The Mining Act of 1872

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Introduction

The 1872 Mining Act was designed to promote westward expansion. It succeeded in its goal and since then the West has been populated. While fair in its day, 125 years later many feel that the law is in need of some serious changes. The price of land in 1872 was much less than it is now. Environmental concerns weren’t an issue. People saw the West as a great open area with plenty of land for everyone. Today things are much different, and policies that effect land usage must reflect those things that have changed. But before changing the law there are many issues that must be understood.

Historical Background

The 1872 Mining Act was passed to help promote the settlement and development of the West, as well as to promote mineral resource development. The major provision of the law allowed private U.S. citizens and businesses to prospect for minerals (except coal) on Federal public domain lands other than those that have been acquired (by purchase, condemnation, or gift). These entities would then mine the land and, if an economic deposit was found, sell these minerals with no reimbursement to the Government or to the general public. The law also allowed for the lease (purchase) of 20-acre tracts of land at $2.50 or $5.00 an acre.

In 1920, the Mineral Leasing Act removed gas, oil shale, phosphates, sulfur, and other hydrocarbons from the claim-patent system of the Mining Act. This act also changed the leasing system so that the Federal government would retain ownership of the leased lands. The 1947 Materials Act and the 1955 Common Varieties Act also changed the Mining Act to further legislate the common variety minerals such as sand, stone, gravel, cinders, and pumice. The Surface Mining Control and Reclamation Act of 1977 introduced some environmental protections. This act regulates coal mining to prevent coal from entering groundwater. Coal operations must receive a permit with the goal being to prevent groundwater from being contaminated by toxic minerals.

In recent years there has been a renewed interest in changing the Mining Act. Many argue that the West has been settled and it is time to stop subsidizing miners. Some basic themes behind the proposed changes include charging fair market value for use of federally owned lands, changing the claim-patent system to a permit system, and making changes to the current claim-patent system (incrementalism).

On May 25, 1993 the Senate passed bill S.775, the "Hardrock Mining Reform Act of 1993". This industry-supported bill would maintain the right to patent, while making the requirements to mine Federal lands more strict and costly. The major provisions of this bill would include a $25 fee for each claim located, and a $100 annual maintenance fee per claim. The bill would also impose a 2% royalty on the value of minerals measured at the mouth of the mine, subtracting the costs of mining. To patent the land it would be necessary to pay fair market value (surface value, excluding mineral value) for the land. Environmental protections are addressed by requiring any operation that disturbs the surface more than minimally to file a plan of operations in accordance with all Federal and state environmental laws. A financial guarantee, such as a bond, would have to be posted to guarantee that reclamation would be completed.

On November 18, 1993 the House of Representatives passed bill H.R.322, the "Mineral Exploration and Development Act of 1993". This bill, supported by environmental interests, would restrict access to Federal lands, significantly increase the cost of mining, and eliminate the right to patent. This bill would impose a $25 fee for claims, and impose a $200 annual maintenance fee on new claims. Claims would also be increased from 20 acres to 40. A royalty of 8% on the net smelter return value of new claims, subtracting the cost of smelting/refining and transportation to the smelter/refinery would be imposed. This bill would also eliminate the right to patent, and rights to use the land would cease once mining activity was stopped. Environmental protections in this bill are similar to S.775, requiring claim holder to restore the land to a condition capable of sustaining the same activities that it could before mining started.

Both of these bills passed, but the House and the Senate were unable to resolve the differences between the two bills. Since these bills were passed, numerous other bills have been introduced, including H.R.357, H.R.1580, S.504, S.506, and S.639. All are similar to H.R.322 and S.775, differing mostly in the amount to charge for maintenance fees and royalties.

Issue Analysis

Our country’s Dominant Social Paradigm (DSP) was the main reason that the 1872 Mining Act came to pass. During the 1800’s there was the widespread belief in Manifest Destiny, that is, the belief that the domain of the United States should extend from coast to coast. This is directly tied to one of the aspects of our DSP, the belief in growth and progress. During the 1800’s an incentive was needed in order to get people to move westward. The Mining Act, along with other policies of the time, was a direct result of this need. These policies of government giving land away were used to promote the growth and progress of the United States. The belief in laissez-faire capitalism also played a role in shaping the original law. The original law as written imposed few restrictions on the actions of miners.

The role of the Federal government in passing the original Mining Act was to promote westward expansion. One hundred and twenty five years later the perceived
role of the government has changed. The West is now populated, and there is no longer a need to promote this westward expansion. The appropriate role of the government at this time is to protect the environment and to preserve our resources for the benefit of future generations. The Federal government should impose standards for the use of the land, as well as standards to ensure the usefulness of the land once it has been mined.

Throughout the history of the Mining Act and other mining laws we can see a very good example of incrementalism. Over the last 125 years there have been many minor changes to the mining law, with no major changes. Even the current legislation being argued consists of many small tweaks to the existing laws, when it actually may be necessary or more practical to completely overhaul the system of mining laws. The current legislation being considered would change the permit and holding fees and allow the Federal government to retain ownership of public lands. It would not take away the general public’s right to freely prospect and mine federally owned lands.

When the Mining Act was passed ecological issues were not a consideration. In 1872 the environment was just another resource to be plundered for the glory of Western civilization. The waste water that pollutes rivers and streams near mines and the fact that mining significantly changes the face of the landscape are two significant environmental problems associated with mining. The original mining act makes no provisions regarding these two issues. According to the U.S. Bureau of Mines, 12,000 miles of rivers have been polluted due to mining activities. There are more than 550,00 abandoned hardrock mines. The Mineral Policy Center estimates the cost of cleanup for the abandoned mines at $32 billion to $72 billion. Now the policy alternatives consist of legislation that would either guarantee the reclamation of the land while charging a small royalty on minerals mined, or a law that would charge a larger royalty, guarantees reclamation, and retains Federal ownership of the land.

**Viewpoints**

There are two main groups that have expressed opinions on the proposed Mining Act reforms. One group is the miners that would be affected by changes in the existing mining laws. The other group consists of environmental groups that wish to strengthen mining laws to help protect the environment.

Groups that champion the cause of miners obviously prefer making rather limited changes to existing mining law. The miners argue that increasing the costs associated with mining on Federal lands would force many of them out of business, cost jobs, and result in a wholesale migration of mining operations to foreign soils. Realizing that some change is inevitable, the mining industry has put its support behind Senate bill S.775. This bill would cost miners the least out of the many proposed plans, and still allow them to purchase Federal lands.

Miners argue that the reformation of mining law will have serious economic consequences. The estimates of the effect of mining reform by different groups vary widely. The Department of the Interior estimates that, based on an 8% gross income royalty, economic output would decrease by $88 million, there would be a job loss of 1,100, and the U.S. Treasurer revenues would be $133 million. The Evans Economic Institute estimates that over a ten-year period output would decrease by fifteen percent, 17,800 jobs would be lost, and revenues to the U.S. Treasurer would decrease by $505 million. It is plain to see that the economic effects of mining law reform are not very clear.

Environmental groups see the reform of mining law as a chance to protect the environment. By increasing costs, less publicly owned lands would be mined. In addition, many of the proposed bills contain wording that would require a bond guaranteeing reclamation to be posted before mining operations could commence. The bills that the environmentalists favor would also radically change the patenting system, allowing the Federal government to retain ownership of lands used for mining. The bill that most environmental groups favor is H.R.357 (nearly identical to H.R.322). This is the bill that raises costs to miners by the most, and that has many environmental safeguards.

Environmental groups also see the 1872 Mining Act as the “Granddaddy of All Subsidies.” Rebecca Wodder, President of American Rivers said that, “This obsolete law is corporate welfare at its worst. Under this fiscally reckless and environmentally irresponsible law, lands belonging to all Americans are sold to mining companies at the 1872 price of $5 an acre, about the price of a Big Mac and fries. Worse yet, the gold, silver and copper treasures underlying these lands are given away absolutely free with no return to the Federal treasury.” Sen. Dale Bumpers (D-AR) has called the Mining Act “a license to steal.” The government through patenting or royalty-free mining since 1872 has given $231 billion worth of mineral reserves away. Secretary of the Interior Bruce Babbitt signed a patent conveying title to 40 acres of Federal land with a gross value of about $85 million in gypsum on April 15, 1996. After which he stated that “It is especially ironic that, on the day that millions of Americans are asked to pay in a substantial portion of their annual earnings in income tax, the 1872 Mining Law still forces me to proceed with these mineral giveaways. The gross value of this patent equals the total tax contribution of 35,000 taxpayers making between $30,000-$40,000 a year.”

**Group Recommendation**

Based on the available data, the history of mining law, and the environmental impacts of mining, our group has come up with a set of recommendations for a new mining law that we believe is fair to the interests of all...
parties. We have tried to protect the environment while keeping mining a profitable enterprise. This law would not present an undue financial burden to miners, protect the environment, and retain Federal ownership of mined lands. The recommended changes to the Mining Act are as follows.

Change the patent system so that the title to the mined land reverts back to the Federal government after mining operations are completed. This change would allow mining interests to claim exclusive usage for a block of land while mining operations take place. Once mining operations cease, and reclamation has been completed, the land would revert back to Federal control. We believe that this compromise would appease both mining and environmental interests. Claim size would be increased to 40 acres. Fair market value without regard to mineral deposits would be charged for the use of the land. In addition, a $100 per year holding fee, per claim, should be imposed while the land is in use. This value could be adjusted for inflation every 5-10 years.

Impose an 8% royalty on the net smelter returns produced from a claim. This amount would be imposed after reasonable costs associated with transportation and smelting/refining has been deducted. This money would not present an undue financial burden to miners. This amount would also not be as difficult to calculate as a royalty would on the value of minerals at the mouth of the mine. This royalty would serve as compensation to the general public for use of publicly owned lands, and could be used to finance the reclamation of lands previously damaged by mining activities.

Another provision of any new mining law should be the requirement that a reclamation bond be posted before mining activities commence. Before being issued a permit to mine, miners would draft a plan for action detailing how they would meet all Federal clear water and air standards. The bond posting would guarantee that once mining was completed the land would be restored to its previous condition so that it could be used for the same activities that it could before it was mined.

We also believe that the Secretary of the Interior should have the power to deem any land excluded from mining activities. There exist lands that, because of their natural beauty or historical significance, should not be damaged by mining. By giving this power to the Secretary of the Interior we hope to ensure that those lands that should fairly remain untouched will do so. This would make the choice of what lands to protect less politically sensitive.

Taken together, these proposals form the heart of a new mining law. These proposals strive to fair to the interests of all parties involved, while retaining the spirit of the original Mining Act. That is, free access to Federal lands for the purpose of prospecting for and mining hardrock minerals. By implementing these proposed changes a new source of revenue could be provided to help repair the damage caused by mining in the past.

**Conclusion**

It is obvious that the Mining Act of 1872 is outdated. Modern times require a modern law that reflects what we now understand to be fair land usage. Those that use publicly owned lands should reimburse the public for the profit that is made from the lands. On the other hand, mining must remain a financially viable activity, or we will not have a source of minerals in our country. We hope that by highlighting those issues that merit attention, people will better understand those issues that affect mining policy.

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