MINERAL POLICY CENTER

Protecting Communities and the Environment

The Last American Dinosaur… The 1872 Mining Law

Mining Law Facts

- Under the 1872 Mining Law, public land is being sold for $5.00 per acre.
- Since 1872, the U.S. government has given away over 3.5 million acres of public land – an area equivalent to the state of Connecticut.
- The 1872 Mining Law forces the government to give away $1 billion in publicly owned minerals every year.
- The 1872 Mining Law has no provisions for environmental protection.
- The 1872 Mining Law's lack of environmental accountability has left 557,000 abandoned hardrock mine sites unreclaimed.

Introduction

The 1872 Mining Law is one of the last remaining American dinosaurs of the old public resource giveaways. It must be reformed. Passed over 125 years ago, this law continues to govern the mining of hardrock minerals on federal lands in a manner no longer consistent with other national policies or popular opinion. Passed to encourage development of the West via mineral exploitation, this antiquated law allows private companies to take valuable minerals, including gold, silver, and uranium, from public lands with no royalty payments of any kind. Not only does the law give public minerals away, but it also offers public land for sale at the price of $5 per acre – 1872 prices. Furthermore, because the Mining Law contains no environmental provisions, hardrock mining wreaks havoc on the environment and taxpayers are all too often left to clean up the mess that companies leave behind.

Congress must act to reform the Mining Law. Meaningful reform must include fiscal reform; environmental protection provisions; land manager discretion; public participation; an end to claims patenting; and a program to clean up abandoned mines.

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Background and History

The General Mining Law of 1872, signed into law by President Ulysses S. Grant, governs the mining of hardrock minerals (gold, silver, copper, platinum, uranium, and other minerals) on federal lands. This law was designed to encourage mining during a period when the nation was interested in promoting settlement of the West. At the time, the mining industry was largely made up of independent prospectors and small pick-and-shovel companies. Prospecting and mining for years without any real federal oversight, they favored the skeletal nature of the Mining Law, which enabled them to essentially continue with business as usual. No longer a small-scale operation, today the hardrock mining industry is dominated by large, multinational corporations that continue to enjoy the free rein afforded by the Mining Law of 1872.

The law is still in effect and applies to over 270 million acres of federal land. This land area constitutes almost one-fourth of all the land in the United States, or two thirds of the lands the federal government holds in trust for all Americans. In the early twentieth century, coal, oil, gas, and phosphate were removed from 1872 jurisdiction. Although common sand and gravel are no longer governed by this law, uncommon varieties of such materials may be still be claimed under the statute.

The Mining Law establishes mining as the predominant land use on federal lands, unless they are specifically withdrawn from mining (e.g. National Parks), regardless of other competing land uses or environmental sensitivity. Specifically, the Mining Law gives anyone the right to stake a mining claim on open public land if a "valuable deposit" of minerals is discovered. Under this law, the federal government has limited authority to prevent or control environmentally harmful mining ventures.

Moreover, the industry pays nothing to the government for gold or other minerals removed from public lands. And not only are the minerals taken free of charge, the miner also has the right to purchase the mineral-rich public lands from the government for a price that cannot exceed $5.00 per acre – a process called "patenting."

The Mining Law contains no environmental protection provisions or land reclamation requirements.

- While the states have mining laws that apply to various aspects of operations on federal lands, all state statutes have major gaps in environmental protection. No state program addresses all essential areas of environmental control or all financial giveaway issues. In addition, state regulatory efforts are crippled by the lack of discretionary authority given to their land regulatory officials.

- While other key national environmental laws apply in part to mining activities, none address reclamation or any of the other core problems associated with hardrock mining. For instance, there is no federal law that protects groundwater resources from mining pollution.

The patchwork of laws that currently exist is simply not sufficient to effectively protect the environment from the harmful impacts of irresponsible mineral development.

Problems and Costs

Failure to reform the Mining Law is costing the public billions of dollars per year in the giveaway of public property and resources.

Mineral Giveaway – Since public land minerals are free due to the lack of any federal royalty, the public gives away between $1 billion worth of minerals per year. In comparison, the coal, and oil and gas industries each pay a 12.5% royalty for the commodities they extract from public land. A 12.5% royalty on hardrock minerals would generate as much as $125 million per year.

Land Giveaway – Since 1872, over 3.5 million acres of public land have been sold to private owners for no more than $5.00 per acre. This giveaway of public land is equivalent in size to the state of Connecticut.

There are several hundred patent ($5/acre land sale) applications pending for public land worth tens of billions of dollars in minerals. In 1994, American Barrick Corporation successfully patented approximately 1,000 acres of public land in Nevada that contained over $10 billion in recoverable gold reserves. In return for $10 billion, Barrick paid U.S. taxpayers $5,140 ($5/acre). In early September 1995, a Danish mining company successfully patented public land in Idaho containing over $1 billion minerals for the fire-sale price of $275. Later that month, another large mining company gained title to $68 million in recoverable gold reserves in Nevada for only $450.

Moreover, recent investigations by the General Accounting Office have revealed many instances where public lands were patented but never actually mined. Instead, they were used for real estate speculation and development.

Believing they lack discretion, land management authorities refuse to deny a permit application to mine or purchase public lands. As a result, consideration is not given to competing land uses, the cultural and historic value of the land, or environmental impacts. Frequently, these sales create a patchwork of private inholdings within federal land regions – a practice inconsistent with federal land management policy. Consequently, the federal government often must buy back the patented lands from the original purchaser for a price far exceeding the original $5/acre. For example, the federal government spent $65 million to block the construction of the proposed New World gold mine on federal lands adjacent to Yellowstone National Park. The mine, if constructed, carried potentially devastating impacts for the Yellowstone ecosystem.

In 1994, Congress enacted a one year patenting moratorium. The moratorium, which must be renewed by Congress on an annual basis, prevents further giveaways of our mineral rich public lands. Unfortunately, the moratorium included a generous grandfather clause and a

number of giveaways have occurred since 1994. Congress has renewed the moratorium yearly, through FY 2003. The patenting moratorium does not, however, prevent a company from mining a claim.

The lack of environmental standards produces environmental degradation at costs of staggering proportions.

Hardrock mining degrades the environment, particularly water quality. EPA estimates that 40% of the headwaters of watersheds in the western United States are polluted by mining. EPA reports that the mining industry is the nation's largest toxic polluter: It released 3.9 billion pounds of toxic chemicals in 1999, over half of all toxics released in the U.S. It generates twice as much solid waste each year as all cities combined. Despite this, hardrock mining wastes are exempt from federal toxic waste regulation under the Resource Conservation and Recovery Act (RCRA).

Hardrock mining also creates the potential for acid mine drainage. Hardrock mining unearths and exposes iron sulfides, which form sulfuric acid when exposed to air and water. The acid mine drainage can then leach out of mine openings into streams and aquifers, posing grave danger to aquatic life.

The lack of adequate environmental controls over hardrock mining has resulted in over 557,000 abandoned hardrock mine sites left unreclaimed. Eighteen of these sites are so polluted that they are included on the Superfund National Priorities List. And more than 12,000 miles of U.S. rivers have been contaminated by mining. Cost estimates for reclaiming these abandoned mines range from $32 billion - $72 billion.

The environmental legacy of hardrock mining is not limited to "old mines." The environmental laxity of the General Mining Law insures that new and current mining operations are also environmental hazards. A 1992 EPA report to Congress (EPA/530-SW-85-033) found that mining practices that resulted in many of the Superfund listings represent methods still used by the mining industry today.

One of the most common processes used today in the extraction of gold and silver is cyanide heap leaching, whereby a cyanide solution is sprayed over the extracted ore body to separate and remove the desired mineral. In the United States alone, approximately two hundred million pounds of sodium cyanide solution is manufactured, shipped, and consumed in gold mining every year. Cyanide is lethal to wildlife in doses of less than a fraction of an ounce.

Cornerstones of Reform

In order to put an end to such financial and environmental abuses, the 1872 Mining Law must be reformed. Reform must include:

1. Fair Financial Return - Public lands and minerals are to be held in trust by the government for the American people. The American people who own these lands and minerals must receive

a fair financial return for their use. To stop the giveaway of public lands, claims patenting must be abolished. Patenting is not necessary to mine on public lands, and therefore represents an unnecessary giveaway of public resources. To stop the giveaway of public minerals, a royalty based on "gross production" or true "net smelter" return should be established. The royalty should be fixed at an amount that constitutes a fair return to the public and generates sufficient revenue to begin cleaning up the 557,000 abandoned mines. Miners of oil, gas, and coal on public lands pay a 12.5% royalty.

2. Land Manager Authority and Discretion - Prevention and proper planning best protect the environment from mining's adverse impacts. A mining permit application must therefore clearly demonstrate, before mining begins, how the mining and reclamation project will occur so as to minimize environmental impacts. Federal regulators must have the authority and discretion to deny permits that fail to do so. Regulators must be able to deny mining permits in environmentally fragile areas or critical wildlife habitats and areas otherwise found to be unsuitable for mining. Managers must be given the discretion to make such determinations based on the review and assessment of the land and surrounding areas.

3. Environmental Performance Standards - Standards requiring full reclamation and environmental protection during mining are essential. These standards must protect surface groundwater quality from erosion and toxic discharge; require landscape restoration concurrent with mining; protect topsoil and wildlife habitats; require productive native revegetation; and minimize and neutralize mine wastes.

4. Inspection, Enforcement and Bonding Provisions - Enforcement authority must be given to federal regulators to ensure operator compliance with the requirements of the reformed law. Enforcement actions must be mandatory and require frequent inspections, violation citations, civil and criminal penalty assessments, and the denial of new mining permits to operators with outstanding violations. Reclamation bonds must be required at levels that will ensure complete reclamation if operators fail to carry out their responsibilities.

5. Public Participation and Citizen Suit Provisions - Reform must provide the public with the right to fully participate at all levels of mining regulation. This includes the right to have access to documents; the right to comment on permit and regulatory actions; the right to petition the government to designate an area unsuitable for mining; the right to file citizen complaints; the right to accompany an inspector to a site; and citizen suit provisions to compel enforcement.

6. Hardrock Abandoned Mine Reclamation Program (HAMR) - A program to clean up the hundreds of thousands of unreclaimed abandoned mine sites must be instituted. Such a program should be funded by a mineral royalty and rental fees. Another way to ensure adequate funding for this program is to institute a reclamation fee for all hardrock mines on both public and private lands. Because the total amount of minerals produced nationwide is so large, a very modest reclamation fee could be established without causing economic hardship within the industry while generating significant revenue for reclamation. Such a reclamation fee program exists for coal mining, where mine operators pay into a national trust fund at a rate of 35 cents per ton of surfaced mined coal, and 15 cents per ton of underground coal. The coal reclamation fee generates approximately $225 million per year for the reclamation of abandoned coal mines.

Reform Efforts

Despite the bipartisan appeal of reforming the 1872 Mining Law – a move that would benefit both the environment and taxpayers' pockets – reform efforts to date have been unsuccessful. While the public is largely in favor of comprehensive reform, the mining industry remains a powerful political lobby.

Reform efforts continue. While comprehensive reform of the 1872 Mining Law is still pending, other less comprehensive efforts have been brought to fruition. Major strides have been made in clean water protection and in the passage of a patenting moratorium. Additionally, some success has been enjoyed on the ground. With the help of Mineral Policy Center's Circuit Riders, grassroots organizations around the country have been working hard to hold the mining industry responsible to the communities and environments in which they operate.

What You Can Do

Call Your Representatives – Call your Senator and Representative today and request that they advocate reform of the 1872 Mining Law and block any efforts at sham reform. The phone number for the Congressional Switchboard is 202-224-3121.

Get Involved– Become a member of MPC or join Mineral Policy Center's and receive updates on 1872 reform status.

Contact MPC - Mineral Policy Center needs your help to reform the 1872 Mining Law. Contact Mineral Policy Center today at, 202-887-1872 or via email at mpc@mineralpolicy.org, to find out what else you can do to help reform this antiquated law.

Mineral Policy Center is a national watchdog organization working to prevent environmental degradation and clean up past pollution caused by hardrock mining. The Center advocates comprehensive fiscal and environmental reform of the 1872 Mining Law.