

Central Valley Regional Water Quality Control Board

~~23 October 2014~~ 25 February 2019

Mr. ~~Dean K. Mills~~ Paul Manyisha
DR Horton
~~5050 Hopyard Road, Suite 180~~ 6683 Owens Drive
Pleasanton, CA 94588

AMENDED CLEAN WATER ACT §401 TECHNICALLY CONDITIONED WATER QUALITY CERTIFICATION FOR DISCHARGE OF DREDGED AND/OR FILL MATERIALS FOR ~~THE DR HORTON~~, CHEYENNE PROJECT (WDID#5A48CR00126A1), VACAVILLE, SOLANO COUNTY

This Order responds to the 13 November 2018 request for an amendment of the Clean Water Act Section 401 Technically Conditioned Water Quality Certification for Discharge of Dredged and/or Fill Materials for the Cheyenne Project (WDID No. 5A48CR00126). The original Water Quality Certification (Certification) was issued on 23 October 2014. The original Certification is amended in underline/strikeout format.

ACTION:

1. Order for Standard Certification
2. Order for Technically-conditioned Certification
3. Order for Denial of Certification

WATER QUALITY CERTIFICATION STANDARD CONDITIONS:

1. This certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to §13330 of the California Water Code and §3867 of Title 23 of the California Code of Regulations (23 CCR).
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 23 CCR subsection 3855(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 any non-denial certification action shall be conditioned upon total payment of the full fee required under 23 CCR §3833, unless otherwise stated in writing by the certifying agency.
4. Certification is valid for the duration of the described project. DR Horton shall notify the Central Valley Water Board in writing within 7 days of project completion.

ADDITIONAL TECHNICALLY CONDITIONED CERTIFICATION CONDITIONS:

In addition to the four standard conditions, DR Horton shall satisfy the following:

1. DR Horton shall notify the Central Valley Water Board in writing 7 days in advance of the start of any in-water activities.
2. Except for activities permitted by the U.S. Army Corps under §404 of the Clean Water Act, soil, silt, or other organic materials shall not be placed where such materials could pass into surface water or surface water drainage courses.
3. All areas disturbed by project activities shall be protected from washout or erosion.
4. DR Horton shall maintain a copy of this Certification and supporting documentation (Project Information Sheet) at the Project site during construction for review by site personnel and agencies. All personnel (employees, contractors, and subcontractors) performing work on the proposed project shall be adequately informed and trained regarding the conditions of this Certification.
5. An effective combination of erosion and sediment control Best Management Practices (BMPs) must be implemented and adequately working during all phases of construction.
6. All temporarily affected areas will be restored to pre-construction contours and conditions upon completion of construction activities.
7. DR Horton shall perform surface water sampling: 1) When performing any in-water work; 2) In the event that project activities result in any materials reaching surface waters or; 3) When any activities result in the creation of a visible plume in surface waters. The following monitoring shall be conducted immediately upstream out of the influence of the project and 300 feet downstream of the active work area. Sampling results shall be submitted to this office within two weeks of initiation of sampling and every two weeks thereafter. The sampling frequency may be modified for certain projects with written permission from the Central Valley Water Board.

Parameter	Unit	Type of Sample	Frequency of Sample
Turbidity	NTU	Grab	Every 4 hours during in water work
Settleable Material	ml/l	Grab	Same as above.
Visible construction related pollutants	Observations	Visible Inspections	Continuous throughout the construction period

Activities shall not cause turbidity increases in surface water to exceed:

- (a) where natural turbidity is less than 1 Nephelometric Turbidity Units (NTUs), controllable factors shall not cause downstream turbidity to exceed 2 NTU;
- (b) where natural turbidity is between 1 and 5 NTUs, increases shall not exceed 1 NTU;
- (c) where natural turbidity is between 5 and 50 NTUs, increases shall not exceed 20 percent;
- (d) where natural turbidity is between 50 and 100 NTUs, increases shall not exceed 10 NTUs;
- (e) where natural turbidity is greater than 100 NTUs, increases shall not exceed 10 percent.

~~Except that these limits will be eased during in-water working periods to allow a turbidity increase of 15 NTU over background turbidity as measured in surface waters 300 feet downstream from the working area.~~ In determining compliance with the above limits, appropriate averaging periods may be applied provided that beneficial uses will be fully protected. Averaging periods may only be assessed by prior permission of the Central Valley Water Board.

8. Activities shall not cause settleable matter to exceed 0.1 ml/l in surface waters as measured in surface waters 300 feet downstream from the project.
9. The discharge of petroleum products or other excavated materials to surface water is prohibited. Activities shall not cause visible oil, grease, or foam in the work area or downstream. DR Horton shall notify the Central Valley Water Board immediately of any spill of petroleum products or other organic or earthen materials.
10. DR Horton shall notify the Central Valley Water Board immediately if the above criteria for turbidity, settleable matter, oil/grease, or foam are exceeded.
11. DR Horton shall comply with all Department of Fish and Wildlife 1600 requirements for the project.
12. DR Horton must obtain coverage under the NPDES General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities issued by the State Water Resources Control Board for any project disturbing an area of 1 acre or greater.
13. The Conditions in this water quality certification are based on the information in the attached "Project Information." If the information in the attached Project Information is modified or the

project changes, this water quality certification is no longer valid until amended by the Central Valley Water Board.

14. 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 State law and section 401 (d) of the federal 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 ensure compliance into this Order.
 - a. If DR Horton or a duly authorized representative of the project fails or refuses to furnish technical or monitoring reports, as required under this Order, or falsifies any information provided in the monitoring reports, the applicant is subject to civil monetary liabilities, for each day of violation, or criminal liability.
 - b. In response to a suspected violation of any condition of this Order, the Central Valley Water Board may require DR Horton to furnish, under penalty of perjury, any technical or monitoring reports the Central Valley Water Board deems appropriate, provided that the burden, including cost of the reports, shall be in reasonable relationship to the need for the reports and the benefits to be obtained from the reports.
 - c. DR Horton shall allow the staff(s) of the Central Valley Water Board, or an authorized representative(s), upon the presentation of credentials and other documents, as may be required by law, to enter the project premises for inspection, including taking photographs and securing copies of project-related records, for the purpose of assuring compliance with this certification and determining the ecological success of the project.

ADDITIONAL STORM WATER QUALITY CONDITIONS:

DR Horton shall also satisfy the following additional storm water quality conditions:

1. During the construction phase, DR Horton must employ strategies to minimize erosion and the introduction of pollutants into storm water runoff. These strategies must include the following:
 - (a) the Storm Water Pollution Prevention Plan (SWPPP) must be prepared during the project planning and design phases and before construction;
 - (b) an effective combination of erosion and sediment control Best Management Practices (BMPs) must be implemented and adequately working prior to the rainy season and during all phases of construction.
2. DR Horton must minimize the short and long-term impacts on receiving water quality from the Cheyenne Project by implementing the following post-construction storm water management practices:
 - (a) minimize the amount of impervious surface;
 - (b) reduce peak runoff flows;
 - (c) provide treatment BMPs to reduce pollutants in runoff;

- (d) ensure existing waters of the State (e.g., wetlands, vernal pools, or creeks) are not used as pollutant source controls and/or treatment controls;
 - (e) preserve and, where possible, create or restore areas that provide important water quality benefits, such as riparian corridors, wetlands, and buffer zones;
 - (f) limit disturbances of natural water bodies and natural drainage systems caused by development (including development of roads, highways, and bridges);
 - (g) use existing drainage master plans or studies to estimate increases in pollutant loads and flows resulting from projected future development and require incorporation of structural and non-structural BMPs to mitigate the projected pollutant load increases in surface water runoff;
 - (h) identify and avoid development in areas that are particularly susceptible to erosion and sediment loss, or establish development guidance that protects areas from erosion/ sediment loss;
 - (i) control post-development peak storm water run-off discharge rates and velocities to prevent or reduce downstream erosion, and to protect stream habitat.
3. DR Horton must ensure that all development within the project provides verification of maintenance provisions for post-construction structural and treatment control BMPs. Verification shall include one or more of the following, as applicable:
 - (a) the developer's signed statement accepting responsibility for maintenance until the maintenance responsibility is legally transferred to another party; or
 - (b) written conditions in the sales or lease agreement that require the recipient to assume responsibility for maintenance; or
 - (c) written text in project conditions, covenants and restrictions for residential properties assigning maintenance responsibilities to a home owner's association, or other appropriate group, for maintenance of structural and treatment control BMPs; or
 - (d) any other legally enforceable agreement that assigns responsibility for storm water BMP maintenance.
4. Staff of the Central Valley Water Board has prepared total maximum daily load (TMDL) allocations that, once approved, would limit methylmercury in storm water discharges to the Sacramento-San Joaquin Delta. The Central Valley Water Board has scheduled these proposed allocations to be considered for adoption. When the Central Valley Water Board adopts the TMDL and once approved by the Environmental Protection Agency, the discharge of methylmercury may be limited from the proposed project. The purpose of this condition is to provide notice to DR Horton that methylmercury discharge limitations and monitoring requirements may apply to this project in the future and also to provide notice of the Central Valley Water Board's TMDL process and that elements of the planned construction may be subject to a TMDL allocation.

REGIONAL WATER QUALITY CONTROL BOARD CONTACT PERSON:

~~George D. Day, P.E.~~ Lynn Coster, Redding Branch Office, 364 Knollcrest Drive, Suite 205, Redding, California 96002, ~~(530) 224-4845~~ (530) 224-2437

WATER QUALITY CERTIFICATION:

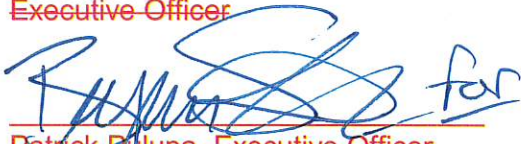
I hereby issue an amended order certifying that any discharge from DR Horton, Cheyenne Project (WDID# 5A48CR00126A1) will comply with the applicable provisions of §301 ("Effluent

Limitations"), §302 ("Water Quality Related Effluent Limitations"), §303 ("Water Quality Standards and Implementation Plans"), §306 ("National Standards of Performance"), and §307 ("Toxic and Pretreatment Effluent Standards") of the Clean Water Act. This discharge is also regulated under State Water Resources Control Board Water Quality Order No. 2003-0017 DWQ "Statewide General Waste Discharge Requirements For Dredged Or Fill Discharges That Have Received State Water Quality Certification (General WDRs)."

Except insofar as may be modified by any preceding conditions, all certification actions are contingent on (a) the discharge being limited and all proposed mitigation being completed in strict compliance with DR Horton's project description and the attached Project Information Sheet, and (b) compliance with all applicable requirements of the *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, Fourth Edition Fifth Edition, revised October 2014 May 2018* (Basin Plan).

Any person aggrieved by this action may petition the State Water Quality Control Board to review the action in accordance with California Water Code § 13320 and California Code of Regulations, title 23, § 2050 and following. The State Water Quality Control Board must receive the petition by 5:00 p.m., 30 days after the date of this action, except that if the thirtieth day following the date of this action falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Quality Control Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request.

(for) **PAMELA C. CREEDON**
Executive Officer


Patrick Pulupa, Executive Officer
Central Valley Regional Water Quality Control Board

2-25-2019

Date

GDD:lmw-LC: ch

Enclosure: Water Quality Order No. 2003-0017 DWQ

cc w/o **Mr. Marc Fugler**, U.S. Army Corp of Engineers, Sacramento
enclosures: Department of Fish and Wildlife, Region 2, Rancho Cordova
U.S. Fish and Wildlife Service, Sacramento
Mr. Bill Jennings, CALSPA, Stockton
Mr. Sean Micallef, **Zentner and Zentner Zentner Planning and Ecology**, Oakland

cc w/o **Sam Zeigler**, U.S. EPA, Region 9, San Francisco
enclosures **Mr. Bill Orme Elizabeth Payne**, SWRCB, Certification Unit, Sacramento
by email:

PROJECT INFORMATION

Application Date: 20 May 2014

Application Complete Date: 22 October 2014

Amended Application Date: 13 November 2018

Applicant: DR Horton, Attn: Mr. ~~Dean K. Mills~~ Paul Manyisha

Project Name: Cheyenne Project

Application Number: WDID No. 5A48CR00126A1

U.S. Army Corps of Engineers File Number: SPK-2004-00050

Type of Project: Restoration of ephemeral Channel D, and the creation of approximately 0.021 acre of seasonal wetlands within the corridor as well as the creation of 0.84 acre ~~of~~ of riparian woodland along Channel D to be placed on both sides of the channel

Project Location: Section 4, Township 6 North, Range 1 West, MDB&M.
Latitude: 38°24'04" and Longitude: -122°58'37"

County: Solano County

Receiving Water(s) (hydrologic unit): Horse Creek, which is tributary to Sacramento River. Valley Putah-Cache Hydrologic Unit-Elmira Hydrologic Area No. 511.10

Water Body Type: Streambed

Designated Beneficial Uses: The *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, Fourth Edition Fifth Edition, revised September 2009 May 2018* (Basin Plan) has designated beneficial uses for surface and ground waters within the region. Beneficial uses that could be impacted by the project include: Municipal and Domestic Water Supply (MUN); Agricultural Supply (AGR); Groundwater Recharge, Water Contact Recreation (REC-1); Non-Contact Water Recreation (REC-2); Warm Freshwater Habitat (WARM); Cold Freshwater Habitat (COLD); Spawning, Reproduction, and /or Early Development (SPWN); and Wildlife Habitat (WILD).

Project Description (purpose/goal): The Cheyenne Project consists of restoring the ephemeral Channel D in order to complete the Cheyenne Project, previously known as Reynolds Ranch, and bringing the project into compliance with the previously obtained United States Army Corps of Engineers permit.

Reynolds Ranch is a residential development on an approximately 170-acre site located in the City of Vacaville within southern Solano County. The original applicant, R.W. Hertel and Sons, Inc. received a Section 404 permit (along with other state and federal permits) in 2002 to fill approximately 0.157 acre of Corps jurisdiction including 0.15 acre of intermittent and ephemeral streams and 0.007 acre of seasonal wetlands.

The current restoration project is proposed to clear up deficiencies with the project regarding the required mitigation, the conservation easement, and endowment and other elements of the Corps permit. Therefore, additional mitigation measures are proposed to bring the project into compliance with the permit and to compensate for the time that has elapsed since mitigation initiation would have been required, i.e., the greater temporal impacts resulting from the project.

The mitigation work on Channel D includes the repair of minor bank erosion occurrences and channel incisions within Channel D. A total of 250 linear feet of work within the ordinary high water mark of the channel is proposed. This work consists primarily of rock placed within the minor incision in Channel D. The rocks will be backfilled with soil, covered with coir erosion control fabric, and planted with native vegetation. A few smaller areas of erosion along the creek banks will also be stabilized. The slopes will be made gentler, and a straw wattle or coir log will be placed along the toe of the slope to protect the bank. Coir fabric will cover the disturbed areas. The fabric will be staked to keep it in place and then it will be planted with native vegetation to hold and restore the channel over the long term.

The project is amended to repair and stabilize an eroded section of a small ephemeral tributary to Channel D that runs parallel and south of McMurtry Lane and is in proximity of the road. The eroded section will be stabilized using both an engineering and bio-engineering approach. The proposed work includes a thickened back of sidewalk wall with a footing to hold the road and sidewalk. Native soil will be replaced between the wall and the creek to match the adjacent slopes. The soil will be compacted and covered with an all-natural, biodegradable erosion control blanket and planted native vegetation. This erosion control blanket is rated to withstand the sheer stress of high flows in the creek, does not contain any plastic, and can be planted through.

The footing and the sidewalk wall will only be used in the worst area where the erosion has taken place. This work will total approximately 25 linear feet including the existing eroded area and the immediately adjacent slopes, which are in danger of slipping further. In addition, a thickened back of walk area will run for another 40 feet at the top of bank in order to ensure stabilization for the necessary road work.

Restoration will also include the creation of 0.021 acre of seasonal wetlands adjacent to Channel D. These wetlands will be constructed within uplands that are approximately 2 feet in elevation above the existing channel. These uplands, which are in a terrace above the channel, will be graded down into a shallow basin to form the seasonal wetlands.

Riparian woodland vegetation will be restored in banks along both sides of the channel. These banks will average ten feet on both sides of the channel or slightly more than double what was previously proposed, for a total ~~of 0.84 acre of riparian woodland~~ restoration of at least 0.35 acre of riparian buffer and enhancement of 0.47 acre of riparian woodlands. Bands of native-dominated uplands buffers totaling 0.62 acre will be located outside of the riparian woodland. These buffers will include native grasses, trees and shrubs. A 25-foot firebreak will separate all of this proposed restoration work from the western development node.

In addition, to this proposed work, the conservation and avoidance measures for the Valley elderberry longhorn beetle, which were previously agreed to, will also be included in the work. No ground disturbance will take place within 50 feet of the existing elderberries and no planting will occur within ten feet of them.

All of this work will be contained within an approximately 43-acre open space area, which will provide additional buffering for all the restoration work. The open space and the restoration areas within it will be permanently protected through a restrictive conservation easement reflecting the most recent Corps requirements. The preserved and restored habitats and their buffers will be managed over the long-term through an endowment and approved easement holder.

Preliminary Water Quality Concerns: Construction activities may impact surface waters with increased turbidity and settleable matter.

Proposed Mitigation to Address Concerns: DR Horton will implement Best Management Practices (BMPs) to control sedimentation and erosion. All temporary affected areas will be restored to pre-construction contours and conditions upon completion of construction activities. DR Horton will conduct turbidity and settleable matter testing during in-water work, stopping work if Basin Plan criteria are exceeded or are observed.

Fill/Excavation Area Direct Impacts to Waters of the State: Project implementation will permanently impact ~~0.0137 acre (250 linear feet)~~ 0.022 acre (423 linear feet) of un-vegetated streambed.

Table 1: Total Project Fill/Excavation Impacts									
Aquatic Resource Type	Temporary Impact¹			Permanent Impact					
				Physical Loss of Area			Degradation of Ecological Condition		
	Acres	CY²	LF²	Acres	CY	LF	Acres	CY	LF
Streambed				0.022	710	423			

Dredge Volume: Not Applicable

U.S. Army Corps of Engineers Permit Number: Nationwide Permit #27 (Aquatic Habitat Restoration, Establishment, and Enhancement Activities) and Nationwide Permit #14 (Linear Transportation Projects)

Department of Fish and Wildlife Streambed Alteration Agreement: DR Horton applied for a Streambed Alteration Agreement.

Possible Listed Species: Valley elderberry longhorn beetle (VELB)

Status of CEQA Compliance: The City of Vacaville approved an Environmental Impact Report on 27 April 2004.

Compensatory Mitigation: On-site mitigation includes the ~~creation of 0.84 acre of riparian woodland along both sides of the 1,905 linear feet of channel~~ creation of 0.021 acre of seasonal wetlands adjacent to Channel D, restoration of 0.35 acre of jurisdictional riparian woodland,

¹ Includes only temporary direct impacts to waters of the state and does not include upland areas of temporary disturbance which could result in a discharge to waters of the state. Temporary impacts, by definition, are restored to pre-project conditions and therefore do not include a physical loss of area or degradation of ecological condition.

² Cubic Yards (CY); Linear Feet (LF)

enhancement of 0.47 acre of riparian woodland, and the restoration of 0.62 acre of native trees, shrubs, and grassland to form an upland buffer to the riparian woodland and the seasonal wetlands.

Application Fee Provided: On 20 May 2014 a certification application fee of \$4,277.00 was submitted as required by 23 CCR §3833b(3)(A) and by 23 CCR §2200(e).