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August 26, 2019

NEPA Services Group
c/o Amy Barker
USDA Forest Service
Geospatial Technology and Applications Center
2222 West 2300 South
Salt Lake City, UT 84119

Re: Alaska Miners' Association Comments on the Forest Service, USDA's June 13, 2019 Revisions to the Proposed Rule on National Environmental Policy Act Compliance: 36 CFR Part 220: 84 Fed. Reg. 114 27544 *et. seq.* RIN 0596-AD31

Dear Ms. Barker:

Thank you for the opportunity for the Alaska Miners Association (AMA) to provide comments on the Forest Service, USDA's June 13, 2019 Revisions to the Proposed Rule on National Environmental Policy Act Compliance: 36 CFR Part 220: 84 Fed. Reg. Vol. 114 27544 *et. seq.* RIN 0596-AD31 (Proposed Rule).

AMA is a professional membership trade organization established in 1939 to represent the mining industry in Alaska. We are composed of more than 1,400 members that come from eight statewide branches: Anchorage, Denali, Fairbanks, Haines, Juneau, Kenai, Ketchikan/Prince of Wales, and Nome. Our members include individual prospectors, geologists, engineers, vendors, suction dredge miners, small family mines, junior mining companies, and major mining companies. We look for and produce gold, silver, platinum, molybdenum, lead, zinc, copper, coal, limestone, sand and gravel, crushed stone, armor rock, and other materials.

Many of our members prospect, operate, or are otherwise interested in mining on the Tongass and Chugach National Forests. These comments are directed at how the United States Forest Service should reduce its management impacts on current and future mining in these Forests.

REASSERTION OF PREVIOUS COMMENTS

AMA incorporates by reference its attached February 2, 2018 comments on this matter and urges the incorporation into the Proposed Rule the points made in these comments. AMA specifically emphasizes the desirability of incorporating the following proposals from our February 2, 2018 comments:

1. NEPA document preparers should be given page and time limits for the preparation of Environmental Impact Statements (EIS) (generally 150 pages, but no more than 300 pages without the written approval of the Regional Forester) (see CEQ Regulation 40 C.F.R. 1502.7) and Environmental Analyses (EA) (generally 15 pages, but no more than 30 pages without the written approval of the Regional Forester). Each NEPA document should be given a completion deadline to reach a Record of Decision (ROD), ideally a single Federal ROC, which, if exceeded, would be

reported by the preparer with an explanation for the delay to an Associate Chief, who would be required to approve an extension. Additionally, a clear MOU should be established upfront when cooperating agencies participate in the EIS process so that action and RODS are not delayed.

2. A legal team should be established at the National and Regional level to provide standardized language and/or procedures needed for NEPA documents to comply with Court rulings. Rather than having each Forest determine how best to address these changes, a legal team should take on this responsibility so that language and procedures to address these rulings can be implemented and included in NEPA documents very shortly after the decisions are made. This should not only include Court rulings that are directly towards mining projects but also related judgments such as those related to overall Forest management planning.
3. Consistent with shortening the length of, and time required for, EISs and EAs, new NEPA documents should be tiered to existing NEPA documents to avoid redoing previously done analysis. This recommendation is consistent the new Determination of NEPA Adequacy provision set out at 36 C.F.R. § 220.4 (i).
4. The Forest Service should add the Categorical Exclusions (CE) proposed on page 6 of AMA's February 2, 2018 letter. These are recurring activities with demonstrably small environmental impacts. Including them would speed up critical mineral exploration on National Forest land. Because the proposed CEs are recurring activities with demonstrably limited environmental impacts, this recommendation is consistent the new Determination of NEPA Adequacy provision set out at 36 C.F.R. § 220.4 (i).
5. The No-Action alternative should address the environmental effects of doing nothing. This analysis should recognize that there may be adverse environmental impacts from doing nothing which need to be analyzed. *Center for Biological Diversity v Department of Interior*, 581 F.3d 1063 (9th Cir, 2009) (holding Bureau of Land Management, violated NEPA by not considering the environmental consequences of its approval of a land exchange that would result in a mining company obtaining fee simple ownership of land on which mining activities would not be subject to the Mining Law Act of 1872). **(Issue Area 1)**.

NEW COMMENTS

1. Add a new subsection to 36 C.F.R. Part 220 to explicitly allow the project proponent to present a draft NEPA document with its draft Plan of Operations. We believe the CEQ regulations provides for this opportunity. This would speed up the NEPA process and reduce the costs to the Forest Service by having the Project proponent (who best understands the project requirements, impacts, and economics) present the relevant information in the format required by the CEQ guidelines. The regulations should further allow the Forest Service to hire a third-party reviewer at the Project proponent's expense conduct the first review/revision of the draft NEPA document presented by the project proponent. Again, this would speed up the process and reduce the cost to the Forest Service. Final review/revision of the NEPA document would be done by Forest Service NEPA preparers.

2. The AMA strongly supports the Determination of NEPA Adequacy provision set out at 36 C.F.R. § 220.4 (i) by which a NEPA analysis performed for a previous proposed action can suffice for a new proposed action if the new proposed action is substantially similar to a previously proposed action that was analyzed in detail in a previous NEPA analysis.

The AMA submits that mineral exploration projects that *exceed* five acres should be authorized pursuant to this provision based upon BLM experience under 43 C.F.R. § 3809.21 that has proven that mineral exploration can be done without harm to the environment.

3. The AMA fully supports the expanded list of CEs approved by 36 C.F.R. § 220.5. However, it should add a CE, similar to the Bureau of Land Management's (BLM's) CE (see 43 C.F.R. § 3809.21), that authorizes mining exploration that impacts less than five surface acres (on a one time basis) by a Notice of Intent (NOI) to proceed without a NEPA document. The Plan of Operations (PoO) and NEPA document required by the Forest Service unnecessarily add time and expense to an exploration project that has minimal surface disturbance and minimal environmental impacts, as the very successful BLM five-acre CE has shown.
4. 36 C.F.R. § 220.5 (a) should direct that CEs contained therein shall be the NEPA preparer's first choice and be used except when there is compelling reason not to do so – in other words, the CE should be the default position.
5. The new proposed CE for approving a Surface Use Plan of Operations for oil and natural gas exploration and initial development activities (36 C.F.R. § 220.5 (e)(17)) should be expanded to include mining exploration and initial development activities. There is no significant difference between mining exploration and oil and gas exploration.
6. The AMA urges that in deciding whether a road should be decommissioned or closed pursuant to 36 C.F.R. § 220.5 (e)(20) the Forest Service first determine whether the road could provide access to mining claims and mineral deposits.
7. The new proposed CE for roads (36 C.F.R. § 220.5 (e)(24)) allows the construction or realignment of up to five miles of National Forest System roads, reconstruction of up to 10 miles of National Forest System roads, and culvert or bridge rehabilitation or replacement along National Forest System roads. This CE should be expanded to include road access to mining claims and mineral deposits.

Finally, in addition to providing the aforementioned comments, AMA wishes to endorse the comments of the American Exploration & Mining Association.

Thank you for the opportunity to comment on the proposed USFS NEPA compliance rule.

Sincerely,



Deantha Crockett
Executive Director