

April 2009
PEW ENVIRONMENT GROUP

S. 796, The Hardrock Mining and Reclamation Act Protecting Taxpayers and the Environment



21st CENTURY MINING RUSH

Mining claims staked under the outdated rules of the 1872 Mining Law have skyrocketed across the West, including areas around the Grand Canyon, Yellowstone, Yosemite and Canyonlands National Parks. After British mining company Vane Minerals began exploration drilling near the Grand Canyon, downstream water utilities, the Governor of Arizona, the Coalition of National Park Service Retirees and others called for new protections. Citing the deficiencies of the Mining Law, Congressman Raul Grijalva (D-AZ) is spearheading an effort to withdraw about one million acres from the outdated law's claimstaking rules.

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. Today, this pioneer-era statute still gives metal mining priority status on many public lands, regardless of the impact on watersheds, wildlife or local communities; it gives away public resources without compensation to taxpayers; and over the years, it has left a legacy of abandoned mine sites that threaten public health and the environment.

On April 2, 2009, Senator Jeff Bingaman, Chairman of the Senate Energy and Natural Resources Committee, introduced the Hardrock Mining and Reclamation Act of 2009. S. 796 makes long overdue improvements to this antiquated law.

Ends the Give-Away of Public Lands and Minerals

An estimated \$1 billion of hardrock minerals are taken from public lands each year.¹ While those producing oil, gas and coal from public lands pay royalties ranging from 8% to nearly 17%, current Mining Law allows hardrock minerals—including gold, uranium and copper—to be taken from public lands for free.

The Bingaman bill sets a royalty on new hardrock mines operating on public lands. Under S. 796, the Secretary of Interior would set royalty rates for hardrock minerals at levels of no less than 2% and no more than 5% of the value of production, minus transportation

¹ Congressional Budget Office, "Budget Options," February 2007 at <http://www.cbo.gov/ftpdocs/78xx/doc7821/02-23-BudgetOptions.pdf>

and processing costs. To account for the differing economics, rates may vary by metal. And to assure that imposition of a royalty does not discourage the fullest recovery of minerals from areas already disturbed, the bill allows for royalty relief in certain cases.

While others who use public lands—for recreation, grazing, filming or other purposes—often pay for their temporary access, mining companies operating under the 1872 Law gain exclusive use of large acreages for long periods of time without payment of rental or user fees.

S. 796 treats mine operators like other public land users, requiring annual rental payments for acreage used in mining operations.

The 1872 Mining Law allows claimholders to buy or “patent” public land for as little as \$2.50 per acre, regardless of location, property value, or potential conflict with other public uses. Since 1994, Congress has adopted yearly appropriations language to halt these forced sales, but the patenting provision remains a part of the Law.

S. 796 permanently ends the forced sale or “patenting” of public lands.

New Considerations for Special Places

Under current Mining Law, over 350 million acres of public land are open to mining,² including some places nationally recognized as having irreplaceable cultural or environmental values. Modern mining operations, which can cover thousands of acres, use significant amounts of toxic chemicals, leave millions of tons of waste, and permanently disrupt resources and habitat, are often incompatible with these values, but the Mining Law treats mining as the “highest and best use” of land with valuable minerals.

While some areas, such as National Parks, have already been placed off limits to new mining claims, many other areas that may be inappropriate for mining are still open to claimstaking, and the process for “withdrawing” such lands has been slow and cumbersome.

S. 796 requires an expedited review of national forest roadless areas, wilderness study areas, and other sensitive lands to determine if those areas should be placed “off limits” to new mining claims.

The bill also allows state, local and tribal officials, who currently have little say in the siting of mining operations, to petition to have specific areas reviewed for possible withdrawal.



SELL LOW, BUY HIGH?

Land within the Lake Mead National Recreation Area in Nevada now occupied by the Hacienda Hotel and Casino once belonged to the American public. The property was purchased by a claimholder under the 1872 Mining Law's "patenting" provisions. The National Park Service has been trying to buy back the land. In 2004 the buy-back cost was estimated at \$20 million.

² National Research Council, Hardrock Mining on Federal Lands, National Academy Press, 1999.



PERPETUAL POLLUTION

The Gilt Edge Mine in South Dakota is a prime example of hardrock mining's potential for "perpetual pollution." Opened in 1986, this gold mine—with thousands of gallons of acidic, metal-laden waters and tons of acid-generating wastes—was abandoned in 1999. A recently approved Superfund reclamation plan for the mine could cost federal taxpayers \$53 million, far in excess of the mining company's posted bond. Treatment of acidic water, at a cost of \$2 million per year, is expected to last forever, and those ongoing costs will likely fall to the state.

Improves Environmental and Financial Assurance Requirements

Hardrock mining has a poor environmental track record, and the Environmental Protection Agency (EPA) estimates that hardrock mining has degraded approximately 40% of western headwaters.³ In 2004, EPA's Inspector General found that many of the most serious mine pollution cases will involve potentially costly water treatment for 40 years or longer—in some cases continuing in perpetuity.⁴

While coal mining on federal land is governed by comprehensive federal legislation, the Mining Law has no environmental management provisions. Other environmental laws, such as the Clean Water Act, have not proven adequate in addressing the unique problems of mining and the weight of the Mining Law's antiquated biases in favor of mining. In many instances, hardrock mine operators have failed to adequately reclaim mined areas, and some mine owners have defaulted on cleanup responsibilities multiple times.⁵

S. 796 borrows from existing practice for mine approval but makes some important improvements.

All mining activities other than "casual use" require permits, and mining on both Forest Service and Bureau of Land Management (BLM) land must adhere to the standard of "no undue or unnecessary degradation." That standard is currently applicable only to BLM mines.

The bill also makes it clear that reclamation requirements apply to restoration of impacted water resources as well as disturbed lands. Financial assurance requirements are tightened with clear requirements for long-term trust funds or bonding to cover any needed long-term treatment of water.

³ US Environmental Protection Agency, "Liquid Assets: America's water resources at a turning point," 2000.

⁴ US Environmental Protection Agency, Office of Inspector General, "Evaluation Report: Nationwide Identification of Hardrock Mining Sites," March 31, 2004, Report No. 2004-P-00005.

⁵ Government Accountability Office, "Environmental Liabilities: Hardrock Mining Cleanup Obligations," Statement for the Record by John B. Stephenson, Director, Natural Resources and Environment, before the Senate Committee on Environment and Public Works, June 14, 2006, GAO-06-884T.

Bonds for water quality restoration may not be released until water standards are met and maintained for a five-year period, and oversight of “temporary cessation”—a point at which some mine owners have abandoned cleanup obligations—is strengthened.

In keeping with recommendations from the National Research Council, land managers are given new authorities to require permit modifications necessary for protection of public health and the environment, and improved enforcement procedures are established.

Accelerates Cleanup of Abandoned Mines

Abandoned hardrock mines are a major source of pollution and a public safety issue across the West and elsewhere. Although no comprehensive inventory exists, EPA estimates that there may be half a million abandoned hardrock mines, including as many as 35,000 on Forest Service lands and 2,500 within the National Park System.⁶ Cost estimates for cleanup run to \$50 billion or more.⁷ Cleanup at the current rate of spending will address no more than 8 to 20 percent of problem over the next 30 years, according to EPA.

Cleanup of coal mines abandoned prior to the passage of the federal law that governs surface mining has benefitted from a cleanup program funded by a reclamation fee on each ton of coal mined. No similar fee is collected from hardrock operations, and some states use coal-generated funds to clean up old hardrock mines.

S. 796 requires the Secretary of Interior to establish a reclamation fee on hardrock minerals. This fee may vary by mineral and must be within the range of .3 to 1%.

The bill uses the reclamation fee, royalties on new mineral production and claim location and maintenance fees to expedite mine cleanups. Federal and state agencies, as well as non-profits organizations, will be eligible for financial assistance to participate in cleaning up mines and restoring affected fish and wildlife habitat.



“OMINOUS” HAZARDS

Abandoned mine sites pose a serious threat to public safety, warned the Department of Interior Inspector General (IG) in 2008. The IG found health-threatening contaminants, including arsenic, lead, and mercury, “easily accessible to visitors and local residents,” and abandoned mines that have caused injuries and fatalities of children and adults. “The potential for more deaths and injuries is ominous,” current funding “inadequate” and existing cleanup programs “ineffective,” said the IG. The IG report is available online at <http://www.doioig.gov/upload/2008-G-00241.pdf>.

⁶ US EPA, Office of Solid Waste and Emergency Response, *Cleaning Up the Nation’s Waste Sites: Markets and Technology Trends*, September 2004.

⁷ US EPA IG Evaluation Report, *op cit*, and US EPA, OSWER, *Cleaning Up, op cit*.