

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

CLEANUP AND ABATEMENT ORDER NO.R5-2006-0708

FOR
WILLIAM ULLMAN, AND
FRENCH BAR BLUFFS, LLC
STANISLAUS COUNTY

This Order is issued to French Bar Bluffs, LLC and William Ullman based on provisions of California Water Code Section 13304, which authorizes the Regional Water Quality Control Board, Central Valley Region (Water Board) to issue a Cleanup and Abatement Order (Order).

The Executive Officer of the Water Board finds that:

1. French Bar Bluffs, LLC and William Ullman of 5506 Starlight Ave, Oceanside CA 92057-4665 who is the agent for French Bar Bluffs, (hereafter jointly referred to as the Discharger) are developing a 544-acre subdivision near La Grange in Stanislaus County. The Discharger has constructed substantial reservoirs, graded lands and streambeds on areas, which drain to the Tuolumne River. The property is in Sections 7,12,and 13, Township 3 South, Range 14 East MDB&M. The Discharger owns the property (APN 008-014-009, 008-016-029, 008-023-018).
2. On 22 June 2005, Water Board staff inspected the property and found extensive grading and construction without coverage under the NPDES General Permit for Storm Water Discharges Associated with Construction Activities, NPDES No. CAS000002, Order No. 99-08-DWQ (General Permit) or any other NPDES permit. Construction activities included upland work as well as work within the Upper Dominici Creek Channel. The in-channel work included the building of eight large dams, grading in the creek channel and removal of riparian habitat without appropriate Clean Water Act Section 404 permit or a Clean Water Act Section 401 Water Quality Certification from the Water Board.
3. On 29 July 2005, the Water Board Executive Officer issued Cleanup and Abatement Order No. R5-2005-0713, requiring removal of the dams constructed at French Bar Bluffs and proper stabilization of the site. The Order required the submittal of a Cleanup and Restoration Plan (Plan) for this work by 1 September 2005 and implementation of the Plan by 1 November 2005. The Discharger has failed to comply with this Order.
4. Clean Water Act (CWA) Section 404 requires any person proposing to discharge dredged or fill material into navigable waters of the United States to obtain a Section 404 permit prior to such discharge. CWA Section 401 requires that any person obtaining a Section 404 permit, obtain water quality certification from the State in which the discharge occurs. California Water Code (CWC) Section 13376 requires, that any person who is proposing to discharge pollutants or dredged or fill material into waters of the state to submit a report of waste discharge pursuant to CWC Section 13260 prior to such discharge. The Discharger

failed, prior to construction of the dams, to obtain a Section 404 permit, a Section 401 Water Quality Certification and failed to file a Report of Waste Discharge.

5. After notification by Water Board staff, the Discharger submitted a Notice of Intent for coverage under the General Permit and was issued WDID NO. 5S50C335052 in June 2005.
6. On 26 September 2005, Water Board staff inspected the site and found water quality problems, including inadequate erosion and sediment control measures.
7. On 29 September 2005, Water Board staff issued a Notice of Violation (NOV) for the violations of the Cleanup and Abatement Order and the General Permit. In the NOV, staff required the submittal of a revised Cleanup and Restoration Plan and SWPPP.
8. On 12 October 2005, the Discharger submitted a revised SWPPP.
9. On 21 November 2005, Water Board staff inspected the site and found that not all BMPs in the SWPPP had been implemented at the site.
10. On 22 November 2005, Water Board staff sent a letter to the Discharger asking for additional information in the Cleanup and Restoration Plan and relaying the findings of our 21 November inspection.
11. From October 2005 to February 2006, agencies staff (Water Board, Department of Fish and Game, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, NOAA National Marine Fisheries, and Stanislaus County Public Works) have met with the Discharger and a representative from the California District Attorneys Association in an effort to review measures proposed to address environmental issues. As a result, the Discharger developed a draft Habitat Restoration and Monitoring Plan.
12. On 3 April 2006, Water Board staff inspected the site and found all but one of the dams overflowing. In addition, staff observed significant flow in the creek between the dams and into the intake leading to the Tuolumne River. Staff notified the California Department of Fish and Game of the on-site conditions.
13. On 4 April 2006, the Discharger informed us that 3 of the 8 dams had failed.
14. On 6 April 2006, Water Board staff inspected the site and found significant impacts to Upper Dominici Creek. A large amount of sediment had deposited into the channel from the dam and spillway failures. It also appears that the increased water flow resulting from the failures caused scouring of the channel and considerable sloughing of sediment from the channel banks.
15. On 17 April 2006, Water Board staff inspected the site to document the significant impacts to Upper Dominici Creek.

16. The *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, Fourth Edition*, (hereafter Basin Plan) designates beneficial uses, establishes water quality objectives, contains implementation programs for achieving objectives, and incorporates by reference, plans and policies adopted by the State Water Resources Control Board. The beneficial uses of the Sacramento-San Joaquin Delta as identified in Table II-1 of the Basin Plan are municipal and domestic supply; industrial; and agricultural supply; contact and other non-contact recreation; aesthetic enjoyment; navigation; and preservation and enhancement of fish, wildlife, and other aquatic resources.
17. The Basin Plan lists specific water quality objectives for inland surface waters. These objectives include limitations on increased temperature, sediment, settleable and suspended material, and turbidity. Based on staff observations, the Discharger's fill activities have resulted in the discharge of waste, e.g., sediment and soil, into surface waters and surface water drainage courses and placed waste in areas where it threatens to discharge into surface water drainage courses during subsequent storm events. The discharge of waste and pollutants to surface waters has created a condition of pollution and threatens to continue to create a condition of pollution or nuisance when earthen materials are transported in storm water during the rainy season to downstream receiving waters increasing levels of sediment and settleable and suspended material.
18. Much of the work in and around Upper Dominici Creek occurred within the riparian area. On 22 June 2005, there was evidence that a significant number of oak trees were removed near the creek. The reduction in canopy from this removal threatens to increase temperature in the stream channel in violation of the temperature objective in the Basin Plan. The dam and spillway failures of 4 April 2006 caused more tree mortality and would add to the potential temperature violation.
19. Senior staff from the Division of Water Rights was consulted to determine if diversion of water at the subject facilities was covered by any basis of right. The Division of Water Rights has not received any formal complaints regarding these facilities and, consequently, has not initiated any investigation to determine if a valid basis of right to divert water exists. A review of the Division's databases indicates that no applications have been filed seeking post-1914 appropriative rights nor have any Statements of Water Diversion of Use been filed indicating that water has or will be diverted under some other basis of right. Any diversions made without a valid basis of right are unauthorized and constitute a trespass against the State of California pursuant to Section 1052 et seq. of the Water Code. Unauthorized diversions are subject to appropriate enforcement action including imposition of Administrative Civil Liabilities and Cease and Desist Orders by the State Water Resources Control Board or pursuit of injunctive relief in the courts.
20. Section 13304(a) of the California Water Code provides that:

“Any person who has discharged or discharges waste into waters of this state in violation of any waste discharge requirements or other order or prohibition issued by a regional

board or the state 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 the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall upon order of the regional 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 limited to, overseeing cleanup and abatement efforts. A cleanup and abatement order issued by the state board or a regional board may require provision of, or payment for, uninterrupted replacement water service, which may include wellhead treatment, to each affected public water supplier or private well owner. Upon failure of any person to comply with the cleanup or abatement order, the Attorney General, at the request of the board, shall petition the superior court for that county for the issuance of an injunction requiring the person to comply with the order. In the suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the fact may warrant.”

21. The soil and sediment deposited into waters of the state constitute “waste”, as defined in California Water Code section 13050. The Discharger, who owns and operates the site, has discharged waste, i.e., earthen material, soil, and sediment, directly into surface waters. The Discharger, through this activity, has caused waste to be discharged where it has caused a condition of pollution or nuisance by increasing levels of sediment and settleable and suspended material in Upper Dominici Creek.

22. Section 13304(c)(1) of the California Water Code provides that:

“If the waste is cleaned up or the effects of the waste are abated, or, in the case of threatened pollution or nuisance, other necessary remedial action is taken by any governmental agency, the person or persons who discharged the waste, discharges the waste, or threatened to cause or permit the discharge of waste within the meaning of subdivision (a), are liable to that governmental agency to the extent of the reasonable costs actually incurred in cleaning up the waste, abating the effects of the waste, supervising cleanup or abatement activities, or taking other remedial action. The amount of the costs is recoverable in a civil action by, and paid to, the governmental agency and state board to the extent of the latter’s contribution to the cleanup costs from the State Water Pollution Cleanup and Abatement Account or other available funds.”

23. Section 13267(b)(1) of the California Water Code provides that:

“In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste outside of its region that could affect the quality of waters of the state within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports.”

24. The technical reports required by this Order are necessary to assure compliance with this Order and to protect the waters of the state. The technical reports are necessary to demonstrate that appropriate methods will be used to clean up waste discharged to surface waters and to ensure that cleanup complies with Basin Plan requirements.
25. The issuance of this Order is an enforcement action taken by a regulatory agency and is exempt from the provisions of the California Environmental Quality Act, pursuant to Section 15321(a)(2), Title 14, California Code of Regulations.
26. Any person adversely affected by this action of the Regional Board may petition the State Water Resources Control Board (State Board) to review the action. The State Board must receive the petition within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions may be found on the Internet at www.waterboards.ca.gov/centralvalley or will be provided upon request.

IT IS HEREBY ORDERED THAT, pursuant to Sections 13267 and 13304 of the California Water Code, French Bar Bluffs, LLC and William Ullman shall:

1. Cease the discharge of earthen materials, soil, and sediment to waters of the state and clean up the waste and abate, in accordance with the schedule in No. 2 below, the condition of earthen materials, soil, and sediment discharged or placed into wetlands, surface waters and surface water drainage courses.
2. Compliance with No. 1 above shall include, but not necessarily be limited to, the following measures:
 - (a) By **1 June 2006**, submit a Cleanup and Restoration Plan. The Cleanup and Restoration Plan must describe how the impacts of the discharge will be resolved, demonstrate how the cleanup and restoration will be completed, and evaluate the effectiveness of the cleanup and restoration. The Cleanup and Restoration Plan is to be prepared by a professional knowledgeable and experienced in wetlands restoration.
 - (b) Clean up all earthen materials, soil and sediment discharged to wetlands, surface waters and surface water drainages in accordance with the Cleanup and Restoration Plan as approved by the Executive Officer.
 - (c) Restore and stabilize the affected area to its natural condition prior to the illegal fill.
 - (d) Purchase necessary mitigation credits for habitat loss.
 - (e) By **1 October 2006**, complete the implementation of the Cleanup and Restoration Plan. The Discharger shall provide staff access to areas of the property, as needed.

- (f) By **1 October 2006**, implement Best Management Practices on the property to control erosion and sediment transport in accordance with Best Available Technology Economically Achievable (BAT) and Best Conventional Pollutant Control Technology (BCT) to reduce or eliminate storm water pollution.
3. If requested, reimburse the Regional Board for reasonable costs associated with oversight of actions taken in response to this Order. By **1 June 2006**, submit the name and address to be used for billing purposes for oversight charges.
4. The Executive Officer may refer this matter to the Attorney General for judicial enforcement or issue a complaint for Administrative Civil Liability.
5. Failure to comply with a cleanup and abatement order or the dates specified may result in further enforcement actions, including actions under section 13350, 13385, and 13387 of the California Water Code, which allows for administrative civil liability up to a maximum of five thousand dollars (\$5,000) for each day of violation.

PAMELA C. CREEDON, Executive Officer

20 April 2006

(Date)