

Public Lands Foundation

Position Statement: 2010-18

Mining Law of 1872

September 11, 2010

Executive Summary

The Public Lands Foundation (PLF) advocates the reform of the 1872 Mining Law to eliminate some of the exclusive ownership and use rights that are granted to mining claimants, to substitute some mechanism other than patenting to provide appropriate tenure for mine development, to obtain fair return of royalties to the public and to reclaim the land to the extent possible so that other uses may be made of the land, and to provide that future proposed mining operations be subject to the same environmental and land use planning considerations as are required for other uses of federal public lands.

Background

The Mining Law of 1872 was one of a number of public land laws passed by Congress in the late 1800's to encourage settlement, development, and private ownership of the public domain lands in the western United States. These laws enabled citizens to claim, settle on, and ultimately acquire title to the federal lands after performing specified development activities.

By the late 1900's, most of the arable and forested lands in the West had either been appropriated into private ownership or reserved into National Forest, Park and Wildlife Refuge Systems, and most of the public land disposal laws, like the Homestead Act and the Desert Land Law, had been repealed. However, the Mining Law of 1872 remains in effect, giving citizens the right to claim, settle on, develop mineral resources, and acquire title to public lands in the National System of Public Lands administered by the Bureau of Land Management (BLM) and in the National Forests administered by the U. S. Forest Service.

Both agencies have developed surface management regulations with strong bonding requirements that help curtail unnecessary surface disturbance, and there are other federal and state mining and environmental laws that govern mining and reclamation of lands when mining has ceased. However, the 1872 Mining Law still gives priority to mineral development over other public uses and environmental concerns on these public lands.

Discussion

The Mining Law of 1872 has enabled private citizens and the mining industry to find, evaluate, and develop the mineral resources on the public lands, and the federal mineral resources continue to be vital to the economy of the nation. During the past 175 years, the easily discovered mineral deposits on or near the surface have been found and developed. Exploration and development of mineral resources at great depths below the surface have commonly required major investments of time and money.

The federal agencies spend huge amounts of money to describe and evaluate the surface

resources on the public lands, but the federal government relies primarily on private industry to evaluate the federally owned subsurface mineral estate. Historically, large areas of federal public lands have been withdrawn from the operation of the Mining Law because of potential conflicts between mining and important surface resources. Commonly these withdrawals have been made with little consideration of the mineral potential of the public lands, but withdrawing the land from mineral entry has been the only way to protect surface resources from the priority that the Mining Law of 1872 gives to mineral development.

Mining Law activities over the years have produced both legal and illegal uses of the public lands resulting in significant mineral production in many areas and unnecessary and damaging surface disturbance in others. Today, with the increased public recreation use of the public lands, and the high level of public environmental concerns, the exclusive right which the Mining Law provides for the discovery and development of locatable minerals on public lands poses many distinct and sometimes unique management problems. Many proposals have been made for revising the Mining Law of 1872 to provide that all natural surface and subsurface resources on the public lands be considered, planned for and managed in a uniform manner so as to produce maximum public benefit, including a fair monetary return to the public. However, no significant changes have been made in recent years to the Mining Law of 1872.

Fair return to the public has been a longstanding issue with the 1872 Mining Law. The Law authorizes citizens to claim public lands, remove minerals without paying any royalty to the government, and have the right to buy the land for \$5 per acre for lode claims or \$2.50 per acre for placer claims. These 1872 ground rules helped settle and develop the West, but they are out of date with current economics, mining industry procedures on private lands, and environmental concerns.

Because of the concerns and controversies over the land value issue, Congress, in 1994, ordered BLM to put a moratorium on issuing mineral patents and receiving new mineral patent applications. This moratorium was effective on October 1, 1994 and continues to this day. The moratorium applies only to the mineral patent process; it does not prevent the location of new mining claims, or mining operations on existing claims.

In the early and mid 1900s there were major amendments to the Mining Law of 1872:

- The Mineral Leasing Law of 1920 and its amendments removed coal, oil and gas, chlorides, and various other non-metallic minerals from the operation of the Mining Law, and made these minerals on federal lands subject to lease from the General Land Office, now BLM.
- In 1955, Public Law 167 further amended the Mining Law by removing common varieties of sand, stone, gravel, pumice, and cinders from the operation of the Mining Law, and made these mineral materials subject to sale by the BLM.

Both of these mineral leasing and mineral material sales programs are subject to the environmental review and land use planning procedures that BLM applies to all other natural resource uses on the public lands. These procedures have enabled industry to develop the federal leasable and saleable mineral resources in ways that protect other surface resources, and provide a fair financial return to the public. It is time for Congress to apply these same ground rules to the development of the publicly-owned metallic minerals which are still subject to the 1872 Mining Law.

There needs to be reform of the 1872 Mining Law to eliminate some of the exclusive ownership and use rights that are granted to mining claimants and to provide for the environmental review and land use considerations that the BLM and other federal agencies use

in evaluating other proposed public uses of the federal lands. The Congress amended the 1872 Mining Law in the 1920s and the 1950s to accommodate the fuel and construction needs of those eras. It needs to amend the Mining Law again in this decade to accommodate the environmental concerns of current times.

PLF Position

1. The Public Lands Foundation advocates the reform of the 1872 Mining Law to eliminate some of the exclusive ownership and use rights that are granted to mining claimants, and to provide for consideration of other resources, resource uses, public needs and environmental concerns on the public lands.
2. The PLF acknowledges that many valid mineral entries exist on the public lands, many are being developed as intended by the Mining Law, and many involve significant investments of time and money. The PLF believes that these commitments and investments need to be recognized in the reform process.
3. The PLF specifically recommends the following actions in the reform process and subsequent management of mineral and other resources on the public lands.
 - A. Develop a fair transition process for gradually eliminating the patenting of valid mining claims, recognizing previous investments made by claimants, thus returning the mined public land to the public for other needs and uses.
 - B. Recognize the need to provide a substitute mechanism for patenting to provide an exclusive right to mine in order to assure appropriate tenure for mine development interests to secure necessary financing and to maintain control of the mineral to be extracted for the life of development. Also provide authority for the Bureau of Land Management to convey title to the surface when deemed to be in the public interest.
 - C. Establish a process of eventually reaching a fair return of royalties to the public, recognizing the past costs of claimants.
 - D. Assure the due diligence of claimants to proceed with the development and extraction of the minerals in a reasonable time period and the return of the land to other valid uses following reclamation of the land to the extent feasible.
 - E. Provide that future proposed mining operations be subject to the same environmental and land use planning considerations as are required for other uses of federal public lands.

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