

## **Supporting Statement A**

### **Use and Occupancy under the Mining Laws (43 CFR Subpart 3715)**

**OMB Control Number 1004-0169**

**Terms of Clearance:** None

#### **General Instructions**

A completed Supporting Statement A must accompany each request for approval of a collection of information. The Supporting Statement must be prepared in the format described below, and must contain the information specified below. If an item is not applicable, provide a brief explanation. When the question “Does this ICR contain surveys, censuses, or employ statistical methods?” is checked "Yes," then a Supporting Statement B must be completed. OMB reserves the right to require the submission of additional information with respect to any request for approval.

#### **Specific Instructions**

#### **Justification**

- 1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection.**

This information collection enables the Bureau of Land Management (BLM) to regulate the use and occupancy of unpatented hardrock mining claims. The mining laws that are key to this information collection include the General Mining Law (30 U.S.C. 21 – 54), which provides that a person, association, or corporation may acquire an interest in public lands via the proper “location” of a mining claim or mill site. Location is the act of taking or appropriating a parcel of land by posting a location notice on the mining claim or millsite, recording the location notice, and marking the mining claim or millsite boundaries on the ground.

Assessment work is required in order to maintain a mining claim, but is not a requirement to maintain a mill site claim. Assessment work includes, but is not limited to, drilling, excavations, driving shafts and tunnels, sampling (geochemical or bulk), road construction on or for the benefit of the mining claim; and geological, geochemical, and geophysical surveys. A claimant is allowed to undertake such activities before obtaining a patent (i.e., exclusive title to the locatable minerals), and indeed may be required to undertake such activities in order to avoid claim forfeiture. However, some early claimants abused the location process by engaging in activities such as establishing saloons or cutting timber on their mining claims. The United States brought actions against those claimants, and courts found that location of a mining claim

does not give the claimant the right to engage in activities other those that are reasonably necessary for mining purposes.

Abuses continued despite these rulings. Some of the uses taking place on unpatented claims included permanent residences, summer homes, town sites, orchards, farms, a nudist colony, restaurants, a rock museum, a real estate office, hunting and fishing lodges, filling stations, curio shops, and tourist camps. Use and Occupancy under the Mining Laws, Final Rule, 61 FR 37116 (July 16, 1996). These abuses prompted Congress to enact the Surface Resources Act.

Section 4 of the Surface Resources Act (30 U.S.C. 612) provides that a mining claim located under the mining laws after July 23, 1955 “shall not be used, prior to issuance of patent therefor, for any purposes other than prospecting, mining or processing operations and uses reasonably incident thereto.” It also provides that the United States, its permittees, and its licensees have the right to use the surface of unpatented mining claims for the management and disposition of vegetative resources, for the management of other surface resources, and for access to adjacent land.

Section 302(b) of the Federal Land Policy and Management Act (FLPMA) (43 U.S.C. 1732(b)) directs the Secretary of the Interior to take any action necessary to prevent unnecessary or undue degradation of the public lands. The BLM has found that an illegal use of an unpatented mining and mill site claim “inherently constitutes ‘unnecessary or undue degradation’ of the public lands.” 61 FR at 37118.

Sections 1 and 3 of the Unlawful Occupancy and Inclosures of Public Lands Act (43 U.S.C. 1061 and 1063) are also relevant to this information collection. Section 1 prohibits inclosures (such as fences) constructed on public lands by any person without claim or color of title made or acquired in good faith. Section 3 prohibits any person “by force, threats, intimidation, or by any fencing or inclosing, or any other unlawful means,” from preventing or obstructing “free passage or transit over or though the public lands.”

In the regulations at 43 CFR subpart 3715, the BLM spelled out the conditions and standards for proper use and occupancy of unpatented mining claims, enumerated both permissible and prohibited activities, and provided for administrative remedies and appropriate penalties. In essence, the regulations at 43 CFR subpart 3715 provide that residency and non-mining commercial activities are normally not authorized by the mining laws, and require claimants to prove that an activity is incidental to mining.

**2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection. Be specific. If this collection is a form or a questionnaire, every question needs to be justified.**

The information-collection requirements are 43 CFR 3715.3-2 and 3715.4. Section 3715.3-2 applies to claimants who want to propose occupancy of unpatented mining claims or mill sites.

This regulation requires the respondent to give the BLM a detailed map that identifies the site and the placement of the following items:

- Where proposed temporary or structures for occupancy would be placed;
- The location of and reason the respondent would need enclosures, fences, gates, and signs intended to exclude the general public; and
- The location of reasonable public passage or access route through or around the area to adjacent public roads.

The proposal also must include a written description of how the proposed occupancy is reasonable incident and describe the above three items in detail, as well as the estimated period of use of the structures, enclosures, fences, gates, and signs, the schedule for removal and reclamation when operations end.

The respondent submits the information to the BLM only once. The respondents are mining claimants and operators of prospecting, exploration, mining, and processing operations. Under 43 CFR 3715.3-4 through 3715.3-6, a claimant may initiate occupancy or use only after the BLM concurs with the proposal.

Sections 3715.4(a) through 3715.4(c) apply to claimants with pre-existing use or occupancy. This regulation requires compliance with these rules by August 18, 1997. Claimants engaged in pre-existing use or occupancy must notify BLM in writing of the existence of the occupancy.

Sections 3715.4(d) applies to all claimants who have “no existing occupancies, but are engaged in uses of the public lands under the mining law.” Under this regulation, the BLM may determine if existing uses comply with the standards in subpart 3715 during normal inspection visits to the area, or upon review of notices and plans of operations filed in accordance with 43 CFR subpart 3809.

**3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden and specifically how this collection meets GPEA requirements.**

The information we require is unique to both the site of the milling or mining operations and to the operator. The information is not available elsewhere. The BLM will keep the information on file to avoid repetitive future requests for information. Keeping the information on file minimizes the need to require additional filings.

The BLM will handle changes in actual, on-the-ground activities as a part of its surface management program. The changes will relate to the type, the intensity, or the location of the boundaries of a mineral activity. Once the BLM approves occupancy, the need for the

occupancy will likely continue throughout the changes. Continued maintenance of the information will eliminate the need for additional filings.

The responses to the information collection are in the form of statements, sketches, plans, drawings and maps, which are submitted manually. The BLM is considering the development of processes for remote filing and automated processing/storage of filings. The BLM is also considering the use of the Geographic Information System, which incorporates digitized data from the maps, plans, or sketches submitted by the respondent.

**4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.**

Since circumstances vary with each exploration and mining operation, there is no other available information that we may use in lieu of that supplied as a part of each filing and the ensuing consultation. The information collected for use and occupancy of public lands under the authority of the Mining Law, the Surface Resources and Multiple Use Act (“Surface Resources Act”) of 1955 (PL. 167), and FLPMA, is not collected under any other program within the BLM. The Forest Service collects similar information for the management of surface disturbing activities within National Forest lands that are authorized by the mining law, and like the BLM the Forest Service uses the authority of the Surface Resources Act. The Forest Service’s rules are at 36 CFR 228.

**5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.**

While the BLM does not collect information on whether respondents are small businesses or other small entities, the BLM estimates that approximately 95 percent (i.e., 158 of the 166 respondents: 148 for the “new occupancies” collection and 10 for the “existing occupancies” collection) have fewer than 500 employees, and therefore are small entities under regulations of the Small Business Administration at 13 CFR 121.201.

The burdens associated with this control number are the same, whether for an individual operator or a multi-national corporation. The provisions of the Mining Law and FLPMA, and the regulatory requirements, are the same whether the operator is an individual, a small mining company, or a multi-national corporation. Therefore, the BLM could not devise any special methods to minimize the information collection burden on small businesses or other small entities. However, the estimated burden of 2 hours for response does not seem onerous.

**6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.**

Failure to collect the required information may result in:

- (1) Occupancy not justified by prospecting, mining, or processing activities would proceed in violation of the law;
- (2) Management of occupancies would not occur;
- (3) Uses unrelated to mining that could be authorized by other regulations would not be regulated, and thus could result in the loss to the Federal Government of rental payments or lease payments;
- (4) Reclamation may not occur, resulting in unnecessary or undue degradation of public land in violation of law; or
- (5) The party responsible for clean up, closure, or reclamation may not be available, and the burden may fall on the Federal Government to reclaim the area.

**7. Explain any special circumstances that would cause an information collection to be conducted in a manner:**

- \* **requiring respondents to report information to the agency more often than quarterly;**
- \* **requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**
- \* **requiring respondents to submit more than an original and two copies of any document;**
- \* **requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;**
- \* **in connection with a statistical survey that is not designed to produce valid and reliable results that can be generalized to the universe of study;**
- \* **requiring the use of a statistical data classification that has not been reviewed and approved by OMB;**
- \* **that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**
- \* **requiring respondents to submit proprietary trade secrets, or other confidential information, unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

The information collected is consistent with guidelines in 5 CFR 1320.5.

**8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and in response to the PRA statement associated with the collection over the past three years, and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.**

**Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.**

**Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every three years — even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.**

On June 16, 2014, the BLM published the required 60-day notice in the Federal Register (79 FR 33592), and the comment period ended August 11, 2014. The BLM received no comments.

During the approval period, the BLM consulted with the following respondents to solicit comments on the burden hour and cost estimates, availability of data, frequency of collection, clarity of instructions; recordkeeping, disclosure and on the data elements to be recorded, disclosed, or reported. The information is provided for each applicant, so the frequency of collection is determined by the number and frequency of the respondent's applications. The burden estimates in Question 12 reflect their input in these consultations.

The following company representatives were contacted as part of BLM's consultation effort:

1. Krause Thacke Mining LLC, Rick Saga, Partner and President, 702-582-7685, Las Vegas, NV
2. Larry Schreiner, 360-388-7593, Yuma, AZ
3. Fred R. Salisbury, Goldwheel Enterprises, 435-632-1468

**9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.**

The BLM does not provide payments or gifts to respondents.

**10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.**

The respondent's confidentiality is protected to the extent consistent with the Freedom of Information Act (5 U.S.C. 552).

Under the privacy provisions of the E-Government Act of 2002, individuals/respondents were informed that providing the information is required in order to obtain or retain a benefit. The BLM has firewalls to protect website access, strong security and password protection of the information in the database, and other security measures to protect electronic information.

**11. Provide additional justification for any questions of a sensitive nature, such as sexual**

**behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.**

Respondents are not required to answer questions of a sensitive nature.

**12. Provide estimates of the hour burden of the collection of information. The statement should:**

- \* Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.**
- \* If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens.**
- \* Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included under “Annual Cost to Federal Government.”**

As shown at Table 12-1, below, the weighted average hourly cost is \$31.26. This cost was determined using national Bureau of Labor Statistics data for “all occupations” at: [http://www.bls.gov/oes/current/oes\\_nat.htm](http://www.bls.gov/oes/current/oes_nat.htm). The benefits multiplier of 1.4 is supported by information at <http://www.bls.gov/news.release/ecec.nr0.htm>.

**Table 12-1 – Hourly Cost Calculation**

<b>A. Occupational Category</b>	<b>B. Mean Hourly Wage</b>	<b>C. Total Mean Hourly Wage (Column B x 1.4)</b>
All Occupations	\$22.33	\$31.26

The estimated annual reporting burdens for this collection are shown below in Table 12-2:

**Table 12-2 - Estimates of Hour and Cost Burdens**

A. Type of Response	B. Number of Responses	C. Time Per Response	D. Total Hours (Column B x Column C)	E. Annual Cost (Column D x \$31.26)
Proposed occupancy 43 CFR 3715.3-2	74	2 hours	148	\$4,626
Notification of existing use or occupancy 43 CFR 3715.4	10	2 hours	20	\$625
Totals	84		168	\$5,251

**13. Provide an estimate of the total annual non-hour cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden already reflected in item 12.)**

- \* The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information (including filing fees paid for form processing). Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.
- \* If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.
- \* Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.

Respondents are not required to purchase additional computer hardware or software to comply with these information requirements. There is no filing or processing fee associated with this information collection.

**14. Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information.**

**Table 14 -1 — Hourly Cost Calculations**

The hourly cost to the Federal Government is based on data at: [http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/14Tables/html/GS\\_h.aspx](http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/14Tables/html/GS_h.aspx). The benefits multiplier of 1.5 is implied by information at: <http://www.bls.gov/news.release/ecec.nr0.htm>.

<b>A. Position</b>	<b>B. Pay Grade</b>	<b>C. Hourly Pay Rate (\$/hour)</b>	<b>D. Hourly Rate with Benefits (Column C x 1.5)</b>	<b>E. Percent of the Information Collection Completed by Each Occupation</b>	<b>F. Weighted Avg. (\$/hour) (Column D x Column E)</b>
Clerical, unskilled	GS-5, Step 5	\$15.05	\$22.56	5%	\$1.13
Technician (geologist)	GS-11, Step 5	\$27.58	\$41.37	80%	\$33.10
Field Office Manager	GS-13, Step 5	\$39.31	\$58.97	15%	\$8.85
<b>Totals</b>				<b>100%</b>	<b>\$43.06</b>

The Table below shows the annualized Federal costs for each collection. The estimated time spent to process the information collections is based on the BLM's experience. The weighted average hourly wage associated with these information collections is shown at Table 14-1, above.

**Table 14-2 — Estimated Annual Cost to the Government**

<b>A. Type of Response</b>	<b>B. Number of Responses</b>	<b>C. Time Per Response</b>	<b>D. Total Hours (Column B x Column C)</b>	<b>E. Total Wage Cost (Column D x \$43.06)</b>
Proposed Occupancy 43 CFR 3715.3-2	74	10	740	\$31,864
Notification of Existing Use or Occupancy 43 CFR 3715.4	10	10	100	\$4,306
<b>Totals</b>	<b>84</b>		<b>840</b>	<b>\$36,170</b>

**15. Explain the reasons for any program changes or adjustments in hour or cost burden.**

There are no program changes. We have adjusted the estimated overall number of responses as follows:

<b>A. Type of Response</b>	<b>B. Requested Responses</b>	<b>C. Approved Responses</b>	<b>D. Difference Between Requested and Approved Responses</b>
Proposed Occupancy 43 CFR 3715.3-2	74	156	-82
Notification of Existing Use or Occupancy 43 CFR 3715.4	10	10	0
<b>Totals</b>	<b>84</b>	<b>166</b>	<b>-82</b>

We have adjusted the estimated overall time burden as follows:

<b>A. Type of Response</b>	<b>B. Requested Time Burden</b>	<b>C. Approved Time Burden</b>	<b>D. Difference Between Requested and Approved Time Burden</b>
Proposed Occupancy 43 CFR 3715.3-2	148	312	-164
Notification of Existing Use or Occupancy 43 CFR 3715.4	20	20	0
Totals	168	332	-164

**16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.**

We will not publish the results of this collection.

**17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.**

Because this is a nonform collection, display of the expiration date is not applicable.

**18. Explain each exception to the topics of the certification statement identified in "Certification for Paperwork Reduction Act Submissions."**

There are no exceptions to the certification statement.