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Pursuant to Nevada Revised Statute 513.063 (Duties), the Commission on Mineral Resources "*shall…advise and make recommendations to the Governor…and Legislature concerning the policies of the State relating to minerals*." Prior to the start of the 81st Regular Session of the Nevada Legislature, the Commission respectfully wishes to submit the following discussion and recommendations regarding certain legislation, passed during the 32nd Second Special Session of the Nevada Legislature proposing to amend the State Constitution, which we believe will be detrimental to the mining industry in the State of Nevada and thus detrimental to the economy of this State.

As a preface to this discussion, the Nevada mineral industry, which includes the production of metals, non-metals, oil, gas, and geothermal energy, is a significant contributor to the State's economy, and which according to DETR directly employed more than 14,600 Nevadans in 2019 at an average annual wage of more than $106,000. In fiscal year 2020, the mineral industry paid $28.9M in Sales/Use tax and $22.9M in Modified Business tax. In addition to these taxes, the mining industry pays an industry-specific tax. Under the Nevada Constitution, the Legislature must impose a tax upon the net proceeds of all minerals extracted in this State at a rate not to exceed 5 percent of the net proceeds, and the net proceeds are not subject to any other tax. (Nev. Const. Art. 10, Section 5) The Nevada Constitution also exempts mines and mining claims from the property tax. (Nev. Const. Art. 10 Section 1)

Assembly Joint Resolution No. 1 (AJR1) and Senate Joint Resolution No. 1 (SJR1) both propose to amend the Nevada Constitution to eliminate: (1) the requirement for the Legislature to impose a tax upon the net proceeds of minerals at a rate not to exceed 5 percent of the net proceeds; and (2) the appropriation of a portion of those proceeds to each county in this State. These resolutions would amend the Nevada Constitution to impose a tax on the gross proceeds of all minerals extracted in this State during a Calendar year at a rate of 7.75 percent of the gross proceeds and authorize the Legislature to provide by law for the taxation of mines and mining claims and the proceeds of all minerals extracted in this State.

Assembly Joint Resolution No. 2 (AJR2) proposes to amend the Nevada Constitution to: (1) increase from 5 to 12 percent the maximum rate of the tax on net proceeds of minerals extracted in this State; and (2) establish the minimum rate of the tax on the net proceeds of minerals extracted in this State as the property tax rate imposed in the taxing district in which the extractive operation is located.

The Nevada Commission on Mineral Resources believes that the amendments proposed by these three joint resolutions do not reflect responsible tax policy in Nevada and, if one results in a Constitutional change, it will be extremely detrimental to the economic health and potential viability of the mineral industry in this State.

A Tax on Gross Proceeds

The change from a net to gross proceeds of minerals tax as proposed in AJR1 and SJR1 represents a tax increase of approximately 382% for operators. A tax increase of this magnitude would upend, if not render uneconomic, most business models. This proposal aims to change the tax rules mid-stream for one industry. Total net proceeds of minerals for Nevada's operations totaled $118.4M for 2019, with $57.2M to the State General Fund and $61.2M distributed to the counties. The use of net proceeds as a reasonable basis for taxation allows operations to account for the various integral operating costs which are necessary for mines to produce their product. Essentially all mineral commodities produced in the State have their price set in an open market, therefore, the operators have no control on the price they can charge for their product; they can only control operational costs.

When a commodity's price increases significantly, then net proceeds tax revenue of those operations will also increase, as is forecast in the most recent Economic Forum. With sights set on gross proceeds instead, which totaled $7,831M in 2019, such a tax appears intended to target high-priced commodities, such as gold, but fails to consider the inherent costs of production, the profitability, or the fact that the sales price is not determined by the operator. As stated above, the proposed gross proceeds tax results in a significant increase in the cost of doing business on an industry that has no ability to change the price of their product to reflect those changes in costs.

Mines are reliant on an asset (the commodity) which is not altogether fixed and known; rather it must be extensively studied and explored, to gain an understanding as to its distribution and concentration. Years, or even decades, of exploration may transpire before a base understanding of the resource can be used to analyze its economics. First and foremost in determining the viability of an operation is the commodity price forecast. Typically, a resource is modeled at a variety of prices to ascertain its sensitivity to expected fluctuations. Only when confidence from those who will be making the investments is sufficiently high will a project move forward into its most capital intensive stage of development. The decision to proceed requires a long-term (8+ years), sustainable operation and even then, the internal rate of return is typically only 15-25%.

Many expenditures to a mining operation are well-established, based on past experience and jurisdiction, these include: permitting, equipment, personnel, energy, consumables, and the various taxes. While rarely static they usually fall within a narrow range amounting to a small multiple of the rate of inflation. However, any drastic increase in cost, or reduction in commodity price, will reduce one or more of the following: resource size, mining rate, employment, mine-life, profitability of the operation. A tax based solely on the value of a commodity sold, without consideration of the profitability of the operation and costs associated with its production does not promote a sustainable economic model for the mineral industry in the State. Without a corresponding increase in commodity price, a mine may have great difficulty absorbing an increased tax burden. It is unrealistic to expect a mine could absorb a tax increase amounting to 382%. Such a transformative change to the tax structure in the State sends a clear message to the industry; mining and mineral industry investment should look elsewhere. This message is in direct contrast to the State's well-established mining heritage, its large and diverse mineral endowment, its importance to the nation's overall mineral production, the role it continues to play in diversifying the State's economy, its ranking in 2019 by the Fraser Institute as the number one mining jurisdiction in the world, and its impacts on employment and wages in Nevada.

The unintended consequences to a tax on gross proceeds will be an immediate and long-term reduction in exploration, the advancement of new mines, investment, mining employment, and economic diversity. While there may be a short-term increase to tax revenue, the Commission believes the aforementioned decreases will only cause that same tax revenue to shrink.

Increase to Cap of Net Proceeds

As proposed by AJR2, increasing the cap on net proceeds from 5% to 12% and affecting a rate increase will reduce the profitability of all mining operations. A 12% rate represents a 140% tax increase. Depending on the economics at each operation, and the actual rate implemented by law, this may cause the reduction in resource size, mining rate, employment, mine-life or worse, the closure of an operation. Based on 2019 net proceeds taxes paid, a change from 5% to just 7%, for example, would create an additional cost of approximately $47M to the industry. Again, mineral industry operators cannot simply pass along an increased cost of business to their consumers. The commodity price is set by an open market, not by them, and they must adapt by adjusting those factors they do control in their business plan. Any increase in the tax rate which does not account for the many variables within the Nevada minerals industry, from commodity (be it gold, copper, limestone, oil, salt, lithium, magnesium, or geothermal), to size, employment, or longevity may arbitrarily necessitate the closure of an operation.

Taxing of Patented Mines and Mining Claims

AJR1 and SJR1 both propose to eliminate the current exemption of any value attributable to minerals underlying a patented mine or mining claims from property tax. Prior to the current patent moratorium, the land embraced within a mining claim could be purchased from the federal government through a patent conveyance. Through the submission of a patent application, the claimant had to document a mineral discovery on each claim in an amount and concentration sufficient to be profitably extracted at the time of the application. If verified by a federal mineral surveyor, a cost born by the claimant, the claim(s) could be conveyed and become private property. Whether the patent was subsequently mined or not, the now private parcel was subject to property tax based on Section 5 of Article 10 of the Nevada Constitution, *"Each patented mine or mining claim must be assessed and taxed as other real property is assessed and taxed, except that no value may be attributed to any mineral known or believed to underlie it, and no value may be attributed to the surface of a mine or claim if one hundred dollars' worth of labor has been actually performed on the mine or claim during the year preceding the assessment."* This exemption is important as it lays the fundamental groundwork that the minerals have no taxable value until they are extracted and subsequently sold, or shipped out of the State. It is this sale of extracted minerals which forms the basis for net proceeds of minerals tax. Prior to extraction, the mineral has no realized value. There is no proper and sound basis for applying a value to a mineral which has not yet been extracted. Any value placed on the mineral would be arbitrary and the as yet unextracted mineral would create an unnecessarily and prematurely burden for the owner or claimant. Any proposal to do so will result in an immediate and long-term decrease in the number of mining claims maintained in Nevada and thus reduce filing fee revenue received at both the county and federal level; which amounted to approximately $2.6M and $34M, respectively, for fiscal year 2020.

Impacts to County Distributions

While the proposed amendment in AJR2 does not change the appropriation amount of net proceeds distributed to the counties, AJR1 and SJR1 both propose to eliminate the appropriation of a portion of the proceeds to each county. For 2019, the appropriation amount to counties totaled $61.2M with distribution dependent on the location of operating mines which paid the net proceeds of mines tax. Five counties received zero appropriation (Carson City, Douglas, Lincoln, Mineral and Washoe) while three counties, with the largest number of operating mines (Eureka, Humboldt, and Lander), received 80% of the appropriation. The distribution of net proceeds tax for these three counties represents from 10% to 27% of all county revenue. Any impact to the viability of a mining operation may result in a county needing assistance from the State General Fund, as has occurred in the past. The potential elimination of this county revenue source will severely hinder county operations and, if coupled with the potential impacts to mining operations and investments resulting from a change to gross proceeds proposed in AJR1 and SJR1, have the capacity to forever negatively alter the economic vitality of rural Nevada.

Closing

The Commission on Mineral Resources requests the Governor and Legislature of the State recognize that these three proposed changes to the Nevada Constitution are not in the best interest of the State as a whole, or the businesses and citizens that would be negatively impacted. A recommended approach would be the creation of a Governor's task force comprised of representation from: the diverse minerals industry, the Governor's office, the legislature, and your Minerals Commission to consider and evaluate alternatives that would provide much needed additional revenue to the State while maintaining the economic viability of the industry.

Respectfully submitted,
State of Nevada Commission on Mineral Resources

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