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Federal Authority and the Development of Corporate Mining, 1807-1847

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“Federal Authority and the Development of Corporate Mining, 1807-1847”
Patrick Allan Pospisek

While the 1913-1914 copper country miners’ strike undoubtedly plays an important role in the identity of the Keweenaw Peninsula, it is worth noting that the model of mining corporations employing large numbers of laborers was not a foregone conclusion in the history of American mining. Between 1807 and 1847, public mineral lands in Missouri, in the Upper Mississippi Valley, and along the southern shore of Lake Superior were reserved from sale and subject to administration by the nation’s executive branch. By decree of the federal government, miners in these regions were lessees, not landowners. Yet, in the Wisconsin lead region especially, federal authorities reserved for independent “diggers” the right to prospect virtually unencumbered. In doing so, they preserved a comparatively egalitarian system in which the ability to operate was determined as much by luck as by financial resources. A series of revolts against federal authority in the early nineteenth century gradually encouraged officers in Washington to build a system in the copper country in which only wealthy investors could marshal the resources to both obtain permits and actually commence mining operations. This paper will therefore explore the role of the federal government in establishing a leasing system for public mineral lands in the years previous to 1850, highlighting the development of corporate mining which ultimately set a stage for the wave of miners’ strikes in the late nineteenth and early twentieth centuries.

To understand the arrival of American miners to the copper country and its subsequent development, we must look back to the early nineteenth century and the federal government’s first forays into managing public mineral lands.¹ With the Louisiana Purchase in 1803, the United States acquired a region of lead mines to the southwest of St. Louis in present-day

Missouri. In 1807, Congress passed laws to reserve mineral bearing lands from public sale and instead allowed the president to dispose of them in such a way as to benefit the nation. The Jefferson administration thus gave authority of the Missouri mines to the Secretary of the Treasury and territorial officials in St. Louis. At that point, the decision was made to lease the public mineral lands for a percentage of the smelted lead procured. In 1821, the Monroe administration transferred authority to the Secretary of War who in turn placed the lead lands under the administration of the Ordinance Bureau. It was at this point that the office received applications to open the lead mines of the Upper Mississippi River valley, in the vicinity of present-day Galena, Illinois. With these applications, the leasing system moved north. By 1825, the regulations were made more liberal to allow any man to dig for lead provided they sold their mineral to a licensed smelter. That smelter was required to hold a \$10,000 surety bond to the U.S. government and, in turn, paid rent lead to the government. Under this system, more than 10,000 miners set to work in northern Illinois and southwestern Wisconsin by 1830. Over the course of the 1830s, this system faced considerable opposition but annually saw the production of millions of pounds of lead. A series of court cases ultimately confirmed the authority of the federal government to lease mineral lands and, in 1842, the U.S. acquired the copper lands of Lake Superior from the Ojibwa Nation. Unsurprisingly then, when faced with a new mineral district, the federal government moved the leasing system to the Keweenaw Peninsula. At the same time, however, a great deal of bureaucratic baggage moved as well.

When the federal government opted to lease the mineral lands of Missouri, they entered a complicated situation. Years under the authority of the French and Spanish crowns created a patchwork of public and private ownership by 1807. The practice of offering land grants without clearly demarcated borders greatly complicated the efforts of federal authorities to verify

ownership and offered a degree of cover for miners claiming mineral land without first securing a lease. The result was a widespread flouting of the leasing regulations as rent lead could only be collected on public lands and many simply claimed to hold private title even when those claims were denied by the government. Further complicating matters was the location of territorial officials in St. Louis, some distance from the mineral lands, and an unwillingness on the part of the Treasury Department to request the assistance of troops to evict trespassers. By the mid-1810s, federal authorities exerted little control in the lead district and the nominal authority, Frederick Bates, sarcastically mused that he himself was likely to be imprisoned by the lead region's criminal interlopers.

The decision to transfer authority over mineral lands to the War Department and leasing into the Upper Mississippi should therefore be read as an attempt to fix the problems of the Missouri lead region. With the exception of a contested claim to land in the vicinity of present-day Dubuque, Iowa, the northern region was free of Missouri's patchwork of private claims. Combined with the War Department's command over the national army, the Upper Mississippi offered a blank slate upon which to reapply the effort at leasing. The Ordinance Bureau sent a series of army officers to supervise the new mining country and contribute to the issuing of leases. By late 1825, the federal government had issued some forty leases, seventeen of whom had begun operations and paid to the government more than 122,000 pounds of rent lead.² That year, a new agent brought into practice the aforementioned liberalization of the leasing system allowing individuals to dig for lead without the burden of acquiring a lease. Miners flocked to the Upper Mississippi in the years that followed and lead production soared. In 1827, the upper mines produced more than five million pounds of lead. In 1828, that number increased to more than eleven million pounds. By 1829, it was more than thirteen million.³

Despite its early success, the leasing system in the Upper Mississippi was not without its problems. By the mid-1830s, Indian threats disappeared from the region and miners began to object to being placed under a military authority. Despite a diligent administration, the Ordinance Bureau's agent no longer commanded the same respect from the restless community of the mid-1830s. Foremost was the issue of reserving mineral lands at all. Miners and non-miners alike argued that maintaining the leasing system was effectively un-American and lobbied for public land sales. In Illinois, only lots in the town of Galena entered private hands in 1837 despite Congress authorizing the sale of those lots in 1829. Wisconsin's non-mineral bearing lands opened to public sale in 1834 but through a combination of ignorance, fraud, and outright malfeasance, considerable amounts of mineral land transferred to private ownership. This simple fact mirrored the earlier patchwork of public and private ownership in Missouri and made the collection of government rents difficult at best. The tension reached its zenith in the fall of 1834 when two prominent smelters refused to pay the rent they owed over to the government, questioning the legality of the entire system. By the summer of 1835, the refusal to pay spread throughout the Upper Mississippi mineral country and the government sued the original nonpayers. As it would take years for the suits to work their way through the legal system, the mineral agency in Galena effectively shut down.

While various attempts were made to revive the system in the Upper Mississippi, especially after the Supreme Court decided in the War Department's favor in 1840, leasing's story largely moved to Lake Superior in the early 1840s. The copper deposits on the Keweenaw Peninsula entered into U.S. ownership in 1842 and, like the Upper Mississippi mines before them, quickly attracted the attention of prospective miners. Given the issues in the Upper Mississippi, however, the Ordinance Bureau changed tactics in an attempt to establish and

maintain control over the copper region. Among the office's first decisions was to issue permits and leases for much larger areas, initially nine square miles, in an effort to keep the number of lessees manageable. They also named an experienced agent to superintend the opening of the copper mines: Walter Cunningham, then an employee of the revived Galena agency. Most importantly, the War Department concluded to counter potential squatters and unlicensed miners with a permanent military force. Thus, during the summer of 1844, two companies of the U.S. Army's 5th Infantry began construction of Fort Wilkins at Copper Harbor. Although the transition to the copper region was brief—Fort Wilkin's troops would be transferred to the war with Mexico in 1846 and Congress would open the mineral lands to sale in 1847—the presence of federal authority dramatically shaped the development of the copper country.

As opposed to the liberalized leasing system in the Upper Mississippi, the transported leasing system on Lake Superior favored men of means over individual miners. In direct reaction to the smelters' revolt, officials in Washington decided to only issue leases to large tracts of land and forego the digger/smelter system from the 1820s and 1830s. The resorting to nine square mile leases (later reduced to one square mile) was specifically done to limit the number of responsible parties who would pay rent to the government: in the event of another movement to cease paying the tax, Washington would have fewer lessees to take to court.⁴ Individual miners were no longer at liberty to prospect over the extent of the mineral district without being in the employ of a lessee. Although the ordinance Bureau lowered their surety bond requirement from the \$10,000 required in the Upper Mississippi to a more modest \$3,000, the requirement still limited applicants to those with connections to wealth. The result was that the new mineral agency often issued permits, the first step to securing a lease, not to individuals but to representatives of investors from more settled portions of the country. While the

Ordinance office in Washington would record the names of applicants in their ledgers, those men were generally the representatives of larger companies. For example, lease number three was granted to a “Carson and Wilson” and, by 1846, was being mined by the Eagle Harbor Mining Company. Likewise, lease number five, more commonly known as the Cliff Mine, was granted to a “Hussey, Avery, & Co,” and actually mined by the Pittsburgh and Boston Company. By the fall of 1846, the Eagle Harbor company employed thirty hands.⁵ By January 1, 1847, Pittsburgh and Boston employed 109 men at the Cliff Mine and had the resources to employ another seven men in a predominately exploratory fashion at lease number four, near Copper Harbor.⁶ Ultimately, the copper country’s most successful early mining operations would be run not by individual operators but rather by well-capitalized companies.

The leasing system further discouraged individual miners as anything but employees based on the actual terms of the leases. Specifically, the War Department issued leases only for periods of three years, renewable for an additional two terms, all totaling nine years. Officials in the Ordinance Bureau had actually begun lobbying for the sale of public mineral lands in the 1830s and presumably expected the Lake Superior lands to enter public ownership well before any lessee reached year nine. Given the immense size of the leases, only deep pocketed applicants could marshal the resources to employ the number of men required to both prospect for mineral and begin mining operations. The War Department further interpreted lease terms to mean any improvements (buildings, mineshafts, and the like) would become the property of the United States upon the expiration of the leases. To make matters more complicated, this interpretation meant that lessees would have no preemption rights to their locations should the lands go up for public sale.⁷ As leases were conditional upon formal surveys, the mineral agency also expected potential lessees to contribute to the cost of this work, generally with workers and

provisions.⁸ These conditions not only limited lessees to people of means but further encouraged partnerships and the formation of mining companies as a way of diluting risk. The Charter Oak Mining Company, for example, authorized the distribution of five thousand shares of stock, the first three thousand of which were held by thirty-six different investors.⁹ While an individual might be willing to pursue a lease under these constraints, the idea of potentially losing years' worth of money and labor spent improving a mine encouraged a corporate model.

These lease terms combined with the distance and climate of the Lake Superior region to further discourage lone miners and supported the development of corporate mining. While the Mississippi and the flat nature of Illinois's prairies allowed individuals to reach the lead region by a variety of means, the only practical way of reaching the Keweenaw from the settled portion of the United States was to travel by ship. Great Lakes captains contracted with potential miners not only for personal transportation but also for carrying supplies and, eventually, shipping copper to the American market. Even the original location of the copper agency office on Porter's Island in Copper Harbor communicates the region's dependence upon Lake Superior shipping. Early explorers and prospective residents recognized the region as inhospitable to most forms of agriculture and even struggled to find grazing land for their horses and livestock.¹⁰ As a result, residents of the 1840s depended upon connections to the south for sustenance, adding significant extra expenses to potential mining operations. With the opening of navigation in 1847, for example, the *Lake Superior News* noted that many mines were running so low on supplies that mine supervisors began diverting workers to the clearing of fields for the raising of what vegetables they could.¹¹ Again, those best suited to commence business under these circumstances were those who could marshal financial resources. The agents of these mining companies even appeared to do a good job of establishing the loyalty of their workers, at least

initially. On one occasion, miners dispatched by a company to assist in surveying work abandoned the government surveyor stating “they were hired to work in the mines, and [to] be under the direction of a miner.”¹² Mining companies took responsibility for their workers, in turn leading to the system of paternalism contributing to the 1913-14 strike.

Even in the leasing systems last gasps, contributions were made to support a corporate model of mining. As far back as the attempt to lease mineral land in Missouri, rent was always to be paid in smelted metal as opposed to raw mineral. Such a system gave added incentive to the smelters operating in the Upper Mississippi as the throngs of individual miners were contractually obligated to sell their mineral only to a licensed smelter who in turn paid the government tax. In the Lake Superior region, however, the presence of native copper and the actions of the mineral agency prevent such a system from developing. In 1846, roughly a year before leasing’s demise, the agency permitted lessees to transport raw mineral out of the copper country, provided it passed through Sault St. Marie where it could be inspected and accounted for. Lessees were then given leave to pay their rent in cash, at an amount decided upon by the mineral agency, or in unprocessed ore, provided they also include the barrel in which it had been shipped.¹³ The arrangement allowed lessees to skip the smelting process, focusing instead on the construction of stamping mills to export a purer, yet largely unrefined product. The copper country thus developed in a further departure from the Upper Mississippi. Without the growth of local processors and without a local market in which to sell copper, individual miners were left with little choice but to become employees rather than independent operators.

All of this, of course, is not to say that corporations would not have developed in the copper country without the influence of the federal leasing system. Rather, the corporations which developed might have looked different had they emerged from a system more closely

resembling that in the Upper Mississippi. Despite the fact that the Lake Superior copper mines rather quickly developed into deep, industrial mines, the earliest sites to be worked were largely surface deposits.¹⁴ Explorers like Douglass Houghton and the first agents of absentee mining companies were essentially searching the surface for signs of richness below the ground. Under these circumstances, an initial round of independent prospectors could have easily descended upon the copper country, just as they did in the Upper Mississippi or later in California. A larger number of independent miners would in turn have contribute to better supply chains by supporting the development of a more extensive network of merchants to supply their needs. These merchants in turn might have acted as factors, assisting in the sale of copper to eastern markets. Undoubtedly, these early surface miners would have given way to consolidation and the inevitable mining companies, but not without establishing a tradition of yeoman miners with a greater degree of self-sufficiency than that established under a system of paternal corporations. While this is admittedly an exercise in hypothetical and counterfactual history, it is worth noting that no similarly dramatic strike took place in the roughly contemporary zinc mines of southwestern Wisconsin, the successor industry to the Upper Mississippi lead district. In all, the federal administration of the copper region, although short lived, ushered in a new model of wide scale mining in the United States. The agency oversaw a transition from independent, yeoman miners to the establishment of paternal mining companies, thus setting the stage for the 1913-1914 copper country miners' strike.

¹ For an expanded discussion of the early history of the leasing system see: Patrick Allan Pospisek, "The Rise and Fall of Frontier Urbanization in the American Midwest: Galena, Illinois, 1820-1870" (Ph.D. diss., Purdue University, 2013), 51-84; 131-154.

² "Lead Mines and Salt Springs," 19th Cong., 1st sess., 1826, S. Doc. 492, *American State Papers: Public Lands*, 4:522.

³ "Annual Report of the Secretary of War..." 24th Cong., 2nd sess., 1836, Ex. Doc. 699, *American State Papers: Military Affairs*, 6: 926.

⁴ Wm. Maynadier to Walter Cunningham, June 15, 1843 & Wm. Maynadier to James M. Porter, June 27, 1843 in *Fort Wilkins 1844 and the U.S. Mineral Land Agency 1843: Copper Harbor, Michigan, Lake Superior*, ed. Lawrence Trever Fadner (New York: Vantage Press, 1966), 162-165.

⁵ "List of Leases and Locations of Mineral Lands, 1843-6," Records of the Office of the Chief of Ordnance (RG 156), National Archives and Records Administration, Washington, D.C.; "Mining Operations—Monthly Reports &c.," *Lake Superior News* Sept. 12, 1846: 2.

⁶ "Annual Reports of Mining Companies," *Lake Superior News*, June 26, 1847: 1

⁷ "Report from the Secretary of War," 29th Cong. 1st Sess., 1846, S. Doc. 160, 8.

⁸ "Report of A. B. Gray, Esq.," *Lake Superior News* Aug. 22, 1846: 1.

⁹ Charter Oak Mining Company Collection, MS 680, Michigan Technological University Archives, Houghton, MI.

¹⁰ Henry Whiting to H. Brady, April 6, 1844 & H. Brady to Tho. S. Jesup, April 6, 1844, in *Fort Wilkins 1844 and the U.S. Mineral Land Agency 1843: Copper Harbor, Michigan, Lake Superior*, ed. Lawrence Trever Fadner (New York: Vantage Press, 1966), 22-4.

¹¹ "Mining Operations on the Southern Shore of Lake Superior," *Lake Superior News* July 13, 1847: 2.

¹² "Report of A. B. Gray, Esq.," *Lake Superior News* Aug. 22, 1846: 1.

¹³ "Notice to Miners," *Lake Superior News* Aug. 1, 1846: 3

¹⁴ "The Silver and Copper Mines of Lake Superior," *Lake Superior News* Aug. 1, 1846: 2.