

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

CLEANUP AND ABATEMENT ORDER R5-2016-0716  
FOR

KYLE TERBORG  
ASSESSOR PARCEL 041-430-049-000  
SHASTA COUNTY

This Order is issued to Kyle Terborg (hereafter referred to as the Discharger) based on provisions of Water Code section 13304, which authorizes the Central Valley Regional Water Quality Control Board (Central Valley Water Board of 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:

**Purpose of the Order**

1. This Order requires the Discharger to clean up earthen materials, soil, and sediment that are discharging or are threatening to discharge to tributaries of the South Fork of Clear Creek, a tributary of Clear Creek. These discharges and threatened discharges are a result of the Discharger's excessive grading activities, road construction activities, and poor road maintenance on Shasta County Assessor Parcel Number (APN) 041-430-049-000 (the Site). Clear Creek is considered a water of the state of California, as well as a water of the United States. The Discharger is the owner of the Site and is responsible for grading terraces and constructing a switchback road adjacent to unnamed tributaries to the South Fork of Clear Creek without authorization from applicable federal, state, and local agencies, including the Central Valley Water Board. The Discharger performed this work in order to facilitate the cultivation of cannabis. This Discharger is also responsible for the discharge of sediment-laden storm water from a poorly maintained access road to an unnamed Class II tributary to the South Fork of Clear Creek. 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 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.

**Responsible Parties**

2. Per records from ParcelQuest online assessor data, Mr. Terborg purchased the 90.9-acre Site in April 2013. As the property owner and the person responsible for discharging or creating a threat of discharge, Mr. Terborg is a responsible party for the purposes of complying with this Order.

**Site Location and Description**

3. The Site is located east of Zogg Mine Road in Igo, CA, west Shasta County, Section 16, Township 31N, Range 6W, Mount Diablo Meridian, in the vicinity of latitude 40.537189° and longitude -122.550743°. Terracing and road construction occurred in close proximity to a tributary to South Fork Clear Creek, Tributary to Clear Creek. A legacy road leading from

Zogg Mine Road to the Site crosses a second tributary to South Fork of Clear Creek, tributary to Clear Creek.

### **Site History**

4. The access road leading to the Site appears in satellite imagery prior to the date that the Discharger purchased the property, and is likely an existing legacy road. Historical GoogleEarth imagery maintains that the location of the current terraces was a previously cleared area as of August 2012. Terracing and construction of the access road was complete by August 2013. No major earthwork appears to have been done at the Site since August 2013. The Site has no prior regulatory oversight or history with the Central Valley Water Board.

### **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 of the Central Valley Water Board and the California Department of Fish and Wildlife (CDFW).
  - a. The Site sits above the South Fork of Clear Creek, a watercourse that is tributary to Clear Creek, a water of the United States and an anadromous fishery. Two headwater tributary drainages, which combine into a single tributary downstream from the Site, carry storm water runoff from the Site to the South Fork of Clear Creek. The combined flow within the single tributary discharges to the South Fork of Clear Creek at approximately latitude 40.533211 degrees and longitude -122.556824 degrees. This confluence lies approximately 2.75 miles upstream from the South Fork of Clear Creek's confluence with Clear Creek. The native soil at the Site is identified as a highly erodible, weakly consolidated silty gravel according to the Visual Classification of Soils – Unified Soil Classification System, ASTM Standard D 2488-00, Standard Practice for Description and Identification of Soils (Visual-Manual Procedure).
  - b. Grading of terraces and the construction of the switch back road have exposed the ground surface by stripping vegetation, thus leaving the upper soils vulnerable to wind and water erosion. Grading, road construction, and inadequate road maintenance have led to at least two discharge locations and a continuous threat to water quality. Discharges of turbid storm water have taken place at two distinct locations. One discharge is taking place at the base of a switchback road constructed by the Discharger between April 2013 and August of 2013. Water originates as sheet flow at higher elevations and is allowed to concentrate within the surface of the switch back road, resulting in erosional gullies and sediment discharge. The other discharge takes place at a lower elevation on the Site where a legacy road crosses a headwater tributary. Sheet flow concentrates on the legacy road and results in the formation of erosional gullies and discharge of turbid storm water. Excessive suspended sediment and increased turbidity can impair water quality and aquatic life.
  - c. The Site was inspected by members of the Central Valley Water Board and CDFW on 21 November 2014 under the authority of an Administrative Inspection Warrant. An inspection report was produced and issued along with a Water Code section 13267 Order, requesting the development of a work plan to address violations observed at the Site. The 13267 Order was issued 9 February 2015, and cited terracing and a switchback (access) road leading to the terraces as threats to water quality, and the Discharger was given 45 days to comply with the 13267 Order.

- d. The Central Valley Water Board, due to some difficulty contacting the Discharger, sent the 13267 Order and accompanying inspection report to an additional address on file. On 4 May 2015, the Discharger contacted staff from the Central Valley Water Board, notifying them that he had received the 13267 Order, and that he would hire an environmental consultant to generate the requested work plan. Staff at that time offered to extend the Discharger's deadline if he could provide proof that a consultant had been hired. The Discharger provided such proof on 7 May 2015, and the staff requested that the work plan be submitted as soon as possible.
- e. The requested work plan from the Discharger's consultant, Salix Applied EarthCare, was received 21 May 2015, and approved 7 July 2015. However, the submitted work plan did not include a timeline, as requested by the 13267 Order. Staff requested that all work detailed in the work plan be completed no later than 15 October 2015, and that a report of completed work be submitted no later than 15 November 2015.
- f. On 16 November 2015, staff contacted the Discharger to check on progress made at the Site. The Discharger informed staff that progress was slow because he did not live in the area, and the operator that he hired was not on schedule. The Discharger, at this time, requested an extension of his deadline. Staff requested to inspect the Site before considering an extension of the deadline. An inspection to determine progress toward completion was scheduled and conducted 21 December 2015. As of 21 December 2015, no work had been completed.

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

- 6. 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. South Fork of Clear Creek is a tributary to Clear Creek.
  - a. The designated beneficial uses for Clear Creek include the following: Municipal & Domestic Supply (MUN); Agricultural Supply (AGR); Industrial Process (PROC); Industrial Service Supply (IND); Industrial Power (POW); Water Contact (REC-1) & Other Non-contact Recreation (REC-2); Warm Freshwater Habitat (WARM); Cold Freshwater Habitat (COLD); Cold Migration (MIGR); Spawning of Warm and Cold Freshwater Aquatic Organisms (SPWN); and Wildlife Habitat (WILD). Beneficial uses of any specifically identified water body generally apply to all of its tributaries.
  - b. The designated beneficial uses of the underlying groundwater include municipal and domestic supply (MUN); agricultural supply (AGR); industrial service supply (IND); and industrial process supply (PRO).
  - c. The Basin Plan lists specific water quality objectives for inland surface waters. These objectives include in part, limitations on increased temperature, sediment, settleable and suspended material, and turbidity.

### **Unpermitted Activities**

7. Central Valley Water Board staff determined that the grading and clearing activities 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 Resources Control Board;
  - b. A grading permit issued by Shasta County.

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

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

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

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

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

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

Discharges of sediment and other inert material alter the hydrologic and sediment transport regimes of surface waters by affecting the flow of water and the establishment of vegetation. Such changes may lead to adverse conditions such as flooding, increases in suspended sediment and turbidity, accelerated erosion of the adjacent channel bed or banks, and localized accumulation of deleterious materials. Additionally, such discharges directly threaten habitat for aquatic species dependent upon native sediment and vegetation characteristics (MIGR, SPWN, and WILD). Increased sedimentation and turbidity can result in increased treatment and/or maintenance costs for downstream agricultural and municipal users that withdraw and treat the water (AGR and MUN). Sediment-laden storm water discharges to surface waters and the resulting turbidity can affect the recreational and aesthetic enjoyment of the surface waters (REC-1 and REC-2).

The clearing and grading activities conducted by the Discharger and the current condition of the Site have unreasonably affected or threaten to unreasonably affect the beneficial uses of the South Fork of Clear Creek, thus creating, or threatening to create, a condition of pollution or nuisance.

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.

The Discharger caused or permitted waste in the form of sediment, sediment-laden storm water, and inert material to be discharged or deposited where it will be, or has the potential to be, discharged into surface waters or surface water drainage courses which drain to the South Fork of Clear Creek, tributary to Clear Creek. These discharges have unreasonably affected or threaten to unreasonably affect the beneficial uses of the South Fork of Clear Creek. The Discharger is therefore subject to an Order to clean up the waste, abate the effects of the waste, and to take necessary remedial actions as directed by the Central Valley Water Board in accordance with Water Code section 13304.

11. *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 68-16, the Statement of Policy with Respect to Maintaining High Quality of Waters in California (*State Antidegradation Policy*). *Resolution 92-49* requires 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 the 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, along with the written reports that describe the results of each phase of the investigation and cleanup.

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

12. Untreated storm water from the Site has discharged, and threatens to discharge, sediment into tributaries from the Site to the South Fork of Clear Creek. The Site has approximately 0.41 acres of graded and cleared land on erodible soils, most of which lies un-vegetated and unprotected from weathering. This leaves a high potential for further sediment discharge to the tributaries to the South Fork of Clear Creek and to the South Fork of Clear Creek 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'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**

13. 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 Basin Plan. Water Code section 13267, subdivision (b) provides that the Regional Water Board, in conducting an investigation, may require the 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 clean up 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.

### **California Environmental Quality Act**

14. 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 the provisions of the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) in accordance with California Code of Regulations, title 14, sections 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 to ensure restoration of stream habitat and to prevent erosion, such actions are 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 Board may recover the costs associated with preparing and processing environmental documents from the Discharger (Pub. Resources Code, § 21089).

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

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

## REQUIRED ACTIONS

**IT IS HEREBY ORDERED** that, pursuant to Water Code sections 13267 and 13304, Kyle Terborg (Discharger) shall clean up and abate the impacts to water quality associated with the discharge and threatened discharge of earthen materials, soil, and sediment as follows:

1. **By 27 December 2016**, the Discharger shall submit an **Interim Erosion and Sediment Control Plan** (hereinafter "Interim Plan") prepared by an appropriately licensed professional for the completion of stabilization and mitigation efforts necessary to minimize erosion and further discharge of sediment to tributaries to South Fork of Clear Creek during the 2016 wet weather period. The Interim Plan shall include, but not be limited to, the following elements:
  - a. A detailed Site map accurately depicting topography, graded/disturbed surfaces, earthen side cast material, and all surface water courses/drainages,
  - b. Identification of all locations where sediment has discharged and threatens to discharge to surface waters and surface water drainage courses,
  - c. Using the above information, identify all areas of immediate concern, along with proposed emergency mitigation measures to be implemented at each area of concern necessary to stabilize the Site during the 2016 wet weather period. Recommendations to be included:
    - i. Stabilize all disturbed areas with erosion control mulches, blankets, mats, tarps, or other accepted erosion control equipment in sufficient quantities to protect the disturbed soil surface from the forces of rain drop impact and overland flow.
  - d. Provide for the submittal of monthly monitoring reports assessing Site conditions, which shall include documentation and photographs of mitigation measures completed, along with recommendations for additional emergency measures or repairs to previously-identified areas of immediate concern, where appropriate.

Central Valley Water Board staff will review the Interim Plan in consultation with the Discharger or his authorized agent(s) and other responsible agencies immediately upon receipt. Work to implement the proposed emergency measures shall begin immediately upon approval of the Interim Plan.

2. **By 27 January 2017**, the Discharger shall have completed work outlined in the Interim Plan, stabilizing the Site for the remainder of the wet-weather period.
3. **By 15 February 2017**, the Discharger shall provide a report of completion 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 1 June 2017**, the Discharger shall provide a proposed **Restoration Monitoring and Mitigation Plan** (hereinafter "RMMP"). The plan shall include, but not be limited to, the following elements:
  - a. An assessment of the impacts to tributaries of the South Fork of Clear 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, out-sloping the access road, establishing permanent ground cover

etc.), as well as proposed mitigation to restore beneficial uses and to compensate for and minimize any further impacts to the tributaries of the South Fork of Clear Creek. Best management practices shall be applied to all current and planned work associated with construction activities on the Site impaction, or having the potential to impact, the South Fork of Clear 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.
5. **By 1 July 2017**, the Discharger shall begin implementation of the RMMP.
6. **By 1 August 2017**, the Discharger shall complete all approved restoration and mitigation measures described in the proposed RMMP.
7. **By 1 December 2017**, the Discharger shall submit a **Completion Report** for the RMMP. 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 tributaries to South Fork of Clear Creek and the South Fork of Clear Creek have been fully implemented.
8. **By 1 October of each year** (starting October 2018) the Discharger shall submit an annual monitoring report. 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 Executive Officer, is submitted showing the discharger has met the requirements of the RMMP.

## **GENERAL REQUIREMENTS AND NOTICES**

### **Duty to Use Qualified Professionals**

9. 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 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) of the registered professional(s) in a manner such that the work can be clearly attributed to the professional responsible for the work.

### **Signatory Requirements**

10. 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."*

#### **Notice of Onsite Work**

11. The Discharger or his authorized agents(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 routines monitoring, maintenance, or inspection or that has not been fully described in the RMMP.

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

12. 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.

#### **Submissions**

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

Griffin Perea  
364 Knollcrest Dr., Ste. 205  
Redding, CA 96002  
(530) 224-3217

#### **Other Regulatory Requirements**

14. 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, 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**

15. 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 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.

#### **Delayed Compliance**

16. If for any reason, the Discharge 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 Discharge may request, in writing, and 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](http://www.waterboards.ca.gov/public_notices/petitions/water_quality)

or will be provided upon request.

  
Pamela Creedon, Executive Officer

12-2-16  
(Date)