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VIA REGISTERED MAIL –  
RETURN RECEIPTS REQUESTED

June 1, 2005

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**Re: Notice of Intent to Sue for Violations of the Federal Water Pollution Control Act (Clean Water Act), the California Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65), and the Resource Conservation and Recovery Act**

Dear Gentlemen,

We write to notify you that California Sportfishing Protection Alliance and Watershed Enforcers (hereinafter collectively referred to as "CSPA") believe that Meridian Gold Company's (hereinafter "Meridian Gold") Royal Mountain King Mine near Copperopolis, California is discharging pollutants into the waters of the United States in violation of the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251-1376 (hereinafter "CWA" or "Clean Water Act"). We also write to notify you that CSPA believes that Meridian Gold's Royal Mountain King Mine is discharging listed chemicals into designated drinking water supplies in violation of California's Safe Drinking Water and Toxic Enforcement Act of 1986, also known as "Proposition 65," California Health & Safety Code § 25249.5. In addition, we write to notify you that CSPA believes that Royal Mountain King Mine is handling, storing, and disposing of solid or hazardous wastes in a matter that may present an imminent and substantial

endangerment to health or the environment in violation of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6901 et seq.

Specifically, and as described in more detail below, Meridian Gold is violating the CWA by discharging pollutants from two overburden disposal piles and at least one wastewater impoundment, including arsenic, manganese, nitrate, selenium, sulfate, nickel, and total dissolved solids, into the waters of the United States without having either applied for or obtained the requisite National Pollutant Discharge Elimination System (“NPDES”) permit.

Meridian Gold also is violating the CWA by discharging storm water from the Royal Mountain King Mine without a valid NPDES permit or, alternatively, in violation of NPDES General Permit No. CAS000001, State Water Resources Control Board Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ (“Industrial Storm Water Permit” or “Permit”).

Meridian Gold also is violating or threatening to violate Proposition 65 by discharging arsenic and nickel, chemicals known to cause cancer or reproductive toxicity, from the Royal Mountain King Mine into groundwater that passes or probably will pass into waters that are designated for drinking.

Meridian Gold also is violating RCRA by handling, storing, or disposing of solid or hazardous waste such as arsenic, manganese, nitrate, selenium, sulfate, nickel, and total dissolved solids, at the Royal Mountain King Mine in a manner that may present an imminent and substantial endangerment to health or the environment.

By this letter, pursuant to 33 U.S.C. § 1365(a) and (b) of the CWA, Cal. Health & Safety Code § 25249.7(d)(1), and 42 U.S.C. § 6972(b)(2)(A) of the RCRA, CSPA is providing Meridian Gold with notice of CSPA’s intent to file suit to address the violations of the Clean Water Act, Safe Drinking Water and Toxic Enforcement Act, and Resource Conservation and Recovery Act, as referenced in this letter.

## **I. BACKGROUND**

The Royal Mountain King Mine’s operations cover approximately 197 acres of land approximately five miles from Copperopolis, California. Meridian Gold and/or its predecessors in interest conducted gold mining, including heap leach mining, at the site from 1988 to July 1994. During active mining, approximately 56 million tons of ore and overburden were removed from the three mining pits at the site. At least seven waste management units remain at the site. These include a former mining pit now filled with a combination of wastewater, groundwater and stormwater known as Skyrocket Pit Lake and several overburden disposal sites, including Gold Knoll ODS and the Western ODS, both of which consist of discarded waste rock disposed in previous active mining pits. The other four waste management units include one other ODS – the Flotation Tailings Reservoir ODS – as well as the Process Water Pond, the Leachate Concentrates Residue Facility, and the Flotation Tailings Reservoir Leachate Collection and Removal System.

Two creeks flow through the mining site – Little Johns Creek drains the eastern and central portions of the site, and Clover Creek drains the western side of the mining area. Both creeks are tributaries to Flowers Reservoir. Little Johns Creek continues below the Flowers Reservoir dam and flows into French Camp Slough, itself a tributary of the San Joaquin River and the Sacramento-San Joaquin River Delta (“Delta”).

The Regional Board has established water quality standards for the San Joaquin River, the Delta and their tributaries in the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, generally referred to as the Basin Plan. The Basin Plan includes a narrative toxicity standard which states that “[a]ll waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life.” The Basin Plan establishes a dissolved oxygen standard of 6.0 mg/L for the San Joaquin River in and around Stockton. The Basin Plan establishes a standard for electrical conductivity in the Delta and its tributaries of 0.7 mmhos/cm from April 1 through August 31 and 1.0 mmhos/cm from September 1 through March 31. The Basin Plan provides that “[t]he pH shall not be depressed below 6.5 nor raised above 8.5.” The Basin Plan also provides that “[a]t a minimum, water designated for use as domestic or municipal supply (MUN) shall not contain concentrations of chemical constituents in excess of the maximum contaminant levels (MCLs).” *Id.*, p. III-3.0. EPA has established recommended secondary MCL ranges for total dissolved solids (500 mg/L), specific conductance (900 µmho/cm), chloride (250 mg/L) and sulfate (250 mg/L). EPA also has established a maximum contaminant level for Nitrate + Nitrite of 10 mg/L.

The California Office of Environmental Health Hazard Assessments (“OEHHHA”) has established a California Public Health Goal for arsenic of 0.004 ug/L. Pursuant to Proposition 65, OEHHHA has established a no significant risk level for arsenic of 5 ug/L and a maximum allowable dose level for reproductive toxicity for arsenic of 0.10 ug/day, which is equivalent to a concentration of 0.05 µg/L. EPA also has established a primary maximum contaminant level of 10 ug/L arsenic and a recommended criterion for ambient waters of 0.018 ug/L.

The Industrial Storm Water Permit incorporates benchmark levels established by EPA as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable (“BAT”) and best conventional pollutant control technology (“BCT”). The following benchmark has been established for pollutants discharged by Meridian Gold at the Royal Mountain King Mine: nitrate+nitrite – 0.68 mg/L as N. The State Board recently proposed to include a benchmark level for specific conductance of 200 µmho/cm.

## **II. PROPOSITION 65 PROHIBITS THE DISCHARGE OF LISTED CHEMICALS TO WATERS DESIGNATED FOR USE AS DRINKING WATER SUPPLIES.**

The California Safe Drinking Water and Toxic Enforcement Act of 1986, commonly referred to as Proposition 65 after the ballot measure that enacted it, prohibits businesses from knowingly discharging or releasing listed chemicals into water or onto land where it passes or probably will pass into a source of drinking water. Cal. Health & Safety Code § 25249.5. The

Governor of California, through the Office of Environmental Health Hazard Assessment, maintains the list of chemicals that are known to the State of California to cause cancer, birth defects or other reproductive harms. Cal. Health & Safety Code § 25249.8. On February 27, 1987, arsenic was included on the Proposition 65 list. On May 7, 2004, nickel was included on the Proposition 65 list.

Proposition 65's discharge prohibition does not apply to any discharge or release that meets both of the following criteria: (1) The discharge or release will not cause any significant amount of the discharged or released chemical to enter any source of drinking water, and (2) the discharge or release is in conformity with all other laws and with every applicable regulation, permit, requirement, and order. Cal. Health & Safety Code § 25249.9(b). The burden of showing that a specific discharge or release meets both of these criteria falls on the defendant. *Id.* The discharge prohibition also only applies to a particular listed chemical after 20 months have passed from the date of listing. Cal. Health & Safety Code § 25249.9(a).

“‘Source of drinking water’ means either a present source of drinking water or water which is identified or designated in a water quality control plan adopted by a regional board as being suitable for domestic or municipal uses.” Cal. Health & Safety Code § 25249.11(d). The State Board enacted Resolution No. 88-63 identifying all groundwaters of the State as water supplies. In the vicinity of Royal Mountain King Mine, groundwater and surface water at the mine site flow downgradient to groundwaters or Flowers Reservoir which are used for domestic water supplies. In addition, the Regional Board's Basin Plan identifies existing and designated beneficial uses for waters within the region. In the vicinity of the Royal Mountain King Mine, the Regional Board has identified the beneficial uses of Flowers Reservoir, Little Johns Creek, Clover Creek and French Camp Slough, as well as the San Joaquin River into which they flow, as including municipal and domestic drinking water supplies. *See* State Board Order No. 2004-007, at 3 (May 20, 2004).

The official summary of Proposition 65 required by OEHHA's regulations is attached hereto as Attachment A.

### **III. THE CLEAN WATER ACT REQUIRES NPDES PERMITS FOR DISCHARGES OF POLLUTANTS FROM POINT SOURCES ASSOCIATED WITH MINING ACTIVITIES INTO NAVIGABLE WATERS.**

Under the CWA, 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. § 122.21(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, industrial waste, chemical wastes, biological materials, heat, rock, and sand discharged into water. 33 U.S.C. § 1362(6). A point source is defined as “any discernable, 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). “Navigable waters” means “the waters of the United States.” 33 U.S.C. § 1362(7).

#### **IV. UNDER THE CLEAN WATER ACT, NPDES PERMITS FOR DISCHARGES OF STORM WATER ASSOCIATED WITH INDUSTRIAL ACTIVITIES DO NOT APPLY TO STORM WATER DISCHARGES COMMINGLED WITH NON-STORMWATER DISCHARGES**

Section 402(p) of the Clean Water Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES discharge permit (33 U.S.C. § 1342) such as the Industrial Storm Water Permit. The Act’s storm water permitting requirements apply to active and inactive mineral mining and processing operations. However, the Industrial Storm Water Permit cannot be applied to industrial storm water discharges that are commingled or mixed with non-storm water discharges, with the exception of certain “authorized non-storm water discharges” listed in the Industrial Storm Water Permit. “Prohibited non-storm water discharges must be either eliminated or permitted by a separate NPDES permit.” Permit, Discharge Prohibition A(1). *See also id.*, Permit, Fact Sheet, p. 9 (“Unauthorized non-storm water discharges (even when commingled with storm water) shall be eliminated or covered by a separate NPDES Permit”). Where a mining facility’s storm water discharges come into contact with contaminated springs and seeps or other mine drainage, those discharges cannot be governed by the Industrial Storm Water Permit. *See* Permit, Special Conditions D.

Where the Industrial Storm Water Permit applies, it sets forth a series of pollution control requirements. Discharge Prohibition A(1) of the Industrial Storm Water Permit prohibits the discharge of materials other than storm water (defined as non-storm water discharges) that discharge either directly or indirectly to waters of the United States. Discharge Prohibition A(2) of the Industrial Storm Water Permit prohibits storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance. Receiving Water Limitation C(1) of the Industrial Storm Water Permit prohibits storm water discharges and authorized non-storm water discharges to surface or groundwater that adversely impact human health or the environment. Receiving Water Limitation C(2) of the Industrial Storm Water Permit also prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedence of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Water Board’s Basin Plan.

The Permit sets forth detailed monitoring requirements. Permit, Section B(5)(a) – the Monitoring and Reporting Requirements – provides that “[a]ll storm water discharge locations shall be sampled.” Section B(7) states that “Facility operators shall visually observe and collect samples of storm water discharges from all drainage areas that represent the quality and quantity of the facility’s storm water discharges from the storm event.” Section B(5)(a) of the Industrial Storm Water Permit requires that dischargers “shall collect storm water samples during the first hour of discharge from (1) the first storm event of the wet season, and (2) at least one other storm

event in the wet season. All storm water discharge locations shall be sampled.” Section B(5)(c)(i) further requires that the samples shall be analyzed for total suspended solids, pH, specific conductance, and total organic carbon. Oil and grease may be substituted for total organic carbon. Section B(5)(c)(ii) requires that “samples shall be analyzed for . . . [t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities.”

Effluent Limitation B(3) of the Industrial Storm Water Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of best available technology economically achievable (“BAT”) for toxic and nonconventional pollutants and best conventional pollutant control technology (“BCT”) for conventional pollutants. BAT and BCT include both nonstructural and structural measures. Section A(8).

Section A(1) and Provision E(2) of the Industrial Storm Water Permit require dischargers of storm water associated with industrial activity to develop, implement, and update an adequate storm water pollution prevention plan (“SWPPP”) no later than October 1, 1992. Section A(1) and Provision E(2) requires dischargers who submitted an NOI pursuant to the Order to continue following their existing SWPPP and implement any necessary revisions to their SWPPP in a timely manner, but in any case, no later than August 1, 1997.

The SWPPP must, among other requirements, identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm and non-storm water discharges from the facility and identify and implement site-specific best management practices (“BMPs”) to reduce or prevent pollutants associated with industrial activities in storm water and authorized non-storm water discharges (Section A(2)). The SWPPP must also include BMPs that achieve BAT and BCT (Effluent Limitation B(3)). The SWPPP must include: a description of individuals and their responsibilities for developing and implementing the SWPPP (Section A(3)); a site map showing the facility boundaries, storm water drainage areas with flow pattern and nearby waterbodies, the location of the storm water collection, conveyance and discharge system, structural control measures, impervious areas, areas of actual and potential pollutant contact, and areas of industrial activity (Section A(4)); a list of significant materials handled and stored at the site (Section A(5)); a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities, and a description of significant spills and leaks, a list of all non-storm water discharges and their sources, and a description of locations where soil erosion may occur (Section A(6)). The SWPPP must include an assessment of potential pollutant sources at the Facility and a description of the BMPs to be implemented at the Facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective (Section A(7), (8)). The SWPPP must be evaluated to ensure effectiveness and must be revised where necessary (Section A(9),(10)).

Receiving Water Limitation C(3) requires a discharger to prepare and submit a report to the Regional Board describing changes it will make to its current BMPs in order to prevent or reduce any pollutant in its storm water discharges that is causing or contributing to an exceedance of water quality standards. Once approved by the Regional Board, the additional

BMPs must be incorporated into the Facility's SWPPP. The report must be submitted to the Regional Board no later than 60-days from the date the discharger first learns that its discharge is causing or contributing to an exceedance of an applicable water quality standard. Receiving Water Limitation C(4)(a). Section C(11)(d) of the Permit's Standard Provisions also requires dischargers to report any noncompliance. *See also* Provision E(6). Lastly, Section A(9) of the Permit requires an annual evaluation of storm water controls including the preparation of an evaluation report and implementation of any additional measures in the SWPPP to respond to the monitoring results and other inspection activities.

Finally, Section B(14) of the Industrial Storm Water Permit require dischargers to submit an Annual Report by July 1 of each year to the executive officer of the relevant Regional Board. The Annual Report must be signed and certified by an appropriate corporate officer. Sections B(14), C(9), (10). Section A(9)(d) of the Industrial Storm Water Permit requires the discharger to include in their annual report an evaluation of their storm water controls, including certifying compliance with the Industrial Storm Water Permit. *See also* Sections C(9) and (10) and B(14).

**V. THE RESOURCE CONSERVATION AND RECOVERY ACT PROHIBITS THE HANDLING, STORAGE, OR DISPOSAL OF ANY SOLID OR HAZARDOUS WASTE IN A MANNER THAT MAY PRESENT AN IMMINENT AND SUBSTANTIAL THREAT TO HEALTH OR THE ENVIRONMENT.**

RCRA prohibits the owner or operator of a treatment, storage, or disposal facility from contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment. 42 U.S.C. § 6972(a)(1)(B). RCRA establishes liability even where the wastes at issue consist solely of solid wastes which are not hazardous, *see, e.g., Zands v. Nelson*, 779 F. Supp. 1254 (S.D. Cal. 1991), as long as the wastes may present an imminent and substantial endangerment to health or the environment.

Courts have noted that the "imminent and substantial endangerment" standard "is expansive language, which is intended to confer upon the courts the authority to grant affirmative equitable relief to the extent necessary to eliminate any risk posed by toxic wastes." *Dague v. City of Burlington*, 935 F.2d 1343, 1355 (2d Cir. 1991) (internal quotation marks omitted), *rev'd in part on other grounds*, 112 S. Ct. 2638 (1992). There is no requirement to show actual harm, only threatened harm, and the term "imminence" does not require a showing that harm will occur immediately, so long as the risk of threatened harm is present. *Id*; *see also Lincoln Properties, Ltd. v. Higgins*, 1993 WL 217429, \* 12-13 (E.D. Cal. 1993).

**VI. MERIDIAN GOLD IS DISCHARGING NUMEROUS POLLUTANTS FROM WASTE MANAGEMENT UNITS AT ROYAL MOUNTAIN KING MINE.**

CSPA is informed and believes, and thereupon alleges, that Meridian Gold is discharging pollutants and/or chemicals listed pursuant to Proposition 65 from all seven waste management units at the Royal Mountain King Mine to surface waters and/or ground waters on, adjacent to or beneath the mining site:

**A. Discharges from Skyrocket Pit Lake.**

According to the available information, Skyrocket Pit Lake is discharging to both groundwater and surface waters. CSPA is informed and believes, and thereupon alleges, that Skyrocket Pit Lake is discharging, among other pollutants, nitrate, selenium, sulfate, bicarbonate and total dissolved solids to Little Johns Creek. CSPA is informed and believes, and thereupon alleges, that Skyrocket Pit Lake is discharging, among other pollutants, arsenic, nickel, and sulfate to groundwater flowing beneath the mining site.

**B. Discharges from Gold Knoll ODS.**

According to the available information, the Gold Knoll ODS is discharging to both groundwater and surface waters. CSPA is informed and believes, and thereupon alleges, that the Gold Knoll ODS is discharging, among other pollutants, manganese, nitrate, selenium, sulfate and total dissolved solids to Clover Creek. CSPA is informed and believes, and thereupon alleges, that the Gold Knoll ODS is discharging, among other pollutants, arsenic, nickel, nitrate, sulfate, and total dissolved solids to groundwater flowing beneath the mining site.

**C. Discharges from Western ODS.**

According to the available information, the Western ODS is discharging to both groundwater and surface waters. CSPA is informed and believes, and thereupon alleges, that the Western ODS is discharging, among other pollutants, manganese, nitrate, selenium, sulfate and total dissolved solids to Clover Creek. CSPA is informed and believes, and thereupon alleges, that the Western ODS is discharging nitrate, selenium and sulfate to Little Johns Creek. CSPA is informed and believes, and thereupon alleges, that the Western ODS is discharging arsenic and nickel to groundwater flowing beneath the mining site.

**D. Discharges from Flotation Tailings Reservoir ODS.**

According to the available information, the Flotation Tailings Reservoir ODS is discharging pollutants to groundwater flowing beneath the mining site. CSPA is informed and believes, and thereupon alleges, that the Flotation Tailings Reservoir ODS is discharging, among other pollutants, selenium, sulfate, TDS and nitrate to groundwater flowing beneath the mining site.

**E. Discharges from the Flotation Tailings Reservoir.**

According to the available information, the Flotation Tailings Reservoir is discharging pollutants to groundwater flowing beneath the mining site. CSPA is informed and believes, and thereupon alleges, that the Flotation Tailings Reservoir is discharging, among other pollutants, sulfate, TDS and nitrate to groundwater flowing beneath the mining site.

**F. Discharges from the Process Water Pond.**

According to the available information, the Process Water Pond is discharging pollutants to groundwater flowing beneath the mining site. CSPA is informed and believes, and thereupon alleges, that the Process Water Pond is discharging, among other pollutants, sulfate, TDS and nitrate to groundwater flowing beneath the mining site.

**G. Discharges from Leachate Concentrate Residue Facility.**

According to the available information, the Leachate Concentrate Residue Facility is discharging pollutants to groundwater flowing beneath the mining site. CSPA is informed and believes, and thereupon alleges, that the Leachate Concentrate Residue Facility is discharging, among other pollutants, sulfate, TDS, nitrate, cyanide to groundwater flowing beneath the mining site.

Meridian Gold's discharges of the significant array of pollutants described above to groundwater and surface waters have had and continue to have deleterious impacts on the quality of those waters and their beneficial uses. High levels of arsenic and total dissolved solids attributable to discharges from Royal Mountain King Mine, as well as other pollutants, are consistently observed in Flowers Reservoir and downgradient drinking water wells.

**VII. MERIDIAN GOLD'S DISCHARGES OF LISTED CHEMICALS TO DRINKING WATER ARE VIOLATING OR THREATENING TO VIOLATE PROPOSITION 65.**

Meridian Gold is discharging contaminants listed pursuant to Proposition 65 to sources of drinking water beneath and downgradient from the Royal Mountain King Mine in violation of Health & Safety Code § 25249.5. Meridian Gold is knowingly discharging arsenic and nickel from the Western ODS, the Gold Knoll ODS and Skyrocket Pit Lake to ground water flowing through the site. Groundwater beneath the mine site flows downgradient to areas where domestic wells are located, to Little Johns and Clover Creeks and to the Flowers Reservoir, all of which the Regional Board or State Board has designated for drinking water use. Because Meridian Gold is violating the CWA as well as the Porter-Cologne Water Quality Control Act, Water Code § 13000 *et seq.*, at the site, as described in the section above, discharges of listed chemicals from the site are strictly prohibited. In addition, Meridian Gold is discharging arsenic into groundwater at levels well in excess of the significant risk level of 5 ug/day and the maximum allowable dose level for reproductive toxicity of 0.05 ug/L identified by OEHHA. Furthermore, Meridian Gold's current discharges of nickel constitute a threat to violate Health and Safety Code § 25249.5 when its provisions regarding nickel discharges become effective on January 7, 2006 (20 months subsequent to the date nickel was included on the Proposition 65 list).

For these reasons, Meridian Gold is in violation of Proposition 65, for knowingly discharging or threatening to discharge arsenic and nickel into waters designated for drinking water. CSPA is informed and believes that the arsenic violations have been ongoing on a daily

basis at least June 1, 2004, and will continue to occur. Each discharge of arsenic as described above constitutes a separate violation of Proposition 65. Consistent with the one-year statute of limitations applicable to Proposition 65 enforcement actions, Meridian Gold is subject to penalties for violations of Proposition 65 since June 1, 2004.

### **VIII. MERIDIAN GOLD'S DISCHARGES OF POLLUTANTS FROM POINT SOURCES INTO NAVIGABLE WATERS WITHOUT AN NPDES PERMIT ARE VIOLATING THE CWA.**

Meridian Gold is discharging the pollutants described in Section VI, above, from point sources into waters of the United States without the NPDES permit required by the CWA.

The CWA defines "point source" as "[a]ny discernable, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged." 33 U.S.C. § 1362(14). *Sierra Club v. Abston Construction Co.*, 620 F.2d 41 (5th Cir. 1980); *United States v. Earth Sciences, Inc.*, 599 F.2d 368 (10th Cir. 1979). Each of the seven waste management units at the Royal Mountain King Mine are point sources. Three of the units – Skyrocket Pit Lake, Western ODS and Gold Knoll ODS are "discernable, confined and discrete conveyance[s]" that are discharging pollutants to waters of the United States. The other four units are point sources that may be discharging pollutants to waters of the United States. In addition, each of those point sources conveys pollutants to waters of the United States via seeps, sumps, drainage ditches, channels and other discrete conveyances which also are point sources under the CWA.

"Pollutant" means: Dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water." 33 U.S.C. § 1362(6). *Northern Plains Resource Council v. Fidelity Exploration and Development Co.*, 325 F.3d 1155 (9th Cir. 2003). Pollutants governed by the CWA include manganese, nitrate, selenium, sulfate, total dissolved solids, arsenic, nickel and other constituents released from Meridian Gold's waste management units.

"Discharge of a pollutant" means "any addition of any pollutant to navigable waters from any point source . . ." *South Florida Water Management Dist. v. Miccosukee Tribe of Indians*, 541 U.S. 95 (2004). "The term 'navigable waters' means the waters of the United States." 33 U.S.C. § 1362(7). Waters of the United States include all tributaries to navigable waters. *Headwaters, Inc. v. Talent Irrigation Dist.*, 243 F.3d 526 (9th Cir. 2001). Waters of the United States also include ephemeral creeks. Clover Creek, Little Johns Creek, and Flower Reservoir are therefore waters of the United States. Meridian Gold is adding pollutants to Clover Creek, Little Johns Creek and Flower Reservoir from Skyrocket Pit Lake, Gold Knoll ODS and Western ODS.

Meridian Gold does not have an NPDES permit that governs discharges from Skyrocket Pit Lake, Western ODS or Gold Knoll ODS. On July 30, 1999, Meridian Gold submitted an

application to the Regional Board to obtain an NPDES permit. On March 13, 2003, Meridian Gold withdrew its NPDES permit application. At this time, Meridian Gold has not applied for an NPDES permit for any of the discharges associated with the Royal Mountain King Mine described in the paragraphs above.

For these reasons, Meridian Gold is in violation of the CWA's duty for persons to apply for an NPDES permit. 40 C.F.R. § 122.21(a). CSPA is informed and believes that this violation has been ongoing on a daily basis since June 1, 2000, and will continue to occur. Each day on which Meridian Gold failed to apply for an NPDES permit for these discharges constitutes a separate violation of the Act, subjecting Meridian Gold to daily penalties since June 1, 2005. Likewise, Meridian Gold is in violation of Section 1311(a) of the CWA, for discharging pollutants from point sources without first obtaining the requisite NPDES permit. CSPA is informed and believes that this violation has been ongoing on a daily basis since June 1, 2000 and will continue to occur. Each day on which Meridian Gold failed to obtain an NPDES permit for these discharges constitutes a separate violation of the Act, subjecting Meridian Gold to daily penalties since June 1, 2005.

**IX. MERIDIAN GOLD IS DISCHARGING STORM WATER ASSOCIATED WITH ITS MINING ACTIVITIES AT ROYAL MOUNTAIN KING MINE THAT IS NOT COVERED BY THE INDUSTRIAL STORM WATER PERMIT, THEREBY VIOLATING THE CWA OR, ALTERNATIVELY, THAT PERMIT.**

On March 20, 1992, Meridian Gold submitted a notice of intent to comply with the terms of the Industrial Storm Water Permit for certain portions of the Royal Mountain King Mine. On June 6, 1997, the company prepared an updated notice of intent. According to the company, Meridian Gold discharge storm water associated with the mine from five locations at the site. Sampling locations purportedly correlating to those five storm water discharge locations, purportedly monitored at six monitoring locations identified as SWM-02, SWM-08, SWM-09, SWM-10, TSWM-1 and TSWM-2.

**A. Discharges of Storm Water Without An NPDES Permit**

Despite those notices of intent, Meridian Gold's storm water discharges at the Royal Mountain King Mine are not eligible for coverage under the Industrial Storm Water Permit. Storm water associated with the waste management units is commingled with unauthorized non-storm water discharges occurring at the mine site, including contaminated seeps and recycled leachate. Because storm water associated with the Royal Mountain King Mine is not exclusively storm water, but also includes wastewater and non-storm water discharges, the Industrial Storm Water Permit does not apply to any discharges at the mine site. For example, CSPA is informed and believes, and thereupon alleges, that storm water falling on the Western ODS commingles with leachate sprayed on the top of the ODS as well as with leachate seeping from the base of the ODS prior to discharging to Clover Creek. Because it commingles with those non-storm water discharges, the storm water from the Western ODS is ineligible for coverage by the Industrial Storm Water Permit. The same is true for other waste management units at the site. Storm water from the Gold Knolls ODS and other waste management units also commingles with

contaminated leachate seeps, making those storm water flows ineligible for coverage under the Industrial Storm Water Permit. Accordingly, Meridian Gold is discharging storm water associated with industrial activity at the Royal Mountain King Mine without an NPDES permit in violation of Sections 301 and 402(p) of the CWA, 33 U.S.C. §§ 1311, 1342(p). CSPA is informed and believes these violations have been ongoing on a daily basis since the date five years prior to the date of this letter and will continue to occur.

**B. Alternatively, Discharges in Violation of the Industrial Storm Water Permit.**

Assuming the Industrial Storm Water Permit applies to some storm water discharges at Royal Mountain King Mine, Meridian Gold is in violation of the Permit.

CSPA believes that Meridian Gold has discharged and continues to discharge high electrical conductivity, total dissolved solids, sulfate, arsenic, selenium, and nitrate+nitrite in violation of the Industrial Storm Water Permit as evidenced by high levels of these pollutants discharged from the Facility during significant rain events. Meridian Gold's Annual Reports and Sampling and Analysis Results confirm discharges of materials other than stormwater and specific pollutants in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the Industrial Storm Water Permit. Specific monitoring results establishing violations of these provisions include the following:

**1. Discharges of Effluent With High Specific Conductance.**

CSPA alleges that discharges from the Royal Mountain King Mine of effluent with high specific conductance on the dates and at the concentrations listed in Appendix A have violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the Industrial Storm Water Permit.

The violations listed in Appendix A include both storm water discharges as well as unauthorized non-storm water discharges. CSPA alleges that such violations have occurred or will occur every day since June 1, 2000, and will continue to occur at the Facility subsequent to the date of this notice of intent to sue. Each discharge of high specific conductance from the Facility constitutes a separate violation of the Industrial Storm Water Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Meridian Gold is subject to penalties for violations of the Industrial Storm Water Permit and the Act since June 1, 2000.

**2. Discharges of Effluent With High Total Dissolved Solids.**

CSPA alleges that discharges from the Royal Mountain King Mine of effluent with high total dissolved solids on the dates and at the concentrations listed in Appendix B have violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the Industrial Storm Water Permit.

The violations listed in Appendix B include both storm water discharges as well as unauthorized non-storm water discharges. CSPA alleges that such violations have occurred or will occur every day since June 1, 2000, and will continue to occur at the Facility subsequent to the date of this notice of intent to sue. Each discharge of high total dissolved solids from the Facility constitutes a separate violation of the Industrial Storm Water Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Meridian Gold is subject to penalties for violations of the Industrial Storm Water Permit and the Act since June 1, 2000.

**3. Discharges of Effluent With High Sulfate Levels.**

CSPA alleges that discharges from the Royal Mountain King Mine of effluent with high levels of sulfate on the dates and at the concentrations listed in Appendix C have violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the Industrial Storm Water Permit.

The violations listed in Appendix C include both storm water discharges as well as unauthorized non-storm water discharges. CSPA alleges that such violations have occurred or will occur every day since June 1, 2000, and will continue to occur at the Facility subsequent to the date of this notice of intent to sue. Each discharge of high levels of sulfate from the Facility constitutes a separate violation of the Industrial Storm Water Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Meridian Gold is subject to penalties for violations of the Industrial Storm Water Permit and the Act since June 1, 2000.

**4. Discharges of Effluent With High Levels of Arsenic.**

CSPA alleges that discharges from the Royal Mountain King Mine of effluent with high levels of arsenic on the dates and at the concentrations listed in Appendix D have violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the Industrial Storm Water Permit.

The violations listed in Appendix D include both storm water discharges as well as unauthorized non-storm water discharges. CSPA alleges that such violations have occurred or will occur every day since June 1, 2000, and will continue to occur at the Facility subsequent to the date of this notice of intent to sue. Each discharge of high levels of arsenic from the Facility constitutes a separate violation of the Industrial Storm Water Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Meridian Gold is subject to penalties for violations of the Industrial Storm Water Permit and the Act since June 1, 2000.

**5. Discharges of Effluent With High Levels of Selenium.**

CSPA alleges that discharges from the Royal Mountain King Mine of effluent with high levels of selenium on the dates and at the concentrations listed in Appendix E have violated

Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the Industrial Storm Water Permit.

The violations listed in Appendix E include both storm water discharges as well as unauthorized non-storm water discharges. CSPA alleges that such violations have occurred or will occur every day since June 1, 2000, and will continue to occur at the Facility subsequent to the date of this notice of intent to sue. Each discharge of high levels of selenium from the Facility constitutes a separate violation of the Industrial Storm Water Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Meridian Gold is subject to penalties for violations of the Industrial Storm Water Permit and the Act since June 1, 2000.

**6. Discharges of High Levels of Nitrate + Nitrite.**

CSPA alleges that discharges from the Royal Mountain King Mine of effluent with high levels of nitrate+nitrite on the dates and at the concentrations listed in Appendix F have violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the Industrial Storm Water Permit.

The violations listed in Appendix F include both storm water discharges as well as unauthorized non-storm water discharges. CSPA further alleges that such violations also have occurred or will occur on other rain dates, including during every single significant rain event that has occurred since June 1, 2000, and that will occur at the Facility subsequent to the date of this notice of intent to sue. These unlawful discharges of nitrate+nitrite from the Facility are ongoing. Each discharge of excessive nitrate+nitrite from the Facility constitutes a separate violation of the Industrial Storm Water Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Meridian Gold is subject to penalties for violations of the Industrial Storm Water Permit and the Act since June 1, 2000.

**7. Failure to Monitor Storm Water.**

Again assuming the Industrial Storm Water Permit applies to storm water discharges at Royal Mountain King Mine, Meridian Gold is violating Sections B(5)(a) and B(7) of the Permit requiring, respectively, all storm water discharge locations to be sampled and representative of the quality and quantity of the Mine's storm water discharges from each sampled storm event. Likewise, Meridian Gold is violating Section B's timing requirements for taking samples. Instead of complying with the Permit's monitoring requirements and developing a storm water monitoring program, Meridian Gold opted to submit its preexisting monitoring program required by WDR No. 5-01-040 to satisfy the requirements of the Industrial Storm Water Permit.<sup>1</sup> Monitoring pursuant to WDR No. 5-01-040 samples water quality from leachate seeps, Little

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<sup>1</sup> The letter from Regional Board staff dated March 8, 1993 referenced by Meridian Gold in several annual reports does not alter the monitoring requirements of the Industrial Storm Water Permit.

Johns Creek and Clover Creek. None of the samples analyze storm water in isolation. To date, Meridian Gold has no samples of the quality of storm water, for example, running off of the ODSs at the site unaffected by leachate.

Because Meridian Gold has not taken samples consisting entirely of storm water running off of the mine site, Meridian Gold has failed to obtain representative samples of storm water discharges from the mine site. Meridian Gold has not sampled all storm water discharges at the mine site. Nor is it clear that any of the samples taken pursuant to WDR No. 5-01-040 were taken during rain events consistent with the sampling requirements of the Industrial Storm Water Permit. Lastly, since at least the 2001-02 rainy season, Meridian Gold has failed to report analytical results in its annual reports for all of the pollutants likely to be discharged, including for example, arsenic, selenium and nitrate+nitrite.

The Facility's failure to comply with the Industrial Storm Water Permit's monitoring requirements are ongoing violations of the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Meridian Gold is subject to penalties for these violations of the Industrial Storm Water Permit and the Act since June 1, 2000.

**8. Failure to Implement BAT/BCT.**

CSPA's investigation indicates that Meridian Gold has not implemented BAT and BCT at the Facility for its discharges of high electrical conductivity, total dissolved solids, sulfate, arsenic, selenium, nitrate+nitrite, and other pollutants in violation of Effluent Limitation B(3) of the Industrial Storm Water Permit.

Meridian Gold was required to have implemented BAT/BCT by no later than October 1, 1992. Therefore, Meridian Gold has been in continuous violation of the BAT/BCT requirements every day since October 1, 1992, and will continue to be in violation every day that Meridian Gold fails to implement BAT/BCT. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Meridian Gold is subject to penalties for violations of the Order and the Act occurring since June 1, 2000.

**9. Failure to Develop and Implement an Adequate Storm Water Pollution Prevention Plan.**

Section A(1) and Provision E(2) of the Industrial Storm Water Permit require dischargers of storm water associated with industrial activity to develop, implement, and update an adequate storm water pollution prevention plan ("SWPPP") no later than October 1, 1992. Section A(1) and Provision E(2) requires dischargers who submitted an NOI pursuant to the Order to continue following their existing SWPPP and implement any necessary revisions to their SWPPP in a timely manner, but in any case, no later than August 1, 1997.

The SWPPP must, among other requirements, identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm and non-storm water discharges from the facility and identify and implement site-specific best management practices (“BMPs”) to reduce or prevent pollutants associated with industrial activities in storm water and authorized non-storm water discharges (Section A(2)). The SWPPP must also include BMPs that achieve BAT and BCT (Effluent Limitation B(3)) and include information specified by the Industrial Storm Water Permit. Permit, Sections A(3)-(10). *See supra*.

CSPA’s investigation of the conditions at the Facility demonstrates that Meridian Gold has been operating with an inadequately developed or implemented SWPPP in violation of Sections A(1)-(10), B(3), and E(2) of the Permit. Meridian Gold has been in continuous violation of these sections of the Industrial Storm Water Permit every day since October 1, 1992, and will continue to be in violation every day that Meridian Gold fails to develop and implement an effective SWPPP. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Meridian Gold is subject to penalties for daily violations of the Order and the Act occurring since June 1, 2000.

**10. Failure to Respond to Discharges Contributing to Exceedances of Water Quality Standards.**

As indicated above, Meridian Gold is discharging high electrical conductivity, total dissolved solids, sulfate, arsenic, selenium, and nitrate+nitrite that are causing or contributing to exceedances of applicable water quality standards, including but not limited to the narrative standards for toxicity and biostimulatory pollutants and the numeric water quality standards for electrical conductance, sulphate, and selenium. For each of these pollutants, Meridian Gold was required to submit a report pursuant to Receiving Water Limitation C(4)(a) within 60-days of becoming aware of levels in its storm water exceeding the EPA Benchmarks and applicable water quality standards. Based on CSPA’s review of available documents, Meridian Gold was aware of high levels of many of these pollutants prior to June 1, 2000. Likewise, Meridian Gold has not filed any reports describing its noncompliance with the Industrial Storm Water Permit in violation of Section C(11)(d). Lastly, CSPA is informed and believes, and thereupon alleges, that Meridian Gold’s SWPPP and accompanying BMPs do not appear to have been altered as a result of the annual evaluation required by Section A(9). Meridian Gold has been in continuous violation of Receiving Water Limitation C(4)(a) and Sections C(11)(d) and A(9) of the Industrial Storm Water Permit every day since June 1, 2000, and will continue to be in violation every day that Meridian Gold fails to prepare and submit the requisite reports, receives approval from the Regional Board and amends its SWPPP to include approved BMPs. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Meridian Gold is subject to penalties for violations of the Industrial Storm Water Permit and the Act occurring since June 1, 2000.

**11. Failure to File True and Correct Reports.**

CSPA’s investigation indicates that Meridian Gold has signed incomplete annual reports and purported to comply with the Industrial Storm Water Permit despite significant

noncompliance at the Facility. Consequently, Meridian Gold has violated Sections A(9)(d), B(14) and C(9) & (10) of the Industrial Storm Water Permit every time Meridian Gold signed an incomplete or incorrect annual report that falsely certified compliance with the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Meridian Gold is subject to penalties for civil violations of Section (C) of the Industrial Storm Water Permit and the Act occurring since June 1, 2000.

**X. MERIDIAN GOLD IS CONTRIBUTING TO THE HANDLING, STORING, AND DISPOSAL OF SOLID OR HAZARDOUS WASTES THAT MAY PRESENT AN IMMINENT AND SUBSTANTIAL ENDANGERMENT TO HEALTH OR THE ENVIRONMENT IN VIOLATION OF RCRA.**

The foregoing description of Meridian Gold's discharges of pollutants into surface and ground waters also establishes violations of the RCRA § 7002(a)(1)(B). 42 U.S.C. § 6972(a)(1)(B). Through its discharges of solid and/or hazardous wastes into ground water from its waste management units, Meridian Gold is handling, storing or disposing of waste in a manner that may present an imminent and substantial threat to health and/or the environment in violation of the RCRA. *Id.* Furthermore, to the extent that Meridian Gold is discharging solid and/or hazardous wastes into surface waters without violating the Clean Water Act's requirements, it is violating the RCRA by handling, storing or disposing of waste in a manner that may present an imminent and substantial threat to health and/or the environment. *See id.*; *see also* 40 C.F.R. § 261.4(a)(2). CSPA is informed and believes that those violations have been ongoing on a daily basis since June 1, 2000 and will continue to occur. Consistent with the five-year statute of limitations applicable to citizen penalty enforcement actions under 28 U.S.C. § 2462, Meridian Gold is subject to penalties for violating RCRA on a daily basis since June 1, 2005.

**XI. PERSONS RESPONSIBLE FOR VIOLATIONS.**

CSPA puts Meridian Gold 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 Meridian Gold on notice that it intends to include those persons in this action.

**XII. NAME AND ADDRESS OF NOTICING PARTY.**

Our names, addresses and telephone numbers are as follows:

Jim Crenshaw, President  
California Sportfishing Protection Alliance  
1248 E. Oak Avenue, #d  
Woodland, CA 95776  
(530) 661-0997

Richard Drury  
Watershed Enforcers  
651 Gateway Blvd., Suite 900  
South San Francisco, CA 94080  
(415) 589-1660 x. 20

### **XIII. COUNSEL.**

CSPA and Watershed Enforcers have retained legal counsel to represent them in this matter. Please direct all communications to:

Linda M. Dardarian  
Nina Rabin  
Goldstein, Demchak, Baller, Borgen & Dardarian  
300 Lakeside Drive, Suite 1000  
Oakland, California 94612  
(510) 763-9800  
(510) 835-1417 (fax)  
ldar@gbdlegal.com  
nrabin@gdblegal.com

Michael R. Lozeau  
Law Office of Michael R. Lozeau  
67 Juanita Way  
San Francisco, CA 94127  
(415) 462-1964  
(415) 462-6385 (fax)  
mrlozeau@lozeaulaw.com

### **XIV. PENALTIES.**

Pursuant to Section 309(d) of the Clean Water 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 CWA subjects Meridian Gold to a penalty of up to \$27,500 per day per violation (violations from January 30, 1997 through March 15, 2004) and \$32,500 per day per violation (violations after March 15, 2004) for all violations occurring during the period commencing five years prior to the date of this Notice of Violations and Intent to Sue. 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, pursuant to Section 505(d) of the Act (33 U.S.C. § 1365(d)), which permits prevailing parties to recover costs and fees, including attorneys' fees, CSPA will seek its reasonable attorney's fees, expenses and costs associated with this matter.

Pursuant to California Health and Safety Code § 25249.7, each separate violation of Proposition 65 subjects Meridian Gold to a penalty of up to \$2,500 per day for each violation in

Meridian Gold Inc.

June 1, 2005

Page 19 of 36

addition to any other penalty established by law for all violations occurring during the period commencing one year prior to the date of the Notice of Violations and Intent to Sue. In addition to civil penalties, CSPA will seek injunctive relief preventing further violations of Proposition 65 pursuant to Health and Safety Code § 25249.7(a). Lastly, pursuant to California Code of Civil Procedure § 1021.5, which permits prevailing parties in public interest cases to recover costs and fees, including attorneys' and expert fees, CSPA will seek its reasonable attorney's fees and costs associated with this matter.

Pursuant to Sections 7002(a) and 3008(g) of the RCRA (42 U.S.C. §§ 6972(a) and 6928(g)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4), each separate violation of RCRA subjects Meridian Gold to a penalty of up to \$27,500 per day per violation (violations from January 30, 1997 through March 15, 2004) and \$32,500 per day per violation (violations after March 15, 2004) for all violations occurring during the period commencing five years prior to the date of this Notice of Violations and Intent to Sue. In addition to civil penalties, CSPA will seek injunctive relief preventing further violations of the RCRA pursuant to Section 7002(a) (42 U.S.C. § 6972(a)). Lastly, pursuant to Section 7002(e) of the RCRA (42 U.S.C. § 6972(e)), which permits prevailing parties to recover costs and fees, including attorneys' fees, CSPA will seek its reasonable attorneys' fees, expenses and costs associated with this matter.

CSPA believes this Notice of Violations and Intent to Sue sufficiently states grounds for filing suit. We intend, at the close of the 60-day notice period or thereafter, to file a citizen suit under Section 505(a) of the Clean Water Act, 33 U.S.C. § 1365, and Cal. Health and Safety Code § 25249.7 against Meridian Gold and its agents for the above-referenced violations. We further intend, at the close of the 90-day notice period or thereafter, to file a citizen suit under Section 7002(a)(1)(B) of the RCRA, 42 U.S.C. § 6972(a)(1)(B).

During the 60-day notice period, we would be willing to discuss effective remedies for the violations noted in this letter. However, if you wish to pursue such discussions 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 and/or state court if discussions are continuing when that period ends.

Sincerely,

*Jim Crenshaw (NR)*

Jim Crenshaw, President  
California Sportfishing Protection Alliance

*Richard Drury (NR)*

Richard Drury  
Watershed Enforcers

## ATTACHMENT A

### OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY

The following summary has been prepared by the Office of Environmental Health Hazard Assessment, the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and its implementing regulations (see citations below) for further information.

Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 22 of the California Code of Regulations, Sections 12000 through 14000.

#### *WHAT DOES PROPOSITION 65 REQUIRE?*

***The "Governor's List."*** Proposition 65 requires the Governor to publish a list of chemicals that are known to the State of California to cause cancer, or birth defects or other reproductive harm. This list must be updated at least once a year. Over 735 chemical listings have been included as of November 16, 2001. Only those chemicals Revised April 2005 that are on the list are regulated under this law. Businesses that produce, use, release or otherwise engage in activities involving those chemicals must comply with the following:

***Clear and reasonable warnings.*** A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical. The warning given must be "clear and reasonable." This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed. Exposures are exempt from the warning requirement if they occur less than twelve months after the date of listing of the chemical.

***Prohibition from discharges into drinking water.*** A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Discharges are exempt from this requirement if they occur less than twenty months after the date of listing of the chemical.

*DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?*

Yes. The law exempts:

***Governmental agencies and public water utilities.*** All agencies of the federal, State or local government, as well as entities operating public water systems, are exempt.

***Businesses with nine or fewer employees.*** Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees.

***Exposures that pose no significant risk of cancer.*** For chemicals that are listed as known to the State to cause cancer (“carcinogens”), a warning is not required if the business can demonstrate that the exposure occurs at a level that poses “no significant risk.” This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific “no significant risk” levels for more than 250 listed carcinogens.

***Exposures that will produce no observable reproductive effect at 1,000 times the level in question.*** For chemicals known to the State to cause birth defects or other reproductive harm (“reproductive toxicants”), a warning is not required if the business can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the “no observable effect level (NOEL),” divided by a 1,000-fold safety or uncertainty factor. The “no observable effect level” is the highest dose level which has not been associated with an observable adverse reproductive or developmental effect.

***Discharges that do not result in a “significant amount” of the listed chemical entering into any source of drinking water.*** The prohibition from discharges into drinking water Revised April 2005 does not apply if the discharger is able to demonstrate that a “significant amount” of the listed chemical has not, does not, or will not enter any drinking water source, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A “significant amount” means any detectable amount, except an amount that would meet the “no significant risk” or “no observable effect” test if an individual were exposed to such an amount in drinking water.

*HOW IS PROPOSITION 65 ENFORCED?*

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys (those in cities with a population exceeding 750,000). Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. A notice must comply with the information and procedural requirements specified in regulations (Title 22, California Code of Regulations, Section 12903). A private party may not pursue an

Meridian Gold Inc.

June 1, 2005

Page 22 of 36

enforcement action directly under Proposition 65 if one of the governmental officials noted above initiates an action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court of law to stop committing the violation.

*FOR FURTHER INFORMATION...*

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900.

**APPENDIX A – Specific Conductance Violations**

Monitoring Location	Date	Specific Conductance (umhos/cm)	Water Quality Standard, Criterion, or Benchmark (umhos/cm) 200 (proposed benchmark); 700 (agricultural WQ criterion); and/or 900 (secondary MCL) 200; 700; and/or 900
SWM-02	05/16/00	2770	
SWM-02	01/15/01	3400	
SWM-02	02/28/01	2600	Same
SWM-02	03/23/01	3000	Same
SWM-02	04/27/01	2400	Same
SWM-02	11/29/01	6600	Same
SWM-02	12/20/01	4000	Same
SWM-02	01/28/02	3000	Same
SWM-02	02/26/02	2400	Same
SWM-02	03/25/02	2100	Same
SWM-02	04/16/02	2800	Same
SWM-02	05/28/02	5000	Same
SWM-02	11/13/02	7800	Same
SWM-02	12/05/02	7000	Same
SWM-02	01/06/03	4200	Same
SWM-02	02/11/03	5000	Same
SWM-02	03/20/03	3800	Same
SWM-02	04/08/03	4000	Same
SWM-02	12/30/03	3400	Same
SWM-02	01/13/04	4400	Same
SWM-02	02/27/04	2200	Same
SWM-08	05/16/00	3150	Same
SWM-08	06/14/00	3680	Same
SWM-08	07/25/00	2100; 3930	Same
SWM-08	08/16/00	2200; 3860	Same
SWM-08	09/06/00	2000; 3590	Same
SWM-08	10/27/00	3000	Same
SWM-08	11/16/00	2800	Same
SWM-08	12/11/00	3000	Same
SWM-08	01/17/01	2400	Same
SWM-08	02/28/01	2000	Same

SWM-08	03/23/01	2600	Same
SWM-08	04/27/01	2000	Same
SWM-08	05/15/01	2300	Same
SWM-08	07/17/01	3200	Same
SWM-08	08/21/01	3600	Same
SWM-08	09/24/01	3200	Same
SWM-08	12/20/01	2000	Same
SWM-08	01/23/02	1600	Same
SWM-08	02/26/02	1100	Same
SWM-08	03/25/02	940	Same
SWM-08	04/16/02	1200	Same
SWM-08	01/08/03	2000	Same
SWM-08	03/20/03	1700	Same
SWM-08	02/27/04	1050	Same
SWM-09	01/17/01	760	Same
SWM-09	02/27/01	340	Same
SWM-09	03/22/01	510	Same
SWM-09	12/20/01	440	Same
SWM-09	01/23/02	500	Same
SWM-09	02/26/02	360	Same
SWM-09	03/25/02	240	Same
SWM-09	04/18/02	420	Same
SWM-09	01/09/03	700	Same
SWM-09	03/20/03	450	Same
SWM-09	04/21/03	850	Same
SWM-09	12/30/03	360	Same
SWM-09	01/27/04	1200	Same
SWM-10	05/16/00	1680	Same
SWM-10	06/14/00	1950	Same
SWM-10	06/14/00	1950	Same
SWM-10	07/11/00	1600; 2100	Same
SWM-10	08/16/00	1300; 2300	Same
SWM-10	09/06/00	1020; 1880	Same
SWM-10	10/04/00	1100; 1810	Same
SWM-10	11/13/00	1050	Same
SWM-10	12/11/00	1200	Same
SWM-10	01/15/01	570	Same
SWM-10	02/28/01	380	Same
SWM-10	03/23/01	1200	Same

SWM-10	04/27/01	1050	Same
SWM-10	05/15/01	1400	Same
SWM-10	07/17/01	1850	Same
SWM-10	08/21/01	2100	Same
SWM-10	09/24/01	1800	Same
SWM-10	10/25/01	1800	Same
SWM-10	11/29/01	1600	Same
SWM-10	12/20/01	380	Same
SWM-10	01/28/02	360	Same
SWM-10	02/26/02	440	Same
SWM-10	03/25/02	250	Same
SWM-10	04/16/02	1000	Same
SWM-10	05/28/02	1700	Same
SWM-10	06/10/02	1800	Same
SWM-10	07/09/02	2000	Same
SWM-10	08/29/02	1800	Same
SWM-10	09/24/02	1700	Same
SWM-10	10/30/02	1600	Same
SWM-10	11/13/02	1350	Same
SWM-10	12/05/02	1500	Same
SWM-10	01/06/03	540	Same
SWM-10	02/11/03	1500	Same
SWM-10	03/20/03	590	Same
SWM-10	04/21/03	1400	Same
SWM-10	05/30/03	1400	Same
SWM-10	06/10/03	1500	Same
SWM-10	07/29/03	2200	Same
SWM-10	09/02/03	3000	Same
SWM-10	09/29/03	1900	Same
SWM-10	10/29/03	1800	Same
SWM-10	11/25/03	1600	Same
SWM-10	12/30/03	200	Same
SWM-10	01/13/04	840	Same
SWM-10	03/30/04	1200	Same
SWM-10	04/19/04	1800	Same
SWM-10	05/27/04	1400	Same
SWM-10	06/14/04	1200	Same
SWM-10	07/14/04	3100	Same
SWM-10	08/30/04	4000	Same

SWM-10	09/13/04	3600	Same
TSWM-01	07/25/00	1200; 2240	Same
TSWM-01	08/16/00	2430	Same
TSWM-02	12/11/00	3200	Same
TSWM-02	01/15/01	2800	Same
TSWM-02	02/28/01	1000	Same
TSWM-02	03/23/01	1600	Same
TSWM-02	04/26/01	1500	Same
TSWM-02	01/23/02	700	Same
TSWM-02	03/25/02	380	Same
TSWM-02	04/16/02	1000	Same
TSWM-02	01/08/03	1300	Same
TSWM-02	03/20/03	1300	Same
TSWM-02	04/21/03	1600	Same
TSWM-02	12/30/03	1600	Same
TSWM-02	01/22/04	1300	Same
TSWM-02	02/27/04	290	Same

**APPENDIX B – Total Dissolved Solids Violations**

Monitoring Location	Date	TDS Concentration (mg/L)	Water Quality Standard, Criterion, or Benchmark (mg/L)
			500 mg/L (max for 3 day avg); 460 mg/L (agriculture WQ criterion); 385 mg/L (annual avg), and/or 250 mg/L to 400 mg/L (objective)
SWM-02	05/16/00	2150	
SWM-02	01/15/01	3310	Same
SWM-02	02/28/01	2360	Same
SWM-02	03/23/01	2790	Same
SWM-02	04/27/01	3080	Same
SWM-02	11/29/01	6290	Same
SWM-02	12/20/01	3910	Same
SWM-02	01/28/02	3840	Same
SWM-02	04/16/02	3920	Same
SWM-02	05/28/02	5300	Same
SWM-02	11/13/02	7750	Same
SWM-02	12/05/02	6990	Same
SWM-02	01/06/03	4090	Same
SWM-02	02/11/03	4930	Same
SWM-02	03/20/03	3680	Same
SWM-02	04/08/03	4030	Same
SWM-02	12/30/03	3570	Same
SWM-02	01/13/04	4180	Same
SWM-02	02/27/04	2150	Same
SWM-08	05/16/00	2870	Same
SWM-08	06/14/00	3540	Same
SWM-08	07/25/00	3900	Same
SWM-08	08/16/00	3890	Same
SWM-08	09/06/00	3680	Same
SWM-08	10/27/00	3490	Same
SWM-08	11/16/00	3010	Same
SWM-08	12/11/00	3060	Same
SWM-08	01/17/01	2550	Same
SWM-08	02/28/01	1810	Same
SWM-08	03/23/01	2640	Same
SWM-08	04/27/01	3020	Same

SWM-08	05/15/01	3250	Same
SWM-08	06/20/01	3760	Same
SWM-08	07/17/01	3830	Same
SWM-08	08/21/01	3570	Same
SWM-08	12/20/01	1660	Same
SWM-08	01/23/02	1830	Same
SWM-08	04/16/02	1260	Same
SWM-08	01/08/03	1820	Same
SWM-08	03/20/03	1560	Same
SWM-08	02/27/04	1050	Same
SWM-09	01/17/01	510	Same
SWM-09	01/27/04	1040	Same
SWM-10	05/16/00	1320	Same
SWM-10	06/14/00	1480	Same
SWM-10	06/14/00	1500	Same
SWM-10	07/11/00	1720	Same
SWM-10	08/16/00	1760	Same
SWM-10	09/06/00	1470	Same
SWM-10	10/04/00	1240	Same
SWM-10	11/13/00	2330	Same
SWM-10	12/11/00	850	Same
SWM-10	03/23/01	860	Same
SWM-10	04/27/01	850	Same
SWM-10	05/15/01	1320	Same
SWM-10	06/20/01	1500	Same
SWM-10	07/17/01	1460	Same
SWM-10	08/21/01	1390	Same
SWM-10	08/21/01	1360	Same
SWM-10	10/25/01	1240	Same
SWM-10	11/29/01	1130	Same
SWM-10	04/16/02	1010	Same
SWM-10	05/28/02	1330	Same
SWM-10	06/10/02	1490	Same
SWM-10	07/09/02	1720	Same
SWM-10	08/29/02	1400	Same
SWM-10	09/24/02	1360	Same
SWM-10	10/30/02	1230	Same
SWM-10	11/13/02	1010	Same
SWM-10	12/05/02	1150	Same

SWM-10	02/11/03	1270	Same
SWM-10	04/21/03	920	Same
SWM-10	05/30/03	1280	Same
SWM-10	06/10/03	1350	Same
SWM-10	07/29/03	1930	Same
SWM-10	09/02/03	1820	Same
SWM-10	09/29/03	1600	Same
SWM-10	10/29/03	1630	Same
SWM-10	11/25/03	1450	Same
SWM-10	01/13/04	600	Same
SWM-10	03/30/04	1110	Same
SWM-10	04/19/04	1690	Same
SWM-10	05/27/04	1840	Same
SWM-10	06/14/04	1880	Same
SWM-10	07/14/04	2500	Same
SWM-10	08/30/04	2840	Same
SWM-10	09/13/04	3050	Same
TSWM-01	05/16/00	1320	Same
TSWM-01	07/25/00	1750	Same
TSWM-01	08/16/00	1910	Same
TSWM-02	05/16/00	1870	Same
TSWM-02	12/11/00	3200	Same
TSWM-02	01/15/01	2510	Same
TSWM-02	02/28/01	660	Same
TSWM-02	03/23/01	1310	Same
TSWM-02	04/26/01	1590	Same
TSWM-02	01/23/02	550	Same
TSWM-02	04/16/02	1040	Same
TSWM-02	01/08/03	930	Same
TSWM-02	03/20/03	970	Same
TSWM-02	04/21/03	1100	Same
TSWM-02	12/30/03	1110	Same
TSWM-02	01/22/04	1040	Same

**APPENDIX C – Sulfate Violations**

Monitoring Location	Date	Sulfate Concentration (mg/L)	Water Quality Standard, Criterion, or Benchmark (mg/L) 250 mg/L (secondary MCL) and/or 500 mg/L (primary MCL)
SWM-02	05/16/00	1050	
SWM-02	01/15/01	1620	Same
SWM-02	04/27/01	1560	Same
SWM-02	04/27/01	1560	Same
SWM-02	01/28/02	2380	Same
SWM-02	04/16/02	2260	Same
SWM-02	01/06/03	2280	Same
SWM-02	04/08/03	2020	Same
SWM-02	01/13/04	2420	Same
SWM-08	05/16/00	1650	Same
SWM-08	06/14/00	2130	Same
SWM-08	07/25/00	2300	Same
SWM-08	08/16/00	2250	Same
SWM-08	09/06/00	2310	Same
SWM-08	10/27/00	1960	Same
SWM-08	01/17/01	1420	Same
SWM-08	04/27/01	1800	Same
SWM-08	07/17/01	2180	Same
SWM-08	01/23/02	1080	Same
SWM-08	04/16/02	660	Same
SWM-08	01/08/03	1100	Same
SWM-09	01/27/04	580	Same
SWM-10	05/16/00	720	Same
SWM-10	06/14/00	830	Same
SWM-10	06/14/00	810	Same
SWM-10	07/11/00	890	Same
SWM-10	08/16/00	890	Same
SWM-10	09/06/00	700	Same
SWM-10	10/04/00	550	Same
SWM-10	04/27/01	440	Same
SWM-10	07/17/01	690	Same
SWM-10	10/25/01	500	Same
SWM-10	04/16/02	540	Same

SWM-10	07/09/02	850	Same
SWM-10	10/30/02	500	Same
SWM-10	04/21/03	400	Same
SWM-10	07/29/03	870	Same
SWM-10	10/29/03	640	Same
SWM-10	01/13/04	310	Same
SWM-10	04/19/04	950	Same
SWM-10	07/14/04	1210	Same
TSWM-01	07/25/00	910	Same
TSWM-02	01/15/01	1240	Same
TSWM-02	04/26/01	780	Same
TSWM-02	04/16/02	540	Same
TSWM-02	01/08/03	390	Same
TSWM-02	04/21/03	410	Same

**APPENDIX D – Arsenic Violations**

Monitoring Location	Date	Arsenic Concentration (µg/L)	Water Quality Standard, Criterion, or Benchmark (µg/L)
			0.004 µg/L (OEHHA public health goal for drinking water); 0.05 µg/L (inorganic oxides) (OEHHA maximum allowable dose level [“MADL”]); and/or 0.10 µg/d (OEHHA MADL)
SWM-02	05/16/00	5.0	
SWM-02	01/15/01	3.0	Same
SWM-02	04/27/01	6.0	Same
SWM-02	04/27/01	6.0	Same
SWM-02	01/28/02	5.0	Same
SWM-02	04/16/02	5.0	Same
SWM-02	01/06/03	4.0	Same
SWM-02	04/08/03	5.0	Same
SWM-02	01/13/04	6.0	Same
SWM-08	05/16/00	1.0	Same
SWM-08	06/14/00	2.0	Same
SWM-08	07/25/00	2.0	Same
SWM-08	08/16/00	2.0	Same
SWM-08	09/06/00	1.0	Same
SWM-08	10/27/00	3.0	Same
SWM-08	01/17/01	2.0	Same
SWM-08	07/17/01	2.0	Same
SWM-08	01/23/02	1.0	Same
SWM-08	04/16/02	1.0	Same
SWM-08	01/08/03	2.4	Same
SWM-09	01/17/01	4.0	Same
SWM-09	01/23/02	1.0	Same
SWM-09	04/18/02	2.0	Same
SWM-09	01/09/03	2.0	Same
SWM-09	04/21/03	4.2	Same
SWM-09	01/27/04	2.2	Same
SWM-10	05/16/00	7.0	Same
SWM-10	06/14/00	7.0	Same
SWM-10	06/14/00	6.0	Same
SWM-10	07/11/00	9.0	Same
SWM-10	08/16/00	9.0	Same

SWM-10	09/06/00	9.0	Same
SWM-10	10/04/00	7.0	Same
SWM-10	01/15/01	2.0	Same
SWM-10	04/27/01	4.0	Same
SWM-10	07/17/01	12.0	Same
SWM-10	10/25/01	8.0	Same
SWM-10	01/28/02	2.0	Same
SWM-10	04/16/02	2.0	Same
SWM-10	07/09/02	8.0	Same
SWM-10	10/30/02	6.2	Same
SWM-10	01/06/03	1.5	Same
SWM-10	04/21/03	2.4	Same
SWM-10	07/29/03	11.1	Same
SWM-10	10/29/03	7.6	Same
SWM-10	01/13/04	3.2	Same
SWM-10	04/19/04	4.0	Same
SWM-10	07/14/04	7.0	Same
TSWM-02	01/08/03	1.2	Same

**APPENDIX E – Selenium Violations**

Monitoring Location	Date	Selenium Concentration (µg/L)	Water Quality Standard, Criterion, or Benchmark (µg/L)
SWM-02	01/28/02	31.0	5.0
SWM-02	04/16/02	11.0	Same
SWM-02	01/06/03	7.0	Same
SWM-02	01/13/04	9.0	Same
SWM-08	05/16/00	10.0	Same
SWM-08	06/14/00	9.0	Same
SWM-08	07/25/00	7.0	Same
SWM-08	08/16/00	7.0	Same
SWM-08	09/06/00	7.0	Same
SWM-08	10/27/00	7.0	Same
SWM-08	01/17/01	6.0	Same
SWM-08	04/27/01	9.0	Same
SWM-08	07/17/01	6.0	Same
SWM-09	01/17/01	6.0	Same
TSWM-01	04/11/00	9.0	Same

**APPENDIX F – Nitrate+Nitrite Violations**

Discharge Location	Date	Nitrate+Nitrite Concentration (mg/l as N)	Water Quality Standard, Criterion, or Benchmark (mg/L as N)
SWM-02	01/15/01	2.57	0.68
SWM-08	07/25/00	17.9	0.68
SWM-08	08/16/00	18.5	0.68
SWM-08	09/06/00	18.3	0.68
SWM-08	10/27/00	20.2	0.68
SWM-08	01/17/01	16.5	0.68
SWM-08	04/27/01	15.3	0.68
SWM-10	01/15/01	0.79	0.68
TSWM-02	01/15/01	8.4	0.68
TSWM-02	04/26/01	3.36	0.68

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**SERVICE LIST**

(by certified mail – return receipt requested)

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