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VIA Email with Hard Copy to Follow

Mr. Neil Kornze
Director
U.S. Bureau of Land Management
1849 C Street NW (WO-200)
Washington, D.C. 20240
Email: sagebrush_withdrawals@blm.gov

Mr. Mark Mackiewicz
PMP National Project Manager
BLM, Price Field Office
125 South 600 West
Price, UT 84501

Re: Scoping Comments on the Notice of Proposed Withdrawal; Sagebrush Focal Areas; Idaho, Montana, Nevada, Oregon, Utah, and Wyoming and Notice of Intent to Prepare an Environmental Impact Statement (“Notice”), 80 Fed. Reg. 57,635 (Sept. 24, 2015).

Dear Mr. Kornze and Mr. Mackiewicz:

I. Introduction

The Women’s Mining Coalition (WMC) is a grassroots organization with members nationwide including the western states where the proposed mineral withdrawal areas are located. WMC members work in all sectors of the mining industry including hardrock, industrial minerals, and coal; energy generation and distribution; manufacturing; transportation; and mining-related service industries. WMC is submitting these scoping comments in response to BLM’s Notice of Proposed Withdrawal; Sagebrush Focal Areas; Idaho, Montana, Nevada, Oregon, Utah, and Wyoming and Notice of Intent to Prepare an Environmental Impact Statement (“Notice”), 80 Fed. Reg. 57,635 (Sept. 24, 2015). WMC is providing these comments on the Proposed Mineral Withdrawal Environmental Impact Statement (“EIS”) because our members have numerous interests that are adversely affected by the proposed withdrawal.

The Bureau of Land Management’s (“BLM’s”) and the US Forest Service’s (“USFS”) September 2015 Records of Decision (“RODs”) are currently being challenged in several federal district courts because they violated numerous federal laws including the National Environmental Policy Act (NEPA) 43 USC 4321-4347 and the Federal Land Management and Policy Act (FLPMA) 43 USC 1701 *et seq.* The mineral withdrawal proposed in the BLM’s and

USFS' Nevada Land Management Plan for Greater Sage-grouse ("NVLMP") and the Final EIS was not part of the Preferred Alternative in the Draft EIS and was added without explaining what changed between the Draft EIS and the Final EIS to justify the need for the new proposed withdrawal. The last-minute addition of the Sagebrush Focal Areas (SFA) which are now the proposed mineral withdrawal areas deprived the public of its lawful and reasonable opportunity to provide comments, as NEPA and FLPMA require.

The September 24, 2015 segregation of the proposed mineral withdrawal areas and the associated two-year segregation¹ of 10 million acres of land from operation of the Mining Law have already harmed mining claimants and local communities in the withdrawal areas. The segregation and proposed withdrawal will dramatically reduce mineral exploration and development in the western U.S., which directly threatens WMC member companies' businesses and also harms the economies of the counties in which mineral exploration and development are significant economic drivers. The substantial reduction in mineral activities that will result from the segregation and proposed withdrawal will also negatively affect local and state governments through reductions in mineral employment and tax revenues from mineral exploration and development activities. The segregation and proposed withdrawal are having a chilling effect on mineral exploration in the U.S. Withdrawing the proposed areas will reduce the number of discoveries of mineral deposits that can be developed in the future into mines, which will reduce state and local tax revenues from mining, adversely affect local and state governments, and increase the Nation's reliance on foreign sources of minerals.

Although these comments focus on the impacts of the proposed withdrawal in Nevada, where many WMC members reside, the concerns outlined herein about the Nevada proposed withdrawal extend to the 10-million acre proposed withdrawal in all of the western states. The following comments are intended to describe the required scope of the analysis in the EIS for the entire 10-million acre withdrawal, using Nevada as an illustration.

II. The EIS Must Satisfy NEPA and FLPMA Analysis Requirements

The EIS must comply with the requirements in both NEPA and FLPMA to prepare a detailed and substantive analysis of how the proposed withdrawal will affect a wide array of environmental resources and the impact of the withdrawal on affected individuals, communities, local and state governments, and the Nation. The following statement in the Notice is an inaccurate and pre-decisional dismissal of the serious impacts that will result from the proposed withdrawal:

"Because of the nature of a withdrawal of public lands from operation of the mining law, *mitigation of its effects is not likely to be an issue requiring detailed analysis*. However, consistent with Council on Environmental Quality regulations implementing NEPA (40 CFR 1502.14), the BLM will consider whether and what kind of mitigation measures may be appropriate to address the reasonably foreseeable impacts to resources from the approval of this proposed withdrawal." 80 Fed. Reg. 57637. (emphasis added)

¹ The Notice at 80 Fed. Reg. at 57,637 also began the two-year segregation period, which does not expire until September 24, 2017.

An EIS developed under this premise will be fatally flawed because it will not satisfy NEPA or FLPMA analysis requirements.

Both NEPA and FLPMA require an in-depth analysis of the impacts resulting from putting numerous known Nevada mining districts (and districts in other western states) off limits to future mineral exploration and development. The EIS must analyze alternatives to the Proposed Action to withdraw 10 million acres from operation of the Mining Law to mitigate these impacts such as different locations and a reduced size for the withdrawal and alternatives that could achieve habitat conservation without the withdrawal. The EIS must quantitatively evaluate the profoundly adverse effect the withdrawal will have on jobs and local and state tax revenues associated with mining. The EIS must also quantify how the withdrawal will increase the Nation's reliance on foreign sources of the minerals needed to sustain modern life.

The proposed withdrawal imposes a cloud on land tenure of 10 million acres of U.S. public lands and national forests, which will significantly reduce and in some cases completely eliminate investment in exploring for and developing U.S. mineral resources. The 2.8 million acre proposed withdrawal in Nevada would prohibit development of numerous important known Nevada mining districts. The EIS must evaluate alternatives for minimizing and mitigating the impacts of putting the identified and future mineral resources in these known mining districts off limits for up to 20 years, thereby reducing the Nation's domestic mineral supply.

A. NEPA Hard Look Requirements

The EIS must comply with NEPA's hard look requirements of the direct, indirect, and cumulative socioeconomic impacts associated with the proposed mineral withdrawal. NEPA requires agencies to take a hard look at how the choices before them affect the environment, and then to place their data and conclusions before the public. BLM's 2008 NEPA Handbook (H 1790-1), defines "hard look" as "a reasoned analysis containing quantitative or detailed qualitative information." (See Handbook Glossary, Page 131.) Additionally, Section 6.8.1.2 "Analyzing Effects" in the NEPA Handbook states:

"The effects analysis must demonstrate that BLM took a "hard look" at the impacts of the action. The level of detail must be sufficient to support reasoned conclusions by comparing the amount and the degree of change (impact) caused by the proposed action alternatives (40 CFR 1502.1)."

NEPA imposes a duty on Federal agencies to take a "hard look at environmental consequences" (*Natural Resources Defense Council v. Morton*, 458 F.2d 827, 838 (D.C. Cir., 1972)). The general qualitative statements about possible effects and some risk, like those in the legally flawed Final EIS for the NVLMP, cannot be replicated in the mineral withdrawal EIS. Imposing an unrealistic timeframe to complete this EIS will not withstand scrutiny under *Northwest Environmental Advocates v. National Marine Fisheries Service*, 460 F.3d 1125, 1141 (9th Cir. 2006) as justification for not providing definitive information that could readily be obtained.

The hard look must be “taken objectively and in good faith, not as an exercise in form over substance, and not as a subterfuge designed to rationalize a decision already made...” *Western Watersheds Project v. Kraayenbrink*, 632 F.3d 472 (9th Cir. 2010). Thus, this EIS cannot be used to rubberstamp the mineral withdrawal proposed from a legally defective land use planning process that provided no balancing of resources or meaningful consideration or analysis of geology or mineral potential. It must quantitatively assess the impacts that will result from the proposed mineral withdrawal including the lost mineral potential and the impact that will have on the Nation’s need for mineral resources. Estimates, assumptions, approximations, hypotheses, and projections will not satisfy NEPA requirements to use sound data and to take a hard look based on this data.

Completing the mineral potential reports and the EIS are enormous tasks that will require substantial time and resources. Any attempt to fast-track the preparation of these documents is likely to produce an EIS that will not meet NEPA “hard look” requirements and a mineral potential report that will not comply with the FLPMA mineral potential analysis requirements described below.

B. FLPMA Mineral Withdrawal Analysis Requirements

BLM’s mineral withdrawal application implements the proposed SFA mineral withdrawal land use management decision made pursuant to FLPMA Section 202 in the NVLMP. The withdrawal of these lands from operation of the U.S. Mining Law will be consummated pursuant to FLPMA which requires the Secretary of the Interior to provide Congress with a detailed analysis of the need for and impacts resulting from the proposed withdrawal and enumerates twelve technical and socioeconomic criteria that must be considered in the proposed withdrawal. The following FLPMA Section 204(c)(2) analysis criteria are consistent with and similar to the scope of the analysis required pursuant to NEPA but add more specific requirements for evaluating the minerals potential of the proposed withdrawal area:

[T]he Secretary shall furnish...

- (1) a clear explanation of the proposed use of the land involved which led to the withdrawal;
- (2) an inventory and evaluation of the current natural resource uses and values of the site and adjacent public and nonpublic land and how it appears they will be affected by the proposed use, including particularly aspects of use that might cause degradation of the environment, and also the economic impact of the change in use on individuals, local communities, and the Nation;
- (3) an identification of present users of the land involved, and how they will be affected by the proposed use;
- (4) an analysis of the manner in which existing and potential resource uses are incompatible with or in conflict with the proposed use, together with a statement of the provisions to be made for continuation or termination of existing uses, including an economic analysis of such continuation or termination;

- (5) an analysis of the manner in which such lands will be used in relation to the specific requirements for the proposed use;
- (6) a statement as to *whether any suitable alternative sites are available (including cost estimates) for the proposed use or for uses such a withdrawal would displace*; (emphasis added)
- (7) a statement of the consultation which has been or will be had with other Federal U.S. and agencies, with regional, State, and local government bodies, and with other appropriate individuals and groups;
- (8) a statement indicating the effect of the proposed uses, if any, on State and local government interests and the regional economy;
- (9) a statement of the expected length of time needed for the withdrawal;
- (10) the time and place of hearings and of other public involvement concerning such withdrawal;
- (11) the place where the records on the withdrawal can be examined by interested parties; and
- (12) a report prepared by a qualified mining engineer, engineering geologist, or geologist which shall include but not be limited to information on: general geology, known mineral deposits, past and present mineral production, mining claims, mineral leases, evaluation of *future mineral potential*, present and potential market demands. (emphasis added)

III. Specific EIS Analysis Requirements

A. The EIS Affected Environment Chapter Must Include Detailed Information on the Geology and Mineral Potential of the Proposed Withdrawal Area

The process used to identify the proposed mineral withdrawal areas was fatally flawed. The Final EIS that BLM and USFS prepared in conjunction with the NVLMP in which the proposed mineral withdrawal was introduced ignored the mineral potential of the proposed withdrawal areas and the impacts resulting from the proposed mineral withdrawal and thus violated NEPA and FLPMA. The Final EIS did not include a section on Geology in the Affected Environment chapter and failed to disclose that the proposed withdrawal included numerous known and important Nevada mining districts. Consequently, the mineral withdrawal EIS cannot rely on the NVLMP Final EIS which unlawfully omitted these issues.

Thus, as a starting point, the EIS Affected Environment chapter must include a thorough discussion of the geology and mineral potential of the proposed withdrawal areas and the known and potential mineral deposits and occurrences in the 2.8 million acres in the proposed Nevada withdrawal and the 10-million acre withdrawal throughout the west.

Exhibit 1 presents an extensive bibliography prepared by the Nevada Bureau of Mines and Geology (“NBMG”) of the key published references documenting the mineral potential of

Nevada. BLM should have used these references in the NVLMP process and must use this literature to develop the current EIS on the proposed withdrawal. BLM must carefully consider information on the mining districts and mineral deposits in the proposed withdrawal area in describing and quantitatively analyzing the mineral potential of the proposed Nevada withdrawal areas. The publication dates for most of the listed references pre-date the NVLMP and should have been considered in Chapter 3 of the Final EIS, Affected Environment, Chapter 4 - Environmental Consequences, and Chapter 5 - Cumulative Effects. BLM must consider a similar bibliography of technical references for the mining districts in the withdrawal areas in the other western states.

The discussion of the mineral potential of the proposed withdrawal areas must include quantitative information about the Nevada mining districts and mineral deposits documented in the references in Exhibit 1 that will be put off limits if the current mineral withdrawal proposal is implemented². In order to satisfy NEPA's hard look requirements, the EIS must include a thorough discussion of the mineral potential of these districts and the impacts that would result from withdrawing these lands from operation of the Mining Law and making the minerals they contain unavailable to the Nation. FLPMA 204(c)(2)(12) also requires detailed information on geology, known mineral deposits, past and present mineral production, the presence of mining claims or mineral leases, an evaluation of future mineral potential of these deposits, and an analysis of the present and potential market demands for the minerals at these sites. Known mineral districts in other states that are included in the proposed withdrawal must be subject to the same detailed analysis.

B. The EIS Purpose and Need Statement Must Explain the Size of the Withdrawal Compared to the Impact of Mining on GSG Habitat

The Purpose and Need statement for an EIS establishes the scope of the analysis for the document. Beyond evaluating BLM's decision to withdraw 10 million acres of land from operation of the Mining Law to conserve Greater Sage-grouse ("GSG") habitat, the EIS Purpose and Need should clearly explain why the proposed mineral withdrawal is necessary and consistent with applicable federal laws and regulations. Specifically, the Purpose and Need statement must examine whether withdrawing 10 million acres of land is necessary to address the impacts from mining on GSG habitat in light of the gross disparity between the dimensions of the vast GSG habitat compared to the documented localized and minor impacts from mining upon this habitat. In discussing its not warranted listing decision, FWS clearly states that mining does not have a significant effect on GSG habitat:

“...Overall, the extent of [mining] projects *directly affects less than 0.1 percent of the sage-grouse occupied range*. Although direct and indirect effects may disturb local populations, *ongoing mining operations do not affect the sage-grouse range wide*.” (FR 59858, October 2, 2015, p. 59915)

Also, FWS quantifies the huge area of the western U.S. that contains GSG habitat:

² See specifically the mining districts in Elko, Humboldt, and Washoe Counties shown on Plate 1 in Tingley, 1993, “Mining districts of Nevada,” NBMG Report 47 (cited in Exhibit 1).

“The sagebrush ecosystem upon which the sage-grouse depends remains one of the largest, most widespread ecosystems in the United States, spanning approximately 70 million ha (173 million ac)”. [*Ibid*, p. 59933].

The EIS Purpose and Need and alternatives analysis must clearly explain why withdrawing 10 million acres, which is nearly six percent of the habitat and nearly 60 times larger than the 0.1 percent of the habitat that is impacted by mining is necessary. Because mining projects only affect about 173,000 acres of GSG habitat throughout the west, the 10-million acre nationwide withdrawal is grossly out of proportion to the size of mining’s impact. Using the 21-million acres size of the GSG habitat in northeastern California and Nevada³ to put this into perspective, **the mineral withdrawal for this area should only be 21,000 acres** (0.1 percent of 21 million acres) – not the proposed 2.8 million acres. Even if future mine development were to double mining’s footprint to 42,000 acres, or even increase it by an order of magnitude to 210,000 acres, there can be no rational justification or scientific basis for withdrawing 2.8 million acres to protect GSG habitat from impacts due to mining.

FLPMA 204(c)(2)(1) requires a clear explanation of the proposed use of the land to be withdrawn and the factors which led to the proposed withdrawal. Comparing the miniscule (0.1 percent) size of mining’s impact to the enormity of the GSG habitat rangewide (173 million acres) reveals the grossly oversized scope of the proposed 10-million acre withdrawal, which is arbitrary, capricious, and unlawful because the existing use of the land for mining does not justify withdrawing 10 million acres. The EIS must address this glaring incongruity between the enormous size of the withdrawal compared to the minimal impact that mining has on GSG habitat to explain the need for the proposed withdrawal. FLPMA requires that proposed withdrawals must consider and disclose how the withdrawal will impact existing land uses and land users, the economic impacts to local communities and the country, and that BLM evaluated other suitable alternatives. Thus the EIS must satisfy NEPA and FLPMA requirements by including a thorough analysis of alternatives to reduce the impacts from the proposed withdrawal. As discussed in more detail below, these alternatives must evaluate reductions in the size of the current 10-million acre proposed withdrawal and alternative locations for the withdrawal to satisfy NEPA and withstand scrutiny under FLPMA 204(c)(2).

C. Socioeconomic Baseline Data Requirements and Impact Analysis

BLM must prepare an EIS that is based on a detailed socioeconomic baseline study for the Affected Environment chapter of the EIS that quantifies the important contributions that mining makes to Nevada’s economy and the social fabric in the Nevada GSG counties – especially in Elko and Humboldt counties where most of the proposed Nevada withdrawal is located. A similarly detailed socioeconomic baseline study must be performed for the other western counties states with proposed mineral withdrawals. The EIS must use this baseline data to perform a detailed environmental consequences analysis in Chapter 4 and evaluate cumulative

³ Record of Decision and Approved Resource Management Plan Amendments for the Great Basin Region, Including the Greater Sage-Grouse Sub-Regions of Idaho and Southwestern Montana, Nevada and Northeastern California, Oregon and Utah, September 2015, (“ROD/ARMPA”) p. 1-15.

effects in Chapter 5.

FLPMA Section 204(c)(2)(2) and (8) provide BLM with specific instructions regarding the scope of the required socioeconomic analysis. To satisfy these FLPMA directives, the EIS must include an inventory of the current natural resource uses and values of the proposed withdrawal sites and evaluate how the proposed withdrawal will affect adjacent public and nonpublic land. This analysis is especially important to the private lands in and near the proposed withdrawal areas where there is significant potential that the proposed withdrawals on public lands will devalue the mineral resources on adjacent private lands – or even render them worthless because they are uneconomic or infeasible to develop without the adjacent public lands. Consequently, the NEPA socioeconomic evaluation and the FLPMA economic analysis must assess the potential takings claims that may arise from the proposed withdrawal.⁴ FLPMA Sections 204(c)(2)(2) and (8) specify that BLM must evaluate the economic impact of the withdrawal on individuals (in this case individuals and companies with claims subject to the proposed withdrawal), local communities, local government interests, the regional economy, and the Nation.

The socioeconomic analysis must evaluate the adverse impacts to both exploration and mine development. The adverse impacts from the proposed withdrawal started on September 24, 2015, the day the segregation notice was published in the Federal Register. The EIS must evaluate how the segregation has chilled investment in mineral exploration and adversely affected claim owners, companies, and communities located near the affected claims. Secondly, the EIS must evaluate how the continued segregation and future withdrawal will create long-term adverse socioeconomic impacts due to the elimination of exploration and development of fewer mining projects, which will dramatically reduce mining jobs and mining tax revenues to state and local governments as well as direct and indirect jobs created by exploration companies that employ drillers, geological consultants, lawyers, surveyors, and other consultants and purchase lodging, restaurant meals, groceries, vehicles, fuel, and other goods and services.

D. Evaluate the Impacts to the Nation of the Reduced Development of Domestic Mineral Supplies and the Increased Reliance on Foreign Sources of Minerals

The Final EIS for the NVLMP failed to evaluate the impact of the proposed mineral withdrawal on the nation's need for minerals and the FLPMA directives that public lands be managed in a manner to provide domestic sources of minerals. FLPMA Section 204(c)(2)(2) requires BLM to prepare an inventory and evaluation of the current natural resource uses and values of the site and adjacent public and nonpublic land and how it appears they will be affected by the proposed use, including particularly aspects of use that might cause degradation of the environment, and also the economic impact of the change in use on individuals, local communities, and the Nation. This analysis must also be undertaken in response to the mandates in FLPMA Section 102(a)(12) and 103(c) that direct BLM to manage the public lands in a manner that recognizes the country's need for domestic sources of minerals and to manage these lands with a balanced approach that considers the need for minerals. Withdrawing huge tracts of

⁴ This also is required under Executive Order 12630 (issued March 1988).

land in Nevada that includes numerous known mining districts with some of the best mineral potential in the country – and even in the world – violates these FLPMA mandates.

IV. Alternatives to the Proposed Withdrawal

Both NEPA and FLPMA Section 204(c)(2)(6) require a substantive analysis of alternatives to the proposed withdrawal. In order to satisfy these requirements, the EIS must analyze in detail feasible alternatives to withdrawing these lands. The alternatives to be analyzed should include substituting mitigation for some or all of the withdrawal, reducing the size of the withdrawal, and changing the location for the withdrawal to minimize impacts to mineral resources. This section describes a number of feasible alternatives that the EIS must analyze to minimize and mitigate the adverse impacts that the currently proposed withdrawal would impose upon on claimants, local governments, state governments, and the Nation.

A. Mitigation as an Alternative to the Mineral Withdrawal

The EIS should evaluate a mitigation alternative that examines the use of mitigation measures at mining projects in proposed withdrawal area rather than withdrawing these lands from operation of the Mining Law. For Nevada, BLM should specifically examine how implementing the Nevada Conservation Credit System (CCS) for mineral projects on lands in the proposed withdrawal would result in effective conservation of high-priority habitats elsewhere in the state and achieve superior statewide conservation.

In contrast to a withdrawal, which sets land aside and does not include resources for habitat conservation or enhancement, the CCS would result in far better overall conservation because project proponents would have to contribute substantial funds to be used for conservation projects elsewhere to preserve the “best of the best” habitat. The mitigation alternative should examine the statewide conservation benefits of allowing development of mining projects in the currently proposed withdrawal with project applicants providing funds to the CCS for habitat conservation and enhancement of equal or even better habitat areas. In this manner, mitigation through the CCS using private-sector funds would achieve superior statewide conservation than a withdrawal. This alternative must quantify the federal resources that would be required to manage the withdrawn lands in a manner that maintains and enhances their habitat value and disclose the availability of these funds. This alternative should include a cost benefit analysis of using federal funds (that may or may not be sufficient based on fluctuating annual appropriations) to manage the habitat on these lands compared to using private-sector funds provided through the CCS that would be a defined and enduring commitment for habitat management and enhancement. The costs considered for federal management must include fuels management, the availability for that funding, and the consequences if such funding is not available and the risk of wildfire increases as a result.

Secondly, because the SFA identified in the NVLMP are primarily a subset of Priority Habitat Management Areas (“PHMA”), it is irrational and therefore arbitrary and capricious to manage the two types of PHMA differently. BLM and USFS have endorsed the land use management tools in the NVLMP as being the appropriate tools for GSG conservation in PHMA. The PHMA land use management tools should be applied to the SFA/proposed withdrawal areas rather than withdrawing these lands. The EIS must evaluate an alternative that examines

applying the PHMA conservation measures in the SFA rather than withdrawing these lands from mineral entry.

B. Alternative Sizes and Areas for the Withdrawal

(i) Eliminate all claims that paid the 2016 claims maintenance fee from the withdrawal

The Nevada Division of Minerals (“NDOM”) has documented that 3,762 unpatented lode, placer, and tunnel claims, and millsites (“mining claims”)⁵ are located within the boundaries of the proposed Nevada mineral withdrawal areas. NDOM obtained the mining claim information using BLM’s land records on its LR2000 online database of claims in good standing that have paid the 2016 claims maintenance fee.

Eliminating these claims from the mineral withdrawal would be a significant way to solve some of the more egregious problems stemming from the proposed withdrawal including the substantial inequities that the current withdrawal proposal imposes on claimants in all of the western states who have paid the 2016 claims maintenance in good faith in reliance upon their rights under the Mining Law. This is particularly true for claims located in well-documented mining districts that never should have been included in the proposed mineral withdrawal in the first place. BLM’s failure to consider the mineral potential of these areas in the Final EIS violated NEPA and FLPMA and created potential claims for takings for interference with reasonable investment backed expectations of these claim holders. Claimants in these areas made investments with the reasonable expectation that BLM would comply with established procedures in developing the NVLMP (and the EIS documents prepared for the other western states), which should have included an evaluation of mineral potential and the impacts resulting from the proposed withdrawal. The unlawful procedures by which BLM identified the proposed withdrawal areas violate claimants’ due process rights and subject the federal government to takings claims and liability for related compensatory damages.

In Nevada, removing the claims from the proposed withdrawal would be a minor reduction in the size of the withdrawal. The maximum allowable size for a lode mining claim is 20 acres; a millsite is restricted to five acres. Taking a conservative approach, if all of the 3,762 claims in the Nevada withdrawal area were full-size 20-acre lode claims, these claims would cover 75,240 acres, which is only 2.7 percent of the 2.8 million-acre proposed Nevada mineral withdrawal area. Allowances should be made for millsite claims to be staked in nearby areas of these lode claims in order to allow for future development. A 2.7 percent reduction in the size of the proposed Nevada mineral withdrawal to eliminate the extremely adverse direct, indirect, and cumulative impacts to the claim owners and communities located near these claims is a reasonable alternative that must be considered in the EIS. A similar analysis must be performed for the other western states with proposed mineral withdrawals.

⁵ See: <http://minerals.nv.gov/uploadedFiles/mineralsnvgov/content/News/AssessmentYear2016ActiveMiningClaimsImpactSlide.pdf>

(ii) Eliminate all Plans of Operation and Notices of Intent from the Withdrawal Area

In addition to eliminating all claims that have paid the claims maintenance fee, BLM should also eliminate lands within the boundaries of authorized permits (e.g., Plans of Operation and Notices of Intent) from the mineral withdrawal. The rationale for eliminating these authorized project activities from the withdrawal is identical to that for mining claims but also includes the property rights associated with the permits themselves as acknowledged by the BLM and USFS. The operators of these Plans of Operation and Notices of Intent submitted these operating permits to BLM and USFS in reliance on their rights under the Mining Law and BLM's and USFS' administration of the Mining Law pursuant to BLM's 43 CFR 3809 surface management regulations and USFS' 36 CFR Part 228A regulations for mineral projects in national forests. Because BLM and USFS have acknowledged these permits are "Valid Existing Rights"⁶ yet, at the same time, included those VERA within the segregation, the agencies have interfered with the permittees use of their permits and, in some instances, rendered those permits valueless. As a matter of equity and constitutional law, these areas should be excluded from the withdrawal.

(iii) Eliminate all Documented Mineral Deposits and Mining Districts from the Withdrawal

FLPMA Section 204(C)(2)(12) requires BLM to prepare a substantive and quantitative analysis of the present and future mineral potential of the proposed withdrawal areas, including an analysis of the present and potential market demands for the minerals that would be placed off-limits to development. The mineral potential reports must evaluate the site-specific data for most or all of the mineral deposits within the proposed withdrawal area that would be needed to satisfy the NEPA hard look requirements and the FLPMA Section 204(C)(2)(12) analysis requirements.

Withdrawing areas with known mineral potential would not be consistent with the declaration of policy in Section 102(a) of FLPMA, which establishes Congressional intent that:

“(12) the public lands be managed in a manner which *recognizes the Nation's need for domestic sources of minerals*, food, timber, and fiber from the public lands including the implementation of the Mining and Minerals Policy Act of 1970 (84 Stat. 1876, U.S.C. 30 21a) as it pertains to the public lands.”

BLM's proposed 10-million acre mineral withdrawal violates this mandate because it sweeps in numerous known mineral deposits and important mineral districts. It is unlawful and not in the Nation's interest for BLM to withdraw lands with known mineralized areas that need further evaluation to quantify their mineral potential. Further analysis is critical to understanding the short- and long-term impacts to local communities, the states, and the Nation of preventing

⁶ ROD, Attachment 2, Glossary at p. 5-24: “Valid existing rights. Documented legal rights or interests in the land that allow a person or entity to use said land for a specific purpose and that are still in effect. Such rights include fee title ownership, mineral rights, rights-of-way, easements, **permits**, and licenses. Such rights may have been reserved, acquired, leased, granted, permitted, or otherwise authorized over time.” (Emphasis added).

exploration and potential development of these mineral deposits for up to 20 years. Consequently, BLM must not withdraw any areas of known mineral potential because they will not be fully evaluated – the segregation and withdrawal will prevent the necessary evaluation and prohibit future development.

The final boundaries for the withdrawal must comply with the FLPMA Section 102(a)(12) mandate that the Nation’s public lands be managed in a manner that recognizes the country’s needs for domestic sources of minerals. Moreover, FLPMA Section 103(c) demands a balanced approach to managing the Nation’s public lands that:

“... best meet[s] the present and future needs of the American people” [and achieves] “a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values.”

These FLPMA directives require BLM to reconfigure the boundaries for the mineral final withdrawal to exclude areas with known mineral potential. This approach is especially warranted because BLM does not have sufficient time or budget to systematically and thoroughly examine the untapped mineral potential in these known mining districts. Including these mining districts in the withdrawal area would violate FLPMA.

(iv) Reduce the Mineral Withdrawals to Areas with Priority Habitat that are Already Functionally Withdrawn from Operation of the Mining Law

In addition to Alternatives B(i – iv), BLM should further minimize the adverse impacts of the proposed mineral withdrawals by preferentially locating the withdrawals in areas that are already functionally off-limits to exploration and mining. BLM should conduct a GIS mapping exercise to identify Priority Habitat Management Areas (PHMA) in areas of low mineral potential that are co-located with areas that are already unavailable for mineral exploration and development such as Wilderness Study Areas (“WSA”) or Areas of Critical Environmental Concern (“ACEC”).

Reconfiguring the mineral withdrawal boundaries to WSAs that are co-located with PHMA and lands with low mineral potential would be a viable alternative for mitigating some of the impacts of the withdrawal and would reduce the impacts of the withdrawal on individuals, companies, and state and local governments. It also would avoid placing known mining districts off-limits for 20 years.

(v) Relocate the mineral withdrawals to areas with high habitat potential and unfavorable geology for the discovery of mineral deposits

The EIS should include an alternative that reduces and re-configures the withdrawal areas to preferentially withdraw PHMA with unfavorable geology for the discovery and development of mineral deposits. Lands that are covered with thick deposits of volcanic rocks or Quaternary

alluvium would be two examples of geologic settings that typically are not priority targets for mineral exploration because of the technical difficulties and economic constraints associated with exploring for buried mineral deposits that if present would be too deep to be feasible to explore and develop.

(vi) Restrict the Mineral Withdrawal to PHMA

BLM has used an inconsistent definition for the SFA proposed mineral withdrawal areas that clearly defines the SFA as “a sub-set of PHMA:”

“The ARMPAs also identify Sagebrush Focal Areas (SFAs) on a portion of the landscape...They correspond to the areas identified by the FWS as GRSG “strongholds” and represent “a subset of priority habitat most vital to the species persistence within which we recommend the strongest levels of protection” (FWS 2014a).

SFAs are areas of highest habitat value for GRSG and are managed to avoid new surface disturbance for the following reasons:

- They contain high-quality sagebrush habitat and the highest breeding bird densities
- They have been identified as essential to conservation and persistence of the species
- They represent a preponderance of current Federal ownership
- In some cases, they are next to protected areas that serve to anchor the conservation importance of the landscape⁷

However, the Final EIS reveals that some SFA areas include less important habitat and even non-habitat:

“The Proposed Plan designates sagebrush focal areas (SFA), representing recognized “strongholds” for GRSG that have the strongest levels of protection. These SFA are mostly in PHMA, but also GHMA and some nonhabitat areas...”⁸

Non-PHMA lands should be excluded from the withdrawal area in addition to the exclusions discussed above.

(vii) Use the 2015 USGS/State of Nevada Habitat Map

In December 2015, the Nevada Sagebrush Ecosystem Council (“SEC”) adopted an updated version of the USGS Nevada GSG habitat map. The distribution of PHMA in northern

⁷ ROD/ARMPA, p. 1-16.

⁸ Final EIS, Nevada and Northeastern California Greater Sage-Grouse Proposed LUPA/Final EIS, p. 4-405

Nevada differs somewhat compared to the 2014 GSG habitat map that was used to develop the NVLMP and to show the SFA. The designation of habitat areas being considered for withdrawal must be based on the 2015 map. It appears that some of the proposed withdrawal areas – especially areas in Elko County – are not within PHMA on the 2015 habitat map. The EIS must use the 2015 map. Consequently, BLM must re-draw the proposed withdrawal boundaries on the basis of the 2015 map, re-notice the withdrawal and offer the public another opportunity to assess and comment upon the scoping of the EIS based upon the updated boundaries.

VI. Conclusions

The obvious incongruity of the proposed withdrawal of 10 million acres to address the 173,000 acres nationwide impacted by mining (0.1 percent of the 173 million acre habitat range wide as cited in FWS' not warranted determination (*op. cit.*) requires BLM to reduce dramatically the size of the withdrawal as discussed above. BLM must justify why the withdrawal is needed at all in Nevada given the superior conservation that would be achieved by requiring mitigation through the CCS for mineral exploration and mine development projects (as well as for other types of projects) compared to withdrawing lands from mineral entry or implementing the other NVLMP land use restrictions and prohibitions in the SFA.

In light of the inappropriate size of and locations for the 10 million acre withdrawal nationwide and the 2.8 million acre in Nevada, BLM must give careful consideration to the alternatives discussed herein to reduce the size of the withdrawal and to minimize the impact of the withdrawal on claimants, companies, local and state government, and the Nation as required by NEPA and FLPMA. Putting known and future mineral resources in such a large area off limits for up to 20 years compromises the Nation's ability to provide for domestic sources of minerals in violation of FLPMA and deprives the affected claimants of their rights of due process.

WMC appreciates the opportunity to provide these comments and stands ready to work with BLM to eliminate the adverse impacts of this ill-considered withdrawal.

Respectfully submitted:



WMC President

Attachment:

Exhibit 1 – Nevada Bureau of Mines and Geology Bibliography for Assessing Potential for Mineral Deposits (mainly metallic deposits)

EXHIBIT 1

Bibliography for Assessing Potential for Mineral Deposits (mainly metallic deposits)

John Muntean, Nevada Bureau of Mines and Geology

Nevada Bureau of Mines and Geology Annual Mineral Industry Reports (source of locations of drill projects)

Muntean, J. L., Davis, D. A., 2016 Metals, *in* The Nevada mineral industry 2013: Nevada Bureau of Mines and Geology Special Publication MI-2014, (*in preparation*)

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Bonham, H. F. and Papke, K., 1969, Geology and mineral deposits of Washoe and Storey Counties, Nevada: Nevada Bureau of Mines and Geology Bulletin 70, 140 p.

Nevada Bureau of Mines and Geology Open File Reports

Singer, D.A., ed., An analysis of Nevada's metal-bearing mineral resources: NBMG Open-File Report 96-2. (*last statewide mineral assessment of Nevada, completed by the U.S. Geological Survey*)

Nevada Bureau of Mines and Geology Maps (open files and peer-reviewed, source of active mines and mineral deposits)

- Muntean, J. L. and Davis, D. A., 2014, Nevada active mines and energy producers: Nevada Bureau of Mines and Geology Open-File Report 14-1, scale 1:1,000,000
- Davis, D. A., Tingley, J. V., and Muntean, J. L., 2006, Gold and silver resources of Nevada: Nevada Bureau of Mines and Geology Map 149.
- Tingley, J. V., 1992, Mining districts of Nevada, 1:1,000,000, NBMG Report 47.

Nevada Bureau of Mines and Geology websites and compact discs (source of information and location on drill projects)

- Muntean, J. L., and Johnson, G., 2013, 43-101 report map service for mineral properties:
http://gisweb.unr.edu/report_43101_1/ (updated through Spring 2015)

Bureau of Land Management LR2000 database (source of claim data and permits/plans)

<http://www.blm.gov/lr2000/>

U.S. Geological Survey Digital Data Series (source of information for claim number data for 1976-2010)

- Causey, J. D., 2007, Mining claim activity on federal land in the United States: U.S. Geological Survey Data Series 290, v. 1.1, <http://pubs.usgs.gov/ds/2007/290/> (number of claims were section, updated by USGS through 2010)
- Crafford, A.E.J., 2007, Geologic Map of Nevada: U.S. Geological Survey Data Series 249, 1 CD-ROM, 46 p., 1 plate. (compiled digital geologic map of Nevada using 1:250,000 county report maps with some new interpretation)
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- Wallace, A., Ludington, R. S., Mihalasky, M. J., Peters, S. G., Theodore, T. G. Ponce, D. A., D. A. John, D. A. R. Berger, R., M. L. Zientek, M. L. G. B. Sidder, G. B., and R. A. Zierenberg R. A., 2004, Assessment of metallic resources in the Humboldt River, northern Nevada, with a section on platinum-group-element (PGE) potential of the Humboldt Mafic Complex: USGS Bulletin 2218, <http://pubs.usgs.gov/bul/b2218>

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- Vikre, P.G., 1987, Paleohydrology of Buckskin Mountain, National district, Humboldt County, Nevada: *Economic Geology* v. 882, p. 934-950.
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Rytuba, J.J., and Glanzman, R.K., 1978, Relation of mercury, uranium, and lithium deposits to the McDermitt caldera complex, Nevada-Oregon: U.S. Geological Survey Open- File Report 78-926, 28 p.

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Schrader, F. C., 1923, The Jarbidge mining district, Nevada: U.S. Geological Survey Bulletin 741, p. 1-86.