
North Coast Regional Water Quality Control Board

July 28, 2015

In the Matter of

Water Quality Certification

for

White Slough Tidal Wetlands Restoration Project
WDID No. 1B15030WNHU

APPLICANT: Humboldt Bay National Wildlife Refuge
RECEIVING WATER: White Slough
HYDROLOGIC UNIT: Eureka Plain Hydrologic Unit, 110.00
COUNTY: Humboldt
FILE: White Slough Tidal Wetlands Restoration Project, WDID No. 1B15030WNHU, ECM PIN CW-813925

BY THE EXECUTIVE OFFICER:

1. On March 17, 2015, the Humboldt Bay National Wildlife Refuge, Eric Nelson (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 White Slough Tidal Wetlands Restoration Project (Project). Information describing the Project was noticed for public comment on the Regional Water Board's website on June 10, 2015. We received no comments. The proposed Project will cause disturbances to waters of the United States associated with the White Slough within the Eureka Plain Hydrologic Unit No. 110.00. The Project is located within the Humboldt Bay National Wildlife Refuge White Slough Unit, Loleta, Humboldt County, at latitude 40.7049°N, and longitude 124.211°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 37.5 acres of diked subsided former tidelands. Project activities are proposed to restore or enhance approximately 37.5 acres of waters of the U.S. and State.

2. The primary objective of the federal Clean Water Act is to *restore* and maintain the chemical, physical, and biological integrity of the Nation's waters (Clean Water Act section 101(a)). To achieve the objectives of the Clean Water Act and the Porter-Cologne Water Quality Control Act, the Regional Water Board must take an active role in promoting the implementation of restoration projects that are expected to help restore the chemical, physical, and biological integrity of the waters within the region. (From the *Policy in Support of Restoration in the North Coast Region* Resolution No. R1-2015-0001 as adopted by the Regional Water Board on January 29, 2015).
3. The primary purpose of the Project is to restore salt marsh habitat on diked subsided former tidelands and to enhance existing brackish and freshwater wetlands. The applicant proposes to restore tidal wetlands and other habitats to be higher ecological function than existing resources as well as be self-sustaining systems adaptive to sea level rise. The proposed Project would include creating construction access and building three earthen tidal ridges to divide the project area into tidal basins. The tidal ridges will be used as access roads. Existing vegetation will be removed as necessary and clean imported fill will be graded to restore tidal wetland elevations. Dewatering of channels will occur when necessary and flow will be restored upon completion of grading and shaping of the restored area. The Applicant has submitted plans for dewatering to avoid and minimize impacts to aquatic resources. Additionally, to restore functions to the tidelands, tide gates will be removed and dikes breached to create higher functioning brackish and salt marshes as well as a mosaic of other aquatic habitats.

The proposed Project includes a plan to revegetate disturbed areas with a combination of plantings at higher elevations and natural recruitment from the native seed bank within the Humboldt Bay tidal system and surrounding aquatic systems. The Project proposes to employ best management practices to prevent or reduce any discharges during and after construction.

4. The Project is planned to begin in the summer of 2015. Due to the size and scope the project is proposed to be conducted through 2020 with construction work at various locations planned to last approximately 5 years.
5. The Project will have only temporary impacts to waters of the US, no mitigation is necessary. The restoration project design and implementation shall restore and enhance currently degraded ecological functions of areas temporarily impacted as well as adjacent aquatic resources for a net gain in wetland functions and area. The applicant has submitted a revegetation plan for restoration of temporarily disturbed

- areas. The Applicant proposes to employ best management practices to prevent or reduce any discharges during and after construction.
6. 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.
 7. On March 26, 2015, the California Coastal Conservancy, as lead California Environmental Quality Act (CEQA) agency, has produced an Initial Study and Proposed Mitigated Negative Declaration and filed with the State Clearinghouse (SCH No. 2015022040), pursuant to CEQA guidelines.
 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. Section 131.12 of the U.S. EPA’s Water Quality Standards regulations includes the “federal antidegradation policy” which emphasizes protection of instream beneficial uses, especially protection of aquatic organisms. As required by the federal antidegradation policy (40 C.F.R. §131.6(d)), each state’s water quality standards must include a policy consistent with the federal antidegradation policy. The State Water Board established California’s antidegradation policy in State Water Board 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. Restoration projects must conform to the state and federal antidegradation policies. This Order is consistent with applicable federal and State antidegradation policies. Restoration projects are intended for the purpose of correcting a water quality problem or condition, which is causing, or threatens to cause, a detrimental effect on an aquatic ecosystem and beneficial uses. Although a restoration project may result in a discharge of waste to a water of the State, or a water of the United States, or both, the impacts are intended to be temporary in nature with the purpose of providing a net benefit to water quality.
 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: White Slough,
Eureka Plain Hydrologic Unit, 110.00

Filled or Excavated Area: Permanent impact to waters of the State:
None
Temporary impact to waters of the State:
37.5 acres of wetlands

Imported Fill material: Approximately 240,000 cubic yards

Latitude/Longitude: 40.7049°N / 124.211°W

Expiration: July 28, 2020

Accordingly, based on its independent review of the record, the Regional Water Board certifies that the White Slough Tidal Wetlands Restoration Project (WDID No. 1B15030WNHU), 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 \$200 was received for this project on March 17, 2015. 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.

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.

5. The Project will have only temporary impacts to waters of the US, no mitigation is necessary. The Project includes a plan to revegetate disturbed areas with a combination of plantings at higher elevations and natural recruitment from the native seed bank within the Humboldt Bay tidal system and surrounding aquatic systems.

Results of annual monitoring of the construction and restoration areas will be reported to the Regional Water Board annually by December 31st beginning in 2015 for at least five years. Reports shall summarize restoration progress, data collected, annual performance, any remedial action necessary and whether success criteria are met for restoration habitat goals identified in the project description. Reports shall also include documentation of appropriate CEQA mitigation measure BMPs implemented to avoid direct impacts and reduce turbidity on site. Photo documentation of BMP installation and performance during rain events at the construction site shall be included in annual reports. Monitoring reports shall be sent electronically to the following email address: NorthCoast@waterboards.ca.gov

6. 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.
7. 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.

8. Ground disturbing activities of greater than one acre are located within jurisdictional waters of the US and these require a Clean Water Act section 404 permit from the US Army Corps of Engineers. Finding No. 23 of the NPDES General Permit for Storm Water Discharges Associate With Construction and Land Disturbance Activities Order No. 2012-0006-DWQ, NPDES No. CAS000002 states that, 'Regional Water Boards may make a determination of whether it applies to the site when construction sites that intend to disturb one or more acres of land within jurisdictional boundaries of a Clean Water Act section 404 permit'. The North Coast Regional Water Quality Control Board staff have reviewed the project description and CEQA mitigation measures (incorporated as conditions of this Order) and have determined that the issuance of this Clean Water Act section 401 water quality certification and associated WDRs State Water Resources Control Board Order No. 2003-0017-DWQ will be sufficient to avoid and minimize and discharges of storm water to surface waters, and that the enrollment under NPDES No.CAS000002 is not applicable.

Mitigation measures identified in the Initial Study and Proposed Mitigated Negative Declaration and filed with the State Clearinghouse (SCH No. 2015022040) are hereby incorporated as conditions of this water quality certification. Annual reporting of installation and performance of mitigation measures shall be included in annual reporting identified in condition #5.

9. The applicant shall submit for review and approval to Regional Water Board Staff a dredge liquid management plan if they pursue the use of liquid fraction dredged imported fill material at the project site. This plan should include at a minimum, engineering designs, BMPs, additional sampling and analysis of dredged elutriate (if applicable), dredged liquid management and any discharge proposal and be protective of beneficial uses identified in the Water Quality Control Plan for the North Coast.
10. As a condition of this water quality certification, the Applicant shall comply with Attachment 1, *Restoration project imported fill suitability assessment criteria*.
11. 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.

12. The Applicant shall provide Regional Water Board staff access to the Project site to document compliance with this certification.
13. 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.
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. 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.
16. 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.
17. Disturbance or removal of existing vegetation shall not exceed the minimum necessary to complete the Project.
18. 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.
19. 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.

20. 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.
21. 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).

22. The authorization of this certification for any dredge and fill activities expires on July 28, 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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Enclosure: Attachment 1

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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