From: Kelleher, Karen
To: Greenberger, Sarah
Cc: Lyons, James; Dreher, Robert; Dan Ashe; Amy Lueders; Gary D Frazer; Kate P Kelly; Ted Boling; Bret Birdsong; Neil G Kornze; Steven Ellis; Tommy Beaudreau; Michael Connor; Michael J. Bean
Subject: Re: Mineral Wdrawal
Date: Thursday, May 14, 2015 12:22:25 PM

Hi Sarah,
I know you aren't taking changes right now, but I do have one other suggestion for discussion:

current:

Any withdrawal would be subject to valid existing rights, and consequently would not affect mineral development activities on valid mining claims that predate the withdrawal.

suggested:

Any withdrawal would be subject to valid existing rights, and consequently would not preclude mineral development activities on valid mining claims that predate the withdrawal.

rationale:

completing the validity exam for a mining claim is a costly & time-consuming process; although we can argue that until the validity exam is complete, the claim is not "valid" and therefore any delay incurred waiting for the mineral exam to complete isn't affecting mineral development activities, this would be a distinction without a difference to most miners who are waiting for an approved Plan of Operation to mine.

On Thu, May 14, 2015 at 10:44 AM, Greenberger, Sarah <sarah_greenberger@ios.doi.gov> wrote:

> Thanks Jim. Appreciated. (b) (5) [redacted] I welcome additional redlines from others. But as I said last night, I recognize there is more discussion and refinement required to align everyone's needs and make a more streamlined statement that we aren't going to be able to accomplish today. I am submitting as drafted last night but will make clear that it's not final and will require more work.
>
> On Thu, May 14, 2015 at 9:57 AM, Lyons, James <james_lyons@ios.doi.gov> wrote:
>
> > My recommendations on the talking points.
> >
> > Comparison version and clean version with comments attached.
> >
> > Key points:
> >
> > 1. Moved **affirmative statement of Sec's intent to maintain the integrity of the SFAs up front**.

2. Made clear that Sec would move forward on recommended withdrawals in plans but would not affect valid existing rights.
3. Withdrawal process would **include review of minerals of national significance**, **<u>but not evaluate the importance of the SFAs</u>**
4. **Review of mineral potential would use existing, available data** so as not to permit new exploration for this purpose
5. Emphasized that **should the Sec elect to incorporate and invoke a site specific process for revocation, that mitigation for any surface impacts to the net conservation gain standard would be required** to provide certainty that the integrity of the SFAs would be maintained even should a site specific revocation for a nationally-significant mineral occur.

Hope this gets us closer.

Jim

On Thu, May 14, 2015 at 3:12 AM, Greenberger, Sarah <sarah_greenberger@ios.doi.gov> wrote:

Hi all - attached is a draft that reflects, I think, our discussion today. Clearly, this will require more rounds of discussion and refinement but intend to submit this language clearly identified as a placeholder to serve as starting place for discussion with the Secretary on Friday and as a vehicle for describing the line we are attempting to walk.

(b) (5) [redacted]

Sarah

On Wed, May 13, 2015 at 12:35 PM, Kelleher, Karen <kkelleh@blm.gov> wrote:

I would suggest one more change:

Original:

If approved, a withdrawal would be subject to valid existing rights, and consequently would not affect mineral development activities on valid mining claims and sites that predate the withdrawal.

Edit:

If approved, a withdrawal would be subject to valid existing rights, and consequently would not affect mineral development activities on sites with valid mining claims ~~and sites~~ that predate the withdrawal.

New:

If approved, a withdrawal would be subject to valid existing rights, and consequently would not affect mineral development activities on sites with valid mining claims that predate the withdrawal.

Rationale: sites that predate the withdrawal will be affected if the claim is not valid – the validity of the claim is the key & until validity is established, mining activities are impacted

On Wed, May 13, 2015 at 10:46 AM, Dreher, Robert <robert_dreher@fws.gov> wrote:

For ease of review, I've pasted below the clean version of my proposed text:

The Secretary intends to act promptly on recommendations from the BLM for land withdrawals to safeguard proposed Sagebrush Focal Areas that anchor the range-wide conservation strategy for greater sage-grouse from potential future mining claim locations.

Mining operations could have a significant impact on habitat and on greater sage-grouse populations in the Sagebrush Focal Areas.

Unlike other resource uses on BLM lands, the Mining Law of 1872 gives the BLM only limited authority to control the placement and extent of locatable mineral development through land use planning provisions or permit approvals. The uncertainty regarding the potential for future mining claims, their location, and the extent of development that they may entail raises concerns regarding the ability of BLM to maintain long-term protection of these most sensitive and important areas for conservation of the greater sage-grouse.

Withdrawal of the lands within the Sagebrush Focal Areas from location and entry under the 1872 Mining Law would create greater certainty regarding the long-term protection of these areas for the Fish and Wildlife Service as it determines whether the greater sage-grouse warrants protection as a threatened or endangered species. If approved, a withdrawal would be subject to valid existing rights, and consequently would not affect mineral development activities on valid mining claims and sites that predate the withdrawal.

The Secretary will consider BLM's recommendations for withdrawal of the lands within the Sagebrush Focal Areas through a public process that will engage the public, States, and other stakeholders. The process will include consideration of the mineral potential and importance as sagebrush habitat of the areas recommended for withdrawal.

In addition, the Secretary will consider a process for future reconsideration of a withdrawal, on a site-specific basis, if new information indicates that there exists a mineral deposit of national significance in a particular location and that mineral exploration or development could go forward without adverse impacts to greater sage-grouse at that location.

On Wed, May 13, 2015 at 10:38 AM, Dreher, Robert <robert_dreher@fws.gov> wrote:

I've taken a stab at editing these talking points to make them something closer to a statement by the Secretary (as I have noted, a clear statement by the Secretary would provide the greatest assurance to FWS). I've tried to navigate the delicate balance between assuring FWS that these withdrawals are likely to be implemented and avoiding pre-determination of the final decisions by stating that the Secretary "intends to act promptly" on BLM's recommendations, and providing a clear statement, ideally by the Secretary herself, of the benefits that withdrawal would provide in terms of assuring long-term protection of the Sagebrush Focal Areas. Nonetheless, the statement makes clear that there will be a decision process and promises to engage the public, States, and stakeholders. Finally, the statement indicates that the Secretary will consider a process for reconsideration of lands subject to withdrawal, on a site specific basis, where new information indicates that a mineral deposit of national significance exists and can be developed without adverse impact on sage grouse in the area.

I deleted the language about providing "a more granular analysis" of mineral potential; I wanted to leave the question of whether there needs to be additional analysis, beyond what is contained in BLM's plans, open.

On Wed, May 13, 2015 at 9:27 AM, Greenberger, Sarah <sarah_greenberger@ios.doi.gov> wrote:

(b) (5) [redacted] We can discuss how we navigate that line.

On Wed, May 13, 2015 at 1:13 AM, Dan Ashe <d_m_ashe@fws.gov> wrote:

Here are my thoughts. If we are trying to get to a "not warranted" determination, then my team needs to have confidence that the Secretary actually intends to follow through on a BLM recommendation. Therefore, I suggest we remove some of the language that they will see as equivocal. I completely support Jim's recommended language, and suggest inserting it in this text.

Dan.

(b) (5) [redacted]

[redacted]

[redacted]

[redacted]

(b) (5) [redacted]

[redacted]

[redacted]

Dan Ashe
Director, U.S. Fish and Wildlife Service

On May 12, 2015, at 1:44 PM, Lyons, James <james_lyons@ios.doi.gov> wrote:

> My thoughts attached.
>
> In sum: I would **only consider a revocation for minerals of national significance** (e.g., rare earth) AND either development would have no impact on GRSG or effects are minimal and can be mitigated to a net conservation gain.
>
> Jim
>
> On Tue, May 12, 2015 at 1:22 PM, Greenberger, Sarah <sarah_greenberger@ios.doi.gov> wrote:
>
> > Here are updated TPs to serve as a starting point for discussion tomorrow. They don't discuss a global review at any point. They still don't talk about the relative absence of development interest in these areas. We can work on that piece but I don't think it's central to the policy discussion at this point.
> >
> > On Thu, May 7, 2015 at 5:17 PM, Greenberger, Sarah <sarah_greenberger@ios.doi.gov> wrote:
> >
> > > Here are the bullets we discussed today. Kate and I will work on phrasing the absence of interest/potential. Please get me edits/thoughts and I will compile. Thanks! Sarah

--
Jim Lyons
Deputy Assistant Secretary
Land and Minerals Management
Jim_Lyons@ios.doi.gov
202-208-4318 (direct)
202-815-4412 (mobile)

<Locatable Mineral Talking Points_v5_JRLcomments.docx>

--
Bob Dreher
Associate Director
U.S. Fish and Wildlife Service
(202) 208-4070

--
Bob Dreher
Associate Director
U.S. Fish and Wildlife Service
(202) 208-4070

--

Karen Kelleher

BLM Analyst-Liaison ASLM

Main Interior room 6324

kkelleh@blm.gov

202-208-4555

--

Jim Lyons
Deputy Assistant Secretary
Land and Minerals Management
Jim_Lyons@ios.doi.gov
202-208-4318 (direct)
202-815-4412 (mobile)

--

Karen Kelleher

BLM Analyst-Liaison ASLM

Main Interior room 6324

kkelleh@blm.gov

202-208-4555