

ITEM: 8

SUBJECT: KLONDIKE, DUTCH AND TELEGRAPH MINES, SIERRA COUNTY

BOARD ACTION: *Consideration of New NPDES Permit*

BACKGROUND: Lazarus Mining LLC currently owns the mining claim for the Klondike, Dutch, and Telegraph Mines in Sierra County. The U.S. Forest Service, Tahoe National Forest (USFS) owns and manages the property on which the mine portals are located. The previous mine owner and operator, the Klondike California Mining Corporation, discharged pursuant to Waste Discharge Requirements (WDR) Order No. 98-119 (NPDES Permit No. CA0084387). The previous NPDES permit expired in June 2003 as the mine owner ceased operation of the mining facilities. Since 2003, the U.S. Forest Service, as land manager, implemented restoration efforts to stabilize the hillside and modify the drainage from the inactive mine portals.

The tentative NPDES permit proposes to regulate up to 0.30 million gallons per day of currently unregulated inactive mine drainage that discharges into Goodyears Creek. The permit includes effluent limitations for conventional pollutants similar to the previously expired permit and requires the Discharger to submit a Priority Pollutant Study to provide water quality information necessary to determine if additional effluent limitations are necessary.

ISSUES: Naming of Discharger: USFS states that (1) the Regional Water Quality Control Board (Regional Water Board) does not have the statutory authority to name an entity as a Discharger based only on the fact that the entity is the landowner or the land manager, and (2) it assumes no liability for violations by the mine owner/operator in water quality matters which occur as a result of its being named in the proposed NPDES Permit. USFS's position that a land owner/manager is not responsible for its tenants' discharges is contrary to State Water Resources Control Board (State Water Board or SWRCB) precedent. The Attorney General and the State Water Board have long interpreted the Porter-Cologne Act and its predecessor, the Dickey Act, to define real property owners as dischargers even when the owner has no involvement with the tenant's activities. Under this precedent, the Regional Water Board may name USFS, as the property owner and/or manager, in waste discharge requirements for constituents discharging from its land¹. The State Water Board specifically concluded in its Order No. 87-5 that a regional water board could name the USFS as a discharger based on its land manager status. The proposed NPDES permit identifies Lazarus Mining LLC as the Discharger and USFS as a "secondary discharger". As a "secondary discharger", the USFS will be responsible for compliance with the NPDES permit and/or water quality violations resulting from the subject discharges if the Discharger does not

¹ *Petition of USDA*, SWRCB Order No. 87-5; *Petition of Zoecon*, SWRCB Order No. 86-2; 27 Ops. Cal. Atty. Gen. 182 (1956)).

comply with permit requirements.

Potential Mining Operations: Lazarus Mining LLC intends to rehabilitate the portals and underground tunnels at the mine discharge sites and requests that the scope of the tentative NPDES permit be expanded to include potential future mining and on-site milling operations. The Discharger states that issuance of an NPDES permit for drainage only will not facilitate near-term planned operations of Lazarus Mining LLC and is requesting the mining operations permitted under the previously expired NPDES permit for the former mine owner to be carried forward in the proposed permit.

The tentative NPDES permit is a new permit proposed to regulate the existing mine tunnel drainage discharge to surface water; it is not an NPDES permit renewal. The previous WDR Order No. 98-119 was issued to the previous mine owner for its gold placer mining and milling operation prior to its ceasing of mining activities and sale of the mine facilities.

Due to the lack of recent and water quality data for existing mine discharges, the proposed permit requires the Discharger to conduct and submit a priority pollutant study to provide the data necessary for the Regional Water Board to conduct a reasonable potential analysis for the portal drainage. To expand the scope of the permit to include mining operations, the Discharger must submit (1) additional mine operational information, (2) verification of National Environmental Protection Act (NEPA) and/or California Environmental Quality Act (CEQA) approvals, and (3) an antidegradation analysis, prior to the Regional Water Board's consideration of reopening the NPDES permit and establishing the necessary waste discharge requirements. Lastly, the projection that the discharge from the planned operations being similar in the quality and quantity of the discharge regulated under the previous WDR Order R5-98-119 (for gold placer mining and milling) is speculative at this time.

Priority Pollutant Study: The Discharger states that the Priority Pollutant Study required in the permit is not necessary before mining operations are in place, and the Study will need to be repeated when mining operations initiate. The Discharger requests that if mining operations are not to be included in this permit, then the requirement for a Priority Pollutant Study be included in a future permit that does allow mining operations. Regardless of the status of future mining activity, a Priority Pollutant Study is necessary to bring forth the necessary water quality data to conduct a reasonable potential analysis to determine if the existing draining is causing, or has the potential to cause, or contribute to, an exceedance to water quality criteria in Goodyears Creek.

Mgmt. Review _____

Legal Review _____

14 March 2008

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