



United States
Department of
Agriculture

Forest
Service

Tahoe
National
Forest

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File Code: 2810/2530
Date: MAR 18 2013

Victor J. Izzo
Title 27 Permitting and Mining
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive #200
Rancho Cordova, CA 95670-6114

Dear Mr. Izzo:

By copy of this letter, I wish to formally protest the wrongful naming of the United States Forest Service on the Tentative Waste Discharge Requirements (WDRs), for Steve Allenbaugh, at the Mayflower Mine in Sierra County. The Tentative WDRs are available on the Central Valley Water Board's web site at:

http://www.waterboards.ca.gov/centralvalley/board_decisions/tentative_orders/allenbaugh/allenbaugh_wdr.pdf

The US Forest Service is erroneously named in any discharge permit issued to a second party user where the US Forest Service is not:

1. The proponent, instigator, or advocate of the activity for which the permit is being issued;
2. Involved in the physical operation or conduct of the activity for which the permit is being issued; or
3. The discharger according to the California Administrative Code definition of a discharger (23 Cal. Ad. Code Sec. 2601).

In this instance, the activities for which the Tentative Waste discharge Requirements is being issued are mining activities being conducted by Steve Allenbaugh. The Mayflower Mine is operated by a third party under mining claims asserted against the control and ownership of the United States under the General Mining Law of 1872. The Forest Service is neither the owner nor operator of the unpatented mining claim owned by Steve Allenbaugh and underlying the mining activities. As owner of the unpatented mining claims and the operator of the mine, Mr. Allenbaugh, not the Forest Service, is responsible for obtaining any permits for the discharge of any pollutants or contaminants at the Site. The Regional Board does not have statutory authority to name an entity as a discharger based only on the fact that the entity is the land owner or, even more remote in our case, the land manager.



Aside from the issue of whether the federal government waived its sovereign immunity under the Clean Water Act to be named as a “co-discharger,” it is the Forest Service’s position that the Water Board does not have any statutory authority under the Porter-Cologne Act to name the Forest Service as a “co-discharger” based upon the federal government’s landowner status. The Porter-Cologne Act requires any person discharging or proposing to discharge waste that could affect the quality of the waters of the State to file a report of waste discharge with the Water Board. Cal. Water Code §13260. The State law definition of a “discharger” is any person who discharges waste which could affect the quality of waters of the State, including the owner or person responsible for the operation of a waste management unit. 23 CCR §2601. These provisions do not apply to the Forest Service where it has no ownership interest or operational control of facilities on federal lands.

As it has incorrectly been named as a co-discharger in this instance, the Forest Service assumes no liability, beyond that which may be already statutorily required, for violations by Steve Allenbaugh in water quality matters which occur as a result of its being erroneously named in the waste discharge requirements for this mining operation.

If you have questions or wish to discuss this matter further, please contact Rick Weaver, at 530-478-6241. I look forward to continued work with the Regional Board toward obtaining our mutual objectives of clean water.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tom Quinn', with a stylized flourish at the end.

TOM QUINN
Forest Supervisor

cc: Jeff Moulton, USDA Office of General Counsel