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Mr. Eric Wilson
Bureau Chief
Idaho Department of Lands
300 N 6th Street, Suite 103
Boise, ID 83702

DEPT. OF LANDS

JUL 16 2019

BOISE, IDAHO

Dear Mr. Wilson;

Thank you for the opportunity to participate in and comment on the rulemaking effort currently underway by the Idaho Department of Lands related to the Mined Land Reclamation Act. The following comments were developed by U.S. Forest Service minerals subject matter experts present during rulemaking sessions during the month of May held in Boise, Idaho as well as coordination with minerals program managers and administrators working in Idaho's National Forests within the Northern and Intermountain Regions.

Through the negotiated rulemaking process, participants have been able to actively engage in voicing concerns and proposing real-time modifications to the draft rule. The comments prepared herein are offered in response to Temporary Rule-Draft #1 presented by Idaho Department of Lands (IDL) dated June 10, 2019, and subsequent to the negotiated sessions attended in Boise through May 29, 2019.

001. TITLE AND SCOPE

Section 6 of Idaho Code, 47-1506 (2)(c) states that no operator who is required to submit an operating plan for a mining operation to an entity of the federal government shall be required to submit an operating plan to the board. As stated, this provision shall apply to all lands, regardless of surface or mineral ownership, covered by the operating plan submitted to the entity of the federal government. In the current draft of the rule, this is not adequately expressed. The U.S. Forest Service recommends expanded explanation be offered in the scope and applicability of the rule to maintain the legislative intent as stated above. Plans of Operations submitted to the U.S. Forest Service pursuant to 36 CFR 228A and 228C require details pertaining to mine and facility closure, reclamation, and post-closure responsibilities. The U.S. Forest Service welcomes collaboration with the State of Idaho regarding administration of operations and reclamation; however, the agency feels this would provide clarification within the rule and avoid potentially duplicative administrative roles and processes without such elucidation.

05. APPLICABILITY

The U.S. Forest Service recommends the language throughout the final rule clearly reflect the rule's applicability to exploration, all mining operations, *and closure of those operations*, which include the permanent closure of cyanidation facilities on all lands in the state. We appreciate the title of the rule has been modified to *Rules Governing Mined Land Reclamation*, indicating that the rule applies to all operations and not only operations that employ cyanide at their processing facilities, as formerly named.

010. DEFINITIONS

The Idaho Department of Lands is adhering to State of Idaho Executive Order 2019-02, Red Tape Reduction Act, the intent of which, in part, is *to undertake a critical and comprehensive review of the agency's administrative rules to identify costly, ineffective, or outdated regulations*. In reviewing working drafts of the rule many definitions will not be carried forward in the new rule. The U.S. Forest Service recommends that all applicable and appropriate definitions are maintained within the new rule and consolidated within Section 010 in order to avoid operators and various agency administrators searching through both statute and the rule. Definitions and the overall text of the final rule should also reflect applicability for all mining operations or processing facilities, including but not limited



to cyanidation. The U.S. Forest Service recommends the following definitions be maintained or added with the offered italicized modifications;

- **02. Best Management Practices.** Practices, techniques or measures developed, or identified, by the *permitting agency* and identified in the state water quality management plan, as described in IDAPA 58.01.02, "Water Quality Standards," which are determined to be a practicable means of preventing or reducing pollutants to a level compatible with water quality goals *and state water quality standards*.
- **05. Discharge.** Any spilling, leaking, emitting, escaping, leaching, or disposing of a pollutant into the waters of the state *from a mining operation or process, including but not limited to cyanidation*.
- **10. Material Stabilization.** Managing or treating spent ore, tailings, other solids and/or sludges resulting from mining and beneficiation processes, including cyanidation, in such a manner to minimize waters or all other applied solutions from migrating through the material and transporting pollutants associated with the cyanidation facility ensuring that all discharges comply with all applicable standards and criteria.
- **Process Waters.** Any liquids which are intentionally or unintentionally introduced into any portion of the *mining process, including but not limited to cyanidation*. These liquids may contain cyanide or other minerals, meteoric water, ground or surface water, elements and compounds added to the process solutions for leaching or the general beneficiation of ore, or hazardous materials that result from the combination of these materials.

120 Financial Assurance Requirements for Mining

The U.S. Forest Service appreciates provisions within the proposed temporary rule that financial assurance provided to the federal government meeting the requirements of Section 120 shall be sufficient for the purposes of the rule.

122 Form of Financial Assurance

Trusts. The temporary rule identifies several forms of financial assurance acceptable to the State of Idaho. Section 05 discusses provisions for trusts. As identified in Idaho Code 47-1512(1) (2) it is recommended that the rule include a provision that names the State as the beneficiary of a trust. The U.S. Forest Service recommends that this provision identify the potential for the federal agency to be named as a co-beneficiary within the trust agreement. This will allow for cooperation and avoid duplicative financial assurances should a trust agreement initiate between the state and an agency of the federal government for an operation.

Corporate Guarantee. Per the U.S. Forest Service "Training guide for reclamation bond estimation and administration for mineral plans of operation authorized and administered under 36 CFR 228A" (2004) and agency directives pertaining to bonding and bond administration, a corporate guarantee is not an approved bonding mechanism accepted by the U.S. Forest Service and in the situation where the U.S. Forest Service would work cooperatively with the State to develop a bond, the Forest Service could not accept an assurance that is not acceptable to the U.S. Forest Service.

The U.S. Forest Service Intermountain and Northern Regions appreciates the opportunity to submit these comments. If you have questions please contact Heidie Torrealday at Heidie.Torrealday@usda.gov.

Sincerely,



for
NORA B. RASURE
Regional Forester