

15 October, 2018

To whom it may concern:

We are writing to submit a public comment in response to the US Forest Service's consideration for regulatory revision(s) to 36 CFR 228 A, which involves the review and approval process of proposed mineral operations and mineral exploration programs on lands managed by the USFS. Bronco Creek Exploration is a mineral exploration company with 9 employees located in Tucson, AZ. We have been consistently exploring for mineral deposits on USFS managed lands in the western United States since 2002, and plan to continue doing so for decades to come. Bronco Creek Exploration prides itself in conducting responsible, early stage exploration programs with little to no surface disturbance. Our proposed Plans of Operation attempt to utilize existing infrastructure and natural clearings to reduce disturbance. Employing this methodology to our exploration programs results in frequent compliments, from regulatory agencies, regarding the low initial impacts and high quality of reclamation work that is built into our Plans of Operation.

Bronco Creek spends approximately \$1,070,000 per year to maintain tenure to its mineral lands in the western US, the majority of these costs are the maintenance of unpatented federal mining claims on federal lands (\$917,000). These costs coupled with 2 to 5 year permitting time-frames to complete an initial basic drill test, which generally only last a couple of months, makes mineral exploration on these lands untenable. We strongly support a revision or amendment to the 36 CFR 228 A that would allow minimal impact activities, with less than 5 acres of disturbance to take place in an expedited fashion. This would greatly enhance the availability of USFS personnel for other activities, lessening the burden to tax payers and proponents, and enhance the attractiveness of exploring USFS lands.

Mineral exploration has and always will be a high risk venture; the cost of which is born by private individuals and companies. Chances of success are estimated to be in the range of 1 in 1,000 to 1 in 3,000 projects becoming a mine (e.g. Singer, 1995; Sillitoe, 2000; Schodde and Hronsky, 2006). In addition, odds of success are decreasing as most of the "easy to find," near surface deposits have already been discovered. Modern exploration is now forced to focus on harder to find deposits, with even lower chances of success. Importantly, the majority of modern exploration, especially the initial phases, has a short duration (1 to 2 months) and causes little to no surface disturbance. If companies are to remain exploring for minerals on lands managed by the USFS, it is critical that they can complete these initial stages, with minimal impact in a timely fashion.

The current system for permitting mining exploration activities is fundamentally broken. We are encouraged that the USFS is considering rule changes that will more appropriately allocate the time and capital of USFS and proponents looking to conduct responsible mineral exploration on lands managed by the USFS. In our experience, plans of operation with limited scope that would take 2-6 months to permit on land managed by BLM, can take 2-5 years to permit on land managed by USFS, though this may vary depending upon the local forest. This increased

permitting time strains the budgets of USFS and proponents alike, and damages local economies that stand to benefit from responsible exploration and mining activities conducted in their communities. More importantly, the increased permitting time does not lead to superior mitigation measures, resulting in reduced environmental impact after Plans of Operation are concluded.

Streamlining the permitting process for proposed (non-discretionary) mineral exploration and mining operations on lands administered by the USFS, which can easily be accomplished by adopting or paralleling the BLM regulations for the approval of mineral operations, is necessary. Making select amendments (detailed below) to 36 CFR 228 A, will allow the USFS to more efficiently review submitted Plans of Operation and will generally expedite the permitting process for mineral operations. Having an effective system for the permitting of mineral exploration and mining projects is critical to the health of the economy, at the local, state, and federal levels, as it allows industry to explore for, develop, and harvest our national resources.

On a global level, the identification, development, and extraction of natural resources has been recognized as a crucial matter for economic independence and national security. Due to the ubiquitous importance placed on this process, many Federal governments have begun publishing their individualized lists of “Critical Minerals.” The United States is no different in this matter, and has recently announced that as a country we should be working towards less foreign dependence on natural resources, especially when they can be feasibly located domestically. The current permitting process and accompanying extended timelines are, by design, discouraging mineral exploration and development. Increasing the efficiency of the permitting process for mineral deposits on lands administered by the USFS is a logical step to more effectively securing these domestic resources for current and future generations.

While we feel many of the proposed changes put forward should be implemented, it is critical that the USFS immediately implement a “5 acre rule” to mimic the BLM’s rule for Notice Level Operations. We strongly recommend that the USFS separate this provision from the rest of the proposed rulemaking and immediately send it to the Office of Management and Budget (OMB) for a determination of “non-significance” and proceed to publish it in the Federal Register as soon as that determination is made. Since the USFS is adopting a regulation similar to what the BLM has been using for almost 20 years, it should be able to obtain a “non-significant” determination.

Please find below, comments and answers to the specific questions posed within FR Doc. 2018-19961.

Classification of locatable mineral operations.

c. Do we agree with the approach of the USFS amending 36 CFR 228 subpart A to more closely match the BLM's regulations and procedures?

Yes, it would be beneficial for the USFS to more closely match the regulations and procedures of the BLM, with respect to the classification of locatable mineral operations. The manner in which the BLM classifies, and conducts analyses on proposed mining and mineral exploration actions is much more efficient and follows a more defined prescription than what the USFS currently adheres to. An amendment to this rule would streamline the permitting process and allow for expedited review of Plans of Operation. This proposed amendment would lessen the burden on USFS resources due to greatly decreased analysis times. As such, the proposed amendment should be applicable to all project types governed by 36 CFR 228 A (i.e. not limited to only energy-producing minerals or Infrastructure projects).

One particular area where the 36 CFR 228 A regulations are sorely lacking, and could easily be improved by more closely following the BLM regulations and procedures, is regarding early-stage mineral exploration. These types of programs are the necessary first steps to locating and identifying mineral resources. Early-stage exploration programs are short-lived and result in minimal surface disturbance. However, on lands administered by the USFS, the majority of these programs are elevated above Notice Level activities. Instead they are treated as more time consuming Plans of Operation, which can fall into one of three categories: Categorical Exclusion (CE), Environmental Assessment (EA), and Environmental Impact Statement (EIS).

If the BLM regulations were utilized as a model for the USFS, many of these projects would be eligible for the simplified *Notice of Intent* category. Within the BLM guidelines, under a Notice of Intent, if a proposed project has an expected surface disturbance of less than 5 acres, and is not expected to adversely affect any sensitive cultural or biological areas, the permitting process is greatly simplified and the analysis is expedited. The current *Categorical Exclusion* (CE) category for the USFS, could easily be amended to match the specifics of the BLM "5 acre rule." Each future USFS Plan of Operations that is processed utilizing the "5 acre rule" has the potential to save USFS and proponents alike significant money and time.

f. What issues were encountered when submitting a Notice Level activity to the USFS?

Unfortunately our group has multiple examples where difficulties were encountered while attempting to submit Notice Level activities to the USFS. In one particular example, a strong argument could be made that the proposed geophysical exploration activities were actually within the definition of *Casual use*, due to their limited scope and duration. Nevertheless, as a courtesy to the local USFS office, we elected to submit a Notice of Intent. The USFS subsequently informed us that either a CE or an EA could possibly be required. The USFS was concerned that cultural resources could be disturbed, during the geophysical program were electrodes similar in size and shape to tent stakes are placed into the ground. In the end we acquiesced to the requests of the USFS and contracted a registered archaeologist to approve the sites before we installed

the electrodes in the ground which added a needless cost and delay to the exploration program.

(1) Submitting, Receiving, Reviewing, Analyzing, and Approving Plans of Operation

d. Would making these measures (upfront meetings, Plan Completeness Reviews) mandatory expedite the approval of proposed PoOs?

Not likely, as for the majority of the proponents who submit Plans of Operation to the USFS, these measures do not represent much of a change, since pre-submission meetings and *Plan completeness reviews* are part of normal interactions with the USFS. As such, this proposed amendment will not expedite the approval of proposed Plans, and will merely represent additional, yet unnecessary regulations. The primary foreseeable benefit is that it may provide a modicum of guidance for the occasional small operator who is unfamiliar with the USFS systems and procedures, however we are concerned that this extra step could lead to unnecessary delays in processing PoOs.

e. How should 36 CFR part 228A 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?

An additional regulation that would be extremely helpful in expediting the review and approval process would be to designate specific timelines by which the USFS must respond to submitted Plans of Operation. For instance, there should be distinct, firm, and separate timelines in place for all of the steps in the process; such as the *Plan completeness reviews* and the duration of the NEPA analysis.

For instance, a response, which designates the official receipt of the Plan from the USFS should be required on/before 15 days; the initial *Plan Completeness Review* should be completed within 30 days from the official receipt by the USFS; and the total duration of the NEPA analysis should not exceed 1 year, except when extraordinary circumstances can be demonstrated by the USFS. Having distinct and firm timelines in place, will ensure that the permitting process continues to progress without undue delays. Currently, it is common for proposed Plans to go without even a cursory review by the USFS for months. Recently we have two plans of operations that were not submitted for public scoping for over 14 months after receipt by USFS.

Additionally, amending 36 CFR part 228 A to increase the consistency of permitting efforts across all National Forest System lands would be quite beneficial. Currently, each individual Forest Service district has a tremendous amount of freedom in their interpretation and handling of the regulations, which creates vast inconsistencies in the ways proposed actions are reviewed and ultimately approved. It would behoove the USFS, project proponents, as well as the general population, if the implementation of the regulations was handled more consistently across all of the Forest Districts, so that all

concerned parties can more reliably anticipate what the process entails and how it will progress.

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?

The primary issue with the receipt, review, analysis, and approval of submitted Plans of Operation, is that each step in the process moves at a glacial pace. For comparison, permitting a Plan of similar scope at the BLM or on State lands (i.e. AZ, UT, WY) will generally take 2-6 months, 9 months with special circumstances, from the date of submission. Simple, low surface disturbance Plans which have recently been submitted to some of the Forest Districts in Arizona are taking 2-5 years to complete. These are PoOs that meet the criteria for a Categorical Exclusion (CE), but have been elevated to EA status because the officials at either the Forest Supervisor's office or the local District office fear they will be sued by NGOs for utilizing CEs as they were originally intended to be used. This is part of why we say the USFS permitting process is broken. Incorporating BLM-style permitting guidelines should help USFS process PoOs in a manner more consistent with other agencies, put mitigation measures in place that minimize impact, and avoid costly litigation.

Additionally, because a 5-acre rule does not exist on land managed by USFS, and the pace of permitting is significantly slower than lands managed by other agencies, there is an incentive to proponents to enlarge PoOs to include extra disturbance to try to compensate for the amount of time it takes to permit a PoO. Reducing the permitting timelines by adopting the "5 acre rule" would illuminate this incentive for smaller, well-defined proposed actions.

(2) Modifying Approved Plans of Operations

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?

Yes, there are certainly occasions when the understanding of a project changes over time. This is especially true when vast amounts of time elapses (i.e. 1-5 years) during the permitting process. In those cases, it is prudent for the USFS to allow reasonable, and especially minor, changes to submitted Plans of Operation without prolonging the original distinct, firm timeline.

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? If you do not agree with the 1999 NRC report's conclusion that 36 CFR part 228, subpart A, should be amended to allow the Forest Service to require an operator to modify an approved plan of operations to achieve these two ends, 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.

Yes, if the USFS can authorize the proponent to amend their approved Plan of Operations, it is also appropriate for the USFS to be able to propose modifications to a previously approved Plan. It should be noted, that if the USFS proposes modifications to a previously approved Plan, the modifications must be wholly aimed to the correction of oversights in the original Plan, and to protect or mitigate against harm to the Forest resources. Furthermore, the proposed modifications must be backed by current and sound scientific knowledge.

(7) Operations on Withdrawn or Segregated Lands

d. We agree that the USFS should either increase consistency with the BLM regulations or even directly adopt the BLM regulations and procedures regarding the Approval and Implementation of Plans of Operation on Withdrawn or Segregated lands.