

Lawsuit To Challenge New Forest Service Regulations

The Forest Service has been busy lately, promulgating rules and regulations that will negatively impact small miners and prospectors. Public Lands for the People (PLP) is taking action to put a stop to it.

In "Forest Occupancy Decision Stands—US Forest Service Withdraws Appeal," (January 2004), we reported on the Lex-Waggener decision (US v. Ronald O. Lex and Ken Waggener; CR S-01-559 LKK; May 14, 2003).

In this case, Judge Lawrence K. Karlton, US District Court in Sacramento, reversed a lower court decision which wrongfully concluded that the miners were required to file a Notice of Intent for occupying their mining claim for more than 14 days in California's Klamath National Forest.

Judge Karlton said that section 36 of the Code of Federal Regulations (CFR), subsection 261, does not apply to miners who are camping on their claims while engaged in activities related to mining, rather it was meant to cover recreational activities. He stated, "As the regulations are currently structured, so long as no earth moving equipment or tree-cutting is involved, a miner can camp on his claim indefinitely..."

The Forest Service, fearing a loss of control that they never legally possessed, published an interim rule to address the above issue, under 36 CFR 228, in the Federal Register on July 9, 2004. The Federal Register Notice is entitled, "Clarification as to When a Notice of Intent and/or Plan of Operation Is Needed for Locatable Mineral Operations on National Forest System Lands."

According to the Federal Register notice, the emergency rule will be effective August 9, 2004, though comments will be accepted until September 7, 2004.

The Forest Service states they will soon require a Notice of Intent "in any situation in which a mining operation causes a surface disturbance, regardless of whether that disturbance is caused by mechanized earth moving equipment or the removal of timber."

"After a Notice of Intent is submitted, the District Ranger determines whether the proposed operations will likely cause a significant disturbance of surface resources. If the determination is that the proposal will likely cause a significant disturbance of surface resources, the operator is notified that a plan of operations is required."

It is our opinion that the emergency rule would place severe restrictions on small operators if it were allowed to stand. Small miners, at the very least, would be subjected to the time and expense involved with the filing of a Notice of Intent for a minimal disturbance. The Forest Service cannot currently respond to applications in a timely manner, and delays would be inevitable if they receive hundreds or even thousands of Notices. Worse yet, some miners could be subjected to the long delays and excessive costs involved with a Plan of Operation and financial guarantees (bonding) for minimal disturbances, all at the discretion of a District Ranger who may or may not be favorable to mining. Merely bringing camping equipment onto a mining claim could be considered a significant disturbance in the mind of a District Ranger.

We have reviewed the emergency interim rule with Public Lands for the People (PLP). Jerry Hobbs, president of PLP, stated there are numerous avenues open to challenge the interim rule. These include non-compliance with the Administrative Procedures Act, National Environmental Policy Act, Regulatory Flexibility Act, Paperwork Reduction Act, and others.

After much discussion, it appears the best course of action is to file suit against the Forest Service to stop the interim rule, and a mining attorney has already been retained.

This should be a concerted effort on behalf of miners and prospectors, rather than a disjointed effort involving lawsuits filed by small entities with limited funds. Several mining and prospecting companies have already started the fundraising effort, including *ICMJ's Prospecting and Mining Journal*, donating thousands of dollars to PLP to pay for the legal fees that will be incurred in this case.

Special thanks goes to Keene Engineering for starting the ball rolling with a \$5,000 donation.

Much more will be needed. I encourage you to support this effort personally, and by bringing it to the attention of any clubs or associations to which you belong.

I have personally met with the PLP board on several occasions. I have been very impressed with their knowledge of rules and regulations, and the ability of their members to apply this knowledge to successfully litigate government agencies. I encourage all miners and prospectors to support their efforts on behalf of all of us.

Contributions can be sent to: Public Lands for the People, 3700 Santa Carlotta St., La Crescenta, CA 91214.

A direct link to the Federal Register notice can be found on our website (www.icmj.com) under the Pending Rules, Regulations, Projects section. The Federal Register notice can also be located online at www.regulations.gov/freddocs/04-15483.htm

Concerned readers in need of further information can contact Sam Hotchkiss, Minerals and Geology Management Staff, at (703) 605-4852.

Comments can be emailed to:
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