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The Mining Law: A Study in Perpetual Motion (Resources for the Future)

John D. Leshy

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In this highly entertaining as well as profoundly scholarly study of the 1872 Mining Law, John Leshy has produced both a legal treatise and a history of the West written from the vantage point of mineral exploration and production. The Mining Law illuminates some of the more obscure corners of Western history, federal land and resource policy, and the relationships among various branches of government in making and carrying out policy.
For more than a century the mining of hard-rock minerals in the United States has been carried out under this law, which was written to promote mineral development in the age of the pick-and-shovel prospector. It is the last important survivor of the great laws undergirding the westward expansion. The Mining Law has never been changed to reflect modern mining technologies or newer social values that question whether mineral extraction is the best use of the land and its resources. From its enactment, the Mining Law's inadequacies have given rise to illegal abuse, litigation, and patchwork regulation by federal agencies and judge-made law. Leshy explains how the law has survived by a combination of executive and judicial manipulation in the face of legislative paralysis. Today, as concern mounts about economic efficiency, government regulation, environmental protection, the rebuilding of the nation's industrial base, and competing uses of the land and its resources, the argument for reform of the law becomes compelling. The present law not only obstructs the very mineral development it was designed to promote; it may no longer be in the national interest. Certainly any future attempts to rewrite or amend the Law will start off with Leshy's exposition and analysis of its origins, operation, and implementation, and his detailed examination of the issues surrounding the law, its interpretation by courts and administrative agencies, and the attempts to adapt the law to changing conditions and social goals. Assessing the prospect for reform in today's political climate, he suggests arrangements regarding the law's reform that might be concluded by industry, small operators, and environmental protection advocates as well as creative measures that might be taken by Congress, the president, and the courts.

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