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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

IDAHO CONSERVATION LEAGUE

Plaintiff,

v.

U.S. SILVER - IDAHO, INC.,

Defendant.

Case No. 2:23-cv-132

COMPLAINT

NATURE OF THE ACTION

1. Plaintiff Idaho Conservation League (“ICL”) brings this Clean Water Act citizen suit enforcement action under 33 U.S.C. § 1365 against U.S. Silver - Idaho, Inc. (“U.S. Silver”) for discharging arsenic, lead, and other pollutants from its Galena Complex Mine to the South Fork Coeur d’Alene River and one of its tributaries, Lake Creek, in excess of the pollution limits set in U.S. Silver’s Clean Water Act permit.

2. U.S. Silver’s Galena Complex Mine is a silver mine located in Idaho’s Silver Valley near Wallace, Idaho.

3. The Clean Water Act prohibits the discharge of any pollutants to waters of the United States unless done in compliance with the terms of a Clean Water Act Section 402

permit, 33 U.S.C. § 1311(a). The Idaho Department of Environmental Quality (“DEQ”) administers Section 402 permitting in Idaho through the Idaho Pollutant Discharge Elimination System (“IPDES”) system. U.S. Silver was issued IPDES Permit ID0000027 (“the Permit”), which includes, among other terms and conditions, “effluent limits” setting maximum concentrations or quantities of pollutants U.S. Silver is allowed to discharge from the two outfalls at the Galena Complex Mine to the South Fork Coeur d’Alene River and to Lake Creek.

4. U.S. Silver’s monitoring and reporting shows the company repeatedly discharged excess quantities of arsenic, lead, and pH from March 2021 through February 2023, representing up to approximately 1,253 separate Clean Water Act violations. These violations are continuing.

5. Plaintiff ICL seeks declaratory and injunctive relief, civil penalties, litigation costs, attorney fees, and other relief to bring U.S. Silver into compliance with the Clean Water Act and to protect the South Fork Coeur d’Alene River and Lake Creek.

JURISDICTION AND VENUE

6. This Court has jurisdiction over the parties and subject matter of this action under Section 505(a)(1) of the Federal Water Pollution Control Act (the “Clean Water Act” or “CWA”), 33 U.S.C. § 1365(a)(1), and under 28 U.S.C. § 1331 (federal question).

7. Plaintiff ICL has complied with the statutory notice requirement under Section 505(b)(1) of the CWA, 33 U.S.C. § 1365(b)(1), and the corresponding regulations at 40 C.F.R. § 135.2. On January 25, 2023, ICL provided U.S. Silver with notice of its intention to file suit for violations of the CWA at the Galena Complex Mine by letter via certified mail. That same day, ICL provided by certified mail a copy of the notice letter to the Administrator of the U.S. Environmental Protection Agency (“EPA”), the Administrator of EPA Region 10, and the Director of DEQ.

8. A true and correct copy of ICL's notice letter is attached as Exhibit A to this Complaint and is incorporated by reference.

9. More than sixty days have passed since the notice letter was served upon U.S. Silver and the state and federal officials. *See* 33 U.S.C. § 1365(b)(1)(A). Less than 120 days have passed since ICL's notice letter was served. *See* 33 U.S.C. §§ 1365(b)(1)(B) & 1319(g)(6)(B)(ii).

10. Venue is proper in the District of Idaho under the CWA, 33 U.S.C. § 1365(c)(1), because the source of the violations is located within this judicial district.

PARTIES

11. Plaintiff IDAHO CONSERVATION LEAGUE (ICL) is an Idaho non-profit conservation organization founded in 1973. ICL is headquartered in Boise. ICL also has offices and staff in Ketchum, McCall, and Sandpoint, Idaho. ICL is dedicated to protecting Idaho's wild lands, clean water and air, healthy families, and way of life. Central to ICL's mission is protecting water quality. ICL has more than 35,000 members and supporters located across Idaho and the nation. ICL has board, staff, members, and supporters who regularly use and enjoy, and have a deep personal interest in the Coeur d'Alene River watershed, including the South Fork, and in protecting and conserving its water quality, fisheries, and ecosystems which have been harmed by and are threatened by U.S. Silver's pollution dischargers.

12. Defendant U.S. SILVER - IDAHO, INC., operates the Galena Complex mine. U.S. Silver is a registered business entity in Idaho. U.S. Silver is organized under the laws of Delaware. Defendant U.S. Silver is sixty-percent owned by Americas Gold and Silver. Americas Gold and Silver is a Canadian precious-metals producer engaged in the exploration, development, operation, and acquisition of precious metals properties. Defendant U.S. Silver is forty-percent owned by Canadian businessman Eric Sprott.

13. U.S. Silver's violations of law, as alleged herein, injure the health, aesthetic, commercial, conservation, scientific, recreational, educational, fish and wildlife preservation, and/or other interests of Plaintiff ICL and its staff, supporters, and members. These are actual, concrete injuries caused by U.S. Silver's violations of law, and the judicial relief sought would remedy, in whole or in part, ICL's injuries.

14. ICL's interests have been, are being, and will continue to be irreparably injured and harmed by U.S. Silver's actions. Unless the relief prayed for herein is granted, ICL and the public will suffer irreparable harm and injury to their legally protected interests.

LEGAL BACKGROUND

The Clean Water Act

15. Congress enacted the Clean Water Act "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a). To achieve this goal, the CWA prohibits the "discharge of any pollutant by any person" to waters of the United States, unless authorized by an NPDES permit. 33 U.S.C. §§ 1311(a), 1342(a).

16. Section 402 of the CWA establishes the National Pollutant Discharge Elimination System ("NPDES") program, which authorizes the EPA to issue a permit for the discharge of any pollutant, or combination of pollutants, on condition that the discharge will meet other sections of the Act. 33 U.S.C. § 1342. The CWA defines "discharge of a pollutant" as the "addition of a pollutant to navigable waters from any point source." 33 U.S.C. § 1362(12). Pollutant is defined to include "industrial, municipal, and agricultural waste discharged into water." 33 U.S.C. § 1362(6). A point source is "any discernible, confined and discrete conveyance," 33 U.S.C. § 1362(14), and navigable waters are broadly defined as "the waters of the United States." 33 U.S.C. § 1362(7).

17. NPDES permits must include conditions that will ensure compliance with the CWA. At a minimum, permits must include technology-based effluent limitations, any more stringent limitations necessary to meet water quality standards, and monitoring and reporting requirements. *See* 33 U.S.C. §§ 1311, 1318, 1342.

18. Once regulated by an NPDES permit, discharges must strictly comply with all of the terms and conditions of that permit. *See* 40 C.F.R. § 122.41(a) (“Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action”).

19. Under the CWA, EPA can grant authorization to a state to administer its own CWA Section 402 permit program. *See* 33 U.S.C. § 1342(b). In 2018, EPA approved Idaho’s IPDES program, which is administered and enforced by DEQ.

20. Citizens may enforce the CWA by filing a civil action, a “citizen suit,” in federal court against any person alleged to be in violation of any “effluent standard or limitation.” 33 U.S.C. § 1365(a)(1). Effluent standard or limitation is defined broadly to include “a permit or condition thereof issued under [section 402] of this title,” and “any unlawful act under subsection (a) of [section 301] of this title.” 33 U.S.C. § 1365(f). District courts have jurisdiction to enforce such standards or limitations, including terms and conditions of permits, and to award injunctive relief, civil penalties, and litigation costs and fees. 33 U.S.C. § 1365(a), (d).

21. Subject to exceptions, no citizen suit may be commenced if EPA or the State has “commenced and is diligently prosecuting a civil or criminal action” in court to require compliance with the same standards or limitations. 33 U.S.C. § 1365(b)(1)(B). Under one exception, this bar to citizen suits does not apply if the citizen plaintiff provides a proper 60 day notice letter prior to the commencement of an EPA or State action, and the citizen plaintiff then files suit within 120 days after serving the notice letter. 33 U.S.C. § 1319(g)(6)(B)(ii).

STATEMENT OF RELEVANT FACTS

The South Fork Coeur d’Alene River

22. The South Fork Coeur d’Alene River flows from its headwaters near Lookout Pass at the Idaho-Montana border west through Idaho’s Silver Valley. Beyond the South Fork’s confluence with the North Fork near Enaville, Idaho, the Coeur d’Alene River flows west into Lake Coeur d’Alene. Lake Coeur d’Alene drains into the Spokane River, a tributary to the Columbia River.

23. The South Fork Coeur d’Alene River subbasin encompasses approximately 298 square miles. Most streams in the South Fork Coeur d’Alene River subbasin are classified by DEQ as “impaired” due to the presence of metals, sediment, and/or other pollutants at levels that exceed applicable water quality standards set by the state under the CWA. The downstream Coeur d’Alene River and Lake Coeur d’Alene are also impaired due to the presence of excess metals, sediments, and/or other pollutants.

24. Near the Galena Complex Mine, the South Fork Coeur d’Alene River is classified by DEQ as impaired due to excessive cadmium, lead, zinc, and sediment. Near the Galena Complex Mine, Lake Creek is impaired by “unknown” pollutants.

25. The South Fork Coeur d’Alene watershed is home to native aquatic species; however, their presence and abundance has been reduced by mining and other human impacts. As reported by DEQ concerning the South Fork Coeur d’Alene River watershed:

The native salmonids of the subbasin’s streams are cutthroat trout, whitefish, and bull trout. Sculpin and shiners are non-salmonid natives. The tailed frog, giant salamander, and turtles completed the aquatic vertebrate species. The fish fauna of the river and some of its tributaries have been altered by the introduction of rainbow and brook trout as well as chinook salmon. Introduced species have been able to establish in some habitats at lower elevations, while higher elevation water bodies tend to retain the native cutthroat trout. Although fish composition appears stable in the headwaters, fish abundance is depleted from the historic levels by metals and sediment impacts Young of the year

salmonids are rarely found in the river below Wallace and the metals impaired tributaries below the mining impacts. Sculpins are rarely found below the mining impacts.

Idaho Department of Environmental Quality, *South Fork Coeur d'Alene River Sediment Subbasin Assessment and Total Maximum Daily Load* (May 17, 2002).

U.S. Silver's Galena Complex Mine

26. U.S. Silver owns and operates the Galena and Coeur Mines and Mills (collectively the “Galena Complex” or “Galena Complex Mine”), underground mines and mills that produce copper, silver, and lead concentrates. The Galena Complex includes three active mining shafts and two processing facilities, including the Galena mill and the Coeur mill.

27. The Galena Complex is located in Idaho’s Silver Valley. The Galena Complex is approximately three miles from Wallace, Idaho, located in Lake Gulch, Shoshone County.

Fig. 1. Map of Galena Complex (<https://www.americas-gold.com/operations/galena-complex/>)



28. The Galena Mine is an underground silver mine which utilizes a horizontal cut and fill method of mining before transporting ore-bearing rock to the surface. From the surface, the ore-bearing rock is trucked 650 feet to the floatation mill where rock is crushed and pulverized to a fine sand. Water is added to the crushed ore to form a slurry, which is then pumped to the flotation circuit to extract the sulfide minerals from the waste rock. The slurry is then concentrated and filtered to form a dewatered silver-copper concentrate cake that is loaded in an enclosed concentrate loading facility at the mill and transported off-site for refining.

29. The Coeur Mine adjoins the western boundary of the Galena Mine. The Coeur mine is also an underground silver mine. When the mine is operating, the ore-bearing rock is transported to the surface and conveyed 680 feet to the floatation mill. The Coeur mill has a similar milling circuit as the Galena mill and the concentrate is also loaded into trucks at a contained loading facility at the mill and transported off-site for refining.

30. Three settling ponds located adjacent to Lake Creek receive stormwater, wastewater, and wastes associated with the Galena Complex. The Galena mine and mill has septic tanks that discharge to the Lake Creek settling ponds. Discharge from the Calahan adit are diverted to the Lake Creek settling ponds. Generally, an “adit” is a horizontal entrance to an underground mine or mine exploration area. Industrial stormwater from the Galena Complex enters the Lake Creek settling ponds. The Lake Creek settling ponds discharge to Lake Creek. Lake Creek is a tributary to the South Fork Coeur d’Alene River.

31. The Osburn tailings impoundment also receives stormwater, wastewater, and wastes associated with the Galena Complex. The impoundment includes two storage areas followed by two settling ponds, which discharge to the South Fork Coeur d’Alene River. Galena

mill tailings are pumped to the Osburn tailings impoundment. Coeur mill tailings, and drainage from the mine, are deposited in the Osburn tailings impoundment. The sanitary wastes at the Coeur mine and mill are collected in septic tanks and digested and discharged to the Osburn tailings ponds. Mine drainage from the Rainbow adit is collected and routed to the Osburn tailings ponds. During mine development, waste rock (non-ore-bearing rock removed from the mine in order to gain access to the ore) from the Galena and Coeur mines is transported to a waste dump, and seepage and runoff from the waste dump is routed to the Osburn tailings impoundment.

Recent and Ongoing CWA Violations Reported by U.S. Silver in its DMRs

32. U.S. Silver was issued IPDES Permit No. ID0000027, effective June 21, 2019. The Permit authorizes U.S. Silver to discharge pollutants at two outfalls within specified limits and subject to the conditions of the Permit. Outfall 1 discharges to Lake Creek, a tributary to the South Fork Coeur d'Alene River, near Silverton, Idaho. Outfall 2 discharges to the South Fork Coeur d'Alene River near Osburn, Idaho.

33. The Permit includes effluent limits U.S. Silver must meet at each outfall for numerous pollutants or other parameters, including for arsenic, lead, and pH. For some pollutants, including lead, the Permit includes an interim limit and a final limit. The interim effluent limits are governed by permit specified compliance schedules and are generally applicable for twelve years after permit issuance, after which the final effluent limitations and monitoring requirements take effect. For other pollutants and parameters, including arsenic and pH, there is no interim effluent limit, and the final limit is effective upon permit issuance.

34. The Permit also requires U.S. Silver to prepare and submit accurate Discharge Monitoring Reports ("DMRs"). DMRs include the results of monitoring required by the Permit. Among other required monitoring, the Permit requires DMRs to include specific monitoring that

would show whether U.S. Silver is meeting the Permit effluent limits for arsenic, lead, and pH. DMRs must be submitted to EPA and DEQ monthly.

35. Table 1 below provides a summary of interim and final arsenic, lead, and pH effluent limitations and monitoring requirements set in the Permit.

TABLE 1: ID0000027 Effluent Limits and Monitoring Requirements

Outfall	Parameter	Effluent Limit (Final / Interim)				Monitoring Requirements	
		Maximum Daily 2		Average Monthly 2			
		ug/l	lb/day	ug/l	lb/day	Sample Frequency	Sample Type
1	Arsenic	13.2 / NA	0.33 / NA	6.6 / NA	0.16 / NA	Monthly	24-hour composite
	Lead	58.0 / 58.0	0.81 / 0.81	24.1 / 27.0	0.39 / 0.39		
	pH	Within the range of 6.5 to 9.0 standard units / NA				Weekly	Grab
2	Arsenic	NA / NA	NA / NA	NA / NA	NA / NA	NA	NA
	Lead	40.0 / 88	0.406 / 0.66	16.0 / 32.0	0.163 / 0.24	Monthly	24-hour composite
	pH	Within the range of 6.5 to 9.0 standard units / NA				Weekly	Grab

36. The public can access information provided in DMRs through EPA's Enforcement and Compliance History Online ("ECHO") website: <http://echo.epa.gov>.

37. Information obtained by ICL from ECHO show that from January 2022 to the present day, U.S. Silver exceeded applicable Permit effluent limits on multiple occasions, including by exceeding its Permit limits for arsenic, lead, and pH.

38. Arsenic is a natural trace component in many rocks and sediments. Arsenic can be released into water as a result of human activities, such as mining. In humans, arsenic is toxic at low levels and is a known carcinogen. Arsenic exposure in aquatic environments causes bioaccumulation in aquatic organisms and can lead to physiological and biochemical disorders.

39. Lead is a naturally occurring element that is toxic to humans. Lead can affect almost every organ in the human body, can accumulate in a body over time, and is particularly dangerous to babies and children. Lead is also toxic to aquatic organisms.

40. The pH of a solution is used to indicate its basicity or acidity. The pH affects most chemical and biological processes in water and is one of the most important environmental factors limiting species distribution in aquatic habitats. Even small changes in pH can shift community composition in streams and can increase exposure to and toxicity of metals and nutrients to aquatic life.

41. Table 2 below shows effluent limit exceedances at the Galena Complex from January 2022 through February 2023 compiled using data ICL gathered from ECHO on March, 17, 2023. There are 32 rows in the table. Each row represents a Permit effluent limit exceedance that occurred during a given monthly reporting period. Each row in the table may represent a separate Clean Water Act violation on each and every day of the given month for the exceedance shown in that row.

42. Based on the information from ECHO and presented in the table, U.S. Silver committed up to approximately 977 separate CWA violations from January 2022 through February 2023.

43. ICL has a reasonable belief that these violations will continue unless relief is granted by the Court.

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TABLE 2: Permit Limit Exceedances, US Silver Galena Complex

Monitoring End Date	Outfall	Parameter	Limit Type	DMR Value	Limit Value	Value Unit	% Exceedance	Number of Days
01/31/2022	1	Arsenic	MO AVG	0.0137	0.0066	mg/L	108	31
01/31/2022	1	Arsenic	DAILY MX	0.0137	0.0132	mg/L	4	31
03/31/2022	1	Arsenic	MO AVG	0.0102	0.0066	mg/L	55	31
03/31/2022	1	Lead	DAILY MX	0.0706	0.058	mg/L	22	31
03/31/2022	1	Lead	MO AVG	0.0359	0.027	mg/L	33	31
04/30/2022	1	Arsenic	MO AVG	0.0142	0.0066	mg/L	115	30
04/30/2022	1	Arsenic	DAILY MX	0.0142	0.0132	mg/L	8	30
04/30/2022	1	Lead	DAILY MX	0.0603	0.058	mg/L	4	30
04/30/2022	1	Lead	MO AVG	0.043	0.027	mg/L	59	30
05/31/2022	1	Arsenic	DAILY MX	0.0154	0.0132	mg/L	17	31
05/31/2022	1	Arsenic	MO AVG	0.0139	0.0066	mg/L	111	31
06/30/2022	1	Arsenic	DAILY MX	0.0148	0.0132	mg/L	12	30
06/30/2022	1	Arsenic	MO AVG	0.0148	0.0066	mg/L	124	30
06/30/2022	2	pH	INST MAX	9.33	9	SU		30
07/31/2022	1	Arsenic	DAILY MX	0.0189	0.0132	mg/L	43	31
07/31/2022	1	Arsenic	MO AVG	0.0189	0.0066	mg/L	186	31
07/31/2022	1	Arsenic	MO AVG	0.0748	0.0726	kg/d	3	31
08/31/2022	1	Arsenic	MO AVG	0.012	0.0066	mg/L	82	31
09/30/2022	1	Arsenic	MO AVG	0.0105	0.0066	mg/L	59	30
10/31/2022	1	Arsenic	MO AVG	0.0128	0.0066	mg/L	94	31
10/31/2022	1	Arsenic	DAILY MX	0.0133	0.0132	mg/L	1	31
11/30/2022	1	Arsenic	MO AVG	0.0739	0.0726	kg/d	2	30
11/30/2022	1	Arsenic	DAILY MX	0.0176	0.0132	mg/L	33	30
11/30/2022	1	Arsenic	MO AVG	0.0176	0.0066	mg/L	167	30
11/30/2022	1	Lead	MO AVG	0.0402	0.027	mg/L	49	30
12/31/2022	1	Arsenic	DAILY MX	0.0178	0.0132	mg/L	35	31
12/31/2022	1	Arsenic	MO AVG	0.0178	0.0066	mg/L	170	31
12/31/2022	1	Arsenic	MO AVG	0.11429	0.07256	kg/d	58	31
12/31/2022	1	Lead	MO AVG	0.0331	0.027	mg/L	23	31
01/31/2023	1	Arsenic	MO AVG	0.0111	0.0066	mg/L	68	31
01/31/2023	2	Lead	MO AVG	0.0337	0.032	mg/L	5	31
02/28/2023	1	Arsenic	MO AVG	0.0096	0.0066	mg/L	46	28

Notes:

1 Limit type corresponds to the permitted effluent limit type (see Table 2 and 3 of IPDES Permit ID0000027). MO AVG = Monthly Average. DAILY MX = Daily Max.

2 Since permitted facilities are required to meet effluent limits at all times and not just on days of active sampling/monitoring, the Number of Days value shows the number of days the reported exceedance in a row may be representative of.

Additional Recent and Ongoing CWA Violations Committed by U.S. Silver

44. In addition to the effluent limit exceedances documented in U.S. Silver's DMRs and described above, U.S. Silver has committed additional CWA violations by failing to comply with the Permit since January 2021.

45. Upon information and belief, U.S. Silver lab reports show that the company: exceeded the applicable monthly average arsenic limits during five months in 2021 (July, August, September, November, and December); exceeded the applicable daily maximum arsenic limit during three months in 2021 (July, August, and November); and exceeded the applicable daily maximum lead limit during one month (March 2021).

46. Because each day of each exceedance is a CWA violation, these exceedances from March through December 2021 may represent up to an additional 276 separate CWA violations committed by U.S. Silver.

47. The Permit requires U.S. Silver to submit monthly DMRs, which must be accurate. Upon information and belief, U.S. Silver filed twelve DMRs from March 2021 to March 2023 which contained one or more instances of unrepresentative or incorrect effluent sampling information.

48. Upon information and belief, U.S. Silver also failed to comply with Permit requirements to: submit to DEQ by January 31, 2021, the effluent monitoring plan required by part I.B.10 of the Permit; submit to DEQ by August 2, 2022, a preliminary engineering report required by the Permit compliance plan at Table 6B; and notify DEQ of exceedances in its WET testing as required by part I.C.5.b of the Permit. The effluent monitoring plan was submitted late on April 2, 2021. The preliminary engineering report was submitted late on November 7, 2022. The failure to notify DEQ of WET testing exceedances is ongoing.

49. ICL has a reasonable belief that these monitoring, reporting, and notification violations will continue unless relief is granted by the Court.

50. During this litigation, ICL may discover additional CWA violations committed by U.S. Silver for failing to comply with effluent limits and other requirements of the Permit.

Delayed Response by DEQ

51. U.S. Silver has a history of failing to comply with the terms of the Permit.

52. On May 17, 2017, ICL sent U.S. Silver a CWA notice of intent to sue over effluent limit exceedances for total suspended solids, lead, and cadmium documented in U.S. Silver's DMRs covering the period of October 2016 through February 2017. Subsequently, ICL and U.S. Silver entered into a settlement agreement regarding those violations.

53. On June 12, 2019, EPA inspected the Galena Complex and issued a Notice of Violation to U.S. Silver for failing to comply with the terms of the Permit.

54. Beginning in July 2022, ICL contacted DEQ on multiple occasions raising concerns about consistent effluent limit exceedances reported in U.S. Silver's DMRs starting in January 2022.

55. By letter dated September 7, 2022, DEQ sent a Notice of Noncompliance to U.S. Silver for Permit limit exceedances for arsenic from April 2022 through July 2022. In the letter, DEQ asked U.S. Silver to provide information and documentation by September 30, 2022, regarding actions taken to identify and eliminate arsenic exceedances.

56. U.S. Silver responded to DEQ by letter dated September 28, 2022, describing efforts taken and still underway in attempt to address these violations. U.S. Silver asked for DEQ's "support and patience as the site returns to compliance."

57. On January 25, 2023, ICL served the notice letter for this action.

58. On March 24, 2023—more than six months after the Notice of Noncompliance and 58 days after ICL served its 60-day notice letter—DEQ filed a Complaint against U.S. Silver in the District Court for the First Judicial District of the State of Idaho. In the Complaint, DEQ seeks “not more than ten thousand dollars (\$10,000) per violation or five thousand dollars (\$5,000) for each day of a continuing violation, whichever is greater, for violations . . . arising from the effluent exceedances, errors in reporting, and other violations of Permit conditions . . . to date.”

FIRST CLAIM FOR RELIEF:
CWA Violations:
Past and Ongoing Exceedances of Permit Pollution Limits

59. Plaintiff realleges and incorporates by reference the preceding paragraphs.

60. Section 301(a) of the Clean Water Act requires compliance with all terms and conditions included in an NPDES permit, 33 U.S.C. § 1311(a).

61. The IPDES Permit for U.S. Silver’s Galena Complex mine has explicit limits for arsenic, lead, and pH. From March 2021 through February 2023, Defendant U.S. Silver failed to comply with the Permit’s effluent limits for arsenic, lead, and pH.

62. Each day of each violation of an effluent limitation or other requirement in the Permit is a separate and distinct violation of the Permit and of Section 301(a) of the CWA, 33 U.S.C. § 1311(a). Upon information and belief, U.S. Silver has committed approximately 1,253 separate CWA violations from March 2021 through February 2023 by exceeding Permit effluent limits.

63. ICL has a good faith belief that U.S. Silver is in continuing violation of the Permit and will continue to exceed the Permit’s effluent limits for arsenic, lead, pH, and other pollutants and parameters.

64. ICL may discover additional CWA violations committed by U.S. Silver for failing to comply with the Permit effluent limits during this litigation.

65. By committing the acts and omissions alleged above, Defendant U.S. Silver is subject to an assessment of civil penalties for all violations of the Permit and the CWA occurring from five years ago to the present day and through the adjudication of this matter under Sections 309(d) and 505 of the CWA, 33 U.S.C. §§ 1319(d) and 1365. By committing the acts and omissions alleged above, Defendant U.S. Silver is also subject to injunctive relief under Section 505 of the CWA, 33 U.S.C. § 1365(a). Continuing to commit the acts and omissions alleged above would irreparably harm Plaintiff and the public. ICL and the public have no plain, speedy, or adequate remedy at law for these harms.

SECOND CLAIM FOR RELIEF:

CWA Violations:

Failure to Comply with Permit Monitoring and Report Requirements

66. Plaintiff realleges and incorporates by reference the preceding paragraphs.

67. Section 301(a) of the Clean Water Act requires compliance with all terms and conditions included in an NPDES permit, 33 U.S.C. § 1311(a).

68. The IPDES Permit for U.S. Silver's Galena Complex mine includes requirements to submit accurate monthly DMRs, to submit an effluent monitoring plan, to submit a preliminary engineering report, to perform other monitoring and reporting requirements, and to notify DEQ of exceedances in its WET testing.

69. In violation of these requirements: U.S. Silver failed to submit accurate DMRs on at twelve instances from March 2021 to March 2023; failed to meet Permit deadlines to submit to DEQ the effluent monitoring plan and the preliminary engineering report; and failed to notify DEQ of WET testing exceedances.

70. ICL has a good faith belief that U.S. Silver is in continuing violation of the Permit and will continue to violate these and other monitoring and reporting requirements.

71. Each day of each violation of a requirement in the Permit is a separate and distinct violation of the Permit and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

72. ICL may discover additional CWA violations committed by U.S. Silver for failing to comply with Permit monitoring and reporting requirements.

73. By committing the acts and omissions alleged above, Defendant U.S. Silver is subject to an assessment of civil penalties for all violations of the Permit and the CWA occurring from five years ago to the present day and through the adjudication of this matter under Sections 309(d) and 505 of the CWA, 33 U.S.C. §§ 1319(d) and 1365. By committing the acts and omissions alleged above, Defendant U.S. Silver is also subject to injunctive relief under Section 505 of the CWA, 33 U.S.C. § 1365(a). Continuing to commit the acts and omissions alleged above would irreparably harm ICL and the public. ICL and the public have no plain, speedy, or adequate remedy at law for these harms.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Idaho Conservation League respectfully requests that this Court grant the following relief:

A. Declare that Defendant U.S. Silver is in violation of the Clean Water Act, Section 301(a), 33 U.S.C. § 1311(a), for discharging pollutants in excess of the effluent limits, and/or otherwise not in accordance with the terms of, its IPDES Permit;

B. Enjoin Defendant U.S. Silver from committing further Permit and Clean Water Act violations;

C. Order Defendant U.S. Silver to come into compliance with the terms of its IPDES Permit;

D. Order Defendant U.S. Silver to pay civil penalties under Sections 309(d) and 505(a), 33 U.S.C. §§ 1319(d) and 1365(a), up to the statutory maximum of \$55,800 per day, per violation for each violation of the Clean Water Act;

E. Award Plaintiff Idaho Conservation League its reasonable costs, litigation expenses, and attorney fees associated with this litigation pursuant to the Clean Water Act, 33 U.S.C. § 1365(d), and all other applicable authorities;

F. Maintain continuing jurisdiction over Defendant U.S. Silver to ensure that upgrades to the facility and its operations are made and the Permit's requirements are met;

G. Enter such temporary, preliminary, or permanent injunctive relief as Plaintiff Idaho Conservation League may hereafter seek; and

H. Grant such further and additional relief as the Court deems just and proper in order to remedy Defendant's violations of law and protect Plaintiff Idaho Conservation League and the public interest.

Dated this 30th day of March, 2023. Respectfully submitted,

/s/ Bryan Hurlbutt

Bryan Hurlbutt (ISB #8501)

Laurence ("Laird") J. Lucas (ISB #4733)

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