



September 17, 2020

Via Certified and Electronic Mail

Douglas Furtado, District Manager
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**Re: Petition Pursuant to Administrative Procedure Act to Take Immediate Action
Protecting the Tiehm's Buckwheat from Harm and Investigate and Prosecute Any
Persons Responsible for the Removal and/or Destruction of Plants; Requesting a
Conclusion by September 24, 2020**

Dear Mr. Furtado:

Pursuant to the Administrative Procedure Act, 5 U.S.C. § 555(b), and the Bureau of Land Management's legal authorities and responsibilities, the Center for Biological Diversity ("the Center") hereby requests that the Bureau of Land Management ("BLM") take immediate action to protect Tiehm's buckwheat (*Eriogonum tiehmii* Reveal, Polygonaceae). Earlier this week, the Center learned of and provided new and alarming information to BLM about recent incidents of collection and/or destruction of Tiehm's buckwheat (*Eriogonum tiehmii* Reveal, Polygonaceae) plants in all six subpopulation locations on Battle Mountain District BLM administered lands in Nevada, where the species is found. Approximately 40 percent of the total population may have been lost.

Tiehm's buckwheat is a BLM special status species and a candidate for listing under the Endangered Species Act, 16 U.S.C. § 1533; Department of the Interior, *Endangered and Threatened Wildlife and Plants; 90-Day Findings for Two Species*, 85 Fed. Reg. 44265 (July 22, 2020) ("90-Day Finding"). It grows only on BLM public lands at an isolated location in the Rhyolite Ridge area of the Silver Peak mountain range in central Nevada. A primary threat to the species is Ioneer Corporation's proposed Rhyolite Ridge lithium-boron mine.

Due to the species' limited range and the imminent threat from the proposed mining project, the Center petitioned the U.S. Fish and Wildlife Service ("the Service") in October 2019 to list Tiehm's buckwheat as endangered under the ESA. In response, the Service determined that substantial scientific information may support listing the species as threatened or endangered. See 16 U.S.C. § 1533(b)(3)(A); Center for Biological Diversity, PETITION TO LIST TIEHM'S

BUCKWHEAT UNDER THE ENDANGERED SPECIES ACT (Oct. 7, 2019). However, the Service has yet to make a final determination on the Center's petition. Accordingly, by letter today, the Center is also renewing its October 2019 request that the FWS list the species on an emergency basis.

Meanwhile, recent events have demonstrated that Tiehm's buckwheat urgently requires immediate protection by BLM. On September 12 and 13, 2020 the Center's Nevada State Director, Patrick Donnelly, and Dr. Naomi Fraga of the California Botanic Garden visited the Rhyolite Ridge site and discovered that approximately 40 percent of the species' total known population had been destroyed by digging and/or collection. *See* Attachment A (Letter from P. Donnelly, Center for Biological Diversity to D. Furtado, Bureau of Land Management et al, Re: *Tiehm's buckwheat large-scale destruction incident* (Sept. 15, 2020)). The full account of the Center's discovery can be found in a letter sent to BLM, Ioneer, and other interested parties on September 15, 2020; the facts will be briefly summarized here.

Mr. Donnelly and Dr. Fraga reported that thousands of individual plants had been removed or destroyed. In some cases, the entire plant had been removed, leaving near-circular holes in the ground. In other cases the buckwheat "mat" had been removed from the ground, leaving badly damaged plants behind. In still more cases plants had been partially excavated, with taproots exposed. The incident damaged all six known subpopulations established by Morefield (1995).

Mr. Donnelly and Dr. Fraga conducted a preliminary field survey, which estimated that approximately 17,000 plants had been lost. Subpopulation five may have been entirely extirpated, while subpopulations three and four suffered 90 and 80 percent mortality, respectively. The remaining subpopulations were reduced by 25-35 percent. Due to the recent nature of this discovery, the data provided by Mr. Donnelly and Dr. Fraga is largely informal and observational. However, it establishes that a large percentage of an imperiled species was recently lost in potentially a single incident or a series of incidents over recent weeks or months; that any similar events in the future could jeopardize the species' future or cause extinction; and that immediate federal protection is necessary.

We therefore request pursuant to 5 U.S.C. § 555(b) that BLM take immediate action pursuant to its Special Status Species policy and its broad authority under the Federal Land Policy and Management Act ("FLPMA"), 43 U.S.C. §§ 1701-1787, to protect what remains of the buckwheat population from any further harm. BLM has a legal obligation to protect and conserve special status species on public lands, and has ample authority under FLPMA to take all actions necessary and appropriate to prevent future losses. The APA requires that BLM conclude this matter within a reasonable time. 5 U.S.C. § 555(b) ("With due regard for the convenience and necessity of the parties or their representatives and within a reasonable time, each shall proceed to conclude a matter presented to it."). Given the existential threat presented by the recent incidents, the risk to

the species' well-being, and indeed its very existence, is more dire than ever, demanding immediate conclusion of this matter.

In FLPMA Congress declared that it is the official policy of the U.S. Government to manage all public lands “in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; [and] that, where appropriate, will preserve and protect certain public lands in their natural condition.” 43 U.S.C. § 1701(8). To that end, FLPMA provides that BLM “shall, by regulation or otherwise, *take any action necessary* to prevent unnecessary or undue degradation of the [public] lands.” 43 U.S.C. § 1732(b) (emphasis added).

Maintaining the quality of environmental values on public lands requires the protection and preservation of rare endemic species such as Tiehm's buckwheat; indeed, there are few environmental harms more serious than the extinction of an entire species. FLPMA's prohibition on unnecessary or undue degradation, meanwhile, requires that BLM prevent or prohibit any environmental degradation that is not necessary to the performance of lawful activities.

In addition, BLM's sensitive species policy requires the proactive conservation of candidate species such as Tiehm's buckwheat. Bureau of Land Mgmt., Manual Transmittal Sheet: 6840 - Special Status Species Management (2008). The policy's objective, in part, is “to initiate proactive conservation measures that reduce or eliminate threats to Bureau sensitive species to minimize the likelihood of and need for listing of these species under the ESA.” *Id.* § 6840.02. Consistent with this obligation, the policy commits BLM to managing candidate species and their habitats to “to minimize or eliminate threats affecting the status of the species or to improve the condition of the species habitat,” by, among other things, “prioritizing Bureau sensitive species and their habitats for conservation action.” *Id.* § 6840.02(C)(5). In other words, BLM must implement “practices to reduce or eliminate threats affecting the status of the species, or improve the condition of the species' habitat on BLM-administered lands.” *Id.* at Glossary 5.

BLM cannot disregard its sensitive species policy. As courts have held, BLM violates the APA when it disregards its own policies. *W. Watersheds Project v. Salazar*, 4:08-cv-516-BLW, 2011 U.S. Dist. LEXIS 111728 *38-39, *48 (D. Idaho Sept. 28, 2011). *See also W. Watersheds Project v. Bernhardt*, 392 F. Supp. 3d 1225, 1243 (D. Or. 2019); *Theodore Roosevelt Conservation P'ship v. Salazar*, 616 F.3d 497, 505 (D.C. Cir. 2010).

Here, BLM must make full use of its authority to protect Tiehm's buckwheat from imminent extinction. Specifically, BLM must: repair, to the fullest extent possible, any damage to still-living plants and backfill all holes to prevent erosion; flag visible holes to enable future monitoring and assessment; enclose the entire known extent of Tiehm's buckwheat with secure fencing; install security cameras to monitor all known Tiehm's buckwheat subpopulations; install proper signage

to inform the public of the sensitive resources present at the site; and post a security guard or law enforcement officer at the Rhyolite Ridge site twenty-four hours a day, seven days a week.

We further request that BLM investigate and prosecute any violations of federal law to the full extent of its authority. FLPMA requires that the Secretary of Interior issue regulations “necessary to implement the provisions of [FLPMA] with respect to the management, use, and protection of the public lands, including property located thereon.” 43 U.S.C. § 1733. BLM has issued regulations implementing this provision at 43 C.F.R. § 9239.0-7. Those regulations define the unauthorized “severance, injury, or removal of timber or other vegetative resources or mineral materials from public lands” as a “trespass.” *Id.* Trespassers upon BLM lands are liable to the United States for damages. *Id.* 43 C.F.R. § 9239.1-3.

Finally, we wish to underscore the gravity of last week’s incident and the urgency of a meaningful response by BLM. The public lands contain unparalleled environmental values, which BLM manages in trust for the American public. Incidents like these inflict irreparable harm on the natural environment, violate federal law, and undermine public trust in BLM as an institution. It is therefore of the utmost importance that BLM take any and all appropriate and rapid actions, including but not necessarily limited to the actions requested above, to protect Tiehm’s buckwheat from further destruction and removal.

Thank you for considering this request. Given the circumstances, we respectfully request a response to the letter no later than close of business on Thursday, September 24.

Sincerely,

/s/ Scott Lake

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ATTACHMENT A

Letter from P. Donnelly, Center for Biological Diversity to D. Furtado, Bureau of Land Management et al, Re: *Tiehm's buckwheat large-scale destruction incident*
(Sept. 15, 2020)

September 15, 2020

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Re: *Tiehm's buckwheat large-scale destruction incident*

With great sadness we report that on September 13, 2020 a large-scale destruction/collection incident destroyed an estimated 40% of the global population of the imperiled Tiehm's buckwheat (*Eriogonum tiehmii* Reveal, Polygonaceae). This significant and possibly irreparable loss is likely a consequence of inaction to protect the species by the Bureau of Land Management, the U.S. Fish and Wildlife Service, the State of Nevada, and the Ioneer Corporation. We request that all parties to which this letter is addressed take immediate corrective,

protective, and restorative actions to ensure the long-term viability of Tiehm's buckwheat and to protect it from further loss.

On September 12, 2020 at approximately 4:00 p.m., Dr. Naomi Fraga of California Botanic Garden and Patrick Donnelly of the Center for Biological Diversity visited subpopulation 1 of Tiehm's buckwheat (*Eriogonum tiehmii*) at Rhyolite Ridge. We discovered that there was significant disturbance at subpopulation 1 adjacent to the road, and many plants were missing. It appeared to be a poaching incident.

We returned on September 13, 2020 to conduct a more thorough survey of the damage. It appears that **there has been a significant incident of collection and/or wanton destruction of Tiehm's buckwheat across the entirety of its range**. The buckwheats appear to have been dug up by small shovels or spades. There were three predominant ways the damage presented: the entire plant was dug up and all that was left was a hole in the ground (Figs. 6-7); a portion of a buckwheat mat was dug up or removed from the ground, leaving a badly damaged remaining plant/mat (Figs. 8-9); or holes were dug to extract plants and extant plants are remaining with taproots exposed and a large hole surrounding them (Fig. 10). We observed significant footprints and disturbance in all subpopulations, including what appeared to be newly created social trails, which we surmise were used to haul out buckwheats (Fig. 3). While there were remains of buckwheat plants around the site within the subpopulations, including whole plants and pieces of plants, the lack of a large amount of uprooted biomass makes very clear that the perpetrators took the majority of the uprooted plants offsite. Please see the end of this letter for photographs of the incident (Figs. 4-10).

We visited all six subpopulations as established by Morefield (1995) and found varying levels of destruction throughout the entirety of occupied habitat and across all subpopulations. As a whole the data presented in this letter are largely preliminary based on observations, though we did count specific holes in the ground at subpopulations 1 and 2. It is unclear how many plants are lost for each hole in the ground – at a minimum one, but it may be more. In subpopulations 3, 4, 5, and 6 we present here estimates of percentage of plants loss, since the holes became too numerous to count. This data may be better obtained during the vegetative growth period in the spring, when plants are green and photosynthetic and more apparent in the landscape. These are presented as provisional and observational data to understand the scope of the destruction.

Subpopulations 3, 4, and 5 were the most severely affected, experiencing severe loss and apparent near total extirpation. Subpopulation 6, far and away the largest of the subpopulations, experienced an estimated 35% loss of individuals, including much higher levels of loss in subpopulation 6b. Subpopulations 1 and 2 were also significantly affected, experiencing an estimated loss of 25%. Within subpopulations, some populations were targeted for more intensive removal/destruction creating areas of wholesale extirpation (Figs. 4-5).

In total, a preliminary field survey revealed an estimated loss of over 17,000 plants. The total global population per EM Strategies 2019 survey was 43,921. **Thus we estimate that approximately 40% of Tiehm's buckwheat's global population was lost to this wanton act of destruction.** Please see provisional field survey data in Table 1.

Subpopulation	Estimated number of plants per 2019 survey (Percent of population)	(Count of holes 2020)	(Visual assessment 2020)	(Count of plants destroyed based on visual assessment)
1	9,240 (21%)	1,500	25% extirpation	2,310
2	4,541 (10%)	650	25% extirpation	1,135
3	1,860 (4%)	N/A	90% extirpation	1,620
4	8,159 (19%)	N/A	80% extirpation	6,527
5	199 (1%)	49	100% extirpation	199
6 (a, b)	19,871 (45%)	N/A	35% extirpation	6,855
Total	43,921			18,646
Percent of total population	100%			42.40%

Table 1: data from preliminary field survey on September 13, 2020 of Tiehm's buckwheat destruction incident. Column 2 data per EM Strategies 2019 survey.

We are unclear on the timing of this incident. Our last visit was July 5, 2020, and we did not notice any of this destruction at that time.

We also want to note that for some number of months, Ioneer Corp. has had a “missing” poster for Tiehm's buckwheat posted in the general store in nearby Dyer, NV. The poster offers a \$5,000 reward for confirming a new population of Tiehm's buckwheat. The poster can be seen below in Figure 1. The poster was also distributed as a two-page stapled document, which is scanned below as Figures 2. We are aware that the poster was up in the Dyer store at least as far back as June 3, 2020 when the picture in Figure 1 was taken. We have been told anecdotally that the poster was up as early as April of 2020 which is supported by a posting on Ioneer's website.¹ The handout scanned below in Figure 2 was obtained at the general store on July 5, 2020.

¹ <https://rhyolite-ridge.ioneer.com/ioneer-is-offering-a-5000-reward-for-the-discovery-of-tiehms-buckwheat/>



Figure 1: “missing” poster as posted in the Dyer general store on June 3, 2020.

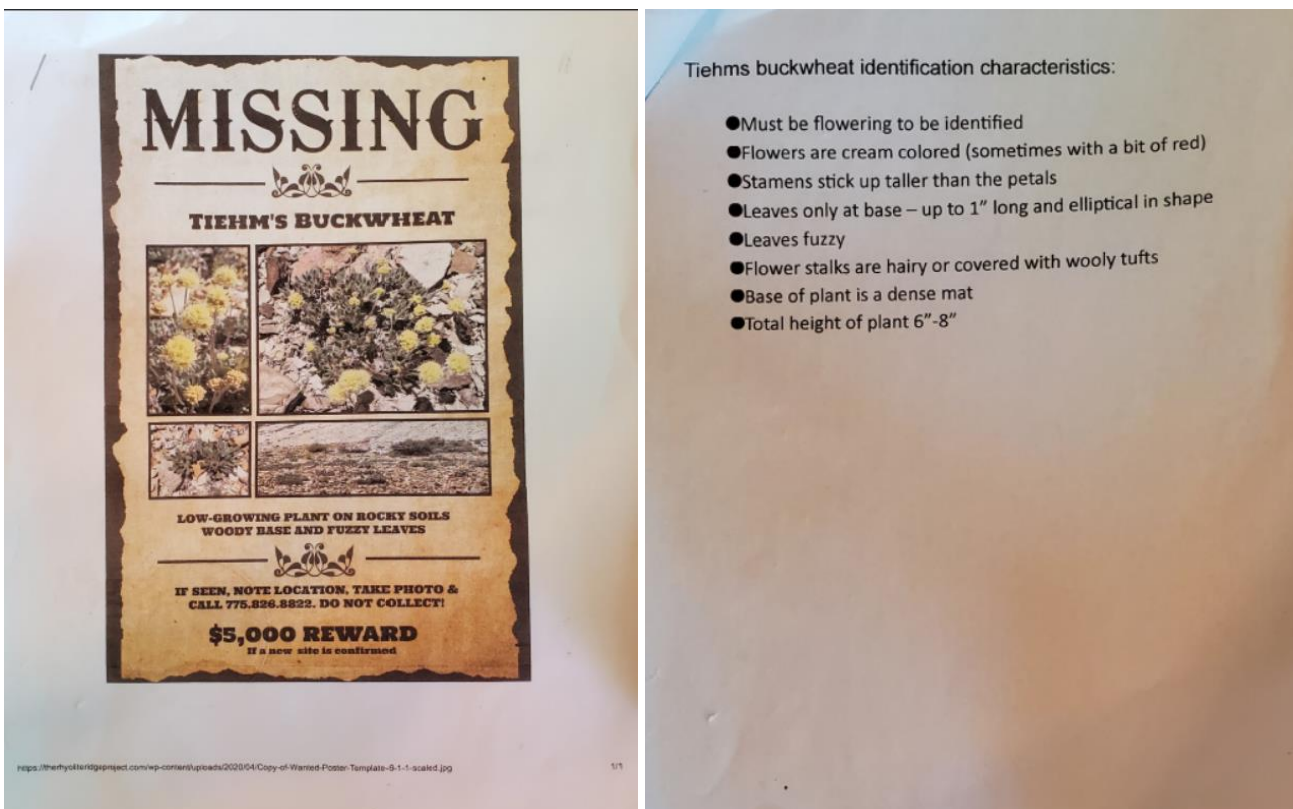


Figure 2: the Ioneer “missing” handout, which is identical to the poster in the store, obtained July 5, 2020.

Although it would be fruitless to speculate on the motives of the perpetrators of this incident, we will make a few observations. The plants were largely broken off from their taproots, and thus it was primarily the above-ground vegetative material that was taken. Such parts of a plant are highly unlikely to be viable in a transplanting situation. They are effectively dead. However, some great care was taken to haul out the dead pieces of buckwheat once they were unearthed, as was evidenced by recently trampled “social trails,” which had been barely discernable in past visits to the site. It seems unusual to go to such effort to remove the plants when they would be so certain not to survive.

The emerging social trail pictured below in Figure 3 was on the east side of subpopulation 2. This area of subpopulation 2 experienced almost 100% extirpation. This trail was not observed in previous visits to be of the same level of use and definition. One might surmise this trail was further developed by repeated trips to haul out the buckwheat plants. We saw similar trails in all populations.



Figure 3: emerging social trail within subpopulation 2.

Urgent Recommendations:

Tiehm's buckwheat faces a dire situation due to this new and active threat. Losing 40% of the global population in a single incident is catastrophic. Without immediate corrective, protective, and restorative action, we fear that other, similar incidents could occur and further jeopardize the long-term viability of the species, ultimately driving the species to extinction. But if your agencies take appropriate measures to protect the plant and restore the damage done to individual plants and habitat by this latest incident, we believe Tiehm's buckwheat can recover from this catastrophic event. Our recommendations are as follows:

Bureau of Land Management:

- Flag visible holes to enable assessment next spring during vegetative growth period;
- Backfill holes to prevent erosion, including focused effort on potentially viable plants that have had their roots exposed and are surrounded by holes;
- Repair damage to plants that is repairable and provide plant care to plants, including potentially supplemental water and/or other aids;
- Fence the entire habitat of Tiehm's buckwheat with secure fencing;
- Install security/game cameras;
- Install proper signage to inform the public of the sensitive resources present;
- Commence an investigation into this crime;
- Prosecute any violations of applicable federal law.

US Fish and Wildlife Service:

- Conduct a comprehensive re-survey of the population to confirm extent of damage;
- Immediately issue a 12-month finding to list Tiehm's buckwheat as endangered under the Endangered Species Act;
- Designate critical habitat for the entirety of the buckwheat's occupied range;
- Develop a recovery plan to ensure Tiehm's buckwheat does not go extinct.

Nevada Division of Forestry:

- Immediately adopt a rule to protect Tiehm's buckwheat under NRS 527.
- Create a plan for seed collection in 2021 and propagation.

Ioneer Corp. & EM Strategies:

- Immediately remove "missing" posters from Dyer store;
- Immediately cease offering a reward for new discoveries of Tiehm's buckwheat;
- Post a 24-hour security guard on-site until more appropriate security measures can be implemented by BLM.
- Cease any further disturbance of Tiehm's buckwheat individuals or native habitat for mining mitigation research until further information about the status and viability of the species in the aftermath of this destruction can be determined.

All Parties:

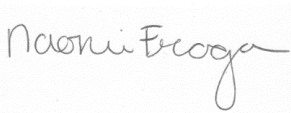
- Only a comprehensive seed banking, propagation, and outplanting effort can restore Tiehm's buckwheat to its former state in its native habitat. Conservation efforts must prioritize restoring Tiehm's buckwheat within formerly occupied habitat, not on mining mitigation.
- Permitting for mining activities within the native range of Tiehm's buckwheat should cease until the population can be stabilized.

The agencies and other parties addressed by this letter can take protective, corrective, and restorative actions that are critical for the species' continued persistence. This species has faced threats from mining for decades, but USFWS and NDF have failed to take action to provide adequate protection for this species, despite repeated warnings of its precarity and limited range; by BLM's lack of management for the buckwheat and its habitat; and by Ioneer's disregard for the need to protect the species in its native environment. Considering the catastrophic damage that the species has already experienced, only direct and immediate action from all interested parties will restore Tiehm's buckwheat and prevent further decline and ultimate extinction.

We await your prompt action,



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CC: Bradley Crowell, Catherine Erskine, Nevada Department of Conservation and Natural Resources; Perry Wickham, BLM Tonopah; Justin Barrett, USFWS Reno; John Christopherson, Nevada Division of Forestry; Kirstin Szabo, James Morefield, Nevada Division of Natural Heritage; Zach Zaragoza, Kyle Chapman, office of Senator Cortez Masto; Kelly Riddle, office of Senator Jacky Rosen; Kevin Herzik, office of Representative Steven Horsford; Senator Melanie Scheible, Chair, Senate Natural Resources Committee.



Figure 4: destruction at a single site near the access road at subpopulation 1.



Figure 5: destruction in subpopulation 6b.



Figure 6: Dug up plants with detritus, subpopulation 2.



Figure 7: completely dug up plants, subpopulation 1.



Figure 8: Destroyed buckwheat with loose pieces, exposed taproot, and small remaining rooted plants in subpopulation 1.



Figure 9: Exposed taproot, subpopulation 1



Figure 10: extant plants are remaining with taproots exposed and a large hole surrounding them.