

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

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In the Matter of Water Quality Certification for  
**The 2006 Klamath River Restoration Grant Program**

Sources: Tributaries to the Klamath River including the Scott and Shasta Rivers  
County: Humboldt and Siskiyou Counties

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**Project Description**

The Department of Fish and Game (DFG or Applicant) proposes to use grant funds approved by the California Legislature to initiate activities that are designed to restore salmon and steelhead habitat and improve fish passage to cold-water tributaries of the Klamath River from Iron Gate Dam to the Pacific Ocean. Past land management practices within California's watersheds combined with natural events have impacted high quality aquatic and riparian habitats and limited the ability of fish to survive and successfully reproduce in the Klamath River and its tributaries. The objective of the Klamath River Restoration Grant Program is to improve spawning success for adult salmon and steelhead and to increase survival for eggs, embryos, rearing juveniles and downstream migrants.

The Klamath River Restoration Grant Program (Project) will address habitat restoration activities at 22 individual project sites. A summary and map of the proposed activities for each of these individual projects is provided in Enclosure 1. Each of the activities will be implemented consistent with the *California Salmonid Stream Habitat Restoration Manual*.

The restoration program includes: 1) the removal of seasonal flashboard dam diversion structures that are typically located in small, low-gradient waterways; 2) addition of fish screens; and 3) installation of habitat improvement structures. Little sediment is typically stored behind these diversion structures. Removal of diversion structures entails techniques such as isolating the project areas from stream flow, and moving fish. The potential effects of structure removal are similar to those found with culvert replacement and typically involve small, short-term sediment discharge and fish harassment due to the temporary disconnection between upstream and downstream habitat. Fish screens are composed of a concrete foundation and walls, with a bypass to carry fish back to the stream. The habitat improvement structures will recruit and sort spawning gravel for adult salmon and steelhead, and create summer rearing pool and over-wintering habitat for juveniles.

## **WATER QUALITY CERTIFICATION FOR FEDERAL PERMIT OR LICENSE**

BY THE EXECUTIVE DIRECTOR:

1. 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."
2. The Applicant has applied to the U.S. Army Corps of Engineers (ACOE) for Regional General Permit No. 12 (Corps File No. 27922N).
3. 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). Clean Water Act section 401 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 State certification conditions shall become conditions of any federal license or permit for the Project. The State Water Resources Control Board (State Water Board) has delegated this function to the Executive Director by regulation. (Cal. Code Regs., tit. 23, § 3838, subd. (a).)
4. The California Regional Water Quality Control Boards have adopted, and the State Water Resources Control Board (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.
5. The North Coast Regional Water Quality Control Board has adopted, and the State Water Board and 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. Existing beneficial uses designated for Tributaries to the Klamath River including the Scott and Shasta Rivers include municipal and domestic, agricultural, industrial, groundwater recharge, freshwater replenishment, hydropower generation, water contact recreation, non-contact water recreation, commercial and sport fishing, warm and cold freshwater habitat, wildlife habitat, rare, threatened, and endangered species, migration, and spawning

(spawning, reproduction, and development). Protection of the instream beneficial uses identified in the Basin Plan requires maintenance of adequate instream flows as well as effluent limitations and other limitations on discharges of pollutants from point and non-point sources to Tributaries to the Klamath River including the Scott and Shasta Rivers.

6. 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 Basin Plan, the existing water quality conditions and Project-related controllable factors.
7. Section 401 of the Clean Water Act requires any applicant for a federal license or permit who seeks to conduct an activity that may result in any discharge to navigable waters, to obtain certification from the State that the discharge will comply with applicable water quality standards. The federal agency issuing permits is the U.S. Army Corps of Engineers (COE). The Klamath River Restoration Grant Program will require Nationwide Permits from the COE under section 404 of the CWA. The DFG submitted an application for section 401 water quality certification on February 2, 2007.
8. The State Water Board is issuing a 401 water quality certification because it has determined that the Klamath River Restoration Grant Program will be consistent with federal and State water quality standards. In issuing a water quality certification, the State Water Board certifies compliance with provisions of the CWA and the State's parallel Porter Cologne Act, including all water quality objectives necessary to protect the designated beneficial uses of affected water bodies, as defined in the Basin Plan. Pursuant to the CWA, the State Water Board must analyze potential Project-related environmental effects to the specified waters prior to making a determination that the proposed retrofit projects will protect the designated beneficial uses of the affected water bodies in the Water Quality Control Plan for the North Coast Region.
9. The State Water Board as responsible agency has reviewed and considered the Mitigated Negative Declaration for this Project (State Clearinghouse Number 2007011060), adopted on January 17, 2007, by DFG. DFG incorporated conditions into the Project that protect the environment. The State Water Board will file a Notice of Determination within five days from the issuance of this certification.

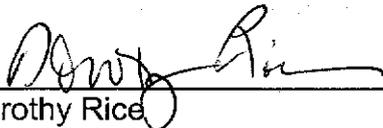
**ACCORDINGLY, BASED ON ITS INDEPENDENT REVIEW OF THE RECORD, THE STATE WATER BOARD CERTIFIES THAT THE KLAMATH RIVER RESTORATION GRANT PROGRAM OPERATED BY THE CALIFORNIA DEPARTMENT OF FISH AND GAME** will comply with sections 301, 302, 303, 306, and 307 of the Clean Water Act, and with applicable provisions of State law, if the Applicant complies with the following terms and conditions during the Project activities certified herein.

1. 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 §3867).
2. 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.
3. 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. DFG shall take all reasonable measures to protect the beneficial uses of water of the Klamath River and tributaries.
4. 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. 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 State Water Board may add to or modify the conditions of this certification as appropriate to ensure compliance.
5. 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 (DFG Code § 2050 to 2097) or the federal Endangered Species Act (16 U.S.C. § 1531 to 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.

6. Fresh concrete or grout that has not set shall not be allowed to contact or enter surface water.
7. Any imported rock placed in the river for construction or armoring slopes shall be washed rock.
8. All equipment using gas, oil, hydraulic fluid or other petroleum products shall be steam cleaned prior to its use in the river channel. All equipment shall be inspected for leaks prior to use in the river and shall be monitored for leakage. Equipment refueling shall only take place in a designated, contained area. Spill and containment equipment (oil spill booms, sorbent pads, etc.) shall be maintained on-site at all sites using such equipment.
9. No construction material, spoils, debris, or any other substances associated with this Project that may adversely impact water quality standards, shall be located in a manner that may result in a discharge or a threatened discharge to waters of the United States.
10. Upon completion of the Project, all Project-generated debris, building materials and trash shall be removed from the Project site with disposal at appropriate waste disposal sites.
11. Any modifications of the proposed Project may require submittal of a new Clean Water Act Section 401 Water Quality Certification application.
12. Each of the activities will be implemented consistent with the *California Salmonid Stream Habitat Restoration Manual*.
13. The conditions and monitoring and reporting requirements detailed in the attached mitigation measures, monitoring, and reporting program (Appendix B of the Mitigated Negative Declaration) 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 mitigation measures, monitoring, and reporting identified in the Mitigated Negative Declaration.
14. All Best Management Practices described in the application for water quality certification 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.

15. This certification is contingent on compliance with all applicable requirements of the Basin Plan, except as may be modified by the specific conditions of the certification.
16. The Applicant shall provide State Water Board staff access to Project sites to document compliance with this certification.
17. The applicant shall provide a copy of this certification and attachments to the contractor and all subcontractors conducting the work, and require that copies remain in their possession at the work site. The Applicant shall be responsible for work conducted by its contractor or subcontractors.
18. If, at any time, an unauthorized discharge to surface waters occurs, or any water quality problem arises, the Applicant shall immediately cease work on the Project and promptly notify the State Water Board.
19. DFG must submit any change 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 prior review and written approval.
20. 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.
21. The State Water Board reserves authority to modify or revoke this certification if monitoring results indicate that the Project would violate water quality objectives or impair the beneficial uses.



Dorothy Rice  
Executive Director

7-10-07

Date

Enclosure