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Report to the Honorable
Chic Hecht, U.S. Senate

August 1987

FEDERAL LAND MANAGEMENT

Financial Guarantees Encourage Reclamation of National Forest System Lands

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Resources, Community, and
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The Honorable Chic Hecht
United States Senate

Dear Senator Hecht:

This report responds to your June 3, 1986, request and subsequent discussions with your staff. We were asked to determine the success of the Forest Service's (Department of Agriculture) policy of requiring financial guarantees to ensure that lands mined under the Mining Law of 1872 are reclaimed.[1] We are also aware that you were concerned about the effects of this requirement on small mine operators.

In summary, we found that the Forest Service requirement of financial guarantees is proving to be a successful incentive for getting mine operators to reclaim mine sites. We did not identify any cases where the costs associated with posting a financial guarantee prevented operators from mining. In this regard, we found that Forest Service officials worked with mine operators to develop plans of operations that would minimize the operators' reclamation costs, thus reducing the amount of the financial guarantees.

We also found that representatives of five of the six mining associations we contacted, representing both small and large mine operators, supported the Forest Service's reclamation requirements. They thought that requiring financial guarantees was, in general, necessary to ensure reclamation. One representative, however, disagreed.

The Forest Service recently completed a nationwide review of reclamation activities on lands that it manages including a review of the administration of its requirements for financial guarantees to ensure reclamation. At the time of our review, the draft report included proposed actions to improve the administration of the Service's reclamation and financial guarantee program.

[1]The Mining Law of 1872 (30 U.S.C. 22, 29, 37) allows U.S. citizens to establish claims to valuable mineral deposits commonly referred to as "hardrock" minerals, such as gold, copper, silver, lead, and iron, that are located on federal lands. After a mineral deposit has been discovered, the claim holder may patent the claim and purchase the land and mineral rights from the government for $2.50 to $5 an acre.

Background

For over 70 years after the creation of the National Forest System, mining operations conducted in national forests under the Mining Law of 1872 were not regulated by the Forest Service. As a result, abandoned mining operations were often left unreclaimed. Consequently, the Forest Service published regulations on August 28, 1974, establishing rules and procedures covering hardrock mining on National Forest System lands. These regulations are intended to protect national forests against unnecessary or unreasonable damages from prospecting, exploration, development, mining, and/or processing operations carried out under the authority of the Mining Law of 1872 without unreasonably restricting the activities of prospectors and mine operators.

Forest Service regulations require mine operators to file a plan of operations for any mining that could result in "significant surface disturbance."[2] The plan is supposed to describe the entire mining operation, including equipment, location of access routes, support facilities, drill sites (to the extent possible), and reclamation plans.

The Forest Service also requires mine operators to post financial guarantees to ensure that mining operations likely to create significant surface disturbance are reclaimed. In this way, the Forest Service has funds for carrying out reclamation if the operator fails to do so. Field officials review the operator's plan of operations, determine the likely degree of surface disturbance, and set the amount of the financial guarantee accordingly. Where only minimal disturbance is anticipated, the official may not require a financial guarantee although reclamation of the mine site is still required.

Scope and Methodology

To determine if National Forest System lands were being reclaimed, we visited national forests in four states: the Toiyabe and Humboldt National Forests, Nevada; the Shasta-Trinity National Forests, California; the Deerlodge National Forest, Montana; and the Boise National Forest, Idaho.[3] We chose national forests in these four states because they

[2]In general, operations using mechanized earth-moving equipment or explosives used on the surface are considered to cause significant disturbance. Pick-and-shovel operations and explosives used underground, unless caving to the surface will result, normally are not. Almost without exception, road and trail construction and tree-clearing operations will cause significant surface disturbance. An operation on flat ground covered by sagebrush, for example, might not be considered a significant disturbance. However, the same sort of operation in a high alpine meadow or near a stream could cause significant disturbance. The determination of what is significant, thus, depends on a case-by-case evaluation of proposed operations and the kinds of lands and other surface resources involved.

[3]The Shasta-Trinity National Forests are comprised of two separate national forests but are administered by one Forest Service supervisor.

have significant hardrock mining activity and account for 55 percent of the plans of operations filed with the Forest Service in 1985. We reviewed 336 plans of operations that were filed or in effect during calendar year 1986 to determine whether a financial guarantee had been required, the type and status of financial guarantee, and the status of the mining operation.

In addition, we talked with representatives of six mining associations representing both large and small mine operators, to obtain their views regarding what impact, if any, the Forest Service's policy of requiring a financial guarantee has had on exploration for and development of minerals on National Forest System lands.[4] (See app. I for more details on our scope and methodology.)

Forest Service's Success in Getting Hardrock Mining Operations Reclaimed

We found that the Forest Service's policy of requiring financial guarantees to cover reclamation costs where significant surface disturbance is likely to occur is a successful incentive for ensuring that mine operators reclaim these lands. The Forest Service required financial guarantees for 214 of the 336 mine sites that we reviewed. (See app. II for a detailed discussion of the mine sites we reviewed.)

At the time of our review, 157 of the 214 sites with financial guarantees were operating and thus did not require reclamation. At one mine site, no mining activity had occurred, and the financial guarantee had been allowed to expire. The remaining 56 mine sites (1) had been reclaimed either by the mine operator or the Forest Service, (2) were in some stage of reclamation, or (3) had mining operations suspended and did not require reclamation at the time of our visit. In three of the cases that we reviewed, the Forest Service used all or part of the financial guarantee to reclaim the mine sites that were abandoned by the operators and/or where the operators did not reclaim the sites after mining was completed.

We also reviewed 122 mining operations that Forest Service district officials determined did not require financial guarantees to ensure reclamation. Sixty-nine of these operations were in the Shasta-Trinity National Forests, California. According to Forest Service officials, most mining activity in these forests is done by part-time mine operators who are

[4]Mining associations we contacted include: the Nevada Mining Association; the Nevada Miners and Prospectors Association; Citizens for Mining, Nevada; the California Mining Association; the Idaho Mining Association; and the Montana Mining Association.

searching for loose gold in the forest's rivers and streams. This activity causes little or no surface disturbance. The remainder of the mining operations for which the Forest Service did not require financial guarantees are generally small pick-and-shovel, drilling, or underground mining operations which cause minimal surface disturbance.

We found that 103 of the 122 operations were ongoing. Mining activity had been completed in 1986 for 19 mining operations, 9 of which caused no significant surface disturbance. In 6 of the 19 cases, operators had reclaimed the mine site after the operation was completed even though they had not been required to post financial guarantees. However, in four cases, the Forest Service had experienced problems with mine operators who either were reluctant to reclaim their operations or had abandoned them.

At the time of our review, the Forest Service was negotiating with two of these operators to post a financial guarantee. In one case, the Forest Service was taking legal action to force the operator to post a financial guarantee.[5] Finally, in the last case, the Forest Service was undecided as to whether to reclaim the operator's damage—roads through the forest—or to integrate the roads into the Forest Service's road network.

Mining Associations Generally Support Reclamation and Financial Guarantee Requirements

We contacted six mining associations that represented small and large mine operators in the states visited. Representatives of all but one association—the Nevada Miners and Prospectors Association—generally agreed with the need for reclamation of mined federal land and financial guarantees to ensure reclamation. In addition, they believed that the Forest Service's practice of requiring financial guarantees was generally applied in a fair and reasonable manner. None of the representatives knew of any instances where mine operators had abandoned plans to develop a mine because the Forest Service had required them to post a financial guarantee to ensure reclamation.

However, representatives of three mining associations told us that small mine operators have difficulty obtaining financial guarantees in the form of surety bonds because many insurance companies will not bond small mine operators unless they post substantial collateral. Forest Service officials agreed that small mine operators have difficulty obtaining surety bonds to ensure reclamation of mining projects. However, these

[5]App. III discusses the legal actions the Forest Service had taken to force mine operators to comply with its reclamation requirements.

officials explained that the Forest Service's regulations, policies, and instructions allow for the acceptance of various types of financial guarantees other than surety bonds. These include the posting of cash, irrevocable letters of credit, certificates of deposit, and savings accounts. According to these officials, this allows mine operators to choose the type of guarantee most compatible with their financial situation while protecting the government's interests. Our review of 223 financial guarantees held by the Forest Service in 1986 shows that less than one-third of the financial guarantees were classified as surety bonds. (See app. IV for the number and type of guarantees posted.)

Forest Service's National Reclamation Activity Review

The Forest Service has recently completed a nationwide review of reclamation activities taking place on National Forest System lands. The objectives of that review were to (1) evaluate Forest Service reclamation standards, (2) evaluate the effectiveness of Forest Service research into new reclamation techniques, (3) evaluate Forest Service planning for reclamation, (4) identify innovative and efficient reclamation methods and procedures, and (5) evaluate the quality, quantity, and organization of the Forest Service's reclamation work force.

The Forest Service review evaluated the implementation of the requirement that mine operators post financial guarantees. This included analyzing the procedures for releasing financial guarantees and evaluating the possibility that the Forest Service and other federal or state agencies imposed duplicative requirements for financial guarantees.

Forest Service officials found some problems in all of these areas. Specifically, they found that the procedures for establishing, increasing, decreasing, releasing, or obtaining financial guarantees was not well understood by Forest Service field units. They also found that practices varied among national forests as to how the amount of financial guarantees should be calculated. In addition, the Forest Service also found that (1) management guidance regarding the reclamation of mined lands contained in some regional and forest land management plans needs improvement, (2) plans of operations lack standards regarding the timing of interim and final reclamation, and (3) Forest Service reclamation standards are not well documented in operating plans and they are generally subjective and difficult to measure.

The Forest Service is drafting a report, scheduled to be completed by August 1987, outlining its findings and proposed corrective actions. These proposed corrective actions are designed to ensure that Forest

Service officials adequately understand how to properly implement the requirement for financial guarantees to ensure reclamation. The actions that they are considering include

- providing training in the use of financial guarantees at all levels, so that the procedures for their use will be more clearly understood;
- standardizing and clarifying the Forest Service's legal interpretation of its surface management regulations with regard to the administration of financial guarantees to ensure that Forest Service officials have a proper understanding of the legal basis for this requirement;
- reviewing regulatory requirements and direction in the minerals management section of their operating manual in order to determine the need for updates and clarifications;
- establishing standards for reviewing and updating financial guarantees; and
- reviewing procedures for the use of financial guarantees between state agencies, other federal agencies, and the Forest Service.

Forest Service headquarters officials told us that they are also in the process of adding a section to the hardrock mining portion of their operating manual that will deal with reclamation. The purpose of this new addition to the manual will be to explain how reclamation needs for individual mining operations should be closely tied to the anticipated use for the area after mining has ceased. These officials also told us that they are currently rewriting their guidance on calculating reclamation costs for financial guarantees. They estimated that both of these projects will be completed in fiscal year 1988.

Conclusions

Based on our review of mining plans of operations filed with the Forest Service for 1986 in the states we visited, we believe that the Service's requirement for financial guarantees to ensure reclamation is working effectively. Those mine sites with financial guarantees where mining was completed were reclaimed or in the process of being reclaimed. Only three of these sites required that the Forest Service use the posted guarantee for reclamation. Furthermore, we found that in most cases, Forest Service officials work with mine operators in negotiating the amounts of the guarantees to ensure fair treatment. As stated earlier, neither Forest Service officials nor representatives of mining associations that we spoke with could cite an instance were mine operators decided not to mine because of the cost of obtaining a financial guarantee.

In addition, representatives of the mining associations that we talked with generally (1) supported the Forest Service's reclamation requirements, (2) agreed with the need for financial guarantees to ensure reclamation, and (3) believed the Forest Service treated hardrock mine operators in a fair and reasonable manner. Mining association representatives and Forest Service officials agree that because of the need to post substantial collateral, it is difficult for small mine operators to obtain surety bonds. However, the Forest Service accepts a variety of forms of financial guarantees that allow small mine operators to post the guarantee most compatible with their financial situation while continuing to protect the federal government's interests.

Finally, the Forest Service has proposed actions outlined in its draft national reclamation activity review report which are intended to improve the administration of the Forest Service's reclamation and financial guarantee program.

Agency Comments

The Department of Agriculture suggested some technical and editorial changes to our draft report, which we incorporated in the final report.

Major contributors to this report are listed in appendix VI. We are sending copies of this report to the Senate Committee on Energy and Natural Resources, the House Committee on Interior and Insular Affairs, the House Agriculture Committee, and other interested parties.

Sincerely yours,

James Duffus III
Associate Director

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Abbreviations

BLM	Bureau of Land Management
GAO	General Accounting Office

Objectives, Scope, and Methodology

Our primary objective was to determine the success of the Forest Service's policy of requiring financial guarantees for hardrock mining operations that could significantly disturb National Forest System lands. Specifically, we determined

- the number of mining operations where reclamation requirements were not met,
- whether the Forest Service used the proceeds from financial guarantees to perform the necessary reclamation, and
- whether the requirement that mine operators provide financial guarantees is an effective incentive to get them to reclaim their mining operations.

To accomplish these objectives, we visited the following national forests: the Toiyabe and Humboldt National Forests, Nevada; the Shasta-Trinity National Forests, California; the Deerlodge National Forest, Montana; and the Boise National Forest, Idaho.[1] We chose national forests in these four states because they have significant hardrock mining activity and account for 55 percent of the mining plans of operations filed with the Forest Service in 1985. In addition, they provide diverse geographic coverage. We obtained information from 15 of the ranger districts with significant hardrock mining activity located in these national forests and visited mining operations in 10 districts.

We reviewed all active mining plans of operations filed or in effect during calendar year 1986 (336) in the 15 ranger districts to determine whether a financial guarantee had been required, the type and status of financial guarantee, and the status of the mining operation. We were assisted in our review of plans of operations and associated documentation by forest and ranger district officials who were familiar with these cases.

During our review, we also met with Forest Service headquarters officials including the Associate Deputy Chief; the Director, Minerals and Geology Management Staff; the Program Coordinator, Minerals and Geology Management Staff; the Program Leader for Locatable and Salable Minerals, Minerals and Geology Management Staff; and a representative of the Fiscal and Public Safety Staff to determine the Forest Service's policy regarding the use of financial guarantees and discuss the efforts being taken to monitor and improve the implementation of

[1]The Shasta-Trinity National Forests are comprised of two separate national forests but are administered by one Forest Service supervisor.

this policy. In addition, we spoke with Forest Service law enforcement officials to determine what legal actions the Service was taking against operators who failed to reclaim mine sites.

We also reviewed the costs to mine operators of providing a financial guarantee, the difficulties they face in obtaining surety bonds, and alternative forms of financial guarantees that are acceptable to the Forest Service. We also determined the costs and difficulties, if any, that the requirement for financial guarantees has imposed on the mine operators.

Finally, we talked with representatives of six mining associations, representing both large and small mine operators, to obtain their views regarding what impact, if any, the Forest Service's policy to require a financial guarantee has had on exploration for and development of minerals on National Forest System lands. The mining associations we contacted include: the Nevada Mining Association; the Nevada Miners and Prospectors Association; Citizens for Mining, Nevada; the California Mining Association; the Idaho Mining Association; and the Montana Mining Association. We also asked Forest Service officials if they knew of any instances where the costs associated with providing a financial guarantee had caused mine operators to cancel proposed mining operations.

We conducted our review between August 1986 and June 1987 in accordance with generally accepted government auditing standards.

Status of Mining Operations Reviewed by GAO

This appendix discusses the 336 mine sites active in 1986 that we reviewed in the Boise National Forest, Idaho; the Deerlodge National Forest, Montana; the Humboldt and Toiyabe National Forests, Nevada; and the Shasta-Trinity National Forests, California. We found that the Forest Service

- required financial guarantees to ensure reclamation for 214 mine sites and
- did not require financial guarantees for 122 mine sites.

The following is a discussion of the status of these mine sites at the time of our review.

Mining Operations With Financial Guarantees to Ensure Reclamation

At the time of our review, 157 of the 214 sites covered by financial guarantees were operating and thus did not require reclamation. At one mine site, no surface disturbance was evident, and the financial guarantee was allowed to expire. Of the remaining 56 sites, (1) 28 were reclaimed by the operator, (2) 18 were in the process of being reclaimed, (3) 3 were reclaimed by the Forest Service, (4) 1 financial guarantee was inadvertently allowed to lapse, and (5) 6 mine sites were inactive but not abandoned.

Twenty-Eight Mine Sites Have Been Reclaimed by the Mine Operators

Twenty-eight mine sites were reclaimed by the mine operators in 1986, and the Forest Service had returned or was in the process of returning the financial guarantees as indicated in table II.1.

Table II.1: Mining Operations Reclaimed in 1986

National forest	State	Financial guarantees returned	Financial guarantees in process of being returned	Financial guarantees held
Boise	Idaho	2	1	1
Deerlodge	Montana	6	2	0
Humboldt	Nevada	7	0	0
Shasta-Trinity	California	4	0	0
Toiyabe	Nevada	5	0	0
Total		**24**	**3**	**1**

As table II.1 shows, at the time of our review, the Forest Service had returned the financial guarantees in 24 instances, was in the process of

returning the guarantees in 3 instances, and in the last case, was awaiting the removal of some mining equipment before returning the financial guarantee.

Eighteen Mine Sites Were in the Process of Being Reclaimed

As shown in table II.2, we found 18 mine sites where the mining activity had ceased and the operator was in the process of reclaiming the mine site. The Forest Service was still holding the financial guarantees for these sites.

Table II.2: Mining Operations in the Process of Being Reclaimed

National forest	State	Number of unreclaimed mine sites
Deerlodge	Montana	9
Humboldt	Nevada	1
Toiyabe	Nevada	6
Shasta-Trinity	California	2
Total		**18**

At the time of our review, the Forest Service was still holding the entire financial guarantee for 11 mining operations pending completion of the required reclamation. However, the Forest Service had released portions of the financial guarantees in seven instances where partial reclamation had occurred.

For example, the Tonopah Ranger District in Nevada's Toiyabe National Forest approved a plan of operations in April 1986. The plan called for road construction and exploratory drilling for gold deposits that would disturb about 4.5 acres. Reclamation of this mining operation was estimated to cost $10,302, and the Forest Service required and received a financial guarantee in this amount from the mine operator. After the exploration work was completed, the operator began reclamation. A ranger district official told us that most of the reclamation work had been completed, when the Forest Service released $5,000 of the financial guarantee in July 1986. The Forest Service is awaiting the completion of reclamation before releasing the remaining $5,302.

In another case, the Forest Service approved a plan of operations in April 1985, which eventually covered about 3 acres in the Ely Ranger District in Nevada's Humboldt National Forest. The Forest Service required a $4,000 financial guarantee that was later increased to $9,000

because the mine site was expanded. Upon completing the mining operation, the operator began reclaiming the area. According to the ranger district official, about two-thirds of the reclamation had been completed, and a partial release of the financial guarantee was in process at the time of our visit.

Three Mine Sites Were Reclaimed by the Forest Service

In three cases that we reviewed, the Forest Service had to use all or part of the operators' financial guarantee to reclaim the mine sites because they were either abandoned or the operator did not perform the required reclamation after completing the mining activity. The following is a discussion of these three cases.

Forest Service Uses Financial Guarantee to Reclaim Site in the Deerlodge National Forest, Montana

In 1983, an operator started a gold mining operation in the Deerlodge Ranger District of the Deerlodge National Forest, Montana. On the basis of an analysis of the projected mining activity, the Forest Service required the operator to post a financial guarantee of $6,000. According to a ranger district official, after the operator dug four trenches—all approximately 8 feet deep, 20 feet wide, and 100 feet long—no other mining activity occurred at the site. In June 1985, the Forest Service notified the operator that since the site had been inactive since 1983, it had to be reclaimed or the Forest Service would use the posted $6,000 to reclaim the site if a new plan of operations was not filed. The operator did not respond, and the Forest Service used about $2,200 to partially reclaim the site. At the time of our review, the Forest Service had notified the operator that the remaining $3,800 would be used to complete reclamation if he did not take action to reclaim the site.

Forest Service Uses Financial Guarantee to Reclaim Site in the Humboldt National Forest, Nevada

In 1980, the Forest Service approved a plan of operations for a silver mine in the Mountain City Ranger District of the Humboldt National Forest, Nevada. The proposed work was underground, the only surface disturbance being a waste pile and a cabin affecting about one-fifth of an acre. The reclamation bond was set at $400. In 1984, after unsuccessfully attempting to get the operators to reclaim the site, the Forest Service used the financial guarantee and hired someone to remove the cabin, recontour, and reseed the area.

Forest Service Uses Financial Guarantee to Reclaim Site in the Shasta-Trinity National Forests, California

An operator on the Weaverville Ranger District of the Shasta-Trinity National Forests, California, began a gold mine operation in 1981. The original plan called for clearing 10 acres of trees in preparation for mining, but this plan was modified by the Forest Service. The Forest Service determined that a financial guarantee of about $8,590 would be required for a plan of operations which allowed for the mining of 3 acres a year. The Forest Service negotiated with the operator and scaled down his proposed operation, thus reducing the total amount of surface disturbance to 3 acres over 3 years. As a result, the amount of the financial guarantee was reduced to $3,585. The scaled-down plan of operations was approved in 1982. In September 1983, the Forest Service notified the operator that he was not in compliance with the approved plan of operations and may need to reclaim the site. The operator did not begin reclamation, and on February 16, 1984, the Forest Service foreclosed on the financial guarantee. The Forest Service estimated it would cost over $1,000 to complete reclamation and offered to let the operator assist in reclaiming the site to help keep costs down. The operator joined in the work, and when the site had been completely reclaimed, the Forest Service refunded to the operator the unused portion of his reclamation bond.

Financial Guarantee Inadvertently Allowed to Lapse in Toiyabe National Forest, Nevada

In 1980, an operator filed a plan of operations to develop a 9-acre mill site for processing ore in the Forest Service's Austin Ranger District of the Toiyabe National Forest, Nevada. The Forest Service required a $9,700 financial guarantee to ensure reclamation. This guarantee was posted in the form of a surety bond.

In 1986, the Forest Service received notification from the surety company that the operator was cancelling the surety bond and that the bond would be released if the Forest Service did not respond. A ranger district official told us that because of an oversight, district office officials failed to take timely action to get him to submit a new plan of operations with an accompanying financial guarantee.

Six Mining Operations Were Inactive but Not Abandoned

According to Forest Service regulations, unless otherwise agreed to by Forest Service officials, mine operators must reclaim their mine sites within 1 year of the conclusion of mining operations. At the time of our review, six mining operations were inactive. Mining activity at two operations were suspended until the mine operators find additional financing to continue their mining activity. Forest Service officials were unsure of when mining activity on the remaining four sites would resume.

The Forest Service holds financial guarantees to ensure reclamation for each site. However, for one site, Forest Service officials told us they underestimated its reclamation costs and may not have secured a large enough financial guarantee to completely reclaim the area.

Forest Service Underestimates Reclamation Costs at One Mine Site

Forest Service officials told us they underestimated reclamation costs for a gold-leaching operation covering about 4 acres in Montana's Deerlodge National Forest. In 1981, the Forest Service required the operator to increase his financial guarantee for the operation to $14,500. Since 1984, work on this gold-leaching operation has been suspended, and in September 1986, the Forest Service requested that the operator begin reclamation of the site. However, the Forest Service now estimates that reclamation costs will exceed $34,000.

At the time of our review, the Forest Service was trying to obtain the $14,500 from the surety company holding the bond. A Forest Service official stated that although the $14,500 reclamation bond would eliminate the environmental and physical safety problems at the mine site, they will not be able to fully reclaim the site.

Mining Operations Without Financial Guarantees to Ensure Reclamation

We reviewed 122 mining operations that Forest Service ranger district officials determined did not require financial guarantees to ensure reclamation although reclamation of the mine sites is still required if significant surface disturbance occurs. Sixty-nine of these operations were in the Shasta-Trinity National Forests, California. According to Forest Service officials, most mining activity in this forest is recreational. Mine operators search for loose gold in the forest's rivers and streams, and they cause minimal or no surface disturbance. The remainder of the operations for which the Forest Service did not require a financial guarantee consisted of small pick-and-shovel, drilling, and underground operations that do not cause significant surface disturbance.

We found that 103 of the 122 operations were ongoing. Mining activity had been completed in 1986 for 19 mining operations, 9 of which caused no significant surface disturbance. In 6 of the remaining 10 cases, operators performed the needed reclamation after the mining operation was completed even though they had not been required to post a financial guarantee. In four cases, however, the mining operations were left unreclaimed by the operator.

Four Mining Operations Without Financial Guarantees Were Left Unreclaimed

We found four cases where the mine sites were left unreclaimed and the Forest Service had not required a financial guarantee from the operator to ensure reclamation.

Roads Left Unreclaimed in the Deerlodge National Forest, Montana

An exploratory drilling operation for silver located on the Philipsburg Ranger District of Montana's Deerlodge National Forest began operation in 1981. Drilling was completed in 1982 and no further mining activity has occurred, according to a Forest Service district official. However, the mine operator built approximately 5-1/2 miles of roads to conduct exploratory drilling. A district official estimated that it would cost between $30,000 and $40,000 to reclaim the roads. However, approximately one-half of the roads is under the jurisdiction of the Department of the Interior's Bureau of Land Management (BLM).

At the time of our review, the Forest Service was undecided about reclaiming these roads because the roads were in good condition, were not causing any erosion problems, and would have to be reclaimed at public expense.

A Forest Service district official told us that the Service did not require the operator to post a financial guarantee because at the time he filed his plan of operations in 1981, he filed a "small miner exclusion statement." This document, accepted in lieu of a financial guarantee, was part of a Montana state program which exempted small mine operators from posting financial guarantees if they agreed (1) not to pollute or contaminate waterways, (2) to provide protection for human and animal safety, and (3) not to disturb more than 5 acres of land. Failure to comply would result in a fine ranging from $10 to $100. A Forest Service district official told us that he has not accepted exclusion statements in lieu of financial guarantees since 1983 because the penalty for failing to reclaim mine sites under this state program was not sufficient to ensure reclamation.

Forest Service May Take Legal Action to Ensure Reclamation of a Mine Site in the Humboldt National Forest, Nevada

According to ranger district officials, a mine operator on the Ely Ranger District of the Humboldt National Forest had been operating an underground gold mine since 1981. In 1985, Forest Service officials discovered that the operator built a road in 1984 without notifying them. In March 1985, the ranger district requested that the operator submit a plan of

operations to cover the road construction. The ranger district determined that a reclamation bond of $5,500 would be required, but the operator refused to post any financial guarantee.

Ranger district officials told us that the ranger district has sent the operator a notice of noncompliance and is seeking assistance from Forest Service law enforcement personnel to get the mine operator to reclaim the site or provide the financial guarantee. No activity has taken place since the notice of noncompliance was issued. A ranger district official stated that the Forest Service intends to begin legal action against this operator since all attempts to reach a reasonable settlement have failed.

Forest Service Is Working With Mine Operators to Obtain Financial Guarantees in the Toiyabe National Forest, Nevada

Forest Service officials in the Bridgeport Ranger District of the Toiyabe National Forest have been dealing with a mine operator who disputes the Forest Service's right to impose a financial guarantee to ensure reclamation. A ranger district official described to us the following sequence of events. The operator submitted his first plan of operations in 1980. When told he would need to post a financial guarantee, he scaled back his work plan and was then not required to post a guarantee. In 1982, he again proposed additional work but did not mine. In 1984, a third plan of operations was submitted. Under this proposal, a cyanide-leaching process would be used to remove minerals from waste materials remaining from turn-of-the-century mining operations. Forest Service officials calculated that a $1,100 financial guarantee was needed to ensure reclamation of about 1 acre of disturbance.

Although the state of Nevada regulates the use of cyanide, the mine operator did not receive permission from the state nor did he post the financial guarantee. However, he proceeded with his planned operation and damaged 1 acre of land. Since there was no approved plan of operations, the Forest Service issued a notice of noncompliance.

In 1985, the operator again submitted a plan of operations for a cyanide-leaching operation which would cover 5 or 6 acres. Forest Service officials calculated that a financial guarantee of about $6,000 was required. At the time of our visit, negotiations were ongoing with the operator, and district officials hoped they would be able to convince him to submit the financial guarantee. The Forest Service and the state would then approve the plan of operations.

In another case, Forest Service officials in the Tonopah Ranger District of the Toiyabe National Forest described a mining operation where the operator was to rework the waste materials remaining from a historic gold mine covering about 115 acres. The operator has disturbed about 10 acres of this area. The initial operation began in April 1985 and had been completed at the time of our visit in September 1986. A ranger district official told us that the Forest Service should have required a financial guarantee to ensure reclamation. Since he was not assigned to the ranger district at the time, he was not aware of why a guarantee was not required.

The operator would like to begin a new operation. The area he would like to work is primarily on land managed by BLM. The ranger district is working with BLM and the operator to get a plan of operations and a financial guarantee on the proposed mine. BLM is to be the lead managing agency for this operation. The Forest Service has included the cost to reclaim the previously disturbed 10 acres in the new reclamation calculations.

The Forest Service Is Taking Legal Action to Ensure Reclamation

Civil or criminal enforcement, or a combination of both, are available to enforce the Forest Service's surface management regulations. Forest Service officials identified six instances where they took legal action—four civil action cases and two criminal action cases—against mine operators who refused to post financial guarantees before mining on National Forest System lands.

Forest Service officials told us that their policy is to work with mine operators to try to bring them into compliance with the Service's regulations before taking legal action. However, the Forest Service can initiate civil action against an operator who refuses to post a financial guarantee and begins mining without an approved plan of operations. In doing so, the Forest Service may either seek to recover damages from the operator, such as the cost of reclaiming the disturbed area, or seek injunctive relief—an order prohibiting the operator from mining until compliance with regulations is met. Forest Service officials identified four instances, nationwide, where they have taken civil action against mine operators who refused to post financial guarantees and mined without an approved plan of operations. Two of these cases are in Oregon, one is in Colorado, one is in Nevada, and all four involve illegal use of mining claims.

In addition, in cases where unnecessary and unreasonable damage is occurring on national forest lands and where reasonable attempts by the Forest Service to secure an adequate financial guarantee from the operator have failed, the operator may be cited for criminal violation of the Forest Service's regulations. For example, Forest Service regulations prohibit the construction of roads or trails in national forests unless they are covered by an approved plan of operations. Individuals who are convicted of criminal violations of the Forest Service's regulations, in addition to being liable for the cost of reclaiming the damage they caused, may be fined, jailed, or both. Forest Service officials identified two cases where the Service won criminal convictions against mine operators who refused to post financial guarantees and mined National Forest System lands without having an approved plan of operations.

In one case, in the Humboldt National Forest, Nevada, the Forest Service filed charges against an operator because he refused to cooperate with the district ranger in working out the least damaging location of a mining road. He also refused to submit a plan of operations and consistently refused to post the required financial guarantee. The road, partly built in a stream bottom, resulted in unnecessary damage to vegetation, soil and water resources, and trees.

Types of Financial Guarantees Used With the Operating Plans Reviewed by GAO

Type of financial guarantee posted	Year (1986)	Percent
Surety bonds	70	31
Cash	70	31
Irrevocable letter of credit	46	21
Assignment of savings account	1	0
Certificate of deposit	18	8
Other[a]	18	8
Total	**223[b]**	**99[c]**

[a]Financial guarantee held by state agencies.

[b]Does not equal the number of mining operations with financial guarantees because some operating plans had more than one type of financial guarantee.

[c]Does not total 100 percent because of rounding.

Comments From the Department of Agriculture

Note: GAO comments supplementing those in the report text appear at the end of this appendix.

United States Department of Agriculture | Forest Service | Washington Office | 12th & Independence SW P.O. Box 96090 Washington, DC 20090-6090

Reply To: 1420 (F&PS)

Date: JUL 13 1987

Mr. J. Dexter Peach
Assistant Comptroller General
Resources, Community, and Economic
Development Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Peach:

We have the following comments on the draft GAO report entitled "Federal Land Management: Financial Guarantees Help to Ensure Reclamation of Hardrock Mine Sites on Forest Service Lands," GAO/RCED-87-157:

Now on p. 6.

See comment 1.

Page 10, first paragraph last sentence: The updating of direction in operating manuals will be completed in fiscal year 1988 not 1987.

See comment 2.

Page 22, last paragraph last sentence: We cannot use money gained from the sale of abandoned equipment on a site to reclaim the site as reported by the Ranger District Office. The money would be deposited to the Treasury as miscellaneous receipts. Money for reclamation would have to be obtained through a damage award in a lawsuit against the operator or through our appropriation process.

See comment 2.

Page 28, last paragraph first sentence: Our current direction is that appropriate state regulatory requirements will be incorporated into plans of operations our field units approve. This insures coordination with State regulatory agencies and the inclusion of all requirements needed to protect surface resources on National Forest System lands in approved plans of operations.

We have enclosed a sheet covering editorial items for your consideration.

Thank you for the opportunity to review and comment on the draft report. If you have questions, please contact Norman Day at 235-9784.

Sincerely,

F. DALE ROBERTSON
Chief

Enclosure

The following are GAO's comments on the Department of Agriculture's letter dated July 13, 1987.

GAO Comments

1. The text has been changed to reflect the Department's target date of fiscal year 1988.

2. We acknowledge the Department's explanation and have deleted the sentence.

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