
North Coast Regional Water Quality Control Board

April 21, 2017

In the Matter of
Water Quality Certification
for the
Rafanelli Dry Creek Emergency Repair Project
WDID No. 1B170047WNSO

APPLICANT:	Mr. David Rafanelli
RECEIVING WATER:	Dry Creek
HYDROLOGIC UNIT:	Russian River Hydrologic Unit No. 114.24
COUNTY:	Sonoma
Files:	Rafanelli Dry Creek Emergency Repair Project ECM PIN CW- CW- 832097

FINDINGS BY THE EXECUTIVE OFFICER:

1. On January 17, 2017, the North Coast Regional Water Quality Control Board (Regional Water Board) received a Notice of Intent (NOI) from Mr. David Rafanelli (Applicant) to comply with the terms of, and obtain coverage under, the General 401 Water Quality Certification Order No. SB14008IN for US Army Corps of Engineers Regional General Permit No. 5 for Repair and Protection Activities in Emergency Situations for the Rafanelli Dry Creek Emergency Repair (Project). Emergency work within waters began on January 15, just after a high rainfall / creek flow event. The U.S. Army Corps of Engineers required regulatory coverage under their Nationwide Permit No. 13 rather than their Regional General Permit No. 5, requiring the Regional Water Board to regulate the Project activities through issuance of an individual water quality certification (certification) under section 401 of the Clean Water Act (33 U.S.C. § 1341). The Project impacts to Dry Creek, waters of the U.S. are located at approximately 3500 W. Dry Creek Road, Healdsburg, Sonoma County. Coordinates of

the Project are approximately latitude 38.644836° N and longitude 122.915764° W. The application was deemed complete on March 15, 2017.

2. **Public Notice:** The Regional Water Board provided 21-day public notice of the application pursuant to Title 23, California Code of Regulations, Section 3858 on March 15, 2017, and posted information describing the Project on the Regional Water Board's website. No comments were received.
3. **Receiving Waters:** The proposed Project would cause disturbances to Dry Creek within the Russian Hydrologic Unit No. 114.24. Dry Creek discharges directly to the Russian River.
4. **Project Description:** The primary purpose of the Project is to repair 55 linear feet of the bank of Dry Creek that failed due to recent flooding and is threatening the loss of property and facilities onsite. The Project includes: installation of large boulders at the toe of the erosion and building up to the top of bank. Additionally, the Applicant has planted approximately 100 willows among the rock slope protection to create a bioengineered structure "softening" the bank hydraulically and creating shade and stream nutrients. The Project employed best management practices (BMPs) to prevent or reduce any discharges during and after construction. The Applicant installed erosion control BMPs including straw and fiber rolls at the top of the bank to reduce further erosion.
5. **Construction Timing:** The Project was conducted beginning January 15 – February 7, 2017.
6. **Project Impacts:** Permanent impacts to waters of the U.S. include approximately 55 linear feet of rock and willows on the banks of Dry Creek. No temporary impacts are proposed.
7. **Mitigation for Project Impacts:** The Applicant interplanted approximately 100 willow pole cuttings among the rockwork to create a bioengineered structure. The plantings were buried to a depth appropriate for willow roots to access water supply for growth. This structural component will soften the banks minimizing velocity changes in this reach, contribute shade, nutrients and cover for aquatic life.
8. **Avoidance and Minimization of Impacts:** To minimize impacts to the banks of Dry Creek the Applicant installed erosion control BMPs including straw and fiber rolls. The applicant worked from the top of bank to minimize channel impacts.
9. **Other Agency Actions:** The Applicant applied for authorization from the United States Army Corps of Engineers Regional General Permit No. 5 for Repair and Protection Activities in Emergency Situations. The US Army Corps of Engineers required regulatory coverage under their Nationwide Permit No. 13 rather than their

Regional General Permit No. 5. The Applicant has applied to the California Department of Fish and Wildlife to obtain a Streambed Alteration Agreement.

10. **CEQA Compliance:** The North Coast Regional Water Quality Control Board, as lead California Environmental Quality Act (CEQA) agency, has determined that the project is exempt from CEQA review pursuant to California Code of Regulations, title 14, section 15269 Emergency Projects, and will file a Notice of Exemption with the State Clearinghouse concurrent with issuance of the 401 Water Quality Certification, pursuant to CEQA guidelines.
11. **Total Maximum Daily Load:** The Russian River is identified as impaired for sediment and temperature under Clean Water Act Section 303(d). At present, total maximum daily loads (TMDLs) have not been established for this water body. If TMDLs are established and implementation plans are adopted for this watershed prior to the expiration date of the requested certification, the Regional Water Board may revise the provisions of that certification to address actions identified in such action plans. 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 certification are designed to reduce removal of riparian vegetation and reduce sediment discharges from bank erosion. Accordingly, this certification is consistent with, and implements, BMPs that would attenuate sediment and temperature adverse impacts.
12. **Sediment TMDL Implementation Policy:** 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.”
13. **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.

14. 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:	Russian River, Russian River Hydrologic Unit No. 114.24	
Filled and/or Excavated Areas:	Permanent impacts to waters of the state:	55 linear feet
	Temporary impacts to waters of the state:	none
Latitude/Longitude:	38.644836°N, 122.915764°W	
Certification Expiration:	April 21, 2022	

Accordingly, based on its independent review of the record, the Regional Water Board certifies that the Rafanelli Dry Creek Repair Project (WDID No. 1B170047WNSO) 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.

Terms and Conditions:

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.
4. A fee of \$200 was received for the Project on February 2, 2017 and the balance totaling \$720 on April 19, 2017. This certification will not be subject to annual billing during the construction phase ("Annual Active Discharge Fee") since the project is complete and the Regional Water Board has received a Notice of Completion. There will be a 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
5. The applicant shall report on the success of the willow plantings in the bioengineered structure for three years. Reports shall document success of plantings to ensure structural stability, development of shade and riparian vegetative function. The applicant shall send reports to the Regional Water Board by January 31 annually.
6. 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.
7. 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.
8. 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.
9. The Applicant shall provide Regional Water Board staff access to the Project site to document compliance with this certification.

10. 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.
11. 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).
12. 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.
13. 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.
14. 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.
15. 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.
16. 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.

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 or approved pursuant to the Porter-Cologne Water Quality Control Act or section 303 of the Clean Water Act.
18. 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.
19. 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.

20. The authorization of this certification for any dredge and fill activities expires on April 21, 2022. 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.

Condition 5 requires reporting or notification to the Regional Water Board. Any requirement for a report made as a condition to this certification is a formal requirement pursuant to California Water Code section 13267, and failure or refusal to provide, or falsification of such required report is subject to civil liability as described in California Water Code, section 13268.

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

170421_GBF_dp_RafanelliBankStab_401

Original to: Mr. David Rafanelli, 4685 West Dry Creek Road, Healdsburg, CA 95448,
garden2view@aol.com

cc: Mr. Lyell Doll, Munselle Engineering, Lyell@munsellecivil.com
State Water Resources Control Board, Stateboard401@waterboards.ca.gov
Ms. Jennifer Siu, EPA Region 9, Siu.Jennifer@epa.gov
Mr. Jim Mazza, U.S. Army Corps of Engineers, James.C.Mazza@usace.army.mil
Ms. Karen Weiss, CDFW, Karen.Weiss@wildlife.ca.gov