
State Water Resources Control Board

June 21, 2024

Mr. Robert Barsotti
Black Oak Ranch Partnership
P.O. Box 1479
Laytonville, CA 95454
Sent via Email: barsotti@mcn.org

**Black Oak Ranch Water Conservation Project
Mendocino County
Streeter Creek and Unnamed Tributary, Tributaries to Tenmile Creek**

NOTICE OF APPLICABILITY, CLEAN WATER ACT SECTION 401 GENERAL WATER QUALITY CERTIFICATION FOR BLACK OAK RANCH WATER CONSERVATION PROJECT, MENDOCINO COUNTY, CALIFORNIA

Dear Mr. Barsotti:

On December 28, 2023, the State Water Resources Control Board (State Water Board) received Black Oak Ranch Partnership's (Partnership) Notice of Intent (NOI) to enroll the Black Oak Ranch Water Conservation Project (Project) under the General Order for Clean Water Act Section 401 Water Quality Certification and Waste Discharge Requirements, Order No. WQ-2022-0048-DWQ for Restoration Projects Statewide ([Restoration General Order](#), Enclosure A)¹. Implementation of the Project will require a permit from the United States Army Corps of Engineers (USACE) pursuant to Section 404 of the Clean Water Act. The Partnership is seeking authorization under USACE's Nationwide Permit (NWP) No. 27 Aquatic Habitat Restoration, Enhancement, and Establishment Activities.

State Water Board staff have reviewed the Partnership's NOI and find the Project meets the requirements of the Restoration General Order. The Project is hereby enrolled under the Restoration General Order. The Restoration General Order certifies that as long as all the conditions listed in the order are met, implementation of restoration projects statewide will comply with Clean Water Act sections 301, 302, 303, 306, and 307. The Partnership may proceed with the Project following any additional federal and/or state approvals such as USACE authorization under NWP No. 27.

The Partnership shall comply with this Notice of Applicability (NOA) and all applicable Restoration General Order requirements. Enclosure B provides additional information related to the Restoration General Order's conditions to conform to the recommendation

¹ Available online at: https://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2022/wqo2022-0048-dwq.pdf.

in 40 CFR § 121.7(d)(3). Failure to comply with this NOA and the Restoration General Order constitutes a violation of the California Water Code and may result in enforcement action or termination of enrollment under the Restoration General Order.

PROJECT NOTICING

In accordance with Section 401(a)(1) of the Clean Water Act and California Code of Regulations, title 23, section 3858, the State Water Board issued a public notice for the Project on January 26, 2024. The State Water Board did not receive any comments relevant to Project certification.

PROJECT DESCRIPTION

The Project is on Streeter Creek and an Unnamed Tributary, which are tributaries of Tenmile Creek, and is located approximately 5 miles north of Laytonville in Mendocino County. The overall objective of the Project is to shift the timing of the Partnership's diversions from the dry summer season to the wet winter season to improve stream habitat. To accomplish this objective, the Partnership will construct a new pond and upgrade the storage tank system to be able to store water diverted in the wet winter and spring months for use during the dry season. The Partnership will then forbear diverting water from the creeks in the dry summer and fall. Collecting and storing water during the wet season and forbearing in the dry summer and fall will improve stream habitat for anadromous fish and other aquatic species in Tenmile Creek that rely on sustained flow in the dry season. The Partnership proposes to dedicate approximately 5.55 acre-feet (1.11 acre-feet/month) of flow to Tenmile and Streeter Creeks during the dry season (May through September) each year.

Black Oak Ranch currently has riparian water rights for Streeter and Tenmile Creeks. An appropriative water right is being acquired as part of this Project to facilitate storage during the wet winter and spring months. Project actions include: (1) installing a Coanda box in an Unnamed Tributary for diversion; (2) constructing a small pond to store the water diverted by the Coanda box; (3) upgrading an existing point of diversion on Streeter Creek to increase pumping capacity and improve the streambank; (4) augmenting the existing storage tank system to increase capacity; and (5) constructing multiple trenches for water pipes and electrical lines for the new and upgraded water distribution system.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

On August 16, 2022, the State Water Board adopted Order WQ 2022-0048-DWQ and certified the consolidated final Program Environmental Impact Report ([PEIR](#); State Clearinghouse (SCH) No. 2019100230) for restoration projects statewide.² The State Water Board reviewed and considered the PEIR as required by CEQA Guidelines sections 15168 subsections (c)(1) and (2) and concluded that the Project is within the overall scope of the PEIR, the activities will not result in environmental effects that were not examined in the PEIR, and none of the conditions described in CEQA Guidelines section 15162 calling for the preparation of a subsequent environmental impact report have occurred. The State Water Board hereby incorporates the mitigation, monitoring,

² https://www.waterboards.ca.gov/water_issues/programs/cwa401/generalorders.html

and reporting program. The State Water Board will file a Notice of Determination for this Project consistent with CEQA Guidelines section 15094(b).

TRIBAL CONSULTATION

On May 17, 2023, pursuant to Restoration General Order Condition E.7, the Eel River Recovery Project (ERRP) on behalf of the Partnership received a Sacred Lands File and Native American Contacts List from the Native American Heritage Commission. On June 5, 2023, EERP notified tribal representatives of tribal organizations traditionally and culturally affiliated with the Project's geographic area that the Partnership planned to file an NOI for the Project. ERRP received no comments from any tribal representatives. ERRP completed tribal consultation for the Project consistent with Restoration General Order E.7. As the State Water Board concludes the Project is within the scope of the PEIR (as discussed above), the State Water Board has already complied with tribal consultation requirements pursuant to Assembly Bill 52 (Statutes 2014, Chapter 532, Gatto) as described in the PEIR.

CONSTRUCTION GENERAL PERMIT

Coverage under the National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges Associated with Construction and Land Disturbance Activities ([Construction General Permit](#))³ is required for discharges of pollutants associated with construction activities that disturb one or more acres of soil or activities that disturb less than one acre but are part of a larger common plan of development that in total disturbs one or more acres. Construction activities subject to the Construction General Permit include clearing, grading, and disturbances to the ground, such as stockpiling or excavation, but do not include regular maintenance activities performed to restore the original line, grade, or capacity of a facility. Coverage is required pursuant to Clean Water Act sections 301 and 402 which prohibit certain discharges of stormwater containing pollutants except in compliance with an NPDES permit. (33 U.S.C. §§ 1311, 1342(p); 40 C.F.R. pts. 122, 123, and 124.)

PROJECT FEE

An application fee of \$796 was received by check on December 28, 2023. The 2023-2024 Application Fee for Category D: Ecological Restoration and Enhancement Projects is a flat fee set at \$796. Accordingly, the total fee associated with this NOA is \$796. This NOA is conditioned on total payment of any fee required under California Code of Regulations, title 23, division 3, chapter 28. Annual fees may apply if Project implementation, including any required monitoring, notification, or reporting, exceeds 12 months from this NOA. Annual fees will continue to be charged until a Notice of Project Complete Letter is issued by the Deputy Director for the Division of Water Rights (Deputy Director). Failure to notify the State Water Board of Project completion may result in continued billing of annual fees.

³ Water Quality Order No. 2009-0009-DWQ NPDES No. CAS000002, as amended by Order No. 2010-0014-DWQ, Order No. 2012-0006-DWQ, Order No. 2022-0057-DWQ, and any amendments thereto. Available online at: https://www.waterboards.ca.gov/water_issues/programs/stormwater/construction/general_permit_reissuance.html

AUTHORIZED IMPACTS

Excavation and fill activities authorized by this NOA are limited to 7.0 acres and 0.002 acres/120 linear feet of temporary impacts⁴ to upland areas and a stream channel, and 9 cubic yards/70 linear feet of permanent impacts⁵ to a stream channel.

PROJECT SPECIFIC AVOIDANCE AND MINIMIZATION MEASURES

The Partnership shall implement the Avoidance and Minimization and Best Management Practices (Enclosure C) identified in its December 28, 2023 NOI.

WATER RIGHTS COMPLIANCE

The Partnership shall not operate the diversion until an appropriative water right permit associated with Application A033365 is issued. The Partnership shall comply with the appropriative water right permit associated with Application A033365, once issued. If the Partnership chooses to proceed with Project construction in advance of issuance of an appropriated water right permit, the Partnership shall provide the Deputy Director, for review and consideration of approval, with a schedule and sequencing of which elements of the Project will be completed in advance of issuance of the appropriative water right permit associated with Application A033365 and which elements will be completed following issuance of appropriative water right permit. The Deputy Director may require modifications as part of approval. The Partnership shall not proceed with construction in advance of issuance of the appropriative water right permit unless Deputy Director approval is granted.

REQUIREMENTS

The Partnership shall comply with all applicable conditions of the Restoration General Order, including but not limited to the following:

- Pursuant to section IX of the Restoration General Order, the Partnership shall minimize impacts to waters of the state to the greatest extent possible. To comply with the requirements of this NOA, the Partnership shall at a minimum implement applicable water resource-related mitigation measures outlined in Attachment A of the Restoration General Order.
- Pursuant to section XIII of the Restoration General Order, the Partnership shall implement the Project in conformance with the information provided in the December 28, 2023 NOI. Any proposed changes to the Project design described in the NOI must be submitted to and approved by the Deputy Director prior to implementation.
- Pursuant to section XIII.B.1.a of the Restoration General Order, the Partnership shall submit a Commencement of Construction Notice to the Deputy Director at least seven (7) days prior to the start of initial ground disturbance activities.

⁴ Temporary impacts from the Project include seven acres of upland grading and the disturbance of the streambed and riparian bank during installation of the new diversion structure on the Unnamed Tributary and upgrades to the point of diversion on Streeter Creek.

⁵ Permanent impacts include the installation of diversion structures into the bed and bank of the Unnamed Tributary and Streeter Creek. Boulders and large woody debris that comprise the fish habitat enhancement structure that buttress the Streeter Creek point of diversion will be permanent but beneficial.

- Pursuant to section XIII.B.1.c of the Restoration General Order, the Partnership shall submit a Request for Notice of Project Complete Letter to the Deputy Director within 30 days following completion of all Project activities including post-construction monitoring of restoration sites. Failure to notify the State Water Board of Project completion may result in continued billing of annual fees until a Notice of Project Complete Letter is issued. Upon approval of the request, the State Water Board will issue a Notice of Project Complete Letter to the Project proponent.
- Pursuant to section XIII.D.4 of the Restoration General Order, nothing in this Order shall be construed as State Water Board approval of the validity of any water rights, including pre-1914 claims. The State Water Board has separate authority under the California Water Code to investigate and take enforcement action, if necessary, to prevent any unauthorized or threatened unauthorized diversions of water. Prior to diverting water from new or updated points of diversion, the Partnership shall obtain any needed water right permit or license modification approvals from the State Water Board's Division of Water Rights.
- Pursuant to section XIII.E.9 of the Restoration General Order, the Partnership shall obtain coverage under and comply with the Construction General Permit and any amendments thereto.

If you have questions about this NOA, please contact Glenn Hoffmann, Project Manager, by phone call to: (916) 319-9943 or email to: Glenn.Hoffmann@waterboards.ca.gov.

Sincerely,



Eric Oppenheimer
Executive Director

Enclosures:

- Enclosure A: General Order for Clean Water Act Section 401 Water Quality Certification and Waste Discharge Requirements for Restoration Projects Statewide, Order No. WQ 2022-0048-DWQ
- Enclosure B: Additional Information for Conformity with 40 CFR § 121.7(d) for Order WQ 2022-0048-DWQ Conditions
- Enclosure C: Notice of Intent (NOI) Avoidance and Protection

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