



File Code: 2800

Date: December 12, 2018

Mr. Barry Murray  
3703 East Alsea Highway  
PO Box 678  
Waldport, OR 97394

Dear Mr. Murray,

This letter is in response to your correspondences with the Siuslaw National Forest regarding your proposal to develop a mining operation on lands managed by the Forest Service. In your correspondences it appears you believe this material to be subjected to authorities under the United States Mining Laws, as amended, as well as Forest Service regulations at 36 CFR 228 Subpart A. Those laws and authorities address locatable minerals.

From what can be gathered from your proposal, the material you are interested in is a common variety under Forest Service regulations and is subjected to disposal under 36 CFR 228 Subpart C. Additional considerations beyond those referenced in your proposal are required before the Forest Service would consider revisiting disposal authorities. Forest Service regulations at 36 CFR 228 Subpart C outline categories under which disposal may be authorized. Additionally, "the Forest Service amended its Mineral Material Disposal regulations...to establish five categories of minerals, based on use, as disposable under the Mineral Material Sale Act of 1947, rather than available for location under the mining law (Maley; "Mineral Law," 6<sup>th</sup> ed., 1996, p.624). Forest Service regulations at 36 CFR 228.41(c) states "[t]his subpart applies to mineral materials which consist of petrified wood and common varieties of sand, gravel, stone, pumice, pumicite, cinders, clay, and other similar materials. Such mineral materials include deposits which, although they have economic value, are used for agriculture, animal husbandry, building, abrasion, construction, landscaping, and similar uses. This subpart also applies to other materials which may not be minerals but are produced using mining methods, such as peat. The categories of these materials...are: 1. Agricultural Supply and Animal Husbandry Materials; 2. Building Materials; 3. Abrasive Materials; 4. Construction Materials; and 5. Landscaping Materials.

United States Federal courts as well as Interior Board of Land Appeals have addressed material classification considerations. Criteria have been established for determining the differences between common and uncommon varieties of stone, and between common variety (mineral material) and locatable minerals classifications. McClarty v. Secretary of Interior, 408 F.2d 908 (9<sup>th</sup> Cir. 1969) and IBLA72-118: "These guidelines...are as follows: (1) there must be a comparison of the mineral deposit in question with other deposits of such minerals generally; (2) the mineral deposit in question must have a unique property; (3) the unique property must give the deposit a distinct and special value; (4) if the special value is for uses to which ordinary varieties of the mineral are put, the deposit must have some distinct and special value for such use; and (5) the distinct and special value must be reflected by the higher price which the material commands in the market place. The Court of Appeals...explained 'value' by indicating that price cannot be the exclusive way of proving that a deposit has a distinct and special

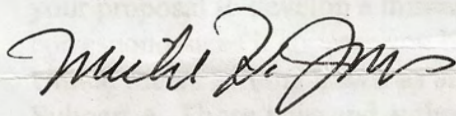


economic value attributable to the unique property of the deposit.”

The Forest Service recognizes that you may have identified what you believe are special or unique values and/or uses for the material. However, because this proposal addresses mineral materials, the Forest Service cannot evaluate your proposal under the U.S. mining laws or locatable mineral authorities at 36 CFR 228 Subpart A.

If you have any additional questions, please contact Jared Richey at [jrichey@fs.ed.us](mailto:jrichey@fs.ed.us) or at 541-367-5168.

Sincerely,



MICHELE JONES  
District Ranger

...gathered from your proposal, the material... is a common... Forest Service regulations and is subject to disposal under... Subpart A. Additional considerations beyond those referenced in your proposal are required... Forest Service would consider revisiting disposal authorities. Forest Service regulations at... CFR 228 Subpart C outline categories under which disposal may be authorized... the Forest Service amended its Mineral Material Disposal regulations... available... categories of minerals based on use, as disposable under the Mineral Material Sale... within the... for location under the mining law (Malloy, "Mineral Law," 5th ed., 1998, p. 104). Forest Service regulations at 36 CFR 228.41(a) states "This subpart applies to mineral materials which consist of petrified wood and numerous varieties of sand, gravel, silt, peat, pumice, clinker, clay, and other similar materials. Such mineral materials include deposits... although they have economic value, are used for agriculture, animal husbandry, building, physical, construction, landscaping, and similar uses. This subpart also applies to other materials which may not be minerals but are produced using mining methods, such as peat. The categories of these materials... are: 1. Agricultural Supply and Animal Husbandry Materials; 2. Building Materials; 3. Abrasive Materials; 4. Construction Materials; and 5. Landscaping Materials.

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