

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

CLEANUP AND ABATEMENT ORDER R5-2011-0704

FOR
STEVE LAWRENCE AND TED DEBRAGA
SHASTA COUNTY

This Order is issued to Steve Lawrence (landowner) and Ted Debraga (operator) based on provisions of Water Code section 13304, which authorizes the California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board) to issue a Cleanup and Abatement Order; Water Code section 13267, which authorizes the Board to require the submittal of technical and monitoring reports; and Water Code section 13260, which authorizes the Central Valley Water Board to request a Report of Waste Discharge.

The Assistant Executive Officer of the Central Valley Water Board finds that:

1. Steve Lawrence (land owner) and Ted Debraga (lease operator) (hereafter Dischargers) have discharged sediment-laden irrigation tailwater from a wild rice field (Shasta County APN 016-340-010) into the Little Tule River. The Little Tule River is tributary to the Fall River, which is tributary to the Pit River.
2. On 14 June 2011, Central Valley Water Board staff investigated a complaint of sediment-laden water being discharged from agricultural fields into the Little Tule River. Staff observed a surface water discharge of sediment-laden water from a wild rice field on the Discharger's property to the aforementioned surface water. Photographs of the discharge are included as Attachment A to this Order.
3. Sediment, when discharged to waters of the State, constitutes as a "waste" as defined in Water Code section 13050. The Dischargers have discharged waste directly into surface waters which are tributary to the Fall River. Water Code section 13050 also defines "pollution" to mean the "impairment of the quality of waters of the State by waste to a degree which unreasonably affects either ... (A) the waters for beneficial uses [or] (B) Facilities which serve these beneficial uses."
4. The *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, Fourth Edition*, (the "Basin Plan") designates beneficial uses, establishes water quality objectives, contains implementation programs for achieving objectives, and incorporates by reference plans and policies adopted by the State Water Resources Control Board. The beneficial uses applicable to Fall River include municipal and domestic supply, agricultural supply, agricultural stock watering, industrial power supply, water contact recreation, other non-contact water recreation, warm freshwater aquatic habitat, cold freshwater aquatic habitat, and wildlife habitat.

5. The Basin Plan contains water quality objectives designed to protect the beneficial uses delineated in the Basin Plan. In regards to suspended sediment and turbidity and states at III-7.00 and III-9.00, respectively:

The suspended sediment load and suspended sediment discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses.

Waters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses. Increases in turbidity attributable to controllable water quality factors shall not exceed the following limits:

- Where natural turbidity is less than 1 Nephelometric Turbidity Unit (NTU), controllable factors shall not cause downstream turbidity to exceed 2 NTUs
- Where natural turbidity is between 1 and 5 NTUs, increases shall not exceed 1 NTU.
- Where natural turbidity is between 5 and 50 NTUs, increases shall not exceed 20 percent.
- Where natural turbidity is between 50 and 100 NTUs, increases shall not exceed 10 NTUs.
- Where natural turbidity is greater than 100 NTUs, increases shall not exceed 10 percent.

6. Discharges of sediment threaten municipal and domestic supply, agricultural stock watering, water contact recreation, other non-contact water recreation, warm freshwater aquatic habitat, cold freshwater aquatic habitat, and wildlife habitat. Furthermore, surface water samples collected on 14 June 2011 and analyzed by Basic Laboratory in Redding, CA (California ELAP Certification #1677 and #2718) indicate that natural turbidity in the Little Tule River was 0.7 NTU and downstream turbidity, where the discharge and receiving water were well mixed, was approximately 323 NTU. The turbidity of the tailwater sample was 682 NTU. Photographs of the discharge and sample locations can be found in Attachment A.
7. The discharge of tail water and sediment from the Discharger's property has created, or threatens to create, a condition of pollution or nuisance in violation the Basin Plan.
8. Water Code section 13304(a) provides that:

Any person ... who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the State and creates, or threatens to create, a condition of pollution or nuisance, shall upon order of the regional board clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but limited to, overseeing cleanup and abatement efforts. ... Upon failure of any person to comply with the cleanup or abatement order,

the Attorney General, at the request of the board, shall petition the superior court for that county for the issuance of an injunction requiring the person to comply with the order. In the suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the fact may warrant.

9. Water Code section 13304(c)(1) provides that:

If the waste is cleaned up or the effects of the waste are abated, or, in the case of threatened pollution or nuisance, other necessary remedial action is taken by any governmental agency, the person or persons who discharged the waste, discharges the waste, or threatened to cause or permit the discharge of waste within the meaning of subdivision (a), are liable to that governmental agency to the extent of the reasonable costs actually incurred in cleaning up the waste, abating the effects of the waste, supervising cleanup or abatement activities, or taking other remedial action. The amount of the costs is recoverable in a civil action by, and paid to, the governmental agency and state board to the extent of the latter's contribution to the cleanup costs from the State Water Pollution Cleanup and Abatement Account or other available funds.

10. Water Code section 13260(a) provides that:

All of the following persons shall file with the appropriate regional board a report of the discharge, containing the information which may be required by the regional board:

(1) Any person discharging waste, or proposing to discharge waste, within any region that could affect the quality of the waters of the State, other than into a community sewer system.

11. Water Code section 13260 (b) provides that:

No report of waste discharge need be filed pursuant to subdivision (a) if the requirement is waived pursuant to Section 13269.

12. Enrollment records provided by the Northeastern California Water Association (NECWA) indicate that the Discharger's property is an irrigated agricultural operation and is currently enrolled in the Central Valley Water Board's Irrigated Lands Regulatory Program (ILRP).

13. Water Code section 13267(b)(1) provides that:

In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste outside of its region that could affect the quality of waters of the State within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports.

14. The technical reports required by this Order (the *Erosion Control and Irrigation Water Management Plan* mentioned below) are necessary to assure compliance with this Order and to protect the waters of the State. The technical reports are necessary to demonstrate that appropriate methods will be used to clean up waste discharged to surface waters and to ensure that cleanup complies with Basin Plan requirements. The Discharger named in this Order owns the site from which waste was discharged. These reports are necessary to implement the cleanup requirements imposed by this Order, and the submittal of these reports to the Central Valley Water Board is a minor burden that bears a reasonable relationship to the need for the Board to review the report to ensure that water quality in the receiving water is being protected.
15. The issuance of this Order is an enforcement action taken by a regulatory agency and is exempt from the provisions of the California Environmental Quality Act, pursuant to California Code of Regulations, title 14, section 15321(a)(2).

IT IS HEREBY ORDERED THAT, pursuant to Water Code sections 13260, 13267 and 13304, Steve Lawrence and Ted Debraga shall:

1. Immediately take all actions to cease the discharge of sediment, sediment-laden tailwater and other wastes to waters of the State, including but not limited to the Little Tule River and its tributaries, Fall River, and the Pit River.
2. Immediately clean up and abate the sediment discharged to surface waters in accordance with the following minimum schedule:
 - (a) By **15 August 2011**, submit and immediately implement an *Erosion Control and Irrigation Water Management Plan* (the "Plan"). The Plan must describe how the site will be stabilized to prevent future discharges of sediment-laden water and all other wastes, and must give a proposed timeline for the work. The timeline shall not extend beyond **30 October 2011**. The Plan must describe how sediment-impacted surface waters will be cleaned up, as appropriate, and must include timelines and long-term monitoring to assess the effectiveness of the stabilization and cleanup efforts. The Plan must be prepared by a professional knowledgeable and experienced in erosion and sediment control, as well as, flood irrigation management. Comments from Central Valley Water Board staff should be incorporated into the Plan. The Plan shall be subject to approval by the Central Valley Water Board, and failure to submit an acceptable Erosion Control and Irrigation Water Management Plan by the aforementioned deadline may result in the imposition of administrative civil liability.
 - (b) By **30 November 2011**, submit a *Completion Report* describing in detail how the *Erosion Control and Irrigation Water Management Plan* has been implemented, and showing that the site and impacted surface waters have been fully remediated. The Dischargers shall provide staff access to areas of the property, as needed.

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

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

As required by Business and Professions Code sections 6735, 7835, and 7835.1, all technical reports shall be prepared by, or under the supervision of, a California Registered Engineer or Professional Geologist and signed by the registered professional.

If, in the opinion of the Executive Officer, the Dischargers fail to comply with the provisions of this Order, the Executive Officer may refer this matter to the Attorney General for judicial enforcement or may issue a complaint for administrative civil liability.

Failure to comply with this Order may result in the assessment of an Administrative Civil Liability up to \$10,000 per day of violation pursuant to Water Code sections 13261, 13350, 13385, and/or 13268. 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, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request.

This Order is effective upon the date of signature.

[Original signed by]

Robert A. Crandall, Assistant Executive Officer

14 July 2011

(Date)

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SHASTA COUNTY

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