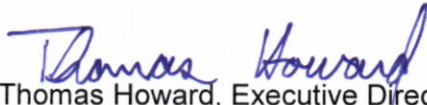

State Water Resources Control Board

TO: Ms. Patty Forbes
Fisheries Branch
Department of Fish and Game
830 S Street
Sacramento, CA 95811

FROM: 
Thomas Howard, Executive Director
EXECUTIVE OFFICE

DATE: **SEP 29 2011**

SUBJECT: AMENDMENT TO CLEAN WATER ACT (CWA) SECTION 401 WATER QUALITY CERTIFICATION FOR THE DEPARTMENT OF FISH AND GAME 2011 FISHERIES RESTORATION GRANT PROGRAM PROJECT (FILE #SB11004IN)

On July 20, 2011, the California Department of Fish and Game (CDFG) submitted a request to the State Water Resources Control Board (State Water Board) to add 18 work sites to the original Camp San Luis Obispo Road Erosion Prevention Project covered in the Clean Water Act Section 401 Water Quality Certification (Certification) for the 2009 Fisheries Restoration Grant Program Project (FRGP). By this amendment, these sites will be covered by the 2011 Certification for the FRGP. The Certification for the 2011 FRGP contains the most current requirements, activities, and Best Management Practices associated with CDFG's FRGP. State Water Board staff has evaluated the changes to the original application information submitted by CDFG with the addition of the 18 work sites and the associated water quality protection measures. Consultations regarding these changes were also conducted with the North Coast, San Francisco Bay, and Central Coast Regional Water Quality Control Boards, and the U.S. Army Corps of Engineers.

Pursuant to California Code of Regulations, title 23, section 3838, I hereby issue an amendment to the Certification determination described in the Enclosure for these projects. Attachments A through D of this Enclosure are also part of this Certification.

If you require further assistance, please contact Bob Solecki, the staff person most knowledgeable on the subject, at (916) 341-5483 (rsolecki@waterboards.ca.gov). You may also contact Bill Orme, Chief of the 401 Certification and Wetlands Protection Unit, at (916) 341-5464 (borme@waterboards.ca.gov).

Enclosures and cc list : (see next page)

Enclosures: Amended Water Quality Certification Order
Attachment A: Signatory Requirement
Attachment B: Amended Project Information Sheet
Attachment C: Amended Project List
Attachment D: Amended Project Maps

cc: Ms. Jane Hicks
Chief, Regulatory Branch
San Francisco District
U.S. Army Corps of Engineers
1455 Market Street, 16th floor
San Francisco, CA 94103-1398

Mr. Dave Castanon,
Chief, Regulatory Branch
Los Angeles District
U.S. Army Corps of Engineers
Department of the Army
P.O. Box 532711
Los Angeles, CA 90053-2325

Mr. Jason A. Brush
Chief, Wetlands Regulatory Office (WTR-8)
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

Ms. Catherine Kuhlman
Executive Officer
North Coast Regional Water Quality Control Board

Mr. Bruce Wolfe
Executive Officer
San Francisco Bay Regional Water Quality Control Board

Mr. Roger W. Briggs
Executive Officer
Central Coast Regional Water Quality Control Board

State Water Resources Control Board

AMENDMENT TO THE CLEAN WATER ACT SECTION 401
WATER QUALITY CERTIFICATION FOR THE CALIFORNIA DEPARTMENT OF FISH
AND GAME 2011 FISHERIES RESTORATION GRANT PROGRAM PROJECT
FILE NO. SB11004IN

All changes to the Water Quality Certification (Certification) (FILE NO. SB10002IN) issued on July 15, 2011 are shown below as additions in **bold underline**, and deletions in **~~bold strikethrough~~**. This does not include minor grammatical edits.

PROJECT: California Department of Fish and Game (CDFG) - 2011 Fisheries Restoration Grant Program Project

APPLICANT: Ms. Patty Forbes
Fisheries Branch
Department of Fish and Game
830 S Street
Sacramento, CA 95814

This **amended** Certification responds to your request on behalf of CDFG for water quality certification for the subject project. Your application was received on ~~March 22, 2011~~ **July 20, 2011** and was determined to be complete on ~~April 20, 2011~~ **August 17, 2011**.

ACTION

- | | |
|---|---|
| <input type="checkbox"/> Order for Standard Certification | <input type="checkbox"/> Order for Denial of Certification |
| <input checked="" type="checkbox"/> Order for Technically Conditioned Certification | <input type="checkbox"/> Order for Waiver of Waste Discharge Requirements |

AMENDMENT:

This amendment will add 18 work sites to the scope of work for the 2011 Fisheries Restoration Grant Program Project (FRGP). Each year this CDFG grant program funds new restoration projects in the California coastal region. These

additional work sites are part of one such restoration project that was included in 2009 FRGP and Certification (FILE NO. SB09004IN) and identified as the Camp San Luis Obispo Road Erosion Prevention Project (Project). The Project originally included 65 work sites, but due to funding, was described as including just 24 work sites in the 2009 FRGP Mitigated Negative Declaration (MND). Only 14 of the 24 Project work sites were actually completed in 2009 primarily due to access or administrative issues. Subsequently CDFG proposed an additional 18 out of the original 65 work sites to complete the Project work plan. Pacific Watershed Associates conducted a sediment delivery analysis on the proposed 18 work sites for CDFG which showed a similar environmental benefit as that determined for the 10 work sites that were not completed in 2009. Therefore, the overall Project purpose would not change with the addition of these new work sites to the Project. CDFG added the 18 work sites to the 2009 MND by Addendum.

All restoration projects funded by the FRGP are conducted based on the most recent edition of CDFG's California Salmonid Stream Habitat Restoration Manual (Manual) and mitigation measures described in the mitigated negative declarations. The projects will implement the Best Management Practices (BMPs) in CDFG's Manual, which is regularly updated to include the latest information necessary to successfully implement habitat restoration activities and minimize impacts to habitat and water quality.

On July 6, 2011, the Army Corps of Engineers issued a Notice to Proceed under RGP 78 (SPL-2011-00627-BAH) for the 18 additional work sites.

The original 2011 FRGP Certification included 4.448 acres and 173,236.8 linear feet of permanent impacts and 14.3 acres and 205,556.2 linear feet of temporary impacts to waters of the state. The 18 additional work sites will add 0.12 acre and 9,785 linear feet of permanent impacts to waters of the state. Therefore with this amendment, total permanent impacts for the 2011 FRGP will increase to 4.568 acres and 183021.8 linear feet, with no change to temporary impacts.

AUTHORIZATION:

This Certification conditionally certifies **57 58** restoration projects funded through the 2011-FRGP grant cycle as listed in Attachment C with the addition of the Project by this amendment.

This Certification does not apply to the placement of any new culvert or channel liner in any water body, unless the project has been approved in writing by the 401 Program Manager of the appropriate Regional Water Quality Control Board(s) **(Regional Water Board)**. Such projects will be identified by CDFG in the notification submitted to the appropriate Regional Water Board, as required in Additional Condition **3** (listed below). The 401 Program Manager of the appropriate Regional Water Board has 30 days from

- c. Except for "minor actions" as described in the MNDs for the 2011 FRGP, 2010 FRGP, **2009 FRGP, the Addendum to the 2009 FRGP MND**, and 2005 FRGP, all work areas shall be effectively isolated from stream flows using suitable control measures before commencement of any in-water work. The diverted stream flow shall not be contaminated by construction activities.
- d. Structures for isolating the in-water work area and/or diverting the stream flow (e.g., coffer dam, geo-textile silt curtain) shall not be removed until all disturbed areas are cleaned and stabilized.
- e. In the event of rain, the disturbed in-water work area shall be temporarily stabilized before stream flow exceeds the capacity of the diversion structure. The disturbed streambed shall be stabilized so that the disturbed areas will not come in contact with the stream flow.
- f. All areas disturbed by FRGP restoration project activities shall be protected from washout and erosion.
- g. For FRGP restoration projects requiring re-vegetation of disturbed areas, viable seed of native species collected within the same watershed, or the greater watershed, shall be used.
- h. The discharge of petroleum products or other pollutants to surface waters that may result in violation of water quality standards is prohibited. Activities shall not cause visible oil, grease, or foam in the work area or downstream.
- i. Fueling, lubrication, maintenance, storage, and staging of vehicles and equipment shall be outside of waters of the State. Fueling, lubrication, maintenance, storage, and staging of vehicles and equipment shall not result in a discharge or a threatened discharge to any waters of the State.
- j. When an individual FRGP restoration project is completed, any excess material or debris shall be removed from the work area and disposed of properly.

2. Posting

A copy of this Certification must be provided to the contractor and all subcontractors who will work at the work site, and must be in their possession at the work site. The project proponent and all contractors and subcontractors shall be familiar with all conditions of this Certification.

3. Notification

No later than 15 days prior to the start of construction, or 30 days for any FRGP restoration project involving the placement of a new culvert or a channel liner, the FRGP restoration project proponent shall submit to the 401 Program Manager of the

the receipt of the notification to respond; otherwise the project may proceed under this Certification.

STANDARD CONDITIONS:

1. This Certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to the Water Code, section 13330, and the California Code of Regulations (Cal. Code Regs.), title 23, section 3867 and following.
2. This Certification action is not intended and shall not be construed to apply to 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 Cal. Code Regs., title 23, 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 Cal. Code Regs., title 23, and owed by the applicant.

ADDITIONAL CONDITIONS:

1. Best Management Practices (BMPs)
 - a. Appropriate BMPs shall be implemented throughout **all FRGP's 58 restoration** projects to help minimize sediment disturbance and suspension within the water as described in this section, and also in the mitigated negative declarations for the 2011 FRGP, 2010 FRGP, **2009 FRGP, the Addendum to the 2009 FRGP MND**, and 2005 FRGP. All BMP materials shall be onsite prior to construction activity and ready for use. BMPs shall be in full compliance with all specifications governing the proper design, installation, operation, and maintenance of such management practices.
 - b. No work shall be conducted within waters of the State during the winter period (November 1 - April 15). However, work in upland areas may occur if proper control measures or BMPs are installed to prevent runoff causing erosion, turbidity, or discharge of pollutants into waters of the State. If upland work occurs during the winter period, a written notification (e-mail is acceptable) must be submitted to the 401 Program Manager of the appropriate Regional Water Board(s) at least seven (7) business days prior to the start of work. The notification must specify timing, location, approximate distance to nearest water body, and control measures or BMPs that will be used to contain potential runoff prior to commencement of work.

appropriate Regional Water Board(s) a notification indicating the expected start/completion dates of project activities, project ID, and water body name(s).

For FRGP restoration projects that include placement of new culvert and channel liner, the notification shall also include the following information:

- a. Describe installation activities; include any structural control details, such as structure for diverting stream flow around the in-stream excavation area, temporary rubber dam, silt curtain, and any treatment device/facility;
- b. Describe the control measures, or BMPs, during construction and post construction, to minimize impacts (e.g., habitat losses, erosion control measures, flow diversions; etc.);
- c. Any compensatory mitigation required by permitting agencies.

4. Monitoring

CDFG shall provide to State Water Board staff, and appropriate Regional Water Board staff, copies of reports documenting the following monitoring activities described in the mitigated negative declarations for the 2011 FRGP, 2010 FRGP, **2009 FRGP, the Addendum to the 2009 FRGP MND**, and 2005 FRGP.

- a. Post-project monitoring immediately after an individual FRGP restoration project is completed to ensure that it is completed as designed; and
- b. Effectiveness monitoring on a random subset of ten percent of the individual FRGP restoration projects, within one to three years after project completion.

5. Reporting

While this Certification is in effect, or until all **58 FRGP restoration** projects have been completed or de-funded, and for as long as required monitoring is occurring, CDFG will submit annual reports on July 1st of each year to the 401 Program Managers of the State Water Board and the appropriate Regional Water Board(s) documenting work undertaken during the preceding year and identifying for all such work:

- a. **FRGP restoration P**project name and grant number as listed in Attachment C;
- b. Year of Certification;
- c. **FRGP restoration P**project purpose and summary work description;
- d. Name(s) of affected water body(ies);

- e. Latitude/longitude in decimal degrees to at least four decimals;
- f. For all **FRGP restoration** projects completed during the year:
 - i. The type(s) of receiving (affected) water body(ies) (e.g., at a minimum: river/streambed, lake/reservoir, ocean/estuary/bay, riparian area, or wetland type); and
 - ii. The total quantity in acres of each type of receiving water body temporarily impacted, and permanently impacted;
- g. Actual construction start and end-dates for each **FRGP restoration** project;
- h. Whether each **FRGP restoration** project is on-going or completed; and
- i. Required monitoring reports as described in Additional Condition **#3 4** (Monitoring).

Notifications and annual reports shall be directed to: Program Manager, Certification and Wetlands Program at the following State and appropriate Regional Water Board office(s):

State Water Resources Control Board
Division of Water Quality
1001 "I" Street, 15th Floor
Sacramento, CA 95814

North Coast Regional Water Quality Control Board
5550 Skylane Blvd., Suite A
Santa Rosa, CA 95403

San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

Central Coast Regional Water Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401

6. Violations

- a. CDFG or its contractor and subcontractors shall verbally report any non-compliance to the 401 Program Manager of the appropriate Regional Water Board within 24 hours from the time when CDFG or its contractor and subcontractors become aware of the circumstances.

- b. CDFG or its contractor and subcontractors shall report all violations of any terms or conditions of this Certification in writing to the State Water Board and appropriate Regional Water Board within seven (7) days from the time CDFG becomes aware of the violation. The written report shall contain:
 - i. A description of the violation and its cause;
 - ii. The period of the violation event, including dates and times, and if the violation has not been corrected, the anticipated time the violation is expected to continue; and;
 - iii. Steps taken or planned to reduce, eliminate, and prevent recurrence of the violation.
- c. In the event of any violation or threatened violation of the conditions of this Certification, the violation shall be subject to any remedies, penalties, processes, or sanctions as provided for under State law. For purposes of the Clean Water Act (CWA) section 401(d), the applicability of any State law authorizing remedies, penalties, processes, 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 Order.
- d. In response to a suspected violation of any condition of this Certification Order, the State Water Board may require the holder of any 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 the cost of the reports, shall be in reasonable relationship to the need for the reports and the benefits to be obtained from the reports.
- e. In response to any violation of the conditions of this Certification Order, the State Water Board may add to or modify the conditions of this Certification as appropriate to ensure compliance.

ADMINISTRATIVE CONDITIONS:

1. The State Water Board reserves the right to suspend, cancel, or modify and reissue this Certification, after providing notice to CDFG and/or responsible contractor/sub-contractor, if the State Water Board determines that **the any FRGP restoration** project fails to comply with any of the terms or conditions of this Certification.
2. A copy of this Certification, the application, and supporting documentation must be available at each work site during construction for review by site personnel and agencies. All personnel performing work on the proposed project shall be familiar with the content of this Certification and its posted location on the work site.

3. CDFG shall grant State Water Board and Regional Water Board staff, or an authorized representative, upon presentation of credentials and other documents as may be required by law, permission to enter the work site at reasonable times, to ensure compliance with the terms and conditions of this Certification and/or to determine the impacts the **FRGP restoration** project may have on waters of the state.

STATE WATER BOARD CONTACT PERSON:

If you have any questions, please contact State Water Board Environmental Scientist Bob Solecki at (916) 341-5483, via e-mail at rsolecki@waterboards.ca.gov, or by mail at State Water Board, Certification & Wetland Program, 1001 I St., 15th Floor, Sacramento, CA 95814. You may also contact Bill Orme, Chief of the 401 Certification and Wetlands Protection Unit, at (916) 341-5464 or via e-mail at borme@waterboards.ca.gov.

CALIFORNIA ENVIRONMENTAL QUALITY ACT:

The CDFG is the Lead Agency responsible for compliance with the California Environmental Quality Act (CEQA; Pub. Resources Code, § 21000 et seq.). The CDFG approved the 2011 FRGP and certified the Mitigated Negative Declaration (MND) for the 2011 FRGP on January 24, 2011 (State Clearinghouse Number 2010122088). The MND for the 2011 FRGP covers 53 of the **57 58 FRGP restoration** projects listed in Attachment C. **The Project, which is the subject of this amendment, is covered under the 2009 FRGP MND and the Addendum to the 2009 FRGP MND (issued April 12, 2011; State Clearinghouse Number: #2009012052).** The 4 remaining **FRGP restoration** projects are covered under the MND for the 2005 FRGP approved and certified May 19, 2005 (State Clearinghouse Number: 2005042095) and the MND for the 2010 FRGP approved and certified February 26, 2010 (State Clearinghouse Number: 2010012057). In making its determinations and findings, the State Water Board must presume that these mitigated negative declarations comport with the requirements of CEQA and are valid (Pub. Resources Code, § 21167.3, subd. (b)). As such, the State Water Board has reviewed and considered these environmental documents and all proposed mitigation measures.

The State Water Board reviewed and evaluated the impacts to water quality identified in the **3 4** MNDs covering **FRGP restoration** projects in the 2011 FRGP. Impacts to water quality were determined to be less than significant because the mitigation measures adopted in Appendix B of the MNDs (Mitigation Measures, Monitoring and Reporting Program) will ensure that **2011 FRGP restoration** project activities will be in compliance with water quality standards. The State Water Board finds that the Mitigation Measures, Monitoring and Reporting Programs in the **3 4** MNDs covering the 2011 FRGP, along with the conditions in the Certification, to be adequate to reduce water quality impacts to less than significant levels.

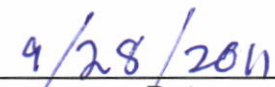
WATER QUALITY CERTIFICATION:

I hereby issue an order certifying that as long as all of the conditions listed in this Certification action are met, any discharge from the referenced project will comply with the applicable provisions of Clean Water Act sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards). This discharge is also regulated pursuant to State Water Board Water Quality Order No. 2003-0017-DWQ which authorizes this Certification to serve as Waste Discharge Requirements pursuant to the Porter-Cologne Water Quality Control Act (Wat. Code, § 13000 et seq.).

Except insofar as may be modified by any preceding conditions, all Certification actions are contingent on (a) the discharge being limited and all proposed mitigation being completed in strict compliance with the conditions of this Certification, and (b) compliance with all applicable requirements of the pertinent Regional Water Board's Water Quality Control Plan and the MND for the 2011 FRGP, MND for the 2010 FRGP, MND for the 2009 FRGP, the Addendum to the MND for the 2009 FRGP, and MND for the 2005 FRGP.



Thomas Howard
Executive Director



Date

- Attachments (4):
- A. Signatory Requirement
 - B. Amended Project Information Sheet
 - C. Amended 2011 FRGP Project List
 - D. Amended Project Maps