California Regional Water Quality Control Board
North Coast Region
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Edmund G. Brown Jr.
Governor

August 10, 2011

In the Matter of

Water Quality Certification

for the

JACK NOBLE – VAN DUZEN RIVER GRAVEL EXTRACTION OPERATIONS
WDID No. 1B05114WNHU

APPLICANT:	Mr. Jack R. Noble and Ms. Mary L. Noble
RECEIVING WATER:	Van Duzen River
HYDROLOGIC UNIT:	Hydesville Hydrologic Subarea No. 111.21
COUNTY:	Humboldt
FILE NAME:	Noble, Jack – Van Duzen River Gravel Extraction Operations

BY THE EXECUTIVE OFFICER:

1. On May 2, 2011, Mr. Jack R. and Mary L. Noble (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 gravel (river-run aggregate) extraction operations on the Lower Van Duzen River between Hydesville and Carlotta (project). The Regional Water Board provided public notice of the application pursuant to title 23, California Code of Regulations, section 3858 on July 15, 2011, and posted information describing the project on the Regional Water Board's website. We did not receive any public comments on this project.

2. The Applicant's gravel extraction operations are located from approximately one and one-half miles upstream to one and one-half miles downstream of the confluence of Yager Creek and the Van Duzen River in Sections 27, 28, 29, and 30, Township 2 North, Range 1 East, HB&M. Extraction of river-run gravel has occurred along the Van Duzen River since at least the 1940's. The project involves extraction of up to 100,000 cubic yards per year of river-run gravel from several gravel bars along the Van Duzen River. The project activities will result in the temporary disturbance of up

to approximately 100 acres each year. The actual volume of material removed and the specific area of extraction varies from year-to-year.

3. The Applicant's aggregate extraction operations have been regulated by the U.S. Army Corps of Engineers (ACOE) Letter of Permission (LOP) Procedure pursuant to Clean Water Act, Section 404. Under LOP 2009, each gravel operator complies with standardized procedures and receives a site-specific LOP. A Modification to the site-specific LOP is provided in subsequent years. In addition to conditions set forth by the Regional Water Board, the California Department of Fish and Game, ACOE, and National Marine Fisheries Service conduct additional regulatory review and project approval. These agencies and the County of Humboldt Extraction Review Team (CHERT) require extensive monitoring, data gathering, reporting, site inspections, channel cross-section surveys, and aerial photo review. Aggregate extraction is expected to continue as often as annually following authorization by other local, state, and federal permits.

4. River-run aggregate may be removed using a variety of extraction methods which may include skimming, trenching, alcoves, horseshoe pits, narrow skims, and excavation of wetland pits on terraces above the ordinary high water using scrapers, dozers, excavators, loaders, and dump trucks. After the Applicant has removed the material to the approved extraction design lines and grades, the extraction area is graded as necessary to leave no depressions or berms that may potentially trap fish or cause impacts to surrounding habitats. The project does not involve excavation in the wetted portion of the channel.

5. Existing haul roads shall be used to access gravel bars and any new roads shall follow the shortest possible route. No riparian vegetation shall be disturbed and no new haul roads shall be cut through the riparian habitat. The Applicant may construct temporary channel crossings using a flatcar bridge with brow log, concrete block, or K-rail abutments, and native gravel approaches. Temporary crossings are located to avoid potential fish spawning, holding, and rearing habitat. When the final surfaces of the site are graded for seasonal reclamation, the operator may remove the temporary crossings and leave the bankfull channel area to the natural reclamation process, which occurs during the high flow events of the following winter. The Applicant shall implement mitigation and impact avoidance measures during the aggregate extraction processes, including: restricting heavy equipment and trucks to haul roads, exclusion of all machinery from the low flow channel, maintenance of vertical and horizontal offsets from the live channel when appropriate, regular maintenance and inspection of equipment to prevent vehicle leaks into receiving waters, limiting temporary channel crossings, and maintaining sufficient water depth for fish.

6. On September 10, 1992, Humboldt County certified a Program Environmental Impact Report (PEIR) for gravel removal from the Lower Eel River (SCH #1992013033). The Lower Eel River PEIR also covers some gravel extraction sites on the lower Van Duzen River. The PEIR "describes and analyzes the potential environmental effects resulting from 13 gravel removal operations located close to one another in the Lower Eel River watershed," including gravel mining on the property owned by the Applicant (Site 10), and "provides an overview of the cumulative effects of removal of gravel from the bed of the Eel River near Fortuna, California." Subsequently, the County Planning Commission certified a Supplemental EIR (SEIR) assessing the environmental impacts of the Applicant's gravel mining activities on the Van Duzen River, including the potential for streambank erosion. The County filed a Notice of Determination with the County Recorder's office on June 4, 1998; the NOD does not specify the date upon which the Planning Commission certified the SEIR. However, a subsequent NOD filed by the County on September 14, 2000, for a proposed expansion of the project indicates that the County certified the SEIR on October 28, 1997. The SEIR also identifies hard points as a mitigation measure for streambank erosion, and finds that hard-rock non-alluvial channel boundaries "control erosion at critical sites," and have been "especially effective in creating and protecting riparian habitat and in improving aquatic habitat." The Regional Water Board considered the environmental documents and determined that the PEIR and SEIR are adequate CEQA compliance for this project.

7. The Van Duzen River Total Maximum Daily Load (TMDL) for sediment was established in 1999 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 Van Duzen River are exceeded due to excessive sediment. Roads and bank erosion are identified as sources contributing to the sediment impairment. The primary adverse impacts associated with excessive sediment in the Van Duzen River pertain to cold freshwater habitat, primarily anadromous salmonid habitat. Actions authorized by LOP 2009 require implementation of Best Management Practices (BMPs) for sediment control at temporary stream crossings, and activities intended to enhance habitat for salmonids (LOP 2009 – Appendix A) and other aquatic species such as alcove/wetland extractions designed to sequester silt and harbor willows. Accordingly, this Order is consistent with, and implements portions of the Van Duzen River TMDL.

8. The Van Duzen River from the powerline crossing above Little Larabee Creek to the confluence with the Eel River 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 condition and outstanding values. Implementation of the project would not affect the free-flowing condition of the Van Duzen River and would not affect the extraordinary values for which the segment was listed.

9. The federal antidegradation policy requires that state water quality standards include an antidegradation policy consistent with the federal policy. The State Water Board established California's antidegradation policy in State Water Board Resolution No. 68-16. Resolution No. 68-16 incorporates the federal antidegradation policy where the federal policy applies under federal law. Resolution No. 68-16 requires that existing quality of waters be maintained unless degradation is justified based on specific findings. The Regional Water Board's Basin Plan implements, and incorporates by reference, both the State and federal antidegradation policies. This Order is consistent with applicable federal and State antidegradation policies, as it does not authorize the discharge of increased concentrations of pollutants or increased volumes of treated wastewater.

10. This discharge is also regulated under 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," which requires compliance with all conditions of this water quality certification. Order No. 2003-0017-DWQ can be found at: http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo2003-0017.pdf.

Receiving Waters:	Van Duzen River in the Hydesville Hydrologic Subarea No. 111.21
Filled or Excavated Area:	Area Temporarily Impacted: 100 acres of stream channel Area Permanently Impacted: None
Total Linear Impacts:	Length Temporarily Impacted: None Length Permanently Impacted: None
Dredge Volume:	None
Latitude/Longitude:	Upstream Extent: 40.5276 N/124.0586 W Downstream Extent: 40.5336 N/124.1170 W

Accordingly, based on its independent review of the record, the Regional Water Board certifies that the Jack Noble – Van Duzen River Gravel Extraction Operations (WDID

No. 1B05114WNHU), 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. This certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Water Code section 13330 and title 23, California Code of Regulations, section 3867.

2. 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.

3. 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.

4. A base fee has already been paid and no additional base fee is required during the term of this Order. Prior to initiating any aggregate mining project, the Applicant shall submit a volume based fee in an amount determined in accordance with the fee schedule contained in California Code of Regulations, Division 3, Chapter 9, Article 1, section 2200(a)(3). The volume based fee payment (check payable to the State Water Resources Control Board) shall be accompanied by a transmittal letter that includes the WDID Number for this Order, the applicable aggregate mining season (year), the volume of aggregate that will be removed during the applicable aggregate mining season, and the volume of aggregate that was mined during the previous aggregate mining season. If/when the actual volume of aggregate mined is less than the amount the Applicant used to calculate the previously paid fee; a corresponding fee credit shall be applied to the total fee that is owed prior to additional mining during the following aggregate mining season or mining event. If/when the actual volume of aggregate mined was more than the amount the Applicant used to calculate the previously paid fee; a corresponding fee debit shall be applied to the fees that are owed prior to additional mining during the following aggregate mining season or mining event. Any fee debit amounts owed from a completed mining event shall be added to the applicable fee balance and included with the annual fee for the following season or mining event. If/when an Applicant owes additional fees for aggregate that has already been mined, and mining will not occur during the following mining season, the Applicant shall submit by August 1 of the following year, a transmittal letter indicating that no extraction will occur during the identified extraction season and the balance owed to cover any fee debit that resulted following the previous mining event. Failure to submit the applicable fee

and any additional fee (debit fee) prior to the start of any subsequent aggregate mining activities is a violation of this Order.

5. The Regional Water Board shall be notified annually at least five working days (working days are Monday – Friday) prior to the commencement of ground disturbing activities, with details regarding the schedule for aggregate mining activities, in order to allow staff to be present onsite during gravel extraction operations, and to answer any public inquiries that may arise regarding the project.

6. Discharges shall not cause or threaten to cause pollution, contamination, or nuisance as defined in CWC 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. Discharge of process wastewater or solids from aggregate washing activities to surface waters is prohibited.

10. Discharge of process wastewater from concrete production and washout activities to surface water or ground water is prohibited.

11. Discharge of process wastewater from asphalt production and associated air pollution control equipment to surface water or ground water is prohibited.

12. Activities shall not cause the turbidity of the receiving waters to be increased more than 20 percent above naturally occurring background levels.

13. 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.

14. 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.

15. No debris, soil, silt, sand, bark, slash, sawdust, rubbish, 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.

16. Permanent haul roads shall follow existing routes to the extent possible. Temporary haul roads shall avoid sensitive areas such as wetlands and riparian vegetation to the extent possible.

17. BMPs for sediment and turbidity control shall be implemented and in place prior to and during each season's extraction activities, and as necessary after extraction activities are completed each season in order to ensure that no silt or sediment enters surface waters.

18. Upon completion of annual aggregate extraction activities, the gravel bar shall be left in a condition that is free-draining and free of depressions in order to reduce impacts to fish and wildlife species, unless a different configuration of the gravel bar is authorized by the ACOE.

19. Accumulated solids (fines) shall be removed from aggregate wash water percolation basins and moved to an appropriate location for disposal, storage, or reuse prior to inundation of percolation basins by surface waters and the area occupied by percolation basins must be restored to pre-existing slopes and contours prior to inundation by surface waters.

20. All activities and BMPs shall be implemented according to the submitted application and the conditions in this certification.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. The Applicant shall provide Regional Water Board staff access to the project site to document compliance with this certification.

27. 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.

28. 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.

    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.

29. 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).

30. The authorization of this certification for any dredge and fill activities expires on November 15, 2015. 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 Dean Prat at (707) 576-2801.

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Catherine Kuhlman
Executive Officer

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Original to: Mr. Jack and Mary Noble, P.O. Box 365, Fortuna, CA 95540

Electronic
Copies to: U.S. Army Corps of Engineers, District Engineer, 601 Startare Drive, Box 14, Eureka, CA 95501
Ms. Jane Hicks, U.S. Army Corps of Engineers, Regulatory Functions, 1455 Market Street, San Francisco, CA 94103-1398