
FMG Respondents' outstanding objections and evidence subject to limitations under the *Evidence Act 1995* (Cth) (EA)

Witness Statement of Fabien (Charlie) Cheedy

(Paragraph / Part of Paragraph)	Objection	Applicant's response	Resolution/ Ruling required
[16] (7th sentence); [17] (3rd sentence); [43] (3rd sentence)	Relevance (Social disharmony)		Resolution: the parties have agreed that the ruling on this objection is appropriately dealt with when judgment is delivered because whether social disharmony is compensable under Part 2, Division 5 of the NTA is a matter in issue between the parties.

NOTICE OF FILING

Details of Filing

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Registry:	WESTERN AUSTRALIA REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink that reads "Sia Lagos".

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.

WITNESS STATEMENT OF FABIAN (CHARLIE) CHEEDY

Federal Court of Australia

No: WAD 37/2022

District Registry: Western Australia

Division: General

YINDJIBARNDI NGURRA ABORIGINAL

CORPORATION RNTBC (ICN 8721)

Applicant

STATE OF WESTERN AUSTRALIA and others

Respondents



Background

1. My name is Fabian Cheedy, though I mainly call myself Charlie.

Filed on behalf of the Applicant

Prepared by Simon Blackshield

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2. I am the son of Robert Cheedy, an Yindjibarndi man, and Amy Mitchell a Nyamal woman. I was born 20 March 1976 at Port Hedland Regional Hospital. My *Galharra* skin group is *Garimarra*.
3. My father's father was Ned Cheedy and my father's mother was Cherry Cheedy (nee Gilbie). They were both Yindjibarndi.
4. I was brought up on my father's side, my father's mother brought me up, and I've been taught only one way. That's why I'm an Yindjibarndi and know all about Yindjibarndi country and Law.
5. I am a common law native title holder as recognised by the Determination of the Federal Court in *Daniel v State of Western Australia* [2005] FCA 536 and upheld by the Full Court in *Moses v State of Western Australia* [2007] FCAFC 78 (**Ngarluma Yindjibarndi claim**) and in *Warrie on behalf of the Yindjibarndi People v State of Western Australia (No 2)* [2017] FCA 1299 (**Yindjibarndi #1**). I am a member of the Yindjibarndi Aboriginal Corporation (**YAC**) and have been a Director of YAC since 10 December 2018. I am not a member of the Wirlu-Murra Yindjibarndi Aboriginal Corporation (**WYAC**).
6. After I was born, my parents took me to Mulga Downs Station, where my father was working. We stayed there until I was two-years-old when my father moved to Woodbrook for a year or so until my parents separated. After that I went to live with my father's mother, Cherry Gilbie, and Wilson Wally, an Yindjibarndi man, who are the parents of Lyn Cheedy. Lyn is my mother, being my dad's younger sister. My grandmother, Cherry had previously been married to my grandfather Ned Cheedy and, although they separated, they were never jealous and never fought with each other. At Law time we would all go together as one family.
7. Under Yindjibarndi Law, family relations are a bit different. I was born in 1976, and Angus Mack was born in 1972, so he's just a bit older. Yet he is my *maali* (grandfather) by Yindjibarndi Law because my grandfather and him are brothers. This is because Angus is the son of Long Mack. He's like a next father to my father now, it does not matter that my actual *babu* (father) is older than him. My

father still has to respect him like he's the next father in line. In the same way, all my father's 'brothers' (by law) are my fathers and I call them my *babu* with the proper respect.

Birdarra Law and the Bundut

8. I went through *Birdarra* Law at Woodbrook in 1993 with Angus Mack and Kevin Wilson and have been to Woodbrook for Yindjibarndi Law ceremonies. I've also travelled to other places to invite members of other communities to come to the Yindjibarndi Law ceremonies: Cane River, Yandeyarra, Warralong, Le Grange, Looma, Cotton Creek, Punmu, Jigalong, Nullagine and Wakathuni,.
9. When I was growing up, I would go with my two grandfathers and my grandmother and the rest of my family to Nhumbugunna (Wittenoom) during the school holidays. We would take our time and pull up in the Yindjibarndi #1 claim area at Thardiwurrungganha (Clowbar) or Hooley Creek. We would camp at Hooley Creek, then get up in the morning and go to Nhumbugunna. We would visit my *abijee* (grandmother's brother), Guinness Gilbie (deceased) when he used to live in Wittenoom.
10. When I was younger I used to go on trips all over Yindjibarndi country to hunt. When I came back from the bush I would go speak to the old people. I would tell them where I had been and they would tell me the names and stories for each place. My grandfather would tell me to keep doing the Law so I could teach young people. So, after that, I took all my brothers through *Birdarra* Law at Woodbrook. That's where you have a *Birdarra* up above the river and then, after you've done those *Birdarra* songs, the *jirlimindi* and *Bundut*, you go down the river with the *marrara* (the younger brother who will be initiated), and sing the other song all night, but that's for men only. I will speak to the Judge when he comes to my country for the hearing in August 2023 about men's Law and the *Bundut* going through the Solomon Hub Project Mine (the **Mine**) in a hearing just for men only. I gave men's

restricted evidence to Justice Rares in September 2015 prior to most of the Mine being developed.

11. Up until about 2012 or 2013 I had regularly accessed the area that is now the Mine site, via the Nanutarra Wittenoom Road and the Rio Tinto Access road to hunt and camp, and to collect ochre and sacred stones for use in Law ceremonies and to take to Law business in various parts of the Pilbara. The Law Carriers sang the songs lines in the *Bundut* that run through the area, told the creation stories and the Yindjibarndi men gave the Judge a restricted map, which shows the sites that were sung and spoken about.
12. During men's Law time before the evening star goes down, we start singing. Before the start of the *Bundut* we sing two *jirlimindi* songs, one for each *jirli* armband that the boys have to wear. Then the women dance and the men sing the *Bundut*.
13. The *Bundut* is one long song, sung in an ancient language, which follows the path of the *Marrga* man (who *Minkala* (God) put on the earth) as he spread his Law through different countries. The Law started at Millstream, in Yindjibarndi country, all tribes will tell you that. In the *Bundut*, which goes for about six or seven hours, you go along the path stopping at many sacred places. When we get to that certain place in the song, we'll sing that place's song, we feel that we are in that place at that time, and we sing about what all the features of each place and the animals in it mean. We sing about *mundas* (hills), caves, *jinbis* (springs), and *mowan thalu* (sacred) sites. We sing near where Solomon mine is now, called Bankangarra *jinbi* (near Ganjingaringunha). Along with others I sing about birds and lizards, spinifex grass and other animals and plants. I might sing each place once, or twice or three times before moving onto the next place.
14. Then the boys go down the creek with the Law men and they do another ceremony that goes until the morning star, *bindirri bundurru*, is getting up. We then go back up the creek and put the young fella on the bed of leaves in the Birdarra camp, he has to put his hand in the flour and then walk in the leaves,

while we sing a song in Yindjibarndi. Then the young fella lies down and the mothers and fathers sing another song. They take the *jirlimindi* off. Then the family get up and go cry, because the young fella has gone and become a man.

15. Then there is a closing ceremony. We talk to the *manjangu* line about each young fella. Each *manjangu* that had a special role in the men's ceremony puts charcoal from the fire we used down by the river, which is named after the song we sing there, on his initiated fella's chest. The young fella can't talk to him anymore. The *manjangu* is paid with milk, honey, sugar and teabags.

Nyinyaard

16. The Yindjibarndi have a culture of sharing and it is our law and custom to make sure everyone is looked after especially our Elders. I was taught these rules by my father's parents and other Elders. The rules about the *Nyinyaard* include the rules about the *Galharra*. The rules about the *Galharra* are about people in each of the four skin groups: Garimarra, Balyirri, Banaga and Burungu. These skin group ensure that Yindjibarndi People marry the right way and have other social obligations to each other. For example, at Law times different skins do different jobs for the ceremony depending on the *Galharra* of the boy who is going through the Law and his parents. Now that the WYAC members are not joining with YAC members to do Law business together they are not following through with their *Galharra* obligations.
17. When we have a meeting and talk about Law, we speak about how the Law runs, the *Galharra* system, and that you have to make the Law run according to that. I was taught the system of Law by Elders, like my grandfather Ned Cheedy, and I practice it. The Law business is being broken by the split between YAC and WYAC members who will not come together as they used to, and as is required by Yindjibarndi Law.

Significant sites and *thalus*

18. I go to different places such as Wirlu-Murra and Ganjingaringunha to get the sacred stone and ochre for Birdarra Law. I started going to Garliwinjinha, Ganjingaringunha and Wirlu-Murra when I was a kid and then when I started my own family after I got married in 1994. Now I take my grandkids to these places. We go hunting for emu and kangaroo, camp out there where I teach them how to cook meat properly in the traditional way, whether it is kangaroo, emu, turkey or porcupine. I always tell them the Yindjibarndi names of the places, plants and animals we see. Now the Mine has been built it is difficult to access Bangkangarra and Ganjingaringunha because the tracks are all fenced and gated off due to the mining works. To get to Bangkangarra I have to go around a very long way as I cannot take the tracks my ancestors did before the Mine was built.

Speaking for country and permission required

19. There's a boss for all 13 areas that make up Yindjibarndi *ngurras*. These people get together at meeting times and talk about the country and our culture together as a group. If everything was still the way it should be before the Mine was built a *manjangu* (stranger) would have to ask permission to come on to country by talking to the men. These men would get together and they would talk about it, because they all have the same idea about the country. Yindjibarndi people have not given FMG permission to build the Mine. FMG should have got that permission but they have not.

Working at the Mine

20. I have worked at the Mine for FMG for the last 16 months. Before that I worked for Rio Tinto for more than 20 years. My last job there was as a ship loader. I stopped working at Rio Tinto because I was put on probation for 12 months. I had a few drinks with a friend and went to work the next morning. I had to do a random alcohol test and I had a blood alcohol limit of 0.02. Rio Tinto's policy is that to work you cannot have any blood alcohol reading.

21. I am an excavator operator at the Mine. I call the excavators diggers. I operate a Liebherr 996. It has a 75-tonne capacity bucket. It takes three buckets to load a truck. The trucks are Caterpillar 793s. They carry 250 tonnes. The 996s are the big diggers. They are called the high priority diggers. The trucks that I load on the 996s are autonomous and no person is driving them. In a shift I usually load 30,000 tonnes of ore. I have done more than that sometimes. I am one of the most productive digger operators. The way a pit is mined is that you take out one flitch at a time. Each flitch is 4m deep.
22. Yet, I feel guilty about doing this job. Working on the Mine is breaking my *wirrard*.

The Pits

23. When I would look at the country where the Mine is, it was beautiful. You can see what the Mine area once looked like when you look at the area surrounding the Mine. The Mine site was full of waterways and permanent pools. They have all been destroyed now. Ganyijingarringunha *wundu* was a large creek that ran through the mine. It is dry now. There is no water in it. FMG has built a causeway up high off the ground along the creek bed.
24. There is a grout wall that has been built to stop the underground water coming in from Wirilu-Murra *jinbi* and Wirilu-Murra *wundu* (creek) into the Queens pit. Holes are dug vertically into the ground and grout or cement is poured into them to make the wall. The water is not flowing from Wirilu-Murra *wundu* or Ganyijingarringunha *wundu* like it once did. I have noticed that the water levels in these *wundus* are so low that they are dry or they are lower than I have ever seen them.
25. There are five pits at the Mine site. A pit is a big hole in the ground. There are different crews who run each pit. The pits are called Freddie's, Firetail, Kings, Trinity and Queens. I have worked in all 5 pits. There are crushers at Kings, Queens and Firetail. Queens is the biggest pit at the Mine. If I needed to describe the size of Queens to a child I would say that it is as big as Roebourne. There are 7 diggers there at the moment. From the top of Queens to the bottom of Queens I estimate is about 300 metres.

26. When I load a robot truck at Queens it goes to unload at the Queens crusher. The ore is crushed and goes on a conveyor belt to the OFP (Ore Finery Plant). The ore gets crushed again and then milled to a certain size. It is called a wet plant. Water gets added to the mill to wash the ore. This washes away the clay and other things. The ore then goes in a conveyor to the Firetail plant. It is called the Dry Plant. The conveyor is about 2 kms long. The ore is milled again at the Firetail plant. The ore becomes finer. Then the ore goes on another conveyor to the TLO, which is the train load-out. The TLO is about 2 kms from the Firetail Plant. All the ore is stockpiled there. There are reclaimers to load the ore onto trains.
27. There are two miner's camps, one for workers and one for visitors and contractors. The workers' camp is called Kangi. That is where I stay when I go for my swing shift. Kanji is a two-story camp. It's very big. A lot of people stay there. I do not know how many people stay there but I would estimate it would be in the hundreds. My swing goes for 2 weeks. I do a week of day shifts and a week of night shifts. The shifts are 12.5 hours long. At the end of my swing I go home to Karratha for a week. I fly to the Mine from Karratha. It's a 20 minute flight. The other camp, for the visitors and contractors, is called Deli.

Photo of the Mine

28. Annexed hereto and marked "FC-1" is a batch of seven photos which have been shown to me, and which are labelled "Pic One" through "Pic Seven". Pic One is an aerial photo of the Mine. I estimate that this photo was taken approximately one year ago, from looking at the works shown in that photo and the mining I know that has been done since it was taken. The yellow colour in the pits is the colour of the soil once the pit gets to a certain depth.
29. Marked on Pic One is some new work that has been done on the Mine since that photo was taken. Zoomed-in photos have then been taken of the area shown on Pic One to show these new works up close. Where the yellow is on this photo the depth of the pits would be an extra 30 or 40 meters from the other areas that are

adjacent. The depth would be between 80 and 100 metres. I know this because the soil changes colour to yellow at that depth.

30. "Pic two" is another photo showing a pit called Brad's. Unlike in the photo, the whole area marked on that map has been dug out now. The pit goes down 5 or 6 benches deep. A bench is 6-10 metres high. So Brad's pit is between 30 and 60 meters deep.
31. Pic Three is a zoomed-in photo of the Firetail area. You can see stockpiles in this photo and digging along the top of a hill. An area which FMG workers call "sniper" is marked on that photo. The top off that hill is being blown up at the moment and then FMG will keep levelling it off until it goes as deep as they want it to go.
32. Pic Four shows the Queens pit, marked to show how the pit is getting bigger and is being joined up with the smaller pit nearby. FMG is blasting there now and it will be joined up as one pit soon.
33. Pic Five shows the Sniper pit (the smaller pit) alongside an area called The Joff (the larger area marked). The Joff has now been flattened right across. There are no more hilly parts or vegetation in the area marked on that photo. All the dirt gets piled up and just covers the vegetation and the caves. The Firetail area is full of caves. I have seen them there. They are getting covered over with dirt now.
34. On Pic Six, an area is marked that is now a large stockpile in the Queens area.
35. On Pic Seven, the stockpile shown in Pic Six has been marked, along with 3 waste dumps. The waste dumps are the 2 triangular-shaped markings and the markings with an unusual shape. The other 2 areas marked are pits that are being joined up together into one long pit (the waste dumps are linked by 2 lines drawn on the photo). In those waste dumps there were caves that were all filled in and flattened and the waste has been dumped over the top. To make the stockpile shown in Pic Six, all that part of the hill was flattened too. I know there were caves in that area because I saw them.

Meetings I have attended as an Yindjibarndi Person

36. I try to attend as many YAC meetings as possible, but I cannot always attend them because I am working on a shift. I attended the meeting held on 12 February 2008 at the Basketball Court with more than 70 other members of the Yindjibarndi #1 Claim group including Aileen and Allery Sandy. The meeting unanimously resolved:

“That the Yindjibarndi people continue to hold their position with the Fortescue Metals Group (FMG) – that is that we will continue to suspend and not perform Yindjibarndi heritage surveys for FMG until the Yindjibarndi people, via their representatives, reach a signed Land Access Agreement with FMG on their three tenements - E47/1333, E47/1334 and E47/447.” Annexed to the affidavit of Simon Charles Blackshield affirmed 1 May 2023 (**First SCB Affidavit**) and marked “**SCB-7**” are the meeting minutes dated 12 February 2008.

37. I attended a YAC Directors’ meeting followed by YAC AGM on 17 December 2008, Aileen Sandy, Sylvia Allan and Maudie Jerrold also attended the meeting. Annexed to the affidavit of Simon Charles Blackshield to be affirmed 18 May 2023 (**Third SCB Affidavit**) and marked “**SCB-53**” are copies of the meeting minutes dated 17 December 2008.

38. I attended a YAC general meeting on 16 March 2010. Others YAC members present at that meeting were present include Aileen Sandy; Sylvia Allan, Maudie Jerrold; Bruce Woodley and Allery Sandy. A copy of the minutes of the 16 March 2010 meeting is annexure “**SCB-54**” to the Third SCB Affidavit.

39. I attended a meeting on 16 March 2011, arranged by FMG at the 50 Cent Hall. At the meeting Andrew Forrest accused Michael Woodley of not telling the truth about comparable mining agreements. I got up to give my response because of my experience working for mining companies like Rio Tinto and knowing how much money they make. Ronald Bower tried to stop Michael Woodley from passing the microphone to me. After a short exchange, he and I said the following

words (as partially recorded on page 21 of the transcript of the meeting, which is annexure "**SCB-27**" to the First SCB Affidavit:

Fabian (Charlie) Cheedy: "I just want to say something, now."

Ronald Bower: "[***unintelligible] ...keep it down to about two minutes [***unintelligible]."

Fabian Cheedy: "You know, some of you people, what you think ah, about the money that he, that can give, Mr Forrest can give you \$4 million dollars. And you think \$4 million dollars is a lot of money. It's a lot of money alright! But you think now, this man, from your country, he can make that in one week. Financial year, every financial year what he give you? \$4 million dollars, that's a rip off. I tell you now, I work in a mining company Mr Forrest, I know how it goes, right? Every financial year they make big bucks. Even you make big bucks. And you want to give \$4 million dollars and start a business, and get your country. When you go to your country, want to go Ngurranyi (to country), they say, 'Oh what you doing here? We got a mining lease here, you can't step, come here. That boundary? And you want \$4 million dollars? \$4 million dollars is going to get you nowhere, because it will all be gone. It will be gone."

MR BOWER STEPS FORWARD TO STAND NEXT TO MR CHEEDY

Fabian Cheedy: "And you think all these leases in that map, that's, that's, that's just about the whole of Yindjibarndi land! So you think about it, if you want to sign for \$4 million dollars, or you want agree, make an agreement for more money. Because this man can make billions and billions of dollars and give you chicken feed."

42. I attended the YAC AGM on 27 March 2013 at the 50 Cent Hall with 81 other Yindjibarndi People including Aileen Sandy; Sylvia Allan, Celia Sandy, Dianna Smith, Maudie Jerrold; Jimmy Horace; Allery Sandy. A copy of the minutes of the 27 March 2013 meeting is annexure "**SCB-55**" to the Third SCB affidavit.

43. I attended a meeting on 4 May 2021 at the Ngurin Centre between representatives of YAC, WYAC and FMG. It was an information meeting for all Yindjibarndi People to decide on the best way forward to come together and work with FMG to make an Indigenous Land Use Agreement. I was very keen for all the Yindjibarndi People to come back together again and at the meeting I said words to the effect that if we didn't come together "we might go for another 12 years not getting anywhere – and then where will we be? We can't be negative for another 12 years." A copy of the minutes of the 4 May 2021 meeting is annexure "**SCB-45**" to the First SCB Affidavit.

Consultation about a YNAC compensation claim

44. I attended a meeting of YNAC and Yindjibarndi People on 11 December 2021 at the 50 Cent Hall. At the meeting, YNAC consulted with the native title holders in attendance whether or not YNAC should make a compensation claim. There was a lot of support for the compensation claim. Annexed and marked "**SCB-37**" to the First SCB Affidavit is a copy of the Certificate in Relation to Consultation and Consent dated 15 February 2022, which includes the details of the meeting of 11 December 2021.

Signed:



Fabian (Charlie) Cheedy

FC Date: 25 May 2023
25. 5. 23

“FC-1”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following seven pages is the annexure marked “FC-1” referred to in the witness statement made by me on 25 May 2023.



Fabian (Charlie) Cheedy

PIC ONE



PIC TWO



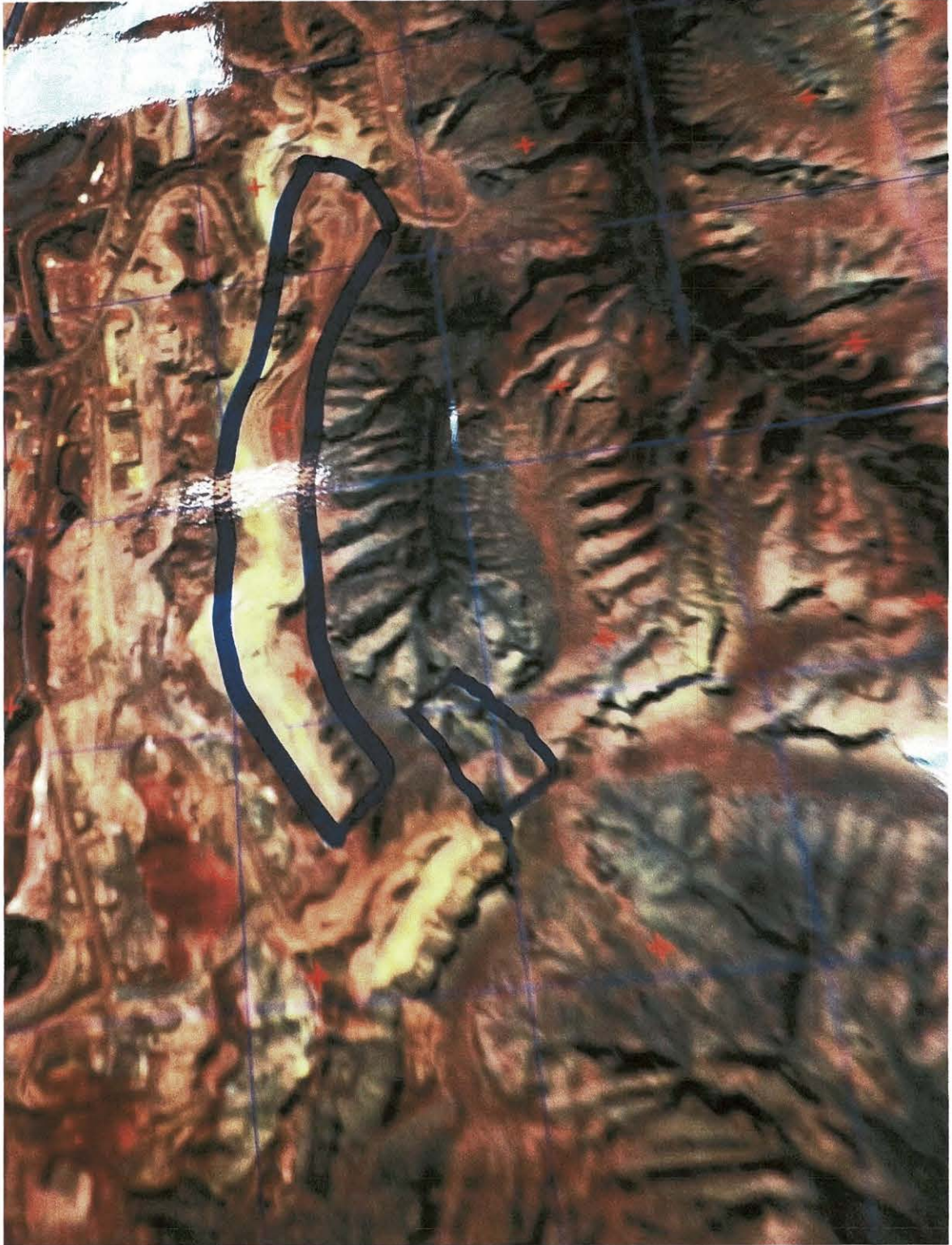
PIC THREE



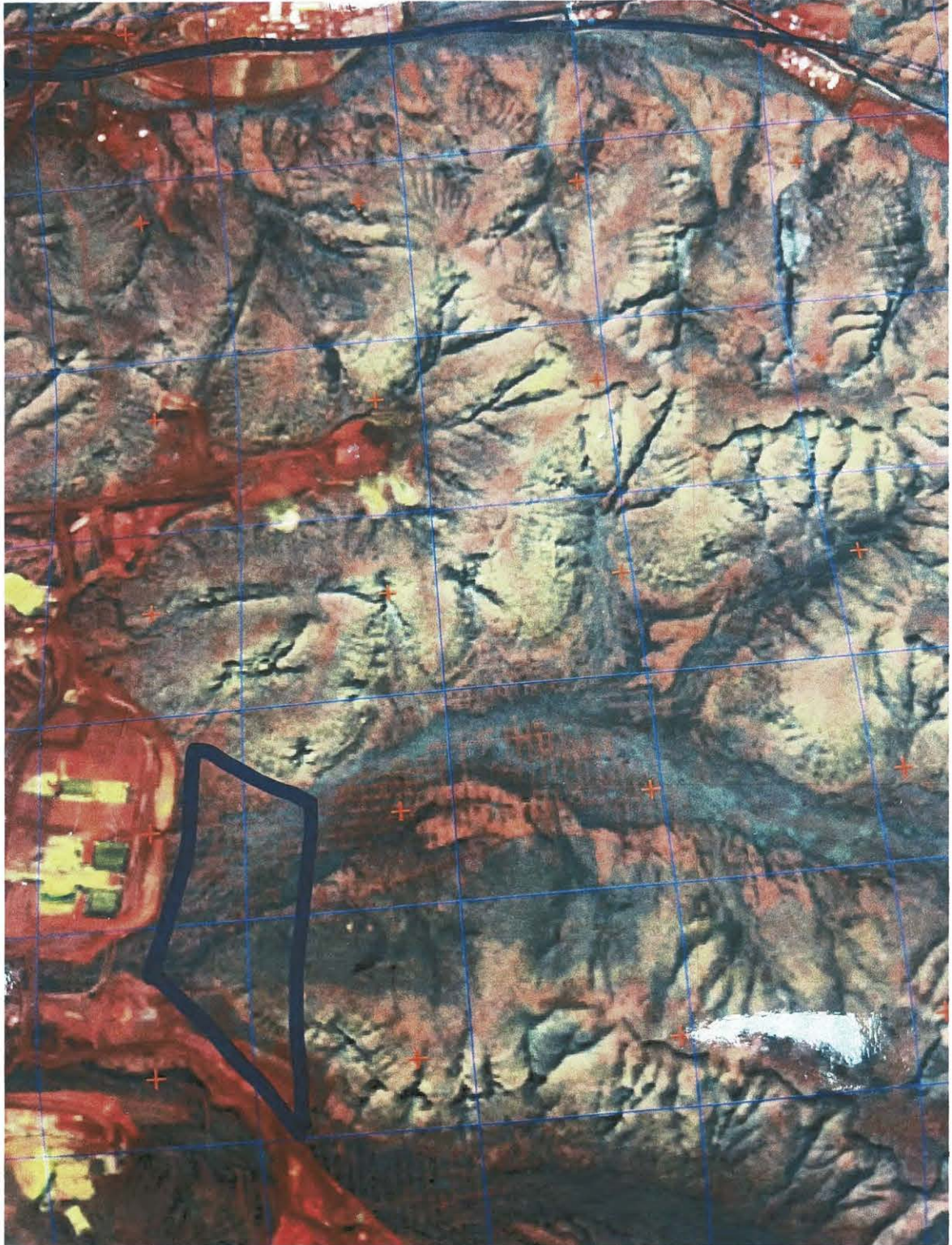
PIC FOUR



PIC FIVE



PIC SIX



PIC SEVEN

