

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

RESOLUTION R5-2011-XXXX

AUTHORIZING THE EXECUTIVE OFFICER TO ENTER INTO AN AGREEMENT FOR
MUTUAL RELEASE AND COVENANT NOT TO SUE
FOR
THE WIDE AWAKE MERCURY MINE
AND
THE CENTRAL, CHERRY HILL, EMPIRE, MANZANITA AND WEST END MINE
PROPERTIES
COLUSA COUNTY, CALIFORNIA

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

- 1. Jurisdiction:** The Wide Awake Mercury Mine property and the Central, Cherry Hill, Empire, Manzanita and West End Mine properties (the “Central Mine Group”) (collectively “the Properties”) are located in Colusa County, California. The Properties are more particularly described in Attachment B, legal descriptions and map. The Central Valley Water Board has alleged that mining wastes containing mercury compounds have been eroding from the Properties and discharging into waters of the State, creating a condition of pollution or nuisance. The Central Valley Water Board is the lead agency for site cleanup at the Properties.
- 2. Site Status:** On November 13, 2009, a panel of the Central Valley Water Board held a public hearing to receive evidence regarding alleged water quality impairments at the Properties, and subsequently issued a recommendation to the full Board. Following that recommendation, the Central Valley Water Board on May 27, 2010, held a further public hearing and, under the authority of Water Code section 13267, issued Technical and Monitoring Report Orders R5-2010-0048 and R5-2010-0049 (the “Orders”), which require further study of water quality concerns at the Properties. The Orders name several entities as Designated Persons and Dischargers, including Homestake Mining Company of California (“Homestake”). On June 28, 2010, Homestake filed timely petitions with the State Water Resources Control Board (“State Water Board”) for review of the Orders, and requested that the petitions be held in abeyance to allow for completion of settlement discussions with the involvement of the Executive Director of the Central Valley Water Board. On July 2, 2010, the State Water Board granted the request, and agreed to hold the petitions in abeyance until at least December 31, 2010. On November 30, 2010, the State Water Board granted a request to continue that abeyance until June 30, 2011.
- 3.** Homestake and the Central Valley Water Board’s Prosecution Team (consisting of members of the Central Valley Water Board that are pursuing cleanup of the Properties) have presented a proposed settlement to the Central Valley Water Board for its approval. While the settlement does not contain any admission of liability by

4. **Board Authority:** Pursuant to Water Code section 13300 et seq., the Central Valley Water Board has authority to release and covenant not to sue or assert claims for environmental investigation or remediation or other related claims against potentially responsible parties if such agreements are sufficiently in the public interest to warrant expending the public resources necessary to reach such agreement.

5. The *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins*, Fourth Edition, revised September 2009 (the “Basin Plan”) contains an implementation program designed to guide the remediation of past and existing discharges of mercury-laden sediment to the Cache Creek Watershed (the “Cache Creek Mercury Program”). The remedial activities that Homestake has agreed to undertake in exchange for a mutual release and covenant not to sue are essential components of the Cache Creek Mercury Program. However, the remedial activities proposed by Homestake will not complete the environmental remediation actions required by the Basin Plan; additional responsible parties will be pursued by the Board to accomplish the remaining obligations. The following is a list of the actions required by the Basin Plan’s Cache Creek Mercury Program that have yet to be implemented at the Properties:
 - a. Reduce loads of total mercury from inactive mines;
 - b. Where feasible, implement projects to reduce total mercury inputs from mercury-containing sediment deposits in creek channels and creek banks downstream from historic mine discharges;
 - c. Reduce erosion of soils with enriched total mercury concentrations;
 - d. Limit activities in the watershed that will increase methylmercury discharges to the creeks and, where feasible, reduce discharges of methylmercury from existing sources; and
 - e. Evaluate other remediation actions that are not directly linked to activities of a discharger.

Homestake’s proposed remedial actions are designed to implement required actions a., c. and d., above, by removing a significant source of eroding mercury-enriched soil that was created during historic mining operations.

6. The stated goal of the Basin Plan's Cache Creek Mercury Program, as far as the inactive mines are concerned, is to, "...restore the mines to pre-mining conditions with respect to the discharge of mercury." Homestake's proposed remedial actions will further this goal.
7. Although the Basin Plan recognizes that, "[m]ethylmercury allocations will be achieved in part by natural erosion processes that remove mercury that has deposited in creek beds and banks since the start of mining," additional actions will be required of other responsible parties to remediate mercury and methylmercury impacts in the Cache Creek watershed. As stated in Table IV-6.3 of the Basin Plan, those other responsible parties have responsibility for implementation of supplemental activities with respect to addressing methylmercury, including:
 - a. Cleanup mines, sediment, and wetlands in Bear Creek, Harley Gulch, and Sulphur Creek:¹ mine owners and other responsible parties, United States Bureau of Land Management ("BLM").
 - b. Conduct additional studies, submit engineering reports, and conduct projects designed to remove or minimize the impact of mercury-enriched sediment in the Harley Gulch Delta: BLM.
 - c. Conduct studies to explore the feasibility of remediating in-creek and in-floodplain sediments in the Upper Cache Creek watershed: BLM, State Lands Commission, Colusa, Lake and Yolo Counties, and private landowners.
 - d. Conduct studies and develop, submit, and implement erosion control plans to prevent the discharge of "enriched" mercury sediments from entering the Cache Creek upper watershed: BLM, State Lands Commission, Colusa, Lake and Yolo Counties, and private landowners.
 - e. Implement management practices and monitoring for erosion control from new projects in the 10-year floodplain: Yolo County, Reclamation Board, private landowners, and the US Army Corps of Engineers.
 - f. Submit plans to control methylmercury discharges from new reservoirs, ponds, and wetlands in the Cache Creek watershed: Yolo County or project proponents.

The mutual release and covenant not to sue that will be provided by the Central Valley Water Board for the Properties in exchange for Homestake's implementation of the proposed remedial activities exempt Homestake from any additional obligations related to any of the above implementation provisions or any of the required implementation measures recited in Finding No. 5.

¹ The Central Valley Water Board's Prosecution has alleged that Homestake is one of the parties for undertaking these actions. The Mutual Release and Covenant Not to Sue will release Homestake from all of these alleged obligations upon implementation of the proposed workplan.

8. **CEQA:** The granting of a Covenant Not to Sue does not constitute a “project” as defined by Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378(a). Thus, this action is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code § 21000 et seq.).
9. **Public Notice:** The Board provided notice of its intention to consider this matter at the April 6/7/8, 2011, Central Valley Water Board meeting and provided an opportunity for interested persons, including all Designated Persons and Dischargers at the Properties, to comment on the draft resolution and its attachments.
10. **Public Hearing:** The Central Valley Water Board, at a public meeting, heard and considered all comments pertaining to the alleged discharges at or from the Properties.

NOW, THEREFORE BE IT RESOLVED, that the Central Valley Water Board, having considered the facts regarding the water quality concerns and the involvement of Homestake at the Properties, and having considered the terms of the proposed settlement, after notice to and full opportunity to be heard for all affected parties, including all Designated Persons and Dischargers, finds that the proposed agreement, release and covenant not to sue are in the public interest, and authorizes the Executive Officer to negotiate minor amendments to the draft Mutual Release and Covenant Not To Sue (Attachment A) and to sign and execute the Mutual Release and Covenant Not to Sue (Attachment A as amended) with Homestake Mining Company of California.

I, PAMELA C. CREEDON, Executive Officer, do hereby certify that the foregoing is a full, true and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, Central Valley Region, on _____, 2011.

PAMELA C. CREEDON, Executive Officer

Attachment A: Mutual Release and Covenant not to Sue
Attachment B: Property Description
Attachment C: Workplan