

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

CLEANUP AND ABATEMENT ORDER NO. R5-2016-0712

FOR

SENG BOUNGNAVATH, KONGKEO KHAMVONGSA, and ALEXANDRA KENSAVATH
ASSESSOR PARCEL 043-060-018-000
SHASTA COUNTY

This Order is issued to Seng Bounnavath, Kongkeo Khamvongsa, and Alexandra Kensavath (hereafter referred to as Dischargers) based on the provisions of Water Code section 13304, which authorizes the Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) to issue an order requiring the cleanup and abatement of wastes, and Water Code section 13267, which authorizes the Central Valley Water Board to require the preparation and submittal of technical and monitoring reports.

The Executive Officer finds, with respect to the Dischargers' acts, or failure to act, the following:

1. This Order requires the Dischargers to clean up and abate discharges and threatened discharges of sediment and earthen materials associated with excessive grading and dam construction activities and to remediate stream alterations to tributaries to Fidler Creek, a tributary to Middle Fork Cottonwood Creek. Middle Fork Cottonwood Creek is considered a water of the state, as well as a water of the United States. The Dischargers are responsible for re-constructing an earthen dam and for conducting extensive grading within and adjacent to two tributaries to Fidler Creek without authorization from applicable federal, state, and local agencies, including the Central Valley Water Board. Work was performed to widen and increase the height of the existing earthen dam and to construct terraces, presumably in support of cannabis cultivation. This Order requires investigation and cleanup in compliance with the Water Code, the Basin Plan, Resolution 92-49, and other applicable State and Regional Water Board plans, policies, and regulations.
2. The Dischargers, as the property owners and/or the persons who have discharged wastes or who have created a condition that threatens to discharge wastes, are responsible parties for the purposes of this Order. This Order finds that Seng Bounnavath, Kongkeo Khamvongsa, and Alexandra Kensavath are responsible parties for the cleanup of the Site and all are jointly and severally liable for the cleanup.
 - a. Per records from the Shasta County Assessor-Recorder's Office, Seng Bounnavath purchased the 40.1-acre parcel, identified as Assessor Parcel Number 043-060-018-000 (hereafter Site), in July 2010, and sold the Site in August 2015. The Site is located near the intersection of Ishi Road and Yolla Bolly Road in the Trinity Alps Preserve, south-western Shasta County, Section 24, Township 33N, Range 4W, MDB&M; in the vicinity of latitude 40.379198° N and longitude 122.733176° W.
 - b. Board Staff investigation of Google Earth and NAIP historic satellite imagery of the Site from 2009 through 2011 indicates an existing earthen embankment dam on a tributary to Fidler Creek. Subsequent hilltop and hillslope grading is visible in 2012 Google Earth imagery, and additional grading upstream of the original dam and additional material on the original dam is visible in 2014 Google Earth and NAIP imagery, indicating additional grading and dam enlargement was conducted between 2012 and 2014. Accordingly, Seng Bounnavath, as the owner of the Site during the time period in which this work was conducted, and as the person who directed and/or allowed the actions that discharged or threatened to result in discharges to waters of the state, is a responsible party.

- c. Per records from the Shasta County Assessor-Recorder's Office, Kongkeo Khamvongsa and Alexandra Kensavath purchased the Site in August 2015. Therefore, as owners of the Site, Kongkeo Khamvongsa and Alexandra Kensavath are also responsible parties. The original Site inspection was conducted in March 2015, and originally named Seng Boungnavath as the responsible party. Upon purchase by Kongkeo Khamvongsa and Alexandra Kensavath, Kendra Anderson hired VESTRA Resources, Inc. (VESTRA) to produce site reclamation plans to satisfy the original Notice of Violation. VESTRA indicated that Kendra Anderson is the mother of Alexandra Kensavath. This action indicates that Kongkeo Khamvongsa and Alexandra Kensavath were aware that the condition of the property is a threat to water quality and that cleanup or remediation actions are required.
3. The Site sits above Fidler Creek, a watercourse that is tributary to Middle Fork Cottonwood Creek. Two tributary drainages carry storm water runoff from the Site to Fidler Creek. The main source of Site runoff initiates as sheet flow from the top of APN 043-060-018-000 and concentrates into two tributaries, which combine approximately 270 feet downstream from the site into a main tributary. The main tributary then discharges to Fidler Creek. The confluence of the main tributary and Fidler Creek lies approximately at latitude 40.381183°N and longitude 122.723113°W – roughly 5 miles north of Fidler Creek's confluence with Middle Fork Cottonwood Creek. Hilltop and hillslope grading occurred in close proximity to a tributary to Fidler Creek, tributary to Middle Fork Cottonwood Creek. Grading to increase the size of the dam located on the Site occurred within a tributary to Fidler Creek, tributary to Middle Fork Cottonwood Creek.
 4. There are no statements or applications on file with the State Water Resources Control Board's Division of Water Rights for water storage or diversion for the Site location. The Site has no prior regulatory oversight or history with the Central Valley Water Board.
 5. The following is a chronology of the Central Valley Water Board and California Department of Fish and Wildlife's (CDFW) recent enforcement activities at the Site.
 - a. On 20 February 2015, Warden Steven Crowl of CDFW was conducting a Uniform Vehicle patrol along Yolla Bolly Road in the Trinity Alps Preserve area and noticed a large scale grading operation and apparent dam construction. Warden Crowl captured photographs and a GPS waypoint at the property and provided a declaration, based on his training and experience, identifying the grading operation and activities at the Site as commonly associated with cannabis cultivation. Photographs of these conditions, along with a lack of visible erosion control on site, were given as cause for recommendation of a joint on-site inspection with Central Valley Water Board and CDFW staffs.
 - b. On 19 March 2015, Central Valley Water Board staff (Staff) contacted Seng Boungnavath to discuss the Site. During the discussion Staff requested consent to perform an on-site inspection to document the grading activities and dam construction. Seng Boungnavath gave consent to perform the inspection. As documented in the attached Seng Boungnavath Inspection Report (Attachment 1), on 20 March 2015, Staff inspected the Site and observed several graded areas, constructed terraces, and recent grading and construction on an earthen dam. There was no evidence of erosion control practices being implemented at the Site. Due to the amount of grading and exposed soils, apparent dam construction activities, and terrace construction in close proximity to tributaries to Fidler Creek, there exists a threat of discharge of sediment to waters of the state and waters of the United States.
 - c. On 8 July 2015, Staff finalized and sent a Notice of Violation (NOV) (Attachment 2), with the on-site inspection report attached, to Seng Boungnavath. The NOV highlighted violations observed

during the on-site inspection and requested that Seng Bounnavath submit a work plan to address the violations by 15 August 2015.

- d. On 13 August 2015, Seng Bounnavath sold the property to Alexandra Kensavath and Kongkeo Khamvongsa.
 - e. On 14 August 2015, VESTRA submitted a work plan on behalf of Kendra Anderson, mother of Alexandra Kensavath. The work plan centered on stabilizing immediate threats from the dam and the freshly graded area near the dam. Upon receiving the work plan, Staff contacted VESTRA to schedule a meeting to discuss the work plan.
 - f. On 18 August 2015, Staff met with VESTRA to discuss the work plan. Staff identified several deficiencies in the work plan and determined the work plan was inadequate to prevent future discharges to waters of the United States. Staff discussed these deficiencies and along with VESTRA and identified measures that are protective of water quality.
 - g. On 7 October 2015, VESTRA submitted a second work plan to address concerns that Staff identified in the initial work plan. VESTRA outlined plans to stabilize the dam, obtain the appropriate water rights, and stabilize the bare soil created from grading and dam construction. Staff reviewed the second work plan and determined the work plan was adequate to prevent immediate discharges to waters of the United States. According to the work plan, the remediation work was to be completed by 31 December 2015.
 - h. On 1 December 2015, Staff accompanied Warden Crowl on a visual inspection of the property. Staff viewed the dam and portions of the property from Yolla Bolly Road (a public road). As of 1 December 2015, no work had been completed at the Site.
 - i. Staff contacted VESTRA numerous times in November 2015 and December 2015 to check on progress of work completed. VESTRA indicated to Staff that money was an issue with the landowner and that work had not been completed. As of 31 December 2015 remediation work had not been completed and Staff had not been contacted regarding the remediation work.
6. *The Water Quality Control Plan for the Sacramento River Basin and the San Joaquin River Basin, Fourth Addition, revised April 2016* (Basin Plan) designates beneficial uses, establishes water quality objectives, contains implementation programs for achieving objectives, and incorporates by reference, plans and policies adopted by the State Water Resources Control Board. Fidler Creek is tributary to Middle Fork Cottonwood Creek.
- a. Existing and potential beneficial uses for Middle Fork Cottonwood Creek include the following: Municipal & Domestic Supply (MUN); Agricultural Supply (AGR); Industrial Process (PROC); Industrial Service Supply (IND); Industrial Power (POW); Water Contact (REC-1) & Other Non-contact Recreation (REC-2); Warm Freshwater Habitat (WARM); Cold Freshwater Habitat (COLD); Cold Migration (MIGR); Spawning of Warm & Cold Freshwater Aquatic Organisms (SPWN); and Wildlife Habitat (WILD). Beneficial uses of any specifically identified water body generally apply to all of its tributaries.
 - b. The designated beneficial uses of the underlying groundwater include municipal and domestic supply (MUN); agricultural supply (AGR); industrial service supply (IND); and industrial process supply (PRO).

- c. The Basin Plan lists specific water quality objectives for inland surface waters. These objectives include in part, limitations on increased temperature, sediment, settleable and suspended material, and turbidity.
- d. The State Water Board has adopted Resolution No. 92-49, *Policies and Procedures for Investigation and Cleanup and Abatement of Discharges under Water Code Section 13304* ("Resolution 92-49"), which is included as Appendix 9 of the Basin Plan. Resolution 92-49 sets forth the policies and procedures to be used during an investigation and cleanup of a polluted site, and requires that cleanup levels be consistent with State Water Board Resolution 68-16, the *Statement of Policy with Respect to Maintaining High Quality Waters in California*. Resolution 92-49 requires the waste to be cleaned up in a manner that promotes attainment of either background water quality, or the best water quality which is reasonable if background levels of water quality cannot be restored. Any alternative cleanup level to background must: (1) be consistent with the maximum benefit to the people of the state; (2) not unreasonably affect present and anticipated beneficial use of such water; and (3) not result in water quality less than that prescribed in the Basin Plan and applicable Water Quality Control Plans and Policies of the State Water Board. Resolution 92-49 directs that investigations proceed in a progressive sequence. To the extent practical, it directs the Boards to require and review for adequacy written work plans for each element and phase, and the written reports that describe the results of each phase of the investigation and cleanup.

7. Central Valley Water Board staff determined that the grading and clearing activities at the Site occurred without coverage under any of the following regulatory permits:

- A U.S. Army Corp of Engineers 404 permit and Section 401 Water Quality Certification;
- A grading Permit issued by Shasta County.

8. "Waste" is defined by Water Code section 13050, subdivision (d) as:

Sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation, including waste placed within containers of whatever nature prior to, and for the purposes of disposal.

Sediment, when discharged to waters of the state, is deemed a "waste" as defined in Water Code section 13050.

9. "Pollution" is defined by Water Code section 13050, subdivision (l)(1) as:

an alteration of the quality of the waters of the state by waste to a degree which unreasonably affects either of the following

- i. The waters for beneficial uses;
- ii. Facilities which serve these beneficial uses.

Discharges of sediment and other inert material alter the hydrologic and sediment transport regimes of surface waters by affecting the flow of water and establishment of vegetation. Such changes may lead to adverse conditions such as flooding, increases in suspended sediment and turbidity, accelerated erosion of the adjacent channel bed or banks, and

localized accumulation of deleterious materials. Additionally, such discharges directly threaten habitat for aquatic species dependent upon native sediment and vegetation characteristics (MIGR, SPWN, and WILD). Increased sedimentation and turbidity can result in increased treatment and/or maintenance costs for downstream agricultural and municipal users that withdraw and treat the water (AGR and MUN). Sediment-laden storm water discharges to surface waters and the resulting turbidity can affect the recreational and aesthetic enjoyment of the surface waters (REC-1 and REC-2).

10. The Clean Water Act regulates discharges of dredged or fill material into waters of the United States. Discharges of dredged or fill material to waters of the United States generally require a Clean Water Act Section 404 permit and accompanying Section 401 Water Quality Certification from the state in which the discharge occurs. The Clean Water Act provides an exception from 404 Permitting requirements for certain agricultural activities, including, "normal farming, silviculture, and ranching activities ... [the] maintenance ... of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, and bridge abutments or approaches, and transportation structures ... [and the] construction or maintenance of farm or stock ponds or irrigation ditches, or the maintenance of drainage ditches..." (33 U.S.C.A. § 1344(f).) Though the State of California conditionally recognizes medical cannabis as an agricultural product (Health & Saf. Code, § 11362.777.), actions conducted by the Dischargers at the Site may have exceeded the scope of the Clean Water Act's Section 404 exemptions for agricultural activities.

11. Water Code section 13304, subdivision (a) states, in relevant part:

Any person who has discharged or discharges waste into waters of this state in violation of any waste discharge requirements or other order to prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and causes, or threatens to create, a condition of pollution or nuisance, shall upon order of the regional board clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts.... Upon failure of any person to comply with the cleanup or abatement order, the Attorney General, at the request of the board, shall petition the superior court for that county for the issuance of an injunction requiring the person to comply with the order. In the suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the facts may warrant.

12. The clearing and grading activities conducted by Seng Bounnavath and the current condition of the Site have resulted in unauthorized discharges or threaten to discharge wastes to surface waters and surface water drainage courses and have created, or threaten to create, a condition of pollution or nuisance. Actions that have created or threaten to create a condition of pollution or nuisance include, but are not limited to:

- a. The Site has approximately 1.5 acres of graded and cleared land on erodible soils, most of which lies un-vegetated and unprotected from weathering, leaving high potential for further sediment discharge to the tributaries to Fidler Creek and to Fidler Creek during wet weather events.
- b. There is a complete lack of sediment control measures at the Site. A lack of adequate erosion and sediment controls, together with steep slopes, continues to threaten to discharge sediment via uncontrolled storm water runoff and erosion of earthen materials into Fidler Creek. This has the potential to impair water quality and aquatic life.
- c. Materials added on to the dam crest and downstream dam face have been subject to tension cracks and rill and gully erosion, and have been discharged to a tributary to Fidler Creek. In

addition, due to the lack of a designed spillway or other outlet works, the entire dam structure is a risk of overtopping and failing, which would lead to discharges of sediment and earthen material to a tributary to Fidler Creek.

13. Cleanup and abatement activities are necessary to ensure that threatened unauthorized discharges to surface waters or surface water drainage courses originating from the Site are prevented, background water quality levels are restored, and that any impacts to beneficial uses are mitigated. The current condition of pollution and threat of pollution is a priority violation as outlined in the State Water Resources Control Board Water Quality Enforcement Policy (Enforcement Policy) and the issuance of a cleanup and abatement order pursuant to Water Code section 13304 is appropriate and consistent with policies of the Central Valley Water Board.
14. Water Code section 13267, subdivision (a) provides that the Central Valley Water Board may investigate the quality of any water of the State within its region in connection with any action relating to the Basin Plan. Water Code section 13267, subdivision (b), provides that the Board, in conducting an investigation may require a discharger to furnish, under penalty of perjury, technical or monitoring program reports. The technical reports required by this Order are necessary to ensure compliance with this Order and to protect the waters of the state. The technical reports are further necessary to demonstrate that appropriate methods will be used to cleanup waste discharged to surface waters and surface water drainage courses and to ensure that cleanup complies with Basin Plan requirements. In accordance with Water Code section 13267, subdivision (b) the findings in this Order provide the Dischargers with a written explanation with regard to the need for remedial action and reports and identify the evidence that supports the requirement to implement clean up and abatement activities and submit the reports. The Dischargers named in this Order own and/or operate, have owned and/or operated the Site from which waste was discharged and on which there exists a threat of future discharge, and thus are appropriately named as parties responsible for providing the reports.
15. Issuance of this Order is an enforcement action taken by a regulatory agency to enforce the regulatory provisions of the Basin Plan, and is therefore exempt from the provisions of the California Environmental Quality Act (CEQA)(Pub. Resources Code, § 21000 et seq.) in accordance with California Code of Regulations, title 14, section 15321. This action may also be considered exempt because it is an action by a regulatory agency for the protection of natural resources (Cal. Code Regs., tit. 14, § 15307.) and an action by a regulatory agency for the protection of the environment (Cal. Code Regs., tit. 14, § 15308.).

REQUIRED ACTIONS

IT IS HEREBY ORDERED that, pursuant to Water Code sections 13267 and 13304, that Seng Bounnavath, Kongkeo Khamvongsa, and Alexandra Kensavath (Dischargers) shall cleanup and abate the impacts to water quality associated with the discharge and threatened discharge of earthen materials, soil, and sediment to waters of the United States as follows:

1. **By 1 August 2016**, the Dischargers shall submit a proposed **Restoration Monitoring and Mitigation Plan (RMMP)** to the Board. The RMMP shall include, at a minimum, the following:
 - a. An assessment of the impacts to tributaries of Fidler Creek from the unauthorized activities, to be completed by an appropriately qualified professional.
 - b. Plans for Site restoration, including how long-term impacts from the Site runoff will be abated (i.e. re-grading, establishing permanent ground cover, removal or reengineering of

the earthen dam etc.), as well as proposed mitigation to restore beneficial uses and to compensate for and minimize any further impacts to the tributaries of Fidler Creek. Best management practices shall be applied to all current and planned work associated with construction activities on the Site impacting, or having the potential to impact, Fidler Creek and its tributaries. The RMMP shall contain, at a minimum, design specifications and drawings, an implementation schedule, and a monitoring plan. The RMMP shall incorporate use of appropriate native or endemic species in any re-vegetation efforts.

- c. The implementation schedule in the RMMP shall include detailed project milestones that take into account the time anticipated to obtain all applicable local, state, and federal permits necessary to fulfill the requirements of this Order. The time for providing that notice and obtaining that agreement should be considered and accounted for when developing a RMMP that complies with the deadlines provided in this Order.
2. **By 1 September 2016**, the Dischargers shall begin implementing the RMMP.
 3. **By 31 October 2016**, the Dischargers are required to have completed all approved restoration and mitigation measures described in the proposed RMMP.
 4. **By 1 December 2016**, the Dischargers must submit a **Completion Report** for the RMMP to the Board. The Completion Report shall accurately depict all construction and/or mitigation measures and document that the above plan to restore, compensate for, and minimize any further impacts to the tributaries to Fidler Creek and Fidler Creek have been fully implemented.
 5. **By October 1 of each year** (starting 1 October 2017) the Dischargers shall submit an annual monitoring report to the Board. The Annual Monitoring Report shall summarize monitoring results of RMMP and shall continue until at least three years after successful completion of the RMMP, or until a report, acceptable to the Assistant Executive Officer, is submitted showing the Discharger have met the requirements of the RMMP.

GENERAL REQUIREMENTS AND NOTICES

6. **Duty to Use Qualified Professionals:** All technical reports required herein that involve planning, investigation, evaluation, or design, or other work requiring interpretation and proper application of engineering or geologic sciences, shall be prepared by or under the direction of persons registered to practice in California pursuant to California Business and Professions Code sections 6735, 7835, and 7835.1. As required by these laws, completed technical reports must bear the signature(s) and seal(s) of the registered professional(s) in a manner such that all work can be clearly attributed to the professional responsible for the work.
7. **Signatory Requirements:** All technical reports submitted by the Dischargers shall include a cover letter signed by the Dischargers, or a duly authorized representative, certifying under penalty of law that the signer has examined and is familiar with the report and that to their knowledge, the report is true, complete, and accurate. The Dischargers shall also state if they agree with any recommendations/proposals and whether they approve implementation of said proposals. Any person signing a document submitted under this Order shall make the following certification:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my knowledge and on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am

aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.”

8. **Notice of Onsite Work:** The Dischargers or their authorized agent(s) shall notify Board staff at least 48 hours prior to any onsite work, testing, or sampling that pertains to environmental remediation and investigation and is not routine monitoring, maintenance, or inspection or that has not been fully described in the RMMP.
9. **Notice of Change in Ownership or Occupancy:** The Dischargers shall file a written report on any changes in the Site's ownership or occupancy. This report shall be filed with the Central Valley Water Board no later than 30 days prior to a planned change and shall reference the number of this Order.
10. **Submissions:** All monitoring reports, technical reports or notices required under this Order shall be submitted to:

Griffin Perea
364 Knollcrest Dr., Ste. 205
Redding, CA 96002
(530) 224-3217
11. **Other Regulatory Requirements:** The Dischargers shall obtain all applicable local, state, and federal permits necessary to fulfill the requirements of this Order prior to beginning the work. For example, FGC section 1602 requires a person or entity to notify CDFW before: 1) substantially diverting or obstructing the natural flow of a river, stream, or lake; 2) substantially changing the bed, channel, or bank of a river, stream, or lake; 3) using any material from the bed, channel, or bank of a river, stream, or lake; and/or 4) depositing or disposing of debris, waste, material containing crumbled, flaked, or ground pavement where it may pass into a river, stream, or lake. The failure to notify CDFW constitutes a violation of FGC section 1602.
12. **Cost Recovery:** Pursuant to Water code section 13304, the Central Valley Water Board is entitled to, and may seek reimbursement for, all reasonable costs it actually incurs investigating and abating the effects of the unauthorized discharges of waste and to oversee/supervise the cleanup of such waste, or other remedial action, required by this Order. The Dischargers shall enroll in the State Water Board's Cost Recovery Program and shall reimburse the State of California for all reasonable costs actually incurred by the Regional Board.
13. **Delayed Compliance:** If for any reason, the Dischargers are unable to perform any activity or submit any document in compliance with the schedule set forth herein, or in compliance with any work schedule submitted pursuant to this Order and approved by the Assistant Executive Officer, the Dischargers may request, in writing, an extension of the time specified. The extension request shall include justification for the delay. Any extension request shall be submitted as soon as a delay is recognized and prior to the compliance date. An extension may be granted by revision of this Order or by a letter from the Assistant Executive Officer. The Regional Water Board acknowledges that local, state, and federal permits may cause a delay beyond the control of the Dischargers and will take all the available relevant facts into consideration when considering whether or not to grant an extension request.

If, in the opinion of the Assistant Executive Officer, the Discharger fails to comply with the provisions of this Order, the Assistant Executive Officer may refer this matter to the Attorney General for judicial enforcement, may issue a complaint for administrative civil liability, or may take other enforcement actions. Failure to comply with this Order may result in the assessment of Administrative Civil Liability


of up to \$10,000 per violation, per day, depending on the violation, pursuant to the Water Code, including sections 13268, 13350 and 13385. The Central Valley Water Board reserves its right to take any enforcement actions authorized by law.

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

http://www.waterboards.ca.gov/public_notices/petitions/water_quality

or will be provided upon request.

This Order is effective upon the date of signature.



PAMELA C. CREEDON, Executive Officer

6/20/16

(Date)

Attachment 1 – 20 March 2015, Seng Bounnavath Inspection Report
Attachment 2 – 6 July 2015, Notice of Violation