
North Coast Regional Water Quality Control Board

January 22, 2021

In the Matter of Water Quality Certification for the Lower Colgan Creek Restoration Phase 2 Project

APPLICANT: City of Santa Rosa, Attn: Steve Brady
RECEIVING WATER: Colgan Creek and seasonal wetland
HYDROLOGIC UNIT: Middle Russian River 114.21
COUNTY: Sonoma
FILE NAME: Lower Colgan Creek Restoration Phase 2 Project
ECM PIN CW-827322; WDID 1B161072WNSO

FINDINGS BY THE EXECUTIVE OFFICER:

1. On August 15, 2016, Steve Brady of the City of Santa Rosa (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 Lower Colgan Creek Restoration Phase 2 Project (project). The project is located on Colgan Creek between Victoria Drive and Boron Avenue in Santa Rosa.
2. **Public Notice:** The Regional Water Board provided public notice of the application pursuant to Title 23, California Code of Regulations, Section 3858 on December 17, 2019, 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 Colgan Creek and an adjacent seasonal wetland, within the Middle Russian River hydrologic area (114.21).
4. **Project Description:** The purpose of the project is to increase riparian habitat value, water quality, and flood protection by increasing flood plain connectivity and in-channel complexity along 2,000 linear feet of Colgan Creek.

Colgan Creek is currently an earthen flood control channel with some rip rap along the toe of the banks. Channelization straightened the channel, lengthened the channel by relocating the channel southeast of its historic location, and significantly

altered the habitat. After channelization routine maintenance regularly removed woody vegetation to maintain the flood carrying capacity of the channel. In recent years, maintenance has been reduced in anticipation of the restoration and willows and other woody species have taken hold along the creek banks. Construction will relocate the channel and enlarge the cross-sectional area of the channel to allow for habitat features, native plantings, and increase the flood capacity to carry the 100-year storm. The Laguna de Santa Rosa Foundation will be planting 1,745 native trees and shrubs throughout the project area and native willows will be planted along ~870 linear feet of the creek. In-stream wetland habitat impacted will be 0.4 acres and ~0.45 acres will be created after completion of the project.

The project will greatly enhance the natural functions of Lower Colgan Creek and is designed to provide the following community and environmental benefits:

- Increase the riparian canopy in both width and cover over the restoration reach. The widened channel will increase the area available for aquatic and terrestrial species living within or migrating along the creek.
 - Increase stream length by ~250 feet by re-creating a meandering channel.
 - Increase habitat diversity with log habitat structures to support pool development; boulder clusters to create natural riffles; and in-channel islands to support a variety of organisms and their life stages. In addition, the Project will add floodplains dominated by sedges (*Carex* sp.) and rushes (*Juncus* sp.), with a dominant tree canopy of oaks (*Quercus* sp.) and willow (*Salix* sp.).
 - Remove invasive species and install genetically appropriate native species throughout the Project area. The site is dominated by Himalayan blackberry (*Rubus armeniacus*), poison hemlock (*Conium maculatum*) and non-native grasses like Harding grass (*Phalaris aquatica*), rip-gut brome (*Bromus diandrus*) and wild oat (*Avena fatua*).
 - Increase flood capacity of the channel from 25-year to 100-year flood capacity, by increasing the channel width and reconnecting the creek to a portion of its historical floodplain.
 - Increase ground water infiltration by slowing the flow within the channel. The Project will increase the thalweg length from 1,950 to 2,200 feet by introducing meander into the existing flood control channel.
 - Improve water quality by reducing sediment from failing banks, increasing canopy cover over the channel and providing a vegetated floodplain that increases the surface area for plants to cleanse pollutants and excess nutrients from the storm runoff.
5. **Construction Timing:** The project is expected to take place between June and October and would take approximately 137 days to complete.

6. **Project Impacts:** The project would temporarily impact approximately 3.08 acres or 2,000 linear feet of Colgan Creek, including a 0.01-acre seasonal wetland beyond the top of bank that would be permanently impacted by the realigned channel.
7. **Mitigation for Project Impacts:** The project is a restoration project except for the seasonal wetland permanent impacts, which will be mitigated for at a 2:1 ratio with credits from an approved wetland mitigation bank. A bill of sale for the purchase of 0.05 acres of wetland creation credits from Hazel Mitigation Bank was received on January 20, 2021.
8. **Project Tracking:** It has been determined through regional, state, and national studies that tracking of mitigation and restoration projects must be improved to better assess their performance. In addition, to effectively carry out the state's Wetlands Conservation Policy of no net loss to wetlands, the state needs to closely track both aquatic habitat losses and the success of mitigation and restoration projects. Therefore, this certification requires the Applicant to upload impact totals and mitigation measures to a web-based project tracking system called "EcoAtlas" using the "Project Tracker" form, which can be found here: <http://ptrack.ecoatlas.org>. Instructions and how to request a username and password are on the Project Tracker website. More information about EcoAtlas is available at: www.ecoatlas.org.
9. Under the Porter-Cologne Water Quality Control Act, each regional water board shall establish water quality objectives to ensure the reasonable protection of beneficial uses and the prevention of nuisance, in consideration of various factors including past, present and probable future beneficial uses of water (Water Code, § 13241). The implementation of restoration projects has the potential to cause discharges of waste into waters of the State and therefore must be regulated. These discharges are intended to be temporary in nature (during the course of construction and/or as a result of the first storm events); and may exceed water quality objectives that are included in the Water Quality Control Plan for the North Coast Region (Basin Plan) with the purpose of providing a net benefit to water quality. (From the *Policy in Support of Restoration in the North Coast Region* Resolution No. R1-2015-0001 as adopted by the Regional Water Board on January 29, 2015).
10. **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."
11. **Other Agency Actions:** On June 12, 2020, the applicant received authorization from the United States Army Corps of Engineers for Nationwide Permit 27, *Aquatic Habitat Restoration, Enhancement, and Establishment Activities*, pursuant to section 404 of the Clean Water Act.

The applicant has submitted a section 1600 Notification of Lake or Streambed Alteration and Incidental Take Permit application for California tiger salamander impacts to the California Department of Fish and Wildlife.

12. **CEQA Compliance:** As lead agency, the City of Santa Rosa certified a Mitigated Negative Declaration (SCH 2010072004), pursuant to the requirements of the California Environmental Quality Act (CEQA).
13. **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.
14. 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.
https://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/generalorders/go_wdr401regulated_projects.pdf

Receiving Water: Colgan Creek and Seasonal Wetland

Permanent Impacts: 0.01 acre of seasonal wetland

Temporary Impacts: 3.08 acres or 2000 linear feet of Colgan Creek

Latitude/Longitude: 38.4096°N/122.7246°W

Certification Expiration: January 22, 2026

Accordingly, based on its independent review of the record, the Regional Water Board certifies that the Lower Colgan Creek Restoration Phase 2 Project (WDID 1B161072WNSO), 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 Applicant shall implement the project according to the 90% plans and plant list submitted on December 10, 2019. Substantive changes must be submitted for review and approval by Regional Water Board staff.
2. Project success criteria is described in the project Monitoring Plan submitted on December 10, 2019. Success shall be subject to the review and acceptance by Regional Water Board staff, and shall not be considered successful until a minimum of five years of monitoring has occurred. Plants shall not be considered successful until irrigation has been terminated for a minimum of two years.
3. Within 30 days of issuance of this Order, the Applicant shall upload Project information to EcoAtlas using the "Project Tracker" form found at the following website: <http://ptrack.ecoatlas.org/>. Required information includes a Project map that may either be uploaded to EcoAtlas or created within EcoAtlas by using the "draw polygon" tool.

Project Specific Conditions Requiring Reports

4. The applicant shall report on the success of the project for a minimum of five years. Reports shall document the success of plantings, structural stability of the reconstructed channel, development of shade and riparian vegetative function, and establishment of in-stream habitat. The applicant shall send reports to the Regional Water Board by January 31 annually.
5. 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

6. 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.
7. 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.

8. 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.
9. A complete fee of \$200, (Category D, Ecological Restoration and Enhancement Projects), was received for the Project on August 15, 2016. This Certification will be subject to annual billing while the project is constructed and monitored, per the fee schedule that is current at the time of annual billing. Currently the annual fee is \$276; the annual fee is expected to increase every year. The fee calculator may be found at:
https://www.waterboards.ca.gov/resources/fees/water_quality/docs/dredgefillcalculator.xlsm

Annual fees will be automatically invoiced to the Applicant. **The applicant must notify the Regional Water Board at project and/or mitigation completion with a final report in order to request to terminate annual billing. Notification should be sent to the staff listed at the bottom of this Order and to Northcoast@waterboards.ca.gov.** Regional Water Board staff will verify conditions of the Certification have been met and may request a site visit at that time to confirm status of Project and compliance with this Certification.
10. 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.
11. 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.
12. Only 100 percent biodegradable geotextiles shall be used for permanent applications within waters of the state unless explicitly approved for specific purposes in the project design.
13. 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.
14. 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.

15. 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.
16. The applicant shall provide Regional Water Board staff access to the project site to document compliance with this certification.
17. Work in flowing or standing surface waters, unless otherwise proposed in the project description and approved by the Regional Water Board, is prohibited.
18. 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.
19. 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.
20. 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).
21. 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.

22. Disturbance or removal of existing vegetation as detailed within the application shall not exceed the minimum necessary to complete the project.
 23. 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 including dry portions of the creek or wetlands. 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.
 24. 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 workday.
 25. 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.
 26. 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.
 27. 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.
- The successor-in-interest shall email the Regional Water Board Executive Officer at: 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.

28. 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).

29. The authorization of this certification for any dredge and fill activities expires on January 22, 2026. 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 4-5 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.

Matthias St. John
Executive Officer

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