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Jeff Bensen, U.S. Forest Service
6750 Navigator Way, Suite 150
Goleta, CA 93117

RE: “WCGC short-term permit”

Dear Mr. Bensen:

Woodwark Law represents the Grateful Lead Environmental Recovery Association (GLER). GLER holds a valid mining claim on the Los Padres National Forest at the Winchester Canyon Gun Club (WCGC) area. While GLER acknowledges the importance of a shooting range for law enforcement and the public, the following are comments regarding the U.S. Forest Service’s proposed short-term permit for WCGC:

Comment One (1): The 18-Day Public Comment Period is Unreasonably Short:

GLER objects to the U.S. Forest Service consideration of a short-term Special Use Permit (SUP) for WCGC as the U.S. Forest Service is knowingly interfering with GLER’s mining rights. The U.S. Forest Service also knowingly omitted important relevant facts; utilized a shortened public comment period (timed over a holiday period) and improperly proposed a categorical exemption all in an effort to discourage public comment and participation. As stated on the U.S. Forest Service’s websiteⁱ, the standard public comment period for short-term and long-term SUPs is 60 days or longer.

Comment Two (2): Paragraph One on Page One is Inaccurate and Misleading:

GLER objects to the first paragraph of File Code: 1950; 2720 as it is inaccurate and misleading since WCGC’s last known SUP expired on February 6, 2004. A Memorandum of Agreement was later signed by Forest Supervisor Peggy Hernandez on July 16, 2008 that was not to exceed two yearsⁱⁱ. The Stipulation states in part “*I. The USFS shall implement all stipulations that apply to the existing MOA for the issuance of the annual permit(s). II. This amendment shall stay in place for a period of no longer than two years from the date of execution or until such time that a term permit is issued*”. We request that this Notice be retracted and corrected before requesting Public Comment.

Comment Three (3): Agency Abuse of “Categorical Exemption” Due to Ongoing EIS:

Page two of the Proposed Action states “*My preliminary assessment is that this proposal, to issue a short-term permit...can be categorically excluded consistent with 36 CFR 220.6*”. The U.S. Forest Service is currently in the process of completing an Environmental Impact Statement (EIS) for a proposed WCGC long-term special use permit. By doing so, the U.S. Forest Service does not have the legal authority to issue a NEPA categorical exemption. For a categorical exemption to apply, there are “*a list of common agency actions that the agency has determined never require an EA or EIS because they do not significantly impact the environment*”.ⁱⁱⁱ WCGC activities are not one of those exemptions as the activities occurring on the gun range have a significant environmental impact^{iv}. The WCGC has been in operation

since July of 1955 and has never removed lead deposits from this gun range. Lead is a hazardous soil and water contaminant with known health and environmental impacts. It is only now that GLER has a mining claim to remove lead (a mineral) that the U.S. Forest Service and WCGC seek to interfere with GLER's specific property right. To prevent federal agencies from using categorical exemptions to avoid compliance with NEPA, "*a proposed categorical exemption class must receive CEQ review and approval, be published in the Federal Register, and be subjected to a public comment period*".^v Until that occurs, the U.S. Forest Service may not "categorically exclude" WCGC's short-term permit from NEPA.

Comment Four (4): GLER Objects to Condition #8 as USFS Exceeded its Authority:

The U.S. Forest Service seeks to exceed its authority by permitting WCGC to remove minerals, including lead, from GLER's duly authorized mining claim. The Mining Law of 1872, 30 U.S.C. §22 et seq., allows citizens to enter federal land to explore for valuable minerals and file for a mining claim, which GLER did. Mining claimants are granted a right of possession as a specific property interest that confers a right to mine on public land. GLER filed a valid Plan of Operation with the U.S. Forest Service in April 2017. For unknown reasons the U.S. Forest Service has yet to approve it. An appeal was filed within the statutory time period. 30 U.S.C. §612 (b), (in part) states "*...this retained right was subject to the condition that the **United States and other users** (emphasis added) not endanger or materially interfere with mining operations*". A mining right, while superior to other leases or permits on public land, does not interfere with public and private activities on their claim. However, the public (including businesses, organizations and clubs) may not interfere with GLER's mining claims or remove minerals due to their specific property interest. GLER is still waiting for a Hearing Date on this Appeal.

GLER Requests a New Condition: "*Prior to the continued operation of the WCGC, existing lead deposits and other minerals on the claim be removed by the underlying minerals rights holder*". GLER is prepared to act immediately following approval of their Plan of Operation.

Comment Five (5): New Developments or Operations Not Included in this Proposed Action:

GLER objects to the prohibited actions section number "2" (page 2) which states (in part) "*The following actions would be prohibited: New developments or operations not included in this proposed action*". This statement infers GLER's mining claim would be prohibited from mining lead and other minerals on their claim. Supra, 30 U.S.C. §612 (b). This mining claim, by law, is exempt from such prohibitive actions by the U.S. Forest Service and WCGC. The U.S. Forest Service must deny WCGC's application for a short-term Special Use Permit (SUP) until GLER's Plan of Operation is approved.

Comment Six (6): U.S. Forest Service Failed to Consult with Other Federal Agencies:

GLER objects to number "9" (page one). The U.S. Forest Service failed to consult with federal agencies, including the U.S. Fish & Wildlife Service, the Environmental Protection Agency, etc. regarding potential impacts from on-going operations of the WCGC. The U.S. Forest Service is in the process of completing an Environmental Impact Statement (EIS) for WCGC's long-term special use permit already scheduled for February 2018. An EIS is required because WCGC's activities have and will continue to result in potential significant impacts to the environment. These impacts affect federally listed endangered species, including the California condor, which is attempted to be mitigated by "authorizations and restrictions" in the U.S. Forest Service letter.

Comment Seven (7): WCGC's Short-Term Permit Conflicts with its Own Agency's Form:

GLER objects to the fact that the U.S. Forest Service has reached conclusions which do not justify the approval of WCGC's application for a Short-term Special Use Permit (SUP). See U.S. Department of Agriculture - Forest Service Form FS-2700-25 "*Temporary Special – Use Permit*".^{vi} Specifically, numbers "11", "12", and "14" as follows:

7a. Number “11” – *“The holder agrees to permit the free and unrestricted access to and upon the premises at all times for all lawful and proper purposes not inconsistent with the intent of the permit or with the reasonable exercise and enjoyment by the holder of the privileges thereof”*. Currently, WCGC has and continues to interfere with GLER’s mining claim, including denying access. A SUP, of which WCGC’s SUP expired years ago, does not confer a property interest in public lands. GLER, on the other hand, has a specific property right. Therefore, WCGC’s SUP must be conditioned upon the U.S. Forest Service’s approval of GLER’s Plan of Operation for their mining claim.

7b. Number “12” – *“This permit is subject to all valid existing rights and claims outstanding in third parties”*. The WCGC is subject to GLER’s valid existing rights and claims. The U.S. Forest Service has interfered with GLER’s mining claim by denying the Plan of Operation without valid explanation. Further, it attempts to unlawfully convey property rights to WCGC in violation of 30 U.S.C. §612. WCGC cannot have property rights as specified in the form. The U.S. Forest Service must include protections for GLER’s specific property rights prior to any approval of WCGC’s SUP.

7c. Number “14” – *“This permit is a license for the use of federally owned land. It does not grant any interest in real property. This permit is not transferable. The holder shall not enter into any agreements with third parties for occupancy of the authorized premises and improvements”*. The removal of lead and other minerals upon this area by WCGC violates several laws. Currently, WCGC has several agreements with third parties (commercial businesses), some of whom are current WCGC Board members, operating on the Los Padres National Forest. The current Forest Ranger is fully aware and seems unconcerned by these overt violations, even with the likelihood of lawsuits that the public would have to fund. As noted on WCGC’s 2004 SUP, “page 1, I.C. License”, they have violated this condition by actively taking steps to steal GLER’s real property. The SUP provisions specifically deny *“any permanent possessory interest in real property”*.^{vii} The U.S. Forest Service also continues to interfere with GLER’s mining claim without authorization.

Therefore, GLER requests the U.S. Forest Service deny the WCGC application for a short-term permit unless and until the U.S. Forest Service approves GLER’s Plan of Operation to remove lead and other minerals from their claim. The U.S. Forest Service currently has a proposed 20-year SUP for WCGC for February 2018, of which there will be a comment period, making this short term permit unnecessary.

Sincerely,

L.G. Woodwark

Lorraine Woodwark, Esq.
Attorney for GLER

ⁱ www.fs.fed.us/special-use-permit-application

ⁱⁱ Winchester Special Use Permit (SUP), page 2, II.A. Expiration “02-06-2004”. Memorandum of Agreement (MOA) signed July 16, 2008.

ⁱⁱⁱ Americanbar.org “The NEPA Implied Exemption Doctrine: How a Novel and Creeping Common Law Exemption Threatens to Undermine the National Environmental Policy Act’s Application to Public Lands and Civil Works” 31 May 2014

www.americanbar.org/content/dam/aba/administrative/environment_energy_resources/committees_dch/PL_robisch_first_place.authcheckdam.pdf

^{iv} 36 CFR 220.6 Cause-Effect Analysis of Categorical Exemptions

^v Americanbar.org “The NEPA Implied Exemption Doctrine: How a Novel and Creeping Common Law Exemption Threatens to Undermine the National Environmental Policy Act’s Application to Public Lands and Civil Works” 31 May 2014

www.americanbar.org/content/dam/aba/administrative/environment_energy_resources/committees_dch/PL_robisch_first_place.authcheckdam.pdf

^{vi} www.fs.fed.us/r2/recreation/special-use/forms/

^{vii} U.S. Department of Agriculture, Forest Service, SPECIAL USE PERMIT. Accepted by WCGC “2-6-03”