

July 2017 Response to Public Comments on Tentative Cleanup and Abatement Order
Bremer Family Winery Vineyard, Napa County

Comment Letter	Comment	Response to Comment
1. Kellie Anderson	<p>1.1 “I have been aware of the ongoing violations at the project site for the last several years. I fully support the Tentative Cleanup and Abatement Order, with the goal of restoring this/these unnamed creeks which are tributaries to Canon Creek and the Napa River. I initiated contact with the Napa County Planning Staff expressing concerns over the importation of rock and dirt fill and the deposition of this material in what had historically been areas of meandering, undefined, multi-thread, ephemeral streams, which supported spectacular sheet flows during storm events.”</p>	<p>Comment noted. The Tentative Cleanup and Abatement Order (CAO) is intended to expeditiously result in site restoration and avoid and minimize further harm to beneficial uses.</p>
	<p>1.2 “The Corrective Action Work Plan relies upon preparation of a technical report describing recent unauthorized activity, calling for a description of pre-disturbance channel morphology and characterization of the impacted creek and riparian habitat. The applicant has employed Napa Valley Vineyard Engineering, Kjeldsen Biological Consulting, Theodore Wooster, Consulting Biologist and Stephen Smith Registered Professional Forester, in the initial and ongoing development of this vineyard project, which has resulted in the removal of riparian vegetation, the discharge of sediment into waters of the state and failure to provide effective erosion and sediment control measures. I request that these individuals and organizations be excluded from further work on the cleanup and abatement order. The Regional Board reasonably could provide a list of qualified, unbiased biological consultants and civil engineering firms with expertise in fluvial geomorphology and creek restoration to oversee this critical, multi-phase restoration process providing an unbiased, fact based effort at creek restoration and evaluation of geological hazards resulting from importation of rock and fill.”</p>	<p>The Tentative CAO provides sufficient mechanisms to ensure that future work will be carried out in compliance with the law. For example, Tentative CAO Provision 11 requires the Dischargers to provide documentation that required plans and reports are prepared under the direction of appropriately qualified professionals. Provision 9 requires the Dischargers to include a perjury statement in all reports submitted and Provision 10 requires all reports and other submittals to be complete, accurate, and otherwise adequate as determined acceptable by the Water Board Executive Officer.</p>
	<p>1.3 “Please require toxicological analysis of the fill material imported to the project site and proposed for removal as part of the Order. Dredged materials imported to the site from the Napa River should be analyzed for pesticides and heavy metals, mercury etc. prior to commencement of any cleanup work. Special attention must be given to removal of the fill as this site is located within close proximity to sensitive receptor populations including the Foothills Adventist elementary school, the</p>	<p>The fill material imported to the site came from restoration projects along the Napa River. This material was primarily excavated from the riverbank within an area that did not have any known historic contamination. Further, while contaminated sediment may be transported and deposited</p>

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	<p>Adventist Community Services Center, the St. Helena Hospital, the Deer Park Community Hall, and the all Senior Munds Mobile Manor. Additionally, fill material, rock, and other construction debris (pipe, concrete, metal fencing) materials removed during project cleanup will expose local residential areas to dust and particulate matter. Clear steps should be identified for protection of the residents, and sensitive receptor sites from air quality impacts. Trucks removing fill from site must be required to be fully tarped upon leaving site. Reliance on exemptions in Vehicle Code #23114 shall not be permitted. Streets must be swept twice daily if visible material is carried onto roadways. An onsite individual should be assigned responsibility for compliance during clean up phase.”</p>	<p>on the channel bed, this is not typically a concern with riverbank material. Therefore, the Water Board did not require toxicological analysis of the excavated material.</p> <p>Fill material proposed for removal under the Tentative Order consists primarily of rocks and boulders placed in the unnamed creek and culverts installed without authorization. Contamination, when present, typically binds to finer material such as soil or sediment. Further, these rocks and boulders likely originated onsite as a result of deep-ripping in preparation for vineyard construction. Toxicological analysis of this material is not required because there is no history of contamination on the project site. Appropriate best management practices, including dust controls, will be required during implementation of corrective actions.</p> <p>We will not be relying on exemptions in Vehicle Code #23114 because most, if not all of the fill material imported to the project site is not proposed for removal under the Tentative CAO. Work required under the Tentative CAO will not result in trucks removing fill from the site, will not expose residents to dust and particulate matter, and will not require daily street sweeping.</p>
	<p>1.4 “All rock walls must be removed, and if permitted to be reinstalled as part of the CAO, be constructed with filter fabric between all rock</p>	<p>The subject of the Tentative CAO is the placement of rock and other fill material in</p>

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	<p>slopes and earthen material as described on page 19 of the Mitigated Negative Declaration. No rock walls shall be permitted to be rebuilt above the approved 5 foot height limit. Please have Dischargers provide technical specs on the effective life of filter fabric under these conditions. What is the expected life of the new terraced vineyard blocks developed on imported fill? Is the proposed installation of filter fabric a viable tested, technique to prevent the discharge of soil and other earthen material into the Creek and other down-gradient receiving waters including the Napa River? ”</p>	<p>waters of the State. The construction of rock walls in uplands under the approved Erosion Control Plan is under the purview of the local land use authority, Napa County. The installation of rock slope protection with nonwoven filter fabric placed between rock fill was described in the CEQA document. When installed correctly, the use of filter fabric is an acceptable method for sediment control. The Water Board is working with Napa County to ensure that appropriate best management practices including erosion and sediment control measures, are implemented at the project site. However, specific requirements relating to the construction of the rock walls and vineyard blocks in uplands are under the purview of Napa County.</p> <p>Water Board staff will continue to act in an advisory capacity to Napa County’s enforcement actions with respect to other vineyard activities that may have resulted in changes to hydrological conditions.</p>

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	<p>1.5 “Special status plants species noted within the project site and outside of the project boundary include Holly Leaf Ceanothus, (Ceanothus Purpureas). Prior to initiation of the CAO, a biological survey should be conducted to determine the presence and distribution of this and other potential special status plant species. Additionally the implementation of mitigation measures BR1 and BR4 included in the Mitigated Negative Declaration must be implemented, including development of a revegetation plan <u>approved by the County and field flagging of the area identified and approved by the County for the revegetation area</u>. These conditions should apply to all abatement order work as well.”</p>	<p>Biological surveys have been conducted at the project site and have identified the presence of holly leaf ceanothus, a special status upland plant. Compliance with mitigation measures identified in the Mitigated Negative Declaration, such as a revegetation plan to mitigate for the removal of holly leaf ceanothus and oak woodlands in upland areas, is under the purview of the local land use authority, Napa County.</p> <p>The purpose of the Tentative CAO is to restore a creek and associated riparian habitat that was filled without authorization. A biological survey to determine the presence of special status plants is not possible because the unauthorized fill of the creek resulted in the removal of all riparian vegetation.</p>
	<p>1.6 “Please evaluate the location of the existing plastic water tank in the Creek channel for compliance with Chapter 4, Table 4-1 of the Basin Plan, Discharge Prohibition No. 9.”</p>	<p>The plastic water tank in question was originally placed within the Canon Creek setback. However, under a Restoration Plan approved by Napa County in January 2016, the water tank was relocated outside the creek setback, erosion and sediment controls were installed, and the creek setback area was revegetated with native shrubs.</p>
	<p>1.7 “Discharger must document changes to offsite hydrological conditions as a result of vineyard modifications. Changes to offsite storm conditions observed include increased depth of flood waters over Deer Park Rd., increased duration of flooding over Deer Park Rd. and dewatering of an unnamed stream at the intersection of Deer Park Rd.</p>	<p>The purpose of the Tentative CAO is to restore the creek and associated riparian habitat that was filled without authorization. Any changes to offsite hydrological conditions resulting from the unauthorized</p>

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	<p>and Oak St. Dischargers must provide hydrological analysis sufficient to identify corrective actions necessary to restore off site runoff to pre project conditions.”</p>	<p>fill will be remedied by implementation of the Tentative CAO. Water Board staff will continue to act in an advisory capacity to Napa County’s enforcement actions with respect to other vineyard activities that may have resulted in changes to offsite hydrological conditions.</p>
	<p>1.8 “Discharger must identify vineyard block locations and acreages approved for development by County of Napa in the Erosion Control Plan. The CAO further requires Discharger submit the as built plans for the project. Please identify all blocks presently constructed and approved vineyard blocks not yet built. Regional Board should evaluate the unbuilt, but approved vineyard blocks for the potential to cause additional creek and riparian impacts. Regional Board should evaluate the need for additional environmental review of blocks not yet constructed and evaluate the Dischargers pending request for modification to the approved ECP currently under review with Napa County.”</p>	<p>The Water Board is working cooperatively with Napa County to ensure that any approved modifications to the erosion control plan will support implementation of the CAO and will not result in impacts to water quality.</p>
	<p>1.9 “Regional Board should clarify what role Napa County will play in future enforcement and implementation of the Order. Will vineyard blocks currently approved for development (but not yet constructed) be permitted to proceed while compliance with Order and restoration is occurring? Which agencies will provide onsite, field verification of compliance with water quality protection and habitat restoration goals? Who will enforce the CAO mitigation monitoring plan?”</p>	<p>Approvals and requirements for future construction of vineyard blocks is under the purview of Napa County. The Bremer Family Winery Vineyard has applied for modifications to the approved Erosion Control Plan which is currently under review by Napa County. It has not yet been determined when the modifications to the Erosion Control Plan will be approved or when additional vineyard construction will be permitted to proceed. The Water Board is working cooperatively with Napa County to ensure that any approved modifications to the Erosion Control Plan will support implementation of the CAO. The Water</p>

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		<p>Board has participated in several site inspections along with staff from Napa County and California Department of Fish and Wildlife to ensure the protection of water quality and the environment, and will continue to do so. The Water Board is responsible for enforcing implementation of the CAO, including verification of compliance with water quality protection, habitat restoration and the mitigation monitoring plan.</p>
	<p>1.10 “The completion of all onsite mitigations should be mandatory and no compensatory mitigations or payment in lieu should be permitted due to the breathtaking damage caused to the Canon Creek watershed. Dischargers have the wherewithal and financial ability to complete onsite restorations and should not be permitted to profit from the installation of vineyards and the harvest of wine grapes at the expenses of the watershed, the Napa river and the riparian habitat they destroyed.”</p>	<p>The Tentative CAO requires restoration of the creek and associated riparian habitat that was filled without authorization. In addition, the Tentative CAO requires compensatory mitigation for any permanent or temporal losses of water quality functions and values provided by the creek and associated riparian habitat that resulted from unauthorized activities. We agree that onsite mitigation is preferable in most cases, and the Tentative CAO expresses such a preference, but the Tentative CAO allows for the possibility that the Dischargers may develop better, more beneficial offsite mitigation. The Tentative CAO requires the Dischargers to submit a Mitigation and Monitoring Plan, which will be available on the Water Board’s website for public comment.</p>
	<p>1.11 “A performance and construction bond should be required to insure timely and satisfactory completion of CAO.”</p>	<p>The Tentative CAO includes provisions to ensure timely and satisfactory implementation. Provision 2a requires the Dischargers to prepare a Corrective Action</p>

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		<p>Workplan including an implementation time schedule for design, permitting, and construction. Provision 2c requires the Dischargers to initiate implementation of the Corrective Action Workplan in accordance with the accepted implementation time schedule within sixty days of acceptance by the Executive Officer. Provision 2b requires monitoring to demonstrate that corrective actions meet success criteria. The Water Code provides additional incentive in sections 13350 and 13385 (administrative civil liability provisions) to comply with the Tentative CAO.</p>
	<p>1.12 “The CAO should run with the land and should be binding upon all heir and successors and should not be discharged in bankruptcy court.”</p>	<p>The issuance of cleanup and abatement orders is a quasi-adjudicative function of the Water Board. They are specific to a person (or entity). Because that person’s (or entity’s) rights are being adjudicated, the Order cannot be tied to the property. Tentative CAO Provision 14 states that none of the obligations imposed by the CAO should be limited or discharged in a bankruptcy proceeding.</p>
	<p>1.13 “Unfortunately, Napa County’s issuance of a Mitigated Negative Declaration for this project, rather than requiring an Environmental Impact Report, was predicated on inaccurate information provided by applicant, engineers and biological consultants, and resulted in the denial of public and agency comments on project impacts. Further, County Planning Staff’s failure to adequately verify on site pre-project conditions i.e. presence of ephemeral streams, riparian vegetation, timber species and geologic conditions, and failure to conduct required mitigation measure inspections they were obligated to provide i.e.</p>	<p>Comment noted. The Mitigated Negative Declaration is not relevant to the restoration of the creek and associated riparian habitat.</p>

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	inspection of temporary construction fencing detailed in the Creek Protections Standards Conditions, contributed to applicants unauthorized construction activities and cumulative damage to the unnamed ephemeral streams on site, Canon Creek and the Napa river.”	
	1.14 “The County of Napa Planning and Code Enforcement Staff’s delayed response to citizens’ complaints (Froeb, Broman, Anderson, et al.) regarding earth moving activities, blasting, cave drilling, trucking of fill dirt, development of rock walls in excess of 10 foot tall where only 5 foot was approved, relocation of vineyard blocks and alterations of sediment ponds from approved permit details, construction of water storage tanks in creek channel, failure to conduct required preconstruction biological surveys, removal of trees identified for preservation on ECPA, and failure to protect special status plant species identified in the Mitigated Negative Declaration and Conditions of Approval, ultimately resulted in the situation that is the subject of this Cleanup and Abatement Order.”	Comment noted.
	1.15 “Further, the geologic and hydrological reality of the project site has been inaccurately portrayed by Discharger’s engineering firm (Napa Valley Vineyard Engineering) as feasibly farmable. Large portions of the site are comprised of Rock outcrop-Kidd Complex soils 50-75 % slopes which exhibit rapid run off and very high erosion potential. Hydrological assumptions based on deep ripping of soils and construction of sub surface drainage and sediment basin, relied upon in plan review and approval, falsely represented the hydrologic suitability and agricultural potential for this site.”	Comment noted. Water Board staff will continue to act in an advisory capacity to Napa County’s enforcement actions with respect to other vineyard activities that may have resulted in changes to hydrological conditions. The suitability of the site for agricultural purposes, however, is not within the scope of the Tentative CAO.
	1.16 “Neighbors questioned the concept of impounding the seasonally high, short duration volumes of water leaving this ‘headwaters’ site with a small attenuation basin. And locals questioned the permitted destruction of a place of such powerful beauty, alternating between summers steep, rattlesnake strewn no man’s land of lichen encrusted cobbles, then metamorphosing into a flash of cascading threads circling, engulfing and ultimately overtaking the entire hillside bowl in a sudden seasonal display of winter’s force. We had all considered this an	Comment noted. Water Board staff will continue to act in an advisory capacity to Napa County’s enforcement actions with respect to other vineyard activities that may have resulted in changes to hydrological conditions. The suitability or use of this site for wine grape production, however, is not within the scope of the Tentative CAO.

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	<p>amazingly beautiful, wild place. Honest geological investigation will document that the boulder fields of Deer Park, forming the headwaters of Canon, Creek, are wholly inappropriate for wine grape production. It is no small oversight that for one hundred and fifty years, Napa County grape growers have left this place alone to rocks and the rain.”</p>	
2. Donald Niemann	<p>2.1 “We wish to commend you for issuing the tentative cleanup and abatement order regarding illegal vineyard activity by the Bremer Family Winery. There is a growing concern here regarding the degradation of the County’s water supply caused in large measure by vineyard expansion into forested hillside areas. Last year citizens attempted to place on the ballot the Water, Forest and Oak Woodland Protection Initiative, which would have dealt with several of the issues raised in the Bremer case. Although the initiative was rejected by County officials on a technicality, I can assure you that sentiment for protecting our watersheds is growing.”</p> <p>2.2 “I only wish that in addition to incurring the costs of remediation, the Bremers were assessed a fine for their knowingly illegal activity. Perhaps requiring the dischargers to spend time helping to clean-up Napa County waters would be an appropriate restitution.”</p>	<p>Comment noted. Please see response to comment 1.16.</p> <p>The assessment of penalties is not within the scope of the Tentative CAO.</p>
3. Sierra Club, Napa Group	<p>3.1 “The Napa Group of the Redwood Chapter of the Sierra Club commends and supports the Cleanup and Abatement Order No. R2-2017-00XX regarding the cited unauthorized discharges described therein that compromised the watershed above Canon Creek, a tributary of the Napa River. Recent co-operative efforts between public agencies, local businesses, and other citizens have been directed in recent years towards improving water quality and habitat throughout the Napa River. The success of these efforts has been noted by many in the form of increased sightings of fish and other riparian wildlife species. The health of the tributaries must be maintained and we are glad to see our public agencies enforcing our public trust regulations.”</p>	<p>Comment noted.</p>
4. David Heitzman, President, Defenders	<p>4.1 “There should be full on site remediation of creeks. No off site work, compensatory work or in lieu payments.”</p>	<p>Please see response to comment 1.10.</p>

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of East Napa Watersheds	4.2 “All engineers and consultants involved in the violation should be prohibited from working on the cleanup and abatement.”	Please see response to comment 1.2.
5. Lisa Hirayama	5.1 “I am writing in support of the Tentative Cleanup and Abatement Order for the above named enterprise. This CAO has the goal of restoring those unnamed creeks which are tributaries to Canon Creek and the Napa River.”	Comment noted.
	5.2 “The RWQCB is asking for a technical report detailing the unauthorized construction activities at the site and an assessment of the impacts to the creeks. The Dischargers have employed Napa Valley Vineyard Engineering; Kjeldsen Biological Consulting; Theodore Wooster, Consulting Biologist; and Stephen Smith, Registered Professional Forester for the development of this vineyard project. <i>I am requesting that these individuals and businesses be excluded from further work on the CAO.</i> In my opinion, they were willing to go along with the Dischargers permit violations and cannot be depended upon to follow guidelines. The Water Board should be able to provide a list of impartial, qualified biological consultants and civil engineers with expertise in creek restoration and evaluating the hazards from importing rock and fill.”	Please see response to comment 1.2.
	5.3 “Please require removal of all the constructed rock walls. If they're to be reinstalled as part of the CAO, please require that they be constructed with filter fabric between all rock slopes and earthen material as described on page 19 of the Mitigated Negative Declaration. The Dischargers must provide technical specs on the effective life of filter fabric under these conditions. No rock walls should be built above the approved five foot height limit.”	Please see response to comment 1.4.
	5.4 “Please require toxicological analysis of the fill material imported to the project site and the proposed fill to be removed as part of the CAO. Dredged materials imported to the site from the Napa River must be analyzed for pesticides and heavy metals, mercury, etc. prior to the commencement of any cleanup work. Dust and particulate matter will be generated during the project cleanup from dirt fill, rock, construction debris, etc. Due to the close proximity of the site of residents and	Please see response to comment 1.3.

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	businesses, trucks removing such material must be required to be fully covered upon leaving the location. An onsite individual should be present during the clean up phase to assure compliance.”	
	5.5 “Please require a biological survey prior to the initiation of the CAO. Such a survey would determine the presence and distribution of special status plants noted within the project site and outside of the project boundary. In addition, mitigation measures BR1 and BR4 included in the Mitigated Negative Declaration must be implemented, including development of a re-vegetation plan approved by the County and field flagging of the area identified and approved by the County for the re-vegetation area. These conditions should apply to all abatement order work as well.”	Please see response to comment 1.5.
	5.6 “Please require the Discharger to document changes to offsite hydrological conditions as a result of the vineyard modifications. Offsite storm conditions that have been observed include 1) the increased depth of flood waters over Deer Park Rd 2) increased duration of flooding over Deer Park Rd 3) water decrease of an unnamed stream at the intersection of Deer Park Rd and Oak St. The Discharger must provide hydrological analysis sufficient to identify corrective actions necessary to restore the offsite runoff to prior project conditions.”	Please see response to comment 1.7.
	5.7 “Please require the Discharger to identify vineyard block locations and acreages approved for development by Napa County in the Erosion Control Plan. The CAO further requires the Discharger submit the as-built plans for the project. Please require identification of all blocks presently constructed and approved vineyard blocks not yet built. <i>The RWQCB needs to evaluate the <u>un-built but approved vineyard blocks</u> for the potential to cause additional creek and riparian impacts.</i> RWQCB must evaluate the need for additional environmental review of blocks not yet constructed and evaluate the Discharger's pending request for modification to the approved ECP currently under review with Napa County.”	Please see response to comment 1.8.

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	<p>5.8 “Please evaluate the location of the existing plastic water tank in the Creek channel for compliance with Chapter 4, Table 4-1 of the Basin Plan, Discharge Prohibition No. 9.”</p>	<p>Please see response to comment 1.6.</p>
	<p>5.9 <i>“The completion of all onsite mitigations should be mandatory and no compensatory mitigations, offsite work, or payments in lieu of should be permitted due to the atrocious and deplorable damage caused to the Canon Creek watershed.</i> The Dischargers have the resources and financial means to complete onsite restorations and should not be allowed to profit from the establishment of vineyards at the expense of the watershed, the Napa River, and the riparian habitat they destroyed.”</p>	<p>Please see response to comment 1.10.</p>
	<p>5.10 “A performance and construction bond should be required to insure timely and satisfactory completion of the CAO. The CAO should be tied to the land, binding upon all subsequent heirs or owners, and should not be discharged in bankruptcy court.”</p>	<p>Please see response to comment 1.12.</p>
	<p>5.11 “Lastly, the RWQCB must clarify what role Napa County will play in the future enforcement and implementation of the CAO. Will vineyard blocks currently approved for development but not yet constructed be permitted to advance while compliance with the CAO and restoration is occurring? Which agencies will provide onsite, field verification of compliance with water quality protection and habitat restoration objectives? Who will enforce the CAO mitigation monitoring plan?”</p>	<p>Please see response to comment 1.9.</p>
	<p>5.12 “Please penalize the Bremer Family Winery Vineyard to the fullest extent of the law for their blatant disregard of the regulations and statutes that are in place to protect residents and the environment.”</p>	<p>Please see response to comment 2.2.</p>
<p>6. Patricia Damery and Donald Harms</p>	<p>6.1 “We ask for full on-site remediation of the creeks that Bremer has so willingly destroyed. Please allow no off site work, compensatory work or in lieu payments. Prohibit all engineers and consultants involved in the whole project from working on the cleanup and abatement. Please to provide a list of qualified engineers and consultants to the Bremer’s, ones who will protect the creek and larger ecosystem which has been damaged.”</p>	<p>Please see responses to comments 1.10 and 1.2.</p>

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<p>7. Gregory and Maryann Nowell</p>	<p>7.1 “My wife and I are writing to state our objection to being named as “Owners” in the Tentative Cleanup and Abatement Order No. R2-2017-00XX (the “Tentative Order”). Our objection is based on the following facts regarding our past involvement with the Erosion Control Permit; and our past and current involvement with John and Laura Bremer, the true Owners of the parcels that are the subject of the proposed Tentative Order.”</p>	<p>We have identified the Nowells as dischargers because the Nowells were identified as property owners in the Erosion Control Plan application and CEQA documents for the vineyard construction. Gregory Nowell attended the Water Board’s October 17, 2016, site inspection and identified himself as a representative of the vineyard. The unauthorized activities that are at the heart of the Tentative CAO occurred during the Nowell’s ownership. We have edited the first paragraph of the Tentative CAO as follows:</p> <p>John and Laura Bremer are named as Dischargers under this Cleanup and Abatement Order (Order) because they owned the Bremer Family Winery Vineyard (Site), and caused or allowed waste to be discharged to waters of the State and United States (referred to collectively as waters of the State hereafter), or to a location where it could discharge to waters of the State, as described herein.</p> <p>Maryann and Gregory Nowell are also named as Dischargers under this Order, because they owned property at the Bremer Family Winery Vineyard (Site) at the time the violations occurred and thereby caused or allowed waste to be discharged to waters of the State and United States (referred to collectively as waters of the State hereafter),</p>

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		or to a location where it could discharge to waters of the State, as described herein.
	<p>7.2 “We are not currently, nor have we ever been, Owners of the parcels that are the subject of the Tentative Order: From November, 2010 to September, 2016, we owned the property at 160 Pine Place, Saint Helena, CA 94574, APN #025-370-057. Our parcel was included in the Erosion Control Plan approved by the County of Napa, #P11-00317 ECPA, however no vineyard development work has commenced on that parcel, and the work that is the subject of the proposed Tentative Order is not located on or near that parcel. Further, neither of us were involved in, or had any responsibility for, the construction of the Bremers’ vineyard project on the parcels they own. We are not, nor have we ever been, partners or co-owners of the Bremer Family Winery or any lands owned by John and Laura Bremer.”</p>	Please see response to comment 7.1.
	<p>7.3 “We do not currently own an interest in any of the parcels that are included in the County’s Erosion Control Plan (ECP): We sold our parcel (APN# 025-370-057) to John and Laura Bremer on September 9, 2016 – months before the proposed Tentative Order was prepared. Any responsibility for future mitigation measures for that parcel contained in the approved ECP and Project Revision Statement or any measures that may be determined necessary by the Water Boards, passed on to the Bremers as the new Owners on that date.”</p>	Please see response to comment 7.1.
	<p>7.4 “Based on this information, we respectfully request that the Water Boards determine that we should not be named in, or in any way be a party to, the proposed Tentative Order, and that our names be removed from the Tentative Order and Public Notice.”</p>	Please see response to comment 7.1.
8. Living Rivers Council	<p>8.1 “Living Rivers Council (LRC) recognizes the need for the WB taking enforcement action on these egregious violations of the Clean Water Act and the Porter Cologne Act by the Bremer Family Winery Vineyard of Napa County.”</p>	Comment noted.

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	<p>8.2 “LRC has been working to restore the Napa River watershed since 2004 by protecting public trust resources from pollution, diminished stream flows and habitat alteration. The primary land use in Napa County is the conversion of wild lands to vineyards often in steep forested areas. These land conversions often result in increased rate of runoff which erodes the bed and banks of streams causing harm to beneficial uses of the Napa River such as: agricultural supply; municipal and domestic supply; groundwater recharge; commercial and sport fishing; cold freshwater habitat; fish migration; preservation of rare and endangered species; fish spawning; warm freshwater habitat; wildlife habitat; water contact recreation; non-contact water recreation; and navigation. The Napa River is the second largest fresh water flow to the greater San Francisco Bay estuary. Environmental harm to the Napa River is also harming this larger estuary important to global fisheries, navigation and recreation.”</p>	<p>Comment noted. Please see response to comment 1.16.</p>
	<p>8.3 “The Napa River is listed for pollutants under the Clean Water Act for sediment, nutrients and pathogens. The SFRWQCB is currently in the process of listing the Napa River on the 2016 303(d) list for chlordane, DDT, Dieldrin, mercury and PCBS toxicity. We appreciate the WB taking strong actions on this Clean-Up and Mitigation Order.”</p>	<p>Comment noted.</p>
	<p>8.4 “LRC joined the neighbors of Bremer to try to work with Napa County Planning, Building and Environmental Services (NCPBES) staff to get them to intervene on the environmental damage of the Bremer vineyard installation. Alteration of the geomorphology and hydrologic stream flows on and off the Bremer property is unlawful. Napa County did not intervene on these problems described in this order and consequently great environmental harm occurred such as: cut and fill of a stream, increased rate of runoff resulting in flooding off site, harm to threatened steelhead in Canon Creek due to alteration of creek habitat and sedimentation to spawning gravels.”</p>	<p>Comment noted.</p>

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	<p>8.5 “Napa County Flood and Water Conservation District (NCFWCD) hauled dirt from the Napa River levee project at Yountville to the Bremer property, without checking for proper permits by the WB and the ACOE (401 and 404 permits) to dispose of this dirt on the Bremer property that resulted in the cut and fill of the stream. Shouldn’t NCPBES and NCFWCD, as responsible agencies and the lead agency for the CEQA determination share in the responsibility of the events that lead to this order? The public initiated an enforcement action to the SFRWQCB regarding these violations of the Clean Water Act (404 permit to cut and fill) and the Porter Cologne Act (401-water quality discharge). NCPBES when getting multiple reports that the public trust was being harmed, should have taken enforcement actions such as a red tag/stop order to Bremer, but the County did not take appropriate actions. Why not?”</p>	<p>Imported fill material was primarily placed in uplands during vineyard construction, which did not require section 401 or 404 permits. These vineyard construction activities were authorized under the Erosion Control Plan by the local land use authority (Napa County) and are not within the scope of the Tentative CAO.</p> <p>Unauthorized fill placed in the creek and associated riparian habitat consisted of rock and boulders that likely originated onsite as a result of deep ripping the soils in preparation for vineyard construction. Napa County has taken enforcement actions including issuing a red tag/stop work order and a Notice of Violation. Napa County staff conducted follow up site inspections in September and October 2016 in coordination with the Water Board and the California Department of Fish and Wildlife (CDFW).</p> <p>Water Board staff will continue to act in an advisory capacity to Napa County’s enforcement actions with respect to other vineyard activities that may have resulted in changes to hydrological conditions.</p> <p>Also, please see response to comments 1.3, 1.4, 1.5, 1.8, and 1.9.</p>

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	<p>8.6 “Napa County needs a Department of Fish and Wildlife water warden to help reduce these types of violations. What can be done to promote this?”</p>	<p>A CDFW warden participated in the September 19, 2016, inspection along with staff from the Water Board and Napa County. The Water Board will continue to work cooperatively with Napa County and CDFW to restore the impacted creek and associated riparian habitat.</p>
	<p>8.7 “The public wants Napa County resource agencies to participate in making sure that developers do not do construction that will violate the Clean Water Act and the Porter Cologne Act by acting proactive with developers to protect our water resources and not wait until great harm is done.”</p>	<p>Comment noted. Please see response to comment 1.16.</p>
<p>9. Linnea Carr</p>	<p>9.1 “I am writing in support of the Tentative Cleanup and Abatement Order for the above named company. This CAO has the goal of restoring the unnamed creeks which are tributaries to Canon Creek and the Napa River. I am submitting my comments regarding this unpermitted, terrible vineyard project.”</p>	<p>Comment noted.</p>
	<p>9.2 “The RWQCB is asking for a technical report detailing the unauthorized construction activities at the site and an assessment of the impacts to the creeks. The Dischargers have employed Napa Valley Vineyard Engineering; Kjeldsen Biological Consulting; Theodore Wooster, Consulting Biologist; and Stephen Smith, Registered Professional Forester for the development of this vineyard project. <i>I am requesting that these individuals and businesses be barred from further work on the CAO.</i> In my opinion, they were negligent by going along with the Discharger's permit violations and cannot be relied upon to follow the rules. The Water Board should be able to provide a list of objective, experienced biological consultants and civil engineers with expertise in creek restoration and evaluating the hazards from importing rock and fill.”</p>	<p>Please see response to comment 1.2.</p>

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	<p>9.3 “Please require toxicological analysis of the fill material imported to the project site and the proposed fill to be removed as part of the CAO. Dredged materials taken to the site from the Napa River must be analyzed for pesticides, heavy metals, mercury, etc. prior to the start of any cleanup work. Dust and particulate matter will be generated during the project cleanup from dirt fill, rock, construction debris, etc. Due to the close location of the site to residents and businesses, trucks removing all materials must be required to be fully covered upon leaving the area. An onsite individual should be present during the cleanup phase to assure compliance.”</p>	<p>Please see response to comment 1.3.</p>
	<p>9.4 “Please require removal of all the presently constructed rock walls. If they're to be reinstalled as part of the CAO, please require that they be constructed with filter fabric between all rock slopes and earthen material as described on page 19 of the Mitigated Negative Declaration. The Dischargers must provide technical specs on the effective life of filter fabric under these conditions. No rock walls should be built above the approved five foot height limit.”</p>	<p>Please see response to comment 1.4.</p>
	<p>9.5 “Please require the Discharger to document changes to offsite hydrological conditions as a result of the vineyard modifications. Offsite storm conditions that have been observed include: A. the increased depth of flood waters over Deer Park Rd B. increased duration of flooding over Deer Park Rd C. water decrease of an unnamed stream at the intersection of Deer Park Rd and Oak St. The Discharger must provide hydrological analysis to satisfactorily identify corrective actions necessary to restore the offsite runoff to pre-project conditions.”</p>	<p>Please see response to comment 1.7.</p>
	<p>9.6 “Please require the Discharger to identify vineyard block locations and acreages approved for development by Napa County in the Erosion Control Plan. The CAO further requires that the Discharger submit the as-built plans for the project. Please require identification of all blocks presently constructed and approved vineyard blocks not yet built. <i>The RWQCB needs to evaluate the <u>un-built but approved vineyard blocks</u> for the potential to cause additional creek and riparian impacts.</i></p>	<p>Please see response to comment 1.8.</p>

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	RWQCB must evaluate the need for additional environmental review of blocks not yet constructed, and evaluate the Discharger's pending request for modification to the approved ECP currently under review with Napa County.”	
	9.7 “ <i>The completion of all onsite mitigations should be mandatory and NO compensatory mitigations, offsite work, or payments in lieu of should be permitted due to the awful and devastating damage caused to the Canon Creek watershed.</i> The Dischargers have the means and financial ability to complete onsite restorations, and they should not be allowed to profit from the establishment of vineyards at the expense of the watershed, the Napa River, and the riparian habitat they destroyed.”	Please see response to comment 1.10.
	9.8 “A performance and construction bond should be required to insure timely and satisfactory completion of the CAO. The CAO should be tied to the land, binding upon all subsequent heirs or owners, and should not be discharged in bankruptcy court.”	Please see responses to comments 1.11 and 1.12.
	9.9 “The RWQCB must clarify what role Napa County will play in the future enforcement and implementation of the CAO. Will vineyard blocks currently approved for development but not yet constructed be permitted to proceed while compliance with the CAO and restoration is occurring? Which agencies will provide onsite field verification of compliance with water quality protection and habitat restoration objectives? Who will enforce the CAO mitigation monitoring plan?”	Please see response to comment 1.9.
	9.10 “Please do not allow another violator to walk away with just a slap on the wrist. The wine industry must understand that they are not above the law and will be held liable. Often times the only way to get the attention of businesses is thru their pocketbook. Please penalize the Bremer Family Winery Vineyard to the fullest extent permitted for their brazen disregard of the rules and regulations that are in place to protect citizens and the environment.”	Please see response to comment 2.2.
10. Elaine de Man	10.1 “Thank you for the opportunity to comment on R2-2017-00XX, the Tentative Cleanup and Abatement Order (CAO) for the Bremer Family Winery Vineyard in Napa County. I fully support the Tentative Cleanup and Abatement Order and hope to see it enacted and enforced.”	Comment noted.

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	<p>10.2 “The consultants and contractors hired by the winery to do the work for this project include Napa Valley Vineyard Engineering, Kjdsen Biological Consulting, Theodore Wooster (Consulting Biologist), and Stephen Smith (Registered Professional Forester). However, it now seems clear that the geologic and hydrological reality of the project site was inaccurately portrayed by the engineering firm, Napa Valley Vineyard Engineering, hired by the Bremer Family Winery to determine the land as “feasibly farmable.” Large portions of the site are comprised of rock slopes which exhibit rapid run off and very high erosion potential. The hydrological <i>assumptions</i> made in the report were based on the deep ripping of existing soils <i>and</i> the construction of a sub-surface drainage and sediment basin. These relied on plan review, approval, <i>and</i> enforcement. Consequently, the hydrologic suitability and agricultural potential for this site were falsely represented from the outset. The net result of the “work” conducted by the consultants and contractors hired by Bremer has been the removal of riparian vegetation, the discharge of sediment into state waters, and the failure to provide effective erosion and sediment control measures. Consequently, these individuals and organizations should be excluded from further work on the cleanup and abatement order for this project. In a perfect world, the Regional Water Quality Control Board would provide a list of unbiased, <i>qualified</i> biological consultants and civil engineering firms with a clean record and expertise in fluvial geomorphology and creek restoration to oversee this critical, multi-phase restoration process.”</p>	<p>Please see response to comment 1.2.</p>
	<p>10.3 “It should also be noted that historic uses of the Napa River (including several highly polluting tanneries that operated along its shores) would indicate that the soil beneath and around the river may harbor a variety of heavy metals and toxic materials. Consequently, any dredged materials that were imported to the Deer Park hillside from the Napa River must be analyzed for pesticides and heavy metals such as mercury <i>prior</i> to the commencement of any cleanup work. And, since, we don’t know the origin of all of the material that may be removed from the site during the clean-up process, the clean-up order must</p>	<p>Please see response to comment 1.3.</p>

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	<p>provide that the removal of any fill material, rock, or other construction debris removed during the cleanup does not expose any of the local residents or nearby school yards to any dust and particulate matter that might be released from the site. Trucks removing fill, for example must be fully tarped. And given the prior history of the parties involved, there need to be reliable monitors on site to make sure these rules are adhered to.”</p>	
	<p>10.4 “No rock walls should be permitted to be rebuilt above the previously approved 5-foot height limit. All illegally constructed rock walls must be removed and, if permitted to be reinstalled as part of the CAO, should be constructed with filter fabric between all rock slopes and earthen material as described on page 19 of the Mitigated Negative Declaration, provided the proposed installation of filter fabric has been shown to be a viable, tested technique that will, in fact, prevent the discharge of soil and other earthen material into the creek and other down-gradient receiving waters, including the Napa River. Among the many questions that should be answered before this project is allowed to proceed is what is the expected life of the new terraced vineyard blocks developed on imported fill?”</p>	<p>Please see response to comment 1.4.</p>
	<p>10.5 “Prior to initiation of the CAO, a biological survey should be conducted to determine the presence and distribution of special status plants species as noted within the project site and outside of the project boundary, such as the Holly Leaf Ceanothus, <i>Ceanothus purpureas</i>. Additionally, mitigation measures BR1 and BR4, included in the Mitigated Negative Declaration, must be implemented, including the development of a revegetation plan approved by the County that includes field flagging of the area identified and approved by the County for revegetation. These conditions should apply to all abatement order work, as well.”</p>	<p>Please see response to comment 1.5.</p>
	<p>10.6 “An existing plastic water tank in the creek channel needs to be evaluated for compliance with Chapter 4, Table 4-1 of the Basin Plan, Discharge Prohibition No. 9.”</p>	<p>Please see response to comment 1.6.</p>

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	<p>10.7 “The Dischargers must also provide hydrological analysis sufficient to identify corrective actions necessary to restore off site runoff to pre-project conditions. Residents in the area are well-aware that as a result of the modified hydrological conditions and vineyard modifications from this project, we experienced an increased depth and duration of flooding over Deer Park Rd., and the dewatering of an unnamed stream at the intersection of Deer Park Rd. and Oak St.”</p>	<p>Please see response to comment 1.7.</p>
	<p>10.8 “We also ask that the Regional Board evaluate the unbuilt <i>but approved</i> vineyard blocks and acreage for the potential to result in additional creek and riparian impacts and that the Board reviews and reports on the Dischargers pending request for modification to the approved ECP currently under review with Napa County.”</p>	<p>Please see response to comment 1.8.</p>
	<p>10.9 “As a result of lack of sufficient oversight of this Bremer project by Napa County, there is now a lack of confidence in the ability of the county to oversee this and other hillside developments. Consequently, I hope that the Regional Board will clarify what role Napa County will play in future enforcement and implementation of the Order. For example, will those vineyard blocks currently approved for development, but not yet constructed, be permitted to proceed while compliance with the Order and restoration is underway? Which agencies will provide onsite, field verification of compliance with water quality protection, and habitat restoration goals? Who will enforce the CAO mitigation monitoring plan and what penalties will be imposed for non-compliance? Will there be a performance and construction bond required to insure timely and satisfactory completion of CAO?”</p>	<p>Please see response to comments 1.8, 1.9, 1.11, and 1.16.</p>
	<p>10.10 “The completion of all onsite mitigations should be mandatory and no compensatory mitigations or payment in lieu should be permitted! The ability of the developers to throw money at the project should not preclude their responsibility to protect the environment. The CAO must run with the land and be binding upon all heir and successors and should not be discharged in bankruptcy court.”</p>	<p>Please see response to comments 1.10 and 1.12.</p>
<p>11. Mike Hackett</p>	<p>11.1 “As a resident of the County of Napa, please know that I fully support the Tentative Order of the Bay Regional Water Quality Control</p>	<p>Comment noted. Please see response to comments 1.10 and 1.2.</p>

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	<p>Board in re: Bremer Family Winery. Specifically, I ask the Board to undertake full on-site remediation of all appropriate creeks and tributaries in Napa County and that Bremer Family Winery fully comply with the requirements set forth in the Tentative Order. I ask that the Board identify independent engineers and consultants to ensure compliance with the proposed Order and its resulting Decision.</p> <p>Please make this statement a matter of public record. I respectfully submit that the tentative order become permanent and subject to full compliance.”</p>	<p>Public comments received will be posted on the Water Board’s website and will be part of the public record.</p>
	<p>11.2 “I have been involved in exposing this operation at Bremer during the last several years. I don’t need to detail the infractions, as you’re already well aware; but these offenders of our basic rights to quality water, need to completely restore the creek they’ve obliterated. Follow on remedial action must be maintained for at least <u>three years</u> to ensure compliance.”</p>	<p>Tentative CAO Provision 2b requires monitoring for at least five years after the completion of corrective actions to demonstrate that success criteria are met.</p>
	<p>11.3 “Last year they sprayed, presumably with glyphosate, the entire unplanted block. That carcinogenic material had a free glide slope into Canon Creek. The vineyards are fill material received via Measure A funds to help restore and rehabilitate the Rutherford area. I believe taxpayer money was used to transport the dirt to a private entity. He used the material to fill in plantable soil above his illegally high berms, thus creating his vineyard; all in excess of his permit. Now he’s asking for expansions. Napa County seldom turns down requests for minor mods or expansions. It is up to the Water Quality Control Board, and your unbiased assessment, to protect our citizen’s rights.”</p>	<p>Comment noted. Please see response to comments 1.3, 1.4, 1.8, 1.9 and 1.16. The scope of the Tentative CAO is intended to address the illegal fill. Glyphosate is one of the few herbicides approved for use near aquatic sites. We do not have information at this time that suggests this was the herbicide that was applied, nor do we have water quality data or other evidence indicating impacts to water quality as a result of applications.</p>
<p>12. Geoff Ellsworth</p>	<p>12.1 “I would like to add my voice in support of the abatement order for Bremer Family Winery Vineyard. Thank you for your attention to this matter. I have recently been elected to the St. Helena City Council, though am speaking here as a private citizen and community member that lives down river from The Bremer site.</p>	<p>Comment noted.</p>

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	<p>I witnessed myself the environmental impacts as this project was under construction.”</p> <p>12.2 “What many in the community are asking for, and I would agree is: -Full onsite remediation of creeks -No off-site work, no compensatory work or in-lieu payments - They fix the creeks that were willingly destroyed -All engineers and consultants involved in the project be prohibited from working on the abatement -If the regional water board will provide a list of qualified engineers to continue”</p>	<p>Please responses to comments 1.10 and 1.2.</p>
<p>13. Herman Froeb</p>	<p>13.1 “Thank you for the opportunity to comment on the Bremer Family Winery Tentative Cleanup and Abatement order. My property and residence of 1021 Deer Park Road, Deer Park, CA is directly adjacent to their Bremer Family Winery property. I am familiar (hiked and hunted under previous owner) with the property, have an architecture degree so have an understanding of plan reading, permit processes, and applied for and administered a Napa County Hazardous Business Material Plan program for a Napa County winery. I have written a letter expressing my concerns, and testified to the Napa County Supervisors regarding the Bremer Family Winery activities, met and emailed with the Napa County Planning Department, and want to thank you, The California Water Board, for reaching your tentative findings to resolve the serious violations of The "Dis-chargers”.”</p>	<p>Comment noted.</p>
	<p>13.2 “I have read the Cleanup and Abatement Order #R2-2017-OOXX which accurately describes their illegal violations. A complete appendix of their red tags and violations regarding their winery operations should be included in the order.”</p>	<p>The violations regarding the winery operations are not within the scope of the Tentative CAO. Water Board staff will continue to act in an advisory capacity to Napa County’s enforcement actions with respect to other vineyard activities that may have resulted in changes to hydrological conditions.</p>

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	<p>13.3 “I was impressed by: 1) The Perjury and Compensatory Mitigation Clauses I assume are to cover their egregious willful deceptions and behaviors 2) The thoroughness of information gathering, and accompanying timelines to assure restoration goals and compliance 3) The extent of proposed restoration upon the damaged environment 4) The assignment of an administrator to assure compliance with your order. I have also read Kellie Anderson"s comprehensive letter and sincerely hope that you incorporate her comments into your final order.”</p>	<p>Comment noted. We will consider all public comments received on the Tentative CAO.</p>
	<p>13.4 “Personally I suffered years of cave drilling exhaust blowing directly onto my home, excessive dust from their vineyard construction project, and now I'm worried our neighborhood will become part of the highest Napa County cancer rate of Counties in California. Asking our neighborhood to breathe Napa River bottom silt that was never tested, tarped, that has a potentially high toxic heavy metal content may require a bigger cleanup - post testing, than this original order.”</p>	<p>Please see response to comment 1.3.</p>
<p>14. Mount Veeder Stewardship Council</p>	<p>14.1 “Mount Veecer Stewardship Council (MVSCO) recognizes the need for the Regional Water Quality Control Board taking enforcement action on these mind numbing violations of the Clean Water Act and the Porter Cologne Act by the Bremer Family Winery Vineyard of Napa County.”</p>	<p>Comment noted.</p>
	<p>14.2 “The unnamed creek, as waters of the US, should be restored to it historical and natural waterway. Mitigations for this disregard of the original waterway are not acceptable to MVSC as we wish to enjoy the waters and waterway in their natural state.”</p>	<p>Please see response to comment 1.10.</p>
	<p>14.3 “Napa County did not intervene on these problems described in this order and consequently great environmental harm occurred such as: cut and fill of a stream, increased rate of runoff resulting in flooding off site, harm to threatened steelhead in Canon Creek due to alteration of creek habitat and sedimentation to spawning gravels.”</p>	<p>Comment noted.</p>

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	<p>14.4 “Napa County Flood and Water Conservation District (NCFWCD) hauled dirt from the Napa River levee project at Yountville to the Bremer property, without checking for proper permits by the WB and the ACOE (401 and 404 permits) to dispose of this dirt on the Bremer property that resulted in the cut and fill of the stream.”</p>	<p>Please see response to comment 8.5.</p>
	<p>14.5 “Napa County Flood and Water Conservation District (NCFWCD) did not revisit their 401 and 404 permit for their Napa River Flood Control Project (Measure A) when they started this excavation in the Oakville Reach (OR) of the Napa River. The OR project was not part of the original Measure A project and the permits needed to be revisited for this additional work.”</p>	<p>Please see response to comment 8.5.</p>
	<p>14.6 “We feel that lead agencies NCPBES and NCFWCD share responsibility for the events leading to this order. The public initiated an enforcement action to the SFRWQCB regarding these violations, yet NCPBES and NCFWCD received multiple public reports that the public trust was being harmed, yet they were very slow, bordering on negligence, to initiate enforcement actions to stop the violations or even alert or consult the WB concerning the violation. These are not the actions of a lead and responsible agency.”</p>	<p>Please see response to comments 1.8, 1.9, and 8.5.</p>

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	<p>14.7 “The public wants Napa County resource agencies to participate in making sure that developers do not do construction that will violate the Clean Water Act and the Porter Cologne Act by acting proactively with developers to protect our water resources and not wait until great harm is done.”</p>	<p>Comment noted. Napa County RCD inspected the vineyard construction and provided guidance to the property owners regarding appropriate erosion and sediment controls. Unfortunately, the vineyard was not constructed in compliance with the approved Erosion Control Plan. Further, follow up inspections by Napa County and RCD staff determined that erosion and sediment controls were not implemented as designed and approved. Water Board staff are working with Napa County resource agencies and the RCD to protect water resources from vineyard-related impacts.</p>
	<p>14.8 “Any fines based on this order should be to the maximum extent possible. Destruction of this type deteriorates our natural habitat and leaves us with an empty shell of natural resources that cannot be enjoyed in the same vein as the original.”</p>	<p>Please see response to comment 2.2.</p>
	<p>14.9 “Shouldn’t NCPBES and NCFWCD, as responsible agencies and the lead agency for the CEQA determination share in the responsibility of the events that lead to this order? The public initiated an enforcement action to the SFRWQCB regarding these violations of the Clean Water Act (404 permit to cut and fill) and the Porter Cologne Act (401-water quality discharge). NCPBES when getting multiple reports that the public trust was being harmed, should have taken enforcement actions such as a red tag/stop order to Bremer, but the County did not take appropriate actions. Why not?”</p>	<p>Please see response to comment 8.5.</p>
<p>15. Jacqueline Skoda Welsh</p>	<p>15.1 “I would like to register my objection to the vineyard development that the Bremer Winey created on their property in Deer Park, CA.”</p>	<p>Comment noted.</p>
	<p>15.2 “I most sincerely would ask the Water Board of California to require full on site remediation of creeks, with no off site work or "in lieu of" payments.”</p>	<p>Please see response to comment 1.10.</p>

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16. Virginia Simms	<p>16.1 “This item involves continued and drastic disturbance of an existing stream, which continued after many warnings of the local authorities. Not only was there no acceptance of the regulations, but there is also no indication that the owner will restore the damage. It is very important that you intervene to both order restoration and urge denial of any winery permit on this property at this time.</p> <p>In addition to strong action on this matter, it is also important that it is made clear to the Napa County decisionmakers that it is their responsibility to respect and protect these smaller creeks in the watersheds of Napa County.</p> <p>It is clear to me that the Bremer Family needs to correct its degradation of the streams, and follow all regulations.”</p>	Comment noted. Please also see response to comments 1.10 and 1.16.
17. Melissa McLaughlin	<p>17.1 “As a local citizen of Napa County, I want to urge you to hold Bremer Family Winery responsible for their flagrant disregard for the rules of management regarding our water system.</p> <p>For several reasons, I urge you to require them to restore creeks they knowingly damaged. First, so that our watersheds, which we citizens and the wildlife depend upon, may be protected. Second, as a public discouragement to other wineries whom we know are considering disregarding similar rules.</p> <p>Bremer Winery must be made to not just halt their work, but also to incur the cost of repairing the damage they have wilfully done. The repairs should be done with contractors recommended by experts such as yourselves, not their same people who have disregarded the regulations.</p> <p>We have these codes in place for a reason, and it is critical that wineries aren't allowed to violate the codes without seriously felt repercussion.”</p>	Comment noted. Please see response to comments 1.1, 1.2, 1.10, 1.16, and 2.2.

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18. Elizabeth Rometry	18.1 “Stop all off site work, compensatory work or in lieu payments. We demand that Bremer fix the creeks he willingly destroyed! Ask that all engineers and consultants involved in the whole project be prohibited from working on the cleanup and abatement. The Regional Water Board needs to provide a list of qualified engineers and consultants.”	Please see response to comments 1.2 and 1.10.
19. Bernadette Brooks	19.1 “I live in Napa Valley and want to be sure that Bremer and others learn that we need to protect our watersheds and water sources. I request that you ensure that they perform a full remediation of the creeks on-site. That no off-site or other in lieu work or payments is allowed. Bremer needs to fix what they have harmed. I ask that those doing the remediation be qualified engineers/consultants , preferably provided by the Regional Water Board and not those who did the original harm, to ensure that the cleanup is done properly.”	Please see response to comments 1.2 and 1.10.
20. Laurence Carr	20.1 “I am writing in support of the Tentative Cleanup and Abatement Order for the above named enterprise. This CAO has the goal of restoring those unnamed creeks which are tributaries to Canon Creek and the Napa River, so I am submitting my comments regarding this unpermitted, harmful development.”	Comment noted.
	20.2 “The RWQCB is asking for a technical report detailing the unauthorized construction activities at the site and an assessment of the impacts to the creeks. The Dischargers have employed Napa Valley Vineyard Engineering; Kjeldsen Biological Consulting; Theodore Wooster, Consulting Biologist; and Stephen Smith, Registered Professional Forester for the development of this vineyard project. <i>I am requesting that these individuals and businesses be prohibited from further work on the CAO.</i> In my opinion, they were inclined to go along with the Discharger's permit violations and cannot be relied upon to follow the criteria. The Water Board should be able to provide a list of unprejudiced, skilled biological consultants and civil engineers with expertise in creek restoration and evaluating the hazards from importing rock and fill.”	Please see response to comment 1.2.

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	<p>20.3 “Please require a biological survey prior to the initiation of the CAO. Such a survey would determine the presence and distribution of special status plants noted within the project site and outside of the project boundary. In addition, mitigation measures BR1 and BR4 included in the Mitigated Negative Declaration must be implemented, including development of a re-vegetation plan approved by the County and field flagging of the area identified and approved by the County for the re-vegetation area. These conditions should also apply to all abatement order work.”</p>	<p>Please see response to comment 1.5.</p>
	<p>20.4 “Please require toxicological analysis of the fill material imported to the project site and the proposed fill to be removed as part of the CAO. Dredged materials imported to the site from the Napa River must be analyzed for pesticides, heavy metals, mercury, etc. prior to the commencement of any cleanup work. Dust and particulate matter will be generated during the project cleanup from dirt fill, rock, construction debris, etc. Due to the close proximity of the site to residents and businesses, trucks removing such material must be required to be fully covered upon leaving the location. An onsite individual should be present during the cleanup phase to assure compliance.”</p>	<p>Please see response to comment 1.3.</p>
	<p>20.5 “Please require removal of all the current constructed rock walls. If they're to be reinstalled as part of the CAO, please require that they be constructed with filter fabric between all rock slopes and earthen material as described on page 19 of the Mitigated Negative Declaration. The Dischargers must provide technical specs on the effective life of filter fabric under these conditions. No rock walls should be built above the approved five foot height limit.”</p>	<p>Please see response to comment 1.4.</p>

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	<p>20.6 “Please require the Discharger to identify vineyard block locations and acreages approved for development by Napa County in the Erosion Control Plan. The CAO further requires the Discharger submit the as-built plans for the project. Please require identification of all blocks presently constructed and approved vineyard blocks not yet built. <i>The RWQCB needs to evaluate the <u>un-built but approved vineyard blocks</u> for the potential to cause additional creek and riparian impacts.</i> RWQCB must evaluate the need for additional environmental review of blocks not yet constructed, and evaluate the Discharger's pending request for modification to the approved ECP currently under review with Napa County.”</p>	<p>Please see response to comment 1.8.</p>
	<p>20.7 “Please require the Discharger to document changes to offsite hydrological conditions as a result of the vineyard modifications. Offsite storm conditions that have been observed include 1)the increased depth of flood waters over Deer Park Rd 2)increased duration of flooding over Deer Park Rd 3)water decrease of an unnamed stream at the intersection of Deer Park Rd and Oak St. The Discharger must provide hydrological analysis sufficient to identify corrective actions necessary to restore the offsite runoff to pre-project conditions.”</p>	<p>Please see response to comment 1.7.</p>
	<p>20.8 “Please evaluate the location of the existing plastic water tank in the Creek channel for compliance with Chapter 4, Table 4-1 of the Basin Plan, Discharge Prohibition No. 9.”</p>	<p>Please see response to comment 1.6.</p>
	<p>20.9 “<i>The completion of all onsite mitigations should be mandatory and <u>NO</u> compensatory mitigations, offsite work, or payments in lieu of should be permitted due to the appalling and disastrous damage caused to the Canon Creek watershed.</i> The Dischargers have the resources and financial capability to complete onsite restorations, and should not be allowed to profit from the establishment of vineyards at the expense of the watershed, the Napa River, and the riparian habitat they destroyed.”</p>	<p>Please see response to comment 1.10.</p>
	<p>20.10 “A performance and construction bond should be required to insure timely and satisfactory completion of the CAO. The CAO should</p>	<p>Please see response to comments 1.11 and 1.12.</p>

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	be tied to the land, binding upon all subsequent heirs or owners, and should not be discharged in bankruptcy court.”	
	20.11 “The RWQCB must clarify what role Napa County will play in the future enforcement and implementation of the CAO. Will vineyard blocks currently approved for development but not yet constructed be permitted to proceed while compliance with the CAO and restoration is occurring? Which agencies will provide onsite field verification of compliance with water quality protection and habitat restoration objectives? Who will enforce the CAO mitigation monitoring plan?”	Please see response to comment 1.9.
	20.12 “Please penalize the Bremer Family Winery Vineyard to the fullest extent permitted by law for their brazen disregard of the rules and guidelines that are in place to protect citizens and the environment.”	Please see response to comment 2.2.
21. Connie Wilson	21.1 “I respectfully ask for a full-site remediation of the destroyed creeks by Bremer Vineyards in Deer Park, Napa Valley. I have watched this family attempt to create a vineyard in a inhospitable location and I am appalled that they were allowed to truck in huge amounts of soil. Now that the site has been shut down, I wish to request that all engineers and consultants involved in this project be prohibited from working on the cleanup and abatement. Thank you for your attention to this disturbing situation.”	Comment noted. Please see response to comments 1.2 and 1.10.
22. Karl Schmitt	22.1 “We are demanding that a full on-site remediation of the intentional destruction of the creek committed by the Bremer Winery must be enforced. We are specifically saying that no off site work, compensatory work or in lieu payments are acceptable.”	Please see response to comment 1.10.
	22.2 “We are demanding that Bremer fix the creeks he willingly destroyed! We are asking that all engineers and consultants involved in the whole project be prohibited from working on the cleanup and abatement. We are asking for a list of qualified engineers and consultants. What is the point of having regulations if they are not being enforced!”	Please see response to comments 1.2 and 1.10.
23. Kit Long	23.1 “I am asking that there be a complete on site remediation of creeks in the Bremer Family Winery project in Napa County, and that the	Comment noted. Please see response to comment 1.10.

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	Water Board use its power to ensure the damage creeks be repaired. No private citizen has the right to destroy the public resource of clear, clean water.”	
	23.2 “If previous engineers and consultants collaborated in the destruction of this creek and riparian environment, they should not be used in future repairs. It should be your responsibility to provide a list of qualified engineers and consultants to repair the damage done.”	Please see response to comment 1.2.
	23.3 “As a member of Napa Climate NOW! I am grateful to BAAQMD for setting the highest possible standards for current GHG measurement and mitigation, and ask that the Water Board have the same diligence in protecting and ensuring safe, un sedimented water in our local watersheds.”	Comment noted.
24. Michelle Montgomery	24.1 “I am writing in support of the Tentative Cleanup and Abatement Order for the above named business. This CAO has the goal of restoring those unnamed creeks which are tributaries to Canon Creek and the Napa River. I am submitting comments regarding this unpermitted, devastating vineyard development.”	Comment noted.
	24.2 “The RWQCB is asking for a technical report detailing the unauthorized construction activities at the site and an assessment of the impacts to the creeks. The Dischargers have employed Napa Valley Vineyard Engineering; Kjeldsen Biological Consulting; Theodore Wooster, Consulting Biologist; and Stephen Smith, Registered Professional Forester for the development of this vineyard project. <i>I am requesting that these individuals and businesses be excluded from further work on the CAO.</i> In my opinion, they were complicit with the Discharger's permit violations and cannot be counted on to follow guidelines. The Water Board should be able to provide a list of impartial, qualified biological consultants and civil engineers with expertise in creek restoration and evaluating the hazards from importing rock and fill.”	Please see response to comment 1.2.

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	<p>24.3 “Please require toxicological analysis of the fill material imported to the project site and the proposed fill to be removed as part of the CAO. Dredged materials imported to the site from the Napa River must be analyzed for pesticides and heavy metals, mercury, etc. prior to the commencement of any cleanup work. Dust and particulate matter will be generated during the project cleanup from dirt fill, rock, construction debris, etc. Due to the close proximity of the site of residents and businesses, trucks removing such material must be required to be fully covered upon leaving the location. An onsite individual should be present during the clean up phase to assure compliance.”</p>	<p>Please see response to comment 1.3.</p>
	<p>24.4 “Please require a biological survey prior to the initiation of the CAO. Such a survey would determine the presence and distribution of special status plants noted within the project site and outside of the project boundary. In addition, mitigation measures BR1 and BR4 included in the Mitigated Negative Declaration must be implemented, including development of a re-vegetation plan approved by the County and field flagging of the area identified and approved by the County for the re-vegetation area. These conditions should apply to all abatement order work as well.”</p>	<p>Please see response to comment 1.5.</p>
	<p>24.5 “Please require removal of all the constructed rock walls. If they're to be reinstalled as part of the CAO, please require that they be constructed with filter fabric between all rock slopes and earthen material as described on page 19 of the Mitigated Negative Declaration. The Dischargers must provide technical specs on the effective life of filter fabric under these conditions. No rock walls should be built above the approved five foot height limit.”</p>	<p>Please see response to comment 1.4.</p>

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	<p>24.6 “Please require the Discharger to document changes to offsite hydrological conditions as a result of the vineyard modifications. Offsite storm conditions that have been observed include 1) the increased depth of flood waters over Deer Park Rd 2) increased duration of flooding over Deer Park Rd 3) water decrease of an unnamed stream at the intersection of Deer Park Rd and Oak St. The Discharger must provide hydrological analysis sufficient to identify corrective actions necessary to restore the offsite runoff to prior project conditions.”</p>	<p>Please see response to comment 1.7.</p>
	<p>24.7 “Please require the Discharger to identify vineyard block locations and acreages approved for development by Napa County in the Erosion Control Plan. The CAO further requires the Discharger submit the as-built plans for the project. Please require identification of all blocks presently constructed and approved vineyard blocks not yet built. <i>The RWQCB needs to evaluate the <u>un-built but approved vineyard blocks</u> for the potential to cause additional creek and riparian impacts.</i> RWQCB must evaluate the need for additional environmental review of blocks not yet constructed and evaluate the Discharger's pending request for modification to the approved ECP currently under review with Napa County.”</p>	<p>Please see response to comment 1.8.</p>
	<p>24.8 “Please evaluate the location of the existing plastic water tank in the Creek channel for compliance with Chapter 4, Table 4-1 of the Basin Plan, Discharge Prohibition No. 9.”</p>	<p>Please see response to comment 1.6.</p>
	<p>24.9 “<i>The completion of all onsite mitigations should be mandatory and no compensatory mitigations, offsite work, or payments in lieu of should be permitted due to the despicable and inexcusable damage caused to the Canon Creek watershed.</i> The Dischargers have the resources and financial means to complete onsite restorations and should not be allowed to profit from the establishment of vineyards at the expense of the watershed, the Napa River, and the riparian habitat they destroyed.”</p>	<p>Please see response to comment 1.10.</p>

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	<p>24.10 “A performance and construction bond should be required to insure timely and satisfactory completion of the CAO. The CAO should be tied to the land, binding upon all subsequent heirs or owners, and should not be discharged in bankruptcy court.”</p>	<p>Please see response to comments 1.11 and 1.12.</p>
	<p>24.11 “Lastly, the RWQCB must clarify what role Napa County will play in the future enforcement and implementation of the CAO. Will vineyard blocks currently approved for development but not yet constructed be permitted to advance while compliance with the CAO and restoration is occurring? Which agencies will provide onsite, field verification of compliance with water quality protection and habitat restoration objectives? Who will enforce the CAO mitigation monitoring plan?”</p>	<p>Please see response to comment 1.9.</p>
	<p>24.12 “Please punish the Bremer Family Winery Vineyard to the fullest extent of the law for their callous disregard of rules and regulations that are in place to protect county residents and the environment.”</p>	<p>Please see response to comment 2.2.</p>
<p>25. Jordan Coonrad</p>	<p>25.1 “Thank you for the opportunity to comment on R2-2017-00XX, the Tentative Cleanup and Abatement Order (CAO) for the Bremer Family Winery Vineyard in Napa County. I fully support the Tentative Cleanup and Abatement Order and hope to see it enacted and enforced.</p> <p>I also wanted to let you know that I have aerial photographs of the property described here that were taken prior to the work being initiated and would happy to share them if needed.”</p>	<p>Comment noted. Please submit your photos to Agnes Farres, San Francisco Bay Regional Water Quality Control Board, 1515 Clay Street, Suite 1400, Oakland, CA 94612.</p>
<p>26. Thornton C. Bunch Jr.</p>	<p>26.1 “As a resident of the County of Napa, please know that I fully support the Tentative Order of the Bay Regional Water Quality Control Board in re Bremer Family Winery. Specifically, I ask the Board to undertake full on-site remediation of all appropriate creeks and tributaries in Napa County and that Bremer Family Winery fully comply with the requirements set forth in the Tentative Order. I ask that the Board identify independent engineers and consultants to ensure compliance with the proposed Order and its resulting Decision.</p>	<p>Comment noted. All public comments received will be posted on the Water Board’s website and become part of the public record. Please see response to comments 1.10 and 1.2.</p>

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	Please make this statement a matter of public record. I respectfully submit that the tentative order become permanent and subject to full compliance.”	
27. Pamela Jackson	27.1 “I am requesting an on-site remediation of the creeks on the Bremer Family Estates with no off site work, compensatory work, or in lieu payments. Bremer needs to fix the creeks he destroyed!”	Please see response to comment 1.10.
	27.2 “As well, engineers and consultants involved in the whole project should be prohibited from working on the cleanup and abatement. The Regional Water Board should provide a list of qualified engineers and consultants. Thank you for hearing the people of Napa Valley since our government seems not to represent us or enforce our watershed laws anymore.”	Please see response to comment 1.2.
28. Dickenson, Peatman & Fogarty (counsel representing John and Laura Bremer)	28.1 “This firm represents John and Laura Bremer (the "Owners") and appreciates the opportunity to provide comments and clarification on certain assertions and/or assumptions included in the Tentative Cleanup and Abatement Order No. R2-2017-OOXX (the "Tentative Order"). The Owners are committed to responsible environmental stewardship and to addressing water quality impacts associated with their Vineyard Erosion Control Plan #P11-00317-ECPA (the "Project").	Comment noted.
	28.2 “The Project background studies (discussed below) and CEQA analysis identified the unnamed drainage feature that is the subject of the Tentative Order but was not subject to any stream setback requirements due to it not meeting Napa County's definition of a "stream" subject to its setback requirements.(NCC Section 18.108.025 et seq.)”	The applicability of the stream setback requirement identified in the Napa County Code is irrelevant to the identification of unauthorized activities described in the Tentative CAO. The CEQA document identified other agencies whose approval may be required, including the Water Board and U.S. Army Corps of Engineers. The unnamed creek is a water of the State and any discharge of fill requires authorization from the Water Board. As stated in Finding

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		<p>9 of the Tentative CAO, unauthorized construction activities are in violation of California Water Code sections 13260 and 13264, Clean Water Act sections 301 and 401, and Basin Plan Discharge Prohibition No. 9.</p>
	<p>28.3 “The Project IS/MND was circulated for public comment from August 6, 2012 to September 4, 2012, which included posting to the State Clearinghouse, SCH# 2012082023. Despite the IS/MND being circulated to the Water Board for review and comment, no comments were received from the Water Board. (See Attachment A, IS/MND and State Clearinghouse Project Summary, p. 2.) As a Responsible Agency, CEQA requires the Water Board to provide comments and take specific actions if it feels the environmental analysis is inadequate, failure to do so waives any objection to the adequacy of the environmental analysis. (See CEQA Guidelines Section 15096(e).) The Water Board's Tentative Order, Appendix A, Staff Observations and Concerns, No. 2 includes many comments directly related to the adequacy of the environmental analysis hydrologic study for the Project. These concerns were required to be raised during the IS/MND comment period, but no such comments were received.</p>	<p>The December 2016 inspection report, included as Attachment A of the Tentative CAO, documents Water Board staff observations and concerns noted during a September 9, 2016, inspection. It is Staff Observations and Concerns No. 1, describing the ditching and culverting of an unnamed creek, that is the basis of the Tentative CAO. The ditching and culverting of the creek were not described in the CEQA document. Staff Observations and Concerns No. 2 discusses the possibility that the constructed detention basin is significantly undersized. However, the constructed detention basin and the hydrologic study are not within the scope of the Tentative CAO.</p>
	<p>28.4 “The CEQA analysis for the Project included the preparation of a Biological Resource Assessment and multiple Botanical Reports to determine the environmental baseline. These reports, as reflected in the IS/MND, did not identify any riparian vegetation or habitat on the Property. (See Attachment B, Botanical Report, Kjeldsen, 2007, pp. 6-12; and Biological Resource Assessment, Wooster, 2011, p. 16.) CEQA provides for the use of existing conditions at the time of commencement of the environmental analysis as the appropriate baseline for determining the Project's environmental impacts. Therefore, the Tentative Order Appendix A, Staff Observations and Concerns, No. 2 statement that the hydrologic modeling "taking advantage of a recent fire over part of the</p>	<p>As discussed in the December 2016 inspection report, Water Board staff reviewed time-sequential aerial photographs available on Google Earth and determined that there was vegetation on the rocky floodplain for the channel that was dominated by chaparral species prior to the unauthorized placement of fill in the creek. This riparian vegetation helped to support beneficial uses of the creek and provided many benefits to water quality including</p>

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	<p>property to assume reduced infiltration capacity under the predevelopment condition;" is inappropriate and inconsistent with established CEQA principles. Further, the environmental analysis assumptions related to pre and post project site conditions were reviewed by the Napa County Resource Conservation District and found to be appropriate."</p>	<p>shading, nutrient cycling, providing habitat and promoting species diversity, stabilizing the floodplain, and facilitating groundwater recharge.</p> <p>Further, as we discussed above in response to comment 28.3, the attached Inspection Report documents Water Board staff observations and concerns noted during a September 9, 2016, inspection. Although Water Board staff will continue to act in an advisory capacity to Napa County's enforcement actions with respect to other vineyard activities that may have resulted in changes to hydrological conditions, Staff Observations and Concerns No. 2 regarding the hydrologic modeling are not within the scope of the Tentative CAO.</p>
	<p>28.5 "Prior to October 2016, all grading activities ceased on the Property and winterization measures were implemented pursuant to County requirements and oversight. Throughout the winter, post rain event inspections were conducted as required to monitor the performance of the erosion control measures, including the detention basin and rock walls identified in Tentative Order, Appendix A, Staff Observations and Concerns. These inspections, and voluntary written reports about them, confirm that no discharge of waste/soil has occurred and that the erosion control measures are protective of water quality. This is despite it being one of the wettest winters on record."</p>	<p>Comment noted.</p> <p>The Dischargers focus on impacts to water quality from the project, as built, and ignore completely the conditions that would have been required of the Dischargers, had they applied for a permit, as required by the California Water Code and Clean Water Act. Water quality impacts described in the Tentative CAO pertain to the unauthorized fill of the unnamed creek and removal of associated riparian habitat. This resulted in the loss of water quality functions and values provided by the creek and associated riparian habitat. The Water Quality Control Plan for the San Francisco Bay Basin designates existing and potential beneficial</p>

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		<p>uses for the Napa River including agricultural supply, municipal and domestic supply, groundwater recharge, commercial and sport fishing, cold freshwater habitat, fish migration, preservation of rare and endangered species, fish spawning, warm freshwater habitat, wildlife habitat, water contact recreation, noncontact water recreation, and navigation. The unauthorized placement of fill in waters of the State has unreasonably affected or threatens to affect water quality and beneficial uses. The success of erosion control measures from the as-built project is not relevant to a determination of whether there has been a violation of California Water Code sections 13260 and 13264, Clean Water Act sections 301 and 401, and Basin Plan Discharge Prohibition No. 9.</p>
	<p>28.6 “The Project has undergone hydrologic modeling to identify and mitigate for any increases in runoff and/or increases in erosion. This included TR-55 modeling that established that the Project will not result in any increase in peak runoff greater than predevelopment conditions. (See IS/MND, p. 28.) Further, the Project also underwent USLE modeling that showed a reduction in soil loss by approximately 54% as compared to existing conditions. The IS/MND states that “the proposed erosion control measures would reduce soil erosion and the loss of topsoil as compared to existing conditions, as well as maximize the potential for containment of detached soil particles to the project area, resulting in no impact with regard to soil erosion, soil loss, and sedimentation.” (Ibid., p.19) As built so far the Project is doing just so.”</p>	<p>Please see response to comments 28.4 and 28.5.</p>

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	<p>28.7 “The culverts referenced in the Tentative Order appear to have been placed within the seasonal drainage located in the southern portion of the property running generally in an east to west direction located between vineyard Block K and Block L/M. It should be noted that the more westerly culvert is located at a preexisting road crossing point. (See Attachment D, historic Google Earth photo dated July 1993 showing historic road crossing.) The Project will replace one of the existing culvert crossings with a clear span access bridge. (See IS/MND, p.1.) The second culvert crossing will either be replaced with a clear span bridge or removed entirely.”</p>	<p>We will require a technical report providing an assessment of impacts to the creek and associated riparian habitat and describing the nature and extent of unauthorized fill as stated in Tentative CAO Provision 1a. We will also require a Corrective Action Workplan designed to remove fill and restore the creek as stated in Provision 2a. Compensatory mitigation will also be required as more fully described in Provision 3.</p>
	<p>28.8 “The Project, as approved by the County, did not require any setback associated with this drainage feature. It is entirely unclear if any water quality impacts occurred as a result of the Project based on the Staff Observations and Conditions. As discussed above, there was no riparian habitat or vegetation associated with this bedrock intermittent drainage. Furthermore, the Project as a whole reduces soil loss from the property by 54% and the system performed wonderfully this past rainy season.</p>	<p>Please see response to comments 28.4 and 28.5.</p> <p>Also, please see response to comment 28.4.</p>
	<p>28.9 “The Tentative Order, Appendix A, Staff Observations and Concerns, No. 2 includes many comments directly related to the adequacy of the environmental analysis hydrologic study for the Project. As discussed above, these comments regarding the hydrologic study assumptions should have been raised during the IS/MND comment period over four years ago. Regardless, as discussed above, the detention basin functioned this winter. Further, please see Attachment E, PPI Engineering Letter, dated October 26, 2016 referencing letter from NRCS verifying that reclassification of rocky soils from hydrologic group D to C is appropriate.”</p>	<p>Please see response to comments 28.3-28.5.</p>
	<p>28.10 “Based on this additional information, we believe that the Water Board should determine that the Project, being overseen by Napa County, has not and will not create or threaten to create, a condition of</p>	<p>Please see response to comments 28.2, 28.3, 28.4 and 28.5.</p>

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	pollution or nuisance and therefore, should not be subject to the proposed Tentative Order.”	