

**Note: This document has been prepared by the  
Central Valley Water Board's Prosecution Team**

ITEM: 25

SUBJECT: Richard Sykora, Red Ink Maid & Big Seam Mine, Placer County

BOARD ACTION: *(a) Consideration of an Administrative Civil Liability Order (ACLO)*  
*(b) Consideration of a Cease and Desist Order (CDO)*

FACILITY  
BACKGROUND: On 27 June 2006, Richard Sykora ("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 mine 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, approximately 6-miles east of Foresthill in Placer County.

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. Ore-bearing material is hand sorted and transported off site. No milling or processing takes place on the Site. Analysis of the mining waste indicates that the waste is classified in accordance with Title 27 of the California Code of Regulations as Group C mining waste. Mining wastes from Group C are wastes from which any discharge would be in compliance with the applicable water quality control plan, including water quality objectives other than turbidity.

There are five waste dumps located on the Site. 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.

**Waste Discharge Requirements Order No. R5-2007-0181**

The Site is regulated by WDRs Order No. R5-2007-0181 (WDRs) adopted by the Central Valley Water Board on 6 December 2007. Monitoring and Reporting Program No. R5-2007-0181 (hereinafter MRP) accompanies Order No. R5-2007-0181. Background information in the WDRs details historical waste dump failures.

A slope failure occurred near the toe of waste dump #2 during the heavy rains of late 1996 and early 1997. This caused movement

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of the waste dump and discharge of the underlying colluvium into the drainage below.

In late March of 2006, a slope failure of waste dump #4 occurred following a month of unusually heavy precipitation. The failure involved a small access road in the uppermost portion of the waste dump #4. The failure resulted in vertical and slight lateral displacement of waste dump #4. Slide debris was substantially contained in a more gently sloping area within the lower portions of waste dump #4.

On 23 March 2006, Regional Water Board staff inspected the site and observed waste rock from mining activities that had been previously discharged to waste dumps #1-4 and that a new access road to the proposed waste dump #5 had recently been constructed. The toe area of waste dump #2 was deeply eroded and evidence of soil material being discharged to Mad Canyon was observed. Waste dump #4 showed signs of a recent failure resulting in vertical and lateral movement of the waste dump. Limited vegetative cover to control erosion and reduce surface water infiltration of the dumps was observed.

#### **Industrial Stormwater General Permit Order 97-03-DWQ**

The Site is also regulated by the Industrial Stormwater General Permit Order 97-03-DWQ (ISW Permit). The Discharger submitted a Notice of Intent 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.

ACLO BACKGROUND: (a) *Consideration of an Administrative Civil Liability Order (ACLO)*

#### **Summary of WDR requirements at issue in the ACLC:**

- Discharger fully reclaim waste dumps #1-#4 by 30 October 2009;
- Discharger submit to the Board a report describing reclamation completion and closure of waste dumps #1-#4 by 30 November 2009;
- Prohibits the discharge of solid waste or liquid waste to surface water drainage courses (other than waste dump #5) or groundwater;
- Submit Annual Monitoring Summary Reports by 1 July each year;
- Submit Annual Facility Inspection Reports by 15 November each year

**Summary of ISW Permit requirements at issue in this ACLO**

- Conduct and submit an Annual Report documenting, among other things, its sampling and analyses, visual observations, and an annual comprehensive site compliance evaluation by 1 July each year.

**Summary of Annual Fee requirement at issue in this ACLO**

- The Discharger is required to pay annual fees for its enrollment in the WDR and the ISW Permit programs.

A summary of the alleged violations of the previously requirements described above follows:

**Violation Category 1:** The failure to comply with the requirement to fully reclaim waste dumps #1 through #4 has caused unauthorized discharges of waste rock and mining overburden to Mad Canyon. The Discharger violated WDRs and Water Code 13376 on 19 April 2011 and 21 February 2012 by discharging waste to Mad Canyon, a tributary to the Middle Fork of the American River and water of the United States.

**Violation Category 2:** The Discharger violated WDRs and Section C.1. of the MRP by failing to submit the 2007-2008, 2008-2009, 2009-2010, and 2010-2011 reports by 1 July each year pursuant to Water Code section 13267.

**Violation Category 3:** The Discharger violated WDRs and Section A.3.a. of the MRP by failing to submit the 2009, 2010, and 2011 Annual Facility Inspection Reports by 15 November each year pursuant to Water Code section 13267.

**Violation Category 4:** The Discharger violated the ISW Permit by failing to submit the 2008-2009, 2009-2010, and 2010-2011 ISW Annual Reports by 1 July each year.

**Violation Category 5:** The Discharger failed to pay annual waste discharge requirement fees for Fiscal Year 2008, Fiscal Year 2010, and Fiscal Year 2011 pursuant to Water Code section 13260.

**Violation Category 6:** The Discharger failed to pay annual Industrial Storm Water General Permit fees for Fiscal Year 2010 and Fiscal Year 2011 pursuant to Water Code section 13260.

**ACLO ISSUES:**

Comments on the Complaint were received from Ross Branch, Field Representative from Congressman Tom McClintock's Office. The Prosecution Team previously prepared a Response to Mr.

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Branch's Comments on 12 July 2012 which is a part of this agenda package.

ACLO  
RECOMMENDATION:

The Prosecution Team recommends that the Board adopt the proposed Administrative Civil Liability Order assessing \$368,624 as calculated for the alleged violations.

CDO BACKGROUND  
AND CONTENTS OF  
CDO:

*(b) Consideration of a Cease and Desist Order*

The Tentative CDO was issued to Richard Sykora on 7 May 2012 for public comment. After a continuance of the hearing to the October Board meeting, the Advisory Team requested that the Prosecution Team revise the due dates in the Draft Cease and Desist Order. The Revised Draft CDO orders the Discharger to cease and desist and directs the Discharger to comply with WDRs in accordance with the time schedule proposed.

If adopted as proposed the CDO would require:

1. By **5 November 2012**, submit to the Central Valley Water Board an updated financial assurance cost estimate for reclamation of the Site.
2. By **20 November 2012**, submit a technical report certifying the installation and completion of the gabion basket retaining structure for waste dump #5 in accordance with the 12 March 2007 *Proposed Stockpile 5 Plan Sheets and Stability Review* and the recommended Appendix A Mitigation Measures for Waste Dump #5 described in the Forest Service's 20 September 2004 Plan of Operations for the Site.
3. By **21 December 2012**, post a financial assurance mechanism in an amount of the approved financial assurance cost estimate in item 1 above and submit a copy to the Central Valley Water Board.
4. By **30 November 2012**, submit a report describing the interim erosion control measures employed at the Site, including such measures as hydroseeding or hydromulching or applying erosion control fabrics or bonded fiber matrix to the waste dump slopes, to establish self-sustaining plant cover to control erosion, reduce infiltration, and provide for increased slope stability.
5. By **19 October 2014**, fully reclaim waste dumps #1 through

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#4 as originally required by WDRs Discharge Specification B.6 and the Discharger's Reclamation Plan approved by Placer County on 7 December 2006. Reclamation must continue until successful revegetation is established in accordance with the approved Reclamation Plan.

6. By **31 October 2014**, submit a report describing and certifying completion of reclamation and closure of waste dumps #1 through #4 as originally required by WDRs Discharge Specification B.7. The report shall also include:
  - a. A certification that the reclamation measures discussed in the Discharger's 31 August 2007 Addendum to the Report of Waste Discharge have been implemented;
  - b. A certification that the 20 September 2004 Forest Service Mitigation Measures attached to the 2004 Plan of Operation have been implemented; and
  - c. A certification that the 20 September 2004 Forest Service Best Management Practices attached to the 2004 Plan of Operation have been implemented.

**CDO ISSUES:**

One comment was received from the Discharger in a letter dated 13 June 2012 pertaining to an ancillary issue regarding a transfer request for WDRs Order No. R5-2007-0181. The letter did not specifically relate to the Tentative CDO itself. The Central Valley Water Board staff responded to this letter on 22 June 2012. Additionally, the Prosecution Team previously submitted a Response to the Discharger's comment on 12 July 2012 summarizing all correspondence pertaining to the transfer request and the Tentative CDO which is a part of this agenda package.

**CDO  
RECOMMENDATION:**

The Prosecution Team recommends that the Board adopt the CDO as proposed.

Mgmt. Review FSM  
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4/5 October 2012  
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