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FORESTS, AND PUBLIC LANDS
SUBCOMMITTEE ON INDIAN AND
ALASKAN NATIVE AFFAIRS
COMMITTEE ON THE BUDGET

June 26, 2012

Mr. Cris Carrigan
Director
Office of Enforcement
State Water Resources Control Board
1001 I Street
Sacramento, California 95814

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RE: Red Ink Maid/Big Seam Mine – Central Valley Water Board Engagement with Legislative Staff

Dear Mr. Carrigan:

I write in response to your letter dated May 23, 2012, concerning the recently issued Administrative Civil Liability Complaint (ACLC) to Mr. Sykora and compliance issues regarding the Red Ink Maid and Big Seam Mine. With regards to the ACLC, I want to clarify the role of this Congressional Office: Neither staff nor I will be representing Mr. Sykora in his ACLC hearing. Our interest in this case pertains solely from a policy concern, the involvement of a federal agency (United States Forest Service, USFS) and federal land, and the implementation of federal law. With this in mind, it will be the responsibility of Mr. Sykora to retain his own representation.

In your letter you state that there is only one storm water report for the 2007 – 2008 season. There are, however, at least three storm water reports we are aware of: 2006 – 2007; 2007 – 2008; and 2008 – 2009. At our interagency meeting in April, we offered these reports to Water Board staff (you included) and were told that you had them on file. The 2006 – 2007 report recorded by Water Board staff Lorrall Wardit states, “No discharge from the facility site. All water percolates into the ground and does not runoff the site. Since no discharge event occurred, sampling was not possible.” You also reference the “Conclusion” section of the 2007 – 2008 report that contains a statement from the engineer in which he opines that the “infiltration rate for on-soil/rock is relatively high and that surface water runoff occurs relatively infrequently.” This is indeed, an opinion, as stated by the engineer and is not a demonstration of verified runoff. Throughout the same report, the same engineer documents attempts to measure runoff in multiple locations over the course of more than an hour and a half during the storm event with 1 inch/hour precipitation yield as measured at the Foresthill Ranger Station (FRH). This visit followed six prior rainfall events “each producing between 0.024 inches and 0.60 inches of rain as measured at the FRH.” The actual measurements and documentation in the report clearly

show the absence of runoff and yet the Water Board appears to have seized on a single statement of opinion. Further, the 2008 – 2009 report has measurements from two separate dates within the rainfall season. The first one, October 4, 2008, was during a rainfall event of “approximately 1.0 inches of rain.” The geotechnical engineers returned on March 1, 2009 to perform more storm water monitoring. At that time, “relatively high intensity rain was falling,” reported at the FRM weather station of “approximately 2¾ inches of rainfall.” The result of those visits was summarized by the engineer stating the following: “As with previous attempts, we were not able to collect storm water samples because there was no surface water flowing at the sample locations.” The report shows that during the first significant rainfall event and during a later and heavier event, storm water is routinely absorbed by the porous mining waste and percolates into the ground resulting in no measurable runoff. The report also shows that the certified engineer attempted to measure storm water runoff on multiple occasions, not on a “single day” as you state in your letter.

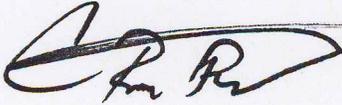
Contrary to your assertions, there are “multiple years of measurement during storm water events by a California certified engineer [stating] that there was no measurable discharge at the site.” Moreover, never once has the Water Board demonstrated “measurable” discharge and, therefore, that *discharge of storm water to surface waters is occurring*. You reference that the ISW permit requires that facility operators be “certain that no discharge of storm water to surface waters would occur under any circumstances” to avoid liability (ISW Permit Fact Sheet, p. VI, ¶ 4(b).) Where is the proof from the Water Board that storm water from the facility is interacting with surface waters? This has never been demonstrated while the opposite, in fact, has been demonstrated. You so much agree when you state in your letter that the presence of BMPs (required by the USFS Plan of Operations) is “at least part of the reason no discharges were observed at the Facility on October 10, 2007.” If the facility operator must be certain there is no discharge of storm water to surface waters to be relieved of the ISW permit, then should not the regulating agency prove that storm water is reaching surface waters to impose the ISW permit? Moreover, what specifically must a facility operator do to show there is no discharge of storm water from his facility? As I read the ISW permit there must be some way, otherwise exemptions would not be included (ISW Permit Fact Sheet, p. V, “Types of Discharges Not Covered by this Permit”); particularly, “4(b): Facilities That Do Not Discharge Storm Water To Surface Waters Or Separate Storm Sewers.”

In regards to the discharge of mining waste due to toe-slope failure, this discharge is a legacy issue. Once again, the Water Board has failed to prove that waste rock, in the case of slope failure, directly or indirectly impacts the seasonal creek in Mad Canyon. It is our understanding that attempts to stabilize the slope could cause greater instability and increase the potential for slope failure. Even if waste rock did make it to the creek, it has already been determined by the Water Board that discharge of waste rock “poses no significant threat to water quality (other than turbidity) nor do they contain a significant amount of degradable material.” Turbidity, as we know, is momentary and occurs naturally in river bank erosion. Simply looking at the American

River during a storm event would show more turbidity than waste rock from the Red Ink Maid and Big Seam Mine could ever cause. If the Water Board is truly concerned about protecting water quality, it would behoove the agency to focus on significant threats to water quality, not a small operation which is already monitored and regulated by the federal land management agency, the United States Forest Service.

Please do not hesitate to contact me if you have any questions, comments, or concerns.

Cordially,

A handwritten signature in black ink, appearing to read "Ross Branch", written over a horizontal line.

Ross Branch
Field Representative

Cc: Robert Egel
Pamela Creedon
Rick Moss
Terry Wardley
Norman Gonzales