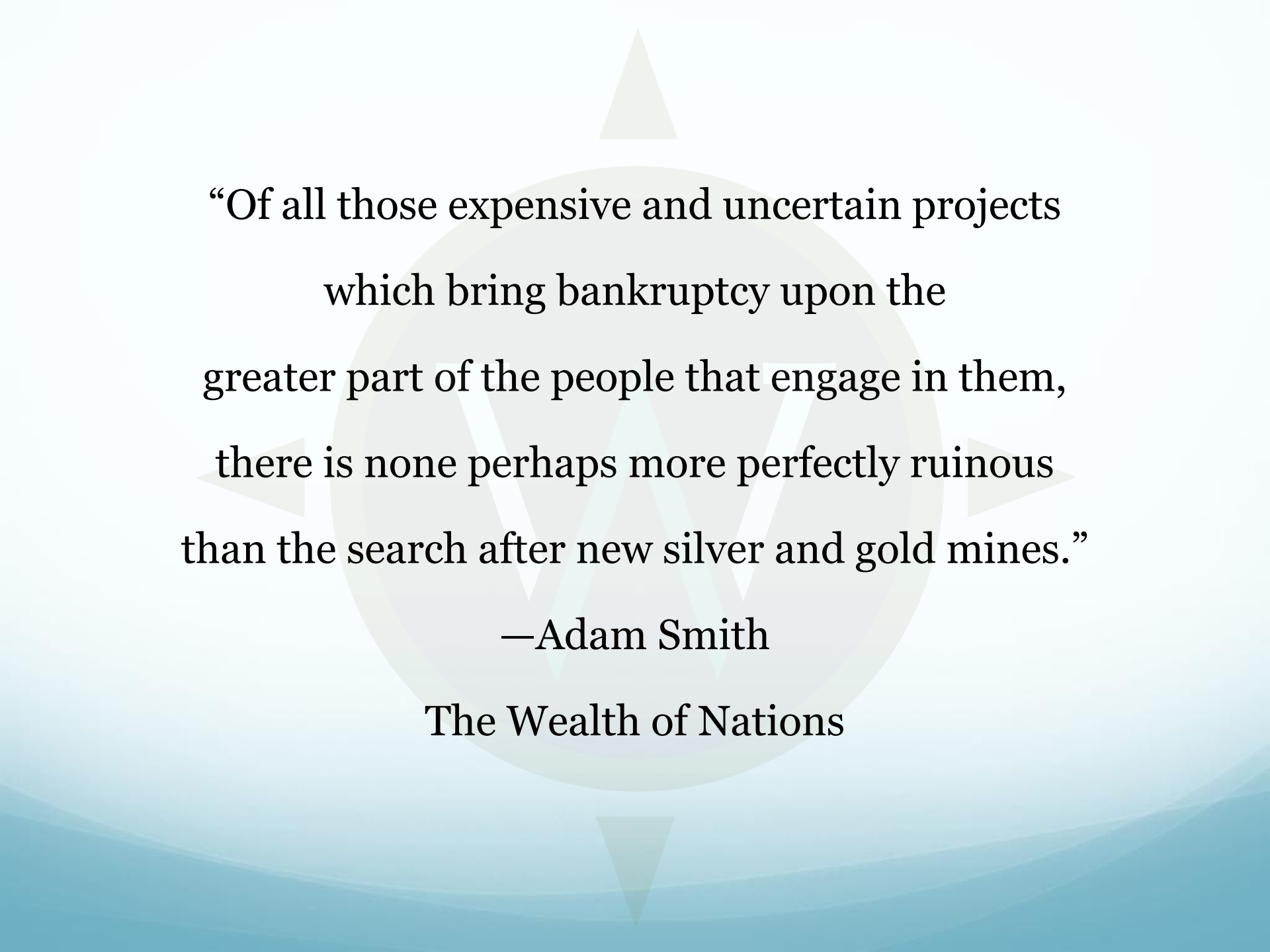




ADVOCATES for the West

Hard Rock Mining 101

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“Of all those expensive and uncertain projects
which bring bankruptcy upon the
greater part of the people that engage in them,
there is none perhaps more perfectly ruinous
than the search after new silver and gold mines.”

—Adam Smith

The Wealth of Nations

Hard Rock Mining 101 – Laws and Regulations

- Hardrock mining on federal public lands governed by series of overlapping environmental and land use statutes and regulations
 - General Mining Law of 1872 (1872 Mining Act)
 - Federal Land Policy and Management Act
 - 3809 Regulations – surface management
 - Forest Service Organic Administration Act of 1897
- Hardrock Mining 101 will examine the first three overlapping authorities, and set aside mining in the National Forests for another presentation

General Mining Law of 1972

- Promote mineral exploration and development on western federal lands
- Offer an opportunity to obtain a clear title to mines already being worked
- Settle the American West
- Codified the pre-1872 customs, codes and laws

General Mining Law of 1972 – Free Access/Right to Mine

- Free access to prospect for locatable minerals in public domain lands, and allows prospector, upon making a discovery, to stake a claim on mineral deposit
 - Applies to individuals and corporations
 - Public domain lands only, not acquired lands
 - No limit on number of claims an individual or corporation can locate
 - Claims held indefinitely
 - No requirement that mineral production ever commence
 - No royalty payment

General Mining Law of 1972 – Locatable Only

- Originally applied to most minerals, but now only applies to “**locatable**” minerals – e.g., metallic minerals (gold, silver, lead, copper, zinc, nickel, etc.) and nonmetallic minerals (fluorspar, mica, certain limestones and gypsum, tantalum, heavy minerals in placer form, and gemstones).
 - Leaseable fuel minerals – e.g., oil, gas and coal – were removed by Mineral Leasing Act of 1920
 - Leasable minerals on acquired lands – Mineral Leasing Act for Acquired Lands of 1947
 - Saleable minerals – e.g., sand, stone, gravel, and clay – were removed by Surface Resources Act of 1947
- Incomplete list of all locatable minerals because in 1873 the Department of the Interior began defining locatable minerals as those minerals that are:
 - recognized as a mineral by the standard experts,
 - are not subject to disposal under some other law, and
 - make the land more valuable for mining than for farming.

General Mining Law of 1972 – Claim-Patent System

- **Claim-Patent system built upon two underlying ideas:**
 1. The right to enter the public domain lands and prospect for and develop minerals in the future; and
 2. Without agency involvement at the front end
- **Five elements to the Claim-Patent System**
 1. Location of mining claims and sites
 2. Recordation of mining claims and sites
 3. Discovery of valuable mineral deposit
 4. Annual maintenance (assessment and fees) for mining claims and sites, and exceptions for assessment work for claimants with less than 10 claims
 5. Mineral patents

Mining Claims – Who/What/When/Where and How

What is a claim?

- A mining claim is a selected parcel of Federal land, valuable for a specific mineral deposit or deposits, for which you have asserted a right of possession under the 1982 Mining Act
- Lode claims (classic veins or lodes having well-defined boundaries) and Placer claims (deposits not subject to lode claims)

Who may stake a mining claim?

- A US citizen or a person with declared intention to become a US citizen, and corporation incorporated under State law

How does one locate a mining claim?

- Ensure an area is part of public domain and open for mineral entry – i.e., hasn't been withdrawn
- Stake and record – “distinctly and clearly marked” and recorded within 30 days with County and BLM state office
- Pay fees – nominal (e.g., \$15 recording fee, \$34 location fee, and \$140 initial maintenance fee, etc.)

Mining Claims - Discovery of Valuable Mineral Deposit

- **Location is not discovery** – SC – “location is the act or series of acts whereby the boundaries of the claim are marked, etc., but it confers no right in the absence of discovery, both being essential to a valid claim. *Cole v Ralph*, 252 U.S. 286, 296 (1920).
- To possess a valid mineral claim, claimant must discover a valuable mineral deposit
 - 1872 Mining Act does not define “valuable mineral deposit”
 - Prudent Man Rule – determines value based on whether or not a person will consider investing time and money to develop a potentially viable mineral deposit
 - Marketability Test – supplemental to PMR – requires claimant to show a reasonable prospect of making a profit from the sale of minerals from the claim or group of contiguous claims
- Once discovery established, claim is a possessory interest in the land valid against United States – unpatented mining claim is an interest only in the minerals in the land and not the land’s surface – US retains fee title in the land

Mining Patents -

- A mining patent transfers fee titled ownership of the surface estate to a third party, to be used for any lawful purpose
- A mining patent is not necessary to undertake mining operations
- Since 1994, Congress has enacted a yearly moratorium against BLM processing of new patent applications, with some grandfathering of existing patent applications
- For all intents and purposes, mining patents are a thing of the past
 - Crown Butte outside Yellowstone

Hard Rock Mining 101 – FLPMA

- FLPMA is basic organic act for BLM, and governs BLM's management of federal public lands
- FLPMA requires that “[i]n managing the public lands the Secretary shall, by regulation or otherwise, take any action necessary to prevent unnecessary and undue degradation of the lands.”
- In addition, BLM is obligated to manage certain public lands in CDCA to avoid “undue impairment.”
- FLPMA's UUD and “undue impairment” standards apply to mining and other land uses across the west.
- These two standards amended the 1872 Mining Act so as to “impair the rights of any locators or claims under the Act, including, but not limited to, rights of ingress and egress.”
- If mining claims cannot be utilized without violating these standards, FLPMA prohibits the development of these claims.

Hard Rock Mining 101 – Regulations

- Purpose of regulations are to implement FLPMA's UUD standard
 - Mineral Policy Center affirms Bush-era definition of UUD
 - “substantial irreparable harm” standard
- Three types of operations
 1. Casual use
 2. Notice-Level operations; and
 3. Plan-level operations
- **Casual Use**
 - Activities ordinarily resulting in no or negligible disturbance of the public lands or resources – e.g., collection of rocks, soil or mineral specimens using hand tools; metal detectors, battery –powered devices to detect minerals, etc.
 - No notification to BLM at all
 - Must reclaim any disturbance

Hard Rock Mining 101 – Regulations

- **Notice Level Operations**

- Operations causing surface disturbance of 5 acres or less
- Operator must submit complete notice of operations 15 days before beginning operations
- Notice effective for two years, with additional two year extension
- Modification needed to avoid UUD
- Upon expiration, cease operations except reclamation

**Figure 3.2-1 - Filing and Reviewing a Notice
(1 of 2)**

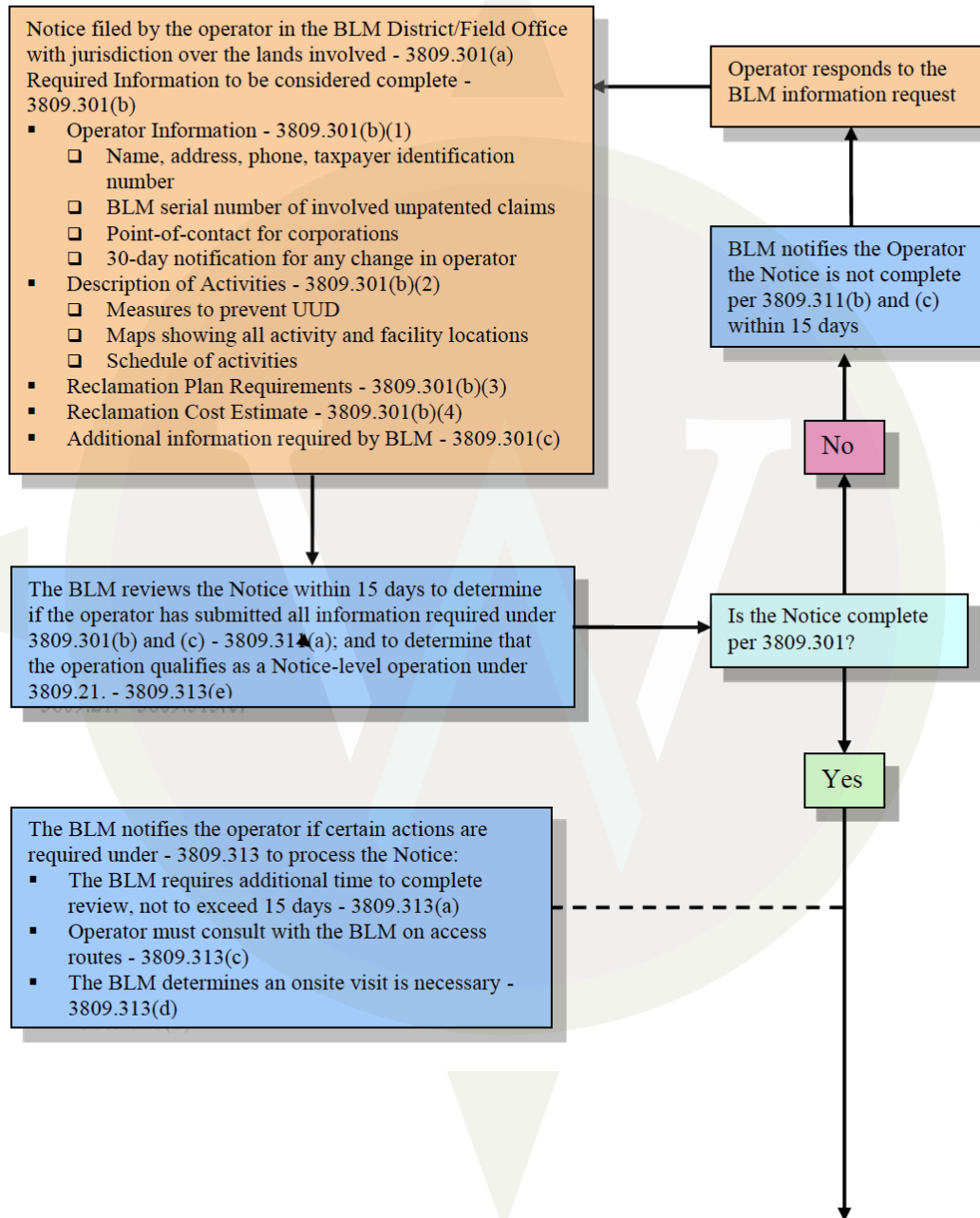
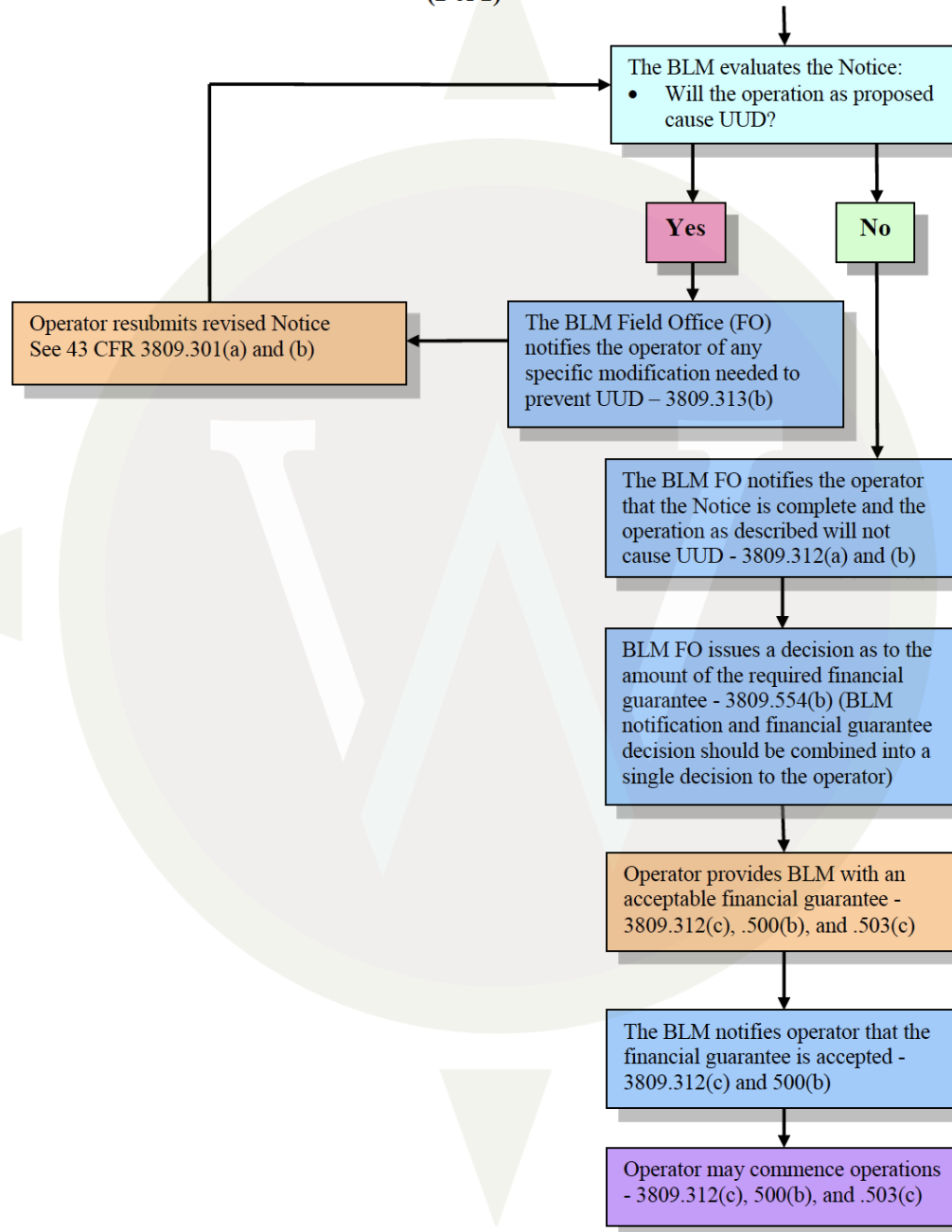


Figure 3.2-1
Filing and Reviewing a Notice
(2 of 2)



Hard Rock Mining 101 – Regulations

- **Plan-Level Operations**

- Operations causing greater than 5 acre surface disturbance, or anything greater than causal use in CDCA lands (“controlled” and “limited”), Wild and Scenic Rivers, WSAs, Wilderness, ACECs, National Monuments and National Conservation Areas
- Operator must have approved Plan of Operations (PoO) and submitted adequate financial guarantee before commencing operations.
- Prior to approving PoO, BLM prepares (1) completeness review; (2) environmental review; and (3) financial guarantee review.

Figure 4.2-2 - Plan of Operations -- Completeness Review

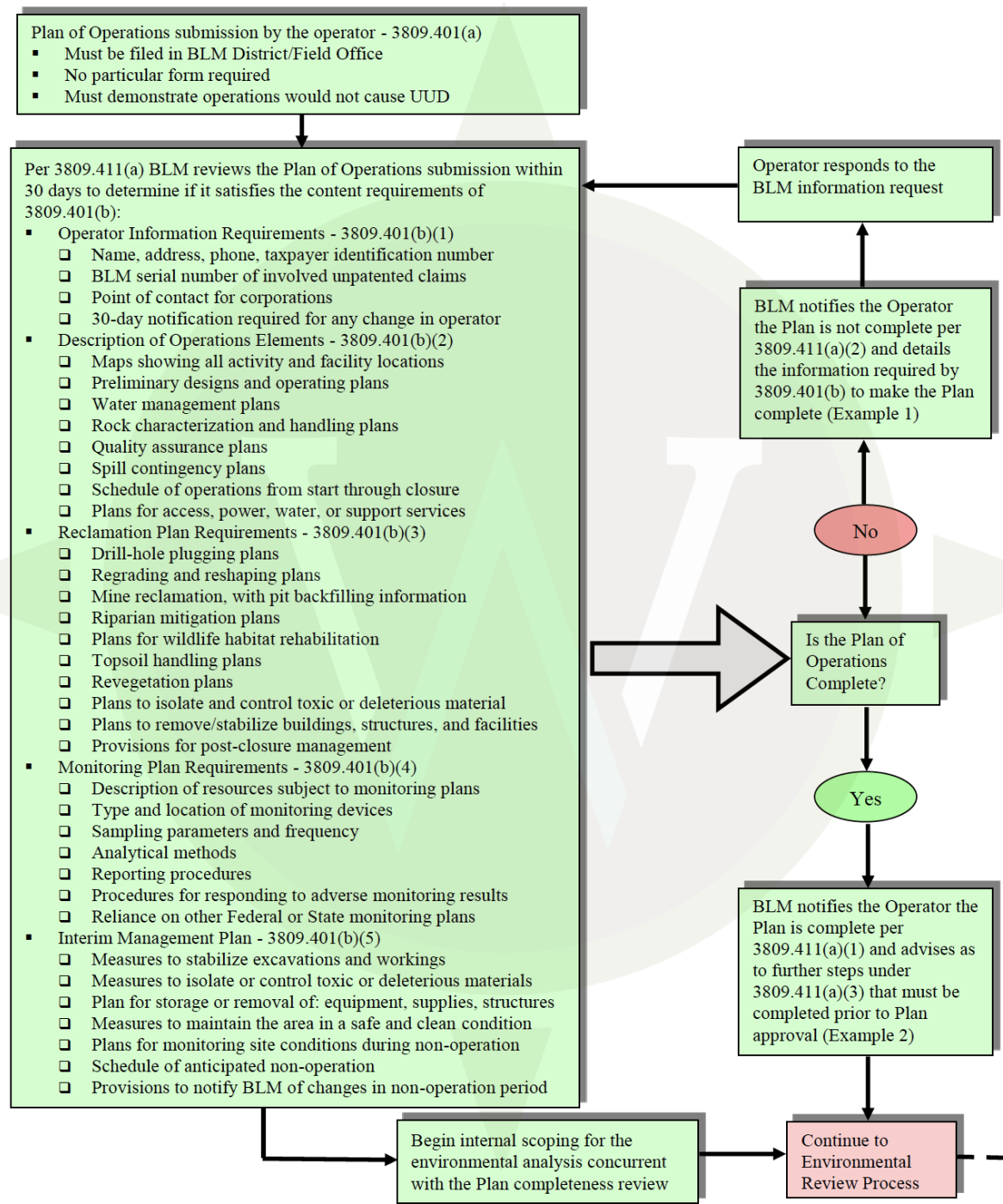


Figure 4.2-3 - Plan of Operations -- Environmental Review

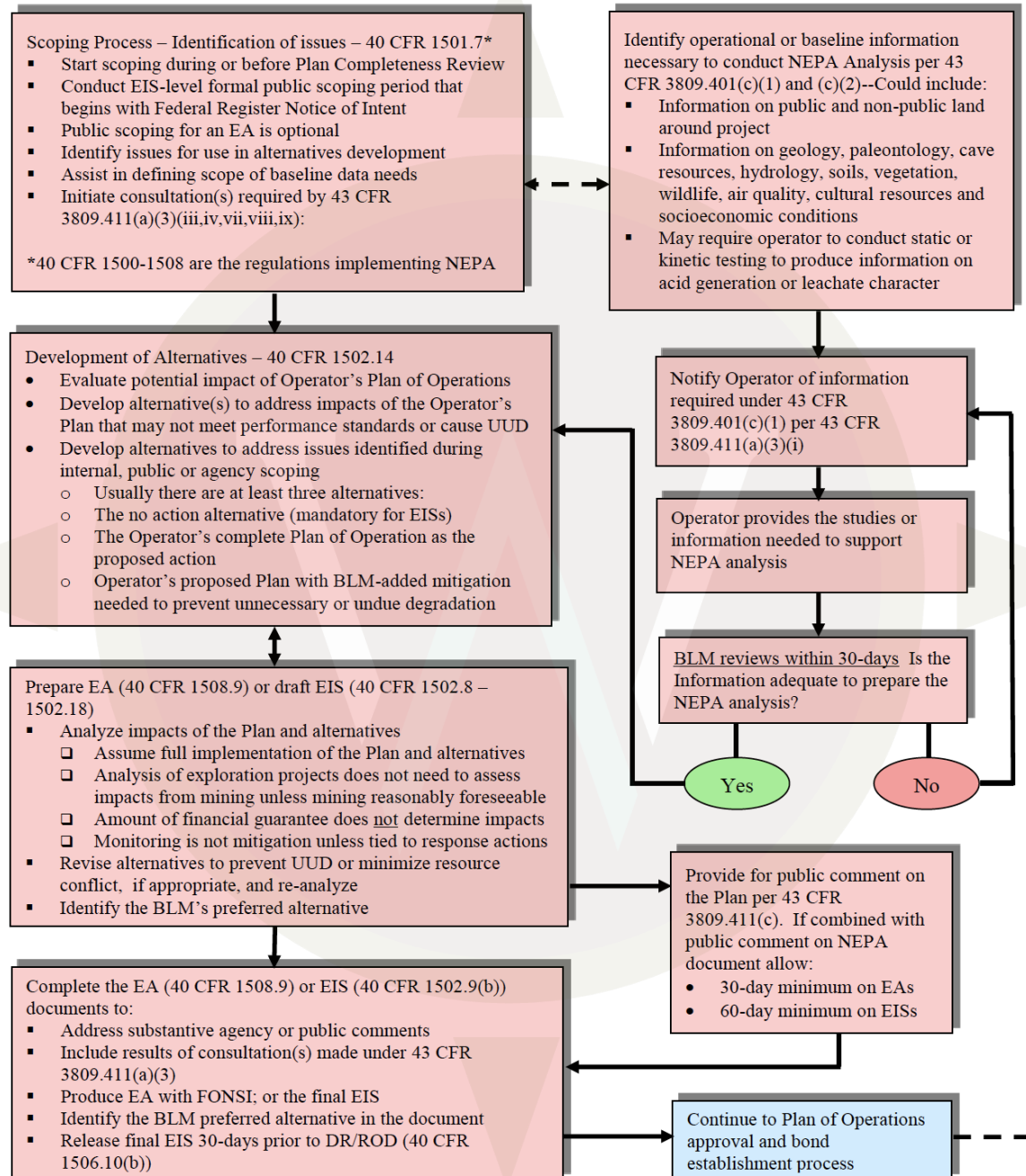
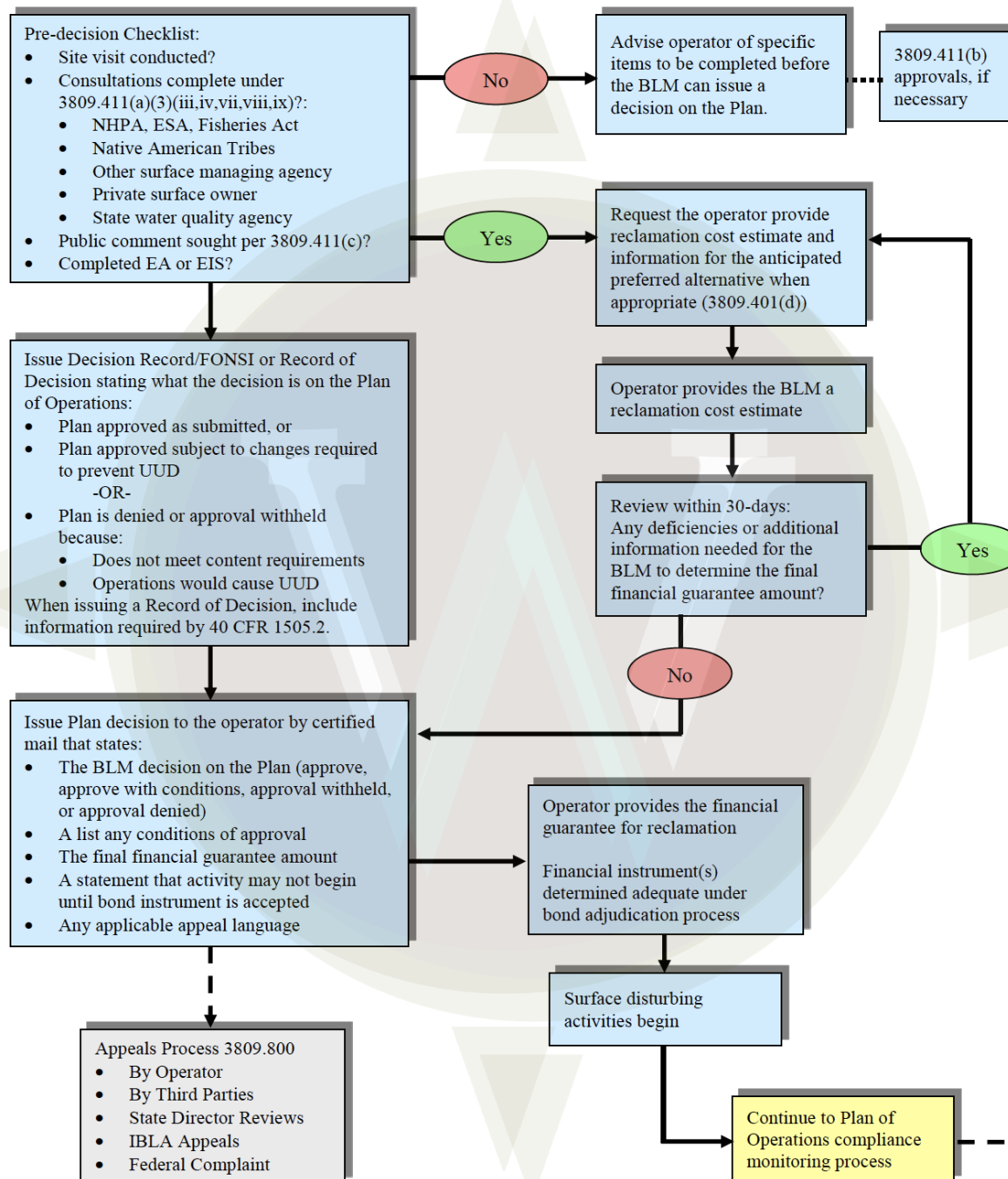


Figure 4.2-4 - Plan of Operations -- Approval and Financial Guarantee



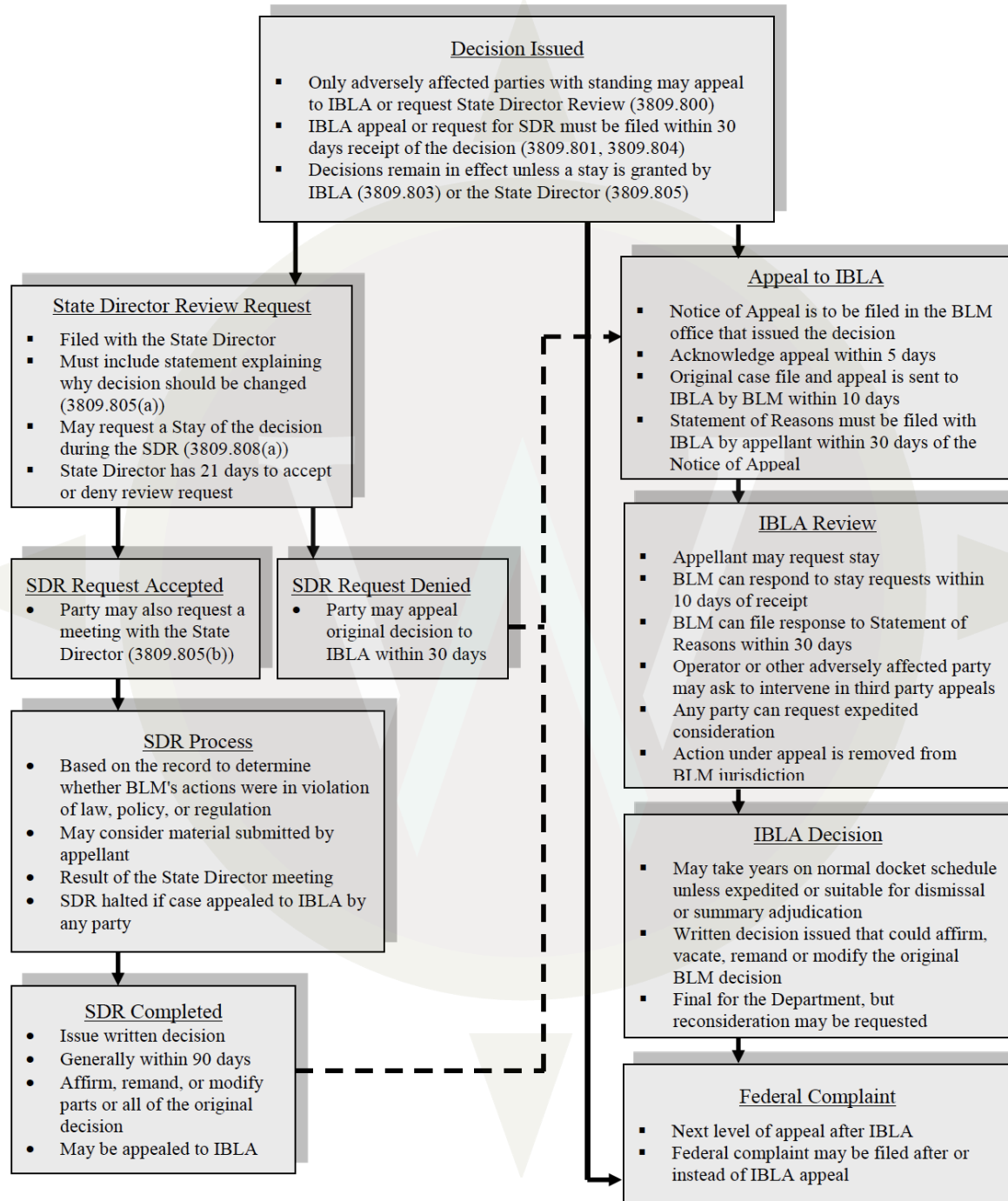
Hard Rock Mining 101 – Regulations, Special Provisions

- **Withdrawn Lands** – BLM will not approve PoO or allow notice-level operations until BLM determined the claim was valid before withdrawal and remain valid
- **Segregated Lands** – BLM has discretion to determine the validity of mining claims within a segregated area before approving a Plan of Operations or acknowledging an exploration Notice.

Hard Rock Mining 101 – Appeal of BLM Mining Decisions

- Many decisions subject to administrative appeal, including:
 - Establishment of the financial guarantee amount;
 - Acceptance, rejection, or forfeiture of a financial guarantee instrument;
 - Approval of a Plan of Operations;
 - Denial or withholding approval of a Plan of Operations;
 - Rejection of a Notice or Plan of Operations;
 - A decision that a Notice has expired;
 - A decision requiring submission of a modification to a Notice or Plan;
 - A decision determining that a Notice or Plan has been abandoned;
 - A decision revoking a Plan or nullifying a Notice; and
 - the State Directors decision on a SD request

Figure 10.2-1 – Administrative Review Process



Questions?

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