

Minutes of the Meeting
MINING OVERSIGHT & ACCOUNTABILITY COMMISSION
December 20, 2011, 9:30am

The meeting was held at the Legislative Building, located at 401 S Carson St, Room 2134, Carson City, Nevada and by video conference to locations in Las Vegas, Winnemucca, Elko, and Ely.

**MINING OVERSIGHT & ACCOUNTABILITY
MEMBERS PRESENT:**

John Restrepo, Elected Chairman
Kyle Davis, Elected Vice Chairman
Roger Bremner, Member
Senator Greg Brower, Member
Robert Campbell, Member
Dennis Neilander, Member

COUNSEL TO THE COMMISSION PRESENT:
Henna Rasul, Chief Deputy Attorney General

**MINING OVERSIGHT & ACCOUNTABILITY
MEMBERS ON VIDEO CONFERENCE:**

Senator Steven Horsford, Member

DEPT OF TAXATION STAFF PRESENT:

Terry Rubald, Chief
Division of Assessment Standards
Donna Proper, Boards & Commissions
Coordinator
Division of Assessment Standards

1: Opening remarks, roll call, and introduction of the Mining Oversight and Accountability Commission (MOAC) members, Deputy Attorney General, Department of Taxation staff, and reporting agencies.

Bill Chisel, Executive Director, NV Dept of Taxation, called the December 20, 2011, first Mining Oversight and Accountability Commission (Commission) meeting to order at approximately 9:40 am. He introduced the Commission members: Roger Bremner, Senator Greg Brower, Robert Campbell, Kyle Davis, Dennis Neilander, John Restrepo and Senator Steven Horsford. Providing support for the Commission are Terry Rubald and Donna Proper. Legal counsel for the Commission is Henna Rasul.

Mr. Chisel gave a brief oversight on the roles and responsibilities of the Commission. The Commission was established during the last legislative session pursuant to Senate Bill 493 to oversee various state agencies including the Department of Taxation regarding the taxation of net proceeds; the Division of Industrial Relations regarding safe and healthful work conditions; the Commission on Mineral Resources regarding the conduct of mining operations; the Bureau of Mines and Geology regarding the administration of NRS 514; the Division of Environmental Protection regarding the reclamation of mine lands.

The Commission will meet at least once each calendar quarter; at the meetings, the state agencies have certain responsibilities to provide information to the Commission:

➤ **First Meeting**

Division of Industrial Relations: Submit a report on maintenance of safe working conditions of mines during the proceeding calendar year.

➤ **Second Meeting**

Dept of Taxation: Provide planned audits for the next calendar year, audit results of the proceeding calendar year; and audit status report on ongoing audits.

➤ **Third Meeting**

Division of Environmental Protection: Provide a report on the division's activities regarding reclamation of mine lands and areas of exploration for the immediate proceeding calendar year.

The Commission is also responsible for reviewing and providing reports on regulations enacted by the Nevada Tax Commission, the Administrator of the Division of Industrial Relations, the Commission on Mineral Resources, and the State Environmental Commission pursuant to NRS 519A.160.

2: Public Comment

Mr. Chisel called for public comments.

Bob Fulkerson, on behalf of the Progressive Leadership Alliance of Nevada (PLAN), thanked the Commission for their public service. PLAN suggested the industry undertake an inventory on the cumulative impacts of Nevada, including mine safety, toxic releases to air, land and water, de-watering, the costs of cleanup, and revenue generation. They also recommended there be a data base of how many workers have been killed, injuries sustained, and the nature of citations issued by federal and state regulators. PLAN encouraged the Commission to develop recommendations or relevant legislation that will make the industry the cleanest and safest in the world that no longer escapes paying its meaningful share of revenues.

John Hadder, Director of Great Basin Resource Watch, an environmental advocacy group in Nevada since 1995, hopes the Commission will examine the tax structure so the mining industry is equitably taxed on their activities and that they can be a forum for discussion between communities and industries where they intersect, as well as looking at the regulations and updating them as necessary. He brought up the issue of pit lakes and said the quality of water is significant. Mercury emissions are another issue. Air resources are important. He questioned what recourse the public has regarding impacts from mining in rural residential areas if there is an operation impacting their quality of life where there are no public lands and no environmental review required. His group would be happy to participate in the process of updating regulations. He thanked the members for serving on the Commission and said the group is hopeful about the possibilities in the future.

Eric Hodgdon, on behalf of Occupy Carson City, voiced concerns regarding greater involvement in state economic affairs and direction. He asked if more of the value extracted could be returned to the people. This doesn't necessarily mean more and onerous taxes – it means if mineral resources are taken from a state, the returns from those resources might be better appreciated, put to better use, in and for the state they came from, or perhaps at least as much as possible. If companies doing the extracting are 100% American owned, the royalties 100% American held, then hopefully more of the proceeds will remain after the stuff is gone. He thanked the Commission.

Larry Wahrenbrock, from Silver City, Nevada, thanked the Commission for their public service where citizens have a forum to address decision makers in the state regarding issues around mining. Both the people affected by mining and the mining industry itself would benefit from a streamlined and comprehensive overall package for permitting which is currently convoluted and complex. Oftentimes, there is a such narrow view taken by the agency of what the permit applies to that the broad perspective of the overall project is lost and the cumulative effects don't get addressed.

Melanie Meehan-Crossley, part of Occupy Carson City, commended the members for their service and said Occupy Carson City is very interested in being involved with the democratic process. Ms. Meehan-Crossley is concerned the industry does not do its fair share of investing in the future of this State and hopes to see something rectified in that regard. She thanked the Commission.

Steve Waclo, a retired 10-year resident of Nevada, thanked the members for their service on the Commission. He read Wikipedia's (internet encyclopedia) information about the Alaska Permanent Fund where residents share directly in the proceeds of mineral wealth extracted and encouraged the Committee to give serious consideration to a similar program in Nevada.

Anthony Huttman, a 21 year old WNC student, thanked the members for their service. He would like to see the mining corporations pay their fair share of tax, roughly 33%, as employed workers do in the state. Mr. Huttman urged the Commission to consider higher taxes for the corporations but also to ensure that the mining corporations are not exporting our wealth. He said he would rather see the jobs put to productive use than focus on cleaning up an environmental mess.

Angie Sullivan, a Las Vegas school teacher and native Nevadan with family throughout the state stated that, in her opinion and experience, mining is a business that has been protected and is a powerful lobbying group. She said mining comes in boom or bust, takes the gold, silver, and minerals, and makes a lot of money for rich investors or corporations that are not from America. It's not here to build up our community nor invest in our system long term. Ms. Sullivan's concern is that it gets overlooked when it's bust because we want people to come back and invest and mine. She would like to see the Commission provide evidence, data, and get information from the communities about environmental and community impact for those areas that will be left. Ms. Sullivan said it's better to use the resources to build infrastructure for the future for students and community and have a more balanced financial method because our gold won't be there forever. She thanked the Commission for their work and hopes they are able to make changes so our gold can be used for the people of Nevada.

Sebring Frehner said the majority of the rules and laws put into place long ago were to protect a young industry that was booming in the state, stayed, contributed, and built up our community and society. It's the global corporations that are coming in and raping our land; once they have stripped everything out of the land, they leave. Mr. Frehner commented that our tax code and laws need to reflect the fact that we shouldn't be protecting global corporations that aren't of this state, aren't staying, aren't going to continue to push for what's in the best interest of our society, and are truly only worried about their bottom line and only pay into the community and tax system when they have to because they are being pressured by the society that they're working within. This is our opportunity to fix the last 50 years of injustice in our tax code of the mining industry boom and bust – taking what it wants and walking away without ever making a real investment in our state. Mr. Frehner said, "We need you guys to help us, the people, force them to make that investment." He thanked the Commission.

Assemblyman Joe Hogan, Vice-Chair, Natural Resources, Mining, and Agriculture Committee, said he and the committee would be interested in monitoring and helping to carry out the challenging charter of the Commission. He discussed labor force safety in central African countries and South America where gold has been discovered but local residents may not get employee benefits and may suffer injuries or death due to lack of safety. Assemblyman Hogan said one opportunity will be to protect the future of the mining industry by taking a close look at what the effects of de-watering the north will be. The effect financially in the south will probably be disastrous if we have the same experience as the Los Angeles Water and Power Authority trying to make up for damage they created by taking water from the eastern slope of the Sierras. We could start a similar project and head for that kind of expenditure and damage to the south and north or use better judgment and the member's wisdom to find a way to minimize and hopefully avoid it. Assemblyman Hogan thanked the Commission.

3: Election of a Chair and Vice Chair

Mr. Chisel called for nominations. Senator Brower moved to nominate John Restrepo as chair; Mr. Bremner seconded the motion. Mr. Restrepo abstained. Motion passed.

Mr. Chisel called for vice chair nominations. Senator Horsford moved to nominate Kyle Davis as vice chair. Mr. Chisel then turned the meeting over to Chairman Restrepo. It was clarified that the vice chair acts on behalf of the chair, in his absence, with the same authorities and responsibilities. Senator Brower seconded the motion. Vote was taken. Vice Chair Davis abstained. Motion passed.

4: Briefing on the role, responsibilities, and authority of the Commission by Commission Counsel, Attorney General's Office

Ms. Rasul said that the Commission was created during the 2011 legislative session via Senate Bill 493 as an amendment to NRS 362. The purpose is to provide for a single administrative body to oversee the activities of the various state agencies that have responsibility for the taxation, operation, safety and environmental regulations of mines and mining in Nevada. The main function of the Commission is to provide oversight and compliance with Nevada law relating to the activities of each state agency, board, bureau, commission, department or division with respect to the taxation, operation, safety and environmental regulations of mines and mining in the state of Nevada by authority to conduct hearings and investigations, to administer oaths, take depositions, and issue subpoenas.

Senate Bill 493 requires periodic reporting by the Division of Industrial Relations; the Dept of Taxation; the Division of Environmental Protection regarding specified areas of area activity pertaining to mining and mining in the state. The Commission may also request an audit or investigation by the legislative auditor of any state agency board, bureau, commission or political subdivision in connection with mining or mines. The Commission is authorized to review and report findings and recommendations about specified permanent regulations proposed by the Nevada Tax Commission, the administrator of Division of Industrial Relations, the Commission on Mineral Resources, and the state Environmental Commission.

5: Discussion on Agency Reporting Requirements

a) Division of Industrial Relations, Department of Business and Industry

Don Jayne, Administrator, Nevada Division of Industrial Relations, addressed the Commission stating that one of the areas his division services is the Mine Safety and Training Section. He introduced Jeff Bixler, Chief Administrative Officer, Mine Safety and Training Section. They are responsible for training and safety inspections at mine sites. They do not have the authority to issue citations, their federal counterparts do that. Mr. Jayne discussed the August annual report referring to the number of fatalities in the mining industry and the recent growth in the amount of employees. A key concern is attracting and retaining qualified people in safety inspector positions. Because the private sector is paying dramatic salaries, the state lost some people.

Mr. Bixler stated that their goal is to ensure the safety and health, and properly train miners. He discussed fatalities. In 2006 there were zero fatalities, first time ever since tracking began in 1909. There was recently a 365 day period (not within one year) without a fatality. The most recent two fatalities were in Elko. Mr. Bixler explained the difference between Nevada and the federal Mine Safety and Health Administration regarding citations. Nevada doesn't fine monetarily, they fine on a series of an order or a notice. An order is an imminent danger situation where the state would shut down a small piece of an operation or the entire mining operation depending on how severe. A notice is used when it does not affect the health and safety, no imminent danger. When a problem is found on a mine site and corrected immediately it is written as condition corrected and no notice or order is issued.

Mr. Jayne closed by stating that they stand ready to perform any task or research the Committee asks. He explained that he had Mr. Bixler speak because there is a balance between the state and federal regulatory authority. For example, white hats vs. black hats – the enforcement side comes out with penalties and fines - tends to be perceived as the black hats. The state gets to be the white hats – they work with the mine sites; they tend to be invited on to the sites and work with them on their training and safety programs to protect those who work in the mining industry. They coordinate with the feds but don't always work exactly in conjunction with them – the operate independent of them. For over 100 years, Nevada has led the United States (U.S.); today it is the 4th largest gold producer in the world – 73-75% of the hard rock mining (gold and silver) in U.S.

Senator Horsford asked Mr. Jayne why his division is not able to place any penalty or fine on a mining operation that fails certain health and safety inspections. He asked if there was a federal or Nevada law that precludes our state divisions from doing it. Mr. Jayne responded there is a separation between the two functions; the federal entity has the fining authority and can place monetary fines on the mine sites for violations; the Nevada Mine Safety and Training Section does not have that authority. They can shut down a job site if imminent danger is seen, which tends to be very effective when needed, but the state does not follow up with a dollar fine. If the division investigated an event such as a fatality, the federal counterparts would also be there performing their level of investigation and ultimately the federal authority processes the fines. To the best of Mr. Jayne's knowledge, the state structure does not have the ability to place monetary fines. Senator Horsford requested Mr. Jayne to provide the Commission either the federal or state citation so they can better understand it. Mr. Jayne will supply the information.

Senator Horsford noted that the performance objectives for 45 monthly and 540 annual safety and health inspections were 140 from the goal and asked if it was due to vacancies or some other reasons. Mr. Bixler said it was a combination of things – they are down 4 employees in an office of 15, which hurts. They revamped their performance objectives and anticipate reaching 75% for the current year. They exceeded their goal for 2011 completing 83% of inspections. Senator Horsford asked if there were 2 vacant inspector positions –Tonopah and Elko. Mr. Bixler clarified he has 4 vacancies – Tonopah, Winnemucca, and two in Carson City. Senator Horsford asked if the inspections for health and safety are unannounced inspections. Mr. Bixler responded, yes.

Mr. Bremner asked Mr. Bixler about his 2010 information that stated there were in excess of 21,000 people employed in mining and that the number has gone up over the last two decades, higher than it ever was. Mr. Bixler affirmed that information. Mr. Bremner inquired if Mr. Bixler had any figures as far as total employees for what percentage of metal and non-metal mining is done in Nevada as compared to the rest of the United States. Mr. Bixler did not have that information but stated as far as gold production in the U.S., Nevada is number 1. Mr. Bremner brought up fatalities in Nevada and stated he thinks that Nevada has more metal and non-metal mining employees than any other state in the U.S. and he would like to know what the total is and asked Mr. Bixler to work it up and present it to the Committee. Mr. Bixler stated he would do so.

Vice Chairman Davis asked when the state goes in and makes a determination that a site is unsafe and that work should stop – if it was based upon a determination of unsafe work under federal or state law or a combination of both. Mr. Jayne stated there was interaction between the two. The state deals with non-financial; they can stop work but cannot impose a financial fine. Mr. Bixler stated that their state goal is to promote mining, "We want to see people working productively, safely, and responsibly." When they find an operation where there may be an imminent danger they shut the entire process down; they stay with them and help them find ways to fix their problem and go back to operation again – rather than just fine them and walk away and then come back at a later date and see what they've done to fix the problem. Vice Chairman Davis again asked how the determination is reached to shut down an operation. Mr. Bixler replied it's a combination of 30 CFR and NRS/NAC 512. Vice Chairman Davis asked that more clarification be provided between federal and state law. The topic was flagged for a future meeting.

Senator Brower asked Mr. Bixler if he could give the Commission an overview of the federal Mine Safety and Health Administration's (MSHA) presence in Nevada as far as how many offices and how many people there were. Mr. Bixler responded that MSHA's main office is in Vacaville, California, for the Western District. They have two field offices, Elko and Boulder City. Mr. Bixler guessed the number of employees to be around 10 per office in Nevada and 15-25 in California.

Chairman Restrepo asked Mr. Bixler how many state mining inspectors he currently has. He said six inspectors and two industrial hygienists; the remaining staff are overhead administrative and supervision. He is short two inspectors and two overhead positions. Chairman Restrepo asked Mr. Bixler if he had those two positions would he be able to operate at the level he feels would be sufficient. Mr. Bixler responded yes. The Chairman asked if the shortage was due to the type of industry and if there were hiring restrictions. The primary reason for the shortage is strictly financial. Chairman Restrepo questioned if people were going into the industry and becoming safety inspectors for the industry. Mr. Bixler said yes the industry is paying about double what the state pays. The average salary is \$80,000-\$100,000/year with the state paying \$40,000-\$45,000.

Senator Horsford asked for the monthly or yearly number of mines that had to be temporarily closed due to failing a worker health and safety inspection. Mr. Bixler said they don't track that item but added that in the last 3 years they closed one mine because of safety and health issues. Senator Horsford asked if they had statistics on whether MSHA has imposed any penalties or fines on mining operations due to worker health and safety issues. Mr. Bixler did not have the figures in front of him. Senator Horsford asked for more information about the mine they closed and when it occurred. At the mine outside Elko, they identified a number of safety violations and some serious environmental problems they passed on to the Department of Environmental Protection and worked with the Environmental Protection Agency (EPA). They were closed down a week the first time and three or four days the second time. The mine took a great deal of time to correct their problems and come back online. They were closely watched for about a year and a half before they actually went out of business and are now working under a new owner. Senator Horsford asked if the mine has been re-inspected under the new ownership. Mr. Bixler replied yes. As Vice Chairman Davis had requested earlier, Senator Horsford asked that a future agenda item be a report from MSHA with more specifics on the relationship between the division and agency as it pertains to why the state does not have the ability to impose fines or penalties based on worker safety issues. Chairman Restrepo asked Mr. Jayne and Mr. Bixler to provide a report at the next meeting. Mr. Jayne said he would do a historical search to see when the statutes and regulations were created.

b) Nevada Tax Commission and the Department of Taxation

Bill Chisel, Director, Nevada Department of Taxation and Bob Barengo, Chairman, Nevada Tax Commission addressed the Commission. Mr. Chisel said the department's responsibility is to audit net proceeds. Reporting responsibilities to the Commission on the 2nd quarter calendar meeting are to provide planned audits, audit results for the proceeding calendar year, and a status report on ongoing audits. They have started seven field audits with a rotation of all mines within a three-year period. Chairman Restrepo asked if the audits were done by state staff. Mr. Chisel said yes.

Senator Brower asked for a summary plan of what the audits will entail. Mr. Chisel responded that the audits are of the seven Barrick mines. Chris Nielsen, Deputy Director, Dept of Taxation, said that during the last legislative session, the Dept notified every mining operator, approximately 100, to expect a field audit within the next several years. The top 45 operators constitute 90% of the market with two constituting the bulk of that. They took a risk approach based on size and ratio of gross to net, looking at the amount of deductions to identify which companies to audit first. The audits began in summer 2011 and are expected to be billed after the first of the year. Barrick is a large company; the department has diverted an unprecedented amount of audit resources to auditing mines. After Barrick, they expect the other smaller companies to be much quicker audits. In conjunction with the field audit program, the department, by statute, has to annually do desk reviews which compare the information with existing statutes and regulations. When the desk review process was undertaken, the department disallowed \$74 million dollars in deductions which resulted in an additional \$4 million in the net proceeds tax. Senator Brower felt this was among the most important activities going on that the Commission will be reviewing.

Chairman Restrepo asked if the department was feeling a shortage of technology or human resources to get the audits done in a proper effective way. Mr. Nielsen replied that they looked at the issue with the budget office towards the end of the last legislative session and at this point they feel they have sufficient resources to perform the audits. He qualified it saying there is a re-learning curve about how long the audits are going to take. They will also have to see if there will be any audit appeals which will use some of the department's resources to provide testimony and support for the audit itself. Mr. Nielsen reaffirmed that, at this point, the department doesn't see any reason why they would need additional resources but it may change as they get further along in the audit program. Chairman Restrepo asked if the Barrick audit is taking a relatively long period of time because it's a new process being initiating that will be more straightforward as the years go on or if it's going to be a large audit every year because of the size of Barrick. Mr. Nielsen believes once the department gets past the Barrick audit and audits Barrick again, they would anticipate that the process would be shorter but, one of Barrick's seven mines constitutes 40% of the market. The department anticipates auditing, pursuant to their plan presented to the Tax Commission and the Governor earlier this year, high risk companies every three years. They are allowed to go back as the statute of limitations is three years. The department plans on auditing these high risk companies every taxable year going forward. The Chairman asked who would be the second audit. Mr. Nielsen believed it would be Newmont and referred to packet page 186. He added, as Mr. Chisel pointed out earlier, Senate Bill (SB) 493 requires the department to report to the Commission the full audit plan at the second meeting next year. The list may change a little but at this point that is the plan for which companies the department is going to audit next. Chairman Restrepo asked how many auditors were on the Barrick audit. Mr. Nielsen said there are 5 auditors out of a total of 40 auditors statewide, which is more than 10% of the audit workforce.

Mr. Bremner asked if the department had the authority to hire contract auditors if they ran into a situation where they couldn't do the workload or if they had considered the possibility. Mr. Chisel said he wasn't sure if the department had the authority but didn't feel they had the funding. He thinks they can cover it with the existing resources at this time and would like to wait another few months before being concerned with lack of resources. Mr. Bremner stated that if it goes too far and the workload can't get done and when it's discovered it's too late then commissions, like this one, get mad that the work isn't getting done rather than having the option ahead of time but, not using it is a different situation. Mr. Chisel responded that if the department finds they do need additional resources, they do have additional auditors they can add to the audits at this time.

Senator Horsford thanked Mr. Bremner for the question and stated that by way of information for the Commission, a big part of why SB 493 came about was because there was a failure by the Tax department to conduct audits on the mining industry for years and it was uncovered during a revenue committee hearing. He said Mr. Bremner hit on a very important part and asked Mr. Neilander, by way of comparison, how the gaming industry and companies have been audited and how often they are reviewed. Mr. Neilander responded that the gaming industry audit cycle is presently about 2 ½ years with a five year statute of limitations. In respect to the way the audits are conducted, gaming provided some assistance to the Taxation department in helping them develop models on a go forward basis. They have to be careful in this area with the Taxpayer's Bill of Rights. The risk model is similar to what was done at the Gaming Control Board (GCB) taking into account a risk based model. There is also a random element necessary by law. Mr. Neilander said desk reviews are not just clerical reviews; some of them call for source documents and those are used to factor in the risk model for which field audits should be done and when. Most of the larger mines are large publicly traded companies with their own internal audit staff as well. The field work will proceed similar to what one would see in a gaming type of audit. Senator Horsford appreciated Mr. Neilander's background with ten years as chairman of the Gaming Control Board.

Senator Horsford asked the process by which companies were selected and if the 3 year limitation was by statute. Mr. Nielsen stated yes it was by state statute and consistent with the other tax types the department administers. Senator Horsford asked what methodology or rationale was used to select Barrick over Newmont. Mr. Nielsen didn't have the exact analysis with him but said they worked with Mr. Neilander and GCB audit staff in developing a risk based analysis which looks at the size of the companies and the amount of ratio to gross to deductions taken. Its a seven-step process scored by gross yield in descending order ranking the companies from high to low; going through the companies mine by mine to look at any discrepancies between the deductions in one mine to the deductions in another and resorting them. He referred to packet page 190 for the department compiled list. As for selecting Barrick or Newmont first, Mr. Nielsen believed GCB recommended the department start with five of Barrick's mines and the department made the determination to do seven as it made sense to audit all the mines in the company. Senator Horsford understood and appreciated the rationale and said it was good to have it on the record so the Commission knows what methodology or justification was used.

Senator Horsford remembered from last legislative session that one company took as much as 72% in deductions against the net proceeds of minerals whereas another of the large companies took just over 40%. He referred to statute of limitations and whether or not the department is going to be able to do the audit in time to determine whether the deductions taken were allowable and, if they weren't, whether they will be able to have those taxes collected as required by state law. Mr. Nielsen reiterated that they went with Gaming's recommendation of Barrick. They are larger and their number of deductions as compared to their gross is less than Newmont. Newmont is selected as the number 2 company to be audited. They will begin the Newmont audit after the first of the year. If they run into any timing problems with completing an audit they will ask the companies to sign a waiver on the statute of limitations to make sure they can capture the full 3-year look-back. It's common practice in the audit world. He added that, of course, it's up to the mining companies to say yes or no but the department hopes the companies would do so in the spirit of cooperation.

Senator Horsford said staffing was the challenge during session and one of the reasons given as to why the audit on the mining industry had not been done for years. He asked Mr. Nielsen to update the Commission on the 40 auditors the department has and how many are trained specifically on net proceeds of minerals. Mr. Nielsen responded that after notifying all the mining companies that they could expect an audit in the near future, the department used the Division of Assessment Standards (DOAS), the subject matter expert in the mining tax, to perform a multi-date training session for audit staff. Seven auditors and their supervisors were trained in conjunction with gaming auditors. The mining audit manual was updated with input from gaming. There are now written materials to help with any turnover/retirements in audit staff to continue the process and not run into the problem they had in the last couple of years. The department feels they have sufficient trained staff to perform the audits but if it becomes an issue in the coming months, they will bring it to the attention of the Commission and budget office and come up with a solution. Senator Horsford asked again if 7 auditors were properly trained in net proceeds audits. Mr. Nielsen said yes the 7 conducting the audit, their supervisors, and more staff had been trained.

Chairman Restrepo asked if the seven auditors would be dedicated X percent of time every year to the mining industry and/or if there is a dedicated mining industry audit group. Mr. Nielsen responded that's the intent; these are some of the most seasoned auditors who have historically audited some of the large gaming properties for sales and use tax, and payroll taxes. The department has dedicated auditors from the north and south; all are required to travel to the site which is usually outside of Las Vegas or Reno and he anticipates them being dedicated to the mining audits going forward. Mr. Nielsen reiterated that they will re-evaluate down the road to see to see if they need to increase or decrease the number of auditors or alter the selection program.

Chairman Restrepo asked what percentage of the auditors are CPAs. Mr. Nielsen stated none were CPAs. Outside of the mining audit issue, historically, one of the problems is the state doesn't pay enough. They train auditors who then go work for the local government or industry that pays significantly more. The Chairman then asked for the percentage of graduate accountants that have their accounting degrees. Mr. Nielsen didn't know the answer. The Chairman asked for the department to provide the information at the next meeting. Mr. Chisel said they would.

Vice Chairman Davis asked how the audits are funded and if the department is a general fund agency or if there were fees that fund all the audits. Mr. Chisel said they are a general funded agency. Vice Chairman Davis asked if that would be the main restriction or if they could go out and charge for more if they found they needed more funding. Mr. Chisel said they don't charge a fee for audits.

Mr. Barengo closed saying the Nevada Tax Commission will be happy to work with the Commission and provide all the information the department has. The staff, executive director, and deputy director are very capable and will be there to report at the meetings as SB 493 tells them to.

c) Division of Environmental Protection, Department of Conservation and Natural Resources

Colleen Cripps, Administrator, Nevada Division of Environmental Protection and Dave Gaskin, Deputy Administrator, Bureau of Mining Regulation and Reclamation, Bureau of Water Pollution Control, and Bureau of Water Quality Planning, addressed the Commission. Dr. Cripps said the division's role is to provide environmental regulation of the mining industry through implementation of the Clean-Air Act, the federal Clean Water Act, the Safe Drinking Water Act, and the Resource Conservation and Recovery Act. They are authorized to implement the federal programs in lieu of the EPA. The Bureau of Mining Regulation and Reclamation is specifically targeted to working with the mining industry and ensuring that mining properties, in addition to being compliant with water pollution control laws, are reclaimed and there is adequate funding. In addition to regulating current mining practices, the division has a program that is designed to address environmental issues related to historic mining activities through their office of corrective actions. Dr. Cripps said they will provide any information the Commission may be interested in hearing as their work progresses.

Mr. Campbell asked Dr. Cripps for her perspective on how the various agencies, all of whom have some role in the mining industry, coordinate and operates effectively. Dr. Cripps asked if Mr. Campbell meant other regulatory agencies. Mr. Campbell replied yes the four or five state agencies that have different roles with the mining industry. He asked for her perception on how the different agencies interact on areas of common concern. Dr. Cripps responded that like those who deal with mine safety told the Commission earlier, they too communicate with other agencies. When they see issues, they contact her division and vice versa. Dr. Cripps said there is communication between these various agencies but they do have very separate roles.

Mr. Neilander said it used to be that if the state had adopted standards that were at least as stringent as the federal standards it generally allowed the state to maintain jurisdiction over those state laws and asked Dr. Cripps if that's how it's still working? Dr. Cripps replied yes, they are required to be consistent with and no less stringent than the federal requirements. They have the ability to be more stringent in certain areas and have programs that go beyond the federal requirements. Mr. Neilander asked when they take regulatory action, based on those state laws, if the federal government has any involvement in the areas where the division has jurisdiction. Dr. Cripps said they have oversight authority, the ability to review, and the authority to come in and do their own independent inspections, which they do periodically. Mr. Neilander asked if they actually do any kind of audit of Dr. Cripps' agencies to make sure they're in compliance with the federal standards. Dr. Cripps replied that yes they do and they are regular and on going.

Vice Chairman Davis commented that earlier public comments brought up the issue of pit lakes and asked what regulations exist for them. Dave Gaskin, who was previously head of the mining program and involved in the program development told Vice Chairman Davis that there are some aspects of pit lakes that are not specifically covered under federal law. The specific water quality requirements which covers the regulation of pit lakes is NAC 445A.429(3) which specifies pit lakes cannot degrade surrounding ground water quality and that the pit lake itself can't adversely affect human, terrestrial or avian life. Vice Chairman Davis asked how it's enforced when a pit lake happens. Does it become a part of a regular mine inspection and is there some program that continues after the mine has ceased its useful life and the lake remains. Mr. Gaskin said that even before the pit is developed, the applicant will submit application for their water pollution permit; a large section of that is predicting the water quality into the future that will be in that mine pit. Pre-mining modeling is performed and then during the course of mining, more data is collected on the geochemistry and water quality, even well after the mine has closed. That assessment continues into the future to verify the modeling and ensure that the regulations are met. Vice Chairman Davis asked if the companies post a bond to make sure that monitoring continues after the mine is done. Yes, monitoring is covered under the bonding program. Vice Chairman Davis asked if there was a case where, even after precautions had been taken, surrounding water was contaminated or had an impact on wildlife, what the remedy would be. Mr. Gaskin replied there is no grandfathering of that water quality; they do require the operator to follow-up and take corrective actions. If the actual monitored water quality is different that the prediction or threatens to exceed the standards they will have the operator take corrective actions either to amend the quality of that water or take other measures to come into compliance with the regs.

Mr. Bremner said earlier public testimony mentioned they had a special mercury reduction program in place and asked for the details of how it works and some of the elements contained in it. Dr. Cripps responded that the mercury reduction program started 10 years ago as a voluntary program. The federal government did not, until very recently, regulate mercury from the mining industry. It was clear when the toxic release inventory was modified to require mines to report this information that there was a lot of mercury that was being released from these operations. The mining industry, working with the division and the EPA, entered into this voluntary program to put additional controls on their processes to reduce mercury. A number of years into that they decided it would be appropriate for the division to turn that program into a regulatory program so they could collect more data, do more detailed analyses of the various processes, and require specific kinds of controls. They were looking at best available control technology to be applied to any thermal process that generates volatile mercury. Since that went into effect, Dr. Cripps said they have and are continuing to issue permits to the mining industry that require best available controls on all of their thermal processes. The division is now seeing those controls be implemented, constructed, and operated. The federal government has now adopted requirements for federal mercury controls and works closely with her agency to ensure that their program continues to be as effective as it has been in the past. Chairman Restrepo asked if they had any information on violations or issues at the mines in terms of corrective actions the division has had to take. Dr. Cripps said she could get that compliance information. Chairman Restrepo asked her to provide it at the next meeting.

d) Commission on Mineral Resources and the Division of Minerals

Alan Coyner, Administrator, Nevada Division of Minerals, addressed the Commission by introducing John Snow and Vice Chairman Dennis Bryan from the Commission on Mineral Resources. The division is a small agency of 10 people in 2 offices in Carson City and Las Vegas which operates under the commission. The 7 members appointed by the governor to 4 year terms include two from large scale mining, one from small scale mining, one from geothermal, one from oil and gas, one from exploration and development, and one from the public at large. Six work in industry. The commission meets quarterly and oversees the activities of the division.

Mr. Coyner said the division is a \$2 million dollar a year funded agency. All money comes from fees on the mineral industry; 80% is from the mining claim fee which is paid annually by all mining claimants in the state. The division's activities range from government relations and industry affairs, helping people understand the mining law, how to stake a mining claim, information about mining, inquiries about permits, and how to get a permit. They maintain the mines' registry by statute – the counter of the ounces. The division has the statutory responsibility to list all the mining operations present in the state, report their annual production, and publish it in the mines' registry.

Mr. Coyner commented on their biggest program, the Abandoned Mines Program where they are responsible for all the physical safety hazards in the state of which there are several hundred thousand. It's an active program where they go out and explore and find the sites and physically remedy them with the minimum state requirement which is a barbed-wire fence. They also have a very active public outreach role called Stay Out and Stay Alive. The division conducts minerals education where they go into school classrooms in Las Vegas, Reno, and Carson City and explain the history of mining, the importance of mining to the state, and how it fits into our economy.

Mr. Coyner said they are responsible for the regulation of the oil, gas, and geothermal programs in the state. All oil and gas wells that are drilled as well as geothermal wells come through the division for a well permit. The construction of those wells is analyzed by their engineer and that permit is issued to those industries. The division has oversight on well operations on an ongoing basis at each of the sites.

Mr. Coyner added that they operate the state reclamation bond pool. Reclamation bonds are posted by all activities in the state whether mining, oil and gas, and geothermal; anything that evolves other than casual activity on the land is required to be bonded. The state reclamation bond pool is a very small segment of \$4.5 million dollars right now of that activity which totals \$1.8 billion dollars of financial assurance that has been posted by mining companies in the state to ensure their reclamation is done long term.

Mr. Coyner said they also work closely with the Nevada Bureau of Mines and Geology on information about mining in the state. The Commission's packet has a presentation by State Geologist John Price that he and Mr. Coyner recently gave to the Northwest Mining Association. He would be happy to go through the presentation in detail at a future meeting. Statutory responsibilities for reporting are covered in NRS 513.063, duties of the commission. Mr. Coyner said those members are the MOAC's resource for information in a fair and unbiased way about mining in the state. Mr. Coyner said he meets the requirements of NRS 513.093(4), administrator duties, by producing: Weekly reports for the commission; monthly reports filed with the Governor's office and other agencies; annual publications including the major mines; the Nevada Abandoned Mines Lands annual report. The also produce the annual Nevada Exploration Survey which looks at ongoing exploration efforts and the money being spent looking for new mineral deposits.

Vice Chairman Davis said that as he was going through the presentation he was struck by how pro industry it was. He also looked at the division's website and saw that one of the objectives is to promote the interests of the industry. Vice Chairman Davis asked Mr. Coyner to help him understand why we have a state agency that's job is to promote a specific industry in the state. Mr. Coyner said the division began in 1983 with the mission to protect, establish, and encourage mining in the state. Because it's a large industry in the state with meaningful economic input, he felt the justification is there given the growth in the state. Mr. Coyner thought the term "promotion" could be a little bit loaded in regards to how it might be looked at and contends that the division continues to provide a fair, honest assessment of what's going on in the state by collecting the various data. Yes, their responsibility is to the commission; yes the majority of the members are from the industry.

Mr. Coyner said in terms of the breadth of state government and what's going on in Nevada, they are fortunate to have a unit within the state government that can take that position. Vice Chairman Davis said he didn't have a problem having an agency that can collect that data and be a resource for the public. His concern is when he hears things like *promotion of the industry* or *advocate legislation that will minimize the effect of restrictive regulations* he gets uncomfortable that we have a state agency that is making a determination on what a restrictive regulation for the industry is. He doesn't understand why this isn't something that the industry can do by themselves. Mr. Coyner asked Vice Chairman Davis for his "advocate" reference. Vice Chairman Davis read from the agency's website that one of their objectives is to "advocate legislation which will minimize the effects of restrictive regulations which impose an unnecessary burden on the industry." Mr. Coyner said he would have to examine it. He said it's true, they are an advocate for streamlining regulations and for economic development. They recognize the importance of the mining industry to the state; they believe in the fact that the state needs mining; that it's an appropriate role here; that it's providing jobs, industry, and economic development mostly to the northern Nevada economy. Mr. Coyner offered that if the Commissioners would like to join in with that he'd appreciate their comments. Vice Chairman Davis apologized for going into things that weren't a part of Mr. Coyner's presentation but they occurred to him as he was reading it. He asked Mr. Coyner about education they give to the schools on the importance of minerals and the mining industry to the state – he would be interested to know the curriculum and what kind of things are covered in these educational processes. Mr. Coyner said he'd be happy to cover it in the future.

Dennis Bryan, Vice-Chairman, Commission on Mineral Resources and the Division of Minerals addressed Vice Chairman Davis' comments. He said the commission has a subcommittee with the Bureau of Land Management to help the industry if they have issues with federal or state regulations. Because they've been through the process, they are there to facilitate a conversation between the Bureau of Land Management (BLM) and, in his case the small miner, to help them through the process and to maybe recognize things that could be streamlined. The biggest problem with the mining industry is the time it takes to do things. In industry, time is money. Mr. Bryan said if they can help streamline that by making every BLM district in the state look at the regulations and help interpret them the same way, then that's part of their duties to the state. Mr. Bryan emphasized that they are not trying to do away with anything, they are trying to streamline.

Chairman Restrepo asked Mr. Coyner, as the "counter of the ounces," if they work closely with the Dept of Taxation to provide them information. Mr. Coyner said they provide the Dept of Taxation, upon their request, the annual summation of production in ounces, not dollars. The importance to Taxation is that some mining companies move ore back and forth between counties so it's very important to get those ounces attributed back to the county of origin because that then determines the net proceeds of minerals tax distribution. He said that's probably their most important function with regards to how taxation works. They don't get involved in the dollars, the net, or the deductions. They are there to provide the actual cumulative production site by site. Mr. Coyner stated that they take a great deal of care and difficulty to make sure those are accurate because they are dealing with 5.5 million ounces of gold a year. They also rely on the Nevada Bureau of Mines and Geology who separately goes out and makes determinations with regards to those productions as well as the U.S. Geological Survey. Chairman Restrepo asked why mining companies would be moving product back and forth between counties. Mr. Coyner explained there are different ore types in the state: Types with sulfite minerals and types with oxide or carbonaceous ores. In order to be most efficient with the processing of those ores, mining companies may transfer ore from one mine site to another mine site for processing because the other mine site may have a process that's better applicable to that ore type and they can maximize recovery that way. It does inject a certain amount of uncertainty into the process but they believe they take care to make sure they track that.

Mr. Bremner requested the number of processing sites in Nevada. Mr. Coyner said there are 45 major mines, it's an arbitrary cutoff in terms of how things are tracked and sized, but that's the working number the Bureau of Mines and Geology and the division works with. Mr. Bremner asked if some of the small mine sites would have to contract with these production sites in order to process their ore. Mr. Bryan replied yes, it's not uncommon where a small mine will sell their ore to one of the major mines. Not all the mining industry is booming at the moment; U.S. Gypsum, 100 miles north of Reno, had to close their doors because of the recession.

Chairman Restrepo inquired if they were responsible for oil and gas production as well. Mr. Snow said the Division of Minerals is responsible for permitting and operational oversight of all the oil and gas exploration and production in Nevada. Chairman Restrepo asked if those resources are also subject to the net proceeds tax in the same way as the hard rock mining is. Mr. Snow replied yes, as well as geothermal. Chairman Restrepo asked how much oil and gas the state is producing. Mr. Coyner said Nevada is 26 of 31 producing states in the U.S. Nevada produces less than 500,000 barrels a year, most of that coming from Railroad Valley, south of Ely, near the town of Currant. At one point we had the largest domestic producing free-flowing oil well in the U.S. There could be significant undiscovered oil and gas accumulations in Nevada. Right now it's not a big industry and it's not paying a lot of net proceeds tax. Access to public lands, whether mining, oil, gas, or geothermal, continues to be a huge issue for the state.

e) Bureau of Mines and Geology

Dr. Jonathan Price, Nevada State Geologist and Director of the Nevada Bureau of Mines and Geology, addressed the Commission by stating that they are the Commission's state geological survey as part of the Nevada System of Higher Education managed through UNR. Dr. Price went over NRS 514.040 duties. They are a bureau of information and exchange on Nevada mineral industry, mineral resources, and geology by questionnaire, field investigations, laboratory studies, and survey of the mineral resources and geology in the state. They produce geologic maps used in determining the resources, understanding the geology, and helping with and stimulating exploration and development. Knowing where the limestone might be close to the ore deposit that could have some acid generating capabilities helps in the production of those resources. Geologic mapping is where they look at the geological hazards such as earthquake faults, liquefactions from earthquakes, land slides, and land subsidence due to ground water withdrawal. Through the assay services that they provide to prospectors and others, they make studies of mineral materials to determine the most economical and practical methods of concentrating and processing these resources to promote their conservation. There is a library collection and bibliography of literature on the industry, geology, and mineral resources with a collection of oil, gas, and geothermal samples. The bureau is struggling to cover the cost to do everything because the budget was cut from \$2.4 million in FY 2009 general fund money to \$2.1 million in FY 2011 and now \$1.0 million for this and future fiscal years. Dr. Price said full time equivalency went from 18.2 to 9.5.

Dr. Price handed out an annual report overview on the mineral industry situation. It looks at the state metals production in the context of global production, keeping track of major producers' resources to get some view of what the future is likely to be for the industry. The bureau looks at metallic deposits including copper, molybdenum lead, zinc, and silver and industrial minerals from aggregate sand and gravel, to crushed stone to gypsum, barite, lithium, and others. Dr. Price said the bureau works with Division of Minerals and the state mine inspector to come up with a good directory of the mining operations throughout the state. The bureau's responsibilities to the Commission are that they are largely an information source and from the university's eyes, a public service and research entity within the university.

Chairman Restrepo asked Dr. Price if he would be presenting at each meeting. Dr. Price intends to come to all meetings as long as he's the director but is retiring the end of June. Dr. Jim Faulds and Dr. John Muntean were with Dr. Price and all are hopeful Dr. Faulds will be named the new director. Dr. Muntean is one of their experts on the mineral resources side. Dr. Price expected that either should come to future meetings if the agenda required it. He stated that what the Commission is doing is quite interesting and he believes the bureau has information that's relevant. Dr. Price said the numbers they get from the Division of Minerals feeds into the joint major mines publication and into their analysis in the more complete publication later in the year. The bureau goes to the U.S. Geological Surgery (USGS) and asks them to double check the numbers. The USGS's numbers are proprietary, they don't release them by company the way Nevada does, but they collect their numbers commonly from different parts of the same company. There are quite commonly discrepancies and they then go back to the companies to ask which number is correct and look at their annual reports to figure out what are the better numbers. It can be relevant to the Department of Taxation in terms of the numbers they're seeing because the bureau can see occasional discrepancies between what the average price of gold would be for the year multiplied by the production that the companies are reporting to the bureau and the USGS, compared to the gross proceeds numbers that Taxation has. Chairman Restrepo asked if the Taxation uses the final reconciled numbers of the 3 groups (USGS, bureau, commission) in terms of volume of production before they start doing the revenue side. Dr. Price didn't think so he assumed they used the numbers supplied by the companies, not double checked numbers. Chairman Restrepo will talk to Mr. Nielsen later about it. Dr. Price thought it would be an opportunity for the bureau to help out.

Vice Chairman Davis asked if the USGS goes to the different companies and gathers data and if that data then is proprietary. Dr. Price said yes, the USGS only releases information in a consolidated manner; they won't even report a number for the state unless there are at least three companies reporting for the state. For example, the lithium production numbers for the state aren't reported by the USGS at all. Vice Chairman Davis asked if that's because the companies are saying they'll give the data but don't want it public. Dr. Price said yes but it gets into some peculiarities of federal statistics collection. The USGS is not identified as an agency that has the authority to require companies to provide that data so it's all voluntary, and because it is, they are willing to put it into a bucket so people can't see what an individual company's numbers were. Vice Chairman Davis asked he worked closely with the previous presenters in order to make sure the data came together in his report. Dr. Price responded yes, they actually use the Department of Taxation's numbers to double check their own numbers so if they come up with something that doesn't look right they'll go back and talk to the companies to sort it out.

Senator Horsford asked if, in addition to state funding, they receive any third party support from the industry. Dr. Price responded that they receive a little bit of grant funding from industry. The total budget for the Nevada Bureau of Mines and Geology varies year by year depending on the external grants they receive. They received a little over \$3 million external dollars over the last several years; most of that comes from federal agencies. A few projects are largely supporting research done by graduate students at specific mines funded in part by industry. Senator Horsford requested Dr. Price provide to the Commission the citations regarding the fact that the USGS doesn't have the authority to collect some of the information. Dr. Price will do so. Chairman Restrepo asked what percentage of the revenues that they have to operate the Bureau, came from the industry. Dr. Price guessed it was less than 5%. Chairman Restrepo asked him to provide it at the next meeting, if possible. Dr. Price will provide it.

The Chairman called for a 45 minute break.

The Chairman reconvened the meeting.

6: Presentation on International Gold Market and Nevada's Place in It by Dr. John Dobra

Dr. John Dobra, Director of the Natural Resource Industry Institute at UNR and a professor of Economics addressed the Commission. He is an economist who looks at the business of mining. To his perspective mining is just rocks; the concern is if money can be made off them. One of his jobs is to conduct audits of the royalties UNR receives.

Dr. Dobra gave a presentation on Nevada's Place in the World Gold Industry. Since 1980, Nevada is a huge part of U.S. gold production. The gold boom in Nevada started because the price of gold went up in 1980 from \$250 to \$850 per ounce. The 1980 average price was about \$610 per ounce which would be about \$1,650 today which isn't too far off from what it is now. The world's largest gold producer is China. Using the USGS numbers, Nevada is the world's 5th largest gold producer; using the Nevada Division of Mineral numbers, Nevada is 4th. Discrepancies exist because some companies report their production in gold equivalent ounces by converting the silver they produced into gold, some just report gold. Nevada produces less than 10% of the World's gold - 5.3 million ounces a year, 170 metric tons. The world produces 2,500 metric tons annually. The amount of gold Nevada produces, which produces a lot of jobs, is a very small fraction of the world gold business. Dr. Dobra said Fort Knox, Kentucky holds the U.S. Treasury's gold supplies, about 8,600 tons. The U.S. has the largest gold supply in the world

Dr. Dobra stated that all the gold sold, if traded, goes through the London Bullion Market Exchange (LBME), the main gold market in the world. Virtually all of the gold produced in Nevada is sold on that exchange. When calculating the value of gold produced in Nevada, the London Spot, which is set on the LBME, is used. In Nevada regulations, it states that if you deliver gold on a certain date the way to put a value on gold is to use the afternoon London Spot of that day. That's what's used for tax purposes. Dr. Dobra said that Nevada is a big player in the world of production but not in the world of gold; there are lots of other places to go and dig up gold. The mines stay here but the capital, in terms of trucks and engineers, may leave and mine in other places. In the 1990s a lot of mining capital moved out of the U.S. to South America, Africa, Asia Minor, Asia, and so on. Mining is a fixed resource because it's in the ground but the resource of being a potential mine is not fixed.

Mr. Neilander asked if the 90's mass exodus in the U.S. was a function of the economics of the price or other factors. Dr. Dobra stated that the federal Mining Law of 1872 gives an individual the right to stake a claim and get property rights to the mineral. There was an effort in the 90's in Washington, D.C, to change the law from a claim staking system where one got property rights to the mineral, to a lease system where the federal government would retain ownership of the mineral and then simply lease it out to individual companies. In response to that and particularly because the congress was talking about an 8% gross royalty compared to our 5% net royalty, we saw a lot of mining capital move out of the U.S.

Vice Chairman Davis suggested it might be useful in the future for the Commission to have a better understanding of the federal Mining Law of 1872. Vice Chairman Davis said in regards to Dr. Dobra's comments about mining companies not having to mine here and could easily go somewhere else, what would be those circumstances to where they would want to leave Nevada and go somewhere else. Dr. Dobra said they'd have to be pretty extreme circumstances because Nevada has a very significant geological resource. Now projects are coming on that are significant and the companies aren't going to easily walk away from that, but they could because we are exporting mining capital to the world.

Vice Chairman Davis said that 3 years ago the attempt to reform the Mining Law of 1872 didn't pass and asked if it had an appreciable impact on operations at that time or was the price of gold too high at that point. Dr. Dobra said a number of factors come in including price, as the price goes up it makes it harder to walk away from Nevada. Another big issue here is politics. Dr. Dobra stated that Senator Harry Reid is perhaps the best friend that Nevada mining industry has; he has essentially blocked any effort to get the mining law reform through the Senate. The House will pass mining law reform every time it comes up, but there are 365 members of the House of Representatives and there is one member whose district produces 70% of the Nation's gold. That doesn't give us a lot of leverage in the House. Having Senator Reid there as Majority Leader, gives Nevada a lot of leverage in the Senate. That's been a big issue in mining law reform.

Vice Chairman Davis asked Dr. Dobra if he knew what the primary purposes for gold were in terms of percentages once the gold is taken out of the land and put to market. Dr. Dobra said last time he saw the numbers, something like 2/3 of refined gold is used for jewelry. He said that sounds like a frivolous use but what you have to remember is that for most of the world, with unstable banking systems, currencies, and government, gold is still a major source of investment and savings. For example, a woman in the Middle East may occasionally wear a vest made out of gold rounds connected together with gold wire which may weigh 50 pounds but it's a source of savings for these people because they live in an unstable political and monetary banking world. After that, the use is primarily electronics, computer mother boards and keyboards probably have a little gold circuitry because gold and silver are good conductors. Other uses are minor.

Vice Chairman Davis asked about the Natural Resource Industry Institute - what it was and where it comes from. Dr. Dobra said he started it in 1994-95 as a one person office even though he has had people work for him. The money comes from contracts, no state money. He's done work for mining companies and the state through the institute.

Chairman Restrepo asked Dr. Dobra if anyone in his profession tries to do forecasting on any kind of econometric modeling on gold prices. Dr. Dobra said there are people that have done it but when he is asked for a forecast his reply is if he knew he wouldn't tell and he wouldn't be here. Yes, it can be done, but the price of gold is notoriously unstable; it's gone down \$300 in the last 3 months; it had a big run-up in the previous 3 months. Dr. Dobra said he wouldn't believe somebody who said they had an econometric model to predict the price of gold. Chairman Restrepo commented that according to Dr. Dobra's chart, since 1980 we have a pretty good uptick that's retained the price at a certain level of \$800 plus. He asked what has caused that to happen for that long a period of time, compared to what it was doing prior to 1980. Dr. Dobra said the main issue is that the price quadrupled in the late 70's. The Chairman asked if the price elevated as a function of supply reduction or demand increases because of world economic trends. Dr. Dobra said it is demand, supply has increased over the last 30 years, but so has demand. Chairman Restrepo asked if demand has been driven by increasing wealth around the world by human beings or political instability or a combination of both. Dr. Dobra replied it's a combination of both but thought the bigger issue, at least more recently, has been the growing wealth of developing nations like India - they are the largest consumer of gold in terms of tons. China has recently liberalized its laws that allow individual Chinese citizens to buy and own gold. Gold plays an important part in the culture of the Middle East Muslim world as it does in Hindu cultures. Dr. Dobra said it's a cultural thing, compared to the rest of the World, it's more important to them; it's never been a big part of U.S. culture. But, as that part of the world gets wealthier, their demand for gold goes up. Chairman Restrepo said the likelihood of gold going to pre 1980 values of \$250-\$300 an ounce probably would not be likely. Dr. Dobra agreed.

The Chairman switched the order of Agenda Items 7 and 8 and called Item 8 first.

8: Review of Regulations

a) Review of LCB File No. R-058-11, regulations adopted by the Nevada Tax Commission; Determination of Findings and Recommendations to be Reported to the Legislative Counsel

Terry Rubald, Chief, Division of Assessment Standards, Department of Taxation, addressed the Commission. The legislature changed the number of the deductions that are allowed in the net proceeds formula in SB 493, section 12.5. Most changes show up in NRS 362.120; as a result of those changes, the department needed to update their net proceeds regulations. They had 3 workshops; several mining industry representatives were in attendance and provided a lot of comment. The Tax Commission adopted the regulations on Dec. 12, 2011. SB 493 provides that this Commission then reviews the adopted regulations and gives a report, the department will forward that report to the Legislative Commission along with the adopted regulations and informational statement. It's on the agenda because the department would like to have the Commission's observations and recommendations so they can forward it to the Legislative Commission for their Dec. 29 meeting. Ms. Rubald began with packet page 194 by reading the changes to definitions and explained the changes in deductions, which, she said, are generally more restrictive. She reiterated that the Tax Commission adopted the regulations on Dec 12 and she would expect to deliver the regulations to the LCB by Friday, Dec. 23.

Senator Brower asked Ms. Rubald to clarify the issue regarding some types of costs that are being eliminated as deductions but then become permissible again in 2014. She said those were medical costs, medical insurance and worker's compensation insurance. Senator Brower asked her to explain the rationale behind elimination and restoration. Ms. Rubald replied it comes from SB 493. Senator Brower asked why the statute is written that way. Ms. Rubald did not have the specifics. Senator Brower asked Senator Horsford if he remembered it. Senator Horsford responded that the majority were found by the Committee on Revenue's identification of allowable and disallowable deductions and were part of the discussions with the industry. This deduction on medical costs was originally included as the list of items that would be allowed. It was requested to be an allowable deduction in fiscal year 2012 because of the policy of rewarding and incentivizing employers who offer insurance to their employees. Rhetorically speaking, Senator Brower said if we want to incentivize mining companies to provide things like medical insurance by way of allowing the deduction, why would we remove that, but it was decided during the legislative session and not up to us to undo what was done in the bill.

Vice Chairman Davis asked if parallel sections 13 -14 on packet page 205 were there for the same reason as the health care issue. Ms. Rubald responded yes because in section 14, the new second parallel section, the medical, dental, and life insurance is back in there. Vice Chairman Davis wondered what the rationale was for the insertion of the rebuttable presumption on packet page 200. Ms. Rubald replied that often contracts negotiated between a third party vendor and the mine operator are a lump sum and don't identify how much is out of state travel and out of state operations, so the assumption is going to be that those kinds of activities occur and 20% off the top is the amount. They did some quantitative analysis as to why 20% and found that the costs of some of the disallowed activities could approximate 20%. Vice Chairman Davis asked why it was needed in the regulation; if a company wanted to claim a portion of the contracted services as something that could be deducted wouldn't it be incumbent upon them to show why in their filings. Ms. Rubald responded that it's been their experience that if the bottom line on the contract says \$1 million dollars, that's how much the deduction has been and they're not itemizing all the components or sometimes they never negotiate the individual components. They are going to assume that a portion of that bottom line is not deductible. Vice Chairman Davis asked if she was saying that in the past they made deductions for the entire amount even though possibly some of that amount wasn't necessarily justified. Ms. Rubald said it was possible they didn't have the backup to identify something that wasn't deductible.

Mr. Neilander thought the regulation would make them do their due diligence when they fill out their tax return. Ms. Rubald said, exactly. Mr. Neilander clarified that the presumption is rebuttable so they've set a threshold which will achieve that goal. He asked what the standard of review is to rebut the presumption. Ms. Rubald believes that if we are saying that 20% is not deductible, they are going to have to show that every component within the contract is deductible. Mr. Neilander stated the standard for a rebuttable presumption generally would be clear and convincing evidence as opposed to some higher threshold. Ms. Rubald responded yes, they would have to show some sort of supporting documentation. Mr. Neilander asked counsel to clarify it for the record. Ms. Rasul stated she would have to look into it and look at the intent behind it and the discussion with respect to what burden of proof would be required. From her experience, it would be what Ms. Rubald stated which would be direct supporting documentation to prove otherwise. Mr. Neilander clarified that LCB has already reviewed the regulations and determined that they comport with the statute. Ms. Rubald replied yes. Mr. Neilander commented that sometimes it's defined as the standard of review and if in this case for the taxpayer it would be by preponderance of the evidence but sometimes it's a clear and convincing evidence so it's not clear in the regulation but it might be stated somewhere else in the general NAC. Ms. Rubald's opinion, not being an attorney, is that in general she's aware of appeals that go to the State Board of Equalization and she doesn't believe they use a clear and convincing; it's preponderance for other types of property tax appeals. Mr. Neilander said that probably, in the course of an audit, you would use 51 or 49 – preponderance. Ms. Rasul added that clear and convincing is a pretty high standard and it's not the standard that's used in these types of proceedings, she would venture to say it's most likely preponderance of the evidence.

Mr. Neilander inquired if the new definition of developmental work becomes not deductible but the mineral extraction as newly defined would be deductible. Ms. Rubald referred to packet page 199 which states that the cost of developmental work related to ore bodies outside the geographic area of the mine plan will not be deductible, so, exploration wherever it takes place, will not be deductible by statute. But, developmental work that occurs inside the mine plan will be allowed. Mr. Neilander asked if, as the mine morphs, the mine plan is amended from time to time. Ms. Rubald believes so.

Vice Chairman Davis asked what the rationale was for allowing deductions inside the mine site. Ms. Rubald believed the idea is to relate the costs to the actual production to the ore and the further you get away from where the ore body is, it's tougher to relate that cost to that ore produced. Vice Chairman Davis asked if it was a statute directive or SB 493. Ms. Rubald replied that the regulation had already said that the cost of developmental work is allowed; it was related to what can economically provide a source of raw materials. The mines have quite a system of transportation and sometimes that can expand the geographic area. They try to define it in terms of something that's auditable with information at the Division of Minerals.

Senator Horsford thanked Ms. Rubald for the regulation overview and commended the Tax Commission for the language that specifically provides additional clarity and uniformity in the calculation of the net proceeds and minerals tax, which was one of the goals and objectives during the legislative session. He asked if the allowable deduction was related to the operation of the mine. Ms. Rubald said yes, the overall statute in 362.120 provides for the cost of extraction and transportation and those will still be allowed. The regulation recognizes that some of the allowable deductions are now partial deductions; they've been restricted in some manner or they've been disallowed altogether of the itemized ones. Senator Horsford asked if where it's allowed if the standard is that it's in relation to the operation of the mine. Ms. Rubald replied absolutely. Senator Horsford asked if the overall regulation, even though not always expressly stated in every provision, is the standard and principle that's used. Ms. Rubald affirmed that the regulations have to read in concert with 362.120.

Senator Horsford referred to packet page 199 and the phrase, costs of public relations and influencing or seeking to influence governmental activities, included marketing. Ms. Rubald said that the cost of public relations was previously in the regulation but she doesn't think 2(c) actually contemplated marketing. But, now that NRS 362.120 specifically disallows marketing and wasn't previously mentioned in the regulations, it's clear that advertising, for instance, is not allowed. Senator Horsford asked about the portion of the report under public hearing process which indicated the department received, from a mining association representative, a verbal statement where they said these changes would cost mine companies as much as \$48 million dollars a year however, the dept was not able to verify that statement and there was no data available. He asked why that information is not being provided by the industry. It seems the industry should be able to provide it as part of the public process of these regulations. Ms. Rubald responded that they have not directly surveyed the industry for specific costs for a lot of these. She referred to packet page 214 where they were able to survey some of the reports they've received in the past where they could identify some of the costs. Specifically, they were able to identify, from 14 of the largest mines, the costs of medical and group health insurance, fire insurance, and employee housing. They were able to extract some information from those costs where they think that might account for about \$7 million just for those 3 deductions that will now be disallowed. They are not able to identify, with any specificity, the other disallowances; they will have to wait and see how the reports turn out from all the different mines. Senator Horsford understands it's a challenge for the Tax Commission because of the manner in which the companies report their deductions and that the information wasn't readily delineated in previous tax submittals. He asked why industry can't substantiate their claim of the \$48 million dollars and be able to provide it to their Commission, the Tax Commission, or the Legislative Commission, all of whom should be able to know that information with some more specificity. Ms. Rubald responded that perhaps the industry would likely be able to come up with it if simply given the time to ask them and then accumulate the information. Senator Horsford requested the information be prepared in advance of the Legislative Commission's hearing so that it's part of the official record.

Chairman Restrepo saying the meeting is December 29 asked if anybody was present from the mining industry. Tim Crowley, president, Nevada Mining Association, vouched for the comment and said he had stated it would generate over \$48 million dollars over the biennium; the figure came directly from projections that were made during the session on what these deductions would generate. He said he'd be happy to provide that information but simply hadn't been asked for it. Chairman Restrepo formally requested he provide it to the Commission for the December 29 meeting. He asked what the deadline would be for Mr. Crowley to provide it and Ms. Rubald replied, by Friday, December 23.

Ms. Rubald requested the Commission's formal action to the Legislative Commission. Mr. Neilander supported the draft and made the motion. Mr. Bremner seconded the motion. Motion passed unanimously. Ms. Rubald asked if she could write it up and send it to the Chairman for his signature. Chairman Restrepo said he'd be out of town and they would discuss it.

b) Ratification of NAC 362.040 regarding depreciation periods for real property, fixed and mobile machinery and equipment pursuant to SB 493, Section 12.5, amending NRS 362.120

Ms. Rubald stated that SB 493 calls for the Commission to review the regulations of the Tax Commission with regard to depreciation. The department did not change any of the existing regulations with the lives of property that affect the rate of depreciation, that's the reason they are calling it a ratification. Packet page 295 shows the regulation as it currently exists, it has not changed, it has not been proposed for change. Since the senate bill called for the Commission to review it, the department wanted to make sure "they dotted their I's and crossed their T's".

Ms. Rubald said the department is asking for the Commission's ratification of the current existing regulation. She referred to packet pages 169 – 172 to explain what is used to calculate the amount of depreciation allowed. Ms. Rubald reiterated it was put on the agenda out of an abundance of caution. They aren't certain that the Commission needs to ratify it because it's already existing but just wanted to be sure. Senator Brower asked Ms. Rubald if she anticipated the ratification or request to go to the Legislative Commission as well. No, she said.

Vice Chairman Davis inquired if this was a standard way of depreciation. Ms. Rubald said the lives shown in the regulation vary somewhat from property taxes, different lives for real property. She believed when it was originally adopted in 1980, and updated in 1991 and 2006, the effort was to try and relate it to the life of the mine, which at the time was a 20 year typical life. Vice Chairman Davis asked if it gives automobiles and light service vehicles a 5 year period or if there are other regulations for other industries where they are able to depreciate automobiles. Is special account taken for the specifics of the mining industry or is it something that's standard across industries. Ms. Rubald replied that it varies to a small degree against what they have for property taxes, for instance a light service vehicle being depreciated for net proceeds at a five year rate might vary from the same vehicle being depreciated for property taxes which might be a 7 year life. Vice Chairman Davis asked what the reason would be for the difference. Ms. Rubald said she doesn't know what the thinking was when the regulations were first adopted.

Senator Brower asked Ms. Rubald if she could point them to where in the bill it provides that this Commission ratify the regulation. Ms. Rubald read from packet page 239, SB 493 Section 12.5 (f) which amended NRS 362.120, "The annual depreciation charge consists of amortization of the original cost in a manner prescribed by regulation of the Nevada Tax Commission and approved by the Mining Oversight and Accountability Commission created by section 5 of this act." She thought it may be the drafters were saying any time there is a new regulation adopted by the Tax Commission, that this body reviews it. But, not knowing if the drafter meant depreciation specifically whether there's a new regulation or not is why it's on the agenda, they are just not sure. Senator Brower understood and thanked Ms. Rubald. Chairman Restrepo called for a motion. Mr. Campbell made the motion. Vice Chairman Davis seconded the motion. Motion passed unanimously.

7: Department Reports:

a) Department of Taxation briefing on the net proceeds of minerals tax process

Ms. Rubald prepared a presentation on the process of valuation, collection, and distribution of net proceeds taxes and asked if, due to time, the Commission would like to delay it until the next meeting. Chairman Restrepo was concerned there seems to be two procedures. According to Dr. Price, there is a process by which 3 entities look at their count of ounces and come up with a reconciled number for reporting purposes but the Department of Taxation uses a different number to count the number of ounces. Mr. Chisel explained that Dr. Price uses an annual estimate of value for the gross proceeds reconciliation and compares it to the department's figures for any large discrepancies. He said they can work with Dr. Price using his numbers and if he has any large variances they can take a look and see what those are. Chairman Restrepo understood that the Division of Minerals also has their methodology.

Ms. Rubald referred to the reporting form (packet page 166) required from all operators. They are to list the product and the total products sold by unit. One of the things already identified by the Department is that they ask for the amount of sold product not necessarily the total product produced. The Chairman asked if that was because the total sold is used to compute the tax. Ms. Rubald said yes, some of it is held as inventory. Dr. Price added that the Division of Minerals collects, in a separate survey of the industry, production numbers.

Dr. Price wasn't sure if all the companies are consistent in their reporting due to the way it was being reported or requested on whether it was sold or produced. In most cases, the numbers are very close. He guessed that the numbers they are reporting to the Department of Taxation are the same as the numbers being reported to the Division of Minerals. Their role has been to just double check to make sure that everything makes sense. Dr. Price said they also check with the U.S. Geological Survey who has its own independent request for that information. Chairman Restrepo wanted to make sure there weren't any material discrepancies between the various reporting and accounting methods whether it was production vs. sales. Dr. Price said it deserved double checking to make sure they understand completely what numbers are being collected. Chairman Restrepo asked who would do the double checking. Dr. Price suggested all 3 groups put their heads together and say what exactly they are collecting in terms of those numbers. The Chairman asked if that would lead to some type of regulatory language or does it remain informal. Mr. Chisel requested that the department be able to work with the different divisions and get an understanding of what numbers each has before they step forward. He asked if it could be discussed at the next meeting. Chairman Restrepo said yes it would be helpful to have something written up to show that they are being fair and equitable to everyone in the process.

Chairman Restrepo obtained the members approval to leave item 8a for the next meeting.

b) Department of Taxation briefing on status of audits

The Commission discussed the status of the audits earlier in the meeting.

9: For Possible Action: Briefing to and from Staff

a) Meeting Schedule and Future Agenda Topics

Ms. Rubald asked the Commission when they might like to meet again since they are supposed to meet once each quarter. Ms. Rubald said the department would cull future agenda item topics from the minutes and asked the Commission to provide her with any other topic or organization they'd like to hear from. Chairman Restrepo asked how she would like the members to provide that information. Ms. Rubald asked the members to let her know directly and she would in turn prepare a proposed agenda for the Chairman's approval. Chairman Restrepo asked if there would be any financial or other reports that would be helpful for them to see prior to the next meeting. Ms. Rubald replied that the department would not be able to produce anything new regarding net proceeds tax because they'll be in the middle of desk reviews and establishing the value. It would be better for the second or third quarter.

The Commission agreed that the next meeting would be scheduled in March 2012. Ms. Rasul cautioned the members, for open meeting law purposes, not to discuss any advance materials received prior to the next meeting.

Chairman Restrepo asked if all documents are being posted on the website for the public. Ms. Rubald responded yes, under the Public Meetings section of the Department of Taxation website. The Chairman requested there be a Mining Oversight & Accountability Commission page with the meeting dates posted and all the documents submitted. Ms. Rubald will work with the department's information technology people to see if it can be done.

Senator Horsford recommended that because the Commission is required to review any regulations that pertain to the mining industry prior the Legislative Commission, they schedule their meeting 10 days to 2 weeks ahead in case there are ever any last minute regs that need to be reviewed.

Senator Horsford also requested that a future topic be the Brook and Stanford Research Institute (SRI) report section on the mining industry for ways on which they could build ancillary sectors within natural resources and mining from an economic development standpoint. He felt it would be good for the Commission to hear that section of the report. The Chairman requested Ms. Rubald have it posted to the website as well since its public information.

Chairman Restrepo asked when the next Legislative Commission meeting was. Ms. Rubald did not know. Senator Brower suggested for the Commission's consideration that maybe they consider having at least one meeting in Elko so if a mining company or the association would be inclined, they could tour a mine. Mr. Crowley said he would be happy to host the Commission.

b) Travel claims

Chairman Restrepo and Ms. Rubald said the Commission already signed some travel documents so the item was taken care of.

10: Public Comment

Chairman Restrepo called for public comment.

Ms. Rubald said she was given a document that Eric Hodgdon, a member of the public, wanted read into the record. It will be made part of the record.

Jan Gilbert, representing the Progressive Leadership Alliance of Nevada, addressed the Commission thanking them for their service to the state. She raised the issue that there wasn't a woman on the Commission yet they are 50% of the population. Ms. Gilbert felt it was an oversight, not a view, that there wasn't a balanced representation. Ms. Gilbert hoped the Commission would consider looking at one of the superfund sites that is designated but not a priority. There are two sites and only one is a priority so there's not cleanup going on at that site; it was shocking to her as a citizen. Regarding the deductions of the health care expenses, which she attended, it was discovered the mining industry was deducting health care costs from the modified business tax and from the net proceeds of minerals. It was her understanding that they should not be allowed to deduct the health care costs from both; it appeared to be a double dipping. She hopes the Commission will urge the Legislature to take the sunset off and not allow the health care costs to be deducted from both. Ms. Gilbert suggested MOAC meeting information be posted on the LCB meeting site since it's the first place most of the public goes. She had to search around for the information but now that she knows it's on the Taxation website, it's easier. The Chairman said Ms. Gilbert made good points and suggested the Commission ask Dr. Cripps from the Division of Environmental Protection to address the superfund site issue at the next meeting. Ms. Rubald said she'd add it to the agenda. Vice Chairman Davis said he'd like to see the pit lakes issue added to the agenda as well. The Chairman acknowledged his request.

11: Adjournment

The Chairman adjourned the meeting at approximately 2:40 p.m.

Respectfully submitted by:
Donna Proper, Program Officer I
February 8, 2012