

STATE OF
COLORADO

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

Permit # P20200021 message

vern berry <vern@sbcbglobal.net>
To: Tim Cazier - DNR <tim.cazier@state.co.us>

Mon, Apr 27, 2020 at 12:08 PM

Tim,

I am writing in opposition of application permit P2020002 of Zephyr Minerals for a mining lease in the Grape Creek/Horseshoe Mountain Stewardship Trust property.

I believe the minuses greatly outweigh the pluses. Increased ground and air traffic present a potentially adverse impact on Grape Creek and environs, especially to the air and water quality. I reside in Texas and have seen the damage to the air quality and the degradation of the roads in far West Texas where fracking is taking place. I have traveled from Texas to Canyon City to flyfish in Grape Creek with a local guide and found not only the fishing wonderful, but the hike into the canyons to be beautiful. With the loss of water quality to support the trout fisheries, not only would it eliminate the fish, but the loss of income for local guides and flyshops.

While in the canyons, I noted the presence of a Bluethroated Hummingbird, very rare in Colorado, but in a habitat where it is normally found. I'm concerned that additional helicopter traffic will disturb the Hummingbird and thus rob the potential of Colorado birders to view the bird. Of course, I need to add that tourism is a large part of income, tax wise, in Colorado and it would be a shame to lose a long term income as opposed to a short term income that isn't even a guarantee.

I certainly hope to return to a pristine Grape Creek in the future to fish and enjoy the wildlife and thus support the local economy. So, please reject this application.

Additionally,

I've gotten a hold of some very good information that will show that Zephyr's proposed activities in the Grape Creek Wilderness Study Area (WSA) is illegal. I am going to include some of this in my comments that I'll submit, and you may find it useful as well.

Zephyr wants to fly in a helicopter with a drilling rig to take samples, which may necessitate clearing multiple helipads. This action is illegal.

1. The company does not have a VER as defined in 43 CFR 3802.0-5(k); that is, the claim did not 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), 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 the point of 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 time frame 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 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, found on page 1-10 to the extent that:
 1. It is not "temporary," in that it would "create a demand for uses that would be incompatible with wilderness management."
 2. 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."
 3. Since 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 may argue that they have no "decision point" here -- no proposal to either approve or deny. Technically, they are correct. The action is illegal, and the BLM does not develop NEPA alternatives and analysis for illegal actions. That the mining company has told the BLM their plans shows good intentions on the company's part. From the BLM's point-of-view, however, it is no different than if I came into the office and said I would like to drive my ATV cross-country in the WSA. The BLM does not need a decision document to inform the party that the action is illegal, or to take action to prevent it.

Sincerely,
Vern Berry - Dallas, Texas