APPENDIX D

SELECTED CORRESPONDENCE BETWEEN NICORE AND AGENCIES

APPENDIX D

SELECTED CORRESPONDENCE

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November 19, 1993

Mary Zuschlag
Siskiyou National Forest
Illinois Valley Ranger Station
Cave Junction, OR 97523

Dear Ms. Zuschlag,

I am submitting some modifications to my plan of operation on the NICORE Project. In the eleven months my operating plan has been under consideration, several issues relating to the plan's workability have been raised. The purpose in amending the plan is to address those issues.

1. Testing (Phase 1) to satisfy requirements relating to metallurgical feasibility, the initial 5000-ton tests must be performed on more than one site. Therefore we have chosen four sample locations that will allow the selection of the most profitable area, which would be mined first.

2. Access: The proposed test work will require the use of the existing road network. I hereby formally reject the various alternative access proposals made by the District Ranger. If the use of the existing road network as outlined in the Plan of Operation and the amendment is held by the District Ranger to require an EIS, I hereby formally request that such EIS be completed in a timely fashion.

3. Phase II: If the metallurgical testing is successful, mining would proceed at the rate of 40,000 tons/year. All aspects of the operation would be identical to those in the testing phase except that the length of the operation would go from 20 days under testing to 120 days/year under production. Any contemplated EIS should consider both testing and production phases.

4. Timing: It has been suggested by Mr. John Nolan that concerns about stream-crossings in Rough & Ready Creek could be reduced if crossings were made after the flows were at a minimum starting about June 15. We feel that this is a worthwhile suggestion and have modified the plan accordingly.

5. Botanical values: We hereby request the assistance of the USFS and its staff in designing both access and pit development so as to minimize impacts to botanical values.

Sincerely,

Walter Freeman

Walter Freeman
NICORE

USDA Forest Service

OMB NO. 0596-0022
EXPIRES: 07/31/92

PLAN OF OPERATIONS FOR MINING ACTIVITIES ON NATIONAL FOREST LANDS

Submitted by Walter B. Freeman _____ modified 11/19/93 Dec. 17, 1992
Signature Title Date

Plan Received by _____ _____ _____
Signature Title Date

I. GENERAL INFORMATION

A. Name of Mine/Project NICORE Project

B. Type of Operation Development
(lode, placer, mill, exploration, development, production, other)

C. Is this a (new/continuing) operation? (CIRCLE ONE)
If continuing a previous operation, this plan (replaces/modifies) a previous plan of operation. (CIRCLE ONE)
This plan supersedes previous notices of intent.

D. Proposed start-up date of operation May 1, 1993

E. Proposed duration of operations

F. Proposed seasonal reclamation close-out date November 15

II. PRINCIPALS

A. Name, address and phone number of operator Walt Freeman P.O. Box 344,
Cave Junction, OR 97523 503-592-2078

B. Name, address, and phone number of authorized field representative (if other than the operator). Attach authorization to act on behalf of operator.

None

C. List the owners of the claims (if other than the operator)

None

(If more space is needed to fill out a block of information, use additional sheets and attach to form.)

with the operation, if applicable:

None

III. PROPERTY OR AREA

Name of claim and the legal land description where the operation will be conducted.

MMC #	Name	Section	Township	Range	
ORMC 20327	Chance 13	22	40S	9W	
ORMC 20396	Chance 83	"	"	"	
ORMC 20298	ACE 103	11	"	"	added Nov 19, 1993
ORMC 20274	ACE 72	16	"	"	
ORMC 20207	ACE 3	8	"	"	

IV. DESCRIPTION OF THE OPERATION

A. Access. Show on a map (USGS quadrangle map or a National Forest map, for example) the claim boundaries and describe and show on the map all access needs, on and off the claim. Specify what Forest Service existing roads will be used, where maintenance or reconstruction is proposed and where any new construction is necessary. For new construction, include construction specifications such as widths, grades, etc. Show location and size of culverts. Describe maintenance plans. Describe the type and sizes of vehicles and equipment that will be traveling the access routes.

* Please see attached sheet detailing access.

B. Attach map, sketch or drawing showing location and layout of the area of operation. Include names and locations or any streams, creeks, and springs. Describe and explain on the map the type of operation, method or techniques you propose (examples: drilling, open pit mining, dredging, milling, etc.; include locations, capacity, size, amount, etc.). Show on the map and describe below the size and kind of all surface disturbance, such as trenches, pits, settling ponds, stream channels and run-off diversions, waste dumps, drill pads, timber disposal or clearance, etc. Include sizes, capacities, acreage, amounts, locations, materials involved, etc.

* Please see attached explanation of operation.

(If more space is needed to fill out a block of information, use additional sheets and attach to form.)

Access:

All access will be over existing roads, with the present "Cat trail" in Sec. 13 T40S R9W being upgraded for vehicular traffic. All roads will be graded and rocked as necessary to a width of approximately 10 ft. Native stone will be used as required.

Six crossings of Rough and Ready Creek will be required with some grading of the approaches being necessary. Construction of washed rock crossings is proposed. These crossings would be rebuilt annually after winter high water.

Modification of the steepest portion of the road leading to Sec. 22 will be necessary to allow for safe travel of the haul truck. Approximately .25 miles of road will need to be rebuilt to reduce gradients to safe levels.

Reconstruction of the "Alberg" road will be required to access the test pit site in Section 8. The worst portion of this road lies in the draw leading to the first switch-back. Proper design of water bars and ditches will help reduce erosion that has been associated with this road in the past.

Phase 1:

A total of approximately 5,000 tons of ore will be removed from Chance 13 and 83 mining claims in Sec. 22; Ace 103 in Sec. 11; Ace 3 in Sec. 8 and Ace 72 in Sec. 16, T40S R9W. This ore will be screened on site using a portable screening plant and then hauled to a stockpile area in Sec. 18, T40S R8W in 2 off-highway ore trucks. The excavation of 5,000 tons of ore would require the construction of four (4) pits covering less than .20 acres each.

Phase II:

Phase II is contingent on the success of Phase I. It is essentially a continuation of Phase I, in that one or two of Phase I sample sites would be selected as mine sites. The pits would be expanded to produce ore at the rate of approximately [redacted] 40,000/year [redacted] The equipment used and the access would be the same as in Phase I. The time of conducting mining operations would be expanded from approximately 20 days in Phase I to 120 days (June 15 - Oct. 15). The pit size would be expanded from less than .20 acres to about 2 acres, with 2 acres being mined and reclaimed annually for the duration of the project. Reclamation procedures would be the same.

Mining:

During the wet months, the laterite deposits such as the one that is the subject of this plan of operation, become "red bogs"; making it imperative that all mining operations be conducted from about June 15 - October 30. During this period, ore would be mined and transported to the stockpile site at the rate of 400 tons per day or about 10,000 tons per month.

Ore would be dug at the mine site using a 1 cu. yd. excavator. It would be screened at the pit using a mobile screening unit. Minus 1-inch material would be stockpiled and subsequently loaded into the haul truck using a 5 cu. yd. front loader. The plus 1-inch oversize produced in the screening operation would be used to backfill the pit. The trucks used to haul the ore to the stockpile in Sec. 18, will be a 25-ton capacity articulated dump truck with "rough terrain" capability and a tight turning radius. The use of this type of truck would allow for road construction to be kept to a minimum, with haul road widths averaging about 12-15 fee.

As mentioned before, all mining operations would be conducted during the dry season. This would insure that little of no run-off would be produced to cause stream degradation.

Site reclamation:

All oversized rock produced by the screening operation would be graded back into the pit after ore removal. In addition, all mined areas would be mulched with a mixture of wood waste and soil produced on site during clearing and overburden removal. Wood waste would be prepared to allow proper mixing of the mulch. Mined areas that had been graded and re-soiled would be planted with indigenous trees.

Describe the Equipment and V[illegible]cles you propose to use in your operat[illegible] (Examples: drill, scoop, truck, plant, mill, etc.). Include: sizes, capaci[illegible] frequency of use, etc.

Equipment: 1-1 cu. yd. hydraulic excavator, 1-5 cu. yd. front loader, rubber tired, 1-portable diesel-powered screening plant, 1-25 ton 6-wheel-drive articulated off-road dump truck, 1-4x4 pickup, 1-50M Lb. track type dozer. The excavator, loader, dozer and screening plant would be moved on and off site once during the operating season. The haul truck would make 1 round trip/1-1.5 hrs. [redacted]

E. Structures. Describe and include justification for the structures or facilities planned for the operation. Include such things as storage sheds, mill buildings, thickener tanks, fuel storage, powder magazines, pipe lines, water diversions, trailers, sanitation facilities, etc. Include justification and calculations for sizing of tanks, pipelines and water diversions. The fuel storage facilities should include containment structures that will hold the volume of the largest storage tank in case of a tank failure of leak. Show the locations on the sketch map.

None

V. ENVIRONMENTAL PROTECTION MEASURES (SEE 36 CFR 228.8)

A. Air Quality. Describe measures to be taken to minimize impacts on air quality such as obtaining a burning permit for slash disposal or dust abatement on roads.

No burning would be required in that all slash will be processed into chips to be used in mulching the reclaimed areas. Dust on haul roads will be controlled using a water wagon pulled by the haul truck on an as needed basis.

(If more space is needed to fill out a block of information, use additional sheets and attach to form.)

Water Quality. State how applic[illegible] state and federal water quality standar[illegible] will be met. Describe what measures or management practices w[illegible]e used to minimize water quality impacts and meet applicable standards.

1. If water is to be used in the operation (processing ore, washing ore, solution make-up, etc.) state how the water will be stored, treated an disposed of. If ponds of any type are proposed, such as for storage or settling, state how they will be designed and built. Provide storage capacities and water balance calculations. State how ponds will be maintained on an annual basis.

2. Describe methods to control runoff and erosion to prevent entry into surface water for all disturbed areas, including waste and tailings dumps.

3. Describe proposed surface water and groundwater quality monitoring, if required, to demonstrate compliance with federal or state water quality standards.

4. Describe what measures will be used to minimize potential water quality impacts during winter closure, if applicable.

5. If land application is proposed for wastewater disposal, the location and operation of the land application system should be described.

No water will be used in the mining operation. Mining will be conducted in the dry months and winter run-off from haul roads etc. would be controlled by establishing proper drainage during the annual reclamation program.

C. Solid Wastes. State how any tailing, dumpage, or other waste produced by operations will be disposed of or treated so as to minimize adverse impacts. Include a statement that all unburnable garbage and refuse will be hauled off-Forest to a sanitary landfill.

No tailings will be produced on site in that ore will be processed off-site. Oversized rock produced by the screening operation will be graded back into the pit as outlined previously. The work area will be "policed" weekly to prevent refuse accumulation.

D. Scenic Values. State how scenic values will be protected. Examples are screening, slash disposal, timely reclamation, etc.

Mining operations will not be visible from any major road or populated area. Slash will be chipped and used as mulch for site reclamation. Each phase of reclamation will be completed with the seasonal close of operation.

(If more space is needed to fill out a block of information, use additional sheets and attach to form.)

Fish and Wildlife. All practica measures to maintain and protect fish and wildlife habitat affected by the operations must be taken, and sh be defined. Most of those measures i ve avoidance of critical habitat such as along streams and bogs when planning roads, dumps, etc. Opp nities during reclamation to prevent erosion or plant browse or forage species should be described.

There are low fish and wildlife population densities in the access and operation areas due to the harsh, rocky terrain. Design of roads and excavated sites (such as constructing animal "escape trails" from pits), as well as adherence to an annual reclamation schedule will minimize habitat impacts.

F. Cultural Resources. Describe procedures for protection of historic and archeological values. The Forest Service is responsible for insuring that the area to be covered by the operating plan is inventoried prior to plan approval to determine the presence of significant cultural resources and will specify protective and/or mitigation measures to be taken by the operator. If previously undiscovered cultural resources (historic or prehistoric objects, artifacts, or sites) are exposed as a result of operations, the operator shall not proceed until he is notified by the District Ranger that he has complied with provisions for mitigating unforeseen impacts as required by 36 CFR 228.4(e) and 36 CFR 800.

None

G. List all hazardous substances (by name and quantity required) which you intend to use or generate during the proposed operation. Operations USING or GENERATING HAZARDOUS SUBSTANCES must attach copies of other Federal and State agency permits, including all stipulations and conditions pertaining to the permit.

None

H. With regard to hazardous substances, discuss handling, storage, security (fencing), identification (signing), or other special operations requirements necessary to conduct the proposed operation.

None

(If more space is needed to fill out a block of information, use additional sheets and attach to form.)

Close-out Reclamation. This se n should describe the removal of struc s and facilities, and the reclamation of the access road. It sho specify that roads no longer needed, (1) be closed, (2) bridges and culverts be removed, (3) cross dr s, dips, or water bars be constructed, (4) the road surface be shaped to as near a natural contour as practicable and be stabilized. Show the expected date for completion of all reclamation.

Pit roads will be reclaimed as mining operations are completed in each area. All major access roads are permanent.

VI. FOREST SERVICE EVALUATION OF PLAN OF OPERATIONS

A. Recommended Changes/Modifications for Plan of Operations: _____

B. Bond - As a further guarantee of faithful performance with the reclamation requirements agreed upon in the plan of operations, the operator delivers herewith and agrees to maintain a surety bond, cash, bond, irrevocable letters of credit in the sum of _____ ($_____).

ACKNOWLEDGEMENTS

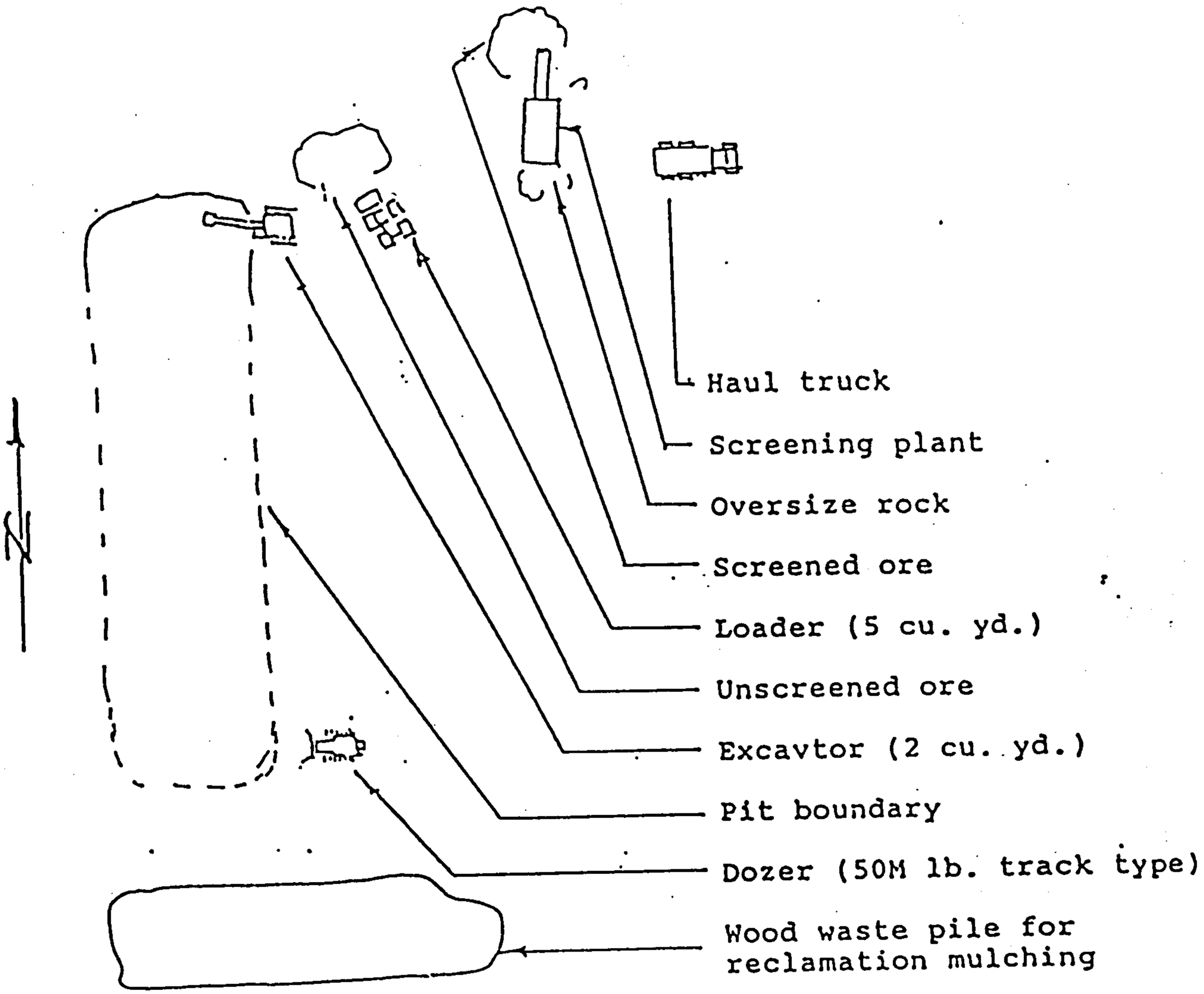
A. It is understood that should the nature of the operation change a modified or supplemental plan of operations may be required.

B. It is understood that approval of this plan of operations does not constitute: (1) Certification of ownership to any person named herein; and (2) Recognition of the validity of any mining claim named herein.

(If more space is needed to fill out a block of information, use additional sheets and attach to form.)

PROPOSED MINE LAYOUT

Scale: 1 in. = 50 ft.



1. Excavator digs ore and stacks it.

2. Loader picks ore up and hauls it to the portable screening plant.

3. The screening plant separates the 1-in. minus.

4. The screened ore is loaded into an articulated 25-ton dump truck and is transported to the ore stockpile in Sec. 18, T40S R8W.

5. Oversize rock is returned to backfill pit.

United States Department of Agriculture | Forest Service | Siskiyou National Forest | Illinois Valley RD
26568 Redwood Highway
Cave Junction OR 97523

Reply To: 2810

Date: November 29, 1993

Walt Freeman
P.O. Box 334
Cave Junction OR 97523

Walt:

This letter will serve to acknowledge receipt of your amended Plan of Operations Dated November 19, 1993 for the NICORE Project.

Your modified plan indicates that you will need to test three additional sites. These test sites each have different access needs. If testing is successful, you propose that mining would proceed with similar methods for up to 120 days per year. Your annual starting date would move from April 15 to June 15.

This additional information will be considered during the Environmental Impact Statement (EIS). A copy of your amended proposal will be circulated to the team of specialist who will be preparing the EIS when funding becomes available. You will be contacted in writing, if any of the specialist have questions regarding this proposal.

In the cover letter to your amended Plan of Operation you have raised the following three issues in addition to amending your mining proposal:

1) You state that the proposed test work will require the use of the existing road network, and that you hereby formally reject the various alternative access proposals made by the District Ranger.

Our policy is to ensure that exploration, development, and production of mineral resources are conducted in an environmentally sound manner and that these activities are integrated with the planning and management of other National Forest resources. To do this we need to look at all access alternatives and choose the most reasonable and environmentally sound route. The existing road network may, in fact, be the least impacting and most reasonable route. Without checking all existing access possibilities we would not know that.

2) If the use of the existing road network as outlined in the Plan of Operation and the amendment is held by the District Ranger to require an EIS, you hereby formally request that such EIS be completed in a timely fashion.

The amended proposal and the original proposal generate similar issues and concerns, therefore, an EIS is still required and will be completed when funding becomes available.

3) You have requested the assistance of the Forest Service in designing both access and pit development so as to minimize impacts to botanical values.

Because of the unique botanical values within your claim area, I have requested eight weeks of funding for a Botanist to survey and evaluate the effects of your proposal. The best time to observe the plant species in the Rough and Ready Creek area is in the early spring. I recommend that you contact our Botanist to arrange an on site review of the access roads and test pits this spring.

If you have any questions or concerns, please feel free to contact me at this office.

Mary Zuschlag

MARY ZUSCHLAG
Acting District Ranger

LAW OFFICES OF
RICHARD M. STEPHENS
800 BELLEVUE WAY, SUITE 400
BELLEVUE, WASHINGTON 98004-4229

ADMITTED ALSO IN OREGON
AND CALIFORNIA

TELEPHONE (206) 462-2082
FACSIMILE (206) 688-0285

July 21, 1994

Ms. Mary Zuschlag
District Ranger
Siskiyou National Forest
Illinois Valley Ranger District
26568 Redwood Highway
Cave Junction, OR 97523

Dear Ms. Zuschlag:

Re: Nicore Project

My client, Walter B. Freeman, asked me to contact you to see if there is any aspect of his plan of operations which he could change which would change your determination that an Environmental Impact Statement needs to be prepared and an Environmental Assessment written instead. For instance, do you think you could subject his plan of operations to an Environmental Assessment if he made changes to the haul routes or if he eliminated any particular stream crossing(s) or avoided any particular rare plant populations? We are looking for any feasible ways we can expedite the review of his plan of operations.

This letter is also a Freedom of Information Act request for copies of all documents showing your estimate of the cost of conducting an Environmental Impact Statement for the Nicore Project and copies of all letters or other communications your office has had in regard to requesting the funds to conduct the EIS for this project.

Thank you for your attention to this request.

Sincerely,

RICHARD M. STEPHENS
Attorney

cc: Walter B. Freeman

United States Department of Agriculture | Forest Service | Siskiyou National Forest | Illinois Valley RD
26568 Redwood Highway
Cave Junction OR 97523

Reply To: 2810

Date: September 13, 1994

Richard M. Stephens
800 Bellevue Way, Suite 400
Bellevue, WA 98004-4229

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Dear Mr. Stephens:

This letter is in response to your letter dated July 21, 1994, requesting the following information:

1) All documents showing our estimate of the cost of preparing an Environmental Impact Statement (EIS), for the NICORE Project, and copies of all letters or other communications our office has had in regard to requesting the funds to conduct the EIS for this project.

(Response #1)

Enclosed are two documents requesting funding for an EIS for the NICORE proposal.

2) You have asked if any aspect of the Plan of Operation for the NICORE proposal could be changed to avoid preparing an Environmental Impact Statement.

(Response #2)

As you are aware, the three major issues that effect the analysis of the NICORE mining proposal are: 1) Wild and Scenic River Eligibility, 2) Sensitive Plants, and, 3) Water Quality. The access route proposed by the NICORE plan of operations parallels Rough and Ready Creek for more that one mile and includes 6 low water crossings. This portion of the access has driven the majority of concerns relating to the 3 major issues. By accessing the claim area via the existing access road, (past the Jim Wood residence), and minimizing the stream crossings, most of the concerns relating to the 3 major issues would be significantly reduced. This does not mean that other concerns would not surface, such as dust, noise, traffic ect.

There is no guarantee that an EIS can be avoided by minor changes in the proposal. However the access route appears to be the most controversial portion of the proposal, and a choice of access that avoids impacts to the three major issues would definitely reduce the need for an EIS.

Mary Zuschlag

MARY ZUSCHLAG
District Ranger

United States Department of Agriculture
Forest Service
Siskiyou National Forest
Illinois Valley R.D.
26568 Redwood Hwy
Cave Junction, OR 97523

Reply To: 2817 NICORE

Date: January 23, 1997

Walter B. Freeman
P.O. Box 344
Cave Junction, OR 97523

CERTIFIED LETTER RETURN RECEIPT REQUESTED

Dear Mr. Freeman:

On December 17, 1992, you submitted for our review and approval a Plan of Operations summarizing your proposal to develop access to laterite resources within Forest System lands, remove a 5,000-ton bulk sample of the material from four locations within those lands, and full-scaled development of the laterite resource within those lands. On July 12, 1993, I informed you of the need for an Environmental Impact Statement (EIS) for reasons stated in that letter. On November 19, 1993, you amended your Plan of Operations to clarify issues regarding the testing phase, access and timing of creek crossings, the production phase, and to include a request for Forest assistance in the design of access and pit development to minimize impacts to botanical resources. On May 11, 1994, you appealed my decision to require an EIS to the Siskiyou Forest Supervisor. He affirmed my decision in a letter to you dated July 29, 1994. On August 12, 1994, you appealed the Siskiyou Forest Supervisor's decision to the Regional Forester. He affirmed the decision of the Forest Supervisor in a letter to you dated November 20, 1994. In addition, he informed you that the Forest Service has the authority to disapprove unreasonable Plans of Operation. Consequently, he directed the completion of a determination of the reasonableness of your Plan of Operations by a certified mineral examiner. A Surface Use Determination (SUD) was completed by a certified mineral examiner on October 1, 1996 and received technical approval on December 13, 1996. You received a copy of it on January 7, 1997.

The conclusion of the mineral examiner in the SUD is that your proposal to remove a bulk sample of nickel-bearing laterite for use in determining the metallurgical feasibility for smelting is reasonable for this stage of your operations, but lacking in some information necessary to conduct the full analysis of the proposal. That information is detailed later in this document.

The mineral examiner further found that incorporation of a proposal to include full-scaled production is not reasonable at this time and should not be included in the Plan of Operations. You state in your Plan of Operations that this phase of the operation is contingent on the success of the bulk sampling phase, therefore, it is dependent on the outcome of sample testing and not certain to occur at this time. The Plan of Operations must be limited only to those activities associated with bulk sampling of the resource. It can be amended at a later date to include full-scaled production should the results of bulk sampling support development of a mine.

I am requesting the following information to enable us to begin our analysis:

1. Site development plan for each location where you propose to remove the bulk sample(s).

2. A plan detailing construction/reconstruction of roads on National Forest System lands.
3. A plan detailing construction and maintenance of proposed washed rock crossings of Rough and Ready Creek.
4. A road maintenance plan.
5. Can the same information be obtained from a smaller-sized sample? There is no substantiation of the need for a 5,000 ton sample.
6. Information regarding the location of the facility to be used for smelting the sample and whether it is currently available for this use.

Your proposal to remove ore for the bulk sampling from more than one site does not appear to be adequately justified at this time. I understand that you are hoping to determine the most profitable area to be mined first. However, there appears to be sufficient sample data already available on the grade of laterite in all four locations to make this decision. Reference is made to the information in Appendix C of the NICORE Project Plan dated December 1, 1992. The four sites greatly increase the complexity of considerations and potential for damage to surface resources with little apparent gain in operational economics. I request either more concrete justification or modification of your operating plan on this point.

We have received funding for this current fiscal year to allow us to begin work on an Environmental Impact Statement, and we will appreciate your cooperation in providing the requested information. I give you my personal assurance that we are committed to prepare the Draft EIS this year. I will incorporate the proposal you submitted as an alternative in the EIS. However the proposed action will be based on the findings and determinations in the SUD. We will need to resolve the issues raised in the SUD before the EIS is completed.

We gladly offer to meet with you at your convenience to discuss the Surface Use Determination and the analysis needs for the EIS.

Sincerely,

Mary Zuschlag

MARY ZUSCHLAG
Illinois Valley District Ranger

enclosure

cc: J.Gauthier-Warinner, M.Cooley, R.Bennett:R6, A.Reifenberg:R6, EIS team

United States Department of Agriculture | Forest Service | Siskiyou National Forest | Illinois Valley RD
26568 Redwood Highway
Cave Junction OR 97523

Reply to: 2800 Date: January 31, 1997

Subject: Nicore pre EIS meeting.

To: The file.

0900, January 31, 1997, Forest Service representatives John Nolan and Don McLennan met with Walt Freeman to discuss the Plan of Operation proposed for the Nicore mining project.

Prior to the meeting Ranger Zuschlag talked with Walt and assured him that she was committed to preparing an EIS for his mining proposal. Walt said that he was willing to cooperate with the Forest Service to supply more detailed information to support his proposal, but as far as the Surface Use Determination recently prepared by the Forest Service, he was letting his lawyer respond to all questions and or responses to the SUD. Walt said that he understood that he was going to be able to work with us in preparing the SUD, but this did not happen. He claims that because he was not involved in the completion of the report, that errors were made that need to be corrected. Ranger Zuschlag asked Walt to meet with Jim Gauthier-Warinner to resolve the differences. Walt replied that he would leave that to his lawyer.

Walt seems to feel strongly that the only access alternative reasonable to him is the current proposal as written. He is willing to prepare better detailed plans of the construction and maintenance of the proposed washed rock crossings of Rough and Ready Creek. Walt agreed to also prepare a detailed site development plan for each mine location. In order to detail the construction and reconstruction needs of roads we agreed to arrange a meeting with Bob O'leary and Walt to prepare a work map that indicates all proposed access needs. Following the map work, all new construction and relocation sites would be field reviewed and marked on the ground when the area becomes accessible.

Walt thought that he would be able to submit the mine pit site development plan and stream crossing information by late next week. We have a tentative date set for February 6, 1997 to meet with Walt to prepare a working map showing access needs.

John Nolan
Minerals Tech

GROEN & STEPHENS
ATTORNEYS AT LAW
ONE BELLEVUE CENTER
411 108TH AVENUE NE
SUITE 1750
BELLEVUE, WASHINGTON 98004-5515

JOHN M. GROEN
RICHARD M. STEPHENS

ALSO ADMITTED IN
ALASKA, OREGON & CALIFORNIA

TELEPHONE
(206) 453-6206

FACSIMILE
(206) 453-6224

February 10, 1997

Mary Zuschlag
Illinois Valley District Ranger
26568 Redwood Highway
Cave Junction, OR 97523

Dear Ms. Zuschlag:

Thank you for your letter to Walt Freeman dated January 23, 1997. He has and will continue to be meeting with people from your office to discuss some of the items that will help the Forest Service prepare the Environmental Impact Statement (EIS) on his Plan of Operations. We hope to be able to provide whatever information we have relevant to the environmental impacts of his operations.

We need to respond to a couple of points in your letter and in the Surface Use Determination (SUD) that we received from J. Gauthier-Warriner. Your letter states the following:

> The mineral examiner further found that incorporation of a proposal to include full-scaled production is not reasonable at this time and should not be included in the Plan of Operations. You state in your Plan of Operations that this phase of the operation is contingent on the success of the bulk sample testing and not certain to occur at this time. The Plan of Operations must be limited only to those activities associated with bulk sampling of the resource.

Mr. Freeman had one meeting with Mr. Gauthier-Warriner. At that meeting, Mr. Gauthier-Warriner assured him that Mr. Freeman would be involved in the preparation of the SUD. Information would be requested and Mr. Freeman agreed to provide whatever he had. At that meeting, Mr. Freeman gave Mr. Gauthier-Warriner a 1992 presentation document which was designed to outline the project's potential as an investment opportunity. That document was not intended to be an exhaustive economic analysis. The document was given to Mr. Gauthier-Warriner because is showed ore maps with assay values.

Because Mr. Gauthier-Warriner did not avail himself of additional resources Mr. Freeman offered, the SUD is partially based on out-of-date information.

Mr. Freeman has reduced a one ton sample by using the direct alloy reduction technology (DART). The sample was removed from the claims at issue by hand. The result was 600 lbs of alloy. Using this process, Mr. Freeman has produced "414" stainless steel. Consequently, the need for a bulk sample is not as significant because we already know the quality of steel that can be produced from this ore. None of this information is in the SUD because Mr. Gauthier-Warriner never contacted Mr. Freeman after the initial meeting. We would be happy to provide you with the metallurgical information derived from that sample upon the recognition that it is proprietary and cannot be disclosed outside your agency.

Therefore, we strongly disagree that the Plan of Operations should be limited to a bulk sample. As long as the work on an EIS is being done, it should be done for full-scale production because we already know that the metallurgical testing indicates that full-scale production is economically feasible.

The other issue relates to one I have already raised with Mr. Gauthier-Warriner. He recommends that Mr. Freeman have a signed contract with a smelting facility before the EIS is completed. Mr. Freeman cannot sign any contract because he cannot promise any smelting facility that he will have a certain amount of ore delivered on any particular day. He cannot make such a contractual obligation unless the Forest Service is willing to guarantee that approval of his Plan of Operation will occur on a certain date in order to allow Mr. Freeman to guarantee delivery of the ore to the smelting facility. I am sure the Forest Service will not promise approval by a date certain or be willing to indemnify Mr. Freeman if he signs a contract and is unable to deliver the ore because the Plan of Operations has not yet been approved. If I am wrong, please let me know.

This requirement for a contract seems to make little sense because it suggests that Mr. Freeman will go to the trouble and expense of removing the ore without a processing facility. While we have no signed contracts with facilities and cannot have a signed contract without a guarantee by the Forest Service that the Plan of Operations will be approved by a particular date, there are several options available. One is the processing facility in Riddle, Oregon. Other processing facilities exist around the country and overseas. There is also the possibility of building a processing facility to handle the production from this mining operation.

We also disagree with the idea that there is no need to remove ore from all sites. Mr. Freeman is not hoping to determine the most profitable area to be mined first. To the contrary, ore needs to be removed from all sites and mixed. The various sites have ore composed of different percentages of nickel.

We realize that access to the four sites may add to the complexity of the EIS. However, limiting the EIS to only one site has big implications for the economics. As I explained above, this Plan of Operations is for full-scale mining production because a sample removed from the site by hand has already confirmed the economics of the project. As you know, the ore at all four sites belongs to Mr. Freeman and access to all four sites cannot be denied.

Finally, toward the end of your letter, you indicated that "[w]e will need to resolve the issues raised in the SUD before the EIS is completed." I am not sure whether this is a conclusion of your letter and the "issues in the SUD" refer to the issues you already specifically addressed, or other issues in the SUD.

Please let me know if you have other issues in the SUD that have not yet been addressed in your letter that you believe need to be addressed. We look forward to working with you in completing your EIS this year.

Sincerely,

GROEN & STEPHENS

RICHARD M. STEPHENS

RMS:Al

Walter B. Freeman
P.O. Box 344
Cave Junction, OR 97523

February 10, 1997

Mr. Don McClennon
USFS Siskiyou National Forest
Illinois Valley Ranger District
Cave Junction, OR 97523

Dear Mr. McClennon,

The following are points of clarification relating to the NICORE Project that you requested in our meeting of January 31, 1997.

1. Mining and haulage of ore would be restricted to a period between May 15 and October 15 annually.

2. Mining rates during the 5000 ton test period and the contemplated production phase would be 400 to 500 tons of screened ore per day utilizing a mobile rotat ing grizzly screening plant.

3. The pit area for 5000 net tons of screened ore would be .38 acres. Annual pit size required to produce 40,000 net tons of screened ore would be 3.1 acres, based on an average mining depth of 12 feet. Pit reclamation will occur concur rently with ore extraction (Fig.1).

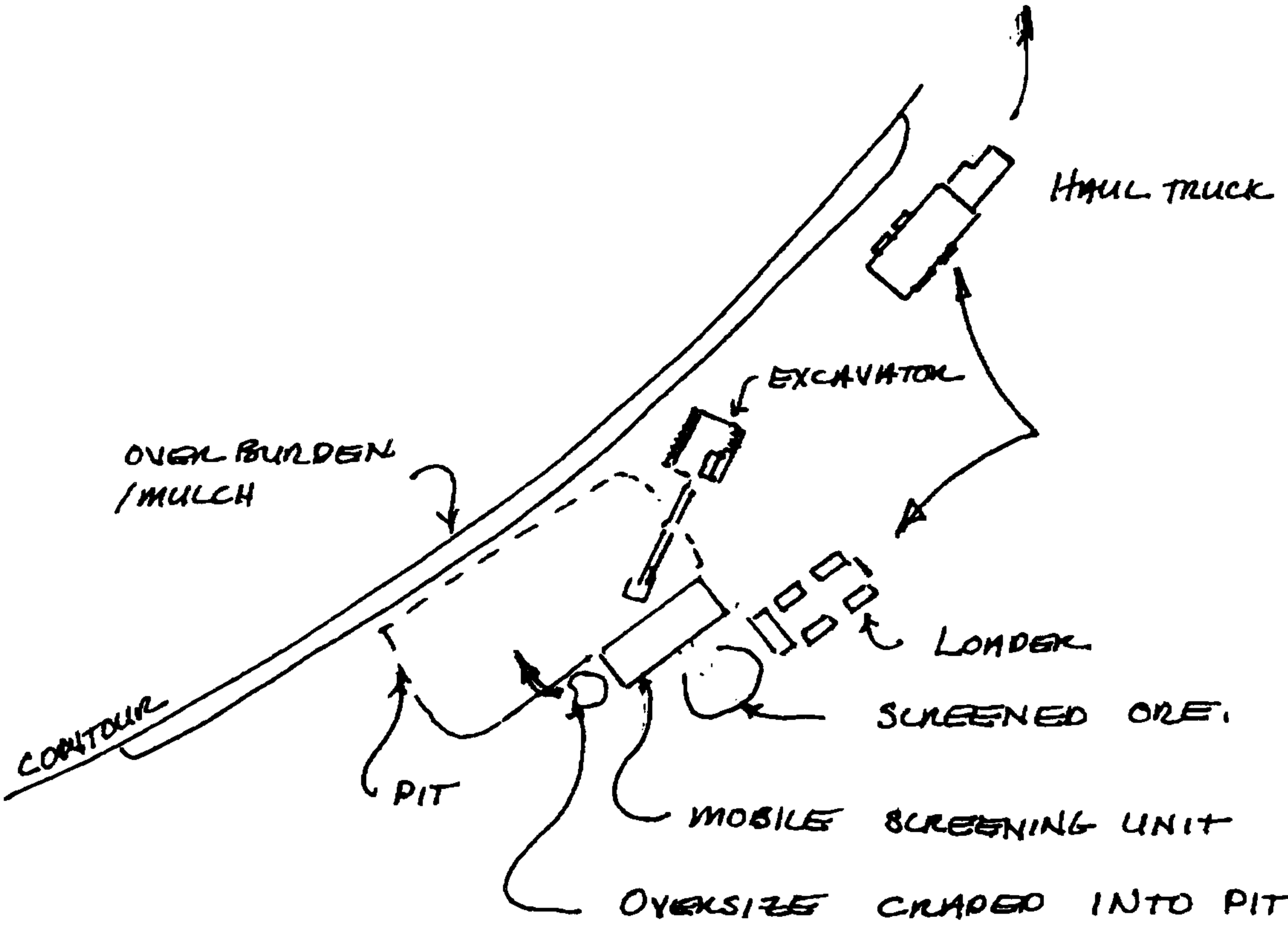
Sincerely,

Walter B. Freeman

Walter B. Freeman

FIG. 1.

MINING & RECLAMATION PROCEDURE



NTS.

FEB. 10. 1997

OR 48362
OR 48415
OR 49890
OR 53033
3809(11784)
S3583(MC:jmw)

CERTIFIED MAIL - RETURN RECEIPT REQUESTED (P 280 973 388)

Mr. Walt Freeman
P.O. Box 544
Cave Junction, Oregon 97523

FEB 19 1997

Dear Mr. Freeman:

We have recently been in contact with the Siskiyou National Forest, Illinois Valley Ranger District, regarding a mining plan of operations submitted by you to the Forest Service outlining your plans to test several areas on National Forest lands and subsequently transport the material to the location of your claims on public lands administered by the Bureau of Land Management (BLM).

I have discussed your plans with the Forest Service. We have agreed to work jointly in the development of the Environmental Impact Statement (EIS) which will be written to analyze your proposed activities. The Forest Service will take the lead in writing the EIS that will be written to address activities occurring on both Forest Service and BLM administered lands.

I understand the Forest Service has asked you to submit additional information to assist them in analyzing your proposal. In addition to the above information requested by the Forest Service, you need to submit information to this office regarding your planned activities on the BLM administered lands to be utilized during, and after, the testing is completed. If you desire, you may combine the information into one document and send us a copy. Maps outlining the location of all roads, stockpiles, and facilities must be included.

The information we require must be in the form of a plan of operations. As we indicated to you in the past, you are required to submit a plan of operations instead of a mining notice for any proposed mining activities on the BLM lands that are designated as Area's of Critical Environmental Concern (ACEC). In this particular case, these BLM lands proposed for inclusion in your proposed operations have been designated as the Rough and Ready ACEC.

Information that should be addressed in your plan of operations includes:

- road construction, upgrade, and maintenance plans.
- milling plans including type of mill operation, size of area utilized, stockpile sizes, location of mined tailing piles, etc.
- measures you will take to minimize unnecessary or undue degradation of the public lands.
- contingency plans for fuel spills and a plan for the storage and handling of hazardous materials.
- needs for occupancy of the site, structures needed for milling and storage, and type of equipment on site.

- needs for signing and gates.
- time frames for each phase of the operation, including periods of for non operation, and the date operations are estimated to be completed.
- water needs and sources.
- measures taken during periods of non operation to ensure the area is maintained in a safe and orderly manner.
- measures taken to ensure bare lands are adequately protected from erosion during wet periods.
- type of vegetation that may be used on site as ground cover.
- reclamation plans.

Please be aware that other questions regarding your operations may arise at a later date as the analysis of your operations proceeds. Once the EIS is completed and a decision letter signed we will issue a separate approval letter for your proposed operations on BLM administered lands.

In addition to your current plans, you have four mining notices filed with this office for past activities located on mining claims on BLM lands within ACEC's. Three are filed for activities at the location of the Rough and Ready ACEC (OR 48342, OR 49890, and OR 53033) and one is filed for activities on your claims located within the French Flat ACEC. Since these areas are now designated as ACEC's, as discussed above, these mining notices are no longer applicable for mining activities at those locations. I will be terminating these notices soon since they are no longer applicable for mining within ACEC's. If you desire to mine at the above locations in the future, you need to file a mining plan of operations with this office.

I know this is a lot of information for you to compile, however, you must submit this to our office so that we may assist the Forest Service in the analysis of your plans. My staff will assist you in any way possible. If you have any questions or needs, please feel free to contact Matt Craddock at (541) 770-2272.

Sincerely,

ROBERT KORFHAGE

Robert C. Korfhage
Grants Pass Area Manager

United States Department of Agriculture
Forest Service
Siskiyou National Forest
Illinois Valley RD
20068 Redwood Highway
Cave Junction OR 97523

Reply To: 2800

Date: March 3, 1997

Groen & Stephens
Attorneys At Law
One Bellevue Center
411 108th Avenue NE
Suite 1750
Bellevue, Washington 98004-5515
Att. Richard M. Stephens

Dear Mr. Stephens:

This letter is our response to your letter dated February 10, 1997, concerning the Nicore mining project Environmental Impact Statement (EIS), and Surface Use Determination (SUD).

After working with Mr. Freeman over the last few weeks, we are very close to having all the information necessary to present the Proposed Action to the public and to proceed with the analysis. As a result of gathering this information and working with Mr. Freeman, it has become apparent that there has been a major change in the scope of the project. The original Plan of Operation proposed to remove a 5,000-ton bulk sample from four locations in order to evaluate the laterite deposits. We now understand that the proposal is a full-scale mining operation of the four sites. Mr. Freeman must submit an amended Plan of Operation, in writing, to fully define and describe his proposal for mining and hauling on National Forest System Lands.

I would be happy to meet with you, Mr. Freeman and Mr. Gauthier-Warinner to discuss problems Mr. Freeman has with the SUD.

We are committed to moving forward with the analysis of the Nicore project and look forward to working with Mr. Freeman throughout the process.

Sincerely:

Mary Zuschlag

MARY ZUSCHLAG
District Ranger

cc: Reb Bennett, Regional Mining Engineer
Mike Cooley, Forest LRM Staff
R.J. Gauthier-Warinner, Area Mining Geologist

NICORE
P.O. Box 344
Cave Junction, OR 97523

March 19, 1997

Mr. Robert C. Korfage
Grants Pass Area Manager
Bureau Of Land Management
3040 Biddle Road
Medford, OR 97504

Dear Mr. Korfage,

The purpose of this letter is to respond to your letter to me dated February 19, 1997, and to assist you in your joint effort with the Forest Service to develop an EIS for the planned mining operation (Known as the NICORE Project). I will assume that you have access to the information previously delivered to the Forest Service and will not repeat it here.

1. Activity: The proposed activity relative to BLM administered land will be to establish a stockpiling and/or ore processing site on 5 to 10 acres in Sec. 18. T40S R8W WM. proximate to existing facilities and structures (please see attached map). The exact location of this site has not yet been determined but its selection will be made with input for BLM technicians in an effort to minimize and mitigate impacts. Although a significant amount of ore has been proven on the BLM portion of the project, mining and/or processing of this material is not planned for the first phase of the proposed operation.

2. Roads: The main access system will utilize the existing road (located under the Pacific Power & Light power lines) to transport ore from the mine site to the storage/processing area. Depending on the area chosen, construction of a short spur from the power line road to the site may be necessary.

Road construction will consist of proper grading and ditching with the application of approximately 6 inches of crushed rock. On site rock will be used so as to avoid the introduction of non-native materials or plants. Road maintenance will be appropriate to use.

3. Milling Plans: The ore processing plan has not yet been finalized. Two possibilities exist. A. Transportation of ore to an off-site processing facility. B. On site ore reduction. Option "A" would involve only ore stockpiling with a maximum of approximate 25,000 tons being stored at any given time. Option "B" would involve processing ore on site utilizing a proprietary process known as Direct Alloy Reduction Technology (DART™)

which was developed for specific application to the NICORE Project.
The essence of the DART™ process is direct production of stainless steel (or other high-alloy steel) from the ore utilizing an electric arc furnace. Emissions will consist of water vapor and carbon dioxide mainly from the ore-drying phase of the operation. Approximately 10 to 12,000 tons of metal and similar amount of slag products (in the form of crushed rock, building stone or artificial stones, etc.) would be produced annually.

4. Measures To Minimize Undue Degradation: No undue degradation of public land is contemplated or foreseen. On going employee training would be perhaps the most useful tool in safe guarding the environment.

5. Fuel Spills, Hazardous Materials: All fuel storage will be in compliance with applicable regulations established by DEQ, EPA and the fire Marshall. No hazardous materials will be used in association with either operating option.

6. Site occupancy: Site occupancy will continue at the existing level. Additional structures needed for the stockpiling option are minimal in that stored ore would be kept under tarps during wet months. Under the processing option buildings for housing the processing equipment would be required (10 to 15,000 sq, ft.). On site equipment (in addition to the processing facility) would be limited to a front end loader and a small dozer.

7. Signs, Etc.: Gates and signs would be posted and installed as necessary to control access and provide for public safety.

8. Time Frame: The operation time frame is contingent on approval of the Plan of Operation (the plan was originally filed in 1992). It is contemplated the first year of the project will be devoted to development of necessary access to the ore and acquisition of the 5000 ton sample for the prototype operation. Therefore, it is anticipated that ore mined during the summer months will be either shipped or processed on a year round basis. In that the acquisition of project finance is contingent on approval of a plan of operation, we could be more definite as to the time frame when we receive plan approval.

9. Water: Under the off site processing option no water would be used other than for dust control on the haul roads. On site processing might require as much as 10 GPM which would be acquired from an on site well.

10. Orderly Manner: Public safety will be maintained by restricting access to the work site. The proposed operation will be designed to be as safe as possible for project employees. Hazards during both operation and shut down will be minimized through implementation of an operation safety plan.

11. Erosion: In that the project site is virtually flat, serious erosion is unlikely. The possibility of minor erosion will be minimized through proper drainage and grading of the site.

12. Ground Cover Vegetation: No use of vegetation ground cover is contemplated on the site for the duration of the operation.

13. Reclamation Plans: The site will be reclaimed at the end of the project by 1. Removal of all equipment, structures and related items. 2. Regrading the site to approximate original contour. 3. ripping any compacted areas. 4. Revegetating the site with native plants.

It is our intention to operate in compliance with all appropriate and applicable federal, state and local regulations.

I trust this information will prove helpful in assisting the Forest Service with the EIS.

Sincerely,

Walter B. Freeman

Walter B. Freeman

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March 21, 1997

Ms. Mary Zuschlag
District Ranger
Siskiyou National Forest
26568 Redwood Highway
Cave Junction, OR 97523

Re: NICORE Project Plan of Operations

Dear Ms. Zuschlag:

Thank you for your letter dated March 3, 1997. I am glad your agency is having success in obtaining the information necessary to prepare the EIS on this Plan of Operations.

In your letter, you indicated that there has been a major change in the scope of the project to include full-scale mining on the sites. I realize this plan has been pending a long time and it may have been easy to forget some of the details. In a letter to you dated November 19, 1993, Mr. Freeman explained that the pending Plan of Operations included two phases. Phase 1 was the 5,000 ton bulk sample. Phase 2 was the full-scale mining operation, but approval of the plan was sought for both phases. In fact, we believe the EIS may not be adequate if it did not include an analysis of all related phases of the plan.

The only difference in the plan now is that Phase 2 is not dependent on Phase 1. As I explained in my letter to you dated February 10, 1997, a sample has already been successfully reduced to a high quality alloy. In light of this successful testing, there is no likelihood that Phase 2 will be abandoned. As long as the Forest Service is preparing an EIS, I believe it is obligated to analyze both phases of the Plan of Operations.

Because the full-scale mining phase was addressed to the Forest Service in November of 1993 and the Surface Use Determination recognizes that the Plan of Operations includes two phases, it is unnecessary to file an amended Plan of Operations to include a phase already addressed. However, I realize your office may have been focussing on only the first phase

and we are more than willing to provide any additional information you need regarding Phase 2.

Please let us know what information you may need.

Sincerely,

GROEN & STEPHENS

RICHARD M. STEPHENS
Attorney

cc: Walt Freeman

United States Department of Agriculture
Forest Service
Siskiyou National Forest
Illinois Valley RD
26568 Redwood Highway
Cave Junction, OR 97523

Reply To: 1950 NICORE

Date: November 6, 1997

Groen & Stephens
Attorneys at Law
One Bellevue Center
411 108th Avenue NE, Suite 1750
Bellevue, WA 98004-5515

Dear Mr. Stephens:

I am pleased to inform you that substantial progress has been made on the analysis for the NICORE Proposal signed by Walter Freeman on March 19, 1997; however, we still have questions about the scope and nature of the Nicore Plan of Operations. The information we have regarding the proposed Plan of Operations and subsequent revisions were used as the basis for analysis in the Draft EIS, but is insufficient for a complete analysis of the proposal. The existing "paper trail" has some vague and confusing statements, and is difficult to follow. Thus, we request that you (or your client) provide us a complete and detailed Plan of Operations, including suitably-scaled maps, information requested in this letter, and any other information that may be pertinent to the proposal. The enclosed form can be used for your convenience or it may used as a guide for preparing a personally designed Plan of Operations. The need for a Plan of Operations that provides complete, accurate and timely information is critical to the approval process. Failure to provide this information can render the analysis insufficient or ineffective and can create an unnecessary time lag and increased costs. New information may drive the need for further analysis; however, all aspects of the Plan of Operations must be analyzed prior to approval. Mr. Freeman's interest will be best served by an accurate and clear Plan of Operations.

The NEPA analysis is a joint effort of the Siskiyou National Forest and Medford District BLM; therefore, the Plan of Operations should include the full scope of the operation, including facilities, access, mining, and any other activities that may occur on BLM or Forest System lands. Following is a list of specific information that must be included in the Plan of Operations:

1. **A detailed mine development plan accompanied by suitably-scaled maps to graphically depict the proposal and dimensions of mine sites.** The development plan should include a description of the processes proposed to occur at the mining and stockpile sites, the timing of site development, depiction of fuel storage sites, if applicable, and a description and identification of locations of disposal or storage of any unwanted material. Based on an estimate of reserves and the rate of production, the plan must identify the life of the proposed operation. It must identify an estimate of the amount of material that will be excavated from each site during each year of the proposed operation. It must identify of the types, capacities, and numbers of all equipment to be used in the operation. Any equipment proposed to be left on site during periods of non-operation must be identified. It must identify the days and the hours during which excavation and hauling will occur. It must identify an estimate of the expected number of annual and daily haul trips between the mine and stockpile site.

2. **A detailed description of the stockpile operations, improvements (including surfacing) and equipment needed.** It must include a suitably-scaled map depicting the stockpile site and all associated facilities including locations of dry and wet piles, location of drying facilities, location of fuel storage facilities, location of parking areas, location of watchman's quarters and sanitary facilities. The map should include dimensions of all facilities. Please include an estimate of how much and how long ore would remain at the site.

3. **A discussion of the need for the 5,000 ton sample, if applicable. Depiction on a suitably-scaled map of the location(s) where the sample will be taken.**

4. **A fuel use, transportation and storage plan.** Please included the estimated amount of fuel needed annually. It should include a discussion of the construction of fuel storage facilities, depiction of their locations, method of transporting fuel to work sites, amount of fuel to be transported to work sites in any one trip, how often fuel will be transported to work sites in a season, and a discussion of emergency measures to be taken in the event of any type of accident involving a fuel spill.

5. **A transportation plan.** The Plan of Operations must include a transportation plan discussing measures to be taken regarding routine road maintenance, maintenance of adequate drainage of roads and mine sites, dust abatement, construction and maintenance of proposed stream crossings, and seasonal road stabilization and closure. Mr. Bob Oleary, Project Engineer, has prepared this information for the DEIS; please contact Mr. Oleary (541-471-6562) if you or Mr. Freeman wish to use his information in the plan.

6. **A reclamation plan.** The Plan of Operations must include a reclamation plan to address concurrent reclamation of mine sites during mining and how many acres would remain disturbed at any one time during the operation, stabilization and revegetation of the stockpile site and all mine sites at closure, and disposal of all unwanted materials.

7. **A monitoring plan.** The Plan of Operations must identify the techniques to be used to monitor and assure compliance with state and federal laws and standards and guidelines, including air quality, water quality, etc.

To assure accuracy of the Draft EIS, the Plan of Operations must be submitted by December 10, 1997. A number of issues related to the NICORE proposal have been identified. The Interdisciplinary Team has considered several options to resolve these issues. Examples include limitations on seasonal operation, closure of the area to the public, stream crossing designs that assure fish passage, an alternate stockpile site that minimizes visual and other impacts, dust abatement, etc. You and your client will have the opportunity to comment on these and any other issues during the DEIS comment period.

Thank you for your cooperation,

Mary Zuschlag

MARY ZUSCHLAG
District Ranger

cc: Walt Freeman
cc: Mike Lunn

enclosures

GROEN & STEPHENS

ATTORNEYS AT LAW
ONE BELLEVUE CENTER
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December 10, 1997

Ms. Mary Zuschlag
District Ranger, Illinois Valley District
Siskyiou Redwood Highway
Cave Junction, OR 97253

Re: 1950 NICORE

Dear Ms. Zuschlag:

Thank you for your letter dated November 6, 1997, requesting additional information regarding the Nicore Project. Mr. Freeman has been and will continue to be fully cooperative in providing your agency with pertinent information regarding this proposal.

To that end, he signed a project summary on March 19, 1997, and was assured that this document in conjunction with previously submitted information was adequate for the needs of your agency in its work on the DEIS. Thereafter, he met with your staff on numerous occasions to answer any questions that they had. That the Forest Service is asking some of the same questions again in your letter after they were addressed in face to face meetings with Forest Service staff suggests that these meetings were a waste of time. I hope that is not true and that the Draft EIS accurately depicts what was explained by Mr. Freeman to be the answers to the Forest Service's questions in those meetings.

We are also concerned about your request for this information by December 10, 1997 after you personally informed Mr. Freeman that the DEIS was to be sent to the printer on November 24, 1997. If that is true, it appears that a response to your letter is not necessary for preparing the DEIS. However, I hope all issues can be resolved during the public comment period.

I am a little concerned about the reference in your letter to substantial progress on the "NICORE proposal signed by Walter Freeman on March 19, 1997" and your request for another Plan of Operations, either one that is "personally designed" or one that uses the form which you sent with your letter. The NICORE Plan of Operations was filed in 1992 and included the maps which you are requesting. On March 19, 1997, Mr. Freeman signed a proposal summary, but that was not his Plan of Operations. The Plan of Operations, which is awaiting approval and which is subject to the EIS, is the one submitted in 1992.

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Your letter contains seven requests for information. This letter is intended to respond to those seven items.

1. A detailed mine plan with maps was submitted with the original Plan of Operations in 1992. That Plan of Operations included processes at the mine site. Processes involved at the stockpile site (as well as fuel storage) were discussed with Don McClendon in September 1997. Timing of site development is contingent on the approval of the Plan of Operations. Site development would have occurred in 1992 had the Plan of Operations been approved then. Production rates and project life were specified. No equipment will be left on site during non-mining periods. Operating times and haul trip frequency were submitted to Mr. McClendon and were included in the project summary prepared by Forest Service staff and signed by Mr. Freeman on March 19, 1997.

2. Stockpiling operations have been discussed with both Don McClendon and John Nolan of your staff. It has been specified that the stockpile area will require five acres. We have discussed several alternative locations on BLM land, but BLM has not determined which site is best. It is impossible to determine the exact site location of dry and wet piles, drying facilities, fuel storage, parking areas, watchman's quarters, sanitary facilities until the site is determined from the range of reasonable alternatives. However, all operations will be conducted in compliance with applicable regulations and ordinances. The site will be designed to handled 40,000 tons and continue until production of the mine is completed.

3. In regard to the need for a 5,000 ton bulk sample, Mr. Freeman explained in a letter to you dated November 19, 1993, that the 5,000 ton bulk sample was Phase 1 of the entire Plan of Operations. Phase 2 is the full-scale mining operation. In my letter to you dated March 21, 1997, I explained that the need for Phase 1 to precede Phase 2 no longer exists. This was also addressed in my letter to you dated February 10, 1997. A sample from the mine has already been successfully reduced to a high quality alloy. Hence, the 5,000 ton bulk sample is no longer a separate phase and full-scale mining is not contingent upon results of that sample.

4. Questions regarding fuel use, storage, and transportation were answered by Mr. Freeman in meetings with your staff. Your request for this information again suggests that meetings with your staff were completely unnecessary. Nothing has changed in regard to fuel since those meetings. Additionally, all handling of fuel, including emergency measures regarding any type of fuel spill, will be taken consistent with state and federal laws regarding fuel use, storage, transportation and emergency measures.

5. Similarly, Mr. Freeman discussed with your staff all aspects of the access roads. Some of the details were included in the project summary referred to above. Maintenance of the roads, maintenance of adequate drainage of the roads and mine sites, dust abatement, construction and maintenance of stream crossings and seasonal road stabilization will be conducted in compliance with all applicable Forest Service regulations.

6. A reclamation plan was submitted in the original Plan of Operations. Details regarding reclamation have been discussed on numerous occasions with your staff.

7. For every federal and state law regulation which requires monitoring, Mr. Freeman will comply with the monitoring techniques required by that law or regulation. As stated above and in previous correspondence and as required by 36 CFR, the NICORE Project will be conducted in compliance with all applicable regulations.

Sincerely,

Groen & Stephens

Richard M. Stephens

RMS:hkh
I:\Clients\Freeman\Zuschlag - 04.doc

GROEN & STEPHENS LLP

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January 29, 1999

Mr. Joel King, Regional Forester
Illinois Valley District
Siskiyou Redwood Highway
Cave Junction, Oregon 97253

Re: Mr. Freeman's Comments on SDEIS for NICORE Project

Dear Mr. King:

These comments on the Supplemental Draft Environmental Impact Statement (SDEIS) are offered on behalf of the Project Proponent, Walter B. Freeman. They are intended not to replace but rather to add to previous correspondence with the Forest Service regarding Mr. Freeman's Plan of Operations, including comments made in regard to the Forest Service's decision to draft an Environmental Impact Statement.

As a preliminary matter, several statements in the SDEIS are either inaccurate or misleading and should be corrected before the document is finalized. For instance, the Project History section fails to recognize that the project started many years earlier than 1992. The development of these claims has been ongoing on a continuous basis since 1970. The SDEIS fails to mention that these claims were subjected to extensive testing in the 1970s. It also fails to recognize that many of the mining roads in the Proposed Action are currently in existence. In order to give a complete picture, the SDEIS should include a recognition that many of the roads in the Proposed Action were developed for mining purposes and are currently in existence.

The Project History also refers to a Surface Use Determination (SUD). This SUD was prepared based on partial data, out-dated information, and by personnel unqualified to judge whether a particular private business proposal is worth pursuing from an economic perspective.
Mr. Freeman offered to provide additional information and data, but the preparer of the SUD was not interested in the information Mr. Freeman offered to provide. A SUD based on incomplete information should not be relied upon by the Forest Service.

The Project History section of the SDEIS also states that the Nicore Plan of Operations was modified in 1996, although it does not state how it was modified. We are unaware of how the

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ILLINOIS VALLEY
RANGER DISTRICT

Plan of Operations was modified in 1996.[1] Mr. Freeman has always been willing to work with Forest Service personnel to take steps to make the project better, but the project was not modified in 1996.

The section entitled "SDEIS Issues" also contains a number of inaccurate and misleading statements which should be corrected before the document is finalized.

1. Soil Productivity. The SDEIS states that "[r]oad development and use, pit development, and ore storage would disturb ultramafic soils and lead to a loss of productivity. The more road development and acreage mined, the greater the risk of loss of productivity." The implication is that the soil is productive and that loss of productivity would be significant. However, no where is there any explanation of the level of productivity of the soils or the level of risk of reducing the productivity, or the level of loss of productivity to which the risk relates. Due to the high mineral content of the ore in the mining area, the soil's productivity is quite low and, regardless of the level of risk, the level of reduction applied to such risk is practically meaningless.

2. Stream Crossings. The original proposal included "washed rock crossings" because the Forest Service suggested that this form of crossing was the Forest Service's preference. It is unfair to criticize the proponent for including within the proposal a condition required by the Forest Service. Mr. Freeman has repeatedly expressed his willingness to install bridges or culverts or any other reasonable stream-crossing facilities.

A second paragraph refers to nine smaller tributary crossings. The SDEIS allows a false impression to be drawn from this paragraph by failing to mention that all but two of these stream crossings are dry during summer months, during the proposed haul periods. In other words, the tributaries will not be functioning as tributaries during the time when crossings will occur.

3. Stream flow and water temperature. The SDEIS states that use of water would lead to "lower flows and higher temperatures." This statement is misleading because summer flows are always low. That fact would not be altered whether or not the project is developed. The reference is also made to a comparative of *lower* flows and *higher* temperatures. However, there is no indication that the degree to which flows might be lower or to which temperatures might be higher would be significant.

4. Risk of hazardous fuel spills. This statement refers to "other hazardous substances" but fails to identify what such other substances are. Consequently, there is no way for one to know what this risk (if any) really is and whether the consequence of such a spill is or is not "significant."

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[1] This mistake is repeated on page 10 of the SDEIS.

5. Proposed, Endangered, Threatened and Sensitive (PETS) Fish Species. The SDEIS states that "[t]he Proposed Action may adversely affect fish and their habitat by blocking fish passage at mainstream and South Fork crossings and degrading other habitat features." However, no explanation is given of what other habitat features might be degraded and how. During the summer months when the Proposed Action utilizes these crossings, the interference with fish passage is nonexistent. Because the lower portion of Rough & Ready Creek goes dry in summer months, there will be no impact to fish passage.

6. Port Orford Cedar Root Disease. Mr. Freeman has agreed to disinfect *all* equipment going into the project area and limit vehicular access to disinfected vehicles. Moreover, the Proposed Action involves significantly less new road construction than alternatives 6, 7, 8, and 10. Because of the additional road work these alternatives require, they all create a greater risk of Port Orford Cedar Root rot than the Proposed Action.

7. Noxious Weeds. Mr. Freeman has agreed to work with the Forest Service to prevent the spread of these plants.

8. Botanical Diversity/Sensitive and Endangered Plants, Aquatic Conservation Strategy and Riparian Reserve Standards and Guidelines, Wild and Scenic River Eligibility. All of these designations were put in place subsequent to the submission of the Plan of Operations and cannot legally restrict access to the ore-body, unless the federal government chooses to pay just compensation for the loss of Mr. Freeman's rights. This is confirmed by a Solicitor's Opinion dealing with land potentially suitable for wilderness preservation.

> A claimant with a valid mining claim under the Mining Law of 1872 may develop the claim even if this impairs the area's suitability for wilderness preservation.

Solicitor's Opinion, "The Bureau of Land Management Wilderness Review and Valid Existing Rights, 88 I.D. 909, 913 (1981). Similarly, the court in *Mountain States Legal Foundation v. Andrus*, 499 F. Supp. 383 (1980), came to a similar conclusion.

9. Economic Viability. The SDEIS claims that the "Proposed Action is associated with Present Net Values." This conclusion is untrue. See following discussion at pages 4-7.

10. Effects on Residents. The main purpose of the original Proposed Action was to move the haul route away from residential uses along Rough & Ready Creek Road and Naue Way. Three of the Forest Service Alternatives (6, 9, and 11) would impact those residential neighbors much more seriously than the Proposed Action.

11. Visual Quality, Recreation and Interpretative Development. "The Proposed Action may degrade scenic quality of the analysis area by developing roads and a stockpile site within direct view of Highway 199, the Rough and Ready Botanical Wayside and the BLM Area

of Critical Environmental Concern." This is simply untrue. Mr. Freeman has previously agreed to locate the stockpile out of view of Highway 199 and the Botanical Wayside. If the stockpile is out of view, it is difficult to imagine how the stockpile would "degrade scenic quality." Moreover, the SDEIS is incomplete because it fails to disclose that Pacific Power & Light was allowed to construct a major power substation on BLM land within view of 199 on property just across US 199 to the east.

12. Roadless character. This reference too is misleading. This area was inventoried for RARE II, but was congressionally mandated for multiple use. The plan of operations is within the South Kalmiopsis Multiple Use Area. Moreover, Mr. Freeman's proposal includes areas that has existing mining roads and is not "roadless."

ECONOMIC ANALYSIS

Mr. Freeman objects to the Forest Service's claim that his Proposed Action has negative economic values and objects to the particular analysis of the economics on several grounds. First, an analysis of the economics of his proposal is not the proper subject of the SDEIS. Second, there is no independent authority to conduct an economic analysis. Third, the economic analysis is flawed.

The focus of NEPA is environmental analysis, not an analysis of the economics of the Proposed Action. NEPA does not require the agency to examine the economic consequences of its actions.

> The theme of § 102 [of NEPA] is sounded by the adjective "environmental": NEPA does not require the agency to assess every impact or effect of its proposed action, but only the impact or effect on the environment. If we were to seize the word "environmental" out of its context and give it the broadest possible definition, the words "adverse environmental effects" might embrace virtually any consequence ... that some one thought "adverse." *Metropolitan Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 772, 103 S. Ct. 1556, 1560, 75 L. Ed. 2d 534 (1983).

Association of Public Agency Customers, Inc. v. Bonneville Power Admin., 126 F.3d 1158, 1186 (9th Cir. 1997).

In response to Mr. Freeman's request that the Forest Service articulate under what authority the SDEIS was expanded to include an analysis of the economics of his proposal, the Forest Service gave Mr. Freeman a copy of Chapter 1900 of the Forest Service Manual. Section 1970.1 lists seven different statutes or regulations which the Manual asserts authorizes or requires the Forest Service to engage in an economic analysis of Forest Service decision making.

Each of these requirements relate to the economics of proposals which lie within the economic discretion of the Forest Service. For instance, these regulations require the Forest Service to consider whether a sale of federal timber makes sense to the interests of the federal government from an economic perspective. After all, there is no federal right of someone to purchase timber from the Forest Service. If a sale is not in the best economic interest of the federal government, the Forest Service can say no. In the present case, however, Mr. Freeman has a right to access his ore and the Forest Service must allow him access regardless of what the Forest Service believes about the economics of his proposal. Not one of the statutes or regulations cited in the Forest Service Manual authorize rejection or modification of a private proposal based on the Forest Service's belief the private proponent will not make enough money.

Third, even if the economic analysis was relevant under NEPA, the economic analysis used in the SDEIS is flawed. One, it relies on two reports (Resource Strategies and Barrick), which were both paid for and submitted by the Nature Conservancy—an organization which has made quite clear that it is opposed to the project. These reports on which the SDEIS solely relies are biased in favor of the philosophical goals of the organization which paid for the reports. What is striking about the reference to the economics and current nickel prices[2] is that the SDEIS as well as the Barrick and Resource Strategies reports fail to recognize the full value of the nickel laterite ore. Instead, they focus only on the *nickel* content and ignore completely two other valuable materials which Mr. Freeman proposes to extract from the ore: both iron and chromium. No one who has concluded that the project is not economic has calculated the value of the iron and chromium content of the ore which will be extracted in addition to the nickel.

Several comparisons have been made of Mr. Freeman's proposal to the Riddle project. This too is faulty because that plant used an antiquated process from the 1920s which failed to use both the iron and chromium, but instead simply discarded those elements. Freeman's proposal will be able to take advantage of the iron and chromium, rather than discard them as waste.

The SUD and the SDEIS both reference the closing of the Riddle smelter. However, there are other smelters in the world and there is nothing to prohibit the reopening of the Riddle smelter. The amount of ore to be extracted in the Proposed Action and more economic reduction processes the choice of a smelter will be easily made. As long as the Plan of Operation is still pending, no smelting facility will contract to process the ore. The Forest Service's request that a smelter be identified first gets the cart before the horse. Mr. Freeman has no interest in stockpiling ore that cannot be smelted, but as has been pointed out to the Forest Service previously, arrangements for smelting cannot be made until the Plan of Operations is approved.

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[2] The SDEIS recognizes that nickel prices have fallen since the Plan of Operations was first filed in 1992. If the Plan of Operations were approved in a timely manner when nickel prices were higher, Mr. Freeman's proposal would have had even more economic benefit which is denied only because the Forest Service took now seven years to reach a decision. If approval of the plan of operations is affected by lower nickel prices, the Forest Service should recognize that approval will place Mr. Freeman in a better position if nickel prices rise.

Moreover, the Forest Service has already been notified that a sample has already been taken from the mining claims and successfully (and economically) reduced. The theoretical assumption that the project is not economic ignores this previous successful sampling.

Economics are a function of both the cost of bringing the material to market and the market price. Mr. Freeman cannot give additional information publicly about expected income because such information is proprietary. In the past, such information given to federal personnel by Mr. Freeman has been illegally disclosed to opponents of his project. Nevertheless, even if the Forest Service's economic analysis were correct—that the Proposed Action is not economically viable, the result would be that the Proposed Action will have no environmental impacts. The Proposed Action will not ever materialize if it is not economically viable.

The SUD "evaluation" was performed by personnel who were not qualified to make such economic determinations. Their work was based on data and information that was in error, out-dated, and supplied by individuals or groups opposed to the project. Information relating to favorable project economics was discussed with the Illinois Valley District Ranger on November 10, 1998, but this information was ignored.

As to the costs associated with removing the ore, the SDEIS has both faulty premises and gives false impressions. For instance, the comparison of the costs of the various alternatives assume that Mr. Freeman will be required to build fully engineered roads consistent with the Forest Service's practice for permanent roads associated with timber harvests. This is inappropriate for several reasons. One, the roads in the Proposed Action are not permanent, nor are they intended to be permanent. They will be reclaimed and they will not be used by the general public. Two, roads designed to be permanent such as those associated for timber harvests are more disruptive to the environment than the temporary roads in the Proposed Action. Three, and most importantly, the Forest Service's own records demonstrate that its practice is not to require fully engineered permanent forest service roads when approving mining plans of operation. Instead, it appears this requirement is being imposed on Mr. Freeman solely to make the Proposed Action appear more costly than it really is.

The SDEIS also gives a false impression. For instance, the table on page 81 shows the preferred alternative (#9) to have haul costs of $840,000 and compares that to the Proposed Action's haul costs of $2,080,000. At first blush, it appears that the Preferred Alternative is more economic than the Proposed Action, that is, until one remembers that the amount of ore being hauled in the Preferred Alternative in much smaller than in the Proposed Action. The Preferred Alternative has costs of $840,000 for only 5,000 tons of ore, resulting in a cost of $168 per ton. The Forest Service estimates the costs in the Proposed Action at $2,080,00 for 400,000 tons of ore, resulting in a cost of $5.20 per ton. Any middle school student can tell that the costs associated with the Preferred Alternative are over 32 times more costly per ton than Mr. Freeman's Proposed Action.

Mr. Freeman objects to the consideration of the Preferred Alternative and its selection as such on several grounds. First, the SDEIS fails to address several problems with the idea of removing

ore by helicopter. It fails to address the impacts of noise and vibration on nearby residences and wildlife. It fails to address the impacts of dust developed by the propeller at the mine-site, the stockpile, and points in between. It fails to analyze the risk of spread of fuel over large area in the event of a partial engine failure, or spread of hydraulic oil over large area due to line or gear-box leakage. It fails to address the risk of spillage of ore on the flight line and other potential catastrophic events such as a helicopter crash.

Alternative 9 also fails to explain how mining equipment is to be transported to the mine site. It is not enough to haul ore out with a helicopter if there is no way for equipment to load the ore to get to each of the sites.

Mr. Freeman also objects to the Preferred Alternative because it does not meet the purpose of the proposal, which is to mine all of Mr. Freeman's claims. A 5,000 ton sample is simply unreasonable given the Forest Service having taken seven years to approve the plan of operations and then allow only 1/80th of the project. The notion that Mr. Freeman may not access his ore until he takes a 5,000 ton sample is an unreasonable restriction on his access to his ore. He has already taken a sample and successfully reduced it. The SUD and the SDEIS completely ignores this fact. Further, the Preferred Alternative anticipates that the Forest Service will require a second Plan of Operations, which means additional delay.

Moreover, the law is quite clear that the federal agencies cannot segment a project when drafting an Economic Impact Statement under NEPA. *See Stop H-3 Ass'n v. Dole*, 870 F.2d 1419, 1427 & n. 13. (9th Cir. 1989)(numerous cases cited). Also, 40 C.F.R. 1508.25 requires connected actions to be considered together in one EIS

Alternatives 6, 7, 8, 10, and 11 are equally inadequate. Alternative 6 is less desirable than the Project Action because it places the haul road immediately adjacent to residential neighbors' yards. As stated above, one of the reasons the route in the Proposed Action was chosen was to avoid interference with residential use nearby.

Alternative 6 also inappropriately places part of the haul route on privately owned land. The Forest Service can neither require a private property owner to allow its property to be used for a haul route (absent the exercise of eminent domain), nor can the Forest Service condition Mr. Freeman's rights upon acquiescence by a private party. *See Washington ex rel. Seattle Title Trust Co. v. Roberge*, 278 U.S. 116 (1928). Also, Alternative 6 requires the construction of a completely new road, the "Ridge Road." Using existing roads has less impact on the environment than the creation of a completely new road where none existed before.

Similarly, Alternatives 7 and 8 are objectionable because they too require construction of a new "Ridge Road." Alternative 8 does not fulfil the project purpose because it denies access to Site D, where a significant portion of the ore body is found.

Alternative 10 and 11 are objectionable because they deny access to Site A where a significant portion of the ore body is found. These Alternatives also incorporate cable haulage without any documentation of whether such a system is reasonable.

The Proposed Action should be preferred for several reasons. Freeman's proposed use of existing roads is less disruptive of the environment than any of the Forest Service proposals suggesting fully engineered roads, as is the Forest Service's practice for permanent roads associated with timber harvests. The roads accessing Mr. Freeman's claims are not intended to be permanent and should not built as if they were.

All of the alternatives addressed in the SDEIS should be rejected because they constitute a denial of reasonable access to Mr. Freeman's ore. The law is clear that restrictions on access can be so extensive they constitute a taking of the mineral resource by the government which requires payment of just compensation. *Skaw v. United States*, 740 F.2d 932 (Fed. Cir. 1984), *on remand* 12 Cl. Ct. 7 (1987); *Yuba Goldfields, Inc. v. United States*, 723 F.2d 884 (Fed. Cir. 1983); *Freese v. United States*, 6 Cl. Ct. 1 (1984), *aff'd w/o opinion*, 770 F.2d 177 (Fed. 1985). Takings claims against the federal government are filed pursuant to the Tucker Act in the Court of Federal Claims.

The Court in *City and County of Denver v. Bergland*, 695 F.2d 465 (10th Cir. 1982), held that the amendment of access which existed prior to FLPMA, was required to be considered under the rules which existed at the time the access right was established. To the extent Mr. Freeman's existing access needs to be changed, such change must be governed by the rules that existed at the time the access road was established.

Mr. Freeman also has rights to use this particular access route to service his claims under the 1872 Mining Law. A 1959 Solicitor's Opinion held that roads built by miners without the grant of an express right-of-way were "roads constructed under clearly implied statutory authority as ways of necessity." Rights of Mining Claimants to Access Over Public Lands to Their Claims, 66 I.D. 361, 365 (1959). This Solicitor's Opinion was cited with approval and relied upon in Alfred E. Koenig, 4 IBLA 19, GFS-BLA-MIN-1971-34 (1971). In that case, the IBLA ruled that the owner of mining claims was entitled to construct and maintain an access road across public lands without prior authorization from the BLM. Likewise, this particular access route built by Mr. Freeman's predecessors for the purpose of accessing the same mining claims cannot be denied.

Mr. Freeman also has rights to access his claims by means of the existing roads pursuant to the Alaska National Interests Conservation Act. The court in *Montana Wilderness Association, Nine Quarter Circle Ranch v. United States Forest Service*, 655 F.2d 951 (9th Cir. 1981), *cert. denied*, 455 U.S. 989, held that the right of access provisions in that Act do not apply only to property within in Alaska as the name of the Act implies, but applies to property within the domain of the Forest Service nationwide.

In *United States v. 9,947.71 Acres of Land*, 220 F. Supp. 328 (D. Nev. 1963), the court explained:

> If the builders of such roads to property surrounded by the public domain had only a right thereto revocable at the will of the government, and had no property rights to maintain and use them after the roads were once built, then the rights granted for development and settlement of the public domain, whether for mining, homesteading, townsite, mill sites, lumbering, or other uses, would have been a delusion and cruel and empty vision, inasmuch as the claim would be lost by loss of access, as well as the investment therein, which in many cases of mines, required large sums of money, before a return could be had.

Id. at 331.

CONCLUSION

The SDEIS attempts to make the proposed plan of operations appear to be unworkable while proposing alternatives which are clearly impossible to implement. None of the Forest Service's alternatives have been subjected to the same level of analysis as the Proposed Action. It is clear that the purpose of the alternatives analysis is to place insurmountable obstacles in the path of rational project development in continuing violation of the General Mining Law and the Minerals Policy Act of 1970.

Sincerely,

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April 1, 1999

Mr. Joel King, Regional Forester
Illinois Valley District
Siskiyou Redwood Highway
Cave Junction, Oregon 97253

Re: Nicore EIS

Dear Mr. King:

We are writing to ask when the EIS will be finalized and a final decision issued on the Plan of Operations. The last time frame I heard was that this process would be complete this spring.

As you know, we are eager to have this process completed so that Mr. Freeman can make some commitments for having the ore smelted. He cannot make arrangements for transportation and smelting until he has approval to remove the ore. For instance, he cannot promise a smelter to have ore in June, if the Forest Service has not finished its review of the Plan of Operations. Unfortunately, some opportunities to have that work done at very low cost have already passed by. Nevertheless, arranging for this work is complicated and we need a realistic timeframe for potential contractors, including a smelting facility, to begin work.

I look forward to hearing from you.

Sincerely,

Groen & Stephens LLP

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