FENNEMORE CRAIG
ATTORNEYS

Dawn Meidinger
dmeidinger@fclaw.com

2394 East Camelback Road, Suite 600
Phoenix, AZ 85016-3429
PH (602) 916-5470 | **FX** (602) 916-5670
fennemorecraig.com

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Docket: FS-2018-0052

Re: Advance notice of proposed rulemaking (the "ANPR"); 83 Fed. Reg. 46,451 (September 13, 2018)

Dear Sir/Madam:

We represent Arizona Minerals Inc. (held by South32 Limited), Pinto Valley Mining Corp. and Rosemont Copper Company (collectively the "Companies"). On behalf of the Companies, all three of which have either unpatented claims and/or operations on National Forest System lands in Arizona, we are submitting comments on the Forest Service's ANPR. The purported purpose of the ANPR is the need to clarify or to otherwise enhance Forest Service regulations that minimize adverse environmental impacts on National Forest System surface resources in connection with operations authorized by the United States mining laws. The Companies contend the scope of the rulemaking should be broader and include provisions to minimize approval times of notices and plans of operations and to maximize opportunities for exploration and production of domestic minerals on National Forest system lands pursuant to the direction of Congress. *See* 30 U.S.C. § 21 (a) (Mining and Minerals Policy Act of 1970).[1]

Comments regarding selected questions posed in the ANPR that are material to the Companies' operations are provided below.

1. <u>Classification of locatable mineral operations</u>.

(a) *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?*

COMMENT: Yes, the implementation of this approach is long overdue. The ability for project proponents to obtain timely approvals for the conduct of exploration on their unpatented

[1] At a minimum, additional consideration should be given to the direction in Executive Orders 13777 (Enforcing the Regulatory Reform Agenda) and 13783 (Promoting Energy Independence and Economic Growth). *See* Exec. Order No. 13,777, 82 Fed. Reg. 12,285 (Mar. 1, 2017) and Exec. Order No. 13,783, 82 Fed. Reg. 16,093 (Mar. 31, 2017).

claims is critical and substantial changes are required to the Forest Service's regulations to make this feasible. The 1999 National Research Council ("NRC") report entitled "*Hardrock Mining on Federal Lands*" (the "NRC Report") recognized this fact and recommended that the Forest Service regulations should allow "exploration disturbing less than 5 acres to be approved or denied expeditiously, similar to notice-level exploration activities on BLM lands."[2] In 2008, the Forest Service proposed regulations addressing many of the recommendations in the NRC Report but those regulations were ultimately withdrawn (hereafter the "2008 Proposed Regulations"). The 2008 Proposed Regulations adopted four classes of locatable operations (i.e., no-notice, notice required, proposed bonded notice and proposed plan of operations).[3] The creation of four classes of operations was unnecessarily complex and created a confusing web of cross-references and undue repetition. We suggest, simply listing appropriately bonded and limited exploration causing surface disturbance as a specific activity requiring the filing of a notice of intent. This change would then place that activity in the category of activities that "might cause significant disturbance of surface resources" but would address the possibility of significant disturbance through confirmed bonding.[4] This approach has the corresponding advantage of keeping bonded exploration out of the category of activities that "will likely cause or are causing significant disturbance" thus not triggering a plan of operations filing.

Specifically, 36 CFR § 228.4 (a) could be amended to specifically list "exploration causing surface disturbance that will last no longer than two years and will occur on no more than 5 acres of unreclaimed National Forest System lands" as an example of an activity that "might cause significant surface disturbance" and does not require any approval or a plan of operations if (1) the notice contains the requisite content, and (2) an appropriate financial guarantee is provided. Importantly, the period for reclamation and reclamation monitoring of such exploration causing surface disturbance should be excluded from the two year duration. If not, it will reduce or eliminate the potential to utilize bonded-notices for such activity.

In conjunction with this modification to the Pt. 228 regulations, clarification should be provided that notice acknowledgement is ministerial and not a Federal action that triggers

[2] *See* NRC Report, Recommendation 3.

[3] *See* 73 Fed. Reg. 15,694, 15,703-15,705 (Mar. 25, 2008).

[4] Addressing the issue of expeditiously authorizing exploration causing surface disturbance lasting less than two years on less than 5 acres of land could also be severed from this rule-making package as a stand-alone non-significant rule modification to get it finalized more quickly. BLM has been utilizing this approach for decades and it is consistent with the NRC Report recommendations.

National Environmental Policy Act ("NEPA") compliance or other regulatory requirements.[5] Further, corresponding changes may also be required to the Forest Service's NEPA regulations that presently treat short term mineral or geophysical investigations as subject to NEPA but eligible for categorical exclusion in certain circumstances (i.e., 36 CFR § 220.6(e)(8)(vii)). The Forest Service regulations need to be clear that bonded-notice activities can proceed with no corresponding NEPA analysis.

(b) *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?*

COMMENT: Notices of intent are required when "operations might cause significant disturbance of surface resources" and within 15 days of receipt of a notice of intent, District Rangers are supposed to notify operators if approval of a plan of operations is required.[6] In practice, and out of an abundance of caution, District Rangers commonly collapse the significance standard of the Pt. 228 regulations with the definition of significance under NEPA and determine that significant disturbance will occur if the proposed exploration or operations do not otherwise meet the criteria for categorical exclusion from analysis under NEPA.[7] This results in the rare use of notices by operators. Further the uncertainty of waiting for a response indicating that a plan of operation is not required (which rarely if ever occurs within 15 days) lends itself to operators electing to submit plans of operation to avoid further time delays and the ultimate decision that a plan of operations is required.

2. <u>Submitting, Receiving, Reviewing, Analyzing, and Approving Plans for Operations</u>.

(a) *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?*

COMMENT: Recommendations for each step of the process are provided below.

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[5] *See Sierra Club v. Penfold*, 857 F.2d 1307, 1314 (9th Cir. 1988) ("We hold that as a matter of law BLM's approval of Notice mines without an EA does not constitute major Federal action within the scope of NEPA….").

[6] 36 CFR § 228.4 (a) and (a)(2).

[7] *See* 36 CFR § 220.6 (e)(8) (short term mineral or geophysical investigations and incidental support requiring less than 1 mile of low standard road, or use and minor repair of existing roads).

(i) Receipt

Consideration should be given to the adoption of a regulation facilitating "deemed approval" if the 30-day period for initial response or the 60-day period for additional review and response is not met.

(ii) Review

Standards for administrative completeness review should be adopted that eliminate agency discretion for this straightforward matter. The standards should also directly relate to the plan content requirements specified in 36 CFR § 228.4 (c). If a plan is received and contains the requisite plan content set forth in the regulations, the plan should be determined administratively complete and advance to the analysis stage. Arizona has adopted a regulatory bill of rights that sets forth time frames for municipal (A.R.S. § 9-831 *et. seq*.) and county (A.R.S. § 11-1605) review and approval of a variety of land use authorizations. The statutes mandate time frames for completeness and substantive review and require refunds of application fees where review is not timely completed. Such a program, with appropriate modifications (necessary because there is no existing authority for the Forest Service to charge fees) could serve as a model here.

The ANPR references the implementation of certain recommendations from the 2016 United States Government Accountability Office (GAO) report entitled "*Hardrock Mining: BLM and Forest Service Have Taken Some Actions to Expedite the Mine Plan Review Process but Could Do More*" (hereafter the "GAO Hardrock Report"). The primary recommendation from the GAO Hardrock Report is to take action to improve the quality of mine plan submissions and develop guidance requiring a pre-application meeting to avoid the problem of incomplete plan submittals. The implementation of this simplistic recommendation will not solve the problems which include multiple rounds of agency review, discretionary application of the mining regulations and the increasing demands for design engineering for facilities, utilities and roads not yet approved and multiple years of baseline study documentation. Nor will the GAO's recommendation solve the problem of agencies requiring information to be included in plans of operation for related operations and facilities over which the Forest Service has no federal jurisdiction or control.

(iii) Analysis

The lack of timeframes for, and the placement of sideboards around, the scope of analysis for plan of operation approval must be addressed in the proposed rule. The GAO Hardrock Report evaluated approval times of 68 mine plans submitted between the period of 2010 and 2014 and concluded that the average time frame for approval was two years. This conclusion is not consistent with the experience of the Companies or other mining operations proposed in Arizona. For example, Rosemont Copper Company submitted its plan of operations to the

Coronado National Forest in 2007 and the record of decision authorizing its plan of operation was not issued *until June of 2017* (emphasis added) and approval of the final plan of operations remains outstanding. In fact, the Companies are not aware of any plan of operations, even for an exploration drilling program, that has been approved in two years. Put simply, the GAO Hardrock Report substantially understates the problem and offers no viable solution.

One of the most important changes that can be made is the recognition that state approvals may be sufficient for meeting the requirements for analysis of impacts and requisite environmental protection. If due import were given to this notion, it could enable expedited approval and avoid replication of effects analysis. In fact, 36 CFR § 228.8 (h) provides an existing standard that could be enhanced and repositioned from the environmental protection section of the regulations to the plan approval section.[8] Specifically, 36 CFR § 228.8(h) provides:

> "Certification or other approval issued by state agencies or other Federal agencies of compliance with laws and regulations relating to mining operations will be accepted as compliance with similar or parallel requirements of these regulations."

Adopting state permit approval and/or analysis will avoid circumstances where the Forest Service develops different standards for resource protection than state agencies having actual regulatory authority. In the case of Rosemont Copper Company's Plan of Operations, the Forest Service required the installation and monitoring of groundwater wells far afield from the mining operations where monitoring of water quality is required by the State of Arizona (who has authority for groundwater protection). Additionally, the Forest Service adopted and imposed unique air permit modeling requirements that were different than the EPA specific requirements under the Clean Air Act and then used those unique model requirements to conclude that only one of the proposed alternatives to the mine plan would meet the NAAQS, even though the State of Arizona (having delegated authority) authorized an air permit that met the NAAQS on a very different alternative consistent with EPA requirements. These types of situations place applicants, and agencies with regulatory authority, in difficult positions having to meet requirements inconsistent with existing state and federal environmental protection programs.

[8] Notably, the Forest Service's 2008 Proposed Regulations moved this provision from its current location to 36 CFR § 228.2 (Scope) to emphasize its application to the entire subpart A of the regulations. *See* 73 Fed. Reg. at 15,702.

(iv) Approval

A conclusive standard for issuance of a notice to proceed, and a timeline associated therewith, following the issuance of a NEPA decision should be developed. Pursuant to the existing regulations, 36 CFR § 228.5(a)(5) provides that where NEPA compliance is required, plan approval will be withheld until a "final environmental statement has been prepared and filed with the Council on Environmental Quality as provided in § 228.4(f)." In practice, plan approval is commonly delayed until a decision document is issued following a pre-decisional objection process, then updating the plan of operations in accordance with the relevant NEPA decision document, then further until the reclamation bond is approved and even further until other required federal or state permits are obtained. The Companies recommend that a regulation be adopted requiring the issuance of a notice to proceed no later than 60 days following receipt of: (i) any updated plan of operations required pursuant to stipulations in a NEPA decision document; and (ii) the operator demonstrating compliance with requisite financial assurance requirements.

Further, flexibility should be provided to the Forest Service to immediately authorize certain types of activities following the issuance of a FONSI or ROD but prior to issuance of a notice to proceed. Such activities might include installation of monitoring devices, cultural resources data recovery work and other non-significant surface disturbance activities. Specifically, 36 CFR § 228.5 (b) (authorization pending final approval) could be modified to remove the phrase "necessary for timely compliance with the requirements of Federal and State laws" from the regulation. This simple modification would be sufficient to provide agency discretion and allow the commencement of environmental protection work in advance of a notice to proceed for exploration or mining activities.

(b) *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?*

COMMENT: The primary issues with respect to Forest Service's receipt, review, analysis and approval are discretionary interpretation of applicable regulations, inconsistent implementation of Forest Service policies, and unwarranted delay due to inadequate or changed staffing and competing priorities. There *has to be a remedy* for the substantial delays incurred at every step of the process beginning with delayed completeness determinations and execution of collection agreements, continuing with inconsistent and never-ending requests for information associated with NEPA analysis (which are commonly beyond the scope of the analysis and the agency's jurisdiction) and ending in the withholding of timely notices to proceed on approved plans of operation (emphasis added). The adoption and utilization of checklists for mine plan completeness and time limits for data request responses or plan approvals should be a priority.

The Forest Service should utilize the example set by the Department of Interior (Secretarial Order 3355) as a possible approach to streamlining the receipt, review and analysis process to address delays arising from the NEPA process. The goal of expediting review of proposed mineral exploration or mining will not be achieved without revisions to the Forest Service's NEPA regulations and policies.

Another challenge occurs with respect to the disclosure of information to the public (36 CFR § 228.6). Modern mine plans of operations and other types of information required by the Forest Service in conjunction with NEPA analysis often includes information that should be withheld from public examination because it is commercial in nature and relates to the competitive rights of the operator. Far too often, operator information is disclosed in response to Freedom of Information Act requests (or otherwise made available through the NEPA process) in a manner inconsistent with the provisions in 36 CFR § 228.6. Such disclosures are harmful to the operator and can serve as fodder for mining opponents. Accordingly, consideration should be given to modifying 36 CFR § 228.6 to expressly include an expanded list of commercial information associated with mine plans of operation that is not available for public disclosure.

3. Modifying Approved Plans of Operations.

(a) *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?*

COMMENT: Yes, mining is dynamic in that it is market based, technology-driven and inherently iterative in response to encountered geologic conditions and flexibility should be retained for operator initiated plan modifications. However the threshold for the necessity of plan modification should be clearly defined to avoid operational uncertainty and unnecessary lengthy approval periods. Further, provisions allowing minor modifications should be adopted. For example, the BLM's plan modification regulations provide for agency acceptance of minor modifications without formal approval if the modification is "consistent with the approved plan of operations and does not constitute a substantive change that requires additional analysis under the National Environmental Policy Act."[9] A similar provision could be incorporated into the Forest Service's regulations.

(b) *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*

[9] 43 CFR § 3809.423 (b).

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?

COMMENT: Partially. The initiation of modification to mine plans of operation should have separate standards for those that are operator initiated versus those that are initiated by the Forest Service for corrective reasons. Both types of modification proceedings should be streamlined.

Modifications required by the Forest Service are justified where unforeseen significant disturbance of surface resources has occurred but not where the Forest Service unilaterally deems that advances in predictive capacity, technical capacity or mining technology should be imposed on an operator. The existing provisions of 36 CFR § 228.4 (e) allow an authorized officer to request a plan modification at any time to minimize unforeseen significant disturbance of surface resources. Such requests are then reviewed by the officer's immediate superior to determine whether the request for modification is justified. It is the criteria for immediate superior review that the NRC Report took issue with. A simple resolution would be to eliminate § 228.4 (e)(1) from the list of required supervisor review determinations.[10] The remaining two factors provide the appropriate standards of review and the "backward looking versus forward looking" concern would then be a non-issue.[11]

On the other hand, operator requested modifications should be allowed in defined circumstances that include changes to approved plans of operation that are both substantive and require additional NEPA analysis.[12] As stated above, mining is dynamic and operators require certainty relative to permitting approvals. Plans of operation should provide some flexibility to avoid constant modification and the provision of specific examples not requiring formal approval would be helpful.

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[10] 36 CFR § 228.4 (e)(1) requires the immediate superior of the authorized officer to determine "whether all reasonable measures were taken by the authorized officer to predict the environmental impacts of the proposed operations prior to approving the operating plan."

[11] *See* 36 CFR § 228.4 (e)(2) (whether disturbance is or probably will become of such significance to require modification to meet the requirements for environmental protection) and 36 CFR § 228.4 (e)(3) (whether disturbance can be minimized using reasonable means).

[12] BLM's regulations require modifications when there are any changes to approved plans (allowing minor modifications without formal approval so long as consistent with the approved plan), when BLM requires it to prevent unnecessary and undue degradation (a standard unique to BLM pursuant to FLPMA) and prior to final closure to address unanticipated events. *See* 43 CFR § 3809.431. If this model is utilized, the notion that "any" change to an approved plan requires modification could benefit from clarification.

(c) *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?*

COMMENT: Yes, the procedures for plan modifications should be generally consistent with initial plan approval and should expressly provide for continued operations while a modification is pending, absent any enforcement related circumstances.

4. Noncompliance and Enforcement.

(a) *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 allows this. Do you agree with this approach?*

COMMENT: This seems to be a solution in search of a problem. It is not clear that there are enforcement issues sufficient to justify the adoption of further regulation. It is true that the Forest Service's enforcement regulations differ from those of the BLM and do not authorize administrative plan suspension or plan revocation. However, there are expansive civil remedies available to the United States Attorney in circumstances of noncompliance including declaratory relief, injunctive relief, monetary damages and imprisonment. The threat of prosecution and imposition of any of those remedies is more than sufficient to engender compliance.

(b) *If you do not agree that 36 CFR part 228, subpart A, should be amended to increase consistency with the BLM's regulations governing the enforcement of locatable mineral operations conducted upon public lands that the BLM manages, 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.*

COMMENT: 36 CFR § 228.7 provides a broad mandate requiring Forest Service officers to serve notices of noncompliance if an "operator fails to comply with the regulations or his approved plan of operations and the noncompliance is unnecessarily or unreasonably causing injury, loss, or damage to surface resources." That mandate is coupled with the provisions of:

- 36 CFR § 228.4(a)(4) giving the District Ranger authority to require plan submittals for any "operation that is causing or will likely cause significant disturbance of surface resources" and providing that "the operations can not be conducted until a plan of operations is approved;" and

- 36 CFR § 228.4(e) providing that at any time during operations under an approved plan of operations, "the authorized officer may ask the operator to furnish a proposed modification of the plan detailing the means of minimizing unforeseen significant surface disturbance of surface resources";[13] and

- 36 CFR § 228.4(e)(3) allowing the authorized officer's immediate superior to impose immediate measures needed to avoid unnecessary or unreasonable irreparable injury, loss or damage to surface resources pending plan modification.

All of this regulatory authority (providing broad discretion to Forest Service officers) coupled with civil enforcement authority, is more than sufficient to prevent operator noncompliance. If anything, the Forest Service might consider including the additional enforcement measures set forth in the 2008 Proposed Regulations that listed the steps an authorized officer could take if an operator fails to comply with a notice of non-compliance within the time provided by the notice, unless good cause is otherwise shown. Those additional steps included: (1) requesting initiation of civil action in a United States District Court seeking relief, (2) issuing a violation notice citing an operator for violating a prohibition in 36 CFR Pt. 261; or (3) attaching the reclamation bond provided by the operator and using the proceeds to take necessary measures to address the actions specified by the notice of noncompliance.[14] In such case, items (2) and (3) would need to be added to the list of appealable decisions in 36 CFR § 214.4(b)(1).

(c) *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.*

COMMENT: If the Forest Service elects to adopt BLM's regulations, sufficient due process would need to accompany the issuance of suspension orders, orders to obtain plan approval for notice-level operations and notice nullification or plan revocation. This would require appropriate modification to the list of appealable decisions at 36 CFR § 214.4 (b)(1).

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[13] This regulation is also the tool that the Forest Service has available to address the concern expressed in the NRC's 1999 report entitled "Hard Rock Mining on Federal Lands" that prospective harm to surface resources cannot trigger a notice of noncompliance. *See* 83 Fed. Reg. at 46,456. In cases of prospective harm, the Forest Service can use its authority under 36 CFR § 228.4 (e) to require a plan modification.

[14] *See* 73 Fed. Reg. at 15,708.

5. Reasonably Incident Use and Occupancy.

(a) *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?*

COMMENT: Yes, the BLM's approach should address any relevant agency concerns.

6. Financial Guarantees.

(a) *What forms of financial guarantee should be authorized? Should the Forest Service provide for the establishment of a funding mechanism which will provide for post-closure obligations such as long-term water treatment and maintaining long-term infrastructure such as tailings impoundments?*

COMMENT: Bonds (both blanket and individual), negotiable securities and cash are the only currently authorized forms of financial assurance under the existing Forest Service regulations.[15] BLM's regulations authorize the use of surety bonds, cash, irrevocable letters of credit, certificates of deposit or savings accounts, negotiable securities or bonds, and insurance.[16] In addition, BLM's regulations authorize the use of state-approved financial guarantees designed to avoid duplication in bonding requirements, so long as the guarantee is redeemable by the Secretary.[17] The Forest Service's regulations should be expanded to allow use of the same types of financial assurance set forth in BLM's regulations and allow state-approved financial guarantees to substitute for federal financial assurance. In addition, authorization for phased bonding should be provided in the Forest Service regulations just as it is under existing BLM regulations.[18]

Financial assurance for circumstances involving long-term water treatment or monitoring of tailings facilities is something that should be addressed by policy as opposed to regulation. Currently, FSM 6500, Chp. 6561.5 provides for the use of long term trust agreements for activities such as water treatment, dam maintenance, and care and maintenance of infrastructure,

[15] *See* 36 CFR § 228.13 (a); *see also* FSM 6500, Ch. 6561.4 purportedly authorizing irrevocable letters of credit, assignment of savings accounts and certificates of deposit and individual sureties for post-reclamation long term work.

[16] *See* 43 CFR § 3809.555.

[17] *See* 43 CFR § 3809.570 through .573.

[18] See 43 CFR § 3809.553.

which may be required for many years following closure. Manualized status for such agreements seems appropriate in light of the complexities of entering into and administering such agreements and it seems more appropriate to retain flexibility for the agency when addressing such circumstances. In addition, it will not foreclose the development and use of other types of agreements which might be the case if only one specific mechanism was identified in a new regulation. It will also allow for consideration to be given to state programs that require post-closure monitoring and long-term care and maintenance which may address a particular concern.

(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?*

COMMENT: Currently, modification of an approved plan of operations is the only regulatory trigger for review of bond adequacy.[19] As a matter of practice, changes in ownership or operatorship, transfers of bonds and plans of operation all provide opportunities for sufficiency review of established financial assurance. The Forest Service has informal guidance that addresses each of these circumstances in its Training Guide for Reclamation Bond Estimation and Administration (April 2004) (Appendix B). Those circumstances are all reasonable justifications for review of reclamation cost estimates and adequacy of any existing financial guarantee. However, the review should not in any way prohibit changes in ownership or transfers of plans of operation. Further, flexibility should be provided so that the review can be undertaken either pre or post-closing of any asset or share sale.

(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?*

COMMENT: Absent the occurrence of changes in ownership, operatorship or transfers bonds or plans of operations, periodic review of active operations and/or those in cessation every 5-7 years and at final closure is sound practice. In the intervening years, periodic inspection by the authorized Forest officer can be utilized to address any noted concerns which is already authorized by 36 CFR § 228.7.

[19] *See* 36 CFR § 228.13 (c).

Thank you for the opportunity to provide input on these important issues and the Companies look forward to participating in the forthcoming rulemaking process.

Sincerely,

Dawn G. Meidinger

cc: Johnny Pappas, South32 Limited
Tim Ralston, Pinto Valley Mining Corp.
Kathy Arnold, Rosemont Copper Company