

# This 150-Year-Old Mining Law Hurts Taxpayers and the Environment

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A view of copper smelters and a mine in Butte, Mont., in 1910. Credit... Getty Images

By Martin Heinrich and [Chris Wood](#)

Senator Heinrich, a Democrat, represents New Mexico in the U.S. Senate. Mr. Wood is the president and chief executive officer of the conservation group Trout Unlimited.

In 1872, seven years after the end of the Civil War, Ulysses S. Grant was president, John Wesley Powell was completing his second expedition down the Colorado River, and Congress was dispatching another party to map areas of the Southwest. Most Western territories were years away — or, in New Mexico’s case, decades away — from statehood.

That same year, a time of Manifest Destiny and westward expansion, Congress passed the General Mining Law of 1872, which helped build the nation but also contributed to widespread damage to America’s lands and waters. That law still largely governs the mining on public lands for gold, silver, lithium, nickel and other “hardrock” minerals.

A suite of proposals now before Congress that one of us, Mr. Heinrich, is sponsoring, would bring the government’s oversight of hardrock mining into the modern era. These bills should be approved without delay.

As the law now stands, taxpayers don’t get a penny in royalties for the hardrock minerals mined by private companies on public land. And because it was not [until the 1970s](#) that mine operators were required to “reclaim,” or restore, the land once they were done with it, the destructive consequences of the extraction of those minerals remain today in scarred landscapes and polluted rivers.

Some [140,000 remnants](#) of these mines are known to exist; some 22,500 pose or may pose risks to humans or wildlife from the pollution they spew. Hundreds of thousands more may be out there. An analysis by Mr. Wood’s organization, Trout Unlimited, of 2015 data from the Environmental Protection Agency found that an estimated [110,000 miles of streams](#) in the lower 48 states are contaminated with heavy metals or acidity. Abandoned mines are a significant source of this pollution. Many of these streams are in watersheds that supply drinking water for communities and provide habitat for trout and salmon.

Significant investments are required to develop a mine, and because of that, the mining industry needs stability and certainty to produce the critical minerals the United States requires. But Congress should balance those needs with the conservation of public lands and waters. Cleaning up a mess is always more expensive than preventing it.

The law today [allows](#) any person or company to explore for minerals on public lands and stake a claim for a modest \$2.50 to \$5 an acre, giving them a “right to mine” if it contains a deposit that can be extracted profitably. This legal framework ties the hands of land management agencies. Courts have ruled that the federal government cannot deprive claim holders of economically viable uses of valid mining claims. These provisions are vestiges of a past when landscapes were exploited without concern for the consequences.

If the proposals before Congress become law, it would establish a new process for tribal leaders to petition federal land managers for greater protections from the impact of mining on public lands with cultural or spiritual significance. Moreover, those land managers could deny mining permits if they determine that scientific, cultural or environmental resources would suffer “substantial irreparable harm.”

Congress can also help solve the problem of abandoned mines. History has shown the way. In 1977, Congress imposed a fee on the [production](#) of coal to clean up abandoned mines in Appalachia and parts of the West. By September 2020, the Abandoned Mine Land Fund had [collected \\$11.6 billion](#).

Last year, the bipartisan infrastructure act created the first-ever abandoned hardrock reclamation program. But no money was allocated to pay for it. To get the money, a fair royalty for hardrock mining on public lands would be established by the proposed legislation, one like the royalties established long ago for coal, oil and gas. The royalties would be used to clean up these abandoned mine sites.

The problem is so large that the federal government cannot reclaim the worst of the sites without help. But states, counties, nonprofits and other potential partners in reclamation efforts are hamstrung by federal laws that treat volunteers who want to help clean up abandoned mines as if they were the very polluters who created the messes.

An example is the effort to clean up the Lilly/Orphan Boy mine near Helena, Mont., one of several abandoned mines on Telegraph Creek in the Little Blackfoot watershed. Under a partnership between the Montana Department of Environmental Quality and Trout Unlimited, toxic mine waste was removed from a floodplain. But the partners could not legally treat the acidic pollution flowing directly from the shuttered mine into the creek without taking on liability for a mess they didn't create. As a result, though the mine was shut down in 1968, the pollution continues.

That's why [another of the proposed measures](#) would provide states, counties and nonprofit groups with carefully prescribed liability protections, allowing these public-private and nonprofit partnerships to begin working on the root of the problem by directly treating toxic discharges.

As the United States pursues a transformation to renewable energy, responsible mining has a crucial role to play. The pandemic revealed major flaws in our reliance on foreign supply chains, and Russia's war on Ukraine has highlighted the need for secure domestic sources of critical minerals that are the raw materials of clean power generation, electric vehicles and other emerging technologies.

At the same time, we need to invest a fair share of today's gains into cleaning up the lasting consequences of more than a century of mining on our rivers and streams, fish and wildlife and communities that depend on clean water and healthy landscapes.

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