

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2012-XXXX

ADMINISTRATIVE CIVIL LIABILITY
IN THE MATTER OF

RICHARD SYKORA
RED INK MAID AND BIG SEAM MINE
PLACER COUNTY

This Order is issued to Richard Sykora (hereafter “Discharger”) pursuant to California Water Code (“Water Code”) section 13268, 13261, and 13385 which authorize the imposition of Administrative Civil Liability (“ACL”). This Order is based on findings that the Discharger violated provisions of Waste Discharge Requirements (“WDRs”) Order R5-2007-0181 and Industrial Storm Water General Permit Order 97-03-DWQ (ISW Permit).

The California Regional Water Quality Control Board, Central Valley Region, (“Central Valley Water Board” or “Board”) finds the following:

1. On 27 June 2006, the Discharger submitted a Report of Waste Discharge for 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 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 near the 6-mile mark of Mosquito Ridge Road in the Foresthill area in Placer County.
2. 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. The waste rock created at the Site consists of natural geologic materials that have been removed or relocated but have not been processed. Analysis of the mining waste indicates that the waste is characterized as a Group C mining waste defined by Title 27 of the California Code of Regulations as waste discharge that should not pose a significant threat to water quality other than turbidity as the waste rock did not exceed hazardous waste total threshold limit concentrations or soluble threshold limit concentrations.
3. The Site slopes to the south and sits approximately 2000 feet above the Middle Fork of the American River. The Middle Fork of the American River is located approximately 0.4 miles south of the Site. Surface water drainage from the Site is to Mad Canyon, a seasonal drainage, and tributary to the Middle Fork of the American River, which is a water of the United States. Beneficial uses of the Middle Fork of the American River are municipal and domestic supply, agricultural supply, hydropower generation, water contact recreation, non-contact water recreation, warm freshwater habitat, cold freshwater habitat, spawning, reproduction, and/or early development, and wildlife habitat.

4. 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.
5. The Site is regulated by WDRs Order No. R5-2007-0181, 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.
6. Pursuant to title 27 of the California Code of Regulations section 22510 subdivision (c) and WDRs Order No. R5-2007-0181, the WDRs incorporate the relevant provisions of the mining and reclamation plan, approved by Placer County as lead agency in the administration of the Surface Mining and Reclamation Act (SMARA), and prescribes additional conditions necessary to prevent water quality degradation. Closure and reclamation requirements ensure that mining units no longer pose a threat to water quality.
7. Specifically, WDRs Order No. R5-2007-0181 Discharge Specifications B.6 and B.7 require the Discharger to fully reclaim waste dumps #1 through #4 by 30 October 2009 and submit to the Central Valley Water Board a report describing reclamation completion and closure of waste dumps #1 through #4 by 30 November 2009. During a site inspection on 10 March 2010, staff of the Central Valley Water Board observed that waste dumps #1 through #4 had not been fully reclaimed as required by the WDRs. No apparent reclamation measures such as hydroseeding or hydromulching establishing self-sustaining plant cover to control erosion, reduce infiltration, and provide for increased slope stability were evident. To date, the Discharger has not fully reclaimed waste dumps #1 through #4 and has not submitted the required report detailing the reclamation and closure of those mining units and is in violation of WDRs Order No. R5-2007-0181. The failure to comply with Discharge Specifications B.6 and B.7 has caused unauthorized discharges of waste rock and mining overburden from the waste dumps to Mad Canyon, a tributary to the Middle Fork of the American River.
8. WDR Order No. R5-2007-0181 prohibits the discharge of solid waste or liquid waste to surface waters, surface water drainage courses (other than waste dump #5), or groundwater.
9. WDR Order No. R5-2007-0181 and the MRP require the submission of Annual Monitoring Summary Reports by 1 July each year. Section C.1. of the MRP specifies the required components for the Annual Monitoring Summary Report. Submission of the Annual Monitoring Summary Report is required pursuant to Water Code section 13267 as referenced in Finding 54 of WDR Order No. R5-2007-0181.
10. Additionally, WDR Order No. R5-2007-0181 and the MRP require the submission of an Annual Facility Inspection Report by 15 November of each year. Section A.3.a. of the MRP specifies the required components for the Annual Facility Inspection Report.

Submission of the Annual Facility Inspection Report is required pursuant to Water Code section 13267 as referenced in Finding 54 of WDR Order No. R5-2007-0181.

11. In addition to being regulated by WDRs Order No. R5-2007-0181, the Site is also regulated by the Industrial Storm Water General Permit Order 97-03-DWQ (ISW Permit). On 17 July 2006, the Discharger submitted its Notice of Intent (NOI) 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. Erosion control measures, mitigation measures, and best management practices (BMPs) for the site are incorporated into the Forest Service Conditions of Approval for the Plan of Operations, the Reclamation Plan, and Storm Water Pollution Prevention Plan (SWPPP).
12. The ISW Permit requires the Discharger to conduct monitoring and submit an Annual Report (ISW Annual Report) documenting, among other things, its sampling and analyses, visual observations, and an annual comprehensive site compliance evaluation by 1 July each year. Section B.14 of the ISW Permit specifies the required components for the ISW Annual Report.

The Central Valley Water Board finds the following:

13. **Violation Category 1:** Discharger violated Prohibition A.6 of WDR Order No. R5-2007-0181 and CWC section 13376 by discharging waste to Mad Canyon, a tributary to the Middle Fork of the American River and water of the United States.
 - a. 19 April 2011 unauthorized discharge of waste to waters of the United States.
 - b. 21 February 2012 unauthorized discharge of waste to waters of the United States.These violations are subject to administrative civil liability pursuant to Water Code section 13385 subdivision (c)(1).
14. **Violation Category 2:** The Discharger violated WDR Order No. R5-2007-0181 and Section C.1. of the MRP by failing to submit the following Annual Summary Monitoring Reports by the specified deadline pursuant to CWC section 13267:
 - a. 2007-2008 Annual Summary Monitoring Report, due 1 July 2008
 - b. 2008-2009 Annual Summary Monitoring Report, due 1 July 2009
 - c. 2009-2010 Annual Summary Monitoring Report, due 1 July 2010
 - d. 2010-2011 Annual Summary Monitoring Report, due 1 July 2011These violations are subject to administrative civil liability pursuant to Water Code section 13268 subdivision (b)(1).
15. **Violation Category 3:** The Discharger violated WDR Order No. R5-2007-0181 and Section A.3.a. of the MRP by failing to submit the following Annual Facility Inspection Reports by the specified deadline pursuant to CWC section 13267:
 - a. 2009 Annual Facility Inspection Report, due 15 November 2009
 - b. 2010 Annual Facility Inspection Report, due 15 November 2010.

c. 2011 Annual Facility Inspection Report, due 15 November 2011

These violations are subject to administrative civil liability pursuant to Water Code section 13268 subdivision (b)(1).

16. Violation Category 4: The Discharger violated the Industrial Storm Water General Permit Order 97-03-DWQ by failing to submit the following ISW Annual Reports by the specified deadline:

a. 2008-2009 ISW Annual Report, due 1 July 2009

b. 2009-2010 ISW Annual Report, due 1 July 2010

c. 2010-2011 ISW Annual Report, due 1 July 2011

These violations are subject to administrative civil liability pursuant to Water Code section 13385 subdivision (c)(1).

17. Violation Category 5: The Discharger failed to pay annual waste discharge requirement fees for the following periods:

a. Annual WDR fee for Fiscal Year 2008, due 28 December 2008

b. Annual WDR fee for Fiscal Year 2010, due 9 January 2010

c. Annual WDR fee for Fiscal Year 2011, due 7 December 2011

These violations are subject to administrative civil liability pursuant to Water Code section 13261 subdivision (a).

18. Violation Category 6: The Discharger failed to pay annual Industrial Storm Water General Permit fees for the following period:

a. Annual ISW Permit fee for Fiscal Year 2010, due 26 November 2010

b. Annual ISW Permit fee for Fiscal Year 2011, due 23 November 2011

These violations are subject to administrative civil liability pursuant to Water Code section 13261 subdivision (a).

19. On 17 November 2008 the State Water Resources Control Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy establishes a methodology for assessing discretionary administrative civil liability. Use of the methodology addresses the factors used to assess a penalty under Water sections 13327 and 13385 subdivision (e) including the Discharger's culpability, history of violations, ability to pay and continue in business, economic benefit, and other factors as justice may require. The required factors under Water Code sections 13327 and 13385 subdivision (e) have been considered using the methodology in the Enforcement Policy as explained in detail in Attachment A to this Order and shown in the Penalty Calculation for Civil Liability spreadsheets in Attachment B of this Order. Attachments A and B are attached hereto and incorporated herein by reference.

20. Issuance of this Administrative Civil Liability Order to enforce Water Code Division 7, Chapters 4 and 5.5 is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code § 21000 et seq.), in accordance with California Code of Regulations, title 14, sections 15307, 15308 and 15321(a)(2).

21. This Order is effective and final upon issuance by the Central Valley Water Board. Payment must be received by the Central Valley Water Board no later than thirty (30) days from the date on which this Order is issued.
22. In the event that the Discharger fails to comply with the requirements of this Order, the Executive Officer or her delegee is authorized to refer this matter to the Attorney General's Office for enforcement.
23. Any person aggrieved by this action of the Central Valley Water Board may petition the State Water Board to review the action in accordance with CWC section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date that this Order becomes final, except that if the thirtieth day following the date that this Order becomes final falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request.

IT IS HEREBY ORDERED that pursuant to section 13323 of the Water Code, the Discharger shall make a cash payment of \$368,624 (check payable to the State Water Pollution Cleanup and Abatement Account) no later than thirty days from the date of issuance of this Order. I, Kenneth D. Landau, Assistant Executive Officer, do hereby certify that the foregoing is a full, true, correct copy of an Order issued by the California Regional Water Quality Control Board, Central Valley Region, and that such action occurred on X August 2012.

KENNETH D. LANDAU, Assistant Executive Officer

XXXX
DATE

Attachment A: Narrative Summary of Administrative Civil Liability Penalty Methodology
Attachment B: Administrative Civil Liability Penalty Methodology Matrix