

## Minerals Issues

Teck Washington, Inc., Pend Oreille Operations

**Objectors believe the draft EIS and final EIS misrepresents the current and future mining operations at the Pend Oreille Mine. It does not adequately take into account the number of mining claims staked and mineral potential in Recommended Wilderness or Research Natural Areas. By not accounting for mineral potential the Forest Service is not managing the lands for multiple uses. Objectors are not objecting to all Recommended Wilderness designations. Rather the objector has carefully tailored its objection to specifically identified mineralized sections, with known mineral potential and existing mining claims.**

### **Response:**

The FEIS, Volume 2, p. 669-679, addressed Minerals and Geology Resources. This includes mining activity under the 1872 Mining Law and Forest Service regulations at 36 CFR 228 Subpart A, “Locatable minerals include most metals and many non-metals (e.g., barite, fluorite, and gypsum). Most Federal lands not withdrawn from mineral entry are available for the exploration and development of locatable minerals by any U.S. citizen under provisions of the Mining Law of 1872, as amended. Mineral operators are entitled to reasonable access to these lands including, where reasonable and necessary, roaded entry. Forest Service control of such activities is limited to minimizing surface impacts and is accomplished via an environmental analysis of individual proposals (36 CFR 228 Subpart A).”

Objectors believe the draft EIS and final EIS misrepresents the current and future mining operations at the Pend Oreille Mine. The FS does not adequately take into account the number of mining claims staked and mineral potential in Recommended Wilderness or Research Natural Areas. The final EIS (Volume 2, page 670) states, “In 2014, Teck American Inc. resumed operations developing zinc deposits at the Pend Oreille Mine north of Metaline Falls, Washington. The mine operation has a 5-year operating life, with the potential to extend operations (Kramer 2014).” This is a quote from a Spokesman-Review newspaper article. It does not say it “assumes operations will soon cease”, it specifically says “with potential to extend operations.” This is the only information the Colville supplied related to the Pend Oreille mine. Although, Teck has staked mining claims on the Colville National Forest, all of their current mining and milling facilities are on private land, no current operation is under the permitting authority of the Colville National Forest.

The final EIS, Volume 2, pp. 671, further explained, “In general, mineral activity on the Forest is relatively minor in scope, given the size and scale of the national forest. Current locatable mineral activities on the Forest primarily include prospecting, exploration, claim staking, and limited mining for select commodities. This level of activity is expected to continue.” *This is not part of the record and could be added: Teck has filed no plans of operation for exploration or development on the Colville National Forest in the past seven years. They have submitted two Notices of Intent for non-ground disturbing, prospecting activities in the past three years.* The number of mining claims located on the Colville National Forest can vary from year to year. Teck points this out in their objection. The important effect to analyze and consider is the level of land disturbing mining activities.

Whether a claim exists or not the 1872 Mining law explicitly provides rights of exploration and entry, to explore and make discoveries upon public lands open to mineral entry and also to stake claims. The 1897 Organic Act authorized the Secretary of Interior (now, the Secretary of Agriculture) to manage the forest reserves and their use by the public. At 16 U.S.C. 479, the Act states, “Nor shall anything herein prohibit any person from entering upon such forest reservations for all proper and lawful purposes, including that

of prospecting, locating, and developing the mineral resources thereof: Provided, That such persons comply with the rules and regulations covering such forest reservations..” On National Forest System lands open to entry and mining claim location under the 1872 Mining Law, the 1897 Organic Act therefore affirmed the public’s right to enter, search for, and develop mineral resources. Nothing in the Act restricted this authority to only valid claims. The Organic Act specifically refers to prospecting, which occurs prior to establishing a valid claim. Whether claims are covering an area or not, unless the area is withdrawn from mineral entry the rights granted by the 1872 Mining Law are still in effect.

The areas recommended for wilderness and designated backcountry are open for mineral entry and suitable for locatable minerals development. (revised LMP, Tables 19 and 38, pp 102 and 152 ). The FEIS (Volume 2, p. 678) describes the effects of recommended wilderness on minerals as:

*Until Congress designates the recommended wilderness areas as wilderness, they remain open to mineral entry under the U.S. Mining Laws. Persons prospecting, locating, and developing mineral resources in NFS lands under the Mining Law of 1872, as amended, have a right of access for those purposes. Requests for access to mining claims located in recommended wilderness would be processed according to existing authorities, regulations, and policy. The claimant’s access (road or trail, motorized or non-motorized) would be specified in a Plan of Operations submitted to the responsible official (generally a district ranger). The Forest Service is not obligated to approve motorized access if the proposed means or modes of transport are not reasonably necessary for the work to be performed for prospecting, location, or mineral development. Access is not authorized until the responsible official signs the Operating Plan. Temporary roads could be authorized in recommended wilderness areas under an approved Plan of Operations only if that mode of access is determined reasonably necessary.*

The revised Colville Land Management Plan describes management areas in Chapter 3. Each management area description includes a table listing suitable uses. “Minerals, locatable” is a row in each table. Except for Congressionally designated Wilderness or “wild” under the Wild and Scenic Rivers Act, every area is considered suitable for locatable minerals unless withdrawn from mineral entry. In areas withdrawn from mineral entry the revised LMP states “Operations may be approved where valid existing rights are proven” (p. 143). Currently the only area withdrawn from mineral entry

The objector is concerned limitations on temporary and permanent road construction would effectively prevent most mineral exploration and development in these areas. This concern is site-specific and will be addressed in any future Plan of Operations submitted by the objector for any activity in any area of the Colville National Forest. The Plans will be processed according to existing authorities, regulations, and policy.

The FEIS, Volume 2, pp. 672, described mineral activity environmental impacts, “Generally, prospecting and early exploration activities have little effect on other resources because of greater flexibility of access and equipment use at that stage. Actual mineral extraction may have minimal to great interaction with other resources, depending upon the location, the mineral being removed, and the process and type of equipment used. For example, a small underground mine, shipping ore directly to an existing offsite mill or smelter without processing and located in a general forest area, would have few effects. On the other hand, a large open pit mine and milling operation, located in wildlife habitat could potentially have a much greater effect on other resources.

Teck also mentioned the Halliday Fen Research Natural Area (RNA). This RNA was established in January 1999. The RNA was withdrawn from mineral entry in 2004, expiring on September 10, 2024. There are mining claims within the boundary of the RNA. If a Plan of Operations was proposed in this

area, the Forest Service would be required to complete a valid existing right determination prior to approving the plan.

Through the Mining and Minerals Policy Act of 1970 (30 U.S.C. 21a) Congress declared it is the United States' policy to encourage private enterprise in development of sound domestic mining, minerals, metal and mineral reclamation industries. The Act also encourages orderly and economic development of domestic mineral resources to assure industrial, security and environmental needs. The revised LMP does not reduce the rights under the 1872 Mining Law as described above. The rights under the 1872 Mining Law continue to exist for lands Recommended for Wilderness, Proposed Research Natural Areas, and Backcountry in the revised LMP. If any of these lands are formally withdrawn from mineral entry, it will be subject to valid existing rights.

FLPMA (Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.)) recognizes that public lands should be managed for domestic sources of minerals under the multiple-use mandate. The objector operates mines in Metaline Falls, Washington, and Red Dog, Alaska, with multiple claims in the Metaline area. Recommended Wilderness Areas, Research Natural Areas, and Backcountry will not be withdrawn from mineral entry as a result of the revised LMP. If Congress designates the recommended wilderness as Wilderness, the lands would be withdrawn from mineral entry subject to valid existing rights. The lands are being managed for multiple uses.

### **Conclusion:**

No issues have been identified in analysis of laws, regulations, and policies governing mining activity as described in the proposed Colville National Forest Plan.

### **POSSIBLE INSTRUCTIONS (if any):**

- Language could be added to the ROD assuring the public these lands are still open to mineral entry and as such the Forest Service will process proposed plans of operation in accordance with law, regulation and policy. If any of the areas are withdrawn from mineral entry by Congress or other means, the withdrawal would be subject to valid existing rights.

Add in the Forest and Community setting:

“The Colville National Forest contains lands rich with minerals. Developing mineral resources, especially gold, lead and zinc, is part of the history of northeastern Washington and is tied to the settlement of the area in the mid-1800s. Development of these resources has provided local jobs and income and provided a supply of these minerals in response to public demand.”

There may be some other additions in the ROD to assure mining is an important resource.

**NOTE:** Teck holds 549 claims on NFS lands in Pend Oreille County and others on BLM. The NFS claims date from 1 claim in 1900, 141 claims in 2000, 18 claims in October 2018, and the balance between 1906 and 1996. Teck holds 357 claims on BLM lands with a similar location schedule, and 51 claims in 2000 and 9 in October 2018. Two spreadsheets are available containing the names, Township/Range/Section, and the location dates of claims directly held by Teck Cominco American and Teck American Incorporated. There are other claims and mining companies that hold claims in the same areas as Teck. They also may hold leases on or claims on private lands. In addition, Teck has lease agreements with other mining claim holders and companies but the specifics are unknown.

Teck has filed zero proposed plans of operations on the Colville National Forest in the past 7 years. The Forest has acknowledged 2 Notices of Intent from Teck in the past 3 years for non-ground disturbing

activities (ground gravity and aerial surveys). Teck has no current operations or facilities on the Colville National Forest

### **Associated Comments:**

In 2016, the Proposed Revised Plan and the Draft Environmental Impact Statement (Draft EIS) did not even acknowledge Teck's operations at the Pend Oreille Mine. The Final EIS now acknowledges the mine's operations, but it seems to incorrectly assume that operations will soon cease. Final EIS at p. 670.

The Forest Service fails to appreciate and acknowledge that Teck's mineral explorations have continued during the many years that the Service has been working on the Revised Plan. Teck has staked more than 200 mining claims since 2011. In fact, since 2016 when the Forest Service issued the Draft EIS Teck has staked claims on almost 300 additional acres of Forest land, yet the Final EIS has not updated the mining claim information presented in 2016 draft. Compare Final EIS at 671 (stating that there are approximately 750 mining claims covering 14,980 acres) with Draft EIS at 546 (stating that there are 748 mining claims covering 14,980 acres). In particular, Teck has staked additional mining claims that render the designation of some areas as Wilderness or Research Natural Areas inappropriate.

Even if the specific properties at issue met all three of the required tests- capability, availability and need - Teck would still object to their designation as Recommended Wilderness because this designation would interfere with significant mining activities and, therefore, is contrary to law.

Congress has long declared as a matter of policy that the Federal Government shall "foster and encourage ... the orderly and economic development of mineral resources."30 U.S.C. § 21a.

Public lands are to be "managed in a manner which recognizes the Nation's need for domestic sources of minerals." 43 U.S.C. § 1701(12). Forest Service policy reflects these statutory commands through the concept of "multiple use." When it comes to planning, Forest Service regulations provide that the "first priority for planning to guide management of the National Forest System is ... to provide for a wide variety of uses, values, products and services. 36 C.F.R.

§219.2(a). The Recommended Wilderness designations are directly contrary to these statutory and regulatory commands.

As the Forest Service acknowledges, its regulations require that land management plans "provide for multiple-use and sustained yield of goods and services from the National Forest System in a way that maximizes long-term net public benefits in an environmentally sound manner." Draft Record of Decision at 13 (quoting the 1982 Planning Rule 219.1). The specific wilderness designations to which Teck objects do not provide a net public benefit. On the contrary, the public would lose the benefit of mineral exploration and development and get no corresponding gain. Significantly, Teck is not objecting to all Recommended Wilderness designations. Rather it has carefully tailored its objection to specifically identified mineralized sections, with known mineral potential and existing mining claims.

The Final EIS also states that although adjustments were made to exclude some areas of mining claims , "the proposed revised forest plan still encompass existing mining claims that are located deeper within the recommended wilderness area boundaries." Final EIS at 1112. This statement is misleading. Most of the areas of mining claims identified by Teck are found along the boundaries of the Recommended Wilderness designations, not deep within the designated areas. See Figures 4(a) and 4(b). There is no reason these areas should not have been excluded as well.

The Final EIS fails to include a reasonably thorough discussion of the impact of Recommended Wilderness designations on mining activities in the area. The Final EIS does not mention that there are mineral resources and mining activity in the areas designated as Recommended Wilderness. It does not explain how the limitations on temporary and permanent road construction would effectively prevent most mineral exploration and development in these areas. In fact, these designations would severely restrict, if not completely eliminate the ability to utilize these mineral resources.