

Mr. Tim Cazier  
Environmental Protection Specialist  
Colorado Division of Reclamation, Mining and Safety  
1313 Sherman St., Rm. 215  
Denver, CO 80203

Re: Comments on the SLB recommendation for Zephyr Gold USA Ltd. to drill in Section 16 of the Grape Creek-Horseshoe Mountain State Stewardship Trust parcel within the Grape Creek Wilderness Study Area

Dear Mr. Cazier,

The Colorado State Land Board (SLB) recommendation for allowing exploration drilling in the Grape Creek-Horseshoe Mountain State Stewardship Trust parcel via Lease SM 112413, within the Grape Creek proposed Wilderness Area, is not legal (see specific details below). SLB Stewardship Trust Land should allow *"only those uses that will protect and enhance the beauty, natural values, open space and wildlife habitat of those lands,"* except for pre-existing uses or management practices. Under State Land Board policy, the Director *shall review and evaluate whether the new use will adversely affect the natural values of the property.* Beyond this even, the SLB's own Stewardship Trust Policy 400-001 requires the establishment of baseline inventories and science-based management plans sufficient to protect and enhance the natural values within that baseline inventory. Neither the inventories nor the science-based management plans were created to my knowledge.

Mining for gold and other minerals is not compatible with sound stewardship of this property, and there will be no way the land's natural values will be able to survive if a mining operation is permitted there. Historically, hard rock mining has damaged surface water and ground water quality, critical for aquatic habitats and for both municipal and agricultural water supplies. The Grape Creek-Horseshoe Mountain parcel is within the water collection basin of the Arkansas River, a primary water "lifeline" for much of southeastern Colorado, hence protecting the Grape Creek water supply is critical for the state of Colorado.

The proposal to use a helicopter to transport a drilling rig into the area to take samples, will necessitate creating a helipad as well as a drilling pad (with an adjacent wooden platform for equipment and operational support). This action must be disallowed for the following reasons:

1. The company does not have a Valid Existing Right (as defined in 43 CFR 3802.0-5(k)) and the claim did not even exist on 10/21/1976. Under 3802.0-6 claimants may conduct operations to the same manner and degree as occurring on 10/21/1976. As the claimant did not have a mining claim until after that date, any action the claimant takes must satisfy the "non-impairment," criteria from FLPMA Section 603(c), and not the "unnecessary and undue" criteria as would be the case with a pre-FLPMA valid claim.

2. In addition, 43 CFR 3802.0-5(d) permits development only to the point that it would be reclaimed to being substantially unnoticeable "by the time the Secretary is scheduled to make a recommendation to the President on the suitability of a wilderness study area for inclusion in the National Wilderness Preservation System." That date was in 1991. That timeframe allowed for some work to be done between 1976 and 1991, as long as it could be reclaimed to be substantially unnoticeable by then. Since we are long past even 1991, that window of opportunity has closed, and any work must be immediately unnoticeable -- that is, it meets the non-impairment criteria of BLM Manual 6330.
3. The proposed action fails both tests of the non-impairment criteria in Manual 6330 to the extent that:
  - a. it is not "temporary" as it would "create a demand for uses that would be incompatible with wilderness management,"
  - b. it creates surface disturbance "that would necessitate reclamation, rehabilitation, or restoration in order for the site to appear and function as it did prior to the disturbance," and
  - c. as there was no mining claim in existence on the date the WSA was established, the action does not fall under one of the exceptions to non-impairment (i.e., a VER or grandfathered use).

The BLM which administers much of the adjacent properties may argue they have no "decision point" on this without a proposal to either approve or deny the action and they would be correct, but the activity within Section 16 is clearly illegal and they would have to have been already aware of this, or they were quite ill-informed. The BLM should not develop NEPA alternatives and analyses for illegal activities (indeed, the DRMS might want to investigate the reasons as to why the BLM hasn't taken action to disapprove the proposed activities!).

Finally, please note that Congresswoman Diana DeGette has a continuing intention of including the Grape Creek-Horseshoe Mountain State Stewardship Trust parcel, the Section 16 area, within the Colorado Wilderness Act, so the impact of these drilling – and potentially mining – activities could likely extend beyond the state land and quite adversely effect the wilderness qualities of much of the surrounding BLM lands.

Yours Most Sincerely,

*Kirby Hughes*

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STATE OF  
COLORADO

Cazier - DNR, Tim <tim.cazier@state.co.us>

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## Comments on the SLB Recommendation for Zephyr Gold USA Ltd. to Drill in Section 16

1 message

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**Kirby Hughes** <kirbyhughes@mesanetworks.net>  
To: tim.cazier@state.co.us

Mon, Apr 27, 2020 at 5:02 PM

Good Afternoon,

Please accept my comments, as attached, addressing the SLB recommendation for Zephyr Gold USA Ltd. to drill in Section 16 of the Grape Creek-Horseshoe Mountain State Stewardship Trust parcel within the Grape Creek Wilderness Study Area.

Thank you!

*Kirby Hughes*

Kirby Hughes

Sierra Club/Rocky Mountain Chapter Mining Chair

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**Proposed Zephyr Mining Company Activity in Grape Creek WSA.zip**

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