14 October 2018

USDA-Forest Service
Attn: Director—MGM Staff
1617 Cole Boulevard, Building 17
Lakewood, CO 80401

Re: Proposed changes to 36 CFR 228(A)

To whom it may concern,

I write these comments to the proposed changes to 36 CFR 228(A) in my capacity as chief geologist and an owner of two small mining companies operating in Idaho. Both operations are based on federal claims on ground administered by the USFS. In large part I find the general nature of the proposed changes welcome and conscientious of the need for environmental protection as well as the essential role that natural resource production plays in our economy. As I am commenting towards the end of the comment period, I have reviewed the copious other comments regarding the proposed changes and concur with a number of other commenters regarding issues such as the need to clearly define significant disturbance, the benefits of adopting a BLM-style five acre bonded rule, and the general need to make the process of permitting more transparent. I will address these and other issues in relationship to the specific questions posed for comment below (specific questions are presented in bold):

1c. 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?

In general, I do agree with this approach but its implementation needs to be consistent and the criteria for defining the three classes of locatable mineral resources especially need to be well-defined. The approach taken by BM has proven to be both functional and typically more efficient than the current implementation of 36 CFR 228(A). The devil is in the details, and there needs to be (as has been stated in numerous other comments) a clear definition of what a significant disturbance is. How big of a hole can one dig and fill in and still fall under casual use (I would note that there are specific rules about this for mineral collecting activities outside of mining claims that are perhaps too limiting for actual early exploration work on a mining claim)? Clear, definitive definitions of the scale of operations or other considerations that lead an activity to be binned into one of the three classes? The five acrea bonded rule for LOI's needs to be part of USF procedure as it is in the BLM.

1e. If you previously concluded that 36 CFR part 228, subpart A, did not require you to give the Forest Service prior notice before you began conducting locatable mineral operations on National Forest System lands, what issues or challenges did you encounter once you began operating?

This is really not a huge issue for us, but one of my operations is clearly casual use. The site lies at the end of a numbered USFS road that is open to travel, and the material we extract (at ow volumes but high value) is gathered solely by picking up loose material from the surface. We are encouraged by USF personnel to submit a yearly letter of intent for these activities for some bureaucratic reason (something about the number of LOI's they respond to). I do not really mind this, and the response from USF is just a formality, but it plays into a finding from the NRC report that has not been adequately addressed in previous comments: "**Recommendation: BLM and the**

Forest Service should carefully review the adequacy of staff and other resources devoted to regulating mining operations on federal lands and, to the extent required, expand and/or reallocate existing staff, provide training to improve staff capabilities, secure supplemental technical support from inside and outside the agencies, and provide other support as necessary." I have no doubt that USFS minerals personnel in the district I work in have a lot, and perhaps too much on their plates. While staffing levels are always going to be subject to funding levels, the workload capacity of staff should not be limited by unnecessary tasks such a the one we experience.

2d. Do you think that amending 36 CFR part 228, supart A, to provide an opportunity for an operator to meet with the Forest Service before submitting a proposed plan of opertions, or to require the Forest Service to determine that a proposed plan is complete before initiating its NEPA-related analysis of the plan will expedite approval of proposed plans of operations? Are there additional or alternate measures that you would recommend to expedite approval of proposed plans of operation submitted to the Forest Service under 36 CFR part 228, subpart A?

e. 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?

f. What issues or challenges have you encountered with respect to preparing a proposed plan of operations or submitting that plan to the Forest Service pursuant to 36 CFR 228.4(c) and (d) or 36 CFR 228.4(a)(3) and (4), respectively?

We do meet with USFS personnel before submitting plans of operation and it is a very helpful process. My only concern if this is added to the regulations is that inability of USF personnel to make time to meet with operators could become a default form of denial of projects. This needs to be prevented. Clarity on behalf of the USF with rregards to the process not only for plans of operation but also letters of intent and casual use is critically needed. One area where we have struggled to independently (outside of verbal discussions with USFS personnel) find information to aid in preparation of plans of operation are guidelines for reclamation activities as well as rules related to site plans such as setbacks from roads and riparian areas. These need to be developed as written documents and made readily available. This would both speed our preparation fo plans and minimize the iterative revisions that consume time for USFS personnel.

3c. 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?

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?

I generally agree that this capability should be added, and the modifications should not be limited to environmental concerns but also should be allowed in response to increased deposit knowledge as operations progress. Even with rigorous deposit

characterization, the subsurface will always contain uncertainties that are realized once mining commences. Operators should be allowed to address this through plan modifications.

4e. 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?

This issue is not relevant to our operations, but I will note that there is a catch 22 in the occupancy rules. One of the concerns that I hear from USFS personnel is that many mining claims are not serious operations. In part this reflects the sort of malfeasance noted in the GAO report. However, in the case of an operator with a remote site, limiting occupancy to 14 days pretty much precludes doing real work on a site that one must otherwise travel several hours, often on difficult roads, to reach. There needs to be some considerations and flexibility in these situations.

(6) Financial Guarantees.

a. Current regulations at 36 CFR part 228, subpart A, include a section entitled “bonds” but there are many alternate kinds of financial assurance which the regulations recognize as being acceptable substitutes. Therefore, the Forest Service contemplates changing the title of this section to the broader terminology “Financial Guarantees.” The current regulations provide for the Forest Service authorized officer to review the adequacy of the estimated cost of reclamation and of the financial guarantee's terms in

connection with the approval of an initial plan of operations. But the regulations do not specifically provide that the authorized officer will subsequently review the cost estimate and the finanical guarantee to ensure that they remain sufficient for final reclamation. The Forest Service is considering amending 36 CFR part 228, subpart A, to provide for such a subsequent review. An issue that the agency will consider is whether 36 CFR part 228, subpart A, should specifically provide that the review will occur at a fixed interval. The Forest Service also is considering whether to amend 36 CFR part 228, subpart A, to specfically 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. Another concern is what forms of financial guarantee should an operator be allowed to furnish to assure these long-term post-closure obligations.

The USFS should alow a wider variety of bonds as BLM does. One of the problems we have encountered in our operations that require bonding is that the terms of the operations are 12 months, after which there will be a determination of whether we met the bond requirements and the money should be released. In the interim we are required to post a similar bond for the next years work. Our experience has been that the bond return process from USFS is less than efficient and has resulted in our unnecessarily tying up capital to effectively have two bonds in place for the same project, plus the capital we used to do the reclamation. Allowing us to have a CD or some other instrument, as has been my experience with BLM, would be useful and serve the same end.

8f. If you submitted a proposed plan of operations under 36 CFR part 228, subpart A, for what you thought was an uncommon variety of sand, stone, gravel, pumice, pumicite, cinders, and clay, what issues or challenges did you encounter in obtaining, or attempting to obtain, Forest Service approval of that plan?

There needs to more understanding within USF of what is locatable and what is not. As is the current framework, they defer to BLM to make the determination. There is no procedure for the operator to state their case. In our instance, we proactively prepared a lengthy document outlying the scientific and legal basis for our material to be locatable and it was accepted. Among the arguments was that the principal constituent of our material is a mineral identified in BLM documents specifically as locatable. Such designations do not exist within USFS.

Respectfuy submitted,

Philip S. Neuhoff, Ph.D.