

MICHELLE LUJAN GRISHAM
GOVERNOR

JAMES C. KENNEY
CABINET SECRETARY

April 21, 2026

The Honorable Randy Moore
Chief
U.S. Forest Service
1400 Independence Ave. SW
Sidney R. Yates Building
Washington, DC 20250

**RE: Comments of the New Mexico Environment Department on the U.S. Forest Service Proposed Rule:
Locatable Minerals, RIN 0596–AD32**

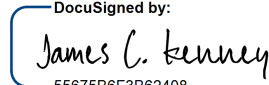
Dear Chief Moore,

The New Mexico Environment Department (NMED) appreciates the opportunity to comment on the U.S. Forest Service’s (USFS) proposed rule, “Locatable Minerals,” published in the Federal Register as RIN 0596–AD32 (Vol. 91, No. 34, Friday, February 20, 2026).

As the primary state agency charged with protecting New Mexico’s air, land, and water resources, NMED is deeply concerned that the proposed rule’s shift toward a three-tier operational system and the inclusion of broad federal preemption language may undermine established state environmental protections. While we support the goal of improving regulatory efficiency, the Department opposes the proposal in its current form, as it risks weakening oversight of mining activities that directly impact New Mexico’s critical surface and groundwater resources and potentially infringes upon the State’s delegated authority to enforce rigorous environmental standards as explained in our attached comments.

Thank you for listening to state leaders and I ask for your support by incorporating our comments into the final rule.

Sincerely,

DocuSigned by:

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James C. Kenney
Cabinet Secretary

Cc: Courtney Kerster, Senior Advisor, Office of Governor Michelle Lujan Grisham
Tracy Parker, Acting Director, Lands, Minerals, and Geology Management

New Mexico Environment Department Comments to the U.S. Forest Service Proposed Changes

Background: The proposed rule seeks to modernize the U.S. Forest Service’s regulations for locatable mineral operations on National Forest System lands, which have not seen a significant revision since 1974. The Agency identified a need for these updates after a 2016 Government Accountability Office (GAO) report found that poor-quality mine plan submissions were significantly slowing down the review process and straining limited agency resources. To address this, USFS is replacing the subjective “likely to cause a significant disturbance” threshold for requiring a plan of operations with a clear, three-tier system consisting of “limited operations,” “operating notices,” and “plans of operations.” These changes are intended to provide greater clarity for operators, particularly regarding exploration activities that often have minor environmental impacts but currently require a full plan of operations.

The desired outcome of these revisions is to improve the efficiency and transparency of the mineral operation review process while minimizing adverse impacts on surface resources to the fullest extent practicable. By requiring pre-submittal meetings and mandating that all submissions be complete before environmental analysis begins, USFS aims to reduce processing times and better inform consultations with federally recognized tribes. Furthermore, the proposal seeks to align USFS rules more closely with Bureau of Land Management (BLM) regulations to reduce confusion for operators working across multiple federal jurisdictions. Ultimately, these updates are intended to support federal policy by securing reliable and sustainable supplies of strategic and critical minerals while ensuring that National Forest lands remain protected for their mandated multiple uses.

Comment 1: Requirement for Enhanced Financial Assurance to Prevent New Legacy Liabilities.

New Mexico continues to bear the environmental and public health burdens of hundreds of legacy uranium mines that were abandoned without adequate reclamation. The proposed rule’s reliance on qualitative “surface resource protection” standards at § 228.10 is insufficient for modern uranium exploration and mining, which involve high risks of long-term groundwater contamination and radiological hazards. NMED demands that for any operation involving uranium or other hazardous minerals, USFS must mandate full-cost, third-party reclamation bonds that specifically include long-term water treatment and radiological monitoring consistent with NMSA § 9-7A-16. The Agency must explicitly state that “financial assurance” will be calculated based on the worst-case reclamation scenario to ensure that New Mexico taxpayers are never again responsible for the “legacy of neglected mines” due to insufficient operator accountability.

Comment 2: Mandatory Consideration of Cumulative Impacts from Past Mining Activities.

New Mexico’s landscape, particularly in the Grants Mineral Belt, is already severely impacted by past mining activities that remain unreclaimed or only partially remediated. Proposed § 228.6(a)(5)(vi) acknowledges that a plan of operations should include information on “past mining activities,” however, the rule lacks a mechanism for USFS to deny or significantly restrict new permits based on the cumulative environmental degradation of a watershed. USFS must require a comprehensive “Legacy Impact Assessment” for any proposed operation in areas with existing mine scars or contaminated aquifers. This assessment must prove that new activities will not exacerbate existing groundwater

plumes or impede ongoing state and federal cleanup efforts at nearby legacy sites and ensure the proposed rule does not inadvertently allow new operations to complicate the restoration of New Mexico's vital resources.

Comment 3: Mandatory Integration of Restoration and Protection in Reclamation Standards.

Section 228.10(c)(9)(iii)(A) must be revised to explicitly require that reclamation plans address both the restoration and protection of surface and groundwater. The current draft focus on “protection” in isolation is insufficient and creates an internal conflict with the Agency’s own definition of reclamation under Section 228.3. In the arid West, simply “protecting” remaining water during operations is insufficient; the post-mining landscape must be restored to a condition that supports pre-existing beneficial uses and hydrological functions. Failure to mandate restoration standards in the reclamation plan invites permanent degradation of aquifers and stream depletion, shifting the long-term environmental burden from the operator to the states. USFS must harmonize these sections to ensure that “reclamation” is not merely a stabilization exercise, but a comprehensive recovery of the hydrological resource.

Comment 4: Critical Omission of Outstanding National Resource Waters (ONRWs).

The omission of Outstanding National Resource Waters (ONRWs) from Sections 228.4(b)(2)(iv)(E), 228.4(c)(8)(iii), and 228.6(a)(5)(v) is a major regulatory oversight that must be corrected to prevent unlawful degradation of New Mexico’s most pristine waterbodies. While the proposed rule identifies CWA Section 303(d)-listed (impaired) waters, it fails to account for ONRWs, which are afforded the highest level of protection under federal anti-degradation policy (40 CFR 131.12) and State law (20.6.4.9.D NMAC).

NMED strongly recommends that the presence of ONRWs be a mandatory disclosure during pre-submittal meetings; an approved Plan of Operations be strictly required for any activity within an ONRW watershed; and detailed protection strategies for ONRWs should be a required component of the Plan of Operations. Without these inclusions, USFS risks authorizing “limited operations” or expedited plans that could irreversibly damage waters of exceptional ecological and recreational significance, in direct violation of established anti-degradation requirements.

Comment 5: Clarification of Section 401 Certification for Mine Plans of Operation.

Section 228.6(d)(3) requires urgent clarification to explicitly state that the federal authorization of the mine plan itself is the trigger for Section 401 Water Quality Certification. The current phrasing is ambiguous and risks perpetuating the misconception that certification is only required for ancillary CWA Section 402 or 404 permits.

Under the EPA’s 2023 Clean Water Act Section 401 Water Quality Certification Improvement Rule (88 FR 66558), a USFS “Plan of Operations” is a federal license or permit that may result in a discharge into waters of the United States. To ensure administrative efficiency and prevent costly litigation or project delays, USFS must align its language with the 401 Improvement Rule. The rule must clearly state that no Plan of Operations shall be approved until the certifying State authorities issue a certification or waiver specifically for the activities described in that plan. Failing to clarify this will lead to jurisdictional confusion and may result in the unauthorized discharge of pollutants into New Mexico's water resources.

Comment 6: Inadequacy of Qualitative Resource Protection Requirements for Groundwater and Sensitive Ecosystems.

While the proposed rule at § 228.10(c)(4) mandates that operators conduct operations to minimize water pollution and changes in water quantity, NMED is concerned that these standards remain largely qualitative in nature. In New Mexico, the protection of groundwater-dependent ecosystems and deep aquifer systems requires rigorous, quantitative baseline data and enforceable performance standards to prevent irreversible degradation. Relying on qualitative descriptions of how an operator will “minimize” impacts, as suggested in § 228.10(a), may lead to inconsistent application across different National Forest System lands and fails to provide the regulatory certainty needed to protect the State's critical water supplies.

Comment 7: Risks to Water Quality from Expanded “Limited Operations” Thresholds.

The proposed rule creates a new category of “limited operations” that do not require prior notice to or approval from USFS. Certain activities excluded from notice, such as those involving the removal of vegetation for line-of-sight activities or geophysical surveys, could lead to localized erosion and unmonitored impacts on shallow groundwater recharge zones. Furthermore, although suction dredging is specifically excluded from limited operations due to its potential for turbidity and impacts on fish habitat, the broader “minimal impact” threshold for other activities at § 228.4(a) lacks sufficient site-specific oversight to ensure that collective small-scale operations do not result in cumulative degradation of waterbodies already listed as impaired under Section 303(d) of the Clean Water Act.

Comment 8: Insufficient Detail in Management of Acid-Forming and Toxic Materials.

Proposed § 228.10(c)(5) requires operators to handle potentially acid-forming or toxic materials in a manner that “minimizes the likelihood of acid formation and toxic and other deleterious leachate generation.” However, the rule does not explicitly require a mandatory geochemical characterization or long-term hydrogeological modeling for all operations that involve the disturbance of such materials. Given New Mexico’s history with legacy mining impacts, NMED recommends that USFS strengthen these requirements by necessitating a detailed water management and treatment plan—specifically including pipelines and facilities for waste rock management as defined in § 228.3(k)—for any operation where the potential for acid rock drainage is identified during the pre-submittal meeting or completeness review.

Comment 9: Failure to Address Cumulative Impact on Class I Areas and Visibility.

The proposed rule does not sufficiently account for the proximity of locatable mineral operations to Mandatory Federal Class I Areas, which in New Mexico include iconic landscapes such as Carlsbad Caverns National Park, Bandelier National Monument, and the Gila Wilderness. Under the Clean Air Act, these areas—including national parks exceeding 6,000 acres—are afforded the highest level of protection to prevent visibility impairment from regional haze. The “minimal impact” thresholds established in § 228.4(a) for limited operations fail to require a cumulative assessment of precursor pollutants (NO_x, SO₂, and PM_{2.5}) that contribute to secondary aerosol formation. NMED recommends

that USFS mandate a proximity-based screening tool for any operation within 50 kilometers of a Class I Area to ensure that increased dust from haul roads and emissions from stationary mining equipment do not degrade “natural obscuration” levels or violate the State’s Regional Haze Oversight.

Comment 10: Inadequate Fugitive Dust Controls for Mining-Related Surface Disturbance.

The proposed revisions to § 228.10(c) regarding “surface resource protection” provide broad, qualitative language but lack specific enforceable requirements for fugitive dust (PM10) mitigation. In the arid environment of New Mexico, mining activities—particularly those involving stripping, heavy equipment traffic, and ore processing—can significantly contribute to localized air quality degradation. Given that many National Forest lands are adjacent to communities and sensitive Class I airsheds, NMED asserts that any Plan of Operations must include a detailed Dust Control Plan. This plan should include quantitative triggers for halting operations during high-wind events to prevent the transport of particulate matter into protected parklands and wilderness areas where air quality must be maintained in its most pristine state.

Comment 11: Absence of Mandatory Monitoring for Critical Mineral Processing Emissions.

While the proposed rule seeks to streamline the acquisition of strategic and critical minerals, it does not adequately address the air quality implications of onsite processing and “reasonably incident” uses. The processing of certain minerals can result in the release of hazardous air pollutants (HAPs) and volatile organic compounds (VOCs). NMED is concerned that the “efficiency and transparency” goals of the proposed rule may lead to the bypassing of rigorous state-level air quality modeling for operations that USFS deems to have “insignificant” impacts. For operations near National Parks and large wilderness areas, USFS must require an Air Quality Related Values (AQRV) analysis to assess potential impacts on nitrogen and sulfur deposition in addition to traditional NAAQS compliance. Without such a requirement, the proposed rule risks undermining the long-term ecological health and visibility of New Mexico’s most sensitive protected environments.