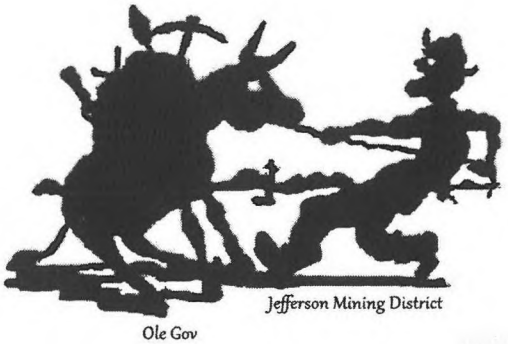

Jefferson Mining District

A Congressionally Acknowledged Miner's Government, As A Matter of Law
http://www.jeffersonminingdistrict.com/
The Date of October 9, 2018.

Certified mail 7018 0360 0001 7220 4487, return receipt requested.

To: USDA-Forest Service.
Attn: Director—MGM Staff, 1617 Cole Boulevard, Building 17, Lakewood, CO., 80401.

Re: Federal Register, FS-2018-0052 Response To Request For Comment.

Director—MGM Staff,
The Assembly of Jefferson Mining District requires I convey observations relative to Federal Register, FS-2018-0052, Notice, to object to it and for the purpose of preserving our right of suit, such that may be required if the rule as presented for comment is promulgated. Not only is the notice incorrect materially obstructing our ability to comment, it violates E.O. 12866. We do not believe the Administrator of OIRA has done the required review to assure meaningful guidance in this matter. We do not see a certification from the Small Business Administration, SBA, Advocacy that this notice or process to date comports with due process sufficient to protect other interests of the United States, such as was found to be the failure the last time the Forest Service attempted to foist Part 228 modification on congressional grantees under the General Mining Laws of the United States, properly interpreted. This failure was brought to light by current Assemblymen today who have witnessed the agency's predilection for abuse, obfuscation, trust or fiduciary breach, fraud or the failure of full and honest disclosure or service[1]. We do not assert this lightly given that last failed rules experience and every dereliction of duty we have witnessed since by the Agencies.

The failure of the notice to meet the law, to explain the subject matter correctly, or without obfuscation by term or place, etc., would have been resolved had the Agency complied, given the determined significance, with the requirement of E.O. 12866 to coordinate[2] or at least consult with "*State, local, and tribal governments*", such as Jefferson Mining District, a congressionally acknowledged[3] miner's government, as a matter of law. Instead, the agency gives lip-service to the law, unduly burdening us without lawful warrant under mere color of authority causing irreparable harm the evidence shows over

1 18 U.S. Code § 1346 - Definition of "scheme or artifice to defraud", For the purposes of this chapter, the term "scheme or artifice to defraud" includes a scheme or artifice to deprive another of the intangible right of honest services.

2 Sec. 4. Planning Mechanism.
In order to have an effective regulatory program, to provide for coordination of regulations, to maximize consultation and the resolution of potential conflicts at an early stage, to involve the public and its State, local, and tribal officials in regulatory planning,...

3 "... *and according to the local customs or rules of miners in the several mining districts...*" - 30 U.S. Code § 22 - Lands open to purchase by citizens.

the years the agencies are intent on committing.

Contrary to what the deceptive Notice repeatedly suggests, when the term obfuscation created by the agencies is finally, truthfully, disclosed that though all minerals are locatable only uncommon mineral deposits are Locatable minerals, any amendment to the rules should either eliminate Part 228 as applicable to uncommon or valuable mineral deposits, known as Locatable minerals, of the granted[4] valuable mineral estate, held in trust[5] by the United States government, or if actually applicable to common minerals, clearly constrain the rule application to those "*where the mineral interest is reserved to the United States*"[6] to be consistent with 43 CFR 3809 and for purposes of The National Environmental Policy Act, NEPA, "*where applicable*", and state exactly the applicability, instead of merely referencing, as this meaningless Notice does, some undefined "certain"[7] "operations" and without reference to the subject matter limitation environmental authority to be used. When the prerequisites to that authority are disclosed it will be found to not be applicable, contrary to the undisclosed process relied upon in the Notice.

Moreover since, the owner of such a location is entitled to the exclusive possession and enjoyment, against everyone, including the United States itself,[8] where there is a valid location of a mining claim, the area becomes segregated from the public domain and the property of the locator and He may sell it, mortgage it, or part with the whole or any portion of it as he may see fit.[9] He is entitled to the most plenary and summary remedies for quieting his claim cognizable in equity.[10] As was said by the supreme court of Oregon,[11] the general government itself cannot abridge the rights of the miner. There are equitable circumstances binding upon the conscience of the governmental proprietor that must never be disregarded. Rights have become vested that cannot be divested without the violation of all

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4 "When the location of a mining claim is "perfected" under the law, it has the effect of a grant by the United States of the **right of present and exclusive possession**. The claim is **property in the fullest sense of that term**; and may be sold, transferred, mortgaged, and inherited without infringing any right or title of the United States. The owner is not required to purchase the claim or secure patent from the United States; **but** so long as he complies with the provisions of the mining laws his possessory right, **for all practical purposes of ownership, is as good as though secured by patent.**" Wilbur v. U.S. ex rel. Krushnic, 1930, 50 S.Ct. 103, 280 U.S. 306, 74 L.Ed. 445.

5 A TREATISE ON THE AMERICAN LAW RELATING TO MINES AND MINERAL LANDS "WITHIN THE PUBLIC LAND STATES AND TERRITORIES GOVERNING THE ACQUISITION AND ENJOYMENT OF MINING RIGHTS IN LANDS OF THE PUBLIC DOMAIN, By CURTIS H. LINDLEY, Of the San Francisco Bar, 1914, VOLUME II, "As between the locator and the government, the former is the owner of the beneficial estate, and the latter holds the fee in trust, to be conveyed to such beneficial owner upon his application in that behalf and in compliance with the terms prescribed by the paramount proprietor. 29 Noyes v. Mantle, 127 U. S. 348, 351, 8 Sup. Ct. Eep. 1132, 32 L. ed. 168; Dahl v. Eaunheim, 132 U. S. 260, 262, 10 Sup. Ct. Rep. 74, 33 L. ed. 325, 16 Morr, Min. Rep. 214; Gillis v. Downey, 85 Fed. 483, 487, 29 C. C. A. 286. - Lindley, § 539. Page 1201.

6 § 3809.2 What is the scope of this subpart?
(a) This subpart applies to all operations authorized by the mining laws on public lands where the mineral interest is reserved to the United States, ...

7 "The goals of the regulatory revision are to expedite Forest Service review of certain proposed mineral operations authorized by the United States mining laws, and, where applicable,..."

8 McFeters v. Pierson, 15 Colo. 201, 22 Am. St. Rep. 388, 24 Pac. 1076, 1077; Gold Hill Q. M. Co. v. Ish, 5 Or. 104, 11 Morr. Min. Rep. 635; Seymour v. Fisher, 16 Colo. 188, 27 Pac. 240, 244; Reed v. Munn, 148 Fed. 737, 757, 80 C. C. A. 215, Lindley, § 539, Page 1203, supra.

9 St. Louis M. & M. Co. v. Montana Limited, 171 U. S. 650, 655, 19 Sup. Ct. Rep. 61, 43 L. ed. 320, Lindley, § 539, Page 1203, supra.

10 Gillis V. Downey, 85 Fed. 483, 488, 29 C. C. A. 286. Lindley, § 539, Page 1203, supra.

11 Gold Hill Q. M. Co. v. Ish, 5 Or. 104, 11 Morr. Min. Rep. 635, Lindley, § 539, Page 1203, supra.

the principles of justice and reason.[12] The same fundamental rules of right and justice govern nations, municipalities, corporations, and individuals.[13] The government may not destroy the locator's rights by withdrawing the land from entry or placing it in a state of reservation.[14]

The Notice comes out of the gate with a number of glaring material inconsistencies or fraudulent omissions which confuse the purported purpose and confound the ability to respond, contrary to law. We'll list a couple and reserve our right to present more later given any need for a judicial review.

The summary references such things as "*National Forest System surface resources*", "*National Forest System lands*", "*to increase consistency with the United States Department of the Interior, Bureau of Land Management (BLM) surface management regulations*", but fails to disclose locations pursuant to the General Mining laws of the United States do not pertain to these "*public land*" being such uncommon locations are private, segregated in-holdings on "*public domain*" the locators of which "*shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations*". 30 USC 26. Being the fact and law, these valuable mineral deposit locations are not of "*lands managed by each agency*"; The Notice fails to disclose just exactly when the Act of 1872 was expressly amended to destroy this trust-grant relationship[15].

The Notice also fails to faithful present that the Act of 1872, amending prior enactments, does not actually empower the Organic Act to regulate but fraudulently omits to explain the "*under regulations prescribed by law*" clause lawfully. To explain this we will present some of the authorities which expose the Notice to be a fraudulent attempt to maintain an authority never intended by Congress over a granted mineral estate.

The supplemental information[16], again, states this will pertain "*National Forest System surface resources*" "*on National Forest System lands*". The authorities clearly establish though the Notice describes Locatable, i.e., uncommon, minerals by *its* terms. The fact is these valuable deposit locations are not on National Forest System lands but on reserved public domain which by operation of law is creates a private mineral estate in-holding. In other words, the Notice fraudulently omits to disclose the Organic Act is not given authority to regulate these locations but by its expressed terms reserves the mineral estate to be, as a matter of law, "*restored to the public domain*"[17] from the forest reserve for

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12 To the same effect, see Merced M. Co. v. Fremont, 7 Cal. 317, 327, 68 Am. Dec. 262, 7 Morr. Min. Rep. 313; Conger v. Weaver, 6 Cal. 548, 557, 65 Am. Dec. 528, Lindley, § 539, Page 1203, supra.

13 United States v. Northern Pac. R. R., 95 Fed. 864, 880, 37 C. C. A. 290, Lindley, § 539, Page 1203, supra.

14 Military and National Park Reservations. Opinion Assistant Attorney-General, 25 L. D. 48; Instructions, 32 L. D. 387, Lindley, § 539, Page 1203, supra.

15 That the general government itself cannot deprive the locator of rights accrued under the mining laws has, we think, been fully demonstrated. - Lindley, § 542, Page 1209, supra.

16 SUPPLEMENTARY INFORMATION: These comments will help the Forest Service draft proposed amendments to the agency's regulations in a way that protects National Forest System surface resources, consistent with applicable statutes authorizing such operations on National Forest System lands.

17 16 U.S. Code § 482 - Mineral lands; restoration to public domain; location and entry
"...wherein any national forest is situated, and near the said national forest, any public lands embraced within the limits of any such forest which, after due examination by personal inspection of a competent person appointed for that purpose by the Secretary of the Interior, shall be found better adapted for mining or for agricultural purposes than for forest usage, may **be restored to the public domain**. And any mineral lands in any national forest which have been or which may be shown to be such, and subject to entry under the existing mining laws of the United States **and the rules and regulations applying thereto**, shall continue to be subject to such location and entry, notwithstanding any provisions contained in sections 473 to 478, 479 to 482 and 551 of this title." (June 4, 1897, ch. 2, § 1, 30 Stat. 36.)

purposes of "*occupation and purchase*"[18], and also not "*occupancy and use*" as fraudulently depicted and further limited to "*rules and regulations applying thereto*", outside of the delegated authority of the Forest Service. Being an "*occupation and purchase*"[19] and not a "*use and occupancy of National Forest System lands*", valuable mineral deposits as not "*defined by the Surface Resources Act of 1955, 30 U.S.C. 612*" but excepted thereby[20]. The grantee is not in an "*occupancy and use*" of the "*public land*", but of an *occupation and purchase*[21] on "*public domain*"; This is not mere semantic gymnastics.

Before getting to the Congressional mineral grants intent, how these are suppose to be respected, let's visit the Agency claim to rule-making authority through the clauses, "*rules and regulations applying thereto", and "under regulations prescribed by law"* to see the constructed adoption is fraudulent. Given there is no "*and*" between "*such*" and "*under*" as there is between "*law,*" and "*and according*", better import or plausibility would have been given to the complete clause "*by citizens of the United States and those who have declared their intention to become such, under regulations prescribed by law*", for purposes of immigration regulation, than the agency cherry-picking the four word clause out of context as its lawful authority.

The provision in the General Mining Law for regulation[22] applies only to the muniments of the title[23], and did not seek to regulate or control mines or mining within the lands held in private ownership[24],

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18 "*shall be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase...*" - 30 U.S. Code § 22 - Lands open to purchase by citizens

19 "*It has the effect of a grant by the United States of the right of present and exclusive possession of the lands located.*" Clipper M. Co. v. Eli M. Co., 194 U. S. 220, 226, 24 Sup. Ct. Rep. 632, 48 L. ed. 944; East Central Eureka M. Co. v. Central Eureka M. Co., 204 U. S. 266, 271, 27 Sup. Ct. Rep. 258, 51 L. ed. 476; Bradford V. Morrison, 212 U. S. 389, 394, 29 Sup. Ct. Rep. 349, 53 L. ed. 564; Bergquist v. West Virginia & Wyoming Copper Co., 18 Wyo. 234, 106 Pac. 673, 682; Forbes v. Gracey, 94 U. S. 762, 766, 24 L. ed. 313, 14 Morr. Min. Rep. 183; Gillis v. Downey, 85 Fed. 483, 487, 29 C. C. A. 286; Stratton v. Gold Sovereign M. & T. Co., 1 Leg. Adv. 350; Phoenix M. & M. Co. V. Scott, 20 Wash. 48, 54 Pac. 777, 778; McCarthy v. Speed, 11 S. D. 362, 77 N. W. 590, 592, 50 L. R. A. 184. Lindley, § 539, Page 1202, See § 322, supra.

20 30 U.S. Code § 612 - (b) Reservations in the United States to use of the surface and surface resources: ... (**except mineral deposits subject to location under the mining laws of the United States**).

21 USC Title 30 § 22, "*and the lands in which they are* ***found to occupation and purchase****, ...*"

22 *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.* - 30 U.S. Code § 22 - Lands open to purchase by citizens.

23 The Act "*did not purport to be a mining code and* ***its object was not to regulate mining*** *as such, in that, [t]**he system does not seek to regulate or control mines or mining within the lands held in private ownership**, except such only as are acquired directly from the government under the mining laws, and then* ***only forming a muniment of the locator's or purchaser's title,***" that the grant "*gave the locator the right to get a patent for his "mine,*"" -The Encyclopedia Americana, 1919, Volume M Mining Laws of the United States, Page 184.

24 "*Though* ***the source of the title and property is from a law of the United States,*** *the perfected title is not a federal question or justiciable matter cognizable in the federal system. As such the title and appurtenant matters is determined by the state court because "**the United States has no continuing interest in the property**"*, Standage Ventures, Inc. v. Arizona, 499 F.2d 248, 249 (9th Cir. 1974), *and the Land Department's jurisdiction is suspended where lands theretofore public have, by virtue of congressional legislation or lawful executive order, been withdrawn from the operation of the public land laws. Its jurisdiction terminates and its authority ceases when the land passes into private ownership and the title of the government is transmitted through the forms of law.* C. Henry Bunte, 41 L. D. 520. Hilgeford v. Peoples Bank, 776 F.2d 176, 178 (7th Cir. 1985) (per curiam), as cited in VIRGIN V SAN LUIS OBISPO, 2000, No. 98-55557, CV-97-08599-ABC, **and for all practical purposes of ownership, is as good as though secured by patent,** Wilbur,

and were not authorization to regulate the grant, property, possession, enjoyment or use, etc. In other words, the "*regulations prescribed by law,*" 30 U.S.C. § 22, are to fulfill the duty of Congress to dispose, as accepted by the qualified locator, not for the agency to frustrate that obligation and duty by wrongful interpretation not intended nor needed by Congress for purpose of disposal of the soil[25]. As a consequence, the "*rules and regulations applying thereto*" do not include environmental regulations. Additionally, we will find in scrutinizing the NEPA, it is inapplicable by its own terms.

The foregoing is the subject matter of a grant disposal of the valuable mineral estate reserved from the nation forest system lands of segregated possession[26] on the public domain, held in disposed trust[27], not of public land held in trust to be disposed. There is no further Congressional authority to oversee what the grantee determines whose rights are on relation back[28] to the original date of enactment. Moreover, the agencies did not exist at this time. This is to say, as well, this is a grant not a commerce or other condition whereby if Congress did not legislate any agency is free to impose[29]. It is quite the opposite situation, a trust, being one of the establishment of a protective covenant to not interfere[30].

We'll now turn to the federal agency claim to regulation authority and by the method chosen, i.e., rule implementing the NEPA by Part 228, then present Part 3809, delineating lawful consistency. As we have shown the prior authorities prove the phrase "*under regulations prescribed by law*", contrary to current "official" opinion, only pertains to the *muniment of title* and does not extend to regulate the

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supra.

25 '*All grants of this description are strictly construed against the grantee; nothing passes but what is conveyed in clear and explicit language; and, as the rights here claimed are derived entirely from the act of Congress, the donation stands on the same footing of a grant by the public to a private company,* ***the terms of which must be plainly expressed in the statute, and, if not thus expressed, they cannot be implied***.' Leavenworth, Lawrence, & Galveston RR. Co. v. United States (1875)

26 The locator of a **mining claim is given a higher estate than is given the settler or locator under any other land laws**. O'Connell v. Pinnacle Gold Mining Co., 140 Fed. 854, 855, 4 L. R. A., N. S., 219, 72 C. C. A. 645. As to the general rule regarding "**vested rights**" in public lands and when they attach **so as to be immune from congressional interference**, see Graham v. Great Falls Water Power & T. Co., 30 Mont. 393, 76 Pac. 808, and cases cited; Instructions, 32 L. D. 383. See, also, East Central Eureka M. Co. v. Central Eureka M. Co., 204 U. S. 266, 271, 27 Sup. Ct. Kep. 258, 51 L. ed. 476. - Lindley, § 542, Page 1208, supra.

27 *However, when rights have attached as a result of a valid location,* ***the land becomes segregated from the public domain*** *and the property of the locator;* ***and the title to the land is held in trust for the claimant*** *until patent.* (Noyes v. Mantle, 127 U.S. 348, 351; Dahl v. Raunheim, 132 U.S. 260, 262; Gillis v. Downey, 85 Fed. 483, 487).

28 "***In construing a public grant, as we have seen, the intention of the grantor, gathered from the whole and every part of it, must prevail****. If, on examination, there are doubts about that intention or the extent of the grant, the government is to receive the benefit of them.*" ****** "*and, unless there were other provisions restraining the words of present grant, the grants uniformly were held to be in praesenti, in the sense that the title, although imperfect before the identification of the lands, became perfect* ***when the identification was effected and by relation took effect as of the date of the granting act,*** *except as to the tracts failing within the excluding provision.*" St. Paul & Pacific R. R. Co. v. Northern Pacific R. R. [Aside Note: Scope of grant inferred from the term "for other purposes" which is extensive.]

29 "*When the location of a mining claim is "perfected" under the law, it has the effect of a grant by the United States of the right of present and exclusive possession. The claim is property in the fullest sense of that term; and may be sold, transferred, mortgaged, and inherited without infringing any right or title of the United States. The owner is not required to purchase the claim or secure patent from the United States; but so long as he complies with the provisions of the mining laws his possessory right,* ***for all practical purposes of ownership, is as good as though secured by patent.***" Wilbur v. U.S. ex rel. Krushnic, 1930, 50 S.Ct. 103, 280 U.S. 306, 74 L.Ed. 445.

30 *It was the established doctrine of the Supreme Court that the rights of miners, who had taken possession of mines and worked and developed them before the passage of this act, were rights which the Government had by its conduct recognized and encouraged, and was therefore bound to protect them.* Broder v. Water Co., 101 U. S. 274, p. 276. Northern Pac. R. Co. v. Sanders, 166 U. S. 620, p. 634.

mine or the mining. It is asserted the Organic Act provides for the power to regulate. This too is an intentional misreading of the law, purposefully ignoring that the creation of the forest reserved had against it a prior reservation, the mineral estate or as accepted by the grantee into private possession[31].

It is said that the original 1974 Rule 36 CFR 252 which is not changed by the mere renumbering to Part 228[32] regarding this purported power were to regulate "*the public lands to search for minerals, shall be conducted so as to minimize adverse environmental impacts on National Forest System surface resources.*" Simply put, a granted valuable mineral deposit location being private where ever located in the public domain is not a National Forest System surface resource, being the Locatable mineral deposit location, USC Title 30 § 26, "***shall have the exclusive right of possession and enjoyment of all the surface*** *included within the lines of their locations*". There is, therefore, no "*National Forest System surface resource*" to regulate. Moreover, the rules applied do not pertain to a private mineral location in-holding the national forest of which, as a matter of law, is "*restored to the public domain*"[33] and by operation of law the locator "*shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations*", 30 USC 26. With careful attention, one can see the distinction between use of "*public land*" and disposals on "*public domain*" is not semantic nullity.

Consistent with the failure of authority, jurisdiction, or power to regulate disposed lands or specific uses in-holding the National Forest system, regarding closures, controls, and for "*occupancy and use*", 36 CFR 261.1 expresses a General Prohibition against agency delegated authority[34]. Furthermore, the 36 CFR 251.50 recognizes mineral locations as Specific, not Special, uses taking further note that the Federal Land Policy Management Act, FLPMA[35], which both agencies are subject to expressly states that Act does not work to regulate Specific uses[36] previously designated. The granted Locatable valuable mineral deposit estate is a Specific, disposed, use held in trust. As shown previously those, "*rules and regulations* ***applying thereto***", pertinent only to and "*did not purport to be a mining code and its object was not to regulate mining as such, in that, [t]he system does not seek to regulate or*

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31 Congress has stated in the Organic Act of June 4, 1897, the Eastern Forests (Week's) Act of 1911, and the Taylor Grazing Act of 1934, that there was no intention to retain federal jurisdiction over private interests within national forests.

32 Office of Information and Regulatory Affairs (OIRA), Executive Order Submissions with the Review Completed between January 1, 1981 and December 31, 1981: USDA-FS RIN: 0596-YA03 Transfer of 36 CFR Part 252 to 36 CFR Part 228 STAGE: Final Rule ECONOMICALLY SIGNIFICANT: No RECEIVED: 06/26/1981 LEGAL DEADLINE: None COMPLETED: 07/08/1981 Consistent w/no change

33 16 U.S. Code § 482 - Mineral lands; restoration to public domain; location and entry
"...wherein any national forest is situated, and near the said national forest, any public lands embraced within the limits of any such forest which, after due examination by personal inspection of a competent person appointed for that purpose by the Secretary of the Interior, shall be found better adapted for mining or for agricultural purposes than for forest usage, may **be restored to the public domain**. And any mineral lands in any national forest which have been or which may be shown to be such, and subject to entry under the existing mining laws of the United States **and the rules and regulations applying thereto**, shall continue to be subject to such location and entry, notwithstanding any provisions contained in sections 473 to 478, 479 to 482 and 551 of this title." (June 4, 1897, ch. 2, § 1, 30 Stat. 36.)

34 36 CFR 261.1 - Scope. "b) Nothing in this part shall preclude activities as authorized by the Wilderness Act of 1964 or the U.S. Mining Laws Act of 1872 as amended."

35 The FLPMA conveniently recognizes two general Uses, "Specific Use" and "Special Use". A valuable mineral deposit location is a specific use on "public domain", not a special use of "public land".

36 43 U.S. Code § 1701 - Congressional declaration of policy (a) The Congress declares that it is the policy of the United States that— (3) public lands not previously designated for any specific use and all existing classifications of public lands that were effected by executive action or statute before October 21, 1976, be reviewed in accordance with the provisions of this Act;

control mines or mining within the lands held in private ownership, except such only as are acquired directly from the government under the mining laws, ***and then only forming a muniment of the locator's or purchaser's title.***" - The Encyclopedia Americana, 1919, Volume M, supra.

Section 1701 (3) of Title 43 United States Code clearly evidences no section of the FLPMA can amend or impair the rights of locators under the 1872 mining law. This is so even for Forest Service authority where, for example, purportedly, criminal, citations issue under 36 CFR 261, implement **16 USC 551** the authority for which was 16 USC 471, repealed by FLPMA, redirected by 43 USC 1740, now authorizing 16 USC 1609, "Multiple Use", subject to FLPMA mandate 43 USC 1732 (b) stating that no section of the FLPMA and, therefore, no Forest Service authority may impair or amend locator's rights under the act of 1872. There is no federal agency authority in this context for Locatable minerals. Imposing authority is a trust breach. U.S. Agency obligation to the FLPMA is confirmed at FSM 2814 "*This right is contained in 16 U.S.C. 551*", where Sec. 551 is redirected as shown which shall not amend, or impair, or interfere the rights of locators under the 1872 mining law, USA v. Hicks, supra.

The numerous savings clauses in law are required because of the the legislative grant of the mineral estate deposits to all Americans. Essentially, the savings provisions are required in understanding the implied contract created that a grantor may not reassert a claim against a granted property. Reference Fletcher v. Peck, 1810[37], on Legislative Grants, which also instructs upon how uncommon mineral claim rights relate back to the date of the granting act and not as of the date of the location. This is why 30 USC 612 (b) governing Surface Resources contains the required saving clause, "*except mineral deposits subject to location under the mining laws of the United States*", preserving this surface grant to the exclusive determination of the uncommon mineral locator, despite knowledge of this prerogative having been removed from agency rules. This exception is so because that act, "*provides that common varieties of mineral materials shall not be deemed valuable mineral deposits for purposes of establishing a mining claim*", FSM 2812, that "*Such claims which otherwise come under 30 U.S.C. 612*", common mineral material claims, Act of July 31, 1947 as amended in 1955, ***only***, suffer surface resource management. Locatable minerals do not so suffer and are *uncommon* or valuable mineral deposits located under the mining laws of the United States, the Act of 1872 amending.

Even the 1960 Multiple Use Act is unavailing to the Forest Service and also contains the required clause saving the granted mineral estate from agency regulation authority.[38] As well, a burden shifts to the agency pursuant to the NFMA at 36 CFR 219.22, (f) where stating: The following **shall be** recognized to the extent practicable in forest planning: (f) **The probable effect** of renewable resource prescriptions and management direction **on mineral resources and activities, including exploration and development**. (emphasis added). This is no more than the NEPA requires to protect man's

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37 "*A grant, in its own nature, amounts to an extinguishment of the right of the grantor, and implies a contract not to reassert that right. A party is, therefore, always estopped by his own grant.*"

38 Multiple-Use Sustained-Yield Act of 1960 – Codified at 16 U.S.C. 528 et. seq. The Multiple-Use Sustained-Yield Act established the multiple use principles on which NFMA is based, and NFMA repeatedly references MUSYA. MUSYA specifically addresses the role of minerals in the management of the National Forests. MUSYA Sec. 1 states: *It is the policy of the Congress that the national forests are established and shall be administered for outdoor recreation, range, timber, watershed, and wildlife and fish purposes. The purposes of this Act are declared to be supplemental to, but not in derogation of, the purposes for which the national forests were established as set forth in the Act of June 4, 1897 (16 U.S.C.475). Nothing herein shall be construed as affecting the jurisdiction or responsibilities of the several states with respect to wildlife and fish on the national forests.* ***Nothing herein shall be construed so as to affect the use or administration of the mineral resources on national forest lands***... (emphasis added). [1] Mining and Minerals Policy Act of 1970, P.L. 91-631, 84 Stat. 1876. [2] Forest Service Manual 2800 Zero Code.

environment, the burden on the agency to show, to the "*extent practicable*", the lawful balance.

This all leaves us to inquire upon the dereliction, or fraud by omission, of the agencies to disclose just which law is applied. We now turn to the rules implementing the NEPA to see this. The rules of environmental regulation used are not applicable to any private in-holding. While the Forest Service uses Part 228, it actually references reliance upon 40 CFR 1500, *et seq*., when demanding Notices of Intent for purposes of environmental assessments. There is only one definition for "Notice of Intent" relative to environmental regulation and it is found at 40 CFR 1508[39] implementing the NEPA[40].

For the sake of brevity, looking squarely at the NEPA requires that it can only be applied, supplementally, to a 1), Major Federal Action, 2), the Federal Funds of which, 3), the Agency has discretionary administration authority over. Private mineral in-holdings have none of the characteristics required for an agency to demand any thing such as a Notice of Intent, NoI, or Plan of Operation, PoO which, never-the-less, the rule read closely shows is the obligation upon the agency[41] itself to fulfill.

By the Subcommittee Hearings of 1974, the NEPA is not a self-executing Code and "***the policies and goals of the act are supplementary to existing statutes***"[42] requires another Act of Congress to gain force and effect and to the limit required by other acts or congressional obligations and duties, such private property disposed to its grantees. We do not have to get too detailed, here, in the proof, for even if the NEPA could be considered applicable in the first instance, provisions within the Act foreclose any possibility that the Act could be imposed upon an exclusively possessed and enjoyed valuable mineral deposit claim or Location, the congressionally granted, private property, in-holding on public domain.

Further, showing the incongruities in the current unlawful imposition implementation, a provision for a "*Proposal*" only there is no authority to demand a Plan of Operations, PoO, which logically could only follow after the findings of an environmental study which the Forest Service is required to do, not the claimant, and only upon major federal actions. Even if the the Forest Service could require a PoO,

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39 § 1508.22 Notice of intent.
Notice of intent means a notice that an environmental impact statement will be prepared and considered. The notice shall briefly:
(a) Describe the proposed action and possible alternatives.
(b) Describe the agency's proposed scoping process including whether, when, and where any scoping meeting will be held.
(c) State **the name and address of a person within the agency** who can answer questions about the proposed action and the environmental impact statement.

40 40 CFR § 1500.1 Purpose.
(a) The National Environmental Policy Act (NEPA) is our basic national charter for protection of the environment.

41 § 1500.3 Mandate.
Parts 1500 through 1508 of this title provide regulations applicable to and binding on all Federal agencies for implementing the procedural provisions of the National Environmental Policy Act of 1969, as amended (Pub. L. 91-190, 42 U.S.C. 4321 *et seq*.) (NEPA or the Act) **except where compliance would be inconsistent with other statutory requirements.** . . . .

42 § 1500.6 Agency authority.
Each agency shall interpret the provisions of the Act as a supplement to its existing authority and as a mandate to view traditional policies and missions in the light of the Act's national environmental objectives. And constrained where "The phrase "to the fullest extent possible" in section 102 means that each agency of the Federal Government shall comply with that section unless existing law applicable to the agency's operations expressly prohibits or makes compliance impossible."

asking for one before the agency has done the environmental assessment of the major federal action it is conducting is putting the cart before the horse. What assessment of actionable environmental harm is the Plan of Operations based and to protect against if made before knowledge of the federal project?

This brings us to the actually lawful authorization of agency demand for information. As to the forms, though required, there is no OMB number for any NoI or PoO allowing the Forest Service or the BLM to demand information. This confirms the in-house nature of the application of the NEPA provision for environmental regulation and lack of authorization to receive the information demanded. Any purported NoI or PoO is evidence of crime committed against the grantee. The demand under color of authority for any submission in this regard is felony conduct or by omission to avoid such. We mention felony here only to point out clearly established law forbids these things. The federal agencies have no power to delegate their obligation onto that of the mineral estate grantee, and in the blind. Also, take note that the filing of a NoI is not a federal action, but NoI is an *agency* implementation of the NEPA.

Being self-initiating, there is nothing a Locatable mineral entryman does for which the environmental regulation rules are applicable. In fact, the imposition is a gross insult, crime, and violation of congressional intent and fulfillment, a fiduciary breach by the agencies, and State, of the highest order.

With that we turn to the BLM, it's use of 43 CFR 3809, of which the Forest Service currently seeks to bring its 36 CFR 228 consistent. Very quickly, it can be seen there are only two elements of correlation between the two statutes. It certainly cannot correlate with the lands under which the Scope of the Part 3809 is relevant[43]. But within the Scope we can find a particular delineation as to what type of minerals is subject to the Part, "*This subpart applies to all operations authorized by the mining laws* ***on public lands where the mineral interest is reserved to the United States***"; remembering the uncommon, or valuable mineral deposit, location is disposed on "public domain", not a use of "*public land*".

The only other obvious consistency which can be made is, "*(d) This subpart does not apply to private land except as provided in paragraphs (a) and (c) of this section. For purposes of analysis under the National Environmental Policy Act of 1969, BLM may collect information about private land that is near to, or may be affected by, operations authorized under this subpart.*" The corollary to Part 3809 is at §3715.0-1(b) which states, "*This subpart applies to public lands BLM administers. They do not apply to state, or private lands in which the mineral estate has been reserved to the United States.*" Note the 3809 and 3715 are not part of granted mineral rights but those minerals reserved to by the U.S. and as stated before in congressional policy which are covered by Subpart B - Leasable Minerals (§ 228.20-228.39), Subpart C - Disposal of Mineral Materials (§§ 228.40 – 228.67), Subpart D - Miscellaneous Minerals Provisions (§ 228.80), Subpart E - Oil and Gas Resources (§§ 228.100 – 228.116). This then indicating, if not proving, Subpart A – Locatable Minerals 228.1 to 228.15 is not lawful: In re Shoemaker, 110 IBLA 39, 53 (1989), "*When it does [interfere], Federal surface management activities must yield to mining as the 'dominant and primary use,' the mineral locator having a first and full right to use the surface and surface resources*", consistent with 40 CFR 1500.6.[44]

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43 (b) This subpart does not apply to lands in the National Park System, National Forest System, and the National Wildlife Refuge System; acquired lands; or lands administered by BLM that are under wilderness review, which are subject to subpart 3802 of this part.

44 … that each agency of the Federal Government shall comply with that section unless existing law applicable to the agency's operations expressly prohibits or makes compliance impossible.

Clearly, Part 3809, and for consistency, as shown before, Part 228 EXPRESSLY, does not apply to private land[45], such as a granted valuable mineral deposit location located under the General Mining Laws of the United States, held in trust, not reserved to the United States. The only actual consistency between the two rules sets is that the NEPA is referenced. As shown prior, the NEPA is not applicable. In practice, what usually happens in our Mining District is an agency will make a wrongful demand for a NoI, PoO, and bond, and the grantee locator will return a letter explaining the inapplicability of either Part 228 or 3809, the respective public domain in-holding location, and but for the most recalcitrant agency employee or officer, there is no further communication. For the more unreasonable employee a second letter issues explaining that any continued wrongful imposition under color of authority infringing the grantee's rights, and property constitute multiple felonies under state law which ends the wrongful agency interaction demands or threatened extortion, coercion or attempted conversion.

With due respect to the congressional grant disposing public domain to "*exclusive possession*" or private property, is it a question now what and why the Minard Oil court stated, "*[W]e concluded that the Forest Service lacked sufficient regulatory control over the processing of oil and gas drilling proposals to establish any approval process that would constitute a major federal action requiring NEPA compliance*", even to the benefit of a gas and oil entryman, a far lesser surface rights grant? This was so even where the Forest Service could produce *Acquired* title to the surface, different than that of a mineral estate grantee location with private disposed surface rights to the entirety of the location, explained previously, which can be asserted even against the United States.

There is no authority for either the, Secretary of Agriculture, Forest Service or the Secretary of Interior, Bureau of Land Management to regulate Locatable, i.e., valuable mineral deposit locations as though they are minerals reserved to the United States. That no Jefferson Mining District Assemblyman, to date, has been so abused by the agencies, State, or third-party interests[46], or the United States itself[47], because of proper challenge to the jurisdiction and delegated authority of agencies attempting to infringe granted property through demonstrably wrongful administrative demands for things, such as the NEPA and the inapplicable Notice of Intent or Plan of Operation, testifies to this fact of ongoing injustice under color of justice. The consistency sought ought to be the *status quo* to be preserved, the Congressional intent to mineral development and extraction unfettered as granted. The properly interpreted and enforced General Mining law precludes the grantor's agent from fraudulently presenting a Notice for consideration amounting to a trust breach of the highest order, as if to make war on the laws of the United States, under color of lawful authority where there is none, relative to the subject matter under consideration. The consistency sought shall be to fulfillment of congressional intent.

Executed this October 9, 2018.

Ron Gibson.
Interim-chairman elect, Office of Jefferson Mining District,

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45 **Valid mining claims are "private property"** Freese v. United States, 639 F.2d 754, 757, 226 Ct. Cl. 252 cert. denied, 454 U.S. 827, 102 S.Ct. 119, 70 L.Ed.2d 103 (198

46 *Such an interest may be asserted against the United States as well as against third parties* (see Best v. Humboldt Placer Mining Co., 371 U.S. 334, 336 (1963); Gwillim v. Donnellan, 115 U.S. 45, 50 (1885)) *and may not be taken from the claimant by the United States without due compensation.* See United States v. North American Transportation & Trading Co., 253 U.S. 330 (1920);

47 "*Even as against the United States which nevertheless retains title to the land.*" Granite Rock Co. v. California Coastal Commission, 1984. However tortured Granite has been made, it foremost recognizes the private nature of a Location.

on the behalf and behest of its Assembly.
820 Crater Lake Ave., Suite 114, Medford, Oregon. 97504.

cc: Jefferson Mining District Recorder.