Data Submitted (UTC 11): 10/1/2019 6:00:00 AM
First name: Darcy
Last name: Marud
Organization: Western Exploration LLC
Title:
Comments: Dear Mr. Shivik:

Western Exploration LLC ([ldquo]WEX[rdquo]) appreciates the opportunity to submit the following objections regarding the above-referenced United States Forest Service ([ldquo]USFS[rdquo]) Draft Record of Decision, Final Environmental Impact Statement & Land Management Plan Amendments ([ldquo]LMPA[rdquo]) for National Forest Service Land in Nevada regarding the Greater Sage-Grouse habitat.[1] WEX has participated in the USFS[rsquo]s amendment process, and submitted information throughout the Greater Sage-Grouse Plan Amendment Process finalized in 2015 at 80 Fed. Reg. 57633 (Sept. 24, 2015), the cancelled Sagebrush Focal Area Mineral Withdrawal at 82 Fed. Reg. 47248 (Oct. 11, 2017), scoping comments dated January 5, 2018 on the USFS Notice of Intent to Prepare an Environmental Impact Statement regarding greater sage-grouse land management issues that could warrant land management plan amendments, and Scoping comments dated August 10, 2018 on the USFS Supplemental Notice of Intent to Prepare an Environmental Impact Statement: Notice of Updated Information Concerning the Forest Service Greater Sage-Grouse Land and Resource Management Plan Amendments, 83 Fed. Reg. 28608 (June 20, 2018), and comments on the USFS Draft EIS and proposed Land Use Plan Amendments, submitted on January 3, 2019.[2] The information provided during those NEPA Processes are hereby incorporated by reference.

1. Background

WEX is a privately-held company that acquired the Doby George and Wood Gulch projects located in northern Elko County, Nevada in 1997. Since 1998, WEX has spent more than $82,000,000 on exploration efforts in the Doby George and Wood Gulch Project areas. Expenditures at Doby George and Wood Gulch during the 2019 field season totaled approximately $2,000,000 [ndash] 3,000,000.

The USGS Mineral Potential report rated the WEX Projects with the highest rating for mineral potential. The Draft EIS for the proposed mineral withdrawal noted that two [ldquo]large, well-defined gold resources have been developed through exploration in the past 20 years in Elko county, Nevada[rdquo] [ndash] referencing the two WEX Projects. Because Doby George was outside the proposed withdrawal area, the USGS noted one large gold/silver mine [ldquo]was added to the estimated future mineral development[rdquo] for purposes of the DEIS on the mineral withdrawal [ndash] that being Gravel Creek.[3]

While WEX greatly appreciates analysis of the potential removal of the SFA designation and strongly supports adoption of the same, WEX also remains concerned about restrictions the agencies seek to impose and the process proposed for imposing restrictions given that the LMP situates all Projects in Priority Habitat Management Area ([ldquo]PHMA[rdquo]), and General Habitat Management Area ([ldquo]GHMA[rdquo]), and/or Other Habitat Management Area ([ldquo]OHMA[rdquo]).

* The Doby George Project is an advanced mineral exploration project that covers approximately 2392 acres (114 claims) in the northern Independence Range on USFS land in the Aura Mining District. Per the Proposed LMPA/FEIS, Doby George is located in PHMA.
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The Aura Project is a mineral exploration project that covers approximately 5,015 acres (239 claims) in the northern Independence Range on USFS land in the Aura Mining District. Per the Proposed LMPA/FEIS, Aura is located in PHMA.

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The Wood Gulch Project is an advanced mineral exploration project that covers approximately 7,470 acres (356 claims) in the northern Independence Range on USFS land near the old Wood Gulch Mine. Per the Proposed LMPA/FEIS that is now being revised, Wood Gulch is located in PHMA.

Limitations inherent in PHMA, GHMA, and OHMA areas potentially threaten the economic viability of the Projects, and thus the long-term economic impacts of the local communities who rely on the Projects for revenue, employment, etc. While WEX appreciates improvements to the LMP through the proposed revisions, there are issues that remain unaddressed. The proposed LMP revisions do not address concerns raised with travel and transportation limitations/restrictions. All of the WEX projects are located in areas proposed for travel and transportation limitations/restrictions; major and minor rights of way are proposed to be avoided in Wood Gulch and Doby George. With respect to Doby George, the agency already has determined that WEX[rsquo]s [ldquo]commitment to the environmental protection measures and monitoring activities included in the environmental assessment will minimize the risk of adverse impacts and unnecessary or undue degradation to public lands.[rdquo] (See BLM [ndash] Tuscarora Field Office, Doby George Exploration Project Environmental Assessment Decision Record (February 2013)). WEX appreciates the general caveat at the beginning of the document that all standards and guidelines will be implemented subject to valid existing rights; however, without more specific detail on some issues to provide guidance this leaves too much room for interpretation/application that jeopardizes valid existing rights [ndash] such as travel and transportation management restrictions which can be critical to development of a mine (and, thus, a VER). In addition, the definition of [ldquo]Valid Existing Rights[rdquo] and [ldquo]Authorized Uses[rdquo] may be too restrictive and would benefit from clarification to avoid inconsistent application by authorized officers and potential interference with legal rights under the Federal Mining Law and Surface Use Act. Such restrictions also are inconsistent with the Materials and Minerals Policy, Research and Development Act of 1980 ([ldquo]MMPRDA[rdquo]) which President Carter signed into law on October 21, 1980 (30 U.S.C. [mdash][sect][sect]1602-1605).[4]

WEX also is concerned that areas that have been completely burned in the 2018 wildfires and are not and cannot be habitat (based on definitions included in the Draft ROD and LMPA still are included within areas designated as PHMA. WEX respectfully requests that where, as here, specific information on areas burned and within the designated HMAs that information must be considered to evaluate removal of such designation or other necessary modifications based on the best available information. As the United States Supreme Court recently made clear in Weyerhaeuser Co. v. USFWS, 586 U.S. __ (Nov. 27, 2018), an analysis of what can be characterized as [ldquo]critical habitat[rdquo] must commence with [ldquo]the ordinary understanding of how adjectives work[rdquo] and, fundamentally that an adjective modifies a noun and as, such, [ldquo]critical[rdquo]

habitat must also be [ldquo]habitat.[rdquo] The USSC rejected the notion that lands that required substantial restoration and modification from their current condition in order to be habitat could somehow be identified as critical habitat (or habitat at all). Similarly, here, it defies logic and legal authority and is internally inconsistent with the definition of habitat in the Draft ROD and LMPA to identify lands as habitat and PHMA and subject them to substantial land management restrictions when, in their current condition, they are incapable of serving as habitat without substantial modification, rehabilitation and then only with many years of such rehabilitation might once again become potential habitat.

II. Objections

A. Definition of VERs, ERs and Authorized Uses [ndash] DEIS Glossary 280, 289; FEIS Glossary 423, 426

Mineral Stipulations [ndash] Appendix G

WEX notes the removal of a definition of [ldquo]valid existing rights[rdquo] which is a legal term of art and the definition included now in the Glossary at 426 for [ldquo]existing rights.[rdquo] While WEX appreciates the apparent scope of the definitions of ERs and Authorized Uses, WEX has concerns that clarity is necessary to avoid inconsistent applications and potential interference with legal rights. While the current definition of [ldquo]ERs[rdquo] includes reference to such rights being established through permits, the prior definition was clear (consistent with the law and the agencies[rsquo] administration/implementation) that permits and licenses in effect are VERs. This is both accurate and critical and WEX[rsquo]s circumstances demonstrate that given the tens of millions of dollars invested over the course of decades, the existing exploration permits in place and the acknowledged high potential of the WEX projects in the USGS report for the proposed mineral withdrawal [ndash] all of which were jeopardized and significantly adversely impacted by the 2015 LUPAs and proposed mineral withdrawal that arose from the 2015 LUPA.

WEX appreciates the numerous statements in the draft ROD and Proposed LMPA that make clear that site specific information will be considered as well as acknowledgement that decisions will be made consistent with applicable law and VERs (and that management direction would not apply to non-habitat). Unfortunately, no analysis is conducted to consider or evaluate travel and transportation management restrictions, which WEX noted in its previous comments submitted in scoping and on the DEIS that this could pose interference issues with development of the Projects and requests clarification by USFS that such decisions shall be made mindful of both VERs and existing disturbance along with potential mitigation measures rather than outright prohibitions. WEX continues to request clarification that existing roads will be recognized without limitations where such access is necessary to VERs and hard rock mineral exploration and development. The definition of VERs should continue to expressly include all existing permits and ancillary uses authorized under the Federal Mining Law which are necessary to ensure reasonable access and use for exploration and development of valuable minerals as protected by Federal law.[5]

WEX appreciates the clarification of which stipulations apply to locatable minerals through use of headings. There are some Standards included in the ROD and Proposed LMPA that should include specification

those apply only to discretionary activities (not nondiscretionary activities for exploration and development of locatable minerals or in any manner inconsistent with Federal law including the Mining Law and MMPRDA). The following is a list of those references where activities should be specified as [ldquo]discretionary[rdquo] for which the standards will be applied:

-- GRSG-GEN-ST-007 [ndash] Standard ([ldquo]In PHMA and GHMA, only allow new discretionary authorized land uses . . ..[rdquo]);

-- GRSG-GEN-ST-009-Standard ([ldquo]Do not authorize new surface disturbing and disruptive discretionary activities that create detrimental noise levels . . ..[rdquo]);

-- GRSG-LR-ST-016-Standard ([ldquo]In PHMA and GHMA, do not authorize discretionary temporary lands special uses . . ..[rdquo]);

-- GRSG-LR-SUA-ST-017-Standard ([ldquo]In PHMA and GHMA, require protective stipulations (e.g., noise, tall structure and guy wire marking, perch deterrent installation) when issuing new discretionary authorizations . . ..[rdquo]).

In addition, GRSG-LM-ST-097-Standard should include reference to feasibility in mandating mitigation to protect greater sage-grouse and their habitats and, as noted below, feasibility must consider the proponent[rsquo]s economic feasibility to implement certain mitigation in compliance with federal law including, but not limited to, the General Mining Law.

B. Burned Lands should be Excluded from PHMA & GHMA [ndash] They Are Not Habitat

The Proposed LMPA defines [ldquo]habitat[rdquo] as an [ldquo]environment that meets a specific set of physical, biological, temporal, or spatial characteristics that satisfy the requirements of a plant or animal species or group of species for part or all of its life cycle.[rdquo] PLMPA at Glossary 426-7. [ldquo]Unsuitable habitat[rdquo] is defined as an [ldquo]area that does not currently provide one or more of the life requisites and therefore does not provide habitat, but it may provide habitat sometime in the foreseeable future through succession or restoration.[rdquo] Id. at Glossary 433. [ldquo]Marginal habitat[rdquo] is defined as an area that supports the species but has generally lower survival rates and reproductive success by comparison and may or may not have the potential to become suitable in the future.[rdquo] Id. at Glossary 428. [ldquo]Priority Habitat Management Areas (PHMA)[rdquo] are defined as areas that [ldquo]are occupied seasonally or year-round and include breeding, late brood-rearing, and winter habitat.[rdquo] Id. at Glossary-430. The PLMPA recognizes [ldquo]IHMA[rdquo] which is habitat that has reduced habitat value due to disturbance, such as fire. However, this definition only applies in Idaho even though burned lands clearly are either unsuitable habitat or IHMA but not habitat that is [ldquo]occupied[rdquo] or PHMA. In Nevada, OHMA are areas with [ldquo]appropriate environmental conditions[rdquo] for GSG [ldquo]that are less used by GRSG or have marginal habitat suitability.[rdquo] Burned lands would fit (probably best within [ldquo]IHMA[rdquo]) but, in Nevada terms, better within OHMA rather than PHMA unless or until they are restored. Under the defined terms used in the Nevada ROD and PLMPA, these lands clearly are not [ldquo]habitat[rdquo] and, at best, might be considered [ldquo]unsuitable habitat[rdquo] which is internally inconsistent with characterizing these lands as PHMA or

GHMA.

As noted in WEX[rsquo]s scoping and DEIS comments and verified through site visits with local agency representatives, the 2018 wildfires in Nevada burned a significant portion of the lands at WEX[rsquo]s project areas. The entire Gravel Creek drilling area burned, in addition to about 80% of Wood Gulch and Doby George areas. WEX retained qualified expert consultants who spent two weeks mapping areas after the wildfire and took dozens of photos WEX has provided to the regional USFS office and submitted as evidence of the condition of these lands in its January comments on the DEIS, demonstrating that that they are not habitat at all in their current state and, therefore, cannot be PHMA, GHMA or even OHMA (though this would be the most suitable designation if they[rsquo]re considered HMA at all in their current state). While we appreciate the note at page 51 of the Nevada ROD and LMPA that PHMA and GHMA areas may contain non-habitat and management direction would not apply to non-habitat if the proposed activity in non-habitat does not preclude effective GSG use of adjacent habitat, the lands in the WEX project areas are simply not habitat at all and should be removed from the PHMA/GHMA designation area.

C. Mapping Updates & Use of Site-Specific Information

WEX appreciates and strongly supports the following statement included in the ROD: [ldquo]I consider it important to have maps with have maps with the best available precision and accuracy to facilitate implementation.[rdquo] Nevada ROD at 17-18 (emphasis added). The PLMPA also notes that mapping errors were the primary reason for the Federal District Court[rsquo]s remand of the 2015 plan amendment. The PLMPA and ROD still contain mapping errors by leaving substantial areas misclassified as PHMA when the best available science and information is that they are not, in their burned state, PHMA.

As both the ROD and FEIS acknowledge, the 2012 Planning Rule [ldquo]requires the responsible official to use the best available scientific information to inform the planning process for developing, amending, or revising a forest plan, including plan components (36 CFR 219.3 and 219.14(a)(3)).[rdquo] While WEX appreciates the provision for updating mapping information and use of site- specific information for project level decision making, respectfully, the [ldquo]updated[rdquo] maps prepared by Coates in 2015/16 still are based on modeling and already are outdated given, for example, the significant number of acres burned in Nevada during the 2018 wildfires. While the DEIS acknowledges that detailed information on the acres destroyed or substantially damaged in wildfires was not entirely available for consideration, where, as here, that information is available and provided by interested stakeholders such as WEX that information should be considered relative to the mapping of [ldquo]habitat[rdquo] herein and subjecting lands to significant management restrictions where the evidence is those lands are not habitat at all. This is supported by common sense, NEPA, FLPMA, MUSYA and the USSC[rsquo]s recent decision in Weyerhaeuser as noted above. [ldquo]Best available science[rdquo] must be considered such as areas completed or substantially destroyed by wildfire that are simply not habitat and should not be identified as such given the undisputable available information.

WEX should not be subjected to potential land management restrictions, erroneous calculations of mitigation, the need for another plan amendment, revision or amendment of the HMA or potential litigation when the available

information is clear these lands are not habitat and will not be habitat for decades to come (if ever). WEX appreciates the apparent removal of the statement that information about the HMA burned in 2018 was not [ldquo]available[rdquo] given that WEX provided that information relative to a significant portion of lands misidentified by the mapping in the DEIS, WEX renews its request that the burned lands be removed from the categorized HMA as they are not habitat and are not in any condition to potentially be habitat without substantial modification that will require decades of rehabilitation. Notably, the PLMPA does not characterize burned land information from 2018 as unavailable but only 2019 information, the burned lands appear to still be misclassified.

D. Continued Use of [ldquo]Net Conservation Gain[rdquo] in Nevada

The FEIS notes that the USFS has the statutory authority, responsibility and prerogative to manage NFS lands and interests and that the State[rsquo]s jurisdiction is limited to only the wildlife. While, appropriately, the USFS commits to its continued commitment to a strong and cooperative working relationship with the Nevada Division of Wildlife ([ldquo]NDOW[rdquo]) in the case of management of the GSG, (FEIS at 1-26) that does not bestow legal authority on the State of Nevada (through NDOW or any other State entity) to management of the FS lands or to impose any requirements on proponents seeking to use FS lands. Thus, continued suggestion that the State can impose requirements for compensatory mitigation and net conservation gain will create confusion, are unlawful, and should be removed.

The U.S. Fish and Wildlife Service ([ldquo]USFWS[rdquo]) has noted the potential infirmity of compensatory mitigation and withdrew its compensatory mitigation policy in 2018 noting that [ldquo][u]nder Supreme Court precedent, the Takings Clause of the Fifth Amendment of the United States Constitution limits the ability of government to require monetary extractions as a condition of permitting private activities . . . Compensatory mitigation raises serious questions of whether there is a sufficient nexus between the potential harm and the proposed remedy to satisfy constitutional muster.[rdquo] (7/30/2018 FR Vol. 83, No. 146, p. 36469 withdrawing the USFWS[rsquo] Endangered Species Act Compensatory Mitigation Policy). While WEX appreciates the recognition that this standard will not apply to hard rock mining which is nondiscretionary activity, WEX urges the USFS to remove continuing references to requiring [ldquo]net gain[rdquo] as opposed to no net loss relative to mitigation measures and further clarify in the ROD that compensatory mitigation simply cannot be required for locatable minerals. There is no basis in law for such a requirement for hard rock mining or other users of National Forest Lands to leave the area better than they found it in order to gain authorizations and permits for such use. Moreover, this standard requires compensatory mitigation to provide net conservation gain. There is no basis in law to require this and it is inconsistent with recent actions by the administration to eliminate the requirement for compensatory mitigation and also with longstanding principles and regulations of the USFS for hard rock mining authorizations.[6]

Mitigation is not mandated in NEPA. There must be a discussion and analysis but ultimately the agency is free to decide the merits of the project. The suggestion that another agency (especially a state agency) can mandate off-site mitigation has been rejected by the United States Supreme Court: [ldquo]In this case, for example, it would not have violated NEPA if the Forest Service, after complying with the Act's procedural prerequisites, had decided that the benefits to be derived from downhill skiing at Sandy Butte justified the issuance of a special use permit, notwithstanding the loss of 15 percent, 50 percent, or even 100 percent of the mule deer herd. Other statutes may impose substantive environmental obligations on federal agencies, but NEPA merely prohibits uninformed-rather than unwise-agency action.[rdquo] Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 351 (1989). Moreover, for off-site mitigation, the involvement of other agencies creates an incongruous situation where the federal agency must wait to decide until another agency acts. Id. at 354. The Supreme Court set aside the holding that the ski area had to develop a mitigation plan for increased air emission from anticipated

development.

This concern is further compounded by the statement in the Glossary that FS[rsquo]s consideration of what is technically and economically feasible [ldquo]does not necessarily require a cost-benefit analysis or speculation about an applicant[rsquo]s costs and profit.[rdquo] ROD at 76. While that may be true for discretionary activities, it is inconsistent with rights under the General Mining Law and other federal law to suggest that something that could be cost prohibitive to development of a mineral resource does not [ldquo]necessarily[rdquo] have to be considered to determine feasibility. When Congress enacted the Mining and Minerals Policy Act of 1970, it declared that [ldquo]it is the continuing policy of the Federal Government in the national interest to foster and encourage private enterprise in (1) the development of economically sound and stable domestic mining, minerals, metal and mineral reclamation industries, (2) the orderly and economic development of domestic mineral resources, reserves, and reclamation of metals and minerals to help assure satisfaction of industrial, security and environmental needs.[rdquo] (30 U.S.C. [sect] 21a). It is clear under the MMPA and the General Mining Law that the economic feasibility to the proponent must be considered as mandated by Congress.[7]

Also, decisions must not be made based on landscape mapping designating habitat management areas. While those areas may be a good starting point for an inquiry as to what might constitute habitat, it is absolutely critical that site-specific information be considered to evaluate what lands do and do not constitute habitat. While WEX appreciates the clarification throughout the document that project level decisions will be made based on site-specific information and the best available science, WEX still is concerned that the starting point for evaluating potential impacts will be erroneous given the misclassification of certain lands as PHMA.

As noted in WEX[rsquo]s comments to the DEIS, it also is important to recognize an exception for special uses that may be necessary to locatable mineral development. Specifically, GRSG-LR-SUA-ST-015-Standard prohibits authorization of new or amended lands special uses for infrastructure outside of existing designated corridors and rights-of-way of similar types, noting certain exceptions to the prohibition. WEX respectfully renews its requests that an additional exception be included or it otherwise be made clear that if the proposed action is needed to exercise a VER or an existing authorized use [ndash] such as the need for distribution lines off of existing transmission lines to build or expand a mine. Alternatively, a simple reference that this does not apply for non-discretionary activities or inclusion of the words [ldquo]for discretionary uses[rdquo] would help further clarify the legal limitations of the prohibition. While this arguably is covered because those rights and authorizations necessary to protect and make use of a VER are mandatory under the law, clarification to avoid deviation, delay and litigation from inconsistent application (and any interference with exploration) would be appropriate and appreciated.[8]

E.Travel Management & Other Land Use Restrictions Must be Based on Site-Specific Information & Must Not Interfere with Mineral Exploration, Development and Ancillary Use[9]

The removal of references to SFAs and provision for use of withdrawals reflects the USFS[rsquo] appropriate consideration for the fact that the economic footprint of these Projects is much broader than the immediate vicinity and county in which they are located. Indirect expenditures in Mountain City, Elko, Winnemucca, and Reno continue to benefit the local economies as services and products are purchased from a wide variety of

vendors, consultants, and contractors (e.g., at least nine businesses providing lodging, food, and community amenities in Mountain City and Elko; eight businesses providing drilling and field supply services; nine businesses providing contractor and subcontractor labor; and 18 consultants providing employees and site-specific services). Moreover, exploration conducted by WEX of the Wood Gulch deposit and surrounding area lead to the discovery in 2013 of another, larger gold deposit approximately one mile east of the reclaimed Wood Gulch mine. This new deposit will be an economically significant discovery. This latter point is critical because, if withdrawn from locatable mineral entry as had been proposed or interfered with at a level that development does not occur, all potential for economic development in the very promising Wood Gulch area will be eliminated. While total withdrawal from mineral entry no longer appears to be a threat given the cancellation of the withdrawal, interference with development of the project would have serious implications both to WEX and the local and state communities [ndash] thus the need for clarification on travel and transportation restrictions.

F. Inclusion of Best Available Science & Disclosure of Shortcomings of Prior Documents Relied upon in the 2015 LUPA

WEX appreciates the significant science and new information the USFS has evaluated and relied upon in the DEIS, the incorporation of that new information and use of same in the improved analysis and the emphasis of integrated resource management to provide for ecosystem services and multiple uses. These are important and significant improvements from the 2015 document that WEX agrees will improve conservation efforts for the GSG habitat. Still, WEX respectfully renews its request for information be included regarding the shortcomings of previous [ldquo]science[rdquo] and information relied upon during the 2015 LUPA process. The USFS has previously failed to address in a [ldquo]meaningful way the various uncertainties surrounding the scientific evidence.[rdquo] Seattle Audubon, 998 F.2d at 704. For example, even though the NVLMP is based largely on the recommended restrictions derived from the December 2011 National Technical Team ([ldquo]NTT[rdquo]) Report, the agencies failed to disclose peer reviewers[rsquo] scientific criticism[10] of the NTT recommendations that reveal questionable science behind the NTT[rsquo]s recommended conservation measures. The peer reviewers were highly critical of the science used to develop the NTT report, finding it grossly oversimplified because it ignores the seasonal aspects of how GSG use the landscape. The peer reviewers objected to the one-size-fits-all approach to habitat conservation and the absence of state-level data in the report and suggested that the recommended conservation measures are inconsistent with federal law such as FLPMA and the National Forest Management Act ([ldquo]NFMA[rdquo]) and national policy and, therefore, unlawful.

III. Conclusion

WEX appreciates the opportunity to provide these comments to USFS. WEX is directly and significantly affected by this planning process and outcome and requests that the USFS consider the specifics of these projects and the facts on the ground relative to its decision-making process as well as socioeconomic impacts that will result. We look forward to working with you collaboratively. Please do not hesitate to reach out should you have questions or wish to discuss further.

If you have any questions concerning this submittal, please contact me at 775-329-8119.

Enclosures

cc: Lee Lizotte

Laura Granier

[1] As acknowledged in the Notice of Intent to Prepare the LMP Amendment, in a March 31, 2017, decision, the U.S. District Court for the District of Nevada concluded that the Bureau of Land Management ([ldquo]BLM[rdquo]) and U.S. Forest Service (together, [ldquo]the agencies[rdquo]) violated NEPA by failing to prepare a supplemental environmental impact statement ([ldquo]SEIS[rdquo]) for the designation of Sagebrush Focal Areas ([ldquo]SFAs[rdquo]) in the 2015 Greater Sage-Grouse ([ldquo]GSG[rdquo]) Plan in Nevada, due to substantial changes made between the draft environmental impact statement ([ldquo]DEIS[rdquo]) and the final environmental impact statement ([ldquo]FEIS[rdquo]), including the designation of 2.8 million acres of SFAs in Nevada, the proposed withdrawal of which significantly interfered with WEX[rsquo]s interests in the Doby George, Wood Gulch, and Gravel Creek Projects (collectively, the [ldquo]Projects[rdquo]). See W. Expl., LLC v. U.S. Dep't of the Interior, 250 F. Supp. 3d 718, 749 (D. Nev. 2017). Accordingly, the Court ordered the USFS to prepare an SEIS to address the deficiencies, noting that an [ldquo]agency must issue a[n] [SEIS] if [ldquo][t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.[rdquo] Id. at 750 (citing 40 C.F.R. [sect] 1502.9(c)(1)(ii)).

[2] WEX hereby incorporates by reference its comments on the BLM[rsquo]s Draft Environmental Impact Statement to amend the LUPA. Proposed SFA Withdrawal, DEIS at B-28; October 2016 Mineral Potential Report and Sagebrush Mineral Resource Assessment for BLM seehttps://pubs.usgs.gov/sir/2016/5089/b/sir20165089b.pdf

[3] The DEIS further noted that the local economy in Elko is primarily based on extensive locatable mineral operations and that the potential future mines in the proposed withdrawal areas could extend the longevity of the existing mining sector in the county and thereby provide ongoing employment as some of the current mines in the county reach the end of their operations.

[4] For example, the MMPRDA declares the [ldquo]continuing policy of the United States to promote an adequate and stable supply of materials necessary to maintain national security, economic well-being and industrial production with appropriate attention to a long-term balance between resource production, energy use, a healthy environment, natural resource conservation, and social needs.[rdquo]

[5] The Federal Mining Law (30 U.S.C. [sect]21a et seq as amended) and FLPMA Section 302(b) authorize exploration, discovery and development of locatable minerals and the opportunity to enter, use and occupy public lands open to location. These federal statutory rights ensure pre-discovery access, use and occupancy for mineral exploration and development [ndash] for without those rights there is no possibility of mineral exploration and development. Restrictions on access or limitations on permits, authorized uses, and other ancillary uses necessary to exploration and development of locatable minerals also would violate the MMPRDA mandate to promote an adequate and stable supple of materials necessary to maintain national security, economic well-being and industrial production with appropriate attention to a long-term balance between resource production, energy use, a healthy environment, natural resource conservation, and social needs.

[6] WEX respectfully requests removal of any references to net conservation gain. Attempting to define the term as achievable by following the mitigation hierarchy leaves much opportunity for confusion, misapplication, delay, conflict and litigation because that very hierarchy does not require that a proponent leave lands better than they found them. Mandating that a proponent conduct mitigation that increases the current quantity and quality of GSG habitat, while an admirable goal is unsupported by the law particularly for hard rock mining. While many measures responsible mining undertake may ultimately achieve this, the uncertainty associated with such a standard, the potential burden and the lack of any law to support such a requirement lead to the conclusion it should be removed entirely from the LMPA. Some mitigation measures will take years to achieve and evaluate effectiveness and forcing an applicant to wait until completion and evaluation of the effectiveness of such mitigation is unwarranted, unlawful and could mean there never is any such development due to the lost time, uncertainty, cost and chilling effect on investment that will follow from such a mandate.

[7] Economic feasibility for the proponent seeking to explore, develop and produce locatable minerals is also mandatory under the directives in the National Materials and Minerals Policy, Research and Development Act of 1980. (30 U.S.C. [sect][sect] 1602 [ndash]1605), hereinafter referred to as the 1980 Act. In the 1980 Act, Congress found: [ldquo]the United States lacks a coherent national materials policy and a coordinated program to assure the availability of materials critical for national economic wellbeing, national defense, and industrial production, including interstate commerce and foreign trade.[rdquo] (30 U.S.C. [sect] 1601(7). In response to this finding, Congress declared: [ldquo][hellip]it is the continuing policy of the United States to promote an adequate and stable supply of materials necessary to maintain national security, economic well-being and industrial production with appropriate attention to a long-term balance between resource production, energy use, a healthy environment, natural resource conservation, and social needs.[rdquo] (30 U.S.C. [sect] 1602).

[8] The DEIS also should provide a mechanism to account for existing disturbance and success of mitigation measures at the WEX projects where work has been ongoing for decades, most of the significant disturbance for power lines and roads already has occurred and the USFS has recognized the effectiveness of conservation and mitigation measures WEX has implemented for many years. The collaborative work WEX has achieved with the USFS over the years demonstrates how federal lands can be properly managed to ensure recognition for the nation[rsquo]s need for mineral resources and at the same time proper mitigation and conservation measures that can and do occur with the responsible exploration for and development of minerals.

[9] The Multiple Use Sustained Yield Act ([ldquo]MUSYA[rdquo]) and the National Forest Management Act ([ldquo]NFMA[rdquo]) requires that the USFS manage forest lands for multiple-use in a manner that recognizes the nation[rsquo]s need for domestic sources of minerals. NFMA requires the USFS to manage National Forest System lands consistent with the Multiple Use and Sustained Yield Act, 16 U.S.C. [sect] 528, to [ldquo]achieve integrated consideration of physical, biological, economic, and other sciences,[rdquo] 16 U.S.C. [sect] 1604(b), to consider both environmental and economic goals, 16 U.S.C. [sect] 1604(g); 36 C.F.R. [sect] 219.1(a), while taking into account the Nation[rsquo]s needs for minerals, 16 U.S.C. [sect] 528. Travel restrictions in the NVLMP violate this multiple-use mandate based on faulty science and without meaningful consideration of economic goals or the Nation[rsquo]s need for minerals. The FS should manage the forest service lands in Nevada according to the multiple-use mandate, an area in which the NVLMP and FEIS fell woefully short throughout the previous phases of the process. This must include avoiding travel management restrictions that will interfere with multiple-use. The NVLMP[rsquo]s onerous travel restrictions on 16 million acres, prohibitive requirements for lek buffer zones and disturbance/density caps and adaptive management triggers do not balance multiple use. Clarifications mandating site-specific information, best available science and respecting existing uses (including roads, mineral exploration and development and ancillary uses, for example) are important to comply with the law.

[10] The peer reviewers[rsquo] comments were attached to the December 18, 2012 letter from Secretary of the Interior to the Honorable Doc Hastings, US House of Representatives and provided with WEX[rsquo]s comments on the DEIS.