

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

CLEANUP AND ABATEMENT ORDER No. R2-2017-1021

**TIMOTHY STARKWEATHER,
JEAN A. PORLIER, JOAN A. BOBLITT,
WILLIAM E. VIDALIN, AND ROBERT V. VIDALIN**

For Properties:

ASSESSOR PARCEL NUMBERS 902-0008-005-05 AND 902-0008-005-09
LAS COLINAS ROAD, LIVERMORE, ALAMEDA COUNTY

This Cleanup and Abatement Order (Order) is issued to Timothy Starkweather, Jean A. Porlier, Joan A. Boblitt, William E. Vidalin, and Robert V. Vidalin (collectively, the Dischargers) for the discharge of earthen fill material into waters of the State and United States on Alameda County Assessor Parcel Numbers 902-0008-005-05 and 902-0008-005-09 (Site), pursuant to provisions of California Water Code (Water Code) sections 13304 and 13267.

The San Francisco Bay Regional Water Quality Control Board (Regional Water Board) hereby finds the following:

1. **Purpose of Cleanup and Abatement Order:** This Order requires the Dischargers to clean up and abate the effects of unauthorized fill placed into jurisdictional waters on the Site.
2. **Named Dischargers:** Ms. Porlier, Ms. Boblitt, Mr. William E. Vidalin, and Mr. Robert V. Vidalin are named as Dischargers because they have owned the Site at all times since unauthorized activities began, according to data from ParcelQuest provided to the Regional Water Board by Rodrigo Orduña of the Alameda County Planning Department and according to Site deeds provided to the Regional Water Board by Mr. MacDonald, attorney for Dr. Starkweather.

Dr. Starkweather is named as a Discharger for the unauthorized placement of fill into seasonal palustrine wetlands, wetland ditches, and other waters at the Site (collectively, the Wetlands) between June 2014 and June 2015 (see Basis for Cleanup and Abatement Order, below). In a recorded interview with Warden Nicole Kozicki of the California Department of Fish and Wildlife (CDFW) on September 14, 2015, Dr. Starkweather said that he was asked by Ms. Porlier and Ms. Boblitt to help manage and preserve the farm and its historic buildings. Dr. Starkweather admitted to “disking” the Wetlands with “bulldozers” because he “didn’t think there was a wetland” and conducting construction activities on the Site without permits, although he stated he obtained permits for certain activities, specifically “electrical” and “hydrant” work.

3. **Site Description and History:** The Site is a remnant portion of the historic ranch of Robert Thomas Livermore, one of the first European ranchers in the Sunol Valley. It consists of two parcels totaling approximately 12.94 acres: Alameda County Assessor Parcel Number 902-0008-005-05, which does not have an associated address; and Alameda County Assessor Parcel Number 902 -0008-005-09, which is located at 3680 Las Colinas Road, Livermore.

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Mses. Porlier and Boblitt, and Messrs. William E. and Robert V. Vidalin, all four descendants of Robert Livermore, own, but do not reside at the Site. Mr. Robert V. Vidalin has apparently been living at the Site, and Dr. Starkweather has conducted work at the Site. Dr. Starkweather has connections to an adjacent property being developed as Monte Vista Memorial Gardens (Gardens), a proposed cemetery located across from Arroyo Las Positas to the north of the Site. The developer is Monte Vista Memorial Garden, LLC, of which Dr. Starkweather is chairman.

The Wetlands are adjacent to Arroyo Seco, located approximately 350 feet to the north. Approximately 570 feet to the northwest of the Wetlands, Arroyo Seco flows into Arroyo Las Positas. Both Arroyo Seco and Arroyo Las Positas are seasonal streams.

4. **Waters of the State and United States:** The Wetlands are waters of the State because they are surface waters, and they are waters of the United States because they are hydrologically connected to Arroyo Las Positas.
5. **Beneficial Uses:** The Water Quality Control Plan for the San Francisco Bay Basin (Basin Plan) identifies the following possible beneficial uses for palustrine wetlands: agricultural supply, cold freshwater habitat, freshwater replenishment, groundwater recharge, navigation, water contact recreation, noncontact water recreation, fish spawning, warm freshwater habitat, wildlife habitat, and preservation of rare and endangered species. Based on Regional Water Board visits to the Site, the beneficial uses most applicable to the Wetlands are: freshwater replenishment, groundwater recharge, wildlife habitat, and preservation of rare and endangered species.

The Basin Plan identifies the following beneficial uses for Arroyo Las Positas and Arroyo Seco: groundwater recharge, cold freshwater habitat, fish migration, preservation of rare and endangered species, fish spawning, warm freshwater habitat, wildlife habitat, water contact recreation, and noncontact water recreation.

6. **Unauthorized Activities and Regulatory Interactions, October 2014 to the Present:**

- a. On October 2, 2014, Warden Kozicki and Marcia Grefsrud, both from CDFW, discovered unauthorized activities at the Site. Warden Kozicki and Ms. Grefsrud inspected the Site and the Gardens on October 6, 2014, with Dr. Starkweather. Dr. Starkweather had constructed a bridge over Arroyo Las Positas to create a pathway between the Site and the Gardens. He had also installed a culvert and filled Wetlands at the Site. Dr. Starkweather had not obtained any permits required for working in waters of the State or United States.
- b. On October 16, 2014, Andy Cho of the Alameda County Public Works Agency inspected the Site and the Gardens, and on October 17, 2016, Mr. Cho emailed a Stop Work Order to Dr. Starkweather for unpermitted grading, fill, bridge construction, and culvert construction at the Site.
- c. On October 20, 2014, Warden Kozicki sent a notice of violation, requiring Dr. Starkweather to do the following directives:
 1. Immediately stop all activities in the Gardens as well as the Site.

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2. Immediately remove the pedestrian bridge, leaving the concrete footings in place until there was a streambed alteration agreement to remove them. Complete this by November 7, 2014, using hand crews only.
3. Submit a mitigation plan to Ms. Grefsrud for review and approval no later than December 31, 2014.

To date, Dr. Starkweather has removed the footbridge, but he has not received a streambed alteration agreement to remove the footings (second requirement). Dr. Starkweather has not complied with either the first or third requirements. Dr. Starkweather has not requested any extensions for these requirements, and there has been no further correspondence on them.

- d. On October 20, 2014, Dr. Starkweather emailed Warden Kozicki, Ms. Grefsrud, and Mr. Cho an apology, wherein he wrote that in the future, “[n]o work [whatsoever] will be done without all proper permits and with the full permission of all [stakeholders]. [No] work of any kind will be done without express permission [and] with all permits...in hand.”
- e. Sometime around September 1, 2015, Mr. Cho received an anonymous telephone call concerning illegal fill at the Site using contaminated soils with high motor oil content. On September 2, 2015, Mr. Cho visited the Site and confirmed that “a large area [including the Wetlands], probably larger than 10 acres...was filled in,” and posted a Stop Work Order. On September 14, 2015, Mr. Cho sent Mses. Porlier and Boblitt a Notice of Administrative Enforcement of Grading Violation requiring the following:
 1. Stop all grading work until obtaining a grading permit.
 2. Pay a fine of \$250.00 within 10 days.
 3. Complete grading permit application forms and submit them with grading plans within 30 days.

To date, Mses. Porlier and Boblitt have not completed any of these requirements.

- f. Mike Brown of Alameda County spoke to Ms. Porlier about the Site on September 10, 2015. Mr. Brown told Ms. Porlier that he was investigating an anonymous complaint that dirt with high motor oil content had been dumped on the Site. Ms. Porlier told Mr. Brown to speak to Mr. Vidalin about the issue since he lives on the Site.
- g. On September 14, 2015, Warden Kozicki visited the Site, observed the fill and disking of 0.6 acres of the Wetlands, and issued a second notice of violation to Dr. Starkweather on October 1, 2015. The notice required the following:
 1. Hire a consultant to do a site visit and determine the extent of the previous wetland and the existing wetland. Provide the results of the survey work by November 30, 2015.
 2. Remove material to return the Wetlands to its prior state based on the consultant’s findings comparing the previous and existing wetland areas.
 3. Install fencing to prevent further encroachment into the Wetlands and prevent any soil erosion from entering the Wetlands.

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To date, Dr. Starkweather has installed fencing and completed the required wetland survey (the 2016 Delineation) but has not taken any action to restore the wetland impacted by unauthorized activities.

- h. Staff at the Regional Water Board discovered the unauthorized activities when Warden Kozicki sent Brian Wines a copy of the October 1, 2015, notice of violation.
 - i. Brian Wines and Yan Nusinovich of the Regional Water Board inspected the Site on June 14, 2016, along with representatives of Alameda County, the Zone 7 Water Agency, CDFW, the U.S. Fish and Wildlife Service, the U.S. Army Corps of Engineers (Corps), and representatives of Dr. Starkweather and found visual evidence that wetlands had been filled (see inspection report, Attachment A). A notice of violation was sent to Mses. Porlier and Boblitt on August 15, 2016, at both the Site address and their home address. In a phone discussion on September 19, 2016, Jana Weldon confirmed that Mses. Porlier and Boblitt received the Notice of Violation. She also said that the sisters had not received previous violation letters and knew nothing about the violations.
 - j. On June 21, 2016, Frances Malamud-Roam of the Corps sent a Notice of Alleged Violation to Dr. Starkweather for the discharge of fill material into waters of the United States.
 - k. On August 23, 2016, Ms. Malamud-Roam sent a Notice of Unauthorized Activities email to Jana Weldon, a consultant for Dr. Starkweather, alleging that Dr. Starkweather had “failed to respond to [the Notice of Alleged Violation]” and must “stop any and all [continuing] activities that involve grading and filling within [Corps] jurisdictional areas at this location” and “restore [the Site] to pre-existing conditions (as described in the [2006 Delineation]).”
7. **Regulatory Status:** This Site is not currently subject to a Regional Water Board order.
8. **Basis for Cleanup and Abatement Order:** Water Code section 13304 authorizes the Regional Water Board to issue orders requiring a discharger to clean up and abate waste, or take other remedial action, where the discharger has caused or permitted, causes or permits, or threatens to cause or permit, any waste to be discharged or deposited where it is, or probably will be, discharged into waters of the State and creates, or threatens to create, a condition of pollution or nuisance.
- a. According to wetland delineations done by LSA Associates, Inc., on December 5, 2006 (2006 Delineation), and on February 11, 2016 (2016 Delineation), approximately 0.6 acres of wetlands were filled at the Site (Attachment A). Based on a review of satellite images in Google Earth, earthwork that filled the Wetlands was conducted between June 2014 and June 2015.
 - b. The Basin Plan requires the Regional Water Board to refer to Executive Order W-59-93, or the “No Net Loss” policy, which ensures that there is no overall net loss, but instead a long-term net gain, in the quantity, quality, and permanence of wetlands acreage.
 - c. The discharge of fill material was conducted without required regulatory agency approvals, which include, but are not limited to the following:

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1. A Clean Water Act section 401 water quality certification from the Regional Water Board;
 2. Waste Discharge Requirements (WDRs) under Water Code section 13263 from the Regional Water Board;
 3. A Clean Water Act section 404 permit from the Corps;
 4. Approval from the U.S. Fish and Wildlife Service pursuant to section 7 or 10 of the federal Endangered Species Act; and
 5. A Fish and Game Code section 2081 Endangered Species Incidental Take Permit from CDFW.
- d. The Discharger has caused or permitted waste to be discharged or deposited into waters of the State and United States, in violation of the Basin Plan, the Clean Water Act, and the Water Code.
1. The Basin Plan prohibits the discharge of silt, sand, clay, or other earthen materials from any activity in quantities sufficient to cause deleterious bottom deposits, turbidity, or discoloration in surface waters or to unreasonably affect or threaten to affect beneficial uses.
 2. Under Clean Water Act section 301, the discharge of any pollutant except as authorized is prohibited. The discharge of dredged or fill material into waters of the United States requires a Clean Water Act section 404 permit. The Corps is responsible for issuing section 404 permits. These permits require a Clean Water Act section 401 certification from the Regional Water Board that the permitted activity complies with applicable state water quality standards and other appropriate requirements. Neither the Corps nor the Regional Water Board has issued a permit or certification, as applicable, for the Dischargers' activities.
 3. Water Code sections 13376 and 13260 require any person who proposes to discharge dredged or fill material into navigable waters of the United States and any person who proposes to discharge waste that could affect waters of State to submit a report of waste discharge (ROWD). Water Code section 13376 prohibits the discharge of fill material, except as authorized by WDRs. Failure to submit a ROWD and obtain WDRs constitutes a violation of Water Code sections 13260, 13264, 13376, and 13385. The Dischargers did not file a ROWD or obtain WDRs from the Regional Water Board for the activities.
- e. The discharge of fill material impacted beneficial uses of the Wetlands:
1. Wildlife habitat provided by the Wetlands was eliminated due to the unauthorized discharge of fill. Furthermore, according to the September 29, 2015, notice of violation from CDFW, the wetland fill impacted endangered species habitat for the California tiger salamander (*Ambystoma californiense*), California red-legged frog (*Rana draytonii*), San Joaquin kit fox (*Vulpes macrotis mutica*), and burrowing owl (*Athene cunicularia*).
 2. The delineations showed a loss of nine types of wetland plants between 2006 and 2016, specifically Italian rye-grass (*Lolium multiflorum*), common plantain (*Plantago major*), rough cocklebur (*Xanthium strumarium*), bull thistle (*Cirsium vulgare*), broadleaved pepperweed (*Lepidium latifolium*), sea barley (*Hordeum marinum*), yellow star-thistle

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(*Centaurea solstitialis*), hare barley (*Hordeum murinum ssp leporinum*), and narrowleaf cattail (*Typha angustifolia*).

3. The fill material may have decreased the rate that water absorbs into the soil, the rate that water reaches the remaining wetlands on the Site, and the amount of groundwater recharge.
 4. The fill material may have loosened sediment and soil, allowing future storm events to move sediment and soil and fill in the remaining wetlands on the Site and nearby surface waters.
 - f. This Order contains requirements for the cleanup of the discharged waste and restoration to abate impacts to the Wetlands.
9. **Basis for Requiring Reports:** The reports required under this Order are required pursuant to Water Code section 13267. The reports are necessary to ensure that the harm and future threat to water quality created by activities on the Site, which resulted in the discharges described above, are properly assessed, abated, and controlled. The evidence supporting requiring the Dischargers to submit the reports is available in the record for this matter and shows that the burden imposed by preparing the reports bears a reasonable relationship to the harm to be corrected.
10. **CEQA:** This Order is an action to enforce the laws and regulations administered by the Regional Water Board. As such, this action is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to section 15321 of Title 14 of the California Code of Regulations.

IT IS HEREBY ORDERED, pursuant to Water Code sections 13304 and 13267, that the Dischargers, or their agents, successors, or assigns, shall provide the following information and perform the following cleanup and abatement actions. **The Dischargers shall obtain all necessary permits for the activities required in this Order.**

A. PROHIBITIONS

1. Removal of vegetation within waters of the State, or within riparian areas that provide benefit to these waters, without authorization from the Regional Water Board and other applicable resource agencies is prohibited.
2. Placement of fill material anywhere at the Site is prohibited, except as allowed by plans accepted by the Executive Officer or approved by the Regional Water Board pursuant to this Order, or through permits (e.g., WDRs or Water Quality Certification) issued by the Regional Water Board subsequent to the adoption of this Order for the placement of fill into waters of the State or United States.
3. Discharge of sediment-laden runoff to surface waters is prohibited.
4. Discharge of silt, sand, clay, or other earthen materials from any activity, in quantities sufficient to unreasonably affect or threaten to affect beneficial uses is prohibited.
5. This Order does not allow for the take, or incidental take, of any special status species. The Dischargers shall use the appropriate protocols, as approved by CDFW, the U.S. Fish and

Wildlife Service, and the Corps, to ensure that activities do not impact the beneficial use of preservation of rare and endangered species or violate the California or federal Endangered Species Acts.

B. CLEANUP AND ABATEMENT TASKS

The submittals required in the tasks below shall be submitted as soon as practicable but no later than the compliance deadlines stated below. The required actions and implementation schedules shall comply with all requirements in order to be acceptable to the Executive Officer.

1. RESTORATION AND MONITORING PLAN FOR THE WETLAND

COMPLIANCE DATE: **June 10, 2017**

The Dischargers shall submit to the Regional Water Board a Restoration and Monitoring Plan (Plan), acceptable to the Executive Officer, describing actions to restore the water quality functions, values, and area of the 0.6 acres of Wetlands lost and mitigate for any temporal and permanent losses. The Plan must also include technical justification for any imported soil remaining on the Site, with considerations of impacts to Wetlands and ecological toxicity. The Plan shall contain, at a minimum, a basis of design report, design specifications and drawings, a planting plan, adequate interim and final performance criteria (used to assess the success of the wetland restoration), a proposed implementation schedule, identification of all necessary permits and approvals and a process to obtain them, and a monitoring plan for the following:

Revegetation – Planted vegetation shall be irrigated, as necessary, to ensure that the vegetation becomes self-sustaining. Monitoring shall include at least a 10-year period of documenting percent survival; height, health, and vigor of shrubs and trees; percent cover of grasses and forbs; and monitoring and control of invasive plants. At end of year 10, percent survival shall be at least 75% and percent ground cover shall be at least 70%.

2. COMPLETION OF INITIAL RESTORATION AND MONITORING

COMPLIANCE DATE: **October 30, 2017, or October 30 of the first viable construction season** if there is delay in obtaining regulatory permits. A construction season is considered viable if after obtaining all necessary permits there is sufficient time to implement all restoration and mitigation actions by October 30. Delays caused by the Dischargers, such as not submitting technically sound or complete permit application documents or not initiating work in a timely manner, will constitute a violation of this requirement. The Dischargers are responsible for submitting timely and complete permit applications and being responsive to regulatory agencies during the application review and processing period.

The Dischargers shall complete the work described in the Executive Officer-approved Restoration and Monitoring Plans required by task B.1.

3. SUBMITTAL OF TECHNICAL REPORT

COMPLIANCE DATE: **January 15, 2018, or three months after the completion of Task 2, whichever is later.**

The Dischargers shall submit a technical report to the Regional Water Board. The report shall document that the plans in tasks B.1 and B.2 to restore the Wetlands on the Site have been fully and adequately implemented. The report shall also include pre- and post-construction photographs of the Site, including, at a minimum, photographs taken from the same fixed photopoints pre- and post-construction, and including views of the two “wetlands” and the seven “other waters” defined in Figure 3 of the 2016 LSA Associates, Inc., delineation.

4. SUBMITTAL OF ANNUAL REPORTS FOR FIRST FIVE YEARS AND REPORTS IN YEARS SEVEN, NINE, AND TEN

COMPLIANCE DATE: **No later than December 31 each year** monitoring is required.

The Dischargers shall submit annual reports to the Regional Water Board for the work required in tasks B.1 and B.2, above by December 31 for the first five years of the initial ten year monitoring period. Thereafter, reports shall be submitted by December 31 of years seven, nine, and ten. Each report must summarize each year’s monitoring results over the reporting period and include all the information specified in the monitoring plans and any corrective measures taken (e.g., re-planting). The report must also include photographs taken at the same locations as specified in task B.3.

The reports shall compare data to previous years and describe progress towards meeting final performance criteria. At the end of year ten, a comprehensive final report shall be prepared that includes summaries of the monitoring data and document if the Site meets the final performance criteria in the monitoring plans. All reports shall include representative photographs and site maps, with photographs taken at the same locations as specified in task B.3.

If any interim or final performance criteria are not met, a report identifying remedial measures to be undertaken, including extension of the monitoring period until the criteria are met, must be submitted to the Regional Water Board. Success of the wetland restoration will be determined by the Executive Officer. If deemed necessary by the Executive Officer, the Dischargers will be required to conduct additional remedial actions.

C. NOTIFICATIONS AND PROVISIONS

1. **Cost Recovery:** The Dischargers are and shall be liable, pursuant to Water Code section 13304, to the Regional Water Board for all reasonable costs actually incurred by the Regional Water Board to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by this Order. Such costs include, but are not limited to, staff time for investigation of the discharge, preparation of this Order, work to complete the directives specified in this Order, and communications between Regional Water Board staff and parties associated with the cleanup and abatement of the discharge wastes, including the Dischargers, interested members of the public, and other regulatory agencies. If the Dischargers are enrolled in a State Water Board-managed reimbursement program, reimbursement shall be made pursuant to this Order and according to the procedures established in that program. Any disputes raised by the Dischargers over

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reimbursement amounts or methods used in that program shall be resolved consistent with the dispute resolution procedures for that program.

2. **Contractor/Consultant Qualifications:** The Dischargers' reliance on qualified professionals promotes proper planning, implementation, and long-term cost effectiveness of investigation, and cleanup and abatement activities. Professionals shall be qualified, licensed where required, and competent and proficient in the fields pertinent to the required activities. California Business and Professions Code sections 6735, 7835, and 7835.1 require that engineering and geologic evaluations and judgment be performed by or under the direction of licensed professionals.
3. **Report Any Changes in Ownership or Occupancy:** The Dischargers shall file a written report on any changes in the Site's ownership or occupancy. At a minimum, the report shall include the name(s) and contact information for new owner(s) or occupants and changes in land use at the Site. This report shall be filed with the Regional Water Board within 30 days following a change and shall reference the number of this Order.
4. **Delayed Compliance:** The Dischargers shall notify the Regional Water Board Assistant Executive Officer (currently, Dyan Whyte) if they are delayed, interrupted, or prevented from meeting any of the compliance deadlines specified in this Order or a key milestone in an approved plan required by the Order (e.g., the Restoration and Monitoring Plans). The deadlines in this Order may not be modified except by amendment of this Order.
5. **Good Operation and Maintenance:** The Dischargers shall maintain in good working order and operate as efficiently as possible any facility or control system, including best management practices and post-construction permanent control measures installed, to achieve compliance with the requirements of this Order.
6. **Reporting of Hazardous Substance Release:** If any reportable quantity of hazardous substances is discharged in or on any waters of the State, or discharged or deposited where it is, or probably will be, discharged in or on any waters of the State, the Dischargers shall report such discharge to the Regional Water Board (in addition to reporting to the California Office of Emergency Services at (800) 852-7550), pursuant to Water Code section 13271. To report to the Regional Water Board, call (510) 622-2369 during regular office hours and file a written report within five working days.
7. **Enforcement:** If the Dischargers fail to comply with the requirements of this Order, this matter may be referred to the Attorney General for judicial enforcement. Failure to comply with this Order may result in the assessment of an administrative civil liability up to \$5,000 per violation per day, pursuant to Water Code section 13350. In addition, the Regional Water Board reserves its right to take any enforcement actions authorized by law for the underlying violations related to the unauthorized discharge of waste and fill material into waters of the State or United States.
8. **State Water Board Petition:** Any person aggrieved by this action may petition the State Water Board to review the action in accordance with Water Code section 13320 and Title 23, California Code of Regulations, section 2050 et seq. The State Water Board's Office of Chief Counsel must receive the petition by 5:00 p.m., 30 days after the date this Order becomes final (if the thirtieth

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day falls on a weekend or State holiday, the petition must be received by the next business day).
This Order is effective May 16, 2017.

9. **Periodic Review:** The Regional Water Board may review this Order periodically and may revise it when necessary.

Ordered by,

Bruce H. Wolfe
Executive Officer

Attachment A: Loss Area Memorandum

Attachment B: 13267 Fact Sheet