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## North Coast Regional Water Quality Control Board

July 8, 2014

Mr. Tom J. Paul, Acting Director  
Water Resources Department  
725 Summer Street NE, Suite A  
Salem, OR 97301  
[Tom.J.Paul@wdr.state.or.us](mailto:Tom.J.Paul@wdr.state.or.us)

Dear Mr. Paul,

Subject: Comments on the Limited License 1533 Application (Water Right Application for the Proposed Cleopatra Project in the Headwaters of the Smith River)

File: North Fork Smith River Cleopatra Mining Project

The North Coast Regional Water Quality Control Board (Regional Water Board) would like to thank you for this opportunity to comment on the Limited License 1533 (LL-1533) application by the Red Flat Nickel Corporation posted by the Oregon Water Resources Department. The Smith River is a unique and thriving natural resource of pristine high-quality water, often referred to as the crown jewel of the North Coast Region of California. Its unspoiled water quality is the water supply for several communities including Gasquet, Hiouchi and Crescent City. It is a state and federally designated Wild and Scenic River with world class recreational opportunities and a habitat stronghold for a declining population of rare, threatened and endangered anadromous fish. The active recreational and fishing industries supported by the Smith River make it a vital part of the Northern California environment, economy, and culture. Staff find that a mining project in this location has a high risk of resulting in discharges of waste with significant adverse impacts to water quality. For this, and the many additional reasons detailed in the attached letter, the staff of the Regional Water Board urges the Oregon Water Resources Department to deny the LL-1533 application. For the protection of this nationally designated recreational area, we further recommend denial of any future proposals to mine the headwaters of the Smith River.

The LL-1533 application filed by the Red Flat Nickel Corporation (St Peter Port Capital Ltd), headquartered in the United Kingdom (Guernsey), should be reviewed in full context of the

proposal in order to determine the potential damage to the public interest and to downstream water right holders. For this proposed phase of work, the Red Flat Nickel Corporation plans to drill 59 exploratory holes to collect geologic samples for mineral analysis. The Red Flat Nickel Corporation's longer term plans are to mine about 4,000 acres of public land. 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. However, this unnamed tributary is a headwater stream to the North Fork Smith River. Both the short term drilling and diversion plans and long term plan to mine the headwaters of the Smith River have potential for significant adverse effects on the environment and could impair the existing and nationally protected beneficial uses of the Smith River.

The North Fork Smith River's outstanding values are its scenic quality including the pristine character of the landscape, the river's clear turquoise colored waters, and the excellent water quality which contributes to the overall functioning of the river's ecosystem. The world class anadromous fishery depends on the excellent water quality that supports the many miles of near-pristine spawning and rearing habitat.

The beneficial uses as listed in the *Water Quality Control Plan for the North Coast Region* (Basin Plan) for the Smith River include:

Municipal and Domestic Supply (MUN)	Wildlife Habitat (WILD)
Agricultural Supply (AGR)	Rare, Threatened, or Endangered Species (RARE)
Industrial Service Supply (IND)	Marine Habitat (MAR)
Industrial Process Supply (PRO)	Migration of Aquatic Organisms (MIGR)
Freshwater Replenishment (FRSH)	Spawning, Reproduction, and/or Early Development (SPWN)
Navigation (NAV)	Estuarine Habitat (EST)
Water Contact Recreation (REC-1)	Aquaculture (AQUA)
Non-Contact Water Recreation (REC-2)	Native American Culture (CUL)
Commercial and Sport Fishing (COMM)	Subsistence Fishing (FISH)
Cold Freshwater Habitat (COLD)	

The beneficial uses as part of Oregon's water quality standards include:

Domestic water supply	Livestock watering
Fishing	Aesthetic quality
Industrial water supply	Fish and aquatic life
Boating	Hydropower
Irrigation	Wildlife and hunting
Water contact recreation	Commercial navigation and transportation

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  
Wildlife habitat

Additionally, the North Fork Smith River is designated as both a Federal and California Wild and Scenic River. 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.

*It is the policy of the State of California that certain rivers which possess extraordinary scenic, recreational, fishery, or wildlife values shall be preserved in their free-flowing state, together with their immediate environments, for the benefit and enjoyment of the people of the state. The Legislature declares that such use of these rivers is the highest and most beneficial use and is a reasonable and beneficial use of water within the meaning of Section 2 of Article X of the California Constitution<sup>1</sup>.*

Though identified in the 1970s as suitable for providing the beneficial use of industrial water supply, it is clear that the value of the beneficial uses to the local culture, environment and economy associated with the 1990 designation of the North Fork Smith River as a wild and scenic river far outweigh those of an industrial water supply project. This is particularly true since staff find the proposed project risks pose significant threat to all other downstream uses. Given the ecological and socioeconomic implications, we believe it is in the best interest of the people of Oregon and California to preserve this unique resource and deny any further attempts to permanently alter the headwaters of this designated national treasure.

In addition, approvals by United States Forest Service (USFS), to the extent it exercises decision-making authority over the water right decision, and certainly in its permit or license for the mining activity, must be accompanied by water quality certification pursuant to the Clean Water Act section 401. Because of the interstate nature of the proposed project, Regional Water Board would hope to have a role in in the certification process. Water quality certifications contain conditions to ensure that any project will comply with state water quality standards and any other water quality requirements of state law.

Consideration of the following factors will show that approval of the LL-1533 application is not in the public interest because of the high-risk location and potential cause of injury to existing water right holders and important natural resources.

- 1) The location of the claim is not well suited for such an industrial operation.  
According to precipitation data between 1961 and 1990<sup>2</sup>, this area was one of the

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<sup>1</sup> California PUBLIC RESOURCES CODE §5093.50.

<sup>2</sup> <http://www.wrcc.dri.edu/precip.html>

wettest in the western states averaging well over 100 inches of precipitation annually. The Smith River watershed is well known for its large amounts of runoff and dramatic swings in flows. The precipitation rates combined with a mining operation atop steep topography make the proposed operations a high risk for discharges of waste and associated water quality impacts. Controlling discharges of waste and preventing pollution to the otherwise high-quality waters would be incredibly difficult, if not impossible, given the setting of the proposed project.

- 2) The high-quality water of the Smith River is recognized in the North Coast Basin Plan as point source discharges of waste are prohibited in the Smith River and its tributaries in California.
- 3) The California State Water Resources Control Board (SWRCB), on November 19, 1998, by Order WR 98-08 (see link below), has declared the Smith River system to be fully appropriated year round.  
[http://www.waterboards.ca.gov/waterrights/board\\_decisions/adopted\\_orders/orders/1998/wro98-08.pdf](http://www.waterboards.ca.gov/waterrights/board_decisions/adopted_orders/orders/1998/wro98-08.pdf)

The SWRCB found that a declaration that specifically identified that a stream system is fully appropriated should encompass all upstream sources which contribute to the identified stream if, and to the extent that, such sources are hydraulically continuous to the identified stream system. (WR Order 98-08 at 21.) Under Public Resources Code §5093.55, no diversion shall be constructed unless and until the Secretary (California Resources Agency) determines that the diversion is necessary to supply domestic water to residents and it will not adversely affect the free-flowing condition and natural character of the river. No department of the state may assist or cooperate, whether by loan, grant, license, or otherwise, with any department or agency of the federal, state, or local government, in the planning or construction of a diversion that could have an adverse effect on the free-flowing condition and natural character of the river. (Pub. Resources Code, § 5093.56.) The Oregon WRD should consult with the California Resources Agency and the California Department of Fish and Wildlife (DFW) to determine whether the proposed project would adversely affect the free-flowing condition and natural character of the Smith River.

- 4) The Oregon WRD should consult with the California SWRCB Division of Water Rights to determine whether downstream water right holders would be injured and/or public trust resources would be damaged by diversions under the LL-1533 application if approved.
- 5) Due to the lack of infrastructure in this wild and scenic area, the initial drilling operations will be mobilized by helicopter. Therefore, the remoteness of the proposed place of use and future project location are clearly problematic for timely inspection or enforcement.

- 6) 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 could impair high quality-waters and be detrimental to the public interest. Such an industrial development could disturb, harm, or destroy 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 all of these reasons provided please deny the LL-1533 application.

If you have any questions or concerns regarding this letter, feel free to contact Jeremiah J. Puget, Environmental Scientist of my staff, at (707) 576-2835.

Sincerely,

*Original signed by David Leland for*

Matthias St. John  
Executive Officer

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Web link: SWRCB Order WR 98-08

[http://www.waterboards.ca.gov/waterrights/board\\_decisions/adopted\\_orders/orders/1998/wro98-08.pdf](http://www.waterboards.ca.gov/waterrights/board_decisions/adopted_orders/orders/1998/wro98-08.pdf)

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