

Minutes of the Meeting
MINING OVERSIGHT & ACCOUNTABILITY COMMISSION
March 28, 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
Congressman Steven Horsford
Dennis Neilander, Member
Douglas Roger Bremner, Member
Robert Campbell, Member

DEPT OF TAXATION STAFF PRESENT:

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

MEMBERS ABSENT:

Senator Greg Brower, Member

COUNSEL TO THE COMMISSION PRESENT:

Henna Rasul, Senior Deputy Attorney General

1. Roll Call and Opening Remarks

Terry Rubald called roll. All members were present except for Senator Greg Brower. There was a quorum.

2. Public Comment

Chairman Restrepo asked if anyone present was there to speak regarding the Virginia City National Historic Landmark. Chairman Restrepo wanted to hold public comment until after the presentation on this item.

Susan Juetten came forward, speaking on behalf of Jon Hadder, from Great Basin Resource Watch (GBRW). Mr. Hadder was unable to attend. Ms. Juetten read from his comments. Assembly Bill 346 revises language in the Nevada Revised Statutes to require reclamation of pit lakes to fulfill a minimum recreational use. GBRW requested last year that the Commission direct the Nevada Department of Environmental Protection (NDEP) to work with the mining industry to develop a reclamation cost estimate from clients for recreational post-mining pit lake use and report on the findings by the next meeting of the Commission. GBRW further proposed that the Lone Tree pit lake be used as a study sample for the estimate. The Lone Tree pit lake will be quite large. It does pose representative challenges in terms of public access. It has had acid toxicity problems requiring treatment and is quite near the Humboldt River. Ms. Juetten stated that GBRW continues to support the resolution, SJR 15, which is before the Legislature. 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 also stated that about ten years ago, when Oil Dry attempted large-scale open pit mining in Hungry Valley, it was ultimately determined that such an operation was incompatible with the residential lifestyle of the people in the Reno Sparks Indian Colony. In the Comstock, there are now additional impacts to residents and to the historic district and also possible effects to the Carson River. GBRW suggested the Commission invite a representative from the Indian Colony to present the community perspective on the attempt by Oil Dry to develop large-scale mining in their backyard and how it would have impacted them. In addition, GBRW recommends the Commission invite the EPA and NDEP to discuss the current status of the Carson River Mercury Superfund site.

Larry Wahrenbrock came forward for comment. He is a resident and a homeowner in the historic town of Silver City. He stated that contemporary open pit mining destroys the environment on an industrial scale. The industry leaves a trail of destruction and degradation. You merely need to look at the myriad of abandoned pit mines, some of which are post public health and safety hazards, to get a feel for this problem. There are hidden costs for the people of Nevada that are unaccounted for. Mr. Wahrenbrock went on to say that tourism and outdoor recreation are the largest sources of income for Nevada. Tourism is a renewable economic engine, especially in cultural tourism. People enjoy seeing the real thing. We have a historic railroad in Ely, the V&T, the Lincoln Highway, the Pony Express route and portions of the Oregon Trail which are here to see and experience. We also have the historic towns and landscapes of Eureka, Austin, Dayton, Genoa, Goldfield, Silver City and Virginia City. The list goes on. These are cultural resources that provide long-term economic stability without being depleted. Our cultural resources are in need of protection. Mining practices that adversely impact these resources need to be fully mitigated, if allowed at all. Mr. Wahrenbrock stated that today there exists a truncated permitting process that leaves the right hand not knowing what the left hand is doing. One agency of governmental jurisdiction accepts carte blanche that another is providing adequate oversight concerning its particular purview, whether it is water resources, mine reclamation, hazardous materials, mine safety, environmental protection, a local planning department, the BLM and Forest Service or the Comstock Historic District Commission, just to name a few. The gauntlet of permitting is staggering and complex. It is often opaque. Mr. Wahrenbrock believes that a consolidated clearinghouse approach is called for. The public, local governments and the industry would all benefit from a single entity empowered to review compliance with regulatory requirements, ensure environmental responsibility and provide a transparent public process for the review of proposed mining operations.

Michelle Busk came forward for comment. She has been a resident of Silver City for 19 years, and built her home there. She enjoys the quiet atmosphere. However, now when a whole community of people has to have the mountain right in their town torn down, and listen to it, and smell it, and breathe it, and then have their weather change because of it, she believes someone's interests are being taken care of more than the people who live there.

Shawn Griffin came forward for comment. He has been a resident of Virginia City for 34 years. He stated that he cannot tolerate the irreparable loss of quality of life in his community. This is the fifth time a mining operation came into Virginia City and told them they were going to do everything by the book. They told them there would not be an open pit mine. There is an open pit mine. They told them there would be hauling on the road five days a week and then they started to haul seven day a week. All of his friends who have lived there as long as he has have had their lives changed. They had no party in this discussion -- none. These people cannot retire now because their homes are worth half what they were before this thing started. The people he loves are moving away because this is no longer their home. He believes we can do better. He understands mining has a history here and supports some limited mining, but does not support taking their town apart to make money.

Chairman Restrepo stated that he wanted to move on to Item 3. Terry Rubald asked the Chairman if we needed to ask for any public comment from Las Vegas. Chairman Restrepo asked for public comment from Las Vegas.

Congressman Horsford stated that there were two members of the public in Las Vegas, but neither wished to speak at this time.

3. For Possible Action: Information Regarding Possible Degradation of the Virginia City National Historic Landmark as a Result of Mining Operations

Terry Rubald explained to Chairman Restrepo that the sign-in sheet indicated that nine people wanted to speak. However, first there was a presentation from Mr. McCarthy.

Joe McCarthy came forward to speak. He stated he was there with Gayle Sherman, and they are board members of the Comstock Residents Association, whose mission is to protect the community and preserve the historic landmark. They presented a PowerPoint presentation showing pictures of the area and Virginia City at dawn. He also showed pictures of the haul road, the barrier and the do not enter signs scattered throughout the landmark. Mr. McCarthy showed pictures of the large size of the pit, and the blasting and dust the residents must deal with. He showed the size of the residential community. Pictures of area wildlife were displayed. He showed pictures of historic land forms dating back 150 years. The Comstock Residents Association is an incorporated non-profit in the State of Nevada, and their goal is to preserve and protect both the 17,000-plus acres of the Virginia City National Historic Landmark, but the timeless cultural communities of Virginia City, Gold Hill, Silver City, Spring Valley down to Dayton, Nevada. Through education and programming and scientific research, the Comstock Residents Association has the inherent wisdom and the organizational capacity to ameliorate the negative impacts of full-scale open pit mining on the national landmark, and they plan on becoming the landmark's citizens' steward as the federal legislation requires and its story teller.

Gayle Sherman with the Comstock Residents Association came forward with her portion of the presentation. She is a former employee of the State of Nevada, retiring after 26 years of service. At the time of retirement, she was Deputy Administrator for Vocational Rehabilitation, and has lived in Silver City since 1975. She moved to what she thought was a ghost town with remnants of a bygone era everywhere, but what she found was a small, historic town with an unusually strong sense of community. She knows all her neighbors. She knows the names of all the kids and dogs in town and where they live. They have town potlucks. They celebrate together, and they grieve together. They all have strong opinions about everything, including mining, and they do not always agree. But they have mastered the fine art of neighborly. She brought her neighbors with her today to bring attention to the events that changed their lives. Ms. Sherman stated in December of 2010, Corrado De Gasperis, the CEO of Comstock Mining, came to a Silver City town meeting and enthusiastically announced his company's intention to revitalize the Comstock by pit mining it. Of course, he did not say it quite that bluntly. He cloaked the pit in promises of economic opportunities. They were unaware that they needed revitalization, but they guessed it looked like they did to someone who was from somewhere else. They very shortly learned that Comstock Mining had been buying land in the Virginia City National Historic Landmark since 2003 with a clearly-stated intent to mine their holdings. Currently, Comstock Mining privately owns 1,455 acres and leases 4,860 acres of BLM land. They own the mineral rights to 92 percent of the Township of Gold Hill. Comstock Mining will tell you they have discovered a new bonanza. Truth be told, after over 150 years of mining, all the high-grade ore veins are long gone. Comstock Mining's definition of a bonanza is a microscopic ninety-five hundredth of an ounce of gold per ton of mineralized material. In order to be profitable, they need to remove and process one million tons of mineralized material per year, which requires the removal of an additional million tons of waste rock. When all is dug and done, the dominant feature along Highway 342 will be pit mines. Houses and businesses in Silver City and Gold Hill will be the rims of those pits. Comstock Mining will tell you they are a viable, robust, sufficiently capitalized company. The real truth is they are not yet profitable. Mr. De Gasperis recently told his stockholders that the company will pay no taxes in 2012 or 2013, and additionally, \$100 million in losses can and will be carried over. The truth is that Comstock Mining is not profitable due to the complexity of the areas in which they are pit mining and the costs associated with those complexities. The company made business decisions to pursue mining in areas that are located in the Carson River Mercury Superfund site, in the historic Gold Canyon corridor in the Virginia City National Historic Landmark, and in areas that are residential within township boundaries. Mining a Superfund site requires extensive testing, analysis and clearance by the Nevada Department of Environmental Protection prior to the disturbance of any soil. All costs associated with

this protective testing are borne by Comstock Mining and are a predictable cost of doing business. In addition, because there are structures located in the areas to be pit mined, there are costs generated due to the protection or relocation of the structures. In Silver City, the residentially-zoned proposed pit mine is located within 200 feet of original residences in this historic community. Additional costs associated with obtaining what is sure to be a hotly contested special use permit are to be expected. Comstock Mining will tell you that they are a responsible mining company in compliance with all regulations. Pit mining is an inherently dirty and polluting industry. State and federal rules and regulations are in place so that there is a minimum level of protection of the public health and welfare and of air and water. Per Nevada law, pit mines are not required to be restored to their original contours. They are only required to be made safe and stable. A pit mine is forever. The truth is that even if all the rules are followed, the end result of pit mining is perfectly regulated ruination of the mined areas. Comstock Mining pit mines are located in areas that are also the historic beginnings of the State of Nevada.

Chairman Restrepo asked if the Commission had any questions.

Member Campbell asked if the designation as a federally-protected landmark carried with it any protections.

Joe McCarthy stated that he would try to address that in his presentation. This national landmark received its federal designation from the Secretary of the Department of Interior in 1961, an honor that is unrivaled in the history of Nevada's historic preservation successes. The landmark has evolved into a tourism powerhouse and a recreational jewel. Its assets include historic land forms, artifacts, the present cultural landscaping and historic towns nestled in visually stunning settings. The landmark is essentially an archive. This mining company will tell you that its version of open pit mining is good for the Comstock. What they will not tell you is that when open pit mining projects come to their inevitable bust, as they always do, our rural communities will be hit hard. The evidence comes from decades of credible, persuasive economic development research. Now, the latest myth that is swirling around is that there is another bonanza on the Comstock. It is absurd. More than a thousand mining companies have been formed over a 150-year stretch of history on the Comstock. Only 29 millionaires were ever created. Only 19 companies ever paid a dividend to their shareholders. More money was lost in Wall Street stock manipulations than was ever produced in gold and silver. Comstock Mining will tell you that they fully comply with and even are exceeding regulatory requirements of mining and milling in the Comstock. What they do not tell you is that their own consultants, Behre Dolbear, two months ago, in their January 2013 technical report, state that once feasible plans are finalized, Comstock Mining, quote, "should move expeditiously to preparing and submitting a plan of operations to the Bureau of Land Management to initiate permitting for expansion." Why is Comstock Mining avoiding a mining plan of operation, a standard practice for doing business by reputable mining companies in rural Nevada? Because such a plan will trigger a requirement for a programmatic environmental impact statement (EIS). A programmatic environmental impact study ought to include the Environmental Protection Agency, the Nevada Department of Environmental Protection (NDEP), State Historic Preservation Office, the National Park Service, the Bureau of Land Management, the Nevada Conservation League, our local communities, and the Comstock Residents Association. Mr. McCarthy stated that their citizen-based organization continues to be outgunned by Wall Street money, by high-powered lawyers and public relation types that tout themselves to eliminate unforeseen opposition, and by Comstock Mining's principal investor, a southern California real estate developer. Comstock Mining will tell you that they plan to honor the history and preserve and reclaim the environment. What they will not tell you is that there is much more to that story. For the record, Comstock Residents Association supports responsible mining on the Comstock, the type of mining operations that give a sense of orientation to Nevadans and actually complements the historic value of the entire district as should be the case in comprehensive landmark historic preservation. Responsible mining in our historic district has to be underground mining that uses vertical shafts with head frames, horizontal tunnels with portals, spoil piles adjacent to the mining entrances, and a series of conditions that mitigate industrial noise, blasting, and pollution. The conditions must include negotiated protections to keep the landmark fuchsia intact, hiding mining and milling operations and ore hauling

activities from the public, and protecting the cultural landscape and our communities from open pit mining entirely. Comstock Residents Association does not believe this is too much to ask. Comstock Residents Association strongly believes that to mine on the Comstock, a mining company needs to follow Nevada's golden rules as they pertain to the mining industry: First, obtain free, prior and informed consent of the affected communities. Second, ensure that the project practices responsible mining, situated far removed from residential communities, not on property within -- with long histories of residential zoning and use, and not forcing communities off their land. Finally, ensure that the project is not located in an endangered and protected area or a fragile ecosystem of significant conservation, historic and ecological value. Just to read Comstock Mining's website is know that the national landmark and our towns are earmarked for the slag heap of extinction. It is crystal clear that Comstock Mining is promising its Wall Street investors that it will eventually mine the full stretch of the landmark from Dayton all the way up to Virginia City. Mr. McCarthy continued to state that for every million dollars spent on historic preservation, 15 jobs are created, while for every million spent on mining, nine jobs are created. Residential properties in historic districts command a premium of 23 percent over comparable properties not in historic areas. Property taxes are ten percent higher, and annual increases in property values are nine percent higher. Mr. McCarthy suggested, since this item was placed on the agenda for possible action, the following actions should be considered: One: Have the Commission form a motion on the lines of directing all state regulatory agencies relating to mining oversight and accountability in Nevada to work together to determine the cumulative effects that are already occurring as a result of the Comstock Mining project and then determine the legal means by which those same regulatory agencies should pursue halting the project indefinitely until a thorough analysis of the cumulative effects have been completed and approved by this Commission. Two: Form a motion to direct all state and federal entities to work together to insist that Comstock Mining be required to satisfactorily complete, for this Commission's review and approval, a problematic environmental impact statement paid for by Comstock Mining and performed by third-party consultants who have no ties now or in the past with Comstock Mining. And finally: Form a motion that would request the Attorney General's office to work with the State Historic Preservation Office and the Comstock Residents Association to initiate a preservation planning process with the following goals in mind: To eliminate uncertainty or confusion about the purpose, meaning, and content of our community preservation statutes by allowing the Comstock Residents Association to facilitate the development of a refreshed long-range vision and set the goals and objectives for the Comstock Historic District.

Vice Chairman Davis asked a question regarding zoning changes. Since it was mentioned that most or all of this project is occurring on private lands that previously were zoned residential, who was in charge of making that zoning change to allow this?

Gayle Sherman responded to this question by stating that there are two local governments involved, Storey County and Lyon County. Storey County granted the zoning change back in 2000. Comstock Mining did not go back and request an addendum expansion, but will probably have to in the future because they are expanding beyond the original project footprint.

Vice Chairman Davis asked what would happen if Storey County said no to any more permits.

Gayle Sherman commented that this would be a question for Comstock Mining.

Joe McCarthy stated that, two years ago, a formal letter was put in by Comstock Mining to the Lyon County Planning Commission requesting a master plan change, a zoning change and a special use permit process to be initiated so they could begin beyond exploring on what is called the Dayton Consolidated Mill Site, a historic mill site. But that was rejected by the Planning Commission. So they are on the record of wanting to see if they can get large significant changes to counties' master plans so that they can get it rezoned to industrially mine within the town limits of Silver City.

Member Bremner asked Mr. McCarthy if the air pollution and dust shown in the slides was a common occurrence with this kind of mining operation.

Gayle Sherman responded to that question by stating that it was a common occurrence. They blast as frequently as every day or every other day. They give a half hour notice before blasting.

Joe McCarthy mentioned that home foundations may be at risk.

Member Bremner asked if Nevada Environmental Protection was actively involved, due to water and air pollution.

Gayle Sherman stated that Nevada Environmental Protection is actively involved. Comstock Residents Association meets with them and attends all their public hearings. Ms. Sherman said that in her opinion it appears that the permitting process is somewhat piecemeal in that you can get a permit for water. You can get a permit for air. You can get sampling analysis testing for all of the mercury and toxic stuff that is left over from the old mining days, but there is no overarching review of the total effect on the landmark or the communities, and that is the problem.

Member Bremner stated that he hoped this did not mean you can get permits to violate air and water standards.

Gayle Sherman responded that the minimum standards are enforced by Nevada Environmental Protection.

Chairman Restrepo asked if there were any violations that the Committee needed to be aware of.

Joe McCarthy stated that they were not implying that any of the regulatory agencies were not doing their job. The regulatory agencies have been working very hard and have been very responsive. The Comstock Residents Association is trying to point out that the cumulative effects of all of the various impacts are not taken into consideration by the individual regulatory agencies.

Chairman Restrepo asked if Congressman Horsford had any question.

Congressman Horsford responded that he did not have any questions, but understood the concern about this Commission's overview and ability to provide oversight to those agencies and whether or not they are properly meeting their requirements according to state law.

Chairman Restrepo asked Terry Rubald to call Corrado De Gasperis with Comstock Mining, Gold Hill, Nevada, to speak.

Corrado De Gasperis introduced his company and stated that Doug McQuide and Ron James would give a more detailed introduction. He asked that they not be judged by what they say or by what others say, but invited anyone to come and visit their site because he thinks what is happening is historic. Mr. De Gasperis stated that his company is almost a uniquely Nevada-only mining company. They are Nevada domiciled and headquartered and operating on the Comstock. They all work there, and most of them live there. They have one employee who does not live in Nevada, their industrial relations person. They have a genuine interest in being integrated in this community, in the Comstock district, and they have a higher notion of protecting, preserving, enhancing, and ultimately celebrating the Comstock. They employ about one hundred people. They have invested over one hundred million dollars, most all of it before they found their first ounce of gold and silver, which only started occurring last quarter, just at the end of last year. Eighty million of that one hundred million was in the last two years. Mr. De Gasperis stated that "sustainability" is pervasive throughout what they do. He believes, on the point of local stewardship, Storey County has become an example of a community and economic leadership model almost entirely on its own, developing one of the most effective forms of responsible, sustainable economic development through what he perceives is more of a public/private partnership throughout the county.

Michelle Busk, resident of Silver City, interrupted the meeting with an angry outburst.

Corrado De Gasperis continued, stating that they are committed to an aggressive program of historic preservation and restoration. He mentioned the Dayton consolidated mill, the Yellow Jacket head frame, and more are at risk of being permanently lost if something is not done to preserve, protect, and restore those assets on the Comstock. They are heavily regulated in that context. Mr. De Gasperis stated that there was initially a fear of surface mining in Gold Hill, in Virginia City limits. There is no geology that would even support that yet. There is not an intention to do that either. They have worked very closely with Storey County to protect the view shed. They own the Gold Hill Hotel. In response to one of Gayle Sherman's points, he did make the comment that they do not intend to pay federal taxes because they have \$100 million in net operating losses. This is because they were an exploration-only company for ten years. They expect to be profitable next quarter. Last year they paid net proceed taxes. This year, in Storey County alone, their property taxes are going up six fold.

Doug McQuide came forward to speak regarding reclamation. He stated that Comstock Mining is committed to preserving, protecting, enhancing, restoring and celebrating all aspects of the Comstock. They are a publicly traded company based out of Nevada and traded on the New York Stock Exchange. However, their focus is completely based on the Comstock. To date, they have already invested over \$80 million and employ, either through primary or secondary employment, over one hundred people. They have consolidated over 6,000 acres from mineral rights on the historic Comstock Lode. When you think of 6,000 acres, it is easy to see it as very large, but actually, from a geologic perspective, they look at it as individual small targets that they have developed independent of one another. Two of them are in Lyon County, the Spring Valley exploration area and the Dayton resource area where the Dayton Consolidated Mine is located. In Storey County, they have four that they are currently looking at for long-term: The Occidental and then, more importantly, around Virginia City and Gold Hill, those ideas are only for underground mining. Currently, they are involved in the Lucerne resource area, which is about two miles south of Virginia City. Together, with the area in American Flats, that is the bulk of their activities. The exploration in Dayton has already identified and validated over three million gold equivalent ounces. Of those, two and a half million are located in the Lucerne resource area, and about a half million are located in the Dayton resource. Mr. McQuide discussed two types of reclamation. The first is their exploration activities. The roads and pads are regraded and vegetated. In Nevada, it takes a couple years for the vegetation to fully grow back. The second is the reclamation of mining. They are bonded with the State of Nevada for \$5 million to ensure the reclamation of American Flats. Ms. Sherman is correct that there is something lacking in the minimum regulations. This is where Comstock Mining goes above and beyond. Mr. McQuide stated that they are committed to resurfacing, re-sloping and vegetating some of the areas. They plan to work with UNR and the tourism industry to set up an interactive example where people can come to the Comstock Lode to learn and touch the geology and learn about the mining, before and after. To make this happen, they have committed a one percent royalty off the top of all their bullion sales to be dedicated to the reclamation of their mining activities that go above and beyond the bonding that is required by the state. Mr. McQuide discussed the Carson River Mercury Superfund. It is designated because of the mercury that was brought up from California to Nevada to be used in the mining activities of the day. When the EPA evaluated it, they identified one significant health risk in their part of the Carson River Mercury Fund, which was a child under the age of six eating dirt. They specifically said there was no risk of airborne contamination or a pathway of exposure through the waterways. However, the EPA did not consider mining activities. Comstock Mining went back and looked at the actual testing results from the EPA at the time. Substantially, all were below the 80 parts per million, which is safe for residential use. Mr. McQuide went on to further discuss Comstock Mining's efforts to safely mitigate mercury contaminants. Mr. McQuide talked about Comstock Mining's contribution to the tourism of the area. They plan to give tours of the mine, and they also bought Cabin in the Sky. He spoke of preserving the mining structures. Comstock Mining has committed one percent royalty to the development of a foundation dedicated to the preservation and restoration of these historic mines. They are also putting together a team to implement this. Mr. McQuide introduced Ron James, who was a Nevada State Historic Preservation Officer for 30 years. Mr. James has joined Comstock Mining to spearhead the development of this foundation.

Chairman Restrepo asked how much money the one percent royalty is generating.

Corrado De Gasperis stated that Comstock Mining had \$4.5 million in revenue in October, November and December. They expect to have \$4.5 million in revenue through the end of March. The royalty amount would be two percent of nine million. Their annual revenue projections are \$35 million this year and potentially almost \$50 million next year.

Ron James came forward to speak. He talked about his background and stated that Comstock Mining asked him to come on board to set up a non-profit organization that will administer funds set aside for historic preservation. Mr. James wanted to declare that in 2004, he was appointed to the National Landmark Committee of the National Park Service. In 2009, Secretary Ken Salazar appointed him to serve as a member of the advisory board for the national park system. And as chairman, Tony Knowles, the former governor of Alaska, who is the chairman of that committee, appointed him to serve

as chairman of the National Historic Landmark Committee for the National Park Service meeting in 2009. Mr. James wanted to declare that his is not representing the National Park Service. Mr. James went on to say that traces of historic surface mining, including historic open pit mining, is part of the landmark history. The short-term disturbance of a limited number of acres followed by reclamation will not have a significant effect on the district except for the positive consequences of improved local economy.

Chairman Restrepo asked for questions from the Commissioners.

Vice Chairman Davis asked if the pit was going to penetrate the groundwater tables.

Corrado De Gasperis responded to this question by first stating that the mining is relatively near the surface. At the lower base of the pit, Mr. De Gasperis does not believe that it goes below 230 feet. So no, it should not penetrate groundwater tables.

Vice Chairman Davis stated that the reclamation plan with the state provides for an exemption for steep walls and faces. He inquired if Comstock Mining asked for that exemption, or if the reclamation plan said they were going to reclaim these.

Corrado De Gasperis answered no to this question. He believes the state reclamation plan, which is tied to the bond, meets the state requirement. There is only about \$6,000 of the \$4.7 million bond associated with the mine.

Vice Chairman Davis asked if the reclamation plan requires Comstock Mining to reclaim the steep walls and faces.

Corrado De Gasperis answered no to this question. He does not believe his company asked for an exemption for reclamation of the walls of the pit. Mr. De Gasperis was not sure he understood the question.

Vice Chairman Davis tried to clarify the question. He stated that Comstock Mining, as the operator, has the ability to petition the state for an exemption for reclamation of steep walls and faces. Vice Chairman Davis stated that in Comstock Mining's plan, it says that they are going to reclaim those steep walls and faces. His question is, "Does the plan match up with what's on file with the state for reclamation?"

Corrado De Gasperis answered that he did not think it would because they would have exempted and/or complied out to the state's plan despite having committed to the county for a higher level of restoration.

There was further discussion on this matter which indicated that the county would take over the reclamation of the steep walls and faces.

Vice Chairman Davis asked why the underground exploration in one case and the above ground exploration in another.

Corrado De Gasperis said they have an exceptional amount of data. There are tremendous underground targets in the north. They do not have as much data for the center and south, but it does not exempt that there are underground targets there as well. It is extremely expensive to drill to depths of 1,500 to 2,000 feet.

Vice Chairman Davis asked if their entire operation was currently planned on private land.

Mr. De Gasperis stated that they are currently mining on private land. They have the right-of-way from BLM to traverse certain public lands, and they have notices to drill on certain public lands just for exploration. They have one county permit in Storey County and one state permit in Lyon County for exploration drilling.

Vice Chairman Davis asked if a federal environmental impact statement was required on the private lands.

Corrado De Gasperis answered no to this question.

Vice Chairman Davis asked if their environmental review indicated impacts on wildlife.

Mr. De Gasperis stated that they have done cultural reviews, biological reviews and hydrological reviews. He did not feel that the statement that Comstock Mining avoids regulation is fair at all.

Vice Chairman Davis asked, if in their current mine plan, they will be required to remove historic structures that are currently in place.

Mr. De Gasperis answered no to this question. He stated that there was a shed up by Billy the Kid in the Lucerne area. They went through the proper channels with the Comstock Historic Commission for approval to take down and reassemble the shed.

Doug McQuide added to this answer stating that any structures they might be potentially involved with in the future would be mitigated by the Comstock Historic District directly. Comstock Mining would obtain permits before they adjust any buildings.

Chairman Restrepo asked if Congressman Horsford had any questions.

Congressman Horsford asked, given that current mining regulations are quite different from those in years past, what is Comstock Mining doing to ensure that any operation they are conducting falls under those new standards.

Corrado De Gasperis answered that the most substantive two actions that they have taken are a newly-required mercury permit and a brand new air quality permit. They have spent almost \$3 million on soil sampling. Also, they have not drilled in certain areas for almost two years because of the requirement to soil sample and clear. Mr. De Gasperis mentioned that there have been inquiries about remediating some of the former disturbances such as the large open pits in Virginia City. They have had many inquiries asking if some of their material could go there.

Congressman Horsford asked the Chairman why this would not be a requirement. He then asked Mr. De Gasperis if Comstock Mining has control over the portions previously mined.

Mr. De Gasperis stated that their reclamation plans include the entirety of that effort. However, he was referring to other mines that are not currently in their jurisdiction.

Congressman Horsford asked Mr. De Gasperis to respond to the public comments about designations and the impact on homes and foundations.

Corrado De Gasperis stated that before they commenced mining, they held a workshop in Storey County facilitated by the Planning Commission. This meeting included a third-party consultant, Ibertech. They were asked how they would notify the community in advance of vibration pretesting. They have done all of those things. More importantly, they have stayed very engaged in the community when something unusual happens and investigate it. Mr. De Gasperis stated that they are very much on top of the vibrations, blasts and dust.

Congressman Horsford stated to the Chairman that he understood the self-monitoring, but that there should be some independent review of these concerns. There should be a third-party review. Congressman Horsford asked if there were any agencies that could respond to what their role is in this regard.

Chairman Restrepo answered that there was no one present from those agencies.

Mr. De Gasperis indicated that he could provide the names of the key interlocutors.

Chairman Restrepo said to please do so.

Congressman Horsford stated that he thought the Committee would be getting reports from agencies later in the hearing. He questioned why the agency representatives were not present for the meeting.

Terry Rubald responded stating that today's presentation for agencies is from the Division of Industrial Relations. NDEP is not present today and is scheduled for a future meeting.

Corrado De Gasperis stated that he did not mean to imply that they were only self-regulated. They have third-party oversight.

Congressman Horsford stated that he found it disappointing that the various agencies, knowing that this item was agendaized and that there were public concerns, failed to send a representative to hear both sides of the issue and be available for response. This is not the type of participation the public expects from our state agencies.

Chairman Restrepo stated that Congressman Horsford's points were well noted.

Terry Rubald stated that her plan was to call on the people who have marked "yes" on the sign-in sheet for comment. The first one is Bill Sjovangen.

Mr. Sjovangen came forward for comment. He introduced himself as the Chairman of Storey County Commission. He stated he would present a little bit of Storey County's position regarding Comstock Mining. The railroad runs very close to the mining operation. One thing that does limit

Comstock Mining is Title 17 of Storey County code, which was completed in the last few months. It limits the surface mining areas to an extreme southwest portion of Storey County. It does not include anything in the town of Gold Hill or the town of Virginia City. It was mentioned that the haul road and some of the other roads possibly were off limits to locals. Comstock Mining has made an agreement with the BLM for a very, very small section of road to operate their haul trucks on. None of the rest of the BLM area is closed to the public in that area. Regarding the dust, the county would consider it minimal from their point of view. There have been some violations, and Comstock Mining has taken action pretty quickly. Regarding tourism, it is up 15 to 20 percent over the last couple of years. People love to watch the mining, and the kids love to watch the heavy equipment. Mr. Sjovangen mentioned that there are complaints from the residents that the mining operation blocks their views. Findings of Fact and Conclusion of Law has pretty much established that one has no right to a view beyond the limits of their own property. Storey County has no major complaints with Comstock Mining, and Storey County works closely with NDEP.

Terry Rubald indicated that Mr. Sjovangen had exceeded three minutes.

Vice Chairman Davis asked how it would work if Comstock Mining applied for any zoning changes. He also asked if the land was originally zoned for mining use.

Bill Sjovangen replied that the land was originally zoned for mining use.

Terry Rubald stated that the next speaker would be Alicia Norris.

Ms. Norris came forward for comment. She stated that she had the pleasure of seeing the mine firsthand. She has seen the reclamation. She has also seen a rise in economic growth, and she is a small business owner. Many people are interested in having mining back in the community and feel that it is putting people back to work. Ms. Norris feels we need new industries in this community to continue.

Terry Rubald called Maurice Washington for comment.

Mr. Washington stated that he was representing the Northern Nevada Development Authority (NNDA) certified by the Governor's Office on Economic Development (GOED). His group is there to support Comstock Mining's efforts for reasons of economic development, job growth and the vitality of the region.

Terry Rubald stated that she believed she had called on everyone who wrote "yes" next to their names.

Chairman Restrepo called for comments from the public.

Robert Elson, resident of Silver City since 1971, came forward. He stated that he was an archeologist and used to be the Director of the Nevada Archeological Survey at the University of Nevada. He has been doing consulting for the last 20 years, both historic and prehistoric archeology. He has worked for a lot of mining companies during that time. Mr. Elson stated that the dust and noise problem they have in Silver City, even though the mine is on the other side of Hartford Hill, a quarter mile away, is significant. Water trucks go up and down the haul road, but ten minutes after the truck has passed, the road is dust. When the wind blows to the south, they get the dust. Mr. Elson does not believe that NDEP regulations are designed for regulating mining adjacent to residential areas. Mr. Elson stated that shortly after Ron James became the state historic preservation officer, Leo Barker of the National Park Service issued a report on the health of the Comstock. He found that the Comstock was endangered mainly by the cumulative effects of surface mining and recommended several things that ought to be done to improve them -- enabling legislation to allow the powers that be to more closely regulated. During the extent of Mr. James's tenure, none of these recommendations were ever implemented. Mr. Elson stated he would be glad to provide a copy of this report. Mr. Elson also stated that he believes Mr. De Gasperis is a very silver-tongued fellow. When Mr. De Gasperis is speaking with regulators, investors, etc., he characterizes the people who are impacted as "a few disgruntled residents." Mr. Elson feels that is not respecting their point of view.

Congressman Horsford stated there was someone in Las Vegas with public comment.

Angie Sullivan came forward for comment. She stated that she was raised in northern Nevada and now resides in Las Vegas. She would like to be a voice of support for the people in small, rural towns like those that are going to be affected by Comstock Mining. She has seen towns being razed --

completely leveled. She has seen mountains of gravel drowned in poison to get the gold out. As she drives from Las Vegas to her hometown, she sees what she would call destruction. She stated that what you are hearing today is people that are worried about their small town, their community and the lives they have established be completely obliterated by investors from outside the state. There will be very little benefit to the actual citizens of this state. The people who will benefit most from this are the people who come in from other places to use our resources without really paying for them. Her concern today, as Senator, and as mentioned by Congressman Horsford, is that there is no real oversight of this. She feels like it is a slap in the face because the people who are supposed to be holding mining accountable are not even present. She intends to make that known in her circles. Ms. Sullivan is afraid, once again, mining will delay, delay, delay. They will act like they are going to do right. They will tell the people whatever they can to appease. She has seen it happen over and over again in her lifetime. Four or five years down the road, the mining company will leave, and the people who live in those areas will be devastated and possibly poisoned. Because their voices are small and they are few, they will be taken advantage of. Ms. Sullivan does not believe this issue is being taken seriously.

Congressman Horsford stated that he knows many people are taking this seriously. He stated that there is a specific charge by law of what this Commission is supposed to do – provide oversight and accountability to those industries. For agencies not to come to this type of a meeting to hear from both sides, the public who are concerned and the company who is trying to represent themselves in a public forum, is very troubling. We will not know whether those agencies are doing their job unless we can hear from those agencies directly.

Chairman Restrepo acknowledged Congressman Horsford's concerns and asked Terry Rubald to be sure to have the agency heads or representatives present at the next meeting to address these issues. Chairman Restrepo asked Henna Rasul of the Attorney General's Office if the Commission could require the agency heads to be at the next meeting.

Henna Rasul responded that because the Commission is overseeing these agencies and ensuring their compliance, the Commission could have a motion to that effect.

Chairman Restrepo asked that at some point this motion be made.

Vice Chairman Davis stated, "So moved."

Member Bremner asked that the record reflect that one representative was present from the Division of Industrial Relations.

Chairman Restrepo responded that we were talking primarily about problems with environmental protection – all agencies.

Vice Chairman Davis stated that he would like to make that motion.

Member Campbell made the second motion, and the motion carried.

Chairman Restrepo thanked Congressman Horsford for being so passionate about this issue and bringing it to our attention.

Joe McCarthy had further comments. He stated that he did not introduce himself when he gave his presentation. He is a board member of the Comstock Residents Association. He is a six-year resident of Silver City and a 30-year resident of Carson City. He was the former Executive Director of the Brewery Arts Center for nearly a decade and Carson City's Economic Development and Redevelopment Director for more than a decade. Mr. McCarthy found it disturbing that Mr. James would reference the economic development impacts when he has no expertise in this area. Mr. McCarthy would also like it on record that they had over 300 citizens sign a petition opposing open pit mining in the landmark. That is not a small group of disgruntled people. Mr. McCarthy found it condescending that Mr. James would make reference to downtrodden types of communities. Mr. McCarthy also found it disturbing that Mr. Washington would provide endorsement from the NNDA. Mr. McCarthy believes that Comstock Mining is a member of NNDA. This eliminates the disinterested third-party interest in economic development. He believes the NNDA is failing us as a development authority and is ashamed of them.

Larry Wahrenbrock came forward for public comment a second time. He clarified Member Bremner's question regarding zoning. The permitting that Comstock Mining currently works under was

originally issued to Plum Mining Company. At the time, there was not a zoning issue. There was never an application or an EA or EIS performed right on any portion of what is going on now. Mr. Wahrenbrock does not believe that the reclamation plan shown by Comstock Mining shows any vested responsibility for Comstock Mining to complete. Mr. Wahrenbrock also gave a brief history of a previous mine. There was a company in the early 1980's called Nevex that proposed an open pit mine on that property. That mine needed a master plan amendment, a zone change as well as a special use permit through about a year and a half worth of open meetings through the Lyon County Planning Commission and the Lyon County Board of Commissioners. Those were denied to Nevex Mining. At the time, I think it was the first mine that was ever denied in the State of Nevada by a local jurisdiction. Comstock Mining purchased that property from the owner that owned it at the time that it was denied.

Corrado De Gasperis came forward for closing comments. He wanted to restate his offer for a visit of the mine. He stated that Comstock Mining would like to deal with the facts and the inaccuracies in every context. He believes having the regulators present at the next meeting would be an excellent idea. Mr. De Gasperis stated that they did not buy the Dayton mine from Nevex.

Member Neilander addressed a question to Terry Rubald and asked her to direct the question to NDEP. With respect to the environmental impact study, he has some confusion about whether an EIS was, in fact, done for any or all portions of the property. Perhaps this ties back to the previous permitting. If we could have them outline how that process worked in this case. The EIS study is always the cornerstone of a number of federal and state laws that come into effect here, including the mention of the Superfunds and surplus and RCRA. Both, under federal law, would have implications which he believes is within the purview of what this Commission is charged with. If we could get some kind of response before the next meeting, at least in writing, he would appreciate that.

Chairman Restrepo asked that the Committee move on to Item 4.

- 4. For Possible Action: Review and Consideration of Request by PLAN and Other Groups to Endorse SJR 15 to the Legislature.** SJR 15 (2011) proposes to amend the Nevada Constitution to remove the separate tax rate and manner of assessing and distributing the tax on mines and the proceeds of mines. SJR 15 may be accessed at the following website location: http://leg.state.nv.us/Session/76th2011/Bills/SJR/SJR15_EN.pdf

Congressman Horsford stated there was someone in Las Vegas who wished to speak.

Michael Ginsburg stated he was there representing the Progressive Leadership Alliance of Nevada (PLAN). He expressed appreciation to Congressman Horsford and his leadership for ensuring SJR 15's success prior to his leaving the State Legislature. He was glad to hear the comments earlier from the representative of Comstock Mining regarding the importance of the other industries in Nevada, in rural Nevada particularly, such as tourism and the importance of our state's resources and the health of our land, water and air along with the health of our citizens. It seems, at least in word, that we have much to agree on. Mr. Ginsburg stated that PLAN supports SJR 15 because it is crucial to remove the constitutional constraints which prevent us from ensuring the industry pays its fair share and to ensure Nevada has the resources to clean up the mess when or if the industry chooses not to. Mr. Ginsburg went on to say that, on the surface, SJR 15 is about the way in which we tax hard rock and precious minerals, or better yet, the way in which we fail to tax them. During the 2011 legislative session, we were told that the mining industry would sue, citing their constitutional protections. They also said that if we did not allow one set of deductions, they would simply find something else to deduct. It was in 1989 when the industry authored and shepherded their own cap on taxation into our constitution. To put this into a monetary perspective, prior to 1989, the industry took 6,000 metric tons of gold alone from the State of Nevada largely tax-free. This is an amount that would have netted the state tens of billions, close to a hundred billion dollars in taxes, if we were charging them at the rate that other states do, particularly Alaska, for example. Mr. Ginsburg went on to speak about the Great Basin mine. He then stated that Barrick, Cortez Hill mined 1.4 million ounces at a cost of \$245 an ounce. That makes it the largest low-cost mine in the entire world, and that is more than one year running. This is promoted by the International Monetary Fund, the World Gold Council and by companies in places other than

Nevada. In Alaska, where mineral severance taxes can be as high as 50 percent, they collect annual revenue in the billions to fund their state, and they have enough left over to send all of its residents a check for their share of the proceeds. This is quite a feat, considering that Nevada has produced more gold in the last eight years than the State of Alaska has produced in all the years combined since 1849. The industry will also tell you it takes money and time to bring the mines into operation, as we all have heard from Comstock Mining earlier. That is true, but another reason not to feel too much sympathy for the high cost and time associated with bringing the mine on line is the value they get after doing so. Mr. Ginsberg stated that mining should be taxed not because we can, or because they make a lot of money, but for what they take, which is precious and irreplaceable to us, and for what they leave. They take nonrenewable resources and they take other things we do not like to talk about, things that Nevada will never get back such as undisturbed land free of toxins, fresh water and clean air. Mr. Ginsburg stated that open pit mines in Nevada on average are deep enough to stack four Statues of Liberty head to toe. Each one of these mines intersects the water table, disturbing our fresh water aquifers and necessitating the need to pump obscene amounts of water from the aquifers in order to keep the mine dry enough to do the activity. The U.S. Department of the Interior and the U.S. Environmental Protection Agency conservatively estimate that if all mining ceased at that time in 2005, it would still take 200 years for the Nevada aquifers to recover. The other problem with the water usage is the inevitability of pit lake formation. All of our open pit mines will become flooded with the inflow of clean brown water. When this happens, it will basically become a toxic metal alphabet soup and a broth of sulfuric acid. Fees for environmental cleanup or reclamation are considered mineral severance, which is an income independent fee imposed on a mine, generally for cleanup and reclamation. And, of course, our constitution unfortunately says that the mining industry can be taxed in "no other way." PLAN humbly asks that the Commission endorse SJR 15 and help get it on the ballot next year.

Chairman Restrepo stated that per NRS 362, which governs our operations as a Commission, that it is in our purview to make sure that the mining industry is in full compliance with Nevada laws related to taxes, their operations, the safety and environmental issues, and that we do not endorse or not endorse any pending legislation. That is a matter for the Legislature.

Henna Rasul confirmed that this was correct.

5: AGENCY BRIEFINGS

For Possible Action: Mine Safety and Training Section – Informational Presentation

There was a short recess to set up the PowerPoint presentation.

Jeff Bixler, Chief Administrative Officer of Nevada Mine Safety & Training stepped forward to give his presentation. He began with the highlights of accomplishments for 2012. The Mine Safety & Training section was established back in 1909. The purpose was to ensure the safety and health of Nevada's miners. This is accomplished through compliance inspections, through training and technical assistance, and consultation. They currently have a staff of 14 people. There are seven inspectors, mine safety and safety inspectors, two industrial hygiene inspectors, a boiler pressure vessel inspector, and then four that are administrative, not management. In 2012, while down four positions, they conducted 315 mine inspections. That includes underground and surface mines, exploration and drilling operations, and sand and gravel operations. They issued 12 orders and 136 notices. Orders are basically an imminent danger type of situation. Notices are less severe violations, and the operator is usually allowed a certain amount of time to correct that problem. They also do 'conditions corrected,' and in 2012 they had 475 conditions corrected. They have a great working relationship with the mine sites. During 2012, they trained 1,012 new miners. Annual refresher classes are required to maintain their certifications to work in Nevada as miners. They trained 2,098 people in surface mining. They trained 36 in underground mining. Mr. Bixler went on to list the numbers of individuals trained as instructors, in technical assistance, etc. They issue diesel permits for underground vehicles, and that is all vehicles working underground; air sampling for silica, gold dust, welding fumes, diesel particulate

matter and noise dosimetry. Respiratory protection is a big issue as dust particles can be very damaging to the lungs. They identified five operations in 2012 that were completely out of compliance and brought them into compliance and assisted over 85 miners in the awareness of hazardous conditions, in the proper wear of the respirators, the use of the respirators and the prevention of long-term health problems. They assisted three mining operations in this last year in avoiding closure from federal or local governments. Two of the mine operations were gravel pits where high walls on the gravel pits were defective. They were not properly benched, and the federal MSHA recommended closing those particular gravel pits. Nevada Mine Safety & Training was able to correct those problems and keep all of those employees working, satisfying MSHA's requirements. Mr. Bixler went on to discuss other accomplishments. They will do all they can to see Nevadans proceed through assisting and promoting mining.

Member Bremner asked if there were any fatalities in Nevada mining in the last year. He also asked how many people were employed in mining now.

Mr. Bixler answered that there was one fatality. He also stated that there were 18,000 employed in mining including contract workers on mine sites and drilling operations.

Chairman Restrepo asked Mr. Bixler if he had any problems with the Comstock operation.

Mr. Bixler responded that people have asked them about the rules and regulations concerning blasting. The only thing they look at is how it applies to the mine workers on the site.

Chairman Restrepo asked if there were any safety issues with the mine workers.

Mr. Bixler responded that there were not.

Chairman Restrepo called for the next agenda item.

6. For Possible Action: Review and Approval of Minutes:

- March 29, 2012
- June 28, 2012
- September 26, 2012
- December 12, 2012

Member Neilander moved that the Commission approve the minutes dated March 29, 2012; June 28, 2012; September 26, 2012; and December 12, 2012.

Member Bremner gave the second motion. The motion carried. Member Bremner made a comment stating that it was accurate about Mr. Wadham paying a bill for mining, but that was a tongue-in-cheek kind of a joke thing, and now it is part of the official minutes.

Chairman Restrepo said that he would like to make a correction also. Counsel reminded him that he was wrong. While we are not part of NRS 362, we are under NRS 514A. Thank you for that correction.

Terry Rubald addressed the Chairman stating that since we were correcting the record, she wanted the record to also reflect that there were actually two other agencies present today. She thought Mr. Price from the Nevada Division of Minerals was present, and Chris Nielsen, the Director of the Department of Taxation was present.

Chairman Restrepo called for Item 7 on the agenda, the meeting schedule. He asked Terry Rubald what she had on that.

7. For Possible Action: Meeting Schedule

Terry Rubald asked to reconfirm that the Chairman would like the meetings scheduled around the economic forum meetings.

Chairman Restrepo said that this was correct.

Terry Rubald stated that she believed the next economic forum meeting was going to be the 3rd of May.

The members discussed their schedules and decided to hold the next meeting on May 15, 2013.

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The Chairman moved on to Item 8.

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

Chairman Restrepo stated that the major topic would be to get some of the agencies to speak regarding the issues brought up today, particularly the Environmental Protection Agency. Chairman Restrepo asked that the transcripts be sent to those agencies. Chairman Restrepo would like the Comstock residents to be present.

Terry Rubald stated that it is required for the Department of Taxation to give their report.

Chairman Restrepo asked for public comment.

9. Public Comment

Terry Rubald stated that she wanted to bring to the attention of the Commission that the Division of Minerals provided all of their reports for the last several months. They are in the packets. Ms. Rubald also stated that Mr. Price was present in the event there were any questions on those reports.

Lowell Price with the Nevada Division of Minerals came forward for comment. He stated that he was the oil, gas and geothermal program manager. He is on the fluid side of the Division. Alan Coyner, Administrator, and Mike Fisher, Deputy Administrator, were at an abandoned mines conference this week. Mr. Price stated that Michael Ginsberg with PLAN made an erroneous statement that the taxpayers would be held accountable for the mining companies just walking away -- for cleanup, reclamation and so forth. He wanted to make it clear to the Commission that all mining operations have to be 100 percent bonded for reclamation whether they are on federal property or private property. On private property, it would be the responsibility of the state. On federal property, it would be the responsibility of the BLM or the Forest Service. They utilize the area of disturbance and the type of disturbance to make their calculations as to what the bond should be. Companies have to pay up front for the disturbance they are proposing.

Chairman Restrepo asked about a scoring potential for fracking.

Mr. Price answered that there is a company, Noble Energy, based out of Houston, Texas. They have leased a substantial amount of property in Elko County primarily along the west, northwest side of the Rubys all the way up to the Mary's River area just to the west of Wells. They have about 350,000 net acres for drilling some test holes. If they end up drilling a lot of wells, the Nevada Division of Minerals, the Nevada Division of Environmental Protection and the BLM would be overseeing their operation. For additional information on hydraulic fracturing, Mr. Price provided a factual website. Over a million wells have been hydraulically fractured during the last 66 years in the United States and Canada. Mr. Price stated that he has not been able to find documentation where this has contaminated any fresh water aquifer. It is the job of the Nevada Division of Minerals to ensure this is done correctly. These fractures are generally at a minimum depth of at least 4,500 feet below any fresh water aquifer. Many times they are 8,000 to up to 12,000 feet deeper than the lowest fresh water aquifer. If it does work out, it could provide a lot of revenue to the state as well as jobs.

10. For Possible Action: Adjournment

Member Campbell moved to adjourn the meeting with a second from Member Neilander. The motion carried. The meeting was adjourned at 1:28 p.m. on March 28, 2013.