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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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COMMUNITY ENVIRONMENTAL
ADVOCATES FOUNDATION,

Plaintiff,

v.

RISE GRASS VALLEY, INC.,

Defendant.

No. 2:24-cv-03643-WBS-CSK

MEMORANDUM AND ORDER

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This case concerns pollutants allegedly emitted from a subsurface gold mine owned by defendant. It involves just one claim: that defendant discharged those pollutants into a local creek without a permit in violation of the Clean Water Act (the "CWA"), 33 U.S.C. §§ 1311(a), 1365(a), 1365(f). (See Docket No. 1 (Compl.) at 17-18.)

I. Factual Background

The Idaho-Maryland Mine (the "Mine") is a "large, subsurface gold mine" in Nevada County, California, near the City

1 of Grass Valley, California. (Docket No. 33-1 at 2.) The Mine
2 "consists of various underground workings, including
3 approximately 73 miles of tunnels," various shafts, and other
4 structures called "raises, winzes, slopes, and lateral drifts."
5 (Id.)

6 The Mine's existing shafts include the New Brunswick
7 Shaft, the Eureka Shaft, and the East Eureka Shaft. (Id. at 3.)
8 The Eureka and East Eureka Shafts are connected to the rest of
9 the Mine's "underground workings," including the New Brunswick
10 Shaft. (Id. at 3-4.)

11 In 2017, defendant Rise Grass Valley, Inc. ("Rise")
12 purchased the Mine complex. (Id. at 4.) Rise's "ownership
13 interest in the Mine" includes "all . . . subsurface workings of
14 the Mine that are more than 200 feet below the ground surface."
15 (Id. at 5.) Rise also owns two surface-level industrial sites
16 that are "associated" with the Mine and "overlie" the Mine's
17 "mineral estate": the Centennial Industrial Site and the
18 Brunswick Industrial Site. (Id. at 5-6.) The Brunswick
19 Industrial Site "encompasses the surface opening of the New
20 Brunswick Shaft." (Id. at 6.)

21 The Mine stopped operating in the 1950s, and its "miles
22 of underground workings were allowed to flood with water." (Id.)
23 Now, the Mine holds approximately 385 million gallons of water,
24 over 90 percent of which lie "more than 580 feet below the ground
25 surface." (Id.) Water samples collected from the New Brunswick
26 Shaft at depths more than 200 feet below ground surface contain
27 iron concentrations at "approximately five times" greater than
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1 federal limits. (Id. at 7.) Similarly, manganese concentrations
2 from that same shaft sampled on February 15, 2018, were also
3 "approximately five times" greater than federal limits. (Id. at
4 7-8.)

5 The water within the Mine is not static; rather, it
6 seeps into the shafts and throughout the Mine's underground
7 workings. (Id. at 8.) Generally, water within the Mine's
8 underground workings "flows downward through the Mine's
9 horizontal shafts until it reaches a horizontal tunnel or drift";
10 it can then flow "northwest, toward the Eureka Shaft and East
11 Eureka Shaft." (Id. at 9.)

12 The parties dispute whether the Eureka Shaft is
13 connected to the Eureka Drain. (Id. at 10.) The parties do not
14 dispute, however, that water flowing from the Eureka Drain
15 "discharges to Wolf Creek." (Id. at 12.) Likewise, the parties
16 dispute whether the East Eureka Shaft is connected to the East
17 Eureka Shaft Drain (id. at 12-13), but do not dispute that water
18 flowing from the East Eureka Shaft Drain runs to Wolf Creek (id.
19 at 13). Nevertheless, one set of water samples revealed that
20 arsenic levels in Wolf Creek downstream of the various drains
21 were more than double the arsenic levels upstream of those
22 drains, and another set of water samples revealed that iron and
23 manganese levels in Wolf Creek downstream of those drains were
24 "markedly higher" than the concentrations upstream of those
25 drains. (Id. at 19.)

26 Rise sought to re-open the Mine after purchasing it.
27 (Id. at 21.) To do so, it applied for "several discretionary
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1 land use approvals from Nevada County in 2020," pursuant to which
2 it was required to "analyze the environmental impacts of the Mine
3 reopening project under the California Environmental Quality
4 Act." (Id.) As part of this process, Rise commissioned several
5 technical reports to support its permit applications and inform
6 Nevada County's environmental review. (Id.)

7
8 One such report was prepared by EMKO Environmental,
9 Inc., in February 2021 (the "EMKO Report"). This report
10 hypothesized that the water discharging from the Eureka Drain,
11 the East Eureka Shaft Drain, and the East Eureka Shaft
12 "originated in the Mine's flooded underground workings, including
13 the New Brunswick Shaft." (Id. at 23.)

14 Nevada County commissioned an independent peer review
15 of the EMKO Report as part of its environmental review. (Id. at
16 27.) This report, which was prepared by the West Yost
17 engineering firm, (the "West Yost Report"), concluded that "the
18 EMKO Report adequately describes and interprets the relevant
19 discharge water quality data." (Id.)

20 Rise also commissioned a technical study of "the
21 existing Mine features located near the ground surface." (Id. at
22 28.) This report was finalized by the engineering firm NV5 in
23 September 2020 (the "NV5 Report"). The NV5 Report states that
24 the "similarities between the Eureka Drain and Eureka Shaft
25 suggest[] that the two are hydraulically connected." (Id. at
26 29.)

27 Yet one more technical report features here. This
28 report was commissioned by Rise and prepared by Geocon

1 Consultants, Inc., on November 1, 2024 (the "Geocon Report").
2 The Geocon Report referenced "waste discharge to surface water
3 from the . . . Mine" and discharges from the "three drains . . .
4 that discharge to Wolf Creek." (Id. at 39.) This report also
5 represented that the Eureka Drain, the East Eureka Shaft Drain,
6 and the East Eureka Shaft discharge to Wolf Creek and found that
7 water samples collected from these drains in 2018 and 2019
8 included "elevated concentrations of arsenic, iron, and
9 manganese," in excess of federal limits. (Id. at 40-41.)

10 II. Parties and Procedural Background

11 Plaintiff Community Environmental Advocates Foundation
12 ("CEA") is a nonprofit organization based in Nevada County,
13 California. (Id. at 32.) It was formed in 2017 and has since
14 "worked to carry out research, education, and advocacy to promote
15 public policy and actions resulting in responsible land use in
16 the County and the broader Sierra Nevada region, with the goals
17 of preserving the area's natural, rural, and cultural resources."
18 (Id. at 33.) CEA and its members have "engaged in research and
19 advocacy regarding Rise's proposal to re-open the Mine," (id.),
20 including by serving Rise with a "Notice of Ongoing Violations
21 and Intent to File a Citizen Suit under the Clean Water Act" (the
22 "Notice") on September 5, 2024 (id. at 36-37).

23 The Notice explained that Rise was violating the CWA by
24 "allowing polluted water from its Mine workings to discharge to
25 Wolf Creek" without a valid permit. (Id. at 37.) It also
26 advised that CEA intended to file suit under the CWA if Rise did
27 not remedy its alleged violations within 60 days. (Id.)
28

1 On November 1, 2024, Rise submitted a discharge permit
2 application to the relevant authority. (Id. at 37-38.) In its
3 application, Rise stated that it was "seeking permit coverage for
4 existing discharge to surface water, and characterized the
5 discharge as related to [m]ining." (Id. at 38 (citation
6 modified).) The precise status of Rise's permit application is
7 unknown, but it is undisputed that Rise has yet to receive a
8 permit.

9 The instant action followed shortly thereafter. The
10 matter now before the court is CEA's motion for partial summary
11 judgment as to Rise's liability under the CWA. (See Docket No.
12 22 at 36.)

13 III. Analysis

14 Summary judgment is proper "if the pleadings, the
15 discovery and disclosure materials on file, and any affidavits
16 show that there is no genuine issue as to any material fact and
17 that the movant is entitled to judgment as a matter of law." Fed.
18 R. Civ. P. 56(c). A material fact is one that could affect the
19 outcome of the suit, and a genuine issue is one that could permit
20 a reasonable jury to enter a verdict in the non-moving party's
21 favor. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248
22 (1986).

23 a. Standing

24 "At the summary judgment stage, [a] plaintiff[] must
25 identify 'specific facts' establishing standing." California ex
26 rel. Imperial Cnty. Air Pollution Control Dist. v. U.S. Dep't of
27 the Interior, 767 F.3d 781, 789 (9th Cir. 2014) (quoting Clapper
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1 v. Amnesty Int'l USA, 568 U.S. 398, 412 (2013)). The Ninth
2 Circuit has found that the Clean Water Act's citizen-suit
3 provision "extends standing to the outer boundaries set by the
4 'case or controversy' requirement of Article III of the
5 Constitution." Ecological Rts. Found. v. Pac. Lumber Co., 230
6 F.3d 1141, 1147 (9th Cir. 2000). Accordingly, the court
7 determines whether plaintiff CEA has standing under Article III
8 of the Constitution. See id.

9 [A]n association has standing to bring suit on behalf
10 of its members when: (a) its members would otherwise have
11 standing to sue in their own right; (b) the interests it seeks to
12 protect are germane to the organization's purpose; and (c)
13 neither the claim asserted nor the relief requested requires the
14 participation of individual members in the lawsuit." United Food
15 & Com. Workers Union Loc. 751 v. Brown Grp., Inc., 517 U.S. 544,
16 553 (1996) (citation omitted).

17 In turn, for one of CEA's members to have "standing to
18 sue in [his] own right," id., he must "demonstrate three
19 elements": (1) an injury-in-fact that is "concrete and
20 particularized" and "actual or imminent"; (2) a causal
21 connection, meaning the injury must be "fairly traceable" to the
22 "conduct complained of," and (3) redressability, meaning that a
23 "favorable decision" would be "likely to redress the injury-in-
24 fact," Barnum Timber Co. v. U.S. E.P.A., 633 F.3d 894, 897 (9th
25 Cir. 2011) (citation modified). "The 'injury in fact'
26 requirement in environmental cases is satisfied if an individual
27 adequately shows that [h]e has an aesthetic or recreational
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1 interest in a particular place, or animal, or plant species and
2 that that interest is impaired by a defendant's conduct."

3 Ecological Rts. Found., 230 F.3d at 1147 (collecting cases).

4 i. Standing of Member to Sue in His Own Right

5 CEA argues that its members -- including Denise Bellas,
6 Jonathan Keehn, and Ralph Silberstein -- have standing to sue in
7 their own right. (See Docket No. 35 at 7-10.) The court agrees.

8 Silberstein has established an injury-in-fact. As a
9 "resident of the City of Grass Valley in Nevada County,
10 California" for nearly thirty years, he has "recreated in and
11 around the vicinity of Wolf Creek" for that duration. (Docket
12 No. 26 (Silberstein Decl.) at 5.) He used to "fish, swim, and
13 wade in the Creek" but has stopped doing so "because of pollution
14 concerns." (Id.) In particular, he has ceased consuming the
15 fish he used to catch in Wolf Creek "due to concerns about the
16 potential adverse effects of the pollution from the Mine" to the
17 water of that Creek and resulting risks to his health. (Id. at
18 5-6.) Defendant does not appear to dispute that Silberstein has
19 established an injury-in-fact (see Docket No. 33 at 26-27), nor
20 could it, because the Supreme Court has found environmental
21 plaintiffs to have established an injury-in-fact under
22 indistinguishable circumstances. See Friends of the Earth, Inc.
23 v. Laidlaw Env't Servs. (TOC), Inc., 528 U.S. 167, 182-83 (2000)
24 (finding injury-in-fact where individual wished to "fish, hike,
25 and picnic along" body of water but "refrained from those
26 activities" due to pollution); see also Ecological Rts. Found.,
27 230 F. 3d at 1149-50 (describing Laidlaw).

1 Defendant argues that Silberstein's injury is not
2 "fairly traceable" to its actions because Silberstein has failed
3 to establish that the Mine is responsible for the pollution in
4 Wolf Creek. (Docket No. 33 at 27.) This argument conflates the
5 merits of plaintiff's CWA claim with whether plaintiff has
6 standing. See Ecological Rts. Found., 230 F. 3d at 1152. The
7 Ninth Circuit has explained that a plaintiff "need not prove to a
8 scientific certainty" that the defendant "has, in fact,
9 discharged pollutants in violation of its permits in order to
10 obtain standing" to assert a CWA claim. Id. (emphasis in
11 original); see also California Sportfishing Prot. All. v. All
12 Star Auto Wrecking, Inc., 860 F. Supp. 2d 1144, 1152 (E.D. Cal.
13 2012) (Mendez, J.) (applying Ecological Rts. Found.). Indeed,
14 "[i]n the CWA context, causation does not require pinpointing the
15 origins of particular molecules; instead, a plaintiff must merely
16 show that a defendant discharges a pollutant that causes or
17 contributes to the kinds of injuries alleged in the specific
18 geographic area of concern." Californians for Alternatives to
19 Toxics v. Schneider Dock & Intermodal Facility, Inc., 374 F.
20 Supp. 3d 897, 909 (N.D. Cal. 2019) (quotations omitted).
21 Silberstein has done so here, most saliently by referencing
22 within and attaching to his declaration a letter in which he
23 documents the excess pollutants measured in Wolf Creek that the
24 Mine allegedly emitted. (See Silberstein Decl. at 9-11.)

25 Silberstein's injury would also be redressed if
26 defendant were to rectify the pollutants their Mine allegedly
27 emitted. See Barnum Timber Co., 633 F.3d at 897. Accordingly,
28

1 Silverstein has standing to sue in his own right. See id.¹

2 ii. Interests Germane to Organization's Purpose

3 In bringing the instant action challenging pollution to
4 local waters, CEA clearly seeks to protect interests "germane" to
5 its "purpose," Hunt v. Washington State Apple Adver. Comm'n, 432
6 U.S. 333, 343 (1977), namely, "carry[ing] out research,
7 education, and advocacy to promote public policy and actions
8 resulting in responsible land use and environmental protection in
9 Nevada County and the Sierra Nevada region, with the overall goal
10 of preserving the area's natural, rural, and cultural resources,"
11 (Silverstein Decl. at 2).

12 iii. Participation of Individual Members

13 "The participation of individual members is not
14 required when the claims proffered and relief requested do not
15 demand individualized proof on the part of an association's
16 members." Gay-Straight All. Network v. Visalia Unified Sch.
17 Dist., 262 F. Supp. 2d 1088, 1105 (E.D. Cal. 2001) (Wanger, J.).
18 In its complaint, plaintiff requests declaratory and injunctive
19 relief as well as the assessment of civil monetary penalties
20 against defendant. (Docket No. 1 at 18-19.) None of the forms
21 of relief CEA requests requires the participation of its
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23
24 ¹ The court need not address whether the other CEA members
25 have standing to sue in their own right for the purposes of
26 determining whether CEA has associational standing. See
27 Ecological Rts. Found., 230 F.3d at 1150 n.10 ("If the sole
28 affiant could have brought a citizen suit as an individual, then
he has stated an injury in fact sufficient to confer standing on
an organization that seeks to sue on his behalf.").

1 individual members. See Oregon State Pub. Int. Rsch. Grp., Inc.
2 v. Pac. Coast Seafoods Co., 361 F. Supp. 2d 1232, 1240 (D. Or.
3 2005) (finding, in CWA action, that "participation of the
4 individual members" of organization was "not required" because
5 "plaintiffs s[ought] an injunction and civil penalties, not
6 individual damages").

7
8 Having determined that an individual member of CEA has
9 standing to sue in his own right, that CEA seeks to protect
10 interests germane to its purpose in bringing this lawsuit, and
11 that CEA's individual members need not participate in this
12 lawsuit to fashion relief, the court finds that CEA has
13 associational standing to bring its CWA claim against defendant.
14 See United Food & Com. Workers Union Loc. 751, 517 U.S. at 553.

15 b. Clean Water Act Claim

16 To establish a violation of the CWA, "a plaintiff must
17 prove that the defendant (1) discharged (2) a pollutant (3) into
18 navigable waters (4) from a point source (5) without a permit."
19 Sierra Club v. El Paso Gold Mines, Inc., 421 F.3d 1133, 1142
20 (10th Cir. 2005), as corrected (Oct. 21, 2005); see also Nat'l
21 Wildlife Fed'n v. Gorsuch, 693 F.2d 156, 165 (D.C. Cir. 1982)
22 (same).² The CWA "defines the phrase 'discharge of a pollutant'
23 to mean 'any addition of any pollutant to navigable waters from
24 any point source.'" S. Fla. Water Mgmt. Dist. v. Miccosukee
25 Tribe of Indians, 541 U.S. 95, 102 (2004) (quoting 33 U.S.C. §
26 1362(12)).

27
28 ² The parties agree that this is the relevant test for
assessing CWA liability. (See Docket No. 35 at 10.)

1 Defendant's argument that the water discharging from
2 the drain constitutes polluted water moving from one "part" of
3 Wolf Creek to another (see Docket No. 33 at 29-31) is flawed
4 because the observed pollutants undisputedly occur in
5 significantly higher concentrations downstream of the surface
6 drains than they occur upstream of the surface drains (see Docket
7 No. 33-1 at 19). If defendant's explanation were accurate, the
8 concentrations of the observed pollutants in Wolf Creek would be
9 similar both immediately upstream and downstream of the surface
10 drains. (See id.)

11 Furthermore, the EMKO Report sampled water discharged
12 from a nearby drain (the "D-1 drain") that had no connection to
13 the Mine's underground workings, and found that, unlike the water
14 samples from the drains that were connected to the Mine's
15 underground workings, water discharged from the D-1 drain did not
16 contain any iron or manganese and contained a fraction of the
17 amount of arsenic sampled from the Mine-connected drains.
18 (Docket No. 35 at 23.) This empirical finding, which defendant
19 does not dispute, bolsters the conclusion that the Mine, not the
20 waters of Wolf Creek, is responsible for the observed pollutants.
21 See Idaho Conservation League, 86 F.4th at 1248 (adding "waste
22 material" produced in mining operation to water that was "not
23 already suspended" in that water constituted "adding" pollutant
24 within meaning of CWA).

25 Nor can the court credit defendant's argument that it is
26 not "adding" the observed pollutants to Wolf Creek because
27 arsenic, iron, and manganese occur naturally when water dissolves
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1 a certain kind of rock present around the Mine. (See Docket No.
2 33 at 30.) CEA “does not dispute that the arsenic, iron, and
3 manganese in the Mine drain discharges may well result from the
4 water contacting surrounding rock as it flows through the Mine’s
5 underground workings.” (Docket No. 35 at 25.) Rather, CEA
6 argues that “the fact that the chemicals may enter the Mine drain
7 water from contact with rock surrounding the Mine workings does
8 not absolve Rise of liability for ‘adding’ these pollutants to
9 Wolf Creek.” (Id.)

10 Based on binding precedent, the court agrees with CEA.
11 The Ninth Circuit has expressly disavowed the “require[ment] of
12 human transformation of all materials identified in the CWA’s
13 definition of ‘pollutant’” for a material to constitute a
14 pollutant within the meaning of that Act. N. Plains Res. Council
15 v. Fid. Expl. & Dev. Co., 325 F.3d 1155, 1163 (9th Cir. 2003).
16 If human transformation were required, the Ninth Circuit
17 explained, “water naturally laced with sulfur could be freely
18 discharged into receiving water used for drinking water simply
19 because the sulfur was not added to the discharged water,” which
20 would be a circumstance that “c[ould] [not] sensibly be
21 credited.” Id. Indeed, to “conclude otherwise” would
22 “improperly undermine the integrity of the CWA’s prohibitions” by
23 focusing on “the alteration of the discharged water” instead of
24 the “receiving body of water” (here, Wolf Creek) that the CWA is
25 designed to protect. Id. at 1162.

26 iii. Point Source

27 “A ‘point source,’ . . . is defined as ‘any
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1 discernible, confined and discrete conveyance,' such as a pipe,
2 ditch, channel, or tunnel, 'from which pollutants are or may be
3 discharged.'" S. Fla. Water Mgmt. Dist. v. Miccosukee Tribe of
4 Indians, 541 U.S. at 102-03 (quoting 33 U.S.C. § 1362(14)).

5 "[M]ining activities" that "release pollutants from a discernible
6 conveyance" constitute "point sources." Trs. for Alaska v.
7 E.P.A., 749 F.2d 549, 558 (9th Cir. 1984). As such, the question
8 here is whether the Eureka Shaft and East Eureka Shaft -- which
9 belong to defendant and allegedly connect to the surface drains
10 that, in turn, discharge polluted water into Wolf Creek --
11 constitute "point sources." (Docket No. 33 at 29.)

12 Defendant's position is that CEA has not demonstrated
13 that the Eureka Shaft and the East Eureka Shaft are connected to
14 the corresponding surface drains that discharge the polluted
15 water into Wolf Creek, so these shafts accordingly cannot be the
16 "point sources" of the pollutants observed in Wolf Creek. (See
17 id.) Specifically, defendant argues that the technical reports
18 described above that it commissioned, and plaintiff repeatedly
19 cites to, do not establish that the Eureka and East Eureka shafts
20 are connected to the surface drains because these reports "were
21 not trying to prove whether the Eureka and East Eureka shafts
22 were connected to" the surface drains and instead "provided" only
23 "conceptual analyses . . . of the Mine's 73 miles of underground
24 shafts and drifts." (Id. at 33.)

25 The court is unpersuaded by this argument. As
26 plaintiff keenly observes, the Geocon Report describes the
27 connections of the surface drains to the Eureka Shaft and the
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1 East Eureka Shaft; a report commissioned by the Environmental
2 Protection Agency (the "Weston Report") states that
3 "[g]roundwater in the underground workings [of the Mine]
4 currently drains through the East Eureka Shaft to Wolf Creek
5 through the East Eureka Outflow located across Wolf Creek" and
6 that "[a] hazardous substance source has been documented at the
7 East Eureka Outflow, where water draining from the mine workings
8 through the East Eureka Shaft was observed flowing directly into
9 Wolf Creek"; the EMKO Report describes the connections between
10 the surface drains to the Eureka Shaft and the East Eureka Shaft;
11 and the NV5 Report concludes that one surface drain is
12 "hydraulically connected" to the Eureka Shaft. (Docket No. 35 at
13 15-16.)

14 Defendant counters with declarations by its experts
15 stating that, in the purported absence of "physical evidence or
16 reports," it is "[m]ore likely than not" that a surface drain "is
17 not connected to the Eureka Shaft," (Docket No. 33-4 at 14),
18 because the "locations of the Eureka Shaft and East Eureka Shaft
19 are not known with certainty," (Docket No. 33-5 at 5).³
20 Defendant's "speculation" regarding the possibility of
21 alternative drain-shaft configurations is "insufficient to raise
22 a genuine issue of material fact," in large part because it does
23 not actually rebut the uniform conclusion reached in the various
24 technical reports plaintiff invokes. Brown v. Woodland Joint
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26 ³ The latter expert declaration expressly states that the
27 "assumption of a connection between the [surface] drains and the
28 [Eureka and East Eureka] shafts was a reasonable hypothesis."
(Docket No. 33-5 at 6.)

1 Unified Sch. Dist., 27 F.3d 1373, 1382 (9th Cir. 1994); see also
2 Guidroz-Brault v. Missouri Pac. R. Co., 254 F.3d 825, 829 (9th
3 Cir. 2001) (“speculation” and “guesswork” cannot “survive summary
4 judgment”). To create a genuine issue of material fact,
5 defendant must “set forth specific facts showing that there is a
6 genuine issue for trial.” Anderson v. Liberty Lobby, Inc., 477
7 U.S. 242, 250 (1986) (citation modified). “[M]aking assertions”
8 regarding potential, alternative drain-shaft configurations,
9 devoid of factual support, is not enough. See S. A. Empresa De
10 Viacao Aerea Rio Grandense (Varig Airlines) v. Walter Kidde &
11 Co., 690 F.2d 1235, 1238 (9th Cir. 1982) (collecting cases).

12 Defendant also argues that the discharge samples taken
13 from the surface drains include chemicals that may not have
14 originated from within the Mine (i.e. chemicals other than
15 arsenic, iron, and manganese). (See Docket No. 33 at 35-37.)
16 This is irrelevant to whether the drains discharged water
17 containing pollutants that did originate from the Mine, which the
18 EMKO, Geocon, and Weston Reports unanimously determined to be the
19 case. (See Docket No. 35 at 21.) Moreover, the Weston and EMKO
20 Reports specifically explain why and how other chemicals could
21 have been present in the various discharge samples, as well as
22 address additional, potential discrepancies. (Id. at 21-22.)
23 Defendant does not rebut these explanations. Once more,
24 speculation regarding the possibility of an alternative source of
25 pollutants does not suffice to create a genuine issue of material
26 fact. Brown, 27 F.3d at 1382.

27 iv. Navigable Waters
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1 "[N]avigable waters" are "the waters of the United
2 States, including the territorial seas." 33 U.S.C. § 1362(7).
3 These waters "clearly" include "nearby streams and rivers" that
4 mines discharge into, Rybachek v. U.S. E.P.A., 904 F.2d 1276,
5 1285 (9th Cir. 1990), such as Wolf Creek. Defendant does not
6 dispute that Wolf Creek constitutes a navigable water. (See
7 Docket No. 33.)

8 v. Without a Permit

9 CEA argues, and Rise does not dispute, that Rise does
10 not have a permit authorizing the ongoing discharges from the
11 Mine. (See Docket Nos. 22 at 32-33 (CEA's motion); 33 at 41-42
12 (Rise's opposition); 35 at 11 (CEA's reply).) Rise instead
13 emphasizes that it has applied for such a permit and urges the
14 court to not mistake its "good-faith efforts" at "avoid[ing]
15 costly litigation" in applying for such a permit as "satisfying
16 CEA's burden of proof on summary judgment." (Docket No. 33 at
17 43.)

18 Be that as it may, the legally relevant question is not
19 whether Rise has demonstrated good faith or applied for a permit.
20 See El Paso Gold Mines, Inc., 421 F.3d at 1142. The legally
21 relevant question is whether Rise has obtained a permit, see id.,
22 and, as discussed above, there is no dispute that Rise has not.

23 IV. Conclusion


24 CEA has demonstrated that Rise has "(1) discharged (2)
25 a pollutant (3) into navigable waters (4) from a point source (5)
26 without a permit," and therefore that Rise has violated the CWA.

27 Id.

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IT IS THEREFORE ORDERED that plaintiff's motion for partial summary judgment as to defendant's liability under the Clean Water Act (Docket No. 22) be, and the same hereby is, GRANTED.

Dated: May 18, 2026



WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE