



THE GENERAL MINING LAW OF 1872 –

Polluter of water, provider of pork.

OVERVIEW

The 1872 Mining Law is one of the last remaining dinosaurs of the old West. Signed by President Ulysses S. Grant over 130 years ago, this law still governs hardrock mining on federal public lands, even though other national policies and popular opinion have changed. Passed to encourage development of the West via mineral exploitation, this antiquated law allows private companies to take valuable minerals, including gold, copper, and uranium from public lands without payment to the owners and with little consideration for communities and the environment.



Barrick Goldstrike: public lands acquired for \$5190 under the 1872 Mining Law. Since then, Barrick has mined tens of billions of dollars of gold from the property.

do apply to mining, they do not adequately protect the environment from mining-specific pollution. For example, two loopholes in the Clean Water Act allow mining waste to be dumped directly into lakes, rivers and streams.

In 2000, EPA declared 40% of the headwaters of all western watersheds polluted by mining.

EPA has 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.

JURISDICTION

The law covers hardrock mining on 270 million of acres of publicly owned lands – mostly in the Rocky Mountain West and Alaska. This constitutes almost one-fourth of all the land in the United States, or two thirds of the lands the federal government holds in trust for all Americans.

The law governs all valuable minerals on these lands not covered by other laws. Practically, this usually means metals such as gold and copper, but also includes valuable clays and other valuable materials. It does not cover fuel minerals such as coal, oil or natural gas, or common materials such as limestone.

ENVIRONMENTAL INADEQUACY

The 1872 Mining Law contains no environmental protection provisions. Although other environmental laws

FISCAL INADEQUACY

The 1872 Mining Law allows mining companies to extract publicly owned minerals without payment to federal taxpayers. Multinational mining companies extract over a billion dollars of public minerals from public lands each year. Coal, oil, and natural gas companies pay a 8 to 12.5% royalty for extracting resources from federal public lands.

The Mining Law also offers mineral bearing public land for sale at \$2.50 - \$5 per acre – 1872 prices. Although a temporary moratorium currently prevents new sales, \$245 billion worth of mineral bearing public lands have been “sold” under the law – a land area equivalent in size to the state of Connecticut.

MISPLACED LAND-USE PRIORITY

The Mining Law establishes hardrock mining as the highest and best use of public lands, unless they are



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specifically withdrawn from mining (e.g. National Parks), regardless of other competing land uses or environmental sensitivity.

Specifically, the Mining Law gives anyone the right to stake a mining claim on open public land if they discover a “valuable deposit” of minerals.

All other types of mine proposals (e.g. coal) on public lands must be weighed against other potential land uses before permittal. In the modern era, federal land management agencies have consistently argued that they cannot deny hardrock mining proposals because of the 1872 Mining Law.

CORNERSTONES OF MINING REFORM

Protecting Treasured Places

Under the federal government’s current interpretation, land managers give preference to mining over all other land uses – from recreation to drinking water supplies to hunting. This leaves places like the Cabinet Mountain Wilderness Area in Montana, Santa Rita Mountains in Arizona and the Grand Canyon in danger from mineral development. Reform of the mining law must recognize that there are some places that should not be mined and must clearly give land managers the ability to deny a mine proposal if there are other important resource values that could be damaged by a mining operation.

Real Environmental Standards

Under current law, there are no statutory environmental standards written specifically for mining. For example, the Clean Water Act does not protect groundwater from mining pollution, and there is no definition of how to reclaim a mine. The mining industry needs industry-specific environmental standards to protect surface and groundwater quality from erosion and toxic discharge; require landscape restoration concurrent with mining; protect topsoil and wildlife habitats; require productive native revegetation; and minimize and neutralize mine wastes.

Fiscal Reforms

The 1872 Mining Law currently provides the mining

industry with billions of dollar in subsidies. For \$5 an acre, mining interests have patented (purchased) an area roughly equivalent in size to the state of Connecticut containing mineral values exceeding \$245 billion. A new, reformed mining law should end the process of patenting. Mining law reform should also include a fair financial return to the taxpayer in the form of a royalty and reclamation fee on the mining industry.

Inspection, Enforcement, Bonding

Enforcement authority must be given to federal regulators to ensure operator compliance with the requirements of the reformed law. Enforcement actions must be mandatory and require frequent inspections, violation citations, civil and criminal penalty assessments, and the denial of new mining permits to operators with outstanding violations. Reclamation bonds must be required at levels that will ensure complete reclamation if operators fail to carry out their responsibilities.

Abandoned Mine Land Fund

There are more than 500,000 abandoned hardrock mines in the United States that will cost an estimated \$50 billion dollars to reclaim, according to the Environmental Protection Agency. Currently there is no funding source for abandoned hardrock mine reclamation, and 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.



Dean Stiffarm holds contaminated water from the abandoned Zortman-Landusky gold mine in Montana.

Taxpayers are on the hook for tens of millions of dollars (minimum) to reclaim the mine because - unlike coal mining - hardrock mining companies pay no mine reclamation fee.



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