

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Water Quality Certification for

The Brooktrails Rubber Spillway Dam Project

Sources: Willits Creek tributary to Mill Creek thence Outlet Creek thence the Eel River thence Pacific Ocean

County: Mendocino County

Project Description

Brooktrails Township Community Services District (Brooktrails) is currently under a building moratorium, issued by the California Department of Health Services. Brooktrails has insufficient water storage capacity to supply its current population during drought years. Lake Emily is part of Brooktrails water supply system and the water sources are from Willits Creek and Dutch Henry Creek, tributary to the Eel River.

The purpose of the proposed project is to restore the storage capacity lost (52 acre-feet) due to siltation at Lake Emily. The Brooktrails proposed project would replace the existing wooden flashboards with inflatable gates at the spillway that will increase the maximum water level at Lake Emily by three feet. The proposed project also includes the installation of a berm at the toe of the dam and construction of a 10 foot by 15 foot building near the spillway to house the gate controls and a small office.

The inflatable gates will be 48 feet wide at the spillway. The structure includes a base slab, 15 foot high concrete cutoff walls, three steel panels, and airbladders for the operation of each panel. Installation will be done when the lake water level is eight feet below the spillway. Water flow to Willits Creek will not be impacted during spillway modification due to an existing four inch bypass valve at the base of the dam.

The dam will be reinforced at the southwest corner with the addition of an earthen berm to support the foundation and improve dam integrity. The berm will have a 225 foot long blanket drain that varies in elevation. Approximately 33 cubic yards of soil from the borrow area will be excavated and compacted for construction of the berm. The berm will fill in 0.07 acre of man-made, emergent wetland formed at the base of the dam due to seepage and hillside runoff. Approximately 30 yards to the south of this area, an equal amount of wetland habitat will be created as part of the designated mitigation measures for this project.

The construction area is about four acres and includes the spillway, berm and borrow site. The soil adjacent to the spillway and dam will be disturbed and then replaced. All

stockpiled material will be placed in the borrow area. The borrow area is immediately south of the dam and berm.

Construction activities will typically occur between 7 a.m. to 6 p.m. Monday through Friday. Heavy equipment operation is expected for a six month period with no disturbances to Willits Creek.

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. The Applicant, Brooktrails Township Community Service District (Brooktrails), has applied to the U.S. Army Corps of Engineers (ACOE) for Nationwide Permits: 3, Maintenance, and 18, Minor Discharge (Corps File No. 400221N).
3. 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). Clean Water Act section 401 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).)
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. Existing beneficial uses designated for tributaries to the Eel River include municipal and domestic, agricultural, industrial, groundwater recharge, freshwater replenishment, hydropower generation, water contact recreation, non-contact water recreation, commercial and sport fishing, warm and cold freshwater habitat, wildlife habitat, rare, threatened, and endangered species, migration, and spawning (spawning, reproduction, and development). Protection of the in-stream beneficial uses identified in the Basin Plan requires maintenance of adequate in-stream flows as well as effluent limitations and other limitations on discharges of pollutants from point and non-point sources to tributaries to the Eel River.

6. The State Water Board has reviewed and considered the plans and project description provided by Brooktrails. Further, the State Water Board has considered the Basin Plan, the existing water quality conditions and project-related controllable factors.
7. Sections 401 of the Clean Water Act requires any applicant for a federal license or permit who seeks to conduct an activity that may result in any discharge to navigable waters, to obtain certification from the State that the discharge will comply with applicable water quality standards. The federal agency issuing permits is the ACOE. The Brooktrails Rubber Spillway Dam Project (Project) will require Nationwide Permits from the ACOE under section 404 of the CWA. Brooktrails submitted an application for section 401 water quality certification on March 5, 2007.
8. The State Water Board is issuing a 401 water quality certification because it has determined that the Brooktrails 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 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 for the North Coast Region.
9. The State Water Board as responsible agency has reviewed and considered the Mitigated Negative Declaration for this Project (State Clearinghouse Number 2006102081), adopted by Brooktrails on October 18, 2006. Brooktrails identified mitigation measures and conditions for the Project that protect the environment in the Final Initial Study/Mitigated Negative Declaration and in their Biological Resources Assessment (December 2006) and Monitoring and Mitigation Plan (May 2007). 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 BROOKTRAILS RUBBER SPILLWAY DAM PROJECT OPERATED BY THE BROOKTRAILS TOWNSHIP COMMUNITY SERVICES DISTRICT will comply with sections 301, 302, 303, 306, and 307 of the Clean Water Act, and with applicable provisions of State law, if the Applicant 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. 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.
4. 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. The Applicant shall take all reasonable measures to protect the beneficial uses of water of the Eel River and tributaries.
5. 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. 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 (DFG 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 the Applicant, the Applicant shall obtain authorization for the take prior to any construction or operation of the Project. The Applicant shall be responsible for meeting all requirements of the applicable Endangered Species Act for the Project authorized under this certification.
7. The Streambed Alteration Agreement, Notification Number 1600-2006-0822-3 (Agreement) issued on June 21, 2007 by the Department of Fish and Game, Bay Delta Region (DFG) shall be incorporated by reference into this water quality certification. The Applicant shall comply with terms of the DFG Agreement. In the event of conflict between terms of that permit and this water quality certification, the conditions of this certification shall control.
8. The North Coast Region shall be notified 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.
9. Best Management Practices (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.
10. Disturbance or removal of vegetation shall not exceed the minimum necessary to complete the project.
11. Fresh concrete or grout that has not set shall not be allowed to contact or enter surface water.
12. Any imported rock placed in the river for construction or armoring slopes shall be washed rock.
13. 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.

14. 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.
15. 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 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. No rubbish shall be deposited within 150 feet of the high water mark of any stream.
16. Upon completion of the Project, all Project-generated debris, building materials and trash shall be removed from the Project site with disposal at appropriate waste disposal sites.
17. Any modifications of the proposed Project may require submittal of a new Clean Water Act Section 401 Water Quality Certification application.
18. The conditions and monitoring and reporting requirements detailed in Chapter 4 of the Final Initial Study/Mitigated Negative Declaration, Chapter 5 of the Biological Resources Assessment, and Chapters 5, 6, 7 and 8 of the Mitigation and Monitoring Plan 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, monitoring, and reporting identified in the Mitigated Negative Declaration, Biological Resources Assessment and Mitigation and Monitoring Plan.
19. All BMPs described in the application for water quality certification 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 measures described in the application for water quality certification.
20. 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.
21. The Applicant shall provide State Water Board and North Coast Region staff access to Project sites to document compliance with this certification.
22. The applicant 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. The Applicant shall be responsible for work conducted by its contractor or subcontractors.

23. 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 North Coast Region shall be notified promptly and in no case more than 24 hours after the unauthorized discharge or water quality problem arises.
24. The Applicant 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.
25. All project work shall be conducted as described in this Order and in the application submitted by the Applicant. 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 the Applicant may be subject to State Water Board enforcement actions.
26. The Eel River watershed is identified on the State of California Clean Water Act Section 303(d) list as impaired for sediment and temperature. Total Maximum Daily Load (TMDL) analyses have been completed for the Eel River watershed sediment and temperature listings. Activities that impact the riparian zone and riparian vegetation are identified as sources contributing to increased stream temperatures. At present, there are no watershed-specific implementation plans for this TMDL. 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 action plans.
27. 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.
28. 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.

ORIGINAL SIGNED BY
Dorothy Rice
Executive Director

January 16, 2008