



Linda S. Adams
Acting Secretary for
Environmental Protection

California Regional Water Quality Control Board
North Coast Region
Geoffrey M. Hales, Chairman

www.waterboards.ca.gov/northcoast
5550 Skylane Boulevard, Suite A, Santa Rosa, California 95403
Phone: (877) 721-9203 (toll free) • Office: (707) 576-2220 • FAX: (707) 523-0135



Edmund G. Brown Jr.
Governor

June 9, 2011

In the Matter of

Water Quality Certification

for the
Town Of Scotia LLC and RED-Scotia LLC
WDID No. 1B11042RHUM

APPLICANT: Town of Scotia LLC and RED-Scotia LLC
RECEIVING WATER: Eel River
HYDROLOGIC UNIT: Scotia Hydrologic Subarea No. 11.12
COUNTY: Humboldt
FILE NAME: Town Of Scotia

BY THE EXECUTIVE OFFICER:

1. On April 4, 2011, the Town of Scotia LLC (TOS) and RED-Scotia LLC (Applicant) filed an application for water quality certification (certification) under section 401 of the Clean Water Act (33 U.S.C. § 1341) with the California Regional Water Quality Control Board, North Coast Region (Regional Water Board) for activities associated with the seasonal construction of a percolation pond adjacent to the Eel River. The percolation pond would be designed to receive discharges of effluent (treated wastewater) during the summertime discharge prohibition season. The Regional Water Board provided public notice of the application pursuant to title 23, California Code of Regulations, section 3858 on May 17, 2011, and posted information describing the project on the Regional Water Board's website. The Regional Water Board did not receive any public comments on this project.
2. The percolation pond will be located on the gravel bar of the Eel River in the Town of Scotia. The purpose of this project is to create a seasonal percolation pond adjacent to the Eel River for disposal of effluent (treated wastewater) from the applicant's wastewater treatment plant and the RED-Scotia power plant. This water quality certification applies only to the movement of gravel for seasonal

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creation and removal of the percolation pond. Discharges of effluent are regulated separately in accordance with a National Pollutant Discharge Elimination System Permit Order No. R1-2006-0020. The project involves annual construction of a percolation pond on the gravel bar during the seasonal low flow period. The construction work involves grading sand and gravel on the gravel bar to build berms creating three sides of the percolation pond. The existing riverbank is used as the fourth side of the pond and will be left in its natural state. The berms created for the percolation pond will be removed and graded back into the gravel bar prior to the end of each seasonal low flow period such that the graded area will drain and not impound water. The proposed percolation pond will be located approximately 100 feet from the active channel during the seasonal low flow period. The percolation pond is constructed prior to May 15 and removed immediately prior to the rise of the river after onset of the winter rainy season.

3. The Eel River from the confluence with Outlet Creek to the mouth at the Pacific Ocean is designated as a recreational reach under both federal and California Wild and Scenic Rivers Acts. These acts require preservation of the river's free-flowing condition; anadromous and resident fisheries; and outstanding geologic, wildlife, flora and fauna, historic and cultural, visual, recreational, and water quality values. Recreational segments are generally developed, with parallel roads, bridges, and structures. All activities normally associated with public lands are permitted subject to the protection of free flowing conditions and outstanding values. Implementation of the Project would not affect the free-flowing condition of the Eel River and would not affect the extraordinary values for which the segment was listed.
4. The Lower Eel River Total Maximum Daily Loads (TMDL) for temperature and sediment was established in 2007 by the United States Environmental Protection Agency in accordance with section 303(d) of the Clean Water Act, because the State of California determined that the water quality standards for the Lower Eel River are exceeded due to excessive temperature and sediment. Roads and bank erosion are identified as sources contributing to the sediment impairment. In addition, activities that impact the riparian zone and reduce riparian vegetation are identified as sources contributing to increased stream temperatures. The primary adverse impacts associated with excessive temperature and sediment in the Lower Eel River pertains to cold freshwater habitat, primarily anadromous salmonid habitat. Actions authorized by this Order require implementation of Best Management Practices (BMPs) for sediment control. Accordingly, this Order is consistent with, and implements portions of the Lower Eel River TMDL.
5. Proposed non compensatory mitigation includes the use of BMP's to prevent impacts to Water Quality including storage of fuel and other potentially hazardous

materials away from jurisdictional waters, refueling outside the stream channel, limiting vehicle access to the stream channel, and checking equipment for leaks prior to entry into the stream channel. All in-channel work related to construction and removal of the percolation pond and access road will be conducted between May 1 and October/November (at time of first significant rain event) each year. No work will be conducted in the live stream channel. The applicant has obtained a Lake or Streambed Alteration Agreement (1600 Agreement) from California Department of Fish and Game.

6. The project meets the exemption criteria under title 14, California Code of Regulations, section 15304 (g) "Minor Alterations to Land", Maintenance dredging where the spoil is deposited in a spoil area authorized by all applicable state and federal regulatory agencies. Regional Water Board will file a Notice of Exemption in accordance with the California Code of Regulations, title 14, section 15062 after issuance of this order.

Receiving Water: Eel River

Hydrologic Unit : Scotia Hydrologic Subarea No. 11.12

Filled or Excavated Area:

Temporarily Impacted: 1.84 acres are impacted annually when the pond is in place and 6,000 cubic yards of gravel on the river bed are displaced and restored prior to winter each year.

Area Permanently Impacted:

None

Latitude/Longitude: Percolation Pond: Latitude: 40.45N Longitude: -124.11W

Federal Permits: U.S. Army Corps of Engineers Nationwide Permit No. 2004-28595N

Accordingly, based on its independent review of the record, the Regional Water Board certifies that the Town of Scotia LLC and RED-Scotia LLC, (WDID No. 1B11042RHUM) as described in the application, will comply with sections 301, 302, 303, 306 and 307 of the Clean Water Act, and with applicable provisions of state law, provided that the Applicant complies with the following terms and conditions:

1. The Regional Water Board shall be notified annually in writing at least five working days (working days are Monday thru Friday) prior to the commencement of grading work, with details regarding the construction schedule, in order to allow staff to be

present on site during construction, and to answer any public inquires that may arise regarding the project.

2. This certification action is subject to modification or revocation upon administrative or judicial review; including review and amendment pursuant to California Water Code (Water Code) section 13330 and title 23, California Code of Regulations, section 3867.
3. This certification action is not intended and shall not be construed to apply to any discharge from any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to title 23, California Code of Regulations, section 3855, subdivision (b) and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
4. This certification is conditioned upon total payment of any fee required under title 23, California Code of Regulations, section 2200, and owed by the Applicant.
5. The validity of any non denial certification action (actions 1 and 2) shall be conditioned upon total payment of the full fee required under title 23, California Code of Regulations, section 3833, unless otherwise stated in writing by the certifying agency.
6. Discharges shall not cause or threaten to cause pollution, contamination, or nuisance as defined in Water Code section 13050.
7. Discharges shall not adversely impact human health or the environment or the beneficial uses of water set out in the Basin Plan.
8. Discharges are authorized only where they do not cause or contribute to a violation or exceedence of applicable water quality standards, prohibitions, or policies in the Basin Plan, and are controlled through implementation of appropriate design and management measures for prevention and minimization of waste discharges.
9. Activities shall not cause the turbidity of the receiving waters to be increased more than 20 percent above naturally occurring background levels.
10. The activities shall not cause the receiving waters to contain floating materials, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses.

11. Fueling, lubrication, maintenance, and storage of vehicles and equipment shall not result in a discharge or a threatened discharge to surface waters or ground water. At no time shall the discharger use vehicles or equipment that leaks any substance that might impact water quality. Staging and storage areas for vehicles and equipment shall be located outside of the bed, channel, and bank of any waters of the State.
12. No debris, soil, silt, sand, bark, slash, sawdust, cement or concrete washings, oil or petroleum products, or other organic or earthen material from any construction or associated activity of whatever nature, other than that authorized by this Order, shall be allowed to enter into or be placed where it may be washed by rainfall into waters of the State. When operations are completed, any excess material or debris shall be removed from the work area. No rubbish shall be deposited within 150 feet of the high water mark of any stream.
13. BMPs for sediment and turbidity control shall be implemented and in place prior to, during, and after construction in order to ensure that no silt or sediment enters surface waters.
14. All activities and BMPs shall be implemented according to the submitted application and the conditions in this certification.
15. A copy of this Order and the application documents submitted by the Applicant for this certification shall be provided to all contractors and subcontractors conducting the work, and shall be in their possession at the work site.
16. All project work shall be conducted as described in this Order and in the application submitted by the Applicant. If the Regional Water Board is not notified of a significant alteration to the project, it will be considered a violation of this Order, and the Applicant may be subject to Regional Water Board enforcement actions.
17. Prior to implementing any change to the project that may have a significant or material effect on the findings, conclusions, or conditions of this Order, the Applicant shall obtain the written approval of the Regional Water Board Executive Officer.
18. If, at any time, an unauthorized discharge to surface water (including wetlands, rivers or streams) occurs, or any water quality problem arises, the associated project activities shall cease immediately until adequate BMPs are implemented. The Regional Water Board shall be notified promptly and in no case more than 24 hours after the unauthorized discharge or water quality problem arises.

19. The Regional Water Board may add to or modify the conditions of this Order, as appropriate, to implement any new or revised water quality standards and implementation plans adopted and approved pursuant to the Porter-Cologne Water Quality Control Act or section 303 of the Clean Water Act.
20. The Applicant shall provide Regional Water Board staff access to the project site to document compliance with this certification.
21. In the event of any violation or threatened violation of the conditions of this certification, the violation or threatened violation shall be subject to any remedies, penalties, process or sanctions as provided for under applicable State or federal law. For the purposes of section 401(d) of the Clean Water Act, the applicability of any State law authorizing remedies, penalties, process or sanctions constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this certification. In response to a suspected violation of any condition of this certification, the Regional Water Board may require the holder of any federal permit or license subject to this certification to furnish, under penalty of perjury, any technical or monitoring reports the Regional Water Board deems appropriate, provided that the burden, including costs, of the reports shall bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports. In response to any violation of the conditions of this certification, the Regional Water Board may add to or modify the conditions of this certification as appropriate to ensure compliance.
22. This order is not transferable. In the event of any change in control of ownership of land presently owned or controlled by the Applicant, the Applicant shall notify the successor-in-interest of the existence of this Order by letter and shall forward a copy of the letter to the Regional Water Board at the above address.
23. To discharge dredged or fill material under this Order, the successor-in-interest must send to the Regional Water Board Executive Officer a written request for transfer of the Order. The request must contain the requesting entity's full legal name, the state of incorporation if a corporation, and the address and telephone number of the person(s) responsible for contact with the Regional Water Board. The request must also describe any changes to the project proposed by the successor-in-interest or confirm that the successor-in-interest intends to implement the project as described in this Order.
24. Except as may be modified by any preceding conditions, all certification actions are contingent on: a) the discharge being limited to and all proposed mitigation being completed in strict compliance with the Applicant's project description, and b)

compliance with all applicable requirements of the Water Quality Control Plan for the North Coast Region (Basin Plan).

25. The authorization of this certification for any dredge and fill activities expires on December 31, 2013. Conditions and monitoring requirements outlined in this certification are not subject to the expiration date outlined above, and remain in full effect and are enforceable.

If you have any questions or comments please call Lisa Bernard at (707) 576-2677.

Catherine Kuhlman
Executive Officer

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Weblink: State Water Resources Control Board Order No. 2003-0017 -DWQ, General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received State Water Quality Certification can be found at:
http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo2003-0017.pdf

Original to: Frank Bacik, Vice President, Legal Affairs, Town of Scotia, LLC,
P.O. Box 245, Scotia, CA 95565

Electronic

Copy to: Ms. Samantha Olson, SWRCB, Office of the Chief Counsel.
SOlson@waterboards.ca.gov
Mr. Bill Orme, SWRCB, 401 Program Manager, Clean Water Act
Stateboard401@waterboards.ca.gov
Ms. Jane Hicks, U.S. Army Corps of Engineers, Regulatory Functions,
1455 Market Street, San Francisco, CA 94105-1398
Jane.M.Hicks@usace.army.mil