
North Coast Regional Water Quality Control Board

August 25, 2016

In the Matter of
Water Quality Certification
for the
Benbow Inn Bank Stabilization Project

APPLICANT: Benbow Historic Inn
RECEIVING WATER: East Fork of South Fork Eel River
HYDROLOGIC UNIT: Benbow Hydrologic Subarea, No. 111.32
COUNTY: Humboldt
FILES: Benbow Inn Bank Stabilization; ECM PIN CW-826726;
WDID No. 1B161000WNHU

FINDINGS BY THE EXECUTIVE OFFICER:

1. On July 22, 2016, the North Coast Regional Water Quality Control Board (Regional Water Board) received an application from the Benbow Historic Inn (Applicant), requesting federal Clean Water Act (CWA), section 401 Water Quality Certification (certification) for the Benbow Inn Bank Stabilization Project (Project).
2. **Public Notice:** Information describing the Project was noticed for public comment on the Regional Water Board's website on August 3, 2016. No comments were received.
3. **Receiving Waters:** The proposed Project will cause disturbances to the East Fork of the South Fork Eel River (EFSF) in the Benbow Hydrologic Subarea (Basin Planning Area No. 111.32).
4. **Project Description:** The purpose of the Project is to stabilize the left bank of the EFSF, which failed during a March 2016 high-flow event. The failed bank has undermined a corner of the Benbow Inn Terrace Building. Bank stabilization activities include micropile installation, slope stabilization using soil nails, placement

of riprap at the toe of the slope and along the lower river bank, and installation of willow and alders within the riprap interstices.

Depending on the EFSF flow level at the time of construction, there will either be a pool or low-flow channel at the base of the slide. Unless the area is dry, the area will need to be isolated and fish removal activities will be performed prior to construction.

The Project area will be accessed from the western-most parking lot of the Benbow Lake State Recreation Area. Construction equipment will utilize the existing Benbow Dam removal access road for a short distance before moving north to traverse the left gravel bar of the EFSR. The Applicant has noted that only dry portions of the gravel bar would be used for construction access.

5. **Construction Timing:** The Project is expected to be completed in two weeks during the late summer or early fall of 2016.
6. **Project Impacts:** Approximately 120 linear feet (0.06 acres) of the EFSF left bank would be permanently impacted due to bank hardening associated with placement of riprap, shotcrete, and wire mesh. Approximately 120 linear feet of the EFSF will be temporarily impacted beneath the bank for construction access.
7. **Mitigation for Project Impacts:** To mitigate for permanent impacts associated with placement of riprap, the Applicant is proposing to use willow and alder planting within the riprap. This will provide shading, habitat, and increased bank stability that would not be provided with exclusive use of riprap.
8. **Avoidance and Minimization of Impacts:** Work will occur during late summer or early fall to avoid the need to work within the active river channel. The Applicant has prepared a Fish Capture and Relocation Plan that shall be approved by the California Department of Fish and Wildlife prior to commencement of Project construction.
9. **Other Agency Actions:** The Applicant has applied to the United States Army Corps of Engineers for Nationwide Permit No. 13, *Bank Stabilization*, pursuant to section 404 of the Clean Water Act. The Applicant has applied for a 1600 Streambed Alteration Agreement from the California Department of Fish and Wildlife.
10. **CEQA Compliance:** The Regional Water Board has determined that the Project is statutorily exempt from the California Environmental Quality Act (CEQA), pursuant to California Code of Regulations title 14, chapter 3, section 15269, *Emergency Projects*. The Regional Water Board is filing a Notice of Exemption with the State Clearinghouse concurrent with issuance of the Certification, pursuant to CEQA guidelines.
11. **Total Maximum Daily Load (TMDL):** The Project area is approximately 1,300-feet upstream from the EFSR confluence with the South Fork Eel River. The South Fork

Eel River is identified as impaired for sediment and temperature under Clean Water Act section 303(d). The United States Environmental Protection Agency established a Total Maximum Daily Load (TMDL) for the South Fork Eel River in 1999. Because the Project will stabilize an actively eroding river bank, Project implementation would result in a net reduction of sediment contributions to the South Fork Eel River. Effective shade was reduced in the Project area after the March 2016 bank failure. This Project will incorporate riparian plantings that will provide increasing shade in the future as the willows grow. The Project will improve effective shade and not increase stream temperatures. This certification would not certify any activities that would contribute to the Eel River sediment or temperature impairment, and would be consistent with and implement the South Fork Eel River TMDL.

12. **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 *Water Quality Control Plan for the North Coast Region* (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.

13. 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. The Order may be accessed at this web address:
http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo2003-0017.pdf

Receiving Water:	East Fork of the South Fork Eel River	
Filled and/or Excavated Areas:	Permanent impacts to jurisdictional waters:	120 linear feet; 0.06 acres
	Temporary impacts to jurisdictional waters:	120 linear feet
Latitude/Longitude:	40.068, -123.78976 ¹	
Certification Expiration:	August 25, 2021	

¹ WGS84 datum

Accordingly, based on its independent review of the record, the Regional Water Board certifies that the Benbow Inn Bank Stabilization Project (WDID No. 1B161000WNHU) 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 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.

Project-Specific Conditions Requiring Reports

1. The Applicant shall implement the July 6, 2016, *Benbow Bank Stabilization Revegetation Plan*, except follow-up monitoring shall occur for not less than five years. Annual monitoring reports for years 1, 3, and 5, shall be provided to the Regional Water Board no later than January 31 of the respective monitoring year. The Year 1 Monitoring Report shall be provided no later than January 31, 2018.
2. The Applicant shall provide pre- and post-Project photographs of the construction access route in all locations requiring trimming or removal of riparian vegetation. The photographs shall be provided no later than November 15, 2016.

Project-Specific Conditions

3. The Applicant shall not use leaking vehicles or equipment within State waters. Vehicles and equipment used within State waters shall be checked for leaks at the beginning of each work day.
4. With the exception of tree planting, Project activities shall be completed before October 15. Exceptions to this deadline are subject to the prior acceptance of Regional Water Board staff.
5. Fish relocation shall not occur until the California Department of Fish and Wildlife has approved a Fish Capture and Relocation Plan. The Applicant shall implement the approved Plan.
6. Disturbance or removal of existing vegetation shall not exceed the minimum necessary to complete the Project.

Standard Conditions

7. 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.

8. 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.
9. 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. The total application fee for the Project is \$200. The Regional Water Board received \$200 from the Applicant on July 25, 2016.
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. This certification does not authorize drafting of surface waters. Any drafting of surface waters shall be in compliance with state water rights law and diversion requirements overseen by the State Water Resources Control Board's Division of Water Rights.
12. Herbicides and other pesticides shall not be used within the Project limits. If the Applicant 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.
13. 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.
14. The Applicant 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 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.

15. 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 the Applicant first submits a proposal that is found acceptable by Regional Water Board staff.
16. The Applicant 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.
17. The Applicant shall provide Regional Water Board staff access to the Project site to document compliance with this certification.
18. 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.
19. 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).
20. All Project activities shall be implemented as described in the submitted certification application package and the findings and conditions of this certification. Subsequent Project changes 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 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.
21. 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.

22. Work in flowing or standing surface waters, unless otherwise proposed in the project description and approved by the Regional Water Board, is prohibited.
23. 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. Fueling, maintenance, and/or staging of individual equipment types within waters of the State or riparian areas may be authorized if the Applicant 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.
24. Gravel bags used within State waters shall:
 - i) Be made of geosynthetic material;
 - ii) Have a bound opening to keep gravel. The opening must be sewn with yarn, bound with wire, or secured with a closure device;
 - iii) Be immediately removed and replaced if the bags have developed or are developing holes or tears; and
 - iv) Be filled only with clean washed gravel.

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

25. Clean washed gravel shall:
 - i) Consist of mechanically-rounded and washed, and/or river run gravel legally obtained from a river or creek bed;
 - ii) Be clean, hard, sound, durable, uniform in quality, and free of disintegrated material, organic matter, and deleterious substances;
 - iii) Have a cleanliness value of at least 85, using the Cleanness Value Test Method for California Test No. 227; and

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

26. 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.

27. 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 or approved pursuant to the Porter-Cologne Water Quality Control Act or section 303 of the Clean Water Act.
28. 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.

The successor-in-interest shall email the Regional Water Board Executive Officer at: NorthCoast@waterboards.ca.gov to request authorization to discharge dredged or fill material under this certification. The request must contain the following:

- i) Effective date of ownership change;
 - ii) Requesting entity's full legal name;
 - iii) The state of incorporation, if a corporation;
 - iv) The address and phone number of contact person; and
 - v) A description of any changes to the Project or confirmation that the successor-in-interest intends to implement the project as described in this certification.
29. Except as may be modified by any preceding conditions, all certification actions are contingent on:
 - i) The discharge being limited to and all proposed mitigation being completed in strict compliance with the Applicant's Project description and CEQA documentation, as approved herein; and
 - ii) 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.

30. The authorization of this certification for any dredge and fill activities expires on August 25, 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 Brendan Thompson of my staff, at (707) 576-2699, or via e-mail at Brendan.Thompson@waterboards.ca.gov.

Matthias St. John
Executive Officer

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Original to: Mr. John E. Porter, Benbow Historic Inn; 445 Lake Benbow Dr.,
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cc: State Water Resources Control Board, Stateboard401@waterboards.ca.gov
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Ms. Jennifer Siu, EPA Region 9, Siu.Jennifer@epa.gov
Ms. Holly Costa, U.S. Army Corps of Engineers, Holly.N.Costa@usace.army.mil
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