

Gold versus Coal: A Six Billion Dollar Difference

The 1872 Mining Law, which gives away mineral resources and sells off public lands, governs the mining of “hardrock” minerals such as gold, copper, and uranium on western public lands. These policies, crafted over a century ago, do not apply to coal taken from public lands.

Coal mining on public lands is governed by the Mineral Leasing Act that provides for resource extraction by site-specific lease. Under this law, which has been amended numerous times since its passage in 1920, the federal government retains ownership of the leased lands and recoups a royalty that is shared with the states.

There are striking contrasts in the details of the two laws, including the dramatic bottom line: From 1920 to 2000, royalties collected from coal mined on federal lands totaled \$6,061,942,562.¹ In contrast, no royalties have ever been collected under the 1872 Mining Law.

Mining on Public Lands	
Coal: The Mineral Leasing Act	Hardrock Minerals: The 1872 Mining Law
Where?	
Public lands are available for coal leasing after they have been evaluated by a land use planning process. Planning must consider competing uses, protection of critical environmental areas, application of unsuitability criteria, and the views of other government agencies.	Nearly 400 million acres of western public lands are open to hardrock mining activities. Land is withdrawn from mining entry by exception, rather than opened by exception. The position of some mining advocates, including the Northwest Mining Association, is that “[l]and use plans cannot be used to prevent mineral activity” and do not override the interests of mining claimholders. ²
There is no general right to prospect; permission is required for exploration in specific areas.	Self-initiated mining exploration is allowed on any “public domain” land not withdrawn through Executive Office or Congressional action.
Lease agreements are available for mining on specific public lands. The Department of Interior may initiate leasing of a specific area or respond to a request for lease of a specific tract.	The “right to mine” applies to “public domain” land, subject to permitting issued under authority of Federal Land Planning and Management Act. These authorities to prevent “unnecessary or undue degradation,” have not been used for denial of major mines. According to the Northwest Mining Association and others, the Mining Law would not allow for a “mine veto” even in cases of “substantial irreparable harm.” ³

¹ See U.S. Department of Interior, Minerals Management Service, Minerals Revenue Management, Commodities Statistics for onshore coal at <http://www.mrm.mms.gov/Stats/comm.htm>.

² Comments of the Northwest Mining Association on Proposed Rule on Surface Management Regulations, letter to the Bureau of Land Management dated December 28, 2001.

³ *Ibid.*

Coal: The Mineral Leasing Act	Hardrock Minerals: The 1872 Mining Law
Who?	
Adult citizens of the United States. Aliens may hold interests in coal leases only by stock ownership in U.S. corporations, and only if the laws of the lessee's country allow similar privileges to U.S. citizens. An alien may not obtain an interest in a coal lease by owning a portion of a limited partnership.	Non-U.S. citizens may be claimholders if they declare an intention to become citizens. Foreign corporations hold and work hardrock mining claims through creation of U.S. subsidiaries. According to analysis of data from the Bureau of Land Management, at least 94 companies from 10 foreign countries have staked claims on 1.2 million acres of public lands under the 1872 Mining Law. ⁴
How?	
Whether by special request or Department initiation, lease arrangements are subject to competitive bids.	Mining claims are staked on a "first-come, first-mine" basis. A valid claim entitles the claimholder to "exclusive possession" of the surface for mining of hardrock or "locatable" minerals.
Lease terms are set for 10 to 20 years but may be renewed and may be altered on renewal.	There are no time limits on the claims themselves; a claim may be held indefinitely with payment of a yearly fee or, for small miners, completion of yearly "assessment" work.
Coal lessees must meet diligent development requirements, initiating production within 10 years of lease issuance and producing "commercial quantities" of coal each year thereafter.	Claimholders are not subject to due diligence requirements. Large numbers of claims held for many years have never been mined. Some mines have been placed into "care and maintenance" or "temporary cessation" for many years.
There are limits on acreage per lessee.	No limits on the number of claims per claimholder.
Compensation?	
The government collects royalties of 8% of gross for underground mining; 12.5% for surface mining	The government gives away hardrock minerals, collecting no royalty.
Annual rental payments are required; no bids are accepted for less than "fair market value"; because royalty amounts are set by statute, a "bonus bid" is generally the deciding factor in lease awards.	No rental payments are required.
What protections?	
Leased land stays in public ownership.	A claimholder may "patent" or buy land for 1872 prices: \$2.50 per acre for "placer" claims; \$5.00 per acre for "lode" claim. This provision is still in the law but the practice has been put on hold through yearly appropriations riders since 1995.
Leases may be conditioned to assure consistency with land use plans and environmental protection. Coal mining on public lands and elsewhere is regulated under the Surface Mining Control and Reclamation Act.	The 1872 Mining Law is silent on environmental protection; mine operation plans are approved under other authorities of BLM and Forest Service. No mine-specific statute governs the mining.
The Department of Interior must approve transfer of leases.	Claims may be transferred or sold, offered on eBay and elsewhere.

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⁴ See "Who Owns the West," Environmental Working Group's analysis and re-hosting of BLM LR2000 database at <http://www.ewg.org/mining/report/index.php?stab=US&chapter=3>.