

Since 1987 I have been in the business of cleaning up our soil and groundwater. I've provided oversight activities and regulatory reporting services for various site characterization and soil/groundwater remediation and compliance monitoring operations throughout Washington, Oregon and Alaska. This has included operations on behalf of: U.S. Army Corps of Engineers, National Oceanic & Atmospheric Administration, U.S. Environmental Protection Agency, Yakama Nation, Fort Belknap Reservation, Duck Valley Reservation, Nez Perce Reservation, City Municipalities, Port Districts, School Districts, Environmental Consultants, nationwide spill response call centers and various private individuals and companies. I am proud of the fact that during my lifetime, I have been responsible to help reduce environmental impacts caused by tens of thousands of cubic yards of contaminated soil, and un-estimated millions of gallons of contaminated groundwater.

As a professional Washington State licensed geologist, hydrogeologist and engineering geologist, I have always been interested in prospecting and mining. Being in the latter part of my professional career, I have decided to spend some time exploring for locatable minerals. In the last two years, I have acquired a few placer and lode claims in a location I have been interested in since the late 1970's. I am now classified as a *small-scale miner* according to *Bureau of Land Management* (BLM) definitions. I strive to operate my mining claims in a manner that future generations would be proud of and I seek to be a partner contributing toward the BLM and Forest Service missions, as I protect the environment during my activities.

I have recently become a member of various mining clubs, as well as my local *Mining District*. In speaking with many of the local "seasoned" miners, I have found that there is general discontentment with the Forest Service's interpretation of the laws giving the Forest Service the authority to, in the words of document 83 FR 46451, "*regulate operations conducted on certain National Forest System lands under the Mining Law of 1872, as amended, 30 U.S.C. 22-54 (The Mining Law)*". Their concerns have caused me to begin reading the various laws and as a result, I understand their concern. The Forest Service seems to have lost sight of the primary mission for which it was originally created by creating regulations ***overlapping*** BLM regulations when this was never the original intent of the law. Overall, I can tell you that this is not "sitting well" with the mining community and ultimately, you will need to somehow address these concerns. I think you can do it by respecting their *rights and obligations* under Federal law, and "encouraging" them in accordance with 30 U.S.C. § 21a, which reads:

"Congress declares that it is the continuing policy of the Federal Government in the national interest to foster and *encourage private enterprise in (1) the development of economically sound and stable domestic mining, minerals, metal and mineral reclamation industries, (2) the orderly and economic development of domestic mineral resources, reserves, and reclamation of metals and minerals to help assure satisfaction*

of industrial, security and environmental needs, (3) mining, mineral, and metallurgical research, including the use and recycling of scrap to promote the wise and efficient use of our natural and reclaimable mineral resources, and (4) the study and development of methods for the disposal, control, and reclamation of mineral waste products, and the reclamation of mined land, so as to lessen any adverse impact of mineral extraction and processing upon the physical environment that may result from mining or mineral activities. For the purpose of this section “minerals” shall include all minerals and mineral fuels including oil, gas, coal, oil shale and uranium. *It shall be the responsibility of the Secretary of the Interior to carry out this policy when exercising his authority under such programs as may be authorized by law other than this section”.*

The Forest Service needs to evaluate their role in obligations and jurisdictional authority provided by 30 U.S.C. § 21a to implement the overall mandate. To do this, I encourage the Forest Service to begin *partnering with the only lawfully established, local mining instrumentalities in existence, the various Mining Districts* established by 30 U.S.C. § 28. The recognition and cooperation with the various Mining Districts, would ultimately also be a remedy to bridge jurisdictional gaps between the *Department of the Interior* and the *Department of Agriculture*. Such a partnership could dramatically simplify local regulations for vastly different geologic terranes and environments *while mending relations* with the people who will actually provide the critical minerals, and the potential jobs they bring, necessary to our nation’s economy and security.

The Forest Service should be very wary of entering into the realm that could be perceived as “extortion” through prohibitive fees required to *simply do what prospectors and miners have a right to do*. While the Forest Service may see those fees beneficial to fund employee salaries, a *small-scale* miner may see those fees as being used in lieu of the limited budget necessary to conduct prospecting and mining activities in the manner necessary to *secure property from vandalism & theft, ensure public safety and operate within an environmentally responsible manner*.

I would add that overall, proper notification and time limit for response was grossly inadequate. For such matters *affecting the livelihoods of small scale miners*, the various Mining Districts must be given verifiable notice, as well as sufficient time to evaluate the proposed rulemaking in their respective jurisdictions, and *if anyone’s comment should be heard, it is theirs*.

Notwithstanding the jurisdictional concerns discussed above, my comments regarding the proposed rulemaking, *assuming you intend to unilaterally advance rulemaking without regard to other jurisdictional entities*, are as follows:

1. Classification of Locatable Mineral Operations

c. The Forest Service is contemplating amending its regulations at 36 CFR part 228, subpart A, to increase consistency with the BLM's regulations which establish three classes of locatable mineral operations and specify the requirements an operator must satisfy before commencing operations in each such class, to the extent that the Forest Service's unique statutory authorities allow this. Do you agree with this approach?

c. No. But I do recommend that the Forest Service discontinue use of terms such as “might cause” and “significant”. These are highly subjective terms open to broad interpretation.

I would recommend editing 36 CFR part 228 as follows:

§ 228.4 Plan of operations—notice of intent—requirements. (a) Except as provided in paragraph (a)(2) of this section, a notice of intention to operate is required from any person proposing to conduct operations which ~~might~~ **will** cause disturbance of surface resources **required for the Forest Service to meet its objectives per (16 U.S.C. Ch. 2 §475)**. Such notice of intention shall be submitted to the District Ranger having jurisdiction over the area in which the operations will be conducted. If the District Ranger determines that such operations will likely cause significant disturbance of surface resources, the operator shall submit a proposed plan of operations to the District Ranger. (1) The requirements to submit a plan of operations shall not apply: (i) To **operations which will be limited to the use of vehicles on existing public roads, or roads used and maintained for National Forest purposes, or pre-existing accesses such as logging roads, skids and trails where limited use is unlikely to damage resources managed by the Forest Service** (ii) To individuals desiring to search for and occasionally **remove small mineral samples or specimens**, (iii) To prospecting and sampling which will not ~~cause significant surface resource disturbance~~ **damage resources managed by the Forest Service** and will not involve removal of more than a reasonable amount of mineral deposit for analysis and study, (iv) To marking and monumenting a mining claim and (v) To subsurface operations which will not cause significant surface resource disturbance. (2) A notice of intent need not be filed: (i) Where a plan of operations is submitted for approval in lieu thereof, (ii) For operations excepted in paragraph (a)(1) of this section from the requirement to file a plan of operations, (iii) For **casual use** operations which will not involve the use of mechanized earthmoving equipment such as bulldozers or backhoes and will not involve the cutting of trees. Each notice of intent to operate shall provide information sufficient to identify the area involved, the nature of the proposed operations, the route of access to the area of operations and the method of transport. If a notice of intent is filed, the District Ranger will, within 15 days of receipt thereof, notify the operator whether a plan of operations is required.

The Forest Service should also recognize that in some instances the use of mechanized machinery *can actually reduce the overall impact to the environment* when compared to non-

Notice Level exploration activities with hand tools. For instance, a small modern backhoe can establish an exploratory test pit quite rapidly in an area where surface slopes are relatively flat and are not covered by vegetation. The prospector can collect the desired samples and immediately backfill the pit to its original grade thus performing desired reclamation activities and demobilizing the very same day. It is reasonable to say that small motorized equipment could be no more than a *Notice Level* activity. Alternatively, non-Notice Level activities with hand tools have left lasting impact to the original surface grade, simply because they are less likely to be filled by a tired and aching human having spent days with a shovel in their hands.

d. If you do not agree ..., please identify the classes of locatable mineral operations that you think the Forest Service should adopt. Also please identify all requirements that you think an operator should have to satisfy before commencing the locatable mineral operations that would fall in each such class.

My Comment:

With the above recommended changes to 36 CFR part 228 are adopted, there are three classifications. Identification of all requirements I would recommend is not possible given the time restraint for this *request for comment*.

e. If you previously concluded that 36 CFR part 228, subpart A, did not require you to give the Forest Service prior notice before you began conducting locatable mineral operations on National Forest System lands, what issues or challenges did you encounter once you began operating?

My Comment:

Intimidation. The general consensus of local miners is that the Forest Service is overbearing and making situations far more difficult than necessary. I have personally been informed by our local U.S. Forest Service *Authorized Officer*, that **any activity, in which they can tell we have “been there” requires a Notice of Intent. This essentially limits any of my prospecting activities to collection of small surface samples.** Seriously, can any reasonable person expect that a serious small-scale prospector and/or miner ***might not*** disturb surface resources? I was also informed I should not bring a pet into the forest because there might be seeds of noxious weeds in it's fur.

If, based on the *Notice of Intent*, the District Ranger determines that such operations **will likely cause significant disturbance of surface resources, the Operator must submit a Plan of Operation.** The language of this regulation is subjective, inadequate, and allows for personal interpretation of the word “significant”, by the District Ranger. It has been the experience of

miners within my District, that **such personal interpretation has been used against operators within our District to require a Plan of Operations for all prospecting and/or mining operations.**

It has been the overall experience of operators within our District that **even if a Plan of Operation is submitted, the District Ranger refuses to approve ANY Plan of Operation claiming the Forest Service does not have the funding or resources to adequately review ANY of the plans and does not foresee approving any in the near future!**

Is this not an environment of intimidation? It seems to me that the very Act (Sundry Civil Appropriations Act of 1897) that is used by the U.S. Forest Service to claim authority over prospecting and mining operations within Forest Reservation boundaries, has been used to unilaterally codify regulations to materially “**prohibit any person from entering upon such forest reservations for all proper and lawful purposes, including that of prospecting, locating, and developing the mineral resources thereof**” **in direct violation of the Sundry Civil Appropriations Act of 1897 itself!**

f. If you previously concluded that 36 CFR part 228, subpart A, only required you to submit a notice of intent before you began conducting locatable mineral operations on National Forest System lands, what issues or challenges did you encounter after submitting your notice of intent or after you began operating?

My Comment:

The overall regulatory environment seems intimidating and has prevented me from reaching this phase of prospecting and exploration.

g. Should certain environmental concerns, such as threatened or endangered species, certain mineral operations, such as suction dredging, or certain land statuses, such as national recreation areas, be determinative of the classification of proposed locatable mineral operations? If so, please identify all circumstances which you think should require an operator to submit a notice before operating, and all circumstances which you think should require an operator to submit and obtain Forest Service approval of a proposed plan of operations?

My Comment:

No. The current classifications are sufficient and jurisdiction over threatened or endangered species, as well as suction dredging, already exists. The Forest Service needs to operate within its intended purpose. Needless additional Forest Service regulation only serves to expand its responsibilities. Please concentrate on restoring the vast tracts of insect and fire damaged forest

that can currently be found within our *District*, to a productive resource as you are mandated by the very laws that created the Forest Service.

2. Submitting, Receiving, Reviewing, Analyzing & Approving Plans of Operations

d. Do you think that amending [36 CFR part 228](#), subpart A, to provide an opportunity for an operator to meet with the Forest Service before submitting a proposed plan of operations, or to require the Forest Service to determine that a proposed plan is complete before initiating its NEPA-related analysis of the plan will expedite approval of proposed plans of operations? Are there additional or alternate measures that you would recommend to expedite approval of proposed plans of operation submitted to the Forest Service under [36 CFR part 228](#), subpart A?

e. How should [36 CFR part 228](#), subpart A, be amended so that the requirements for submitting a proposed plan of operations and the process the Forest Service uses in receiving, reviewing, analyzing, and approving that plan are clear?

f. What issues or challenges have you encountered with respect to preparing a proposed plan of operations or submitting that plan to the Forest Service pursuant to [36 CFR 228.4\(c\)](#) and (d) or [36 CFR 228.4\(a\)\(3\)](#) and (4), respectively?

g. What issues or challenges have you encountered with respect to the Forest Service's receipt, review, analysis, or approval of a proposed plan of operations that you submitted under [36 CFR part 228](#) subpart A?

My Comment: The Forest Service has informed some of the local miners that they do not foresee approving any plans at this time. I have listened to quite a few personal accounts regarding recent interactions between prospectors/miners and Forest Service agents, and quite frankly, they disappoint and discourage me. To protect the individuals from any acts of regulatory retribution, I won't provide specifics, especially since I was not an actual witness to these "ongoing dramas". But the reasonable reaction to perceived regulatory environment I have entered leads me to ask: what incentive do I have to create a Plan of Operations, when there is apparently not much chance that I will receive approval, even if I submit an adequate plan?

I have written numerous Sampling & Analysis Plans, Phase I, II & III Environmental Site Assessments and Remediation Work Plans for large projects under many jurisdictions. I can prepare an adequate Plan of Operation if necessary. But why should I take the time to write one if ***it will not be approved, even if reviewed and found to be adequate?*** Why should any hopeful *small scale miner* within my *District*?

It is my opinion that you must include the various Mining Districts in formulating these regulations, as it is clearly written into existing law that:

“The miners of each mining district may make regulations not in conflict with the laws of the United States, or with the laws of the State or Territory in which the district is situated, governing the location, manner of recording, amount of work necessary to hold possession of a mining claim” (30 U.S.C. § 28).

Forest Service rules must not become excessively burdensome for prospectors and miners, to the extent of eliminating incentive to actually perform their obligations. The Forest Service should work *in partnership* with the various *Mining Districts* for any rulemaking which affects their respective District. ***It is their lawful and rightful authority to be involved in the process of crafting such regulations, as they apply to the area “in which the district is situated”.***

3. Modifying Approved Plans of Operations

If 83 FR 46451 seeks comment on subjects discussed in the National Research Council (NRC) publication “Hard Rock Mining on Federal Lands”, then the “Advance notice of proposed rulemaking; request for comment” should ensure that a publicly accessible copy is readily available, in a timely manner. I suggest at least a hyperlink should have been added to 83 FR 46451 to provide a mechanism for *free online public review*. Otherwise, costs, availability and shipping delays prevent the average person from reviewing this document to make an informed opinion, especially given the time restraint for comment.

My Comment:

Language such as “*minimizing unforeseen significant disturbance of surface resources*” encroaches into the realm of bureaucratic rabbit holes which lead to limitless studies, evaluations and delays for prospectors and miners while giving reason for regulatory agencies to seek yet more funding for unfunded mandates.

c. 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?

As discussed above, I encourage the Forest Service to begin *partnering with the only lawfully established, local mining instrumentalities in existence, the various Mining Districts* to craft such rules in accordance with 30 U.S.C. § 28.

d. Do you agree with the 1999 NRC report's conclusion that the plan of operations modification provisions in 36 CFR part 228, subpart A, should be amended to permit the Forest Service to

require modification of an approved plan in order (1) to correct problems that have resulted in harm or threatened harm to National Forest System surface resources and (2) to reflect advances in predictive capacity, technical capacity, and mining technology? ... please identify any circumstances in addition to those in the current regulations which you think should permit the Forest Service to require modification of an approved plan of operations.

My Comment:

I cannot provide reasonable comment when I was not afforded sufficient opportunity to review the *National Research Council (NRC) publication "Hard Rock Mining on Federal Lands"*. I recommend that a copy be provided to each of the various Mining Districts for their review and comment prior to any proposed rulemaking.

e. Do you think that the regulations at 36 CFR part 228, subpart A, should be amended to set out the procedures which govern submission, receipt, review, analysis, and approval of a proposed modification of an existing plan of operations? If so, please describe the procedures that you think should be added to 36 CFR part 228, subpart A, to govern modification of existing plans of operations, including any differing requirements that should be adopted if the modification is being sought by the operator rather than the Forest Service.

Again, I encourage the Forest Service to begin *partnering with the only lawfully established, local mining instrumentalities in existence, the various Mining Districts* if the Forest Service desires to craft such rules, in accordance with 30 U.S.C. § 28.

4. Noncompliance & Enforcement

f. As the NRC's 1999 report entitled "Hard Rock Mining on Federal Lands" finds, the Forest Service's inability to issue a notice of noncompliance unless the operator fails to comply with 36 CFR part 228, subpart A, and that noncompliance is unnecessarily or unreasonably causing injury, loss or damage to National Forest System surface resources "has led to concern about the efficacy of the notice of noncompliance in preventing harm to [those] resources. . . .".

My Comment:

I was not afforded sufficient opportunity to review the *National Research Council (NRC) publication "Hard Rock Mining on Federal Lands"*. I recommend that a copy be provided to each of the various Mining Districts for their review and comment prior to any proposed rulemaking. Partner with the various *Mining Districts* if the Forest Service desires to craft such rules, in accordance with 30 U.S.C. § 28.

g. The Forest Service is contemplating amending 36 CFR part 228, subpart A, to increase consistency with the BLM's regulations governing the enforcement of locatable mineral operations conducted upon public lands that the BLM manages, to the extent that the Forest Service's unique statutory authorities allow this. Do you agree with this approach?

My Comment:

Sufficient law enforcement agencies exist that have the necessary and proper jurisdictional authority, to address ALL unlawful behavior on National Forest lands. Expansion of Forest Service authority to include law enforcement capabilities, *while simultaneously seeking to expand Forest Service regulations into areas of disputable jurisdiction* is highly questionable. It is also unnecessary as it currently has enforcement options currently available through legitimate government attorneys and law enforcement agencies.

Quite frankly the Forest Service's desire to be granted law enforcement authority could be perceived as a unilateral political power grab that would enable it to codify regulations, and enforce those same regulations, that could potentially be used to materially **“prohibit any person from entering upon such forest reservations for all proper and lawful purposes, including that of prospecting, locating, and developing the mineral resources thereof”** in direct violation of the Sundry Civil Appropriations Act of 1897.

h. If you do not agree that 36 CFR part 228, subpart A, should be amended ..., please describe the enforcement procedures that you think the Forest Service should adopt to prevent noncompliance with the agency's requirements governing locatable mineral operations from harming National Forest System surface resources.

My Comment:

As before, I encourage the Forest Service to begin *partnering with* **the only lawfully established, local mining instrumentalities in existence, the various Mining Districts** if the Forest Service desires to craft such rules, in accordance with 30 U.S.C. § 28.

My qualifications and licenses do not include those necessary to provide legal consultation to the Forest Service with regards to implementing its desired enforcement procedures. However, the fact that this question is being asked of the public seems to be *prima facie evidence* that the Forest Service does not understand law enforcement processes, and should leave law enforcement activities to be handled by the appropriate **existing** attorneys and law enforcement agencies.

i. Please describe the processes that the Forest Service should be mandated to follow if 36 CFR part 228, subpart A, is amended to permit the Forest Service to take the following enforcement actions: Ordering the suspension of noncompliant operations, in whole or in part, requiring noncompliant operators to obtain approval of a plan of operations for current or future notice-level operations, and nullifying a noncompliant operator's notice or revoking a noncompliant operator's approved plan of operations.

My Comment:

Again, the fact that this question is being asked of the public seems to also be *prima facie evidence* that the Forest Service does not understand law enforcement processes, and should thus leave law enforcement activities to be handled by **existing** attorneys and law enforcement agencies.

The Forest Service must respect the many jurisdictions operating on Federal Lands with respect to the environment (USEPA), fish & wildlife (USFW), legal matters (US District Attorneys) and law enforcement (the various County Sheriffs, DEA, etc.) currently in place. *Their tasks are not the Forest Service's tasks.* The Forest Service is not intended to regulate mining. When a Forest Service agent sees a violation of law, the appropriate response is to report the incident to the proper authorities.

5. Reasonably Incident Use and Occupancy

e. The Forest Service is contemplating amending 36 CFR part 228 subpart A, which governs all operations conducted on National Forest System lands under the mining laws, to increase consistency with the BLM's regulations governing use and occupancy under the mining laws. Do you agree with this approach?

My Comment:

The Forest Service should *partner with the only lawfully established, local mining instrumentalities in existence, the various Mining Districts* if the Forest Service desires to craft such rules, in accordance with 30 U.S.C. § 28. Local conditions and customs are likely to require consideration when crafting such law to ensure claim holders are granted the right to security from theft, “claim-jumping” and public safety among other rights.

f. If you do not agree that 36 CFR part 228, subpart A, should be amended to increase consistency with the BLM's regulations governing use and occupancy under the mining laws, please describe the requirements, standards, and procedures that you think the Forest Service should adopt to prevent unlawful use and occupancy of National Forest System surface resources

that is not reasonably incident to prospecting, exploration, development, mining, or processing operations under the mining laws.

My Comment:

This is not a matter of agreeing, or disagreeing. This is a matter of utilizing **lawfully established, local mining instrumentalities, the various Mining Districts** if the Forest Service desires to craft such rules, in accordance with 30 U.S.C. § 28. Local conditions and customs are likely to require consideration when crafting such law to ensure claim holders have security from theft, vandalism, “claim-jumping” and are able to restrict access to operations as necessary for public safety.

6. Financial Guarantees

b. What circumstances should permit the authorized officer to review the cost estimate and financial guarantee's adequacy and require the operator to furnish an updated financial guarantee for reclamation or post-closure management?

My Comment:

Authorized officers should only review a proposed financial guarantees adequacy when activities proposed in a submitted *Plan of Operation* rise to the magnitude of requiring an Environmental Impact Statement, present a clear threat or danger to public health & safety and/or pose a verifiable endangerment to the environment. The scope of mining operations and their resulting potential impacts vary greatly among the various *Mining Districts*. The Forest Service should partner with the various *Mining Districts* to evaluate proposed rulemakings, in accordance with 30 U.S.C. § 28.

c. How frequently should the authorized officer be allowed to initiate this review and update of the financial guarantees for reclamation or post-closure management?

My Comment:

This is a matter that should be considered on a case-by-case basis. Many prospecting activities performed by *small-scale miners* won't rise to a level requiring a mandate of periodical review, especially when their activities conform to any *Notice of Intent* or an approved *Plan of Operation*. The scope of mining operations and their resulting potential impacts vary greatly among the various *Mining Districts*. The Forest Service should partner with the various *Mining Districts* to evaluate proposed rulemakings, in accordance with 30 U.S.C. § 28.

7. Operations on Withdrawn or Segregated Lands

My Comment:

Due to the imposed time restraints of this “request for comment”, I didn’t have adequate time to evaluate your proposed rulemaking for this topic.

8. Procedures for Minerals or materials that May Be Saleable Mineral Materials, Not Locatable Minerals

d. The Forest Service is contemplating amending 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. However, since the authority to determine the validity of mining claims lies with the Department of the Interior, the amendments would need to direct the Forest Service to ask the BLM to initiate contest proceedings with respect to mining claims which the Forest Service thinks are based upon an improper attempt to appropriate salable mineral materials under the mining laws—a process consistent with an existing agreement between the Department of the Interior and the Department of Agriculture. Do you agree with this approach?

My Comment:

The Bureau of Land Management (BLM) operates a variety of jurisdictions on Federal Lands, including that of the Forest Service. The various National Forests lie *within* all of the lands managed by BLM. It is my opinion that the law should be clarified regarding this jurisdiction, and I think it should be in favor of the BLM. The Forest Service should concentrate on its intended purpose and jurisdiction over the agricultural aspects of lands within Forest Service boundaries, to improve and protect the forest within the boundaries, or for the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber for the use and necessities of citizens of the United States (16 U.S.C. Ch. 2 §475). The purpose of the Forest Service is *not to manage, or to regulate the sale of rocks*.

e. If you do not agree that [36 CFR part 228](#), subpart A, should be amended to increase consistency with the BLM's regulations governing substances that may be salable mineral materials rather than locatable minerals, please describe the requirements and procedures that you think the Forest Service should adopt to help ensure that the public interest and the Federal treasury are protected by preventing mineral materials from being given away for free contrary to [30 U.S.C. 602](#) which requires payment of their fair market value.

My Comment:

If the Forest Service is aware of improper use of potentially saleable mineral materials, they should report the incident to the appropriate legal authority.

Respectfully submitted,

DLG