



New Mexico Wilderness Alliance

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The 1872 Mining Law

Briefing Paper

A 21st century industry governed by a 19th century law

The mining of hardrock minerals—gold, uranium and other metals—on public lands is governed today by a law that has changed little since it was first signed by Ulysses S. Grant. The General Mining Law of 1872 was enacted to promote mineral exploration and development in the western United States.

Today, the Civil War-era statute still guarantees free access to individuals and corporations, both domestic and foreign-owned, to prospect on public lands and lay claim and develop the minerals without taxpayer compensation. And because interpretation of this old law has established mining as the “highest and best use” for federal lands, it remains nearly impossible—even today—to prohibit or even restrict mining in special areas, regardless of its impact on critical habitat and other natural resources.

At the heart of the act is its “claim and patent” system, which differs dramatically from the sale or lease approach used for development on federal lands of other resources. With oil and gas, for example, the federal government identifies particular areas suitable for development and opens those tracts up to bid. In contrast, the 1872 law reverses this process, giving individuals and corporations “carte blanche” to explore and stake claims on vast tracts of public lands, save those expressly “withdrawn” by legislative or administrative action.

Once a valuable mineral is “discovered” and procedural filings made, a claim is considered valid and the claimant may mine the resource without payment of royalties to the federal government. In addition, the claimant may buy the property at prices set in the original 1872 law, which run from \$2.50 to \$5.00 per acre. Claims, which may be bought, sold or transferred, are not time-limited. Thus failure to develop a mining property does not extinguish the claimant’s rights.

Land that is patented becomes private property and can be used for mining or developed by the owner for other purposes, including commercial enterprises, such as condominiums, ski resorts and casinos, without public input. Over the years, this archaic “patent” system has allowed the metal mining industry to take title to approximately 3.4 million acres of federal land—an area nearly the size of Connecticut. It’s no surprise that the late Congressman Morris Udall described the law as “a real estate fire sale without the fire.”

A Messy—and Costly—Business

The law that regulates metal mining may be stuck in the 19th century, but the industry is operating in the 21st. The pioneer prospector panning for gold has been replaced by a giant, profitable and frequently foreign-owned industry, with operations that can cover hundreds of acres of land, create pits thousands of feet deep and generate huge volumes of toxic waste that can drain or leach into surrounding ground and surface water. According to the EPA, metal mining—both past and present—has degraded 40 percent of western watersheds. Nearly half a million mine sites await reclamation and the cost to taxpayers for cleaning up the pollution could run upwards of \$50 billion. And while mining and its impacts were once largely relegated to remote areas, the simultaneous expansion of both the industry and the population in the West means that mining operations often border urban areas.

Past Attempts at Reform

For many decades, government agencies, leading lawmakers and citizens alike have raised serious concerns about the 1872 Mining Law. As early as 1934, a board commissioned by President Franklin D. Roosevelt concluded that the law was outdated and prevented the federal government from acting as a trustee of its national resources. In 1979, the arm of Congress now known as the Government Accountability Office (GAO) called the policy “inadequate” and “outdated,” issuing a series of reports that detailed abuses not only by the mining industry but land speculators as well.

By 1989, the GAO bluntly called for reform, arguing that the 1872 Law did not adequately protect public land or give taxpayers a fair return for minerals extracted from it. In the early 1990s, Congress took a tentative but important step by temporarily halting any further forced sale of land acquired through the claims process.

Growing Urgency

With so little regulation and oversight, it’s no wonder that there has been a recent increase on mining claims in the West. Over the past five years, a little noticed rush has led to almost a 50 percent increase in claims for uranium, gold and other metals on public land, according to the Bureau of Land Management.

Many of these new claims have been staked by foreign-owned companies, and many are near such national treasures as the Grand Canyon, as well as highly-populated urban areas and Tribal lands. This increase is fueled by record prices for gold and other metals, new interest in uranium, particularly by foreign-owned companies as well as the rise in land speculation by developers, which the law not only permits but encourages.

Meanwhile, the loss of taxpayer revenues is mounting. Consider \$245 billion worth of minerals extracted from public lands without taxpayer compensation, an average loss to the U.S. Treasury of \$100 million per year and a bill that could be as high as \$50 billion to clean up the pollution left behind.