Great Basin Resource Watch

PLAN
Progressive Leadership Alliance of Nevada
www.planevada.org

January 11, 2021 – Via BLM Eplanning Portal

Gerrit Buma - Planning and Environmental Coordinator
BLM, Sierra Front Field Office
5665 Morgan Mill Road
Carson City, Nevada 89701

Re: *Yerington Anaconda Mine Site Disposal, Environmental Assessment (DOI-BLM-NV-C020-2020-0010-EA) Scoping Comments*

Dear Gerrit Buma,

Great Basin Resource Watch (GBRW) and the Progressive Leadership Alliance of Nevada (PLAN) (collectively "commenters") submit these comments pursuant to BLM's Dec. 11, 2020 public notice on this matter. Commenters are Nevada-based non-profit public interest organizations representing thousands of Nevadans in affected communities. We have been engaged in the Anaconda mine site since 2002. All previous comments from either of the commenters on the Anaconda/Yerington Mine or proposed exchange are hereby incorporated into the administrative record for BLM's consideration and review. All attachments and other documents previously submitted (see Great Basin Resource Watch 2018 and 2020) and submitted with these comments (and also submitted to BLM's Eplanning site) are included into the administrative record for BLM's consideration and review.

Due to the connection between the proposed Sale and RMP Amendments, in addition to the need to comply with the Federal Land Policy Management Act (FLPMA) and the National Environmental Policy Act (NEPA), all issues and concerns noted herein must be satisfactorily met in order for the RMP Amendments and any subsequent ROD or other decisions to be legal. As stated by the Ninth Circuit, the RMP Amendments cannot be based on a NEPA document that violates NEPA, or a decisionmaking process that violates FLPMA: "[W]e note the incongruity of holding that the analysis in the FEIS of the no action alternative violates NEPA with respect to the land exchange but not with respect to the RMP amendments if the same erroneous assumption infects them both." Center for Biological Diversity v. U.S. Dept. of Interior, 623 F.3d 633, 648 (9th Cir. 2010)(BLM land exchange with mining company violated NEPA and FLPMA).

The Sale Is Not In the National/Public Interest and Does Not Satisfy the FLPMA Criteria

In FLPMA, "Congress declares that it is the policy of the United States that . . . the public lands be retained in Federal ownership, unless . . . it is determined that disposal of a particular parcel will serve the national interest." 43 U.S.C. § 1701(a). Regarding land sales, FLPMA allows such sales only under strict requirements:

(a) Criteria for disposal; excepted lands
A tract of the public lands (except land in units of the National Wilderness Preservation System, National Wild and Scenic Rivers Systems, and National System of Trails) may be sold under this Act

where, as a result of land use planning required under section 202 of this Act, the Secretary determines that the sale of such tract meets the following disposal criteria:
(1) such tract because of its location or other characteristics is difficult and uneconomic to manage as part of the public lands, and is not suitable for management by another Federal department or agency; or
(2) such tract was acquired for a specific purpose and the tract is no longer required for that or any other Federal purpose; or
(3) disposal of such tract will serve important public objectives, including but not limited to, expansion of communities and economic development, which cannot be achieved prudently or feasibly on land other than public land and which outweigh other public objectives and values, including, but not limited to, recreation and scenic values, which would be served by maintaining such tract in Federal ownership.

FLPMA, 43 U.S.C. §1713 ("Sales of Public Land Tracts"). Based on information provided to the public, the proposed sale does not meet these requirements of FLPMA and its implementing regulations, and these mandates have not been shown to be met.

BLM's national website notes that land sales must be in the public interest: "**Land Sales.** With the passage of the Federal Land Policy and Management Act of 1976 (FLPMA), Congress mandated that the BLM retain most remaining public lands, significantly reducing the acreage available for disposal. However, select sales continue to remain an important component of the BLM's land management strategy, **when they are in the public interest** and consistent with publicly-approved land use plans." https://www.blm.gov/programs/lands-and-realty/land-tenure/sales-and-exchanges (viewed Jan. 9, 2021). (emphasis added).

BLM's public interest assessment must include consideration of the burden as well as the benefits that might flow from a land exchange. City of Santa Fe, 103 IBLA 397 (1988). The public interest test is at the heart of Congress' directive to the federal land agencies to protect public—rather than private—concerns in every sale or exchange. Federal courts have strictly applied this mandate to protect the public. In National Audubon Society v. Hodel, 606 F. Supp. 825 (D. Alaska 1984), the court invalidated the Interior Department's public interest review as failing to consider "a substantial risk of significant short and long term injury to [an area's environmental] qualities," and that the potential harm to wildlife populations outweighed any benefit from the exchange. Id. at 843.

In the analogous context of land exchanges, "Section 206 of FLPMA and its implementing regulations permit the Secretary of the Interior or his designee to dispose of public lands in exchange for non-federal lands only on condition that the public interest will be served by the trade." Desert Citizens Against Pollution v. Bisson, 231 F.3d 1172, 1180, n. 8 (9th Cir. 2000). "Section 206 of FLPMA forbids land exchanges unless the 'public interest will be well served.'" Ctr. for Biological Diversity v. U.S. DOI, 623 F.3d 633, 640 (9th Cir. 2010); 43 U.S.C. § 1716(a). This determination requires that BLM give "full consideration" to securing important objectives that include "[p]rotection of fish and wildlife habitats, cultural resources, watersheds, wilderness and aesthetic values; enhancement of recreation opportunities and public access . . .." 43 C.F.R. § 2200.0-6.

BLM Needs to Justify the Land Disposal

BLM must provide a detailed analysis of the justification for BLM to remove itself from its oversight duties to protect public lands and ensure their continued use for the public good. The scoping materials provides very little convincing evidence that the public is better served with no BLM oversight of lands that it has been entrusted to protect. And as noted above, FLPMA requires that a land sale meet specific criteria, which does not appear to exist here. The scoping notice only states the following., "ARC's purpose for this request is to consolidate land ownership to facilitate better management of the

Anaconda Mine site remediation." That is not a qualifying purpose under FLPMA. Perhaps the consolidation will make the process easier for ARC, but it is not the responsibility of BLM to cater to a private corporation.

There are assertions from ARC that the remediation process will proceed more quickly under consolidation, which could be a benefit only if the scope and level of clean-up is not sacrificed in the process. However, the loss of public oversight once BLM sells these lands is unlikely to be compensated by advancing some of the clean-up/surface remediation. BLM must demonstrate with clear and convincing evidence that the land disposal is in the best public interest and meets the FLPMA criteria.

BLM Needs to Consider All Reasonably Foreseeable Actions

During the public scoping meeting, January 5, 2021, BLM stated that foreseeable activities are to be included in the EA as required by the National Environmental Policy Act (NEPA). BLM also indicated that environmental impacts due to future remining of the Anaconda site would not be included in the EA because to BLM knowledge Atlantic Richfield Corp. (ARCO) has no plans for remining the site. Yet that is not the deciding factor and BLM cannot simply rely on ARCO's current statements to limit its NEPA/FLPMA reviews.

According to the congressional record in testimony at a Federal Subcommittee on Federal Lands hearing on H.R. 5347, The Lyon County Economic and Environmental Remediation Act on July 17, 2018, the following statement was read into the record: "The Atlantic Richfield Company does not intend to hold this land long term but will transfer ownership to an unaffiliated entity that purchased most of the former mine site in the early 2000s and is currently investigating additional mining opportunities."[1] The entity is Signatse Peak Services LLC (SPS), a subsidiary of Quaterra Resources INC, who acquired private land, patented claims, and 32 unpatented mining claims on April 27, 2011 when SPS closed a transaction under which all property and water rights of Arimetco, Inc. (Arimetco) were transferred.[2]

Signatse Peak Services LLC has been public about its interest and plans for remining portions of the Anaconda site. According the Technical Report on the Mineral Resource, "The data clearly show that the possibility exists to expand the resource as mineralization extends beyond the limit of current drilling, particularly below the existing pit and on its western end. … The results of the 2013 NI 43-101-compliant resource estimate compare favorably to the estimates of copper remaining in and around the Yerington pit after the mine shut down…"[2]

Representative Amodei's 2018 Bill, H. R. 5347, contained the following finding:[3]

> "the conveyance of the Federal selected lands **will promote economic development within the County by consolidating private land for future mining activities**;"

[1] U.S. House of Representatives, "LYON COUNTY ECONOMIC DEVELOPMENT AND ENVIRONMENTAL REMEDIATION ACT," 115 Congress 2nd Session, Report 115-1002.

[2] Singatse Peak Services, LLC, "NI 43-101 Technical Report Mineral Resource Update Yerington Copper Project Lyon County, Nevada." January 3, 2014.

[3] U.S. House of Representatives, "H. R. 5347 - To facilitate resolution of environmental remediation and reclamation, resolve potential liability of the United States, and promote economic development in Lyon County, Nevada, and for other purposes.," MARCH 20, 2018.

Quaterra is clear on its interest to remine portions of the Anaconda mine site on their website, for example:[4]

> "The **acquisition by SPS of historic copper resources and valuable water rights in a mining friendly state with excellent infrastructure** presents an opportunity to fast track the project," says Thomas Patton, Quaterra's President and CEO. "Our first priority will be to convert and expand historic resource estimates into NI43-101 **eligible resources.**" (see Quaterra, April 27, 2011)
>
> "The SPS drilling program around the Yerington pit is part of an aggressive, two-year, exploration program to validate historic drilling data in order to complete a NI43-101-compliant resource estimate and technical report on the project." (see Quaterra, June 28 2011)
>
> Vice President and General Manager at subsidiary SPS's Yerington Copper Project:
> "As general manager Mr. Dischler **will be responsible for moving the Yerington-MacArthur copper mining complex forward towards production.**" (see Quaterra, September 21, 2011)
>
> Mr. Dischler has stated: "It is an exciting time to be joining the SPS team at Yerington **given the unique opportunity this project has to create jobs for the local community** while helping to address the environmental issues from historic mining operations at the site. I believe in this project." (see Quaterra, September 21, 2011)
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> "We are very pleased with the results of the Tetra Tech study," says Eugene Spiering, Quaterra's VP Exploration. "The validation of historic data combined with the results of our recent exploration drilling provide SPS with a large copper resource **that we believe can be expanded by additional drilling and built into a major deposit in the near future."** (see Quaterra, January 5, 2012)
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> "We see this as a positive step toward **our goal of developing the Yerington mine site** as well as our other assets in the Yerington Copper District," says SPS President Thomas Patton, who is also President and CEO of Quaterra." (see Quaterra, September 6, 2012)
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> "This increase in the Yerington pit resource is a very positive development for us and reinforces our commitment to focus on advancing our copper projects in theYerington District," says Quaterra President and CEO Steven Dischler. (see Quaterra, November 20. 2013)
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> "The Yerington Project consists of the Yerington pit and surrounding areas, MacArthur oxide and sulfide deposits, water rights and other district prospects, all of which have the potential to be transformed into a large-scale, long-life copper mining operation." (see Quaterra, June 16, 2014)
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> Quaterra President and COO Gerald Prosalendis: "For Quaterra, the agreement addresses lingering concerns about potential liability for previous mining at the site. It strengthens our land position. It puts the project on a simpler path towards cleanup and subsequent mine development. As a consequence, we believe potential partners will feel more comfortable participating with SPS in mining development at the site." (see Quaterra, June 3, 2019)

[4] Quaterra Resources, INC, https://quaterra.com/projects/quaterras-yerington-copper-projects/

There can be little doubt that BLM certainly must and should know that remining of the site is a reasonably foreseeable action and must be included in the EA (or to comply with NEPA, an EIS). SPS has been an active player at the Anaconda mine site, and has conducted additional exploration drilling and analysis that points to significant exploitable copper resources.

BLM must analyze in detail the effects of remining/mining of the site, and all other reasonably foreseeable potential future uses of the site, including how remediation of the site would be different under a remining scenario. It is in the public interest and a requirement of NEPA and FLPMA to evaluate all reasonably foreseeable future uses of the site.

Assessment of Fair Market Value Needs to be in the EA (EIS)

The sale of public lands to private interests is of interest to the public and must be a fully transparent process. BLM must provide a detailed discussion of how land sale values were determined. Appraisals that are fully-compliant with uniform national standards and federal government standards must be required and subject to public review under NEPA and FLPMA. This includes a full and complete analysis of the mineral values at the site, as well as all potential values.

BLM Needs to Develop an EIS

An Environmental Assessment is insufficient to address the analysis needed to fully understand the full impacts of the land disposal action. The consequences of this proposed action on the affected community and environment would be significant, especially when all foreseeable actions are properly included. The data and analysis contained in the environmental reports needs to be part of the EA and EIS itself. The EA/EIS is the NEPA document which will remain publicly accessible and must contain the essential information for the public to understand the proposed action and the why and how the environment is expected to be affected.

According to the NEPA Handbook:

> "7.2 ACTIONS REQUIRING AN EIS
> Actions whose effects are expected to be significant and are not fully covered in an existing EIS must be analyzed in a new or supplemental EIS (516 DM 11.8(A)).
>
> Among the reasons an EIS should be prepared:
>
> (7) Approval of any mining operation where the area to be mined, including any area of disturbance, over the life the mining plan is 640 acres or larger in size. "If, for any of these actions it is anticipated that an EIS is not needed based on potential impact significance, an environmental assessment will be prepared...." (516 DM 11.8(B) and (C))."

An EIS analysis is needed to address at the very least the potentially significant impacts regarding community and environmental impacts including site remediation. See also 40 CFR §1508.27 (listing 10 "significance" factors, the presence of any one of which triggers the need for an EIS). The mine's impacts to these resources, including public health, satisfy many of these criteria.

"An agency is required to prepare an EIS when there are substantial questions about whether a project *may* cause significant degradation of the human environment." Native Ecosystems Council v. U.S.F.S.,

428 F.3d 1233, 1239 (9th Cir. 2005) (emphasis in original). "If an agency decides not to prepare an EIS, it must supply a convincing statement of reasons to explain why a project's impacts are insignificant." Native Ecosystems Council, 599 F.3d at 937 (9th Cir. 2010).

BLM Must Fully Analyze and Quantify All Cumulative Impacts

The EA/EIS should also examine how the various impacts of this mine, and any reasonably foreseeable future uses of the site, will add to the collective impacts of other ecosystem disturbing projects in the region. For example, what are the fugitive and other emissions from the mine when taken together with other sources in the region that might result in exceedances of standards under the Clean Air Act? Does the mine disturbance further impair the regional ecosystem resulting in threats to fauna and/or flora. The cumulative impact analysis needs to address cultural resources and traditions as well, in this case numerous historical and cultural sites.

A cumulative impact is "the impact on the environment which results from incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time." (40 CFR § 1508.7.) This definition is critical to determining the proper area to be studied in a cumulative impact assessment.

Under a leading Ninth Circuit's land exchange case, the Court required BLM to review the direct, indirect, and cumulative impacts from reasonably foreseeable activities on the selected (currently federal) lands (such as mineral development), and specifically required the agency to review the different impacts and aspects of future use of the lands under federal law (no sale/exchange) and under only state law (if the sale/exchange went forward):

> As described above, the FEIS itself contains detailed information about the mining activities that Asarco intends to conduct on the selected lands, as well as the acreage to be devoted to such activities. It is thus plain from the record that both Asarco and the BLM have a fairly detailed knowledge of what Asarco intends to do if the proposed exchange is approved.
>
> In the circumstances of the case before us, where it is obvious, as detailed in the record, that Asarco and the BLM know a great deal about Asarco's mining plans for the selected lands, NEPA requires a meaningful analysis of the different environmental consequences that would result from public ownership (with an MPO requirement) and private ownership (without an MPO requirement). This does not mean that the BLM must require, in connection with the preparation of the FEIS, that Asarco file full-fledged MPOs for the mining it will conduct on the selected lands. **But it does mean that, based on the information now reasonably available, the BLM must make a meaningful comparison of the environmental consequences of Asarco's likely mining operations with and without the requirement that MPOs [Mining Plans of Operation] be prepared by Asarco and approved by the BLM-that is, with and without the proposed exchange.** In the absence of such a comparison in the FEIS, the BLM has not conducted the "hard look" that NEPA requires. Rather, the BLM has averted its eyes from what is in plain view before it.

Center for Biological Diversity v. U.S. Dept. of Interior, 623 F.3d 633, 645-46 (9th Cir. 2010)(emphasis added). Thus, the court required BLM, as part of its "meaningful comparison" of the different regulatory standards, to fully analyze "the environmental consequences of Asarco's likely mining operations."

The dissent noted the majority's requirements: **"In holding that the BLM failed to conduct such a comparison, the majority essentially determined that in order to fully comprehend 'the different environmental consequences' of the Land Exchange, NEPA requires an analysis that mimics the MPO submission and approval process."** 623 F.3d at 660 (Tallman, J. dissenting)(emphasis added). While BLM may agree more with the dissent that NEPA does not require this analysis, it must comply with the *majority's* decision, not the dissent's critique of that decision.

The court faulted BLM for assuming that future use of, and impacts to, the land would be the same regardless of whether the exchange occurred: "The FEIS contains only a single description of the environmental consequences of mining because the BLM assumed that they would be the same under every alternative. That is, because the BLM assumed that mining operations would be the same, the FEIS contains no comparative analysis of the environmental consequences of the land exchange and the no action alternative." 623 F.3d at 640.

The court detailed the differences between regulation of mineral operations on public land under FLPMA and other laws and regulation under purely state law. 623 F.3d at 644-46. Although that case dealt with Arizona law, the same requirements apply to the differences between public land/mining law and Nevada state law.

The court found that BLM violated NEPA, and well as FLPMA's public interest requirement:

> The ROD listed no disadvantages of conveying the selected lands into Asarco's private ownership. The ROD stated, "An additional rationale for approving the land exchange is that the BLM considers the continuation of mining as the foreseeable use of most of the selected federal lands whether the exchange occurs or not." In other words, the ROD, like the FEIS, assumed that mining would occur on the selected lands in the same manner whether or not the exchange took place. For the reasons discussed above, this assumption is unreasonable. The manner in which Asarco engages in mining on the selected lands is likely to differ depending on whether the land exchange occurs, and the environmental consequences will differ accordingly.
>
> Because the ROD unreasonably assumed that mining would occur in the same manner, its analysis of the public interest under FLPMA is fatally flawed. Without an accurate picture of the environmental consequences of the land exchange, the BLM cannot determine if the "public interest will be well served by making the exchange," and the Secretary cannot determine if the "values and the objectives" which the selected lands "may serve if retained in Federal ownership are not more than the values" of the offered lands. We therefore hold that the conclusion in the ROD that the proposed land exchange is in the "public interest" within the meaning of FLPMA was arbitrary and capricious.

623 F.3d at 647. Similarly, the court found that BLM illegally amended the RMP, based on its failure to review the proposed exchange and its impacts based on the different regulatory structure that would apply to public and private land:

> For the same reasons that the analysis in the FEIS of the land exchange is inadequate under NEPA, so too is the analysis of the proposed RMP amendments. By assuming that mining would occur in the same manner and to the same extent on the selected lands regardless of whether the exchange occurred, the BLM assumed either that the RMPs would be amended even if the exchange did not occur, or that even if the RMPs were not amended the existing RMPs would not affect Asarco's mining plans. There is nothing in the record supporting the first assumption that

> the RMPs would be amended absent the exchange, especially given that the BLM acknowledges that the amendments were prerequisites to the land exchange. And the second assumption-that the unamended RMPs would have no effect on mining-suffers from the same flaws discussed above. Just as the BLM must consider the constraints imposed by the MPO requirement for the no action alternative to the land exchange, so too must it consider the constraints the RMPs would impose if the amendments did not occur.

623 F.3d at 647-48.

Additional NEPA, FLPMA, and Other Requirements

NEPA requires BLM to fully analyze all mitigation measures, their effectiveness, and any impacts that might result from their implementation. NEPA regulations require that an EIS: (1) "include appropriate mitigation measures not already included in the proposed action or alternatives," 40 CFR § 1502.14(f); and (2) "include discussions of: . . . Means to mitigate adverse environmental impacts (if not already covered under 1502.14(f))." 40 CFR § 1502.16(h). NEPA requires that BLM review mitigation measures as part of the NEPA process -- not in some future decision shielded from public review. 40 CFR § 1502.16(h). This includes mitigation for all potentially affected resources such as air and water quality, wildlife, cultural, recreation, visual, etc.

Under NEPA, the EA/EIS must also fully review all direct, indirect, and cumulative environmental impacts of the Project. 40 C.F.R. §§ 1502.16, 1508.8, 1508.25(c). Direct effects are caused by the action and occur at the same time and place as the proposed project. Id. § 1508.8(a). Indirect effects are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Id. § 1508.8(b). Types of impacts include "effects on natural resources and on the components, structures, and functioning of affected ecosystems," as well as "aesthetic, historic, cultural, economic, social or health [effects]." Id. Cumulative effects are defined as:

> [T]he impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. 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 EA/EIS must provide detailed analysis of the cumulative impacts of all past, present, and reasonably foreseeable future activities/actions. In its cumulative impact analysis, an agency must take a "hard look" at all actions:

> [A]nalysis of cumulative impacts must give a sufficiently detailed catalogue of past, present, and future projects, and provide adequate analysis about how these projects, and differences between the projects, are thought to have impacted the environment. . . . Without such information, neither the courts nor the public . . . can be assured that the [agency] provided the hard look that it is required to provide.

Te-Moak Tribe of Western Shoshone v. U.S. Dep't of Interior, 608 F.3d 592, 603 (9th Cir. 2010) (rejecting EA for mineral exploration that had failed to include detailed analysis of impacts from nearby proposed mining operations).

The Ninth Circuit has repeatedly faulted the federal land agencies' failures to fully review the cumulative impacts of mining projects. In the most recent case, vacating BLM's approval of a mine, the court stated that "'in a cumulative impact analysis, an agency must take a 'hard look' at *all* actions that may combine with the action under consideration to affect the environment.'" Great Basin Resource Watch v. BLM, 844 F.3d 1095, 1104 (9th Cir. 2016) (emphasis in original) (quoting Te-Moak Tribe). BLM violated NEPA because it "did not 'identify and discuss the impacts that will be caused by each successive project, including how the combination of those various impacts is expected to affect the environment.'" Id. at 1105, quoting Great Basin Mine Watch, 456 F.3d 973-74.

In Great Basin Mine Watch, the Ninth Circuit required "mine-specific . . . cumulative data," a "quantified assessment of their [other projects] combined environmental impacts," and "objective quantification of the impacts" from other existing and proposed mining operations in the region. Id. at 972-74. The agency cannot "merely list other [projects] in the area without detailing impacts from each one." Id. at 972. *See also* ONRC v. Goodman, 505 F.3d 884, 893 (9th Cir. 2007).

In addition to the fundamental cumulative impacts review requirements noted above, NEPA regulations also require that the agency obtain the missing "quantitative assessment" information. 40 C.F.R. § 1502.22. "If there is 'essential' information at the plan- or site-specific development and production stage, [the agency] will be required to perform the analysis under § 1502.22(b)." Native Village of Point Hope v. Jewell, 740 F.3d 489, 499 (9th Cir. 2014). Here, the adverse impacts from the Project when added to other past, present, or reasonably foresee-able future actions is clearly essential to BLM's determination (and duty to ensure) that the projects comply with all legal requirements and minimizes all adverse environmental impacts.

Under NEPA, BLM must also fully analyze the baseline conditions of all potentially affected resources. BLM is required to "describe the environment of the areas to be affected or created by the alternatives under consideration." 40 CFR § 1502.15. The establishment of the baseline conditions of the affected environment is a fundamental requirement of the NEPA process. "Without establishing the baseline conditions which exist ... before a project begins, there is simply no way to determine what effect the project will have on the environment, and consequently, no way to comply with NEPA." Great Basin Resource Watch, 844 F.3d at 1101, quoting Half Moon Bay Fisherman's Mktg. Ass'n. v. Carlucci, 857 F.2d 505, 510 (9th Cir.1988). "[W]ithout [baseline] data, an agency cannot carefully consider information about significant environment impacts. Thus, the agency fails to consider an important aspect of the problem, resulting in an arbitrary and capricious decision." N. Plains Resource Council, Inc. v. Surface Transp. Bd., 668 F.3d 1067, 1085 (9th Cir.2011). This includes the requirement to fully analyze for public review the quality and quantity of ground and surface waters, wildlife, recreation, cultural, air quality, and all potentially affected resources.

The requirement to fully review all baseline conditions is especially required due to the problematic contamination and environmental problems at the site. As BLM's Handbook for property disposal states:

> Prior to the disposal of any real property, the BLM will determine whether recognized environmental conditions (REC), solid waste, or physical hazards are present on the real property. It is BLM policy to include the requirements of Chapter III, Paragraph J of this handbook for transfers of real property from the BLM to other Departments and Agencies of the United States. The BLM is required by law to consider whether property it proposes to transfer to third parties has contamination present. Conducting ESAs early in the disposal process allows the BLM to evaluate its potential liability under CERCLA as a past owner/operator. In addition, because the BLM may retain liability as a "past owner/operator" for lands transferred out of

> Federal ownership, it has a strong interest in understanding the condition of the property at the time of transfer. Thus, the BLM's interest in conducting ESAs for disposals is not only to satisfy legal requirements, but is important to establish an environmental baseline at the time of transfer so that the Department of the Interior (DOI, Department) can minimize its post-transfer liability for environmental conditions discovered on the property.

H-2000-02 Environmental Site Assessments for Disposal of Real Property (Public), at 7-8. BLM HANDBOOK Rel. No. 2-299 08/21/2012. https://www.blm.gov/sites/blm.gov/files/H-2000-02_Environmental%20Site%20Assessment%20for%20Disposals.pdf (viewed Jan. 9, 2021).

FLPMA and BLM mining regulations require that all activities on public land comply with all environmental protection standards, including air and water quality standards. See, e.g., 43 CFR § 3809.5 (definition of "Unnecessary of Undue Degradation" prohibited under FLPMA includes "fail[ure] to comply with one or more of the following: … Federal and state laws related to environmental protection."); § 3809.420(b)(4) (listing Performance Standards that must be met, including the requirement that "All operators shall comply with applicable Federal and state air quality standards, including the Clean Air Act (42 U.S.C. 1857 et seq.)."

The same is true for operations that are not specifically authorized by the 1872 Mining Law (such as the site operations) which are properly governed by DOI/BLM's FLPMA special use regulations : "(b) Each land use authorization shall contain terms and conditions which shall: … (3) Require compliance with air and water quality standards established pursuant to applicable Federal or State law." 43 C.F.R. §2920.7(b)(3). NEPA requires that: "Environmental impact statements shall state how alternatives considered in it and decisions based on it will or will not achieve the requirements of sections 101 and 102(1) of the Act [NEPA] and other environmental laws and policies." 40 C.F.R. § 1502.2(d).

BLM Cannot Sell Lands Under the Walker River

Based on the disposal maps provided by the BLM, a portion of the Walker River is included in lands proposed to be sold. The banks and beds of navigable waters are properties of the states based on the U.S. and Nevada Constitutions. The Walker River is a navigable water and this designation was acknowledged in the recent Nevada Supreme Court decision, Mineral County vs. Lyon County (Case # 75917, Sept. 17, 2020). As such, Nevada owns the beds and banks of such navigable waters. It is not within the BLM's authority to consider the sale of land belonging to the State of Nevada and held in public trust. Thus, BLM must remove any lands containing the River from the potential sale.

BLM Must Fully Analyze all Impacts

Water Issues

1. Changes in use and control of water needs to be analyzed including how water rights are expected to be affected.

2. Hydrology. A complete characterization of the surface waters and springs and an understanding of groundwater movement is needed. To achieve this end, at least one year of monthly samples followed by quarterly samples, as a baseline. There should have been recorded water level data in every exploration bore-hole collected.

3. Complete assay analysis is also needed to include Clean Water Act, Safe Drinking Water Act, and Nevada Dept. of Environmental Protection standards.

4. Changes in water dynamics need to be examined as to how local flora and fauna will be affected; potential loss of springs or changes in the water table, for example. Analysis must address whether the springs are on wildlife migratory routes, and, if so, how migrations will be affected.

5. Geochemical analysis. The geochemistry of waste rock, heap leach ore, and tailings must be thoroughly analyzed for potential acid production, including crystallographic analysis to determine the extent of fracturing expected upon blasting. In this regard the full range of static and kinetic tests need to be performed: determine the NAPP and NAG values, for example. There must be a contingency plan accounting for markedly varying acid generation capacity as the mining proceeds that is not expected from preliminary testing.

6. Reclamation. There must be a reclamation plan that includes how the mine will deal with the occurrence of leaks in the waste water containment system; mill tailings pond, heap/leach, and waste rock, etc..

7. Analysis of the potential loss of riparian areas and wetlands is also necessary (including analysis and compliance with the federal Clean Water Act).

Air Issues

1. Hazardous and Criteria Pollutant Air Emissions. Analysis and mitigation of other gaseous emissions (such as sulfur oxides, nitrogen oxides, etc.) from all mine facilities and vehicles is needed.

2. Greenhouse Gases. In light of pending regulations on carbon dioxide (greenhouse gas) releases, the draft EIS should analyze the project's contribution to carbon dioxide and other significant greenhouse gas emissions.

3. Particulates. The expected amount of airborne particles as dust or diesel vehicular emissions from all aspects of the project needs to be determined with concentrations for varying wind factors. Impacts of the "dust" should be evaluated for inhalation health impacts, visibility impairment, and resettling on surface water and vegetation. In the case of resettling on surface water there should be a chemical analysis of the dust to determine whether the dust could have an adverse effects on the chemistry of the water. In general, there needs to be a plan for dust control.

Wildlife

A full inventory of the baseline conditions, and potential loss of plant and animal species, examining both estimated numbers and variation of specie, needs to be done as a result of land disturbance. An understanding of migratory routes needs to be resolved, and the impacts of the loss of these migratory routes from the various land disturbances should be addressed. There needs to be particular emphasis on the impacts to migratory bird nesting sites and raptors. In some cases of migratory birds very limited nesting locations exist, thus there is the potential for the mine to seriously threaten such species. The degree to which the action may adversely affect an endangered or threatened species or its habitat must be addressed. The BLM needs to examine how seasonal impacts to plant and animal species would be mitigated or avoided.

Cultural/community

The project area must be surveyed for historical and archeological artifacts, and mitigation plans must be developed to protect these sites.

There also needs to be an assessment of how the various communities in the region will be affected in terms of lifestyle, economics, and overall quality of life. The EA/EIS should address how cultural activities will be affected and how they will be impacted from the loss of federal ownership and from reasonably foreseeable future uses of the land.

In the American Indian Religious Freedom Act (AIRFA), Congress stated that "[i]t shall be the policy of the United States to protect and preserve for American Indians their inherent freedom to believe, express, and exercise the traditional religions." 42 USC § 1996 (1982). The BLM must analyze the cumulative impact to the ability of Native Americans to fully practice the traditional religions within the study area. The analysis must include both known sacred and spiritual sites as well as traditional food and medicine gathering locations, which are important components of traditional practice.

Under NEPA and FLPMA, BLM must fully consider all reasonable alternatives, and their impacts. This includes full analysis of the no-action alternative and how the land is expected to be used if the sale does not occur.

NEPA requires the agency to "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources." 42 U.S.C. § 4332(E); 40 CFR § 1508.9(b). It must "rigorously explore and objectively evaluate all reasonable alternatives" to the proposed action. City of Tenakee Springs v. Clough, 915 F.2d 1308, 1310 (9th Cir. 1990). The alternatives analysis is considered the heart of a NEPA analysis. 40 C.F.R. § 1502.14. The alternatives analysis should present the environmental impacts in comparative form, thus sharply defining important issues and providing the public and the decisionmaker with a clear basis for choice. Id. The lead agency must "rigorously explore and objectively evaluate all reasonable alternatives" including alternatives that are "not within the [lead agency's] jurisdiction." Id.

Even if an EA leads to a FONSI, it is essential for the agency to consider all reasonable alternatives to the proposed action. One of the Ninth Circuit's leading EA/alternatives decisions states:

> NEPA requires that federal agencies consider alternatives to recommended actions whenever those actions "involve[ ] unresolved conflicts concerning alternative uses of available resources." 42 U.S.C. § 4332(2)(E) (1982). The goal of the statute is to ensure "that federal agencies infuse in project planning a thorough consideration of environmental values." The consideration of alternatives requirement furthers that goal by guaranteeing that agency decisionmakers "[have] before [them] and take [ ] into proper account all possible approaches to a particular project (including total abandonment of the project) which would alter the environmental impact and the cost-benefit balance." NEPA's requirement that alternatives be studied, developed, and described both guides the substance of environmental decisionmaking and provides evidence that the mandated decisionmaking process has actually taken place. Informed and meaningful consideration of alternatives--including the no action alternative-- is thus an integral part of the statutory scheme.
>
> Moreover, consideration of alternatives is critical to the goals of NEPA even where a proposed action does not trigger the EIS process. This is reflected in the structure of the statute: while an EIS must also include alternatives to the proposed action, 42 U.S.C. § 4332(2)(C)(iii) (1982), the consideration of alternatives requirement is contained in a separate subsection of the statute and therefore constitutes an independent requirement. See id. § 4332(2)(E). The language and effect

> of the two subsections also indicate that the consideration of alternatives requirement is of wider scope than the EIS requirement. The former applies whenever an action involves conflicts, while the latter does not come into play unless the action will have significant environmental effects. An EIS is required where there has been an irretrievable commitment of resources; but unresolved conflicts as to the proper use of available resources may exist well before that point. Thus the consideration of alternatives requirement is both independent of, and broader than, the EIS requirement.

Bob Marshall Alliance v. Hodel, 852 F.2d 1223, 1228-1229 (9th Cir. 1988) (citations omitted, emphasis in original). "While a federal agency need not consider all possible alternatives for a given action in preparing an EA, it must consider a range of alternatives that covers the full spectrum of possibilities." Ayers v. Espy, 873 F.Supp. 455, 473 (D. Colo. 1994).

Reasonable alternatives that must be fully analyzed include, but are not limited to: removal from the sale of all lands through which the Walker River flows, removal from the sale of all lands around the current mining site (i.e., no buffer lands should be sold), allowing the sale only with significant restrictions limiting any future use to only remediation of the site[5], and allowing the sale only with stringent environmental controls to protect land, water, cultural, wildlife, recreation, and air resources as binding conditions of the sale. Indeed, in order to comply with the public interest requirement under FLPMA, at a minimum, the sale cannot occur without adopting these reasonable provisions/conditions.

[5] This alternative is particularly reasonable since BLM purports to assert that nothing but remediation will occur at the site (so as to avoid having to analyze other uses of the site such as remining/mining). In other words, if BLM limits its review to only remediation, with no future remining/mining, then that should be a binding condition of the sale, binding on all future owners/users of the lands.

List and Brief Description of Materials That Must Be Fully Considered and Included in the Administrative Record

Carson Now, "Former Lyon County mine sees revitalization, restoration work continue," May, 17, 2020. (NDEP say work to revitalized and restore the Anaconda Copper Mine continues to progress on Schedule)

Nevada Independent, The, "Anaconda Copper Mine: An Uncertain Future," Sept. 24. 2019. (Discusses comments various sources on remining of the Anaconda site).

Great Basin Resource Watch, "Re: Lyon County Economic Development and Environmental Remediation Act," Testimony for HR 5347, July 17, 2018.

Great Basin Resource Watch, "RE: Draft MOA Memorandum of Agreement and Historic Properties Treatment Plan," Comment letter, March 18, 2020.

Quaterra Resources Inc., "Quaterra Subsidiary Singatse Peak Services Purchases Arimetco Assets At Yerington, Nevada," April 27, 2011. www.quaterra.com

Quaterra Resources Inc., "Quaterra Subsidiary Singatse Peak Services Commences Drilling At Yerington, Nevada," June 28, 2011. www.quaterra.com

Quaterra Resources Inc., "Quaterra Announces Appointment Of Vice President And General Manager At Subsidiary SPS's Yerington Copper Project," September 21, 2011. www.quaterra.com

Quaterra Resources Inc., "Quaterra Subsidiary Singatse Peak Services Releases Independent Resource Estimate At Yerington Copper Project In Nevada," January 5, 2012. www.quaterra.com.

Quaterra Resources Inc., "Quaterra Subsidiary Singatse Peak Services Reaches Agreement With EPA To Upgrade Fluid Management System At Yerington," September 6, 2012. www.quaterra.com

Quaterra Resources Inc. "Quaterra Announces Significant Increase Of Copper Resource And Grade At The Yerington Copper Project, Nevada," November 20, 2013. www.quaterra.com

Quaterra Resources Inc., "Quaterra Resources Inc. Announces that Freeport-McMoran Nevada LLC Signs Agreement With Quaterra to Earn Interest in Singatse Peak Services LLC, Holder of Yerington Project," June 16, 2014. www.quaterra.com

Quaterra Resources Inc., "Quaterra Announces Framework Agreement with Atlantic Richfield Company to Facilitate Yerington Site Cleanup," June 3, 2019. www.quaterra.com

Singatse Peak Services, LLC, "NI 43-101 Technical Report Mineral Resource Update Yerington Copper Project Lyon County, Nevada." January 3, 2014.

SUPREME COURT OF THE STATE OF NEVADA, "MINERAL COUNTY; AND WALKER LAKE WORKING GROUP, Appellants, vs. LYON COUNTY; CENTENNIAL; LIVESTOCK; BRIDGEPORT RANCHERS; SCHROEDER GROUP; WALKER RIVER IRRIGATION DISTRICT; STATE OF NEVADA DEPARTMENT OF WILDLIFE; AND COUNTY OF MONO, CALIFORNIA," Sept., 17, 2020. (Certified questions under NRAP 5 concerning Nevada's public

trust doctrine. United States Court of Appeals for the Ninth Circuit; A. Wallace Tashima, Raymond C. Fisher, and Jay S. Bybee, Circuit Judges.)

U.S. Bureau of Land Management, "H-2000-02 Environmental Site Assessments for Disposal of Real Property," August 21, 2012.

U.S. Bureau of Land Management, "SALES, R&PP AND EXCHANGES," (as of 1-11-2021). https://www.blm.gov/programs/lands-and-realty/land-tenure/sales-and-exchanges

U.S. House of Representatives, "H. R. 5347 - To facilitate resolution of environmental remediation and reclamation, resolve potential liability of the United States, and promote economic development in Lyon County, Nevada, and for other purposes.," MARCH 20, 2018.

U.S. House of Representatives, "LYON COUNTY ECONOMIC DEVELOPMENT AND ENVIRONMENTAL REMEDIATION ACT," 115 Congress 2nd Session, Report 115-1002.

Conclusion

Commenters do not support the land disposal action. BLM needs to conduct a detailed NEPA and FLPMA analysis and provide justification for the loss of public oversight. Given that BLM is currently not planning to address remining of the site we are not convinced that BLM will conduct the analysis in sufficient breath and detail necessary to make the case that the land disposal in in the best public interest and consistent with US law.

Sincerely,

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