
North Coast Regional Water Quality Control Board

September 9, 2013

In the Matter of
Water Quality Certification

for

**California Department of Fish and Wildlife – Crescent City Marsh Wildlife Area
WDID No. 1A13081WNDN**

APPLICANT:	California Department of Fish and Wildlife
RECEIVING WATER:	Wetlands and Unnamed Drainage Channels
HYDROLOGIC AREA:	Smith River Plain Hydrologic Subarea No. 103.11
COUNTY:	Del Norte
FILE NAME:	CDFW – Crescent City Marsh Wildlife Area, Ditch Maintenance

BY THE EXECUTIVE OFFICER:

1. On June 27, 2013, the California Department of Fish and Wildlife (CDFW/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 maintenance excavation of drainage channels at the Crescent City Marsh (CCM) and Crescent City Marsh Wildlife Area (CCMWA) to improve and manage critical habitat for the endangered western lily. The Regional Water Board provided public notice of the application pursuant to title 23, California Code of Regulations, section 3858 on August 2, 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 primary purpose of this project is to enhance and increase critical habitat for the western lily by creating and maintaining early successional habitat. The 1998 U.S. Fish and Wildlife Service (USFWS) Recovery Plan for the western lily identifies secondary succession as a primary reason for decline of western lily populations throughout its restricted range. Approximately ten years ago the CCM supported more than seventy-five percent of the total reproductive population of this endangered species.
3. In 1991, the largest known population of western lily was discovered at the CCMWA. Since 2006, the western lily population has declined to less than fifty percent of the 1997 population estimate and the western lily has disappeared from the lowest elevations of the marsh. Threats to the western lily populations include increased secondary succession by encroaching woody scrub vegetation and conifers, and

inundation of habitat resulting from poor draining and flooding of critical and suitable habitats due to plugged culverts that drain the marsh to the beach. CDFW, in cooperation with the USFWS, seek to improve critical habitat for this state and federal endangered species by taking action to manage and maintain its critical habitat.

4. Planned management and maintenance actions focus on two specific tasks. The California Department of Transportation (CDOT) will implement both tasks and all aspects of the channel excavation and maintenance. Task 1 involves excavation of approximately 290 cubic yards of sediment, debris, and decomposed vegetation from an existing plugged drainage channel that originates in the CCMWA and runs parallel to Highway 101 then into the inlet of the "north culvert" that passes under Highway 101. The excavation will be approximately 315-feet long by 2.5-feet deep by 10-feet wide. Excavated muck soil and decomposed vegetation within the eastern 150 linear feet of the channel will be spread on a like-sized area on either side of the channel to raise the marsh surface approximately 2 feet or as necessary to support a slightly higher and more diverse plant community.
5. Task 2 involves excavation of approximately 250 cubic yards of sediment, debris, and decomposed vegetation from an existing plugged drainage channel that originates in the CCMWA and runs parallel to Highway 101 then into to the inlet of the "south culvert" that also passes under Highway 101. The excavation will be approximately 150-feet long by 3-feet deep by 15-feet wide. Excavated muck soil and decomposed vegetation will be placed adjacent to the channel and within the marsh until adequately dewatered. The dewatered muck soil materials and vegetation will be loaded into trucks and hauled to an approved disposal site.
6. The project will result in 5,400 square feet and 465 linear feet of temporary impacts to waters of the United States associated with wetlands and existing drainage channels. The project will not result in any permanent impacts to waters of the state or United States. The project has temporary impacts that are considered to be self-mitigating and has been designed to improve habitat for the endangered western lily. Best Management Practices (BMPs) will be implemented during construction to prevent adverse impacts to the environment.
7. On May 9, 2013, the CDFW approved a Mitigated Negative Declaration (SCH No. 2011082068) 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 impacts to biological resources including special status plants, nesting birds, riparian vegetation, sensitive natural communities, and federally protected wetlands.
8. The Applicant has applied for authorization from the United States Army Corps of Engineers to perform this project under Individual Permit pursuant to Clean Water Act, section 404. The CDFW is the Applicant for the project and does not issue Lake and/or Streambed Alteration Agreement (1600 permit) to CDFW. The CDOT will be required to obtain a 1600 permit prior to initiating any work.
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, and does not otherwise authorize degradation of the waters affected by this project.

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

Receiving Waters: Smith River Plain Hydrologic Subarea No. 103.11

Filled or Excavated Area: Area Temporarily Impacted: 5,400 square feet of wetlands in drainage channel
Area Permanently Impacted: None

Total Linear Impacts: Length Temporarily Impacted: 465 linear feet of wetlands in drainage channel
Length Permanently Impacted: None

Dredge Volume: None

Latitude/Longitude: 41.74359 N/124.16859 W

Accordingly, based on its independent review of the record, the Regional Water Board certifies that the California Department of Fish and Wildlife – Crescent City Marsh Wildlife Area (WDID No.1A13081WNDN), 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. In accordance with State and Federal laws and regulations, the Applicant is liable and responsible for the proper disposal of Project-generated waste. When handling, transporting, and disposing of Project-generated waste, the Applicant and their contractors shall comply with all applicable State and Federal laws and regulations. When disposing of project-generated waste offsite, the Applicant and its contractors shall:
 - i) make appropriate arrangements to dispose of the material, including, but not limited to, property owner agreements, permits, licenses, and environmental clearances;
 - ii) obtain satisfactory evidence that the work in 8.i has been completed; and
 - iii) obtain a dated, signed manifest from the disposal site owner, or authorized representative, that identifies the type and quantity of disposed waste.
9. 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.
10. Disturbance or removal of existing vegetation shall not exceed the minimum necessary to complete the project.
 11. The mitigation measures detailed in the Mitigated Negative Declaration (SCH No. 2012102037) 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.
 12. 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.
 13. 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.
 14. 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 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.
 16. The Applicant shall provide Regional Water Board staff access to the project site to document compliance with this certification.
 17. 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.

18. 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.

19. 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).
20. The authorization of this certification for any dredge and fill activities expires on September 9, 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 David Leland for

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

Original to: Mr. Robert Sullivan, California Department of Fish and Wildlife, P.O. Box 366, Lewiston, CA 96052

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