
North Coast Regional Water Quality Control Board

August 28, 2015

In the Matter of
Water Quality Certification
for
Rohner Creek Flood Control, Habitat and Seismic Improvement Project
WDID No. 1B15018WNHU

APPLICANT: The City of Fortuna
RECEIVING WATER: Rohner Creek and Hillside Creek
HYDROLOGIC UNIT: Eel River Hydrologic Unit No. 111.11
COUNTY: Humboldt
FILE: Rohner Creek Flood Control, Habitat and Seismic Improvement Project, ECM PIN CW-813220

BY THE EXECUTIVE OFFICER:

1. On February 23, 2015, the City of Fortuna (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 Rohner Creek Flood Control, Habitat and Seismic Improvement Project (Project). Information describing the Project was noticed for public comment on the Regional Water Board's website on June 19, 2015. We received no comments. The proposed Project will cause disturbances to waters of the United States and State associated with Rohner Creek and Hillside Creek within the Eel River Hydrologic Unit No. 111.11. The Project is located along Rohner and Hillside Creeks in Fortuna, Humboldt County, approximately at latitude 40.597919°N, and longitude 124.150036°W.

2. Permanent impacts to waters of the U.S. include approximately 1.4 acres of wetlands, and 1.15 acres of Riparian habitat. Temporary impacts to waters of the U.S. include approximately 1.25 acres of wetlands and 585 linear feet of creek channel.
3. The primary objectives of the Project consist of flood control, seismic and habitat improvements throughout the channel and floodplain of Rohner and Hillside Creeks. The proposed Project would include four phases of channel widening and stabilization, a floodplain swale (high flow bypass) for flow exceeding the 10-year storm, retrofitting the 12th Street culvert to improve fish passage, placement of fill to raise the ground elevation and replacement of three culverts and three bridges. These four phases of construction will achieve a 100-year flood capacity for Rohner and Hillside Creeks.

The Project includes a *Habitat Mitigation and Monitoring Plan* as well as a *Stream Corridor Management Plan* that describe proposed mitigation, maintenance and monitoring. The Project proposes to employ best management practices to prevent or reduce any discharges during and after construction.

This Project includes initiation of a long-term stream corridor monitoring and maintenance process. Activities identified within the *Stream Corridor Management Plan* are permitted under this water quality certification. Stream Corridor Management Plan activities are designed to balance the importance of maintaining flood control and ecological functions for the waters of the State. These activities include monitoring, identifying project activities and any necessary mitigation, development of an annual maintenance plan, agency approval for specific activities, implementation, annual reporting and a five year review.

4. Project phases 1 - 4 are planned to begin in the summer of 2015 through fall of 2018 with construction work planned to last approximately 120 days. Following phases 1 - 4 the applicant may propose in-stream maintenance activities, in accordance with the approved *Stream Corridor Management Plan*, annually through the permit cycle.
5. Compensatory mitigation for permanent impacts to wetlands, creek channels and riparian vegetation are required for this Project. The applicant proposes onsite in-kind mitigation that would establish and re-establish approximately 0.90 acres of riverine wetlands, establish approximately 1.45 acres of emergent wetlands, and establish and re-establish approximately 4.55 acres of riparian zone. Temporary impacts are proposed to be restored to pre-project condition within one year of project completion. The Project 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 August 4, 2014, the City of Fortuna, as lead California Environmental Quality Act (CEQA) agency, filed a Notice of Determination for Mitigated Negative Declaration with the State Clearinghouse (SCH No. 2014062010), pursuant to CEQA guidelines.
8. The Eel River is identified as impaired for sediment and temperature under Clean Water Act Section 303(d). 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.
9. 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."
10. 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.
11. 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: Rohner Creek and Hillside Creek,
Eel River Hydrologic Unit No. 111.11

Filled or Excavated Area:	Permanent impact to waters of the State: 1.4 acres Wetlands Permanent impact to waters of the State: 1.15 acres riparian area Temporary impact to waters of the State: 1.25 acres wetlands
Channel and Shoreline:	Temporary impact to waters of the State: 585 linear feet creek channels
Latitude / Longitude:	40.597919°N / 124.150036°W
Expiration:	August 28, 2020

Accordingly, based on its independent review of the record, the Regional Water Board certifies that the Rohner Creek Flood Control, Habitat and Seismic Improvement Project (WDID No. 1B15018WNHU), 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 \$18,061 was received for this project on July 10, 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.

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. Compensatory mitigation shall be implemented in accordance with the *Rohner Creek Flood Control, Habitat and Seismic Improvement Project Habitat Mitigation and Monitoring Plan* dated July 2015, submitted by GHD on behalf of the Applicant. Compensatory mitigation for permanent impacts to wetlands, creek channels and Riparian are required for this project. The applicant shall implement onsite in-kind mitigation that would establish and re-establish approximately 0.90 acres of riverine wetlands, establish approximately 1.45 acres of emergent wetlands, and establish and re-establish approximately 4.55 acres of Riparian. Temporary impacts are proposed to be restored to pre-project condition within one year of project completion.

Results of annual mitigation monitoring will be reported to the Regional Water Board annually by December 31, beginning one year after mitigation plantings are implemented. Reports shall summarize data collected, monitoring method, annual performance and success criteria identified in the mitigation plan as well as any adaptive management or maintenance proposed or conducted. Reports shall clearly show whether annual and final criteria are being met.

Activities associated with long-term maintenance and management of waters of the State shall be implemented in accordance with the *Rohner Creek Flood Control, Habitat and Seismic Improvement Project Stream Corridor Management Plan* dated June 2015, submitted by GHD on behalf of the Applicant. The Applicant shall submit annual reports of maintenance and management activities and mitigation measures following the first year of activities.

Annual reports shall be submitted to electronically to the Regional Water Board at the following address: NorthCoast@waterboards.ca.gov

6. Wetland areas that comprise the compensatory mitigation for the project must be provided long-term protection through real estate instruments or other available mechanisms, as appropriate considering relevant legal constraints (33 C.F.R. § 332.7(a)(1)). The City of Fortuna shall submit electronic copies of *Permanent Stream Corridor Drainage Easements* signed by mitigation property owners and include a map showing the extent of easements on mitigation areas. The site protection instruments shall be submitted prior at the end of the mitigation monitoring period when success criteria have been met.
7. 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.
8. 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.
9. 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.
10. The Applicant shall provide Regional Water Board staff access to the Project site to document compliance with this certification.
11. 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.
12. 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).

13. 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.
14. 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.
15. Disturbance or removal of existing vegetation shall not exceed the minimum necessary to complete the Project.
16. 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.
17. 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.
18. 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.

19. 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).

20. The authorization of this certification for any dredge and fill activities expires on August 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. The Regional Water Board may consider reissuing this Order for additional five-year terms as necessary and appropriate for stream corridor management activities.

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

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. Merritt Perry, City of Fortuna, 621 11th Street, Fortuna, CA 95540

Copy to: Holly Costa, US Army Corps of Engineers holly.n.costa@usace.army.mil
Carol Heidsiek, US Army Corps of Engineers Carol.A.Heidsiek@usace.army.mil
David Manthorne, CA Fish and Wildlife David.Manthorne@wildlife.ca.gov
Brett Vivian, GHD, Brett.Vivyan@ghd.com
Jeremy Svehla, GHD, jeremy.svehla@ghd.com
Kevin Carter, City of Fortuna, KCarter@ci.fortuna.ca.us
Merritt Perry, City of Fortuna, mperry@ci.fortuna.ca.us