Dear Ranger Sienkiewicz and Project Leader Werner,

Thank you for the opportunity to comment on a mineral exploration proposal in the Emigrant Peak area, approximately 7 miles SE of Emigrant in what is known as “Emigrant Gulch.”

The Greater Yellowstone Coalition (GYC) is a regional conservation organization based in Bozeman, MT with offices in Idaho and Wyoming and over 40,000 members and supporters from across the country and within the Northern Rockies. Our mission is to protect the lands, waters, and wildlife of the Greater Yellowstone Ecosystem (GYE), now and for future generations. Our members include residents living in communities throughout Paradise Valley, including Old Chico and Emigrant Gulch, and visitors enjoying the GYE, the Custer Gallatin National Forest, the Yellowstone River and Chico Hot Springs.

The purpose for this action is the submission of the Emigrant Project Plan of Operations by Lucky Minerals Inc. (the Proponent) and the subsequent scoping requirement under the National Environmental Policy Act (NEPA). The need for Federal action is the Forest Service’s (the Service) responsibility to approve, or require modification to, the Emigrant Project Plan of Operations in accordance with Federal mining and environmental law.

Scoping:

“Scoping” is supposed to be “an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action.” 40 C.F.R. § 1501.7.

Similarly, the Forest Service NEPA Handbook (FSH 1909.15) Chapter 30 (31.3) 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.

Further, the Service must ensure that the applicant’s plan of operations meets regulatory requirements. Among other things, the plan of operations shall provide certain information, including
a description of measures to minimize environmental impacts, “as foreseen for the entire operation for the full estimated period of activity.” 36 C.F.R. § 228.4.

The only exception is when “the development of a plan for an entire operation is not possible at the time of preparation of a plan.” Id. The Forest Service has to determine whether the plan of operations includes sufficient measures to minimize environmental impacts. Id. § 228.8.

Additionally, the Forest Service NEPA Handbook (FSH 1909.15) Chapter 30 (31.3) states:

Scoping should also reveal any past, present, or reasonably foreseeable future actions (emphasis ours) with the potential to create uncertainty over the significance of cumulative effects. Scoping complexity should be commensurate with project complexity.

According to the “Emigrant Mining District Project South Central Montana” (43-101 Technical Report) prepared by Geologic Systems, Ltd. and published March 2015 and publicly available¹, the plan of operations submitted to the Forest Service on March 26, 2015² does not cover concurrent activity nor reveal the foreseeable future actions of “an aggressive exploration program in the near future” (page 7) by excluding information necessary to adequately evaluate the sufficiency of environmental analysis. In other words, we believe this exploration is more complicated with a much larger scope and the potential to create uncertainty over the significance of cumulative effects. Thus, a full and proper analysis under NEPA should be required to understand the entirety of the impacts associated with the proposed.

The Lucky Minerals report recommends a multi-stage exploration approach with an initial stage involving drilling on patented grounds and in public land areas covered by “low level; Categorical Exclusion permit (page 74). “While this is being performed an application will be made for road access construction and additional drilling locations that would be covered by an Environmental Assessment program” with up to $380,000 budgeted to obtain the EA permit for future stages. Currently, Lucky Minerals owns 122 ACTIVE mining claims in the immediate area totally over 2,500 acres primarily as one contiguous area within Emigrant Gulch.³

On April 7, 2015 Lucky Minerals submitted to the Montana Department of Environmental Quality (DEQ) a “Plan of Operations for Drilling Activities on Private Land”⁴ running concurrent with the drilling on public land consisting of “a two year period of exploration activities centered on the St. Julian patented claims.”

Considering these publicly available plans clearly indicate “reasonably foreseeable (if not imminent) future activities” and the potential for cumulative impacts on this unique and significant area, we believe that any proposed mining activity including exploratory drilling demands a full review under NEPA.

Any level of increased mining activity or exploration in Emigrant Gulch and its surrounding wildlands is significant for the following important reasons:

• Occupied and active grizzly bear habitat bordering the Primary Conservation Area.
• Documented Canada lynx habitat.
• This area is part of the inventoried “North Absaroka Roadless Area”. These lands are specifically identified as pristine and unspoiled and provide the public with many benefits including clean water, hunting opportunities, outdoor recreation and critical wildlife habitat.
• Paradise Valley and surrounding peaks and valleys are well-known to contain many archeological sites with the first Crow Agency at nearby Mission Creek.

¹ http://luckyminerals.com/content/Emigrant%20Mining%20District%20Project%2043-101%20report.pdf
³ http://thediggings.com/owners/2369092
⁴ Plan is not currently available on MT DEQ web sites. Available here: http://bit.ly/1T8CoUB
• Immediate proximity to the congressionally designated Absaroka-Beartooth Wilderness and Yellowstone National Park.
• Immediate proximity to the Dome Mountain Wildlife Management Unit and other critical winter range in Paradise Valley.
• A source of ground water in the Yellowstone River basin including Chico Hot Springs.
• A source of surface water critical for irrigation and agriculture and already threatened by historic mine operations including acid mine drainage.
• Emigrant Peak, Emigrant Gulch, West Fork Mill Creek and Six Mile Creek are important and popular public access points providing for outdoor recreation contributing to the local and regional economy.

The Forest Service must also analyze the potentially significant impacts to recreational opportunities due to the minerals exploration proposal. Emigrant Peak and surrounding areas are popular destinations for hikers and climbers in the summer time and an international destination for backcountry skiers in the winter and spring. Lucky Minerals’ proposal may, if it is not already, impede access to public lands by fencing drill sites and blocking roads. In addition, the presence of industrial activities within otherwise wild country impedes recreational users’ sense of solitude and enjoyment of their activities. These impacts warrant evaluation in an EIS.

The precedence for further environmental review for even exploratory drilling has been established more than once. An EA was completed in May 1990 for a proposed action to conduct exploratory mining in Emigrant Gulch filed by Montana Mining and Reclamation5. In May 1992, an EA was performed when Pegasus Gold Corporation and Harrison Western Mining Corporation applied for exploratory activities6. An EA was conducted again in 1997 to evaluate a mineral exploration project for just five drill sites, none of which were in Inventoried Roadless Areas as per the current proposal from Lucky Minerals.

**Categorical Exclusion:**

The Forest Service does have a Categorical Exclusion (CE) for “short term mineral, energy or geophysical investigations” (36 CFR 220.6(e)(8)), but according to the Forest Service NEPA Handbook (FSH 1909.15) Chapter 30 (31.3) on Categorical Exclusions:

> If the responsible official 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 determines, based on scoping, that the proposed action may have a significant environmental effect, prepare an EIS.  (36 CFR 220.6(c))

The Greater Yellowstone Coalition believes the proposal has several uncertain effects, and may have significant effects, on at least four (underlined below) and possibly more of the following “resource conditions that should be considered in determining whether extraordinary circumstances related to the proposed action warrant further analysis and documentation in an EA or EIS (Id.31.2):

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;
2. Flood plains, wetlands, or municipal watersheds;
3. Congressionally designated areas, such as wilderness, wilderness study areas, or national recreation areas;
4. Inventoried roadless areas or potential wilderness areas;

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5 Decision Notice dated June 4, 1990 from Livingston Ranger District, Fred Salinas, District Ranger
6 Decision Notice dated June 15, 1992 from Livingston Ranger District, Fred Salinas, District Ranger (File No: 2810)
7 Scoping Notice dated July 23, 1997 from Livingston Ranger District, Terri Marceron, District Ranger (File No: 2810)
(5) Research natural areas;
(6) American Indians and Alaska Native religious or cultural sites, and
(7) Archaeological sites, or historic properties or areas.

**Impacts on the Extraordinary Circumstances:**

The Forest Service NEPA Handbook (FSH 1909.15) Chapter 30 (31.2) on Categorical Exclusions continues:

The mere presence of one or more of these resource conditions does not preclude use of a categorical exclusion (CE). It is the existence of a cause-effect relationship between a proposed action and the potential effect on these resource conditions and if such a relationship exists, the degree of the potential effect of a proposed action on these resource conditions that determine whether extraordinary circumstances exist. (36 CFR 220.6(b))

In considering extraordinary circumstances, the responsible official should determine whether or not any of the listed resources are present, and if so, the degree of the potential effects on the listed resources. If the degree of potential effect raises uncertainty over its significance, then an extraordinary circumstance exists, precluding use of a categorical exclusion.

It is surprising that adherence to food storage orders is the only mitigation identified in the scoping notice under “Potential Effects to Wildlife.” Not only is this area known to have large numbers of ungulates, it is also occupied and active (personal encounter in late June 2015) grizzly bear habitat and known lynx habitat, with both species protected by the Endangered Species Act. This listing makes them factors to consider for Extraordinary Circumstances when considering a Categorical Exclusion.

The “Fish and Wildlife requirements” cited by Lucky Minerals in both the Forest Service and MT DEQ Plans of Operation include, among others:

- “Any harvested animal carcass must be acceptably stored, unless the carcass is being field dressed, transported, being prepared for eating, or being prepared for acceptable storage.”
- “Burnable attractants that cannot be completely consumed by fire must be packed out.”

Although likely “boiler plate” language on behalf of Lucky Minerals, these give us pause and indicate an incomplete understanding of the unique wildlife issues, wildlife management regulations, impacts on local hunting, and the wildfire risks in this critical and sensitive area of Paradise Valley and the Greater Yellowstone Ecosystem. This further indicates the need of comprehensive review of all exploratory activities.

As stated in the Project Description for both the USFS and MT DEQ applications, “The plan is to use two drills and run them two shifts per day, usually 10 hour shifts with time for shift change and drill maintenance. Night drilling will require the use of small lights similar to the ones used by highway crews and be localized to the drill area only and given the tree cover and mountainous terrain any visual impacts would be extremely minimal.”

While attempting to address the visual impacts to humans in Paradise Valley, this statement fails to account for the noise, added road activity and light disturbance that constant (20+ hours a day) drilling activity will have on all wildlife including elk, big horn sheep, lynx and grizzly bears.

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8 Ibid, page 11
**Grizzly bears:**

The grizzly bear is listed as a threatened species under the Endangered Species Act and subject to analysis for potential adverse impacts that require consideration in an EA or EIS. 36 C.F.R. § 220.6(b)(1)(i) (requiring consideration of Federally listed threatened or endangered species or designated critical habitat, species proposed for Federal listing or proposed critical habitat, or Forest Service sensitive species in evaluating extraordinary circumstances precluding reliance on categorical exclusion).

Even though grizzly bears are currently listed, the U.S. Forest Service has continued to manage bears under the direction of the “Final Conservation Strategy for the Grizzly Bear in the Greater Yellowstone Area” (March 2007). In the Conservation Strategy, forest management direction is described for bear management units within the Primary Conservation Area (PCA).

The proposed exploratory drilling for “phase 1” on both public and private lands do not fall within the current Primary Conservation Area (PCA) boundary. However, existing new claims by Lucky Minerals cross the divide between Six Mile Creek and Emigrant Creek which constitutes the boundary of the PCA. Due to the “reasonably foreseeable activities” acknowledged by Lucky Minerals with concurrent private land exploration and an upcoming “Phase 2” of exploration, all efforts should be made to understand the cumulative impacts of these explorations on grizzly bears. GYC has in the past been critical of whether or not the standards within the Conservation Strategy should be considered “adequate regulatory mechanisms,” and the lack of analysis or consideration of the impacts of the proposed project for grizzly bears and their habitat further raises these concerns of the Forest Service’s ability to continue maintaining sufficient habitat and adherence to firm standards in the future.

Under the Conservation Strategy a project, such as the proposal at Emigrant Peak, would fall under the Developed Site Standard. That standard states: “The number and capacity of developed sites within the PCA will be maintained at or below the 1998 level with the following exceptions; any proposed increase, expansion, or change of use of developed sites from the 1998 baseline in the PCA (Appendix F) will be analyzed, and potential detrimental and positive impacts documented through biological evaluation or assessment by the action agency. A developed site includes but is not limited to sites on public land developed or improved for human use or resource development such as campgrounds, trailheads, lodges, administrative sites, service stations, summer homes, restaurants, visitor centers, and permitted resource development sites such as oil and gas exploratory wells, production wells, plans of operation for mining activities, work camps, etc.”

The Conservation Strategy goes on to detail how to apply the standard and mitigate the impacts by limiting other development within the bear management unit or mitigating off site in adjacent bear management units or outside of the PCA if necessary.

“Mitigation of detrimental impacts will occur within the affected subunit and will be equivalent to the type and extent of impact. Mitigation measures will be equivalent to the type and extent of impact. Mitigation measures will be in place before the initiation of the project or included as an integral part of the completion of the project.”

“To the fullest extent of its regulatory authority, the Forest Service will minimize effects on grizzly habitat from activities based in statutory rights, such as the 1872 General Mining Law. In those expected few cases where the mitigated effects will result in an exceedance of the 1998 baseline that cannot be

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9 USDI, Fish and Wildlife Service. 2009 Endangered and threatened wildlife and plants; Reinstatement of protections for the grizzly bear in the Greater Yellowstone Ecosystem in compliance with court order. Federal Register 75; 14496-14498.
12 Ibid, page 42
compensated for within that subunit, compensation, in the PCA, to the levels at or below the 1998 baseline will be accomplished in adjacent subunits when possible, or the closest subunit if this is not possible, or in areas outside the PCA adjacent to the subunit impacted. Mitigation for Mining Law site impacts will follow standard development site mitigation to offset any increases in human capacity, habitat loss, and increased access to surrounding habitats. Access impacts relating to Mining Law activities will be mitigated per the applications rules for changes in secure habitat.”

Additionally under the Conservation Strategy this project would fall under scrutiny of the Secure Habitat Standard. 13

“The percent of secure habitat within each bear management subunit must be maintained at or above levels that existed in 1998 (Appendix F). Temporary and permanent changes are allowed under specific conditions identified below. Appendix G provides additional information on definitions and rules for implementation of this standard. Figure 10 provides a summary of the secure area management rules. The rule set in Figure 10 will be used in management and evaluation of projects and habitat management actions as appropriate under this Conservation Strategy.”

The Conservation Strategy does allow for permanent changes to secure habitat as long as replacement secure habitat is provided.

“A project may permanently change secure habitat provided that replacement secure habitat of equivalent habitat quality (as measured by the Cumulative Effects Model or equivalent technology) is provided in the same grizzly subunit. The replacement habitat must either be in place before project initiation or be provided concurrently with project development as an integral part of the project plan.”

There are also allowances for temporary changes to secure habitat. “Temporary reductions in secure habitat can occur to allow projects, if all of the following conditions are met:

- Only one project is active per grizzly subunit at any one time
- Total acreage of active projects within a given BMU will not exceed 1% of the acreage in the largest subunit within that BMU (see Appendix G). The acreage of a project that counts against the 1% limit is the acreage associated with the 500-meter buffer around any motorized access route that extends into secure habitat.
- Secure habitat is restored within one year after completion of the project.”

The lack of implementation of the Conservation Strategy in the proposed scoping raises red flags for GYC as we review this project. To date, it appears there has been no analysis of impacts to grizzly bear habitat, discussion of mitigation or maintenance of the 1998 baseline for developed sites, or consideration under the cumulative effects model. While we understand that grizzly bears are not currently delisted, and therefore the Conservation Strategy may not be the current management direction, it would be consistent with all other agency actions during the past 8 years to continue to utilize the standards within the Conservation Strategy for the benefit of the resource and consistency as the agencies move again towards delisting. Not considering these standards and impacts under the Conservation Strategy highlights the concerns we raised in 2007 over the enforceability of these standards.

For areas outside of the PCA within occupied grizzly bear habitat (the entire Emigrant Gulch, Six Mile Creek and West Fork of Mill creek area is known to be occupied grizzly bear habitat14), the agency is required to consult with the USFWS under Section 7 of the Endangered Species Act (ESA). See the attached map for location of PCA boundary and occupied habitat in relation to the project boundary. Section 7 of the ESA requires that an agency “consult with the Secretary of the Interior (USFWS) or Commerce if it has reason to believe that its action may affect an endangered or threatened species.” If a proposed Federal action may affect a listed species or designated critical habitat, formal consultation with

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13 Ibid, page 39
FWS is required (except when the Services concur, in writing, that a proposed action “is not likely to adversely affect” listed species or designated critical habitat).15

Considering the full extent and length of shifts of the proposed drilling (20+ hours a day)16, The Greater Yellowstone Coalition believes it is necessary for the USFS to request that the USFWS, fulfilling the Section 7 consultation requirement, complete a Biological Opinion that analyzes the impacts to grizzly bears including any necessary “incidental take statement.” Incidental take should be considered for both direct and indirect effects on grizzly bears including management removals or relocations.

At a minimum, the Forest Plan requires a biological assessment of the project with informal consultation with the USFWS because the project area includes occupied grizzly habitat.17

In its analysis, the Forest Service should consider the potential for conflicts that could result from increased human presence in the area leading to injury, harm, or direct or indirect mortality of grizzly bears—as well as risks to human safety, particularly during the critical fall season.

It is crucial that the Forest Service enforce food storage requirements and that forest employees and contractors are educated with “bear aware” practices. The Forest Service must enforce and ensure that ongoing disturbances are regulated under food storage order #001-14-11-00-02.

**Canada lynx**

This rare medium-sized carnivore was listed as a threatened species in 2000 under the Endangered Species Act 18 and remains in that status and subject to Section 7 consult under the Endangered Species Act (ESA). Section 7 of the ESA requires that an agency “consult with the Secretary of the Interior (USFWS) or Commerce if it has reason to believe that its action may affect an endangered or threatened species.” If a proposed Federal action may affect a listed species or designated critical habitat, formal consultation with FWS is required (except when the Services concur, in writing, that a proposed action “is not likely to adversely affect” listed species or designated critical habitat).19

Concerns over management practices on federal lands were the justification for the Canada lynx listing decision in 2000. The listing rule stated: “Current U.S. Forest Service Land and Resource Management Plans include programs, practices, and activities within the authority and jurisdiction of Federal land management agencies that may threaten lynx or lynx habitat. The lack of protection for lynx in these Plans render them inadequate to protect the species.”

The Forest Service’s cumulative effects analysis with respect to impacts to lynx should include all past, present and reasonably foreseeable actions as outlined clearly in Lucky Minerals Plan of Operations to both the agency and the State as well as their published plans for Phase 2. Canada lynx are now managed according to the *Northern Rockies Lynx Management Direction*, based on recommendations set forth in the *Canada Lynx Conservation Assessment and Strategy*.20

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18 USDI, Fish and Wildlife Service. 2000. Endangered and threatened wildlife and plants; determination of threatened status for the contiguous United States distinct population segment of the Canada lynx and related rule; final rule. Federal Register 65;16053-16086
The strategy states: “Only a fraction of the historical number of mines is operating today; those that continue to operate do so with more stringent environmental protection measures. However, in some parts of the United States, minerals exploration and new development appear to be on the rise. Activities associated with exploration and development of locatable minerals could affect lynx habitat by changing or eliminating the native vegetation, and by contributing to habitat fragmentation. Amount of impact can be variable depending on the size of the associated mining operation or development. Locatable minerals are extracted through both open pit and sub-surface mines with potential habitat alteration ranging from tens to thousands of hectares.”

Given the clear direction of the ESA and the U.S. Forest Service’s own management direction and strategy, proceeding without full analysis of the cumulative effects of proposed action would be reckless and ignore the agencies own biologists who raise concerns caused by disruption to vegetation, habitat loss, and fragmentation.

Further, in 2014 the USFWS designated critical habitat for Canada Lynx including portions of the Custer Gallatin National Forest (see attached map). The entire proposed project and surrounding areas lies within designated critical habitat and the USFS shares in the responsibility for the well-being of lynx and lynx habitat. Considering this is the first significant exploration project in Emigrant Gulch since 1993 with potentially significant habitat changes since that time, the Forest Service must consult with the USFWS prior to authorization of any mining activity and the outcome of that consultation should be included in the NEPA analysis to allow the public to review and comment upon it.

Not only is the proposed project within critical habitat of this threatened species, it is also currently thought to be occupied habitat, based upon the best available science. Independent wildlife researchers at Wild Things Unlimited, Steve Gehman and Betsy Robinson, documented lynx presence in nearby Mill Creek with confirmed DNA samples that determined the presence of a resident female lynx during six winters between 2003 and 2009. Given the large territories occupied by Canadian lynx, and Emigrant Gulch’s proximity to designated Wilderness and Inventoried Roadless Areas contiguous with the Mill Creek drainage, it is possible this individual or others have been present in Emigrant Gulch in recent times.

Additionally, lynx occupying critical habitats outside of Yellowstone National Park, such as in the Emigrant Peak area, may contribute to the long-term persistence and reduce extinction risk for the species. Researchers found that lynx made long-distance movements to breed successfully and that these movements occurred with lynx travelling into the boundaries from external locations on National Forest Lands. Lynx persistence inside Yellowstone National Park may be dependent upon these long-distance movements and the Custer Gallatin National Forest must take a “hard look” at both direct and indirect impacts of the proposed project to lynx, not only at the proposed project site, but at a larger scale, because individual lynx persisting in outlying forest lands may contribute to breeding success of lynx at an ecosystem scale.

We ask the Forest Service to include in the NEPA analysis all relevant data about lynx habitat and presence in and around the project area. It should reference any and all studies currently underway or completed regarding lynx in the region and include complete data, with historic trapping records, incidental take, presence of snowshoe hares (a primary food source), and habitat types present that are favorable to lynx occupancy, acquired from its own records and data from other state and federal sources.

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agencies and institutions that will provide sufficient baseline information upon which informed management decisions can be made.

Given all of the directives that are associated with lynx habitat and presence, previous agency planning, and the plain language in the ESA, the agency must consider the presence of Canada lynx and their critical habitat as an "extraordinary circumstance" that requires further analysis of an Environmental Impact Statement. 36 C.F.R. § 220.6(b)(1)(i) (requiring consideration of Federally listed threatened or endangered species or designated critical habitat, species proposed for Federal listing or proposed critical habitat, or Forest Service sensitive species in evaluating extraordinary circumstances precluding reliance on categorical exclusion).

**Peregrine falcon:**

The EA for the exploratory mining in Emigrant Gulch in 1990 explicitly mentions "a historic peregrine eyrie" near the project area, and is thereby subject to analysis for potential adverse impacts that require consideration in an EA or EIS. 36 C.F.R. § 220.6(b)(1)(i) (requiring consideration of Federally listed threatened or endangered species or designated critical habitat, species proposed for Federal listing or proposed critical habitat, or Forest Service sensitive species in evaluating extraordinary circumstances precluding reliance on categorical exclusion).

Although no longer listed under the Endangered Species Act, the US Fish and Wildlife Service (USFWS) lists the peregrine as “DM” (Any previously listed species that is now recovered, has been delisted, and is being monitored). The US Forest Service lists the species as “Sensitive” under their “Species of Concern.” Has the Service identified the location of this historic eyrie, and others, or performed a proper survey for additional sites that have been established in the past 25 years and the impacts of increased drilling, human presence and road activity on these sites?

**Congressionally Designated Wilderness Area:**

The Emigrant Exploration Project is planned adjacent to the congressionally designated Absaroka-Beartooth Wilderness, posing potential adverse impacts to wilderness character that require consideration in an EA or EIS. 36 C.F.R. § 220.6(b)(1)(iii) (requiring consideration of congressionally designated wilderness in evaluating extraordinary circumstances precluding reliance on categorical exclusion).

The Scoping Notice and Plan of Operations do not make any mention of wilderness areas; however, plate 3 of the figures accompanying the Plan of Operations situate the drill areas north of the "wilderness boundary" found towards the bottom of the map. Emigrant Exploration Project, Park County, Montana: Proposed Areas of Drilling (Maps and Plans to accompany Plan of Operations January 2015), available at http://www.fs.usda.gov/project/?project=47041.

The Lucky Minerals technical report does define the wilderness area: "The Absaroka wilderness area forms a buffer between Yellowstone National Park and the project area." (page 10). This language indicates a lack of understanding on behalf of Lucky Minerals about the value of the Absaroka-Beartooth Wilderness, the agency requirements to maintain Wilderness character, and a disregard for the importance of wild, unfragmented Wilderness areas, inventoried roadless areas and Yellowstone National Park as part of the Greater Yellowstone Ecosystem. This only highlights the need for adequate environmental analysis so cumulative impacts are truly understood and recognized not only for the benefit of the agency but also for Lucky Minerals and future entities that may become vested in this project.

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24 Decision Notice dated June 4, 1990 from Livingston Ranger District, Fred Salinas, District Ranger
25 http://mtnhp.org/SpeciesOfConcern/?AorP=a&OpenFolders=S&Species=Birds
Lucky Minerals further states, "In 1983 the project area was deliberately left out of the wilderness area due to its high mineral potential." Without a citation, it is unknown if the area was in fact set aside specifically for 'high mineral potential' or for the fact that there were roads and previous development from the past 100+ years of mining. The latter does not preclude the Service from managing this area, and particularly the Inventoried Roadless Areas, to maintain or enhance wilderness and roadless qualities.

**Inventoried Roadless Areas:**

In addition to being adjacent to the Absaroka-Beartooth Wilderness, part of the current exploration proposed by Lucky Minerals is in the inventoried “North Absaroka Roadless Area (IRA),” posing potential adverse impacts that require consideration in an EA or EIS. 36 C.F.R. § 220.6(b)(1)(iv) (requiring consideration of congressionally designated wilderness in evaluating extraordinary circumstances precluding reliance on categorical exclusion).

These lands are specifically identified as pristine and unspoiled and provide the public with many benefits including clean water, outdoor recreation and critical wildlife habitat. The west side of the Gulch, including much of Emigrant Peak, is part of the IRA. Please refer to the attached map. With mining exploration expanding to this section of the gulch for the first time since 1963, it is critical to fully analyze and understand the current conditions and potential impacts to this sensitive and unique landscape.

Lucky Minerals is proposing three drill pads on the DUV-Allison area to be accessed via helicopter only. These sites are very close to, if not within, the IRA and it appears a number of drill sites on the Emigrant Peak (west) side are within the IRA (see attached map).

The Lucky Minerals proposal is the first major mining exploration in Emigrant Gulch since the implementation of the 2001 Roadless Rule. Thus, it is doubtful the impacts of mining exploration on the North Absaroka Roadless Area(s) have ever been analyzed properly under the current Roadless Rule. Because impacts to “inventoried roadless areas” are specifically noted as one of only seven Extraordinary Circumstances precluding the granting of a CE, it is incumbent on the Agency to fully understand the unknown and cumulative impacts on this resource.

The 2001 Roadless Rule does not preclude the existence of roads in an IRA nor does it’s prohibition on new road construction apply to roads needed to access mineral claims:

> Both the final Roadless Rule and the final Bureau of Land Management mining rule have comparable goals to prevent unnecessary or undue degradation of public lands. However, the Roadless Area Conservation Rule at 294.12(b)(3) does not affect rights of reasonable access to prospect and explore lands open to mineral entry and to develop valid claims. Reasonable access includes, road construction or reconstruction for mining activities covered under the General Mining Law while the performance standards at proposed 3809.420(c) would require that permitted roads and structures be designed, constructed, and maintained to control or prevent erosion, siltation, and air pollution and to minimize impacts to resources.

This does not prevent the Service, however, from requiring a comprehensive plan with full environmental review of the potential impacts associated with road maintenance, reconstruction or improvements on Emigrant Peak road #3273 prior to any work being done in an IRA.

Despite more than 150 years of mining history in Emigrant Gulch, there is evidence of natural restoration. Anyone that has tried to travel the main road #3272 from time to time understands how “the mountain tends to take back the road.” The Forest Service needs to analyze the current state of the IRA within the Gulch and the impacts of any future exploration to the undisturbed and recovering IRA lands.

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Large east-facing alpine bowls such as those found on Emigrant Peak (one of the highest peaks in the Montana, Absaroka Range) are not common in the area. One impetus for the creation of the Roadless Rule was an effort to expand the system of protected federal lands to include ecosystems that are not well represented in the current system of National Parks, wilderness areas, and preserves. The IRA lands within Emigrant Gulch provide a resource that is “extraordinary” and important habitat to listed species like grizzly bears and lynx, sensitive species like peregrine falcons but also to critical ungulate species like big horn sheep, which are currently under considerable duress throughout the Paradise Valley. As the first significant exploration in over 20 years, if not the single largest proposed lode-exploration in the history of the Gulch, updated baselines and an understanding of cumulative impacts to critical wildlife habitat provided by Inventoried Roadless Areas are crucial and further evidence for the need for full environmental review.

**American Indian religious, cultural or archeological sites:**

Paradise Valley is well-known to contain many pre-historic sites including vision sites, burial grounds, possible buffalo jumps and many additional artifacts. Despite the long history of mining with Emigrant Gulch, the current explorations are proposed for Inventoried Roadless Areas and helicopter-accessed sites that may not have been surveyed previously, posing potential adverse impacts to a resource that requires consideration in an EA or EIS. 36 C.F.R. § 220.6(b)(1)(vi)(vii) (requiring consideration of congressionally designated wilderness in evaluating extraordinary circumstances precluding reliance on categorical exclusion).

Impacts to “American Indian religious, cultural or archeological sites” are specifically noted as two of only seven Extraordinary Circumstances precluding the granting of a CE. It is incumbent on the Service to fully understand the impacts on this rare resource and consult with tribal authorities and local archeological experts, including but not limited to specialists within the Custer Gallatin National Forest. Since even the most preliminary unintended contact with these important and sensitive resources would likely be disastrous, it is not adequate for Lucky Minerals to simply state, “At this time, there are no known archeological or historical cultural sites within the claims covering the Plan of Operations” and “if undiscovered cultural resources are found during program implementation, Lucky will immediately cease operations at that location and notify the Forest Service.”

**Ground and Surface Water Impacts:**

In order to provide proper scoping of water resource related conservation, protection and reclamation issues we have identified the following points:

*Impacts to Beneficial uses* – In correspondence between the Greater Yellowstone Coalition and the Gallatin National Forest dated 03/09/1992 a discussion of water quality sampling and analysis which was conducted in conjunction with mineral exploration at that time, describes several bench marks or baseline conditions for Emigrant Creek that are relevant to the current exploration. That analysis indicates Emigrant Creek met the criteria of Montana Water Quality Standards for a B1 classification. We have significant concerns that the currently proposed plan of operations will be adequately protective of the beneficial uses supported by a B1 water resource. While naturally occurring mineralization is present in the system, additional disturbances such as reactivation of relic roads and the risk of new surface flows from drilling sites could create impacts of a magnitude that degrade and impair water quality. The applicant should provide a description in their plan of operations of the current water quality status and assure that protections and precautions specified are sufficient to ensure no degradation. GYC recommends new water quality sampling and analysis be completed that is compliant with current standards and practices in order to assure the public this important resource will not be degraded. The Forest Service should illuminate the risk for impairment of beneficial uses and preserve the public’s

28 Livingston Ranger District letter “reply to 2810” 03/09/1992 to Louisa Wilcox - Greater Yellowstone Coalition
access to clean water. The Forest Service should verify that the proposed exploration plan will not result in degradation of high quality waters of the state (B1) or waters of the US, and is consistent with Montana's nondegradation policy MCA 2014 75-5-303.

**Groundwater interactions** – In the plan of operations the applicant should indicate where and to what depth groundwater is expected. Any existing drill sites should be assessed in comparison to proposed core sample locations to determine the potential for artesian flow and specifications for properly plugging locations with artesian flow should be included. The Forest Service should clarify the risk of contaminated contact water migration and the potential for increased acid drainage pollution from artesian flow or spring sources. This should include a review of each proposed core sample with full disclosure of location and depth.

**Surface water interaction** – Road access improvements are mentioned in the current proposal, but no specific stream crossing assessment is included. Additionally, no design or construction standards are included, which would indicate how the project is protective of current water quality and protects the public's interest in terms of future access and safety. The Forest Service should clarify the risk of water contamination from road construction, maintenance, use, failure and chemical releases/spills. The Forest Service should clarify procedures and specifications for reporting spills, along with any cleanup and remediation of water bodies on forest lands. Additionally, a proper environmental analysis should address the applicant’s potential for Clean Water Act violations such as filled in wetland areas and blocked stream channels. Spill migration and potential impacts should be stated and addressed in the plan of operations. Response times and spill response resources for spill containment should be specified. As a condition of approval all applicable county, state and federal permits must be received and verified prior to project mobilization.

**Water Sources and Water Rights** – The proposed water withdrawal locations do not indicate what water rights and points of use are valid for the project. This proposed use should be publicly reviewed and the appropriate agreements should be verified. The Forest Service should evaluate the risk of water withdrawal impacts to other water users and the possible impacts on beneficial uses downstream. At a minimum, as a condition of approval, the necessary water rights and points of use should be reviewed and verified.

**Oversite and verification** – Neither the proposed plan of operations, the Forest Service or the Montana Department of Environmental Quality have specified project inspection periods, milestone events or reporting. No estimates of oversight resources or capacity have been disclosed. The Forest Service should clarify project oversight responsibilities, reporting and staff roles for this project.

Between 1973 and 1992, explorations have resulted in 83 test holes for a total of 42,237 feet. This averages just over 508 feet of depth per hole. A lone drill site on Emigrant Peak from 1963 is widely known to be have struck an artesial well that has continued to flow over 50 years later. Local landowners in Emigrant Gulch claim “almost every historic drill site up there is leaking water.”

With a combined 35 drill sites, “with multiple holes from each proposed site,” Lucky Minerals is proposing an average depth of 1,000 feet, though some holes may be up to 2,000 feet. This represents a significant increase over historic drilling with unknown impacts to groundwater. With a long legacy of mining activity and unknown levels of acid mine drainage and other groundwater impacts, a current baseline on all existing drill sites needs to be fully analyzed before any new drill sites are approved in Emigrant Gulch. Further, Lucky Minerals MUST be required to disclose the overall number of drill holes proposed (not just drill pad sites) in a detailed and specific Plan of Operations made available for public scrutiny and comment prior to granting any permits by the US Forest Service or Montana DEQ.

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29 http://luckyminerals.com/content/Emigrant%20Mining%20District%20Project%2043-101%20report.pdf (page 18)
30 Personal conversation on July 9, 2015 with B. Wells, Box 35 Pray, MT 59065
Roads:

The Plan of Operations with both the Service and MT DEQ indicates, “Road 3272 and 3273 access roads and the existing road network on patented claims would be maintained through grading.” The plan goes on to say, “All roads, including the ones still drivable will be cleaned of rock and other debris to their original configuration; they will not be made wider.” Also, “The existing crossing (Emigrant Creek) are all used and have been used for many years without problem.” Has Lucky Minerals provided any documentation or studies to validate these claims?

It is widely known that above “the culvert” south of White City, the creek often floods over the road. The relic roads in upper Emigrant Gulch are difficult to travel, if not dangerous. This is particularly true of Road #3273 (on Emigrant Peak) that was first installed in 1963. We find it difficult to believe with the maintenance equipment planned – a D-7 dozer and G-12-14 grader – that roads will not be made wider, nor is there any enforceable standard of “original configuration.” We believe more information on the planned road maintenance and stream crossings is required along with adequate mitigation in place for any potential impacts or disturbances to Emigrant Creek and its tributaries.

Portions of Road #3272 are managed by Park County while most of the remainder goes through other patented placer claims not controlled by the Proponent. Is Park County aware of the added loads and impacts being proposed and has the County authorized maintenance. Further, are proper easements in place for access and road improvements through other private property? Please provide information on whether or how this has been obtained.

Considering the rough and difficult nature of the roads in Emigrant Gulch, are there preventative measures that adequately address pollution of Emigrant Creek and its tributaries in the event of trucks or drilling equipment going off the road into the creek? This has happened in the past and remains a possibility in the future. Is the Forest Service or Lucky Minerals planning to cache, or have nearby, the equipment and resources needed to remove vehicles from the creek or remove oil or fuel should a spill occur in Emigrant Creek or its tributaries? Since the area is remote, a spill could be disastrous to water resources and downstream irrigators if adequate equipment is not available in the gulch or somewhere nearby.

Conclusion:

Towering over the Yellowstone River, Emigrant Gulch and Emigrant Peak is at the heart of Paradise Valley for residents and tourists alike. The area is key to the integrity of the Greater Yellowstone Ecosystem and critical to the future of the grizzly bear, lynx and many other species. Emigrant Peak and Gulch holds valuable pieces of our nation’s shrinking inventoried roadless areas, set aside for their unique qualities and wildlife habitat values. This important area is connected to and a gateway to the wild lands of nearby Yellowstone National Park.

Lucky Minerals seeks immediate approval for only a portion of its planned mineral exploration on Emigrant Peak and within Emigrant Gulch. However, the company’s Engineering Report touts “an aggressive exploration program in the near future” that exceeds the scope of its formal Plan of Operations in terms of timing, spatial extent, and intensity. Under well-established NEPA principles and the Forest Service’s own regulations requiring a Plan of Operations to document all foreseen activities connected with a proposal, it would be improper to consider Lucky Minerals’ Plan of Operations in isolation. Instead, the Forest Service should require Lucky Minerals to resubmit a plan that complies with regulatory requirements and evaluate the direct, indirect, and cumulative impacts of the proposed mineral exploration activities in an EIS. However, even considering just the exploration activity included in Lucky

Minerals’ existing Plan of Operations, potentially significant environmental impacts are evident that require the Forest Service to complete a full environmental analysis under NEPA.

In addition, the Forest Service must require Lucky Minerals to pay a bond sufficient to cover post-exploration reclamation, including potential water quality mitigation or restoration activities. 36 C.F.R. § 228.13. In the event that the Montana Department of Environmental Quality requires a bond, the Forest Service must independently evaluate the size of the bond to ensure its adequacy in light of the water contamination risks, and reevaluate the bond in the event of any unforeseen environmental impacts requiring additional reclamation. See Forest Service Handbook, § 2817.24.

We appreciate this opportunity to comment under the directives of the National Environmental Policy Act and are also sending these comments to the MT DEQ for consideration under the Montana Environmental Policy Act. We appreciate your full and complete attention to these comments and the many others submitted by interested organizations, businesses, landowners and individuals. We look forward to your response.

Respectfully Submitted,

Joe Josephson
Montana Conservation Associate

Attached maps:
Occupied Grizzly Bear Habitat and Primary Conservation Area
Lynx Critical Habitat
Inventoried Roadless and Wilderness

CC:
Mary Erickson, Supervisor, Custer Gallatin National Forest
Tom Livers, Director, Montana Department of Environmental Quality (MTDEQ)
Warren McCullough, Chief, Environmental Management Bureau, MTDEQ
John DeArment, Division Administrator, Permitting and Compliance, MTDEQ
Tracy Stone Manning, Chief of Staff, Office of the Governor of the State of Montana
Lucky Minerals Exploration & Lynx Critical Habitat

Legend
- Lucky Minerals Exploration
- Lynx Critical Habitat

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Bozeman
Livingston
Yellowstone National Park

0 miles
1.25 miles
2.5 miles
5 miles
Lucky Minerals Exploration with Inventoried Roadless & Wilderness

Legend
- Lucky Minerals Exploration
- Wilderness
- Inventoried Roadless

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