

June 25, 2014
rev July 1, 2014

Mr. Tom J. Paul, Acting Director
Water Resources Department
725 Summer Street NE, Suite A
Salem, Oregon 97301

Subject: Comments on the Limited License 1533 Application

Dear Mr. Paul,

These are my comments on the Limited License 1533 (LL-1533) application posted by the Water Resources Department (WRD) in its weekly Public Notice of Water Use Requests on June 24, 2014. The comment period ends July 8, 2014.

The LL-1533 application was filed by the Red Flat Nickel Corporation (St Peter Port Capital Ltd) which is headquartered in the United Kingdom (Guernsey). The LL-1533 application should be fully reviewed considering both the short term and long term context in order to determine the potential damage to the public interest and the injury to downstream water right holders. In the short term the Red Flat Nickel Corporation plans to drill 59 exploratory holes 50 feet deep to collect geologic samples for mineral analysis. In the long term the Red Flat Nickel Corporation plans to strip mine about 4000 acres of public land and use sulfur leach methods to extract metals from the ore. Both the short term and long term plans would destroy wilderness quality public lands, eradicate and disturb the local flora and fauna, pollute downstream waters, and deplete a fully appropriated stream. The pollution would harm fisheries and drinking water supplies. Both the short term mineral exploration drilling and long term industrial strip mining would clearly impair and be detrimental to the public interest. A foreign corporation should not be allowed to pollute and despoil the public waters and land resources relied on by local American citizens for their livelihoods. Therefore, the LL-1533 application to use water for mineral exploration drilling should be denied in order to protect the public interest. There is no conceivable reason to approve the use of our public waters for mineral exploration drilling that would enable a strip mine that is clearly detrimental to the interests of so many American citizens.

The LL-1533 application proposes to divert surface water from an unnamed tributary of Taylor creek in the Siskiyou National Forest in Curry County, Oregon for mineral exploration drilling. Water in the unnamed stream flows into Taylor Creek, then flows into Baldface Creek, then flows into the North Fork Smith River, then flows into California, then flows into the Middle Fork Smith River, then flows into the Smith River, then flows into the Pacific Ocean. The proposed point of diversion on the unnamed stream is about two miles north of the California State line.

Fully considering the following issues will show that approval of the LL-1533 application is not in the public interest because it could cause injury to existing water right holders and important natural resources.

1) The California Water Resources Control Board (WRCB), on November 19, 1998, by Order WR 98-08, has declared the Smith River system to be fully appropriated year round (Exhibit A page 8).

2). Since the North Fork Smith River system rises in Oregon and is hydraulically continuous with a fully appropriated downstream watershed there is no water available for appropriation from the watershed in Oregon (Order WR 98-08, page 21 section 4.9). Appropriations from State and Federal Wild and Scenic River systems are restricted (Order WR 98-08, page 23 section 4.13). It appears that no equitable apportionment, compact, Congressional apportionment, or other agreement between Oregon and California are in place to govern the partition of the waters of the North Fork Smith River system. It also appears that water rights only exist on the California side of the North Fork Smith River drainage and not on the Oregon side. The only beneficial uses of water on record from the North Fork Smith River watershed in Oregon are for the wild, scenic, recreational, fishery, and other natural ecological demands. Therefore, there is no water available in Oregon for new out of stream uses from the North Fork Smith River watershed.

3) The North Fork Smith River is designated as both a Federal and California Wild and Scenic River. In 1972 the North Fork Smith River was added to the California Wild and Scenic River System. In 1988 the North Fork Smith River in Oregon was added to the National Wild and Scenic River System. In 1990 the North Fork Smith River in California was added to the National Wild and Scenic River System by the Smith River National Recreation Area Act. Such instream uses are declared the highest and most beneficial uses. The North Fork Smith River's outstandingly remarkable values are its scenic quality including the pristine character of the landscape and the river's clear turquoise colored waters, and the excellent water quality which contributes substantially to the overall functioning of the river ecosystem as an integral part of the Smith River system. The world class anadromous fishery depends on the many miles of near-pristine spawning and rearing habitat. The Six Rivers National Forest has determined that the beneficial uses of the North Fork Smith River are migration and spawning of anadromous fish, municipal and domestic water supplies, water-based recreation, and wildlife habitat.

4) The Smith River is a world class salmon and trout stream and a major recreational economic engine for coastal communities in Northwest California and Southwest Oregon. The Federal lands in the California portion of the watershed are protected in the Smith River National Recreation Area and the Smith River is nationally known for its clear waters and large salmon and trout. The North Fork Smith River and Baldface Creek in Oregon are habitat for threatened Coho salmon, Chinook salmon, Steelhead trout, and Coastal cutthroat trout.

5) The North Fork Smith River watershed in Oregon is a large part of the South Kalmiopsis Roadless Area and was proposed for addition to the Kalmiopsis Wilderness Area by the Forest Service in 2004. In addition it has been determined by the Forest Service that Baldface Creek and its tributaries meet the standards needed to be added to the National Wild and Scenic River System.

6) These large institutional water right holders could be injured through impairment of their water rights by water use under the LL-1533 application if approved:

The City of Crescent City provides water diverted from the Smith River to the citizens of Crescent City for municipal uses under application 17956 and permit 11475. The water right has a priority of January 23, 1958.

The Big Rock Community Services District provides water diverted from the Smith River to the citizens of Hiouchi, and to the visitors and employees of Jedediah Smith Redwoods National Park for municipal and domestic uses under application 23396, permit 16066, and license 13849. The water right has a priority of November 14, 1969.

The Gasquet Community Services District provides water diverted from the North Fork Smith River to the citizens of Gasquet for domestic uses under application 23513 and permit 16085. The water right has a priority of May 20, 1970. On November 6, 2012, the SWRCB issued an Order Approving a Petition For Extension Of Time. The SWRCB conditioned that Order through agreements with the National Marine Fisheries Service (NMFS) and the California Department of Fish and Game (DFG) to settle their protests.

The California Department of Corrections provides water diverted from the Smith River to Pelican Bay prison for municipal uses under application 29084 and permit 20210. The water right has a priority of August 10, 1987.

7) These large individual water right holders could be injured through impairment of their water rights by water use under the LL-1533 application if approved:

Alexandre EcoDairy Farms diverts water from the Smith River for irrigation with a Pre-1914 Claim under application S017698. The water right has a priority of 1900.

Lester A. Ulrich diverts water from the Smith River for irrigation under application 13295, permit 7877, and license 4048. The water right has a priority of August 15, 1949.

Richard and Loraine Garvin divert water from the Smith River for domestic, irrigation, and stockwatering uses under application 14948, permit 9178, and license 4720. The water right has a priority of August 1, 1952.

Reservation Ranch diverts water from the Smith River for irrigation with a Riparian Claim under application S019263. The water right has a priority of 1969.

8) There are also numerous other small water right holders who could be injured through impairment of their water rights by water use under the LL-1533 application if approved.

9) In the Water Availability Statement for the LL-1533 application the Watermaster states that he has not visited the proposed diversion site, the site has not been observed during regular WRD fieldwork, and he did not affirm that water is available. In addition the Watermaster did not acknowledge the downstream Wild and Scenic River designations in

Oregon and California, the numerous water rights in California, and the declaration that the Smith River system is fully appropriated. The remoteness of the proposed LL-1533 point of diversion and place of use is clearly problematic because it does not allow for timely inspection or enforcement by the WRD.

10) The proposed project area on and around McGrew Hill includes populations of the rare and sensitive *Streptanthus howellii* plants. There are also many *Darlingtonia* fens located in the area that depend on springs. Those plant communities should be protected.

The Oregon WRD should consult with the California SWRCB and DFG, and the NMFS when reviewing the LL-1533 application. The Oregon WRD should also give formal notice to the water right holders on the Smith River and North Fork Smith River in California by requesting their comments on the LL-1533 application.

In April 2014, I spent a day hiking around the proposed Cleopatra mine project area and can attest to its wilderness and roadless characteristics. It is certainly a bad idea to turn that area into an industrial wasteland or sacrifice zone. Using the public waters of Oregon and California to facilitate such an industrial development in a headwater of an important California river by a foreign corporation would impair and be detrimental to the public interest. Such an industrial development would eradicate and disturb the local flora and fauna, pollute the water, degrade the area with helicopter noise, equipment noise, offensive visual blight, and air pollution from dust clouds and exhaust fumes. For example, the landscape would be littered with pipes, hoses, tanks, pumps, and other industrial equipment and debris. For all of these reasons please deny the LL-1533 application.

Sincerely,

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cc:

Governor John Kitzhaber
Governor Edmund G. Brown Jr.
Felicia Marcus, Chair, California SWRCB
John W. Corbett, Chair, California North Coast Regional Water Quality Control Board
City of Crescent City
Big Rock Community Services District
Gasquet Community Services District