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COUNSEL
Rose Marie Reynolds

STAFF
John B. Walker
Executive Secretary

MEMORANDUM

Date: January 23, 2012

To:
Appellant:
Comstock Residents Association
P.O. Box 29
Silver City Nevada, 89428

Respondent:
Nevada Division of Environmental Protection, Bureau of Mining
Regulation & Reclamation: Represented by Carolyn Tanner
SDAG, Office of the Attorney General

Intervener:
Carolyn L. McIntosh
Patton Boggs LLP
1801 California Street, Suite 4900
Denver, CO 80202

From: John B. Walker, Executive Secretary

Subject: Appeal of Dayton Consolidated Exploration Project Permit
0315 Deadlines

Respondent NDEP has filed a Motion to Dismiss the referenced appeal (see attached). If the Appellant and/or the Intervener intend to file a written response to NDEP's Motion to Dismiss, the written response must be filed with the SEC and served on all parties by February 3, 2012 at 5:00 p.m.

On or before February 6, 2012, all parties to the appeal are directed to exchange a list of proposed witnesses and documents to be offered into evidence at the hearing. The list does not need to be filed with the SEC.

FORM # 3
FORM FOR REQUESTING AN APPEAL HEARING
BEFORE THE NEVADA STATE ENVIRONMENTAL COMMISSION

RECEIVED

DEC 30 2011

1. Name, address, telephone number, and signature of applicant:
Name: Gayle Sherman, for the Comstock Residents Association (CRA) ENVIRONMENTAL PROTECTION
Address: P.O. Box 29, Silver City Nevada, 89428
Telephone: 775-847-0651
Signature: *Gayle Sherman*
Representative Capacity (if applicable): Secretary/Treasurer of the Comstock Residents Association.
2. Specify type of applicant: Individual, Partnership, Corporation, or Other: Corporation
3. Other person or persons authorized to receive service of notice: Robert Elston, Robin Cobbey
4. Complete description of the business or activity and the location of the activity involved in the request: Comstock Mining Inc. (CMI) POB 1118 Virginia City NV 90440 . CMI wants to engage in exploratory drilling at the Dayton Consolidated Mill in Silver City Nevada, in order to determine the location of gold and silver deposits prior to engaging in open pit mining. Contested Permit: Reclamation Permit # 0315 .
5. Nature of the appeal and grounds thereof: This project is located on 19.75 acres within the Carson River Mercury Superfund site (CRMS). According to NDEP's Bureau of Corrective Actions (BCA) and the reclamation permit application, historic mills and mines were located on this site. It is well documented in EPA publications, that mill and mine sites are the source of mercury, arsenic and lead contamination within the CRMS. Because of the unique hazards that result from exploratory mining within the CRMS, the contaminated soil in this project area will be twice disturbed, once by the exploration activities and then by the reclamation to restore the land. Prior to the issuing of any permit, the NDEP should determine the extent of the hazard, require the development of a mitigation plan and then consider whether the project should go forward. Although the Reclamation Permit requires that CMI develop a Sampling and Analysis Plan (SAP) for testing of the mine wastes and/or mill tailings disturbed by the exploration activities, this limitation on the material to be tested does not take into account that historic mercury deposits occurred in a broad range of settings due to the stockpiling of mercury prior to use and the disposal of mercury wherever it was convenient to do so. The subsequent erosion, transportation and redeposition of mercury due to geological processes resulted in mercury contaminated sediments. NDEP's response to comments made at the Public Hearing on the draft permit stated that the SAP would also be applicable to historic disturbed areas, however the permit conditions provide no mechanism for assuring that the evaluation of historic areas would continue upon the expiration of the permit. In addition, there is no clear requirement that CMI must also develop a management plan to deal with the potential generation of RCRA and NAC 459 hazardous waste during this process. The permit identifies standard reclamation requirements per NAC519A but fails to address the reclamation of sites containing hazardous wastes. To grant this permit prior to knowing the full extent of the health hazards, subordinates the safety of the residents of Silver City to the economic gain of CMI. Clearly this is an exceptional situation, requiring extra

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oversight in order to safeguard the public and the environment. In response to the Public Hearing on the draft permit, BMRR stated that air and water issues were outside their authority. However, they do make reference to the BCA which conflicts with this assertion. A narrow view of this permit creates a regulatory blind spot that obscures potential harm to the environment and the health and safety of the public. Oversight by the SEC is needed to ensure global regulatory oversight and the safety of the public. In addition to the above concerns, the CRA also incorporates all other objections identified in the written and oral comments presented to the NDEP prior to and at the Public Hearing on the draft permit.

6. Section or sections of the State Air Quality Regulations, Water Pollution Control Regulations, Hazardous Waste Regulations, Solid Waste Management Regulations, or NRS section involved in the appeal: At a minimum, NAC 519A.010 to 519A.370. NRS 445B.100, NRS 445.210, NAC ~~459~~

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7. Approximate time in hours and minutes necessary for delivery of oral testimony and reading of prepared statements as admissible evidence to be entered in the record: 4 hours

Date of Request 12-30-11

Send Form To: John B. Walker, State Environmental Commission, 901 South Stewart Street, Suite 4001
Carson City, NV 89701-5249