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Hardrock Mining on Federal Lands

It's time to amend the 150-year-old law that has shortchanged taxpayers billions of dollars.



For 150 years, the production of hardrock minerals on federal lands has been governed by the General Mining Law of 1872. Under the law, companies are not required to pay a royalty to taxpayers from the sale of publicly owned minerals including gold, silver, copper, and uranium extracted from federal lands. This approach not only differs from federal management of oil, gas, and coal development, which are charged royalties as high as 18.75 percent, but it also prevents accountability regarding the volume and value of public resources extracted from federal lands.

Without reform, mining companies will continue profiting from gold, silver, and other hardrock minerals removed from federal lands every year while taxpayers lose out on billions of dollars in much-needed revenue.

A 150-Year-Old Law

Congress enacted the General Mining Law of 1872 to encourage new settlement and economic development in the West. The law allowed any citizen to claim the rights to extract and sell valuable minerals found on federal lands not otherwise closed to mining. Over time, Congress instituted separate systems for managing the development of specific resources on federal lands, including energy resources like oil, gas, and coal, and basic mineral materials like sand, gravel, and stone. Private interests are now required to compensate taxpayers for the value of these resources, through a royalty or direct purchase contract.

The hardrock minerals not covered by subsequent laws, known as “locatable minerals,” are still subject to the 1872 Mining Law. There is no comprehensive list or definition, but these minerals include gold, silver, copper, uranium, lead, zinc, barite, molybdenum, and fluorspar, among others. For their development, the Department of the Interior (DOI) charges companies a set of fees for establishing and maintaining a mineral claim but does not recover any portion of the value of the extracted minerals. These fees include a minimal location fee currently set at \$40/claim, a one-time processing fee of \$20/claim, and a maintenance fee charged to individuals or companies with 11 or more claims currently set at \$165/claim, or \$165/20 acres for placer claims.

Taxpayers Lose Billions on Gold, Silver, and More

According to annual budget justifications, DOI has collected approximately \$686 million in mineral fees over the last decade (Fiscal Years (FY) 2012-2021). In those same years, the limited data available indicate that at least 850



metric tons of gold, worth approximately \$38.4 billion, was extracted from federal lands in Nevada. Taxpayers received nothing from the sale of this gold. Had a royalty of just five percent been imposed, DOI could have collected nearly \$1.9 billion on behalf of taxpayers.

Hardrock gold mine on federal land in Nevada.

Source: GAO-16-165

DOI does not track the quantity or value of gold extracted from federal land in other states, or the production of any other hardrock mineral, rendering it impossible to estimate the total value of minerals taken from taxpayers without compensation. In 2020, the Government Accountability Office (GAO) found that there were 20 hardrock operations authorized under the leasing system used for acquired federal lands at the end of FY2018. In FY2018, these operations produced 143,000 tons of hardrock minerals and generated \$8.7 million in federal royalties. In comparison, 728 hardrock operations were managed under the claim location system from the Mining Law of 1872 at the end of FY2018. Total mineral production from these operations is unknown, and taxpayers received \$0 in federal royalties.

In addition to avoiding royalties, hardrock mining companies are allowed to reduce their federal taxes through the Percentage Depletion Allowance and the ability to expense (write off) exploration and development costs. Together, these tax breaks represent a subsidy to the industry worth at least \$200 million per year, according to the Joint Committee on Taxation (JCT).

A Legacy of Liabilities

On the other side of the ledger, federal agencies continue to spend billions of dollars to reclaim hardrock mine sites on federal land that have been abandoned. The 1872 Mining Law provided only a skeletal structure for federal management of hardrock mining and did not include provisions requiring the cleanup of federal land after mining activities cease. DOI adopted regulations in 1981 to impose reclamation (clean-up) requirements on mine operators. However, these regulations failed to prevent further mine abandonments, and DOI has subsequently struggled to secure adequate financial assurances to guarantee future reclamation.

Abandoned mine lands are often hazardous and sometimes toxic. DOI, EPA, and other federal agencies reclaim these sites to mitigate threats to human health and safety. In 2020, GAO identified 140,000 abandoned hardrock mines on federal land, but there could be another 390,000 abandoned mine features that haven't been counted yet. GAO also reported that four federal agencies had spent \$2.9 billion to reclaim abandoned hardrock mines on federal lands between 2008 and 2017. That work addressed only a fraction of sites in need of reclamation, and through these agencies, taxpayers continue to spend hundreds of millions of dollars a year to clean up liabilities created by the hardrock mining industry.

Reform Proposals

Over the years, various legislation has been introduced to amend the General Mining Law of 1872. Some measures would have converted federal management of hardrock mining to a leasing system similar to federal coal leasing. Others would have modified the mining claim process and permanently ended mineral patenting on federal land. Almost all, however, have sought to address the great hardrock giveaway by imposing a royalty on hardrock mineral production ranging from 8% to 12.5% for new hardrock operations. Although some legislation made it past committees and bipartisan legislation passed the House, none has been enacted into law.

Time for Mining Reform

The General Mining Law of 1872 has cost taxpayers tens of billions of dollars in lost revenue, and billions more in mine reclamation spending. The law's enduring authority, coupled with lucrative tax breaks represents a continuous drain on the federal budget and a blatant giveaway to the hardrock mining industry.

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