



MINERAL  
POLICY  
C E N T E R

*Protecting  
Communities  
and the  
Environment*

**\*\*\* TAXPAYER PROTECTION AND CORPORATE ACCOUNTABILITY \*\*\***

The various laws that govern hardrock/metal mining in the United States combine to give away billions of taxpayer dollars to the mining industry. Historically, the environmental and taxpayer communities have opposed separating fiscal mining reform from environmental mining reform, reasoning that the environmental aspects would never pass without the fiscal aspects as a “sweetener.” We would like to discuss rethinking that philosophy, and potential planks of a proactive fiscal reform platform. Described here are five potential remedies that could be addressed in combination or separately:

1. End patenting;
2. Increase and make permanent the claims maintenance fee;
3. Implement a royalty;
4. Repeal the percentage depletion allowance;
5. Establish a ‘bad actor’ mining prohibition.

**END PATENTING**

Under the General Mining Law of 1872 mining claim holders can purchase, or patent, mining claims on public land for between \$2.50 to \$5 per acre (depending upon claim type). Since the law was passed, mining interests have patented an area roughly equivalent in size to the state of Connecticut containing mineral values exceeding \$245 billion.

**Status**

Congress passed a patenting moratorium in 1994 as an amendment to the Interior Appropriations bill, and has renewed the moratorium annually since then. We have no reason to expect that moratorium would not be renewed for FY2003. Hundreds of patent applications filed before 1994 were grandfathered. Interior estimates that the last of the grandfathered patents will likely be completed (sold) by the end of FY2002.

In the 1<sup>st</sup> session of the 107<sup>th</sup> Congress, Rep. Nick Rahall (D-WV) introduced a bill (H.R.1085) that would make permanent the patenting moratorium, as well as the claim maintenance fee (see below). The reform bill that Rep. Rahall will likely introduce would end patenting as well.

**INCREASE AND MAKE PERMANENT THE CLAIMS MAINTENANCE FEE**

In 1992, Congress enacted an annual maintenance, or holding, fee of \$100 per claim per year for unpatented mining claims. Before the claims holding fee was introduced, claim holders only had to show \$100 worth of “improvement” on each claim each year, leading to widespread land fraud. After enactment, the maintenance fee cut the total number of mine claims in half in the first year. Although the original legislation called for the fee to be adjusted for inflation after 5 years, it has never been increased. The fee generates the only public revenue associated with hardrock mining: about \$25 million/year. At present, all revenue from the fee goes to administration of the mining laws.

**Status**

The FY2002 Interior Appropriations bill renewed the claim maintenance fee, at \$100 per claim per year, through 2003.

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H.R.1085 would make permanent the claim maintenance fee at the present \$100/claim/year rate. The comprehensive mining reform bill would double the claim maintenance fee and then double it again to \$400 if no mining occurs within 5 years of filing a mining claim. Without adjustment for drop in claims associated with increased fee, a doubled fee would return approximately \$50 million/year.

### **IMPLEMENT A ROYALTY**

Under the 1872 Mining Law, mining companies extract minerals from publicly owned lands (almost \$1 billion worth in 2000) without paying royalties to the federal government. All other extractive industries (including coal, oil and natural gas) pay between 8 and 12.5% of the value of minerals extracted from federal lands. On average, hardrock mining companies pay each other about a 5% royalty when mining each other's deposits. In 2000, an 8% royalty would have returned \$79 million on hardrock minerals.

#### **Status**

No stand-alone royalty legislation has been introduced in the 107<sup>th</sup>. None has been introduced since the 105<sup>th</sup>. The comprehensive mining reform bill would contain at least an 8% royalty.

### **REPEAL THE PERCENTAGE DEPLETION ALLOWANCE (PDA)**

The PDA allows mining firms to deduct a fixed percentage from their corporate income taxes to compensate for the reduced value of a mine as mineral production progresses. There are two problems with the PDA: (1) on public lands, the mining industry didn't pay anything to obtain the mineral deposit; (2) because the percentage is fixed, over the life of the mine the company can actually deduct more from their taxes than the mineral deposit is worth. The FY2002 Bush budget classifies the percentage depletion allowance as a "tax expenditure" and estimates that it costs the public about \$300 million/year, or \$1.3 billion over 4 years.

#### **Status**

Senator Feingold has introduced or been willing to introduce legislation repealing this tax break every year for the past 4 or 5 years.

### **ESTABLISH A 'BAD ACTOR' PROVISION**

Under current law, land management agencies must permit a mine no matter the environmental track record of the company involved. Many of the major players in the U.S. mining industry are currently in violation of the Clean Water Act. Also, corporate officers from bankrupt mining companies that have abandoned mine cleanup to taxpayers have resurfaced in new companies proposing new mines. A 'bad actor' provision would require regulators to consider a mine operator's past performance before permitting it do business. A 'bad actor' could be an operator that has:

- Violated a federal law, such as the Clean Water Act;
- Defaulted on a reclamation bond;
- Violated the terms of a previously issued permit.

#### **Status**

Section 510(c) of the Surface Mining Control & Reclamation Act (SMCRA), which governs coal mining, contains a bad actor provision. The comprehensive mining reform bill would also contain a bad actor provision.