

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Water Quality Certification for the

**RESORT IMPROVEMENT DISTRICT #1
TELEGRAPH CREEK WATER INTAKE PILOT STUDY PROJECT**

ARMY CORPS OF ENGINEERS 404 PERMIT-NATIONWIDE NUMBER 1999-24337

SOURCES: Telegraph Creek

COUNTY: Humboldt

WATER QUALITY CERTIFICATION FOR FEDERAL PERMIT OR LICENSE

BY THE EXECUTIVE DIRECTOR:

1.0 Introduction

Resort Improvement District # 1 (RID1) has applied to the Army Corps of Engineers (ACOE) for a Nationwide Permit (NWP) for the Telegraph Creek Water Intake Pilot Study Project in Humboldt County, California. Before the ACOE can issue a NWP, RID1 must obtain a water quality certification from the State Water Resources Control Board (State Water Board) under section 401 of the Clean Water Act. (33 U.S.C. § 1341.)

RID1 has applied for the following NWP:

Telegraph Creek Water Intake Pilot Study:
NWP Number 33 (Temporary Construction, Access, and Dewatering)

Class 33 of the NWPs is subject to review under the California Environmental Quality Act (CEQA), and requires the consideration of issuance of water quality certification by the State Water Board.

2.0 Project Description

On August 13, 2009, Resort Improvement District #1 applied for section 401 water quality certification for the Telegraph Creek Water Intake Pilot Study (Project) in Humboldt County, CA. RID1, acting as lead agency under the California Environmental Quality Act, issued a Notice of Exemption for the Project, which it filed with the Humboldt County Clerk on July 21, 2009. The purpose of the Project as stated in RID1's application is to evaluate the feasibility and design of a diversion system that provides suitable fish passage and ecological conductivity in the Telegraph Creek Watershed consistent with the recommendations of an amended settlement between the National Oceanic & Atmospheric Administration (NOAA) Fisheries agency and

RID1. Accordingly, the Project will require temporary and minor alterations to the stream channel (placement of rebar and small cobble/sandbags) to accommodate a Coanda fish screen, and to measure the flow of water over the screen into a small settling tank before the water is returned to the creek. At a minimum, the study will need to measure and capture a flow of approximately 0.775 cfs during one low-flow event in the fall of 2009, and during one or two high-flow events in the winter and spring of 2010. After the study has been conducted, RID1 will remove the fish screen and associated materials, and return the stream channel to its pre-study condition.

3.0 Regulatory Authority

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. 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).)
3. 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.
4. The Water Quality Control Plan for the North Coast Region (Basin Plan) lists the existing beneficial uses designated for Mattole River Hydrologic Area, which includes Telegraph Creek, as municipal and domestic supply, agricultural supply, industrial supply, groundwater replenishment, freshwater replenishment, navigation, water contact recreation, non-contact water recreation, commercial and sport fishing, cold freshwater habitat, wildlife freshwater habitat, rare, threatened or endangered species, migration of aquatic organisms, cold spawning, estuarine habitat, and aquaculture. Industrial process supply, power, and warm freshwater habitat are listed as potential uses. 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 nonpoint sources to the Mattole River Hydrologic Area.

5. The State Water Board has reviewed and considered RID1's application for 401 certification, and application for a Nationwide Permit. Further, the State Water Board has considered the Basin Plan, the existing water quality conditions, and project-related controllable factors associated with the Project.
6. RID1 has determined that the Project is exempt from CEQA and invoked a Class 6, Section 15306 categorical exemption for information collection, research, experimental management, and resource evaluation activities that do not result in a serious or major disturbance to an environmental resource. (Pub. Resources Code, §15306.) After its own review of the Project, the State Water Board likewise finds that the Project qualifies for a Class 6 exemption from CEQA, pursuant to Section 15306 of the CEQA statutes and guidelines.

ACCORDINGLY, BASED ON ITS INDEPENDENT REVIEW OF THE RECORD, THE STATE WATER BOARD CERTIFIES THAT THE CONSTRUCTION AND OPERATION OF THE TELEGRAPH CREEK WATER INTAKE PILOT STUDY PROJECT UNDER NATIONWIDE PERMIT ISSUED BY THE U.S. ARMY CORPS OF ENGINEERS, AS DESCRIBED IN ITS APPLICATIONS FOR WATER QUALITY CERTIFICATION, will comply with sections 301, 302, 303, 306, and 307 of the Clean Water Act, and with applicable provisions of state law, provided Resort Improvement District Number 1 complies with the following terms and conditions:

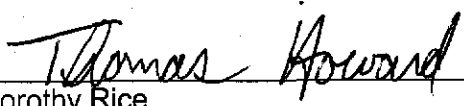
Specific Conditions

1. RID1 shall notify the Deputy Director of Water Rights (Deputy Director) of the Project's progress, including initiation and ending dates once the Project is initiated and upon Project completion.
2. RID1 shall operate and construct the project according to the description provided in its application.
3. RID1 will ensure that the required 0.8 cfs bypass flow be maintained at the proposed diversion point of the fish screen throughout the Project period, and will not take water in excess of its permit of 0.775 cfs from Telegraph Creek.
4. RID1 shall remove the facilities after the Project's completion in the winter or spring of 2010, and any affected areas will be restored to their pre-project condition. All construction debris will be removed from the Project site.
5. 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.
6. If, at any time, an unauthorized discharge to surface water (including wetlands, rivers or streams) occurs, or any water quality problem arises, the associated project activities shall cease immediately until adequate Best Management Practices are implemented. The North Coast Regional Water Board shall be notified promptly, within 24 hours after the unauthorized discharge or water quality problem arises.

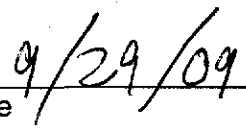
General Conditions

7. This certification is contingent on compliance with all applicable requirements of the Water Quality Control Plan for the North Coast Region, except as may be modified by the specific conditions of the certification.
8. 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 water of Telegraph Creek.
9. 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, including but not limited to: timely payment of any annual fees or similar charges that may be imposed by future statutes or regulations for the State's reasonable costs of a program to monitor and oversee compliance with conditions of water quality certification.
10. This certification is not intended and shall not be construed to apply to issuance of any FERC license or FERC license amendment.
11. 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 & G. 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 Projects authorized under this certification.
12. 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.
13. The Applicant 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 Deputy Director for prior review and written approval.
14. This certification is subject to modification 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).

15. The State Water Board reserves authority to modify this certification if monitoring results indicate that continued operation of the project would violate water quality objectives or impair the beneficial uses of Telegraph Creek.
16. 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.
17. 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 hydrologically connected water development projects, where coordination of operations is reasonably necessary to achieve water quality standards or protect beneficial uses of water.
18. The State Water Board shall provide notice and an opportunity for hearing in exercising its authority under conditions 15, 16, and 17 above.



Dorothy Rice
Executive Director



Date