

Lefebvre, Michele

From: bbuttazoni@blm.gov on behalf of CCDO_LucerneROW2012, BLM_NV
<blm_nv_ccdo_lucernerow2012@blm.gov>
Sent: Monday, January 05, 2015 1:52 PM
To: Lefebvre, Michele
Subject: Fwd: Comments on Lucerne/American Flat right of way
Attachments: Comments on Lucerne-Am Flat EA.docx

Additional comment.

----- Forwarded message -----

From: **Buttazoni, Brian** <bbuttazoni@blm.gov>
Date: Mon, Jan 5, 2015 at 3:51 PM
Subject: Fwd: Comments on Lucerne/American Flat right of way
To: Lucerne ROW <lucerneROW2012@blm.gov>

----- Forwarded message -----

From: [REDACTED]
Date: Mon, Jan 5, 2015 at 3:35 PM
Subject: Comments on Lucerne/American Flat right of way
To: Brian Buttazoni <bbuttazoni@blm.gov>

Dear Brian,

I have attached some comments on the Lucerne/American Flat right of way EA. I realize the official deadline for submitting comments has passed, however I hope you can take them into consideration. I also understand you are in the process of developing a cultural resources MOA, and hopefully these comments would be useful toward that end.

By the way, did you ever find out what the story was on that Lyon County Commission agenda item?

Thank you very much for your time.

[REDACTED]

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Comments on:
 DRAFT ENVIRONMENTAL ASSESSMENT
 Comstock Mining, LLC American Flat Road/Lucerne Access Right-of-Way Amendment
 (NVN 091237) DOI-BLM-NV-C020-2013-0005-EA

The Draft Environmental Assessment released in November, 2014 by the BLM Carson City District, Sierra Front Field Office presents two conclusions regarding whether the project will cause significant effects.

The Draft EA states, with respect to the Proposed Alternative Cumulative Effects, that:

The Proposed Action would avoid or mitigate impacts to eligible cultural sites within the Project Area through an MOA and HPTP; therefore, incremental increase in cumulative effects to cultural resources from the Project would be minimal (Page 81).

With respect to visual impacts, the EA states:

The Proposed Action would not cause visual effects to historic properties within the Virginia City Historic District (Page 53).

These conclusions are unjustified, as would be any subsequent conclusions based on the Draft EA that the American Flat Road/Lucerne Access Right-of-Way project would cause “less than significant effects.”

- Potential impacts are evaluated only from the point of view—literally the line of sight—from 13 locations (“contributing historic properties or grouping of historic properties”) within the Virginia City Historic District (Page 26). } 2
- Potential impacts to the Virginia City Historic District landscape, and the Virginia City National Historic Landmark landscape are not evaluated. } 3
- Potential visual impacts are described and analyzed under what can only be described as a new doctrine of *consistent/non-consistent* use. This doctrine creates what is in effect a categorical exemption for certain kinds of modern mining activities and their visual impacts to the environment. This has no basis in NPS guidelines, nor is it defined, explained, or its use justified in the Draft EA. } 4

The relationship between the project's Viewshed APE and the Virginia City Historic District and the Virginia City National Historic Landmark is not specifically explained in the Draft EA. The Viewshed APE is initially defined on page 25:

The Viewshed APE includes Grinders [sic] Bend at the north, Devil's Gate at the Lyon/Storey county line at the south, and the Virginia & Truckee Railroad grade on the west, and the ridge east of State Route 342 on the east. For this Project, the Viewshed APE would be approximately 2,160 acres.

The Draft EA acknowledges that the various iterations of the project area lie within or include portions of the Virginia City Historic District and the Virginia City National Historic Landmark (Page 15). However, impacts to their respective landscapes are never taken into account in the discussion of the project's potential visual impacts on the environment. This despite the fact that the Draft EA itself points out the importance of landscape as a cultural resource. On page 15, the Draft EA explains how "the term 'contributing' is used when a cultural resource adds to the eligibility or listed status of a larger historic property, in this case, the Virginia City National Historic Landmark and National Historic District." The importance of landscape as the "larger historic property," and its inclusion in any analysis of visual effects seem self-apparent. But there is no explanation in the Draft EA as to why the "wider historic property" is not included in the analysis along with the selected individual historic properties.

The Draft EA does briefly address the concept of landscape as it relates to the Lucerne/American Flat right of way project. On page 51, we read, "The Virginia City Historic District is a rural historic landscape comprising tangible features that are the result of historic use of the region . . ." This statement implies that the rural historic landscape is limited to "tangible features," although these are not defined or specified. It foreshadows the Draft EA's arbitrary limitation of visual impacts to a handful of historic buildings in the Historic District—the "tangible features."

There are no sources or citations for the Draft EA's limitation of a rural historic landscape to "tangible features." The actual definition of a rural historic landscape is found in the National Register Bulletin entitled *Guidelines for Evaluating and Documenting Rural Historic Landscapes* (McClelland et al. 1999:1). It states:

For the purposes of the National Register, a rural historic landscape is defined as a geographical area that historically has been used by people, or shaped or modified by human activity, occupancy, or intervention, and that possesses a significant concentration, linkage, or continuity of areas of land use, vegetation, building and structures, roads and waterways, and natural features. (Bold text in the original.)

The Draft EA then goes on to say (Page 51):

"This section describes potential visual effects to historic properties within the Viewshed APE from the proposed action. This analysis considers the potential effects that construction, maintenance, and use of the American Flat Road and Lucerne Haul

Road would have on the eligible historic buildings and structures within the Virginia City Historic District.”

There is no explanation or justification for limiting the analysis to “eligible historic buildings and structures” while ignoring the National Landmark and Historic District landscape. The Draft EA itself clearly states that the project is situated in a rural historic landscape, which—by definition—includes a “geographical area,” which would in turn include the landscape. (*Webster’s* defines landscape as “An *expanse* of natural scenery considered in terms of the visual impression it makes” (Italics added). There is no explanation for considering only potential impacts to a small number of buildings—“historic properties”—but not impacts to the wider historic property—the landscape.

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It is not possible to accurately or realistically assess the Lucerne/American Flat right of way project’s visual impacts without taking the landscape into account. Landscape is important as a “geographical area that has historically been used by people, or shaped or modified by human activity” (McClelland et al. 1999:1). The 2,160 acre project APE is a historic landscape formed by a complex interaction through time between people and the land on which they lived and worked. The evidence of this interaction includes built, historic features as well as their landform settings, some of which remain untouched or undeveloped but still comprise an important element of the historic landscape.

The Draft EA’s conclusions with respect to visual impacts are also based on an unprecedented doctrine of *consistent/non-consistent* use. Even though this doctrine is fundamental to important conclusions in the Draft EA, it is never specifically defined. The doctrine apparently argues that modern activity, in this case open pit mining and associated ore-hauling, has no visual impact if it is somehow similar (“consistent”) to an activity that took place in the past, or in this case the period of significance for the Comstock Historic District. Any appreciation of this new doctrine is handicapped, along with the entire Draft EA, by the arbitrary elimination of the Historic District/National Historic Landmark landscape from the assessment.

The first mention in the Draft EA of *consistent/non-consistent* use occurs in in the section describing the Viewshed APE (Page 25-26):

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“The seven aspects of integrity, as defined by the National Park Service, are location, design, setting, materials, workmanship, feeling, and association. The aspects of setting, feeling, association can potentially be affected by modern, non-consistent use of the region.”

Almost any modern use of an area potentially affects the integrity of the area’s historic properties, and in fact these effects are at the heart of every cultural resource study done under Section 106 of the NHPA. The Draft EA quietly introduces a new dimension when it adds “non-consistent” to the analysis of potential effects to integrity. Even though this new wrinkle modifies a long-standing, fundamental principle of cultural resource management and consequently demands an explanation—or at least a definition—the Draft EA provides neither. The Draft EA does lead us to believe that there might also be such a thing as a

modern, “consistent” use, and it would have no impact on integrity. There is no explanation as to how we are to differentiate between “consistent” and “non-consistent,” what measurements we are to use, and what the borderline between the two is and how we are to objectively determine when it has been crossed.

There is also no precedent for the newly invented and undefined doctrine of *consistent/non-consistent* use in any Park Service publications written to guide the evaluation of cultural resources and the application of National Register Criteria. The Draft EA does cite (Page 51) the National Park Service *Guidelines for Evaluating and Documenting Rural Historic Landscapes* (McClelland et al. 1999), in describing the Virginia City National Historic District as a rural historic landscape. However, neither of the words “consistent” or “non-consistent” appear in this publication.

Park Service publications do address modern mining’s potential impacts on mining-related historic properties, however none of these venture into “consistent” vs. “non-consistent” uses. *Guidelines for Identifying, Evaluating, and Registering Historic Mining Properties* (Noble & Spude 1997:21) states, in its discussion of setting, that: “Other modern intrusions include recent mining activity that can compromise integrity of setting through the introduction of newer mass mining systems that destroy the historic mining property or leave it isolated.” There is clearly no exemption here for “consistent” mass mining systems.

A section in *National Park Service Guidelines for Evaluating and Documenting Rural Historic Landscapes* (McClelland et al. 1999:23), entitled “Identify Changes and Threats to Integrity” lists changes occurring after the period of significance that may reduce a historic landscape’s integrity. The list includes:

[M]odern methods of mining that leave large open pits or massive tailings uncharacteristic of historically significant extraction methods.

This statement comes as close as any found in Park Service publications to even approaching the *consistent/non-consistent* doctrine. But it strains credulity to presume that the statement is also meant to be reversed, and create a category of modern mining whose open pits and massive tailings do not change or threaten the integrity of a historic landscape because they are somehow “characteristic” of historically significant extraction methods. The statement specifically includes modern mining methods on a long list of changes which “may reduce the integrity of a rural landscape” (McClelland et al. 1999:23). The list is comprised of actions which, when put into place, change or threaten the integrity of historic landscapes. It is a warning, not an attempt to create a special category of mining methods and absolve them any damage they might cause to the historic landscape.

A number of other examples from the Draft EA make repeated attempts to support the doctrine of *consistent/non-consistent* use, mostly by imagining circumstances in which an open pit mine and haul roads could be slipped unnoticed into the landscape. A few of the most egregious are listed below:

- “This landscape is not a reflection of industrial activities of the Comstock Bonanza period” (Page 52).

Landscape is not a zero-sum game. It is invariably a mix of features and landforms representing a range of time periods, without necessarily “reflecting” any single period. The landscape in question includes evidence of industrial activities from the Bonanza period and other periods, as well as evidence of non-industrial activities.

- “Development associated with the large-scale operations of the 1930s substantially affected the landscape and resources of the preceding era because the equipment, structures, and buildings dating to the Comstock Bonanza were scavenged, scrapped, or replaced. Furthermore, the reprocessing of old pan-amalgamation tailings essentially removed many of the landscape features of those earlier operations” (Page 52)

These statements are not inaccurate, however they do not include evidence connecting them to the Gold Hill/American Flat area and making them relevant to evaluating impacts to the Gold Hill/American Flat landscape. They imply that all evidence of Bonanza era mining activities has been erased from the landscape, which is not close to true. They do not address the many non-mining landscape features—cemeteries, the Virginia and Truckee railroad grade, the Gold Hill townsite, Devil’s Gate, etc.—which were not affected by post-Bonanza scavenging.

- The statistics regarding reprocessed ore at the Con Chollar mill (Page 52-53) suffer from the same lack of relevancy. They are meaningless in this context if we are not told where the tailings came from, or more exactly where in the Gold Hill/American Flat area they came from and exactly how their removal changed the historic landscape.

- “Open pit mining occurred during the historic period of the Virginia City Historic District from 1859 to 1942. These historic operations were essentially modern in character, using extraction, transportation and processing methods equivalent to present-day operations of the region” (Page 53).

This is a completely unsupported, incorrect opinion presented as fact. The first sentence wrongly implies that open pit mining during the 1930s and up to the end of the period of significance in 1942 represents a continuum of open pit mining that began in 1859. It is only remotely true if open pit mining is defined as any example in which a hole was dug in the ground. Open pit mining as commonly understood did not occur on a significant scale in the Comstock until the 1930s, and was a clear departure from earlier mining methods.

The second sentence is also opinion presented as fact, without any explanation or supporting evidence. The idea that historic mining operations in 1859, or later, were “essentially modern in character” is preposterous, especially when compared to modern, i.e. present day, open pit mining. The “essential” similarity between open pit

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mining during the 1930s and modern mining is not demonstrated or explained in any way that supports comparing their differences and/or similarities.

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The Draft EA also implements the doctrine of *consistent/non-consistent* use in arguing for minimizing the Lucerne/American Flat right of way project's potential visual impacts to the landscape.

- “The reintroduction of open pit mining into an industrial mining landscape where similar methods were used historically does not detract from the historic integrity of contributing properties within the District” (Page 53).

This is opinion stated as fact. It is circular reasoning based solely on the acceptance of the doctrine of *consistent/non-consistent* use. The conclusion is not supported by any cited precedent or evidence. Consideration is apparently arbitrarily limited to the buildings mentioned previously as “contributing properties,” and does not include the landscape, which is itself a contributing property, or additional historic properties found upon it. Whether open pit mining is “reintroduced” or new has no bearing on its visual impact upon the historic landscape. Characterizing the Comstock as an “industrial mining landscape” is, again, unsupported opinion presented as fact. The Comstock is a complex and varied landscape, and no evidence is presented to justify such a narrowly selective description.

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The use of “historic integrity” and “detract” are also problematic. We can assume “detract” is meant to be synonymous with “compromise,” which is the term normally used to describe adversely affected aspects of integrity. “Detract” is an inexact term which leaves us wondering just how “detracting” from integrity affects a property’s ability to convey its significance. According to the Park Service, a property either retains integrity or it doesn’t (NPS 1998:44), a conclusion we can’t reach using such subjective measures. “Historic integrity” also muddles the argument, and casts additional doubt on the conclusion. “Historic” is vaguely descriptive, but has nothing to do with the Park Service’s concept of integrity. Use of such fuzzy terms simply glosses over the fact the Draft EA avoids any assessment of effects that includes a realistic look at the actual impacts modern open pit mining and haul roads have on setting, feeling, and association (among others).

- “The proposed function of the American Flat Haul Road and Lucerne Haul Road is consistent with the historic use of the region. The Proposed Action would not cause visual effects to historic properties within the Virginia City Historic District” (Page 53).
- “The method and scale of ore extraction and transportation proposed by Comstock Mining LLC is consistent with the methods used during historic mining operations” (Page 53).

The first of these two quotes is one of the clearest implementations of the doctrine of *consistent/non-consistent* use to be found in the Draft EA. These two sentences are

apparently meant as cause and effect, the first sentence stating a fact which makes the second statement, therefore, true. In other words, if an activity has a function “consistent” with past use it will therefore cause no visual impact. This exemption is granted without describing what the results of the activity will look like, which would seem to be fundamental to assessing its visual effects. Instead, all that is necessary is to show some commonness of purpose or function between modern and past activity, although just what that would amount to is unknown because we lack a working definition for “consistent.”

The second quote is more subjective opinion stated as fact, without the supporting information that would enable us to judge the comparison it makes between the “methods and scale” of the current proposal and the 150 plus years of mining history which preceded it. We are asked yet again to accept the key to the argument—the word “consistent”—without ever being told what it means. We are informed that the Lucerne and Hartford Pits were mined by power shovel, and the ore was transported by truck to processing facilities (Page 52), and that these methods were “comparable to present day operations” (Page 52). There is no explanation of how this “comparability,” to the extent that it exists, helps to assess visual impacts or how it supports the conclusion that the modern methods create no visual impacts. It is akin to saying because earlier miners dug holes in the ground and moved ore from one place to another, any modern version of these activities has no visual impact on the landscape or environment.

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The first fundamental problem with the Draft EA is that it arbitrarily limits itself to visual impacts to a handful of buildings, and does not address potential impacts to the Historic District and National Historic Landmark. Second, the Draft EA attempts to assess visual impacts—concluding that the Proposed Alternative has none—without ever describing, specifying, or even attempting to visualize the impacts open pit mines and haul roads have on setting, feeling, and association of historic properties and historic landscapes. (I include open pit mines because the Draft EA itself includes them [i.e. Section 4.2.1.2]). Instead of an objective analysis of what the Proposed Alternative’s impacts actually might be, and look like, they substitute an invented, ill-defined doctrine that considers only the intended function of the activity producing the impacts. It exempts these activities from assessment based upon a groundless distinction between “consistent” and “non-consistent” land use. Open pit mining and its associated haul roads change the setting, feeling, and association of historic properties and historic landscapes. These are the important changes that must be analyzed, not ignored based on a tenuous link to something that happened in the past. BLM’s argument in the Draft EA would lead us to believe the entire landscape could be subsumed into one giant open pit mine, or massive network of haul roads, without causing impacts to setting, feeling, or association so long as it was done “consistent” with past activities.

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The Draft EA, as written, is erroneous in its conclusions that the Proposed Alternative of the Lucerne/American Flat project will cause little if any visual impacts to historic

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properties. It would be equally wrong to conclude from the Draft EA that the project will have less than significant effects, and that an Environmental Impact Statement is not required. On the contrary, a proper assessment of the project might well find it has significant effects on cultural resources, and a further EIS level study is necessary to address and mitigate these effects.

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REFERENCES CITED

McClelland, L.F., J.T. Keller, G.P. Keller, and R.Z. Melnick. 1999. Guidelines for Evaluating and Documenting Rural Historic Landscapes. United States National Park Service, Washington, D.C.

National Park Service (NPS), National Register of Historic Places. National Register Bulletin: How to Apply the National Register Criteria for Evaluation. Washington, D.C.: National Park Service, 1990, revised, 1991, 1995, 1997, 1998.

Noble, Bruce J. Jr. and Robert Spude. 1997. Guidelines for Identifying, Evaluating, and Registering Historic Mining Properties. United States Park Service, Washington, D.C.