

ITEM: 10

SUBJECT: California Department of Parks and Recreation, Empire Mine State Park

BOARD ACTION: Consideration of an Administrative Civil Liability Order

BACKGROUND: The California Department of Parks and Recreation (State Parks) owns and operates the Empire Mine State Historic Park in Nevada County. The discharge of untreated mine drainage from an adit within the park to surface water is regulated by Waste Discharge Requirements (WDRs) Order R5-2006-0058, which was adopted in June 2006. Because State Parks could not immediately comply with the effluent limits in the WDRs, the Board adopted Time Schedule Order (TSO) R5-2006-0059 concurrently with the WDRs. The TSO contains performance-based interim effluent limits, and allowed State Parks until 18 May 2010 to come into compliance with the final effluent limits.

State Parks determined that it needs to install a treatment system in order to meet the final effluent limits. However, the system is not yet in place, and as of 18 May 2010, State Park's self-monitoring reports show that it is violating the final effluent limits for a number of constituents. The Prosecution Team anticipates that these effluent limit violations will continue until the treatment system is installed. Currently, State Parks is accruing mandatory minimum penalties at an estimated rate of \$21,000 to \$42,000 per month. According to State Parks' recent progress report, the treatment system should be constructed by October 2011.

ISSUES: California Water Code Section 13385 requires that the Water Boards assess mandatory minimum penalties for serious and non-serious violations of NPDES permits. A mandatory minimum penalty of \$3,000 must be assessed for each serious violation, defined, in part, as any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements by either 40% or 20%, depending on the constituent. A mandatory minimum penalty of \$3,000 must also be assessed for each non-serious or chronic violation whenever an effluent limitation is exceeded four or more times in any period of six consecutive months, not counting the first three violations. As of 18 May 2010, the discharges of waste from the Empire Mine State Historic Park resulted in serious and non-serious effluent limitation violations for which mandatory minimum penalties must be assessed.

On 4 November 2010, the Executive Officer issued Administrative Civil Liability Complaint R5-2010-0544, proposing that the Department be assessed mandatory minimum penalties in the amount of \$84,000 for effluent limit violations specifically identified

in Attachment A to the ACL Complaint as being subject to a mandatory minimum penalty. The ACL Complaint was accompanied by Hearing Procedures which describe the process that must be followed if the matter proceeds to a hearing.

State Parks subsequently waived its right to have a hearing conducted within 90 days after being served with the ACL Complaint, and stated that it wished to engage the Board in settlement discussions. However, State Parks has not provided any further communication as to the issues it wishes to discuss, and has not responded to inquiries from Board staff. State Parks did not submit any evidence that it wishes the Board to consider nor any policy statements by the 3 January 2011 deadline in the Hearing Procedures.

The Prosecution Team's review of the self-monitoring reports indicates that the data has been correctly reported, and that there is no legal reason or recognized statutory defense or exemption to the imposition of mandatory minimum penalties. Therefore, the Prosecution Team has brought this matter before the Board.

Under California Water Code section 13385, the Water Board must at a minimum assess the recommended mandatory minimum penalty of \$3,000 per violation and may assess up to the statutory maximum of \$10,000 for each day in which the violation occurs. The Prosecution Team is recommending that the Board only assess the mandatory minimum penalty amount in this case, as State Park's December 2010 progress report states that it is progressing with the design and construction of the treatment system.

RECOMMENDATION: Prosecution Team recommends that the Board adopt the Administrative Civil Liability Order as proposed

Mgmt. Review\_\_WSW\_\_\_\_  
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