

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Water Quality Certification for

2008 KLAMATH RIVER RESTORATION GRANT PROGRAM

Sources: Shasta and Scott Rivers and their Various Tributaries, tributary to Klamath River thence Pacific Ocean

County: Siskiyou County

Project Description

The purpose of the 2008 Klamath River Restoration Grant Program (Project) is for the Department of Fish and Game (DFG) to use grant funds approved by the California Legislature to initiate activities that are designed to restore salmon and steelhead habitat, and fish access to cold water tributaries of the Klamath River below Iron Gate Dam in Siskiyou County. The Project is an addendum to the 2007 Klamath River Restoration Grant Program. The Project will improve the spawning success for adult salmon and steelhead, and will increase the survival rate of eggs, embryos, rearing juveniles, and downstream migrants. The proposed activities include the removal of permanent and seasonal barriers to historical salmonid habitats and the prevention of juvenile salmonid entrapment.

The Project consists of 11 different proposals at 31 sites within the Klamath River watershed, which are summarized in Table 1 Project Proposals. During application processing for the 401 Water Quality Certification, DFG elected not to implement Proposal KA07 (Cardoza Fish Passage).

Project activities within wet stream channels will be limited to the period between July 1 and October 15, or until the first significant autumn rainfall. Work periods may also be limited at individual sites to assure that salmonids are not present.

Table 1 Project Proposals

Proposal ID No.	Proposal	No. of Sites	Purpose	Stream / Watershed
KA07	Cardoza Fish Passage	1	Replace two corrugated metal pipes with a bridge structure to improve fish passage	Parks Creek / Shasta River
KA09	Granada Irrigation District (GID) Fish Passage	1	Remove concrete dam base and right abutment, construct single grade control structure, install fish screens, install pumps and piping for increased flows, entitled under adjudicated rights, to GID and RY Ranch	Shasta River / Klamath River
KA10	Huseman Water Conservation	1	Move point of diversion downstream, install pumping stations and fish screens to prevent salmonid entrapment	Shasta River / Klamath River
KA11	Montague Flow Gage Weir Fish Passage	1	Build boulder weir(s) and back flood the existing concrete weir to improve fish passage	Shasta River / Klamath River
KA12	Parks Creek Fish Passage at I-5	1	Build boulder weirs and modify the existing roughened channel to improve fish passage for salmonids	Shasta River / Klamath River
KA13	Scott River Head Gates and Measuring Weirs	14	Construct head gates and water diversion measuring devices on tributaries to provide increased flow control and monitoring accuracy	Various / Scott River
KA14	Shasta River Fish Screens – Oregon Slough	2	Construct fish screens, install head gate, install flow gage to increase survival of salmonids	Oregon Slough / Shasta River
KA15	Shasta River Fish Screens – Parks Creek	2	Install fish screens, head gates and measuring weirs to increase salmonid survival	Parks Creek / Shasta River
KA16	Shasta River Fish Screens – Yreka Creek	2	Install fish screens, head gates and measuring weirs to increase salmonid survival	Yreka Creek / Shasta River
KA17	Shasta River Head Gates and Measuring Weirs	5	Install head gates and measuring weirs to provide increased flow control and monitoring accuracy	Various / Shasta River
KA18	Sugar Creek Debris Modification	1	Modify a log debris accumulation to improve fish passage	Sugar Creek / Scott River

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. 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 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 federal agency issuing permits is the US Army Corps of Engineers (ACOE), San Francisco District. The Applicant, the California Department of Fish and Game (DFG) applied for Nationwide Permits from the ACOE under section 404 of the Clean Water Act. DFG's 2008 Klamath River Restoration Grant Program (Project) operates within the provisions of Regional General Permit Number 12 (Corps File Number: 27922N) issued by ACOE. This permit allows the DFG, grantees and other individuals and groups to conduct fishery habitat restoration activities using methods described in the *California Salmonid Stream Habitat Restoration Manual*. The Regional General Permit will expire December 1, 2009.
4. 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.

5. The North Coast Regional Water Quality Control Board (North Coast Region) 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.
6. Existing beneficial uses in the North Coast Region Basin Plan designated for tributaries to the Klamath River include municipal and domestic; agricultural; industrial; groundwater recharge; freshwater replenishment; hydropower generation; contact and non-contact water recreation; commercial and sport fishing; warm and cold freshwater habitat; wildlife habitat; rare, threatened, and endangered species habitat; fish migration and spawning (reproduction and development); and Native American Culture.
7. The State Water Board has reviewed and considered the plans and Project description provided by DFG. Further, the State Water Board has considered the North Coast Region Basin Plan, the existing water quality conditions and project-related controllable factors.
8. The Klamath River watershed is identified on the State of California Clean Water Act Section 303(d) list as impaired for nutrients, dissolved oxygen, sediment, and temperature. Total Maximum Daily Load (TMDL) analyses for the Klamath River watershed have been completed for the Shasta River dissolved oxygen and temperature listings, and for the Scott River sediment and temperature listings. The North Coast Region has implemented their TMDL plans for the Shasta and Scott Rivers.
9. DFG submitted an application for a section 401 water quality certification for the Project on February 15, 2008. On May 20, 2008, DFG notified the State Water Board that Project Proposal KA07 (Cardoza Fish Passage) will not be built under the application.
10. The State Water Board is issuing a 401 water quality certification because it has determined that the Project 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 Clean Water Act and the State's parallel Porter Cologne Water Quality Control Act, including all water quality objectives necessary to protect the designated beneficial uses of affected water bodies, as defined in the North Coast Region Basin Plan. Pursuant to the Clean Water Act, 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 Basin Plan.

11. The State Water Board as the responsible agency has reviewed and considered the Mitigated Negative Declaration (MND) for this Project (State Clearinghouse Number 2008012062), filed by DFG on February 15, 2008. With the MND, DFG provided Exhibit A (Statements/Scopes of Work for each proposal), and Appendix B that identified the mitigation measures and conditions, and the monitoring and reporting requirements for the Project. 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 2008 KLAMATH RIVER RESTORATION GRANT PROGRAM IN SISKIYOU COUNTY 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 DFG complies with the following terms and conditions during the Project activities certified herein.

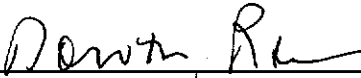
1. This certification is subject to modification or revocation upon administrative or judicial review including review and amendment pursuant to Water Code section 13330 and California Code of Regulations, title 23, division 3, chapter 28, article 6 (commencing with § 3867).
2. This certification action 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 sought a FERC license or amendment to a FERC license for a hydroelectric facility.
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 watershed.
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.

5. 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.
6. 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 (California Fish and Game 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 DFG, DFG shall obtain authorization for the take prior to any construction or operation of the Project. DFG shall be responsible for meeting all requirements of the applicable Endangered Species Act for the Project authorized under this certification.
7. Each of the activities under the Project will be implemented in a manner consistent with the *California Salmonid Stream Habitat Restoration Manual*.
8. The MND adopted by DFG contains mitigation measures, monitoring, and a reporting program for the Project and shall be incorporated by reference into this water quality certification. DFG shall comply with conditions listed in Appendix B of the MND. In the event of conflict between conditions of that MND and this water quality certification, the conditions of this certification shall take precedence.
9. Proposal KA07 shall not be built by DFG as part of the Project, and the terms and conditions in this Order are not applicable to Proposal KA07.
10. The State Water Board Executive Director and the North Coast Region Executive Officer shall be notified one week prior to the commencement of ground disturbing activities, and shall be provided the construction schedule in order to allow staff to be present onsite, to answer any public inquiries during construction, and to document compliance with this certification.
11. Best Management Practices (BMPs) for erosion, sediment and turbidity control shall be implemented and be 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.
12. 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.

13. 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 placed within 150 feet of the high water mark of any watercourse, stream, river, or reservoir and allowed to enter into or be placed where it may be washed by rainfall into waters of the State.
14. Disturbance or removal of vegetation shall not exceed the minimum necessary to complete the project.
15. Fresh concrete or grout that has not set shall not be allowed to contact or enter surface water.
16. Any imported rock placed in the river or stream for construction or armoring slopes shall be washed rock.
17. Gravel imported from offsite will not be from sources downstream of gold or mercury (cinnabar) mines or sources known to contain historic hydraulic gold mine tailings, dredge tailings, or mercury (cinnabar) mining or tailings.
18. No oiling of roadways during the construction or in association with any activity of whatever nature is authorized by this Order.
19. All equipment using gas, oil, hydraulic fluid or other petroleum products shall be steam cleaned prior to its use in the waterway. All equipment shall be inspected for leaks prior to use 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.
20. Upon completion of the Project, all Project-generated debris, building materials, and trash shall be removed from all the Project locations (sites) with disposal at appropriate waste disposal sites.
21. Any modifications of the proposed Project may require submittal of a new Clean Water Act Section 401 Water Quality Certification application.
22. The BMPs described in the application for water quality certification; and the Statements/Scopes of Work and Appendix B of the MND are hereby incorporated by reference and are conditions of approval of this certification. Notwithstanding any more specific conditions in this certification, DFG shall comply with all measures described in the application for water quality certification.

23. 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.
24. DFG shall provide a copy of this certification to the contractor and all subcontractors conducting the work, and require that copies remain in their possession at the work site. DFG shall be responsible for work conducted by its contractor or subcontractors.
25. 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 BMPs are implemented. The State Water Board and North Coast Region shall be notified promptly, within 24 hours after the unauthorized discharge or water quality problem arises.
26. 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.
27. All Project work shall be conducted as described in this Order and in the application submitted by DFG. If the State Water Board is not notified of a significant alteration to the project, it will be considered a violation of this Order, and DFG may be subject to State Water Board enforcement actions.
28. The Klamath River watershed is identified on the State of California Clean Water Act Section 303(d) list as impaired for nutrients, dissolved oxygen, sediment and temperature. If a TMDL implementation plan is adopted prior to the expiration date of this Order, the State Water Board may revise the provisions of this Order to address actions identified in such plans.
29. 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.
30. 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

6/26/08
Date