October 15, 2018
Conducting small-operations under two sets of rules makes no sense
COMMENTS IN RESPONSE TO
Federal Register/Vol. 83, No. 178/Thursday, September 13, 2018/Proposed Rules
RE: DEPARTMENT OF AGRICULTURE- Forest Service
36 CFR Part 228
RIN 0596–AD32
Locatable Minerals

I wish to comment on the proposed revisions to the USFS locatable minerals regulation.

The goal of the regulatory revisions to expedite USFS review by clarifying the process and to create a more consistent regulatory environment is welcome and desirable for mineral exploration in the United States and particularly in the western US. This includes our strategic minerals inventory.

I am a geologist with over thirty years of mineral exploration experience and have operated projects on BLM and USFS administered-lands. The lack of parity in the regulation of mineral exploration projects between the Departments of Interior and Agriculture is puzzling. In my experience, all mining projects begin with small exploration programs that may discover potentially economic mineralization. Projects are result-driven and smaller exploration companies are funded by investors as are major mining companies. Extended delays in the permitting process and the extensive studies required by USFS regulations prevent many explorers from considering work on USFS lands. The current regulatory environment effectively is a prohibition to working on USFS lands. Similar projects where claims are located on BLM lands are leading to discovery of mineral deposits which benefits local, state and federal economies. This is an important reason to revise the regulatory environment on USFS lands.

The lack of expeditious review by the regulating agency is, in part, a result of the lack of a uniform process between various offices administering the same regulations. The USFS is often understaffed or has staff that lacks in expertise and experience in the permitting process. Positions advertised in the last several years have categorically excluded candidates that have both experience and expertise by using descriptors like "recent-graduates". The result is "compounded incompetency" in the permitting environment where inexperienced personnel are responsible for enforcing regulations, without the expertise to develop common sense, working solutions to any of a multitude of questions that may arise in the permitting process.

The current regulations that are applied to small, early-stage, exploration are in many cases applicable to large-scale exploration efforts or producing mine operations. Competent explorers understand that large projects will require extended time periods necessary to develop baseline studies and large expenditures of money to achieve permit approval. For projects where explorers can begin to evaluate their mining claims, and can effectively do so, with under five acres of surface disturbance, it seems that revision of the burdensome, existing process would allow for operators to explore and regulators to carry on work, permitting larger-scale projects where more resources are required of the agency.

1a-c)For this reason, I strongly support a revision of the regulations to create a BLM-type "notice-level" operational classification that is specific in description. The current USFS notice-level classification is non-existent in my experience. The current description "are identified by 36 CFR 228.4(a) as those which might, but are not likely to, cause significant disturbance of surface resources." is vague and has apparently been inconsistently interpreted by different USFS jurisdictions.

One important aspect of the 5-acre notice-level operations is the concept of concurrent reclamation. When earth moving equipment is mobilized to a project, that is the time to reclaim existing surface disturbance that is no longer needed, for small operations. It also provides the opportunity for the regulators to determine if the reclamation is "properly" carried out and helps ensure that future reclamation will be completed in a desirable fashion.

1 g)Environmental concerns should not be ignored in any large-scale operation. In small-scale operations, environmental impacts are expected to be minor. As such, the preparation of expensive, time intensive environmental assessments are not justified. This relates to the point made above regarding lack of regulating personnel and lack of experience and expertise who can work with operators to resolve unforeseen, minor impacts in small areas of surface disturbance. One problem encountered in Nevada is that many USFS lands are designated “Inventoried Roadless Areas” . This designation was apparently assigned to lands where there are frequently used access roads but were simply excluded from USFS maps. From this, it is clear that an assigned land status may not be properly applied to certain lands and a prudent regulator will be able to work with operators of small-scale projects to satisfactorily mitigate environmental impacts in a small-scale project.

2 a-d) When projects move to a classification that requires a Plan Of Operations, it is very desirable to have details of the measures expected from the operator and that the measures are similarly applied across all jurisdictions. It is too common that there is inconsistent regulation. If there is sufficient staffing to have “prescribed meetings” between regulators and operators, this would be desirable. However, if the timeline to

have such meetings is extended, then this provides no solution to the existing problem of very long approval times (Years!)
If complete guidelines are established in what is expected of the operators, then there should not be gaps in the POO that would create redundancy in analysis of the POO by the regulators, which cost time and money to both the agency and the operator. The approval timeline now, often results in the operator applying for a permit before all pertinent geologic information is collected at a project. The result is often that upon final approval, the operator must begin the amendment process for the POO. Once a POO is approved there needs to be a clear path for amendment that is not encumbered by a extended timeline excepting when there are unforeseen extraordinary circumstances.
3c) Do you agree that 36 CFR part 228, subpart A, should be amended to explicitly permit an operator to request
Forest Service approval for a modification of an existing plan of operations?
Yes
4,5) Regarding enforcement tools of compliance. If there are significant deviations from the POO, these need to be dealt with appropriately. If conversation with operators is unsuccessful to provide for a satisfactory remedy to the problem, then more severe enforcement measures should exist. However, the USFS must be held accountable for "heavy-handed", illegal enforcement tactics as have been witnessed in numerous situations in recent history.
Before creating new regulations, fair and proper enforcement of existing regulations should be strongly considered. The publication of the Proposed Rules States" the mining laws have been widely abused"… but the GAO reports "finds, some holders of mining claims" have used the claims for inappropriate uses or illegal activities. The GAO's recommendation to revise the regulations to limit use or occupancy seems appropriate. However, competent explorers should not be the pre-judged subject of "abusive miners" by the regulators.
The BLM's regulations that establish a framework for distinguishing between bona fide uses and occupancies and those that represent abuse of the mining laws for non-mining pursuits (43 CFR part 3710, subpart 3715 is a desirable approach.
6) Financial Guarantees
The BLM has a SRCE to determine Bonding Requirements. When operating under a POO, the review should be made periodically by the USFS, in early phases to determine if the "bond" is appropriate. The bond should be reviewed at change of ownership of the property. Otherwise, the financial guarantee should be considered to have been appropriately calculated as part of the original (or amended ) POO.
7) Operations on Withdrawn or Segregated Lands.
The BLM"s regulations here are off-base.
The inability to show that one mining claims fails to pass the test of mineral examination should not invalidate all claims on segregated or withdrawn lands. Many lands segregated, have been done so on questionably valid segregations… some by political agenda. Therefore, claims located on lands subsequently segregated should be evaluated on a, claim by claim basis. Otherwise the owner should be fully compensated for all expenditures on the claims as a whole. All or nothing, is an inequitable solution to US citizens who, in good faith, located claims under the Mining Law.
8) Procedures for Minerals or Materials that May Be Salable Mineral Materials, Not Locatable Minerals
The Forest Service should amend 36 CFR part 228, subpart A, to increase consistency with the BLM's regulations governing substances that may be salable mineral materials rather than locatable minerals.