

California Regional Water Quality Control Board
North Coast Region

CLEANUP AND ABATEMENT ORDER NO. R1-2002-0043

FOR

LOLONIS VINEYARDS, INC.

Mendocino County

The California Regional Water Quality Control Board, North Coast Region (hereinafter Regional Water Board) finds that:

1. Lolonis Vineyards, Inc., constructed a large earthen dam, reservoir, vineyard and associated access roads located at 1801 Road D, Redwood Valley, California, Parcel No. 163-260-01 (hereinafter, Discharger). The construction began on or before 1997 and was mostly complete by the fall of 1999. The dam is approximately 60 feet high and impounds approximately 220 acre-feet of water when full. The dam was constructed on an unnamed steelhead trout-bearing stream (hereinafter tributary "A"). Tributary "A" flows into Salt Hollow Creek, which is tributary to the upper Russian River in Mendocino County. A large concrete spillway that drains the reservoir was constructed through a small ridge and diverts water into a second unnamed stream (hereinafter tributary B). Tributaries "A" and "B" converge a few hundred feet downstream of the dam. Concurrent with dam and reservoir construction, the Discharger also constructed two sections of road and a vineyard within tributary "B" and its drainage basin upstream of the spillway. At least 300 feet of tributary was filled in with earth material during construction. The roads and vineyard were constructed without incorporating adequate erosion control devices. Regional Water Board Staff estimates that at least 100 cubic yards of earthen material was discharged into tributary "B". The estimate is based on direct measurements of sediment deposits in tributary "B" taken by Regional Water Board staff. The discharge was a result of the Discharger's construction activities and lack of erosion control during rainfall events.
2. Water Rights Permit #20020, term # 20, required the Discharger to file a Report of Waste Discharge (ROWD), pursuant to Water Code Section 13260. The ROWD was to be filed with the Regional Water Board prior to commencement of construction, to prevent degradation of the quality of water during and after construction and to comply with all Waste Discharge Requirements imposed by the Regional Water Board.
3. On July 13, 2000, Regional Water Board, California Department of Fish and Game (CDFG) and National Marine Fisheries Service (NMFS) staff first inspected tributary "A" and tributary "B" and the Discharger's dam construction project. The inspection was in response to a complaint the CDFG and NMFS received from downstream residents. The downstream residents reported that tributary "A" was laden with excessive amounts of sediment as a result of the Discharger's construction projects. They also reported that they observed steelhead trout spawning in tributary "A" prior to the construction. They have not observed steelhead since the construction began. During the inspection, Regional Water Board, CDFG, and NMFS staff observed extensive fine sediment

- deposits in tributary "A", for approximately 3,500 feet, from the confluence of Salt Hallow Creek upstream to the Discharger's construction projects. During the inspection, Regional Water Board and CDFG staff verbally requested that the Discharger hire an engineer to develop a plan to remove sediment and earthen fill from tributary "B".
4. On August 11, and September 18, 2000, Regional Water Board and DFG staff again met with the Discharger on site to discuss possible clean up measures and further evaluate the extent of the discharge.
 5. On September 18, 2000, the Discharger submitted to Regional Water Board staff an erosion control plan titled "Stream Repair Work Plan", developed by Franz Engineering. Regional Water Board and Department of Fish and Game staff verbally concurred with the plan.
 6. On November 15, 2000, Regional Water Board staff met with the Discharger's representatives and conducted an inspection, which determined that the "Stream Repair Work Plan" had not been implemented. The Discharger's representatives informed Regional Water Board staff that they were too busy with the grape harvest and, furthermore, that the CDFG 1603 Stream Alteration Permit had not been obtained.
 7. On December 1, 2000, Regional Water Board and CDFG staff measured sediment and earthen material that was discharged. Regional Water Board Staff measured that over 100 cubic yards of sediment was discharged into tributary "B" as a result of the Discharger's construction activities.
 8. On December 12, 2000, at the request of CDFG, the Mendocino County District Attorney filed charges against the Discharger for water pollution (DFG Code 5650) and altering/changing/diverting a stream (DFG Code 1603). The stream alteration charges were for constructing the spillway, roads, and vineyard in tributary "B" without obtaining a required Streambed Alteration Permit. The construction activities resulted in the pollution of tributary "B".
 9. On April 2, 2001, the Executive Officer of the Regional Water Board issued the first written directive pursuant to CWC Section 13267(b) requiring the Discharger to submit a technical report. The report was to include the following:
 - An implementation plan for removal of sediment and fill that was discharged into tributary "B".
 - A plan to prevent potential discharges over the spillway from increasing flows and eroding tributary "B".
 - An erosion control plan for the new vineyard development.
 - A Time Schedule for completion of the planned work.

These four requirements were originally developed by the CDFG as part of an agreement with the Mendocino County District Attorney. The technical report was to be submitted to the Executive Officer by May 2, 2001.

10. In a letter dated April 23, 2001, the State Water Resources Control Board, Division of Water Rights notified the Discharger that it had not complied with the constraints, terms and conditions of Water Rights Permit 20020. This included failure to install flow-measuring devices prior to diverting water to storage, and bypassing stream-flow for the protection of fish and wildlife.
11. On May 2, 2001, the Discharger submitted a written request for an extension of time for submittal of the technical report that was required in the April 2, 2001 directive from the Executive Officer.
12. In a letter to the Discharger dated May 11, 2001, the Executive Officer of the Regional Water Board denied the extension. The request was denied because the Discharger had failed to adequately implement the erosion control plan developed by Franz Engineering or adequately respond to Regional Water Board staff's informal attempts to gain compliance the previous year.
13. On June 6, 2001, Regional Water Board staff received a new report titled "Preliminary Action Plan", on behalf of the Discharger, developed by O'Connor Environmental Inc. (OEI). The plan includes an assessment of channel deposits in tributary "B" and a proposal to prepare the required technical report.
14. On June 26, 2001, the Executive Officer issued a second written directive pursuant to CWC Section 13267(b) notifying the Discharger that the "Preliminary Action Plan" developed by OEI was incomplete and inadequate and was submitted after the required due date. The directive also stated the Executive Officer was considering issuance of a complaint to assess Administrative Civil Liabilities.
15. On August 3, 2001, the Discharger submitted another technical report titled "Lolonis Vineyards Erosion Assessment and Action Plan", developed by OEI.
16. On September 19, 2001, the Executive Officer issued a third written directive pursuant to CWC Section 13267(b) informing the Discharger that portions of the OEI Plan were still inadequate. The Executive Officer concurred with OEI's plans for excavating sediment, utilizing sediment traps on tributary "B", and installation of vineyard and road erosion control measures.
17. On September 28, 2001, the Discharger's attorney, Ginevra Chandler, wrote to the Executive Officer requesting information on fish presence in tributary "A" and agreed to maintain the reservoir level 5 feet below the spillway crest to prevent discharges over the spillway. Regional Water Board staff provided documentation of fish presence to Ms. Chandler and met with her to discuss some of the concerns raised in her letter.
18. On November 2, 2001, Regional Water Board, DFG, and NMFS staff met with the Discharger to evaluate excavation work in tributary "B". Staff observed that, while some

excavation and stabilization work had been done, the stream was not excavated to remove the discharged sediment to the extent feasible, nor did it fully comply with the work plan as approved. Additional excavation is required to restore tributary "B" and prevent the discharge of additional sediment downstream.

19. On December 17, 2001, the Discharger's attorney, Ginevra Chandler, wrote to Regional Water Board and CDFG staff requesting a list of actions necessary to complete the Discharger's remediation activities. Those actions are included in the requirements of this Order.
20. On February 15, 2002, staff from the Regional Water Board, CDFG and NMFS again inspected tributaries "A" and "B" and the Discharger's dam and vineyard construction projects. Evidence of additional sediment transport was observed in tributary "B". Tributary "A" continued to be laden with excessive fine sediment deposits and aquatic vegetation. A recent algae bloom was also observed, which was not observed during previous inspections.
21. As a tributary to the Russian River, the beneficial uses of Salt Hollow Creek and the unnamed tributary, as designated in the Water Quality Control Plan for the North Coast Region (Basin Plan), include:
 - a. Municipal and domestic supply
 - b. Agricultural supply
 - c. Industrial supply
 - d. Industrial process supply
 - e. Groundwater recharge
 - f. Navigation
 - g. Hydropower Generation
 - h. Water Recreation
 - i. Non-contact water recreation
 - j. Commercial and sport fishing
 - k. Warm freshwater habitat
 - l. Cold freshwater habitat
 - m. Wildlife Habitat
 - n. Migration of Aquatic Organisms
 - o. Spawning, Reproduction, and/or early development
 - p. Estuarine Habitat
 - q. Aquaculture
22. The Discharger has discharged waste into the waters of the state in violation of the prohibitions contained in the Action Plan for Logging, Construction and Associated Activities contained in the Basin Plan by discharging dirt and debris while constructing the dam and spillway. The Discharger has also caused or permitted, causes or permits, or threatens to cause or permit waste to continue to be discharged or deposited where it is, or probably will be discharged to waters of the state and creates or threatens to create, a condition of pollution or nuisance. The debris and dirt remaining from the construction of the dam and spillway threaten to discharge into Salt Hollow Creek, which may create a

condition of pollution or nuisance as defined in Section 13050 of the California Water Code.

23. This enforcement action is being taken for the protection of the environment and, therefore, is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section 21000 et seq.) in accordance with Section 15321, Chapter 3, Title 14, California Code of Regulations.

THEREFORE, IT IS HEREBY ORDERED that, pursuant to California Water Code Sections 13267(b) and 13304, the Discharger shall:

1. By September 15, 2002, cleanup and abate the effects of waste earthen materials discharged into the unnamed tributaries (tributaries "A" and "B") of Salt Hollow Creek and the Russian River. Tributaries "A" and "B" are shown on the map contained in the August 3, 2001, "Erosion Assessment and Action Plan" developed by O'Connor Environmental, Inc.
2. By September 15, 2002, remove remaining sediment and earthen fill material from tributary "B". This includes the remaining sediment that eroded from the vineyard constructed by the Discharger in the upper reaches of tributary "B" and earthen fill that was placed in tributary "B" as a result of the Discharger's road construction project, located upstream and adjacent to the spillway.
3. By September 15, 2002, take action to prevent additional stream bank erosion in tributary "B" that has resulted from water diversion and increased flows over the spillway. The spillway diverts water from tributary "A" to tributary "B".
4. Provide any and all documentation available evidencing compliance with Term 20 of Water Rights Permit #20020, which required the Discharger to submit a Report of Waste Discharge with the Regional Water Board.
5. Install flow measuring devices as required in Water Rights Permit 20020 to verify the restoration of required flows in tributary "A". The installation of flow measuring devices was required prior to diverting water to storage.
6. On or before May 15, 2002, submit to the Executive Officer for approval a workplan, prepared by a California registered professional engineer or geologist, for cleanup and abatement as specified in provisions 1 through 5 above. The workplan shall include a complete survey of the natural channel dimensions and elevations of tributary "B" upstream of the spillway to ensure that sediment and earthen fill are removed down to the natural channel to the extent feasible. The workplan may include but shall not be limited to the proposals contained in the August 3, 2001, "Erosion Assessment and Action Plan" by O'Connor Environmental, Inc. The workplan shall also include a comprehensive time schedule for implementation of immediate and long-term cleanup and abatement activities.

7. The workplan shall also specify a site inspection schedule and a long-term water quality monitoring plan. The site inspection schedule shall be sufficient to ensure that releases over the spillway do not result in additional stream bank erosion in tributary "B" and that flows are sufficient to restore fish habitat in tributary "A". The long-term monitoring plan shall include tributaries "A" and "B". The objectives of the long-term monitoring plan are to detect trends and determine if the streams are recovering from the discharge of sediment.
8. The cleanup and abatement activities specified above shall be supervised on the ground by the licensed or certified professional civil engineer or engineering geologist experienced in erosion control activities.
9. If for any reason, the Discharger is unable to perform any activity or submit any document in compliance with the schedule set forth herein or in compliance with any work schedule submitted pursuant to this Order and concurred in by the Executive Officer, the Discharger may request, in writing, an extension of time specified. The extension request must be submitted at least five days in advance of the due date and shall include justification for the delay including a description of good faith efforts performed to achieve compliance with the due date. The extension request shall also include a proposed time schedule with new performance dates for the due date in question and all dependent dates. An extension may be granted for good cause, in which case this Order will be revised accordingly.
10. The sufficiency and timing of by-pass flows are not addressed by this order and may need to be addressed separately.

Ordered by _____
Susan A. Warner
Executive Officer

April 5, 2002