

**Minutes of the Meeting**  
**MINING OVERSIGHT & ACCOUNTABILITY COMMISSION**  
**June 28, 2012, 10:00 am**

The meeting was held at the Legislative Building, located at 401 S Carson St, Room 2135, 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**  
**Senator Greg Brower, Member**  
**Robert Campbell, Member**

**DEPT OF TAXATION STAFF PRESENT:**

**Christopher Nielsen, Executive Director**  
**Department of Taxation**  
**Terry Rubald, Chief**  
**Division of Local Government Services**  
**Anita Moore, Boards & Commissions**  
**Coordinator**  
**Division of Local Government Services**

**MEMBERS ABSENT:**

**Senator Steven Horsford**

**COUNSEL TO THE COMMISSION PRESENT:**

**Henna Rasul, Senior Deputy Attorney**  
**General**

**1. Roll Call and Opening Remarks**

Anita Moore called roll.

**2. Public Comment**

Stacy Shinn, representing the Progressive Leadership of Alliance of Nevada (PLAN), spoke about the PLAN publication in 2009 entitled *Fool's Gold: The Silver State's Tax Structure, Inadequate and Inequitable*. It states that Nevada law allows generous deduction for expenses related to mining operation. PLAN is asking that the Committee take a deeper look at the tax deductions allowed in statute and regulations. They are asking the Committee to make a recommendation to the Legislature for passing Senate Joint Resolution 15, removing the mining industry's unique tax rate from our state constitution.

Howard Roth with PLAN gave public comment stating that the mining industry argues they pay the same taxes that most other industries pay and net proceeds on minerals tax in addition. They argue that higher taxes would push them out of state. When looking at what other states and nations ask mining to contribute, it becomes clear that Nevada mining is not paying their fair share. Mr. Roth is asking the Commission to conduct an overview of the legislative and regulatory deductions mining is allowed to take on the net proceeds on minerals tax and take a vote to make recommended changes to those deductions, including Senate Joint Resolution 15.

**3. Agency Reports; Consideration and Possible Adoption of Recommendations and Orders  
For Possible Action: Department of Taxation – Net Proceeds of Minerals Audit Overview –  
Informational Presentation Pursuant to NRS 514A.070(2):**

**(a) Overview of Audit Process and Review of Prior Audit Results**

Chris Nielsen, Director of the Department of Taxation, presented the first item. The audit reports have been broken up into four subcategories. When conducting an audit, the Department may look back at the previous three calendar years in which the company has filed a return or eight years if they have failed to file a return. The audit may be a desk audit or a field audit. The Department did conduct field audits with respect to these three companies. Mr. Nielsen explained the different types of audits and the various ways in which they are conducted. He also reviewed the appeal process. Mr. Nielsen referred the Committee to the two-page table in their packet. Barrick is one of the companies we are reporting preliminary results on. The last time they were audited, there was a net refund credit due of approximately \$615,000 when all the locations were netted out. The Department has the obligation not just to see if any deductions are disallowed or taxable sales are understated, but also to credit taxes where credit is due.

**(b) Identification of Audits of Mining Operators to be Conducted for the Remainder of the 2012 Calendar Year and the 2013 Calendar Year**

Terry Rubald, Chief of Local Government Services Division with the Department of Taxation, addressed Item B. The Department has transferred two audit positions to the Division of Local Government Services. These positions will be dedicated to net proceeds and will also do sales and use tax audits of mines. Ms. Rubald explained the audit process for mines. She referred the Committee to the proposed schedule in their packets. By the end of 2014, we will have audited virtually all of the major mines, and then we can start over again with a three-year cycle.

Member Neilander asked Ms. Rubald questions regarding the new audit positions, and the effect on the schedule. Ms. Rubald responded.

**(c) 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**

Chris Nielsen presented the report on Item C. The Department has three audits of companies to report. Each company has multiple locations or multiple mines, and the Department has treated each location as a separate audit. The audits have been petitioned so the results are not final. Mr. Nielsen reviewed the first audit, EP Minerals.

Vice Chairman Davis has a question regarding the desk audit and field audit. Mr. Nielsen and Ms. Rubald responded.

Member Neilander also had a procedural question pertaining to petitions for redetermination and interest rates. Mr. Nielsen responded.

Mr. Nielsen continued his report of the EP Minerals audit, at the various locations. In aggregate, the approximate preliminary billing was 3.98 million which includes tax penalties and interest.

Mr. Nielsen then gave his review of the Barrick audit. The Department conducted a field audit of all seven of the Barrick mines. These audits were focused on the deductions rather than the gross yield. The aggregate billing for the seven Barrick mines is approximately 2.49 million.

Vice Chairman Davis had a question pertaining to Barrick paying their taxes up front yet appealing some of the determinations. The question pertained to how the interest was handled. Mr. Nielsen responded.

Member Neilander had a question pertaining to penalties. Mr. Nielsen responded, and there was discussion regarding cooperation of the mining companies in providing records.

Member Brower also discussed cooperation and asked that the Commission be informed if the Department runs into any problems.

Member Campbell asked if the monies paid are held in abeyance or distributed per the normal process. Mr. Nielsen responded that it was his understanding that the monies were distributed.

Vice Chairman Davis requested an example of circumstances where a penalty might be waived. Mr. Nielsen responded.

Mr. Nielsen went on to review the audit of the third mining company, Ormat. The Department looked at five different locations. We began with a sales and use tax audit, but later converted to a net proceeds of minerals audit. The aggregate for all five locations was approximately 2.25 million. This audit, as with the EP Minerals and Barrick, is being petitioned.

**(d) A Report of the Status of Each Audit of a Mining Operator or Other Person that is in Process at the Time of the Report**

Mr. Nielsen began the review of Item D and stated that there are two audits in the packets which have commenced, Newmont and Graymont Western U.S. We are looking at five locations of Newmont. Hopefully by this time next year, we will be reporting on the results of those two audits, if not sooner.

Chairman Restrepo asked for clarification that the audits are taking in the range of nine to eleven months to complete. Mr. Nielsen responded that yes, the larger companies such as Barrick and Newmont take approximately that length of time. The smaller companies should be quicker. If the audits are appealed, it is unknown how long it will take to finalize.

Vice Chairman Davis asked if there were any issues with staffing. Mr. Nielsen responded that we went to IFC and have money within our existing budget to add two new auditors.

Chairman Restrepo asked that a motion be made to approve these reports. Member Bremner moved to accept the reports with a second from Member Brower. The motion passed.

**4. Review of Regulations**

**For Possible Action: Review of LCB File No. R044-12 Regulations Adopted by the State Environmental Commission; Determination of Findings and Recommendations to be Reported to the Legislative Counsel**

Ms. Rubald stated that this agenda is a review of LCB File No. RO 44-12, regulations adopted by the State Environmental Commission.

Dr. Colleen Cripps, Administrator, Nevada Division of Environmental Protection, came forward to speak. She stated that the Division of Environmental Protection is proposing to amend several sections of NAC 519A, which cover the reclamation of land subject to mining operations. The State Environmental Commission reviewed and approved these amendments at the latest meeting on June 12th. They are bringing these amendments to this Committee for review.

Dr. Cripps gave a brief overview of the amendments. The proposed changes are relatively minor. They basically strengthen financial assurance for reclamation of exploration projects in a number of ways. First, by requiring additional corporate information before a reclamation permit can be transferred. Second, it also enhances requirements for the use of insurance as a financial assurance mechanism. These changes replace some outdated state requirements and replace them with the federal requirements that are currently being used by the Bureau of Land Management.

Third, they require that reclamation cost estimates utilize third-part costs for equipment rental, operation and labor. A company could not submit what their own costs would be in order to make them consistent and ensure that, if we have to call the bond, we have enough resources to pay for the reclamation by a third party.

We also added new provisions to require any proposed post-mining land use that would occur on private land, that the land use be in accordance with local government requirements.

Under the proposed revisions, any projects, whether exploration or mining, would be required to minimize the transport of sediment to surface water and to monitor and control noxious weeds.

Lastly, we had two regulations that were repealed in response to the Governor's Executive Order. The first is a deletion of an outdated and unused provision allowing an amount of surety that is actually less than the required amount to ensure full reclamation. The second repeal is a requirement for the submission of a fee to the Division to conduct a review or to arrange for a third party to review for operators that are using the corporate guarantee.

Today we are requesting that this Commission forward these regulatory changes to the Legislative Commission and recommend their approval.

Vice Chairman Davis asked if there were any concerns or opposition to these regulations at the Environmental Commission.

Dr. Cripps answered that there were and that there was discussion, but there were no substantive comments or opposition.

Vice Chairman Davis asked where in the regulation it referenced recommended land use in accordance with local Government.

Dr. Cripps responded that it was in Section 5, Page 10.

Member Neilander asked about the reference to the Nevada Handbook for Best Management Practices and whether it had been written collectively by their Division.

Dr. Cripps stated that it was not written by their Division. There was some further discussion regarding the handbook. Dr. Cripps stated that it was done through the State Conservation Commission.

Member Brower asked if it pertained to the issues or management practices relating to their portfolio or if it was broader.

Dr. Cripps referred the question to her Deputy Administrator, Dave Gaskin. Mr. Gaskin stated that the handbook covers a large number of different types of activities, mining reclamation or a subset of that which is very broad. There was further discussion.

Chairman Restrepo asked for a motion to accept either the modifications made or revisions made to NRS 519A-160.

Member Neilander moved to accept with a second from Member Campbell. The motion passed.

## **5. Agency Briefings**

### **(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**

#### **(1) 2011 Production Totals for Metallic and Non-Metallic Minerals**

Allen Coyner, Administrator, Nevada Division of Minerals presented on this agenda item. Included in the packet are monthly reports for the last three months. The Governor has directed the Division and the Commission to go forward with a proposal to join what is called the Interstate Mining Compact Commission.

Mr. Coyner commented on the amount of gold that is produced from private land versus public land. He stated that it may have a bearing going forward on how gold, which is our major commodity, is taxed. There is quite a difference. Two-thirds of gold produced in Nevada comes from private land.

Mr. Coyner went on to discuss production values. These are numbers that have been reported to the Division of Minerals. The numbers have not been cross-checked with the Department of Taxation yet. With regard to value, the Division has traditionally made a market determination based upon average price as reported by national organizations. It is rather easy in the metallic field, but more difficult with industrial minerals. Taxation has not finalized those values for us for 2011. Mr. Coyer reviewed the numbers of his report for gold and silver production and value.

Vice Chairman Davis and Mr. Coyner discussed private land versus public land issues.

Chairman Restrepo asked a question regarding copper and Mr. Coyner gave a detailed explanation of copper mining.

### **(b) For Possible Action: Followup Report by Department of Taxation on Mine Production Data Reported to Division of Minerals, Bureau of Mines, and Department of Taxation**

Terry Rubald came forward to address this agenda item. She mentioned that at the last meeting the variances between tax payers reporting to the Division of Minerals and the Department of Taxation were discussed. She referred to Page 59 in the packet for a summary of surveys regarding variance in the production reporting between the Division of Minerals and to the Department of Taxation for net proceeds. Ms. Rubald stated that after the last meeting, we sent out a survey to all those companies where the production reports varied. We told the mines that, in some cases, there were significant differences in the volume of production reported to the two agencies and that, as part of the reconciliation process, we needed to determine the reason for the differences. As you can see on the summary report, there were a variety of reasons for the reporting differences. All of this information is helpful when sending our auditors out into the field. There are a few companies that have not responded, and we are working with them for answers.

Chairman Restrepo asked about the end result and if there was a need for further reconciliation and standardization.

Ms. Rubald responded that interacting with the Department of Minerals has helpful, and the information will help in our field audits.

Mr. Coyner stated that their statutes direct them to have companies report to them regarding the amount produced. That is going to be a different number than the amount shipped. There are stockpiles and material in process. Taxation is based on dollars and when material is turned into value registered in dollars, whereas the Division of Minerals is looking at how much came out of the ground in that year. The companies need to understand what each agency is asking.

Chairman Restrepo asked for a motion to accept the proposed report from both the Department of Taxation and the Division of Minerals.

Member Bremner moved to accept with a second from Member Neilander. The motion passed.

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

Terry Rubald mentioned that we are planning a tour of the mines. We will be departing Carson City early on the morning of July 16<sup>th</sup>. Mr. Crowley's group will escort participants to a couple of the mines.

Mr. Crowley came forward and gave an explanation of the mine tour.

Chairman Restrepo took a head count for the tour and asked a few more questions of Mr. Crowley.

Regarding the next meeting, Ms. Rubald stated that it will be a meeting at which the Division of Environmental Protection will be giving a report. Ms. Rubald stated that she will send out an email to select a date in September.

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

Terry Rubald stated she had no additional topics.

#### **8. Public Comment**

Mr. Glen Miller, Great Basin Resource Watch Board Member, came forward for public comment. He stated he also teaches at the University as an environmental chemist. He has been interested in pit lakes for over 20 years. The Division of Environmental Protection has done a good job of regulating water quality. However, now the issue is going to be very difficult because there are going to be somewhere between 30 and 40 pit lakes, and some which are very large. Many of these are located on public land. Mr. Miller discussed his concerns regarding safety and public access and future geologic impact of these pit lakes. This is something the Commission should consider.

Vice Chairman Davis said that the next meeting would be an appropriate time to discuss the issue of pit lakes.

Chairman Restrepo asked Mr. Miller how it would be best to address this issue.

Mr. Miller stated that this is an issue that is going to require legislation. Right now, quite a few of these pit lakes are going to be fenced off. The Sleeper mine had very bad water, but has now been neutralized. It is going to cost a lot of money to make these pit lakes accessible and safe because of the angle of reposed slopes caving in. It is a very long-term issue.

Vice Chairman Davis requested an overview of what regulations are in place dealing with pit lakes.

Mr. Miller stated that there is also the issue of post-mining land use.

Chairman Restrepo asked Ms. Rubald to find the necessary expert for our next meeting with Dr. Cripps.

#### **9. For Possible Action: Adjournment**

The meeting was adjourned.