

# WESTERN EXPLORATION LLC

October 15, 2018

USDA – Forest Service  
Attn: Director MGM Staff  
1617 Cole Blvd, Building 17  
Lakewood, CO 80401

And online to:  
<http://www.regulations.gov>

**Re: Comments on Advanced Notice of Proposed Rulemaking, 36 CFR Part 228  
83 Fed. Reg. 46451**

Dear Director MGM,

Western Exploration LLC (“WEX”) appreciates the opportunity to submit the following comments in response to the Advanced Notice of Proposed Rulemaking relative to 36 CFR 228A (the “228A Regulations”). WEX appreciates and applauds the USFS’ goal to expedite agency review of certain proposed mineral operations authorized under the U.S. Mining Laws and to increase nationwide consistency in regulating mineral operations authorized by the U.S. Mining Laws. WEX responds to the request for comments based on decades of experience working with USFS under the existing 228A Regulations and the U.S. Mining Laws and, importantly, recently being subjected to a proposed mineral withdrawal.

## **I. Background**

WEX is a privately-held company that acquired the Doby George and Wood Gulch projects located in northern Elko County, Nevada in 1997. Since 1998, WEX has spent over \$50 million on exploration efforts in the Doby George and Wood Gulch Project areas. Field exploration expenditures at Doby George and Wood Gulch (the “WEX Projects”) during a typical field season generally will range, at a minimum, of between \$7,000,000 – 10,000,000.

The WEX projects are among the most promising gold mines in our country and the world. This was recently confirmed in the USGS Mineral Potential report, which gave the WEX Projects the highest rating for mineral potential. The BLM has noted that two “large, well-defined gold resources have been developed through exploration in the past 20 years in Elko County, Nevada” – referencing the two WEX Projects. The BLM has also recognized that the local economy in Elko is primarily based on extensive locatable mineral operations.

The WEX Projects include the following:

- The Doby George Project is an advanced mineral exploration project that covers approximately 2,392 acres (114 claims) in the northern Independence Range on US Forest Service (“USFS”) land in the Aura Mining District.
- The Aura Project is a mineral exploration project that covers approximately 5,015 acres (239 claims) in the northern Independence Range on USFS land in the Aura Mining District.
- The Wood Gulch Project is an advanced mineral exploration project that covers approximately 7,470 acres (356 claims) in the northern Independence Range on USFS land near the old Wood Gulch Mine.

The economic footprint of WEX’s projects is much broader than the immediate vicinity and county in which they are located. Specifically, indirect expenditures in Mountain City, Elko, Winnemucca, and Reno continue to benefit the local economies as services and products are purchased from a wide variety of vendors, consultants, and contractors (*e.g.*, at least nine businesses providing lodging, food, and community amenities in Mountain City and Elko; eight businesses providing drilling and field supply services; nine businesses providing contractor and subcontractor labor; and 18 consultants providing employees and site-specific services). Moreover, exploration conducted by WEX of the Wood Gulch deposit and surrounding area lead to the discovery in 2013 of another, larger gold deposit approximately one mile east of the reclaimed Wood Gulch mine. This new deposit will be an economically significant discovery.

WEX has experience working with the USFS under the 228A Regulations having obtained approvals for its exploration activities for a number of years and having carried out all of its activities in an environmentally responsible way. WEX also has direct and recent experience in dealing with a proposed mineral withdrawal which put in great jeopardy the entire company and its nearly 20 years and over \$50 Million in investment in what has been described as one of Nevada’s and our Nation’s most promising next gold mines. WEX has a demonstrated interest in the regulations that govern its exploration and development of mineral interests on National Forest System lands.

## **II. Three Classes of Locatable Mineral Operations – Clarifying Requirements**

The current 228A Regulations establish three classes of locatable mineral operations: (i) those that do not require an operator to provide notice to FS before operating; (ii) those that do require the operator to submit a notice of intent to conduct operations; and (iii) those that require submission and approval of a proposed plan of operations. These three categories of activities and requisite notice and application approval generally align with the BLM’s surface management regulations at 43 CFR 3802.10 which establish three classes of locatable mineral operations through (i) casual use; (ii) notice-level operations; and (iii) plan-level operations. The BLM regulations, however, provide a greater level of specificity for notice-level operation by putting a

clear 5-acre or less limitation on surface disturbance for exploration activities. The BLM regulations also specify requirements an operator must meet before commencing operations in each such class. To the extent the FS's unique statutory authorities allow for this, WEX does not have concerns with providing more clarity and consistency to the three classes of activity and requirements associated with each. These changes also do not appear to substantially differ substantively from what already exists under the 228A Regulations and, thus, the clarity would be welcome. In addition, to the extent such clarifications provide for a more streamlined process for notice level work and plan-level operations, WEX strongly supports such efficiencies as the delays being experienced in the industry are costly, detrimental to the necessary attraction of investment dollars to conduct exploration and development, and sometimes prove to be insurmountable obstacles to development of valuable and needed mineral resources.

The ANPR asks whether certain environmental concerns, such as threatened or endangered species, certain mineral operations, such as suction dredging or certain land statuses should be determinative of the classification of proposed locatable mineral operations. No regulation amendment is necessary for these considerations and no hardline mandates should be imposed through regulations relative to these concerns because they all already are considered in the determination of whether activities ordinarily result in no or negligible disturbance of the lands or resources the agencies manage. Local site-specific information is the best available data for agencies to manage and operators to minimize disturbance. Mandating a "one-size-fits-all" requirement in the regulations based on land status or endangered species will tie the hands of the agencies and operators instead of allowing them to appropriately consider the best available information and work together to minimize, to the extent possible, the environmental disturbance while allowing for efficient extraction of the minerals as authorized under the U.S. Mining Laws.

### **III. Specifying/Clarifying Requirements for Submission of Proposed Plan**

The ANPR states that the FS thinks that increasing the clarity of the plan of operations content requirements would result in better proposed plans of operations. The FS also thinks that emphasizing that proposed plans of operation must specify in detail the measures that operators intend to take to satisfy the requirements for environmental protection set out in 36 CFR 228.8 would result in better proposed plans. WEX already provides a very detailed plan and specific actions it takes to satisfy environmental protection requirements and, therefore, does not object to this but does note that any changes should ensure the operator and the agency maintain flexibility to ensure that a suite of mitigation measures can be identified that would satisfy the environmental concern, to ensure such measures are actually effective from an environmental protection standpoint, economically feasible for the operator and also can be modified as necessary if local changes occur to habitat (such as fire) or otherwise. Amendments should avoid locking either FS or operators into "one-size-fits-all" rigid requirements that do not allow for the best solution based on site-specific information.

The ANPR also identifies the importance of encouraging a meeting with agency officials to discuss the formulation of a proposed plan before an operator may submit the plan to the agency and also mandating a finding by the appropriate agency official that an operator's proposed plan

is complete before the agency begins the National Environmental Policy Act (“NEPA”) related process of analyzing the plan and ensuring the measures an operator intends to take to satisfy the requirements for environmental protection set out in the 228 Regulations is appropriate. WEX recognizes the value of meetings and collaboration with the agency and also the importance of submitting a complete proposed plan; however, WEX also cautions that such a mandate not become a means to further delay the process by delaying commencement of NEPA. If such a mandate for completeness is included in the regulation amendments, then the proposed amendment should make clear the requirements and also mandate that within no more than 15 business days of receipt of a proposed plan, the agency shall notify the operator of any issues or lack of completeness. Without specific time frames to identify any deficiencies in the proposed plan, such a requirement could undermine the agency’s identified objective to streamline the permitting process.

The ANPR also asks for any recommendations to expedite the approval of proposed plans of operations. Often times the local agencies are spread extremely thin given the demands on their time with limited resources. In light of that, allowing the operator to fund an independent expert to assist in the agency’s review of the proposed plan could mitigate this issue and provide the necessary substantive expertise and resources for the agency while avoiding the delay that sometimes occurs given the limited agency resources.

#### **IV. Modifications of a Permit in Light of New Circumstances or Information**

The ANPR notes an absence of any specific process under the existing 228A Regulations for an operator to request modification of an approved plan. WEX agrees that clarification to provide for modifications and delineation of what might constitute a major versus a minor modification would be extremely useful for the agency and operators. For example, WEX had permit mandates put in place severely restricting its exploration drilling season based on a generalized requirement related to Greater Sage Grouse, migratory birds, and other bird surveys and restrictions. There should be a simplified process for modification of such requirements when changes in circumstances and/or regulatory requirements justify it. Such a process should specify what minor changes can be made without the necessity of completing the NEPA process and what types of more major changes would require a public comment period or NEPA review. To the extent changes are within the scope of the original analysis of environmental impacts completed, minor modifications through a no more than 3 month process should be authorized.

#### **V. Operations on Withdrawn or Segregated Lands**

As the ANPR notes, segregations and withdrawals close lands to the operation of the Mining Laws, subject to valid existing rights (“VERs”). Following the BLM’s adoption of the 2015 Land Use Plan Amendments for Greater Sage Grouse Conservation, the BLM immediately issued a notice of proposed withdrawal of more than 10 million acres of land, segregating all of those lands which included the entirety of the Wood Gulch project. While the agency attempted to provide some assurance to WEX that its existing permits were considered VERs, the segregation seriously jeopardized WEX and the entirety of its projects in Nevada. As the ANPR notes, the

current BLM/DOI process for determining whether a plan of operations would be considered for approval on segregated or withdrawn lands would mandate a claim by claim analysis for validity of every mining claim within the area of the proposed plan. That process, according to testimony from the primary USFS/BLM mining claim examiner, would take years and likely cost hundreds of thousands of dollars. In the meantime, the uncertainty surrounding the project and operator's ability to get the necessary approvals or even maintain its rights to explore and develop the area it invested more than 20 years and \$50 million in nearly ended the project and the company. This was all done with virtually no notice to WEX – as the BLM added the proposed withdrawal of WEX's lands (along with millions of acres across the West) in the Final Environmental Impact Statement with no opportunity for public comment, all based on erroneous habitat mapping, and no consideration of mineral potential.

The USFS should not amend its regulations to follow the BLM's process on segregated or withdrawn lands or trigger a request for mining claim validity or contest claims on lands that are subject to segregation or proposed withdrawal. Instead, the USFS should look to evaluate the existence of VERs based on the available information, the investment in the lands to date, the prospect of the development of the project, the reasonable expectation of the owner of the mining claims, and the environmental circumstances (existing disturbance) and mitigation that can be required or offered by the operator in a proposed plan. The USFS Regulations should not be amended to prohibit approval of a plan of operations in an area where lands are segregated or withdrawn. Instead, USFS should consider the vested rights, including the investment and potential projects already identified in the area and subject to existing permits – the geological potential and likelihood of development and mitigation available to address any environmental concerns that relate to a segregation or proposed withdrawal. This is consistent with the purpose of the 228A Regulations to minimize adverse environmental impacts on National Forest System surface resources in connection with operations authorized by the United States mining laws. The mineral examination process was more functional (and funded) when that process was in place to lead to patents of mining claims. Since at least the time such patenting process has been in moratorium, the mineral claim examination process has turned into a cost prohibitive process that moves with glacial speed and most likely bankrupts a claim holder without regard to the years and millions of dollars invested in those claims. The current BLM process should be corrected (through an appropriate separate rulemaking), and not adopted in the FS regulations. This is particularly true given the current demonstrated ability of an administration to propose mineral withdrawals that can put more than 10 million acres of the land with very high mineral potential “off limits” to mining completely. Vested rights and significant investment backed expectations in those rights must be protected and this rulemaking provides the USFS an opportunity to provide a balanced, lawful approach to do so.

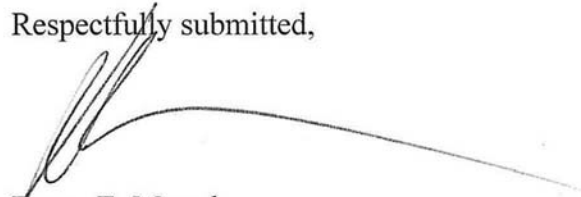
WEX in particular has experienced significant and unnecessary permitting delays, which, in some instances, have lasted several months. As outlined here, the WEX Projects have key economic ramifications in Nevada and beyond, including job creation, tax contribution, and playing a key role in decreasing U.S. reliance on foreign imports for critical minerals. The ANPR makes reference to several policies including the importance of reducing U.S. reliance on foreign import of critical minerals. WEX urges in these comments that the USFS address these

unnecessary permitting delays, which would further the policy goals outlined in the EO of lessening U.S. import reliance of critical strategic and essential minerals. For example, measures should include streamlining the federal permitting system to reduce America's dependence on foreign sources.

WEX thanks you for the opportunity to comment on this important issue for our nation and looks forward to continued participation in this and other relevant processes.

If you have any questions concerning this submittal, please contact me at 775-329-8119.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Darcy E. Marud', with a long, sweeping horizontal line extending to the right.

Darcy E. Marud  
President and CEO  
Western Exploration LLC

cc: Lee Lizotte  
Laura Granier