



STATE OF NEVADA

Department of Conservation & Natural Resources

DIVISION OF ENVIRONMENTAL PROTECTION

Brian Sandoval, Governor

Leo M. Drozdoff, P.E., Director

Colleen Cripps, Ph.D., Administrator

Notice of Final Decision – Bureau of Mining Regulation and Reclamation

Web Posting: 12/20/2011

Deadline for Appeal: 12/30/2011

Dayton Consolidated Exploration Project Permit # 0315 Comstock Mining Inc.

The Nevada Division of Environmental Protection (Division) has decided to issue a Reclamation Permit, No. 0315 (Permit) for an exploration project to Comstock Mining Inc. The permit authorizes Comstock Mining Inc. to reclaim the Dayton Consolidated Exploration Project. This Project is located in Lyon County, Nevada. The Division has been provided with an application, in accordance with Nevada Revised Statutes (NRS) and Nevada Administrative Code (NAC) 519A to assure the Division that Comstock Mining Inc. will leave the project site safe, stable, and capable of providing for a productive post-exploration land use.

This permit will become effective December 31, 2011. The final determination of the Administrator may be appealed to the State Environmental Commission (SEC) pursuant to NAC 519A.415. The appeal must be filed by December 30, 2011 on SEC Form #3 and in accordance with administrative rules of the SEC.

The following comments were received during a 30-day public notice period and at the November 16, 2011 public hearing to gather additional public comments related to the Division's intent to issue the Permit.

Paraphrased General Public Comments:

1) The proposed project is located within the Virginia City National Landmark Historic District and a State of Nevada designated Comstock Historic District, both of which provide for cultural resource protections.

Division Response: The Permittee has been made aware of the State Historical Preservation Office NAC 384 regulations. The protections of historical and cultural resources are beyond the scope and intent of the NAC 519A regulations for issuance of a reclamation permit.

2) The applicant has not provided any legal documentation for proof of the right to perform the proposed activities.

Division Response: The Permittee states that the area within the project boundary is secured with Patented Lode Claims on private land. Legal documentation of the validity of the mining claims is beyond the scope and the intent of the NAC 519A regulatory framework. A reclamation permit does not have a legal basis to serve as a determination of ownership or the validity of any mining claim to which it may relate.

3) The required Sampling and Analysis Plan (SAP) which includes a standard operating procedure in the Long Term Sampling and Response Plan (LTSRP) guidance document for exploration activities that may disturb mine wastes and/or mill tailings appears to be developed without any public input or comment. All disturbed soils should be tested for mercury or other toxic substances prior to issuance of an exploration permit.

Division Response: The Bureau of Corrective Actions (BCA) is in the process of evaluating the SAP and upon determination of completeness; the SAP will be made available for public review. The SAP will have specific sampling protocols required to be met before any exploration disturbance activity may occur in the Carson River Mercury Superfund Site (CRMS). The requirements of the SAP will be enforced by the BCA to ensure that development and/or reprocessing of mill tailings and mine wastes within the CRMS does not mobilize, spread, relocate, or otherwise enhance the release of the constituents of concern, mercury, arsenic, and lead, into the environment or by increasing the potential for human exposure.

The SAP will identify where potentially elevated levels of mercury, arsenic, and lead exist prior to exploration activities. The Permittee will target these areas in the SAP for sampling and analysis. A site characterization report will be generated after the field investigation is completed and the Permittee will have the option of mitigating areas that exceed action levels prior to disturbance or avoiding those areas.

The BCA has informed the Comstock Residents Association (CRA) that they will have an opportunity to review and comment on the SAP prior to final approval, even though there is no formal public comment process for this type of document. The BCA has informed the CRA that the Division is not obligated to incorporate the comments, but would appreciate input. In addition, the BCA does not have a formal public comment mechanism for remediation plans. The BCA will provide any remediation plan associated with the Permittee's operation to the CRA for review and comment prior to final approval.

4) Comstock Mining Inc. should obtain an Air Quality Permit as the 19.75 disturbance acres presented on the applicant's maps are not true to scale and relying on the operator's assertion does not fulfill the regulatory duty of NDEP to safeguard the public.

Division Response: An air quality permit requirement is beyond the scope of the NAC 519A regulatory framework. Per NAC 445B.22037, a surface area disturbance air quality permit is required for mineral exploration projects with more than 20 acres. The operator has defined 19.75 acres for the project disturbance including 16 acres proposed and 3.75 acres documented

as pre-1981 existing disturbance. The Division performs periodic inspections of permitted sites to ensure that the operator maintains compliance with all permit conditions.

5) Project area is located within Silver City residential zoning with the potential to drill close to existing homes. We would like to know if there are requirements for the schedule of the drilling times and how close this drilling can be to residences.

Division Response: Local zoning laws, drill schedules, and drilling distance from local residences are beyond the scope and intent of the NAC 519A regulatory framework.

6) The draft permit is “open ended” with no expiration timeframe.

Division Response: NAC 519A.130 states: Permits for exploration projects: Duration; limitation on issuance. (NRS 519A.160)

1. A permit for an exploration project is valid for the life of the project unless it is suspended or revoked by the Division.

7) A Cumulative Impact Study should be required to be performed by the applicant.

Division Response: A cumulative impact study is beyond the scope and intent of the NAC 519A regulatory framework.

8) The applicant should be required to perform concurrent reclamation. When will areas be reclaimed? Please define this with a map and GIS shape files including acreages.

Division Response: Concurrent reclamation is not required as a condition of a reclamation permit and cannot be enforced within the scope of the NAC 519A regulatory framework. Permittees are encouraged to perform concurrent reclamation activities to reduce reclamation obligations and bonding liability. See comment 15 response in reference to requirements for mapping project disturbances.

9) A separate detailed Revegetation Plan must be a condition of the permit because desert environments are some of the most difficult to stabilize and re-vegetate once disturbed. As stated in the application, the site has been disturbed; therefore a vegetation survey conducted during the winter months will not identify vegetation species necessary for re-vegetation efforts. How will re-vegetation success be monitored?

Division Response: The Permittee is required to provide a Reclaimed Desired Plant Community (RDPC) baseline vegetation transect study in areas that have not been previously disturbed to meet criteria established in the Permit's Attachment B document entitled; Guidelines for Successful Re-vegetation for the Nevada Division of Environmental Protection, the Bureau of Land Management, and the U.S.D.A. Forest Service. The RDPC baseline report will record the site specific existing native plant types, the percent vegetation cover for each species, and photo documentation of the transect locations.

A Department of Agriculture custom soil characterization report with vegetation species data has been submitted and is based upon studies performed in Lyon County. In order to obtain site specific data, the Permittee has hired biological specialists to perform a RDPC study during the optimal growth season between May 1, 2012 and June 30, 2012. A Schedule of Compliance (SOC) item is included in the Permit to meet this specific RDPC requirement on or before July 31, 2012. Upon submittal, the RDPC will be made available for public viewing. The Permittee will be required to meet the conditions of the baseline vegetation criterion before the surety bond will be released. The reclamation cost estimate provides for additional costs for re-seeding acres and three years of post-seeding monitoring by a professional range specialist.

10) The proposed plan states: “it is anticipated that excess water will be encountered during drilling”. This suggests that it be prudent that a comprehensive groundwater resource and protection plan be required. Because drilling will occur within the Carson River Mercury Superfund Site, additional water pollution control permits and protections should be required.

Division Response: Neither a comprehensive groundwater resource protection plan, nor a water pollution control permit are required for the permitted activity. The Permittee currently has a State of Nevada storm water permit, MSW-272, issued by the Division’s Bureau of Water Pollution Control. This permit has specific Best Management Practices that include inspection and reporting requirements.

The Permittee is required to properly plug all drill holes according to the NAC 534 regulations. Inspections have confirmed that the drill operator has performed the plugging requirement as a common practice after completion of each hole. The reclamation cost estimate provides additional costs to properly plug an additional 5 drill holes. Every drill pad will consist of two sumps constructed in series with an average dimension of 15 ft. x 6 ft. x 4 ft. each to contain all water encountered. When drilling in areas with elevated groundwater, super-size sumps averaging 40 ft. x 100 ft. x 6 ft. deep will be constructed for additional water containment. The Permit requires that all drill hole cuttings, grout and drill fluids be contained in constructed sumps for each drill pad site.

11) A separate super sump detail must be a condition of the permit because it is an industry standard that super sumps are lined with geo-synthetic liner materials to prevent drilling fluids/cuttings/leachate from reaching the shallow groundwater table. The super sumps should be built at a 2:1 slope so that wildlife or humans can climb out of them. The plan should detail how the super sumps will be decommissioned.

Division Response: There is no NAC 519A regulatory requirement for geo- synthetic lined sumps. Previously constructed super sumps have had berms on three sides with egress access toward the upward slope. The sumps are bonded to be backfilled and re-contoured to blend into the surrounding topography. The Permittee has demonstrated successful earthwork reclamation for several super sumps.

12) There exists a history of violations and non-compliance associated with Comstock Mining Inc. and its predecessors on a previously permitted project. Therefore, a robust and beyond ordinary compliance stipulations should be incorporated into this permit application. Prior to issuing any new permits, the existing permits should be modified to include requirements to address the Contaminants of Concern in all areas that have been exposed to possible contamination.

Division Response: The Permittee has resolved all non-compliance issues as related to the Plum Mining Reclamation Permit. Therefore, the issuance of a reclamation permit for exploration is unaffected.

Upon final approval of the SAP requirements, appropriate stipulations will be incorporated into the Plum Mining Reclamation Permit to address any previously disturbed areas within the CRMS. The Division will perform quarterly inspections to ensure that the Permittee maintains compliance with all permit conditions.

13) There is no detail on the proposed mitigation or monitoring measures of air, water and noise which would be required during active operation activities.

Division Response: Mitigation or the monitoring of air, water and noise are beyond the scope and intent of the NAC 519A regulatory framework.

14) The bond amount Comstock Mining Inc. reported is not adequate to put back a mountainside. There are 135 drill pads and a request for reclamation of 19.75 acres.

Division Response: The Permittee proposes 16.0 acres of new disturbance with 3.75 acres of pre-existing disturbance for a total of 19.75 acres. The 2011 Nevada Standard Reclamation Cost Estimator (NSRCE) has been used to estimate reclamation costs and accounts for the material volume required to reclaim the drill pads on variable slope faces. Each drill pad will have average dimensions of 40 ft. x 60 ft. The proposed 135 drill pads add up to 7.4 acres of disturbance.

15) The permit application must include a separate attachment detailing the disturbance areas. It is likely that the area of disturbance will be significantly larger than identified within the draft permit. For example, Table 1, page 5, revision 2, states that 19.75 acres will be disturbed. However, the draft permit does not factor in the effect of steep slopes in the cut and fill areas, which will likely result in greater disturbance than estimated. Another example of disturbance area underestimation occurs in Table 1 which states that 7.2 acres of roadway would be created and/or disturbed. On page 9 of revision 2 [page 7, under D) it states that 18,000 feet of roadway, averaging 20 feet wide would be created. This amounts to over 8.3 acres.

Division Response: Periodic inspections using global positioning systems (GPS) and the required annual report to meet the SOC will provide for accurate disturbance accounting while taking into account the slope variances. The SOC states; On or before April 15th of every calendar year, the Permittee shall provide a map which accurately depicts the exploration status of the project that includes all constructed exploration access roads, drill pads, sumps and super sump disturbances that have been developed as of December 31st of the prior year. The Permittee must also provide

an acreage disturbance summary report with the corresponding map to also include any concurrent reclamation performed.

Exploration roads average approximately 15 ft. in width. The D-8 Dozer proposed for construction has a maximum blade use width of 14.5 ft. The 20 ft. wide blade noted in the plan is an error and is not applicable with a D-8 Dozer used for construction purposes. Exploration roads built 15 ft. (wide) x 18,000 ft. (length) /43560 sq. ft. per acre equals 6.2 acres of disturbance. Permit Table 1 lists 7.2 acres for road disturbances. The 18,000 ft. length for roads includes 3.7 acres of pre-1981 existing roads that do not require any reclamation bonding. The Permittee has purposefully chosen NSRCE input assumptions of 18,000 ft. (length) x 20 ft. (wide) roads to provide for a conservative overestimate of the reclamation costs to reclaim the roads. The Division's periodic inspections and the SOC provide for monitoring of the disturbances to ensure that the Permittee maintains compliance with the Permit conditions.

16) Item C, page 10, states that "on private lands, historic access roads which are used and maintained for exploration activities, but their original integrity was not compromised during the exploration period will not be reclaimed". This becomes important because page 11, Item 4, states that Comstock Mining agrees to assume responsibility for reclamation of any surface area affected by the proposed work. On page 6, Item B, this is worded slightly differently. I understand that if Comstock Mining Inc (etal) touches it or disturbs it with equipment, that same area is subject to reclamation (old or new).

Division Response: The Permittee is referring to access roads existing before 1981 that do not require construction to obtain access, only maintenance work. Per NAC 519A.105 Applicability: Road used for access to exploration project or mining operation does not apply to a road which an operator can prove to the satisfaction of the Division existed before January 1, 1981, if the road is used for access to an exploration project or mining operation; and has not been altered other than maintenance activities and minor repairs since January 1, 1981. Page 6, Item B is a reference to pre-existing disturbances that will be re-affected by Permittee with new construction for improved access. Re-affected disturbance acres are included in the total 19.75 acres listed in the permit for the reclamation cost estimate and surety bond.

17) The applicant states, on page 9 of the application that "The post mine land use will remain with the current use, which is mining and minerals exploration and development." I submit that the characterization of the use of the property as "mining, and mineral exploration and development is not accurate.

Division Response: Per NAC 519A.070 "Productive post mining use of the land" defined. "Productive post mining use of the land" means a use which supports activities including recreation, wildlife habitat, light industry and commercial; thus indicating that the Permittee's land may support a post exploration multiple land use, and any other activity which benefits the owner of the land, including mineral exploration.

18) This permit is for control of new activities. What if anything is being done to require the company to use similar investigative activities (SAP requirements) to determine what has occurred

to other sites they have disturbed and likely have dispersed Contaminants of Concern (CoC) – mercury, arsenic, and lead – around the Dayton Consolidated site?

Division Response: For areas within the CRMS boundary that have been disturbed, the Permittee will evaluate their previous operations and incorporate these into the SAP. In areas that exceed the CoC action levels, the Permittee will be required to follow the appropriate remediation measures per the approved SAP and requirements of the LTSRP.

19) There appear to be no specific requirements for closure and reclamation activities for sites that have been contaminated by Comstock Mining.

Division Response: The Division approved SAP will address evaluation and assessment of any potential CoC in prior disturbances created within the risk boundaries of the CRMS. The Division will evaluate whether material generated during historic milling and mining activities has been redistributed by the Permittee into areas that must be mitigated.

20) It is unclear how the regulatory requirements between the Bureau of Corrective Actions and the Bureau of Mining Regulation and Reclamation (BMRR) will interact and how non-compliance will be addressed.

Division Response: Division staff from BMRR and BCA have worked together to resolve how the SAP and LTSRP requirements for proposed activities within the boundaries of the CRMS would be incorporated into the Permit. The Permit requires that the Permittee have an approved SAP as a specific permit condition. Failure of the Permittee to comply with permit conditions and requirements will result in the Division issuing a notice of noncompliance order which may result in the permit being suspended or revoked, the surety (bond) forfeited, and a civil penalty assessed. The LTSRP requires that the SAP must be prepared by a Certified Environmental Manager (CEM) or a Licensed Professional Engineer (PE). The CEM or PE will be responsible to ensure that all SAP protocols are used and follow a proper chain of custody to ensure intact receipt of all samples to a Nevada Certified Laboratory. The Division will conduct quarterly inspections to ensure that the Permittee maintains compliance with all permit conditions.

21) There has not been appropriate oversight by the Division regarding activities being conducted in the CRMS.

Division Response: The BMRR will conduct quarterly inspections to ensure that the Permittee is complying with permit conditions. The BCA will be available to attend those inspections to evaluate compliance with the SAP. The Permittee has hired an environmental consultant to prepare the SAP, conduct field sampling, review the analytical results, report on the site investigation and make recommendations for soil mitigation, if necessary. Sampling activities conducted by the Permittee in accordance with the SAP will be coordinated with BCA to facilitate site visits and allow for duplicate soil samples to be collected by a NDEP contractor. The duplicate samples will be analyzed and the results compared to the Permittee's analytical results.

22) Why have none of the existing permits been modified to assess the actions and the fate of CoCs that have already been disturbed and where they have been dispersed.

Division Response: See Division response to comment #12.

23) General re-vegetation comment: And then, in implementation, I'd like to know exactly what kind of equipment is going to be used, what avoidance measures, how the soil is going to be treated, whether you're going to think about removing pest plants, such as cheatgrass or whitetop.

Division Response: The Permit does not require specific equipment to be used for the reclamation of disturbed areas. The Permittee has provided the reclamation costs for a small dozer to re-grade 32,000 cubic yards of soil to achieve final topography and a small all-terrain vehicle (ATV) with drag chains to provide for soil scarification and reduce soil compaction for seed bed preparation. The Permittee states that re-vegetation will be broadcast seeding by hand. Inspections will monitor for weeds whereas state regulations require the land owner to be legally responsible for the control of any noxious weeds.

Per NRS 555.150 Eradication of noxious weeds by owner or occupant of land. Every railroad, canal, ditch or water company, and every person owning, controlling or occupying lands in this State, and every county, incorporated city or district having the supervision and control over streets, alleys, lanes, rights-of-way, or other lands, shall cut, destroy or eradicate all weeds declared and designated as noxious as provided in NRS 555.130, before such weeds propagate and spread, and whenever required by the State Quarantine Officer.

Per NRS 555.202 Legislative declaration. The Legislature declares that it is primarily the responsibility of each owner or occupier of land in this State to control weeds on his or her own land, but finds that in certain areas this responsibility can best be discharged through control by organized districts.

The paraphrased general public comments were developed based upon written comments submitted by the following individuals:

Gayle Sherman, Secretary/Treasurer; CRA
Cashion Callaway, Silver City
Erich Obermayr, Silver City
Cynthia Etchegoin, Silver City
Allison Woodman, Silver City
Carol and William Godwin, Silver City
Bonnie Brown, Silver City
Larry Wahrenbrock, Silver City
Robert Elston, Silver City
Daan Eggenberger, Friends of the Comstock

Additional public comments were received from the following individuals during the public comment hearing held on November 16, 2011:

Gayle Sherman, Secretary/Treasurer; Comstock Residents Association
Robert Elston, Silver City
Larry Wahrenbrock, Silver City
Daan Eggenberger, Friends of the Comstock
Susan Juetten, Great Basin Resource Watch