

September 1, 2009

## **ZORTMAN AND LANDUSKY MINE RECLAMATION AND WATER MANAGEMENT**

### **PURPOSE OF THE BRIEFING DOCUMENT:**

The bonds posted for reclamation and water treatment at these bankrupt Montana gold mines have not been adequate. The mines are located on about 1,200 acres of intermingled private and public lands in the Little Rocky Mountains of Phillips County near the Fort Belknap Indian Reservation.

After three years of environmental review, analysis, and consultation with the Fort Belknap Tribes, a record of decision (ROD) was issued in 2002 selecting final mine reclamation plans. The reclamation plans were estimated to cost more than the funding available from the reclamation bonds. With supplemental funding from BLM and the state of Montana, the reclamation earthwork was completed in May 2005. However, there is still a funding shortage to maintain water treatment. Upon conclusion of the bankruptcy process, BLM invoked its CERCLA authority in 2004 to maintain the systems used for capture and treatment of acid mine drainage and heap leaching solutions.

### **ISSUES:**

The mine owner/operator, Pegasus Gold Corporation, declared bankruptcy in 1998 and the bonds collected by the Montana Department of Environmental Quality (DEQ) were used to pay for most of the reclamation (\$29.6 million for earthwork and a \$13.8 million water treatment trust fund). To date, the BLM has provided more than \$9 million and the DEQ has provided over \$1 million to assist with reclamation and excess water treatment costs.

Back in 1998, the Interior Board of Land Appeals (IBLA) set aside BLM's 1996 and 1998 reclamation plan decisions and required more consultation with the Fort Belknap government. The BLM, DEQ, EPA, and the Fort Belknap government re-evaluated the reclamation options and collaborated on a supplemental EIS (SEIS). The final SEIS on mine reclamation was released in late 2001, with the ROD issued May 1, 2002. The selected reclamation plans from the final SEIS were estimated to cost \$76.9 million for earthwork and water treatment, or approximately \$33.5 million more than was available from the reclamation and water treatment bonds.

The Fort Belknap government was consulted on a draft ROD. Although it agreed in principle with the preferred reclamation plans, the tribal government rejected the ROD because it did not include provisions for Fort Belknap to manage the reclamation, or funds for offsite environmental projects that would benefit the reservation. The tribes appealed the BLM's ROD to IBLA shortly after it was issued in 2002. Reclamation work continued at the mines during the appeal period. In 2004, the BLM invoked its CERCLA authority in order to continue site management activities. The IBLA dismissed the tribes' appeal as moot on June 22, 2006, saying because there is no operator, and because the project is no longer administered under the regulations at 43 CFR 3809, no relief is possible.

### **MAIN DECISION OR MESSAGE:**

The DEQ and BLM are presently managing the site and have conducted reclamation and water treatment activities since 1999. The reclamation earthwork has been completed.

One source of litigation is that the ROD selected the preferred reclamation plans from the final SEIS contingent upon funding. Of the \$33.5 million funding shortage identified in the ROD, \$22.5 million was required for earthwork and \$11 million to treat acid rock drainage. Due to efficiencies realized through the competitive bid process, and funding provided by BLM's abandoned mine land program and state grants, the shortfall in funding for the reclamation earthwork was eliminated. Therefore, BLM has been able to complete implementation of the preferred reclamation alternatives on the public lands.

Another critical item that has been resolved is the funding needed for the long-term water treatment trust fund. This fund is supposed to generate enough revenue to fund water treatment indefinitely after year 2017. The Montana legislature approved a bill last session that established a trust fund to pay for water treatment beyond 2017.

The remaining critical issue is the cost of short-term water treatment between now and 2017. The present bond provides \$731,000 each year (through 2017) to run the seepage capture systems and water treatment plants. Treatment costs have consistently been over this amount since 1999; and BLM provided money to pay for the excess water treatment costs through 2008. Now that reclamation is complete, the combined site maintenance and water treatment costs will run an estimated \$1.5 million per year through 2017. The most pressing issue is that beginning in 2008, it cost an estimated \$770,000 per year over the annual bond payment to maintain the site and prevent the release of contaminants. This annual treatment shortfall will continue until 2018, when the long-term trust fund for water treatment becomes available.

Concurrent with the aforementioned mine reclamation activities, the Fort Belknap Tribes filed suit in April 2000 against BLM, BIA and IHS, claiming that the government had violated its trust responsibilities by failing to protect the tribes' trust resources from damage due to mining. The U.S. District Court in Missoula issued a ruling on June 29, 2004, granting summary judgment in favor of BLM. The tribes appealed this ruling to the Ninth Circuit, which heard the case in June 2006. In November 2006, the Ninth Circuit affirmed the ruling of the District Court in BLM's favor. In December 2006, the tribes petitioned the Ninth Circuit for a rehearing. In addition, on January 29, 2004, the tribes filed a citizen suit under the Clean Water Act over mine discharges against BLM, DEQ, and a patented (private) claim owner. In February 2005, the U.S. District Court in Great Falls dismissed the tribes' case against BLM for lack of jurisdiction, citing BLM's use of its CERCLA authority as not being subject to review.

With the closeout of the ZMI bankruptcy proceedings in late 2003, the Zortman and Landusky mines are abandoned. In June 2004, the state director signed an action memorandum to continue the capture and treatment of mine drainage and heap solutions as time-critical removal actions under BLM's delegated CERCLA authority. The CERCLA removal action is being conducted in close cooperation with the DEQ. Most recently, the BLM consulted with the Fort Belknap government on an engineering evaluation/cost analysis (EE/CA). The EE/CA and accompanying action memorandum were completed in September 2006. The EE/CA found that the present capture and treatment systems are optimal and no large-scale changes in water treatment technology are warranted.

One issue of relatively recent concern is contamination due to some iron-rich seeps that occur in Swift Gulch, north of the Landusky Mine. The water quality from these seeps has gotten worse since mine closure in 1998. A water treatment system was put into place in 2009 to increase the pH of the water and allow the contaminants to settle out in a series of pond constructed adjacent to the creek.

#### **BUREAU PERSPECTIVE:**

Reclamation at the mines is a contentious issue with the Fort Belknap Tribes and state and national environmental groups. The Mineral Policy Center/Earthworks and Montana environmental organizations often cite the Zortman-Landusky mines during debates on mining regulation.

#### **CONTACTS:**

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