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# CHANGING AN ANACHRONISM: CONGRESS AND THE GENERAL MINING LAW OF 1872

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Few have argued that Congress should act with haste—fewer still have argued that Congress does act with haste. Changing the General Mining Law,<sup>1</sup> the statute which controls private prospecting and mining activities for metalliferous or hardrock minerals on Federal public lands, has been an issue before the Congress practically since the law was passed in 1872. But Congress has always proceeded with great deliberation with respect to changing this law.

Some would say that it is well that Congress has been unwilling to take quick action on changing the Mining Law. There is little doubt that the provisions of the law provide an incentive for the exploration and development of the mineral resources of the public lands. Over 500,000,000 acres of public lands are open to prospecting and these include some potentially mineral-rich areas. There is also little doubt that the United States needs minerals to maintain its present high standard of living. There is an intuitive appeal to the proposition that our high standard of living is inextricably tied to incentives for the development of minerals, both energy minerals and hardrock and industrial minerals.

Similarly, the national defense posture of the United States is often cited in support of the need for incentives to assure reliable domestic supplies of minerals. Following World War II, ready access to the public lands encouraged the discovery of uranium reserves that were needed to build the atomic warhead stockpile. A restrictive policy regarding access to the public lands, the argument goes, would work against a strong national defense posture. If there is merit to these arguments, then perhaps Congress has been wise in resisting changes in the 1872 Mining Law.

Despite the past unwillingness of Congress to make major changes in the Mining Law, it appears that Congress is coming close to making some significant changes. Even so, Congress is moving more slowly than some had expected it would. In a series of articles on the mining law in the *St. Louis Post Dispatch* in December, 1971, William K. Wyant, Jr. said, "High noon is approaching for the 1872 mining law, which has contributed richly to the mining industry, created a few millionaires and many paupers, and enlivened the legends of the Old West. The shoot-out in Congress will be next year." The 1972 session of Congress is now history, and there was no

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1. 30 U.S.C. §22 (1964).

shoot-out, although there were some initial tryouts for the big shoot-out. The 93rd Congress, on the other hand, may well see some changes in the mining law.

There have, of course, been some changes since 1872 in the laws concerning public land minerals. The most significant was the passage in 1920 of the Mineral Leasing Act,<sup>2</sup> which provided an entirely different system for the development of oil, gas, coal, potash, phosphates, sulphur, and sodium. And other changes, too, have been made, especially to those dealing with conflicts posed by finding minerals developable under both the 1872 and the 1920 Laws on the same tract and by the use of timber and other surface resources on mining claims.

### SETTING THE STAGE FOR CHANGE

There has been no lack of proposals over the years for changes in the 1872 General Mining Law. But the process of change that now seems to be underway got its real start with the passage of the 1964 National Wilderness Areas Preservation Act<sup>3</sup> and the establishment of the Public Land Law Review Commission. What to do about the status of the 1872 Mining Law on wilderness areas was one of the tough questions that Congress faced when it gave statutory recognition to some 9 million acres of wilderness on the public lands and assured the establishment of additional wilderness areas over a period of time. Most of the land that was placed in wilderness status had always been open to mining. Mining claims had been filed in many areas, some lands within the outside boundaries of the wilderness areas had been patented and were in private ownership, and active prospecting was going on. Recognizing these facts, Congress vacillated between total and immediate elimination of mining on the one hand, and no prohibition of mining at all by leaving the wilderness areas it established in the 1964 Act open to prospecting and mining until 1983 on the other. At the same time, it passed legislation to create the Public Land Law Review Commission,<sup>4</sup> whose task it was to review all of the laws, including the mineral laws, that govern the disposal, use, and management of the Federal public lands. Only a thorough review of all of the public land laws and their many interrelationships, it was argued, would provide the kind of foundation that would be necessary to rationalize the existing hodge-podge of policies for the public lands to balance the various kinds of use of these lands.

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2. 30 U.S.C. §181 (1964).

3. 16 U.S.C. §§1131-1136 (1964).

4. 43 U.S.C. §1391.

The Public Land Law Review Commission, made up of six Senators, six Congressmen, six Presidential appointees, and a chairman, who also happened to be Chairman of the House Interior and Insular Affairs Committee, worked for five years. Its report to the Congress and to the President, presented in June, 1970, proposed major revisions in practically all public land laws and policies.<sup>5</sup> If these recommendations were to be adopted in their entirety, almost every public land law—some three or four thousand of them—would undergo some change. Some of the changes would be dramatic. Others would simply ratify changes in practice that had been made long ago.

As expected when the Commission was created, the fate of the 1872 General Mining Law was one of the key issues it faced. And it was one of the remarkably few topics on which the carefully constructed agreement on recommendations by the Commission failed to achieve unanimity.

#### AN ALTERNATIVE TO THE 1872 LAW

Shortly before leaving office in January, 1969, Secretary of the Interior Stewart Udall issued a plea to the Public Land Law Review Commission.<sup>6</sup> Calling the 1872 Act "an outright giveaway of vital national resources," he proposed that the Commission recommend substituting a leasing act along the lines of the 1920 Mineral Leasing Act. Congress had made oil, gas, coal, phosphate, potash, sodium, and sulphur subject to leasing in 1920 because the 1872 Law was deemed to be ill suited to development of minerals that were either fugitive, such as oil and gas, or generally found in large bedded formations, such as the others placed under the 1920 Act.

Secretary Udall's proposal was hardly a new one. Bills to place the locatable minerals under the 1920 Act previously had been introduced from time to time. And it was recognized by the Public Land Law Review Commission well before the Udall letter that one of the major alternatives to the location-patent system of the 1872 Law that it would have to consider for locatable minerals was a leasing system. But Udall's proposal did help to direct attention at this decision and it helped to identify some of the important issues in the Commission's consideration of the 1872 Mining Law. Several provisions of the Law deserve mention.

Ready access to Federal public lands for prospecting and mineral development is the feature of the Mining Law that is most strongly

5. U.S. Public Land Law Review Commission, *One Third of the Nation's Land* (1970).

6. Letter from Stewart L. Udall, Secretary of the Interior, to the Public Land Law Review Commission, January 15, 1969. For an accompanying analysis of the 1872 Mining Law, see Udall, *The Mining Law—An Antique in Need of Repeal*.

defended by its supporters, and most strongly attacked by its detractors. The tradition of the prospector with a burro roaming the public lands at will in his search for minerals is practically as old as the public domain itself. Combined with other provisions of the Mining Law—the lack of government control over the actions of prospectors and miners on public lands and the possibility of a valuable discovery with no payment to the government for the removal of minerals—ready access to the public lands provided the kind of incentive the mining industry said was necessary to encourage mineral discovery and development. Incentives for the development of minerals were wholly consistent with the early public land laws. Granting public lands to homesteaders, states and railroad companies and opening the lands to prospecting were all part of a national policy of settlement and development.

While other aspects of this early policy for public lands had been discarded or changed, the use of public lands to encourage mineral development continued. The rationales most often used cite the importance of minerals to the Nation's economy and to national defense. But the ready access of public lands to prospecting has led to other problems in recent years. The ease with which the Mining Law can be subverted by those whose purpose does not involve bona fide mining activities had led to many problems in the administration of the Law. And the free and open entry to the public lands for prospecting results in inevitable conflicts with other uses of the public lands that are gaining in importance as the western United States has become increasingly developed.

The 1920 Mineral Leasing Act differs in important ways from the 1872 Law. It gives the administrator of the public lands control in determining which public lands are to be offered for lease. It allows for conditions in leases to assure minimum impacts on other resources and uses. And it provides for royalty payments to the Federal government and the allocation of leases on the basis of competitive bidding. Many believe the 1920 Act to be a reasonably modern and workable law, while the 1872 Law is believed by many to be a hopelessly inadequate way of meeting today's conditions and a giveaway of valuable resources.

The fact that there was a 1920 Mineral Leasing Act, and that its provisions offer a clear alternative to the provisions of the 1872 Law obscured to an extent some of the issues of public lands mineral policy that faced the Public Land Law Review Commission. Both those who favored and those who opposed major changes in the 1872 Law often seemed to base their pleas to the Commission on the assumption that "the" alternative to the 1872 Law was a leasing system with all the

features of the 1920 Leasing Act. This was a confusing element in the Commission's deliberations and has continued to be a confusing element in the debates that have followed publication of the Commission's report. The mining industry was especially troubled by the notion that a leasing system for locatable minerals—any leasing system—would inevitably bring to an end its ready and open access to the public lands.

### THE COMMISSION'S RECOMMENDATIONS

In its deliberations, the Commission's approach to the Mining Law was to isolate the various elements of prospecting and mining and to deal with each element on its merits. Thus, whether or not the public lands should be open to prospecting and mining was considered as an issue separate from the kind of payment that should be required or the kind of control that should be exercised over the use of surface resources. In this way, the Commission was able to recommend policies that would lead, if adopted, to substantial changes in the 1872 Law, but without totally scrapping elements of the 1872 Law in favor of the 1920 Mineral Leasing Act.

At the heart of the Commission's recommendation for a new mining law for hardrock minerals was the idea that the public lands should continue to be open to prospecting. Recognizing that prospecting now causes considerable damage to surface resources and to environmental values, the Commission agreed that a permit specifying control measures to be taken by the prospector should be required whenever machinery that would damage the terrain was to be used. However, the Commission took pains to assure that issuance of such permits be a ministerial, rather than discretionary, function of the land management agency.<sup>7</sup> The traditional free and open access to the public lands for prospecting was to be retained although some limitations were to be placed on what the prospector could do to the surface of the land.

On other elements of an overall policy, the Public Land Law Review Commission leaned more toward the present requirements of the Mineral Leasing Act. Royalties on mineral production and allocation of rights to development on a competitive basis whenever mineral values were known to be present, features that sound very

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7. U.S. Public Land Law Review Commission, *supra* note 5, at 127. In the report, the recommendation was: "Upon receipt of the required notice of location, a permit should be issued to the locator, subject to administrative discretion exercised within strict limits of congressional guidelines, for the protection of surface values. While an administrator should have no discretion to withhold a permit, he should have the authority to vary these restrictions to meet local conditions." The Commission's concern with agency control over prospecting on the public lands is evident.

much like provisions in the Mineral Leasing Act, were proposed. Title to the surface was to remain in Federal ownership, a significant departure from the 1872 Law. Although title to ore bodies would pass to the prospector-miner as long as production continued, title to the minerals would revert to the Federal government once mining ceased. And the conditions under which minerals were to be developed once a discovery was made, and under which ownership to the ore body would pass to the prospector, would be spelled out in a development contract between the prospector and the Federal government.

In view of the adamant opposition of the mining industry to any substantial changes in the 1872 Mining Law, the Public Land Law Review Commission came a long way in setting the stage for a new mining law. And even then, the most important dissent in the Commission's report argued for an even further departure from the present policy. Four commissioners, only one of whom was a member of Congress, argued in a lengthy footnote that the 1872 Mining Law should not be just modified, but rather should be replaced entirely with a leasing system much like that of the 1920 Mineral Leasing Act.<sup>8</sup>

On release of the Commission's report no one seemed quite as pleased with the recommendations on minerals as the Commission itself. The mining industry remained opposed to any significant dismantling of the 1872 Law. On the other side, the conservation community continued to argue that present location-patent system should be replaced with a leasing system—presumably the same system as contained in the 1920 Mineral Leasing Act. The careful balancing of interests and goals that the Commission believed was represented in its recommendations for a new policy for hardrock minerals was apparently unconvincing.

#### A LEGISLATIVE STRATEGY

The Commission's recommendations were, of course, only recommendations and, as such, required responses by Congress or the responsible Federal agencies if they were to have any effect on mining practices on the public lands. The Chairman of the Commission, Congressman Wayne N. Aspinall of Colorado, occupied a pivotal position as chairman of the House Interior and Insular Affairs Committee in determining the response of the 92nd Congress.

From the moment the PLLRC report was released and all of its

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8. Id. 130. The dissent proposed modifying the 1920 Act for hardrock minerals by placing some limits on discretion in restricting prospecting on public lands, by protecting leases from *ex post facto* regulation, and by authorizing competitive royalty bidding as well as competitive bonus bidding.

many recommendations were made public, Chairman Aspinall took the position that the process of changing public land policy had to be orderly if it was to occur at all. To Aspinall this meant that before his Committee would take up changes in the mining laws, the grazing laws, and other major laws governing the disposal or management of public lands, there must first be agreement on some basic principles that would be used as the foundation on which such changes can be built. To do this, he introduced in April, 1971, H.R. 7211,<sup>9</sup> a bill to establish policies for the public lands. The guiding policy statements in this bill were all derived from the Public Land Law Review Commission report. Aspinall's bill was eventually reported out by the Interior and Insular Affairs Committee, but it was never brought up for floor action, in large part because of opposition by conservation groups. Whether or not some version of a public land policy bill similar to H.R. 7211 will ever be passed by the Congress is uncertain. But Aspinall's strategy for revising public land laws by attempting to establish a set of general policies before taking up major changes in existing laws is of interest as it might have applied to minerals. Three of the policy statements in H.R. 7211 involved considerations that will be of particular importance as Congress works on changing the 1872 Mining Law.

First, H.R. 7211 would have required that "the United States receive fair market value for the use of the public lands and their resources, except that monetary payment need not represent fair market value where Congress has identified public benefits from the use of public lands and resources that offset the need to return fair market value to the United States." Leasing of oil and gas rights under the 1920 Mineral Leasing Act and the 1954 Outer Continental Shelf Lands Act,<sup>10</sup> as well as the sale of rights to public land timber, have long been on a basis that approximates fair market value. However, the 1872 Mining Law has permitted the extraction of minerals from Federal lands and the patenting of valuable ore bodies without payment other than a nominal fee to the Federal government.

Payment for prospecting rights and for mineral production will be an important consideration as Congress works on a new mining law. The House Interior Committee in the working of H.R. 7211 has signalled possible Congressional interest in modifying the usual requirement that the Federal government receive fair market value by suggesting that Congress may identify offsetting public benefits. Howard L. Edwards of The Anaconda Company, a major copper producer, states in his testimony concerning public lands and

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9. House of Representatives, 92nd Congress, 1st Session.

10. 43 U.S.C. §1334 (1964).

mining bills before the Senate Committee on Interior and Insular Affairs on September 22, 1971, that “. . . it is in the interest of the Nation to encourage development of minerals because of national and international economy and political considerations. Since competitive bidding operates to discourage minerals development, and to change the economics so that less ore is available, then the benefits that accrue to the Nation from such direct payments must be weighed against the indirect losses of tax revenue and domestic mineral reserves.”<sup>11</sup> These are arguments that will surely be repeated when Congress considers changing the present 1872 Mining Law.

A second policy statement in H.R. 7211 would have required that “regulations for the protection of areas of critical environmental concern be promptly developed; and any permit, license, or other authorization to use, occupy, or develop the public lands contain provisions authorizing revocation or suspension of such permit, license, or other authorization upon violation of any regulation issued with respect to the enforcement of this Act or of any applicable state or Federal air or water quality standard.” The Mining Law does not now require a permit for prospecting and mining on the public lands. However, the Public Land Law Review Commission argued that there should be such a permit and that it include whatever standards and requirements that are to be imposed upon the holder of the permit. Practically all other uses of the public lands except some kinds of outdoor recreation now require a permit in which conditions of use can be imposed.

The House Interior Committee in reporting out H.R. 7211 probably did not think of these requirements in Federal permits only in terms of prospecting and mining on the public lands. But there is probably no other use on which the impact would be greater than prospecting and mining. The potential for damage to surface resources and to environmental values is probably greater for prospecting and mining than for other uses of public lands. And the lack of control over prospecting and mining now means any controls would have an impact.

A third policy statement in H.R. 7211 suggests that “any person permitted to engage in extractive or other activity likely to entail significant disturbance to or alteration of the public land to be required to have, as a condition of such use, a land reclamation plan and a performance bond guaranteeing such reclamation . . .” Here is a proposal reflecting a recommendation of the Public Land Law Review Commission that is clearly directed at prospecting and

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11. *Hearings on Legislation to Revise the Public Land Laws Before the Senate Committee on Interior and Insular Affairs*, 92nd Cong., 1st Sess., 285-286 (1971).

mining. Even without other controls on mineral development on public lands, implementing an acceptable plan for reclamation of prospecting and mining pits and shafts would go far to ameliorate environmental damage. This, in fact, is the approach being taken to strip-mine reclamation in various states and in proposed Federal legislation.

Chairman Aspinall's strategy for implementing the recommendations of the Public Land Law Review Commission thus provided for a first step toward revision of the 1872 Mining Law. At the same time, this first step did not specifically deal with repeal or revision of the 1872 Law.

### THREE PROPOSALS FOR CHANGE

While Aspinall's Committee concentrated on his public land policy bill, three proposals to change the Mining Law were introduced in the 92nd Congress. The first, introduced in several bills that differ somewhat, would substitute a leasing system like that of the 1920 Mineral Leasing Act for the present Mining Law. A second proposal represents the mining industry's idea of how the recommendations of the Public Land Law Review Commission should be implemented. The third version of a new mining law is the Administration's proposal, which is even closer to the recommendations of the PLLRC than the industry's version. These three proposals establish the range of alternatives that will be considered by the Congress. The key features of each proposal deserve identification.

The leasing proposals would give the public land management agencies control over which lands would be open to prospecting and mining and over the conditions to be imposed in the leases. Further, a leasing law would provide for royalty payments and competitive bidding for leases. The leasing proposals differ in the extent to which they spell out specific conditions under which lands would be leased. In this regard, the 1920 Mineral Leasing Act is quite specific with respect to minimum royalties and conditions under which competitive bidding will take place and less specific with respect to the conditions under which leases will be issued. This reflects the major concerns of the Congress at the time the Act was passed.

The mining industry's proposal would revise the 1872 Mining Law without drastically revising its structure and provisions. It would retain the mining location provisions of the 1872 Act, would continue the policy of ready access to the public for mineral prospecting, and would permit the patenting of mining claims. In addition, royalty payments to the Federal government would be required, but only on the net value of mineral production from mining claims prior to

patenting. Thus, the bulk of the minerals found on public lands would not be subject to royalties because most finds are patented before intensive production starts. Control by Federal agencies over environmental degradation resulting from prospecting and mining activities under this bill would still be minimal.

This proposal would eliminate some of the outdated provisions of the 1872 Law with respect to size and shape of mining claims, extralateral underground rights, and description and location of claims. These are matters that have in recent years caused problems for the mining industry. But the proposal would do little to cope with serious objections to the 1872 Law regarding the lack of payment to the Federal government for valuable mineral properties, the lack of control over environmental damage, and the patenting of rights to the surface of mining claims.

The Administration's proposal falls in between the leasing proposals and the mining industry's proposal. It would keep the basic location system of the 1872 Law, but would provide for some degree of control over prospecting and mining by requiring a license or exploration development and production permit before starting commercial prospecting. The license or permit would be the vehicle for imposing controls over environmental damage as well as the vehicle for giving the prospector exclusive rights for prospecting in a specified area.

The Administration would also provide for a royalty on the gross value of production of minerals developed under the terms of prospecting permits, as well as from minerals on lands that have been patented to the permittee under this proposal. Patents would be granted only to the mineral deposit, although the bill also would grant leases for necessary use of surface areas in conjunction with mining. Rights to the mineral deposit would be returned to the Federal government when the deposit is exhausted or abandoned. Competitive bidding would be used to allocate permits whenever the Secretary believes the land contains commercially valuable minerals or two or more permit applications are filed for the same land on the same day. Much the same public lands as today would be open to prospecting under the Administration proposal, but the Secretary would be given authority to remove lands from application of the proposed act where the administering agency determines that there is a higher use for the land. Obviously, the drafters of this proposal had carefully read the recommendation of the Public Land Law Review Commission.

#### THE UPCOMING DEBATE

When Congress comes to its "shoot-out" over these various

proposals, some of the debate will almost surely be over the distinction between the leasing and location-patent systems. Just as in the deliberations of the Public Land Law Review Commission, this distinction will obscure some important elements of a minerals policy. Already the Administration proposal, which would result in a system close to that of the Mineral Leasing Act, is characterized, perhaps to appeal to the mining industry, as a bill to "reform the mining laws." Some features of the present location-patent system would be retained, but many features of the present leasing system would also be adopted. This was also the thrust of the recommendations of the Public Land Law Review Commission. Arguments over the merits of a leasing system as contrasted with a location-patent system should not, however, be allowed to obscure the basic issues that are involved. And, as in many policy issues, the facts for resolving the issues are in doubt.

There is little doubt about some of the facts. The public lands of the western United States have been the source of many important mineral discoveries in the United States. Over 90% of the Federal public lands are in the eleven contiguous western States and Alaska. Mines in these states in 1965 produced over 90% of the Nation's copper, over 95% of the mercury and silver, about 50% of the lead, and 100% of the nickel, molybdenum and potash. Most of these mineral deposits were on Federal public lands when first discovered. The minerals produced are important to the Nation's economy and their production contributes substantially to employment and national income.

But the relation of these facts to the specifics of public land policy is not at all clear. The General Mining Law of 1872 is said to encourage prospecting and mining, but the extent to which this encouragement derives from the lack of a requirement for paying royalties on production and the extent to which it derives from a lack of control over environmental degradation is debatable. The mining industry argues that the public lands must all be open to prospecting if the industry is to be encouraged to search for minerals. But ready access to public lands may skew prospecting efforts away from opportunities on private lands that may be even more attractive. And encouraging mining on the public lands may also discourage the development of substitutes for minerals in limited supply.

These are important aspects of a national minerals policy. If it is desirable to encourage the discovery and development of domestic mineral resources, it may be desirable that no distinction be made between categories of land ownership. The problem of focusing a discovery and development policy on particular minerals is also

important. If present public policies encourage exploration for minerals on public lands, then the only focus on particular minerals derives from the expected occurrence of minerals on the public lands as compared with other lands. If, as seems to be the case, the public lands have a relatively high potential for the discovery of copper, molybdenum, mercury, silver, and nickel, then a policy to encourage discovery and development of public land minerals is necessarily directed at these minerals and not at others. Perhaps this emphasis corresponds to national needs and priorities. But perhaps it does not and, unless it does, encouraging mineral development by providing ready access to public lands may divert efforts from development of more important minerals.

These arguments are speculative, but no more so than the argument that the 1872 Mining Law lessens the Nation's dependence on foreign minerals and therefore is vital as a national defense measure. Good data on which to base an assessment of such assertions simply do not exist.

Similarly, assessing the revenues that might accrue to the Federal government should the Mining Law be revised to provide royalty and bonus payments and the impact of such payments on mineral development is difficult. The proposed changes in the Mining Law, with one exception, would set minimum royalties as a percentage of the gross value of production at the mine. The proposals that would authorize competitive bidding would leave the determination of whether competitive conditions exist to the Secretary of the Interior. Thus, the amount of royalties and bonus payments that would be paid would depend to an extent on the manner in which the Secretary would exercise his discretionary authority. More important, the possible reaction of the mining industry to royalties and competitive bidding for minerals is uncertain. If no other changes were made in the Mining Law, royalties and competitive bidding may have relatively little impact on the industry's view of public lands. But a requirement for payment for minerals along with other major changes in the Mining Law could have a major impact on the way in which the industry views prospecting on the public lands, in addition to which it could affect the production of minerals after a discovery has been made.

Controls on potential environmental damage would add costs to prospecting and mining activities on public lands. Such controls, however, are becoming increasingly common on private lands. The major impact of lack of controls on public lands may simply skew the focus of the mining industry's efforts away from private lands.

This lack of hard information is not likely to impede Congress

seriously as it deliberates a change in the 1872 Mining Law. In legislating public land policy, Congress is necessarily concerned with the broad thrust of statutes and has shown itself, perhaps more so in recent years, to be content with leaving the details of implementing policy to the land management agencies. In this context, the lack of hard and unambiguous data on which to base changes in the 1872 Mining Law is perhaps not a serious impediment to change.

Ultimately, the most interesting aspect of changing the 1872 Mining Law may be the extent to which Congress is willing to delegate authority for establishing specific regulations to the Secretary of the Interior. The mining industry's proposal would have Congress spell out in great detail the conditions for mining on public lands. The 1872 Law does this and, evidently, the mining industry believes this approach would favor its interests. The leasing proposals, on the other hand, would delegate broad authority for regulating mining on public lands to the Secretary of the Interior. Conservation groups favor this approach and apparently believe their interests can best be fostered through the land management agencies.

Chairman Aspinall's strategy of seeking to establish some general policies applicable to all uses of public lands would have provided a foundation for Congress to put greater direction into public land laws. It was an attempt to recapture to the Congress some of the authority that it has delegated in recent years. At the same time, it would have provided a basis for achieving some consistency among policies for use of the public lands.

As the 92nd Congress adjourned, Aspinall's strategy had apparently failed. Although the House Interior and Insular Affairs Committee reported a bill for a National Land Policy, Planning, and Management Act, which contained the public land policy provisions favored by Aspinall, the bill died without being brought to debate and vote on the floor of the House. It was evident as the Congress pressed for adjournment that passage of a bill by the House and working out differences with a Senate passed land use policy bill that had no public land provisions would be difficult and time-consuming.

During the early fall, Congressman Aspinall lost his primary bid for reelection to Congress and this, too, had its impact on the fate of his bill in the 92nd Congress, and probably in the 93rd Congress as well. An individual Congressman's interest in a bill, especially if he is a Committee chairman and has the respect of his colleagues, is usually a necessary condition for passage. Aspinall's primary loss very likely affected his ability to secure passage of his bill in the busy final days of the Congressional session. Power in Congress accumulates slowly, but erodes rapidly.

In the next Congress, it is unlikely that there will be a successor to Aspinall with his combination of authority and interests and his willingness to use a public lands policy act as a precondition to changing that anachronism—the General Mining Law of 1872. It was Aspinall who laid the foundation for change with his efforts to establish the Public Land Law Review Commission. And it was Aspinall who believed strongly that change in the Mining Law could be accomplished only by making it consistent with the rest of the body of public land laws. This was at the heart of his strategy.

The effectiveness of any legislative strategy is a function of timing and personalities. Both will be different in the 93rd Congress. Aspinall will not be Chairman of the Interior and Insular Affairs Committee and the report of the Public Land Law Review Commission will have lost some of its timeliness and impact. But the significant policy issues raised in the debate over public land policies in the 92nd Congress remain and these are the issues that are at the core of concern with the Mining Law.

Revising the Mining Law will come about only when someone in Congress decides the time is right to make the effort that will be necessary to change a law that has been essentially the same for 100 years. Perhaps his efforts will be eased by the existence of a public land policy act—one that has not yet been passed, but may yet grow out of the efforts initiated in the 92nd Congress. But whatever the foundation that has already been laid, revising the Mining Law will require a strategy and the expenditure of political capital, which carried Chairman Aspinall part, but only part, of the way toward this goal.