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The Mining Law

A Study in Perpetual Motion

John D. Leshy

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John D. Leshy



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A STUDY IN
PERPETUAL MOTION

JOHN D. LESHY

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This book is the product of RFF's Mineral Economics and Policy Program. It was edited by Samuel Allen and designed by Martha Ann Bari. The index was prepared by Florence Robinson.

Foreword

In making a study of the evolution of the 1872 Mining Law a highly entertaining as well as profoundly scholarly volume, John Leshy has wrought a major miracle. When I first encountered the draft manuscript, its hundreds upon hundreds of pages, of which footnotes and references alone took up some 40 percent, seemed forbidding. Yet it did not take long to discover that the road to be traveled was both a learned discourse by a law professor and, embedded in it, a history of the West, written from the vantage point of exploration for and production of minerals. As the reader discovers, the history of the West is no less wild and woolly when mining law is the focus than when cattle-rustling or the gold rush are the center of attention. The cast of characters may differ, but there are enough oddballs—politicians, judges, governors, and plain adventurers and hustlers of all sorts—in the West's mining history to make it highly enjoyable for the nonexpert to read this book much as one reads other books on "how the West was won." Only here it is not how it was won, but how often it was nearly lost; not to foreign invaders, but to manipulators of the law, and sometimes even to those who endlessly amended and interpreted the law.

These comments, I hasten to add, are not meant to ignore or detract from the enormous amount of research and evaluation that the author has devoted to the subject. They merely suggest that a "scholarly" venture need not be dry and turgid. All in all, it is a fair prediction that Leshy has produced the definitive book on the 1872 Mining Law.

That a law soon to be six-score years old should have survived to this day is perhaps a credit to its original framers. But it is also a result of the ingenuity with which subsequent generations have managed to coexist with rules they would have liked to see altered but abstained from touching for fear the whole edifice might come tumbling down. That John Leshy has captured the lore no less than

the law in his fascinating account, so as to satisfy both the legal mind and the student of American history, is no mean feat. Its comprehensiveness guarantees that any future attempt to rewrite or amend the Law—a safe prediction of things to come—will start off with Leschy's exposition. In addition, to many observers of the mineral scene the book will come as a highly welcome distraction from increasing lamentations over vulnerabilities in strategic materials, low metal prices, investment imbalances, foreign competition, and other ills that have befallen the domestic mining industry. If the industry has lived through 114 years of turmoil under a flawed law, perhaps it is more robust than we think.

Hans H. Landsberg
Joint Director,
RFF Mineral Economics
and Policy Program

July 1, 1986

Preface

This book could be subtitled “an affectionate discourse on the origin, implementation, evolution, and future of the Mining Law of 1872.” The idea for it was born of years of bemused observation of the Mining Law from the vantage point of various jobs that put me in relatively close contact with its workings. Like most who encounter it, I was amazed at its longevity, and marveled at how different the Law’s original vision was from modern mineral industry practices and contemporary federal land policy. I suspected there was a good story here, one that might be useful for its own sake, and that could along the way illuminate some of the more obscure corners of Western history, federal land and resource policy, and the relationship among various branches of government in making and carrying out policy.

Hobbies that turn into full-fledged professional endeavors have a nasty way of turning into obsessions, but I am grateful to my wife, Helen Sandalls, for helping me retain perspective, and for her patience and support. I benefited from able research assistance provided by a number of my students over the years, including Gloria Sturman, Kim Graber, Jane Nicoletti-Jones, Terry Jackson, Tom Bradley, Howard Kopp, Christopher Robbins, and Michael Golder. Karen Crile, Alice Fuhr, and Paula Gambill worked wonders in typing the manuscript. Rick Brown, Marianne Alcorn, Dick Nash, Sharon Firestone, Sandy McDaniel, Donna Larson, and Ed Cooper of the Arizona State University Law Library were able to produce the most arcane sources swiftly and with good humor.

I am also grateful to several reviewers of earlier versions of the manuscript, some anonymous, and some not. At the risk of slighting numerous people who provided helpful comments, I would especially like to thank Larry MacDonnell, Charles Wilkinson, and Mike Harvey.

Finally, I thank Resources for the Future for a grant that started off this project, Managing Editor Sally Skillings for her patience, and Samuel Allen for his many helpful editorial suggestions.

The references are generally current through May 15, 1986.

July 1, 1986

John D. Leshy
Tempe, Arizona

[T]here are many arts and sciences of which a miner should not be ignorant. . . . Lastly, there is the Law, especially that dealing with metals, that he may claim his own rights, that he may undertake the duty of giving others his opinion on legal matters, that he may not take another man's property and so make trouble for himself, and that he may fulfil his obligation to others according to the law.

—Georgius Agricola, *De Re Metallica* (1556)
(Herbert C. and Lou Henry Hoover translation, 1912)

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