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Governor

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RICHARD PERRY
Administrator

September 25, 2014

TO: All State of Nevada County Recorders

Re: Clarification of fees for recording of mining documents

Thank you for the recent request for clarification on fees for amended certificates of location. We have listed below the fees to be collected by County Recorders on behalf of the Nevada Division of Minerals:

- 1) The filing fee is \$8.50, as currently set by the Commission on Mineral Resources in NAC 517.200 and NAC 513.315.
- 2) NRS 517.185 stipulates the mining documents to which this filing fee applies:
 - a. NRS 517.050 - Certificate of location (lode claims) - \$8.50 per claim
 - b. NRS 517.080 - Relocation of abandoned lode claim - \$8.50 per claim
 - c. NRS 517.110 - Certificate of location (placer claim) - \$8.50 per claim
 - d. NRS 517.140 - Certificate of location (mill site) - \$8.50 per mill site
 - e. NRS 517.170 - Certificate of location (tunnel right) - \$8.50 per tunnel right
 - f. NRS 517.200 - Amended certificate of location - \$8.50 per claim*
 - *See Attorney General opinion 85-18
 - g. NRS 517.230 - Affidavit of Annual Assessment Work and Affidavit of Notice of Intent to Hold - \$8.50 per claim

As a reference, the pertinent statutes and regulations noted above are attached. This letter and attachment has been added to our new website (<http://minerals.nv.gov>) and can be found in the Mining Program under "Claims". This clarification supersedes our letter of September 22, 2014.

If you have any questions, please don't hesitate to contact us at 775-684-7040 or by email at ndom@minerals.nv.gov. Thank you for all you do in collecting these mining claim fees.

Sincerely,

Rich Perry
Administrator

Attachment - List of filing fee statutes and regulations
Attorney General's opinion 85-18

similar place that forms the heart of both the federal cabaret tax and the casino entertainment tax. Large rock concerts in these settings constitute a different form of entertainment that generates a completely different aesthetic or emotional effect or appeal.

CONCLUSION

The casino entertainment tax does not apply to rock concerts held either in an outdoor stadium or in an auditorium inside the gaming establishment apart from the showrooms and lounges. Any attempt to apply the casino entertainment tax to these activities would have little chance of successfully withstanding a court challenge given the legislative, judicial and administrative history of the tax.

Sincerely,

BRIAN MCKAY, *Attorney General*

By THOMAS C. NAYLOR, *Deputy Attorney General,*
Gaming Division

OPINION NO. 85-18 Mining Claims; County Recorders; Imposition and Collection of Mining Claim Fees Upon Filing of Certain Documents by County Recorders—The 1985 Nevada Legislature enacted a revenue statute requiring county recorders to collect fees for the recordation of seven expressly enumerated documents related to mining claims. These mining claim fees must be collected only upon recordation of the enumerated documents on a “per claim” basis and for no other recordation. 1985 Nev. Stat. Ch. 489; NRS 517.050-517.230 (1985).

CARSON CITY, December 5, 1985

MR. RICHARD L. REYBURN, *Executive Director*, Nevada Department of Minerals, 400 West King Street, Suite 106, Carson City, Nevada 89710

DEAR MR. REYBURN:

This letter is in response to your request of October 17, 1985, for an opinion of the Attorney General relative to the collection of mining claim filing fees by the respective county recorders. In your letter you present five inquiries for consideration by this office. Each of these questions will be addressed separately in this opinion.

ANALYSIS

Nevada statute provides in relevant part that:

Each filing pursuant to NRS 517.050, 517.080, 517.110, 517.140, 517.170, 517.200 and 517.230 must be submitted with a fee of \$0.75 per claim. The county recorder shall collect the fee and quarterly pay the money collected to the state treasurer for deposit in the state treasury to the credit of the fund for the department of minerals.

1985 Nev. Stat., ch. 489, § 2.6, at 1704, *amending* 1983 Nev. Stat., ch. 627, § 79, at 2095.
Review of the statutory provisions enumerated in chapter 489 indicates that a mining claim

fee must be collected by the county recorder upon the filing of (1) lode claim certificates of location, *see* NRS 517.050(1) (1985); (2) lode claim relocation certificates, *see* NRS 517.080(2) (1985); (3) placer claim certificates of location, *see* NRS 517.110(1) (1985); (4) mill site certificates of location, *see* NRS 517.110(1) (1985); (4) mill site certificates of location, *see* NRS 517.140(1) (1985); (5) tunnel right certificates of location, *see* NRS 517.170(1); (1985); (6) amended certificates of location, *see* NRS 517.200(1) (1985); and, (7) affidavits of labor or improvements, *see* NRS 517.230(1) (1985). A notice of intent to hold document does not appear within the statutes delineated by section 2.6 of chapter 489. Moreover, notices of intent to hold are not recognized whatsoever by Nevada mining claim statutes. *See* NRS 517.010-517.460 (1985), *as amended by*, 1985 Nev. Stats., ch. 489.

By contrast, federal statute and regulation refer to this document with reference to unpatented mining claims under the Federal Land Policy and Management Act of 1976. *See* 43 U.S.C. § 1744 (1982) and Supp. I 1983; 43 C.F.R. §§ 3833.0-1 to 3833.0-3, 3833.05, 3833.1-1 to 3833.1-3, 3833.2 to 3833.2-4, and 3833.3 to 3833.5 (1985). A “notice of intention to hold a mining claim” is defined as “an instrument containing the information required in [the code of federal regulations] which has been or will be filed under state law in the local jurisdiction indicating that the owner continues to have an interest in the claim.” 43 C.F.R. § 3833.0-5(k) (1985). *Cf.* 43 C.F.R. § 3833.0-5(1) (1985) (notice of intent to hold mill or tunnel site).

Under federal law, a notice of intent to hold document generally does not “relieve the owner of complying with federal or state laws pertaining to the performance of annual assessment work.” 43 C.F.R. § 3833.2-3(a) (1985). The notable exception to this general rule provides that:

Section 314 of the Act (43 U.S.C. 1744) requires that the owner of an unpatented mining claim shall file, prior to December 31st of each year following the calendar year in which the claim was located, either a notice of intent to hold the claim or evidence of annual assessment work. The General Mining laws (30 U.S.C. 28) allow the required annual assessment work to be initiated in the assessment year following the assessment year in which the claim was located. *Therefore, in order to comply with the filing requirements of section 314 of the Act, claimants of mining claims located after 12 o'clock noon on September 1st of that same year, shall file with the proper BLM office, a notice of intent to hold the mining claim in the first calendar year following its location.* This does not apply to the claimant who elects to perform his assessment work early and wishes to record the assessment work. 43 C.F.R. § 3833.2-1(d) (1985). (Emphasis added.)

The Nevada Legislature was presumed to have complete knowledge of the federal law governing notices of intent to hold a mining claim when the state mining claim fee statute was enacted during the 1983 session and amended in the sixty-third session. *See, e.g., City of Boulder v. General Sales Drivers*, 101 Nev. 117, 694 P.2d 498, Nev. Adv. Op. 26 (1985); *Ronnow v. City of Las Vegas*, 57 Nev. 332, 366, 65 P.2d 133 (1937). Revenue generating legislation is strictly construed in favor of the taxpayers and such a statute “must say what it means.” *Cashman Photo v. Nevada Gaming Comm’n.*, 91 Nev. 424, 428, 538 P.2d 158 (1975). As the court explained in the *Cashman* decision, revenue statutes cannot be extended by implication to matters not mentioned in the legislation. *See id* at 428, 538 P.2d at 158. *Accord Gould v. Gould*, 245 U.S. 151 (1915).

Applying these legal principles to the subject mining claim fee statute indicates that the fee may not be collected upon the filing of a notice of intent to hold document. The subject statute expressly enumerates the types of filings upon which the fee may be collected. This statute does not authorize collection of the fee upon the filing of a notice of intent to hold document. In fact, Nevada law does not even recognize such a document which is a creature of federal law. When the subject mining claim fee was enacted and amended by the Nevada Legislature in 1983 and

1985, respectively, the notice of intent to hold document existed under federal law. The Nevada Legislature is presumed to have known of this difference between federal and Nevada law relative to mining claims. Despite the extensive amendment to Chapter 517 of the Nevada Revised Statutes by the 1985 session, the Legislature elected not to enact a state law provision for notices of intent to hold a mining claim such as that contained in federal law.

Strict construction of this revenue generating legislation necessitates the conclusion that the Legislature did not intend to place a fee upon the filing of a document which is not even recognized by state law. The courts would not recognize an implied "tax" in these circumstances. This conclusion is supported by the apparent public policy of notices of intent to hold a mining claim. Under federal law, the filing of this document preserves a mining claim for a period of time immediately following the claim process without the necessity of completing labor or improvements. By so doing, a nascent claim is not financially burdened until the claimant has adequate time to determine profitability of the claim. The Nevada Legislature reasonably could have concluded that these types of developing claims should not be subjected to the mining claim filing fees.

CONCLUSION

Nevada law does not permit a county recorder to collect a fee under chapter 489 of the 1985 Statutes of Nevada for the filing of a notice of intent to hold a mining claim, mill site or tunnel right in order to preserve the owner's interests under federal law. State statute does not recognize the notice of intent to hold document as a method of protecting an owner's interest under Nevada law. Consequently, the Attorney General concludes that the legislature did not intend to exact revenue from the recordation of a document not required by state law.

QUESTION TWO

Whether section 2.6 of Chapter 489 of the 1985 Statutes of Nevada permits a county recorder to collect the authorized fee for each claim referenced in an amended certificate of location filed under section 517.200(3) of the Nevada Revised Statutes in order to correct a common error in multiple claims.

ANALYSIS

State statute prescribes that, "[w]here a common error occurs, in more than one certificate of location, the locator may record one document which describes the error, makes reference to the claims by name and the date, book and page of recording and states the desired amendment." NRS 517.200(3) (1985), *as amended by*, 1985 Nev. Stat., ch. 489 § 18, at 1712. NRS 517.200(3) permits the locator of a mining claim to file a single amended certificate of location to correct a common error affecting multiple claims.

The mining claim fee authorized by section 2.6 of Chapter 489 of the 1985 Statutes of Nevada must be collected on the basis of the "claims" affected by the filing with the county recorder. This fee, therefore, must be collected for each claim referenced in the consolidated amended certificate of location recorded under NRS 517.200(3). A conclusion to the contrary by the Attorney General would disregard the plain and unambiguous language of the statute which indicates the fee is to be collected on a "per claim" basis. *See, e.g., City of Las Vegas v. Macchiaverna*, 99 Nev. 256, 257-258, 661 P.2d 879 (1983).

CONCLUSION

Review of the statute imposing the mining claim fee demonstrates an unambiguous

legislative direction that the fee be collected for the filing of certain documents on a “per claim” basis. Accordingly, a county recorder must collect the authorized fee for each claim referenced in an amended certificate of location recorded pursuant to NRS 517.200(3).

QUESTION THREE

Whether section 2.6 of Chapter 489 of the 1985 Statutes of Nevada permits a county recorder to collect the authorized fee upon the filing of any document which may effect the recordation of a single claim.

ANALYSIS

The mining claim fee authorized by the 1985 Nevada Legislature may be collected only upon the recordation of seven expressly enumerated documents. As delineated above, these documents are (1) lode claim certificates of location; (2) lode claim relocation certificates; (3) placer claim certificates of location; (4) mill site certificates of location; (5) tunnel right certificates of location; (6) amended certificates of location; and, (7) affidavits of labor or improvements. *See text at 2, supra.* Chapter 489 of the 1985 Statutes of Nevada does not authorize the collection of the seventy-five cent fee on any other mining claim document recordations. Likewise, this statute does not excuse payment of the fee merely because a single claim may require the recordation of several of the enumerated documents.

CONCLUSION

The mining claim fee imposed under Nevada law may be collected upon recordation of seven expressly enumerated documents. A county recorder may neither collect this fee for filing other mining claim documents nor excuse payment of the fee because several of the enumerated documents must be filed with respect to a single claim.

QUESTION FOUR

Whether section 2.6 of Chapter 489 of the 1985 Statutes of Nevada permits a county recorder to collect the authorized fee upon the filing of documents pertaining to mill sites, tunnel rights and placer claims.

ANALYSIS

As explained above, the mining claim fee imposed by Chapter 489 of the 1985 Statutes of Nevada must be collected by the respective county recorders upon the filing of a placer claim certificate of location, a mill site certificate of location, a tunnel right certificate of location and any amended certificate of location related to placer claims, mill sites of tunnel rights. *See text at 2 and 5, supra.*

CONCLUSION

Chapter 489 contemplates the collection of the authorized mining claim fee for recordation of certificates of location related to placer claims, mill sites and tunnel rights. This fee must also be collected for amended certificates of location pertaining to placer claims, mill sites and tunnel rights.

QUESTION FIVE

Whether section 2.6 of Chapter 489 of the 1985 Statutes of Nevada requires the respective county recorders to collect the authorized fee for members of an association placer claim.

ANALYSIS

The mining claim fee authorized by the 1985 Nevada Legislature must be imposed by the county recorder upon the filing of a location certificate for a placer claim as required by section 517.100(1) of the Nevada Revised Statutes. This statute provides in relevant part that:

When the locator files his maps pursuant to NRS 517.100, he shall present to the county recorder for recording, together with the usual recording fees, duplicate certificates which state:

- (a) The name of the claim, designating it as a placer claim.
- (b) The name of the locator or locators and the post office address of each.
- (c) The date of location.
- (d) The number of feet or acres claimed.

NRS 517.110(1) (1985).

Neither the mining claim fee statute nor NRS 517.110(1) contains any language which indicates a legislative direction to collect fees or require separate location certificates from each person participating in a mining corporation, association or partnership. By contrast, Nevada statute does contain a legislative recognition of the ability of individuals to form mining corporations, associations and partnerships in order to share the profits and expenditures of operating mining claims. See NRS 520.010-520.260 (1979), as amended by, 1985 Nev. Stat., ch. 445, § 69, at 1487.

CONCLUSION

The mining claim fee imposed upon the recordation of placer claim certificates of location may not be collected for each member of an association operating such a claim. Instead, the fee must be collected on a "per claim" basis whether the claim is held by an individual, association, corporation or partnership.

Sincerely,

Brian McKay, *Attorney General*

By Dan R. Reaser, *Attorney General*,
Civil Division

OPINION NO. 85-19 Meetings of State and Local Agencies; Legality of Licensing Decisions Rendered by Mail—Nevada law prohibits the members of a public body from rendering a licensing decision by a mail poll. See NRS 241.010-241.040 and 590.495 (1985).

CARSON CITY, December 17, 1985

MR. KEN STRUNK, Nevada Board for the Regulation of Liquefied Petroleum Gas, Post Office Box 338, Carson City, Nevada 89702

Nevada Division of Minerals – Mining Document Fees

NRS 517.185 Fee for each document filed; disposition.

1. In addition to any recording fee, each filing pursuant to [NRS 517.050](#), [517.080](#), [517.110](#), [517.140](#), [517.170](#), [517.200](#) and [517.230](#) must be submitted with a filing fee in an amount established pursuant to subsection 2. The county recorder shall collect the filing fee and, on or before the fifth working day of each month, deposit with the county treasurer all such fees collected during the preceding month. The county treasurer shall quarterly pay the money collected to the Division. The Division shall deposit with the State Treasurer, for credit to the Account for the Division of Minerals created pursuant to [NRS 513.103](#), all money received pursuant to this section.

2. The Commission on Mineral Resources shall, by regulation, establish the filing fee required pursuant to subsection 1 in an amount not to exceed \$6 per claim.

(Added to NRS by [1985, 1494](#); A [1989, 1595](#); [1991, 1780](#); [1993, 298](#), [1686](#); [1995, 579](#); [1999, 891](#), [3629](#); [2001, 66](#))

NAC 517.200 Filing fee. ([NRS 513.063](#), [517.185](#)) The amount of the filing fee that is imposed pursuant to subsection 1 of [NRS 517.185](#) is \$6 per claim.

(Added to NAC by Comm'n on Mineral Resources by R069-99, eff. 8-19-99; A by R080-01, 1-16-2002; R199-08, 8-26-2008, eff. 8-27-2008)

NRS 513.094 Additional fee; Administrator to establish program to discover dangerous conditions of nonoperating mines; employment of qualified assistant; regulations.

1. An additional fee, in an amount established pursuant to subsection 4, is imposed upon all filings to which [NRS 517.185](#) applies. Each county recorder shall collect and pay over the additional fee, and the additional fee must be deposited in the same manner as provided in that section.

2. The Administrator shall, within the limits of the money provided by this fee, establish a program to discover dangerous conditions that result from mining practices which took place at a mine that is no longer operating, identify if feasible the owner or other person responsible for the condition, and rank the conditions found in descending order of danger. The Administrator shall annually during the month of January, or more often if the danger discovered warrants, inform each board of county commissioners concerning the dangerous conditions found in the respective counties, including their degree of danger relative to one another and to those conditions found in the State as a whole. In addition, the Administrator shall work to educate the public to recognize and avoid those hazards resulting from mining practices which took place at a mine that is no longer operating.

3. To carry out this program and these duties, the Administrator shall employ a qualified assistant, who must be in the unclassified service of the State and whose position is in addition to the unclassified positions otherwise authorized in the Division by statute.

4. The Commission shall establish by regulation:

(a) The fee required pursuant to subsection 1, in an amount not to exceed \$4 per claim.

(b) Standards for determining the conditions created by the abandonment of a former mine or its associated works that constitute a danger to persons or animals and for determining the relative degree of danger. A condition whose existence violates a federal or state statute or regulation intended to protect public health or safety is a danger because of that violation.

(c) Standards for abating the kinds of dangers usually found, including, but not limited to, standards for excluding persons and animals from dangerous open excavations.

(Added to NRS by [1987, 1867](#); A [1993, 298](#), [1683](#); [1995, 579](#); [1999, 890](#), [3627](#); [2001, 66](#))

NAC 513.315 Additional fee. ([NRS 513.063](#), [513.094](#)) The amount of the additional fee that is imposed on filings pursuant to subsection 1 of [NRS 513.094](#) is \$2.50 per claim.

(Added to NAC by Comm'n on Mineral Resources by R069-99, eff. 8-19-99; A by R080-01, 1-16-2002; R199-08, 8-26-2008, eff. 8-27-2008)

NRS 517.170 Recording of certificate of location; filing of map; effect of insufficiency.

1. Within 90 days from the date of the location, the locator of a tunnel right or location shall record his or her location with the county recorder of the county in which the location is situated.
2. When the locator records his or her certificate of location the locator shall file two copies of a map that complies with the requirements set forth in [NRS 517.040](#).
3. Any record of a tunnel right or location which does not contain all the requirements named in this section is void.

[21:89:1897; C § 228; RL § 2442; NCL § 4140]—(NRS A 1971, 2202; [1985, 1500](#))

NRS 517.200 Validation of defective certificate of location or change of boundaries: Filing of amended certificate of location; effect of amendment; correction of common error.

1. If at any time the locator of any mining claim located before, on or after March 16, 1897, or the locator's assigns, apprehends that the locator's original certificate of location was defective or erroneous, or that the requirements of the law had not been complied with before filing, or if he or she is desirous of changing his or her surface boundaries or of taking in any part of an overlapping claim which has been abandoned, or in case the original certificate of location was made before March 16, 1897, and he or she is desirous of securing the benefits of this chapter, the locator, or the locator's assigns, may file an amended certificate of location, subject to the provisions of this chapter, if the amendment does not interfere with the existing rights of others at the time of the amendment.

2. The amendment or the record thereof does not preclude the claimant from proving any title the claimant held under previous locations.

3. Where a common error occurs in more than one certificate of location, the locator may record one document which describes the error, makes reference to the claims by name and the date, book and page of recording and states the desired amendment.

[6:89:1897; C § 213; RL § 2427; NCL § 4125]—(NRS A 1969, 498; [1985, 1501](#))

NRS 517.230 Affidavit of work performed or improvements made; affidavit of owner or claimant; evidentiary effect of affidavits.

1. On or before November 1 of the year for which labor is performed or improvements are made as required by law for a mining claim annually, the person in whose behalf the labor was performed or improvements made, or someone in the person's behalf, shall make and have recorded by the county recorder, in books kept for that purpose in the county in which the mining claim is situated, an affidavit setting forth:

- (a) The amount of money expended, or value of labor or improvements made, or both.
- (b) The character of expenditures or labor or improvements.
- (c) A description of the claim or part of the claim affected by the expenditures or labor or improvements.
- (d) The year for which the expenditures or labor or improvements were made and the dates on which they were made.
- (e) The name of the owner or claimant of the claim at whose expense the improvements or labor was made or performed.
- (f) The names of the persons, corporations, contractors or subcontractors who performed the work or made the improvements.

2. An affidavit made and recorded pursuant to subsection 1 or a copy thereof, certified by the county recorder, is prima facie evidence of the performance of the labor or the making of the improvements, or both.

3. On or before November 1 of each year that the performance of labor or the making of improvements is not required by law for a mining claim, the owner or claimant of the mining claim who intends to hold the claim, or someone in the owner or claimant's behalf, shall make and have recorded by the county recorder, in books kept for that purpose in the county in which the mining claim is situated, an affidavit setting forth:

- (a) The name and address of the owner or claimant of the mining claim.
- (b) The name of the mining claim, and the serial number, if any, assigned to the claim by the United States Bureau of Land Management.
- (c) The date that the affidavit was made.
- (d) A statement that the owner or claimant of the mining claim intends to hold the claim.

4. An affidavit made and recorded pursuant to subsection 3 or a copy thereof, certified by the county recorder, is prima facie evidence that the owner or claimant of the mining claim intended to hold the claim from 12 p.m. on September 1 of the year before the affidavit was made and recorded, until 11:59 a.m. on September 1 of the year that the affidavit was made and recorded.