



January 9, 2019

Fremont County
Board of County Commissioners
Sean Garrett, Director of Department of Planning and Zoning
615 Macon Avenue
Cañon City, CO 81212

RE: Zephyr Gold USA, Ltd.
Conditional Use Permit (CUP) 12-003
Response to Item 3 of Resolution 2018-44

Dear County Commissioners and Mr. Garrett,

Zephyr Gold USA, Ltd., (Zephyr) respectfully resubmits correspondences and documents that demonstrate legally-established access.

1. US BLM 1907 American Placer survey plat depicting the historic public road.
2. February 11, 2013: Richard Ranson esq. of Ranson & Kane PC states in conclusion that access exists on three substantial factual bases including adverse possession, prescriptive easement and according to §CRS 42-2-201 as a public highway.
3. May 7, 2014: Letter to Mr. Giordano, then director of Department of Planning and Zoning, describing interaction with Mr. and Mrs. Keller and historic use of the access road.

Please note that Mr. and Mrs. Keller purchased the American Placer, a land parcel designated for mining by the US BLM, after Zephyr was granted permission to explore for precious metals. That approval includes an access permit from Fremont County dated December 12, 2012, recognizing the existing access as a legal access. Stephanie Carter of the US BLM described the road as a federal public road rather than a driveway in a November 2012 phone conversation that was shared with the county in a November 27, 2012 correspondence.

Environmental Alternatives Inc.

1107 Main Street, Cañon City, CO 81212

e-mail: eai@bresnan.net

Phone: 719-275-8951

Zephyr has previously shared all of this information with Mr. and Mrs. Keller, CO Division of Reclamation, Mining and Safety (DRMS), US BLM and Fremont County. Exploration activity is consistent with the approved conditional use permit and the DRMS Notice of Intent to explore permits. Whereas Zephyr is again providing supporting documentation for use of the road (and gate that was installed by a Zephyr predecessor), Zephyr believes it is and always has been legally justified in using the road. Out of neighborly courtesy Zephyr cooperates with Mr. and Mrs. Keller regarding gate security.

Please feel free to contact me directly at 719-275-8951 or eai@bresnan.net if you have any questions.

Respectfully requested,



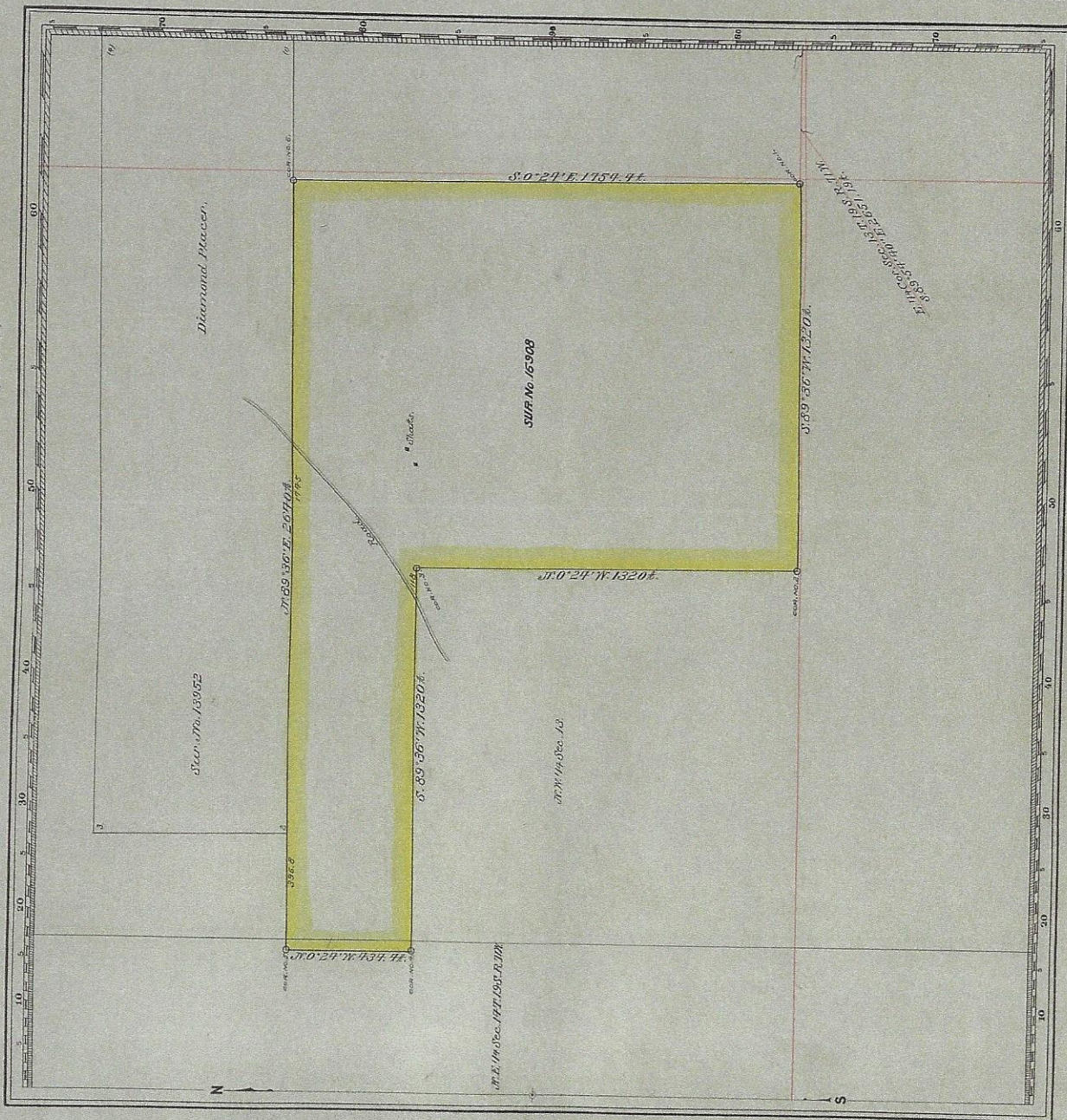
Angela M. Bellantoni Ph.D.

Enclosures:

- 1907 American Placer survey plat
- February 11, 2013 correspondence from Ranson & Kane
- May 7, 2014 correspondence to Bill Giordano
- December 12, 2012 approved Fremont County access permit
- November 27, 2012 correspondence to Anthony Adamic

Cc via email: Loren Komperdo
Will Felderhof
David Felderhof

(4-675)



Plat No. 16508
Survey No. 16508
Date of Survey, October 12th, 1903

Mineral Survey No. 16508
Land District
Pueblo

Lot No. 16508
PLAT
OF THE CLAIM OF
E. F. JEWETT, ET AL.,
KNOWN AS THE
THE AMERICAN PLACER.

IN GREENHORN COUNTY, COLORADO,
Containing an area of 62.327 Acres.
State of 200 Feet to the inch.
Variation 13° 10' East.

Surveyed November 19th, 1903 By
Edward P. Mather, Jr., U.S. Deputy Mineral Surveyor.

The Original Field Notes of the Survey of the Mining Claim of
E. F. Jewett, et al.,
known as the
The American Placer.

From which this plat has been made under my direction, I
have been examined and approved, and am on file in this office,
and I hereby certify that they furnish such accurate description
of said Mining Claim as will, if incorporated into a patent,
serve fully to identify the premises, and that such reference
as made therein to natural objects or permanent monuments
as will perpetuate and be the basis thereof
of further survey that five hundred Dollars worth of labor has
been expended on improvements made upon said Mining
Claim for claimant or grantors, and that
said improvements consist of

that the location of said improvements is correctly shown
upon this plat, and that no portion of said labor or im-
provements has been included in the estimate of expendi-
tures upon any other claim.

I do further certify that this is a correct plat of said Mining
Claim made in conformity with said original field notes of the
survey thereof, and the same is hereby approved.

J. S. Worner, General Office.
Denver, Colorado.
March 9th, 1904

J. S. Worner General for
Colorado.

February 11, 2013

Angela Bellantoni
Environmental Alternatives Inc
1107 Main Street
Canon City, CO 81212

RE: Dawson Project/Judith Placer Issue

Dear Angela:

Thank you for asking me to review the information regarding Judith Placer, and how that patented mining claim interacts with the right of your client to cross that property to access the Dawson Project.

I was provided documents from a public records search of the Judith Placer which were included with a letter you wrote another party on January 24, 2013. I was also provided what I assume is a Google Earth view of the Judith Placer property, including a nearby county road and an obvious roadway from the county road across the Judith Placer leading to the Dawson Project. In addition, you and I discussed this matter by telephone and you provided me with information you had regarding the history of the properties and the use of the roadway across the Judith Placer.

The document search provided the Mining Patent to the Judith Placer (originally held by The Diamond Fire Brick Company), dated June 26, 1917, indicating the property was first mined in 1912; a sale of the "Judith Mine" to H.K. Porter Company, Inc., (along with three other patented mining claims) in 1959; and finally, the sale of the "Judith Placer" to James Pesavento in 2002.. Mr. Pesavento moved the property to PVK Investment, LLC on the same day he acquired the property from H.K. Porter.

The Patent issued by the USA in 1917, includes the following statement:

Fourth: That in the absence of necessary legislation by Congress the Legislature of Colorado may provide rules for working the mining claim or premises hereby granted, involving easements, drainage, and other necessary means to the complete development thereof.

The sale to H.K. Porter was by Quit Claim Deed, and the sale to Pesavento was by Warranty Deed.

It is my understanding from my discussion with you the roadway, which is very obvious in the Google Earth photo, has been in place and use for more than seventy - five (75) years. From at least the Google photo, it appears the roadway across the Judith Placer to the Dawson Project is the only access from the county road to the Dawson Project. It is my understanding that until very recently, no restrictions were placed on the public use of the roadway across the Judith Placer property. Apparently after the recent change in ownership, some efforts to restrict access to the roadway and the right to cross the Judith Placer have been made by new ownership.

The question you presented to me was, given the information I was provided, did the current ownership of the Judith Placer have a legal right to restrict access and use of the roadway from the county road to the Dawson Project. I am of the opinion the answer to your question is NO.

As you know, every simple legal answer has a complicated explanation. I'll try and summarize my thoughts and provide a few case and statute citations in the event there is any interest in further exploration of this question.

Colorado's Supreme Court has determined that adverse use can create an easement under Colorado's adverse possession statute. See Lobato v. Taylor, 71 P.3d 938, 950 (Colo. 2002) (referencing Colorado's adverse possession statute in an action to create an easement by adverse possession); Allen v. First Nat'l Bank of Arvada, 120 Colo. 275, 285, 208 P.2d 935, 941 (1949). In Colorado, the General Assembly has declared that the law of adverse possession extends to "any right or interest of or to real property." § 38-41-101(1) (emphasis added). The statute, which declares eighteen years to be the statutorily-mandated period of time for adverse possession, reads in full:

'No person shall commence or maintain an action for the recovery of the title or possession or to enforce or establish any right or interest of or to real property or make an entry thereon unless commenced within eighteen years after the right to bring such action or make such entry has first accrued or within eighteen years after he or those from, by, or under whom he claims have been seized or possessed of the premises. Eighteen years' adverse possession of any land shall be conclusive evidence of absolute ownership.'

Under the Restatement, an easement is created by adverse possession if the adverse use is: "(1) open or notorious, and (2) continued without effective interruption for the prescriptive period." Restatement § 2.17. Colorado case law tracks the Restatement's language regarding the elements of a claim to create an easement by adverse possession: "An easement by prescription is established when the prescriptive use is: (1) open or notorious; (2) continued without effective interruption for the prescriptive period; and (3) the use was either (a) adverse or (b) pursuant to an attempted, but ineffective grant." Lobato, 71 P.3d at 950 (citing Restatement §§ 2.16- 2.17) .

To acquire a prescriptive easement, a party must confine his or her use to a single, definite, and certain path. Minor deviations do not defeat the claimed easement. Weisiger v. Harbour, 62 P.3d 1069 (Colo. App. 2002).

I read the original Patent issued in 1917 to permit Colorado, by law, to establish the right of easement across the property so as to allow development.

The elements of adverse possession, and prescriptive easement both exist with a level of certainty to protect the right to cross the Judith Placer to access the Dawson Project.

If efforts are made to restrict access to the Dawson Project, legal action may be required to obtain a judicial determination of the right of access and use. That legal action is in the nature of a request to quiet title to the established easement in favor of the Dawson Project property owners; although I suspect there may be sufficient factual basis for claiming the roadway is a public road. Colorado has a statute which states as follows:

43-2-201. Public highways

(1) The following are declared to be public highways:

(a) All roads over private lands dedicated to the public use by deed to that effect, filed with the county clerk and recorder of the county in which such roads are situate, when such dedication has been accepted by the board of county commissioners. A certificate of the county clerk and recorder with whom such deed is filed, showing the date of the dedication and the lands so dedicated, shall be filed with the county assessor of the county in which such roads are situate.

(b) All roads over private or other lands dedicated to public uses by due process of law and not heretofore vacated by an order of the board of county commissioners duly entered of record in the proceedings of said board;

(c) All roads over private lands that have been used adversely without interruption or objection on the part of the owners of such lands for twenty consecutive years;

(d) All toll roads or portions thereof which may be purchased by the board of county commissioners of any county from the incorporators or charter holders thereof and thrown open to the public;

(e) All roads over the public domain, whether agricultural or mineral.

I will offer that I am not an authority on Mining Patents and whether a Patent grants a property owner more than the right to mine and extract minerals from the property. But, assuming the current owner of the Judith Placer claims full ownership, as it appears it does, and that ownership right goes back at least to the H.K. Porter acquisition in 1959, if not before, the statute I have cited above would make the roadway to the Dawson Project a public road.

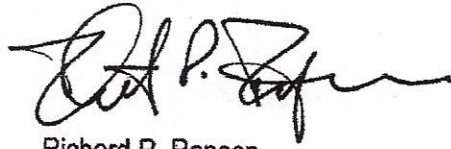
I have highlighted the two sections that may apply. If the current owner claims outright ownership of the parcel, Section (c) applies. If not, and it is claimed the USA maintains an ownership interest in the property other than mineral and mining rights, then (e) applies.

In conclusion, based on the information I was provided, I believe there is substantial factual basis for the establishment of an easement across the Judith Placer by adverse possession, or that a prescriptive easement was established across the land; or that by virtue of CRS §43-2-201, the road became a public highway many years ago.

I hope my thoughts help you understand the issue you presented to me for consideration.

Cordially,

RANSON & KANE, P.C.

A handwritten signature in black ink, appearing to read "Richard P. Ranson", with a stylized flourish at the end.

Richard P. Ranson

Please respond to:

Zephyr Minerals U.S.A. Ltd.
402 Valley Road, Suite E
Canon City, Colorado 81212
U.S.A.

Zephyr Minerals Ltd.
1800 – 1959 Upper Water Street
Purdy's Wharf Tower 1
Halifax, NS B3J 3N2 Canada

Via email Bill.giordano@fremontco.com
Original by post

May 7, 2014

Mr. Bill Giordano, Director
Department of Planning and Zoning
Fremont County
615 Macon, Room 215
Canon City, CO 81212

Dear Sir:

Re: Correspondence of April 21, 2014 to you from Randy and Jeanie Keller
Re: "Dawson Gold Mine Access"

Further to our telephone conversation of May 6, 2014, it is Zephyr Minerals Ltd.'s (Zephyr) position that there is no merit to Randy and Jeanie Keller's statement in their above correspondence regarding lack of an easement on the current roadway over their recently acquired property known as the Jennings and American Placer claims. The current roadway has been the access route to the patented mining claims held by Zephyr since 1893 and in fact is shown on the survey plat of the American Placer claim of 1907 (see attached). This roadway has been in continuous usage for over 100 years, and in the most recent years, mid 1970s to the present, by various companies involved in developing the "Dawson Gold Project". These companies include U.S. Borax and Chemical Corporation (ca 1976-1986), Jascan Resources Inc. (1986-1989), Uranerz U.S.A. Inc. (1989-1992), Celtic Minerals Ltd. (1995-2012) and Zephyr (2012 to present), and during these time periods, none of these companies paid any easement fees for usage of this roadway.

Furthermore, Zephyr has obtained a legal opinion from the law firm of Ranson & Kane, P.C. in Colorado Springs who has advised Zephyr that we have a prescriptive right to use the roadway based on the history of usage.

It is also noteworthy and very relevant that this roadway serviced a small, albeit short lived, community known as Dawson City ca. 1898. A paper written by Nancy Dawson the great granddaughter of Mr. Dawson, a co-founder of Dawson City and who also lent his name to Dawson Mountain, describes the early history of the area and shows a picture of the town. The article was printed in a publication known as

"Colorado Heritage" in 1994. Based on this history, it could well be argued that this roadway is in fact a public road.

For the record, it should be noted that the original CUP was granted by Freemont Co. on March 11, 2013, which pre-dates the acquisition of the American Placer claim by Randy and Jeanie Keller. The application for this CUP was well advertised by Zephyr but neither of the Kellers attended the hearing prior to the CUP grant.

Furthermore neither of the Kellers attended the public meeting in February 2014 at which time an extension to the CUP was granted. The agenda for this meeting was a matter of public record and publicly posted. Mr. Keller had the opportunity to discuss his access concerns at that time in the appropriate public setting but did not do so.

Both of the Kellers were fully aware of Zephyr's planned activities at the Dawson Gold Project and it would appear that the Keller's purchase was motivated by a plan to extract easement fees from Zephyr for usage of the roadway.

While we are willing to meet with Randy and Jeanie Keller regarding any questions they may have regarding our usage of the road and our planned operations at the Dawson Gold Project, it is Zephyr's intention to exercise its prescriptive right of access.

Finally the gate that is referenced by Mr. Keller as "his" gate is in fact owned by Zephyr . It was installed by Mr. Jim Javernick of Canon City for the previous owner of our claims. It was placed at the intersection with the Temple Canon Road with agreement of the previous owner of the American Placer claim to benefit all claimholders.

If you have any further questions on this matter, please do not hesitate to contact me.

Sincerely yours,

ZEPHYR MINERALS LTD.

Will Felderhof
Technical Consultant

Attachment

cc: Loren Komperdo, President & CEO
David Felderhof, Executive Vice President
Angela Bellantoni, Environmental Consultant

12/05/2012 13:29 7192751715

7192752047

1/1

FREMONT COUNTY

NO 100' TVI
Will be needed IF production starts. * See Note below

DEC 12 2012

DRIVEWAY ACCESS and ADDRESS PERMIT
FREMONT COUNTY BUILDING DEPARTMENT
615 MACON AVE. ROOM 212
Phone: 719-276-7460 Fax: 719-276-7461

ZONING
PERMIT # DOT-12-5

- (1.) APPLICANT SHALL SCHEDULE AN ON-SITE MEETING WITH DEPARTMENT OF TRANSPORTATION DESIGNEE TO DETERMINE ADEQUATE LOCATION REQUIREMENTS OF THE DRIVEWAY ACCESS, AND FOR FINAL ACCEPTANCE INSPECTION. IF APPLICANT FAILS TO APPEAR, THERE WILL BE A RESCHEDULE FEE OF \$45.00
- (2.) PLOT MAP OR SKETCH IS REQUIRED. DEPARTMENT OF TRANSPORTATION DESIGNEE WILL INDICATE DRIVEWAY LOCATION & INITIAL

Department of Transportation Designee:

Name of Applicant: Zephyr Gold USA Ltd.

Phone: 902-446-4189

Phone: 719-275-2047

Alt. Phone:

Current address, City, State, Zip Code of Applicant: 1950 Upper Water Street, Suite 1700, Halifax, Nova Scotia, Canada

Name of Driveway Contractor installing:

If existing driveway, please include address:

CP3

For County use: The following is to be completed by Department of Transportation Designee:

Name of street being accessed: CR 3

Site distance both directions: E 100' & W 500'

- Driveway access shall not interfere with location or functioning of any traffic regulation device.
- More than one driveway access shall not be allowed on any parcel less than 100' in width.
- Driveway access shall be constructed so as not to interfere with the street drainage system.
- No driveway access shall enter or exit on to street at less than 45 degrees.

The following information will be required prior to the final acceptance:

Will drainage study be required: Yes _____ No ☒ If yes, specify below:Will improvements be required: Yes ☒ No _____

Culvert size: 15" X 40" Type of Culvert (Material): CMP

Cover over top of Culvert 7 1/2"

Curb Cut _____ Drop Inlets _____

Downspouts _____

Energy Dissipaters _____

Flared Ends _____

Headwalls _____

Rip Rap _____

Paving & Beveled Ends _____

Deflectors _____

Racks _____

Crisps _____

Raisers _____

Basins _____

Spillways _____

Others _____

- A minimum of 12 inch diameter culvert, unless larger required due to historical drainage.
- Minimum cover over top of the culvert shall be 1/2 the diameter of the culvert. Minimum length of culvert 24".
- Driveway shall not allow drainage onto County Right-of-Way.
- Culverts shall be set on a grade which will allow for proper drainage.
- Culverts shall be corrugated metal or material of equivalent strength & construction.

(3.) LOCATION AND SITE REQUIREMENTS APPROVED BY DEPARTMENT OF TRANSPORTATION:

DESIGNEE: [Signature]

DATE: 12-12-12

(4.) A. APPLY FOR ADDRESS TO THE BUILDING DEPARTMENT, 615 MACON, ROOM 212

B. PLOT MAP OR SKETCH AS APPROVED IN (2.) ABOVE. WILL BE REQUIRED WHEN APPLYING FOR AN ADDRESS.

C. SUBMIT COPY OF ISSUANCE OF AN ADDRESS TO THE BUILDING DEPARTMENT WHEN APPLYING FOR A PERMIT

**Permit will expire one year from date of purchase.

I certify that I understand and agree to the above requirements and conditions.

Signature of Applicant: _____

Date: _____

Fee Paid: _____

FINAL ACCEPTANCE OF DRIVEWAY ACCESS BY DEPARTMENT OF TRANSPORTATION:

DESIGNEE: _____

DATE: _____

**Must submit proof of ownership & Plot Plan indicating location of driveway

Costs required: 1. Road Supervisor 2.00" Office Manager 3. Planning & Zoning 4. Building Department 5. Owner

* Access onto Roadway will need to be modified if production is started. Access will need to be wider and a 15" X 40' culvert installed.

12 DEC 13 2012 (JOB NO. 6178) 0002



November 27, 2012

Anthony Adamic
Fremont County
Department of Transportation
615 Macon Avenue
Cañon City, Colorado 81212

RE: Zephyr Gold USA Ltd
Conditional Use Permit Application
Precious Mineral Exploration

Dear Mr. Adamic,

Please accept the following information as requested in our phone conversation on November 21 and meeting on November 26, 2012.

The required Roadway Impact Analysis form was submitted to Fremont County Planning and Zoning Department on Wednesday, November 14, 2012 as Exhibit CUP-23.1.

Item a) Stephanie Carter of US BLM was contacted regarding the driveway access permit since the access in question is not a driveway but rather an intersection of a county road and a federal public road. The driveway application was provided to BLM for review. Since this is not a driveway and the property belongs to the public with right of access via US Mine Act, Zephyr will respond to this request as directed by US BLM.

Item b.1) The closest CDOT maintained roads are Highways 50 and 115. The route to the BLM access may vary depending on point of origination. As stated on the form, daily project traffic will be four pick-up trucks, twice a day.

Item b.2) Mountain trail improvements will utilize a D-6 bulldozer, or similar size dozer. Exploratory drilling will be performed with the available drill rig with depth maximum capacity of 1200 feet. If Phase 2 is required and metallurgists request, a small back hoe, possibly Komatsu 200 or similar size excavator, will place approximately five tons of area rock into a one 10-ton haul truck for analysis. Due to minimal surface disturbance, reclamation will not require specialized equipment. Equipment will be mobilized to and from the site as needed for each phase on flatbed trailers at commencement and completion of each phase, total of 12 trips over 12 months, maximum. This is included as vendor trips on Item 4 of the Roadway Impact Analysis form.

Environmental Alternatives Inc.

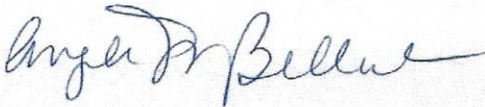
1107 Main Street, Cañon City, CO 81212
www.envalternatives.com • e-mail: eai@bresnan.net
Phone: 719-275-8951 • Fax: 719-275-1715

Item b.3) Item 5 of the Roadway Impact Analysis form addresses this concern specifically.

Item c) Item 4 of the Roadway Impact Analysis form addresses this concern specifically.

Item d) Fugitive dust mitigation will occur as minimal surface disturbance, immediate reclamation upon completion of exploration, drilling with water, and slow vehicle speed due to rugged mountain terrain.

Respectfully submitted,



Angela M. Bellantoni

Cc: Dave Felderhof
Loren Komperdo

Environmental Alternatives Inc.

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