

STATE OF CALIFORNIA  
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN FRANCISCO BAY REGION

CLEANUP AND ABATEMENT ORDER No. R2-2017-0025

FOR:

BREMER FAMILY WINERY VINEYARD  
NAPA COUNTY

The California Regional Water Quality Control Board, San Francisco Bay Region (hereinafter the Water Board), finds that:

1. John and Laura Bremer and Maryann and Gregory Nowell (Dischargers) are named as dischargers under this Cleanup and Abatement Order (Order) because they own the Bremer Family Winery Vineyard (Site) and caused or allowed waste to be discharged to waters of the State and United States (referred to collectively as waters of the State hereafter), or to a location where it could discharge to waters of the State, as described herein.
2. The Site is a 156-acre property located on the east side of Deer Park Road at its northern intersection with Sanitarium Road, in St. Helena (Assessor's Parcel Numbers 021-400-002, -004, -005, 021-420-027, and 025-370-057 and -058).
3. The Site is located in the Canon Creek watershed, tributary to Napa River. Canon Creek discharges to the Napa River approximately two miles southwest of the Site. An unnamed creek bisects the northern portion of the Site and continues along the western property boundary before joining Canon Creek approximately 0.75 mile south of the Site. A second unnamed creek bisects the southern portion of the Site before joining the first unnamed creek along the western boundary of the Site. The second unnamed creek is referred to hereafter as the "Creek".
4. On September 19, 2016, Water Board staff inspected the Site to assess site conditions after receiving complaints related to construction of a vineyard. During the inspection, Water Board staff observed unauthorized fill in the Creek and evidence of unauthorized construction activities including installation of culverts, placement of rock fill below ordinary high water extending up into the adjacent floodplain and riparian area, and removal of riparian vegetation. Appendix A to this Order is a copy of the inspection report and photographs taken during the inspection.
5. The Dischargers failed to apply for or obtain proper authorizations and permits from the Water Board for the work at the Site. In addition, based on conversations with California Department of Fish and Wildlife (CDFW) and U.S. Army Corps of Engineers (Corps) staff, there is no record that the Dischargers obtained proper authorizations or permits from either CDFW or the Corps.
6. The Creek is a water of the State and United States and is a tributary to the Napa River.
7. The Water Quality Control Plan for the San Francisco Bay Basin (Basin Plan) defines the existing and potential beneficial uses for waters within the Region. The beneficial uses of any water body identified in the Basin Plan generally apply to all its tributaries. The Basin Plan designates the following existing and potential beneficial uses for the Napa River: agricultural

supply; municipal and domestic supply; groundwater recharge; commercial and sport fishing; cold freshwater habitat; fish migration; preservation of rare and endangered species; fish spawning; warm freshwater habitat; wildlife habitat; water contact recreation; noncontact water recreation; and navigation (Water Board, 2015).

8. The Dischargers have unreasonably affected or threaten to affect water quality and beneficial uses by placing fill in the Creek and performing unauthorized construction activities as described herein.
9. The Dischargers' unauthorized construction activities at the Site are in violation of California Water Code (CWC) sections 13260 and 13264, federal Clean Water Act (CWA) sections 301 and 401, and the Basin Plan, as described below:
  - a. CWC section 13260 requires that any person discharging waste, or proposing to discharge waste, within any region that could affect the quality of the waters of the State, shall file with the appropriate Water Board a Report of Waste Discharge (ROWD). CWC section 13264 further provides that no person shall initiate any new discharge of waste, or make any material changes in any discharge, prior to the filing of the ROWD required by CWC section 13260. The Dischargers have not filed a ROWD with the Water Board for the unauthorized construction activities at the Site, which could adversely impact the quality of waters of the State. Accordingly, the Dischargers are in violation of CWC sections 13260 and 13264.
  - b. CWA section 301 prohibits the discharge of any pollutant by any person.
  - c. CWA section 404 requires a permit before dredged or fill material may be discharged into waters of the United States, unless the activity is exempt from section 404 regulations. CWA section 401 requires an applicant to obtain a related certification from the state in which the discharge originates or construction occurs, certifying (with or without additional conditions) that the activity is consistent with a number of specifically identified CWA provisions. Title 23 of the California Code of Regulations, section 3855, requires that "an application for water quality certification shall be filed with the regional board executive officer." The Dischargers have not filed an application for a CWA section 401 Water Quality Certification for the unauthorized activities that resulted in a discharge of fill to waters of the State. Accordingly, the Dischargers are in violation of CWA section 401.
  - d. Chapter 4, Table 4-1 of the Basin Plan, Discharge Prohibition No. 9, prohibits the discharge of silt, sand, clay, or other earthen materials from any activity in quantities sufficient to cause deleterious bottom deposits, turbidity, or discoloration in surface waters or to unreasonably affect or threaten to affect beneficial uses. The Dischargers' unauthorized installation of culverts, placement of rock fill below ordinary high water extending up into the adjacent floodplain and riparian area, and removal of riparian vegetation has resulted in the discharge and/or threatened discharge of soil and other earthen materials into the Creek and down-gradient receiving waters, including the Napa River, thereby unreasonably affecting or threatening to affect beneficial uses. Napa River is a CWA section 303(d)-listed sediment-impaired water body due to excessive erosion and fine sediment discharges and the resulting adverse impacts to fish habitat. Fine sediment clogs spawning gravels and

degrades rearing habitat, contributing to the decline of salmon and steelhead in the Napa River watershed. Accordingly, the Dischargers' unauthorized activities at the Site are in violation of the Basin Plan.

10. CWC section 13304 requires that any person who has discharged or discharges waste into waters of the State in violation of any waste discharge requirement or other order or prohibition issued by a Water Board or the State Water Resources Control Board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into waters of the State and creates, or threatens to create, a condition of pollution or nuisance, shall, upon order of the Water Board, clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts.
11. Based on the above findings, the Water Board finds that the Dischargers have caused or permitted waste to be discharged, or deposited where it has been discharged, into waters of the State and created or threatens to create a condition of pollution. As such, pursuant to CWC sections 13267 and 13304, this Order requires the Dischargers to submit technical reports and undertake corrective action to clean up the waste discharged and abate its effects. The burden of preparing technical reports required pursuant to CWC section 13267, including costs, bears a reasonable relationship to the need for the reports and the benefits to be obtained from the reports, namely the restoration of beneficial uses at the Site.
12. Issuance of this Order is an action to enforce the laws and regulations administered by the Water Board and for the protection of the environment. As such, this action is categorically exempt from the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 *et seq.*), pursuant to section 15321, subdivision (a)(2), of title 14 of the California Code of Regulations. This Order generally requires the Dischargers to submit plans for approval prior to implementation of cleanup activities at the Site. Submittal of plans is exempt from CEQA as submittal will not cause a direct or indirect physical change in the environment or is an activity that cannot possibly have a significant effect on the environment. CEQA review at this time would be premature and speculative, as there is not enough information concerning the Dischargers' proposed remedial activities and possible associated environmental impacts. If the Water Board determines that implementation of any plan required by this Order will have a significant effect on the environment, the Water Board will conduct the necessary and appropriate environmental review prior to the Executive Officer's approval of the applicable plan. The Dischargers will bear the costs, including the Water Board's costs, of determining whether implementing any plan required by this Order will have a significant effect on the environment and, if so, in preparing and handling any documents necessary for environmental review.
13. Pursuant to CWC section 13304, the Dischargers are hereby notified that the Water Board is entitled to, and may seek reimbursement for, all reasonable costs actually incurred by the Water Board to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by this Order.

IT IS HEREBY ORDERED, pursuant to CWC sections 13267 and 13304, that the Dischargers shall submit the required technical reports and clean up the waste discharged, abate its effects, and take other remedial actions as follows:

### **Prohibitions**

1. No unauthorized construction-related materials or wastes shall be allowed to enter into or be placed where they may be discharged into waters of the State.
2. The discharge of sediment, waste products, hazardous materials, or other materials that will degrade, or threaten to degrade, water quality, or adversely affect, or threaten to adversely affect existing or potential beneficial uses of waters of the State is prohibited.
3. The discharge of sediment into waters of the State resulting from failure to provide effective erosion and sediment control measures is prohibited.
4. Removal of riparian vegetation in a manner that impacts water quality in any creek, or other water of the State is prohibited.
5. The take, or incidental take, of any special status species is prohibited. The Dischargers shall use the appropriate protocols, as approved by CDFW, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service, to ensure that activities do not impact the beneficial use of the preservation of rare and endangered species or violate the California or federal Endangered Species Acts.

### **Provisions**

1. No later than September 6, 2017, the Dischargers shall submit, acceptable to the Water Board's Executive Officer, the following:
  - a. A technical report providing a description of the recent unauthorized construction activities at the Site and an assessment of the impacts to the Creek and associated riparian habitat. This technical report shall describe in detail the nature and extent of the unauthorized fill and vegetation clearing activities by: providing a map illustrating the extent of unauthorized construction activities at the Site; calculations quantifying the acreage of land disturbance and linear footage of Creek impacts; calculations of the volume and types of fill placed; a detailed qualitative description of the overall project purpose and design; as-built plans for the constructed project; a jurisdictional delineation of the extent of federal and State waters at the Site prior to and following the constructed project; and all other necessary information. The impact assessment shall be completed by a licensed professional geologist or civil engineer with expertise in fluvial geomorphology and/or creek restoration and shall, at a minimum, include a description of the pre-disturbance channel morphology, soil conditions, hydrology, and characterization of the impacted Creek and riparian habitat, as well as supporting documentation (e.g., aerial photographs, photographs, reports, topographic maps, and drawings). The technical report, including the impact assessment, shall serve as the basis for the Corrective Action Workplan described below.
  - b. Description of any permits and other authorizations applied for and/or obtained from local, State, and federal agencies and local or regional districts for any grading, excavation, filling,

vegetation clearing, or other activities that have disturbed land or water features at the Site since it was acquired by the Dischargers.

2. No later than November 6, 2017, the Dischargers shall submit a Corrective Action Workplan, acceptable to the Executive Officer, that includes the following:
  - a. A proposal for corrective actions designed to (1) remove sediment, rock, and other earthen materials placed without authorization from waters of the State plus an appropriately-protective buffer area; (2) eliminate the threat of discharge of sediment posed by the unauthorized construction activities at the Site, and (3) restore the Creek and associated riparian habitat. The Corrective Action Workplan (CAW) shall include interim and final success criteria and performance standards for assessing whether corrective actions are achieving the intended water quality protection and habitat restoration goals. Performance criteria shall include targets for (1) water quality, (2) soil and hydrologic conditions, and (3) vegetation composition including invasive species control. The CAW shall also include an implementation time schedule for design, permitting, and construction.
  - b. A monitoring plan designed to monitor and evaluate the success of the implemented corrective actions in accordance with the interim and final success criteria and performance standards. The Dischargers shall monitor the success of the corrective actions until performance criteria have been successfully achieved, for at least five years following completion of the corrective actions, and for not less than a period of two years after any irrigation of revegetation plantings has ceased.
  - c. Within sixty days of acceptance of the CAW by the Executive Officer, the Dischargers shall initiate implementation of the CAW in accordance with the accepted implementation time schedule.
3. No later than November 6, 2017, the Dischargers shall submit a Mitigation and Monitoring Plan, acceptable to the Executive Officer, that includes the following:
  - a. A proposal to provide compensatory mitigation to compensate for any permanent or temporal losses of water quality functions and values provided by the Creek and associated riparian habitat that resulted from unauthorized activities at the Site. The Mitigation and Monitoring Plan (MMP) shall (1) provide a full description of the waters of the State and/or United States filled or indirectly impacted at and downstream of the Site; (2) describe existing site conditions at the proposed mitigation site; (3) propose compensatory mitigation sufficient to fully compensate for identified direct and indirect permanent and temporary losses. Such mitigation shall preferentially be in-kind and onsite. To the extent the mitigation is out-of-kind or offsite, delayed beyond the schedule set forth in this Order, or its success is uncertain, the plan shall propose a greater amount of mitigation relative to the amount of impacts; (4) describe implementation methods used to provide compensatory mitigation; (5) provide interim and final success criteria and performance standards sufficient to fully evaluate the success of the compensatory mitigation; (6) include a full description and schedule of the monitoring that will be implemented; and (7) include an implementation schedule. The Dischargers shall initiate implementation in accordance with the accepted implementation time schedule within 60 days of written acceptance of the MMP by the Executive Officer.

4. No later than January 31 of each year following initiation of the corrective actions and continuing until the corrective actions are successfully achieved, the Dischargers shall submit annual monitoring reports, acceptable to the Executive Officer, evaluating the progress of implementation and success of the corrective actions in accordance with the approved implementation time schedule and approved monitoring plan. No later than January 31 of each year following implementation of the compensatory mitigation, the Dischargers shall also submit, acceptable to the Executive Officer, annual monitoring reports for mitigation implemented under the approved MMP, evaluating the progress of implementation and success of mitigation in accordance with the approved implementation time schedule and approved MMP.
5. The Dischargers shall obtain all necessary permits, authorizations, and other approvals necessary to complete actions under this Order.
6. The Dischargers shall submit with the final monitoring report a Notice of Completion, acceptable to the Executive Officer, demonstrating that the CAW and MMP, as approved, have been successfully completed.
7. If the Dischargers are delayed, interrupted, or prevented from meeting the work completion or report submittal deadlines specified in this Order, the Dischargers shall promptly notify the Executive Officer in writing with recommended revised completion or report submittal deadlines. Any extensions of the time deadlines specified in this Order must be approved in writing by the Executive Officer. The Executive Officer may consider revisions to this Order.
8. Water Board staff shall be permitted reasonable access to the Site as necessary to oversee compliance with this Order.
9. The Water Board, pursuant to CWC section 13267, subdivision (b)(1), requires the Dischargers to include a perjury statement in all reports submitted under this Order. The perjury statement shall be signed by a senior authorized representative of the Discharger(s) (not by a consultant). The perjury statement shall be in the following format:

*I, [NAME], certify under penalty of law that this document and all attachments were prepared by me, or under my direction or supervision, in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.*
10. The technical reports and other submittals required above shall be complete, accurate, and otherwise adequate as determined acceptable by the Executive Officer.
11. The Dischargers shall provide documentation that plans and reports required under this Order are prepared under the direction of appropriately qualified professionals. California Business

and Professions Code sections 6735, 7835, and 7835.1 require that engineering and geologic evaluations and judgements be performed by or under the direction of registered professionals. A statement of qualifications and registration numbers of the responsible lead professionals shall be included in all plans and reports submitted by the Dischargers. The lead professional shall sign and affix their registration stamp to the report, plan, or document.

12. No later than 14 days from the date of this Order, the Dischargers are required to acknowledge in writing their understanding of the reimbursement process and billing procedures for Water Board oversight of the cleanup work as described in the Reimbursement Process for Regulatory Oversight fact sheet provided to the Dischargers with this Order, by filling out and returning the Acknowledgement of Receipt of Oversight Cost Reimbursement Account Letter or its equivalent, also provided with this Order.
13. Upon receipt of a billing statement for costs incurred pursuant to CWC section 13304, the Dischargers shall reimburse the Water Board.
14. None of the obligations imposed by this Order on the Dischargers are intended to constitute a debt, damage claim, penalty, or other civil action that should be limited or discharged in a bankruptcy proceeding. All obligations are imposed pursuant to the police powers of the State of California intended to protect the public health, safety, welfare, and environment.

Failure to comply with the provisions of this Order may result in the imposition of civil liabilities, imposed either administratively by the Water Board or judicially by the Superior Court in accordance with CWC sections 13268, 13304, 13308, 13350, and/or 13385 and/or referral to the Attorney General of the State of California for injunctive relief or civil or criminal liability. Failure to submit, late or inadequate submittal of technical reports and workplan proposals, or falsifying information therein, is a misdemeanor and may subject the Dischargers to additional civil liabilities. This Order does not preclude or otherwise limit in any way the Water Board's ability to take appropriate enforcement action for the Dischargers' violations of applicable laws, including, but not limited to, discharging without a permit and failing to comply with applicable requirements. The Water Board reserves its rights to take any enforcement action authorized by law.

I, Bruce H. Wolfe, Executive Officer, do hereby certify that the foregoing is a full, complete and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Francisco Bay Region on July 6, 2017.

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Bruce H. Wolfe  
Executive Officer