

Advanced Geologic Exploration, Inc.

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October 15, 2018

Nicholas E. Douglas Director, Minerals and Geology Management USDA National Forest Service 1400 Independence Ave., SW Mail Stop 1140 Washington. D.C. 20250-0003	Director – MGM Staff USDA National Forest Service 1617 Cole Blvd. Building 17 Lakewood, CO 80401
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RE: Comments to Revision of 36 CFR 228A Locatable Minerals Regulations

Dear Sirs and Madams,

The comments contained herein are pursuant to your September 13, 2018 Advanced Notice of Proposed Rulemaking to the Forest Service's Locatable Regulations, 36 CFR 228 Subpart A (Notice).

My firm works with several National Forest Service (NFS) and Bureau of Land Managements (BLM) Districts across the west in preparing Notices of Intents and Plans of Operations for small and large mining activities. We see several discrepancies not only with the encompassing permitting processes, but also how these processes are managed both with the various districts as well as between the two governmental departments. On June 3, 2180, we submitted to the Chief of the National Forest Service and a number of members of Congress a list of issues that we saw were paramount and in need of much attention (see attachment). Therefore, I feel your plan to make changes to the 39 CFR 228 Subpart A regulations are both welcomed and much needed.

Contained within your Notice was the proposal to have a permitting process that was comparable to that of the BLM. For NFS to achieve this goal they must first understand the relative concept of "significant", both from a project stand point and a level of disturbance. Every state in the union has laws that govern what is significant mining and what are significant mining projects. The NFS and BLM have their thresholds as well and these must also dovetail with the state's laws. In general, these are also the differences between Notices of Intent (NOI) and Plans of Operations (POO). There are two principal categories on how this is determined, how much material is processed and how much area of land is disturbed. However, the NFS invokes one additional concept and that is the use of heavy equipment. Here in lies the crux of the problem because the BLM will allow the use of heavy equipment within non-significant mining

projects that are scheduled within their NOI permit and the NFS will not.

Many exploration projects require the use of heavy equipment to achieve their goals. Similarly, small mining projects can benefit from the use of heavy equipment, but still keep their activities below the “significant mining” threshold. Under the BLM rules, these projects can be permitted through NOIs but the NFS has required a POO. The permitting process for POOs are exceeding more comprehensive and time consuming than NOIs, often taking 8-12 months to obtain, which often kills projects. If the NFS would revise their concept of “significant” not to be predicated on whether or not heavy equipment was used, I believe this will pave the way for the NFS to dovetail into a similar permitting process as the BLM.

Lastly, on striking difference in BLM NOIs is they do not require an equipment list. If the NFS adopts the BLM permitting process, and if the NFS allow the use of heavy equipment within non-significant mining projects in a NOI, I suggest that they drop the equipment list requirement from their NOI requirements. This would save time and money of both the operator and the NFS, not to mention making permit modification easier.

With that said and pursuant to the comments requested, please see the following:

1. Classification of locatable minerals operations.
 - a. N/A
 - b. N/A
 - c. Yes, I agree with the approach of increasing permitting consistency with the BLM regulations. As described above, I strongly urge the NFS to abandon the use of heavy equipment as a permitting threshold for NOIs and POOs. It should be governed by the amount of material processed and/or the acreage of disturbance.
 - d. The current requirements that an operator must satisfy is satisfactory, however, should be scaled to commensurate with the planned activities. Obviously, non-significant mining activity requirements would be less than significant mining activities.
 - e. Casual use is the only activity that does not require prior notifications. Therefore, the term “casual use” must be clearly and uniformly defined.
 - f. Current permitting procedures require NOIs or POOs for greater than casual use activities. Unfortunately, most NFS district offices will require the operator to file a POO rather than a NOI for these non-significant, small-scale activities.
 - g. This is a poorly worded question and singles out specific types of mining activities, such as suction dredging. Nevertheless, if the NFS were to consider the relative levels of activities, significant vs. non-significant, then this question could be more relevant to certain environmental concerns. However, everyone’s concept of what is “significant” is subjective. Therefore, this needs to be specifically defined so the prudent operator and regulator have defined

guidelines to follow. Each state has their definition of what constitutes significant mining. The NFS has MOUs in place with each state to follow those definitions. Therefore, what constitutes the permitting threshold between NFS NOIs and POOs should be commensurate with each state. I understand this could complicate the national agenda, however, each operator will understand what their permitting requirements will be depending on which state that are in.

2. Submitting, Receiving, Reviewing, Analyzing, and Approving of Plans of Operations.
 - a. N/A
 - b. N/A
 - c. N/A
 - d. In all my permitting processes, I always meet with a NFS Forest Minerals Administrator prior to submitting the NOI or POO. Often at that onsite meeting, the administrator will bring a biologist, archeologist, geologist, hydrologist, etc. to help review the planned activities and provide answers to specific questions. That opportunity has always been available. So, I am not sure the intent of the question. Should it be a requirement? No, but every applicant should be made aware of the opportunity to meet on the project site with the NFS representative. With BLM projects, they can immediately determine if the project status is non-significant or significant because it is governed by the amount of material processed and/or the acreage of disturbance. In the case of a non-significant mining activity, the level of disturbance and more much material is processed is understood, environmental concerns are addressed and the permitting process is relatively easy. When significant mining activities are planned, many concerns will be addressed and the applicant will be responsible for meeting the various levels of concern.
 - e. As previously stated, each state has their definitions for significant or non-significant mining. The NFS should follow these definitions. Aiding in those means would be that the NFS remove the concept that the use of heavy equipment constitutes a POO requirement. Once this understanding is achieved, then the permitting process can be scaled and streamlined to meet the activities specific needs. NEPA requirements would be less stringent and the 15-day timeline could easily be met.
 - f. I do not have any specific challenges in preparing POOs. We have a comprehensive format which has been built upon the numerous submittals we have had approved. The NFS has a guide that is both helpful and informative. One suggestion would be to make this guide available from all NFS Regional and District websites.
 - g. I have had numerous challenges with having POOs accepted by the NFS. Some of the main concerns are listed in the enclosed attachment. More recently NFS has become concerned of getting sued by parties opposed to the approved planned activities. If something is not specifically addressed in the review process, then is could lead to potential legal problems. This has adds substantial

time delays to the review process. I am not sure how this can be overcome but changing the level of significance to the mining activity could greatly reduce these potential legal problems while maintaining NEPA requirements. If the NFS would like to engage me in a conversation about these challenges I have experience, please feel free to contact me at their convenience.

3. Modifying Approved Plans

- a. N/A
- b. N/A
- c. Yes, I agree.
- d. The NFS requires a specific description of the activities planned. Sometimes those activities change, either in a small or large ways. It seems prudent to have an option to submit a small change with a Letter of Modification, which simply notifies the NFS of the changes. For example, if the operator wanted to add a piece of heavy equipment, such as a backhoe or loader, this would be required a notification to the NFS. In fact and in practice, this already happens. I have had good success with POO changes with simple modification letters. However, if non-compliance has occurred, the operator should have the opportunity to correct the deficiency through a modification letter only if no harm has occurred to the lands or the environment. They must first rectify the problem before making POO modifications.
- e. Yes. I propose a scaled approach that could service the needs of small, medium or large projects. I do not think a “one size fits all” approach is good. Something that a small project could easily submit would be most welcomed.

4. Non-Compliance and Enforcement

- a. N/A
- b. N/A
- c. N/A
- d. N/A
- e. N/A
- f. N/A
- g. Agree. Once again, specifically define “significant” and substantially” in the rule changes.
- h. N/A
- i. I propose a scaled approach that could service the needs of small, medium or large projects. I do not think a “one size fits all” approach is good. Something that a small project could easily submit would be most welcomed.

5. Reasonably Incident Use and Occupancy

- a. N/A
- b. N/A
- c. N/A

- d. N/A
 - e. Agree in part. The rules need to be simple and straight forward. In the BLM model, an Occupancy application is presented separately from the POO application.
6. Financial Guarantees
- a. N/A
 - b. For significant mining projects in California, the Financial Assurance Cost Estimates (FACE) are reassessed each year and think this should be done on NFS projects as well. Small, non-significant projects will not have the same needs, however, and these could be reassessed every 2 or 3 years. This could probably be scheduled within the acceptance letter's terms and conditions section.
 - c. See (b) above.
7. Operations of Withdrawn or Segregated Lands
- a. N/A
 - b. N/A
 - c. N/A
 - d. Disagree, in part. I suspect it would be governed on why the lands were withdrawn or segregated. I do not think that if surface environmental issues should hamper underground mining activities. In such cases, it would not be appropriate to invalidate mining claims. We already rules with Limited Operating Periods (LOPs) for various environmental issues, but this does presuppose that a mining claim is then to be void. This needs to be crafted carefully for fear of closing lands for undue, unjust and/or transitory environmental issues. Miners can be very cleaver in their mining methods and simply closing lands for locatable minerals for environmental reasons would be short sighted. I can see politics playing a large role if this were happen, and that would be sad.
8. Procedures for Minerals of Materials that may be Salable Mineral Materials, Not Locatable Minerals.
- a. N/A
 - b. N/A
 - c. I think this is understating how the BLM governs salable minerals and materials. I do not believe that a Mineral Examination Report (MER) is always required. My understanding is only if the BLM contests whether or not it is locatable. For example, obsidian is generally a salable mineral. However, there are gem quality deposits that have been deemed locatable. Here, a MER would be required for the claim's validity.
 - d. Yes. This is already in practice. However, if the amendment is required then of course this should be done. Only the BLM can invalidate claims, but the NFS should be allowed to contact the BLM to perform a MER and only invalidate a

locatable mineral claim if proven to be unsuitable for claiming purposes. The claimant should have the right to obtain a lease to mine the minerals, however. One of the problems here is that old phrase, "One man's garbage is another man's treasure". Therefore, fair market value is a relative and subjective term.

- e. See (d) above.
- f. Yes, I have had problems with the NFS in submitting POOs for mining of uncommon minerals before. Once the POO has been declined, the appeal process is all internal whereby the Forest Supervisor weighs in on whether the District Ranger was correct in their findings. This seems highly unfair, as they are all one and the same entity. I would like to see an independent review process enabled. I hope that a review of the appeal process would revise this to be more fair to the applicant.

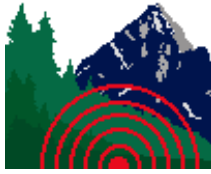
Thank you for your consideration to the matter. If you have any questions or if you need further assistance, please feel free to contact me at your convenience.

Sincerely,

Advanced Geologic Exploration, Inc.



Charles P. Watson
President, Chief Geologist
California Professional Geologist No. 7818



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June 3, 2018

USDA Forest Service
1400 Independence Ave, SW
Washington, DC 20250-1111

RE: Permitting Challenges with the National Forest Service

Dear Sir,

My firm works with several National Forest Service Districts across the west in preparing Notices of Intent and Plans of Operations for large and small mining activities and we see several discrepancies with not only the legal process, but also how the process is managed. I have been asked to provide a general list of challenges we see with permitting these activities, focusing mainly on small mining activities.

1. Timing for Acceptance. While the BLM has 15 days to respond to the permit applicant, the NFS has none. Recently we have been told the NFS has 30 days to respond to the applicant, however, this has often been used to say the application was received or that more information is needed. It is understood that NEPA criteria needs to be satisfied and it is here where the application process can take months and even years. Specialists need to do their investigations and write their reports, then the minerals officer incorporate it into their response to the applicant. Few NFS specialists perform these tasks in a timely manor. While the BLM can do all of this in 15 days, the NFS cannot.
2. Lack of Qualified Personnel. Too many district and regional offices do not have a qualified person to preform the oversight work necessary to make accurate permitting decisions. Some districts don't even have a minerals officer. This often leads to confusion as to what is necessary and sometimes, mineral officers making up the law as they go. There needs to be a organized and coordinated effort by the NFS to make sure mining and permitting laws are equal and just from district to district, and from regional forest to regional forest. Each mineral officer must carry the 1994 Title 2800 Field Manual for Mining and Mine Sites on Federal Lands with them at all times and know the contents by heart, and be able to show the public the specific section and subpart that requires their particular attention.
3. Regional Minerals Officer. Per Point 2 above, the NFS should have a go-to person who district and regional officers can rely on for questions on permitting. This oversight officer

will be able to keep track of what is happening at the lower levels and provide guidance and direction for current and future oversight activities. The Regional Minerals Officer should also be able to field complaints and deal with "rouge" mineral officers not performing their jobs accurately and efficiently.

4. Road Closures. District and regional mineral officers must be made aware of how the system roads are managed in the forest. In particular and per the Revised Statute 2477 on what constitutes a system road and what does not, and how this affects the claimant's mine and permitting application. To wit, mineral officers must be current on rule and law changes, and be able to effectively convey those changes to the public.
5. Small Miners vs. Large Miners. Miners seem to be lumped into a basket whereby small miners get lost in the myriad of rules and regulations that are meant for large mining projects. A method by which these smaller, less invasive activities can move through the review process quicker would be helpful. This would also help the specialists and keep their workload down to a manageable level.
6. Specialist Coordination. While most mineral officers are helpful and understand that mining is part of the multiple use criteria of the National Forest, the specialists (biologists, botanists, hydrologist, etc.) do not always share this line of thought. Moreover, they are usually hindrances to the small miner's application process. Some deliberately do not perform their required NEPA tasks in a timely manor because their personal opinions cloud their judgment. Here again, putting a time limit in doing their investigations and reports would aid greatly in relieving this problem.

There are other issues that could assist the small miner and their permitting efforts with the National Forest Service. I would be happy to give more examples and provide suggestions if it would help the process, including many good examples as well.

If you have any questions or if you need further assistance, please feel free to contact me at your convenience.

Sincerely,

Advanced Geologic Exploration, Inc.



Charles P. Watson, Chief Geologist
California Professional Geologist #7818

