

ZORTMAN AND LANDUSKY MINE RECLAMATION

PURPOSE OF THE BRIEFING DOCUMENT:

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

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 cost more than the funding available. In addition, both immediate and long-term funding is inadequate to maintain capture and treatment of acidic waters, no matter which reclamation plan is implemented. Reclamation work is underway and additional funds have been obtained to complete the earthwork requirements which will be finished in 2005. However, funding is still needed to maintain water treatment. Now that the bankruptcy process is complete, BLM has invoked its CERCLA authority in order to maintain the systems used to capture and treatment mine drainage and 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) have been funding reclamation (\$29.6 million for earthwork and a \$13.8 million water treatment trust fund). To date, the BLM has provided nearly \$5 million and the DEQ has provided \$1.4 million to assist with reclamation, excess water treatment costs, and preparation of the Supplemental EIS.

In 1998, the Interior Board of Land Appeals (IBLA) set aside BLM's reclamation plan decision and required additional 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 January 2002, and the ROD was issued May 1, 2002. The preferred reclamation plans in 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 they agree in principle with the preferred reclamation plans, the Council rejected the ROD because it did not include provisions for Fort Belknap to manage the reclamation, or funds for certain offsite environmental projects that would benefit the Reservation. The Tribes have appealed the BLM's ROD to IBLA. The Tribes also have litigation pending in both State and Federal court.

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 is to be completed by the end of 2005.

The ROD selected the preferred reclamation plans from the Final SEIS contingent upon funding. The ROD also selected "backup" reclamation plans that can be completed with the available reclamation bonds. 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, the shortfall in reclamation earthwork funds has been reduced to \$1.5 million (for work on private lands), down from the original \$22.5 million identified in the ROD. Therefore, BLM will be able to complete implementation of the preferred reclamation alternatives on the public lands.

A critical item is to obtain the funds needed for long-term water treatment. The deficit in the long-term water treatment trust fund has increased from \$11 million to \$12.4 million due to the loss in interest accrual. The long-term trust fund is supposed to generate enough revenue to fund water treatment indefinitely after year 2017.

Presently, the short-term water treatment bond provides \$731,000 each year (through 2017) to run the seepage capture systems and water treatment plants. Treatment costs in 2003 were about \$45,000 more than available from the bond. In the past BLM has provided money to the State to assist with the water treatment. However, this year BLM assistance is limited.

The BLM and DEQ support additional funding to implement the preferred reclamation plans and to maintain water treatment. The agencies have identified funding to support the water treatment trust fund as the first priority. A provision in the Interior appropriations bill provided for the establishment and funding of a long-term water treatment trust fund. However, that provision did not make it into the final bill.

The Federal Court in Missoula issued a ruling on June 29, 2004, granting summary judgement in favor of BLM on the trust lawsuit that was filed by Fort Belknap in 2000. 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.

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. BLM will continue consultation with Fort Belknap on the removal action.

BUREAU PERSPECTIVE:

Mine reclamation is a contentious issue with the Fort Belknap Tribes and state and national environmental groups. The Mineral Policy Center has often cited the Zortman-Landusky mine during the debate on Mining Law reform and the 3809 regulations. The mine was the topic of considerable interest during the last session of the Montana Legislature. The mine will again be in the spotlight during the upcoming election season with the initiative to repeal the cyanide-leaching ban on the ballot.

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