

May 9th 2011

To: Mr Stopher, Ca. DFG

From: Donald E. Eno
Lifetime Member PLP

Adopting Comments from Jerry Hobbs of P.L.P. et al

Re: Public Comments on Proposed Suction Dredging Regulations – SDEIR

California Mother lode Country is a rich resource, to this day, and it is a crying shame that the people of California cannot enjoy the economic benefits from our infamous Mother lode mineral bounty. California is in the tank some 30 billion dollars, and the United States economy is on life support rescued only by *printing money* neck and neck with other Countries fiat currencies. The ship is sinking fast and unbelievably the CDFG is spending millions of dollars screwing around with this SDEIR for the purpose of making sure of two things.

One is to stop *all placer gold mining* in our rivers assuring that new wealth cannot ever be extracted from rivers and for the benefit of California's economy ever again.

Two is to ensure that all the mercury, heavy metals, *Sulfide Rich Black Sands*, toxic minerals, asphalt and garbage that is polluting our rivers is "Quarantined" and thoroughly protected by the environmental groups & Federal and State Agencies. All of them hell bent on making it a crime for suction dredge miners to remove any and all pollution we unearth from under river gravel beds - the very same out of site out of mind ecological disaster contaminating California's aquatic environment and our drinking water supplies - that these Agencies proclaim to be protecting.

SDEIR Simply Cannot Ignore [Blow Off] the Economic Potential and Losses of the Gold Mining Potential Of the Sierra Nevada Mother lode Country & Other Gold Bearing Areas of California Without Hard Look Economic Analysis.

The mineral wealth of the Mother lode has not produced anywhere near its potential, in fact, the citizens of California have been and are being cheated as a direct result of USFS abuse of discretion for decades. It goes without saying that the Citizens of California have lost countless billions of dollars as a result of USFS surface use mining regulations and abusive practices.

Every single time prospectors go out upon the National Forests (NF) operating under the authorization of the US Mining laws, we risk being seen or caught by the USFS and that is where the trouble begins. Even though everything we do is perfectly lawful, we have to all but hide like thieves in the night to keep from being threatened or cited for something by the FS. The FS learned decades ago that if they can catch the miners early enough, there is always a way to stop him from doing enough diligent work before he can make a discovery of valuable minerals, or stop him from having a chance to perfect his discovery. The cost to California has been vast and it has all been done in the name of protecting FS surface resources. This, in part is why I bring all these issues to the forefront, what are the losses to the State, and what have been the true costs? How much more must be lost.

These Environmental protection agencies” EPA, CDFG, USFS, and CRWQB were created, funded, and armed with vast power and backed by environmental statutes for the purpose of protecting; safe domestic water supplies, clean water, protection of fish and wildlife, clean air, to prohibit pollutants from harming our shared environment. However, this is not the case, environmental concern and protections are not the mission or the objective at all. Environmental health is a subterfuge, a surrogate for exacting absolute power to take absolute control over virtually all lands of the United States, and the [river] Pollution in this case is what Representative Helen Chenoweth-Hage dubbed the new species of *cash cow*. If not but for the pollution lurking in the rivers, and the fears of ecological disasters that are threatening our environment, none of these federal and state employees would have a job.

These agencies, CDFG included have created an entire industry: vibrant environmental businesses like Horizon, a subcontracted private gaggle of purported scientists performing tasks like this SDEIR, and environmental special interest groups’ law firms, dedicated to litigation on behalf of Mother Nature, a bustling private businesses well funded by our agencies, and spin cycling the moneys back to their lobbies to help control all the; lands,

waters, and air of these United States. Despite our thirty billion dollar deficit, there is apparently no shortage of money flowing through these bustling businesses or through our State and Federal agencies for environmental studies and draconian regulations.

All these; sky is falling, save the earth, global warming theories assure absolute Federal and State Agencies' control over every natural resource guarantees to provide a thriving environmental industry, and spin cycles money to lobbies and Politicians for more and more power and control. Hell, we don't need to save the planet, the planet will be fine long after mankind is gone and forgotten. We cannot save ourselves from ourselves, and this whole SDEIR proves my case.

At this point, assuming CDFG pulls off this hoax, the net result will assure several horrific environmental consequences will occur as follows.

The gross pollution; Heavy metals like lead, mercury, and minerals like arsenic and others cited in the SDEIR will remain undisturbed in the watersheds; on bedrock, under the river gravel beds of the Sierra Nevada's will continue to; oxidize, leach, rust, corrode deep in the river channels out of site and out of mind.

The mercury will remain in the rivers as-is where-is for now.

The super-sized metallic garbage, miscellaneous metallic trash, scrap metals, aluminum cans, tin cans, and asphalt will largely be ignored & unnoticed. The general public will pat you all on the back, they will continue flocking to the National forests enjoying the rivers and streams oblivious to the ecological disaster under their feet. Swimmers, tubers, kayakers, fishermen, sport divers, come one comes all will be exposed to the very personal safety hazards your SDEIR declared would likely pose a health hazard to gold dredgers working under water! And, these elitists' fly fishermen, and the more reasonable sport fishermen will continue to pursue, catch, kill, and eat mercury and heavy metals contaminated fish flesh, oblivious to the CDFG fish farming for \$\$ and heavy metals protection management practices.

It is absolute certainty that that all future major floods will turn the raging rivers into massive gravel ball mills which in turn will grind and spread this poisonous mixture further down the watersheds, flouring mercury, and posing greater and greater risks to our water supply, fish, aquatic

environments and jeopardize the public health and safety of all citizens of California.

The net result of all these environmental controls - in this particular case the SDEIR - for the purported; *protection of water quality*, the *habitats* for the poor yellow legged frog, (AKA: Fish Food) and, the elimination & mitigation of the *in stream suction dredge miners* - will assure a long enduring legacy and testament Government assured pollution and poisonous water supplies for all humankind and species within the once great State of California.

Question; Why does CDFG insist on fattening up planted – stocked trout and/or other fish species with yellow legged frogs and / or other frogs?

Question; Is it the all mighty dollar for fishing licenses?

The theories and conclusions throughout the SDEIR are weak at best, grabbing at straws, inferring harms to justify an entirely new CDFG in stream suction dredge mining, providing for the submission of a Plan of Operations scenario with multiple authorizations under the guise of a “permit.”

My wife and I moved to California in 1992 for the gold mining opportunities it offered under the US Mining Laws. When we moved here, I was naïve, I thought that the agencies like the USFS were honorable and had to be honest. Silly me, it didn't take long for me to learn that I was dead wrong.

Prospecting and small scale mining is wrought with challenges, often hazardous to life and limb; dark tunnels, raises, shafts, oxygen depletion, cave-ins, underwater rockslides, looming boulders, and the list goes on. The greatest threat of all hands-down has been USFS material interference, and making otherwise lawful exercise of the authorized mining under the US Mining Laws a crime.

The only mining allowed it appears is Massive Corporate – scale mining, a scale that sends the Environmentalists into orbit. These are the mines that leave the massive scars all the environmentalists get upset about. What is strange is that small-scale miners in both under ground placer and river placers could work 50 years and never know they were there. You all have a choice, either plenty of insignificant blemishes here and there - and often times no trace at all, or the alternative is big massive pits and everybody

goes crazy over them to. So, it appears that environmentalists will never be happy.

Then there is the USFS managed Mineral Materials mining, but the USFS gets their cut of the \$\$\$\$. The small hard rock miners have been all but destroyed, and all that's really left are the small-scale miners operating small-scale suction dredgers.

Having dissected this SDEIR as much as I have, it is evident that CDFG and all collaborators have a mission that I never knew before. It appears that CDFG has a new mission. More on this later...

SDEIR Premise: No Valid Gold Mines – No Concern For Takings

The DFG scientists and collaborators who prepared the SDEIR made arbitrary and capricious *assumptions* regarding the shrinking *number* of Suction Dredge Miners - in *correlation* - with the rise and fall of the spot price of gold - the shrinking number of plans of operations (PO's) - the purported *depletion* of gold in our rivers as evidenced by - (the disputed data collected from 1,111 CDFG surveys) - which erroneously presumes that the gold production *reported* in relation to the reported number of days miners spent suction dredge mining - at first blush - might indicate that there is no economic quantity[ies] of gold in the California's rivers to substantiate *valid* mining claims. This entire topic is overly generalized, there is no economic analysis or computations to support these presumptions in the SDEIR and I believe that such analysis was overlooked to avoid interferences with the predetermined objectives that this SDEIR was tailored to create.

Operating under these *broad brushed presumptions*, it appears that the SDEIR is relying on the *theory* that under this new regulatory regime, there will be no way for miners to prove they have a valuable mine and therefore, there will not be any *takings* issues, thus no liabilities for the State of California. This is not a safe presumption.

SDEIR indicates that the USFS geologists (mineral examiners / expert witnesses) from Redding Ca. Region 5 et al have been consulted to assist the CDFG SDEIR team to formulate these proposed sub-surface mining regulations with a Plan of Operations (PO) authorization(s) provision(s) cleverly referred to as a "Permit(s)." In reality, these so-called permits are

simply a 36 CFR 228 styled PO approval process with multi-level stages of authorization - to pretend each level of authorization is a Permit to skirt the Federal Mining Laws. This is a very, very clever use of semantics to achieve a result that will benefit the USFS far beyond they could have dreamed of otherwise under the Federal Laws and constraints of authority.

There can be no doubt whatsoever that the USFS and perhaps BLM advised CDFG that *Validity Examinations* and *Validity Contest* actions routinely would cost the poor miner(s) + or - \$100,000.00 each for one mining claim and usually takes many years to adjudicate. It will cost more if the miner actually won because most likely FS would appeal which drags this process out longer costing more \$\$\$. Plainly the USFS and CDFG rely upon the overwhelming legal costs to take mines w/o compensation by design.

And, these Certified Minerals Officers know full well that when the SDEIR proposed regulations *reduce the dredge nozzle size*, then next to nobody will stand a chance in a validity contest. This I believe is *the plan* that CDFG has cooked up in concert with the USFS and is what CDFG is relying upon. It is also why CDFG SDEIR is *arrogantly* refusing to accommodate, or even discuss the 1872 Mining Laws, and the Mineral Policy Acts of 1970 and 1980, mining rights, ownership of real property etc. I have been scratching my head wondering what I was missing that gave CDFG and SDEIR this arrogant confidence. The maze of bizarre anomalies contained in this SDEIR is coming into focus now.

Any miner or mineral examiner worth a damn knows that *profit* of a mining venture is directionally proportional to the tonnage and grade of ore moved vs, the time it takes to move it. And that your proposed regulations are *by design* intended to *materially interfere, prohibit* mining and to threaten to *invalidate* any and all placer mines of *your collective choosing* to insulate the State and the USFS from the threat of *takings* at the court of claims. This in itself is subterfuge, a premeditated plan to take any and all mining claims at will under the color of law and authority without Due Process of law. I suggest that CDFG cease and desist with this SDEIR plan as there will be *no turning back if you do the dirty deed*. If Congress Investigates the collaboration with those highly trained Federal officers and attorneys who knew better, heads are going to roll.

Therefore, if the USFS and / or BLM and / or CRWQB et al are colluding with the CDFG team to formulate this *perfect plan* using this SDEIR to

destroy *one targeted class of people*, through these regulations under the *guise* of protecting the fish and water quality, there will be big trouble ahead for all who knowingly participated. ***Occupational Profiling?***

Discrimination? And, even more profound is that if CDFG goes final with these Proposed regulations, *the USFS will have achieved the regulatory regime of their dreams*, second only to the 1974 promulgation of the 36 CFR 252 Surface Mining Regulations – re codified as 36 CFR 228.

So, I can well imagine how the USFS, R-5, OGC, and the whole lot of these collaborators are feeling mighty giddy about now knowing that they have nearly achieved the otherwise *impossible*. That is, a means to *prohibit mining* via collaboration with CDFG and CRWQCB et al through this SDEIR.

I strongly recommend that CDFG and FS et al don't go this route. Actually, it doesn't matter that much, you are all exposed to a profound degree having done what you have done thus far. You can bet *your careers* that there will be intense Congressional oversight, investigations, hearings as a result of this premeditated trickery under the *color of law* and under the *pretext* of protecting fish and water quality.

It is my opinion that the CDFG and all collaborators are using the *alleged* + or – 2% *mercury* loss from dredge tailings issue that might harm fish and water quality as a pretext and excuse to justify gaining 100% control over suction dredge mining in our rivers and to satisfy all collaborators in this dubious deception of unprecedented proportion. The word ***Collaborators*** sounds like such an innocent term doesn't it? It is not, it is more like ***conspiring*** in this case referring to this SDEIR.

Just as the environmentalists used the protection of the habitat for the spotted owl as a *surrogate species* for the true purpose of prohibiting the practice of logging *old growth timber*, the CDFG appears to be using *specs* of mercury and *frogs* as a line of attack to stop and/or control all suction dredge mining in California's rivers. Everybody knows that *frogs are fish food*, especially fishermen! So CDFG keeps on managing the fish farm monopoly, business as usual for big annual income, selling licenses to kill fish en masse. All the while quarantining the river pollution to protect it, not the fish and frogs.

Frankly, having read all the vague theories, overblown fears, and purported science contained throughout your SDEIR, I conclude that there isn't one of you who could possibly care about our fish, water quality, or any other genuine environmental concern, *other than the power you gain from it*. Rather, this particular brand of environmentalism as demonstrated throughout this SDEIR is a calculated maneuver used strictly for control. I cannot read one paragraph in your SDEIR without seeing the *spin, bias* and unjustifiable *smearing of suction dredge miners* and all their associated activities.

Resume SDEIR Premise Analysis

Skewed Data collection biased outcome of SDEIR

Using 1,111 responses to your survey questions appears to be a methodical and calculated strategy to skew the analysis and conclusions, and to minimize as much opposition to this SDEIR as possible. Your analysis and conclusions in this SDEIR are based upon the *responses* of *only* the suction dredge miners *who responded* to your surveys consisting of 1,111 suction dredge miners for the 2008 mining season. (Approximately 33 percent of the documented permits for that year) CDFG should reconsider the wisdom of this flawed strategy.

Question; How might the analysis and results of the SDEIR changed if every owner of patented and un-patented placer mining claims filed at BLM throughout the state of California had been notified in advance that CDFG was planning to perform an EIR with the intent to promulgate new sub surface placer mining regulations and a multi level permit system affecting all mining claims situated on rivers and streams?

CDFG failed to provide proper lawful Notice

SDEIR should have put all California mining claim owners on proper lawful 'notice' that their "*property interests*" may or will be taken by "State Regulations" under this SDEIR regulatory scheme.

SDEIR Offends Due Process

I know it sounds silly for mere citizens to expect to be protected by Due Process under the US Constitution with respect to property rights. Never the less, it is just a *thought* CDFG might entertain since you have made it clear you don't care about mining rights or any of that silly nonsense the courts have struggled with about 140 years.

SDEIR Failed to provide Advanced Notice

SDEIR failed to put all California mining claimants (property Owners) on advanced notice prior to preparing the SDEIR. This failure precluded all prospectors, miners, and mining claim holders on **notice** as to the; who, what, when, where, and why their property interests and mining rights may be affected.

Insufficient notice biased SDEIR

If all mining claim holders in this State were properly notified well in advance, the SDEIR would have had vastly more input and data, and therefore dramatically changed the content of the entire SDEIR. However, the way this SDEIR has been *fabricated*, it is evident that it has been a *sneaky*, quiet, back room process with unscrupulous characters & motives to satisfy everyone but the targeted and profiled gold miners of every stripe in the State of California. SDEIR *intended to deceive the public* and *skew the data* in to achieve the purposes of all the agencies involved.

As it stands, each and every owner of mining claims located in the State of California have been denied an opportunity to be involved in public scoping, and to *participate* in this SDEIR process. And to be notified in advance of impending regulatory schemes that *may* affect their rights, and if these regulations go final, it is a forgone conclusion that the Due Process rights of every owner of mining claims located in the State of California will violated by SDEIR failure to serve notice.

I urge CDFG to reconsider moving forward with this *egregious* oversight and immediately correct this oversight by giving proper notice in a timely manner.

This entire *premise* lacks merit for a broad number of reasons, which my comments will expose in further discussions as follows;

Your analysis and conclusions are based in part upon the *responses* of only the suction dredge miners *who responded* to your *surveys* consisting of approximately 1,111 (purported) randomly* selected suction dredge miners for the 2008 mining season. (Repetitive)

Under Notice and Due Process, SDEIR should have sent surveys and notice to all owners of placer mining claims located in California by collaborating with USDI BLM using BLM Data Base.

The mere fact that CDFG SDEIR Team *deliberately* chose not to send surveys to all miners who own Federal placer mining claims in California is egregious and indefensible.

Why?

Because every year the USDI BLM sends out the annual mining claims maintenance packages to all mining claimants holding active (Lode, Placer, Tunnel sites, & Mill sites) within the State of California. This annual mass mailing notifies everyone holding interest in such property of the latest changes in fees or rules. You have had nearly three years to deal with this crap, to contact miners and gather information that you claim to want for making wise decisions. We only have 60 days to unravel and decipher your complex web of deception. Given more time, I personally could have *refined my comments and condensed them*, but I have to ensure my standing is secure first and foremost.

Discussion

Each and every owner of an un-patented placer mining claim has an interest in mining in California, and certainly deserves the right to be put on advanced **notice**; that *several methods of placer mining* are currently being reviewed by a hand-picked group of environmental activists *masquerading* as; scientists, CDFG officers, private environmental contractors and consultants of every environmental Agency within the State of California.

SDEIR regulations affect more than just in stream suction dredgers

Further, this *collaborative* group is planning to perform an EIR for the purpose of reviewing *suction dredge mining*, and that the scope and breadth of this review will include possible changes to; *high-banking, gold panning, power sluicing, ground sluicing, and power winching* on Federal mining claims located throughout the state of California. CDFG SDEIR *failed to give all these other owners of placer mining claims notice and Due Process*. Their mining rights have also been adversely affected *and they don't even know it yet!*

Further such **notice** should have advised all placer mining claimants that the outcome of the review may or is likely to result in proposing *new regulations* that *may result in more restrictive use(s)* of their Federal mining claims that *may adversely impact their right to mine*, and/or may adversely affect their property interests in said mining claims and may affect the validity of their mining claims.

To be fair, the CDFG should have collaborated and coordinated a mass mailing to all mining claimants with USDI BLM to ensure all claimants were given notice by adding one or two stinking pages to the BLM bulk mailing with *notice*, enclosed information and updates, and web site addresses with pertinent and current information such as I described above. Even if CDFG asserts this collaboration with BLM is or was impossible, for any reason whatsoever, then the alternative would be to Request a computer generated electronic version of the BLM's current mailing list. Had CDFG done this, then all properly and notified recipients would have been given *proper and lawful notice* that their Federal mining claims and Granted Mining Rights would be in serious Jeopardy.

Even more profound is that the Citizens of California and the Citizens of the United States - each and every one - are adversely affected by these broad sweeping proposed regulations.

Why?

Because the US Mining Laws declares that these lands are free and open to exploration, prospecting, entry, location, and mining to all citizens of the United States. Now, *unwitting prospectors* who enter lands open to entry under the mining laws who have not been given notice will be subject to citation for daring to prospect in a manner in violation with SDEIR regulations.

(Insert 1872 US Mining Law Preamble Here)

Therefore your failure to notify not only the *current owners of un-patented mining claims* in California, but also you are prohibiting all future prospecting in rivers, lakes, and whatever waters that you have authority to reasonably regulate.

Thus, this SDEIR and proposed regulations hamper, impede, clash with, endanger and materially interfere with and outright prohibit the entire stated purpose of the US Mining Laws and the Mineral Policy Acts.

I Request CDFG provide Congress a Copy of this SDEIR

I strongly suggest that the CDFG formally inform and advise Congress that the State of California and the CDFG has devised a plan and scheme to usurp and generally disregard the US Mining Laws with respect to in stream placer mining throughout the state with this proposed SDEIR.

I advise CDFG to advise Congress that CDFG has in the past, and is, expanding vast withdrawals of rivers and streams from conducting any reasonable means of placer mining operation in California's waters by *regulatory fiat* under the SDEIR with the full cooperation and assistance of the USFS and/or other Federal Agencies.

When I say Congress, I am not referring to your liberal buddies, I mean the appropriate Committees and Subcommittees related to mining and land management etc. that would be horrified at these actions.

Question; How many linear miles of rivers and streams did CDFG close to in stream placer mining in the State of California (suction Dredging) in 1994?

Question: Can you provide me/us with a series of maps for the public record showing and listing all the miles of rivers CDFG closed to in stream placer mining with suction dredges?
(If not, please provide relevant data or a specific reference so I can go dredge these up for myself.)

Question; How many linear miles of rivers and streams is CDFG closing to in stream placer mining in the State of California (suction Dredging) as proposed in this SDEIR?

Citizens' right to choose to benefit from the Rewards of US Mining Laws have been usurped

And the Citizens of this State and the US have not been given advance **notice** that their right under the US Mining Laws to obtain a mining right and to secure the exclusive possession of an un-patented mining claim through self-initiation is *unlawful* in the *State of California*.

CDFG failed to afford notice to corporations in this SDEIR

Under the US Mining Laws the word "Citizens" has been extended to include "Corporations." Thus, it appears that corporations have not been put on **notice** of CDFG SDEIR finding proposed regulatory scheme as may adversely affect their valuable mineral estates.

Further, I personally own several such mining claims that I did not "dredge" in 2008, however this does not indicate that I had or have no *interest* in extracting my minerals by suction dredge mining at some point in the future.

CDFG via SDEIR is willfully discriminating against a minority group

The fact that I was not afforded the courtesy of proper and lawful notice and was not afforded an opportunity to participate in this process strictly because I did not choose to purchase a suction dredge permit from CDFG for that particular year - *even though I still hold valid active river placer mining claims - discriminates against me*, skews the purported analysis, and by extension, *discriminates* against thousands of other subsurface placer miners holding valid and active Federal mining claims who were also deliberately and / or maliciously excluded from reasonable; notification, participation, and failed to afford them an opportunity to participate in the surveys.

Back to Premise

The SDEIR makes far too many unfounded presumptions throughout this SDEIR, and severely lacks any consequential *analysis* related to the reasons. Reading the SDEIR one is led to believe that it *must be due to depletion of gold* in California's rivers and streams. I disagree with these bald assertions that were made in the SDEIR to mislead one to believe that that theory is true. Absent any evidence the validity of the question remains why.

Questions;

Why have in stream placer mining operations been on a steady decline for nearly 20 years?

Why is gold production continuing to be in decline - despite the 10-year steadily rising spot gold price reaching the current price of \$1,500.00 per ounce?

Why are the numbers of *approved plans of operations* in California's National Forests inexplicably down nearly to zero for all forms of gold mining including; open pit placer mining, subsurface (underground) gravel mining, subsurface lode mining, and in stream placer mining?

Your SDEIR team made *no attempt* to determine the cause of any of these questions. The only data available that your team found worthy of analyzing came from surveys of gold recovery that was proffered by the 1,111 in stream placer miners survey. Even then the SDEIR had reservations concerning the validity of this data and explained scientifically why such data may be skewed, for example they came up with "*recall bias*" with respect to miners' anecdotal reports of gold production.

So, I came up with my own explanation for the SDEIR gold depletion theory which I call “*liars bias*” short for “*The deliberate and calculated for CDFG desired outcome bias.*”

Setting the record straight – answering the questions

For all your highly educated *scientists, analysts, and consultants* to fail to *entertain and address* the possible reasons *why* is absurd. In fact, considering your collaboration with the USFS minerals officers in particular makes the fact that the SDEIR team couldn’t – didn’t want to - manage to answer these questions is both inexcusable and inexplicable, and at best deceitful to put it mildly. Especially in light of the valuable resources of gold locked away in rivers CDFG has removed from in stream mining for nearly twenty years.

If I make bald assertions with out providing explanations or basis for my answers to these questions SDEIR team would have no reason to consider them. Therefore I will provide the sources for your analysis so that you can answer the mysterious questions yourselves.

Below *I will provide you the plausible variables that you should have considered carefully before you all took such quantum leaps to achieve your politically motivated agenda as follows;*

(I know, it puts a monkey wrench in your giddy up that you wanted to avoid.)

Reasons Why and Sources of data for Confirmation

Comprehensive analysis of BLM statistics related to the number of placer mining claims located on lakes, *rivers, streams and waters* filed at BLM each and every year at least beginning in 1990 or earlier.

- A) The spot price of gold each and every year since 1990 or earlier.
- B) Comprehensive USFS data since 1990 or earlier establishing;
 - 1) The number of *submissions* of plans of operations (PO’s) and Notices of Intent (NOI) - Statewide - for suction dredging operations & the number of FS *approvals* of NOI’s & PO’s for suction dredging in connection with either camping or occupancy.
 - 2) The number of Submitted NOI’s and/or PO’s that FS did *not authorize* along with the statistical data indicating why they were not authorized.

- 3) The number of NOI's and PO's that the miners withdrew after they had been submitted.
- 4) The length of time it took between the date of *submission* and the date the NOI's or PO's were either; *rejected, denied, unreasonably delayed, unreasonably mitigated*, and/or were subsequently *withdrawn by claimant for his just cause*.

Just Cause;

Miners who refused a PO because of the *unlawful* minimum bond, unreasonable mitigation measures, unreasonable delay, etc..

Discussion; USFS fabricated a shortcut to aid them in compelling the miners to file a NOI or PO to authorize camping. The FS used 36 CFR 261 prohibitions to issue Forest Order 03-98 prohibiting camping more than 30 days unless the miner obtained authorization through an approved PO. To add insult to injury at the same time the USFS tried to require a minimum bond of \$2100.00 before a PO would be authorized. (Minimum bond was unlawful and FS dropped the "minimum bond" a few years later)

W/O the *camping* FO, the USFS lacked jurisdiction and authority to demand a PO for suction dredging operations. And FS compelled miners to submit a PO under the *pretext* of *authorizing* the "*camping*" Forest Orders - coupled with the attendant extortion of a reclamation bond. ***Semantics.***

Convolutated as it sounds, hard to describe or believe as it is, the USFS tracked down every miner in Pumas NF routinely in a concerted effort - and *harassed and threatened* all miners in Plumas National Forest for some ten years with this *creative use of semantics* under the *color of law* and authority.

Also, there are no bonding companies that will bond small miners because the *property interest* in an un-patented mining claim - that the bond would have been tied to - is *encumbered* by USFS "*authorizations,*" rendering the true mineral value of any and all such un-patented mining claims nearly worthless.

(For Plumas NF only, FO 03-98, 30 day camping prohibition w/out authorization through a PO.) Circa 1998

All the rock solid evidence and data reflecting my assertions above is available at all USFS District Ranger and Forest Supervisors' offices

throughout California. - Whatever the FS does in one state spreads like wildfire to all the others.

*(Just like the USFS, the BLM should also provide very similar statistical data, and criteria as described for USFS above - under their mining regulations - as relates to suction dredge mining since 1990 or before.)

Harassment

I don't suppose SDEIR considered this issue & FS would not be eager to share this information because it looks bad.

Question? Might anyone on the SDEIR team be thinking that the data derived from these answers might explain in part why these tactics might; lower the gold production rates, or reduce the number of miners willing to mine, or explain both the increase in the number of approved PO's from 1990 – 2000 and then the decrease in the number of PO's from about 2000 to the present?

Discussion – Harassment – NOI – PO Approval Process

The USFS willfully and eagerly engages in *stalling tactics* that violate their own 36 CFR 228 mining regulations. They use their unbridled *discretion* to *compel* miners to submit a NOI or PO under the *guise* that our “operations” (one- man show) *may* cause a *significant surface resource disturbance*.

This allows the FS to *stall* approving *operations* - as a matter of course - under the *premise* that they must *analyze* the *possible* adverse impacts to surface resources. - And/or they need *more information* or *more time* to adequately analyze the proposed PO for many months and years.

Yet, by golly, the FS *always* approves PO's without *ever* performing an EA because they *determine* that the operations will not cause a *significant* surface resource disturbance after all! Wow, we have come full circle to where we began. Seems like a waste of time and a big hassle for nothing in most cases.

Furthermore, after months and years of torture and stalling and frustration, some miners decide it is time to go and mine anyway. Bad move, these miners end up in Federal Court and get prosecuted and punished.

Discussion – Latest Trick to stop all NOI's and PO's

The PNF FS latest trick that has evolved over the past few years is to sick the CRWQCB on them and as a result, nobody in Plumas NF or Tahoe NF has managed to get an approved PO for the past 2 years. Some have paid

thousands of dollars and waited for years for *approvals* with *no guarantee* that they will actually ever be approved.

SDEIR Disingenuous – Old Data Intentionally Misleading -

Thus SDEIR is mis-leading due to the manner in which SDEIR used the USFS number of PO's spanning 3 years to pretend that miners just aren't mining or filing PO's to mine. From the data you can acquire from the USFS Offices in Plumas NF will prove my assertions above are true and it would lead reasonable minds to conclude that these forms of harassment are occurring and have for at least 16 years straight.

And, the USFS data - if reviewed fairly – would show a distinct and direct **correlation** between the “Camping” Forest Order 03-98 (in Plumas NF) and the number of PO's filed for suction Dredging operations within the National Forests.

Harassment – Direct Correlation – FS Own *Interpretations* of case law

Also, it would be wise to recognize that for several years before the FS dreamed up the camping forest order, - around 1992? - The number of NOI's & PO's for suction dredge mining is up during that period because of the *prior occupancy strategy* the USFS engaged in ie; claiming their *interpretation of certain case law* regarding *occupancy* and *structures* along with the USFS threats of citations etc. This was also a USFS-wide scheme in Region 5. Most of the suction dredgers I knew at the time had done their homework and determined that the FS was without authority to demand these NOI's & PO's so we had to hide as much as possible. FS does not have any interest in whether their rules are lawful, they use them as long as they can get away with it, and when a court rules them unlawful, the FS finds another unlawful strategy until it is over ruled. The end justifies the means!

CDFG is also Responsible for Gold Production being Down

CDFG Largely responsible for huge reduction in production. Funny, one would have thought that with all the highly educated professionals involved - pouring their hearts & souls into this project - *analyzing all this data* and combing such vast literature resources for *research* to complete this comprehensive SDEIR - that at least one brilliant analyst might have found it important to analyze data beginning say 5 or 10 years prior to the *1st time the CDFG introduced suction dredging regulations* - followed by the introduction of the *1994 suction dredge mining regulations* - and then

performed the economic analysis to derive at the actual adverse economic impacts caused to the gold production specifically caused by the CDFG Regulatory scheme and permit system in California.

Question; What is the adverse economic impact in relation to gold production in California as a direct and/or indirect result of CDFG suction dredging regulations since 1985?

Assuming that the *answer* is provided by CDFG along with the Data to support it, then we might ascertain how much gold production has been lost or taken by and from the State of California, as a direct consequence of CDFG prior suction dredging regulations and correlate this data accordingly for economic analysis of the loss of gold recovery and its value in Dollars since CDFG got involved regulating in stream mining.

Darn it, I forgot, **California's Gold Production** in *California's Mother Lode Country* is not *worthy* of economic consideration, for it complicates the *predetermined* goals and objectives of the SDEIR.

Such in depth analysis will strongly suggest that the *low production rates* are indeed *directly correlated* with the adverse economic impacts caused in large part by all previous CDFG SD unreasonable and restrictive regulations.

Economic Analysis Grossly Deficient

Seriously, CDFG SDEIR *economic analysis* needed to take a requisite “hard look” at the adverse economic impacts directly related to cumulative economic impacts to suction dredge miners and to the State of California with due regard to the USFS own special brand of *harassment* of placer miners and lode miners spanning the same period of time in California.

Irretrievable losses of highly skilled prospectors & miners

Consider also that countless highly skilled lode and placer miners with decades of experience have been harassed out of the forests and/or driven into bankruptcy as a direct result of these abuses, and worse, all that hard earned knowledge about all forms of gold mining is lost, leaving us with precious few mentors that might have passed down that invaluable knowledge to younger men if not but for these unreasonable Government Agency regulations and willful abuses.

OK, a little *sarcasm* is in order

I can hear it all now, the collaborators behind this charade saying; “we can’t have that, no, we just “stay the course” white wash the *whole gold production subject* and *pretend* there simply is not enough gold to justify showing how much economic harm we have already caused to the miners and the California economy, and caused directly by our own regulations.” “Don’t take a requisite “hard look” at the “economic” analysis, that’s opening Pandora’s box.” “And if we did the economic hard look analysis it certainly would interfere with our plans and make us all look bad.”

Honest Adverse Analysis of Economic Impacts Would Benefit the State of California Substantially

If CDFG SDEIR team did *genuine* and *honest* economic research, evaluation, and also reviewed the *direct adverse economic impacts* caused by the USFS harassment and regulations spanning the same period of time, and the correlated direct economic impacts caused by the other agencies, then CDFG would have some *solid data* to truly evaluate the potential economic benefits that the State of California might expect to gain from mineral extraction, especially in these economic hard times.

Question; We the Citizens of this state need to know approximately what we have lost over the past 20 years and what more we will lose as a result of the SDEIR proposed regulations?

This *requisite hard look* at the *economic impacts and benefits analysis* would benefit the; in stream miners, *all the citizens of the State of California*, and the Federal Government to know; how much money all this harassment, litigation, prosecution, and regulation is costing the people of the State of California, the Federal Government, and the Tax Payers of the United States.

Let’s not forget, all these unnecessary harassments and litigation have an adverse impact related to; the losses of workforce skills, talent, loss of productive workforce hours, loss of efficiency during in stream mining operations, and losses of gold recovery and so on. CDFG has a broad array of highly skilled professional analysts and resources available to prepare the proper hard look at economic impacts for this SDEIR, so it shouldn’t be that tough to come up with this economic analysis. Perhaps then we will have a far better perspective and make better decisions – and in the best interest of

the citizens of the State of California, and eliminate a lot of waste, fraud, and abuse at the same time!

Adverse Economic Impacts to California and to the United States

Next, *what are these illusive costs anyway?*

What is the cost to the California Tax payers?

What is the cost in *lost gold recovery* revenue as a direct result of *Federal and State's regulatory interference*; which amounts to *regulatory material interference*?

What is the cost to the Federal Government?

What is the cost to the people of the United States?

How much money does it cost the USFS to pay the college kids to spy on miners for them, or for the USFS to; hassle, threaten, intimidate, inspect, cite, investigate, prosecute, and punish these *evil gold miners* on an annual basis anyway?

What is the cost in terms of lost short term & long term opportunities for gold discoveries and production revenues directly linked to the *loss of willing citizens* (loss of man power) due to these egregious abuses?

What are the costs for the Federal Defenders Offices to defend many of these poor lode, placer and/or suction dredge miners?

What are the *legal costs* and *expenses* foist upon the suction dredge miners who pay out of pocket expenses, and \$300,00 an hour attorney's fees for all manner of endless litigation with the agencies?
(*Not to mention the **personal toll** it takes on us; stress, worry, hardships, frustration and losses of income, shattered hopes, the countless hours studying the vast universe of applicable laws that adversely affect them, and keeping up with new rules in the federal Register, writing comments for the purpose of ensuring we have provided input and have Standing to Sue when the Agencies ram all these rules and regulations down our throats?*)

What does it cost *on an annual basis* for the fuel, maintenance of vehicles, and mileage for *hither swarms of USFS officers* to commute in *packs* to and from mining claims, record keeping, Law Enforcement, time researching County and BLM record to *locate and keep track of these mining claims* so

they can *target the placer miners & intercept miners* who *might* be mining or dredging on their claims? Oh! The horror of it all!

What are the costs of transportation and putting USFS officers up in hotels to be present to *testify* against these miners?

What does it cost the Federal Courts to handle the caseloads directly related to try and convict these miners on an annual basis?

What does it cost the IBLA to adjudicate all these mining cases brought against miners to take their claims away?

What is the *cost to the miners* who were prosecuted over the span of a decade and were found guilty, punished, fined, and put on probation, for *alleged* crimes under the color of law, when it turns out that *years later*, the Federal Courts rule that the very *convoluted forest rules* that all those poor saps were *prosecuted* and *punished* for spanning a decade are unlawful? (Does anyone think the USFS expunged their record, or could/would make it up to them?) Hell no!

Oh! Like me, yea, USFS cited me, attempted prosecution, went to trial with no evidence, on the *bogus* camping FO 03-98, and I was acquitted after two years of stress, legal research, and misery. Think FS would apologize? How are we compensated? No, they simply dream up another clever ruse to compel our compliance.

What does it cost the USFS alone to *process simple* NOI's and PO's for suction dredge mining; to analyze, stall, mitigate, request more information, perform the environmental reviews or analysis, to perform the *surface use determinations*, and to *approve* - (something already authorized under the US Mining Laws) - these operations on an annual basis?

What is the annual cost for the USFS to be constantly in consultation with the Office of General Council (OGC) on a continuous basis as relates to those *targeted – profiled* gold miners?

What does it cost for the USFS to *withdraw the land from mineral entry* for the sole purpose of *prohibiting* one miner or one claimant from - *dare I utter the words* - suction dredge mining on his/her mining claim? Expand this for cost per year on average?

What does it cost *per year* for all USFS projects specifically targeted to *prohibit or protect* lands from the *suction dredge miners*; (including but not limited to; withdrawals, mineral potential reports, nominations to the Federal Register for Historic landmarks, mineral validity examinations, Mineral validity adjudications, appeals, surface use determinations and the Mining Claims Rights Restoration Act (MCRRA); contests and appeals?) - Annual costs would suffice.

What does it cost for BLM, or State Parks, State Lands, Game Refuges, or elsewhere to process their PO's along the lines of what I outlined immediately above for the USFS?

Summarizing; Failure to take a Requisite Hard Look At Economic Impacts

As discussed at great length and in detail above the SDEIR failed to take even a *cursory* look, let alone the *requisite hard look* at the significant adverse economic impacts CDFG has already caused for nearly two decades as a direct result of overly rigid and arbitrary suction dredging regulations previously implemented.

Now, CDFG is *doubling down* with the SDEIR proposed Suction Dredge Mining Regulations. Your SDEIR never bothered to address the economic impacts CDFG has already had upon suction dredge mining or production. As I have discussed throughout this - my 3rd *major* set of comments - the next adverse economic impact will be devastating. It will be the final nail in the casket of the 1872 mining Laws.

The Sierra Nevada range has plenty of gold to extract to this day, the fact that the SDEIR broad brushed the whole issue and attempted to *paint the picture* that suction dredge mining is ineffective; that the *economics* is insignificant is absolute poppycock and is not supported by analysis of any kind. (Just the way USFS and DFG SDEIR want it to be)

Bottom Line Perspective – Reality Check is Required

When you get done looking at the entire economic picture; in aggregate, cumulatively as discussed above, the costs to Government, the losses of gold production, and you put things in perspective, the past losses and future losses significantly adversely affect the economy of California & the United States immensely.

Perspective

Our operations are typically a one-man show, with *little tools and hand tools* carrying out what the US Mining Laws authorizes to this very day and as the 1872 Mining Law intended. And to think that of all the documented; tons of gold we have recovered in 40 years, and all the mercury we have removed, and all the lead and other heavy metals we recovered, and *black sands loaded with a variety of toxic sulfides and native minerals*, and the fact that suction dredge mining is the least invasive of all gold mining methods developed world wide, and that typically when we leave a stream after mining, to the untrained eye, most people wouldn't even know we had been there. And they would never see evidence of our mining by late spring the next year.

It defies logic, reason, common sense, and insults our intelligence that SDEIR could possibly blow smoke up our Asses with this SDEIR hogwash.

And, for a little more perspective, I bet that by the time the requisite hard look economic analysis is finished, you will find that the vast amount of abuses we have suffered through, and the amount of moneys in aggregate spent by the State, the Courts, the USFS, the CDFG, miscellaneous agencies, and State Courts, and the losses of productivity - will vastly exceed all the tons of gold we have recovered in 40 years.

Now that seems to me that all these losses are an incredible waste of Tax payers money, a waste of manpower, waste of resources and a major loss to the Citizens of California and the United States.

And, to put the cherry on top, when we locate mining claims we are immediately targeted as though we are mere criminals, occupationally profiled, prejudiced, maligned, screwed, harassed, persecuted, prosecuted, punished and fined every which way but loose. Hey, anybody want to become a hard working gold prospector? Great perks and benefits!

Prudent Man Rule

Question; Would it be reasonable to say; that under the regulatory regime, and the current USFS discretionary management, that a prudent man would be willing to invest time and labor toward the development of an economically viable gold mine?

Question; Same question, but, add the CDFG SDEIR proposed mining regulatory regime on top of that?

Question; Is this any way to treat the most economically productive & greenest forest – river user group of all other user groups combined?

“Perspective” – Pedis Possessio – Prospecting

Finally, under the **1872 Mining Laws** as amended Congress authorized Citizens of the United States to enter Federal Lands, to exploit mineral resources, and if they made a discovery of a valuable mineral they could stake a claim, develop it, mine it, apply for mineral patent and purchase the land. The *Just reward* promised under the 1872 Mining Laws.

On the other hand, Congress was well aware that miners could not exercise Pedis Possessio *indefinitely*, because sooner or later the miner would, of necessity, need to leave the ground unattended perhaps for food or provisions - he had physical possession of the land, and upon departure – left unattended - it would be vulnerable to another prospector exercising the right of Pedis Possessio also, so when the 1st miner returned to his workings, he was sent packing *at gunpoint if need be* by the 2nd miner.

Thus, Congress provided that the miners had authorization to file a mining claim(s) to prevent another miner from taking advantage of all the hard work he must do to make a valuable discovery, and that (in part) is why miners file mining claims, to continue the search, and gather information and evidence to prove he has a valid claim worthy of patent without fear that another miner could come to his mine site and take it away from him.

Even if he can't prove the *validity* of his mine, based upon the economic extraction of the gold, *the mining claim is assumed valid until proven otherwise*. This is where notice and Due Process come into the picture, something the Mineral officers know and loathe, but it is still the law of the land and a reasonable law at that. However, *and this is crucial*, Congress was & is well aware that by authorizing this Army of citizens - (*of every race, creed, color, religion, sex, financial means, education, and intelligence, etcetera*) - to *enter and mine on lands free and open to; prospecting, mining, and patent*, it was & is clear that not every man or woman would find and discover a mine that was so incredibly economically valuable that it could go to patent.

And it doesn't matter, because Congress was well aware that gold would continuously be recovered by each and every one of them to one degree or

another for decades to come. Thus, the *cumulative amount of gold* recovered in aggregate on an annual basis would still be substantial even if the 99% of the individual mining claims were low-grade deposits that could never be truly suitable for patent. Thus, under the US mining Laws, despite the best efforts of the Agencies regulatory interference, the stubborn miners to this very day have indeed still produced substantial benefits to all Citizens of the United States, to the Citizens of California, and the gold they recover is *new wealth*, not recycled money exchanging from hand to hand to hand every single day. Amazing reality isn't it, the wisdom and foresight of the 1872 Mining Laws, developed and written by miners, for miners in the gold fields of the Sierra Nevada's Mother Lode Country & created the Greatest Migration of people all over the world to California! Now that is what I call a proud *legacy* and achievement. WOW, for 132 years willing men have produced vast amounts of gold and over the past 40 years Despite all the malicious *material interference* by every agency imaginable the mining law *cumulatively* produced literally tons of gold that filtered its way through the economy to benefit all the citizens of California & the USA just as the law was intended. So, what do you think of these so-called *pesky gold miners* and these (so-called) weekend suction dredgers – recreational suction dredge miners now?

Question; Can you imagine what small-scale gold miners might have produced had the USFS and CDFG stayed out of our way?

Question; Can you imagine how much money in gold production gold miners could produce in the next 10 years alone if the USFS, CDFG, and CRWQCB et al got the hell out of the way?

Furthermore, **The Legislative Histories of the Mineral Policy Acts of 1970 and 1980** clearly express the need for *agencies to develop plans or find ways for the economic exploitation of low-grade deposits - to be exploited for the benefit of all citizens of the United States*. Thus, low-grade deposits, *exploited* by small-scale suction dredge miners have for decades accomplished precisely the goals Congress had in mind when these Laws Passed.

Note; there is no evidence of record or in the field to suggest that the Federal Agencies have attempted to comply with these Acts, they most certainly do not “foster, encourage or promote mining or mineral resources.” California Suction Dredge Miners - in aggregate – have yielded tons of gold spanning

over 4 decades - despite the abuses from every Tom, Dick and Harry (forest Users) as well as the very Federal Agencies commanded by Congress to Foster, Encourage and Promote mining. Go figure. Small scale suction dredge miners have accomplished a small percentage of what Congress demanded and if the Agencies including CDFG get off our backs, we will produce far more and the Government will save big money in; land management, prosecution, litigation, harassment and so forth.

And CDFG needs be aware and advised, that *prospecting* with a suction dredge is a *right* from the time the prospector enters lands free and open to location and entry, it is protected by pedis Possessio, and without owning a claim the operator is *Authorized by the Mining Law to prospect and keep the gold he finds*.

Notice:

No such thing as *Recreational Mining* under the US Mining Law
Further, while on this topic, there is no such thing as *recreational suction dredge mining* on Federal Lands open to entry under the US Mining Laws.

The only proper use of the term *recreational* mining of any kind is where the State lands or other lands have been set aside to allow suction dredgers to dredge for gold – where the miner pays a fee for the privilege and he has no right to stake a claim - this is one *exception* to the rule I will concede.

However, all these miners CDFG has labeled “*Recreational*” suction dredge miners in the SDEIR ***must be stricken from the record entirely***. There is no provision under Federal law for “*Recreational*” any kind of mining. Small-scale suction dredge miners are prospectors and it doesn’t matter if they have a full time job elsewhere. They have a *right* to prospect and mine with a suction dredge or a teaspoon & soda straw if they choose. Making any attempt to label them *otherwise* is based on *ignorance* and feeds into the USFS schemes to argue that the purported *recreational* miner is not a miner at all, but he is merely playing and therefore in the logic of the USFS they don’t belong and accordingly, they have no rights and therefore should be eradicated like a *rat infestation*. This is in fact a calculated plan by the agencies to extinguish small-scale suction dredge miners from the face of the earth by hook or by crook. It was the agencies that dubbed them this name decades ago, and it stuck, despite efforts to educate them otherwise. It is the use of *semantics* the FS is known for and even if they do have some fun

along the way, they collectively recover impressive amounts of gold in aggregates, and accomplish the stated purpose of the mining Laws.

*Sarcasm; God forbid they have a nice, fun, pleasant experience prospecting and mining in peace, not as if all other forest and river users are persecuted for having a little fun!

All these purported “*Recreational*” suction dredge miners you incessantly refer to in your SDEIR, are by definition “**small scale**” suction dredge prospectors and/or miners. These *small scale miners* operating on Federal Lands open to entry and location are either “*prospecting*” using *small scale portable suction dredges*, or they are prospectors / small scale miners who have filed a mining claim seeking hot pockets and rich crevices where valuable mineral deposits of gold may be extracted economically in an effort to recover as much gold as possible. Even if it is argued that it costs more to extract than they recover, all that money that was spent gets recycled from hand to hand to hand again, and they still extract[ed] new wealth from the earth’s crust *and that is new wealth no matter how you slice it.*

Consider this, when the US prints money; they devalue it the money in circulation, but when miners extract gold, they create new wealth that enters the economy. It is a no-brainer, but God forbid those evil suction dredge miners should have some fun along the way. GET EM!

CDFG, I Insist that you Change all references to *Recreational Suction Dredge Mining* and *Recreational dredges* from the record and replace that word with “Small-Scale Suction Dredge Mining” and “Small-Scale” Dredges or Portable Suction Dredge.”

The inappropriate name simply confuses the issues, period, end of story. Take note, there is no provision under Federal Law that they must have a mining claim that is so rich in gold from stem to stern on their claims that they would have a right to apply for patent and be prepared to prove it at any moment the USFS or BLM chooses.

The SDEIR Notes a Drop in Suction Dredge Miners Work Force Attrition

Evidence demonstrates - Relentless Harassment By USFS et al

Now, continuing on with the comprehensive analysis of the *decline in gold production* despite the huge *rise in gold spot price spanning 10 years*, the *adverse economic impacts* – as a result of reducing the volume of gravel that can be moved versus time - under the unreasonable 1994 CDFG mining

regulations, and the *inexplicable decline of the numbers of suction dredge miners can only be accurately determined by evidence* available in the public records.

**Cumulative Impacts of Long Term Abuse and Persecution
More Reasons For The Diminished Workforce**

***Attrition** of work force - and root causes - and where Data is can be found to support or refute the conclusions the SDEIR is provided below.

Therefore it will be *useful* and *instructive* for CDFG to pursue pertinent data from the;

The number of mining related cases *dropped* by Government for *lack of evidence* or any *other* reason whatsoever - to establish either; an *upward or downward* trend in prosecutions of miners by the USFS, BLM and DFG.

Based upon my experience reviewing this sort of case law, assisting the Federal Defender's Office as a consultant, assisting miners who have been cited, and assisting private attorneys and Federal Defenders to defend miners from many of these *convoluted citations* under 36 CFR 261 prohibitions over the past 10 years, I have no doubt that this *evidence* will help establish conclusive proof that various agencies have exponentially increased their; *regulatory restrictions, demands, threats both oral and written, enforcement efforts, creative interpretations of rules for the purpose of issuing citations, prosecutions and punishments* such that all miners - especially *suction dredge miners* - have been *harassed* out of the rivers and forests of California. One has to be a brave soul to dare mining in the National Forests especially in Gold Country.

Most miners cannot not conceivably understand the vast intricacies - and/or the Government's ever-changing *interpretations* of the entire body of laws and regulations governing their prospecting and small-scale mining activities. Even when we *think* we understand the rules, the USFS comes up with new rules, or try to bully us with *new interpretations*, or try to enforce *policy* and on it goes. It is all an incredible waste of time, money and effort. We can never be *certain* of the laws governing our actions.

And, considering that these miners cannot possibly mine anywhere in California without USFS officers; or their hired spies, or other forest and river *users* lodging complaints against them - or CDFG Wardens / Officers ambushing miners by surprise to ensure their mining activities are in full compliance with rules they make up as they go along.

And if *anything whatsoever* can be remotely *interpreted* as non-compliant; they threaten, cite, prosecute and punish the miner(s) with fines and probation - yet another subterfuge - to regulate their mining through probation.

It is no small wonder why the *numbers* of miners *willing to endure all the miseries* I have described thus far have been *losing their motivation* to prospect or mine under this *tyranny* - under the pretext of *protecting* the environment. Miners are constantly and relentlessly threatened, hassled, intimidated, ordered about, even cited and convicted for not following an unlawful order by a an authorized officer or a law enforcement officer.

To gain a better understanding of these *irrefutable* facts, more anecdotal evidence may be derived from mass mailing surveys to mining claimants - derived from BLM records - who have personally experienced the unreasonable and heavy-handed abuses by USFS Officers in relation to insignificant “one man mining operations.”

Evidence of Abuses in Offices Of Congressmen and Senators

A vast majority of these miners have folders full of letters; written to Congressmen and Senators complaining of these abuses for the record, *pleading for help*, along with response letters from the USFS and/or the OGC and/or the US Attorney’s offices justifying their actions under the color of law. And no doubt these miners have vast inventories of letters *from* these “authorized officers” *demanding* something unreasonable or *threatening* enforcement action, threatening tearing down cabins as they are threatening to do this very moment on a friend’s pre 1955 mining claim. Or they threaten to impound personal equipment, or remove or destroy the miners *improvements*, physically *blocking access* to their mines, closing down every road they possibly can and every other *sneaky* tactic imaginable.

Proof? That is easy to acquire; every *District Ranger’s Office* has extensive files on *every claimant* who files a NOI or PO, which contains all official correspondence between the USFS and the miner. They have files by name of the miner and/or by claim name, for example a prospector on land open to location for whom they had official contact. Files by name can be thick with one man’s history of trying to comply with the rules and the hassles that ensued, and the numerous *failed* prosecution efforts for *attempting to mine* on the NF. There are many ways to determine the level of abuse miners face

every single day. Even our *Congressmen* here in California have collections of letters from miners complaining of abuses that can be reviewed or tallied for statistical analysis. These Congressmen also send letters often to the USFS Supervisor's office and District ranger's offices complaining, scolding, and demanding answers.

Evidence of Harassments contained here also - SOPA

The USFS has archives of their schedule of proposed actions (SOPA) spanning decades. All NOI's and PO's can be traced in the archives and current SOPA's.

Your SDEIR researchers or USFS collaborators published data from the SOPA's or directly from USFS files pertaining to the number of approved PO's in Plumas NF and Tahoe NF spanning 3 years in the very late 1990's showing the number of approved PO's apparently to deceive the miners and the public by cherry picking. (Plumas NF & Tahoe NF)

The same National Forests today have 0 approved PO's collectively. (for placer or lode mining) USFS is doing great at Fostering and Encouraging Mining!

I personally used the FOIA to obtain the number of PO's for both Forests around 2001; Tahoe had around 130 approved PO's, and Plumas where *harassment was rampant* had perhaps 7 or fewer approved PO's. It took a couple years for Tahoe NF to learn Plumas' special brand of harassment techniques, but they are running neck and neck now regarding approved PO's.

More Evidence of the Systematic, Forest-Wide Plans to Harass

Under the FOIA around 1998 – 2001 I obtained numerous copies of the infamous *Plumas Leadership Team* (PLT) *meetings*. These are readily available also, and they are riddled with discussions concerning *how to get miners*, how to *evade FOIA's* by marking *Draft* on documents so that the FS does not *legally* have to release them. If anybody gave a damn, and ordered such items released en masse, it would be impossible to assert anything other than what I am disclosing here, *that miners have been harassed unmercifully and relentlessly for at least the past 15 years*. This is where the real scheming takes place, but the FS tries to be careful what they document especially when I busted them red handed. It is referenced in their notes, "*The miners are trying to catch us.*" The entire rats' nest needs fumigation.

The SDEIR contains *selective* information happily provided by the USFS intended to assist your team to *bias* the data needed to help whitewash the aforementioned *premise* concerning validity, gold production rates, profitability, numbers of NOI's and PO's on record, coupled with your numbers of SD permits etc., for the purpose of *correlation*.

SDEIR have undoubtedly been consulting with the USFS Region 5 and the Redding USFS *minerals officers* concerning the SDEIR and proposed regulations. And because the USFS has been so *helpful* to you in devising these *convoluted* proposed regulations, I need to make a few crucial additional comments concerning the *value of their information* and their clear motives in the gambit to do far more than control suction dredge mining.

USFS Absolutely Cannot Prohibit Mining Value of the Plumas & Tahoe 1998 Approved PO Data

The USFS has never had the *authority* to control or regulate suction dredge mining within the National Forests. The exception to this rule started a few years prior to 1998 when the USFS in Plumas NF would threaten suction dredge miners verbally, and follow through with letters demanding we comply or face a variety of enforcement actions.

The FS would often insist that *occupancy* across the board in any form including *tents* or the mere *placement of equipment on FS land* was sufficient to require submission and approval of a PO.

And the *excuse* was because this *occupancy* might *significantly* disturb the surface resources, they also demanded a hefty bond, and imposed insane mitigation measures, reclamation and monitoring a dredge site for 3 years for occupancy in connection with suction dredging. (*Evidence; My PO Feather River#1 approximately 1996? in FS files/my personal files*)

Forest Order – 36 CFR 261 Prohibitions

This previous process was *cumbersome*, hard to explain to miners, *stretching the case law that far* because the USFS had *no other authority* to regulate *occupancy* in general, so they *concocted the FO 03-98 camping prohibition* and they quit trying to rationalize the long winded version ((Brunskill's Cabin et al) as their rationale and authority to demand a NOI or PO and a prohibitive bond. **See case excerpts below;**

An act or omission listed in 36 C.P.R., Part .261 not authorized by a permit issued under 36 C.P.R. § 261.1a, or otherwise authorized, is punishable as provided in [16 U.S.C. § 551](#). Permits are generally in the form of special use permits issued under 36 C.F.R., Part 251. [36 C.F.R. § 251.50\(a\)](#) provides that “[a]ll use of National Forest System land, ... except those provided for in the regulations governing ... minerals and mineral materials (§ 252), ... are ‘special uses’ and must be authorized....” A system other than use permits has been established for minerals and mineral materials. That system of regulation is found in 36 C.F.R., Part 252. When the statute and the regulations give miners a statutory right to go upon and use the open public domain for purposes of mineral exploration and development, Forest Service officials may not unreasonably restrict that right by applying general Forest Service regulations and a permit system.

Testimony at appellant's trial before the U.S. Magistrate indicated that the District Ranger stated in a letter dated April 1, 1981, that appellant's plan of operations had been reviewed and would be approved with seven additional conditions. The District Ranger also told the appellant that an approved copy of the plan would be sent to appellant when a \$2000 road use permit bond was posted. However, mining activities, including use of roads for access on or off mining claims, are covered by regulations found in 36 C.F.R., Part 252. *See* 36 C.F.R. § 252.3(a). The only bonds required under Part 252 are bonds for reclamation, 36 C.F.R. § 252.13, not bonds for special use authorization under [36 C.F.R. § 251.56\(a\)](#).

CONCLUSION

*5 The United States Magistrate concluded “[t]hat the forestry regulations under which Defendant has been, charged apply to miners generally and to ... Lloyd Craig Defendant as to mining operations and building, and maintaining Forestry System Roads or trails leading to miners claims and use thereof.” This Court has carefully considered the United States Magistrate's conclusion of law and cannot agree that 36 C.F.R., Part 261 applies to appellant, a miner acting under the United States **mining** laws of 1872 who submitted a proposed plan of operations under 36 C.F.R., Part 252 in accordance with **Forest Service** determinations. Any violation by a miner of **Forest Service** regulations should be charged under 36 C.F.R., Part 252.

The complaints under which defendant was charged state that appellant plowed snow without a permit in violation of [36 C.F.R. § 261.10\(a\)](#) and that he damaged the Birch Creek Road in violation of [36 C.F.R. § 261.12\(d\)](#). Since this Court found that appellant was not required to have a special use permit for activities done in connection with mining operations as defined in 36 C.F.R., Part 252, the complaints do not state facts constituting offenses for which appellant may be charged and they must therefore be dismissed. *See Fed.R.Crim.P. 3*. The remaining two issues presented for appeal need not be decided at this time.

The Court will issue an order in conformity with this Memorandum Opinion.

D.Mont., 1984.
U.S. v. Craig
Slip Copy, 1984 WL 922460 (D.Mont.)

END OF DOCUMENT

Subj: Miner is not "special use" permittee - McClure case - Again, a miner is not a "special use" permittee.

See also [United States v. Lex, 300 F. Supp. 2d 951 \(E.D. Cal. 2003\)](#) (overturning conviction for violation of [§ 261.10\(b\)](#) because the defendant did not occupy Forest Service land for residential purposes and the occupation was authorized by federal law); [United States v. McClure, 364 F. Supp. 2d 1183 \(E.D. Cal. 2005\)](#) (granting motion to dismiss misdemeanor charge for occupying

national forest lands without a special use permit because such a permit is not required for mining activity). Excerpt from McClure:

“36 C.F.R. § 261.10(b) under which appellants were convicted, does not prohibit occupancy that is subject to a special use authorization or that is “otherwise authorized.” Here, because activity *960 covered by the **Forest Service's mining** regulations is excluded from the special use regulations, see 36 C.F.R. § 251.50(a),^{FN6} the appellants could not obtain*1186 a special use authorization for their activity which was subject to the **mining** regulations.” Found at 36 CFR 228. See also U.S. v. Craig.

USFS had no Authority To Demand Minimum Bond

And then the USFS went a step further with demands for minimum bonds of \$2100.00. for mere occupancy, a right authorized under the mining law. They had no *authority* to demand a minimum bond, but that is irrelevant to them. *After a few years of harassing miners with this and our efforts resisting, FS conceded and gave up the minimum bond scheme.* The end justifies the means.

Lucky for the USFS - DFG S.D. Regulations Save The Day

CDFG has a window of opportunity to propose new Suction Dredge Regulations. And the USFS *got a front row seat at the table for planning!* That is great, true experts to assist the CDFG to develop new CDFG SDEIR suction dredging regulations and permitting system. With these kind of experts consulting with you all and providing helpful information, what could possibly go wrong with CDFG SDEIR proposed regulations?

USFS Geologists and OGC Collaborating

Nobody knows the intricacies of the 36 CFR 228 Surface Mining Regulations better than Geologists at the USFS Redding, California Office and OGC. You folks at CDFG don't know how fortunate truly are. These Certified Minerals Officers are *qualified experts* concerning validity examinations, they conduct mineral potential reports, validity examinations, and they are expert witnesses who are cool and calm under fire in a courtroom. And thank God Region 5 and the OGC is collaborating. *How could anything go wrong?* In fact, I don't know that any other agency that could possibly understand all the pitfalls and benefits of the 36 CFR 228 mining regulations or offer better collaborative efforts.

With that said (*tongue in cheek*), I chewed on these SDEIR regulations and the permitting process for quite some time. Plainly the CDFG cannot regulate subsurface mining per se, but CDFG can issue permits. Now, I examined the multi-stage multi-permit process and analyzed the process in my prior comments, and since we had an extension of 10 days for more comments, I expanded my dissection of the SDEIR proposed regulations.

I recognized this is a well-crafted system after all; it just depends upon the perspective and specifically what the regulations are attempting to accomplish in the end. **And it has nothing to do with frogs and mercury! It strictly has to do with creating new State: in stream mining regulations disguised as a permit system.** The intended result of the SDEIR proposed regulations was in part to give CDFG authority that the USFS lacked under the LRMP to manage the riparian zones, and these regulations *do that* even if it is *piecemeal approval under the guise of permit*, you did accomplish that goal.

Admittedly it is not elegant, it's complicated, and provides for numerous permits; applications, inspections, denials, and approvals. So why make it so complicated? Why did they make this process so Cumbersome? Why so Expensive? Why so much driving all over the entire state each and every time we need an inspection? Why don't the regulations make any *environmental* sense?

Answer; Yes they are ugly, awkward, inefficient, *but the ends justify the means*. In fact they reduced the 6" nozzle to 4" to compel more miners into more permits and the 1602 permit process. Special approval[s] that gives CDFG opportunity to deny permits. **Answer, they are cumbersome because there was and is no other way for CDFG to regulate in stream mining with the flexibility to deny if they had a one size fits all permit like they had before.** Permit is approval or authorization - and authorization is an approval or a permit. **Semantics.**

USFS never had authority to *manage* the suction dredge miners under a NOI or PO, but a little clever use of *semantics* and disguising the SDEIR proposed mining regulations, using a multi level multi permit system would be a nice surrogate for the 36 CFR 228 model for a submission of a PO. **But the USFS records indicate that lacking authority to demand a PO did not stop the FS. They bullied Lots of PO's over the past 20 years.**

And the multilevel permit system has the advantage of not being as rigid as the 36 CFR 228 regulations, more opportunity for arbitrary and capricious denials. *In fact, the multi permit system imposed on one claim may amount to five permits / authorizations and they are intentionally nebulous, no stated criteria for approval or denial, they are standard less giving CDFG unbridled discretion.*

Over the past 15 years the FS purported to have had the authority to manage power winching and they did demand we protect the anchoring trees in the riparian zone along the rivers. In fact the record is clear that FS regulated the impacts above the waterline and they would mitigate the potential harms to surface resources. *(Oh! Don't tell me the FS was acting w/out authority to mitigate riparian zones! Or in the alternative, the USDA FS gave up power/authority to mitigate in riparian zones)* Now CDFG has conveniently taken over authority for *power winching* through a new permit; application – inspection - approval – denial – fee – permit/approval. I suppose this is a mitigation measure. Under what criteria and authority? Each permit (level of authorization) is another opportunity to deny approval to mine.

36 CFR 228 regulations have 3 levels of approvals;
USFS 1) no notice at all, 2) Notice of Intent NOI, 3) Plan of Operations PO

CDFG has 5 levels of approval; 1) approve equipment, 2) approve dredge site, 3) power winch permit, 4) request larger dredge, 5) streambed alteration permit.

Question; How many possible applications are needed for maximum mining potential?

Question; How many permits may be issued for one miner on one claim for maximum production, and how much is each permit?

I must give this SDEIR team of highly educated professionals, seasoned expert minerals officers, OGC, and their collaborators credit! They certainly Unless something has changed that we don't know about, CDFG has no memo of understanding to manage minerals, no experience with managing minerals, no authority to withdraw Federal Lands from operation of the mining law, and the list goes on. In short, CDFG has authority to manage fish and aquatic habitats.

Here, I am going to impersonate an unethical overzealous Government land manager for a moment and do some open collaborative scheming; So, first of all, the SDEIR team players needed something / anything that they could embellish to show bogus harm to fish to justify changing the regulations.

Viola! Discharging Mercury specks! Yea, that will work, hot dog we got this! OK, we got the CRWQCB on our side on that issue, now we need some *really good science* to back us up on this *mercury thing*. So, let's get some teams together and *cherry pick* everything we can to make sure this study looks good, it's going to end up in court and we have to *justify* our actions, so we need *lots of references*, *lots of opinions*, *lots of highly qualified experts*, and really *detailed science*; We need another team to go after those evil rotten suction dredge miners themselves; any photos of filthy water discharge, toothless miners, filthy camps, scrounges at camp, pigs taken a craps in the forest, littering, spilling fuel, stuff like that. Throughout these documents, just spin the miners like the media spins republicans! Every chance you get just lean that way, look for every opportunity to paint them with a *broad brush*, and what ever you do, don't *acknowledge* any *benefits* they might provide, like *removing mercury* or *lead*, or anything like that. Don't *quantify* any of that stuff. We can't afford to open Pandor's box. This is the only crack at this we might have for another twenty years, so go team go!

Now, we have got to change the regulations so we can do the *dirty deed* and get rid of those *pesky miners* once and for all. But how? It's going to be very risky; we only have authority to issue permits. Ah Hah! Permits as in plural (s), so now were on to something! We'll make it a series of permits. Permit for this, permit for that, and another permit through the 1602. And a winch permit, that might just do the trick! So, with this multilevel permit system, we can deny any or all of the permits we offer. We need some help though. USFS has offered someone with experience with mining regulations; they can help with some suggestions - they want in on the action, and it would benefit them a lot.

I think the idea that CDFG could *create* a set of suction dredge mining regulations *out of thin air* without collaboration with the USFS is in itself absurd. Who is better suited to *help draft a regulatory system* that will be heavily used in the National Forests than USFS minerals officers?

The CDFG has no authority to regulate sub surface mining, so they cannot have a classic set of regulations like a NOI or PO scenario. And, looking at the 36 CFR 228 regulations that FS has made dredgers fill out many times, the PO application asks for the same information that the SDEIR asks through these various permits each miner has to apply for.

It just takes multiple forms to achieve the same results as the submission of a PO.

The USFS is dancing on the edge of the world here because they are aiding the CDFG to willfully violate the property rights under the Federal Mining Law *and* the Miners *bundle of rights* under the *guise* of a *multi level multi permit system* where any permit can be denied at any time, and CDFG compel miners to pay fees for each permit, limit the size of equipment, is flat out *conspiring to deprive citizens of property under the color of law and authority.*

I have no doubt Region 5 and my favorite OGC attorney is being as *helpful* as can be. They have undoubtedly been very helpful in teaching the CDFG SDEIR team tactics that avoid State Regulated Subsurface Mining with a rather ugly, cumbersome, expensive, complicated, environmentally stupid, **series of permits** for a chance to mine, but it accomplishes far more than could be done under 36 CFR 228.

Bottom Line – SDEIR proposed **regulations** are just that subsurface **mining regulations disguised as a series of permits.** We are not issued a classic DFG apply by mail - pay the fee - permit, **no**, we are merely being *authorized* at several *different stages* of a *PO scenario devised to disguise the fraudulent scheme.* Instead of authorizing a larger dredge, they have us pay for the authorization and *call it a permit.* And then CDFG can deny it or approve it at their discretion.

It is purely a matter of *semantics*; no different than the USFS calling a **miner's occupancy (camping)** and then unlawfully extorting him for the right to occupancy Congress had already authorized for him under the US Mining Laws.

USFS special brand of semantics spanning 20 years;

PO is *approved* not authorized by FS because the Mining Law authorizes Mining and occupancy.

An act or omission listed in 36 C.P.R., Part .261 *not authorized* by a permit issued under 36 C.P.R. § 261.1a, or *otherwise authorized*, is punishable as provided in 16 U.S.C. § 551.

FO 03-98 Authorizes *camping* through PO approval process that FS had no authority to demand. SDEIR *authorizes* and / or *approves* through permits & FS *authorizes* camping permits to campers. ***It is all sleazy convoluted use of semantics and deception to punish miners under the color of authority.***

This groovy new SDEIR permit system as you call it, gives the CDFG vast power to *withdraw lands from mineral entry* under the *guise* of protecting fish without needing to ask Congress for permission!

Semantics strikes again! The CDFG is not technically *withdrawing* land from operation of the mining laws! They merely *close waters* to the only lawful means of placer mining on those lands that remain open to the operation of the US Mining Laws, it has the same effect, different terminology. *Semantics! Withdrawn* from mining vs *closed* to mining. Withdrawn or closed serve the same purpose, one is lawful and the other is *disguised as lawful under the color of law and authority* and is a *devastating and malicious conspiracy to prohibit lawful placer mining*.

CDFG Fish Farming

Oh! Aint that rich! CDFG, the *Fish farmers of America*, they raise fish, stock fish, and *the fish eat the very frogs* (endangered or sensitive species of frogs), that CDFG claims to be protecting, and you can't blame the fish, *frogs are food and the fish aren't choosy*. That is some fine protection.

Then CDFG sells fishing licenses to 1.7 million people who will spend 11 days each, that's *18,700,000 use days* chasing, taunting, playing with, letting go, injuring and killing fish willy-nilly and slinging heavy metals (lead/brass/copper/plastics) and they all have a crack at catching some dinner.

Then, rather than cut back on recreational uses and fishing or stocking fish, CDFG imposes *prohibition of mining on placer miners*. Don't want to cut into the profitable fish farming and harvesting business! *You folks gotta be smokin' crack*.

Miners clean up after the CDFG

CDFG, that fish farming business us looking good! With what 3500 dredgers cleaning up your *fish farm tanks* for you, dredging up *lead by the buckets* and *cleaning up the mercury*, which must surely be appreciated by the trout, *which love to eat frogs*, any kind of frogs. I grew up using frogs for bait, better than worms! And, *fishermen eat fish*, and *mercury is in the fish flesh you say*, and you insist on *protecting the mercury and lead*.

Hey, guys, they say that a fish's brain is the size of a pea, but the size of a fisherman's brain has yet to be determined! Makes me wonder the size of the brains of environmentalists who dream up this crap.

So you plant more trout for the fish farm and the frogs got to fend for them selves. Some ESA protection plan you have here! And now *you have the balls to blame the in stream suction dredge miners!* You guys are *pathetic*. This is going to be *hilarious explaining to the Judge*.

Frankly from all I have been able to figure out, this looks like a classic RICO racketeering case or Bivens v. 7 unnamed FBI Agents. It will all come out in the wash.

To Deny a Permit is cheap versus Notice and Due Process

It allows the CDFG to *deny any permit* at any time. And, it allows *environmentalists* to decide what I can or cannot do on my mining claims.

All of this hinging on the premise that suction dredge mining purportedly releases micro specks of the ounces of mercury we do dredge out of our environment. *That's the USFS for you;*
“Let no good deed go unpunished.”

Face it, if the FS had this system in place in 2001 they could have saved \$200,000.00 – \$400,000.00 in my PL-359 contest, mineral withdrawal, mineral material analysis, nomination to the Federal Register of historic landmarks, mineral potential report, & LRMP planning covering a lousy 40 acres, every inch of my mining claim! Over placer gold dredging? The USFS could have simply chatted with CDFG a bit and CDFG would simply deny me my permit and that would have been that.

This charade is unbelievably corrupt at the highest levels.

This whole new permitting system for suction dredging operations on streams within the National Forests is a disguised Plan of operations orchestrated [in part] by the USFS. The SDEIR “*proposed regulations*” and “suction dredge permit” are cleverly *devised* - State Administered “River Mining Regulations” that require submission of a request for a “Plan of Operations” for mining rivers (subsurface mining) – something that the FS has had no authority to manage – ever since Congress created under The Organic act!!! Isn't that something?

Further, the power to *harass* miners increased dramatically and exponentially in direct correlation with *the 1974 USFS promulgation of the 36 CFR 252, now re-codified 36 CFR 228 mining regulations.*

*** Plan of Operations**

Plan of Operations NOT required for Suction Dredging Operations under applicable FS 36 CFR 228 regulations - with rare exception.

*** Camping V Occupancy**

Miners *occupy* lands open to entry and location under the mining laws. Miners *occupy out of necessity* in the pursuit of developing a paying mine and for mining, *and uses reasonably incident to mining.*

In stark contrast, **campers for the sake of camping** and *recreation* have no similar Congressional “right” to *camp*. These forest users camp for the sake of pleasure, out door experiences, for fishing, hunting and so forth.

Most or all USFS Supervisors throughout California & the 11 western states have issued similar camping Forest Orders, regardless of the fact that miners operating under the mining laws are authorized by Congress to *occupy* the lands in which they operate. And the US Supreme Court Doctrine of *Pedis Possessio* further clarified the right to *occupy* the lands open to location and entry under the mining laws. Vast case law since has upheld the right of prospectors and miners to occupy such Federal Lands for prospecting w/out filing a claim, and all phases of development of a mine, and for mining operations. *USFS doesn't give a rats' ass about any of this, the end justifies the means.*

After approximately 10 years of harassment under these camping Forest Orders we finally won a decision in US v Lex which confirmed once again that miners are authorized by Congress under the US Mining Laws to *occupy* these lands, and that the USFS camping Forest Orders are not applicable to miners operating under the mining laws. Provided in my attachments with my compliments.

What is truly *egregious* is that the USFS, (and likely sanctioned by the Office of General Council - Region Five) willfully planned and maliciously executed this calculated plan to use the word “camping” as a ploy to compel/coerce miners to submit a Plan of Operations for operations plainly exempt under the 36 CFR 228 regulations under the *color of law*.

Furthermore the OGC, and USFS conspired to willfully *cite* and *prosecute* numerous miners - under the color of law - for purported violations of unauthorized “camping” all over the western United States for approximately a decade.

Camping Prosecution Details

Evidence; Look up USFS v Eno, where USFS aforementioned spies photographed and reported seeing my motor home on 3 occasions spanning some 45 days and based upon this feeble evidence USFS cited me for the *alleged* violation of F.O. 3-98 maximum 30 day camping violation - without ever seeing or speaking to me. I had to get a Federal Defender, make many appearances for 2 years traveling 250 miles round trip before the FS favorite “hanging Judge.” Magistrate Judge (HJ) instructed me in open court “before [my] plea that if [I] plead not guilty it would go very badly for me.” I was ultimately acquitted of any crime and found innocent / not guilty.”

USFS - Lawmaker – Enforcer - Judge – Jury & Executioner

When one considers the *vast power* of the USFS, one must also understand that the USFS; *makes the rules*, they; *target, profile, monitor, discriminate against and persecute miners*, they *inspect* the miners operations, they *threaten* miners with citations, compel miners to comply with their latest *creative interpretations* of all laws – (case law, statutes, regulations) - they promulgate the regulations, they interpret the regulations, they enforce the regulations, they cite miners with impunity, they are protected by *presumption* and *discretion*, they are protected and assisted by the OGC and/or the US Attorney’s Office for prosecutions, they make recommendations for individual probations - and all of it documented and easy to prove with a proper investigation. We only struggle because when defending yourself against a crime we cannot get a judge to look at the big picture or compel an investigation

And in Redding California the FS Officers even act as bailiffs and assistants for the Federal Judge, they hang out with the Judge in his chambers before

the hearings having their morning cappuccino frappe' and doughnuts while the poor miner is biting his nails waiting for his hearing. It is comforting sitting in the Federal Court waiting for the Forest Service's hanging Judge to come out when you have been observing the chummy relationship between the USFS officers and the Judge over the course of two years waiting for an justified acquittal. It certainly engenders an appearance of impropriety.

Dick Zimbiac Certified Minerals Officer – Mutual Friends

Evidence of the USFS premeditated plan to harass miners was revealed to me by the *only honorable* and *reasonable* Forest Service officer I have ever met in 16 years of prospecting/dredging in California.

This officer was the lead Tahoe Minerals' Officer named Dick Zimbiac (one of perhaps only 3 *certified* Minerals Officers in the United States with his extensive training in the entire U.S.). Mr. Zimbiac told (a close associate) and me that between 1998 and 2000 that he attended a multi-Forest wide meeting concerning what is officially dubbed and documented as the "Miner Problem." The bottom line as stated in that meeting was that **"If you look hard enough, you can always find something to cite a miner for."**

Does any of this sound like "Reasonable Regulations" to you? I am an honorably discharged veteran of the US Navy, I have never been suspected of a crime, never been investigated, cited, arrested, or convicted of any crime of any description until I was wrongfully cited by the USFS, tried and acquitted of any wrongdoing. (Oops, I admit I have had one minor speeding ticket in the past 36 years.)

Move the water! Might eliminate management issues

While I appreciate the water in the streams, I really do, it is very useful and has been granted to miners for mining purposes, and I don't object to sharing my water on my claim with Mother Nature, I do object to CDFG *management* of wildlife when such management materially interferes with my Congressionally Granted mining rights & where the purported purpose is intended to Materially Interfere and the reasoning is unjustifiable and conducted under the color of law or authority.

Mother Nature and me have been working together side by side for decades and we have always got along just fine, it is the *bureaucrats* that cause all the mischief and hardship on species, fish, and miners.

Now, since the *management* of these habitats and fish is *materially interfering* with my mining operations on my claim, then DFG has my blessing to *move the water out of my way and I will mine my gold dry*. The old timers called this kind of diversion fluming and that would allow me to mine and spare the fish at the same time. Then I could eliminate the hindrance for economic mining of my mineral deposit without bothering CDFG.

Sometimes I wonder how this planet ever evolved over these billions of years, and up until the 1960's without any input from these pencil pushing environmental hypocrites infiltrated throughout our Government agencies.

I am adopting the comments of several miners, listed below with my list of attachments. I will be sending more comments will be sent via e-mail before midnight 5-10-2011 with other attachments.

Thank you in advance for entertaining my Comments.

Sincerely,



Donald E. Eno

Hard copy of these Comments sent by US Post Office Registered Mail
Certified RRR

Attachments - to follow by US Mail;
Budd – Fallen Law Offices LLC,
USC Annotated – 30 USC Ss 1601 Minerals and Materials Policy Act 1980,
30 USC SS 612,
US v. Lloyd Craig
USFS mining regulations 36 CFR 228

Adopted Comments by the following;
Jerry Hobbs - Public Lands for the People (501 C3),
Paul Coombs
City of ELDorado _ Board of Supervisors,
Sierra County Board of Supervisors

Budd-Falen Law Offices, L.L.C.

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MEMORANDUM

TO: INTERESTED PARTIES

**FROM: KAREN BUDD FALEN
BUDD-FALEN LAW OFFICES, LLC**

DATE: MAY 26, 2010

**RE: IT'S NOT ABOUT SAVING SPECIES – IT'S ABOUT SPENDING
TAXPAYER MONEY AND MAKING SOME GROUPS WEALTHY**

Below please find some disappointing data regarding Endangered Species Act (“ESA”) and its cost to the American public. ESA process and litigation are NOT about saving species, it is about spending American taxpayer money. In an economic time where American jobs are scarce, private property rights are being taken and the federal deficit is trillions of dollars, certainly the federal government can find a better way to spend American taxpayer dollars than lining the pockets of radical environmental groups and their “pro bono” (i.e. allegedly free) attorneys and spending money on a program that by the federal government’s data is a complete failure.

The ESA was signed into law in 1978 with the best of intentions. However, over the years it has become the battle cry to eliminate private property rights and property use, shut down agriculture and other industries and fund radical environmental groups and their attorneys. There is not a single state within the United States that does not have listed, threatened or endangered species. It would not be so bad if the original intent of the ESA was followed and species were listed, then recovered, then removed from the list—but that is not what is happening.

As of May 17, 2010, there are a total of 1,374 species listed as threatened or endangered. This list includes everything, even bugs, worms, plants, snakes, spiders, bogs, moss, mice, rats and other species. According to a 2009 report by Greenwire citing the U.S. Fish and Wildlife Service, the average cost of listing a single species is \$85,000 and the average cost of designating critical habitat is \$515,000 per species. Thus, the approximate cost to the American taxpayer of listing the 1,374 species is \$116,790,000 and the approximate cost of designating critical habitat for those species is \$707,610,000.

If it weren't bad enough that America's taxpayers are spending millions simply listing species, that is not the end of the story. The ESA sets very specific time frames for species listing and critical habitat designation; time frames which the federal government cannot seem to meet. Species are listed by a petition process, which means that anyone can send a letter to the federal government asking that a species, either plant or animal, be put on the ESA list. The federal government has 90 days to respond to that petition, no matter how frivolous. If the federal government fails to respond in 90 days, the petitioner—in the vast majority of cases, radical environmental groups—can file litigation against the federal government and get its attorneys fees paid. The simple act of filing litigation does not mean the species will get listed or that it is warranted to be protected; this litigation is only over whether the federal government failed to respond to the petition in 90 days. Between 2000 and 2009, in just 12 states and the District of Columbia, 14 environmental groups filed 180 federal court complaints to get species listed under the ESA and were paid \$11,743,287 in attorneys fees and costs. Again, there are listed ESA species in all 50 states, the District of Columbia and the U.S. Territories. Consider how much in attorneys fees have been paid if all litigation in all states is considered.

And it doesn't end there; the federal agencies have placed 341 more species on the candidate species list, meaning that they are under consideration for listing on the ESA threatened or endangered species list. That is 341 species times the average cost of listing of \$85,000 per species and \$515,000 for each critical habitat designation for a total of \$204,600,000—all from America's pocketbooks.

And it still doesn't end there; certain radical environmental groups have petitioned for additional listings of even more species and critical habitat designations. In the last 8 months, the Center for Biological Diversity, the WildEarth Guardians and the Western Watersheds Project have threatened the federal government with litigation if the government fails to list 238 more species. If the federal government does not respond to those listing petitions or Notices of Intent to Sue, federal court complaints will be filed and according to recent history, attorneys fees will be paid.

And with all this money—\$116,790,000 for species listing; \$707,610,000 for critical habitat designation; \$11,743,287 in attorneys fees paid to some radical environmental groups because the federal government simply missed deadlines—only 47 species have been taken off the ESA list and **of that 47 only 21 because they were recovered**. That is a 1.5% success rate! The other 26 species were taken off the list because they either went extinct (9 species) or should never have been put on the list in the first place (17 species). There is something wrong with this picture.

And while you are thinking about the ESA and its cost versus failure rate, consider the additional individual costs to American taxpayers and small businesses. The California red and yellow-legged frogs have cost the taxpayers \$445,924 just in litigation attorneys fees. Part of the reason that California farmers in the Central Valley have no water for their crops is because of Natural Resources Defense Council litigation

over the delta smelt, a 2 to 3 inch long minnow. Wolf litigation has cost American taxpayers \$436,762 in attorney fees, all paid to environmental groups who sue the federal government. Litigation over the desert tortoise, (a total of 11 cases) – a species that only spends 5% of its life above ground – has cost the American taxpayers \$702,519 just in payment of attorneys fees. In fact, in the last 10 years, the federal government has spent more than \$93 million in taxpayer money on the desert tortoise.

And that is not counting the costs to American business, even “green business.” In California, Brightsource Energy will have to spend \$20 million dollars to relocate 20 tortoises plus create a permanent tortoise trust fund so it can build its solar power plant. That is 1 million dollars plus per tortoise. Other businesses that have been impacted or stopped by the desert tortoise include a wind farm that would supply electricity to Las Vegas. Private landowners who wish to develop their own property are required to pay “mitigation fees” of between \$370 and \$550 per acre to develop private lands designated as desert tortoise critical habitat. Once the money is paid, it does not matter how many desert tortoises are killed. Hyundai car company had to buy 3000 acres of additional land for \$5 million so that it could use its own private property for a car safety test track. In addition to the \$5 million, the company also agreed to pay \$1.5 million into an endowment fund for the desert tortoise. The National Military Training Center at Ft. Irwin has also been negatively impacted, agreeing to pay \$6.9 million to relocate desert tortoises on the base so it can conduct its military training. None of this counts the over 30 family ranches that were eliminated because they used to graze their cattle on desert tortoise critical habitat.

It is clear that the American taxpayers have a tremendous problem. This wouldn't be so hard to take if the ESA was successful or if the radical environmental groups that are getting taxpayer money to litigate over the ESA were spending money on species or their habitats. However, there is no evidence that one single dime of the money the federal government pays to environmental groups to litigate over ESA species is spent on habitat or species research or mitigation projects—the money is just spent to get more taxpayer money and put more small businesses out of business or stop private landowners from using their properties. Even those businesses that supply “green jobs” and “green technology” suffer. This is a maddening state of affairs for America - somewhere the madness must stop!

-END-

UNITED STATES CODE ANNOTATED
TITLE 30. MINERAL LANDS AND MINING
CHAPTER 28--MATERIALS AND MINERALS POLICY, RESEARCH, AND DEVELOPMENT

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Current through P.L. 107-11, approved 5-28-01

§ 1601. Congressional statement of findings; "materials" defined

(a) The Congress finds that--

(1) the availability of materials is essential for **national security**, economic well-being, and industrial production;

(2) **the availability of materials is affected by the stability of foreign sources of essential industrial materials, instability of materials markets**, international competition and demand for materials, the need for energy and materials conservation, and the enhancement of environmental quality;

(3) **extraction, production, processing, use, recycling, and disposal of materials are closely linked with national concerns for energy** and the environment;

(4) the United States is strongly interdependent with other nations through international trade in materials and other products;

(5) technological innovation and research and development are important factors which contribute to the availability and use of materials;

(6) **the United States lacks a coherent national materials policy and a coordinated program to assure the availability of materials critical for national economic well-being, national defense**, and industrial production, including interstate commerce and foreign trade; and

(7) notwithstanding the enactment of section 21a of this title, the United States does not have a coherent national materials and minerals policy.

(b) As used in this chapter, the term "materials" means substances, including minerals, of current or potential use that will be needed to supply the industrial, **military**, and essential civilian needs of the United States in the production of goods or services, including those which are primarily imported or for which there is a prospect of shortages or uncertain supply, or which present opportunities in terms of new physical properties, use, recycling, disposal or substitution, with the exclusion of food and of energy fuels used as such.

CREDIT(S)

1986 Main Volume

(Pub.L. 96-479, § 2, Oct. 21, 1980, 94 Stat. 2305.)

<General Materials (GM) - References, Annotations, or Tables>

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HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1980 Acts. Senate Report Nos. 96-897 and 96-937, see 1980 U.S. Code Cong. and Adm. News, p. 4871.

Short Title

1980 Amendments. Section 1 of Pub.L. 96-479 provided: "That this Act [enacting this chapter] may be cited as the 'National Materials and Minerals Policy, Research and Development Act of 1980'."

CROSS REFERENCES

Materials defined for purposes of National Critical Materials Council, see 30 USCA § 1811.

LIBRARY REFERENCES

Administrative Law

Mineral exploration and extraction on Department of Defense lands, see 32 CFR § 235.1 et seq.

Law Review and Journal Commentaries

Taking account of the ecosystem on the public domain: Law and ecology in the greater Yellowstone region. Robert B. Keiter, 60 U.Colo.L.Rev. 923 (1989).

30 U.S.C.A. § 1601

30 USCA § 1601

END OF DOCUMENT

UNITED STATES CODE ANNOTATED
TITLE 30. MINERAL LANDS AND MINING
CHAPTER 15--SURFACE RESOURCES
SUBCHAPTER II--MINING LOCATIONS

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Current through P.L. 107-89, approved 12-18-01

§ 612. Unpatented mining claims

(a) Prospecting, mining or processing operations

Any mining claim hereafter located under the mining laws of the United States shall not be used, prior to issuance of patent therefor, for any purposes other than prospecting, mining or processing operations and uses reasonably incident thereto.

(b) Reservations in the United States to use of the surface and surface resources

Rights under any mining claim hereafter located under the mining laws of the United States shall be subject, prior to issuance of patent therefor, to the right of the United States to manage and dispose of the vegetative surface resources thereof and to manage other surface resources thereof (except mineral deposits subject to location under the mining laws of the United States). Any such mining claim shall also be subject, prior to issuance of patent therefor, to the right of the United States, its permittees, and licensees, to use so much of the surface thereof as may be necessary for such purposes or for access to adjacent land: Provided, however, That any use of the surface of any such mining claim by the United States, its permittees or licensees, shall be such as not to endanger or materially interfere with prospecting, mining or processing operations or uses reasonably incident thereto: Provided further, That if at any time the locator requires more timber for his mining operations than is available to him from the claim after disposition of timber therefrom by the United States, subsequent to the location of the claim, he shall be entitled, free of charge, to be supplied with timber for such requirements from the nearest timber administered by the disposing agency which is ready for harvesting under the rules and regulations of that agency and which is substantially equivalent in kind and quantity to the timber estimated by the disposing agency to have been disposed of from the claim: Provided further, That nothing in this subchapter and sections 601 and 603 of this title shall be construed as affecting or intended to affect or in any way interfere with or modify the laws of the States which lie wholly or in part westward of the ninety-eighth meridian relating to the ownership, control, appropriation, use, and distribution of ground or surface waters within any unpatented mining claim.

(c) Severance or removal of timber

Except to the extent required for the mining claimant's prospecting, mining or processing operations and uses reasonably incident thereto, or for the construction of buildings or structures in connection therewith, or to provide clearance for such operations or uses, or to the extent authorized by the United States, no claimant of any mining claim hereafter located under the mining laws of the United States shall, prior to issuance of patent therefor, sever, remove, or use any vegetative or other surface resources thereof which are subject to management or disposition by the United States under subsection (b) of this section. Any severance or removal of timber which is permitted under the exceptions of the preceding sentence, other than severance or removal to provide clearance, shall be in accordance with sound principles of forest management.

Only the Westlaw citation is currently available.

United States District Court, D. Montana,
Helena Division.
UNITED STATES of America, Plaintiff,
v.
Lloyd CRAIG, Defendant.
No. CR-82-8-H.

April 16, 1984.

ORDER

JAMES F. BATTIN, Chief Judge.

*1 Pursuant to the Memorandum Opinion this day filed in the above-captioned case,

IT IS ORDERED that the U.S. Magistrate's judgment finding appellant guilty of violating [16 U.S.C. § 551](#) and [36 C.F.R. §§ 261.10\(a\), 261.12\(d\)](#) (1980) is reversed and the complaints charging appellant with such offenses are dismissed.

The Clerk is directed forthwith to notify counsel for the respective parties of the making of this order.

MEMORANDUM OPINION

The above-captioned case is before this Court on appeal from a U.S. Magistrate's judgment finding defendant, Lloyd Craig, guilty of violating [16 U.S.C. § 551](#) and, more specifically, [36 C.F.R. §§ 261.10\(a\), 261.12\(d\)](#) (1980).

FACTS AND ISSUES

On July 16, 1981, appellant Craig was charged with three offenses. The criminal complaints alleged that he had plowed snow on a National Forest System road without a permit in violation of [36 C.F.R. § 261.10\(a\)](#) (1980), that he damaged the road by such plowing in violation of [26 C.F.R. § 261.12\(d\)](#) (1980),

and that he placed a private lock on a forestry gate on a National Forest System road without a permit in violation of [36 C.F.R. § 261.12\(a\)](#) (1980). The alleged violations occurred on Birch Creek Road No. 139 in the Helena National Forest.

During February and March of 1981 appellant had numerous conferences and telephone conversations with Forest Service officials of the Helena National Forest concerning a plan of operations for mining claims owned by Gipsy Creek Mining Company in an area adjacent to the Birch Creek Forest Service road. Appellant filed a plan of operations and reclamation, together with various maps, plats and diagrams, as requested by Forest Service officials. The plan was received by the District Ranger on March 10, 1981. A letter from the District Ranger dated March 17 requested additional information from appellant and informed him that a permit was being prepared for commercial hauling and snow plowing.

On April 1, 1981, a second letter from the District Ranger stated that appellant's plan of operations had been reviewed and would be approved with seven additional conditions. It further stated that an approved copy of the plan would be sent to appellant when a \$2000 road use permit bond was posted. Appellant applied for the bond on April 6, 1981, and on May 15, 1981, the bond was mailed to the Forest Service. In the meantime, however, appellant allegedly plowed snow on Birch Creek Road which caused damage to the road and led to the charges against him.

The parties consented to a hearing before a U.S. Magistrate pursuant to [28 U.S.C. § 636\(c\)\(1\)](#), and a non-jury trial was held before Magistrate Leo J. Kottas on July 28, 1981. Magistrate Kottas entered judgment on February 5, 1982, finding appellant guilty of both plowing snow without a permit and damaging a National Forest System road. Appellant was fined \$350 and \$425, respectively, for the two offenses. Appellant was found not guilty of placing a

private lock on a National Forest System gate.

*2 Appellant presents three issues for review by this Court. First, whether 36 C.F.R., Part 261, general prohibitions relating to the use of national forests, is applicable to persons exercising statutory rights under the U.S. mining laws in searching for, prospecting, locating and developing mineral resources on public lands under the jurisdiction of the U.S. Forest Service. Second, whether a Forest Service employee, a non-lawyer, may prepare and prosecute criminal charges before a U.S. Magistrate. Third, whether the evidence adduced at trial is sufficient to support appellant's conviction.

This appeal is properly before the Court under [18 U.S.C. § 3402](#). Rules of Procedure for the Trial of Misdemeanors Before U.S. Magistrates, Rule 7(e), promulgated by the United States Supreme Court pursuant to [18 U.S.C. § 3402](#), provides that on appeal “[t]he defendant shall not be entitled to a trial *de novo* by a judge of the district court. The scope of appeal shall be the same as on an appeal from a judgment of a district court to a court of appeals.” Thus, the U.S. Magistrate's decision is reversible only if it is clearly erroneous or contrary to law. [United States v. Ramirez](#), 555 F.Supp. 736, 739 (E.D.Cal.1983); [United States v. Li](#), 510 F.Supp. 276, 277 (D.Haw.1981); [United States v. Williams](#), 220 F.Supp. 556, 557 (N.D.Cal.1963).

DISCUSSION

I. Applicable Regulation.

A. History.

The statutory right to mine on public land is a long-standing right. The mining laws of 1872 encourage economic development of minerals and declares that “all valuable mineral deposits in land belonging to the United States ... shall be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase ... under regulations prescribed by law...” [30 U.S.C. § 22](#). Appellant argues that he was convicted of charges stemming from activities done as the owner of mining claims legally filed and recorded under the U.S. mining laws of 1872 (30 U.S. §§ 21-54). Appellant further argues that the only regulations which apply to his actions are found in 36 C.F.R.,

Part 252.

Appellant was convicted under [16 U.S.C. § 551](#) and [36 C.F.R. §§ 261.10\(a\), 261.12\(d\)](#). The Organic Administration Act of 1897, [16 U.S.C. § 551](#), gives the Secretary of Agriculture the authority to make rules and regulations governing the occupancy and use of national forests and preserving such forests from destruction. The statute also makes any violation of promulgated rules and regulations punishable by a fine of not more than \$500 or imprisonment for not more than six months, or both. The Secretary's authority to govern the use of national forests, however, is limited by [16 U.S.C. § 478](#): “[n]or shall anything herein prohibit any person from entering upon such national forests for all proper and lawful purposes, including that of prospecting, locating and developing the mineral resources thereof.” Even though the Secretary cannot prohibit mining on National Forest System land, miners are subject to “the rules and regulations covering such national forests.” [16 U.S.C. § 478](#).

*3 The use of our national forests involves important and competing interests. These interests, however, must co-exist. Since 1897, the Secretary of Agriculture has had authority under [16 U.S.C. §§ 478](#) and [551](#) to promulgate regulations concerning the methods of prospecting and mining in national forests. It was not until 1974 that such regulations were adopted. A precarious balance was struck between the legitimate needs of a miner to enter and use national forest land for mining purposes and the need to protect the forests from harmful effects resulting from mining activities. As stated, “[i]t is the purpose of these regulations to set forth rules and procedures through which use of the surface of National Forest System lands in connection with operations authorized by the U.S. mining laws ([30 U.S.C. 21-54](#)), which confer a statutory right to enter upon the public lands to search for minerals, shall be conducted so as to minimize adverse environmental impacts on National Forest System surface resources.” [36 C.F.R. § 252.1](#).

There is no doubt that the regulations found in 36 C.F.R., Part 252 govern mining activities of miners. And, there is no doubt that such regulations have the force and effect of law. [United States v. Weiss](#), 642 F.2d 296, 298 (9th Cir.1981). The real question is whether the regulations listed in 36 C.F.R., Part 252

are the only regulations which apply to "operations" conducted under the U.S. mining laws of 1872. Appellee argues that any person, including a miner or a prospector, may be issued a citation for acts or omissions listed in 35 C.F.R., Part 261, unless the acts or omissions are authorized by an approved operating plan or a special use permit.

B. Approved Operating Plan.

This Court cannot agree that a miner may be issued a citation under 36 C.F.R., Part 261 if his or her submitted plan of operations has not yet been approved by a District Ranger. A proposed plan of operations is required to be filed with the Forest Service "[i]f the District Ranger determines that such operations will likely cause significant disturbance of surface resources..." 36 C.F.R. § 252.4(a). The plan must include existing and/or proposed roads or access routes to be used in connection with the operations. 36 C.F.R. § 252.4(c)(2). "Proposals for use of such access as part of a plan of operations shall include a description of the type and standard of the proposed means of access, a map showing the proposed route of access, and a description of the means of transportation to be used." 36 C.F.R. § 252.12. The **Forest Service** had been in contact with appellant for several months during the spring of 1981 and had required appellant to file a proposed plan of operations.

The language of 36 C.F.R., Part 252 indicates that the **Forest Service** intended Part 252 to apply to all operations conducted under the U.S. **mining** laws of 1872. 36 C.F.R. § 252.2. It is undisputed that appellant had legally filed and recorded **mining** claims under the U.S. **Mining** Laws of 1872. The only question, then, is whether appellant was conducting "operations."

*4 "Operations" are defined as "[a]ll functions, work and activities in connection with prospecting, exploration, development, **mining** or processing of mineral resources and all uses reasonably incident thereto, including roads and other means of access on lands subject to the regulations in this part, regardless of whether said operations take place on or off **mining** claims." 36 C.F.R. § 252.3(a). Thus, activities done in connection with prospecting, exploration and development of mineral resources are covered by Part 252 and those activities include use of roads on or off

mining claims.

There is no requirement that Part 252 applies only to operations conducted after an operating plan has been approved. The language of Part 252 supports a conclusion that even though appellant's proposed plan of operations had not been approved, appellant had filed such a plan and was conducting "operations" under the U.S. mining laws of 1872. Recognizing that miners have a statutory right to explore and develop mineral resources, the Forest Service drafted its regulation in parts, separating mineral resource regulation from permissive use regulation. Any violation by appellant before his proposed plan of operations was finally approved should have been charged under 36 C.F.R., Part 252, the only part which applies to minerals and mineral resources. In fact, § 252.12 prohibits the use of access until an operator has received approval of an operating plan in writing. 36 C.F.R. § 252.12.

C. Special Use Permits.

This Court cannot agree that a miner who has submitted a plan of operations must also apply for special use permits for activities already covered by the operating plan. Mining has been accorded greater rights than those given for permissive uses and special use permits such as those required by 36 C.F.R., Part 261 are not required for mining-related operations such as exploration and development. Regulation of such operations is covered by Part 252.

An act or omission listed in 36 C.F.R., Part 261 not authorized by a permit issued under 36 C.F.R. § 261.1a, or otherwise authorized, is punishable as provided in 16 U.S.C. § 551. Permits are generally in the form of special use permits issued under 36 C.F.R., Part 251. 36 C.F.R. § 251.50(a) provides that "[a]ll use of National Forest System land, ... except those provided for in the regulations governing ... minerals and mineral materials (§ 252), ... are 'special uses' and must be authorized...." A system other than use permits has been established for minerals and mineral materials. That system of regulation is found in 36 C.F.R., Part 252. When the statute and the regulations give miners a statutory right to go upon and use the open public domain for purposes of mineral exploration and development, Forest Service officials may not unreasonably restrict that right by applying general Forest Service

regulations and a permit system.

Testimony at appellant's trial before the U.S. Magistrate indicated that the District Ranger stated in a letter dated April 1, 1981, that appellant's plan of operations had been reviewed and would be approved with seven additional conditions. The District Ranger also told the appellant that an approved copy of the plan would be sent to appellant when a \$2000 road use permit bond was posted. However, mining activities, including use of roads for access on or off mining claims, are covered by regulations found in 36 C.F.R., Part 252. *See* 36 C.F.R. § 252.3(a). The only bonds required under Part 252 are bonds for reclamation, 36 C.F.R. § 252.13, not bonds for special use authorization under 36 C.F.R. § 251.56(a).

CONCLUSION

*5 The United States Magistrate concluded “[t]hat the forestry regulations under which Defendant has been, charged apply to miners generally and to ... Lloyd Craig Defendant as to mining operations and building, and maintaining Forestry System Roads or trails leading to miners claims and use thereof.” This Court has carefully considered the United States Magistrate's conclusion of law and cannot agree that 36 C.F.R., Part 261 applies to appellant, a miner acting under the United States **mining** laws of 1872 who submitted a proposed plan of operations under 36 C.F.R., Part 252 in accordance with **Forest Service** determinations. Any violation by a miner of **Forest Service** regulations should be charged under 36 C.F.R., Part 252.

The complaints under which defendant was charged state that appellant plowed snow without a permit in violation of 36 C.F.R. § 261.10(a) and that he damaged the Birch Creek Road in violation of 36 C.F.R. § 261.12(d). Since this Court found that appellant was not required to have a special use permit for activities done in connection with mining operations as defined in 36 C.F.R., Part 252, the complaints do not state facts constituting offenses for which appellant may be charged and they must therefore be dismissed. *See Fed.R.Crim.P. 3*. The remaining two issues presented for appeal need not be decided at this time.

The Court will issue an order in conformity with this

Memorandum Opinion.

D.Mont., 1984.
U.S. v. Craig
Slip Copy, 1984 WL 922460 (D.Mont.)

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prior to the deadline for submitting applications. An applicant could voluntarily submit information documenting the amount of purchases of unprocessed timber originating from National Forest System lands within Washington State. The Department then determined which amount is higher, verified by either the Department's records or the applicant's records. The Department then determined the applicant's portion of the 50 million board feet by determining the lesser of the amount verified by the records or 15 million board feet. Applicants could submit the information documenting the amount of purchases in the following manner:

(i) Actual receipts for purchasing unprocessed timber from National Forest System lands within Washington State; or

(ii) A statement by a certified public accountant of:

(A) A summary by fiscal year for 1988, 1989 and 1990 of the applicant's acquisitions of timber originating from National Forest System lands in the State of Washington, listing total volume for each of the three fiscal years; and

(B) The average volume for the three fiscal years. The volumes to be reported were the harvest volumes, except in the case of open sales. Advertised volumes had to be reported for open sales.

(C) The certified public accountant must have certified to the following:

"I certify that under the penalties and remedies provided in §492 of the Act (16 U.S.C. 620d) and the penalty of perjury provided in the False Statements Act (18 U.S.C. 1001) that the information provided in support of this application is, to the best of my knowledge and belief, a true, accurate, current, and complete statement of [applicant's company's name] National Forest System timber acquisitions originating from within the State of Washington for fiscal years 1988, 1989 and/or 1990."

(D) The certified public accountant's statement and certification must have been on the accountant's company letterhead, must have been notarized, and must have accompanied the applicant's application.

(c) *Selling and trading rights.* The purchase limit right obtained under this rule may be sold, traded, or otherwise

exchanged with any other person subject to the following conditions:

(1) Such rights may not be sold, traded, or otherwise exchanged to persons already in possession of such rights:

(2) Any person selling, trading, or exchanging any or all of the rights obtained under this rule shall advise the Regional Forester of the amount being traded and the name(s) of the person(s) acquiring such rights within 15 days of the transaction; and

(3) No person may have or acquire more than 15 million board feet in one fiscal year.

(d) *Information collection.* The application procedures in this section constitute information collection requirements as defined in 5 CFR part 1320. These requirements have been approved by the Office of Management and Budget and assigned clearance number 0596-0114.

(e) *Persons with approved shares.* The application period for shares of the indirect substitution exception for acquiring unprocessed timber originating from National Forest System lands within the State of Washington closed on January 8, 1992. Persons with approved shares are responsible for monitoring and controlling their acquisitions of National Forest System timber originating from within the State of Washington to assure approved share amounts are not exceeded in any Federal fiscal year. Unused portions of annual shares may not be "banked" for use in future fiscal years. The acquisition of such National Forest System timber must be reported to the Forest Service in accordance with §223.193 of this subpart. The following shares are approved as of September 8, 1995:

(1) Cavenham Forest Industries, Portland, OR, 1,048,000 board feet.

(2) Weyerhaeuser, Tacoma, WA, 15,000,000 board feet.

PART 228—MINERALS

Subpart A—Locatable Minerals

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228.2 Scope.
228.3 Definitions.
228.4 Plan of operations—notice of intent—requirements.
228.5 Plan of operations—approval.

§ 228.1

- 228.6 Availability of information to the public.
- 228.7 Inspection, noncompliance.
- 228.8 Requirements for environmental protection.
- 228.9 Maintenance during operations, public safety.
- 228.10 Cessation of operations, removal of structures and equipment.
- 228.11 Prevention and control of fire.
- 228.12 Access.
- 228.13 Bonds.
- 228.14 Appeals.
- 228.15 Operations within National Forest Wilderness.

Subpart B—Leasable Minerals

228.20–228.39 [Reserved]

Subpart C—Disposal of Mineral Materials

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- 228.41 Scope.
- 228.42 Definitions.
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APPENDIX A TO SUBPART E OF PART 228—GUIDELINES FOR PREPARING SURFACE USE PLANS OF OPERATION FOR DRILLING

AUTHORITY: 30 Stat. 35 and 36, as amended (16 U.S.C. 478, 551); 41 Stat. 437, as amended, sec. 5102(d), 101 Stat. 1330–256 (30 U.S.C. 226); 61 Stat. 681, as amended (30 U.S.C. 601); 61 Stat. 914, as amended (30 U.S.C. 352); 69 Stat. 368, as amended (30 U.S.C. 611); and 94 Stat. 2400.

SOURCE: 39 FR 31317, Aug. 28, 1974, unless otherwise noted. Redesignated at 46 FR 36142, July 14, 1981.

Subpart A—Locatable Minerals

§ 228.1 Purpose.

It is the purpose of these regulations to set forth rules and procedures through which use of the surface of National Forest System lands in connection with operations authorized by the United States mining laws (30 U.S.C. 21–54), which confer a statutory right to enter upon the public lands to search for minerals, shall be conducted so as to minimize adverse environmental impacts on National Forest System surface resources. It is not the purpose of these regulations to provide

Forest Service, USDA

§ 228.4

for the management of mineral resources; the responsibility for managing such resources is in the Secretary of the Interior.

§ 228.2 Scope.

These regulations apply to operations hereafter conducted under the United States mining laws of May 10, 1872, as amended (30 U.S.C. 22 *et seq.*), as they affect surface resources on all National Forest System lands under the jurisdiction of the Secretary of Agriculture to which such laws are applicable: *Provided, however,* That any area of National Forest lands covered by a special Act of Congress (16 U.S.C. 482a-482q) is subject to the provisions of this part and the provisions of the special act, and in the case of conflict the provisions of the special act shall apply.

§ 228.3 Definitions.

For the purposes of this part the following terms, respectively, shall mean:

(a) *Operations.* All functions, work, and activities in connection with prospecting, exploration, development, mining or processing of mineral resources and all uses reasonably incident thereto, including roads and other means of access on lands subject to the regulations in this part, regardless of whether said operations take place on or off mining claims.

(b) *Operator.* A person conducting or proposing to conduct operations.

(c) *Person.* Any individual, partnership, corporation, association, or other legal entity.

(d) *Mining claim.* Any unpatented mining claim or unpatented millsite authorized by the United States mining laws of May 10, 1872, as amended (30 U.S.C. 22 *et seq.*).

(e) *Authorized officer.* The Forest Service officer to whom authority to review and approve operating plans has been delegated.

§ 228.4 Plan of operations—notice of intent—requirements.

(a) Except as provided in paragraph (a)(1) of this section, a notice of intent to operate is required from any person proposing to conduct operations which might cause significant disturbance of surface resources. Such notice of intent to operate shall be submitted to the

District Ranger having jurisdiction over the area in which the operations will be conducted. Each notice of intent to operate shall provide information sufficient to identify the area involved, the nature of the proposed operations, the route of access to the area of operations, and the method of transport.

(1) A notice of intent to operate is not required for:

(i) Operations which will be limited to the use of vehicles on existing public roads or roads used and maintained for National Forest System purposes;

(ii) Prospecting and sampling which will not cause significant surface resource disturbance and will not involve removal of more than a reasonable amount of mineral deposit for analysis and study which generally might include searching for and occasionally removing small mineral samples or specimens, gold panning, metal detecting, non-motorized hand sluicing, using battery operated dry washers, and collecting of mineral specimens using hand tools;

(iii) Marking and monumenting a mining claim;

(iv) Underground operations which will not cause significant surface resource disturbance;

(v) Operations, which in their totality, will not cause surface resource disturbance which is substantially different than that caused by other users of the National Forest System who are not required to obtain a Forest Service special use authorization, contract, or other written authorization;

(vi) Operations which will not involve the use of mechanized earthmoving equipment, such as bulldozers or backhoes, or the cutting of trees, unless those operations otherwise might cause a significant disturbance of surface resources; or

(vii) Operations for which a proposed plan of operations is submitted for approval;

(2) The District Ranger will, within 15 days of receipt of a notice of intent to operate, notify the operator if approval of a plan of operations is required before the operations may begin.

(3) An operator shall submit a proposed plan of operations to the District

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Ranger having jurisdiction over the area in which operations will be conducted in lieu of a notice of intent to operate if the proposed operations will likely cause a significant disturbance of surface resources. An operator also shall submit a proposed plan of operations, or a proposed supplemental plan of operations consistent with § 228.4(d), to the District Ranger having jurisdiction over the area in which operations are being conducted if those operations are causing a significant disturbance of surface resources but are not covered by a current approved plan of operations. The requirement to submit a plan of operations shall not apply to the operations listed in paragraphs (a)(1)(i) through (v). The requirement to submit a plan of operations also shall not apply to operations which will not involve the use of mechanized earthmoving equipment, such as bulldozers or backhoes, or the cutting of trees, unless those operations otherwise will likely cause a significant disturbance of surface resources.

(4) If the District Ranger determines that any operation is causing or will likely cause significant disturbance of surface resources, the District Ranger shall notify the operator that the operator must submit a proposed plan of operations for approval and that the operations can not be conducted until a plan of operations is approved.

(b) Any person conducting operations on the effective date of these regulations, who would have been required to submit a plan of operations under § 228.4(a), may continue operations but shall within 120 days thereafter submit a plan of operations to the District Ranger having jurisdiction over the area within which operations are being conducted: *Provided, however,* That upon a showing of good cause the authorized officer will grant an extension of time for submission of a plan of operations, not to exceed an additional 6 months. Operations may continue according to the submitted plan during its review, unless the authorized officer determines that the operations are unnecessarily or unreasonably causing irreparable damage to surface resources and advises the operator of those measures needed to avoid such damage.

Upon approval of a plan of operations, operations shall be conducted in accordance with the approved plan. The requirement to submit a plan of operations shall not apply: (1) To operations excepted in § 228.4(a) or (2) to operations concluded prior to the effective date of the regulations in this part.

(c) The plan of operations shall include:

(1) The name and legal mailing address of the operators (and claimants if they are not the operators) and their lessees, assigns, or designees.

(2) A map or sketch showing information sufficient to locate the proposed area of operations on the ground, existing and/or proposed roads or access routes to be used in connection with the operations as set forth in § 228.12 and the approximate location and size of areas where surface resources will be disturbed.

(3) Information sufficient to describe or identify the type of operations proposed and how they would be conducted, the type and standard of existing and proposed roads or access routes, the means of transportation used or to be used as set forth in § 228.12, the period during which the proposed activity will take place, and measures to be taken to meet the requirements for environmental protection in § 228.8.

(d) The plan of operations shall cover the requirements set forth in paragraph (c) of this section, as foreseen for the entire operation for the full estimated period of activity: *Provided, however,* That if the development of a plan for an entire operation is not possible at the time of preparation of a plan, the operator shall file an initial plan setting forth his proposed operation to the degree reasonably foreseeable at that time, and shall thereafter file a supplemental plan or plans whenever it is proposed to undertake any significant surface disturbance not covered by the initial plan.

(e) 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 disturbance of surface resources. If the operator does not furnish a proposed modification within a time deemed reasonable by the authorized officer, the authorized officer may recommend to his immediate superior that the operator be required to submit a proposed modification of the plan. The recommendation of the authorized officer shall be accompanied by a statement setting forth in detail the supporting facts and reasons for his recommendations. In acting upon such recommendation, the immediate superior of the authorized officer shall determine:

(1) 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,

(2) Whether the disturbance is or probably will become of such significance as to require modification of the operating plan in order to meet the requirements for environmental protection specified in § 228.8 and

(3) Whether the disturbance can be minimized using reasonable means. Lacking such determination that unforeseen significant disturbance of surface resources is occurring or probable and that the disturbance can be minimized using reasonable means, no operator shall be required to submit a proposed modification of an approved plan of operations. Operations may continue in accordance with the approved plan until a modified plan is approved, unless the immediate superior of the authorized officer determines that the operations are unnecessarily or unreasonably causing irreparable injury, loss or damage to surface resources and advises the operator of those measures needed to avoid such damage.

(f) Upon completion of an environmental analysis in connection with each proposed operating plan, the authorized officer will determine whether an environmental statement is required. Not every plan of operations, supplemental plan or modification will involve the preparation of an environmental statement. Environmental impacts will vary substantially depending on whether the nature of operations is prospecting, exploration, development,

or processing, and on the scope of operations (such as size of operations, construction required, length of operations and equipment required), resulting in varying degrees of disturbance to vegetative resources, soil, water, air, or wildlife. The Forest Service will prepare any environmental statements that may be required.

(g) The information required to be included in a notice of intent or a plan of operations, or supplement or modification thereto, has been assigned Office of Management and Budget Control #0596-0022. The public reporting burden for this collection of information is estimated to vary from a few minutes for an activity involving little or no surface disturbance to several months for activities involving heavy capital investments and significant surface disturbance, with an average of 2 hours per individual response. This includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief (2800), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

[39 FR 31317, Aug. 28, 1974. Redesignated at 46 FR 36142, July 14, 1981, and amended at 54 FR 6893, Feb. 15, 1989; 69 FR 41430, July 9, 2004; 70 FR 32731, June 6, 2005]

§ 228.5 Plan of operations—approval.

(a) Operations shall be conducted in accordance with an approved plan of operations, except as provided in paragraph (b) of this section and in § 228.4 (a), (b), and (e). A proposed plan of operation shall be submitted to the District Ranger, who shall promptly acknowledge receipt thereof to the operator. The authorized officer shall, within thirty (30) days of such receipt, analyze the proposal, considering the economics of the operation along with the other factors in determining the reasonableness of the requirements for surface resource protection, and;

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(1) Notify the operator that he has approved the plan of operations; or

(2) Notify the operator that the proposed operations are such as not to require an operating plan; or

(3) Notify the operator of any changes in, or additions to, the plan of operations deemed necessary to meet the purpose of the regulations in this part; or

(4) Notify the operator that the plan is being reviewed, but that more time, not to exceed an additional sixty (60) days, is necessary to complete such review, setting forth the reasons why additional time is needed: *Provided, however,* That days during which the area of operations is inaccessible for inspection shall not be included when computing the sixty (60) day period; or

(5) Notify the operator that the plan cannot be approved until a final environmental statement has been prepared and filed with the Council on Environmental Quality as provided in § 228.4(f).

(b) Pending final approval of the plan of operations, the authorized officer will approve such operations as may be necessary for timely compliance with the requirements of Federal and State laws, so long as such operations are conducted so as to minimize environmental impacts as prescribed by the authorized officer in accordance with the standards contained in § 228.8.

(c) A supplemental plan or plans of operations provided for in § 228.4(d) and a modification of an approved operating plan as provided for in § 228.4(e) shall be subject to approval by the authorized officer in the same manner as the initial plan of operations: *Provided, however,* That a modification of an approved plan of operations under § 228.4(e) shall be subject to approval by the immediate superior of the authorized officer in cases where it has been determined that a modification is required.

(d) In the provisions for review of operating plans, the Forest Service will arrange for consultation with appropriate agencies of the Department of the Interior with respect to significant technical questions concerning the character of unique geologic conditions and special exploration and development systems, techniques, and equip-

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ment, and with respect to mineral values, mineral resources, and mineral reserves. Further, the operator may request the Forest Service to arrange for similar consultations with appropriate agencies of the U.S. Department of the Interior for a review of operating plans.

§ 228.6 Availability of information to the public.

Except as provided herein, all information and data submitted by an operator pursuant to the regulations in this part shall be available for examination by the public at the Office of the District Ranger in accordance with the provisions of 7 CFR 1.1-1.6 and 36 CFR 200.5-200.10. Specifically identified information and data submitted by the operator as confidential concerning trade secrets or privileged commercial or financial information will not be available for public examination. Information and data to be withheld from public examination may include, but is not limited to, known or estimated outline of the mineral deposits and their location, attitude, extent, outcrops, and content, and the known or planned location of exploration pits, drill holes, excavations pertaining to location and entry pursuant to the United States mining laws, and other commercial information which relates to competitive rights of the operator.

§ 228.7 Inspection, noncompliance.

(a) Forest Officers shall periodically inspect operations to determine if the operator is complying with the regulations in this part and an approved plan of operations.

(b) 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 the authorized officer shall serve a notice of noncompliance upon the operator or his agent in person or by certified mail. Such notice shall describe the noncompliance and shall specify the action to comply and the time within which such action is to be completed, generally not to exceed thirty (30) days: *Provided, however,*

That days during which the area of operations is inaccessible shall not be included when computing the number of days allowed for compliance.

§ 228.8 Requirements for environmental protection.

All operations shall be conducted so as, where feasible, to minimize adverse environmental impacts on National Forest surface resources, including the following requirements:

(a) *Air Quality.* Operator shall comply with applicable Federal and State air quality standards, including the requirements of the Clean Air Act, as amended (42 U.S.C. 1857 *et seq.*).

(b) *Water Quality.* Operator shall comply with applicable Federal and State water quality standards, including regulations issued pursuant to the Federal Water Pollution Control Act, as amended (33 U.S.C. 1151 *et seq.*).

(c) *Solid Wastes.* Operator shall comply with applicable Federal and State standards for the disposal and treatment of solid wastes. All garbage, refuse, or waste, shall either be removed from National Forest lands or disposed of or treated so as to minimize, so far as is practicable, its impact on the environment and the forest surface resources. All tailings, dumpage, deleterious materials, or substances and other waste produced by operations shall be deployed, arranged, disposed of or treated so as to minimize adverse impact upon the environment and forest surface resources.

(d) *Scenic Values.* Operator shall, to the extent practicable, harmonize operations with scenic values through such measures as the design and location of operating facilities, including roads and other means of access, vegetative screening of operations, and construction of structures and improvements which blend with the landscape.

(e) *Fisheries and Wildlife Habitat.* In addition to compliance with water quality and solid waste disposal standards required by this section, operator shall take all practicable measures to maintain and protect fisheries and wildlife habitat which may be affected by the operations.

(f) *Roads.* Operator shall construct and maintain all roads so as to assure adequate drainage and to minimize or,

where practicable, eliminate damage to soil, water, and other resource values. Unless otherwise approved by the authorized officer, roads no longer needed for operations:

(1) Shall be closed to normal vehicular traffic,

(2) Bridges and culverts shall be removed,

(3) Cross drains, dips, or water bars shall be constructed, and

(4) The road surface shall be shaped to as near a natural contour as practicable and be stabilized.

(g) *Reclamation.* Upon exhaustion of the mineral deposit or at the earliest practicable time during operations, or within 1 year of the conclusion of operations, unless a longer time is allowed by the authorized officer, operator shall, where practicable, reclaim the surface disturbed in operations by taking such measures as will prevent or control onsite and off-site damage to the environment and forest surface resources including:

(1) Control of erosion and landslides;

(2) Control of water runoff;

(3) Isolation, removal or control of toxic materials;

(4) Reshaping and revegetation of disturbed areas, where reasonably practicable; and

(5) Rehabilitation of fisheries and wildlife habitat.

(h) 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.

§ 228.9 Maintenance during operations, public safety.

During all operations operator shall maintain his structures, equipment, and other facilities in a safe, neat and workmanlike manner. Hazardous sites or conditions resulting from operations shall be marked by signs, fenced or otherwise identified to protect the public in accordance with Federal and State laws and regulations.

§ 228.10 Cessation of operations, removal of structures and equipment.

Unless otherwise agreed to by the authorized officer, operator shall remove

§ 228.11

within a reasonable time following cessation of operations all structures, equipment and other facilities and clean up the site of operations. Other than seasonally, where operations have ceased temporarily, an operator shall file a statement with the District Ranger which includes:

(a) Verification of intent to maintain the structures, equipment and other facilities,

(b) The expected reopening date, and

(c) An estimate of extended duration of operations. A statement shall be filed every year in the event operations are not reactivated. Operator shall maintain the operating site, structures, equipment and other facilities in a neat and safe condition during nonoperating periods.

§ 228.11 Prevention and control of fire.

Operator shall comply with all applicable Federal and State fire laws and regulations and shall take all reasonable measures to prevent and suppress fires on the area of operations and shall require his employees, contractors and subcontractors to do likewise.

§ 228.12 Access.

An operator is entitled to access in connection with operations, but no road, trail, bridge, landing area for aircraft, or the like, shall be constructed or improved, nor shall any other means of access, including but not limited to off-road vehicles, be used until the operator has received approval of an operating plan in writing from the authorized officer when required by § 228.4(a). Proposals for construction, improvement or use of such access as part of a plan of operations shall include a description of the type and standard of the proposed means of access, a map showing the proposed route of access, and a description of the means of transportation to be used. Approval of the means of such access as part of a plan of operations shall specify the location of the access route, design standards, means of transportation, and other conditions reasonably necessary to protect the environment and forest surface resources, including measures to protect scenic values and to insure against erosion and water or air pollution.

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§ 228.13 Bonds.

(a) Any operator required to file a plan of operations shall, when required by the authorized officer, furnish a bond conditioned upon compliance with § 228.8(g), prior to approval of such plan of operations. In lieu of a bond, the operator may deposit into a Federal depository, as directed by the Forest Service, and maintain therein, cash in an amount equal to the required dollar amount of the bond or negotiable securities of the United States having market value at the time of deposit of not less than the required dollar amount of the bond. A blanket bond covering nationwide or statewide operations may be furnished if the terms and conditions thereof are sufficient to comply with the regulations in this part.

(b) In determining the amount of the bond, consideration will be given to the estimated cost of stabilizing, rehabilitating, and reclaiming the area of operations.

(c) In the event that an approved plan of operations is modified in accordance with § 228.4 (d) and (e), the authorized officer will review the initial bond for adequacy and, if necessary, will adjust the bond to conform to the operations plan as modified.

(d) When reclamation has been completed in accordance with § 228.8(g), the authorized officer will notify the operator that performance under the bond has been completed: *Provided, however*, That when the Forest Service has accepted as completed any portion of the reclamation, the authorized officer shall notify the operator of such acceptance and reduce proportionally the amount of bond thereafter to be required with respect to the remaining reclamation.

[39 FR 31317, Aug. 28, 1974; 39 FR 32029, Sept. 4, 1974]

§ 228.14 Appeals.

Any operator aggrieved by a decision of the authorized officer in connection with the regulations in this part may file an appeal under the provisions of 36 CFR part 251, subpart C.

[54 FR 3362, Jan. 23, 1989]

§ 228.15 Operations within National Forest Wilderness.

(a) The United States mining laws shall extend to each National Forest Wilderness for the period specified in the Wilderness Act and subsequent establishing legislation to the same extent they were applicable prior to the date the Wilderness was designated by Congress as a part of the National Wilderness Preservation System. Subject to valid existing rights, no person shall have any right or interest in or to any mineral deposits which may be discovered through prospecting or other information-gathering activity after the legal date on which the United States mining laws cease to apply to the specific Wilderness.

(b) Holders of unpatented mining claims validly established on any National Forest Wilderness prior to inclusion of such unit in the National Wilderness Preservation System shall be accorded the rights provided by the United States mining laws as then applicable to the National Forest land involved. Persons locating mining claims in any National Forest Wilderness on or after the date on which said Wilderness was included in the National Wilderness Preservation System shall be accorded the rights provided by the United States mining laws as applicable to the National Forest land involved and subject to provisions specified in the establishing legislation. Persons conducting operations as defined in § 228.3 in National Forest Wilderness shall comply with the regulations in this part. Operations shall be conducted so as to protect National Forest surface resources in accordance with the general purposes of maintaining the National Wilderness Preservation System unimpaired for future use and enjoyment as wilderness and to preserve its wilderness character, consistent with the use of the land for mineral location, exploration, development, drilling, and production and for transmission lines, water lines, telephone lines, and processing operations, including, where essential, the use of mechanized transport, aircraft or motorized equipment.

(c) Persons with valid mining claims wholly within National Forest Wilderness shall be permitted access to such

surrounded claims by means consistent with the preservation of National Forest Wilderness which have been or are being customarily used with respect to other such claims surrounded by National Forest Wilderness. No operator shall construct roads across National Forest Wilderness unless authorized in writing by the Forest Supervisor in accordance with § 228.12.

(d) On all mining claims validly established on lands within the National Wilderness Preservation System, the operator shall take all reasonable measures to remove any structures, equipment and other facilities no longer needed for mining purposes in accordance with the provisions in § 228.10 and restore the surface in accordance with the requirements in § 228.8(g).

(e) The title to timber on patented claims validly established after the land was included within the National Wilderness Preservation System remains in the United States, subject to a right to cut and use timber for mining purposes. So much of the mature timber may be cut and used as is needed in the extraction, removal, and beneficiation of the mineral deposits, if needed timber is not otherwise reasonably available. The cutting shall comply with the requirements for sound principles of forest management as defined by the National Forest rules and regulations and set forth in stipulations to be included in the plan of operations, which as a minimum incorporate the following basic principles of forest management:

(1) Harvesting operations shall be so conducted as to minimize soil movement and damage from water runoff; and

(2) Slash shall be disposed of and other precautions shall be taken to minimize damage from forest insects, disease, and fire.

(f) The Chief, Forest Service, shall allow any activity, including prospecting, for the purpose of gathering information about minerals in National Forest Wilderness except that any such activity for gathering information shall be carried on in a manner compatible with the preservation of the wilderness environment as specified in the plan of operations.

5/3/2011

Mr. Mark Stopher
California Department of Fish and Game
601 Locust St.
Redding, CA 96001

Comments Regarding: Suction Dredge Permitting Program
Draft Subsequent Environmental Impact Report
California Department of Fish and Game

Dear Mr. Mark Stopher,

When I read California's newly proposed suction dredge regulations, I immediately began to see red flags. My law enforcement background and sense of justice is sounding a red alert.

Although I'm not a suction dredge miner, I *am* a miner and these proposed regulations are just plain wrong — and unjust. As a former law enforcement officer, I easily recognize the threats contained in these proposed regulations to suction dredge miners specifically and to the public in general.

The Department of Fish and Game intends to impose on suction dredge miners a class of permit requirements and restrictions that it does not impose on hunters and fishermen. There are four notable areas of unique requirements:

1. a maximum of 4,000 suction permits are to be provided
2. dredging equipment must be itemized, "A list of all suction dredge equipment that will be used under the permit, including nozzle size, constrictor ring size (if needed), engine manufacturer and model number, and horsepower;"
3. a maximum of six dredging locations are allowed per license and a list must be provided with an exact geographical location for each site
4. an approximate date for dredging must be provided for each location

Historically, there has been no limit to the maximum number of suction dredge permits that can be issued. According to DFG, the previous number of annual permits issued is in the area of 3,000 or so.

The current plan to limit the maximum number of permits to 4,000 is unsupported by data indicating the necessity of the requirement. Whether or not it is an intended consequence by the DFG or not, the plan presents the possibility that environmental activists may purchase permits with the expressed purpose of locking out suction dredge miners from exercising their federal

statutory rights to mine. Buying up most of the suction dredging permits is far cheaper for the environmental activists than filing lawsuits. The State is, therefore, aiding and abetting a radical environmental agenda.

There are only three dredging equipment specifications in the regulations:

1. the diameter of the suction nozzle;
2. the intake hose diameter;
3. and pump intake screen specifications.

Why is it necessary for the state to force the miner to disclose a list of all *unregulated* equipment used to include engine manufacturer, model number and horsepower? Changing any of the equipment without the onerous modification of the permit is impermissible and citable. Clearly, the listing of all equipment, for which there are no State permit requirements, is a *selective enforcement* tool for DFG law enforcement, a polite way to say *harassment*.

The requirements of location and dates reveal another State agenda, which will impede and make difficult the lawful activity of suction dredging.

The proposed regulations would make it unlawful to dredge anywhere other than the maximum six locations listed on the dredging permit. The limitation to number of dredging locations, without justification of supporting data, clearly limits the opportunities to suction dredge.

Why does the State need to know the whereabouts of suction dredging locations? And, why does the State need to know the “approximate” dates that each location is intended to be dredged? These requirements are clearly designed to assist law enforcement to easily locate a suction dredging operation.

Civil law enforcement operates in two modes, reactive and proactive.

Reactive enforcement is when law enforcement learns of a potential violation of law and responds to address the specific violation by specific violators.

Proactive enforcement is when law enforcement targets a class of suspected violators of law with specific actions. Unlike reactive enforcement, proactive enforcement presumes violations by a class of violator.

These regulations clearly announce that suction dredgers are a specific class of potential law violators that requires that law enforcement be provided the *proactive* tools to deal with the violators. Therein lays the rationale for the location and approximate date requirements for permitted suction dredging. These regulations provide no data to support a de facto assertion that suction dredgers are a specific classification of law violators justifying the specific proactive targeting of them by law enforcement.

Unintended consequences of the requirements of location and dates are even more ominous. DFG license data is public information and thus discoverable via a public records information request. The data will be extremely beneficial to anyone desiring to locate a dredging operation

for purposes of robbery, theft or vandalism. In addition, it tells criminals when the suction dredger's residence may be vacant and more vulnerable for burglary and/or home invasion robbery.

Characterizing suction dredgers as potential criminals, these regulations provide law enforcement with specific and unique proactive tools to target the miners. By formulating unjustified regulations, the State is deliberately limiting freedoms and creating an environment ripe for the encouragement of law enforcement excesses. Incentivizing police abuse of citizens, whether intended or unintended, is a step forward on the road toward a police state.

Regards,
Paul Coombs

COUNTY OF EL DORADO

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SUZANNE ALLEN DE SANCHEZ
Clerk of the Board



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May 3, 2011

California Department of Fish and Game
Attn: Mark Stopher, Environmental Program Manager
601 Locust Street
Redding, CA 96001

Re: Suction Dredging Draft Subsequent Environmental Impact Report

Dear Mr. Stopher:

El Dorado County has a rich history of gold mining and has provided a viable and prosperous vocation for hundreds of thousands of miners, producing tens of millions of ounces of gold since its discovery in 1848. With the passage of SB 670 in August 2009 all suction dredging operations ceased in the State of California, further depressing the local economy. Equally concerning, is the California Department of Fish and Game (DFG) and their proposed rules and regulations with the recent release of the Draft Subsequent Environmental Impact Report (DSEIR) on suction dredging. The proposed rules and regulations will adversely affect thousands of jobs and diminish the value of the mineral estate of thousands of private property owners who hold title to land in California.

Clearly ignored in the DSEIR is the macroscopic effect of naturally occurring processes to our rivers and streams versus the microscopic effect of the few thousand miners who extract gold from these waterways (SNF Cooley 1995). It is well documented that the dredging industry has little effect on our waterways. In fact, while producing a culturally important and significant benefit to our economy, they contribute significantly to the cleaning of waste and toxic metals from the bottom of the river beds cost free to the taxpayers; which is an important fact to be considered.

One of the newly proposed regulations would prohibit dredging within three feet of the wetted edge of a stream and would impact mining on nearly every private or public small stream in California. This proposal affects a "Takings" of the only economically viable means to extract gold (suction dredging) from the mineral estate on private gold bearing properties containing a small stream. There is nothing in the DSEIR to substantiate the need for the addition of this rule and is a violation of our Constitution and property rights.

More specific to El Dorado County, the new regulations prohibit dredging in Weber Creek and Rock Creek, which have continually produced significant amounts of gold on private property and federal mining claims.

California Department of Fish and Game

May 3, 2011

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The complete prohibition of small-scale mining on these historically productive streams is not acceptable or scientifically substantiated in the DSEIR.

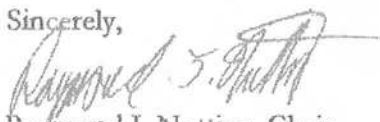
Another issue of great concern to those in El Dorado County is the proposed rule changes affecting mining on the Cosumnes River Watershed. Changes to seasonal restrictions already in place since 1994, should not be imposed without irrefutable, science based, peer-review studies supporting such changes. These proposed changes negatively impact the economic viability of many small-scale mining businesses on private property as well as Federal Mining Claims. The regulation, which only allows work between September 1 through January 31 annually, is effectively a complete prohibition of mining on affected streams. Mining becomes progressively more difficult due to extreme low water flows that occur by early fall, on the streams zoned E, that render equipment virtually inoperative. As well, rapidly cooling seasonal temperatures make it physically impossible to work in a wet environment while in the upper reaches of the Cosumnes River i.e.; Camp Creek and Middle Fork Cosumnes near Pi Pi Valley. Also, valuable equipment and lives will be put in peril by the ever-present threat of flash floods which occur often in the fall at these higher elevation streams. This questionable, proposed new zoning, which imposes a fall and winter "season of operation", is not acceptable, justified or practical. This unwarranted rule change is downright hazardous to physical lives as well as the economic well-being of the productive miners in El Dorado County.

Until the passage of SB 670, hundreds of ounces of gold were mined annually by professional dredgers from the South Fork American River (River) in El Dorado County. In 1994, DFG reduced the dredging from "Year Round" to a June 1 through October 15 annual season despite the repeated requests to provide a justifiable reason for this closure. There is a misconception that suction dredging has a negative effect on the aquatic life in the River, but this has never been proven. In fact, the uneven spiked releases from Chili Bar Dam between 250 Cubic Feet per Second (CFS) and 4,000 CFS results in a fluctuation on the River, and creates a severely compromised biological zone of over four feet in elevation, which has a severe negative affect on the aquatic and riparian life. Given this fact and the knowledge there are hundreds of thousands of additional recreational users, it is without merit that the dredging community be held responsible for negative effects to our River corridor and its habitats. Unless the DFG and the new DSEIR can produce objective, fact based reasons for seasonal or nozzle size restrictions of suction dredging on this environmentally compromised river, we recommend professional and recreational miners be allowed to resume their valuable work year round. Unjustified, arbitrary regulations are not acceptable.

As it stands, the DFG's currently proposed new rules and regulations appear to ignore scientific facts and documented independent peer reviewed studies that have been recognized and noted in the present and past EIR processes. The El Dorado County Board of Supervisors requests that all conclusions be objective and accurate and not based on conjecture, but reflect the actual scientific facts and peer reviewed studies.

Thank you for your consideration.

Sincerely,



Raymond J. Nutting, Chair
El Dorado County Board of Supervisors

SIERRA COUNTY

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3 May 2011

Mr. Mark Stopher
Environmental Program Manager
California Department of Fish and Game
601 Locust Street
Redding, CA 96001

Subject: Draft Subsequent Environmental Impact Report

Dear Mr. Stopher:

The Sierra County Board of Supervisors has completed its review of the proposed "Draft Subsequent Environmental Impact Report (SEIR) for the Suction Dredge Permitting Program" in California. This review included two (2) publicly noticed Board of Supervisor meetings and one (1) publicly noticed town hall meeting within the community of Downieville.

First and foremost, the Board of Supervisors expresses its deepest concerns over the public outreach program and effort undertaken by the Department of Fish and Game to understand the impacts of the December 2006 court order; the impacts of implementing the ban on suction dredging brought about in SB 670 effective August 6, 2009; and, the impacts that will be caused by implementation of the proposed suction dredge rules that serve to amend the 1994 regulations and impose further restrictions on suction dredging operations. The public meetings conducted by the Department of Fish and Game were held in urban regions which are far-removed from the counties and communities that will receive the burden and impacts of the proposed regulations. Rather than Fresno or Sacramento, conducting a public meeting in Downieville or Quincy, located in the heart of the motherlode and possessing a deep and rich cultural history based in the gold mining industry, would have produced a more accurate and realistic understanding of the impacts that the proposed regulations will have on the population and economy of the region.

The Board of Supervisors offers the following comments with respect to the draft subsequent environmental impact report:

1. We find the dredging seasons proposed for most Sierra County waterways as draconian and lacking scientific rationale. The approach proposed in the regulations fails to provide specific scientific evidence that resulted in the seasonal classification of streams in Sierra County, and this broad-brushed approach appears

to be based on a general "species restriction" that implements a one-size-fits-all approach. This fails on its face to take into consideration the specific habitats, local environmental conditions, and other factors. The SEIR provides only superficial evidence and fails to provide the scientific evidence and the burden of proof to support the proposed classification of streams. The premise is flawed at best. As just one example, several streams are classified by elevation, void of any scientific data or findings of yellow legged frog existence and the resultant dredging season is proposed as September 1 through January 31. Now consider the high elevations, extreme weather conditions, access restrictions, and the time of year and you have the perfect recipe for a de facto closing of most of the tributaries involved.

2. We question the need for capping the number of statewide permits at 4,000. This is an arbitrary number and the document fails to show a legitimate justification for such a limit. This decision is not based on scientific findings and is an arbitrary and capricious decision. We would also suggest that such a limit could effectively impact this industry by allowing non-mining interests to purchase and hold permits with no intent of ever dredging. This arbitrary limit appears to be in direct contradiction to the rights afforded under federal law for mineral discovery and development. The number of permits issued in the 1980's and 1990's was over 10,000 from information we have obtained and this severely reduced number is arbitrary at best and creates significant social and economic impacts to the County and region.
3. We question the need for many of the specific restrictions otherwise placed on the dredges and operations themselves (four inch intake nozzles, three foot dredging rules, screen size restrictions, winching permits, gas cans). In each instance, we question the overall need and science behind the decisions made. As just one example, the 3/32 inch screen on intakes is unreasonable and there is no evidence presented in the SEIR of proximate cause that suction dredging has ever entrained fish or aquatic life and the diameter of the hole would constantly clog with debris rendering the small suction dredge inefficient and inoperable.
4. The Forest Service-Pacific Southwest Region under the signature of the Regional Forester by letter dated December 4, 2009 to the Department of Fish and Game responded to a "request for comment" issued by the Department on October 26, 2009 (Notice of Preparation) and expressed opinions as to the impacts of suction dredging on the Tahoe National Forest. With all due respect to the Regional Forester, we strongly challenge the information he has provided concluding that State Highway 49 in Sierra County has reached "full parking capacity". There is no evidence to support this conclusion and for the Department to rely upon this "opinion" is inappropriate. The National Forest is currently engaged in a corridor management analysis and NEPA document to manage corridor occupancy but to suggest "full capacity" has been reached is inaccurate. The Tahoe National Forest is an agency that no longer has staff assigned on a daily basis within western Sierra County and the information they provided only highlights their misunderstanding of reality in western Sierra County. Further, the suggestion is also made that the campsite use by dredging interests causes an impact to recreational camping. This is categorically false as campsites used by dredging interests are authorized under

individual permit issued by the Tahoe National Forest for locations outside of recognized campgrounds. These dredgers are prohibited from occupying a campsite in an organized campground for more than 14 days and by virtue of the Forest Service permit are therefore authorized to camp. There is no impact to recreation from these individual campsites authorized by the Forest Service otherwise, why would the agency issue them in the first place?

5. The SEIR fails to identify that the Department or its consultants have ever conducted or participated in the conducting/monitoring of dredging operations to understand and quantify the potential impacts of dredging. This creates a significant credibility issue for any stated findings or conclusions.
6. The proposed "three foot rule" prohibits dredging three feet from either bank of a stream and for those jurisdictions that possess numerous small streams that have historically been allowed to be dredged, this new rule is a de facto closure of all small streams less than six (6) feet across. There is no scientific data to support this regulation and in the absence of such data, the conclusion and proposed regulation is arbitrary.
7. The SEIR fails to provide any accurate understanding of impacts to the County social and economic structure. Dredging is not simply a recreational pursuit. While recreational mining is a viable recreational pursuit similar to rafting, off-highway and over-the-snow access, fishing, and so forth, it is also a very viable component of the County economy. Dredging is a livelihood in Sierra County and a sole source of income for many individuals and families. It is a valid resource industry that not only represents the culture and heritage of the gold country region but is a significant economic indicator in the County. In Sierra County alone, there are over 1500 mining claims on the unsecured property assessment roll valued at 9.6 million dollars and contributing a significant property tax payment to the County. This condition coupled with the commerce created by these claims (local purchases, fuel purchases, food and restaurant use, purchases of supplies, perishables, and other needs, medical attention, school children attending schools, home owners and/or renters, volunteer firemen, and so many other interactions) provides that the use is a significant socio-economic contributor to a community and an economy that has experienced a downturn in the wake of a decimated timber industry, and is trying to survive. The potential loss or reduction in recording fees, in transient occupancy tax, in mineral claim sales and development, on taxable property, and in local commerce is not accurately stated nor shown anywhere in the SEIR. The SEIR should show this economic contribution to the local economy. It fails to recognize this condition and belittles the significance of the economic contribution that suction dredging provides to the State of California, to the County of Sierra, and to the local economy.
8. Site visits directed under the Fish and Game Code require the interaction of Departmental Game Wardens for routine, follow-up, and enforcement visits to a dredging site. We have a very fundamental concern that the expectation for existing wardens to increase their respective activities as a result of the regulations outlined in the SEIR to include multiple site visits to a dredging site is both unrealistic and far exceeds the resources of the limited number of Wardens in the field today. The County embraces a process that is administered through site visits from Departmental Game Wardens as this assures flexibility, adaptability, and

recognition of a wide range of local conditions adapted to a wide range of dredging practices; but to legislate the proposed set of regulations as a one-size-fits-all process and to remove the flexibility and interpretation that a Warden can make in the field is self-defeating.

Sierra County is a County of 3,200 persons, one of just three California Counties that has lost population as counted in the recent 2010 census. When one takes a look at the overall environment health of the County and human impact on that environment, it is one of those rare special places in California that has had minimal impact by human behavior. With a great decrease in what was Sierra County's traditional economies of logging and mining over the last thirty years, our local economy struggles just to survive with the limited tourism industry that remains along with an agricultural economy on its eastern side.

There is little doubt to this Board that all human behavior has some impact on the environment. When we look at that minimal interaction within the boundaries of Sierra County, your proposed restrictions to what was once a surviving industry (both professional and recreational), is frustrating to say the least. While Sierra County and her businesses will immeasurably be harmed by the implementation of these proposed restrictions (as it has been by the outright ban of dredging for the last 18 months), one need not look far to be frustrated by far bigger impacts to the environment, impacts that are left in place and left unchecked by California's over-reaching environmental protection laws. Whether it be a four lane transcontinental highway bisecting the Sierra, or any number of multi-story concrete dams harnessing public waterways and blocking the natural spawning fisheries, those impacts remain unchecked while a reactionary public policy "plays" with the relatively minor impacts of minimal suction dredging in one of California's most rural regions.

We would seek to have the Department look at the activity of suction dredging not in a perfect world, but the real world in which all Californians live. Using the standards that you propose for suction dredging, both for those wishing either to make a living from it or just wishing to enjoy the activity as a recreational hobby, we would be curious to know just how many other daily pursuits of Californians would be curtailed ...interstate highways, transcontinental aircraft, or the daily commute of the masses in the greater Los Angeles, San Diego, and San Francisco bay area.

Sincerely,

SIERRA COUNTY
BOARD OF SUPERVISORS



LEE ADAMS
CHAIRMAN OF THE BOARD