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

In re: FS-2018-0052, Forest Service Advance Notice of Proposed Rulemaking 36 C.F.R. Part 228 Subpart A, Locatable Minerals; Request for Comment

To Whom It May Concern:

This letter provides information in response to the Forest Service (“USFS”)’s notice as part of its proposed rulemaking for 36 C.F.R. § part 228 Subpart A. 83 Fed.Reg. 46451-46458 (Sept. 13, 2018) involving hardrock mining.

1. The complexity and significance of the proposed rulemaking, as well as the resulting environmental impacts from operations reviewed and approved under the revised regulations, requires the USFS to **analyze the proposal via an EIS**.
2. Public review and comment can and does reduce harms from hardrock mining, **the reforms that are needed are those that result in stronger and better protections, not less as proposed by the agency**.
3. Any and all activities above *de-minimus* casual use should **require a Plan of Operations**. Even small-scale mineral operations can have deleterious impacts, especially when conducted within or near streams/riparian areas, sensitive wildlife and/or plant habitats. Impacts to public recreational uses, or Native American cultural/religious uses, are also immediately felt by these operations. Requiring a Plan of Operations for all activities above *de-minimus* casual uses is also **consistent with protecting Forest resources and ensuring public participation under NEPA**. Currently, both BLM and USFS require a similar Surface Use Plan of Operations for all applications for permits to drill on oil and gas leases, regardless of the extent or location of drilling. There is no reason why hardrock mineral operations should not be held to the same standard.

4. Just as BLM's regulations require **financial guarantees/bond submittals and approvals** before approval of a Plan of Operations (or Notice of Intent, although such levels of approval should be discontinued), so too should the USFS's regulations. The applicant should provide the amount and details of the FG/bond in its Plan of Operations, and the agency's review of the FG/bond should be subject to public review under NEPA.
5. Before the agency asserts that mining claimants have a statutory right to use and occupy public lands, the agency must verify that the claims are valid under the Mining Law. A **mineral examination report** verifying claim validity should be required before USFS approves any operations under the mining laws above initial exploration. This will ensure that rights under the mining laws are not inappropriately applied when there was no valid claim(s) under the mining laws. This is especially important when claimants are proposing permanent use and occupancy of public lands (such as for waste and tailings dumps, and cyanide and sulfuric acid heap leach facilities) that permanently preclude all other uses of public lands.
6. **The use of the President's Executive Orders to "streamline" agency and public review for minerals cannot be used to circumvent the congressionally-mandated public review requirements under NEPA, or the environmental protection requirements under the Forest Service Organic Act, National Forest Management Act, Endangered Species Act, Clean Water and Air Acts, and other applicable federal laws.**

I ask that USFS extend the public comment period by 60-days and conduct an EIS pursuant to NEPA for this proposed rulemaking. This is an opportunity for USFS to adopt and revise regulations so they are more consistent and protective of America's resources like water and public lands. It is critical that the USFS increase transparency and public involvement and engagement to ensure the accomplishment of the twin aims of NEPA.

Thank you for your consideration.

Sincerely,
Steven Krichbaum