Bill Helmer

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Colleen Garcia, Minerals Program Manager

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RE: Long Valley Exploration Drilling Project

Dear Ms. Garcia,

Thank you for the opportunity to comment on the proposed Long Valley Exploratory Drilling Project (Project). This project is a huge undertaking, with many obvious, potential significant impacts in this incredibly beautiful and ecologically sensitive area. Since the Forest Service is still short-staffed, I don’t understand why the Inyo National Forest (INF) began its National Environmental Policy Act (NEPA) review of this Project with a Categorical Exclusion (CE) which will be challenged by nearly everyone except Kore Mining, the Project proponent. At a minimum, the NEPA review for the Project should have been an Environmental Assessment (EA), but beginning with an Environmental Impact Statement (EIS) would have also been appropriate. Beginning with an obviously inappropriate CE is a waste of time for Forest Service staff and the public, and will be a waste of taxpayers money as the government has to defend yet another probable lawsuit against a Categorical Exclusion substituted for an appropriate NEPA review.

One major defect of using the Categorical Exclusion [36 CFR 220.6(e)(8)] is the almost complete lack of scoping and public involvement in a federal agency decision which is supposed to involve the public. The Forest Service NEPA handbook states:

Scoping is required for all Forest Service proposed actions, including those that would appear to be categorically excluded (sec. 11). Scoping is important to discover information that could point to the need for an EA or EIS versus a CE. Scoping is the means to identify the presence or absence of any extraordinary circumstances that would warrant further documentation in an EA or EIS. Scoping should also reveal any past, present, or reasonably foreseeable future actions with the potential to create uncertainty over the significance of cumulative effects. Scoping complexity should be commensurate with project complexity (31.3. FSH 1909.15 - NATIONAL

ENVIRONMENTAL POLICY ACT HANDBOOK CHAPTER 30 - CATEGORICAL EXCLUSION

FROM DOCUMENTATION).

However, common sense dictates that scoping requires that the public know about the Project in the first place. Apparently, it is up to the discretion of Inyo National Forest as to how to perform scoping, whereas real scoping is required by an EIS, and at a more discretionary level, with an EA. Inyo National Forest chose not to publish a notice or a press release about the Project in local papers, and refused to “spotlight” the project on its website. Instead, the only way to find the one and a half page scoping letter is to dig into the INF website with five mostly non-intuitive “clicks.” Once that is done, very little information is provided in the scoping letter. The vicinity map is small and virtually useless, while the Project map is hard to see, making it very difficult to figure out the location of the Project. Points of reference such as Hot Creek and Hwy. 395 are excluded. It’s very important to have good maps!

It is also not stated that the exploratory drilling project is for a potential cyanide heap leach gold mine. This is essential information relevant to public scoping. If the price of gold remains high, and the drilling results are promising, then a gold mine at the Project location is a reasonable cumulative impact of the drilling. Just because a gold mine would require further NEPA review does not negate the need for a cumulative impact analysis. As stated in the Forest Service Handbook cited above, “Scoping should also reveal any past, present, or reasonably foreseeable future actions with the potential to create uncertainty over the significance of cumulative effects.” INF violated its own handbook by not providing this information in the scoping document. A link to the website of the project proponent, Kore Mining, should not be the way that the public finds out that the drilling is for a gold mine.

I found out about the Project almost two weeks after the scoping period began on April 7. I subscribe to the Inyo Register, but there was no notice in the April 6 or April 7 paper. Even though the comment period was extended for one week, most people have had to deal with an effective two or three week comment period, if they found out about it at all. Actual, common sense scoping for the Project was never conducted because the INF decided that under their discretion, “scoping” will consist of no scoping. I know that the INF can do better than this.

The scoping letter also doesn’t specifically state the type of “extraordinary circumstances” which would exclude a Categorical Exclusion, and require the preparation of an EA or EIS. Three of these extraordinary circumstances included in the Forest Service Handbook Forest Service Handbook (31.2) are:

***(1) Federally listed threatened or endangered species or designated critical habitat, species proposed for Federal listing or proposed critical habitat, or Forest Service sensitive species;***

***(6) American Indians and Alaska Native religious or cultural sites, and***

***(7) Archaeological sites, or historic properties or areas.***

The Bi-State Sage Grouse is a Forest Service designated Sensitive Species which would be severely impacted by the proposed drilling as well as a cyanide heap leach gold mine, if the drilling results lead to that. Proposed drilling in Bi-State Sage Grouse habitat certainly meets the (1) extraordinary circumstance criterion.

The INF scoping letter did not mention any Section 106 consultation for this Project as required by the National Historic Preservation Act (NHPA). Extraordinary circumstances (6) and (7) require government to government consultation with all federally and non-federally recognized Native American tribes in the Eastern Sierra. The Project is an Undertaking under the NHPA, and the public also needs to be informed about the Section 106 process (36 CFR § 800.2 - Participants in the Section 106 process). Since the INF refused to conduct adequate scoping and chose to use a Categorical Exclusion with little or no public information about the Project, the Section 106 process needs to be followed with its public notice requirements. Section 106 consultation needs to be completed before there is a Categorical Exclusion decision memo. There are no draft Categorical Exclusions with the opportunity to comment after the agency receives the scoping comments. This is another reason why CEs are not appropriate in sensitive ecological regions such as the Project area.

In addition, Section 106 Regulations state: “If a project, activity, or program is categorically excluded from NEPA review under an agency’s NEPA procedures, the Agency Official shall determine if it still qualifies as an undertaking requiring review under Section 106 pursuant to Sec. 800.3(a). If so, the Agency Official shall proceed with Section 106 review in accordance with the procedures in this subpart” (36 CFR 800.8(b). The drilling Project is clearly an Undertaking under Section 106 because it is a project which requires Federal approval (36 CFR 800.16(y)). The Section 106 process is not mentioned in the INF scoping letter, and the requirements of the NHPA are being violated by the INF.

To date, there have been no archaeological surveys completed for the Project, and tribal consultation for all potentially affected tribes has also not been completed. While tribal consultation can continue into the future, the specific Section 106 procedures for determining potential adverse effects must be completed before the NEPA review is finished. The Area of Potential Effects (APE) can only be determined in consultation with the tribes, and may include the visual impacts of the drilling operations on the cultural landscape. In other words, the APE may be much larger than the Project Boundary as depicted on the INF scoping letter.

In 2007, the Subcommittee on National Parks, Forests and Public Lands, Natural Resources Committee, held an oversight hearing entitled, *Management by Exclusion: the Forest Service Use of Categorical Exclusions from NEPA*. The Subcommittee’s Chair at the time, Raul Grijalva, stated: “The Forest Service use of categorical exclusions from the National Environmental Policy Act or NEPA is in serious need of oversight. Under the Bush Administration, the Forest Service has vastly expanded the use of categorical exclusions from

NEPA. This includes categorical exclusions both at the planning and project levels. In fact, the Forest Service made more administrative changes to NEPA procedures than any other

Federal land management agency…The title of this hearing is ``Management by Exclusion'' because by categorically excluding forest plans and projects from NEPA, the Forest Service is

excluding the ability of the public to be involved in the management of their publicly owned national forests.”

Fourteen years later, the Forest Service’s use of inappropriate Categorical Exclusions is worse than ever. As we can see from the example of this exploratory drilling Project, scoping and public involvement for a CE can be excluded at the discretion of INF, and they were excluded.

The environmental organization WildEarth Guardians, based in Santa Fe, New Mexico, recently released a report, *The Forest Service & Categorical Exclusions: Misuse and Obfuscation Reveal a Clear Need for Changes* (WildEarth Guardians, August 2020). The report can be obtained online at: <https://wildearthguardians.org/press-releases/report-forest-service-routinely-skirts-environmental-protection-laws/>.

I hope the proposed CE for the *Long Valley Exploratory Drilling Project* will be a tipping point to end the Forest Service’s abuse of Categorical Exclusions for projects that clearly may have significant and possibly irreversible negative impacts on the environment. The Forest Service’s own NEPA guidance states: “**(c)** ***Scoping.*** If the [responsible official](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=b2c97c6356a795e0b8cd2474c9d84846&term_occur=999&term_src=Title:36:Chapter:II:Part:220:220.6) determines, based on scoping, that it is uncertain whether the proposed action may have a significant effect on the environment, prepare an EA. If the [responsible official](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=b2c97c6356a795e0b8cd2474c9d84846&term_occur=999&term_src=Title:36:Chapter:II:Part:220:220.6) determines, based on scoping, that the proposed action may have a significant environmental effect, prepare an EIS” (36 CFR 220.6(c)). There was already enough information about this ecologically significant location in the Hot Creek area of Long Valley to determine that extraordinary circumstances would negate the anticipation “that this project can be completed under a categorical exclusion under the category established under 36 CFR 220.7(e)(8).”

As of the comment due date of May 13, 2021, over 1,300 comments have been received. My guess is that the majority of these comments are against the Project, and ask for an EA or EIS for the Project. After reviewing some of the comments on the Project, I’ve concluded that the drilling itself “may have a significant environmental effect on the environment,” and also will have a significant negative effect on the environment when the cumulative impacts of a cyanide heap leach gold mine are added to the analysis. After detailed analysis, other commenters have stated that it would be impossible for the Project to be under one acre, and reclamation activities would take place beyond one year. These two facts alone make the Project ineligible for this Categorical Exclusion.

I believe the Inyo National Forest should do all it can to protect this unique, sacred area now called Long Valley. There’s no place like it. We are here to protect it for present and future generations. Since the 1872 Mining Law still exists, claims on public lands can be made over and over again. The imperfect reclamation of previous drilling projects means nothing when another mining company can come in and rip the land up again for a few specks of gold because the price of gold is high. It’s all driven by speculative greed with no concern about the land or the people, fish, and animals who live here. The Kore Mining Project needs a full environmental NEPA review, with the fullest public participation, which underscores the need for an Environmental Impact Statement. I feel that the dedicated staff of the Inyo National Forest truly wants to protect the land and also wishes to work cooperatively with all who care about this place.

Thank you,

Bill Helmer

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