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## North Coast Regional Water Quality Control Board

May 9, 2017

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**In the Matter of**  
**Water Quality Certification**  
**for the**  
**Dry Creek Ecosystem Restoration Section 1135 Project**

APPLICANT: U.S. Army Corps of Engineers, San Francisco District  
RECEIVING WATER: Dry Creek  
HYDROLOGIC UNIT: Middle Russian River 114.24  
COUNTY: Sonoma  
FILE NAME: Dry Creek Ecosystem Restoration Section 1135 Project;  
ECM PIN CW-833728; WDID 1B170259WNSO

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### FINDINGS BY THE EXECUTIVE OFFICER:

1. On March 13, 2017, the U.S. Army Corps of Engineers (Corps), San Francisco District (applicant) filed an application for water quality certification (certification) under section 401 of the Clean Water Act (33 U.S.C. § 1341) with the North Coast Regional Water Quality Control Board (Regional Water Board) for activities associated with the Dry Creek Ecosystem Restoration Section 1135 Project (project). The application was deemed complete on April 12, 2017. The project is located approximately one mile west of Healdsburg at, at latitude 38.6202028°N and longitude 122.8897417°W.
2. **Public Notice:** The Regional Water Board provided public notice of the application pursuant to Title 23, California Code of Regulations, Section 3858 on April 12, 2017, and posted information describing the project on the Regional Water Board's website. No comments were received.

3. **Receiving Waters:** The proposed project will cause disturbances to Dry Creek, tributary to the Middle Russian River (114.24). The project is located along approximately 1,700 feet of Dry Creek upstream of river mile 3 and is at the upstream end of backwater influence from the Russian River.
4. **Project Description:** The purpose of the project is to enhance habitat for Endangered Species Act listed salmonids, and is intended to partially meet the requirement of the Reasonable and Prudent Alternatives of the Russian River Biological Opinion. The project will enhance a 1,700 linear-foot reach of Dry Creek, which comprises 2.1 acres of perennial stream and 12.06 acres of riparian forest wetland. The reach is bisected by a concrete grade control sill that was constructed by the Corps in 1981.

Habitat enhancement will include creation of side and back channels, installation of large woody debris features, construction of boulder fields, use of biotechnical stabilization structures, and vegetation management. The project will increase riparian zone length, increase open water, and create habitat complexity for salmonids. The project will increase waters of the U.S. by 0.47 acre and increase Waters of the State by 0.07 acre.

Site specific activities include dewatering and bypass flow pumping diversions using imported barriers such as water filled bladders, gravel coffer dams, sheetpile cofferdams or other appropriate measures to isolate the work areas where water is present. Vegetation removal, excavation, and grading will be done using heavy equipment. Approximately 19,000 cubic yards of earthen material will be excavated. The material will be stored on site and at staging areas to be reused on site. Any material not used will be appropriately disposed of by the contractor.

5. **Construction Timing:** Construction is expected to begin in March 2018 and take approximately 9 months. Major ground disturbing construction near the streambed would occur between June 15 and October 15 during summer low flows.
6. **Project Impacts:** Approximately 3.55 acres of waters of the state and 2,330 linear feet would be temporarily affected by the project. Approximately 0.47 acres of waters of the U.S. and 0.07 acres of waters of the State would be created.
7. **Mitigation for Project Impacts:** The project is considered self-mitigating because the primary purpose is habitat enhancement and will create waters of the U.S. and state.
8. **Total Maximum Daily Load (TMDL):** The Russian River is identified as impaired for sediment and temperature under Clean Water Act Section 303(d). At present, TMDLs have not been established for this water body.
9. **Sediment TMDL Implementation Policy:** Pursuant to Regional Water Board Resolution R1-2004-0087, *Total Maximum Daily Load Implementation Policy Statement*

*for Sediment-Impaired Receiving Waters within the North Coast Region (Sediment TMDL Implementation Policy), the Executive Officer is directed to “rely on the use of all available authorities, including existing regulatory standards, and permitting and enforcement tools to more effectively and efficaciously pursue compliance with sediment-related standards by all dischargers of sediment waste.”*

10. **Other Agency Actions:** For projects undertaken by the Corps, the Corps does not issue itself a permit. However, the Corps has determined that the project is consistent with the Department of the Army Nationwide Permit 27, *Aquatic Habitat Restoration, Establishment, and Enhancement Activities*. The project is designed to partially meet the requirements of the Reasonable and Prudent Alternatives of the Russian River Biological Opinion issued by the National Marine Fisheries Service. As a federal agency, the Corps does not seek a streambed alteration agreement from the California Department of Fish and Wildlife but instead seeks input through coordination with the U.S. Fish and Wildlife Service.
11. **CEQA Compliance:** The project was evaluated per the National Environmental Policy Act in the *Continuing Authorities Program Detailed Project Report with Integrated Environmental Assessment*. Additionally, the Sonoma County Water Agency certified the *Dry Creek Habitat Enhancement Miles 2-6 Environmental Impact Report* (SCH 2014052020), pursuant to the requirements of the California Environmental Quality Act (CEQA), which includes evaluation of the project.
12. **Antidegradation Policy:** The federal antidegradation policy requires that state water quality standards include an antidegradation policy consistent with the federal policy. The State Water Board established California’s antidegradation policy in State Water Board Resolution 68-16, which incorporates the federal antidegradation policy where the federal policy applies under federal law. Resolution 68-16 requires that existing high quality waters be maintained unless degradation is justified under specific provisions. The Regional Water Board’s Basin Plan implements, and incorporates by reference, both the state and federal antidegradation policies. This Certification is consistent with applicable federal and state antidegradation policies, as it does not authorize the discharge of increased concentrations of pollutants or increased volumes of treated wastewater, and does not otherwise authorize degradation of the waters affected by this project.
13. This discharge is also regulated under State Water Resources Control Board Order 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.  
[http://www.waterboards.ca.gov/board\\_decisions/adopted\\_orders/water\\_quality/2003/wqo/wqo2003-0017.pdf](http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo2003-0017.pdf).

Receiving Water:	Dry Creek	
Filled and/or Excavated Areas:	Temporary impacts to waters of the state:	3.55 acres
Total Linear Impacts:	2,330 linear feet of temporary impact	
Latitude/Longitude:	38.6202028°N/122.8897417°W	
Certification Expiration:	May 9, 2022	

Accordingly, based on its independent review of the record, the Regional Water Board certifies that the Dry Creek Ecosystem Restoration Section 1135 Project (WDID 1B170259WNSO), 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:

**All conditions of this Certification apply to the applicant (and all their employees) and all contractors (and their employees), sub-contractors (and their employees), and any other entity or agency that performs activities or work on the project as related to this water quality certification.**

**Project-Specific Conditions**

1. The mitigation measures detailed in the Environmental Impact Report (SCH 2014052020) 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 identified in the Environmental Impact Report that are within the Regional Water Board’s jurisdiction.

**Project Specific Conditions Requiring Reports**

2. The Project will conduct restoration and evaluate the success of the Project, post-construction implementation, effectiveness and validation monitoring in accordance with the *Dry Creek Adaptive Management Plan* (Plan). The Plan includes a three-tiered approach to quantitatively evaluate and determine effectiveness of implementation of habitat enhancement elements, physical response to enhancements and if habitat enhancements are resulting in beneficial effects for salmonids. The Project will employ best management practices to prevent or reduce any discharges during and after construction.

Results of annual monitoring of the mitigation areas shall be reported to the Regional Water Board annually on April 1. Reports shall summarize data collected, annual performance, any remedial action necessary and whether success criteria of the Plan are being met. The reports shall be submitted to the following email address: [NorthCoast@waterboards.ca.gov](mailto:NorthCoast@waterboards.ca.gov).

3. Regional Water Board staff shall be notified in writing at least five working days prior to the commencement of ground disturbing activities, with details regarding the construction schedule, in order to allow staff to be present onsite during construction, and to answer any public inquiries that may arise regarding the project.

### **Standard Conditions**

4. 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.
5. 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.
6. The validity of this certification is conditioned upon total payment of any fee required under title 23, California Code of Regulations, section 3833, and owed by the applicant.
7. This certification does not authorize drafting of surface waters. Any drafting of surface waters shall be in compliance with state water rights law and diversion requirements overseen by the State Water Resources Control Board's Division of Water Rights.
8. Herbicides and other pesticides shall not be used within the project limits. If the applicant has a compelling case as to why pesticides should be used, then a request for pesticide use and a BMP plan may be submitted to the Regional Water Board staff for review and acceptance.
9. Only wildlife-friendly, 100 percent biodegradable erosion and sediment control products that will not entrap or harm wildlife shall be used. Erosion and sediment control products shall not contain synthetic (e.g., plastic or nylon) netting. Photodegradable synthetic products are not considered biodegradable. The applicant shall request approval from the Regional Water Board if an exception from this requirement is needed for a specific location.
10. Best management practices (BMPs) shall be implemented according to the submitted application and the conditions in this certification. BMPs for erosion, sediment, and turbidity control shall be implemented and 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. BMPs shall be immediately available for deployment at all times to prevent discharges to waters of the state.

11. The applicant is prohibited from discharging waste to waters of the state, unless explicitly authorized by this certification. For example, no debris, soil, silt, sand, bar, slash, sawdust, 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.
12. The Applicant is liable and responsible for the proper disposal, reuse, and/or recycling of all Project-generated waste in compliance with applicable state and federal laws and regulations.
13. The applicant shall provide Regional Water Board staff access to the project site to document compliance with this certification.
14. Work in flowing or standing surface waters, unless otherwise proposed in the project description and approved by the Regional Water Board, is prohibited.
15. If, at any time, an unauthorized discharge to surface water (including wetlands, lakes, rivers, or streams) occurs, or any water quality problem arises, the associated project activities shall cease immediately until adequate BMPs are implemented including stopping work. 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.
16. All project activities shall be implemented as described in the submitted certification application package and the findings and conditions of this certification. Subsequent project changes that could significantly impact water quality shall first be submitted to Regional Water Board staff for prior review, consideration, and written concurrence. If the Regional Water Board is not notified of a significant alteration to the project, it will be considered a violation of this certification, and the applicant may be subject to Regional Water Board enforcement actions.
17. Prior to implementing any change to the project that may be a material change as defined in California Water Code section 13260(c) as a proposed change in character, location, or volume of the discharge, the applicant shall obtain prior written approval of the Regional Water Board Executive Officer. If the Regional Water Board is not notified of the material change to the discharge, it will be considered a violation of this certification, and the applicant may be subject to Regional Water Board enforcement action(s).
18. The applicant shall provide a copy of this Certification and State Water Board Order 2003-0017-DWQ to any contractor(s), subcontractor(s), and utility company(ies) conducting work on the project, and shall require that copies remain in their possession at the work site. The applicant shall be responsible for ensuring that all work

conducted by its contractor(s), subcontractor(s), and utility companies is performed in accordance with the information provided by the applicant to the Regional Water Board.

19. Disturbance or removal of existing vegetation as detailed within the application shall not exceed the minimum necessary to complete the project.
20. Fueling, lubrication, maintenance, storage, and staging of vehicles and equipment shall not result in a discharge or threatened discharge to any waters of the state. At no time shall the applicant or its contractors allow use of any vehicle or equipment that leaks any substance that may impact water quality.
21. The Applicant shall not use leaking vehicles or equipment within state waters or riparian areas. Vehicles and equipment used within state waters shall be checked for leaks at the beginning of each work day.
22. 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 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 pursuant to Section 13267 of the Porter-Cologne Water Quality Control Act.
23. The Regional 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 and approved pursuant to the Porter-Cologne Water Quality Control Act or section 303 of the Clean Water Act.
24. 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 certification by letter and shall email a copy of the letter to the Regional Water Board at the following email address: [NorthCoast@waterboards.ca.gov](mailto:NorthCoast@waterboards.ca.gov).

The successor-in-interest shall email the Regional Water Board Executive Officer at: [NorthCoast@waterboards.ca.gov](mailto:NorthCoast@waterboards.ca.gov) to request authorization to discharge dredged or fill material under this certification. The request must contain the following:

- i) Effective date of ownership change;
- ii) Requesting entity's full legal name;
- iii) The state of incorporation, if a corporation;
- iv) The address and phone number of contact person; and
- v) A description of any changes to the Project or confirmation that the successor-in-interest intends to implement the project as described in this certification.

25. Except as may be modified by any preceding conditions, all certification actions are contingent on:

- i) the discharge being limited to and all proposed mitigation being completed in strict compliance with the Applicant's Project description, and
- ii) compliance with all applicable requirements of the Water Quality Control Plan for the North Coast Region (Basin Plan).

26. Except as may be modified by any preceding conditions, all certification actions are contingent on a) the discharge being limited to and all proposed mitigation being completed in strict compliance with the applicant's project description, and b) compliance with all applicable requirements of the Water Quality Control Plan for the North Coast Region (Basin Plan).

27. The authorization of this certification for any dredge and fill activities expires on May 9, 2022. 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.

**Conditions 2-3 are requirements for information and reports.** Any requirement for a report made as a condition to this certification is a formal requirement pursuant to California Water Code section 13267, and failure or refusal to provide, or falsification of such required report is subject to civil liability as described in California Water Code, section 13268.



If you have any questions or comments, please contact Kaete King of my staff, at (707) 576-2848, or via e-mail at [Kaete.King@waterboards.ca.gov](mailto:Kaete.King@waterboards.ca.gov).

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Matthias St. John  
Executive Officer

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