



August 6, 2014

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Bruce A. Nelson
Manager & Agent for Service of Process
Elkhorn Mine LLC
2621 Ridgemont Drive
Eugene, OR 97405

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

Dear Mr. Nelson:

I am writing on behalf of the California Sportfishing Protection Alliance (“CSPA”) in regard to violations of the Clean Water Act (“the Act”) occurring at Elkhorn Mine LLC’s (“Elkhorn Mine”) Abandoned Greenhorn Mine Facility located at Sections 5 & 6, T32N, R7W, 23 miles NW of Redding, California (“the Facility”). The Parcel number for the Facility is 011290048000. CSPA is a non-profit public benefit corporation dedicated to the preservation, protection and defense of the environment, wildlife and natural resources of California waters, including Willow Creek, Whiskeytown Lake, Clear Creek, the Sacramento River, the Sacramento – San Joaquin Delta and other California waters. This letter is being sent to you as the responsible owner, officer, or operator of the Facility. Unless otherwise noted Elkhorn Mine and Bruce Nelson, shall hereinafter be collectively referred to as “Elkhorn Mine.”

This letter addresses Elkhorn Mine’s unlawful discharges of pollutants from the Facility to natural and constructed channels, which convey that storm water to Willow Creek, which flows to Whiskeytown Lake, which in turn flows to Clear Creek, which in turn ultimately flows into the Sacramento River and the Sacramento - San Joaquin Delta. This letter addresses the ongoing violations of the substantive and procedural requirements of the Clean Water Act and National Pollutant Discharge Elimination System (“NPDES”).

Section 505(b) of the Clean Water Act provides that sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)), a citizen must give notice of intent to file suit. Notice must be given to the alleged violator, the U.S. Environmental Protection Agency, and the State in which the violations occur.

As required by the Clean Water Act, this Notice of Violation and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, Elkhorn Mine and Bruce Nelson are hereby placed on formal notice by CSPA that, after the expiration of sixty (60) days from the date of this Notice of Violation and Intent to File Suit, CSPA intends to file suit in federal court against Elkhorn Mine and Bruce Nelson under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act.

These violations are described more fully below.

I. Elkhorn Mine Is Violating the Clean Water Act by Discharging Pollutants From the Facility to Waters of the United States Without a Permit.

Under the Act, it is unlawful to discharge pollutants from a “point source” to navigable waters without obtaining and complying with a permit governing the quantity and quality of discharges. *Trustees for Alaska v. EPA*, 749 F.2d 549, 553 (9th Cir. 1984). Section 301(a) of the Clean Water Act prohibits “the discharge of any pollutants by any person . . .” except as in compliance with, among other sections of the Act, Section 402, the NPDES permitting requirements. 33 U.S.C. § 1311(a). The duty to apply for a permit extends to “[a]ny person who discharges or proposes to discharge pollutants. . . .” 40 C.F.R. § 122.30(a).

The term “discharge of pollutants” means “any addition of any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12). Pollutants are defined to include, among other examples, a variety of metals, chemical wastes, biological materials, heat, rock, and sand discharged into water. 33 U.S.C. § 1362(6). A point source is defined as “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, [or] conduit . . . from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14). An industrial facility that discharges pollutants into a navigable water is subject to regulation as a “point source” under the Clean Water Act. *Comm. to Save Mokelumne River v. East Bay Mun. Util. Dist.*, 13 F.3d 305, 308 (9th Cir. 1993). “Navigable waters” means “the waters of the United States.” 33 U.S.C. § 1362(7). Navigable waters under the Act include man-made water bodies and any tributaries or waters adjacent to other waters of the United States. *See Headwaters, Inc. v Talent Irrigation Dist.*, 243 F.3d 526, 533 (9th Cir. 2001).

The Facility is located at Sections 5 & 6, T32N, R7W, 23 miles NW of Redding, California, parcel number 011290048000. The Facility falls under Standard Industrial Classification (“SIC”) Code 1021 (“Copper Ores”). The Facility’s discharges include arsenic, cadmium, copper, iron, mercury, and zinc.

Elkhorn Mine discharges these pollutants from the Facility through numerous discharge points from adits, and horizontal shafts into Willow Creek, Whiskeytown Lake, Clear Creek, the Sacramento River, and the Sacramento - San Joaquin Delta without a valid NPDES permit. Willow Creek, Whiskeytown Lake, Clear Creek, the Sacramento River, and Sacramento - San Joaquin Delta are waters of the United States. Accordingly, Elkhorn Mine's discharges of water containing pollutants from the Facility are discharges to waters of the United States.

CSPA is informed and believes, and thereupon alleges, that Elkhorn Mine has the duty to apply for an NPDES permit, as it discharges pollutants from the Facility into navigable waters. Elkhorn Mine has failed to meet this duty, and has not applied for a current NPDES permit, violating of Section 301(a) of the Act. Elkhorn Mine has discharged, and continues to discharge, pollutants from the Facility to waters of the United States every day through groundwater seepage and every day that there has been or will be any measurable discharge of storm water from the Facility without a permit since August 6, 2009, including but not limited to the dates set forth on Attachment A hereto. Each discharge on each separate day is a separate violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

These unlawful discharges are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Elkhorn Mine is subject to penalties for violations of the Act since August 6, 2009.

II. Persons Responsible for the Violations.

CSPA puts Elkhorn Mine and Bruce Nelson on notice that they are the persons responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CSPA puts Elkhorn Mine and Bruce Nelson on formal notice that it intends to include those persons in this action.

III. Name and Address of Noticing Party

California Sportfishing Protection Alliance, Bill Jennings, Executive Director;
3536 Rainier Avenue, Stockton, CA 95204; Phone: (209) 464-5067.

IV. Counsel.

CSPA has retained legal counsel to represent it in this matter. Please direct all communications to:

Notice of Violation and Intent To File Suit

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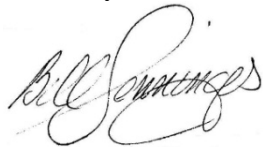
Andrew L. Packard
Megan Truxillo
John J. Prager
Law Offices of Andrew L. Packard
100 Petaluma Boulevard North, Suite 301
Petaluma, CA 94952
Tel. (707) 763-7227
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V. Penalties.

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 Elkhorn Mine and Bruce Nelson to a penalty of up to \$37,500 per day per violation for all violations occurring during the period commencing five years prior to the date of this Notice of Violations and Intent to File Suit. In addition to civil penalties, CSPA 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)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

CSPA believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. We intend to file a citizen suit under Section 505(a) of the Act against Elkhorn Mine and Bruce Nelson and their agents for the above-referenced violations upon the expiration of the 60-day notice period. If you wish to pursue remedies in the absence of litigation, we suggest that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,



Bill Jennings, Executive Director
California Sportfishing Protection Alliance

SERVICE LIST

Gina McCarthy, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Jared Blumenfeld
Administrator, U.S. EPA – Region 9
75 Hawthorne Street
San Francisco, CA, 94105

Hon. Eric Holder
U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Thomas Howard, Executive Director
State Water Resources Control Board
1001 I Street Sacramento, CA 95814
P.O. Box 100
Sacramento, CA 95812-0100

Pamela Creedon, Executive Officer
Region 5 - Central Valley Region
Regional Water Quality Control Board
11020 Sun Center Drive #200
Rancho Cordova, CA 95670-6114

ATTACHMENT A
Notice of Intent to File Suit, Elkhorn Mine, LLC
Significant Rain Events,* August 6, 2009 – August 6, 2014

August 24, 2009	February 6, 2010	November 7, 2010	February 28, 2011
October 13, 2009	February 9, 2010	November 9, 2010	March 1, 2011
October 14, 2009	February 11, 2010	November 10, 2010	March 2, 2011
October 19, 2009	February 23, 2010	November 20, 2010	March 3, 2011
November 6, 2009	February 24, 2010	November 21, 2010	March 5, 2011
November 9, 2009	February 26, 2010	November 22, 2010	March 6, 2011
November 17, 2009	March 2, 2010	November 23, 2010	March 8, 2011
November 20, 2009	March 3, 2010	November 26, 2010	March 10, 2011
November 22, 2009	March 5, 2010	November 27, 2010	March 12, 2011
November 27, 2009	March 9, 2010	December 1, 2010	March 13, 2011
December 11, 2009	March 12, 2010	December 2, 2010	March 15, 2011
December 12, 2009	March 30, 2010	December 4, 2010	March 16, 2011
December 14, 2009	March 31, 2010	December 5, 2010	March 17, 2011
December 15, 2009	April 2, 2010	December 6, 2010	March 18, 2011
December 16, 2009	April 4, 2010	December 8, 2010	March 19, 2011
December 20, 2009	April 11, 2010	December 9, 2010	March 20, 2011
December 21, 2009	April 12, 2010	December 13, 2010	March 21, 2011
December 27, 2009	April 13, 2010	December 14, 2010	March 22, 2011
December 29, 2009	April 14, 2010	December 17, 2010	March 23, 2011
December 31, 2009	April 20, 2010	December 18, 2010	March 24, 2011
January 1, 2010	April 27, 2010	December 19, 2010	March 25, 2011
January 8, 2010	April 28, 2010	December 20, 2010	March 26, 2011
January 9, 2010	May 9, 2010	December 21, 2010	April 15, 2011
January 11, 2010	May 10, 2010	December 22, 2010	April 20, 2011
January 12, 2010	May 17, 2010	December 25, 2010	April 23, 2011
January 13, 2010	May 19, 2010	December 26, 2010	April 24, 2011
January 17, 2010	May 22, 2010	December 28, 2010	April 25, 2011
January 18, 2010	May 25, 2010	December 29, 2010	May 15, 2011
January 19, 2010	May 26, 2010	January 1, 2011	May 16, 2011
January 20, 2010	May 27, 2010	January 2, 2011	May 17, 2011
January 21, 2010	June 2, 2010	January 11, 2011	May 25, 2011
January 22, 2010	June 3, 2010	January 12, 2011	May 31, 2011
January 23, 2010	June 4, 2010	January 13, 2011	June 1, 2011
January 24, 2010	August 28, 2010	January 30, 2011	June 2, 2011
January 25, 2010	September 2, 2010	February 14, 2011	June 4, 2011
January 26, 2010	September 19, 2010	February 15, 2011	June 28, 2011
January 30, 2010	October 23, 2010	February 16, 2011	June 29, 2011
February 1, 2010	October 24, 2010	February 17, 2011	August 23, 2011
February 2, 2010	October 27, 2010	February 19, 2011	October 3, 2011
February 3, 2010	October 28, 2010	February 21, 2011	October 4, 2011
February 4, 2010	October 29, 2010	February 24, 2011	October 5, 2011
February 5, 2010	October 30, 2010	February 25, 2011	October 6, 2011

* Dates gathered from publicly available rain and weather data collected at stations located near the Facility.

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October 10, 2011	March 25, 2012	December 16, 2012	June 26, 2013
November 5, 2011	March 26, 2012	December 17, 2012	August 11, 2013
November 19, 2011	March 27, 2012	December 20, 2012	September 21, 2013
November 20, 2011	March 28, 2012	December 21, 2012	September 30, 2013
November 21, 2011	March 29, 2012	December 22, 2012	November 19, 2013
November 22, 2011	March 30, 2012	December 23, 2012	November 20, 2013
November 23, 2011	March 31, 2012	December 24, 2012	December 6, 2013
November 24, 2011	April 10, 2012	December 25, 2012	January 11, 2014
December 15, 2011	April 11, 2012	December 26, 2012	January 29, 2014
December 30, 2011	April 12, 2012	December 27, 2012	February 6, 2014
January 18, 2012	April 13, 2012	December 28, 2012	February 7, 2014
January 19, 2012	April 18, 2012	December 29, 2012	February 8, 2014
January 20, 2012	April 25, 2012	December 30, 2012	February 9, 2014
January 21, 2012	April 26, 2012	January 4, 2013	February 12, 2014
January 22, 2012	May 7, 2012	January 5, 2013	February 13, 2014
January 23, 2012	August 28, 2012	January 6, 2013	February 26, 2014
January 24, 2012	October 22, 2012	January 23, 2013	February 27, 2014
January 25, 2012	October 24, 2012	January 26, 2013	February 28, 2014
January 26, 2012	October 31, 2012	February 19, 2013	March 1, 2014
February 1, 2012	November 17, 2012	March 5, 2013	March 2, 2014
February 7, 2012	November 19, 2012	March 6, 2013	March 3, 2014
February 12, 2012	November 20, 2012	March 19, 2013	March 5, 2014
February 13, 2012	November 21, 2012	March 20, 2013	March 6, 2014
February 28, 2012	November 28, 2012	March 26, 2013	March 9, 2014
February 29, 2012	November 29, 2012	March 31, 2013	March 10, 2014
March 1, 2012	November 30, 2012	April 4, 2013	March 28, 2014
March 13, 2012	December 1, 2012	April 5, 2013	March 29, 2014
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