



CALIFORNIANS
FOR
WESTERN
WILDERNESS



FRIENDS
OF THE INYO
SINCE 1986



June 5, 2026

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submitted via online <https://cara.fs2c.usda.gov/Public/CommentInput?Project=69000>

RE: Comment on Burnt Rock Exploration Project Notice of EA

The Sierra Club, Californians for Western Wilderness, Earthworks, Center of Biological Diversity, Friends of the Inyo, and Desert Survivors are submitting comments on the Notice of Intent to prepare an Environmental Assessment (EA) for the [Burnt Rock Exploration Project](#) (69000). We contend that there will be significant impacts with this project that need to be addressed in an Environmental Impact Statement (EIS); not an Environmental Assessment (EA). As we know the area well, we are offering our observations and comments. We urge the Forest Service to take a hard look at the direct and cumulative environmental and cultural impacts in order to protect these public lands so that they may be enjoyed by future generations.

The Sierra Club was founded in 1892 and is the nation's oldest grassroots environmental organization. The Sierra Club is a not-for-profit organization incorporated in California, and has over 617,000 members in chapters across the nation and is dedicated to the protection and preservation of the environment. The Sierra Club's mission is to explore, enjoy and protect the wild places of the earth; to practice and promote the responsible use of the earth's ecosystems and resources; and to educate and enlist humanity to protect and restore the equality of the natural and human environments. The Toiyabe Chapter of the Sierra Club covers the state of Nevada and the Eastern Sierra, California, which are in the Great Basin and Range region. We consist of approximately 5,260 members. Our members protect, explore, and enjoy National Forest lands.

Californians for Western Wilderness is a citizens organization with more than 900 members and supporters. We are dedicated to encouraging and facilitating participation in legislative and administrative actions affecting wilderness and other public lands in the West. Our members use and enjoy public lands all over the West, including Nevada.

The Center is a non-profit environmental organization dedicated to the protection of native species and their habitats in the Western Hemisphere through science, policy, and environmental law. The Center has over 1.7 million members and supporters throughout Nevada and the United States, including supporters who live near the project site, and who utilize public lands for recreation and other uses. The Center's Great Basin program focuses on the protection of wildlife and endangered species, the preservation of public lands, and the sustainability of scarce groundwater resources.

Desert Survivors is a non-profit organization of people who love the desert and are committed to preserving its unique beauty and value. Founded in 1981, the organization promotes a mission of experiencing, sharing and protecting the desert as wilderness. Desert Survivors has approximately 300 members, who mostly live in California and Nevada

The Burnt Rock exploration project is located in Mineral County on the Nevada side and in the southeast corner of the Bodie Hills. The Bodie Hills are a unique mountain range on the western edge of the Great Basin between Mono Lake and Bridgeport, California. They are most known for the gold mining at the towns of Aurora (1860) and Bodie (1875). In those days, gold mining consisted of tunnels carved out with a pickaxe. Starting in the 1960s, the Carlin-trend/open pit gold mining was developed to extract microscopic gold that needs to be leached from the rock with sodium cyanide. Open pit mining at Aurora began in 1987 but closed by 2004. Interest has been renewed in this area with the price of gold at over \$4,500/oz. It is the high price of gold that makes mining microscopic gold viable.

The Burnt Rock project is one of six gold exploration projects in close proximity of or adjacent to each other in the southeast corner of the Bodie Hills abutting the California-Nevada border. All are in Mineral County, Nevada and all except one, surround the historic Aurora Mining District. While gold exploration doesn't always lead to a gold mine, it seems likely in this case, based on the size of the Burnt Rock gold exploration project. The proponent, CP Resources/Headwater Gold has data from the Spring Peak gold exploration project that is promising according to their website and news articles. They are stating they have discovered high-grade ore. Also, Newmont Corporation, the world's largest gold mining corporation, is funding 100% of the project¹. This project is planned as a ten year project at the end of which CP Resources will have sufficient data to develop a model of the underground deposits, a pre-requisite to developing a mine.

Sierra Club is concerned about the size of the Burnt Rock project and the cumulative impacts of these six exploration projects on Nevada's biodiversity and wildlife: Burnt Rock, Polaris, Lodestar, Sawtooth Ridge, Spring Peak, and Bald Peak. A seventh project has been submitted to the Forest Service called the Doug Project in the same area. The Forest service must meet its legal obligations to ensure that mitigation is achieved in accordance with the Organic Act and the regulations under 36 CFR Part 228 that requires the Forest Service to protect the forest lands from destruction and depredation. See 16 USC § 551. The Forest Service must also meet its legal obligations to comply with the National Environmental Policy Act (NEPA). Due to the size of this project and the cumulative effects, the Forest Service should prepare an Environmental Impact Statement instead of an Environmental Assessment. This project in combination with the Polaris exploratory drilling project, will destroy the sage grouse habitat from East Brawley Peak to the upper reaches of Mt. Hicks so as to extirpate the Aurora and Mt. Hicks leks. There is no set of mitigations

¹ <https://www.mining.com/newmont-funded-nevada-gold-project-selected-for-fast-41-permitting/> and <https://headwatergold.com/spring-peak-nevada/>

that will prevent that and therefore, the Forest Service cannot find that this project has no significant impacts. The Forest Service could consider compensation that helps the sage grouse in another part of the Bodie Hills or Mt. Grant Population Management Areas or translocation of the sage grouse in the project area, but must admit that this project will destroy an extensive area of sage grouse habitat south of Bodie Creek. This project will also destroy hundreds of plants of two rare, sensitive species that thrive there: Long Valley milkvetch and the Bodie Hills cusickiella.

The following are our concerns and recommendations as to what should be addressed in the environmental analysis of the impacts of this project. Our main concerns are the impact to the threatened bi-state sage grouse, to mule deer migration, to cultural resources, to springs in the area, and to the rare Bodie Hills Cusickiella and Long Valley milkvetch.

I. Legal Background

A. Overview of USFS Authority to Regulate Exploration for Hardrock Minerals

"The Organic Administration Act of 1897 (the "Organic Act") extended the Mining Law to the National Forest system but authorized the Secretary of Agriculture to regulate mining activities in the National Forests to protect the forest lands from destruction and depredation. *Karuk Tribe of California v. U.S. Forest Service*, 681 F.3d 1006, 1012 (9th Cir. 2012) (en banc) (citing 16 USC §482, 551. The Act specified that prospectors and miners entering federal forest lands "must comply with the rules and regulations covering such national forests." Id. (quoting Organic Administration Act of 1897 §478). The Organic Act requires the Service to "protect []against...depredations upon the public forests and national forests." 16 USC §551. However, the Organic Act also states: "[A]ny mineral lands in any national forest...subject to entry under the existing mining laws...shall continue to be subject to such location and entry..." Id. §482. The Organic Act does not "prohibit any person from entering upon such national forests for all proper and lawful purposes, including that of prospecting, locating, and developing the mineral resources thereof." Id. §478.

In 1974, the Forest Service promulgated regulations to implement the Mining Law "and minimize the adverse environmental impacts of mining activities in National Forests." *Karuk Tribe of California v. U.S. Forest Service*, 681 F.3d 1006, 1012 (9th Cir. 2012) (en banc) (discussing National Forests Surface Use Under U.S. Mining Laws, 39 Fed. Reg. 31, 317 (Aug. 28, 1974). Part 228 Subpart A regulations apply to uses of National Forest lands "in connection with *operations authorized by the United States mining laws* (30 USC 21-54)." 36 CFR. §228.1 (emphasis added). "Operations," must be "conducted so as to minimize adverse environmental impacts on National Forest System surface resources." 36 CFR §228.1. "Operations are defined as "[a]ll functions, work, and activities in connection with prospecting, exploration, development, mining or processing of mineral resources and all uses reasonably incident thereto..." 36 CFR §228.3(a).

Once the Forest Service receives an operator's proposed plan of operations, the agency must complete "an environmental analysis in connection with [the] proposed operating plan" to "determine whether an environmental statement is required." 36 CFR § 228.4(f). Section 228.4(f) states:

Upon completion of an environmental analysis in connection with each proposed operating plan, the authorized officer will determine whether an environmental statement is required. Not every plan of operations, supplemental plan or modification will involve the preparation of an environmental statement. Environmental impacts will vary substantially depending on whether the nature of operations is prospecting, exploration, development, or processing, and on the scope of operations (such as size of operations, construction required, length of operations and equipment required), resulting in varying degrees of disturbance to vegetative resources, soil, water, air, or wildlife. The Forest Service will prepare any environmental statements that may be required.

Section 228.8, titled "Requirements for environmental protection," states:

All operations **shall be conducted so as, where feasible, to minimize adverse environmental impacts on National Forest surface resources**, including the following requirements:

- (a) Air Quality. Operator shall comply with applicable Federal and State air quality standards, including the requirements of the Clean Air Act, as amended (42 USC 1857 et seq.).
- (b) Water Quality. Operator shall comply with applicable Federal and State water quality standards, including regulations issued pursuant to the Federal Water Pollution Control Act, as amended (33 USC 1151 et seq.).
- (c) Solid Wastes. Operator shall comply with applicable Federal and State standards for the disposal and treatment of solid wastes. All garbage, refuse, or waste, shall either be removed from National Forest lands or disposed of or treated so as to minimize, so far as is practicable, its impact on the environment and the forest surface resources. All tailings, dumpage, deleterious materials, or substances and other waste produced by operations shall be deployed, arranged, disposed of or treated so as to minimize adverse impact upon the environment and forest surface resources.
- (d) Scenic Values. Operator shall, to the extent practicable, harmonize operations with scenic values through such measures as the design and location of operating facilities, including roads and other means of access, vegetative screening of operations, and construction of structures and improvements which blend with the landscape.
- (e) Fisheries and Wildlife Habitat. In addition to compliance with water quality and solid waste disposal standards required by this section, **operator shall take all practicable measures to maintain and protect fisheries and wildlife habitat which may be affected by the operations.**
- (f) Roads. Operator shall construct and maintain all roads so as to assure adequate drainage and to minimize or, where practicable, eliminate damage to soil, water, and other resource values. Unless otherwise approved by the authorized officer, roads no longer needed for operations:
 - (1) Shall be closed to normal vehicular traffic,
 - (2) Bridges and culverts shall be removed,
 - (3) Cross drains, dips, or water bars shall be constructed, and
 - (4) The road surface shall be shaped to as near a natural contour as practicable and be stabilized.
- (g) Reclamation. Upon exhaustion of the mineral deposit or at the earliest practicable time during operations, or within 1 year of the conclusion of operations, unless a longer time is allowed by the authorized officer, operator shall, where practicable, reclaim the surface disturbed in operations by taking such measures as will prevent or control onsite and off-site damage to the environment and forest surface resources including:
 - (1) Control of erosion and landslides;
 - (2) Control of water runoff;

- (3) Isolation, removal or control of toxic materials;
 - (4) Reshaping and revegetation of disturbed areas, where reasonably practicable; and
 - (5) Rehabilitation of fisheries and wildlife habitat.
- (h) Certification or other approval issued by State agencies or other Federal agencies of compliance with laws and regulations relating to mining operations will be accepted as compliance with similar or parallel requirements of these regulations.²

Courts "have repeatedly upheld the Forest Service's authority to impose reasonable environmental regulations on mining activities in National Forests, so long as they do not prohibit or impermissibly encroach on legitimate mining uses." *Karuk Tribe of California v. U.S. Forest Service*, 681 F.3d 1006, 1012 (9th Cir. 2012) (en banc) (citing *United States v. Shumway*, 199 F.3d 1093, 1106-07 (9th Cir. 1999); *Clouser v. Espy*, 42 F.3d 1522, 1529-30 (9th Cir. 1994); *United States v. Weiss*, 642 F.2d 296, 298-99 (9th Cir. 1981)). Although, "[t]he Mining Laws and the Organic Act give miners 'a statutory right, not mere privilege,' to enter the National Forests for mining purposes...Congress has subjected that right to environmental regulation." *Karuk Tribe of California v. U.S. Forest Service*, 681 F.3d 1006, 1012 (9th Cir. 2012) (en banc) (citing 16 USC §478 (miners entering federal forest lands "must comply with the rules and regulations covering such national forests"); and quoting *United States v. Locke*, 471 U.S. 84, 104-05, 105 S.Ct. 1785, 85 L.Ed.2d 64 (1985) (the right to mine on public lands is a "unique form of property" over which the federal government "retains substantial regulatory power" (internal quotation marks omitted)). The approval of mining activities is affirmative agency action involving the exercise of discretion, including discretion to benefit wildlife species by imposing habitat protections. *Karuk Tribe of California v. U.S. Forest Service*, 681, F.3d 1006, 1021-27 (9th Cir. 2012) (en banc).

"The Forest Service clearly has the power to reject an unreasonable plan, and to impose conditions on the mining activity....And no mining activity can proceed until the Forest Service has evaluated the Plan and imposed mitigation measures." *Baker v. U.S. Dep't of Agric.*, 928 F. Supp. 1513, 1518 (D. Idaho 1996) citing *United States V. Weiss*, 642 F.2d 296, 298-99 (9th Cir. 1981). See also *Havasupai Tribe v. U.S.*, 752 F.Supp. 1471 (1990) ("Of course, the Forest Service would have the authority to deny an unreasonable plan of operations of a plan otherwise prohibited by law. E.g., 16 USC §1538 (endangered species located at the mine sites).")

B. National Environmental Policy Act (NEPA) Requirements

Congress passed NEPA to establish a national policy of environmental protection and to require the Federal government to further specific environmental goals by "all practicable means, consistent with other essential considerations of national policy." 42 USC § 4331(b). In passing NEPA, Congress emphasized that federal agencies must follow the statute "to the fullest extent possible." 42 USC § 4332. Consistent with this broad mandate, NEPA requires that federal agencies prepare a detailed statement for any major Federal action that may significantly affect the quality of the human environment. 42 USC § 4332. The detailed statement must consider the reasonably foreseeable environmental effects of the proposed agency action, including any unavoidable reasonably foreseeable adverse impacts from the proposed action and the relationship between the short-term use of the environment and the "maintenance and enhancement of

² 36 CFR §228.8 (emphasis added).

long-term productivity.” *Id.* Federal agencies must use reliable data and resources in the statement and ensure the professional and scientific integrity of its analysis. *Id.*

By focusing the agency’s attention on the environmental consequences of its proposed action, NEPA “ensures that important effects will not be overlooked or underestimated only to be discovered after resources have been committed or the die otherwise cast.” *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989). Under NEPA’s statutory requirements, agencies must take a “hard look” at environmental consequences of its actions. *Kleppe v. Sierra Club*, 427 U.S. 390, 410, n.21 (1976).

A hard look is a “reasonably thorough discussion of the significant aspects of probable environmental consequences.” *Neighbors of Cuddy Mountain v. U.S. Forest Serv.*, 137 F.3d 1372, 1376 (9th Cir. 1998). It is not sufficient to merely provide “[g]eneral statements about ‘possible’ effects and ‘some risk’ ... absent a justification regarding why more definitive information could not be provided.” *Id.* at 1380. Similarly, “conclusory statements, based on vague and uncertain analysis ... are insufficient to satisfy NEPA’s requirements.” *Bark v. U.S. Forest Serv.*, 958 F.3d 865, 872 (9th Cir. 2020) (quotation omitted). To take the requisite hard look, an agency “may not rely on incorrect assumptions or data” in arriving at its conclusion of no significant impacts. *Environmental Defense Center v. Bureau of Ocean Energy*, 36 F.4th 850, 872–873 (9th Cir. 2022) (quoting *Native Ecosystems Council v. U.S. Forest Serv.*, 418 F.3d 953, 964 (9th Cir. 2005)).

NEPA imposes “a duty to assess, in some reasonable way, the actual baseline conditions” in a project area. *Or. Nat. Desert Ass’n v. Rose*, 921 F.3d 1185, 1190 (9th Cir. 2019) (citing *Or. Nat. Desert Ass’n v. Jewell*, 840 F.3d 562, 569 (9th Cir. 2016)). “An agency need not conduct measurements of actual baseline conditions in every situation—it may estimate baseline conditions using data from a similar area, computer modeling, or some other reasonable method.” *Great Basin Res. Watch v. BLM*, 844 F.3d 1095, 1101 (9th Cir. 2016).

NEPA requires agencies to analyze a reasonable range of alternatives, including a no-action alternative, to the proposed agency action that are technically and economically feasible and meet the purpose and need of the proposal. 42 USC § 4332(2)(C)(iii). NEPA requires federal agencies to “study, develop, and describe appropriate alternatives” to the proposed project action in the EA. *W. Watersheds Project v. Abbey*, 719 F.3d 1035, 1050 (9th Cir. 2013) (quoting *N. Idaho Cmty. Action Network v. U.S. Dep’t of Transp.*, 545 F.3d 1147, 1153 (9th Cir. 2008)).

If an agency is unsure whether its proposed action will have significant environmental impacts, it may first prepare an EA. “An EA is intended to help an agency decide if an EIS is warranted; an EA is not meant to replace or substitute for an EIS.” *Environmental Defense Center v. Bureau of Ocean Energy*, 36 F.4th 850, 872 (9th Cir. 2022) (citing *Anderson v. Evans*, 314 F.3d 1006, 1023 (9th Cir. 2002)). When reviewing an EA, Courts examine it “with two purposes in mind: to determine whether it has adequately considered and elaborated the possible consequences of the proposed agency action when concluding that it will have no significant impact on the environment, and whether its determination that no EIS is required is a reasonable conclusion.” *Id.* (quoting *Ctr. for Biological Diversity v. Nat’l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1215 (9th Cir. 2008)). “If the agency does not prepare an EIS, it must submit a ‘convincing statement of reasons’ to explain why the proposed action’s environmental impacts will not be significant.” *Id.* at 879 (quoting *Ocean Advocates*, 402 F.3d at 864 (citation omitted)). “Conclusory assertions about insignificant impacts will not suffice.” *Id.*

Where a conclusion of no significant impact relies on mitigation measures, “[a] ‘perfunctory description,’ or ‘mere listing of mitigation measures, without supporting analytical data,’ is insufficient to support a finding of no significant impact.” *National Parks & Conservation Ass’n v. Babbitt*, 241 F.3d 722, 735 (9th Cir. 2001). The court, when determining the sufficiency of the mitigation measures, considers “whether they constitute an adequate buffer against the negative impacts that may result from the authorized activity. Specifically, [the court] examine[s] whether the mitigation measures will render such impacts so minor as to not warrant an EIS.” *Id.* See also *Foundation for North American Wild Sheep v. U.S. Dept. of Agr.*, 681 F.2d 1172, 1180-81 (1982) (substantial questions about effectiveness of mitigation to reduce impacts to insignificant levels warranted preparation of EIS).

“An EIS must be prepared if there are ‘substantial questions’ regarding whether the agency’s proposed action may have significant impacts. *Environmental Defense Center v. Bureau of Ocean Energy*, 36 F.4th 850, 878 (9th Cir. 2022) (quoting *Ocean Advocates v. U.S. Army Corps of Eng’rs*, 402 F.3d 846, 864–65 (9th Cir. 2005)). “In challenging an agency decision not to prepare an EIS, plaintiffs need not prove that significant environmental effects *will* occur; they need only raise a ‘substantial question’ that they might.” *Id.* at 878–879. “This presents a ‘low standard’ that is permissive for environmental challenge. *Id.* at 879. (quoting *Cal. Wilderness Coal. v. U.S. Dep’t of Energy*, 631 F.3d 1072, 1097 (9th Cir. 2011)).

“NEPA review cannot be used ‘as a subterfuge designed to rationalize a decision already made.’” *Environmental Defense Center v. Bureau of Ocean Energy*, 36 F.4th 850, 882 (9th Cir. 2022) (quoting *Metcalf v. Daley*, 214 F.3d 1135, 1142 (9th Cir. 2000)).

NEPA calls on agencies to “fulfill the responsibilities of each generation as trustee of the environment for succeeding generations.” 42 USC §4331(b)(1).

C. National Historic Preservation Act (NHPA)

The NHPA requires federal agencies to “make a reasonable and good faith effort to identify historic properties; determine whether identified properties are eligible for listing on the National Register ... [and] assess the effects of the undertaking on any eligible historic properties found.” *WildEarth Guardians v. Provencio*, 923 F.3d 655, 676 (9th Cir. 2019). The NHPA involves “a series of measures designed to encourage preservation of sites and structures of historic, architectural, or cultural significance.” *San Carlos Apache Tribe v. United States*, 417 F.3d 1091, 1093–94 (9th Cir. 2005) (quoting *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104, 108 n. 1, 98 S.Ct. 2646, 57 L.Ed.2d 631 (1978)).

Section 106 “requires that federal agencies take into account the effect of their undertakings on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register.” *Id.*; 54 USC §306108³. This requirement is governed by numerous federal regulations which establish a procedure generally referred to as the Section 106 process. See 54 USC § 306108; 36 CFR §800 *et seq.*

³ “Historic property means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the national Register of Historic Places maintained by the Secretary of the Interior.” 36 CFR. §800.16(l)(1).

"The section 106 process seeks to accommodate historic preservation concerns with the needs of Federal undertakings through consultation among the agency official and other parties with an interest in the effects of the undertaking on historic properties, commencing at the early stages of project planning. The goal of consultation is to identify historic properties potentially affected by the undertaking, assess its effects and seek ways to avoid, minimize or mitigate any adverse effects on historic properties." 36 CFR §800.1.

As summarized in *WildEarth Guardians Provencio*, 923 F.3d 655, 676 (2019):

Section 106 of the NHPA requires the Forest Service to "make a reasonable and good faith effort to identify historic properties; determine whether identified properties are eligible for listing on the National Register...; [and] assess the effects of the undertaking on any eligible historic properties found." *Te-moak Tribe*, 608 F.3d at 607 (first alteration in original) (quoting *Muckleshoot Indian Tribe*, 177 F.3d at 805). It must also engage in consultation with the State Historic Preservation Officer (SHPO) to "[d]etermine and document the area of potential effects," "[g]ather information," and "develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize, or mitigate adverse effects on historic properties." 36 CFR §800.4(a), §800.6(a).

Where an agency determines that an "undertaking" has the potential to cause effects on "historic properties," the regulations provide for a four-step process: (1) initiate the Section 106 process; (2) identify, through reasonable and good faith efforts, historic properties within the area of potential effects (APE); (3) assess whether effects of the undertaking on any eligible historic property is adverse; and (4) seek to resolve any adverse effects. 36 CFR §800.3-800.6. The APE is defined as "the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist." 36 CFR §800.16(d). The APE is "influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking." *Id.*

These steps are accomplished through consultation with interested parties. *Id.* at §800.1(a), §800.2. Specifically, an agency "shall" consult with any Native American Tribe "that attaches religious and cultural significance to [the affected] property" and provide the Tribe "a reasonable opportunity to identify its concerns about historic properties, advise on the identification and evaluation of historic properties, including those of traditional religious and cultural importance, ... and participate in the resolution of adverse effects." *Id.* at §800.2(c)(2)(ii). "If the agency official finds ... there are historic properties present but the undertaking will have no effect upon them as defined in §800.16(i), the agency official shall provide documentation of this finding, as set forth in §800.11(d), to the SHPO/THPO. The agency official shall notify all consulting parties, including Indian tribes and Native Hawaiian organizations, and make the documentation available for public inspection prior to approving the undertaking." *Id.* at §800.4(d)(1). It is our understanding that six tribes attach religious and cultural significance to the Bodie Hills.

"[F]ederal agencies must comply with these regulations." See *Pit River Tribe v. U.S. Forest Serv.*, 469 F.3d 768, 787 (9th Cir. 2006). "Early consultation with tribes is encouraged by the [NHPA] regulations." *Te-Moak Tribe of W. Shoshone of Nevada v. U.S. Dep't of Interior*, 608 F.3d 592, 609 (9th Cir. 2010) (citations omitted). The consultation requirement "is not an empty formality; rather, it 'must recognize the government-to-government relationship between the Federal Government and Indian tribes' and is to be 'conducted in a manner sensitive to the concerns and needs of the Indian tribe.'" *Quechan Tribe of Fort Yuma Indian Rsrv. v. U.S. Dep't of Interior*, 755 F. Supp. 2d 1104, 1108 (S.D. Cal. 2010) (quoting 36 CFR §800.2(c)(2)(ii)(C)).

The USDA policy DR 1350-002 issued April 30, 2024 and is in effect until 2029, states, "*The opportunity to consult must occur when a proposed regulation, policy, budget action, or other USDA action (e.g., infrastructure projects, directives, funding set asides) could have Tribal implications. This could include implications for Tribes that involve their government-owned corporations, Tribal jurisdiction, and Tribal lands.*" Section 5(e)(1). It goes on to state that all affected tribes are to be consulted, "*If the issue only affects one specific Tribe or a specific number of Tribes, then consultation will occur with the affected Tribe(s).*" Section 5(e)(1)(a). The Tribes we are aware of that consider the Bodie Hills part of their homeland are: the CA-NV Washoe Tribe, the Bridgeport Indian Colony, the Mono Basin Kootzaduka'a Tribe, the Yerington Paiute Tribe, Walker River Paiute Tribe, and the Benton Ute Gwaitu Tribe. The Forest Service must meet, government to government, with each.

The Forest Service manual states, "*Regulations (36 CFR 219.4(a)) implementing the National Forest Management Act (NFMA) of 1976 (16 USC 472a et seq.) direct the Forest Service to consult with and coordinate forest planning with Indian tribes.*" Section 1563.01d (2) (emphasis added).

Joint Secretarial Order (JSO) No. 3403 issued by the Secretary of Agriculture "*to ensure that the Department of Agriculture and the Department of the Interior (Departments) and their component Bureaus and Offices are managing Federal lands and waters in a manner that seeks to protect the treaty, religious, subsistence, and cultural interests of federally recognized Indian Tribes*" states, "*The Departments will engage affected Indian Tribes in **meaningful** consultation at the earliest phases of planning and decision-making relating to the management of Federal lands to ensure that Tribes can shape the direction of management. This will include agencies **giving due consideration to Tribal recommendations** on public lands management.*" JSO 3403 Sect. 3(c) (emphasis added).

D. Administrative Procedure Act (APA) Requirements

Under the APA, courts must "hold unlawful and set aside agency action, finding, and conclusions" if they are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, " or if adopted without observing legally required procedures. 5 USC §706(2)(A), (D). agencies violate this standard when they rely on factors Congress did not intend, fail to consider an important aspect of the problem, offer a decision or explanation counter to record evidence, or their actions are implausible and cannot be ascribed to a difference in view or agency expertise. *Motor Vehicle Mfrs. Ass'n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). Although an agency's rational conclusions are entitled to deference, the Court must engage in a careful review to ensure the decision has a firm basis in the record. *Nw. Coal. for Alternatives to Pesticides v. U.S. Env'tl. Prot. Agency*, 544 F.3d 1043, 1052 n.7 (9th Cir. 2008). The Court "cannot defer to a void." *Oregon Nat. Desert Ass'n v. Rose*, 921 F.3d 1185, 1191 (9th Cir. 2019) (quoting *Or. Nat. Desert Ass'n v. BLM* ("ONDS v. BLM"), 625 F.3d 1092, 1121 (9th Cir. 2010)).

II. What Should be Addressed in an Environmental Assessment or an Environmental Impact Statement

A. The Forest Service Must Reduce the Project to What is Known

The January 21, 2026 version of the Burnt Rock plan of operations says there will be up to 600 drill sites over the life of the project, but only 266 have been mapped, less than half of the total project. The agency cannot approve a project that is only partially defined. If the Forest Service doesn't know the location of 334 drill sites equal to 56 percent of the project, then it can't assess the environmental impacts and mitigate them. Nor can the public comment on it. The environmental assessment must provide information about all the project activities. NEPA Section 102 in Title I of the Act requires federal agencies to incorporate environmental considerations in their planning and decision-making through a systematic interdisciplinary approach. *"NEPA ensures that important effects will not be overlooked or underestimated, only to be discovered after resources have been committed or the die otherwise cast."* *Roberston v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1998). This was codified in 40 CFR §1500.1(b), *"The regulations in this subchapter are intended to ensure that relevant environmental information is identified and considered early in the process in order to ensure informed decision making by Federal agencies."* NEPA 40 CFR §1501.2 states: *"Each agency shall (2) Identify environmental effects and values in adequate detail so the decision maker can appropriately consider such effects and values alongside economic and technical analyses."*

We realize that the future site locations are dependent upon the results of drilling at the first 266 sites and that the proponent wants to be able to do step-out drilling or drill at new locations without going through another NEPA process. However, allowing the proponent to just give notice to the Forest Service of the new drill sites and roads, by-passes public review. The proponent is likely to destroy cultural resources or significantly impact flora and fauna by drilling in new locations, especially when the majority of new surface disturbance will be in Inventoried Roadless Areas. The Area of Potential Effects (APE) for the Burnt Rock project covers about half of the project area, but not the entire project area. The areas the proponent expands into may not have been surveyed for cultural resources. Considering the pre-historical use of the Bodie Hills for large game hunting, it is likely there are significant cultural resources at risk with this approach.

Even if CP Resources sends an annual as-built report with the new sites to the Forest Service by April 15 for their review and approval before beginning operations (June 30) for the following season, it does not include input from the public or the Tribes and violates NEPA. Nor is there any guarantee that the Forest Service will do anything more than approve it without properly evaluating the impacts and mitigating them. There should be a supplemental EA for each set of future sites. NEPA mandates public involvement. Section 106 mandates Tribal involvement. The Forest Service's regulations require that a supplemental plan "shall be subject to approval...in the same manner as the initial plan of operations." 36 CFR § 228.5(c). As the environmental assessment cannot analyze the impacts of the drill sites that have not yet been identified, the Forest Service cannot rationally or lawfully rely on the existing EA to satisfy the NEPA requirements for those subsequent approval processes.

B. The Project Needs to be Reviewed as an Environmental Impact Statement

The National Environmental Policy Act (NEPA) requires agencies to prepare an environmental impact statement ("EIS") for "major Federal actions significantly affecting the quality of the human environment." 42 USC § 4332(2)(C). An agency may avoid an EIS only if it finds, after preparing an environmental assessment ("EA") which considers all direct, indirect and cumulative impacts (40 CFR § 1508.1(g) (2022)), that the action will have no significant impact on the environment. *Id.* at § 1508.1(l).

Based on acknowledged and identified potential significant impacts in the EA, (and as shown herein), there certainly is a potential for significant impacts requiring an EIS. An EIS is required “where there are substantial questions about whether a project *may* cause significant degradation of the human environment.” *Native Ecosystems Council v. U.S. Forest Serv.*, 428 F.3d 1233, 1239 (9th Cir. 2005) (emphasis in original) (citing *Idaho Sporting Cong. v. Thomas*, 137 F.3d 1146, 1149 (9th Cir. 1998)); see also 42 USC § 4332(2)(C). “If *any* 'significant' environmental impacts might result from the proposed agency action then an EIS must be prepared *before* agency action is taken.” *Grand Canyon Trust v. F.A.A.*, 290 F.3d 339, 340 (D.C. Cir. 2002) (citing *Sierra Club v. Peterson*, 717 F.2d 1409, 1415 (D.C. Cir. 1983) (emphases in original)).

The Burnt Rock Project is double the size of the Polaris Mineral Exploration Project with far greater environmental impacts to the bi-state sage grouse. Initially, it will involve construction of up to 45 miles of temporary access roads, up to 266 drill sites, and up to 4 laydown yards and up to 250 acres of disturbance. The density of the drill sites itself precludes any wildlife from sticking around. The entire project is 6,792 acres in size. 880 acres of that is on private property and any drilling planned on the private property is not mapped or known. The core area of the project covering the 266 drill sites is about 3,780 acres. There's a drill site every 14 acres. And then, the project can double in size. It is likely to also include additional drill sites and roads on private property within the project boundary that is adjacent to the Forest Service property. More importantly, the Forest Service cannot find that the Burnt Rock project has no significant impacts. It will have significant impacts on the bi-state sage grouse and sensitive plant species that cannot be mitigated as we discuss further in this letter. It will tear up precious meadows and mature low/black sagebrush, remove hundreds of mature pinyon trees, and cause mule deer and pronghorn to find new routes around the project.

C. The Environmental Assessment Needs to Consider Alternatives that Would Better Comply with the Requirements of 36 CFR. Part 228

The EA presents two options, the proposed action and no action. The Forest Service selected the proposed action under the 1872 Mining Law. However, the Forest Service must consider viable alternatives that would better comply with the requirements to minimize impacts to the extent practicable and feasible.

The environmental assessment should provide an alternative that avoids impacts to the sage grouse and rare plants even if it is inconvenient or more expensive for the proponent, as long as it is not impracticable or infeasible. If there isn't an alternative that allows drilling without forcing the sage grouse out of the area or without reducing their numbers, then this should be a red flag preventing a FONSI determination. The Forest Service should either select a no action alternative or mandate compensatory mitigation for the loss of bi-state sage grouse and this high quality habitat.

D. Impacts to Natural Resources in the Region

1. Bi-state Sage Grouse

The bi-state sage grouse are a distinct population segment of the greater sage grouse (*Centrocercus urophasianus*) and is a candidate for a state as well as a federal listing as a threatened species. The overall population trend over the past 60 years has declined by about 66 percent, and has been in steady decline of

1.2-2.5 percent over the long term (1969-2018) (Coates 2024). The decline has slowed in recent years, but is still declining. There were about 3,305 individuals as of 2018. About half of the population of the bi-state sage grouse is in the Bodie Hills within the Bodie Hills Population Management Unit (PMU) and the Mt. Grant Population Management Unit (PMU). The Bodie Hills PMU is the core population that is used to translocate broods to establish sage grouse in other areas of their range. There are springs throughout the Bodie Hills and snow in winter, which provides a climate refugia and is why the Bodie Hills support the core sage grouse population. As one can see in the map below, the Burnt Rock project is in a core habitat area, south of the Aurora Crater (2024 Bi-state Sage-Grouse Action Plan).

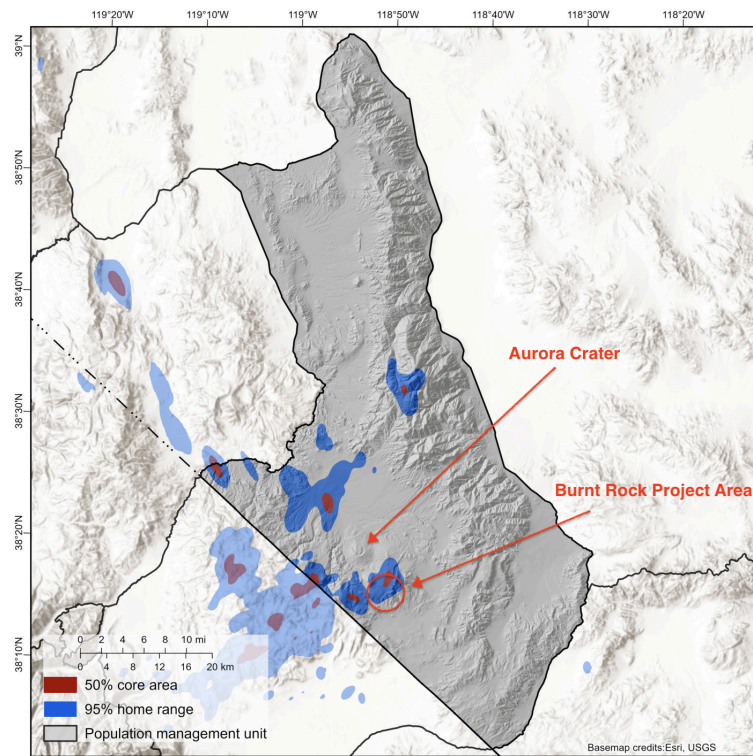


Figure 3. Core (50% utilization distributions) and overall (95% utilization distributions) population-level home ranges within the Mount Grant PMU calculated from data collected from 2011 – 2023².

Figure 1: Core sage grouse habitat. Southern most blue and red splotches are in the Burnt Rock project area.

Population numbers matter. The Bi-state Sage Grouse Local Area Working Group has been working to protect the bi-state sage grouse for over two decades by flagging fencing, removing pinyon trees encroaching on sage grouse habitat, oiling raven eggs, doing an annual count of the birds across their range, studying them, and more. A lot of expense, time and effort has gone into helping this species thrive. Wildfire, predation, and other threats have had an impact. Despite extraordinary efforts to help this species survive, it is still in decline. The highest threat to the species in the Bodie Hills is wildfire, especially at the lower elevations in the Mt. Grant PMU. A wildfire could cut off the connectivity between the two PMUs and make habitat restoration more difficult. Human activities cause the majority of wildfires. This project puts this area at a high fire risk by driving over vegetation, using chainsaws to remove trees, welding, and other activities.

Mitigations/Actions to Reduce Impacts

The EA Biological Assessment and Biological Evaluation does a good job of laying out the many impacts of the Burnt Rock project to the bi-state sage grouse. However, the EA concludes that there will be enough mitigations with a non-operational period March 1-June 30, a cap of 3 percent loss of sage grouse habitat, concurrent reclamation, reclamation success criteria, removal of common weeds, and downward lighting that the impacts will be minimal. *“The Proposed Action may impact individual Bi-State DPS but would not likely lead to a trend toward federal listing or a loss of viability of this species.”* It is hard to quantify the impact of this project when there are many variables and unknowns. The main impact will be the loss of future generations of the sage grouse using the area. The EA argues that the sage grouse can move to the areas that are quiet as the project progresses. Yet the density of drill sites, leaves few quiet places especially if there are 5-10 drill rigs in operation spread out across the project area. There will be drill rigs from the adjacent Polaris project running as well. The plan of operations doesn’t say the drill teams will be working close together, moving to the next area together, leaving the majority of the project area quiet. They may be spread out in five different areas. Nor does it say the prime sage grouse habitat will be left for last. It also doesn’t say if the entire area will be prepped at the start, taking away habitat at the start or if a “prep as you go” approach will be taken. The main routes, including the 20-foot wide main access road running through the project area will probably be put in at the start. That will introduce commotion throughout the project area right off the bat. If a hen were to find a quiet area to nest and raise her brood, will she be interrupted and have to flee when a drill team moves to her quiet spot? And move again when the drill team moves into her new spot? Will her brood survive if she abandons them? If a hen leaves, will she return the next year to mate, start a nest again that may be interrupted again? Will she search for a new lek and relocate? Will she miss a mating season looking for a new lek? As the project progresses and more drill pads and roads are put in, there will be less and less habitat for food and cover for the sage grouse. If hens don’t show up at a lek, eventually, the males will abandon the lek.

There isn’t enough evidence to determine if the mitigations will be effective through 7 years of extensive drilling, traffic, vegetation removal, and general commotion throughout the project area. It is impossible to know how many sage grouse will not be born or not make it to maturity because of this project. This project will disrupt the reproduction cycle of many hens for a decade that otherwise would produce offspring that would produce offspring, etc. This species’ population numbers are already low for long term survival. As the EA biological evaluation states, sage grouse use the area year-round, especially in spring, summer, and winter for mating, nesting, and brood rearing and will need to leave the area if they are to survive. It will be a test of their loyalty to a site if they return a decade later. To really know the impacts of this project on the sage grouse, they would need to be collared and tracked to see if they survive and where they go. We don’t really know how well they will adapt to new surroundings. If significant impacts can’t be mitigated, then the Forest Service should consider compensatory mitigation.

The Burnt Rock plan of operations lists four actions to mitigate the impact of their drilling activities on the sage grouse on Forest Service land. These commitments are insufficient for protecting the sage grouse. The Forest Service is adding more which will help. None of these commitments apply to Headwater Gold’s activities on the adjacent private property, however, which is even closer to a sage grouse lek than the Forest Service property.

- Construction, drilling, and reclamation activities will not take place between March 1 and June 30 within four miles of active or pending leks consistent with Forest Plan Standard MG-S-01.

- If camping is necessary to facilitate site supervision and core inspection, two to three personnel would camp on private lands or disturbed areas within the Plan boundary.
- Disturbance will only be created as is determined necessary based on drilling results. Disturbance will be limited as much as possible.
- Reclamation activities will use plant species that provide suitable habitat for bi-state sage grouse.

As all of the project area is within 4 miles of an active lek, the EA makes it clear that there will be *no* activities from March 1 through June 30 including site prep and road maintenance; not just the three activities listed above. In 2023 and 2024, there were two drilling crews camping on private land adjacent to the Spring Peak gold exploration project area. They were camped next to a wetland meadow, a stream, and a spring that is used by wildlife. With many RVs, tents, and vehicles adding to the noise, lights, and commotion, wildlife would lose access to that water source. A better camping location would be further to the east, closer to the pinyon forest and away from wetlands, springs, and streams. With respect to the third commitment, a promise that the proponent will disturb as little as possible is not adding much in the way of protection, especially when the project is as big as this one is. The planned and existing disturbance is 121 acres and the allowed, unknown disturbance is even more at 129 acres. With respect to the fourth commitment, promising to spread seed mix for suitable sage grouse habitat is good, but using one seed mix for different habitats with no plan to plant seedlings, creates a habitat that will take years to become quality sage grouse habitat.

The 2016 Amendment 18 to the 1986 Toiyabe National Forest Resource Management Plan (RMP) is the RMP that applies to the bi-state sage grouse today. It lists actions to protect the bi-state sage grouse. The following Forest Plan Standards apply to the bi-state sage grouse related to this project. The Forest Service has addressed these in the EA. We still have a few concerns about some.

- AA-S-02: Total anthropogenic disturbances shall affect no more than 3% of the total bistate DPS habitat within 4.7 mile[s] of active and pending leks in the Bodie/Mount Grant, Desert Creek/Fales, and White Mountains population management unit boundaries.
- AA-S-06: Require site-specific project mitigation to insure no permanent net loss of habitat due to project disturbance.
- AA-S-11: During project implementation limit offsite noise to less than 10 decibels (dbA) above ambient measures from 2 hours before until 2 hours after sunrise at the perimeter of a lek (0.25 mile buffer around lek point) during active breeding/nesting season.
- Wild-S-02: Vegetation treatments and post-disturbance restoration shall seed and/or transplant sagebrush to restore large patches of sagebrush cover and connect existing patches.

With respect to AA-S-02, the Forest Service is putting a restriction in place to limit the disturbance cap to 3% in sage grouse habitat and is requiring a 100-acre cap of surface disturbance at any one time. The surface disturbance of the initial drill sites is 121 acres and not all of it is in sage grouse habitat so this requirement really only covers any disturbances beyond the initial project. What isn't clear is if concurrent reclamation kicks in only when a new drill site is proposed and then, only if it is within 4.7 miles of the New Lek. (EA p.58 vs p. 64) Is it dependent upon the presence of Bi-State DPS in the area (EA p 57)? If sage grouse abandon the area, will concurrent reclamation, which mitigates impacts on other flora and fauna species as well, stop? Concurrent reclamation should be in effect during the entire project. We assume the surface disturbance of the initial 75 drill sites of Polaris project has been factored into the 3 percent cap for the Burnt Rock project because the EA states that the existing disturbance to date is 1.35 percent for the

New Lek and 0.48 for the Aurora Peak Lek. Will the 3 percent cap be recalculated as the 175 additional drill sites are added under the Polaris project?

We have questions about how the 121 acres of surface disturbance were calculated should the 100-acre cap start with the initial drill sites. Only 12 of the 18 Spring Peak drill sites and one temporary road section were reclaimed in November 2024. Now, 17 months after reclamation, few perennials have come up. Some drill pads are carpeted with cheatgrass. Does the 2.9 acres of surface disturbance in Table 1 Proposed and Existing Surface Disturbance include those 12 drill sites? We visited a few of the reclaimed drill sites on May 11, 2026 and took photos. They aren't close to matching the surrounding or adjacent vegetation yet. With respect to Standard AA-S-06, it is an issue of quality of the habitat achieved through reclamation and that will be very dependent upon the ARC. (See Appendix C for photos of reclaimed drill pads 1, 4, 5, 18, 23, 24 and a brief description of dominant species growing there.)

Usually, a bulldozer is brought in to prep the entire site upfront. If so, then all the surface disturbance will occur at the start and will exist for many years until the site is drilled and reclaimed. Consider requiring "as you go" site prep throughout the life of the project as well as concurrent reclamation to avoid impacts until it is absolutely necessary.

With respect to AA-S-11, 8 drill sites (55, 78, 79, 106, 107, 67, 80 and 194) are planned within the Aurora Peak Lek shown in Figure 5 in the EA Biological Assessment and Biological Evaluation (BA/BE). Drill sites 55, 78, and 79 may be within 0.25 miles of the lek itself. If so, this standard may apply in July-August for late nesters. Since drilling goes 24/7 once a hole is started, there would be drilling at dawn.



Wetland at foot of east slope of E. Brawley Peak
on 7-28-24



View of Aurora Lek meadow area on 6-13-22,
headwater of Aurora Creek

Drill sites 55, 78, and 79, are in a high use sage grouse area near a wet meadow at the base of East Brawley Peak. It would be better to drill them in the fall or eliminate them.

The EA references the 2025 Nexus Biological Baseline Survey Report for the Burnt Rock Exploration Project which says there are only two springs in the project area: LA-3 in sage grouse habitat and Five Mile Spring in a woodland. But there are more springs in the area than that and meadows along them. There are three springs in the Aurora Peak Lek that should be mentioned. Two are just outside the project boundary: STK 51469 and STK 51470 (in the Aurora Peak Lek). One is the headwaters of an ephemeral stream that flows through the large meadow in the private property parcel APN 007-190-11. Then there are two springs outside of the project boundary near East Brawley Peak: LA-102 and UBC-105 and several seeps and

wetlands between them, which makes the area around these 3 drill sites (55, 78, and 79) such great habitat for the sage grouse. On July 28, 2024 we flushed 21 sage grouse walking to the top of East Brawley Peak. They flew down to where these drill sites will be. On May 26, 2026, we flushed six sage grouse that were only 270 yards away to the east of drill site 78 in another meadow area just over the hill. They flew over a ridge towards drill site 78. There was sage grouse scat on the ridge they flew over, further evidence that drill sites 55, 78, and 79 should be eliminated. Drill sites 107, 106, 67, 80, and 194 are in the Aurora Peak Lek and should be eliminated as well.



This is the hillside where drill sites 107, 106, 67, and 80 will be. Good sage grouse habitat as well.



Drill site 194 is on the ridge on the left side of the photo In the sagebrush.

Some Polaris drill sites were eliminated that were proposed in the sage grouse home territory, why not for the Burnt Rock project too? (See Appendix A Figure 1 for a map of drill sites 55, 78, 79 in relation to Aurora Peak Lek, sage grouse presence, and springs.)

Other Adjacent and Concurrent Projects-Cummulative Impacts

Adjacent Private Property

Besides impacts to the sage grouse of this project and the adjacent Polaris project, a big factor in assessing the impacts to the bi-state sage grouse is the potential for concurrent drilling on private property adjacent to both the Burnt Rock and Polaris projects. The private land was owned by the Juan and Carmel Arrache Family Trust. One of the family's largest parcels (Mineral County, NV APN 007-190-10) is 680 acres that extends from the foot of East Brawley Peak to western edge of the Forest Service property that was the western border of Headwater Gold's Spring Peak exploratory drilling project. This parcel is adjacent to the Aurora Peak Lek (Figure 5 BA/BE p. 106). It encompasses a large wetland meadow, the largest springs in the area, and a small perennial stream. All of which supports the bi-state sage grouse, mule deer, pronghorn, and other wildlife in the region. Riparian habitat is rare in the Great Basin and this private property offers very important habitat for wildlife. Although activities on private property aren't disclosed, it is highly likely that there will be drilling on this parcel and a few others within the project area.

In September 2023, the Arrache Family Trust properties were quit-claimed to J.E.A. Aurora Properties, LLC and J.E.A. Aurora Properties has allowed Headwater Gold to camp, put in a well, put in roads, and drill on their properties. Headwater Gold drilled at four locations on the J.E.A. Aurora Properties

parcel 007-190-10 in 2024 along the southwestern edge of the Spring Peak project boundary and at a fifth location on the edge of the riparian meadow in late 2024 in parcel 007-190-11. CP Resources has filed an extensive number of mining claims on the J.E.A. Aurora properties.

Looking at Figure 2 Project Boundary and Land Status in the plan of operations (p. 42), one can see that parcel 007-190-10 is marked with diagonals indicating CP Resources has numerous claims there.⁴ There are diagonals through the other JEA Aurora Properties, LLC properties within the Project: part of the private parcel in the northwest quarter of the northwest quarter of Section 33 (Mineral County APN 007-190-11), a private parcel in the southwest quarter of the southeast quarter of Section 34 by Five Mile Spring (Mineral County, NV APN 007-190-14) and a private parcel in the southwest quarter of the southeast quarter of Section 27 to the north of it (Mineral County APN 007-190-13). It is safe to assume that CP Resources plans to drill on these private parcels. The roads that run through the parcel 007-190-10 are 22538 (aka Mon #43 Trail) and 22539 (Stateline Trail) which are listed as two of the roads to be used in the Burnt Rock project as well as in the Polaris project. Why are these roads listed in Table 1 of the Burnt Rock Plan of Operations (p. 68) if CP Resources isn't drilling on that parcel? They don't need them for any drill sites on Forest Service land. Why would CP Resources file claims on the J.E.A. Aurora parcels and pay the annual fee if they weren't planning to drill on them? There is every reason to believe that there will be drilling and new roads on the J.E.A. Aurora Properties, LLC parcels within the Burnt Rock project boundary that must be considered when assessing the impact of the Burnt Rock project to the sage grouse.

Adjacent Polaris Project

The Forest Service must also take into account that there will be drilling on the ridge of East Brawley Peak above the Aurora Peak Lek as part of the Polaris project during the same ten year timeframe. The initial plan is for 7 drill sites at the top, but more could be added as that project develops. Vehicles will be traveling through the Aurora Peak Lek at the foot of East Brawley Peak on road 22538 to get to drill sites on the ridge or in the saddle between East and West Brawley Peak. We found several scat piles and tars in the road to the top of East Brawley Peak and flushed 21 sage grouse from the grasses in, and next to, the road at the 9,025 foot level on July 28, 2024. This area is the sage grouse hot spot and may have the highest use within the Polaris and Burnt Rock project areas. The drilling on East Brawley Peak under the Polaris project alone, will have a significant effect on the sage grouse and the Aurora Peak Lek.

⁴ (This is easiest to see on the map of the Nevada Division of Minerals Open Data Site <https://data-ndom.opendata.arcgis.com/pages/mining-claims> although it doesn't drill down to the quarter-quarter level.)



Sage grouse in unnumbered use road near top of E. Brawley Peak



Spooked sage grouse flying to the foot of E. Brawley Peak

The impact to the sage grouse from the Polaris project alone was determined to not be significant. Now, with the Burnt Rock project and the likely drilling on the JEA Aurora properties, the combined impact of all three projects is significant. The three projects together cover the entire area from West Brawley Peak to Mt. Hicks, all priority sage grouse habitat. We've seen sage grouse, sage grouse scat and tars across this area. Besides the sage grouse we saw on the east face of East Brawley Peak, we've observed sage grouse on the northeast slope of Aurora Peak, to the east of the transmission road on the west slope of Mt. Hicks, and in the area of drill sites 57, 81, 253, 195, and 161. We have found sage grouse scat and tars sprinkled across the area from the base of East Brawley Peak to a half mile west of the Swampside Trail. We've found it at the base of Aurora Peak on the east slope, around Mt. Hicks, and at the southern end of the Connector Trail (22535). Some Burnt Rock drill sites are around the edge of the large riparian meadow and the spring that feeds a small stream that flows through it (drill sites 66, 101, 191, and 53). Riparian areas are good brood

raising areas where chicks can fatten up on insects. This increases their chances of survival to adulthood. The Forest Service must consider the combined impacts on the sage grouse in determining the total impact of the Burnt Rock project. (See Appendix A Figures 1 and 2 for a map of sage grouse presence we've come across in the project area in relation to drill sites, the Aurora Peak Lek, and springs.)

Mt. Hicks Lek Is Active and Impacted

The Burnt Rock project is likely to impact the hens that mate at the Mt. Hicks lek and at the New Lek at a snow pond on the northern slope of Mt. Hicks. The status of the Mt. Hicks Lek is considered unknown and only 2 birds were observed there in 2025. However, on August 19, 2025, we observed over 40 piles of sage grouse scat at the end of Forest Service road 42757 on the east slope of Mt. Hicks in an open area that is typical of leks, not far from the known lek site. This may be an active lek site on Mt. Hicks and it had to have been used by more than 2 birds to generate so much scat.

The scat piles we observed were less than one mile from the nearest drill site (drill site 200). While the project activities will not directly impact this lek, they could impact where the hens nest after mating. There is little riparian habitat on Mt. Hicks, so it is possible the hens nest in the area between Mt. Hicks and East Brawley Peak where there are springs, seeps, meadows, and wetlands. On August 19, 2025 we flushed a sage hen from the brush where the Burnt Rock drill site 227 is planned, saw sage grouse tracks where drill site 228 will be, and observed seven sage grouse tars where drill site 200 is to be. If they do nest in the same area as the Aurora Lek hens, then the Burnt Rock project will push the Mt. Hicks hens out of the area too, which puts both the Aurora and Mt. Hicks Leks at risk of becoming inactive.



The Mt. Hicks lek area covered in fresh scat piles.

The second Mt. Hicks lek, New Lek, is at the end of the Forest Service road 42058G where there is an ephemeral pond, a snow pond on the north slope of Mt. Hicks below the Mt. Hicks lek. The pond is a little more than a mile and a half from the northern project boundary and a little more than half a mile from the Polaris drill site 51. On August 26, 2025, we observed many single pieces of scat on the dry lake bed and a few piles of older scat and over 50 piles of yellow (fresh), cream to white (semi-fresh), and grey (old) sage grouse scat, many with tars, on the east side of the pond just beyond an old fence. The fence should be flagged or removed to avoid sage grouse flying into it. It is only a few feet from the lek. It is an open, rocky area with low sagebrush. Yet taller, big sagebrush is nearby to provide food in winter. The snow pond would have fresh water in the spring and into the early summer providing a wetland area and a supply of insects for chicks. A large area to the south of FS road 42058G is superb, healthy sagebrush steppe and

excellent sage grouse habitat that leads up to the Mt. Hicks Lek and to the pond lek. That wonderful habitat on the north slope of Mt. Hicks is now covered in claims filed by CP Holdings Corporation i.e., CP Resources/Headwater Gold. They have filed 157 claims in sections 11-14 of T5N R28E. Two of those claims (SP-544 and SP-545) are at the pond lek. It seems more intrusion on sage grouse habitat and impacts to the sage grouse are coming.



Pond Lek on the north slope of Mt. Hicks, east of a snow pond.

EA Under Values Significance of Impacts

There are two main impacts to the sage grouse, the loss of habitat and the loss of the use of habitat. The loss of habitat comes with the clearing of land for roads and drill pads, reducing cover and food for the sage grouse. If the whole project area is prepped at the start of the project, then the impact of the loss of cover and food will start that first year. It takes years for a sagebrush community to be re-established. After the Spring Peak Fire in 2013, the area was seeded in 2015. People who helped plant back then remember it was all ash still in 2015. 2017 was a big winter with lots of moisture. By 2020, tender, young sagebrush plants were 2-3 feet tall and sage grouse were foraging on them. There were piles of sage grouse scat under many of the shrubs. That is a span of 7 years for big sagebrush to grow back enough to provide food and cover. Low or black sagebrush might take longer. Reclamation of the Spring Peak drill sites shows that in 17 months, big sagebrush came up at some sites but was less than a foot tall, not enough to provide cover. A sage grouse would be exposed if they ate there.

The loss of use of habitat comes from the commotion and intrusion of human activities, i.e., traffic, drill noise in 5 or more locations, generator noise, diesel fumes, the well running, bulldozers moving dirt, emptying and moving port-a-potties, lights at night, presence of people, people talking, people camping, off-hours music, pipes clanging, car doors slamming, the water truck wetting the roads, etc. This commotion will be spread out in different areas. Sage grouse will flush when a person is walking quietly within 500 feet of them! It is quiet out there. The only sounds are the wind, the rustle of a shrub, and other birds calling.

A 2012 research paper⁵ shows noise impacts the Greater Sage Grouse and can cause the sage grouse to leave the area, interrupt their communication with one another, reduce their breeding success and increase stress to the point that they die. The researcher's recommendation is that noise not exceed the natural ambient noise level + 10 db. This research tells us the drilling will surely cause harm. The EA contends that 34 trips per day will be light traffic. It isn't light in comparison to the current average which is probably not even one trip per day on the just the transmission line road. Once the project is over, the improved roads will allow street vehicles to explore the area. So the intrusions will continue indefinitely. The more visitors, the higher the chance of human caused wildfires.

One could argue that there aren't many sage grouse living there to worry if they survive or leave. With this species, numbers are important. As noted in Table 10 in the EA BA/BE report (p. 25) there were 40-50 sage grouse on 3/27/24. That is the potential loss and it is significant. The numbers were lower in 2023 because it was after an extreme winter with a deep snowpack. Usually, the sagebrush is sufficiently tall enough to stick out of the snow to support them, but it was buried that winter. They had to move to a lower elevation to find sagebrush to eat. That year, sage grouse were in different locations in Long Valley too. The lower lek count in 2022 followed a summer after the area had been heavily grazed by sheep. The meadow grasses were grazed to a nub in the Aurora Lek area. (RU-S-01 has not been followed.)

Because the Bodie Hills PMU is the stronghold of the entire bi-state sage grouse population, a loss of the Aurora and Mt. Hicks Leks and their nesting habitat could jeopardize the species. It will certainly add to the factors causing further declines in a declining population. The USGS recently created a model that predicts how much the population will be affected by anthropogenic disturbances. The model could be run using the Burnt Rock and Polaris drill sites to measure the impact to the entire bi-state sage grouse population. If the Bodie Hills population declines, then the whole species is in trouble.

2. The Project Will Disrupt the Mule Deer Migration and Mule Deer Hunting

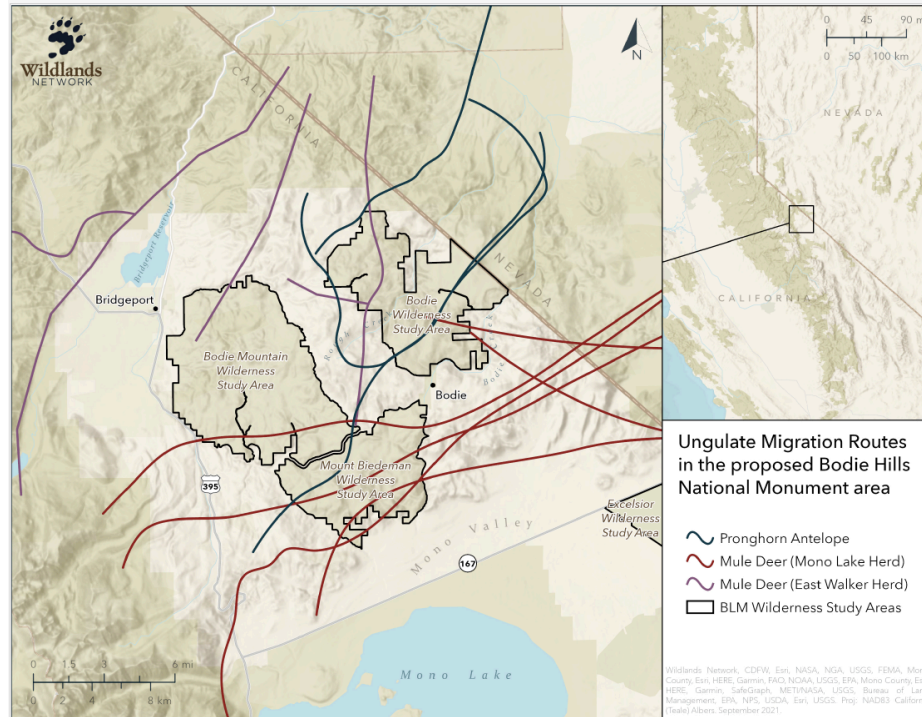
As noted in the Burnt Rock EA BA/BE, the Burnt Rock project will disrupt the mule deer migration and impact pronghorn that summer in the Bodie Hills.

Executive Order 2021-18⁶ ordered the Nevada Department of Wildlife to prepare a Nevada Wildlife Connectivity Plan that outlines a plan for conserving wildlife migration corridors, which was released in 2025. The goal is to identify and preserve migration corridors. There are migration corridors in the Burnt Rock project area. The Wildlands Network has produced a map of the migration corridors the Bodie Hills that shows several migration routes of the Mono Lake Mule Deer herd traveling across the southern slope of East Brawley Peak. The area between the Brawley Peaks and Mt. Hicks is some of the best summer range for the mule deer in Mineral County.

⁵ Patricelli et al.

https://www.academia.edu/14133188/Recommended_management_strategies_to_limit_anthropogenic_noise_impacts_on_greater_sage_grouse_in_Wyoming or https://www.academia.edu/14133174/Experimental_Evidence_for_the_Effects_of_Chronic_Anthropogenic_Noise_on_Abundance_of_Greater_Sage_Grouse_at_Leks

⁶ https://gov.nv.gov/layouts/full_page.aspx?id=337913



In 2020 we watched a pronghorn pass through Spring Peak towards the large meadow where there's a stream and springs that provide water for wildlife. Ungulate tracks and wild horse scat piles have also been observed in the Spring Peak area many times and ungulate tracks have also been observed on the Sawtooth Ridge. The Stantec 2021 Biological Baseline Survey Report that was prepared for the Sawtooth Ridge Exploration Project includes a photo of a mule deer running within four-miles of the project area. Also of note is the possibility of a mountain lion on Mt. Chalcedony. There is an outcrop that smells strongly of feline urine. Mountain lions would be in the vicinity of deer, their prey.

Having 2-3 campers (people or RVs?) or camping for “site supervision and core inspection” on the private property by the stream and spring at the junction of 22536 and 42759 will block wildlife from accessing that key water source. The general traffic and commotion will disrupt their use of the area and block their access to water. Springs at Spring Peak are an important source of water. There are few alternatives nearby. Larken Lake, 3.5 miles to the south, is only a seasonal, alkaline lake. The Forest Service might consider placing guzzlers on the wildlife migration routes for mule deer and pronghorn.

3. Sensitive and Rare Plants Should be Avoided

The Nevada side of the Bodie Hills is remote and has not been extensively surveyed. Although the Nexus Environmental Consultants field surveys covered a lot of ground, there are a few known occurrences that they didn't catch and one survey cannot effectively document all of the special species in the area. The Biological Evaluation of plants referenced the NatureServe Explorer and the Nevada Natural Heritage databases. Other sources of information are iNaturalist and the Plants of the Bodie Hills 2025 by Tim Messick. The Plants of the Bodie Hills document shows an occurrence of *Rhinotropis intermontana* was found on the north slope of East Brawley Peak and states that *Boechera (Arabis) bodensis* has been found on Mt. Hicks. These were not noted in the botanical survey report. The following California Native Plant

Society (CNPS) List 1 and 2 rare plant species have the potential to be in the project area but were not included in the survey.

- *Boechnera cobrensis* (Masonic rockcress)
- *Astragalus platytropis* (Broad-keeled milkvetch)
- *Rhinotropis* [Polygala] *intermontana* (Intermountain milkwort)
- *Rhinotropis* [Polygala] *subspinosa* (Spiny milkwort)
- *Eriogonum alexandrae* (Alexander's buckwheat)*

In the list above, the one with an asterisk is also on the Nevada Division of Natural Heritage (NDNH) at risk list. Many of these plants might be in the project area as they are present on the California side or in other areas on the Nevada side in the region. The survey that was done was predictive, where they focused on 7 sensitive species that might be in the area. They also used a list from 2016. There might have been new additions to the Sensitive Species list in the past ten years. We came across a fritillaria in the meadow on the banks of an ephemeral stream between drill sites 78 and 67 that might be the rare, native *Fritillaria pinetorum*.



The Intuitive Controlled Survey methodology used by the Nexus Environmental Consultants does not provide adequate or intensive enough coverage and limits potential botanical surveyors to a target list of species. Botanical field surveys should be transect-based and cover the entire project area, including areas that will be directly or indirectly impacted by the project. Timing of botanical surveys must be done within the effective period of anthesis for sensitive annual plants. Botanical field surveys will be conducted in the field at the times of year when plants will be both evident and identifiable. The botanical report should list all the species found in the area surveyed and it should clarify who did the survey versus who wrote the report and what the surveyor's qualifications are.

We've observed the Bodie Hills cusickiella (*Cusickiella quadricostata*) in many of the locations shown in Figure 5 Sensitive Plant Species Locations in the Biological Evaluation. It thrives in this area. It seems to select for areas with light soils. It has a California Rare Plant Ranking of 1B.2: *Plants rare, threatened, or endangered in California and elsewhere*. This species has a very small range and is found almost exclusively in the Bodie Hills with a few individuals found to the east of Coleville, California and near the Borealis mine in Nevada. The Burnt Rock project area may be the largest and most dense population of it and this project will destroy a significant percent of the population.

There are 8 drill sites in the locations shown in Figure 5 where the Bodie Hills cusickiella lives (56, 164, 24, 191, 101, 53, 251, and 178). There are another 9 drill sites close to it (80, 66, 59, 192, 249, 54, 117, 177, and 162). The temporary roads to drill sites 70, 38, 40, 117, and just past 66 will pass through it. The proposed 20-foot Temporary Access Road will go through a hillside that is covered in Bodie Hills cusickiella as well as a variety of other wonderful plant species that are part of the community. It is a biodiverse hillside. More plants will be destroyed with future step-out drill sites and additional temporary roads to them. The impact on the total population is unknown, hundreds of individual plants will be destroyed with this project. It is also present in the adjacent private property which will be explored adding to the impact to this species.



hillside with Bodie Hills cusickiella
(the plants with lighter, lemon colored flowers)



same hillside with rockcross



healthy Bodie Hills cusickiella plant next to Laydown 4

The other rare species that has been found in the Burnt Rock project area is the Long Valley milkvetch (*Johannis-Howelli astragalus*). We have found many occurrences of it in the Mt. Hicks Road 42757 and at the foot of Aurora Peak in the path of the Connector Trail (22535). Our observations have been entered into iNaturalist. We have also found several individuals on the ridge where the non-existent Prospect Road C (42759C) is. Neither of these locations appear on the Figure 5 Sensitive Plant Species Locations in the Biological Evaluation. The Long Valley milkvetch also has a California Rare Plant Ranking of 1B.2: *Plants rare, threatened, or endangered in California and elsewhere*. It is found primarily in Long Valley and in the Bodie Hills. A small range. With it being in the Mt. Hicks Road and in the area of the Connector Trail, flagging them won't work. There are 8 drill sites in the locations shown in Figure 5 where the Long Valley milkvetch lives (90, 89, 248, 154, 229, 150, 149, and 200). They will be destroyed with the bulldozing of the Connector Trail road and by the traffic and possible grading of the Mt. Hicks road. More will be destroyed with future step out drilling.

The EA and the plan of operations states, “CP Resources will flag and avoid sensitive plant populations to the extent possible but the final decision to reroute roads or move drill pads will need to be made on the ground to determine if an alternate location is feasible based on slope, landform, and if cultural resources can be avoided.” The plan at present is to flag these areas, but that isn’t much protection. It is unacceptable to just hope for the best. Hundreds of Bodie Hills cusickiella plants will be lost and dozens of Long Valley milkvetch will be lost. There needs to be a better plan to protect them. It is unlikely they would survive being transplanted, but it hasn’t been tried. Nor has propagating them from seed and then transplanting them been tried. An alternative that should be considered would be to collect their seeds and soils and use them during reclamation. This alternative should be explored because both species are rare and a significant percentage of their populations will be eliminated.

A third rare species might be in the project area, the *Boechnera/Arabis bodiensis*, a rockcress. We have found rockcress in several locations throughout the project area, in areas other than what is shown in Figure 5 Sensitive Plant Species Locations in the Biological Evaluation. But, rockcress is very hard to identify at the species level. The fruits are a key feature that helps identify the *Boechnera/Arabis bodiensis*. They weren’t fruiting when we were looking so we could not tell if they were a rare species or not. If they are the Bodie Hills rockcress, then they will be destroyed by drill sites 96, 7, 8, and 9 and the road to them. Drill site 2 and possibly 165 will destroy some individuals of the rare Lavin’s rockcress. We hope the Forest Service will ask Headwater Gold to move the drill sites and roads to avoid destroying these four rare plant species.

4. Missing Road Disturbance Calculations

The Burnt Rock Project is planning 45 miles of new temporary access roads in addition to the existing Forest Service roads that pass through the project area. That's a lot of roads and surface disturbance and that doesn't include the additional roads that will come later with the step-out/in new drill pads. The new temporary roads will be 14 feet wide and the access roads will be 20 feet wide. The sheer quantity of them is concerning, but a 20-foot road in an undeveloped, natural area is a huge scar on the landscape. The transmission road (42754) to get to the project site has a road bed of only 12 feet. These roads will remove a significant amount of cultural resources, sage grouse habitat, and sensitive plants.

While we are grateful for the latest updates to the plan of operations that correct some of the missing road disturbances, some of the road calculations don’t take into account the current conditions of the roads. We have been to the project site to “ground-truth” the conditions of the existing Forest Service roads. There are many significant discrepancies in the surface disturbance tables in the EA and Plan of Operations from our findings. The total road disturbance of 55.8 in Table 1 Proposed and Existing Project Disturbance (EA p. 2) is an underestimate and needs to be updated to correctly reflect the proposed disturbance. The reclamation bond should then be recalculated.

By our calculations, the Burnt Rock project needs to add at least an additional 8.32 acres of disturbance for a total of 64.12 ($55.8 - 2.7 + 11.02$) of road surface disturbance and this doesn’t include adjustments for slope or the widening of the Transmission Line Road. This includes the existing Forest Service roads that were widened and graded for the Spring Peak project, those same roads that will be widened to 14 feet with the Burnt Rock project. We used Google Earth to measure the road lengths. Our calculations are below:

FS road	length-miles	length-feet	width now	widened to	additional ft	sq feet	acres	project
22356	1.76	9292.8	6	10	4	37,171.2	0.85	Spring Peak
22536	1.76	9292.8	10	14	4	37,171.2	0.85	Burnt Rock
22535	0.97	5,121.6	0	14	14	71,702.4	1.65	Burnt Rock
22377	0.33	1,742.4	0	16	16	27,878.4	0.64	Burnt Rock
42758-east	0.84	4,435.2	6	8	2	8,870.4	0.2	Spring Peak
42758-east	0.84	4,435.2	8	14	6	26,611.2	0.61	Burnt Rock
42758-west	0.94	4,963.2	6	9	3	14,889.6	0.34	Spring Peak
42758-west	0.94	4,963.2	9	14	5	24,816.0	0.57	Burnt Rock
42759-east end	0.99	5,227	10	20	10	52,272	1.2	Burnt Rock
sub total						301,382	6.91	
42759-to 79	0.92	4,859	7	14	7	34,013	0.78	Burnt Rock
42754L	0.62	3,249	9	14	5	16,245	0.37	Burnt Rock
42757B, 42757	0.81	6,717	7	14	7	47,019	1.08	Burnt Rock
42757J, 42757B	0.85	4,465	7	14	7	31,255	0.72	Burnt Rock
42760-to 120	0.16	8,427	8	14	6	50,562	1.16	Burnt Rock
sub total						179,094	4.11	
Total						480,476	11.02	

There are also inconsistencies between Table 1 Proposed and Existing Project Disturbance in the EA and Table 1 USFS MVUM Roads and Motorized Trails in the Excelsior/Wassuk MVUM. For example, the calculation for the Widening of USFS MVUM Motorized Trails 14-foot Running Width shows a total of 2.7 acres of disturbance. But, $9.1' \times 12,564' = 114,332.4 \text{ sq ft} = 2.62 \text{ acres}$. However, the roads that would be widened in this category are 22535 and 22536 which are actually 14,414.4' in length according to Table 1 USFS MVUM Roads and Motorized Trails ($9,292.8 + 5,121.6$), not 12,564'. Using $14,414.4' \times 9.1' = 131,167.4 \text{ sq ft} = 3.01 \text{ acres}$.

22536 Swampside Trail

This road was widened with Headwater Gold's Spring Peak Mineral Exploration Project from a 6' wide, two-track road with vegetation down the center to a graded 9-10' road bed with berms. The lower half of the road now measures 20 feet of disturbance from the bottom of the berm on the downhill side to the edge of the road on the uphill side. We measured it in three locations, at the junction with 74259, at the Spring Peak drill site 1, and where it flattens out at the north end. Since the Burnt Rock project includes the reclamation of the Spring Peak project, the calculation should be for a total of 8' adjusted for slope (from 6' to 14'). The calculation in Table 1 Proposed and Existing Surface Disturbance combines roads 22535 and 22536 under Widening of USFS MVUM Motorized Trails 14-foot Running Width. The total disturbance for both is an under calculation. For 22536 it should be $1.76 \text{ mi} = 9,292.8' \times 4 = 37,171.2 \text{ sq ft} = 0.85 \text{ acres}$ for the Spring Peak disturbance plus $1.76 \text{ mi} = 9,292.8' \times 4 = 37,171.2 \text{ sq ft} = 0.85 \text{ acres}$ to widen it to 14'. Add in the disturbance of 22535 of 1.65, the total for the two roads is 3.35 acres, not 2.7 acres. However, a corrected slope of 9.1 doesn't accurately reflect the 8-11 feet of downslope berm disturbance. When the road bed is dug out to create dirt to fill in the drill pads, it creates bigger and wider berms. (See Appendix B for photos of 22536 before and after grading.)

Non-Existent USFS Roads

There are three roads that Headwater Gold will widen that no longer exist. They did exist at one time and two are even on the USFS Excelsior/Wassuk Motor Vehicle Use Map (MVUM). But these roads have not been maintained, are not signed, and no longer visible from the ground level: 42759C (Prospect Road C) and 22535 (Connector Trail). The third road is not on the MVUM. It was a "use" road: 22377 (Loop Trail). Our photos show that nature has reclaimed them. Using the Google Earth satellite history feature, it

looks like these roads, which were rarely used roads to begin with, disappeared after the 2013 Spring Peak wildfire.

22535 Connector Trail-The Water Haul Route

Photos below were taken from the northern end. Using Gaia, we went where the road was supposed to be. Then we zig-zagged across the landscape looking for it, but could not find it. Nature has recolonized this road. The surface disturbance will be the full 14-foot width plus an adjustment for slope. It should be $0.97 \text{ mi} = 5,121.6' \times 14 = 71,702.4 \text{ sq ft} = 1.65 \text{ acres}$.

This route will be part of the water haul route to the Humboldt Pit Lake according to the maps in the EA. Given that sage grouse use this area and the presence of sensitive plant species in the northern portion of this route, the soft substrate that will erode easily, and that it could remain a primitive road if it were not used as a water haul route, we recommend using 42754L as the water haul route instead. The route 22535 is not mentioned in the list of roads to be used for hauling water in the EA. (p. 7 Water Supply and Use) (See Appendix B for photos of 22535's location from the north end and from the south end showing absence of a road.)

42759C Prospect Road C

The aerial photos show no trace of this road. We walked the ridge where Gaia placed the road, spread out and criss-crossed the land at the base of the ridge and we still could find no trace of the road, but we did find depressions on the ridge where prospecting occurred in the past. Forest Service road 42759C is not included in Table 1 Proposed and Existing Project Disturbance under Widening of USFS MVUM Motorized Trails 14-ft running width and doesn't need to be. There is a yellow line along the ridge, so Headwater Gold won't be trying to use the naturally reclaimed Prospect C Road; just the temporary road. The EA should be updated to reflect this, though. (See Appendix B for photos of 42759C's location showing the absence of a road.)

22377 Loop Trail

This two-track use road has also been naturally revegetated and is no longer visible from the ground. The EA says it will be used. If so, it should be added to Table 1 Proposed and Existing Project Disturbance. It would add an additional 0.64 acres to the total disturbance ($0.33 \text{ mi} = 1,742.4' \times 16 = 27,878.4 \text{ sq. ft. (it is sloped)}$). (See Appendix B for photos of 22377's location showing the absence of a road.)

Spring Peak Project Surface Disturbance

Headwater Gold widened some of the existing Forest Service roads in the Burnt Rock project area as part of the Spring Peak mineral exploration project, but didn't count Forest Service roads 42754 (the transmission line road) and 42759 (the Aurora road) in that project's surface disturbance and it isn't being counted now. These were the roads to get to the Spring Peak project site. Grading deepened the road bed and created 2 foot berms which changed the rustic character of these two roads. For example, the road bed for 42754 is now 12' wide.

42758 South Aurora Road—east of 22536

Also as part of the Spring Peak project, the South Aurora Peak Road 42758 was widened from the transmission line road to the junction of the Swampsite Trail 22536. It was a 6-foot wide, two-track road with vegetation down the center and now is an 8-10 foot wide, scraped road. That disturbance should be

counted now since the Burnt Rock project subsumes the Spring Peak project. It would roughly be 0.84 mi (from the transmission line road to 22536) = $4,435.2' \times 2 = 8,870.4 \text{ sq ft} = 0.2 \text{ acres}$. Although there is very little slope involved, the road was cut deep enough that the berms are wide. The calculation below doesn't account for a wide berm, just a wider road bed. So a disturbance of 0.2 acres for the Spring Peak project is an undercount. (See Appendix B for photos of 42758 showing the road before and after grading.)

42758 South Aurora Road—west of 22536

Headwater Gold should also count the segment of 42758 from the junction of 22536 to the border as part of the surface disturbance that comes with the Spring Peak project. In 2022, Headwater Gold hired a team to drill that year that didn't follow the plan of operations. They drove the water truck multiple times to the Humboldt Pit Lake using the South Aurora Road 42758. Before then, it was a rarely used, 6-foot wide, two-track road with vegetation down the middle. But it turned it into a wide dusty road with whoops that then was severely eroded and rutted after a heavy summer rain. Their use of that road was not permitted in the Spring Peak plan of operations and it is now a mess. It measures 9' wide now. That disturbance is 0.94 mi (from 22536 to drill site 90) = $4,963.2' \times 3' = 14,889.6 \text{ sq ft} = 0.34 \text{ acres}$. This road is included in the list of water haul routes in the EA. (p.7 Water Supply and Use) Will it be used as a back route to the Humboldt Pit Lake again? If so, then the whole route should definitely be included in the total surface disturbance. (See Appendix B for photos of 42758 showing damage done by water truck traffic.)

42758 South Aurora Road, to be Widened?

It isn't clear if the road will be widened to 14 feet. If so, then that additional surface disturbance would be added on. The Spring Peak disturbance calculation should be 0.94 mi (from 22536 to the Burnt Rock border near drill site 90) = $4,963.2' \times 2' \text{ more} = 9,926.4 \text{ sq ft} = 0.23 \text{ acres}$. If the road is widened to 14 feet, then the calculation would be:

- 0.84 mi (from the transmission line road to 22536) = $4,435.2' \times 6 = 26,611.20 \text{ sq ft} = .61 \text{ acres}$
 - + 0.94 mi (from 22536 to drill site 90) = $4,963.2' \times 5 = 24,816 \text{ sq ft} = .57 \text{ acres}$
- for a total of 1.18 acres more.

42759 Aurora Road

The EA states that part of the Aurora Road 42759 will be widened to 20 feet from the transmission line road to the junction of the new temporary road with a 20-foot running width to a little west of drill site 35. The rest of 42759 will remain as is with a road bed width of 8-10 feet. Table 1 Proposed and Existing Surface Disturbance has a total acre disturbance of 1.2 acres. The issue is that two-thirds of this road is lined with mature and young pinyon trees. Widening the road means removing hundreds of trees. To widen a section of the road will require cutting into the uphill slope that looks like it is steeper than 9.9 percent. (See Appendix B for photos of 42759 showing how forested part of it is and the slope in part of it.)

Forest Service Roads To Be Used, Likely Widened, But not Included in the Surface Disturbance

The roads discussed below are much less than 14-feet wide which seems to be the preferred road width. Yet, they will be used to access drill sites, but are not listed in Table 1 Proposed and Existing Surface Disturbance. Is this because they do not need to be 14-feet in width or that the Forest Service will have them graded and widened as a service to the project proponent? If it is the latter, the sheer number of these is too many for a give-away when it is only for this project. By our calculations, it adds an additional 4.11 acres to the total disturbance excluding the Transmission Line road. There is no other reason to widen these roads that have had little use over the years. It would be at the tax payers' expense and serves no national need nor provides any benefit to the public. Widening these roads will change the rustic character

of them and will create berms with soft dirt that will invite weeds. Even if they are not graded, traffic on them will eliminate the vegetation, turn them into dust which will invite weeds. They should at least be included in the reclamation plan if only to ensure they will be weeded.

However, if Forest Service roads discussed below do not need to be widened, then the Forest Service should question the need to make 22535, 22536, and the temporary roads 14 feet wide. Especially 22535. Headwater Gold was able to manage 9-foot wide roads with the Spring Peak Mineral Exploration Project. Why could it not do it with the Burnt Rock project too?

Aurora Road 42759-west of Swampside Trail, to be Widened?

The Figure 2 map of the drill sites shows that drill sites 78, 79, and 55 will be accessed from the Aurora Road 42759. This road is only 7 feet wide, has vegetation down the middle and is deeply rutted in places. Won't it need to be graded? (See Appendix B for photos of 42759 showing rutted section and width of road to drill sites 55, 78, 79.)

Short Cut Road L 42754L-Widened?

The Short Cut Road is about 9 feet wide with vegetation down the middle and some rocky sections. Yet, it isn't listed in Table 1 Proposed and Existing Surface Disturbance. Won't it need to be 14 feet wide and graded too? This would be a shorter route to the transmission line road than 22535 and should be the water haul route as proposed in an earlier version of the plan of operations. The EA lists this road as a water haul route. (p.7 under Water Supply And Use) (See Appendix B for a photo of 42754L showing its current width and condition.)

Mt Hicks 42757 Roads—to be Widened?

The roads to the east of the transmission line 42754 on Mt. Hicks have sections that are rocky, rutted, and have tall vegetation down the middle. They are probably about 7-10 feet wide. Yet, they aren't listed in Table 1 Proposed and Existing Surface Disturbance. Won't they be graded too? The tall grasses and shrubs create a fire hazard by vehicles with low to normal clearance. (See Appendix B for photos of 42757 showing how narrow and primitive the road is.)

Airstrip Road 42760-Widened?

The Airstrip road is in Alkali Flat, an ancient lake bed. It is the route to drill sites up the drainage of 5 Mile Spring. It is only 8 feet wide with vegetation down the middle of it and healthy sagebrush steppe lining the sides of the road. It is very sandy and the sand is probably several feet deep looking at the two foot berm of the Transmission Line Road next to it. If roads need to be 14-feet wide, then 6 feet x 0.16 miles or 0.12 acres needs to be added to the surface disturbance calculation. This road might also need road improvements that create a firmer road bed. (See Appendix B for photos of 42760.)

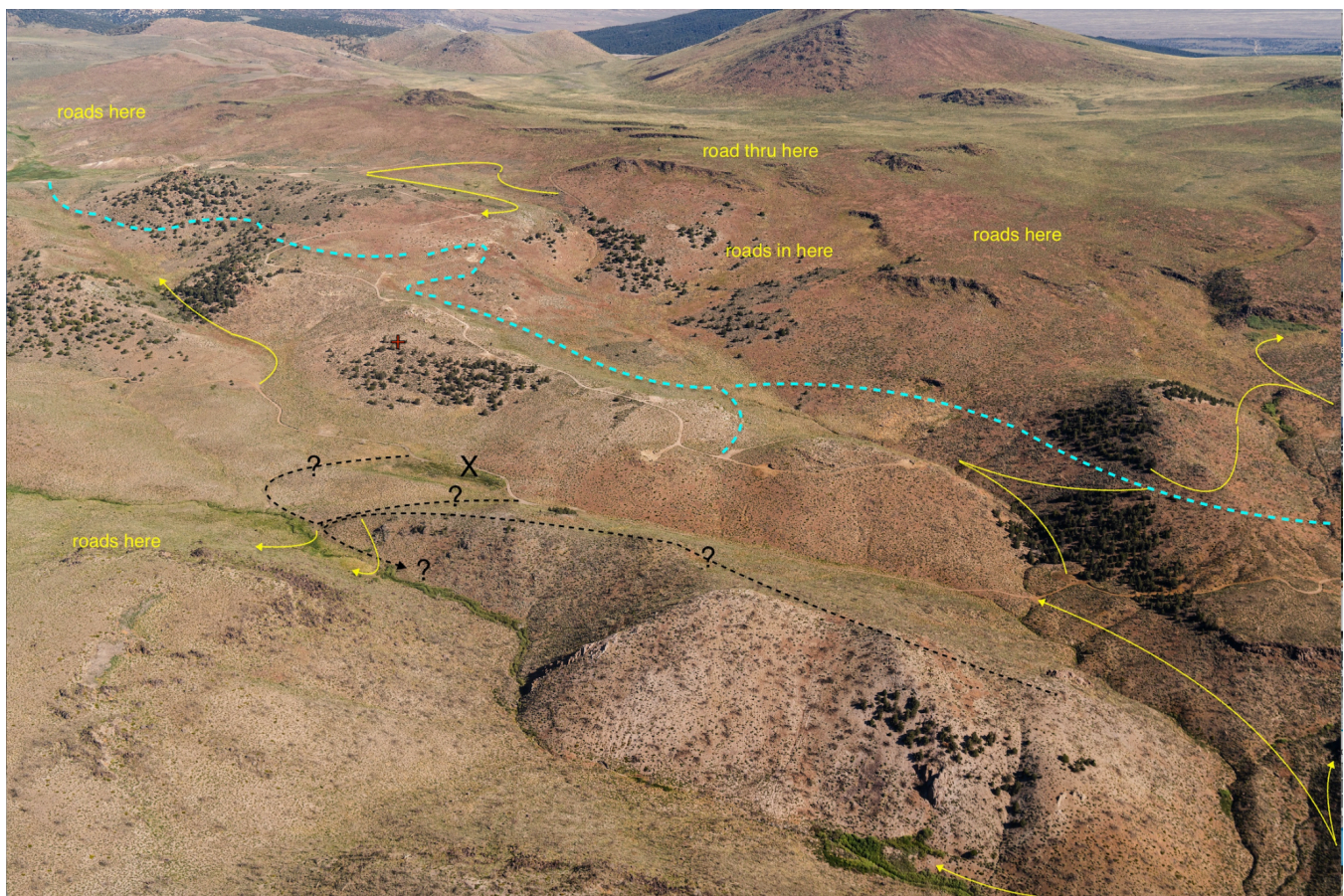
Transmission Line Road 42754-Widened?

The transmission line road is the main access road to get to the Burnt Rock project area. It was graded and deepened for the Spring Peak Mineral Exploration project with berms 2 feet high along a good portion of the road. The berm width of the bigger and wider berms was not included in the surface disturbance for that project. The road bed is still only 12-feet wide. If the Burnt Rock project needs roads to be 14-feet wide at a minimum, then will the transmission line road be widened as well? Or, will the traffic of the project end up slowly widening it? There isn't enough room for large vehicles to pass each other. With 5 drill teams changing shifts twice a day and 10 water trucks coming and going, there will be considerable

traffic on this road, passing each other, day in and day out for at least seven years and passing the cattle trucks, OHVs, and people exploring the area. There may be additional traffic if additional drill teams are used to explore the private property within the project boundary. If it is widened, will it be widened to 14 or even to 20 feet, since it is the main route into the project? Why isn't this included in the surface disturbance and in the reclamation bond? (See Appendix B for photos of 42754 showing the current width after grading.)

The 20-Foot Wide Access Road

A 20-foot wide road running across the Forest Service part of the project area will have a significant impact on the area. It is wider than the transmission line road. Sections will require cutting deeply into hillsides and removing part of the hillsides. If it continues into the private J.E.A. Aurora property across the large riparian meadow at the western end, then it will have even more of an impact and would seriously damage the meadow and alter the course of the stream running through it. Riparian habitat is precious, especially in the driest state in the Union. A section of that Main Access Road follows a natural, ephemeral drainage and passes through a seep with riparian vegetation between drill sites 53 and 163. Not a good route for preserving what precious riparian habitat is there. It is the Forest Service's job to minimize impacts to the natural environment. The Forest Service should question the need for it or for it to be 20-feet wide.



The blue dashed line is the Main Access Road that will be 20 feet wide. Yellow lines are temporary roads up or through drainages. Black dashed lines are roads on the map in Figure 4 that don't exist at the project site. The seep with the "X" has a road through it that needs repair to protect the seep.

Other Road Concerns

There is a segment of temporary road that continues past drill site 66 heading east, then turns south towards the riparian meadow on private property. It appears that there will be drill sites in the meadow or at its edge. Riparian habitat is precious and should be protected. We hope Headwater Gold will skirt the meadow and not put a road through it which would cross a stream and be a muddy mess. This is another clue that there will be drilling on the J.E.A Aurora properties and it is disconcerting that the meadow will be damaged.

The spaghetti of temporary roads seems excessive. Couldn't the routes be designed in a way that reduces the amount of roads? For example, the temporary road segment between drill sites 243 and 127 could be eliminated. These drill sites could be reached from 42759. Couldn't drill site 122 come off of a segment above it?

Some of the temporary roads will pass through patches of pinyon woodlands and sagebrush. The Spring Peak Fire of 2013 burned part of the pinyon woodlands and sagebrush in the project area, but it skipped over and left some patches. Adult sage grouse only eat the sagebrush leaves so the remaining sagebrush habitat in the project area will help the recovery process. The environmental assessment should consider re-routing it and other roads to avoid the remaining sagebrush patches entirely and to minimize the number of pinyon trees that would need to be removed. The plan of operations estimates 60 trees would be limbed or removed. That is an undercount by far. There should be a map in the environmental assessment showing the patches of sagebrush and pinyon trees overlaid with the routes to highlight this.

Please clarify if road 22534/Bulge Trail will be used as the water haul route to/from the Humboldt Pit Lake. Road 22534 is a two-track road, 6 feet wide with vegetation down the middle. Sage grouse use the southern part of this road because there is a spring, aspens, and riparian habitat on the north slope at the base of Aurora Peak. It would be an unnecessary impact to the bi-state sage grouse. There are several individuals of the rare, sensitive *Johannis-Howellii* astragalus at the northern end of 22535/Connector Trail. There could be individuals along the southern end of 22534 as well. It was not surveyed for sensitive plant species or for cultural resources because most of it is outside of the project boundary. The transmission line should serve as the only route to/from the Humboldt Pit Lake. It is rare to encounter another vehicle on the road and there is a pull out for passing at each transmission tower. If it is to be used and widened, then it needs to be included in the surface disturbance.

We'd like to point out that Forest Service road 42759 between drill sites 206 and 127 doesn't have that loop in it anymore. The road goes straight across. It is often a muddy section of road that goes through the northern edge of a wetland. The loop is overgrown and not visible on the ground. However, the shortcut that everyone uses gets to be a big muddy mess and needs to be repaired. (See Appendix B for a photo of 42759 where the road no longer goes around the wetlands to the south, but across the northern side of the meadow.)

The laydown areas are quite large and laydown 1 is in an undisturbed, mature sagebrush steppe community. Laydown 4 will expand and remove more of the low/black sagebrush community that survived the 2013 Spring Peak Fire. Appendix D-Laydowns shows the size of the laydown areas on a satellite image and photos of them.

5. Temporary Roads In Drainages and Across Meadows

Many of the temporary roads follow natural drainages and ephemeral stream beds, some of which are quite steep and downcut. Roads in these canyons will cause serious erosion and it means sediments will be washed downhill and into the ephemeral stream drainages. Why is this being allowed? Will wattles really be effective erosion control and will they have to remain indefinitely to do so?

There are also two ephemeral stream crossings to get to drill sites 6, 184, 166, 66, and 194. The roads to them will cross through precious meadows. How will these crossings not turn into a muddy mess and destroy the meadows? The 20' wide access road ends at a very large meadow in a private property parcel. Will it continue through the meadow? Roads should not be allowed through meadows. (See photos in Appendix B-Roads)

The following are proposed temporary roads that will be in drainages or follow an ephemeral stream bed, which can be seen better in Google Earth than in the maps provided in the plan of operations:

- from Drill Site 120 to Five Mile Spring
- from Five Mile Spring to FS road 42759 at Drill Site 33--a steep drainage that passes by a seep
- from Five Mile Spring to FS road 42759 at Drill Site 213--a steep drainage
- from Drill Site 35 to 30 (a steep segment) to 241
- from Drill Site 31 to 164 to 53 which passes through a seep as well
- Drill Sites 11 and 123 which are along an old ephemeral stream bed
- Stream crossing to get to Drill Sites 6 and 184 and from there to 4, 32, 254-257, 119, 250, 206, 97, 165. It is next to an ephemeral stream that is wide and has seen significant flows. With the amount of traffic to reach so many drill sites, there needs to be a built crossing. (See photos in Appendix B.)
- from Drill Site 185 to 1
- If the road goes through from Drill Site 45 to 266, and then on from 266 to FS road 42759 at Drill Site 33
- from Drill Sites 59 to 52 are either in or next to a wetland
- From Drill Site 67 to 194 the road crosses an ephemeral stream and wetland. The stream is a narrow deep channel. A crossing should be built even if it is just boards put down, instead of smashing down the banks and filling the channel in with dirt. (See photos in Appendix B)

6. Temporary Roads Are In IRAs

Inventoried Roadless Areas (IRAs) are designated areas within the National Forest System managed to preserve their undeveloped character. The 2001 Roadless Area Conservation Rule (36 CFR Part 294) prohibits road construction in IRAs. While changes to this rule are being proposed, they are still in process. The draft Environmental Impact Statement for the rescission of this rule is projected to be released in June 2026 and the Record of Decision is to be released later in the year. Even if the revised or rescinded 2001 Roadless Rule allows road building and tree removal, the Forest Service nonetheless should consider the impacts of those activities in light of the particular values of an IRA.

As the EA points out, there will be 3 drill sites (263, 139, 144) in the Mt. Hicks IRA and 31 in the Larken Lake IRA. What the EA doesn't point out is that in addition to the 2 drill sites well within the Mt.

Hicks IRA, 25 drill pads line the roads bordering it. Many drill pads along the transmission line road are only 100-140 feet in with a short road to them. They will be very visible from the transmission line road. This will completely change the rustic character and feel of the area when the entry to a roadless area is a line of ugly, reclaimed drill pads that will look very unnatural. It doesn't set the stage for entering a natural area with characteristics of a wilderness area. On the upper slopes of Mt. Hicks, the 2 primitive 2-track roads that form the boundary of the Mt. Hicks IRA (42757 and 42757J) will likely be graded and possibly widened to 14 feet (and not counted in the surface disturbance). That road "maintenance" will have a significant visual impact as well and will add to the domesticated look of a natural sub-alpine region that makes it a special and wild place to explore. Then there are 5 drill sites (6, 184, 47, 74, 50) and two laydown areas (1 and 3) along the border of the Larken Lake IRA. Three of these drill sites and the laydown areas will be visible from the Forest Service roads leading into the area. The laydown areas will end up being much bigger than they currently are, similar to how the staging area next to Highway 359 tripled in size from before the Spring Peak project began.

The EA underplays the number of trees that will be removed. Eleven drill pads will be in a forested part of the Larken Lake IRA and roads will go through the forest to get to 2 more that are out in the open on a steep slope in a canyon. This area is not sparsely forested in the least as the EA says. Hundreds of mature, healthy pinyon trees will be removed for the drill pads and the roads to them. The fact that the temporary roads to the drill sites in the IRA will be "reclaimed" is small consolation. The seed mix in the reclamation plan consists of grasses and sagebrush; not trees. It will be decades before these roads and drill sites convert to a pinyon and juniper woodland. More roads means more weeds, more traffic and increases the chances for a human-cause wildfire. The Forest Service should put boulders at the entrance of all reclaimed roads leading into the IRAs to keep people from driving on them.

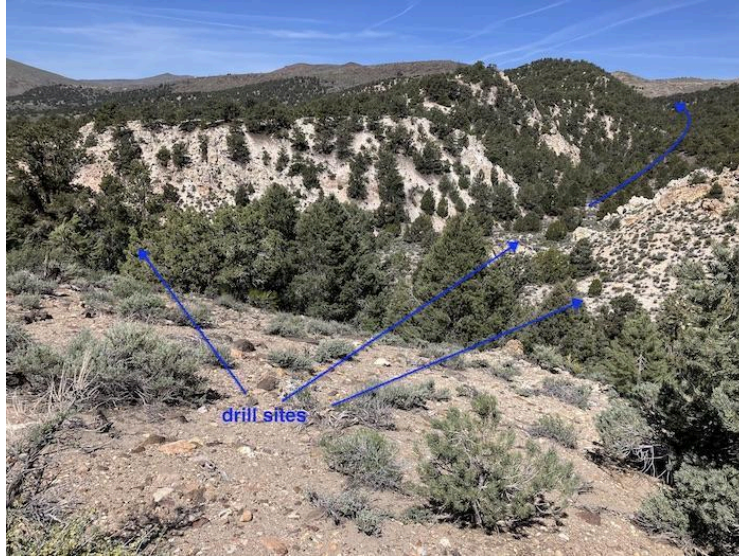


Drill pad 115 is in the canyon below, drill site 112 on the rim of the canyon above—forested



Drill site 47—about 20 trees will need to be removed for the drill pad and road to it

Also concerning is putting a road in at the bottom of a deep canyon in the Larken Lake IRA that is easily eroded with heavy rains. It is also densely forested and was not burned in the 2013 Spring Peak Fire.



Road to go up this canyon to 2 drill sites and 5 Mile Spring and drill sites 109, 108, 115 all in the Larken Lake IRA

Worse yet is the potential for an additional 334 step-out drill sites. The plan of operations states, *"For initial exploration activities, CP Resources proposes 0.30 miles of temporary road construction and three pads for a total of 1.20 acres of disturbance within the Mt. Hicks IRA affecting less than 1 percent (0.008 percent) of the IRA from the initial work plan... There are 3.95 miles of temporary road construction and 31 pads for a total of 13.75 acres of disturbance within the Larken Lake IRA affecting about 0.33 percent of the proposed disturbance from the initial work plan."* (PoO at p.24-25, pdf p. 28-29). It goes on to point out that the disturbances will be significantly increased with future drill sites. The disturbed area in the Mt. Hicks IRA could grow from 1.20 acres to 121.7 acres with future sites! The disturbed area in the Larken Lake IRA could grow from 13.75 acres to 134.25 acres with future sites! That's a lot of disturbance and a lot more roads and drill pads. It is even more than the maximum disturbance allowed! The percentages presented in the plan of operations are the portion of disturbance within the entire IRA. If you look instead at the percentage of the maximum disturbance in the IRAs within the project area, it is 14% of the Mt. Hicks IRA and 8.13% of the Larken Lake IRA. Not as insignificant as the plan frames it.

The 2001 Roadless Rule protects cultural resources and prevents development in culturally significant landscapes. The USDA initiated the change to eliminate the roadless rule with little prior Tribal consultation as implied by the statement, *"Tribal governments...will have an opportunity to be engaged during rulemaking and EIS development through various coordination and consultation events."* (FR 2025-16581 (8/29/25)). The National Congress of American Indians opposes this rule (Resolution #SEA-25-102).⁷ Has the Forest Service discussed the Burnt Rock project's incursion into the roadless areas with the local Tribes?

7. The Weed Management Control Plan Proliferates Common Weeds

The Forest Service improved upon CP Resources/Headwater Gold's proposed weed management plan by adding 3 common invasive weeds which will help (cheatgrass, Halogeton, and Russian thistle). The

⁷ <https://www.wpr.org/wp-content/uploads/2026/01/SEA-25-102-Final.pdf>

main focus of the Noxious Weed Management Plan (NWMP) is on weeds in the Nevada State Noxious Weed List which aren't found in the region except at the Humboldt Pit Lake. The most common noxious weeds that are in the project area are not on the state weed list and they should be eradicated too. There are still 3 more common non-native and invasive species that we have observed in the project area that we'd like added to the list. They came in after the 2013 Spring Peak Fire, but could appear in the reclaimed drill pads and roads. We have observed tumble mustard in the reclaimed Spring Peak drill site 24 already.

- red brome (*Bromus rubens*),
- tumble mustard (*Sisymbrium altissimum*),
- flixweed (*Descurainia sophia*)

Guideline Weed-G-02 in the Bi-state Sage Grouse Amendment 18 (2016) of the Toiyabe Land and Resource Management Plan requires aggressive treatment of new weeds or annual grass infestations. It doesn't say just weeds on the state weed list. The amendment explains "*The approved amendment enforces the importance of controlling noxious and invasive weeds in disturbed areas across the amendment area...The approved amendment also requires aggressive treatment of new infestations (Weed-G-02) to control the potential spread of weeds.*" Standard FT-S-02: "*Enhance and restore habitat while reducing the potential for severe wildfires in habitat.*" Amendment p.22 because it will "*provide for the enhancement or active restoration of habitat to meet the desired habitat conditions.*" (rationale 4 Amendment p.12). It is important that the reclamation leaves behind quality sage grouse habitat; not weeds.

The Forest Service FSM 2900 defines an invasive species as "*Executive Order 13112 defines an invasive species as "an alien species whose introduction does or is likely to cause economic or **environmental harm** or harm to human health."*...Based on this definition, the labeling of a species as "*invasive*" requires closely examining both the origin and effects of the species. The key is that the species must cause, or be likely to cause, harm and be exotic to the ecosystem it has infested before we can consider labeling it as "*invasive*". " (emphasis added) The common invasive species listed above cause environmental harm and increase the risk of a wildfire. This is important because flixweed and red brome become fire hazards when they dry out. FSM 2902 stresses the importance of prevention and early detection of invasive species. The FSM 2900 definition of noxious weeds is broader and supersedes the state's definition for projects on federal land.

The Noxious Weed Management Plan (NWMP) follows the Humboldt-Toiyabe NF Supplement FSM Chapter 2080-Noxious Weed Management (2000-2004) Sections 3, 6, 7, and 8. However, the most current Forest Service guide on noxious weeds is FSM 2900 Zero Code 12/5/2011. Here are the actions that CP Resources will take per the NWMP. The first four are the same actions supposedly taken by CP Resources/Headwater Gold in the Spring Peak exploratory drilling project and yet, the Spring Peak project has significantly proliferated common weeds in the area.

1. Treat (i.e., spray herbicides) before the project starts along the access roads and at disturbed sites in the project area, if there are weeds present. (Common noxious weeds are present on Spring Peak drill sites. The Burnt Rock project subsumes the Spring Peak project. CP Resources/Headwater Gold should remove them too before the Burnt Rock project begins.)
2. Wash vehicles [i.e., in Hawthorne] before coming to the project area. (In reality, this measure is not likely to be followed. Supposedly Headwater Gold washed their vehicles daily before coming to the Spring Peak project area, but there is a lot of Russian thistle along the road berms and on the drill pads.)

3. Annually treat noxious weeds along all roads requiring maintenance. (i.e., temporary roads. But, FS roads that will be graded or widened should be included and aren't.)
4. Monitor and treat noxious weeds on reclaimed surfaces. (This applies to reclaimed drill pads and one treatment may not cut it. Monitoring and treatment should be done annually. We'd like to point out that spraying weeds with herbicides after a drill site has been seeded, may kill the desirable plants depending on the herbicide used. Hand weeding would be better.)
5. Treat any noxious weeds resulting from the project activities at the end of the project for up to 3 years. Note: The reclamation bond calculation (RCE) only included weed control for 3 years (p. 31), but it may take longer for the sites to be reclaimed. (The EA is requiring concurrent reclamation, so there should be concurrent weed management as well to gain the benefits described in the EA.)
6. Mark areas with weeds and avoid or minimize travel through it. (Weeds are along the main roads and all the Spring Peak temporary roads so this will require a lot of flagging. Maybe not so useful.)
7. Use weed-free seed mixes and weed-free straw/hay used for erosion control.
8. Control or manage only weeds that are a result of the project's disturbances. (This should include Spring Peak's project disturbances as well as the Burnt Rock's)
9. The Plan of Operations uses the definition of noxious weeds of the Nevada Revised Statutes (NRS 555) as "*any species of plant which is, or likely to be, detrimental or destructive and difficult to control or eradicate*" or is listed in the State of Nevada Noxious Weed List. (plus the 3 common weeds have been added to the list—thank you!)

Weeds are hard to eradicate or control once they get a foothold. They easily get a foothold when the soil is disturbed, especially if the dirt is loose as will be on most of the road berms and pad slopes. If the road is in soft substrate, which a lot of the area is, grading will create berms with soft dirt. They will be covered in weeds in a year. Forest Service roads 42758, 42759, and 22536 were graded for the Spring Peak project and have weeds on the berms, especially 42758. While cheatgrass came in after the wildfire, Russian thistle was minimal, but will spread deeper into the interior of areas that are more pristine. That should be avoided. The NWMP states noxious and invasive weeds will be treated annually along roads requiring maintenance, i.e., every year for ten years. Does that include the following Forest Service roads: 42754, 42760, 42759, 42758, 42758a, 22535, 22536, 42754L, 42754J, 42757, 42757a and 42757b or just the roads that were counted in Table 2 Proposed and Existing Surface Disturbance? The NWMP states monitoring will be during the growing season from May-July. For Russian thistle, the growing season can be multiple times from May through August. Tumblemustard and cheatgrass come in early and go to seed by May or early June. If the monitoring is done in July for example and actual treatment comes after that, the weeds will have gone to seed. The goal should be to remove the weeds before they go to seed.

It isn't clear how often or when the drill pads will be monitored and treated for weeds. The NWMP states that noxious weeds will be treated after a site has been reclaimed. But, weeds can come in before a site is reclaimed. Russian thistle appeared on the Spring Peak drill sites before they were reclaimed. Seed from these weeds were buried by the bulldozer, but are in the soil and can grow. The weeds should be pulled as they appear and not allowed to go to seed no matter when they come in. (See Appendix C for photos of Russian thistle on Spring Peak drill pads prior to reclamation.)

The NWMP states, "*In addition to noxious weeds, Appendix B includes three non-native, invasive species that the USFS targets for treatment: cheatgrass (*Bromus tectorum*), halogeton (*Halogeton glomeratus*), and prickly Russian thistle (*Sa/sofa* [*Salsola*] *tragus*). These species are established in the Plan boundary. CP Resources will treat Project disturbance areas for these species, but it is understood that*

complete eradication of these infestations is not expected by the USFS to achieve reclamation release." We are glad these noxious weed species will be addressed, but why not expect eradication of all except cheatgrass? The Spring Peak project brought these invasive species in and so will the Burnt Rock project. CP Resources should eradicate them, especially the Russian thistle and halogeton. Cheatgrass is more difficult to control and was present throughout the project area before the Spring Peak project began. However, there should be a requirement to at least eliminate it from all drill pads and graded or widened roads.

Russian thistle can be eliminated. The seed is viable for only a few years, so pulling it before it goes to seed for three consecutive years should eliminate it. There was very little of it before the Spring Peak project started grading. We came across only one patch. It is now on the berm of almost all of the graded access and temporary roads created for the Spring Peak project and on some of the reclaimed drill pads. Instead of spraying herbicides year in and year out to control weeds, they could be pulled by hand. The proponent could hire a few people to monitor and pull weeds on the drill pads as they reclaim them. Russian thistle, flixweed, tumbled mustard are easy to pull out. They could be pulled in spring and again in the summer when weeds might resprout, bagged, and removed from the area. Cheatgrass is now on most of the reclaimed and un-reclaimed drill pads of the Spring Peak project and spreading seed. It too could be pulled in the spring before its seed matures (see photos below). We have not seen halogeton out there yet, but we have seen it on the transmission line road by the Lodestar project. We have photos from 2020-2025 documenting the landscape and vegetation before the Spring Peak activities began and later, the presence of weeds. (See Appendix C for photos of cheatgrass on some of the reclaimed Spring Peak drill pads.)

Reclamation at the Spring Peak project started in November 2024 at 12 of the 23 drill pads. By late May 2025, the drill pads that were reclaimed were covered in cheatgrass and in late July when we drove by them, many had Russian thistle and tumble mustard in addition to cheatgrass. Also, at Spring Peak, Russian thistle moved in along the berms created when Headwater Gold created the temporary roads or widened existing Forest Service roads. It is reasonably foreseeable that this will also occur with the Burnt Rock project. Drill teams and the water truck will be traveling through the Spring Peak area and will pick up and spread noxious weeds. This is unavoidable and why it is so important to constantly weed the project area and the access roads—biannually if necessary.

The Noxious Weed Management Plan says, "If noxious weeds become established due to Project activities, CP Resources will use a licensed third-party contractor to apply USFS-approved pesticides to infestations throughout the Project area." which means herbicides will be used. This may be the only way to eradicate state listed noxious weeds. However, common noxious weeds like Russian thistle, halogeton, tumble mustard, flixweed, and even cheatgrass can easily be pulled, bagged, and removed from the area instead. Constant spraying of herbicides will impact wildlife, including the sage grouse. Spraying herbicides in Bi-state sage grouse habitat is to be avoided per the standard Weed-S-02 in Amendment 18 to the Toiyabe RMP.

One of the water sources for the Burnt Rock project is the Humboldt Pit Lake or the wells next to it. There is pepperweed at the Humboldt Pit Lake and on the Del Monte Canyon Road to the Aurora Mine. Burnt Rock project vehicles will be driving along Del Monte Canyon Road as the laydown area is at the Aurora Mine in addition to the water truck coming and going to the pit lake. Standard Weed-S-03 in Amendment 18 of the Toiyabe RMP requires cleaning of vehicles before entering a *different area*, as in the case of vehicles going to/from Spring Peak and the Humboldt Pit Lake, not just to/from Hawthorne. Amendment p.11 (emphasis added). Pepperweed is extremely hard to get rid of and is on the Nevada

noxious weed list. There is a well-established area of it and it has been spreading. It would be an ecological disaster if it spreads to the precious wetlands in and around the Burnt Rock project. Pepperweed is rhizomatous. It requires the use of a specific herbicide to kill its roots, Telar (with Imazapyr), which must be applied at a specific time of plant growth to the lower leaves to be effective. It needs to be removed before the Burnt Rock project begins.

There's a statement, "*CP Resources shall cooperate with the USFS to inventory, monitor, and control noxious weeds within areas of disturbance until release of all bond monies.*" (PoO p. 24, pdf p. 28) It is concerning that it is up to CP Resources to identify the weeds, then report them, and call in a third party to spray. Who on the Burnt Rock project will be responsible for monitoring the weeds? If there will be no involvement or oversight by the USFS until a final inspection before releasing the bond money in ten years, then CP Resources should hire a third party to monitor, and remove weeds on drill pads and roads when they sprout, throughout the life of the project.

Bottom line, CP Resources should leave the Project area as they found it or even in better condition, not worse. The presence of weeds is contrary to the desired goals established for sage grouse habitat by type of habitat: leks, in nesting, brood-rearing areas, and winter areas in Amendment 18. "*The proposed action was developed to amend the LRMP with stronger management direction that removes the discretion present in the current plan and include standards and guidelines which will be used to protect habitat from activities, direct restoration of habitat, and move the habitat toward the desired conditions.*" Amendment p.2

8. The Reclamation Plan Restores Only One Type of Habitat

The common reclamation practice is to rough up the dirt, toss the seed mix, rake, and come back in three years to see how it is doing in order to have the bond money released. The Forest Service has added additional reclamation requirements to conform to the bi-state sage grouse standards, in particular, concurrent reclamation as the way to enforce the 3 percent disturbance cap. Concurrent reclamation is great for all the reasons stated in the EA. The EA also includes criteria for success that is to be met before disturbed land can be removed from the disturbance cap. We have a few concerns about the success criteria and that there is still only one seed mix for all habitats. It would be better if different seed mixes were used in different habitat types: sagebrush steppe, riparian and seep, and woodland. Areas with rare, sensitive plant species will need a different approach.

Most of the Burnt Rock project area is sage grouse habitat. The reclamation plan should include habitat restoration for the sage grouse since so much of the land will be bulldozed for the roads and drill pads. Standard ML-S-01 of Amendment 18 states, "*Mitigate long-term negative impacts in habitat from discretionary or nondiscretionary activities to the extent practicable.*" Amendment p.21. Reclamation should be designed to "maintain, improve, or restore bi-state sage grouse habitat as stated in standard Wild-S-01 of Amendment 18 of the Toiyabe RMP and post-disturbance restoration calling for "*seed and/or transplant sagebrush to restore large patches of sagebrush cover*" as in Wild-S-02 Amendment p.16.

For sage grouse, a productive vegetation community would include areas of high and low sagebrush and insect-generating riparian areas. The seed mix in Table 2 is weighted for grass, not sagebrush and only includes big sagebrush (*Artemisia tridentata*). It does not include the seed of low/black sagebrush (*Artemisia arbuscula* or *nova*). The requirements in Table 1 of the 2016 Bi-state Sage Grouse Amendment 18

(Amendment p. 37-39) are pretty specific and won't be achieved with just any seed mix. Some of the desired conditions are:

- 65% of the landscape should be sagebrush
- The extent and dominance of invasive species, including cheatgrass, is limited to <5%
- Sagebrush species present include *Artemisia tridentata* subspecies in nesting sites
- Winter habitat is composed of sagebrush plant communities with sagebrush canopy cover greater than 10% and sagebrush height greater than 25 centimeters (9.8 inches) above snow level

The EA explains that it takes 21-74 years for low sagebrush communities to recover. The Inyo National Forest is requiring black or low sagebrush (*Artemisia nova* or *arbuscula*) to be planted with container plants as part of the reclamation for the Long Valley exploration project. Why can't the Humboldt-Toiyabe National Forest do the same here as well and require low or black sagebrush to be planted at some drill sites instead of seeding them with big sagebrush (*Artemisia tridentata*). The Long Valley planting instructions state plants should be planted in late fall with one plant per square meter in a biodegradable grow tube. They are to be watered three times weekly for the first two weeks and watered in the late spring/summer the first year when the first six inches of soil are dry. There are few low/black sagebrush communities in the Burnt Rock area. The patches that are there are there because the Spring Peak Fire jumped over them. They are special and add biodiversity to the region. There are 4 Spring Peak drill sites and laydown 4 in this low/black sagebrush community: 1, 2, 4, and 7. Drill sites 1 and 4 were covered in low or black sagebrush, not big sagebrush. Yet big sagebrush was in the seed mix and is coming in. This will not pass the compare test with the adjacent plant community. Laydown 4 is also in a low/black sagebrush community. Much of laydown 4 overlays the Spring Peak laydown area, only it will be much bigger and will take out even more of it. (See Appendix D-Laydowns for photos.) Either a different seed mix is needed for low/black sagebrush communities or it needs to be planted with container plants. This will come up with several Burnt Rock drill sites: 214, 101, 191, 249, 54, and probably others.

The proposed "one size fits all" seed mix in Table 2 does not list species that would be in a riparian habitat (e.g., willow, wild rose, rushes, sedges) or that would match the Bodie Hills cusickiella-matted buckwheat communities. The Bodie Hills cusickiella grows on the light soils and that may be why it thrives in the Burnt Rock area. Some of the roads and drill sites will destroy the Long Valley milkvetch and the Bodie Hills cusickiella-matted buckwheat communities which have a lot of rockcress too. The rockcress might be the rare Bodie Hills rockcress. How will these sensitive species be restored? The Long Valley milkvetch and Bodie Hills cusickiella might have deep root systems. If so, they wouldn't transplant well. It might be possible to propagate them from seed, if the soil from the root zone is saved off. They may be very dependent on mycorrhizae or other soil microbes to which they are specifically adapted. Any attempts to propagate them from seed should probably be in soil heavily supplemented with dirt from the root zones of plants that would be "sacrificed" to road widening. The reclamation plan should require collecting their seed and saving off the soil where it grows and using it to restore these species.

Some of the roads and drill sites will go through seeps and cross streams and should be restored with perennial riparian species i.e., wildrose, rushes, willows. The iNaturalist database will have some entries of what is growing there which could be used to guide. The reclamation plan should detail what plant communities should be cultivated where.

Rocky Mountain Bee Plant is listed in the Table 2 seed list and was in the seed mix used at Spring Peak. It is a non-native annual which came up, died, and so far, has not resprouted, but it is too soon. It is a late summer flower. It was not present in the area before this reclamation effort. The 2025 Plants of the Bodie Hills by Tim Messick notes only two locations of Rocky Mountain Bee Plant in the entire Bodie Hills. One individual plant is to the east of Aurora Peak and the other plant is at the bridge crossing the East Walker River on Forest Service road 028. We've been going to the Spring Peak area many times since 2020 and never saw a native or a Rocky Mountain Bee Plant. However, there is a native bee plant that does occur in the region, Yellow bee plant (*Peritoma lutea*). Why isn't it in the seed mix instead of the Rocky Mountain bee plant? We've seen it along NF-028 east of the Elbow on the way to Ninemile Ranch. (See Appendix C for photos of non-native bee plants on reclaimed Spring Peak drill pads.)

What has sprouted from the list in Table 2 after 17 months is sagebrush, Great Basin wildrye, yellow rabbitbrush, and sulphur buckwheat. This isn't very much diversity or a very high rate of success. If the other species on the list do not sprout, then the Forest Service might adjust the species list to include more species native to the area. Please consider requiring soil amendments or hydroseeding and watering after seeding until the snow sets in to boost the success rate.

To check for understanding, the success criteria described in the EA and the Monitoring Manual for Grassland, Shrubland and Savanna Ecosystems, will be measured as follows:

drill pads (will be flat, generally 60' x 60')

- One compare/ARC parcel on each side of the pad
- Each compare/ARC parcel will be close to the drill pad—no more than the pad's width away.
- Three transects per pad
- Standard point line transect length of 25m (or the length of the drill pad)?
- 50 points/hits per 25m transect (or every 1.5ft)?
- Six soil samples per transect
- Soil stability of 2 or more and within 1 point of the soil stability of the compare parcel
- Visual assessments each year until it looks passable
- Transect measures on the reclaimed road and compare parcels the final year to prove it reached 30 percent cover of percent cover of the compare parcel, matches the same species as the compare parcel (in the same proportion?) or an assigned plant community, and has no more weeds than the lowest percent of the two compare parcels

temporary roads (could be on slopes)

- Two compare/ARC sections on each side of the road no further away than the width of the road
- Transects will run in the road scar, lengthwise? Or across it?
- Three transects per road section if across it, one if lengthwise?
- One section of the road every _____? Mile? Half mile? (there are 45 miles of road, this could be onerous)
- Transects to have no more than a 200ft or 0.25mi change in elevation
- Standard point line transect length of 25m
- 50 points/hits (or every 1.5ft)
- Six soil samples per transect
- Soil stability of 2 or more and within 1 point of the soil stability of the compare parcel
- Visual assessments each year until it looks passable

- Transect measures on the reclaimed road and compare parcels the final year to prove it reached 30 percent cover of percent cover of the compare parcel, matches the same species as the compare parcel (in the same proportion?) or an assigned plant community, and has no more weeds than the lowest percent of the two compare parcels

The rule that the compare site is to be on the sides of the disturbed site seems like it would work, but when we look at the Spring Peak drill sites, we see it isn't a very good habitat either. The process of contouring/smoothing out the pad extended the disturbed surface out from the edge of the drill pads. This, and that the habitat next to the pads has been disturbed previously in some cases, create a poor compare area. It is often a transition zone itself. If the drill pad is in the Spring Peak burn scar, then the compare parcel will be a weird mix of species that developed from the reseeding after the fire with a seed mix that was probably intended to quickly stabilize the soil and not a seed mix to restore the prior habitat. The plants in the burn scar are on a path towards succession that is being interrupted again with this project. Should that mixed-bag plant community be the goal? It would be a very low bar. Or should the target community be closer to what it was before the fire? We recommend using an area across the road from a drill site, behind the drill pad, or farther out to the sides as the compare parcels. The Burnt Rock project will be going on for ten years. That allows time to develop a more mature plant community, to end up with 3 foot tall big sagebrush, some bitterbrush, ephedra, sulphur buckwheat, ricegrass, wildrose, willow, and native forbs. (See Appendix C-Reclamation for before and after photos of Spring Peak drill pads 5 and 13 to show that the adjacent area has also changed and wouldn't be a good comparison parcel.)

Many of the planned drill sites and temporary roads are near the springs, pass through the seeps, or are in ephemeral stream drainages. The soft dirt from the berms around the drill sites or along the roads will continually wash downhill into the springs and wetlands. The Main Access Road (in blue) in Figure 4 of the plan of operations is poorly sited. It will pass through a seep and come out at the riparian meadow. The temporary roads to drill sites 58, 192, 59, and 215 encircle a seep area. If the springs are damaged because of the project activities, EO 11990 and the "No Net Loss" Policy of the Water Resources Development Act, 1988 require reclamation or replacement of riparian habitat. The reclamation plan should include a map of the seeps, springs, and wetlands and an explanation as to how they will be protected. Headwater Gold created a drill pad in an ephemeral stream bed as part of the Spring Peak mineral exploration project, drill site 18. The berm of the drill pad extended well into the stream bed and is still partially so, after reclamation. Vehicles also drove in the stream bed.

Please state in the reclamation plan that chip bags are not to be left behind as CP Resources/Headwater Gold did at Spring Peak drill site 13 in 2024 and to not dump the porta potty waste into the sump pits as we suspect they did at Spring Peak drill sites 14, 20, and 23 in 2023 when they left for the season. These three sump pits smelled of sewage and chemical toilets. Nor should a water truck be used that has transported sewage. We smelled sewage as a water truck passed us on its way to a Klondex drill site near St. Mary's Hill.



Many chip bags were left at Spring Peak drill site 13

We also hope CP Resources will do the same level of reclamation on the private property as they will do on the Forest Service property.

9. The Project Will Impact Springs

Wetlands are precious in Nevada. It is the driest state in the U.S. and yet it has thousands of springs and seeps, wetland habitats that support unique species. According to the 2023 State of Nevada Wetland Program Plan, Nevada has lost 52% of its wetlands, possibly more since many springs have not been surveyed yet. The Forest Service is a partner in the state's wetland program. While the goals are voluntary, a key goal is to protect the state's wetlands.

The Burnt Rock Project must be in compliance with the federal Executive Order 11990, which states *"Each agency shall provide leadership and shall take action to minimize the destruction, loss or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands in carrying out the agency's responsibilities."* (Section 1.(a). A wetland is defined as *"those areas that are inundated by surface or ground water with a frequency sufficient to support and under normal circumstances does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds.* There are many wetlands and meadows in the Burnt Rock project area that need to be protected and not degraded.

Five Mile Spring and LA-3 were mentioned in the hydrology report prepared for the EA, but there are 4 other springs within the Burnt Rock project area that were not mentioned:

- perhaps the biggest spring in the area at the location of stock water right 51471/51277 about 380 meters south of drill site 194,
- a spring 330 meters due west of drill site 66 that feeds the stream running through the large meadow,
- springs on the northeast slope of Aurora Peak (partly in and adjacent to the Burnt Rock Project), and
- a spring 162 meters east of drill site 48 at the location of stock water right V03644.

The hydrology report prepared for this project states there are ephemeral streams, but the only one of any importance is the headwater of Aurora Creek. Maybe the report only considered ephemeral streams on Forest Service property. There is one ephemeral stream that is very important. It starts on private property, but flows onto Forest Service property towards Five Mile Spring. It is fed by a spring near drill site 66, flows through a large wet meadow on private property (parcel APN 007-190-11 Mineral County, NV), then flows onto Forest Service property just past spring LA-3, towards Five Mile Spring. It can be seen clearly in Google Earth in 2006 after the wet winter. The flow from spring LA-3 and from the spring at stock water right 51471/51277 seem to be tributaries to it. It is a very important stream and might be impacted by the well that CP Resources put in.

CP Resources/Headwater Gold was granted a Ready for Action (RFA) water right (permit 93471) and put in a well beside the stream at the end of the large meadow in July 2023, close to a spring called LA-3. The well, stream, and spring are on private property. However, Spring LA-3 fills a depression 200 yards away, a pond frequented by wildlife, and then flows downstream onto Forest Service property. The well is perforated from 150 feet to 450 feet. The well log notes the water table was 165 feet below ground surface. That means the riparian vegetation around the spring and along the stream are supported by surface water i.e., the spring outflow, not the groundwater. The hydrologic report for the Burnt Rock project states the springs are likely perched aquifers and will not be impacted by groundwater pumping at the well. However, there was no data presented to support that assessment other than the geologic map and some assumptions. The impact of that well is unknown. Groundwater pumping next to the LA-3 could reduce the flow or dry up the spring if the perched aquifer is not separated from the groundwater table by an impermeable layer, but is the result of upward pressure along a fault. This, in turn, could impact the riparian habitat along the stream that runs onto Forest Service property. It might impact the spring at stock water right 51471/51277 about 500 meters upgradient from the well and LA-3.

CP Resources used the well in the Spring Peak mineral exploration project. In 2024, water was pumped through a hose to facilitate drilling at drill site 24 almost two miles away. The Place of Use map of permit 93471 shows that CP Resources plans to pump water to various locations on Forest Service property throughout the project area as it did in 2024. The impacts of the 2024 groundwater pumping at that well are unknown. Did the groundwater pumping reduce the flow of the spring LA-3? Will it with the Burnt Rock Project? This pond is critical for wildlife as it has water during mild drought years and the outflow from it supports a cluster of willows a half mile downstream from it on Forest Service land and wild rose and grasses along the way. We often observed ungulate tracks crossing the road heading towards the pond. If the LA-3 spring stops flowing and the pond dries up for seven years, the surrounding and downstream riparian vegetation will die off. If LA-3 is being monitored, did the monitoring show the impact of groundwater pumping in 2024?

LA-3 Spring and Pond



pond on 5/31/20



pond on 7/28/24--well in use



pond on 7/24/25--drilling stopped late 2024.



Pond on May 26, 2026

The RFA permit allows CP Resources/Headwater Gold to pump up to 10 acre-feet per year and use the water throughout the project area (see places of use map for permit 93471) including in parcels owned by JEA Aurora Properties, LLC. The Burnt Rock hydrologic report states that the well has a sustainable yield of 30 gpm. That is equal to 0.1326 af/day. Assuming continuous pumping, that means that the water right will be exceeded if pumping continues beyond 75 days ($10/0.1326=75.4$). Or, another way to calculate it, 10 acre-feet equals 3.259 million gallons per year, if water is pumped at 30 gpm, then the water right will be met in 75 days ($30 \times 60 \times 24 / 3,259,000$); in 2 ½ months. How will it be monitored to ensure the water right is not exceeded? Is there a meter on the well and will CP Resources report usage to NDWR on a monthly basis?⁸ The hydrologic report states that much of the rock has low permeability. If this is the case where the well is, then will it even provide 10 acre-feet of water per year, year after year for seven years? The planned daily water usage of 35,000 gallons is 81% of the sustainable yield of 43,2000 gallons; almost maxing it out. The pump test was only an 8-day test. The usage in 2024 was probably only 3-4 months. That is not long enough to know how much water is available or if that aquifer will be pumped dry. Drying up a spring violates EO 11990 and takes away valuable water sources for wildlife.

The Polaris EA states that Klondex has been monitoring the seeps and springs within the project boundary since 2021 and that they will continue to monitor all the seeps and springs shown on the EA map in Table D-1, annually which includes one in the Burnt Rock project area, LA-3. CP Resources (or Klondex) should also monitor the spring at stock water right 51477/51277 since it may be the largest in the area. Another important spring to monitor is the source spring for the stream through the large riparian meadow that is about 200 yards below (south of) drill site 80. The data from this monitoring should be shared with the Forest Service and included in the environmental assessment for the Burnt Rock Project. Fletcher Spring to the north of the Burnt Rock project and Five Mile Spring at the foot of Spring Peak should be monitored too. Five Mile Spring is large enough to be named and noted on the USGS topographic map of the Cedar Hill Quadrangle. Fletcher Spring was a historic stop for travelers in the 1800s and has a significant year-round flow.

⁸ The Nevada State Engineer has proposed a metering order for the East Walker River Hydrologic Basin 09-109 requiring monthly reporting of groundwater use over 5 afa. The well CP Resources put in is in basin 111B, less than 1 mile from the boundary of 09-109. They have a 10 afa water right.

10. Sump Pits Leave Contaminants Behind

The drill muds contain polymers, grease, clays, and cuttings. Sump pits are less trouble, but add to the surface disturbance unnecessarily and leave dried contaminants in the ground. Drill pads have to be bigger to accommodate one to three sump pits. On slopes, dirt pulled out to make the pit is cast downhill smothering plants below. We ask the Forest Service to require settling tanks instead of sump pits. The water in the settling tank can be recycled. The Organic Act requires the Forest Service "to regulate their occupancy and use and to preserve the forests thereon from destruction." 16 USC §551. "*All operations shall be conducted so as, where feasible, to minimize adverse environmental impacts on National Forest surface resources...*" 36 CFR §228.8.

E. Possible Alternative, Not Considered in the EA

The Burnt Rock project is expected to last 10 years with drilling in the first 7 years and the last three years involving reclamation activities. Given that, an end date should be explicitly stated in the final EA or the Record of Decision i.e., December 31, 2037. The reason for this is to ensure that this project won't go on for more than 10 years until all 600 drill sites have been completed followed by three years of reclamation. With the Forest Service's restriction of no more than 100 acres of disturbance at a time, the 250 acres disturbance maximum won't be what decides when the project ends. The annual Asbuilt reports will tell the Forest Service when 600 drill sites have been completed though. A set date would be an easier way for all to know when it is over.

How much of this project can be finished in 10 years? It seems unlikely that 266 drill sites, let alone 600 can be completed in seven years, even with five drill teams working 24/7. The EA states, "*With average drill lengths of 2,000 feet, it is anticipated that each drill hole would be completed in 13 days, assuming a production rate of 150 feet per day.*" p. 49. There are 243 days from July 1-Feb 28. It snows in the Bodie Hills in winter (January and February) which will reduce the number of working days down to 212/year (July 1-Dec 31). Realistically, only 16 holes can be drilled per team per year (212/13 days per hole). With 5 teams working it is a total of 81 holes per year and 567 holes in seven years. The average would be 2 holes at each of the 266 drill sites ($266/567=2.1$), far short of the goal of 20 holes at 266 sites, let alone 600 drill sites. Either this project will go on for decades ($20 \text{ holes} \times 266 \text{ sites} / 81 \text{ holes/year} = 65 \text{ years}$) plus reclamation or it will need more than 5 drill teams, which means more traffic and impacts to the area. Neither of these scenarios have been addressed in the EA.

Given that some drill sites will have more than 2 drill holes and that not all of the 266 drill sites will actually be used, there should be a plan that prioritizes which drill sites will be worked first. It also provides an opportunity to eliminate drill sites that will impact the bi-state sage grouse and the rare *Cusickiella quadricostata* the most. Also, drill sites that will impact the bi-state sage grouse the most should be planned for the fall season, the time of the year that will impact them the least. Drill sites in the woodlands and in the southern part of the project area, the farthest from the sage grouse could be worked in the summer months. It will take more planning, but it is a way to minimize the impacts and it is a feasible alternative.

F. Tribes Must Be Involved in Determining the APE

The APE for the Burnt Rock project must be determined with all the Tribes and their THPOs. The Bodie Hills has a rich pre-historic history, and there are many sites that are sacred to the Tribes that consider it part of their ancestral homeland. In our visits to the Project area, we have observed cultural resources which will need protection and probably adjustments to the plan of operations to do so. There are dense lithic scatter sites in several locations throughout the Project site and other evidence of prehistoric presence. There may even be burial sites in the project area. However, this project is proposing so many drill sites and roads that it will destroy all evidence of human occupation and prehistoric use in it. When the sheep were brought in to graze the area, they bedded in and trampled through many of the lithic scatter sites burying them a few inches. However, they are still there and with time and rain washing the soil away, they will reappear together once again. That was bad enough, but bulldozers will completely erase the record or distort the sequence and timing of disposition. There are Burnt Rock drill pads and roads planned in areas that were deliberately avoided in the Spring Peak project due to the presence of lithic scatter and other cultural resources. If they were avoided then, why shouldn't they be avoided now? It is so important that the whole project area is thoroughly surveyed and properly documented at a landscape level.

A big concern is that future drill sites can be anywhere within the project claim area. If the cultural resource survey is just done along the temporary roads and at the drill sites for direct effects for the 266 drill sites, cultural resources could be harmed in developing the additional 334 drill sites. Also, the historical significance is lost when cultural surveys are done in bits and pieces. To better capture the significance of the history of the area, a landscape survey is needed. A promise that the Forest Service will review the proposed future drill sites when they receive the annual report from CP Resources outlining their plans for the next season, is inadequate. How will the Forest Service know whether the proposed drill sites will destroy a cultural resource or not? Will they go out to the site with an archeologist and look? Instead of a promise, there should be a MOU between the FS, CP Resources, and the Tribes' THPOs and maybe the Nevada SHPO committing the Forest Service to contact the Tribes when new drill sites or roads are proposed. Without an MOU, there cannot be a FONSI for this EA. Pre-approval of the unknown is completely unacceptable.

G. Errata in the Plan of Operations

- Section 5.3 Weed Management and the [Noxious Weed] Risk Assessment Factors and Rating in Appendix A assigns the project a moderate rating. Yet, the Noxious Weed Management Plan states the overall risk factor is low. (p 6 Section 2.3.1 or pdf p 178)

In Conclusion

We contend that despite the mitigations, the non-operational period, the limit of 100 acres surface disturbance at a time, treatment of common weeds, and a establishing reclamation criteria, the Burnt Rock mineral exploration project will still have a significant impact on the sage grouse, mule deer, the rare Bodie Hills cusickiella and Long Valley milkvetch, the spring and ephemeral stream downstream from the well, on the meadows, and the cultural resources in the project area. The impacts cannot be reduced to an insignificant level. This project is just too big, disturbing thousands of acres of land.

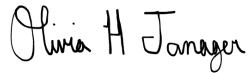
Based on what we see with CP Resources' Spring Peak project, the Burnt Rock project will leave the land in a degraded state compared to what was before the Spring Peak project began despite the fact that much of the vegetation had burned in 2013 and was starting to recover—a low bar. There is little more that can be done that would not force the sage grouse to leave the area. Listed below are actions that would help lessen the impact and better protect the natural and cultural resources.

- Defer the project until the total bi-state sage grouse population reaches a viable population size.
- Consider the impacts of two other concurrent projects: Polaris and on private property.
- Provide a hard and fast end date for the drilling operation. That amount of drilling cannot be completed in 7 years.
- Collect more data on the Mt. Hicks Lek. It is not inactive.
- Significantly reduce the size of the project to less than 266 drill sites with no future drill sites.
- Include a compensation plan that offsets the harm to the sage grouse and rare plant species.
- Restore sage grouse and riparian habitat instead of just reclaiming the roads and drill pads.
- Expand the non-operational period to beyond June 30 to cover late nesting season.
- Eliminate drill sites 55, 78, and 79 that are in the highest sage grouse use area.
- Prioritize drill sites to start in the forested and southern areas first and leave the rare plant and sage grouse sites for last.
- Focus on one area at a time, do not spread the 5-10 drill teams across the project area.
- Collect seeds of the rare plants and plant them where they grow now.
- Revise the map of rare plant species to include more areas of Long Valley milkvetch.
- Move drill sites and roads to avoid rare plants, especially the Lavin's milkvetch.
- Calculate what percent of the total Bodie Hills cusickiella population will be removed.
- Replace Rocky Mountain bee plant with the native Yellow bee plant in the seed mix.
- Consider using soil amendments.
- Clarify the transect requirements for roads versus drill pads.
- Plant low/black sagebrush in reclaimed or disturbed areas where it grows now.
- Use different seed mixes for different vegetation communities.
- Do not use herbicides to remove common noxious weeds. Pull them.
- Add red brome, tumbled mustard, and flixweed to the common weeds list.
- Eliminate the pepperweed at the Humboldt Pit Lake.
- Do not allow sheep or cattle in the project area to over graze.
- Do not use groundwater within the project boundary on public land especially if the usage is not metered and reported to NDWR.
- Do not camp in the project area in or near sage grouse habitat or by streams and springs.
- Eliminate or reduce the width of the 20-foot temporary road.
- Prep drill sites in stages, not all at the start.
- Consider alternate water supply for ungulates since they won't be able to access the springs in the project area.
- Change the water haul route from 22535 to 42754L.
- Roads 22377, 24759C do not exist, remove them from the PoO and Road Maintenance Plan
- Do not use back road routes 22534, 24758A to haul water
- Road 22535 does not exist and will be a temporary road. Add 0.09 acres to the total surface disturbance.
- If graded or widened, Include Forest Service roads in the total surface disturbance calculation and reclamation bond.

- Count the surface disturbance from widening the MUVN roads for the Spring Peak project.
- Block the entrances to the IRAs after reclamation.
- Provide a more realistic estimate of pinyon trees to be removed in the IRA and other places.
- Protect the cultural resources.

The Bodie Hills needs to be protected and is to some degree on the California side, but not on the Nevada side. Yet it is one ecosystem with many different types of plant communities: pinyon-juniper woodlands, sagebrush plains, aspen groves, and patches of limber, Jeffrey, and lodgepole pine forests. There are springs and seeps, ponds, and streams. Two peaks are above 10,000 feet with the highest peak at 10,236 feet and 4 peaks ranging from 8,979 to 9,545 feet in elevation--all covered in snow in winter. The different communities support a variety of wildlife such as pygmy rabbits, pika, bi-state sage grouse and pinyon jays in addition to the ungulates. The Total Management Area Direction in the 1986 Toiyabe Resource Management Plan states, "*Management will emphasize key values of wildlife, dispersed recreation, and grazing; and wild horse management in areas with significant wild horse populations. Management will provide for the orderly exploration, development, and wildlife, cultural resource, and recreation values. reclamation of mining resources in a manner that minimizes effects on range, wildlife, cultural resource, and recreation values.*" (page IV-112) The Sierra Club urges the Forest Service to use its authority to manage the Bodie Hills for its wildlife, cultural resources and recreation values. Protect it.

Sincerely,



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Attachments:

Appendix A-Bi-state sage grouse related maps
Appendix B-Roads
Appendix C-Reclamation
Appendix D-Laydowns
Water Right permit 93471
Places of Use map for water right 93471