

EARTHWORKS

July 14, 2015

Peter Werner, Project Lead
Custer-Gallatin National Forest SO
10 East Babcock
Bozeman, MT 59715
FS-comments-northern-gallatin@fs.fed.us

Re: Scoping comments on the Emigrant Project Plan

Dear Mr. Werner,

I am writing on behalf of Earthworks, a national non-profit organizations dedicated to protecting communities and the environment against the adverse impacts of mining. Earthworks has a long record of working on hardrock mining issues in Montana, and it has an office in Missoula, Montana.

Lucky Minerals is requesting a Categorical Exclusion under NEPA for their proposed mineral exploration of an area immediately adjacent to the east side of Emigrant Peak on the Yellowstone District of the Custer Gallatin National Forest approximately 7 miles southeast of Emigrant, near Yellowstone National Park.

1. The Forest Service must evaluate the cumulative, connected and reasonably foreseeable actions associated with the proposed activity.

The Agencies must disclose all reasonably foreseeable effects related to the proposed action. NEPA requires agencies to disclose all significant impacts from projects, whether they are “direct” or “indirect.” 40 C.F.R. § 1502.16; City of Davis v. Coleman, 521 F.2d 661, 676 (9th Cir. 1975). “Indirect” impacts include any “reasonably foreseeable” impacts. 40 C.F.R. §§ 1508.8(b), 1502.22. These disclosures must be specific and clear. Idaho Sporting Congress v. Thomas, 137 F.3d 1146, 1152 (9th Cir. 1998) (finding “vague and nonspecific” disclosures inadequate under NEPA because they “provide no analysis for the public to review”). The Agencies should pay particular attention to indirect impacts to public resources in and around the project area. NEPA requires the Agencies to discuss these “reasonably foreseeable” impacts. 40 C.F.R. §§ 1508.8(b).

The Agencies must analyze and discuss all cumulative impacts, “regardless of what agency (Federal or non-Federal) or person undertakes such actions.” *Id.* § 1508.7. This includes all past, present, and “reasonably foreseeable future actions” “which when viewed with other proposed actions have cumulatively significant impacts.” *Id.*; see also *id.* 1508.25(a)(2). Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.” 40 C.F.R. § 1508.7. The cumulative analysis must be reasonably detailed; “[g]eneral statements about ‘possible’ effects and ‘some risk’ do not constitute a ‘hard look’ absent a justification regarding why more definitive information could not be provided.” *Neighbors of Cuddy Mountain v. U.S. Forest Serv.*, 137 F.3d 1372, 1379-80 (9th Cir. 1998). The Agencies must also evaluate connected actions. NEPA requires proposals “which are related to each other closely enough to be, in effect, a single course of action shall be evaluated in a single impact statement.” 40 C.F.R. § 1502.4(a); *Kleppe v. Sierra Club*, 427 U.S. 390, 408 (1976). Thus, a NEPA document must analyze the impacts of “[c]onnected actions,” including actions that are “interdependent parts of a larger action and depend on the larger action for their justification.” 40 C.F.R. § 1508.25(a)(1).

In addition to the proposed exploration activities identified here, Lucky Minerals also plans to conduct exploration activities on private lands, including a laydown and staging area and additional drillings activities as described in its 43-101 technical report.¹ The plan of operations submitted to the Forest Service on March 26, 2015 does not cover this concurrent activity nor reveal the foreseeable future actions of “an aggressive exploration program in the near future” (page 7) by excluding information necessary to adequately evaluate the sufficiency of environmental analysis.

The Lucky Minerals Inc, report recommends a multi-stage exploration approach with an initial stage involving drilling on patented grounds and in public land areas covered by “low level; Categorical Exclusion permit (page 74). “While this is being performed an application will be made for road access construction and additional drilling locations that would be covered by an Environmental Assessment program” with up to \$380,000 budgeted to obtain the EA permit for future stages. Currently, Lucky Minerals, Inc. owns 122 ACTIVE mining claims in the immediate area totally over 2,500 acres primarily as one contiguous area within Emigrant Gulch.²

On April 7, 2015 Lucky Minerals, Inc, submitted to the Montana Department of Environmental Quality (DEQ) a “Plan of Operations for Drilling Activities on Private Land”³ running concurrent with the drilling on public land consisting of “a two year period of exploration activities centered on the St. Julian patented claims.”

NEPA evaluation of this project must include the cumulative, connected and reasonably foreseeable actions associated with the full scope of activity on public and private lands. An EA should be conducted that evaluates this project, including additional exploration activities by the proponent on private lands, and any other projects within the area.

¹ <http://luckyminerals.com/content/Emigrant%20Mining%20District%20Project%2043-101%20report.pdf>

² <http://www.fs.usda.gov/project/?project=47041>, Plan of Operations 2015 amended

³ Plan is not currently available on MT DEQ web sites. Available here: <http://bit.ly/1T8CoUB>

2. The Forest Service should conduct an Environmental Assessment (EA) because extraordinary circumstances exist that preclude categorical exclusion.

The Forest Service should conduct an EA because the proposed exploration project has uncertain effects, or may have significant effects, on at least four (underlined below) of the following “resource conditions that should be considered in determining whether extraordinary circumstances related to the proposed action warrant further analysis and documentation in an EA:

- (1) Federally listed threatened or endangered species or designated critical habitat, species proposed for Federal listing or proposed critical habitat, or Forest Service sensitive species;
- (2) Flood plains, wetlands, or municipal watersheds;
- (3) Congressionally designated areas, such as wilderness, wilderness study areas, or national recreation areas;
- (4) Inventoried roadless areas or potential wilderness areas;
- (5) Research natural areas;
- (6) American Indians and Alaska Native religious or cultural sites, and
- (7) Archaeological sites, or historic properties or areas.

Any level of increased mining activity in Emigrant Gulch and its surrounding wildlands are significant for the following important reasons:

- Occupied and active grizzly bear habitat bordering the Primary Conservation Area
- Documented Canada lynx habitat
- This area is part of the inventoried “North Absaroka Roadless Area”. These lands are specifically identified as pristine and unspoiled and provide the public with many many benefits including clean water, hunting opportunities, outdoor recreation and critical wildlife habitat.
- Paradise Valley and surrounding peaks and valleys are well-known to contain many archeological sites with the first Crow Agency at nearby Mission Creek.
- Immediate proximity to the Congressionally designated Absaroka-Beartooth Wilderness and Yellowstone National Park
- Immediate proximity to the Dome Mountain Wildlife Management Unit and other critical winter range in Paradise Valley
- A source of ground water in the Yellowstone River basin including Chico Hot Springs
- A source of surface water critical for irrigation and agriculture and already threatened by historic mine operations including acid mine drainage
- Emigrant Peak, Emigrant Gulch, West Fork Mill Creek and Six Mile Creek are important and popular public access points providing for outdoor recreation contributing to the local and regional economy.

There is uncertainty associated with the potential impacts of the proposed exploration activities on these resources. The plan calls for helicopter use and drilling two sites simultaneously over the course of two shifts (day and night). This type of noise and industrial activity are likely to result in adverse effects to grizzly bears and other wildlife, which should be analyzed in the NEPA process.

3. The Plan of Operations lacks sufficient information to evaluate the proposal.

The proposed plan of operation (POO) lacks the specifics necessary to evaluate the proposal. The POO states that for proposed core drilling: “The layout should be considered a conceptual plan and not something which is exact in nature. As new information is acquired additional holes may be required on a specific area or direction, as other locations earlier thought practical are found to be not important.” (p. 5, POO).

The company must provide a plan of operations that provides specific information related to drilling locations, depth, etc. to evaluate the potential impacts. The EA should also include baseline data to identify groundwater resources in the area and disclose whether the proposed drilling operations will intersect any of the existing adits in the area (e.g., the Allison Tunnel), artesian springs or any other groundwater resources.

The plan also calls for moving the drill to the base metal zone if agreement is reached with local owner on mineral rights. The agency should not approve any activity in this proposal where clear legal authority isn't present.

4. The plan of operation (POO) provides insufficient information on the impacts to water quality and quantity and the Forest Service should provide additional information on water rights.

The plan calls for the use of water rights attached to the St Julian Mine Patent claims along Emigrant Creek for drilling use on unpatented claims in another section of land on Emigrant Peak. Has the State authorized the use of the St. Julian water rights for a separate place of use? Please provide information on whether and how this has been authorized.

The plan also calls for pumping water (up to 50 gpm) from Emigrant Creek for exploration activities, but it fails to provide baseline information on streamflows in the stream or aquatic life, and it fails to evaluate whether reduced flows may result in adverse impacts to aquatic life in Emigrant Creek. MFISH indicates that the upper reaches of Emigrant Creek already suffer from chronic dewatering.

The POO states that the average drill depth is expected to be around 1000 feet, though some holes may be up to 2000 feet. The plan fails to provide baseline data on groundwater in the area, and whether groundwater may be reached by drilling operations.

5. Analysis of impacts to threatened and endangered species

Grizzly bears are currently managed by the “Final Conservation Strategy for the Grizzly Bear in the Greater Yellowstone Area” (March 2007)⁴. In the Conservation Strategy, management direction is described for both the Primary Conservation Area (PCA) and adjacent areas.

The proposed exploratory drilling for “phase 1” on both public and private lands do not fall within the current Primary Conservation Area (PCA) boundary. However, existing new claims by Lucky Minerals cross the divide between Six Mile Creek and Emigrant Creek, which constitutes the boundary of the PCA. With the “reasonably foreseeable activities” acknowledged by Lucky Minerals with a concurrent private land exploration and an upcoming “Phase 2” of exploration⁵, all efforts should be made to understand the cumulative impacts of these exploration activities on grizzly bears.

For areas outside of the Primary Conservation Area (PCA) within occupied grizzly bear habitat which the entire Emigrant Gulch, Six Mile Creek and West Fork of Mill creek area is known to be⁶, the agency may be required to complete Section 7 consult under the Endangered Species Act (ESA). Section 7 of the ESA requires that an agency “consult with the Secretary of the Interior (USFWS) or Commerce if it has reason to believe that its action may affect an endangered or threatened species.” If a proposed Federal action may affect a listed species or designated critical habitat, formal consultation with FWS is required (except when the Services concur, in writing, that a proposed action “is not likely to adversely affect” listed species or designated critical habitat).⁷

Canada lynx are now managed according to the *Northern Rockies Lynx Management Direction*, based on recommendations set forth in the *Canada Lynx Conservation Assessment and Strategy*. In 2014 the USFWS designated critical habitat for Canada Lynx including portions of the Custer Gallatin National Forest (see attached map). The entire proposed project and surround areas lies within designated critical habitat and the USFS shares in the responsibility for the well-being of lynx and lynx habitat and should manage according to the Northern Rockies Lynx Management Direction.

Considering the full extent and length of shifts of the proposed drilling (20+ hours a day)⁸, Earthworks requests that the USFWS complete a Biological Opinion on the impacts to grizzly bears and lynx including any necessary “incidental take statement.” Incidental take should be considered for both direct and indirect effects on grizzly bears including management removals or relocations. At a minimum, the Forest Plan requires a biological review of the project with informal consultation with the USFWS because the project area includes occupied grizzly habitat and designated lynx habitat.⁹

⁴ http://www.fws.gov/mountain-prairie/species/mammals/grizzly/Final_Conservation_Strategy.pdf

⁵ <http://luckyminerals.com/content/Emigrant%20Mining%20District%20Project%2043-101%20report.pdf>

⁶ See Interagency Grizzly Bear Study Team Boundary Maps, available at <http://www.nrmc.usgs.gov/mapgallery/map.html?webmap=78152b8e0bde457ca95918fdd48c5352>

⁷ [50 CRF §402.02, 50 CFR §402.13] ESA Section 7 Consultation Handbook, March 2008

⁸ <http://www.fs.usda.gov/project/?project=47041>, Plan of Operations 2015 amended, page 3-4

⁹ U.S. Forest Serv., Gallatin Forest Plan 1987 as Amended Through November 2014, Appendix G: Grizzly Bear Standards and Guidelines at G-8 (Nov. 18, 2014).

6. Impacts to recreation and public access.

The POO calls for drilling on existing Forest Service roads. How will this affect recreation activities in the area?

7. There is insufficient information on cultural resources.

The EA should provide information on whether cultural resources are present in the area. It is unlikely that the exploration crew is appropriately educated to identify these resources and prevent impacts should they be present.

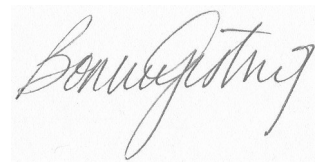
8. Adequacy of reclamation bond.

Lucky Minerals is a penny-stock Canadian firm with assets in 2014 of \$935,000 CA; with no track record of management or production, which indicates the speculative nature of this project and the lack of financial resources to conduct the full scope of proposed exploration activities on private and public lands, which the company estimates at over \$2 million. The Forest Service should require a detailed and significant bond to ensure that it has the financial resources for reclamation if the company is unable to do so.

Please place me on the list to receive future notices pertaining to this project.

Thank you for the opportunity to comment on this proposal.

Sincerely,



Bonnie Gestring
Earthworks
140 South 4th Ave. West, Unit 1
Missoula, MT 59801
406-549-7361
bgestring@earthworksaction.org

cc;

Warren McCullough
Montana Department of Environmental Quality
wmccullough@state.mt.us

