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**North Coast Regional Water Quality Control Board**

January 26, 2016

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**In the Matter of**

**Water Quality Certification**

**for**

**Humboldt Road Safety Improvement Project**  
**WDID No. 1B14022WNDN**

APPLICANT: Elk Valley Rancheria  
RECEIVING WATER: Wetlands  
HYDROLOGIC UNIT: Smith River Hydrologic Unit 103.11  
COUNTY: Del Norte  
FILE: Humboldt Road Safety Improvement Project  
ECM PIN CW-804466

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**BY THE EXECUTIVE OFFICER:**

1. On March 7, 2014, the Elk Valley Rancheria (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 Humboldt Road Safety Improvement Project (Project) on non-tribal land. The Applicant has also filed an application for water quality certification with the US EPA for project activities that are conducted and cause impacts to tribal land. Information describing the Project was noticed for public comment on the Regional Water Board's website on December 3, 2015. We received no comments. The proposed Project will cause disturbances to waters of the United States associated with wetlands within the Smith River Plain Hydrologic Sub-Area No. 103.11. The Project is located along Humboldt Road near

the intersection of Humboldt Road and Sandmine Road, Crescent City, Del Norte County, at latitude 41.74°N, and longitude 124.156389°W. The Project will cause 0.04 acres of permanent impacts to wetlands, waters of the U.S. There are no temporary impacts to waters of the U.S. or the State proposed.

2. The Elk Valley Rancheria and the County of Del Norte signed a Memorandum of Agreement (MOA) on January 21, 2010, regarding the improvements to the County road that provides access within and leading to the Rancheria (DN CO AGMT #2010-001). Although Humboldt and Sandmine Roads are Public County routes, within the MOA, the Tribe has agreed to procure funding and documentation for the environmental studies, mitigation, permit processing, administration, engineering and other aspects of project management for activities conducted on tribal and non-tribal property.
3. The purpose of the Project is to improve vehicular, bicycle and pedestrian traffic safety and efficiency along Humboldt Road. Project objectives are to redesign the roadway to meet or exceed American Association of State Highway and Transportation Officials (AASHTO) standards. The Project will provide a pedestrian-oriented transportation facility separated from the roadway for pedestrians, cyclists and equestrian use. Project activities include: resurfacing and/or reconstructing the road structural pavement, construction of a roundabout with sidewalks and crosswalks, construction of 4-foot wide shoulder, and construction of separate pedestrian-oriented trail. The Project includes design plans to implement post-construction storm water treatment for the increase in impervious surface due to roadway improvements.
4. The Applicant proposes to conduct the proposed activities between May 15 and October 14, 2016, for the duration of five months.
5. The Project will permanently impact approximately 0.04 acres of wetlands, waters of the U.S. (non-tribal land). The proposed Project is not anticipated to result in any temporary impacts to waters of the U.S. or state. The Applicant proposes compensatory mitigation including establishment of approximately 1.38 acres of wetlands and 0.48 acres of riparian habitat at the Martin Ranch in Crescent City. The mitigation site is part of a greater riparian and wetland complex, becoming part of the larger contiguous habitat. The compensatory mitigation site will include offset for impacts related to fill of wetlands on non-tribal land as well as Rancheria property. Best Management Practices (BMPs) for sediment and erosion control are proposed to avoid and minimize temporary impacts.
6. The Applicant has applied for authorization from the United States Army Corps of Engineers under Nationwide Permit No. 14. The Applicant has received authorization from US EPA for a Clean Water Act, section 401 for activities on tribal land. The

Applicant has received authorization from the California Coastal Commission, Coastal Development Permit A-1DNC-12-021.

7. On January 23, 2012, Del Norte County, as lead California Environmental Quality Act (CEQA) agency, certified a Mitigated Negative Declaration and filed with the State Clearinghouse (SCH No. 2011122072), pursuant to CEQA guidelines. The Regional Water Board has considered the environmental document.
8. 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.). This certification does not certify any activities that would affect either the free-flowing character or recreational values of the Smith River.
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: Wetlands,  
Smith River Hydrologic Unit No. 103.11

Filled or Excavated Area: Permanent impact to waters of the US:  
0.04 acres Wetlands  
Temporary impact to waters of the US:  
None

Latitude/Longitude: 41.74°N / 124.156389°W

Expiration: January 26, 2021

Accordingly, based on its independent review of the record, the Regional Water Board certifies that the Humboldt Road Safety Improvement Project (WDID No. 1B14022WNDN), 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 certification 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 \$1,821 was received for this project on March 7, 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](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 certification.

5. Compensatory mitigation shall be implemented in accordance with the *Humboldt Road Safety Improvement Project Wetland Mitigation and Monitoring plan*, dated July 2015 (Mitigation and Monitoring Plan). Any subsequent proposed revisions by the Applicant must be approved by the Executive Officer before they are implemented. Project mitigation includes establishment of approximately 1.38 acres of wetlands and 0.48 acres of riparian habitat at the Martin Ranch in Crescent City. All Mitigation and Monitoring success criteria identified in the Mitigation and Monitoring Plan shall be met to show that the site has self-sustaining and functioning wetlands. Monitoring and adaptive management shall be conducted at the site for at least 5 years or until success criteria are met. Prior to the end of the 5-year mitigation and monitoring period the Applicant will submit a copy of documentation establishing the long-term management of the mitigation site.

Results of annual monitoring of the mitigation areas will be reported to the Regional Water Board annually on December 31 beginning in 2016. Reports shall summarize data collected, annual performance, any remedial action necessary and whether success criteria are met. Reports shall be submitted electronically to the following email address: [NorthCoast@waterboards.ca.gov](mailto:NorthCoast@waterboards.ca.gov).

6. The Regional Water Board shall be notified at least five working days (working days are Monday – Friday) prior to the commencement of project construction.
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 certification, 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 be a material change as defined in California Water Code section 13260(c) as a proposed change in character, location, or volume of the discharge, the Applicant shall obtain prior written approval of the Regional Water Board Executive Officer. If the Regional Water Board is not notified of the material change to the discharge, it will be considered a violation of this certification, and the Applicant may be subject to Regional Water Board enforcement action(s).
13. All Project work shall be conducted as described in this certification 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 certification, and the Applicant may be subject to Regional Water Board enforcement actions.
14. The Applicant shall provide a copy of this certification 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 certification, 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 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.
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 certification by letter and shall email a copy of the letter to the following email address: [NorthCoast@waterboards.ca.gov](mailto:NorthCoast@waterboards.ca.gov) .

To discharge dredged or fill material under this certification, the successor-in-interest must email the Regional Water Board Executive Officer at: [NorthCoast@waterboards.ca.gov](mailto:NorthCoast@waterboards.ca.gov) a written request for the ownership change and the effective date of the change. 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 certification. 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 January 26, 2021. Conditions and monitoring requirements outlined in this certification 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.

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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](http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo2003-0017.pdf)

Original to: Mr. Rob Jacob, Environmental Services Coordinator, Elk Valley Rancheria, 2332 Howland Hill Road, Crescent City, CA 95531

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