

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION– OFFICE OF CHIEF COUNSEL
April 18, 2007**

ITEM 9

SUBJECT

IN THE MATTER OF THE PETITIONS OF ED VOICE AND VOICE FAMILY, FRIENDS OF SMALL PLACES, CARLOS QUILEZ (WATER QUALITY CERTIFICATION FOR VAN DUZEN RIVER RANCH STREAMBANK PROTECTION ACTIVITIES).
SWRCB/OCC FILE A-1781, A-1781(a), AND A-1781(b)

DISCUSSION

On September 28, 2006, the North Coast Regional Water Quality Control Board (North Coast Water Board) issued water quality certification for Van Duzen River Ranch Streambank Protection Activities pursuant to Section 401 of the Clean Water Act (water quality certification). The activities were to take place on the Dischargers' Van Duzen River Ranch near Fortuna, in Humboldt County. The primary purpose of the Project is to stabilize areas of erosion in order to reduce the risk of streambank failures that would likely result in the loss of riparian areas and agricultural land. Timely petitions were received by Ed Voice and Voice Family, Friends of Small Places, and Carlos Quiles.

Due to their legal and factual similarities, the three petitions were consolidated for review. The draft order concludes that the North Coast Water Board failed to comply with the California Environmental Quality Act (CEQA). Under CEQA, the North Coast Water Board must receive and review the environmental document prepared by the lead agency and determine whether the document adequately addresses the project's effect on water quality. The draft order concludes that the North Coast Water Board did not receive a copy of the environmental document and did not make any of the required CEQA findings. The draft order concludes by revoking the water quality certification and remanding it back to the North Coast Water Board so that it may comply with CEQA.

POLICY ISSUE

Should the State Water Board adopt the proposed order dismissing the petition?

FISCAL IMPACT

None.

REGIONAL BOARD IMPACT

The North Coast Water Board would be required to process a new water quality certification application.

STAFF RECOMMENDATION

Adopt the draft order.

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD
ORDER WQ 2007-

In the Matter of the Petition of

**ED VOICE AND VOICE FAMILY, FRIENDS OF SMALL PLACES,
AND CARLOS QUILEZ**

For Review of Water Quality Certification for
Van Duzen River Ranch Streambank Protection Activities
Issued by the
California Regional Water Quality Control Board,
North Coast Region

SWRCB/OCC FILE A-1781, A-1781(a), and A-1781(b)

BY THE BOARD:

On September 28, 2006, the North Coast Regional Water Quality Control Board (North Coast Water Board) issued water quality certification for Van Duzen River Ranch Streambank Protection Activities pursuant to Section 401 of the Clean Water Act (water quality certification). Timely petitions were received by Ed Voice and Voice Family, Friends of Small Places, and Carlos Quilez.

I. BACKGROUND

On May 24, 2006, the North Coast Water Board received a request for water quality certification from Jack and Mary Noble (Dischargers) for activities related to the installation of hard points (Project). The activities were to take place on the Dischargers' Van Duzen River Ranch near Fortuna, in Humboldt County. The Project straddles approximately three miles of the Van Duzen River centered at the confluence of Yager Creek. The primary purpose of the Project is to stabilize areas of erosion in order to reduce the risk of streambank failures that would likely result in the loss of riparian areas and agricultural land. This Project follows an earlier water quality certification for gravel extraction granted by the North Coast Water Board on May 8, 2006. The petitioners allege that the installation of hard points is only necessary to remedy streambank damage from the previous water quality certification. The water quality certification for gravel extraction is not at issue in this petition and we make no determination about these allegations.

On July 14, 2006, the North Coast Water Board posted its public notice for water quality certification for the Project pursuant to the State Water Resources Control Board's (State Water Board) regulations.¹ After receiving several comment letters opposing the project, North Coast Water Board staff visited the Project site on August 15, 2006. While onsite, staff inspected the site, including the streambank protection measures, and interviewed the Dischargers. After the site visit and consideration of public comments, the North Coast Water Board issued its water quality certification.

II. ISSUES AND FINDINGS

The three petitions raise a number of issues. Most of these issues are not substantial or appropriate for review by the State Water Board and will not be discussed in this order.² The issue we address concerns responsibilities under the California Environmental Quality Act (CEQA).

The State's issuance of a water quality certification is a discretionary action subject to CEQA.³ When granting or denying water quality certification, the State Water Board or appropriate Regional Water Board usually acts as a responsible agency for the purpose of CEQA compliance.⁴ A responsible agency complies with CEQA by considering the environmental document prepared by the lead agency and by reaching its own conclusions on whether and how to approve the project involved.⁵ The responsible agency must make the findings for each significant effect of the project within their area of expertise.⁶

For the Project, the Humboldt County Planning Division assumed the role of lead agency for CEQA compliance and issued an Environmental Impact Report (EIR) and a Supplemental Environmental Impact Report (SEIR). Neither document was submitted to the State Water Board as part of the administrative record nor were responsible agency findings made concerning the adequacy of the EIR/SEIR.⁷ The North Coast Water Board must obtain

¹ Cal. Code Regs., tit. 23, § 3858.

² See *People v. Barry* (1987) 194 Cal.App.3d 158, 175-177; *Johnson v. State Water Resources Control Bd.* (2004) 123 Cal.App.4th 1107; Cal. Code Regs., tit. 23, § 2052, subd. (a)(1).

³ Pub. Resources Code, § 21080, subd. (a).

⁴ Pub. Resources Code, § 21069.

⁵ Cal. Code Regs., tit. 14, § 15096, subd. (a).

⁶ Cal. Code Regs., tit. 14, § 15096, subd. (h); Pub. Resources Code, §§ 21104, 21158, subd. (c).

⁷ The State Water Board's water quality certification regulations require that the certifying agency be provided with and have ample time to properly review a final copy of valid CEQA documentation *before* taking a certification action. (Cal. Code Regs., tit. 23, § 3856, subd. (f) (emphasis added).)

copies of the pertinent environmental documents, must make findings for each significant effect of the Project, and must reach its own conclusions in order to comply with the requirements of CEQA.⁸

ORDER

IT IS HEREBY ORDERED that the Water Quality Certification for Van Duzen River Ranch Streambank Protection Activities be revoked and remanded to the North Coast Water Board. The North Coast Water Board is directed to obtain the relevant environmental documents and make its own responsible agency findings as to the adequacy of these documents.

CERTIFICATION

The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on April 18, 2007.

AYE:

NO:

ABSENT:

ABSTAIN:

DRAFT

Song Her
Clerk to the Board

⁸ Substantive comments shall only be for those activities that affect water quality. (See Pub. Resources Code, §§ 21104, 21158, subd. (c).)