From:	Jerimiah Rieman
To:	Dan Ashe
Cc:	Bob Budd
Subject:	GSG and Locatable Minerals in Wyoming
Date:	Thursday, January 08, 2015 1:13:43 PM
Attachments:	2015-1-6 State Regulation of Locatable Minerals.pdf DEQ-IT@wyo.gov_20150106_181001.pdf

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Director Ashe-

In 2005, following your agency's "not warranted" finding for Greater Sage-grouse (GSG), the State of Wyoming recognized that long-term conservation of GSG and sagebrush habitats had to become a major priority. At that time Wyoming developed a process that is rooted in a balance between conservation efforts and maintenance of a stable economy, much of which is based on extractive energy resources. This strategy, and subsequent conservation actions over the last eight years have led to stabilization of habitats and increases in populations of GSG. More importantly, in analyzing trends over time, we continue to see both the high and low points in natural cycles move upward.

Development of the Core Area Strategy was an intensely difficult process, and required us to address and balance the concerns many interests, including those of your own agency and other federal agencies, who continue to serve as key members of our team. Equally important to the success is the support of those who are regulated, and despite early skepticism, industry has become one of our most ardent advocates. Their agreement and continued dedication to the conservation mission has come with significant impact to their own interests, including modification, and in some cases complete curtailment of their economic activities. These are critical partners in our conservation effort.

The basic premise of the Core Area Strategy is to ensure no negative impacts to GSG from development of Wyoming's natural resources, and this approach has been effective in that regard. There is no question that GSG populations will rise and fall cyclically over time, likely impacted most by timing and amounts of precipitation. Some have criticized the Core Area Strategy as being ineffective given the downward trend in populations following its adoption. Although a downward trend did occur, those critics ignore the fact that GSG populations had been on the rise at the time the Core Area Strategy was initially instituted. Following the logic of our critics perhaps we should have done nothing. However more recently as we moved out of a cyclic downturn. In 2014 we saw significant increases in males on leks, and in particular, the largest increases in areas of core habitat considered by your agency to be "strongholds" for GSG.

We spent a considerable amount of time in the past two weeks to discuss the concerns of the Department of Interior (DOI) relative to locatable minerals in areas identified by the U.S. Fish and Wildlife Service (FWS) as "strongholds" for GSG. Since that time, we have consulted with the Bureau of Land Management (BLM), FWS, the Wyoming Attorney General's Office, Wyoming Department of Environmental Quality (DEQ), Wyoming Geological Survey, and other agencies relative to the issue in Wyoming.

The primary proposal, as we understand it, is the withdrawal of large segments of Wyoming Core Areas from mineral entry, in order to protect habitats for GSG out of

concern that the BLM doesn't have adequate regulatory mechanisms with regard to locatable minerals. The Wyoming Plan, as administered through Executive Order, statute, and federal land use planning, provides those assurances. This has been affirmed by the FWS, state actions, and the courts. There appears to be confusion relative to the restrictions Wyoming places on mining activity. The Wyoming EO applies to all activities, including mining and locatable minerals. As you can see from the attached statements from the Attorney General's Office, there are numerous safeguards in place now to properly permit locatable mineral development with regard for GSG conservation. Specifically, any mineral exploration in the state, regardless of the amount of surface disturbance, requires a mineral exploration permit from the Land Quality Division of DEQ, and any cumulative development over one acre in a project requires a storm water discharge permit from the Water Quality Division of DEQ. Both of these requirements trigger a DDCT analysis, and make any activity subject to the current restrictions and stipulations of the State of Wyoming. As an example I have provided you a copy of a permit issued by the DEQ with relation to locatable minerals which notes the GSG analysis that took place as well as future analysis that would be required if the project was to expand. These requirements, guided by EO, have been shown repeatedly to demonstrate no impact on GSG. Our process is working.

If locatable activity is permitted, should the operation reach a size of fifteen (15) acres, a mining plan and additional permitting is required. In effect, at a 2.3% surface disturbance level, the operation is again required to submit a long-term plan of action that will must "cause no harm" to GSG. At the present time, because these requirements provide a greater degree of certainty over management of the entire landscape, withdrawal of mineral entry on federal lands only could in fact diminish the existing, and highly adequate, protections afforded the species.

According to the most recent data from the Wyoming Geological Survey, locatable mining potential in the area of concern is relatively minimal. Mapping of the areas of mining potential overlain with existing land-use protections, including mineral withdrawals, Areas of Critical Environmental Concern (ACECs), cultural designations and others, shows approximately 40,000 acres that may have potential for limited mineral entry. Considering more than 15 million acres already in Core Areas, all subject to restrictions applied by the State of Wyoming and other land management agencies, 40,000 acres is at best, insignificant.

Our plan was developed with the cooperation and compliance of the mining industry, and they will ardently defend the actions required of them. Many of these partners are now voluntarily restoring and reclaiming areas specifically to enhance habitats for GSG. Removal of large blocks of land to mineral entry will be viewed as an unnecessary and punitive action, and will likely challenge the unprecedented partnerships we have forged over the past eight years, all in the interest of conservation of GSG.

While we recognize the efforts of the DOI to assure a bright future for GSG, the actions proposed for the State of Wyoming would accomplish the exact opposite.

I would like to discuss this with you further at your earliest convenience (307-777-5629 o, 307-286-7524 c). This issue is of great importance to us.

My best.

Jerimiah

Jerimiah L. Rieman
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January 6, 2014

PRIVILEGED AND CONFIDENTIAL
ATTORNEY-CLIENT COMMUNICATION

TO: **Jerimiah Rieman**
Natural Resource Policy Director

FROM: **Andrew Kuhlmann** AJK
Senior Assistant Attorney General

RE: **State Regulation of Locatable Minerals Development**

The State regulates the exploration and development of "locatable minerals" at both the exploration and extraction phases, and regardless of who owns the land. Where a state agency has regulatory jurisdiction, it must require compliance with Executive Order 2011-5 regarding sage grouse core area protection. Much of the State's regulation is through the Wyoming Environmental Quality Act ("Act") and involves the Land Quality or Water Quality divisions of the Department of Environmental Quality ("DEQ"), as discussed below. While other agencies also have regulatory jurisdiction over issues related to mineral development (i.e., Office of State Lands and Investments for locatable minerals on State lands; State Engineer's Office for permitting water wells and water rights; federal land management agencies), those other agencies are not discussed here.

Also, for the purposes of this document, the term, "locatable minerals," is not intended to include coal, oil, natural gas, or "saleable minerals" such as sand and gravel. Those types of resources are not generally considered "locatable" under federal mining law. However, the Wyoming Environmental Quality Act does not use the distinction between locatable and non-locatable minerals. Except perhaps for limited mining operations, as discussed below, the Environmental Quality Act and the Noncoal Rules and Regulations regulate saleable minerals mostly the same as locatable minerals.

Regulation of locatable mineral exploration and development activities by the Department of Environmental Quality can include regulation of:

1. Exploration by dozing. This involves using earth moving equipment to remove overburden and expose possible indications of mineralization. A person must obtain a special license from the Land Quality Division and post a reclamation bond before he can explore by dozing. The Land Quality Administrator may deny a special license application if he determines that the application is in violation of the purpose of the Environmental Quality Act. Exploration by dozing is primarily governed by Wyoming Statute § 35-11-414 and the Land Quality Division's Noncoal Rules and Regulations, Chapter 5. However, if an exploration project of this type would substantially affect forty acres or more in any four contiguous sixteenth sections, it is instead subject to the reclamation standards and requirements of surface mining.

2. Exploration by drilling. Unlike exploration by dozing, exploration by drilling does not require a special license or permit from the Land Quality Division. However, drillers have to provide the Division with a drilling notification and a bond, and obtain the Division's approval of the notification and bond, before they can begin drilling. The Division must approve the notification and bond. Drillers also must meet reclamation standards, including surface restoration, before the bond can be released. Exploration by drilling is primarily regulated under Wyo. Stat. Ann. § 35-11-404 and the Noncoal Rules and Regulations, Chapter 8.

3. Stormwater discharge. Mineral exploration and extraction can also be regulated under the Wyoming Pollution Discharge Elimination System ("WYPDES") program pursuant to the Clean Water Act and the Environmental Quality Act. This regulation could apply to both exploration and mining activities. Construction projects that disturb between one and five acres must comply with the Water Quality Division's small construction general permit. Construction projects that disturb five or more acres (whether contiguous or as part of a common plan of development) must be covered under the large construction general permit. An applicant for the large construction general permit must provide a notice of intent and a storm water pollution prevention plan at least thirty days before commencing construction activities. The applicant must also determine if its construction project falls within a sage grouse core area. And if so, it must coordinate with the Wyoming Game and Fish Department, prior to applying with the Water Quality Division, and get a letter confirming consistency with the Governor's executive order.

4. Mining operations. Any person wishing to extract minerals, as defined by the Environmental Quality Act, must first obtain a mining permit from the Land Quality Division. This broad requirement includes surface, underground, and in situ mining operations. The application process includes submitting operation and reclamation plans for technical review and approval by the Land Quality Division. By rule, an applicant must consult with the Department of Game and Fish and the U.S. Fish and Wildlife Service prior to submitting an application, and must address those agencies' recommendations. An applicant also must provide a sufficient

reclamation bond to the Land Quality Division. The Land Quality Division also reviews and approves revisions to an existing permit. A permit can be denied if any part of the proposed operation, reclamation program, or the proposed future use is contrary to the law or policy of Wyoming or the United States. The permitting process is described primarily in Wyoming Statute § 35-11-406 and the Noncoal Rules and Regulations, Chapters 2, 3, and 7.

5. Small mining operations. The Environmental Quality Act and the Noncoal Rules and Regulations allow for a less involved permitting process for mines that would disturb no more than 35,000 tons of overburden and 10 acres of land in a single year. Such operations are referred to in regulation as "small mining operations." These operations cannot be coal, uranium, underground, or in situ mines. The permitting process of small mining operations still includes reclamation bonding, a technical review and approval of reclamation and operations plans for the mine, and the regulatory requirement to consult with wildlife agencies prior to applying. Small mining operation applications are also subject to the same grounds for denial as general mining permit applications. Small mining operations are specifically regulated by Wyoming Statute §§ 35-11-401(j), -406, and the Noncoal Rules and Regulations, Chapter 9.

6. Limited mining operations ("LMOs"). This regulatory category only includes mining operations that affect no more than fifteen acres of land during the entire life of the mine. Limited mining operations also can only mine for certain minerals that are probably not considered "locatable" under federal mining law: sand, gravel, scoria, limestone, dolomite, shale, ballast, or feldspar. Although limited mining operations are not required to get mining permits, they still must submit a description of the operation, a sufficient bond, and annual reports to the Land Quality Division. Limited mining operations also must complete site reclamation consistent with Land Quality Division rules. In addition, an operator must still get a mining permit for mining operations affecting less than fifteen acres that are for the same minerals and are located adjacent to, or in the same vicinity as, one another. Limited mining operations are primarily governed by Wyoming Statute § 35-11-401(e)(vi) and (h), and the Noncoal Rules and Regulations, Chapter 10.

MR_

Department of Environmental Quality

To protect, conserve and enhance the quality of Wyoming's environment for the benefit of current and future generations.

Matthew H. Mead, Governor

Todd Parfitt, Director

August 6, 2014

RECEIVED AUG 13 2014 WDEQ/LANDER

Mr. John Watson
NV Gold Corporation (USA)
P.O. Box 187
Evergreen, CO 80437

RE: NV Gold Corporation (USA) – TFN 6 6/090
Approval of Drilling Notification No. 429DN, Black Jack Project

Dear Mr. Watson:

With the recommendation of Mila Ready with the District II Office of the Land Quality Division, the Black Jack exploration drilling program has been approved. Company check no. 1061 in the amount of Thirty-Seven Thousand, One Hundred Dollars ($37,100) has been accepted as your reclamation performance bond to ensure that all drill holes are completely sealed and surface disturbances reclaimed. The site is located on Federal lands and our office is in receipt of the Acceptance of 3809 Notice dated July 30, 2014 from the Bureau of Land Management (BLM) Lander Field Office. A copy of the approved Form 9DN is enclosed for your files.

The Black Jack Project is located within sage-grouse core area and has been reviewed by the Wyoming Game and Fish Department (WGFD). Their July 30, 2014 analysis of the project using the Density Disturbance Calculation Tool (DDCT) resulted in the following stipulations:

1. There will be no activity on the project from March 15 to June 30 annually.

2. Each drill hole will be immediately plugged before leaving the pad. Each drill site will be reclaimed as soon as the sumps are dry and backfilled. All exploration disturbances, including access routes, will be reclaimed as soon as possible following the conclusion of the Project this year, or no later than November 30, 2014.

3. The WGFD analysis specified that "*reclamation should re-establish native grasses, forbs and shrubs during interim and final reclamation to achieve cover, species composition, and life form diversity commensurate with the surrounding plant community or desired ecological condition to benefit sage grouse and replace or enhance sage-grouse habitat to the degree that environmental conditions allow. Seed mixes should include two native forbs and two native grasses with at least one bunchgrass species. Where sagebrush establishment is prescribed, establishment is defined as meeting the standard prescribed in the individual reclamation plan... The operator is required to control noxious and invasive weed species, including cheatgrass.*"

4. The Reclamation Plan submitted by NV Gold for the Bald Mountain Project specified a seed mix which includes Wyoming Sagebrush. LQD recommends that sagebrush seed be broadcast at a rate of 1 lb. PLS/acre.

5. Future exploration activity after 2014 under this Drilling Notification will require vegetation monitoring on the Sage Hen Creek wildfire area to determine if the area has returned to suitable sage-grouse habitat. This will also entail a new DDCT analysis based on your projected activities in the area.

An Abandoned Drill Hole Report (ADHR) is required by W.S. 35-11-404 (d) and (e) to be submitted to LQD within one year after the completion of the drilling program unless artesian flow is encountered. In that case, the report is due within 60 days and must be copied to the Wyoming State Engineer's Office. The report must include location coordinates, preferably by using GPS equipment. The ADHR form is found on the LQD website or upon request.

If you should have any questions regarding this Notification or the ADHR, please contact the Lander District II Office at 307-332-3047.

Sincerely,

Nancy Nuttbrock
Deputy Director, Department of Environmental Quality
Administrator, Land Quality Division

NN:CB:MR:DH:nv
Encl: Form 9DN
xc: District II
Tom Sunderland – BLM Lander Field Office, 1335 Main St., Lander WY 82520
(Case No. WYW-168578)

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