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XSUNX INC
Form S-8
December 27, 2004

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM S-8
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

XSUNX, INC.

(Exact name of registrant as specified in its charter)

SUN RIVER MINING, INC.

(former name of registrant)

Colorado

(State of Jurisdiction of
Incorporation or Organization)

84-1384159

(I. R. S. Employer
Identification Number)

65 ENTERPRISE, ALISO VIEJO, CA 92656

(Address and Zip Code of principal executive offices)

XSUNX, INC.
Employee Stock Compensation Plan

(Full title of plan)

TOM DJOKOVICH
PRESIDENT
65 ENTERPRISE
ALISO VIEJO, CA 92656
949-330-8060

(Name, address and telephone number, including area code, of agent for service)

Copies of all communications, including all communications sent to the agent for service, should be sent to:

Michael A. Littman
Attorney at Law
7609 Ralston Road
Arvada, CO 80002
(303) 422-8127

CALCULATION OF REGISTRATION FEE

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Title of Securities to be	Amount to be Registered	Proposed Maximum Offering Price Per Share*	Proposed Maximum Aggregate Offering Price**	Amount of Registration Fee
Common Stock (\$0.01 par value)	115,000	.41	\$47,150	\$100

* Estimated pursuant to rule 457(c)

** Includes awards that may be granted pursuant to the foregoing plans.

PART I INFORMATION REQUIRED IN SECTION 10(a) OF PROSPECTUS

ITEM 1. PLAN INFORMATION

The documents containing the information required by Part I of Form S-8 will be sent or given to employees as specified by Rule 428(b)(1) of the Securities Act of 1933, as amended (the "Securities Act"). Such documents are not required to be and are not filed with the Commission either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424. These documents and the document incorporated by reference in this Registration Statement pursuant to Item 3 of Part II of this Form S-8, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act.

ITEM 2. REGISTRANT INFORMATION AND EMPLOYEE PLAN ANNUAL INFORMATION

Upon written or oral request, any of the documents incorporated by reference in Item 3 of Part II of this Registration Statement, any of the other documents required to be delivered to Plan participants pursuant to Rule 428(b), and any additional information about the Plan and its administrators are available without charge by contacting:

XSUNX, INC.
TOM DJOKOVICH
PRESIDENT
65 ENTERPRISE
ALISO VIEJO, CA 92656
949-330-8060

PART II INFORMATION REQUIRED IN REGISTRATION STATEMENT

ITEM 3. INCORPORATION OF DOCUMENTS BY REFERENCE

The following documents previously filed with the Commission by the Company for purposes of the information reporting requirements of the Securities Exchange Act of 1934, as amended (the "Exchange Act") are incorporated herein by reference:

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1. The Company's Quarterly Report on Form 10-QSB for the three months ended June 30, 2004;
2. The Company's Quarterly Report on Form 10-QSB for the three months ended March 31, 2004;

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3. The Company's Quarterly Report on Form 10-QSB for the three months ended December 31, 2004;
4. The Company's Annual Report on Form 10-KSB for the year ended September 30, 2003;
5. The Company's Report on Form 8-K filed with the Commission on or about November 3, 2004;
6. The Company's Report on Form 8-K filed with the Commission on or about October 1, 2004;
7. The Company's Report on Form 8-K filed with the Commission on or about August 31, 2004;
8. The Company's Report on Form 8-K filed with the Commission on or about February 25, 2004;
9. The Company's Report on Form 8-K filed with the Commission on or about October 2, 2003;

All documents filed by the Company pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act subsequent to the date of this Registration Statement and prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated herein by reference and to be a part hereof from the date of filing of such documents. Any statement contained in a document incorporated or deemed to be incorporated herein by reference will be deemed to be modified or superseded for purposes hereof to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated herein by reference modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part thereof.

ITEM 4. DESCRIPTION OF SECURITIES

Incorporated by reference to Form 10SB12G for the Company filed February 18, 2000, and subsequent amendments thereto.

ITEM 5. INTERESTS OF NAMED EXPERTS AND COUNSEL

Not applicable.

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ITEM 6. INDEMNIFICATION OF DIRECTORS AND OFFICERS

The Company's By-Laws authorize the Company to indemnify any present or former director, officer, employee, or agent of the Company, or a person serving in a similar post in another organization at the request of the Company, against expenses, judgments, fines, and amounts paid in settlement incurred by him in connection with any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, to the fullest extent not prohibited by the Colorado Business Corporation Act, public policy or other applicable law. Section 7-109-102 of the Colorado Business Corporation Act authorizes a corporation to indemnify its directors, officers, employees, or agents in terms sufficiently broad to permit such indemnification under certain circumstances for liabilities (including provisions permitting advances for expenses incurred) arising under the Securities Act.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers, or persons controlling the Company pursuant to the foregoing provisions, the Company has been informed that in the

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opinion of the Commission such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Company of expenses incurred or paid by a director officer or controlling person of the Company in the successful defense of any action, suit or proceeding) is asserted by such director, officer, or controlling person in connection with the securities being registered, the Company will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

ITEM 7. EXEMPTION FROM REGISTRATION CLAIMED

Not applicable.

ITEM 8. CONSULTANTS AND ADVISORS

The following consultants/professionals/employees will be issued securities pursuant to this Registration Statement:

Name	Number	Type of Services Provided
Randy A. McCall	50,000	Employee/Consultant/Service Provider
Steven R. Davis	40,000	Employee/Consultant/Service Provider
Joe Wojcik	15,000	Employee/Consultant/Service Provider
Sam Del Cielo	10,000	Employee/Consultant/Service Provider

The balance, of shares registered hereunder will be issued for back salary compensation for employees (not current officers) or for back (accrued) services of consultants of the Company.

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ITEM 9. EXHIBITS

Exhibit No.	Title
4.1	Employee Stock Compensation Plan
5.1	Opinion of Michael Littman, Esq.
23.1	Consent of Michael B. Johnson & Company, CPA
23.2	Consent of Michael Littman, Esq.
24.1	Power of Attorney

ITEM 10. UNDERTAKINGS

(a) The undersigned Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement to;

(i) include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

(ii) reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the

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registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and

(iii) include any additional or changed material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement; provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or 15(d) or the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

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(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the Registrant's annual report pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

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SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement, to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Aliso Viejo, State of California on the 23rd day of December, 2004.

XSUNX, INC.

/s/ Tom Djokovich

Tom Djokovich
President