Access Fund * American Rivers * American Whitewater * Backcountry Horsemen of Washington * Cascade Forest Conservancy * Clark-Skamania Flyfishers * Conservation Northwest * Evergreen Mountain Bike Alliance * Lower Columbia Canoe Club * Mazamas * Sierra Club Loo Wit Group * The Mountaineers * The Wilderness Society * Vancouver Audubon Society* Vancouver Wildlife League * Washington Trails Association * Washington Wild * Wild Steelhead Coalition * Willapa Hills Audubon Society

June 15, 2017

James M. Peña
Regional Forester
Pacific Northwest Region 6
U.S. Forest Service
1220 SW 3rd Avenue
Portland, OR 97204

Dear Mr. Peña,

For more than 10 years, the Cascade Forest Conservancy and a host of partners have worked to protect the Green River valley and Goat Mountain near Mount St. Helens National Volcanic Monument from the development of an industrial-scale mine. The mining proposal—which has been challenged and delayed for years—threatens to devastate the Green River valley and its unique ecosystem. In anticipation of the issuance of a decision on the Goat Mountain Exploration project, the undersigned organizations write to express grave concerns about the approval of mining operations on land that was protected in 1986 using federal funding from the Land and Water Conservation Fund. Our organizations represent thousands of individuals who recreate on public lands, including lands acquired through the Land and Water Conservation Fund (LWCF).

Despite being purchased through LWCF, lands within the Green River valley have been threatened by hardrock mining since 2005. Currently, a copper, gold, and molybdenum mine is being proposed in the valley by a Canadian prospecting company, Ascot Resources. Ascot has applied for an exploratory permit to determine the value of mineral deposits underground. Exploration activities alone would impact backcountry recreation in the valley through continuous drilling and truck traffic during the summer and early fall, road construction, tree removal, and the use of toxic chemicals near the river. Exploration is a step toward a full-scale mining operation, likely with an open-pit mine and toxic tailings ponds, which would completely destroy the recreational opportunities and scenic beauty of this area. The implications of mining exploration and development within the Green River valley reach across the nation, potentially opening all federal LWCF lands to industrial-scale mining.

We request the U.S. Forest Service use its authority to deny mineral exploration within the Green River valley, and on all U.S. Forest Service lands protected using the Land and Water Conservation Fund. To protect the integrity of this important program for public recreation, industrial mining activities -- including exploration -- must be excluded from all LWCF lands.

1. **Mineral exploration and development threatens the unique ecosystem of the Green River valley that supports native fish, wildlife, and many recreational opportunities.**

The remote Green River valley sits on the northeastern border of the Mount St. Helens National Volcanic Monument. Within the valley, a unique ecosystem created from the 1980 eruption of Mount St. Helens borders surviving patches of old growth forest. The pristine Green River, a proposed Wild and Scenic River and a state-designated Wild Steelhead Gene Bank, flows through the valley before entering the Monument. The Green River supports a robust population of federally-listed native steelhead. The old-growth that survived the 1980 blast provide valuable habitat for the threatened northern spotted owl. Within the blast zone, shrubs and other small plants have grown back and provide forage for elk and bears.

People come to this area to enjoy solitude and outdoor recreation activities such as camping, hiking, hunting, fishing, and horseback riding. Popular areas for hiking, backpacking and camping include the Goat Mountain and Green River trails, and the neighboring Mount Margaret Backcountry area. For two decades, the Green River Horse Camp and several trails open to stock use in the area, including Vansen Peak, Green Mountain, Strawberry Mountain, and Goat Mountain, have been popular destinations for equestrians, hikers, campers and hunters. Local horsemen maintain more than 20 miles of Forest Service trails associated with this recreational gem each year through volunteer labor. Each year in late August, trails adjacent to or within view of Goat Mountain are part of the St. Helens International Festival of Trails (SHIFT), which include two days of mountain biking and one day of trail maintenance in and around the Mount St. Helens National Volcanic Monument. Additionally, the Green River is a whitewater paddling destination downstream from the proposed mine development. Mt. St. Helens attracts climbers and mountaineers from around the country and the world. Unique places like the Green River valley offer treasured opportunities for outdoor recreation. The area's scenic beauty, proximity to the Monument, and outdoor recreation opportunities were the basis of the Forest Service's purchase of lands within the Green River valley using LWCF funds.

2. **The intent and purpose of the Land and Water Conservation Fund is to safeguard important natural and cultural areas, not open these lands to destructive activities such as mining.**

Congress established the Land and Water Conservation Fund (LWCF) in 1964 to safeguard important natural and cultural areas, and to provide recreation opportunities to all Americans. For over fifty years the LWCF program has protected nearly five million acres of public lands without spending any taxpayer dollars. The primary source of revenue for LWCF is from oil and gas leases on the Outer Continental Shelf. The goal of LWCF is to use revenues from nonrenewable resources to permanently conserve public lands and the associated trails, open spaces, and wildlife habitat.

The LWCF Act was amended in 1976 to further recognize the recreation, open space, and wildlife preservation aspects of LWCF funding. Congress stated that lands purchased by the Forest Service with

LWCF funds must be "primarily of value for outdoor recreation purposes."[1] Also, Congress explained the purpose of allocating funds for the purchase of lands with LWCF money:

> The purposes of this part are to assist in preserving, developing, and assuring accessibility to all citizens of the United States of America of present and future generations … such quality and quantity of outdoor recreation resources as may be available and are necessary and desirable for individual active participation in such recreation and to strengthen the health and vitality of the citizens of the United States by (1) providing funds for and authorizing Federal assistance to the States in planning, acquisition, and development of needed land and water areas and facilities and (2) providing funds for the Federal acquisition of development of certain lands and other areas.

16 U.S.C. § 460*l*-4.

LWCF has been critical to preserving public lands with high conservation and recreation values for future generations to enjoy. Congress created this legacy to mitigate the impacts of offshore oil and gas extraction, and maintaining the integrity of this program and its public lands is essential.

Furthermore, land trusts throughout the nation and here in Washington State rely on the promise of the Land and Water Conservation Fund to ensure management of lands purchased by the federal government for conservation and recreation. This is a fundamental mechanism that allows these organizations to preserve important conservation, scenic and recreational values for current and future generations. Allowing mine development on these LWCF lands would be breaking that trust and obligation that has endured and grown for decades.

3. The U.S. Forest Service acquired the lands within the Green River valley involved in the current mining proposal partially with LWCF.

The current mining proposal involves 900 acres in the Green River valley that were acquired by the Forest Service in 1986 from the Trust for Public Land, with approximately 730 acres acquired through donation, and 170 acres purchased with LWCF funding. When the lands were transferred, Gifford Pinchot National Forest Supervisor Robert Williams reported to Congress that the acquired property "will aid in the preservation and integrity of the Green River prior to its entering the National Volcanic Monument, and will also aid in the preservation of the scenic beauty of this area which is to become an important Monument portal."[2] From this and other documents, it is clear that the Forest Service's stated purposes for acquiring the land under LWCF were scenic beauty and outdoor recreation.

The 900 acres of public lands involved in the current exploratory drilling proposal are lands that were acquired by the U.S. Forest Service under LWCF and the Weeks Act. On these acquired lands, mining is not governed by the 1872 Mining Law which calls for mining to be a preeminent use on federal lands. In 1917, Congress authorized the Secretary of Agriculture to permit limited mineral development on lands

[1] 16 U.S.C. §460*l*-9(a)(1)(b).
[2] Letter from Robert Williams, Gifford Pinchot National Forest Supervisor to The Honorable Slade Gorton, United States Senator (Feb. 3, 1986)(on file with the Forest Service).

acquired under the Weeks Act.[3] This authority was transferred to the Department of the Interior by section 402 of the Reorganization Plan No. 3 of 1946.[4] The long-term distinction between acquired and other federal lands raises the question of whether the Interior Department may permit or lease hardrock minerals on these lands at all under the non-substantive Reorganization Plan No. 3.[5]

If exploratory drilling on these lands is considered at all, it must be pursuant to the provisions of the 1946 Reorganization Plan No. 3, which requires:

> That mineral development on such [acquired] lands shall be authorized by the Secretary of the Interior only when he is advised by the Secretary of Agriculture that **such development will not interfere with the primary purposes for which the land was acquired** and only in accordance with such conditions as may be specified by the Secretary of Agriculture **in order to protect such purposes**.[6]

Therefore, no permit, or any authorization to develop these acquired lands can occur if such an action would "interfere with the primary purposes for which the land was acquired," and only if such an action would "protect such purposes." Under the authority of the Weeks Law of 1911, the Forest Service could acquire these and other lands for the regulation of the flow of navigable streams or for the production of timber. Additionally, the Forest Service told Congress that land acquisition in the Green River valley would "aid in the preservation of the integrity of the Green River prior to its entering the National Volcanic Monument, and [would] also aid in the preservation of the scenic beauty of this area which is to become an important Monument portal." It is these primary purposes: timber production, natural water flow restoration, and preservation of the integrity of the Green River and the area's "natural scenic beauty" that have shaped historic and current use of the area.

Further, for the parcels acquired with LWCF funding, outdoor recreation must be considered a primary purpose for which the land was acquired because this is essential to the LWCF appropriation authority. In a 2014 case, a federal court confirmed that outdoor recreation must be considered a primary purpose for which the LWCF land was acquired and that the agencies must make an express determination that the exploratory drilling is not inconsistent with outdoor recreation.[7] Exploratory drilling is incompatible with the primary purpose for which the lands were acquired because the drilling will: (1) harm the integrity of the Green River; (2) interfere with outdoor recreation; (3) interfere with the habitat of local wildlife and endangered species; and (4) interfere with the scenic beauty of the area.[8]

Mining activities, including exploratory drilling, would degrade important conservation and recreation values and are inconsistent with LWCF. Ascot Resources' drilling proposal will cause negative impacts to

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[3] Act of Mar 4, 1917 (codified in 16 U.S.C. § 520).
[4] 5 U.S.C. App. 1.
[5] See George C. Coggins & Robert L. Glicksman, *Public Natural Resources Law* vol. 3, § 24:31 (C. Boardman, 2007).
[6] 5 U.S.C.A. app. § 1 (2012) (emphasis added).
[7] *Gifford Pinchot Task Force v. Perez*, No. 03:13-cv-00810-HZ, p. 20-22 (D. Or. 2014).
[8] See Gifford Pinchot Task Force et. al comments re: Goat Mountain Hard Rock Prospecting Permit Applications Modified EA p. 7-15.

scenic beauty of the land because drilling would be seen and heard by backcountry users, including hunters, anglers, and backcountry horsemen near the Green River Horse Camp. The associated toxic tailings ponds required with a gold and copper mine would be likely to fail in a seismically active area near an active volcano, destroying fish runs, making the river unsuitable for river-based recreation including paddling and fishing. A mine in this area would be at a high risk for producing acid mine drainage which would also degrade the river's cool, clean waters and make it uninhabitable for wild steelhead and other fish and unsuitable for recreational use and enjoyment.

Also, the quality of steelhead and trout fishing and other outdoor recreational opportunities would be degraded by exploratory drilling. The permitted drilling activities and associated noise, road construction, and tree removal would impair recreation for at least two years, the initial term of the prospecting permits. However, the permit may be extended for up to four years. Since this remote area is only accessible mid-summer through early autumn, the drilling activities would coincide with the peak recreation time and breeding times for game species, especially the large herds of deer and elk that roam this valley.

Furthermore, the watershed under threat by mining activities is part of the Cowlitz basin feeding the Cowlitz River. At least two local communities, Kelso and Castle Rock, rely on clean, cold, uncontaminated water as a source of safe and clean drinking water for their residents. Development of a mine would threaten these ecosystem benefits that are so important to these local communities.

While the exploratory stages of the mining project alone will negatively impact these LWCF lands, it is only step one toward a full-scale destructive mine. An industrial mine would cause extensive and irreversible harm to this pristine and scenic river valley. Previous mineral exploration within the valley conducted in the 1970s determined that the mineral deposits below the ground are low-quality. Therefore, if a mine were to be developed, it would almost certainly need to be an open-pit mine to be profitable. An open-pit mine in this location would destroy Goat Mountain, the Green River Horse Camp, and the associated trails. Additionally, the impacts to the landscape would be seen from popular recreational areas nearby, such as the Mount Margaret Backcountry and other areas within the Monument. The associated toxic tailings ponds required with a gold and copper mine would be likely to fail in a seismically active area near an active volcano, destroying fish runs and polluting downstream drinking water supplies for thousands of residents. A mine in this area would be at a high risk for producing acid mine drainage which would also degrade the river's cool, clean waters and make it uninhabitable for wild steelhead and other fish. The significant threats to the Green River and scenic beauty of the area are direct contradictions to the Forest Service's stated purposes for acquiring the land under LWCF.

4. **Opening LWCF lands in the Green River valley to mining threatens public lands that were protected from mining using LWCF, and sets a dangerous precedent for all federal lands acquired using LWCF funding.**

Throughout the nation, LWCF has been used by federal agencies to acquire private lands, often when commercial development would threaten ecological, cultural, or recreational values on adjacent federal public lands. LWCF continues to be used by communities and backcountry recreationists to protect federal lands from mining and other threats. For example, in 2014 the Uncompahgre National Forest acquired lands and former mining claims in the Ophir Valley to preserve stunning scenery, animal habitat,

and recreational opportunities that otherwise would have been negatively impacted by private development. Also, in 2010 the Forest Service used LWCF funding to acquire the New World Mine claims near Yellowstone National Park. The acquisition of these mining claims through LWCF was in direct response to the threat to water quality posed by a mine upstream of Yellowstone National Park.

The Forest Service and Bureau of Land Management can take an important step toward protecting irreplaceable public lands values and the integrity of the LWCF program by providing long-term protection for the Green River valley from mining. Public lands within the Green River valley are a mixture of acquired lands, including the lands involved in the current drilling proposal, and lands subject to the 1872 Mining Law. We request that the agencies consider withdrawing lands subject to the mining law, and remove from leasing acquired lands within the valley.

If the Forest Service and BLM allow mining activities on LWCF lands within the Green River valley, it calls into question the protection offered through LWCF. A mine approval here would imply that no LWCF lands are safe from commercial development that would destroy irreplaceable public conservation and recreation values. Ascot Resources' drilling proposal not only threatens the Green River valley, but also millions of acres nationwide that have been conserved through LWCF. For these reasons, we urge the agencies to deny the proposed exploratory drilling permits and begin the process to permanently withdraw from mining and remove from mineral leasing lands within the Green River valley.

Sincerely,

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