

MAY 2009

## Waiting for Mining Reform 137 Years and Counting...

The newest communications marvel was the telegraph. “Rapid transit” meant the steam locomotive. The most recent U.S. census had counted just over 38 million Americans – nationwide. And on May 10, 1872, the 18<sup>th</sup> President signed “An Act to promote the Development of the Mining Resources of the United States.”

Since then, the United States has changed dramatically, as has the mining industry. But the law that governs mining on public lands remains nearly identical to the bill signed by President Grant.



- Hundreds of millions of acres of public land are still “free and open to exploration and purchase.”
- Fortunes in gold, silver, copper and other metals are still transferred from the American public to miners and giant corporations – without compensation.
- The “right to mine” takes precedence over other public needs, including recreation, habitat preservation and watershed protection.
- The law still calls for the forced sale of public lands to miners at 1872 prices.
- And the primary law on hardrock mining remains silent on environmental protection, while federal taxpayers are paying for cleanup of many abandoned mine sites.

For years, the Mining Law of 1872 has prompted intense debate but emerged nearly impervious to change. Critiques of the law and calls for reform echo through the decades:

***The Mining Law “has a history of the most frequent, vexatious, costly, and damaging litigation.”***

1880, First U.S. Public Lands Commission

***“the sooner amendments are made...the better it will be for the mining industry.”***

1884, California District Court

***“The period when laws of this character were needed ... is past.”***

1934, Report from President Franklin D. Roosevelt’s National Resources Board

***The law is “no longer...effective.”***

1941, Harold Ickes, Secretary of Interior

***“I would hope that such revisions ... will be accomplished without undue delay.”***

1949, President Harry S. Truman

***The Mining Law and associated laws “not only directly impair the public interest, but often obstruct private mineral exploration and development.”***

1952, The President’s Materials Policy Commission (the Paley Commission)

***“...the most important piece of unfinished business on the Nation’s natural resource agenda is the complete replacement of the Mining Law of 1872.”***

1969, Stewart Udall, Secretary of Interior

***“...the public should receive a fair return...”***

1974, Comptroller General of the United States

***This is the “only law that puts the land use decision entirely in the hands of the developer.”***

1974, Senator Lee Metcalf, D-MT

***The Mining Law does “not adequately consider nonmineral resource values.”***

1981, Council on Environmental Quality

***“The Mining Law of 1872 Needs Revision.”***

1989, United States General Accounting Office

***“Further delay exacts a heavy price on both the environment ... and on the economic health of the mining industry.”***

1994, Governor Cecil D. Andrus (D-ID) and Governor Dan Evans (R-WA)

***“... reasonable mining fees and Federal royalties would benefit all ....”***

1999, Governor Kenny C. Guinn, R-NV

## **A New Opportunity**

In 2009, for the first time in more than a decade, two serious proposals for Mining Law reform have been introduced in Congress. And, in a significant break from the past, each of the bills is championed by the Chairman of the Congressional committee of jurisdiction. The bills differ, but both **H.R. 699, from House Natural Resources Committee Chairman Nick Rahall (D-WV)**, and **S. 796, from Senate Energy and Natural Resources Committee Chairman Jeff Bingaman (D-NM)**, would make important and long-needed changes to the Mining Law. Both bills:

- Retain the “location” system for staking claims but, for the first time, collect a royalty for minerals taken from public lands.
- Use royalties and claim fees to fund cleanup of abandoned mines.
- Require permits for exploration and mining.
- Make it clear that reclamation obligations include restoration of water resources.
- Address the protection of irreplaceable and vulnerable natural areas. The House bill puts certain areas, including national forest roadless areas, off-limits to new mining claims. The Senate bill sets a deadline for studies to determine areas that should be closed to new claims.

**On this 137<sup>th</sup> anniversary of the Mining Law, reform may finally be at hand.**