

**Minutes of the Meeting**  
**MINING OVERSIGHT & ACCOUNTABILITY COMMISSION**  
**June 26, 2013, 10:00 am**

The meeting was held at the Nevada Department of Education Boardroom, located at 700 East Fifth Street, Carson City, Nevada and by video conference to the Nevada Department of Education, 9890 South Maryland Parkway, Suite 221, Las Vegas, Nevada.

**MINING OVERSIGHT & ACCOUNTABILITY  
MEMBERS PRESENT:**

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

**MEMBERS ABSENT:**

Congressman Steven Horsford, Member

**COUNSEL TO THE COMMISSION PRESENT:**

Sarah Bradley Esq., Deputy Attorney General

**DEPT OF TAXATION STAFF PRESENT:**

Christopher Nielsen, Director  
Department of Taxation  
Terry Rubald, Chief,  
Division of Local Government Services  
Department of Taxation  
Tom Summers, Tax Manager  
Compliance Division, Reno  
Department of Taxation  
Bonnie Duke, Auditor  
Department of Taxation  
Anita Moore, Program Officer,  
Boards & Commissions,  
Division of Local Government Services  
Department of Taxation

**MEMBERS OF THE PUBLIC PRESENT:**

Brian Hutchins, Comstock Mining, Inc.  
Rachel Yelderman, Comstock Mining, Inc.  
Gayle Sherman, Comstock Residents Assn.  
Joe McCarthy, Comstock Residents Assn.  
Robin Cobbey, Comstock Residents Assn.  
Daan Eggenberger, Friends of the Comstock  
Susan Juetten, Great Basin Research Watch  
Colleen Cripps, NDEP  
David Emme, NDEP  
David Gaskin, NDEP  
Mike Elges, NDEP  
Alan Coyner, NDOM  
Mike Visler, NDOM  
Jim Wadhams, Newmont Mining  
Bob Fulkerson, PLAN  
Christopher Preciado, PLAN  
Howard Watts III, PLAN  
Laura Martin, PLAN  
Michael Finsbuy, PLAN  
Stacey Shinn, PLAN  
Larry Wahrenbrock, Silver City Resident  
Bill Sjovangen, Storey County  
Cheri Wulforst, Terra General Operating  
Mark Joseph Phillips, Virginia City Resident

**1. Roll Call and Opening Remarks**

Chairman Restrepo called the meeting to order and asked for the roll call. Terry Rubald called roll. All members were present except Congressman Horsford.

**2. Public Comment**

Chairman Restrepo then asked for public comment.

First to offer public comment was Gail Sherman with the Comstock Residence Association. Her comment was to call attention to concerns regarding the permitting of open pit mining and milling within the Carson Mercury Superfund Site. She said the superfund site was established by the EPA in 1990 as a result of the discovery of high levels of mercury in fish in the Carson River.

Ms. Sherman thanked Jeff Collins of the Bureau of Corrective Actions (BCA) for making the Comstock a safer place to live and work. Ms. Sherman stated the BCA is very active in outreach providing superfund site information to the public. The BCA agreement with the EPA has required Comstock Mining to perform extensive testing for mercury, arsenic and lead prior to the disturbance of any soil.

Her concerns lie with other NDEP permits issued within the superfund site. Ms. Sherman stated there is no protective protocol in place that would ensure all permits granted are done so with the unique superfund site issues considered as part of the permitting process. She suggested that before any NDEP permit is issued, the BCA provide written clearance of the specific areas slated to be disturbed and that the written clearance be made part of the permit. Ms. Sherman feels this would provide a more integrated, transparent and protected permitting process.

The next speaker was Robin Cobbey, a resident of Gold Hill and a board member of the Comstock Residence Association. Ms. Cobbey chose to address the question one of the commissioners asked at the last meeting: Does Comstock Mining AKA Plum Mining have any violations?

She said that there have been many violations for the past six or seven years. As Plum Mining, there were numerous violations, some serious as recorded by NDEP. Her concern was that in some cases of hazardous material spilling or leaking on to unprotected ground, it took up to four citations before a violation was mitigated. About every seven to ten years, the area gets above average precipitation, causing flooding and mudslides. Her concern is that there does not appear to be any plan for this in the current mining operation. She continued by saying that many violations go unnoticed by the regulatory agencies and authorities.

The most serious violation happened in 2011 when a cease and desist was issued by NDEP for introducing pollutants into the waterway. This happened in an area where Comstock Mining was in violation of a county ordinance and should not have been exploring in the first place as they had already exceeded the amount of earth they could disturb. Residents had reported to the county that Comstock was exceeding the disturbed acreage allowance on the east side of Highway 342 where they were exploring. County ordinance allowed up to a thousand cubic feet and they had disturbed about 13,000 cubic feet. Ms. Cobbey said that the county did not investigate because they were told by Dennis Anderson, senior engineer of Comstock Mining, in a letter dated April 6, 2011 that the law of Apex in the Mining Law of 1872 allowed them the right to follow mineralized ore. She said this is false information because this law applies to federal land and Comstock Mining was exploring on private land. Ms. Cobbey feels this to be misinformation and the county relied on it erroneously; as a result, Comstock disturbed acres of earth where they had no permit to explore and they entered pollutants in the waterway in violation of NRS 445A.465. She said it took months before the county and the mining company acknowledged the law of Apex did not apply and that Comstock Mining had provided false information.

The next public comment came from Mr. Larry Wahrenbrock, resident of Silver City since 1973. Mr. Wahrenbrock stated that the Comstock Historic District Commission can tell him what kind of exterior siding, what kind of windows, what kind of a door he can put on his house, but they can't tell the mining company that they cannot destroy the mountain side across the street from his house.

Mr. Wahrenbrock said he would like the commission to review the Comstock Historic District Commission as well as the Department of History, in regard to their administrative processes. He stated that in 2011 there was a gubernatorial executive order requiring all boards to review their Nevada Administrative Code and the rules and regulations. Of the 14 sections he felt 12 were found to

be in need of review. He expects certain things out of his government and doesn't see those things happening on the Comstock. He hopes that as part of the commissions review at the Department of Conservation and Natural Resources, a comprehensive review of the Historic District Commission, the Comstock Historic District Commission and the State Historic Preservation Office would be appropriate.

Ms. Susan Juetten was the next public comment. Ms. Juetten read comments on behalf of John Hader, the executive director of Great Basin Resource Watch in Reno, who could not be present.

GBRW has presented information to MOAC on the issue of pit lakes in Nevada and with the governor's signature has amended existing NRS on the reclamation of pit lakes larger than 200 acres.

GBRW is requesting MOAC follow the process of implementation of this revised NRS as there may be a need in the future to act to assure that there is accountability by mining corporations in being held accountable for this new NRS.

Regarding mining on the Comstock, GBRW sees this as a situation where if there were something such as a general overall environmental review process in place, which Nevada does not have, connecting potential impacts to air, water, land, economy, other laws such as the superfund laws, that there's an additional level of oversight that other states have that Nevada does not.

Ms. Juetten said that Comstock Mining has to date effectively navigated around the National Environmental Policy Act by avoiding federally controlled lands. This was mentioned in the March Meeting of MOAC. She said that regarding the environmental review process, it can be performed on a local, often county level where there is not a federally required environmental review and it requires what are called cumulative impact analyses. Such analyses go beyond the state permitting process in requiring how the current projects will add to other existing activities such as Superfund and for projects in the foreseeable future. In doing so, the environmental analysis which is now limited under the permit regulations that we already have does not tie together impacts.

GBRW encouraged MOAC to consider the need for the state to develop such a process to act when the National Environmental Policy Act, the federal law, does not apply.

Public comment next came from Mr. Mark Joseph Phillips, a resident of Storey County for 20 years. Mr. Phillips stated he was grateful to see environmental and financial oversight on the agenda and thanked the commission for continuing Item Number 4 on the agenda in regard to Comstock Mining and the historic district.

Mr. Phillips commended the commission, the governor and Storey County elected officers. Mr. Phillips then said when it comes to net proceeds from mining, they just put zero on the forms in Storey County. He suggested there was a judge and a congressman with mining claims on the Storey County and Lyon County line as well as a county commissioner with two patented mining claims he didn't put in his financial disclosure statement. Mr. Phillips then said that Mr. Amodei has introduced legislation that would give all the federal land, convey it back to Storey County as private property with no consideration of federal action, no consideration of Natural Environmental Policy Act 1969 and no consideration of Natural Historic Preservation Act.

Mr. Phillips stated that he went to state records committee and all of the land use and zoning maps and maps to the master plan were missing. He said that shortly after that, Mr. Amodei came up with his own map. He questioned the location of the maps from Storey County from the 70s and 80s.

Bob Fulkerson from the Progressive Leadership Alliance of Nevada spoke next during public comment. Mr. Fulkerson said that the Nevada Department of Wildlife told us that we can catch all the trout we possibly could from Wildhorse Reservoir in northeastern Nevada. He said they forgot to mention that consuming more than four trout per month from Wildhorse could cause mercury poisoning.

He stated that as a result of mercury contamination from mining, NDOW has issued methyl mercury health advisories for more than 90 percent of the fisheries in the waters in Nevada. Some of these water bodies were contaminated from historic mining when we didn't know any better, but much of this toxin has been added much more recently in large part because of the massive amounts of mercury that Nevada mines are pumping out.

Between 2006 and 2011, Nevada mines reported emitting in to our air more than 10,000 tons of mercury compounds. It ends up in our fish and in our kids and in us.

Mr. Fulkerson said that NDEP should be congratulated for a monitoring program and the mining industry should be congratulated for reducing those emissions compared to what was happening ten years ago. He felt there is great room for improvement because there are huge amounts of additional fused mercury emissions from sources that are not reported and are not monitored because they are not recognized by the State of Nevada.

He cited research by Dr. Glen Miller at UNR stating that now we know that mercury emissions from tailing facilities and active heat sleep operations are probably double the amount of mercury that is being released into the air compared to what is currently reported. Mr. Fulkerson said that now the technology exists to decrease mercury air pollution from these sources but NDEP and the mining industry do not seem to care. He asked the commission to join PLAN in challenging the industry to reduce emissions from these other sources.

Mr. Fulkerson stated that state regulations are inadequate. He said that when the mining industry is asked by federal regulators to take corrective action to protect public health, their response suggests they don't want to adopt the stronger standards for methyl mercury and are not going to do it.

NDEP wants to use standards that were developed 40 years ago when the science and the health about methyl mercury was little understood. Methyl mercury bio cumulates up the food chain. The smaller fish are getting it. They're eaten by the bigger fish. Those bigger fish are eaten by us, by eagles, by other wildlife and causing a chain reaction that has some profound health implications for all of us. By NDEP not adopting stronger standards, they are severely jeopardizing the health of the people of Nevada, particularly children and women of child-bearing age.

Chairman Restrepo asked if anyone else from the public in Carson City or Las Vegas would like to speak, there were no responses.

### **3. AGENCY REPORTS: CONSIDERATION AND POSSIBLE ADOPTION OF RECOMMENDATIONS AND ORDERS**

#### **(a) Department of Taxation Report of expenses and deductions of each mining operation, pursuant to the requirements of NRS 362.120(5)**

Ms. Terry Rubald, Chief of the Division of Local Government Services, spoke for the Department of Taxation.

The first item on the agenda was a report of expenses and deductions of each mining operation. This was done pursuant to NRS 362.120(5).

In the commission's packet there was a net proceeds of minerals tax bulletin for the calendar year 2012. She directed the members attention first to page 19 which is the "meat" of the report. Ms. Rubald pointed out a list by taxpayer showing the gross yield, the allowed deductions and what the department calls the 'calculated net'. If this was less than zero there is also a 'reported net'.

For an example, the first item on the bulletin is AU Mines Inc, the Manhattan Gulch Mine. The amount of allowed deductions of the mine is \$3,180,037. This amount is subtracted from the gross yield and in this case resulted in a negative net proceeds of \$1,802,518. The reported net shows zero since anything below zero is not taxable.

Ms. Rubald explained the new reporting form was implemented for the calendar year 2012 as a result of the 2011 legislation. It is much more specific as to the type of expenses allowed as deductions.

This section of the bulletin breaks down the gross yield and net proceeds first by industry. But right behind it is another second section and it is the same information but it's sorted by county in which the mine is located. On page 35, the last entry in the first section shows the total for 126 active mining operations. Total gross yield was \$10,437,065,303. The amount of allowed deductions was \$5,715,000,000. This resulted in reported net proceeds of \$4,809,000,000. The overall net to gross

ratio is 46.08 percent and the amount of taxes generated by the net is \$239,789,200, of which just slightly more than half goes to the state general fund and the state debt fund.

Ms. Rubald then pointed out a table located at page 52 of the packet. This time the data is presented in summary form by industry mineral type. The mineral type reporting the highest net to gross ratio is iron ore, but there were only two reporters and of the two, one reported a negative net. She said this was not very indicative.

The industry mineral type that really drives the overall net to gross ratio is the silver and gold precious metals group which accounts for about \$9.5 billion of the gross value of the resources extracted. Extraction costs in the gold industry amount to nearly \$2.9 billion. Transportation costs to the mills was nearly \$104,000,000. The milling function amounted to \$1.2 billion. The total royalties depreciation and return on investment accounted for an additional 731 million of deductions. The total allowable deductions for gold were \$4.9 billion, so the resulting net to gross ratio was 48.56 percent. There are about 34 gold and silver producers, so their cost of doing business definitely drive the overall cost experienced by mines in the state.

The industrial type minerals and the geothermals are not a very profitable group, ranging from zero net to gross ratio all the way up to clay, which has a 37.35 percent net to gross ratio.

Vice Chairman Davis referred to page 20 and asked why the Comstock operation would have so many more deductions in their gross yield in 2012. Ms. Rubald replied the reason is that it's a start up and they probably have a lot of specific costs associated with that.

Chairman Restrepo asked Ms. Rubald if she thought that was due to the fact that it was a relatively new operation, a new company. Mr. Rubald said yes, that is what she would expect from a new operation.

Chairman Restrepo then referred to page 52 and asked since the law has changed in the reduction of the deduction overall, the 46 percent, what would that have been the year before – the year prior to the reduction deduction. He asked if that was normal and how much was that affected by the legislation. Ms. Rubald said she would expect the net to gross ratio to be higher than prior year because there is more net.

After discussion, Chairman Restrepo stated it would be interesting to see the difference historically now that they had a full year. Ms. Rubald will provide that information at an upcoming meeting. Chris Nielsen, Director, Department of Taxation spoke and said that the Department would certainly provide that information.

Member Neilander said that he would be interested in seeing particularly from 2009 up to 2012 more detail in the bar chart on page 12.

**(b) Department of Taxation Report on desk review procedures and certifications, pursuant to the requirements of NRS 362.120(1)**

Ms. Rubald mentioned the process of review, which the Department calls desk reviews. The description of the process is in the packet at page 54 and 55. She said the Department looks at every single report that is submitted by the taxpayers on an annual basis. The purpose of a desk review of net proceeds and minerals taxpayer report is to enable the Department to certify the value to be taxed, determine whether the reported gross yield is consistent with known and available market data, determine non-allowable deductions claimed by taxpayers short of reviewing the source documents as you would in a full audit. Determine instances of non-compliance in the reports with applicable statutes and regulations and also determine whether penalties and interest are due on late filed reports.

A desk review is a more complex process than just checking for clerical errors. The process involves judgment as to compliance with law and appraisers. The Department has an appraisal staff examine each entry for reasonableness, accuracy and completeness. They often require taxpayers to submit supporting documentation. The taxpayers have the ability to go to the State Board of Equalization on an appeal.

The most common reason for the disallowance and the increase in allowed deductions has to do with the amount of depreciation of assets that are claimed as an expense.

Member Neilander asked if the depreciation is straight line depreciation. Ms. Rubald said yes it is straight line and there are different years, 20 years, 10 years and 5 years. They agreed that the issue is the taxpayer miscategorizing the equipment as opposed to the amount of the depreciation. This is probably the reason for most incorrect entries. Member Neilander said he thought they would have a centralized way of calculating depreciation, Ms. Rubald said yes. Member Neilander asked if the Department is still using the desk audit as part of the risk model for the field audits. Ms. Rubald replied yes, the appraisal staff will recommend to the audit staff if they have found something that needs to be looked in to.

**(c) For Possible Action: Department of Taxation – Net Proceeds of Minerals Audit Status – informational presentation pursuant to NRS 514A.070(2):**

Ms. Rubald introduced Tom Summers, the manager of the Reno group of the compliance division for the Department of Taxation, and Bonnie Duke, the supervisor of the new audit section in the Local government Services Division of the Department of Taxation.

Mr. Summers and Ms. Duke began by reporting on the completed audits. Last year they reported the field audit had been completed for Barrick and since that time the audit process has been finalized.

Mr. Summers answered questions from the members rather than rereading the audit information which began at page 60 of the packet. Member Neilander stated that as a point of clarification, it appeared in a number of these audits that were completed, including Barrick and others, the major dispute was over disallowing expenses for certain types of insurance where the legislature amended it to make it clear that it was not an allowed deduction so the argument then became: it must have been allowed prior to that and that was a result in these various settlements that were reached. Mr. Summers said that was correct. Member Neilander asked if any of those went to hearing or if a hearing was requested. Mr. Summers stated that as it had been previously allowed over the years, the Department did a settlement agreement on it in order to go forward and it would not be deductible based on SB93.

Vice Chairman Davis asked if this was applied to audits going forward so the Department would not need to deal with the issue on subsequent audits. Mr. Summers said that was correct.

Chairman Restrepo asked what was the status of the Comstock audit as per the schedule on page 57. Mr. Summers said it had not been selected for audit yet and Chairman Restrepo asked why. Mr. Summers replied that with Comstock just getting up and running, as the Department transitioned from compliance to local government service taking over the audit, the Department has a 3 year statute of limitations to review the audit and they were allowing them time to 'get going' and then do a 3 year audit when they reach that point in time.

Member Neilander followed up with the summary of the current audit status on page 57. He commented that the audit cycle was mapped out in hope of capturing everything within a 5 year period. Barrick is completed, Newmont is in process. He said the field audit is about a 9 month cycle and asked how that compares to what the Department projected earlier and how does that impact the 5 year plan. Mr. Summers said it was an ambitious plan when the Department started it. He felt because of the number of mines for Newmont (5 mines with 1 miner) it takes longer. Newmont has a different accounting system than Barrick and Newmont has signed an extension to the waiver of limitations so the interest clock keeps running while the Department does their research. He said the most recent visit to Newmont was June 4<sup>th</sup> and there was a conference call set up with Newmont for July 3<sup>rd</sup> to resolve questions from both parties. He felt progress was being made and they have signed the waiver through September 27<sup>th</sup>. He also said Newmont was very cooperative and the Department was making good progress. It is just a different accounting system and a volume of records to go through.

Member Neilander said it is very difficult to inject that cycle because every company has different bookkeeping methods and different corporate chain to deal with. Mr. Nielsen, Director of the Department of Taxation stated that once Newmont is billed later in the summer, in excess of 80 percent of the so called gross yield will have been audited statewide. He said that when he presented the plan

to the governor 2 years ago with the assistance of Mr. Neilander, the goal was not to audit every single company every single year. The plan was within a 5 year period to not just do the desk review and the desk audits, but do field audits. The Department knew that Barrick and Newmont were going to take longer since they are such large companies. He anticipates once they are done with Newmont that the rest of these smaller companies are going to go much quicker. He felt they are on track as far as auditing everybody within the 5 year plan.

When asked by Member Neilander if he felt like he had the tools that are necessary in order to keep the process moving along, Mr. Nielsen replied yes. The Department is almost done with the transition between the desk review process and the field audit process. He felt Newmont will be the last field audit conducted out of the compliance division. Mr. Nielsen said that the Department collects for the general fund and from the Department of Taxation over 2 billion dollars a year of which about 100 million or so is attributable to mining.

Mr. Neilander asked if the Department had been able to combine respective sales and use tax audits with the mining audits in terms of the field work. Mr. Summers replied that the Department's primary focus is sales tax on any tax or other excise taxes. He said if you get selected for any of the other excise taxes, you always get the sales tax audit thrown in at no extra charge.

Chairman Restrepo asked Mr. Nielsen if there was a regulatory authority that the Department has to require all the mining companies to do their internal audits the same way so that all companies are doing it the same way – then there would not be the issue the Department ran into with Newmont because they're different than Barrick. Mr. Nielsen did not feel there was any sort of statutory tool to require that. He said a business is free to select their own fiscal year whether it's a one company business or they have multiple subsidiaries. He did not feel the Department is there to tell those companies how to do business, only to ensure that they are paying the legally required taxes.

Bonnie Duke, supervisor of the new audit division in Local Government Services, responded to the question of whether the initial audit schedule was too ambitious. She said the auditors will continue with their process in which they use risk models to determine which ones to audit first and hopefully they can be more efficient in the way they do things and get more done. She said the original schedule is just not going to happen. Ms. Duke stated in terms of the combined sales tax and net proceeds audits, once her auditors have taken over on the net proceeds, they won't be doing sales tax audits with the net proceeds audits. They found it wasn't efficient.

Chairman Restrepo asked if the requested extension is the only extension received or is there an extension available. Mr. Summers replied that they could ask for an extension but they have reached tentatively a gentlemen's agreement that should be all the time they need. Mr. Nielsen pointed out in an audit it isn't unusual to grant an extension and any tax liability.

**(1) Identification of audits of mining operators to be conducted for the remainder of the 2013 calendar year;**

**(2) A report of the results of each audit of a mining operator or other person completed by the Department during the immediately preceding calendar year;**

**(3) A report of the status of each audit of a mining operator or other person that is currently in process.**

Bonnie Duke provided a brief background of the audit section of the Division of Local Government Services. It was organized in October of 2012. The net proceeds of minerals tax function, the real property transfer tax audit and administration function as well as the performance audit functions were combined into a single audit section. In addition, the audit section has been responsible for the refund program for the mining claim fees per SB493 that was passed two years ago. SB493 repealed the fee charged on certain mining claims; the deadline for those claims is June 30<sup>th</sup> 2013.

The staffing in the audit section is a supervisor and three auditors. Ms. Duke said that one of the auditors, Sapan Chawla has an MBA degree and has extensive auditing experience in the gaming industry. Another employee Katrina Humlick just completed her Master's degree in accounting. Jake Coval has a Bachelor's degree in accounting and has also done a lot of training. Ms. Duke said she is a licensed CPA and has much experience in auditing as well as having worked for a mining company and a local government. She expressed confidence their team will do well in this audit.

During the period of October 2012 to March 2013 all of the resources of the audit section were primarily focused on the net proceeds of tax audits because of the importance of the tax audits. During that time the performance audit and real property transfer tax audits were deferred. With the addition of the staff in April, the hope is to get new staff trained and make headway on all projects.

The net proceeds tax audits initiated by the audit section are Jerritt Queenstake, Robinson Mining and Round Mountain. Ms. Duke's hope is to get these done as quickly as possible. In addition, they have undertaken a limited scope audit for Barrick for their 2011 year. This is because of a potential misstatement in gross yield. Also add to the list the Hollister Mine, a gold mine, and the Big Ledge Mine which is a Barrick/Nevada Geothermal Utility, a Washoe County thermal. These will be the next three audits they will undertake.

Chairman Restrepo asked Ms. Rubald how progress was, getting more consistent numbers, working with Alan Coyner's shop to get a better handle on the mining production being reported. Ms. Rubald responded that Mr. Coyner has been very generous with his information and the exchange of that information. It has been a very valuable resource for the Department.

Vice Chairman Davis asked if someone could explain to him the issue of the deduction of self use of electricity, specifically regarding Ormat Technologies reviews. He said the Department had determined if that would not be allowable and the adjustment was made to allow for it. He asked that someone explain to him why that decision was made. Mr. Summers explained that Ormat produced the electricity and were siphoning off some to run the power plant itself. He said they were not reporting that in the gross yield but they were taking the expense deductions related to that. At first the Department disallowed the expenses related to their self use. Ormat then petitioned. The Department went back and agreed to give them those expenses but they also added their self use electricity to the gross proceeds. Mr. Summers said the main concern was they were not reporting the power as potential proceeds but were taking the deduction.

#### **4. AGENCY BRIEFINGS**

##### **For Possible Action: Information and Response to Commission questions regarding the Nevada Division of Environmental Protection Regulatory Efforts and Requirements concerning the Comstock Mine operations**

**Dr. Colleen Cripps, Administrator  
Nevada Division of Environmental Protection**

Dr. Colleen Cripps, administrator of Nevada Division of Environmental Protection introduced herself to the commission. Dr. Cripps explained that she was not present at the last meeting because after reading that agenda the topic was listed as information regarding possible degradation of the Virginia City National Historic Landmark as a result of mining operations. She assumed that to mean that the commission would talk about state historic preservation type issues, not that it was going to get in to all of the other environmental and regulatory aspects of that project. She said she thought there was an agreement that the Division would be in attendance on the third meeting of the year to discuss environmental issues. Because of these things, she made the decision that her Division did not need to be present. She stated that clearly she needed to work on her crystal ball or mind reading skills.

Dr.. Cripps then introduced her deputy administrators. First Mr. David Gaskin, deputy administrator over mining and their water programs – water pollution control and water quality planning. Next Mr. David Emme, Deputy Administrator. Mr. Emme oversees the state drinking water program, hazardous waste program and the Bureau of Administrative Services. Then Mr. Mike Elges, Deputy

MOAC June 26, 2013



Administrator. Mr. Elges oversees the air programs and the bureau federal facilities. Dr. Cripps said they had all read the transcripts and were prepared to address any of the issues that were raised at the last meeting as well as any other questions the commission may have.

Before speaking on the regulation reclamation of the Comstock Mining project, Dr. Cripps wanted to talk about concerns they read in the transcript. Regarding roles and responsibilities and what NDEP does and does not do. She said they have limited authority under state and federal statute and regulations to control water and air pollution and the management of solid and hazardous wastes from stationary sources like mining operations. They also have the state-only program that is managed through the Bureau of Mining Regulation and Reclamation. This is designed specifically to regulate the mining industry and to ensure proper reclamation of mining operations and of productive post-mining land use. Additionally they operate a program in the Bureau of Corrective Action that deals with areas where there is environmental contamination and the cleanup of those areas. In general, the potential impacts of any project are evaluated up front. Permits are issued then with conditions that limit activities to levels that meet the requirement of those laws. The Division then conducts regular inspections under all of their programs including air, water, waste and mining to ensure compliance. If the company is found to be out of compliance with any of the statutes, regulations or the permit conditions, an enforcement action is initiated.

She said that Comstock Mining is not self-regulating. There are a lot of federal and state requirements that apply to this facility. They have an obligation to comply with these requirements and the terms and conditions that are established in their permits and they also have an obligation to report any failure to do so. Dr. Cripps said there are a number of things that the Division does not regulate. The first and most important is the location of the facility. The siting of the facility is under the purview of the local government through either zoning or conditional or special use permits. The Division does not get involved in that in any way. They also do not regulate noise, traffic, visual or cultural impacts, vibration, light pollution or other nuisance issues. Once a special use permit has been issued, they are required to issue a permit to the company if it provides it can meet the requirements under the Division's authority. They do not have the ability to just say no to a company. If they can meet the requirements under the statutes and regulations, they have to issue them a permit.

Regarding coordination between the agencies, Dr. Cripps said there are a number of agencies that are involved in any sort of operation or any facility that has significant pollution emissions. There is a wide range from water resources, mine reclamation, hazardous materials, historic preservation. BLM and forest service get involved. There is a wide range of agencies that have various aspects of authority over these projects. Dr. Cripps said they work together and coordinate their efforts.

Dr. Cripps mentioned that they have two liaisons within their office from the Bureau of Land Management. They are located within the Bureau of Mining Regulation and Reclamation and they are there to ensure that state and federal coordination occurs on mining projects. They also work with local governments and have a number of regulations that require conditional use permits from local government to be in place before any of their permits are issued and the operation can begin construction.

About the environmental impact statement, Dr. Cripps said there were a number of concerns that had been expressed at the last MOAC meeting regarding the fact that an EIS was never completed for the activities of Comstock Mining. Dr. Cripps said she did get a request specifically from Member Neilander asking that this be addressed. She stated she had provided a brief written response through Ms. Rubald several weeks before this meeting. An EIS is only required for activity on federal land. The Division has no involvement with environmental impact statements and no authority to require one. It is a federal requirement that is solely under the purview of the federal land manager. She said any specific questions about this should be directed to the Bureau of Land Management. The State of Nevada does not have any equivalent process to do that kind of analysis.

Mr. Gaskin introduced himself and said that the Bureau of Mining Regulation and Reclamation is a state program under state law and regulations, and its purpose is to protect water quality from mining impacts. This is done through control of design, construction, operation and closure of mining facilities in the state. They have authority over both the quality of the surface and groundwater, both

public and private lands of this comprehensive program, the focus on the proper containment of process solutions within a mining operation, the leach pads, tailings, impalements, ponds, mills. Since Nevada is a very arid state, we do have requirements that are fairly stringent with zero discharge for mining facilities. A lot of other states have discharges for mining facilities as a normal part of operations because they have so much rainfall and less evaporation. Here in Nevada, we have a zero discharge requirement. The Bureau also looks at other potential sources of contamination such as waste truck dumps and pit lakes and purfil issues. They issue water pollution control permits and have inspectors and people that will go out and do compliance and enforcement to make sure the regulations are followed.

Also in the Bureau of Mining is the reclamation branch. Their job is to ensure proper reclamation of mining operations. They also cover exploration projects as well and industrial minerals. They look at rebraiding, recontouring, revegetation of a mine site so that at the end of the mining life there is a productive post-mining land use. They issue reclamation permits and have similar inspection compliance and enforcement functions. They also handle the bonding for mining facilities and exploration projects.

Mr. Gaskin said that the Bureau of Water Pollution Control is a broader program with only some activities that are mining-related. They cover surface water discharges and issue storm water permits for facilities working in water waste permits. He said that in all of their programs there is extensive public involvement. Mr. Gaskin said there had been a couple of SEC appeals regarding Comstock, one on a reclamation permit that was dismissed and another with corrective actions that were withdrawn. Mr. Gaskin stated that reclamation is not optional, it is required in the regulations and statutes and bonding is held in case the operator is not willing or able to do the reclamation.

In terms of bonding for the Comstock projects, there is approximately 4.7 million dollars for mining and exploration. Their various projects cover waste truck dumps, leach pads, ponds, buildings, roads.

About coordination, Mr. Gaskin said their offices are all near each other and the Mining Bureau is on the same floor in the same building as NDEP as well as the office of Corrective Actions. There is closeness and communication within the Division. They have worked extensively to address historic mining impacts in the Comstock area and how those relate to the permits from the Bureau of Mining. Although Comstock is a small mining operation, NDEP holds them to the same standards as large mines to prevent adverse impacts to water quality and ensure adequate reclamation. The permit process invites public input. They frequently inspect the site to ensure compliance with regulations.

Member Bremner asked about degradation of the quality of the water in Wildhorse Reservoir. He said the Department of Wildlife said you should not eat more than four fish a year out of Wildhorse. It is one of the premier fisheries in northeastern Nevada and the degradation has been going on for a long time. He asked Mr. Gaskin if he would care to comment on the depreciation of the quality of water in Wildhorse. Mr. Gaskin said that NDEP is working with the Bureau of Water Quality Planning and monitoring a lot of waterways of Nevada. He said they had met with top fisheries, people from NDOW and the state epidemiologist for Nevada, talking about mercury levels in fish tissues. The Division of Wildlife has an extensive list of consumption recommendations for fish. DOW has done extensive sampling throughout the state and mercury is a pervasive issue.

Member Bremner asked how long has this spirit of cooperation among agencies been going on. Dr. Cripps said been at least a decade. Member Bremner said it seems like the situation is getting worse, not any better. He stated he didn't know what kind of corrective action has been taken; Wildhorse has been going down and mercury has been going up for a long time. We have had suits from Idaho and Utah blaming Nevada mines for mercury pollution. He felt it is long overdue to cooperate and take corrective action.

Dr. Cripps responded that it is not clear the mercury in Wildhorse is a direct result of current mining operations. She said a lot of these are historic problems that we are now identifying because we're doing much more fish tissue analysis across the country than has been done before. It is also widely recognized that there is a large global pool of mercury that comes from other processes around the globe that is deposited across the country, including Nevada. She added regarding some of the

issues that came up in Idaho, they did their own analysis and made a determination that a lot of the mercury contamination they saw in Idaho was a result of historic mining operations in Idaho, not deposition from Nevada mines.

Member Bremner said he knew of one instance where Jerritt Canyon Mill operation was totally out of line and it took a long time for NDEP to take any corrective action. It took a prod from the different agencies, and he hoped that NDEP was on top of things better today than they were then.

Vice Chairman Davis said he also had concerns about this issue. He asked what other parts of the country or the state do we see these kind of levels of mercury contamination in fish. Dr. Cripps said we see these issues across the country. She said there has been a lot of mercury emitted from the power industry over the years. There is a lot of mercury in the global mercury pool that continues to be deposited and then reemitted around the world. NDEP has been doing a lot of research with the University of Nevada, Reno, on this issue for the last ten years. She clarified the difference between .03 which is an EPA guideline, not a standard, and the .1 that NDEP has been using in this state would not significantly affect the way mercury is being addressed.

Dr. Cripps said the fish tissue advisories that are established and put out by NDOW are based on a .03 level. What all of NDEP is concerned about is requiring total maximum daily load, TMDL, analysis of all of these water bodies based on a guideline rather than a standard. NDEP also recognizes that there is really nothing they are going to be able to actively do to address that mercury because of the global contaminant level being seen. That has been shown in a number of areas in the country that have done TMDLs on mercury where they do a huge amount of analysis only to find out there is no source they can go after to have an impact on the mercury in a specific water body.

Mr. Gaskin said the 303D list is a list of impaired waters which is based on certain criteria that the state had approved by EPA and now EPA is changing their guidelines. He felt that just putting a few more streams on the list isn't going to result in cleaning those streams up. He stated that at a recent meeting with NDOW and Division of Health they all agreed that changing that number would have no impact on fish advisories, on NDOW's fish consumption recommendations or anything else. He said it is just an administrative list.

Vice Chairman Davis asked if he was understanding correctly what Mr. Gaskin had said: there is the more stringent guideline, but NDEP does not want to go with this more stringent guideline because they don't know of a way to actually take action to get to that guideline. Dr. Cripps then said it would result in a huge amount of work by their agency with limited resources already to do work that is not going to have any notice, any result, any noticeable impact. She said it also sets an unlevel playing field between fisheries that occur in fresh water versus ocean fisheries where the FDA level is set at 1.0. The other concern is that NDEP has been trying to make sure they are dealing with a level playing field. If tuna is bought in the grocery store, it can have levels of 1.0 or above and it is completely unregulated.

Vice Chairman Davis asked why NDEP is concerned about a level playing field between ocean fisheries and Wildhorse reservoir. Mr. Gaskin answered it is where they focus their resources is where they can have the best benefit with limited resources and limited ability. He said they go after the things that can make the best benefit for the environment. NDEP recognizes that mercury is a huge issue but they are focusing on potential sources as best they can already. He said listing on the 303D list is not going to change that.

Vice Chairman Davis said we don't have any ocean fisheries. He asked what does it matter if there is an unlevel playing field between what may be coming out of the ocean which is another state's problem and our state's problems. Mr. Gaskin said people in Nevada are eating fish from the market and that is a much bigger concern than the fishermen out in the field and we do have the NDOW recommendations that control them, so it is being addressed.

Vice Chairman Davis asked if they were saying in terms of what other states might be doing in areas where they may have these levels of mercury contamination, that some of them are following the .3 in terms of determining TMDL but then some are doing as NDEP is saying and following the standard is not going to result in any kind of change? Mr. Gaskin answered by saying that of the western states, about half have adopted the 0.3 EPA guideline and about half use the FDA 1.0. He further said their main reason for this was that NDEP adopts the levels that are adopted by the Division

of Health, and they have not adopted the 0.3. The Division of Health has adopted the 1.0. NDEP is discussing this with them and talking. Both agree with NDOW that the lower the better. He said there is no safe good level for mercury and they want to reduce it as much as possible. They are talking about moving toward that 0.3 level but they are not there yet officially. He felt that in the future they would move in that direction. Dr. Cripps said she did not think more resources would make a difference either. It is not going to make any difference to the way they are addressing the issue.

Vice Chairman Davis asked if they thought it would put a little more importance on the need to point out these point sources so they could reduce the pollution if there were a higher standard. Dr. Cripps replied that they have done a lot of work over the years to establish what those emissions are and whether or not those fisheries are being impacted directly from those sources and they have not been able to make that direct connection. When Vice Chairman Davis asked what the task is and if there is a uniform test or a case by case as to when the NDEP decides to fight back and not go with recommendations by the US EPA. Dr. Cripps replied they have on occasion pushed back on EPA and have entered into litigation in a couple of cases. In particular, she said NDEP has concerns when EPA is trying to use guidelines and policy, rather than rulemaking, to establish requirements. NDEP feels there ought to be a public process that EPA has to go through in order to set these guidelines and the state should not be held accountable to a policy. There are huge implications across the board for economic development and other things. NDEP does not think it makes any sense for that to be a ruling factor. She said that does not mean NDEP does not follow their policies and guidelines on most things, but there are a few where there have been serious issues NDEP has had with that. She added that there were certain cases where EPA has used settlements with non-governmental organizations to require the states to do certain things when they were not a party of the litigation. This resulted in huge economic impact and also resource impacts to her agency.

Vice Chairman Davis asked why is it the responsibility of NDEP to be fighting against something on the basis that it might impact economic development. Dr. Cripps answered one of the things they try to do at NDEP is provide a balance between businesses they regulate, the environmental community. They do that within the confines of the regulatory structure that they have been given. That is NDEP's mission statement. Vice Chairman Davis said he knows it is in their mission statement and obviously that has always been a problem of his, but he appreciated the answer to his question.

Vice Chairman Davis then asked questions regarding the Comstock. He asked what the process was for projects to be permitted within a superfund site and what is the interaction between EPA and NDEP in terms with dealing with that.

Mr. Emme answered the question with an overview of the Carson River Mercury Site. The Carson River Mercury Site was added to the superfund national priority list in 1990. It has the distinction of being the only NPL site in Nevada. The contaminants are mercury, lead and arsenic. He provided a background on the site – during the historic Comstock Mining era in the 19<sup>th</sup> Century, millions of pounds of mercury were imported for use in the mercury amalgamation process, which involved adding mercury to a slurry of ore and creating an amalgam and separating that for retort and gold recovery then discharge of the tailings.

He continued that over 250 individual mill sites have been identified along the tributaries of the Carson River, primarily in Six Mile Canyon, Gold Canyon and the Dayton area. The USGS first conducted studies of mercury contamination in the area dating back to the 1970s. Historic mining led to release of large quantities of mercury into the mill tailings and the sediments of the Carson River system. The EPA conducted extensive studies after the site was listed on the NPL, including human health risk studies. The site was divided into what the EPA refers to as operable units just to try to manage the decision making, and studies, related to identifying the problems.

Operable unit one includes the soils in the upland areas above the Carson River in the tributaries in Gold Canyon and Six Mile Canyon primarily. There was a record of decision that was issued for this unit in 1995. It mostly related to soils. This record of decision was primarily looking at a risk of exposure via ingestion of soils and creating a risk of health impact. The focus was on residential areas where there was direct human risk of exposure to contaminants. The record of decision called for soil excavation in four residential areas in Dayton and Silver City areas and also called for what

NDEP refers to as institutional controls which amounted to a long term sampling and response plan. The idea behind that was to point out specific hot spots of mercury in people's backyards more or less. They said they would clean those up. They did that.

Mr. Emme said that there is also distributed mercury throughout this watershed essentially. NDEP's concern is with residential exposure, people's children primarily being exposed to mercury in their backyard. What NDEP is going to do is create a long term sampling and response plan – if there is new development or disturbance that results in a new residential area such as a subdivision, the plan would require sampling, characterization and then proper management if there are contaminated materials that are found. This was the record of decision the EPA issued in 1995.

Mr. Emme continued to say Superfund is not a law that is delegated to the states. It is implemented by the EPA. NDEP entered into a cooperative agreement with the EPA to implement that long term sampling response plan over time as the local regulatory agency. He said he thought it was important to keep in mind the record of decision and the plan itself are focused on residential exposure and residential development. It does not address commercial or industrial development like mining operation. NDEP and their Bureau of Corrective Actions were faced with a number of instances where commercial and industrial activities were occurring or were proposed to occur. NDEP was approached by companies and other entities wanting to do the right thing, so NDEP worked with them over time to give them guidelines on sampling and characterization of any disturbances they may create and improper management of any contaminated material they might encounter. This was also done with Comstock Mining. Comstock developed an extensive sampling and analysis plan related to their operations. Mr. Emme said this was above and beyond what would have been required by the EPA as part of this being conducted within the confines of a superfund site. The current area of mining operation was cleared through this sampling and analysis plan. He added that the EPA as well as NDEP have extensive documents available on their websites.

Vice Chairman Davis asked about the condition of permits if there are any violations or failures to report to NDEP. Is there is any process within NDEP where they would do inspections? Are there any inspections that occur absent any self reporting? Dr. Cripps replied yes, absolutely. NDEP has regular inspection schedules in all of their programs and those are established and agreed as part of NDEP's agreement with the EPA and then reported not only within NDEP but many are reported directly to the EPA.

Vice Chairman Davis asked another question regarding the 2006 violation having been with excessive precipitation. He asked if the infrastructure put in place was inadequate to deal with what they should have expected in terms of that increased precipitation or – since NDEP has a zero standard was it still a violation? Mr. Gaskin responded in the regulations NDEP has design criteria for storm events and the mining facilities are required to contain the 25 year 24 hour storm event and would stand the 100 year 24 hour storm event. Those are built into the sizing of components. Regarding this violation, Comstock had a large area they had just expended, a leach pad with a lot of exposed plastic that collected a lot of rain water that wasn't absorbed and slowed down by the leach material. It reported into the ponds and then to a storm overflow pond which is designed to handle that capacity. There were many facilities through the state at that time that had issues with potential overflows. He said that was something NDEP was watching closely.

When Vice Chairman Davis asked if that was a design flaw that has been corrected, Mr. Gaskin said it was just mainly the timing. He said the fortunate thing with the storm events is that you get a lot of dilutions, no high concentrations. The site was not in high operation mode; they were in the middle of phasing up their leach pad at that point.

### **A recess was taken**

Chairman Restrepo called the meeting back to order and asked if the members had any more questions.

Dr. Cripps said Mr. Elges would be talking for a few minutes about the air quality issues and other things that came up in the last meeting's transcripts. As an overview, Mr. Elges said NDEP's air

pollution control program is responsible for implementing the federal Clean Air Act requirements along with the state's air quality provisions. Much of this is done by requiring appropriate control of the different pollutants. In this case, air emissions that are emitted from the various sources in the state, power plants, chemical manufacturing operations, sand and gravel processing facilities and the different mining operations – all fall under NDEP air quality regulations and requirements.

Mr. Elges stated the bureau regulates sources by issuing various federally approved air quality permits and enforcing the conditions of those permits. The permitting section reviews permit applications and issues air quality permits to different stationary sources NDEP has. Permits contain all of the different state and federal air quality standards that apply to a particular source as well as detailed requirements for the pollution controls they are required to have; limitations on how processes and pieces of equipment may be operated, emission limitations for all of the different regulated pollutants that the source would emit and detailed requirements for emissions monitoring testing, record keeping and reporting. The bureau's compliance and enforcement personnel enforce all of the different regulations of permits they have within the industry. Compliance inspectors conduct routine inspections and make sure all owners and operators of equipment are complying with all the permit conditions that are established. If a source is found to be in violation, an enforcement action is taken by the agency. The source is required to stop operation of the non-compliant unit and is required to correct any problems. In most cases, that happens quickly and they are then able to go back into operation. Subsequently NDEP will work through the process of determining appropriate penalty. Generally there is a monetary penalty for violations that occur for the types of infractions. In serious situations, NDEP has the authority and have gone in and shut down the entire facility and required operators to start over and come back into compliance before NDEP allows them to go back into operation.

Looking at the mining industry, Mr. Elges said NDEP currently has about 115 permits issued to different mining operations in Nevada. The majority of mining operations are considered class one operations; this is the most complex, largest permit NDEP issues. These fall under federal EPA regulations as well, so there is state and federal oversight. Specifically for Comstock Mining, there are currently two air pollution control permits from NDEP. Comstock Mining has a mercury permit that requires them to install and operate specific mercury pollution controls on the mercury retort and refinery furnace that they have at the mine site. These controls reflect the state of the art mercury reduction equipment.

Mr. Elges said mercury control requirements are pretty unique to Nevada. The program was initiated in about 2006. NDEP pre-empted the EPA in establishing mercury requirements and the EPA did not establish any mercury control requirements until a few years ago. He said NDEP was about half a decade or better ahead in requiring some reduction of mercury emissions from these processes. The program has been very successful. Nevada is down around two or three thousand pounds of emissions today. There are still a number of facilities that are required to put their state of the art controls on; NDEP expects those numbers to continue to come down.

The other permit Comstock Mining has is NDEP's class one operating permit to construct. This permit places conditions on processes such as the ore crushing and conveyance systems, alignment cement silos, their agglomeration systems, the refinery, the lab and a couple of diesel generators. While this is a major source permit, this is a relatively small mining operation compared to most of them that NDEP looks at. The permit also requires the company to control water defined as fugitive emissions. Fugitive emissions are those activities that essentially liberate emissions that can't otherwise be ducted through a chimney or a conventional smoke stack. For those types of emissions, the permit requires the company to implement best management practices and to control fugitive dust. Examples of best management practices are watering haul roads, using sweepers to clean up track out from haul roads or using wet suppression in areas where they are doing digging in the pit or excavation. Applications were submitted by Comstock Mining for the mercury control permit and the class one permit in 2011 and 2012. NDEP permitting engineers reviewed those applications extensively.

Mr. Elges said that NDEP has worked within the program and with the other bureaus within NDEP to make sure they were developing a permit that was consistent with all of the activities and the unique aspects of this particular mining operation. Once that work was done, the draft mercury permit

and the class one operating permit were assembled and put out for public notice. A public hearing was requested for both of these permits. At the public hearing, NDEP received and responded to comments; both permits were issued. The mercury permit was issued in July of 2011 and the class one construction permit was issued in February of 2012. Mr. Elges stated that Comstock Mining had submitted an application for modification and NDEP had just received the application a few days before this meeting. It appeared the changes being requested consisted of some cleanup of language that did not match exactly the type of equipment Comstock wanted to purchase. There was a request to increase some flow rates on pollution control devices and a request to decrease some hours of operation on some of the equipment. He said NDEP would start working on the application immediately but it is a process to get to the point of issuing the draft permit. This will go through the same process the previous permits did.

From a compliance and enforcement perspective, Mr. Elges said NDEP was notified that the operations essentially restarted at the mine site August of 2012. Within a couple of days of notification of restart, NDEP responded to a complaint that was filed by a resident about dust coming from the roadway. An inspection was conducted of the facility and the different routes used for trucking the ore away from the pit. They found the emissions were minimal and generally well controlled. At that time, they could not identify a specific source of dust.

NDEP responded to a second complaint similar in nature, about dust coming from the roadway in February of this year. The investigation concluded that there was a fair bit of track out from the mine operations and the track out had likely mixed with rain and snow events that were occurring that time of the year and when the highway dried out it left essentially a mud slick film that was being reemitted when traffic was driving over it and causing a localized dust issue. At the same time, NDEP noted that Comstock was using a sweeper to try to sweep that material back up and get it cleaned up. The activity of the sweeper was actually creating a lot of extra dust as well. Comstock has since been allowed to use other routes than the highway to truck their materials. He did not expect a similar event.

Mr. Elges said NDEP conducted a third inspection of the facility in May. This was the routine annual full facility-wide inspection, reviewing all operations. They look at the facility as well as the records that are retained. NDEP looks for anomalies in the monitoring and record keeping requirements established that would tip them off to any infractions along the way. They did not see anything out of the ordinary. The visual inspection was good, there were no violations identified.

Chairman Restrepo asked the members if there were any questions. Member Neilander asked about what has been termed as compartmentalization and the permitting process. He asked the NDEP representatives if they were familiar with how structurally this was handled in other jurisdictions. Dr. Cripps answered that there is a state NEPA process which California has a similar one, CEQA. They do similar kinds of things but there is not an equivalent here.

Member Neilander asked, with respect to NEPA, the federal provisions, there is not a state NEPA? Dr. Cripps said this is correct; there is no state process similar to NEPA. Member Neilander said there were a couple of states that adopted baby NEPAs or NEPAs that would perhaps be substantially similar to the federal provisions that would be applicable on private lands subject to state regulation, but Nevada never did proceed along those lines. Dr. Cripps confirmed this.

Chairman Restrepo asked if the state should have its own NEPA. Dr. Cripps said that is not something they have ever discussed in the department.

Chairman Restrepo then said he would like to move item 4-C above 4-B and report on the proceeds of mineral type projections as reported by the economic forum.

**(c) Report on net proceeds of minerals tax projections, as reported to the Economic Forum.**

**Department of Taxation**

Ms. Rubald referred to pages 87, 88 and 89 of the meeting packet. She said on page 87 is an initial general fund revenue forecast. At the top is the net proceeds of minerals. There are three

different agencies of the right hand side which made their projections for 2013, 2014 and 2015. At the time these projections were made, the pre-payment program of the net proceeds was due to sunset on June 30, 2013 which would have meant that everything that had been prepaid for 2013 would have been no revenue in 2014. That is why you see nothing for 2014 on the page. The legislature has since extended that sunset. There will be a cash flow stream for the entire duration of the biennium.

Ms. Rubald continued that while these forecasts were being built, there was a projection from the Department of Taxation, a projection from LCB fiscal and a projection from the Department of Administration budget section.

On the next page, 88, halfway down on line 20 there is a comparison of what was projected during the '11 through '13 biennium versus what was projected for the 13-15 biennium. The projection has gone down from the 214 million to the 88 million.

On pages 89 and 90 is the Departments portion of the projection. Ms. Rubald said the Department based their projection using the vast majority of the net proceeds produced by the gold industry and a projection of 1550 for the price of gold and a production of 5.5 million. They then used various calculations to estimate what the actual net proceeds would become. The net to gross ratio they were projecting at 44.81 percent. Also through formulas, they projected how much of the actual tax distribution would go to the state fund, the state debt fund and to the counties. They used that state percentage of almost 52 percent to determine how much would be going to the state.

Vice Chairman Davis asked how long ago these projections were made. Ms. Rubald responded they started this in February and March and went through a series of meetings with the other agencies. There is a group that advised the economic forum that was vetted through that group as well.

Vice Chairman Davis asked if Ms. Rubald thought that gold prices have been dropping pretty quickly and if she thought that was going to have an impact. Mr. Rubald replied the 1600 gold for 2015 may be a little generous at this point. Ms. Rubald said the sources that she used came from the internet. There were a lot of different banks, a German bank, the London banks. She said that was why she ended up with the 1550 and 1600.

Chairman Restrepo asked for a clarification on page 88 regarding the May 15<sup>th</sup> forecast. He asked if 107 million a year was correct on column G. Ms. Rubald said yes, except she thought the 88 million was not going to increase a lot more than that. Chairman Restrepo asked what was causing the drop between column G and the column I on the spreadsheet from 214 million to 88. Is one a one year period and the other a two year period? Ms. Rubald said the difference may have been production and price. Chairman Restrepo asked if it was that much of a dramatic change that she was projecting. Ms. Rubald said the 88 million is the latest information that the three agencies had. She confirmed that it is quite a difference, quite a drop. Chairman Restrepo then asked if 88 million is tied to any number on page 89. Ms. Rubald replied that page 89 is just the department's projections. The 88 million was the combined wisdom of all of the agencies and the advisory committee.

**(a) For Possible Action: Pursuant to NRS 513.093(3)(a) and (b), Division of Minerals briefing on the activities of the Division, to include accounting of any fees or fines imposed or collected and the current condition of mining and of exploration for and production of oil and gas.**

**Alan R. Coyner, Administrator**

**Division of Minerals, Nevada Commission on Minerals Resources**

Alan Coyner, Administrator, Nevada Division of Minerals introduced himself. He said that at each meeting NDM was required to report on their fiscal revenue collections, which he included in the board's packet on page 85. Mr. Coyner stated that 80 percent of NDM revenue comes from mining claims fees. They are totally fee-funded. He said he believes NDEP is getting fairly close to being totally fee-funded, and that is an important thing for the commission to keep in mind on a going-forward basis. He mentioned Member Neilander's interest in the decline in the gold price. He stated that NDM tracked a number of mining claims very closely because that is where their revenue comes from. He felt that at the next meeting he would be able to give a good solid number on the number of mining



claims that are being held over. September 1<sup>st</sup> is the deadline for the federal fee with regard to mining claims. November 1<sup>st</sup> is the deadline for the county level mining claim fee which is where he derived his revenue.

Mr. Coyner mentioned that he worked closely with Member Davis on SB390 which was the hydraulic fracturing bill. Mr. Coyner, Dr. Cripps, Member Davis and representatives from the industry worked to forage a reasonable piece of legislation with regard to hydraulic fracturing. It keeps the privacy of the regulation of that activity within the Division of Minerals. They issue all of the oil, gas and geothermal well drilling permits in the state on public and private land. It calls upon NDM to coordinate with the NDEP to take a look at what are the effects, what can be projected about the effects on the ground-waters and waters of the state. He then addressed what sort of things we need to put into regulation within our NRS522, oil and gas, to further regulate or enhance the ability to regulate this activity. He said this is fairly controversial in certain parts of the United States. It has also resulted in a significant upswing in production of oil and gas in the United States.

Nevada currently has four permits issued with Noble Energy in Elko County. Mr. Coyner expects those activities will begin in August. At the next meeting, he expects to be able to report about how that exploration operation is going and bring information regarding SB390 and hydraulic fracturing. He said about oil and gas, as soon as the well is complete, the revenue starts. It is not like mining which is sometimes five to eight years.

Mr. Coyner chaired the State Environmental Commission hearings in 2006 when they put the mercury reduction program into effect. He said they looked at the heat areas, the processing areas, the furnaces and the retorts to begin to place the best management practices on those units. They did see a significant reduction in mercury. Mr. Coyner said gold and mercury and arsenic are joined at the hip in Nevada. They are only good as they are inspected, operated, maintained and approved upon.

Mr. Coyner said that mercury is all around us. We breathe it every day. There is a lot of native mercury in the rocks of Nevada. He told the commission that a world renown expert in mercury, Mae Gustin at UNR. He suggested the commission consider calling upon her to come discuss mercury.

Member Bremner asked about the mercury reduction initiative. It was his understanding that when it first started, the mines themselves were in a large part responsible for self-testing and these results were easily changed. He asked if that was still an integral part of the mercury reduction initiative where mines do the testing themselves. Mr. Coyner said the mines do their own testing. He brought forward Mr. Gaskin to answer the question for NDEP as this is their area of expertise. Mr. Gaskin said the testing process for mines initially was based on modeling. Now it is actually using instrumentation and getting fiscal measurements. Those tests are jointly done where NDEP witness and participate in those tests. The testing was initially done on theoretically modeling and the companies would do that in the absence of a standardized method from EPA on even how to do that or how to quantify it. Because the levels were so low, instrumentation wasn't available to go down to those levels. Even the models were not standardized. There were differences in the reporting as mentioned. Now it is a lot more prescriptive and quantitative.

Vice Chairman Davis asked Mr. Coyner if there were any other applicants or anything on the horizon of people that are looking for drilling permits besides Noble Energy. Mr. Coyner responded that the Noble permits have been issued and they have a drilling program that over the next few years might result in up to 200 drill holes if successful. The permits are being issued two at a time because the way that the company is exploring is they will drill one hole and they are both permitted to about 12,000. They will drill one vertical hole and then about 1,000 feet away they will drill a directionally drilled loop of a hole. Once that is set up there will be instruments in the second hole. Once that is set up and developed, it will track the first well and essentially measure it with the second well.

Mr. Coyner said there is a pending MOU between Noble Energy, DRI and the two agencies to allow for DRI to collect the science which will put a third party independent as part of the equation to be able to utilize the science they are developing as well as help guide the agencies and to provide that sort of information to the public on a transparency basis.

Mr. Coyner also said there is interest in Railroad Valley which is their biggest oil production area. This area is south of Current, which is just south of Ely. It is in Nye County, eastern Nevada.

They have had a couple of inquiries from people, but no proposals. The intent will need to be judged whether it is hydraulic fracturing under the definition of SB390. Mr. Coyner thinks SB390 is broad enough that it will take in most of these other types of stimulations that people have talked about.

Vice Chairman Davis suggested that this winter or possibly next spring would be a good time to review this and take a look at it to figure out where we're at and see what science has told us as well as see if there is any other activity happening.

Chairman Restrepo thanked the Division and Member Davis for being actively involved in SB390. He said it is very important and a joint effort to get it through.

Mr. Coyner said NDOM will be present to the State Environmental Commission about the same time frame and it would be very convenient for them to have that data available. He said that at the next meeting NDOM can maybe present their variance chart again that they presented last meeting.

**5. For Possible Action: Review and Approval of Minutes:**

- **June 26, 2013**

Ms. Rubald brought to the commission's attention that at the March meeting, Mr. Sjovangen, Chairman of the Storey County Commission, came forward during public comment and the minutes should have listed his title. This was confirmed at page 81 of the transcript and Ms. Rubald asked that the minutes be amended to reflect his title.

Member Neilander made the motion that the commission approve those minutes dated March 28, 2013 with the correction as stated by Ms. Rubald.

This motion was seconded by Member Bremner. There was no discussion; the vote was unanimously in favor of the motion.

**6. For Possible Action: Meeting Schedule**

Chairman Restrepo mentioned that everyone's term was ending. Ms. Rubald said if the members would continue to serve they could continue to meet until there was a reappointment.

September dates were discussed.

**7. Briefing to and from Staff; Suggestions for Future Agenda Topics**

Chairman Restrepo suggested Mae Gustin from UNR would be a future agenda item. Ms. Rubald said that the next meeting will be a report from NDEP.

**8. Public Comment**

Chairman Restrepo asked for public comment.

Larry Wahrenbrock came forward and thanked the members for their public service. He commented on the testimony by the Department of Conservation and Natural Resources that they do not accept applications or approved permits unless there is a local special use permit or a conditional use permit issued by a local authority.

Mr. Wahrenbrock stated he sits on the planning commission in Lyon County and oftentimes when an application comes in front of them for mining operation and there is a special use permit in their jurisdiction's case they will review an application but there is no expertise on a local level to really do a thorough review in the same manner that the state does. The application is approved with the conditions that the state approve all of the air quality, water quality and additional permits because they have the expertise to do it.

He continued by saying the department chairman said they cannot refuse to issue a permit as long as the applicant follows the legal requirements. Mr. Wahrenbrock said he finds this confusing and a bit disconcerting because those requirements seem to be highly technical and vary by interpretation.

Also, Mr. Wahrenbrock said Comstock Mining was consistently characterized as a small operator, a small operation. He said in the world of mining in the State of Nevada they are small, they are not Barrick, they are not Newmont, but they are in the backyards of residences. He said if a pit is in your backyard, it is no small deal. That immediate adjacency to a residential neighborhood and within a historic district puts it in the forefront as a big operation in his mind.

Mr. Wahrenbrock commented on the Carson River Mercury Superfund Site and the record of decision. He said that record of decision was seriously flawed. It is recognized not by EPA that record of decision was flawed, yet the state consistently uses the language in that flawed record of decision in their decision-making process.

Mr. Wahrenbrock also stated he was surprised to see the Department of Conservation and Natural Resources did not bring the Division of Historic Preservation with them to discuss historic preservation issues and that was disappointing to him.

Mark Joseph Phillips, a Virginia City resident was next to comment. He said at the end of last year, the Storey County Board of Commissioners had two term-limited commissioners and they now have a new board of commissioners. The last thing the term-limited board of commissioners did was to approve a new set of zoning maps. He stated what has happened is this map reflects commercial residential zoning in the area where exploration drilling is going on now. This is a significant change to the previous zoning maps. He has reason to believe the plan for reclamation is stick a sewer pipe down the exploration holes and start selling lots on reclaimed lands. This came as a shock to him.

Chairman Restrepo thanked the public for their comments.

## **Adjournment**

Meeting was adjourned.