
North Coast Regional Water Quality Control Board

June 12, 2015

In the Matter of
Water Quality Certification

for

Little Browns Creek Power Pole Removal & Mitigation Project
WDID No. 1A14111WNTR

APPLICANT: Trinity Public Utilities District
RECEIVING WATER: Little Browns Creek
HYDROLOGIC UNIT: Trinity River Hydrologic Unit No. 106.32
COUNTY: Trinity
FILE: Little Browns Creek Power Pole Removal & Mitigation Project,
WDID No. 1A14111WNTR, ECM PIN CW-810495

BY THE EXECUTIVE OFFICER:

1. On October 28, 2014, the Trinity Public Utilities District (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 Little Browns Creek Power Pole Removal & Mitigation Project (Project). Information describing the Project was noticed for public comment on the Regional Water Board's website on May 7, 2015. We received no comments. The proposed Project will cause disturbances to waters of the United States and the State associated with Little Browns Creek within the Trinity River Hydrologic Unit No. 106.32. The Project is located within Little Browns Creek Weaverville, Trinity County, at approximate latitude 40.787°N, and longitude 122.8954°W. No permanent impacts to waters of the

U.S. and the State are proposed. Temporary impacts to waters of the U.S. and the State include approximately 18 linear feet of impacts to creek bed and bank.

2. The primary purpose of the Project is preliminary remediation of impacts associated with approximately 600 linear feet of unpermitted in-stream impacts to waters of the US and State including grading and riparian vegetation removal conducted by the applicant, within the Little Browns Creek floodplain during maintenance to existing power poles. Activities proposed by the applicant would reduce sediment within the reach and enhance aquatic habitat. Restoration of impacts to riparian vegetation and final restoration of the creek channel will be conducted after power poles are removed from the active channel as mitigation for unpermitted impacts. The applicant is currently seeking regulatory approval for removal of the power poles as continued maintenance has caused degradation of Little Browns Creek where legacy power poles exist in the channel. The applicant will submit a subsequent application for Federal Clean Water Act, section 401, Water Quality Certification to permanently relocate legacy in-stream power poles out of the creek prior to expiration of this proposed certification.

The proposed Project would include construction of a temporary 2 foot tall, 15 – 18 foot long earthen and rock swale to redirect braided channel flow to an existing defined channel during low flows. Work will be completed when no water is present at this reach of Little Browns Creek. The Project proposes to employ best management practices to prevent or reduce any discharges during and after construction.

3. The Project is planned to be conducted in 2015 when stream conditions are dry and is expected to take approximately one day to complete.
4. Non-compensatory mitigation for the Applicant's unpermitted grading activities within Little Browns Creek includes activities permitted within this Order as well as power pole relocation and final remediation of the power pole area within Little Browns Creek. The Applicant has agreed to move all power poles that are currently within Little Browns Creek out of the floodplain as continued maintenance is degrading the creek. Best Management Practices for sediment and turbidity control, operation of heavy equipment near a river, as well as, aquatic species and habit protection are proposed to avoid and minimize temporary impacts.

Installation of the earthen and rock swale will have temporary impacts the creek during the 1-day construction. These treatments will become channel forming features directing flow to a defined channel and reducing erosion in the braided channel.

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 Department of Fish and Wildlife to obtain a Streambed Alteration Agreement.
6. The North Coast Regional Water Quality Control Board, as lead California Environmental Quality Act (CEQA) agency, has determined that the project qualifies for a Categorical Exemption, 15321 Enforcement Actions by Regulatory Agencies, 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. The Trinity River Total Maximum Daily Load (TMDL) for sediment was established in 2001 by the United States Environmental Protection Agency (EPA) in accordance with section 303(d) of the Clean Water Act, because the State of California determined that the water quality standards for the Trinity River are exceeded due to excessive sediment. Bank erosion is identified as a source contributing to the sediment impairment. Removal of riparian vegetation is identified as a source contributing to temperature impairment. Activities that will be authorized by this Order are designed to reduce removal of riparian vegetation and reduce sediment discharges from bank erosion. Accordingly, this Order is consistent with, and implements, BMPs that would attenuate sediment and temperature adverse impacts.
8. 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."
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.
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. (Weblink attached below).

Receiving Water:	Little Browns Creek, Trinity River Hydrologic Unit No. 106.32
Channel and Shoreline:	Permanent impact to waters of the State: None Temporary impact to waters of the State: 18 linear feet creek channel
Dredge Volume:	None
Permanent Degradation:	None
Latitude/Longitude:	40.787°N / 122.8954°W
Expiration:	June 12, 2020

Accordingly, based on its independent review of the record, the Regional Water Board certifies that the Little Browns Creek Power Pole Removal & Mitigation Project (WDID No. 1A14111WNTR), 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. A fee of \$1,201 was received for this project on November 3, 2014. 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 the applicant.
5. The applicant must notify the Regional Water Board of the end of the construction phase of the Project in order to request the Regional Water Board to terminate annual construction period billing and to receive a “Notice of Completion of Discharges Letter”. If the Project is subject to annual monitoring fees, the applicant must also notify the Regional Water Board at the end of the monitoring period in order to request to terminate annual monitoring period billing and receive a “Notice of Project Complete Letter”. Completion reports may be necessary to be submitted by applicant at the end of each of these phases. Regional Water Board staff may request site visits at the end of each phase of the Project to confirm status of project and compliance with this Order.
6. Non-compensatory mitigation for the Applicant’s unpermitted grading activities within Little Browns Creek includes activities permitted within this Order as well as power pole relocation and final remediation of the power pole area within Little Browns Creek. The Applicant has agreed to move all power poles that are currently within Little Browns Creek out of the floodplain as continued maintenance is degrading the creek. Best Management Practices for sediment and turbidity control, operation of heavy equipment near a river, as well as, aquatic species and habit protection are proposed to avoid and minimize temporary impacts.
7. The proposed Project will have only temporary impacts to waters of the U.S. The applicant proposes to implement the preliminary remediation plan, *Hydrologic study of Little Browns Creek and Trinity PUD Little Browns Creek power line remediation assessment of effects of proposed action on hydrology and sediment* submitted with the application on November 3, 2014. The preliminary remediation included in this plan (installation of the earth and rock swale) shall be completed by the end of 2015.
8. Results of monitoring of the mitigation areas will be reported to the Regional Water Board. An “as-built” report shall be submitted to the Regional water Board following construction of the earth and rock swale documenting that it was built in accordance with the project description. The applicant shall submit a report to the Regional Water Board after the hydrologic year 2015/16 to demonstrate the effectiveness of the swale to divert low flows to an existing channel and reduce erosion in the braided channel. Additionally, this report should document the revegetation of unpermitted grading within the creek.

9. Within 5 years of date of this certification, the applicant shall submit a subsequent application for Federal Clean Water Act, section 401, Water Quality Certification to permanently relocate legacy in-stream power poles out of Little Browns Creek and final restoration of creek function and vegetation within the project footprint.
10. Only wildlife-friendly, 100 percent biodegradable erosion and sediment control products that will not entrap or harm wildlife shall be used. Erosion and sediment control products shall not contain synthetic (e.g., plastic or nylon) netting. Photodegradable synthetic products are not considered biodegradable. The applicant shall request approval from the Regional Water Board if an exception from this requirement is needed for a specific location.
11. 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.
12. 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.
13. The Applicant shall provide Regional Water Board staff access to the Project site to document compliance with this certification.
14. 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.
15. 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).

16. 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.
17. 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.
18. Disturbance or removal of existing vegetation shall not exceed the minimum necessary to complete the Project.
19. 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.
20. 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.
21. 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.

22. 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
23. 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.
24. 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).
25. The authorization of this certification for any dredge and fill activities expires on June 12, 2020. 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.

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

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