STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Water Quality Certification for

COOLEY RANCH WATER RIGHT APPLICATIONS PROJECT
Applications 31304, 31362, and 31363

Sources:	Unnamed streams tributary to Dry Creek (Lake Sonoma) thence to the Russian River thence the Pacific Ocean
Hydrologic Unit:	Warm Springs Hydrologic Sub Area No. 114.24, Middle Russian River Hydrologic Area No. 114.20, Russian River Hydrologic Unit No. 114.00
County:	Sonoma County

WATER QUALITY CERTIFICATION FOR FEDERAL PERMIT OR LICENSE

BY THE EXECUTIVE DIRECTOR:

Project Description

1. Klein Foods Inc. (Applicant) proposes to construct new vineyards and a water supply system on the 19,000-acre Cooley Ranch, about 5.5 miles west of the community of Cloverdale in Sonoma County, California. A project vicinity map is shown on Attachment A. Construction will be conducted from June 1 through October 31.

2. Approximately 13,000 acres of the Cooley Ranch are designated as forever wild, and 4,650 acres are designated as an agricultural preserve pursuant to an open space agreement administered by the Sonoma County Agricultural Preservation and Open Space District. The Applicant proposes to store 226 acre-feet per annum of water for irrigation and recreation on the ranch land designated as agricultural preserve.

3. The sources of water for the project are from five unnamed intermittent streams that are tributaries to Lake Sonoma (located on Dry Creek) thence to the Russian River. These unnamed streams are classified as Class II Watercourses in accordance with the California Forest Practice Rules (FPRs).[1]

[1] FPRs define a Class II Watercourse as having fish always or seasonally present off-site within 1000 feet downstream and/or aquatic habitat for non-fish aquatic species.

4. The project causes permanent impacts to 2.1 acres of wetlands and 4,010 linear feet of stream bed and bank within the Warm Springs Hydrologic Sub Unit No. 114.00, Russian River Hydrologic Unit No. 114.00.

5. Applicant has designated 280 acres of vineyards that can be divided into three geographic areas based on the water rights (Attachment A). Water Rights Application 31304 is for the Western Project Area (WP Area); Application 31362 is for the Northern Project Area (NP Area); and Application 31363 will cover the Eastern Project Area (EP Area). The proposed vineyards are currently grassland but were previously used for cultivating wine grapes in the 1930's.

6. The WP Area will consist of 65 acres of vineyards and will include construction of an onstream storage reservoir with a capacity of 48 acre-feet (af) that inundates 3.5 acres behind a 22 foot high dam. Infiltration galleries will be constructed across each of the two unnamed streams and water will be pumped through buried four-inch diameter polyvinyl chloride (PVC) pipelines to fill the reservoir. The typical infiltration gallery construction views for all three project areas are shown in Attachments B-1, B-2, and B-3. Water will be extracted using 15-horsepower diesel pumps.

7. The NP Area will consist of 114 acres of vineyard and an onstream storage reservoir with a capacity of 98 af that inundates 4.5 acres behind a 52 foot high dam. Infiltration galleries will be constructed across each of the two unnamed streams and water will be pumped through buried four-inch diameter PVC pipelines to the reservoir (Attachments B-1, B-2, and B-3).

8. The EP Area will have two vineyards. The western vineyard will be 66 acres and eastern vineyard will be 35 acres. Three reservoirs will be constructed in the EP Area. The eastern half of the EP Area will have a 30 af offstream reservoir that will inundate 1.75 acres behind a 24.9 foot high dam, and the western portion will have two onstream reservoirs. These reservoirs will be 35 af and 15 af, and will inundate 2.5 acre and 1.5 acres, respectively. The dam heights will be 22 feet and 17 feet, respectively. Two infiltration galleries will be constructed in the eastern half of the EP Area and will cross the same watercourse upstream and downstream of the proposed vineyard. One infiltration gallery will be installed across an unnamed stream in the western portion of the EP Area with conveyance to both reservoirs. All conveyance systems in the EP Area will consist of buried four-inch diameter PVC pipelines.

9. The Applicant will preserve 7.3 acres of existing wetlands upstream of the proposed storage facility in the NP Area and proposes to create 2.1 acres of additional wetlands, as shown in Attachment C, in accordance with the Mitigation and Monitoring Plan for the Cooley Ranch Project (MMP), March 2007. This additional wetland acreage replaces 0.01 acre inundated by the 98 af reservoir in the NP Area, and 0.5 acre and 1.6 acres of wetlands in the EP Area that will be inundated by the 15 af and 30 af reservoirs, respectively. Thus, the applicant has

proposed a 1:1 acreage mitigation of created wetlands for addressing the federal and state goals of "no net loss" of wetlands, as established in 40 CFR parts 230-233 (404 (b)(1) guidelines[2], and in State of California, Executive Department, Executive Order W-59-93, respectively.

10. The Applicant has not proposed wetland mitigation at an established mitigation bank or in-lieu fee mitigation, rather has proposed on-site compensatory mitigation to address the goal of "no net loss" of wetlands. The success of compensatory mitigation has been linked to the requirements for wetland condition and function.[3] Most on-site compensatory mitigated wetland projects do not equally replace wetland function and thus the goal of "no net loss" is not achieved with a 1:1 acreage ratio. The North Coast Regional Water Quality Control Board (North Coast Region) staff experience also indicates that wetland creation and function must be demonstrated; otherwise temporal losses of wetlands are likely to occur and the goal of "no net loss" cannot be achieved. A state-wide evaluation of compensatory mitigation projects revealed that the majority of projects that met or exceeded acreage mitigation requirements had an overall mitigation ratio of 1:1.9.[3]

11. The proposed 1:1 mitigation ratio is not sufficient to provide reasonable assurance that the goal of "no net loss" of wetland acreage will be achieved. The Mitigated Negative Declaration (MND) for the project[4] states that if additional mitigation is needed, that the drainage channels downstream of the reservoirs with designated by pass flows will be sufficient to create additional wetlands. This certification requires creation of an additional 1.05 acres of wetland as mitigation for temporal losses and to provide reasonable assurance that the goal of "no net loss" of wetland acreage is achieved. Additionally, this certification requires monitoring and reporting with a reservation of authority to require additional mitigation measures to ensure that the condition and function of the created wetlands will remain high quality

12. The Applicant will enhance Foothill Yellow Legged Frog habitat for an unnamed stream in the EP Area. Water will be diverted from a nearby spring to the unnamed stream to maintain flows.

13. The Applicant will preserve an archeological site of interest in the NP Area. Preservation activities will consist of bypassing upstream runoff by installation of a buried pipeline around the site, as shown on Attachment D.

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[2] 2008 Final Rule on Compensatory Mitigation for Losses of Aquatic Resources issued by the US Army Corp of Engineers (ACOE) and Environmental Protection Agency.

[3] "An Evaluation of Compensatory Mitigation Projects Permitted Under Clean Water Act by the California Water Resources Control Board, 1991-2002", R. F. Ambrose, J. C. Callaway and S. F. Lee, August 2007.

[4] "Initial Study/Mitigated Negative Declaration, Cooley Ranch Water Rights Applications 31304, 31362, and 31363, August 2007", State Water Resources Control Board, Division of Water Rights.

14. Some of the conveyance pipelines will need to cross streams, creeks and other waterways, which will be bridged if necessary (as shown on Attachment E-1); otherwise trenching will be used for pipeline installation. New dirt roads will be constructed within the NP and EP Areas (as shown on Attachment A) to access the reservoirs and infiltration galleries. Culverts will be constructed for the roads, as shown on Attachment E-2.

15. Equipment staging and soil stockpiling sites have been designated within each project area: one each in the NP and WP Areas and two in the EP Area. Three borrow pit sites have been proposed in the EP Area (Attachment A).

Project History

16. Application 31304 was filed on March 14, 2002 and Applications 31362 and 31363 were filed on September 26, 2002 with the State Water Board, Division of Water Rights (Division) for the appropriation of water for the project.

17. On October 3, 2003, the Division issued a Public Notice of Applications 31304, 31362 and 31363 in accordance with Water Code sections 1300 through 1304. Three protests were accepted and dismissed by way of conditions in the water right permits or mitigation measures.

18. The Division issued Division Decision 2008-01 (August 2008) that summarized staff findings from the Division field investigation, summarized activities taken under the California Environmental Quality Act (CEQA), and ordered terms and conditions for the monitoring and mitigation of riparian and wetland habitat.

19. The State Water Board was the lead agency under CEQA and filed an Initial Study/MND with the State Clearinghouse on September 7, 2007. State Clearinghouse Number 2007092024 was issued to identify the CEQA document for this project. The Division filed its Notice of Determination and final MND with the State Clearinghouse on August 8, 2008.

20. Water Rights Permits 21227, 21228, and 21229 (for Applications 31304, 31362, and 31363, respectively) were issued by the Division on November 8, 2008.

21. An application for a water quality certification pursuant to section 401 of the Clean Water Act was received on December 12, 2007 for the project. The Division requested additional information to complete the application on January 10, 2008, which was received on January 29, 2009 along with the $1,000 application fee. The Applicant submitted the Draft Storm Water Pollution Prevention Plan for the project on March 16, 2009.

22. California Department of Fish and Game (DFG) issued the 1602 Lake and Streambed Alteration Agreement (Notification No. 160-2006-0320-3) for the Applicant's project on June 4, 2009.

Construction Activities

23. Heavy equipment will be used to construct the reservoirs, wetlands, roads, pipelines, crossings, and vineyards. The construction equipment will consist of earthmovers, bulldozers, excavators, sheep foot rollers, scrapers, backhoes, vibratory compactors, water trucks, and dump trucks. Rubber-tired or rubber tracked equipment will be used to construct the wetlands.

24. Vegetation removal and tree cutting will be conducted at the reservoir and infiltration gallery sites. The inundated area of the reservoirs will be cleared of all structures, trees, and other vegetation. Exotic invasive species in the wetlands will be removed by hand-held equipment, mechanical methods, or herbicide application, as necessary.

25. Approximately 280 acres of grassland will be disked for conversion to vineyards. Vineyard roads and fences will be constructed around the perimeter of the vineyards. Construction of new dirt roads and trenches for the buried conveyance pipelines will follow the existing topography with minimal changes in grade. Cut-off ditches will be installed along key locations of the vineyard roads to control runoff from entering the vineyard.

26. Temporary check dams will be installed upstream of the reservoir sites to retain any flows during construction.

27. Excavated material from the reservoir site will be used to construct the earthen dam. Material from the borrow sites will be used only if material from the reservoir sites are insufficient or not suitable for construction of the dams.

28. The spillway sills and channels will be constructed of grouted riprap. Reservoir outlet pipes will be encased in concrete and rip-rap will be installed at the outlets and in the channels downstream of the reservoirs to dissipate the discharge energy.

Construction Best Management Practices (BMPs)

29. Applicant proposes to establish a minimum setback of 50 feet from any drainage channel, wetland and stream. Unless other runoff controls are implemented, a larger setback of 100 feet for the equipment staging areas and sediment stockpiles is needed during construction activities due to the project topography and the proximity of these areas to existing streams and drainages.

30. Vehicle and equipment cleaning, fueling, and maintenance will be conducted at the staging sites and will follow the guidelines set forth in the January 2003 California Storm Water Quality Association (CASQA) Handbook according to the standards identified in the following Fact Sheets:

Activity	Fact Sheet
Cleaning	NS-8
Fueling	NS-9
Maintenance	NS-10

31. Clearing and grubbing of the reservoir and vineyard sites of trees and other vegetation will have erosion measures implemented for the prevention of runoff and erosion impacts in accordance with the guidelines identified in CASQA Fact Sheet WM-3. Excavated trees will be stockpiled on the perimeter road of the vineyards and will be disposed of by burning during the authorized burn periods, as specified in Section 2-300 of the North Sonoma Air Pollution Control District Procedures.

32. Stockpile management will be conducted using the control measures as set forth under CASQA Fact Sheet WM-3 to prevent runoff and erosion impacts.

33. Temporary check dam installation, maintenance and removal upstream of the reservoirs will follow the guidelines set forth in CASQA Fact Sheet SE-4.

Regulatory Authority

34. 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."

35. 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) and with any other appropriate requirement of state law. Section 401 directs the agency responsible for certification to prescribe effluent limitations and other limitations necessary to ensure such compliance, mandating that such certification conditions shall become conditions of any federal license or permit for the project. The State Water Board has delegated this function to the Executive Director by regulation. (Cal. Code Regs., tit. 23, § 3838, subd. (a).)

36. The ACOE has determined an Individual Permit under section 404 of the Clean Water Act is required for the project. ACOE identification number for the project is 28490N.

37. 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.

38. The North Coast Region has adopted, and the State Water Board and the 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.

39. The Basin Plan identifies existing beneficial uses for the Warm Springs Hydrologic Subarea within the Middle Russian River Hydrologic Area as municipal and domestic supply; agricultural supply; industrial service supply; groundwater recharge; freshwater replenishment; navigation; hydropower generation; water contact recreation; non-contact water recreation; commercial and sport fishing; warm freshwater habitat; cold freshwater habitat; wildlife habitat; rare, threatened or endangered species; migration of aquatic organisms; spawning, reproduction, and/or early development; and aquaculture. The Basin Plan also identifies industrial process supply as a potential beneficial use for water in the Warm Springs Hydrologic Subarea.

40. The State Water Board has reviewed and considered the plans and project description provided by the Applicant. Further, the State Water Board has considered the North Coast Region Basin Plan, the existing water quality conditions and project-related controllable factors.

41. The State Water Board has listed the Russian River Hydrologic Unit on the Clean Water Act Section 303(d) list. The entire Russian River Hydrologic Unit is listed as impaired for sediment and temperature. Agriculture, agricultural storm runoff, road construction, land development, hydromodification, channelization, erosion, dam construction, upstream impoundment, removal of riparian vegetation, flow and habitation modification, streambank modification and destabilization, and drainage and filling of wetlands are identified as sources contributing to sedimentation and siltation, and temperature pollutants or stressors in the watershed. At present, there are no watershed specific total maximum daily loads (TMDLs) that have been established for the Russian River Hydrologic Unit.

42. The State Water Board has adopted Water Quality Order 99-08 for General Permit for Stormwater Discharges Associated with Construction Activity. The General Permit requires all dischargers where their construction activity disturb one or more acres to:

- Develop and implement a Storm Water Pollution Prevention Plan (SWPPP) which specifies BMPs that will prevent all construction pollutants from contacting storm water and with the intent of keeping all products of erosion from moving into receiving waters;
- Eliminate or reduce non-storm water discharges to storm sewer systems and other waters of the United States; and
- Perform inspections of all project facilities to evaluate the effectiveness of BMPs.

43. The State Water Board has reviewed and considered the MND for this project, and is concurrently adopting CEQA findings and an amended MMP with this water quality certification. 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 COOLEY RANCH WATER RIGHT APPLICATIONS PROJECT FOR APPLICATIONS 31304, 31362, and 31363 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.

Construction Conditions

1. All BMPs described in the application for water quality certification and supplemental information are hereby incorporated by reference and are conditions of approval of this Certification. Notwithstanding any more specific conditions in this Certification, Applicant shall comply with all measures described in this application for water quality certification and its supplements.

2. Oiling of roads for the purpose of dust control during construction or in association with any other activity of whatever nature is prohibited.

3. All imported riprap, rocks and gravels used for construction shall be pre-washed.

4. BMPs for erosion, sediment and turbidity control shall be implemented and be in place at commencement of, during, and after any ground clearing activities, earth movement, excavation, or any other project activities that could result in erosion or sediment discharges to surface waters.

5. Fresh or unset cement, concrete, gunite, or grout is prohibited from contacting or entering surface waters. Concrete trucks or grout mixers shall be cleaned at a designated concrete washout area within the staging site(s) of each project area. Washout water is prohibited from contacting or entering surface waters.

6. No construction material, debris, spoils, soil, silt, sand, bark, slash, sawdust, rubbish, steel, 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 surface waters.

7. 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.

8. Equipment refueling shall only take place in a designated containment area within the staging site at each project area. Spill and containment equipment (oil spill booms, sorbent pads, etc.) shall be maintained onsite at all site locations where such equipment is used.

9. Stationary equipment (motors, pumps, generator, etc.) located within or adjacent to the waterway shall be positioned over drip pans. Containment equipment shall be used for the diesel powered well pumps at each infiltration gallery.

10. Containment equipment consisting of plastic sheets or equivalent materials with a perimeter berm shall be used for storage of materials and chemicals. Spill kits shall be provided onsite and spills must be immediately cleaned up and the contaminated material placed in containers for disposal.

11. Stockpiles for the excavated sediment, debris, and rocks in each project area shall be surrounded with fiber rolls and/or silt fencing, and erosion control blankets must be available on site to cover the stockpiles when needed to control runoff during precipitation events.

12. Disturbance or removal of vegetation shall not exceed the minimum necessary to complete the project. A 50 foot setback to any watercourse shall be maintained for stockpiled trees and vegetation.

13. A setback of 100 feet to any watercourse shall be maintained for all excavated sediment, debris and trash during construction activities. A 50 foot setback may be implemented if containment and/or cover equipment are used to control runoff during rainfall events.

14. No ground disturbing activities shall occur within the setback area, including, but not limited to, grading, herbicide spraying, installation of roads and fencing, and storage of construction materials and equipment. Planting, maintenance, and irrigation of native riparian vegetation are permissible within the setback areas.

15. Construction and ground disturbance activities within 250 feet of Foothill Yellow Legged Frog and Northwestern Pond Turtle habitat are prohibited. Restart of construction activities within the habitat of these species requires DFG approval.

16. The Applicant shall conduct wetland mitigation by creating an additional 1.05 acres of new wetlands, thereby creating a total of 3.15 acres of wetlands.

17. Exclusionary fencing shall be installed around wetland areas that have been preserved and/or created and the surrounding setbacks. Exclusionary fencing shall also be installed within areas near roads or vineyards, and shall allow passage of native animals. Vehicle traffic (farm equipment, wheeled/tracked vehicles) is prohibited in these wetland areas. Hydrology that has historically served these wetlands shall not be impacted by vineyard or drainage activities.

18. Temporary check dams shall be placed upstream of the construction sites of new culverts and pipeline crossings at streams and watercourses. These dams, in addition to those proposed for the reservoirs, shall be installed, maintained and removed consistent with CASQA Fact Sheet SE-4. Check dams shall remain in place until completion of construction activities.

19. The Applicant shall select and apply herbicides according to the product label directions and uses approved by the United States Environmental Protection Agency and the California Department of Pesticide Regulation, and per applicable provisions of this Order. Herbicide application shall be conducted on a dry day and is prohibited from occurring during rainfall events. The extent of herbicide application shall be limited to those areas where invasive vegetation has been identified. Herbicides shall be stored in the original container and empty containers shall be disposed at authorized waste disposal site.

20. Soil stabilization and erosion control measures shall be implemented for the downstream face of all dams and for banks of any watercourses affected by construction activities.

21. All exposed and disturbed slopes in the places of use that are not cultivated for vineyards shall be covered with three inches of straw for winterization until dense growth of deep-rooted ground cover can be established.

22. Erosion control equipment and measures, consistent with those identified in the Storm Water Pollution Prevention Plan (SWPPP) required by this certification, shall be implemented to all graded areas of exposed soil within the places of use. The equipment and measures shall be installed prior to the first wet season after the land conversion and shall remain and maintained in place.

23. Roads shall be constructed so that they do not concentrate flow of water or increase sediment delivery to streams or other waters of the State. All culverts must meet 100-year return interval flow design standard, and retain natural hydrologic function by hydrologically disconnecting roads to the extent feasible.

24. Discharge of sediment laden water to watercourses or water bodies that exceeds the applicable level(s) in the Basin Plan is prohibited.

25. All water quality treatment and control facilities and systems used shall be properly operated and maintained to achieve compliance with conditions of this certification.

26. All construction debris and trash shall be contained and regularly removed from the work area to the staging area during construction activities. Upon completion, all project-generated debris, building materials, excess material, waste, and trash shall be removed from all the project sites for disposal at an authorized landfill or other disposal site.

Monitoring and Reporting Conditions

27. Applicant shall submit a plan that identifies the area within the project where an additional 1.05 acres of wetlands will be created. The plan shall be submitted to the Deputy Director for Water Rights and the Executive Officer of the North Coast Region, and shall be approved by the Deputy Director for Water Rights upon consultation with the Executive Officer of the North Coast Region.

28. Wetlands that are preserved and/or created shall be monitored to assure functionality, specifically for preservation of the natural hydrologic conditions and wildlife habitat within the project areas. Monitoring and reporting of existing and preserved or created wetlands shall be conducted in accordance with the MMP. Monitoring shall be conducted annually for a period of ten years. Wetland Annual Reports shall be submitted to the Deputy Director for Water Rights and the Executive Officer of the North Coast Region, and shall be approved by the Deputy Director for Water Rights upon consultation with the Executive Officer of the North Coast Region. If monitoring and reporting indicates that vineyard creation or operation and maintenance activities are adversely impacting wetlands, or that the created wetlands have reduced functionality then remedial measures or additional mitigation will be required by the Deputy Director for Water Rights.

29. Applicant must develop and implement a final SWPPP for the project with BMPs for the NP, EP and WP Areas that address:

    - Erosion Control;
    - Sediment Control;
    - Wind Erosion Control;
    - Stabilization Controls;
    - Non-Storm Water Management;
    - Waste Management and Materials Pollution Controls; and
    - Post-Construction Control Practices.

    The final SWPPP shall be submitted to the Deputy Director for Water Rights and the Executive Officer of the North Coast Region and shall be approved by the Deputy Director for Water Rights upon consultation with the Executive Officer of the North Coast Region. Reporting shall be conducted in accordance with the approved SWPPP.

30. Applicant must develop and implement a Rain Event Action Plan (REAP) to protect all exposed portions of the project area within 48 hours prior to any

precipitation event. The REAP shall be submitted to the Deputy Director for Water Rights and the Executive Officer of the North Coast Region and shall be approved by the Deputy Director for Water Rights upon consultation with the Executive Officer of the North Coast Region. Reporting shall be conducted in accordance with the approved REAP.

31. Applicant must develop a disposal plan for rock and accumulated sediment associated with the check dams, and for excavated sediment. The disposal plan shall be submitted to the Deputy Director for Water Rights and the Executive Officer of the North Coast Region and shall be approved by the Deputy Director for Water Rights upon consultation with the Executive Officer of the North Coast Region. The final disposition of rock and accumulated sediment shall be implemented in accordance with the approved plan.

Notification Conditions

32. The Applicant shall provide a copy of this Certification, the SWPPP and the REAP 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.

33. The Deputy Director for Water Rights and the Executive Officer of the North Coast Region shall be notified one week prior to the commencement of ground disturbing activities, and upon request, a construction schedule shall be provided to staff of the State Water Board and North Coast Region in order for staff to be present onsite, to answer any public inquiries during construction, and to document compliance with this certification.

34. If at any time an unauthorized discharge to surface waters (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 Deputy Director for Water Rights and the Executive Officer of the North Coast Region shall be notified within 24 hours after the unauthorized discharge or water quality problem arises.

35. 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 review and written approval. If the State Water Board is not notified of a significant change to the project, it will be considered a violation of this certification.

General Conditions

36. No construction shall commence until all necessary federal, state and local approvals have been obtained for the construction of the project facilities, the point of diversion, place of use and the conveyance system.

37. 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. Applicant shall take all reasonable measures to protect the beneficial uses of the middle and lower Russian River Watershed.

38. If TMDLs are established and implementation plans are adopted for this watershed prior to completion of project activities, the North Coast Region may request the State Water Board revise the provisions of this Order to address actions identified in such action plans, and the State Water Board reserves the right to do so.

39. 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.

40. 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 (Fish & Game Code, §§ 2050 - 2097) or the federal Endangered Species Act (16 U.S.C. §§ 1531 - 1544). If a take will result from any act authorized under this certification or water rights held by the Applicant, Applicant shall obtain authorization for the take prior to any construction or operation of the project. Applicant shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this certification.

41. 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 California Code of Regulations, title 23, section 3855, subdivision (b), and the application specifically sought a FERC license or amendment to a FERC license for a hydroelectric facility.

42. The authorization to operate the project pursuant to this certification is conditioned upon payment of all applicable fees for review and processing of the application for water quality certification and administering the State's water quality certification program provided under California Code of Regulations, title 23, section 3833.

43. 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.

44. 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.

45. 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.

46. 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).

47. Activities related to this application that threaten or potentially threaten water quality shall be subject to further review by the State Water Board and North Coast Region. The State Water Board reserves authority to modify this certification if monitoring results indicate that the project would violate water quality objectives or impair the beneficial uses of the Warm Springs Watershed.

48. 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.

49. The State Water Board may add to or modify the conditions of this certification as appropriate to coordinate the operations of this project and other water development projects, where coordination of operations is reasonably necessary to achieve water quality standards or protect beneficial uses of water.

50. The State Water Board shall provide notice and an opportunity for hearing in exercising its authority under conditions 47, 48, and 49 above.

ORIGINAL SIGNED BY
Dorothy Rice
Executive Director

September 10, 2009
Date

Attachments

WToy:ds 7/23 and 8/6/2009
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