

**STATE OF
COLORADO****Cazier - DNR, Tim <tim.cazier@state.co.us>**

Zephyr Gold USA, Dawson Gold Project; CUP 12-003, Application for Major Modification, Ref: Permit # P2020002

1 message

John Sztukowski <john@wildconnections.org>
To: tim.cazier@state.co.us
Cc: Katie Meehan <katie_meehan@twos.org>

Mon, Apr 27, 2020 at 5:07 PM

April 27, 2020

Mr. Tim Cazier
Colorado Division of Reclamation, Mining and Safety
[1313 Sherman Street, Room 215](#)
[Denver, Colorado 80203](#)

Re: Zephyr Gold USA, Dawson Gold Project; CUP 12-003, Application for Major Modification

Ref: Permit # P2020002

Dear Mr. Cazier:

Wild Connections is a registered 501(c)(3) nonprofit organization that has worked to identify, protect, and restore wildlands, native species, and biological diversity in the Arkansas and South Platte watersheds for the past 25 years. As our name indicates, Wild Connections focuses on protecting wildlands on a landscape-wide basis, with particular emphasis upon protecting the connecting links that enable wildlife to move back and forth, as well as upon protecting the large, unimpacted core areas that can sustain a complete diversity of our region's wildlife.

The Wilderness Society (TWS) is a non-profit national organization founded in 1935, with members who reside throughout the nation. TWS works to protect America's wilderness lands through public education, scientific analysis, and advocacy. TWS's mission is to protect wilderness and inspire Americans to care about our wild places, so that future generations will enjoy the clean air, water, wildlife, beauty, and opportunities for recreation and renewal that pristine mountains, forests, and rivers provide. Protecting wilderness quality and other sensitive lands managed by BLM is vital to achieving The Wilderness Society's mission.

The Grape Creek watershed and contiguous lands are some of the most intact wild and scenic public lands in the region, and provide habitat and range to numerous wildlife species, as well as providing a number of backcountry recreational opportunities for residents and tourists. We are extremely concerned to hear about the proposed path forward for the expansion of Zephyr's mining operation to extend into the Grape Creek Area of Critical Environmental Concern (ACEC) and the Grape Creek Wilderness Study Area (WSA), both managed by the Bureau of Land Management (BLM). The expansion, as proposed, is illegal.

The Federal Land Policy and Management Act (FLPMA) requires the BLM to manage WSAs so as not to impair the suitability of these areas to become Wilderness Areas if Congress chooses to designate them as such. WSAs have specific policies in place for management to ensure that these areas remain suitable for such designation. WSAs are part of the National Landscape Conservation System. This makes conservation of WSAs a priority along with other units of the system including monuments, National Conservation Areas, Wilderness, wild and scenic rivers and national trails. It also allows for more attention and resources to be given to these lands through the BLM Directorate for the National Landscape Conservation System and Community Partnerships.

BLM Manual 6330 contains detailed guidance for how WSAs are to be managed under BLM, including the non-impairment standard. The BLM's "non-impairment" guidelines set strict, consistent management requirements designed to protect the wilderness character of WSAs.

The current proposal to expand Zephyr's mining operation is illegal for the following reasons:

- The company does not have a Valid Existing Right 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.
- 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 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 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.

- The proposed action fails both tests of the non-impairment criteria in Manual 6330, found on page 1-10 to the extent that:
 - It is not "temporary," in that it would "create a demand for uses that would be incompatible with wilderness management."
 - 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."
 - 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 Grape Creek area has current and proposed protective designations as well as a number of well-documented and significant flora, fauna, and recreational values, specifically within the proposed exploratory area for mining. All of these values may be at risk to mining exploration activities and potential development:

- A large part of the proposed expansion area is within the Bureau of Land Management (BLM) Grape Creek Wilderness Study Area (WSA). Designated by act of Congress in 1980, the Lower and Upper Grape Creek WSAs consist of over 21,400 acres of BLM managed public land. BLM notes this area for its diverse terrain from rolling hills to rugged canyons and mountains to rich riparian zones along the creek. A predominant feature is Horseshoe Mountain, in the northeastern portion of the WSA. Vegetation consists mainly of pinyon and juniper, ponderosa pine, Douglas fir, and riparian species along Grape Creek. Fauna includes mule deer, mountain lion, black bear, bighorn, various small mammals, wild turkey, various species of raptors, and trout. Subtle remains of the Denver and Rio Grande railroad spur offer historical significance. Activities include hiking, backpacking, camping, horseback riding, hunting, and photography.
- A large part of the proposed expansion area is contained within the 32,884 acre Grape Creek proposed Wilderness under the 2019 Colorado Wilderness Act, which passed the U.S. House in February as the Protecting America's Wilderness Act. Congresswoman Diana DeGette, who is championing this bill and our local public lands, notes that Grape Creek is a secluded and serene body of water, creating a lush habitat with diverse vegetation and wildlife. She further notes that it is a pristine environment that is a haven for both fish and fisherman alike, a true example of sustainable Colorado recreation.
- The central and western portions of the proposed expansion area are also within BLM's Grape Creek Area of Critical Environmental Concern (ACEC), an area currently managed and protected as a corridor of significant naturalness character with unique high desert riparian resources, scenic and visual qualities, flora (*Aquilegia chrysantha* var. *rydbergii*, *Mentzelia chrysantha*, and *Mentzelia densa*) and fauna values (bighorn sheep and peregrine falcon nesting area).
- Portions of the proposed expansion area are also contained within Colorado Natural Heritage Program (CNHP)'s Grape Creek Potential Conservation Area (PCA), an area identified by the Grape Creek riparian corridor and watershed. CNHP found this area to have a biodiversity significance ranking of B2 (on a scale of B1 to B5 with B1 being the most significant), having very high biodiversity significance.
 - The Grape Creek PCA's biodiversity significance is due to this site encompassing an excellent (A-ranked) and a good (B-ranked) occurrence of a globally imperiled (G2G3/S2S3) riparian natural community, narrowleaf cottonwood - Rocky Mountain juniper (*Populus angustifolia* - *Juniperus scopulorum*) woodland. Additionally, there is a good (B-ranked) occurrence of the globally vulnerable (G3/S2) narrowleaf cottonwood - Douglas-fir (*Populus angustifolia* - *Pseudotsuga menziesii*) woodland and a good to fair (BC-ranked) occurrence of the apparently globally secure but state imperiled (G4/S2) Rocky Mountain juniper / Red-osier dogwood (*Juniperus scopulorum* / *Cornus sericea*) woodland. Several fair (C-ranked) occurrences of a globally imperiled (G2/S2) plant, Arkansas Canyon stickleaf (*Nuttallia densa*), have also been documented.
- The non-profit, scientific organization Rocky Mountain Wild, primarily using Colorado Parks and Wildlife data, conducted a biological diversity index for the Grape Creek watershed and found that this area provides high quality habitat and range for several wildlife species:
 - Rocky Mountain bighorn sheep (*Ovis canadensis Canadensis*) production area, overall range, summer range, winter range, severe winter range, winter concentration area, and summer concentration area;
 - Black bear (*Ursus americanus*) overall range, summer concentration area, and fall concentration area;
 - Elk (*Cervus Canadensis*) overall range, summer range, winter range, and severe winter range;
 - Mule deer (*Odocoileus hemionus*) overall range, summer range, summer concentration area, winter range, severe winter range, and winter concentration area;
 - White-tailed deer (*Odocoileus virginianus*) overall range;
 - Pronghorn (*Antilocapra americana*) overall range, winter range, and severe winter range;
 - Mountain lion (*Puma concolor*) overall range;
 - Brazilian free tailed bat (*Tadarida brasiliensis*) overall range, Colorado state ranked critically imperiled species;
 - Townsend's big-eared bat (*Corynorhinus townsendii*) overall range, US Fish and Wildlife Service Endangered Species;
 - Gunnison's prairie dog (*Cynomys gunnisoni*) overall range, a Species of Most Concern by the US Wildlife Conservation and Restoration Program's (WCRP) Comprehensive Wildlife Conservation Strategy (CWCS), as well as listed as Colorado BLM sensitive;
 - Aberts squirrel (*Sciurus aberti*) overall range;
 - Bald eagle (*Haliaeetus leucocephalus*) winter forage and winter range, listed as Colorado BLM Sensitive, CWCS Species of Most Concern, and Partnership in Flight Priority Bird;

- Scaled quail (*Callipepla squamata*) overall range, a CWCS Species of Most Concern and Partnership in Flight Priority Bird;
- Wild turkey (*Meleagris gallopavo*) roost sites, overall range, winter range, and winter concentration area;
- Great blue heron (*Ardea Herodias*) foraging area;
- Canadian goose (*Branta canadensis*) foraging area, production area, winter concentration, and winter range;
- Brown Trout (*Salmo trutta*) habitat

Because of the above reasoning, Zephyr's proposed action is illegal and threatens the values, existing special designations, and proposed designations the Grape Creek watershed. As such, Wild Connections and The Wilderness Society maintain this area is too valuable and significant to local wildlife and recreation to be considered for exploratory mining.

It is immaterial over the long term that the activities currently proposed are "exploratory" and that surface operations within the proposed expansion area would be accessed during this initial phase by helicopter, since the potential impacts upon wildlife of low-level helicopter operations are extreme, and in some cases at least as severe as accessing the area via a road. Attached is the letter the Pikes Peak Sierra Club Group recently sent to the State Land Board detailing these impacts within Section 16. This letter notes in particular that the Colorado Parks and Wildlife informed the State Land Board that wildlife impacts within the proposed site will be high and difficult to remedy. In addition, the foreseeable future impacts would be far more severe, since the ultimate purpose of these operations would seemingly be to mine the area.

Sincerely,

John Sztukowski, Conservation Director
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Grape Creek Zephyr SC comment letter 2.doc

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Pikes Peak Group of the
Colorado Chapter
522 North Royer Street
Colorado Springs, CO 80903

April 5, 2019

Colorado State Land Board
1127 Sherman St., Suite 300 Denver, CO 80203-2206
via e-mail: barb.fiedler@state.co.us

Re: Application for Change of Use on Grape Creek – Horseshoe Mountain

Dear Commissioners:

On behalf of the Pikes Peak Group of the Sierra Club, one of the nominators of the Grape Creek/Horseshoe Mountain Stewardship Trust Parcel, I have examined the information contained in the packet accompanying the application for a mining lease on the parcel and believe that it clearly shows that granting this application, even with the use restrictions proposed by your staff, would not protect, much less enhance, the values for which the parcel was placed in the Stewardship Trust. As Colorado Revised Statutes § 36-1-107.5 states with regard to new uses, you may “permit only those uses that will protect and enhance the beauty, natural values, open space, and wildlife habitat of those lands.” The proposed mining lease clearly does not meet this requirement.

I wish to call your attention to the letter received from Colorado Parks and Wildlife (CPW), contained in your information packet as Exhibit 5, which states that wildlife impacts within the proposed site will be high and difficult to remedy. The letter notes that this is particularly the case with respect to the impact to bighorn sheep. As the CPW letter notes, the area in question is not only a bighorn winter concentration area and lambing area, but also a migration corridor and year round range. The letter states that there is no way to avoid an impact to the bighorn population if surface and subsurface exploration and mining take place. This blanket statement stands in sharp contrast to the CPW recommendations for other affected species, for which it recommends only seasonal restrictions on surface activities. Despite this clear statement that impacts to bighorn sheep will not be seasonally limited, the staff recommendations for approval of the application presuppose that the property’s natural values will be adequately protected and wildlife impacts sufficiently minimized if drilling equipment is brought in by helicopter, if the disturbed surface area is limited and located at least 500 feet from Grape Creek, and if surface activities and exploration activities are limited to only four months of the year (July 1 - October 31). Nothing in the CPW letter supports this conclusion.

I wish to call your attention to a recent Bureau of Land Management decision in Utah, reported in the Grand Junction Sentinel https://www.gjsentinel.com/news/western_colorado/blm-pulls-permit-on-helicopter-shuttles/article_2abe9140-454c-11e9-9a85-20677ce07cb4.html, in which

the BLM withdrew a permit for helicopter access for boaters on the Colorado River near Moab because of concerns that it would impact bighorn sheep, potentially driving them from the area. The permit in question would have allowed for just one daytime trip a week, but even this relatively low level of disturbance was considered impactful because bighorn sheep are particularly sensitive to helicopter traffic.

I wish also to call your attention to guidelines which other governmental agencies have adopted to minimize impacts to bighorn sheep from helicopter operations, including those associated with geophysical mineral exploration. See Recommended Land Use Guidelines for Mountain Goat and Bighorn Sheep Ranges in Alberta http://reviewboard.ca/upload/project_document/EA0405-002_Recommended_Land_Use_Guidelines_for_Mountain_Goat_and_Bighorn_Sheep_Ranges_in_Alberta.pdf . These guidelines recommend limiting helicopter operations within a “land use zone” constituting all of the mapped critical range plus an additional 800 meter buffer around the range. Such a zone would effectively encompass all of the Stewardship Trust Parcel. The guidelines also recommend establishment of flight paths to and from the approved activity area that avoid all steep cliff faces that may be used as escape terrain, as well as other known high use areas. They further recommend that exploratory geophysical drilling should be done by means of directional drilling from outside the zone.

I therefore suggest that there is no evidentiary support for staff’s conclusion that by avoiding direct surface access to the parcel and instead conducting these extensive and intrusive explorations activities by helicopter during a limited portion of the year, the granting of the permit can be made consistent with the constraints imposed on a Stewardship Trust Parcel under state law.

Sincerely,

James E. Lockhart, Conservation Chair
Pikes Peak Sierra Club Group