

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

REVISED CEASE AND DESIST
ORDER NO. R5-2012-0094

REQUIRING RICHARD SYKORA
RED INK MAID AND BIG SEAM MINE
PLACER COUNTY

TO CEASE AND DESIST
FROM DISCHARGING CONTRARY TO REQUIREMENTS

The California Regional Water Quality Control Board, Central Valley Region, ("Central Valley Water Board" or "Board") finds that:

1. On 27 June 2006, Richard Sykora (hereinafter Discharger) submitted a Report of Waste Discharge (ROWD) 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 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 in waste dumps on the Site. The waste rock created at this 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 characterize as a Group C mining waste defined by Title 27 of the California Code of Regulations as waste discharges 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 it to Mad Canyon, a seasonal drainage, and tributary to the Middle Fork of the American River, which is a water of the United States.
4. There are five waste dumps located on the Site (Exhibit C). 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%.

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%.

5. The Site is regulated by Waste Discharge Requirements (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 (Exhibit D).
6. The Prosecution Team recently discovered that the Discharger may have transferred ownership and operating responsibilities of the mining claims to Red Ink Maid, LLC and Wildcat Mining Enterprises, LLC, respectively (Group Exhibit P). Both of these entities are Nevada limited liability companies of which the Discharger is a named officer (Exhibit Q). A search of the California Secretary of State's business database yields no results for either of these limited liability companies, indicating that they may not be registered to conduct business in California. Furthermore, the Discharger has not applied in writing to the Executive Officer of the Central Valley Water Board requesting transfer of WDRs Order No. R5-2007-0181 as required by Provision F.6 of that Order (Exhibit D). The Central Valley Water Board staff sent the Discharger a letter dated 6 April 2012 requesting submission of the required information to transfer the Order to the subsequent operator if such a change in control or ownership has occurred (Exhibit R). Therefore, because the Discharger continues to be the named mine claimant and operator on the waste discharge requirements, the Discharger remains responsible for complying with the terms of WDRs Order No. R5-2007-0181 and this CDO.
7. 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.
8. Specifically, WDRs Order No. R5-2007-0181 Discharge Specifications B.6 and B.7 requires 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 (Exhibit D). In 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 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 (Exhibit E). 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.

9. On 12 March 2007, the Discharger submitted an addendum to the 27 June 2006 ROWD titled *Proposed Stockpile 5 Plan Sheets and Stability Review* (Exhibit S). The plan sheets and stability review depict two alternative waste rock configurations for Waste Dump #5, also referred to as Stockpile 5. The first alternative depicts a gabion basket retaining structure at the toe of the slope to allow increased waste rock storage volume (Exhibit T). The second alternative depicts a completed waste rock stockpile configuration with a finished slope with a maximum slope gradient of 33 degrees (1.5 : 1 horizontal to vertical)(Exhibit U). On 6 March 2012, the Discharger through the Discharger's consultant submitted a letter indicating that waste rock placement to Waste Dump #5 resulted in an estimated 38 degree to 40 degree slope and that the gabion basket retaining structure was the preferred option for construction of Waste Dump #5 (Exhibit V).
10. Additionally, WDRs Order No. R5-2007-0181 Discharge Specification B.9 states Waste Dump #5 shall be designed, constructed, and maintained to prevent scouring and/or erosion of the mine waste material, the surrounding area, and shall incorporate the provisions of Findings 27 through 29 in the WDRs (Exhibit D).
 - a. Finding 27 states: "[t]his Order includes the design and method of disposal of waste rock for waste dump #5. The design and method of disposal of waste rock to waste dump #5 is based on the Discharger's report dated 12 March 2007." The Discharger's report dated 12 March 2007 is attached to this Order as Exhibit S.
 - b. Finding 28 states: "[i]nitially, waste rock is to be dumped from the end of the existing access road in the waste dump #5. When sufficient material is present, a ramp is to be constructed into the bottom of the waste area and the waste material shaped and compacted. From that point forward, waste material is to be placed from the toe in an upgradient direction to promote stability."
 - c. Finding 29 states: "[t]he face of the waste dump #5 is to be armored with coarse rock to control erosion during periods of inactivity and when the dump is complete. The Discharger is to prevent movement of fine material (soil and sediment) down gradient in the waste dump area by installing an approved erosion barrier as described in the Forest Service Mitigating Measures dated 20 September 2004." The Forest Service Mitigating Measures are attached to this Order as Exhibit W.

11. On 18 August 2009, staff of the Central Valley Water Board expressed concerns regarding the long term stability of Waste Dump #5 because of ongoing placement of the waste rock by the end-dumping method alone (Exhibit X). Concerns of this nature were previously raised by both United States Forest Service and Central Valley Water Board representatives in July 2009. During Site inspection on 3 March 2010 and in a Notice of Violation issued on 23 March 2010, the staff of the Central Valley Water Board noted that mining waste continued to be discharged to Waste Dump #5 by the end-dumping method only and that it was not being constructed in the manner prescribed in Findings 27 and 28 of the WDRs (Exhibit Y). Additionally with respect to Waste Dump #5, on 19 July 2010, the Forest Service also directed the Discharger to “construct the fill from the bottom up as described in your consultant’s revised stability report dated March 12, 2007 and the mitigation measures from you[r] previous approved Plan of Operation that expired on December 1, 2009” (Exhibit Z). On 9 January 2012, the Department of Conservation, Office of Mine Reclamation issued a Notice and Order to Comply with SMARA, including ordering the Discharger to comply with reclamation plan Condition 4 regarding compliance with the Central Valley Water Board’s WDRs (Exhibit AA).
12. Pursuant to title 27 of the California Code of Regulations section 22510 subdivision (f), the Discharger shall provide for adequate funding to pay for the costs of closure and post closure maintenance as required and shall provide assurance of financial responsibility. Since Placer County, acting as lead agency under SMARA, requires financial assurances for the cost of closure and post closure maintenance, the Central Valley Water Board approved these comparable requirements and waived the requirement that the Central Valley Water Board be listed as an alternate payee to the financial assurance.
13. As a part of the 2006 Reclamation Plan approved by Placer County, the County approved the related financial assurance in the form of an Irrevocable Standby Letter of Credit from Placer Sierra Bank in the amount of \$20,000 naming Placer County, the California Department of Conservation, and the United States Forest Service as the beneficiaries (Exhibit AB). However, on 20 April 2011, the beneficiaries received notice that Wells Fargo Bank would not be extending its Letter of Credit in the amount of \$20,000 (Exhibit AC). The Discharger’s financial assurances expired on 1 December 2011.

REGULATORY CONSIDERATIONS

14. Water Code section 13301 states, in part, “[w]hen a Regional Board finds that a discharge of waste is taking place or threatening to take place in violation of the requirements or discharge prohibitions prescribed by the regional board or the state board, the [regional] board may issue an order to cease and desist and direct that those persons not complying with the requirements or discharge prohibitions (a) comply forthwith, (b) comply in accordance with a time schedule

set by the [regional] board, or (c) in the event of a threatened violation, take appropriate remedial or preventative action.”

15. As a result of the events and activities described in this Order, the Central Valley Water Board finds that discharges of waste are taking place and/or threatening to take place to Mad Canyon, a tributary to the Middle Fork of the American River, in violation of WDRs.
16. Water Code section 13267, subdivision (b) states, “[i]n conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of the waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring these reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.”
17. Monitoring reports and other technical reports are necessary to determine compliance with the WDRs and with the terms of this Order. Technical or monitoring reports required by this Order shall be submitted to the Central Valley Water Board pursuant to the requirements of Water Code section 13267.
18. The issuance of this Order is an enforcement action by a regulatory agency and is exempt from the provisions of the California Environmental Quality Act, pursuant to section 15321 subdivision (a)(2), Title 14, California Code of Regulations.
19. On 5 October 2012, in Rancho Cordova, California, after due notice to the Discharger and all other affected persons, the Central Valley Water Board conducted a public hearing at which evidence was received to consider a Cease and Desist Order under Water Code section 13301 to establish a time schedule to achieve compliance with waste discharge requirements.

IT IS HEREBY ORDERED that, pursuant to sections 13301 and 13267 of the Water Code, Richard Sykora shall, in accordance with the following tasks and time schedule, implement the following measures required to ensure compliance with WDRs Order No. R5-2007-0181.

1. By **5 November 2012**, submit to the Central Valley Water Board an updated financial assurance cost estimate for reclamation of the Site in accordance with Public Resources Code, Division 2, Chapter 9 section 2773.1, Title 14 California Code of Regulations section 3804, and the State Mining and Geology Board's Financial Assurance Guidelines.
2. By **20 November 2012**, submit a technical report with plans and specifications for construction of 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. The technical report shall also provide a calculation of the material already discharged to Waste Dump #5 and the remaining capacity of Waste Dump #5.
3. By **19 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. The Central Valley Water Board shall be named as an alternative payee on the financial assurance in accordance with title 27 of the California Code of Regulations section 22510 subdivisions (f) and (g).
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 #4 as originally required by WDRs Order No. R5-2007-0181 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 Order No. R5-2007-0181 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.
7. All technical reports required herein that involve planning, investigation, evaluation, design, or other work requiring the proper application of engineering or geologic sciences, shall be prepared by, or under the supervision of, a California Registered Engineer or Registered Geologist (as applicable) pursuant to California Business and Professions Code sections 6735, 7835, and 7835.1, and shall be signed by a registered professional.

Any person signing a document submitted under this Order shall make the following certification:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my knowledge and on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

If in the opinion of the Executive Officer, the Discharger fails to comply with the provisions of this Order, the Executive Officer may refer this matter to the Attorney General for judicial enforcement or may issue a complaint for administrative civil liability.

Failure to comply with this Order or with WDRs may result in the assessment of administrative civil liability pursuant to the California Water Code. The Central Valley Water Board reserves its right to take any enforcement actions authorized by law.

Any person aggrieved by this action of the Central Valley Water Board may petition the State Water Resources Control Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Resources Control Board must receive the petition by 5:00 p.m., 30 days after the date that this Order is adopted, except that if the thirtieth day following the date that this Order is adopted falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Resources Control 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_notice/petitions/water_quality
or will be provided upon request.

CEASE AND DESIST ORDER NO R5-2012-0094
RICHARD SYKORA
RED INK MAID & BIG SEAM MINE
PLACER COUNTY

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I, PAMELA C. CREEDON, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Central Valley Region, on 5 October 2012.

original signed by Kenneth D. Landau for

PAMELA C. CREEDON, Executive Officer