

FILED

AUG 22 2014

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY _____ DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

**CALIFORNIA DEPARTMENT OF
FORESTRY AND FIRE PROTECTION,**

Plaintiff,

v.

**MWE SERVICES, INC. dba MIDWEST
DEMOLITION COMPANY,
CHRISTOPHER J. MARTIN, and DOES 1
through 50, inclusive,**

Defendants.

Case No. 2:14-CV-00010-JAM-KJN

ORDER

The motion of California Department of Forestry and Fire Protection (Cal Fire) to remand its fire suppression cost recovery action (Case No. YCSCCVCV 12-0000768) to the Yuba County Superior Court came on for hearing in this Court on August 20, 2014. Stephen M. Lerner of the California Attorney General's Office appeared on behalf of Cal Fire, Gregory Boderick of the United States Attorney's Office appeared on behalf of the United States Geological Survey (USGS) and the United States Forest Service (USFS), and James E. Burns of the Kronenberg Law Firm appeared on behalf of MWE Services, Inc. (MWE).

Having read all moving, opposition and reply papers, including Cal Fire's Memoranda of Points and Authorities in support of its Motion for Remand, and having heard argument of

1 counsel, the Court finds that remand is appropriate because the Court lacks subject matter
2 jurisdiction over Cal Fire's cost recovery action. There is no federal jurisdiction based on
3 diversity of citizenship because a state is not a "citizen" of a state for purposes of diversity
4 jurisdiction. (*Moor v. County of Alameda*, 411 U.S. 693, 717 (1973).) There also is no federal
5 question jurisdiction because Cal Fire's cost recovery action arises under state law and not under
6 the United States Constitution, treaties, federal statutes, administrative regulations or common
7 law, including the federal officer removal statute. (U.S. Const., art. III, § 2; 28 U.S.C. §§1331 &
8 1442.)

9 IT IS ORDERED THAT:

- 10 1. Cal Fire's motion is GRANTED.
- 11 2. The Court orders Cal Fire's cost recovery action (Case No. YCSCCVCV 12-
12 0000768) remanded to the Yuba County Superior Court and instructs the clerk of the court to
13 mail a certified copy of this order to the clerk of the Yuba County Superior Court.

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15 IT IS SO ORDERED.

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17 Dated: 8-21-14


Judge, United States District Court

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