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EVIDENCE & POLICY STATEMENT

In Response To:

Complaint No: R5-2013-0518

For

Administrative Civil Liability

Witness List for Rebuttal
of
Civil Liability Complaint #R5-2013-0518

10 minutes - Mr. Norman Gonzales: Community Outreach Director for Congressman,
Tom Mc Clintock.
Testimony on United States Forest Service's Requirements on Reporting and
Compliance Responsibilities pertaining to M.A.A. and the Clean Water Act on
U.S.F.S. lands.

10 minutes - Mr. Ross branch: Field Representative, office of Congressman, Tom Mc Clintock.
Testimony on United States Forest Service's Requirements on Reporting and
Compliance Responsibilities pertaining to M.A.A. and the Clean Water Act on
U.S.F.S. lands.

Central Valley Regional Water Quality Control Board

RESPONSE Administrative Civil Liability Complaint R5-2013-0518

Background:

In a 1981 Management Agency Agreement between the State Water Resources Control Board, the State of California, and the USFS four objectives were outlined. In addition to achieving the goals of the Federal Water Pollution Control Act and implementing legislative mandates for multiple uses, the agreement also sought to “minimize duplication of effort” and “assure control of water pollution through implementation of Best Management Practices (BMPs)” (‘Whereas’ #1). Moreover, it designated the USFS as the “management agency for all activities on NFS lands effective upon execution of a management agency agreement (‘Whereas’ #7).” In accepting responsibility for water quality on federal lands, the USFS (in conjunction with the State Board) prepared a document titled Water Quality Management for National Forest Service Lands in California (Service 208 Report) (‘Whereas #6’). That document identifies the implementation of Best Management Practices (BMP) as the practices and procedures that constitute water quality protection and improvement.

The MAA constitutes a binding agreement. The Forest Service application of site specific BMPs results in the Forest Service compliance with the Clean Water Act and other applicable laws regarding water quality. By reason, this same immunity extends to the general public who use NFS lands. Although much has changed in water law over the last thirty years, the integrity and the authority of the MAA has never been challenged. In fact, just the opposite has been the case. The examples follow below:

- Chapter IV, pg. 12 of the Central Valley Region Basin Plan (2012) reads: “The Regional Water Board abides by State Water Board agreements with federal and State agencies which have been formalized with either an MAA, MOA, or MOU signed by the State Water Board.” The first agreement mentioned in the following paragraph is the 1981 MMA with the Forest Service.
- Section 4, Part B of the State’s Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program (2004) is titled “Third Party Programs Administered by State Agencies other than the SWRCB or RWQCBs.” It goes on to read, “MAAs are important for NPS regulation because they delineate the roles and responsibilities of individual agencies in the State’s efforts to control NPS pollution sources.”
- Section 13170.1 of the Porter Cologne Water Quality Control Act (2012) deals exclusively with Management Agency Agreements stating: “The state board shall consider all relevant management agency agreements, which are intended to protect a specific beneficial use of water, prior to adopting all water quality control plans pursuant to Section 13170.”

Failure of both the USFS and Water Board to abide by this 1981 agreement has led to much confusion for the operator and the violations in the Administrative Civil Liability Complaint.

The land where the mining claims are located is owned by the US Government and administered by the US Department of Agriculture, Forest Service (USFS). Therefore, the USFS is partly responsible for the implementation and any order of compliance. Indeed, the Waste Discharge Requirements assert that the USFS can be held liable for violations. The evidence included herein shows the following facts:

- 1) Compliance with Water-Board approved and USFS implemented BMPs satisfies compliance with the federal Clean Water Act and Porter Cologne Water Quality Control Act.
 - (a) Per the MAA and Plan of Operations, annual monitoring and facility inspections are done in conjunction with Forest Service to ensure BMPs eliminated the potential of runoff.

- 2) No evidence, measurements, or reports have ever been provided by the Water Board showing that the mining operation threatens water quality.
- 3) The *mining* operation has been halted since 2009.

Violation:

The Discharger violated the Industrial Storm Water General Permit Order 97-03-DWQ by failing to submit the 2011-2012 ISW Annual Reports by the specified deadline.

Considering the facts above, the Water Board has no legal basis to require annual storm water reports or impose an Industrial Storm Water Permit. For decades, we worked closely with the Forest Service to ensure that water quality was never threatened and the evidence shows that it never was negatively impacted.

Complaint Resolution:

With the information provided it is clear that fundamental errors in the complaint exist. The proper action of the Central Valley Regional Water Quality Control Board is to withdraw this Complaint. We respectfully request such action.

EXHIBITS: DESCRIPTION:

- A M.A.A.
- B BMPs
- C 208 Report
- D 1993 Plan of Operation - Where to put dump
- E June 11, 1990 - Arnold Inouye, WQC's No Discharge letter
- F Sept. 30 1994 - Dept. Of Conservation letter. If you come under S.M.A.R.A., let us know
- G Dec 30, 2003 - Mike Foster, Placer Co - Stating we don't come under S.M.A.R.A.
- H Jan 9, 2004 - Tim Leslie - Wrote Law for Exemption
- I Feb. 9, 2004 - Dept of Conservation hearing - Under S.M.A.R.A. as of this date
- J Sept. 8, 2004 - Decision Notice - No Significant impact
- K Oct. 20, 2004 - Plan of Operation
- L May 11, 2005- Jan Cutt's letter - USFS responsible fore Dumps #1-4
- M Dec. 16, 2005 - Letter from Rosenbaum, WQC senior engineer - Didn't know if we came under S.M.A.R.A.
- N July 28, 2006 - Letter from Jan Cutts - USFS has waiver from WQC.
- O Nov. 1, 2006 - Holdrege & Kull's Rock Acid Neutralizing Report
- P Nov. 22, 2006 - Jeff Huggins, WQC - Rock Acid Neutralizing. Agreed No Significant Impact
- Q Oct. 21, 2009 - Letter to Ted Rel, Placer County from Fischer, USFS again stating Dumps #1-4 USFS responsibility
- R Nov. 8, 2010 - Placer County's letter to S.M.A.R.A. - Dumps #1-4 Reclaimed.
- S Sept. 10, 2010 - Letter again from Placer County - Dumps #1-4 Reclaimed
- T Auburn Journal Article - Vandalism. Feb. 22, 2012 - Arrest.
- U Nov. 1, 2006 - Holdrege & Kull Stability Stabilization Report
- V 2008-2009 Storm Water Report
- W Appendix 'E' - Response to comments from Richard Johnson, USFS, taking water Tests
- X Feb. 29, 2008 - Letter to Pam Creedon Re: Wildcat Mining Ent. LLC takes over Operation
- Y April 27, 2012 - Pink Slip issued by M.S.H.A stating no safe access on dumps #1-4
- Z Photo - Mine Site