



United States  
Department of  
Agriculture

Forest  
Service

Tahoe  
National  
Forest

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PEC

File Code: 2810/2530  
Date: January 23, 2008

Pamela C. Creedon  
Executive Officer  
Central Valley Regional Water Quality Control Board  
11020 Sun Center Drive #200  
Rancho Cordova, CA 95670-6114

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Dear Ms. Creedon:

By copy of this letter, I wish to formally protest the wrongful naming of the United States Forest Service on WDR for Tentative Order for NPDES NO. CA0084387 for Lazarus Mining LLC, at the Klondike, Dutch and Telegraph Tunnel Mines in Sierra County. 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 WDR for Tentative NPDES No. CA0084387 is being issued are mining activities being conducted by Patrick Fagan. The Klondike, Dutch and Telegraph Mines are 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 claims owned by Patrick Fagan and underlying the mining activities. As owner of the unpatented mining claims and the operator of the mine, Mr. Fagan, 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

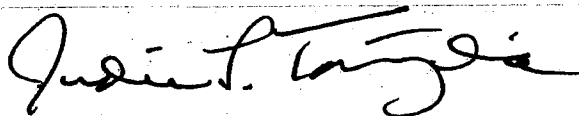


who discharges waste which could affect the quality of waters of the State, including the owner or person responsible for the operation of a waste management unit. 23 CCR §2601. These provisions do not apply to the Forest Service where it has no ownership interest or operational control of facilities 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 Patrick Fagan 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 Greg Schimke, Minerals Program Manager, at 530-478-6273. I look forward to continued work with the Regional Board toward obtaining our mutual objectives of clean water.

Sincerely,



JUDIE L. TARTAGLIA  
Acting Forest Supervisor

cc: Rose Miksovsky, OGC