

LESSONS LEARNED IN MONTANA – A DESPATCH FROM THE FRONT LINES¹

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Abstract. When Pegasus Gold Corporation filed for Chapter 7 bankruptcy in early 1999, Montana DEQ's Environmental Management Bureau became responsible for collecting over \$80 million in surety bonds and implementing reclamation plans at four cyanide heap-leach mine complexes: Basin Creek, Beal Mountain, Zortman, and Landusky. No previous DEQ reclamation projects had approached the scale of the Pegasus properties. Lessons learned from four years of hands-on experience directing these projects include:

- 1) Site maintenance and water treatment costs continue in bankruptcy. Laws and bonds must be written to allow regulatory agencies immediate access to funds.
- 2) Insurance companies may prefer protracted litigation to settlement of multi-million dollar claims.
- 3) If reexamination of an approved reclamation plan after bankruptcy or abandonment reveals previously unaddressed issues, the public may demand additional environmental analysis, even if there is no responsible party to pay for it.
- 4) Bond forms should be written to reflect involvement of federal partners.
- 5) Bond forms should be written to exclude line-item limitations on costs, and agencies should attempt to collect bond amounts as lump sums to be placed in interest-bearing accounts.
- 6) It is extremely difficult in the current economic climate for even financially stable companies to obtain surety bonds. Agencies should be flexible, creative, and reasonably patient as companies try to establish acceptable guarantees for reclamation.
- 7) Indirect costs (administrative overhead, engineering design, inflation, contingencies, etc.) are a much larger part of total reclamation costs than DEQ previously assumed.
- 8) Real-world emergencies will continue to occur under agency management.
- 9) Leach pad geochemistry may continue to evolve during reclamation, complicating treatment and increasing costs.
- 10) When bond calculations include a component for long-term water treatment, DEQ runs the calculation out to 100 years. Projected expenditures beyond 100 years have little effect on a present-value figure.

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- 11) Bankruptcy trustees serve different masters, and may sell equipment or facilities needed for reclamation.
- 12) Agencies must be creative when faced with bond shortfalls. Grants or assistance may be available from federal partners (EPA, BLM, USFS). In 2002, Montana sold \$2.5 million in state general obligation bonds to fund reclamation at Beal Mountain.