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September 5, 2024

Via Certified Mail / Return Receipt Requested

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Re: Notice of Ongoing Violations and Intent to File a Citizen Suit under the Clean Water Act

Dear Mr. Mullin:

I am writing on behalf of Community Environmental Advocates Foundation ("CEA Foundation") regarding violations of the Clean Water Act[1] ("CWA" or "Act") at the Idaho-Maryland Mine complex in Nevada County, California.[2] The purpose of this

[1] Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.*
[2] For the purposes of this Notice Letter, and unless stated otherwise, the term "Idaho-Maryland Mine complex" refers collectively to the approximately 2,585-acre subsurface estate and approximately 175.4 acres of surface properties owned by Rise Gold Corp. in Nevada County, California, and which are described more particularly in K. Elliott & D. Kindermann, *Nevada County Board of Supervisors Board Agenda Memorandum* at 3

letter ("Notice Letter") is to put Rise Gold Corp. and its wholly owned subsidiary, Rise Grass Valley, Inc. (collectively, "Rise"), on notice that, at the expiration of sixty (60) days from the date this Notice Letter is served, CEA Foundation intends to file a "citizen suit" against Rise in U.S. federal district court.

The civil action will allege significant and ongoing conduct at the Idaho-Maryland Mine complex resulting in violations of the Act, including but not limited to the continuous discharge of water polluted with arsenic, various heavy metals, and other chemicals directly from the underground workings of the Idaho-Maryland Mine complex into Wolf Creek, via several drains.

BACKGROUND

This Notice Letter concerns the ongoing discharge of polluted waters from the underground workings of the former Idaho-Maryland Mine complex in Nevada County, California. This mine complex—which consists of several separate historical mines—produced approximately 2.4 million ounces of gold between 1866 and 1956.[3] During the mine complex's operations, mercury and cyanide were used to recover gold from the mined ore.[4] The underground workings of the complex ultimately grew to include approximately 73 miles of tunnels, several raises, 4 inclined shafts, and 2 vertical shafts.[5] When the Idaho-Maryland Mine ceased operations in 1956, these extensive underground

(Nov. 28, 2023), available at https://www.nevadacountyca.gov/DocumentCenter/View/51714/2-Staff-Report.

[3] *See* K. Elliott & D. Kindermann, *supra* note 2, at 5; EMKO Environmental, Inc., *Groundwater Hydrology and Water Quality Analysis Report for the Idaho-Maryland Mine Project – Nevada County, California* at 3 (Feb. 2021), available at https://www.nevadacountyca.gov/DocumentCenter/View/41645/Appendix-K2_Groundwater-Hydrology-and-Water-Quality-Analysis.

[4] Weston Solutions, Inc., *Site Inspection Report – Idaho Maryland Mine – Grass Valley, Nevada County, CA* at 1, 5 (Sept. 2019), available at https://www.envirostor.dtsc.ca.gov/getfile?filename=/public%2Fdeliverable_documents%2F6354388177%2FIMM%20SI%20text%20through%20App%20D%209-24-19.pdf. The Weston Solutions report was prepared at the request of Region 9 of the U.S. Environmental Protection Agency ("EPA").

[5] Elliott & Kindermann, *supra* note 2, at 3; EMKO, *supra* note 3, at 3, 36-37.

workings were allowed to flood with water.[6] The workings have remained flooded in the decades following the closure.[7]

Rise currently owns an approximately 2,585-acre subsurface estate, which encompasses the historical Idaho-Maryland Mine complex and its underground workings.[8] Rise also owns two surface properties, which generally overlie the subsurface estate: the approximately 56.41-acre Centennial Industrial Site and the approximately 119-acre Brunswick Site.[9] The Centennial Industrial Site is immediately adjacent to Wolf Creek, a perennial tributary of the Bear River.[10] Portions of Wolf Creek adjacent to and downstream of the Centennial Industrial Site host wetland habitats and are used for fishing.[11]

There are approximately 1,183 acre-feet of water within the underground workings in Rise's subsurface estate.[12] Several drains continuously convey this water from the underground workings to surface waterbodies.[13] These drains have been present for at least thirty years, and likely much longer.[14] In particular, three drains in the immediate vicinity of the Centennial Industrial Site near Idaho Maryland Road discharge between dozens and hundreds of gallons of water per minute from the underground workings into Wolf Creek.[15] Rise's retained hydrological consultants have referred to

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[6] Elliott & Kindermann, *supra* note 2, at 5; EMKO, *supra* note 3, at 3.
[7] EMKO, *supra* note 3, at 28.
[8] Elliott & Kindermann, *supra* note 2, at 3; EMKO, *supra* note 3, at 1.
[9] Elliott & Kindermann, *supra* note 2, at 3.
[10] EMKO, *supra* note 3, at 5, 13-15; Weston, *supra* note 4, at 1.
[11] Weston, *supra* note 4, at 1.
[12] EMKO, *supra* note 3, at 30.
[13] *Id.* at 28-29, 32-33, 59; *see also* Weston, *supra* note 4, at 18 (describing the East Eureka Outflow as a "hazardous substance source," as "water draining from the mine workings through the East Eureka Shaft . . . flow[s] directly into Wolf Creek" and that this water contains arsenic and lead "at concentrations significantly above background").
[14] EMKO, *supra* note 3, at 32 (citing Condor, 1994).
[15] *Id.* at 33 (describing the ED-1 – Eureka Drain, IMD-1 – East Eureka Shaft Drain, IMD-2 – East Eureka Shaft, and D-1 culvert); *see also id.* at 66 (estimating total flow from the drains at approximately 60 to 125 gallons per minute). The EMKO report indicates that there is uncertainty about whether the water discharged from a fourth drain, the D-1 culvert, originates in the underground workings. *Id.* at 33, 39, 55.

these drains as the "Eureka Drain," the "East Eureka Shaft Drain," the "East Eureka Shaft."[16]

The water conveyed from these drains into Wolf Creek contains high concentrations of several pollutants, including arsenic, assorted heavy metals, and other chemicals.[17] Sampling conducted in early 2018 indicates that at all three of the drains that indisputably discharge water from the underground workings:

- Arsenic concentrations are approximately 4 to 6 times higher than the relevant regulatory standards allow;[18]
- Iron concentrations are approximately 5 to 16 times higher than regulatory standards;[19]
- Manganese concentrations are approximately 4 to 6 times higher than regulatory standards;[20] and
- Ammonia concentrations are approximately 2 to 8 times higher than regulatory standards.[21]

Sampling of the water discharged from the drains in 1991 and 2006 was "consistent with the findings" collected in 2018, and thus "there does not appear to" have been "any significant change in the water quality in the shaft, drains, or creeks over the last two to three decades."[22] Additional sampling conducted on behalf of the U.S. EPA in 2019

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[16] *Id.* at 33.
[17] *See id.* at 42-43. The relevant regulatory standards are the NPDES effluent limits. *Id.* at 47.
[18] *Id.* at 43 (showing arsenic concentrations between 37 and 41 micrograms/liter; NPDES limit is 10 micrograms/liter).
[19] *Id.* at 43, 46-47 (concentrations between 1,600 and 4,800 micrograms/liter; NPDES limit is 300 micrograms/liter).
[20] *Id.* at 43, 47 (concentrations between 200 and 300 micrograms/liter; NPDES limit is 50 micrograms/liter).
[21] *Id.* at 42 (concentrations between 50 and 240 micrograms/liter; NPDES limit is 25 micrograms/liter); *see also id.* (showing total suspended solid concentrations also exceeded the relevant regulatory standards at ED-1 and IMD-2); *id.* at 43 (showing zinc concentrations exceeded relevant regulatory standard at ED-1).
[22] *Id.* at 47.

indicated that the drains were releasing both arsenic and other heavy metals into Wolf Creek.[23] Notably, some arsenic concentrations recorded in 2019 were significantly higher than those recorded in 2018 and were approximately 10 times above the relevant NPDES effluent limit.[24]

The drains' discharge of polluted water into Wolf Creek appears to have a significant adverse impact on the Creek's water quality, as concentrations of arsenic, iron, and manganese are much higher downstream of the drain discharges than they are upstream.[25] Indeed, the iron and manganese concentrations in Wolf Creek meet the relevant NPDES effluent limits in the upstream samples but exceed those limits in the downstream samples.[26] Moreover, the 2019 sampling indicated that arsenic concentrations in Wolf Creek were also highest immediately downstream of the drains.[27]

Rise has proposed to resume underground gold mining operations at the Idaho-Maryland Mine complex.[28] Before reinitiating mining, Rise would need to conduct an initial dewatering of the underground workings.[29] Water removed from the underground workings would be treated and discharged to South Fork Wolf Creek.[30] Rise has acknowledged that it would need to attain coverage under an NPDES permit before initiating this discharge.[31] Rise's consultant also acknowledged that after Rise ceased mining operations and the underground workings were allowed to reflood, Rise would

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[23] *See* Weston, *supra* note 4, at 2, 11 (describing elevated concentrations of chromium, cobalt, copper, lead, nickel, and zinc in East Eureka Outflow samples).
[24] *See id.* at 11 (recording arsenic concentrations of 102 micrograms/liter within one drain and 41.8 micrograms/liter at the point where the drain discharges to Wolf Creek).
[25] *See* EMKO, *supra* note 3, at 46, 51-52 (showing arsenic concentrations of 4.0 micrograms/liter downstream of the drains and 1.3 micrograms/liter upstream of the drains; iron concentrations of 310 micrograms/liter downstream of the drains and 240 micrograms/liter downstream of the drains; manganese concentrations of 35 micrograms/liter downstream of the drains and 15 micrograms/liter upstream of the drains); *see also id.* (attributing the discrepancy in heavy metal concentrations in the upstream and downstream Wolf Creek samples to the drain discharges).
[26] *Id.* at 46, 53.
[27] Weston, *supra* note 4, at 12-13.
[28] EMKO, *supra* note 3, at 1.
[29] *Id.*
[30] *Id.*
[31] *Id.* at 4-5, 109-11.

likely require an NPDES permit to cover the water that will once again flow from the drains to Wolf Creek.[32] However, Rise does not hold an NPDES permit that covers the ongoing point source discharges of polluted water from the underground workings within its subsurface estate.[33]

APPLICABILITY OF THE CWA

The CWA prohibits the "discharge of any pollutant by any person" unless done in compliance with some provision of the Act. 33 U.S.C. § 1341(a). Section 402 of the CWA requires a permit for the discharge of pollutants into navigable waters. *Id.* § 1342(a)(1). As set forth below, Rise is in violation of the CWA because the drains near the Centennial Industrial Site are continuously discharging water laden with pollutants into Wolf Creek from the flooded underground mine workings within Rise's subsurface estate, and Rise has no NPDES permit covering these discharges.

In fact, Rise and its expert consultants have already effectively conceded this violation. In recognizing that Rise would need an NPDES permit to cover both the active dewatering of the mine[34] and any discharge from the drains that resumes after its mining operations end,[35] Rise has tacitly acknowledged: (1) the arsenic, heavy metals, and chemicals within the water in the mine complex's underground workings are "pollutants"; (2) Wolf Creek, South Fork Wolf Creek, and other similar tributaries of the Bear River are waters of the United States; (3) the flow of the pollutant-laden mine water into these surface water bodies constitutes "discharge"; and (4) Rise holds no existing NPDES permit that authorizes this discharge.

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[32] *See* EMKO, *supra* note 3, at 117 (recognizing that "[a]fter mining is completed, water from the underground mine workings would eventually begin to seep from the existing drains or from rockbed fractures if the drains are sealed," and that "before the mine is allowed to flood, an application could be made with the Regional Water Board for an individual permit to cover the mine drainage); *id.* (acknowledging that under this permit, Rise could dilute the receiving waterbody or "treat[] . . . the water from the drains, prior to discharge to Wolf Creek, similar to the drainage from the inactive Newmont Northstar Mine").

[33] *See* Weston, *supra* note 4, at 7 (indicating an NPDES permit issued by the Central Valley Regional Water Quality Control Board in 1995 for an earlier mine dewatering proposal was later cancelled).

[34] EMKO, *supra* note 3, at 4-5, 109-11.

[35] *Id.* at 117.

The only apparent difference between these future discharges—for which Rise acknowledges it would need an NPDES permit—and the current discharges from the Idaho-Maryland Mine complex—for which Rise has none—is the fact that Rise itself has not yet begun mining on the site. But this fact is immaterial for CWA liability. It is well established that the Act is a strict liability statute. Put simply, "if you own the leaky 'faucet,' you are responsible for its 'drips.'" *Sierra Club v. El Paso Gold Mines, Inc.*, 421 F.3d 1133, 1145 (10th Cir. 2005), *cert. denied*, *El Paso Props., Inc. v. Sierra Club*, 547 U.S. 1065 (2006). Thus, in *El Paso Gold Mines*, it did not matter that the current owner of an inactive gold mine had not itself "acted in some way to cause the discharge" of polluted water from the mine's underground workings. *Id.* It was enough that the company owned the defunct mine shafts from which the pollutants flowed. *See id.* at 1143-45; *see also Comm. to Save Mokelumne River v. East Bay Mun. Util. Dist.*, 13 F.3d 305, 308-09 (9th Cir. 1993) (concluding utility district was liable for ongoing, unpermitted flow of polluted water from "abandoned mine site"). Because Rise now owns the Idaho-Maryland Mine complex, it is liable for any ongoing, unpermitted discharges of pollutants from it.

Moreover, the Central Valley Regional Water Quality Control Board—the state entity responsible for administering the CWA in Nevada County—has concluded that virtually identical discharges require an NPDES permit. In the 1970s, the California Department of Parks and Recreation purchased the defunct Empire Mine in Nevada County and began operating the site as Empire Mine State Historic Park, a recreational facility with no active mining operations.[36] The Empire Mine site is immediately south of the Rise-owned Brunswick Site and roughly one mile south of the Idaho-Maryland Mine complex drains. In 2002, the Regional Water Board determined that the historical "Magenta Drain" on the Empire Mine site was passively discharging water from the flooded underground workings of the Empire Mine to an unnamed tributary of the South Fork of Wolf Creek.[37] Like the discharges from Rise's drains, the water flowing from the

[36] *See* Cal. Reg'l Water Quality Control Bd., Central Valley Region ("Regional Water Board"), *Order No. R5-2006-0058 / NPDES No. CA0085171: Waste Discharge Requirements for State of California Department of Parks and Recreation Empire Mine State Historic Park Nevada County* at F-4 (June 23, 2006), available at https://ciwqs.waterboards.ca.gov/ciwqs/readOnly/CiwqsReportServlet?reportID=5734716&inCommand=displaysubpage&subPage=rmAttachmentPopup&regMeasID=313660.
[37] *Id.* at F-5 to F-6.

Magenta Drain contained elevated levels of arsenic, iron, and manganese, among other chemicals.[38]

The Regional Water Board determined that the flows from the Magenta Drain constituted an unpermitted discharge of pollutants from a point source to a water of the United States.[39] It therefore required the Department of Parks and Recreation to attain an NPDES permit.[40] The Department then developed and implemented a passive water treatment system to ensure that the water discharged from the Magenta Drain satisfied the effluent limits in the NPDES permit.[41] If the Department is liable under the CWA for the Magenta Drain discharges, Rise must be liable for the very similar discharges of pollutants from the Idaho-Maryland Mine complex drains.

DISCHARGE OF A POLLUTANT

Under the CWA, a "discharge of a pollutant" is "any addition of any pollutant to navigable waters from any point source." 33 U.S.C. § 1362(12). An addition occurs when a point source introduces a pollutant into navigable water from the "outside world." *Nat'l Wildlife Fed. v. Gorsuch*, 693 F.2d 156, 165 (D.C. Cir. 1982). In this context, "outside world" means any place outside the particular water body into which pollutants are introduced. *Catskill Mountains Chapter of Trout Unlimited, Inc. v. City of New York*, 273

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[38] *Id.* at F-5, F-22 to F-32. The concentrations of arsenic recorded at the immediate outlet of the Magenta Drain (54.0 to 77.2 micrograms per liter) were similar to the arsenic concentrations that have been recorded at the outlet points of the three Idaho-Maryland Mine complex drains (37 to 59 micrograms per liter). *See id.* at F-33, F-34; EMKO, *supra* note 3, at 43; Weston, *supra* note 4, at 11.

[39] Regional Water Board, *supra* note 36, at 3, F-5 to F-6.

[40] *Id.*

[41] *See* Regional Water Board, *Order R5-2012-0050 / NPDES No. CA0085171: Waste Discharge Requirements for the State of California Department of Parks and Recreation Empire Mine State Historic Park Nevada County* (June 8, 2012), available at https://ciwqs.waterboards.ca.gov/ciwqs/readOnly/CiwqsReportServlet?reportID=5734716&inCommand=displaysubpage&subPage=rmAttachmentPopup&regMeasID=385621 (describing treatment strategies implemented following issuance of initial NPDES permit in 2006). The Regional Water Board later authorized the Department to continue discharging under a general NPDES permit for "limited threat" discharges. *See* Regional Water Board, *Order R5-2017-0083* at 4-5 (June 9, 2017), available at https://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/rescissions/r5-2017-0083_rec.pdf.

F.3d 481, 491-92 (2d Cir. 2001). Thus, collecting acid drainage seeping from abandoned mine workings and then channeling that drainage into a surface water body constitutes the "discharge of a pollutant." *Comm. to Save Mokelumne River*, 13 F.3d at 306-09. A "pollutant," in turn, is broadly defined as including "dredged spoil, solid waste," "chemical wastes, biological materials," "rock, sand, . . . and industrial . . . waste discharged into water." 33 U.S.C. § 1362(6).

It is beyond dispute that the significant quantities of arsenic, iron, manganese, and other heavy metals and chemicals discharged from the Idaho-Maryland Mine complex drains are "pollutants" under the CWA. *See El Paso Gold Mines*, 421 F.3d at 1138, 1141 (indicating "zinc and manganese" that have leached into water within the underground workings of an abandoned mine are "pollutants"); *Comm. to Save Mokelumne River*, 13 F.3d at 306 (indicating "acid mine drainage" with "high concentrations of aluminum, cadmium, copper, zinc, iron, and sulfuric acid" resulting from water seeping into abandoned mine workings is a "pollutant"); *Beartooth All. v. Crown Butte Mines*, 904 F.Supp. 1168, 1172-73 (D. Mont. 1995) (tracing the clear relationship between mining activities and elevated concentrations of chemicals like arsenic, iron, lead, and manganese, and emphasizing that whether these chemicals occurred historically or naturally in some amounts is irrelevant to whether they are "pollutants" under the CWA).

It is also clear that the drains are "discharg[ing]" pollutants by causing the direct "addition" of pollutant-laden water from the Idaho-Maryland Mine complex's flooded workings directly into Wolf Creek. *See Comm. to Save Mokelumne River*, 13 F.3d at 306-09; *Beartooth All.*, 904 F.Supp. at 1172. The science supporting this is unequivocal. Rise's own professional consultant and a separate hydrology expert retained by the EPA each recorded significantly elevated concentrations of arsenic, iron, manganese, and other chemicals at the drains near the Centennial Industrial Site.[42] Each of those sets of experts concluded that these drains were discharging between dozens and hundreds of gallons per minute of this pollutant-laden water from the flooded underground workings in Rise's subsurface estate into Wolf Creek.[43] And each concluded that the concentrations of certain pollutants in Wolf Creek are greater downstream of the drains *because of* the polluted water being discharged from those drains.[44]

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[42] *See* EMKO, *supra* note 3, at 39-47; Weston, *supra* note 4, at 11, 18.
[43] EMKO, *supra* note 3, at 32-33, 59; Weston, *supra* note 4, at 1, 4, 18.
[44] *See* EMKO, *supra* note 3, at 51 ("The increasing concentration [of iron and manganese] from upstream to downstream is indicative of the increasing proportion of groundwater discharge and flow from the drains as Wolf Creek passes through the project

FROM A POINT SOURCE

The CWA defines a "point source" as "any discernible, confined and discrete conveyance . . . from which pollutants are or may be discharged." 33 U.S.C. § 1362(14). This specifically includes any "pipe, ditch, channel, tunnel, conduit," or "discrete fissure." *Id.* It is indisputable that each drain that discharges water from the underground workings of the Idaho-Maryland Mine complex into Wolf Creek is a "point source" under the Act.[45] *See El Paso Gold Mines*, 421 F.3d at 1140 n.4, 1141 n.6 (explaining underground mine shafts and tunnels were "undoubtedly" point sources); *Trustees for Alaska v. EPA*, 749 F.2d 549, 558 (9th Cir. 1984) (concluding that when mining operations lead to the discharge of water "from a discernible conveyance," they are subject to regulation as point sources); *Beartooth All.*, 904 F.Supp. at 1173-74 (holding various mine adits and pits were point sources and emphasizing both Congress and the EPA intend for the term "point source" to be "interpreted broadly"). Just like the Magenta Drain on the Eureka Mine site and the tunnels and shafts in *El Paso Gold Mines*, the drains associated with the Idaho-Maryland Mine complex and any underground workings conveying water to those drains are discrete conveyances from which pollutants are being discharged.

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site area."); Weston, *supra* note 4, at 12-13 (reporting highest arsenic concentrations in Wolf Creek immediately downstream of the drains); *id.* at 18 (attributing elevated arsenic and lead levels in Wolf Creek in part to drain outflows).

Although the data and expert reports conclusively show that the drains *are* increasing the concentrations of pollutants in Wolf Creek, Rise would be liable for CWA violations even if this were not so. Under the Act, it is enough to show that there is a "discharge of a pollutant from a point source without a permit"; there is no need to make the additional showing that discharge from the point source is "produc[ing] a net increase in" pollutants in the receiving surface water body. *Comm. to Save Mokelumne River*, 13 F.3d at 309; *see also Beartooth All.*, 904 F.Supp. at 1173 ("The court in *Mokelumne River* explained that the CWA does not impose liability only where a net increase in the level of pollution from a point source discharge is present. . . . Rather, the CWA categorically prohibits any discharge of a pollutant from a point source without a permit.").

[45] For the same reasons, any underground mine workings within Rise's subsurface estate that channel the water to the outlet drains are also "point sources" under the Act. *See El Paso Gold Mines*, 421 F.3d at 1141 n.6 (explaining both mine shaft and outlet tunnel to which it connects are point sources). Rise is liable for these discharges irrespective of the identity of the parties that own the surface estates where the drain outlets are located.

INTO NAVIGABLE WATERS

Navigable waters are "waters of the United States." 33 U.S.C. § 1362 (7). Wolf Creek is a perennial tributary of the Bear River, which itself is tributary to the Feather River. The CWA is concerned with the pollution of tributaries as well as with the pollution of navigable streams, as it "it is incontestable that substantial pollution of one not only may but very probably will affect the other." *Headwaters, Inc. v. Talent Irrigation Dist.*, 243 F.3d 526, 534 (9th Cir. 2001). Thus, even intermittently flowing tributaries of navigable streams are themselves waters of the United States. *Id.*; *see also United States v. Moses*, 496 F.3d 984, 989-91 (9th Cir. 2007) (reaffirming the holding in *Headwaters* following the U.S. Supreme Court's ruling in *Rapanos v. United States*, 547 U.S. 715 (2006)); 40 C.F.R. § 120.2 (defining "Waters of the United States" to include "relatively permanent, standing, or continuously flowing" "[t]ributaries of" all waters that are "[c]urrently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce"). Because the Bear River is navigable and Wolf Creek is its perennial tributary, Wolf Creek is a water of the United States irrespective of whether Wolf Creek itself is navigable. Indeed, both the Regional Water Board and Rise itself have already acknowledged this.[46]

RELIEF SOUGHT FOR VIOLATION OF CLEAN WATER ACT

The contaminated water flowing into Wolf Creek from the Idaho-Maryland Mine complex's drains constitutes a discharge of pollutants into a navigable water from a point source. Therefore, Rise requires an NPDES permit for this ongoing discharge under the CWA. Because Rise does not have an NPDES permit covering its discharge of pollutants into Wolf Creek, it is in violation of section 402 of the CWA.

Pursuant to section 309(d) of the Act, 33 U.S.C. §1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4, each separate violation of the Act subjects the violator to penalties of up to $66,712 per day per violation for violations occurring after November 2, 2015, where penalties are assessed on or after December 27, 2023.[47] In determining the amount of civil penalty to award, a court shall consider (1) the

[46] *See* Regional Water Board, *supra* note 36, at F-5 to F-6 (concluding even smaller and more intermittent tributaries of Wolf Creek are waters of the United States); EMKO, *supra* note 3, at 4-5, 109-11, 117 (similar).

[47] For illustrative purposes, were Rise assessed the maximum statutory penalty for each of the three drains for each day between August 5, 2019, and August 5, 2024, the total monetary penalty would be $365,648,472 (3 drains/violations * 1,827 days * $66,712).

seriousness of the violations; (2) any economic benefit gained from the violations; (3) the history of such violations; (4) any good-faith efforts to comply with applicable requirements; (5) the economic impact of the penalty on the violator; and (6) any other matters that justice may require. 33 U.S.C. § 1319(d).

In addition to civil penalties, CEA Foundation will seek injunctive relief preventing further violations of the Act pursuant to sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), declaratory relief, and such other relief as permitted by law.

Lastly, pursuant to section 505(d) of the Act, 33 U.S.C. § 1365(d), CEA Foundation will seek to recover its costs, including attorneys' and expert fees, associated with this enforcement action.

NOTICE OF INTENT TO SUE

If Rise does not act within 60 days to correct this violation of the CWA, by applying to the Central Valley Regional Water Quality Control Board for an NPDES permit, CEA Foundation will seek relief in federal district court under the CWA's citizen suit provision, 33 U.S.C. § 1365(b)(1)(A).

NOTICING PARTY AND ITS LEGAL COUNSEL

The party giving this notice is:

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Legal counsel to the party giving this notice is:

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All correspondence regarding this Notice Letter should be directed to CEA Foundation's legal counsel.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP

Ryan K. Gallagher, Attorney

Attachments

A. Service List

1810732.5

ATTACHMENT A

SERVICE LIST

Via Certified Mail / Return Receipt Requested

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