



October 7, 2019

Kacey KC
State Forester
Nevada Division of Forestry
2478 Fairview Dr.
Carson City, NV 89701

Re: Petition to add Tiehm's buckwheat (Eriogonum tiehmii) to the state list of fully protected species of native flora

Ms. KC:

Pursuant to NAC 527.550, the Center for Biological Diversity hereby petitions the Nevada State Forester to adopt a regulation under the authorities of NRS 527.270, adding Tiehm's buckwheat (*Eriogonum tiehmii*) to the list of fully protected species of native flora in NAC 527.010. We also urge the Division to work with other state entities with authority over mining to ensure that no mineral exploration or development activities occur in the Rhyolite Ridge area which may affect Tiehm's buckwheat.

Tiehm's buckwheat is a rare plant in the buckwheat family which grows in a unique channery substrate in just six populations covering ten acres within three square miles of the Rhyolite Ridge area of the Silver Peak Range in Esmerelda County, Nevada. This diminutive plant with pale green leaves and showy white flowers is one of the only living things to grow in the harsh mineral soils it thrives in. Numbering between 20,000-40,000 individuals, the low number of populations makes this species highly vulnerable to disturbance. Ongoing mineral exploration leading to eventual mine development within the buckwheat's habitat necessitates action to prevent its extinction.

It is the official policy of the State of Nevada to prevent the extinction of plants found within our borders. NRS 527.260 contains a legislative finding that "the economic growth of the State of Nevada has been attended with some serious and unfortunate consequences. Nevada has experienced the extermination or extirpation of some of its native species of flora. Serious losses have occurred and are occurring in other species of flora with important economic, educational, historical, political, recreational, scientific, and aesthetic values. The people of the State of

Nevada have an obligation to conserve and protect the various species of flora which are threatened with extinction.”

NRS 527.270 defines a species or subspecies of flora as “threatened with extinction” when the State Forester “determines that its existence is endangered and its survival requires assistance because of overexploitation, disease, or other factors or because its habitat is threatened with destruction, drastic modification, or severe curtailment.”

As is detailed in the attached petition to US Fish and Wildlife Service, Tiehm’s buckwheat’s habitat faces imminent destruction and/or drastic modification due to mineral exploration activities and the eventual development of an open pit mine. It clearly qualifies as a species of flora threatened with extinction under NRS 527.270.

In accordance with NAC 527.550(1), this petition contains the following elements:

- (a) The name and mailing address of the petitioner;*
- (b) The signature of the petitioner and the date the petition was signed;*

Please see the end of this petition.

- (c) A statement of the reasons for the proposed adoption, amendment or repeal of the regulation;*

Please see the attached petition to FWS.

- (d) An estimate by the petitioner of the economic effects of the regulation to be adopted on the general public and the business that it regulates or will regulate, including, without limitation, the adverse and beneficial effects, and the immediate and long-term effects;*

It is not possible to come up with concrete numbers for this estimate, because the exact nature of the current or future economic activity associated with mineral exploration and production within the Tiehm’s buckwheat habitat is unknown. It is known that there are two mineral exploration notices ongoing in the area, and only one contains Tiehm’s buckwheat habitat. (See Figures 4-5 in attached petition.) It is clear that, in order to save the buckwheat, some amount of economic activity associated with mineral production will have to be foregone. The exact amount and exact locations are unknown. It is likely that some mineral extraction activity in the area could go on, but significant buffers would be needed around existing populations of Tiehm’s buckwheat.

Listing could also have beneficial economic impacts. According to a 2018 study by the Outdoor Industry Association, outdoor recreation in Nevada generates \$12.6 billion in consumer spending and \$4 billion in tax revenue for the state while employing 87,000 people. While Tiehm's buckwheat itself may not generate tremendous economic value, Nevada's biodiversity does. Every species we lose is one less reason people have to visit Nevada's wild lands and recreate here. Generally outdoor visitors avoid large strip mines.

Biodiversity also has intangible economic benefits in the form of ecosystem services. A recent UN report found over 1,000,000 species are at risk of extinction. Biodiversity gives us clean air, clean water, and food to eat. Each imperiled species that we lose serves to accelerate the ongoing extinction crisis, putting the very processes that make life on earth possible in jeopardy. It is difficult to put an economic value on that, but it must be factored in when deciding whether or not to protect this species.

(e) An estimate by the petitioner of the cost to the Division for enforcement or implementation of the regulation to be adopted, amended or repealed;

Presumably there is incrementally more work for NDF staff when a plant is added to the state's critically endangered flora list, and more work may arise in the future if industry or other entities seek permits to cause take to that species. Combined with perhaps the occasional field visit, one wouldn't imagine this would add more than a few hours per week to a staff's time. We could estimate it at 1/20th Full-Time Equivalent (FTE) for the purposes of this petition but that is a shot in the dark.

(f) A statement concerning the regulations of other federal, state and local governmental agencies that overlap or duplicate the regulation to be adopted, amended or repealed, including, without limitation, a specific reference to any such regulation;

The Center for Biological Diversity is simultaneously petitioning the US Fish and Wildlife Service under the Endangered Species Act (16 U.S.C. §1531 et seq.) and the Nevada Division of Forestry under NAC 527.550. While in theory the federal Endangered Species Act may be sufficient to protect this species, the reality is that the federal process moves very slowly, with initial "90-day" determinations often taking over a year or more, and secondary "12-month" findings taking on the order of a decade on average. All the while requiring deadline litigation from citizens and NGOs like the Center for Biological Diversity to move the process along. The Nevada Division of Forestry is a more deft entity, who can theoretically move this petition along at an accelerated pace to ensure that Tiehm's buckwheat gets the protection it needs before it is too late. Thus we are petitioning both entities simultaneously. We don't want Tiehm's buckwheat to go extinct while we wait for the US Fish and Wildlife Service to protect it.

(g) A statement indicating whether the regulation to be adopted, amended or repealed establishes a new fee or increases, reduces or eliminates an existing fee;

There would be no new fees or increases, reductions, or eliminations of existing fees in association with this regulation.

(h) Any other relevant data, views and arguments in support of the petition.

Please see the attached petition to FWS.

Having thus fulfilled the requirements of NAC 527.550(1), we hereby submit this petition and will await a timely response from the State Forester as set forth in NAC 527.550(2).

NAC 527.550(2) mandates a response to this petition from the State Forester: “Within 30 days after a petition is submitted, the State Forester will: (a) Notify the petitioner in writing of his or her decision to deny the petition and the reasons for the denial; or (b) Initiate the adoption, amendment or repeal of the regulation in accordance with the procedures set forth in chapter 233B of NRS.”

In a 1995 species status report on Tiehm’s buckwheat, Nevada Natural Heritage Program botanist James D. Morefield wrote, “*Eriogonum tiehmii* meets the definition of a Threatened species under the Endangered Species Act. Immediate and aggressive measures are needed to prevent its extinction and to protect it sufficiently to avoid formal listing.” Morefield also recommended designating all occupied habitat as critical habitat, each surrounded by a 100-meter wide buffer. And he detailed a number of conservation actions, reiterated by Dr. Naomi Fraga in Appendix A of the attached petition.

The State of Nevada’s foremost authority on rare plants has already stated the plant was worthy of protections, 24 years ago, and no actions were taken. Now we stand at the precipice, where mineral exploration activities are causing dire impacts to the species right now, as we speak. The State Forester must now step in and take emergency action to prevent the extinction of this species.

Thank you for your consideration of this petition and for the Division of Forestry’s ongoing efforts to protect and safeguard Nevada’s native flora.

Sincerely,



Patrick Donnelly

Nevada State Director

Center for Biological Diversity

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Attachment:

Emergency petition to the U.S. Fish and Wildlife Service to list Tiehm's buckwheat (*Eriogonum tiehmii*) under the Endangered Species Act as an endangered or threatened species and to concurrently designate critical habitat, 32 pp.

CC:

Brad Crowell, Nevada Department of Conservation and Natural Resources

Jordan Hosmer-Henner, Office of the Governor

Greg Lovato, Nevada Division of Environmental Protection

Rich Perry, Nevada Division of Minerals

Kristin Szabo, Nevada Natural Heritage Program

Assemblywoman Heidi Swank, Chair, Assembly Natural Resources, Agriculture, and Mining Committee

Senator Melanie Scheible, Chair, Senate Natural Resources Committee

Assemblywoman Sarah Peters