

Minutes of the Meeting
MINING OVERSIGHT & ACCOUNTABILITY COMMISSION
December 12, 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
Douglas Roger Bremner, Member
Senator Greg Brower, Member
Robert Campbell, Member

MEMBERS ABSENT:

Senator Steven Horsford
Kyle Davis, Vice Chairman
Dennis Neilander, Member

DEPT OF TAXATION STAFF PRESENT:

Terry Rubald, Chief
Division of Local Government Services
Anita Moore, Boards & Commissions
Coordinator
Division of Local Government Services

COUNSEL TO THE COMMISSION PRESENT:

Henna Rasul, Senior Deputy Attorney General

1: Roll Call

Terry Rubald called roll. All members were present except for Kyle Davis, Vice Chairman, Senator Steven Horsford, and Dennis Neilander.

2. Public Comment

Chairman Restrepo asked if there was any public comment.

Bob Fulkerson, representing the Progressive Leadership Alliance of Nevada came forward to make a statement. He stated gold mining constitutes 92 percent of all mining in Nevada. In 2011, gold mining conglomerates took almost \$9 billion in gold and paid a total of \$104 million to the State General Fund under the mining tax, an effective tax rate of 1.2 percent. In 2010, their tax rate was just under 1.1 percent, but at least they paid something, because 111 times over a ten-year period, Nevada mines claimed that gold produced at one mine or another had no taxable value. As a result, more than \$4.3 billion was produced at gold mines where mining paid no mining taxes whatsoever. Now, mining pays sales tax, and they pay certain property taxes, but, of course, not on the value of the mine or their mining claims. But renters, the unemployed, minimum wage workers also pay sales and property taxes. But gold mining is different, so it should be taxed differently because once that gold is gone, it's gone forever.

Mr. Fulkerson further stated that everyone agrees that Nevada is one of the most stable, mineral-rich, least-taxed places to mine on the planet. Making mining pay here what they pay in other states or countries would not cause them to suffer or abandon operations here. SJR 15 would allow Nevada voters to decide whether mining's tax loopholes should continue to be chiseled in the stone of the state constitution. Legislators now have no flexibility and cannot adjust the net proceeds on minerals tax based on more equitable tax load compared to our non-extracted industries. Some of mining's tax

loopholes that were closed in the last session will sunset unless the Legislature acts. Mining corporations will again be able to double dip and claim health deductions from both the MBT and the net proceeds on minerals tax. Now, contrary to some smoke and mirrors legal opinions that are circulated by the mining lobbyists, removing mining's sweetheart tax status in the constitution will in no way change how mining is currently taxed. The net proceeds on minerals tax is contained in statute, and that remains unchanged under SJR 15. Now, to ensure mining pays minimal taxes, they have more lobbyists than any other industry in this building, and when the Legislature isn't in session, the mining industry pays a huge role in making sure that anyone who steps out of line is summarily slapped down. Transnational mining corporations from around the world thought it was important to triple down on a Washoe Senate race in order to continue their tax-free ride in Nevada. Mining has produced nearly 100 percent of all the 294 million pounds of toxic chemical releases in Nevada, including mercury, arsenic, uranium and radium. The massive quantities of earth moved for mining and the exposure to elements and compounds when safely underground to air and water starts a chemical chain reaction that will pollute our streams, rivers and lakes over the long term.

To summarize, Mr. Fulkerson continued to state that mining is not paying its fair share of taxes compared to other and non-extractive industries in Nevada. It's undermining good government through unprecedented influence on Nevada's elected officials, and it's the state's top polluter. He asked the commission to follow the four-point path forward to make mining work for Nevada and not the other way around, pass SJR 15. Pass legislation requiring mining corporations to take responsibility for monitoring and safeguarding their pit lakes after the gold is gone. Permanently eliminate the double dipping allowed to mining corporations; and eliminate or severely reduce the state-funded cheerleading squad for transnational mining corporations, the Division of Minerals; and direct funds for hiring worker safety inspectors and mining tax auditors.

Chairman Restrepo asked if there was any other public comment.

Susan Juetten representing Great Basin Resource Watch made a statement at this time regarding several requests they had made. They had asked that MOAC recommend to the Nevada Legislature state statutes be modified or created to require beneficial use for all current and future pit lakes. They also requested that the commission direct the NDEP work with the mining industry to develop a reclamation cost estimate of compliance for recreational post mining pit lake use. She said that they further propose that the Lone Tree pit lake be used as a sample for this estimate. She asked if the commission had considered these requests and asked that they consider these requests at their next scheduled meeting. Ms. Juetten said the Great Basin Resource Watch continues to support the resolution SJR 15 that will be before the Legislature again in 2013. She said the mining industry should not be given special tax status and the Legislature should be allowed to develop a just and fair taxation scheme for the mining industry which appears to be the will of the public.

Ms. Juetten then made a third request of the commission. She asked that in an effort to protect the historical heritage of the Comstock in Lyon and Storey counties as well as the unique rural residential lifestyle, the commission place this item on the next agenda to discuss the re-mining of the Comstock and the historical heritage that may be at stake. She asked that the Comstock Residents Association be asked to present their perspective; also Comstock Mining, Inc.

Chairman Restrepo asked Ms. Juetten for a copy of her testimony and made the request of staff to see what the proper way to move forward in looking at some of these issues at their next meeting.

The next public comment was made by Stacy Chin who is a board member from the Human Service Network which represents over 40 service providers in northern Nevada. As a coalition they have voted to make revenue and rating revenue their top priority, especially for this legislative session. She stated they are committed to finding solutions, especially for the vulnerable populations they serve on a daily basis. She stated they support Senate Joint Resolution 15 as part of revenue reform. Human Service Network urged the commission to make the recommendation to the Legislature to pass SJR 15.

Mr. Joe McCarthy was the next speaker to make public comment. Mr. McCarthy is the volunteer development manager for the Comstock Residents Association. He stated his organization is an incorporated non-profit and are proceeding with application to the IRS for 501c3 status in order to move forward as stewards of Virginia City National Historical Landmark. He said that stewardship is essential to serving a national historic landmark and it is the Comstock Residents Association's opinion

that public entities have been remiss in providing that stewardship. He stated they concur with everything that has been discussed today by PLAN and Great Basin Resource Watch. He asked to be allowed to speak in front of the commission as an agenda item, to state all of their concerns as to the degradation of the Virginia City National Historic Landmark. Mr. McCarthy offered to answer any questions the commission may have regarding information, support and stewardship for that landmark.

Mr. Larry Wahrenbrock then spoke during public comment. Mr. Wahrenbrock is a resident of Silver City and mentioned the issues regarding the Comstock are complicated and diverse. He stated that the entire tax structure of the mining industry needs to be completely reinvented. Mr. Wahrenbrock then stated the concept of mine reclamation needs serious overhauling. He did not feel the concept of a large open pit should be considered reclamation, yet it is. The remnants of contemporary open pit mining will last for hundreds if not thousands of years and it is time we learn a lesson and require comprehensive reclamation requirements. Mr. Wahrenbrock said the industry is out of step with reasonable mitigation requirements regarding its impacts to the natural as well as the human environment; long-term consciousness must be developed and implemented that recognizes the exportation of nonrenewable resources without substantial reconciliation is unsustainable and not in the best interests of our state. He said the privileges enjoyed by the mining industry are not in balance and far outweigh the responsibilities required of it by the State of Nevada.

Ms. Janette Dean spoke next during public comment. Ms. Dean represents the public as part of the 99 percent and Occupy Carson City. There are 165 members in their group. They work closely with progressive Democrats. Ms. Dean stated her group was in attendance to lend their support. They agree with passage of SJR 15 and feel the mining code law is out of date. She stated that gold mining is very lucrative and believes that the benefits the gold companies are receiving should be shared with the citizens of the state. Ms. Dean said that in 2010 Newmont Mining saw sales of 9.5 billion dollars with a net income of 3.1 billion dollars with a dividend to shareholders of 708 million dollars. Barrick Gold Strike saw sales of 10.9 billion dollars, net income 3.3 billion dollars and produced a dividend of 438 million dollars for shareholders. Ms. Dean stated that in 2010 in state and local taxes, Nevada received just 204 million dollars from the entire industry. She urged the commission to recommend passage of SJR 15.

Chairman Restrepo asked if there was any more public comment and Senator Brower responded that there were gentlemen in Las Vegas prepared to speak.

Christopher Preciado is the youth outreach director for the Clark County Democratic Party. He stated that 8.76 billion dollars in gold was taken from Nevada in 2011. He said a total of 104 million dollars was paid by the mines to the state general fund which is an effective tax rate of 1.87 percent. In 2010 the tax rate was one percent. SJR 15 would allow Nevada voters to decide whether mining sweetheart tax loopholes would continue to be "chiseled in the stone of the state constitution". "Currently, legislators have no flexibility and cannot adjust the net proceeds on mineral tax based on more equitable tax load compared to our non-extractive industries. SJR 15 would allow the voters to decide whether legislators should have that flexibility. It is time the mining companies stop raping the lands of Nevada for gold and pay their fair share. I ask that we keep pushing support for SJR 15 and finally let the people decide whether we want to live in a state where a company mining for gold gets away with paying less taxes than a family in Nevada."

Howard Watts spoke next. He said that he would like to compel the different agencies to come forward and provide reports so that we can get a better understanding of what the industry is doing. He asked the questions - is our environment being safeguarded not to minimum legislative standards, but to our standards of health and protection for generations of Nevadans to come? Are we protecting workers not just with state and federal labor standards, but with the goal in mind that not one Nevadan is killed or maimed in one of our mines? Is the industry, especially the gold mining industry, not just paying what is required under current law, but paying their fair share to reclaim environmental damage and contribute to our state's well-being?

Mr. Watts urged the members of MOAC to keep these questions in mind and to come up with statements, resolutions, advise and give advisement to the Legislature to address these critical questions instead of just receiving information and providing oversight and transparency.

Mr. Derrick Washington, representing Nevada State Stonewall Democratic Caucus spoke next. He said it is time for the mining corporations, which are foreign owned, to be taxed at a fair rate.

Chairman Restrepo then moved directly to Agenda items 5A and 5B since Senator Brower may have to leave the meeting. 5A and 5B are possible action items.

5. Agency Briefings

(a) For Possible Action: Reports by Department of Taxation on projections of net proceeds of minerals taxes; status of mine property tax; and net proceeds of minerals tax collections.

Terry Rubald, Chief of the Local Government Services Division of the Department of Taxation presented the report by the Department. Ms. Rubald discussed the handout for item 5A – a report for fiscal year 2012, 2013 – the projected net proceeds tax by county. This is a report of the taxes received on the prepayment system. She stated that in 2008, the Department accelerated the payment system in order to receive revenues more quickly for each tax year.

The taxpayers used to report in February as the production year was the calendar year. The Department would review those reports, send out a bill in April and would be paid in May. Now, they send a report estimating how much they will have in gross and net proceeds for the current year and they make a prepayment on that report, that is due March 1st. They also have the ability to amend that information on a quarterly basis. The report in the packet shows a total of 132 mines. They reported 9.8 billion in gross and a net of almost 4.3 million, generating a net proceeds tax of almost 214 million and an additional amount for royalties paid, which is at the maximum tax rate of 5 percent, 50 million for a total of almost 229 million. The report does not show carry forward from prior years where they overpaid, so this amount would have to be adjusted downward. Currently the amount is about 13 million dollars so the total to be paid is about 216 million dollars.

Of the 132 mines listed, 5 of them reported zero gross. 24 did not report at all. Of those reporting a gross, 22 reported a zero net. Of those 22, 10 were industrial type minerals like clay or diatomaceous earth, 5 were geothermals, 3 were oil and gas, 4 were gold that reported no net – for a projection.

Ms. Rubald explained this may change over the different quarters as their conditions change so the figures cannot be taken as a final. This report is a projection for this calendar year which is not complete yet.

Chairman Restrepo asked – of the companies who reported zero net, were the projected grosses mostly in the gold mining sectors or how is the share of those reporting grosses relative to who reported – distributed?

Ms. Rubald replied that 22 who reported a zero net, all of them reported a gross and 4 of those were gold mining companies.

Chairman Restrepo asked – of those 4, what did those revenues represent of the total share of the folks that reported zero net?

Ms. Rubald said she was looking at the Emigrant mine on page 2, that gross was about 26.6 million. Also on the same page, Derrick Canyon project, 134.2 million in gross.

Continuing to the next part of her presentation, Ms. Rubald introduced Mr. Ginnon to assist her. The topic is the second 5(a) tab in the packet, the table of figures that was recently adopted by the economic forum as to revenues that have been projected for the state. She directed their attention to the forecast which was ultimately adopted for fiscal year 2013 of 106.7 million dollars: nothing for 2014 (explanation to follow) and 86.1 million for 2015.

The reason there's nothing shown for 2014 is because the prepayment system that they were just discussing on this previous report; the statute authorizing it will sunset on June 30th, 2013. So the payments that are made this coming March 1st for the fiscal year -- for the calendar year, then in 2014, there won't be that prepayment in March. There's a donut hole for that year if that particular law sunsets. Then it would start up again with the regular reporting. The forecast would change if the law changed and it was not sunset.

Viewing the tables in the packet, Ms. Rubald explained to the commission they were viewing linear trends and growth trends. She pointed out that at the top it's a problem that the long term trends

will show the lower price; the shorter term trends show a larger price. What is seen for 2012 is a projected price of \$1657; for 2013 - \$1625; for 2014 - \$1700.

Ms. Rubald said that the last few years, the production has been hovering around (just above) 5 million ounces.

She explained that the Department of Taxation, the Department of Administration and the LCB reported to the Technical Advisory Committee so they had input as well, prior to any projections going to the economic forum.

Ms. Rubald said during the spring, summer and fall, the Department's appraisers go in the field and appraise properties on a rotational basis, then come back to the office and make an estimate of the value of the assets. These values are then turned over to the county assessor to put on the tax roll so the Department does not actually do any billing collection or distribution, just the valuation. Last year the statewide total is almost 1.2 billion dollars of an assessed value. Then subtract pollution control exemption which is about 350 million dollars. Last year the net assessed value on the secured roll was about 820 million dollars. This tax benefits mostly the local jurisdictions.

There were no questions from the commission members.

5. Agency Briefings

(b) 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 Coyner, administrator, Nevada Division of Minerals reported on the activities of the Division and the fees or fines collected.

Mr. Coyner stated they do not do any fining so he would not be able to report on that. He did provide a report on fees. The fees are made up of oil assessment fees, oil permit fees, mining claim fees, dangerous mine fees, geothermal fees and abandoned mine securing fees. These are the dominant amount of the revenue that comes to the Division. He stated that all of NDM money is fee base except for grants and there is no general fund money in their budget. The total to November 30, 2012 was \$1,517,283.42. Mr. Coyner explained that by January he would have a more accurate picture as to the revenues for the year because October, November and December would be the months with the greatest amount of revenue received during the fiscal year.

Chairman Restrepo asked if the fees were set by statute or were they administrative.

Mr. Coyner said the ceiling on the fees is set by statute. The direction to set fees is given to the Commission on Mineral Resources, so the Commission has the ability by regulation to move the fee up and down for mining claims and for disturbance to public land. But there are caps on those that are legislatively set. The caps were put in place approximately 13 or 14 years ago and they have not had to reach that cap yet.

There were no further questions.

Senator Brower had to leave the meeting so he suggested that any further action items be presented. Only the adjournment needed a quorum.

9. For Possible Action: ADJOURNMENT

The meeting was adjourned.

Mr. Coyner then presented a Power Point demonstration.