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**Response to Summary of Comments on the proposed DMRE regulations
of the Nevada Division of Minerals of the Commission on Mineral Resources**

Introduction and Overview

Assembly Bill No. 52 passed during the 2017 Nevada legislation session, directing the Division of Minerals (NDOM, the Division) of the Commission on Mineral Resources (CMR) to regulate boreholes and wells drilled for the purpose of Dissolved Mineral Resource Exploration (DMRE).

A team was created that included representatives from NDOM, Division of Water Resources (DWR) and Division of Environmental Protection (NDEP) to develop the new regulations. The team met approximately weekly during the development of the regulations beginning in July, 2017.

NDOM developed the initial draft regulation and presented it to interested stakeholders on August 23, 2017. Stakeholders included individuals that had provided direct comment regarding AB 52 during the legislative session. An additional meeting was conducted with stakeholders to discuss the changes made to the draft regulation on September 8th, 2017. The regulation development team considered all comments on the proposed regulation that were submitted at these meetings and then filed the revised draft regulation with the Legislative Counsel for their administrative review process, as set forth in NRS 233B, on September 27, 2017.

As provided in NRS 233B and for all agency proposed regulations, the Legislative Counsel Bureau (LCB) completed their review and approved the revised text of the proposed regulation and returned it to NDOM on November 29, 2017.

On December 5, 2017, as provided in NRS § 233B.0603, NDOM issued the Notice of Public Workshop to receive public comment. The Notice was sent to all interested persons on the agency established mailing list and was posted on the NDOM internet web page. The Notice was also sent to each county library, the State Library and Archives, the Legislative Building, and each facility where the workshops would take place. The time and place for the workshop was set forth in the Notice for December 21st, 2017 in Carson City, NV. At the workshop, full opportunity was provided all wishing to comment or submit written comments on the proposed rule. The date for submitting written comments was extended to December 31, 2017.

The proposed regulation was then amended as a result of comments received at the public workshop by the regulation development team. A revised text was then re-submitted to the Legislative Counsel Bureau on January 8, 2018. A second LCB draft (R109-17) was released on March 9, 2018. The adoption hearing scheduled for April 27, 2018 was posted on March 20, with written comments accepted through April 20, 2018. No written comments were received by the Division before the deadline, however, two sets of comments were received via email one business day later and were incorporated in this document.

The following sections include the agency response to a summary of all comments received:

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Response to Comments on Public Involvement

Comment: Did the Division post the workshop with 15-day notice?

Response: Yes, the December 21st public workshop was posted on December 5, 2017, which meets the legal requirements outlined in NRS § 233B.0603.

Comment: An additional 30 days is needed to comment on the proposed regulations.

Response: The Division accepted written comments after the workshop through December 31, 2017. There was also another opportunity to comment before the adoption hearing was scheduled. Subsequent to this comment and preceding response, a second LCB draft (R109-17) was released on March 9, 2018. Additional written comments were accepted through April 20th, 2018, providing for an additional 30 days of comment period.

Comment: These regulations are not necessary; DMRE is covered under DWR regulations.

Response: The regulations are necessary as the Legislature passed AB 52 during the 2017 session and mandated that regulations be developed. The need for this legislation stemmed from the need to create a system by which mining claim holders without a water right could explore for locatable minerals that may exist on their claims.

Comment: There should be more opportunity for meaningful public involvement, Section 25.2 should be revised. Public should be allowed to comment on a permit before it is issued.

Comment: Section 27, subsection 5: Applications for permits to drill dissolved mineral resource exploration wells should not be posted on the Division of Mineral's internet web site. There is no required public notice or comment period that necessitates publishing applications on the Internet. Section 37 already provides for a public hearing if the Administrator deems it necessary, and includes notification procedures in advance of such a hearing.

Comment: What is the timeframe for posting of materials? "As soon as practicable" language should be re-inserted into regulations concerning posting approved permits to website. All postings should have time limits for posting such as "2 days before approval and no later than 3 days after approval."

Response: The posting of permits for all DMRE wells is required by statute to be "within 5 days of approval". Exploration boreholes and wells are limited and temporary activities with de-minimis impact on adjacent properties. Borehole approvals and well permits for dissolved minerals are temporary and do not create permanent water rights or long-term permits. AB 52 does not require a permitting process to have a "protest" or "appeal" period before a permit for an exploration well can be issued or a notice of

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intent for a borehole can be approved. Following comments received during stakeholder meetings requesting a more transparent process, the regulation development team agreed during the drafting of the regulations to post all documents on the Division web site related to this program, but without requiring a specified number of days. The proposed regulations commit the Division of Minerals to posting all notices, applications, permits, driller's reports, plugging reports and quarterly reports of pumped volumes on the Division web site. The web site was operating as of January 1, 2018 and these documents are being scanned and posted. Posting of documents related to this regulatory program are done manually by scanning documents and updating web data. This will be done as quickly as staffing allows. The draft regulations that were originally submitted to the LCB did include the term "as soon as practicable." The term "as soon as practicable" was removed during legal review by the LCB. As such, NDOM will not attempt to re-insert that language.

Comment: Interested parties should be allowed to be involved in any hearings, an email list and notification to such parties should be established by the Division.

Response: Section 17 of the statute states that a hearing can be called by either the State Engineer or Administrator of NDOM if either deem necessary to gather evidence or information. To provide notice of any hearing, language has been added to the new draft in Section 37, number 5, which requires the Division to post notice of the hearing on the web site and send an email notice to any person who requested such notification.

Response to Comments on Permitting Concerns

Comment: Dual permitting scenarios are still unclear, are there cases where one would be required to permit in both DWR and NDOM? Example: If the intent is to drill a borehole that may be completed as a well with water rights, should it be permitted as a well through DWR or as DMRE borehole?

Comment: It should be made clear that if an operator has a water right they should not fall under these regulations.

Response: Yes, there may be instances where permitting is required from both NDOM and NDWR. The new statute allows for up to 5 acre-feet of pumping for sampling and testing per project, above which a water right from the NDWR is required before exceeding the 5 acre-feet limit. In order to convert a DMRE borehole to a well it must first be permitted as a DMRE well under NDOM. Existing wells authorized to operate by mining, milling or other waivers, or production wells for which water rights have been established by NDWR prior to January 1, 2018, are exempt from the regulations in this chapter. Clarifying language was added in Section 20 to address these concerns.

Comment: Section 20, subsection 2(a): This paragraph excludes existing wells that are already "...authorized to operate by a mining, milling, or other waiver issued by the Division of Water Resources of the State Department of Natural Resources." This places existing dissolved mineral

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resource exploration wells in a no-man's land of regulation, where neither the Division of Minerals nor the Division of Water Resources will allow extraction of brine for dissolved mineral resource exploration.

Response: In the example provided with the comment above, two wells were drilled as authorized by MM waivers issued by NDWR. The one-year MM waivers were not renewed by NDWR, but the two wells received one-year observation well waivers. Under the MM waivers, the operator had the ability to pump test up to 5 acre-feet per project for testing. If additional pump testing is required by the owner beyond 5 acre-feet, a water right needs to be acquired.

Comment: Point of diversion regulations puts restrictions on ability to move proposed well.

Response: The term "point of diversion" is not defined or used in the DMRE statute or proposed regulations. Moving the location of a permitted DMRE well is possible, if the well has not been drilled, by submitting a revised application.

Comment: Permit extensions as written, do not require a specified reason. Extensions should only be granted in the case of specific reason.

Response: In response to this comment, language "for good cause" was added to the regulations in Sec. 29, (1) and a permit extension reason is now required.

Comment: The NDOM language regarding the boreholes to wells conversion was dropped in the LCB version, it should be added back and include clarification that a well permit shall be denied if borehole doesn't meet the well specifications, and be plugged in a manner prescribed by this chapter.

Response: In the regulations, conversion of an approved DMRE borehole to a DMRE well would be subject to the same requirements as any proposed DMRE well. By statute, approved DMRE boreholes must be drilled by a licensed Nevada water well driller. If an operator who drilled an approved DMRE borehole wanted to complete the borehole as a well, the application process for a DMRE well in Section 27 of the regulations is required. If the well permit application was denied, the operator would have to plug the borehole per the regulations in Section 25.

Comment: Section 25, Borehole Plugging: Converting a dissolved mineral resource borehole to an instrumentation borehole upon plugging as defined in NAC 534.144 should be allowed.

Response: As per regulations proposed here, boreholes are not allowed to remain open after 60 days of drilling, unless they are permitted as DMRE wells. If an entity wants to install instrumentation for continuous monitoring, the borehole should be permitted and completed as a DMRE well.

Comment: Section 27, subsection 2: The application fee of \$1,000 for a dissolved mineral resource well permit is excessive when compared to the analogous fees charged by the Division of Water Resources.

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Response: The fee amount was calculated to be sufficient to cover the cost of the time and resources needed to conduct the application and well design review, as well as the field inspections during drilling and after plugging.

Response to Comments on DMRE Boreholes

Comment: Boreholes have never been regulated before. These regulations represent a change in ongoing and new operations, especially when you have a water right. There is concern that all boreholes will eventually be regulated following the introduction of these regulations.

Response: The drilling and plugging of exploration boreholes has been regulated under the regulations for Water Well and Related Drilling (NAC 534) of the Division of Water Resources. The borehole definition in Chapter 534 of the NAC is intended for sampling of solids and specifically prohibits the diversion of water for any purpose. This was, in part, the reason for A.B. 52 defining a “dissolved mineral resource exploration borehole” in statute. This creates a distinctly different type of borehole for dissolved mineral exploration projects only, which allows the operator or claimant to sample water from the borehole via pumping. This sampling is necessary for dissolved mineral resources exploration. These new regulations now allow claim holders to explore for dissolved mineral resources without obtaining a water right. These regulations are meant to create a legal opportunity for the exploration of dissolved mineral resources, not to extend authority into hard-rock exploration borehole drilling. These regulations are also intended for environmental and safety concerns that are specific to drilling in areas of potential conflict with fluid minerals, high temperature gradients, or where fresh water and brine aquifers could be commingled without proper casing design and construction.

Comment: Sections 23, 25 and 35 should include NDOM enforcement abilities for boreholes. (*note: section numbers have changed since comment was originally submitted.*)

Response: Section 36 of the proposed regulations addresses enforcement and penalties for “willful violation of any part of this chapter.”

Response to Comments on 5 Acre-foot Limits

Comment: Regulations don’t specify that a well must be permitted with DWR or plugged “before” exceeding the 5-acre foot allotment of water, as reads must be permitted “under” DWR, with no constraint on when.

Response: The comment was acknowledged and clarifying language was added to Section 34, (1)(e) of the proposed regulations that an operator must obtain a water right in compliance with the appropriation requirements of chapters 533 and 534 before water is pumped from a DMRE well in excess of 5 acre-feet for the exploration project.

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Comment: Reference to 5-acre use doesn't address consumptive/non-consumptive water use.

Response: Consumptive vs non-consumptive water use pertains to a water right, governed by the NDWR. The statute states that *"the appropriation procedures of Chapters 533 and 534 do not apply to the reasonable loss of water of not more than 5 ace-feet for testing and sampling of water pumped within a dissolved mineral resource exploration project"*. The 5-acre foot limit is measured at the well head by meter, as is described in Section 34.

Response to Comments on Other Topics

Comment: The new regulations should operate prospectively.

Response: The comment was noted and clarifying language was added to Section 20. The Division of Minerals began regulating under the statute on January 1, 2018. The new regulations apply to all dissolved mineral resource exploration boreholes and wells approved or permitted after this date, and as such do operate prospectively. Since January 1, 2018, several DMRE wells have been permitted under NDOM.

Comment: Project is not clearly defined in these regulations, as it reads you can have multiple wells on a single project, and multiple projects on adjacent claims. Section 14 definition of a DMRE Project should be removed or re-written.

Response: The definition of a dissolved mineral exploration project is described in Section 18.3 of the Statute. On Federal land it includes those mining claims identified within a notice or approved plan of operations issued by the BLM or other Federal agency. The statute lists the relevant Federal regulations in 43 CFR 3809.300-434. Multiple notices or plan-level projects can't be aggregated on adjacent claims owned or controlled by the same entity.

Comment: Grammatical and minor language, numbering or formatting changes should be included to make regulations as clear and concise as possible.

Response: Several written comments were submitted at the workshop with suggested clarifying language changes in Sections 17, 20.3(b), 22.1(a), and 25.1(e,f), which were adopted in the new draft. Other changes included such edits as removed the word "water" from "water wells" to include all permitted wells in the required setbacks in Sections 24 and 28.

Comment: Regulations require the installation of a flow meter on permitted wells, but does not specify the need to measure said well.

Response: Current draft has incorporated these edits as appropriate. Language was edited in Section 34 concerning the installation of the flow meter and reporting requirements. However, the word

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“measure” was not included in suggested section, as full reading of section implies the measurement of the well via the reporting requirements.

Comment: Can funds for a permit application be transferred electronically?

Response: The Division does not currently have the ability to accept electronic transfers without individual transaction approval through the State Treasurers office. The Division can only accept checks in person or through the mail at this time.

Comment: How will NDOM determine the amount of the bond on private land?

Response: NDOM will calculate bonding for wells permitted on private land by using the Nevada Standardized Reclamation Cost Estimator (SRCE) as a reference tool in determining the proper amount necessary to properly plug the proposed well.

Comment: Section 20, subsection 1: The text should indicate that the chapter applies to both dissolved mineral resource exploration boreholes and dissolved mineral resource exploration wells. As written, it states that the chapter applies to dissolved mineral resource exploration boreholes, but the exceptions in subsection 2 are all related to dissolved mineral resource exploration wells.

Response: We agree with comment and will propose language addition adding the words “or well” in Section 20, subsection 1.

Comment: Section 25, subsection 4(b)(1): The word “or” appears to be missing from this paragraph. The intent appears to be that the procedures in paragraphs 1, 2, or 3 would be considered acceptable methods for plugging.

Response: LCB has reviewed the language as included in the proposed regulations and deemed that the grammatical styling is appropriate.

Comment: In as much as the use of a “tremie pipe” is set forth in the regulations [Section 24, Part 4 (i) (1) and Section 26, Part 1] we suggest the inclusion of a definition of such for the sake of clarity;

Response: The use of the word “tremie pipe” is taken from existing language in NAC 534, and is a term familiar to water well drillers.

Comment: The draft regulations set forth in Section 24 Part 9 and Section 35 Part 8 the requirement that “the owner and lessor of the land on which a dissolved mineral resource exploration borehole is located, the operator and the well driller are jointly and severally responsible for plugging a dissolved mineral resource exploration borehole.” While there is a need to properly and effectively plug and abandon all exploration boreholes in a timely manner, placing a portion of the responsibility for plugging on the land owner may not provide the level of performance that would otherwise be afforded by reserving this

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responsibility to the project operator[s] and the well driller. Accordingly, we recommend that references to the “owner and lessor” be struck from these two sections of the draft regulations;

Response: This provision was set in place to address borehole and well drilling conducted on private and public land, and affords the regulator maximum opportunity to get the well plugged before having to use the bond.

Comment: We note a potential conflict regarding surface casing. In Section 25 Part 3 the draft regulations state that “Any pipe or tubing used for ground control or sampling must be removed by the well driller before plugging a dissolved mineral resource exploration borehole.” Section 35 Part 4 states “All casing strings must be cut off below ground level and casing stub must be permanently capped.” We feel that some clarification of these two parts would be helpful to future operators;

Response: We agree that Section 25.4(a) may be confusing as it allows for plugging of DMRE boreholes using either the borehole plugging provisions of Section 25 or the well plugging provisions of Section 35. We agree there is no need to have two different provisions for plugging a borehole and the confusion around casing for plugging wells adds to the interpretation a well driller would need to interpret. To better clarify this, we propose to eliminate Section 25.4(a), which would remove the following: *(a) In the same manner required for plugging a dissolved mineral resource exploration well pursuant to section 35 of this regulation.* By removing this, DMRE boreholes could only be plugged according to the provisions in Section 25.

Comment: Section 23 and Section 29 Part 1 may conflict with each other. Section 23 states that “If a well driller does not begin drilling the dissolved mineral resource borehole within 60 days after the Administrator or Division approved the application for the notice of intent, the well driller may not drill the borehole unless the well driller or operator submits to the Division a new application for approval of a notice of intent to drill the borehole and such application is approved by the Administrator or Division.” Section 29 Part 1 states “A permit to drill a dissolved mineral resource exploration well expires 2 years after the date on which it was issued.” While we recognize that a Dissolved Mineral Resource Exploration Well Permit Application is separate and distinct from a Notice of Intent to Drill Dissolved Mineral Resource Exploration Borehole. However, it is our opinion that some clarification of the terminology of these two approval steps would facilitate more efficient compliance by potential operators.

Response: The intent of these sections is for NDOM to have knowledge of when a well or borehole is to be drilled, so that field inspections can be scheduled. Section 23 refers to the 60 day limit in which a borehole needs to be drilled after the NOI is approved. A permit for a DMRE well described in Section 29 includes conditions in the permit that require notification by the operator or driller when the well driller will commence drilling.