

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

CLEANUP AND ABATEMENT ORDER NO. R5-2009-0708
FOR

MARK VANN
ROUGH AND READY CREEK
TUOLUMNE COUNTY

This Order is issued to Mark Vann (hereafter Discharger) based on provisions of California Water Code (CWC) sections 13304 and 13267, which authorize the Executive Officer of the Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board), to issue a Cleanup and Abatement Order (Order) and to require the submittal of technical reports.

The Executive Officer of the Central Valley Water Board finds, with respect to the Discharger's acts, or failure to act, the following:

1. The Discharger owns property located at 14484 Algerine Wards Ferry Road in Tuolumne County. The property is in Sections 27 and 28, Township 1 North, Range 15 East MDB&M (APN 96-180-010).
2. On 7 April 2009, Central Valley Water Board and California Department of Fish and Game (DFG) staff inspected the property and found the Discharger had constructed an earthen dam within Rough and Ready Creek. The in-stream dam had failed during a prior rain event. Failure of the dam resulted in the deposition of sediment in Rough and Ready Creek for about a quarter of a mile downstream of the failed dam. In addition to the in-stream work, Board staff observed that roads have been graded around the dam area and on several upland areas. The total area graded is estimated at two acres. Photographs taken during the 7 April 2009 inspection showing the area, the magnitude of the dam failure, and the discharge of sediment to surface waters are included as Attachment A, a part of this Order.
3. On 13 April 2009, Board staff issued a Notice of Noncompliance (NONC) to the Discharger for failure to comply with the CWC and the federal Clean Water Act. Staff notified the Discharger of the following violations:
 - Failure to obtain coverage under the Construction Storm Water General Permit for clearing, grading, and excavation resulting in land disturbance of one or more acres.
 - Violation of CWC section 13376, which requires that any person 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 NONC required the Discharger to file a Notice of Intent requesting coverage under the Construction Storm Water General Permit, submit a Storm Water Pollution Prevention Plan and submit a Clean Water Act Section 401 Water Quality Certification application no later than 15 May 2009.

4. On 21 April 2009, Board and DFG staff inspected the property again. During the inspection, Board staff walked the creek channel with a DFG biologist and a DFG lieutenant to further assess the damage in the creek. Staff observed that sediment was deposited in many areas downstream from the failed dam. Board staff met with the Discharger and recommended that he consult with a professional qualified to conduct a full streambed site assessment. Board staff also informed the Discharger that the sediment would need to be removed to prevent additional impacts.
5. The Discharger submitted a Notice of Intent for coverage under the Construction Storm Water General Permit on 27 April 2009, and was issued WDID NO. 5S55C355222.
6. The Discharger's activities have impacted Rough and Ready Creek, a tributary to the Tuolumne River. If the site is not immediately stabilized and if a long-term solution to migration of down-stream sediment is not implemented, these impacts will likely be accelerated.

REGULATORY CONSIDERATIONS

7. The Discharger, by failing to file for the proper permits prior to grading activities, not stabilizing the site after the activities occurred, and damming a creek without proper permits has caused or permitted, or threatens to cause or permit, waste to be discharged in such a manner that it threatens to cause or create a condition of pollution or nuisance. Therefore, the Discharger is subject to this Order pursuant to CWC section 13304.
8. 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 plans and policies for protecting waters of the basin, and incorporates by reference plans and policies adopted by the State Water Resources Control Board. The beneficial uses of the Tuolumne River, as identified in Table II-1 of the Basin Plan, are municipal and domestic supply; agricultural supply; water contact recreation; non-contact water recreation; warm freshwater habitat; cold freshwater habitat; migration of aquatic organisms; spawning, reproduction, and/or early development of aquatic organisms; and wildlife habitat.
9. CWC section 13304(a) states that:

Any person ... 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 not 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.
10. CWC section 13304(c)(1) states 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.

11. CWC section 13050 states, in relevant part:

(l)(1) "Pollution" means an alteration of the quality of the waters of the state by waste to a degree which unreasonably affects either of the following:

(A) The waters for beneficial uses.

12. CWC section 13267(b)(1) states, in relevant part, that:

...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...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.

13. The technical reports required by this Order are necessary to ensure compliance with this Order 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. The Discharger is subject to this Order because he owns the property from which waste was discharged.

14. The issuance of this Order is exempt from the provisions of the California Environmental Quality Act, pursuant to California Code of Regulations, title 14, section 15321(a)(2).

IT IS HEREBY ORDERED that, pursuant to CWC sections 13304 and 13267, Mark Vann shall cleanup and abate the impacts to Rough and Ready Creek caused by his grading actions in accordance with the scope and schedule set forth below:

1. The Discharger shall take all reasonable steps to stabilize the site and cease the discharge of sediment and other wastes to waters of the state, including, but not limited to, Rough and Ready Creek and its tributaries. Compliance with this directive shall include, but not be limited to, immediately cleaning up and abating the sediment that has been discharged to surface waters in accordance with the following schedule.
2. By **15 July 2009**, the Discharger shall submit a written report detailing the results of a site assessment of all areas impacted by the dam failure, including the disturbed areas above the dam and the full length of the creek impacted by sediment deposition. The report must include at minimum the habitat type (riffle,run, pool), depth of sediment deposited in each

reach and a full assessment of the biological and habitat impacts to the creek channel and upstream flooded areas.

3. By **15 July 2009**, the Discharger shall submit a comprehensive *Cleanup and Restoration Plan* (Plan), for approval by the Board's Executive Officer. The Plan must also be submitted to the DFG, US Army Corps of Engineers, and Tuolumne County. The Plan shall describe how the remaining dam structure, and all sediment deposited in the stream channel due to the failure of the dam, will be removed. The Plan shall contain information establishing that the earthen material removed will be deposited in an area and manner that will not impact surface waters, and all disturbed soil areas will be stabilized with an effective combination of erosion and sediment controls. All work must be conducted in accordance with the approved Plan.

The Plan shall be implemented as soon as possible after approval by the Board's Executive Officer. At minimum, the Plan shall include the following elements:

- a. A qualified biologist shall be onsite at all times during cleanup and restoration activities. The biologist will monitor work activities and write daily work reports that include photographs of the activities.
 - b. If the creek is flowing and the work activity results in a visible plume, water samples shall be taken upstream and downstream of the work area every four hours and analyzed for turbidity and suspended solids.
 - c. If downstream turbidity levels exceed Basin Plan objectives, the monitoring results must be reported verbally to Board and DFG staff within eight hours. A written report including photographs shall be submitted to Board and DFG staff within 48 hours.
4. By **15 October 2009**, all work will be completed in accordance with the approved Plan and the entire project shall be stabilized.
 5. By **2 November 2009**, the Discharger shall submit a *Completion Report* describing in detail how the *Cleanup and Restoration Plan* has been implemented and how the site and impacted surface waters have been fully remediated. The report shall include photographs of the site and Rough and Ready Creek prior to and after stabilization and cleanup and monitoring information taken during the stabilization activities.
 6. The Discharger shall conduct visual monitoring throughout the 2009-2010 wet season in accordance with the current General Construction Permit. All inspection reports shall include written reports and photographs. On **15 May 2010** the Discharger shall submit the monitoring reports and photographs to Board and Department of Fish and Game, Army Corps of Engineers and Tuolumne County staff.
 7. The Discharger shall provide Board staff access to areas of the property as needed.

Any person signing a document submitted under this Order shall make the following certification:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my knowledge and on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

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 may issue a complaint for administrative civil liability.

Failure to comply with this Order may result in the assessment of an Administrative Civil Liability of up to \$10,000 per violation per day, pursuant to the CWC sections 13268, 13350, and/or 13385. The Central Valley Water Board reserves its right to take any enforcement actions authorized by law.

Any person aggrieved by this action of the Board may petition the State Water Board to review the action in accordance with CWC section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request.

This Order is effective upon the date of signature.

Original signed by

PAMELA C. CREEDON, Executive Officer

18 June 2009

Date

Attachment A: Central Valley Water Board staff inspection photographs

DJB/SYM: 8-June-09

Attachment A

Mark Vann, Rough and Ready Creek
7 April 2009 Inspection Photographs



Figure 1: View of the area where the earthen dam failed



Figure 2: View of the former pond area
Note: view is looking down stream towards the area where the earthen dam failed



Figure 3: Area where the earthen dam failed



Figure 4: Another view of the dam failure area



Figure 5: View looking immediately downstream from the dam failure area



Figure 6: Sediment deposited in the stream channel just downstream of the dam



Figure 7: Sediment deposited further downstream



Figure 8: Sediment deposited still further downstream



Figure 9: Sediment deposited even further downstream



Figure 10: Culverts which washed down stream from the dam failure area



Figure 11: Sediment deposited still further downstream



Figure 12: Sediment deposited approximately 1/4 mile downstream from the dam failure area