



Linda S. Adams
Secretary for
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**California Regional Water Quality Control Board
North Coast Region
Bob Anderson, Chairman**

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Arnold
Schwarzenegger
Governor

September 22, 2009

In the Matter of

Water Quality Certification

for the

**ROWDY CREEK GRAVEL EXTRACTION AND WILLOW PLANTING FOR BANK
STABILIZATION PROJECT
WDID NO. 1A09087WNDN**

APPLICANT: Harry Harms
RECEIVING WATER: Rowdy Creek
HYDROLOGIC UNIT: Smith River Plain Hydrologic Subarea No. 103.11
COUNTY: Del Norte
FILE NAME: Harms, Harry – Rowdy Creek Gravel Extraction and Willow
Planting for Streambank Stabilization

BY THE EXECUTIVE OFFICER:

1. On July 20, 2009, Harry Harms (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 gravel extraction and willow planting on Rowdy Creek in the town of Smith River. The Regional Water Board provided public notice of the application pursuant to title 23, California Code of Regulations, section 3858 on August 27, 2009, and posted information describing the project on the Regional Water Board's website. We did not receive any public comments on this project.
2. The primary purpose of the project is to reduce ongoing streambank erosion and additional loss of the Applicant's property. The project is located upstream and adjacent to the bridge over Rowdy Creek on Fred D Haight Drive. The Applicant owns property on both sides of the creek and immediately upstream of the bridge.
3. Over time, the stream channel along the Applicant's property has narrowed and deepened along the east streambank and the streambank has been eroding. In

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2004, the Applicant installed seven rock weir structures outside the stream channel and approximately 10 to 15 feet away from the top of the east streambank. The weirs consist of rows of large concrete and rock riprap buried approximately 20 feet below the top of the streambank. The purpose of the rock weirs was to eventually prevent streambank erosion and associated property loss if future erosion caused the weirs to become exposed along the streambank. Each of the rock weirs were capped with a large green rock on the end that is closest to the streambank for future identification. Willow cuttings were also planted in the excavations.

4. Since the weirs were installed in 2004, approximately 5 to 15 feet of the east streambank has eroded and the green rock at the end of the southernmost rock weir is now exposed in the streambank. The Applicant is concerned that the gravel bar on the west side of the creek will continue to expand eastward over time and the channel will continue to narrow and deepen, causing additional streambank erosion and property loss along the east streambank.
5. The project includes planting willows along the toe of the eroding streambank to provide additional bank stabilization, shade and riparian habitat. The project also includes annual removal of up to 25 cubic yards of gravel off the top of the gravel bar located on the west side of the channel to increase the flow capacity through the project area.
6. Annual gravel extraction activities will take approximately one to two days to complete. The gravel bar will be accessed using an existing access road. Up to 5,000 square feet of the gravel bar may be temporarily impacted by annual extraction activities. Equipment used for gravel extraction will consist of a scraper, backhoe, and dump truck. A post-hole digger will be used to bore holes along the toe of the east bank for planting willows.
7. Compensatory mitigation is not required for the proposed project. Noncompensatory mitigation includes the use of Best Management Practices for operation of heavy equipment in a stream channel. After gravel extraction activities are complete, the extraction area will be graded to fill any depressions and drain freely back to the channel.
8. The Applicant has applied for authorization from the United States Army Corps of Engineers to perform the project under Nationwide Permit, pursuant to Clean Water Act, section 404. The Applicant has obtained a Lake or Streambed Alteration Agreement from the California Department of Fish and Game.
9. The Regional Water Board, as the lead California Environmental Quality Act (CEQA) agency, has determined that this project qualifies for a Categorical Exemption, section 15333 – small habitat restoration projects, pursuant to CEQA.

10. 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.

Receiving Water: Rowdy Creek in the Smith River Plain Hydrologic Subarea No. 103.11

Filled or Excavated Area: Area Temporarily Impacted: 5,000 square feet of streambed (gravel bar)
Area Permanently Impacted: None

Total Linear Impacts: Length Temporarily Impacted: None
Length Permanently Impacted: None

Dredge Volume: None

Latitude/Longitude: 41.92422 N/124.14570 W

Accordingly, based on its independent review of the record, the Regional Water Board certifies that the Rowdy Creek Gravel Extraction and Willow Planting for Streambank Stabilization Project (WDID No. 1A09087WNDN), 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:

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. This certification is conditioned upon total payment of any fee required under title 23, California Code of Regulations, section 2200, and owed by the Applicant.
4. The Applicant shall notify the Regional Water Board prior to the commencement of any ground disturbing activities, with details regarding the construction schedule, in order to allow staff the opportunity to be present onsite during construction and to answer any public inquiries that may arise regarding the project.

5. The Applicant shall provide a copy of this Order and the application documents submitted for this certification to all contractors and subcontractors conducting the work, and a copy of the Order shall remain at the work site during project activities. The Applicant shall be responsible for work conducted by its contractors or subcontractors.
6. All activities and BMPs shall be implemented according to the submitted application and the conditions in this certification.
7. No more than 25 cubic yards of gravel shall be removed annually. Up to 25 cubic yards of gravel may be removed during the first annual gravel extraction event. Subsequent annual extraction events shall be limited to the amount of gravel that accumulates on the gravel bar during the subsequent rainy season or 25 cubic yards, whichever amount is less.
8. Disturbance or removal of vegetation shall not exceed the minimum necessary to complete the project. No mature trees shall be removed.
9. Willows shall be planted on the east streambank during the same year as the first gravel extraction event
10. 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 Order, 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. No rubbish shall be deposited within 150 feet of the high water mark of any.
11. If, at any time, an unauthorized discharge to surface water (including wetlands, rivers or streams) occurs, or any water quality problem arises, the Applicant shall cease the associated project activities immediately until adequate BMPs are implemented. 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.
12. Prior to implementing any change to the project that may have a significant or material effect on the findings, conclusions, or conditions of this Order, the Applicant shall obtain the written approval of the Regional Water Board Executive Officer. Implementation of such change in the project prior to Regional Water Board notification and approval is a violation of this Order subject to enforcement action under the Water Code.
13. The Regional Water Board may add to or modify the conditions of this Order, as appropriate, to implement any new or revised water quality standards and

implementation plans adopted and approved pursuant to the Porter-Cologne Water Quality Control Act or Section 303 of the Clean Water Act.

14. The Applicant shall provide Regional Water Board staff access to the project site to document compliance with this certification.
15. 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 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 Regional 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 Regional 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.
16. 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, 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.
17. 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 Order by letter and shall forward a copy of the letter to the Regional Water Board at the above address.

To discharge dredged or fill material under this Order, the successor-in-interest must send to the Regional Water Board Executive Officer a written request for transfer of the Order. The request must contain the requesting entity's full legal name, the state of incorporation if a corporation, and the address and telephone number of the person(s) responsible for contact with the Regional Water Board. The request must also describe any changes to the project proposed by the successor-in-interest or confirm that the successor-in-interest intends to implement the project as described in this Order.

18. This certification is contingent on compliance with all applicable requirements of the North Coast Water Quality Control Plan, except as may be modified by the specific conditions of the certification.

19. The authorization of this certification for any dredge and fill activities expires on September 22, 2014. 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.

If you have any questions or comments please call Dean Prat at (707) 576-2801.

Catherine Kuhlman
Executive Officer

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Original to: Mr. Harry Harms, P.O. Box 2155, Harbor, OR 97415

Copies to: U.S. Army Corps of Engineers, District Engineer, 601 Startare Drive, Box
14, Eureka, CA 95501
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1455 Market Street, San Francisco, CA 94103-1398