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## North Coast Regional Water Quality Control Board

August 12, 2013

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In the Matter of  
**Water Quality Certification**  
for

**Nylander Ranch – Levee Repair, Freshwater Slough**  
**WDID No. 1B13064WNHU**

APPLICANTS: Allen and Cheryl Nylander  
RECEIVING WATER: Freshwater Slough  
HYDROLOGIC AREA: Eureka Plain Hydrologic Unit No. 110.00  
COUNTY: Humboldt  
FILE NAME: Nylander Ranch – Levee Repair, Freshwater Slough

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BY THE EXECUTIVE OFFICER:

1. On May 22, 2013, Allen and Cheryl Nylander (Applicants) 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 repairing an existing levee on the Applicant's Nylander Ranch property near Eureka. The Regional Water Board provided public notice of the application pursuant to title 23, California Code of Regulations, section 3858 on July 18, 2013, 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 Nylander Ranch and levee project are located adjacent to Freshwater Slough. The project involves repairing an eroded section of an existing levee that protects the Applicant's agricultural property from flooding, high tides, and saltwater. The eroded section is located immediately downstream of the confluence of Ryan Slough and Freshwater Creek. Erosion has reduced the width of the levee base from its original width of 50 feet to approximately 30 feet within the eroded section. The eroded section is approximately 320 feet long.
3. The project involves repairing and stabilizing the eroded levee section by placing rock riprap on the slough side of the levee. Levee repair activities will take place within the levee's original footprint. The original footprint is based on the remains of a wooden wall located along the toe of the levee. Approximately 670 cubic yards of rock riprap

and approximately 240 yards of coarse river-run aggregate will be used to restore the levee. A toe trench will be excavated on the slough side of the levee to place a base course of rock riprap. The eroded slope will be benched to provide a stable slope face for placement of the remaining rock riprap. Excavated materials will be stockpiled for onsite use. Geotextile fabric will be placed over the benched surface, coarse river-run aggregate will be placed over the fabric, and rock riprap will be placed over the aggregate. Stockpiled materials will be placed on the land side of the levee to create a 1.5:1 slope and to make the restored levee top 6-feet wide.

4. All work on the lower portion of the slough side of the levee will take place during low tides. There are eighteen days during the August 1 to October 15 work period that have daytime low tides. An approximately two-hour work window is anticipated for placing the rock riprap in the lower portion of the levee during low tide. The lower portion of the levee repairs will be completed in approximately 50-foot long sections and approximately seven low tide work windows are expected to be needed in order to complete the lower portion of the levee repairs. The project is expected to take three weeks to complete.
5. On July 25, 2013, the Humboldt Bay Harbor, Recreation and Conservation District (HBHRCD) approved a Mitigated Negative Declaration (SCH No. 2013022020) for the project in order to comply with CEQA. The Regional Water Board has considered the environmental document, BMPs, and any proposed changes incorporated into the project or required as a condition of approval to avoid significant effects to the environment. The environmental document includes mitigation measures for the project's potential impacts to biological resources. To mitigate for potential impacts to riparian habitat, the top and land side of the levee will be planted with native riparian and coastal prairie species.
6. The project will result in permanent impacts to 320 linear feet and 6,400 square feet of waters of the United States associated with restoring the original levee footprint and bank of Freshwater Slough.
7. The Applicant has obtained authorization from the United States Army Corps of Engineers (File No. 2011-00325) to perform this project under Nationwide Permit No. 31 pursuant to Clean Water Act, section 404. The Applicant applied for a Lake and/or Streambed Alteration Agreement from the California Department of Fish and Wildlife. The Applicant has also applied for a Humboldt County grading permit and a Coastal Development Permit from the HBHRCD.
8. 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.

9. 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 Waters: Eureka Plain Hydrologic Unit No. 110.00

Filled or Excavated Area: Area Temporarily Impacted: None  
Area Permanently Impacted: 6,400 square feet of streambank

Total Linear Impacts: Length Temporarily Impacted: None  
Length Permanently Impacted: 320 linear feet of streambank

Dredge Volume: None

Latitude/Longitude: 40.78895 N/124.11505 W

Accordingly, based on its independent review of the record, the Regional Water Board certifies that the (WDID No.1B13064WNHU), 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 of 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. 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.
6. 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.
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. The mitigation measures detailed in the Mitigated Negative Declaration (SCH No. 2013022020) are hereby incorporated by reference and are conditions of approval of this certification. Notwithstanding any more specific conditions in this certification, the Applicant shall comply with all mitigation measures identified in the Mitigation Negative Declaration that are within the Regional Water Board's jurisdiction.
11. 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 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.
12. Fueling, lubrication, maintenance, storage and staging of vehicles and equipment shall not result in a discharge or a threatened discharge to waters of the United States. At no time shall the Applicant use any vehicle or equipment, which leaks any substance that may impact water quality.
13. 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).

14. 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.
15. The Applicant shall provide Regional Water Board staff access to the project site to document compliance with this certification.
16. 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.
17. 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.
18. 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).
19. The authorization of this certification for any dredge and fill activities expires on August 12, 2018. 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.

*Original signed by*

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

Original to: Allen and Cheryl Nylander, 3800 Park Street, Eureka, CA 95501

Copy to: Ms. Prairie Moore, NRM Corporation, 1434 3<sup>rd</sup> Street, Eureka, CA 95501

Electronic

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