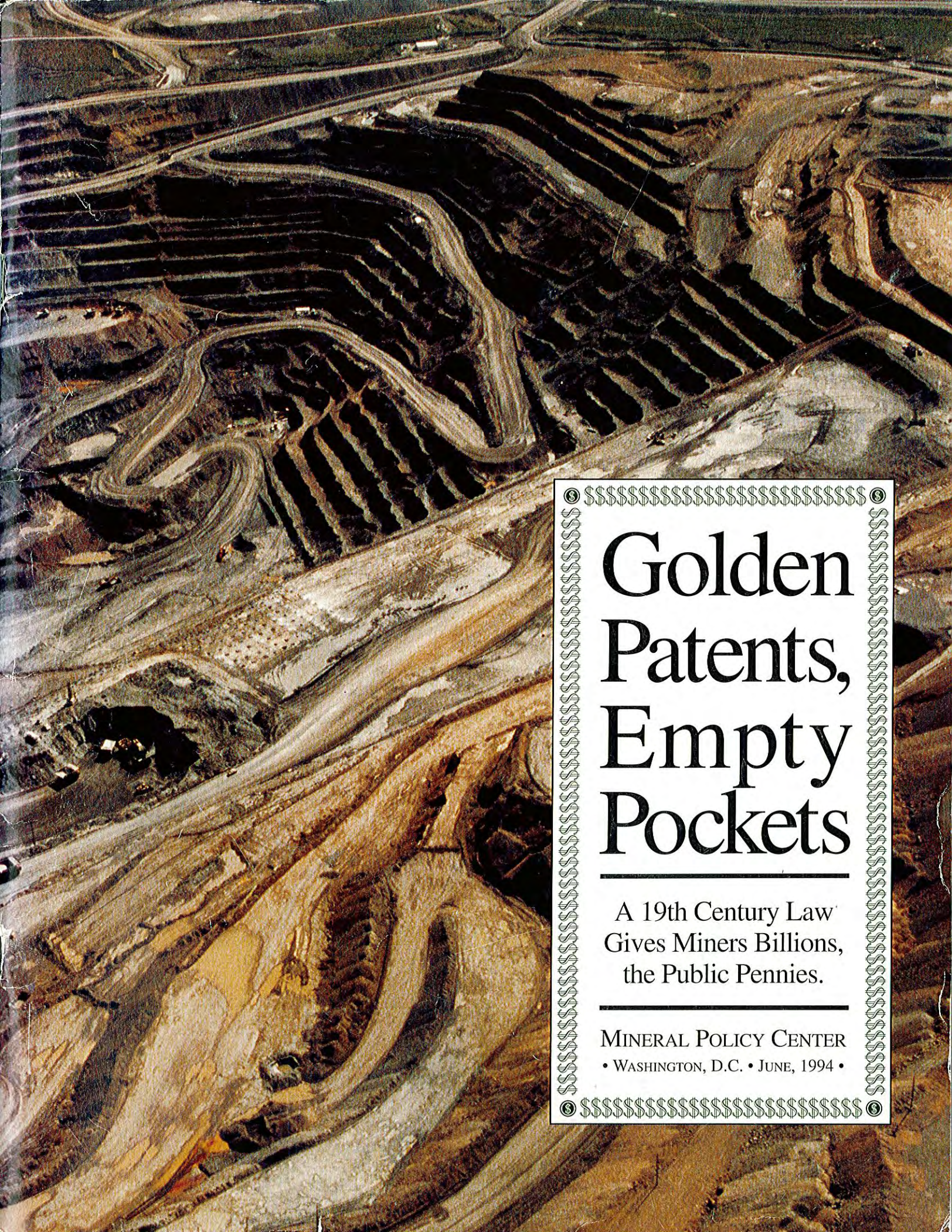

Golden Patents, Empty Pockets

A 19th Century Law Gives Miners Billions, the Public Pennies.

MINERAL POLICY CENTER
• WASHINGTON, D.C. • JUNE, 1994 •

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A 19th Century Law Gives Miners Billions, the Public Pennies.

by
Thomas J. Hilliard

with
James S. Lyon
Beverly A. Reece

MINERAL POLICY CENTER
• WASHINGTON, DC • JUNE,1994 •

COVER PHOTOGRAPH:
American Barrick Corporation's Goldstrike Mine near Elko, Nevada.
In May 1994, using the patenting process, Barrick gained fee title to the public land on which the mine is located.
That land contains over $10 billion in recoverable gold ore reserves for which Barrick paid only $5,190 in sale price.

Golden Patents, Empty Pockets

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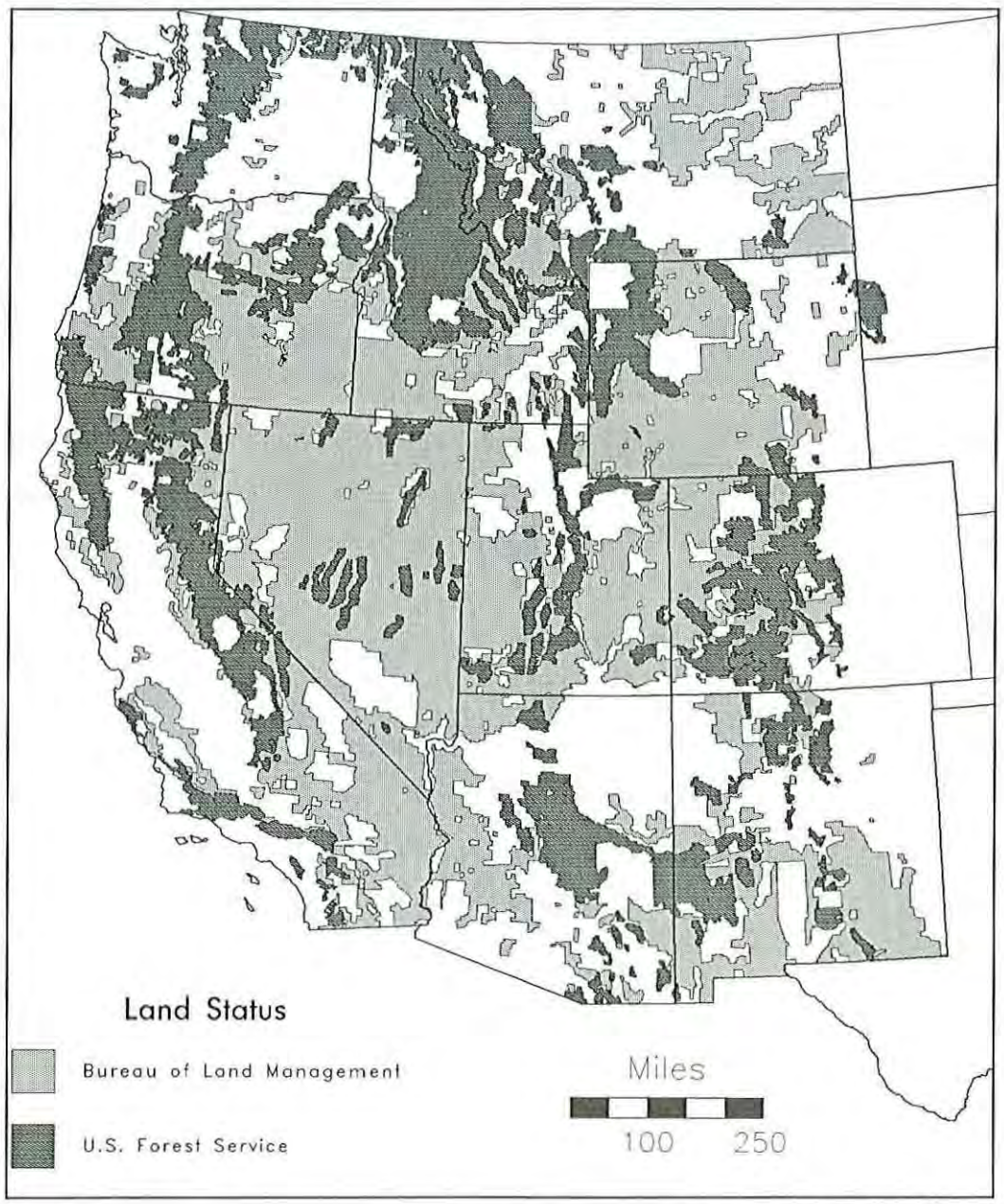


Public lands managed by the U.S. Bureau of Land Management and U.S. Forest Service in Western states (not all public lands depicted in map are open to patenting under 1872 Mining Law).

Source - U.S. Geological Survey

Executive Summary

Unless Congress takes action during the 103rd Congress, title to more than $34 billion in mineral resources belonging to the American taxpayers will be signed over within the next several months to private mining companies for no more than $800,000, a price less than $5.00 per acre. These transactions, mandated by an obscure practice called "patenting," will benefit only the buyers. Through patenting, mining companies get a golden deal, while taxpayers get nothing but empty pockets. ***Golden Patents, Empty Pockets*** reports the full scope and dimension of the patenting boondoggle and its origins in an outmoded Civil War-era statute — the 1872 Mining Law.

The scandal of patenting has been hidden from public scrutiny by the very federal agency charged with protecting the public interest. The Bureau of Land Management, an agency of the U.S. Department of the Interior, conducts the patent process in secret, discouraging public participation or public comment. The Bureau makes decisions involving billions of dollars on the basis of documents it refuses to release to the public. Open decision-making is taken for granted at other agencies, even other areas of BLM — but it is not tolerated in the patent process.

The General Mining Law of 1872 governs hardrock mining (gold, silver, copper, platinum, etc.) on Western public lands. According to the Mining Law, mineral development is the "highest and best use" of public land, regardless of any other competing land uses. Anyone can enter public lands to explore for hardrock minerals. Upon finding recoverable minerals, anyone can file a mineral claim to extract and sell them.

Patenting is the Mining Law's centerpiece. A company that discovers a valuable mineral deposit on its claim can "patent," or gain fee title to, the land for a price not to exceed $5.00 per acre. Upon patent issuance, title to public lands is transferred to private ownership. However, patenting is not necessary to mine on public lands. Many companies choose not to patent and operate hardrock mines on public land without difficulty. Those companies are permitted to extract and sell hardrock minerals, and are not required by the Mining Law to pay royalties or any other form of compensation to the American public.

Mineral Policy Center began this study of patenting more than two years ago. In its research the Center reviewed numerous government and company documents and interviewed a large variety of state and federal personnel, mining company officials, independent experts and knowledgeable citizens. ***Golden Patents, Empty Pockets*** reports several key findings:

❶ $34 billion in publicly-owned minerals is at stake:

An assortment of Canadian, South African and American-owned companies is preparing to patent more than $34 billion in hardrock mineral reserves. At stake are some extremely valuable deposits of gold, silver, platinum, beryllium and other minerals. After the Interior Department issues patents to all its current applicants, almost all mines of any importance on public lands will have passed into private hands. In return, the American public will receive less than $800,000 for the land and nothing in royalties for the minerals.

The most successful of all patenters is the Goldstrike mine in northern Nevada. As this report goes to press, Goldstrike's operator, the American Barrick Resources Corporation, has just received patents on 1,038 acres. Those acres hold mineral reserves valued at more than $10 billion, which the Interior Department sold to Barrick for $5,190 at a price of $5 per acre.

❷ Bureau of Land Management keeps patenting secret:

The U.S. Bureau of Land Management (BLM) is keeping the truth about patenting from the American public. BLM, as custodian of the mineral patent process on all public lands, has hidden the true scope and importance of the patent process behind a wall of confidentiality claims and elaborately secretive procedures.

Full public participation in the patent process is essential, in view of patenting's enormous fiscal and environmental costs. But BLM has locked out the public, most dramatically in its handling of mineral reports. The cornerstone of any patent application, mineral reports prove the profitability of extracting, processing and selling the mineral deposit. BLM keeps secret the most important sections of the mineral report. Agency decisions to approve any given patent application are thereby shielded from accountability to the American public.

BLM violates most common procedures of open government:

- No Public Hearings: BLM holds no public hearings on the impact of pending patents.

- No Public Comment: BLM does not seek or accept comments from the public on the impact of particular patents or on possible mitigative measures.

- No Public Notice: BLM does not alert the public when a patent application is underway.

❸ Patenting rush is underway:

By means of the patent process, mining companies have begun racing to privatize some of the most valuable hardrock mines in the United States. 613 patent applications are currently being processed by BLM. The companies hope to escape before proposed Congressional reforms of the 1872 Mining Law can be enacted.

Besides abolishing the patent process, the comprehensive reforms being proposed during the 103rd Congress would impose a production royalty, and establish Federal minimum environmental protection and reclamation standards. The reforms would also give authority to Federal land managers to deny ill-conceived and poorly designed mine proposals, and to assess and designate lands unsuitable for mining.

Sanchez Mine and New World Mine are two mining projects for which patent applications are now underway:

- **Sanchez Mine, Arizona**: In southern Arizona's Coronado National Forest lies a major copper ore deposit known as Sanchez, which the Arizona Mining Company (Azco) is proposing to mine — and to patent. The 550,000 tons of copper Azco's engineers estimate to be present would be worth about $1 billion at today's prices. An 8% royalty would yield American taxpayers more than $80 million.

- **New World Mine, Montana**: This proposed gold/silver mine is located less than three miles from the world's oldest national park, Yellowstone. The Noranda Resources Corporation, one of Canada's largest companies, has been lobbying the Forest Service for permission to construct the mine. But the National Park Service, the Environmental Protection Agency, many citizens groups and nearby community residents have noted the high potential for the mine to degrade the Yellowstone environment, particularly its streams and underground aquifers. If New World's operator receives its patents, the Federal government will have little land management authority with which to prevent possible environmental damage to Yellowstone National Park.

❹ Prompt action could save $10 billion:

Enactment of comprehensive Mining Law reform in 1994, before the 103rd Congress adjourns, can save the American public more than $10 billion in mineral reserves. Many of the 613 pending patents are still early in the application process. The comprehensive reform bill passed by the House of Representatives in November 1993 would eliminate patenting on public lands. Patent applications valued at approximately $24 billion have progressed too far to be halted, unless the Federal government agreed to compensate the applicants. But prompt action can halt many applications that are still early in the patent process.

Enactment of a law similar to the House-passed bill would save more than $10 billion in recoverable mineral reserved from being privatized by mining companies. Conversely, some or all of that $10 billion may be lost if Congress delays reform by as little as a year.

❺ The Mining Law has cost the public $231 billion in mineral assets:

The Federal government has handed away more than $231 billion in publicly owned mineral reserves since passage of the 1872 Mining Law. Most of that staggering sum was lost through patenting, and the rest through hardrock mining on public lands, for which the Federal government requires no compensation of any kind.

Between 1873 and 1992, according to Interior Department records, more than 315 million ounces of gold, 5.5 billion ounces of silver, 79.5 million tons of copper, 19.2 million tons of lead, and 13.9 million tons of zinc were mined in the 13 Western states. In 1993 dollars, these minerals would be worth approximately $472 billion. Mineral Policy Center calculates that the American public has given away royalty-free at least 49% of $472 billion, or $231 million.

❻ Patenting causes environmental destruction:

Environmental protection has become yet another victim of the patent process. Patenting puts many obstacles in the way of sound land management. Patented mines carve out private "inholdings" within public lands, even within national parks. These inholdings obstruct sound land management by fragmenting the public lands. Patented mines, now private property, are no longer subject to federal land management regulation. Instead they are regulated by weaker state law, and inspected by understaffed and underfunded state regulatory agencies.

Hardrock mining creates tremendous amounts of waste and can seriously degrade the environment, especially rivers, streams and aquifers. Mines

may pollute rivers, creeks and aquifers that flow into adjacent public lands, creating hazards which the land manager is powerless to halt.

Even the opportunity of miners to patent weakens Federal land management. Good preventive regulation sometimes requires getting tough with an irresponsible operator, e.g., by withholding a permit renewal until some unsafe practice is stopped. But getting tough on a hardrock mine operator may result in losing authority altogether through the patent process. Regulators feel a constant pressure to allow poor environmental practices at patentable minesites.

One case of mining destruction has occurred at the Stibnite gold mine in northern Idaho. The Stibnite mine has been leaking cyanide into a tributary of the South Fork Salmon River, one of Idaho's only breeding grounds for the threatened chinook salmon. The river runs through the Payette National Forest, but the Forest Service has lost most of its authority over the Stibnite mine because of patenting.

Regulatory agencies ought to require financial bonds that realistically guarantee cleanup of even the worst mines, but Idaho does not. If Stibnite's operator, Dakota Mining Corporation, goes bankrupt, Idahoans will have to pick up the check — and a National Forest river becomes the ultimate victim.

❼ Real estate speculation is a common outcome:

By means of the mineral patent process, the American public is often giving its land away, not for mining, but for real estate speculation and private home construction. While the stated function of patenting is to encourage mining, the Mining Law fails to require that land privatized through a mineral patent actually be mined. For decades, patenters have found it easier to exploit their land for non-mining purposes than for mining purposes.

While speculation and home-building top the list of patent abuses, there is no end to the variety of uses to which so-called "mineral" patents are put — everything from gambling casinos to luxury resorts, ski slopes to brothels.

Perhaps the most famous patenter of recent times is Frank Melluzzo. In 1970, Melluzzo received patents on 61 acres of rocky hillside outside of Phoenix, Arizona. Melluzzo paid $153.50, a price of $2.50 per acre. A decade later, Melluzzo sold out to a developer for $400,000 and 11% share in any forthcoming profits. In 1982, the Pointe at Tapatio Cliffs opened for business. Today, the Pointe is one of Arizona's biggest and most expensive luxury resorts. This $153.50 strip of land is now valued at $41.3 million.

Recommendations

Mineral Policy Center recommends that Congress and the President take the following steps:

- Immediately impose a patenting moratorium until such time as patenting can be permanently abolished.

- Approve comprehensive Mining Law reform legislation that abolishes the patenting system before the 103rd Congress adjourns.

- Require the Bureau of Land Management to immediately open all patenting records to the American public, including patent applications, mineral examinations, and processing documentation.

- Require the Bureau of Land Management to compile and publicly release all information on the scope, cost and use of mineral patenting.

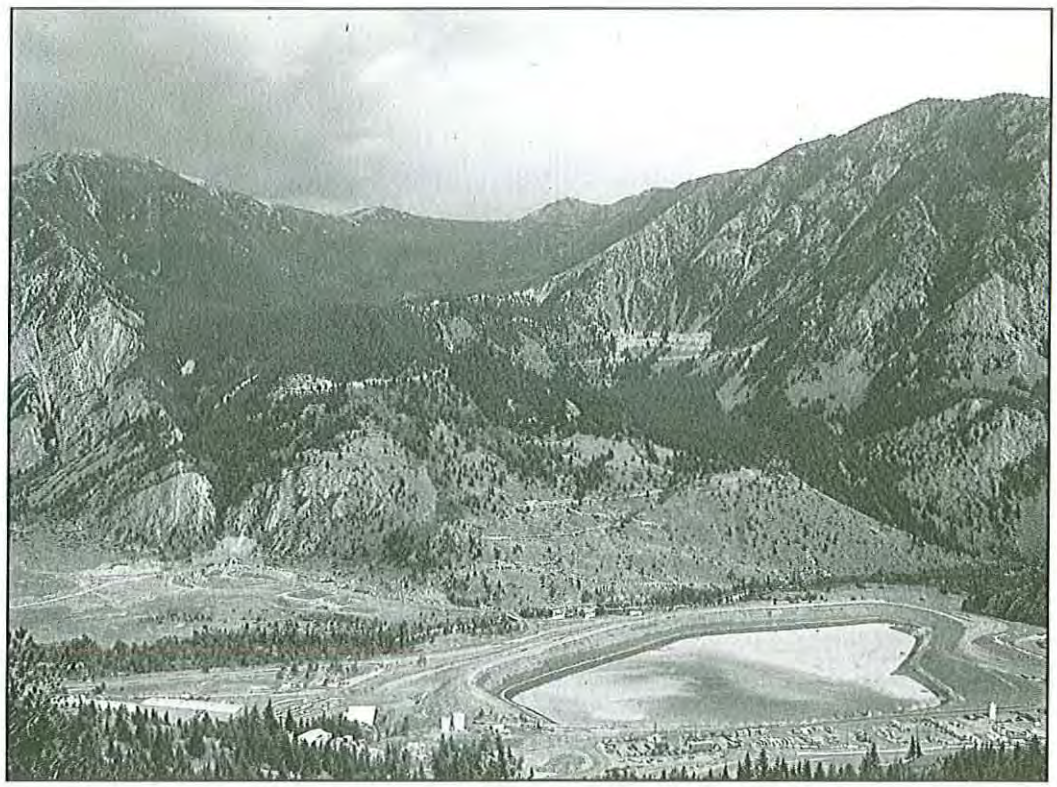
- Initiate a Congressional investigation of the patenting system and its administration by the Bureau of Land Management.

Conclusion

The 1872 Mining Law mandates that the Federal government carry out a transaction that would drive any private-sector real estate company into bankruptcy within a week: sell off valuable mineral-bearing land for no more than $5 per acre. Mining companies receive golden patents, while the American people get nothing in return but empty pockets.

Any legitimate historical rationale for patenting has long since vanished. Today, patenting serves to privatize land at fire-sale prices, and to allow operators to escape the more stringent environmental regulations and royalty requirements now under consideration by Congress. More than $34 billion is at stake in 613 pending patent applications. The time to shut the door on patenting abuses is now, before more taxpayer assets slip away into private hands.

In addition, the Bureau of Land Management has perpetuated this outrageous state of affairs by keeping the patent process a closely-guarded secret. This agency must be opened up, management of the patent process systematically reviewed, and all patenting records made available to the public.



Jill Bauermeister, U.S. Forest Service

The Platinum Patenting Prize - *Owners of Montana's Stillwater Mine are seeking to patent land containing over $3 billion in recoverable platinum and palladium deposits for a sale price of only $12,660.*

1 The Public Stake In Patenting

Thanks to an antiquated mineral development law, more than $34 billion of the American public's assets will be sold in the coming months. Ordinarily, when we think of public assets, real estate comes to mind: highways, hospitals post offices, and so on. But these assets are invisible: vast mineral deposits of gold, silver, copper, and platinum, located under the ground of the Western public lands. The Secretary of the Interior will be forced to sell 250,000 acres of public lands to private mining companies for no more than $800,000, at no more than $5.00 per acre.

The Secretary has no choice because of the "patenting" provisions of an outdated Federal statute, the 1872 Mining Law. The Mining Law mandates that any miner who finds a valuable mineral deposit has the right to purchase it and all the land over it. Further, the maximum sales price is $5.00 per acre, regardless of either the commercial value of the land or qualities less easily measured by dollars, such as the land's historical, environmental or scenic importance.

The 1872 Mining Law was written to bring order out of the chaos of the Western gold and silver rushes. Its authors viewed the public lands in the West as wilderness to be tamed and exploited as quickly and as thoroughly as possible. Mining was declared the "highest and best use" for the public's land.

Today, the American public holds a different view, one expressed in the 1976 Federal Land Policy and Management Act: "It is the policy of the United States that the public lands be retained in Federal ownership."[1] Over the past 122 years, the American people have come to believe that public lands should be kept in the public trust. As taxpayers, Americans want a fair share of compensation for the use of public lands by extraction industries. As citizens, Americans insist that public lands be managed sustainably, so that future generations will gain the same benefits as our own.

Defining What is at Stake

For the first time in many years, a serious campaign is underway to reform the 1872 Mining Law. A bill overwhelmingly adopted by the House of Representatives in October 1993 would eliminate patenting and retain the public lands in Federal ownership, while charging production royalties similar to those now paid by the oil, natural gas and coal industries. Oversight of the hardrock mining industry would change drastically.

The real significance of reforming the Mining Law is hard for the public to measure, however, without a clear picture of what is at stake. The American public should know, at a minimum, what mines are now going through the patenting process and how much those mines are worth. Such facts are crucial to informed debate over the 1872 Mining Law.

The Bureau of Land Management (BLM), manager of public lands for the U.S. Department of the Interior, is the agency charged with collecting all relevant facts about public land use. Sadly, BLM has made virtually no effort to publicly distribute information on patenting, or often even to compile it for internal use. Until April 1994, the agency did not even possess a central record of what mines exist on public lands.[2]

Sadly, BLM has made virtually no effort to publicly distribute information on patenting, or often even to compile it for internal use.

Moreover, BLM does not require companies to disclose any information on their patent applications to the public, save for a notice in a local newspaper stating the geographical coordinates of the land parcel under review. In sum, patenting information has never been systematically gathered and published by any public agency or private organization.

Mineral Policy Center initiated research to determine the scale and possible consequences of the patent process more than two years ago, in response to numerous requests for data. The project began with queries to the companies that had filed the applications. The companies, under no duty to provide information on pending patent applications, for the most part declined to do so. BLM staff at the district level were queried next for their detailed familiarity with local mines and mining projects.

Company officials and BLM staff also assisted in determining how much of each mine still remained on public lands. Many mines are now operated on a mixture of Federal, state and private lands, requiring some degree of estimation. Finally, Mineral Policy Center turned to a variety of other sources, including land status maps, investment analyses and Interior Department reports.

The value of the mineral reserves at these patenting mines was determined by review of corporate annual reports and entries in the ***American Mines Handbook,*** a commonly used reference source.[3] ***The Mining Record,*** a weekly trade publication, provided up-to-date market prices for most of the commodities.[4] The mineral reserve for each minesite was multiplied by the current market price to establish its "gross" value, meaning its value excluding extraction, processing, and marketing costs. Finally, the gross value of the mineral reserve was multiplied by the percentage believed to be still in public ownership, and therefore subject to the patent provisions of the Mining Law.[5]

The Public Stake in Patenting

Large and highly profitable mining companies are preparing to patent more than $34 billion in hardrock mineral reserves. With $34 billion, one could purchase and line up enough 1994 Cadillac Eldorados to stretch bumper to bumper from Washington, D.C., to Los Angeles, California.[6] That sum is 11 times larger than the entire 1993 budget of the Headstart program, an important social services program for children. Of the 500 companies listed in *Fortune* magazine's Fortune 500 list, only 9 had annual sales higher than the value of currently pending patent applications.

At stake are some of the world's most important producers of gold, silver, platinum, beryllium and other minerals. By the time the current round of patenting is complete, virtually all mines of any importance on public lands will have passed into private hands.[7]

Table 1 describes some of the hardrock mines for which patent applications are in progress. Some of these mines have just begun the patenting process; others are almost finished. Unless stopped by Congressional action on Mining Law reform, by a patent moratorium, or by individual company failures in the patent process, all of the following mines will shortly become private property. In addition, over 500 patent applications not itemized in Table 1 will extract still more mineral assets from the American public.

Beyond the Dollar: Facts about Patenting Mines

While the General Mining Law of 1872 was originally enacted to encourage settlement of the West by American pioneers, the Mining Law today encourages exploitation by foreign mining companies. Companies incorporated in foreign countries and controlled by foreign boards of directors have taken special advantage of the mineral patent process.

Table 1 notes the country of origin for the major patenters of hardrock mines. Of the 30 mines listed in Table 1, nine are foreign-owned or controlled. These nine mines represent some of the biggest mines in the United States. The mineral reserves about to be patented at those mines are worth approximately $20.1 billion.

The recent surge in patenting amounts to a modern gold rush. Gold mines now going through the patent process are worth at least $19 billion, more than all other such commodities combined. The extraordinary value of such mines must be understood in the context of America's central role in the world gold market. In 1993, the United States produced over 10 million ounces of gold, more than any country but South Africa.

America's leading role in the gold market is of recent origin. In 1981, the U.S. was the sixth largest gold producer in the world, a fairly minor actor in the market.[8] Over the next decade, new developments in gold

Table 1. The Patent Gold Rush

Mine Name, State	Owner(s) (Country)	Mineral	Patent Price	Taxpayer Loss (est.)
ACC Mines, WY	American Colloid (U.S.)	Bentonite	$8,278	$32,300,000
Briggs, CA	Canyon Resources (U.S.)	Gold	$310	$242,600,000
Brush Wellman, UT	Brush Wellman (U.S.)	Beryllium	$8,830	$1,268,300,000
Carlota, AZ	Cambior USA (Canada)	Copper	$3,070	$423,000,000
Castle Mountain, CA	Viceroy Resource (U.S.) 75%, MK Gold (U.S.) 25%	Gold	$1,055	$276,300,000
Twin Creeks, NV	Santa Fe Pacific (U.S.)	Gold	$3,520	$1,402,500,000
Cortez, NV	Placer Dome (Canada)	Gold	$955	$581,200,000
Crown Jewel, WA	Battle Mountain Gold (U.S.)	Gold	$1,380	$570,000,000
Getchell, NV	FirstMiss Gold (U.S.)	Gold	$3,460	$26,200,000
Gold Bar, NV	Atlas (Canada)	Gold	$2,130	$82,600,000
Gold Quarry, NV	Newmont Gold (U.S.)	Gold	$1,025	$221,200,000
Goldstrike, NV	American Barrick (Canada)	Gold	$5,190	$10,200,000,000
Grassy Mountain, OR	Newmont Gold (U.S.)	Gold/silver	$310	$154,700,000
Grouse Creek, ID	Hecla Mining (U.S.)	Gold/silver	$2,230	$379,400,000
Helvetia, AZ	Asarco (U.S.)	Copper/silver	$3,470	$1,848,500,000
Jerritt Canyon, NV	Anglo-American (South Africa) 70%, FMC (U.S.) 30%	Gold	$5,080	$1,113,200,000
Keystone, CA	Keystone Mining (U.S.)	Gold	$540	$54,300,000
Lone Tree, NV	Santa Fe Pacific (U.S.)	Gold	$495	$600,000,000
Lost River, AK	Greatland Exploration (U.S.)	Fluorspar	$1,855	$400,000,000
McCoy/Cove, NV	Echo Bay Mines (Canada)	Gold/silver	$3,305	$1,448,600,000
Mesquite, CA	Santa Fe Pacific (U.S.)	Gold/silver	$1,745	$540,000,000
Montanore, MT	Noranda Minerals (Canada)	Copper/silver	$185	$3,688,200,000
Mount Emmons, CO	Cyprus-Amax (U.S.)	Molybdenum	$1,000	$2,999,200,000
New World, MT	Noranda Minerals (Canada)	Gold	$220	$141,000,000
Round Mtn, NV	Echo Bay Mines (Canada) 50%, Homestake (U.S.) 25%, Case Pomeroy (U.S.) 25%	Gold	$4,820	$319,500,000
Sanchez, AZ	AZCO (U.S.)	Copper	$1,640	$1,052,800,000
Sleeper, NV	Cyprus-Amax (U.S.)	Gold	$3,530	$600,000,000
Stillwater, MT	Chevron (U.S.) 50%, Manville (U.S.) 50%	Platinum/ Palladium	$12,660	$3,378,300,000
Superior, AZ	Magma Mining (U.S.)	Copper	$500	$117,500,000
TOTALS **30 mines, 11 states**	28 companies (3 countries)	9 Minerals	**$82,788**	**$34,181,100,000**

processing technology pioneered by the U.S. Bureau of Mines dramatically reduced industry costs. Low-grade ore deposits that had previously been ignored because of uneconomical production costs suddenly became highly profitable.

Several of these mines ought to provide a steady revenue stream to the American public — were their operators not applying for patents.

In the early 1980's the industry began large-scale extraction at the world's largest unexploited low-grade gold ore zone, the 50-mile-long Carlin Trend in Northern Nevada. Today, mines are strung out along the Carlin Trend like gold beads on a necklace. Several of these mines ought to provide a steady revenue stream to the American public — were their operators not applying for patents.

Table 2 shows what will be lost, by state, from the patenting of the large hardrock mines identified in Table 1. In some states, such as South Dakota and New Mexico, the bulk of mineral discoveries has fallen on private lands. In states like Nevada, on the other hand, some of the rich mineral deposits in areas like the Carlin Trend happen to have been found on public lands.[10]

Table 2. Pending Patents by State

State	Patent Price	Taxpayer Loss (est.)	Applications
Nevada	$33,510	$16,615,000,000	111
Montana	$13,065	$7,207,500,000	59
Arizona	$8,680	$3,441,800,000	31
Colorado	$1,000	$2,999,200,000	25
Utah	$8,830	$1,268,300,000	36
California	$3,650	$1,113,200,000	101
Washington	$1,380	$570,000,000	10
Alaska	$1,855	$400,000,000	50
Idaho	$2,230	$379,400,000	47
Oregon	$310	$154,400,000	37
Wyoming	$8,278	$32,300,000	95
New Mexico	—	—	10
South Dakota	—	—	1
TOTALS	**$82,791**	**$34,181,100,000**	**613**

Key to Tables 1 and 2

Mine Name, State: Name/location of mine being patented. In many cases the entire mine is not being patented, generally because the rest was patented at some earlier time.

Owner(s)(Country): Companies with significant interest, country where company/parent was incorporated. Largest shareholder's home country determines mine ownership nationality.

Commodity: Mineral being extracted at minesite.

Patent Price: Price for which BLM will sell land to patentor. Statutory rate for lode claims is $5 per acre, placer claims is $2.50 per acre. Applications above consist of lode claims, except for "ACC Mines", which consists of placer claims.[8]

Taxpayer Loss (est): Current value of recoverable mineral reserve, as estimated by MPC. Value is obtained by multiplying amount of proven/probable reserve by current market mineral price mineral by % of reserve estimated to be patented. Standard industry periodicals used as reference sources.[9]

What Can Be Saved?

Congress can protect $10.3 billion in mineral reserves in the public domain at a stroke by enacting comprehensive Mining Law reform in 1994. Many pending patents are still early in the application process. Those applications can be blocked by legislation currently under consideration in Congress. Conversely, some or all of that $10.3 billion may well be lost if Congress delays reform by as little as a year.

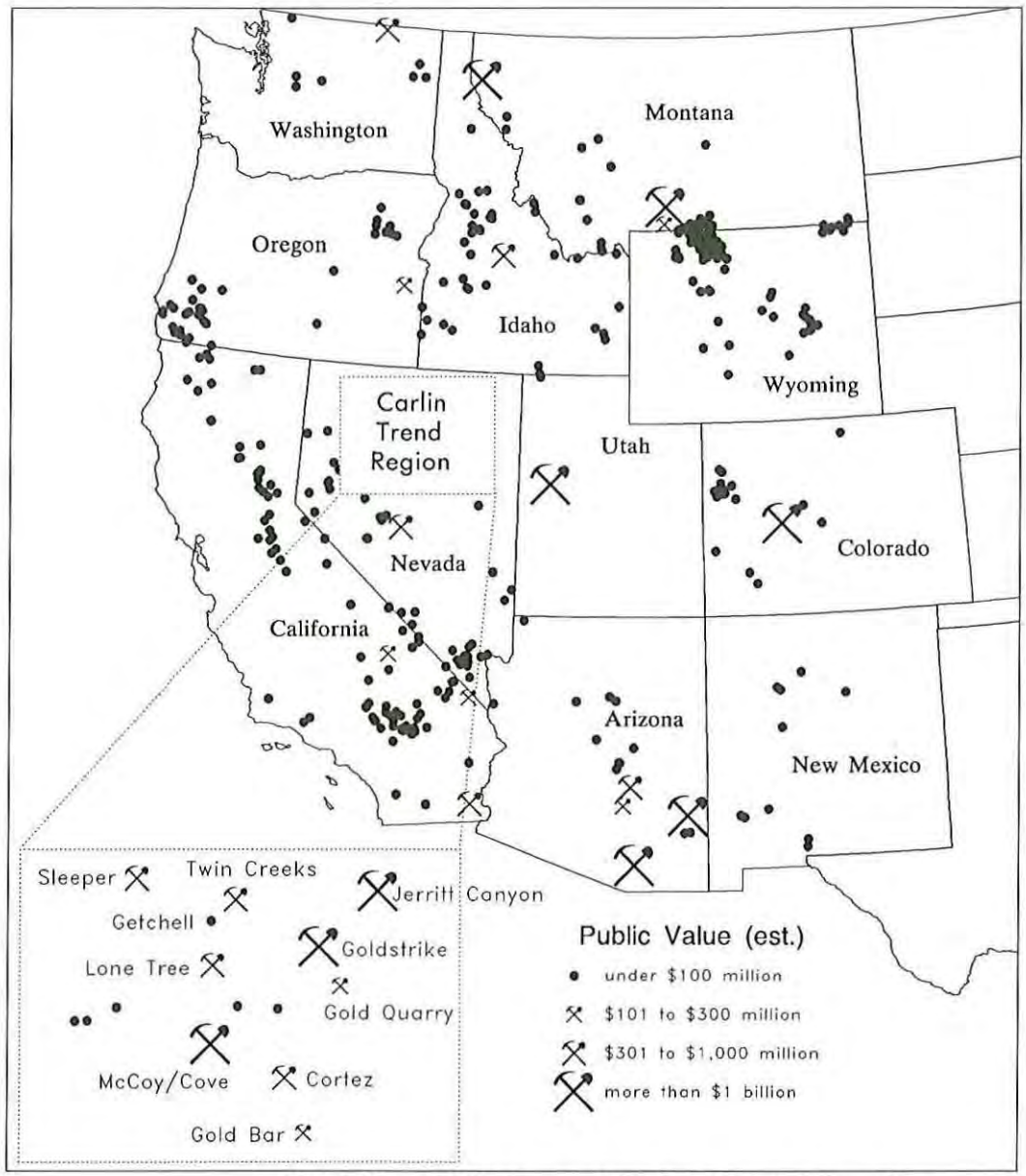
The reform bill passed by the House of Representatives would eliminate patenting on public lands and would block patent applications that received what is known as a "first-half certificate" after 5 January 1994.[11] Of the 613 patent applications currently pending, more than 300 would be blocked by the House-passed reform bill. Fourteen of the mines listed in Table 1 had not obtained their certificates prior to 5 January 1994: Briggs, Brush Wellman, Carlota, Crown Jewel, Grassy Mountain, Grouse Creek, Keystone, Lone Tree, McCoy/Cove, Mount Emmons, Round Mountain, and part of ACC Mines, Gold Quarry, and Jerritt Canyon. The total value of their mineral assets is about $10.3 billion.

If Congress fails to pass some version similar to the House bill, the American public may well lose the mineral reserves in those 14 mines to private ownership.

The crucial turning point in the processing of any mineral patent is receipt of a first-half certificate from the Department of the Interior. This document marks the point at which some degree of property rights accrue to the applicant. Once a first-half certificate is issued, the Government may not be able to prevent final patent issuance unless it compensates the applicant.

Mining Law reform, as passed by the House, states that those applications which received their first-half certificates "prior to January 5, 1994" (the date of the bill's introduction) will not be blocked. A similar clause would presumably apply if Congress enacted a moratorium on patenting. If Congress fails to pass some version similar to the House bill, the American public may well lose the mineral reserves in those 14 mines to private ownership. Every two years, at the end of a Congress, all pending bills expire and must be reintroduced at the opening of the next Congress. The 103rd Congress opened in January 1993 and will close by December 1994.

If Congress fails to act this year, a Mining Law reform bill will have to be reintroduced, and the cutoff date will be moved back at least one year. Any or all of the 14 mines at stake could obtain their first-half certificates in the meantime. From application to first-half certificate has traditionally taken one to two years, and most of the 14 mines under consideration filed their applications at least that long ago. The need for prompt Congressional action is urgent. While Congress procrastinates, the certificates will flow out like a river of money.



Location of 562 patent applications currently pending in all Western states, except Alaska and South Dakota.

Map © Mineral Policy Center, 1994; Data: Bureau of Land Management

The Cumulative Cost of Patenting

The Federal government is preparing to give away mineral reserves with a value of $34 billion, a staggering sum. But much more has already been given away. Since 1872, the Federal government has given away more than $231 billion of mineral reserves belonging to the public, either by patent or by royalty-free mining on public lands.

Once upon a time, all Western lands were public lands, all Western minerals property of U.S. taxpayers. Since passage of the General Mining Law 122 years ago, however, the Federal government has been giving away the public's minerals at a rapid rate. Until passage of the 1920 Mineral Leasing Act, which took commodities such as oil and gas out of the Mining Law's purview, mineral patents were being granted at an average rate of around a thousand each year.

The costs of a patent program must be high — but no data exist to prove it directly. The Federal government has never centrally compiled information on the identity of mines being patented, let alone their value of production. It is possible, though, to glimpse the scale of the patent process by looking at the historical value of all hardrock mining in the West, public and private.

Mineral Policy Center began its historical analysis by compiling production figures for extraction of gold, silver, copper, lead, and zinc for the 13 Western states from passage of the Mining Law in 1872 to 1993.[12] Production figures were multiplied by the then-current price of each commodity, then adjusted for inflation with "implicit price deflators" pegged to the year 1993.[13]

Table 3 represents Western mineral production over the last 120 years, although it is far from complete. Mineral records prior to 1883 are widely dispersed and in some cases could not be found at all. Much of the West remained governed as territories for some time after 1872, sometimes with different jurisdictional boundaries than today's states. Still, such gaps are only marginal in nature.

Between 1873 and 1993, according to Mineral Policy Center's calculations, more than 315 million ounces of gold, 5.5 billion ounces of silver, 79.5 million tons of copper, 19.2 million tons of lead, and 13.9 million tons of zinc were mined from Western soil. In today's dollars, these extracted minerals are worth approximately $472 billion. This number does not include the many less important hardrock minerals, such as tungsten, platinum, mercury, or molybdenum, nor those minerals counted as hardrock prior to 1920, such as petroleum, natural gas, and coal, for which little data exist.

Of the $472 billion in minerals taken from Western lands, the proportion taken from patented lands is unlikely to ever be known. However, the

Table 3.
Historic Value of Production (In $Millions)

State	Copper	Gold	Lead/ Zinc	Silver	TOTAL VALUE	% Public Lands	MINERALS GIVEAWAY
Alaska	$2,672	$9,608	$1,255	$218	$13,753	68%	$9,333
Arizona	139,560	4,861	1,419	4,969	150,809	47%	$71,016
California	2,786	22,872	547	1,208	27,413	44%	$12,182
Colorado	1,456	13,677	6,832	11,223	33,188	36%	$12,014
Idaho	918	2,189	15,299	9,811	28,217	62%	$17,416
Montana	38,197	5,711	10,108	10,223	64,239	28%	$18,000
Nevada	13,099	28,188	1,285	7,208	49,780	83%	$41,183
New Mexico	22,584	820	1,438	1,070	25,912	33%	$8,572
Oregon	51	1,220	2	57	1,330	52%	$697
South Dakota	14	12,478	16	160	12,668	6%	$727
Utah	38,529	6,422	9,005	8,394	62,350	64%	$39,773
Washington	343	1,280	599	151	2,373	29%	$688
Wyoming	98	15	1	1	115	49%	$56
TOTALS	**$260,307**	**$109,341**	**$47,806**	**$54,693**	**$472,147**		**$231,657**

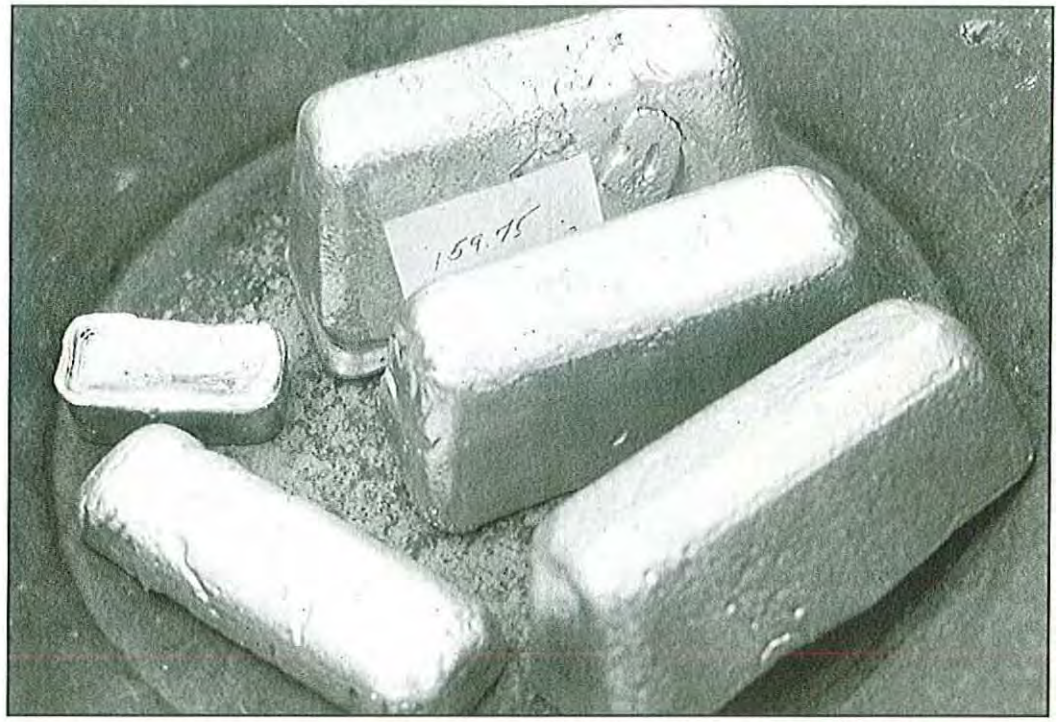
proportion in each state of public land area to total land area should correlate reasonably well to the total Mining Law giveaway. The total giveaway is here defined as production from patented land and unpatented land where no royalty is charged to the mine operator.

The acreage given away to date by the Mining Law, 3.2 million acres, is relatively minor set against the vast land acreage of the Western states. It can therefore be assumed that almost all lands not still in the public domain were given away by some other form of land grant: homesteading, railroad, state, Mexican land grants, and so on. The remainder is open to mining location and eventually to patent. Many companies also choose to operate mines on public lands instead of patenting. The Federal government charges them no royalties.

For example, the value of Arizona's historic mineral production is about $150.8 billion. Since 47% of Arizona's land area is public land governed by the Mining Law, just under half of that state's production value may have been extracted from public lands, or roughly $71 billion.

By Mineral Policy Center's conservative assumption, the government has handed away more than $231 billion in mineral reserves since passage of the 1872 Mining Law, through patenting or royalty-free mining. For that staggering sum, the Federal government could have simply donated $3,439 to every family in America.

●



Robert Anderson, Bureau of Land Management

The Patenting Prize *- Over 500 ounces of gold mined in Alaska is worth nearly $200,000 in 1994. Currently, the U.S. produces approximately 10 million ounces of gold annually. More than 3/4 of all gold produced is made into jewelry.*

2 How Patenting Works

The basic structure of patenting is straightforward. A prospector who stakes a claim on public lands and strikes gold (or any other hardrock mineral) has the right to patent — meaning to purchase — the land from the Federal government. Under the 1872 Mining Law, the government must sell the land at a price of $2.50 - $5.00 per acre.

The land conveyed through such a patent is gone from the public domain for good. The purchaser receives full title to the surface and everything underneath. No conditions can be attached to the patent, so the patent's recipient can use the land for any purpose, including but not limited to mining. The Mining Law also provides patenters what are known as "extralateral rights," the right to follow and mine the mineral deposit wherever it goes. The device was invented to resolve disputes over ownership of mineral deposits. One effect, however, is that the patenter can continue mining outside of the patented claim and onto land withdrawn from Federal land management authority.

Stages of a Patent Application

There are four steps to a successful patent: claim location, the first-half certificate, the mineral examination, and patent issuance.

All mining, prospecting and patenting must first be preceded by **claim location.** Over 590 million acres of publicly owned land are currently open to public exploration for valuable minerals. Certain minerals were earlier removed from the jurisdiction of the 1872 Mining Law and must therefore be explored and developed under guidance of other laws: coal, oil and gas, "common varieties" of sand and gravel. All other minerals are considered to be a "hardrock mineral." The most valuable are phosphates and the metallic minerals, such as gold, silver, copper, lead, zinc, molybdenum, platinum and so on.

After deciding what area to explore, the interested party files for the claim, sends in a minor processing fee, and takes possession. Thereafter, the claimant only pays a $100 annual fee to the government for each claim to maintain possession. The Mining Law recognizes three types of claims:

❶ **lode claims** apply to hardrock minerals extracted from a well-defined zone or belt of mineral-bearing rock, the classic open-pit or underground mine, and can be patented for $5.00 per acre;[14]

❷ **placer claims** apply to all other hardrock minerals, primarily for minerals found in masses of gravel or sand resulting from the crumbling and erosion of solid rock, and can be patented for $2.50 per acre;

❸ **millsite claims** apply to land without minerals where the applicant wishes to build mills, leach heaps or other processing facilities used to support mining activities. Some millsites can be patented for $2.50 per acre, and others for $5.00 per acre.

The next step toward receiving a patent is to obtain from BLM a **first-half certificate.** This certificate shows that the applicant has settled all questions of claim possession. At the time of the Mining Law's enactment, "claim jumper" was the most hated word in a miner's vocabulary. Every rich strike led to conflict over who found it first. Each side marshalled evidence of its legitimacy, tarring the others with accusations of "claim jumping." Elaborate proof-of-title procedures served a valuable role at that time in resolving disputes. The main preconditions to obtaining a first-half certificate are:[15]

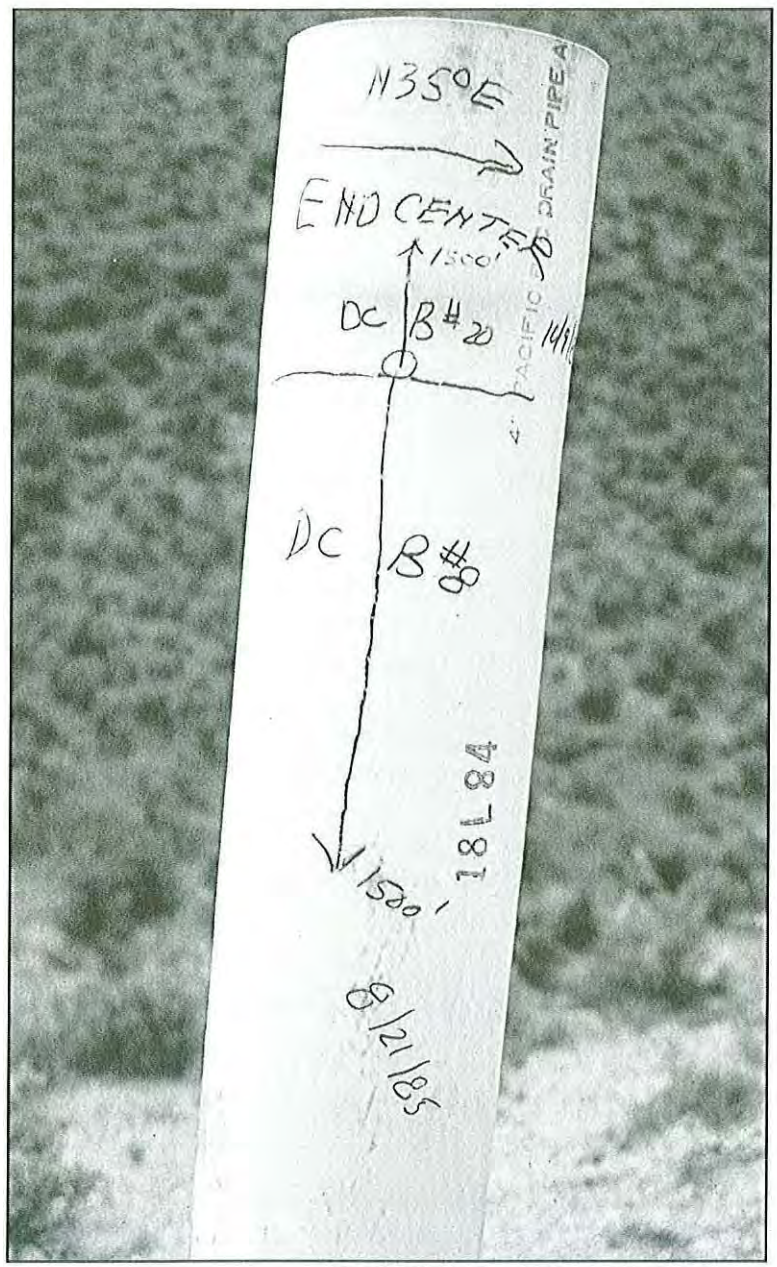
- Commissioning a mineral survey of the claims to be patented;
- Posting corners of each claim with stakes;
- Providing a complete record of ownership and title evidence;
- Publishing a legal notice of intent to patent in local newspapers;
- Supplying a complete description of geology and mineral deposit embodied in the claim.

Proving discovery of a valuable mineral is essential to obtaining a patent.

When an applicant obtains a first-half certificate, a form of quasi-property rights comes along with it. Now the applicant is no longer a mere occupant. The first-half certificate assures the applicant that passing a mineral examination is the sole obstacle to obtaining the patent. The third step in patenting a mineral claim of the "lode" or "placer" type is to demonstrate through a **mineral examination** (sometimes referred to as a "validity examination") that a "discovery" has been achieved. Proving discovery of a valuable mineral is essential to obtaining patent. The Mining Law's purpose is to give away lands bearing "valuable" minerals, so a successful applicant must "discover" valuable minerals underlying that land.

Unfortunately, the Mining Law failed to define either "discover" or "valuable." As a result, courts and regulatory agencies stepped in to establish elaborate tests, carried out through "mineral examinations," to prove discovery.

The heart of discovery is in the "prudent person" test. A BLM mineral examiner analyzes drill tests, geological history and current commodity market conditions. Using the standard established by the 1894 *Castle v. Womble* decision, the landmark case in this field, the examiner looks to see



Philip M. Hocker, Mineral Policy Center

***Mining on Public Lands**—To ensure a valid claim under the 1872 Mining Law, miners are required to stake their mining claim.*

if the mineral could be sold at a rate such that "a person of ordinary prudence would be justified in the further expenditure of his labor and means...." In other words, the mineral deposit must be profitable to extract and sell. If so, the examiner prepares a report recommending issuance of the patent.[16]

Millsite examinations are handled differently. If the claim contains marketable minerals in lode or placer form, it is not eligible for patent as a millsite claim. The applicant must show the reverse of a lode or placer application — that the claim contains no lode or placer-type minerals.

After the mineral report is approved, the applicant is ready to obtain **patent issuance.** A second-half certificate is drafted and prepared for the signature of the Secretary of the Department of Interior. The applicant at last receives the patent and becomes owner of the claim "to have and to hold the said lands with all the rights, privileges, immunities and appurtenances...forever."[17]

Table 4 outlines patent applications currently pending at the U.S. Department of the Interior. As of 22 April 1994, there were 613 patent applications pending, covering a total of 8,295 mineral claims, involving 249,823 acres of public lands. One application can contain a number of adjacent claims. Millsite claims generally cover 5 acres, lode claims 20.6 acres, while placer claims vary in size.[18]

Outmoded Aspects of the Patent Process

The most destructive defect of the patent process is its reliance upon strict factual tests. The four-part process described above has nothing in common with any real interests of land managers, the Federal government or the American public. The patent process forces the Bureau of Land Management, an agency chartered to administer public lands to test simple questions of fact, e.g., that the claim is properly staked.

Table 4. Pending Patent Applications In Western States

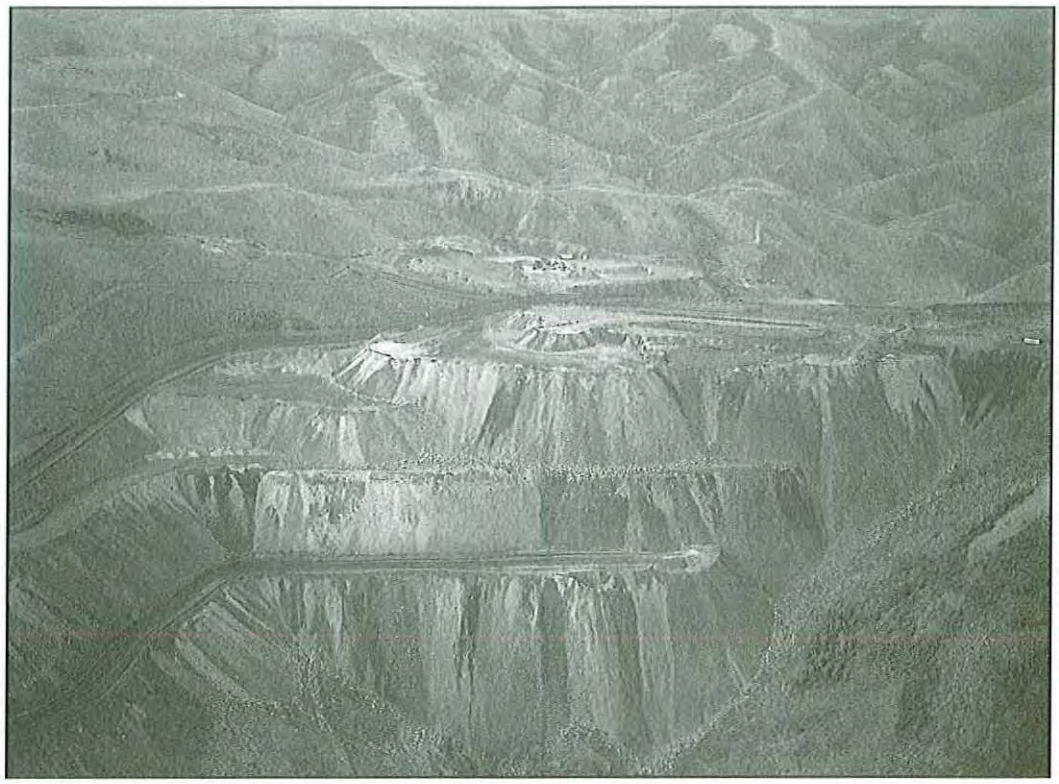
State	Applications	Claims	Acres
Alaska	50	497	10,756
Arizona	31	464	7,532
California	101	982	20,318
Colorado	25	256	31,504
Idaho	47	1,085	28,300
Montana	59	257	8,457
New Mexico	10	146	8,148
Nevada	111	2,782	25,026
Oregon	37	288	10,899
South Dakota	1	1	21
Utah	36	564	37,120
Washington	10	159	1,395
Wyoming	95	1,114	60,348
TOTALS	**613**	**8,595**	**249,823**

The fundamentals of the patent process have remained essentially the same for 122 years, while both the mining industry and public attitudes toward public lands have been radically transformed. The result is a hodgepodge of antiquated and arbitrary requirements. "Extralateral rights," for example, were traditionally granted during gold rush days so that miners could reap the just rewards of discovering a mineral deposit. This privilege enabled a miner who had found the topmost point of a mineral deposit to follow it downward along "dips, spurs and angles" wherever the deposit might lead.

The Applicant at last receives the patent and becomes owner of the claim "to have and to hold the said lands with all the rights, privileges, immunities and appurtenances ...forever."

Extralateral rights soon proved, in the words of Mining Law authority John Leshy, "an enormously productive engine of conflict and confusion."[19] Eight years after enactment of the Mining Law, a presidentially-appointed commission recommended abolishing them.[20] The recommendation went ignored, as did many similar ones over the next century. Today's lode patents still carry with them extralateral rights.

New procedural steps have been added to the patenting process over time, mainly to reflect pressing concerns of the day. When those concerns fade away, the requirements linger and grow disconnected from their original purpose. For example, every patent applicant must pledge that he or she has had no "direct or indirect part in the development of the atomic bomb project."[21] This rule was intended to prevent the exploitation of inside information by would-be patenters of uranium mines. Long after the creators of the atomic bomb have passed away or retired, patent applicants must still discuss their connection to the Manhattan Project.



A Billion Dollar Deal *- Operators of the Jerritt Canyon Mine in Nevada's Carlin Trend region are seeking to patent public land containing more than $1 billion in recoverable gold reserves for a sale price of $5,080.*

3 The Great Escape

Starting in the late 1980s, highly profitable mining companies have begun racing to privatize some of the most valuable hardrock mines in the United States. Through patenting, the companies hope to escape before Federal regulatory reforms can be enacted.

This surge of patents and patent applications amounts to a new gold rush. Unlike the 1849 gold rush at Sutter's Mill, California, the modern gold rush is being carried out through bureaucratic procedures, as set forth in the General Mining Law of 1872. Over the past half-decade, mining companies have filed hundreds of mineral patent applications. These new 49'ers are rushing to escape imminent reform of the Mining Law.

Ten years ago, major mining companies had little reason to bother with patenting. Under the Mining Law, companies have an unabridgeable right to construct and operate hardrock mines on public lands. Patenting is in no way necessary to mine on public lands. Hundreds of hardrock mines are currently operating on public lands without hardship. The patent controversy centers around land ownership, not the ability to extract minerals.

Proposed reforms of the 1872 Mining Law would end the financial and environmental subsidies bestowed on public-lands miners. Besides abolishing the patent process, the reforms would impose a production royalty, establish tough environmental protection and reclamation standards, and give authority to Federal land managers to deny ill-conceived and poorly designed mine proposals.

Mining companies have reacted to Mining Law reform proposals by rushing their mines to patent. Once a mine is patented, it is no longer subject to Federal regulatory jurisdiction. Only enactment of Mining Law reform or some form of Congressionally mandated moratorium can halt the new gold rush.

The Patenting Pace

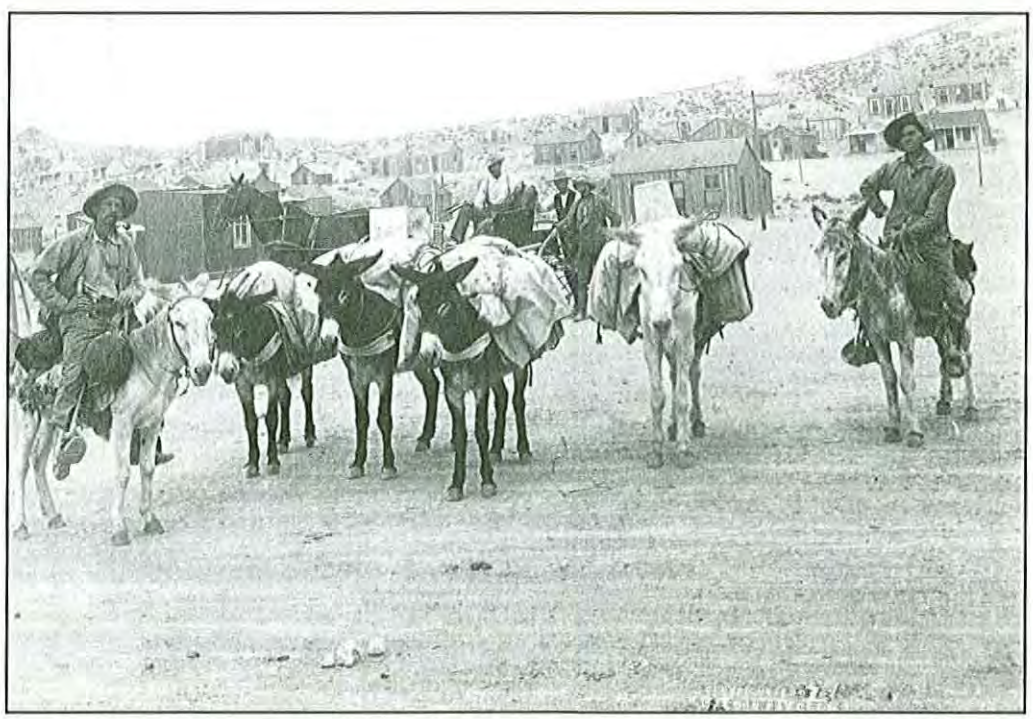
Passage of the General Mining Law of 1872 brought a patenting frenzy that lasted almost a half-century. Within a decade of the Mining Law's enactment, miners were clamoring to patent claims all over the West. Each patented claim could hold the next big silver, copper or gold strike under its soil. The Department of the Interior cooperated by granting patents at a

rapid-fire rate. From 1873 to 1920, Interior handed out 54,541 patents, more than a thousand each year.

The pace began to slow after World War I. The richest mines had already been patented; and Congress, alarmed by the patenters' voracious appetites, withdrew numerous commodities from Mining Law jurisdiction. In particular, the 1920 Mineral Leasing Act struck a hard blow against speculators. It excluded oil, natural gas and several other profitable minerals from the Mining Law's grasp.

With the richest deposits patented or withdrawn, mining companies made only selective use of the patent process. Companies targeted their patents to profitable mines and the most promising mineral deposits. By the 1940's, patent issuance had slowed to less than a hundred each year.

Then came the late 1980's and a new patent explosion. A sense of the change in attitude can be discerned from Table 5, which lists annual patent applications from 1982 to 1992 in Nevada, the center of the American gold boom.[22] From 1982 to 1986, applications were filed covering 5300 acres. The next five years saw applications covering 18,888 acres filed, a threefold jump. One mineral adjudicator for the BLM's Nevada office remarked: "I've been adjudicating mineral patents for twenty-some years, and this is the most I've ever had pending!"[23] Patent applications in Nevada take an average of three years to process. Application paperwork mounted, overwhelming BLM staff and imposing lengthy backlogs throughout the patenting process.



Prospecting the West *- The gold discovery at Sutters Mill, California, in 1848 opened the floodgates to thousands of prospectors and settlers.*

Library of Congress

Table 5. Nevada Patent Activity, 1982-1993

Year	Applications	Claims	Acres
1982	7	55	791.8
1983	14	254	2,837.9
1984	8	115	855.4
1985	3	87	360.0
1986	3	67	455.4
1987	11	355	5,541.4
1988	15	450	3,189.8
1989	5	168	1,155.0
1990	22	337	4,051.6
1991	13	790	4,951.5
1992	34	1156	10,227.3
1993	23	444	4,875.2

Why Mining Companies Want Patents

Behind the sudden surge in patent applications lies a shift in fortunes for the General Mining Law of 1872. Its primary mechanisms left untouched for over a century, the Mining Law now faces a nationwide campaign aimed at systematic reforms.

If reformers succeed in overhauling the Mining Law, those mines remaining on public lands will have to meet new environmental standards and their owners will have to pay royalties for the minerals they extract. Some mining companies consider the costs — and the stakes of Mining Law reform — to be sizable. Mining executives are most concerned about three likely changes in the Mining Law:

❶ **Royalties:** Comprehensive Mining Law reform would impose a royalty on the gross value of production, that is, the market value of the mineral. Mining companies currently pay no Federal royalty for mining on public lands.

❷ **Environmental Standards:** Comprehensive Mining Law reform would establish standards to protect the environment during operation of the mine and institute reclamation requirements to ensure protective, stable land after mining commences.

❸ **Land Manager Discretion:** Comprehensive Mining Law reform would give Federal land managers discretionary authority to approve, modify or deny mining permits. For the first time, land managers would have authority to deny a deficient mining permit or an ill-conceived mine in a sensitive area.

The Royalty Dodge

Mines that obtain mineral patents will not have to pay royalties, regardless of what Congress requires in a Mining Law reform statute. Royalties are paid in compensation for minerals removed from public lands. The American public, through the Federal government, supplies hardrock minerals on public lands for extraction and sale by mining companies, and reasonably expects compensation for those minerals. By patenting a hardrock mine, a company purchases the mineral deposit altogether and need provide no further compensation.

Mines that obtain mineral patents will not have to pay royalties, regardless of what Congress requires in a Mining Law reform statute.

The link between proposed royalties and the patenting gold rush has been noted by a number of figures in the mining industry. For example, the President of Canyon Resources, Richard De Voto, wrote personally to his shareholders, reassuring them that the company was protecting their assets.[24] "The Briggs Project [a mine for which the company was then seeking permits] does occur on federal mining claims and could be materially affected by [Mining Law reform] legislation," warned De Voto. "The Company will attempt to alleviate any adverse effects of the potential of the imposition of a royalty . . . by continuing its present efforts to patent the Briggs claims into private ownership."

The rewards of patenting could mean millions of dollars in extra profits for some companies, particularly if the final bill incorporates the royalty provisions of H.R. 322, the House reform bill. H.R.322 would impose an 8% gross royalty on hardrock mineral production from Western public lands. For some mines, the patent may prove especially profitable:

AZCO is seeking to patent land containing over $1 billion in recoverable copper reserves at its proposed Sanchez Mine, for a sale price of $1,640.

Jeff Widen, Mineral Policy Center

- **Jerritt Canyon Mine, Nevada:** This gold mine, majority owned by the Independence Mining Company (a subsidiary of the South African Anglo-American Corporation), is part of the Carlin Trend cluster of mines in northern Nevada. Jerritt Canyon has gold reserves valued at more than $1.1 billion. If Jerritt's patent application was blocked and an 8% royalty established, Jerritt would provide American taxpayers over $88 million over the life of the mine.

- **Stillwater Mine, Montana:** This Montana mine, jointly owned by the Chevron and Manville Corporations, is the only mine in the world extracting platinum and palladium as its primary commodity. Stillwater's reserves include 13.7 million ounces of palladium and 3.9 million ounces of platinum, worth an impressive $3.4 billion on the open market.[25] An 8% royalty would return to taxpayers about $272 million.

- **Sanchez Mine, Arizona:** In southern Arizona's Coronado National Forest lies a major copper ore deposit known as Sanchez, which the Arizona Mining Company is proposing to mine. The 550,000 tons of copper Azco's engineers estimate to be present would be worth about $1 billion at today's prices. An 8% royalty would yield American taxpayers about $84 million.

Flight from Environmental Standards

Some companies may fear the higher environmental standards that would at last be imposed were the Mining Law reformed. For those companies, patenting constitutes the ultimate escape from Federal land management authority. Some pollution control laws such as the Clean Water Act are narrowly applicable, but for the most part such laws fail to address the mining industry's environmental problems.

Once a mine operator privatizes its mine through patenting, only the state government retains any regulatory authority. By and large, state mining regulations are weak, vague and inconsistent. Even where a state may have relatively good regulatory provisions, state inspection and enforcement programs have a history of lax oversight.

The state of Arizona, for example, makes many aspects of reclaiming a mine voluntary. If revegetation is "not reasonably expected to be successful," the miner need not do so. Fish and wildlife habitat must be identified in the reclamation plan, but state law does not require taking steps to preserve them.[26] As Mining Law reform brings closer the prospect of stronger Federal regulations, mining companies are seeking weaker regulatory requirements under state laws like that of Arizona.

A recent conversation with executives of Magma Copper Company suggests one important rationale for patenting. Magma is seeking permits from the Bureau of Land Management to reopen the Robinson copper mine outside Ely, Nevada. At the same time, Magma has applied for 2,053 acres of millsite patents. The Robinson managers have made no secret of their reasons for patenting. In the spring of 1994, a group of visitors was walking around the Robinson Project on a site tour. One visitor asked their guide, a company executive, why the company was seeking millsite patents. The executive's response was blunt: "to avoid regulation."[4]

A Case Study: $10 Billion for $5,190

The Goldstrike mine in northern Nevada provides convincing evidence of the high stakes at issue in the patenting debate. The American Barrick Resources Corporation (Barrick) is poised to receive patents on Goldstrike, which has reserves valued at more than $10 billion. The Department of the Interior will be forced to sell this land for $5,190.

Miners are fond of bestowing optimistic names like Golden Reward or Treasure Chest on their mines, but such optimism has never been fulfilled so richly as with Goldstrike mine. When Barrick purchased Goldstrike in 1985, executives of the Canadian corporation believed the mine contained about 600,000 ounces in gold reserves.[5] After some exploration, that figure was found to be a gross underestimate.

Today, Goldstrike has the largest estimated gold reserves of any mine in North America—more than 27 million ounces, by the company's own estimate. At current gold prices of $375 per ounce, the value of Goldstrike's proven and probable mineral reserves in the ground is around $10.2 billion.

Goldstrike is located entirely on public lands. If Congress approved an 8% royalty this year, Goldstrike's forecast 1995 production (two million ounces of gold) would net American taxpayers about $62 million per year. The American public will never see this money, however, because in 1995 Goldstrike will no longer be on public land.

In March 1992, Barrick filed applications to patent the Goldstrike gold mine. The applications covered 1,038 acres of "lode" (or gold-bearing) claims, which the company could purchase under the Mining Law for $5,190, or $5.00 per acre. Additionally, the company is seeking to patent 755 acres of "millsite" (or non-gold-bearing) claims for $3,775. Normally a patent application takes three years to complete. But the Goldstrike application moved through the BLM bureaucracy with unprecedented speed. By September 1992 the paperwork was completed, enabling Barrick to receive a key intermediate grant called a "first-half certificate"

(see Chapter 2 on the patent process). By February 1993, the company had passed a mineral examination and demonstrated the "validity" of its claims to a BLM geologist. Barring any unexpected obstacles, the company expected to receive its patent certificate that same month, an impressive feat.

Just short of final approval, an unexpected obstacle did arise. Mineral Policy Center alerted newly-appointed Interior Secretary Bruce Babbitt that the Bureau of Land Management had put the Goldstrike application on a "fast track" to patent issuance. The previous summer, BLM officials had drafted a pilot program for evaluating patent applications under which the patent applicant hires a geologist to conduct the mineral examination for its own patent application.

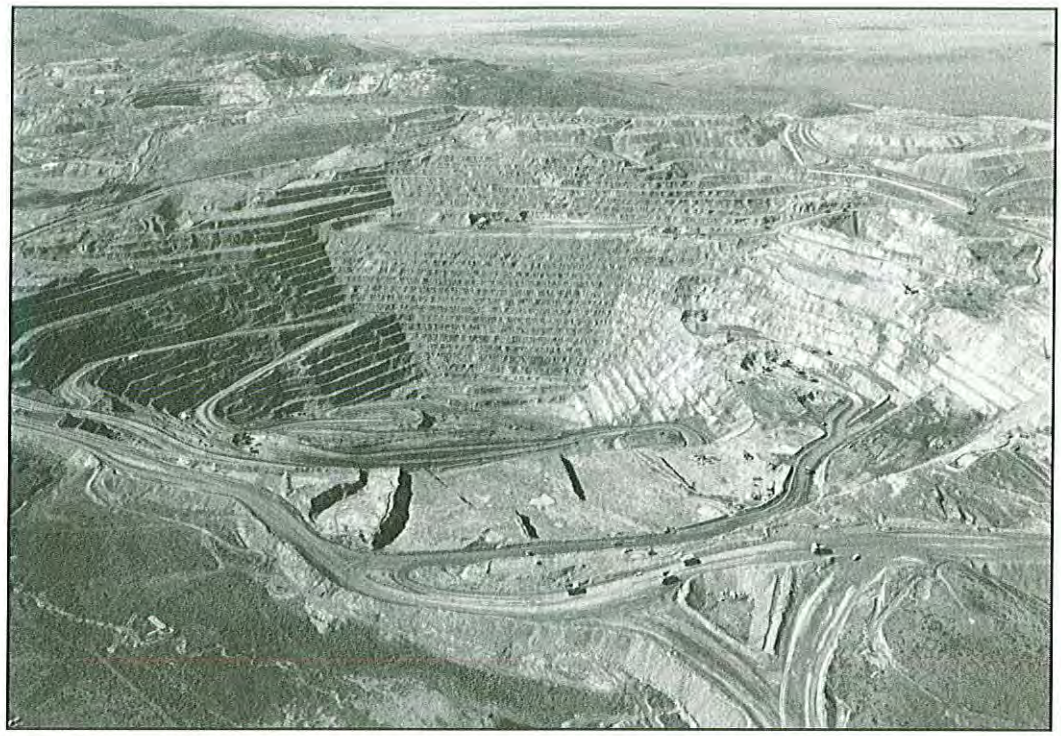
For a company to hire its own examiner constitutes a serious conflict of interest.

This "fast track" program's goal was to shorten the process of mineral patent evaluation. It accomplished this goal by permitting the company to hire a mineral examiner to carry out many portions of the mineral examination process. For a company to hire its own examiner constitutes a serious conflict of interest. Barrick was the only applicant to enroll in and graduate from this pilot program. Interior Secretary Babbitt abolished the pilot program, noting that it was not in the public interest "to continue any program that accelerates the patenting process."[27]

Prompted by his discovery of the fast track program, the Secretary assumed personal charge of the patent approval process. State Directors of the Bureau of Land Management had hitherto wielded authority to approve patents. Secretary Babbitt revoked that authority.[28] Henceforth, he would have to personally approve each patent application. Babbitt also instituted a review process which, according to the Department, "follows normal routing for correspondence or documents which are intended for final action or signature."[29] The completed application must pass inspection at four separate offices prior to reaching the Secretary.

The Interior Solicitor's Office, upon review, discovered that the mineral report had not considered possible impacts stemming from massive water-use requirements at Goldstrike. Specifically, the loss of water at several nearby creeks could put in danger a rare fish species, the Lahontan cutthroat trout.[30] The patent application was then held in abeyance while the Fish and Wildlife Service determined potential impacts. The Endangered Species Act prohibits Federal actions that may severely impact threatened or endangered species.

Barrick objected strongly to the delays in issuing its mineral patents. In August 1993, five months after Secretary Babbitt's decision, the company filed suit against the Interior Department before a U.S. District Court judge in Nevada, demanding immediate issuance of its patent. "By virtue of its



Grand-daddy of the Giveaways - *In May 1994, American Barrick Corp. patented its Nevada Goldstrike mine that contains over $10 billion in recoverable gold reserves for a sale price of only $5,190.*

compliance with the procedures set forth in the federal mining laws to obtain a patent Barrick has a vested right to the issuance of patents," claimed Barrick in its complaint. "[Secretary Babbitt's] unlawful refusal to issue Barrick's patents was and is unlawful, arbitrary, unreasonable and without a rational basis."[31]

The Interior Department responded that "the Secretary's actions in carefully reviewing Barrick's patent applications are reasonable in light of the circumstances of this case."[32] A Nevada District Judge finally ruled in March 1994 that Interior would have another three months to issue or deny Barrick its patent.[33] As this report goes to press, the Interior Department is reportedly preparing to issue mineral patents for the Goldstrike mine.

Mining Law Reform In The House: H.R.322

The recent legislative campaign to comprehensively reform the 1872 Mining Law began in June 1989, when Senator Dale Bumpers (D-AR) introduced S. 1126, a bill proposing major changes. In January of the next year, Congressman Nick Joe Rahall (D-WV) offered a reform bill in the House of Representatives, H.R. 3866.

Over time, the two lawmakers came to agree that comprehensive reform should include six basic elements. At the beginning of the 103rd Congress, Rep. Rahall introduced a new bill, H.R.322, the Mineral Development and Exploration Act, which included all the basic reform elements. Ultimately, H.R. 322 passed the House of Representatives in November 1993 by a 316-108 vote.[31]

❶ **Fair financial return:** Institute an 8% gross production royalty for extracted hardrock minerals on public lands. This 8% gross royalty would generate approximately $30 for an average ounce of gold, which in April 1994 sold for $375 per ounce.

❷ **Patenting:** Abolish the Mining Law's Patenting System.

❸ **Land manager discretion:** Provide Federal land managers with authority to approve, modify or deny mining permits. Establish a process whereby sensitive lands are assessed for possible designation as "unsuitable for mining."

❹ **Environmental standards:** Establish comprehensive Federal standards to prevent environmental damage or threats to the public from faulty operation or design.

❺ **Reclamation standards:** Require mine operators to reclaim mined lands to defined standards after completion of mining.

❻ **Enforcement and inspection:** Establish mandatory Federal inspection and enforcement requirements to ensure compliance and provide public with rights to participate in all aspects of the Mining Law's decision-making processes.

❼ **Hardrock abandoned mine reclamation:** Establish a program funded by royalties and fees to begin reclaiming the more than 500,000 hardrock abandoned mines nationwide.

In the Patenting Pipeline *- Included in the 613 pending patent applications is the Round Mountain Mine in Nevada. One of the largest mines in the U.S., Round Mountain is seeking to patent public land covering a small corner of its mine. The land, however, contains over $300 million in recoverable gold.*

4 BLM, Keeper of Secrets

The Bureau of Land Management is keeping the truth about patenting from the American public. BLM hides the true scope and importance of the patent process behind a wall of confidentiality claims and elaborately secretive procedures.

The U.S. Bureau of Land Management is the custodian of the mineral patent process on all public lands. BLM uses its authority to conceal or obscure most aspects of the patent process. BLM refuses to conduct public hearings, accept public comment, or post public notices on pending patents. BLM refuses to provide information on patent applications essential to challenging or even understanding them. BLM refuses even to collect data that would reveal the scope, cost and nature of patent applications.

The Bureau of Land Management, allotted 9,500 employees and an annual budget of $597 million, is one of the Interior Department's largest agencies. BLM handles the claim/patent procedures established under the 1872 Mining Law. Over 592 million acres of public lands in 13 Western states can be claimed and potentially patented under the Mining Law.[35]

How BLM Administers the Patent Process

The Mining Law does not instruct BLM or any other agency on how to grant patents. It simply defines the standards an applicant must meet. The applicant must "file in the proper land office an application for a patent" and fulfill tasks of a generally administrative nature. Afterwards, the applicant must prove "discovery," a technical term for demonstrating that the mineral deposit is valuable enough to be extracted and sold at a profit. The Mining Law does not say what constitutes discovery. As a result, the courts have defined the term instead. An extensive case history has woven the discovery test into a tangled web of economic and geological calculations.

In drafting the Federal regulations and policies that guide the patent process, BLM took as a starting point the Mining Law's emphasis on factual tests. The Mining Law does not leave patenting up to interpretation. The applicant must simply prove certain facts about the claim in question. An applicant either can produce title to the claim or cannot, can pass the discovery test or cannot.

The Mining Law was written in an era before sustainable stewardship of natural resources became an important national priority. Hence its fundamental purpose, to promote the mining resources of the United States, disregards and subverts all other competing land uses.[30]

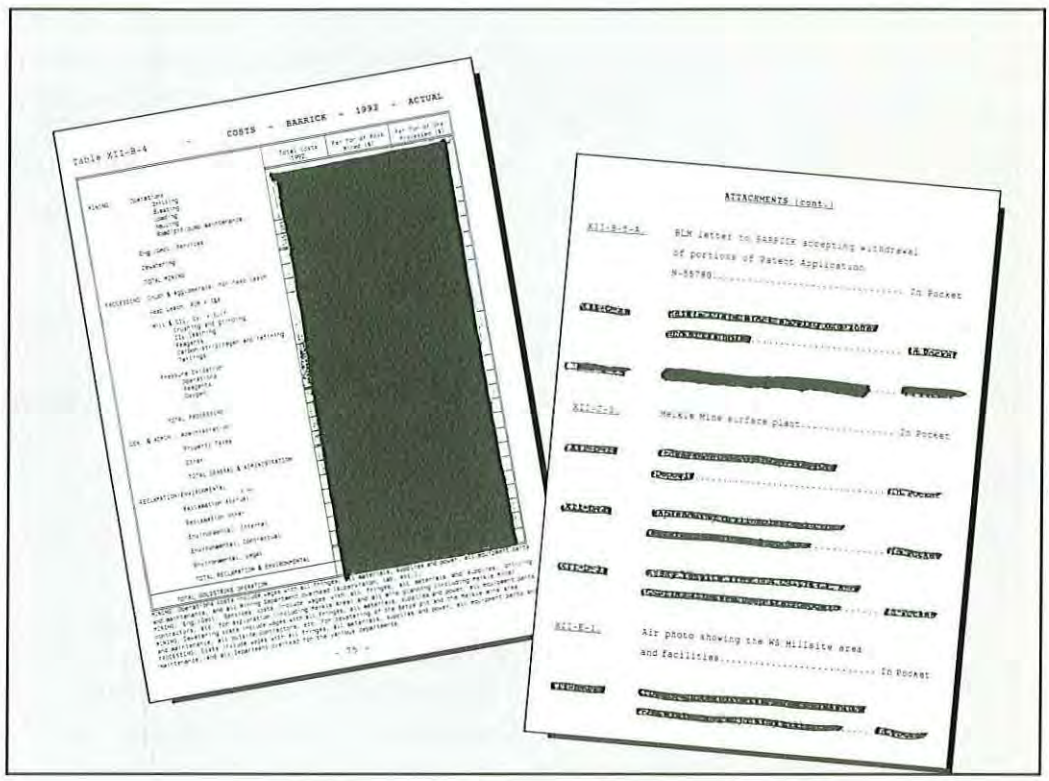
Patenting: A Secretive Process

The Bureau of Land Management has sealed off the patenting process from public scrutiny and participation. Patenting can have major impacts upon local communities, on water quality regulation, and on other land management decisions. Nevertheless, the public's ability to participate in the process is thwarted by BLM. In contrast to the administrative procedures required for virtually all other land management activities, BLM avoids public inclusion in the patenting process:[6]

- **Public Hearings:** BLM holds no public hearings on the impact of pending patents;
- **Public Comment:** BLM does not seek or accept comments from the public on the impact of particular patents or on possible mitigative measures;
- **Public Notice:** The Mining Law requires only that a brief notice be placed in a local newspaper for 60 days. BLM takes no other action to alert the public that a patent is about to take place.
- **Public Information:** BLM staff in state offices are forbidden from answering questions about administration of the patent process. A June 1992 memorandum, citing "burdensome and duplicative...requests for statistical information," ordered BLM staff to forward all inquiries to the Washington D.C. office.[37]
- **Public Documentation:** BLM does not release the crucial portions of mineral reports, which serve as the basis for deciding whether or not to issue a mineral patent.

Document Hide-and-Seek

The keystone of BLM secrecy is in its handling of mineral reports. Mineral reports (sometimes referred to as "validity examinations") serve as the basis for the decision to issue a mineral patent. The Mining Law achieves its goal of giving away only lands bearing valuable minerals underneath by requiring patent applicants to prove "discovery" of such minerals. The discovery test is simple in theory. The applicant must demonstrate to a BLM mineral examiner that some mineral under the claim can be extracted, processed and sold at a profit.



***BLM or CIA?** - Pages of the Goldstrike mineral report used by BLM to evaluate the validity of the Company's $10 billion patent application. Prior to public release, BLM blacked out all the critical sections of the report.*

The discovery test becomes highly complicated in practice, however, and subject to abuse. The BLM mineral examiner analyzes every step of the mining process before ruling on the "discovery." The most important factors are 1) the grade and quantity of a mineral reserve; 2) the cost of production; 3) the cost of environmental safeguards and post-mining reclamation; 4) the cost of processing and distribution; and 5) the expected market price. The mineral examiner and his or her superior wield complete authority to rule on whether the applicant can profitably mine that claim.

Members of the public must also rely on the mineral report if they wish to challenge issuance of a patent. A BLM decision that the applicant has passed the discovery test — thereby becoming eligible for patent — can only be overturned on grounds that some aspect of the mining process was neglected or wrongly calculated. Without access to every page of a mineral report, outsiders must take BLM's decisions on faith.

For many years BLM held mineral reports confidential. In 1987, the window of public scrutiny cracked slightly open, when BLM Director Robert Burford received a legal memorandum on the status of mineral reports from the Interior Solicitor's Office. The Solicitor's Office advised Burford that the Freedom of Information Act applies to mineral reports, and that BLM had no legal standing to deny their release.[38]

BLM staff in the field are still not disclosing mineral reports, despite their agency's avowed policy of public release. A recent letter from the head of the Mineral Resources Division in Montana stated: "We do not release these [mineral] reports to the public since they generally contain proprietary information."[39] BLM's Nevada State Office, which handles more patent applications than any other state, has not released a report to the public in the last five years.[40]

BLM policy in the wake of the 1987 memo continues to effectively deny public participation by withholding crucial parts of the mineral report.

BLM policy in the wake of the 1987 memo continues to effectively deny public participation by withholding crucial parts of the mineral report. BLM still conceals sections of the report as "commercial, proprietary information." Until patent issuance, the land and its mineral deposit are public property, about which the public must have the right to know all important information. Public access to some portions of a mineral report means little if BLM holds the facts justifying patent a closely guarded secret.

Mineral Policy Center has found that even the largest and most controversial mineral reports are inaccessible to the public. At the beginning of February 1994, Mineral Policy Center requested a copy of the mineral report for the Goldstrike claims in northern Nevada. The claims, valued at approximately $10 billion dollars, are to be sold by BLM for $5,190. BLM staff assured Mineral Policy Center that they would release the report after appropriate review. Despite these assurances, BLM delayed disclosure until May 1994, three months later.

It was then discovered that BLM officials had deleted key financial and geological data in the Goldstrike mineral report, claiming that the data would "harm the competitive position of the company if released."[7] The deletions made it impossible to judge whether the BLM mineral examiner ruled correctly and on what basis. Most disturbingly, BLM blacked out a page summarizing costs in each phase of the operation — the basis for judging whether the minerals are valuable enough to pass the discovery test.

One conversation provides startling insight into how BLM officials interpret the "proprietary information" restriction. In March 1994, the following conversation regarding mineral reports took place between Brian Kuehl, an attorney with the Greater Yellowstone Coalition, and a geologist for the Montana Office of the Bureau of Land Management:[41]

Kuehl: "Why do you think the information [in a mineral report] is confidential?"

Bureau: "Well, they're stamped confidential."

Kuehl: "Who stamped them confidential?"

Bureau: "The company stamped them confidential."

Kuehl: "What you're telling me is that the company is making decisions for the BLM about what information should be released under [the Freedom of Information Act]."

Bureau: "Well, I think this is information the company wouldn't want released."

The company's wishes should not be a relevant consideration. What matters is that members of the public have full access to documents relevant to disposal of land which belongs to them, and which is held in trust for them by the Federal government.

Even patent documents not technically confidential are often difficult to obtain from BLM. The agency has failed to centrally compile the most basic information on the size, scope and impact of the patenting program, despite strong public over the past two decades. In February 1994, Mineral Policy Center formally requested information on the value of pending patent applications.[42] BLM has committed to provide this information but has never done so.

"I was really astonished when I tried to order up from my own department some figures regarding the volume and value of mineral production from public lands... The answer I got was, 'We don't have any.'"

—Bruce Babbitt, Secretary of the Interior

Soon after his appointment as Secretary of the Interior, Bruce A. Babbitt discovered the absence of hard data on patenting and the Mining Law in general. "I was really astonished when I tried to order up from my own department some figures regarding the volume and value of mineral production from public lands," he recounted in Congressional testimony. "The answer I got was, 'We don't have any.'"[43] Not until more than a year later was BLM able to provide a list of mines operating on land managed by the agency.

On 1 April 1994, Mineral Policy Center requested from BLM's California office information about the ultimate use of patents issued during the past decade.[44] Patenting is commonly used to obtain land for purposes unrelated to mining, such as real estate speculation or summer cabin construction. Two weeks later, BLM wrote back and admitted to possessing no data at all on usage of patented lands.[45] Further, the agency refused to find out. As a result, the public has no way of knowing whether mining activities or speculative real estate development occurred on land patented under the 1872 Mining Law.

Land Exchanges: Patenting Through the Side Door

The Bureau of Land Management has another means of concealing the cost of patenting — the land exchange. Land exchanges, established by the 1976 Federal Land Policy and Management Act[46] and bolstered by the 1988 Federal Land Exchange Facilitation Act[47] enable the Department of the Interior to transfer a parcel of land to a private owner in exchange for another parcel deemed to protect "fish and wildlife habitat and aesthetic values" or enhance "recreation opportunities."

As patenting grows increasingly controversial and endangered, mining companies apparently see land exchanges as a side-door alternative. Lands secured through exchange do not show up in patenting statistics or attract unflattering public scrutiny.

A land exchange does differ in important ways from issuance of a mineral patent. First, a land exchange is intended to be a fair market transaction, in which the government gains land of equivalent value to that being given up. Second, the public has the opportunity to participate in the process. The 1988 land exchange law requires public notice, public comment and public hearings. Third, the land exchange theoretically serves valid public land management goals, such as consolidating ownership of environmentally sensitive areas.

As patenting grows increasingly controversial and endangered, mining companies apparently see land exchanges as a side-door alternative

Nonetheless, land exchanges now under consideration by BLM pose precisely the same environmental threats as do patents. For two pending patent applications, BLM plans to give up authority over waste impoundments, an alarming concession. No other part of a mine is more important to land managers. The facilities that store hazardous wastes cause the overwhelming majority of all accidents which threaten the environment and public health usually stem from those areas.

Jerritt Canyon and Goldstrike are two proposed land exchanges currently pending in the Elko District of BLM's Nevada State Office:

- **Jerritt Canyon:** The Independence Mining Company, a subsidiary of Anglo-American, a South African corporation, is proposing to give the Bureau Land Management 5,800 acres in Northern Nevada that includes "prime fisheries and spawning habitat for the Lahontan Cutthroat trout, a federally designated threatened species."[48] In exchange, BLM would give Independence 4,565 acres of land at its Jerritt Canyon mine, the eighth largest gold mine in the United States.

- **Goldstrike:** The American Barrick Resources Corporation, a Canadian company, is proposing to give the Bureau of Land Management 413 acres of land, also of value in protecting the Lahontan cutthroat trout, in exchange for an indeterminate acreage of land at its Goldstrike mine.[49] Goldstrike is the second largest gold mine in the United States.

In both cases the proposed land exchanges share an unusual feature — Independence and Barrick have applied for millsite patents to the same land for which they are also requesting land exchanges. Rodney Harris, District Manager of BLM's Elko, Nevada office asserts that the land exchanges will be completed prior to patent issuance.[50] The companies' elaborate — and seemingly unnecessary — resort to the land exchange process suggests that the companies are willing to go to great lengths to avoid use of the patent process. BLM has thus far proven willing to cooperate in that evasion.

Mining Law Reform In The Senate: S.775

In May 1993, the U.S. Senate approved by unanimous consent S.775, the Hardrock Mining Reform Act, sponsored by Senator Larry Craig (R-ID).[35] S.775 is the Senate proposal for reforming the 1872 Mining Law. Sometime during the summer of 1994, supporters of the Craig bill may meet in Congressional conference supporters of H.R. 322, the comprehensive Mining Law reform bill approved by the House of Representatives on a 316-108 vote. In a conference, differences between two bills are worked out and merged into a single bill for approval by Congress and the President.

S.775 has little in common with its House counterpart. S.775 is championed by the American Mining Congress and large mining companies around the country. Among its opponents are the National Taxpayers Union, Sierra Club, National Wildlife Federation and the Secretary of the Interior.

S.775 seeks to maintain the status quo of the Mining Law, by proposing only minor changes. Specifically, S.775 would:

- **Keep patenting:** Instead of charging $5.00 per acre, S. 775 would require payment for the market value of the surface land. Mineral reserves underneath the surface would continue to be given away without compensation.

- **Impose an insignificant royalty:** S.775 imposes a 2% net royalty. A net royalty applies only to profits from selling a mineral, not the entire value received from its sale. The royalty would generate approximately 22 cents for an average ounce of gold, which in April 1994 sold for $375 per ounce. The Congressional Budget Office projects that the Craig bill will raise no revenue.[36]

- **Continue the status quo for environmental and reclamation standards:** S.775 maintains the Mining Law's assumption that mining should be the dominant use of public lands. S.775 establishes no Federal environmental protection standards for mining and reclamation activities. Instead the bill maintains that mines should obey existing state or Federal law, which they already do at present.

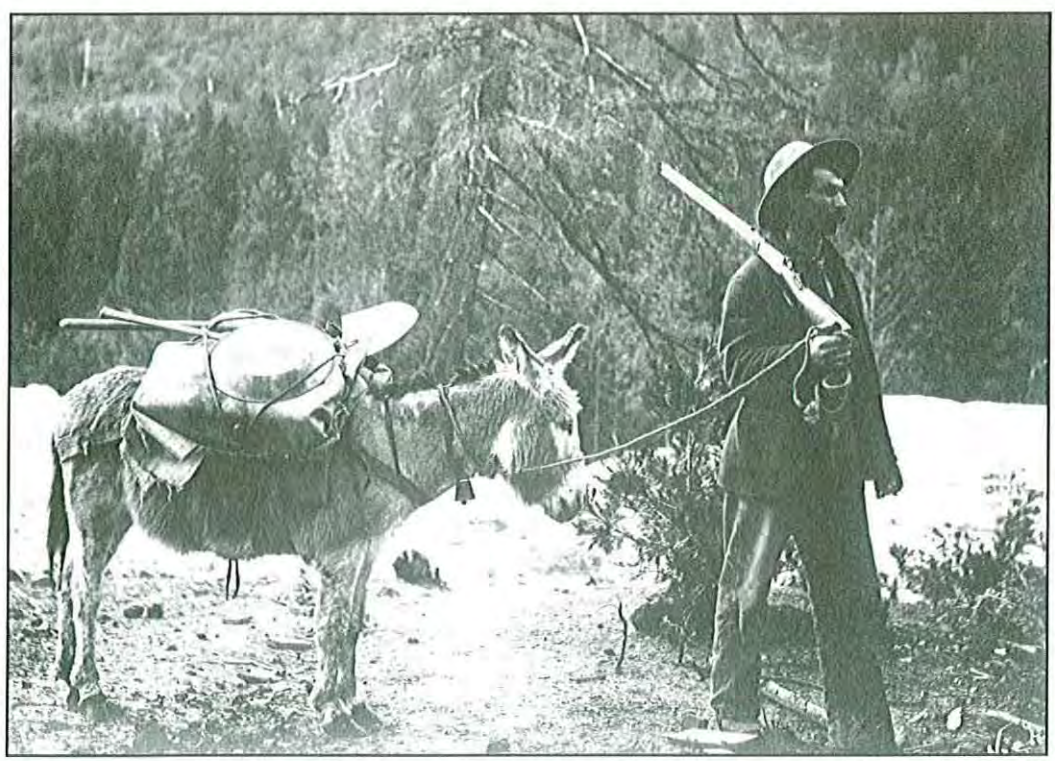
- **Establish no funding for abandoned mine cleanup fund:** S.775 establishes a program to clean up abandoned hardrock mines, but provides no funding and no cleanup standards.

5 Patenting: A Brief History

Patenting is no longer needed to achieve national goals, but its history is richly intertwined with the history of frontier-era America. Back when the Mining Law was enacted in 1872, giving land away was the Federal government's favorite strategy for encouraging settlement of the West. Over the next century, however, the arguments associated with Western settlement went the way of the buffalo and the stagecoach. The modern mining industry has attempted to find new justifications for patenting, with little success.

The Mining Law and Patenting

The Mining Law's origins are intricately linked with the settlement of the Western frontier. The hunger to settle Western lands grew throughout the first half of the 19th Century. In 1848 came the decisive signal. President James K. Polk signed the Treaty of Guadalupe-Hidalgo, ending the Mexican-American War and winning possession of California and most of the Southwest. By various treaties and conquests, the U.S. government now owned virtually the entire West.



***Pickaxe and Mule** - The Mining Law was supposed to benefit small prospectors.*

Library of Congress

A fever to settle the "empty quarters" swept the country. Regardless of whether the Federal government wanted such settlement, it was taking place. And the settlement fever had taken hold in the halls of Congress. In 1862, Congress enacted the Homestead Act to encourage Easterners to go West and stake a claim to land. The Homestead Act granted land patents to settlers at a rate of $2.50 per acre. Other laws granted lands to railroads and newly-admitted states.

Patents were dubbed after the British custom of "letters patent": "an official document...conferring a right or privilege on some person or party." [53] Despite the British origin of patenting, the British did not apply the custom to mineral-bearing land. On the contrary, they reserved such land to the Crown, as did most of Europe, in recognition of its extraordinary value.

Patents were dubbed after the British custom of "letters patent": "an official document... conferring a right or privilege on some person or party."

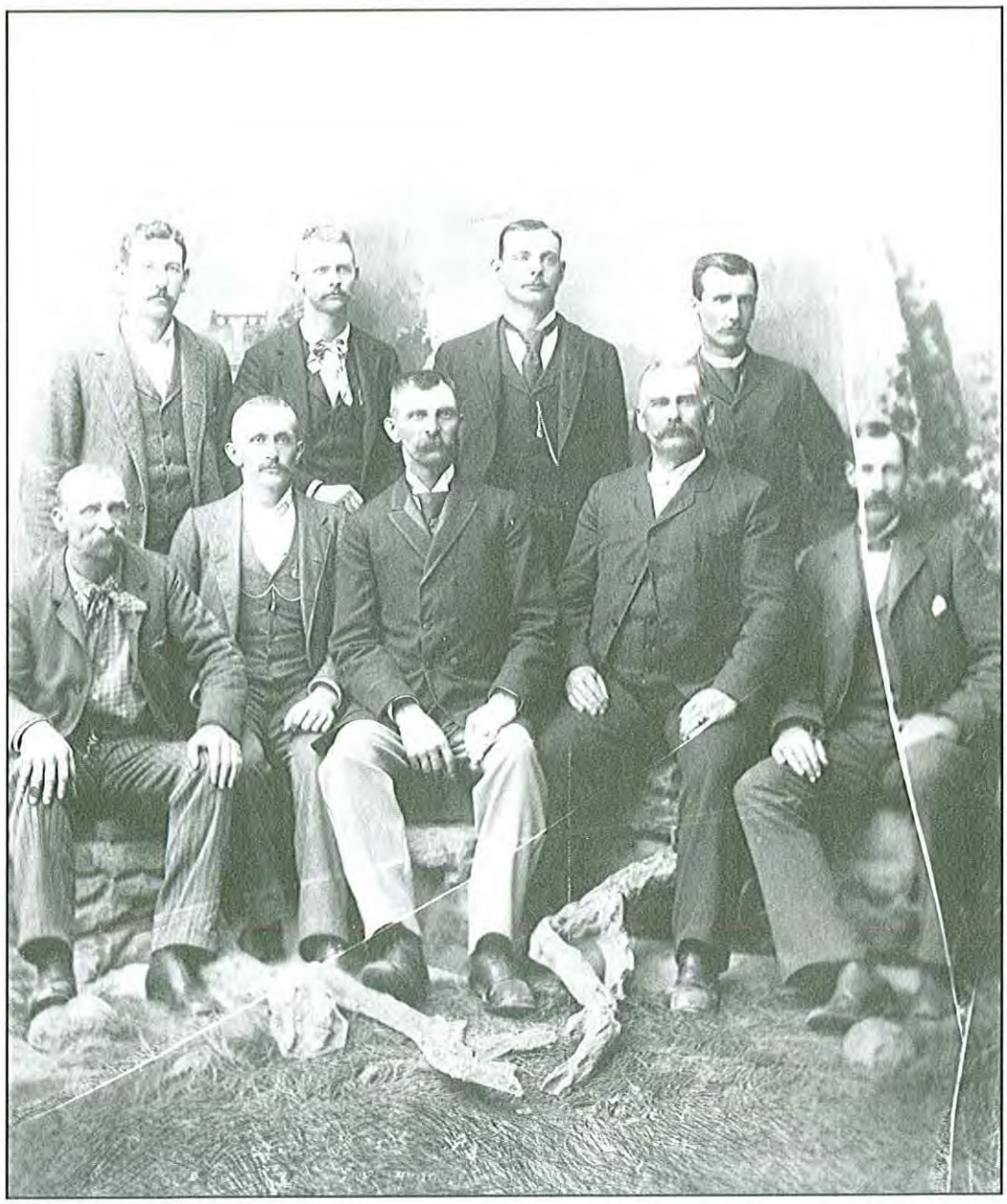
For a half-century after the signing of the Constitution, the government in Washington followed the British custom of leasing or selling public mineral reserves at fair prices. But the old ways crumbled under gold rush pressures. Gold was discovered at Sutter's Mill, California the same year the U.S. and Mexico signed the treaty of Guadalupe-Hidalgo, and the California gold rush was on. Within two years, as many as 100,000 people had descended upon the Sierra Nevada foothills — the largest migration in the shortest time in U.S. history.

Over the next decade, public-land mining became one of the most divisive issues on the frontier. Many in Congress stuck to principles seeking fair compensation to the public for miners' use of mineral-bearing public lands. The advocates of moderate leasing and sale systems could not muster votes, however, against supporters of "free mining," who wanted to use the gold rush as bait for Western expansion.

The originator of the free mining movement, Senator Thomas Hart Benton of Missouri, declared that the nation would be well repaid "if the gold was put in circulation without tax or royalty."[54] Neither side could muster votes to break the deadlock.

Paralyzed by the conflicting factions, Congress allowed free mining to go on by default — uninvited, technically illegal, but taken for granted. Miners set up camps and drafted their own rules by the popular doctrine of "squatter sovereignty," indifferent to parliamentary debates on the East Coast.

In 1864, the newly-admitted state of Nevada sent to Congress the man who would break the deadlock over Western mining. Senator William M. Stewart had earned a reputation as one of Nevada's leading mining attorneys, fighting to ensure that large mining companies captured the largest share of Nevada's Comstock silver boom. Now he set about prosecuting



Library of Congress

Growing Corporate Influence *- As the mining industry flourished, its political power in Congress kept mining "free" on public lands. Members of The Colorado Grand Canyon Mining Co.*

the case for a public lands law based on Benton's "free mining" theory. His opponent, George Julian, the Chairman of the House Public Lands Committee, had proposed a bill to establish a leasing system. After strenuous persuasion — and some backroom maneuvering — Stewart won passage of the 1866 Lode Mining Law. This law declared: "the mineral lands of the public domain . . . are hereby declared to be free and open to exploration and occupation."[55] Six years later, Stewart combined that statute with the 1870 Placer Act (which extended the Lode Mining Law's principles into placer mining) into a single package called the General Mining Law of 1872.

Historical Rationales for Patenting

The rationales presented by Senator Stewart and other free mining advocates bear remarkably little relevance to the needs of today's mining industry. At the time, however, the case for patenting seemed highly persuasive. Four rationales were considered central by proponents of the Mining Law:

- **Western settlement:** Patenting would reward Western settlers for their enterprise, accelerating settlement of the frontier and reinforcing U.S. claims to the region.[56]

- **Community stability:** Patenting would turn miners into solid landowning citizens. Such citizens would become pillars of their communities, helping to alleviate boom and bust cycles.[57]

- **Small miner promotion:** Patenting would aid the "honest prospector" and the "poor miner," who represented all that was true and good about America.[58]

- **Public land disposal:** Patenting would put public lands into the hands of private individuals. At that time, public sentiment held that the Federal government had no business keeping land which could be given away to American citizens.[59]

The Western settlement argument lost its force by the turn of the century. In 1893, historian Frederick Jackson Turner noted a startling fact revealed by the 1890 census — there was no longer any clear line of demarcation between settled and unsettled areas of the West. He drew this famous conclusion: "The frontier has gone, and with its going has closed the first period of American history."[60] With the frontier's going also departed enthusiasm for encouraging Western settlement through donation of valuable minerals. The West had been settled.

On the second rationale, the Mining Law proved incapable of safeguarding community stability. The boom-bust cycle prevalent before the 1872 Mining Law continued unabated after its enactment. Once the claim was "played out" miners picked up and moved on despite patenting or the Mining Law.

Small-scale miners, the third rationale, continued to enjoy little success competing against big companies after enactment of the Mining Law. "As a matter of fact, the individual prospector no longer exists as a significant factor in the mining industry," declared Harold Ickes, Franklin Roosevelt's Interior Secretary, in 1941.[61] In 1979, the U.S. Office of Technology Assessment, after a thorough survey, concluded that the role of small prospectors in making discoveries is minimal.[62]

The Mining Law did, however, prove quite effective at the fourth rationale, disposing of public lands. Each year from 1880 to 1920, more than a

thousand patents were issued, many expensive losses to the national trust.[63] Public pressure mounted to stop the most egregious giveaways, but the Mining Law had accumulated powerful defenders in the Western states, and attempts to reform the patenting process proved fruitless. Congress was forced to put limitations on the Mining Law's jurisdiction. Most dramatically, oil and gas escaped the grasp of patenters — first by executive order of Presidents Roosevelt and Taft, and finally by passage of the 1920 Mineral Leasing Act.[64]

Starting with the oil and gas controversies, as well as the creation of the National Park System and National Forests at the turn of the century, the tide began to turn against public land disposal as a national goal. In many different ways, Congress and the President responded to public pressure by hemming in the Mining Law's promise of free minerals for the taking.

Finally, the 1976 Federal Land Policy and Management Act established a new national goal "It shall be the policy of the United States that the public lands be retained in Federal ownership...."[65]

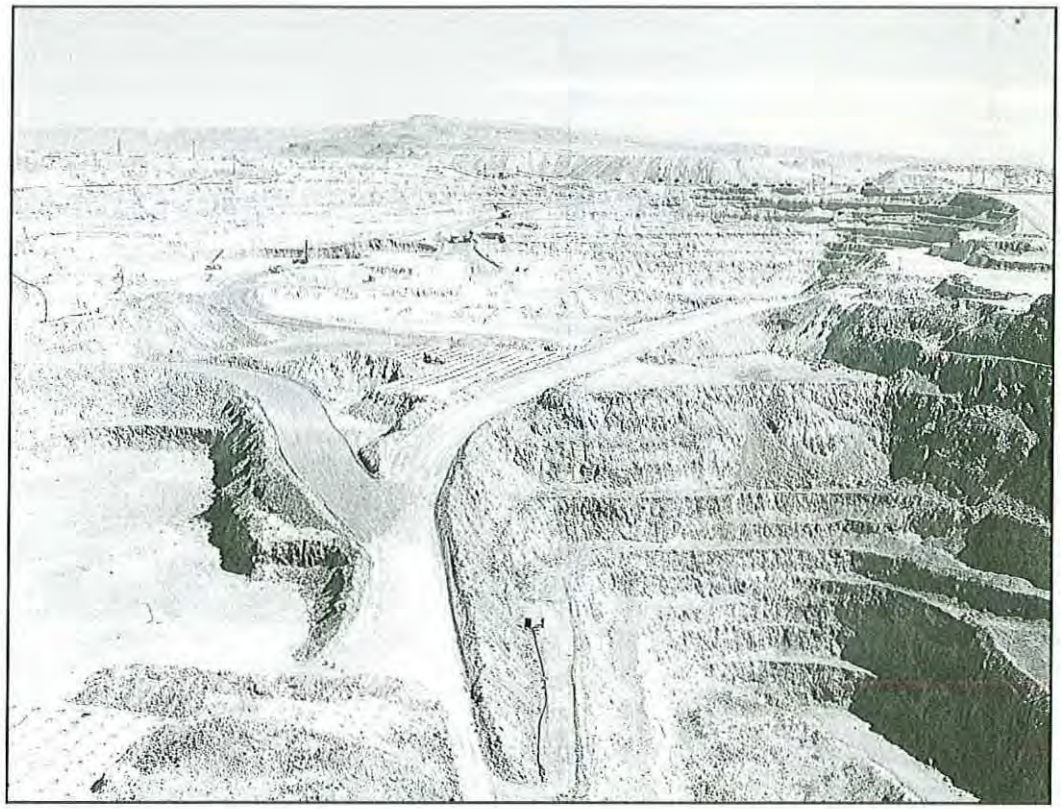
Modern Rationales for Patenting

With the demise of the historic defenses for patenting, the mining industry has been forced to seek new ones. One new argument is frequently advanced by mining companies: that investment capital cannot be procured for a proposed mine without obtaining private, patented title as security. According to this argument, banks, large mining enterprises and other sources of financing and investment for a new mining venture insist that a mining company demonstrate secure title to land before agreeing to participate. Unless the company can patent its land, such important partners will consider the venture too risky and stay away, it is argued.

The argument is not credible. Many hardrock mines have prospered through operating on public lands for many years without a patent. Nor has financing proven a difficulty. Several hardrock mines now applying for patents attracted substantial outside investment long beforehand.[66]

Other non-hardrock industries have thrived without patenting. The coal mining industry has operated on public lands under a leasing system since 1920. Despite lacking patent privileges, coal mining companies encounter no financing problems due to land tenure security questions. Oil and gas companies have operated wells under leasing arrangements for many years. They too suffer no undue difficulty in attracting outside investment and financing.

It is more likely that fears of royalties and more stringent environmental regulation lie behind the mining industry's its fervent support of mineral patenting.



Golden Dreams - *Nevada's Sleeper Mine, owned by Cyprus-Amax has applied to patent land containing more than $600 million in recoverable gold reserves. If approved, the U.S. taxpayers will only receive $3,530.*

6 Patenting and Environmental Destruction

The patent process robs the American public of more than its land and mineral assets. All too often, environmental safety is victimized as well. Patenting allows evasion of the basic principle of land management: to ensure that public lands are managed sustainably, so that future generations will benefit from them as much as our own.

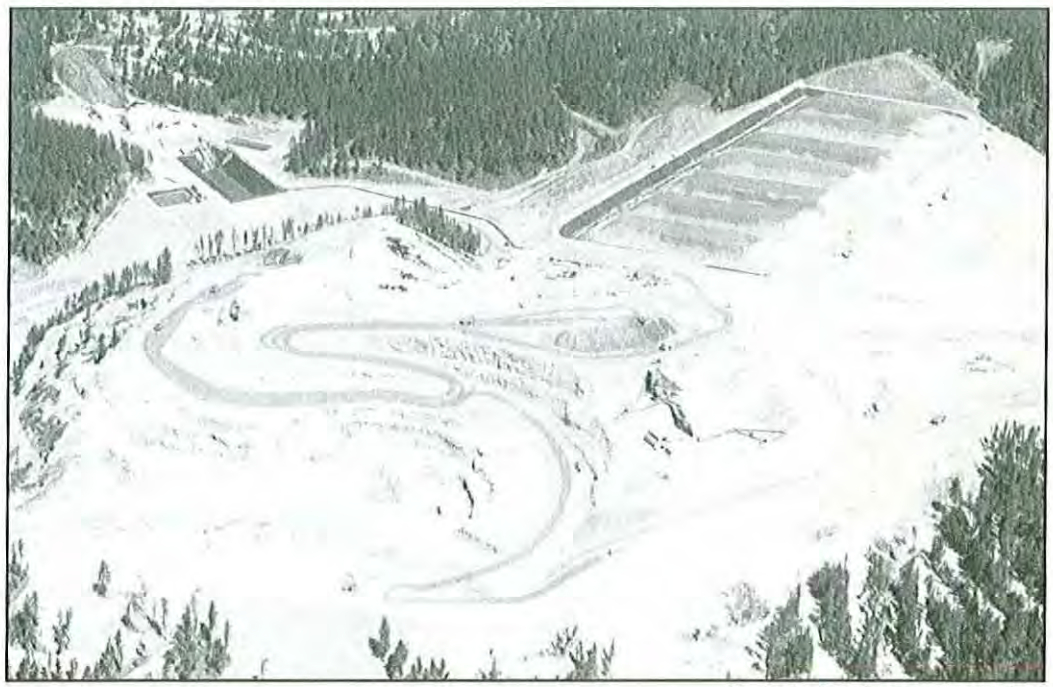
The 1976 Federal Land Policy and Management Act (FLPMA) set forth a new policy, declaring that "it is the policy of the United States that the public lands be retained in Federal ownership."[67] The Mining Law, regardless, still forces the U.S. government to give away hardrock mines. Yet if any industry needs rigorous land management at the Federal level, it is the hardrock mining industry. Hardrock mines produce an enormous volume of toxic waste as a by product of extraction and processing. Poorly designed, operated or reclaimed mines have caused many environmental disasters.

Patenting puts many obstacles in the way of intelligent land management. Patented mines carve out private "inholdings" within public lands, even within National Parks. These inholdings obstruct sound land management by fragmenting the public domain. Mines may pollute rivers, creeks and aquifers that flow into adjacent public lands, creating hazards which the land manager is powerless to halt.

The 1976 Federal Land Policy and Management Act (FLPMA) set forth a new policy, declaring that "it is the policy of the United States that the public lands be retained in Federal ownership."

Even the existence of patenting weakens land management. A miner's ability to patent exercises a constant "chilling effect" on Federal land managers. Good preventive regulation sometimes requires getting tough with an irresponsible operator, e.g., by withholding a permit renewal until some unsafe practice is stopped. But getting tough on a hardrock mine operator may result in losing authority altogether through the patent process. The temptation is strong to let operators have their way.

Proposed reforms of the 1872 Mining Law, have sparked a massive patenting stampede. Some of the most controversial mines and mining proposals will soon be on private land. Failure by Congress to reform the Mining Law this year may well result in Federal land managers losing all authority over more than two dozen of America's largest hardrock mining operations. Each one of those mines holds the potential for environmental disaster.



Patented Problems *- Gilt Edge Mine, located in the Black Hills of South Dakota, operates on patented land and has a history of large cyanide leaks. Citizens went to court to get the mine cleaned up because of State failure to adequately regulate the mine.*

Technical Information Project

Mining's Impacts on the West

The hardrock mining industry has historically inflicted extensive and long-lasting environmental damage across the Western United States. Hardrock mines can generate 100 tons of waste for every ton of raw ore.[68] According to the U.S. Environmental Protection Agency, mining produces twice as much waste as all other American industries put together.[69] The waste from modern, large-scale mine pits blankets thousands of acres. Mine wastes tend to contain many kinds of heavy metals — arsenic, cadmium, copper, lead, mercury, selenium, and others—of a highly toxic nature.

Heaps of ore, frequently soaked in chemicals such as cyanide and sulfuric acid, provide more opportunities for contamination. Many ore heaps begin leaking toxic contaminants even before the mine closes down. Rain can soak through waste and ore piles or into open pits and shafts. There the water may react with sulfur and become highly acidified. The toxic brew then migrates to nearby rivers, creeks and aquifers.

The legacy of environmental degradation from mining is enormous. According to the EPA, mine wastes have polluted more than 12,000 miles of our nation's waterways and 180,000 acres of lakes and reservoirs.[70] It is estimated that there are more than 550,000 abandoned hardrock mines nationwide, with an approximate cleanup cost of $32-72 billion.[71]

Hardrock mines can be built and operated safely, if appropriate precautions are taken and the local environment is not unusually sensitive. Success requires careful planning and design in cooperation with land

management agencies, with close attention to operating practices. The Castle Mountain Mine in California and Thunder Mountain Mine in Idaho are success stories. However, there are many more disappointing stories of mines gone wrong. Local communities and fragile wilderness areas quickly become the victims in such cases.

Patenting Blocks Effective Land Management

Almost all activities on public lands are regulated by Federal land management laws, the cornerstone of which is the 1976 Federal Land Policy and Management Act (FLPMA). FLPMA's intent is to ensure that public lands are managed sustainably, so that future generations will benefit from them as much as our generation. Patented mines contradict that intent. In addition, patented mines sometimes pollute nearby rivers and aquifers, which flow back into adjacent public lands. The patent process becomes an accomplice to the degradation of a National Park or wilderness area.

One sad case has occurred in northern Idaho. The Stibnite gold mine, owned by the Dakota Mining Corporation, may well be the most dangerous operating mine in Idaho. It has been leaking cyanide into the East Fork River, a tributary of the South Fork Salmon River, one of Idaho's only breeding grounds for the threatened chinook salmon.[72] The East Fork runs into the Payette National Forest, but the Forest Service has little say in Stibnite's performance. In 1990, the operator patented virtually the entire minesite, leaving primary oversight responsibility to an Idaho state agency.[73]

***Patented Disaster** - The Stibnite Mine, in central Idaho, patented in 1990, is now regulated by the State. Cyanide leaks, polluted wastewater discharges, diesel fuel spills and other problems have plagued this mine for several years.*

Stibnite's performance could deteriorate beyond the state's ability to handle it, chiefly because of Stibnite's artificially low financial bond. Dakota Mining Corp., despite receiving a recent capital infusion, has not turned a profit since 1987. That's not supposed to matter, since companies must usually place a financial bond with a state agency to guarantee cleanup, even in the event of bankruptcy. The Stibnite bond, however, is "totally inadequate," say Idaho state regulators. The state has been unable to get the company to correct its mine problems and state law prohibits regulators from raising the bond to a realistic level.[74]

Patenting also creates private "inholdings" on public lands. Even National Parks are not immune. The National Park Service has made note of the difficulties posed by Mining Law exemptions. Of 769 patented claims in 18 different National Parks, "several of them have been put to non-mining uses," notes a Service fact sheet. The non-mining uses include "tourist resorts, housing subdivisions, and hunting/fishing camps."[75]

Private inholdings fragment the public domain and make effective land management more difficult. For example, private owners have the legal right to get access to their property, and can therefore construct roads through public land. But a Federal agency cannot infringe upon the private land-owner's property rights. In 1989, Park Service officials in Alaska reported to the General Accounting Office "that a patent holder recently denied Park Service staff permission to cross his land to conduct work related to an environmental impact statement on nearby unpatented claims."[76]

Patenting's Chilling Effect on Land Management

Even the existence of patenting exercises a pervasive influence on Federal land managers. A land management agency must be able to compel compliance with sound environmental practices. Sometimes an irresponsible operator, or one operating on a low budget, will follow responsible practices only when compelled, e.g., through enforcement action or withholding of an operating permit.

The Mining Law's patent provisions deny BLM and Forest Service land managers genuine regulatory authority over the mines they oversee. A disgruntled mine manager can choose to patent the mine, stripping Federal land managers of any regulatory authority over it. Worse, the mine manager can simply make clear that the move is under consideration. The chilling effect on a land manager can be considerable and damaging.

Clair Baldwin, a District Ranger for the Forest Service, has recounted the experience of negotiating under such circumstances. "When I am sitting down with a mining company and proposing changes in their operating

plan or suggesting a $10,000 reclamation bond, there is, in the back of my mind, the worry — What do I do if they tell me to go to hell?"[77] Other land managers share Baldwin's fear.

Private Mines, Public Problems

It may seem like a good idea to give up public ownership of potentially hazardous mines. Unfortunately, the environmental impacts of a patented mine cannot be confined to its owner. When disaster strikes at a hardrock mine on private land, the American public pays anyway.

Through the Federal Superfund program, American taxpayers have often had to pick up the tab when minesites became so degraded as to endanger public health and safety. The Superfund program cleans up the worst and most dangerous of America's hazardous waste sites. Thirty-four Western minesites are currently on the Superfund National Priorities List.[78] All but two of these are on patented land. EPA estimates cleaning up those sites may cost the public $250-350 million per site, many times the cost of preventing disaster through sound public land management and careful mine operation.[79]

The Summitville Superfund site in Colorado provides one instructive case study. In 1988 Colorado granted a permit to a mining company to construct a gold mine called Summitville on patented land high in the mountains. The operation was ill-conceived, poorly planned and resulted in disastrous environmental consequences. In December 1992, the company went bankrupt and the mine is now being cleaned up under auspices of the Superfund program. Ironically, U.S. taxpayers are now paying $38,000 a day to monitor and contain acidic discharges. The final cleanup bill is estimated to be between $60 and $100 million.

Patenting makes cohesive management of mining's environmental impacts impossible. Instead, potentially hazardous mines are forced upon state governments to cope with as best they can. States are unready for such a burden, however, struggling as they do with tight budget constraints, weak statutory powers and inadequate technical resources. Every state has its own laws and procedures to cope with the hardrock mining industry. Even where state laws boast strong language, inspection and enforcement are usually weak and drastically underfunded. More disasters are the inevitable outcome, beginning the cycle again.

The Rush to Escape Federal Land Management

The rush to privatize hardrock mines through patenting is now reaching alarming proportions. Congressional efforts to reform the Mining Law, as discussed in Chapter 2, have caused a rush of patent applications by mining companies seeking to escape stronger Federal environmental protection standards, royalties and other elements of reform.

Perhaps the most disturbing of the currently pending patent applications are those filed by a subsidiary of Noranda, a large Canadian resource corporation, for 44 acres of land in Montana. Noranda proposes to build a gold and silver mine called New World two miles outside Yellowstone National Park. The minesite will be located high in the mountains, adjacent to the headwaters of a river flowing into Yellowstone and in prime grizzly bear habitat.

The Forest Service is preparing an Environmental Impact Statement (EIS) on New World, and local communities are using that system to present arguments against allowing its construction. But the Forest Service and public participation in the EIS process may both become irrelevant at any time. Noranda has applied for mineral patents. If Noranda succeeds in patenting the New World site, it will be exempt from many Federal regulatory controls both present and proposed.

To minimize environmental impacts, sound land management practices must be applied before a mine begins construction on public lands. The mining company must demonstrate the environmental soundness of the project and commit to specific safeguards in order to receive operating permits. Some mining companies are apparently attempting to shortcut this difficult but necessary stage.

Patenting at Yellowstone - *Canadian based Noranda Corp., seeks to patent part of its proposed New World mine 2.5 miles outside of Yellowstone National Park. Federal agencies fear the mine will degrade the park, yet if the patents are approved, the Forest Service will have little regulatory authority over the mine.*

Jill Bauermeister, U.S. Forest Service

A surprising number of proposed mines on public lands are now going through the patent process. Among New World's cousins are the following proposed mines:

- **Crown Jewel Project:** The Battle Mountain Gold Company has proposed building a gold mine in northern Washington state, in the Okanogan National Forest.
- **The Carlota Project:** Cambior USA Inc. (a subsidiary of a Canadian company) has proposed building a copper mine in Arizona's Coronado National Forest.
- **Grouse Creek Project:** Hecla Mining Company has proposed building a gold and silver mine in northern Idaho in the Payette National Forest.
- **Montanore Project:** Noranda Minerals Company, operator of the New World Project, has also proposed building a copper and silver mine in Montana's Cabinet Mountains Wilderness Area.

Millsite Patent Applications

One clear sign that current patent applications are sparked by fear of possible environmental reforms is a large quantity of "millsite" patent applications. The Mining Law set up a special category for public land on which a company might wish to build a mill, smelter or other processing facility. Known as millsites, these claims have increasingly been used instead to locate waste facilities, such as tailings ponds and overburden heaps, that can have significant impact on the environment. By patenting these millsites, mining companies can remove some of their most environmentally sensitive activities from Federal oversight.

Of the 8,595 claims now for which applications are now pending, just over half are millsite applications. Kinross's DeLamar mine in Idaho has filed one of the larger applications for millsite land. DeLamar's operator was charged with allowing the death of over a hundred migratory birds in 1991. The birds mistook a cyanide-laden tailings pond for an ordinary water pond. BLM found that the mine operator took inadequate precautions to keep the birds away. The operator is now patenting the DeLamar tailings pond. After issuance of the patent, the tailings pond will be off-limits to BLM regulators. The Migratory Bird Treaty Act, however, will still apply.

The Patent Moratorium Debates

The U.S. Congress has already passed up the opportunity to halt the new gold rush of patenting. In the late 1980's, the emergence of a new Mining Law reform campaign caused an uproar in the hardrock mining industry. Some companies realized that the proposed environmental standards and compensation to the public could be avoided by means of patenting.

A modern gold rush, a rush to patent, began gathering steam. In 1990, realizing that important national assets were exiting the national trust, Congressman Ralph Regula (R-OH) introduced a provision in the Fiscal Year 1991 Interior Department appropriations bill to establish a one-year "patenting moratorium."

The patenting moratorium would have prohibited the Department of the Interior from using public funds to process mineral patents for the space of a year, effectively stopping the patent process. The amendment passed easily in the House of Representatives. Despite forceful advocacy by Senator Dale Bumpers (D-AR), however, the moratorium failed in the Senate 48-50. The following year, a similar motion passed in the House again, and again lost in the Senate — on a vote of 46-47. In 1992, the Senate defeated the moratorium proposal by a 52-44 vote, supporting instead a token mining industry proposal. Both House and Senate versions were eventually dropped in conference.

The House of Representatives took its opportunity to halt the patent giveaway, but the Senate let it slip by. The members of the Senate who voted against a mineral patent moratorium must bear much of the blame for the enormous losses discussed in this report.

7 Patenting For Real Estate: Miners Need Not Apply

By means of the mineral patent process, the American public is giving its land away for real estate speculation and private home construction. While the stated function of patenting is to encourage mining, the Mining Law fails to require that land privatized through a mineral patent actually be mined. Patented land can be used for any legal purpose. For decades, patenters have found it easier or more profitable to exploit their land for non-mining purposes than for non-mining purposes.

While speculation and home-building top the list of patent abuses, there is no end to the variety of uses to which so-called "mineral" patents are put — everything from gambling casinos to luxury resorts, ski slopes to brothels. In 1974, the General Accounting Office (GAO) surveyed 240 patented mining claims, and discovered that only one was being mined.[80] GAO found patented land used for ranching and oil storage, among other purposes. BLM has reported many more uses for patented land unrelated to mining, including a brothel in Nye County, Nevada.[81]

Homes and Real Estate for Sale: $5 an Acre

One common non-mining abuse is that of home construction. A prospective home builder can find some industrial mineral relatively simple to extract, and prepare a patent application demonstrating ability to process and market it. Once patents are issued, the mining plan can be safely forgotten. "Very few of the patents issued in my area have been for genuine mining purposes," asserts Deane Swickard, a BLM Resource Area Manager of the old California mining district.[82]

Real estate speculation has proven a vastly successful use of the patent process. Few can match the payoff of the 1971 Melluzzo patent, in which a 61-acre placer claim, sold by the Federal government for approximately $150, later became the site of a luxury resort now valued at $41.3 million (see sidebar). Melluzzo has plenty of company. The history of patenting is studded with brilliant real estate coups achieved at taxpayer expense.

- **Colorado:** In 1983, Mark Hinton patented 160 acres on the Arapaho National Forest, next to the Keystone ski resort outside of Aspen. Hinton said he would use the land for gold placer mining and paid his $400. Staff of the Forest Service reported to GAO investigators that he never produced an ounce of gold.[83] The land has other values, however. In 1988 Hinton put some of the land up for sale at $11,000 per acre, 4,400 times the patent price.

- **Nevada:** One dubious patent application was filed by Robert and Paula Mendenhall outside Las Vegas, Nevada. The application is for 419 acres of limestone claims, which they seek to purchase for $1047.50, at $2.50 per acre. Nevada's mineral riches are almost all buried in the northern half of the state, while Las Vegas is at the southern tip and has no history of serious mining.

  The area around the Mendenhall claims is littered, however, with housing subdivisions, selling at $46,000 per acre.[84] The Nevada State Office of BLM is currently contesting the application on grounds that the limestone is not profitable enough to pass the "discovery" test. If the Mendenhalls succeed in proving the value of their limestone, they will be legally entitled to build subdivisions there — or put their patented land to a wide variety of other profitable uses.

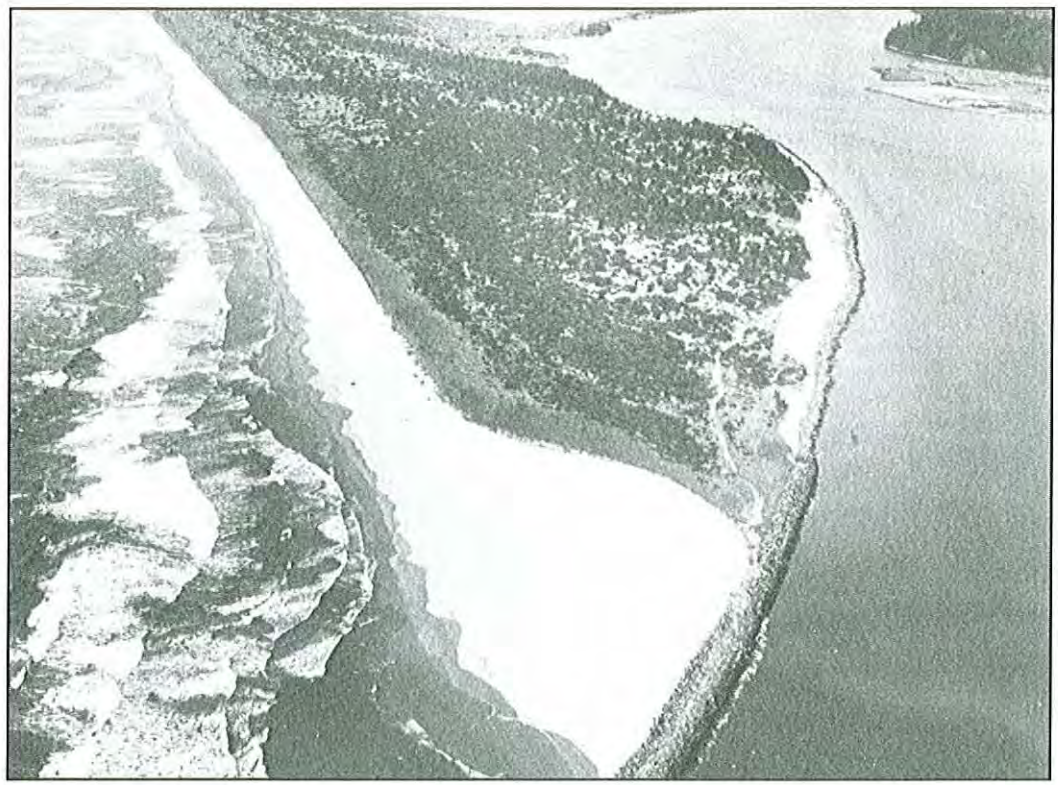
Patenting and Buy-Backs

Patenting has also proven a useful tool for extracting money from the Federal government. Some lands kept open for mining are valued for other purposes, chiefly as wilderness areas of high ecological value. Land management agencies, loath to give up such areas but barred by the Mining Law from simply taking them away from patent applicants, must pay the applicants to give up their claims. These deals, commonly known as "buy-backs," turn the Mining Law into yet another generator of non-mining profits.

One episode involves the Oregon Dunes National Recreation Area near Coos Bay, which attracts more than two million visitors each year to see its scenic beauty and migrating birds. Harold Duval and his family visited the Dunes in 1959 for another reason entirely: to apply for patents for its contaminant-free sands, perfect for glass manufacture.

1989, the Duvals succeeded in patenting 780 acres of sand dunes from the Forest Service for $1,950.[85] The Forest Service is now negotiating to give the Duvals other National Forest land in exchange for their 780 acres. Agency officials have offered land worth approximately $2 million, but the Duvals continue to hold out, insisting that the land's value is closer to $12 million.[86]

Other buy-back schemes have not even required filing patent applications. Short of passing an Act of Congress, it is extraordinarily difficult for the Federal government to get public lands back from someone who has claimed it. A claimant can resort to a wide array of legal maneuvers, contests, appeals and reviews, frustrating attempts to clear the claim for years. The cost-effective alternative is simply to pay the claimant in money or other land in return for giving up the claim:



***Sand Scam Patent** - In 1989, a land speculator successfully patented 780 acres of the Oregon Dunes National Recreation Area for $1,950 by claiming an interest in mining the sand. The federal government now finds itself negotiating with the patentor to buy back the land for between $2 -12 million.*

- **Nevada:** In 1988, Anthony Perchetti paid $135 in filing fees to obtain claims to land on Yucca Mountain, Nevada. The Federal government was preparing to designate Yucca mountain as the nation's most appropriate site for a nuclear waste depository, and wanted the land quickly. Rather than fight Perchetti in court, the Department of Energy paid him $249,000 to vacate the Yucca Mountain claims.[87]

- **Oregon:** In Coos Bay, not far from the Duval patents, James Aubert filed claims to 147 acres of sand dunes.[88] He filed the claims on 26 April 1993, three days before a withdrawal order by Interior Secretary Bruce Babbitt would have gone into effect. BLM had intended to exchange the land with a local government — now the agency will have to pay off the claimholder to go forward with its plan.

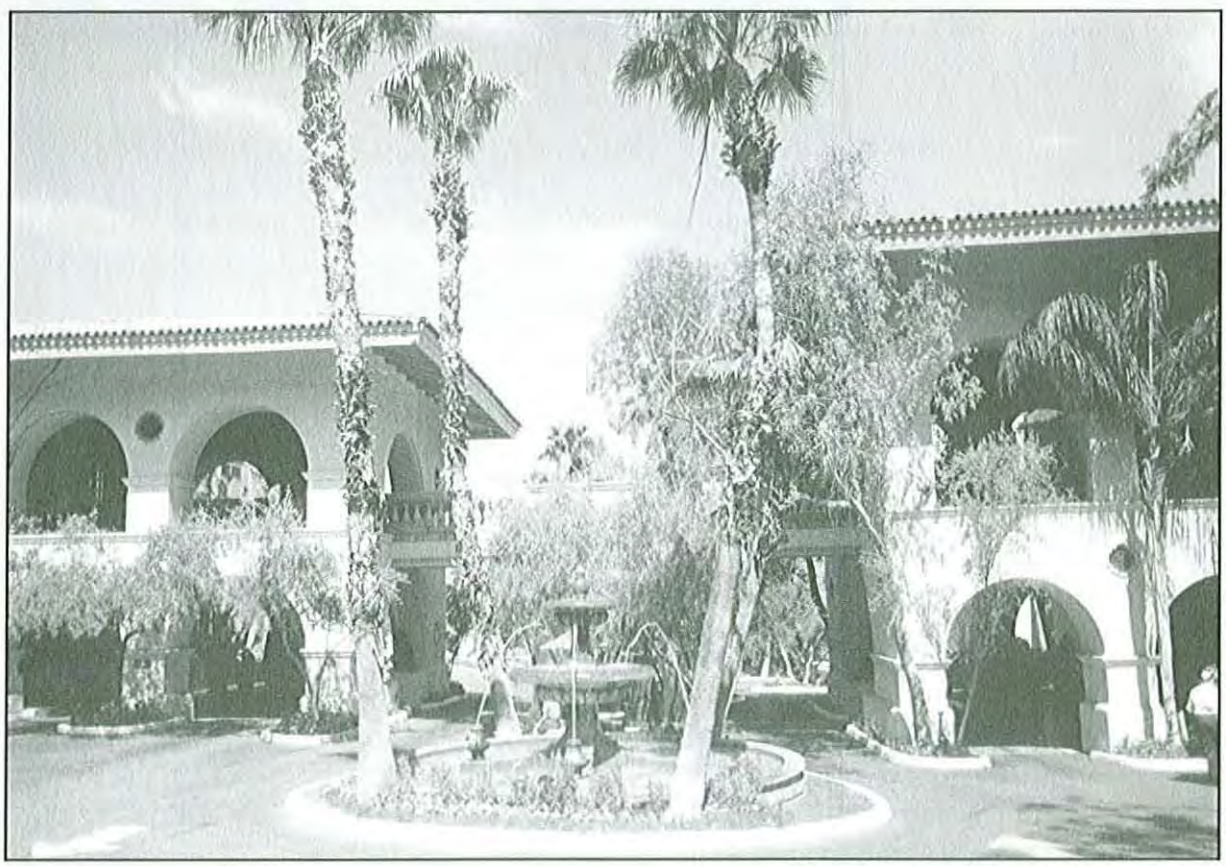
For every non-mining patent exposed to public scrutiny, several others go unnoticed. The Bureau of Land Management has refused to keep records or even find out what happens to the patents it issues. BLM officials have rejected requests to find out the ultimate purpose for which patented land is employed.[89] The patents discussed in this chapter probably represent only a small fraction of "mine-free" mineral patents acquired under the 1872 Mining Law.

The Pointe Hilton at Tapatio Cliffs

The Hilton hotel chain owes a debt of gratitude to the patent process and to a patenter named Frank Melluzzo. The Pointe Hilton at Tapatio Cliffs, overlooking the city of Phoenix, is one of Arizona's biggest and most expensive luxury resorts. For their $190/night rates, guests stay in "a spacious two-room suite complete with a fully stocked refrigerator and wet bar," and are invited to enjoy 18-hole golf courses, desert jeep tours, sea-salt pedicures, plus "terraced flower gardens and cascading fountains" and many other resort attractions.[90]

The spot was just a rocky hillside until Frank Melluzzo came along. Melluzzo staked 61.4 acres of sand and gravel placer claims and applied for patent. On 12 November 1970, at a price of $2.50 per acre, Melluzzo and his wife paid $153.50 and received title "to have and to hold the said premises, with all the rights, privileges, immunities and appurtenances, of whatsoever nature, thereunto belonging, unto the said claimants, their heirs and assigns, forever."[91]

Ten years later, Melluzzo resold his property for $400,000 and an 11% share in any forthcoming profits. The buyer was Gosdell Builders, a real estate firm with big plans for Melluzzo's hill. In 1982, the Pointe Hilton at Tapatio Cliffs celebrated its grand opening. The Pointe is valued today at $41.3 million.[92]



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***The Pointe of Patenting**—Pointe Hilton at Tapatio Cliffs, Phoenix,*

8 Conclusion

The patenting system under the 1872 Mining Law has grown into a multi-billion-dollar corporate giveaway program, one that imposes vast ecological costs on the American public. Any legitimate historical rationale for patenting has long since vanished.

Today, patenting serves to privatize land at fire-sale prices, and to allow operators to escape the more stringent environmental regulations and royalty requirements now under consideration by Congress. More than $34 billion is at stake in pending patent applications. The time to shut the door on patenting abuses is now, before more taxpayer assets slip away.

If Congress passes a comprehensive Mining Law reform bill during the 103rd Congress, the billion-dollar giveaway will end. A minimum of $10.3 billion in mineral reserves will be saved, so that Americans will receive a fair return in the form of royalties on those reserves. The environmental degradation that accompanies patenting will also be halted. If Congress fails to act, the $34 billion now at stake will be lost to private hands, and the health of the public lands will remain in jeopardy.

Mineral Policy Center recommends the following steps:

❶ Immediately impose a patenting moratorium until such time as patenting can be permanently abolished.

❷ Approve comprehensive Mining Law reform legislation that abolishes the patenting system before the 103rd Congress adjourns. No justification remains for allowing mining companies or others to privatize public lands.

❸ Require the Bureau of Land Management, until such time as the patent process is abolished, to make all mineral reports publicly available in their entirety and to cease treating information on patenting as confidential.

❹ Require the BLM to compile and publicly release all information on the scope, cost and use of mineral patenting.

❺ Initiate a Congressional investigation of the patenting system to evaluate issues such as the value of resources at stake, the use to which patented lands are being put, and the impact of patenting upon land management.

Notes

1. 3 U.S.C. § 1701.
2. Paul Politzer, Bureau of Land Management, letter to Thomas J. Hilliard, Mineral Policy Center, 22 April 1994.
3. *American Mines Handbook 1994*, Southam Magazine Group, 1993.
4. *The Mining Record*, The Mining Record Company. For products lacking a standardized market, namely bentonite, beryllium and fluorspar, MPC consulted with experts in the private sector and at the Bureau of Mines.
5. Mineable reserves were used in all cases but one. Only geologic reserve figures were available for Helvetia, a copper deposit in southern Arizona. A minimum mineable reserve figure was obtained, however, from Mark Chatman, a U.S. Bureau of Mines expert on mineral deposits in the Helvetia area. Telephone communication, 25 January 1994.
6. Telephone communications with various Cadillac dealers in northern Virginia area, 6 May 1994. A standard Cadillac Eldorado is 16'10" long, and costs approximately $39,000.
7. The Bureau of Land Management now keeps a database of all operating hardrock mines on public lands. Paul Politzer, U.S. Bureau of Land Management, letter to Thomas J. Hilliard, Mineral Policy Center, 10 May 1994.
8. See Chapter 2 for a discussion of lode, placer and millsite claims.
9. *American Mines Handbook 1994*, Southam Magazine Group, 1993; *The Mining Record*, The Mining Record Company.
10. Examples include the Pete, Marigold, Dee, and Goldstrike mines, and portions of the Gold Quarry mine.
11. See Chapter 2 for a discussion of first-half certificates.
12. Annual records by the U.S. Geological Survey report annual production up to 1909; the U.S. Bureau of Mines reports production figures from 1909 to the present.
13. Implicit price deflators are a standard economist's tool. The Bureau of Labor Statistics keeps official price deflators from 1909 to the present. Deflators for the period between 1873 and 1909 were calculated by two leading economic historians. Nathan S. Balke and Robert J. Gordon, "The Estimation of Prewar Gross National Product: Methodology and New Evidence," *Journal of Political Economy*, Vol. 97, No. 1, 1989.
14. 30 U.S.C. § 29.
15. "Processing Mineral Patent Applications," Form H-3860-1, U.S. Bureau of Land Management, 17 April 1991.
16. *Castle v. Womble*, 19 L.D. 455, 1894.
17. "Processing Mineral Patent Applications," Illustration 35, Form H-3860-1, U.S. Bureau of Land Management, 17 April 1991.
18. Roger Haskins, U.S. Bureau of Land Management, telephone communications, 9 May 1994.
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20. *Report of the Public Lands Commission*, Vol. 22, No. 46, Serial 1923, 1880.
21. 43 CFR 3862.1-1(b).
22. "End of Year Reports on Mineral Patent Applications and Surface Management," annual reports, Nevada State Office, U.S. Bureau of Land Management, 1982-1993.
23. Elaine Lewis, Nevada State Office, U.S. Bureau of Land Management, telephone communication, 8 August 1992.
24. Richard De Voto, Canyon Resources Corporation, letter to shareholders, 9 March 1993.
25. 1993 Annual Report, Manville Corporation.
26. Senate Bill 1365, State of Arizona, 41st Legislature, 2nd Session, 1994.

56. Russell R. Elliott, *Servant of Power: A Political Biography of Senator William M. Stewart*, University of Nevada Press, 1983.

57. *Congressional Globe*, 39th Congress, 1st Session, pp. 3225-3236.

58. Elliott, op. cit.

59. *Congressional Globe*, 39th Congress, 1st Session, pp. 3225-3236.

60. Frederick Jackson Turner, "The Significance of the Frontier in American History," *Frontier and Section: Selected Essays of Frederick Jackson Turner*, Prentice-Hall, 1961.

61. Harold Ickes, Department of the Interior, testimony before the Senate Committee on Public Lands and Surveys, 77th Congress, 1941.

62. *Management of Fuel and Nonfuel Minerals in Federal Land*, U.S. Office of Technology Assessment, 1979.

63. "Mineral Patents Issued by Fiscal Year from 1867 to 1992," fact sheet, Bureau of Land Management, undated.

64. 30 U.S.C. § 181.

65 43 U.S.C. § 1701.

66. One example is the Briggs Project, a proposed gold mine in southern California being developed by the Canyon Resources Corporation. On 26 December 1990, Kennecott Exploration Company agreed to provide development capital for the Briggs Project; patent applications were filed in July 1993. 1992 Annual Report, Canyon Resources Corporation.

67. 43 U.S.C. § 1701.

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69. *Report to Congress: Wastes from the Extraction and Beneficiation of Metallic Ores, Phosphate Rock, Asbestos, Overburden from Uranium Mining, and Oil Shale*, U.S. Environmental Protection Agency, December 1985.

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Mineral Policy Center

Hardrock mining and oil and gas exploration and extraction are major sources of environmental damage to the United States — sources which are not adequately controlled by existing law or regulation. Nonfuel mining generates twice as much solid waste each year as all other U.S. industries and cities combined — and much of this waste is hazardous.

The outdated laws and policies governing these resources conflict with the public's right to environmental protection and fair value for its resources, with the government's need for efficient regulation, and with the mineral industry's need for stability and security of its exploration investments.

To respond to this problem, Mineral Policy Center was established in 1988 in Washington, D.C., to:

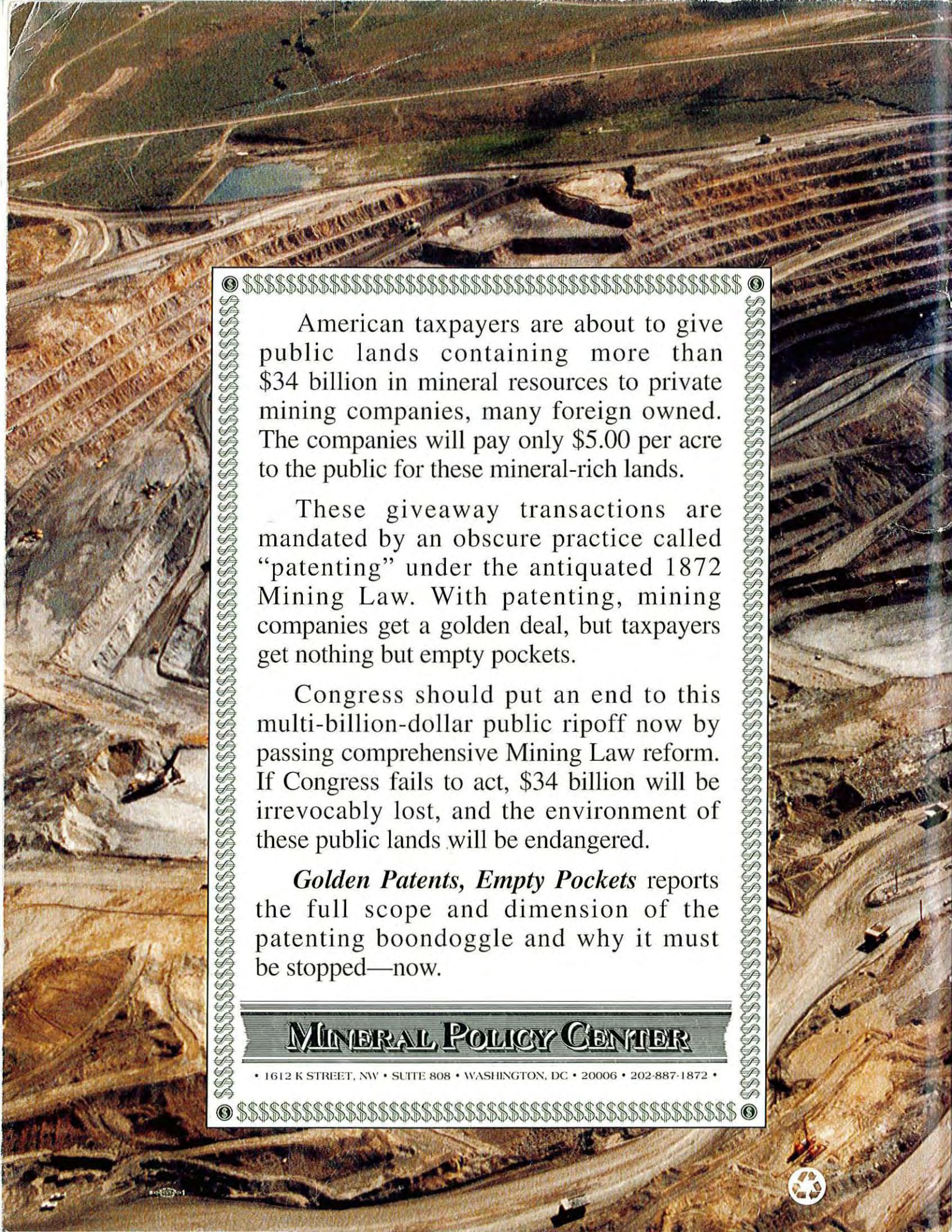
- Educate and assist citizens' groups and agency personnel working with conservation problems related to legislation such as the 1872 Mining Law, the Mineral Leasing Act, and the Resource Conservation and Recovery Act;
- Serve as a Washington source for information on the environmental problems with those laws, and the problems the laws cause the mineral industry;
- Lobby for reform amendments to the laws and the corresponding federal regulations;
- Encourage improved state action to reduce mineral development impacts on state and federal domains.

As an expert "service bureau" for local groups, the Center provides technical, legal, and political strategy assistance to deal with mineral threats to sensitive areas. It draws on examples of successful strategies used in the past, and trains activists and regulators to deal successfully with the technical nature of mining's impacts and regulations.

Tax-deductible contributions help support this important service. Contributors of $25 or more per year receive periodic issue updates and ***Clementine***, the Center's Journal of Responsible Mineral Development, which reports on major minerals issues nationwide.

Authors

Thomas J. Hilliard is Senior Policy Analyst at Mineral Policy Center. Beverly A. Reece is Director of Communications for the Center; James S. Lyon is Director of Programs and Government Affairs.



American taxpayers are about to give public lands containing more than $34 billion in mineral resources to private mining companies, many foreign owned. The companies will pay only $5.00 per acre to the public for these mineral-rich lands.

These giveaway transactions are mandated by an obscure practice called "patenting" under the antiquated 1872 Mining Law. With patenting, mining companies get a golden deal, but taxpayers get nothing but empty pockets.

Congress should put an end to this multi-billion-dollar public ripoff now by passing comprehensive Mining Law reform. If Congress fails to act, $34 billion will be irrevocably lost, and the environment of these public lands will be endangered.

Golden Patents, Empty Pockets reports the full scope and dimension of the patenting boondoggle and why it must be stopped—now.

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