WYOMING MINING ASSOCIATION

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January 16, 2024

The Honorable Sherry R. Haywood
Assistant Secretary
Securities and Exchange Commission
100 F St., NE
Washington, D.C. 20549-1090

Re: Proposed Rule Change to Amend the New York Stock Exchange Listed Company Manual to Adopt Listing Standards for Natural Asset Companies – File Number SR-NYSE-2023-09

Dear Assistant Secretary Haywood:

The Wyoming Mining Association (WMA) is a statewide trade organization that represents and advocates for 33 mining company members producing bentonite, coal, trona (natural soda ash), uranium, and lignite, as well as companies developing gold and rare earth element deposits. WMA also represents over 100 associate member (service and supply) companies, one electricity co-op, and one advanced nuclear power company.

WMA has significant concerns with the Securities and Exchange Commission's (SEC) October 4, 2023, proposed rule at Federal Register Volume 88, No. 191, Pages 68811-68819 to amend the New York Stock Exchange (NYSE) Listed Company Manual to adopt listing standards for Natural Asset Companies (NAC).

The rule as proposed clearly contemplates that NACs include public lands. WMA believes the establishment of NACs on public and US Forest Service lands is unlawful as it would conflict with the Federal Land Management and Policy Act (FLPMA) of 1976 which governs public lands, as well as several statutes pertaining to the management of National Forest System Lands and the U.S. Mining Law, specifically the General Mining Act of 1872. WMA believes the proposed rule must be revised to clearly state that a NAC cannot involve any public lands, and that it can only apply to private lands with landowner consent, or state-owned lands where including state lands in a NAC would be consistent with the laws of that state pertaining to specific state-owned parcels.

Federal laws governing the management of the nation's public lands require these lands to be managed principally for multiple use and sustained yield, and SEC's proposed rule cannot change how public lands must be managed. FLPMA clearly states and defines that federal policy on land management be on the basis of multiple use and sustained yield. FLPMA does not define conservation as a principal or major use of public lands.

There can be no doubt that the SEC's proposed definition of a NAC directly interferes with mandated multiple use and sustained yield principle, as the proposed rule unlawfully proposes to substitute non-use for multiple use on NAC-held public lands. This is an attempt override

Congressional intent by authorizing NACs to acquire public lands and manage them to specifically prohibit multiple use and sustained yield. NACs by their very nature will act to withdraw lands from mineral entry without due process. Section 204 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1714) gives the Secretary of the Interior general authority to make, modify, extend or revoke withdrawals, but only in accordance with the provisions and limitations of that section. A NAC would not be in accordance with the provisions and limitations of Section 204 of the Federal Land Policy and Management Act of 1976. WMA believes that the SEC cannot categorically dismiss the clear multiple use and sustained yield FLPMA directives as enacted by Congress.

Under the SEC's proposed NAC listing rules, NACs would be prohibited from allowing mining, logging, fossil fuel development, and industrial-scale agriculture on NAC-held lands because these activities are explicitly and categorically defined as "*unsustainable*."

The term "*unsustainable*" is linked to the definition of sustainability. The most popular definition of "*sustainable development*" is from the 1987 document entitled *Our Common Future*, by the World Commission on Environment and Development, 1987, page 43, (https://sustainabledevelopment.un.org/content/documents/5987our-common-future.pdf) which states:

> *Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs. It contains within it two key concepts:*
> - *the concept of 'needs', in particular the essential needs of the world's poor, to which overriding priority should be given; and*
> - *the idea of limitations imposed by the state of technology and social organization on the environment's ability to meet present and future needs.*

This is a single definition taken from a document requested by the General Assembly of the United Nations (U.N.). This definition does not have the force of law within the United States. In fact the paper *Defining Sustainable Development Law* (Futrell, J.W. 2004 Natural Resources & Environment Volume 19, Number 2 pages 9 to 12 - https://scholar.google.com/scholar?q=futrell,+j.w.+Defining+Sustainable+Development+Law&hl=en&as_sdt=0&as_vis=1&oi=scholart) states:

> *"In designing the new sustainable development law, we should being mired in an effort to define the elusive concept of sustainable development"*

The SEC's proposed NAC listing rules are tied to terms that are considered "*elusive concepts*."

Putting public lands off limits to multiple use and sustained yield by sequestering them in NAC-administered conservation investment properties is fundamentally incompatible with FLPMA's mandate that public lands be managed for mining, logging, and other nonrenewable multiple uses that necessarily involve causing changes to the landscape. By disallowing "principal or major uses," the proposed rule is irreconcilable with FLPMA, and therefore unlawful.

In enacting FLPMA, Congress did not give federal agencies the power to establish conservation as a "use" to prohibit other uses and to prioritize that "use" above all others. In fact, conservation is not included in the list of multiple-uses Congress set forth in FLPMA. As Congress has not authorized any agency (including the SEC) to subordinate the multiple use directives in FLPMA by putting conservation of public lands on the same level as all other multiple uses, or establish a policy of conservation as the highest and best use of public land, the proposed rule is unlawful as written.

The SEC's proposed rule cannot usurp or interfere with these federal land management agencies' lawful jurisdiction over public lands or change the way in which these lands must be lawfully managed. The SEC cannot create NACs on public lands without Congressional action to amend FLPMA and the laws governing US Forest Service lands to authorize the SEC to create public land NACs. Unless and until Congress says otherwise, the BLM and the U.S. Forest Service must manage the public lands for multiple use and sustained yield as currently directed in Federal law.

Unfortunately, it appears that the inclusion of public lands in SEC's proposed rule seeks to accomplish an unlawful objective to put lands off-limits to multiple use in conflict with FLPMA and other public land management statutes. WMA membership is concerned that opponents of mining will use the SEC rule to create de facto private-sector land withdrawals in order to lock up the vast resources of our Nation's public lands in violation of existing laws and regulations governing these lands.

This proposed rule flies in the face of current efforts by the Federal government to develop domestic sources of critical minerals, specifically the Department of Energy's (DOE's) Critical Materials Program. The Critical Minerals Program;

> :… *coordinates research, development, demonstration, and deployment projects funded through multiple offices aimed at achieving DOE's vision to build secure, domestic critical mineral and material (CMM) supply chains*…"
>
> **Source:** *Critical Minerals & Materials Program* - https://www.energy.gov/cmm/critical-materials-project-search

The following minerals are on the critical minerals lists:

- Final 2023 Department of Energy (DOE) Critical Materials List
  - aluminum, cobalt, copper, dysprosium, electrical steel (grain-oriented electrical steel, non-grain-oriented electrical steel, and amorphous steel), fluorine, gallium, iridium, lithium, magnesium, natural graphite, neodymium, nickel, platinum, praseodymium, terbium, silicon, and silicon carbide
- Final U.S. Geological Survey (USGS) 2022 List of Critical Minerals
  - Aluminum, antimony, arsenic, barite, beryllium, bismuth, cerium, cesium, chromium, cobalt, dysprosium, erbium, europium, fluorspar, gadolinium, gallium, germanium, graphite, hafnium, holmium, indium, iridium, lanthanum, lithium, lutetium, magnesium, manganese, neodymium, nickel, niobium, palladium,

platinum, praseodymium, rhodium, rubidium, ruthenium, samarium, scandium, tantalum, tellurium, terbium, thulium, tin, titanium, tungsten, vanadium, ytterbium, yttrium, zinc, and zirconium.

Source: Federal Register / Volume 88, Number 149 / Friday, August 4, 2023 / Notices pages 51792 to 51798 - https://www.govinfo.gov/content/pkg/FR-2023-08-04/pdf/2023-16611.pdf

This proposed rule will work to deny this nation domestic sources of minerals most needed by it.

Uranium is not listed on the critical minerals lists however there is legislation related to it that is significant. *House Resolution 1042 = Prohibiting Russian Uranium Imports Act* passed the House of Representatives on December 11, 2023. This bill:

"…*bans unirradiated low-enriched uranium (i.e., uranium that has not been in a reactor) that is produced in Russia or by a Russian entity from being imported into the United States. The bill also prohibits the importation of unirradiated low-enriched uranium that has been swapped for the banned uranium or otherwise obtained in a manner designed to circumvent the ban's restrictions*."

Source: *Summary: H.R.1042 — 118th Congress (2023-2024)* - https://www.congress.gov/bill/118th-congress/house-bill/1042

Since the passage of this bill by the House of Representatives, the spot market price of natural uranium has risen from USD82.50 on December 11, 2023 to USD104 on January 12, 2024 (Source: NUMERCO - https://numerco.com/NSet/aCNSet.html).

18.2% of this nation's electricity comes from nuclear energy (Data as of October 2023 – Energy Information Agency (EIA) - https://www.eia.gov/tools/faqs/faq.php?id=427&t=3) The establishment of NACs on public and US Forest Service lands could deny this nation needed uranium to support its existing nuclear reactor fleet as well as any new reactors to be constructed in the future.

This also has implications for national defense, since all US Navy submarines and aircraft carriers are nuclear powered and require uranium, The establishment of NACs on public and US Forest Service lands could have a profound detrimental impact to national defense specifically to our nuclear navy.

The proposed rule conflicts with the US Mining Law and the right to mine. Section 22 of the General Mining Act of 1872 states that, "*Except as otherwise provided, all valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, shall be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase, by citizens of the United States and those who have declared their intention to become such, under regulations prescribed by law, and according to the local customs or rules of miners in the several mining districts, so far as the same are applicable and not inconsistent with the laws of the United States*."

The proposed rule would sequester lands away in NACs where mineral exploration and mining could no longer occur due to land use restrictions, a de facto and unauthorized withdrawal of NAC lands from operation under the Mining Law. Thus the SEC's proposed rule is in direct conflict with established bedrock law, and therefore unlawful.

Just as the proposed SEC rule cannot ignore or override FLPMA's multiple use and sustained yield mandate, it cannot upend the rights under Section 22 of the Mining Law or FLPMA's explicit policy to preserve rights under the Mining Law.

In FLPMA Section 204, Congress created a mechanism to withdraw lands from operation of the Mining Law, but withdrawals must adhere to the FLPMA Section 204 withdrawal procedures. The SEC cannot override FLPMA Section 204 to create a regulatory withdrawal mechanism to prevent mineral exploration, development, and mining on public lands within a NAC.

Likewise, WMA believes the proposed rule cannot be used to create mitigation banks where conservation credits could be sold to third parties as off-site, compensatory mitigation of impacts associated with projects elsewhere on public lands, as neither the Mining Law nor FLPMA authorize compensatory mitigation. Therefore, NACs cannot sell mitigation credits to offset impacts to public lands from multiple use projects including, but not limited to mineral exploration and mining projects.

The SEC's proposed appears to be another attempt to implement the Administration's carefully orchestrated plan to use the SEC (and other agencies) to create the business model for private-sector conservation investments as a way to implement the public lands conservation leases. Such conservation leases violate FLPMA's multiple use directives and rights under the U.S. Mining Law. Just as the Bureau of Land Management is statutorily precluded from implementing the conservation leases in its Proposed Conservation and Landscape Health Rule, the SEC is similarly barred from including public lands in NACs. The SEC has no statutory basis for creating a regulatory mechanism to authorize what is tantamount to de facto private-sector land withdrawals to set aside public lands for their "ecosystem services."

WMA members take conservation and stewardship very seriously. Accordingly, they strive to protect air, land, water, plant, animal, and cultural resources before, during, and after mining operations. Our members also take great care to comply with all federal, state, local, and tribal laws and regulations. We support reasonable, practical, and legally sound regulations and land planning that ensure appropriate environmental protections while still allowing domestic mining to be viable, practical, and globally competitive.

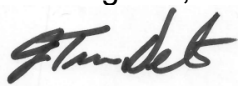
Regretfully, WMA see the proposed rule as yet another attempt by the Biden Administration to lock up land and mineral development in a time when domestic mineral production is more important than ever. Closing off public lands for responsible multiple use and development will not only cost Wyoming in terms of jobs and revenue, but increase our dependence on foreign minerals in very uncertain times. Incidentally, there is no assurance that a foreign entity would not be able to take advantage of the proposed rule and take American public land out of production. Large foreign entities (both governmental and private) could exploit this proposed rule to block access to resources on this nation' public lands, in essence stranding

or sterilizing them, rendering them inaccessible and unextractable, potentially at our time of greatest need.

In conclusion, WMA respectfully requests that the SEC revise the proposed rule to clearly prohibit including public lands in NAC landholdings. The proposed rule as written authorizing public land NACs is unlawful because Congress has not authorized the SEC or any other federal agency to subordinate the multiple use directives in FLPMA and other public land laws. None of the country's laws governing public land use put conservation on the same level as all other multiple uses or establish policy preferences that functionally make conservation the highest and best use of public lands.

The Wyoming Mining Association appreciates the opportunity to comment, and associates itself with technical and legal objections to the proposed rule as laid out in comments submitted by the state of Wyoming, the Women's Mining Coalition, the National Mining Association, and the Essential Minerals Association.

Best regards,



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