

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

CLEANUP AND ABATEMENT ORDER NO.R5-2006-0735

FOR
ROBERT AND DENISE STEIN
ICE POND ROAD PROPERTY
PORTOLA
PLUMAS COUNTY

This Order is issued to Robert and Denise Stein based on provisions of California Water Code Section 13304, which authorizes the Regional Water Quality Control Board, Central Valley Region (Regional Water Board) to issue a Cleanup and Abatement Order (Order) and California Water Code section 13267, which authorizes the Regional Water Board to issue an order requiring submittal of monitoring and technical reports.

The Executive Officer of the Regional Water Board finds that:

1. Robert and Denise Stein, 19883 Echo Blue, Penn Valley, CA 95946 (hereafter Discharger), are the trustees of the property located at 5390 Ice Pond Road in Portola, Plumas County. The property (APN 025-100-032) includes a concrete dam (Ice Pond Dam) across Big Grizzly Creek in Section 20, Township 23 North, Range 14 East, MDB&M. Big Grizzly Creek is downstream of Lake Davis and contains an excellent trout fishery and is used as an agricultural water supply.
2. On 13 December 2006, Regional Water Board staff and Department of Fish and Game (DFG) staff conducted an inspection of Big Grizzly Creek downstream of the Ice Pond dam. The inspection was in response to a report of a large quantity of sediment in the creek which had covered the water intake to the Grizzly Ranch Golf Course. Investigation by Regional Water Board and CFG staff revealed up to 40 inches of sediment deposited in the creek bed downstream of Ice Pond, destroying aquatic habitat and eliminating benthic invertebrates in varying degrees for more than one quarter mile downstream from Ice Pond Dam.
3. The sediment originated from sediments accumulated over the years in the Ice Pond behind the concrete dam. During a period when the upstream flows from Lake Davis were curtailed in early November to facilitate installation of equipment and performance of flow studies, the Discharger opened the gate in the bottom of Ice Pond Dam and drained the pond to effect repairs on the gate. When flows from Lake Davis resumed, the Discharger had not completed repairs and the gate was held open. The stream flows through the now empty pond scoured the deposited sediment and transported it downstream of the Ice Pond.
4. The discharge of earthen material, soil and sediment into waters of the state constitute "waste" as defined in California Water Code section 13050. The

Discharger, who owns the site, has caused waste, e.g., earthen material, soil, and sediment to be discharged directly into surface waters, which are waters of the state and waters of the United States. 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.

5. 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 at page II-2.00 states that the "...beneficial uses of any specifically identified water body generally apply to its tributary streams." The Basin Plan does not specifically identify beneficial uses for Big Grizzly Creek, but does identify present and potential uses for the Middle Fork Feather River from Little Last Chance Creek to Lake Oroville to which Big Grizzly Creek is tributary. These beneficial uses, identified in Table II-1 of the Basin Plan are municipal and domestic supply; water contact and non-contact recreation, including aesthetic enjoyment; warm and cold freshwater habitat; cold spawning, and preservation and enhancement of fish, wildlife, and other aquatic resources. Although not specifically listed in Table II-2, agricultural supply, including stock watering is an existing, but not designated use. The site inspection and general knowledge of the area supports that all these beneficial uses either do exist or have the potential to exist in Big Grizzly Creek downstream of Ice Pond Dam.
6. 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 activities in opening the gate in the bottom of the Ice Pond Dam have resulted in the placement and disturbance of sediment and soil, where it discharged into a surface water drainage courses. The discharge of waste 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 downstream by stream flows increasing levels of sediment, settleable and suspended material, and turbidity. Sediments deposited on the creek bed have substantially changed the characteristics of the creek bottom, smothering existing benthic life and affecting an agricultural water intake. The impact of the deposited sediment will continue until the sediment is removed.
7. 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.”

8. As described in Findings 1 through 3, the Discharger is subject to an Order pursuant to Water Code section 13304 because the Discharger is the trustee and/or owner of the property and took the actions that resulted in the discharges of waste to waters of the State.

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. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports and shall identify the evidence that supports requiring that person to provide the reports.”

11. As described in Findings 1 through 3 above, the Discharger is subject to an Order pursuant to Water Code section 13267 because he took the actions that have resulted in the threatened discharge of waste to waters of the State. The reports required by this Order are necessary to assure that the work required is completed in compliance with applicable state law and requirements to protect the beneficial uses of waters of the State.
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.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, Robert and Denise Stein shall cleanup the waste and abate the effects of the discharge and threatened discharge of waste, including earthen materials, soil, and sediment to waters of the state as follows:

1. Complete, forthwith but no later than **1 January 2007**, corrective actions necessary to remove the sediment discharged from the Ice Pond to Big Grizzly Creek, including but not necessarily limited to, the following:
 - (a) Remove, as reasonable feasible, all fine grained sediment deposited from the Ice Pond for approximately ¼ mile downstream to the rock diversion dam, including the sediment covering the intake to the Grizzly Ranch Golf Course.
 - (b) Operate the gate in the Ice Pond dam in a manner that prevents the downstream discharge of additional sediment currently residing below the high water line of the Ice Pond to Big Grizzly Creek.
 - (c) Prior to beginning remedial activities, notify Regional Board and California Department of Fish and Game staff by phone of the plan and time frame for beginning sediment removal activities.

- (d) Provide Regional Water Board and California Department of Fish and Game staff access to areas of the property to conduct monitoring as needed during and after the implementation of your sediment removal project.
2. Submit by **1 February 2007**, a written Completion Report describing what actions you have taken to comply with this order, including the methodology of cleanup, quantity of sediment removed from Big Grizzly Creek, and what actions are proposed to prevent a recurrence of a similar discharge. The Completion Report is to be prepared by a professional knowledgeable and experienced in stream restoration
 3. Reimburse, if requested, the Regional Water Board for reasonable costs associated with oversight of actions taken in response to this Order. By **7 February 2007** 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.

Original signed by Kenneth D. Landau for

Pamela C. Creedon
Executive Officer

22 December 2006

(Date)

PVW/sae