

United States Department of the Interior

BUREAU OF LAND MANAGEMENT

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Instruction Memorandum No. NV-2005-032
Expires: 9/30/2006

To: Field Managers, Nevada

From: Deputy State Director, Minerals Management

Subject: Guiding Principles for Long-Term (Post-Mining) Trusts under 43 CFR 3809

Attached is a copy of some basic principles for establishing a trust fund to cover long-term (post-mining) impacts from activities authorized under 43 CFR 3809. The principles are taken from those developed by the Office of the Solicitor for long-term contingency trust and funding agreements. The attached document is to be used by Nevada Field Offices as the “guiding principles” for all future trust and associated funding documents developed for mining operations under 43 CFR 3809, where long-term, post-mining impacts to the environment, especially the ground water system, are predicted. However, these are not to be considered the “end-all” list of considerations in a trust and/or trust agreement. Field offices are encouraged to contact Reg Reid, Nevada State Office (NSO) 3809 trust coordinator, early in the development process for any 3809 trust documents.

All final 3809 trust documents for Nevada operations involving public land will be signed by the State Director. A copy of any proposed trust documents must be submitted to NV-920, Attn: Reg Reid, for review prior to submission to the State Director for signature. Field offices should plan on a 60-day NSO review period.

If you have any questions on this matter, please contact Reg Reid, Surface Management Lead, at reid@nv.blm.gov or (775) 861-6567.

Signed by:
Del Fortner
Deputy State Director
Minerals Management

Authenticated by:
Pam Collins
Staff Assistant

1 Attachment

1 – 3809 Guiding Principles for Long-Term Trust Documents (1 p)

3809 Guiding Principles for Long-Term (Post-Mining) Trust Documents

1. In determining the need for such a funding mechanism, the BLM authorized officer should consider whether:
 - a. The anticipated post-mining obligations are identified in the environmental document and plan approval for the operation;
 - b. There is a reasonable degree of certainty that the obligations will occur based on scientific evidence and/or models;
 - c. The financial responsibility for those obligations rests with the operator; and
 - d. It is not feasible, practical and/or desirable to require a financial guarantee for those anticipated long-term post-mining obligations using an individual financial guarantee [43 CFR 3809.552(a)], blanket financial guarantee [43 CFR 3809.560(a)] or State approved financial guarantee [43 CFR 3809.570].
2. An operator will not be required to establish such a fund to address unanticipated events or worst-case scenarios.
3. The amount of the fund must cover all anticipated post-closure costs, including BLM administration costs, as if BLM were hiring a contractor to perform the work after the operator has vacated the project area.
4. The trust fund must be sufficiently funded to cover all costs the BLM would encounter in maintaining the fund should the operator not be available, including trust management fees, any applicable taxes and any other costs that may be identified or become applicable.
5. The fund must be isolated from the effects of any potential operator bankruptcy.
6. BLM must approve the disbursement of funds from the account, types of investments used, and the fund management entity.
7. BLM must authorize any release of funds to the operator when the operator performs the obligations identified in the post-closure maintenance and replacement plan.
8. The agreement must define how BLM will decide when the fund is no longer needed or that the amount in the fund may be reduced, and include provisions allowing for the return of funds to the operator should the authorized officer make such a determination.
9. At least once a year the responsible BLM office must review the financial statements to ensure growth of the fund is keeping pace with the assumptions used to determine the amount needed in the fund. Where a deficiency is identified in the adequacy of the fund to meet future obligations, the authorized officer must take the necessary steps to ensure adequate funds are available to guarantee those future obligations will be performed.
10. The BLM must conduct, at least every three years, a thorough review of the cost estimates and other assumptions used in determining the amount of funds needed in the trust fund.
11. The State Director may limit the allowable financial instruments for a trust fund or other financial mechanism established under 43 CFR 3809.552(c) to those listed under 43 CFR 3809.555, or may choose to allow other financial instruments to be used.