



**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

Summary of Public Workshop to Solicit Comments on Proposed Regulation R092-13

Carson City, NV Workshop  
October 30, 2013

Attendees:

NDEP Staff: Bruce Holmgren, Chief, Bureau of Mining Regulation and Reclamation (BMRR); Paul Comba, Reclamation Branch Supervisor (BMRR); and Jane Boomhower, Reclamation Branch Program Assistant (BMRR).

Public:

Joe Girado, Barrick Gold Corporation  
Allen Biaggi, A. Biaggi and Associates, LLC  
Shane Johnson, Waterton Global Mining Company  
Walt Martin, JBR Environmental Consultants, Inc.  
John Hadder, Great Basin Resource Watch  
David Gaskin, NDEP  
Joe Sawyer, NDEP  
Jim Butler  
Todd Minard  
Philip Muyengwa

Meeting Summary

Mr. Holmgren called the Workshop to order at 2:00 pm. He introduced himself and other BMRR staff. He explained the purpose of the Workshop was to solicit public comments on proposed regulation R092-13. Mr. Holmgren provided the following overview:

The BMRR under authority of the Nevada Division of Environmental Protection (Division) is holding the Workshop to solicit public comments regarding the proposed changes to the NAC 519A: Reclamation of Land Subject to Mining Operations or Exploration Projects regulations due to the passage of Assembly Bill 346 (AB346). AB346, commonly referred to as the "Pit Lake Access Bill" would allow public nonmotorized access to pit lakes greater than 200 acres when obtaining 90% capacity under certain circumstances. The bill was passed during the 2013 Nevada Legislative Session and signed by Governor Brian Sandoval. The proposed regulation, R092-13, involves revisions to implement new statutory requirements of Nevada Revised Statutes (NRS) 519A.230, Provisions of plan for reclamation; exceptions.

Mr. Comba provided a summary of the specific changes to NAC 519A contained in R092-13. These revisions address reclamation requirements for pit lake access and include:

Section 5 of NAC 519A.250 is revised to reference the new statutory provisions related to pit lake access contained in NRS 519A.230. If public access will be provided, an exemption from reclamation requirements would not be available and reclamation of the open pit and rock face would be required for the point(s) of public nonmotorized access to the water level of the pit lake.



A new section is proposed to be added to NAC 519A.265 and 519A.270 requiring a plan for reclamation to include the landowner(s) determination whether public access will be allowed to the future pit lake located on their premises, and if so, provision(s) for a point or points of access.

Additional revisions to NAC 519A.260, Section 3, 519A.315, Section 1 and 519A.345, Section 9 are proposed for the regulation to conform to new requirements of NRS 519A.230.

Mr. Comba further explained that NRS 519A.230 was also amended requiring an operator who has a reclamation plan on file with the Division for an operation which will result in formation of a pit lake that will be more than 200 acres in size, to submit an amendment to the reclamation plan by July 1, 2014. The reclamation plan amendment must provide documentation of consultation conducted by the operator with the owner(s) of the land, including any federal land manager, on which the pit lake will be located of whether access will be allowed, and if so, the reclamation activities required to provide for a point of public nonmotorized access.

Mr. Holmgren noted that the Division is aware of seven open pits with the potential to reach more than 200 acres in size. They are the Betze-Post, Gold Quarry, Twin Creeks, Lone Tree, and Round Mountain.

After this summary, Mr. Comba asked whether there were any questions or comments.

Many of the public comments made during the Workshop dealt with the consultation process with the landowner(s) and public access to the pit lake. Mr. Biaggi stated that the intent of the legislation was consensus must be achieved from all landowner(s) affected before access can be provided. The documentation of the consultation process provided to the Division can take many forms including memoranda, meeting notes or formal letter stating the consultation was performed and does not need to include a reason or rationale for the decision. If any landowner(s) does not agree to allow public access, then no public access will be granted.

There was an opposing view offered by Mr. Hadder that if one landowner agreed to public access, then access should be provided as the pit lake will be a water of the State and therefore, access must be provided.

Mr. Biaggi countered that the statutory language requires that consensus for access must be provided by all affected landowner(s) and there is no mandated access to such waters. Although a pit lake may be considered a water of the State, they would not be categorized as navigable water which would infer a public trust responsibility.

Mr. Martin supported the need for consensus as land ownership below the surface of the waters remains in place and it would be impossible to manage movement on the lake with multiple ownerships when not everyone has agreed to allow public access.

There was some discussion regarding the waiver of liability to owners of the land if public access to a pit lake is provided, as contained in the bill language and amended statute. Mr. Holmgren indicated that the BMRR tried to keep the regulatory changes simple and the NAC 519A revisions reference the statutory provisions related to liability issues.

Mr. Comba notified the Workshop attendees that the Division will accept public comments until November 21, 2013. The proposed changes to NAC 519A will be presented to the State Environmental Commission (SEC) in Carson City, Nevada on December 4, 2013. The SEC will approve, deny or request modification to the proposed changes. He further explained that when changes to regulations are proposed, the proposing agency must evaluate the impact of the proposed regulations on small businesses. The Division has determined that the proposed changes to NAC 519A will not impose significant economic burden on small

businesses, nor will adoption of the regulation changes restrict the formation, operation or expansion of small businesses. There were no public comments offered regarding impact to small businesses.

There being no further questions or comments, Mr. Holmgren adjourned the Workshop at 2:30 pm.

Elko, NV Workshop  
November 7, 2013

Attendees:

NDEP Staff: Bruce Holmgren, Chief, Bureau of Mining Regulation and Reclamation (BMRR) and Paul Comba, Reclamation Branch Supervisor (BMRR).

Public:

Karen Endres, BLM, Battle Mountain  
Jeff White, Newmont Mining Corporation  
Stephanie Stoeberl, Newmont Mining Corporation  
Kendra Olcott, Barrick Goldstrike Mining  
David Djikine, BLM, Battle Mountain  
Scott Ackert  
Peter Keefe

#### Meeting Summary

Mr. Holmgren called the Workshop to order at 3:00 pm. He introduced himself and Mr. Comba. He explained the purpose of the Workshop was to solicit public comments on proposed regulation R092-13. The overview of the proposed regulation provided by Mr. Holmgren and the summary of the specific changes to NAC 519A provided by Mr. Comba were the same as provided at the Carson City Workshop.

#### Questions and comments made by Workshop attendees included:

Ms. Stoeberl asked for clarification of whether a reclamation plan amendment would need to be submitted if it is decided that public access to the pit lake will not be allowed. Mr. Holmgren responded that the permittee would be responsible to initiate consultation with the landowners and submit a reclamation plan amendment documenting that the consultation had been conducted and the determination of whether public access will be permitted.

Mr. White provided additional discussion that the regulation does not require the documentation of the consultation process be in any specific format. The documentation of the consultation process provided to the Division can take many forms including memoranda, meeting notes or formal letter stating the result of the consultation process. This documentation would be included as an appendix to the reclamation plan and referenced in the plan. Mr. Comba responded that he was correct.

Ms. Endres questioned whether the proposed regulation takes into account the water quality of pit lakes for public access and what standards would apply. Mr. Holmgren responded that there are existing requirements in NAC 445 regarding pit lake water quality. The legislation did not address the water quality criteria, nor does the proposed changes to NAC 519A.

Mr. Djikine had a further question related to pH of the pit lake and what would be the effect on public access if a pit lake was projected to have an acidic pH value. Mr. Comba responded that if this was the case, access

to the pit lake would most likely be determined to not be a feasible option and consequently, the decision would be not to allow access.

Mr. White provided additional input regarding the articulation of waiver of liability as outlined in the legislation. He stated that this provision as well as the additional legislative provision that a protected person would not have to extend any assurance that the premise will be safe if public nonmotorized access was provided is adequately covered in the amended NRS 519A.230, and consequently, the Division did not see a reason to bring this forth in the proposed changes to 519A regulations. Mr. Comba responded that BMRR's intent was to keep the regulation changes simple and by referencing the statute, the legislative intent of AB346 would be met.

There was discussion during the Workshop on who will be the affected landowner(s) referred to in the legislation and NRS 519A.230. The BMRR staff provided clarification that the landowners would be those adjacent to the pit shell as well as the owners of the land under the pit lake. An additional question raised during this discussion was responded to that there was no correlation made between predicted pit infill water rates and the possible public access being provided when the pit lake reaches 90% of maximum capacity.

BMRR staff discussed the comment period for accepting additional comments on R092-13 closing on November 21, 2013, and the proposed regulation being presented at the next SEC regulatory hearing, scheduled for December 4, 2013 in Carson City, Nevada. BMRR staff also disclosed that the Division prepared a statement indicating that the proposed regulation R092-13 will not impose significant economic burden on small businesses, nor will adoption of the regulation changes restrict the formation, operation or expansion of small businesses. There were no public comments offered regarding impact to small businesses.

There being no further questions or comments, Mr. Holmgren adjourned the Workshop at 3:35 pm.