

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

CLEANUP AND ABATEMENT ORDER R5-2015-0738

ISSUED TO

K2 RANCHES, LLC
STANISLAUS COUNTY

This Order is issued to K2 Ranches, LLC pursuant to Water Code section 13304, which authorizes the Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) to issue Cleanup and Abatement Orders, and Water Code section 13267, which authorizes the Board to require the submittal of technical and monitoring reports.

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

1. K2 Ranches, LLC (hereafter Discharger) is the owner of a 62-acre parcel in Stanislaus County (APN 020-008-029)(the "Property"). 40 acres of the Property, which was previously dry land pasture, have been recently graded, possibly in preparation for a permanent crop such as an orchard or vineyard. The topography is rolling hills with the majority of the property drainage toward Peaslee Creek and a tributary to Peaslee Creek. Peaslee Creek is a tributary to the Tuolumne River.
2. On 03 August 2015, the Stanislaus County Public Works Department notified Board staff of grading activities at the Property and expressed concerns about site conditions. On 17 August 2015, Board staff conducted an inspection of the Property to evaluate potential sediment and erosion potential impacts to Peaslee Creek and the Tuolumne River. The Board's Inspection Report is attached hereto as Attachment A, which is herein incorporated by reference.
3. Sediment, when discharged to waters of the state, constitutes as a "waste" as that term is defined in Water Code section 13050. Due to the sloped topography and exposed nature of the disturbed (graded) soil at the Property, there is a risk of significant erosion and sediment runoff and discharge into Peaslee Creek, and subsequently to the Tuolumne River, if adequate mitigation practices are not installed prior to rain events.
4. The *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, Fourth Edition*, (Basin Plan) designates beneficial uses, establishes water quality objectives, contains implementation plans and policies for protecting waters of the basin, and incorporates by reference plans and policies adopted by the State Water Board.
5. The beneficial uses of the Tuolumne River, as identified in Table II-1 of the Basin Plan, are municipal and domestic supply; agricultural supply; water contact recreation; non-contact water recreation; warm freshwater habitat; cold freshwater habitat; migration of aquatic organisms; spawning, reproduction, and/or early development of aquatic organisms; and wildlife habitat.
6. The Basin Plan lists specific water quality objectives for inland surface waters. These objectives include limitations on increased temperature, sediment, settleable and suspended material, and turbidity.
7. Water Code section 13304(a) states, in relevant part, that:

Any person who ... 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. ...

There is a significant probability that the Discharger's grading activities, conducted on sloped topography, will result in the discharge of wastes to surface waters, which will create, or threaten to create, a condition of pollution or nuisance. Site conditions, and the potential for the Site to discharge sediment into surface waters, are described in the Board's Inspection Report (Attachment A).

8. Water Code section 13267(b)(1), states, in relevant part, that:

In conducting an investigation ... 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 ... 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. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.

The technical reports required by this Order, including a Sediment and Erosion Control Plan and a Completion Report, are necessary to ensure that the Discharger will implement appropriate measures to protect waters of the State and to verify that those measures were installed. These reports would ordinarily be prepared before conducting any activities to ameliorate significant threats to water quality, even if such activities were not mandated by the Central Valley Water Board. As such, the burden of preparing the report bears a reasonable relationship to the benefits of such reports, which include the protection of watercourses utilized for recreation, freshwater habitat, and the spawning, reproduction, migration and/or early development of aquatic organisms, all of which could be impacted by sediment discharges from the Property. K2 Ranches, LLC is hereby being required to submit these reports because it is the owner of the Property and is responsible for the grading activities conducted at the Property.

9. 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).

IT IS HEREBY ORDERED THAT, pursuant to Water Code sections 13267 and 13304, K2 Ranches, LLC shall:

1. Immediately take all actions to prevent the discharge of sediment and other wastes to waters of the state, including but not limited to Peaslee Creek, its tributaries, and the Tuolumne River.
2. Immediately clean up and abate conditions which threaten to cause or permit wastes (soil and sediment) to be discharged or deposited to waters of the state, including Peaslee Creek and its tributaries. The Discharger shall comply with this directive in accordance with the following schedule:
 - (a) The Discharger must immediately begin implementing soil stabilization and erosion control management practices.

- (b) By **31 October 2015**, the Discharger must submit a ***Sediment and Erosion Control Plan*** to the Central Valley Water Board. The *Sediment and Erosion Control Plan* must describe all actions that the Discharger has taken to stabilize the soil and to implement erosion control measures, and must describe all additional actions that must be undertaken by the Discharger to stabilize the Property to prevent future discharges of sediment and all other wastes. The Plan must propose a timeline for the additional work that shall not extend beyond **30 November 2015**. The *Sediment and Erosion Control Plan* must contain contingency plans that will describe how the Discharger will clean up or mitigate any sediment discharges to surface waters, should they occur during rain events, and shall include timelines and long-term monitoring to assess the effectiveness of the sediment and erosion control efforts.
- (c) By **20 December 2015**, the Discharger must submit a ***Completion Report*** to the Board that will describe how the Sediment and Erosion Control Plan has been implemented, including photos showing the management practices that have been implemented for erosion and sediment control.
3. The *Sediment and Erosion Control Plan* and *Completion Report* must be written, amended, and certified by a qualified professional possessing one of the following registrations or certifications, and appropriate experience with erosion issues: California registered professional civil engineer, geologist, engineering geologist, landscape architect; NRCS Certified Conservation Planner; professional hydrologist registered through the American Institute of Hydrology; certified soil scientist registered through the American Society of Agronomy; Certified Professional in Erosion and Sediment Control (CPSEC)™/Certified Professional in Storm Water Quality (CPSWQ)™ registered through EnviroCert International, Inc.; or a professional in erosion and sediment control registered through the National Institute for Certification in Engineering Technologies (NICET).
4. 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.”*
5. **Report Submittals.** All monitoring and technical reports required under this Order shall be submitted to:
- California Regional Water Quality Control Board, Central Valley Region
Attn: Terry Bechtel
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670
6. If for any reason, the Discharger is unable to perform any activity or submit any document in compliance with work 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 the situation is recognized and no later than the compliance date. An extension may be granted by revision of this

Order or by letter from the Assistant Executive Officer. Extension requests not approved in writing by the Assistant Executive Officer with reference to this Order are denied.

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.

Original signed by

ANDREW ALTEVOGT, Assistant Executive Officer

9/22/15

(Date)

Attachment: 17 August 2015 Inspection Report