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The 1872 Mining Law: Time for Reform



A THREAT TO NATIONAL PARKS AND SCENIC PLACES

*Despite concerns with the impacts of the proposed New World Mine on **Yellowstone National Park**, the outdated federal mining law provided little authority for federal land managers to deny a 1989 proposal for mining on the edge of the Park. Thanks to the 1872 Law, protection came at a cost of \$65 million, with the federal government buying back land and mining rights given away by the antiquated law.*

19th Century Policies

Hardrock mining on public lands in the western United States is governed by the **General Mining Act of 1872**-a law that has changed little since it was signed by President Ulysses S. Grant. This pioneer-era statute still gives metal mining priority status on many public lands, regardless of the impact on watersheds, wildlife or local communities.

Today, while western urban and suburban areas are among the fastest growing in the nation, the outdated 1872 Mining Law:

- Opens over 350 million acres of public lands to mining exploration and development, in many cases encouraging mining companies to explore for minerals in areas ill-suited to mining.
- Treats metal mining as the “highest and best use” of most federal lands in the West, giving it priority over recreation, watershed protection and other uses.
- Gives away valuable mineral resources, without requiring royalties or rent.
- Offers claimholders the right to buy public lands at prices set in 1872. Though Congress has temporarily halted this practice on annual appropriations bills, the “patenting” provision remains in the law.
- Fails to protect water quality, wildlife habitat, and other natural resources. Nearly 40% of western headwaters have been contaminated by hardrock mining,¹ and a 2004 government analysis found that nearly 60% of mine contamination cases studied will require water treatment for 40 years to “perpetuity.”² Overall, an estimated half million non-coal mines have been abandoned, and the cost for cleaning up those mines could run to \$50 billion.³

Modern Mining and the 21st Century Metals Rush

Modern mining operations, unlike their pick and shovel forebears, can disrupt thousands of acres of land and use hundreds of acres for permanent waste containment. In the case of the 1989 proposal for mining near Yellowstone National Park, for example, the proposed “reclamation plan” would have placed millions of tons of processed waste into a 90-foot high impoundment the size of 70 football fields.⁴

Today, says the U.S. Environmental Protection Agency, “[t]he mineral processing and mining sectors generate more wastes that are corrosive or contain toxic metals than any other industrial sector,”⁵ and many more mines are employing “environmentally sensitive technologies,” such as cyanide heap leaching.⁶

In addition, over the past several years, mining claims for uranium, gold and other metals on public lands have increased dramatically. An analysis of data from the Bureau of Land Management shows an 81% jump in active mining claims in 12 Western states from January of 2003 to July 2007.⁷

Real Reform

America can no longer afford this antiquated law. Reform must ensure that modern legal principles govern current-day mining of gold, uranium and other metals. Real reform would:

- End metal mining’s priority status on public lands.
- Close certain sensitive areas and special places to new claimstaking.
- Treat hardrock mining like other extractive industries by requiring payment of royalties similar to those paid by coal, oil and gas industries.
- Allow states, local governments, and Indian tribes a voice in placing important lands off limits for new mine operations.
- Keep public lands in public hands with permanent prohibition of “patenting” or forced land sale.
- Require comprehensive and thorough review of mine operations on public lands, with a new emphasis on preventing long-term water quality problems.
- Make it clear that federal land managers must deny mine permit applications when operations will permanently degrade public lands and waters.
- Address the legacy of abandoned mine sites with a program modeled after that used for cleaning up abandoned coal mines.

¹ US EPA, “Liquid Assets: America’s water resources at a turning point,” 2000.

² US EPA, Office of the Inspector General, “Nationwide Identification of Hardrock Mining Sites,” March 31, 2004, <http://www.epa.gov/oig/reports/2004/20040331-2004-p-00005.pdf>.

³ US EPA, Office of Solid Waste and Emergency Response, Cleaning Up the Nation’s Waste Sites: Markets and Technology Trends, September 2004.

⁴ *Philadelphia Inquirer*, “A gold mine in Montana is a lode of controversy,” October 2, 1995.

⁵ US EPA, “Compliance and Enforcement National Priority: Mineral Processing and Mining,” November 2004, <http://www.epa.gov/compliance/resources/publications/data/planning/priorities/fy2005prioritycra.pdf>.

⁶ US EPA, Office of Inspector General, “EPA Can Do More to Help Minimize Hardrock Mining Liabilities,” June 11, 1997, <http://www.epa.gov/oig/reports/1997/7100223.pdf>.

⁷ Dusty Horwitt, Environmental Working Group, Statement before the Senate Energy and Natural Resources Committee, Sept 27, 2002, <http://energy.senate.gov/public/files/HorwittTestimony.doc>.