
North Coast Regional Water Quality Control Board

October 19, 2016

In the Matter of
Water Quality Certification
for the
Parker Creek Culvert Replacement Project

APPLICANT: Michael Sebring and Cheryl Kelly
RECEIVING WATER: Pacific Ocean
HYDROLOGIC UNIT: Big Lagoon Hydrologic Area
COUNTY: Humboldt
Files: Parker Creek Culvert Repair/Replacement;
ECM PIN CW-828145, WDID No. 1B161320WNHU

FINDINGS BY THE EXECUTIVE OFFICER:

1. On September 9, 2016, the North Coast Regional Water Quality Control Board (Regional Water Board) received an application from Michael Sebring and Cheryl Kelly (Applicant), requesting federal Clean Water Act (CWA), section 401 Water Quality Certification (certification) for the Parker Creek Culvert Replacement Project (Project). A water quality certification was issued for the Project on October 6, 2016. This certification updates impact and Project description information, corrects errors in Finding 1, and replaces the certification issued October 6, 2016.
2. **Public Notice:** Information describing the Project was noticed for public comment on the Regional Water Board's website on September 27, 2016. No comments were received.
3. **Receiving Waters:** The proposed Project would cause disturbances to Parker Creek in the Big Lagoon Hydrologic Area (Basin Planning Area No. 108.10). Parker Creek discharges directly to the Pacific Ocean at the downstream extent of the Project.

4. **Project Description:** The purpose of the Project is to replace a failed 24-28 inch-diameter, approximately 190-foot-long corrugated metal culvert with a 36-inch-diameter, high density polyethylene culvert of the same length and in the same footprint as the existing culvert. The existing culvert is 24-inches diameter at the inlet and transitions to a 28-inch-diameter segment at some point along the alignment. Erosion and sinkholes have appeared at various locations along the length of the culvert. The new culvert will be sized to accommodate the 100-year storm flow. Riprap energy dissipation will be placed at both the culvert inlet and outlet.
5. **Construction Timing:** The Project is expected to be completed in approximately two weeks during the fall of 2016, and be completed by October 31, 2016.
6. **Project Impacts:** Approximately 75 square feet (0.002 acres) of riprap would be placed at the culvert inlet, and approximately 60 square feet (0.001 acres) of riprap would be placed at the culvert outlet. Approximately 400 square feet of riparian vegetation consisting largely of Himalayan blackberry would be temporarily impacted at the inlet and outlet for construction access. No riparian trees would be removed or trimmed.
7. **Mitigation for Project Impacts:** Permanent impacts from placement of riprap are equal to the area of concrete removal from the channel. Because Project implementation would result in no net increase of fill to waters of the state, mitigation is not required.
8. **Avoidance and Minimization of Impacts:** Parker Creek cannot be daylighted along the length of the culvert due to an existing leachfield in close proximity to the culvert. Also, as cited in a draft staff report prepared by the City of Trinidad, a daylighted Parker Creek would encroach on the existing Parker Creek Trail and existing geologic conditions would require additional studies that could not be completed before winter 2016-17. Riparian vegetation would be trimmed to the minimum extent necessary to access the Project area. The culvert will be set at the same grade and elevations as the existing culvert.
9. **Other Agency Actions:** The Applicant has claimed coverage under United States Army Corps of Engineers non-reporting Nationwide Permit No. 3, Maintenance, 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 categorically exempt from the California Environmental Quality Act (CEQA), pursuant to California Code of Regulations title 14, chapter 3, section 15302 (c), Replacement or Reconstruction. 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. **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.

12. 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:	Parker Creek and Pacific Ocean	
Filled and/or Excavated Areas:	Permanent impacts to waters of the state:	none
	Temporary impacts to waters of the state:	none
Latitude/Longitude:	41.057742, -124.139844 ¹	
Certification Expiration:	October 19, 2021	

Accordingly, based on its independent review of the record, the Regional Water Board certifies that the Parker Creek Culvert Replacement Project (WDID No. 1B161320WNHU) 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.

¹ WGS84 datum

Standard Conditions

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. The total application fee for the Project is \$200. The Regional Water Board received \$200 from the Applicant on September 9, 2016.
4. 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.
5. Disturbance or removal of existing vegetation shall not exceed the minimum necessary to complete the Project.
6. 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.
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. 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.
10. 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.
11. 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.
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 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).
15. 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.

16. 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.
17. Work in flowing or standing surface waters, unless otherwise proposed in the project description and approved by the Regional Water Board, is prohibited.
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 Applicant shall not use leaking vehicles or equipment within State waters or riparian areas. Vehicles and equipment used within State waters shall be checked for leaks at the beginning of each work day.
20. 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.
21. 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.
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 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.

23. 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.

24. The authorization of this certification for any dredge and fill activities expires on October 19, 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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cc: State Water Resources Control Board, Stateboard401@waterboards.ca.gov
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