

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

CLEANUP AND ABATEMENT ORDER R5-2019-0704  
FOR  
ELVIS KY; KYZEN ENTERPRISES, INC.; AND PHILIP ISIDRO  
ASSESSOR PARCELS 052-017-087, 050-020-022, and 050-022-023  
CALAVERAS COUNTY

This Order is issued to Elvis Ky; Kyzen Enterprises, Inc. (Kyzen); and Philip Isidro (collectively, Dischargers) based on provisions of Water Code section 13304, which authorizes the Central Valley Regional Water Quality Control Board (Central Valley Water Board) to issue an order requiring the cleanup and abatement of wastes, and Water Code section 13267, which authorizes the regional water boards to require the preparation and submittal of technical and monitoring reports (Order).

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

**Purpose of the Order**

1. This Order requires the Dischargers to clean up earthen materials, soil, sediment, nutrient rich waste waters, fertilizers, and pesticides associated with cannabis cultivation activities that are discharging or threatening to discharge to tributaries of Salt Spring Valley Reservoir. These discharges and threatened discharges are a result of the Dischargers' cultivation activities, grading activities, road construction, and watercourse crossing construction on Calaveras County Assessor Parcel Numbers (APNs) 052-017-087, 050-020-023, and 050-020-022 (the Site). An unnamed Class III watercourse, referred to here as Watercourse A, flows through the Site. Watercourse A is considered waters of the state, as well as waters of the United States. The Dischargers performed this work in order to facilitate the cultivation of cannabis on parcels 052-017-087 and 050-020-023. The above-mentioned activities have either previously discharged wastes or threaten future discharge of wastes to Watercourse A without authorization from applicable federal, state, and local agencies, including the Central Valley Water Board. This Order requires investigation and cleanup in compliance with the Water Code, the *Water Quality Control Plan for the Sacramento and San Joaquin River Basins*, Fourth Edition, revised April 2016 (Basin Plan), State Water Resources Control Board (State Water 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.

### Responsible and Potentially Responsible Parties

2. The Dischargers, as the current owners of the Site and/or the persons discharging or creating a threat of discharge, are responsible parties for the purpose of complying with this Order. This Order finds that Elvis Ky, Kyzen, and Philip Isidro are responsible parties.
  - a. Per records from the State of California's Secretary of State, Kyzen filed its Articles of Incorporation of a General Stock Corporation in January 2016 and Statements of Information in January 2016 and November 2018. Per these records, Elvis Ky serves as the Chief Executive Officer, Secretary, Chief Financial Officer, Director, and Agent of Kyzen.
  - b. Per records from the Calaveras County Assessor-Recorder's Office, Kyzen purchased the 60-acre parcel, identified as APN 050-022-023; the 224-acre parcel, identified as APN 050-022-022; and the 239-acre parcel, identified as APN 052-017-087 in April 2016.
  - c. On 25 July 2016, Philip Isidro submitted a Notice of Intent (NOI) to enroll under Order R5-2015-0113, *Waste Discharge Requirements General Order for Discharges of Waste Associated with Medicinal Cannabis Cultivation Activities* (General Order) for a Tier 2 cannabis cultivation operation on APN 052-017-087. In the NOI, Philip Isidro is identified as the cultivator of APN 052-017-087 and signed the NOI as the cultivator, and Elvis Ky is identified as the landowner of APN 052-017-087 and signed the NOI as the landowner.
  - d. On 15 September 2016, Philip Isidro received a Notice of Applicability from the Central Valley Water Board for a Tier 2 cannabis cultivation operation on APN 052-017-087. Tier 2 designation permits up to 1 acre of disturbed land associated with cannabis cultivation under the terms of the General Order.
  - e. Per the above records, communications between Elvis Ky and Central Valley Water Board staff (Staff), and California Department of Fish and Wildlife (CDFW) investigative records, Elvis Ky is properly named in his individual capacity in addition to Kyzen and Phillip Isidro. While officers cannot be held liable solely based on their corporate title, they can be held liable for personally participating in the wrongful conduct of the corporation or authorizing or directing that it be done. (See *People v. Pacific Landmark, LLC* (2005) 129 Cal.App.4th 1203, 1213-16; State Water Board Order WQ 2002-0001 (*Mr. Kelly Engineer/All Star Gasoline, Inc.*)).) As the sole officer and director of Kyzen, Elvis Ky exercised substantial, if not exclusive, control over Kyzen's wrongful conduct and personally authorized or directed some of the Site work that is the subject of this Order, such as watercourse crossing construction.

### **Site Location and Description**

3. The Site is located near Hunt Road, approximately 1.8 miles east of the intersection of Hunt Road and New Hogan Dam Road, and approximately 6.5 miles northwest of Copperopolis, Calaveras County in the vicinity of 38.06396°N and -120.70551°W. Watercourse A and one watercourse tributary thereto flow through the Site. The Site consists of three parcels totaling 523 acres, including approximately 7.5 acres of disturbed land for cannabis cultivation, and 4.7 acres of disturbance without adequate erosion and sediment control practices.

### **Site History**

4. The 523-acre Site appears to have been largely undeveloped prior to March of 2016. Google Earth satellite imagery from March of 2016 indicates natural hillsides with two access roads and little to no land disturbance or grading. Subsequent grading and road improvements are visible in the 2017 and 2018 Google Earth imagery. In June of 2017, Staff participated in an overflight of the area and noted grading, clearing, and the presence of cannabis plants throughout the Site. In addition to the cannabis cultivation, Staff noted the presence of water storage tanks and irrigation lines in support of the cannabis cultivation. There are no statements or applications on file with the State Water Board's Division of Water Rights (Division of Water Rights) for water storage or diversion for the Site location. Philip Isidro had Tier 2 permit coverage for APN 052-017-087 under the General Order. APNs 050-022-022 and 050-022-023 were not covered under the General Order.

### **Factual Basis of Order**

5. The following describes the initial discovery of the water quality concerns at the Site and the findings of the joint investigation by the Central Valley Water Board and CDFW.
  - a. In May 2017, the Calaveras County Sheriff's Department contacted the Central Valley Water Board and CDFW regarding environmental impacts stemming from cannabis cultivation sites throughout Calaveras County. Staff identified an area north of Copperopolis suspected of environmental impacts.
  - b. Staff researched the area in question and determined that grading, access road construction, and cannabis cultivation were located on Calaveras County APNs 052-017-087, 050-022-023, and 050-022-022, owned by Kyzen.
  - c. The Site is located directly along Watercourse A, which is tributary to Salt Spring Valley Reservoir. Salt Spring Valley Reservoir is tributary to Rock Creek, which is tributary to Littlejohn Creek, and thence the San Joaquin River. Road construction, hillside grading, watercourse crossing construction, and cannabis

cultivation had been conducted on the Site near Watercourse A and its tributaries.

6. On 28 July 2017, the Calaveras County Sheriff's Office obtained a search warrant from the Superior Court of California, Calaveras, for APNs 050-022-023 and 052-017-087. The warrant authorized Staff to participate in the search to inspect for water quality violations.
7. On 2 August 2017, Staff met with the Calaveras County Sheriff's Office, CDFW wardens and environmental scientists, Calaveras County Code Compliance, Calaveras County District Attorney, California National Guard, and California Department of Forestry and Fire Protection (CAL-FIRE) staff to inspect the Site. During the Site inspection, Staff observed improper storage of various chemical fertilizers, pesticides, fuel, imported potting soil, and septage. Staff also observed constructed access roads, constructed benches, cannabis cultivation, constructed watercourse crossings, and a watercourse diversion.
  - a. Approximately 7.5 acres of land disturbance for the purpose of cannabis cultivation was documented at the Site, including approximately 4.7 acres of disturbance lacking proper erosion and sediment control practices. The ground disturbance was in three primary locations on Site and for purposes here will be identified as the South-Western Cultivation Area, South-Eastern Cultivation Area, and Northern Cultivation Area.
    - 1) The South-Western Cultivation Area was located on APN 050-022-023 and comprised approximately 4.1 acres of disturbed area to the west of Watercourse A. To support cannabis cultivation, the area was cleared of vegetation, and cannabis was planted in holes in the ground, filled with imported potting soil.
    - 2) The South-Eastern Cultivation Area was located on APN 050-022-023 and APN 052-017-087, and included approximately 2.7 acres of disturbed area to the east of Watercourse A. Cannabis was planted in raised fabric pots, raised wooden planter beds, and in holes in the ground filled with imported potting soil.
    - 3) The Northern Cultivation Area measured approximately 0.7 acres and was located on APN 052-017-087. This area was graded into two terraced pads: The Greenhouse Pad and the Lower Pad. Cannabis was not present in this area at the time of inspection. The Greenhouse Pad had gravel armoring and appeared stable. The Lower Pad was constructed adjacent to Watercourse A and encroached on the natural bank of the watercourse. The Lower Pad had steep cutback slopes measuring approximately 11 feet tall. The surface of the Lower Pad was

natural soil and lacked vegetation or sediment and erosion control practices.

- 4) CDFW documented two additional watercourse crossings that are addressed in the 14 December 2018 Revised Notice of Violation Corrective Action Workplan (Revised Workplan).
- b. Staff documented three improperly constructed, unpermitted watercourse crossings on Site that crossed Watercourse A.
- 1) Watercourse Crossing 1 is a ford constructed of earthen material at the southeast corner of the South-Western Cultivation Area on APN 050-022-023. Staff documented the placement of rock and soil within Watercourse A without proper flow relief such as a culvert or designed vents through the fill prism. Approximately 13 cubic yards of material were placed within Watercourse A to create the crossing.
  - 2) Watercourse Crossing 2 was located on the north end of the South-West Cultivation Area on APN 050-022-023 and was constructed using a 48-inch corrugated metal pipe (CMP) culvert and earthen fill. The fill prism is estimated to be 93 cubic yards of soil.
  - 3) Watercourse Crossing 3 was located adjacent to the Northern Cultivation Area on APN 052-017-087 and was constructed of a 36-inch plastic corrugated pipe and earthen fill material. The fill prism placed within Watercourse A was measured to contain approximately 52 cubic yards of material. The culvert appeared undersized, damaged, and blocked during the inspection, which caused a diversion of Watercourse A to the south of the natural channel. The diversion ran across grassland, the road, and connected with the natural channel of Watercourse A downstream. Staff measured two main erosional gullies and estimated 55 cubic yards of soil had eroded as a result of the diversion.
- c. Storage of chemical fertilizers and pesticides, fuels, imported potting soils, and disposal and storage of septage was occurring on Site. The storage of these materials was occurring directly adjacent to Watercourse A. Chemical fertilizers, pesticides, and fuels were stored directly on the ground surface with no cover or secondary containment. Chemicals stored on the ground surface without appropriate cover or containment present a threat of container degradation leading to rupture and discharge Watercourse A. Human waste was observed in and around Watercourse A. The imported potting soil was uncovered, uncontained, and deposited directly onto the native ground surface, which naturally drains towards Watercourse A, creating a threat of sediment discharge to Watercourse A.

8. On 20 February 2018, the Central Valley Water Board issued the Dischargers a Notice of Violation for unlawful discharges from the commercial cannabis cultivation operation at the Site. The Notice of Violation requested that the Dischargers submit a workplan within 60 days. The Notice of Violation, including the Inspection Report from the 02 August 2017 inspection, is attached hereto as Attachment A.
9. On 26 February 2018, United States Postal Service (USPS) certified mail tracking system indicated the Notice of Violation addressed to Elvis Ky and Kyzen was picked up at the post office in Valencia, CA.
10. On 7 June 2018, a commercial cannabis cultivation ban went into effect in Calaveras County.
11. In July 2018, the Calaveras County Sheriff's Office observed that the Site owned by Kyzen had an active commercial cannabis cultivation operation.
12. On 13 August 2018, Staff returned to the Site to document environmental impacts resulting from continued illegal commercial cannabis cultivation. CDFW served a search warrant that allowed Staff to inspect the Site.
  - a. Cultivation was limited to a portion of the South-Eastern Cultivation Area on APN 050-022-023, including approximately 1.75 acres of disturbed land for cannabis cultivation. The area was well vegetated. Plants were grown in above-ground fabric pots with potting soil as a growth media.
  - b. Watercourse crossings at the Site were in similar condition as observed during the 2 August 2017 inspection. Watercourse Crossing 3 continued to divert Watercourse A. Staff documented the eroded channel using a GPS and measuring tape. Measuring the channel dimensions and length of the channel, staff determined that approximately 140 cubic yards of soil had eroded as a result of the watercourse diversion.
  - c. Improper chemical and waste storage was occurring on Site. Human waste, gasoline containers, and refuse were found in Watercourse A, adjacent to the South Eastern Cultivation Area.
13. On 26 November 2018, the Dischargers submitted a Notice of Violation Corrective Action Workplan prepared by their consultant, Condor Earth. The workplan was submitted in response to the 20 February 2018 Notice of Violation. Central Valley Water Board staff reviewed the workplan and responded with comments to the Dischargers and Condor Earth.
14. On 10 December 2018, the Central Valley Water Board sent the Dischargers a Continuing Notice of Violation for the commercial cannabis cultivation operation at the Site based on the 13 August 2018 inspection. The Continuing Notice of Violation,

including the inspection report from the 13 August 2018 inspection, is attached hereto as Attachment B.

15. On 14 December 2018, USPS certified mail tracking system indicated that a copy of the Continuing Notice of Violation addressed to Elvis Ky and Kyzen was picked up at the post office in Santa Clarita, CA.
16. On 17 December 2018, Condor Earth submitted the Revised Notice of Violation Correction Workplan (Revised Workplan) on behalf of the Dischargers. The Revised Workplan is attached hereto as Attachment C. In general, the Revised Workplan proposed the following actions:
  - a. Watercourse Crossings 1, 2, 3, 4, and 5 will be removed. Disturbed areas will be stabilized using appropriate Best Management Practices (BMPs). The fill material at these locations will be removed so that the bank slope matches the historical stream bank slope, or as designed for low water crossings in accordance with the Handbook for Forest, Ranch, and Rural Roads. All culverts will be removed and properly disposed of. The material removed from this crossing will be removed.
  - b. Earthen fill added by the Dischargers to the spillway of the historical pond will be removed. The material filled at this location will be removed so that the spillway grade matches the historical spillway contours.
  - c. Stockpiles on site will be stabilized using appropriate BMPs. All stockpiles will be at least 200 feet from all stream courses, on a slope no steeper than 5:1, and no higher than 3 feet.
  - d. The Revised Workplan included an attachment provided by Elvis Ky that detailed clean-up activities that did not require assistance by a qualified professional. In general, this section included trash and debris removal, chemical disposal, and irrigation infrastructure removal.
17. On 29 March 2019, the Central Valley Water Board sent the Dischargers a Draft Cleanup and Abatement Order and provided the opportunity for the Dischargers to comment.
18. On 5 April 2019, USPS certified mail tracking system indicated that a copy of the Draft Cleanup and Abatement Order addressed to Elvis Ky and Kyzen was left with an individual in Valencia, CA.
19. On 8 May 2019 the Central Valley Water Board sent an electronic copy of the Draft Cleanup and Abatement Order to Kyzen's email address.

20. On 9 May 2019 Elvis Ky confirmed to the Central Valley Water Board over the phone that he had received the Draft Cleanup and Abatement Order. A Record of Communication was written immediately after the phone call to document the topics discussed.
21. The Central Valley Water Board received one comment on the Draft Cleanup and Abatement Order from Kyzen. No changes were made in response to this comment.

### **Beneficial Uses and Water Quality Objectives**

22. 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 Board. Watercourse A is tributary to Salt Spring Valley Reservoir. Salt Spring Valley Reservoir is in Hydrologic Unit 531.
  - a. The designated beneficial uses for Other Lakes and Reservoirs in Hydrologic Unit 531 are: Municipal and Domestic Supply (MUN), Irrigation and Stock Watering (ARG), Process (PROC), Power (POW), Contact (REC-1), Other Noncontact Recreation (REC-2), Warm Freshwater Habitat (WARM), Cold Freshwater Habitat (COLD), Cold Spawning (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.

### **Unpermitted Activities**

23. Central Valley Water Board staff determined that the grading, access roads, terracing, watercourse crossings, dam construction, and water diversion activities at the Site occurred without coverage under any of the following regulatory permits:
  - a. Any waste discharge requirement, conditional waiver, or water quality certification issued by either the Central Valley Water Board or the State Water Board for APNs 050-022-022 and 050-022-023 (Note: APN 052-017-087 had a General Order permit with the Central Valley Water Board for cannabis cultivation but was not in compliance as discussed in Findings 7 and 8);



- b. A Lake and Streambed Alteration (LSA) Agreement (1600 Agreement) from CDFW;
- c. A Clean Water Act section 404 dredge or fill permit from the Army Corps of Engineers;
- d. A permit, license, or registration for water storage from the Division of Water Rights; or
- e. A grading permit from Calaveras County.

### **Legal Authority to Require Clean Up and Abatement**

24. "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.

25. "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 (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 and the resulting turbidity within surface waters can also

affect the recreational and aesthetic enjoyment of the surface waters (REC-1, REC-2).

The grading and clearing activities, access road construction, bench construction, watercourse crossing construction, stream diversion and resulting channel erosion, improper storage and potential disposal of septage on Site, improper storage of chemicals on Site, and improper storage of imported potting soil on Site have led to the unauthorized discharge and threat of discharge of wastes into surface waters and have created, or threaten to create, a condition of pollution by unreasonably affecting the beneficial uses of waters of the state. Watercourse A is tributary to Salt Creek and Salt Spring Valley Reservoir. Accordingly, the beneficial uses of the Salt Spring Valley Reservoir discussed above in Finding 17 also apply to Watercourse A.

26. 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.

The Dischargers, as the owners and/or operators of the Site, caused or permitted waste in the form of earthen materials, pesticides, fuels, septage, and waste water to be discharged or deposited where it will be, or has the potential to be discharged to surface waters which drain to Watercourse A, a tributary to Salt Springs Valley Reservoir by way of Salt 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.

27. Resolution 92-49 is incorporated into the Basin Plan as Appendix 9. 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 (Antidegradation Policy). 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 Central Valley Water Board to require and review for adequacy written work plans for each element and phase and written reports that describe the results of each phase of the investigation and cleanup.

28. The Central Valley Water Board, by adopting this Order, is not making any determination as to apportionment of liability among or between responsible parties, and nothing in this Order is intended to, or shall be interpreted as, limiting a responsible party's ability to seek reimbursement or indemnity from any and all other responsible parties.

#### **Cleanup and Abatement Action Necessary**

29. Graded and cleared areas of the Site are at risk of erosion and sediment discharge to waters of the state. Constructed watercourse crossings have resulted in the deposition of earthen fill materials directly into several watercourse channels and subsequent failures have led to the discharge of earthen fill material to waters of the state. A crushed culvert has blocked flow of Watercourse A, resulting in the creation of a new channel which has eroded and discharged sediment into waters of the state. Cleanup and abatement is necessary to ensure that the existing condition of pollution is cleaned up, that threatened unauthorized discharges to surface waters 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 is a priority violation as outlined in the State Water Board's 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.

#### **Technical Reports Required**

30. Water Code section 13267(a) provides that the regional water board may investigate the quality of any water of the state within its region in

connection with any action relating to the water quality control plan or any waste discharge requirements. Water Code section 13267, subdivision (b) provides that the regional water board, in conducting an investigation may require Dischargers to furnish, under penalty of perjury, technical or monitoring reports. The burdens, including costs, of the technical reports required by this Order bear a reasonable relationship to the need for the reports. The technical reports required by this Order are necessary to assure 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 or have owned and/or have operated the Site from which waste was discharged and thus are appropriately named as parties responsible for providing the reports.

### **California Environmental Quality Act**

31. Issuance of this Order is an enforcement action taken by a regulatory agency to enforce the regulatory provisions of the Basin Plan and is exempt from provisions of the California Environmental Quality Act (CEQA) (Public 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). To the extent that the Order requires earth disturbing and revegetation activities not to exceed five acres in size and to ensure restoration of stream habitat and prevent erosion, such actions are considered exempt from the provisions of CEQA pursuant to California Code of Regulations, title 14, section 15333. Should additional environmental review be required in connection with future discretionary regulatory actions at this site, the Central Valley Water Board may recover the costs associated with preparing and processing environmental documents from the Dischargers (Pub. Res. Code, § 21089.)

### **No Limitation of Water Board Authority**

32. This Order in no way limits the authority of the Central Valley Water Board to take any enforcement actions authorized by law.

## REQUIRED ACTIONS

**IT IS HEREBY ORDERED** that, pursuant to Water Code sections 13267 and 13304, the Dischargers shall cleanup and abate the impacts to water quality associated with the discharge and threatened discharge of earthen materials, chemicals, fuels, septage, and waste water to waters of the state as follows:

1. **Within 30 days following the effective date of this Order**, the Dischargers shall provide the Central Valley Water Board with copies of complete applications for all federal, state, and/or local permits necessary to complete the work outlined in the Revised Workplan.
2. By **1 November 2019**, the Dischargers shall complete work described in the Revised Workplan and outlined in Finding 16. The Dischargers shall also stabilize the Site with erosion and sediment control best management practices for the 2019/2020 wet weather period. As described in the Revised Workplan, the Dischargers shall remove all watercourse crossings, remove debris from the historical pond spillway, and stabilize stockpiles of fill and debris.
3. **Within 30 days** of completing the work described in the Revised Workplan and outlined in Finding 16, and no later than **1 December 2019**, the Dischargers shall provide a **Completion Report** to the Central Valley Water Board. This report shall include a summary and photographs of work completed and installed erosion and sediment control measures at the Site.
4. By the **5<sup>th</sup> day of every month** and until the Completion Report is submitted and approved by the Central Valley Water Board, the Dischargers shall email the Central Valley Water Board at [centralvalleysacramento@waterboards.ca.gov](mailto:centralvalleysacramento@waterboards.ca.gov) with progress updates on Required Actions 1, 2, and 3. The email shall include the status of required permits for the work, a description and photographs of work that has been completed since the prior email update, and anticipated work schedule for the next two months.

## GENERAL REQUIREMENTS AND NOTICES

### Duty to Use Qualified Professionals

5. All technical reports required herein that involve planning, investigation, evaluation, or design, or other work requiring interpretation and proper application of engineering or geological sciences, shall prepare 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.

### **Signatory Requirements**

6. 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."*

### **Notice of Onsite Work**

7. 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 Workplan.

### **Notice of Change in Ownership or Occupancy**

8. 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.

### **Submissions**

9. All monitoring reports, technical reports, or notices required under this Order shall be submitted electronically to:

centralvalleysacramento@waterboards.ca.gov  
Attn: Kim Sellards

### **Other Regulatory Requirements**

10. 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, Fish and Game Code 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 Fish and Game Code section 1602.

### **Cost Recovery**

11. Pursuant to Water code section 13304, the Regional 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 Central Valley Water Board.

### **Delayed Compliance**

12. 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 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.

ELVIS KY, INDIVIDUALLY AND DBA KYZEN ENTERPRISES, AND PHILIP ISIDRO  
ASSESSOR PARCELS 052-017-087, 050-020-022, and 050-022-023  
CALAVERAS COUNTY

If, in the opinion of the Assistant Executive Officer, the Dischargers fail 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 [State Water Boards' Water Quality Petitions web page](http://www.waterboards.ca.gov/public_notices/petitions/water_quality) ([http://www.waterboards.ca.gov/public\\_notices/petitions/water\\_quality](http://www.waterboards.ca.gov/public_notices/petitions/water_quality)) or will be provided upon request.

This Order is issued under authority delegated to the Executive Officer by the Central Valley Water Board pursuant to Resolution R5-2019-0704 and is effective upon signature.

Original signed by  
PATRICK PULUPA, Executive Officer

2 August 2019  
Date

- **Attachment A** – 20 February 2018 Notice of Violation and 02 August 2017 Inspection Report
- **Attachment B** – 10 December 2018 Continuing Notice of Violation including 13 August 2018 Inspection Report
- **Attachment C** – 17 December 2018 Revised Notice of Violation Correction Workplan