



## 1. **MINING: Reform of 1872 law won't save Western splendors** (04/16/2009)

**Scott Streater, special to E&E**

The Cabinet Mountains Wilderness Area in northwest Montana is home to a stunning array of rolling alpine meadows and picturesque mountain lakes. Lawmakers have long recognized its beauty. The 94,272-acre wilderness area inside the Kootenai National Forest was one of the first to be designated under the Wilderness Act of 1964.

But this pristine region is in danger of being altered forever.

The Revett Silver Co., has proposed building a massive hardrock mine in the Kootenai National Forest, on the edge of the wilderness area. Using horizontal drilling techniques, they plan to burrow as much as 3 miles underneath the wilderness area to remove an estimated 10,000 tons of copper and silver ore per day.

The mining would generate millions of tons of waste rock, which would be piled 300 feet high on a 340-acre area next to the Clark Fork River.

Numerous critics have lined up against the project, from local government leaders and community activists, to Tiffany & Co. They fear some of the tunnels could collapse and destroy alpine lakes and streams. They also worry the mining activity would drive away grizzly bears and that toxic metals from the waste rock could pollute the Clark Fork River that is home to the endangered bull trout.

Yet, the mine has received initial federal approval thanks to a 19th century mining law that the federal government has interpreted to trump almost all other environmental laws and that the mining industry has used to extract billions of dollars worth of gold, silver and other precious metals from public lands.

"We always hoped the federal government would recognize the critical habitat value of the area and step in and protect the grizzly bears and bull trout, but they have done the exact opposite," said Jim Costello, Montana coordinator for the Rock Creek Alliance, a citizens group fighting the proposed mine. "They have sold them out to corporate interests."

Federal regulators say they understand concerns about habitat destruction and water pollution. But they feel powerless to do much because of the current mining laws.

"We really don't have much say-so," said Paul Stantus, the forest engineer at the Kootenai National Forest. "We have to deal with the law that's there."

### **Ending a 'sweetheart deal'**

For lawmakers and activists, the proposed mine in the Kootenai National Forest is exhibit A in the ongoing battle in Washington, D.C., to reform the 1872 hardrock mining law to reflect today's environmental and economic realities.

The law allows virtually any U.S. citizen or company to stake claim to minerals on federal lands across the West. The mining industry, unlike coal and oil companies, is not required to pay production royalties or rental fees for the use of public land, and there are few environmental standards or requirements governing cleanup.

Decades of mining have left tens of thousands of abandoned mines as open sores on the landscape, and many are leaching toxic metals like lead and mercury into waterways. The problem is so extensive that U.S. EPA estimates it will cost taxpayers as much as \$50 billion to completely clean up the mess.

Yet the thought of saddling taxpayers with the full cleanup cost riles both environmental groups and fiscal watchdogs who believe industry should bear much of the burden.



Critics say congressional efforts to reform the 1872 hardrock mining law are insufficient to protect wild and scenic lands like Montana's Cabinet Mountains Wilderness Area from the harmful effects of mining. Photo courtesy of the Rock Creek Alliance.

"It is absolutely preposterous to have taxpayers pick up the tab for the environmental mess the mining companies ought to be accountable for," said Jill Lancelot, senior adviser and co-founder of Taxpayers for Common Sense.

Congress is considering legislation from Senate Energy and Natural Resources Chairman Jeff Bingaman (D-N.M.) that, among other things, would allow the Interior secretary to impose royalty fees on new mining production to help pay for abandoned mine cleanup (*E&E Daily*, April 4). A similar measure from House Natural Resources Chairman Nick Rahall (D-W.Va.) is moving through the House.

And the \$787 billion American Recovery and Reinvestment Act, signed by President Obama in February, includes \$105 million in direct spending by the National Park Service, Bureau of Land Management and Forest Service to clean thousands of abandoned hardrock mines on public lands (*Land Letter*, Feb. 26).

But congressional reforms face stiff opposition. The National Mining Association argues that imposing royalty fees on hardrock

mining companies using public land could cripple the industry during the ongoing economic recession.

"At a time when we are struggling to put people back to work you would be sending the wrong signal if you enact legislation that could eliminate some of the highest-wage jobs in states like Nevada and Colorado," said Luke Popovich, a spokesman for the National Mining Association. "It strikes me as odd to be taking an ax to the industry at this time."

Critics scoff at such arguments, saying the benefits of mining law reform outweigh industry concerns. They note the U.S. mining industry is prospering during the worldwide recession because most hardrock mining that takes place on federal land is for gold, and the per-ounce price of gold is near an all-time high.

"To me, that undercuts the claim that these are tough times and we can't make the industry pay more," said John Leshy, who served as the Interior Department's solicitor during the Clinton administration and is now a law professor at the University of California. "The truth is they can't mine anywhere else in the world for free like they do on the federal lands in the U.S., and that's a very sweetheart deal."

Meanwhile, the initial approval of the proposed mine in the Kootenai National Forest is being challenged in federal court.

The nonprofit Western Mining Action Project has filed a federal lawsuit challenging a portion of the Forest Service's environmental impact statement dealing with water quality. Earthjustice, meanwhile, has challenged the Fish and Wildlife Service's biological opinion of the project that dismisses mining effects to wildlife.

"This mine proposal is the poster child for why we need reform," said Tim Preso, an attorney in Earthjustice's Northern Rockies office in Bozeman, Mont. "These kinds of decisions where you have overwhelming natural values that should not be destroyed by mining is why we need to reform the law to forbid miners from mining wherever they want. This is not a good place for mining."

## Legacy of trouble

When Congress passed the General Mining Act of 1872, it sought to incentivize settlers to expand the budding American empire to the Western frontier, which in the decade following the Civil War was still a wild and unforgiving place. The plan worked, as thousands of prospectors took up free mining claims on federal land.

Jeff Parsons, a senior attorney with the Western Mining Action Project, which represents citizens and tribal groups on mining and pollution issues, said the law met its intent, and then some. "You could argue the West has been settled," he said, "and this effort no longer needs to be reflected in public law."

What cannot be argued is that the nation's 19th- and 20th-century quest for mineral wealth came at a huge environmental cost. Today, the Government Accountability Office estimates at least 250,000 abandoned mines dot the Western landscape, many of them former hardrock mines.

Such mines are a particular concern because the abandoned waste rock is usually left in open-air piles where it is exposed to sun, wind and rain. Over time, mineral sulfides in the waste rock cause the leaching of heavy metals, which in turn accumulate in streams, creeks and rivers. The U.S. Bureau of Mines estimates that 12,000 miles of rivers in the West are contaminated with metals from mining operations.

EPA spent roughly \$2.2 billion between 1998 and 2007 working on mine cleanup projects across the country, while BLM and the Forest Service spent a combined \$259 million to target mine pollution on public lands. Congress allocates about \$30 million annually to the two agencies to target roughly 50 abandoned mines each year.

The abandoned mines are also a safety concern, especially on public lands where hikers and tourists risk falling into mine shafts or tunnels. Last July, the Interior Department's inspector general harshly criticized the the National Park Service for its lax approach to the issue ([E&ENews PM](#), July 25, 2008).

And in a more recent study, the Interstate Mining Compact Commission, which represents environmental regulators in 24 mining states, found that nearly one in five abandoned mines posed a safety threat, said Greg Conrad, the commission's executive director.

"A decade, two decades ago, people would dismiss the environmental and safety concerns by saying these mines are distant from where people live," said Velma Smith, manager of the Pew Campaign for Responsible Mining. "The fact is they're getting less and less distant from where people live, where people go for recreation, and where municipal governments obtain drinking water, and that's why it grows more and more urgent to modernize this law."

## Royalty fees: How high?

The two bills currently in Congress could generate hundreds of millions of dollars in new revenue to help address the toxic legacy of abandoned hardrock mines.

Rahall's bill, introduced in January, would impose a royalty fee of 4 percent for existing hardrock mines and a higher 8 percent fee for newly permitted mine projects. An unspecified portion of the money generated by these royalties would be placed into a fund to help pay for abandoned mine cleanups.

Though no analysis has been done to show how much money the royalty fees would raise, Rahall's bill is a carbon copy of one he introduced in 2007, and a Congressional Budget Office review of that bill estimated almost \$500 million in revenues over a 10-year period.

NMA's Popovich said an 8 percent royalty on new mines would be the highest in the world and "would certainly be traumatic to our industry and to the world economies we operate in."

Popovich said the industry would be amenable to a 4 percent royalty fee, which is more in line with the bill offered by Bingaman. The Senate measure would establish royalty payments of between 2 and 5 percent and only on new operations. It also would authorize the Interior secretary to set royalty rates for different minerals.

But even at the higher 8 percent, hardrock miners would still pay less in royalties than the coal or oil and gas industries, whose government-imposed royalty fees are between 8 and 12.5 percent, according to Leshy, the University of California law professor.

Mine reform advocates favor the Rahall bill, mostly because it would raise more money for abandoned mine cleanup. But they credit Bingaman for bring the measure before the Senate, which last considered such a bill a decade ago.

"Here we have a Westerner, a guy from a state that has mining, who understands that mining is a part of the Western economy," said Smith, the Pew Campaign for Responsible Mining official. "But yet, he has put forward a new bill to regulate mining in a new way. There's a lot of positive stuff in that bill."

## Lessons from coal, oil and gas

But Mark Squillace, director of the Natural Resources Law Center at the University of Colorado, says both bills are flawed because they do not address the fundamental problem faced by places like the Kootenai National Forest, where mining companies may be willing to pay big money -- both in royalties and production costs -- to access the minerals under the Cabinet Mountains wilderness.

In addition to royalties, Squillace said Congress and the Obama administration should adopt a mineral lease program like that long used by the Minerals Management Service, BLM and other agencies regulating coal, oil and gas exploration and production. Under such programs, suitable parcels are identified ahead of time, an auction is held, and the highest bidder wins the lease. If an area is deemed unsuitable for drilling, it is simply excluded from auction.

"It's not a radical idea," Squillace said.

Yet no one is considering such an option. While both congressional bills contain language that would permanently remove "environmentally sensitive" lands from mining claims, critics say such measures are excessively vague and leave too much authority to the discretion of political appointees.

Rahall's bill includes a provision that would allow the Interior Department's secretary to arbitrarily remove a publicly owned parcel from mining claims if the activity would cause "undue degradation," regardless of how far along it is in the planning process. But Squillace said the provision is unfair to industry.

"This could create a situation where the mining companies have planned a project, even conducted an EIS, then at the end of the day the federal government says, 'No you can't come in and mine the land,'" Squillace said. "Well, that doesn't sound fair to most people. It doesn't sound fair to me."

"I'd like to see reform, but maybe somewhat differently than what has been discussed lately," he said.

Costello, the Rock Creek Alliance member fighting the proposed mine in the Kootenai National Forest, agreed more must be done and that royalty payments alone will not solve the problem of mines expanding into sensitive areas.

"There are other Cabinet Mountains wilderness areas out there," Costello said. "And without reforms, these problems will continue."

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