



American Exploration &
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Shannon Estenoz, Assistant Secretary for Fish and Wildlife and Parks
Katherine Harrigan, Division of Natural Resources and Conservation Planning, National Wildlife
Refuge System
Public Comments Processing
Attn: FWS–HQ–NWRS–2022–0106
U.S. Fish and Wildlife Service
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Submitted electronically on Regulations.gov

Dear Ms. Harrigan and Assistant Secretary Estenoz,

The American Exploration & Mining Association (“AEMA”) appreciates the opportunity to share our concerns and comments on the proposed rule and proposed policy updates of the U.S. Fish and Wildlife Service (“FWS”), *National Wildlife Refuge System; Biological Integrity, Diversity, and Environmental Health* (individually, the “Proposed Rule” and “Proposed Service Manual Update,” and collectively “BIDEH Updates”).¹

AEMA is a 129-year-old, 1,800-member national trade association representing the minerals industry with members residing in 46 U.S. states, 7 Canadian provinces or territories and ten other countries. AEMA is the recognized national voice for exploration, the junior mining sector, and maintaining access to public lands, and represents the entire mining life cycle, from exploration to reclamation and closure. More than 80 percent of our members are small businesses or individuals who work for small businesses. Our members have extensive first-hand experience with exploring for mineral deposits, finding and developing mineral deposits, permitting exploration and mining projects, operating mines, reclaiming mine sites, and ensuring that exploration and mining projects comply with all applicable federal and state environmental laws and regulations. Indeed, AEMA’s members operate their respective exploration and mining activities in a responsible manner through a wide range of social and environmental conditions across the United States, and their operations are subject to extensive environmental evaluations at the project level to ensure resource protection through federal and state permitting actions. Moreover, our members extract the minerals necessary for renewable energy, electric vehicles, and modern technology.

¹ *National Wildlife Refuge System; Biological Integrity, Diversity, and Environmental Health*, 89 Fed. Reg. 7345 (Feb. 2, 2024) (Docket No. FWS–HQ–NWRS–2022–0106, RIN 1018–BG78) (*hereinafter* “Proposed Rule”).

AEMA acknowledges that the FWS has a statutory mandate to manage current National Wildlife Refuge System lands (“System Lands”) in a way that maintains the biological integrity, diversity, and environmental health (“BIDEH”).² However, AEMA has concerns that, if adopted as-is, the BIDEH Updates may have complex and far-reaching effects— that have not been fully evaluated—on our member mining companies, as well as various other sectors of the economy such as ranching, on both public and private lands. AEMA is concerned that such effects may be contrary to the statutes governing the National Wildlife Refuge System, public lands, and mining, and may additionally frustrate the Biden administration’s goals for promoting a renewable energy transition sourced with domestic minerals. Specifically, AEMA is concerned that the potential ramifications of the BIDEH Updates include:

- (1) blanketly applying BIDEH policies to an array of lands that the public does not understand to be a part of the National Wildlife Refuge System, including conservation easements;
- (2) impeding the exploration and development—on public and currently private land—of minerals that are essential for modern technology, including renewable energy and medical devices, through new acquisitions to the National Wildlife Refuge System;
- (3) effecting mineral withdrawals of public lands without complying with the statutory and regulatory processes for such withdrawals;
- (4) interfering in matters outside of the statutory scope of the National Wildlife Refuge System, including interfering in the planning and regulatory processes of *other* federal agencies and tribal, state, and local governments with respect to both public *and private* property; and
- (5) conflicting with the multiple-use mandate imposed by statute on public lands, as well as several other statutes that prioritize mineral development.

Further details and explanations as to AEMA’s concerns and requests for clarification are included below.

I. SWEEPING AND UNIFORM APPLICATION OF BIDEH TO NEW LANDS

The BIDEH Updates blanketly and surreptitiously apply BIDEH policies to an array of lands that the public does not understand to be a part of the National Wildlife Refuge System, including conservation easements. AEMA is dually concerned that: (1) this application of BIDEH to land interests such as conservation easements is misleading to the public and obscures the public’s ability to impact the full and true impacts of the BIDEH Updates; and (2) a one-size-fits-all approach ignores the unique needs of individual areas, including biological needs as well as the needs of local communities, local economies, and local governments, and consequently will degrade public relations.

The statute, Proposed Rule, Proposed Service Manual Update, and other FWS manuals and handbooks use varying terminologies to describe the lands to which BIDEH concepts apply, and use varying definitions of those terms. This variation is likely to cause confusion, and may also leave the public feeling deceived because it subsumes a broader array of lands into the BIDEH

² See 16 U.S.C. § 668dd(a)(4)(B).

umbrella than at first meet the eye—including conservation areas and conservation easements managed by the FWS, the designation and acquisition of which FWS has recently prioritized.³ This is a far broader application of BIDEH than what the public would commonly understand to be the National Wildlife Refuge System.

The statute applies BIDEH to the administration of “the System.”⁴ The Proposed Rule applies BIDEH to “national wildlife refuges, both individually *and as a network*,” and to “refuge *ecosystems and all their components* across processes across multiple spatial scales.”⁵ The Proposed Service Manual Update applies its BIDEH management directives to “to all Refuge System units.”⁶ The statute and current regulations define “refuge” as “a designated area of land, water, or an interest in land or water within the System, but does not include Coordination Areas.”⁷ The “System,” in turn, is defined as “the National Wildlife Refuge System designated under [16 U.S.C. § 668dd(a)(1)],”⁸ which broadly includes “the various categories of areas that are administered by the Secretary for the conservation of fish and wildlife, including species that are threatened with extinction, all lands, waters, and interests therein administered by the Secretary as wildlife refuges, areas for the protection and conservation of fish and wildlife that are threatened with extinction, wildlife ranges, game ranges, wildlife management areas, or waterfowl production areas.”⁹ The FWS’s Conservation Easement Handbook clarifies that the FWS considers “conservation easements” to be “subject to the same laws, regulations, and policies as any other real property that is part of the National Wildlife Refuge System.”¹⁰ Further, the FWS Strategic Growth Policy expressly includes “conservation areas” in its use of the term “refuge.”¹¹ And the

³ For example, the FWS established the Bear River Watershed Conservation Area in 2013, which approves the purchase of up to 920,000 acres of conservation easements in a 4.5-million-acre area of Idaho, Wyoming, and Utah, and 30 acres of conservation easements were added in 2016 as a “unit of the National Wildlife Refuge System.” *See* 81 Fed. Reg. 93951 (Dec. 22, 2016). In 2022, the FWS established the Lost Trail Conservation Area as a unit of the National Wildlife Refuge System, which includes 38,052 acres of conservation easements in Flathead and Lincoln counties, Montana, and up to 100,000 acres of conservation easements within the project boundary may be added. *See* 87 Fed. Reg. 62113 (Oct. 13, 2022). And in 2023, the FWS proposed the establishment of the Missouri Headwaters Conservation Area, which is a 5.7-million-acre area in Montana that approves the purchase of up to 250,000 acres of conservation easements. *See Proposed Missouri Headwaters Conservation Area*, U.S. Fish & Wildlife Service (last visited Feb. 29, 2024), <https://www.fws.gov/project/proposed-missouri-headwaters-conservation-area>.

⁴ *See* 16 U.S.C. § 668dd(a)(4)(B).

⁵ Proposed Rule, at 43 C.F.R. § 29.3 and §29.3(a).

⁶ Proposed Service Manual Update, § 3.2.

⁷ 16 U.S.C. § 668ee(11); *see also* 50 CFR § 25.12.

⁸ 16 U.S.C. § 668ee(14).

⁹ 16 U.S.C. § 668dd(a)(1); *see also* 50 CFR § 25.12 (“National Wildlife Refuge System, and System mean *all lands, waters, and interests therein administered by the U.S. Fish and Wildlife Service as wildlife refuges, wildlife ranges, wildlife management areas, waterfowl production areas, coordination areas, and other areas for the protection and conservation of fish and wildlife* including those that are threatened with extinction...”)

¹⁰ *Conservation Easement Handbook (Supplements 601 FW 6 (Administration of National Wildlife Refuge System Conservation Easements))*, at 9, NATIONAL WILDLIFE REFUGE SYSTEM, U.S. FISH & WILDLIFE SERVICE (October 2022), <https://www.fws.gov/sites/default/files/policy/files/ConservationEasementHandbook.pdf> (*hereinafter Conservation Easement Handbook*).

¹¹ *See Strategic Growth Policy*, 602 FW 2, U.S. FISH & WILDLIFE SERVICE (Sept. 4, 2014), <https://www.fws.gov/policy-library/602fw5>.

FWS webpage on conservation areas states that conservation areas are a “a type of national wildlife refuge that consists primarily or entirely of conservation easements on private lands.”¹²

Piecing those terms and definitions together, the BIDEH Updates would apply BIDEH to all lands in the System, which includes not only what the public commonly understands to be a “refuge,” but also all “other areas” managed by the FWS “for the protection and conservation of fish and wildlife,” which already includes millions of acres of conservation areas and conservation easements. The FWS has already designated 13 conservation areas,¹³ and has recently prioritized adding more, such as: (i) the Lost Trail Conservation Area that was added in 2022 as a unit of the National Wildlife Refuge System and includes 38,052 acres of conservation easements in Flathead and Lincoln counties, Montana, and up to 100,000 acres of conservation easements within the project boundary may be added;¹⁴ and (ii) the overwhelmingly large, 5.7-million-acre Missouri Headwaters Conservation Area in Montana that was proposed in 2023 and would allow the purchase of up to 250,000 acres of conservation easements.¹⁵ It is concerning that the BIDEH updates could lead to the FWS’s application of BIDEH to millions of acres of current, currently proposed, and future FWS conservation areas and conservation easements. This is a much farther-reaching application of BIDEH than what the public commonly understands to be a FWS refuge.

While AEMA acknowledges that FWS has a statutory mandate to manage System Lands in a way that maintains BIDEH,¹⁶ AEMA is concerned that the BIDEH Updates may deceive the public by roping in far more areas than what the public understands to be refuges. If the public does not fully understand where and how the BIDEH Updates would apply, then the public is unable to fully evaluate and meaningfully participate in the rulemaking process, which process is mandated to involve and meaningfully consider the public’s input. AEMA is further concerned that a blanket, nationwide application of BIDEH ignores the unique needs of individual areas, including biological needs as well as the needs of local communities, local economies, and local governments. Such a one-size-fits-all approach that takes away any local autonomy is likely to degrade trust between FWS and the local communities and local businesses companies who will be impacted the most by these policies. Moreover, AEMA is concerned that, when further examining how the BIDEH Updates plan to utilize BIDEH in the name of protecting System Lands, such broad application will significantly impede land uses such as mining and ranching, as discussed in more detail in the section below.

II. IMPEDING EXPLORATION AND DEVELOPMENT OF IMPORTANT MINERALS THROUGH EXPANSION OF THE NATIONAL WILDLIFE REFUGE SYSTEM

Not only do the BIDEH Updates implicitly apply BIDEH to a broad new array of lands that may not be commonly understood as National Wildlife Refuges, they also promote the addition of new lands to the System. AEMA acknowledges that FWS has a statutory mandate to manage System Lands in a way that maintains BIDEH,¹⁷ and AEMA understands this mandate with respect to what is commonly understood to include System Lands. But the BIDEH Updates push this

¹² *Conservation Area*, U.S. Fish & Wildlife Service, <https://www.fws.gov/glossary/conservation-area> (last visited Feb. 29, 2024).

¹³ *Conservation Area*, U.S. Fish & Wildlife Service, <https://www.fws.gov/glossary/conservation-area> (last visited Feb. 29, 2024).

¹⁴ See 87 Fed. Reg. 62113 (Oct. 13, 2022).

¹⁵ See also *supra* note 3.

¹⁶ See 16 U.S.C. § 668dd(a)(4)(B).

¹⁷ See 16 U.S.C. § 668dd(a)(4)(B).

mandate beyond the bounds of the statutory intent in affecting lands arguably outside the System and/or in emphasizing the addition of new lands to the System.

Specifically, the Proposed Rule promotes the *expansion* of the National Wildlife Refuge System through “acquir[ing] lands when necessary to ... ensure biological integrity, diversity, and environmental health” and “connect habitat.”¹⁸ The Proposed Rule’s repeated references to “connectivity,”¹⁹ “connect[ing] habitat,”²⁰ and conservation “across multiple spatial scales,”²¹ together with its instructions to pursue “appropriate actions” to address “threats to refuge resources [that] arise *outside refuge boundaries*,”²² further indicate the FWS’s intent to link currently separate National Wildlife Refuge System lands with each other by acquiring and adding the intervening lands to the System.

The Proposed Service Manual Update is even more replete with instructions to acquire and add new lands to the National Wildlife Refuge System. Specifically, it instructs the FWS to: promote “ecological connectivity” by “acquir[ing] lands to ... ensure BIDEH”²³; “take a *proactive* approach” to “acquiring” lands for “*enhancing* the BIDEH of the Refuge System at all spatial scales”²⁴; create “connected, and intact habitats,” “habitat corridors, linkages, or contiguous blocks”²⁵; “*maximize* the size of contiguous habitat, restore and maintain connectivity between blocks of habitats, and protect wildlife corridors”²⁶; and “acquire additional lands to establish wildlife corridors that improve connectivity and allow species movement from one habitat to another in support of BIDEH.”²⁷ It also charges the Chief of the Refuge System with “[e]nsuring that the national land acquisition strategy for the Refuge System is designed to *enhance* the BIDEH of the Refuge System at all spatial scales,”²⁸ which further implies that the FWS intends to emphasize expansion of the Refuge System. And, like the Proposed Rule, the Proposed Service Manual Update instructs the FWS to take action to promote BIDEH not only on established “refuges” but also “associated ecosystems,”²⁹ “across multiple spatial scales,”³⁰ and address “events occurring off refuge lands”³¹ and “outside refuge boundaries.”³²

Although AEMA supports the protection of biological integrity, diversity, and environmental health, we oppose such a dramatic push to *expand* the National Wildlife Refuge System, which will immediately halt mineral exploration, prospecting, locating, and filing of mining claims on lands added to the System where the minerals are federally owned.³³ Further, to the extent the

¹⁸ See Proposed Rule at 43 C.F.R. § 29.3(c)(2).

¹⁹ See Proposed Rule at 43 C.F.R. § 29.3(b).

²⁰ See Proposed Rule at 43 C.F.R. § 29.3(c)(2).

²¹ See Proposed Rule at 43 C.F.R. § 29.3(a).

²² See Proposed Rule at 43 C.F.R. § 29.3(c)(5) (emphasis added).

²³ See Proposed Service Manual Update, § 3.10(B).

²⁴ See Proposed Service Manual Update, § 3.10(B) (emphasis added).

²⁵ See Proposed Service Manual Update, § 3.10(B).

²⁶ See Proposed Service Manual Update, § 3.11(B)(2) (emphasis added).

²⁷ See Proposed Service Manual Update, § 3.10(B).

²⁸ See Proposed Service Manual Update, § 3.7, Table 3-1 (emphasis added).

²⁹ See Proposed Service Manual Update, § 3.5(C).

³⁰ See Proposed Service Manual Update, § 3.6(A)(1).

³¹ See Proposed Service Manual Update, § 3.15(A).

³² See Proposed Service Manual Update, § 3.19(E) (instructing the FWS to pursue “appropriate action” to address “threats to refuge resources [that] arise outside refuge boundaries.”)

³³ See 50 C.F.R. § 27.64 (“Prospecting, locating, or filing mining claims on national wildlife refuges is prohibited unless otherwise provided by law.”).

lands newly acquired for the System have non-federal mineral rights (e.g., conservation easements where the minerals are reserved for the landowner), even if exploration and development of non-federal minerals would be technically permissible, adding them to the System will have a chilling effect on such exploration and development by imposing more stringent limitations on surface occupancy and other regulatory restrictions on operations.³⁴ Indeed, the FWS’s Conservation Easement Handbook and Service Manual on the Administration of National Wildlife Refuge System Conservation Easements both instruct the FWS to, “whenever possible, include in the easement document authority for the Service to require and approve a permit to access any associated subsurface minerals.”³⁵

This expansion of the System is also likely to suppress mining outside of but near System Lands. This is because mineral operations typically need to be of a certain size to be economically feasible. And, unlike some other types of land uses like recreation, mining operations can’t simply shift to another location—the minerals are where the minerals are. Precluding mining on large, newly acquired areas of the Refuge System, including large conservation areas, may leave the remaining outside areas as legally available for mining, but practically and economically unavailable, particularly in light of the emphasis of the BIDEH Updates on interfering with neighboring land use planning.

Such an expansion of the National Wildlife Refuge System—and associated halting of new mineral development—is an extreme measure that is unnecessary to protect biological integrity, diversity, and environmental health. AEMA members’ mining activities are subject to a comprehensive suite of regulations designed to protect the natural environment, wildlife, and human health, and AEMA members are committed to responsible mineral development and operations. Enforcing existing environmental regulations and allowing responsible, compliant companies to continue their lawful activities is a better-reasoned approach than the proposed wholesale elimination of mining through expansion of System Lands.

Moreover, expansion of the National Wildlife Refuge System with the aim of protecting fish and wildlife against the impacts of climate change could actually have the opposite effect by hindering the transition to renewable energy. Mining for minerals like copper that are designated by the U.S. Department of Energy as “critical materials for energy”—meaning they are deemed essential to energy technologies and have a high-risk for supply chain disruption³⁶—are necessary to facilitate a transition to a clean energy economy. Indeed, such minerals are commonly used in electric utility equipment, electric vehicles, solar and wind power systems, and building construction, among other things. Many other minerals, such as gold and silver, are crucial in making technological advancements, such as in many electronic devices as well as in medical equipment. Likewise, the fifty minerals designated by the United States Geological Survey as “critical minerals”³⁷ are important for the nation’s technological progress.

Currently, the United States is heavily reliant on foreign countries for such minerals and materials that are essential to modern technology and the clean energy transition. This reliance on imported

³⁴ See 50 C.F.R. § 29.32 (addressing non-federal mineral rights within the National Wildlife Refuge System).

³⁵ See Conservation Easement Handbook, § V(j); see also *Administration of National Wildlife Refuge System Conservation Easements*, 601 FW 6, at § V(i), p.8§, U.S. FISH & WILDLIFE SERVICE (Oct. 27, 2022), <https://www.fws.gov/policy-library/601fw6> (hereinafter “*Conservation Easement Service Manual*”).

³⁶ See *What are Critical Materials and Critical Minerals?*, U.S. Dep’t of Energy, <https://www.energy.gov/cmm/what-are-critical-materials-and-critical-minerals> (last visited Jan. 10, 2024).

³⁷ See 2022 Final List of Critical Minerals, 87 Fed. Reg. 10381 (Feb. 24, 2022).

materials presents the risk of uncertainty of availability and pricing of materials necessary to meet our domestic technological needs and environmental goals. In addition, outsourcing our nation's mineral needs can mean that mining takes place in countries that lack similarly rigorous environmental standards for mining as the United States, which may lead to avoidable environmental degradation in those countries.

Precluding domestic production of critical materials, critical minerals, and other important hard-rock minerals via the BIDEH Updates would not only frustrate the goals of the Biden administration to shift to clean energy, tackle climate change, and promote environmental stewardship—it would also run counter to the Biden administration's goals to invest in domestic jobs, domestic production and manufacturing, and the U.S. economy. Specifically, Executive Order 14017, "On America's Supply Chains," makes it a presidential priority to "revitalize and rebuild domestic manufacturing" and "domestic production," and directs cabinet officials to develop policies to "sustainably reshore[] supply chains," "develop[] domestic supplies," and encourage domestic "investment in critical goods and materials." In addition, the Inflation Reduction Act incentivizes electric vehicle batteries and solar and wind projects made with domestic content or domestic supply chains.³⁸ Because the BIDEH Updates would facilitate putting both public and private lands off-limits to mineral exploration and development, it consequently could thwart President Biden's stated goals to strengthen domestic critical minerals supply chains in order to lessen the Nation's dependency on foreign minerals.

III. UNAUTHORIZED MINERAL WITHDRAWALS

The effect of the BIDEH Updates would be to either preclude or significantly hinder mining and mineral exploration on a growing area of land, through the proposals' encouragement of adding lands to the National Wildlife Refuge System. To the extent that such additions to the National Wildlife Refuge System come from land that is currently managed by the U.S. Bureau of Land Management ("BLM") or U.S. Forest Service ("Forest Service") and open to mineral exploration and development, the effect of adding such land to the National Wildlife Refuge System is a mineral withdrawal and/or a conveyance of public lands, both of which implicate a suite of statutory and regulatory procedural requirements.

First, the Federal Land Policy and Management Act ("FLPMA") requires that, when the Secretary of the Interior conveys title to public lands, generally only the *surface* may be conveyed, while the minerals and "the right to prospect for, mine, and remove the minerals" must be reserved.³⁹

Second, minerals belonging to the United States, including those underlying lands managed by the BLM land and Forest Service land, are statutorily required to allow mineral exploration and

³⁸ The Inflation Reduction Act of 2022, Pub. L. No. 117-169, 136 Stat. 2001.

³⁹ See FLPMA Section 209, 43 U.S.C. § 1719. There is a limited exception for when the surface owner is or will be a non-Federal entity, in which case the Secretary may convey the minerals if s/he makes the findings that: "(1) that there are no known mineral values in the land, or (2) that the reservation of the mineral rights in the United States is interfering with or precluding appropriate nonmineral development of the land and that such development is a more beneficial use of the land than mineral development." *Id.* This exception does not apply to conveyances to another federal entity.

mining,⁴⁰ unless the minerals are “withdrawn” after, and only after, following one of four procedural pathways:

1. *Administrative Withdrawals.* Pursuant to FLPMA, the Secretary or Assistant Secretary of Interior Secretary may withdraw public lands from mining and mineral exploration, but subject to limitations and following specific procedures.⁴¹ Secretarial withdrawals must be published in the Federal Register⁴² and cannot take effect until after providing an “opportunity for a public hearing.”⁴³ In addition, withdrawals proposed to last more than twenty (20) years or comprise more than 5,000 acres in aggregate must generally be reported to Congress prior to taking effect.⁴⁴
2. *Presidential Withdrawals.* The President of the United States may, by Executive Order or Presidential Proclamation under the authority of the Antiquities Act of 1906 withdraw public lands from mineral exploration and to designate landmarks, historic and prehistoric structures, and other objects of historic or scientific interest.⁴⁵
3. *Congressional Withdrawals.* Congress may, through duly enacted legislation, withdraw public land from mineral exploration and mining by, for example, designating areas as Wilderness areas, National Parks, or Wild and Scenic Rivers.
4. *Federal Power Act Withdrawals.* The Federal Power Act provides for withdrawals for certain hydroelectric power developments under the authority of the Federal Energy Regulatory Commission (“FERC”).

Unless withdrawn pursuant to one of the above procedures, “all valuable mineral deposits in lands belonging to the United States . . . shall be free and open to exploration”⁴⁶ Therefore, the BIDEH Updates should be amended to clarify that if FWS intends to acquire into the National Wildlife Refuge System any public lands that are currently open to mineral exploration, such acquisitions and mineral withdrawals can only be effected after following the statutory and regulatory procedures for mineral withdrawals.

IV. INTERFERENCE IN LOCAL, STATE, AND FEDERAL MATTERS OUTSIDE THE STATUTORY SCOPE OF THE NATIONAL WILDLIFE REFUGE SYSTEM

AEMA acknowledges that the Secretary, through the FWS, is statutorily tasked with managing “the System” in way that ensures a number of specific goals, including but not limited to: maintenance of the BIDEH of the System; “effective coordination, interaction, and cooperation with owners of land adjoining refuges and the fish and wildlife agency of the States in which the

⁴⁰ See 30 U.S.C. § 22 (“[A]ll valuable mineral deposits in lands belonging to the United States . . . shall be free and open to exploration”).

⁴¹ See FLPMA Section 204, 43 U.S.C. § 1714.

⁴² See FLPMA Section 204(b), 43 U.S.C. § 1714(b).

⁴³ See FLPMA Section 204(h), 43 U.S.C. § 1714(h). Emergency withdrawals are excepted from the hearing requirement. See *id.*

⁴⁴ See FLPMA Section 204(c), (d), 43 U.S.C. § 1714(c), (d). There is a limited exception for withdrawals necessitated by “emergency,” which withdrawals must still be reported to Congress within three months after taking effect and can only last for three years. See FLPMA Section 204(e), 43 U.S.C. § 1714(e).

⁴⁵ Pub. L. No. 59-209, 34 Stat. 225 (June 8, 1906) (currently codified at 54 U.S.C. §§ 320301–320303).

⁴⁶ 30 U.S.C. § 22.

units of the System are located”; and “timely and effective cooperation and collaboration with Federal agencies and State fish and wildlife agencies during the course of acquiring and managing refuges.”⁴⁷

But the BIDEH Updates stretch the boundaries of these statutory authorizations and positions FWS as the aggressive landowner in the neighborhood who will soon wear out its welcome. Specifically, the Proposed Rule instructs FWS to pursue “appropriate actions” to address “threats to refuge resources [that] arise *outside refuge boundaries*.”⁴⁸ The Proposed Service Manual Update likewise instructs the FWS to take action to promote BIDEH not only on established “refuges” but also “associated ecosystems,”⁴⁹ “across multiple spatial scales,”⁵⁰ and address “events occurring *off refuge lands*”⁵¹ and “*outside refuge boundaries*.”⁵² The Proposed Service Manual Update even goes so far as to have an entire section on actions the FWS should take to protect “BIDEH from actions *outside of refuges*” and “events occurring off refuge lands.”⁵³ It instructs Refuge managers, with respect to “events occurring *off-refuge*,” to “regularly monitor land use proposals, changes to *adjacent lands*, and *external activities* for their potential impacts to the BIDEH of ecosystems that include refuges,” and to “engage constructively with the broader community” to “encourage compatible adjacent land uses and seek to avoid and mitigate potential adverse impacts on refuge resources by actively participating in the planning and regulatory processes of other Federal agencies and Tribal, State, and local governments having jurisdiction over public or private property affecting, or affected by, the refuge.”⁵⁴ While this language might seem initially benign, the instructions continue: “If ... a decision is made or is imminent that will result in unacceptable impacts on refuge resources, *we may take action within the legal authorities available*...”⁵⁵

In other words, under the BIDEH Updates, the FWS may bring legal action against landowners or local governments in the vicinity of System Lands, which could be in the vicinity of tens of millions of acres of conservation easements, conservation areas, and other property interests that the FWS has acquired or plans to acquire for conservation purposes. This has the potential to significantly disrupt the FWS’s relationships with landowners and local governments and disrupt land uses like mining that are important to our nation’s economy and the functioning of modern technology.

V. CONFLICTING WITH THE STATUTORY MULTIPLE-USE MANDATE FOR PUBLIC LANDS AND STATUTES PRIORITIZING NATIONWIDE MINERAL DEVELOPMENT

As discussed above, the BIDEH Updates direct the FWS to acquire new lands to add to the National Wildlife Refuge System as well as interfere with other agencies’ planning processes for lands outside of the Refuge System. This includes “actively participating in the planning and regulatory processes of other Federal agencies and Tribal, State, and local governments” in the

⁴⁷ 16 U.S.C. § 668dd(a)(4).

⁴⁸ See Proposed Rule at 43 C.F.R. § 29.3(c)(5) (emphasis added).

⁴⁹ See Proposed Service Manual Update, § 3.5(C).

⁵⁰ See Proposed Service Manual Update, § 3.6(A)(1).

⁵¹ See Proposed Service Manual Update, § 3.15(A) (emphasis added).

⁵² See Proposed Service Manual Update, § 3.19(E) (instructing the FWS to pursue “appropriate action” to address “threats to refuge resources [that] arise outside refuge boundaries.”)

⁵³ See Proposed Service Manual Update, § 3.15

⁵⁴ See Proposed Service Manual Update, § 3.15(A) (emphasis added).

⁵⁵ See Proposed Service Manual Update, § 3.15

vicinity of National Wildlife Refuges.⁵⁶ Given that many System Lands, including conservation easements, are in the vicinity of public lands managed by the BLM and Forest Service, the directive to promote BIDEH outside of refuges and in other agencies' planning process conflicts with the statutory mandates for the federal government to manage public lands for "multiple uses," including mining. Specifically, FLPMA makes it the policy of the United States to manage public lands "on the basis of multiple use and sustained yield"⁵⁷ and "in a manner which recognizes the Nation's need for domestic sources of minerals . . . from public lands."⁵⁸ Similarly, the Multiple-Use and Sustained Yield Act ("MUSY") directs that the surface of national forests be managed and developed "for multiple use and sustained yield."⁵⁹ FLPMA defines "multiple use" to include "a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and non-renewable resources, including . . . minerals."⁶⁰ FLPMA additionally designates "mineral exploration and production" as a "principal or major use" of public lands, along with domestic livestock grazing, fish and wildlife development and utilization, production, rights-of-way, outdoor recreation, and timber production.⁶¹

Moreover, FLPMA and multiple other statutes emphasize that mineral development is a national priority. Specifically, FLPMA directs that "public lands be managed in a manner which recognizes the Nation's need for domestic sources of minerals . . . from public lands."⁶² Similarly, the Mining and Minerals Policy Act of 1970 ("MMPA"), declares that "it is the continuing policy of the Federal Government in the national interest to foster and encourage private enterprise in (1) the development of economically sound and stable domestic mining, minerals, metal and mineral reclamation industries, (2) the orderly and economic development of domestic mineral resources, reserves, and reclamation of metals and minerals to help assure satisfaction of industrial, security and environmental needs... including all minerals and mineral fuels including oil, gas, coal, oil shale and uranium."⁶³ In addition, the National Materials and Minerals Policy, Research and Development Act of 1980 expressly directs the Secretary of Interior to act immediately to attain the goals set forth in the MMPA, and it calls for the Executive Office to promote goals of the MMPA within the various departments and agencies.⁶⁴

It is difficult to see how these statutes prioritizing mineral development nationwide—on both public and private land—and additionally directing the BLM and Forest Service to manage public lands for multiple-uses (which includes allowing mining and mineral exploration) can be coalesced with the FWS's policy of BIDEH, the restrictions on mineral exploration that implicitly come with BIDEH, and the BIDEH Updates' elimination and/or hindering of mining by promoting the aggressive addition of lands into the National Wildlife Refuge System.

CONCLUSION

AEMA acknowledges that the FWS must manage System lands to maintain their BIDEH. However, we are concerned that the BIDEH Updates will be used by the FWS to go beyond the

⁵⁶ See Proposed Service Manual Update, § 3.15(A).

⁵⁷ FLPMA Section 102(a)(7), 43 U.S.C. § 1701(a)(7).

⁵⁸ FLPMA Section 102(a)(12), 43 U.S.C. § 1701(a)(12).

⁵⁹ Multiple-Use and Sustained Yield Act of 1960, Section 2, 16 U.S.C. § 529.

⁶⁰ FLPMA Section 103(c), 43 U.S.C. § 1702(c).

⁶¹ FLPMA Section 103(l), 43 U.S.C. § 1702(l).

⁶² 43 U.S.C. § 1701(a)(12).

⁶³ 30 U.S.C § 21(a).

⁶⁴ See generally 30 U.S.C. §§ 1601–1605.

agency's statutory mandate to interfere with land uses outside of the System, aggressively add new lands to the System, and impede exploration and mining of minerals that are important to this nation's economy, clean energy transition, and modern technology, and may otherwise have complex and far-reaching effects that have not been fully evaluated by the public on multiple sectors of the economy. AEMA accordingly requests that the Proposed Rule and Propose Service Manual Update be amended and significantly scaled-back.

Sincerely,

A handwritten signature in black ink that reads "Mark D. Compton". The signature is written in a cursive, slightly slanted style.

Mark Compton
Executive Director