

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Water Quality Certification for

**ANTELOPE CREEK RANCH
RESTORATION AND ENHANCEMENT PROJECT**

Source: Antelope Creek tributary to Antelope Sink

County: Siskiyou County

WATER QUALITY CERTIFICATION FOR FEDERAL PERMIT OR LICENSE

BY THE EXECUTIVE DIRECTOR:

Project Description

1. Michael Michalak (Applicant) owns and operates Antelope Creek Ranch, a 313 acre property that encompasses 1.5 miles of Antelope Creek, which is proposed for restoration and enhancement activities by the Applicant and is shown on Attachment A.
2. Antelope Creek is located within the Klamath Watershed; however, Antelope Creek is hydraulically isolated, flowing north from the property for approximately 8.3 miles to Antelope Sink, which has no surface water outlets. Within the Applicant's ranch, Antelope Creek is controlled by a deflector levee with four slide gates. One 36-inch slide gate controls flow to the upper pond, while the remaining three 30-inch slide gates control flow to the main stream channel. Water that is not passed through the slide gates enters a flood control channel (a.k.a. bypass channel), which rejoins the main channel of Antelope Creek at the downstream end of the property.
3. Previous uses of the property included cattle grazing, in-stream gravel quarrying, and commercial Christmas tree processing that contributed to the downcutting of the creek channels, the loss of wet meadows, and the disruption of the natural floodplain.
4. The Applicant purchased Antelope Creek Ranch in 2001. Applicant began development of the Antelope Creek Ranch Restoration and Enhancement Project (Project) in 2003 to restore the beneficial uses of Antelope Creek and the associated wet meadows and floodplain. Project construction began in 2004, and continued through 2007, when Antelope Creek Ranch was also developed as a

sport fishing business. Applicant filed Statements of Water Diversion and Use, which were assigned Nos. S016158 and S016159, with the State Water Resources Control Board (State Water Board), Division of Water Rights in September 2008.

5. The California Department of Fish and Game (CDFG) issued a Streambed Alteration Agreement (Agreement, Notification No. R1 03-0215) for the Project on September 27, 2003, and amended and renewed the Agreement in 2008, extending the expiration date to June 25, 2013.
6. The Applicant requested a U. S. Army Corps of Engineers (ACOE) jurisdictional determination for the Project in 2008. The ACOE determined that the addition of commercial sport fishing in the Project area caused Antelope Creek to become jurisdictional in the summer of 2008. The ACOE required the Applicant to apply for Nationwide Permit (NWP) 27 for Aquatic Habitat Restoration, Establishment, and Enhancement Activities.
7. The Applicant has entered into a Wetland Enhancement, Restoration, or Establishment Agreement (No. 813338J007) with the U.S. Fish and Wildlife Service on September 17, 2008, which expires on June 30, 2013.

Construction Activities

8. The Applicant proposes to complete the Project by widening the upper pond, re-establishing the main channel below the deflector levee, and re-grading the flood control channel.
9. The main channel of Antelope Creek below the intake structure of the deflector levee will be enhanced with rock vanes to protect the channel and allow fish passage.
10. The upper pond will be enlarged and separated by berms from the main channel. The outlet of the upper pond will be enhanced with rock vanes to allow fish passage and natural outflow to the main channel.
11. The flood control channel will be raised and narrowed to eliminate existing downcutting. Rock vanes will be used for hydraulic controls and native riparian vegetation will be planted around the repaired flood control channel.

Construction Best Management Practices (BMPs)

12. The Applicant prepared a Storm Water Pollution Prevention Plan that contained the BMPs for the Project on March 11, 2004.

13. Heavy equipment will be stored overnight in an old landing strip hanger; all other equipment will be stored in the Antelope Creek Ranch shop, as shown on Attachment A.
14. Equipment will be inspected daily for leaks. If leaks are found, they will be immediately repaired or the equipment will be removed from the Project site. Drip pans or other types of containment will be placed under stationary equipment and vehicles. Refueling of equipment will be performed in the Antelope Creek Ranch shop.
15. Areas of disturbed soil will be seeded with native vegetation and covered by 1 to 2 inches of clean weed-free straw mulch to control erosion.
16. All rock vanes will be protected by boulders and sod matting where they key into the streambank. Any rocks imported to the Project will be cleaned before installation to prevent off-site contamination.
17. Concrete will be pre-mixed off-site and brought in by truck. Concrete pours will occur when the flood control channel is dry. Concrete washout will occur in the Antelope Creek Ranch shop.
18. All construction-related debris, waste, and trash will be collected at the end of the work day. Material will be kept in the Antelope Creek Ranch shop for final disposal at an authorized site.

Regulatory Authority

19. The Federal Clean Water Act (33 U.S.C. §§ 1251-1387) was enacted "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." (33 U.S.C. § 1251(a).) Section 101 of the Clean Water Act (33 U.S.C. § 1251(g)) requires federal agencies to "co-operate with the State and local agencies to develop comprehensive solutions to prevent, reduce and eliminate pollution in concert with programs for managing water resources."
20. Section 401 of the Clean Water Act (33 U.S.C. § 1341) requires every applicant for a federal license or permit which may result in a discharge into navigable waters to provide the licensing or permitting federal agency with certification that the Project will be in compliance with specified provisions of the Clean Water Act, including water quality standards and implementation plans promulgated pursuant to section 303 of the Clean Water Act (33 U.S.C. § 1313). Section 401 of the Clean Water Act directs the agency responsible for certification to prescribe effluent limitations and other limitations necessary to ensure compliance with the Clean Water Act and with any other appropriate requirement of state law. Section 401 further provides that certification conditions shall become conditions of any federal license or permit for the Project. The State Water Board is the state agency responsible for such certification in California. (Wat. Code § 13160.) The

State Water Board has delegated this function to the Executive Director by regulation. (Cal. Code Regs., tit. 23, § 3838, subd. (a).)

21. The California Regional Water Quality Control Boards have adopted, and the State Water Board has approved, water quality control plans (basin plans) for each watershed basin in the State. The basin plans designate the beneficial uses of waters within each watershed basin and water quality objectives designed to protect those uses. Section 303 of the Clean Water Act requires the states to develop and adopt water quality standards. (33 U.S.C. § 1313.) The beneficial uses together with the water quality objectives that are contained in the basin plans constitute State water quality standards under section 303.
22. The North Coast Regional Water Quality Control Board (North Coast Region) has adopted, and the State Water Board and the U.S. Environmental Protection Agency have approved, the Water Quality Control Plan for the North Coast Region (Basin Plan). The Basin Plan designates the beneficial uses of waters to be protected along with the water quality objectives necessary to protect those uses.
23. The Basin Plan identifies existing or potential beneficial uses for the Tennant Hydrological Sub-area within the Klamath River Basin, which encompasses Antelope Creek and Antelope Sink, as municipal and domestic supply; agricultural supply; industrial service supply; industrial process supply; groundwater recharge; freshwater replenishment; hydropower generation; water contact recreation; non-contact water recreation; commercial sport fishing; warm freshwater habitat; cold freshwater habitat; wildlife habitat; rare, threatened or endangered species; migration of aquatic organisms; spawning, reproduction, and/or early development; and aquaculture.
24. The Applicant applied for water quality certification (certification) under section 401 of the Clean Water Act (33 U.S.C. § 1341) with the State Water Board, Division of Water Rights, on August 20, 2009. The Division of Water Rights provided public notice of the application on its website, pursuant to title 23, California Code of Regulations, section 3858 on September 15, 2009. No public comments were received on this Project.
25. The State Water Board has reviewed and considered the plans and Project description provided by the Applicant. Further, the State Water Board has considered the North Coast Region Basin Plan, the existing water quality conditions and Project-related controllable factors.
26. The CDFG adopted a Mitigated Negative Declaration (MND), State Clearing House No. 2004032123 for the Project on May 5, 2004, pursuant to the California Environmental Quality Act (CEQA). The State Water Board has considered the MND and any proposed changes incorporated into the Project or required as a condition of approval to avoid significant effects to the environment. The State Water Board has prepared a Notice of Determination that will be filed with the State Clearinghouse within five days from the issuance of this certification.

ACCORDINGLY, BASED ON ITS INDEPENDENT REVIEW OF THE RECORD, THE STATE WATER BOARD CERTIFIES THAT MICHAEL MICHALAK'S ANTELOPE CREEK RANCH RESTORATION AND ENHANCEMENT PROJECT will comply with sections 301, 302, 303, 306, and 307 of the Clean Water Act, and with applicable provisions of State law, if Michael Michalak complies with the following terms and conditions during the Project activities certified herein.

Construction Conditions

1. All BMPs described in the application for water quality certification and the Storm Water Pollution Prevention Plan are hereby incorporated by reference and are conditions of approval of this certification. Notwithstanding any more specific conditions in this certification, the Applicant shall comply with all measures described in the application for water quality certification and its supplements.
2. Control measures for erosion, excessive sedimentation and turbidity shall be implemented and be in place at commencement of, during and after any ground clearing activities, excavation, or any other Project activities that could result in erosion or sediment discharges to surface waters.
3. Construction material, debris, spoils, soil, silt, sand, bark, slash, sawdust, rubbish, steel, or other organic or earthen material from any construction activity shall be prevented from entering surface waters.
4. All equipment must be washed prior to transport to the Project site and must be free of sediment, debris and foreign matter. All equipment using gas, oil, hydraulic fluid or other petroleum products shall be inspected for leaks prior to use and shall be monitored for leakage. Stationary equipment (motors, pumps, generator, etc.) shall be positioned over drip pans or other types of containment. Spill and containment equipment (oil spill booms, sorbent pads, etc.) shall be maintained onsite at all locations where such equipment is used or staged.
5. No unset cement, concrete, grout, damaged concrete, concrete spoils, and wash water used to clean concrete surfaces shall contact or enter surface waters.

Monitoring and Reporting Conditions

6. The following in-stream flow conditions shall be followed for operation of the Project.
 - a. Combined flow to the upper pond and the flood control channel shall not exceed 10 percent of the total in-stream flow entering the Project, and shall not exceed 0.5 cubic feet per second, except as provided by this certification.
 - b. Runoff from storm events shall be diverted to the flood control channel as needed to prevent flood damage to the Project area.

- c. At no time shall Antelope Creek be used to fill the upper pond. Water diverted to the upper pond must have equal inflow and outflow.
7. Stream flow shall be monitored weekly using the existing Tennant Community Services District gauge upstream of the Project site, and by establishing and calibrating a stream depth gauge at the railroad bridge at the downstream end of the Project.
8. Project activities shall not cause an increase in turbidity downstream of construction sites that are greater than 20 percent of the naturally occurring background levels.
9. Turbidity monitoring shall be conducted whenever Project activities occur in or have the potential to affect an active stream channel. The following monitoring activities shall be required to determine compliance with the turbidity water quality standards.
 - a. Sampling locations shall be 50 feet upstream and 100 feet downstream of the Project activity site.
 - b. The upstream monitoring location shall be used to determine natural or background levels for the purpose of monitoring water quality impacts from the Project activity.
 - c. Turbidity monitoring shall begin immediately upon commencement of Project activities in or around an active stream channel, and shall continue for a minimum of one day after completion of the Project activity.
 - d. Monitoring shall occur three times daily: 1) prior to beginning work in the morning to establish daily background turbidity values, 2) midday, and 3) mid-to-late-afternoon.
 - e. If monitoring data indicates increased turbidity above background, monitoring shall continue until the data show that turbidity levels have returned to background levels.
 - f. Turbidity may be monitored using an in-situ turbidity probe or by collecting grab samples for immediate measurement upon collection.
10. Monitoring results shall be reported to the State Water Board Deputy Director for Water Rights (Deputy Director for Water Rights) and the Executive Officer of the North Coast Region within four weeks of Project completion.
11. At a minimum, the monitoring report shall include:
 - a. A summary of findings;
 - b. Identification and discussion of problems with achieving certification conditions;

- c. Proposed corrective measures, to be approved by the Deputy Director for Water Rights and;
- d. Monitoring data.

Notification Conditions

- 12. A copy of this certification shall be provided to the contractor and all subcontractors conducting the work, and copies shall remain in their possession at the work site. The Applicant shall be responsible for work conducted by its contractor or subcontractors.
- 13. The Deputy Director for Water Rights and the Executive Officer of the North Coast Region shall be notified one week prior to the commencement of ground disturbing activities, and upon request, a construction schedule shall be provided to agency staff in order for staff to be present onsite, to answer any public inquiries during construction, and to document compliance with this certification.
- 14. If at any time an unauthorized discharge to surface waters (including rivers or streams) occurs, or any water quality problem arises, the associated Project activities shall cease immediately until adequate BMPs are implemented. The Deputy Director for Water Rights and the Executive Officer of the North Coast Region shall be notified within 24 hours after the unauthorized discharge or water quality problem arises.
- 15. The Applicant must submit any changes to the Project, including Project operation that would have a significant or material effect on the findings, conclusions, or conditions of this certification, to the Executive Director of the State Water Board for review and written approval. If the State Water Board is not notified of a significant change to the Project, it will be considered a violation of this certification.

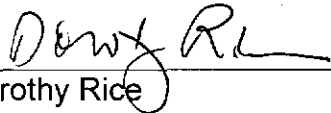
General Conditions

- 16. Notwithstanding any more specific conditions in this certification, the Project shall be operated in a manner consistent with all 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. The Applicant shall take all reasonable measures to protect the beneficial uses of Antelope Creek and the Antelope Sink.
- 17. This certification is contingent on compliance with all applicable requirements of the North Coast Region Basin Plan, except as may be modified by the specific conditions of this certification.
- 18. This certification does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes

prohibited in the future, under either the California Endangered Species Act (Fish & Game Code, §§ 2050 - 2097) or the federal Endangered Species Act (16 U.S.C. §§ 1531 - 1544). If a take will result from any act authorized under this certification or water rights held by the Applicant, the Applicant shall obtain authorization for the take prior to any construction or operation of the Project. The Applicant shall be responsible for meeting all requirements of the applicable Endangered Species Act for the Project authorized under this certification.

19. 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 California Code of Regulations, title 23, section 3855, subdivision (b), and the application specifically sought a FERC license or amendment to a FERC license for a hydroelectric facility.
20. The authorization to operate the Project pursuant to this certification is conditioned upon payment of all applicable fees for review and processing of the application for water quality certification and administering the State's water quality certification program provided under California Code of Regulations, title 23, section 3833.
21. 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.
22. In response to any violation of the conditions of this certification, the State Water Board may add to or modify the conditions of this certification as appropriate to ensure compliance.
23. 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 any 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.
24. This certification is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Water Code, section 13330 and California Code of Regulations, title 23, division 3, chapter 28, article 6 (commencing with section 3867).

25. The State 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.
26. The State Water Board reserves authority to modify this certification if monitoring results indicate that the Project would violate water quality objectives or impair the beneficial uses of Antelope Creek and the Antelope Sink.
27. The State Water Board may add to or modify the conditions of this certification as appropriate to coordinate the operations of this Project and other water development projects, where coordination of operations is reasonably necessary to achieve water quality standards or protect beneficial uses of water.
28. The State Water Board shall provide notice and an opportunity for hearing in exercising its authority under conditions 25, 26, and 27 above.



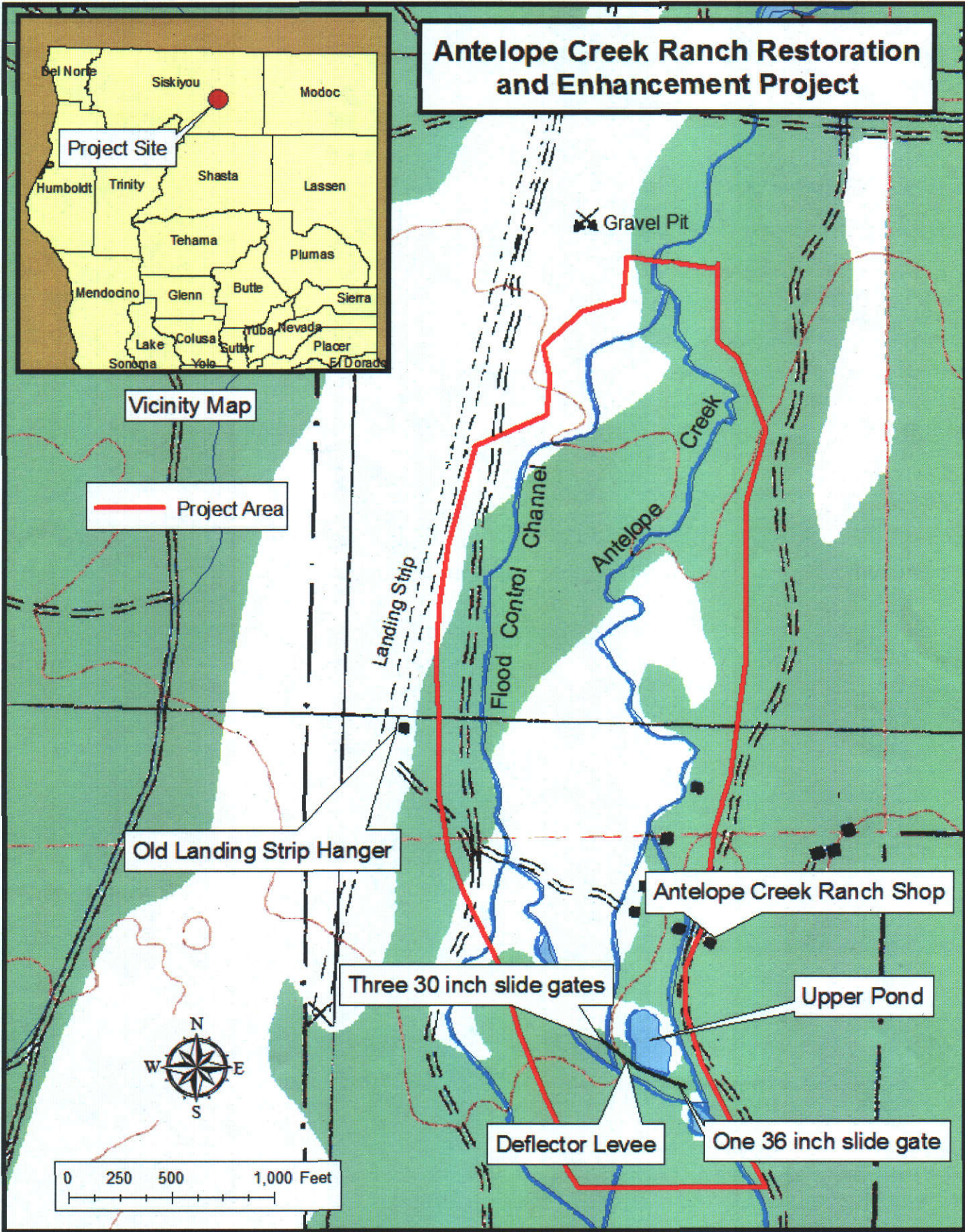
Dorothy Rice
Executive Director

7-14-10

Date

Attachment

Antelope Creek Ranch Restoration and Enhancement Project



ATTACHMENT A – LOCATION MAP