



File Code: 2800
Date: July 28, 2016

Mr. James Hollen
Sr. Mine Reclamation Specialist
Mining Act Reclamation Program, Mining and Mineral Division
1220 South St. Francis Drive
Santa Fe, New Mexico 87505

Dear Mr. Hollen:

This letter is in response to your June 29, 2016, request for review and comment on the Minimal Impact Existing Mine Permit Modification Application submitted by El Capitan Metals, Inc. (ECPMI). The Lincoln National Forest has been working with ECPMI in order to get it in compliance with Forest Service laws and regulations. In particular, the only road access to the ECPMI private land where its mine is situated is across National Forest System Road (NFSR) 489A via NM Highway 246.

Prior to March 2016, ECPMI held a road use permit to haul mined material off of its private land using NFSR 489A. At the end of March, ECPMI terminated its road use permit for access across National Forest System lands, and erroneously asserted a purportedly vested R.S. 2477 right to use and modify NFSR 489A. ECPMI's position is not tenable,¹ and since terminating its permit ECPMI has no authorization or right to utilize NFSR 489A for access to their private property for mining purposes.

Please further note that ECPMI is not now, nor has it ever been, authorized to undertake road construction on NFSR 489A. All work that was conducted by ECPMI at the end of March to widen and shape NFSR 489A was done without the required environmental analysis and authorization by the USFS. This has resulted in resource damage on National Forest System lands, and an investigation is currently underway to ascertain the nature and extent of such damage to surface resources.

Moving forward, ECPMI must now obtain new authorization from the USFS to use NFSR 489A to access its private property for mining purposes. To obtain such authorization, and pursuant to 36 CFR 228 Subpart A, USFS requires ECPMI to submit a Mining Plan of Operations for

¹ The law is clear that a private entity, such as ECPMI, cannot hold an R.S. 2477 right of way and cannot state a claim to an R.S. 2477 right of way. Such a claim can only be made by a government entity. To our knowledge, Lincoln County has never stated an R.S. 2477 claim to NFSR 489A.



commercial use of the road based on ECPMI's assertion that NFSR 489A is needed for mining operations on its private land.

In closing, it is important for all parties to recognize that regardless of what the State of New Mexico's Mining and Minerals Division, the Mine Safety and Health Agency, or any other agencies require, ECPMI must have a valid authorization from the USFS to use NFSR 489A. Any further commercial use of, or improvements to, NFSR 489A by ECPMI at this time is not authorized, and is in violation of our regulations.

If you have any additional questions, please contact me at 575-630-3010 or hmnoel@fs.fed.us.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Heather Noel', with a stylized flourish at the end.

HEATHER NOEL
District Ranger