May 27, 2008

U.S. Forest Service, Department of Agriculture
Attn: Director, Minerals and Geology Management Staff
Mail Stop 1126
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Re: Comments on Proposed Rule: Revision of 36 CFR Parts 228 *et al*., 73 Fed. Reg. 15694-15716 (March 25, 2008)

Dear Forest Service:

This letter is submitted as comments upon the above-noticed Proposed Rule and is submitted by the dozens of signatory groups representing thousands of American citizens from communities around the west and across the country.[1]

Overall the Proposed Rule violates a number of federal environmental, wildlife, cultural resource, and related laws and regulations and cannot be finalized by the U.S. Forest Service (USFS) or Department of Agriculture. These laws include, but are not limited to: the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), Forest Service Organic Act of 1897 (Organic Act), National Forest Management Act (NFMA), Clean Water Act (CWA), National Historic Preservation Act (NHPA), Religious Freedom Restoration Act, as amended (RFRA) (and related laws protecting cultural and religious uses of public land), and the 1872 Mining Law, among others. The following comments are not submitted in any particular order. The USFS must fully respond to each issue raised in these comments. Further, pursuant to the Administrative Procedures Act (APA), any material deviation in the Final Rule from the provisions of the Proposed Rule requires the re-notice and re-availability of the revised Proposed Rule for public review and comment.

Misinterpretation of "Rights" Under the 1872 Mining Law

The Proposed Rule is based on the statement that "prospectors and miners have a statutory right, not a mere privilege, under the Mining Law of May, 1872 … to go upon certain National Forest System lands for the purposes of locatable mineral exploration, development, and production." 73 Fed. Reg. 15595. Further, this statement applies these "rights" to "all prospecting, exploration, and mining operations, whether within or outside the boundaries of a mining claim." Id. This overstates the "rights" of claimants under the mining laws, and thus understates the authorities of the USFS to regulate mining. Further, the USFS statement that it cannot "unreasonably restrict the exercise of that right" not only significantly overstates the "right" of the claimant, it illegally restricts the agency's authority under the Organic Act.

These conclusions also substantially limit the federal government's ability to consider, let alone investigate, the validity of any mining claims on federal public lands proposed for disturbance or use. In the Proposed Rule, the USFS failed to properly recognize the limitations of the 1872 Mining Law, the USFS's broad multiple use land management authority over federal lands not subject to valid

[1] At the outset, it is discouraging to see that the USFS only "contacted representatives of the mining industry" about these provisions. 73 Fed. Reg. 15695.

claims, and the Administrative Procedure Act's mandate requiring reasonable agency determinations based on substantial evidence in the administrative record.

The key federal court decision is Mineral Policy Center v. Norton, 292 F.Supp.2d 30 (D.D.C. 2003). In that case, the BLM's surface management regulations under the Mining Law, issued by the Department of Interior in 2001, were successfully challenged because they did not properly apply the federal government's full land management authority over lands that are either not covered by valid claims or unclaimed under the Mining Law. The court held:

> While a claimant can explore for valuable mineral deposits before perfecting a valid mining claim, without such a claim, she has no property rights against the United States (although she may establish rights against other potential claimants), and her use of the land may be circumscribed beyond the [base environmental protection standard applicable to operations on valid claims] standard because it is not explicitly protected by the Mining Law.

Mineral Policy Center, 292 F.Supp.2d at 47-48. As the Interior Board of Land Appeals (IBLA) recently confirmed:

> Vested property rights against the United States arise only *after* such a discovery [of a valuable mineral deposit]. Cole v. Ralph, 252 U.S. 286, 296 (1920); Davis v. Nelson, 329 F.2d 840, 845 (9th Cir. 1964)("It is clear that under both the mining law and the regulations that a discovery of valuable mineral is the sine qua non of an entry to initiate vested rights against the United States.").

United States v. Walter B. Freeman, 174 IBLA 290, 295 (2008)(emphasis in original). The IBLA also held, in a different case:

> First of all, the mere filing of a plan of operations by a holder of a mining claim invests no rights in the claimant to have any plan of operations approved. Rights to mine under the general mining laws are derivative of a discovery of a valuable mineral deposit and, absent such a discovery, denial of a plan of operations is entirely appropriate. This, in fact, was the express holding in [citations omitted].
>
> Moreover, in determining whether a discovery exists, the costs of compliance with all applicable Federal and State laws (including environmental laws) are properly considered in determining whether or not the mineral deposit is presently marketable at a profit, i.e. whether the mineral deposit can be deemed to be a valuable mineral deposit within the meaning of the mining laws. If the costs of compliance render the mineral development of a claim uneconomic, the claim, itself, is invalid and any plan of operations therefore is properly rejected. Under no circumstances can compliance be waived merely because failing to do so would make mining of the claim unprofitable. Claim validity is determined by the ability of the claimant to show a profit can be made after accounting for the costs of compliance with all applicable laws, and, where a claimant is unable to do so, BLM must, indeed, reject the plan of operations and take affirmative steps to invalidate the claim by filing a mining contest.
>
> Finally, insofar as BLM has determined that it lacks adequate information on any relevant aspect of a plan of operations, BLM not only has the authority to require the filing of supplemental information, it has the obligation to do so. We emphatically reject any suggestion that BLM must limit its consideration of any aspect of a plan of operations to the information or data which a claimant chooses to provide.

Great Basin Mine Watch, 146 IBLA 248, 256 (1998) (emphasis in original). Although these case dealt with the BLM rather than the Forest Service, the fundamental review regarding the federal land agency's authority over mining is the same for both agencies. Thus, the Proposed Rule's basic assumption – that all "miners" have a "statutory right" to "develop and produce," without any evidence of claim validity, violates federal law.

The 1872 Mining Law distinguishes between valid and invalid claims, giving rights against the United States only to those who hold a valid mining claim. In order for a placer or lode claim to be considered valid under the 1872 Mining Law, the claimant must discover a commercially valuable mineral deposit. In addition, the 1872 Mining Law puts limits on the size, location, and number of mining and millsite claims, with millsite claims being smaller, allowed to be staked only on non-mineralized lands, and only in limited numbers, among other requirements. Thus, under the Mining Law, claim validity means more than just properly filing the claimstaking paperwork; it also requires proper location of the claim on the ground and most importantly, the discovery of a valuable mineral deposit. Only if all requirements are satisfied do any rights vest in the claimant against the United States.

In the Mineral Policy Center case, the Court recognized that the federal land agency must regulate mining activities proposed on valid claims differently from those proposed for lands not subject to valid mining claims. Lands not subject to valid claims are not protected by the Mining Law and must be managed under the full discretionary authority provided to the USFS under the Multiple Use Sustained Yield Act, NFMA, Organic Act and others. Indeed, the Court upheld challenged portions of the regulations based on an express finding that BLM had committed to conduct a full FLPMA multiple use review for any lands proposed for mining not covered by valid claims.[2]

Instead of recognizing the critical distinction between valid and invalid claims, and ensuring appropriate measures to ensure that the USFS uses the proper regulatory authority, the Proposed Rule essentially assumes that claimants hold vested property rights against the U.S. without any evidence of validity. Such a position openly ignores the Mining Law's hallmark discovery requirement and improperly renders the USFS' multiple use resource protection requirements meaningless. As such, the Final Rule must contain provisions to ensure that the USFS properly applies all of its resource protection authority when considering mining plans of operation.

The USFS legal conclusion that it may ignore validity concerns when processing mining plans also runs afoul of the Administrative Procedure Act (APA). The reason for this is simple: the APA requires rational and reasonable decisions based on substantial evidence contained in the administrative record. However, the USFS fails to acknowledge that the same reasoning applies to the agency's proposal to assume validity. This is especially problematic in cases where evidence in the record indicates potential invalidity of mining claims, such as waste dumping and other ancillary uses on lode claims. The agency is obligated to conduct at least some analysis to rationally justify any assumption of validity. This review need not require a full-blown mineral examination and contest proceeding in every case.

[2] The fact that Mineral Policy Center involved the BLM, not the USFS, does not change this analysis, because the court was interpreting the U.S.'s authority under the 1872 Mining Law, which applies to both agencies. Thus, although the court focused on BLM's multiple use authority under FLPMA, the same analysis applies to similar USFS multiple use authority.

Improper Limitation on Protection of Segregated Lands

The Proposed Rule, while correctly recognizing the need to verify validity in withdrawn areas, only states that the agency "may" require validity confirmation in segregated areas. *See* 73 Fed. Reg. 15700; proposed §228.14. At a minimum, the prohibition against approving operations on withdrawn lands until the validity of all claims has been verified should be extended to segregated lands. "[T]he effect of this withdrawal application was to segregate the public land from mining location, and to require the contestees to show that the millsite claims were valid as of the date of the segregation." United States v. Cuneo, 15 IBLA 304, 315 (1974). Thus, the allowance for further operations to be conducted on segregated lands must be eliminated. 73 Fed. Reg. 15700. Overall, on segregated or withdrawn lands, the USFS should not approve any activities until the validity of all claims has been verified. Further, no activities, except possibly collecting samples with hand tools, should be allowed in these areas.[3]

Violation of the Organic Act and Weakening of Environmental Protections

The Proposed Rule does not ensure that all operations "prevent destruction" of the forests, as required by the Organic Act. 16 U.S.C. § 551. The current "minimize adverse impacts" standard "where feasible" violates this standard. *See* 36 CFR § 228.8. The Proposed Rule's change to substitute "**where practical**" instead of "where feasible" only makes a bad situation worse. *See* Proposed 228.9; 228.3(c)(definition of "minimize"). The Proposed Rule does not justify such a substantial weakening of the agency's environmental protection authority.

The only limitation on the USFS' regulatory authority over mining is that the agency cannot outright "prohibit" mining as a matter of discretion. *See* 16 U.S.C. § 478. Requiring a more protective environmental standard, without the "where feasible" and certainly without the "where practical" qualifiers, meets the Organic Act duty to prevent destruction without violating Section 478. For example, the proposed standard for modifying or suspending operations that might be "causing irreparable injury, loss or damage to National Forest System" resources, *see* 228.6(h)(4)(ii), should be applied to the decision to approve or disapprove operations in the first place.

Further, the Proposed Rule's focus on the "economics of operations" as grounds to reduce the level of environmental restrictions, 73 Fed. Reg. 15695, improperly restricts the agency's Organic Act and other authorities to protect the forests.

In expanding the system of "notice operations" to include mining and exploration operations under a new category of "bonded notice operations," the Proposed Rule misleadingly states that this system is "similar to the BLM's 'notice' category of operations," 73 Fed. Reg. 15697, and complies with the NRC recommendations, 73 Fed. Reg. 15695. That is untrue. Even if the "notice" system complied with the Organic Act, ESA, NFMA, NEPA and other laws – which it does not – the creation of "bonded notice operations" to include mining as well as exploration is **not** "similar" to BLM's notice procedures because those are limited to only exploration. *See* 43 CFR Part 3809.

Under current USFS policy, the agency's review of "notice operations" are exempt from NEPA, ESA, NHPA, NFMA, RFRA, CWA, and other procedural and substantive requirements. In addition to the fundamental violations of these laws with the "notice" system, expansion of this to now include

[3] The USFS should not allow claimants to conduct "annual assessment work" in withdrawn or segregated lands, *see* 228.14(g), since a claimant can accomplish the same requirement by filing the yearly claim maintenance fee, with no disturbance to USFS land.

mining as well as exploration, and for up to 2 years of operation, substantially weakens federal oversight of mining, is bad public policy, and violates these statutes.[4] As shown in the attached evidence, it is clear that "notice" operations have significant environmental impacts that cannot legally be shielded from public review and full agency authority. Overall, all mining except casual use activities that do not involve motorized equipment should be required to submit a Plan of Operations (PoO).

Violation of NEPA

The USFS cannot exclude the Proposed Rule from full public review and comments and consideration in an Environmental Impact Statement (EIS) or Environmental Assessment (EA) under NEPA. The USFS proposes to Categorically Exclude (CE) the Proposed Rule from full NEPA review, relying on USFS Handbook Chapter 30. 73 Fed. Reg. 15701.[5] That would violate NEPA, its implementing regulations, and USFS policy. The Proposed Rule states that it qualifies under the category for "rules, regulations, or policies to establish servicewide administrative procedures, program processes, or instruction. This proposed rule clearly falls within this category of actions and no extraordinary circumstances exist which would require preparation of an environmental assessment or an environmental impact statement." 73 Fed. Reg. 15701. This language is nearly identical to the USFS' proposed use of a CE for the revision of its NFMA regulation in 2005, which was struck down by the federal courts. *See* Citizens for Better Forestry v. U.S. Dept. of Agriculture, 481 F.Supp.2d 1059 (N.D. Cal. 2007). Such a major change in agency mining regulations, which the USFS admits has not occurred since 1974, 73 Fed. Reg. at 15695, does not qualify under this CE.

At a minimum, the Rule would adversely effect a number of "extraordinary circumstances" listed in Chapter 30, such as (a) "Federally listed threatened or endangered species or designated critical habitat, species proposed for Federal listing or proposed critical habitat, or Forest Service sensitive species"; (b) Flood plains, wetlands, or municipal watersheds; (c) Congressionally designated areas, such as wilderness, wilderness study areas, or national recreation areas; (d) Inventoried roadless areas; (e) Research natural areas; (f) American Indians and Alaska Native religious or cultural sites; and (g) Archaeological sites, or historic properties or areas." Chapter 30.3. The Proposed Rule contains no evidence that the USFS reviewed the effect of the Rule on these resources. The agency cannot plausibly argue that mining conducted under the Rule will not adversely affect some or all of these resources. *See* attached examples of mining impacts on these USFS resources. Under Citizens for Better Forestry, the use of a CE in this case violates NEPA.

NEPA also requires the preparation of an EIS when there "may" be significant environmental and other impacts from the implementation of the Rule. It is clear that mining under the Rule not only "may" but shall present these impacts. Also, due to the controversy regarding this Rule change, the likelihood of its establishing a precedent, as well as the direct, indirect and cumulative impacts, requires the preparation of an EIS.

Further, the Proposed Rule will not only weaken the current environmental standard for mineral operations (e.g., the change from minimizing adverse impacts where "feasible" to where "practical", *see,*

[4] It should noted that mining operations up to two years in duration are not "short-term" and may not be "low impact," as misleadingly described in the new "bonded notice" system. 73 Fed. Reg. 15698.

[5] The Proposed Rule appears to mis-reference the current Handbook section as 31.1b, when it correctly should be 31.12 (Categories Established by the Chief). In any event, regardless of the citation, the USFS' use of a CE for the Proposed Rule violates NEPA as shown herein.

e.g., proposed 228.9), it expands the category of "notice operations" by creating a new "bonded notice" category of operations that will, under current agency policy, avoid compliance with NEPA, the ESA, the NHPA, and other procedural and substantive protections for these types of mineral operations. Such a major change must certainly at a minimum require the preparation of an EA – however in this case, as shown herein, an EIS is undoubtedly required. The USFS also offers no technical data, analysis, or support for these changes – evidencing an arbitrary and capricious action under the APA.

It should be noted that the BLM's revisions of its mining regulations in 2000, 43 CFR Part 3809, was accompanied by full public review and comment and a Draft and Final EIS. The USFS must follow the same procedure here.

Violation of Endangered Species Act

The Proposed Rule has not undergone the required consultation under the ESA with the Fish and Wildlife Service (FWS) and NOAA Fisheries.[6] Such consultation is required under the ESA. *See* Western Watersheds Project v. Kraayenbrink, 538 F.Supp. 2d 1302 (D. Idaho. 2008)(requiring ESA consultation when revising regulations). The USFS cannot credibly argue that mining under the Rule would not adversely affect threatened or endangered species. Under the relaxed new "where practical" environmental standard, as well as the expanded "bonded notice" system, the new Rule would clearly threaten T&E species. To make matters worse, under current USFS policy, ESA consultation is not required for "notice" operations (and would be expanded to "bonded notice" operations). Thus, continuing and expanding this regulatory system requires consultation under the ESA.[7]

Further, the regulatory system under the Rule will likely result in severe impacts to T&E species across the West. This would violate ESA Section 7's duty to prevent jeopardy to listed species or adverse modification to critical habitat, as well as ESA Section 9's prohibition against "take" of the various species.. The Proposed Rule contains no analysis of these issues on the host of listed species in the West – in violation of the ESA.

Violation of the NFMA

The proposed Rule does not ensure, let alone mention, that all operations must be consistent with all applicable Forest Plans, as required by the NFMA. 16 U.S.C. §1604(i). This is especially problematic with the current and expanded "notice" and "bonded notice" operations. The USFS cannot allow this system to override Forest Plan and other NFMA requirements.

Relatedly, there is no mention of the provisions of the Clinton-era Roadless Rule and its significant restrictions on mining. The Final Rule should notify potential operators of the required restrictions on mining and access in Roadless Areas.

Improper Focus on Surface Resources Only

The Proposed Rule, like the current system, improperly limits USFS authority to only impacts to surface resources. Although the agency is correct that the Interior Department has historically

[6] The USFS also failed to conduct the required consultation with potentially affected Native American Tribes under the NHPA.

[7] The 1974 Rule was not subject to full consultation under the ESA and thus cannot be relied upon for ESA compliance.

administered the mineral resources, any subsurface operation proposed on USFS lands, with no BLM lands involved, will not involve any BLM oversight. Thus, on USFS lands that involve subsurface operations, the USFS must have environmental and other regulatory control. Otherwise, there is a gap in environmental oversight that would violate the federal environmental and public lands laws discussed herein.

Also, the Proposed Rule fails to cover situations involving "split estates" where the USFS owns/manages the surface but a private person/company owns the subsurface. The Rule must recognize that all applicable USFS requirements and procedures apply to operators on these types of lands/interests.

Improper Consideration of "Significant Disturbance" and Further Discussion on "Notice/Bonded Notice" Operations

In addition to the other problems with the "notice/bonded notice" system, the Proposed Rule also fails to consider what may be "significant disturbance" so as to trigger the requirement to submit a PoO. For example, the agency fails to include motorized suction dredging as a significant disturbance – which it clearly is. *See* attached materials. Further, the definition of "significant disturbance" should not be tied to the need for reclamation. *See* 73 Fed. Reg. 15696. For example, suction dredging, due to its location within the stream, may not require extensive reclamation, but will usually result in significant environmental impacts.

The Proposed Rule also continues the improper practice of leaving the "significant disturbance" decision up to the District Ranger, with little check on his/her discretion. For example, under BLM's regulations, exploration proposals over 5 acres, and all development/production operations, must submit a PoO. Although we do not support the concept of "notice" operations, this is a more definitive process.

In addition, under no circumstances should "notice/bonded notice" operations be allowed to continue past the original period.[8] The Proposed Rule allows an operator to essentially propose a new notice/bonded notice operation in the same area, albeit in a new notice. 228.5(d). That is unacceptable and further eliminates the public's rights under NEPA, etc. Overall, no activities should be allowed in the future in the same lands covered by a previous notice.

Additionally, unlike the Proposed Rule, 228.4(c)(1)(ii), there should not be any "bonded notice" operations in segregated lands. As stated herein, there should not be any operations allowed at all in such areas until the validity of all claims has been proven. However, if this comment is disregarded, at least the operations must be covered by a PoO, not a "notice."

Further, operators that have had a pattern of noncompliance should not ever be allowed to conduct operations under any "notice/bonded notice." The Proposed Rule makes this discretionary with the District Ranger. 228.5(a). Such circumstances require the mandatory submission of a PoO.

"Notice/bonded notice" operations must be subject to NEPA, ESA, NHPA, and other procedural and substantive requirements that apply to PoO-level operations. The USFS cannot avoid complying with these laws via categorizing mineral operations in this way. Further, although the USFS' recognition that CWA Section 401 certification requirements apply to mining is positive, the exclusion

[8] Again, even though we offer comments on improving the "notice/bonded notice" system, we do not support the system, nor feel its complies with federal law.

of Section 401 requirements via the "notice/bonded notice" system, despite the fact that these operations may result in a discharge of pollutants to waters of the U.S., violates the CWA. At a minimum, operations should not be considered under the "notice/bonded notice" system if they may result in such discharges (including CWA Section 404 discharges).

Overall, the entire "might cause" significant disturbance, "not likely to cause" significant disturbance, and "will likely cause" significant disturbance is extremely deferential to the District Ranger and can be, and has been in the past, used by the USFS to eliminate public and other agency review under NEPA, the ESA, NHPA, etc.[9] Such an anti-public process should be eliminated. At a minimum, any operations involving motorized equipment that might cause a disturbance of resources should require the submission of a PoO.

Access to Private Land Should Not Be Covered by the 228 Regulations

The Proposed Rule improperly places the regulation of access to mineral operations on private lands under the Part 228 regulations, even allowing such access to escape public review as a "bonded notice" operation. 73 Fed. Reg. 15699; proposed 228.12(e). This is especially troubling since the Rule is based on "rights" under the Mining Law that do not apply on private lands. Instead, under FLPMA, the NFMA, and other public land laws, access to private lands is a discretionary decision not subject to any rights under the Mining Law.[10] Thus, access to private lands must be obtained via a special use permit or other similar right-of-way, subject to different statutes and regulations. The leading case is Virgil Horn, 117 IBLA 10 (1990), 1990 WL 308067, which held that the Mining Law no longer applies once a mining claim becomes private fee land.

In Horn, the USFS argued that, even after the agency had approved a plan of operations (under the 228 regulations) for activities on the unpatented claim, the later issuance of a patent meant that the plan approval was no longer effective and that the operator had to obtain a special use permit to access his now private lands. In adopting the USFS's position, the Interior Department held that "Appellants seek the benefits of the general mining laws; however, they no longer possess a mining claim located on federal land." 1990 WL 308067 at 2.

> [T]he Forest Service District Ranger, Big Bear Ranger District, informed Virgil Horn that as of the date of patent he became owner of private land surrounded by National Forest land; that **a mining plan of operations which had authorized certain uses was no longer effective since the land was now private land; and that all uses outside the patented land were subject to Forest Service regulations governing special uses (36 CFR Part 251**, Subpart B) …. The District Ranger provided Horn with two application forms for Special Use Authorization, one for access to the land and the other for water transmission and diversion.

[9] In addition, the Proposed Rule is internally inconsistent. It states that a "notice" is allowed when operations "might cause" significant disturbance, 228.4(b)(1)(i), but that even a "notice" is not required when operations "are not likely to cause" significant disturbance. 228.4(b)(2)(iii). The "not likely to cause" exemption could override the duty to submit a notice when operations "might cause" a significant disturbance.

[10] The one potential access "right" to private lands may be for private inholdings completely surrounded by public lands under ANILCA, which is a very limited situation.

Id. (emphasis added). Thus, based on this stated position of both the USFS and DOI, the Proposed Rule cannot be finalized as written.

Reclamation Bonding

Although the Proposed Rule's requirement for full-cost bonding (plus additional costs to ensure that the agency has all necessary funds to complete reclamation, including additional contingency and third-party costs) is a welcome revision, the bonding section needs to be strengthened. *See* proposed 228.13. First, there should be no statewide or nationwide bond pools. Although the Proposed Rule states that each operation must be fully bonded, the allowance for such pools restricts public review and individual Forest oversight.

Also, although the requirement that initial bond estimates be included in the PoO is helpful, the public must be given the opportunity to review and comment upon the bonding as part of the NEPA process – not "after" the process is over, 228.13(c). (Of course, this omission is worse in the "bonded notice" category where there is no public review at all). Public review and comment should be allowed in the approval process, as well as the bond release process.

Lastly, the USFS should not approve operations that involve long-term or perpetual water quality treatment. This is because such operations really are not "reclaiming" the site if such continued activities remain. Although the recognition in the Proposed Rule that such treatment must be fully covered by a trust fund or similar funding mechanisms is an improvement over the current situation, the fundamental decision to approve such operations violates the Organic Act, the Surface Resources Act, and related authorities.

Deferral to State Procedures

The continued policy of allowing state environmental decisions to substitute for USFS regulation, proposed 228.2, should be stricken. Federal law does not allow state decisions to replace the USFS authority. Although the Rule should acknowledge the applicability of state and local environmental and public health requirements on USFS land, these requirements are **in addition to** USFS authorities, not a substitute.

Modifications to Approved PoOs

The Proposed Rule's strengthening of the authorities of the USFS to re-open existing PoOs is a positive development.

Restriction on Public Access to Information

Although certain trade secrets information can be withheld from public review, the Proposed Rule would prevent the public from knowing about the "known or planned location of exploration pits, drill holes, [and] excavations." 228.7 (b). Such an exclusion prevents the public from exercising their rights under NEPA and related laws and should be stricken.

Conclusion

Thank you for the opportunity to comment on such an important matter. As shown above, the USFS cannot finalize any revisions to the applicable regulations until all requirements discussed above have been met.

Sincerely,

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ATTACHMENT: along with this comment letter we have submitted multiple publications documenting the impact of mining on USFS lands and the importance of this rule thereto. The list of publications is included in a spreadsheet on the disc, entitled publications.xls