

**Minutes of the Meeting**  
**MINING OVERSIGHT & ACCOUNTABILITY COMMISSION**  
**March 29, 2012, 10:00 am**

The meeting was held at the Legislative Building, located at 401 S Carson St, Room 3137, Carson City, Nevada and by video conference to Grant Sawyer Office Building, Room 4401, Las Vegas, Nevada.

**MINING OVERSIGHT & ACCOUNTABILITY**  
**MEMBERS PRESENT:**

**John Restrepo, Chairman**  
**Kyle Davis, Vice Chairman**  
**Dennis Neilander, Member**  
**Roger Bremner, Member**

**MEMBERS ABSENT:**

**Senator Greg Brower, Member**  
**Robert Campbell, 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**  
**Anita Moore, Boards & Commissions**  
**Coordinator**  
**Division of Assessment Standards**

Terry Rubald called roll.

**2: Recess for ethics training, about 1 hour**

Chairman Restrepo called recess for ethics training provided by Caren Cafferata-Jenkins, Esq. Executive Director of the Commission on Ethics.

**3: Reconvene Regular Meeting**

**4: Chairman Restrepo reconvened the meeting. He asked if there was any public comment.**

John Hadder, Director of the Great Basin Resource Watch, stated he sent a letter to the Commission regarding the pit lake issue. He brought up a couple of issues that we've been involved with since we have the opportunity and two of which we're working on. One is the Anaconda Mine. It remains a public health safety issue. It is a superfund site, the EPA has revealed groundwater contamination, and it appears in the north end site, Uranium levels three times the standard, and Arsenic levels almost 50 times the standard in some places. He is requesting that the Commission make this a possible agenda item to talk about how to clean up this mine site. The other issue is more recent. It's in the same area that you might consider looking into, there is a land transfer that is in process from the Bureau of Land Management to the City of Yerington. Representative Amodei has a bill in the House. We are concerned for the major reason that the Pumpkin Hollow mine exploration is looking at expanding operations, and they would expand on public lands.

Tim Crowley, President of the Nevada Mining Association, thanked the Commission for their commitment to helping ensure Nevada's mining industry is complying with Nevada's rules and regulations and doing what it can to be safe and environmentally sound as possible. Fortunately, throughout the economic downturn, most of mining's diverse industry has remained healthy and grown, producing tens of thousands of jobs and billions of dollars in investment. Mining does a significant

amount of business with other Nevada-based companies, nearly 2,400 companies in the State of Nevada. We're helping grow Nevada's economy and providing new job opportunities all over the state. The mining industry is here to help.

Chairman Restrepo commented that Mr. Crowley mentioned the mining industry paid a hundred million in taxes in 2010, 52 percent more than 2009. Was the bulk of that property taxes to counties. Mr. Crowley said he wanted to be clear that hundred million is an increase over what we paid in 2009. In 2010, and that includes property taxes, sales taxes and payroll taxes, all aggregated. The total amount of taxes was around \$320 million.

Senator Horsford asked on the business procurement, does the Association maintain information for Nevada based businesses who might want to do work with the mining industry or specific mining companies? Do you collect or report on how many of the businesses that companies work with are local or Nevada based? Mr. Crowley said they are just starting to collect that data. We have gone to our member companies and collected their vendor list and aggregated them, and we have the ability to segregate that. We are going to drill in deeper to figure out how many of those businesses are in Clark County and how many are in Washoe County.

Chairman Restrepo asked if the list has not only the names of the Nevada companies, but the amount of business that goes to those companies? Mr. Crowley answered that they have collected that data in some cases. There is a proprietary aspect to that where some contract holders don't want to release.

Senator Horsford asked can you give us an indication of the timeline or your plan when that database comes on line, what's the time line for when you think that information will be available? Mr. Crowley responded that he could not answer that question accurately. We do understand the sense of urgency in this and we are working very quickly to be as smart on this topic as possible.

Jan Gilbert, Progressive Leadership Alliance of Nevada, commented that during this time prices of gold increased greatly, and of course they would pay more in taxes because of the price of gold. She thinks they need to keep alert to those number and continue to look at the deductions on the net proceeds of minerals.

Sam King, League of Women Voters of Nevada, they are actively watching the work of this Commission and interested in the economic impact.

**5: For Possible Action: Review of LCB File No. R125-08, regulations adopted by Division of Industrial Relations, Mine Safety and Training Section; Determination of Findings and Recommendations to be Reported to the Legislative Counsel**

Don Jayne, Administrator for the Division of Industrial Relations and Jeff Bixler, Chief Administrative Officer for the Nevada Mining Safety & Training section, stated they were mandated back in February 2007 under AB 115 to modify regulation as needed. They went through all the motions and a public hearing December 2010, and recently submitted a second draft with modifications. He then read through the amendments: Ladders and ladderways, Mercury treatment plants, ground support, airborne contaminants, and incorporating federal regulations. Mr. Jayne then stated that they were looking for permission to continue through the regulation process.

Terry Rubald, Chief, Division of Local Government Services, suggested that the way the business could be conducted is this body issue a decision letter that would be forwarded to the Legislative Commission.

Vice Chairman Davis asked that Don Jayne and Jeff Bixler, take them section by section through the regulation. Mr. Jayne informed the Commission ultimately, as they went through the final draft of the regulation, they did not get sections 6, 7 and 8 removed from the copy that was distributed to the Commission, and for that, we apologize.

After the review section by section, Chairman Restrepo asked what was the pleasure of the Commission.

Vice Chairman Davis said he was comfortable with recommending approval of the regulation provided it is not the one that is in here. It is the one that is missing those three sections they touched on. Member Neilander agreed, he was prepared to go forward, and there was a question just to generally clarify the authority. He believes that has been done and the record is complete in that regard, so he was prepared to go forward and would make a motion when ready.

Member Neilander made the motion that the Commission recommend and authorize the agency to go forward and submit these regulations for final approval by the Legislative Counsel Bureau, and we are working off of LCB File No. R125-08 dated February 29, 2012, as amended on the record today with the deletions of Sections 6, 7, and 8. Vice Chairman Davis seconded. The motion carried unanimously.

## **6: Agency Reports; consideration and possible adoption of recommendations and orders**

### **(a) Mine Safety and Training Section Overview – informational presentation**

Don Jayne stated at the last meeting of the Oversight Committee, there were various questions asked as far as the duties and relationships and responsibilities as far as Nevada's DIR, Division for Mining Safety & Training. During the course of his presentation he believes he built into the presentation answers to those questions. Mr. Jayne went through his presentation.

#### **(b) Agency Responses to Questions posed by Commission regarding**

- 1.) Demographic information regarding numbers of metal and non-metal mining employees;**
- 2.) State authority to impose fines on mines that fail certain health and safety inspections;**
- 3.) Process for determining when a mining operation is shut down for unsafe working conditions.**

Don Jayne commented that he could go over the answers again, but he thinks what we provided in our presentation and the additional handout spells out the number of employees in the mining industry. As Mr. Bixler alluded to, Texas on paper shows more, but when we add the ancillary workers, we really have 21,000 folks. The state authority would impose fines on mines that fail certain health and safety inspections. We went through the presentation and highlighted a couple of areas where we had that authority, including and all the way up to, if necessary, the fact that it would be a gross misdemeanor with jail time as well as potential \$2,000 fines.

Vice Chairman Davis asked if the gross misdemeanor comes down on the person in charge rather than the company? Mr. Bixler said it could be issued to a person or to the company.

### **(c) Department of Taxation overview of Net Proceeds of Minerals Tax Administration (continued from December 20, 2011 meeting.)**

Terry Rubald stated she was here today to familiarize you with the timeline and the processes and the calculations of net proceeds. She referred to a handout that looks like a calendar and the copy of the 2010-2011 net proceeds of minerals bulletin, which was like a tax roll. It has some interesting

graphics in it, but mostly it's a listing of all of the taxpayers, first by industry and then by county. We also have some information about the royalties received as well. Also as a part of this packet she has included copies of all the different kinds of reporting forms that taxpayers use to report to us and we'll talk a bit about that. Also there is an item called a three-year net proceeds projection report, and it's just kind of a comparison of the amount of since we've had this accelerated payment system. It's a comparison of the projections paid compared to the actual taxes due, and she will reference all those. Ms. Rubald then went through her presentation.

Vice Chairman Davis asked can you explain royalties a little better, because I see the rate of tax on all royalties. Ms. Rubald said basically the owner gets a payment from the operator for the use and the right to access their mineral estate. So the royalty recipients have an automatic rate of tax at five percent. Ms. Rubald continued with her slide show.

Vice Chairman Davis commented on how she talked about how you've disallowed about 40 million in deductions that were claimed. He wondered if she had this information because he would be curious as to in those instances, if that had been appealed to the Board of Equalization and what the success rate has been on the appeals. Ms. Rubald said we don't go to the State Board very often. Sometimes we have had some major controversies. In fact, we did just settle something this last year with regard to the deduction associated with the power plants that a couple of the major taxpayers have. In many cases something like this can be settled or worked out before it would go to a formal appeal process.

Chairman Restrepo asked how the gross yield is computed. Ms. Rubald replied the gross yield is reported by the taxpayer, we ask for the units of production, often using in the case of gold they will use the spot price on the day that it is shipped.

## **7: Agency Briefings**

### **(a) Department of Taxation briefing on status of net proceeds of minerals audits.**

Bill Chisel, Director of the Department of Taxation, wanted to give a brief high-level status update on where we are with our audits because next meeting we will get into more detail. Right now we have just completed seven Barrick audits, and we have started five of the Newmont Mine audits. These audits will cover about 80 percent of the State of Nevada's net proceeds. By the next meeting we should have the Barrick audits ready. In addition they are making some changes within the Department that will impact net proceeds. The changes will be revenue neutral, so there is not going to be any cost. They are looking at establishing a deputy director in Las Vegas over audits and collections, and a deputy director in Carson City over excise tax, regulations, and legislative actions. They are also looking at hiring two new mining auditors who will be housed in the Department of Local Government Services. Mr. Chisel continued at the last meeting there was a question about our auditors and their education background. He found that 80 percent of them had college degrees, a bachelor's or higher.

### **(b) Pursuant to NRS 514.035(1), Bureau of Mines and Geology briefing on the activities of the Bureau undertaken since its previous report, to include the current condition of mining and of exploration for and production of oil and gas; percentage of revenue from industry used to operate the Bureau**

Jonathan Price, State Geologist, Director of the Nevada Bureau of Mines and Geology, commented that before his presentation, he wanted to address two questions that the Commission had from the previous meeting. One had to do with a policy of the U.S. Geological Survey regarding confidentiality of production data from mining companies. From their website he found the following quote, that "unless authorization is granted for release, the data furnished are aggregated so as not to reveal company proprietary data and treated in confidence by the Department of Interior." He then said that was a little

different than the way we do it in Nevada. But their information is confidential by company. The other question was what percentage of the Nevada Bureau of Mines and Geology funding comes from grants and contracts with industry. For fiscal year 2011, it was 3.1 percent. Our total expenditures for that year were about \$5 million, and 1.1 percent of that was grants, four different grants from the mining industry. And 2.0 percent was five small grants from the geothermal industry. So overall, it was 3.1 percent.

Dr. Price then referred to a handout. It's the overview section of their annual report on the mineral industry of Nevada. They are in the process of finalizing the complete report, and many of the graphs that we have in the PowerPoint presentation are in this overview section. He then began his presentation.

**(c) 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.**

**1. Response to inquiry about curriculum in schools regarding importance of mining and mining industry to the state**

**2. Response to inquiry about mine production data as collected by Division of Minerals, Bureau of Mines, and Department of Taxation**

Alan Coyner, Administrator of the Nevada Division of Minerals, said first of all, with regards to the packet, you will find our monthly reports toward the back, since he was e-mailing them to the Commission on a monthly basis he was not going to belabor the activities that we have there. Moving to item number 1 he misstated something at the last meeting he does not have direct involvement with Washoe County School District or Clark County School District. What we do is a co-sponsor for the Nevada Earth Science Teachers' Workshop. He has provided a handout that summarizes the work they are involved in.

Mr. Coyner commented that probably something that is of a little more interest is Item 2. Before you, you should have a memorandum written by Terry. Then there is a four-page comparison list, essentially, of the mining properties of interest that are reporting to both agencies. Terry Rubald gave a summary of the memorandum. Mr. Coyner said they were looking at the first-ever comparison between these two agencies, so it is kind of ground-breaking in and of itself. It won't be easy, these facilities are processing millions of ounces of gold. There's gold that is in stockpile. There is gold that is in process in their circuits. There is gold that moves from one county to another county because some of the facilities process ore from a mine that is in a different county than the facility is in ect.. All that has to be accounted for separately. He said he believes the Commission was expecting them to come back to the next meeting and resolve as many of these differences as we can.

Vice Chairman Davis commented first of all what's going to be the process for resolving. Is there a way that Taxation and the Division of Minerals are going to split things up. And two, is it the goal as this process continues, that you standardize those reporting between the two agencies so that we start to see this happening less and less in further reports.

Terry Rubald said yes, we talked among ourselves, and I think that the Department of Taxation will probably take the lead in trying to get the information from the taxpayers. We are very interested in producing this report on an ongoing basis as well as working with the taxpayers to resolve the variances.

Chairman Restrepo asked by implication does this mean you guys will develop maybe a standard set of definitions and metrics and calculations. He said Alan mentioned earlier that Barrick and Newmont may have a different definition of what's sold and shipped. Are we going to try and come up

with some standard definition that everyone's got to report to you or do they have their internal different definition when they report to you.

Terry Rubald replied our missions are a little different, but I think that can be helpful to the industry if we come up with definitions in regulation about what is it that Taxation wants versus what the Division of Minerals wants. Alan Coyner agreed.

**8: Review and Discussion of the Brookings Institution – Metropolitan Policy Program, Brookings Mountain West and SRI International, Unify, Regionalize, Diversify: An Economic Development Agenda for Nevada, with regard to the mineral industry**

Chairman Restrepo stated this is just for informational purposes. The pages that deal with the mining industry on the Brookings study are on Page 7, then 47 through 51.

**9: Discussion and Consideration of Legislative Matters and Fees Related to Regulation of the Mining Industry**

Chairman Restrepo asked was there a charge to this Commission to look into some type of fee structure for the work of the Commission and the work of Taxation. Bill Chisel said there was no statutory authority.

Member Neilander said with respect to the Gaming Control Board there is statutory authority, but the way the Board has handled that historically is that, A, we will charge fees for things that can be considered a service to the industry. For example, the lab function, which has to test all of the gaming devices and equipment charges for that, and there is a benefit to the industry for that, because once your product had been approved in Nevada, it is much easier to get it approved everywhere else. Similarly all investigative activities are charge fees on an hourly basis. But with respect to auditing, the Board has historically not charged fees for audit functions, and the principal reason for that is that the audits function generally benefits the State as opposed to the industry.

**10: Briefing to and from Staff; Meeting Schedule and Future Agenda Topics**

Terry Rubald said she would send out an email to check on dates for June and September. She then mentioned that there was some expression during the last meeting for having a field trip to one or more of the mines.

Chairman Restrepo said in terms of the field trip, it can be done as part of the normal meeting cycle. We'll have to do that at another date, maybe sometime in July.

**11: Adjournment**

The Chairman adjourned the meeting at approximately 3:17 p.m.