

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

TIME SCHEDULE ORDER R5-2015-0901
REQUIRING

LAZARUS MINING, LLC AND U.S. FOREST SERVICE, TAHOE NATIONAL FOREST
KLONDIKE, DUTCH, AND TELEGRAPH TUNNEL MINES
SIERRA COUNTY

TO COMPLY WITH
WASTE DISCHARGE REQUIREMENTS ORDER R5-2015-0075
(NPDES PERMIT NO. CA0084387)

The California Regional Water Quality Control Board, Central Valley Region, (Central Valley Water Board or Board) finds that:

1. Lazarus Mining, LLC, owns and operates the Klondike, Dutch, and Telegraph Mines (hereinafter Facility). Lazarus Mining, LLC owns the unpatented mining claim for the mines and the U.S. Forest Service owns and manages the property on which the Facility is located. Lazarus Mining, LLC is considered the primary Discharger. However, the U.S. Forest Service is considered a secondary Discharger and is also responsible for compliance with this Order. Tunnel drainage water is discharged from the Telegraph Tunnel Mine at Discharge Point 001 and from the Klondike and Dutch Tunnel Mines at Discharge Point 002 to Goodyears Creek, a water of the United States and a tributary to the Yuba River.
2. On **5 June 2015**, the Central Valley Water Board adopted Waste Discharge Requirements (WDR) Order R5-2015-0075 (NPDES No. CA0084387), which imposed Final Effluent Limitations IV.A.1.a and IV.B.1.a, which read in part as follows:

Table 4. Effluent Limitations – Discharge Point 001

Parameter	Units	Effluent Limitations			
		Average Monthly	Maximum Daily	Instantaneous Minimum	Instantaneous Maximum
Lead, Total Recoverable	µg/L	0.6	1.7	--	--
Nickel, Total Recoverable	µg/L	14	45	--	--

Table 5. Effluent Limitations – Discharge Point 002

Parameter	Units	Effluent Limitations			
		Average Monthly	Maximum Daily	Instantaneous Minimum	Instantaneous Maximum
Cadmium, Total Recoverable	µg/L	1.3	2.6	--	--

NEED FOR TIME SCHEDULE EXTENSION AND LEGAL BASIS

3. On 27 April 2015, the Discharger submitted an infeasibility analysis requesting additional time to comply with the final effluent limitations for lead and nickel at Discharge Point 001 and cadmium at Discharge Point 002 in WDR Order R5-2015-0075. The Discharger indicated that effluent levels of lead, nickel, and cadmium in 2012 were anomalously high and occurred when a limited rehabilitation

program was conducted at the Facility. The Discharger plans to continue to conduct temporary exploration and sampling activities and, if conditions are favorable, to initiate underground placer and hard rock gold mining and milling operations during the term of WDR Order R5-2015-0075. The Discharger is uncertain of the source of the high levels of these constituents observed in 2012 and whether such high levels would occur under future exploratory and/or active mining operations. Therefore, the Discharger proposed to conduct additional effluent testing under actual operating conditions to determine the cause of the high effluent levels, design a proposed compliance program, design and construct facilities, implement new or significantly expanded programs, secure necessary permits for facilities and/or programs, and secure financing. The Discharger estimated that 24 months would be required to gather additional data under operating conditions to determine the source of the potential pollutants and 36 months would be required to implement the appropriate source control and waste treatment measures; thus, the Discharger estimated that compliance with the final effluent limitations for lead and nickel at Discharge Point 001 and cadmium at Discharge Point 002 would be achieved by **31 July 2020**.

4. The Discharger cannot consistently comply with the effluent limitations for lead and nickel at Discharge Point 001 and cadmium at Discharge Point 002 in WDR Order R5-2015-0075 and must implement additional actions to reach compliance. This Order contains a time schedule for compliance with final effluent limitations, sets interim limitations for certain constituents, and is intended to provide protection from mandatory minimum penalties (MMP's) for these constituents.

MANDATORY MINIMUM PENALTIES

5. Water Code section 13385, subdivisions (h) and (i), requires the Central Valley Water Board to impose MMP's upon dischargers that violate certain effluent limitations. Water Code section 13385(j)(3) exempts discharges from these MMP's:

... where the waste discharge is in compliance with either a cease and desist order issued pursuant to Section 13301 or a time schedule order issued pursuant to Section 13300 or 13308, if all the [specified] requirements are met...for the purposes of this subdivision, the time schedule may not exceed five years in length...

6. Per the requirements of Water Code section 13385, subdivision (j)(3), the Central Valley Water Board finds that new or modified control measures are necessary in order to comply with new or more stringent effluent limitations, and that the Discharger could not have designed, installed, and put into operation the new or modified control measures within 30 calendar days of the date that the final effluent limitations went into effect. The proposed time schedule is needed to gather additional data under operating conditions and implement the appropriate source control and waste treatment measures.
7. Time Schedule Orders (TSO) generally may only provide protection from MMP's for up to 5 years. However, Water Code section 13385, subdivision (j)(3)(C)(ii)(II), authorizes the Board to grant an additional five years if the Board finds, following a public hearing, that a Discharger is making diligent progress towards bringing the waste discharge into compliance and that the additional time is necessary to comply with the effluent limitations.
8. Compliance with this TSO provides protection for the Discharger from MMP's as follows:
 - a. Lead and Nickel: WDR Order R5-2015-0075 imposed new final effluent limitations for lead and nickel at Discharge Point 001 that are effective on **1 August 2015**. This TSO provides

protection from MMP's from **1 August 2015** through **31 July 2020** for a period of five years. This time schedule is as short as possible and does not exceed five years in length.

- b. Cadmium: WDR Order R5-2015-0075 imposed new final effluent limitations for cadmium at Discharge Point 002 that are effective on **1 August 2015**. This TSO provides protection from MMP's from **1 August 2015** through **31 July 2020** for a period of five years. This time schedule is as short as possible and does not exceed five years in length.
9. The Board finds that the time schedule in Finding No. 8 is as short as possible, considering the technological, operational, and economic factors that affect the design, development, and implementation of the control measures that are necessary to comply with the effluent limitations.
 10. This TSO provides a time schedule for completing the actions necessary to ensure compliance with final effluent limitations. Since the time schedule for the completion of these actions exceeds one year, this TSO includes interim effluent limitations and interim requirements and dates for their achievement.
 11. This TSO includes performance-based interim effluent limitations for lead, nickel, and cadmium. There are limited analytical monitoring results and/or a high percentage of censored (i.e., non-detect) results for these constituents. This provides limited datasets to determine if the data has a normal or lognormal distribution and to attain statistically calculated performance-based interim limitations. For example, using the five cadmium analytical results provided by the Discharger with the statistical based approach provided in EPA's *Technical Support Document for Water Quality-Based Toxics Control*, or TSD, to calculate the interim limitation, an interim average monthly effluent limitation (AMEL) equates to 23 µg/L, which is artificially inflated for a maximum effluent concentration (MEC) at 11 µg/L. Therefore, in the absence of adequate data to determine the distribution and calculate statistically-based interim limitations, staff used professional judgment in calculating the interim effluent limitations for lead, nickel, and cadmium in this Order to provide the Discharger a safety factor over the MEC's. Interim effluent limitations are established as shown in the following table:

Interim Effluent Limitations

Parameter	Units	Data Points	MEC	Interim Average Monthly Effluent Limitation	Interim Maximum Daily Effluent Limitation
Discharge Point 001					
Lead, Total Recoverable	µg/L	16	4	5.0	7.5
Nickel, Total Recoverable	µg/L	16	68	72	110
Discharge Point 002					
Cadmium, Total Recoverable	µg/L	5	11	15	23

12. The Central Valley Water Board expects that the Discharger can maintain compliance with the interim effluent limitations included in this Order. Interim effluent limitations are established when compliance with the final effluent limitations cannot be achieved by the existing Facility. Discharge of constituents in concentrations in excess of the final effluent limitations, but in compliance with the interim effluent limitations, can significantly degrade water quality and adversely affect the beneficial uses of the receiving stream on a long-term basis. The interim effluent limitations, however, establish enforceable ceiling concentrations until compliance with the final effluent limitations can be achieved.

13. If an interim effluent limitation contained in this Order is exceeded, then the Discharger is subject to MMP's for that particular exceedance as it will no longer meet the exemption in Water Code section 13385(j)(3). It is the intent of the Central Valley Water Board that a violation of an interim AMEL subjects the Discharger to only one MMP for that monthly averaging period. In addition, a violation of an interim maximum daily effluent limitation (MDEL) subjects the Discharger to one MMP for the day in which the sample was collected.

REGULATORY BASIS

14. Water Code section 13300 states, in part:

Whenever a regional board finds that a discharge of waste is taking place or threatening to take place that violates or will violate requirements prescribed by the regional board, or the state board, or that the waste collection, treatment, or disposal facilities of a discharger are approaching capacity, the board may require the discharger to submit for approval of the board, with such modifications as it may deem necessary, a detailed time schedule of specific actions the discharger shall take in order to correct or prevent a violation of requirements.

15. Water Code section 13267 states, in part:

In conducting an investigation ... the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region ... shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.

16. The Discharger owns and operates the Facility. The technical and monitoring reports required by this Order are necessary to determine compliance with WDR Order R5-2015-0075 and with this TSO.
17. Issuance of this TSO is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.) pursuant to Water Code section 13389, since the adoption or modification of an NPDES permit for an existing source is statutorily exempt and this Order only serves to implement an NPDES permit. (*Pacific Water Conditioning Ass'n, Inc. v. City Council of City of Riverside* (1977) 73 Cal.App.3d 546, 555-556.).
18. On 10 December 2009, the Central Valley Water Board adopted Resolution No. R5-2009-0114 to provide explicit authority to the Executive Officer to issue or modify time schedule orders, and to make this authority known to the public and regulated community.
19. The Central Valley Water Board has notified the Discharger and interested agencies and persons of its intent to adopt a new Time Schedule Order for this discharge and has provided them with an opportunity to submit their written views and recommendations. No adverse comments were received during the 30-day public comment period. Therefore, this Order is issued by the Executive Officer of the Central Valley Water Board.

IT IS HEREBY ORDERED THAT, pursuant to Water Code section 13300 and 13267, in order to ensure compliance with the requirements of WDR Order R5-2015-0075, the Discharger shall comply with the following:

1. Pursuant to Water Code Section 13267, the Discharger shall submit the following technical reports to ensure compliance with the final effluent limitations for lead and nickel at Discharge Point 001 and cadmium at Discharge Point 002 contained in WDR Order R5-2015-0075, as described in Finding No. 2 above:

Task	Compliance Date
Submit Progress Reports ¹	31 January, annually
Submit sampling and monitoring workplan for collecting additional data for lead and nickel at Discharge Point 001 and cadmium at Discharge Point 002	31 August 2015
Submit results of sampling and monitoring program and a workplan for selected alternative for control and/or treatment project, with time schedule	31 July 2017
Submit documentation that selected alternative for control and/or treatment project has been completed	31 January 2020
Submit documentation showing that the discharge fully complies with the effluent limitations for lead and nickel at Discharge Point 001 and cadmium at Discharge Point 002	31 July 2020

¹ The progress reports shall detail the steps taken to comply with this Order, including documentation showing completion of tasks, construction progress, evaluation of the effectiveness of the implemented measures, and assessment of whether additional measures are necessary to meet the compliance dates.

2. The following interim effluent limitations shall be effective **1 August 2015 and until 31 July 2020**, or when the Discharger is able to come into compliance, whichever is sooner:

Parameter	Units	Interim AMEL	Interim MDEL
Discharge Point 001			
Lead, Total Recoverable	µg/L	5.0	7.5
Nickel, Total Recoverable	µg/L	72	110
Discharge Point 002			
Cadmium, Total Recoverable	µg/L	15	23

3. Any person signing a document submitted under this Order shall make the following certification:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my knowledge and on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.”

4. In accordance with California Business and Professions Code sections 6735, 7835, and 7835.1, engineering and geologic evaluations and judgments shall be performed by or under the direction of registered professionals competent and proficient in the fields pertinent to the required activities. All technical reports specified herein that contain work plans for, that describe the conduct of

investigations and studies, or that contain technical conclusions and recommendations concerning engineering and geology shall be prepared by or under the direction of appropriately qualified professional(s), even if not explicitly stated. Each technical report submitted by the Discharger shall contain the professional's signature and/or stamp of the seal.

If, in the opinion of the Executive Officer, the Discharger fails to comply with the provisions of this Order, the Executive Officer may refer this matter to the Attorney General for judicial enforcement, may issue a complaint for administrative civil liability, or may take other enforcement actions. Failure to comply with this Order or with the WDR Order may result in the assessment of Administrative Civil Liability of up to \$10,000 per violation, per day, depending on the violation, pursuant to the Water Code, including sections 13268, 13350 and 13385. The Central Valley Water Board reserves its right to take any enforcement actions authorized by law.

Any person aggrieved by this action of the Central Valley Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at:

http://www.waterboards.ca.gov/public_notices/petitions/water_quality

or will be provided upon request.

This Order is effective upon signature.

Original Signed By

PAMELA C. CREEDON, Executive Officer

14 July 2015

DATE