

Friends of the Kalmiopsis - WaterWatch of Oregon - Oregon Coast Alliance
Friends of Del Norte - Native Fish Society - Kalmiopsis Audubon Society
American Whitewater - Soda Mountain Wilderness Council - Oregon Wild
Klamath-Siskiyou Wildlands Center - American Rivers
Environmental Protection Information Center - Smith River Alliance
Oregon Council of Trout Unlimited - Cascadia Wildlands Center
Surfrider Foundation - Waterkeeper Alliance

July 2, 2014

Tom J. Paul, Acting Director (503-986-0900)
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301
Sent via email to Director@wrđ.state.or.us
and to jerry.k.sauter@wrđ.state.or.us

Subject: Opposition to Limited License Application LL-1533 for mining activities in the watershed of the National Wild and Scenic North Fork Smith River

Dear Acting Director:

Red Flat Nickel Corporation (RFNC) has requested a limited license to use water from an unnamed tributary of Taylor Creek, which is a tributary of Baldface Creek, which is a tributary of the National Wild and Scenic North Fork Smith River. The limited license application is LL-1533. The comment period ends July 8, 2014. LL-1533's period of use is from July 1, 2014 to November 1, 2018. See - http://apps.wrđ.state.or.us/apps/wr/wrinfo/wr_details.aspx?snp_id=179162

On May 15, 2014 seventeen organizations, with an interested in protecting the nationally outstanding waters of the North Fork Smith River and the Smith River, sent a letter to the Oregon Water Resources Department in care of Mr. Phillip C. Ward.

That letter opposes the use of water from the North Fork Smith Watershed, including the unnamed tributary of Taylor Creek, for mining activities. It further demonstrates why granting RFNC's application for a limited license is not in the public interest and that it would harm downstream users. We resubmit our May 15th letter to the record of LL-1533 application in its entirety. Our opposition remains unchanged.

Many of the signers of this letter will also submit separate comments opposing LL-1533.

Thank you for considering our concerns. Our letter follows:

Friends of the Kalmiopsis - WaterWatch of Oregon - Oregon Coast Alliance
Friends of Del Norte - Native Fish Society - Kalmiopsis Audubon Society
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Environmental Protection Information Center - Smith River Alliance
Oregon Council of Trout Unlimited - Cascadia Wildlands Center
Surfrider Foundation - Waterkeeper Alliance

May 15, 2014

Phillip C. Ward, Director
Oregon Water Resources Department
725 Summer Street NE. Suite A
Salem, OR 97301-1271
phillip.c.ward@state.or.us

Re: Opposition to the use of water for mining activities in the National Wild and Scenic North Fork Smith River and Baldface Creek watersheds.

Dear Mr. Ward:

The above local, regional and national organizations represent thousands of citizens in Oregon and California. We are writing to ask that the Oregon Water Resources Department deny any request for the use of water for mining activities within the National Wild and Scenic North Fork Smith River Watershed in Oregon. This includes but is not limited to the following streams, springs or groundwater sources: North Fork Smith River, Baldface Creek, Taylor Creek, Fall Creek, Diamond Creek, any other named or unnamed tributaries and any springs or *Darlingtonia* fens. Permitting either temporary or permanent use of water from any of these sources for mining activities is not in the public interest.

Red Flat Nickel Corporation (RFNC) has submitted a mining plan of operation for phase II of the Cleopatra Project (test drilling) in the watershed of the National Wild and Scenic North Fork Smith River in Oregon. The company's goal is to develop and operate a mine to extract nickel, cobalt and chromium.¹ The area where RFNC wants to develop a surface mine is in a reference watershed, an inventoried roadless area and a recommended addition to the Kalmiopsis Wilderness. Such a mine would cause injury to streams the Forest Service has found eligible to become Wild and Scenic Rivers and the congressionally protected National Wild and Scenic North Fork Smith River. These are some of the purest waters in the West, with outstanding runs of wild salmon and steelhead and cutthroat trout. The North Fork Smith is treasured by whitewater boaters. It provides pure drinking water for downstream communities.

¹ See cover letter and the Cleopatra Check Drilling Program Plan of Operations submitted to the United States Forest Service. The plan is dated October 26, 2012, signed by Mike Oxley, Agent for Red Flat Nickel Corporation. See plan of Cleopatra Plan of Operations at - http://a123.g.akamai.net/7/123/11558/abc123/forestservic.download.akamai.com/11558/www/nepa/95851_FSPLT3_1638439.pdf

The watersheds where the mining is proposed are pristine. Large-scale surface mining would drastically alter them forever. According to reports compiled by the Environmental Protection Agency, the metal mining industry is the largest toxic polluter in the nation.² In 1998, at the same time citizens were filing a class action lawsuit against Glenbrook Nickel, the EPA proposed regulations to address the hazardous air pollutants at the company's nickel smelter near Riddle, Oregon.³ The proposed rules outline some of the serious human health and environmental impacts associated with metal mining and processing. Scientists are finding that metal contamination can cause fish to lose their sense of smell, thus affecting their ability to mate, find food and avoid predators.⁴ Nickel specifically attacks neurons that helps fish smell food.⁵

Below we summarize phase II of RFNC's mining activities, their initial proposed water usage and the nationally outstanding values of the project area and the streams that flow through it. We're gravely concerned that these mining activities will ultimately lead to despoiling one of the most pristine stream systems in Oregon and California. Mine development will further jeopardize the pure drinking water of the communities downstream. It will be highly controversial in both Oregon and California.

The Cleopatra mining plan of operation

Red Flat Nickel Corporation (RFNC) submitted a mining plan of operations for the Cleopatra Confirmation Drilling Project to the Rogue River-Siskiyou National Forest on October 26, 2012. The cover letter accompanying the plan states that the ultimate goal of RFNC is to develop and operate a mine. The stated target minerals are nickel, cobalt and chromium.

The area subject to the Cleopatra plan of operations is 3,980 acres of federal mining claims in the watershed of the National Wild and Scenic North Fork Smith River and the Inventoried South Kalmiopsis Roadless Area on the Rogue River-Siskiyou National Forest in Curry County.⁶ The claims are owned by St. Peter Port Capital Ltd.. St. Peter Port Capital is located in St. Peter Port, Guernsey, GY1 3HB.⁷

² http://www.earthworksaction.org/media/detail/epa_metal_mining_industry_nations_top_toxic_polluter#.U1GLEdxWiRo

³ <http://www.gpo.gov/fdsys/pkg/FR-1998-08-04/html/98-20511.htm>

⁴ <http://www.scientificamerican.com/article.cfm?id=fish-cannot-smell-in-polluted-waters>

⁵ *Id.*

⁶ See Rogue River-Siskiyou National Forest Project Initiation Letter, Nov. 20 , 2013 available here - http://a123.g.akamai.net/7/123/11558/abc123/forestservic.download.akamai.com/11558/www/nepa/95851_FSPLT3_1634322.pdf

⁷ The Cleopatra Plan of Operations states that the owner of the claims is St. Peter Port Capital. The BLM's LR2000 data base lists the claim holder as Red Flat Nickel Corporation. SPPC owns 80% share of RFNC plus holds an an outstanding loan.

Previously 736 shallow auger holes were hand drilled across the 3,980 acre claim block. The current plan for test drilling is described as a “continuing operation (Phase II).” The plan states that, “[w]ater will be required for the drilling operation. Water will be sourced from an unnamed tributary to Taylor Creek.” Taylor Creek is tributary of Baldface Creek. The unnamed tributary, Taylor Creek and Baldface Creek are Forest Service eligible Wild and Scenic Rivers. The water would be used to machine drill 59 holes across the claim block to an expected depth of 50 feet. The plan states that, “[a] permit for extracting water from the unnamed Taylor Creek tributary will be obtained from the Oregon Water Resources Department before any water extraction operations begins.” The plan of operation also notes that drilling additives may be mixed with the water to improve sample recovery, and/or to maintain hole stability.

National Wild and Scenic Smith River

The National Wild and Scenic Smith River is known as California’s “sacred river.” It’s the only major undammed river system in the State and a world-class salmon and steelhead fishery. The Smith River is nationally known for its beautiful clear waters. The natural amenities it provides are a major economic engine for coastal communities in Northwest California and Southwest Oregon. The river is also the primary domestic water source for Gasquet, Crescent City, Hiouchi, the Jedediah Smith Redwoods State Park and Pelican Bay State Prison. In the State of California, the National Wild and Scenic Smith River and its National Wild and Scenic tributaries are fully appropriated.

In California, all federal lands in the Smith River’s watershed are permanently protected under the 1990 Smith River National Recreation Area Act (SRNRA Act or Act). The National Recreation Area is managed with the goal of preserving the outstanding values of this remarkable river system. In the last decade approximately 80 million non-federal dollars have been spent on projects and land acquisition that benefit the Smith River’s nationally outstanding salmon and steelhead habitat.

In the 1980s, the driving factor for the establishment of the National Recreation Area was the threat of a large-scale nickel strip mine and an acid heap leach nickel processing facility in the watershed of North Fork Smith River.⁸ In the SRNRA Act, Congress specifically closed all federal lands in the Smith’s California watershed to mining, subject to valid existing rights.

However, approximately 30,000 acres of the North Fork Smith River’s watershed in Oregon is unprotected and open to mining. This area provides some of the wildest, most productive and important fisheries habitat in the Smith River system. It’s here that Red Flat Nickel Corporation wants to develop a large-scale surface mine for nickel and other metals.

The southern boundary of the 3,980 acre Cleopatra claim block is directly adjacent to the northern boundary of the Smith River National Recreation Area and to the California/Oregon

⁸ California Nickel Corporation Gasquet Mountain Project Operational Plan submitted to the U.S. Forest Service - http://books.google.com/books/about/California_Nickel_Corporation_Gasquet_Mo.html?id=kef7GwAACAAJ

state line. The mine area is in the immediate watershed of three tributaries of the North Fork Smith River: Diamond Creek, an important producer of steelhead and cool pure water, Fall Creek and Baldface Creek. The latter is one of the most productive salmon, steelhead and cutthroat trout tributaries of the Smith River. We're gravely concerned about the development of a nickel strip mine in these pristine or near pristine watersheds. This is not the place for a large polluting metal mine, and the impacts will not stop at the state line.

National Wild and Scenic North Fork Smith River

The North Fork Smith River is one of three major forks of the National Wild and Scenic Smith River. The North Fork Smith River is considered to have the most outstanding water clarity within the Smith River Basin.⁹ Beneficial water uses of the North Fork Smith River are identified as: migration of anadromous fish and spawning of fisheries, municipal and domestic water supplies, water-based recreation and wildlife habitat.¹⁰ A little under half of the North Fork Smith River's watershed is in Oregon.

The North Fork Smith River in California was added to the National Wild and Scenic River System in the 1990 Smith River National Recreation Area Act.¹¹ The North Fork Smith River in Oregon was added to the National Wild and Scenic River System in 1988.¹² Its outstandingly remarkable values are: 1) Scenic Quality, including the pristine character of the landscape and the river's emerald hued waters; 2) Water Quality, which contributes substantially to the overall functioning of the river ecosystem and is an integral part of the Smith River System; and 3) Fish, including seven miles of near-pristine spawning and rearing habitat on which the anadromous fishery of the Smith River depends and that contributes substantially to the world-class fishery of the greater Smith River.¹³

Baldface Creek

Baldface Creek flows into the National Wild and Scenic North Fork Smith River, two river miles from the Oregon/California border. In 1994, the Siskiyou National Forest found Baldface Creek and all its perennial tributaries to have outstandingly remarkable water quality and fishery values making the stream and its tributaries eligible to be added to the National Wild

⁹ *Id.*

¹⁰ *Id.*

¹¹ <http://www.rivers.gov/rivers/smith.php>

¹² <http://www.rivers.gov/rivers/smith-nf.php>

¹³ USDA Forest Service, North Fork Smith Wild and Scenic River Management Plan, Siskiyou National Forest, March 2003.

and Scenic River System.¹⁴ The mainstem creek and its tributaries meet the highest potential classification of a Wild River Area.

Taylor Creek and its unnamed tributary, from which Red Flat Nickel Corporation has indicated they want to withdraw water, are perennial tributaries of Baldface Creek, and as such are eligible Wild and Scenic Rivers with the classification of “Wild.” It is the policy of the Forest Service to protect these streams’ “outstandingly remarkable values” and classification of all Eligible Wild and Scenic Rivers until Congress acts on the agency’s findings.

The Wild and Scenic River Eligibility Study states that:

Baldface Creek provides some of the best water quality and fisheries habitat known on the Siskiyou National Forest. The world-class fishery on the Smith River depends on the water and fish produced in the Baldface drainage. (Page 2)

The Eligibility Study also notes:

Numerous springs are fed by groundwater from the highly fractured ultramafic bedrock. The cold water from the seeps and fens, although not great in quantity, contribute to cool summer stream temperatures. (Page 5)

There are numerous small wetland seeps, Darlingtonia bogs and springs that aid in maintaining lower [stream] temperatures. (P. 10)

Water quality is good to excellent. Water quality (chemical, biological, productivity) could be of [the] highest value for stream in the region (P. 9).

And,

Baldface Creek contributes substantially to the world-class fishery of the North Fork Smith River. It provides near-pristine spawning and rearing habitat and is a source of high quality water on which the anadromous fishery of the Smith River depends. (P. 11).

Baldface Creek and its tributaries provide habitat for native naturally reproducing populations of Chinook Salmon, Coho Salmon, Steelhead trout and cutthroat trout. Coho Salmon are protected under the Endangered Species Act as “threatened.”

Downstream communities depend upon the waters of the North Fork Smith River

The North Fork Smith River watershed is of great ecological and economic importance, and its waters also provide cold, clear drinking water to a number of downstream communities. The community of Gasquet holds a water rights from the North Fork Smith River and Hiouchi, Jedediah Smith Redwoods State Park, Crescent City and Pelican Bay State Prison hold water rights for the Smith River. Large-scale surface mining in the pristine

¹⁴ USDA Forest Service, Eligibility Study: Baldface Creek and Its Tributaries, Siskiyou National Forest, November 1993 and Forest Supervisor’s finding 1994.

headwaters of the otherwise protected Smith River Watershed would jeopardize the clean water these communities depend on.

This is no place to turn into an industrial zone of ore haul routes, a strip mine, and potentially an acid heap leach nickel laterite processing facility with associated mine waste storage.¹⁵ EPA reports—finding that the metal mining industry is the largest toxic polluter in the nation—confirm there is good reason for concern. There are also immediate concerns with impacts of the check drilling program on the complex groundwater regime of this pristine aquifer recharge area

Conclusion

The Smith River is an extraordinary waterway that holds great ecological and economic significance for the citizens of Oregon and California. The river system’s clean, cold waters support imperiled fish and supply coastal communities. These river values have been recognized by federal agencies and Congress through Wild and Scenic designations throughout the basin. The Red Flat Nickel Corporation’s mining proposal will put this river at risk. Given these combined circumstances we encourage the State of Oregon to deny permits for any temporary limited license or permanent water right for Taylor Creek and its tributaries, Baldface Creek or any other stream in the North Fork Smith River Watershed for any purpose.

Sincerely,

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Dave Willis, Chair
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Portland, Oregon

¹⁵ The proposed Gasquet Mountain Nickel Mine Project eliminated ammonia leach processing and the smelting-type refining process from further study because they increased power requirements by 20 percent. The selected process for refining the nickel laterite soils in the North Fork Smith watershed was a sulfuric acid heap leach process (Gasquet Mountain Mining Project Draft Environmental Impact Statement, p. II-4). While Red Flat Nickel Corporation has stated its ultimate goal is to develop and operate a mine in the area, the company has not disclosed how the nickel laterite soils would be refined and where.

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Ashland, Oregon

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Arcata, California

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CC: Senator Ron Wyden
Senator Jeff Merkley
Senator Diane Feinstein
Senator Barbara Boxer
Congressman Peter DeFazio
Congressman Jarred Huffman
Governor John Kitzhaber
Governor Edmund Brown Jr.
Rob MacWhorter, Forest Supervisor Rogue River-Siskiyou National Forest
Dennis McLerran, Administrator, U.S. EPA Region 10
Jared Blumenfeld, Administrator, U.S. EPA Region 9
Felicia Marcus, Chair - State Water Resources Control Board
John W. Corbett, Chair - North Coast Regional Water Quality Control Board

Attachment: San Francisco Chronicle, May 3, 2014, "Proposed mine by wild Smith River roils Del Norte County folks"