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## North Coast Regional Water Quality Control Board

October 27, 2017

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**In the Matter of**  
**Water Quality Certification**  
**for the**  
**Miller Property - 1161 Boonville Road, Ukiah Project**  
**WDID No. 1B171810WNME**

APPLICANT: Mr. Stephen H Miller  
RECEIVING WATER: Robinson Creek  
HYDROLOGIC UNIT: Russian River Hydrologic Unit No. 114.31  
COUNTY: Mendocino  
Files: Miller Property – 1161 Booneville Road, Ukiah Project, ECM  
PIN CW-841053

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### FINDINGS BY THE EXECUTIVE OFFICER:

1. On September 19, 2017, Mr. Stephen H Miller (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 Miller Property - 1161 Boonville Road, Ukiah Project (Project). The Project is at approximately 1161 Boonville Road, Ukiah, Mendocino County, at latitude 39.095803°N, and longitude 123.208486°W. The application was deemed complete on October 26, 2017.
2. **Public Notice:** Information describing the project was noticed for public comment on the Regional Water Board's website on October 27, 2017. Under Title 23, California Code of Regulations, Section 3858(a): "The executive director or the executive officer with whom an application for certification is filed shall provide public notice of an application at least twenty-one (21) days before taking certification action on the application, unless the public notice requirement has been adequately satisfied by the

applicant or federal agency. If the applicant or federal agency provides public notice, it shall be in a manner and to an extent fully equivalent to that normally provided by the certifying agency. If an emergency requires that certification be issued in less than 21 days, public notice shall be provided as much in advance of issuance as possible, but no later than simultaneously with issuance of certification." Due to the significant nature of water quality issues related to threatened significant erosion and sediment delivery along the creek bank during the next wet season, 401 Water Quality Certification will be issued during the 21-day public comment period so that the project can start as soon as possible. Public comments will still be accepted and reviewed during the entire 21-day comment period.

3. **Receiving Waters:** The Project will cause disturbances to waters of the state associated with the bed and banks of Robinson Creek within the Russian River Hydrologic Unit No. 114.31.
4. **Project Description:** The primary purpose of the Project is to stabilize the banks of Robinson Creek that eroded during winter storms to reduce the delivery of additional sediment into the creek and protect Applicant's property. The proposed Project would use earth moving machinery and include installing a bioengineered structure of Rock Slope Protection (RSP) and native plantings on the bank of Robinson Creek at the Applicant's property along approximately 100 linear feet of the southern bank of Robinson Creek near a vulnerable bridge crossing for residents. The Applicant has submitted design plans that include vegetated rock slope protection, quarried rock, the use of native stream bed material and native riparian willow plantings.
5. **Construction Timing:** The Project is planned to begin in the summer and fall of 2017 with construction work planned to last approximately one week. Work within the channel may be extended from beyond October 15 to November 15, 2017, through compliance with Condition No. 3 (below). The project may take place between May 15 and October 15, 2018, if permitting requires.
6. **Authorized Project Impacts:** Permanent impacts to waters of the state include approximately 100 linear feet of Robinson Creek bed and bank.
7. **Mitigation for Project Impacts:** Compensatory mitigation is required for the proposed impacts to waters of the state. The Project includes a revegetation and mitigation and monitoring plan that includes bioengineered treatments and approximately 75 native riparian willow plantings in the channel. The plan includes five years of monitoring and reporting to ensure the plantings will be self-sustaining after five years. Best Management Practices (BMPs) for sediment and turbidity control, as well as, aquatic species and habitat protection are proposed to avoid and minimize temporary impacts.
8. **Project Tracking:** It has been determined through regional, state, and national studies that tracking of mitigation and restoration projects must be improved to better assess their performance. In addition, to effectively carry out the state's Wetlands Conservation Policy of no net loss to wetlands, the state needs to closely track both aquatic habitat losses and the success of mitigation and restoration

projects. Therefore, this certification requires the Applicant to upload impact totals and mitigation measures to a web-based project tracking system called “EcoAtlas” using the “Project Tracker” form, which can be found here: <http://ptrack.ecoatlas.org>. Instructions and how to request a user name and password are on the Project Tracker website. More information about EcoAtlas is available at: [www.ecoatlas.org](http://www.ecoatlas.org).

9. **Avoidance and Minimization of Impacts:** The proposed Project includes a revegetation and mitigation and monitoring plan that includes bioengineered treatments and native riparian plantings in the channel to minimize the effects of hardening the creek banks. The plan includes five years of monitoring and reporting to ensure the plantings will be self-sustaining after five years. The Project proposes to employ best management practices to prevent or reduce any discharges during and after construction. The project will be conducted when the creek is not flowing and access will be through an existing decommissioned road that will be restored to pre-project condition to prevent erosion and sediment delivery after the project is completed. Any aquatic wildlife in ponded areas within the area of disturbance will require rescue and relocation approved by the California Department of Fish and Wildlife. Any equipment that is used in the creek channel will be cleaned and in good working order with any refueling, staging or storage of the equipment occurring at least 100 feet away from the creek channel.
10. **Other Agency Actions:** The Applicant has applied for authorization from the United States Army Corps of Engineers for a Clean Water Act, section 404 permit. The Applicant has applied to the California Department of Fish and Wildlife to obtain a Streambed Alteration Agreement.
11. **CEQA Compliance:** The North Coast Regional Water Quality Control Board, as lead California Environmental Quality Act (CEQA) agency, has determined that the project qualifies for a Categorical Exemption, 15304 Minor alterations to land, and will file a Notice of Exemption with the State Clearinghouse concurrent with issuance of the 401 Water Quality Certification, pursuant to CEQA guidelines.
12. **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 Order are designed to reduce removal of riparian vegetation and reduce sediment discharges from bank erosion. Accordingly, this Order is consistent with, and implements, BMPs that would attenuate sediment and temperature adverse impacts.
13. **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.”*

14. **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.
  
15. 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:

[https://www.waterboards.ca.gov/board\\_decisions/adopted\\_orders/water\\_quality/2003/wqo/wqo2003-0017.pdf](https://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo2003-0017.pdf)

Receiving Water:	Robinson Creek, Russian River Hydrologic Unit No. 114.31	
Filled and/or Excavated Areas:	Permanent impacts to waters of the state:	100 linear feet stream channel
	Temporary impacts to waters of the state:	none
Latitude/Longitude:	39.095803°N / 123.208486°W	
Certification Expiration:	<b>October 27, 2022</b>	

Accordingly, based on its independent review of the record, the Regional Water Board certifies that the Miller Property - 1161 Boonville Road, Ukiah Project (WDID No. 1B171810WNME) 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:**

**Project-Specific Conditions**

1. Compensatory mitigation shall be implemented in accordance with the Certification application submitted by the Applicant on September 19 and supplemental information submitted on September 26, 2017, and any subsequent revisions approved by the Executive Officer. Project mitigation includes a plan to revegetate disturbed areas, including using approximately 75 native willow pole plantings within the RSP as described in the plan along approximately 100 linear feet of stream. The Applicant proposes to monitor the revegetation to ensure 85% planting success criteria are met after 5 years.
2. Mitigation success shall be subject to the review and acceptance by Regional Water Board staff, and shall not be considered successful until a minimum of five years of monitoring has occurred. Plants shall not be considered successful until irrigation has been terminated and plants are self-sustaining for a minimum of two years.
3. End of the annual work period may be extended to November 15, 2017, under following conditions. When the 7-day NOAA National Weather Service forecast of rain for the project area at <http://www.wrh.noaa.gov/> includes a minimum of 5 consecutive days with any chance of precipitation, 3 consecutive days with a 30% or greater chance of precipitation, or 2 consecutive days of 50% or greater chance of precipitation, all work underway shall be finished, erosion control measures applied, and no new work shall be conducted prior to the rain event.

**Project-Specific Conditions Requiring Reports**

4. Mitigation and monitoring reports shall be submitted after years 1 through 5 following mitigation implementation (Reports). Reports shall be submitted to the Regional Water Board by January 31, and detail the monitoring results from the prior calendar year. The reports shall be submitted to the following email address: [NorthCoast@waterboards.ca.gov](mailto:NorthCoast@waterboards.ca.gov).

Reports shall include:

- Year 1 report will include as-built plans for all plantings;
  - Maintenance activities performed;
  - Monitoring methods;
  - Monitoring data summarized;
  - Time-series photographs;
  - Annual performance and whether success criteria are met;
  - Recommendations for adaptive measures.
5. **Project Tracking:** Within 30 days of issuance of this Order, the Applicant shall upload Project information to EcoAtlas using the "Project Tracker" form found at the following

website: <http://ptrack.ecoatlas.org/>. Required information includes a Project map that may either be uploaded to EcoAtlas or created within EcoAtlas by using the “draw polygon” tool. Required mitigation monitoring reports shall be uploaded to EcoAtlas by March 1 following the certification January 31 monitoring report due date. To upload monitoring reports into EcoAtlas, use the “Files and Links” tab found on your project’s EcoAtlas page.

### **Standard Conditions**

6. 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.
7. 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.
8. 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.
9. A fee of \$720 was submitted for the Project on October 24, 2017. This Project application qualifies for the Low Impact Discharge flat fee. This Certification may be subject to annual billing during the construction phase depending on length of construction period (if extended into 2018) (“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: [https://www.waterboards.ca.gov/northcoast/water\\_issues/programs/water\\_quality\\_certification/](https://www.waterboards.ca.gov/northcoast/water_issues/programs/water_quality_certification/) 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.

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. 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.
12. 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.
13. The Applicant shall provide Regional Water Board staff access to the Project site to document compliance with this Certification.
14. 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.
15. 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).
16. 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.
17. 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.

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](mailto:NorthCoast@waterboards.ca.gov).

The successor-in-interest shall email the Regional Water Board Executive Officer at: [NorthCoast@waterboards.ca.gov](mailto: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 27, 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.

**Conditions 4, 5, 9, 14, 15 and 22 have requirements for information and reports if applicable.** 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.

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For: Matthias St. John  
Executive Officer

171027\_GBF\_er\_MillerPropBankStabilization\_401

Original to: Mr. Stephen H. Miller, 1161 Booneville Road, Ukiah, CA 95482

cc: State Water Resources Control Board, [Stateboard401@waterboards.ca.gov](mailto:Stateboard401@waterboards.ca.gov)  
Ms. Jennifer Siu, EPA Region 9, [Siu.Jennifer@epa.gov](mailto:Siu.Jennifer@epa.gov)  
Ms. Holly Costa, U.S. Army Corps of Engineers, [Holly.N.Costa@usace.army.mil](mailto:Holly.N.Costa@usace.army.mil)  
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