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## North Coast Regional Water Quality Control Board

July 18, 2013

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In the Matter of

**Water Quality Certification**

for

**City of Arcata – McDaniel Slough Marsh Enhancement Project**  
**WDID No. 1B06106WNHU**

APPLICANT: City of Arcata  
RECEIVING WATERS: Humboldt Bay  
HYDROLOGIC UNIT: Eureka Plain Hydrologic Unit No. 110.00  
COUNTY: Humboldt  
FILE NAME: Arcata, City of – McDaniel Slough Marsh Enhancement Project

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BY THE EXECUTIVE OFFICER:

1. On July 31, 2007, the City of Arcata filed an application for water quality 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 McDaniel Slough Marsh Enhancement Project. The Regional Water Board provided public notice of the application pursuant to title 23, California Code of Regulations, section 3858 on June 21, 2007, and posted information describing the project on the Regional Water Board's website. Water quality certification was issued on July 25, 2007, and an amendment to that water quality certification was issued on July 28, 2010. The McDaniel Slough Marsh Enhancement Project was initiated and most of the work has already been completed; however, the previously issued certification expired prior to completion of the project.
2. On May 6, 2013, the City of Arcata (Applicant) filed another application for water quality certification (certification) under section 401 of the Clean Water Act (33 U.S.C. § 1341) with the Regional Water Board to allow completion of the McDaniel Slough Marsh Enhancement Project (project). The Regional Water Board provided public

notice of the application pursuant to title 23, California Code of Regulations, section 3858 on June 20, 2013, and posted information describing the project on the Regional Water Board's website. We did not receive any public comments on this project.

3. The Applicant is partnering with California Department of Fish and Wildlife (CDFW) on this project; the Applicant owns approximately 88 acres and CDFW owns approximately 166 acres of the project site. The project is located adjacent to, and on the northwest boundary of, the Arcata Marsh and Wildlife Sanctuary (AMWS). The City's portion of the site links the AMWS to the CDFW Mad River Slough Wildlife Area, which is located west of Janes Creek/McDaniel Slough. South of the AMWS is the Humboldt Bay National Wildlife Refuge. Together, these properties make up more than 1000 acres of contiguous public land north of Humboldt Bay.
4. The Applicant has divided the project activities into phases. Phase 1, completed in 2007, included the following:
  - excavate soil to begin constructing two approximately ten-foot deep freshwater ponds
  - use excavated soil from the freshwater pond area to construct levees on the eastern portion of site - levees will be constructed along the east side of V Street and around an area which will be made into a brackish pond in the future; pond will initially be a seasonal freshwater pond
  - plant vegetation on newly constructed levees
  - excavate deposited sediment from historic slough channels on the eastern portion of the site - soil will be used to build levees and to construct sills in the newly contoured channels to provide habitat for goby
  - remove portions of the levee bordering McDaniel Slough (Janes Creek), leaving some portions of the levee intact to serve as roosting islands and to break up wave fetch within the project area to promote deposition of suspended sediment
  - contour bottom of future brackish pond, build and vegetate islands in brackish pond
  - construct trails, viewing structures, kiosks
  - plant upland areas with native vegetation
  - install storm water BMPs throughout the project area
  - PG & E will reinforce its power tower structures in the project area
5. Phase 2, completed in 2011, included the following:
  - install a tide gate on the open culvert to control flows and allow the western area to dry out while maintaining water in lower reaches of western remnant channels
  - complete construction of freshwater ponds
  - use excavated material from freshwater pond area to construct new levees on western portion of site - south side of V Street area and westward
  - plant vegetation on newly constructed levees

- isolate borrow ditch area, dewater, install culvert with tide gate and connect to existing levee
  - remove deposited sediment from western remnant channels and construct a low sill to retain approximately 20-30% of high tide flows in order to maintain/enhance post project habitat for tidewater goby
  - place any remaining suitable soil from freshwater pond construction (up to 40,000 cubic yards) on up to 23 acres of low elevation subsided areas adjacent to the modified remnant to build up the marsh plain by up to one foot, in order to accelerate development of pickleweed habitat
  - complete design infrastructure for brackish pond (this will not involve any field work)
  - remove tide gates and leave culverts in place in order to allow increased but limited flows into the restoration area
  - allow levees to season/settle
6. Remaining Phase 3 activities include the following:
- plant salt marsh vegetation
  - remove four culverts from levees, one at a time, to allow unrestricted tidal flow passage into and from the restoration area
  - breach the bay front levee
  - reinforce levees at mouth of McDaniel Slough
  - begin operation of brackish marsh, by discharging approximately 1-6 cubic feet per second of treated wastewater from the City of Arcata wastewater treatment facility (WWTF) into the brackish pond area which may only occur after the City of Arcata has applied for and received an amendment to the National Pollutant Discharge Elimination System Permit for the WWTF allowing discharge of treated effluent to the brackish pond
7. Culvert removal in Phase 3 involves blocking the existing culverts to prevent flow from the creek while work is occurring on each successive culvert. If the water level is not below the height of the culvert, the Applicant will temporarily isolate the culvert work area.
8. Non-compensatory mitigation measures include the use of Best Management Practices for heavy equipment operation, and erosion and sediment control. If it appears that the increase in tidewaters will damage the cement base of the Pacific Gas and Electric (PG&E) towers located within the project area, PG&E will build up the cement tower base and employ BMPs associated with transportation, storage, dust control and management of spills and sediment control.
9. The Applicant has applied to the United States Army Corps of Engineers for authorization to perform the project under individual permit, pursuant to Clean Water Act, section 404.
10. On December 20, 2006, Humboldt County Community Development certified an Environmental Impact Report (EIR) (SCH No.2003022091) for the project in order to

comply with CEQA. After adoption of the EIR, the CDFW acquired additional land which allowed for expansion of the area of tidal and freshwater wetland habitat restoration/enhancement. On July 16, 2010, The City of Arcata adopted a McDaniel Slough Wetland Enhancement Project EIR Supplement to address changes to the project within the expanded project area. The Regional Water Board has considered the environmental documents and any proposed changes incorporated into the project or required as a condition of approval to avoid significant effects to the environment. The project may have the following significant effects on the environment: impacts to drainage due to construction of a new perimeter levee along the western boundary; construction related nonpoint source water quality effects; and storm water may pick up pollutants and adversely impact surface water quality.

11. Mitigation measures identified in the EIR as necessary to reduce or eliminate significant effects on the environment include: installation of a new drainage ditch along the outside of a new levee; installation of a new culvert and tide gate; construction during the dry season; exposed soil will be covered with weed-free straw mulch; limiting vehicle and equipment parking, refueling, and maintenance activities to designated areas; implementation of Best Management Practices for erosion and sediment control; and, implementation of a Storm Water Pollution Prevention Plan. Mitigation measures identified in the EIR are incorporated as conditions of approval this Order.
12. 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, and does not otherwise authorize degradation of the waters affected by this project.
13. 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.  
[http://www.waterboards.ca.gov/board\\_decisions/adopted\\_orders/water\\_quality/2003/wqo/wqo2003-0017.pdf](http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo2003-0017.pdf)

Receiving Water: McDaniel Slough and Humboldt Bay in the Eureka Plain  
Hydrologic Unit No. 110.00

Filled or Excavated Area: Area Temporarily Impacted: 59.34 acres of wetland, marsh  
and channels

Area Permanently Impacted: 6.5 acres of wetland

Total Linear Impacts: Length Temporarily Impacted: 5,200 linear feet of slough  
channel on agricultural lands  
Length Permanently Impacted: None

Dredge Volume: None

Latitude/Longitude: 40.871111 N/124.101944 W

Mitigation Summary: Compensatory mitigation includes creation of 6.64 acres of wetland area and restoration of salt marsh, tidal connections and tidal influence to approximately 200 acres of existing wetland, and salmonid and wildlife habitat. Approximately 180.1 acres of tidal habitat (mudflat, salt marsh, tidal channel), 11.9 acres of sub-tidal estuarine habitat, and 24.7 acres of brackish marsh will be created, and 23.5 acres of existing seasonal wetlands will be enhanced. The project has been designed to avoid and minimize adverse impacts and permanent impacts to waters of the United States. Mitigation measures to avoid significant environmental effects are incorporated as conditions of this Order.

Expiration: July 18, 2018

Accordingly, based on its independent review of the record, the Regional Water Board certifies that the City of Arcata – McDaniel Slough Marsh Enhancement Project (WDID No. 1B06106WNHU), 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:

**All conditions of this order apply to the Applicant (and all their employees) and all contractors (and their employees), sub-contractors (and their employees), and any other entity or agency that performs activities or work on the project as related to this Water Quality Certification.**

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. The validity this certification is conditioned upon total payment of any fee required under title 23, California Code of Regulations, section 3833, and owed by the Applicant.
4. Regional Water Board staff shall be notified in writing at least five working days (working days are Monday – Friday) prior to the commencement of ground disturbing activities, with details regarding the construction schedule, in order to allow staff to be present onsite during construction, and to answer any public inquiries that may arise regarding the project.
5. The conditions and monitoring and reporting requirements detailed in the Monitoring, Mitigation and Adaptive Management Plan (MMA) in the Final EIR are hereby incorporated by reference and are conditions of approval of this certification. Notwithstanding any more specific conditions in this certification, the City of Arcata shall comply with all mitigation measures identified in the MMA.
6. 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.
7. All activities and BMPs shall be implemented according to the submitted application and the conditions in this certification. BMPs for erosion, sediment and turbidity control shall be implemented and in place at commencement of, during and after any ground clearing activities or any other project activities that could result in erosion or sediment discharges to surface water.
8. The Applicant shall prioritize the use of wildlife-friendly biodegradable (not photo-degradable) erosion control products wherever feasible. The Applicant shall not use or allow the use of erosion control products that contain synthetic materials within waters of the United States or waters of the State at any time. The Applicant shall not use or allow the use of erosion control products that contain synthetic netting for permanent erosion control (i.e. erosion control materials to be left in place for two years or more after the completion date of the project). If the Applicant finds that erosion control netting or products have entrapped or harmed wildlife, personnel shall remove the netting or product and replace it with wildlife-friendly biodegradable products. The Applicant shall request approval from the Regional Water Board if an exception from this requirement is needed for a specific location.
9. Disturbance or removal of existing vegetation shall not exceed the minimum necessary to complete the project.

10. 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.
11. The Applicant shall provide Regional Water Board staff access to the project site to document compliance with this certification.
12. If, at any time, an unauthorized discharge to surface water (including wetlands, lakes, rivers or streams) occurs, or any water quality problem arises, the associated project activities shall cease immediately until adequate BMPs are implemented including stopping work. 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.
13. Fueling, lubrication, maintenance, storage, and staging of vehicles and equipment shall not result in a discharge or threatened discharge to any waters of the State including dry portions of the shoreline. At no time shall the Applicant or its contractors allow use of any vehicle or equipment, which leaks any substance that may impact water quality.
14. All project work shall be conducted as described in this Order and in the application submitted by the Applicant. 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. 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 action(s).
15. The Applicant shall provide a copy of this Order and State Water Resources Control Board (SWRCB) Order No. 2003-0017-DWQ to any contractor(s), subcontractor(s), and utility company(ies) conducting work on the project, and shall require that copies remain in their possession at the work site. The Applicant shall be responsible for ensuring that all work conducted by its contractor(s), subcontractor(s), and utility companies is performed in accordance with the information provided by the Applicant to the Regional Water Board.
16. The Applicant shall comply with all applicable water quality standards as detailed in the Basin Plan.
17. 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.
18. In the event of any violation or threatened violation of the conditions of this Order, 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 for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this Order. In response to a suspected violation of any condition of this certification, the State Water Board may require the holder of any federal permit or license subject to this Order to furnish, under penalty of perjury, any technical or monitoring reports the State 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 Order, the Regional Water Board may add to or modify the conditions of this Order as appropriate to ensure compliance.

19. 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.

20. 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).
21. The authorization of this certification for any dredge and fill activities expires on July 18, 2018. Conditions and monitoring requirements outlined in this Order 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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Matthias St. John  
Executive Officer

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](http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo2003-0017.pdf)

Original to: Mr. Mark Andre, City of Arcata, 736 F Street, Arcata, CA 95521

Electronic

Copy 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