

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

CLEANUP AND ABATEMENT ORDER NO.R5-2005-0706

FOR
WALTER JOHNSON
AND RED ELEPHANT MINE, LLC
RED ELEPHANT MINE
LAKE COUNTY

This Order is issued to Red Elephant Mine LLC, and Walter Johnson based on provisions of California Water Code Section 13304, which authorizes the Regional Water Quality Control Board, Central Valley Region (Regional Board) to issue a Cleanup and Abatement Order (Order).

The Executive Officer of the Regional Board, finds that:

1. Walter Johnson of 4132 Santa Rosa Avenue, Santa Rosa, CA 95407 (hereafter Discharger) owns approximately 80 acres of land near Middletown in Lake County. The Discharger has recently conducted extensive mining and land clearing activities and constructed a dam. The property and dam are located at 27697 Morgan Valley Road in Middletown and are known as the Red Elephant Mine. The mine was prospected for cinnabar in 1918 and is covered with serpentine rock. The Discharger was excavating the serpentine rock for his decorative rock business in Santa Rosa. Red Elephant Mine is in Section 3, Township 11 North, Range 5 West, MDB&M. Runoff from the site discharges to Jericho Creek, tributary to Lake Berryessa. The Discharger owns the property (APN 013-018-05).
2. On 12 January 2005, Regional Board staff inspected and observed the discharge of sediment and debris to surface waters and surface water drainage from past mining and excavation activities. Regional Board staff also observed the failure of portions of the man-made earthen dam. Large areas of soil were sloughing away from the dam into surface waters, and linear cracks and separation on the top of the dam were also observed. The dam was constructed without permits from Lake County, or any State or Federal Agency. Water samples collected down-stream of the dam contained high levels of turbidity and settleable solids.
3. The sediment and debris deposited into surface waters tributary to Jericho Creek and Lake Berryessa by the erosion and possible failure of the dam 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, settleable and suspended material, and turbidity. Continued erosion and sloughing of materials from the dam threaten to water quality.

4. Lake County Community Development Department, Building and Safety Division issued a Notice of Nuisance, on 1 December 2004, for un-permitted grading, requiring the Discharger to submit plans for all required grading, construction, environmental and erosion control work prior to doing the work. The County, on 3 March 2005, issued a Cease and Desist order requiring the Discharger to cease mining and grading activities immediately.
5. 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 to obtain a Section 404 permit, a Section 401 Water Quality Certification and failed to file a Report of Waste Discharge.
6. 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 Basin Plan identifies the beneficial uses applicable to Lake Berryessa and its tributaries. Jericho Creek is a tributary to Lake Berryessa. The listed existing or potential beneficial uses are: municipal and domestic supply; agriculture; recreation; freshwater habitat; warm water spawning; and wildlife habitat.
7. The Basin Plan lists specific water quality objectives for inland surface waters. These objectives include limitations on sediment, settleable and suspended material, and turbidity. Based on staff observations, the Discharger's excavation and construction 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 stormwater during the rainy season to downstream receiving waters increasing levels of sediment, settleable and suspended material, and turbidity.
8. 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.... 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.”

9. 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.”

10. 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.”

11. 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.

12. 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.

13. 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 petition must be received by the State Board 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.swrcb.ca.gov/rwqcb5 or will be provided upon request.

IT IS HEREBY ORDERED THAT, pursuant to Sections 13267 and 13304 of the California Water Code, Walter Johnson and Red Elephant Mine, LLC shall:

1. Clean up and abate, forthwith, the condition of earthen materials, soil, sediment, and debris materials discharged or placed into 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) Clean up all soil discharged to Jericho Creek from construction activities. Remove the dam and all materials used to construct it.
 - (b) Stabilize and restore the affected area to its natural condition prior to the construction of the dam.
 - (c) By **1 May 2005**, submit a Cleanup Activity Plan. The Cleanup Activity Plan must include a time schedule for submittal of a final report that describes how the impacts of the discharge will be resolved, demonstrates completion of the plan, and evaluates the effectiveness of the cleanup.
 - (d) By **1 July 2005**, complete the implementation of the Cleanup Activity Plan. The Discharger shall provide staff access to areas of the property, as needed.
3. If requested, reimburse the Regional Board for reasonable costs associated with oversight of actions taken in response to this Order. By **31 May 2005**, submit the name and address to be used for billing purposes for oversight charges.
4. If in the opinion of the Executive Officer, the Discharger fails to comply with the provisions of this Order, 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) to twenty-five thousand dollars (\$25,000) for each day of violation.

THOMAS R. PINKOS, Executive Officer

(Date)