

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

ACL COMPLAINT NO. 5R-2006-0521

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT  
IN THE MATTER OF

FRENCH GULCH (NEVADA) MINING CORPORATION  
WASHINGTON MINE  
SHASTA COUNTY

This complaint is issued to French Gulch (Nevada) Mining Corporation, (hereafter Discharger), based on a finding of a violation of the Clean Water Act (CWA) Section 301, California Water Code (CWC) Section 13376, and Waste Discharge Requirements Order No. 96-289 (modified by Change of Name and/or Ownership of Facilities Order No. R5-2006-0017), pursuant to the provisions of Section 13385 of the CWC, which authorizes the imposition of Administrative Civil Liability (ACL), and of CWC Section 13323, which authorized the Executive Officer to issue this complaint.

The Executive Officer of the Regional Water Quality Control Board, Central Valley Region (hereafter Regional Board) finds, with respect to the Discharger's acts, or failure to act, the following:

1. The Discharger is the owner and operator of an underground gold mine, a complex of patented and unpatented claims and a mill site referred to collectively as the Washington Mine. Unpatented land is administered by the U.S. Department of Agriculture, Bureau of Land Management and mining is conducted by the operator under a special use permit.
2. The Washington Mine is in Section 17, T33N, R7W, MDB&M approximately 2.5 miles west of the community of French Gulch, Shasta County.
3. Waste Discharge Requirements Order No. 96-289 allow for the mining of ore from underground workings, crushing and milling of the ore and recovery of mineral values with flotation methodology, with eventual disposal of dewatered tailings to a designated surface disposal facility.
4. Surface water runoff from the site is to Scorpion Gulch, tributary to French Gulch which in turn is tributary to Clear Creek and eventually to Whiskeytown Lake and the Sacramento River. The beneficial uses of surface waters designated in the Regional Board Water Quality Control Plan for the Sacramento and San Joaquin Rivers - 4<sup>th</sup> Edition 1998 (Basin Plan) include municipal, domestic, agricultural and industrial supply; recreation, freshwater habitat, spawning, and wildlife habitat.
5. On 24 June 2006, a warden with the California Department of Fish and Game investigated a complaint of discolored water entering Whiskeytown Lake. Upon investigation, it was discovered the source of the discolored water was a discharge of fine grained rock slurry from the Washington Mine, approximately 7.5 miles upstream of Whiskeytown Lake. The operators of the mill had been pumping mill tailings and waste rock via pipeline to an underground storage site. The pipeline, constructed of doubled walled Schedule 40 PVC

pipe, was suspended above a steep slope with rope and wood braces and had broken, discharging the material down the slope and into surface waters. The operator was unaware of the discharge until notified by the warden, whereupon they immediately stopped the discharge.

6. The pipeline had not been adequately engineered, nor was the underground storage of tailings and waste rock slurry allowed under the current waste discharge requirements.
7. Water samples were obtained during the spill by an employee with the National Park Service experienced in such sampling. Samples were obtained in Clear Creek upstream of the affected drainage, in the affected drainage, and in Clear Creek downstream at the confluence with Whiskeytown Lake. These samples were transported under chain of custody to Regional Board staff and then to the Regional Board's contract lab. The analyses revealed concentrations of arsenic in the water upstream of the domestic water intake at Oak Bottom Marina at Whiskeytown Lake at 3.5 ug/l, below the Environmental Protection Agency MCL of 10 ug/l.
8. Significant bottom deposits of the rock slurry remained in Scorpion Gulch and French Gulch which may impact the benthic aquatic community.
9. Regional Board staff obtained samples of the spilled material from the slope below the broken pipeline before it entered the creek. The solid material contained arsenic at a concentration of 2,140 mg/kg, above the Hazardous Waste Total Threshold Limit Concentration of 500 mg/kg contained in Title 22 of the California Code of Regulations (CCR).
10. According to the Discharger's initial estimates, approximately 5 tons or, by their calculation, 4,409 gallons of rock slurry had been spilled. While most of the slurry was not susceptible to cleanup without significant damage to the benthic aquatic community in Scorpion Gulch and French Gulch, the operators, over the next few weeks, removed approximately 880 gallons of material from the hillside leading to Scorpion Gulch.
11. The Discharger is alleged to have violated provisions of law for which the Regional Board may impose liability under Section 13385(c)(1) and (2) of the CWC.
12. Waste Discharge Requirements Order No. 96-289 states, in part, the following:
  - "A. *Discharge Prohibitions:*
    1. *The discharge of waste, including mill effluent, tailings or the tailings supernatant, to surface waters or surface water drainage courses is prohibited.*
  - "B. *Discharge Specifications*
    1. *The discharge shall not cause a condition of pollution, contamination, or nuisance as defined by Section 13050 of the California Water Code.*

3. *Collected solids removed from the tailings pond shall be removed and disposed in WMU No. 2"*

13. Section 301 of the CWA and Section 13376 of the CWC prohibit the discharge of pollutants to surface waters except in compliance with an NPDES permit.
14. The Discharger is alleged to have violated Discharge Prohibitions A.1; Discharge Specifications B.1 and B.3.
15. Pursuant to CWC Section 13385 a(2) and (5) civil liability may be imposed based on the following fact:

On 24 June 2006, a warden with the California Department of Fish and Game investigated a spill of material from the Washington Mine to surface waters. Further investigation by Regional Board staff revealed the spilled material was a combination of mill tailings and waste rock from the construction of a new mine adit. The origin of the spilled material was from a poorly designed and constructed pipeline designed to transport waste rock and mine tailings for storage in the underground workings of the mine in violation of waste discharge requirements.

16. The Discharger is alleged to have violated provisions of law for which the Regional Board may impose liability under CWC Section 13385(c)(2). Section 13385 of the CWC states, in part:

*"(a) Any person who violates any of the following shall be liable civilly in accordance with this section:*

*(2) Any waste discharge requirements or dredged and fill material permit.*

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*(5) Any requirements of Sections 301, 302, 306, 307, 308, 318, or 405 of Clean Water Act, as amended."*

*"(c) Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:*

*(1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.*

*(2) Where there is discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons."*

*"(e) In determining the amount of any liability imposed under this section, the regional board, the state board, or the superior court, as the case may be, shall take into account the nature, circumstances, extent, and gravity of the violation or*

*violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefits or savings, if any, resulting from the violation, and other matters that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation."*

17. The discharge from the broken pipeline was estimated by the mine operator to be approximately 4,409 gallons on 24 June 2006. Some of the material was recovered and an estimate of 4 tons or approximately 3,527 gallons of solids and contaminated liquid entered Scorpion Creek and was not susceptible to cleanup.
18. Pursuant to CWC Section 13385(c) the Discharger has a maximum civil liability of \$35,270 based on the estimated discharge (3,527 gallons minus 1,000 gallons) at \$10 per gallon, plus \$10,000 for the one day of discharge in violation of Waste Discharge Requirements.
19. Regional Board staff spent a total of 116 hours investigating this incident and preparing the Complaint. The total cost for staff time is \$12,760 based on a rate of \$110 per hour including overhead costs.
20. The ruptured pipeline was temporary in nature. The Discharger had planned and is currently designing a permanent pipeline with adequate engineering and design for future operations. In place of using the temporary pipeline to move the material to the mine stopes, the Discharger could have dewatered the material and transported it to the approved disposal area via truck. Total economic savings by the Discharger for not using this method at the time of the spill is less than \$5,000. Currently, the Discharger is using this latter method for disposal of the material.
21. According to the Discharger, a total of \$7,560.00 (540 man hours at a rate of \$14.00) was spend on cleanup of residual material left on the hillside. Further, cost of equipment and supplies resulted in additional costs of \$2,750. Total costs spent on cleanup are \$8,960.
22. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et. seq.), in accordance with Section 15321(a)(2), Title 14 of the California Code of Regulations.

**FRENCH GULCH (NEVADA) MINING CORPORATION, IS HEREBY GIVEN NOTICE THAT:**

1. The Executive Officer of the Regional Board proposes the assessment of Administrative Civil Liability in the amount of **thirty-five thousand two hundred seventy dollars (\$35,270)**. The amount of the liability proposed is based on a review of factors cited in CWC Section 13385 presented in Finding No. 16 above, and the State Water Resources Control Board's Water Quality Enforcement Policy.
2. A hearing on this matter will be scheduled for the 7 or 8 December Regional Board meeting unless the Discharger agrees to waive a hearing and pay the proposed civil liability in full.
3. If a hearing in this matter is held, the Regional Board will consider whether to affirm, reject, or modify the proposed Administrative Civil Liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. The Discharger may waive the right to a hearing, in which case, the Regional Board may not hold a hearing. If the Discharger wishes to waive the right to a hearing, sign the attached waiver form and return it with a check made payable to the State Water Resources Control Board in the amount of the civil liability, to the Regional Board Redding office by **20 October 2006**. Any waiver will not be effective until 30 days from the date of this complaint to allow interested persons to comment on this action.

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PAMELA C. CREEDON, Executive Officer

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(Date)

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