

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

CLEANUP AND ABATEMENT ORDER R5-2016-0713
FOR
XANG BOUNIEUTTAY
ASSESSOR PARCEL 029-390-032-000
SHASTA COUNTY

This Order is issued to Xang Bounieuttay (hereafter referred to as Discharger) 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 Board to require the preparation and submittal of technical and monitoring reports.

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

1. This Order requires the Discharger to clean up and abate the impacts to water quality associated with the discharge of earthen materials, soil, sediment, and chemical fertilizers to tributaries of Cedar Creek, which is a tributary of Little Cow Creek. Little Cow Creek is considered a water of the state, as well as a water of the United States. This Order also requires the Discharger to take steps to eliminate the threat of future discharges. The discharges that have occurred, and the threatened discharges that may occur in the future, are the result of excessive grading activities, road construction, watercourse crossing construction, improper chemical fertilizer storage, and surface water diversion activities. The Discharger is responsible for these conducting these activities, as well as for an unpermitted watercourse diversion, within and adjacent to two unnamed class III tributaries to Cedar Creek. The Discharger created access roads, constructed terraces, constructed watercourse crossings, and diverted water, presumably in support of cannabis cultivation. This Order requires the Discharger to investigate and clean up wastes in compliance with the Water Code, the *Water Quality Control Plan for the Sacramento and San Joaquin River Basins, Fourth Addition, revised April 2016* (Basin Plan), State Water Resources Control Board Resolution No. 92-49, *Policies and Procedures for Investigation and Cleanup and Abatement of Discharges under Water Code Section 13304* ("Resolution 92-49"), and other applicable State and Regional Water Board plans, policies, and regulations.
2. The Discharger, as the property owner and the person and/or persons discharging or creating a threat of discharge, is a responsible party for the purposes of this Order.
 - a. Per records from the Shasta County Assessor-Recorder's Office, Mr. Bounieuttay purchased the 5.0-acre parcel, identified as Assessor Parcel Number 029-390-032-000 (hereafter Site), in April 2015 and has retained ownership since.
 - b. Board staff investigation of Google Earth and NAIP historic satellite imagery of the Site from 2009 through 2014 indicates an undeveloped parcel devoid of access roads, graded areas, or terraces.
 - c. The Central Valley Water Board and California Department of Fish and Wildlife (CDFW) conducted a Site inspection on 9 December 2015. Staff from both agencies found that the Site had been significantly modified, as described in a joint inspection report (Attachment 1).

3. There are no statements or applications on file with the State Water 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.
4. The Site is located near Buzzards Roost Road in the Round Mountain community, central Shasta County, Section 27, Township 34N, Range 1W, MDB&M; in the vicinity of latitude 40.768680° N and longitude 121.961101° W.
5. The Site sits above Cedar Creek, a class I watercourse that is tributary to Little Cow Creek which is an anadromous stream. Two unnamed tributaries/drainage courses carry storm water runoff from the Site to Cedar Creek. The main source of Site runoff initiates as sheet flow from the highest slopes on Site and concentrates into the two unnamed tributaries, which combine approximately 400 feet downstream from the site into one tributary (hereafter Main Tributary). The Main Tributary then discharges to Cedar Creek. The confluence of the Main Tributary and Cedar Creek lies approximately at latitude 40.778168°N and longitude 121.972141°W—roughly 0.86 miles north of the Site.
6. The following describes the findings of the joint investigation of the Central Valley Water Board and CDFW.
 - a. On 3 December 2015, Marc Pelote with Shasta County Code Enforcement spoke with Central Valley Water Board staff regarding a recent inspection Mr. Pelote conducted at the Site. Mr. Pelote documented various grading violations on the Site. Mr. Bounieuttay had previously obtained a grading permit from Shasta County to construct an access road and grade a small pad for a private residence. During the inspection, Mr. Pelote documented violations of the original grading permit by exceeding the original area to be graded. In addition to the grading violations Mr. Pelote noted watercourse crossing construction and road construction that, in Mr. Pelote's opinion, presented water quality risks to two unnamed tributaries to Cedar Creek. In addition to the grading permit violations, Mr. Pelote identified an area that appeared to have been used to cultivate cannabis near an unnamed tributary to Cedar Creek. Descriptions of these conditions and the threats they posed to degradation of water quality at the Site were given as cause for a follow up on-site inspection involving Central Valley Water Board and CDFW staffs.
 - b. On 7 December 2015 Central Valley Water Board staff (Staff) contacted Mr. Bounieuttay to discuss the Site. During the discussion, Staff requested consent to perform an on-site inspection to document the grading activities, watercourse crossing construction, and road construction. As part of the documentation, Staff requested consent to collect photographs, collect GPS data, and collect soil and water samples. Mr. Bounieuttay gave consent to perform the inspection and data collection. As documented in the attached Bounieuttay Inspection Report (Attachment 1), on 9 December 2015, Staff inspected the Site and observed several graded areas, constructed terraces, two watercourse crossings, road construction, improper storage of chemical fertilizers, and a surface water diversion. There was no evidence of erosion control practices being implemented at the Site.
 - c. Grading and road construction at the Site has resulted in the ground surface being stripped of vegetation and the upper soils lying vulnerable to wind and water erosion. Watercourse crossing construction has led to the deposition of earthen materials

directly into two tributaries to Cedar Creek, and due to design of the crossings, the earthen fill material is left at risk of erosion and discharge into the tributaries.

- d. A surface water diversion was created by excavating a depression in a spring fed watercourse that combines with the headwaters of one of the two unnamed tributary drainages, and diverting water through a constructed embankment and several black plastic pipes. The grading, road construction, crossing construction, and surface water diversion have created threats of erosion and sediment discharge to the two unnamed tributaries and to Cedar Creek. Excessive suspended sediment and increased turbidity can impair water quality and aquatic life.
 - e. The native soil at the Site, as identified using the USDA Web Soil Survey, are classified as Kilarc very stony sandy clay loam (KID) – moderately well drained soil with very high runoff rates. The lack of adequate erosion and sediment controls within the graded areas and the diversion, together with steep slopes, continue to cause a threat of future sediment discharge from uncontrolled storm water runoff and erosion of earthen materials into Cedar Creek.
 - f. Chemical fertilizers were improperly stored directly adjacent to an unnamed tributary to Cedar Creek. The various containers (bags, buckets, jugs) of chemical fertilizers were stored on the ground surface and lacked any type of secondary containment system causing a threat of discharges of excess nutrients into the unnamed tributary. Although the containers did not appear to have been breached, lab samples taken in this unnamed tributary indicated elevated levels of phosphorous. The elevated levels of phosphorous could have been from previous application of these chemicals or a previous container breach that was not identified during the on-site inspection. Excessive nutrient loading can lead to degradation of water quality including but not limited to: algal blooms, lower dissolved oxygen levels, and potential fish and other aquatic life kills.
7. 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.
- a. Existing and potential beneficial uses for Little Cow Creek include the following: Municipal & Domestic Supply (MUN); Agricultural Supply (AGR); Industrial Power (POW); Water Contact (REC-1) & Other Non-contact Recreation (REC-2); Cold Freshwater Habitat (COLD); Cold Migration (MIGR); Spawning of Warm & Cold Freshwater Aquatic Organisms (SPWN); and Wildlife Habitat (WILD). Cedar Creek is tributary to Little Cow Creek. 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.

8. The State Water Board has adopted 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 No. 68-16, the *Statement of Policy with Respect to Maintaining High Quality Waters in California* ("Resolution 68-16"). 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 Regional Water Board 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.

9. Central Valley Water Board staff determined that the grading, road construction, watercourse crossing construction, and surface water diversion activities at the Site occurred without coverage under any of the following regulatory permits:
 - a. A National Pollutant Discharge Elimination System (NPDES) permit or any other waste discharge requirements issued by the Central Valley Water Board or the State Water Board pursuant to Water Code section 13263;
 - b. A CDFW Lake and Streambed Alteration Agreement (1600 Agreement);
 - c. A California State Water Resources Control Board Division of Water Rights statement of water diversion;
 - d. A U.S. Army Corp of Engineers 404 permit and a Section 401 Water Quality Certification.

10. 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.

11. "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 purposes of, disposal.

Sediment and sediment-laden storm water, when discharged to waters of the state, is deemed a "waste" as defined in Water Code section 13050. The Discharger caused or permitted waste to be discharged or deposited where it will be, or has the potential to be, discharged to surface waters draining to Cedar Creek, which is tributary to Little Cow Creek, in violation of Water Code sections 13260 and 13376, which creates a condition of pollution subject to this Order in accordance with Water Code section 13304.

12. "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.
- a. The clearing and grading activities, road construction, watercourse crossing construction, surface water diversion, and improper chemical fertilizer storage conducted by the Discharger has resulted in the unauthorized discharge or threat of discharge of wastes into surface waters and surface water drainage courses and have created, or threaten to create, a condition of pollution by unreasonably affecting the beneficial uses of waters of the United States. The Site's tributary drainages empty into Cedar Creek, a tributary to Little Cow Creek. Accordingly, the beneficial uses of Little Cow Creek discussed above in paragraph No. 7 also apply to all of its tributaries.
 - b. 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 also affect the recreational and aesthetic enjoyment of the surface waters (REC-1 and REC-2).
 - c. Discharges of excess nutrients alter the natural chemistry of surface waters and can affect aquatic life dependent on surface waters. Such chemical changes may lead to adverse conditions of algal blooms, lower dissolved oxygen levels, and fish and aquatic life kills. As such, these discharges threaten the habitat of aquatic life (MIGR, SPWN, and WILD).

13. Untreated storm water from the Site has discharged, and threatens to discharge, sediment and excess nutrients into tributaries from the Site to Cedar Creek. The Site has

approximately 1.3 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 and excess nutrient discharge to the tributaries to Cedar Creek and Cedar Creek itself during wet weather events. There is a complete lack of sediment control measures at the Site. Cleanup and abatement is 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 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 Regional Water 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 United States. 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 Discharger 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 Discharger named in this Order owns and/or operates the Site from which waste was discharged, and there exists a threat of future discharge, and thus is appropriately 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 Mr. Xang Bounieuttay (Discharger) shall clean up and abate the impacts to water quality associated with the discharge and threatened discharge of earthen materials, soil, sediment, and chemical fertilizers to waters of the United States as follows:

1. **By 1 August 2016**, the Discharger shall submit a proposed **Restoration Monitoring and Mitigation Plan** (hereafter "RMMP") to the Board. The RMMP shall include, but not be limited to:

- a. An assessment of the impacts to tributaries of Cedar 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, watercourse crossing re-design and re-construction etc.), as well as proposed mitigation to restore beneficial uses and to compensate for and minimize any further impacts to the tributaries of Cedar 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, Cedar 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 Discharger shall begin implementation of the RMMP.
 3. **By 31 October 2016**, the Discharger shall complete all approved restoration and mitigation measures described in the proposed RMMP.
 4. **By 1 December 2016**, the Discharger shall 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 Cedar Creek and Cedar Creek has been fully implemented.
 5. **By October 1 of each year** (starting 1 October 2017) the Discharger shall submit an annual monitoring report to the Board. The Annual Monitoring Report shall summarize monitoring results of the 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 has met the requirements of the RMMP.

GENERAL REQUIREMENTS AND NOTICES

6. 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. All technical reports submitted by the Discharger shall include a cover letter signed by the Discharger, 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 Discharger shall also state if it agrees with any recommendations/proposals and whether it approves 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. The Discharger or his authorized agent(s) shall notify Central Valley Water 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. The Discharger 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. All monitoring reports, technical reports and notices required under this Order shall be submitted to:

Griffin Perea
364 Knollcrest Dr., Ste. 205
Redding, CA 96002
(530) 224-3217
11. The Discharger shall obtain all applicable local, state, and federal permits necessary to fulfill the requirements of this Order prior to beginning the work. For example, California Fish and Game Code (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. Pursuant to Water code section 13304, the 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 Discharger 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. If for any reason, the Discharger is 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 Discharger 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 Board acknowledges that local, state, and federal permits may cause a delay beyond the control of the Discharger 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

6/24/16

Date

Attachment 1 – 9 December 2015, Xang Bounieuttay Inspection Report