# DECISION NOTICE
# AND
# FINDING OF NO SIGNIFICANT IMPACT

## Paint Mine Exploration and Development Proposal

**UNITED STATES DEPARTMENT OF AGRICULTURE**
**FOREST SERVICE**

**Duchesne/Roosevelt Ranger District**
**Ashley National Forest**
**Duchesne County, Utah**

050604

# DECISION NOTICE
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**Introduction**

This documents my decision on a proposal submitted by the Uintah Mountain Copper Company (UMCC) of Price, Utah to excavate and remove hematite (iron oxide) ore from one of the Company's 30 unpatented lode mining claims located in the Slate Creek drainage of the Ashley National Forest. Slate Creek drainage is located approximately 25 air miles northwest of Duchesne on the Duchesne/Roosevelt Ranger District.

This decision has precedence over the "Decision Notice and Finding of No Significant Impact Document" issued April 2002 for the "Ore Exploration and Development Proposal" – Environmental Assessment, dated September 21, 2001.

On May 23, 2002, the Utah Environmental Congress appealed the April 2002 Decision Notice and Finding of No Significant Impact Document, dated April 2002, and the corresponding Environment Assessment, dated September 21, 2001. This appeal was directed at the analysis and evaluation of impacts to Threatened & Endangered Species, USDA Forest Service – Region 4 Sensitive Species, and Ashley National Forest Management Indicator Species. Upon receipt and study of the appeal, I directed that additional analysis and evaluation be conducted for the appeal issues, and a revised environmental assessment prepared.

The August 2003 Environmental Assessment for the Paint Mine Exploration and Development Proposal, herein called the "August 2003 EA" is a revision of the September 21, 2001 Environmental Assessment for Ore Exploration and Development Proposal, herein called the "September 2001 EA". The August 2003 EA analyzes and evaluates the proposed action submitted by UMCC.

I have attached a Supplement to the August 2003 Environmental Assessment for the Paint Mine Exploration and Development Proposal (EA). This Supplement, dated April 2004, consists of corrections and clarifications to the EA (minor errors in data, maps and other resource information found after publication of the EA), and addresses various comments received from offices and organization on the EA. The Supplement does not change the results of the analysis and evaluation in the EA, including the disclosed impacts.

**Purpose and Need for Action**

Uintah Mountain Copper Company (UMCC) submitted a plan of operations to the Ashley National Forest in accordance with U.S. Mining Laws and regulations. UMCC received an approved Plan of Operations in 1996 for the campsite, access road and first phase of test pit work. The current exploration and development modification to the existing Plan of Operations for completion of the test pit was submitted in 1999 and revised according to Forest Service requests on November 30, 2000, December 30, 2000, and May 14, 2001. The Plan of Operations plan addresses various test pit and ore removal actions within claims filed as Sunshine Quartz Mine No. 3, Sunshine Quartz Mine No. 4, and Hematite No. 5.

The proposed test pit and hematite (iron oxide) ore removal is an extension of previous exploration and development phases, and are considered necessary by UMCC to "(a) verify depth and location of geologic strata and faulting identified during the previous drilling programs, (b) assess the accuracy of drill hole data interpolations for calculating hematite ore deposits/reserve, (c) determine the probable depth of overburden for possible future mining, and (d) provide for small scale reclamation projects to measure and document the viability of proposed reclamation methods and to extrapolate results to large operations". *(UMCC*

*Engineering Analysis Report, Exploratory Test Pit Excavation & Reclamation Development Program, page 2, September 26, 1997)*

The Proposed Action is part of UMCC's program to evaluate the full mining potential of the project. The evaluation will also include a minerals evaluation; demonstrations that minerals can be mined, removed, and marketed at a profit; and methods needed to achieve successful environmental reclamation. The ore that is removed would be hauled to an off-Forest pilot plant or testing laboratories as part of project evaluation.

**Decision and Rationale**

My decision is to implement Alternative B-Modified Plan of Operations as described in the August 2003 Environmental Assessment.

In accordance with the Federal Land Policy and Management Act of 1976, the Forest Service must consider that all National Forest System lands are available for mineral exploration and development under the 1872 Mining Law (as amended) unless the lands in question are withdrawn from mineral entry. National Forest System lands occupied by UMCC's mining claims have not been withdrawn from mineral entry. In addition, mining laws for legal claims require that existing and future mining development proposals on National Forest lands not withdrawn from mineral entry be accepted, analyzed, evaluated, and permitted, based on environmental protection and mitigation measures.

The laws provide for holder of valid mining claims to be able to reasonably develop the mineral assets. The surface use regulations (36 CFR 228) require the analysis and development of procedures and mitigations to minimize impacts on other National Forest lands and resources. The mitigations were developed from the analysis documented in the EA and will be required as the modified proposed action is implemented.

UMCC will be allowed use of the campsite for staging of personnel and as an ore transfer site. Once the project is completed the campsite will be cleaned up and the site restored.

**Mitigation and Monitoring**

All mitigation measures described in the EA on pages 2-19 through 2-32 will be required when implementing the project. The mitigation measures include intensive monitoring requirements to assure implementation of and acceptable site rehabilitation and restoration. Included is rehabilitation and cleanup of the campsite/ore transfer site. All protection and mitigation measures will be made part of UMCC's Plan of Operations.

**Summary of the Proposed Action and Alternatives**

The Ashley National Forest interdisciplinary team analyzed and evaluated UMCC's Proposed Action and alternatives in accordance with the laws, regulations, and policies associated with the National Environmental Policy Act (NEPA).

Proposed Action

Uintah Mountain Copper Company began survey work, claims identification, and claims filing in the Slate Creek drainage as early as 1936. From 1936 to 1995, UMCC performed discovery and exploration work on their claims. Recently, UMCC submitted a proposed Plan of Operations that initiated the analysis as included in the EA. The Plan of Operations is addressed in the EA as "Alternative A - Proposed Action".

The proposed action is to excavate a 0.075-acre test pit area and remove approximately 650 cubic yards (1534 tons) of hematite (iron oxide) ore from the claim area filed as Sunshine Quartz Claim No. 4, located in Section 15 of Township 2 North, Range 6 West, USM. The ore will be excavated by heavy equipment, temporarily stored at a site near the test pit, and eventually transported by long-haul trailer trucks to a pilot processing plant in Price, Utah. Excavation, storage, and removal operations will take place over a 60-day operating period during the

summer and fall months, followed by cleanup, and rehabilitation and monitoring work. The project is planned to take place in the summer of 2004 or 2005, depending on the timing of final project approvals. The intent of UMCC's proposal is to determine the extent, quantity, and quality of hematite ore and its marketability in the specialty natural pigments market.

Alternative B – Modified Plan of Operations

The Forest interdisciplinary team developed a second Action Alternative as part of the NEPA process. The Action Alternative is labeled as "Alternative B- Modified Plan of Operations" in the Environmental Assessment, and includes modifications to UMCC's proposed Plan of Operations, and mitigation measures in addition to UMCC's proposed environmental protection measures. This alternative addresses environmental issues noted during the public scoping process and includes measures to eliminate significant impacts and minimize non-significant impacts to vegetation, terrestrial and aquatic wildlife, soils, water quality, air quality, wilderness values, roadless areas values, recreation users and uses, and public facilities.

Alternative C – No Action

A third alternative to UMCC's Proposed Action was developed, and fully analyzed and evaluated by the Forest interdisciplinary team. This alternative is labeled as "Alternative C – No Action" in the Environmental Assessment. The alternative analyzes conditions that preclude excavation and ore removal (disapproval and rejection of UMCC's Plan of Operation) and requires rehabilitation and closure of all areas of past disturbance associated with discovery and exploration. Although technically feasible, this alternative does not comply with Federal land and mineral laws, regulations, and policies. Nevertheless, this alternative is included in order to quantify baseline environmental conditions that would exist if exploration and development operations were to end and proposed operations were not initiated. This alternative is in compliance with Section 1502.14 of CEQ's NEPA Implementing Regulations 40 CFR 1500-1508. As discussed in CEQ's 40 Most Asked Questions…."the NEPA regulations require the analysis of the no action alternative even if the agency is under a court order or legislative command to act…" This analysis provides a benchmark, enabling decisionmakers to compare the magnitude of environmental effects of the action alternatives. It is also an example of a reasonable alternative outside of the jurisdiction of the agency which must be analyzed." If UMCC decides not to proceed with the project activities listed under the preferred alternative, the company will be required (by Federal and State of Utah mineral laws, regulations, policies, and codes) to comply with all site rehabilitation and restoration mitigation measures listed for Alternative C-No Action.

**Issues, Concerns and Public Involvement**

Public input for the Uintah Mountain Copper Company Test Pit/Ore Extraction Proposal was invited through public notices and mailing of scoping documents on April 18, 2000. Forest Service specialists were also consulted, and an Interdisciplinary Team (IDT) was involved throughout the analysis. The IDT identified five key public issues for environmental analysis. In addition, the IDT identified six management concerns for the proposed action. The eleven issues and concerns address the potential effects of the proposed action and alternatives on the following resources:

-Wildlife habitat
-Vegetation
-Sensitive areas
-Water quality
-Small or large mine activities, as identified by the State of Utah Department of Natural Resources-Division of Oil, Gas and Mining
-Inventoried Roadless area
-Visual quality
-Native American uses
-Public access and safety
-Air Quality
-Infrastructure, including roads and bridges
-High Uintas Wilderness

The analysis in the both the September 2001 and August 2003 Environmental Assessment for the above 12 issues and concerns and associated resources included a description of the issue and related resource, environmental consequences to the resource from implementation of the

proposed action and/or alternatives, and protection and mitigation measures for eliminating or reducing environmental effects to the resource.

In addition, on September 25, 2001, a letter was sent to all concerned publics [with an enclosed copy of the September 2001 EA asking for review and comments on the analysis and evaluation. Six comment letters were received, and those commenting identifying areas of concern and recommendations for change. These comments were addressed in the Decision Notice and Finding of No Significant Impact for the September 2001 EA.

On August 14, 2003, we sent the August 2003 EA out for pre-decisional review and opened the official 30 day public comment period for this EA. Substantive comments were requested on the proposed action and the analysis under the new 36 CFR 215 regulations that were published on June 4, 2003.

We have consulted with the Northern Ute Tribe in the development of this proposal. In addition to the scoping efforts mentioned above, which included the Northern Ute Tribe, this project was discussed with the Business Committee of the tribe on January 14, 2004 *(memo: Clark Tucker, 2/3/2004).*

A complete review and documentation of the scoping effort can be found in the analysis file in the Ashley National Forest Supervisor's Office.

**How we Used Public Comments**

All comments received during the 30 day public comment period for the August 2003 EA were analyzed and responded to and were used to consider the adequacy of the analysis in addressing issues and concerns, whether clarifications were needed to avoid confusion or provide additional information, and whether or not the analysis met current administrative and legal requirements. The *Supplemental EA and Summary of Public Comments with Forest Service Responses* document shows the clarifications made and the specific responses to individuals and organizations to their comments and concerns.

**⟐Finding of No Significant Impact (FONSI)**

After considering the environmental effects described in the EA, I have determined that these actions will not have a significant effect on the quality of the human environment considering the context and intensity of impacts (40 CFR 1508.27). Thus, an environmental impact statement will not be prepared. I base my finding on the following:

1. The beneficial effects of the action do not bias my finding of no significant environmental effects.

2. There will be no significant effects on public health and safety, because the project location is separated from the public through road restrictions and safety concerns have been identified and properly mitigated (*see EA pages 4-52 to 4-55).*

3. There will be no significant effects on unique characteristics of the area, because there are no ecologically critical areas such as, parklands, prime farmlands, or wild and scenic rivers. There are inventoried roadless areas adjacent to the project site, and the transfer area is in a roadless area. Effects to roadless areas are minor because the access road, test pit area, and test pit work will be outside of the any inventoried roadless area. Test pit excavation and ore removal/hauling activities will have short-term effects to some attributes associated with the inventoried roadless area surrounding the test pit area and on either side of the access road, but these attributes will return to pre-conditions upon completion of the project *(refer to Section 4.7.b – Roadless Area-Inventoried Roadless Area Surrounding the Project Area, pages 4-and 4-45).* The 1.25-acre temporary camp/ore transfer site is located within an inventoried roadless area. Upon completion of project work, all facilities associated with this site will be removed, and the site will be

rehabilitated and closed. *(Refer to Section 2.1.b.1) – Mitigation Measures for Inventoried Roadless Area Surrounding the Project Area, page 2-30 of the EA).*

*4.* The effects on the quality of the human environment are not likely to be highly controversial. There is no known scientific controversy over the impacts of the project. While some of the comments received on the proposal during the 30-day comment period were thoughtful and substantive, the removal of the proposed quantity of ore from a valid mining claim is not expected to be highly controversial *(see the Summary of Public Comments with Forest Service Responses).*

5. We have considerable experience with the types of activities to be implemented. The effects analysis shows the effects are not uncertain, and do not involve unique or unknown risk *(see EA Chapter 4 and Table 2.8 pages 2-40 to 2-46).*

6. The action will not establish a precedent for future actions with significant effects. As disclosed in Section 1.6*, page 1-12 (Decisions to be Made)* and Section 2.2*, pages 2-4 through 2-42 (Descriptions of the Alternatives)* of the August 2003 EA, the Forest Service accepted and analyzed Uintah Mountain Copper Company's (UMCC) Proposed Action for: a) test pit excavation and ore removal at the UMCC's claim filed as Sunshine Quartz Mine No. 4, and b) temporary storage and eventual transport of the ore to an off-Forest pilot processing plant. UMCC's Proposed Action did not include future claim development operations; therefore, the August 2003 EA did not address and analyze UMCC's possible future operations. All future development operations on Sunshine Quartz Mine No. 4 and on other adjacent UMCC claims will require a new proposed action from UMCC and corresponding analysis and evaluation in the appropriate NEPA document, i.e., environmental assessment or environmental impact statement.

   Completion of the proposed test mining does not assume or guarantee that larger scale mining will ever commence at the Paint Mine site. The purpose of the test mining is to determine if the mineral deposits at the Paint Mine site can be economically mined, processed, and marketed. While additional mining is not guaranteed, however, such test mining (or bulk testing) is typically done as a first step to larger scale mining. Collection and processing of such large samples is rarely done, except for those deposits with reasonable potential for economic development and large-scale mining.

7. The cumulative impacts are not significant. The proposal is only the test pit and associated activities. The August 2003 EA addresses possible future activities as "reasonably foreseeable actions" in cumulative effects, which addresses concerns that the proposal not be considered in a piecemeal fashion *(see pages 1-11 through 1-13), and cumulative effects analysis on pages 4-26, 4-27, 4-29, and 4-34).* A 10 to 30 year timeframe is included in the description of reasonably foreseeable actions *(page 1-13)* and thus is considered in the cumulative effects write-ups for all resources. I have determined that there will be no "significant environmental cumulative impacts" to any resource.

   The rationale for the "reasonably foreseeable actions" scenario has been carefully documented and the assumptions clearly stated *(refer to pages 1-11 through 1-12 in the EA for rationale/assumptions and pages 1-12 through 1-13 for the scenario).* UMCC did not offer a more specific description, and stated that the company had… "no known long-range plans for the future of its claims, and only a wide range of possible options based upon the outcome of its development work". The Plan of Operations submitted by UMCC (8/2001 & 10/2000) included "small-scale ore removal and reclamation projects for evaluating and documenting economics and restoration techniques of a larger project." UMCC has also stated…"Small-scale test pits provide a wealth of economic and environmental reclamation data for evaluating the future mining potential of the project." Also, UMCC wrote the Ashley NF (9-30-99) that their data…"provides a reasonable

standard for minerals valuation during exploration and development activities of our project".

8. The action will have no significant adverse effect on districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places nor cause loss, destruction of significant scientific, cultural, or historical resources, (*see EA page 4-49).*

9. The action will not adversely affect any endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species act of 1973. The United States Department of Interior – Fish and Wildlife Service has concurred with the Wildlife Biological Assessment prepared and on file for this project for Threatened and Endangered Species *(USFS – Ashley National Forest Wildlife Biological Assessment – UMCC Paint Mine Exploration and Development Project, dated October 15, 2001 and USDA-USF&WL Service response letter – informal consultation for UMCC Paint Mine Exploration and Development Proposal, January 10, 2002)*. With the exception of the Canada lynx, this Biological Assessment determined that there would be no effects to Threatened and Endangered Species as a result of the project. The Biological Assessment determined that the project may affect, but is not likely to adversely affect the Canada lynx. Because the concurrence letter from the US Fish and Wildlife Service was two years old and there were some minor changes in lynx habitat that would be affected by the proposed project, electronic correspondence with US Fish & Wildlife Service was initiated. This correspondence (*dated January 26th 2004*) also addressed the reasonably foreseeable actions. I have determined in this correspondence that these changes do not change the overall assessment in the Biological Assessment of the Paint Mine proposal relative to effects on lynx (US F&WS e-mail correspondence). For further information on this subject, see the US F&WS e-mail correspondence, and the Biological Assessment (the later two are available upon request from the Duchesne Ranger District Office).

   A Wildlife Biological Assessment/Evaluation (BA/BE) was prepared and is on file for this project for Threatened and Endangered Fish Species, with a finding of no effect. This BA/BE was submitted to the United States Department of Interior – Fish and Wildlife Service on March 14, 2003. Since there was a finding of no effect, the USDI-USF&WS did not respond. *(USFS – Ashley National Forest Biological Assessment/Evaluation – UMCC Paint Mine Exploration and Development Project, dated March 14, 2003)*.

10. The action will not violate Federal, State, and local laws or requirements for the protection of the environment.

**Consistency with Forest Plan**

This decision to implement Alternative B-Modified Plan of Operations is consistent with the intent of the Forest Plan's general direction for the management of the area at and adjacent to the project (See Ashley NF LRMP Chapter II pp. 9-10). Management areas "n" and "f" occur within the areas to be analyzed. The project is in conformance with land and resource management plan standards and guidelines for these management areas *(See EA pages 1-4 to 1-5).*

**Findings Required by Other Laws**

This decision is in compliance with all applicable laws, regulations, and policies.

**Appeal and Review Rights**

This decision is subject to appeal. As the proponent, UMCC may appeal the decision under either 36 CFR 215 or 36 CFR 251. Other parties may only appeal under 36 CFR 215.

Appeals under 36 CFR 251 must meet the content requirements of 36 CFR 251.90. The appeal must be postmarked or received by the Appeal Deciding Officer, within 45 days of this decision.

The appeal Deciding Officer is George Weldon, Forest Supervisor, 355 North Vernal Avenue, Vernal, Utah 04078. A copy of the appeal must be filed simultaneously with: Clark Tucker, District Ranger, 85 West Main Street, Duchesne, Utah 84021.

Those organizations (identified below) who provided substantive comments during the 30 day comment period may appeal the decision under 36 CFR 215. Appeals under 36 CFR 215 must meet the content requirements of 36 CFR 215.14, as published in the Federal Register on June 4, 2003. Any written appeal must be postmarked or received by the Appeal Deciding Officer with 45 days of the publication of this notice in the Uinta Basin Standard. The Appeal Deciding Officer is: George Weldon, Forest Supervisor, Ashley National Forest, 325 25th Street, Ogden, Utah 84401, via mail, fax: (801) 625-5277; or e-mail at: appeals-intermtn-regional-office@fs.fed.us. E-mailed appeals must be submitted in MS Word (*.doc) or rich text format (*.rtf). Appeals may be hand delivered to the above address, during regular business hours of 8:00 a.m. to 4:30 p.m.

I have determined that all organizations that responded during the official 30-day public comment period have met the "substantial comment" standard and have standing to appeal. Those who have standing to appeal are:

The Uintah County Commission
The Utah Division of State History
The High Uintas Preservation Council
People for the USA, Rocky Mountain Region
Uintah Mountain Copper Company
The Utah Environmental Congress

Copies of the Paint Mine Exploration and Development Proposal – Environmental Assessment of August 2003 (August 2003 EA) and Supplement to the Paint Mine Exploration and Development Proposal – Environmental Assessment of August 2003 (April 2004 Supplement to the EA) can be obtained from the Forest Supervisor's Office, 355 North Vernal Avenue, Vernal, Utah 84078, or the Duchesne Ranger District Office, 85 West Main Street, Duchesne, Utah 84021.

**Implementation**
If no appeal is received, implementation of this decision may occur no sooner than five business days after the close of the appeal period.

If an appeal is received, implementation may take place 15 days after a final decision is made on appeal.

/s/Clark Tucker
CLARK TUCKER, District Ranger
Roosevelt/Duchesne Ranger District
Ashley National Forest

May 6, 2004
Date