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Report to the Chairman, Subcommittee on Mining and Natural Resources, Committee on Interior and Insular Affairs, House of Representatives

August 1990

FEDERAL LAND MANAGEMENT

Unauthorized Activities Occurring on Hardrock Mining Claims

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August 17, 1990

The Honorable Nick J. Rahall, II
Chairman, Subcommittee on Mining
and Natural Resources
Committee on Interior and Insular Affairs
House of Representatives

Dear Mr. Chairman:

This report responds to your request that we identify the types of unauthorized nonmining activities occurring on hardrock[1] mining claims on federal land and the problems resulting from these activities. As agreed, we limited our review to the Department of the Interior's Bureau of Land Management (BLM) and the Department of Agriculture's Forest Service, which together manage about 460 million, or about 64 percent, of the approximately 724 million acres of federally owned land. We also limited our review primarily to the states of Arizona, California, and Nevada, which have the highest number of hardrock mining claims on federal land and have a large number of new claims filed each year. (App. I provides a more detailed explanation of our scope and methodology.)

The issue of unauthorized nonmining surface activities on hardrock mining claims falls under the purview of the Mining Law of 1872, enacted to promote the exploration and development of domestic mineral resources. The act does not, however, clearly specify what types of surface activities are not authorized. The Surface Resources Act of 1955 did, however, make clear that mining claims cannot be used for any purpose other than prospecting, mining, and processing operations, as well as activities reasonably incidental thereto. Subsequent court rulings together with regulations and policies promulgated by the federal land-managing agencies have served to further clarify what activities the federal government will tolerate on mining claims. However, ambiguities remain concerning whether and under what circumstances activities such as residency are authorized.

Results in Brief

Our visits to 59 sites in Arizona, California, and Nevada together with our review of applicable laws, regulations, policies, and procedures as

[1]Hardrock minerals include cooper, gold, iron, lead, and silver.

well as discussions with federal land-managing agency officials showed that:

- Some claim holders are using their claims for unauthorized residences, nonmining commercial operations, illegal activities, or speculative activities not related to legitimate mining. Agency officials estimate that of the over 662,000 mining claims in the three states included in our review, about 1,600 have known or suspected unauthorized activities occurring on them.
- Unauthorized activities result in a variety of problems, including blocked access to public land by fences and gates; safety hazards to those using the land, such as threats of physical violence and brandishing of firearms; environmental eyesores caused by abandoned vehicles, dumped garbage, and road construction; environmental contamination caused by the unsafe storage of hazardous wastes; investment scams that defraud the public; and increased costs to reclaim damaged land or otherwise acquire land from claim holders intent on profiting from holding out for monetary compensation from parties wishing to use the land for other purposes.

BLM and the Forest Service manage about 460 million acres that contain the vast majority of the 1.2 million active mining claims. The sheer number of claims and the extensive acreage involved make it difficult for the federal land-managing agencies to prevent unauthorized activities or stop them at an early stage. And eliminating existing and often long-standing unauthorized activities is an unduly expensive, and complicated process. While there is no panacea for eliminating or preventing all unauthorized activities on mining claims, we believe that steps can be taken to reduce the frequency of their occurrence and to more quickly eliminate existing ones.

Chronology of Laws and Regulations Governing Unauthorized Activities on Hardrock Mining Claims

The Mining Law of 1872 (30 U.S.C. 22 et seq.) allows U.S. citizens and businesses to freely prospect for hardrock minerals on federal land not specifically closed or withdrawn from mineral entry.[2] Prospectors can file a claim, which covers about 20 acres, giving them the right to use the land for mining-related activities. The mining law allows claim holders to preserve the rights to their claims by performing annually the equivalent of at least $100 worth of drilling, excavating, or other development-related work. Claim holders generally do not have to prove discovery of a valuable mineral deposit to maintain their claims unless, for example, the government challenges the validity of their claims.

The Surface Resources Act of 1955 (30 U.S.C. 612(a)) requires that mining claims be used only for prospecting, mining, mineral processing, and activities reasonably incidental to those operations. The act left to the federal land-managing agencies the task of determining what activities are reasonably incidental to mining.

The Forest Service issued regulations that became effective in 1974 to protect surface resources on national forests during mining and exploration. BLM's companion surface management regulations became effective in 1981. Both regulations require that those proposing to mine and occupy mining claims file a notice or plan of operations describing the proposed operation and related activities. The responsible federal agency must then either approve or reject the proposed activities.

Nonmining Activities and Their Related Problems

Despite the intent of the Mining Law of 1872 to promote mining and the Surface Resources Act's restriction of nonmining activities, some claim holders are using their claims for unauthorized residences, nonmining commercial operations, and illegal activities or speculative activities not related to legitimate mining. Many of these unauthorized activities are accompanied by environmental, public safety, or other problems.

Residency is the most frequent unauthorized activity on hardrock mining claims. Of the 59 sites we visited, 33 had unauthorized residences ranging from small rundown shacks to permanent, more expensive, year-round dwellings. The more elaborate residences have amenities such as gazebos, garages, greenhouses, and satellite television dishes. All these claim holders live rent-free on public land. Problems associated with unauthorized residences included blocked access or

[2]Mining is not permitted on more than 135 million acres of federal land.

rights-of-way, which may be associated with threats of physical violence to the public and agency staff, and environmental eyesores such as abandoned vehicles, dumped garbage, and road construction. (See app. III.)

Some mining claims, usually with unauthorized residences, also are used for nonmining commercial operations ranging from rental properties to unsafe toxic chemical storage that can endanger the environment, threaten underground water supplies, and increase the cost to reclaim the land. (See app. IV.) Other claims are used for a variety of illegal activities, including investment scams that have defrauded investors of at least $250 million and marijuana cultivation frequently guarded by armed men or booby traps. (See app. V.)

Still other claims are filed to profit by blocking an anticipated land use until prospective users buy out the claim holders' interest. These "nuisance claims" can impede government land transfers, cost the federal government hundreds of thousands of dollars, and hinder legitimate mining operations and other federal land uses. (See app. VI.)

Reasons for Unauthorized Activities Are Varied

While unauthorized activities on hardrock mining claims are contrary to existing laws and agency policies, federal land-managing agencies are not likely to prevent all new ones or eliminate the backlog of existing ones for several reasons. Primary among these reasons is the simple fact that to meet its purpose of promoting the exploration and development of domestic mineral resources, the mining law makes it relatively easy and inexpensive for claim holders to file and preserve the rights to their claims. As a result, there are about 1.2 million active claims spread throughout the western states and Alaska. The sheer number of claims and the acreage involved make it virtually impossible for the land-managing agencies to detect all existing unauthorized activities within any reasonable level of staff resources.

In addition, the large number of new claims filed each year makes it difficult and often impossible for the land- managing agencies to monitor and interact with claim holders to avoid unauthorized activities or stop them at an early stage. For example, about 160,000 new claims were filed in 1988 alone.

When an unauthorized activity is identified, the responsible land-managing agency faces an often long and costly process to either invalidate the claim or eliminate the activity, in part because under existing

regulations, the burden of proof is on the federal government to show that the activity is not incidental to mining rather than on the claim holder to show that it is. Since mining operations range from multimillion-dollar endeavors to very limited pick and shovel work, proving that a claim is not being developed or that an activity is not incidental to mining can be difficult. Moreover, while the federal government can seek injunctive relief or damages for trespass relating to an unauthorized activity without first having to determine the validity of a mining claim, U.S. attorneys are often reluctant to prosecute these cases because of higher competing priorities.

Instead of proving that an activity is not incidental to mining, a federal land-managing agency can invalidate a claim if it can show that a claim cannot be mined economically. However, this requires that BLM or the Forest Service perform a mineral examination which, according to BLM officials, usually costs about $10,000 in staff time alone. Agency decisions invalidating a claim or eliminating an activity determined not to be incidental to mining can be appealed through the existing tiered administrative appeals process and in the federal courts. In those cases where the federal government proves that an activity is not incidental to mining, a claim holder's potential losses are often limited to the investment in the unauthorized activity, and when a claim is invalidated, a claim holder can immediately refile another claim on the same location.

Finally, decisions to eliminate an unauthorized activity, especially those involving a claim holder's permanent residence, can become both emotional and controversial. According to the Forest Service, efforts to eliminate a residency sometimes result in an emotional conflict and unfavorable publicity followed by requests from public officials for more time or different solutions. The Forest Service states that this adds to, and significantly increases, the time and energy already spent.

Alternatives to Reduce the Number of Unauthorized Activities Are Limited

While there is no panacea for eliminating or preventing all unauthorized activities on hardrock mining claims, there are several alternatives for reducing their number. The Forest Service, in commenting on a draft of this report, suggested that federal land-managing agencies could revise their regulations to (1) clearly state that residency and nonmining commercial activities are normally not authorized and (2) shift the burden of proof to the claim holder to show that an activity is incidental to mining. On the basis of our work, we agree that existing regulations need to be revised to clearly state that residency and nonmining commercial activities are not normally authorized. We believe that this

would help shift the burden of proof to claim holders to show that an activity is incidental to mining and would reduce the number of unauthorized activities.

The Forest Service also suggested that the agencies simplify some of the government's procedures involving claim contests. Specifically, it suggested that the time required to eliminate existing and many times long-standing unauthorized activities can be shortened if BLM did not have to review and approve work done by certified Forest Service mineral examiners and review examiners before beginning the administrative appeals process. We believe that the complexity and time-consuming nature of the existing process for invalidating claims suggests that the Forest Service and BLM should jointly review this and other procedures that could make the process for eliminating unauthorized activities more efficient.

We believe that the number of unauthorized activities can be further reduced by reducing the number of claims that are not being actively explored, developed, or mined. While we support the purpose of the mining law, it makes little sense to allow it to continue to be used to encumber federal lands with mining claims not likely to be mined in the foreseeable future. While no hard data exist, BLM and Forest Service officials estimate that over 80 percent of the over 1.2 million claims considered "active" are not being explored, developed, or mined. Some of these claims, in turn, are used for unauthorized activities that result in the variety of problems identified in this report.

In a March 1989 report,[3] we stated that the mining law's annual work requirement (1) no longer ensures that a mining claim will be developed, (2) is difficult for federal land-managing agencies to enforce, and (3) is generally recognized by the mining community as being circumvented by many claim holders who certify that they have met the requirement without ever performing the work. The Forest Service noted that the work requirement can also help ensure that claims are held in good faith. However, its effectiveness is limited to the extent that claim holders actually perform the work. Therefore, we recommended that the Congress amend the act to require claim holders to pay the federal government an annual holding fee in place of the existing annual work requirement. An identical proposal was made by the administration in

[3]Federal Land Management: The Mining Law of 1872 Needs Revision (GAO/RCED-89-72, Mar. 10, 1989).

the President's fiscal year 1991 budget, and a bill to impose an annual holding fee of $100 per claim has been introduced in the Senate.

In our March 1989 report, we concluded that, depending on the amount, requiring every claim holder to pay an annual fee would likely result in clearing more invalid, inactive, or abandoned claims from the records and making those claims available to others because claim holders not intent on developing their claims may be reluctant to pay the annual fee. In a February 1990 analysis of the expected impacts of an annual holding fee, the Congressional Budget Office agreed with our conclusion, stating that a yearly fee would clear inactive claims, thus opening up land formerly closed to hardrock mining. The President's fiscal year 1991 budget estimates that a $100 annual holding fee would clear about 225,000 claims in fiscal year 1991 alone. This also would likely eliminate the unauthorized activities occurring on these claims. The higher the annual fee, the higher the likelihood that invalid, inactive, and abandoned claims will be cleared and the higher the likelihood that unauthorized activities will be eliminated.

Conclusions

Claim holders who use their claims for unauthorized activities create a variety of problems for federal land-managing agencies. Moreover, these activities are difficult and expensive to prevent or eliminate. However, several alternatives are available to reduce the frequency of their occurrence. One is to implement our prior recommendation to require claim holders to pay the federal government an annual holding fee in place of the existing annual work requirement. On the basis of our work on unauthorized activities occurring on hardrock mineral claims, we believe that the Congress should consider an annual holding fee that is graduated over time, thereby encouraging timely development of mineral resources rather than the hording of claims on federal lands. We also believe that BLM and the Forest Service should (1) revise their regulations to clearly state that residency and nonmining commercial activities are normally not authorized, thereby shifting the burden of proof to the claim holder to show that an activity is incidental to mining and (2) jointly review the process for invalidating claims to determine whether changes, such as eliminating BLM's review and approval of the Forest Service's mineral examinations, can make the process more efficient.

Recommendation to the Congress

In a March 1989 report, we recommended that the Congress amend the Mining Law of 1872 to require claim holders to pay the federal government an annual holding fee in place of the existing annual work requirement. One likely result, depending on the amount of the fee, would be a reduction in the number of invalid, inactive, and abandoned claims together with a reduction in the number of unauthorized activities occurring on them. To discourage more claim holders not intent on developing their claims and more activities not incidental to mining, we recommend that the mining law be amended to require claim holders to pay the federal government an annual holding fee that can be graduated over time. In establishing such a fee, a balance must be struck between an amount high enough to discourage those not intent on developing their claims from retaining existing claims and filing new ones and an amount low enough not to discourage legitimate miners.

Recommendations to the Secretaries of the Interior and Agriculture

To reduce the number of unauthorized activities on hardrock mining claims on federal land, we recommend that the Secretaries of the Interior and Agriculture direct the Director of BLM and the Chief of the Forest Service, respectively, to (1) revise their surface management regulations to clearly state that residency and nonmining commercial activities are normally not authorized on hardrock mining claims, thereby shifting the burden of proof to the claim holder to show that an activity is incidental to mining and (2) jointly review the process for invalidating claims to determine whether changes, such as eliminating BLM's review and approval of the Forest Service's mineral examinations, can make the process more efficient. If any of these revisions requires legislative changes, the Secretaries should submit the appropriate language to the Congress for its consideration.

Agency Comments and Our Evaluation

The Departments of the Interior and Agriculture provided written comments on a draft of this report. Interior's and Agriculture's comments and our evaluation of them are included as appendixes VIII and IX, respectively.

Interior noted that it had implemented a criminal penalty authority as a means to prevent or deter unauthorized activities on mining claims. Therefore, we have deleted a proposal we made in our draft report calling for Interior to adopt such a regulation. Concerning our recommendation that the Congress amend the mining law to require claim holders to pay a graduated fee, Interior noted that the President's fiscal

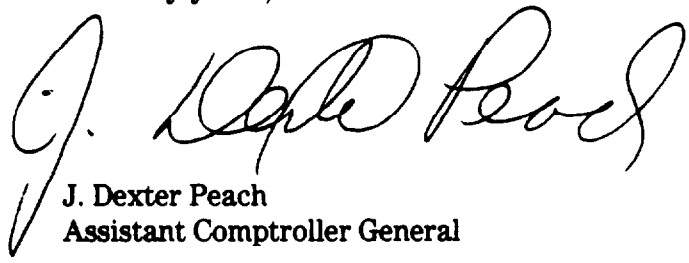
year 1991 budget proposes an annual $100 holding fee for each mining claim on federal land.

Conversely, Agriculture disagreed with our recommendation to the Congress for a graduated annual holding fee, stating that it does not believe that such fees will effectively eliminate unauthorized activities and could adversely affect mineral development, particularly for small mining companies. Agriculture also identified actions that it believed the Congress and the federal land-managing agencies should take to reduce the number of unauthorized activities on hardrock mining claims. To respond to Agriculture's concerns and suggestions, we added a new section to this report that discusses alternatives for reducing the number of unauthorized activities as well as our evaluation of Agriculture's suggested revisions to federal surface management regulations.

As agreed with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date of this letter. At that time, we will send copies to interested parties and make copies available to others upon request.

This report was prepared under the direction of James Duffus III, Director, Natural Resources Management Issues (202) 275-7756. Other major contributors to this report are listed in appendix X.

Sincerely yours,



J. Dexter Peach
Assistant Comptroller General

Contents

Abbreviations

DOE	Department of Energy
BLM	Bureau of Land Management
EPA	Environmental Protection Agency
GAO	General Accounting Office
IBLA	Interior Board of Land Appeals

Objectives, Scope, and Methodology

To identify the types of activities that are authorized and specifically unauthorized on mining claims, we reviewed the laws and the agency regulations, policies, and procedures related to mining claims on federal land.

To identify the types of nonmining activities occurring on hardrock mining claims, we first identified the total number of mining claims of record and the number of new claims filed annually with the Bureau of Land Management (BLM) since 1985. BLM records mining claims for all federal land open to mining. We selected Arizona, California, and Nevada because they have the most claims filed on federal land and they have large numbers of new claims filed each year. We limited our review to BLM and the Forest Service because, together, they are responsible for managing about 64 percent of federal land.

To identify unauthorized activities, we reviewed applicable data on the claims and interviewed BLM and Forest Service headquarters and field officials. We also asked the two agencies to provide estimates, by state, of the number of known and suspected unauthorized activities on mining claims.

To develop specific case studies, we asked BLM and Forest Service officials to identify sites in the three states selected for our review that provide examples of the types of nonmining activities occurring on mining claims. Forest Service and BLM officials identified 59 such sites in the three states we selected and accompanied us on visits to all the sites during January through March 1989. Table I.1 identifies the number of sites by state and agency.

Table I.1: Claim Sites Visited

	Claim sites			
Agency	**Arizona**	**California**	**Nevada**	**Total**
Forest Service	6	29	0[a]	**35**
BLM	9	9	6	**24**
Total	**15**	**38**	**6**	**59**

[a]We did not visit any Forest Service sites in Nevada because of snow cover at the few sites that the Forest Service identified.

We conducted our work between December 1988 and March 1990 in accordance with generally accepted government auditing standards. The Departments of the Interior and Agriculture provided written comments on a draft of this report. These comments and our evaluation of them are included in appendixes VIII and IX, respectively.

Background

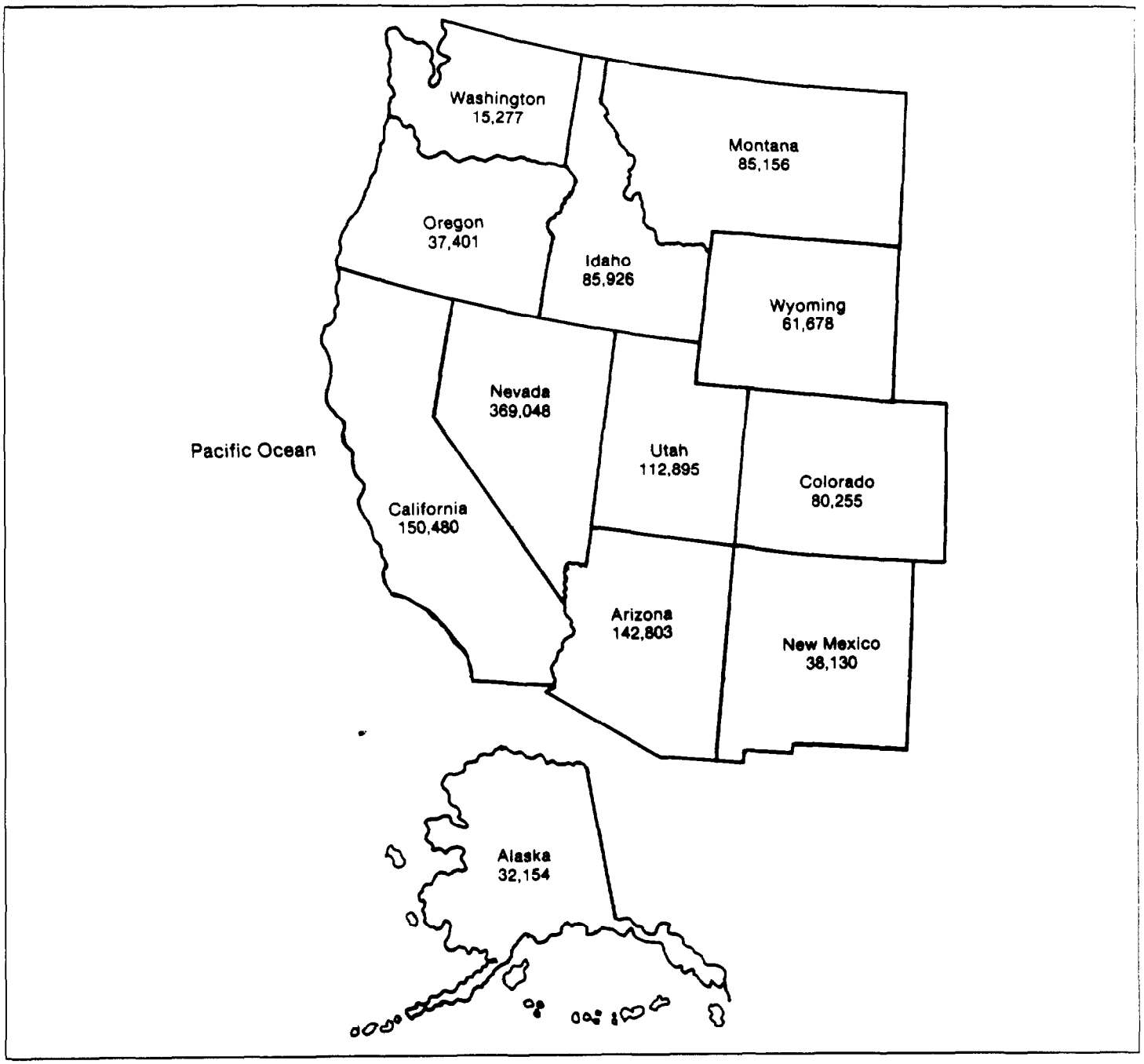
The Mining Law of 1872 (30 U.S.C. 22 et seq.) promotes the exploration and development of mineral resources on federal lands. These lands cover approximately 724 million acres and are located primarily in the western United States. The principal federal land-managing agencies are the Department of the Interior's Bureau of Land Management and the Department of Agriculture's Forest Service. These two agencies manage about 270 million and 191 million acres, respectively, or about 64 percent of all federally owned lands. Each agency is responsible for the surface management of mining-related activities on its lands.

Under the mining law, U.S. citizens and businesses can freely prospect for hardrock minerals on federal lands not specifically closed or withdrawn from mining and file claims with BLM (for a fee of $10 each), giving them the right, without prior federal approval, to use the land for mining-related activities. In the intervening 118 years since the law was enacted, over 6 million claims have been filed, of which about 1.2 million were active during 1988. The term "active" means that the claims were either actively being mined or their active status was being maintained by claim holders who filed affidavits with BLM certifying that they have annually performed at least $100 worth of drilling, excavating, or other development-related work (often referred to as the act's "diligence" or "annual work" requirement) for each claim. By filing a claim, a claim holder obtains, certain legal rights.[1] However, these rights may be challenged by the federal government until the claim holder establishes the claim's validity by proving that a valuable mineral deposit has been discovered.

Over 99 percent of the land covered by mining claims is concentrated in 11 western states and Alaska. Figure II.1 shows the claims of record as of January 1989 for these states.

[1] A valid mining claim provides the claim holder an exclusive possessory interest in the claim—a form of property that can be sold, transferred, or inherited without infringing the paramount title of the United States. The claim holder has the full legal right to explore, develop, mine, and sell minerals from these federal lands.

Figure II.1: Claims of Record as of January 1989



The Mining Law of 1872 granted claim holders the right to use the land covered by a claim (about 20 acres) for mining-related activities. While the act's intent is to promote mining, it does not clearly specify which types of surface activities are authorized and which are not. In the intervening years, many claim holders have used their claims for nonmining activities. In the process of eliminating some of these nonmining activities, a body of case law has developed clearly establishing that to be authorized, activities on mining claims have to be mining related.

The Surface Resources Act of 1955 (30 U.S.C. 612 (a)) clarified the claim holder's surface rights by specifying the circumstances under which a claim holder may occupy a claim. It specifically provides that mining claims can be used only for prospecting, mining, or processing operations and "uses reasonably incident thereto." Agency policies, set out in a manual for dealing with residential occupancy on mining claims, and developed from the Surface Resources Act and subsequent Interior Board of Land Appeals (IBLA)[2] decisions, further provide that in order for claim holders to reside on claims, they must be actively and diligently engaged in substantially continuous mining activities and their residences must be reasonably incidental to those activities. The phrase "reasonably incidental" provides some latitude for interpretation. Part-time or weekend prospectors would not meet the standard to reside on a claim. Residency would, however, be reasonably incidental to mining where there are substantial improvements or mining equipment that is reasonably incidental to the ongoing operations or occupancy is required to prevent theft of valuable minerals or equipment.

After the Surface Resources Act helped clarify the long-standing question of what are authorized activities on mining claims, the Forest Service, pursuant to its enabling legislation, the Organic Act of 1897 (16 U.S.C. 551), adopted regulations (36 C.F.R. 228) which became effective in 1974 to protect surface resources affected by mining-related activities on National Forest System lands. BLM, pursuant to the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701, et seq.), adopted companion regulations (43 C.F.R. 3809), which became effective in 1981. These regulations establish procedures which enable the agencies to identify and approve or reject proposed activities on mining claims.

[2]Interior's Board of Land Appeals, Office of Hearings and Appeals, is an authorized representative of the Secretary of the Interior, for the purpose of hearing, considering, and determining, as fully and finally as might the Secretary, matters such as the disposition of lands and their resources.

Despite these requirements, some claim holders continue to use their claims for unauthorized residences, nonmining commercial operations, and illegal or speculative activities. Agency officials estimate that in the three states we visited, of a total of over 662,000 mining claims, about 1,600 have known or suspected unauthorized activities. (See table II.1.)

Table II.1: Known and Suspected Unauthorized Activities by State and Agency (as of January 1989)

State	Agency			Active claims
	BLM	Forest Service	Total	
Arizona	254	91	345	142,803
California	559	600	1,159	150,480
Nevada	85	21	106	369,048
Total	**898**	**712**	**1,610**	**662,331**

Unauthorized Residences

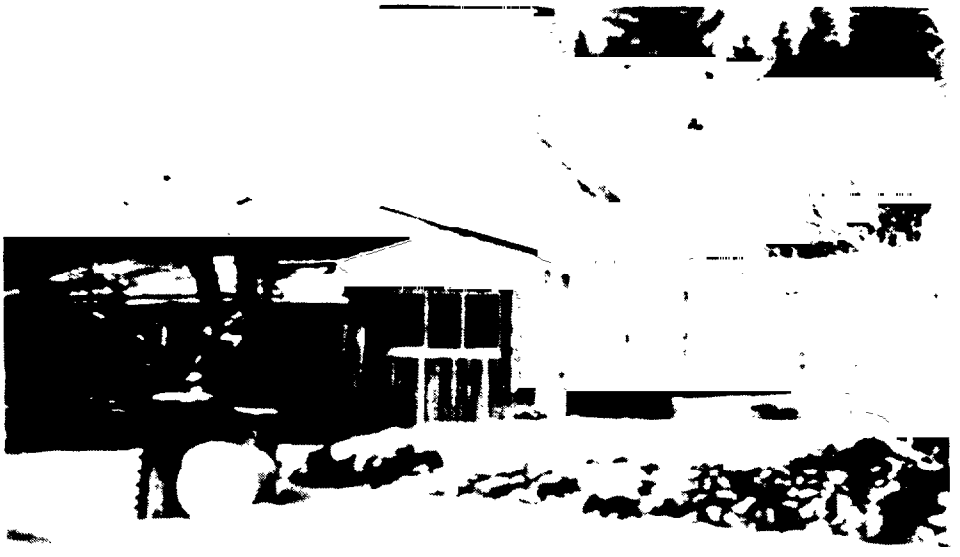
BLM and Forest Service officials in Arizona, California, and Nevada told us that unauthorized residency is the most frequent nonmining activity on mining claims. Unauthorized residences adversely affect the agencies' ability to effectively manage public land because the residences are often accompanied by a variety of associated problems.

We visited 59 claim sites in the three states, 49 of which contained residences. BLM or the Forest Service considered the residences on 33 of these sites to be unauthorized at the time of our visit. Residences are unauthorized if no mining is taking place on a claim or if the residence is not reasonably incidental to the mining that is taking place. These residences covered a wide variety of structures, and many residences had one or more other unauthorized uses associated with them.

Unauthorized Residences Cover a Wide Range of Structures

The unauthorized residences on claims we visited included small run-down shacks; various types of trailers; summer cabins; and permanent, more expensive, year-around houses. At one extreme, many of the older shacks do not meet local health and sanitation codes. By contrast, the more elaborate residences have amenities such as gazebos, garages, greenhouses, and satellite television dishes. The shack and permanent residence shown in figure III.1 illustrate the range of unauthorized residences.

Figure III.1: Unauthorized Shack and a Permanent Residence on Claims



Even when a claim is being mined, elaborate residences are not necessarily allowed. IBLA explained in 1985 that ". . . the right to occupy does not necessarily embrace the right to live in the style one might desire if he or she owned the land in fee."[1]

Unauthorized Residences on Claims Where No Mining Is Occurring

In some scenic locations, claim holders live in unauthorized residences on mining claims where there is no pretense of mining. Often, the mining that may have occurred at one time and justified the residency has long since ceased, but residency continues. These claim holders live rent-free on public land. For example, a Forest Service official showed us a claim in California's Tahoe National Forest which had a residence that he said was unauthorized. The claim holder lived on the banks of the Yuba River in a large house with a picturesque setting, but no mining was taking place. (See fig. III.2.) A Forest Service official told us that the agency became aware of the unauthorized residence when the claim holder questioned why the Forest Service sent her a questionnaire concerning mining operations. No mining had occurred on the claim in years, she said.

[1] Bruce W. Crawford et Ux., IBLA 83-851, May 17, 1985. "Fee" means acquiring all rights and interests associated with a property.

Figure III.2: Unauthorized Residence on a Claim in the Tahoe National Forest With No Recent Mining

Unauthorized Residences Not Incidental to Mining

Many residences, particularly in scenic areas, are associated with part-time mining operations where the mining is minimal or seasonal. These residences are not authorized because they do not meet BLM and Forest Service policies that diligent mining-related activities be in progress and residences be reasonably incidental to those activities. For example, about 200 claim holders and their families live in unauthorized residences near the Salmon and Klamath rivers in the Klamath National Forest, California. According to Forest Service officials, in most of these cases, the mining appears incidental to the residency rather than the reverse. Forest Service officials also told us that in one area of the Klamath National Forest, a rural mail route served 40 residences—37 of which were unauthorized because they were not reasonably incidental to ongoing mining.

Problems Associated With Unauthorized Residences

Problems associated with unauthorized residences on mining claims include blocked access or rights-of-way, which may be associated with threats of physical violence to the public and agency staff attempting to use what should be open public land; environmental eyesores caused by abandoned vehicles, dumped garbage, and unauthorized road construction; and management complications.

Blocked Access

Unauthorized residences deny the general public their right to safely enjoy the benefits of public land. Claim holders often block public land through a variety of means including erecting fences and gates and posting "no-trespassing" and "private property" signs. There have also been instances of claim holders issuing verbal threats, and brandishing firearms. (See fig. III.3 for pictures of blocked accesses.)

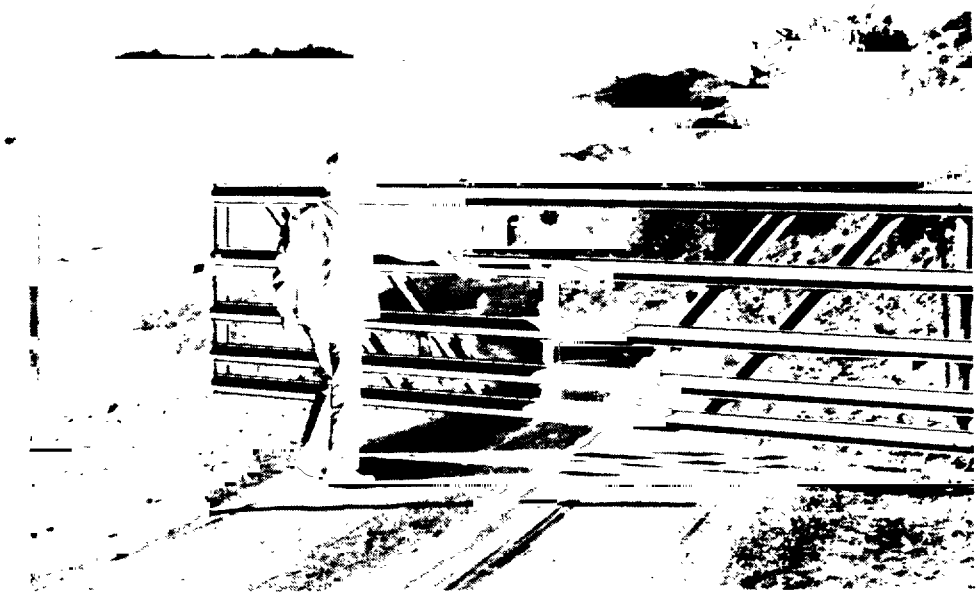
Figure III.3: Examples of Blocked Public Access

For example, Forest Service officials told us that the Tahoe National Forest contains about 360 unauthorized residencies—most located on mining claims. They said that one stretch of the north Yuba River, which runs through the forest, was closed to camping because the banks are covered with claims, many of which involve unauthorized residences.

Some unauthorized residents block access to public land with threats of violence. We saw video recordings taken by agency officials on mining claims in northern California that showed claim holders, some with automatic weapons, threatening agency officials. Because of concern for how one potentially violent claim holder might react to our visit, Forest Service officials decided that we needed to be accompanied by an armed law enforcement ranger when we visited his claim in the Angeles National Forest, California.

We visited another unauthorized residence in the Tonto National Forest, Arizona. The claim holder had a gate across a Forest Service road about 5 miles from a Forest Service campground. (See fig. III.4.) Forest Service documents revealed several instances where individuals, including an off-duty Forest Service ranger, reported that the claim holder told them they could not pass through the area or that they were blocked from leaving the area after entering.

Figure III.4: Blocked Access Associated With an Unauthorized Residence on a Claim in the Tonto National Forest, Arizona



Environmental Eyesores

Environmental eyesores are often found on claims with unauthorized residences. Some claim holders operate on public land like it is private property—dumping junk and storing old equipment and vehicles. We observed a wide variety of junk strewn about a claim in California's Angeles National Forest that also contained an unauthorized residence. (See fig. III.5.)

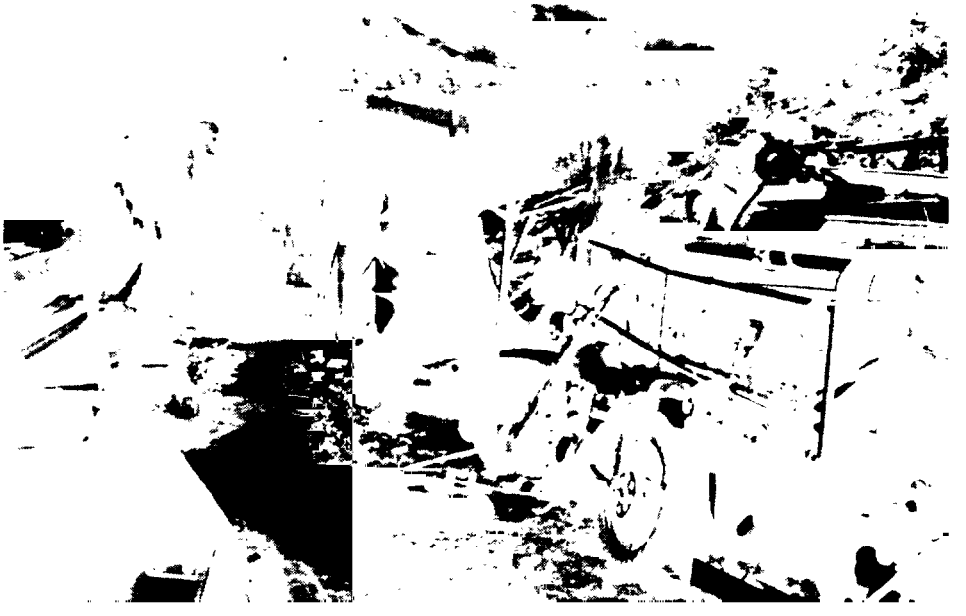


Figure III.5: Assorted Junk Associated With an Unauthorized Residence in California's Angeles National Forest

At the unauthorized residence which we visited in Arizona's Tonto National Forest, the claim holder had constructed many unauthorized roads. Some, including the one shown in figure III.6, parallel existing Forest Service roads. This claim holder also has a number of inoperable vehicles, trash piles, and an unused cyanide pond located on his claims. Forest Service officials told us that no recent mining has taken place on these claims.

Figure III.6: Eyesores on Claims in the Tonto National Forest, Arizona

Management Difficulties

Unauthorized residences in a national forest can have adverse consequences on forest management. For example, the Forest Service's first

priority in fire fighting is to protect people and structures. Forest Service officials said that as a result, sometimes forest fires get out of control because fire fighting resources must be diverted to protect people and structures regardless of whether they are authorized.

Nonmining Commercial Operations

Some mining claims are used for nonmining commercial operations ranging from rental properties to toxic chemical storage. We visited a site in Randsburg, California, where a BLM official told us that a claim holder lived in an unauthorized residency. The claim holder was also using an unauthorized cabin as a rental property. (See fig. IV.1.) The BLM official told us that the area is an old mining district; however, no recent mining has occurred on this claim. The cabin shown in figure IV.1 was one of an estimated 20 unauthorized structures in the area.

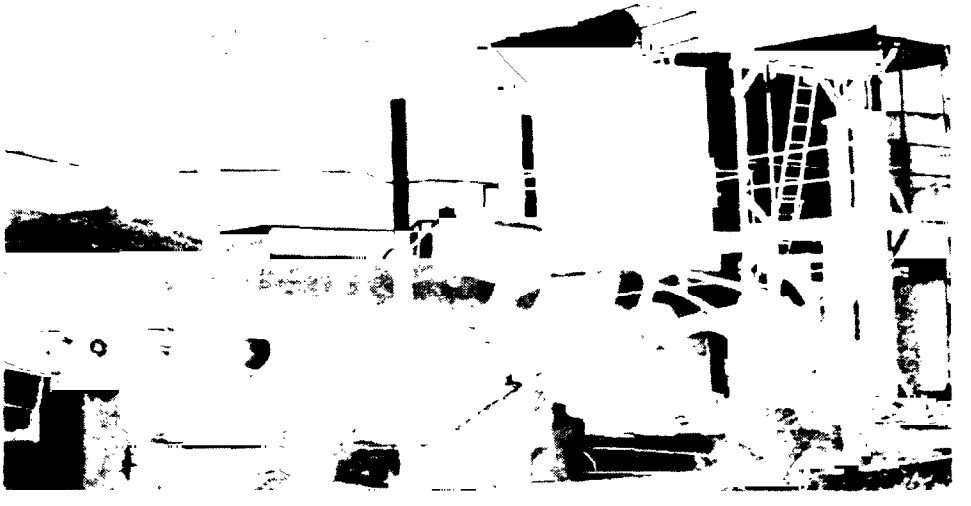
Figure IV.1: Unauthorized Rental Unit on a Claim in Randsburg, California

Nonmining commercial operations on claims may cause far greater environmental and reclamation problems than those associated with the more numerous unauthorized residences. These problems include unsafe storage of hazardous waste materials, which can endanger the environment and threaten underground water supplies. In addition, commercial operations may involve large accumulations of equipment and other material that have nothing to do with mining and will have to be removed to reclaim the mine site.

We visited two sites in the Mojave Desert in southern California where commercial operations were being conducted on mining claims. Near Lancaster, California (see fig. IV.2), one claim holder was using an 11-acre claim site to store scrap metal which, a BLM official said, he was selling overseas. In addition to the scrap metal, the claim holder stored

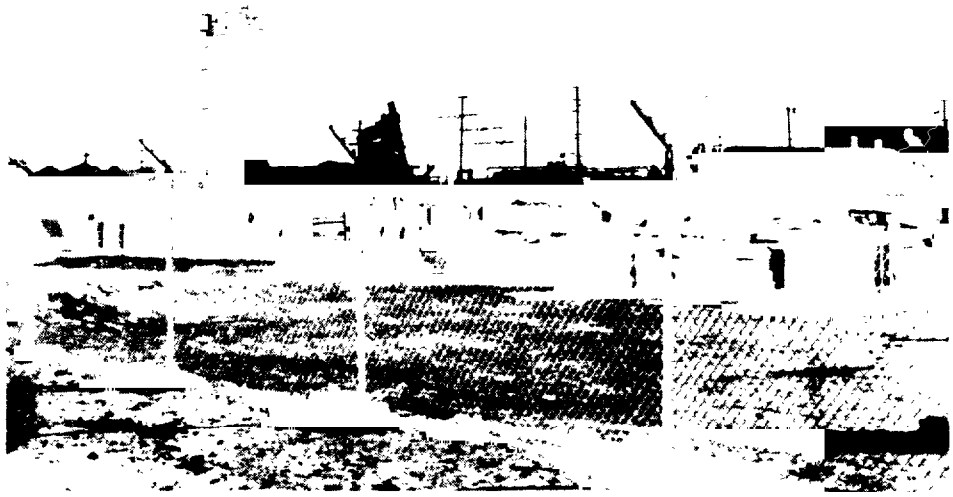
other materials including arsenic, copper, cyanide, and heavy metals. The state regional water quality control board determined that three of the settling ponds on the property were toxic pits, and the Environmental Protection Agency (EPA) initially estimated that site clean-up would cost about $1 million. A BLM official told us in March 1990 that the estimated cost had been reduced because the claim holder had recently sold some of the scrap that had been stored on the claim. None of the operations on the claim were authorized.

Figure IV.2: Hazardous Materials Stored on Mojave Desert Claim



We visited another nearby site where the claim holder was using the claim to recover silver from photographic processing materials. This site had numerous drums strewn about which BLM officials believe contain hazardous chemicals. (See fig. IV.3.) In 1989, BLM had a hazardous materials contractor sample materials at the site for laboratory analysis. As of March 1990, BLM had not received the results of the contractor's analysis.

Figure IV.3: Chemical Containers on a Claim in the Mojave Desert



Illegal Activities

Mining claims are also used for a variety of illegal activities. Some mining claims have provided the basis for investment scams whereas others have been used for marijuana cultivation.

Mining Claim Investment Scams

Mining claim investment scams have long been a method of defrauding the public. However, the scams have become more sophisticated and prevalent in recent years. Documented investor losses have reached at least $250 million, according to the Director, New Mexico Securities Division, who heads a multiagency and multi-state mining scam clearinghouse called "Project Goldbrick." He also told us that during 1988 and 1989, they have learned of over 100 suspected mining scams. While not all of these scams involve claims on federal land, many do and most of these have operations in Arizona, California, or Nevada. In 1989, these states had at least 21 cases under investigation or prosecution, all of which involved claims on public land.

Many scams follow a similar format. Investors are offered the opportunity to buy a specific amount of ore-bearing material at a set price under delayed delivery contracts, usually ranging from 6 months to 3 years. The operator is able to show investors that claims have already been staked on federal land—ostensively for the purpose of mining a valuable mineral. The problem is that either the ore is never mined or the material mined is not valuable.

As an example of the types of mining claim investment scams operating on federal land, Forest Service officials told us about an alleged scam operation in the Kaibab and Coconino National Forests in Arizona. In 1988, the operator filed 1,263 claims covering about 200,000 acres of public land. The claim holder then began seeking money from investors through delayed delivery contracts to mine gold. However, the Forest Service independently sampled various claim sites in March 1989 and found only a common variety basaltic rock and cinder material. The Arizona Securities Division is investigating this operation because of concern that no gold is present.

In January 1989, we visited 19 claims covering 365 acres in the Prescott National Forest in Arizona, which the Forest Service suspects may also be a scam operation. The operator was offering the public contracts for future gold deliveries from this gold mine. At the time of our visit, the operator had failed to make promised ore deliveries and, at least one state—Wisconsin—had prohibited the company from continuing to sell its stock in the state because it was an unregistered security. In addition to potentially defrauding investors, the operator created significant

areas of surface disturbance and heavily damaged a riparian area.[1] (See fig. V.1.)

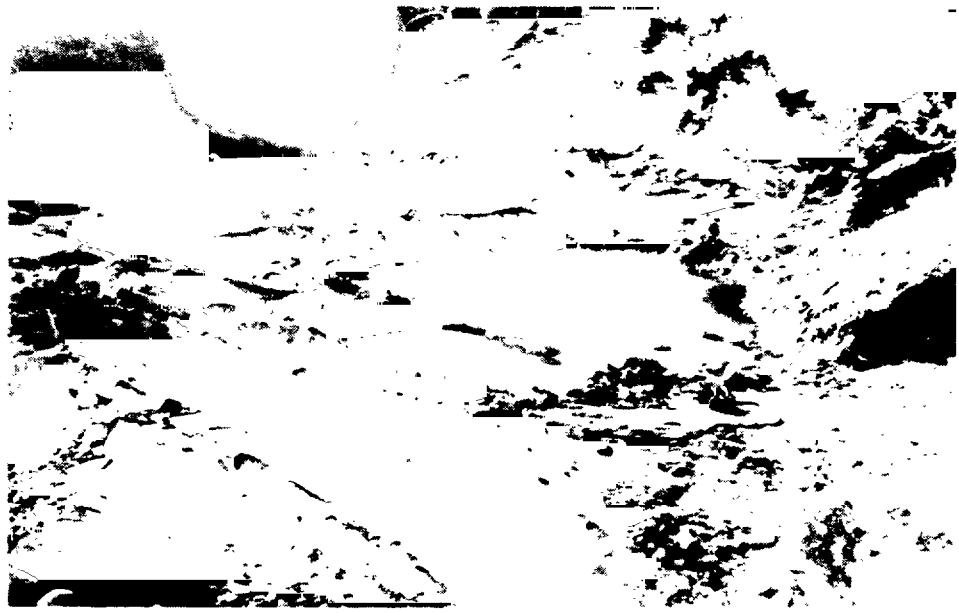


Figure V.1: Damaged Riparian Area on Forest Service Grazing Allotment in the Prescott National Forest, Arizona

We also visited a site on BLM land near Lake Isabella, California, where the claim holder was under a securities investigation. The claim holder had allegedly misled the public into investing in gold which may not exist. At the time of our visit in February 1989, the site contained several unauthorized structures (see fig. V.2) and, according to BLM documents, a criminal investigation was pending by the U.S. Postal Service and the Securities and Exchange Commission. In addition, EPA and the county were investigating the storage of hazardous materials on the site.

[1]Riparian areas are the narrow bands of green vegetation along the banks of rivers and streams and around springs, bogs, lakes, and ponds.

Figure V.2: Unauthorized Residences and Truck Scale on a Claim Near Lake Isabella, California, Pending Investigation as a Mining Scam

Marijuana Cultivation

In 1982 and again in 1984, we reported on the problem of marijuana cultivation on public land.[2] Forest Service and BLM officials told us that marijuana is being grown on mining claims in northern California as well as on other federal land. In addition to being illegal and unauthorized activities on mining claims, these operations can cause safety hazards because they are frequently guarded by armed men or booby traps.

We visited two sites in California's Klamath National Forest where in 1988, claim holders lived on the claims and the county sheriff found marijuana. We also visited a claim site on BLM-managed lands near Nevada City, California, that had been used for marijuana cultivation. During the visit, we observed a drip irrigation system and an observation post in a tree over an underground marijuana drying shed. (See fig. V.3.)

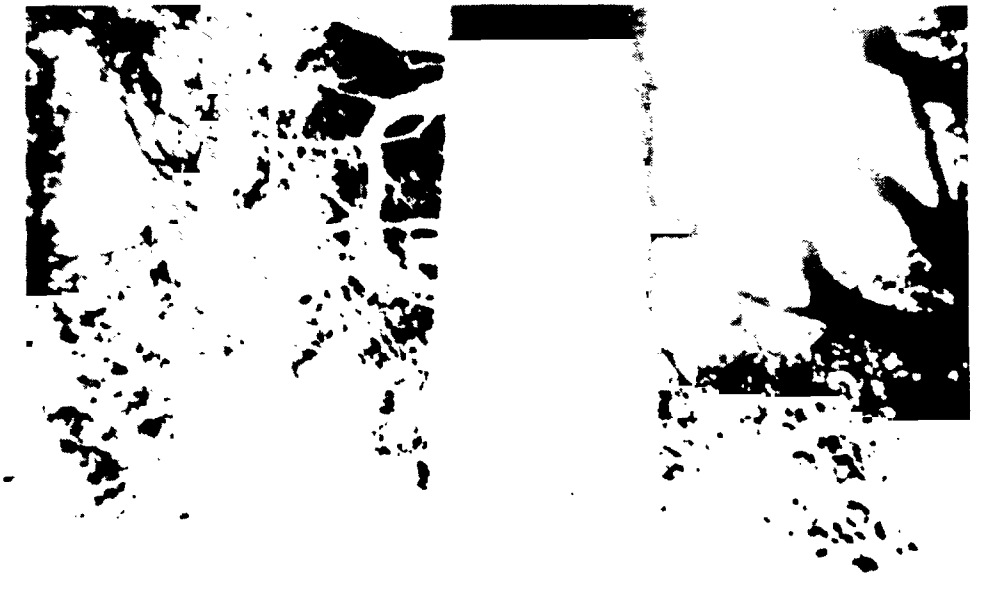


Figure V.3: Marijuana Observation Post on a Claim Near Nevada City, California

[2]Illegal and Unauthorized Activities on Public Lands—A Problem With Serious Implications (CED-82-48, Mar. 10, 1982) and Additional Actions Taken to Control Marijuana Cultivation and Other Crimes on Federal Lands (RCED-85-18, Nov. 28, 1984).

Nuisance Claims

Some claim holders record claims but do not mine on them; rather, they profit by blocking an anticipated land use until a prospective user buys out their interest, probably for thousands of dollars more than the minimal amounts they paid to record their claims. These claims are referred to as "nuisance claims." Nuisance claims can impede government land transfers and cost the federal government substantial amounts of money to invalidate claims or buy out the claim holders. In addition, nuisance claims impede legitimate mining operations and other public land uses. A BLM official in Nevada told us that nuisance claims are a problem on a national level and a major problem in the Las Vegas area.

Claim holders profit from such claims because interested parties know that it is both costly and time-consuming for the government to invalidate claims. Therefore, potential users will often buy out the claim holder rather than pursue the process required to invalidate the claim.

The Department of Energy (DOE), in 1989, came to terms with a claim holder who was blocking construction of a proposed nuclear waste repository at Yucca Mountain, about 100 miles from Las Vegas, Nevada. DOE officials identified this location as a possible repository site in 1976, and since 1977, over 170 drill holes, trenches, and pits have been constructed to obtain site-specific data. In August 1987, an individual filed 10 claims, and in 1988, he filed another 17 claims covering, in total, about 540 acres in the proposed repository area. After reviewing its options, DOE decided that rather than go through the lengthy mineral validation process, it was more expedient to buy out the claim holder, which it did for $249,500.

DOE's experience with nuisance claims at Yucca Mountain is not unique. Individuals can also find out about proposed land uses through agency planning actions or when such information otherwise becomes public.

Others outside the federal government, such as municipalities, also are affected by nuisance claims. For example, the Congress passed legislation giving the city of Mesquite, Nevada, the exclusive right to purchase a parcel of BLM land, subject to valid existing rights, at fair market value. However, before the act was signed, an individual located claims on about 600 acres of land that the town wanted to buy from BLM, effectively blocking the sale. The town paid the claim holder $10,000 to give up the mining rights to the claims, according to the city manager.

Unauthorized Activities Continue

Many of the currently known and suspected unauthorized activities on mining claims have been in existence for a long time, according to agency officials. Some of the sites we visited involve residences which have been in existence for more than 20 years—two for over 50 years. Our review of the mining law and agency regulations and policies, and our discussions with agency officials show that unauthorized activities on mining claims have grown over a long period of time, in part, because the Mining Law of 1872 was not specific in prohibiting nonmining activities, and agencies did not have adequate surface management regulations. However, even after the development of surface management regulations, unauthorized activities persist. There is little in existing laws or regulations to deter claim holders from initiating unauthorized activities or to encourage them to promptly terminate such activities when discovered.

Legislation and Regulations to Prevent Unauthorized Activities Came Years After Many Problems Arose

The Mining Law of 1872 has several provisions that make management difficult. The act provides that prospective claim holders can file a claim and obtain ownership rights after discovering a valuable mineral deposit. However, from the time of the law's enactment, BLM's predecessor organization adopted the practice of local mining districts, which did not require mineral discovery to precede filing a claim. In 1919, the Supreme Court accepted this practice when it ruled that, in order to create valid rights or initiate a title against the United States under the mining law, a discovery of minerals within the location is essential, but such discovery could precede or follow the filing of a claim.[1] As a result of the court's ruling, BLM's predecessor formally adopted this interpretation. The Mining Law of 1872 is also unique in that while other transfers of interest in federal land require an overt act by the government, the mining law provides for the transfer of legal rights to a claim holder, provided certain requirements are met.

These provisions make it easy for an individual to obtain a claim and difficult for the government to invalidate one. For the government to invalidate a claim for lack of discovery, it must establish a prima facia case that a discovery has not been made. The burden is on the government to conduct a mineral examination as the normal first step in establishing this case. Once the government establishes its initial case, the miner then has the burden of proving, by a fair preponderance of the evidence, that he has made a discovery. The cases will be heard by an administrative law judge in Interior's Office of Hearings and Appeals.

[1] Union Oil Company of California v. Smith, 249 U.S. 337 (1919).

Either party can appeal the judge's decision to IBLA. Further appeals can be made to the Secretary of the Interior and to the federal courts.

The mining law further complicated agency efforts to prevent new activities and eliminate existing unauthorized activities on claims by giving claim holders the right to occupy their claims, but it did not specify what types of occupancies were authorized. The Surface Resources Act of 1955 was the first legislative directive that specifically provided that mining claims shall not be used for any purpose other than prospecting, mining, or processing operations and uses reasonably incidental thereto.

In 1968, the 9th Circuit Court of Appeals stated that a permanent residence not reasonably related to mining is not justified.[2] Additionally, the court held that the United States could seek injunctive relief or damages in the U.S. district court for trespass against persons without first having to determine the validity of their mining claims.

In 1985, IBLA, in Bruce W. Crawford,[3] helped clarify under what circumstances occupancy was justified if there was some level of ongoing mining activity. This ruling provided BLM the basis for administratively resolving occupancy questions before Interior's Office of Hearings and Appeals.

It was many years after the Surface Resources Act before the Forest Service and BLM implemented surface management regulations which can help ensure that claim holders do not initiate unauthorized activities on mining claims. The Forest Service, pursuant to its enabling legislation, implemented its surface management regulations (36 C.F.R. 228), which became effective in 1974. These regulations require that those proposing to mine and occupy mining claims file a notice or plan of operations with the Forest Service describing the proposed mining operation and the related occupancy. A court decision in 1984 further strengthened the regulations by establishing the precedent that fixed residences—the most frequent occupancy problem—must be covered in a plan of operations.[4] These plans require prior written approval from the Forest Service.

[2]United States v. Nogueira; 403 F. 2d 816, 825, (9th Cir., 1968).

[3]Bruce W. Crawford et Ux. IBLA 83-851, (1985).

[4]United States v. Langley, 587 F. Supp. 1258 (E.D. Cal. 1984).

In 1981 BLM, pursuant to authority granted in the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701, et seq.), established its surface management regulations (43 C.F.R. 3809). Similar to the Forest Service's regulations, advance notice or approval of a plan of operations governing mining activities (and related occupancy) are required.

Before October 1989, BLM policy required that mining operations under a notice or operating plan—operations causing surface disturbance and certain other operations—be inspected at least annually. However, in October 1989, BLM headquarters issued instructions requiring that producing operations and nonproducing operations which cause any surface disturbance be inspected at least biannually. Forest Service regulations require inspections but leave it up to the various field offices to determine inspection frequency.

Unauthorized Uses Persist

The Surface Resources Act of 1955, which is key to preventing new unauthorized uses, is also key to the agencies' efforts to eliminate existing nonmining activities. The act's clear statement that activities unrelated to mining are not allowed gives the agencies a stronger basis for eliminating unauthorized activities. However, the procedures for demonstrating that activities are not justified are complex, time-consuming, and staff intensive, and the burden of demonstrating that activities are unauthorized rests with the federal government. The Forest Service told us that when mining operations are covered by a plan of operations, it is easier to eliminate activities not authorized by the plan.

Agency efforts to resolve unauthorized activities with a claim holder begin with a series of informal steps. These steps may drag on for years as agency staff make personal visits, write letters, make a formal determination that the activity is unauthorized and obtain agency approval to contest the case. If the unauthorized activity cannot be resolved through these procedures, the agencies proceed to formal administrative and legal remedies.

The agencies have attempted to terminate unauthorized activities which could not be informally resolved by proving that a valid mineral discovery had not been made and that the claims were, thus, invalid. However, this procedure proved to be costly and time-consuming. For instance, a mineral examination must be conducted to determine the validity of a claim, and agency officials told us that these examinations

usually cost the government about $10,000 in staff time alone. Typically, it takes more than a year to conduct the necessary examinations and work through the appeal process, which is often required to uphold the invalidation of a mining claim. In addition, BLM's manual governing residential occupancy on mining claims notes that validity contests are generally ineffective and inappropriate in cases of unauthorized mining claim occupancy on land open to mineral entry because new mining claims may be located after a claim is held to be null and void.

While the 1968 court ruling provided a remedy which does not require invalidating the claim, the remedy has major shortcomings because it requires cooperation from U.S. Attorneys, some of whom are reluctant to prosecute these cases because of higher priority work. In addition, according to a BLM official, the administrative approach will not be fully effective until a body of precedent develops to help determine when activities are unauthorized. Moreover, these cases can be appealed to the federal courts.

Preventing New Unauthorized Uses Is Difficult

While current surface management regulations help the Forest Service and BLM prevent or identify new unauthorized activities, the agencies face major problems in implementing them. Their enforcement resources are spread thinly for managing the approximately 460 million acres they control. These BLM- and Forest Service-managed lands contain the vast majority of the approximately 1.2 million active claims, and in 1988, about 160,000 new claims were filed. Agency mining enforcement activities are carried out by relatively small staffs that have other duties as well. Although BLM anticipates some increase in staff as a result of new revenue from budget increases, the vast acreage of federal land and the large number of claims will continue to make enforcement under existing budget constraints difficult, if not impractical.

The enforcement burden on agency staff is large because the law and regulations contain few self-policing controls. The mining law allows an individual to file a claim and obtain mineral rights without first proving that a valuable mineral deposit has actually been discovered. The cost of filing a claim is only $10, and the minimum yearly cost of maintaining a claim involves submitting an affidavit with a $5 fee certifying that at least $100 of development work was done for each claim. These requirements make it easy and relatively cheap to obtain and hold a claim whether or not mining is being pursued. While no hard data exist, agency officials estimate that over 80 percent of currently recorded claims are not being actively explored, developed, or mined.

With the limited self-policing requirements contained in the law and agency regulations, the agencies must rely on their inspection and enforcement activities to ensure that claim holders do not exceed approved activities. However, agency enforcement efforts are not fully effective. For example, BLM was not able to consistently meet the limited inspection requirements that existed before 1989. Further, BLM officials in the three states covered in our review said they also will not be able to meet the more frequent inspection schedule in the new inspection requirement.

Inspecting operations covered by notices and plans is necessary because several agency officials told us that claim holders sometimes build unauthorized structures or exceed what is authorized in a plan. For example, a Forest Service official told us that one claim holder built a landing strip on his claim and the Forest Service did not know about it until a plane crashed. We saw other examples of unauthorized activities at several sites. For example, at one site on BLM lands, the claim holder added an unauthorized truck scale to a claim that already had several unauthorized residences and structures. At a site on Forest Service lands, although the claim holder had submitted a plan, he built roads that were not authorized by the plan.

Other problems exist where claim holders conduct operations on their claims without filing a notice or plan of operations. Not only are unauthorized mining operations conducted, but nonmining operations may be ongoing. For example, at one of the sites we visited, the claim holder was operating a scrap metal and hazardous waste storage site without a plan. During his operation, he contaminated the soil with heavy metals.

Comments From the Department of the Interior

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

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

MAY 17 1990

Mr. James Duffus, III
Director, Natural Resources
Management Issues
General Accounting Office
Washington, D.C. 20548

Dear Mr. Duffus:

Thank you for your letter of April 5, 1990, asking the Department of the Interior to comment on the draft report entitled, Federal Land Management: Unauthorized Activities Occurring on Mining Claims (GAO/RCED-90-111).

We have reviewed the report and our general comments are:

See comment 1.

Page 1 - The number of mining claims which have known or suspected unauthorized activities is cited as 1,600 of 662,000 mining claims. You may wish to put this number in perspective by pointing out that the 1,600 claims with unauthorized activity are less than one quarter of one percent (0.24 percent).

See comment 2.

Page 4 - The report recommended that the Secretary of the Interior adopt regulations implementing the criminal penalty authority contained in FLPMA. The Bureau of Land Management (BLM) has such regulations in place at 43 CFR 9262.1. The regulations provide for penalties for unauthorized use, occupancy, or development of public lands.

Formal comments prepared by BLM are enclosed for your incorporation into the GAO report. Thank you for the opportunity to comment.

Sincerely,

Deputy Assistant Secretary - Land and
Minerals Management

Enclosure

Bureau of Land Management's Comments on
General Accounting Office Report (GAO/RCED-90-111)

MATTERS FOR CONGRESSIONAL CONSIDERATION

...we believe that the Congress should consider replacing the $100 annual work requirement with an annual holding fee that could be graduated over time, recognizing that a balance must be struck between an amount high enough to discourage persons not intent on mining from filing new claims and keeping existing ones and an amount low enough to not discourage serious miners.

See comment 3.

The 1991 President's Budget, published on January 29, 1990, includes proposed appropriations language that would establish an annual holding fee of $100 for each unpatented mining claim located on public lands. This holding fee would be established in lieu of the assessment work requirement contained in the Mining Law of 1872, as amended (30 U.S.C. 28), and the filing requirements contained in Sec. 314(a) and (c) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1744).

RECOMMENDATION TO THE SECRETARY OF THE INTERIOR

We recommend that the Secretary of the Interior adopt regulations implementing the criminal penalty authority contained in FLPMA as a means to prevent or deter unauthorized activities on mining claims.

See comment 2

The Bureau of Land Management did implement such regulations June 20, 1989, at 43 CFR 9262.1. These regulations provide for penalties for unauthorized use, occupancy, or development of public lands. Section 43 CFR 9262.1 reads as follows:

Under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)) any person who knowingly and willfully violates the provisions of Sec. 2801.3(a), 2812.1-3, 2881.3, or 2920.1-2(a) of this title by using public lands without the requisite authorization, may be tried before a United States magistrate and fined no more than $1,000 or imprisoned for no more than 12 months, or both.

The following are GAO's comments on the Department of the Interior's letter dated May 17, 1990.

GAO Comments

1. We believe that the report provides adequate perspective by identifying the total number of claims and the number of known or suspected unauthorized activities associated with these claims.

2. The proposal in our draft report on criminal penalty authority has been deleted.

3. The report has been revised to reflect the proposal in the President's fiscal year 1991 budget to establish an annual holding fee of $100.

Comments From the U.S. 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
14th & Independence SW
201 14th Street SW
P.O. Box 96090
Washington, DC 20090-6090

Reply To: 1420

Date: MAY 2 1990

Mr. John W. Harman, Director
Food and Agriculture Issues
Resources, Community, and Economic
Development Division
General Accounting Office
Washington D.C. 20548

Dear Mr. Harman:

We have reviewed the draft report FEDERAL LAND MANAGEMENT: Unauthorized Activities Occurring on Mining Claims, RCED-90-111. We believe that the report does an excellent job of accurately describing the types and consequences of unauthorized residences, nonmining commercial ventures, and in some cases, illegal or speculative activities on mining claims on National Forest System lands.

We have the following comments on the section "Results in Brief":

See comment 1.

Our experience is that **preventing** additional unauthorized use is not an unduly expensive or complicated process as implied under the third finding on page 2. If our field personnel are present on-the-ground and interact periodically with a mining claimant, we are able to gain an understanding of the rights of both parties, and we can avoid unauthorized occupancy or stop it at an early stage. This does require a commitment by the Government to have a field force sufficient to monitor mining activity. We fully concur with the finding as it applies to existing and many times long-standing unauthorized activity.

See comment 2.

The responsibilities and authorities of the Secretary of Agriculture on National Forest System lands must be recognized. Therefore, we recommend that the "Secretary of Agriculture" be included along with the "Secretary of the Interior," and "Congress" in the last paragraph of this section on page 2.

See comment 3.

We believe the report needs to clearly recognize that we can control future unauthorized use and eliminate existing unauthorized use by applying current laws, regulations, policies, and procedures. We say this while conceding the difficulty that we have experienced in eliminating unauthorized use. This requires that we commit the legal and administrative personnel needed, and that we maintain frequent contact with the mining claimant at the field level.

FS-6200-28a (5/84)

In fact, if there is lack of commitment to either requirement, any other changes will likely not succeed.

Our comments on changes proposed by the report are made in the context of the following:

1) Unauthorized residence is the major unresolved mining claim use issue on National Forest System lands. Most other unauthorized uses of mining claims such as "illegal activities" occur in conjunction with unauthorized residences.

2) In our efforts to remove unauthorized residences, we have scrupulously: (a) sought input from literally everyone with any possible interest including elected and appointed officials at all levels, the claimant, mining interests, and the public; (b) looked at the possible legal alternatives; and (c) followed both the intent and requirements of the applicable laws. We also believe we have been both compassionate and patient. Adequate time has been allowed for the people involved to relocate, and in some cases of extreme personal hardship, we have authorized some residential occupancy through special-use permits. Despite this, we end up with emotional conflicts that generate unfavorable publicity whereby many public officials ask for more time or new, or different solutions. These add to, and significantly increase the time and energy already spent in reaching what we consider to be a legally correct, but compassionate and fair decision.

In context with the above and the information presented in the report, we believe the following points should be incorporated into recommended changes and other report sections:

See comment 3.

1) We need a declaration of policy from Congress that it clearly intends for unauthorized uses to be eliminated from public lands, and that it will support the agencies efforts to accomplish this. The policy should also include a statement to the effect that residential occupancy is not a normal requirement for mining activity under the 1872 Mining Laws. This could easily be expressed in an amendment to the Surface Use Act of 1955.

See comment 3.

2) Simplify some of the Government's procedures involving claim contests with the Office of Hearings and Appeals (OHA). Based upon current practice, it is necessary for the Bureau of Land Management (BLM) to review and approve work done by certified Forest Service Mineral Examiners and Certified Review Examiners, both of which are highly experienced and trained at the BLM Phoenix Training Center. The legal basis for this needs to be reviewed, and if it can be eliminated by administration action, it should be. If not, Congress should give the Forest Service the necessary legal authority to avoid the BLM review and go directly to the OHA.

See comment 3.

3) Agencies need to revise their existing regulations to include stronger language involving unauthorized use. It is imperative that revised regulations clearly state that: (a) residency and nonmining commercial

uses are normally not authorized, and (b) the burden of proof to demonstrate that residency is required is upon the claimant. With the developed transportation system for most areas, there is almost no need for residency in connection with mining activity. Remote nonroaded areas like parts of Alaska could be the exception.

See comment 4.

4) Eliminate the imposition of higher fees. We do not believe this will prove effective in eliminating the problems, and this could have adverse effects on mineral development, particularly for smaller mining companies. The imposition of higher fees will definitely not have much effect on mining related scams. Those who intend to run a scam and defraud the public can easily afford higher fees, while the legitimate miner could not.

The proposed changes will not be effective if there is no support for an effective on-the-ground work force that can interact with a mining claimant on a one-to-one basis.

These constitute our major points of concern. Some minor points and technical corrections are included in the enclosure.

Thank you for the opportunity to comment on the draft report. If you have any questions on our comments, please contact Sam Hotchkiss at 453-8235.

Sincerely,

F. DALE ROBERTSON
Chief

Enclosure

cc:
OIG (J. Hill)
M&G
Lands
F&PS (LE)

FS-6200-28a (5 84)

ADDITIONAL COMMENTS

Page 3, Paragraph 1 - So long as the lands are open to mineral exploration, the claimants need no federal action to obtain the full legal rights to their claims.

See comment 2.

COMMENT: The referenced statement is not accurate. There are very well established legal requirements which cost considerable money that must be completed to gain full legal rights. We also do not agree that the number of mining claims filed in 1988 reflects that the self-initiating character of the mining laws is problematic. The number of mining claims filed in 1988 is largely reflective of today's mineral values. We recommend that the material relating to these two points be deleted.

Page 3, Paragraph 1 - Although the purpose of this annual work requirement is to encourage mineral development, we reported in March 1989 that much of the work done or certified to have been done by claim holders to meet the annual work requirements had not brought the claims any closer to development, and the requirement is difficult for federal land managing agencies to enforce.

See comment 5.

COMMENT: The courts have recognized that the annual assessment requirement serves both the purpose of promoting diligent development of mining claims and the purpose of ensuring that mining claims are held in good faith. These purposes are not necessarily coextensive and should not be so. Otherwise mining claims might be relinquished because of temporary fluctuations in mineral values. We recommend that the report discuss the effectiveness of the annual assessment requirement in light of both of its recognized purposes.

Page 3, Paragraph 2 - Because mining operations may range from multi-million dollar endeavors to very limited pick and shovel work, the determination of what constitutes "incidental to mining" can be difficult at times.

See comments 2 and 6.

COMMENT: We agree that the determination of what constitutes an activity incidental to mining can be difficult at times. However, an important fact to remember is that any significant surface disturbing activity on National Forest System land, regardless of whether or not the activity is incidental to mining, must be approved by the Forest Service. If an activity incidental to mining which causes significant surface resource disturbance is not approved, then it is not authorized. The courts have generally used a low threshold in deciding whether or not surface disturbing activities are significant for the purpose of requiring that those activities be approved by the Forest Service. For example, the courts have held that the maintenance of residential structures on mining claims causes significant surface resource disturbance.

Page 4, Paragraph 2 - In the Forest Service, the lack of penalty authority in the mining laws is mitigated to some extent by a general criminal penalty authority within its regulations governing prohibited actions in national forests.

See comment 7

COMMENT: The criminal penalty authority for unauthorized uses on National Forest System lands is quite clear. Authority to impose criminal penalties is provided by 16 U.S.C. 551 The Forest Service regulations implementing that

authority are set forth at 36 CFR Part 261. The penalties that can be imposed are described by 36 CFR 261.1b, while the unauthorized actions for which such penalties may be imposed are set forth at 36 CFR 261.10. The maximum penalty allowable is rarely imposed by the courts who tend to provide miners an opportunity to bring their conduct into compliance with pertinent Forest Service regulations in lieu of being criminally fined or incarcerated. Therefore, we would like to see the following more accurate language be included in your final report: "The Forest Service has regulations which provide the agency full authority to levy criminal penalties for unauthorized uses of National Forest System lands, even though there is a lack of penalty authority in the mining laws."

Page 4, Paragraph 4 - These claim holders...pay little or no real-estate taxes.

See comment 8.

COMMENT: This is not a Federal matter, and generally is not true. Real-estate taxes by local officials are not restricted in any way. County officials commonly tax privately owned facilities on Federal land. This language should be deleted.

Page 12, Paragraph 2 - So long as the lands are open to mineral exploration the federal government has no discretion about granting the claimants their full legal rights to the claim.

See comment 2.

COMMENT: The first response made for page 3, paragraph 1 is applicable.

Page 37, Paragraph 1 - There is little in existing laws or regulations to deter claimants from initiating unauthorized activities or encourage them to promptly terminate such activities when discovered.

See comment 9.

COMMENT: The response made for page 4, paragraph 2 is applicable.

Page 38, Paragraph 2 - The Forest Service cases have two intra-agency administrative appeal levels beyond the initial field office decision before the case can be appealed to the courts.

See comment 2.

COMMENT: This sentence does not belong in a paragraph having to do with the procedures that must be followed for the government to invalidate a mining claim on which a discovery has not been made. The Forest Service administrative appeal procedure is used in connection with decisions about the approval of activities on mining claims, not in connection with decisions about whether a discovery has been made on a claim. Also, revisions were made in the Forest Service administrative appeal regulations approximately 18 months ago which provide that many decisions relating to the regulation of activities on mining claims are subject to only one level of administrative review. For these reasons, we recommend that this sentence be deleted.

Page 40, Paragraph 3 - But the procedures for demonstrating that activities are not justified are complex, time consuming, and staff intensive, and the burden of demonstrating that activities are unauthorized rests with the federal government.

See comment 2.

COMMENT: The response made for Page 3, Paragraph 2 is applicable.

Page 41, Paragraph 2 - Unless the land has been withdrawn from mineral entry the claimant can re-file the claim and the whole invalidation process would have to start over.

COMMENT: Once a mining claim has been declared invalid, the government may bring an action in federal court seeking the ejectment of persons who were conducting unauthorized activities on mining claims and an order requiring the removal of structures and improvements from the invalidated claim. The fact that a mining claimant re-files the claim has not barred the successful prosecution of such actions. Normally, the institution of such proceedings is not necessary to obtain the abatement of unauthorized uses as mining claimants typically are cooperative once their claims are declared invalid. Thus, the the implication that a claimant's ability to re-file a mining claim prevents the government from resolving unauthorized use of mining claims is not accurate. Therefore, we recommend that this sentence be deleted.

See comment 2.

Page 42, Paragraph 2 - The mining law allows claimants to file a claim and obtain mineral rights without first proving that a valuable mineral deposit has actually been discovered.

See comment 10.

COMMENT: This statement is misleading. The rights of the miner are very limited until it is proven a valuable mineral deposit exists. The early right gained is merely protection from other miners.

The following are GAO's comments on the Department of Agriculture's letter dated May 2, 1990.

GAO Comments

1. The Forest Service does not believe that preventing additional unauthorized activities is an unduly expensive or complicated process if there is support for an effective work force in the field that can periodically interact with mining claim holders. While it may be possible to prevent additional unauthorized activities with an effective work force in the field, our concern is that with current budget restrictions and the sheer number of mining claims spread over the approximately 460 million acres which BLM and the Forest Service manage, it is unlikely that the land-managing agencies will be able to provide the needed interaction with claim holders to prevent unauthorized activities. We therefore are recommending that the Congress amend the Mining Law of 1872 to provide a less staff-intensive, more readily enforceable alternative—a graduated holding fee which could discourage unauthorized activities.

2. Clarifications have been made to the text of the report.

3. The Forest Service commented that our report should recognize that it can prevent future unauthorized activities and eliminate existing ones by applying current laws, regulations, policies, and procedures although it acknowledges that this has been difficult. Our report recognizes that current law specifically provides that mining claims should not be used for unauthorized activities and that regulations establish procedures which enable the agencies to identify and eliminate unauthorized activities. The Forest Service also pointed out that its task could be facilitated if the Congress declared that unauthorized activities should be eliminated from public lands and amended the Surface Use Act of 1955 to clearly state that residential occupancy is not a normal requirement for mining, and that both BLM and the Forest Service revise their regulations. Because we believe that existing law already prohibits unauthorized activities, we sought solutions which could discourage new or continued unauthorized activities. We agree with the Forest Service that the federal land-managing agencies should revise their regulations to clearly state that residency and nonmining commercial activities are normally not authorized, thereby shifting the burden of proof to the claim holders to show that activities are incidental to mining. We also believe that the complexity and time-consuming nature of the existing process for invalidating claims suggest that the agencies should jointly review existing procedures that could make the process for eliminating unauthorized activities more efficient.

4. The Forest Service disagreed with our recommendation that the Congress replace the annual work requirement with a holding fee, noting that such a fee will not prevent unauthorized activities and could adversely affect mineral development, particularly for smaller companies. While we agree that a holding fee may have little effect on illegal mining-related scam operations for which there are other legal remedies we believe such a holding fee can help prevent or terminate other unauthorized activities such as unauthorized residences, which the Forest Service notes is the major unresolved mining claim activity on National Forest System lands. We believe the holding fee would be effective in preventing and eliminating unauthorized activities because it would increase the cost of holding claims, a cost which is now minimal, particularly where claim holders do not actually meet the annual work requirement. Preventing or eliminating unauthorized residences would have a widespread impact because the Forest Service points out that most other unauthorized activities on mining claims occur in conjunction with unauthorized residences. In setting the amount of the holding fee, we recognize that a balance must be struck between an amount high enough to discourage persons not intent on mining from filing new claims and retaining existing ones, and an amount low enough not to discourage legitimate miners.

5. The report has been changed to show that the annual work requirement can also help ensure that claims are held in good faith. However, the effectiveness of the annual work requirement as an assurance that claims are held in good faith is limited to the extent to which claim holders actually perform the work.

6. We believe that the report fairly deals with the thrust of the Forest Service's comment that it has approval authority for activities that would cause significant surface disturbance on its lands. Specifically, the report notes that the Forest Service has regulations which allow it to identify and approve or reject proposed activities on mining claims.

7. The reference to penalty authority has been deleted.

8. The reference to real estate taxes has been deleted.

9. In response to our statement that there is little to deter claim holders from initiating unauthorized activities, or to encourage them to terminate such activities, the Forest Service commented that it has criminal penalty authority even though such penalty authority in the mining law

is lacking. However, the Forest Service points out that its maximum penalty of $500 or imprisonment for not more than 6 months is rarely imposed by the courts, which tend to provide miners the opportunity to bring their conduct into compliance with pertinent Forest Service regulations. Accordingly, we continue to believe that there is little deterrent to unauthorized activities on mining claims.

10. According to the Forest Service, our statement that claim holders can file a claim and obtain mineral rights without first proving that a valuable mineral deposit exists is misleading. We do not believe this statement is misleading because once a claim is filed, claim holders have the right to explore, mine, sell the minerals contained on the claim, and sell their rights to the claim. In addition, the courts have held that claim holders, prior to discovery, have legal rights in the claim that the government cannot abrogate without due process. We believe that this provides claim holders, even those who have not proven discovery, with substantial rights in their claims.

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