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DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION

333 W. Nye Lane, Room 138
Carson City, Nevada 89706

**Testimony of Allen Biaggi and David Gaskin, Nevada Division of Environmental
Protection
on AB 321 (Financial Assurance for Mine Reclamation)**

Before Assembly Committee on Natural Resources, Agriculture and Mining

April 2, 2003

Good afternoon, Mr. Chairman and Committee members. My name is Allen Biaggi and I am the Administrator of the Nevada Division of Environmental Protection. With me today is Dave Gaskin, Chief of the Division's Bureau of Mining Regulation and Reclamation.

AB 321 makes important and sweeping changes to Nevada's mining laws. The bill ultimately removes corporate guarantees and other forms of security from the list of available financial assurance mechanisms.

Since its formation in 1990, the state reclamation program has worked well to ensure the physical stability of reclaimed exploration projects and mine sites in order to provide for public safety and a productive post-mining land use. To do this, the legislature wisely established a requirement where mines are required to have a financial mechanism in place to ensure reclamation is accomplished when mining is completed. The statutes currently allow a number of financial instruments available to the industry to meet this requirement including corporate guarantees.

In the late 1990's, as a result of depressed precious metals prices, a number of challenges were presented to the program in terms of the scope of reclamation, the way the bonding obligation is calculated and the frequency and methods corporate guarantees are evaluated. On top of this, the September 11th terrorist attacks changed the perspective of the surety and bonding industry on providing financial instruments not only for the mining industry but also for others such as the health care and construction. The Division recognized and responded to these challenges by establishing a Mining Bonding Task Force to identify the problems and potential solutions

associated with financial mechanisms. We also established a Corporate Guarantee Review Panel to review not only individual company guarantees but also the system in general. Finally, from the lessons learned from the mining bankruptcies that occurred in the late 1990's we put into place a number of institutional and regulatory changes that we believe made the program stronger and reduced the potential liability to the public.

The public policy decisions before you today through this bill are significant and far-reaching. It involves a delicate act of balance between the levels of risk, liability, public health and environmental quality verses the economic viability of this important industry; one critically important to Nevada's our rural communities.

I would like to turn the remainder of the Division's testimony over to Dave Gaskin who will provide the Committee with details of our position regarding this legislation.

Good afternoon Mr. Chairman, Committee members I am Dave Gaskin, Chief of the Division's Mining Regulation and Reclamation program.

The major change to current mining reclamation requirements occurs on Page 1 section 1 of the bill. This section currently allows a number of different mechanisms for financial assurance, including trust funds, surety bonds, letters of credit, insurance and corporate guarantees. Each form of surety carries a certain amount of risk, from the possible financial failure of the mine operator as well as the possible failure of the financial institution. The general requirements were established to minimize risk to the State without imposing overly burdensome requirements on the mining industry. This section is addressing the risk involved with the use of corporate guarantees.

The control and minimization of such risk is accomplished in a number of ways: through regulatory requirements, agency policy and the judgment of the Administrator of the Division. The regulations under NAC 519A contain specific financial criteria an applicant must meet to obtain a corporate guarantee. As a result of decreased metals prices in the late 1990's, these criteria were put to the test. One company with a corporate guarantee, a copper mining company from Arizona called Arimetco Inc., declared bankruptcy in 1997. The company abandoned its operations, including the Yerington Mine, in early 2000. This placed the State and its partner in reclamation bonding, the Bureau of Land Management, in a position of having to deal with closure and reclamation of a mine with only a fraction of the necessary funding. The State managed to prevent immediate environmental impacts through the Division's Emergency Mitigation and Restoration funding. Much of the expense has been reimbursed and is currently being covered by Atlantic Richfield, owner of a previous operator of the Yerington Mine. The State is working with the numerous parties involved to accomplish permanent closure and reclamation.

As a result of the Arimetco situation and the overall economic climate, the Division reevaluated its ability to address mine bankruptcy and abandonment. In cooperation with the mining industry, a major revision was made to the reclamation regulations to give the Division the authority to require bonding for process fluid stabilization. Previously, bonding could only cover the cost of physical reclamation. However, it was recognized that stabilization of fluids could

present the largest cost of reclamation at a mine site. NAC 519A was revised in July of 2000, and the Division now has the authority to ensure that adequate surety is in place to cover stabilization of process solutions.

In September of 2000, another significant measure was taken by the Division, again in cooperation with industry. The reclamation regulations were revised to establish a trust fund for short-term fluid management, known as the Interim Fluid Management or IFM fund. Fees were assessed on mine operators to provide a fund of \$1,000,000. This money is used by the Division to manage fluids at abandoned sites until resources are made available from the surety.

These two measures have greatly enhanced the Division's ability to address bankrupt and abandoned mines. I should mention that we have had no bankruptcies of mine operators since 1999.

Additionally, a number of revisions were made to address the adequacy of the regulatory criteria for corporate guarantees. After thorough review and discussion with environmental groups and industry, the reclamation regulations were revised in October of 2001 in three areas:

- Provide for periodic review of the financial health of mining companies vs. one-time qualification. This helps us account for economic ups and downs.
- Provide the Division the flexibility to adjust the amount of reclamation obligation covered by corporate guarantee. Previously, corporate guarantees were automatically set at 75% of the total reclamation obligation. This allows us to adjust individual corporate guarantees as necessary to address risk.
- Ensure financial information is prepared in accordance with United States Generally Accepted Accounting Principles. This allows fair and balanced evaluation of foreign-based corporations.

Along with the regulatory revision, the Division also developed a Corporate Guarantee Policy. This document describes the corporate guarantee qualification process, defines document requirements for periodic reviews, and established the Corporate Guarantee Review Panel. This panel was established to advise the Administrator in making decisions regarding corporate guarantees. The panel consists of a representative from NDEP, the Division of Minerals, the Risk Management Division, and a CPA from the general public.

Currently, the total amount of financial assurance in the State represented by corporate guarantees stands at approximately \$230 million. That is out of a total of approximately \$550 million in all types of financial assurance for mine reclamation. Due to mergers and consolidations, we are only dealing with three companies with corporate guarantees at this time: Barrick, Newmont and Glamis. Recent revisions to the Bureau of Land Management's regulations now prohibit new corporate guarantees on public land, so it is unlikely that we will receive many more requests for corporate guarantees. Mainly, we will be managing the existing agreements.

The corporate guarantee system is not without risk. The key is to control the risk and to keep it at an acceptable level. This is a balance between two primary factors. On one side is the economic

health of members of the mining industry, the second largest industry in the state. On the other side are the potential impacts, both environmentally and financially, of bankruptcy and abandoned mining operations. This balance is clearly stated in the legislative findings at the very beginning of the reclamation statutes, in NRS 519A.010: (a) The extraction of minerals by mining is a basic and essential activity making an important contribution to the economy of the State of Nevada, and (b) Proper reclamation of mined land, areas of exploration and former areas of mining or exploration is necessary to prevent undesirable land and surface water conditions detrimental to the ecology and to the general health, welfare, safety and property rights of the residents of this state.

The corporate guarantee system was established as a valid means of financial assurance when the reclamation statutes were adopted in 1990. The security of the corporate guarantee system is under constant scrutiny – by NDEP, by environmental groups, by the mining industry, and the public. The changes we have instituted over the past few years are evidence that the system is flexible and can incorporate constructive improvements to maintain the proper balance of risk.

Thank you for your consideration of these comments.

If you have any questions, we will be happy to answer them.