



United States
Department of
Agriculture

Forest
Service

Smokey Bear Ranger District

901 Mechem Drive
Ruidoso, NM 88345
(505) 257-4095

File Code: 2810/1950

Date: July 10, 2008

Mr. Kenneth Pavlich
El Capitan Precious Metals, Inc.
1325 Airmotive Way, Suite 276
Reno, NV 89502

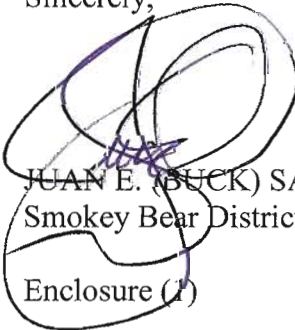
**CERTIFIED MAIL – RETURN
RECEIPT REQUESTED
NUMBER: 7004145000384185236**

Dear Mr. Pavlich:

Enclosed is a signed Memorandum of Understanding (MOU) between the United States Forest Service, Lincoln National Forest, and El Capitan Precious Metals Inc. The purpose of this MOU is to articulate the working agreement whereby a third-party contractor will prepare an environmental analysis associated with the request to conduct exploration activities detailed in the Plan of Operation submitted by El Capitan Precious Metals, Inc. to the Smokey Bear Ranger District in May 2008.

The MOU describes the statement of mutual interests and benefits including terms and conditions that each party willfully recognize and agree too abide by. Note that either party, in writing, may terminate this MOU in whole, or in part, as stated on page 7 of this MOU.

Sincerely,



JUAN E. (BUCK) SANCHEZ
Smokey Bear District Ranger

Enclosure (1)



MEMORANDUM OF UNDERSTANDING
Between
USDA FOREST SERVICE
Lincoln National Forest
and
El Capitan Precious Metals Inc.

This **Memorandum of Understanding (MOU)** is hereby entered into by and between the USDA Forest Service, Lincoln National Forest, hereinafter referred to as the Forest Service, and the El Capitan Precious Metals Inc, hereinafter referred to as the ECPMI.

A. PURPOSE.

The purpose of this MOU is to articulate the working arrangement whereby a third-party contractor (GL Environmental) would prepare an environmental analysis to analyze the ECPMI Plan of Operation (POO) to conduct minerals exploration associated with up to 112 test cores as described in the May 2008 POO.

B. STATEMENT OF MUTUAL INTERESTS AND BENEFITS.

Based upon the project description and other information provided by ECPMI and GL Environmental and an initial assessment of the Project, the Forest Service has determined that an Environmental Assessment (EA) must be prepared to determine whether an Environmental Impact Statement (EIS) is required or a Finding of No Significant Impact may be prepared. The NEPA documents will be prepared by a GL Environmental in a manner consistent with the applicable legal requirements.

The parties agree that the analysis will be given a high priority, will be initiated and completed promptly, will utilize existing information and resource specialists to the greatest extent appropriate, will focus on key environmental issues, and will provide an opportunity for full participation by interested members of the public and governmental agencies consistent with the applicable legal requirements.

The parties recognize that the Forest Service retains sole responsibility for making decisions with regard to the analysis.

C. IN CONSIDERATION OF THE ABOVE, THE PARTIES AGREE AS FOLLOWS:

1. It is understood by ECPMI and the Forest Service that the analysis will be prepared by GL Environmental. ECPMI will include in its contract with GL Environmental the scope of work provisions provided to ECPMI on May 16, 2008. GL Environmental may obtain technical assistance or information from one or more independent, third-party subcontractors subject to Forest Service approval.

2. Based upon a review of the project and the information developed to date, the Forest Service and GL Environmental will make an effort to meet a time schedule mutually agreed upon in writing by ECPMI and the Forest Service. The schedule may be subsequently modified due to events or conditions beyond the control of the parties. In this event, the Forest Service will work with ECPMI on a new schedule.
3. Meetings and/or teleconferences between ECPMI, GL Environmental, and the Forest Service, for the purpose of exchanging facts and/or information, and updating the status of the analysis, will occur during the project planning stages at the following key points in the planning part of the process:
 - a. Prior to establishing a written time schedule for the preparation of the analysis.
 - b. The pre-work meeting with the GL Environmental and to review this MOU and the contract.
 - c. Prior to the initiation of scoping. Prior to any change in the scope of the analysis.
 - d. Prior to issues/content analysis and the development of alternatives, including mitigation measures.
 - e. Prior to the development of an internal draft EA, including the effects analysis.
 - f. Prior to public notice and comment for the EA. Note that the Forest Service intends to conduct a formal Regional review of the NEPA process/documentation.
 - g. Prior to issues/content analysis associated with the notice and comment period for the EA.
 - h. Prior to the issuance of a Decision Notice and/or NEPA documentation, as needed.
4. These meetings/teleconferences in no way limit the communications between the ECPMI, GL Environmental, and the Forest Service regarding questions of procedural matters, scope of analysis, technical feasibility, mitigation, or other matters. All such meetings will generally include the Forest Service Point of Contact and the principal contacts for ECPMI and GL Environmental.

D. THE FOREST SERVICE SHALL:

1. Establish a principal point of contact for the Forest Service as the Project Manager on all matters relating to the environmental analysis and the preparation of the document. The duties of the Project Manager shall include oversight of analyses using past relevant studies and reports, and information supplied by ECPMI and GL Environmental, the Forest Service, other agencies, and any subcontractors where necessary. The goal is to facilitate appropriate and efficient communication between the Forest Service, ECPMI,

and GL Environmental, the public, and affected Federal State and local agencies, to expedite the flow of information necessary for the analysis.

2. Provide contract provision to be included in the contract between ECPMI and GL Environmental in accordance with the terms of this MOU.
3. Furnish copies of the following information to GL Environmental:
 - a. Forest Plan
 - b. Forest Service NEPA Handbook 1909.15 (on website)
 - c. 40 CFR 1500, NEPA regulations (on website)
 - d. 1900-01 training slides with relevant FS-R3 NEPA standards
 - e. Sample EA(s) for general format to be followed.
 - f. FS-R3 requirements for project records, along with a sample Index to follow for format and general content.
 - g. FS directives for NEPA analysis using the Visual Quality System and new Scenery Management System analysis, plus the Recreation Opportunity Spectrum analysis.
 - h. Terrestrial Ecosystem Mgt book and NRIS-Terra data (soil data).
 - i. MIS Assessment, latest R3 sensitive species list for LNF, and list of federally listed or candidate species that must be considered for LNF; plus species concurrence list from USFWS when it is available.
 - j. Latest FS direction on effects analysis for migratory birds.
 - k. Latest FS direction on addressing Environmental Justice, and access to NRIS Human Dimensions module for social and economic analysis purposes (demographic data, etc)
 - l. Query from range database regarding potentially affected allotments, authorized cattle numbers, permittees, season of use, etc. (as needed by GL Environmental)
 - m. GIS and other database information about past/on-going land uses such as past timber sales, mining activities, prescribed burns, wildfires, etc. for cumulative effects analysis.
 - n. FS directives regarding development of BA, BE, and Wildlife Report, including sample BA, BE, and Wildlife Report.
 - o. Mailing lists that GL Environmental may use along with other lists for developing the initial scoping letter.
 - p. A written description of the decision (selected alternative) and decision rationale for use by GL Environmental in drafting the FONSI.

4. Meet/conference with ECPMI and GL Environmental the environmental analysis discuss at a minimum the following topics:
 - a. The significant issues that will be addressed in the analysis.
 - b. The design criteria for the proposed action and the alternatives to the proposed action.
 - c. The alternatives to be analyzed in detail and the alternatives that will not be analyzed in detail.
 - d. The changes to the EA required by the comments received from the public.
 - e. Mitigation measures and analysis and disclosures required by those measures.
5. Make its own independent evaluation of the information submitted by ECPMI and GL Environmental, subcontractors, or others, and have responsibility for its accuracy (40 CFR 1506.5(b)). Make the final determination of the inclusion or deletion of material from the analysis and in all instances involving questions as to the content of any material (including all data, analysis, and conclusions). Make arrangement for a formal Regional Review of the NEPA process/documents.
6. Provide the necessary and available personnel and other resources to complete their responsibilities in a timely and professional manner.
7. Coordinate the release of the Decision Document.

E. ECPMI and GL ENVIRONMENTAL SHALL:

1. Establish a principal point of contact for all matters relating to the environmental analysis.
2. Require a disclosure statement to be executed by the GL Environmental and subcontractors stating that they and their professional personnel have no financial interest in the outcome of the environmental analysis and decision.
3. Provide to the Forest Service any justifiable, necessary, or relevant technical or environmental information it may have, which is needed (at the Forest Service's discretion) for review of the process and analysis.
4. Respond to data requests and provide review comments (e.g., on description of the project and changes thereto) within a reasonable time set by the Forest Service.
5. Provide information about the feasibility of design criteria, mitigation measures and related agreements as requested by the Forest Service.
6. Be solely responsible for all GL Environmental and subcontractor fees, costs, and expenses and make no claim against the Forest Service for such fees, costs, and expenses.

7. Fund all reproduction, printing, and distribution of preliminary, Draft, and Final documents, unless otherwise agreed to by the Forest Service.
8. Consistent with the applicable legal requirements, maintain the official administrative record for the project until the decision is signed. At that time, the project record will be delivered to the Forest Service.
 - a. The Forest Service shall provide direction to GL Environmental for design, organization, indexing, preparation and maintenance of the administrative record for the project.
 - b. The GL Environmental shall document the sampling, testing, field observations, literature searches, analysis, recommendation, and other work which provides source material for the analysis, and any Supplements to them. GL Environmental shall also document all the Forest Service's records in a similar and compatible manner.
 - c. The documentation shall be assembled in some organizational system which will make it possible for the responsible official to refer conveniently to specific documents or pages within documents. The source documents shall be listed. The list shall show the date, author, addresses, subject and document or page number. The list shall be an appendix to the analysis and used to incorporate by reference the items on the list in the analysis.
 - d. The list shall be prepared on a current basis throughout the environmental analysis and documentation processes so that it reflects the following information for each document: date, document number, page number, author, addressee, issue, sub-issue, and by page number. Provision should be made for printing reports of the sorted information.
 - e. Two complete copies of the record will be available to the public during the Draft analysis comment period. Any documents added after the comment period is prepared shall be included in the set of documents.
9. Consistent with the applicable legal requirements and review/approval of the Forest Service:
 - a. Develop a public involvement plan for the public scoping.
 - b. Arrange for and participate in the agency and public scoping meetings and make available to the Proponent and the public any summary of the results.
 - c. Design visual aids for meetings and open houses including maps, handouts, poster boards, mailers, etc.

- d. Develop an information mailer/newsletter and news releases for the scoping period and comment period, as well as for the release of the final analysis and decision documents.
- e. Develop a mailing list and, at the direction of the Forest Service, draft responses to comments for Forest Service approval.
- f. Be responsible for conducting and completing all necessary studies, inventories, and suitable reports for all resource values in the scoping process. These resource values may include but not be limited to: Cultural features; sensitive, threatened and endangered plant and animal species; wetlands; visual esthetics; fisheries and; riparian zones, and tundra environments.

F. IT IS MUTUALLY AGREED AND UNDERSTOOD BY THE PARTIES THAT:

1. ECPMI and GL Environmental recognize that the Forest Service will make the final determination concerning the scope and contents of the consultant's work. The contract between the ECPMI and GL Environmental will specify compliance with all applicable legal requirements.
2. All information and data collected by the GL Environmental and any subcontractors will be inserted in the administrative record.
3. The complexity and the independent nature of the NEPA process requires a common understanding of the roles of the Forest Service personnel, ECPMI, GL Environmental, and other interested persons, agencies, and organizations.
4. The independent nature of the NEPA process creates the need to conduct the process with integrity. The Forest Service Point of Contact will establish the process for the efficient flow of communication between the ECPMI, GL Environmental, and the Forest Service.
5. All planning data, maps, files, reports, computer, audio or video tapes, and disks and other records will be made a part of the permanent administrative record.
6. In the event of a challenge to the legality or adequacy of the Forest Service compliance with NEPA with respect to the proposal of ECPMI, GL Environmental, and their professional personnel, and the subcontractors shall, at ECPMI's expense, make available to the federal government all pertinent non-privileged information under their control, and to the extent reasonable, discuss such information with the government, provide necessary declarations or affidavits, and testify at deposition, evidentiary hearing, or trial regarding such information.
7. As required by NEPA, the environmental analysis process will give full consideration to a "No Action Alternative" and other alternatives identified by the ID team that are technically and economically feasible and address the purpose and need and significant


- issues. ECPMI's financing of this analysis will have no bearing on the consideration given to the "No Action " or other alternatives.
8. Either party, in writing, may terminate this MOU in whole, or in part, at any time before the date of expiration. In the event of termination, it is agreed to as follows:
 - a. The analysis preparation process will terminate.
 - b. All documentation, reports, analyses, and data used in the analysis developed by ECPMI, GL Environmental, and their subcontractors up to the date of termination will be delivered to the Forest Service and be placed in the administrative record.
 - c. Participation by the Forest Service will be constrained by federal government staffing and budget limitations.
 9. Any information furnished to the Forest Service under this MOU is subject to the Freedom of Information Act (5 U.S.C. 552).
 10. This MOU in no way restricts the Forest Service or ECPMI from participating in similar activities with other public and private agencies, organizations, and individuals.
 11. The Forest Service and ECPMI and their respective agencies and offices will handle their own activities and utilize their own resources, including the expenditure of their own funds, in pursuing these objectives. Each party will carry out its separate activities in a coordinated and mutually beneficial manner.
 12. The principal contacts for this MOU are: Adam Mendonca, Planner, Smokey Bear Ranger District, Lincoln National Forest, 575-257-4095 and (name, title, address, phone # for both parties)
 13. Nothing in this MOU shall obligate either the Forest Service or ECPMI to obligate or transfer funds. Specific work projects or activities that involve the transfer of funds, services, or property among the various agencies and offices of the Forest Service and the ECPMI will require execution of separate agreements and be contingent upon the availability of appropriated funds. Such activities must be independently authorized by appropriate statutory authority. This MOU does not provide such authority. Negotiation, execution, and administration of each such agreement must comply with all applicable statutes and regulations.
 14. This MOU is not intended to, and does not create, any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by a party against the United States, its agencies, its officers, or any person.
 15. This MOU may be amended upon mutual written agreement of all parties.
 16. This MOU takes effect upon the signature of the Forest Service and ECPMI.

17. By signature below, the Proponent certifies that the individuals listed in this document as Representatives of the Proponent are authorized to act in their respective areas for matters related to this MOU.

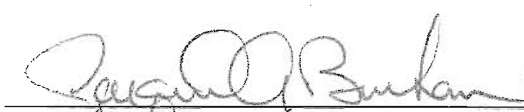
THE PARTIES HERETO have executed this MOU.

El Capitan Precious Metals Inc.
1325 Airmotive Way
Suite 276
Reno, NV 89502
775-786-6444

USDA FOREST SERVICE
Lincoln National Forest
1101 New York Avenue
Alamogordo, NM 88310-6992
(505) 434-7200



Kenneth Pavlich **20-Jun-2008**
President **DATE**

 6/30/08

Jacquie Buchanan **DATE**
Forest Supervisor

The authority and format of this instrument has been reviewed and approved for signature.

 06/30/08

Rene Arnold **DATE**
for **Forest Service Grants & Agreements**
Specialist