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MAY 14 2007



USDA
Forest Service

Incident Report

MINING & MINERALS DIVISION

Incident Number

8110776

Case Number:

Sensitivity: NS	Document: IR	Incident Name	Incident Date /Time 02-22-2007 / 13:00
Reporting Officer BERTRAND	Reporting Officer ID 1730	Report Date 02-23-2007	
Place of Incident NORTH OF COUNTY ROAD C006 ON FS LAND	Incident Type SPECIAL USES	Day of the Week THURSDAY	

Incident description
DIGGING/EXCAVATING , CONSTRUCTING ROADS, DAMAGING NATURAL FEATURES OR PROPERTY OF THE U.S. WITHOUT SPL-USE PERMITS.

Remarks

Region 03	Forest 08	District 1	State NM	County 27	Land Status NFS
Latitude Degrees 33 Minutes 37 Seconds 9			Longitude Degrees -105 Minutes 32 Seconds 59		
Warning N	IRC 17	IRC 01	Other Number	Dispatch Number	Incident Status

Keywords

WEAPONS

Impact N	Edged N	Handgun N	Rifle/Shotgun N	Other N
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SUPPLEMENTAL INFORMATION

Initial Response date/time /	First on Scene date/time /	Reported By:	Agency ID	No. Of Officers Injured
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Synopsis

Located several illegal drill hole sites and roads constructed on Forest Service land.



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Narrative

On the morning of 2/22/07 I was contacted by District Ranger Buck Sanchez of the Smokey Bear District on the Lincoln National Forest. Sanchez informed me that he had a concerned citizen on the phone and wanted me to speak with him on speaker phone in his office.

I went to SANCHEZ office and was introduced on the phone to Lee Arnone. ARNONE said that he lived just off County road C006 near the forest land. ARNONE explained that he had observed drill holes and recent bulldozed roads and blasting noise up behind his home which borders the Lincoln NF. SANCHEZ's and I agreed to meet with him that afternoon to see the area(s) of concern.

At approximately 1300hrs myself and SANCHEZ met with ARNONE at his residence (117 Via Del Oso, Capitan NM). ARNONE spoke with us as we all hiked up behind his home on the forest. ARNONE said that he had observed recent activity over the past few months and was concerned that the Capitan Mining Company was doing the work and showed us a copy of a permit application he received by e-mail from the New Mexico State Mining and Minerals Division.

The permit application had a stamp on it which was marked received dated Sept 11, 2006. The permit application was titled SUBPART 3 MINIMAL IMPACT EXPLORATION PERMIT APPLICATION. This application was 10 pages to include a map of the proposed area of worksites highlighted in yellow.

The permit application listed operator information and the project name as AN6. Listed names on the permit application showed EL Capitan Ltd. out of Capitan, New Mexico as applicant.

The owner was listed as Larry Lozensky out of Scottsdale, Arizona. The on-site contact operator representative listed Randy Bouldin.

On page 8 of the permit applicant again showed a signature of Randy Bouldin under certification requirement. BOULDIN here was listed as VP & Field Supervisor and was dated 9/7/2006.

I located no approval DATE or INSPECTOR signature printed on the front page of the permit application were it listed the printed sign-off area.

ARNONE showed me (5) drill hole sites. These sites were obviously constructed with heavy earth moving equipment and fairly level to accomodate mobile drill platform trucks and support vehicles.

I walked these areas and used my handheld 12 channel GPS (Global Positioning Satellite) receiver unit to document these areas of disturbance. The GPS was set to NAD 83 (North America Datum).

I also documented by photographs.

I located areas where two roads were built to access drilling sites. These areas were also void of natural vegetation and scraped down to or below mineral surface. The 5 drill sites were marked and capped with either a flat stepping stone size brick or large rock painted yellow.

These 5 holes throughout the area were labeled on the yellow cap which read: EC-06-28, EC-06-27, EC-06-21, EC-06-22, and EC-06-24.

I removed the yellow cap of EC-06-28 and observed a drill hole approximately 6-7 inches in diameter. Using my flashlight and kicking a rock down the hole I heard no rock hitting bottom or flashlight illumination showing the bottom.

I also observed fine powder mineral spoils/tailing pile consistant with bore drilling in and around the area of each documented site.

ARNONE pointed out several areas that USFS Archeologist Chris Adams had visited in the fall of 2006.

ARNONE said he believed there was a grave site and Kilns sites from Native Americans and a historical cabin site in the facinity of the disturbed areas were the drilling and roads were built.

I cleared the area approximately 1600hrs

On 2/23/07 I made contact with Recreation/Land Staff Officer Richard Carlson and Recreation/Land Staff Assistant Christina Humpfries at the Smokey Bear District Office. I briefed CARLSON and HUMPFRIES of the incident and they assisted by locating the current file we had with the EL Capitan LTD. HUMPHRIES took my GPS way points and plotted them on a topographical map for refrence. All points of documented refrence point locations showed that the drill holes and roads were on Forest Service land, not private land.

CARLSON looked through the file on hand and was not able to produce any operating plan filed by Capitan Mining Ltd showing the areas that I had visited.

CARLSON said we only had a recent Plan of Operation filed with the forest from EL Capitan Mining Ltd. El Capitan Ltd was asking for permission to drill (2) exploratory drill holes situated West of the El Capitan LTD private land and East of Hwy 246.

CARLSON said it had not been approved and had to go through NEPA (National Enviromental Policy Act) clearence before anything was signed and approved by the Forest Service.

I was given a copy of the Plan of Operations filed by El Capitan Ltd it was submitted to the District Office on 11/15/2006. The document was submitted by Randy Bouldin and Larry Lozensky of El Capitan Ltd.



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In this document El Capitan Ltd identified the two proposed drill site holes as EC-SW-061 and EC-SW-062 on a map attached to the filled Plan of Operations for Mining Activities.

On 2/26/07 at 1430hrs I made contact with CARLSON who advised that he had made contact with Mickey Jojola inspector with the State Mining and Minerals office.

Carlson said he briefed JOJOLA about what we found on FS land. JOJOLA said that no permit with the state office had been approved for any drilling on the Forest Service property.

CARLSON under my supervision made arrangement by phone with Randy Bouldin of El Capitan Ltd to meet with him and discuss what I had located on Forest Service land.

On 2/27/07 at approximately 0900hrs myself and CARLSON arrived at the El Capitan Ltd to meet with BOULDIN. We met with BOULDIN at his shop at 670 Pine Lodge road (HWY 246) Capitan, NM.

I introduced myself and informed BOULDIN that I was here to show him what I had located on Forest Service land and was on a fact finding mission.

BOULDIN was very cooperative when I showed him on a map what I found and saw in regards to dirt roads built and drill holes bored. BOULDIN said he had nothing to hide about anything.

BOULDIN said he was the person who actually built the roads, and drill pad sites. BOULDIN said that everything out there with a Yellow cap was his doing and the company he works for (El Capitan Ltd.).

BOULDIN said over a 3 month period in the fall of 2006 they drilled the exploratory holes. BOULDIN said his company hired two different drilling companies to do the actual drilling. Yellow Jacket Drilling out of Phoenix AZ. and Harris Drilling out of Salt Lake City UT.

BOULDIN said that in June or July of 2006 he saw and met with the State Mining and Minerals Inspector (Mickey Jojola) in person at his office in Santa Fe.

BOULDIN said that Inspector JOJOLA went over his permit application and told him that everything looked good and could go ahead with the exploratory drilling. BOULDIN said that he believed everything was in order and then started the project.

Bouldin said that Inspector JOJOLA came out some time in early November 2006 and conducted a site inspection and used a GPS to document the drill sites.

BOULDIN said he was not present when JOJOLA did the site inspection but his Night Watchman/ Caretaker Vick Sharp was on the premises. I verified with SHARP who was standing in our presence at the time of our conversation.

SHARP said that JOJOLA did conduct a site visit inspection.

BOULDIN was informed a short time later from Inspector JOJOLA that El Capitan Ltd. would need to contact the Forest Service for a permit to drill the (2) proposed holes west of the private land near Hwy 246, (EC-SW-061 & EC-SW-062).

BOULDIN said he had no idea that El Capitan Ltd was in violation of FS law. BOULDIN went on to say that the State Inspector told him that everything was good because it was all within the 100 acre variance.

I asked BOULDIN if he had any paper work or permits in his possession which would show that they had an approved Operating Plan with the Forest Service.

BOULDIN denied having anything paperwork documents in possession showing El Capitan Ltd had a valid approved Operating Plan with the Forest Service.

BOULDIN said everything had been filed with the State and the BLM (Bureau of Land Management).

BOULDIN said the owner of the El Capitan Ltd was owned by Larry Lozensky in Scottsdale AZ and he should have the Operating Plan permits.

I asked Bouldin if I could show him the sites I documented as what I believed was on Forest Service land. BOULDIN agreed.

We went to these areas and BOULDIN was familiar with all the drill hole sites and roads leading to them.

BOULDIN asked if I was aware that he had drilled 3 more holes north of his private land on Forest and I said, "NO". BOULDIN said he would take us to the location so I could document them.

These drill hole sites were labeled (EC-06-15, EC-06-16, and EC-06-17). These drill hole sites were similar in size as the others and had a yellow rock or brick cap.

BOULDIN then took us out on to FR 489 to show us an area where he would like to get Special Use clearance from the Forest Service to build a road to some private deed land owned by EL Capitan Ltd.



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I cleared at at approximately 1300hrs.

Offense Codes

Venue: FED Title: 36CFR Section: 2616A Severity: MISDEMEANOR
Description: Cutting or damaging trees without spl-use authorization.

Venue: FED Title: 36CFR Section: 26110A Severity: MISDEMEANOR
Description: Constructing road without spl-use authorization or approved operating plan.

Venue: FED Title: 36CFR Section: 26115H Severity: MISDEMEANOR
Description: Vehicle damages resources

Venue: FED Title: 36CFR Section: 2619A Severity: MISDEMEANOR
Description: Damaging natural features of US property

Venue: FED Title: 36CFR Section: 26110K Severity: MISDEMEANOR
Description: Use FS Land without spl-use authorization

Incident Report

Incident Number: 8110784		Document: IR		Case No:		Sensitivity: NS	
Incident Name:				Incident Date/Time: 03-20-2007 / 09:00			
Reporting Officer: BERTRAND				ID: 1730		Report Date: 03-20-2007	
Place of Incident: EL CAPITAN MINING LTD.							
Incident Type: SPECIAL USES				Day Of Week: TUESDAY			
Incident Description: DIGGING, EXCAVATING, CONSTRUCTING ROADS, WITHOUT SPL-USE PERMIT							
Remarks:							
Region: 03 Forest: 08 District: 1 State: NM County: 27 Land Status: NFS							
Latitude				Longitude			
Degrees: 33		Minutes: 37		Degrees: -105		Minutes: 32	
		Seconds: 9				Seconds: 59	
Warning	IRC	IRC	Other Number	Dispatch Number	Incident Status		
N	17	01					
Keywords:							
WEAPONS							
Impact: N Edged: N Handgun: N Rifle/Shotgun: N Other: N							
SUPPLEMENTAL INFORMATION							
Initial Response	First on Scene	Reported	Agency	No. of			
Date/Time	Date/Time	By	ID	Officers			
/	/						
SYNOPSIS							
NARRATIVE							
On 3/20/07 at approximately 0900hrs myself and other officials from the State Minerals Dept. and the USFS met with Randy Bouldin of EL Capitan Ltd. The purpose of the site visit was to see first hand what illegal activities had occurred on FS land. BOULDIN agreed to show everyone the areas of our concerns. These locations in question were documented with a video camera and GPS coordinates re-taken. The following officials attended the site visit: USFS employess Doug Roe, Richard Carlson, Diane Tafoya, Guy Miller, State Minerals employees Terrence Foreback, and Mickey Jojola.							
OFFENSE CODES							

Disclosure of any record, which is contained in a system of records (including LEIMARS) by any means of communication to any person, or to another agency, is prohibited except as described in 5 USC 552a.



NEW MEXICO ENERGY, MINERALS and NATURAL RESOURCES DEPARTMENT

Bill Richardson
Governor
Joanna Prukop
Cabinet Secretary

Bill Brancard
Director
Mining and Minerals Division

CERTIFIED MAIL:

March 30, 2007

Randy Bouldin
El Capitan Ltd
P.O. Box 1319
Capitan, NM 88316

RE: Cessation Order, C07-12-1, El Capitan Ltd., Un-permitted Exploration Activities

Dear Mr. Bouldin:

During a recent site inspection, conducted on March 20, 2007, Michael Jojola and Terence Foreback, of the NM Mining and Minerals Division, identified your exploration operation to be in violation of the New Mexico Mining Act and 19.10 NMAC. Exploration activity had taken place without an approved permit. Sections 19.10.3.302.B and 19.10.4.401 NMAC, require all exploration operations to obtain an approved permit prior to any exploration activities. Additionally, permit applications must be submitted not less than 45 days prior to the anticipated date of commencement of operations.

Pursuant to Subsection A of 19.10.11.1102 NMAC, you are hereby notified that a Cessation Order C07-12-1 (CO), has been issued to you by the New Mexico Mining and Minerals Division (MMD), for failure to comply with the above Sections 19.10.3.302 and 19.10.4.401 NMAC. C07-12-1 and the proposed penalty assessment are attached to this letter. Please take special note of the abatement requirements and time frames on page three of the CO. Also, please note on page, 2 the steps required if you wish to contest the CO and/or penalty assessment, or if you wish to request a conference

If you have any questions, please contact me at (505) 476-3437 or Terrance Foreback at (505) 476-3432.

Sincerely,

Holland Shepherd
Program Manager
Mining Act Reclamation Program (MARF)

Enclosure

cc: Karen Garcia, Chief, Mine Reclamation Bureau
Diane Tofoya, USDA Forest Service
Terence Foreback, Permit Lead, MARF
Mine File

FORM: MMDCEO
3/30/07

STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
Director, Mining and Minerals Division
1220 South St. Francis Drive
Santa Fe, New Mexico 87505
(505) 476-3400

CESSATION ORDER NO. C07-12-1

To the Following Permittee or Operator:

Name El Capitan Ltd.

Mine N/A ☐ Surface ☐ Underground ☒ Exploration

County Lincoln Telephone (505) 354-1443

Mailing Address P.O. Box 1319
Capitan, NM 88316

Permit No. none

Date of Inspection March 20, 2007

Time of Inspection: From 9:30 ☐ a.m. to 2:00 ☐ p.m.

Name of Operator (if other than Permittee) same

Mailing Address same

Under the authority of the New Mexico Mining Act, Sections 69-36-1 to 69-36-20 NMSA 1978, the undersigned authorized representative of the Director of the Mining and Minerals Division has conducted an inspection, or otherwise made a determination, that the above mine operation is in violation of the Act, the regulations or required permit condition(s), and has found that a Cessation Order must be issued with respect to each of the conditions, practices, or unabated violations listed on page 3. This Order constitutes a separate Cessation Order for each condition, practice or unabated violation listed.

In accordance with Section 69-36-7 S.3 NMSA 1978 and Section 11.10.11.1102 of the New Mexico Mining Act Rules (19.10 NMAC), you are ordered to **CEASE IMMEDIATELY** all mining and operations or relevant portions thereof described in this order.

This Cessation Order shall remain in effect until the Director determines that the condition practice or violation has been abated or until modified, vacated or terminated by the Director or the Commission.

The undersigned authorized representative of the Director has determined that a condition, practice or violation exists at this operation that violates the Act, these Rules, a permit, or order.

Authorized Representatives Michael Joiola and Terence Foreback

Signature of Authorized Representative [Signature] Date 3/30/07

Person Served with Notice Randy Bouldin
Print Name and Title

Signature of Person Served mailed to Randy Bouldin Date March 30, 2007

**Notice of Opportunity to Respond
and Request for Conference**

page 2 of 3

1. **Abatement Period.** The permittee shall advise the Director when the condition practice or violation has been abated. Within 10 days of receiving such information the Director shall determine if the condition, practice or violation has been abated.

2. **Penalty Assessment.** The Director shall review each notice of violation and cessation order in accordance with the assessment procedures,, described in Rule 11, to determine whether a civil penalty will be assessed, the amount of the penalty, and whether each day of a continuing violation will be deemed a separate violation for purposes of the total penalty assessed.

The permittee may submit written and oral information about the alleged violation to the Director and to the inspector who issued the notice of violation or cessation order. The Director shall consider any information so submitted in determining the facts surrounding the alleged violation and the amount of the penalty.

The Director shall serve a copy of the proposed penalty and of the worksheet showing the computation of the proposed penalty on the permittee, by certified mail, within 30 days after the date set for abatement of the violation.

3. **Informal Conference** If you wish to contest the cessation order or penalty, the Director must receive your request for an informal conference within fifteen (15) days from the date the proposed penalty is served. To arrange a conference, you must inform the Director of your request in writing, at:

**Director, Mining and Minerals Division
Energy, Minerals and Natural Resources Department
1220 South St. Francis Drive
Santa Fe, New Mexico 87505**

The conference officer shall consider all relevant information. It will be informal in nature and not be governed by the rules of evidence for adjudicatory hearings. The conference shall be held within 30 days from the date of issuance of the proposed cessation order or penalty, unless the Director grants an extension for good cause shown.

The permittee may submit written and oral information about the alleged violation to the Director and to the inspector who issued the notice of violation or cessation order. The Director shall consider any information so submitted in determining the facts surrounding the alleged violation and the amount of the penalty.

4. **Appeal of Order.** Any order or penalty assessment by the director pursuant to the Act or these Rules shall become final unless a person who is or may be adversely affected by the order or penalty assessment files, within 60 day from the date of notice of the order or penalty assessment, a written petition to the Commission for review of the order or penalty assessment by the Director.

5. **Final Order.** If no conference is requested or petition filed with the Commission, the proposed penalty, violation or cessation order become the Director's final order. All penalties must be paid within 30 days after the Director's final order.

6. **Penalties.** For each violation covered by this Order, a penalty shall not exceed \$10,000 per day of noncompliance for each violation. Penalties will be assessed using the points table found on page 9 of Rule 11, of the New Mexico Mining Act Rules.

7. **Failure or Refusal to Comply.** Anyone who fails or refuses to comply with a final order of the Commission or the Director may be guilty of a misdemeanor and subject to a fine not to exceed ten thousand dollars (\$10,000) per day of violation or imprisonment of up to one year, or both.

Nature of Cessation Order:

During an inspection on March 20, 2007, inspectors, Michael Jojola and Terence Foreback, with the Mining and Minerals Division, found that El Capitan Ltd. was operating an exploration operation north of Capitan without an approved permit. The inspectors identified and located two roads measuring approximately 800 feet, and three holes, drilled within an area of about 3 acres, located on the Capitan USGS quadrangle, at GPS 448985,3720086; 449009,3720170; and 448868,3719967. Randy Bouldin, representing El Capitan Ltd. accompanied the inspectors, and admitted to them that the drilling had been conducted by El Capitan Ltd. without a permit.

Provision(s) of the regulations, Act, or Permit Violated:

The following portions of the New Mexico Mining Act (NMMA) and the New Mexico Mining Act Rules (19.10 NMAC) were violated:

Subsection A. of 19.10.4.401 NMAC requires that:

After December 31, 1994, no person shall engage in exploration operations in New Mexico without first obtaining a permit to conduct exploration from the Director.

Determination of Cessation Order 19.10.11.1102.A (2)

The Director determines that a condition, practice or violation exists at any operation that violates the Act, 19.10. NMAC, or a permit because the mining is conducted either (a) ***without a permit***, (b) outside a permit area, or (c) on previously undisturbed land within a permit area but where mining is not authorized by the permit, the director may issue a cessation order with respect to activities in the area where the unauthorized mining occurs.

Portion of the Operation to which the Order Applies

The Order applies to the entire operation

Remedial Action Required and Time for Abatement

- Cease any mining and exploration activities, at the identified site, immediately.
- Submit a permit an approvable application for a minimal impact Exploration operation along with the appropriate fees, within 30 days of the date of this Order. The permit application will be for reclamation and mitigation only.
- Survey the boundary of the patented land between the mine operation and the area of exploration to determine the permit boundary associated with the Capitan Iron Mine, within 60 days of this Order, or other time frame to be negotiated with the U.S. Forest Service and MMD.
- Submit the appropriate application to the U.S. Forest Service for mining activities on Forest Service land, for the site identified in the Order, within 30 days of the date of this Order.

A Penalty Assessment of \$ 5,000 has been issued with this Cessation Order. (see attached)

This Cessation Order shall remain in effect until the Director determines that the condition, practice or violation has been abated or until modified, vacated or terminated by the Director or the Commission.

Cessation Order Penalty Assessment

Cessation Order CO7-12-1

Mine Site: Unpermitted Exploration Site
Permit #: none
Operator: El Capitan Ltd
Date Issued: 30-Mar-07

Nature of Violation:

Operating a mining operation without a mine permit.

Possible Points

Actual Points

History of Previous Violations

Note:

25

0

Seriousness

Foreseeability

Not Foreseeable

0

Unlikely

5

Likely

9

Almost Certain

10

10

Extent of Potential or Actual Damage

Damage within the permit area

7

Damage without the permit area

15

15

Violation of Administrative Requirement

10

Note:

Negligence

No Negligence

0

Negligence

12

Willful

25

20

Note:

Good Faith

Rapid Compliance

-15

Use of Additional Equip. of Labor

-25

Normal Compliance

0

0

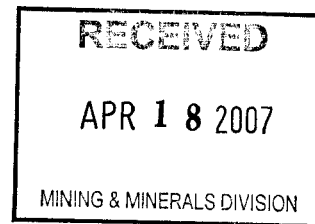
Note:

Total Points Assessed

45

Total Fine Assessment

\$5,000



El Capitan LTD • P.O. Box 1319 • Capitan, New Mexico 88316-1319

April 5, 2007

New Mexico Mining and Minerals Division
Holland Shepherd, Program Manager
1220 South St. Francis Drive
Santa Fe, New Mexico 87505

Dear Mr. Shepherd:

Please be advised we are in receipt of your letter dated March 30, 2007. El Capitan Ltd., has commenced abatement procedures regarding un-permitting activities. Mining and exploration activities at the site have ceased. The appropriate permits are being prepared and will be submitted within the timeframes designated in the Cessation Order. We understand that the permits will be only for reclamation and mitigation. The boundary of patented lands will be surveyed within sixty (60) days. In addition, the appropriate permit for mining activities will be filed with your Division within thirty (30) days.

El Capitan Ltd., sincerely regrets the actions undertaken and plans to fully mitigate the issues identified in your March 30, 2007 letter.

Please feel free to contact me if you have any questions.

Best regards,

Randy Bouldin
El Capitan, ltd.