

Date: Oct 14, 2018

Forest Service, USDA

RE: Document Citation: 83 FR 46451, Document Number: 2018-19961

Dear Forest Service, USDA:

Below are our comments regarding proposed changes to 36 CFR part 228, Subpart A on Locatable Minerals. The comments correspond to the Comments Outline Requested.

1.
 - a. No comment
 - b. No comment
 - c. We concur with proposal
 - d. We request that the USFS three (3) classes: Casual use, Notice of Intent, and Plan of Operations terms be incorporated into BLM's terms. In the alternative, we recommend that the USFS terms be placed in brackets () after the BLM term to aid in the proposed transition.
 - e. The challenges encountered were resistance from the Forest Ranger in charge of Los Padres National Forest, California. The reasoning was in direct conflict with current federal regulations.
 - f. We determined that due to the resistance by the Los Padres USFS in the valid registered mining claim to remove lead minerals and do environmental remediation in already disturbed lands due to a shooting range, that instead of filing a Notice of Intent, a Plan of Operation was filed. The Forest Ranger, John "Pancho" Smith at first denied we had submitted a Plan, then denied the Plan and Request for Appeal (legally filed by attorney) were ignored and then denied. A second Plan of Operation was filed 9/14/2018. We are waiting for a response, which may have to be again requested due to the lack of cooperation with the USFS. Los Padres USFS does not appear to understand or believe they are obligated to follow federal regulations.
 - g. Circumstances in which an operator would be required to submit notice before operating: 1. Current Special Use Permit (SUP) being used at same location as mining claim. The reason for this is to protect mining operators from infringements on their claim(s), provide notice to public during mining operations to protect all persons. It also gives mining operators authority to notify SUP holders to coordinate time and date(s) of mining operation. 2. When there is a potential interference with endangered species, soil and rock contamination or operation may cause disturbance movement on hills, mountains, historic and American Indian ceremonial/burial areas.
- (2) a. This section contains language that is arbitrary and subjective. We recommend clear definitions are provided so that both the Agency Official and Operator understand the regulations. Under circumstances that require flexibility (that have not been outlined in the regulations), deference must be provided to mining operators, especially when the mining of valuable resources has the potential to benefit the economic and national security interests of the United States. Further, we recommend "step-by-procedures" with stated number of days when agency officials must respond on approving or requesting modifications to Plan of Operations.

Exception: For mining claims on already disturbed lands (for e.g., mining claim on gun/shooting range) that an exception be given to mining operators to remove minerals, such as lead which is also a contaminant, and environmental remediation to restore lands.

b. We concur that mining operators should be able/encouraged to meet with agency officials to discuss proposed Plan of Operations before submission.

c. This section contains arbitrary and subjective language prone to abuse by certain USFS agency officials. Therefore, we object to the language used for this section. In particular, "...to require that the appropriate agency official ensures that an operator's proposed plan of operations is *complete* (emphasis added) before the agency begins the..." The word "complete" has not been specifically defined which creates a subjective term that can and has been abused by agency officials. For e.g., Forest Ranger John "Pancho" Smith has been evasive and resistant in approving a complete Plan of Operation in 2017. An Amendment was given to the original Plan of Operation using USFS Form 2800-5 (optional form) with the expectation it would assist the forest ranger in understanding that the original Plan was complete. Nothing was approved and Request for an Appeal by our attorney was ignored and then denied. **We recommend** defining the word "complete" as "applicable required information in all sections according to the current regulations at time of application of the Plan of Operations. Information that is not applicable to the mining operation, applicant should write 'N/A'."

d. We concur with amendment. Recommendation to expedite approval of proposed plans of operations must provide exceptions to already disturbed land. For e.g., mining claim on shooting/gun ranges, should have expedited approval of "plan of operations" to remove toxic minerals, such as lead. This corresponds to the USFS goals of protecting and improving environmental damage to forest lands. Lead mining operations accomplish the federal government's goal.

e. We recommend providing actual timelines that are enforceable for agency officials to comply with applications for plan of operations and modifications.

f. The challenges we have encountered with respect to submitting a proposed plan of operations (plan) to an agency official are: 1. Denial by USFS agency officials that a plan was submitted, even with date-stamp proof. 2. Denial of plan by USFS agency official using false legal arguments and claims contrary to current federal, state laws, regulations and case law. 3. Scurrilous agency official claimed that a plan contradicted with a current SUP by another organization. For e.g., mining claim on same area as gun range in Los Padres USFS. Agency official claimed removal of contaminated lead mineral was inconsistent with gun range and therefore had to deny plan. Ironically, the temporary SUP had expired some years ago and the USFS had "looked the other way" while gun range controlled land. However, once mining claimant demanded Request for Appeal, Agency Official quickly granted a temporary SUP claiming the USFS had the right to usurp the mining claim operators' rights. The USFS created a divide between the two groups that could have been able to cooperate but for the USFS interference.

(3) a. We recommend giving mining operators the ability to request modification of an approved plan and to provide a procedure for such a modification. We recognize that technology is constantly advancing providing an opportunity for operators to better protect the environment.

In conclusion, we recommend:

1. Mining claims established for the purposes of removing lead (harmful environmental health contaminant) and other minerals on shooting ranges on land that has already been disturbed be provided an "Expedited Exemption Document" by USFS Agency Officials.
2. Said "Expedited Exemption Document" shall exempt mining operators from applying for Plan of Operations provided that no new land is being disturbed in furtherance of removing lead minerals. Said document shall provide authority for operators to coordinate with gun ranges on dates and times for mining.
3. However, in those circumstances when there is undisturbed mining claim lands, an Expedited plan is approved and provided on the provision of restoration any disturbance upon completion of mining operation. "Restoration" shall be defined as "returning land to a state where forest is able to restore itself."
4. Definitions shall be provided for certain ambiguous terms to provide clarification.
5. We recommend that "step-by-step procedures" are provided for plans.
6. We also recommend that number of days are stated when Agency Officials must respond and how they are to respond are outlined.
7. For any denial, operators shall be encouraged to meet with an agency official to determine reason for denial.
8. Operators must also be provided guidelines and timelines on the appeal process for a denial.
9. USFS Agency Officials shall be subject to disciplinary action when there is documented evidence of failure to cooperate, meet, or refusal of a complete Plan of Operation. Agency Official must not refuse a Plan that does not conflict with federal law and regulations.

Respectfully submitted,

G. Brent Muchow, President
Grateful Lead Environmental Recovery