



# MINING IN NEVADA: REWARDS AND RISKS

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We sometimes think of mining as a relic of Nevada history. Discovery of the Comstock Lode in 1859 allowed Nevada to achieve early statehood, and the 1900 discovery of silver in Tonopah likely kept Nevada from being demoted to territorial status. Today's mines are less conspicuous, but the industry is a significant contributor to Nevada's economy. In 2010, Nevada's gold mines produced 5.3 million ounces of gold, and the state was ranked third in world gold production.<sup>1</sup> Mining has accounted for 14 percent of jobs added to Nevada's workforce in the last 12 months, and the average annual salary for workers in the metal mining industry in 2012 was \$88,000.<sup>2</sup>

## Unpatented Mining Claims

Much of Nevada's mining takes place on unpatented mining claims. The Mining Law of 1872 allows a citizen of the United States (including any domestic corporation) to locate mining claims on the open public domain.<sup>3</sup> A lode claim is used to acquire land for "hard rock" mineral deposits, such as gold, silver, copper and molybdenum. The locator erects a location monument along the center of the claim and defines the four corners of a 1500- by 600-foot rectangle. The claim covers 20.66 acres, and there is no limit as to the number of claims that one person or company can locate. The claimant files location certificates and maps with the appropriate county and the Nevada state office of the Bureau of Land Management (BLM) within 90 days of

location. Thereafter, the claimant perpetuates the claim by paying a maintenance fee to the Nevada state office of the BLM by September 1 of each year and filing an affidavit in the county by November 1.<sup>4</sup>

The Mining Law of 1872 also allows location of placer claims for unconsolidated sedimentary deposits, such as gold in river gravels, and millsite claims, which are 5-acre nonmineral claims for surface development, such as ore piles and buildings.

A claim that is properly located and maintained gives the claimant the exclusive right to explore, develop and mine the minerals within the claim boundary. Upon achieving production, the mine operator will pay a net proceeds of mines tax to the state of Nevada; in 2011, the

state collected \$242,605,014 in mining taxes.<sup>5</sup> Mining companies pay federal income tax, but there is presently no federal royalty imposed on mining claims.

There is a unique element of risk associated with unpatented claims. If the federal claim maintenance fee is not made timely, the claim is immediately forfeited and becomes open to location by any rival claimant. In 2011, a mine operator failed to make its claim payments and the ground was located by a rival company. The matter is subject to ongoing litigation.

### Private Lands

Mining also occurs on private lands. These include grants made to the Central Pacific Railway following construction of the transcontinental railroad, fee lands granted to Nevada upon admission to statehood, patented mining claims and various land grants, including homesteads. These lands can be purchased or leased from the owner of record. Title to these lands is sometimes complicated by severance of the surface from the mineral rights, requiring the mining company to deal separately with surface and mineral owners. A typical mining lease will reserve a royalty on production to the owner, expressed as a percentage of net smelter returns (gross revenues less certain allowable deductions).

Until 1993, the owner of an unpatented mining claim could apply to the United States for a mineral patent, a deed transferring fee ownership of the property from the United States to private ownership. The patent process required evidence that the claim owner could mine, process and sell minerals at a profit under current economic conditions. Because of perceived abuses in the patenting process (and the extremely low purchase price of \$5 per acre), Congress suspended mineral patenting in 1993.

### State and Federal Mining Regulations

The location and acquisition of mining claims or fee lands is based on private initiative, but the state and federal governments have extensive control over mine operations. For unpatented claims, the BLM or Forest Service will serve as lead agency in developing an environmental impact statement and approving a mining plan of operations. For private lands, the Nevada Division of Environmental Protection (NDEP) has primary jurisdiction. Among other things, the agencies will identify impacts on surface and underground water, air quality, endangered species, cultural resources and community services. The permitting agency will require the operator to develop a reclamation plan and post a bond sufficient to cover all costs of reclamation and land restoration. The permit process for a large mine will take five years or more.

### Risks Associated with Mining

There are certain unusual risks in mineral development. Unlike oil drilling, in which results are almost immediately apparent, it takes years, even decades, to drill and delineate a mining property. During this time, laws and regulations can change significantly; for example, California has virtually prohibited open pit gold mining. Prices of labor and machinery can increase

significantly, and there are often shortages of skilled workers, including mining engineers and underground miners. Finally, the best mining plans are subject to world demand and market fluctuations. In the past 15 years, the price of gold has fallen to \$254 an ounce and risen as high as \$1,895 per ounce.<sup>6</sup> Mining is an industry founded on risk. ■

1. Personal communication with Tim Crowley, President of Nevada Mining Association, February 7, 2013.
2. "Nevada Mining Industry: Employment and Wages Update," Nevada Mining Association, [www.nevadamining.org/issues\\_policy](http://www.nevadamining.org/issues_policy) (October 2012).
3. For a more detailed discussion of the public domain, see Richard W. Harris, "Who Owns Nevada? An Introduction to Public Lands," *Nevada Lawyer* (July 2012).
4. For a more detailed discussion of this topic, see Richard W. Harris, "An Introduction to Mining Law," *Nevada Lawyer* (October 1999).
5. See web reference in Endnote 2 above.
6. "Interactive Gold Price Chart," World Gold Council, [www.gold.org/investment/statistics/gold\\_price\\_chart](http://www.gold.org/investment/statistics/gold_price_chart).



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