MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON TAXATION

Seventy-Seventh Session
May 2, 2013

The Committee on Taxation was called to order by Chairwoman Irene Bustamante Adams at 1:06 p.m. on Thursday, May 2, 2013, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada and to Lundberg Hall, Room 114, Great Basin College, 1500 College Parkway, Elko, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at nelis.leg.state.nv.us/77th2013. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblywoman Irene Bustamante Adams, Chairwoman
Assemblywoman Teresa Benitez-Thompson
Assemblyman Jason Frierson
Assemblyman Tom Grady
Assemblyman Cresent Hardy
Assemblyman Pat Hickey
Assemblyman William C. Horne
Assemblywoman Marilyn K. Kirkpatrick
Assemblyman Randy Kirner
Assemblywoman Dina Neal
Assemblyman Lynn D. Stewart

COMMITTEE MEMBERS ABSENT:

Assemblywoman Peggy Pierce, Vice Chairwoman (excused)

GUEST LEGISLATORS PRESENT:

Assemblyman John Ellison, Assembly District No. 33
Assemblyman Ira Hansen, Assembly District No. 32
Senator Michael Roberson, Clark County Senatorial District No. 20

STAFF MEMBERS PRESENT:

Michael Nakamoto, Deputy Fiscal Analyst
Kevin C. Powers, Chief Litigation Counsel
Gina Hall, Committee Secretary
Colter Thomas, Committee Assistant

OTHERS PRESENT:

Tim Crowley, President, Nevada Mining Association
James L. Wadhams, representing the Nevada Mining Association and Newmont Mining Corporation
Michael J. Brown, Vice President, Corporate and External Affairs, North America, Barrick Gold Corporation
Richard Perry, Councilman, City Council, City of Elko
Jim Garza, Member, Board of Directors, Great Basin Regional Development Authority; and Director, Community and Economic Development, White Pine County
Jeff Zander, Superintendent, Elko County School District
Marla Turner, Private Citizen, Las Vegas, Nevada
Michael Ginsburg, Southern Nevada Director, Progressive Leadership Alliance of Nevada
Mayra Ocampo, representing the Service Employees International Union Nevada, Local 1107; and We Are Nevada Coalition
Ruben R. Murillo Jr., representing Clark County Education Association; and Nevada State Education Association
Guy Louis Rocha, Private Citizen, Carson City, Nevada
Christine McGill, representing the Human Services Network
Joe McCarthy, Private Citizen, Silver City, Nevada
Terry Rubald, Chief, Local Government Services, Department of Taxation
Dana R. Bennett, Ph.D., Owner, Bennett Historical Research Services, Phoenix, Arizona
Angie Sullivan, Private Citizen, Las Vegas, Nevada
Demar Dahl, Chair, Board of Commissioners, Elko County
Graham Hollister, Jr., Private Citizen, Genoa, Nevada
Vince Agamenone, Private Citizen, Lyon County

Chairwoman Bustamante Adams:
Today we are going to be hearing Senate Joint Resolution 15 of the 76th Session. I would like to welcome the residents in Elko and Las Vegas, and thank you for joining us. We have a limited amount of time, and there are a lot of people in the audience. Because of our time restriction, we have organized it so that the stakeholders in support have elected some individuals to represent them as a group voice, and the same for those who are opposed to S.J.R. 15 of the 76th Session. I will call those individuals first. The concern is that I will lose the video feed in Elko and Las Vegas, so we have to be mindful of the time. There are also two other committees that start right after Taxation and I may lose my Committee members as well. With that I will make sure I keep it in order.

We will start with Kevin Powers, who is already at the witness table. He is from the Legal Division of the Legislative Counsel Bureau (LCB). He is going to go over S.J.R. 15 of the 76th Session for the Committee members. This will be our time to ask him technical questions, to make sure we understand it.

Senate Joint Resolution 15 of the 76th Session: Proposes to amend the Nevada Constitution to remove the separate tax rate and manner of assessing and distributing the tax on mines and the proceeds of mines. (BDR C-1151)

Kevin C. Powers, Chief Litigation Counsel:
As you know the Legislative Counsel Bureau (LCB) Legal Division is nonpartisan staff. We do not urge or oppose any particular piece of legislation. We provide the Committee and the Legislature with legal advice and counsel regarding the legal consequences and effects of legislation.

Before you is Senate Joint Resolution 15 of the 76th Session, a proposed constitutional amendment. Under Article 16, section 1, of the *Nevada Constitution* this proposed constitutional amendment was passed by the 76th Session of the Legislature in 2011 and has to be passed by the 2013 Legislature in order for it to go on the 2014 ballot. If it is passed, it will go on the ballot. If approved by the voters in the general election on November 4, 2014, it would then become part of the *Nevada Constitution*.

To understand the legal effect and consequences of S.J.R. 15 of the 76th Session we need to start with a basic principle of state constitutional law. The state constitution is not a grant of power to the Legislature; it is a limitation on power. So the powers of the Legislature and the *Nevada Constitution* are virtually unlimited, unless expressly limited by the *United States Constitution*.

Currently under Article 10 of the *Nevada Constitution,* there are certain limitations imposed on the Legislature on how they can tax mining, mining claims, and minerals. The first limitation is in Article 10, section 1, subsection 1. That creates a property tax and specifically provides an exception that mines and mining claims are not subject to a property tax, but may only be taxed as provided in section 5 of Article 10.

The first thing that S.J.R. 15 of the 76th Session does is repeal or remove that limitation on legislative power, thereby, as a result, mines and mining claims would be subject to the property tax in Article 10, section 1, unless there was another provision of the *Nevada Constitution* that authorized the Legislature to exempt those mines and mining claims from the property tax.

The second main provision in Article 10 dealing with the taxation of mines is section 5. That provision requires the Legislature to impose a net proceeds tax that may not exceed 5 percent of the proceeds. Article 10, section 5, also provides that no other tax may be imposed on minerals or the proceeds until the identity of those minerals or proceeds are lost. Article 10, section 5, also provides for a system for the taxation of patent and mining claims. What S.J.R. 15 of the 76th Session will do is repeal all of the provisions of Article 10, section 5. The end result of the removal of the exception in Article 10, section 1, subsection 1, and the repeal of Article 10, section 5, would be to remove the limitations on legislative power in Article 10, the result being that the legislature would be restored to its full power to determine how to best tax mines, mining claims, and minerals. So that is the purpose of S.J.R. 15 of the 76th Session, to remove those limitations on legislative power that currently exist in the *Nevada Constitution*.

One legal effect or consequence that has come up is what happens to the existing statutes if S.J.R. 15 of the 76th Session becomes effective and the constitutional provisions are repealed. This office has issued an opinion letter (Exhibit C), and as a quick summation of that opinion letter it is our belief that the repeal of the provisions in Article 10 will not affect the existing statutes that provide for the net proceeds tax in *Nevada Revised Statutes* (NRS) Chapter 362. Our analysis is that the repeal of the constitutional provisions will not repeal by implication those provisions that allow the net proceeds tax on minerals that already exist in NRS Chapter 362.

Finally, it has been stated that, because there is a possibility that there will be questions about whether the existing net proceeds tax is repealed, some mining companies may not pay that tax. To understand the legal consequences with regard to the payment of taxes, courts generally apply the rule that in order to challenge a tax, you have to pay the tax under protest and litigate while you are paying that tax. Therefore, if a mining company wanted to challenge the net proceeds tax, if S.J.R. 15 of the 76th Session becomes effective, they would still have to continue to pay that tax under protest and litigate while they are paying that tax. They would not be able to stop paying the tax. Indeed, if they stopped paying the tax, they may lose their right to challenge the tax by their failure to pay it.

Madam Chairwoman, that covers the main principles and points that I wanted to cover in the overview of S.J.R. 15 of the 76th Session. I am now open to any questions that the Committee members may have.

Chairwoman Bustamante Adams:
Are there any questions from the members of the Committee?

Assemblywoman Neal:
If S.J.R. 15 of the 76th Session repeals section 5, then the guidepost puts us back to looking at what, the constitutional debates? This provision about net proceeds was added in 1906 through a constitutional amendment. If that language is no longer there, we then have to figure out what determines our language. Would we not go back to the framers' intent, on their discussion of what they expected, and how they expected proceeds of a mineral to be treated?

Kevin Powers:
Once the limitations are removed by S.J.R. 15 of the 76th Session it would be up to the Legislature to determine how to properly tax mines and mineral claims. Without that limitation in the *Nevada Constitution* it would be a policy matter for the Legislature to determine. They would not have to go back to the original intent of the constitutional provision because that original constitutional provision in 1864 would be different from what the *Nevada Constitution* would look like if S.J.R. 15 of the 76th Session passes. The original *Nevada Constitution* in 1864 said that mines and mining claims could only be taxed through proceeds and, therefore, there was a limitation on what the Legislature could do. Senate Joint Resolution 15 of the 76th Session removes those limitations; therefore, it becomes a policy matter for the Legislature to determine how to best tax mines, mining claims, and minerals.

Assemblywoman Neal:
Going back to constitutional law, when you learn how to make a decision you have guideposts. Before it was decided how the mineral would be treated, within the debates, there were several discussions about whether it should be this or that. I will just keep it that simple. Are you saying that we

would not even think about that language before it became a part of the *Nevada Constitution*?

For myself, to stretch yourself beyond the debate into a new arena where your guideposts would be case law from the Supreme Court or other policy decisions, takes you into a place where you do not necessarily have a foundation. If I was going to challenge something I would want to know what the legal foundation was for how you establish that language. What did it come from? How did it originate? Where did it originate? How did you achieve that policy decision?

If this passes and it comes out of the *Nevada Constitution*, what then do you rely on? I thought you had to look to what the original intent was. Now the Legislature can establish that intent, but it is the *Nevada Constitution*. We did not make that whole entire document.

Kevin Powers:
I think the best answer to your question is to go back to that principle of state constitutional law, that the *Nevada Constitution* is not a grant of power to the Legislature, it is a limitation on power. The Legislature does not need language in the *Nevada Constitution* in order to tax mining. They could tax it without any language in the *Nevada Constitution*. What the existing language in the *Nevada Constitution* does is limit the legislative power. The purpose of S.J.R. 15 of the 76th Session is to remove those limitations, restoring full power to the Legislature to make the policy determination on how to tax mining.

Assemblywoman Kirkpatrick:
I want to be clear, because there are a lot of things swirling around about what this does and does not do. I want to understand from our perspective, and I consider you as nonpartisan staff to be from our perspective. If it comes out of the *Nevada Constitution*, there is some time frame before the Legislature meets again. I would think that there would be a two-thirds requirement to make a change, as there is with other property tax matters. What happens if the Legislature does not do the second piece of this? What happens to those dollars?

My second question is, currently we do not necessarily tax everybody else at the 5 percent. Where does that 5 percent fit in? Is that the 3.64 percent piece or is that the 5 percent piece, because I am not clear on how that integrates back to what everybody else says. Our law is very clear that everything must be uniform and equal, so in my mind, based on that, it would appear that there is probably a tax break. I am not sure how that works. I do not understand how it works if the second piece of this does not come along. I am asking these questions so it is clear to voters if it goes to the ballot box, both sides of what is really out there. We have seen headlines that say one thing, so I want to be clear on what it truly means in this bill.

Kevin Powers:
This will be a somewhat elaborate and lengthy answer to your question, but I think it is important to comprehensively answer those questions.

Your first question is, essentially, what happens to the existing statutes if S.J.R. 15 of the 76th Session becomes effective, and really the legal issue is, does the repeal of the constitutional provisions also repeal by implication the statutes? It is the opinion of our office that the repeal of the constitutional provisions does not repeal by implication the statutes. Those statutes remain in effect, for several reasons.

First, there is another provision of the *Nevada Constitution*—Article 1, section 1, subsection 6—that authorizes the Legislature to exempt personal property from the property tax. Therefore, the net proceeds, which are now exempt from the personal property tax, will continue to be exempt from the personal property tax even after S.J.R. 15 of the 76th Session becomes effective, because that other constitutional provision will still be in place.

Second, when courts look to determine whether statutes are repealed by implication, they interpret those statutes in a manner to uphold them if there is any reasonable basis for doing so. We believe that the existing net proceeds statutes in NRS Chapter 362 can be reasonably interpreted as a tax on mineral production, severance, or extraction, and therefore the repeal of these constitutional provisions will not repeal those existing statutes because they would then be a legitimate tax on mineral production, extraction, and severance.

One other point, the Legislature is not limited once these constitutional provisions are removed to one type of taxation of mining. Once the constitutional exemption for property tax is removed, the real property—the mines and the mining claims—will be subject to real property tax. The net proceeds, however, are not real property. They are personal property, and, as I mentioned, they will still be exempt from the personal property tax under Article 10, section 1, subsection 6, and then those net proceeds would still be taxed under NRS Chapter 362, which provides for the 5 percent tax on net proceeds.

I understand the arguments have been made by the mining industry that once you remove these constitutional provisions, under the uniform and equal clause, the net proceeds will have to be taxed at the statutory cap of 3.64 percent, but that is the property tax. So, if net proceeds were being taxed as personal property, then yes they would be limited to the 3.64 percent, but NRS Chapter 362 would be a tax on mineral production, severance, and extraction. It would not be a property tax, and therefore the Legislature can impose a different rate on the extraction of the minerals.

Courts have consistently held that a taxation on an activity, a business, or a privilege, such as the privilege to extract minerals, is not a property tax, it is an excise tax, and therefore the uniform and equal clause in the Nevada Supreme Court has held on numerous occasions the uniform and equal clause does not apply to excise taxes; it only applies to property taxes. Therefore, as long as NRS Chapter 362 is viewed as an excise tax on the mineral production, extraction, and severance, it is not subject to the uniform and equal clause, and it will still remain in place after S.J.R. 15 of the 76th Session, if it becomes effective, repeals those constitutional provisions.

Assemblywoman Kirkpatrick:
I have a couple more questions, because I do not remember last session going into this depth and I want to be clear.

Is geothermal included in that, because they do fall under this same tax piece?

So nothing changes for the Legislature, as far as the collections and all of that, until the next legislative session when they choose to make some differences? So, currently mining prepaying their stuff does not change. It does not change because the 5 percent is still there. That does not change until the next legislative session if they choose to take the excise tax and do the additional percentage, correct?

Kevin Powers:
First off, let us quickly deal with geothermal. Geothermal pays a net proceeds tax now, but they pay it at a different rate than other mining operations. That would still remain in place. Geothermal also has mines and mining claims. Because S.J.R. 15 of the 76th Session removes the exemption for real property tax, all mines and mining claims would be subject to the real property tax, except possibly geothermal, because there is another provision in the *Nevada Constitution*, Article 10, section 1, subsection 8, that allows the Legislature to exempt energy production from real property tax. So geothermal probably will still enjoy its exemption from the real property tax, and it will still

be taxed at the same rate that it has been in NRS Chapter 362. I hope that addresses your question with regard to geothermal.

What will happen if S.J.R. 15 of the 76th Session is ratified by the voters and becomes effective? First off, the Legislature could pass legislation this session that becomes effective only if S.J.R. 15 of the 76th Session is passed by the voters. This legislative session could adjust the statutes any way it wanted contingent upon approval of S.J.R. 15 of the 76th Session. If, however, the Legislature chooses not to take that route, then all the existing statutes remain in place and the Department of Taxation should collect the net proceeds tax like it has been. It would be up to the next Legislature to determine whether they want to change that tax or leave it in place.

Assemblyman Hickey:
If in fact a new tax was defined as an excise or severance tax, is it not a tax or something we could do in, or apart from, removing the constitutional place that mining now occupies? My simple question is could we not do that sort of thing anyway?

Kevin Powers:
The short answer is no. The reason is the constitutional provision in Article 10, section 5, which was put in place in 1989. This specifically provides that there is a net proceeds tax and that no other tax shall be imposed on the mineral or its proceeds until the identity is lost. The legislative history from 1987 and 1989, when the resolution went through, shows clearly that the purpose of that provision was to make a single tax on the net proceeds and to prohibit any other tax. The legislative history is rife with references to the fact that the provision prohibited excise, severance, and production taxes that could be imposed in addition to the net proceeds tax. It was only the net proceeds that could be taxed, and that was the point of that constitutional provision.

Assemblyman Hardy:
Currently, how are construction, concrete, and aggregate-type products (construction materials) taxed? Will this have the same affect with minerals being taken off the *Nevada Constitution*?

Kevin Powers:
As I understand your question, if those activities do not involve extraction of minerals from the ground, then they are not going to be affected by S.J.R. 15 of the 76th Session. Extraction for concrete and construction materials production usually results in leftover material used in the construction or manufacture of something else. They are not actually extracting it from the ground. If they were extracting it from the ground, they would be affected by

S.J.R. 15 of the 76th Session. If they are just using the proceeds they acquire from a mining company, then they would not be affected by this, other than that the mining company may pass on additional costs to their end consumers.

Assemblyman Hardy:
Currently, for all those projects, 100 percent comes out of the ground for a concrete product. It is a mineral that comes from the ground. So the other products, for roads and highways, pretty much come out of the ground with the same extraction process, and they are classified as mines through the Occupational Safety and Health Administration.

Kevin Powers:
I agree. The actual extraction of the minerals for those processes will be affected by S.J.R. 15 of the 76th Session, the same way that any other extraction would be. I was just referring to once it is extracted from the ground, the actual process of turning it into another product will not be directly affected by it, but yes the extraction would be affected, assuming that the Legislature ultimately decides to change the statutes. Again, right now, if S.J.R. 15 of the 76th Session passes and becomes effective and the Legislature does nothing else, the existing statutes will remain in place. The only thing that will change is that there will be a real property tax imposed on mines and mining claims that is not imposed now, except potentially for geothermal operations. The net proceeds tax will remain the same. It would only be the actual real property tax on the land that would change.

Assemblyman Frierson:
I wanted to follow up on the question that was asked about whether we could have an excise tax regardless of this measure. You talked earlier about a tax on activity, and the language that is proposed to be removed says no tax may be imposed upon a mineral or its proceeds. Are you interpreting that as including activities, because it seems to me that is expressly dealing with property? I do not know if it was clear to me that we could not do the excise independent of this measure.

Kevin Powers:
It is our interpretation of this provision that no other tax may be imposed on a mineral or its proceeds until the identity is lost, that it prohibits any other type of tax on the activity of mining. The reason for that is prior to the constitutional amendment being proposed in 1987 and 1989 there was an opinion issued from this office that indicated that at that time the Legislature could impose a severance, activity, or extraction tax on mining, in addition to the net proceeds tax, based on the constitutional language that existed at that time.

One of the things that may have motivated the proposal of the constitutional amendment was in fact to ensure that no other tax except the one on net proceeds was imposed on mining, and, like I mentioned, the legislative history from 1987 and 1989 indicates that the purpose of this provision was to do just that, prohibit the Legislature from imposing an extraction, production, or severance tax on mining, and limit it to just the net proceeds tax. So that is the legislative history. Indeed, in a bill passed during 1989 to implement the new constitutional provision, the Legislature included a statement of legislative intent, specifically stating that it was the Legislature's understanding in passing the constitutional amendment that no other tax, including severance and extraction tax, would be imposed on mining, other than the net proceeds tax. So this language, in conjunction with the legislative history, we believe precludes the Legislature right now from imposing any other tax on mining operations, other than the one on net proceeds.

Assemblyman Frierson:
I like to get into the actual technical language, this being used in most of the legislation we consider. It seems to me we may be assuming the inverse. You spoke of the legislative intent of putting the language in, if we take out the language are we expecting interpretation to be the polar opposite? It seems like we are crossing our fingers that the court is going to interpret it as the complete inverse as far as legislative intent goes. Is there any concern of the likelihood that it would not be interpreted that way by simply removing it?

Kevin Powers:
We are confident in our interpretation. We believe it is supported by the fundamental rules of statutory and constitutional construction. It is not possible for us to guarantee with 100 percent certainty how a court will interpret the constitutional provisions. We think, going back to the basic rule that the *Nevada Constitution* is not a grant of power but a limitation, that once you remove the limitations the Legislature should have full power to tax mining in any way the Legislature deems appropriate as long as it does not violate any other constitutional provision, and there are no other constitutional provisions limiting taxation in the *Nevada Constitution*. Obviously, you would still have to follow the equal protection clause and due process from the federal constitution. We are confident once you remove those limitations full power would be restored.

Assemblyman Stewart:
If oil or natural gas were an issue, would they go under the geothermal category and the same provisions?

Kevin Powers:
Article 10, section 5, does cover oil, natural gas, and other hydrocarbons as mining. They are not in the same category as geothermal operations. Oil, natural gas, and other hydrocarbons are considered to be extraction of minerals in the same as any other extraction of minerals, such as gold, iron, copper, or anything like that. They are treated the same as those, not geothermal.

Assemblywoman Benitez-Thompson:
Walk me through this timeline once again. If S.J.R. 15 of the 76th Session passes here, then goes to the ballot on November 4, 2014, we see what the public's opinion of it is, and if it were to prevail, to pass. Are you telling us that mining, in order to be able to litigate any of this, would have to pay their tax bill under protest? Tell me how that tax assessment process would happen, thinking about the board of equalization and our county assessors. Are they using NRS Chapter 362 in order to create that tax bill and make that assessment?

Kevin Powers:
In order to answer your question we have to bifurcate. We have to distinguish between the real property taxation of the mines and the mining claims, which is the land, versus the taxation of the net proceeds, which is different. Net proceeds are considered personal property. If S.J.R. 15 of the 76th Session becomes affective at the general election, it is our belief and our opinion that NRS Chapter 362, dealing with the net proceeds, would remain in place and those net proceeds taxes would still be collected against the net proceeds of personal property the same way they are now. The real property component, the mines and the mining claims, and the land, would then be subject to the ordinary real property tax. The county assessors would have to assess the value of the mines and the mining claims, using the ordinary procedures from NRS Chapter 361, and give a value for the mines or mining claims using those procedures. That would be different, but only regarding the mines, the mining claims, and the real property, not the net proceeds, which are personal property subject to NRS Chapter 362.

Assemblywoman Kirkpatrick:
To follow up on Assemblywoman Benitez-Thompson's question, in some counties within our state they only do this estimate every five years. We are fortunate in the larger urban areas that they do it every year. Are you saying that if the assessment needed to be done and the assessors had to figure out how to do it, it really could be five more years until the next assessment was done?

Kevin Powers:
I would say no, because once new taxable property comes onto the real property tax rolls, the county assessors are going to go out there and assess that property, because it has not been assessed up to this point. Since S.J.R. 15 of the 76th Session would become effective in November, that would be during the period when the county assessors are starting the process for the next fiscal year. During that time period they would be going out and assessing these mines and mining claims for real property tax, because they had not done it in the past. It would be dereliction of duty for the county assessor to wait five years to assess new property that has been put on the property tax rolls.

Assemblywoman Kirkpatrick:
I feel bad picking on you and asking you the hard questions, but as you are nonpartisan staff I am appreciative and feel you are the right person. I am trying to get away from assumptions, as opposed to some certainties. I think this has made it very complicated and I just want it to be clear.

So the assumption is that they are going to do it by statute. They are not required to do it, because they can wait up to five years, but it would be in their best interest to allow it for the local coffers.

On that note, I want to be clear on what they are currently protected from. I do not remember if it goes just to the rural counties now, but in some instances I have heard that by taking them out of the *Nevada Constitution*, it would open it up to go into all of the counties. I think that the rural counties get around 2 percent and the state gets around 1 percent, but also do not fund the schools, because they make up the difference. Does that change within this policy as well?

Kevin Powers:
With regard to new real property being put on the tax rolls, the five-year cycle under NRS Chapter 361 for assessing real property only exists if you have a baseline assessment. If you have a baseline assessment then each year after that there is a formula for the county assessor to determine the value of the property and how to assess the property tax, and then within that five-year period they have to reassess again. But the five-year cycle cannot exist without a baseline determination of the value. The county assessors would have a duty, under NRS Chapter 361, to make an initial baseline assessment of the mines and mining claims that are now currently not subject to the real property tax but would be under S.J.R. 15 of the 76th Session.

Assemblywoman Kirkpatrick:
With what you just said, would these fall under the income portion of the property tax abatement that some businesses typically get?

Kevin Powers:
I would need to examine that abatement more closely. There is a possibility, if the abatement applies across the board to all types of property and if it had a particular classification of commercial property and this is considered commercial property, then they could potentially receive that abatement for the real property taxes. It is possible though that mining claims and mining property may be taxed in a different category, similar to open space or agricultural property. If that is the case, I do not believe that the abatement that was enacted in 2005 applied to that type of property. I will look into that further and get back to you for a more specific answer.

Assemblywoman Kirkpatrick:
The only reason I ask is that there are a lot of businesses, and in my mind that would be considered a business, but I do not know within statute if it is considered a business. They have that extra piece where, if the income of the business is down, they can write off a different portion of the property tax. If we could look at that it would be helpful for me.

Kevin Powers:
Of course. I want to emphasize too that none of that will affect the net proceeds tax. The net proceeds tax would still be applied in the same way.

Going to your second question, with regard to the distribution of the revenue from the net proceeds tax, Article 10, section 5, includes a provision in the *Nevada Constitution* where a portion of the net proceeds tax equal to the current tax ad valorem rate applied by the local governments goes to the local governments. Of the money that is collected in the net proceeds tax, the state controller calculates the amount that would go to the local governments using their existing ad valorem tax rate, and that is in the *Nevada Constitution*. It is also in statute, so if you repeal that provision from the *Nevada Constitution*, the statutory provision still exists. If the Legislature does nothing with NRS Chapter 362, the current appropriation of money to the local governments from the current net proceeds tax will remain the same. Of course, once you take it from the *Nevada Constitution,* it would be up for the Legislature in future sessions to determine if they wanted to adjust that. They would not be obligated to adjust it, but they would have that power.

Assemblyman Stewart:
I do not mind asking you the hard questions. You seem to be a fountain of knowledge.

If the assessor goes to assess a mine, he assesses it, minus the value of the mineral in the mine, just on the property itself. If it is five acres of a mine that is producing $10 million per year, and another mine on five acres in the same county is not producing anything, are they both assessed the same?

Kevin Powers:
Because there is no current formula in place for assessing mines and mining claims that formula would have to be developed by the State Board of Equalization and it would then have to be followed by all the county assessors. They would have to come up with a formula for determining the value of a mine or mining claim, and they would have to make a distinction between operating a productive mine versus nonoperation of an unproductive mining claim. The State Board of Equalization would have to come up with a formula to apply so that the county assessors would know how to assess the different types of mining property, some of which is productive and some of which is not. I cannot say conclusively that the formula would expressly exclude the value of the mineral under the land.

Assemblyman Stewart:
So we have no precedent, no background to go on. Would we just be developing it as we went along?

Kevin Powers:
That is correct. Other states use real property taxes on mines and mining claims. I believe our tax officials could look to those other states to determine how they assess mines and mining claims under a real property tax.

Assemblywoman Kirkpatrick:
So there is a $600 million thing in the building right out of the gate after November 4. Based on what you have been saying, I do not see where that comes into play. The assessor would need to have time to put those requirements in place—also based on what you said. We would somehow have to fund the entities where the funds go now based on if the real property tax then becomes assessed like everybody else with 35 percent value, as opposed to what is done today. I do not see the additional revenue until all of those things have been resolved. Is that a fair statement?

Kevin Powers:
That is a fair statement with regard to the real property tax component. It would take some time before the revenue was collected, because the assessors would need to have a formula in place, assess the property, issue the tax notices, and then, obviously, the tax would have to be collected in the ordinary course of business. But, again, nothing would change with regard to the existing net proceeds tax. The only increase in revenue, if no statutes are changed, would come from the increase from the real property tax on mines and mining claims, which is not collected now.

Assemblywoman Neal:
I wanted to follow up on Assemblyman Stewart's question. You said that an assessor would have to go back out, but there is no precedent dealing with an unproductive mine or productive mine. Is that what you said?

Kevin Powers:
There is no precedent in this state, but there is precedent in other states for assessing mines and mining claims. Other states do assess mines and mining claims as real property. In this state, however, mines and mining claims have been exempted from real property tax since 1864, when the *Nevada Constitution* was adopted. There was only a brief period, from 1863 to 1864, when this state actually put real property tax on mining claims.

Assemblywoman Neal:
That is why I was confused. There was an 1867 Nevada Supreme Court case [*State of Nevada v. Eastabrook*, 3 Nev. 173, 180 (1867)] that dealt with the issue of unproductive versus productive mines. Would that play into this discussion?

Kevin Powers:
In that case, the Nevada Supreme Court was interpreting the *Nevada Constitution* as it existed at that time. The *Nevada Constitution*, at that time, said that all property shall be assessed property tax except mines and mining claims, "the proceeds alone of which shall be...taxed." So, in that case, the Nevada Supreme Court was just determining how you tax the proceeds from a mining operation. Those proceeds were personal property, and they were subject to the personal property tax rate, like all other personal property. That is not what S.J.R. 15 of the 76th Session does. It does not take the state back to where the *Nevada Constitution* was in 1864, because the *Constitution* then had limitations. Senate Joint Resolution 15 of the 76th Session removes all limitations, so it restores the power of the Legislature to determine how to best tax mines.

In the case you are referring to, the Nevada Supreme Court was interpreting that limitation in the *Nevada Constitution*. That limitation will not be in place if S.J.R. 15 of the 76th Session is passed.

Chairwoman Bustamante Adams:
Are there any questions from the members of the Committee? [There were none.]

Mr. Powers is legal counsel for the LCB, and is nonpartisan, so he will return to the dais to serve as legal counsel and to answer any legal questions that the Committee members need to ask.

We are now going to transition to opposition. If you are in opposition to S.J.R. 15 of the 76th Session I am going to have you come first. I have asked those in opposition to coordinate, to make sure they have different representatives testify. We are under certain time constraints, so we will respect that, and make sure we try to get in as many people as we can. I would like Tim Crowley, Jim Wadhams, Dana Bennett, and Mr. Brown to come to the table.

If you do not get to verbally testify today I will also be taking written testimony up until 5 p.m. tomorrow. I will include it in the public record. You can submit it to the Assembly Taxation Committee.

Tim Crowley, President, Nevada Mining Association:
I am here in opposition to S.J.R. 15 of the 76th Session. It is a measure that dismantles the current system that provides significant resources to the state, and the system that provides significant resources to the counties in which mining exists. In fact, there are net proceeds revenues in all counties throughout the state of Nevada, except Carson City. It provides predictability to the mining companies on a tax regime. Removing the net proceeds tax will have the opposite impact. It will halt revenue to the state. It will create uncertainty about county revenues. It will create uncertainty about taxes to the industry going forward. The best course of action, in our opinion, is not to pass this measure.

If you are inclined to pass it, we would ask that you answer some very tough questions, and get the answers to what the impact would be to the state. What would the impact be to the counties, to the rural hospitals, the school districts, the court systems, and the assessors who do not collect the net proceeds tax now? How will they assess this? Will they assess our property as they do today on 100 percent of value, or 35 percent of value going forward?

Answer the questions about taxes to the industry. What will the rules be on our industry going forward, both to the operators and to the claim holders?

Senate Joint Resolution 15 of the 76th Session was introduced two years ago on a false premise. The premise was that mining is protected from taxation. That is absolutely false. We are not protected from paying sales taxes. We are not protected from paying property taxes or payroll taxes. Like all businesses in the state of Nevada we pay those taxes. We are not protected from paying additional taxes that you might decide to enact going forward, should it be a margins tax, should you take Steve Wynn's advice and pass a gross receipts tax, or whatever it may be. As long as it is not a property tax competing with the existing property tax you can tax us in additional ways. Today, through general business taxes, we pay $170 million. That is the payroll tax, the property tax, and the sales taxes combined. Net proceeds are not a small increment on top of it. It creates an additional $250 million on top of the $170 million we already pay. That is $250 million that dwarfs the generally imposed taxes. If we were manufacturing shoes, instead of raw materials, we would pay $170 million to the state and local governments, but instead we pay over $400 million.

Mining is the only payer of a state property tax, the state portion of the net proceeds of minerals tax, and we maintain that portion would go away with the repeal of the net proceeds tax.

Mining is a high-risk business. It takes huge capital to start a mine. It takes a very long timeline to get from the point of discovery to the point of processing a mineral. Sometimes it is around 15 years and a billion dollars through that timeline before you generate one penny of revenue. When you get to the end of the timeline you do not always know what the value of your mineral is going to be. You certainly did not know at the start of that timeline.

Just look at the value of gold right now. It has dropped 15 percent since the start of this legislative session. It has had a little bit of a recovery, but had another fall yesterday. It is at times volatile.

Because of the incredible capital, the long timeline, and the fluctuation in the value of what we produce, we need as much certainty about our business as possible. That includes certainty about the taxes we owe and the revenues that are going to the communities in which we live. There have been many misstatements and much misinformation about this issue, the passage or consideration of S.J.R. 15 of the 76th Session. To the extent that these false notions motivate the desire to pass S.J.R. 15 of the 76th Session I would like to set the record straight.

Some say we do not pay our fair share of taxes. In a lot of ways that is true. We pay more than our fair share of our taxes. We pay four times the taxes of an average business in the state of Nevada on a per employee basis. We pay twice as much taxes as our economic footprint. In other words, we represent 4 percent of the state's economy, yet 8 percent of every dollar that goes into the State General Fund comes from the Nevada mining industry.

Some say that Nevada is too mining friendly and should be taxed like surrounding states. A hard rock mine in Nevada has a higher tax overhead than similarly sized mines in New Mexico, Arizona, Alaska, Wyoming, and Idaho. California, Colorado, and Utah do have greater tax burdens on their mines, but it is not significant.

Some say that we are the only industry singled out in the *Nevada Constitution*. That is wrong again. Just read the *Nevada Constitution*, as I know you have. Warehousing, securities, and others are mentioned in the *Nevada Constitution*. Lately I have been hearing a lot about how mining is the same size as the gaming industry, and thus should pay the same amount of taxes. That is far from the truth. I just mentioned we are 4.4 percent of the state's gross domestic product (GDP), yet we pay 8 percent of every dollar going into the General Fund. Gaming is roughly 30 percent of the state's GDP. They pay roughly half of all the dollars that go into the State General Fund. Both industries pay a significantly disproportionate amount of taxes to the State of Nevada.

Mining is proud to be an important part of this economy. We have been here since the founding of the state, and we have a very bright future ahead of us. There are new gold projects coming on line. There are new molybdenum projects coming on line: lithium, vanadium, copper, and geothermal.

There is a lot of growth in the mining industry. With this growth comes the creation of some of the best jobs in the state of Nevada. We are paying on average $90,000 per employee, with benefits. That is twice the state average salary. We are also proud to be consistent in working with you to solve and address the budget needs of this state. We helped last session when the state was upside down. We reviewed the net proceeds of minerals tax, and from that point on we have been paying $48 million per biennium more in net proceeds taxes. We worked with you in 2010, during the special session, to increase fees on the industry. We worked with you in 2009 to prepay our net proceeds of minerals tax, something that we are still doing today. We worked with you in 2003 to pass a broad-based business tax. Incidentally, as 1 percent of the state's workforce, we are the fourth largest payroll taxpayer in the state of Nevada. The payroll tax originated in 2003. We will work with you in 2013, right now, to develop broad-based business taxes, if that is the decision of this legislative body and the Governor.

The best option for you is to reject S.J.R. 15 of the 76th Session. It was introduced on the false premise that we are protected from taxation; we are not. In reality it adds another $250 million of taxes to the State General Fund and to local communities. If it is not your inclination to reject S.J.R. 15 of the 76th Session, determine the impact. Determine how it will fiscally and administratively impact the state, the counties in which our employees live, and the industry itself, including the exploration world. Establish the rules by which we will have to play, going forward before you dismantle this system that works so well.

Chairwoman Bustamante Adams:
Are there any questions from the members of the Committee? [There were none.]

James L. Wadhams, representing the Nevada Mining Association and Newmont Mining Corporation:
Newmont has been active in Nevada since 1962. It survived through the difficult times of the early 2000s, when the price of gold dropped into the $200 range. Newmont is an American company, founded in 1921, with their North American headquarters in Elko, Nevada. It is a publicly traded company and it employs nearly 4,000 Nevada residents in high-paying jobs.

I am going to try to avoid repeating anything that Mr. Crowley said, however I think he must have anticipated what I was going to say, so if I have a couple of overlaps, I apologize in advance.

It is time for some Nevada straight talk. This is a very serious issue, and I especially appreciate the rigor of the questions that this Committee is willing to consider—the facts, the law, and especially the consequences. I hope today to provide you with some additional information that you will find useful in your deliberations as you begin to consider what the consequences of this action might be.

I do appear in opposition, along with Mr. Crowley. Things have changed. Senate Joint Resolution 15 of the 76th Session creates uncertainty, and it is unfortunately a domino progression of uncertainty. The uncertainty begins in the business itself. As Mr. Crowley mentioned, the normal business uncertainties of this activity include a drop in the price of gold, the rising cost of production, and the cost of extraction. However, facing federal legislation, the ballot initiative on the margins tax, the potential passage of this resolution, and the discussion with this body, and particularly the other house, of certain ballot initiatives add to the uncertainty of the tax status that we face. That uncertainty then trickles down from us to the counties in which we do business, where the revenues are spread throughout the state.

We think this resolution is not only a bad idea, it is bad policy. It will have a dramatic impact on this segment of Nevada's economy, and ultimately the entire state. If it does nothing else, it will inject uncertainty for investors, and that will tend to stop exploration and development. Shortly following that will be production and jobs. If it does what it purports to do and reverses the 1989 tax increase, it will put mining back into the *Nevada Constitution*, with the minerals being taxed at the county rate. We have heard many opinions expressed in and from the media about mining, and indeed everyone has a right to those opinions. We respect that. But what is the issue here? The issue is the value of the dirt, or perhaps what is in it. It is not about payroll. It is not about the profitability or anything else. All of that could be dealt with independently. It is about the value of that dirt. Currently, mining companies have to crush and process nearly 12 tons of dirt to get 1 ounce of gold. Twelve tons for those of us from southern Nevada is about the amount of dirt that is taken out of our backyard to build a swimming pool, to get one ounce of gold. Now how much would somebody pay for that 12 tons of dirt? Some would say they would pay $1,600. Hardly, a buyer would consider the cost of extraction, the possible prices they might get in the future and, as Mr. Crowley pointed out, that is sometimes 10 or 15 years into the future. We are talking about how you value that property.

People say that mining wrote the *Nevada Constitution*, yet if mining wrote it, why was there a decision to include that property as taxable at all. People say that mining is the only industry in the *Nevada Constitution*, but as Mr. Crowley pointed out, if you read Article 10, you can see very clearly that there are three other industries that are not only specifically identified, but the types of property that they hold are not just protected, they are exempted. I am raising no issue with those exemptions. They were passed by the people, and I think on sound purpose; however people do say that we are the only one and that is not true.

People say that mining is wildly profitable, but none of these critics have pointed to a current financial analysis that evaluates the profit margins, much less even looks at the current stock prices, and this is not a difficult analysis, because the two major companies in this industry are publicly traded. People say mining is not paying its fair share, and to follow Mr. Crowley, they are saying that because it is protected, and yet it pays the payroll tax. Is there a suggestion that we are actually exempt from the payroll tax and can request that return? I do not think so. We do not have a profits tax, but we might have a margins tax. Mining would be fully exposed to those issues. We would have paid the gross receipts tax in Assembly Bill No. 582 of the 76th Session. Ironically, the language that people say protects mining was adopted to make mining pay a higher property tax rate than anyone else.

In 1989 the Legislature passed Senate Joint Resolution 22 of the 64th Session, and to try to do this briefly, I have placed a copy of S.J.R. 22 of the 64th Session on the screen (Exhibit D). Subsection 5, the underlined words, is the exact language that S.J.R. 15 of the 76th Session would repeal, the language that S.J.R. 22 of the 64th Session put into the *Nevada Constitution*.

If we scroll down just a bit you will see the Secretary of State, who in that period of time was responsible for creating the argument for passage, stated in basically one sentence, "This proposal would allow the Legislature to generate additional revenue for the state by requiring the mining industry to pay increased taxes." Are you prepared to repeal that increase?

People say it is time to take mining out of the *Nevada Constitution*, and then we can tax them like everyone else. I am repeating now what has been said a couple of times, that if they would read Article 10 of our *Nevada Constitution*, which is not very long and is not very complicated, states very specifically that all property—real, personal, and possessory—is subject to the uniform and equal clause and just valuation. As was referenced earlier, the *Nevada Constitution* is not empowerment but a constraint, and that constraint is expressed very clearly in that section.

A single sentence is often forgotten by our critics, which the *Nevada Constitution* provides in Article 10, section 2. It is very simple, "The total tax levy for all public purposes including levies for bonds, within the state, or any subdivision thereof, shall not exceed five cents on one dollar of assessed valuation." That apparently is an obsolete way of saying 5 percent, so all of our property is protected and capped at 5 percent. As Assemblywoman Kirkpatrick mentioned earlier, there is a statutory cap within the constitutional cap of $3.64, or perhaps if you add the 2 pennies, $3.66, but nonetheless the ultimate fog line for this Legislature and its power is 5 percent.

Interestingly, on this very issue, one of Nevada's nonprofit organizations weighed in on a recent court case [(Exhibit E), page 19]. I think the second sentence is particularly compelling: "Clearly the plain meaning of Article 10, Section 1(1) is to exclude mines from the same uniform and equal assessment as other real property in the state." The question is, what does it mean to eliminate the Legislature's right to tax mines differently? If you remove "to tax them differently," will you not have to tax them the same?

Some people have said that mining should be the sacrificial lamb to soothe education, but no one has analyzed what kind of education budget could possibly be built on a commodity price. Indeed Gary Peck, like his predecessor 25 years ago—a lady whom I knew personally because I was here 25 years ago—does not want teachers' salaries pegged to the commodity price of gold. The problem is not just what people say, it is that it is repeated so frequently that the underlying facts and the law are often forgotten. Wrong information does not become true simply because it is repeated loudly or frequently. This body makes the policy. We respect that and we encourage you to do it on this issue. Take the time to get the facts and review the law before you make that policy. I have yet to meet a legislator who was happy that they voted for a bill that later produced unintended consequences. Assemblywoman Kirkpatrick actually cut her teeth on resolving some unintended consequences of a bill that had been passed in a prior session.

We simply ask that the Legislature and the Governor request the respected fiscal analyst to estimate not only the effect of any tax changes, but also the capacity of that class of taxpayers to absorb the tax increase and the point at which the tax reduces the activity, rather than increases the revenue. In reference to a $600 million tax increase, I suggest it should be more carefully analyzed. That type of proposal may actually generate less revenue than the current method of taxation—less, not more.

There has been no hard analysis done of this for the Economic Forum, which just concluded yesterday. Maybe at some point in time that will be done. They ultimately have to determine what their estimates are for these revenue forecasts. At the same time, we are offering tax incentives to attract new employers, we seem to want to subject those employers that actually have added jobs to higher taxes. There is an inconsistency. This resolution before you is tax policy, and should not be done just for political convenience.

I have also included a series of documents that I think are important in this discussion (Exhibit E): The first one is the 2011 vote on S.J.R. 15 of the 76th Session. As you will note it passed both houses, but did not obtain a two-thirds majority vote. There is the text of ballot Question No. 1 [May 2, 1989, Special Election], which I referenced earlier, that resulted from S.J.R. 22 of the 64th Session. There is the text of S.J.R. 15 of the 76th Session from this session, which you already have. There is a section of the *Nevada Constitution*, Article 10, which I have referenced.

I have also included several decisions of the Nevada Supreme Court. This is sort of a follow-up to a question, and in no way am I disputing the analysis that was done by Mr. Powers. He is very competent counsel. I would mention that there are a couple of cases, one in 1914 and a more recent one in 1951, that identify the net proceeds tax as a tax on the ad valorem value of the property. We have cases as recent as *Sun City Summerlin Community Association v. State Department of Taxation* [113 Nev. 835, 838, 842-43, 944 P.2d 234 (1997)] and *List v. Whisler* [99 Nev. 133, 137-38, 660 P.2d 104, 106 (1983)] that all identify the methods that the state must use.

I will conclude by saying that one of the fascinating issues in this whole discussion is the frequent confusion of the method of valuation of property. If one looks at *Nevada Revised Statutes* 361.227, the method of valuation is identified based upon what would typically be applied to commercial property. It is generally called the capitalized income approach. To raise an example by parallel, if you have two 7-Eleven stores, one on a high traffic corner with substantial sales and an identically constructed 7-Eleven in a remote area, they will not be valued by the assessor the same way, because their capitalized income will be different. An investor will pay more for the high-traffic store than for the low-traffic store.

There are a lot of ways that this creates uncertainty. The assessors will have to decide how to value the new property coming on the rolls and the old property going off of the rolls. We would suggest to you that you take the time and carefully consider the fiscal and economic impacts of this.

Chairwoman Bustamante Adams:
Thank you Mr. Wadhams. I think both you and Mr. Crowley did an excellent job in representing all your stakeholders that are in opposition.

Assemblywoman Neal:
I thought about this. I really did. I started thinking the argument that was presented was if you remove them from being taxed differently, then will they not be taxed the same? So I thought about this for more than one day. I started examining the historical arguments and examined the case law that was provided by Mr. Wadhams, because I wanted to see what was out there.

So, if we find ourselves in an open space, if S.J.R. 15 of the 76th Session passes, then we find ourselves relying on not only the historical context, but also case law. What seemed unique to me in a couple of the cases was that in the court's discussion they were talking about the entire proceeds of mines, that the ad valorem should be applied to the entire proceeds of mines. So I asked myself what that meant. I had to go back to 1906 when the word "net" was added in, and I then wondered what the difference was between "gross" and "net." I then looked to the constitutional debate. What I found was interesting. There was significant debate over several days that said the Legislature should tax everything which proceeds or animates from the mine that is valuable. I then asked myself if we were doing that. Are we taxing everything the mine produces?

I want to know how we have treated it in statute. If the Nevada Supreme Court said it should be the entire proceeds of the mines and the products that are produced, then we need to ask if they are actually doing that. To me, the open space we find ourselves in is the ability to define and look at the historical debate, decide what we feel is the actual truth that was established in 1864, and then see what was established in 1912, in terms of the entire proceeds. I want that discussion to be had. Why do we not just delete "net"? Why do we not talk about the entire proceeds, the waste rock and everything that comes from it that gives value?

That was more of a commentary, with somewhat of a hypothetical phrasing, but I want to have that discussion. The Legislature should tax everything which proceeds or animates from the mine that is valuable.

James Wadhams:
I just want to say hear, hear. We think that discussion is very important and we appreciate that question. We would be happy to participate with any and all people in developing that answer. You are currently taxing the entire value of the mineral itself. The point is you could be taxing the income of this corporation if you had a business income tax. You could be taxing its gross receipts, if we had a gross receipts tax. You could be taxing its margin as a business. Article 10 limits the Legislature only to the taxation of the property value. Business activity is not constrained by Article 10. We think that discussion is an important one to have.

Assemblywoman Neal:
I appreciate your answer and look forward to some level of debate.

I asked another question when we met. I listened to the statements. I listened to several different companies. I wondered what is different about what is being stated. How do you differ in your argument? I heard the certainty argument and I understand it, but at the same time I had to then ask the question, based on everything that was presented, how have you managed over the 100-plus years to maintain your longevity, knowing that there is a reciprocal relationship between recession and times when we are doing well? There must be a constant in that business. There is a constant growth, because nothing lasts that long without having something very certain about it, being able to stand all of these changes that have been cited. Talk to me about that.

Tim Crowley:
We do not function in a dissimilar way than other businesses. When there is an increase in overhead on that business, changes have to occur. The changes that occur in the mining business are that we have to focus, we have to constrict, and we have to limit investment. Should the price of gold continue to fall, there will be changes that will limit investments in the future and that will cause these companies to focus only on those ore bodies that are profitable to mine. That ore body grows and shrinks with the price of all of the overhead on that mine, including the price of gold and the price of consumables like diesel, rubber, and steel for our trucks. It is a constant readjustment. It is a daily adjustment of how you work to maintain a profit. We will not work at a loss. No business will, or at least not for too long. If that overhead is a tax increase, there is still a reaction to that. The simplest answer is that we have to turn to and limit ourselves to ore bodies that are profitable to us.

Assemblywoman Benitez-Thompson:
I was thinking about what Mr. Wadhams said, with his cautionary tale about being careful. Even the best of us, specifically Assemblywoman Kirkpatrick in her first session, have produced policy with these big unintended consequences. Shame on us legislators for sometimes making errors and mistakes. I want to make sure you know I heard that.

I want to get back to thinking thoughtfully about this process. As I read NRS Chapter 361 and look through the established process that is there, I see it is pretty well laid out. I am trying to get an idea if this did pass and the public supported it, what type of time frame we are looking at for creating a mechanism by which the Board of Equalization and county assessors can come up with a valid tax bill for you folks.

As I look through it, and the way we are talking, I do not want the rhetoric to be left that we are going to have these bumbling county assessors going, "Oh my gosh, how am I going to figure out how much this land costs? Golly gee whiz, I have never done this before," when we have tons of information here in NRS Chapter 361 that is going to give us guidance. I want to get a better idea for a better projection of time, without too many red flags that this will take forever. We are never going to be able to figure this out; we do not have the wherewithal in Nevada to possibly ever solve this problem.

James Wadhams:
I would like to intercept that question. First of all, I was complimenting Assemblywoman Kirkpatrick. She fixed unintended consequences caused by somebody else. She was not the cause of them.

Chairwoman Bustamante Adams:
I appreciate that correction on the record.

James Wadhams:
I apologize. I think rather than ask the taxpayers what the timeline would be, I think we have some county assessors here who are very competent. I know we have the Department of Taxation, and they may be able to answer that question much better than we would.

Chairwoman Bustamante Adams:
I will have the Department of Taxation come up under the neutral position to answer questions regarding that roll.

We have only a few minutes left under opposition. I appreciate Mr. Crowley and Mr. Wadhams for representing your industry. I want to make sure we hear from the rural counties as well. There is a gentleman up in Elko that is at the table. I want to give Assemblyman Ellison an opportunity to testify, if you could come to the table. I would also like Mr. Garza from White Pine to come to the table. Dana, you can stay there.

Michael J. Brown, Vice President, Corporate and External Affairs, North America, Barrick Gold Corporation:
This is a different title than I have had in the previous nine sessions I have been here. I was actually in this room, in the last session, when I realized that there were higher expectations of the mining industry and the mining companies in Nevada. I went back to Barrick and convinced them that we needed to expand our commitment to corporate social responsibility in Nevada.

We created a new corporate social responsibility team, hired one of the best experts in the world on this, and launched a series of initiatives to expand our economic and vendor base in the state, to hire more Nevadans, to train more Nevadans, to increase our engagement with the Western Shoshone, and to establish a new partnership program with groups like communities and schools; not just to address the symptoms of problems in Nevada, but also to try to address the actual cause of those problems. There was a deeper commitment across all Nevada—north, south, and rural—to deal with the issues in higher education and public education, because, after all, this is our twenty-seventh year in the state of Nevada, and we are pleased to be here. I have 4,087 employees in the state.

I spend more time in Nevada than I do in Washington, D.C., where I am actually a rower. I enjoy rowing very much. A few weeks ago I had Mary Whipple, the gold medal-winning rower from the U.S. Olympics in London, to Las Vegas to do an event at the Springs Preserve for a group of kids from communities and schools. Mary Whipple's job in rowing is to steer the boat. She is the coxswain. Rowing is the only sport where we actually face backwards as you go, and I sit in the bow. So, should we hit a bridge, I will absorb all the kinetic energy first when we hit that bridge.

I kind of feel when we get into this issue that I am out in this open space without a coxswain and I am not sure where we are going.

I want to talk about tax policy in a broader sense and how mining companies deal with this, some of the ideas that the World Bank, International Monetary Fund, and others have put forward. Tax policy is hard. President Warren G. Harding, back in the '20s, said he wished he had a book where he could look up the answers. He added that even if he had that book, he was not sure he would understand it.

In Nevada we have struggled with the issues of how to establish taxation since Bert Goldwater chaired a committee in 1960 [Citizens Committee on Taxation and Fiscal Affairs]. David Schwartz, in a superb article in 2009, said Nevada still has a tax system not by design, but by default [David McGrath Schwartz, "A tax system by default, not by plan," *Las Vegas Sun*, Jan. 25, 2009].

As a former house page in the Ohio House of Representatives I tend to go back to my experience there when I am looking for guidance. Tax structures are born out of the political and economic life of a state over time. It is really not possible to wipe the slate clean and prescribe some new structure to meet some theoretical or desirable effect. Rather, it is necessary to review the existing structure, in light of generally desirable standards, arriving at some modifications that are within the realm of possibility.

Last session, and I congratulate this Committee and the Chair last session, now Speaker Kirkpatrick, because we did have the financial folks from the mining companies sit and we walked through all the deductions. Eventually legislation was enacted that removed a series of deductions and produced a new revenue boost of $48 million for the state. I thought that might bring resolution to the issue; it clearly did not.

Industry-specific taxes, like a minerals tax, are exactly that. They are specific to an industry. States like Nevada that are dependent on industry-specific taxation are, in fact, partners with those industries. As partners there is an obligation and need to help educate policymakers on current trends in that industry. The mining industry is a multibillion dollar global business. You cannot build a mine without raising billions of dollars on global capital markets. It is a very unique industry, and as we make investment decisions we have to look at things like ore grade, infrastructure, reserves, political stability, social factors, and fiscal regimes.

Generally speaking there are no gold nuggets, bars, or even visible veins of gold to be found in Nevada. There is no sage grouse sitting on top of a gold bar somewhere. The gold is microscopic and disseminated in solid rock, at great depths, and often underneath the water table. It is not like mining coal, where one mine is a continuous seam of coal yielding a marketable product at the end. Absent the billions of dollars of world-class processing, technologies, and facilities built in Nevada, that gold would remain unrecoverable, and really of no value to the state. The modern gold industry, as we understand it today, dates back to 1985. We have had three phases of that industry. From 1985 to 1995 the gold was largely reasonably close to the surface. You had to remove about 100 tons of material. It was pretty simple processing. In about 1995 that started to change. We had to build deeper mines, more underground mines, but more importantly the only way to extract that microscopic gold from the rock was to build large processing facilities and invest billions of dollars in roasters and autoclaves.

What I think is important as partners of this industry is we are projecting that, if you look beyond 2015, at that third generation of gold mines, the ore is going to be deeper, it is going to be more complicated to process, and we have to figure out how to get the billion-dollar facility we built for the old mine to the new mine. It is generally a very different industry.

After the fall of the Berlin Wall and new markets opened up, the International Monetary Fund (IMF), the World Bank, the International Council on Mining and Metals, consulting firms like Ernst & Young, and others started to produce a lot of research on what mineral taxes should look like. Nevada is actually getting it right in many of these areas. We are not manufacturers. It is not an alchemy factory where we have a shiny gold bar coming out of one end. A mine is a depleting asset. We continually have to rebuild the mine, after we produce the gold bar, which would be like rebuilding a factory. They have very long gestation periods. We are looking at ten-year permitting cycles in some cases, so no revenue is produced. The state starts to get sales taxes when we start to build the mine, eventually you get net proceeds taxes when we actually start to make money as the mine comes into operation.

Chairwoman Bustamante Adams:
I want to be able to hear from the person in Elko so I will need you to wrap it up.

Michael Brown:
When we look at the IMF and how they have recommended countries to tax mining, they generally suggest that that tax system be based on some kind of a net concept, that there be a cooperative effort between government and the mining companies to develop those systems, and that they create a balance. I am a great fan of Elliot Richardson, who wrote a book called *The Creative Balance*. Do you want long-term sustainability in your rural counties or do you want short-term gains? Right now we have had a sustainable industry in rural Nevada for 30 years, and I hope that however we end this process we get there. I am not sure where we are going, and that is why I am very concerned about S.J.R. 15 of the 76th Session, because I am not sure what is on the other side. With that, I have submitted the whole thing for the record [(Exhibit F) and (Exhibit G)]. Thank you.

Chairwoman Bustamante Adams:
We will now go to Elko.

Richard Perry, Councilman, City Council, City of Elko:
I have been chosen to testify today on behalf of the Council. Our council spent time analyzing and discussing S.J.R. 15 of the 76th Session at our last public meeting, took public comment, and produced the letter outlining our position (Exhibit H), which we sent on Monday to each of you.

I just want to add a few things and outline some high points, and not repeat all that is in that letter.

The City of Elko is opposed to S.J.R. 15 of the 76th Session. We believe that the mining and natural resource industries are highly capital-intensive international businesses. For most of Nevada's history it has been rated as one of the top ten international locations for natural resource exploration and production. This rating is not just based on geology, but on political and tax stability. Although third world countries often have better geology, their lack of a stable tax structure often places them low on the list for natural resource investment. As such, we object to any effort to dismantle the steady form of tax revenue to our local communities and to the State of Nevada.

The City of Elko receives little from net proceeds of mines tax, but our General Fund in 2012 and 2013 was 65 percent funded from Consolidated Tax (CTX) Distribution revenues. The year-to-date largest contributor to CTX revenues in Elko County is industrial and business sales, which is largely from equipment sales to the natural resource industries. The current discussion of changing the way mines are taxed may already be having a negative impact on capital investment, which will negatively impact our CTX revenues for the City of Elko and Elko County. Our county CTX revenues, as they are recorded here for the first quarter of 2013, are in a relatively steep decline right now. That has us all somewhat worried. That may in part be the price of gold and it may be in part the discussion that is taking place right now.

Our state needs capital investment by private industry to create jobs that pay well and a healthy tax base. The current formula for the net proceeds of minerals (NPOM) tax has created just that, supplying a reliable source of revenue to both state and local rural governments. With the current NPOM tax most rural counties are net exporters of tax revenue to the state, and the jobs created feed families, provide health and retirement benefits, fund our rural schools, pay court and social costs, and build and maintain the infrastructure that we have here in rural Nevada. These living-wage jobs benefit not just mining families in the rural counties, but thousands of Nevada citizens employed in mining support industries in other parts of the state.

Senate Joint Resolution 15 of the 76th Session does not outline the rules for taxing mining and other natural resource industries. It raises more questions than it answers, and is a great uncertainty to rural counties and cities. On paper it could cause a $100 million reduction in revenues to the state and $70 million to rural counties. The City of Elko is currently preparing its 2013-2014 budget. Our budget is largely dependent on what happens at the Legislature and the health of our local industries. What should we assume?

Therefore, before considering this legislation, we ask that the following questions be answered:

- What will the fiscal impact be to the rural mining counties with these changes, in the short and long term?
- The net proceeds of mines applies to mining, oil, gas, and geothermal. Oil and geothermal are potential growth industries in Nevada. Elko County will see its first two oil exploration wells with new tracking technology this summer. Those are the first in the state of Nevada. A change in the tax structure could scare these people away, and that could be a long-term advantage to this state in more revenues if they are

successful. Will this proposed constitutional change affect all of these natural resource industries?

- What will the distribution rate be? Currently less than half of the NPOM tax goes to county governments, and a little over half to the state.
- Will mining taxes change from being centrally assessed to locally assessed? I believe Mr. Powers answered part of that question, and it was one that concerned me. As someone who has worked in the mining industry in the past, I strongly believe that the valuation of mineral claims and properties is a highly technical business, and I do not know of any county assessors who have degrees in mining or metallurgical engineering that might have the skills to take that on.
- Will there be state resources available to assist with implementation, and as such is this an unfunded mandate on local governments?

While we believe that all Nevada industries should do their part, legislation as it so drastically affects revenues to our state and local governments, should be carefully reviewed and analyzed to avoid unintended consequences. Senate Joint Resolution 15 of the 76th Session appears to us to be very problematic and may cause significant economic hardship to rural mining counties and the state of Nevada. It also creates investment uncertainty in our natural resource industries, one of the few bright spots in our state economy, and the primary source of employment in Elko County. Therefore, the City of Elko cannot support S.J.R. 15 of the 76th Session.

Thank you for listening and thank you for your time in representing the citizens of the great state of Nevada.

Chairwoman Bustamante Adams:
I want to say thank you for representing the group there and for your patience. We did receive your letter. Assemblywoman Kirkpatrick has a question for you.

Assemblywoman Kirkpatrick:
Based on what you just said, can you tell me where the $100 million shortfall would come from?

Richard Perry:
That is a number that I picked up on an analysis that I received from the Nevada Mining Association on the possible difference in property tax revenues versus NPOM tax. The $70 million is the component that would impact the counties that currently receive net proceeds tax. I can produce that and send it to you, if you would like.

Assemblywoman Kirkpatrick:
That would be helpful, because I believe that the question was answered. Property tax is in addition to the net proceeds tax. I heard today, and I do not know if it true or not, that mining also gets an exemption on some sales tax stuff. You mentioned CTX, and CTX is derived of all the sales tax, so was that also in your calculations?

Richard Perry:
That was not in that calculation. The sales taxes were completely separate. My point in bringing up CTX was that Elko County receives very little NPOM tax; however, it is a major hub for sales of industrial equipment. I believe that the two go together. As the profitability of the industry increases, they expand and we see those sales tax revenues. That is what we largely live on here. As I mentioned, our city general fund, from which we provide services, is 65 percent based on CTX revenues, and those can vary wildly.

Assemblywoman Kirkpatrick:
It would be most helpful if you could send that to Assemblyman Ellison or me sometime today.

Chairwoman Bustamante Adams:
We have our last three people at the witness table, and then we are going to transition. I think the people who have gone before you have done an excellent job of helping the Committee to understand the issues, both in the rural areas and the impacts, so do not feel obligated to go too long.

Assemblyman John Ellison, Assembly District No. 33:
I think they have done a great job explaining what could happen in the future to Nevada, not just rural Nevada, but the whole state.

There are a lot of people who traveled to Elko and here today. We have White Pine, Humboldt, and Lander Counties, and some people from Elko. Could I get them to stand and be recognized. They have traveled a long way to be here to speak today, and I know that with our time that is not going to happen.

Chairwoman Bustamante Adams:
Those who are in opposition to S.J.R. 15 of the 76th Session please stand. I appreciate you traveling here to participate in the legislative process.

Assemblyman Ellison:
We have heard the stories out there, that mining is not going to go away no matter what. I can tell you that fear of the future in mining has already taken its toll. We have all seen the letter, just recently, that says with the price of

gold right now, and possibly with S.J.R. 15 of the 76th Session, the toll on this will definitely impact employment.

I just left a hearing on Senate Joint Resolution 14, which my colleague from Lyon County was down speaking on. That hearing in the Assembly Committee on Natural Resources, Agriculture, and Mining talked about a copper mine that would create up to 900 new jobs. With that, the biggest fear is the uncertainty of what is going to happen with this field. This is a new mine that is just getting ready to start. With high unemployment in that area, that could have a major toll on the future of that county.

There are about 25,000 employees working in mining in Nevada right now. If we looked at the total numbers from 2011 and 2012, Nevada has increased employment by 31,000. How many of them have been employed in the mining sector? That is what I would like to know and what I am hoping Mr. Brown might be able to address.

The national average of growth is 1.6 percent. Nevada has jumped to 3.3 percent in growth. We were one of the worst but have come up dramatically. I believe that had a lot to do with mining.

An analysis within mining figures that the taxes paid to Nevada per employee, based on revenues, are about $50,000. There is not one industry in this state that comes close to that. This is why it is so important to keep this industry alive. The uncertainty of what is going on out there could be devastating. We do not know what is going to happen to the NPOM tax going to the cities. Right now the state is being subsidized by the rural counties in education. Even though the Governor has increased education by about $400 million, we still have a long way to go. This is not the answer.

I received an email that said for the last 25 years there has been a lot of talk in Nevada about broad-based economic diversity and our economy in gaming and tourism, but little has been accomplished. By most measures, our economy is less diverse than it was a quarter of a century ago. We have had only limited success in attracting other industries to our state. Mining is a shining exception to the rule. Thanks to mining many of our rural counties have prospered in the recent recession. Unemployment in rural counties has remained well below the state average, helping our entire state. When gaming and construction were laying off tens of thousands of employees, mining was hiring. I hope we take this into consideration. I would really ask for the support of this Committee to not support S.J.R. 15 of the 76th Session.

Chairwoman Bustamante Adams:
Thank you, Assemblyman Ellison, and if you have written testimony we will take it for the record. I do have a question from Assemblyman Horne.

Assemblyman Horne:
Assemblyman Ellison, I just wanted to get some clarification. I heard you say that the state is being subsidized for education by the rural counties. Was that your statement?

Assemblyman Ellison:
Yes. Where I came up with that answer, if you look at some of the rural counties right now, they all pay into the state system. Eureka County takes very little of the education funds. They pay over 50 percent of the resources back to the state, so the NPOM tax comes back to the state. They do not pay for any education. The other one is Elko County, which takes very little of the education funding. If you go back and look in the rural counties, and I am hoping we can check into this, Eureka County and some of the rural counties take very little in education. That money comes back to the other part of the state.

Assemblyman Horne:
I will look into that because I have been working on the Assembly Committee on Ways and Means, particularly higher education funding. I know for a fact that the funding formula presented has more than $21 million coming from Clark County up to the rural schools to hold them harmless, et cetera. It has been said to me multiple times that Eureka County, and maybe money can address this, is sitting on $400 million. I certainly would like some explanation of how the rural schools are holding up the state in education, because those are certainly not the numbers that I have been seeing.

Assemblyman Ellison:
I would be happy to get that to you.

Chairwoman Bustamante Adams:
We have Mr. Garza and Mr. Zander.

Jim Garza, Member, Board of Directors, Great Basin Regional Development Authority; and Director, Community and Economic Development, White Pine County:
I represent two entities. We have submitted two documents that have been attached as one package (Exhibit I). The first document was signed by the newly elected chairwoman of Great Basin Regional Development Authority, Laurie Carson. The second document, which is the majority of the package

I submitted, includes comments and issues I wanted to address with the White Pine County Commission, as Director of Community and Economic Development for White Pine County.

There are a couple of things that are a major concern of ours. As an economic development director it is always important to look at the financial impacts that are going to come into play if S.J.R. 15 of the 76th Session passes. That is my job. I have to figure out what that amount is and how I am going to help the county recover that amount. Right now that question is unanswerable.

We know how much we are going to lose. If you look at the NPOM that White Pine County has received over the last five years, it is 49 percent of our current budget over that same period. That is a lot of money I have to make up.

I understand education is an issue. I have children in the educational system myself. I know something has to get done, and our commission understands and knows that higher education needs to have improvements.

What is of concern here is that there really is no true financial impact analysis that has been completed. What are the actual numbers we are dealing with here? What do we need to make up? What are the actual burdens that the state, the educational funds, or the teachers associations are trying to find solutions for? What is that dollar amount? I think that is important to know. That way we have a baseline of what we are going after, so we know what we are going to affect and we do not over affect.

Let me give you a good example of that. Based on the Department of Taxation's annual reports for the last five years, let us look at the state Distributive School Account. I looked at it seven years back. Five years back the highest amount was $111 million. In 2012 that dollar amount was $89 million. That is a decrease of $22 million. That is factual. It is in the documents. That is the kind of information that needs to be brought forward and understood. Are we trying to find a $22 million shortfall five years back, when we have $111 million that was funded into that budget? Are there more parameters that need to be added?

The NPOM tax was $253.3 million in 2012. Are we willing to affect $253.3 million for what I understand right now may be a $22 million plus shortfall? That is what an impact analysis does. It brings out that information. It establishes a baseline of what you are looking for, sets some parameters, and then goes after the most appropriate and legal way the state can acquire the funds to meet that burden. That is what I have to do on a regular basis. That is what I think is good stewardship on my part as an economic director.

I ask that this Committee look at that issue, address it on an economic impact basis, and find the answers to those questions. What is it that is our burden? How are we going to find it? How is it going to affect the rural communities? Right now, the way this looks, it is affecting White Pine County's budget by 49 percent.

I asked a question of the LCB representative, Mr. Powers. He had mentioned that it is per NRS that mines have to continue to pay this tax burden; however, if there is litigation, is that tax burden then set aside and not distributed until that litigation is resolved? If that is the case, how long will that take? Five years, ten years, fifteen years? Is White Pine County going to be out of a supplemental type of tax, which appears to be collectable through NRS? Are those funds going to sit in an account, frozen, until the litigation is done? That will be devastating to Eureka, Lander, White Pine, and Pershing Counties, not just to the county governments, but to our hospitals, our capital improvement funds for our school districts, and our senior centers.

I would encourage you to give a hard look at the pamphlet I provided. That is why impact analysis is so important. It gives you the answers to your questions. We ask that you vote against S.J.R. 15 of the 76th Session.

Chairwoman Bustamante Adams:
Are there any questions from the members of the Committee?

Assemblywoman Kirkpatrick:
I have a question and a comment. It is a little hard to swallow sometimes that we do not do anything to help the rest of the state, because I have a lot of constituents in my entity that want to know why it is always about gaming. Why is it not about someone else?

I came here today trying to have a fair hearing and not make it personal, so that we can have a real discussion about what we may or may not put on the ballot, and now it feels personal. It is really personal for me, because I represent about 64,900 people who do not see the same benefit that you do, but they see their gaming dollars go this way.

I am a little bit frustrated now because this is not what this meeting was intended to do. This is not how this particular Legislature has been working all session long to solve the issues. This is not about the teacher's union. This is not about one industry over another. This is about policy. This is about doing what is best for the state.

I am trying to keep my composure because I remember the days when we helped out White Pine County when they had some tough times. I remember the days when we, and I did it myself, put in some payment in lieu of tax changes so that you could use it for roads, education, and other stuff. I have always been a Nevadan. I feel that to say you are going to lose all of this and it is the southern Nevada legislators' fault is offensive. I do not take that so well. I want to understand, because I particularly asked if anything changed except for the property tax, and my legal counsel said on the record, which could be used in court, that the net proceeds tax stays the same. I did not get the white sheet from the mining association. I did not get the same paper that you got. It is personal now and it should not be. This is about policy. This is about what is best for our state. I explain to my constituents all day long, and I think I particularly asked a question, that this may present a problem that we have to look at. If it comes out of the *Nevada Constitution*, we have to go back and we have to fund the counties that we do not. I understand that. We asked that question.

I do not really have a question anymore at this point because I think it is too personal, but it is not supposed to be. You made it personal, I did not, nor did this Committee, and at some point they are owed an apology. We have been way fairer than the Senate was on the other side and I am really offended.

Jim Garza:
It was not my intent to address this and offend this Committee. White Pine County understands, and our office understands, we have a responsibility to help this state. All we ask is that we know what the numbers are, so we can address how we can help, and at the same time how we can make sure that we maintain integrity in our communities. That is what the bottom line really is here.

We know this Committee has gone above and beyond to help with this issue, and it was not my intent to make this personal. My intent is strictly to look at the economic side of this, impact analysis, how it can be alleviated and managed, and how we can participate to help. We are willing to help. We just need to know with what dollar amount we are helping. What do we need to help provide? These are unanswered questions, and it is my job to make sure that our county is able to sustain economic impacts. All we are asking for is a baseline to work with so we can help you and help the state.

I apologize to the entire Assembly if the comment I made earlier was offensive.

Chairwoman Bustamante Adams:
Thank you, Mr. Garza. We will hear from Mr. Zander next. I would also like to call up Assemblyman Hansen, who represents several of the counties that are impacted. It is only because he is our colleague I am allowing him to come up now.

Jeff Zander, Superintendent, Elko County School District:
I became superintendent three years ago. For 22 years prior to that I was the chief financial officer for the school district, so I do have an understanding of the school funding formula in the state of Nevada and how it interacts with all the other counties. Also, being from Elko for a number of years, I have seen the boom and bust of the mining industry up there, and what has taken place in our communities. Earlier Assemblyman Ellison talked about rural counties making Clark County whole. I think it is important for the Committee to understand how the *Nevada Plan* works in regard to the wealth factors and how local wealth is equalized through the *Nevada Plan*.

Within the *Nevada Plan* you have three revenue sources. You have state revenue, federal resources, and local resources. Some of those revenues are included within the formula, and some are outside of the formula. One-third of all net proceeds tax, ad valorem resources, sales tax (Local School Support Tax) are included within the formula. Those resources accounted for outside of the formula are two-thirds of net proceeds tax and two-thirds of ad valorem revenues.

There was an earlier discussion of how rural counties make Clark County whole, or vice versa, in regard to the state of Nevada, school funding, and the *Nevada Plan*. The Distributive School Account floats based upon local wealth resources coming from Clark County. The huge ad valorem rolls that Clark County has in place have sort of balanced educational funding in the state of Nevada for years. Unfortunately, with this latest recession, we have had a huge decrease in local wealth resources coming from Clark County. Prior to that recession the Elko County School District, as an example, could equate $6 to every $1 Clark County received, so Clark County was basically making the rest of the state whole 6-to-1, or at least in Elko County's case.

In Elko County, we do not receive many net proceeds taxes. We have been fortunate to have the gold mines located around Elko County, so we have the majority of support services, and the majority of the students coming to this area living in Elko County. This has provided growth for our area. For the most part, those mines are located in Eureka and Lander Counties, and as a result and due to the net proceeds tax distributions, Eureka and Lander Counties are both eligible to opt out of the *Nevada Plan*. So when we are talking about the *Nevada Plan* and the school districts in the *Nevada Plan,* we are actually talking about 15 school districts within the state. With this latest recession we have increased local resources with the rural counties, mainly Elko and Humboldt and the northeastern counties, versus Clark County with a decrease in local wealth. Now we are seeing a reversal of that 6-to-1 ratio, probably closer to a 3-to-1 ratio. So in a roundabout way the northeastern counties, in some ways, are making Clark County whole. That being said, the $70 million budget the Elko County School District maintains and the $30 million budget Humboldt County maintains in their general fund cannot make a $2.3 billion general fund budget in Clark County whole. But through the *Nevada Plan* and through the equalization of wealth, there is a mechanism going on where resources that would normally come to our county are being diverted to other counties throughout the state.

The second point I would like to make, so the Committee understands, is when local wealth is interjected into the *Nevada Plan* formula, it does not increase funding for education. Because the funding for education is deemed through the *Nevada Plan*, the *Nevada Plan* takes all the historical costs, the allocation of wealth from other funds, basic support ratios from others, and transportation costs for every school district and determines a unique per pupil allocation for each school district. Additional local wealth coming into the *Nevada Plan* does not increase funding for schools. What it does is relieve the obligation for the state to fund education.

From the standpoint of increased net proceeds tax coming into the school district funding formula, it does not truly increase funding because it is a fixed pool in regard to expenditure for those schools. You are going to see either a decrease of wealth to a larger metropolitan district or an increase in wealth to a more rural school district. Allocation of local resources to the *Nevada Plan* does not increase school funding.

Chairwoman Bustamante Adams:
Are there any questions from the members of the Committee? [There were none.] Assemblyman Hansen, could you state for the audience which counties you represent?

Assemblyman Ira Hansen, Assembly District No. 32:
My assembly district covers Washoe County (part), Humboldt County, Lander County, Pershing County, Esmeralda County, Mineral County, and a good portion of Nye County.

I will get right to it, policy and what is best for the state. This policy has been in the *Nevada Constitution* in one form or another since 1864. To give you an example of the impact we can have, let us jump to 1949. In 1949 the Nevada Legislature passed the Freeport law. The Freeport law basically did not tax inventories and it caused a minor boom for warehousing. What happened though was that in 1958 and 1960 they put that same question on the ballot and it went into the *Nevada Constitution*. Following that and the absolute certainty it created, there was an explosion in the warehousing industry in Nevada. The reason that happened had to do with the uncertainty factor. Anything the Legislature can do, it can also undo. So, even though it had promised the warehousing industry it would not tax its inventory, once that certainty was in the *Nevada Constitution*, it encouraged people to come and invest in our state.

It is the exact same principle with mining. The reason Nevada has had such a successful time with the mining industry is that same certainty factor. These people have and will invest literally billions of dollars in this state to explore and find gold, with the understanding that once they find it they will have the opportunity to reap their reward. Obviously, this is a commodity. It bounces all over the place. It is really a very risky investment. To help ensure they are willing to invest that money in our state and our economy, the protection in the *Nevada Constitution* has acted as a magnet for that capital investment in the state. Once we remove that, once we create that uncertainty factor, you are going to see a substantial decline in the amount of exploration and, ultimately, in tax revenue that comes into Nevada. Therefore, removing this from the *Nevada Constitution* will, in fact, be harmful. It will be bad policy for the state of Nevada. In the long run, it will ultimately result in a substantial decline in the amount of revenue that we receive in taxation, as well as being extremely devastating to the rural economies that especially nowadays are absolutely critically connected to the mining industry. That is the biggest part of this picture and we need to keep it in mind. This is going to create an uncertainty in investment. While Nevada does have a unique status as one of the great gold producers, 96 percent of gold is produced outside of the state of Nevada. There are other places they can go and invest. One of the reasons Nevada is so highly ranked, compared to the other 48 states where mining could potentially occur, is precisely because, in most other states, the tax and revenue policies are uncertain. Therefore, there is hesitancy on the part of an industry that cannot recoup its costs—in some cases not one nickel—for as many as 15 years after investing their money. They are not going to go where there is that kind of uncertainty. Once we remove this cap and place this ability to raise this tax situation into every two-year legislative session, we are going to drive this investment pool of billions of dollars out of our state. It will ultimately be bad policy and harmful for the State of Nevada.

That is the bigger picture. As far as all the school district stuff, I honestly do not know all the mathematics of it. I am just telling you that we are always trying to expand our economic development. California has a very poor tax and regulatory climate for business, yet you do not see those people rushing to Nevada, even though we have an excellent one by comparison. Why is that? It is because of the exact thing I am talking about. They are uncertain about how the Legislature is going to react in the future with our tax and regulatory policies.

If you were going to move your company from California and invest hundreds of millions of dollars in the process, only to discover that the Legislature here mirrors what has happened in the state you just left, what is the point in coming? So that is why this constitutional provision is so vital to maintain.

I would encourage you to think long term, to think of the impact on those rural economies, and vote no on S.J.R. 15 of the 76th Session.

Chairwoman Bustamante Adams:
Are there any questions from the members of the Committee? [There were none.] We will now transition to those who are in support of S.J.R. 15 of the 76th Session. In Las Vegas if I could have Mr. Ginsburg, Ms. Turner, Mr. Murillo, and Ms. Ocampo come to the table. Here in Carson City I would like Mr. Rocha, Mr. McCarthy, and Ms. McGill to come to the table. I am going to take Las Vegas first, because I do not want to lose the video feed.

Assemblyman Grady:
Before we proceed, I would like to make a quick comment. My colleague from Elko mentioned that I was downstairs testifying in the Assembly Committee on Natural Resources. I represent a community, Assembly District 38. We are just getting ready to open up a new mine. They have just secured a large part of the investment that is needed in that mine. This will be an underground mine and an open pit mine. We are very concerned with the passage of this bill that we could lose that mine or curtail their development for quite some time. They are, as many of my colleagues have mentioned, watching what is happening. There has been a big drop in gold prices in the last couple of weeks, and the investors inside and outside of the country are really watching what is happening here. I think we have to be extremely careful where we go.

Chairwoman Bustamante Adams:
Thank you, Assemblyman Grady. I appreciate your comments.

Marla Turner, Private Citizen, Las Vegas, Nevada:
I am here to express my support for S.J.R. 15 of the 76th Session (Exhibit J). We all know that when the mining industry's tax structure protections were written into the *Nevada Constitution*, the environment around mining and its importance to the state were very different. Its contributions and its place in the landscape of Nevada's economic well-being were huge. Those conditions made it possible for the industry to successfully argue for such protections.

Today, mining continues to play a very significant role, both economically and historically; however, the recognition that mining no longer needs such protections has been very well known to the state and its citizens for at least 25 years.

In 1987, my stepfather, Assemblyman Marvin Sedway, declared that the mining owners were not paying their fair share and he began efforts to repeal the constitutional protections. Two years later Nevadans voted overwhelmingly, by 3 to 1, in favor of S.J.R. 22 of the 64th Session, which has been commented on so many times today. That increased mining's taxes and contributions to 5 percent of its net proceeds, but as has also been stated earlier, it had the consequence of limiting the state's ability to impose any other tax on the industry. Anyone who says that the bill's sponsor, my stepfather, Assemblyman Marvin Sedway, was happy with the outcome of that does not remember our history. He voted against that measure after fiercely objecting to his original bill being co-opted and elimination of that bill's original intent.

Fast forward to today. Nevada faces unprecedented budget shortfalls and simultaneous desperate needs for revenue to address our big and costly problems. We all know what they are: deteriorating roads, education, et cetera. There are a myriad of problems and programs. We need to put our residents and our nation's hardest hit back to work. The question is, how do we do that? How do we do it in a way that causes the least distress for most?

I will not pretend that I have the answers, but surely the solution begins with creating a level playing field that does not allow exceptions for those who do not warrant it or do not need it.

I know mining owners believe that they are paying plenty. According to the Nevada Department of Taxation, transnational mining businesses made over $15 billion off of gold finds in Nevada between 2010 and 2011. That is a two-year period. They paid about $200 million in taxes to the State General Fund. That is an effective tax rate of under 2 percent. Compare that to gaming, which paid nearly $2 billion in taxes for 2012 alone.

I am sure every other business in Nevada feels the same way too, that they are paying plenty. Nevada residents also feel like they are paying plenty, when they pay their property taxes or see a slice of their paychecks go to the federal government, and yet no one but mining tries to get out of paying their fair share by basically saying I have not had to in the past and I do not want to now.

Some mining advocates will say that lifting the taxation cap could have repercussions beyond our state's borders. Mining advocates claim the repeal will actually decrease mining's contributions to the state. As we know from testimony earlier from LCB, that statement is inaccurate. The needs of the state have become dire, and the reasons to protect mining have become moot. Many of mining's owners, which the *Nevada Constitution* currently protects, are in many cases foreign-based companies getting rich off of Nevada's limited precious resources, and taking their money out of Nevada. It is time to stop that. Additionally, I believe the day will come when the proverbial well runs dry, and the mine owners will pack up and leave our state. What they are going to do is leave behind a bunch of unemployed people and holes in our land.

Nevada Governor Bob Miller said pretty much the same thing in his 1989 State of the State speech. This is what he said:

> The fact is this: mining does not pay its fair share to the state. A gold mine that would pay a million dollars in state and local taxes in Nevada pays $8 million in Colorado. And you know, that might be tolerable if the mines were taking a renewable resource from the ground. But, they are not. One day, the ore will be gone. And so will the companies. And so will that source of income.

In conclusion, I will just say that we cannot ever afford to give mining owners protections that are no longer warranted, discriminate against other businesses and industries that are not granted similar protections, and allow that same industry to take its proceeds out of Nevada. We can never afford to do that, but most especially not at a time like now when the state is facing such significant revenue challenges. Nor should we continue to allow the mining industry to control the narrative and threaten the state with pulling up stakes. That is like what teenagers do when you tell them they have to clean their rooms.

I urge you to vote in favor of S.J.R. 15 of the 76th Session, so we can start asking mining owners to pay their fair share and welcome them into the same family where every other industry in our state lives. It is time to do this now, not because it was from my stepfather, but because it is the right thing to do.

Chairwoman Bustamante Adams:
Are there any questions from the members of the Committee? [There were none.]

Michael Ginsburg, Southern Nevada Director, Progressive Leadership Alliance of Nevada:
We are in support of S.J.R. 15 of the 76th Session. It is nice to hear the industry finally take a position on S.J.R. 15 of the 76th Session, instead of claiming neutrality. It gives us an opportunity to address some of the concerns they have raised.

I just want to talk briefly. I have thrown out my talking points for the sake of brevity. I think we all have a bit of ad valorem today.

Despite what you have heard, the resolution really is not about taxes. I wish it was so that we could actually have that debate, but it is not. We have heard about the excessive burdens on the mining industry, the taxation that they struggle with, and that those taxes are about average for the nation. They are not average, at least not according to the U.S. Geological Survey, the U.S. Government Accountability Office, the U.S. Department of the Interior, and even the Cato Institute, which is a place I do not normally go to for tax policy advice.

Senate Joint Resolution 15 of the 76th Session is also not about what we fail to hear in the Economic Forum regarding mining and its taxation, which was not included on the agenda because its contributions to our revenue sources are not significant enough to even make that list. It is not about the microscopic gold that we heard about earlier, despite the fact that the microscopic gold we have in Nevada is among the highest concentrations of gold in the entire world. Barrick, for example, gets about 32 grams per ton out of their mine in the Carlin Trend. The global average for mining gold in particular is less than one gram per ton, so do not let them fool you, they are doing quite well with that microscopic gold.

I also wish S.J.R. 15 of the 76th Session addressed the environmental devastation or the cost that we incur as a result of hard rock minerals mining, but it does not. It does not talk about or address what will happen when the state's aquifers decide that they can no longer give up the more than ten million gallons of water that are required each and every day to keep the pits dry enough to mine. That ten million gallons per day is more than any U.S. city uses, except for Los Angeles, Chicago, and New York. It is not about the 200 years that it is going to take to repair those aquifers when the open pits fill with toxic stew, totaling more in volume than all of our state's water sources combined.

Lastly, S.J.R. 15 of the 76th Session is not about the fact that this body is struggling right now to find ways to adequately fund a decent education for the kids in all of our counties. Enough gold left the state in 2012 to not only fund all of our schools above the top ranked states in the nation for the next ten years, but also to provide each classroom in those schools with a chalkboard covered in gold.

Unfortunately, S.J.R. 15 of the 76th Session has become about scaring our rural neighbors, brothers, and sisters into thinking that they are going to lose their funding. I cannot help but be a little upset and offended by some of what was said today. For those who are familiar with the Progressive Leadership Alliance of Nevada, we have consistently taken positions that are very unpopular in support of our brothers and sisters in the rural counties; in particular the Lincoln, White Pine, and Nye County water grab that the Southern Nevada Water Authority has been trying to push through. We have been fighting that tooth and nail for more than a decade, and we continue to do so, so that is a particular concern for me.

One thing that S.J.R. 15 of the 76th Session is about is allowing the people of this state, giving them permission, to undo something that the mining industry put into the *Nevada Constitution*, that is limiting our Legislature in making a decision on how the industry is taxed and how much it is taxed. It removes that limitation and puts it back into the hands of our duly elected representatives. That is all it does, nothing more. Once that passes a vote of the people, and we certainly hope that it will, we will be back here to have that debate about taxes.

Chairwoman Bustamante Adams:
Are there any questions from the members of the Committee? [There were none.]

Mayra Ocampo, representing the Service Employees International Union Nevada, Local 1107; and We Are Nevada Coalition:
The We Are Nevada Coalition is an organization of over 20 public sector unions and community organizations that unanimously voted to support S.J.R. 15 of the 76th Session in order to ensure no further cuts are seen in our education and health and human services. Our essential community services are already dealing with shoestring budgets. We are asking big business to pay their fair share, including mining.

A 2013 study by the Institute on Taxation and Economic Policy titled "Who Pays?: A Distributional Analysis of the Tax Systems in All 50 States" (Fourth Edition) documents in precise distributions state income taxes, sales, excise taxes, and property taxes paid by each income bracket. This report concluded what we have always known, that our states ask more of low- and middle-income families than they do of the wealthiest. This study also finds that states praised for low taxes are often high-tax states for low- and middle-income families. In Nevada, those in the lowest income bracket pay about 10 percent of their income in either sales or property tax. It is time for big business to become fully vested in doing business in Nevada, not only in looking at the profit margins, but also in the well-being of our community as a whole.

For Nevada to continue to thrive, Nevada business needs to pay its fair share. The special privilege mining has had for over 150 years in our state needs to be put to an end, and S.J.R. 15 of the 76th Session is a step toward seeing the right thing done in our state.

Ruben R. Murillo Jr., representing Clark County Education Association; and Nevada State Education Association:
Senate Joint Resolution 15 of the 76th Session is an issue of fairness, a level playing field for all businesses in Nevada. Senate Joint Resolution 15 of the 76th Session removes exempting one industry from taxation in the *Nevada Constitution*. No industry should be allowed this special privilege. If I were any other business in Nevada, without such guarantees in the *Nevada Constitution*, I would also be upset. Critics say that it is unfair to target one industry for taxation, but is it really fair to target one industry for special protection? I am glad to hear the discussion about funding for education because, to be honest with you, the Clark County School District has taken half a billion dollars in cuts, and the whole state a billion, out of the education budget. We are drowning. We are working with less material, less pay, and such. In order to recruit the best for our profession, and also provide the tools and materials necessary to provide our students a good education, we need funding, whether it is in the rural counties or in Clark County. I too do not want our teachers' salaries tied to the price of commodities. What I want are our teachers' salaries, funding, and education to be tied to a stable tax base paid for by every constituent and every business in this state.

You, the citizen Legislature, should have the ability to set rates equally among all Nevada industries. Again, it is a matter of fairness. As a citizen Legislature, allow the citizen voter of Nevada to make that determination.

Chairwoman Bustamante Adams:
Are there any questions from the members of the Committee? [There were none.] We will now hear from Carson City.

Guy Louis Rocha, Private Citizen, Carson City, Nevada:
I was the Nevada historian and state archivist for 28 years until my retirement in February 2009. I want to characterize my presentation today as a cross between a history lesson and an op-ed on mining tax policy. Obviously I have staked a position.

I am here today to testify on why the mining industry was treated differently than other businesses regarding tax policy when the *Nevada Constitution* was adopted in 1864. The issue during the constitutional convention of adopting a uniform property tax for all business enterprises including mining—versus providing an exemption for mineral extraction—was very controversial and complex. [Continued to read from prepared testimony (Exhibit K).]

Christine McGill, representing the Human Services Network:
The Human Services Network, primarily based in Washoe County, covers over 50 Nevada health and human services providers. We would just like to remind everyone that good economic development has two sides. It is not all about industry and it is not all about schools, services, and providers. There has to be a balance. Senate Joint Resolution 15 of the 76th Session is just one more tool to open up that discussion, to achieve that balance, so we can see how much taxes are needed to make sure we have vibrant thriving communities, so that we can attract new business.

The Health and Human Services Network would just like to remind you of that, and say they are in favor of S.J.R. 15 of the 76th Session.

Joe McCarthy, Private Citizen, Silver City, Nevada:
Thank you for allowing me to comment today on the importance of having the 2013 Nevada Legislature once again pass S.J.R. 15 of the 76th Session. I am a member of the Comstock Residents Association. I am currently a resident of Silver City, Nevada, and a 35-year resident of Nevada. I was the former executive director of the Brewery Arts Center for nearly a decade and Carson City's economic development and redevelopment director for more than a decade. I have been honored to serve our great state throughout my career, and I thank you as members of this Committee for all you do in dedicated service to Nevada.

The Comstock Residents Association is a proud member of the Progressive Leadership Alliance of Nevada, and my brief remarks today are addressed to the difficult task you have in front of you, but I want to give you a little bit of a different perspective.

We believe, first of all, by once again approving S.J.R. 15 of the 76th Session and forwarding it on to the voters for their consideration, this Legislature will send a positive message of wise governance. It will be a clear, unequivocal statement that says our elected officials believe in good policy, and you believe in working very hard to create and continue to create an equitable tax system in our state.

Here is a case in point of why equitable taxation could protect us from the much used term "unintended consequences." Right now, the environmental degradation and the unraveling of community life currently happening in your Virginia City National Historic Landmark is a perfect example of why passage of S.J.R. 15 of the 76th Session is imperative. The Comstock communities and the historic landmark are currently under a threat posed by a gold mining project, and it is wreaking havoc on our land just ten miles from where we now sit. Open pit mining, such as this, seems to come to Nevada more often than not when the commodity prices bubble up. [Continued to read from prepared testimony (Exhibit L).]

Chairwoman Bustamante Adams:
Are there any questions from the members of the Committee?

Assemblyman Hickey:
Thank you for your passionate testimony, but it is a little odd to me that you speak about the national landscape or national treasure that is Virginia City, and the heritage you want to preserve. Is it not true that Virginia City would not be the national heritage that it is without the industry of mining? My question to you is about your concern, because it would seem that your real interest is in banning mining in the state. If the reasons to consider this resolution are, for instance, to help better fund education, this is almost like a tobacco issue here. Let us ban it, but then we will have no more revenue from which the taxes are derived. So, I am just wondering, are you really opposed to mining? What is it that you want the people and the representatives of the people to do in 2015? Are you hoping that we will ban mining?

Joe McCarthy:
The Comstock residents do not oppose mining. We support responsible mining, underground mining that is consistent with the history and the heritage of the area. What we have now is twenty-first-century, highly industrialized, open pit mining, which is the fastest way to tear down the mountain to access the gold. We want our public officials to work with this mining company, to not allow

open pit mining, but to allow them to do underground mining, which is consistent with the history of the area.

To the first part of your question, the Comstock has been celebrating the state of Nevada entering the Union because we were a mining state at that time. We have been celebrating that history. We have turned ourselves into that storytelling entity. In other words, we want to be consistent with the history, but we also do not want to lose our communities. Things have changed in the last 150 years.

Chairwoman Bustamante Adams:
We will transition to neutral now, as I do not want to lose the Department of Taxation before they have to leave. We had some questions regarding an assessor's role. Could Ms. Rubald come to the table.

Ms. Rubald, were you here when Assemblywoman Benitez-Thompson asked her question? I could have her repeat it if you need her to.

Terry Rubald, Chief, Local Government Services, Department of Taxation:
Yes, I was here, but I would like her to repeat it so I can answer more specifically for you.

Assemblywoman Benitez-Thompson:
I am just trying to get an idea of the time frame. I do not want to say establish the process, because I do not want it to be left on legislative record that there is an entirely new process that needs to be created within NRS Chapter 361 for the tax assessment of real property, but to change what we have in place in NRS Chapter 361. What would the time frame be in order to make any changes necessary in order to get a valid tax bill into mine owners' hands?

Terry Rubald:
It is my understanding that the net proceeds tax chapter, NRS Chapter 362, will stand with the exception of the portion that refers to the exemption of patented mining claims.

To flesh out the record, there are two kinds of mining claims. There are patented mining claims and unpatented mining claims. In the history of our country, the federal government owned all of the land. When they opened up the west to homesteading, there were homestead patents. Similarly, there were mining patents to encourage the mining of the west. The patent meant that ownership passed from the federal government to the mine. Unpatented mining claims means that they are in the process, there is a claim, so that the miner can proceed to discover the extent of the resource and have some exclusivity there.

Currently in our statutes, as I said, the patented mining claims are eligible for an exemption if they can show that they have done $100 worth of labor directed toward mining on each claim. Sometimes patented mining claims are no longer under the ownership of the mine; they pass to the regular public, and are treated just like any other land. Sometimes a rancher will buy the patented mining claim and it will be used as agricultural property. It could be residential property, or it could be industrial property. The unpatented mining claims enjoy a complete exemption from taxation.

If S.J.R. 15 of the 76th Session were to pass, as I understand it, it removes the exemption portion of NRS Chapter 362, so patented mining claims would then have to be valued like other land in the state, and under NRS 361.227 land is valued according to fair market value. Generally speaking, the value of most land is established by comparable sales. That is pretty easy to do in communities where a lot of homes, residences, and retail businesses are on the market. You can establish what a comparable sale might generate. You can establish the value of that kind of land. For mining, there is not very much in the way of comparable sales. There could be some, and if that occurs I suppose there could be some sort of sales comparison approach. The trouble with those kinds of sales is they are dependent on how well the mineral underneath is defined, how much resource there is, and whether it is a proven or probable resource. So the comparable sales methodology might not be the best, although it is what is available. *Nevada Revised Statutes* 361.227 also has alternative methods for establishing value, one of which, and I think it was mentioned earlier today, is what we call the income approach. We could actually use the books and records of the business to figure out what the value would be. There is that methodology.

There are some other methodologies in the statutes already, and of course we have many, many regulations that flesh out those traditional methodologies that are used to establish the value of land. It may be that, because this is a special purpose type of property, when it is actually used for the purpose of a mine, those additional statutes or regulations might be necessary.

For instance, golf course land has a special use. We have special regulations that were adopted by the Nevada Tax Commission that laid out a specific methodology for how to value golf courses. Similarly, we have statutes and regulations that tell us how to value agricultural land. We have models and examples in the law already that tell us how to value particular kinds of special purpose land. That is a potential way to go.

If S.J.R. 15 of the 76th Session passes in November 2014, unless something is done now, we would not have any special purpose legislation on the books. We would revert to what is currently on the books, which are the traditional methodologies for establishing the value of land.

Assemblywoman Benitez-Thompson:
I am trying to clarify if we are completely reinventing the wheel and we have to establish a whole new section of NRS, or if we indeed have a framework that allows for an evaluation and methodology process, and we have a good starting place. That at least helps me in thinking about these time frames. As things play out, are we looking at starting at square one or are we 70 percent there, with just some additional tweaks needed in NRS? That is what I am trying to find out. It sounds as if it is mostly the latter. Some tweaks might be needed, but we do certainly not have to start from scratch with a methodology process and a way to go about doing this.

Terry Rubald:
Absolutely. We already have quite an established body of statutes and regulations that guide us in the evaluation of land.

Assemblywoman Neal:
This is interesting to me. You said there would be a void, so basically we would be back to figuring out the fair market value of the land because there would be no special use provision out there, no special designation.

What would you be valuing specifically? Are you valuing the mine? How would you know the value of the thing that is in the earth, without it being extracted? We are back in terms of speculation there.

Terry Rubald:
Absolutely. That is the difficult part of this: the value of the land.

Let me put in an aside here. The Department of Taxation already values all of the improvements according to replacement cost new less the statutory depreciation and all applicable obsolescence, so I do not think improvements are on the table here.

With regard to land, the point would be—and I think there are a couple of bills out there that are trying to propose the transition methodology—that the land would have to be valued without reference to the underlying mineral, because it is difficult to establish how much mineral there is to value. That is the problem: is it a probable, a proven, or a possible reserve?

Assemblywoman Neal:
I have been trying to read the history and understand all of the conversations that have happened. The fact that we are actually having some of the same conversations they had 50 years ago leaves me trying to understand where we go from here. There are two things that sparked my interest when you said "comparable sales." The first question I have is, comparable sales to what? To the change of the characterization of the property itself, when it morphs into something else, or the actual ore? You also mentioned that there are several different alternative methods where you could then deal with how this should be taxed, and you stated income as a method. That brought me back to the 1987 minutes, when they discussed S.J.R. 22 of the 64th Session. What was interesting in the minutes was that they talked about how 5 percent of the mine's net proceeds was a type of income tax. It struck me as something to highlight and think about, because I wanted to know what they meant. I found this funny, because they were actually explaining this amendment to my dad. He asked the question about how something was being treated.

Talk to me about the context in 1987 of this being treated as a type of income tax and if that is still a viable conversation. Then you can go back to the comparable sales question.

Terry Rubald:
The NPOM tax has often been compared to an income tax, because you start out with total income, or gross yield. You allow certain deductions, and you come up with a net against which the tax is applied. That is why it is like an income tax.

What we were talking about in the sales comparison approach was the valuation of the land, which is not net proceeds. The net proceeds is the value of the mineral. The land has been exempt under current law because it was felt the net proceeds of minerals tax basically took care of all of that, although for a patented mining claim you do have to make an application for the exemption.

If the land becomes taxable because the exemption is removed, then there are methodologies for establishing the value of the land. I think that was what some of the previous debate was about, whether you treat the value of the land as if it had an established mineral in it or just plain basic use, like any other kind of use in the state.

I am trying to demonstrate to you that there are methodologies already in the law that can account for value. There may need to be some tweaking to determine whether you are going to value that land as if it had the mineral resource under it or not.

Assemblywoman Neal:
That is completely different from my understanding of the whole concept that we are dealing with. I had asked you what the economic drivers were that drove the prepenalty tax that we imposed and then the weaning off. I really want to know the weaning off drivers.

Terry Rubald:
There actually have been several times throughout the history of the net proceeds tax where quarterly, three times a year, or biannual payments have been required of the industry. Sometimes advance payments have been required, and sometimes just as they are going along. It has been back and forth over the decades.

In 2001 it was decided that the prepayment system that had been in existence for a few years was causing some distress, because the mining industry would overpay causing a credit that would require a refund. It was causing distress to the local governments because sometimes the Department would come along and say the miner had overpaid and the local government needed to make a refund right then, especially to avoid interest. It might be late in the budget year, and they would have to scramble to find the money to pay the refund. It was decided at the time that it would be best to have an annual payment, after the production year was over, and the following April. The Department certifies the value to be taxed and the tax payments were made in May. We still have some portion of that left today, except we also have the prepayment system.

In 2008 we had a new law, Senate Bill No. 2 of the 25th Special Session, which required prepayment. That occurs on March 1 of each year. On March 1, 2013, the mines were paying for production that may not have occurred yet in 2013, just their best estimate. We still have the true-up system. They can pay quarterly if they find that they are having a banner year and they need to continue to make payments to avoid any penalties. We also have a true-up period that just finished up a couple days ago, where we figured out what the value of the minerals were, we applied the prepayments, and if there was anything left to be taxed, those bills have gone out and the mines will be expected to pay by May 10.

Assemblyman Stewart:
Would you agree that assessing the value of the mine would be a very volatile thing from period to period, based on the fact that the price of the mineral goes up and down, and the fact that the mineral would play out. It would not be a very consistent source of revenue based on that volatility. Is that an accurate statement?

Terry Rubald:
Yes, the NPOM tax has been known to be a volatile tax, because the price that mines receive for their product is often based on commodities markets and supply and demand around the world. Those commodity prices are often dependent on things beyond the borders of Nevada.

Assemblyman Stewart:
If you assess an agricultural field, it is fairly consistent. If you assess a factory, it is usually fairly consistent. With mining, you assess that real property based on what it has produced, then that production value goes up and down based on the stock market. One five-year period it might be worth $10 million and the next five-year period, if the mineral runs out, it is practically worthless. Is that accurate? It is a different system than normal. Is that correct?

Terry Rubald:
Let me put it this way, the net proceeds portion, the mineral valuation, is very volatile. The value of the improvements of the mine is relatively stable, because we value it according to NRS, based on replacement cost new less depreciation. So that portion is fairly stable. I think the valuation of the land would be more stable than a net proceeds volatility, because there is an actual use going on. Because we are based on the fair market value of the land, other kinds of property experience ups and downs in their economy, and the mines would also. I am not sure that the land value and the improvement value of the real property would be as volatile as the price for the mineral.

Chairwoman Bustamante Adams:
Senator Roberson, are you in neutral?

Senator Michael Roberson, Clark County Senatorial District No. 20:
I am here to explain some of the issues that have been raised by Ms. Rubald. I just noticed this on the television from my office. I think it is very important for me to mention a couple things, so there is no confusion with regard to what Ms. Rubald has mentioned as far as the taxation of patented and unpatented mining claims upon passage of S.J.R. 15 of the 76th Session. Could you give me one minute to give you some clarifying information about what we are doing in the Senate on this issue?

Chairwoman Bustamante Adams:
I will have you come under public comment.

Senator Roberson:
Madam Chairwoman, I think this is really important that we discuss this while you have Ms. Rubald here.

Chairwoman Bustamante Adams:
I do not think I have anybody else in neutral.

Senator Roberson:
For the record, I am not neutral.

Chairwoman Bustamante Adams:
Is there anyone in Las Vegas in neutral? [There was no one.] Is there anyone in Elko in neutral? [There was no one.] We will now take public comment from Senator Roberson. I would also like Ms. Bennett to come back to the table.

Senator Roberson:
I heard part of the discussion and Ms. Rubald and your attorneys with LCB are correct that nothing will change with regard to S.J.R. 15 of the 76th Session other than the ad valorem taxation of patented and unpatented mining claims. Many of us do not want to see the taxation of mining claims change with the passage of S.J.R. 15 of the 76th Session. We have put in many hours working with LCB staff, Ms. Rubald, Carole Vilardo, and mining exploration companies that had an interest in this. We drafted Senate Bill 401, which was heard in the Senate Committee on Revenue and Economic Development earlier this session. It is my understanding that the majority party in the Senate is going to take what is in S.B. 401 and put it in Senate Bill 400, which is still currently in Senate Revenue and Economic Development. Very simply, it does two things. It provides by statute that there will not be ad valorem taxation on unpatented mining claims, so the status quo is kept on unpatented mining claims. On patented mining claims, where you actually have land to deal with, we make it clear in statute that the valuation of those patented mining claims will not include what may or may not be underneath the surface of the ground. The point is to keep the status quo on mining claims.

The point of S.J.R. 15 of the 76th Session is not to make it more difficult for mom and pop companies who are out there exploring to try to discover whether there are minerals underneath the ground, and to be taxed before they actually take that mineral out from beneath the ground, if it is there.

So again, we can and are fixing this by statute. You should address it. You should study it yourself in this Committee, but I do not want anyone to get hung up on what I think is a red herring, which we are going to address this session statutorily. Regarding the larger policy of S.J.R. 15 of the 76th Session, I think you all know where I stand. I support it, and you are all smart enough to discern the truth from what you have heard today, to rely on your counsel, Mr. Powers and Ms. Erdoes, and not the testimony of some who have incentive to deceive you.

Chairwoman Bustamante Adams:
Thank you for your public comment. Ms. Bennett, we are ready for your public comment.

Dana R. Bennett, Ph.D., Owner, Bennett Historical Research Services, Phoenix, Arizona:
I thought I should get up and explain why I am bouncing up and down today. I am a Nevada historian who specializes in legislative history. I do not have a position on this bill. I know some of you are familiar with me from my previous life as a lobbyist, so I wanted to specify that.

I was asked to provide some context about the legislative history of the development of the current language in the *Nevada Constitution* dealing with the net proceeds of mines, and you have heard a lot of that already. You have a paper I put together (Exhibit M) that looks at how that was developed.

From 1981 it really originates with the tax shift from property to sales tax, through the approval by the voters on May 2, 1989, to place that in the *Nevada Constitution*. I know you are very pressed for time. I had planned to hit all of the highlights, and I will respond to your direction. If you would like me to do that, I will. If you would like me to make myself available to answer any questions you might have after you review the paper, I can do that as well.

Chairwoman Bustamante Adams:
I will do that. I will submit it for public record and allow the Committee members to contact you directly. Is there anyone in Las Vegas who would like to speak in the neutral position? I do not want you to go into full testimony on opposition or support, but if you would like to make a statement.

Angie Sullivan, Private Citizen, Las Vegas, Nevada:
I wanted to just comment on a couple of things. First of all, I wanted to comment on the Mining Oversight and Accountability Commission meetings, which I believe are under the direction of Governor Sandoval. I have attended several of those meetings. I am concerned about several things I have heard in the meetings about inspection and auditing. I am concerned that we most likely are not getting full and accurate information.

In the last meeting I was at, the people who are responsible for many of the oversight tasks did not even attend to report or answer questions. I am very concerned that we are not even getting a complete report of what is being done in mining. I am concerned that there is not a full report and that there is no transparency or accuracy.

I am not going to say Nevada mining is dishonest, but I am not sure why they present only their side of the case. There is no one there to force that issue, to look over and make sure everything is fair.

My second comment was about growing up in rural Nevada. I know there is probably a lot of concern within the rural communities, but if the truth were told, people who live in rural towns—like I have all my life except when I moved to Las Vegas to teach school—like Winnemucca, McDermott, Lovelock, Elko, and even Austin do depend on the boom and bust cycle of mining. That does not mean that mining should not be held responsible when there is a boom. I understand there is a bust cycle. I have seen the bust. I know the bankruptcy. I know how they leave Nevada. I know what happens when everyone in town loses their job overnight. I understand and I am going to be a voice for people who might be too scared for their jobs to speak out.

There is exploitation that happens. It is well known that you need to be quiet and you need to put up with it, because that is the only game in town and you are not allowed to be vocal about the problems in the work place, dangerous conditions, or how you are treated. You are not necessarily allowed to unionize. There is always the threat that they will leave and go somewhere else. Besides the cap that gives this industry an advantage, and besides their taking a commodity that cannot be restored, they have also exploited the people of Nevada long enough. Someone needs to make them accountable. They need to report what they are taking and how much money they are earning. They need to be fair to their labor here, whatever we have to do to make that happen. I would appreciate any and all corrections for the people of Nevada, in the entire state, north and south alike. It is just not fair what is going on, on many levels, financial and otherwise.

Chairwoman Bustamante Adams:
Mr. Dahl, you will be our last testifier before I adjourn the meeting. For the others seated at the table I will have to take your written testimony, as our Committee members have other hearings to attend. I will take written testimony from anyone—to include it as part of the public record—up until 5 p.m. tomorrow.

Demar Dahl, Chair, Board of Commissioners, Elko County:
I will just take a minute of your time. I have a point I think is important and needs to be expressed. I was just sitting here trying to figure out how to express this. I think there have been a lot of good arguments made already today.

In Elko County, just recently, a big mine bought a little mine and paid $2.3 billion for it. Let us say you were all members of the board of that mine and you hired me as the president and I came to you and proposed we buy this property. It is going to cost $2.3 billion. It is going to take approximately seven years before we will have any return on it. We can control what it is going to take to develop it, which is going to be approximately another billion dollars. We can control our production costs, as we have a pretty good idea how to do that. We can control the costs of the engineering, permitting, so on and so forth. What we cannot control is what we are going to get out of it. A few months ago the price of gold was around $1,800 per ounce. It was under $300 per ounce 11 or 12 years ago. So, in seven years, no one can tell you what it is going to bring, but we do have a pretty good idea of our costs. We will pay a lot of taxes, but we have a pretty good idea of what those taxes are going to be, because the *Nevada Constitution* requires or limits the Legislature in what they can do about raising those taxes. This is a big gamble. The only thing that we are really not sure of at this point is what we are going to receive in the way of revenue.

Then one of you says to me that the Legislature is considering changing that provision in the *Nevada Constitution*, so that at some point in the next few years they are going to be able to determine what the taxes are going to be. We do not know what they are going to be, so now there are two things that we do not know. We do not know what we are going to be able to get for what we sell, and we do not know what our taxes are going to be.

So one of you might say to me, do we not have some property in South Africa? Do you not think that we need to look somewhere else to develop what we are talking about developing in a mine? We may be killing the goose that lays the golden egg for us, and that goose would not be available.

Chairwoman Bustamante Adams:
Thank you Mr. Dahl for making the trip from Elko. As I need to close the hearing I will take written testimony from the gentlemen seated at the table.

Please state your name for the record, and if you are in opposition or support under public comment.

Graham Hollister, Jr., Private Citizen, Genoa, Nevada:
I am in support of S.J.R. 15 of the 76th Session (Exhibit N).

Vince Agamenone, Private Citizen, Lyon County:
I am from Lyon County and I am also in support of S.J.R. 15 of the 76th Session (Exhibit O).

Chairwoman Bustamante Adams:
Thank you everyone. [(Exhibit P), (Exhibit Q), (Exhibit R), (Exhibit S), (Exhibit T), (Exhibit U), (Exhibit V), (Exhibit W), (Exhibit X), (Exhibit Y), (Exhibit Z), (Exhibit AA), (Exhibit BB), (Exhibit CC), (Exhibit DD), (Exhibit EE), (Exhibit FF), (Exhibit GG), (Exhibit HH), (Exhibit II), and (Exhibit JJ) were presented but not discussed and are included as exhibits for the meeting.] I will close the hearing on S.J.R. 15 of the 76th Session. The meeting is adjourned [at 4:18 p.m.].

RESPECTFULLY SUBMITTED:

____
Gina Hall
Committee Secretary

APPROVED BY:

____
Assemblywoman Irene Bustamante Adams
Chairwoman

DATE: ______________________________

EXHIBITS

Committee Name: Committee on Taxation

Date: May 2, 2013 **Time of Meeting: 1:06 p.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.J.R. 15*	C	Kevin Powers	Legislative Counsel Bureau Legal Opinion
S.J.R. 15*	D	James Wadhams	PowerPoint Presentation
S.J.R. 15*	E	James Wadhams	Testimony
S.J.R. 15*	F	Michael J. Brown	Testimony
S.J.R. 15*	G	Michael J. Brown	Photos – No Gold Veins, Nuggets or Bars
S.J.R. 15*	H	Richard Perry	City of Elko Letter of Opposition
S.J.R. 15*	I	Jim Garza	Great Basin Regional Development Authority Letter of Opposition
S.J.R. 15*	J	Marla Turner	Testimony in Support
S.J.R. 15*	K	Guy Rocha	Testimony in Support
S.J.R. 15*	L	Joe McCarthy	Testimony in Support
S.J.R. 15*	M	Dana R. Bennett, Ph.D.	Amending the Nevada Constitution, Taxation of the Net Proceeds of Mines, 1981 – 1989
S.J.R. 15*	N	Graham Hollister, Jr.	Testimony in support
S.J.R. 15*	O	Vince Agamenone	Email in Support
S.J.R. 15*	P	Human Services Network	Letter of Support
S.J.R. 15*	Q	Matt McCarty	Testimony in Opposition
S.J.R. 15*	R	Nevada Republican Central Committee	Resolution
S.J.R. 15*	S	Women's Mining Coalition	Email in Opposition
S.J.R. 15*	T	Wells Family Resource & Cultural Center	Letter of Opposition
S.J.R. 15*	U	Richard Tellier	Letter of Support
S.J.R. 15*	V	Chris Bayer	Letter of Support
S.J.R. 15*	W	Emails in Opposition	Emails in Opposition

S.J.R. 15*	X	Emails in Opposition	Emails in Opposition
S.J.R. 15*	Y	Marigold Mining Company	Email in Support
S.J.R. 15*	Z	Dan Rockwell	Letter of Opposition
S.J.R. 15*	AA	Lander County Economic Development Authority	Letter of Opposition
S.J.R. 15*	BB	Desert Pacific Exploration, Inc.	Comments Submitted
S.J.R. 15*	CC	Battle Mountain General Hospital – Lander County	Letter
S.J.R. 15*	DD	Charleston Neighborhood Preservation	Letter of Opposition
S.J.R. 15*	EE	Northeastern Nevada Regional Development Authority	Letter of Opposition
S.J.R. 15*	FF	Elko County Board of Commissioners	Letter of Opposition
S.J.R. 15*	GG	White Pine County School District	Letter regarding suggested amendment
S.J.R. 15*	HH	Behre Dolbear Group, Inc.	2013 Ranking of Countries for Mining Investment: "Where Not to Invest"
S.J.R. 15*	II	Elaine Barkdull-Spencer	Letter of Opposition
S.J.R. 15*	JJ	Comstock Mining	Letter of Opposition