April 6, 2015

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

**for the**

**California Department of Transportation**
**State Route 199 Middle Fork Smith River Wall Project**
**41.8822, -123.8216**
**WDID No. 1B15014WNDN, ECM PIN CW-813031**
**Caltrans EA No. 01-0B320**

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| APPLICANT: | California Department of Transportation |
| RECEIVING WATERS: | Middle Fork Smith River |
| HYDROLOGIC AREA: | Hydrologic Planning Area 103.30, Middle Fork Smith River |
| COUNTY: | Del Norte |
| FILE NAME: | CDOT Middle Fork Wall Highway 199 |

FINDINGS BY THE EXECUTIVE OFFICER:

1. On February 6, 2015, the North Coast Regional Water Quality Control Board (Regional Water Board) received an application from the California Department of Transportation (Caltrans) requesting Federal Clean Water Act (CWA) section 401, Water Quality Certification (certification) for activities related to the State Route 199 Middle Fork Wall Project (Project).

2. **Hydrologic Unit**: The proposed Project would cause impacts to the Middle Fork Smith River (Basin Plan Hydrologic Planning Area 103.30, Middle Fork Smith River).

3. **Public Notice:** The Regional Water Board provided public notice of the application pursuant to title 23, California Code of Regulations, section 3858 on March 5, 2015, and

posted information describing the Project on the Regional Water Board's website. No comments were received.

4. **Project Description:** The Project location is in Del Norte County between post-miles 24.6 and 24.7 on State Route 199 (SR 199). The purpose of the Project is to fortify a section of SR 199 that overlies a geologically unstable area immediately adjacent the Middle Fork Smith River. Two existing steel bin walls are failing due to saturation of the existing roadway prism. Caltrans would install a soldier pile tieback wall to encapsulate the existing walls and the unstable area between the walls; the goal is to prevent the sinking of the soil in the space between the two bin walls.

5. **Construction Timing:** Project construction is expected to require 150 days between July 2015 and October 2016.

6. **Permanent Impacts:** Approximately 4,160 square feet (0.1 acres) of riparian habitat would be removed as a result of construction access and activities. Riparian vegetation removal would consist of two alder trees (12" and 16"), saplings, shrubs, and herbaceous vegetation.

7. **Temporary Impacts:** Caltrans has determined that the proposed Project would result in approximately 0.16 acres (200 linear feet) of temporary impacts to the upper bank of the Middle Fork Smith River as a result of construction access.

8. **Mitigation for Project Impacts**: Due to the very steep terrain, the 0.1-acre area of impacted riparian habitat shall be seeded with local native plant species instead of planted. Natural recruitment is expected to occur due to the Project location's proximity to existing, forested riparian areas.

9. **Post-Construction Stormwater Treatment:** Project implementation would result in approximately 0.03 acres of new impervious surface area. Post-construction storm water treatment is not required.

10. **Disturbed Soil Area**: Project implementation would result in less than one acre of disturbed soil area. Caltrans shall utilize appropriate erosion control, sediment control, and site management Best Management Practices to prevent discharge of pollutants during construction.

11. **Utility Relocations:** Utility relocations affecting jurisdictional waters are not proposed for this Project.

12. **Other Agency Actions:** Caltrans has applied for coverage under U.S. Army Corps of Engineers Nationwide Permit No. 14, pursuant to the Clean Water Act, section 404.

Caltrans has also submitted a section 1600 Notification of Lake or Streambed Alteration to the California Department of Fish and Wildlife.

13. **Wild and Scenic River:** The Smith River is designated as a California Wild and Scenic River under the California Wild and Scenic Rivers Act (CWSRA) (CA Public Resources Code Section 5093.5 et seq.). The Smith River at the Project location is designated as Recreational under the CWSRA. This certification does not certify any activities that would affect either the free-flowing character or recreational values of the Middle Fork Smith River.

14. **CEQA Compliance:** The Regional Water Board, as lead California Environmental Quality Act (CEQA) agency, has determined that the Project qualifies for a Categorical Exemption, (section 15301, *Existing Facilities*), and has filed a Notice of Exemption with the State Clearinghouse concurrent with issuance of the certification, pursuant to CEQA guidelines.

15. **Antidegradation Policy:** 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 certification 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.

16. 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 certification. A weblink to this Order is included at the end of this certification.

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| Receiving Water: | Middle Fork Smith River (Basin Plan Hydrologic Planning Area 103.30, Middle Fork Smith River) | |
| Filled and/or Excavated Areas: | Permanent – riparian habitat | 0.1 acres |
| | Temporary – jurisdictional waters | 0.16 acres (200 linear feet) |
| Dredge Volume: | none | |
| Latitude/Longitude: | 41.8822, -123.8216 | |

Accordingly, based on its independent review of the record, the Regional Water Board certifies that the State Route 199 Middle Fork Wall Project (WDID No. 1B15014WNDN), 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 Caltrans complies with the following terms and conditions:

**All conditions of this certification apply to Caltrans (and all its 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 (including the off-site mitigation lands) as related to this Water Quality Certification.**

**Project-Specific Conditions Requiring Reports**

1. The Regional Water Board shall be notified in writing (e-mail is acceptable) at least five working days prior to commencement of ground disturbing activities for each construction season.

**Project-Specific Conditions**

2. Tree removal is prohibited, except for a 12-inch and 16-inch alder.

3. Disturbed areas shall be seeded with local native plant species and weed-free mulch shall be applied, immediately upon construction completion.

4. Disturbed soil areas shall be fully stabilized or otherwise protected in advance of any rain event.

5. Work within the wetted portion of the channel and below ordinary high water is prohibited.

**Standard Conditions**

6. Herbicides and other pesticides shall not be used within the Project limits. If Caltrans has a compelling case as to why pesticides should be used, then a request for pesticide use and a BMP plan may be submitted to the Regional Water Board staff for review and acceptance.

7. All Project activities and BMPs shall be implemented according to the submitted application package and the findings and conditions of this certification. Subsequent changes to the Project that could significantly impact water quality shall first be submitted to Regional Water Board staff for prior review, consideration, and written concurrence. If the Regional Water Board is not notified of an alteration to the Project that results in an impact to water quality, it will be considered a violation of this Order, and Caltrans may be subject to Regional Water Board enforcement actions.

**Standard Conditions (continued)**

8. All conditions required by this Order shall be included in the Contract Documents prepared by Caltrans for the contractor. In addition, Caltrans shall require compliance with all conditions included in this Order in the bid contract for this Project.

9. Caltrans is prohibited from discharging waste to waters of the State, unless explicitly authorized by this certification. For example, no debris, soil, silt, sand, bark, slash, sawdust, rubbish, cement or concrete or concrete washings, welding slag, oil or petroleum products, or other organic or earthen material from any construction or associated activity of whatever nature, shall be allowed to enter into State waters.

10. Except for temporary stockpiling of waste generated during demolition operations ("temporary" in this instance means generated and removed during the same working day), waste materials shall not be placed in a manner where the materials may be transported into waters of the State. Waste materials shall not be placed within 100 linear feet of State waters. Exceptions to the 100-foot limit may be granted on a case-by-case basis provided Caltrans first submits a proposal in writing that is found acceptable by Regional Water Board staff.

11. Caltrans is liable and responsible for the proper disposal, reuse, and/or recycling of all Project-generated waste in compliance with applicable State and Federal laws and regulations, and as described in Caltrans 2010 Standard Specifications 13-4.03D, Waste Management. Additionally, when handling, transporting, disposing, reusing, and/or recycling Project-generated waste, Caltrans and their contractors shall:

    i) Provide the Regional Water Board with a copy of the Solid Waste Disposal and Recycling Report prepared for Caltrans by the contractor per Caltrans 2010 Standard Specification 14-10.02A(1), Submittals. These reports shall be provided not later than January 31 for each year work is performed during the previous calendar year. A copy of the final Solid Waste Disposal and Recycling Report shall be submitted to the Regional Water Board within 30 days after being received by Caltrans from the contractor.

    ii) For waste other than solid waste, obtain evidence that waste has been appropriately disposed, reused, and/or recycled. Evidence shall include type and quantity of waste and may include, but not be limited to, property owner agreements, permits, licenses, and environmental clearances. Evidence shall be provided to the Regional Water Board upon request; and

    iii) For waste other than solid waste, ensure the Resident Engineer has given written permission for disposal, reuse, and/or recycling, prior to the actual disposal, reuse, and/or recycling.

**Standard Conditions (continued)**

12. Asphalt-concrete grindings shall not be placed in any location where they may, at any time, be directly exposed to surface waters or seasonally high ground water, except asphalt-concrete grindings may be re-used and incorporated into hot mix asphalt products or encapsulated within the roadway structural section.

13. Caltrans and their contractors shall comply with the activity restrictions detailed in Caltrans 2010 Standard Specifications 13-4.03C(1). In addition, fueling, maintenance, storage and staging of vehicles and equipment shall be prohibited within waters of the State (e.g., gravel bars, seeps, ephemeral streams) and riparian areas.

14. Fueling, maintenance, and/or staging of individual equipment types within waters of the State or riparian areas may be authorized if Caltrans first prepares a plan for review and approval by Regional Water Board staff that:

    i) Identifies the specific piece of machinery that may require fueling, maintenance, and/or staging within waters of the State or riparian areas;

    ii) Provides justification for the need to refuel, maintain, or stage within State waters or riparian areas. The justification shall describe why conducting the activity outside of jurisdictional waters is infeasible; and

    iii) Includes a narrative of specific BMPs that shall be employed to prevent discharges to State waters and riparian areas;

15. Caltrans shall not use leaking vehicles or equipment within State waters or riparian areas.

16. Only 100-percent biodegradable erosion and sediment control products that will not entrap or harm wildlife shall be used. Photodegradable synthetic products are not considered biodegradable. If Caltrans 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. This condition does not prohibit the use of plastic sheeting used in water diversion or dewatering activities. Caltrans shall request approval from the Regional Water Board if an exception to this requirement is needed for a specific location.

17. Work in flowing or standing surface waters, unless otherwise proposed in the Project description and approved by the Regional Water Board, is prohibited.

18. Non-stormwater discharges are prohibited unless the discharge is first approved by the Regional Water Board and in compliance with the Basin Plan. If dewatering of groundwater is necessary, then Caltrans shall use a method of water disposal other than disposal to ground or surface waters, such as land disposal. Groundwater

**Standard Conditions (continued)**

disposed of to land shall not enter State waters. Alternatively, Caltrans may apply for coverage under the Low Threat Discharge Permit or an individual National Pollutant Discharge Elimination System (NPDES) Permit. If Caltrans applies for coverage under either of these permits, then discharge is prohibited until Caltrans has received notification of coverage under the respective permit.

19. Gravel bags used within State waters shall:
    i) Comply with Caltrans 2010 Standard Specifications sections 13-5.02G and 88-1.02F;
    ii) Be immediately removed and replaced if the bags have developed or are developing holes or tears; and
    iii) Be filled only with clean washed gravel.

    Exceptions to these criteria are subject to the review and acceptance of Regional Water Board staff.

20. This Order does not authorize drafting of surface waters.

21. Caltrans shall provide access to the Project construction site upon request by Regional Water Board staff.

22. Initial water pollution control training described in Caltrans 2010 Standard Specifications 13-1.01D(2), Training, shall apply to all Caltrans employees, contractors, and sub-contractors. Initial water pollution control training topics shall include Regional Water Board 401 certification and construction general permit requirements, identification of state waters and riparian areas, and violation avoidance and discharge reporting procedures.

23. Caltrans shall maintain logs of all Caltrans staff, contractors, and sub-contractors trained pursuant to the Caltrans 2010 Standard Specifications 13-1.01D(2). The logs shall include the names of trainees, training dates, and summary of the scope of training. Caltrans shall provide evidence of this documentation upon the request of the Regional Water Board.

24. If an unauthorized discharge to surface waters (including wetlands, rivers or streams) occurs, or any other threat to water quality arises as a result of Project implementation, the associated Project activities shall cease immediately until the threat to water quality is otherwise abated. If there is a discharge to State waters, the Regional Water Board shall be notified no more than 24 hours after the discharge occurs.

**Standard Conditions (continued)**

25. Uncured concrete shall not be exposed to State waters or surface waters that may discharge to State waters. Concrete sealants may be applied to the concrete surface where difficulty in excluding flow for a long period may occur. If concrete sealant is used, water shall be excluded from the site until the sealant is cured. If groundwater comes into contact with fresh concrete, it shall be prevented from flowing towards surface water.

26. Ground and surface water that has come into contact with fresh concrete, and all other wastewater, shall not be discharged to State waters or to a location where it may discharge to State waters; the wastewater shall be collected and re-used or disposed of in a manner approved by the Regional Water Board.

27. All imported fill material shall be clean and free of pollutants. All fill material shall be imported from a source that has the appropriate environmental clearances and permits. The reuse of low-level contaminated solids as fill on-site shall be performed in accordance with all State and Federal policies and established guidelines and must be submitted to the Regional Water Board for review and consideration of acceptance.

28. Caltrans shall provide a copy of this certification and State Water Resources Control Board (SWRCB) Order No. 2003-0017-DWQ (web link referenced below) to the contractor and all subcontractors conducting the work, and require that copies remain in their possession at the work site. Caltrans shall be responsible for work conducted by its contractor and subcontractors.

29. The validity of this certification is conditioned upon total payment of any fee required under title 23, California Code of Regulations, section 3833. The total Application fee is $2,700. The Regional Water Board received $2,700 from Caltrans on February 6, 2015.

30. This certification will be subject to annual billing during the construction phase ("Annual Active Discharge Fee") and during the monitoring phase of the Project ("Annual Post Discharge Monitoring Fee"), per the current fee schedule, which can be found on our website: http://www.swrcb.ca.gov/northcoast/water_issues/programs/water_quality_certification.shtml. These fees will be automatically invoiced to Caltrans.

31. Caltrans shall notify the Regional Water Board upon Project construction completion to request termination of the Annual Active Discharge Fee and to receive a "Notice of Completion of Discharges Letter." If the Project is subject to the Annual Post Discharge Monitoring Fee, then Caltrans shall also notify the Regional Water Board at the end of the monitoring period to request termination of the fee and receive a "Notice of Project Complete Letter." Caltrans may be required to submit completion reports at the end of each of these phases. Regional Water Board staff may request site visits at the end of

**Standard Conditions (continued)**

each Project phase to confirm Project status and compliance with this Order.

32. 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.

33. 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 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 certification. 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 certification 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 certification, the Regional Water Board may add to or modify the conditions of this certification as appropriate to ensure compliance.

34. 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.

35. This certification is not transferable. In the event of any change in control of ownership of land presently owned or controlled by Caltrans, Caltrans shall notify the successor-in-interest of the existence of this certification by letter and shall forward a copy of the letter to the Regional Water Board. The successor-in-interest must send to the Regional Water Board Executive Officer a written request for transfer of this certification to discharge dredged or fill material under this Order. The request must contain the following:
    - i) Requesting entity's full legal name;
    - ii) The state of incorporation, if a corporation;
    - iii) The address and phone number of contact person; and
    - iv) A description of any changes to the project or confirmation that the

**Standard Conditions (continued)**

successor-in-interest intends to implement the project as described in this Order.

36. Except as may be modified by any preceding conditions, all certification actions are contingent on:

    i) The discharge being limited, and all proposed revegetation, avoidance, minimization, and mitigation measures being completed, in strict compliance with Caltrans's project description and CEQA documentation, as approved herein;

    ii) Caltrans shall construct the project in accordance with the project described in the application and the findings above; and

    iii) Compliance with all applicable water quality requirements and water quality control plans including the requirements of the Water Quality Control Plan for the North Coast Region (Basin Plan), and amendments thereto.

    Any change in the design or implementation of the project that would have a significant or material effect on the findings, conclusions, or conditions of this Order must be submitted to the Executive Officer of the Regional Water Board for prior review, consideration, and written concurrence. 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 Caltrans may be subject to Regional Water Board enforcement actions.

37. The authorization of this certification for any dredge and fill activities expires five years from the date of this Order. 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.

**Condition 1 includes a reporting requirement.** Any requirement for a report made as a condition to this certification is a formal requirement pursuant to California Water Code section 13267, and failure or refusal to provide, or falsification of such required report is subject to civil liability as described in California Water Code, Section 13268.

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 or approved pursuant to the Porter-Cologne Water Quality Control Act or section 303 of the Clean Water Act.

Please contact our staff Environmental Scientist, Brendan Thompson at (707) 576-2699, or via e-mail, at Brendan.Thompson@waterboards.ca.gov, if you have any questions.

*Original signed electronically by Fred Blatt for*

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Matthias St. John
Executive Officer

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Web link: 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

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