

Minutes of the Meeting
MINING OVERSIGHT & ACCOUNTABILITY COMMISSION
September 24, 2014, 1:30 p.m.

The meeting was held at the Nevada Legislative Building Room 2135, located at 401 S. Carson Street, Carson City, Nevada, and by video conference to the Grant Sawyer Office Building, 555 E. Washington Avenue Room 4412 E, Las Vegas, Nevada.

MINING OVERSIGHT & ACCOUNTABILITY
MEMBERS PRESENT:

John Restrepo, Chairman
 Attending from Las Vegas location
Kyle Davis, Vice Chairman
Senator Greg Brower, Member
Robert Campbell, Member
Dennis Neilander, Member
 Attending from Las Vegas location

MEMBERS ABSENT:

Douglas Roger Bremner, Member

COUNSEL TO THE COMMISSION PRESENT:

Henna Rasul, Senior Deputy Attorney General

DEPT OF TAXATION STAFF PRESENT:

Terry Rubald, Deputy Executive Director,
 Department of Taxation
Jeffrey Mitchell, Coordinator of Assessment Standards
 Department of Taxation
Jane Ware, Administrative Assistant IV
 Boards & Commissions,
 Division of Local Government Services,
 Department of Taxation

MEMBERS OF THE PUBLIC PRESENT:

Carson City:
Stacey Shinn, PLAN
Rich Perry, NDOM
Colleen Cripps, NDEP
David Gaskin, NDEP
Bruce Holmgren, NDEP
Greg Lovato, NDEP
Rod Neils, MSATS
Allen Biaggi, NV Mining Association
Mike Visher, NDOM
John Hadder, GBRW

Las Vegas:
Jim Wadhams, Newmont Mining
Brian Davie, Guinn Center

1. Roll Call and Opening Remarks

Chairman Restrepo called the meeting to order and asked for the roll call. Terry Rubald, Deputy Executive Director, Department of Taxation, called roll. All members were present except for Douglas Roger Bremner.

2. Public Comment

Chairman Restrepo then asked for public comment.

John Hadder, Director, Great Basin Resource Watch, introduced himself. Mr. Hadder said he would like to request that the commission put on its agenda for December the issue of pit lakes in

Nevada. He requested an update of a bill passed last session in which the final regulations have been stalled out. He also hoped the Bureau of Land Management (BLM) might be asked to come and give their perspective on possible reclamation of any of these pit lakes as well.

Mr. Hadder also addressed hydraulic fracturing regulations. He said GBRW discussed regulations with DOM staff on several occasions. Mr. Hadder and GBRW do not consider that Nevada is really ready for these regulations, ready for this process. He stated the background environmental analysis they think is necessary to move forward has not been done.

Mr. Hadder added that the State of New York has put a moratorium on hydraulic fracturing until their finish the environmental analysis. It has not been done for Nevada. Senate Bill 390 requires that there be some regulations in place by the end of the year. Mr. Hadder requested a hold on regulations while investigating outstanding issues. There is no dedicated groundwater monitoring in these regulations. This is a loophole in the law that should be corrected. It is very important that we protect the groundwater. There should be monitoring regarding checking wells and their development in case of operator error or equipment failures. The monitoring should be fairly close to where the fracking is occurring. This should be corrected in the regulations before final adoption at the end of the year.

Stacey Shinn with Progressive Leadership Alliance of Nevada (PLAN) came forward for public comment. Their organization has been following the process of writing hydraulic fracturing regulations. They are very pleased the Commission has the opportunity to review the regulations this afternoon. They have some grave concerns regarding the Division of Minerals writing their own regulations. They also agree with their colleague from the Great Basin Resource Watch regarding research into the monitoring systems of our groundwater.

3. REVIEW OF REGULATIONS

For Possible Action: Review of LCB File No. R011-14, regulations adopted by the Commission on Mineral Resources; Determination of Findings and Recommendations to be reported to the Legislative Counsel

The regulations provide for a hydraulic fracturing regulatory program; and revise provisions governing the operation of wells for the extraction of oil, gas and geothermal resources.

Rich Perry, Administrator, Nevada Division of Minerals (NDOM), and Dave Gaskin, Deputy Administrator, Nevada Division of Environmental Protection (NDEP) came forward to give a presentation and answer questions. Mr. Perry explained how a hydraulic fracturing well is permitted in the State of Nevada and the different agencies involved. The regulations basically relate to drilling and completion of a well. Regarding the permitting, the BLM is involved if it is on federal grounds. That typically involves a National Environmental Protection Agency (NEPA) process and public involvement. NDEP is involved if there are any air permits, discharge permits or any re-injection permits required for drilling and completion or operation of a well. NDOM operates a program for oil, gas and geothermal permitting for the State of Nevada. The Division of Water Resources (NDWR) is involved since water is used for drilling, dust control and hydraulic fracturing. Any water use prior to the drilling of a well has to go through the process that the NDWR has in place for appropriated water. Mr. Perry listed the members of the team that has been working on the regulations. Mr. Perry further explained that the State of Nevada has been a member of the Interstate Oil and Gas Compact Commission since 1950. The Governor is our representative, and typically he designates the head of NDOM as the person that is involved with the compact. Being a member gives us the ability to work with other states and regulatory agencies. They have reviewed all the states that produce oil in the United States. They borrowed from some components of Colorado's recent update called Rule 609, which is related to sampling of wells. They benchmarked against other state regulations and went to public workshops.

The first and second draft went to the Legislative Counsel Bureau (LCB) for legal review and then to the final hearing.

The hydraulic fracturing regulations were to address three different areas. The first area is to assess the effects on waters of the state. They require a permit application that has a one-mile area of review that shows all land ownership and any water wells in that area so they know the operator is looking within a mile of where they are going to drill a well. Mr. Perry explained the processes and showed as cross-section of a well.

Mr. Perry stated the second part of the legislation requires a person who engages in hydraulic fracturing to disclose chemicals. There have been a lot of questions about this from the public. They have a hydraulic fracturing chemical list on their website. They also have a pre-approval process that requires an operator to list the chemicals they might use. Most of the chemicals are water, sand and surfactant, but there are some chemicals listed that cause them concern. They can deny the use of those chemicals prior to their use. Post hydraulic fracturing, there is a website funded by the Oil and Gas Conservation Commission (OGCC) called frackfocus.org where the public obtain specific information on the well.

The third area was to provide notice for members of the public concerning activities. This is done through updating their website. All of their approved applications are listed chronologically under the oil and gas tab. Under public comment, they added a notification to land owners and county commissioners prior to any hydraulic fracturing treatment. They post peer review papers on their website. The final part of the legislation was to develop the program by July 1st.

The Commission on Mineral Resources is the body that approves the regulations. They met on August 28th and approved the regulations with several small changes. They, therefore, met the dates the legislature wanted these to be adopted. They also cleaned up parts of Chapter 522 of the Nevada Administrative Code (NAC), the oil and gas regulations. The final step is a legislative commission subcommittee review, which has not been scheduled to date.

When comparing these regulations to other states, they believe they are in the top three or four states as far as stringency and requirements for transparency and certainly in the sampling water, as most states do not require any water well sampling before and after a well is drilled.

Mr. Perry showed pictures. He stated it is not hydraulically fracturing until a company has actually drilled and completed the well and analyzed whether or not there are any hydrocarbons that make it worthwhile to go down there and do this treatment. Hydraulic fracturing is a stimulation treatment to try to create secondary permeability and porosity in higher carbon-bearing strata to allow oil or gas to flow. Nevada has never produced any gas commercially, only oil.

Vice Chairman Davis asked how long ago the pictures were taken and if the pictures would be up on frack focus.

Rich Perry answered that they were taken in early June, and the pictures are up.

Vice Chairman Davis stated he appreciates many of the things that were done especially the update on the existing oil and gas regulations. He asked if hydraulic fracturing could occur without any monitoring of groundwater. He asked Mr. Perry to describe how this might occur.

Mr. Perry stated in the regulations they focus heavily on source control monitoring, which is ensuring that the casing is correct and that the cement behind the casing is in place. They require what is called a cement bond log or cement evaluation log to prove the cement is in place before they can move forward and pressure test the casing. This is the preventative part. If anything could go wrong it is at the beginning when this is done. This is the time when there are high pressures on the casing. Other states have found they have had some issues when they allowed an old well to be hydraulically fractured without proper cement and casing behind it. They believe by requiring the logs and pressure of when it is hydraulically fractured that we will know immediately if there are any problems. In the

regulations they are required to shut down if there is any loss of pressure during that period of time. At that point, they would take a corrective action. They did not take the approach of requiring engineered monitoring wells for every oil well drilled simply because it does not make a lot of sense to them. Shallow groundwater monitoring wells are intended to detect leaks as well as plastic liners on garbage dumps and plastic liners in tails dams. These wells are a mile or two deep.

Vice Chairman Davis asked if there were wells that were shallower, that is something we could revisit.

Rich Perry responded that shallow is a definition they have thought about because the confining pressure of the rock to some extent dictates whether or not to allow a well that is shallow to be hydraulically fractured. Most states do not. They have a limit stating there is no fracturing above a specific elevation. At a mile deep the confining pressures are quite high.

Vice Chairman Davis stated that he read some recent articles that fracturing was occurring in other states far shallower than originally thought. That is the concern. As it reads right now, the operator has a requirement to do water quality monitoring if there are existing wells within the area of review. The only case in which this would not happen is if there were no existing wells, and they did not drill any wells for their source water. Is this correct?

Rich Perry responded that this is correct. They added the requirement that if a well was drilled for source water, which was the case initially and it is probably the case where most operators would want to go, they would want to drill a well within several hundred feet of their pad so that they had drilling water. One of the final changes in the regulations is the requirement that be one of the wells be sampled.

Vice Chairman Davis asked for an explanation of trade secrets, which exist in the regulations. How do these interplay with the disclosure requirements?

Rich Perry explained that Nevada has laws for trade secrets. They request the actual chemical formulas, but they cannot release them. They have the ability with the Division to look at them, to go through and compare them against a chemical list, a toxicity list and make a determination. They cannot give them to the public. The Division can make a determination whether or not to allow them.

Vice Chairman Davis confirmed the Division would have that information if something were to go wrong.

Rich Perry responded yes.

Chairman Restrepo asked if they anticipated any of the issues that have come up recently and are mentioned in articles in the Wall Street Journal and reports in the National Academy of Science, such as leaky wells. Are you familiar with this series of articles or reports that just came out recently?

Rich Perry responded that they had their hands on the reports immediately when they came out. The report concluded that the problems with the wells were related to poor casing and cement jobs. The Division's focus is on the preventative part by ensuring there are two layers of casing and intermediate casing and that the engineers cement behind that casing to ensure there is no potential for leakage. Also note that the wells mentioned in the report were gas wells. We may have gas production in Nevada someday, but the geology has not been favorable to that.

Chairman Restrepo asked if they had any comments on the previous testimony by Mr. Hadder regarding holding off on the regulations until some more work is done on the monitoring issue. They have probably not had time to read his letter. Chairman Restrepo stated he would appreciate them reading the letter and sending written comments in the next few weeks regarding their thoughts. He would also like them to address Mr. Hadder's comments.

Rich Perry responded he has not read the letter.

Chairman Restrepo asked Mr. Perry to respond prior to the next meeting.

Senator Brower asked about the timing on this issue. Is the Commission's statutory mandate to review, not adopt, certain regulations, including this proposed regulation? If the Commission did not do a review today, would it cause timing issues for the Division?

Rich Perry stated it was his understanding that this Commission is asked to comment with a recommendation for or against. Then it goes to the Legislative Committee on rule making, which has all of the documentation that they submitted on the regulations and the information statement. He anticipated they will be setting a meeting soon. It was their hope the review would be done today so it could be considered by the Legislative Committee.

Senator Brower stated that was his hope, as well, and he believes the Commission's expectation. He wanted to make sure they do not fail in a way that would cause an adverse impact in terms of the overall timing for the regulatory process. It would be helpful if counsel would weigh in on that.

Henna Rasul, Senior Deputy Attorney General, stated that it was two-fold – to do a review per the statute and then provide a report to the Legislative Commission regarding the findings and recommendations.

Senator Brower confirmed that the Commission is to do a review and a report. He is hopeful that we can move forward with this. Senator Brower asked about the 1.1 million such wells in the United States at this time.

Rich Perry replied that there are 1.1 million wells that have been hydraulically fractured. He would say that probably two thirds are gas and one-third is oil. They exist in 32 states.

Dave Gaskin stated hydraulic fracturing will likely continue to occur. It is important to have some sort of regulatory framework in place for the protection and defensibility of the Commission on Mineral Resources and NDOM, as well as the industry itself, to give the permit defense they need out in the field. He believes the Legislature put this in the statute as they did because they want a fast track. They recognize this activity is ongoing, and there is a need to have something in place as soon as possible. It does not mean it cannot be improvised or improved as we move forward and learn more. He would like to emphasize that timing is not inconsequential.

Chairman Restrepo stated he was convinced.

Vice Chairman Davis asked if the regulations will be effective as soon as the Legislative Commission approves them.

Rich Perry responded that it is his understanding that after the Legislative Commission approved them, the document goes to the Secretary of State. Once recorded by the Secretary of State, the regulations are effective.

Senator Brower stated, from his experience, this is exactly what the Legislature was expecting and anticipating because this activity is ongoing. Their concern was that it not take place for longer than absolutely necessary before there is a robust, comprehensive regulatory scheme in place. This has been very comprehensive and thorough and studied. He believes we are now ready to move on with this.

Chairman Restrepo asked for a motion to move forward on the regulations.

Senator Brower moved to approve the regulations with a second from Member Neilander.

Vice Chairman Davis stated that he will be supporting moving this regulation forward today because he does agree that we need some kind of structure in place. Based on his involvement with the process, he does believe the law requires an assessment of the effect on the waters of the state. When there are areas in which hydraulic fracturing could occur without any monitoring of the water, he does not believe we are meeting the intent of the law. That gives him concern, and he believes it does need to be addressed. But the near term, knowing that these operations are occurring and that they will continue to occur without regulations in place, he would like to see this put in place for the near term and we can continue to work on this.

Member Neilander stated that he believes that of all the regulations that have come before us for review and reporting since this body was created, these are far the most comprehensive in terms of the involvement, the hearings that have occurred and the work that was done. Although not perfect, he is going to support the regulations today.

Chairman Restrepo agreed. The motion carried. Chairman Restrepo thanked the presenters.

4. AGENCY REPORTS: CONSIDERATION AND POSSIBLE ADOPTION OF RECOMMENDATIONS AND ORDERS

For Possible Action: Department of Conservation and Natural Resources-Division of Environmental Protection Overview – informational presentation pursuant to NRS 514A.070(2):

(a) Overview of Division activities concerning reclamation of mined lands, areas of exploration and former areas of mining or exploration during the immediately preceding calendar year

(b) Report on Enforcement Actions, fees and fines

Colleen Cripps, Administrator, NDEP, came forward to give an overview of the Division's reclamation activities and an account of the fees and any fines that have been imposed by their agency over the past year. With her today is Greg Lovato, who recently became Deputy Administrator. There has been a management change since their last presentation to the Commission. Mr. Lovato is now over the mining program, corrective actions and federal facilities. Also with her today is Bruce Holmgren, Chief of the Bureau of Mining Regulation Reclamation within her Division. Mr. Lovato will give the overview.

Greg Lovato, Deputy Administrator, NDEP, stated they operate under specific statutes in 519A. The components of the program have up-front permitting and bonding, ongoing inspections, company compliance and enforcement and financial assurance in the form of bonds. The governing statutes cover all these elements. It is important to note that the state regulations and statutes cover both public and private lands. They have a Memorandum of Understanding that is updated every five years, most recently in early 2014, with the BLM and the Forest Service. This coordination provides for agreements on bonding amounts, who holds bonds and compliance with regulations and statutes of all governing agencies. The program is composed of seven staff. There are minimum requirements in terms of when activities are required to obtain permits. These limits are five acres and 37,000 tons. That is about an acre of rock about ten-feet deep. Mr. Lovato showed an example of a heap leach pad which was a gold mine successfully reclaimed post-use. He also showed what fines and fees have been collected for the past year, and went on to show other mining reclamation slides. Right now there are 260 total permits in the reclamation group, 13 last year and four completely released. After three years of post-use and the vegetation has taken hold, the bonds get released. There were 145 projects inspected, and the permit inspection frequency is roughly once every three years. Exploration projects permitted right now are approximately 10,000 acres, 75% public and 25% private. Actual disturbance is about two-thirds public and less than that for private. Mining operations are up as of December of last year to 180,000 acres of disturbed lands, mostly half and half, public and private. These numbers are obtained from reports that come in and surveys done at the sites.

Regarding fees, the program is 100% fee-funded. Most of the fees come from annual reclamation, permit renewals and funds. The branch activities of the seven staff along with all of the associated indirect costs, is independent of the general fund and federal grants. The two types of fees are permit fees, which make up a smaller portion of the annual revenue, and annual fees that help support the program along with support to the Nevada Bureau of Mines and Geology (NBMG). Mr. Lovato explained the breakdown of the fees. Although there were quite a few inspections, the program is in pretty good shape from a compliance standpoint. No fines were imposed in 2013. Overall bond amounts statewide are continuing to grow. Mr. Lovato explained the breakdown. The industry is leaning more toward bonds than letters of credit. As in past years, the only corporate guarantees are with Barrick and Newmont. Those continue to be subject to a review on a yearly basis by the panel. The bond quote for remaining amount is managed by NDOM. On BLM, NDEP or private land, BLM holds the bond. Most projects involve a combination of both.

Member Davis asked if there was an operation that is on both private land and BLM land, does BLM hold the bond on their portion and NDEP hold the bond on the private portion.

Mr. Lovato responded that it depends. For the most part, BLM holds the bond for the entire just because that works out better. If the government has to do the work, it is better for one entity to hold the bond. In cases where they are completely separate, the bonds are separate.

Bruce Holmgren, Chief of the Bureau of Mining Regulation Reclamation, NDEP, clarified that in most cases, BLM holds the entire bond. On both a public and a private lands component on BLM-managed lands, the Forest Service prefers to hold the public land portion, and the state holds the private. There are mixed cases there as well.

Member Davis asked if there is a project which is on both public and private lands, and the project becomes all private through a land sale, and the BLM holds that, does it get transferred to the state if it is all BLM private land.

Mr. Lovato responded yes. He stated that this concludes their presentation, and they are open for further questions.

Member Neilander asked, if the inspections are being done on a three-year cycle, what would cause the permit to need updating.

Mr. Holmgren responded that the regulations require a three-year update on their buy and cost estimates. They usually do their inspections at that time or when the permittee requests a bond release. They like to confirm the work has been completed.

Member Neilander asked if the three-year time frame was actually in the regulation and statute.

Mr. Holmgren responded it is in the regulation for the bond updates. The inspections are not. They just feel it is an appropriate time to inspect the sites.

Chairman Restrepo thanked the presenters and expressed his appreciation.

5. AGENCY BRIEFINGS

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.

Rich Perry, Administrator, NDOM, directed the Commission to the document in their packet which shows the fees year-to-date, this fiscal year through September 12th. It shows a normal pattern at the beginning of the year. Approximately 75% of their fees come from claim fees that are collected by county recorders, an \$8.50 per claim fee for each claim that is held on to or each new claim that is filed in the State of Nevada. Those are starting to trickle in from the county recorders. That typically starts in September and is finished by around January. Most of the fees come in in the first six months of the year. The abandoned mine securing fee is collected at \$20 per acre for any new permitted mine. That pays for work that is done on the abandoned mine land orphan program which they run. This is a big part of their operation in which they do hard closures on orphan mines. Orphan mines are those that were out there one hundred years ago. In 1987, the Legislature determined these needed to be addressed because people were driving motorcycles and ATVs into them and getting hurt.

At the next meeting, he will have the mines and minerals production statistics book that is being printed this week. He apologized that he did not have it ready for this meeting.

Chairman Restrepo thanked Mr. Perry, and stated this item was for informational purposes and does not require a vote.

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

- June 26, 2014

Member Davis moved to approve the minutes of the June 26, 2014 meeting with a second from Member Neilander. The motion carried.

7. For Possible Action: Meeting Schedule

Terry Rubald stated that pursuant to law, this body should have a meeting in the fourth quarter. It does not have to be in December, and could be sooner. There is no set agenda for that particular meeting as there was for the first three quarters in which it was required to have a certain agency give a report. Her recommendation would be to have a meeting either the first or second week of December.

It was decided that December 2nd worked best for everyone. Terry Rubald stated she would set it up for the morning at 10:00 a.m.

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

Member Davis asked for an update on pit lakes from NDEP and the BLM.

Coleen Cripps stated that they are prepared to talk about this today if the Commission is interested in hearing about where they are with the pit lake regulations.

The Commission agreed that they wanted to hear about this.

Henna Rasul stated that this has not been agendized. However, it technically could be heard under public comment. It would just be to receive information.

Dr. Cripps stated that would be fine. Then if there are any issues or additional questions, they could come back to the next meeting. They could provide the information, and the Commission could decide if more is needed.

Chairman Restrepo stated this was going to be an informational item, anyway.

Member Davis commented that the Commission has been operating for a while with less than seven members. He asked when more members might be appointed to this Commission. He also asked about the framework under the law that establishes this Commission.

Terry Rubald responded that the Department has inquired on several occasions. The members of this Commission are appointed by the Governor. We have inquired of the Governor's Office and the Legislature. They are aware appointments need to be made. We have also inquired about renewing the current memberships terms. We are awaiting word on that as well. It is her understanding that this Commission can continue as long as we have a quorum of the existing members.

Henna Rasul added that this Commission is a little different. It is a more involved process for appointment purposes. NRS 21 514.040 stated the Governor, on his own, can appoint two members. Then the remaining members would have to be recommended by majority leader, speaker, assembly and minority leader of the senate. They would have to meet and confer. It is more involved than solely having the Governor appoint members as he typically does with most bodies.

Member Davis would like to have the issues of Mr. Hadder with GBRW on the agenda for the next meeting.

Dr. Cripps commented that she would not be available on that date.

Member Davis stated maybe we will just focus on the BLM on that date.

Dr. Cripps stated she could send staff. They would be happy to get back with Mr. Hadder, as well.

9. Public Comment

Greg Lovato provided an update on NDEP's activities with land owners, land managers and mining companies in regard to the pit lake access bill. The pit lake access bill was Assembly Bill 346,

and it passed in the 2013 Legislative Session. It amended the reclamation regulation at 519A.230. In summary, mining projects with a field surface greater than 200 acres required consultation with land owners or land managers to determine if public non-motorized access would be allowed in pit lakes. That consultation has been completed with all seven mine pits in Nevada that are over 200 acres. All 7 documentation was submitted to NDEP by the July 1, 2014 deadline. At this time, they are in compliance with the statute. All the consultations have been completed. Presently, none of the land owners and land managers have decided that pit lake access is something they are going to allow. However, through the consultation process, all the land owners and the BLM agreed the decision to allow access could be reconsidered after operations cease and post-mining conditions can be evaluated. Currently, they are not planning on pursuing any regulations to implement the statute since the statute has been complied with through the consultation process that was completed in July.

Member Davis asked, regarding the land owners wanting to allow access, if this included public and private land.

Greg Lovato responded that this was correct.

Member Davis asked if there has been a determination what would happen if there was a disagreement between two land owners regarding the same project.

Greg Lovato replied that this matter has not come up. At this point it is more of a practicality and feasibility issue based upon the contours of the land and whether it is something that people think is a good idea for topography.

Member Davis stated he would like to get the BLM's perspective on this at the next meeting.

Chairman Restrepo asked Terry Rubald to arrange this.

10. For Possible Action: Adjournment

The meeting was adjourned at 2:46 p.m.