
North Coast Regional Water Quality Control Board

August 8, 2014

In the Matter of

Water Quality Certification

for

Renner Tide Gate Project
WDID No. 1B14062WNHU

APPLICANT: MLRX2, LLC, Mike Renner
RECEIVING WATER: Humboldt Bay
HYDROLOGIC UNIT: Eureka Plain Hydrologic Unit No. 110.00
COUNTY: Humboldt
FILE: Renner Tide Gate Project, WDID No. 1B14062WNHU, ECM PIN
CW-807474

BY THE EXECUTIVE OFFICER:

1. On July 1, 2014, MLRX2, LLC, Mike Renner (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 Renner Tide Gate Project (Project). Information describing the Project was noticed for public comment on the Regional Water Board's website on July 17, 2014. We received no comments. The proposed Project will cause disturbances to waters of the United States and State associated with the Humboldt Bay tidal wetlands within the Eureka Plain Hydrologic Unit No. 110.00. The Project is located at 1200 Railroad Avenue, Eureka, Humboldt County, at latitude 40.796139°N, and longitude 124.185808°W. The Project will result in permanent impacts to approximately six (6) square feet of waters of the U.S. and State, tidal wetlands and shoreline. The project will temporarily impact approximately 650 square feet of waters of the U. S. and State, tidal wetlands and shoreline.

2. The primary purpose of the Project is to improve the storm water outfall pipe leading from the storm water treatment skim box to Humboldt Bay. The proposed Project would include dewatering (as necessary) at the site of the outflow pipe for access, potholing to locate the buried pipe, maintenance of the existing tide gate (if present) or installation of a new tide gate if necessary. During construction no vegetation is proposed to be disturbed.
3. The Project is planned to take place during summer or fall of 2014 or 2015, depending on permitting, with construction work planned to last approximately one (1) week.
4. Compensatory mitigation is not required for this project. The Project will have temporary impacts to waters of the US, and as such, the applicant proposes to restore the project site to pre-project conditions within one year of Project completion. No vegetation is proposed to be disturbed during construction. The Project proposes to employ best management practices to prevent or reduce any discharges during and after construction.
5. The Applicant has applied for authorization from the United States Army Corps of Engineers for a Clean Water Act, section 404 permit. The Applicant has applied to the California Coastal Commission for project approval.
6. The North Coast Regional Water Quality Control Board, as a Responsible California Environmental Quality Act (CEQA) agency, has determined that the project qualifies for a Categorical Exemption, 15301 (d) Existing Facilities, and will file a Notice of Exemption with the State Clearinghouse concurrent with issuance of the 401 Water Quality Certification, pursuant to CEQA guidelines.
7. Pursuant to Regional Water Board Resolution R1-2004-0087, Total Maximum Daily Load Implementation Policy Statement for Sediment-Impaired Receiving Waters within the North Coast Region (Sediment TMDL Implementation Policy), the Executive Officer is directed to "rely on the use of all available authorities, including existing regulatory standards, and permitting and enforcement tools to more effectively and efficaciously pursue compliance with sediment-related standards by all dischargers of sediment waste."
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.

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. (Weblink attached below).

Receiving Water: Humboldt Bay,
Eureka Plain Hydrologic Unit No. 110.00

Filled or Excavated Area: Permanent impact to waters of the US and State:
Six (6) square feet of tidal wetlands
Temporary impact to waters of the US and State:
650 square feet of tidal wetlands

Latitude/Longitude: 40.796139°N / 124.185808°W

Expiration: August 8, 2019

Accordingly, based on its independent review of the record, the Regional Water Board certifies that the Renner Tide Gate Project (WDID No. 1B14062WNHU), 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. Compensatory mitigation is not required for the project. The Project will have temporary impacts to tidal wetlands and shoreline and the applicant proposes to restore the project site to pre-project conditions within one year of Project completion. No vegetation is proposed to be disturbed during the project.
5. Applicant shall prioritize the use of wildlife-friendly 100% biodegradable erosion control products/BMPs whenever feasible. For purposes of this Order, photodegradable synthetic products are not considered biodegradable. Applicant shall not use or allow the use of erosion control products that contain synthetic (e.g., plastic or nylon) netting or materials for permanent erosion control (i.e., erosion control materials to be left in place for two years or after the completion date of the Project). If the Applicant finds that erosion control netting or products have entrapped or harmed wildlife, the Applicant shall remove the netting or product and replace it with wildlife-friendly biodegradable products. Applicant shall remove any remaining synthetic netting or materials remaining at the end of two years, or sooner.
6. BMPs shall be implemented as proposed in the application materials. 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. Severe and unseasonal rain events are becoming more frequent due to the effects of climate change. Therefore, BMPs shall be immediately available for deployment at all times to prevent discharges to waters of the state.
7. 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.
8. The Applicant shall provide Regional Water Board staff access to the Project site to document compliance with this certification.
9. 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.

10. 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).
11. All Project work shall be conducted as described in this Order and in the application submitted by the Applicant, and shall comply with all applicable water quality standards as detailed in the Basin Plan. 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.
12. 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.
13. Disturbance or removal of existing vegetation shall not exceed the minimum necessary to complete the Project.
14. 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.
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. 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.

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 email a copy of the letter to the following email address: NorthCoast@waterboards.ca.gov

To discharge dredged or fill material under this Order, the successor-in-interest must email the Regional Water Board Executive Officer at: NorthCoast@waterboards.ca.gov 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. 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).

18. The authorization of this certification for any dredge and fill activities expires on August 8, 2019. 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 Gil Falcone at (707) 576-2830 or Stephen Bargsten at (707) 576-2653.

Original signed by David Leland for

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

Original to: MLRX2, LLC, Attn: Mike Renner, 1940 Home Ave, Fortuna, CA 95540

Copy to: Laurie Monarres, US Army Corps of Engineers
Laurie.A.Monarres@usace.army.mil

Carol Heidsiek, US Army Corps of Engineers
Carol.A.Heidsiek@usace.army.mil

Stein Coriell, SHN Consulting Engineers and Geologists
scoriell@shn-engr.com