



STATE OF
COLORADO

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

P-2020-002 Dawson Gold Project NOI Appeal

1 message

Jennifer Thurston <jennifer@informcolorado.org>

Fri, Jun 12, 2020 at 3:38 PM

To: "Cazier - Dnr, Tim" <tim.cazier@state.co.us>

Cc: John Sztukowski <john@wildconnections.org>, Jeff Parsons <wmap@igc.org>, Russ Means - Dnr <Russ.Means@state.co.us>, Ginny Brannon <Ginny.Brannon@state.co.us>

Howdy Tim,

I have attached a letter to appeal the approval of P-2020-002 Dawson Gold Project, on behalf of INFORM and Wild Connections.

Thank you for your review. Please let me know if you need additional information.

Thanks,

Jennifer Thurston

Information Network for Responsible Mining

Office: 970-859-7456

Email: jennifer@informcolorado.org

Web: www.informcolorado.org

Twitter: <https://twitter.com/INFORMining>



INFORM-WildConnections-P2020002-Dawson-Appeal-June122020.pdf

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June 12, 2020

Tim Cazier
Environmental Protection Specialist
Colorado Division of Reclamation, Mining & Safety
1313 Sherman Street, Room 215
Denver, Colorado 80203

Re: Appeal of Notice of Intent P-2020-002, Dawson Gold Project, Zephyr Gold USA Ltd.

Dear Mr. Cazier,

On behalf of the Information Network for Responsible Mining (INFORM) and Wild Connections, and pursuant to Mined Land Reclamation Board (MLRB) Hard Rock Rule 5.1.3, please accept this appeal of the Division of Reclamation Mining and Safety's (Division) approval of the Notice of Intent to commence prospecting activities associated with the Dawson Gold Project proposed by Zephyr Gold USA Ltd (Zephyr).

The Information Network for Responsible Mining (INFORM) is a statewide citizens organization that addresses the impacts of hardrock mining across Colorado and whose members regularly use and enjoy the public lands in the vicinity of the Dawson Project and the Grape Creek-Temple Canyon area.

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 Dawson Gold Project exploration area is in an exceptionally sensitive location. The area of the proposal is included in a BLM Wilderness Study Area and is adjacent to conservation lands, including a State Land Board "stewardship trust" parcel, a BLM Area of Critical Environmental Concern, a Cañon City conservation park, a valuable trout fishery, high quality wildlife habitat, and public lands with abundant recreational opportunities as well as cultural and historic significance. 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 include 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 Potential Conservation Area'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

As a result of these exceptional values, the Division's review should be to an exacting standard under the MLRB Rules. Unfortunately, as discussed herein, several aspects of the Division's review leave open questions as to compliance with the Rules, leaving adequate reclamation in doubt, and unnecessarily increasing the risk of unnecessary and significant impacts to this particularly sensitive area.

Rule 5.1.2(d)(iv) requires an estimated acreage of land surface to be disturbed for prospecting activities and the operator has responded in the Notice of Intent that less than one-tenth of an acre will be disturbed. The Notice describes a plan to drill in three separate areas using helicopters to access the site, assembling platforms in lieu of drilling pads, and flying in equipment and conducting exploration activities from the platforms. However, the plan contains ambiguities regarding the scope of the proposed construction and location of such construction such that additional disturbances will occur but are not addressed as "affected land" as defined in Rule 1.1(4). For example, the record demonstrates that while the plan is to lower materials from a helicopter to conduct the prospecting activities, "if sufficiently level ground is not in the vicinity" of the proposed drilling, a helicopter landing area platform will be constructed. There is no indication as to of the location of these potential ground-disturbing activities. Thus, the areas for the actual landing and staging sites required by the helicopters, as well as the pathways used by personnel to travel from the landing sites to the drilling locations, the surface area located beneath the 20x30 foot drilling platforms, and all adjacent tanks and equipment locations, as well as the three ancillary mud pits disclosed in the Notice are not sufficiently specified nor accounted for.

Rule 5.1.2(d)(v) requires a map that includes "sufficient detail to identify and locate known prospecting features and facilities that may be affected and those that are not anticipated to be affected. This includes the location of all drill holes, mud pits, excavations, trenches, adits, shafts, tunnels, rock dumps and prospecting roads." However, the area map

submitted with the Notice does not clearly identify these features, nor outline all of the affected land. Instead, broad ranges of “radius” areas are indicated for the general locations of landing zones and drill site locations. Such vague and generalized descriptions are not sufficient to comply with the rules, particularly given the high conservation values and rugged terrain of the potentially impacted land.

The Notice indicates that three mud pits will be utilized, one at each drilling site, but does not provide any additional information about their size, capacity, construction or usage. Rule 5.3.1(d) requires the operator to conduct drilling in such a way as to prevent cuttings and fluids from entering any drainage way, and how this will be handled should be included in the Notice. The operator indicates that all stipulations, including those for wildlife, that were made as part of its State Land Board lease will be extended to the BLM areas included in the Dawson Gold Project. Even so, the Division should specifically address the recommended seasonal closures to protect big game and wildlife in the vicinity and dictate these as a condition of the permit.

The Notice of Intent materials submitted by the operator also include a letter of recommendations from Colorado Parks & Wildlife submitted during the State Land Board leasing process that specifically states that any surface or subsurface sampling will have “adverse impacts” on the landscape, commenting that the “possibility for impacts within the proposed site will be high and difficult to remedy.” CPW also requested that it be consulted in the future as site activities progress, but there is no additional information provided by the operator about whether this has occurred. Rule 5.3.2 Protection of Wildlife provides that “the Exploration Operation shall be conducted as to minimize adverse effects upon wildlife.” As such, the current record does not support the required “minimize” standard for wildlife.

An additional State Land Board stipulation is that a biological survey for rare plants be conducted in any location in the project area where surface disturbance occurs; however, there is no indication in the record that the survey has been conducted. Despite the operator’s claims that no surface disturbance will occur, as mentioned above, some areas will be disturbed, in fact, and should be surveyed. The State Land Board relies on the Division to review permits to guarantee that the land will be protected, and Rule 5.3.6 does require that the operator comply with all other local, state and federal requirements.

The new exploration activities will be conducted within a BLM Wilderness Study Area, where regulations for surface disturbances are more stringent than on non-designated BLM lands. Any activities authorized by the Division as part of Zephyr’s prospecting activities should not create any conflicts with BLM’s standards under 43 C.F.R. Part 3802. These regulations require that all mineral rights asserted by prospectors be verified existing rights as well as satisfying BLM’s non-impairment surface standard. Further, the regulations specifically require a plan of operations wherever the operator proposal “involve[s] construction of means of access, including bridges, landing areas for aircraft, or improving or maintaining such access facilities in a way that alters the alignment, width, gradient size, or character of such facilities.” [43 C.F.R. § 3802.1-1.] As referenced herein, the proposal specifically contemplates

construction of landing areas for helicopters. As such, the plan of operations requirement is triggered. The Division should at minimum be required to clarify this point with BLM prior to approval to ensure compliance with Rule 5.3.6.

Respectfully submitted,

Jennifer Thurston, Director
Information Network for Responsible Mining
P.O. Box 332
Paradox, CO 81429
(970) 859-7456
jennifer@informcolorado.org

John Sztukowski, Conservation Director
Wild Connections
2168 Pheasant Pl.
Colorado Springs, CO 80909
(817) 939-4239
john@wildconnections.org