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**Via Certified Mail –
Return Receipt Requested**

November 30, 2017

Patrick A. Fagen, CEO / Registered Agent
Managing Agent
Lazarus Mining, LLC
P.O. Box 16187
2229 T Vista Drive
South Lake Tahoe, CA 96151

David J. Brown, Assistant Minerals Officer
Head of Agency
U.S. Forest Service
Tahoe National Forest
Yuba River Ranger District
15924 Highway 49
Camptonville, CA 95922

Tony Tooke – Chef
U.S. Forest Service
Sidney R. Yates Federal Building
201 14th Street, SW
Washington, DC 20024

Re: Notice of Violations and Intent to File Suit Under the Federal Water Pollution Control Act (Clean Water Act)

Dear Mr. Fagen, Managing Agent, Mr. Brown, Head of Agency and Mr. Tooke:

STATUTORY NOTICE

This Notice is provided on behalf of California River Watch (“River Watch”) in regard to violations of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. § 1251 et seq., that River Watch alleges are occurring as a result of discharges of contaminated effluent from the Klondike, Dutch and Telegraph Tunnel Mines (the “Facility”).

River Watch hereby places Lazarus Mining, LLC, as owner and operator of the mining Facility, and U.S. Forest Service, as owner of the property upon which the Facility is located (hereafter collectively referred to as the “Discharger”) on notice, that following the expiration of 60 days from the date of this Notice, River Watch will be entitled under CWA § 505(a), 33 U.S.C. § 1365(a), to bring suit in the U.S. District Court against the Discharger for continuing violations of an effluent standard or limitation, permit condition or requirement, or a Federal or State Order or Permit issued under CWA § 402, 33 U.S.C. § 1342, and the Regional Water Quality Control Board, Central Valley Region, Water Quality Control Plan (“Basin Plan”), as the result of alleged violations of permit conditions or limitations in the Discharger’s National Pollutant Discharge Elimination System (“NPDES”) Permit for the Facility.

The CWA regulates the discharge of pollutants into navigable waters. The statute is structured in such a way that all discharges of pollutants are prohibited with the exception of enumerated statutory provisions. One such exception authorizes a discharger, who has been issued a permit pursuant to CWA § 402, 33 U.S.C. § 1342, to discharge designated pollutants at certain levels subject to certain conditions. The effluent discharge standards or limitations specified in a NPDES permit define the scope of the authorized exception to the CWA § 301(a), 33 U.S.C. § 1311(a), prohibition, such that violation of a permit limit places a Facility in violation of the CWA. River Watch alleges the Discharger violates the CWA by discharging pollutants from a point source to a water of the United States without complying with CWA §§ 301(a) and 505(a)(1)(A), 33 U.S.C. §§ 1311(a), 1365(a)(1)(A).

The CWA provides that authority to administer the NPDES permitting system in any given state or region can be delegated by the Environmental Protection Agency (“EPA”) to a state or to a regional regulatory agency, provided that the applicable state or regional regulatory scheme under which the local agency operates satisfies certain criteria (see CWA § 402(b), 33 U.S.C. § 1342(b)). In California, the EPA has granted authorization to a state regulatory apparatus comprised of the State Water Resources Control Board and several subsidiary regional water quality control boards to issue NPDES permits. The entity responsible for issuing NPDES permits and otherwise regulating the operations taking place at the Facility’s operations in the region at issue in this Notice is the Regional Water Quality Control Board, Central Valley Region (“RWQCB”).

While delegating authority to administer the NPDES permitting system, the CWA provides that enforcement of the statute’s permitting requirements relating to effluent standards or limitations imposed by the Regional Boards can be ensured by private parties acting under the citizen suit provision of the statute (see CWA § 505, 33 U.S.C. § 1365). River Watch is exercising such citizen enforcement to enforce compliance by the Discharger with the NPDES permit.

NOTICE REQUIREMENTS

The CWA requires that any Notice regarding an alleged violation of an effluent standard or limitation or of an order with respect thereto shall include sufficient information to permit the recipient to identify the following:

1. The Specific Standard, Limitation, or Order Alleged to Have Been Violated.

River Watch identifies the Discharger's violations of permit conditions or limitations set forth in RWQCB Order No. R5-2015-0075, NPDES Permit No. CA0084387 ("Waste Discharge Requirements for the Lazarus Mining, LLC and U.S. Forest Service, Tahoe National Forest Klondike, Dutch, and Telegraph Tunnel Mines Sierra County") (the "NPDES Permit"). A violation of the NPDES permit is a violation of the CWA.

2. The Activity Alleged to Constitute a Violation.

Most often, the NPDES Permit standards and limitations allegedly violated are self-explanatory, and an examination of the language of the NPDES Permit itself is sufficient to inform the Discharger of its failure to fully comply with the NPDES Permit requirements. This is particularly so since the Discharger is responsible for monitoring its operations to ensure compliance with all permit conditions. River Watch sets forth the following narratives, which identify with particularity the activities alleged to be violations. River Watch does so following a review of public records (e.g., the Facility's Self-Monitoring Reports ("SMRs") and the California Integrated Water Quality System ("CIWQS") reporting system) relating to operations at the Facility. Additional records and other public documents in the Discharger's possession or otherwise available to the Discharger regarding the NPDES Permit may, upon discovery, reveal additional violations.

River Watch contends that from November 30, 2012 through November 30, 2017, the Discharger violated the Act and the following identified requirements of the NPDES Permit with respect to effluent discharges from the Facility and receiving water limitations. These reported violations are identified in the Facility's SMRs by violation number, date of alleged violation, and pollutant. The following prohibitions apply to the Discharger:

Reported Violations

A. Exceeding Effluent Limitations for Lead

i. Lead

Lead has adverse effects on many types of aquatic plants and animals, affecting growth, survival, and reproduction. Fish embryos, in particular, are more sensitive to lead than are adult fish. Lead is more toxic at lower pH levels, such as those identified by the Discharger's own samples.

The Discharger has admitted discharged effluent in violation of the following NPDES Permit conditions:

- **(4 Violations)**

Order No. R5-2015-0075, IV. Effluent Limitations and Discharge Specifications, A. Effluent Limitations – Discharge Point 001, 1. Final Effluent Limitations – Discharge Point 001, a. The Discharger shall maintain compliance with the effluent limitations specified in Table 4: Lead, Total

Recoverable; Average Monthly 0.6 ug/L

- » 1 Category 2 Pollutant, Lead, Total Recoverable Monthly Average limit is 0.6 ug/L and reported value was 0.8 ug/L at EFF-001 (Event ID: 1029493 on 5/31/17)
- » 1 Category 2 Pollutant, Lead, Total Recoverable Monthly Average limit is 0.6 ug/L and reported value was 2 ug/L at EFF-001 (Event ID: 1029491 on 11/30/16)
- » 1 Category 2 Pollutant, Lead, Total Recoverable Monthly Average limit is 0.6 ug/L and reported value was 2 ug/L at EFF-001 (Event ID: 1029488 on 09/30/16)
- » 1 Category 2 Pollutant, Lead, Total Recoverable Monthly Average limit is 0.6 ug/L and reported value was 2 ug/L at EFF-001 (Event ID: 1029480 on 08/31/15)

- **(5 Violations)**

Order No. R5-2015-0075, IV. Effluent Limitations and Discharge Specifications, A. Effluent Limitations – Discharge Point 001, 1. Final Effluent Limitations – Discharge Point 001, a. The Discharger shall maintain compliance with the effluent limitations specified in Table 4: Lead, Total Recoverable; Maximum Daily 1.7 ug/L

- » 1 Category 2 Pollutant, Lead, Total Recoverable Daily Maximum limit is 1.7 ug/L and reported value was 2 ug/L at EFF-001 (Event ID: 1029490 on 11/07/16)
- » 1 Category 2 Pollutant, Lead, Total Recoverable Daily Maximum limit is 1.7 ug/L and reported value was 2 ug/L at EFF-001 (Event ID: 1029487 on 09/15/16)
- » 1 Category 2 Pollutant, Lead, Total Recoverable Daily Maximum limit is 1.7 ug/L and reported value was 2 ug/L at EFF-001 (Event ID: 1029482 on 11/30/15)
- » 1 Category 2 Pollutant, Lead, Total Recoverable Daily Maximum limit is 1.7 ug/L and reported value was 2 ug/L at EFF-001 (Event ID: 1029481 on 11/19/15)
- » 1 Category 2 Pollutant, Lead, Total Recoverable Daily Maximum limit is 1.7 ug/L and reported value was 2 ug/L at EFF-001 (Event ID: 1029479 on 08/12/15)

ii. Cadmium

Cadmium is a non-essential metal with no biological function in aquatic life. Acute exposures are known to cause increased mortality in aquatic organisms. Chronic exposure leads to adverse effects on growth, reproduction, immune and endocrine systems, development and behavior in aquatic organisms. The Discharger has admitted discharged effluent in violation of the following permit conditions:

• **(4 Violations)**

Order No. R5-2015-0075, IV. Effluent Limitations and Discharge Specifications, B. Effluent Limitations – Discharge Point 002, 1. Final Effluent Limitations – Discharge Point 002, a. The Discharger shall maintain compliance with the effluent limitations specified in Table 5: Cadmium, Total Recoverable, Average Monthly 1.3 ug/L

- » 1 Category 2 Pollutant, Cadmium, Total Recoverable Monthly Average limit is 1.3 ug/L and reported value was 2 ug/L at EFF-002 (Event ID: 1029492 on 11/30/16)
- » 1 Category 2 Pollutant, Cadmium, Total Recoverable Monthly Average limit is 1.3 ug/L and reported value was 2 ug/L at EFF-002 (Event ID: 1029489 on 09/30/16)
- » 1 Category 2 Pollutant, Cadmium, Total Recoverable Monthly Average limit is 1.3 ug/L and reported value was 2 ug/L at EFF-002 (Event ID: 1029486 on 11/30/15)
- » 1 Category 2 Pollutant, Cadmium, Total Recoverable Monthly Average limit is 1.3 ug/L and reported value was 2 ug/L at EFF-002 (Event ID: 1029485 on 08/31/15)

B. Exceeding Receiving Water Limitations

i. Turbidity

Turbidity affects organisms that are mainly dependent on light such as aquatic plants because it limits their ability to carry out photosynthesis. This directly affects organisms that depend on plants for food and oxygen. As sediments increase in water, the amount of light that can pass through the water decreases and the impacts on aquatic organisms, in turn, increases. The Discharger has admitted violating the receiving water limitation of the following permit conditions:

• **(1 Violation)**

Order No. R5-2015-0075, V. Receiving Water Limitations, A. Surface Water Limitations, 17. Turbidity: a. Shall not exceed 2 Nephelometric Turbidity Units (NTU) where natural turbidity is less than 1 NTU;

- » Surface Water Discharge, permit limit is 2 Nephelometric Turbidity Units (NTU) where natural turbidity is less than 1 NTU: reported value at RSW-001 was 0.5; at RSW-002 was 2.7; and at RSW-003 was 2.7
(Event ID: 1027589 on 11/07/16)

ii. pH

The pH of a stream affects organisms living in the water. Excessively high and low pH levels can be detrimental for the use of water. A changing pH in a stream can be an indicator of increasing pollution or some other environmental factor. A pH level of five is ten times more acidic than water, low pH in water will corrode or dissolve metals and other substances. The Discharger has admitted violating the receiving water limitation of the following permit conditions:

- **(1 Violation)**

Order No. R5-2015-0075, V. Receiving Water Limitations, A. Surface Water Limitations, 8. pH: The pH to be depressed below 6.5 nor raised above 8.5.

- » 1 Other Effluent Violation, permit limit 8.5 and reported value was 9.2
(Event ID: 948879 on 03/27/13)

3. The Person or Persons Responsible for the Alleged Violations.

The entities responsible for the alleged violations identified in this Notice are Lazarus Mining LLC as owner and operator of the Facility, and the U.S. Forest Service as owner of the land, collectively referred to in this Notice as the “Discharger” as well as those of the Discharger’s employees responsible for compliance with the NPDES Permit and the CWA.

4. The Location of the Alleged Violation.

Lazarus Mining LLC currently owns and operates the Klondike, Dutch, and Telegraph Mines in Sierra County. The U.S. Forest Service owns and manages the property on which the mine portals are located. Lazarus Mining LLC is identified in the NPDES Permit as the primary discharger. The U.S. Forest Service is identified in the NPDES Permit as a secondary discharger. Both entities are responsible for compliance with the NPDES Permit.

The Facility consists of three tunnel mines. Effluent from the Telegraph Tunnel Mine discharges into Goodyears Creek at Discharge Point 001. Effluent from the Klondike and Dutch Tunnel Mines is commingled and discharged to a swale which flows to Goodyears Creek at Discharge Point 002, approximately 2,500 feet downstream from the discharge from the Telegraph Tunnel Mine. Goodyears Creek is a water of the United States and a tributary to the Yuba River.

Goodyears Creek is a small ephemeral stream located in a canyon below the Facility, with the headwaters in close proximity to Discharge Point 001. Goodyears Creek is located in Sierra County (coordinates 39° 37’ 07” N 120° 52’ 05” W). Its tributaries include Eureka Creek, Snow

Creek, Stony Point, New Bullards Bar Reservoir, and North Yuba River.

5. The Date or Dates of Violation or a Reasonable Range of Dates During Which the Alleged Activity Occurred.

The range of dates covered by this Notice is from November 30, 2012 to November 30, 2017. River Watch may from time to time update this Notice to include all violations of the CWA by the Discharger which occur during and after this period. Some violations are continuous, and therefore each day constitutes a violation.

6. The Full Name, Address, and Telephone Number of the Person Giving Notice.

The entity giving notice is California River Watch, referred to throughout this notice as "River Watch," an Internal Revenue Service Code § 501(c)(3) non-profit, public benefit corporation organized under the laws of the State of California. Its headquarters and main office are located in Sebastopol. Its mailing address is 290 South Main Street, # 817, Sebastopol, CA 95472. River Watch is dedicated to protecting, enhancing, and helping to restore surface and ground waters of California including coastal waters, rivers, creeks, streams, wetlands, vernal pools, aquifers and associated environs, biota, flora and fauna, and educating the public concerning environmental issues associated with these environs.

River Watch may be contacted via email: US@ncriverwatch.org, or through its attorneys. River Watch has retained legal counsel with respect to the issues raised in this Notice. All communications should be directed to counsel identified below:

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RECOMMENDED REMEDIAL MEASURES

River Watch looks forward to meeting with the Discharger's staff to tailor remedial measures to the specific operations of the Facility.

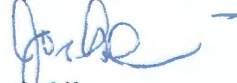
CONCLUSION

The violations set forth in this Notice effect the health and enjoyment of members of River Watch who reside and/or recreate in the affected community identified herein. Members of River Watch may use the affected watershed for recreation, sports, fishing, swimming, hiking, photography, nature walks and the like. Their health, use, and enjoyment of this natural resource are specifically impaired by the Discharger's alleged violations of the CWA as set forth in this Notice.

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any “person”, including a governmental instrumentality or agency, for violations of NPDES permit requirements and for unpermitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), § 1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. § 1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to \$37,500.00 per day/per violation for all violations pursuant to CWA §§ 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. See also 40 C.F.R. §§ 19.1 – 19.4. River Watch believes this Notice sufficiently states grounds for filing suit in federal court under the “citizen suit” provisions of the CWA to obtain the relief provided for under the law.

The CWA specifically provides a **60-day “notice period”** to promote resolution of disputes. River Watch strongly encourages the Discharger to contact counsel for River Watch within **20 days** after receipt of this Notice to: (1) initiate a discussion regarding the allegations detailed in this Notice, and (2) set a date for a site visit. In the absence of productive discussions to resolve this dispute, or receipt of additional information demonstrating the Discharger is in compliance with the strict terms and conditions of the NPDES Permit and the CWA, River Watch will have cause to file a citizen's suit under CWA § 505(a) when the 60-day notice period ends.

Very truly yours,



Jack Silver

JS:lhlm

Service List

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