CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

In the Matter of: RICHARD SYKORA Red Ink Maid & Big Seam Mine	**Complaint No. R5-2012-0543** **For** **Administrative Civil Liability** 7 May 2012

NOTICE OF HEARING TO ASSESS ADMINISTRATIVE CIVIL LIABILITY:

The Executive Officer of the Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board or Board), hereby gives notice that:

1. This administrative civil liability complaint (Complaint) is issued under the authority of California Water Code (CWC) section 13323 to Richard Sykora (Discharger) to assess administrative civil liability pursuant to CWC sections 13268, 13261, and 13385.

2. Unless waived, a hearing on this matter will be held before the Central Valley Water Board within 90 days following issuance of this Complaint. The Discharger, or its representative(s), will have an opportunity to be heard and to contest the allegations in this Complaint and the proposed imposition of administrative civil liability. Not less than 10 days before the hearing date, an agenda for the meeting of the Central Valley Water Board at which this matter will be heard will be available on the Board's website: http://www.waterboards.ca.gov/centralvalley/

3. At the hearing, the Central Valley Water Board will consider whether to affirm, reject, or modify the proposed administrative civil liability (including an increase in the amount of the liability up to the statutory maximum) or whether to refer the matter to the Attorney General for assessment of judicial civil liability. The Discharger can waive its right to a hearing to contest the allegations contained in this Complaint by submitting a signed waiver and paying the civil liability in full or by taking other actions as described in the attached waiver form.

4. If this matter proceeds to hearing, the Prosecution Team reserves the right to seek an increase in the civil liability amount to cover the costs of enforcement incurred subsequent to the issuance of this Complaint through the close of the hearing. The Central Valley water Board has the discretion to award these additional enforcement costs as "other matters that justice may require" under bother CWC section 13385(e) and the State Water Resources Control Board's Water Quality Enforcement Policy.

5. Regulations of the United Stated Environmental Protection Agency require public notification of any proposed settlement of the civil liability occasioned by violation of the Clean Water Act. Accordingly, interested persons will be given thirty days to comment on any proposed settlement of this Complaint.

BACKGROUND INFORMATION

6. On 27 June 2006, the Discharger submitted a Report of Waste Discharge for waste discharge requirements (WDRs) for mining activities at Red Ink Maid and Big Seam Mine (Site). The land where the mining claims are located is owned by the United States government and administered by the United States Department of Agriculture, Forest Service (Forest Service). The Discharger is the mine claimant and operator and therefore has primary responsibility for compliance with WDRs. The Site is located on two contiguous 20-acre parcels of land within the Tahoe National Forest near the 6-mile mark of Mosquito Ridge Road in the Foresthill area in Placer County.

7. The mine is an underground lode gold mine accessed by one portal on the Big Seam mining claim. Waste rock created by drilling and blasting inside the mine is hauled and disposed of in waste dumps on the Site. The waste rock created at the Site consists of natural geologic materials that have been removed or relocated but have not been processed. Analysis of the mining waste indicates that the waste is characterized as a Group C mining waste defined by Title 27 of the California Code of Regulations as waste discharge that should not pose a significant threat to water quality other than turbidity as the waste rock did not exceed hazardous waste total threshold limit concentrations or soluble threshold limit concentrations.

8. The Site slopes to the south and sits approximately 2000 feet above the Middle Fork of the American River. The Middle Fork of the American River is located approximately 0.4 miles south of the Site. Surface water drainage from the Site is to Mad Canyon, a seasonal drainage, and tributary to the Middle Fork of the American River, which is a water of the United States. Beneficial uses of the Middle Fork of the American River are municipal and domestic supply, agricultural supply, hydropower generation, water contact recreation, non-contact water recreation, warm freshwater habitat, cold freshwater habitat, spawning, reproduction, and/or early development, and wildlife habitat.

9. There are five waste dumps located on the Site (see Exhibit C). Waste dumps 1 through 4 are located directly in front and to the east of the mine portal and cover about two acres. Waste dumps 1 through 4 have slopes ranging from 55-75 percent. Lack of capacity and slope stability issues restrict further placement of waste rock on these waste dumps. Waste dump 5 is the newest waste dump located to the west of the portal on a slope ranging from 20-55 percent.

10. The Site is regulated by WDRs Order No. R5-2007-0181, adopted by the Central Valley Water Board on 6 December 2007 (Exhibit D). Monitoring and Reporting Program No. R5-2007-0181 (hereinafter MRP) accompanies Order No. R5-2007-0181 (Exhibit D).

11. Pursuant to title 27 of the California Code of Regulations section 22510 subdivision (c) and WDRs Order No. R5-2007-0181, the WDRs incorporate the relevant provisions of the mining and reclamation plan, approved by Placer County as lead agency in the administration of the Surface Mining and Reclamation Act (SMARA), and prescribes additional conditions necessary to prevent water quality degradation. Closure and reclamation requirements ensure that mining units no longer pose a threat to water quality.

12. Specifically, WDRs Order No. R5-2007-0181 Discharge Specifications B.6 and B.7 require the Discharger to fully reclaim waste dumps #1 through #4 by 30 October 2009 and submit to the Central Valley Water Board a report describing reclamation completion and closure of waste dumps #1 though #4 by 30 November 2009 (Exhibit D). During a site inspection on 10 March 2010, staff of the Central Valley Water Board observed that waste dumps #1 through #4 had not been fully reclaimed as required by the WDRs. No apparent reclamation measures such as hydroseeding or hydromulching establishing self-sustaining plant cover to control erosion, reduce infiltration, and provide for increased slope stability were evident (Exhibit E). To date, the Discharger has not fully reclaimed waste dumps #1 through #4 and has not submitted the required report detailing the reclamation and closure of those mining units and is in violation of WDRs Order No. R5-2007-0181. The failure to comply with Discharge Specifications B.6 and B.7 has caused unauthorized discharges of waste rock and mining overburden from the waste dumps to Mad Canyon, a tributary to the Middle Fork of the American River (Exhibits F and G).

13. WDR Order No. R5-2007-0181 prohibits the discharge of solid waste or liquid waste to surface waters, surface water drainage courses (other than waste dump #5), or groundwater (Exhibit D).

14. WDR Order No. R5-2007-0181 and the MRP require the submission of Annual Monitoring Summary Reports by 1 July each year. Section C.1. of the MRP specifies the required components for the Annual Monitoring Summary Report (Exhibit D). Submission of the Annual Monitoring Summary Report is required pursuant to CWC section 13267 as referenced in Finding 54 of WDR Order No. R5-2007-0181.

15. Additionally, WDR Order No. R5-2007-0181 and the MRP require the submission of an Annual Facility Inspection Report by 15 November of each year. Section A.3.a. of the MRP specifies the required components for the Annual Facility Inspection Report (Exhibit D). Submission of the Annual Facility Inspection

Report is required pursuant to CWC section 13267 as referenced in Finding 54 of WDR Order No. R5-2007-0181.

16. In addition to being regulated by WDRs Order No. R5-2007-0181, the Site is also regulated by the Industrial Storm Water General Permit Order 97-03-DWQ (ISW Permit)(Exhibit H). On 17 July 2006, the Discharger submitted its Notice of Intent (NOI) and its activities became covered by the ISW Permit on 7 August 2006. The Discharger is required to comply with the ISW Permit including provisions regarding waste handling, erosion control and site stabilization, and precipitation and drainage controls throughout the active life of the mine and the post-closure maintenance period. Erosion control measures, mitigation measures, and best management practices (BMPs) for the site are incorporated into the Forest Service Conditions of Approval for the Plan of Operations, the Reclamation Plan, and Storm Water Pollution Prevention Plan (SWPPP).

17. The ISW Permit requires the Discharger to conduct monitoring and submit an Annual Report (ISW Annual Report) documenting, among other things, its sampling and analyses, visual observations, and an annual comprehensive site compliance evaluation by 1 July each year. Section B.14 of the ISW Permit specifies the required components for the ISW Annual Report (Exhibit H).

STATEMENT OF WATER CODE SECTIONS UPON WHICH LIABILITY IS BEING ASSESSED

18. Administrative civil liability may be imposed pursuant to the procedures described in CWC section 13323. An administrative civil liability complaint alleges the act or failure to act that constitutes a violation of law, the provision of law authorizing administrative civil liability to be imposed, and the proposed administrative civil liability.

19. Pursuant to CWC section 13385, subdivision (a)(1), any person who violates CWC section 13376 shall be subject to administrative civil liability pursuant to CWC section 13385 subdivision (c).

20. Pursuant to CWC section 13267, subdivision (b), a regional board may require that any person who has discharged, discharges, or is suspected of having discharge 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.

21. Pursuant to CWC section 13268, subdivision (a), any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of section 13267, or failing or refusing to furnish a statement of compliance as required by subdivision (b) of section 13399.2, or falsifying any information provided therein, is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b).

22. Pursuant to CWC section 13268, subdivision (b)(1), civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with section 13323) of Chapter 5 for a violation or subdivision (a) in an amount which shall not exceed one thousand dollars ($1,000) for each day in which the violation occurs.

23. Pursuant to CWC section 13385, subdivision (a)(2), any person who violates any waste discharge requirement set forth in a NPDES permit shall be subject to administrative civil liability pursuant to CWC section 13385 subdivision (c).

24. Pursuant to CWC section 13385, subdivision (c), the Central Valley Water Board may impose administrative civil liability in an amount of ten thousand dollars ($10,000) for each day in which the violation occurs.

25. Pursuant to CWC section 13260, subdivision (d), each person who is subject to waste discharge requirements shall submit an annual fee according to a fee schedule established by the state board.

26. Pursuant to CWC section 13261, subdivision (a), a person who fails to pay a fee when so requested by a regional board is guilty of a misdemeanor and may be liable in an amount not exceeding one thousand dollars ($1,000) for each day in which the violation occurs.

THE EXECUTIVE OFFICE OF THE CENTRAL VALLEY WATER BOARD ALLEGES:

SUMMARY OF ALLEGED VIOLATIONS

27. Violation Category 1: The Discharger violated Prohibition A.6 of WDR Order No. R5-2007-0181 and CWC section 13376 by discharging waste to Mad Canyon, a tributary to the Middle Fork of the American River and water of the United States.

- **a.** 19 April 2011 unauthorized discharge of waste to waters of the United States.
- **b.** 21 February 2012 unauthorized discharge of waste to waters of the United States.

28. **Violation Category 2**: The Discharger violated WDR Order No. R5-2007-0181 and Section C.1. of the MRP by failing to submit the following Annual Summary Monitoring Reports by the specified deadline pursuant to CWC section 13267:
    a. 2007-2008 Annual Summary Monitoring Report, due 1 July 2008
    b. 2008-2009 Annual Summary Monitoring Report, due 1 July 2009
    c. 2009-2010 Annual Summary Monitoring Report, due 1 July 2010
    d. 2010-2011 Annual Summary Monitoring Report, due 1 July 2011

29. **Violation Category 3**: The Discharger violated WDR Order No. R5-2007-0181 and Section A.3.a. of the MRP by failing to submit the following Annual Facility Inspection Reports by the specified deadline pursuant to CWC section 13267:
    a. 2009 Annual Facility Inspection Report, due 15 November 2009
    b. 2010 Annual Facility Inspection Report, due 15 November 2010.
    c. 2011 Annual Facility Inspection Report, due 15 November 2011

30. **Violation Category 4**: The Discharger violated the Industrial Storm Water General Permit Order 97-03-DWQ by failing to submit the following ISW Annual Reports by the specified deadline:
    a. 2008-2009 ISW Annual Report, due 1 July 2009
    b. 2009-2010 ISW Annual Report, due 1 July 2010
    c. 2010-2011 ISW Annual Report, due 1 July 2011

31. **Violation Category 5**: The Discharger failed to pay annual waste discharge requirement fees for the following periods:
    a. Annual WDR fee for Fiscal Year 2008, due 28 December 2008
    b. Annual WDR fee for Fiscal Year 2010, due 9 January 2010
    c. Annual WDR fee for Fiscal Year 2011, due 7 December 2011

32. **Violation Category 6**: The Discharger failed to pay annual Industrial Storm Water General Permit fees for the following period:
    a. Annual ISW Permit fee for Fiscal Year 2010, due 26 November 2010
    b. Annual ISW Permit fee for Fiscal Year 2011, due 23 November 2011

FACTORS CONSIDERED IN DETERMINING ADMINISTRATIVE CIVIL LIABILITY

33. On 17 November 2010, the State Water Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on 20 May 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability This policy can be found at:

http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf.

Violations of CWC section 13385 in Violation Category 1 are assessed on a per day basis. While the Discharger's failure to complete reclamation as required by the WDRs is not being alleged as a violation in this Complaint, the failure to fully reclaim the mine Site has led to these unauthorized discharges of waste to Mad Canyon which have a direct impact on water quality. Based on the evidence in the record, it is clear that discharges of waste to Mad Canyon are occurring continuously due to the unstable nature of the waste piles, observed failures at the toe of the waste dumps, observed debris chutes created by slide material to Mad Canyon, and considering the slope at which the waste dumps are located. Though the Prosecution Team suspects that the unauthorized discharges are more frequent in nature, the actual number of days of violation alleged in this Compliant is based on observations made during Site inspections conducted on 19 April 2011 and 21 February 2012 (Exhibits F and G).

Violations of CWC section 13267 in Violation Categories 2 and 3 are assessed on a per day basis. However, the violations at issue are non-discharge reporting violations and qualify for the alternative approach to the penalty calculation under the Enforcement Policy, which reduces the overall penalty. The failure to submit Annual Monitoring Reports and Facility Inspection Reports results in no economic benefit that can be measured on a daily basis, though the Discharger may have experienced a cost savings from failing to submit the reports. It is appropriate to assess daily penalties for the first thirty (30) days, plus one violation for each additional thirty-day period. For Violation Category 2 implementing the alternate approach for calculating multiday violations results in 18 days of violation for the 2007-2008, 2008-2009, and 2009-2010 Annual Monitoring Report and 16 days for the 2010-2011 Annual Monitoring Report. For Violation Category 3, implementing the alternate approach for calculating multiday violations results in 18 days of violation for the 2009 and 2010 Facility Inspection Reports and 11 days of violation for the 2011 report (Exhibit B).

Violations of CWC section 13385 in Violation Category 4 are assessed on a per day basis. Similar to Violation Categories 2 and 3, these violations are non-discharge reporting violations and qualify for the alternative approach to the penalty calculation under the Enforcement Policy. The failure to submit the ISW Annual Reports results in no economic benefit that can be measured on a daily basis, though the Discharger may have experienced a cost savings from failing to submit the reports. It is appropriate to assess daily penalties for the first thirty (30) days, plus one violation for each additional thirty-day period. For Violation Category 4, implementing the alternate approach from calculating multiday violations results in 18 days of violation for the 2008-2009 and 2009-2010 ISW

Annual Reports and 16 days of violation for the 2010-2011 report (Exhibit B).

Violations of CWC section 13260 in Violation Categories 5 and 6 are assessed on a per day basis. The failure to pay annual waste discharge requirement fees and annual ISW Permit fees as required is a non-discharge violation and qualifies for the alternative approach to the penalty calculation under the Enforcement Policy. The failure to pay annual waste discharge requirement fees and annual ISW Permit fees results in no economic benefit that can be measured on a daily basis, though the Discharger experienced a cost savings from not paying fees. It is appropriate to assess daily penalties for the first thirty (30) days, plus one violation for each additional thirty-day period. For Violation Category 5 implementing the alternate approach from calculating multiday violations results in 18 days of violation for the 2008 Annual WDR Fee and 2010 Annual WDR Fee and 8 days of violation for the 2011 Annual WDR Fee. For Violation Category 6 implementing the alternate approach from calculating multiday violations results 18 days of violation for the 2010 ISW Permit Fee and 11 days of violation for the 2011 ISW Permit Fee (Exhibit B).

The required factors have been considered using the methodology in the Enforcement Policy, as explained in detail in Exhibit A and shown in the Penalty Calculation for Civil Liability (Exhibit B).

34. The maximum penalty for the violations described above is $4,708,000 based on a calculation of the total number of per day violations times the statutory maximum penalty. However, based on considerations of the above facts and after applying the penalty methodology, the Executive Officer of the Central Valley Water Board proposes that civil liability be imposed administratively on the Discharger in the amount of **$368,624** for the violations cited above. The specific factors considered in this penalty are detailed in Exhibit A. The Discharger's culpability, history of violations, and ability to pay and continue in business were considered, but did not change the amount of liability. Other factors as justice may require were considered, but circumstances warranting an adjustment under this step were not identified by staff or provided by the Discharger.

PROPOSED ADMINISTRATIVE CIVIL LIABILITY

The Executive Officer proposes that the Discharger be assessed an administrative civil liability pursuant to CWC sections 13323, 13261, 13268, and 13385 in the amount of **$368,624** for the violations alleged above.

If the Central Valley Water Board holds a hearing, it may choose to impose the administrative civil liability in the amount proposed, in a higher or lower amount, or it may decline to seek civil liability, or it may recommend referral of the matter to the Attorney General for enforcement. If this matter proceeds to hearing, the Prosecution

Team reserves the right to seek an increase in the civil liability amount to cover the costs of enforcement incurred subsequent to the issuance of this administrative civil liability complaint through hearing under both CWC section 13385(e) and the Enforcement Policy.

There are no statutes of limitations that apply to administrative proceedings. The statutes of limitations that refer to "actions" and "special proceedings" and are contained in the California Code of Civil Procedure apply to judicial proceedings, not an administrative proceeding. See *City of Oakland v. Public Employees' Retirement System* (2002) 95 Cal. App. 4th 29, 48; 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, §405(2), p. 510.)

Notwithstanding the issuance of this Complaint, the Central Valley Water Board retains the authority to assess additional penalties for violations the Discharger's waste discharge requirements and/or ISW Permit for which penalties have not yet been assessed or for violations that may subsequently occur.

Issuance of this Complaint is an enforcement action and is therefore exempt from the provisions of the California Environmental Quality Act (Pub. Res. Code § 21000 et seq.) pursuant to title 14, California Code of Regulations sections 15308 and 15321 subsection (a) (2).

Payment of the assessed liability amount does not absolve the Discharger from complying with WDRs Order No. R5-2007-0181 or the ISW Permit, the terms of which remain in effect. Additional civil liability may be assessed in the future if the Discharger fails to comply with WDRs Order No. R5-2007-0181 or the ISW Permit, and/or future orders issued by the Central Valley Water Board.

May 7, 2012
Date

Pamela C. Creedon
Executive Officer
Central Valley Water Board Prosecution Team

WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

By signing this waiver, I affirm and acknowledge the following:

I am duly authorized to represent Richard Sykora (hereafter Discharger) in connection with Administrative Civil Liability Complaint R5-2012-0543 (hereafter Complaint). I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served. The person who has been issued a complaint may waive the right to a hearing."

□ ***(OPTION 1: Check here if the Discharger waives the hearing requirement and will pay in full.)***

a. I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board.

b. I certify that the Discharger will remit payment for the proposed civil liability in the full amount of **$368,624** by check that references "ACL Complaint R5-2012-0543" made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by the Central Valley Water Board by 4 June 2012.

c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after a 30-day public notice and comment period. Should the Central Valley Water Board receive significant new information or comments during this comment period, the Central Valley Water Board's Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.

d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

□ ***(OPTION 2: Check here if the Discharger waives the 90-day hearing requirement in order to engage in settlement discussions.)*** I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the complaint, but I reserve the ability to request a hearing in the future. I certify that the Discharger will promptly engage the Central Valley Water Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing so that the Discharger and the Prosecution Team can discuss settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1."

□ ***(OPTION 3: Check here if the Discharger waives the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. Attach a separate sheet with the amount of additional time requested and the rationale.)*** I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the complaint. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing and/or hearing deadlines so that the Discharger may have additional time to prepare for the hearing. It remains within the discretion of the Central Valley Water Board to approve the extension.

_____
(Print Name and Title)

_____
(Signature)

_____
(Date)