

GAO

Report to the Chairman, Subcommittee
on Government Management,
Information, and Technology, Committee
on Government Reform, House of
Representatives

September 2000

NATIONAL PARK SERVICE

Agency Should Recover Costs of Validity Examinations for Mining Claims



G A O

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United States General Accounting Office
Washington, D.C. 20548

Resource, Community, and
Economic Development Division

B-285504

September 19, 2000

The Honorable Stephen Horn
Chairman
Subcommittee on Government Management,
Information, and Technology
Committee on Government Reform
House of Representatives

Dear Mr. Chairman:

The notion of mining operations in the national parks may be surprising to many people.¹ However, in 1999 there were 50 private mining operations in 16 parks, including 17 operations on mining claims located under the Mining Law of 1872. While all parks are now closed to location of new mining claims, many mining claims, which represent possible private property rights that could be developed in the future, exist on national park lands. For example, there are about 875 such mining claims on public land in the three national parks established by the California Desert Protection Act of 1994—Death Valley National Park, Joshua Tree National Park, and Mojave National Preserve.² In order to conduct mining operations on an existing claim, a claimant must, among other things, demonstrate the discovery of an economically valuable mineral deposit and submit a plan of mining operations for approval. The National Park Service (Park Service) verifies the existence of such deposits in national parks by conducting or contracting for reviews, which are called validity examinations. Park Service policy requires that a validity examination be conducted before approving a claimant's plan of operations, which is a proposal to begin mining activities. Park superintendents may initiate examinations, even without a proposal to begin mining activities, to address environmental concerns on specific claims, among other reasons.

¹ In this report parks means any unit of the National Park System.

² In this report a mining claim refers to an "unpatented" claim for which title remains with the federal government because the claimant has not gone through the process of "patenting" the claim and thereby receiving title.

The Park Service conducts these examinations under an interagency agreement with the Bureau of Land Management (Bureau), which has primary responsibility for managing mining claims on public land.³ Validity examinations consist of (1) an administrative review of the Bureau's mining claim records to determine whether the claimant has complied with all pertinent laws and regulations, (2) a mineral examination of the claim site (fieldwork) to assess whether the claimant has discovered an economically valuable mineral deposit, and (3) a detailed mineral report prepared by the examiner. If an examiner finds that a claimant has not complied with requirements or that the mineral deposit on a claim cannot be mined economically, the Park Service will seek to have the claim eliminated by requesting that the Bureau declare the claim invalid. Validity examinations can take from several months to more than a year to complete because of their technical and complex nature and legal appeals from claimants can add more time to the process.

Concerned about the federal costs of conducting validity examinations at the three California Desert parks, you asked us to determine (1) whether data are available on the Park Service's costs of conducting validity examinations at these parks since 1994 and (2) whether the Park Service recovers the costs of such examinations from claimants.

Results in Brief

The Park Service does not know how much it is spending to conduct validity examinations because it does not routinely track the direct costs of examinations—such as examiners' salaries and time—and does not have a system to allocate the appropriate indirect costs—such as fringe benefits, supplies, and utilities. Although it cannot produce an accounting of its actual expenses, the Park Service estimated it has spent about \$668,000, primarily on direct costs, for the 17 validity examinations it has initiated at the three California Desert parks: about \$281,000 on contracts for fieldwork (for 10 examinations) and about \$387,000 on examiners' salaries, travel, and mineral tests (for 7 examinations). These estimates are less than the full costs, however, because the Park Service has not determined all of its direct or indirect costs that can be attributed to the examinations.

The Park Service does not recover any costs of its validity examinations from claimants. The Secretary of the Interior is authorized to establish

³ Both the Bureau and the Park Service are agencies within the Department of the Interior.

reasonable charges for processing documents relating to public lands. Relying on this authority, the Department of the Interior's (Interior) Solicitor issued an opinion in December 1996, stating that the Bureau's costs of processing mining documents, including validity examinations and plans of operations, can and should be recovered from claimants. The Bureau has drafted regulations—which are expected to be published in the *Federal Register* in fall 2000—to recover various costs incurred in managing its minerals program, including the costs of its validity examinations. Interior officials believe that the Park Service also could recover the costs of a validity examination when a claimant has submitted a plan of operations, and the Park Service has been working with the Bureau to be included in the regulations. However, 7 of the 17 examinations initiated by the Park Service since 1994 were not undertaken to process and approve claimants' plans of operations but were instead initiated by park superintendents for other reasons, such as a need to address management or environmental problems posed by particular claims. Such problems include, for example, unauthorized occupancy of a claim site or destruction of habitat for the desert tortoise, a threatened species. According to Interior's Office of the Solicitor and Park Service officials, it has not been determined whether the Park Service can recover the costs of such discretionary validity examinations. Furthermore, the Park Service has no written guidelines to guide its park superintendents in making decisions about when it is appropriate to initiate discretionary examinations.

This report makes recommendations for the Park Service to (1) develop an accurate accounting of the costs of its validity examinations, (2) take steps to recover the costs of validity examinations to the extent allowed by law, and (3) develop guidance that describes the circumstances under which discretionary validity examinations—for which costs may or may not be recoverable from claimants—are appropriately initiated. We provided Interior with a draft of this report for its review and comment. Interior agreed with the report's recommendations and stated that the Park Service will work closely with the Bureau and other Interior offices to determine the most efficient and effective means to implement them.

Background

Under the Mining Law of 1872, as amended, individuals or parties who comply with pertinent laws and regulations may locate one claim or more than one claim, which is called a claim group, to mine certain minerals—such as gold, silver, and copper—on public lands. For example, at the Mojave National Preserve, individual claim groups contain from 2 to 88 claims and vary in size from 5 to almost 3,000 acres. Public lands on which mining claims may be located may subsequently be designated as National Park System or wilderness lands, and no new mining claims can be located on these park and wilderness lands. For example, the California Desert Protection Act of 1994⁴ designated over 9 million acres for three national parks—Death Valley National Park, Joshua Tree National Park, and Mojave National Preserve—and 69 wilderness areas in the California Desert. While new mining claims cannot be located on these designated lands, claims that existed prior to designation continue to exist and can be mined after the Park Service approves their plans of operations. There are 11 national parks that contain about 1,200 preexisting mining claims on public land; about three-quarters of these claims are in two of the three California Desert parks, as shown in table 1.

Table 1: Mining Claims Located on Land Managed by the Park Service

Park	State	Number of claims
Mojave National Preserve	California	584
Death Valley National Park	California	292
Yukon – Charley Rivers National Preserve	Alaska	129
Denali National Park and Preserve	Alaska	115
Wrangell – St. Elias National Park	Alaska	27
Bering Land Bridge National Preserve	Alaska	17
Great Basin National Park	Nevada	10
Bighorn Canyon National Recreation Area	Montana	5
Kenai Fjords National Park	Alaska	3
Joshua Tree National Park	California	1
Saguaro National Park	Arizona	1
Total		1,184

Source: Data provided by the Park Service as of June 1999.

⁴ P.L.103-433, Oct. 31, 1994.

Park Service data indicate that the number of claims in the parks has declined over time. For example, the Park Service estimated there were about 2,400 claims within the boundary of the Mojave National Preserve when it was designated in 1994. By June 2000, the number of claims at the Preserve had declined to about 600. Park Service officials attributed this decline to claims having been eliminated through an active program to determine the status of claims within the parks and to claimants having forfeited their claims by failing to pay a required \$100 per claim annual maintenance fee. According to Park Service officials, claimants have also been encouraged to donate claims to the park to protect park resources.

Within national parks, because mining operations may conflict with the Park Service's preservation and conservation mission, the Park Service is responsible for the oversight of mining claims. The Mining in the Parks Act of 1976 makes all activities resulting from valid mining claims within any area of the National Park System subject to regulations prescribed to preserve and manage those park areas, and the Park Service has issued regulations to implement the act. The Bureau is responsible for developing and promulgating policies for administering the mining laws on public lands, including conducting validity examinations. Through an interagency agreement, the Park Service agrees to perform validity examinations of mining claims in national parks, but the Bureau retains responsibility for approving the examinations. The Bureau also provides guidance and requirements for validity examinations and certifies federal mineral examiners. The Park Service's mineral examiners conduct validity examinations and oversee any examinations performed by contracted examiners.

To conduct mining operations in the parks, a claimant must, among other things, demonstrate the existence of a valuable mineral deposit capable of sustaining a profitable mining operation. However, historically, many claimants hold their claims without discovering such deposits or conducting any significant mining operations. Before claimants begin development activities, Park Service regulations require that they submit, and obtain Park Service approval of, a plan of operations. The plans are to contain, among other things, a description of the proposed mining activity and a plan for reclaiming the mine site. As part of the approval process, Park Service policy requires a validity examination to verify that there has been a discovery, by the claimant, of a valuable mineral deposit. Furthermore, the California Desert Protection Act requires the Secretary of the Interior to determine the validity of claims at the Mojave National Preserve before approving any plan of operations; the act did not impose

this requirement on the other two parks. In addition to conducting validity examinations to process and approve plans of operations, park superintendents may initiate validity examinations for other purposes—for example, to address environmental concerns such as threats to wildlife habitat that could result from mining activities on specific claims.

If the Park Service finds, on the basis of a validity examination, that the mineral deposit is not economically valuable, the Park Service can request that the Bureau declare the claim invalid, meaning that the claim can be legally extinguished. However, claimants who disagree with the finding can contest the Bureau's decision and may appeal to the Interior Board of Land Appeals and ultimately to federal court. This process can result in lengthy administrative and judicial proceedings. If, on the other hand, the claimant has met all requirements and the mineral deposit is found to be economically valuable, the claim is valid and mining operations may occur subject to Park Service regulations; alternatively, the Park Service may preclude mining through a buyout of the claimant's property right interest at fair market value. For example, the Park Service recently negotiated to acquire six valid claims located in an environmentally sensitive wilderness area for \$2.5 million.

The Park Service Does Not Know How Much Its Validity Examinations Cost

The Park Service does not know the full cost of its validity examination program. The agency does not routinely track the direct costs of the examinations it conducts—such as the examiners' time and salaries—nor does it have a system under which it accurately identifies or allocates the appropriate indirect costs to the program. Indirect costs could include those for items such as fringe benefits (medical insurance and retirement), physical overhead, supplies, and utilities. Because of the technical and contentious nature of mining claims, the validity examination process is lengthy and detailed (see app. I), and the direct and indirect costs of the examinations are likely to be substantial. In response to our request, the Park Service developed an estimate of the costs associated with the 17 validity examinations that it has initiated at the three California Desert parks since the passage of the California Desert Protection Act of 1994. For examinations conducted by Park Service examiners during this period, the Park Service estimated direct costs and some, but not all, indirect costs. This estimate included examiners' salaries for conducting fieldwork and writing reports, costs for travel and mineral tests, and 26 percent of the examiners' salaries to reflect employee benefits. Table 2 shows the Park Service's estimated total costs of about \$387,000 for the seven examinations, which ranged from about \$104,000 to \$21,000. Park Service

officials attributed the range in costs to the unique nature of each examination, including the number of claims that were examined, the type of mineral deposit, the extent and type of exploration or mining activity, and the remoteness and accessibility of the claim site.

Table 2: Estimated Costs Associated With Seven Validity Examinations Performed by Park Service Personnel in the California Desert Parks, Fiscal Year 1995 Through June 1, 2000

Name of claimant or claim group	Park	Number of claims	Estimated costs				Total
			Fieldwork	Reporting	Travel	Testing	
Golden Quail	Mojave	16	\$14,000	\$83,000	\$4,000	\$2,850	\$103,850
Volco	Mojave	9	7,800	15,600	2,000	75,250 ^a	100,650
Rainbow Talc	Death Valley	6	11,500	45,200	4,000	4,220	64,920
Blair	Mojave	7	6,400	34,600	3,000	490	44,490
U-Thor	Joshua Tree	3	3,600	23,400	1,000	450	28,450
J.O .	Death Valley	7	10,900	0 ^b	4,000	9,135	24,035
Lucky Day	Mojave	2	6,650	13,640	0	700	20,990
Total		50	\$60,850	\$215,440	\$18,000	\$93,095	\$387,385

^aA contractor performed most of the examination at a cost of about \$75,000.

^bThe report was not written because the examination was halted when the claimant failed to pay the maintenance fees for 1999.

Source: GAO's analysis of data provided by the Park Service.

The Park Service also provided costs for the contracts it awarded for fieldwork and report preparation associated with the other 10 mineral examinations it initiated at Mojave National Preserve and Joshua Tree National Park since the passage of the California Desert Protection Act of 1994. Park Service examiners monitor these contracts, review the validity examination reports prepared by the contractors, and develop report conclusions and recommendations. The costs of these or other associated services provided by Park Service personnel are not included in the contract data the Park Service provided to us. Table 3 shows the Park Service's contract costs totaled about \$281,000 and ranged from about \$57,000 to \$13,000. Again, Park Service officials attributed the range in costs to the unique nature of each examination.

Table 3: Costs of Fieldwork and Report Preparation Associated With 10 Validity Examinations Performed by Contractors in the California Desert Parks, Fiscal Year 1995 Through June 1, 2000

Name of claimant or claim group	Park	Number of claims	Contract cost
Soda Lake	Mojave	4	\$57,400
Barnett	Mojave	8	40,353
Moonstar	Mojave	8	39,723
Telegraph	Mojave	12	28,808
Coxcomb Eagle	Joshua Tree	1	27,126 ^a
Oro Fino	Mojave	12	26,813
Maxfield	Mojave	19	17,541
Gyron	Mojave	1	15,505
M.H.B.G. #5	Mojave	1	14,088
Storm Jade	Joshua Tree	1	13,291
Total		67	\$280,648

^aThe examination was not completed because the Bureau declared the claim null and void for other reasons.

Source: Data provided by the Park Service.

The Park Service Is Seeking to, but Does Not Yet, Recover the Costs of Its Validity Examinations

The Park Service is seeking to recover the costs of its validity examinations. The Secretary of the Interior is authorized to establish reasonable charges—or user fees—for processing documents relating to public lands. Relying on this authority, Interior's Solicitor issued an opinion in December 1996 concluding that the Bureau should recover the costs of processing mining-related documents, including plans of operations and the costs of validity examinations, from claimants. Because the Park Service conducts validity examinations in national parks under its interagency agreement with the Bureau, officials in the Solicitor's Office believe that the Park Service should also recover these costs. This position is consistent with Interior's policy, which states that agencies should recover, to the extent authorized by law, the costs of activities that provide a special benefit to a nonfederal recipient above and beyond those benefits that accrue to the general public.

The Bureau is drafting regulations that will, among other things, require it to recover the costs of validity examinations undertaken when claimants submit plans of operations to begin mining. However, Park Service officials we contacted were unaware of the Bureau's efforts in this regard until we told them. The Park Service then initiated discussions with the Bureau and Interior's Solicitor seeking to clarify and amend the draft regulations to cover validity examinations performed by the Park Service. The Bureau anticipates it will publish the draft regulations in the *Federal Register* for public comment in fall 2000. The draft regulations do not specifically provide for recovery of the cost of examinations conducted by the Park Service. However, they leave open the possibility that the Bureau—the agency responsible for promulgating policies on validity examinations—may, in the final regulations, require claimants to reimburse the Bureau for both agencies' validity examinations. The agencies would then have to establish a means for the Park Service to recoup its costs from the Bureau, for example, through an Economy Act transaction.⁵ Officials from the Solicitor's Office said that the Park Service, as an alternative to being included in the Bureau's draft regulations, could issue similar regulations of its own. However, the Park Service's position is that it would be most expedient and efficient to the government and claimants for the Bureau to include the Park Service in the final rule rather than having two sets of regulations and processes for claimants to follow.

The Park Service's discretionary validity examinations—that is, examinations that are not initiated to process and approve plans of operations submitted by claimants—are not covered by the Bureau's draft regulation. Officials from the Solicitor's Office said that they have not specifically addressed whether the Park Service is authorized to recover the costs of discretionary examinations. They and Park Service officials we contacted were uncertain whether or not recovery for such examinations is possible. Seven of the 17 validity examinations initiated by the Park Service since 1994 were discretionary and were initiated by the park superintendents.

The Park Service has no internal written direction or guidance on when to initiate such discretionary examinations. When no plan of operations is submitted, park superintendents have broad discretion in deciding whether and when to initiate such validity examinations. Park officials provided a

⁵ The Economy Act provides authority for agencies to enter into reimbursable agreements to furnish materials or to perform work or services.

variety of reasons for initiating these discretionary examinations, including (1) ascertaining whether nonfederal property rights, that is, a valid mining claim, exist in the park and (2) addressing management or environmental problems posed by particular claims. For example:

- In one case, a claimant constructed a cabin and several other structures on the claim site and conducted some mining activities. However, the claimant had been using the site primarily for recreational purposes for many years before the land was designated by the Congress as Park Service wilderness. The Park Service believes that the claimant does not have a right to occupy the site and has initiated a validity examination. If the examination proves that the claim is invalid and this conclusion is upheld, the Park Service would then possess full rights to the land in order to manage it as wilderness.
- In another case, the claims are in an environmentally sensitive area, in a desert wilderness as well as on a national natural landmark. Mining operations here would also disturb fragile habitat for the desert tortoise, a threatened species. The Park Service is conducting a validity examination to determine if the claims contain a mineral deposit that is economically valuable and meet other requirements, and thus are valid; if not, the claims could be extinguished.

Without any written direction or guidance on initiating discretionary validity examinations, we found a wide range of opinions within the Park Service about their appropriateness. Several officials believe the Park Service should systematically conduct validity examinations on all claims located in the national parks regardless of whether claimants submit plans of operations. These officials noted that it is important to obtain a clear title to park lands to better protect and manage resources; it is less expensive to do examinations in the near term, thus avoiding possible future cost increases; and there is greater likelihood that claimants will relinquish claims they believe have marginal value, knowing that a validity examination will be performed. Other Park Service officials said that validity examinations should not be conducted unless a plan of operations has been submitted or activity on a specific claim presents a serious threat to park resources. These officials noted that there is little or no activity on most claims and thus they do not pose an immediate threat to park resources; many claims of this type are likely to be relinquished over time; examinations may prove a claim to be valid when it might have otherwise been relinquished; and examinations themselves may disturb some park resources. An official in Interior's Solicitor's Office said that there is no law

or regulation that requires the Park Service to generally perform examinations other than those needed to process a plan of operations.⁶

Conclusions

The Park Service does not recover the costs of its validity examinations from claimants who submit plans of operations but is beginning to explore the possibility. And, by not accounting for the costs of the examinations, it is not in a position to recover the costs. Furthermore, seven of the examinations at the three parks since 1994 were conducted at the park superintendents' discretion, and it is uncertain whether the Park Service can recover the costs of discretionary examinations. In addition, there is no guidance that describes when it is appropriate for the Park Service to conduct such discretionary examinations.

Recommendations for Executive Action

We recommend that the Secretary of the Interior require that the Director of the Park Service

- develop an accurate accounting of the costs of its validity examinations,
- take steps to recover the costs of validity examinations to the extent allowed by law, and
- develop guidance that describes the circumstances under which discretionary validity examinations—for which costs may or may not be recoverable from claimants—are appropriately initiated.

Agency Comments

We provided Interior with a draft of this report for its review and comment. Interior agreed with the report's recommendations and stated that the Park Service will work closely with the Bureau and other Interior offices to determine the most efficient and effective means to implement them. Interior's comments are in appendix II.

To obtain data on the cost to the Park Service of conducting validity examinations at the parks established by the California Desert Protection

⁶ He noted that an exception was provided in the Mining in the Parks Act of 1976, which required the Park Service to determine the validity of all unpatented claims in Death Valley National Monument—now Death Valley National Park—and certain other parks within 2 years of enactment.

Act of 1994, we obtained and compiled cost estimates for validity examinations performed since 1994 (as of June 1, 2000) from Park Service officials at the Geologic Resources Division in Denver, Colorado, and at those parks. We discussed the development of these costs and the tasks and time requirements for validity examinations with certified mineral examiners. To determine whether the Park Service can recover its costs of conducting validity examinations, we reviewed pertinent laws, regulations, and policy and procedural manuals. We discussed these requirements with the Chief of the Park Service's Policy and Regulations Branch of the Geologic Resources Division, Bureau headquarters officials, and the Interior's Office of the Solicitor headquarters officials. We also visited mining claims at the Mojave National Preserve and Death Valley National Park and interviewed Park Service representatives at both parks. We conducted our review from May through August 2000 in accordance with generally accepted government auditing standards.

As requested, 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 of this report to the Honorable Jim Turner, Ranking Minority Member, Subcommittee on Government Management, Information, and Technology, House Committee on Government Reform; the Honorable Bruce Babbitt, Secretary of the Interior; the Honorable Robert Stanton, Director of the National Park Service; the Honorable Thomas Fry, Director of the Bureau of Land Management; and other interested parties. We will also make copies available to others upon request.

If you or your staff have any questions about this report, please call me at 202-512-3841. Key contributors to this report are listed in appendix III.

Sincerely yours,

A handwritten signature in black ink that reads "Jim Wells". The signature is written in a cursive, flowing style.

Jim Wells
Director, Energy, Resources,
and Science Issues

Validity Examination Tasks and Time Requirements

Tasks to be completed	Time needed
Records research	2 to 3 weeks
Check Bureau of Land Management database and claims files to determine if a claim is administratively current. Research county records. Contact claimants to resolve discrepancies or inconsistencies.	
Preliminary literature search	2 to 4 weeks
Obtain appropriate maps, commodity data, production history, and geologic reports. Contact industry and agency information sources.	
Field examination preparation	2 weeks
Send letter to claimant giving 30-day advance notice of the field examination. Arrange logistics and travel, develop sampling strategy, and assemble and pack field equipment and materials.	
Field examination	2 to 3 weeks
Contact claimant to identify claim boundaries, discovery points, sample points, and workings. Traverse claims and photo-document survey claim corner and discovery monuments. Generate map with geology, topography, surface features, and sample sites. Map, describe, and photo-document workings. Describe geologic structures, mineralization, ore deposit, associated mill sites and facilities. Take samples and photo-document them, following established protocol.	
Assay and laboratory analysis	2 to 8 weeks
Deliver samples to assayer or laboratory. Analyze and interpret results.	
Report preparation	4 to 6 months
Research literature on site geology, mining history, exploration, Park Service documents. Research laws, Park Service and Bureau of Land Management policies, Interior Board of Land Appeals. Research appeal decisions, other federal and state decisions. Prepare photos, maps, and illustrations. Prepare economic evaluation: ore volume, assay and market analyses, and cost calculations. Prepare draft report and obtain internal review.	
Bureau of Land Management review	2 to 4 weeks
Assemble and mail report for Bureau of Land Management review. Bureau reviews report and returns for revision.	
Edits, corrections, and final Bureau approval	2 to 4 weeks
Revise draft and return for second Bureau review. Finalize and mail to Bureau and claimant.	
Total time needed	8 to 13 months

Comments From the Department of the Interior



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

AUG 29 2000

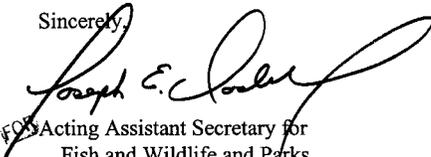
Mr. Jim Wells
Director, Energy, Resources,
and Science Issues
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Wells:

The Department of the Interior has reviewed the General Accounting Office's draft report entitled, "National Park Service: Agency Should Recover Costs of Validity Examinations for Mining Claims" (GAO/RCED--00-265, code 141453). Overall, we agree with the report's recommendations. The National Park Service will be working closely with the Bureau of Land Management, the primary federal agency vested with the responsibility to conduct validity exams, and other Departmental offices to determine the most efficient and effective means to implement the recommendations.

Thank you for the opportunity to review and comment on this draft report.

Sincerely,



Acting Assistant Secretary for
Fish and Wildlife and Parks

GAO Contacts and Staff Acknowledgments

GAO Contacts

Barry T. Hill, (202) 512-3841
Sue Ellen Naiberk, (303) 572-7357

Acknowledgments

In addition to those named above, Arleen L. Alleman, Brian W. Eddington, Richard P. Johnson, William J. Temmler, and William F. Wright made key contributions to this report.

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