



State of Nevada

Dept. of Conservation & Natural Resources

State Environmental Commission SEC.nv.gov

901 South Stewart Street, Suite 4001, Carson City, Nevada 89701

SEC Appeal Hearing

Notice Pursuant to NRS 233B.121 and NAC 445B.891

Date: March 27, 2012

To: Appellant:
Comstock Residents Association
Represented by John Marshall, Esq.

Respondent:
Nevada Division of Environmental Protection
Represented by Cassandra Joseph, Esq.
Office of the Attorney General

Intervener:
Comstock Mining Inc.
Represented by Carolyn McIntosh, Esq.
Patton Boggs LLP & Brian R. Hutchins, Esq. of BH Consulting LLC

From: John B. Walker, Executive Secretary

Subject: Notice of Appeal Hearing: Dayton Consolidated Exploration Project,
Permit No. 0315 Sampling and Analysis Plan

A three-member panel of the State Environmental Commission (SEC) has scheduled an appeal hearing on the above referenced permit. The hearing will begin on April 27, 2012 at 9:00 a.m. in Reno, Nevada at the Nevada Department of Wildlife, Conference Room "A", 1100 Valley Road. The April 27th hearing date was selected after consultation with the parties

The SEC has jurisdiction to hear this appeal pursuant to NAC 519A.415. The statutes and regulations involved in this appeal hearing as cited by appellant are: NAC 519A.160, 519A.185, 519A.190, 519A.210, and 519A.260; NRS 233B.032; and NRS 233B.121.

About the Appeal: On December 20, 2011, the Nevada Division of Environmental Protection (NDEP) issued Permit 0315 to Comstock Mining Inc. (CMI). The permit authorizes CMI to reclaim Dayton Consolidated Exploration Project, which is located on about 20 acres within the Carson River Mercury Superfund site. Permit 0315 required CMI to submit to NDEP for review and approval a Sampling and Analysis Plan (SAP) which includes a standard operating procedure in the Long Term Sampling and Response Plan guidance document for activities that may disturb mine wastes and/or mill tailings

within the Carson River Mercury Superfund site. Permit 0315 also required the NDEP-approved SAP to be implemented prior to any mineral exploration activities within the Carson River Mercury Superfund site.

On February 2, 2012 NDEP approved the SAP and on February 8, 2012, the Comstock Residents Association (CRA) filed its appeal.

CRA asserts the bases for appeal in its form 3 as follows. The final SAP was not available at the time of the public hearing on Permit 0315 and was not included as part of the opportunity for public comment. NDEP said in its summary of responses to the public hearing on Permit 0315 that the SAP would be made available for public review and then provided CRA with only 11 calendar days to review the 659-page document and provide input. The review was informal in nature and not in compliance with legal requirements. A public hearing should have been conducted to provide an opportunity for the public to submit written and oral input as per NAC 519, 519A.185, 519A.190, and 519A.210; NRS 233B.032; and NRS 233B.121.

In addition, CRA states the SAP is an important standard that identifies the areas on CMI property that will be tested for toxic substances based on archeological locations of mines and mills; however, the underlying archeological survey and field review were not reviewed for validity by NDEP. Further, CRA states the SAP provides for removal of certain areas of CMI holdings from the Carson River Mercury Superfund site prior to testing, and as a result, the Permit/SAP is not adequately protective of public health and safety as per NAC 519A.260. The testing of the soil to be disturbed by CMI's exploratory mining impacts the health and welfare of area residents, some of whom live within 300 feet of proposed soil disturbances.

Hearing Procedure: Practice before the SEC is governed by the attached regulations found at NAC 445B.875 et seq. The online version is located at: <http://www.leg.state.nv.us/NAC/NAC-445B.html#NAC445BSec875>.

NRS 233B.121 to 233B.150 are also applicable. See: <http://www.leg.state.nv.us/NRS/NRS-233B.html#NRS233BSec121>

Related Information: Additional information about this appeal is available on the SEC website at the following location: http://sec.nv.gov/main/comstock_sap.htm

ecc: NDEP Staff
SEC Appeals Panel
SEC/DAG