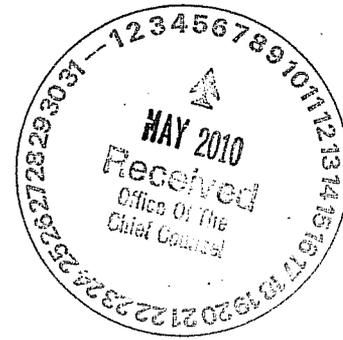


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Attorney for Respondents CAL-SIERRA PROPERTIES,
ROY D. WHITAKER, and GLADYS WHITEAKER,

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

CENTRAL VALLEY REGION

RE: WIDE AWAKE MERCURY MINE

No. R5-2010-XXXX

COMMENTS ON PROPOSED TECHNICAL AND MONITORING REPORT ORDER

Ms. Pamela Creedon, Executive Officer
State Water Resource Control Board
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95870

Ms. Lori Okun, Senior Staff Counsel
Office of Chief Counsel
State Water Resource Control Board
1001 I Street
Sacramento, CA 95814

Dear Ms. Creedon and Ms. Okun:

I represent CAL-SIERRA PROPERTIES. I represent under protest, ROY D. WHITAKER and GLADYS WHITAKER.

ROY D. WHITEAKER and GLADYS WHITAKER do not concede the jurisdiction of the Water Quality Control Board. They never personally owned the WIDE AWAKE MINE Property. They had nothing whatsoever to do with the now closed mine. They did not operate any mining operations. Their belated addition to the list of Respondents after the start of hearings denied them Due Process of Law. By joining the response, ROY D. And GLADYS WHITAKER do so solely for the purpose of objecting to their inclusion as Respondents. They do not concede jurisdiction.

Respondents CAL-SIERRA PROPERTIES, ROY D. WHITEAKER, and GLADYS WHITEAKER adopt the 17 comments on draft order submitted by ROBERT LEAL. With a few factual exceptions, they are all applicable to Respondents.

Since the “dischargers: are all jointly and severally liable for the cost of clean up, the arbitrary inclusion and exclusion of owners constitutes a violation of Respondents’ right to Due Process of Law. Due Process of law requires fairness on the part of government. It is not fair to add parties to the Respondent list with no reason. It is likewise unfair to the remaining Respondents to remove jointly and severally liable parties for costs of clean up from the list of potentially liable “dischargers.”

As Homestake Mine Respondents have put it, “The Draft Order does not directly address Homestake’s argument that it were to be liable for all the WIDE AWAKE MINE; it should not be jointly and severally liable, because the alleged harm is reasonably divisible.” (underscore

added)

The Draft Order, as modified, addresses the objection of parties to current and interim owners, operators, and lessees are jointly and severally liable despite the facts they did not contribute to the discharges. As already indicated, this is a violation of Due Process of Law in its unfairness to Respondents.

Respondents adopt the portions of Homestake's comments regarding In the matter of U.S. Cellulose, WQ92-04 as cited by Homestake.

Regarding Paragraph 44, Respondent CAL-SIERRA PROPERTIES has suggested corrective measures to the WIDE AWAKE MINE Property. "Discharger" Merced General Construction, Inc. has the equipment to perform a "clean-up." The mine might be re-opened and used as a receptacle for the tailings. The tailings could simply be buried.

Paragraph 52 should be stricken from the report. It raises a completely new issue not dealt with at the October 7, 2009, hearing. Water Board counsel make a "Johnny come lately" argument against estoppel by laches. Estoppel by laches was raised in the Respondent's October 7 pleadings, was argued on October 7, was never responded to in any way, verbally or in writing by the Water Control Board counsel. Their reason for the October 7, continuance was they needed time to investigate and not for time to research.

Paragraph 54 refers to subsequent owners of contaminated property and provides such parties "will not have further clean-up responsibility if the timing of the waste discharge relative to property ownership or control was such [the owner] did not cause or permit the discharge of waste."

If the Water Board counsel rely on Paragraph 54, they should consider dropping the

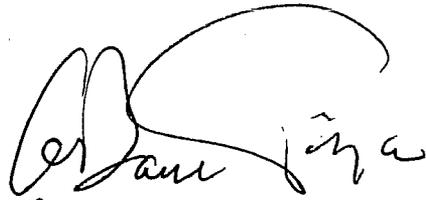
Respondents from the Order

The Respondents did not cause or permit the discharge of waste. If a discharge of waste occurred, it was caused by former owners, not the Respondents.. Discharge of waste was not permitted by the Respondents; the Respondents had no knowledge of any discharge of waste. Without knowledge of it, the owner could not permit it.

The Water Board attorney's do not meet the standard of "the ordinary, contemporary, and common meaning" of the phrase "interim owners." Zimmerman v Oregon Dept. Of Justice, 170 F3d 1169, 1147 (9th Circuit, 1999).

Two week's notice to respond is unfair and violates Respondents' right to Due Process of Law.

Respectfully submitted May 4, 2010.

A handwritten signature in black ink, appearing to read "G. Dave Teja". The signature is written in a cursive style with a large, sweeping flourish at the end.

G. Dave Teja, Attorney for CAL-SIERRA PROPERTIES, ROY D. WHITAKER, and GLADYS WHITEAKER, Respondents.

PROOF OF SERVICE

Case Name: **California Regional Water Quality Control Board, Central Valley Region**
Case Number: **5R-2010-XXXX**
Regarding: **WIDE AWAKE MINE**

I am a citizen of the United States, employed in SUTTER County, California, am over the age of eighteen years and not a party to the above-entitled action. My business address is 799 Plumas Street, Suite B, Yuba City, CA 95991. On **May 4, 2010**, I served the following documents:

Comments on Proposed Technical and Monitoring Report Order

MANNER OF SERVICE

U. S. MAIL: by causing a true copy of the above document(s) to be placed into a sealed envelope, addressed as listed below and depositing the envelope directly in the United States mail with postage paid. Place of deposit: **United States Post Office at 761 Plumas Street, Yuba City, California 95991**

PERSONAL SERVICE: By causing a true copy of the above document(s) to be personally delivered by hand to the addressee(s) listed below:

OTHER: By causing a true copy of the above document(s) to be delivered to the addressee(s) listed below by and /or through: _____

PARTIES SERVED AND ADDRESSES

Homestake Mining Company Gerald F George, Esq., PO Box 7880 San Francisco, CA 94120-7880	Emma G. Trebilcot Trust Sean K. Hungerford, Esq. 400 Capitol Mall, Suite 1800 Sacramento, CA 95814
Robert Leal PO Box H Yuba City, CA 95992-0768	David G. Brown PO Box 246 Lima, MT 59739
NBC Leasing, Inc. Thomas E. Nevis 319 Teegarden Ave Yuba City, CA 95991	Glen Mills, Inc. Beverly M. Mills, 203 Court Street Woodland, CA 95695
Roy Tate 676 Magnolia Road Marysville, CA 95901	Pamela Creedon, Executive Officer 11020 Sun Center Dr., Ste 200 Rancho Cordova, CA 95670
US Bureau of Land Management Gary Sharpe, Asst. Field Office Manager Ukiah Field Office 2550 North Street Ukiah, CA 95482	Lori Okun, Staff Counsel State Water Resources Control Board Office of the Chief Counsel 1001 I St. Sacramento, CA 95814

Kenneth Landau Asst Executive Officer 11020 Sun Center Drive, Ste. 200, Rancho Cordova, CA 95670	Joe Karoski Asst. Executive Officer (Acting) 11020 Sun Center Dr., Ste. 200 Rancho Cordova, CA 95670
Victor Izzo Senior Engineering Geologist 11020 Sun Center Dr., Ste. 200 Rancho Cordova, CA 95670	Jeffery Huggins Water Resource Control Engineer 11020 Sun Center Dr., Ste. 200 Rancho Cordova, CA 95670
Lawrence S. Bazel, Esq. Frisco Ivester & Bazel 155 Sansome Street, Seventh Floor San Francisco, CA 95991	Kevin Garcia Merced General Construction, Inc. 2370 West Cleveland Avenue, #123 Madera, CA 93637

I declare under penalty of perjury of under the laws of the State of California that the foregoing is true and correct. Executed **May 4, 2010** in Yuba City, California.



Linda M. Cunningham