

# THE 1872 MINING LAW

## ENRICHING FOREIGN COMPANIES AT TAXPAYER EXPENSE FOR 150 YEARS

### Overview

The 1872 law allows foreign mining companies to dig riches out of the ground, and leave the mess. Families across the country live with pollution from irresponsible mining, and taxpayers – not polluters – too often pay for a cleanup bill which has reached \$50 billion.<sup>1</sup> Why? Because our mining laws were written 150 years ago. They're out of touch and out of scale with modern hardrock mining, and desperately need to be updated.

**We need a mining law that will protect drinking water and hold mining companies responsible for their pollution.**



Sierrita Mine, Arizona

### The details behind this outdated law:

#### Jurisdiction

**The 1872 Mining Law, designed to encourage development of the West, still governs hardrock mining on federal public lands:**

350 million acres, mostly in the Rocky Mountain West and Alaska. This is more than 15% of all the land in the United States – or  $\frac{1}{3}$  of the lands the federal government holds in trust for all Americans. The 1872 Mining Law still governs metals, such as gold, silver, platinum, and copper, and also governs valuable clays and other precious materials. The law does not cover certain fuel minerals, such as coal, oil and natural gas, or common materials, such as limestone.

#### Fiscal Inadequacy

**Unlike other extractive industries, under the 1872 law, mining companies pay no royalties.** Whoever stakes a claim and discovers valuable minerals on public lands claims those riches – more than \$300 billion and counting since 1872 – without giving taxpayers a dime for them. Coal, oil, and natural gas companies typically pay an 8–12.5% royalty for extracting resources from federal onshore public lands.

Miners can also buy valuable mineral bearing public lands for no more than \$5 per acre – 1872 prices.

#### Misplaced Land-Use Priority

**The 1872 Mining Law establishes hardrock mining as the “highest and best use” of public lands, regardless of other competing land uses (recreation, hunting, renewable energy, grazing, or even oil and gas drilling) or environmental sensitivity.** All other types of mine proposals (e.g. coal) on public lands require federal agencies to weigh

the mining proposal against other potential land uses before the project can receive a permit. In the modern era, federal land management agencies consistently argue that they cannot deny hardrock mining proposals because of the 1872 Mining Law. This preference for hardrock mining conflicts with the Congressional mandate in the Federal Land Policy Management Act (FLPMA) to balance and mix land uses.

#### Environmental Inadequacy

**Hardrock mining is the number one source of toxic pollution, according to the Environmental Protection Agency (EPA).** The 1872 Mining Law contains no environmental protections. As a result:

- In 2000, EPA declared 40% of the headwaters of all western watersheds polluted by mining.
- EPA identified the hardrock mining industry as the nation's largest toxic polluter – contributing almost half of all reported toxic releases in the U.S.
- Over 500,000 abandoned mines litter the country. Cleanup will cost an estimated \$50 billion.<sup>1</sup>

**Cornerstones  
of Mining  
Law Reform**



# CORNERSTONES OF MINING LAW REFORM

## How to fix the 1872 Mining Law — the basics of reform:

1

### Protect Treasured Places

Some places simply should not be mined. The current law leaves iconic American heritage sites at risk. The Cabinet Mountain Wilderness Area in Montana, Santa Rita Mountains in Arizona, and the Grand Canyon could all be damaged by mineral development. The reformed law must give land managers the ability to choose competing land uses over a potential mining operation that may damage other important resources.

2

### Adequate Environmental Standards

Loose regulations allow foreign mining companies to dig riches out of the ground, and leave the mess. Too often, taxpayers – not the polluters – are paying for cleanup. Mining companies need to be held responsible for their pollution to protect drinking water and save taxpayer dollars. Large-scale mines often create pollution that lasts forever. The mining industry needs industry-specific environmental standards.

3

### Fiscal Reforms

A new, reformed mining law should end the process of patenting. Reform must also include a fair financial return to the taxpayer in the form of a royalty and reclamation fee on the mining industry.

4

### Inspection, Enforcement and Bonding Provisions

Laws are only as good as their enforcement. A reformed mining law must require frequent inspections and the authority to impose violations, penalties, and deny new mining permits to operators with outstanding violations. The law must require reclamation bonds at levels that ensure complete reclamation if operators fail to carry out their responsibilities.

5

### Abandoned Mine Land Fund

Currently, there is no independent dedicated funding source for abandoned hardrock mine reclamation. The abandoned mines that litter the Western United States threaten both public safety and precious water resources. An abandoned mine land fund, paid for by the mining industry, is needed to clean up this toxic legacy. Over 500,000 abandoned mines litter the country. Cleanup will cost an estimated \$50 billion.<sup>1</sup>

<sup>1</sup> <http://nepis.epa.gov/Exe/ZyPDF.cgi/30006113.PDF?Dockey=30006113.PDF>