

Clark Pearson
15329 Little Valley Rd. #33
Grass Valley, CA 95949
(530) 273-0420

August 31st, 2012

State Water Resources Control Board
Office of Chief Counsel
Jeannette L. Bashaw, Legal Analyst
P.O. Box 100
Sacramento, CA 95812-0100

Certified mail #70103090000205919077



Petition and Notice of Appeal

Dear Ms. Bashaw,

I, Clark Pearson, Petitioner and Appellant, hereby appeal the August 6th 2012 request received from the State Water Board on August 28th 2012 (attached) by Fredrick Moss upon the grounds that it is arbitrary, capricious and not in accordance with existing law. Appellant denies any and all allegations set forth by Mr. Moss's August 6th 2012 notice.

Appellant has not met the threshold for reporting

Appellant has not met the minimum threshold requirements set forth under 40 CFR 117.4 as to make such reports requested by Mr. Moss. Also the site does not place a net "addition" of a pollutant within the meaning of Federal and State Clean Water Acts. And as such, the reporting is therefore not mandated by law. As stated in *National Pork Producers v. EPA* 635 F.3d 738:

"In the absence of an actual addition of any pollutant to navigable waters from any point, there is no point source discharge, no statutory violation, no statutory obligation of point sources to comply with EPA regulations for point source discharges, and no statutory obligation of point sources to seek or obtain an NPDES permit in the first instance".

This is why submitting the reports would not be appropriate.

The storm water permit can be obtained through the U.S. Forest Service

The storm water permit Mr. Moss is requesting could be attained through the U.S. Forest Service of the Tahoe National Forest, as any minimal storm water does not originate on the site but rather the National Forest.

If I can be of further assistance feel free to give me a call.

Sincerely,

A handwritten signature in blue ink that reads "Clark Pearson".

Clark Pearson



EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR ENVIRONMENTAL PROTECTION

Central Valley Regional Water Quality Control Board

6 August 2012

Clark Pearson
15329 Little Valley Road, SPC 33
Grass Valley, CA 95949

CALIFORNIA WATER CODE 13267 ORDER FOR TECHNICAL AND MONITORING REPORTS, GALENA LODGE CLAIM, SIERRA COUNTY

In a letter dated 21 June 2012, the Central Valley Water Board sent you via U.S. Postal Service certified mail the enclosed California Water Code 13267 Order for Technical and Monitoring Reports for the Galena Lode Claim in Sierra County. The unclaimed certified mail packet was returned to the Central Valley Water Board on 26 July 2012.

Therefore, the Central Valley Water Board is obligated to use a process server to insure that you have received the enclosed documents.

If you have questions regarding the contents of this letter, please contact Jeff Huggins of my staff at (916) 464-4639 or jhuggins@waterboards.ca.gov

FREDERICK MOSS
Assistant Executive Officer

Enc:

1. Revised 3 August 2012 California Water Code 13267 Order for Technical and Monitoring Reports for the Galena Lode Claim in Sierra County
2. 15 May 2012 Forest Service Photo-log
3. 19 June 2012 Central Valley Water Board Photo-log
4. SWRCB Resolution 92-49

cc: Genice Froehlich, District Ranger-Yuba River Ranger District, Tahoe National Forest, Camptonville, CA
Rick Weaver, U.S. Department of Agriculture, Tahoe National Forest, Nevada City
Bill Miller, California Department of Fish and Game, Rancho Cordova
Bill Jennings, California Sportfishing Protection Alliance, Berkeley
Patrick Pulupa, Staff Counsel, Office of Chief Counsel, SWRCB, Sacramento



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Central Valley Regional Water Quality Control Board

21 June 2012

Revised 6 August 2012

Clark Pearson
15329 Little Valley Road, SPC 33
Grass Valley, CA 95949

CERTIFIED MAIL NUMBER
7012 0470 0000 9904 0030

CALIFORNIA WATER CODE 13267 ORDER FOR TECHNICAL AND MONITORING REPORTS, GALENA LODE CLAIM, SIERRA COUNTY

In a letter dated 25 May 2012 and sent to the Central Valley Water Board, the U.S. Forest Service (the "Forest Service") transmitted the findings of an inspection of your mining operations at the Galena Lode Claim (the "Site") located in Township 18N, Range 9E, Section 10 MDM, within the Yuba River Ranger District of the Tahoe National Forest. On 15 May 2012, Forest Service staff observed and documented (see enclosed Photo-log) that your operations are causing significant environmental impacts to National Forest Lands, including, but not limited to:

- *"Significant resource damage to Grouse Creek from the mining/milling operations within the channel. You have set up your mill circuit in a tributary channel of Grouse Creek. It is estimated that you have filled in 150' of stream bed channel. ...During the survey, Forest Service employees noted that the waste discharged from you operations is adversely affecting Grouse Creek on both National Forest lands and the adjoining private property."*
- *"You are using lands to store waste ore and/or tailings from your mining operations without authorization. This unlined waste dump is immediately adjacent to the tributary channel to Grouse Creek and is subject to erosion and sedimentation discharging into the creek."*
- *"You are discharging very fine clay and silty sands from your processing plant directly into the tributary channel to Grouse Creek resulting in adverse impacts to aquatic habitat without permits or authorization."*

Based on a review of the information contained in the 25 May 2012 letter and the photographs provided by the Forest Service, and a 19 June 2012 Central Valley Water Board inspection of the Galena Mine with the Forest Service, Central Valley Water Board staff has determined that your mining and milling activities at the Site are resulting in the illegal discharge of mining waste to waters of the state. Your activities have impacted drainage areas and are resulting in the discharge of storm water runoff and sediment to Grouse Creek, a tributary to the Middle Fork of the Yuba River. Irrespective of whether or not you have a valid mining claim, your mining and milling activities pose a significant and substantial threat to water quality, and these activities are resulting in violations of the California Water Code and the federal Clean Water Act.

The violations noted are described below:

KARL E. LONGLEY SCD, P.E., CHAIR | PAMELA C. CREEDON P.E., BCCE, EXECUTIVE OFFICER

11020 Sun Center Drive #200, Rancho Cordova, CA 95670 | www.waterboards.ca.gov/centralvalley

Violations:

- A. Water Code section 13260 requires that any person discharging or proposing to discharge waste that could affect the quality of the waters of the state file a report of the discharge with the appropriate regional board. A search of our permitted mining facilities finds that you have never filed a report of waste discharge ("ROWD") to obtain Waste Discharge Requirements ("WDRs"), which would provide regulatory coverage for discharges of mining waste from the Site.
- B. Your activities at the Site are resulting in the discharge of mining waste directly to a tributary of Grouse Creek, which is a violation of the federal Clean Water Act (33 U.S.C. § 1311.) and state law (Wat. Code, § 13385.). Under these laws, the discharge of pollutants to surface waters without a federal or state permit, such as a National Pollutant Discharge Elimination System ("NPDES") permit, is illegal, thereby subjecting you to civil and criminal penalties.
- C. Mining activities at the Galena Lode Claim also are resulting in the discharge of pollutant-laden stormwater to surface waters. Under federal and state law, these discharges must receive coverage under the *NPDES General Permit for Discharges of Storm Water Associated with Industrial Facilities* (Order 97-03-DWQ), which requires that you file a Notice of Intent to apply for coverage under this permit with the State Water Board.

To address these violations, this letter hereby requires that you submit reports concerning your mining operations to the Central Valley Water Board pursuant to Water Code sections 13267 and 13260

Water Code section 13267 states, in relevant part:

[T]he 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 ... 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 those 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.

The Central Valley Water Board is requesting these reports to ensure compliance with applicable laws and regulations, including the *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins*, Fourth Edition, revised September 2009 (the "Basin Plan"). Discharges from mining activities such as those conducted at the Site threaten the beneficial uses of the receiving waters delineated in the Basin Plan, and pose a significant risk to aquatic life. You (Clark Pearson) are being asked to provide these reports because you operate mining claim(s) at the Site, and are responsible for the wastes generated at the Site.

Required Reports:

1. By ~~20 July 2012~~ **4 September 2012**, you shall submit a ROWD for the Galena Lode Claim mining operations. **No further mining activities are allowed until this report is submitted.** Consistent with Water Code section 13264, you are required to submit a complete ROWD at least 140 days prior to discharging any additional mining waste. Discharging waste without first securing WDRs or a waiver is a violation of the Water Code and exposes you to enforcement action(s), including administrative civil liability.

2. By ~~27 July 2012~~ **4 September 2012**, you must submit a Notice of Intent to comply with the State Water Board's *NPDES General Permit for Discharges of Storm Water Associated with Industrial Facilities* (Order 97-03-DWQ) for discharges of storm water from the facility. Permit information can be downloaded from the internet at: http://www.waterboards.ca.gov/centralvalley/available_documents/index.html#StormWaterPermits.
3. By ~~24 August 2012~~ **8 October 2012**, you must submit a report which assesses the nature and extent of the mining waste discharged at the Site and provide the reports required by Water Code section 13260(k) to the Central Valley Water Board. If the Galena Lode Claim portal discharges water, a report shall be submitted that evaluates the potential of the portal water to produce acid mine drainage, the discharge of heavy metals, or the release of other hazardous substances.
4. By ~~21 September 2012~~ **9 November 2012**, you must submit a cleanup and abatement plan for all mining waste discharged at the Site in accordance with Division 2 of Title 27 of the California Code of Regulations and State Water Board Resolution No. 92-49.

Reports: Any technical report required herein that involves planning, investigation, evaluation, engineering design, or other work requiring interpretation and proper application of engineering or geologic sciences shall be prepared by or under the direction of persons registered to practice in California pursuant to California Business and Professions Code sections 6735, 7835, and 7835.1. As required by these laws, completed technical reports must bear the signature(s) and seal(s) of the registered professional(s) in a manner such that all work can be clearly attributed to the professional responsible for the work.

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, may issue a complaint for administrative civil liability, or may take other enforcement actions. Failure to comply with this Order may result in the assessment of Administrative Civil Liability of up to \$10,000 per violation, per day, depending on the violation, pursuant to the Water Code, including sections 13268, 13350 and 13385. 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 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 Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order 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.

If you have questions regarding the contents of this letter, please contact Jeff Huggins of my staff at (916) 464-4639 or jhuggins@waterboards.ca.gov



FREDERICK MOSS
Assistant Executive Officer

- Enc: 15 May 2012 Forest Service Photo-log
19 June 2012 Central Valley Water Board Photo-log
SWRCB Resolution 92-49
- cc: Genice Froehlich, District Ranger-Yuba River Ranger District, Tahoe National Forest,
Camptonville, CA
Rick Weaver, U.S. Department of Agriculture, Tahoe National Forest, Nevada City
Bill Miller, California Department of Fish and Game, Rancho Cordova
Bill Jennings, California Sportfishing Protection Alliance, Berkeley
Patrick Pulupa, Staff Counsel, Office of Chief Counsel, SWRCB, Sacramento