No. S-228723
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36

AND
IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*, S.B.C. 2002, c. 57

AND

IN THE MATTER OF THE PLAN OF COMPROMISE AND ARRANGEMENT OF PURE GOLD MINING INC.

PETITIONERS

NOTICE OF APPLICATION
(PRODUCTION OF AVAILABLE D&O INSURANCE POLICIES AND THE PUREGOLD MINE SCOPING STUDY DATED FEBRUARY 2023)

NAME OF APPLICANT: Linda Larouche, in her capacity as the proposed representative plaintiff in the shareholder class action File No. S-222826, c/o **Eli Karp (he/him)** ek@knd.law; **Sage Nematollahi (he/him)** sn@knd.law

TO: Petitioners, the Monitor and the Service List

TAKE NOTICE that an application will be made by the Applicant to the Honourable Justice Walker at the courthouse at 800 Smithe Street, Vancouver, British Columbia, on May 29, 2023, or soon thereafter, for the orders set out in Part 1 below.

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PART 1: ORDERS SOUGHT

1. An order that Pure Gold Mining Inc. (hereinafter, "**PureGold**") shall disclose to the Applicant any and all insurance policies that may be available to respond to the claims asserted against any of Pure Gold Mining Inc., Darin Labrenz, Sean Tetzlaff, Mark O'Dea and/or Graeme Currie in the proposed class proceeding styled *Larouche v Pure Gold Mining Inc et al*, Supreme Court of British Columbia at Vancouver, No S-222826 ("**Class Action**"); and

2. An order that PureGold shall disclose to the Applicant the Scoping Study (as defined below) in relation to the Pure Gold Mine, dated February 2023.

PART 2: SUMMARY OF APPLICANT'S POSITION

3. PureGold is seeking a Reverse Vesting Order to approve a transaction whereby West Red Lake Gold Mines Ltd. would acquire all of its issued and outstanding shares. As part of the Reverse Vesting Order, PureGold is seeking broad releases for the benefit of PureGold as well as its former directors and officer. The proposed releases would limit the Class Action's recovery against PureGold to unidentified "Available D&O Insurance." It would also limit any claim broadly against PureGold's former directors and officer, including by investors who are not currently represented in in the Class Action, to such Available D&O Insurance.

4. As this Court recently observed in *PaySlate Inc. (Re)*, 2023 BCSC 608 at para 87 (CanLII), "RVOs are not the norm and should only be granted in extraordinary circumstances."

5. At the upcoming application, the Petitioner has the burden to satisfy the Court based on proper evidence that the proposed Reverse Vesting Order is appropriate in the circumstances. In doing so, amongst other factors, the Petitioner must satisfy the Court that "the consideration to be received for the assets is reasonable and fair, taking into account their market value." To that end, the Petitioner must provide evidence of value. The Scoping Study that was

prepared in February 2023 provides information regarding the value of the mine. The Scoping Study has been identified and referred to in the Petitioner's various materials, but it has not been produced. It ought to be produced.

6. Of note, the Scoping Study is technically a "Preliminary Economic Assessment" report under National Instrument 43-101 (Standards of Disclosure for Mineral Projects). It ought to have been already disclosed to the public in accordance with CSA Staff Notice 43-307 (Mining Technical Reports - Preliminary Economic Assessments), which is available on the website of the Ontario Securities Commission, here, and it is also attached hereto as **Schedule "B"**.

7. Additionally, at the upcoming application, the Petitioner has the burden to satisfy the Court that the proposed releases are appropriate. The proposed terms of the release refer to unidentified "Available D&O Insurance," but there is no evidence regarding such insurance and what it may provide. These documents are referred to in the Petitioner's materials, and they ought to be produced for inspection.

PART 3: THE FACTS

8. The Class Action is a shareholder action for violation of securities laws. It was commenced on April 4, 2022, and it was assigned to the Honourable Mr. Justice Walker for judicial management in March 2023.

9. The Class Action has been brought on behalf of a proposed Class of PureGold investors, which is defined as follows:

> All persons and entities, wherever they may reside or may be domiciled, who purchased or otherwise acquired the securities of PureGold in the primary market and/or in the secondary market during the Class Period, except the Excluded Persons;

10. The Defendants in the Class Action are:

a. PureGold, which, at the relevant time, was a publicly traded reporting issuer and subject to the *Securities Act*, RSBC 1996, c 418, and its subsidiary instruments and policies;

b. PureGold's former directors and officers, Messrs. Darin Labrenz, Sean Tetzlaff, Mark O'Dea and Graeme Currie; and

c. Clarus Securities Inc., Sprott Capital Partners L.P., Stifel Nicolaus Canada Inc, Canaccord Genuity Corp., Haywood Securities Inc., PI Financial Corp, National Bank Financial Inc, Desjardins Securities Inc. and Haywood Securities Inc., who were the underwriters in relation to the issuance and distribution of PureGold's securities in: (i) a public offering of PureGold securities carried out in May 2021 for gross proceeds of approximately $17.3 million; (ii) a public offering of PureGold securities carried out in September 2021 for gross proceeds of approximately $23 million; and (iii) a brokered private placement of PureGold securities carried out in February 2022 for gross proceeds of approximately $14 million.

11. The Class Action alleges that PureGold's disclosure documents issued during the relevant period contained misrepresentations as they failed to properly disclose that PureGold's operations at its sole material project, the PureGold Mine, were negatively impacted as a result of severe mine planning deficiencies. Additionally, PureGold's disclosures failed to properly disclose that significant capital would be required to rectify the mine planning deficiencies and bring PureGold to a state of sustainable positive free cash flow at the corporate level.

12. The Class Action, furthermore, alleges that those operational and financial issues were disclosed in a press release dated March 28, 2022, titled "PureGold Mine Operations Update and 2022 Corporate Outlook." In that press release, amongst other things, PureGold reported that its mining operations and production had been negatively impacted as a result of its inability to maintain access to high-confidence, high-grade stopes, and that PureGold to a state of sustainable

positive free cash flow, PureGold required approximately $50 million of external financing over the next six months.

13. The Class Action allegations are consistent with the affidavit statements made in paragraphs 8-10 of the pre-CCAA filing Affidavit of Mr. Chris Haubrich, dated October 30, 2022, which has been filed in this proceeding, as follows:

> [8] **Since the completion of a feasibility study for the Mine in 2019, Pure Gold has invested more than $300 million, raised through equity and debt financings and the sale of a gold stream, in the development and operation of the Mine**.
>
> [9] Notwithstanding Pure Gold's significant investment in bringing the Mine into commercial production, established track record of raising funds on the capital and debt markets, and strong mill performance at the Mine since start-up, **the Mine faced significant operational challenges in 2021 that resulted in (a) gold production falling materially short of feasibility and design capacity; (b) costs of operations being significantly higher than feasibility study forecasts; and, consequently, (c) the Company facing significant short-term liquidity challenges**. As a result, despite the Company's success in late 2021 and 2022 in raising additional equity capital, restructuring its debt and changing its management team to address operational challenges, as of October 2022 the Mine had still not reached a state of breakeven cash flow, although significant progress toward that goal had been made. As discussed in more detail below, due to these factors the Company made the decision on October 24, 2022 to place the Mine on care and maintenance status which will result in its employee workforce at the Mine being reduced from approximately 275 to approximately 50.
>
> [10] **The operational challenges facing the Mine that contributed to the financial difficulties that ultimately led to the decision to place it on care and maintenance status were the subject matter of a press release dated March 28, 2022**, in which Pure Gold advised that (a) the Company's cash balance as of that date was approximately $9 million; (b) the Company expected that it would need to seek additional financing in the next30 days to fund operations and to service the interest on its debt; and (c) the Company would require approximately $50 million in total new funding over the next six months (i.e., April — September 2022) to address its short-term operational challenges. As a result of these announcements, the Company's market capitalization, which was

> approximately $185 million as of March 31,2022, was reduced to approximately $87 million as of April 29, 2022.
>
> [bold and underline added]

14. On October 30 and 31, 2022, respectively, PureGold applied for, and this Court granted, an Initial Order under the *CCAA*, and the within CCAA Proceedings were commenced.

15. During these CCAA Proceedings, a SISP process was undertaken, which is described in great detail in various materials filed by the Petitioner and/or the Monitor. The process included, amongst other things, the preparation and completion of a "Scoping Study" in February 2023. The Scoping Study has not been made publicly available. Its intended purpose is stated by the Petitioner to be as follows: "to accomplish the goal of re-establishing Pure Gold's long-term development and production plans (including a detailed restart plan) to a level of detail that would be sufficient to assist parties interested in completing their due diligence in respect of a potential transaction with Pure Gold." *See* Affidavit No 2 of J. Singh affirmed on May 18, 2023, at para 16.

16. According to the Petitioner, not a single qualifying bid was received by the LOI deadline of December 19, 2022. *See* Affidavit No 2 of J. Singh affirmed on May 18, 2023, at para 15.

17. On March 17, 2023, PureGold issued a news release titled "PureGold Announces Management Departures." In that news release, PureGold announced that the remaining senior management team and board of directors of PureGold had either resigned or were set to resign their positions with PureGold.

18. On April 17, 2023, PureGold announced that it had entered into a binding letter agreement whereby, subject to certain pre-conditions including this Court's approval, West Red Lake Gold Mines Ltd. would acquire all of PureGold's issued and outstanding shares. The consideration to be paid is as follows:

    d. C$6.5 million in cash;

e. Issuance of 28.46 million shares of West Red Lake Gold Mines Ltd;

f. Granting a 1% net smelter royalty; and

g. US$10 million in deferred considerations.

19. On May 18, 2023, PureGold announced that it would be seeking this Court's approval of the transaction through a Reverse Vesting Order. As it concerns the Class Action parties, the proposed Reverse Vesting Order contains broad releases that limit the claims against PureGold to unidentified "Available D&O Insurance." The Reverse Vesting Order, furthermore, limits any claims against PureGold's former director and officers, including by shareholders who are not currently within the scope of the Class Action, to such "Available D&O Insurance."

PART 4: LEGAL BASIS

20. At the application to approve the proposed Reverse Vesting Order, the Petitioner has the burden to satisfy the Court, on the basis of proper evidence, both that:

a. the proposed Reverse Vesting Order is appropriate in the circumstances; and

b. the releases sought for the benefit of PureGold and its former directors and officers are appropriate.

21. The insurance policies, if any, and the Scoping Study are key foundational documents that are required to establish the value that is being achieved or preserved in the proposed transaction, the value that is being compromised in this process, and the resources that would remain available to the other stakeholders including Class Action parties to obtain recovery.

22. The documents that are being sought are specific, limited and referred to, relied upon or otherwise identified in the Petitioner's own materials. Their production would not impose any undue hardship on the Petitioner. It is appropriate, proportionate and consistent with due process and the ends of justice that the Petitioner be ordered to produce those documents.

23. Unless the insurance policies and the Scoping Study are produced for inspection, it would be the Applicant's position that the evidentiary record is not proper to meet the standards for the approval of the proposed Reverse Vesting Order and/or the proposed releases.

24. The Applicant relies on this Court's recent decision in *PaySlate Inc. (Re)*, 2023 BCSC 608 (CanLII), and CSA Staff Notice 43-307 as a secondary authority.

PART 5: MATERIAL TO BE RELIED ON

1. The pleadings and proceedings filed herein;

2. Affidavit No 2 of J. Singh affirmed on May 18, 2023;

3. Such other material as Counsel may direct and this Honourable Court may permit.

The applicant estimates that the application will take 30 minutes.

[ ] This matter is within the jurisdiction of a master.

[X] This matter is not within the jurisdiction of a master.

TO THE PERSON RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if the application is brought under Rule 9-7, within 8 business days after service of this notice of application,

(a) file an application response in Form 33,

(b) file the original affidavit, and every other document that,

i. you intend to refer to at the hearing of this application, and

ii. has not already been filed in the proceeding, and

(c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:

i. a copy of the filed application response;

ii. a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;

iii. if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9)

Date: May 19, 2023

KND Complex Litigation

KND COMPLEX LITIGATION
1186 Eglinton Ave West
Toronto, ON M6C 2E3
T: (416) 537-3529

Sage Nematollahi (he/him)
sn@knd.law

Counsel to the Class Action Plaintiff

To be completed by the court only:

Order made

[ ] in the terms requested in paragraph _____ of Part 1 of this Notice of Application

[ ] with the following variations and additional terms:

_____

_____

_____

_____

_____

_____

Dated: _____

SCHEDULE "A"
DRAFT ORDER

No. S-228723
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IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36

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PETITIONERS

[DRAFT] ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE)
MR. JUSTICE WALKER) _____, 2023

ON THE APPLICATION OF LINDA LAROUCHE ("**Applicant**") coming on for hearing at the Courthouse at 800 Smithe Street, Vancouver, British Columbia on _____, and on hearing Sage Nematollahi, Counsel to the Applicant, and _____, Counsel to the Defendant, and on reading this Notice of Application and the further materials filed by the Petitioner in relation to an application for the approval of a Reverse Vesting Order in relation to the Petitioner;

THIS COURT ORDERS that:

1. Pure Gold Mining Inc. shall produce to the Applicant any and all insurance policies that may be available to respond to the claims asserted against any of Pure Gold Mining Inc., Darin Labrenz, Sean Tetzlaff, Mark O'Dea and/or Graeme Currie in the proposed class proceeding styled *Larouche v Pure Gold Mining Inc et al*, Supreme Court of British Columbia at Vancouver, No S-222826.

2. PureGold Mining Inc. shall produce to the Applicant the Scoping Study in relation to the Pure Gold Mine, dated February 2023.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING ON CONSENT:

Signature of lawyer for Class Action Plaintiff, Linda Larouche	Signature of lawyer for Petitioner

By the Court

_____
Registrar

SCHEDULE “B”
CSA STAFF NOTICE 43-307

1.1.3 CSA Staff Notice 43-307 – Mining Technical Reports – Preliminary Economic Assessments

CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA Staff Notice 43-307
Mining Technical Reports – Preliminary Economic Assessments

August 16, 2012

Introduction

This notice sets out staff's position on several issues regarding the use and disclosure of a "preliminary economic assessment" (**PEA**), as defined in revised National Instrument 43-101 *Standards of Disclosure for Mineral Projects* (**NI 43-101**), which came into force on June 30, 2011.

The economic analysis by way of a PEA is generally the first signal to the public that a mineral project has potential viability. Given the significance of this milestone in the evolution of any mineral project, the market views PEA results as important information.

NI 43-101 defines a PEA as a study, other than a pre-feasibility study (**PFS**) or feasibility study (**FS**), which includes an economic analysis of the potential viability of mineral resources. The terms PFS and FS have the meanings ascribed by the CIM Definition Standards for Mineral Resources and Mineral Reserves, as amended.

When preparing technical reports under revised Form 43-101F1 *Technical Report*, Items 16 to 22 provide a framework for reporting on a PEA, PFS, or FS. Although these studies generally analyse and assess the same geological, engineering, and economic factors, the level of detail, precision, and confidence in the outcomes is significantly different.

PEA as a Proxy for a PFS

We are seeing situations where issuers represent that their PEA, or components of it, have been or will be done at or close to the level of a PFS. In extreme cases, the issuers are representing that the study is a PFS but for the inclusion of inferred mineral resources. In other cases, issuers appear to be treating the PEA as a substitute or proxy for a PFS.

Staff's position

The definition of PEA has two key elements that distinguish it from other studies. First, by definition, it *cannot* be a PFS or FS. Second, a PEA can only demonstrate the *potential* viability of mineral resources. PFS and FS are more comprehensive studies and, therefore, are sufficient to demonstrate the technical and economic viability of a mineral project.

Section 2.3(1)(b) of NI 43-101 does not allow issuers to include inferred mineral resources in a PFS-level economic analysis, whereas section 2.3(3) of NI 43-101 allows issuers to include inferred mineral resources in a PEA. Issuers that blur the boundary between a PEA and a PFS by stating that some or all of the components of the PEA are done at the level of a PFS, run the risk that we may challenge whether the study meets the definition of a PEA. We recommend that issuers do not:

- describe a study as a PEA unless it clearly falls into the definition of a PEA, or
- compare their PEA or any components of it to the standards of a PFS if the study includes inferred mineral resources

Under the second element of the definition, a PEA is a conceptual study of the potential viability of mineral resources. In this context, section 3.4(e) of NI 43-101 requires specific cautionary language indicating that the economic viability of the mineral resources has not been demonstrated. This cautionary language is in addition to the cautionary statement for inferred mineral resources required by section 2.3(3)(a). Any disclosure that implies the PEA has demonstrated economic or technical viability would be contrary to NI 43-101 and the definition of PEA.

We may take the position that an issuer is treating the PEA as a PFS if the issuer:

- does not include the section 3.4(e) cautionary statement with equal prominence each time it discloses the economic analysis of the mineral resources
- uses the PEA as a basis to justify going directly to a FS or a production decision
- discloses mining or mineable mineral resources or uses the term “ore”, which is essentially treating mineral resources as mineral reserves, or
- otherwise states or implies that economic viability of the mineral resources has been demonstrated

We caution issuers to ensure that their disclosure of the results of a PEA is not misleading by providing appropriate context, cautionary statements, and discussion of risk sufficient for the public to understand the importance and limitations of the results of the PEA.

PEA Done in Conjunction with a PFS or FS

We are seeing situations where issuers prepare a PEA using inferred mineral resources, concurrently with or as an add-on or update to their PFS or FS. In some cases, the issuer’s explanation for doing this is that the issuer has only completed the technical and economic analysis of the inferred mineral resources to the level of a PEA. We are concerned that this interpretation could lead to issuers indirectly including inferred mineral resources in their PFS or FS, in contravention of the section 2.3(1)(b) restriction on including inferred mineral resources in an economic analysis.

Staff’s position

CSA broadened the definition of PEA in response to industry concerns that issuers needed to be able to take a step back and re-scope advanced stage projects based on new information or alternative production scenarios. In this context, the revised definition is based on the premise that the issuer is contemplating a significant change in the existing or proposed operation that is materially different from the previous mining study. In most cases, this will also involve considerably different economic parameters and capital investments. Examples of a significant change are a different scale of proposed operation (higher or lower throughput), a different scope of operation (higher or lower grade), the inclusion of other types of mineralization (oxide vs. sulphide), the use of alternative mining methods (open pit vs. underground), or the use of alternative processing technology.

By definition, a PEA is a study other than a PFS or FS. We generally consider that two parallel studies done concurrently or in close time proximity to each other are not in substance separate studies, but components of the same study. Therefore, a study that includes an economic analysis of the potential viability of mineral resources that is done concurrently with or as part of a PFS or FS is not, in our view, a PEA if it:

- has the net effect of incorporating inferred mineral resources into the PFS or FS, even as a sensitivity analysis
- updates, adds to or modifies a PFS or FS to include more optimistic assumptions and parameters not supported by the original study, or
- is a PFS or FS in all respects except name

PEA Disclosure and Technical Report Triggers

In some cases, issuers are disclosing results of potential economic outcomes for their material mineral properties that are not supported by a technical report.

Staff’s position

Investors may place significant reliance and make investment decisions based on potential economic outcomes disclosed by the issuer about its material mineral properties. Because this information is significant, it could trigger the filing of a supporting technical report depending upon the materiality of the information to the issuer.

An issuer could trigger the requirement to file a technical report, under section 4.2(1)(j) of NI 43-101, to support disclosure of the results of a PEA if the disclosure is:

- contained in the issuer’s corporate presentations, fact sheets, investor relations materials or any statement on the issuer’s website, or

- posted or linked from third party documents, reports or articles or otherwise adopted and disseminated by the issuer

Potentially Misleading PEA Results

We are seeing situations where issuers and qualified persons appear to use overly optimistic or highly aggressive assumptions in the PEA, or methodologies that diverge significantly from industry best practice guidelines and standards for exploration and mineral resources. We are concerned that these practices could result in disclosure that is misleading if it is inconsistent with the comparable work of other qualified persons.

Staff's position

Part 4 of National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**), sets out the requirements for disclosing forward-looking information. The results of a PEA include, or are based on, forward-looking information that is subject to the requirements of Part 4A of NI 51-102. Under Part 4A, an issuer must not disclose forward-looking information unless the issuer has a reasonable basis for the forward-looking information. Hence, any assumption under the PEA must have a reasonable basis in the context of the mineral project. Where we have concerns that some assumptions are overly optimistic or aggressive, we may challenge the qualified person to explain or justify the assumptions, or failing that, ask them to revise the PEA to take a more conservative or reasonable approach.

As discussed in Companion Policy 43-101CP, we think qualified persons acting in compliance with the professional standards of competence and ethics of their professional association will generally use procedures and methods that are consistent with industry best practices and standards. In circumstances where significant divergence might be justified, issuers should consider disclosing the nature of and basis for the divergence to ensure that their disclosure is not misleading.

PEA Disclosure that Includes By-products

In some cases, issuers are disclosing the results of a PEA that includes projected cash flows for by-product commodities that are not included in the mineral resource estimate. This situation can arise where there is insufficient data for the grades of the by-products to be reasonably estimated or estimated to the level of confidence of the mineral resource.

Staff's Position

We consider the inclusion of such by-product commodities in the PEA to be misleading and contrary to the definition of PEA because these commodities are not part of the mineral resource. We caution issuers not to include cash flow projections for any commodity or part of a commodity that has not been properly categorised as a measured, indicated or inferred mineral resource.

Qualified Person – Relevant Experience

We are seeing situations where individuals are taking responsibility for technical reports or parts of reports that support the results of a PEA, while not fully complying with the requirement to have experience relevant to the subject matter of the mineral project and the technical report.

Staff's Position

In addition to the relevant experience requirement in paragraph (c) of the qualified person definition under NI 43-101, CIM definitions provide guidance relating to the qualified person's competence and relevant experience in the commodity, type of deposit, and situation under consideration. In addition, professional associations recognized under NI 43-101 have codes of ethics that may restrict the practice of members based on their area of expertise and competence.

Where we have concerns that a qualified person does not have relevant experience, we will challenge the qualified person to explain or justify their relevant experience, or failing that, ask for a revised technical report from additional qualified persons.

Consequences of Material Deficiencies or Errors

When we identify material NI 43-101 disclosure deficiencies in required documents, we will generally request that the issuer correct the deficiency by restating and re-filing the documents. Where the issuer fails to comply with the request, we may place the issuer on our reporting issuer default lists, seek a commission order requiring the issuer to re-file the documents, or issue a cease trade order until the issuer corrects the deficiency. Even if the issuer corrects the deficiency, we may still pursue enforcement or other regulatory action for the original breach, depending on the circumstances.

If an issuer is considering a prospectus offering, the review of the prospectus filing could take more time if issues such as those noted above are present. Where there are material deficiencies, we may recommend against issuing a receipt for the prospectus.

Issuers should bear in mind that, in any circumstances, correcting material deficiencies or hiring additional qualified persons to certify deficient parts of a technical report can be complex, costly and time-consuming for the issuer.

For further guidance on this issue, please see CSA Staff Notice 51-312 *Harmonized Continuous Disclosure Review Program* and CSA Notice 51-322 *Reporting Issuer Defaults.*

Questions

Please refer your questions to any of the following people:

Robert Holland
Chief Mining Advisor, Corporate Finance
British Columbia Securities Commission
604-899-6719 or 1-800-373-6393 (toll free in Canada)
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NOTICE OF APPLICATION
(PRODUCTION OF AVAILABLE D&O INSURANCE POLICIES AND THE PUREGOLD MINE SCOPING STUDY DATED FEBRUARY 2023)

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