IN THE SUPREME COURT OF THE STATE OF NEVADA

SOUTHERN CALIFORNIA EDISON, Appellant, vs. THE STATE OF NEVADA DEPARTMENT OF TAXATION, Respondent.	No.: 67497

JOINT APPENDIX

VOLUME VII

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Docket 67497 Document 2015-26115

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Norman J. Azevedo, Attorney at Law, and that on the 27th day of August, 2015, I caused to be served a true and correct copy of the foregoing JOINT APPENDIX in the following manner:

(ELECTRONIC SERVICE) Pursuant to Rule5(D) of the Nevada Rules of Civil Procedure, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by the Court's Facilities to the Service List as follows:

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FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

THE HONORABLE JAMES T. RUSSELL, DISTRICT JUDGE

--oOo--

SOUTHERN CALIFORNIA EDISON,	)	Case No. 09 OC 00016 1B
	)	
Plaintiff,	)	Dept. No. I
vs.	)	
	)	
THE STATE OF NEVADA, EX REL. DEPARTMENT OF TAXATION,	)	
	)	
Defendant.	)	

TRANSCRIPT OF PROCEEDINGS

TRIAL

DAY 4

Friday, January 24, 2014

Reported By: DAWN BRATCHER GUSTIN, CCR 253, RPR, CRR
California CSR 7124

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that involves actual identifiable incumbents who are presently in the industry, but there's also potential competition, that is, there's issues as to who might possibly enter the industry if they were so motivated and what might be precluding them or obstructing them or discouraging them from entering the industry. So you can't just really look at actual incumbents, you also have to think about incipient competition as well or potential competition.

And in my experience with such things as teaching law and economics and participating in antitrust type proceedings, the law, when it comes to antitrust and when it comes even to commerce clause issues, is much more focused, if not almost exclusively focused, on not fine-tuning these competitive relationships, but rather trying to establish a level playing field, that is, a level and a fair competitive environment in which this rivalry can take place.

Q Can there be a competition -- You mentioned product competition. Can there be competition in both inputs and outputs to a given market?

A Absolutely, and I should have mentioned that, that is, when it comes to this competitive rivalry, the competitive rivalry has to be an identification to

relevant markets.

Just think about a business firm. A business firm is going to be most interested in its cost structure and in its success in selling its product. So when you do a competitive analysis, you are generally going to be looking for relevant markets in terms of inputs and product.

So in terms of this case, for instance, you would be focusing on Mohave's product which is electricity. It's not a differentiated product. It's like the ultimate example of a widget, as we academic economists talk about in our econ classes. It is a homogeneous product, it's very much a commodity product. It gets dumped into a grid in which it's homogenized. If it wasn't homogenized when it went in there, it's going to be homogenized. And, believe me, it's homogenized as a matter of entry into that grid as well, but as the quality of the power has to meet standards.

So not just that, but also the fuels, that is the fuels for producing electricity are important as well. And fuels ought to be taken very, very broadly. Almost all electricity in the United States is produced through electrical induction and electrical induction is just a matter of spinning magnets around a coil of

water -- a wire. It's old 1850s discovery. And with the exception of photovoltaic power, which is a different technological process for generation, all commercial generation is with this spinning of magnets around a coiled wire, so it's all a matter of, okay, so what does it take to spin those magnets and those magnets are usually spun by attaching them to a turbine which is a fan-like structure. And then what you need is you need something to drive the turbine. And most electricity in the United States, but not all, but most electricity is driven by producing steam, by boiling water using a fossil fuel, coal, natural gas, sometimes oil, in order to produce that steam. But really anything will do that will spin the turbine, so water, falling water, hydroelectric power will spin the turbine, so that's really a competitive input as well, and blowing wind will spin turbines so that is also a competitive input as well.

So all these various inputs are important to examine to see whether they are implicated in a particular case.

Q What about geothermal resource as an input?

A Yes, I should have mentioned obviously that steam isn't necessarily produced by burning hydrocarbons.

That's the prevalent way of doing it, but there is a significant amount of electricity, especially in the western states, that is generated through geothermal power that is getting actually heat from underground and bringing it up, and usually it's water, although there are resources in which it's, it's really pretty much pure steam or some, someplace in between hot water and pure steam, there's quite a variety, and then typically running that heat through a heat exchanger, because usually there's enough nasty chemicals and such that you don't want to be passing that steam or brine through the turbine blades themselves, but producing some pretty steam -- pretty clean steam, so usually there is some type of device to extract the steam from the water conduit that's usually bringing it up to the surface, water or steam conduit and then producing the steam and spinning the turbine in that way.

So that steam is just as competitive with steam produced from coal or natural gas or whatever when it's -- by the time it's steam, it's steam and you are just driving the turbine.

Q What is the significance of the concept of an operating margin in competition analysis?

A Well, it's very important. So let's see --

investments, on a forward-looking basis the owners of the power plants have to believe or forecast, as you are naturally doing with investments, whether the forward-going operating margins in the future will bring enough of a margin on a present value basis, present value back to the present, to justify dumping more capital into the plant to maintain its continued existence and continued operations.

Q Now, does a market feature such as the illegal tax on -- that you are assuming occurred here, does that impose a competitive disadvantage and a competitive advantage in the marketplace?

A I think anytime that -- Yes, I think anytime that there's an impact on competition, because competition is a relational concept, that is, it has to do with economic rivalry, there's obviously somebody who has benefited and somebody who's detrimented in that, but it is not an easy matter to identify exact -- empirically exactly the degree to which and the way in which someone is both competitively disadvantaged in total and somebody is competitively advantaged in total. It becomes a complex examination of the operation of that market, it has time dimensions, et cetera, et cetera. It's also not a zero-sum game, that is, just because somebody is

disadvantaged by a dollar, doesn't mean somebody else is advantaged by a dollar. It's not going to all come out in the wash. So even though there are advantages and disadvantages, they don't necessarily net to zero.

So one thing -- one way I like to look at the difficulties of kind of identifying empirically exactly the nature of advantage and disadvantage is kind of by analogy, especially as it relates to the imposition of an illegal tax, which again is the assumption here that I'm making.

So you can analogize to a race in which a runner is handicapped with leg weights, and if he's a very strong runner, he may win the race anyway. And some people may be inclined to say, well, no harm, no foul, but that seems a little bit extreme. The runner did win the race, but anybody that you took off the street and said, well, was this a fair race, they would point to the leg weights and they'd say, well, obviously this person was competitively disadvantaged. Now, they may have been strong enough to have won the race, but everyone knows that they probably had one- or two- or three-tenths of a second taken off their time in the hundred yard dash by having these leg weights. And so the mere fact that they won the race is hardly dispositive of there being no

competitive disadvantage.

So all I'm trying to say is that you need to not only look at the results, you've got to look at the process, and when the process is like inherently unfair, I think more often than not that's what the law, when it comes to antitrust law or it comes to commerce clause law is really trying to focus on is the level playing field and not necessarily the finite results particularly in any particular time period.

So, for instance, if you use the race analogy, maybe the initial race was a time qualification for getting into a subsequent race as happens in the Olympics when you have a big field, they have several qualifying races to see who's going to get in the final race. And let's say a fast runner has leg weights in all those races, and they win, but they're fast enough to win in the qualifiers and so they get into the final race. But in the final race the competition is a bit tighter and they end up losing. So there's both kind of a short-run analysis and a long-run analysis, and in terms of this case I think the analogy here is that in the long-run Mohave did shut down. The reason it shut down, and we can get into this, the reason it shut down is because its owners didn't believe that its going-forward

operating costs, operating margin were sufficiently robust to warrant the capital additions that would have been necessary to keep it in existence and extend its life beyond 2005.

Q Okay. Now, with that background I'd like to ask you for some specific opinions and the basis for them in this case.

First of all, is coal as a fuel for generating electricity, is coal the relevant market to analyze competitive harm in this case?

A Not in my opinion, no. It's way too narrow a definition of a relevant market. We're looking at the relevant input market. We really need to look at all sorts of ways of causing that turbine to spin to induce the production of electricity and that would involve falling water and blowing wind, but those aren't particularly implicated in the substance of this case. What is implicated in the substance of this case is that steam can be accessed and produced in various ways for input to spin this turbine, and one of them, only one of them is the, is the combustion of coal. You can also produce steam by combusting natural gas, by combusting oil distillates and also by accessing the steam from geothermal resources. So really all those inputs are

potentially relevant to focus on in, in this analysis. And to just confine it to coal just seems like it's extremely arbitrary to me as an economist.

Q And how about in terms, again, of the relevant market to determine competitive harm in this case? Would it be appropriate to limit that competitive market to fuels that are produced only in Nevada?

A No, because basically fuels can be accessed from other states and also because it's not just the fuels market that's implicated in this case, but it's also the product market of electricity and electricity is basically bought and sold at the wholesale level throughout the Western United States. So for those reasons I think you need to go beyond the boundaries of the state in order to investigate the implications on competition of an illegal tax being imposed.

Q Now, so applying your view of the relevant markets for assessing competitive harm, do you think it's correct to say that SCE as the operator and the other owner participants of Mohave experienced no competitive disadvantage as a result of paying this use tax on the coal purchased in this time period we're focusing on, 1998 through 2000?

A No, and the reason is because this, this coal

tax -- First of all, it was, it was not a de minimis tax level, it was 7 and a quarter percent, I believe, of the cost of coal, so I don't think that there's any doubt that it passes some kind of de minimis test as being something that we ought to look at, but the fact that it shrunk the operating margin, the immediate impact may not have been to affect the short-run dispatch of the coal plant.

By the way, "dispatch" is a term of art used in the electric power industry to just indicate when it is that a power plant is run by its owners which generally means that it's economical to run the power plant rather than to purchase the power from somewhere else in the market instead of running the power plant.

So anyway, anytime you have a positive operating margin, you would expect the plant to run if it's available to run. Now, it has to be available to run, and whether or not the owners have maintained a high availability or a low availability may depend upon the operating margin which is affected by this kind of a tax and would impact their incentive to maintain a high level of availability or let slide, frankly, a little bit lower level of availability. And then there's also the fact -- And so it's the incentive to operate the plant to

maintain its availability. In the long run it's the incentive to maintain the existence of the plant and the continued operation of the plant as well. And also, you know, it's not -- the competitive process is not just a competition for producing widgets, it's not just a market share competition. That's one part of it, but it really has to do with also getting sufficient profits. It is, it is a competition to generate that economic surplus.

Now, under regulation, and we can get into this more later, that one of the purposes of utility regulation is to basically divide that economic surplus on an equitable basis between the owners of power plants and utilities and electric utility customers.

Q In your view did the tax which you are assuming to be illegal in this case, did it play a part in the owner's decision to shut down Mohave?

A I was directly involved, not in all of those negotiations and discussions for sure, but I remember being on the Navajo reservation in Arizona for meetings on at least two or three occasions involving the -- this would have been in the 2002 to 2003 time frame, I believe, maybe as late as 2004, and the issue was basically coming up with an agreement between Peabody and the Indian tribes, the Navajos and the Hopis, that would

allow for an extension of the coal slurry contract and also among the owners as to whether or not to undertake the life extension investments necessary.

Let me just kind of put that in, in context to make sure we're clear about in general why the plant was shut down.

There was a settlement that was reached, I think it was part of a consent decree, and it involved the federal government, as I recall, as well as perhaps some other parties, and the concern was about visibility in the Grand Canyon and the contribution of coal plants throughout the area to diminish visibility in the Grand Canyon. And so part of the settlement of that particular lawsuit was that the owners of Mohave agreed that they would not operate beyond 2005, or maybe it was the end of 2004, I forget exactly what the precise date was, unless they installed scrubbers and baghouses and other things basically to extract more of the particulates and not emit them into the atmosphere.

So those were expensive investments, so that was really what the center of the focus would have been of the owners, is does it make sense to make these investments. And when they were doing that economic analysis, and I just -- working is perfectly obvious for

anybody who has done generic economic analysis, you need to be reasonably confident that that kind of economic investment will be worthwhile. And so when you look for -- Well, look at the question of, well, what will make that economic investment worthwhile and worth making. It all has to do with the going-forward operating margin. If I take the expected price of the product and subtract out my short-run cost of producing that product, I'll have an operating margin and that's where I've got, that's when I've got to justify -- that's what's available to justify making any kind of life-extension investment in this power plant.

So there's no doubt that the owners were looking at that calculus. And anything that would have diminished the operating margin going forward would have operated in the direction of diminishing their incentive to make the necessary investments to extend the life of the plant, which in this case were primarily these pollution control investments.

Q And in looking at the question of competitive advantage and disadvantage in terms of this illegal tax, is it necessary to look beyond the period of specific time in 1998 through 2000 to get a full picture of competitive advantage or disadvantage caused by the

imposition of this illegal tax in a defined time period?

A Well, I think it is because the competitive process is really a long-run and continuing evolving process, and certainly what people believe about the future tends to be heavily influenced about how the recent past has gone and people's willingness to make investments for the future tend to be at least partly determined by how things have gone so far and whether things have gone successfully. And also their ability, just their financial ability to make these investments as well.

So I think it's, I think it's -- And I believe that really when you deal with antitrust analysis and other analysis in which there's economic analysis in the context of a lawsuit, it's very seldom, it seems to me, relevant just to lock yourself into a particular time period.

But the other thing I think I would point out, just based on my familiarity with the case, is that the reason -- my understanding is the reason that we're focused in this particular proceeding for the period 1998 to 2000 is that the parties have agreed that even though there is at least a follow-on interval from 2000 to 2005, that for the case of litigative efficiency, we'll all

live by focusing on the results and the analysis 1998 to 2000. But the mere fact that the second period ends in 2005 is a result of the fact that the plant was shut down so that that locked-in period, which I realize is not immediately literally a part of this proceeding, is only locked in with an end date of 2005 because the plant was ultimately shut down and it was shut down for reasons of competitive analysis.

Q The -- I'd like you to make an assumption that as I think the Department's position is in this case, that in order to obtain a refund of an illegal tax that impermissibly burdens interstate commerce, that the taxpayer must show or at least the State has the option of requiring the taxpayer to show that there are competitors of that taxpayer who were advantaged by the legal tax.

MS. SESSION: Objection, your Honor.

THE COURT: Ms. Session.

MS. SESSION: I think that misrepresents the State's position in the case, particularly I object specifically to the reference to an illegal tax. The tax is use tax. Use tax is not an illegal tax. The statute that is allegedly discriminatory, basically discriminatory is the exemption statute which is not a

statute that imposes a tax. So I object to the form of that question that represents that as our -- as the State's position.

THE COURT: Mr. Read, why don't you rephrase the question.

MR. READ: I'll rephrase it.

BY MR. READ:

Q All right. I want you to assume that the -- to answer this question in the context of what I will try to describe, and I hope accurately, the position of the Department, that -- in this case that there is an exemption to the use tax that was not available to Southern California Edison and that that exemption is available to in-state producers of specified minerals.

MR. READ: Okay so far, Ms. Session?

MS. SESSION: Only to the extent that I -- you know, I -- when you say it's available to in-state --

THE COURT: Well, the Court understands the distinction with respect to that and I guess --

MS. SESSION: There's no identified in-state producer of minerals that --

THE COURT: Well, I guess what you are just saying basically is one of the arguments is is there any actual competition out there to a certain extent with

respect to this particular plant which would have benefited versus -- under one tax scheme versus the other tax scheme, I guess is the way I would phrase it, so...

MR. READ: Okay.

BY MR. READ:

Q So at --

THE COURT: Given that, so I guess the question then becomes is there truly any actual competitor out there that when you look at the tax scheme that was in place in this -- in the State of Nevada at that time, 1998 to 2000 and as a result of this, is there really any true actual competition in respect to that.

THE WITNESS: Well, in my opinion there is actual competition and the question that was asked involves that feature, it seems to me, but it also involves the issue of whether I believe that the existence or nonexistence is, is even a relevant part of the inquiry if you begin with the assumption that the tax framework, let me just use that generically because I'm not -- I don't claim to be an expert in how all these taxes -- and if you recall it's an assumption that I'm making here that that determination is made that somehow -- the way in which all these things, all these taxes interact is deemed to be discriminatory under the

commerce clause, so let's just take that as a given, that it's facially discriminatory under the commerce clause, that in my academic experience in law and economics that that would be a per se violation. There wouldn't be a rule of reason, an argument available to say that, well, we have to look more deeply into this. I mean, it -- let me just take --

THE COURT: That's part of the argument in this case, whether you have to go more deeply or not.

THE WITNESS: Exactly, exactly. And I understand that. And so what I'm saying is that my understanding is that if something on its face -- Let's just take the extreme.

THE COURT: Well, they use that facially discriminatory --

THE WITNESS: Somebody imposes an import tariff that is just so blatantly contrary to the intent of the founders to have a free market within the United States, then it's not enough to say as an excuse, well, we have all of these grand public policy defenses as to why we ought to be able to do that, or, well, it's okay to do that because there's really no existing incumbents within our state that are discriminated against, but the commerce clause in the broad interpretation of the

commerce clause that I'm aware of, and again I'm not a legal expert, I'm talking simply as an academic economist.

THE COURT: Well, Professor Pomp calls it internal consistency principle and as a result of that then basically there is a violation, so --

THE WITNESS: Right.

THE COURT: -- whether I agree or don't agree, that's -- we'll get to that at some point in time, but at least I've followed his argument to that extent, so you don't even have to get into anything beyond that. But I guess what I think -- I think where we are to some extent, and I think where your question went to is going beyond that, just the facial discrimination issue is going beyond that to --

MR. READ: Yes.

THE COURT: -- whether or not there's any actual discrimination to a competitor; is that correct?

MR. READ: That's correct. And in the view of plaintiffs, in the view of SCE, Dr. Jurewitz's testimony is not required, but we know, of course, that the Department has made additional arguments. We obviously have to --

THE COURT: Well, under some cases, there are

some cases out there in respect to that that kind of support the position that --

MR. READ: Yes.

THE COURT: -- even if there is facial discrimination there's still --

MR. READ: Right.

THE COURT: -- doesn't matter, still got to get the actual discrimination and I guess that's kind of where the question went to.

MR. READ: Right. Now, let me rephrase the question perhaps a little more simply.

BY MR. READ:

Q Let me just have you assume that you are being asked as an economist in terms of devising a remedy for this discriminatory tax structure that instead of a refund you are going to be asked to impose a -- or advise on how to impose a retroactive tax on anyone who was advantaged by that discriminatory tax. We are speaking of that additional tax could only be imposed within the boundaries of the state of Nevada. There may be advantages imposed outside, but let's stick with the retroactive tax could only be applied within the state.

How difficult in your view as an economist would it be to try to devise that remedy in this case?

A Well, I think it would involve some terribly complicated empirical questions as to exactly who was advantaged and the degree to which they were advantaged, and I kind of go back to my runner analogy, you may know that somebody won or lost the race but you are not really -- it would become entirely conjectural and speculative and would bring the expert witnesses out of the woodwork with all of their models, especially in this industry, of trying to figure out and sort out how -- what would have happened to the short-run dispatch and the long-run dispatch of Mohave or, in other words, who might have been advantaged by this.

So simply identifying somebody on a factual basis is going to be controversial. And then as you say there's the in-state/out-of-state issue, that is, the markets for electricity are sufficiently broad that this tax, if it were illegal, would have provided an improper advantage to people outside the state as well, but the State of Nevada can really only tend to the -- in terms of its scope for taxation of beneficiaries within the state of Nevada.

I think it raises really complicated factual issues as to exactly who the beneficiaries were and how much they benefited. And also I would think that if I

were sitting on the other side of being retroactively taxed after the fact, I'd certainly have some strong opinions about, about the adjudication being remedied in that particular way and I would think it would raise all sorts of legal process issues. And from an economist standpoint it would also place all taxpayers in this constant state of uncertainty as to whether or not some subsequent litigation that somebody else may be bringing in some case as to why their tax should be lower suddenly rebounds to me in the form of my tax suddenly being higher than I thought it was supposed to be two or three years ago when I paid it.

Q Now, in -- you've read the expert report of one the Department's experts, Professor Swain.

A Yes.

Q And he discusses various producers of electricity using, or at least theoretically using oil and natural gas and geothermal energy to produce electricity.

MS. SESSION: Objection, your Honor. Counsel referred to Professor Swain. Professor Swain is actually our dormant commerce clause expert and I think he is meaning to reference Dr. McCann.

THE WITNESS: No, no.

discriminatory. And I don't feel like I'm sufficiently deeply an expert on the commerce clause and all the considerations that might be exculpatory considerations that would basically allow somebody to refute the notion that even though on its face if you just look at the use tax it certainly seems to be discriminatory, but when you take into account all the other available exemptions, et cetera, et cetera, in Nevada law, well, it's not really discriminatory.

Q Well, let me try and simplify the issue and focus just on competitive advantage and disadvantage in your area of interest.

Let's assume that there are one or more geothermal power plants in Nevada along the geothermal energy sources, and actually I believe you know enough about the markets in the west that that isn't really an assumption, there are such --

A That's correct.

Q Okay. And they, they do not pay a sales tax on the geothermal energy that's used to create the electricity in those plants. SCE does pay or did in this time period, did pay such a tax on its fuel, the coal. Now, is that a sufficient set of information for you to give us an opinion about whether or not -- you've talked

about SCE being disadvantaged.

A Yes.

Q Can you give us based on these facts an opinion about whether or not that tax situation as it impacts SCE is an advantage to the geothermal producers in Nevada?

A Yes. Again, let's focus on the concept of operating margin. By virtue of the fact that they were paying a lower tax through the proceeds of mine tax and being exempt from the sales tax, they would have had a lower burden placed upon their operating margin. That would have put them in a position of having a fatter operation -- operating margin than if they had had a higher tax. That would throw off, that is, that would generate more profits, more incentive to maintain the plant, more incentive to invest in life extension and more incentive for the industry, speaking of potential competition, not just incumbents, but potential competition in terms of entrance into the geothermal power generation business.

And when you look at the facts, one interesting fact is that after the closure of Mohave in 2005, the geo-- the size of geothermal generated within Nevada increased from roughly about 240 megawatts to

almost 500 megawatts so that the size of the geothermal generation in the state of Nevada more than doubled after the closure of the Mohave plant.

Q Now, let me ask you some questions about the other expert that Ms. Session mentioned, Mr. McCann. You've read his written report in this case?

A Yes, I have.

Q Now, in his report Mr. -- Dr. McCann, I believe, claims that unless SCE can show that Mohave lost electricity sales, actually reduced dispatch because of the added cost of the use tax, it has not been harmed or does not merit a refund.

Do you agree or disagree with that point of Dr. McCann?

A I absolutely disagree. That is way too narrow a focus in terms of indicia of competition and indicia of success. To simply focus on production from Mohave, that is, production of widgets in this case, production of electricity, it is probably the case, in fact in my experience almost certainly the case, that Mohave would have operated during this time frame any hours that it was available, it may have possibly missed a few hours, but it would have been fairly de minimis. So in that sense if you are going to restrict your

analysis of competition to simply whether or not there was an impact in the number of widgets coming out of the power plant, you are not going to find any short-run impact.

Now, if you did a more sophisticated analysis, you might find that Mohave was maintained at a somewhat lower level than it would have been had its operating margin been fatter due to the reduced incentive to maintain its availability.

So my recollection is that all that Mr. McCann said was it operated when it was available. Well, but was it available in all hours that it could have been available? Possibly not. Now, I haven't investigated that either. I'm just pointing out that there are other complex factual issues as well. And to go back to my analogy with the runner, it seems to me Mr. McCann is saying, well, between 1998 and 2000, Mohave won the race, didn't it? So no harm, no foul. It doesn't matter that it had leg weights on it.

Q In the period we're referring to, and assuming that indeed Mohave ran and sold its power into the marketplace despite the imposition of this use tax, are you saying that SCE and other Mohave participants nevertheless suffered a competitive disadvantage?

A Yes, they had, they had lower profits, they had lower surplus, they may have actually -- and if we knew all the facts they may actually have operated less than they would have because they would have possibly maintained a few percentage points higher availability of the plant, that can't be ruled out, as an economist I would say that could very well have been one of the judgments made in terms of allocating capital. These guys are always interested in capital allocation: Should I spend a little bit more money on this plant? What are the pros and cons? Well, you'll increase the availability by 3 percent if you do such and such. Is that worthwhile? Well, let's look at the operating margin and see if it's worthwhile, but the operating margin is, you know, impacted by a 7 and a quarter percent tax on coal, not an immaterial amount in terms of reducing the operating margin.

So there are, there are impacts simply in terms of incentives. There's also impacts in terms of the amount of surplus. I mean, it's difficult -- When somebody is in the business of producing electricity cheaply for -- and to benefit both their shareholders and their customers, because the results that, that really utility regulation tends to pass on a lot of these

benefits to consumers, to say that the competitive process is somehow harmed or that the individual competitor is not harmed, rather, not harmed, simply because, well, they operated the same amount, they produced the same amount, there's not as much surplus being passed through to their beneficiaries, the beneficiaries being a combination of the shareholders and the utility customers, so I just find it also not, not very accurate whatsoever to say that there's not an impact on that competitor.

Q Now, Dr. -- I'm not sure if it's Mr. or Dr. McCann.

MS. SESSION: Dr. McCann.

MR. READ: Doctor, okay. I don't want to diminish his credentials.

BY MR. READ:

Q Dr. McCann in his written report, he goes on to say that not only did Mohave run essentially all the time or whenever it could, or Edison does not -- is not showing that it didn't, he also says that because of the cost recovery arrangements in effect, and now we are really focused on the time period 1998 through the end of 2000, because of the cost recovery arrangements peculiar to SCE and its regulation by the California Public

go to the ratepayer.

Q And --

THE COURT: We are going to take a break here shortly, but let me ask you one quick question before we take a break.

No matter how you get there, lower operating costs through lower taxes would have had a benefit to Southern Cal Edison no matter what, correct? Because then it lowers down, basically as you talked about in your operating margins, it would allow you to be able to do other things with respect to that. Is that a fair statement?

THE WITNESS: It's a fair statement that it would be a benefit to the, to the Edison company shareholders and ratepayers, okay. It certainly would make the Edison company I think more competitive in terms of its overall survival to have lower costs versus higher costs even if, as is done under traditional regulation, the operating margin difference, or in other words the potential refund, was flowed through to customers.

On a survival basis the Edison company is in a better position with lower prices versus higher prices, so even if this gets manifested in terms of lower prices being charged to consumers, there's still a competitive

advantage in the Edison company survival by being able to charge its customers lower prices rather than higher prices.

THE COURT: We're going to go ahead and take our morning recess at this time. We'll be in recess for about 15 minutes. Thank you.

(A recess was taken.)

THE COURT: Please be seated. Your witness, counsel.

MR. READ: Thank you, your Honor.

BY MR. READ:

Q Just a few more questions for you, Dr. Jurewitz. Just to be clear, the PROACT balance that was established, that included among unrecovered costs, unrecovered Mohave operating costs including this use tax, correct?

A Yes, it did, yes.

Q And is the -- Do you recall the dateline that was established by the settlement such that risk before it was borne by shareholders and risk after borne by ratepayers?

A Yes, the dividing line per the settlement was September 1st, 2001, so any rate-making after that date would have flowed through to consumers, the cost of the

nor did I try to follow that trail to specific companies.

Q Okay. And those cites from the, the reports that you are referring to, that just refers to output for oil produced, correct?

A That's my understanding, oil produced in Nevada.

Q All right. But that wouldn't give you any information about what -- how that oil was taxed specifically and whether it received any preferential treatment as you have opined in Expert Opinion 5, would it?

A It is correct that that particular report doesn't contain that information, and my statements about the payments of the tax have more to do with my understanding of the general tax framework rather than pointing to some specific instance.

Q Okay. And really -- I'm really interested in those specific incidents. So with that, would you agree that you haven't -- that you can't provide the names of oil companies producing oil in Nevada that received a preferential tax treatment in their production of oil, sale of oil in 1998 to 2000? You can't give me a name of a company?

A It is the case that I don't have that

information.

Q Right.

A It would take some additional research and I'm not sure -- So let me just state I haven't done that.

Q Okay.

A But I wouldn't characterize it as I can't do that.

Q Okay.

A But I certainly can't do that as I sit here.

Q Okay. And you haven't?

A That's correct.

Q And to your knowledge nobody has?

A Well, I don't know of anybody that has, but --

Q Okay.

A -- that's all I can say.

Q Okay. All right. Well, let's move on. The next one, same question about natural gas. Can you provide me with the names of the specific companies that provide -- that received preferential treatment by Nevada in their sale of natural gas that was exempt from sales and use tax or that was subject to net proceeds and exempt from sales and use tax and the natural gas used to generate electricity? Generate power, pardon me.

A Yes. I don't have any information in addition to what here is stated at the -- about midway down page 10 where we talk about, again, what's reported by the Nevada Bureau of Mines and Geology which makes statements about the Kate Spring Field and cites to Makoil and Western General. I can't tell you whether they are taxpayers or perhaps separate entities, so I cannot -- my answer there is the same as it was for your questions regarding oil.

Q Okay. And then geothermal heat, same question, what specific producer of geothermal -- I do want to ask a couple of specific questions about geothermal heat. Isn't geothermal vertically integrated in that generally speaking the owner of the steam coming out of the ground is the same that is owner of the turbine that produces the electricity?

A That is at least my understanding frequently the case. I'm not really sure what percentage might fall in those two different categories.

Q Okay. And so can you identify any specific transactions in the sale of the steam in the geothermal to someone generating energy that would be a sales -- a taxable transaction that wouldn't have been subject to sales or use tax because they paid net proceeds?

A I can't cite to a specific instance. I could certainly give you a list of geothermal plants, but I don't really know whether they are vertically integrated or not into the resource, that is, actually own the resource as opposed to lease the resource from some other company.

Q All right.

A I think the predominant business model is one of vertical integration, but these things can get awfully complicated, so I really -- I'm not prepared to testify --

Q Okay.

A -- as I sit here on that.

Q All right. So the next line in Expert Opinion 5 is, "This conveyed an unfair advantage to these domestic users relative to a taxpayer who imported coal from out-of-state sources or contemplated doing so but did not do so due to its higher cost."

So again, is it fair to say that you cannot identify those domestic users that you allege got an unfair advantage?

A Where -- What language are you looking at here? I'm sorry.

Q It's the next sentence under Expert Opinion

No. 5 at the bottom of page 8.

A Well, insofar as the statement talks about the import of coal from out-of-state sources, Mohave would certainly fall in the category of actually having done it. In terms of contemplating doing so but not doing it, you are asking a question about essentially potential competition and I cannot identify somebody who was discouraged from importing coal and didn't do it because of this, no, I can't.

Q Okay. And really that wasn't my question because that's sort of the second half of that sentence.

I was asking you if you could identify those domestic users that had an unfair advantage relative to Mohave, the purchasers of out-of-state coal or those that didn't purchase out-of-state coal. I'm asking can you identify those domestic users that received an unfair advantage.

A Well, my belief is that the geothermal plants would have been actual competitors that would have received that unfair advantage by being exempt from any kind of comparable tax on the steam that they use --

Q Okay.

A -- and that I could --

Q Is there a specific geothermal plant that you

are referring to?

A Well, I have looked at a list of geothermal plants. There's about 240 megawatts of them during this time, there is quite a long list. I can name a couple that come to mind. There's Beowawe and there's Dixie Valley.

Q Um-hum. Do you have evidence that there was a sales transaction on the steam from those geothermal plants that were exempt from sales and use tax purposes as a result of NRS 372.270?

A I don't have that specific evidence, no.

Q So you really can't specifically identify anyone in oil, natural gas or geothermal that had a competitive advantage over Southern Cal Edison due to Southern Cal Edison's payment of use tax, can you? A specific company.

A My analysis is based upon a generic analysis of all these various technologies. I did not go deeply enough to go through all the tax records to see whether somebody actually did or did not pay a tax. In fact, that seems to me one of the problems here is putting that kind of burden on the taxpayer to go through that kind of elaborate analysis of competitors and exactly what did they pay or didn't they pay. I'm not sure whether all

that is publicly available. I suspect that it may not be publicly available. I don't really know. It may be subject -- It may be proprietary. To me what you are asking kind of illustrates the challenge faced by the taxpayer in this case trying to identify all those people who might have been advantaged. And so the analysis that I've done has been at a generic level.

Q Would you characterize it as perhaps as theoretical, your analysis, as opposed to actual?

A I'm not so sure I would use exactly those words. I think that it is a good faith effort to identify who may have been advantaged based upon the generic categories in terms of the industries that they are in and the appearance of what they would have been paying in terms of taxes, but it doesn't go so deeply as to identify specific taxpayers. That's absolutely true.

Q Okay. Thank you.

So moving to Expert Opinion 6, again it says, "The electric" -- "electricity produced at the Mohave Generating" -- "Generation Station was produced in the same market as electricity that could have been produced or was actually produced by favored users of domestic Nevada oil, natural gas and geothermal heat." So I'm focused on the language where it says "that could have

been produced or was actually produced."

So which was it, was it could have been or was it actually produced?

A Well, that's a fair question and I would say that in terms of actual production --

Q Yes.

A -- that that certainly applies to geothermal. There may have been incidental amounts of electricity produced by oil and gas within the state. I don't represent that those would have been very large amounts. I think the main focus here is on the geothermal which is quantitatively substantial in terms of the amount of geothermal electricity produced.

Q All right. But you use the language "favored users of domestic Nevada oil, natural gas and geothermal." Who are those favored users and how are they favored exactly?

A Well, the favored user would have been the producer who was using, for instance, just focusing on geothermal, who was using the geothermal heat --

Q Yeah.

A -- and not having to pay as large a tax on that geothermal heat compared to the tax on coal.

Q Would that have been due to the exemption in

372.270 or would that have been the result of the fact that there wouldn't be a retail sale of the steam before producing the energy?

A Can you ask the question -- Can you repeat that question?

Q Okay. So you said that the geothermal, producers of geothermal would have been a favored user of domestic geothermal and favored because they wouldn't have had to pay the use tax that Southern Cal Edison paid.

A That's correct.

Q That's right? Correct?

So is that because there wasn't a sale of the geothermal heat?

A It is -- My understanding it is because they -- in paying the proceeds of mine tax --

Q Yes.

A -- that they would have had an exemption from the sales tax.

Q But are there sales of geothermal heat that you are aware of?

A I can't say that I have investigated the structure of the geothermal market enough to know --

Q Okay.

A -- whether there are arms-length transactions between two different entities in terms of heat.

Q All right. And so when you say favored users of geothermal heat, you don't really have any evidence that they were actually favored by not -- by having retail sales of geothermal heat and being -- not having to pay sales or use tax because of the exempt -- the specific exemption in 372.270? You can't give me any specific examples of that, can you?

A Well, it's -- In my mind that statement is based on the fact that they paid a proceeds of mine tax that was lower, substantially lower than the use tax paid for the importation of coal, for instance, and doesn't really have anything necessarily to do with the exemption from the sales tax.

Q With an actual sale. But wouldn't the difference in treatment between the coal and the geothermal have more to do with the fact that coal as a fuel has to be transported to the generator of electricity and sold in a sale between the producer and the generator of electricity, whereas the geothermal is vertically integrated and the producer of the steam is the same as the producer of the electricity?

A See, I don't see that as a substantive

difference. That may -- There may be distinctions in tax law, for instance, that involve those sorts of considerations.

Q Yeah.

A As an economist I was -- I don't regard those as, as having much substantive importance. So, for instance, let me just specifically -- the fact that coal had to be or was transported about 270 miles as opposed to geothermal steam being, you know, just next door, I don't see any great substantive distinction there.

Q All right. But in terms of tax treatment and favored and disfavored taxpayers, isn't it relevant to know what the transactions were on the fuel source to determine whether someone was actually favored and someone was actually disadvantaged?

A Yes, specifically I think it's important to look at the tax burden placed on the coal and the tax burden placed on the heat.

Q And couldn't the difference be due to the difference in the transactions that were taking place and not anything to do with the particular statutes that the Department of Taxation was administrating?

A Well, the specific statutes I assume tie into the nature of the transactions and I'm not steeped in all

of the intric-- of all of the background and inner workings of all these tax features within the state of Nevada. So I'm really focusing on the difference between the proceeds tax and the use tax.

Q Right.

A And that difference really driving the issue of preference, preferential treatment.

Q All right. But if the geothermal never was sold and so there was never a question of sales or use tax, would that difference have anything to do with the Department of Taxation's statutes? So I -- You are saying that there's a difference between the -- what the tax burden is on the geothermal and the tax burden is on the coal, but the coal is sold in a retail sale and the geothermal, at least based on your testimony to your knowledge is not. Wouldn't that be the explanation of the difference in treatment?

A Well, it may be an explanation of the mechanics of the difference in treatment, but whether that difference in treatment is lawful under the commerce clause is I guess what we're talking about.

Q All right. And do you have an opinion about that, about whether it's lawful under the commerce clause?

A Well, I certainly as I've said don't have strictly speaking a legal opinion, but I think that the commerce clause is generally concerned about protecting interstate commerce and fair treatment of interstate commerce and interstate transaction and it's most obviously, it seems to me, concerned about protectionism, but I don't think that that's the only concern. Interstate commerce goes beyond protectionism. Protectionism might be a typical incentive for these violations. I'm not saying that it is in this case. It might just be simply an inadvertent fact of life with a different history than protectionism, but nonetheless the issue here is whether it's legal or illegal under the commerce clause.

Q That's correct, and that's what I'm trying to get at with my questions is whether the use tax that was assessed on Southern Cal Edison was a legal tax. So -- You talk about protectionism and that is a different -- that is an interesting issue under the commerce clause. I think that's an important reason for this dormant commerce clause to prevent protectionism. Do you think that when the legislature in Nevada passed this exemption that's at issue in this case in 1955, and that would be 372.270, that they were trying to protect a domestic coal

industry?

A I have no idea what the intention of the legislature was. It may have simply been to, you know, raise revenues or simply look at revenue patterns. It may have been inadvertent. I'm certainly not here to say that it in any way was intentionally protectionist, but I don't think that that's a necessary finding for this case. I don't think this case goes to intention.

Q Okay. We had talked briefly about crude oil or oil, and to your knowledge is crude oil used directly in Nevada to generate electricity? Or was it used in Nevada during that 1988, 2000 to generate electricity?

A I don't have any evidence that it was.

Q Okay. And when you're talking about oil, are you, are you referring to refined products that would be burned as electricity such as diesel or a fuel element or two?

A Yeah, the statistics here I assume, for instance, on page 10 where it says barrels of oil, I would assume --

Q Yes.

A -- that those are crude.

Q Okay. And are you aware of any power generating stations that burn crude oil without some kind

of processing of that?

A I'm not aware of any that literally burn crude oil, that is, that simply take it out of the ground, because oil is not a homogeneous product, it has all sorts of different molecules in it ranging from light to heavy and the -- but there's a full range of oils that have been used in, in various places to produce electricity. Fuel oil is a fairly thick, long molecule oil that ends up residing at the bottom of the barrel because it's heavier and lighter distillates end up residing at the top. If all I do is let the oil stand there it will separate and gasoline will float to the top and other distillates slightly below that. So oils that would be used in the production of electricity in various ways would come from both the bottom of the barrel as well as the top of the barrel like internal combustion engines would operate off the top of the barrel.

So refining is -- The history of refining has undergone over the last hundred years quite a bit of sophistication, and in the early days processing was literally not much more than letting things sit around and then skimming stuff off the various levels. Now, we all know that that's no longer the status of modern refining.

Q Well, what was the status in 1998 to 2000?
A Well, the state-of-the-art or rather the state of common practice would certainly be to undergo a little bit more sophisticated refinement than simply letting the barrel stand there for a while and then pulling off various levels of oil and distilled products.
Q Particularly if you were generating electricity at the level that Mohave was generating, wouldn't you agree?
A Yes.
Q All right. And to your knowledge were there any -- was there any capacity in Nevada to refine oil?
A I don't know.
Q So you had discussed Makoil and Western General and I think you indicated those are natural gas producers?
A Well, this is really just a quote from Nevada Bureau of Mines and Geology, okay, so I really -- and I really don't know exactly what the business pursuits are of Makoil and Western General.
Q Okay. So to your knowledge you don't know whether they -- the gas that they -- Are they natural gas producers? Do you know what -- Is that what they produced?

A Well, based on the quotation here it's not even clear that they were natural gas producers. It says, "Used to operate production and related equipment at the lease sites of Makoil and Western General." Now, insofar as it's talking about production equipment --

Q Um-hum.

A -- if that is intended to mean gas production equipment, then it certainly seems like these two companies are gas producers.

Q Okay. But you are not, you are not offering an opinion that those producers of natural gas were generating electricity with that natural gas or power comparable to the power being generated at the Mohave Generating Station, are you?

A Certainly not comparable in size. It's not clear from this statement that they are operating the equipment using electricity or internal combustion or what, but the equipment, I would assume, based on my general expert knowledge is undoubtedly equipment that could have been powered by electricity as opposed to internal combustion engine.

Q Okay. But you don't really know?

A I don't really know that.

Q And so -- And to your knowledge was this gas

that was produced transported via pipeline to an interconnected power station? Do you know that?

A I do not know that, no.

Q Okay. And to your knowledge were there purchase transactions on this gas that was produced with a clear and lead defined price by Makoil or Western General for the natural gas used on their site?

A That is not obvious from this statement either.

Q So back to the Expert Opinion No. 6, when you say that in the same market so that -- Again, I'm going to repeat this first phrase: "The electricity produced at the Mohave Generating Station was produced in the same market as electricity that could have been produced or was actually produced by favors" -- "favored users of domestic Nevada oil, natural gas and geothermal heat." And, again, you can't identify any specific favored users, can you?

A Well, I would say on the geothermal side in my opinion the, there are identifiable geothermal plants within the state of Nevada. There's quite a number of them.

Q But you can't identify a geothermal plant that did not have to pay use tax on a sale of some

geothermal steam because of the exemption in 372.270, can you?

A I infer that they have taken advantage of the tax law and followed the tax law. I have not investigated the tax records of any of these companies, nor do I --

Q Okay.

A -- do I know that they were available to me.

Q Okay. And then in the middle of the sentence or this expert opinion it says, "In a complete market analysis, is it" -- "it is appropriate to consider the impact on both potential entrance to a market as well as actual incumbent competitors." And then the next line is, "Thus it is not necessary to identify actual advantaged competitors."

That's not based on any specific knowledge you have about the dormant commerce clause, that statement, those statements, are they?

A I think it's fair to say that I'm generalizing here more from my experience with these issues as it relates to antitrust proceedings and competition analysis in antitrust proceedings.

Q Okay.

A But I would go on to say that it's my very

Q Okay.

A -- obvious case in which I think there's perfectly good evidence that electricity was produced in the electricity market and, and the evidence there is simply that by virtue of having a lower tax, namely the proceeds of mine tax, that their operating margin would have been larger than if they had been charged a higher tax. That would have been -- put them in a position in which they would have been more capable of competing in markets and had the incentive to make further investments to compete in those markets.

Q But you can't identify a buy-sell situation with the geothermal steam, can you?

A I have -- I cannot as I sit here identify a buy-sell, a buy-sell situation with the geothermal steam.

Q All right. So there's no evidence that anybody producing geothermal steam actually benefited from the exemption on a sale if we have no evidence of a sale; is that fair?

A I am not in the position to offer evidence that any of these geothermal plants indeed engaged in the sale of the steam but exempted themselves from the sales tax based upon the exemption that accompanies the proceeds of mine tax.

Q All right. So no evidence of a sale?
A I have no evidence of a sale.
Q All right. Thank you.
THE COURT: Ms. Session, just to clarify something in my mind, hot water and steam I guess as under the definition set forth in 362.010 basically is a mineral; is that correct?
MS. SESSION: Yes.
THE COURT: Do you know whether or not there is a net proceeds tax applied to steam as it's generated or hot water as it's generated?
MS. SESSION: Geothermal, the geothermal industry is subject to the net proceeds mineral tax.
THE COURT: That's my question I guess is where I was getting to.
MS. SESSION: And we will offer some testimony regarding that in our case, our rebuttal case.
THE COURT: Thank you.
BY MS. SESSION:
Q You made a statement during your testimony that you thought that the Department's focus on coal and how coal competes with coal was too narrow a focus, a market focus and that really the focus should be on fuel. Is that an accurate representation of your earlier

A Good.
Q You were in the courtroom this morning and heard the testimony of Dr. Jurewitz?
A I did.
Q Now, Dr. Jurewitz testified regarding the complexity of making market determinations and assessments of competitive advantage and disadvantage. Do you recall that testimony?
A I do.
Q Now, is that issue of complexity of market determination and competition applicable to dormant commerce clause jurisprudence?
A Let me read you something from a case that made it inapplicable. And the case is Fulton, F-u-l-t-o-n, where -- in a slightly different context, but one in which the taxpayer was -- or the State of North Carolina was asking the court, well, take into account the instance of the tax and who pays it and how it interacts with other taxes. And the court said this:
"There's a problem with this line of argument and it lies in the extreme complexity of economic incidence analysis. The actual incidence of a tax may depend on elasticities of supply and demand, the ability of producers and consumers to substitute one product for

another, the structure of the relevant market, the time frame over which the tax is imposed and evaluated, and so on. We declined to shoulder any such analysis in" -- an earlier case, called "Minneapolis Star...noting that" -- and here's a quote -- "'courts as institutions are poorly equipped to evaluate with precision the relative burdens of various methods of taxation. The complexities of factual economic proof always present a certain potential for error, and courts have little familiarity with the process of evaluating the relative economic burden of taxes.' We were likewise unwilling to 'plunge...into the morass of weighing comparative tax burdens by comparing taxes on dissimilar events.'"

In other words, the court -- and, if anything, the testimony this morning certainly reinforced what the Supreme Court said -- this is pretty complicated. And I think they know you're going to end up with, with computer printouts by experts on each side purporting to show one set of economic consequences, another computer printout tending to show the opposite, and how can the courts really deal with that.

And I think that is why we have cases saying we don't care if there's any competition at all or whether there's an intrastate competitor. And that was

made quite clear in a case out of my home state of Connecticut, Healy, H-e-a-l-y, v. Beer Institute. And I don't know if that is one of the cases you gave, but it's 491 U.S. 324.

Connecticut attempted to regulate the price at which alcohol could be sold in Connecticut and they regulated it only with respect to interstate brewers and shippers. And the argument was, well, what's the commerce clause problem? There is no brewer that does business solely in Connecticut and there is no shipper that sells beer exclusively within Connecticut. We're such a small state you couldn't make a living if you were to rely on Connecticut.

And the majority rejected that and here's what the concurrence said: "As far as I know, we have never required a plaintiff to show that a statute which facially discriminates against out-of-state businesses in fact benefits a particular in-state business, and we have flatly rejected the kindred contention that the plaintiff could not prevail if the benefit to in-state business was minimal."

In other words, the court has said in other situations there is no de minimis defense to a facially discriminatory tax. You know, that was the lesson of

Bacchus where you had that horrible pineapple wine and the court said, well, you know, it may not compete a lot, but there's no de minimis defense, so the statute is facially unconstitutional. That's good enough for us.

And I think one of the lessons coming out of the discussion this morning is look how complicated it would be. The taxpayer in this case does not have access to the tax records of others that do business in Nevada. It can't possibly know how various geothermal was used, how the geothermal businesses are structured. How do you know that without looking at their tax returns? How do you know to what extent they avail themselves of various exemptions?

It's impossible because of confidentiality laws for the taxpayer to have access to that information. So it's a pretty good, realistic, pragmatic reason why the Supreme Court has not held in cases that I've cited that you need to prove anything about the local market.

And one final example, Your Honor -- this one you probably do have the cite, I mentioned it yesterday -- Camp Newfounds/Owatonna, where the court said -- that was where the camp that catered primarily to Maine residents had an exemption that other camps did not and the court said, look, there's no evidence that these

benefited camps are in competition with the disadvantaged camps, but the statute is facially unconstitutional and that's all we need to know.

And, in fact, it actually said something about tariffs. You know, yesterday I had mentioned the word, how Nevada essentially has a tariff here on imported coal. And in this case the court said -- and here's a quote -- "Tariffs are so patently unconstitutional that our cases reveal not a single attempt by a state to enact one."

As I mentioned yesterday, it's sort of the paradigm of what is unconstitutional under the commerce clause, a tax on imports that the local product doesn't pay.

So I think when you put it all together, certainly a picture emerges. Now, that's not to say there aren't cases where the taxpayer chose to pitch their complaint as a competitive one and the court, as I said, you know, we'll play it as it lies. But certainly in these cases there was no need to show any competition, and as the Beer Institute case makes out so clearly, you don't even need an intrastate transaction or person.

Now, there could be one tomorrow. We're going to foreclose that today. We're not going to wait

until there's someone tomorrow and the statute becomes unconstitutional.

And that, of course, is the beauty of the internal consistency doctrine. We'll resolve this issue today. We don't have to wait for there to be an actual law tomorrow, we're going to imagine what that world will look like and we're going to send a signal today so people can rely and make investment decisions.

Q Professor Pomp, just to be clear, it is not your opinion that the Nevada Legislature enacted, through this structure and interplay of taxes we have discussed, a tariff, but that is the interpretation offered by the Department?

A Well, the way they have interpreted the interplay of the various sections, it ends up having the effects of a tariff. I am not saying that that was the intent. It doesn't matter what the intent is. You can have the very best of intent, but if you have a facially discriminatory tax, as the court has said, it is virtually, per se, unconstitutional, so...

Q Professor Pomp, you've mentioned the difficulty of imposing on a taxpayer, like SCE in this case, of knowledge of the tax practices and returns of others, but have you seen in this record some indication

that indeed this exemption 372.270 is indeed in the time period of this case being utilized to a substantial moneyed level?

A Yes.

Q If we could have Exhibit 54 put up on the screen.

Now, is this the document that you are referring to in your previous answer?

A Can we make it bigger?

Q We may be able to give you a copy as well.

A Or a copy.

MR. READ: May I approach?

THE COURT: You may.

THE CLERK: What number was it?

MR. READ: 54.

May I provide this to the witness?

THE COURT: Yes.

MR. READ: Thank you.

THE WITNESS: Yes. This is an analysis by the Nevada Department of Taxation about the revenue loss due to various exemptions. Other states do exactly the same thing and we call them tax expenditure reports.

And what I see here is that the estimate for 372.270, which is the exemption from the sales and use

tax, if there's been the mining tax already paid is $217.7 million.

BY MR. READ:

Q Now, this report does not indicate the specific entities who, who were taking this exemption amounting to almost $218 million in 1998, does it?

A No. So it does not break down that by sector.

Q And given your understanding of confidentiality and access to tax returns, is there any way in which SCE would be in any position to identify who paid or who claimed these exemptions amounting to, according to the Department of Taxation, $218 million in 1998?

A I know of no way. I think if you were to bring a Freedom of Information Act you would get the response that taxpayer information is confidential. And sometimes tax departments resist this aggregating data out of the fear that by doing it you'd be able to figure out who the taxpayer was, so that if they told you, okay, X million comes from this type of activity and if you know that there's one major player doing that kind of activity, well, now you can figure out how much tax they paid.

So there's been situations where the tax departments even resist disaggregating it on a slightly more detailed level.

Q Finally, are you familiar with the Arizona transactions privilege tax?

A I am.

Q And in your view is that a sales tax?

A In 1995 I wrote an article, ironically with Professor Swain's co-author, Professor Hellerstein, and we analyzed the Arizona privilege tax, transaction tax, and concluded that it was best characterized as a sales tax.

And in general there are two ways sales taxes are structured in this country. One way is to put the legal incidence of the tax on the consumer, and that's known as a consumer-based sales tax, and impose the obligation to collect that tax on the vendor.

The other way is to put the legal incidence of the tax on the vendor and that's known, not surprisingly, as a vendor-based sales tax. And the vendor then has the right, typically, to collect it from the consumer.

Arizona, Nevada, New Mexico chooses to put it on the vendor, but that doesn't change the nature of the

specific taxpayer that's benefited from this exemption in 372.270?

A Who's "we"?

Q Southern Cal Edison. Have they identified anyone -- has any -- Is there any evidence that anyone during that 1998 to 2000 period, much less anyone that was competing with Southern Cal Edison, claimed that exemption?

A They claim --

Q That benefited?

A They quite rightly think that is totally irrelevant.

Q Okay. But doesn't McKesson say it is?

A No.

Q Okay.

A McKesson is a case that comes up in the context of a Florida statute that dealt with an advantage for a particular product made out of Florida-oriented inputs, citrus and what like -- what like. And so the way the case evolved, you had Florida changing its statute three times after Bacchus, clearly an attempt, clearly an attempt to favor Florida products. So the case grows out of a discriminatory/protectionist context. That's the way the case went before the Supreme Court.

It is very logical in that situation you had a defined beneficiary --

Q Right.

A -- that were the people who manufactured with Florida products. Very obvious. And so it was very easy for the court to throw it out as an approach.

It is a sufficient approach under the facts of McKesson. It's not a necessary approach, it was a sufficient approach, given the context in which the case came to the U.S. Supreme Court.

Southern Edison is not arguing it as a McKesson type of situation. This is an internally inconsistent tax. There is no need to engage in any kind of sophisticated analysis of who the competitors are.

Indeed, you heard what I read from Fulton. The court wants out of that. It is a morass as the court said. It is far too complicated. And you heard the testimony this morning about how complicated it can be and it is unnecessary to engage in that.

Q All right. But isn't McKesson frequently cited and very, very commonly cited as guidance for providing remedy in dormant commerce clause cases?

A I guess it depends on the context. I don't know.

bourbon and there was no local bourbon to be protected, you would not need discrimination in fact. The discrimination is you are singling out an interstate transaction for a tax. That's the discrimination. That's the injury. That's the harm to the values of the commerce clause which is to create a free trade zone here in the U.S.

It doesn't matter if there's a -- someone benefited or not. The harm is the impeding of interstate commerce. That's the harm. The encouragement of balkanization, that's the harm. So you don't need anything in fact. And, you know, you keep wanting, where's the competitors? Where's the fact?

Q Um-hum.

A Well, the cases don't require that. Internal consistency doesn't require that.

Q Isn't it really the case -- Isn't it really the case here that it's not that it's hard to identify the competitors that benefited from the -- ostensibly benefited from this exemption, it's that there isn't any? There's no one there. That makes it hard if there isn't anyone, it makes it impossible; isn't that correct?

A It's unnecessary. It's unnecessary.

Q All right.

A I don't know if, with a lot of time spent going through the records of the tax department, which we probably couldn't do, whether you would be able to discover who is benefitting. Is geothermal benefitting? I mean -- but that's a -- We know there's 200-- nearly $218 million of benefit.

Q Do you know that?

A Do I -- I know that there was an executive director's report from the Department of Taxation.

Q To who? And who prepared that report?

A I assume it was at the request -- these things normally are at the request of someone in the legislature.

Q Right. And are you aware of the testimony that the Department doesn't keep those records and it says that it's an estimate?

A Everything is always an estimate in life, so --

Q All right.

A -- you know, as the court said in Fulton. I know the court is well aware that things are an estimate. Do you remember the part that I read here that said, "The complexities of factual economic proof always present the certain potential for error." So, yes, things are --

The injury is the deprivation of property, that's money, without due process of law. That's the Fifth Amendment. Why is there no due process of law? Because the statute is unconstitutional.

Q Not the use tax statute?

A The interaction of the use tax exemption with the mining tax.

Q I just want to clarify, because we keep saying it's an illegal tax. But the use tax is not illegal?

MR. READ: Your Honor, this has been asked and answered many times. I mean, we are way beyond repetition and I object.

THE COURT: And I understand what you are trying to do, but it has been asked a lot in respect to that. If you have any further questions specifically in a different area --

MS. SESSION: Okay.

THE COURT: -- because it's been asked a lot so I'm going to sustain it.

MS. SESSION: It's been stated a lot too, Your Honor, but...

THE COURT: I understand, but he's answered it pretty consistently --

part of the price of the tangible personal property purchased?

A Again, I have not looked at the contracts, I'm not familiar with the transaction, so... You know, in general as a matter of constitutional law, a state gives a credit for any sales or use taxes paid on the transaction which is now subject to a use tax in the state of consumption. So that's the, that's the general pattern around the country. And how that gets applied under the facts of this case I have not looked at.

Q Professor Pomp, thank you so much for your testimony today and for your patience with my questions.

A Thank you. It was fun.

THE WITNESS: Your Honor, I thank you.

THE COURT: Oh, we're not done. There's redirect.

THE WITNESS: We're not.

THE COURT: Hopefully it's very brief, a few questions.

MR. READ: It will be very brief, Your Honor.

REDIRECT EXAMINATION

BY MR. READ:

Q Professor Pomp, just a hypothetical.

If one competitor has to pay among its costs an unconstitutional tax and its competitors do not, are those competitors benefited by the effect of the tax on that one competitor who pays it?

A Yes. That one competitor is certainly at a disadvantage.

Q Thank you.

MR. READ: Nothing further.

THE COURT: Ms. Session?

MS. SESSION: I have nothing, Your Honor. Thank you very much.

THE COURT: Thank you. You can be excused --

THE WITNESS: Thank you, Your Honor.

THE COURT: -- with respect to this case.

Counsel, we are going to be in recess until Tuesday at 9 o'clock. We'll start then with going back to the State's case. Well, I'm presupposing that the plaintiff rests. I don't know if that's true or not.

MR. READ: There is one item which is -- We will have no further testimony. We have been making an effort to collect a more -- a more substantial sample of the --

THE COURT: That's fine.

MR. READ: -- slurry.

FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

THE HONORABLE JAMES T. RUSSELL, DISTRICT JUDGE

--oOo--

SOUTHERN CALIFORNIA EDISON,	)	Case No. 09 OC 00016 1B
	)	
Plaintiff,	)	Dept. No. I
vs.	)	
	)	
THE STATE OF NEVADA, EX REL. DEPARTMENT OF TAXATION,	)	
	)	
Defendant.	)	

TRANSCRIPT OF PROCEEDINGS

TRIAL

DAY 5

Tuesday, January 28, 2014

Reported By: DAWN BRATCHER GUSTIN, CCR 253, RPR, CRR
California CSR 7124

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Generally the common usage of the term is as a waste product from a coal preparation plant, and that waste product is what is left over after you separate impurities from the coal, and then that waste product is generally pumped or hauled to a disposal area, many areas that are called coal refuse and slurry embankments, very similar to tailings dams that are more commonly seen in Nevada.

Next slide. In our report we define the steps that were performed at Black Mesa. First the run-of-mine or raw coal had to be altered at the preparation plant before their introduction into the pipeline. The run-of-mine coal was processed to remove impurities. Any rock that was in the run-of-mine coal was separated in what's known as twin Pennsylvania rotary breakers. That rock was then discharged to a 60-ton bin and hauled back to the mine pit for disposal.

And if you recall the image I had from Google Earth that showed those truck dump piles at the mine, that would have been very similar to what would have occurred when the rock was all back to the pit for disposal.

From there the coal that's in process was pulverized to a fine consistency. Then coal was blended

with water to create the coal slurry prior to being transported to the power station. And the chemicals were used to blend with the slurry to inhibit corrosion and prevent clumping of the coal slurry in the pipeline.

Next image. This diagram came from one of the journal articles, and it shows in the upper left-hand corner the rotary breakers. That is where the separation of any rock that was in the run-of-mine coal would have occurred.

Then it -- the rotary breaker -- Next image, please. And I found a typical rotary breaker on the Pennsylvania crusher website that explains how that works. It essentially has screens inside of a large drum that are two inches in diameter and material is introduced into one end as it's revolving, and the material, coal, is broken up by that repeated revolution of the breaker, and any larger rock or larger pieces of coal that would have bone -- "bone" is a term people use for kind of a combination coal and rock. It has some Btu, some thermal characteristics, but it's a lot harder.

Any of that material would then find its way out by gravity at the lower end and exit out the chute where it would then be transported to the bin for disposal.

A Yes.
Q Did you also bring samples of coal of the size that would have come through the breakers at Peabody?
A Oh, yes. The 2-by-0 -- well, actually the 2-inch lumps and the 2-by-0 would have included a lot of fine material as well, but similar to what's in the other bags.
MS. SESSION: May I have the samples of the coal marked --
THE COURT: It would be No. 118?
THE CLERK: 128.
THE COURT: 128.
MS. SESSION: Did you want to have a look, Your Honor?
(Exhibit 128 was marked.)
MR. WARD: Thank you.
BY MS. SESSION:
Q So what is it that I just handed to you?
A These are 2-inch or less lumps of coal.
Q All right. And so would those have been similar to what would have come out of the breaker at Peabody?
A Yes, with the exception there would have been

a lot more fine material included in that, which would have been similar to what was in the smaller bags.

Q And would that -- Just breaking it down to the 2-inch-size coal, is that a form of processing of coal?

A Yes, by definition.

Q And would that have made it more suitable for burning as fuel, just breaking it down to the 2-inch sizes and removing the rock?

A That is the first critical step in processing of coal.

Q So even regardless of the grinding that would have taken place at the Black Mesa processing plant, this was already a processed coal product?

A Yes.

Q When Mr. Barbaro testified, he said that the coal slurry at Black Mesa was similar to coal slurry at a coal preparation plant.

Do you remember -- Did you review his testimony?

A Yes.

Q Do you recall that part of his testimony?

A Yes.

Q And do you agree with that?

coal slurry and water?

A I'm sorry. Make sure I understood the first part of that question.

Q Yeah. The question really is, is that the slurry process used to move coal around a mining operation or remove waste, is that different than what would have -- what has to go in to determine the composition of the coal slurry product so that it will -- it could be transported in the quantity it was being transported through a 270-mile-long pipeline?

A The physical processes are similar but on much smaller scale within a traditional coal preparation plant.

Q Well, in preparation of the coal slurry product, would they have to -- would there have to be some type of engineering done to know what size particles, what velocity of the water, issues such as the viscosity of the coal slurry product, would there have needed to be some type of engineering done to determine those qualities of the coal slurry product so that it would function in the pipeline, 270-mile pipeline?

A Yes. There's a significant amount of engineering design that goes into a plant of that nature, and there are significant differences between a

traditional coal preparation plant in that -- so the volume that you are transporting and the pressures and the size consistency of the coal that's introduced and made into a coal slurry.

Q For waste they wouldn't be so concerned about the mesh size of the coal, would they, if they were transporting waste by slurry?

A The waste product that -- its term is called "slurry," is going to consist of clay and silt particles as well as some coal. Naturally you are trying to recover as much coal as possible, but it's impossible to be a hundred percent efficient. So there's still sometimes significant amounts of coal that are thrown away in these coal refuse areas.

In fact, a side point on that, in recent years, from the '90s, there's been a lot of new technology developed that allows more of the coal to be recovered. And there were tax incentives given to companies to try to go back to these old coal waste areas and recover some of that coal out of the refuse areas, and it's been done all over the country in the past 20 years or so.

Q Mr. Cunningham had mentioned that if Mohave hadn't been able to use the coal slurry product, that

ponds, where the extra slurry was stored so that the plant would always have a supply in case the pipeline shut down.

THE COURT: I think you said they had to be reslurried, though, once they went back in there, back into the plant; is that correct?

THE WITNESS: That's correct. That's the way we understood the literature. Because once they were pumped in those ponds, you would get a lot of more settling. And some of the earlier reports, design reports, that I read from the '60s said they originally planned to just pump it in a pond, let it settle, and then use a dredge to go in and reslurry the coal fines.

But these Marcona ponds kept a certain amount of mixing going on. And I didn't look into detail as to how they were designed, but if you recall that photograph, you saw the series of big circular ponds with a structure in the center, and those structures then were used to then reslurry, remix the coal fines or reintroduce water and pump it into the tanks that were right at the plant itself.

THE COURT: You indicated that this was kind of a, I guess, at the time a state-of-the-art kind of a -- that's my term, not your term -- state-of-an-art

alternative transportation. Plus it was cheaper.

THE COURT: Ms. Session.

MS. SESSION: Thank you.

BY MS. SESSION:

Q Judge asked about the reslurry process. Did the coal from the storage ponds have to be reslurried because Mohave could only burn a liquefied coal product, such as the coal-sorting water that they received from the Black Mesa Pipeline?

A If I can clarify that, they weren't burning the slurry, but --

Q No?

A -- they were transporting. That was how all of their handling was set up, was to pump it in the form of coal slurry.

So initially it came into the tanks right beside the plant, then the excess into the Marcona ponds, so that they would always have a -- I can't remember how long that supply was, but to have adequate so that they could keep the plant in operation. They had to handle it in the form of a slurry, and then dewater it before it went into the boilers.

Q All right. And I guess to clarify, of course they were burning -- ultimately just burning coal, but

the plant had to have the coal slurry product, not dry coal, in order to burn the coal at the plant?

A Yes. That's how the plant was designed.

THE COURT: In a normal coal plant at different coal planting, different than this one, there was some testimony that basically the final end product that goes into the furnaces, so to speak, in respect, that is pretty much the same as this plant at the Mohave plant?

THE WITNESS: Yes.

THE COURT: So it was just how you get the product to get into the furnaces, I guess.

THE WITNESS: That's correct. The Black Mesa plant was making a coal slurry product to transport it to Mohave. And it was probably a little higher in moisture content than your typical power plant. It's very difficult to get all the moisture out, especially that small particle size, but it was still essentially the same as in a traditional --

THE COURT: Coal plant.

THE WITNESS: -- PC plant, pulverized coal plant.

BY MS. SESSION:

Q The -- In discussion about why this -- the

THE WITNESS: And that one, because that was the only sieve that we had available, but it was a 30-by-200.

THE COURT: Thank you.

THE WITNESS: And those sizes are on that sheet in the PowerPoint.

BY MS. SESSION:

Q So the actual grind that would have been done at the Black Mesa preparation plant, coal slurry preparation plant, would it have been finer than this?

A Yes, it would have been a bit finer.

Q Okay. And for burning as fuel, grinding is a -- is grinding an important part of the process when you are going to burn coal as fuel?

A Yes.

Q So the grinding that would have taken place at Black Mesa, while it would have helped with transportation, did it also help with its ultimate use as fuel at Mohave?

A Yes.

Q And to your knowledge did Mohave have the means available to do that intermediate grinding from the 2-inch coal to this -- these fines at Mohave?

A My understanding is they had another step to

grind it even further for the final fuel that went into the boilers, but it was not what would have been at a standard power plant. It would be a lot more in that process.

Q And would a standard power plant have had the means to take the 2-inch coal and grind it into a fine pulverization like this?

A If I understood your question --

Q Yeah.

A -- yes. Most power plants are receiving coal probably smaller than a 2-by-0, but all power plants have a little bit different spec on the product that they receive. So, yes, they have a lot.

But that's for transportation because you don't want to transport this in a railcar because you'd lose half of it by the time it got there. So, yes, they have to have the pulverization process at the plant.

Q But Mohave didn't -- Beyond their ultimate, after they dewatered this coal, they didn't have that intermediate pulverization ability, did they, from the 2-inch to this size?

A That's my understanding, they did not.

Q To the -- I'm sorry. To the 28-by-325 size.

A Correct.

burning.

Q The sub --

A Sub-bituminous, yeah. So generally you probably -- in most coal plants you would be burning sub-bituminous to bituminous coal.

Q All right. So are there any significant coal deposits in Nevada?

A No, there are no significant deposits in Nevada.

Q You mention a -- read reports done by Horton and Garside?

A Um-hum.

Q Who are Horton and Garside?

A Garside was with the Nevada Bureau of Mines and Geologists, retired a few years ago, a research geologist with the Bureau. And Horton, that report's from 1964. I did not know Horton. I believe he was a geologist also with the Bureau. I am not a hundred percent sure of that, but that report was published through the Bureau.

Q And was that a report about coal or was that a more general report?

A A more general report.

Q But it included information about coal --

A That's right --
Q -- deposits in Nevada?
A -- it included a few pages about coal deposits.
Q And what did they conclude about coal deposits in Nevada?
A That there is not much coal at all. There are some minor amounts of coal in various parts of the state, very minor amounts. Some small deposits in the Elko area, small deposits near Coaldale, and small deposits up here in the Pine Nut Mountains, not too far away, some small deposits west of Reno, and also some in Lyon County. So a few scattered small deposits of coal throughout the state.
Generally sort of low-ranking coal and, and, and very minor deposits. Did a little bit of research I believe in terms of historic production. The only documented production I could find was from the 1860s and 1870s, and that was from a place El Dorado Canyon up there in the Pine Nut Mountains. Very, very minor amount.
Q All right. And, I don't know, I've seen mention of Coaldale and some suggestion that since it's named Coaldale there must be coal there.

A There are some very, very small coal seams in the rocks there, but nothing that's been economical for -- to develop. In the 1800s, primarily in the 1800s, maybe stretching into the very early 1900s, some of that coal was used locally for heating, but it's never been a -- there are no large enough deposits in Nevada that would be economical to mine, market, sell the coal, if you will, to large producers.

Q Did Horton and Garside, did they make a conclusion about the quality of the coal that was here in Nevada?

A Yeah, I can't recall the exact details, but, yeah, they basically concluded that both the amount of coal and the quality of the coal in the state sort of inhibit any significant economic production of coal.

Q And in this case we're talking about the use of coal to, for the commercial production of electricity. Is there coal of that quality or quantity that --

A No, there is not. The maximum production, and this is, to my knowledge, the only sort of documented amounts from the 1860s and 1870s from the deposit up here in the Pine Nut Mountains, was 40,000 tons. And, again, the mining out of just the Black Mesa Mine I think is 4.8 million tons per year, okay, so we're talking about --

and that's just one year and we're talking about the documented total production in Nevada so we're talking about orders of magnitude difference between one mine like Black Mesa and what has historically been produced in 150 years out of Nevada.

Q All right. So based on that, you know, you said you had some numbers about production, production of coal in Nevada. Is there a track, anything that tracks the production of coal in Nevada?

A Well, since we're not producing any coal now, no, but we both -- both Nevada Division of Minerals and Nevada Bureau of Mines do keep track of mineral production in the state. And, in fact, Nevada Bureau of Mines, we publish an annual report called The Mineral Industry Report, have been publishing that since the '80s. And we've had nothing to report in the span of that time in terms of production of coal in the state.

Q I'm going to turn from coal to oil. Are you knowledgeable about the oil in Nevada?

A Yes.

Q And how do you know about oil?

A Well, again, the responsibility of, of our department, of the Bureau of Mines and Geology is to sort of have -- both to study and assess, if you will, the

1998, 2000 time period. And so if we had unlimited quantities of those minerals, what, what minerals were in Nevada that could be used for commercial generation of electricity?

A You've asked me a very hypothetical question, if we had unlimited quantities.

Q Yeah.

A We know we have the major fuels for electricity here in Nevada, we have oil, we have natural gas, we have geothermal energy, we have coal, we have uranium, they all exist here in Nevada.

Q Right.

A But if we had unlimited quantities we would probably make electricity out of all of them.

Q Right.

A But during the time period of interest, 1998 to 2000, based on the records of the Division of Minerals and the Mines Registry we recorded geothermal and we recorded oil and gas production. We did not produce -- we did not report and, to my knowledge, there was no production of uranium or coal in Nevada during those three years.

Q Okay. And so we just started to talk about oil. So was this production of oil, is it a quantity

anything, dry anything or make electricity. They are produced and used right at the location, which in itself produces some challenges. As you know, we're a pretty rural state when you look at the whole place and you can't put electrical energy in a can for the most part, you've got to get it into a wire and get it where it needs to be used. So there's lots of geothermal potential in Nevada and many sites that might be developed, but there's not a power line very close by so that's a limitation.

Q And in this case if we compare the production of coal and then the sale of the coal to the power-generating plant as tangible personal property or property that the, fuel that the generating plant purchases, that buy/sell doesn't occur with the geothermal, does it?

A In the same sense that you just described the answer would be no. In other words, the geothermal power producer is generally the same company that is operating the wells and providing the plant with the hot water and the steam, so, yeah, there's no exchange of money that would happen at that point.

There are some entities that may control certain parts of the geothermal field and there certainly

is probably different royalty interests between the federal government and between private property owners that have to be accommodated as that is being, as the geothermal fluids are being produced. So --

Q But you are not aware of any --

A -- buy/sell --

Q -- buy/sell --

A -- I don't know how I would apply that term with regards to what I see there. I see it as a vertically integrated process that happens, but I'm sure there's accounting that takes into the fact who actually owns that geothermal fluid as it comes out of the ground.

Q Okay. Is there -- Are there -- Well, tell me the geothermals, and we're talking 1998 to 2000 --

A Right.

Q -- are there geographic constraints --

A Yes, there are.

Q -- regarding the geothermals?

A Yeah, those years I believe I reported, or at least in my deposition I did, that there were something like 11 sites in Nevada that were commercially producing electricity from geothermal fluid. Each of those sites had, had either an individual power plant associated with it, but several of the sites had two or three plants

structure of ownership of the various geothermal --

A Right.

Q -- fields and sites, and I know I'm not using the, the accurate words, but you mentioned that the -- there were various accountings of the fluids that came out of the ground as far as who owned them and that sort of thing. You don't know specifically whether there were any, as Ms. Session described, buy/sell transactions, correct?

A I do not know there was any buy/sell transactions.

Q And you don't know one way or the other?

A I do not know one way or another.

MR. WARD: Okay. That's all the questions I have.

THE COURT: Any redirect?

MS. SESSION: Just briefly, Your Honor.

REDIRECT EXAMINATION

BY MS. SESSION:

Q Mr. Coyner, I just had some questions regarding the sale of electricity and the amounts of the sale of electricity for geothermal. Is that something different than the sale of the geothermal fluid that was

FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

THE HONORABLE JAMES T. RUSSELL, DISTRICT JUDGE

--oOo--

SOUTHERN CALIFORNIA EDISON, Plaintiff, vs. THE STATE OF NEVADA, EX REL. DEPARTMENT OF TAXATION, Defendant.	Case No. 09 OC 00016 1B Dept. No. I

TRANSCRIPT OF PROCEEDINGS

TRIAL

DAY 6

Wednesday, January 29, 2014

CERTIFIED COPY

Reported By: DAWN BRATCHER GUSTIN, CCR 253, RPR, CRR
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cost is in the investment in the generating stock.

Q During 1998-2000, in comparison to its competitors, how were -- Mohave's fuel costs, how did they compare with its competitors?

A So Mohave's fuel costs were basically inframarginal. That is, they never rose to the point of being at the market clearing price. They were always less than the market clearing price, which meant that Mohave was always able to sell their output to anyone who was willing to buy the output and in particular into the CISO markets. So they're basically called inframarginal.

Q You used a term, "base load." What does that mean, "base load generation"?

A So base-load-generation power plants are able to run at a constant level around the clock, around the year, so Mohave was -- basically you turned it on and walked away. Well, not quite walked away, but -- but basically there wasn't -- it wasn't -- the output wasn't varied up and down in order to follow a load. They were just able to basically constantly output at 1500 megawatts an hour year-round and just be able to sell into the marketplace.

They would take down the power plant for various reasons, you know, to maintain it and do other

things, but there wasn't any reason to cut back operations because of situations in the marketplace.

Q So I guess what you're saying is their output would never be affected by a change in the marketplace --

A Correct.

Q -- during that period at issue?

A Correct.

Q So did Mohave have any competition with other generators in that capacity market that we were discussing?

A No. Mohave was built in 1970, before the qualifying facilities were put in place. There were -- there was a set of third-party generator contracts that were introduced under the Public Utilities Regulatory Policy Act of 1978, a federal law that was passed that required utilities to buy power from renewable power generators and from code generation plants at industrial facilities, and those facilities were called qualifying facilities, or QFs, and every state was required to issue a set of contracts that could -- in which the utilities were to buy the power output from these QFs.

But Mohave was built before that point, built in 1970, so Mohave was never competing with those power

plants in the capacity market, and it wasn't competing with any of the other power plants in the capacity market because -- it was so low cost relative to any of the peak-load capacity power plants, that it could always sell its capacity.

And on top of that, it always had the rate of return on its investment because it was owned by Edison. Edison, as a utility, was assured of a rate of return on its investment through the Public Utilities Commission.

Q So these qualifying facilities, was there a typical contract they had for their output?

A The particular contract was a must-take contract. That means that the utilities had to buy the power from those power plants under all conditions. So essentially the price of those power plants was -- was irrelevant to the decision about dispatching those power plants.

There was never a position where Mohave -- Mohave could have never displaced the generation from those power plants because Edison was legally required to take the output from that, from those QF power plants.

Q Right. So regardless of whether -- price or any of those factors, the geothermals, their output had to be taken?

A Correct.

Q So for geothermals in this case, is there any other important considerations?

A So one additional consideration about geothermal is the fact that the geothermal projects are vertically integrated, which means that they are owned by one single entity from the well into the geothermal field to the electricity that is generated and shipped out of the power plant. There's no separate set of transactions between the well production and the going into the steam generator and then being produced by the electricity.

What's important relative to this case is, there's no sales transaction or no -- in which you can set a price and set a tax on that sales transaction. There's no value that you can put explicitly on that steam that's being transacted in that.

Q And is that distinguishable from coal?

A Yes. So in this case Peabody was delivering a coal slurry product to Edison and Edison was paying a price, a dollar-per-ton price, which is a sales transaction, and that is then -- can be identified as a taxable transaction. So that's an important distinction between any of the coal plants, any of the coal plants in Nevada and geothermal.

A Yes, I am.
Q Do you agree with it?
A No, I don't agree.
As I stated, oil that's extracted would have had to have been processed. Therefore, it would have been subject to a sales tax. The gas could not be delivered to electricity generators who were interconnected to the grid, so it could not be in a competitive position with Mohave, and the geothermal was never transferred in a sales transaction that would have ever been subject to sales tax.
Q Southern Cal Edison frequently represented that it would be difficult for them to show damages or harm in this case.
Do you agree that that would be difficult for Southern Cal Edison to show?
A No, I don't believe that it would be that difficult to show for them. It would involve some analysis, which can take some time, but, in fact, I laid out in my report on page 6 a five-step analysis of how they would have to show their damages.
And what I started with was that they would have to show that Mohave's output was reduced compared to other power plants, similarly situated power plants, that

they had to show that that reduction was due to external dispatch decisions, that they had to show that the output was not reduced due to transmission constraints, that they had to show that their fuel costs were higher than the winning bids into the power market, and, finally, they had to show that, in fact, the power that they were -- when they were displaced by the power market, they were displaced by a generator inside Nevada.

And all -- hmmm?

Q I was just going to say, if we could take those one at a time to discuss, but finish your answer.

A Yeah. So I actually made a data request to Edison to ask them for what -- the data that would be required for each one of these steps.

I mean, what is interesting is that because of the refund case, the energy refund crisis case, all of this data is actually available for this time period in great detail, and it's been analyzed in great detail by Edison's witnesses in the refund case. So they're extremely familiar with all the data that I laid out in this case or at least their witnesses were in that particular case.

And so I made a data request to Edison, and their responses were largely, well, you can look in the

Exhibits 270 and 271 that were in the energy crisis case, but Edison actually never undertook this analysis to do this even though they actually had all the pieces to do this analysis.

Q What was the data request that you made?

A Made a data request in -- I think it was early May, and I made a data request that began with Request No. 17, I believe. And the response I got back -- that we got back from Edison -- and I can't see the date on this -- but anyways, it was Responses 17 through 29.

MS. SESSION: Your Honor, we have the data. It's very voluminous. We have them on disc. They were our Defendant's 119, Southern California Edison's Response to the Second Request for Production of Documents, and they're discs that are marked Bates stamp 12025, 12026, 12027, 12028, 12029, 12030, and I would offer them -- I think they have been already accepted as Defendant's 119, but I would offer actual discs to put into the record.

THE COURT: Mr. Read, any objection? I think they've already been admitted to some extent. They're just the actual discs that support --

MR. READ: Well, this is similar to the other

issue where our written response describes material that we provided, but the -- you know, the material is, as Ms. Session indicates, is voluminous.

I think, actually, after my examination of the witness, that it would also be irrelevant. This really is not an issue in dispute in terms of the showing, so I don't know --

THE COURT: That's a different issue, whether it's relevant.

MR. READ: I don't know that we need to burden your record with this vast amount of data that goes nowhere on these issues.

THE COURT: Since it's already been admitted, we're going to admit that just for the purposes of having a complete record in this case.

MS. SESSION: Thank you.

THE COURT: Mark the whole thing as one. It will be 119A.

THE CLERK: 119A?

THE COURT: Yes, if we have the other. It will be 119A.

THE CLERK: But all the discs as one?

THE COURT: Yes.

(Defendant's Exhibit 119A was marked and

admitted.)

BY MS. SESSION:

Q So I think this is the Energy Information Administration, the Form 923 data.

Is that what we're discussing?

A That's only one piece of it.

Q So let's start with that piece of it.

What would that data show?

A So that data shows the output from the power plants in the United States, including Mohave, and you would be able to use that data in order to show the power output from similarly situated power plants elsewhere in the Western Electricity Grid. You could identify other coal-fired power plants, for example, and look at the output of Mohave compared to those other power plants.

Q So you could actually engage in a comparison with possible competitors based on output?

A Correct.

Q And so what would be the next step? Are you aware of any -- well, let's start with that condition 1, that they had to reduce output.

You've heard the testimony in this case. Was there any testimony regarding reduced output from Mohave?

A My reading of Dr. Jurewitz's oral testimony

of the tax exemption.

Q And is it your position that they had the data and information to be able to do that if such a competitor existed?

A Yes. They would be able to identify the specific power plant, Nevada power plant, that was selling into the CISO market and be able to finger that plant and trace back to it as to whether it was receiving an exemption or not.

Q Based on this data, would that have been a hypothetical damage or could they have shown actual damages?

A They could show actual damages.

Q So when Southern Cal Edison says it is not possible to identify favored competitors in Nevada, that's not true, is it?

A No, it's not.

Q So you have some discussion about undue market entry.

How does that enter into the discussion about damages?

A So in large part what's happened, seems to have happened is Dr. Jurewitz has turned antitrust analysis on its head.

generators. The legal fix to the issue would have been -- might have been to eliminate the exemption. Mohave's position still would have been the same versus out-of-state competitors.

So there's -- the issue of competition versus out-of-state competitors is irrelevant in this case for that reason.

Q Thank you.

Are you familiar -- did you review the Coal Supply Agreements in this case?

A Yes.

Q And would you characterize Peabody's arrangement with Mohave as a monopoly arrangement?

A It is -- it's -- yes. It's essentially a monopoly arrangement with a monopoly buyer at the other end, a monopsonist, which is a buyer. So Peabody was a monopoly in terms of selling to Edison. There was no other way to get coal to Mohave.

THE COURT: Sole source?

THE WITNESS: It was sole source, but more importantly, it was converted into a coal slurry product, a unique product that was delivered to Mohave. It would have had to have been processed through Peabody's facilities at the other end of the pipeline.

There was no railcar to Mohave to deliver the coal, to deliver dry coal. The power plant wasn't actually able to use dry coal on site, so anybody who was selling coal to Mohave would have had to deliver it to Peabody's Black Mesa facility, have it processed into coal slurry product, and then shipped through the pipeline to the other end.

So, in fact, Peabody stood as a monopolist with entire control over the ability to sell any other type of coal into Mohave.

BY MS. SESSION:

Q How about natural gas to Mohave?

A There is -- there was a limitation in the agreement with the Bureau of Reclamation, I believe -- I'm forgetting which federal agency it was now -- that limited the amount of energy that could be produced at Mohave to 15 percent of output, and so that restricted the ability to use natural gas.

Natural gas was used as a -- for coal firing, that is, it assisted in the burning of coal, but it was not a primary source of fuel for Mohave because of that limitation.

Q What was -- if you know, what were the terms of that limitation, if you know?

yet. A lot of it has to do with the hydrofracked gas, the shale gas that is now a big topic.

Q Which is a relatively new technology?

A Right. Right. It did not emerge until about 2007.

Q So how would you sum up this case after your analysis of the factual circumstances?

MR. READ: Objection, Your Honor. I don't know what the basis is to ask this witness for his summary of the case.

THE COURT: I think you need to rephrase the question.

MS. SESSION: All right.

BY MS. SESSION:

Q Based on your analysis, has Southern Cal Edison suffered any harm as a result of the use tax that they paid at the same time that there was an exemption of -- sales and use tax exemption on minerals mined in Nevada? Have they suffered any actual harm?

A No, Edison hasn't suffered any harm. They haven't shown that there were any in-state competitors who gained a benefit. They haven't shown that they lost any profits from the -- from those actions. They actually fully recovered their investments through 2005,

their investments in Mohave.

Q And in your opinion, if there had been a taxpayer that was benefited in Nevada, would Mohave -- would Southern Cal Edison have had the ability, if that competitor had existed, to identify them?

A Yes. They would -- with significant analysis or with the analysis that I laid out, they could have identified any competitors that were gaining an advantage in the marketplace.

MS. SESSION: Thank you very much for your testimony today.

THE COURT: Thank you. We're going to go ahead and take our recess at this time. We'll be in recess for about 15 minutes, and then we'll come back for cross-examination.

(A recess was taken.)

MS. SESSION: One last item, Your Honor. I would like to enter that into evidence.

THE COURT: Any objection?

MR. READ: No objection.

THE COURT: We'll go ahead and admit it. I think she said 134.

(Defendant's Exhibit 134 was admitted.)

THE COURT: Mr. Read, cross.

Q Now, again, in most -- all my questions, unless I tell you otherwise, I'm going to remind you to assume that we're talking about a -- SCE is not required to show an actual competitor getting symmetrical advantage to its disadvantage, okay, in order to get relief in this case.

If, in fact, SCE shareholders have fully recovered fuel costs, including the cost of this use tax, but if this use tax is considered illegal -- make that assumption -- is it your view that the shareholders have not been damaged?

MS. SESSION: Objection, Your Honor. I think he's asking him to assume that the use tax is illegal, and I think Dr. McCann's already indicated he can't answer that question.

THE COURT: Well, I think he clarified it on a hypothetical basis and assuming that.

So to the extent that you can answer -- I think it's already been asked and answered a different way, but to the extent that you can answer, go ahead. I'm going to overrule the objection.

MS. SESSION: All right.

THE WITNESS: So I think I can answer that in that any reduction in the sales tax would have been

passed through in a lower fuel price to ratepayers.
BY MR. READ:
Q Okay. So in other words, then, this means that if that illegal tax has been paid and should not have been paid, then it is ratepayers in your view who have been damaged?
A Yes, it would be ratepayers who would have any damages.
Q Okay. And --
THE COURT: If in fact -- as we've had some testimony in this case, if, in fact, under what took place -- and I think you explained it very well in 2000-2001 with respect to what was going on in California in respect to that -- if, in fact, there is no refund to consumers in this particular case, if essentially the taxes are refunded to Southern California Edison in respect to that, would it be fair to say that a windfall, then, has been, in fact, given to Southern California Edison if it doesn't have to pay those amounts over to consumers?
THE WITNESS: Absolutely it would be a windfall.
THE COURT: A significant windfall?
THE WITNESS: Yes.

projects.

Q Do you have any basis? Have you visited any of these projects? Do you have any basis to understand how many wells may exist for any individual geothermal power plant?

A Yes. Two -- well, three things: One, I have been to one of the power plants in Nevada, but actually I worked on the Geysers Geo divestiture for -- in the PUC case and visited the Geysers plants, which is a web of wells throughout Lake County that supplied the -- I think it's about 8,000 rated megawatts of -- no, that's not right -- 1400 megawatts of rated capacity in the Geysers projects.

And then on top of that, for the California Energy Commission, I've been doing the cost-of-generation report in which we look at a range of generation technologies, and we've actually spent particular attention on geothermal projects, particularly in this latest round, and so we've been looking at well -- drilling well success rates and that sort of thing for these power projects.

Q So on the basis of your experience and if we make some assumptions that the Geysers' layout and structure might be similar to the geothermal projects in

Nevada, this would be hundreds -- there would be hundreds of geothermal wells supplying power to these power plants here in Nevada; right?

A For any one particular plant, it's not hundreds; it's in the dozens or less.

Q Yes. And I meant hundreds when you multiply times the number of power plants.

A Correct.

Q Okay. And it is -- if you know, it is certainly entirely possible for individual geothermal wells to be owned by different corporate entities, isn't it?

A It would be different corporate subsidiaries of a single corporation.

Q It could be a subsidiary, different LLC, limited liability company, for example?

A Right. Correct.

Q And your work -- in your work you have not identified or determined whether or not there are individual subsidiaries owning particular wells, have you?

A No, I have not.

Q Let me ask if you recall that Dr. Jurewitz testified to a number of assumptions that he made in

making his competitive analysis.

Do you recall that testimony? I think he gave it here in court as opposed to in his report.

A Well, if you give me a specific reference, I can --

Q Yes. I think that he indicated, for example, that he was assuming that SCE was required to make a showing of competition, of competitive disadvantage in order to obtain a refund in this proceeding.

Do you recall that?

A Yes.

Q Do you understand that in this case SCE contends that there are numerous policy and legal arguments that support a refund without any showing of competitive analysis?

A I haven't looked at the other policy arguments in detail because they're legal arguments outside my range of expertise.

Q Would you agree as an economist that if a competitor is required to pay an illegal cost in its operation, that that puts it at a competitive disadvantage to others who are not required to pay such a cost?

A In a very hypothetical situation, well, yeah,

that would be generally true.

Q Or is another way to put that, that if in that situation, that hypothetical, the imposition of that illegal cost on one competitor actually offers an advantage to any competitors who do not have to pay such a cost?

A Yes. You would have to identify who those other competitors were who were in that -- who were in the advantaged position, because it may not be true that all competitors are in that disadvantaged position.

Q And if you have a competitor -- Strike that. Let me start over.

Let me ask you to assume that you have an entity that is -- I believe you've used the word an "inframarginal" producer, and if I understand it right, that is an entity that will not suffer any loss of output or sales even if costs are increased.

Have I got that approximately right?

A Yes.

Q Okay. Thank you.

And it's your view, at least in this time period, SCE, at least in terms of operating Mohave, was operating as an inframarginal competitor or producer?

A Yes.

A Right.
Q Is that correct?
A Right. Correct.
Q Okay. And 372.270, that's also an exemption statute?
A Yes.
Q Okay. On the combined sales and use tax return, can the Department identify what type of exemptions are being taken from the face of the form?
A No.
Q Okay. So how do you make the determination that as referred to in direct that NRS 372.270 is the dormant tax exemption, how did the Department make the determination that miners or minerals aren't taking advantage of that exemption?
A Primarily because their sales are out of state or sales from resale so they don't need that exemption. And I have never seen it.
Q Okay.
A Which is not to say that we see -- We don't audit a hundred percent of businesses.
Q Okay. So let's talk about that. Okay. The Department audits -- has an audit selection criteria called Risk Base; is that correct?

exemption for coal?

THE WITNESS: I don't know.

THE COURT: Go ahead.

MR. AZEVEDO: Thank you, Judge.

BY MR. AZEVEDO:

Q One of the claims brought by Southern California Edison is they are entitled for a credit attributable to the, say this right, the Arizona privilege tax, transaction privilege tax.

A Um-hum.

Q On direct you testified regarding that particular tax imposed by the State of Arizona and you indicated in your opinion or based on your experience that that tax was not a sales tax.

A Right.

Q Is that correct?

A That's my opinion, yes.

Q Okay. What is the basis of your opinion? What aspects of that tax caused you to conclude that it is not a sales tax?

A Because the taxes on the gross receipts of a seller is on the seller and because they applied that tax even though the sale took place in Nevada.

Q Okay. Okay. Those two facets?

A Yes.
Q Okay. So let's look at Nevada sales tax. I'll start there and then we can go over to Arizona's. Do you agree that Nevada's sales tax is a sales tax?
A Yes.
Q Silly question, but... Okay. What is the measure of Nevada sales tax?
A It's on the sales price.
Q Now, is the sales price the measure for an individual item of tangible personal property like this pen, and the gross receipts or gross proceeds the measure of the tax for all sales of a retailer?
A Yes.
Q Okay. So how does that differ from Arizona?
A The sales tax is on an individual transaction.
Q Okay.
A Which ultimately can be the whole gross receipts except for the exemptions that they may have. And the other tax is just the gross receipts -- from what I understand is just on the gross receipts of the seller.
Q Okay. So when you drew your conclusion, did you look at the Arizona tax?
A I had, yes. I went on the Internet, yeah.

A No, it's imposed on the consumer. It's a consumer that pays the sales tax.

Q Okay. If the Department goes to audit in my scenario Macy's.

A Um-hum.

Q And Macy's has incorrectly either collected or remitted sales tax, does the Department audit Macy's and impose a sales tax sufficiently against Macy's?

A It would, yes.

Q Because why?

A Because they should have collected the tax.

Q Okay.

A But Macy's can go back and collect the tax from whoever they purchased it from -- I mean whoever they sold to.

Q I'm just talking about the relationship between the Department and the retailer. Is it because Macy's, the seller, was a retailer because they sell more than two items in 12 months, has the legal obligation to collect the tax?

A They have a legal obligation to, yes, collect the tax.

Q And your understanding of the Arizona tax is the transaction privilege tax is levied on the retailer

or the vendor?

A Yes.

Q Okay.

A They can't go back to the purchaser to collect the tax.

Q And I'm going to hand you the Arizona statutes in a second.

Is it my understanding you said because Arizona did not collect the tax on the sale of the coal in Nevada, that was part of your conclusion?

A When I look at a sales tax, they -- sales taxes are supposed to be collected where the sale has taken place in an area where they don't have any nexus, so that was one of the reasons why I felt it is not a sales tax because they did collect it even though the sale didn't take place in Arizona.

Q Okay. Okay. And so based on that you made the determination -- Did you look to the statute to see quite possibly that they had some statutory language to say the sales didn't have to take place within the state of Arizona?

A I looked at the statute and -- the Internet is where I looked and read along what they were talking about in terms of their transaction privilege tax.

Q Okay.

MS. SESSION: Your Honor, in regards to the transaction privilege tax, I think if we asked Southern Cal Edison to identify that specific statute in the -- you know, and they haven't, and I think since we're discussing it that it would be helpful if we could identify the specific -- There are several transaction privilege taxes in Arizona. I'm not sure which one they are referring to.

THE COURT: Okay. Thank you.

MR. AZEVEDO: I've got copies, Your Honor.

THE COURT: He's got copies. We get to find out.

MS. SESSION: We get to find out.

THE COURT: Ms. Oliver, did you have any involvement in the decision that was prepared by the Department of Taxation on February 27th, 2009? I know it was basically a decision by the Tax Commission, but did you have any involvement in that?

THE WITNESS: No, I did not.

MR. AZEVEDO: If I may approach, Your Honor?

THE COURT: You may.

MR. AZEVEDO: Copy for the Court.

/////

BY MR. AZEVEDO:

Q Take a chance to review the materials I have placed before you.

A Um-hum.

MR. AZEVEDO: If I may approach again, Your Honor?

THE COURT: You may.

THE WITNESS: Okay. Um-hum.

BY MR. AZEVEDO:

Q Okay. The first item I'll call your attention to is this document. It's entitled Transaction Privilege Classifications with several modifications.

A Okay.

Q And I have highlighted two in particular. One's referring to 42-5061, which is a retail classification definitions, and second one is 42-5072, mining classification.

A Okay.

Q If we go to 42-5072 --

MR. AZEVEDO: It's this document, Your Honor.

BY MR. AZEVEDO:

Q -- witness -- I have highlighted some language that talks about the tax base.

A Right.

Q Did you review this prior to making your conclusion?
A No.
Q Okay. Have you read it where it indicates that the taxes imposed regardless of where the place of sale is -- I'll be more specific. Let me read it.
"The tax base includes the value of the entire product mined, quarried or produced for sale, profit or commercial use in this state, regardless of the place of sale of the product or of the fact that deliveries may be made to points without this state."
A Okay. Are you --
Q Okay. So -- Go ahead.
A This is not a sales tax, though.
Q That's your conclusion --
A That's my conclusion.
Q -- this is a transactions privilege tax?
A This almost looks more like a net proceeds or something tax, but I would not consider that a sales tax.
Q Okay. And even though it's a sale of a mineral, a tax levied on the sale, you wouldn't consider it a sales tax?
A The net proceeds mine tax is levied on the sale as well, but it's not a sales tax.

A Okay.
Q Okay. On direct you indicated that Nevada's use tax is imposed basically looking at a two-step process or a two-part test, and you reference NRS 372.185; is that correct?
A Yes.
Q Okay. And in that regard the first step, does it require that the property be used, consumed or otherwise tangible personal property stored in Nevada?
A It does.
Q Okay. And Ms. Session previously addressed 372.185(2) and, and I'll read that to you, it says, "The tax," referring to the use tax, "is imposed with respect to all property which was acquired out of state in a transaction that would have been a taxable sale if it had occurred within this State."
A Um-hum.
Q Okay. Is it fair to conclude or is that statutory requirement, does it require the property to be acquired out of state?
A Not necessarily.
Q Okay.
A It's -- There's two parts. It could have been acquired in state and the second part is the one

A Yes. Or a misinterpretation.
Q And Mr. Azevedo characterized this as a big mistake. Do you think this is a big mistake in terms of what was being reported to the -- what the legislature --
A Yes -- no --
Q -- was looking for --
A -- there was no consider--
Q -- and what was being reported?
A 217.7 million, you know, where we're talking about under prosthetic devices 553,000 and then it goes to 801.4 million, I mean, when you are looking at it it's not that big through a total of all the other exemptions.
Q Was it perhaps a good-faith estimate, on the high side granted, but a good-faith estimate to try to provide some information to the legislature?
A Yes.
Q So I don't want to belabor the, the transaction privilege tax in Arizona, but isn't the fact that it doesn't matter if the sale actually takes place in Nevada? Isn't that an important factor in determining whether it's actually a sales tax?
A Yes. In my opinion, yes.
Q And that's in addition to the fact that the incidence of the tax falls on the retailer?

A Yes.

Q Ms. Rubald, what do you understand the term "ordinary mining process" to mean?

A It means that in the mining industry that in order to get a marketable product that it takes more than simply the excavation of the ore. It also means that you have to prepare the ore in order to get it ready for market. Typically that includes processes like reduction, beneficiation. Those are the principal ones that come to mind that are words that are currently used in our regulations.

Q Is there a definition of ordinary mining processes? Is it ordinary mining processes?

A Yes.

Q And is there a definition in Nevada law for ordinary mining processes?

A No, although that term is certainly used in this preamble to Senate Bill 61, but also when you read the legislative history there is a reference about where that term comes from and it was brought to the attention of Mr. Malkiewich by the mining industry that the term is a reference to the federal regulations on depletion allowance.

Q And are you familiar with the federal

depletion allowance regulations?

A I have studied them, yes.

Q And why are they important to your position overseeing net proceeds of minerals taxation?

A Well, because in our regulations there is a reference to -- in 362 -- I can't remember, Chapter 362 about the gross yield to include that point in time where the beneficiation is completed. And so in trying to understand what beneficiation is and what a mining process is and a nonmining process is, the federal regulations are a useful reference because they have very specific definitions for a mining process and a nonmining process.

Q Are the -- Is the net proceeds of minerals tax and the way that Nevada calculates it, is it in a way a mirror of the federal depletion allowance?

A Well, it's not a precise mirror. There are differences, but --

Q Aren't both trying to reach the value of the mineral?

A Yes, that's true. In the federal regulation their purpose is to limit the depletion allowance against mining income, so it was in their interest to figure out what comprised mining income, at what point is income the

result of mining and at what point is it not the result of mining. And similarly in our, in our case, in Nevada's case, we are trying to figure out what, at what point the mineral should be, should be valued, and as I've said it's that point where it's first commercially marketable.

Q All right.

A And so we need to know if the gross yield reflects that commercially marketable point or if it's reflecting some manufacturing point.

Q And are you familiar with the -- oh, an example, I'll just give an example, I'll throw out clay and clay pipes?

A Well, I am familiar with some case law because it came up when we were trying to make a determination with regard to lime and limestone and I'm familiar with some case law, I believe it's Cannelton Sewer Pipe.

Q And, and was Cannelton, if you recall, was that a federal depletion allowance case?

A Yes, it was.

Q And what's -- What is the risk that the federal government is trying to avoid in terms of the depletion allowance?

coal, it means washing the coal and crushing it.

Q And it's a mining process?

A Yes, it's sizing it.

Q Sizing it. And we've been talking quite a bit about gold. Does beneficiation have a particular meaning for gold?

A Well, they have a lot of different processes. They can -- depending on the type of ore, they use roasters or autoclaves, leach pads. There's a variety of methodologies that they use to separate the mineral gold from the ore.

Q Do the federal depletion allowances, do they -- regulations, do they specifically give guidelines for what's a mining process with -- for gold, for instance?

A Yes.

Q And in your experience is the separation between a mining process and a nonmining process specific to the ore and the purpose for which it's being mined?

A Yes, I think there are certainly differences between different types of minerals. I think the other day we were discussing industrial minerals versus the metals and of course oil and gas, geothermal. They are very distinct kinds of industries that would have

different kinds of beneficiation.

Q All right. And so I'm trying to think of a good example, but are there ores that you can think of that crushing or grinding would be a mining process and other ores where grinding would be a nonmining process? Are there distinctions between ores for that?

A Well, I think probably grinding and crushing is common to a lot of the different ores, but I think it also has to do with at what point do you do that in the process. I keep going back to the lime limestone example where there is definitely some crushing and grinding to prepare it to go to the kiln, but even after it comes out of the kiln there is further sizing that goes on. Diatomaceous earth there is further sizing that goes on.

Q And if we talk about diatomaceous earth for a minute, what is diatomaceous earth?

A It's a type of clay.

Q All right.

THE COURT: Ms. Session, I'm going to stop you now. It's almost 5 o'clock.

MR. READ: Okay.

THE COURT: Unless you were going to finish in the next three minutes.

MS. SESSION: No, I think I have a little

FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

THE HONORABLE JAMES T. RUSSELL, DISTRICT JUDGE

--oOo--

SOUTHERN CALIFORNIA EDISON,	)	Case No. 09 OC 00016 1B
	)	
Plaintiff,	)	Dept. No. I
vs.	)	
	)	
THE STATE OF NEVADA, ex rel. DEPARTMENT OF TAXATION,	)	
	)	
Defendant.	)	

TRANSCRIPT OF PROCEEDINGS

TRIAL

DAY 7

Thursday, January 30, 2014

Reported By: DAWN BRATCHER GUSTIN, CCR 253, RPR, CRR
California CSR 7124
PEGGY B. HOOGS, CCR 160, RDR, CRR
California CSR 5958

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DIRECT EXAMINATION

(Resumed)

BY MS. SESSION:

Q Good morning, Ms. Rubald. How are you this morning?

A Cold.

Q Yeah.

A Thank you, though.

Q And you managed to walk into the courthouse without slipping.

A Without slipping, yes.

Q That's good.

So I think yesterday we left off discussing the federal depletion regulations and how they informed the Department's decisions regarding mining and nonmining processes. Why is it important to make that determination, that particular determination?

A Well, the regulations call for finding the gross yield which is equal to the sales price of the mineral product and so we want to be sure that what we are obtaining in terms of a gross yield is for the mineral product.

Q And maybe not extra value added by some other nonmining processes?

A That's right.
Q All right. Just for your reference is the federal depletion regulations that are included in Exhibit 112, so let me make sure you have that in front of you.
MS. SESSION: Do we have Exhibit 112?
THE WITNESS: Thank you.
BY MS. SESSION:
Q And did you testify yesterday that each mineral may have different definitions that apply in terms of mining and nonmining processes?
A Yes, I believe the federal regulations basically talk about, well, several different groups of minerals and try to define the mining processes for each of those groups.
Q All right. So, for instance, is gold in one of those categories?
A Yes.
Q And is it in a separate category from coal?
A Yes.
Q And is coal specifically discussed?
A Yes, it is.
Q So how do you determine where to start with gross yield?

A Well, as I've said, the idea is to find the gross yield equal to the sales -- or the value of the gross yield of the mineral product equal to the sales price. That's where we start. But the regulation in 362.010 also tells us that the gross yield for the mineral product is, includes mining processes such as reduction, beneficiation and any treatment that would take the mineral to, to a commercially marketable stage.

Q And yesterday I think you started to tell us about beneficiation. What do you mean by "beneficiation"?

A Beneficiation are those processes or treatments that basically separate the mineral from the ore in which it lies.

Q And so your understanding of the term, would that be a mining process or a nonmining process?

A That is a mining process.

Q And are there definitions of beneficiation in the regulations?

A In the --

Q Nevada regulations?

A Nevada regulations? No.

Q All right. And so do you need to make reference to the federal depletion regulations --

A It is certainly --
Q -- to help in that determination?
A It is certainly a good source of -- and a useful tool to help us define that. In my studies I've noticed in other states they have similar cutoffs or definitions. What I'm thinking about is Wisconsin and Wyoming and they both are -- in their regulations have basically adopted the federal regulations.
Q Oh, all right. And Nevada hasn't adopted the federal regulations?
A No.
Q But for your purposes they provide a helpful guideline?
A Yes.
Q So can you offer us an example of why it's important to determine when the mining process ends and the nonmining processes start in terms of determining what the gross yield is?
A Well, yes, we want to make sure that we've got the gross yield for the mineral product. We don't want to skew the gross yield that's attributable to the mineral product.
If I were to give an extreme example, if you took my diamond ring here, it has a diamond and it has

gold in it, but if we were to take the value of the diamond ring as the measure of gross yield, it would be capturing the jewelry-making portion. So we don't want to do that; what we want is the value of the mineral product alone, whether it's the diamond or the gold.

Q In your diamond-ring example, even though it's been subject to processes, it's still a diamond, correct?

A Yes, the ring is still comprised of gold and it's still a diamond, but it's been manufactured into a ring.

Q All right. But there haven't been any chemical changes to the diamond?

A No.

Q Has there been any chemical changes to the gold?

A No. There's a refining process for the gold, but that refining process under the federal regulations, and as we've been treating it in Nevada, is a mining process up and -- you know, to -- when I say "refining," what we're doing is we are purifying or beneficiating the gold so that it becomes pure gold. We are separating the mineral from the waste product.

Q And at least for gold that removal of

impurities is part of a non-- a mining process?

A Removal of impurities is a mining process.

Q For gold?

A Yes.

Q And I'm not sure if I've asked this question, but can you think of other minerals in Nevada that are mined in Nevada but the mineral when it's sold at retail is subject to sales tax?

A Yes, I think I've mentioned that both lime and diatomaceous earth are examples of minerals that have been subjected to sales tax.

Q So I wanted to walk through -- we walked through lime a little bit, I wanted to walk through the diatomaceous earth as it flows through the stream of commerce and how it's treated for tax purposes.

So, first of all, what is diatomaceous earth?

A Diatomaceous earth is a, it's an industrial mineral, it's a type of clay.

Q And any ideas about how it's formed and why it's located -- what our deposits are like in Nevada?

A Well, the deposits in Nevada, there are some deposits that really don't need much beneficiation at all because it's, it's fairly intact, all you have to do is excavate it, perhaps crush it and get it ready for

transport, but there are other kinds in -- other grades that need additional processing.

Q And so when you are looking at diatomaceous earth, are you trying to find where the first marketable product is?

A Yes. The regulation actually calls for the, the first -- it calls for the commercially marketable product, it doesn't call for the first one, but if we take it at the first marketable product, then that's more representative of the, of the mineral as a whole. In other words, we don't have to worry about deductions for further processing.

Q So you said there's different grades of diatomaceous earth. Is there some that is -- goes to market just after crushing?

A Yes.

Q And do you know approximately what the price per ton would be?

A I have -- I've kind of forgotten. I think it's somewhere in the neighborhood of 35- to $50 a ton.

Q All right. And so the DE that is of greater quality for further processing, what happens to that DE?

A In the processing?

Q Yes.

A Well, depending on the kind of grade that they want, some of it will go into flash dryers and then the -- is bagged and transported, but others -- other diatomaceous earth will go to a kiln and be heat-treated, partially to get rid of, again, the impurities and then it will possibly be further graded as to size and then bagged.

Q I'm going to take each of those separately, but when that process, those processes are finished and those products are sold, are they subject to sales tax?

A Yes.

Q And is it fair to say that once they are in the finished product that they are in smaller quantities than that bulk that sold for $50 a ton?

A Well, yes, I mean, the -- I guess I'm not exactly sure of your question, but the quantities sold are in bags.

Q Right.

A So there may be as much volume as in a -- the bulk, but they are bagged and sold individually as bags by weight.

Q Is it fair to say that that product has more value than the diatomaceous earth that's sold by the ton?

A Yes.

Q But it's still diatomaceous earth, correct?
A Yes.
Q And these processes, if you know, are they meant to create specific products for a specific market?
A Yes, in the diatomaceous earth it has a variety of uses including as use in filtration systems for swimming pools and for making wine. It's also used in the oil field, not exactly sure what the use is, but I know that there are sales to use in oil field uses and there's also use as a kitty litter.
Q Let's take kitty litter. What kind of processing needs to occur for it to be used as kitty litter, if you know?
A I don't really know, but I suspect it has to do with size.
Q Sizing? Yeah. And it's subject to sales tax?
A Yes.
Q If you know, the processing that's done to make it into kitty litter, is that considered a mining process or a nonmining process?
A I believe it's a nonmining process.
Q All right. And so you had one process, it was like flash drying and then sizing. What kinds of --

What kinds of products would that apply to?
A I don't really know.
Q Okay. But would the flash drying and crushing be considered nonmining processes?
A No. Those are mining processes.
Q Okay. So --
A It's the kiln process that's the --
Q It's the kiln process that...
So the kiln and the crushing, those are nonmining processes?
A Well, if the crushing occurs before the kiln, that's a mining process.
Q Right.
A After the kiln it's, it's a sizing process to -- in order to bag it.
Q Okay. What's the purpose of the grinding and heating in your experience with diatomaceous earth?
A It's to purify it and improve the grade of the ore.
Q All right. And are those finely ground DE products still DE?
A Yes.
Q So in the case of DE, the minerals would be subject to net proceeds and mineral tax?

A Yes.
Q And then after nonmining processes are applied, the same mineral is subject to a sales tax?
A Yes.
Q All right. Let's, if we can, go back to the federal depletion regulations. And I think we already discussed it. The regulations have specific things to say about the processes for gold?
A Yes.
Q Do you know, can you tell me what those processes are for gold?
A The things that I can recall are autoclave and roasting, leach pad. Those are the types of processes associated with gold that are mining processes.
Q And are those mining, mining processes in the regulations for gold the same as the mining processes for coal? And if you could have a look, perhaps you could find in the regulation where it discusses the mining processes for coal.
A Is this in 112?
Q Yes. Is that what you have in front of you? And are there page numbers at the bottom?
A 6114.
Q Okay. I have different page numbers.

A Yeah, it doesn't -- it doesn't look exactly like what I'm used to seeing for the federal regulations.

Okay. Here it is, I found it.

Q Okay. Good. At what page?

A So would you repeat your question, please?

Q What page are you looking at?

A I'm looking at page 6124.

Q All right. And so what does it say about the mining processes for coal?

A It says, "The definition of a mining process in the case of coal includes cleaning, breaking, sizing, dust allaying, treating to prevent freezing, and loading for shipment."

Q And have you had experience with coal?

A Actually, yes, in my former life in Wyoming at the State Board of Equalization and also as a county assessor, but particularly at the state board we often had appeals from coal companies, and so I was very familiar with the regulations governing coal in Wyoming. Wyoming happens to be the largest producer of coal in the nation.

Q Well, that's interesting. So you went from the largest producer of coal in the nation to the state with no coal?

A Yes, but the largest producer of gold.
Q Of gold, yeah.
So are the regulations consistent with your understanding of the mining processes for gold -- I mean for coal? I'm sorry.
A Yes. You are talking about the federal regulations?
Q Yeah.
A Yes.
Q And similarly are there -- is the -- do the federal regulations give guidelines for what are nonmining processes for coal?
A Yes.
Q And, if you can, if you could turn to that page.
A I believe that's 6128.
Q Okay. And what does it say on 6128 about the nonmining processes for coal?
A It says, "The general rule for nonmining processes is that" -- "that are not considered to be mining include electrolytic deposition, roasting, calcining, thermal or electric smelting, refining, polishing, fine pulverization, blending with other minerals, treatment effecting a chemical change, thermal

action, and molding or shaping."

Q All right. And you've listened to the testimony or reviewed the testimony regarding the processes that were applied at the Black Mesa coal slurry preparation plant, haven't you?

A Yes.

Q And based on your understanding of the federal depletion guidelines, are those mining processes that took place at the coal slurry preparation plant or nonmining processes?

A I believe that the processes there were fine pulverization so that it could be made into, into the slurry product and, as such, it would be a nonmining process.

Q And just to go back a little bit to the regulations. Do the regulations say anything about mining transportation and nonmining transportation?

A Yes. There is a regulation that basically says that transportation from, say, the mouth of the mine to the facility is mining transportation if it's within 50 miles, but transportation beyond 50 miles is not a mining process.

Q Okay. That would be nonmining transportation?

A Yes.
Q And once a mineral has been subject to a nonmining process, can it go back to being a mining process or once it -- once the mining process has ended is that the end?
A I believe that that -- the mining process ends at the point when the beneficiation is complete and after that it -- you can't go back. It becomes a nonmining.
Q All right. So once nonmining processes were applied at the coal slurry preparation plant, everything after that is either a nonmining process or a nonmining transportation?
A Yes.
Q Do the federal depletion regulations define some of the terms that we just discussed for nonmining processes?
A Yes.
Q And can you turn to those definitions?
A Yes. On page 6129.
Q All right. At the top of the -- and I'm not sure if your copy is the same as mine, but is there a definition for transformation processes under a sub 5?
A The 5 that I'm looking at is for fine

pulverization.

Q All right. Well, let's start with fine pulverization. You heard the testimony regarding screen sizes. Do you understand the screen sizes?

A I believe I do, yes.

Q And so does it specify a screen size in that term for fine pulverization?

Does it specify a screen size for that term "fine pulverization"?

A Yes, it says, "The size opening is a No. 20 screen."

Q All right. And the -- in your understanding that the larger the screen size, the finer the pulverization?

A That is my understanding, yes.

Q And so in the Coal Slurry Agreement if it calls for a 28-by-325, would that 28 be a larger screen size?

A The 28 is a larger screen size than the 20 screen size that's called for for fine pulverization which would tell me that it's even more finely pulverized.

Q All right. And is there a term "blending"?

A Yes. And in that case it -- the regulations

say that blending with other materials refers to processes used to blend different kinds of minerals with one another such as blending iodine with common salt to produce iodized salt.

Q And is there a definition under (h) on the next page for the -- that we discussed for the nonmining transportation?

A Yes. And it's transportation in excess of 50 miles.

Q So all the processes that took place at the coal slurry preparation plant in your understanding were nonmining processes?

A That's my understanding.

Q And would the transportation in the 270-mile pipeline be considered nonmining transportation?

A Yes.

Q All right. So this seems to be a case that -- where we like to make hypotheticals so I have a final hypothetical for you.

If -- I never like to say this out loud, but if the coal were mined in Nevada, would the coal slurry and water that was -- that Southern Cal Edison took title to been subjected to nonmining processes like the DE we just discussed, would that coal slurry and water product

be subject to a sales tax when it was purchased by the end user?

A Let me put it like this. I believe it's a -- the coal slurry product is not subject to net proceeds and, therefore, is likely to be subject to sales tax.

Q All right. Thank you very much.

MS. SESSION: That's all for my direct, Your Honor.

THE COURT: Cross-examination, Mr. Azevedo.

CROSS-EXAMINATION

BY MR. AZEVEDO:

Q Good morning.

A Good morning.

Q How are you this morning?

A Good, thank you.

Q On your first day of direct examination, in describing the net proceeds of minerals tax you describe it as an "in lieu of a property tax." Can you explain what you meant by that?

A What I meant by that is that based on the, the history of the tax it has been treated as a property tax. The -- In a true property tax what we would be valuing is the property in the ground, but because the

they report all their sales?

A Yes.

Q Okay. So on the net proceeds return, they report all their sales and you don't know what type of sale that is, specifically, you know it's a sale of a mineral, but for sales and use tax purposes you do not know whether it's a sale for resale, out-of-state sale, an exempt sale pursuant to 372.270?

A What we know is that they are reporting the gross yield from the sales of their mineral product.

Q Okay. When they report that, do they tell you whether the sale was out of state or in state?

A No.

Q Do they just give you a, for lack of a better term, a gross number to calculate gross yield?

A They tell us the quantity of the product, the unit price for the product and then extend that into the total gross yield.

Q Okay. So then from your perspective looking at it from what you see in your division in the Department, how can the Department determine how many sales of minerals extracted in Nevada were exempt pursuant to 372.270?

A From the net proceeds reports we cannot make

that identification.

Q Any other documentation within your division that will allow you to make that determination?

A No.

Q Okay.

A Not in my division.

Q So you can't -- You don't know what sales are exempt pursuant to 372.270 which may be exempt as a sale for resale or exempt as an out-of-state sale?

A Not until the audit process.

Q Okay. And that's just begun in 2011 and those are still in process?

A We're still in process.

Q Is there a confidentiality applicable to the net proceeds of minerals tax?

A With regard to the total certified value, no, because that is the work product of the, of the Department we publish in a net proceeds bulletin. The annual reports that each company submits I believe would be considered to be confidential.

Q Okay. So there is a confidentiality that applies to the information the miners supply to you?

A Yes.

Q Okay. So there's no way for anyone at Edison

word "competitors" in that sentence.

Q Okay. So I'll give it a shot and see if I can get it right.

"Further, the class of in-state competitors who are exempted from sales and use tax by virtue of the net proceeds of minerals exemption alone is null (there are no members)."

A Correct, although I used the -- I said "were," not "are."

Q Okay.

A Because I'm referring back to the audit period.

Q Yeah. Okay. With that, what was -- What was the scope of the opinion in your report?

A Well, the scope of the opinion was to evaluate the remedy in this case from the perspective of tax policy. That's what I did.

Q All right. And did you make any assumptions in order to render -- Obviously we aren't to a remedy stage in this case. Did you have to make some assumptions in order to make that analysis?

A Yes. I -- Maybe I can just describe this a little. I mean, basically at the end of the day I've analyzed what the remedy would be if there's a finding

that the statutory scheme is unconstitutional. And to get to that point, to sort of describe what the facts would look like, why we would get to that point in this trial, I made some assumptions, yes.

Q All right. And I think the, the assumptions, first of all, were based on some exemptions that exist in Nevada law?

A Yes, if I could describe the exemptions and what I did is I made some, what you might call worst-case assumptions. And I guess perspective's everything in life, I mean, worst case from the State's point of view, best case from the taxpayer's point of view.

Q Right.

A I assumed the statute would be held unconstitutional.

Q And when you say "the statute," are you talking about the exemption statute 372.270?

A I'll describe it as the scheme.

Q Okay.

A The scheme.

Q All right.

A And then I also assumed the worst case which is that we aren't talking coal versus coal, that there would be a finding, this is just assumed, that it's coal

If you look at a similarly situated taxpayer doing business solely in Nevada, and we assume that the mineral proceeds tax would exempt that taxpayer's sales to SCE, then that purely local coal mine, coal miner would only pay one tax, the mineral proceeds tax and not the sales and use tax. And so we see a discrimination; the out-of-state person is paying two taxes and the local person is paying one tax. And that's -- using this case in illustration of how the internal consistency test works.

Q And it's a theoretical principle?

A Yes, and maybe I need to reconcile that with the language I quoted earlier. In the internal consistency test we do two hypothetical things. We assume the tax regime is adopted at nationwide, and that's counterfactual, that's usually not the case.

Q Okay.

A And then secondly we assume that there's a similarly situated intrastate taxpayer, which is often true but is not true in this case, at least if we are treating coal mines as with that class. But the internal consistency test doesn't care. We'll assume there is one and we'll test the validity of the statute based on those two hypothetical assumptions, that there is an in-state

to fashion remedies. And then I've described already what that means in this particular case and in a McKesson type situation.

When I say "leaves it to the state," the state has to follow federal law, has to follow constitutional, there are parameters, guidelines, there are rules the state follows, but there's lots of reasons why it's left for the state.

Q So just hypothetically if the -- So say the Court ordered the state to, to go make that, that assessment that you talked about and ordered them to go and determine whether -- We have a list of all the companies that paid net proceeds of tax, and if the state went and contacted all of the companies that paid net proceeds of tax and ascertained that none of them used the exemption in NRS 372.270, would the state have fulfilled its duty at that point?

A I think it would have. I would phrase it a little differently about what the, what I would -- what the state would do because the question really technically from a, I think from a legal standpoint is whether these people were lawfully entitled to the exemption and I think also in this case it's a question of whether even if they were, the exemption was entirely

superfluous because other exemptions were available to them and it's just no harm, no foul, but you would do that by applying the law, looking at the facts, ascertaining the business models of these companies, finding out how they do business and then apply the law to the -- to their business or the transactions that they undertake and come to a conclusion about whether they should be a taxpayer, whether they legally are a taxpayer, whether they legally avail themselves of the exemption and no other exemption, no other lawful exemption's available to them, and I think that's a -- precisely what's done.

In other words, I'm saying you don't go look at someone's tax return to determine what the law is. You don't look what they've actually been doing to determine what the law is. You would -- that's the trouble, why I resist a little bit the way that was phrased.

Now, in practice, what a state might do is use audit people, go out and have -- you know, to figure out what their model is, and if you find out what they were doing, that would be very, you know, probative, but I think you would also want to do what I call a purely legal analysis based on the fact patterns.

BY MR. READ:

Q Mr. Swain, are you familiar with the Arizona transactions privilege tax?

A Yes.

Q Would you characterize that as a sales tax?

A Well, generally, yes, but it's actually a tax that has a number of enumerated classifications, so you have to look at each classification at a time.

Q Are you familiar with an article written by, among other people, Walter Hellerstein, along with Professor Pomp, on the subject of the Arizona privilege tax?

A No. If you're referring to the Jefferson Lines articles that -- I didn't know they wrote something on the Arizona transaction privilege tax. I know they wrote an article that mentioned it just because I listened to his testimony.

Q Speaking of -- is it Professor Hellerstein?

A Yes.

Q And he's the senior author, along with you and others, on this treatise; correct?

A Yes. At this point it's Walter Hellerstein and I on the treatise.

Q And am I correct that Professor Hellerstein

rate of 3 percent when the boat wasn't purchased in Jersey City.

That's what the case essentially says. I don't see really what it has to do with this case, so...

Q Now, there was a considerable amount of testimony by Professor Swain about concern with a level playing field.

How does the level playing field concept apply, if it does, in the case of a -- a discriminatory -- a tariff that discriminates against interstate commerce?

A There are certainly Supreme Court cases that focus on discrimination among competitors. That's one of the reasons people will litigate a case, because they feel they're behind the eight ball. That was McKesson, but that is not the end-all and be-all of commerce clause jurisprudence. That's an example, but it is simply an example. It is not the entire universe.

So let's suppose -- in my report I think I used the example -- let's suppose Nevada, for whatever reason, documents a tariff on Kentucky bourbon. There's no local bourbon, I assume, or we will assume, no local bourbon industry here in Nevada.

That tariff, as the Supreme Court has said in

other cases, is sort of a paradigm of what's unconstitutional under the commerce clause, and yet there's no level playing field to be talked about in terms of trying to level the playing field between Nevada bourbon manufacturers and Kentucky bourbon manufacturers.

Why do we strike down statutes like that? It is to promote the values of the commerce clause, to have a free trade zone, to make sure that we're not discriminating against products from other states. We don't want to encourage retaliation by other states. So when -- Kentucky may well then retaliate against Nevada.

So that's one of the goals that we're trying to protect with our jurisprudence. It's not solely the level playing field among competitors.

Now, it was in McKesson, but that doesn't mean that everything McKesson said should be extrapolated and applied outside the situation in which McKesson was saying what it was saying. So in McKesson, as we talked about, I think, last week, you had this powerful in-state industry that sought to -- Florida changed its statute three different times, went through three different iterations in an attempt to get around Bacchus, and finally it is held unconstitutional.

And, yes, McKesson does say, well, one thing

you can do is go back and tax -- now, in that case it's obvious who the favored industry was. They're the ones who lobbied for the provision. It was obvious who they were. Florida didn't do that, Your Honor. Florida did not do any retroactive assessment, and it's pretty obvious why not politically.

If you have an industry that is powerful enough to get a statute passed three different times, don't you think they're going to be powerful enough not to pay a retroactive tax? I mean, the whole idea was to help them, favor them. So there was no retroactive assessment made in McKesson for obvious reasons.

It's difficult, as we talked about, I think, last week, not to mention potential statute of limitation problems and other issues that may exist under state law.

Q Professor Pomp, I believe Judge Russell asked Professor Swain about the term in McKesson about providing a taxpayer with meaningful backward-looking relief.

In that phrase, as you understand it, is the meaningfulness of the relief from the perspective of the taxpayer?

A Yes. I think His Honor said, from whose perspective, and I think the answer to that is, from the

Q Are you aware of any tax authority that has determined that geothermal -- the provision of geothermal energy is a service and, thus, not subject on that basis to sales or use tax?

A I am not aware of it being a service. Certainly in Nevada -- I listened carefully to my good friend saying he thought it would be a service here, but geothermal, as I understand it -- I think there was testimony to this, and I think Professor Swain, in fairness, was not here that day -- geothermal is subject to the mining tax. Services are not subject to the mining tax. So I think you have a position here in Nevada that it is not a service.

I'm not saying one couldn't imagine it being a service. I could imagine characterizing someone who sells tangible personal property as being in the service of selling, of retailing. You know, these are not hard and fast categories, but I think at least in Nevada we know it's not viewed as a service because it's subject to the mining tax.

Q Could we bring up on the screen Exhibit 54, one of the more frequently-looked-at exhibits in this case. And Professor Swain testified about a computation that he did to try and determine perhaps how the estimate

of $217.7 million was derived as the value, if you will, of the exemption provided by 372.270.

If one assumes that Professor Swain is right, that the unknown author of this document did indeed apply a sales tax rate to the total proceeds, gross proceeds, reported from the relevant year net proceeds tax returns, does that render the figure of $217.7 million irrelevant to this case?

A No, not irrelevant at all. And I -- I think early on, when this document was brought to my attention, it had been suggested that this may have been the way the estimate was made. The problem is, everything is lumped together in that estimate, so you can't just aggregate it. I think there's probably gold, I think that's right, there's silver and there's gas, there's geothermal.

I don't know what magnitude -- of course, the U.S. Supreme Court said that de minimis is no exception to a discrimination complaint. It doesn't matter if the discrimination is de minimis or not, but it is impossible, from the mere fact that that figure came from looking at total production, to know how it's broken down. That's the problem.

Q You're familiar with the treatise that includes as authors Professor Hellerstein and

IN THE SUPREME COURT OF THE STATE OF NEVADA

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JOINT APPENDIX

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Docket 67497 Document 2015-26115

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Norman J. Azevedo, Attorney at Law, and that on the 27th day of August, 2015, I caused to be served a true and correct copy of the foregoing JOINT APPENDIX in the following manner:

(ELECTRONIC SERVICE) Pursuant to Rule5(D) of the Nevada Rules of Civil Procedure, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by the Court's Facilities to the Service List as follows:

Gina Sessions, Esq.
Office of the Attorney General
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Rhonda Azevedo

Rhonda Azevedo, Legal Assistant

Effective: [See Text Amendments]

Code of Federal Regulations Currentness
Title 26. Internal Revenue
Chapter I. Internal Revenue Service, Department of the Treasury
Subchapter A. Income Tax
Part 1. Income Taxes (Refs & Annos)
Normal Taxes and Surtaxes
Natural Resources
Deductions
→ **§ 1.613–4 Gross income from the property in the case of minerals other than oil and gas.**

(a) In general. The rules contained in this section are applicable to the determination of gross income from the property in the case of minerals other than oil and gas and the rules contained in § 1.613–3 are not applicable to such determination, notwithstanding provisions to the contrary in § 1.613–3. The term gross income from the property, as used in section 613(c)(1), means, in the case of a mineral property other than an oil or gas property, gross income from mining. Gross income from mining is that amount of income which is attributable to the extraction of the ores or minerals from the ground and the application of mining processes, including mining transportation. For the purpose of this section, ordinary treatment processes (applicable to the taxable years beginning before January 1, 1961) and treatment processes considered as mining (applicable to the taxable years beginning after December 31, 1960) will be referred to as mining processes. Processes, including packaging and transportation, which do not qualify as mining will be referred to as nonmining processes. Also for the purpose of this section, transportation which qualifies as mining will be referred to as mining transportation and transportation which does not qualify as mining will be referred to as nonmining transportation. See paragraph (f) of this section for the definition of the term mining and paragraph (g) of this section for rules relating to nonmining processes.

(b) Sales prior to the application of nonmining processes including nonmining transportation. (1) Subject to the adjustments required by paragraph (e)(1) of this section, gross income from mining means (except as provided in subparagraph (2) of this paragraph) the actual amount for which the ore or mineral is sold if the taxpayer sells the ore or mineral:

(i) As it emerges from the mine, prior to the application of any process other than a mining process or any transportation, or

(ii) After application of only mining processes, including mining transportation, and before any nonmining transportation.

If the taxpayer sells his ore or mineral in more than one form, and if only mining processes are applied to the ore or mineral, gross income from mining is the actual amount for which the various forms of the ore or mineral are sold, after any adjustments required by paragraph (e)(1) of this section. For example, if, at his mine or quarry, a taxpayer sells several sizes of crushed gypsum and also sells gypsum fines produced as an incidental byproduct of his crushing operations, without applying any nonmining processes, gross income from mining will ordinarily be the total amount for which such crushed gypsum and fines are actually sold. See paragraphs (f) and (g) of this section for provisions defining mining and nonmining processes for various minerals.

(2) In the case of sales between members of a controlled group (including sales as to which the district director exercises his authority under section 482 and the regulations thereunder), the prices for such sales (which shall be deemed to be the actual amount for which the ore or mineral is sold) shall be determined, if possible, by use of the representative market or field price method, as described in paragraph (c) of this section; otherwise such prices shall be determined by the appropriate pricing method as provided in paragraph (d)(1) of this section. For the definitions of the terms controlled and group, see paragraph (j)(1) and (2) of this section.

(c) Cases where a representative market or field price for the taxpayer's ore or mineral can be ascertained.—(1) General rule. If the taxpayer processes the ore or mineral before sale by the application of nonmining processes (including nonmining transportation), or uses it in his operations, gross income from mining shall be computed by use of the representative market or field price of an ore or mineral of like kind and grade as the taxpayer's ore or mineral after the application of the mining processes actually applied (if any), including mining transportation (if any), and before any nonmining transportation, subject to any adjustments required by paragraph (e)(1) of this section. See paragraph (e)(2)(i) of this section for certain other situations in which this paragraph shall apply. The objective in computing gross income from mining by the representative market or field price method is to ascertain, on the basis of an analysis of actual competitive sales by the taxpayer or others, the dollar figure or amount which most nearly represents the approximate price at which the taxpayer, in light of market conditions, could have sold his ores or minerals if, prior to the application of nonmining processes, the taxpayer had sold the quantities and types of ores and minerals to which he applied nonmining processes. If it is possible to determine a market or field price under the provisions of this paragraph, and if that price is determined to be representative, the taxpayer's gross income from mining shall be determined on the basis of that price and not under the provisions of paragraph (d) of this section. The taxpayer's own actual sales prices for ores or minerals of like kind and grade shall be taken into account when establishing market or field prices, provided that those sales are determined to be representative.

(2) Criteria for determining whether an ore or mineral is of like kind and grade as the taxpayer's ore or mineral. An ore or mineral will be considered to be of like kind and grade as the taxpayer's ore or mineral if, in common commercial practice, it is sufficiently similar in chemical, mineralogical, or physical characteristics to the taxpayer's ore or mineral that it is used. or is commercially suitable for use, for essentially the same purposes as the uses to which the taxpayer's ore or mineral is put. Whether an ore or mineral is of like kind and grade as the taxpayer's ore or mineral will generally be determined by reference to industrial or commercial specifications and by consideration of chemical and physical data relating to the minerals and deposits in question. The fact that the taxpayer applies slightly different size reduction processes, or the fact that the taxpayer uses slightly different beneficiation processes, or the fact that the taxpayer sells his ore or mineral

for different purposes, will not, in itself, prevent another person's ore or mineral from being considered to be of like kind and grade as the taxpayer's ore or mineral. On the other hand, the fact that the taxpayer's ore or mineral is suitable for the same general commercial use as another person's ore or mineral will not cause the two ores or minerals to be considered to be of like kind and grade if the desirable natural constituents of the two ores or minerals are markedly different substances. For example, anthracite coal will not be considered to be of like kind as bituminous coal merely because both types of coal can be used as fuel. Similarly, bituminous coal which does not possess coking qualities will not be considered to be of like grade as bituminous coking coal. However, in the case of a taxpayer who mines and uses his bituminous coal in the production of coke, all bituminous coals in the same marketing area will be considered to be of like kind, and all such bituminous coals having the same or similar coking quality suitable for commercial use by coke producers will be considered to be of like grade as the coal mined and used by the taxpayer.

Fine distinctions between various grades of minerals are to be avoided unless those distinctions are clearly shown to have genuine commercial significance.

(3) Factors to be considered in determining the representative market or field price for the taxpayer's ore or mineral. In determining the representative market or field price for the taxpayer's ore or mineral, consideration shall be given only to prices of ores or minerals of like kind and grade as the taxpayer's ore or mineral and with which, under commercially accepted standards, the taxpayer's ore or mineral would be considered to be in competition if it were sold under the conditions described in paragraph (b)(1) of this section. A weighted average of the competitive selling prices of ores or minerals of like kind and grade as the taxpayer's, beneficiated only by mining processes, if any, in the relevant markets, although not determinative of the representative market or field price, is an important factor in the determination of that price. The taxpayer's own competitive sales prices for minerals which have been subjected only to mining processes shall be taken into account in computing such a weighted average. For purposes of the preceding sentence, if the district director has exercised his authority under section 482 and the regulations thereunder and has determined the appropriate price with respect to specific sales transactions by the taxpayer, that price shall be deemed to be a competitive sales price for those transactions. Sales or purchases, including the taxpayer's, of ores or minerals of like kind and grade as the taxpayer's, will be taken into consideration in determining the representative market or field price for the taxpayer's ore or mineral only if those sales or purchases are the result of competitive transactions. The identity of the taxpayer's relevant markets (including their accessibility to the taxpayer), and the representative market or field price within those markets, are necessarily factual determinations to be made on the basis of the facts and circumstances of each individual case. For the purpose of determining the representative market or field price for the taxpayer's ore or mineral, exceptional, insignificant, unusual, tie-in, or accommodation sales shall be disregarded. Except as provided above, representative market or field prices shall not be determined by reference to prices established between members of a controlled group. See paragraph (j) of this section for the definitions of the terms controlled and group.

(4) Use of prices of mineral of different grade. If there is no representative market or field price for a mineral of like kind and grade as the taxpayer's, representative market or field prices for an ore or mineral which is of like kind but which is not of like grade as his ore or mineral may be used, with appropriate adjustments for differences in mineral content. Representative market or field prices of an ore or mineral of like kind but not of like grade may be used only if such adjustments are readily ascertainable. For example, it may be appropriate in a particular case to establish the representative market or field price for an ore having 50 percent X mineral content by reference to the representative market or field price for the same kind of ore having 60 percent X mineral content with an appropriate adjustment for the differences in the valuable mineral content of the two ores, any differences in processing costs attributable to impurities, and any other relevant factors.

(5) Information to be furnished by a taxpayer computing gross income from mining by use of a representative market or field price. A taxpayer who computes his gross income from mining pursuant to the provisions of this paragraph shall attach to his return a summary statement indicating the prices used by him in computing gross income from mining under this paragraph and the source of his information as to those prices, and the relevant supporting data shall be assembled, segregated, and made readily available at the taxpayer's principal place of business.

(6) Limitation on gross income from mining computed under the provisions of this paragraph. It shall be presumed that a price is not a representative market or field price for the taxpayer's ore or mineral if the sum of such price plus the total of all costs of the nonmining processes (including nonmining transportation) which the taxpayer applies to his ore or mineral regularly exceeds the taxpayer's actual sales price of his product. For example, if on a regular basis the total of all costs of nonmining processes applied by the taxpayer to coal for the purpose of making coke is $12 per ton, and if the taxpayer's actual sale price for such coke is $18 per ton, a price of $7 per ton would not be a representative market or field price for the taxpayer's coal which is used for making coke. In order to rebut the presumption set forth in the first sentence of this subparagraph, it must be established that the loss on nonmining operations is directly attributable to unusual, peculiar and nonrecurring factors rather than to the use of a market or field price which is not representative. For example, the first sentence of this subparagraph shall not apply if the taxpayer establishes in an appropriate case that the loss on nonmining operations is directly attributable to an event such as a fire, flood, explosion, earthquake, or strike.

(d) Cases where a representative market or field price cannot be ascertained--(1) General rule. (i) If it is impossible to determine a representative market or field price as described in paragraph (c) of this section then, except as provided in subdivision (ii) of this subparagraph, gross income from mining shall be computed by use of the proportionate profits method as set forth in subparagraph (4) of this paragraph. A method of computing gross income from mining under the provisions of this paragraph shall not be deemed to be a method of accounting for purposes of paragraph (e) of § 1.446–1.

(ii)(a) The Office of the Assistant Commissioner (Technical) may determine that a method of computation is more appropriate than the proportionate profits method or the method being used by the taxpayer. The taxpayer may request such a determination (see (d) of this subdivision (ii)). If the taxpayer is using a method of computation which has been determined by the Office of Assistant Commissioner (Technical) to be more appropriate than the proportionate profits method, such method shall continue to be used until it is determined by the Office of Assistant Commissioner (Technical) that either the proportionate profits method or another method is more appropriate.

(b) The proportionate profits method is more appropriate than the method being used under (a) if, under the particular facts and circumstances, the method being used under (a) consistently fails to clearly reflect gross income from mining and the proportionate profits method more clearly reflects gross income from mining for the taxable year.

(c) An alternative method (a method other than the method being used under (a) (if any) and the proportionate profits method) is more appropriate than the method being used under (a) (if any) and the proportionate profits method if, under the particular facts and circumstances, the latter methods consistently fail to clearly reflect gross income from mining, and the alternative method being considered more clearly reflects gross income from mining on a consistent basis than the method being used under (a) (if any) and the proportionate profits method. When determining whether a method of computation clearly reflects gross income from mining, it is relevant to compare the gross income from mining produced by such method with the gross income from mining, on an equivalent amount of production, which results from the computation methods used by competitors. When determining the acceptability of proposed alternative methods, primary consideration will be given to computation methods based upon representative charges for ores, minerals, products, or services. See paragraph (c) of this section for principles determining the representative character of a charge.

(d) Application for permission to compute gross income from mining by use of an alternative method shall be made by submitting a request to the Commissioner of Internal Revenue, Attention: Assistant Commissioner (Technical), Washington, DC 20224.

(e) Among the alternative methods of computation to which consideration will be given, provided that the requirements of this subdivision (ii) are met, are the methods listed in subparagraphs (5), (6), and (7) of this paragraph. The order in

which these methods are listed is not significant, and the listing of these methods does not preclude a request to make use of a method which is not listed.

(iii) Approval and continued use of any method of computation under this paragraph depends upon all the facts and circumstances in each case, and shall be subject to such terms and conditions as may be necessary in the opinion of the Commissioner to reflect clearly the gross income from mining. Accordingly, the use of such a method for any taxable year shall be subject to review and change.

(2) Costs to be used in computing gross income from mining by use of methods based on the taxpayer's costs. In determining the taxpayer's gross income from mining by use of methods based on the taxpayer's costs, only costs actually paid or incurred shall be taken into consideration. In general, if the taxpayer has consistently employed a reasonable method of determining the costs of the various individual phases of his mining and nonmining processes (such as extraction, loading for shipment, calcining, packaging, etc.), such method shall not be disturbed. The amount of any particular item to be taken into account shall, for taxable years beginning after November 30, 1968, be the amount used in determining the taxpayer's income for tax purposes. For example, the depreciation lives, methods, and records used for tax purposes, if different from those used for book purposes, shall be the basis for determining the amount of depreciation to be used. However, a taxpayer may continue to use a reasonable method for determining those costs on the basis of the amounts computed for cost control or similar financial or accounting books and records if that method has been used consistently and is applied to the determination of all those costs.

(3) Treatment of particular items in computing gross income from the mining by use of methods based on the taxpayer's costs. (i) Except as specifically provided elsewhere in this section, when determining gross income from mining by use of methods based on the taxpayer's costs, the costs attributable to mining transportation shall be treated as mining costs, and the costs attributable to nonmining transportation shall be treated as nonmining costs. Accordingly, except as specifically provided elsewhere in this section, all profits attributable to mining transportation shall be treated as mining profits, and all profits attributable to nonmining transportation shall be treated as nonmining profits. For this purpose, mining transportation means so much of the transportation of ores or minerals (whether or not by common carrier) from the point of extraction from the ground to plants or mills in which other mining processes are applied thereto as is not in excess of 50 miles or, if the taxpayer files an application pursuant to paragraph (h) of this section and the Commissioner finds that both the physical and other requirements are such that the ores or minerals must be transported a greater distance to such plants or mills, the transportation over the greater distance. Further, for this purpose, nonmining transportation includes the transportation (whether or not by common carrier) of ores, minerals, or the products produced therefrom, from the point of extraction from the ground to nonmining facilities, or from a mining facility to a nonmining facility, or from one nonmining facility to another, or from a nonmining facility to the customers who purchase the taxpayer's first marketable product or group of products. See paragraph (e)(2) of this section for provisions relating to purchased transportation to the customer and paragraph (g)(3) of this section for provisions relating to transportation the primary purpose of which is marketing or distribution. In the absence of other methods which clearly reflect the costs of the various phases of transportation, the cost attributable to nonmining transportation shall be an amount which is in the same ratio to the costs incurred for the total transportation as the distance of the nonmining transportation is to the distance of the total transportation. As an example, where the plants or mills in which mining processes are applied to ores or minerals are in excess of 50 miles from the point of extraction from the ground (or in excess of a greater distance approved by the Commissioner), the costs incurred for transportation to those plants or mills in excess of 50 miles (or of that greater distance) shall be treated as nonmining costs in determining gross income from mining. Accordingly, all profits attributable to that excess transportation are treated as nonmining profits. However, except in the case of transportation performed in conveyances owned or leased by the taxpayer, the preceding sentence shall apply only to taxable years beginning after November 30, 1968.

(ii) In determining gross income from mining by use of methods based on the taxpayer's costs, a process shall not be considered as a mining process to the extent it is applied to ores, minerals, or other materials with respect to which the taxpayer is not entitled to a deduction for depletion under section 611. The costs of such nondepletable ores, minerals, or

materials; the costs of the processes (including blending, size reduction, etc.) applied thereto; and the transportation costs thereof, if any, shall be considered as nonmining costs in determining gross income from mining. If a mining process is applied to an admixture of depletable and nondepletable material, the cost of the process and the cost of transportation, if any, attributable to the nondepletable material shall be considered as nonmining costs in determining gross income from mining. Accordingly, all profits attributable thereto are treated as nonmining profits. In the absence of other methods which clearly reflect the cost attributable to the processing and transportation, if any, of the nondepletable admixed material, that cost shall be deemed to be that proportion of the costs which the tonnage of nondepletable material bears to the total tonnage of both depletable and nondepletable material.

(iii) In determining gross income from mining by use of methods based on the taxpayer's costs:

(a) The costs attributable to containers, bags, packages, pallets, and similar items as well as the costs of materials and labor attributable to bagging, packaging, palletizing, or similar operations shall be considered as nonmining costs.

(b) The costs attributable to the bulk loading of manufactured products shall be considered as nonmining costs.

(c) The costs attributable to the operation of warehouses or distribution terminals for manufactured products shall be considered as nonmining costs.

Accordingly, all profits attributable thereto are treated as nonmining profits.

(iv) In computing gross income from mining by the use of methods based on the taxpayer's costs, the principles set forth in paragraph (c) of § 1.613–5 shall apply when determining whether selling expenses and trade association dues are to be treated, in whole or in part, as mining costs or as nonmining costs. To the extent that selling expenses and trade association dues are treated as nonmining costs, all profits attributable thereto are treated as nonmining profits.

(v) See paragraph (e)(1) of this section for provisions excluding certain allowances from the taxpayer's gross sales and costs of his first marketable product or group of products.

(4) Proportionate profits method. (i) The objective of the proportionate profits method of computation is to ascertain gross income from mining by applying the principle that each dollar of the total costs paid or incurred to produce, sell, and transport the first marketable product or group of products (as defined in subdivision (iv) of this subparagraph) earns the same percentage of profit. Accordingly, in the proportionate profits method no ranking of costs is permissible which results in excluding or minimizing the effect of any costs incurred to produce, sell, and transport the first marketable product or group of products. For purposes of this subparagraph, members of a controlled group shall be treated as divisions of a single taxpayer. See paragraph (j) of this section for the definitions of the terms controlled and group.

(ii) The proportionate profits method of computation is applied by multiplying the taxpayer's gross sales (actual or constructive) of his first marketable product or group of products (after making the adjustments required by paragraph (e) of this section) by a fraction whose numerator is the sum of all the costs allocable to those mining processes which are applied to produce, sell, and transport the first marketable product or group of products, and whose denominator is the total of all the mining and nonmining costs paid or incurred to produce, sell, and transport the first marketable product or group of products (after making the adjustments required by this paragraph and paragraph (e) of this section). The method as described herein is merely a restatement of the method formerly set forth in the second sentence of Regulations 118, section 39.23(m)–1 (e)(3) (1939 Code). The proportionate profits method of computation may be illustrated by the following equation:

(Mining costs ÷ Total costs) x Gross sales = Gross income from mining

(iii) Those costs which are paid or incurred by the taxpayer to produce, sell, and transport the first marketable product or group of products, and which are not directly identifiable with either a particular mining process or a particular nonmining process shall, in the absence of a specific provision of this section providing an apportionment method, be apportioned to mining and to nonmining by use of a method which is reasonable under the circumstances. One method which may be reasonable in a particular case is an allocation based on the proportion that the direct costs of mining processes and the direct costs of nonmining processes bear to each other. For example, the salary of a corporate officer engaged in overseeing all of the taxpayer's processes is an expense which may reasonably be apportioned on the basis of the ratio between the direct costs of mining and nonmining processes. On the other hand, an expense such as workmen's compensation premiums would normally be apportioned on the basis of direct labor costs. For the rule relating to selling expenses, see paragraph (c)(4) of § 1.613–5.

(iv) As used in this section, the term first marketable product or group of products means the product (or group of essentially the same products) produced by the taxpayer as a result of the application of nonmining processes, in the form or condition in which such product or products are first marketed in significant quantities by the taxpayer or by others in the taxpayer's marketing area. For this purpose, bulk and packaged products are considered to be essentially the same product. Sales between members of a controlled group (as defined in paragraph (j) of this section) shall not be considered in making a determination under this subdivision. The first marketable product or group of products does not include any product which results from additional manufacturing or other nonmining processes applied to the product or products first marketed in significant quantities by the taxpayer or others in the taxpayer's marketing area. For example, if a cement manufacturer sells his own finished cement in bulk and bags and also sells concrete blocks or dry ready-mix aggregates containing additives, the finished cement, in bulk and bags, constitutes the first marketable product or group of products produced by him. Similarly, if an integrated iron ore and steel producer sells both pig iron in various sizes and rolled sheet iron or shapes, his first marketable product is the pig iron in its various sizes. Further, if an integrated clay and brick producer sells both unglazed bricks and tiles of various shapes and sizes and additionally manufactured bricks and tiles which are specially glazed, the unglazed products, both packaged and unpackaged, constitute his first marketable product or group of products.

(v)(a) As used in this subparagraph, the term gross sales (actual or constructive) means the total of the taxpayer's actual competitive sales to others of the first marketable product or group of products, plus the taxpayer's constructive sales of the first marketable product or group of products used or retained for use in his own subsequent operations, subject to the adjustments required by paragraph (e) of this section. See (b) of this subdivision in the case of actual sales between members of controlled groups and in the case of constructive sales. A constructive sale occurs when a miner-manufacturer is deemed, for percentage depletion purposes, to be selling the first marketable product or group of products to himself.

(b) In the case of sales between members of a controlled group as to which the district director has exercised his authority under section 482 and the regulations thereunder and has determined the appropriate price with respect to specific sales transactions, that price shall be deemed, for those transactions, to be the actual amount for which the first marketable product or group of products is sold for purposes of this subdivision (v). In the case of all other sales between members of a controlled group, and in the case of constructive sales, the prices for such sales shall be determined by use of the principles set forth in paragraph (c) of this section, subject to the adjustments required by paragraph (e) of this section. In the case of constructive sales, see paragraph (c)(4) of this section for rules relating to information to be furnished by the taxpayer.

(vi) The provisions of this subparagraph may be illustrated by the following examples:

Example 1. (a) Facts. A is engaged in the mining of a mineral to which section 613 applies and in the application thereto of nonmining processes. During 1968, A incurred extraction costs of $35,000; other mining costs of $56,000; $150,000 for manufacturing costs; $46,000 for other nonmining processes; and $14,000 for the company president's salary and similar costs resulting from both nonmining and mining processes. During that year, A produced and sold 70,000 tons of his first marketable product for an actual gross sales price of $420,000, after the adjustments required by paragraph (e) of this section. A representative market or field price for A's mineral before the application of nonmining processes cannot be established.

(b) Computation. (1) The computation of A's gross income from mining by use of the proportionate profits method involves two steps. The first step is to apportion A's costs to mining and to nonmining. A apportions the company president's salary and similar costs to mining and to nonmining in the manner described in the second and third sentences of subdivision (iii) of this subparagraph, and apportions his remaining costs as follows:

Cost	Mining	Nonmining	Total
Extraction	$35,000	.....	$35,000
Other mining processes	56,000	.....	56,000
Manufacturing	.....	$150,000	150,000
Other nonmining processes	.....	46,000	46,000
Subtotal	91,000	196,000	287,000
President's salary and similar costs	4,439	9,561	14,000
Total costs	95,439	205,561	301,000

(2) The second step is to apply the proportionate profits fraction so as to compute A's gross income from mining. To do this, A first computes his gross sales of his first marketable group of products, in this case $420,000. A multiplies his actual gross sales of $420,000 by the proportionate profits fraction, whose numerator consists of his total mining costs ($95,439) and whose denominator consists of his total costs ($301,000). Thus, A's gross income from mining is $133,170 (*i.e.*, 95,439/301,000ths of A's actual gross sales of $420,000).

Example 2. B, who leases a mineral property from C, is engaged in the mining of a mineral to which section 613 applies and in the application thereto of nonmining processes. Pursuant to the terms of the lease, B is required to pay C 10 cents for each ton of mineral which B mines. During 1971, B extracted 100,000 tons of mineral. He sold his first marketable product for an actual gross sales price of $225,000 after the adjustments required by paragraph (e) of this section. A representative market or field price for B's mineral before the application of nonmining processes cannot be established. During 1971, with respect to the 100,000 tons of mineral extracted, B incurred mining costs of $50,000 and nonmining costs of $100,000, and paid $10,000 to C as C's royalty. Since the royalty payment is considered to be C's share of the gross income from mining under section 613(a), it is not considered to be either a mining cost or a nonmining cost of B. B's gross income from mining is $65,000 under the proportionate profits method, determined as follows: The $225,000 gross receipts must be multiplied by the proportionate profits fraction which is $50,000 mining costs over $150,000 total costs ($50,000+$100,000 nonmining costs). Since the resulting $75,000 is the total gross income from mining with respect to the property, it must be allocated between B's lease interest and C's royalty interest. The $10,000 paid to C must be subtracted from the $75,000 leaving $65,000 which represents B's gross income from mining. C's gross income from mining is the royalty he received or $10,000.

(5) **Representative schedule method.** The representative schedule method is a pricing formula which uses representative finished product prices, penalties, charges and adjustments, established in arms-length transactions between unrelated parties, to determine the market or field price for a crude mineral product. The representative character of a price, penalty, charge, or adjustment shall be determined by applying the principles set forth in paragraph (c) of this section. The representative schedule method is principally intended for use in those industries in which such a schedule-type pricing method is in general

use to determine the price paid to unintegrated mineral producers for their crude mineral product. For example, if unintegrated producers of copper concentrate in a particular field or market customarily sell their product at prices which are determined in accordance with a schedule-type pricing formula, consideration will be given to the determination of concentrate prices for integrated copper producers in accordance with the same pricing formula. The representative schedule method shall not be used if it is impossible to determine one or more of the elements in the representative schedule formula by reference to prices, penalties, charges, or adjustments established in representative transactions between unrelated parties. See paragraph (c) of this section for principles determining the representative character of a charge.

(6) Method using prices outside the taxpayer's market. Under the other market method the taxpayer uses representative market or field prices established outside his markets, provided that conditions there are substantially the same as in his markets. For example, it may be appropriate in a particular case to establish the representative market or field price for pellets containing 60 percent iron which are produced and used in market area X by reference to the representative market or field price for pellets containing 60 percent iron which are produced and sold in adjacent market area Y, provided that conditions in the two marketing areas are shown to be substantially the same.

(7) Rate of return on investment method. [Reserved]

(e) Reductions of sales price in computing gross income from mining—(1) Discounts. If a taxpayer computes gross income from mining under the provisions of paragraph (b)(1) of this section, trade discounts and, for taxable years beginning after November 30, 1968, cash discounts actually allowed by the taxpayer shall be subtracted from the sale price of the taxpayer's ore or mineral. If a taxpayer computes gross income from mining under the provisions of paragraph (c) of this section, any such discounts actually allowed (if not otherwise taken into account) by the person or persons making the sales on the basis of which the representative market or field price for the taxpayer's ore or mineral is to be determined shall be subtracted from the sale price in computing such representative market or field price. If a taxpayer computes gross income from mining under the provisions of paragraph (d) of this section, such discounts actually allowed (if not otherwise taken into account) shall be subtracted from the gross sales (actual or constructive), and shall not be considered a cost, of the first marketable product or group of products. The provisions of this subparagraph shall apply to arrangements which have the same effect as trade or cash discounts, regardless of the form of the arrangements.

(2) Purchased transportation to the customer. (i) A taxpayer who computes gross income from mining under the provisions of paragraph (c) of this section and who sells his ore or mineral after the application of only mining processes but after nonmining transportation shall use as the representative market or field price his delivered price (if otherwise representative) reduced by costs paid or incurred by him for purchased transportation to the customer as defined in subdivision (iii) of this subparagraph. If the transportation by the taxpayer is not purchased transportation to the customer, or if the taxpayer does not sell the ore or mineral until after the application of nonmining processes, and if other producers in the taxpayer's marketing area sell significant quantities of an ore or mineral of like kind and grade after the application of only mining processes but after purchased transportation to the customer, the representative delivered price at which the ore or mineral is sold by those other producers reduced by representative costs of purchased transportation to the customer paid or incurred by those producers shall be used by the taxpayer as the representative market or field price for his ore or mineral in applying paragraph (c) of this section. Furthermore, appropriate adjustments shall be made to take into account differences in mode of transportation and distance. When applying this subdivision, the representative market or field price so computed shall not exceed the taxpayer's delivered price less his actual costs of transportation to the customer. For purposes of this subdivision, any delivered price shall be adjusted as provided in subparagraph (1) of this paragraph.

(ii) If a taxpayer computes gross income from mining under the provisions of paragraph (d) of this section, the cost of purchased transportation to the customer (as defined in subdivision (iii) of this subparagraph) shall be excluded from the gross sales of his first marketable product or group of products (after any adjustments required by subparagraph (1) of this paragraph), and from the denominator of the proportionate profits fraction, so as not to attribute profits to the cost of that transportation. Similar transportation cost adjustments may be made, if appropriate, in the case of other methods of computation which are based on the taxpayer's costs. For the treatment of costs and profits attributable to transportation which is not purchased transportation to the customer as defined in subdivision (iii) of this subparagraph, see paragraph (d)(3)(i) of this section.

(iii) For purposes of this section, the term purchased transportation to the customer means, in general, nonmining transportation of the taxpayer's minerals or mineral products to the customer:

(a) Which is not performed in conveyances owned or leased directly or indirectly, in whole or in part, by the taxpayer,

(b) Which is performed solely to deliver the taxpayer's minerals or mineral products to the customer, rather than to transport such minerals or products for packaging or other additional processing by the taxpayer (other than incidental storage or handling), and

(c) With respect to which the taxpayer ordinarily does not earn any profit.

For purposes of the preceding sentence, transportation which is performed by a person controlling or controlled by the taxpayer (within the meaning of paragraph (j)(1) of this section) shall be deemed to have been performed in conveyances owned or leased by the taxpayer unless it is established by the taxpayer that the price charged by the controlling or controlled person for such transportation constitutes an arm's-length charge (under the standard described in paragraph (b)(1) of § 1.482 -1). The term purchased transportation to the customer includes transportation to a warehouse, terminal, or distribution facility owned or operated by the taxpayer, provided that such transportation is performed under the conditions described in the first sentence of this subdivision. A taxpayer will not be deemed ordinarily to earn a profit on transportation merely because charges for the transportation are included in the stated selling price, rather than being separately stated or segregated from other billing. A taxpayer will not be deemed ordinarily to earn a profit on transportation if the rates for the transportation constitute an arm's-length charge ordinarily paid by shippers of the same product in similar circumstances. If a taxpayer computes gross income from mining under the provisions of paragrsph (d) of this section, the term purchased transportation to the customer refers to transportation which conforms to the other requirements of this subdivision and which is performed to transport the taxpayer's first marketable product or group of products (as defined in paragraph (d)(4)(iv) of this section) rather than to transport minerals or mineral products which do not yet constitute the taxpayer's first marketable product or group of products.

(iv) The provisions of this subparagraph may be illustrated by the following examples:

Example 1. A is engaged in the mining of an ore of mineral M and in the production and sale of M concentrate. A retains a portion of his concentrate for use in his own nonmining operations. During 1968, A sold 100,000 tons of M concentrate of ore mined and processed by him, which sales constituted a significant portion of his total production. Eighty thousand tons of that concentrate were sold by A on the basis of a representative price (after adjustments required by subparagraph (1) of this

paragraph) of $30 per ton f.o.b. mine or plant, resulting in gross income from mining of $2,400,000. The remaining 20,000 tons were sold by A, both directly and through terminals, on the basis of a delivered price (after adjustments required by subparagraph (1) of this paragraph) at City X of $40 per ton. The delivered price included $15 per ton cost of purchased transportation from the mine or plant to customers in City X. The representative market or field price of the concentrate sold by A on the basis of a delivered price is $25 per ton, determined by subtracting the cost of the purchased transportation to the customer ($15 per ton) from the delivered price for the concentrate ($40 per ton). Accordingly, A's gross income from mining with respect to the 20,000 tons of M concentrate sold on a delivered basis is $500,000. The representative market or field price for the concentrate retained by A and used in his own nonmining operations may be computed by reference to the weighted average price for both A's f.o.b. mine and A's delivered sales of concentrate, with the delivered sales prices reduced in the manner described above. On this basis, the representative market or field price for the retained concentrate is $29 per ton.

Example 2. B is engaged in the mining of an ore of mineral N and in the production of N concentrate. B retained all but an insignificant amount of his concentrate for use in his own nonmining operations. Other producers in B's marketing area sell significant amounts of N concentrate of like kind and grade, both on an f.o.b. mine or plant basis and on a delivered basis. In this case, the prices for both the f.o.b. and the delivered sales made by other producers (after any adjustments required by subparagraph (1) of this paragraph), after reduction of the delivered prices by the cost of purchased transportation to the customer, shall, if such prices are otherwise representative, be taken into account in establishing the representative market or field price for the N concentrate produced and used by B.

(f) Definition of mining—(1) In general. The term mining includes only:

(i) The extraction of ores or minerals from the ground;

(ii) Mining processes, as described in subparagraphs (2) through (6) of this paragraph; and

(iii) So much of the transportation (whether or not by common carrier) of ores or minerals from the point of extraction of the ores or minerals from the ground to the plants or mills in which the processes referred to in subdivision (ii) of this subparagraph are applied thereto as is not in excess of 50 miles, and, if the Commissioner finds that both the physical and other requirements are such that the ores or minerals must be transported a greater distance to such plants or mills, the transportation over such greater distance as the Commissioner authorizes. See paragraph (h) of this section for rules relating to the filing of applications to treat as mining any transportation in excess of 50 miles.

(2) Definition of mining processes. (i) As used in subparagraph (1)(ii) of this paragraph, the term mining processes means, for taxable years beginning before January 1, 1961, the ordinary treatment processes normally applied by mine owners or operators in order to obtain the commercially marketable mineral product or products, including the following processes (and the processes necessary or incidental thereto), and, for taxable years beginning after December 31, 1960, the following processes (and the processes necessary or incidental thereto):

(a) In the case of coal--cleaning, breaking, sizing, dust allaying, treating to prevent freezing, and loading for shipment;

(b) In the case of sulfur recovered by the Frasch process--cleaning, pumping to vats, cooling, breaking, and loading for shipment;

(c) In the case of iron ore, bauxite, ball and sagger clay, rock asphalt, and ores or minerals which are customarily sold in the form of a crude mineral product (as defined in subparagraph (3)(iv) of this paragraph):

(1) Where applied for the purpose of bringing to shipping grade and form (as defined in subparagraph (3)(iii) of this paragraph)--sorting, concentrating, sintering, and substantially equivalent processes, and

(2) Loading for shipment.

(d) In the case of lead, zinc, copper, gold, silver, uranium, or fluorspar ores, potash, and ores or minerals which are not customarily sold in the form of the crude mineral product--crushing, grinding, and beneficiation by concentration (gravity, flotation, amalgamation, electrostatic, or magnetic), cyanidation, leaching, crystallization, precipitation (but not including electrolytic deposition, roasting, thermal or electric smelting, or refining), or by substantially equivalent processes or combination of processes used in the separation or extraction of the product or products from the ore or the mineral or minerals from other material from the mine or other natural deposit; and

(e) In the case of the following ores or minerals:

(1) The furnacing of quicksilver ores,

(2) The pulverization of talc,

(3) The burning of magnesite, and

(4) The sintering and nodulizing of phosphate rock.

(ii) The term mining processes also includes the following processes (and, except as otherwise provided in this subdivision, the processes necessary or incidental thereto):

(a) For taxable years beginning after December 31, 1960, in the case of calcium carbonates and other minerals when used in making cement--all processes (other than preheating the kiln feed) applied prior to the introduction of the kiln feed into the kiln, but not including any subsequent process;

(b) For taxable years beginning after December 31, 1960, and before November 14, 1966, in the case of clay to which former section 613(b)(5)(B) applied, and for taxable years beginning after November 13, 1966, in the case of clay to which section 613(b)(5) or (6)(B) applies--crushing, grinding, and separating the clay from waste, but not including any subsequent process;

(c) For taxable years beginning after October 9, 1969, in the case of minerals (other than sodium chloride) extracted from brines pumped from a saline perennial lake (as defined in paragraph (b) of § 1.613–2)--the extraction of such minerals from the brines, but in no case including any further processing or refining of such extracted minerals; and

(d) For taxable years beginning after December 30, 1969, in the case of oil shale (as defined in paragraph (b) of § 1.613–2)--extraction from the ground, crushing, loading into the retort, and retorting, but in no case hydrogenation, refining, or any other process subsequent to retorting.

(iii) A process is necessary to another related process if it is prerequisite to the performance of the other process. For example, if the concentrating of low-grade iron ores to bring to shipping grade and form cannot be effectively accomplished without fine pulverization, such pulverization shall be treated as a process which is necessary to the concentration process. Accordingly, because concentration is a mining process, such pulverization is also a mining process. Furthermore, if mining processes cannot be effectively applied to a mineral without storage of the mineral while awaiting the application of such processes, such storage shall be treated as a process which is necessary to the accomplishment of such mining processes. A process is incidental to another related process if the cost thereof is insubstantial in relation to the cost of the other process, or if the process is merely the coincidental result of the application of the other process. For example, the sprinkling of coal, prior to loading for shipment, with dots of paper to identify the coal for trade-name purposes will be considered incidental to the loading where the cost of that sprinkling is insubstantial in relation to the cost of the loading process. Also, where crushing of a crude mineral is treated as a mining process, the production of fines as a byproduct is ordinarily the coincidental result of the application of a mining process. If a taxpayer demonstrates that, as a factual matter, a particular process is necessary or incidental to a process named as a mining process in section 613(c)(4) of this paragraph, the necessary or incidental process will also be considered a mining process.

(iv) The term mining does not include purchasing minerals from another. Accordingly, the processes listed in this paragraph shall be considered as mining processes only to the extent that they are applied by a mine owner or operator to an ore or mineral in respect of which he is entitled to a deduction for depletion under section 611. The application of these processes to purchased ores, minerals, or materials does not constitute mining.

(3) Processes recognized as mining for ores or minerals covered by section 613(c)(4)(C). (i) As used in section 613(c)(4)(C) and subparagraph (2)(i)(c) of this paragraph, the terms sorting and concentrating mean the process of eliminating substantial amounts of the impurities or foreign matter associated with the ores or minerals in their natural state, or of separating two or more valuable minerals or ores, without changing the physical or chemical identity of the ores or minerals. Examples of sorting and concentrating processes are hand or mechanical sorting, magnetic separation, gravity concentration, jigging, the use of shaking or concentrating tables, the use of spiral concentrators, the use of sluices or sluice boxes, sink-and-float processes, classifiers, hydrotators and flotation processes. Under section 613(c)(4)(C), sorting and concentration will be considered mining processes only where they are applied to bring an ore or mineral to shipping grade and form.

(ii) As used in section 613(c)(4)(C) and subparagraph (2)(i)(c) of this paragraph, the term sintering means the agglomeration of fine particles by heating to a temperature at which incipient, but not complete, fusion occurs. Sintering will be considered a mining process only where it is applied to an ore or mineral, or a concentrate of an ore or mineral, as an auxiliary process necessary to bring the ore or mineral to shipping form. A thermal action which is applied in the manufacture of a finished product will not be considered to be a mining process even though such thermal action may cause the agglomeration of fine particles by incipient fusion, and even though such action does not cause a chemical change in the agglomerated particles. For example, the sintering of finely ground iron ore concentrate, prior to shipment from the concentration plant, for the purpose of preventing the risk of loss of the finely divided particles during shipment is considered a mining process. On the other hand, for example, a heating process applied to expand or harden clay, shale, perlite, vermiculite, or other materials in the course of the manufacture of lightweight aggregate or other building materials is not considered to be a mining process.

(iii) As used in section 613(c)(4)(C) and this section, to bring to shipping grade and form means, with respect to taxable years beginning after December 31, 1960, to bring (by the application of mining processes at the mine or concentration plant) the quality or size of an ore or mineral to the stage or stages at which the ore or mineral is shipped to customers or used in nonmining processes (as defined in paragraph (g) of this section) by the taxpayer.

(iv) An ore or mineral is customarily sold in the form of a crude mineral product, within the meaning of section 613(c)(4)(C), if a significant portion of the production thereof is sold or used in a nonmining process prior to the alteration of its inherent mineral content by some form of beneficiation, concentration, or ore dressing. An ore or mineral does not lose its classification as a crude mineral product by reason of the fact that, before sale or use in a nonmining process, the ore or mineral may be crushed or subjected to other processes which do not alter its inherent mineral content. Whether the portion of production sold or used in the form of a crude mineral product is a significant portion of the total production of an ore or mineral is a question of fact.

(4) Type of processes recognized as mining for ores or minerals covered by section 613(c)(4)(D). Cyanidation, leaching, crystallization, and precipitation, which are listed in section 613(c)(4)(D) as treatment processes considered as mining, and the processes (or combination of processes) which are substantially equivalent thereto, will be recognized as mining only to the extent that they are applied to the taxpayer's ore or mineral for the purpose of separation or extraction of the valuable mineral product or products from the ore, or for the purpose of separation or extraction of the mineral or minerals from other material extracted from the mine or other natural deposit. A process, no matter how denominated, will not be recognized as mining if the process beneficiates the ore or mineral to the degree that such process, in effect, constitutes smelting, refining, or any other nonmining process within the meaning of paragraph (g) of this section. As used in section 613(c)(4)(D) and subparagraph (2)(i)(d) of this paragraph, the term concentration has the meaning set forth in the first two sentences of subparagraph (3)(i) of this paragraph.

(5) Processes recognized as mining under section 613(c)(4)(I). Under the authority granted the Secretary or his delegate in section 613(c)(4)(I), the processes which are described in subdivisions (i) through (iv) of this subparagraph, and the processes necessary or incidental thereto, are recognized as mining processes for taxable years beginning after December 31, 1960. The processes described in subdivisions (i) through (iv) of this subparagraph are in addition to the specific processes recognized as mining under section 613(c)(4). Such additional processes are:

(i) Crushing and grinding, but not fine pulverization (as defined in paragraph (g)(6)(v) of this section);

(ii) Size classification processes applied to the products of an allowable mining process;

(iii) Drying to remove free water, provided that such drying does not change the physical or chemical identity or composition of the mineral; and

(iv) Washing or cleaning the surface of mineral particles (including the washing of sand and gravel and the treatment of kaolin particles to remove surface stains), provided that such washing or cleaning does not activate or otherwise change the physical or chemical structure of the mineral particles.

(6) In the case of a process applied subsequent to a nonmining process, see paragraph (g)(2) of this section.

(g) Nonmining processes--(1) General rule. Unless they are otherwise provided for in paragraph (f) of this section as mining processes (or are necessary or incidental to processes listed therein), the following processes are not considered to be mining processes--electrolytic deposition, roasting, calcining, thermal or electric smelting, refining, polishing, fine pulverization, blending with other materials, treatment effecting a chemical change, thermal action, and molding or shaping. See subparagraph (6) of this paragraph for definitions of certain of these terms.

(2) Processes subsequent to nonmining processes. Notwithstanding any other provision of this section, a process applied subsequent to a nonmining process (other than nonmining transportation) shall also be considered to be a nonmining process. Exceptions to this rule shall be made, however, in those instances in which the rule would discriminate between similarly situated producers of the same mineral. For example, roasting is specifically designated in subparagraph (1) of this paragraph as a nonmining process, but in the case of minerals referred to in section 613(c)(4)(C) sintering is recognized as a mining process. If certain impurities in an ore can only be removed by roasting in order to bring it to the same shipping grade and form as a competitive sintered ore of the same kind which requires no roasting, the subsequent sintering of the roasted ore will be treated as a mining process. In that case, however, the roasting of the ore will nonetheless continue to be treated as a nonmining process.

(3) Transportation for the purpose of marketing or distribution; storage. Transportation the primary purpose of which is marketing, distribution, or delivery for the application of only nonmining processes shall not be considered as mining. Nor shall transportation be considered as mining merely because, during the course of such transportation, some extraneous matter is removed from the ore or mineral by the operation of forces of nature, such as evaporation, drainage, or gravity flow. Similarly, storage or warehousing of manufactured products shall not be considered as mining. The preceding sentence shall apply even though, during the course of such storage or warehousing, some extraneous matter is removed from the ore or mineral by the operation of forces of nature, such as evaporation, drainage, or gravity flow.

(4) Manufacturing, etc. The production, packaging, distribution, and marketing of manufactured products, and the processes necessary or incidental thereto, are nonmining processes.

(5) Transformation processes. Processes which effect a substantial physical or chemical change in a crude mineral product, or which transform a crude mineral product into new or different mineral products, or into refined or manufactured products,

are nonmining processes except to the extent that such processes are allowed as mining processes under section 613(c) or under paragraph (f) of this section.

(6) Definitions. As used in section 613(c)(5) and this section:

(i) The term calcining refers to processes used to expel the volatile portions of a mineral by the application of heat, as, for example, the burning of carbonate rock to produce lime, the heating of gypsum to produce calcined gypsum or plaster of Paris, or the heating of clays to reduce water of crystallization.

(ii) The term thermal smelting refers to processes which reduce, separate, or remove impurities from ores or minerals by the application of heat, as, for example, the furnacing of copper concentrates, the heating of iron ores, concentrates, or pellets in a blast furnace to produce pig iron, or the heating of iron ores or concentrates in a direct reduction kiln to produce a feed for direct conversion into steel.

(iii) The term refining refers to processes (other than mining processes designated in section 613(c)(4) or this section) used to eliminate impurities or foreign matter from smelted or partially processed metallic and nonmetallic ores and minerals, as, for example, the refining of blister copper. In general, a refining process is designed to achieve a high degree of purity by removing relatively small amounts of impurities or foreign matter from smelted or partially processed ores or minerals.

(iv) The term polishing refers to processes used to smooth the surface of minerals, as, for example, sawing applied to finish rough cut blocks of stone, sand finishing, buffing, or otherwise smoothing blocks of stone.

(v) The term fine pulverization refers to any grinding or other size reduction process applied to reduce the normal topsize of a mineral product to less than .0331 inches, which is the size opening in a No. 20 Screen (U.S. Standard Sieve Series). A mineral product will be considered to have a normal topsize of .0331 inches if at least 98 percent of the product will pass through a No. 20 Screen (U.S. Standard Sieve Series), provided that at least 5 percent of the product is retained on a No. 45 Screen (U.S. Standard Sieve Series). Compliance with the normal topsize test may also be demonstrated by other tests which are shown to be reasonable in the circumstances. The normal topsize test shall be applied to the product of the operation of each separate and distinct piece of size reduction equipment utilized (such as a roller mill), rather than to the final products for sale. Fine pulverization includes the repeated recirculation of material through crushing or grinding equipment to accomplish fine pulverization. Separating or screening the product of a fine pulverization process (including separation by air or water flotation) shall be treated as a nonmining process.

(vi) The term blending with other materials refers to processes used to blend different kinds of minerals with one another, as, for example, blending iodine with common salt for the purpose of producing iodized table salt.

(vii) The term treatment effecting a chemical change refers to processes which transform or modify the chemical composition of a crude mineral, as, for example, the coking of coal. The term does not include the use of chemicals to clean the surface of mineral particles provided that such cleaning does not make any change in the physical or chemical structure of the mineral particles.

(viii) The term thermal action refers to processes which involve the application of artificial heat to ores or minerals, such as, for example, the burning of bricks, the coking of coal, the expansion or popping of perlite, the exfoliation of vermiculite, the heat treatment of garnet, and the heating of shale, clay, or slate to produce lightweight aggregates. The term does not include drying to remove free water.

(h) Application to treat, as mining, transportation in excess of 50 miles. If a taxpayer desires to include in the computation of his gross income from mining transportation in excess of 50 miles from the point of extraction of the minerals from the ground, he shall file an original and one copy of an application for the inclusion of such greater distance with the Commissioner of Internal Revenue, Washington, DC 20224. The application must include a statement setting forth in detail the facts concerning the physical and other requirements which prevented the construction and operation of the plant (in which mining processes, as defined in paragraph (f) of this section, are applied) at a place nearer to the point of extraction from the ground. These facts must be sufficient to apprise the Commissioner of the exact basis of the application. If the taxpayer's return is filed prior to receipt of notice of the Commissioner's action upon the application, a copy of such application shall be attached to the return. If, after an application is approved by the Commissioner, there is a material change in any of the facts relied upon in such application, a new application must be submitted by the taxpayer.

(i) Extraction from waste or residue. Extraction of ores or minerals from the ground means not only the extraction of ores or minerals from a deposit, but also the extraction by mine owners or operators of ores or minerals from waste or residue of their prior mining. It is immaterial whether the waste or residue results from the process of extraction from the ground or from application of mining processes as defined in paragraph (f) of this section. However, extraction of ores or minerals from waste or residue which results from processes which are not allowable as mining processes is not treated as mining. Extraction of ores or minerals from the ground does not include extraction of ores or minerals by the purchaser of waste or residue or the purchaser of the rights to extract ores or minerals from waste or residue. The term purchaser does not apply to any person who acquires a mineral property, including waste or residue, in a tax-free exchange, such as a corporate reorganization, from a person who was entitled to a depletion allowance upon ores or minerals produced from such waste or residue, or from a person who would have been entitled to such depletion allowance had section 613(c)(3) been in effect at the time of the transfer. The term purchaser also does not apply to a lessee who has renewed a mineral lease if the lessee was entitled to a depletion allowance (or would have been so entitled had section 613(c)(3) been in effect at the time of the renewal) upon ores or minerals produced from waste or residue before renewal of the lease. It is not necessary, for purposes of the preceding sentence, that the mineral lease contain an option for renewal. The term purchaser does include a person who acquires waste or residue in a taxable transaction, even though such waste or residue is acquired merely as an incidental part of the entire mineral enterprise. For special rules with respect to certain corporate acquisitions referred to in section 381(a), see section 381(c)(18) and the regulations thereunder.

(j) Definition of controlled group. When used in this section:

(1) The term controlled includes any kind of control, direct or indirect, whether or not legally enforceable, and however exercisable or exercised. It is the reality of the control which is decisive, not its form or the mode of its exercise. A presumption of control arises if income or deductions have been arbitrarily shifted.

(2) The term group means the organizations, trades, or businesses owned or controlled by the same interests.

[T.D. 7170, 37 FR 5374, March 15, 1972]

SOURCE: T.D. 6500, 25 FR 11402, Nov. 26, 1960; 25 FR 14021, Dec. 21, 1960, unless otherwise noted.

Treas. Reg. § 1.613–4, 26 C.F.R. § 1.613–4

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Senate Bill No. 61—Committee on Taxation

CHAPTER 25

AN ACT relating to taxation; implementing S.J.R. No. 22 of the 64th session concerning the taxation of the net proceeds from the extraction of minerals; making various changes concerning the collection of the tax on the net proceeds of minerals; revising the provisions governing the assessed valuation of taxable property; and providing other matters properly relating thereto.

[Approved March 20, 1989]

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The legislature hereby declares that:

1. The legislature's intent in proposing and approving Senate Joint Resolution No. 22 of the 64th session is to provide a separate method of taxation that is intended to be the only manner of taxation of mines, other than patented mines and mining claims upon which less than $100 worth of labor has been actually performed in the preceding year, and minerals, including oil, gas and other hydrocarbons, until the mineral has been extracted and subjected to the ordinary mining processes involved in the extraction.

2. The legislature intends that the tax imposed by this act and the proposed constitutional limitations upon the taxation of minerals and their proceeds preclude a tax upon:

(a) The extraction and ordinary mining processes involved in the extraction of minerals, including oil, gas and other hydrocarbons;

(b) Minerals, including oil, gas and other hydrocarbons, until after the completion of the ordinary mining processes involved in the extraction of the mineral, and if exchanged at that time, until after the completion of the exchange; and

(c) The proceeds received in exchange for minerals, including oil, gas and other hydrocarbons, if the minerals are exchanged upon the completion of the ordinary mining processes, until after the completion of the exchange.

3. The legislature's intent in proposing and approving Senate Joint Resolution No. 22 of the 64th session is to provide the opportunity for this and other legislatures to assess a tax on the net proceeds of minerals.

4. The legislature intends that the tax imposed by this act and the proposed constitutional limitations upon the taxation of minerals and their proceeds do not preclude or in any way affect the taxation of motor vehicle or diesel fuel, jewelry, profits or revenues of businesses, or any other tax upon property, sales or businesses, except as provided in subsection 2.

EX 134

ALJ/CAB/tcg

Mailed 12/3/2004

Decision 04-12-016 December 2, 2004

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company Regarding the Future Disposition of the Mohave Generating Station.	Application 02-05-046 (Filed May 17, 2002)

(See Appendix A for List of Appearances.)

OPINION AUTHORIZING SOUTHERN CALIFORNIA EDISON COMPANY TO MAKE NECESSARY AND APPROPRIATE EXPENDITURES ON CRITICAL PATH INVESTMENTS AT MOHAVE WHILE CONTINUING TO SEEK RESOLUTION OF THE WATER AND COAL ISSUES AND TO ESTABLISH A MERMA ACCOUNT

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OPINION AUTHORIZING SOUTHERN CALIFORNIA EDISON COMPANY TO MAKE NECESSARY AND APPROPRIATE EXPENDITURES ON CRITICAL PATH INVESTMENTS AT MOHAVE WHILE CONTINUING TO SEEK RESOLUTION OF THE WATER AND COAL ISSUES AND TO ESTABLISH A MERMA ACCOUNT

Summary

This decision authorizes Southern California Edison Company (Edison) to make necessary and appropriate expenditures on the Mohave Generating Station (Mohave), for critical path investments required by the 1999 Consent Decree[1] to allow Mohave to continue operations post year-end 2005; to continue working on resolution of the essential water and coal issues including the funding of the C-Aquifer hydro-geological and environmental studies; to study options/alternatives to work in concert with Mohave's continued operation or to replace Mohave's power generation for Edison customers and Mohave's economic benefits for the Hopi and Navajo communities and other affected stakeholders if Mohave cannot continue as a coal-fired plant; and to establish a Mohave Employee-Related Memorandum Account (MERMA) to track worker protection benefit expenses incurred before January 1, 2006, associated with the temporary shut-down of Mohave at the end of 2005. Once the two primary unknown questions concerning the availability of water and coal supplies are ascertained, the Commission intends to review those cost and the contingency

[1] Mohave Environmental Consent Decree settled a federal civil lawsuit, CV-S-98-00305-LDG (RJJ), that was filed in 1997 by Grand Canyon Trust, Inc., Sierra Club, Inc. and National Parks and Conservation Association, Inc. against Edison and the other Mohave co-owners alleging various air quality violations at Mohave. Edison and the other Mohave co-owners were signatories to the 1999 Consent Decree and have known since then that either the required improvements had to be made, or the facility would shut-down at the end of 2005.

costs (which even Edison admits are not yet firm) subject to the usual GRC review of capital additions if Edison requests such regulatory assurance. Edison is also directed to proceed with an alternatives feasibility study to evaluate other viable procurement options to be used in conjunction with Mohave. Our goal is to return Mohave to service with as short of a shut-down period as possible. The Commission's decision at this time is made without prejudice to the ultimate resolution of the future fate of Mohave.

Edison is not required by law to file for a Certificate of Public Convenience and Necessity (CPCN) for the required environmental upgrades.

Background

Mohave is a two-unit, coal-fired power plant located in Laughlin, Nevada. Together the plant's generating units have an operating capacity of approximately 1,580 megawatts (MW). Edison is the plant operator and owns a 56% undivided interest in Mohave,[2] which is equivalent to approximately an 885 MW entitlement. Under the terms of the 1999 Consent Decree, if Mohave is to be operational as a coal-fired plant post 2005, certain pollution control equipment[3] must be installed. In its application, filed May 17, 2002, Edison projected a total cost of approximately $1.1 billion for the required pollution controls and other capital investments necessary to extend Mohave operations

[2] The remaining percentage shares in the plant are owned 20% by Salt River Agricultural Improvement and Power District (Salt River), 10% by Los Angeles Department of Water and Power (LADWP) and 14% by Nevada Power Company (Nevada Power).

[3] SO2 scrubbers, fabric filter dust collectors, and low-NOx burners. The pollution controls required by the 1999 Consent Decree do not address carbon and mercury emissions which could become issues under future environmental regulations.

post 2005. The cost includes (1) the required pollution control equipment itself; (2) other plant investments needed to accommodate the added pollution control equipment; (3) restoration of plant efficiency and capacity; (4) refurbishment of the coal-slurry pipeline to the plant; and (5) a water supply for the coal mine and slurry operation. In its application Edison requested that the commission either authorize it to spend up to $58 million in preliminary work in 2003, or authorize it to establish appropriate accounts for the shut-down of the facility.

Under the Consent Decree, even if the installation of the equipment is underway, but not completed, by the end of 2005, the plant will have to cease operations until the installation is completed. Any cessation of operations and the associated residual costs, when combined with the cost of the pollution controls, impacts the economics of continuing Mohave as a coal-fired plant. Edison projects a lead-time of 3-4 years for installation completion. This time could be lengthened or shortened by a wide variety of factors.

Mohave employs approximately 355 people at the facility, 285 who are represented by the Utility Workers Union of America (UWUA). Mohave obtains all of its coal supply from the Black Mesa coal mine (Mine), which is located approximately 273 miles east of Mohave in northeast Arizona. The Mine is operated by Peabody Western Coal Company (Peabody) on lands that belong to the Hopi Tribe and the Navajo Nation (Hopi, Navajo). The coal is transported from the mine to Mohave by way of a coal-slurry pipeline owned and operated by Black Mesa Pipeline, Inc. (Black Mesa Pipeline). The mine and pipeline, combined, employ approximately 270 people, 220 of whom are represented by United Mine Workers of America (UMWA). The pipeline requires that the coal be pulverized and mixed with water near the mine site to produce the slurry. Once the slurry mixture reaches Mohave, the water is extracted and the coal is

dried. The water for the slurrying process and for all other water requirements of the mine comes from the N-Aquifer, a well that underlies the land of the Hopi and Navajo.

In addition to the time limitation of 2005 as set forth in the 1999 Consent Decree for the installation of the required pollution controls, Mohave's coal supply contract expires at the end of 2005, and the availability of water for use at the mine and for the pipeline is uncertain after 2005 because the Hopi and Navajo oppose further use of the N-Aquifer for slurrying purposes. Edison, and the other Mohave owners, have been, and still are, involved in negotiations for a continued supply of coal and water post 2005. Despite their efforts over the past three years, as of the writing of this decision the water and coal issues are still unresolved. The Mohave co-owners' agreement, whereby Edison, Salt River, LADWP and Nevada Power set forth the rights and obligations of the co-owners, also terminates at the end of 2005. While there are options for extension of the co-owners agreement, there is no obligation on the part of the owners to exercise the option.

Water and Coal Issues

Water

Since Mohave's inception in 1971, water from the N-Aquifer has been used to slurry the coal the 273 miles from the mine to the Mohave facility. Approximately, 4,400 acre-feet per year of water is extracted from the N-Aquifer for this purpose. The Hopi Tribe opposes the further pumping of the N-Aquifer after 2005, and has taken this position since before Edison filed this application. This opposition is based, in part, on the value the Hopi, and others, place on the special religious and cultural importance of this water source and their concerns

about the impact the withdrawal of the water for the slurry purposes has on certain surface springs and washes in the Black Mesa area.

Beginning in 2001, Edison and the other Mohave co-owners restarted past efforts to develop an alternative water source to the N-Aquifer for the mine and the coal slurry pipeline. Because of the arid nature of the geography close to the coal mine, as well as the sensitive nature of the water associated with the Grand Canyon, the parties have had a difficult time identifying, much less obtaining, rights to another viable water supply. Some alternatives that were studied included a "pump-back" option involving obtaining Colorado River water from near the Mohave plant site; participation in a multi-purpose water pipeline from Lake Powell; a "mine-only" water pipeline from Lake Powell, possibly combined with relocating the slurry preparation plant further north; relocating the current N-Aquifer well-field to an area northwest of Peabody's leasehold; obtaining effluent water from Flagstaff or other communities; and obtaining river water from the Marble Canyon area in the lower basin of the Colorado River.[4] After exhausting those possibilities after years of analysis and negotiation, the parties determined that the only potentially viable alternative is the C-Aquifer. This determination was not reached until almost a year after Edison filed this application.

Once the parties informed the Commission of the potential of the C-Aquifer, they also advised the Commission that a hydrologic feasibility study and an environmental study must be done by the Bureau of Reclamation (BOR),

[4] Edison's reply brief, p. 7, citing Salt River opening brief, pp. 6-8 and Palmer testimony from Tr. 2273-2276.

at a cost of approximately $6 million, before it can be determined if the C-Aquifer is a suitable alternative. The major stakeholders negotiated for some time to reach an agreement on the funding for the C-Aquifer study. To facilitate these negotiations, the Commission scheduled a voluntary mediation for the Mohave co-owners, Peabody, and the Hopi and Navajo for October 10, 2003.

By the date of the mediation, the stakeholders had reached their own agreement to resolve the critical and complex issues that surround the development and operation of the C-Aquifer. Edison and the other co-owners agreed to fund the BOR study and negotiated a Memorandum of Understanding (MOU) to be signed by all stakeholders before funding was allocated and commenced. Unfortunately, the parties took until March 4, 2004, before all necessary signatures were obtained on the MOU.[5] Despite the best efforts of the Commission and the mediation judge, it still took almost five months for the parties to reach final resolution of many complex issues related to both the C-Aquifer and tangential issues as well.[6] Once the MOU contained all required signatures, Edison and the other co-owners funded the BOR study and the hydrological feasibility study is underway. Concurrent with the BOR study, multi-party negotiations are continuing to develop and establish all of the various agreements and arrangements necessary to build the C-Aquifer pipeline

[5] A copy of the MOU is attached as Attachment B to Exhibit 18.

[6] Numerous allegations of "foot-dragging" have been bandied about by signatories to the MOU. However, when the Commission reviewed the chronology of the mediation efforts from October 2003 through the final MOU agreement date of March 4, 2004, it is clear that no one party did anything deliberate to sabotage the MOU, and the confluence of factors that contributed to the five-month delay were not attributable to any one party. What is important is that once the MOU was signed, Edison and the other co-owners forthwith funded the BOR study.

and well-field and implement usage of this new water supply for future Plant operation.

The C-Aquifer supply study will assess from a hydrological, geological, engineering, water-quality, and cost standpoint the viability of: (1) constructing the C-Aquifer Project (Project); (2) withdrawing 6,000 acre-feet per year (afy) of C-Aquifer via the Project during the extended term of Mohave; and (3) using the 6,000 afy of the C-Aquifer for coal-slurrying and other mine purposes to replace the N-Aquifer as the primary source of water. If the supply study proves positive, the Environmental Review, in accordance with the National Environmental Protection Act (NEPA) will review the environmental impacts of the activities enumerated above. The complete scope of work for the C-Aquifer supply and environmental studies is set forth in an attachment to the MOU.

Even if the C-Aquifer studies are positive, parties still have to consider and resolve many other complex issues including, but not limited to:

1. The amount of water found to be available during the supply study portion of the C-Aquifer study;
2. The status and nature of the Hopi and Navajo demands to upsize the proposed C-Aquifer pipeline and allocate some of the available supply of C-Aquifer water to Indian domestic and municipal use;
3. The scope and severity of any environmental limitations on the use of C-Aquifer water that are identified during the environmental study portion of the C-Aquifer study and incorporated into applicable permits;
4. The terms and conditions Edison is able to negotiate with the Hopi and Navajo relating to the use of the N-Aquifer, or another water source, as a temporary emergency back-up supply;
5. The definition and costs for all necessary rights of way and other property rights for the new water wells, pipelines and other related facilities; and

6. Clarification of issues connected with ownership and operation of the wells and pipeline.

Although the items enumerated above are of concern to all the parties, and involve unknown costs or timelines necessary for resolution of the issues, the stakeholders have expressed confidence that these issues can be satisfactorily resolved once the water supply is secure.

There is another potentially troubling water issue and that is a source of water for cooling purposes at the Mohave facility itself. In addition to the water that is extracted from the slurry mixture, Mohave also uses water from the Colorado River at the plant for cooling and other purposes. Mohave's contract for this water terminates in 2026 and there is no provision or assurance that the contract will be extended. While it may be premature to be concerned about a water source not needed until 20 years from now, the parties are in agreement that without a substitute cooling water source, the Mohave facility will not be able to continue in operation post 2026. This potential situation does affect the cost estimates for Mohave since it reduces the plant life projections from the normal 30 years to approximately 17-20 years.

Coal

The Black Mesa mine is Mohave's only source of coal, and Mohave is the only purchaser of coal from the Mine, through Peabody. The coal-slurry pipeline is currently the only means of transporting the coal from the Mine to Mohave, and Mohave is specifically designed to burn slurried coal. The coal supply agreement between Peabody and the Mohave co-owners terminates at the end of 2005, and there is an option, but no obligation, to extend the term of the coal supply agreement up to 15 years.

Stakeholders have been negotiating the quantity, quality and price of coal post 2005. While there are complicated issues yet to be resolved, the parties have decided to address the post-2005 coal quality and quantity through a decision to implement coal-washing at the mine. This, however, does not completely settle the coal issues. Presently, there are two federal lawsuits brought by the Hopi Tribe and the Navajo Nation against Peabody, pending in Washington D.C. and Arizona, in which the plaintiffs are seeking to invalidate the coal leases under which Peabody mines coal on the Hopi and Navajo lands. Because of these suits, Peabody can not warrant that it can supply coal to Mohave.

In addition, Peabody has a permit pending for a permanent program permit to mine coal from the Black Mesa Mine that identifies the N-Aquifer as the source of water for the mine and slurry operation. The permit has been stalled for fifteen years due to a protest by the Hopi Tribe to the continued use of the N-Aquifer for the mine and slurry purposes. Environmental work is required as part of this permanent permit, and no work has been initiated on this work pending resolution of the alternative water supply issue.

The parties have conceded that a coal washing facility will be a necessary component to continued use of coal from the Black Mesa Mine. A coal washing facility portends additional pollution and emission problems that will also have to be resolved.

In summary, although the coal issues do not appear to be as daunting to resolve as finding an alternative water source, without satisfactory settlement of the outstanding coal issues, Mohave does not continue as a coal-fired plant.

Procedural History

On May 17, 2002, Edison filed this application seeking Commission authorization to either 1) recognize that Mohave will no longer function as a

coal-fired plant after the end of 2005 and establish the appropriate balancing accounts for closure costs, or 2) authorize Edison to spend up to $58 million in 2003 on the pollution controls and related capital expenses necessary to allow the facility to continue as a coal-fired plant post-2005.

Protests were filed by the Navaho, the Hopi, Salt River, the Center for Energy and Economic Development (CEED), Coalition of California Utility employees (CUE), Peabody, the Utility Reform Network (TURN), Natural Resources Defense Council (NRDC), and the Office of Ratepayer Advocates (ORA).

On October 11, 2002, a combined Prehearing Conference (PHC)/ Public Participation Hearing (PPH) was held at the Navajo Nation Chapter House in Tuba City, Arizona. After hearing the statements of the parties, and listening to over 100 concerned members of the Hopi Tribe and Navajo Nation, the local people, the mine and slurry workers, neighbors of the mine, environmental groups, and interested people from all walks of life and geographic locations, we concluded that we could not adequately address the full panoply of issues raised by Edison's application by the beginning of 2003. Instead, on January 7, 2003, Commissioner Lynch issued a Scoping Memorandum setting forth the scope of the proceeding and the issues to be addressed, along with a procedural schedule for the filing of the first round of testimony, on January 30, 2003, by Edison and on March 28, 2003, by the Intervenors. Concurrent rebuttal testimony was served April 25, 2003. Since the initial rounds of testimony, the Commission has requested additional testimony and/or briefing on numerous specified subjects, including cost and legal issues. Evidentiary hearings were held June 14 through July 9, 2004, and in advance of the hearings, parties served updated and/or supplemental testimony.

Concurrent post-hearing briefs were filed on August 9, 2004, and reply briefs were filed on August 24, 2004, by Edison, Hopi, NRDC, WEC, TURN, ORA, Navajo, Peabody, Salt River and UWUA/ UMWA/CCUE.

The proposed decision (PD) was mailed on October 20, 2004. On September 15, 2004, the Navajo filed a request for Final Oral Argument (FOA). On November 9, 2004, comments were received from the Hopi, Navajo, NRDC, WEC, Edison, Peabody, ORA and UWUA/UMWA/CCUE. In their comments, Peabody and the Hopi also requested FOA. On November 15, 2004, reply comments were received from the Hopi, Navajo, NRDC, ORA, Peabody, Edison, TURN and UWUA/UMWA/CCUE. On November 30, 2004, FOA was held. Following is a summary of the parties' comments and reply comments and a discussion of the modifications or clarifications the Commission adopts.

To begin, no party questions the value of Mohave to those most affected by its operation: the Hopi, the Navajo and the mine, plant and pipeline workers. In addition, Mohave is a key and valuable resource for Edison consumers as the utility ramps up its resource adequacy reserves. The parties universally recognize the importance of preserving the "Mohave-open" option. The major difference that divides the parties is on the topic of how much authority the Commission can give Edison *now*, in light of the inchoateness of the water and coal issues. The Hopi, Navajo and Peabody urge the Commission to amend the PD and give Edison *now* all the authority it will ever need to do the environmental upgrades and other capital improvements if the water and coal issues are resolved favorably. All of the other parties favor proceeding more thoughtfully and do not want the full authority given *now*, absent the Commission's ability to make a finding that authorizing the spending of $1.1 billion is in the ratepayer and public interest. What we will do is to

authorize Edison to spend any money necessary to preserve the "Mohave-open" option, but do not authorize Edison to proceed with the pollution controls, related capital improvements and construction costs for those items now.

To address that concern we are clarifying what Edison should do if, and when, the water study reaches a favorable conclusion. Edison is to file an application in the Long-Term Procurement docket, R.04-04-003, that specifically addresses the future of Mohave. The application should be served on the service list for the Mohave proceeding, which list will be made a sub-list in R.04-04-003. While we cannot bind future Commissions to any particular process or timeline, this Commission can stress in this decision the importance of processing the application in as expeditious manner as possible that still allows for the vetting of sufficient information for a determination that keeping Mohave as a coal-burning plant is in the public and ratepayer interest. Issues that have already been litigated and are resolved in this decision will not need to be re-litigated in the application. This includes the costs for the pollution equipment and upgrades, upgrades to the slurry line, and costs related to the new water supply.

There were a few other common threads that ran through many of the comments. One primary thread was the recommendation that the alternatives study not just be viewed as a substitute for Mohave, but that renewables be studied as an energy source that could work in concert with Mohave. We agree and clarify that alternatives should be studied not just to replace Edison's share of Mohave's output in the scenario where Mohave is permanently closed, but that alternatives need to be studied as a compliment to Mohave.

Edison asks that the Commission clarify or revise the PD with regard to the following: (1) Commission forum in which Mohave's extended operation is to be compared against possible alternative generation sources; (2) Edison's

ability to recover the costs that it will incur in connection with the alternatives study; (3) the legal basis for the Commission's conclusion on the reasonableness of the Mohave capital costs; and (4) the Commission's treatment of the contingency amount included in Edison's cost estimates. We have adopted some of these recommendations in the body of the decision.

Peabody, along with the Hopi and Navajo, still want the Commission to issue a definitive order giving Edison the authority *now* to upgrade Mohave on condition that the C-Aquifer water source is found to be feasible. In addition, Peabody challenges the premise in the PD that Mohave must close post 2005 pursuant to the Consent Decree. The Commission relied on the record in the proceeding for that premise and the Commission has no authority or jurisdiction to extend the Consent Decree. If circumstances change and the Consent Decree is modified, the Commission will amend or clarify its decision on Mohave as appropriate.

Peabody further argues that the PD puts the Commission in the position of perhaps being the impediment to extending Mohave's life post 2005. We agree with Peabody, the Hopi and Navajo that the closure of Mohave, even for a limited time, will have devastating effects on the Hopi and Navajo people and tribes as a whole, as well as on the workers at the Mohave facility, at the mines and on the pipeline. In order to make certain that all parties understand the Commission's desire to do what ever is possible to keep the "Mohave-open" option in play, we clarify sections of the PD. However, we are still convinced that we cannot find at this time, based on the record of the proceeding, with the water and coal issues still uncertain, that authorizing $1.1 billion for Mohave is in the public and ratepayer interest.

ORA urges the Commission to clarify that its approval of interim spending is limited to $58 million, the amount Edison requested in its original application for preliminary retrofit work. This $58 million is in addition to Edison's share of the reasonable costs of the C-Aquifer study and the coal and water negotiations, and 100% of the alternatives feasibility study. Instead, we authorize Edison to spend what is necessary to preserve the "Mohave-open" option, but do not authorize the pollution controls, related capital expenses and construction costs at this time.

ORA is also concerned about cost recovery for the interim spending if the retrofit of Mohave never occurs. ORA wonders if events transpire that make continued operation of Mohave impossible, such as a final conclusion that water is unavailable, and Edison continues to make critical path investments that basically are moot, should Edison still be able to recover those costs as reasonable, regardless of the circumstances. We refine our findings so Edison knows it will not be able to recover costs that are not focused on the keep "Mohave-open" option.

ORA also asked the Commission to clarify whether the cost estimates for the retrofit work were sufficient to guarantee cost recovery, even if there were overruns, or whether they were a "cap" and Edison would need to seek further Commission authorization if the costs increased. We find the cost estimates to be reasonable. Although Edison objected to the cost-cap concept, we agree with ORA that it is a good starting point as estimates go, and if there are increases in

the project's costs, Edison must seek authorization for the increased recovery by way of an Advice Letter (AL).[7]

In light of comments made by ORA, Edison and others that CEQA might apply to the Mohave retrofits, especially considering the long-term effects that might result from the continued operation of Mohave as a coal-burning facility, we retract our finding that CEQA does not apply. Instead, we will leave open that issue for determination when the actual retrofitting is ready to begin.

In its comments NRDC asks the Commission to clarify that the outcome of the alternatives study should not be prejudged, to factor into the cost of the retrofit the realistic expectation that if Mohave is extended carbon emissions will be regulated sometime during its lifetime, and that intervenors should be eligible for compensation for follow-up activities ordered in the PD. In addition, NRDC wants the opportunity to participate in Edison's review of the Ganatt time-line and to participate in the decision as to whether Mohave should be returned to service. We adopt some of NRDC's recommendations. Specifically, we are not prejudging the outcome of the alternatives study, and find that it is appropriate for intervenors to seek compensation for additional work contemplated by the decision. And we agree that Edison's cost estimates of $720 million for environmental controls do not include the cost for controlling mercury and carbon, selective catalytic reduction, coal washing, post 2026 cooling water[8] and

[7] We will specify that Edison may seek further rate recovery authorization via an AL, without limiting the Energy Division's authority to proceed otherwise.

[8] We have already adjusted for the possibility that Mohave cannot continue to operate post 2026 due to a lack of water for cooling purposes by estimating the refurbished plant's life as 17 to 20 years, instead of the usual 30-year plant life.

the slurry right-of-way. However, we know that Edison's estimates were just that and were based on factors that Edison knew it had to address. Edison's contingency of 30-plus % in its $1.1 billion estimate was meant to cover some of these unknown costs. As discussed above, we will take Edison's estimates as a cap, and if and when Edison knows it has increased costs, it must seek further authorization for cost recovery assurance. As for carbon regulation and the other unaddressed costs enumerated above, when Edison files its application for full authorization to do the Mohave retrofits, it should alert the Commission as to the status of carbon regulation, and its estimated costs in relation to Mohave so the cost can be factored in when we make the final determination on Mohave. And Edison is to consider any suggestions it receives for shortening the Ganatt time-line.

WEC's comments presented some clarification recommendations, some of which we adopted. The main point presented by WEC was that the PD must make it clear that the alternatives study is not putting renewables in direct competition with Mohave, but that alternatives can work to compliment generation from Mohave.

UWUA/UMWA/CCUE's comments are focused on ensuring that Edison is authorized to take all feasible steps to ensure Mohave's future operations. One of the unions' primary concerns was that the alternatives feasibility study could side-track Edison from focusing on keeping Mohave open. We find that the two paths are not incompatible. We give Edison the necessary spending authority and cost recovery direction so it can pursue both avenues simultaneously.

In its comments and reply comments, the Navajo are still requesting that the Commission issue a "conditional spending order" as part of this decision. We do issue an order that authorizes Edison to spend money on preliminary

retrofit work, the C-Aquifer study, the alternatives feasibility study and the water and coal negotiations. We do not think labeling our orders with the nomenclature demanded by the Navajo changes the efficacy of our order or improves on it in any way. We carefully considered the positions of all the parties, determined the direction we wanted to go which was to preserve the "Mohave-open" option, crafted our decision accordingly and chose the terminology that best expressed our intentions.

While we want to avoid "unnecessary human suffering"[9] as the Navajo describe the impact on the Navajo and Hopi people if the plant is shut down, we are still convinced that the record supports the steps we have outlined in this PD for keeping the Mohave-open option available and agree with the Navajo that there are significant conditions that must be met *before* Edison begins major upgrade expenditures. Those conditions involve the C-Aquifer, resolution of all outstanding water issues, a determination that mine use of the water complies with the Endangered Species Act, resolution and dismissal of the Navajo equitable claims relating to the Black Mesa Mine Leases and Edison's certification to the Commission that there is sufficient agreement on these issues to support going forward with the major expenditures. Without torturing the point further, we believe we have set the stage to keep Mohave open for the benefit of all stakeholders while simultaneously protecting the Edison consumers and ratepayers.

The Hopi's primary request is that the Commission clarify that the feasibility study of alternatives is not linked to Mohave's continued operation,

[9] Navajo comments, p. 5.

but that the alternatives should be viewed as complementary to Mohave. The Commission's immediate objective should be on keeping Mohave open, and in the long term the focus can be on future replacement options. Next the Hopi ask the Commission to direct Edison to include in its resource planning an allocation of at least 885 MW of base load power from Mohave so that Edison does not fill that MW allocation with commitments for other power and then there is no need for Mohave. And finally, the Hopi urge the Commission to keep this proceeding open as a vehicle for oversight and reporting functions, rather than folding issues from Mohave into the procurement Rulemaking, R.04-04-003. We do clarify the PD as requested for the alternatives study, and in the Long Term Procurement proceeding, Edison was instructed to prepare its resource scenarios with a "Mohave-in" and "Mohave-out" options, and we will continue to have Edison do that to insure that Mohave is not accidentally forgotten and Edison becomes fully resourced with no need for Mohave.

TURN agrees with the recommendation presented by Edison and ORA that the PD should strike any references to AB57. We agree and have so modified the PD. TURN also echoes ORA and NRDC that the costs of Mohave's refurbishment should not be deemed reasonable. We carefully considered this issue and determined that the record supports finding that the $720 million for pollution equipment and upgrades, $200 million for upgrades to the coal slurry pipeline and $160 million for costs associated with delivery of the new water supply in cost estimates was reasonable, and we now clarify that it is a cap for those costs, subject to Edison seeking approval for increases in the estimates. The additional 30 to 40 % that Edison identified as a contingency amount we are not finding reasonable at this time. TURN also asks the Commission to clarify that Edison is not authorized to spend that money now, and we do. Once the water

and coal issues are resolved, Edison is to file an application, and at that time, if the total costs, including fuel and water, indicate that continuing with Mohave is in the public interest, we can expeditiously authorize Edison to go forward with the upgrades. We will not need to relitigate those cost estimates. TURN also urges us to not modify the PD as requested by Peabody, the Hopi and the Navajo.

Motions

During the course of the proceeding numerous motions were filed. Motions brought before the scheduling of the EH were ruled on either by the Law & Motion ALJ, or the ALJ assigned to the proceeding. Motions regarding requests to strike or limit testimony and/or to exclude exhibits from the record were ruled on orally by the assigned ALJ during the EH. With the exception of the request addressed below, any motions not previously resolved or addressed in this decision are deemed denied.

On September 22, 2004, the Navajo Nation filed a Request for Official Notice of Mitigated Negative Declaration (MND). The MND was prepared by the Commission in another proceeding, A.99-10-023, and addresses environmental upgrades and other related issues that the Navajo's allege are germane to this proceeding. The MND was prepared in connection with a sale Edison proposed to make of Mohave and includes the proposed environmental upgrades mandated by the Consent Decree. The Navajo want notice taken of this MND because they contend that it indicates that the Commission has already conducted a thorough environmental review of the Consent Decree upgrades.

We will allow notice to be taken of this MND with the caveat that the Commission is not making a finding in this decision whether or not further

environmental review of the project may be necessary, and with the further specification that the MND from 2000 may be outdated by the time the project needs to be reviewed again.

Summary of Parties' Positions

Edison

Edison's initial 2002 application was neutral as to whether Edison supported making the necessary expenditures for the pollution controls mandated by the Consent Decree and keeping Mohave operational, or instead supported planning for the permanent shut-down of Mohave post 2005. By the time Edison filed supplemental testimony in January 2003, Edison was not optimistic that Mohave could continue operation post 2005 because negotiations on the important coal and water issues were stalled. Instead, in early 2003 Edison focused on the costs and procedures necessary to shut the plant down. Significant movement was subsequently made on the coal and water issues, and by the time of the evidentiary hearings in June/July 2004, Edison was redirecting its efforts toward the continued operation of Mohave post 2005. Edison's position post-hearing is that the record does not support a finding that Mohave should be permanently shut-down, but until the water supply issue is resolved, the Commission cannot make the necessary public interest determination supporting the $1 billion investment in pollution controls.

While the Hopi, Navajo, and Peabody urge the Commission to issue a "Conditional CPCN," Edison advocates instead a "CPCN-plus-interim-funding" approach that would allow Edison to move forward with Mohave as quickly as

possible once the key issues are resolved.[10] From Edison's perspective, this CPCN-plus proposal would allow the Commission to have a clear idea of what it was approving before authorizing the $1 billion plus investment, but the interim-spending would ensure that there was no preventable delay in the start of the retrofit process.

Edison and the other co-owners have already spent approximately $9 million on preliminary engineering for the Mohave pollution controls and related plant improvements and have committed funding of $6 million for the C-Aquifer studies. Edison argues that it does not need to spend any additional money on the Mohave retrofit until the coal and water issues are resolved. In point of fact, Edison claims additional interim spending will not speed up the retrofit—only the resolution of the water and coal issues can speed up the time-line. Edison's witness, Mr. Phelan, testified that once Edison is given notice to proceed from the Commission, it will take 36 to 39 months to complete the necessary upgrades for Mohave's future operation. Mr. Phelan further testified that the "real large commitment of dollars occurs six to seven months in when significant orders of materials would be placed, in particular, as it relates to the dry scrubber and the baghouse."[11] From Edison's perspective, it would be ill advised to commit to the purchases of such major equipment until the water and coal negotiations are completed.

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[10] Edison does not argue that a CPCN is required for the plant upgrades but urges that if the Commission determines one is necessary that it be a "CPCN-plus-interim-funding" approach.

[11] Edison post-hearing brief, p. 31, from Tr. 991-995.

In addition, Edison argues against any type of Conditional CPCN on several grounds: it could disadvantage Edison, and thereby harm Edison ratepayers, in the continued negotiations on prices, terms and conditions for water and coal commitments; provides no recognizable benefit; and injects confusion and uncertainty into the process.

Edison presented capital addition and other cost projections for the continued operation of Mohave totaling approximately $1.1 billion--exclusive of the water and coal contract costs. Because of the lack of finality on the water and coal issues, including the cost of both items, Edison was not able to project a cost estimate with precision. This cost estimate presented was based on a 20-year plant life following the installation of the pollution controls and other related investments because Edison does not have now, and has no assurance it will obtain later, a water source for the cooling of the plant post 2026. However, based on cost estimates for considered alternatives, Edison posits that Mohave, even with $1.1 billion in pollution controls and other upgrades, even with a multi-year shut down while the retrofit is being completed, even with potential additional water and coal supply costs and even with a shortened plant life till only 2026, is still cost effective.

In summary, Edison urges the Commission to authorize a CPCN-plus-interim-spending. In the meantime, Edison intends to press forward on reaching a resolution to the water and coal issues, and if and when these issues are adequately resolved, Edison will promptly file a CPCN application and seek interim funding for limited critical path work so as to minimize any delay pending the CPCN decision. However, under any scenario, Edison anticipates the shut-down of Mohave post 2005 pursuant to the Consent Decree and seeks authorization to establish the MERMA account to book the limited worker

protection benefit expenses that will ensue. The creation of the MERMA account is necessary, from Edison's perspective, irrespective of the length of the shut-down, and does not prejudice the re-opening of the plant.

Edison does not believe the alternative proposals presented by other parties are viable. In its reply brief, Edison urges the Commission to reject the various "conditional CPCN" proposals advanced by the Hopi, Navajo and Peabody, as well as the alternative proposals of WEC, NRDC and TURN, and instead to allow the continuing and intense efforts that are being made to resolve the coal and water issues.

Hopi Tribe

The Hopi Tribe argues that the economic evidence it presents overwhelmingly supports the conclusion that Mohave should continue in operation as a coal-fired plant. To this end, the Hopi urge the Commission to approve a "Conditional CPCN" finding that it is in the public interest to preserve Mohave as a coal-fired power plant. The Hopi claim that the Conditional CPCN would allow Edison to spend a reasonable range of money for implementing the required plant upgrades and alternative water supply, subject to confirmation that the coal and water solutions are technically feasible.

Specifically, the Hopi urge the Commission to authorize Edison to proceed with the Mohave upgrades that are needed to obtain a replacement water supply for the N-Aquifer and to comply with the terms of the Consent Decree as long as the costs do not exceed $1.08 billion for the capital investment and the average cost for delivered fuel and water in nominal dollars for 2006 to 2025 is $1.57/MMBtu. In addition, the CPCN approval would be conditioned on satisfactory resolution of the technical issues associated with the new water supply and the required emission controls.

The Hopi argue that the case for keeping Mohave in operation is compelling. To begin, volatility in the supply and price of natural gas puts California consumers and ratepayers at risk the more they are dependent on gas as a fuel source for electricity. And coal, unlike liquefied natural gas (LNG) does not present geopolitical and/or national security risks. Also, coal supply agreements and prices can be locked into long-term contracts that bring supply and price stability as well as fuel diversity for consumers. The Hopi contend that its witness demonstrated that during the 2000-2001 California Energy Crisis, Mohave alone produced electricity cost savings that would have paid for the entire amount of the now required $1.1 billion in Mohave upgrades.

Next, based on the Hopi calculations, the long-term cost savings to ratepayers from the continued use of Mohave will be huge, even if environmental requirements for mercury emission controls are tightened. The Hopi witness, Judah Rose, testified that Mohave is economic even if capital costs were to rise to 179% of Edison's capital cost estimates, and even if the price of coal doubled. Rose also tested his theory against numerous scenarios, including a shortened life of 20 years because of the cooling water issue, and in all cases, Mohave remained highly economic. As Rose testified, the cost of upgrading Mohave is equivalent to the capital cost of a new natural-gas fueled combined cycle gas turbine plant (CCGT) in California, yet the fuel costs are more stable and lower.

In point of fact, the Hopi posit that even taking into consideration all of Edison's criticisms of Rose's testimony, Mohave is still economic and saves California ratepayers over $500 million.

Furthermore, addressing the environmental concerns that coal-burning plants raise, the Hopi witness testified that with all now required, and with some

future "might-be-required" emission controls, Mohave can produce clean, economical power. Black Mesa coal has a very low mercury content, and the baghouses that will be installed at Mohave as part of the pollution controls can capture any stray mercury emissions. The Hopi argue that even if Selective Catalytic Reductions (SCR) are required, SCR implementation is possible and will not affect the positive economics of the plant.

And finally, when compared with any of the other feasible alternatives, the Hopi believe that Mohave compares favorably with all renewables and compliments demand side efficiency programs. The Hopi's argue that because Mohave is a baseload plant, demand side efficiency programs and renewable peaking resources cannot replace Mohave, but that the Mohave plant can work with these alternatives to augment and subsidize them.

No party to the proceeding failed to recognize the economic and social consequences that the shut-down of Mohave will have on the workers at the plant as well as on the Hopi and Navajo people and tribal governments. To address these concerns, WEC and NRDC suggested alternatives to Mohave that involved job opportunities on the reservations. WEC proposed replacing the economic and power benefits that flow from Mohave with two 500-megawatt solar installations on the reservations, and NRDC suggested constructing an integrated gasification combined cycle plant (IGCC) on the reservations or in Nevada.

The Hopi argue that WEC's proposal is not "realistic, practical or sensible."[12] For a myriad of reasons, including the fact that WEC presented no

[12] Hopi post-hearing brief, p. 19.

source of financing for the project, no specific sites for the plants have been identified, and no contracts for the design, construction or operation of the plants were presented, the Hopi do not view the WEC proposal as one that would allow the Hopi to build an economy.

The Hopi also do not believe that IGCC is economic or proven and therefore should not be considered in this proceeding as a Mohave replacement. The Hopi argue that while there are uncertainties that surround the coal and water issues germane to Mohave's continued operation, coal-burning power plants are a known technology, whereas the uncertainties associated with either the solar system or the IGCC render them too unrealistic and speculative to be seriously considered as viable alternatives to Mohave at this point in time.

To summarize the Hopi position: the economic consequences of Mohave's shut-down are far-reaching and potentially devastating for the tribes and other stakeholders. In fact, the Hopi argue that preserving and protecting Mohave will "lead the way in implementing sound environmental practices, strengthen national energy security, and avert what would otherwise be a modern economic massacre of the Hopi Tribe and its people."[13] The Hopi urge the Commission to order Edison to engage in all spending necessary to preserve Mohave.

As Chairman Taylor testified for the Hopi, "there is no question that the Tribe's economic security is fundamentally tied to the ongoing operation of [Mohave]. . . . [A]lmost 30% of our tribal budget is dependent upon [Mohave] derived revenues, a fact which impacts every aspect of Hopi life, including the education of our young people, health and social service programs, our

[13] Hopi post-hearing brief, p. 1.

infrastructure, and many other essential programs."[14] To bolster this argument, Chairman Taylor detailed that 65% of the Hopi's total government budget is related to coal revenues, 30% of which is derived from Black Mesa coal sales to Peabody for delivery to Mohave.[15]

As Chairman Taylor further explained, unemployment on the reservation is pandemic, unemployment hovers at 50%, of those employed 35% earn below national poverty guidelines and 44% of Hopi families with children under 18 live in poverty.[16] Almost 40% of Hopi homes lack complete plumbing and over 35% lack complete kitchen facilities.[17]

In its reply brief the Hopi suggest that if Edison finds that the other Mohave co-owners are refusing to proceed or are acting unreasonably to delay any necessary critical path expenditures, Edison should report back to the Commission and seek further guidance.

Navajo Nation

The Navajo Nation believes that the continued operation of Mohave as a coal-fueled generation facility is in the best interest of California ratepayers. The Navajo argue that Mohave is one of the lowest-cost, diverse and reliable energy sources serving California, and even when the costs of the environmental controls are considered, Mohave is competitive. From the Navajo vantage point, if Mohave is closed, some 260 mine workers who are Navajo and live and work

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[14] Hopi opening brief, pp. 26-27.

[15] Hopi opening brief, p. 27.

[16] Id.

[17] Hopi opening brief, pp. 27-28.

on the reservation will either be out of work or be forced to relocate off the reservation. This loss of employment will put a significant burden on the Navajo Nation and its ability to provide services to over 8,000 Navajo families, and will seriously impact local communities and businesses. When this cost is added to the loss of royalty and tax revenue for coal and water, it is obvious that the closure of Mohave will have a devastating impact on the workers and Navajo community.

As Navajo witness Ashley testified, the Navajo revenue from the Black Mesa mine provides 10-13% of the Navajo Nation's General Fund revenues, and the total amount for royalties and taxes received from Peabody's operation of the Black Mesa mine was $19,178, 092 in 2002 and $16,783,977 in 2003.[18]

Navajo Nation President Shirley, Jr. testified that the Navajo Nation's ability to assist laid-off mine workers was severely limited because of the already existing unemployment problem. Specifically, President Shirley testified that the Navajo Nation already provides general assistance to 8,000 plus families. If the mine closure adds workers to the list of those needing assistance, that will coincide with when the Navajo Nation's revenue sources from the mine to provide such benefits will be reduced.[19]

The Navajos recommend that the Commission issue a Conditional CPCN or a conditional spending order authorizing Edison to make expenditures necessary to prevent a temporary or permanent shutdown of Mohave and to bring the plant in compliance with the 1999 Consent Decree. The Navajo

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[18] Navajo opening brief p. 12.

[19] Navajo opening brief, pp. 12-13.

condition this proposal on the resolution of the water supply issue and on a set cost cap on the cost of as-delivered energy. The Navajo believe that this Conditional CPCN would allow the stakeholders to resolve the water issue in a manner ensuring that California ratepayers benefit from the continued operation of Mohave.

In the view of the Navajo Nation, the appropriate future course of action requires: (1) the C-Aquifer supply study must be completed, including a demonstration that the water supply source is in compliance with the Endangered Species Act; (2) the Navajos must resolve and dismiss their claims relating to the Black Mesa Mine Leases; and (3) Edison must certify that there is agreement on all of the above enumerated conditions and that the all-in-cost of Mohave generated electricity will not exceed $46 MWh.

As a caveat, the Navajos remind the parties that the Navajos have every incentive to help craft a resolution to the water and coal issues as their very economic existence depends on the continued operation of Mohave.

However, the Navajos also argue that California ratepayers will benefit from Mohave as a power source. Mohave has historically delivered low-cost power to California. Now with the installation of the pollution controls, Mohave will deliver clean, coal-fired generation at a cost the Navajo claim is lower than the cost of energy from a natural gas fired facility. In addition, coal provides fuel diversity and supply and cost stability—especially important in light of today's volatile natural gas market.

The Navajos contend that all of the alternatives to Mohave that were proposed are advanced renewable technologies, some of which are still in the research and development stages. While these resources may have potential value, experimentation with them should not be at the expense of the welfare of

the Hopi and Navajo people. Therefore, the Commission should commit to Mohave's continued future, while allowing the utilities and other parties to research and develop other alternatives.

In evaluating the costs involved with the continued operation of Mohave, the Navajos allege that the requirements of a Conditional CPCN have been met because Edison has presented an "appropriate cost estimate" of what is required to keep Mohave operational post-2005. These costs as presented by Edison include the costs of a temporary shutdown, undepreciated book costs, pollution control and life-extension upgrades, refurbishment of the coal slurry pipeline, the C-Aquifer costs and a generous contingency sufficient to cover any cost uncertainties. Given these cost estimates, the Navajos contend that energy from Mohave is still cheaper than the most likely alternative—a CCGN plant, and obviates the vagaries associated with the supply and price of natural gas.

In summary, the Navajo urge the Commission to authorize Edison to expend the money necessary to keep Mohave operational by issuing the conditional CPCN, since the continued operation of Mohave is inextricably intertwined with the continued fiscal solvency of the Navajo Nation. In its reply brief the Navajo argue against Edison's proposal of a CPCN-Plus approach as the Navajo view that as a tactic that "engenders undue and prolonged delay."[20]

Black Mesa Pipeline

Black Mesa Pipeline is the owner of the 273-mile long, 18-inch coal-water slurry pipeline originating on the Black Mesa in the Northeastern part of Arizona that delivers coal from the Peabody mine to Mohave. Under its current contract

[20] Navajo reply brief, p. 10.

with Edison, Peabody has the responsibility for shipping the coal from its mine to the generating station. However, as of January 1, 2006, Peabody will no longer have that contractual obligation, and it will be the responsibility of the Mohave owners to arrange for the transportation of the coal.

Black Mesa favors the continued operation of Mohave as a coal-burning facility, not only for its own employees' sake, but for the fuel diversity it provides California. However, the pipeline company is concerned about the necessary temporary shutdown. The cost of even a temporary shutdown would include severance pay, outplacement services, retraining and other related employee expenses. In addition, the pipeline company estimates that the cost to overhaul the slurry pipeline in 2009 could be $165 million, or even higher. Of primary concern to Black Mesa Pipeline is the uncertainty surrounding the coal and water issues, as well as the length and cost of even a temporary shutdown of Mohave for the pollution controls.

While cognizant of the uncertainties surrounding the coal and water issues, Black Mesa advances a proposal that it hopes would induce the parties to reach closure on the open issues: offer a deadline-based cost savings sharing mechanism whereby if participants complete their projects at below estimated costs they would receive a share of the difference between the cost and the estimate, while participants who do not reach agreement as of that date would not be entitled to such an incentive.

In sum, Black Mesa urges the Commission to reach a decision concerning the future of Mohave to provide closure to California consumers on their electricity supply, and more particularly to provide a greater degree of certainty to the employees, and their families, of Black Mesa Pipeline, Peabody and Mohave.

Salt River Project

Salt River Project favors the continued operation of the Mohave facility and has been involved, as a co-owner of Mohave, in the negotiations, and subsequent MOU, concerning the C-Aquifer water feasibility study. From their understanding of the work to be performed by the BOR, it will take at least until spring of 2007 for the well field and environmental studies to be complete. However, even once the BOR completes its study, Salt River argues that there are still a myriad of issues that need resolution. Specifically, the following items must be negotiated with the Hopi and Navajo: rights-of-way and leases associated with the pipeline route and well fields; a royalty rate for water withdrawn from wells on the reservation; water rights issues related to the C-Aquifer; and selection of an entity to operate the water system.

Salt River argues that it would be premature for the Commission to issue any kind of a CPCN before three crucial issues are resolved: (1) the completion of the C-Aquifer study; (2) unavailability of water for cooling Mohave post 2026; and (3) the tribes' challenges in court to the validity of Peabody's coal leases. While Salt River does not anticipate that water for cooling Mohave post 2026 will materialize, Salt River argues it is important that any cost benefit analysis of Mohave recognize the potential shortened plant life. Once the water and coal issues are resolved, Edison should file an application for a CPCN.

Salt River does not share Peabody and the tribes' position that a Conditional CPCN now will assure the continuation of Mohave. As a co-owner, Salt River asserts that it is important that it, Nevada Power and LADWP, as well as Edison, know that the coal and water issues are resolved before committing additional spending. In fact, Salt River is concerned that the issuance of a

Conditional CPCN might interfere with the continued water and coal negotiations. Salt River again repeated these concerns in its reply brief.

In addition, Salt River does not agree with the concept that a price cap offers protection to ratepayers. To the contrary, Salt River argues that predetermining the price that Mohave co-owners would have to pay for coal and water would eliminate any possibility that the Mohave co-owners could negotiate the best price for ratepayers.

TURN

TURN does not believe that Mohave is more cost-effective as a power source than other non-gas options available to Edison. TURN focuses on the uncertainties that surround Mohave, including the cost of retrofitting the facility and the necessary down-time to accomplish that task, and the water and coal supply and cost issues and questions whether Mohave can produce coal-based power any cheaper than other non-gas options. TURN is also concerned about the additional costs that might beset the Mohave facility if there are new requirements from the Environmental Protection Agency (EPA) concerning mercury emissions.

In addition, TURN questions the need for Mohave's baseload power generation in the face of renewed direct access to the noncore users and the resultant costs to ratepayers if the plant is restarted and there is an exodus of customers due to direct access, core/noncore, or community choice aggregation. TURN's witness estimated that in 2010, when Mohave is likely to return to service, Edison will only need 23% of Mohave's capacity. Instead of more baseload, TURN's witness opines that Edison will need more peaking power. As

TURN argued, even the Edison witness indicated that "we don't have it [energy] when we need it the most and we have an excess when we don't need it."[21]

Earlier in the proceeding, TURN expressed a concern that if the Commission commits to the continued operation of Mohave before all the critical water and coal issues are resolved, parties could view Edison as having a "blank checkbook," and the ratepayers could be prejudiced.

However, TURN is not insensitive to the devastating effects Mohave's closure will have on many stakeholders, including the Navajo Nation and Hopi Tribe. In its post-hearing brief, TURN recommends that the Commission encourage Edison and other negotiating parties to continue working towards resolution of the water and coal issues; authorize limited critical path expenditures by Edison—with the understanding that Edison is limited to recovery of its 56% ownership share; assume Mohave will close in 2026; require Edison to quantify potential future compliance costs associated with mercury and carbon dioxide emissions at Mohave; give bundled ratepayers protections for possible stranded costs from refurbishments for Mohave; and open a parallel proceeding to explore alternatives to Mohave that rely on energy efficiency and renewable fuels and will also generate revenue for the Hopi and Navajo people.

What TURN does not recommend is granting any type of Conditional CPCN. TURN argues that granting a CPCN now "leaves out an important step by failing to bring together all the cost elements that are typically considered and examining all feasible alternatives."[22] In addition, TURN is not convinced that if

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[21] TURN opening brief, p. 27, quoting from RT Vol. 4, 456-57.

[22] TURN opening brief, p. 9.

a Conditional CPCN was issued, even with a price cap as advocated by the Navajo and Hopi, that ratepayers would get the best negotiated price.

TURN advocates continuing with the C-Aquifer studies, water and coal negotiations, authorizing limited critical path expenditures so that the possibility of continuing with Mohave as a coal-fired plant is not foreclosed, but also TURN urges exploration of other alternatives that could bring similar economic benefit to the Hopi and Navajo, yet would be less risky and more environmentally sound. TURN believes this course of action is in the best interest of the California ratepayers.

TURN's suggestion about a companion proceeding to study alternatives to Mohave does suggest that the WEC solar option as well as the NRDC IGCC facility be reviewed. Both of these alternative proposals would produce cleaner power, but most importantly could potentially be a source of economic viability on the reservations for the Hopi and Navajo. In its reply brief, TURN again stresses the need for this study, because even if the shut-down of Mohave is temporary, the Hopi and Navajo will need some way to generate meaningful revenues during the 2006-2009 period. TURN is mindful of the impact this shut-down will have on so many people, particularly the Hopi and Navajo and the union workers, and nothing the Commission might do will prevent this required shut-down. TURN characterizes the proposed "Conditional CPCP" concept as a "half-baked"[23] proposal, and suggests a better course of action would be for the parties to explore an array of short-term and long-term options that benefit ratepayers and the Hopi and Navajo.

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[23] TURN reply brief, p. 3.

ORA

ORA questions the "need" for the power from Mohave, and argues that a decision on the future disposition of Mohave is premature and inappropriate until the threshold issues concerning water and coal are resolved. From ORA's perspective, absent resolution of these concerns, ratepayers should not be burdened with financing any critical path spending.

In light of the Commission's recent decision (D.03-12-059) approving Edison's application to acquire the Mountainview facility, a 1,054 MW, baseload facility, located within Edison's load center, ORA is concerned that the output from Mohave might not be needed by California ratepayers. In addition, ORA is concerned that with the uncertainties about Edison's customer base in view of core/non-core, community choice aggregation, municipalization, direct access, distributed generation and expanded energy efficiency and demand reduction programs, committing ratepayers to pay for the necessary upgrades to Mohave may leave ratepayers with redundant costs and unneeded resources. Instead, ORA encourages the Commission to focus on new investments in energy efficiency, demand response and renewable generation to meet any anticipated demand growth, rather than continuing with the Mohave baseload facility.

ORA recommends that the Commission not grant a CPCN, or a Conditional CPCN, at this time, as the need for and cost-effectiveness of Mohave have not been proven. ORA believes California ratepayers might be better served from pursuing alternatives such as in-state energy efficiency, in-state natural gas combined cycle plants and in-state and out-of-state central grid renewables, instead of committing to finance the continued operation of Mohave in view of the unknowns and unresolved issues.

Utility Workers Union of America/United Mine Workers of America/Coalition of California Utility Employees (Unions)

The Unions predict that if Mohave is shut down, most of the 285 Mohave union employees, plus approximately 65 non-union workers, would lose their jobs. Basically, there is no alternative employment available in the Laughlin area, and no employment opportunities that would come close to duplicating the salary and benefits that the plant provides. Displaced workers too young to retire would most likely have to relocate and "bump" other represented employees at another Edison facility. Since the average age of the union members who work at Mohave is mid-forties to late forties, very few of the employees can retire.

The Unions argue that the situation is not much better for 230 mine and pipeline workers who would lose their jobs with Peabody and Black Mesa Pipeline if Mohave ceased to function as a coal-burning plant. In addition to loss of jobs at the mine and pipeline, the entire Hopi and Navajo communities would be affected by the end of coal mining. The Union's economic expert estimates that the shutdown of the plant, mine and pipeline would result in a loss of 1,190 jobs, $54.9 million in personal income, and $162.2 million in business income.[24] As it is, the Hopi and Navajo have approximately 50% unemployment.

In addition, royalties from the mines are an important source of income for the Hopi and Navajo, and with those monies the communities have modernized and improved the standard of living for the residents. In 2002 alone, the Unions claim that coal royalty payments to the Hopi and Navajo, including bonus

[24] Union opening brief, p. 8.

payments, exceeded $40 million. Peabody also pays water use fees to the Hopi and Navajo in the range of $3 to $4 million per year.

The Unions urge the Commission to consider the devastating impact the closure of Mohave as a coal-burning plant would have on the plant, mine and pipeline employees, their families and the Hopi and Navajo communities. But the Unions also acknowledge that while the Commission should be mindful of the impact the closure of Mohave will have on the Hopi and Navajo communities, the Commission's primary focus must be on ratepayers. Even given this mandate, the Unions argue that the continued operation of Mohave will provide fuel diversity that will provide electricity at a reasonable cost. The Unions are confident that even after paying for the investments needed to upgrade Mohave, Mohave is superior cost wise to a new CCGT facility, especially because of the lower operating costs of Mohave, and because decommissioning costs must be added to the total cost estimate of any alternative.

The Unions do not oppose the Commission's consideration of any of the other alternatives, such as those proffered by WEC and NRDC, but contend that the solar and IGCC proposals suffer from high production costs, inability to provide dependable power at times of peak demand or reliance on untested technology.

In summary, the Unions urge the Commission to do what is possible to see that the C-Aquifer feasibility and environmental studies are completed, and if the C-Aquifer proves a satisfactory water source, have Edison seek full approval to go forward with the retrofit of Mohave and get interim funding for all critical path issues. Until such time as Edison can file such an application, the Unions

suggest that the Commission require Edison to report every two months on the progress being made toward these goals.

In its reply brief, the Unions summarize the positions of all the parties and find that there is consensus on the most important issue: Mohave should not be shut-down *now*. To insure that Mohave can continue as a coal-fired plant if the water and coal issues are resolved, the Unions urge the Commission to assure Edison that it will recover prudent investments made in Mohave. As a corollary, the Unions suggest that if Edison shuts Mohave down prematurely, Edison will not recover any unamortized plant balances unless it can demonstrate that it took all such steps and that the shutdown is due to factors outside of Edison's control.

City of Laughlin, Nevada

Laughlin, Nevada is the site of the Mohave facility and through testimony submitted by the Chamber of Commerce and the Town, Laughlin very much supports the continued operation of Mohave. The plant has a minimum $60 million annual impact on the community, and even a temporary shutdown of the plant will have devastating financial implications for the area. In addition to the 355 employees at Mohave, Laughlin opines that an additional 300 people are employed in the environs to provide goods and services to the 355 plant employees and their families. From Laughlin's perspective, Mohave's continued operation is crucial to the continued health and viability of Laughlin.

WEC

WEC represents the Black Mesa Trust and To' Nizhoni Ani' and advocates a solar dish option as being more cost effective than refurbishing and re-powering Mohave. WEC bases its analysis on assumptions it makes concerning the water royalty payment for water from the C-Aquifer, right-of-way costs for

the 120 mile pipeline from the C-Aquifer field to the mesa, costs associated with the analysis and development of the C-Aquifer, cost of a back-up water supply, costs for a coal-washing facility, penalties for emissions from Mohave, payment of coal royalty payments to the Hopi and Navajo and the projected price of coal. In sum, WEC finds that "the Mohave refurbishment teeters on the edge of cost effectiveness." From WEC's perspective, if its assumptions about the costs enumerated are true, Mohave is not cost effective. However, WEC reasons that the solar dish option it prefers is a cost effective resource addition, is more environmentally compatible, and poses no risk to California ratepayers.

Most importantly, WEC argues against the continued operation of Mohave because it is a terrible waster of water and a huge pollution emitter. As WEC states, "[I]n the desert, water is life."[25] WEC reminds parties that the N-Aquifer is not available for slurry purposes post 2005, and questions why fresh water should be used for slurry purposes—especially when water is such a valuable commodity in the southwest. In addition, many of WEC's clients are concerned that the pumping of water from the N-Aquifer is drying up the springs that are important for religious ceremonies and purposes. WEC suggests exploring the use of "brackish" water, or dry cooling, instead of being totally reliant on aquifer water.

WEC posits that no matter what analysis is undertaken to compare the costs of a refurbished Mohave to any other alternative, including WEC's solar dish option, Mohave fails to meet the cost-effectiveness test. WEC urges the

[25] WEC opening brief, p. 6.

Commission to forego issuing any type of Conditional CPCN, and instead order Edison to negotiate with the Hopi and Navajo on the solar dish option.

In its reply brief, WEC argues that Mohave "was" a valuable generating resource for California—but only because it had no pollution controls, had unconscionable low coal prices, used prodigious amounts of pristine ground water, and had access to lots of Colorado River water for cooling. While that may have worked for the last century, WEC claims that using precious water to ship coal from Arizona to Nevada is a "dumb idea"[26] and it is time to take advantage of new electric generation technologies that are cost effective, don't impact the environment and don't use precious desert water.

NRDC

NRDC presents the Commission with a number of options beginning with the recommendation that Edison be authorized to spend the necessary money on the coal and water issues to keep the possibility of the continuation of Mohave a viable alternative. NRDC is concerned with not only the power supply to California if Mohave closes, but also with the economic future of the Hope Tribes and Navajo Nation and the workers at Mohave. Specifically, NRDC urges the Commission to not allow, by decision or inaction, Edison to cease operations at Mohave without making provisions for environmentally superior and cost effective alternatives and for revenue sources for the Hopi and Navajo. Approval or denial of Edison's original application does not resolve these concerns.

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[26] WEC reply brief, p. 4.

NRDC advances an alternative that it believes addresses the interests of most of the parties and that is to expend limited funds on Mohave on only critical path items and simultaneously examine an alternative resource plan to replace Mohave's output—with the collaborative input of other parties including the Hopi and Navajo. NRDC identifies the C-Aquifer water study, a coal-washing study and a coal washing environmental study as the only critical path expenditures that should be authorized now.

NRDC wants the Commission to direct Edison to do a study on alternatives that compares the cost of Mohave's compliance with the Consent Decree with renewable options on the reservations, an IGCC sited on Black Mesa, various energy efficiency programs, and possible power purchase agreements with third parties.

NRDC devised its own ideal alternative resource plan to replace Mohave's output as follows: 1/3 with energy efficient investments; 1/3 with renewable investments including resources constructed on or near the reservations in cooperation with the Hopi and Navajo; and 1/3 with a new IGCC power plant designed for carbon dioxide capture, located at or near Black Mesa mine. NRDC suggests that this proposal would address the needs and concerns of the California consumers, the Hopi and Navajo, the unions and the environmental groups. NRDC opines that its output replacement proposal is more cost effective than even a successful retrofit of Mohave because it is probable that Mohave will become subject to new pollution control requirements and the water supply at Laughlin expires in 2026, without any probable replacement source, rendering the lifetime of the plant shorter than normally assumed.

NRDC is confident that its alternative resource proposal will be successful for the following reasons:

- Energy efficiency effectively reduces user consumption at times of peak usage, incurs no line losses, relieves the utility from making system upgrades and because load is reduced, the amount of required reserve margins is reduced.
- Renewable energy resources, and specifically solar energy, are well suited for the state of Arizona, where the Hopi and Navajo are located. Solar energy conveniently peaks in the afternoon, simultaneously with the highest level of electric use. Other possible renewable resources for Arizona are geothermal, biomass, and wind.
- An IGCC plant, especially if it is located near the Black Mesa Mine, would provide many benefits including the fact that it can use reclaimed water, could be sized to use the remaining coal from the existing Black Mesa Mine, would provide continued employment for the miners, would provide construction payrolls where the Hopi and Navajo are located, then would provide employment for plant operation, and finally would increase the tax base in the vicinity of the reservations.

In summary, NRDC's proposal would (1) continue the coal mining jobs; (2) provide income to the Hopi and Navajo communities from lease payments for land, property taxes and royalties for coal; (3) provide a plant with a longer life than Mohave; (4) have much lower environmental impacts; (5) use less water; (6) provide employment, including union jobs; and (7) protect California electric users. However, NRDC does advocate that the Commission direct Edison to make necessary expenditures on the identified critical path issues to preserve the option of the Mohave retrofit while Edison is exploring NRDC's proposal with the Hopi and Navajo.

NRDC also wants the Commission to order Edison to conduct a study, while the critical path items are on-going, to examine an alternative portfolio of resources to replace Edison's share from Mohave. NRDC again argued for this in

its reply brief suggesting that if the study was done now, it would reduce the time pressure during the CPCN proceeding.

Peabody

Peabody favors the continued operation of Mohave as it believes the plant is superior to any real world alternative and meets the needs of most of the stakeholders. From Peabody's perspective, Mohave is important enough that the Commission should take a proactive role, not a laissez-faire attitude, and grant Edison a conditional CPCN now.

To begin, Peabody argues that Mohave supports the Hopi and Navajo tribal economic communities, in contrast to what would happen if Mohave closes. Many economic and health issues are inextricably intertwined with the jobs that are directly and tangently related to Mohave. Next, Peabody supports the continuation of Mohave because the plant supplies electricity to California without the volatility of the price and supply issues associated with natural gas. In conjunction with this point, if Mohave closes, that will increase California's over-reliance on gas-fueled electricity by approximately 5%. Because of the natural gas concern, Peabody advocates avoiding, or minimizing, the shut-down of Mohave especially during the 2006-2008 period when Peabody predicts the natural gas shortage will be the most severe. Peabody bases its prediction on the following data: (1) gas production is down; (2) off-shore well production is down; (3) the cost of new well exploration is prohibitive so there are no new sources of gas; (4) companies are expanding their ownership interests through acquisitions, mergers and consolidations—and not through new sources; (5) companies are spending less money on development; (6) there is no congressional support for expanding gas reserves; (7) congress has not extended

tax credits for gas investments; (8) there is no support for the Alaskan pipeline; and (9) there has been little progress on liquefied natural gas (LNG).

Peabody sees the only real impediments to the future success of Mohave as the feasibility of the C-Aquifer and the resolution of the pending litigation brought by the Navajo Nation, and joined in by the Hopi Tribe, against Peabody concerning the viability of the existing coal leases and related royalty issues.

Peabody suggests that the Commission determine that the continued operation of Mohave is in the public interest and order Edison to take all feasible steps to resolve the water rights issue so that the environmental upgrades can begin at the plant as soon as possible. In conjunction with these steps, Peabody urges the Commission to view Mohave as an "emergency" situation and take all steps possible to avoid or minimize closure of the plant. From Peabody's perspective, if its predictions about the higher prices and reduced supply of gas come true, Mohave may be what saves California from an electricity crisis.

The Commission should find, Peabody proposes, that there is certainly a need for Mohave's power, especially since it is scheduled to come back on line when base load is again needed. And, from Peabody's analysis, no matter how you run the numbers, Mohave is economic as compared to any viable alternative. Mohave is good for ratepayers, good for the California economy, and vital to the livelihood of the Hopi and Navajo tribes. To this end, Peabody recommends that the Commission issue a Conditional CPCN authorizing the continued funding of the C-Aquifer feasibility and environmental studies, allow Edison to spend up to $58 million on preliminary design and engineering work and allow Edison cost recovery.

In its reply brief, Peabody again cautions the Commission about the true consequences to Edison ratepayers if we take a "wait and see" attitude and do not take a proactive posture.

Issues Before the Commission

For over two years, the Commission has heard from the stakeholders on the future fate of Mohave and what effects will result from whatever decision we make. In fact, Commissioner Lynch and ALJ Brown, along with Commission staff and representatives from the Public Advisor's office, went to Tuba City, Arizona, on the Navajo Reservation, and on October 11, 2002, held a PHC/PPH in the Navajo Nation Chapter House. The Commission first heard from the parties and their counsel during the PHC segment of the proceeding, and then during the 8-hour PPH met and heard from over 100 individuals representing every aspect of Navajo and Hopi life.

The Commission has jurisdiction over the Mohave facility by virtue of Edison's 56% ownership, and takes an interest in the plant because of the 885 MW California receives daily and for which Edison ratepayers are obligated to pay. This Commission does not have jurisdiction over the other Mohave co-owners, Salt River, LADWP, or Nevada Power, does not have jurisdiction in Nevada or Arizona, has no control over water in Nevada or Arizona, and certainly has no jurisdiction over the sovereign nations of the Navajo Nation and Hopi Tribe. However, that does not mean the Commission is not mindful of the far reaching effects its decision concerning Mohave's future will have on all involved.

Edison's initial application, filed May 17, 2002, preliminarily framed the issues before the Commission: should Edison be authorized to spend money on critical path expenditures before Edison files its CPCN for Mohave, or plan for

the permanent shut-down of Mohave at the end of 2005, with the appropriate memorandum accounts. As simplistic as these choices appear, especially in light of the totality of Mohave's impact in Nevada, Arizona, for the Hopi and Navajo, and for the plant, mine and pipeline workers and their families and communities, and for consumers and ratepayers in California, that is what is before this Commission: what should Edison be authorized to spend, and when, and what is the appropriate ratemaking and recovery mechanism?

Discussion

Plant Upgrade Costs

While parties certainly brought different perspectives and philosophies to this proceeding, there are numerous areas of agreement, mixed in with the competing proposals and positions. To begin, all agree that the Consent Degree requires Edison to install identified pollution controls and that there are corresponding capital upgrades to the facility that are also necessary to maximize the life of the plant. The estimate put forth by Edison for the upgrades and new equipment is approximately $1.1 billion. In general terms, this includes $720 million for the equipment and upgrades, $200 million for upgrades to the coal slurry pipeline, and $160 million for costs associated with delivery of the new water supply. Edison's witness also confirmed that this figure includes a 30 to 40% contingency factor. Except for the contingency factor, there was little disagreement as to Edison's representation of the projected costs for the itemized categories.

Different parties cross-examined the Edison witnesses on aspects of these cost estimates, but there appears to be somewhat of a consensus that these figures are sufficient for the purpose of assessing the cost of compliance with the Consent Decree.

Water and Coal Costs

What is not known, and therefore Edison could not include in its application, are the costs of the future operation of Mohave as a coal-burning plant because of the on-going negotiations on critical water and coal issues that involve not only the cost of the commodity, but also the supply and quality. No matter what viewpoint each party brought to the proceeding, all of the parties universally agreed that first and foremost there must be resolution on the water issue. Mohave's future as a coal-burning plant using coal from the Black Mesa Mine, slurried by pipeline from the mine to the plant, requires large amounts of water. These coal and water supply issues must be resolved for this Commission to determine if the future functioning of Mohave is reasonable for AB57 purposes.

To this resolution, Edison and the other co-owners, pursuant to the MOU signed March 4, 2004, are funding the C-Aquifer hydro-geological study, and if that study proves that the aquifer is a viable water source, they will fund the subsequent environmental study. No party suggested that there is anything that can be done at this time to expedite this C-Aquifer study, and it appears that BOR has already commenced the first phase of the study. This hydro-geological phase takes approximately nine months and the environmental study takes approximately two years. Based on these time estimates, all of the C-Aquifer studies will be complete sometime in late 2006/early 2007.

While the Hopi, Navajo and Peabody profess complete optimism that if the C-Aquifer is determined to be a feasible water source alternative that all other issues will be quickly and satisfactorily resolved, at a fair cost, other parties are not as convinced that the other issues will be serendipitously resolved if the C-Aquifer study reaches positive results. Similarly, while the supply and price

of coal is still also unresolved, in the post-hearing briefs almost all of the parties indicated that significant progress has been made on these issues and there is more universal optimism that if the water source issue is resolved, a satisfactory outcome will also be reached on the coal issues.

Alternatives

In addition to the outstanding water and coal issues that make an evaluation today as to the efficacy and efficiency of continuing with Mohave as a coal-burning facility impossible, there are also unresolved issues concerning (1) the need for the power, (2) time and type of need and (3) California's emphasis on reducing demand through energy efficiency and demand response programs, and meeting need through clean and/or renewable power.

California's Energy Action Plan[27] (EAP) sets forth a number of goals for California, including encouraging utilities to have a mixed portfolio of ownership interests, fuel diversity, and contract terms. Mohave, as a utility owned generation coal-burning facility gives Edison one more long-term, stable power source designed to serve baseload, and provides needed fuel diversity. It is true that Edison, and California, are very dependent on natural gas to produce energy. As so many parties commented, in the face of the volatile supply and price of natural gas, coal presents a cost-efficient alternative. Even though the exact price of coal is not known today, parties were in agreement that based on historical data, coal is a reliable and affordable source of power.

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[27] Joint Agency Energy Action Plan by the Commission, the California Energy Commission and the California Power Authority, adopted by the Commission May 8, 2003.

However, Mohave also produces a baseload supply of power, producing power 7/24. The question arises that if demand for electricity is reduced by either California's emphasis on energy efficiency and demand reduction programs, or because there are significant changes in Edison's customer base due to core/non-core, community aggregation, municipalization or direct access, will Edison still need 855 MW of power? Mohave cannot run efficiently as a "peaking" unit. If by the time Mohave comes back on line in 2009/2010, if Edison only needs "peaking" power, will Mohave be producing so much extra power as to vitiate any savings from the coal production?

Unfortunately, because of the absence of critical information on the costs of water and coal for a continued Mohave, neither the Commission, nor the parties, can make an informed determination as to the efficiencies of Mohave *vis-à-vis* any alternatives. Because Mohave is a baseload plant, the most logical comparison is with a new CCGT facility. While parties opined as to which would be more cost efficient, there was not enough clear information to make an accurate comparison. For example, although a new gas-fired plant would burn cleaner than a coal-fired facility, its economic efficacy depends significantly on the cost of gas—a factor that cannot be known exactly today. So what a CCGT facility might save on emissions costs, might be lost to the vagaries of the gas market.

Also because not all of the critical costs for a continued Mohave are known today, Mohave could not be compared with other possible alternatives, such as renewable sources. While WEC presented a proposal for solar on the reservation, WEC's cost estimates were not sufficient for comparison—even if Mohave's cost estimates were complete.

NRDC proposed a mixed portfolio of alternatives to replace Edison's share of load from Mohave: reduce demand by 1/3 through energy efficiency, obtain 1/3 of the power from renewables and get the remaining 1/3 from an IGCC. While this proposal comports with the EAP in loading energy efficiency and emphasizes renewables, again, we are unable to adequately compare the proposal with Mohave due to the inchoateness of Mohave's cost estimates and the lack of sufficient specificity of NRDC's recommendations.

Alternatives Study

TURN suggests that the Commission open a companion proceeding to explore alternative resources until Mohave's coal and water issues can be resolved to the point that accurate and reliable cost comparison's can be made. TURN argues that none of the possible alternatives presented during this proceeding were adequately researched and did not provide reliable cost data. TURN urges the Commission to initiate this companion proceeding to both serve as the forum in which to review specific generation alternatives to Mohave and examine options for creating alternative sources of revenues for the Navajo and Hopi in the event Mohave closes permanently.

TURN reminds us that Edison's witnesses indicated that Edison had not investigated any alternatives because Edison focused exclusively on keeping Mohave in operation. TURN recommends that whether or not the Commission adopts TURN's companion proceeding proposal, Edison should seriously investigate options and include a comparison in its subsequent filing for Mohave. The alternatives should include proposals that would replace the income from the plant, mine and pipeline for the Hopi and Navajo, as well as choices that utilize energy efficiency and renewables. TURN suggests that

Edison investigate further the WEC solar proposal and the NRDC IGCC suggestion.

Our present record contains two proposals for alternatives to Mohave power: the WEC solar and the NRDC IGCC proposals, but neither proposal is more than conceptual in nature. However, based on the stated priorities of this Commission and the state, both proposals merit further consideration. NRDC proposes to replace Edison's share of Mohave's output with a combination of renewable energy on the Mesa, additional efficiency investments in California, and an IGCC at the Black Mesa Mine. WEC suggests that a massive array of solar thermal electric generators could be deployed on the Mesa, eventually totaling 1,000 MW of peaking-capacity renewable power.

We will pursue both of these proposals, and others that may be appropriate, in a focused manner to determine their technical and economic feasibility. In so doing, we will integrate this analysis into the long-term planning process in our Procurement rulemaking, which is the proper forum for consideration of supply, demand and resource-specific considerations.

Edison is hereby directed to undertake a feasibility study of the options for replacing its share of Mohave's output if Mohave closes, or to be used in conjunction with Mohave if it returns to service, from sources that will provide the fullest possible benefit to the Hopi and Navajo while protecting the interests of Edison's ratepayers. Edison is to involve any interested party in this proceeding work together with those parties to design this study and to jointly determine the independent consultants, contractors and supervisors on the study. One aspect of this study should consider the IGCC options at the Black Mesa Mine, including water use issues and an assessment of the feasibility and cost associated with the sequestration of carbon emitted from the plant. Cost

assessments should include an analysis of federal funds available for IGCC development. Edison should also analyze the feasibility of renewable energy projects on reservation land, including but not limited to the proposed solar thermal facilities identified by WEC.

Both the IGCC and renewable energy projects should include consideration of any enhancements to the transmission system that may be necessary to bring power into California. The final plan should be sufficiently detailed, including cost components, proposed counterparties and generation on-line dates, to allow this Commission to affirm a specific resource plan during Edison's next long-term planning process. Ownership arrangements involving the Hopi and Navajo should be given consideration in the feasibility study.

Within 90 days of the issuance of the order, Edison shall file an initial study plan, including anticipated costs to ratepayers in preparing and conducting the study. Parties will have an opportunity to comment on Edison's filing and the study plan contained in it, including proposed additional projects or options that should be considered. Edison should include updates on the alternatives study in conjunction with the required updates regarding progress in the C-Aquifer study. Any costs incurred by Edison in conducting this study will be recovered in the manner established below.

Our understanding of the timing of events in the ongoing Mohave negotiations leads us to adopt the following schedule for the feasibility study process. It is anticipated that the C-Aquifer hydro-geological study will be completed by October 2005. This corresponds well with the timing of both the coal and water supply questions and the duration of the proposed alternatives feasibility study.

Edison's CPCN

No party argued that a CPCN was *necessary*. Basically the only arguments concerning a CPCN urged the Commission to issue one now--if one was necessary. Edison does not think it needs a CPCN, and numerous other parties opined that under Pub. Util. Code § 1001 Edison may proceed with the pollution upgrades without one. We agree. Edison is not required by law to seek a CPCN for the Mohave pollution controls.

In point of fact, the parties arguing against the Peabody/Hopi/Navajo request for a conditional CPCN, did not argue that a CPCN is required by law. Instead, they opposed the granting of a conditional CPCN on general principal because of the inchoateness of the cost estimates and the fact that the Commission has no record before it to decide if the expenditure of $1.1 billion or more is in the ratepayer and public interest.

The Navajo Nation proffered numerous Commission authorities in support of the proposition that the Commission has the authority to grant a CPCN—with conditions. Whether or not the granting of a CPCN with conditions that must be satisfied, such as environmental mitigation resulting from a CEQA review, is something the Commission *has* done or can do does not need to be resolved in this decision. In the cited cases, new or expanded generation facilities triggered the CPCN process.

Here, a CPCN is not necessary under the circumstances presented in this case. But most importantly, even if we agreed that we could torture the concept of a CPCN and twist it into a new creature known as a "conditional" CPCN, we do not see how it would satisfy Edison's concerns for cost recovery or the Hopi and Navajo and Peabody's desire for "certainty."

The record is clear that what Edison wants is an assurance that if it makes the investment, it has a reasonable opportunity to recover return on its investment through rates. This, however, only addresses Edison's appropriate share (56%) of the cost for the required environmental improvements. The remaining 44% of Mohave is owned by the other co-owners, and Salt River, the next largest owner with a 20% interest, has indicated that it, Nevada Power and LADW&P will not commit to funding their share of the $1.1 billion until the results of the C-Aquifer water supply study, environmental review, and negotiations between the parties on the other related and important issues are complete.[28] This Commission does not have jurisdiction over the other co-owners. Therefore, even if we were inclined to issue a "conditional" CPCN now, it would not provide the security that the Hopi and Navajo and Peabody would like to receive.

In addition, except for the Hopi and Navajo and Peabody, every other party weighing in on the "conditional" CPCN concept argues that it would thwart, not facilitate, the parties' continued negotiations on the other unresolved issues—most importantly the cost of coal and water. In point of fact, Salt River posits that although it intends to negotiate aggressively to achieve the best price for coal and water, if a "conditional" CPCN with a price cap of $46/MWh is granted now, "[the Mohave co-owners] will still be negotiating with one arm tied behind their back."[29]

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[28] Salt River reply brief, p. 2.

[29] Salt River reply brief, p. 8.

There is one other troubling aspect to the requested "conditional" CPCN and that is that there is a lack of consensus among the "conditional" CPCN proponents as to whether, if the Commission authorizes the $1.1 billion for environmental upgrades as long as the "all-in levelized cost" for energy from Mohave is $46 MWh, the Commission ever has a subsequent opportunity to review the expenditures. It is unclear whether the Hopi and Navajo and Peabody want the Commission to give a "blanket immunity" to Edison for all expenditures, or whether there is an opportunity for the Commission, and interested stakeholders, to review Edison's expenditures, prior to allowing recovery in rates, to determine whether the costs are "reasonable and prudent."[30]

For all of these enumerated reasons, the Commission finds that the statutes do not require a CPCN and the record does not support the granting of one even if it was required.

We are convinced by the arguments posited by the Navajo, Hopi, and Peabody, that if they receive some assurance from the Commission that we are committed to preserving a "Mohave-open" option, that that will help make the continued operation of Mohave as a coal- fired plant a self-fulfilling prophecy. To that end, we address the reasonableness of the firm construction costs which have been the subject of a robust evidentiary hearing.[31]

Future Procedural Steps

With 885 MW of energy, Mohave is a valuable resource and will factor in as a key component in Edison's Long Term Procurement Plan (LTPP). However,

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[30] TURN opening brief, p.p. 9-10.

[31] Navajo reply brief, p. 1.

unless all issues concerning water and coal are resolved by the time Edison files its 2006 LTPP, Edison will have to prepare two resource scenarios: one with Mohave in, and one with Mohave out.

We initially considered having all issues concerning Mohave's future vetted in the 2006 LTPP. However, in response to comments from numerous parties, we clarify the procedures Edison is to follow to obtain Commission authorization to proceed with the environmental retrofits and other capital improvements. We still intend to close this proceeding once this decision is final. The procurement docket, R.04-04-003, however, will remain open. Instead of having Mohave considered as part of Edison's total resource package, we now clarify that Edison is to file a separate application in R.04-04-003, using the sub-service list identified under A.02-05-046, so that the authorization for the retrofits can be considered and determined separate and distinct from Edison's other issues in the LTPP proceeding. Issues litigated in this proceeding and subject to findings herein will not be relitigated.

To expedite the application process, we direct Edison to prepare such an application in advance, with only the costs associated with water and coal missing, so that once those costs are determined, Edison can file the application forthwith.

In this decision we find that the determination of the future fate of Mohave is a matter of economic life or death to the affected parties and inform the future Commission faced with the ultimate decision in Mohave that any steps it can take to expedite the proceeding will inure to reduce the human suffering created by delay and dealing with the unknown.

Ratemaking Issues

Construction Costs

The record in this proceeding establishes that the cost of the pollution controls and related capital improvements as put forth by Edison are reasonable. We therefore approve these costs subject to the conditions herein, and without limiting the Commission's ability to review the costs of the plant in service in a General Rate Case.

Edison has provided evidence and testimony on the costs of (1) engineering and design information; (2) a project implementation plan including contracting processes and construction tasks; and (3) "preliminary estimates of the costs of financing, construction, and operation" including fuel expenses. The construction costs that were the subject of the evidentiary hearing we find to be reasonable. However, the financing, operation, fuel and contingency costs are still inchoate and have not been vetted so we do not make a reasonableness finding at this time for those costs.[32]

In Edison's application filed in May 2002, the utility requested "critical path" spending authority for 2002/2003 so the Consent Decree required retrofits might be in place either soon enough to prevent a shut-down of the plant in 2006, or to shorten any temporary shut-down. This request was made in the context that Edison assumed the water and coal issues would be resolved by 2003.

It is obvious from the record in this proceeding that we are still awaiting resolution of the water, coal and other issues. But we are also mindful that if we do nothing in the interim, the keep "Mohave-open" option could be

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[32] TURN opening brief, p. 10, referencing Cal. Pub. Util. Code § 1003(a), (b), (c), (d), and (e).

compromised. We therefore find reasonable the following costs: (1) continued funding of the C-Aquifer studies; (2) funding of a study of alternative options; and (3) those specific design and construction costs that have been the subject of evidentiary hearings. Edison is also authorized to negotiate with contractors and vendors as necessary. We will borrow from TURN's proposal and limit Edison's recovery to 56% of any monies expended, except for the alternative options study where Edison may recover 100% of the costs incurred.[33] Edison should file an Advice Letter (A.L.) with the Commission's Energy Division (ED) setting forth with specificity line items it believes would be on the critical path to preserving the "Mohave-open" option. The A.L. should be served on the sub-service list, identified by A.02-05-046 as part of the service list for R.04-04-003 and should be updated as circumstances dictate.

Pending the outcome of the C-Aquifer studies, Edison is directed to continue to negotiate in good faith with the other stakeholders to reach a satisfactory resolution of all outstanding issues so Edison will be in a position to go forward with the environmental upgrades as soon as feasible. In the interim, Edison is to do whatever is possible within its control to advance the time line on the Mohave retrofit.

Edison prepared and filed a time-line for the Mohave retrofits, and it is referenced as the "Draft Gantt Chart: Mohave Life Extension (Interim Funding

[33] Edison ratepayers will not be responsible for more than 56% of any monies spent pursuant to this Decision. The other Mohave co-owners should bear the additional % of expenses since all Mohave owners will benefit from the upgrades to the facility. While we do not have the authority to order the other co-owners to spend the money, we do hope they will cooperate in good faith.

Approval)(Gantt Chart)."[34] This timeline indicates that if and when the retrofit takes place, the plant will have to be closed for a prolonged period of time. In its testimony and briefs Edison indicated that until the water issue is resolved, there are very few expenditures that could be made now that would shorten the shut-down period for the plant.

Numerous parties challenged this assertion, and opined that with a combination of proactive steps taken now, and with a simultaneous, rather than sequential, approach to the engineering, purchasing and construction steps, the Gantt time line could be shortened. Edison is ordered to revisit the Gantt Chart and make a good faith effort to shorten the time line in any and every way possible include these updates with its monthly report.

Edison should file monthly reports with the Commission's ED updating the Commission and the parties on progress in the coal and water negotiations, the C-Aquifer studies, the alternatives study and update on the Gantt Chart time-line. These reports should be served on the sub-service list for A.02-05-046 as part of the service list for R.04-04-003.

The Commission's decision at this time is made without prejudice to the ultimate resolution of whether Mohave should continue as a coal-burning plant. However, by authorizing Edison to make certain investments at this time we keep that question open, until such time as a definitive public interest judgment can be made.

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[34] The Gantt Chart is Attachment A to Exhibit 11.

Ratemaking Issues

MERMA Account

No matter what the ultimate fate of Mohave's future will be, it appears that pursuant to the terms of the Consent Decree, the plant will have to temporarily shut-down at the end of 2005. The Consent Decree mandates this, and there has been no evidence that the plaintiffs to the Consent Decree will agree to any change in the closure date or any other terms of the settlement. Therefore, Edison seeks authority to create a new memorandum account—the Mohave Employee-Related Memorandum Account (MERMA)—to track limited worker protection benefit expenses that Edison may incur in connection with the temporary shut-down of Mohave.

As Edison explains in its brief, the creation of the MERMA account does not pre-judge whether Mohave will re-open again, or affect the date of any re-opening. The only purpose of the account is to provide a means for the future recovery of any worker protection benefit expenses associated with the shut-down of Mohave that may be incurred *before* January 1, 2006.

If there is an extension to the Consent Decree and Edison is allowed to keep Mohave operational post 2005, appropriate changes will be made to the MERMA account to reflect this time extension.

Any worker protection benefit expenses associated with the Mohave shut-down that are incurred *after* January 1, 2006, would be addressed in Edison's 2006 General rate Case (GRC).

We agree that this account is appropriate and necessary and direct Edison to file an A.L. with the E.D. establishing the MERMA mechanism and associated preliminary statement language. The expenses Edison is to track in this MERMA account include costs incurred by Edison for severance, retraining, early

retirement, outplacement and related expenses associated with Edison employees impacted by the shut-down of Mohave, including all payroll taxes associated with Mohave worker protection benefit expenses. The balance of the MERMA would earn interest at the standard three-month commercial paper rate.

Other Cost Recovery

Edison has already spent money on preliminary retrofit work, on the C-Aquifer hydro-geological and environmental study and on an initial Preliminary Environmental Assessment (PEA). This decision authorizes additional spending on those activities as well as spending for the alternatives feasibility study. If Mohave operations are ultimately extended, Edison will capitalize its 56% share of these costs along with all other capital improvements made to the facility consistent with accounting conventions. If however, the plant is permanently closed, Edison will request abandoned plant recovery of its 56% share of these expenses in a GRC. We also adopt the Unions' proposal that if Mohave shuts down prematurely, Edison will not recover any unamortized Mohave plant balances unless it can demonstrate that it took all such steps to preserve the "Mohave-open" alternative and that the shut-down is due to factors outside of the utility's control.

While we cannot determine at this time whether Mohave will prove to be cost effective because of the confluence of multiple factors surrounding the Mohave facility--all of which are out of the control of this Commission, we do want to give the parties some assurance. Therefore, all reasonable costs Edison has incurred, or will incur for the water hydro-geological and environmental studies and the preparation of the PEA are recoverable as capital expenditures--subject to audit in a General Rate Case. We find those costs already incurred and reviewed in this proceeding so far to be reasonable.

In addition, as Edison proceeds with the other authorized spending, we will give Edison advance regulatory review and guidance as to the reasonability of the spending if Edison files a request for such review with the ED and serves it on the sub-service list for A.02-05-046 as part of the service list for R.04-04-003.

Preliminary Environmental Assessment

Pursuant to a March 9, 2004, ALJ ruling, Edison prepared and submitted a PEA on August 6, 2004. The ruling directed Edison to address the "necessary construction activities at the [Mohave] site" if the installation of pollution controls and other retrofits were to proceed. In the PEA Edison indicates that the construction activities would span approximately a three-year period from commencement of construction. Even if all the outstanding water and coal issues are sufficiently resolved in 2004 enabling Edison to apply for Commission approval of its share of Mohave investments by early 2005, Edison still projects that the project would not be completed until 2009 to 2010.

The PEA identified that the projected construction activities would have potential adverse impacts to air quality, biological resources, cultural resources and hydrology/water quality. By implementing mitigation measures, Edison opines that all of these impacts can be mitigated to less-than-significant levels.

We do not know if any other environmental review will be required by Arizona or federal laws or statutes.

Comments on Proposed Decision

The proposed decision of Administrative Law Judge (ALJ) Brown in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(d) and Rule 77.7 of the Rules of Practice and Procedure.

Assignment of Proceeding

Loretta M. Lynch is the Assigned Commissioner and Carol A. Brown is the assigned ALJ in this proceeding.

Findings of Fact

1. Mohave is a coal-fired power plant located in Laughlin, Nevada that is subject to the terms of a Consent Decree entered into by Edison and the other Mohave co-owners in 1999, settling a federal civil lawsuit concerning various air quality violations at Mohave.

2. Under the terms of the 1999 Consent Decree, Edison must make necessary and appropriate expenditures on the Mohave Generating Station for pollution control equipment and other related capital investments in order to continue operations post year-end 2005.

3. Edison is the plant operator and owns a 56% undivided interest in the plant.

4. Edison projects that the pollution controls and related capital improvements will cost approximately $1.1 billion.

5. Mohave obtains all of its coal supply from the Black Mesa Mine and the coal is transported the 273 miles from the mine to the plant by way of a coal-slurry pipeline.

6. The water for the slurry process and for all other water requirements of the mine comes from the N-Aquifer, a well that underlies the land of the Hopi and Navajo.

7. The Hopi and Navajo oppose the further pumping of the N-Aquifer for coal-slurry purposes post 2005.

8. The only potentially viable alternative source of water to replace the N-Aquifer that has been identified to date is the C-Aquifer.

9. The Mohave co-owners, along with the Hopi and Navajo, signed a Memorandum of Understanding regarding the possible use of the C-Aquifer as a replacement for the N-Aquifer.

10. Edison and the other Mohave co-owners are funding a study, to be conducted by the Bureau of Reclamation (BOR), to determine if the C-Aquifer is available as a water source alternative for the N-Aquifer.

11. The BOR study will proceed in two phases: first a hydro-geological study that will take approximately nine months, and then if the results of the hydro-geological study are positive, an environmental study that could take up to two years.

12. The Mohave plant itself needs additional water for cooling purposes over and above the water extracted from the slurry mixture and Mohave's contract for this cooling water expires in 2026; there is no assurance that water will be available after the contract terminates.

13. The Black Mesa Mine is Mohave's only source of coal, and Mohave is the only purchaser of coal from the Mine through an agreement with Peabody.

14. The coal supply agreement between Peabody and the Mohave co-owners terminates at the end of 2005.

15. Parties have been negotiating the quantity, quality and price of coal post 2005, but no final resolution has been reached.

16. Until there is resolution of the water and coal supply and cost issues, this Commission does not have enough data to determine if the future functioning of Mohave as a coal-burning facility is in the public interest and that the necessary $1.1 billion investment will inure to the benefit of the Edison ratepayers.

17. The only determination this Commission can make at this point in time is to authorize Edison to continue funding the C-Aquifer studies, to fund a study of

alternatives to Mohave, and to continue to work towards resolution of the water and coal issues so as to keep the "Mohave-open" option viable.

18. It is reasonable to limit Edison's recovery to 56% of any interim spending, reflecting Edison's ownership interest in Mohave, except that Edison should have the opportunity to recover all costs incurred in the study of Mohave alternatives, if the Mohave co-owners do not participate in that study.

19. Edison should investigate alternative resources to first allow for a meaningful comparison of Mohave's costs with other alternatives, including the WEC solar and the NRDC IGCC proposals, and also to replace the output from Mohave if the Commission ultimately determines that keeping Mohave open as a coal-burning plant is not in the public interest, or compliment the generation from Mohave if it returns to service.

20. Edison is to establish the MERMA to track limited worker protection benefit expenses that Edison may incur before January 1, 2006, in connection with the expected temporary shut-down of Mohave at the end of 2005.

21. Any worker protection benefit expenses Edison may incur from the Mohave shut-down after January 1, 2006, will be addressed in Edison's 2006 General Rate Case.

22. Edison should file an Advice Letter with the Commission's Energy Division establishing the MERMA mechanism and associated preliminary statement language.

23. If Mohave operations are ultimately extended, consistent with accounting conventions, Edison may capitalize its appropriate share (56%) of money already spent on preliminary retrofit work, on the C-Aquifer studies and on any other capital improvements made to the facility.

24. If Mohave is permanently closed, Edison may request abandoned plant recovery of its appropriate share (56%) of all expenses in a General Rate Case.

25. The future of Mohave as a coal-burning plant is a matter of economic life or death to the affected parties and it is reasonable to expedite the processing of Edison's application for full authorization to go forward with the environmental retrofits and other related capital expenditures so as to reduce any unnecessary or avoidable delay.

Conclusions of Law

1. Edison's actual capital costs for the environmental upgrades, upgrades to the coal slurry pipeline and delivery of the new water supply, not including the 30-40% contingency for water and coal contract costs, are reasonable. Nothing herein prevents a review by the Commission of the costs of the plant in service in a General Rate Case.

2. The record supports finding reasonable the funds Edison has spent on the C-Aquifer studies and preliminary engineering, while Edison continues to work towards a resolution of the water and coal issues and to allow Edison to recover 56% of these expenses as capital expenses reflecting Edison's ownership share of Mohave, subject to a showing that Edison did not prematurely cause the facility to shut-down due to action, or in-action, within Edison's control.

3. It is reasonable to defer the Commission's final decision on the future of Mohave as a coal-fired plant until the Bureau of Reclamation completes the hydro-geological and environmental studies to determine if the C-Aquifer is a viable alternative source of water to slurry the coal from the mine to Mohave.

4. If the C-Aquifer is a viable alternative source of water, and if there is resolution on the issues relating to the quantity, quality and price of coal, Edison will be able to recover its reasonably incurred procurement costs.

5. To insure that the Commission has a complete range of alternatives to compare Mohave to, the Commission directs Edison to investigate and collect data on alternatives to Edison's Mohave share of, including proposals presented by WEC and NRDC, and to work with other stakeholders to design this study and to jointly determine who should conduct the study. It is reasonable to allow Edison to recover 100% of the cost of the study if the other Mohave co-owners do not participate in the study.

6. It is reasonable to authorize Edison to establish the Mohave Employee-Related Memorandum Account (MERMA) to track limited worker protection benefit expenses that Edison may incur before January 1, 2006, in connection with the expected shut-down of Mohave at the end of 2005.

7. It is reasonable that Edison recover limited worker protection benefit expenses that Edison may incur after January 1, 2006, in connection with the expected shut-down of Mohave at the end of 2005, in a General Rate Case.

8. It is reasonable that if Mohave operations are ultimately extended that Edison capitalize its 56% of money spent on preliminary retrofit work, on the C-Aquifer studies and any other critical path spending along with all other capital improvements made to the facility, consistent with accounting conventions.

9. It is reasonable that if Mohave is permanently closed that Edison recover its appropriate share of all expenses for abandoned plant recovery in a General Rate Case.

O R D E R

IT IS ORDERED that:

1. Southern California Edison Company (Edison) may spend necessary and appropriate funds on critical path investments at Mohave as defined herein, including the C-Aquifer studies and an alternatives feasibility study, while Edison continues to work towards a resolution of the water and coal issues.

2. Edison is authorized to recover as a capital expense 56% of any expenses already made on the initial engineering and design plans for the pollution control and retrofit work and any monies expended on the C-Aquifer studies, and 100% of monies spent on the alternatives feasibility study (if the other Mohave co-owners do not participate in the study) and any money Edison spends pursuant to this decision on interim critical path items subject to the limitations established herein.

3. Edison is to explore alternatives to Mohave continuing operation as a coal-fired plant. The focus of this study should be on exploring the specifics of these possible options so they may either be compared with Edison's Mohave share of in a subsequent proceeding, or considered as alternatives to replace the power from Mohave in the scenario where the plant is permanently closed or compliment the generation from Mohave if Mohave returns to service. The alternatives investigated should include options that provide economic stability to the Hopi Tribe and Navajo Nation, and where appropriate, utilize renewable resources for generation. Edison is directed to work with other stakeholders to design this study and to jointly determine who should conduct the study.

4. Edison is to file monthly reports with the Commission's Energy Division updating any progress made on the coal and water negotiations, the C-Aquifer studies, the alternatives' investigation and shortening the Gantt Chart time-line.

5. Edison is authorized to establish a Mohave Employee-Related Memorandum Account (MERMA) to track limited worker protection benefit expenses that Edison incurs before January 1, 2006, and to file an advice letter establishing the MERMA mechanism and associated preliminary statement language.

6. Edison is authorized to recover any costs incurred for limited worker protection expenses incurred after January 1, 2006, in Edison's General Rate Case.

7. Edison may file advice letters, or tariffs, as appropriate and necessary to implement the orders, conclusions and results reached in this decision.

8. If Edison determines that the other Mohave co-owners are not cooperating with the steps and spending established to preserve the keep "Mohave-open" option, Edison shall report this fact to ED and the Commission's General Counsel, so that the Commission may provide further guidance.

9. Edison is to prepare an application for authorization to go forward with the environmental retrofits and other capital expenditures, with the costs for water, coal and other environmental controls, so once the water and coal issues

are resolved, Edison can file the application forthwith. Capital costs found reasonable in this decision will not be re-litigated.

This proceeding is closed.

This order is effective today.

Dated December 2, 2004, at San Francisco, California.

MICHAEL R. PEEVEY
President
CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners

APPENDIX A

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December 12, 1988

Senator Charles W. Joerg
301 Tahoe Drive
Carson City, Nevada 89701

Dear Senator Joerg:

You have requested an opinion regarding the effect that the amendment to the constitution proposed by Senate Joint Resolution No. 22 of the 64th session of the legislature will have if it is adopted.

The pertinent provisions of the resolution are:

> Section 1. 1. The legislature shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal and possessory, except mines and mining claims, [when not patented, the proceeds alone of] which shall be assessed and taxed [, and when patented, each patented mine shall be assessed at not less than five hundred dollars ($500), except when one hundred dollars ($100) in labor has been actually performed on such patented mine during the year, in addition to the tax upon the net proceeds.] *only as provided in section 5 of this article.*
>
> ***
>
> *Sec. 5. 1. The legislature shall provide by law for a tax upon the net proceeds of all minerals, including oil, gas and other hydrocarbons, extracted in this state, at a rate not to exceed 5 percent of the net proceeds. No other tax may be imposed upon a mineral or its proceeds until the identity of the proceeds as such is lost.*
>
> *2. The legislature shall appropriate to each county that sum which would be produced by levying a tax upon the entire amount of the net proceeds taxed in each taxing district in the county at the rate levied in that district upon the assessed valuation of real property. The total amount so appropriated to each county must be apportioned among the respective governmental units and districts within it, including the county*

EXHIBIT 76

itself and the school district, in the same proportion as they share in the total taxes collected on property according to value.

3. 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.

The first potential problem with S.J.R. 22 is that the meaning of the term "proceeds" in subsection 1 of section 5 is unclear. The term is first used to limit the rate of the tax upon the "net proceeds" of all minerals to 5 percent of the "net proceeds." In this context, "proceeds" appears to mean the value received in exchange for the mineral. The second sentence of subsection 1 prohibits imposing any other tax upon "a mineral or its proceeds until the identity of the proceeds as such is lost." In this context, "proceeds" could either mean the value received in exchange for the mineral or the products or derivatives of the mineral.

If "proceeds" is construed throughout the subsection to mean the value received in exchange for a mineral, the prohibition against imposing a tax upon proceeds until they lose their identity as such could apply to money or other property received in exchange for a mineral. Theoretically, if a mining company received a parcel of real property in exchange for a mineral extracted in this state, that property could be exempt from taxation as the "proceeds" of the mineral. Similarly, if all of the money received in exchange for a mineral is held by a corporation, that revenue could be exempt from a corporate income tax.

If "proceeds" is construed in the second sentence to mean the products or derivatives of a mineral, then the amendment could affect the taxation of gasoline, diesel fuel, bullion, jewelry, and other items that can be characterized as the products or derivatives of minerals. The minerals from which these items are produced may have lost their identity as such, but the language of the proposed constitutional amendment refers to the proceeds losing their identity as such. It is difficult to say when such items lose their identity as the proceeds of minerals, if ever. These items could therefore be exempt from all taxes, such as sales taxes and motor vehicle fuel taxes. If items produced from minerals extracted in this state are exempt from taxation, the Commerce Clause of the United States Constitution will prohibit Nevada from taxing these items if they are produced in other states. Westinghouse Electric Corporation v. Tully, 466 U.S. 388, 104 S.Ct. 1856 (1984). For example, motor vehicle fuel can be characterized as the product or derivative of crude oil, and therefore would be exempt from taxation (other than at the rate of 5 percent of the net proceeds) if extracted in this state. The Commerce Clause

would preclude taxing motor vehicle fuel produced from oil extracted in another state. The result would be that no motor vehicle fuel tax could be imposed.

The existing language concerning the taxation of the net proceeds of mines does not offer much help in interpreting the proposed language. Subsection 1 of section 1 of article 10 provides for the taxation of the net proceeds of "mines and mining claims." The term "proceeds" in section 1 has been interpreted by the Nevada supreme court as meaning "products." State v. Eastabrook, 3 Nev. 173 (1867). NRS 362.120, which deals with the calculation of the gross yield and net proceeds of a mine, provides in pertinent part:

> 2. The gross yield must include the value of any product of the mine which was:
> (a) Sold;
> (b) Exchanged for any thing or service;
> (c) Removed from the state in a form ready for use or sale; or
> (d) Used in a manufacturing process or in providing a service,
> during the period covered by the statement.
> 3. The net proceeds are ascertained and determined by subtracting from the gross yield *** [specified] deductions for costs incurred during that period ***.

Under the existing language, the proceeds of a mine are its products. The net proceeds are calculated by deducting certain costs from value received in exchange for those products. Unfortunately, the proposed language refers to the proceeds of "minerals," not "mines." As discussed previously, the proceeds of minerals can be the value received for them or the products or derivatives of the minerals. In either case, the interpretation may cause problems. If "proceeds" means value received, the money or other property received may be perpetually exempt from taxation. If "proceeds" means the products or derivatives of a mineral, the exemption may apply to items such as gasoline and jewelry.

It is possible that these problems can be addressed by enabling legislation, which could be proposed to take effect upon approval of the constitutional amendment. The Supreme Court of Florida has held that the interpretation of ambiguous language in the constitution by the legislature will not be disturbed by the courts unless clearly contrary to the language in question. Greater Loretta Improvement Ass'n v. Boone, 234 So.2d 665 (Fla. 1970). The bill which implements the constitutional amendment can provide evidence of the legislature's intent in approving that amendment. Therefore, the legislature should be able to provide by law the meaning of "proceeds" of minerals, as either their value or

their derivatives. The legislature also may specify when proceeds lose their identity as such.

For example, the legislature could provide by law that "proceeds" means the value received for a mineral, and that they lose their identity as such when first transferred by the person who extracted the mineral. This would limit the exemption from taxation, but would still mean that all money and property of a mining company could be perpetually exempt from all forms of taxation (i.e., property tax and corporate income tax). It is possible that the court would uphold legislation providing that the proceeds lose their identity as such when transferred to the person who extracted the mineral. If such legislation were upheld, the transfer would not be taxable, but the money or other property exchanged for the mineral would be subject to taxation.

Alternatively, the proposed legislation could interpret "proceeds of minerals" to mean their derivatives, and could specify what those derivatives are and when they lose their identity as such. This would mean that the value received for the minerals would be subject to taxation, but the mineral's derivatives would not. Under this approach, any restrictive interpretation of "proceeds" or "losing their identity as such" would be suspect: it would be difficult to "interpret" proceeds of minerals as excluding jewelry, or to say that oil loses its identity as a proceed of a mineral through processing at a refinery.

The danger with this type of curative legislation is that there is no guarantee that the Supreme Court of Nevada would concur in the legislature's interpretation of the constitution. If the court disagrees, the constitution could become a bar to a wide range of taxes on certain property. Amending the constitution is a time-consuming process, during which the state may be limited in its ability to respond to a fiscal crisis.

It is the opinion of this office that the better interpretation of "proceeds" is "the value received in exchange" for the minerals. The alternative interpretation would mean that the word "proceeds" has different meanings in the two sentences of subsection 1 of the proposed section 5. Interpreting "proceeds" to mean "value" seems consistent with the intent of the proposed amendment's supporters in that it limits the taxation of mining companies (rather than that of retail sellers of jewelry and motor vehicle fuel). This interpretation is more consistent with the common, dictionary definition of the word "proceeds," and is also more easily limited by enabling legislation.

In summary, the language of the amendment is ambiguous in that the "proceeds of a mineral" can be interpreted in two ways. Under either

interpretation, certain property may become exempt from taxation. The legislature may attempt to limit the exemption with enabling legislation, but there is no guarantee that such legislation would be upheld as consistent with the amendment to the constitution.

Very truly yours,

Lorne J. Malkiewich
Legislative Counsel

FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

THE HONORABLE JAMES T. RUSSELL, DISTRICT JUDGE

--oOo--

SOUTHERN CALIFORNIA EDISON, Plaintiff, vs. THE STATE OF NEVADA, EX REL. DEPARTMENT OF TAXATION, Defendant.	Case No. 09 OC 00016 1B Dept. No. 1

TRIAL

DAY 1

Tuesday, January 21, 2014

CERTIFIED COPY

Reported By: PEGGY B. HOOGS, CCR 160, RDR, CRR
California CSR 5958

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tax attorneys. And one of the responsibilities I had, of course, was use tax in Nevada and the other states that SCE had business in.

Q Now, let me ask you a few background questions with respect to the Mohave Generating Station, which I will simply call "Mohave."

Who owns Mohave?

A The Mohave Generating Station is a coal-fired electric generating station located in Nevada, near Laughlin, Nevada, and it's a jointly owned project that's owned by four participants: Southern California Edison owns the principal share of 56 percent; the Department of Water and Power, Los Angeles Department of Water and Power owns 10 percent; Salt River Project owns 20 percent; and Nevada Power, which is referred to as NV Energy today, I think owned 14 percent of that plant.

Q And is SCE the operator of Mohave?

A Yes. They're the operating agent. As principal owner, in the contractual arrangement with the joint participants, Edison operates the plant.

Q And at least in the time period that we're concerned about, from 1993 forward, could you describe SCE's responsibilities as Mohave's operator insofar as taxes are concerned.

A Yes. Well, in general, they're responsible for all operation, maintenance, cost and the procurement of fuel. In this case the use tax is directly connected to the fuel acquisition that's accounted for as a component of that cost. So Edison had a responsibility to manage effectively and minimize all of the costs of operations, and we played a role in the tax organization of minimizing the tax on the acquisition of that fuel.

Q What is SCE's obligation as the Mohave operator for the other participants in terms of pursuing these refund claims?

A SCE has an obligation to minimize the cost, including the use tax, on the acquisition of fuel for itself, for its ratepayers, and for the participants. We have an obligation to minimize those costs.

Q If SCE prevails in these refund claims, how will the -- the refund money be distributed?

A The refund money, plus any interest that accrues on that, less the -- any litigation costs that have been unrecovered at that point in time, would be distributed to the participants in direct proportion to their ownership interest.

Q And specifically --

THE COURT: Well, would any of it ever go

back to any of the ratepayers at all? Because obviously that was one of the factors, I guess. All the electricity in respect to this power company went to California; correct?

THE WITNESS: Yes.

THE COURT: None of it --

THE WITNESS: Well, 56 percent of the energy went to California.

THE COURT: Did any of it stay in Nevada?

THE WITNESS: Yes. Yes. Nevada Power would have been entitled to 14 percent allocation of the electricity produced.

THE COURT: Okay. So they would have had use of that power in the state of Nevada for 14 percent?

THE WITNESS: Yes, that's my understanding.

THE COURT: And when you set the rates in regard to these things through the PUC or whatever the entity is you set them through, you go in, establish and look at it and go in front of them and say: Okay. These are the costs and everything that we do and so here's --

Basically they set the rates for the users; is that correct? I'm simplifying it, of course.

THE WITNESS: Yes. I'll speak with respect to Southern California Edison and their 56 percent share.

THE COURT: Okay.

THE WITNESS: Fuel costs for Southern California Edison Company is accounted for as a pass-through. It's paid for, in effect, by the ratepayers in California.

Now, normally any recovery that we would have for fuel costs accounted for in a prior period would be refunded to ratepayers. However, there is one exception with respect to Southern California Edison Company, and it relates to the energy crisis that occurred back in California around 1999 or 2000. There was a settlement decision with the PUC, because there was substantial unrecovered balances of fuel costs during that period of time.

And in that settlement, which was effective September 1 of 2001, Southern California Edison had to write off approximately 300 million of unrecovered fuel costs. So to the extent that we recover any use tax, which would have been included in that fuel tax for the period up to September 1, 2001, those costs would be retained by Edison as an offset for these prior period write-offs.

THE COURT: Which you lost, I guess?

THE WITNESS: Yes.

THE COURT: Go ahead.

MR. READ: In fact, you covered, I think, my next question, but let me just clarify.

BY MR. READ:

Q So for -- in the case of SCE, in terms of any recovery on these claims, SCE ratepayers will get the benefit of any recovery for periods from September 1, 2001, forward; is that right?

A That's correct.

Q Now, does SCE have the authority and obligations from the California PUC to pursue refund claims on behalf of ratepayers?

A Yes, they do, and there's an expectation that we would. In fact, in California, under regulatory precedent and policy, if the company failed to pursue a legitimate claim, the Commission could impute a penalty or a payment to its ratepayers even if the company did not pursue it.

Q If the Court determines that SCE is entitled to the refund it is seeking in this case, would SCE be willing to accept that refund in installment payments or over time?

A Yes, I believe Edison management would agree to that.

Q Now, let's turn to the actual claims for refund that are the subject of this trial. And we're going to try to do this at least with occasional reference to exhibits that will be on the monitor to highlight some of the items. I hope all this show and tell works reasonably well.

Could you please briefly describe the chronology of the filing of SCE's claims for use tax that are the subject of this trial?

A Yes. The first claim was filed by Southern California Edison on April 26, 2001, for the period March of 1998. That's the first claim in what we refer to as Claim Set 2. I believe we have an exhibit, Exhibit 11.

Is that being projected? There we are. Okay.

As you can see, it's dated April 26th. It deals -- it's regarding a claim for refund for March 1998. It submits the original tax return and an amended tax return and makes -- this is our initial claim for refund.

Attached is the original return, the amended return and supporting documentation, which included a Peabody invoice and the Southern California Edison -- an excerpt from Southern California Edison's general ledger

exclusions.

Q All right. And, next, the Fifth Claim for Relief?

A The Fifth Claim for Relief, again, is a subset of the total of 100 percent claim for relief, and it is an argument that we're entitled to exclude taxes paid to the Navajo Nation from the measure of tax.

And there are two taxes at issue here: There's the possessory interest tax imposed on the Peabody invoices and on the Black Mesa invoices, and the possessory interest tax -- excuse me -- the business activity tax is the second tax. It runs through a computation here, and the total claim for relief with respect to the Fifth Claim for Relief is $979,379.41.

MR. READ: Your Honor, I should have noted, when Mr. Smith was talking about the Fourth Claim for Relief, that our Complaint originally did include an additional federal tax that we were seeking to exclude from the base of the computation of use tax, and that was the black lung tax, so-called.

We, as counsel for SCE, in looking at this more closely, concluded that given the way the IRS codifies that tax as a manufacturer's excise tax, and that is a tax that is explicitly included in computing

the use tax base under Nevada law, that we did not have a substantial basis to proceed with that claim, and therefore -- and we advised counsel for the Department -- that we were going to withdraw that portion of our refund -- partial refund claim and focus entirely in terms of federal taxes on the SMCRA tax.

So that is why there will be that difference between the Complaint and our proof that that's not an omission.

BY MR. READ:

I think we were on now the sixth claim, Mr. Smith.

A Yes. The Sixth Claim for Relief -- all these claims for relief cover the same period for Claim Set 1. The Sixth Claim for Relief, which, again, is one of our alternative partial relief claims, excludes the tax paid to the State of Arizona from the measure of tax.

You'll recall on the Third Claim for Relief that we were asking for a credit. In the event that the credit was denied, in this claim for relief we would still argue that we're entitled to exclude the Arizona transaction privilege tax and, in addition to that, the ad valorem tax paid on -- with respect to the coal purchases.

THE COURT: Ms. Session, cross.

CROSS-EXAMINATION

BY MS. SESSION:

Q Good afternoon, Mr. Smith.

A Good afternoon.

Q So when did you start with SCE?

A In 1970.

Q And during that period of time, were you always responsible for preparing the use tax returns?

A My staff was responsible for doing that. I had full responsibility for the tax organization beginning in 1988. That's when I was elected as an officer with the company and became the chief tax officer for Southern California Edison Company. So my staff filed those returns under my overall management.

Q And isn't it true that Southern Cal Edison paid use tax in the state of Nevada on its purchase of coal slurry and water from Peabody without protest for approximately 30 years?

A I don't know for what period of time, but a substantial amount of years before these claims were submitted, yes.

Q You just testified about a particular period

A No.
Q The delivery price?
A No. The Black -- the invoice from Black Mesa Pipeline was a separate billing for the service of providing transportation for the coal. It's not included in the price of the coal that's billed by Peabody Coal Company for the sale of the coal.
Q Are you familiar with the Coal Supply Agreement, the Amended Coal Supply Agreement?
A Only generally. One of our witnesses here, Paul Phelan, would be more suited to answer specific questions concerning our coal contracts.
Q But would it surprise you if in that coal contract, included in -- the delivered price of coal would be included in both the billing from Peabody for the coal and from Black Mesa for the transportation?
A Well, you know, I don't know. I'm not familiar with the specific terms of the contract.
Q The sale of the coal, the transaction, actually took place at the end of the pipeline in Nevada; is that correct?
A It's my understanding the -- that the sale occurs at the Mohave Generating Station.
Q At the transfer of title; is that correct?

A Yes.
Q And --
THE COURT: Restate that one more time so I clearly understand that.
The sale of coal took place at the Mohave plant?
THE WITNESS: The transfer -- it's my understanding that the transfer of title occurs upon the delivery of the coal at the Mohave Generating Station.
THE COURT: Thank you.
BY MS. SESSION:
Q If Peabody had delivered the coal in Nevada, would they have been required to pay a sales tax, if they had a presence in Nevada, at that delivery at that time where title passed?
MR. READ: Objection. I do think that calls for speculation.
THE COURT: I'm going to overrule it.
To the extent that you can answer that, it may call for a legal conclusion, to be honest with you, to some extent under the case law, but to the extent you understand as the chief taxman for Southern California Edison --
THE WITNESS: I think it would depend on the

facts as applied to the transaction that you're talking about. If the transportation was included in the price of the coal and Peabody had nexus in Nevada, if all of those conditions were in place, then it's possible that they would be liable for the sales tax and submit a sales tax rather than Edison self-imposing a use tax on that transaction. But I don't think those are the facts that match the case that's before us here.

BY MS. SESSION:

Q Thank you.

During 1998-2000 period that we're talking about, was Southern Cal Edison registered as a taxpayer to pay taxes in Arizona?

A I believe so. I think Arizona -- we had business in Arizona.

Q And was that business related to the Mohave Generating Plant?

A I don't think -- I'm not aware of that business being related to the Mohave Generating Plant. We had other interests in Arizona, but I can't speak with any certainty on those questions.

Q But Southern Cal Edison didn't pay any purchases on its coal slurry and water purchases directly to Arizona, did they?

A We did in the form of the transaction privilege tax that was included on the Peabody invoice.

Q And, again, relating to the amended 1996 Coal Supply Agreement, are you aware if that was included in the price of the coal?

A No, I'm not familiar with that -- with the details of that contract.

Q And Southern Cal Edison didn't pay any taxes directly to the United States Government as part of its coal slurry and water purchases, did they?

A They -- those taxes that you're referring to were itemized on the invoices that we received from the Peabody Coal Company.

Q And again --

A So it's a component of the amount. It's individually itemized on their -- those taxes were paid to Peabody, who paid the taxes to the government.

Q They were included in the total fuel, cost of fuel; correct?

A Well, they're itemized on the invoice, so it's a separate charge for that component of the bill.

Q But Southern Cal Edison didn't pay it themselves to the United States, did they?

A No. They reimbursed Peabody for the

ridiculous argument, and it has no parallel to refining gas -- oil into gasoline. That would be my answer.

There's no parallel or correlation that by adding water to coal to transport it in water, at the end that does not change the character of the coal at all, in a parallel to refining oil into gasoline.

BY MS. SESSION:

Q Can you burn oil as a fuel without refining it --

A Yes.

Q -- in a power plant?

A Yes.

Q Oil without -- you can take it out of the ground and burn it in a power plant?

A Yes.

Q And can you burn raw coal in a power plant?

A Yes.

Q Without crushing it, you can take raw coal out of a mine --

A Crushing doesn't change the character of the coal.

Q That wasn't my question.

Can you take raw coal out of the ground and burn it in a power plant without crushing it?

A You can't even transport it without crushing it.

Q Okay. Thank you.

You can't identify a purchaser of coal in Nevada during the period of March 1998 until December 2000 that received an exemption on their purchase of coal, can you?

A No, I can't.

Q Is it your position -- and this is kind of based on some previous testimony -- that gold that's mined in Nevada and being sold in the gold market is competing with coal that Southern Cal Edison was purchasing from Arizona from 1998 to 2000?

A I'm sorry. Could you repeat that question?

Q Sure. Is it your position that gold that's mined --

A Gold? G-o-l-d, gold?

Q Yes, gold.

A Gold.

Q -- mined in Nevada, that is being sold in the gold market, is competing with the coal that Southern Cal Edison was purchasing from Arizona in the period from 1998 to 2000?

MR. READ: Objection, Your Honor. It goes

Let me ask you, are you familiar with the process that Peabody used to extract the coal at Black Mesa?

A Yes, I am.

Q And how did you become familiar with that process?

A As part of my duties as an assistant plant engineer, for a period of time I had responsibility for interfacing with the quality control engineer at Peabody, and I visited the mine several times.

Q And just generally speaking, what did the mine look like?

A It was an open-pit mine, or they basically -- it was what they refer to as a strip-mine operation, so that the areas where they had identified the coal seams, they would basically cut a large trench, if you will, to expose the coal seams on what they call the high wall of the mine.

And then as they mined an area of coal seams, you know, as they proceeded forward into that, they would basically take the waste material and place it behind them, if you will, so that the waste material would be backfilling as they proceeded forward through the high wall and through the coal seams.

Q And are you familiar with the term "overburden"?
A Yes, I am.
Q And what does that mean?
A "Overburden" is a common term that refers to the waste material or the noncoal material that in -- more often than not it's on top of the coal seams.
Q And at least as of 1976 going forward, at the time of the Amended Coal Supply Agreement, did Peabody remove the overburden before it extracted the coal?
A It was actually -- it was actually -- some of it was removed, yes, you are correct, so that they could expose the coal seams. But they may have had to blast that overburden to, again, fracture it and -- so that they could pick it up basically with the draglines and transport it off the coal seam or the coal material and place it over in the waste pile.
Q And at that point they would go in and extract the coal?
A That's correct.
MR. WARD: Nick, if you could display Exhibit 78.
It might be easier to look at it in your book. I'm not sure how big we can blow it up.

THE COURT: Before you do that, I just had a question.

On the Amended Mohave Project Coal Supply Agreement, it indicates that its governed by the laws of the State of Nevada specifically.

Were you aware of that?

THE WITNESS: Yes.

THE COURT: And the Coal Slurry Agreement, Pipeline Agreement, it indicates that it's governed by the laws of Arizona.

Were you aware of that?

THE WITNESS: Not specifically, but somewhat familiar with it, Your Honor.

THE COURT: Also, I was trying to find in the Amended Coal Slurry Pipeline Agreement, where does it indicate and on what page does it indicate that the payment would be made by SCE in respect to the transportation? I looked real quick. I couldn't find it.

THE WITNESS: Let me see if I can find that for you.

THE COURT: I'm trying to read it awful fast.

THE WITNESS: Okay. Your Honor, if you go over to Bates stamp 001508, item D at the top of the

page.

THE COURT: 001 what?

THE WITNESS: 1508.

THE COURT: Okay.

THE WITNESS: The first sentence there, "Peabody will pay or cause Edison to pay on behalf of the Mohave participants to Black Mesa storage-related charge," and I believe --

THE COURT: It goes on to say Peabody will reimburse or cause Edison to reimburse, but Edison was not a principal party to this agreement, were they?

THE WITNESS: No, they were not.

THE COURT: So it was Peabody's obligation, essentially, to pay those obligations, and then they could force Edison pursuant to some other agreement, maybe.

THE WITNESS: Yes. And it was really a convenience from a timing perspective in terms of that way Black Mesa Pipeline would receive their payments that much sooner.

THE COURT: If you go back over to the Amended Mohave Project Coal Supply Agreement and you go to page 15, if you would. It's Exhibit 41.

MR. WARD: Your Honor, are you on 577?

THE COURT: I'm at 00577, correct. Thank you.

THE WITNESS: Yes, I have it.

THE COURT: It indicates the price -- delivery price is the price to be paid for coal delivered to the Mohave project and shall be the sum of the mine price, which is the price of the coal delivered to the coal slurry preparation plant at seller Black Mesa Mine, and that price for transportation, which is the price provided for unsedimented coal slurry or the price provided in any alternative coal delivery arrangement approved by buyers pursuant to paragraph 4.01B."

So is that your understanding of the price?

THE WITNESS: Yes, it is.

THE COURT: Go ahead.

BY MR. WARD:

Q Just a point of clarification.

That delivered price that you spoke of, that included a single component for the mine price of the coal itself; correct?

A That is correct.

Q Let's jump back to Exhibit 78, if we could.

This might be helpful as we go through the --

A Did you say 78?
Q 78, yes.
A I don't have that in this --
Q I'm sorry. It's in a different --
A Okay. I have it.
Q Are you familiar with this document?
A Yes, I am.
Q Does it accurately depict the Mohave coal journey as you understand it?
A Yes, it does.
Q Let me ask you -- and it might be helpful to refer to this document as you explain -- what happened to the coal after it was actually extracted from the Black Mesa Mine?
A Well, if you look at the upper left-hand corner, the strip mining operation that I just spoke of, you'll see that as, in essence, the starting point. And from the strip mining operation, the coal was sized with a crusher to a nominal 2 inch, or what they refer to as a 2-by-0, and it went one of several places. You'll see just below that there is a live cold storage, and then there's a dead cold storage stockpile.
Q Let me stop you right there and ask a couple of follow-ups.

You mentioned the crushing process to the 2-by-0 size.

To your knowledge, from 1998 through 2005, was the coal ever separated from rock or other impurities during that breaking process?

A No. The quality control program that they instituted, it pretty much took care of the issue in terms of separation so that that separation was occurring in the mining operation itself, so that it was segregated, the overburden material was substantially removed at the -- at the strip mining operation.

Q So it's accurate to say that all they did was take the coal that came from the mine and crush it into smaller size?

A Yes.

Q Now, you started to explain what's listed on here as live and dead storage stockpiles.

Can you explain the difference between those two briefly?

A Well, there were a number of stockpiles that were created that could be drawn from of different qualities of coal so that -- so that the coal could be blended for ash, it could be blended for Btu content or energy content, and a number of other parameters. So

they maintained a dead stockpile that they could draw from.

The live cold storage was the coal that was actually being delivered to the -- what they refer to as the weigh tower, where they did the sampling and the weighing of the coal for contract purposes.

Q And where was that weighing and sampling done?

A If you move to the right of the diagram, you'll see a sample and check weighing notation. That was the weight tower, and that was where the coal was weighed to establish the contract tonnage.

Q And was the coal ever weighed or sampled for the billing or contract purposes again in the process at any point?

A No, not to my knowledge.

Q What happened to the coal after it was weighed and sampled?

A It was transferred via conveyor into raw coal bins at the -- within the prep plant that was operated by Black Mesa Mine.

Q And then what happened from the raw coal bins?

A It was crushed -- again, it went through what

they refer to as a primary crushing circuit, so it was crushed down to a nominal quarter-inch size.

After that crushing process, water was introduced and the coal entered a piece of equipment called a rod mill, where it was crushed even further and sized -- well, it was crushed down even further, beyond the quarter-inch, so that there were a number of size fractions that were much, much finer than that and so that they could get the size consistency necessary to transport it via the pipeline.

Q So at this point is it accurate to say that the only difference in the coal as it was at this point from when it came out of the mine itself was just the size differential?

A The size differential and the fact that water had been introduced.

Q But the character or the nature of the coal itself had not changed at all at that point?

A No.

Q Now, why did they pulverize the coal in this way? What was the purpose of that process?

A The purpose of that was ultimately to provide a material that could be transported or pumped via positive displacement pumps in the pipeline.

Q And in what form was the coal when it went into the pipeline?

A It was -- again, there are size parameters called out in the contracts, so that it had a certain size fraction -- again, that was described in the contract -- that was maintained for pumpability of the coal so that it did not settle out and plug the pipeline.

Q And when it went through the pipeline, was it in slurry form?

A Yes.

Q And what did the slurry look like?

A The slurry was basically a 50-50 mix of coal and water by weight, so it basically looked like fine particles of coal suspended in water.

Q And approximately how long did it take the coal to reach the Mohave plant once it entered the pipeline?

A From the time it left the prep plant to the time that it arrived at the Mohave Generating Station was approximately 72 hours or three days.

Q And when it arrived at Mohave, where did it go? Where did the slurry go?

A It would go one of two places. It would either go into what was referred to as the burn tanks,

which were large storage tanks that contained agitators to keep the coal slurry in suspension, or it went into storage for later use at the power plant.

Q And the active storage tanks, the ones that were being used, what happened when the coal left those active storage tanks?

A The coal was pumped from the burn tanks or the active storage tanks through a loop, and the loop supplied 20 centrifuges per unit, and the purpose of the centrifuge was to separate the coal and water -- or separate the water from the coal. Excuse me.

Q And what happened after the coal particles went through the centrifuge?

A After it went through the centrifuge, the dry coal or the -- the water was mechanically removed via centrifuging. That was referred to as a coal cake, which contained nominally about 25 percent moisture. That coal was discharged from the centrifuges into coal pulverizers so that the coal was ground even further. And you can think of the pulverizer as a very large mortar and pestle, if you will. So it had grinding wheels within it, so it was pulverized even further.

Hot air was also introduced for conveying the coal pneumatically through the pulverizer, ultimately

discharging from the pulverizer into the burners to be combusted in the furnace.

Q What happened to the water that was -- that was removed from the coal and the centrifuges?

A The water that was removed from the -- via the centrifuges, that water, which was referred to as centrate, which still contained some suspended coal particles, a very small amount of suspended coal particles, it was transferred to a piece of equipment called a clariflocculator. And that -- that name is basically a combination of a clarifier and flocculation. Okay.

So that that ultrafine material, which was much lighter and would essentially float, was agglomerated in particles that would ultimately settle out, and that material, which was referred to as underflow, was pumped back into the boiler and actually into the burner fronts and combusted in the furnace. Excuse me.

THE COURT: I'm going to stop you right there.

We're going to go ahead and take our break for the evening at this time. It's a good place to take a break.

FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

THE HONORABLE JAMES T. RUSSELL, DISTRICT JUDGE

--oOo--

SOUTHERN CALIFORNIA EDISON,	)	Case No. 09 OC 00016 1B
	)	
Plaintiff,	)	Dept. No. I
vs.	)	
	)	
THE STATE OF NEVADA, EX REL. DEPARTMENT OF TAXATION,	)	
	)	
Defendant.	)	

TRANSCRIPT OF PROCEEDINGS

TRIAL

DAY 2

Wednesday, January 22, 2014

CERTIFIED COPY

Reported By: DAWN BRATCHER GUSTIN, CCR 253, RPR, CRR
California CSR 7124
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THE WITNESS: Thank you.

BY MR. WARD:

Q Now, yesterday there was some question about the role that SCE had in that agreement and I just wanted to ask you, did SCE have any contractual rights under that agreement?

A Yes, they did. They were a third-party beneficiary.

Q And I believe there was also some question about the components of the delivered price of the coal under the Amended Coal Supply Agreement, which is Exhibit 41, and I'll direct you specifically to page, Bates page 577. We looked at that yesterday. Could you describe those components for the Court?

A Yes, there are two components to the delivered price of the coal. One is the mine price which was the price that Peabody charged to deliver the coal to the prep plant and then there was the transportation component which Peabody contracted with Black Mesa Pipeline and that component covered the costs associated with the transportation of -- from the Black Mesa Mine to the Mohave Generating Site.

Q Thank you. And let's touch briefly -- yesterday there was a question about the use of natural

gas in Mohave. First let me ask you, were you present for Mr. Smith's testimony yesterday?

A Yes, the latter portion of Mr. Smith's testimony I was in the courtroom.

Q Okay. And do you recall him being asked during cross-examination whether Mohave burned any natural gas?

A Yes, I do.

Q And let me ask you, was Mohave capable of burning natural gas?

A Yes, it was.

Q And did it in fact burn natural gas?

A Yes, it did.

Q And how so?

A Natural gas was used as what was commonly referred to as a start-up fuel so that you can think of it as preheating, if you will, to get the steam generators up to temperature and actually producing steam to a limited extent so that when it was firing gas during the start-up sequence, its output could be approximately a hundred megawatts.

It was also used as an ignition fuel to ignite the coal. The coal was blown into the boilers, but it needed an ignition source to start the coal

combustion process and then it became self-sustaining so that the igniter gas was then backed out or turned off, if you will, and -- once the coal flame front was self-sustaining.

Q And did there ever come a time in the life of the plant where it was permitted to burn natural gas in more ways than just as a start-up or an ignition fuel?

A Well, it was recognized as part of the overall negotiating process for the renewal of the water supply contract to the plant. That water supply contract was extended in 1993. And as part of that water supply contract, and this was the contract to draw water out of the Colorado River for plant cooling purposes, as part of that contract there was a termination contract with the Department of the Interior who oversaw the distribution of the Colorado River water among the various western states.

That termination provision when the contract was renewed in 1993 had a provision in it that limited use of natural gas to 15 percent of the total heat input so that if any other fuel source besides Black Mesa coal was utilized, it could trigger a termination of that water supply contract or the ability to draw water for plant purposes.

And in addition to that, in the later years of Mohave's operation, there were increasingly restrictive emissions limitations on the plant, air emissions, so that about 2001 the Mohave co-owners worked with the Department of the Interior, the Navajo Nation and the Hopi Tribe to increase that input through natural gas beyond 15 percent to a maximum input of 30 percent so they could do what was referred to as co-firing, both natural gas and coal.

Q And what does co-firing mean in the context you have just described?

A Co-firing means that you are combusting both natural gas and coal at the same time. And that was an operational strategy, if you will, to increase the output of the plant while maintaining or decreasing the air emissions that were limiting the plant's output.

Q And why would that be beneficial for Mohave?

A One, it would be beneficial because there were times that the output of the plant was significantly restricted due to air emissions, reaching the air emissions limitations strictly burning coal so that if the coal were backed out and natural gas was substituted up to a certain point, you could increase the output while maintaining similar or lower emissions and staying

within the emissions limitations imposed by the Nevada Department of Environmental Protection.

Q Thank you, Mr. Phelan.

MR. WARD: I have no more questions, Your Honor. At this time I would tender the witness for cross.

THE COURT: Ms. Session, cross?

MS. SESSION: Thank you.

Your Honor --

THE COURT: Excuse me.

While she's getting ready, I guess one question I have, where did the natural gas come from for the Mohave plant?

THE WITNESS: The natural gas for the Mohave plant, there was a contract that was with Southwest Gas. Where Southwest Gas acquired that natural gas, it could be from a variety of sources.

THE COURT: Okay.

THE WITNESS: I don't know specifically.

THE COURT: Okay. But it was directly in relationship to I guess Southwest Gas, a Nevada supplier; is that correct?

THE WITNESS: That's correct.

THE COURT: Ms. Session.

MS. SESSION: Thank you, Your Honor.

Before I start questioning Mr. Phelan, Mr. Phelan was deposed twice, April 5th, 2013 in Reno, Nevada and the 13th of May, 2013, and I would like to offer those -- that deposition testimony as our exhibits -- our next exhibits.

THE COURT: Any objection?

MR. WARD: Your Honor, I'm not sure. We have the witness here. I think she could use those for impeachment purposes.

THE COURT: Well, yes, generally you cross-examine them with -- and if you impeach them you impeach them with the depositions and that, so let's see where we go with his testimony in respect to that and then you can offer them for impeachment purposes or any purposes like that if you feel necessary.

MS. SESSION: Okay. I was thinking that it might be more efficient to put them in ahead of time, but I can certainly do that, thank you.

THE COURT: That's the normal way you do it, so...

MS. SESSION: All right.

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CROSS-EXAMINATION

BY MS. SESSION:

Q Good morning, Mr. Phelan. How are you today?

A I'm fine, thank you.

Q So you testified earlier about the water contracts with the Colorado River Commission and the Department of the Interior.

A Yes.

Q And generally speaking Southern Cal Edison had an agreement to purchase coal from Black Mesa in exchange for the Colorado River water from Mohave; is that generally correct?

A There was associated with the original water contract and the 1993 extension of that water contract that I just mentioned, there was what was referred to as the termination contract, so that unless a waiver were sought and granted specifically from the Department of the Interior to use any other fuel source other than Black Mesa coal to the extent called out in the contract, so that as I mentioned previously there was in that termination contract, there was language in there authorizing use of natural gas up to 15 percent of the heat input, but if any other coal source were used other than Black Mesa coal, it would trigger a termination

provision unless a waiver were granted.

Q And that 15 percent use of natural gas, was that sufficient to act as a primary fuel source for the generation of electricity?

A No, it was really a supplemental fuel source. However, Mohave from its inception was actually designed to operate or it had dual fuel capability, so although it was never done, the equipment existed to allow Mohave to burn full load with natural gas exclusively.

Q And wasn't it during the deposition your testimony that if anything but Black Mesa coal was burned at Mohave that you risked terminating receiving the water from the Colorado River?

MR. WARD: Your Honor, could I just have her direct the witness to the testimony she's referring to?

THE COURT: What page and what deposition? Obviously there are two dates that you had.

MS. SESSION: Yes, it's the April Reno deposition and it would be pages 12 to 13 in the --

THE COURT: Okay. What page, do you know?

MS. SESSION: What page? Page 12 to 13.

THE COURT: Page 12 to 13. Thank you.

MR. WARD: I'm not sure the witness has a copy, Your Honor.

THE WITNESS: I don't.

THE COURT: I don't think he needs a copy until for impeachment purposes. So he can answer the question and if he wants to answer the question and he disagrees, then she can show it to him and have him explain his differentiation in the testimony, so...

MR. WARD: Thank you.

THE WITNESS: Could you restate, please?

BY MS. SESSION:

Q So I believe your testimony in the deposition was that, that the coal for Mohave had to come from Black Mesa, otherwise the supply of Colorado River water going to the plant would terminate.

A Yes, unless a waiver were sought and granted.

Q Right. And who had to sign the waiver?

A The Department of the Interior in their role as the entity that oversaw the coal leases. The original water supply agreement, one, wanted to motivate the Mohave owners to utilize Black Mesa coal, and this dated back to the early 1960s. They wanted the Mohave co-owners to use that fuel source for a source of revenue for both the Hopi and the Navajo, so they substituted that waiver provision that would terminate the water supply contract and terminate the plant's ability to draw

water from the Colorado River for cooling purposes.

Q In -- During that period in 1998 to 2000, could the Mohave Generating Plant have operated without the Colorado River water for cooling purposes?

A No, it could not have.

Q I'm going to ask you to look at the document that's in the binder as Defendant's Exhibit 83.

A I don't have that book here.

Thank you.

Q Is that the contract that you were talking about during your deposition?

A The contract I was making reference to was the extension of this contract. This contract is the original 1966 Water User Contract.

Q Can you look at page 10, 14A in that original contract?

A Yes. Yes, is that 6040?

Q Yes.

A Okay. I have it.

Q And so that 14A provision, is it your understanding that that provision is what required Southern Cal Edison to use the coal from Black Mesa Indian reservation in order to receive the Colorado River water?

A Yes, you are referring to 14A.

Q 14A.

A The fuel supply. Yes, that is my understanding. And further towards the bottom of that page in that same clause, 14A, it says, "Provided that natural gas may be used for emission purposes at any time."

Q All right.

A And during emergencies, again trailing over to page 11, substitution of other coal or gas fuel for Black Mesa coal can be done. In such event the secretary would be notified.

Q To your knowledge did that ever happen during the 1998 to 2000 period, that there was a substitution for Black Mesa coal either by natural gas or some other source of coal?

A Other than ignition and start-up gas, I'm not aware of any situation where that occurred.

Q And how about till 2005?

A There was some discussion, as I mentioned, and negotiations did occur with the Department of the Interior to increase the amount of gas burned to 30 percent to allow for co-firing, which I just described a moment ago.

Q Yes.

A But, yes, that was done and that was negotiated in 2001.

Q All right. So for the cooling water for Mohave, how much water did Mohave use from the Colorado River for cooling purposes per year?

A It was dependent on the amount of time that the plant operated and at what load, but generally speaking the water drawn from the Colorado River was approximately 14,000 acre-feet.

Q And yesterday there was some testimony about the coal slurry and water for the coal slurry. That was a separate water source?

A The water that was referenced in regards to the coal slurry came from deep water wells at the Black Mesa Mine. That water was used to transport the coal through the preparation plant and to the Mohave site. That water was recovered to the greatest extent possible and it was recycled in the plant water processes for cooling and other purposes.

Q So the water used for the coal slurry was not only used for transporting the coal, it also had uses at the Mohave Generating Plant?

A A portion of it did. What was recoverable.

And roughly speaking through the process within the plant where the coal slurry was centrifuged to remove the water, only a portion of that water was recoverable for recycling in other plant processes.

Q And how much of that was used per year in the plant?

A The Black Mesa -- or, excuse me, the water that came with the slurry --

Q Yes.

A -- or with the coal?

Q Yes.

A It was approximately 4,000 acre-feet a year.

Q All right. And the water that was recovered from the slurry, how was it used at Mohave?

A It was used for primarily plant cooling.

Q And was it approximately 20 percent of the water used for that purpose?

A The total water recovered that was, was approximately 50 percent of that 4,000 acre-feet that was used to transport the coal. The rest of it was lost through the combustion process because it could not be removed from the coal cake or was otherwise combusted to steam vapor within the steam generators.

Q So what was the proportion of Colorado River

water used at Mohave compared to the proportion of the recovered coal slurry water?

A Well, as I mentioned, it was approximately 14,000 acre-feet that was withdrawn from the Colorado River and then the recoverable portion of the water used for transportation of coal was approximately 2,000 acre-feet. So of the roughly 16,000 acre-feet that went into the water processes at the plant for cooling and other purposes, about 2,000 acre-feet.

Q And isn't it true that the water was included in the price that Edison paid for the coal slurry and water that was delivered to Mohave?

A The water was actually provided by Peabody to Black Mesa for the purposes of transportation of the coal to the power plant. That water was obtained by Peabody from deep water wells on the coal leases. So the price that was paid for that water was part of the overall royalties paid and it was part of the royalties that were paid by Peabody to the Navajo and the Hopi. And then the owners reimbursed Peabody for that water.

Q You had testified earlier about the Coal Supply Agreement that sets out the price as the mine price and the transportation price.

A Yes.

Q And would that be included in the mine price for the coal?
A Yes, it would.
Q Could you please look at Defendant's Exhibit -- is it 9?
MS. NICHOLS: 91.
BY MS. SESSION:
Q 91.
A I have it.
Q All right. And could you look at E and F at the bottom of the page? Oh, I'm sorry, it's page 2, Bates stamp page 6109.
A Yes, I have it.
Q All right. And that references the requirements that the co-tenants use the coal mine from Black Mesa for Mohave; is that correct?
A Yes, it does.
Q All right. And then F, "The U.S. has determined there is a need to continue this requirement so long as the co-tenants use Colorado River water at the Mohave Generating Station." Is it your understanding that this requirement continued on during the period at issue here, 1998 to 2000?
A Yes, it is.

Q Okay. All right. Now, if you look at the next page, which is 6110, can we look at 5A?
A Yes, I have it.
Q And does that also state that Mohave's required to use the coal from the Black Mesa area on the Indian reservation?
A Yes, it does.
Q And does it indicate in there that that has to be used as the primary fuel supply for the Mohave Generating Station?
A Yes, the third line down it references primary fuel supply for the Mohave Generating Station.
Q All right. So even if there were other coal sources available at the time in that 1998-2000, Southern Cal Edison would have been obligated to buy from the Black Mesa Mine; is that correct?
A Unless a waiver could be negotiated and granted by the Department of the Interior or, I believe, the emergency provisions still were part of this overall agreement so that if Black Mesa could not deliver for whatever reason, there were alternatives that they could use an alternative fuel supply.
Q But again your previous testimony was that at least 1998 to 2000 that never occurred?

A No, other than the use of natural gas for start-up ignition and up to 15 percent of total heat input.

Q During your direct testimony you stated in the testimony that the Coal Supply Agreement, that the term "coal" was used but not the term "coal slurry" product; was that your testimony?

A Yes.

Q And do you have Exhibit 41? Do you have the -- that would be in Southern Cal Edison's binder. Could you look at Bates stamp page 569?

A Yes.

Yes, I have it.

Q Okay. This, this is the Amended Coal Supply Agreement?

A Yes, it is.

Q And does it state there that Southern Cal Edison took title to coal slurry and water?

A Yes.

Q So not just coal, correct?

A It says, "Coal, slurry and water."

Q All right. And then if you could go in that same document to the Bates stamp page 577.

A I have it.

Q All right. And I think it states there that the mine price is the price -- What does it state what the mine price is?

A The mine price in section 6.01, subpart A, the mine price which is the price of the coal delivered to the coal slurry preparation plant at seller's Black Mesa Mine.

Q Okay. So the word -- the term "coal slurry" and "coal slurry preparation plant" are part of the contract, correct?

A Yes, they are.

Q And isn't the coal slurry plant the place where the coal was turned into a coal slurry?

A It was processed and sized to prepare it for transportation as a coal slurry.

Q In your earlier testimony, previous testimony you had referred to the pipeline agreement, but isn't the agreement actually titled the Coal Slurry Pipeline Agreement?

A Yes, it is.

Q So if you could turn to Bates stamp page 568 in the Amended Coal Supply Agreement.

A Okay. I have the page.

Q And isn't it the -- a part of that agreement

that Peabody would supply all the requirements of coal for Mohave?

A Yes. If you refer to the bottom of page -- the previous page, Bates stamp 567, section 3.01 where it says "quantity," basically that first sentence states that it shall be the total fuel requirements excluding ignition fuel of the first two generators -- units at the Mohave Generating Station.

Q And is your understanding that this agreement covered the period through 2005?

A Yes, it did.

Q So I want to talk a little bit now about processing the coal. You testified that after Peabody extracted the coal that they sized the coal. Can you describe how that occurred?

A They described -- Excuse me. They sized the coal using a crusher to what was referenced and it was a nominal 2-inch diameter or it was commonly referenced as a 2-by-0 coal.

Q And is that a form of processing the coal? Does the coal ever come out of the ground at a 2 by 0?

A No, typically when it's mined from, as part of the strip mining process, it's in much larger pieces than that, so it's sized to a uniform consistency and

that size, at least in, in the mining process at Peabody, was to take it to a nominal 2-inch size.

Q Is that considered a processing of the coal?

A No, it's really a sizing.

Q Sizing?

A Yeah, it's sizing.

Q All right. And you don't think sizing is any type of processing?

A It, it really isn't processing. It doesn't change the coal in any way other than just reduce the size of the pieces of the coal.

Q I have a couple of terms I'd like to ask you about. After it's been sized, is it still considered raw coal?

A Typically it was considered raw coal and that was also referenced in some of the process flow diagrams where you would see coal or raw coal used.

Q And can you tell me what -- There's another term "run-of-mine coal." Is there a difference between raw coal or run-of-mine coal?

A It would be very similar. Run-of-mine would be typically as it's mined from the pit and -- but it could be used interchangeably because raw coal would be substantially the same thing.

Q Then I have another term, "rail coal." Can you tell me what rail coal would be?
A Not specifically, no, I'm afraid I can't.
Q All right. Well, is there coal that is transported by rail?
A Certainly there is.
Q And was there coal being transferred from the -- to the Navajo Generating Station as rail coal from Black Mesa?
A Yes. The actual leases that were operated by Peabody contained two mines, the Black Mesa Mine and the Kayenta Mine. The Kayenta Mine the coal was transported from the mine to a railhead and there was a dedicated rail system that transported the coal from that railhead to the Navajo Generating Station which was a plant whose operating agent was Salt River Project.
Q And, if you know, would the rail coal, would it be crushed to the 2 by 0 or would it be loaded differently?
A That I don't know what size it was delivered to the railhead at.
Q So once the coal has been crushed to the 2-by-0 size, if it was transported in that form to Mohave, would Mohave be able -- would they have the means

to process it to a point that it could be burned at the generating station?

A No, they would not. The, the coal would have been delivered -- if it, hypothetically if it were delivered by rail in a 2-by-0 size, Mohave had no dry coal handling facilities at the site so they couldn't even accept the coal and the systems that existed at the Mohave site were designed to accept coal in the form of a slurry.

Q All right. Can you tell me when the decisions were made to transport the coal by slurry?

A Not specifically, no. That was very early in the conceptual design of the process or of the Mohave plant which occurred in the early 1960s, so I don't really have much direct knowledge in that regard.

Q In your deposition I think that you said that there was a lot of testing that needed to be done to determine the proper grinding that needed to be done with the coal to create the slurry. Do you recall that testimony?

A Yes, I do. That was done because the size consistency had to be within a certain range to prevent the coal from settling out as well as maximizing the amount of coal that could be delivered to the power

plant, but there were also a number of factors. And that's not an area of my expertise, but I do believe we have a witness that can testify further in that regard.

Q All right. Is it -- Was it your understanding that a coal slurry pipeline, the transportation methodology was chosen because it was economic for Southern Cal Edison?

A Yes, economics were certainly a driver when they considered that option as opposed to transport to the Mohave site via a rail system. At that time a rail system simply didn't exist in the Mohave Valley from Needles up to the power plant site at Laughlin and there was only, I believe only one rail line that operated in that area of Arizona. So -- which would have prohibited other freight traffic from utilizing that same rail system, so they were certainly looking at alternatives.

Q And so is it fair to say that the, that the Black Mesa coal slurry preparation plant and the pipeline were developed to meet the needs of Southern Cal Edison in terms of transporting the coal?

A Yes.

Q And was it the slurry transportation, I think is what you just testified to, determined to be less expensive than possible rail transportation?

will settle out and plug the line. But, furthermore, the coal, when it arrives at the Mohave power plant, it also has to be a size consistency so that it can be pumped to be delivered to the coal dewatering centrifuges and then on through the coal pulverizers and combusted in the furnace. So it's necessary for the design of the plant, but it doesn't add value to the coal itself.

Q Did it make it into a product that can be used by Mohave?

A It makes it into a coal that can be used at Mohave that is compatible with the design of the Mohave power plant.

Q And isn't it created specifically for Mohave, the coal slurry, and isn't it true that it couldn't be used at any other power plant?

A The coal could be used at any other power plant.

Q But the coal slurry -- the -- Mohave took title to coal, slurry and water at the pipeline. If Mohave didn't take title to that product that came out of the pipeline, could it be used in another generating station?

A If, if the coal were delivered in the form of a coal slurry, a 50/50 coal-water mix to a conventional

dry coal power plant, the equipment for handling that simply wouldn't exist at another conventional power plant that accepted coal in dry form. So, no, it could not be used.

Q So this coal slurry preparation was prepared specifically for use at Mohave?

A It was prepared for use at Mohave.

Q And this pipeline slurry setup at Mohave 1998 to 2000, that was a unique setup, wasn't it?

A I'm not sure what you are referring to, unique setup.

Q Were there any coal-fired plants in existence at the time that used a pipeline delivery system or a coal slurry delivery?

A None that I am aware of. There was a plant that was in operation prior to Mohave that used coal slurry, but it was a much smaller plant and it was the test facility that the Mohave design was based on.

Q But at the time were there any other coal plants operating with a slurry preparation?

A Not that I'm aware of.

Q So at the coal slurry preparation plant, it was your indication that, during your deposition that the addition of the water to the coal washed out some of the

impurities?

A As the coal was, as the coal traveled through the coal preparation plant, it was crushed down to a finer consistency so it was crushed down to a minus-quarter-inch nominal size and then further ground in rod mills which sized it down even smaller. As a result of that crushing process and separation process, there were classifiers that were used to separate the material by gravity and some of that material was returned to the rod mills for further crushing. As a result of that process, some of the ultra fine material, there were noncombustibles in that that were ultimately removed. It was a very fine clay type material that was primarily very high ash.

Q And wouldn't you agree that the removal of those impurities improve the quality of the coal as fuel?

A To an extent it did, yes.

Q The processes that took place at the coal slurry processing plant, would you characterize those as coal processing and not part of the mining process?

A It was really to size the coal to a consistency that met the specifications necessary to pump the coal without it settling and without undue erosion of the coal slurry pipeline. That was the primary

objective, was to get it in a form where it had the right consistency in terms of density. By weight it was basically a 50/50 coal-water mix and then it had the appropriate size consistency that it could be easily pumped from the mine to the power plant.

Q I want to take a minute and talk about the quality control program. I think it's your testimony that there's testing that was done prior to the coal arrival at the coal slurry preparation plant; is that correct?

A That's correct.

Q And what was the testing that was done at that point?

A Well, there were a number of tests done, but prior to the coal entering the coal slurry or the raw coal storage tanks, at the beginning there were -- associated with the coal slurry preparation plant there was a weighing process and an analysis process. Peabody and the owners contracted an independent testing lab to do, essentially continue a sampling or samples every two hours to assure that the coal that was being sent to the prep plant met the specifications, and that was also part of the analysis that went into the -- or contractual specifications, let me put it that way, so that the coal

was weighed at that weigh tower. That determined the contract tonnage by contract that Peabody delivered. It was also analyzed so that the owners could be assured that it met contractual specification as far as its overall quality.

Q And that had to do with the ash content?

A It not only had to do with ash content, there were limitations on the amount of sulfur that could be contained within the coal. There were limitations on ash and there was a minimum Btu content or energy content that was specified in the coal slurry or the Coal Supply Agreement.

Q After that testing was done, was there any further testing that was done on the coal?

A There was testing done, but not for contractual purposes. When the coal was received at the power plant, it -- as I testified previously it went to one of two places. It either went directly into the, what we'll refer to as the burn tanks and it was immediately burned in the steam generators at Mohave or it went into storage. So there was ongoing analysis at the power plant for operational purposes of the power plant to assure that the coal being delivered was of a certain Btu content and that other parameters were also

checked in terms of ash and in terms of pH.

Q Were there -- Was there testing done for sizing?

A There was testing done for sizing at the power plant and that was, the objective there was to maximize the efficiency in the water removal through the centrifuges so size fraction was a consideration operationally.

Q And so at that point the issue with the size fraction didn't have anything to do with the transporting the coal?

A No, it was strictly for operational efficiency and reliability within the power plant.

Q I just have a couple questions and kind of back to this being a unique coal slurry water product unique to Southern Cal Edison's needs. If Mohave had used rail coal, would they have needed the 6-million-gallon storage tanks with the paddle agitators to receive the coal?

A No, they would not have.

Q And how many of those 6-million-gallon storage tanks were located at Mohave?

A There were four. And they were actually -- they contained -- they each contained 6 million gallons.

In addition to that there was also storage elsewhere on the power plant property.

Q And were those the ponds?

A Yes. They were commonly referred to as Marcona ponds.

Q Marcona ponds?

A And each one of those, there were eight of them, each one of those contained approximately 80,000 tons of coal.

Q And the Marcona ponds, would that be coal still in the slurry or still in water?

A Yes, it would. It was actually stored -- well, it actually settled out to a point, but when it was brought back in and sent to the burn tanks, it was reslurried so that it was the appropriate consistency to run through the burn tanks and into the Mohave process.

Q Then I think you testified that there were centrifuges?

A Yes, I did.

Q And if Mohave used rail coal they wouldn't have needed centrifuges; is that correct?

A No, they would not have.

Q And how many centrifuges did they have?

A Each unit had 20 centrifuges and they were

arrayed so that two centrifuges supplied a single coal pulverizer and there were ten pulverizers.

Q And so how many were there? I'm sorry.

A Ten coal pulverizers, 20 centrifuges per unit for a total of 40 centrifuges.

Q And if they, Mohave had used rail coal, would they have used -- needed a clarifloculator?

A No, they would not have.

Q And was there just one clarifloculator?

A No, there were two.

Q There were two. And so this equipment, this six -- the storage tanks and the centrifuges and the clarifloculators, were they specifically designed for Mohave to receive a -- the coal slurry and water that they received?

A Yes, they were.

Q All right. And were they unique to Mohave? Were you aware of any other generating plant that had that type of equipment?

A No, other than the plant I mentioned where the -- that was the test bed for Mohave, no.

Q And we already established that wasn't operating in that time period?

A I do not believe it was, no.

Q Yeah. And conversely Mohave, they didn't have the capacity to handle run-of-mine coal at the Mohave plant, did they?

A No. That would have really required a dry coal handling facility which Mohave did not have.

Q All right. And who, who determined -- How was it determined how fine the coal had to be ground at the coal slurry preparation plant? Who determined those specifications?

A That was actually the responsibility of Black Mesa Pipeline. Again, I'm not an expert in that area.

Q Right.

A But we do have a witness who is and was involved in the testing process and the sizing process.

Q Can you tell me what an inhibitor is?

A I'm not sure what you are referring to.

Q Well, let's look at the Amended Coal Slurry Pipeline Agreement. Well, let's start with the original, I'm sorry, original Coal Slurry Pipeline Agreement which is Exhibit 42 and we'll look at Bates stamp page 548.

A Yes, I have it.

Q So actually starting on page 547, do you see where it references material?

A Yes, I do.

Q And then under material there's a material on 548 called sodium bichromate?

A Yes.

Q Are you familiar with sodium bichromate?

A I'm familiar with sodium bichromate, yes.

Q What is that?

A Sodium bichromate very early, it was used as a corrosion inhibitor, okay, so it prevented corrosion from occurring in the pipeline. However, sodium bichromate, the chromium content of that subsequently became an environmentally hazardous material so it was no longer used and they substituted a material called sodium tripolyphosphate and that was used as a corrosion inhibitor periodically on the pipeline to prevent corrosion from occurring when there were pH excursions within the pipeline, but it was not used on a continuous basis.

Q So is that -- the sodium bichromate, is that an inhibitor?

A Yes, it is.

Q All right. So when it was used -- Well, first question. Was it part of the price Southern Cal Edison paid for the coal slurry and water that it received at Mohave?

A If it was used during that time, and, again, this is the original agreement which predates my employment with SCE, but if it was used at that time to periodically run through the pipeline to prevent corrosion from occurring, it would have been charged accordingly as part of the transportation cost and that Black Mesa charged for transportation.

Q Right. And if I remember correctly, the transportation charges were part of the delivered price for the coal slurry and water?

A That's correct.

Q Was corrosion in the pipeline a problem?

A It was certainly a concern. Again, if there were pH excursions that could potentially create corrosion on the inside diameter of the pipeline as it was in operation, so periodically they ran corrosion inhibitor through it to form a protective layer to prevent it from corroding.

Q And how often did the pipeline in your experience break as a result of corrosion?

A It, it didn't happen that frequently, however, very late in the operation, which is what I'm more familiar with --

Q Um-hum.

Q And I think that you had previously testified that there's a base price included in that $18 a ton. Do you recall that?

A Yes, I do.

Q And what is the -- what does the base price refer to?

A The base price refers to the -- it actually -- Normally it's included in the invoice, but I'm not seeing it. The base price refers to the mine price that is reflected in the original contract, the Coal Slurry Supply Agreement and then it's adjusted for a variety of adjustments, say changes in labor costs, changes in materials, supplies, the royalty payments and other payments to arrive at a total mine price.

Q And so does the, does that base price correspond to the value of the coal as extracted?

A No, the mine price refers to the value of the coal as extracted and as agreed to contractually by, between Peabody and the Mohave owners. So it would incorporate those adjustments in cost to arrive at the, at the total mine price.

Q Okay. And so when we're talking about $18 a ton --

A Um-hum.

Q -- it includes more than just the value of the coal in that $18 a ton?

A It includes the cost of extraction of the coal and delivery to the prep plant.

Q And on this page the coal delivered and the $18 a ton, that just refers to the mine price part of the overall delivered price of the coal slurry and water that's delivered to Mohave; is that correct?

A It -- the mine price refers to the cost for extraction of the coal and delivery to the prep plant. The transportation cost refers to the cost associated with Black Mesa's coal prep plant and transportation to the power plant.

Q And I'm just trying to clarify that on this invoice it says, "Coal delivered."

A Yes.

Q And it has a -- that $18 a ton?

A Right.

Q So that's the coal that is delivered to the coal slurry preparation plant; is that correct?

A Again normally, although I'm not seeing it in this particular invoice, there is a summary sheet that further describes.

Q Right. Well, is it at 1252?

A Yeah, that's what I'm --
Q Is that what you are looking for?
A Hang on just a moment.
Q I tried to find one that was legible.
A Yes.
Q Can you read that one?
A Yes, I can, most of it.
Q So we're looking at Bates stamp page 1252?
A Yes, we are.
Q And what is that?
A That's a summary of the computation of the various components that make up the mine price. So if you look at the left-hand side of the page approximately five lines down, you'll see contract tonnage which is $471,712 which is the contract tons that were delivered to the prep plant which again appears in the first line on Bates stamp 1251.
Q Okay. And then two lines down from there it has the initial mine price. Is that the price that's set in the Coal Supply Agreement?
A Yes. Yes, it is.
Q And what's that price?
A I can't read it completely, but it appears to be $3.798 per ton.

Q And in your experience is that a typical mine price?

A I'm not sure what you are referring to as a typical mine price.

Q Is it standard from each invoice, that initial mine price, is it a standard amount, the 3.7?

A It's per the contract and as far as the Amended Coal Supply Agreement, yes, and then it's adjusted through a series of adjustments that you see here.

Q All right. Can you walk us through the adjustments to that mine price as it relates to the $18 a ton for the delivered coal?

A It's -- Yeah, we can, we can summarize that, but it's also summarized in the Amended Coal Supply Agreement in section 8, so it describes the various components that go into the various adjustments that you see here on 1252.

So, for example, there are adjustment factors to reflect most current labor costs associated with extraction of the coal which you see under that initial mine price.

Q Right.

A And that's to index the labor, current labor

costs as opposed to what was originally reflected in the Coal Supply Agreement in 1976.

Q Would that be the labor costs for the mining?

A Yes, it would.

Q All right. And then there -- are there sections that relate to the material and supply costs?

A Yes, but before we get there there's also a welfare component to the labor costs which go to benefits that were paid to the miners which is the next line down.

Q Okay.

A Below that you see a reference to M and S, mill factor index and component. That's material and supplies. So, again, it was origin-- originally the cost was set forth in the 1976 agreement and it was adjusted upward based on consumer price indexing to current-day values, so that was the purpose of that adjustment.

Q Okay.

A There were administrative and general costs that factored into the adjustments that were made to the base mine price. Inflation, deflation which is the next set of entries down. And then there was a component referencing law changes. So, for example, if there were any changes in law that required an added cost to extract the coal, Peabody would request reimbursement for that.

So, again, that made up part of the adjustments to the overall mine price.

Then there were taxes that Peabody was reimbursed for and then there was a capital escalator that reflected costs associated with Peabody's acquisition of major equipment to operate the mine, so trucks, front-end loaders, draglines, things like that, so that they recovered their depreciation costs. Again, another adjustment.

Below that you see the royalties and those are typically calculated on a separate page, but you see the Navajo lease, the joint use Navajo, joint use Hopi and then you see water royalties. So those are the water royalties I referred to earlier for the water from the deep wells that were supplied to the Black Mesa Pipeline --

Q Pipeline?

A -- for operation of the prep plant. Then that was tallied up in terms of total-per-ton royalties. Finally below that you see a Btu adjustment. Per the amended contract there were adjustments if -- to the Btu content. So, for example, if the coal supply did not meet the contractual specifications and the Btu content was much lower, there was a credit. If they exceeded

that point and the Btu content was higher, there might have been an additional payment from the owners to Peabody.

Q Okay.

A So that's reflected there as well.

And then the last line on that left-hand column was the black lung tax which was, I believe, imposed by federal law on Peabody and which they were reimbursed for and that was calculated as an adjustment to the mine price per ton.

Q All right. At the top of the next line --

THE COURT: Counsel, before we get started with that --

MS. SESSION: Yes.

THE COURT: -- we'll go ahead and take a short break at this time.

MS. SESSION: All right.

THE COURT: We've been going for about an hour and a half --

MS. SESSION: Yes. Thank you.

THE COURT: -- and so we'll take about a ten-minute break.

MS. SESSION: Okay. Great.

THE COURT: Court is in recess.

(A recess was taken.)

THE COURT: Please be seated.

Your witness.

MS. SESSION: Thank you, Your Honor.

BY MS. SESSION:

Q So I think we left off at the top of the next column with the ash component?

A Yes, on Bates stamp 001252.

Yes, there was an adjustment for ash similar to the adjustment made for Btu and that's reflected on a per-ton basis which adjusts the overall mine price.

Q All right. And we're still talking about the mine price?

A Yes, we are.

Q Okay. Then what's the next item there?

A The next item is the tax imposed as a result of the Surface Mining Control and Reclamation Act.

Q And was that a tax on Peabody's mining?

A Yes, it was.

Q All right. And then that's been calculated into the price per ton?

A Yes, it has.

Q Okay. And then the next item is the PIT payment?

tonnage.

Q Okay. Well, in reference to the Coal Supply Agreement in section 6 that sets the price for the delivered coal, slurry and water to the Mohave Generating Station, would this amount that we just went through be the total of the mine price portion of the delivery cost for the -- delivered cost for the coal?

A The delivered cost for the coal including the taxes that were paid, yes, it would.

Q All right. And then the delivered price of the coal also included the transportation price; is that correct?

A The delivered price included mine price plus transportation costs.

Q So the next section then, is that the transportation costs?

A Yes. You'll see a line right below the ash computation price that says, "Pipeline," and that would be the transportation charges associated with transporting the deliveries of the delivered coal to the power plant.

Q And before I ask you questions about the pipeline I just want to clarify. So the initial mine price was approximately $3.79 on this invoice and then

these items that we went through after we go through all of these items, the price per ton is now $20.96; is that correct?

A The mine price that's referenced there is the mine price per the contract in 1976.

Q Right.

A So the -- What's reflected there and the adjustments that are incorporated or added to that initial mine price reflect the current cost to extract and deliver the coal in March of 2000.

Q And that's delivery to the coal slurry preparation plant?

A Delivery to the coal slurry preparation plant.

Q Okay. So for the transportation price we don't have it itemized on this invoice, but in the contract it's split up between a demand charge and a commodity charge; is that correct?

A Yes, it is.

Q And can you tell me what a demand, what the demand charge is?

A I would need to reference the Amended Coal Slurry Supply Agreement.

Q Okay.

A Which was...

THE COURT: 43, I think.

THE WITNESS: Exhibit 43?

BY MS. SESSION:

Q Or 40-- Is it the coal supply or the -- Coal Supply Agreement?

A I'm referencing the Amended Coal Slurry Pipeline Agreement, Exhibit 43.

Q Oh, okay. All right.

And so the question was what's included in the demand charge?

A Okay. The demand charge is referenced on Bates stamp 001488. And the demand charge in the contract was a base charge of $707,086 which on Bates stamp 1488 that's line 24 or 25.

Q All right. And, and then is that based on the -- is that the charge for maintaining the capacity to transport the coal?

A Yes, it is.

Q And so that's a base charge that doesn't change from month to month; is that correct?

A I do believe that there's --

Q Adjustments?

A -- inflation adjustments because this was in

1976.

Q All right. And then the second part of the price for transportation is the commodity charge and is that based on the total, the actual tons delivered?

A It's based on the actual tons delivered. So it would incorporate operating costs associated with operating the pipeline. So, for example, the electricity cost associated with operating the pipeline to deliver X number of tons. Likewise, materials and supplies also would be part of that commodities charge.

Q And the materials and supplies is what we discussed earlier that would have included the, in the original contract it was sodium bichromate and in the amended contract the sodium tripolyphosphate; is that correct?

A That's correct.

Q And were taxes and insurance included in the commodity charge?

A I believe taxes and insurance were included -- Just a moment.

It was an operating cost adjustment, but I believe -- I don't think it was part of the commodity charge. I believe insurance and taxes were a separate line item on the invoice.

Q Okay. But it was included in the total transportation cost?

A Yes, it was.

Q All right. So in your deposition you indicated that the price for transportation would include processing of the coal from the -- transportation and processing and delivery of the coal from the mine to Mohave Generating Station, so would it include the cost of processing the coal?

A It included the cost of preparation of the coal. I don't recall specifically if I used processing, but it included operation of the coal preparation plant.

Q If I showed you that testimony from your deposition, would that refresh your memory whether you --

A Yes, it probably --

Q -- referred to processing?

A -- it probably would.

MS. SESSION: I'm going to move to admit the deposition of May 13 --

THE COURT: Well, the correct way to do it is go ahead, give it to him and see if it refreshes his memory, and if it does, then he can testify in respect to that --

MS. SESSION: All right.

THE COURT: -- and after that we'll determine whether or not we admit anything.

MS. SESSION: All right.

BY MS. SESSION:

Q If you'll have a look at page 25.

MR. WARD: Which line?

Oh, okay. Thank you.

THE WITNESS: And you are referencing line 13?

BY MS. SESSION:

Q Yeah, generally 11, lines 11 to 14, yeah.

A Yes. What I -- I did say processing. What I was referring to was the operation of the prep plant.

Q Of the coal slurry preparation plant?

A That's correct.

Q Does the coal slurry preparation plant process the coal?

A It, it -- as we -- or as I testified earlier, its primary purpose is to prepare the coal, size it so that it can be transported via pipeline.

Q And without that processing, was it of any use to the Mohave Generating Station?

A It wouldn't have been -- the pipeline would not have been able to transport it if it had not been

prepared in the coal preparation plant.

Q And obviously if it couldn't be transported, the Mohave Generating Station couldn't use it, correct?

A Exactly, that is correct.

Q So did the price for transportation also include labor?

A Yes, it did. Labor to operate the coal preparation plant as well as operate and maintain all of the equipment and operate and maintain the four pumping stations along the route of the pipeline.

Q And I -- During your deposition I think we asked you a question about the number of employees that would have been employed at the Black Mesa Pipeline and I think you gave us an estimate. Do you recall that?

A I believe I did, but I don't recall specifically what the number is or what I gave you. The number's approximately 50 employees total and a large percentage, I'm not sure of the exact percentage, work at the coal preparation plant.

Q Okay. Do you know what types of employees those would have been? Would they have been engineers or --

A They did have an engineer on staff, but mostly it was operators and technicians associated with

maintaining the equipment.

Q And then there was a business activity tax. Are you familiar with the business activity tax as it related to the price for transportation?

A Yes. The business activity tax was imposed by the Navajo Nation in order for Black Mesa to operate on Navajo reservation land.

Q And did Southern California Edison agree to pay that as part of the price of the coal slurry and water that was delivered?

A Yes, they did.

Q And finally I think there were telephone charges and trash, trash service?

A Yes, there was.

Q So what would be a typical price for the transportation costs per month?

A It would be easier if we referenced an invoice.

Q Well, if you'd like you can reference the one that we were looking at, the Bates stamp 1252.

A 1252. Yes, the total charges were in the 1.7 million to 1.8 million a month.

Q Then on this invoice was that added to the, the total price per ton for the delivered coal to Mohave?

A I'm not sure of your question.
Q Well, at the bottom there is a calculation, it says, "FOB Mohave." Do you see that?
A Yes, I do.
Q Does that appear to be adding the mine price to the transportation costs?
A Yes, it is.
Q And would that be the total delivered price of the coal, slurry and water to Mohave?
A Yes.
Q And then does that -- is that a calculation of what the price per ton was for that delivered coal slurry and water?
A Yes, $24.701 per ton.
Q All right. That is the end of my questions regarding the price. I just had a few other questions.
In your deposition you -- we discussed dedicated versus acquired coal. Do you recall that?
A Yes, I do.
Q And what's the difference between dedicated and acquired coal?
A There were three leases that coal was extracted from at the, both the -- or, excuse me, that both the Kayenta Mine and the Black Mesa Mine extracted

coal from. When the contracts were originally instituted, the coal slurry -- the coal supply contract for the Mohave plant and the coal supply contract for the Navajo plant, there were dedicated reserves that were known at the time so there was a total forecasted tonnage in those reserves and portions of that were dedicated to the Navajo Generating Station, portions of those known reserves were dedicated to the Mohave Generating Station.

As they continued to operate the mine, additional exploration within the leases was done to determine whether or not additional reserves existed. They did identify further reserves that had not yet been dedicated to one or the other of the plants. That was known as additional coal. Or if it were reserved or if those reserves were made available by Peabody to either the Navajo or the Mohave projects, it could be acquired coal. So those terms were used in the contracts. And that was the difference.

The dedicated coal was already previously dedicated as part of the original agreements that were struck between the -- between Peabody and the two plants. Acquired coal or additional coal was reserves that were found at a later date and may or may not have been reserved for future use.

Q All right. And so there was dedicated coal to Mohave?

A Yes, there was.

Q All right. The -- We -- You had testified earlier that there was rail coal that was sent to the, from the Kayenta Mine to the Navajo Generating Station, correct?

A That's correct.

Q And so isn't it true that the coal that was being mined could be sold at a state that was prior to processing it through the coal slurry preparation plant? It could be sold as rail coal?

A It could be sold as rail coal.

Q All right. Finally I just have a few questions. You had indicated that, in your direct testimony that you were involved with studies about extending the use of Mohave, correct?

A That's correct.

Q And ultimately what was the result of those studies?

A The -- In 2001 I was assigned as the project manager for what was referred to as the Mohave Continued Operation Project, and the purpose of that project was to extend the life of the plant beyond December of 2005 when

the current contracts lapsed and also an agreement had been reached to shut down the Mohave plant or prior to that time install additional pollution controls on the plant.

Q And who was that agreement with?

A There was a consent decree agreed to between the Mohave owners and a number of plaintiffs, and I don't recall them all specifically from memory, to do just that, either, one, install additional pollution controls including scrubbers and bag houses on the Mohave Generating Station to improve the air quality, or shut the plant down by December of 2005.

Q Was there a --

A So --

Q Were those lawsuits a result of -- or the consent agreement -- yeah, the lawsuits a result of some issue with air pollution related to Mohave?

MR. WARD: Your Honor, I would just object to the relevance of this.

THE COURT: Can you comment on relevance?

MS. SESSION: Yeah, in the trial statement there was a -- Southern Cal Edison's trial statement there was a statement made that the cost of coal contributed to shutting down the Mohave Generating Plant

and I'm just establishing that.

THE COURT: That there may have been environmental factors as well?

MS. SESSION: Yes.

THE COURT: It's relevant. I'll go ahead and overrule the objection.

MR. WARD: Thank you, Your Honor.

MS. SESSION: I just have a few questions since Mr. Phelan was involved in the decommissioning of the plant.

BY MS. SESSION:

Q So wasn't the primary reason for closing Mohave due to the expense of compliance with the clean air requirements?

A Well, that was a part of the reason of the shutdown, but in addition to that the overall project included the extension of the life of the plant and that meant renegotiating new contracts because all of the contracts associated with the Mohave power plant expired in the middle of 2006, so the project had a number of facets. The more immediate issue was installing the pollution controls, but in addition to that to extend the life of the plant. And to install those pollution controls the life had to be extended at least through the

end of the water agreement that was entered into in 1993 to -- which extended to 2026.

So, so there was an overall effort to both install the pollution controls and concurrent with that renegotiate extensions to the various contracts, including the Coal Supply Agreement, the Coal Slurry Pipeline Agreements, the coal leases and actually the agreements between the co-owners which also lapsed in July of 2006. So all of that was going on at the same time and it was all a part of the overall effort.

Q All right. Wouldn't you agree that the cost of installing the scrubbers to comply with the air quality standards and the Clean Air Act were a significant factor in the decommissioning of the Mohave Generating Plant?

A It was a factor, but it wasn't the only factor. Another factor and contributor was that the timing of that investment to be made. If the contracts had been extended and there was certainty regarding the fuel supply at a reasonable price, it quite possibly would have been cost effective and beneficial to Southern Cal Edison's ratepayers to extend that life because coal was such a low-cost fuel. However, as the contractual negotiations lagged on and with no resolution, the time

discover a way to put washed coal through the pipeline?

A Not a long-distance one that I know of.

Q And so you said this testing was in 2003, so prior to that time was the coal that went into the Black Mesa Pipeline washed?

A Oh, no.

Q And other than the size of the coal particles themselves, was there any difference at all in the coal that arrived at the Black Mesa preparation plant than the coal that ultimately went into the pipeline?

A No.

Q And with all this testing and the probing and things you did on the pipeline, what was the general goal of those exercises?

A Well, it was always to increase efficiency and therefore reduce costs. But the pipeline is a -- this was a one of a kind when it was built, the first of its kind. It underwent many, many changes from those early days until on, major changes such as replaced the kind of first-stage grinding at the preparation plant because it wasn't producing quite enough. I don't remember for sure, but I think they went from a hammer mill to a Cage-Pactor to feed the first stage into the rod mill. Even the valves themselves, there's plug

valves, ball valves, gate valves, some of them worked in some places, some worked in others, there were all kinds of changes, lot of changes to equipment. Even in those big pumps up there, the highest was the 1600 pounds, even changed out the cylinder size to make it work better.

Q And when you say "changes," you mean with respect to the original condition of the pipeline?

A That's right.

Q And is that unusual in your experience?

A Oh, no, that's not unusual. In fact, it's derelict if it doesn't go on.

Q Okay. And what, generally speaking what things do you do when you are designing a slurry pipeline?

A The first stage, of course, is someone comes to us and says I want to move a finite volume of this solid this distance (indicating) and I want to move this much of it a year. So that's really the basis of design.

So if it's a slurry pipeline we're looking at, the first thing we'd have to do is define the hydraulic characteristics of the slurry that that solid will produce.

Now, if it's something that we worked with before such as a copper concentrate or coal or fly ash,

we have a starting point to know what we have -- to what particle size distribution we have to grind it down to so we start from there.

And the next thing then is a, what range of concentrations can we do this at. So ultimately after that and after the tests of viscosity to find out what the, what the viscosity is going to result in across the variety of concentrations and what the concentration has to be so it would be a very narrow range, we'll come up with, all right, this volume of slurry, this volume of solids can be transported in a slurry of this concentration and that's how the pipe diameter is set because that results in a finite volume of slurry that has to be moved in let's say a year from here to here (indicating). We break that down into how many feet a minute is that and then we look at which pipe diameters will provide that velocity that we say it has to meet to maintain stability throughout the length of the pipeline.

Q And you used a couple terms and I just want to clarify for the Court their meaning.

What is a slurry concentration?

A A slurry concentration is usually expressed as the weight of solids in the weight of a unit volume of slurry. In other words, mathematically the weight of the

solids over the sum of the weight of the solids plus the weight of the water in that volume.

Q Okay. And what about flow velocity, what do you mean when you use that term?

A Well, flow velocity is the speed at which the slurry moves through the pipeline. Ordinarily expressed in feet per second. And I'd like to say another word about velocity because it's so important in the slurry line.

In a liquids line you can operate at an inefficient velocity, too low. It will work, but it's inefficient. You can also work at a velocity that's, that's too fast, again, inefficient and costly. Slurry pipelines don't have that capability. There's a narrow range where they are not going too slow and depositing out, probably plugging up, or they are going too fast and maybe causing abrasion and certainly overreaching the limits of the pressure limits on the system.

So we pick that, one of those diameters down there that will give us the velocity we want. And in case of coal it's usually about five and a half to six feet a second.

Q Okay.

A And incidentally if you look at a list of

slurry pipelines around the world, you'll find some of strange diameters like 9-inch, 7-inch or 5-inch, those are really nonstandard sizes of pipe and an ordinary pipeline wouldn't consider them. Slurry has to because that's the diameter that gives the velocity we have to have.

Q And what are particle size requirements with respect to the slurry pipeline?

A Basically it's a -- for almost any solid there is a maximum particle size that the stream can stand and a minimum particle size. Generally the heavier or denser the solid, the smaller the top size must be and the more of it, a higher percentage must be of the finer particles, and the concentration will probably also be higher than it will, say, for copper and with coal.

With coal the stream that may have maybe 1 percent of particles in there of 1/8-inch diameter, nothing bigger. About 20 percent of it has to be smaller than 45 micron, which is about two-thousandths of an inch, and then the rest ranges in between there.

Q And so is it correct to say that the particle size requirements of a slurry pipeline are a key calculation?

A Oh, yes. Yes.

-oOo-

CARSON CITY, NEVADA; JANUARY 22, 2014; 1:28 P.M.

-oOo-

THE COURT: Mr. Cunningham, I believe you're on the stand.

Mr. Ward, your witness.

MR. WARD: Thank you.

DIRECT EXAMINATION

(Resumed)

BY MR. WARD:

Q Good afternoon, Mr. Cunningham.

Before we broke for lunch, we were talking a little bit about the particular characteristics of the Black Mesa Pipeline slurry.

So just to sort of touch on that again, what were the particular size requirements for the coal in the slurry?

A It was about a 1/8-inch top size and about a .2 -- a two-thousandths-of-an-inch bottom size, 20 percent of it below that size, from 48 to 60 percent concentration.

Q That was my next question.

Now, why were those particular size and concentration levels chosen?

A Well, history has showed us that's the one that works. It's not too -- it's not too high a concentration to yield too big a loss, and it's not too low a concentration to allow the larger particles to settle too quickly.

Q Would that have been particularly important given all the various terrain that you described at the pipeline?

A That's important independent of terrain.

Q During your time working on the Black Mesa Pipeline, which I believe you testified was roughly 1988 through 2005, was there ever any other substance added to the slurry besides coal and water?

A Not the slurry.

Q And during that time was there ever any -- was it ever necessary to add chemicals to the slurry to prevent the pipeline from corroding?

A No.

Q During your time working at the Black Mesa Pipeline, were chemicals ever added to the pipeline?

A When the pipeline was laid down on water, oxygen scavenger would be added to it.

and everything is going through there."

Q So would it be correct to say that everything that came into the preparation plant went into the pipeline and that nothing was separated or lost in the process?

A That is correct.

Q Thank you.

MR. WARD: No further questions for this witness, Your Honor.

THE COURT: Cross-examination.

CROSS-EXAMINATION

BY MS. SESSION:

Q Good afternoon, Mr. Cunningham.

A Hi there.

Q I was very interested in your testimony regarding the initial creation of the coal slurry that was used in the Black Mesa Pipeline.

A Uh-huh.

Q Were you part of that process --

A No.

Q -- when they determined --

A No.

Q Are you aware of what kinds of things would

have gone into -- been in consideration at that time?

A You mean in preparing -- from the time the coal arrives at the prep plant until it leaves the pipeline?

Q Correct.

A My understanding, it was coming into a hammer mill for the initial grinding, which should take it down to about 3/8 inch by zero, and from there into the rod mill, where it's mixed with the water and ground for the final pipeline particle-size distribution.

Q And I guess my question is more in reference to how is it determined initially what the -- and I'm sorry. Is it a solution or a -- what the composition of the slurry would be that would be optimal for pumping in the pipeline?

A Thousands of tests.

Q Thousands of tests?

A And the information derived from the first coal pipeline.

Q Would there have been any kinds of -- what kinds of employees -- or what kind of training would you have to have to make that initial determination of what would -- how the slurry would be composed?

A It could be a mining engineer, a pipeline

A It was a new -- it wouldn't be unique for a coal slurry system. It was unique as a delivery system compared to other methods.

Q Were there other power plants during that period of time that received coal in a slurry from a pipeline?

A Not that I'm aware of. At least not in this country.

Q And I know you're an expert in slurry pipelines. Aren't they more commonly used in mining to take waste products away from a mine?

A In any copper mine. For instance, the last one I worked on was in Zimbabwe, Indonesia. The pipeline that carried the copper concentrate down from the mill to the pier was 6 inch. The pipeline that carried the tailings, the waste, out to separation were 36 inch.

Q But those pipelines would operate differently than how Black Mesa --

A Oh, certainly.

Q Yeah. It's --

A The hydraulics -- the hydraulics of it, they're all the same as far as the --

Q The material --

A Oh, yeah.

Q -- is different.

Also on page 3 of your report -- I'm just going to read one line -- it says:

"If the transportation mode selected had been rail or truck, grinding facilities similar to those at the Black Mesa Pipeline preparation plant would have been built at the Mohave plant instead, as with many other coal-fired generating plants."

A That is correct. Most modern coal-fired power-generating stations burn the same-size coal as Mohave burned. I think it's minus 200 mesh, almost powder, is fired into the burners. And it doesn't make any difference how that coal arrived at that plant, it's going to have to be finely ground to that same -- that same-size distribution, no matter how it got there.

So if Mohave had been built without a coal slurry pipeline, those grinding facilities at Black Mesa would have to be done at Mohave, where they would replace the de-watering system. So putting the cage factor and the rod mill up here at Black Mesa was just a case of relocating some equipment that was somewhere going to have to be used anyway.

Q Right. And conversely, had they been using dry coal, Mohave wouldn't have needed the storage tanks?

A Probably not.
Q The centrifuge, the clarifloculator, those wouldn't have been necessary?
A That's right. That had to have been rolled into the feasibility study somewhere.
Q And so you think it's fair to say that this coal slurry that was prepared by Black Mesa -- coal slurry preparation plant was uniquely suited to the fuel needs at the Mohave plant?
A Well, since the Mohave plant was designed around receiving their coal that way, it would have to be uniquely suited.
Q Right. And so would you characterize the pulverization or the grinding that's done at Black Mesa as fine pulverization?
A No.
Q Why not?
A Fine pulverization took place at Mohave.
Q So what's the difference between what was -- is it a size -- where is the line between the grinding that was done at Black Mesa and what was done --
A I don't know if it's been standardized, but it's never used in terms of coal and the size of the

pipeline. That's never considered to be pulverized.

We had worked with pulverized coal, a completely different concept of a pipeline design, using like 70 percent concentration and burn the whole thing. Nothing ever came of it yet, except in Russia where they plugged the line.

But anyway, pulverized coal is what they have down at Black Mesa. We would not -- we would not consider the Black Mesa grind to be pulverized.

Q Okay. So is it fair to say that the coal that was in the coal slurry was somewhere between the run-of-mine coal produced at Peabody and the fine pulverized --

A Well, all of them, even the pulverized coal, was run-of-mine.

Q You don't see a difference between the run-of-mine and the pulverized coal?

A No.

Q Can you put the run-of-mine coal into a burner?

A No. Just like you can't put the run-of-mine coal into the pipeline.

Q Do you ever -- you have to grind the coal to use it as fuel?

A That's correct. I should correct that to say run-of-mine-size coal into the pipeline.

Q Okay. So the grinding that was done at Black Mesa was necessary for transportation purposes. But based on the design of Mohave, wasn't it necessary for its ultimate use as fuel as well since they didn't have the grinding facilities at Mohave?

A Wasn't it necessary what?

Q So the grinding that was done at Black Mesa, the testimony has been that it was done for transportation purposes.

But based on the design for Mohave, because they didn't have the grinding facilities, didn't it meet their fuel needs as well by grinding?

A To be fair, what?

Q Didn't -- wasn't it necessary, that grinding at Black Mesa, to ultimately use the coal as fuel at Mohave --

A Of course.

Q -- because they didn't have the grinding facilities?

A It wasn't designed that way.

Q That's right. But it needed to happen for them to use the coal as fuel.

A Yes.
Q Okay. So the coal slurry preparation plant, wasn't that a form of processing the coal, the grinding?
A I think -- I think we're getting into some kind of nomenclature problem here.
I can always talk about a product of a rod mill being such and such. It doesn't have anything to do with it being changed or whatever, except ground by size.
And as far as the process goes, as far as I'm concerned, everything from the mining to the transporting by conveyor, going up to the preparation plant, that's all a process. It doesn't necessarily entail any kind of change to the material being handled. It's a handling process.
Q So -- but it is a process, the grinding?
A I guess it could be.
Q All right.
There's been a lot of testimony saying that the coal that was burned at Mohave is the same coal that was mined.
A Yes.
Q But isn't there a difference in the raw coal in terms of its ability to use the fuel? Doesn't it need to be ground first and pulverized before it can be used

as coal?

A Nothing has been taken out of it. The particles are just smaller.

Q I'm not saying anything has been taken out of it, but doesn't it have to be processed?

A It has to be ground, yes.

Q And the ground coal that can be burned as fuel doesn't exist in nature, does it?

A It does in small quantities. There's all kinds of powder that comes out of the mining and the grinding.

Q Of a consistency of a nature that you could supply --

A Not in the quantity that we could use.

Q 400,000 tons a month; is that right?

A Well, 4.8 million a year.

Q So in order for the raw coal that has been mined, doesn't there have to be some processing by humans in order for it to burn as fuel in a power plant properly?

A Well, machines don't run themselves.

Q Okay. Exhibit 105 -- I don't know if you have the exhibit binder --

MR. WARD: Your Honor, just to note for the

Are you aware of any source of natural gas in Nevada, during that period 1998 to 2000, that was used to generate electricity to a power plant in Nevada?

A There are gas-fired power plants in Nevada, yes.

Q From 1998 to 2000?

A Yes.

Q And were they using gas from Nevada?

A I don't know where they were getting the gas.

Q And then the geothermal -- is it your understanding that geothermal operations are vertically integrated and that the steam directly produces the electricity?

A I don't know what you mean by "vertically integrated," but, yes, the hot water that comes out, or steam, is used to generate electricity.

Q And are you aware of any transaction in between the steam being generated and the generation of electricity, any kind of buying or selling of the steam that's generated?

A Buying and selling of the steam before it's generated the electricity?

Q Yes.

A I don't know if that's occurred or not. I

think in general it's not, but maybe there's some examples where a different owner owns the geothermal well than owns the steam turbine. I don't know that.

Q But you're not aware of any specific examples in Nevada of that happening, are you?

A No. I don't know one way or the other when I say no. I'm not aware.

Q Okay. What's the difference between run-of-mine coal and rail coal?

A Run-of-mine and what?

Q Run-of-mine coal and rail coal.

A Oh, and rail coal.

Run-of-mine coal is just an industry term for the coal as it comes out of the mine. It may have had some crushing in the mine for it, but it's generally the product that as it comes out of the mine, before it goes to the next step of processing.

Rail coal would be the term for when you're shipping coal by rail and if you -- once you load it into railcars, it's just the generic term that designates how the coal was shipped to its customer.

Q Okay. And generally speaking, if we were going to compare rail coal and the coal in the coal slurry, would it be accurate to say that the coal

Q Would you like me to read the question again?
A Yeah. I'm sorry.
Q The Department has taken the position in this case that because the coal was not being commercially mined in Nevada between 1998 and 2005, that SCE, Edison, did not actually have any competitors who were advantaged by the use tax it was paying on the Black Mesa coal.
Do you have an opinion in that regard?
A I think they were. And I look at it a little more broadly than the State does.
I see -- in the mining industry, having worked in it so long, the real competitors are -- we're competing for the engineers and the geologists. There are a limited number. We compete for the equipment. It can be expensive. Just several years ago you couldn't buy the big rubber tires for the trucks. There was a shortage. They became very, very expensive.
And I think when you're competing and one player has to pay a tax that the other player doesn't have, that's going to put them at a disadvantage.
THE COURT: To be honest with you, I'm not sure I understood that answer in respect to the question that was asked. I mean, we can read the question back, but I don't think it correlated to anything. So the

exempt due to that statute. Now, if you had inadvertently paid them when you shouldn't have, then you would claim the -- a refund for that exemption.

Is that what you mean?

Q Yes, that's what I mean.

And so if you were self-exercising that exemption, the Department wouldn't have any means of knowing that you were doing that in the normal course?

A As you comply with the law?

Q Right.

A No. I think when they examine the books and records in an audit, then they review that.

Q But in absence of an audit, they wouldn't have any means of knowing who was --

A No. I think it's self-reported.

Q Self-reporting?

A Other than that, I think generally there's press releases. You know, what mining companies are doing is often in press releases, so I don't think there's anything hidden about it.

Q Right. And you're familiar with the sales and use reporting form that the Department uses?

A Yes.

Q And are you familiar with whether there's a

Q Yes.
A So you have an item and you have freight cost?
Q Right. That's included in the value of the item?
A Right. The freight rules have evolved a bit back and forth over the past 20 years or so, and so I'm not sure what they were at the time.
At certain times the freight was taxable. If the item was delivered to your doorstep, then that was part of the sale. If it was -- if the title transferred at the point of origin, then it was not part of it and it had to be separately stated.
But these rules have evolved and evolved. I couldn't really tell you what it is currently. I'm not really practicing specifically in that right now.
Did I answer the question or did I go off on a tangent?
Q Yes, you answered the question.
And the part I understood about that question is that if title to the tangible personal property is taken -- takes place after the transportation of the item, then it's proper to apply sales and use tax to the value of that transportation?

A Yeah, if it was transported by the entity you're purchasing it from.
Q Yes.
A I mean, it depends. If it's a third-party transportation, it would be different, I believe.
Q All right. Are you familiar with the federal depletion allowance guidelines?
A Not really. I'm aware of them, but I'm not really familiar.
Q Are you familiar with the definitions of mining and nonmining processes?
A No. I do know I've developed a net proceeds model that talks about mining processes that our company tried to use for the depletion. There were so many tweaks and changes that they had to make because the definitions aren't the same. That's all I know about it. There's some differences, and I can't really tell you what they are. I don't do federal taxes.
Q Okay. To the extent you understand it, do you understand that for different minerals there's different processes that are considered mining for some and nonmining for others?
A No. That's really not my area of expertise.
Q So you don't know whether gold would be

Q Okay. So if the exemption in 372.270 only applies to the part of the sale that was subject to net proceeds tax, wouldn't the remaining value of the mineral be subject to sales or use tax?

A Are you talking about jewelry, then?

Q I'm just talking about the way that the exemption would apply, the way it reads.

A The way it reads is, if you want to put it up on the board, it's minerals subject to NRS 362. So 100 percent of your mineral is subject to NRS 362, 100 units. Whether or not any tax was paid isn't what the question is, what the exemption is. It's whether it's subject to NRS 362.

So technically, in that case, the entire amount is exempt from sales and use tax.

Q That's your understanding?

A Yeah. That's been the practice for many years here in Nevada. That's my understanding.

Q Are you familiar with a 1955 AGO that states that the portion of the sale -- that if the exemption was meant to apply to the entire sale, they would have said that the gross yield was not subject to sales and use tax?

A I've seen an AG opinion, and I disagree with

it. It's not the way it's done in practice. It seems to be incorrect math to me. But I have seen that AG opinion. I've never seen it applied.

Q Would you agree that in 1955, that that opinion would have come out at the time that the exemption was added to the statutes?

A Uh-huh.

Q All right. You testified that, hypothetically, if there was a mine -- a coal mine in Nevada and it delivered coal slurry product to a generating station, that, hypothetically, it would not -- it would be able to claim the exemption in 372.270?

A It would be exempt from sales tax.

Q But without having a coal mine in Nevada, can we know what type of processing might have to happen to the coal in order to turn it into a product that could be burned into -- in a power plant?

A I think in the hypothetical we're assuming that it's the type of coal seam that could be produced -- that could produce energy; correct?

So if it was the same type of processes that have been discussed and it's being delivered to a plant in a slurry form, it doesn't seem much different from the

FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

THE HONORABLE JAMES T. RUSSELL, DISTRICT JUDGE

--oOo--

SOUTHERN CALIFORNIA EDISON,	)	Case No. 09 OC 00016 1B
	)	
Plaintiff,	)	Dept. No. 1
vs.	)	
	)	
THE STATE OF NEVADA, EX REL. DEPARTMENT OF TAXATION,	)	
	)	
Defendant.	)	

TRANSCRIPT OF PROCEEDINGS

TRIAL

DAY 3

Thursday, January 23, 2014

CERTIFIED COPY

Reported By: PEGGY B. HOOGS, CCR 160, RDR, CRR
California CSR 5958

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Paulina T. Oliver	484			

EXHIBITS

No exhibits marked or admitted

Q That wasn't your testimony yesterday, that that would be unfair?

A Well, I don't know that they would necessarily be aware of all other taxpayers' situations in that case. Taxpayers themselves may not have full knowledge of everyone else's tax positions. In most cases sales and use taxes are proprietary information and they're not open records to the public, and so what other -- what other situations might occur may not even be known to the taxpayer.

Q You're aware that this case involves a dormant commerce clause; correct?

A I'm aware of that, yeah.

Q And are you aware that the claim that Southern California Edison is making is based on discrimination, that their claim is based on discrimination or, more specifically, that this is a discriminatory tax scheme? Is that your understanding?

A Yeah. I understand that -- I understand that they are -- that it's not consistent and equivalent with other transactions that are similar that are taking place.

Q Can you identify any of those similar transactions -- I'll start with coal -- that are taking

place that are being treated differently?

A The ones that I'm familiar with, there are mining companies in Nevada that they have mines and they also have a processing plant, but with excess capacity at the processing plant. And so they purchase -- they purchase stockpiles from other companies, mining companies, both inside of the state and outside of the state. They're bringing ore stockpiles from out of the state, not paying use tax on those. They're also buying the stockpile locally, blending those stockpiles, processing through their power plant -- I'm sorry -- through their processing plant and making gold, gold-silver, gold-silver dore.

Q So you're talking about gold and silver, but not coal?

A I'm thinking of a similar transaction in my experience, which is what I'm testifying about. I'm very familiar with arrangements that involve mostly gold and silver in Nevada, and so I can see, for consistency purposes, this taxpayer purchases two stockpiles, one from outside of the state, one inside the state. No sales tax is being charged or use tax being self-assessed, and this has been audited on the out of state. It's very similar transactions.

If it would not have been taxable if the transaction took place in the state for sales and use tax purposes, then it's not taxable if it came from out of state. So if a use tax does not apply in that situation, those stockpiles are blended and processed for net proceeds tax purposes. Only the ore that was extracted from the state of Nevada is reportable for 362. The other ore, when it's produced, is not reportable for 362, nor are its specific costs deducted. It's just outside of the equation.

Q Can you identify the taxpayers that you're -- and, remember, we're talking about 1998 to 2000.

A The taxpayer -- well, I can't specifically name the taxpayer, but it wouldn't be relevant during that time period because I wasn't aware of what that taxpayer was doing at that time period.

This is more of a current issue that I'm aware of and it's one of my clients. I don't believe I can name the name of the client for confidentiality reasons.

Q Okay. But in any case it wasn't during this time period of 1998 to 2000?

A That specific one that I'm talking about with

the two stockpiles being blended was not, but ore is bought and sold within the state of Nevada all the time between companies, and if -- and if the ore body is across the state line and being brought in and blended, use tax has never been assessed on that.

Q I have a couple questions about that, but, first, are any of these ores ores that would compete with coal as a fuel for power plants?

A Not in my experience.

Q So none of these examples you're talking about would involve a mineral that could be used for fuel at a power plant?

A In my experience, not that I'm aware of.

Q Okay.

MR. AZEVEDO: Excuse me, Your Honor. This witness -- we have other witnesses that will address the specific topic of competition in the context of the commerce clause.

THE COURT: Well, and I guess I understand that, but to some extent she's been put on as an expert, I guess, under Nevada use tax and Nevada mining proceeds tax, so she's fair game in respect to any questions in regards to that. Whether you have another witness or not that may explain it a little better or not, you could

paying?

A Okay. So that's assuming there's a coal mine in Nevada, they source the coal in Nevada. That would be subject to net proceeds of minerals tax, and then they would be exempt from sales and use tax for that mineral.

Q And during the period of time before the Court today, 1998 to 2000, what was the -- I'll use an income tax term -- the effective tax rate that the mines were paying of net proceeds of minerals tax?

A For net proceeds of minerals tax, you look at effective tax rate by taking the resulting tax, and then looking at the gross proceeds, and at that time it would average 1 percent or less on the minerals that were taxed.

Q Okay. So in that regard, the hypothetical mine would pay about a 1 percent tax on the mineral?

A Correct.

Q And it would have no tax due -- sales and use tax due on the mineral extracted?

A That's correct.

Q What about Southern California Edison?

A Southern California Edison had to bear taxes, including the transaction privilege tax, which in my understanding is similar to a sales and use tax that's

due on the minerals. That's roughly 3.7 percent, I believe. They also had to pay some local taxes. There's business activity tax, there's some possessory interest tax. There's other taxes, I think, adding up probably in the neighborhood of 6, 7 percent in total, and I'm not exactly sure, but that's the tax burden for what Southern California Edison had to -- had to pay.

Q So there's a varying burden?

A Correct.

THE COURT: Can we go back? I want to understand.

So essentially, if in fact the net proceeds tax back in 1998 or 2000 and everything else in respect to -- on a mine in respect to that product, in respect to that -- obviously there's deductions, you end up with a gross amount and everything else -- is approximately 1 percent of the -- is that the tax that's paid is about 1 percent; is that what you said?

THE WITNESS: What I was talking about was a computation of an effective tax rate. So the basic computation is gross proceeds, and then there are a number of deductions you take that you subtract from the gross proceeds to get the net. Sometimes the net is negative and so no tax applies at all, but if there is

proceeds there and you apply the tax rate, which, say, was 5 percent of the net, if you take that tax paid and divide it by the -- into the gross, that gives you the effective tax rate.

So if you're looking at gross proceeds --

THE COURT: The rate --

THE WITNESS: -- the effective tax rate would be about 1 percent or less.

THE COURT: That's the effective tax rate?

THE WITNESS: Correct.

THE COURT: The actual tax rate being charged would be 5 percent?

THE WITNESS: It could be up to 5 percent.

THE COURT: Up to 5 percent?

THE WITNESS: Correct.

THE COURT: But you're saying normally it ends up being about 1 percent as an effective tax rate because of the deductions and everything else?

THE WITNESS: Right. Does that make sense?

THE COURT: Thank you.

BY MR. AZEVEDO:

Q Aside from the use tax related to the coal, what other taxes that you're aware of did SCE pay to Nevada as a result of Mohave's operation in Nevada?

A If they use the inventory themselves, it now becomes eligible for use tax and they have to report the use tax on that.

Q So that's one circumstance where there's use tax. And when goods are brought in from out of state, are they typically subject to use tax?

A Yes.

Q Under what circumstances?

A Well, any time there is a sale made from out of state, whether it's, you know, tangible personal property, of course, but any sale that is made from out of state that the item is brought into Nevada for use in Nevada, it is use taxable.

Q All right. And we've had some discussion this morning regarding a credit.

Can you explain how that credit works?

A There is a credit for sales tax legitimately paid to another state. Basically, if the consumer -- and it could be that the consumer purchased the item over there. Because the sale took place over there, the retailer would have collected sales tax from the consumer, but the consumer's intent was to use it in Nevada. So rather than pay the use tax on the entire sales price, which is normally what happened, we would

give them a credit for the amount of sales tax legitimately paid to another state up to the amount of their rate. If our rate is higher, we'll collect the higher amount, the difference.

But in order for it to be legitimately paid, that means the sale took place in the other state, and that's why the retailer collected the tax.

Q All right. So that's the first part; the actual retail sale, the transfer of title would have to take place in the other state?

A Right.

Q And then the end user, the consumer of the good, would have to pay some type of sales tax?

A Right. That would have been charged to them by the retailer in the other state.

Q Are there any provisions that you're aware of that would give a taxpayer a credit for taxes that were included in the price of the tangible personal property?

A There are some taxes that may be excluded. I'm thinking of, like, live entertainment tax or something like that, but taxes paid to the federal government are not. Taxes paid and assessed to the vendor would not be excluded from the sales price for the taxable measure for our purposes for the use tax.

Are you aware of anything that would allow a taxpayer to subtract that from the sales price?

A No.

Q And then I believe there's a business activity tax that was paid to the Navajo and/or Hopi --

A My understanding is that, again, it was assessed and paid to the Navajo Nation by the vendor, not -- not the purchaser, but the purchaser just reimbursed them for that, which means that there wouldn't be an exemption for that.

Q I'm not certain, but I believe that was paid by the processing plant.

And then the possessory interest tax, I think that was an Indian reservation tax?

A That's the first time I've ever heard of it, but it sounded that way. I'm not familiar with that.

Q But you have no reason to believe it would be different than those other taxes?

A Exactly.

Q We've heard testimony about the transportation in this case --

A Right.

Q -- where Peabody transferred the coal but retained title to the coal, to the coal slurry

preparation plant, and then delivery of the coal slurry and water to Mohave via pipeline.

Did you understand those transportation costs to be part of the price for the coal?

A The definition of gross receipts in the sales price includes -- included, back in those years, the cost of transportation for the item to be delivered to the purchaser.

Q Were there any circumstances -- we're talking 1998 to 2000 -- were there any circumstances where you could -- where the transportation price, since it was separately stated, that it could be somehow deducted from the --

A If separately stated had no bearing on that because it was going to be taxable anyway, but it would not have been taxable if the sale had taken place in Arizona and title had changed in Arizona. That would have been the only time that the transportation might have been exempt.

Q Okay. And under that circumstance, the transportation costs would not have been part of the price because the transaction would have taken place before the transportation took place?

A Right. Correct.

Q What changes have there been in that transportation as it applies to sales and use tax?
A Since we joined the streamlined sales tax --
Q To the best, if you can give me dates for when the changes -- to the best of your ability. Go ahead.
A It started -- there was a few changes, minor changes, in 2002 and 2005, but in May of 2009 the statute provided that freight, shipping and postage are no longer taxable as long as it doesn't include any handling or packaging or crating. So now, after 2009, that probably would not have been --
Q Was --
A I'm trying to --
Q Was there processing? Would that be -- I mean, there was processing for transportation. Would that --
A There is some processing going on, there is some handling going on, so I would have to take a look at that, but generally speaking, shipping charges like to third parties -- third-party shippers or postage would not be taxable anymore on the sale.
Q But 1998 to 2000, under the circumstance where title passed in Nevada --

A It would be taxable.
Q Do mining companies pay sales and use tax?
A Pardon me?
Q Do mining companies?
A Certainly. They pay sales and use tax on all the tangible personal property they use.
Q Have you done audits on -- sales and use tax audits on mines?
A I personally have not, but they have been done.
Q They have been done, all right.
You've listened to the testimony in this case. The sale took place in Nevada. Would there have been a basis to collect a sales tax from Peabody Coal Company?
A No. Because they had no nexus in Nevada, meaning they had no physical presence in Nevada.
Q And, you know, they had title to the coal slurry when it was running through the pipe, and I think it only ran through Nevada a very short distance, but would that be sufficient to have nexus with Nevada?
A It could be. Yes, it could be.
Q Right. Did the Department to your knowledge ever have to make that determination?

A No.
Q And why is that?
A Because the use tax was being paid on the coal, the coal slurry.
Q And so because their complementary tax and use tax was being paid, were we missing out on any type of revenue because --
A We weren't, so we wouldn't have had a need to.
Q And if you know, are you aware whether Peabody was registered as a retailer in Nevada?
A I believe they were not registered as a retailer.
Q At least to the extent of your knowledge they weren't. Okay.
I think -- I will start to ask you -- I'm going to ask you to look at the Plaintiff's Exhibit 30 -- I want to say 38. Yeah, 38. It might be up there.
Are you familiar with that particular exhibit?
A You know, this says --
THE COURT: She doesn't have the binder.
MS. SESSION: Okay.
THE WITNESS: Okay.

A Yeah.
Q Did Southern Cal Edison ever request that you come out and do an audit to determine what the refund amounts would be?
A Not that I'm aware of, no.
Q Did you attend the second commission hearing on this matter?
A I did.
Q And based on your understanding of the testimony that you've seen before the Tax Commission and in court here, do you believe Southern Cal Edison is entitled to a refund?
A I do not, no.
Q Can you tell me why?
A Because this -- this -- the purchase of the coal slurry was use taxable, it was eligible for use tax. They should have paid use tax on it. They didn't, so I don't think they deserve a refund on it. It's a taxable item.
Q And do you believe that they are entitled to the exemption in 372.270?
A No. Because they didn't pay any net proceeds of minerals tax.
Q And are you aware of any taxpayers that

purchased coal in Nevada or paid -- that didn't pay tax on that coal in Nevada, any taxpayers?

A Well, there is no specific exemption for coal, so if coal is used to make briquets, which I think that was the testimony, yes, sales tax is due on the entire amount.

Q Right. And are you aware of any sales transactions on coal that took place in Nevada that were not subject to sales or use tax?

A No, I'm not aware of any.

Q And are you aware, apart from the gold splatters, any sales of minerals in Nevada that were not subject to sales or use tax?

A Well, they're not subject to sales and use tax primarily because they're wholesale sales.

Q Right. Okay. Not because of the exemption in 372.270?

A And, you know, if they did pay that tax, they would be exempt because of the tax. But, again, we don't -- I've never seen that exemption being taken on a sales and use tax transaction.

Q I gave an example to Miss Byram of net proceeds of minerals tax where the deductions -- based on the deductions, that there was no net proceeds of

decision-making.

Q You have referred on a couple of occasions to your written report.

Do you have a copy of that in front of you?

A I do.

Q And I believe that that document has now been identified and admitted in evidence as Exhibit 69.

And do you have any corrections or changes to the report itself?

A I do not.

Q Now, I'd like to start off by asking you some questions regarding something in the commerce clause jurisprudence that's identified as the internal consistency principle.

Could you just briefly describe what that principle is?

A Yes. And it's a very important principle, and it is set forth in my report on -- starting on page 5 or maybe page 4.

The internal consistency principle is an entirely hypothetical inquiry. It asks nothing about the actual existing state of affairs and, therefore, it really does bear, I think, on one of the issues in this case.

And what you do is you essentially clone the challenged tax system. So in this case you would take what's at issue in this case, the Nevada -- Nevada exemption from the sales tax, sales and use tax, for transactions that are subject to the mining tax, and you would assume that every state in the union had exactly that approach. So that's what we mean. The Court does actually use the word "cloning." So we re-replicate, duplicate, clone, that part of the Nevada tax structure that's under discussion here.

And then you would ask: Well, what kind of world would that be? Would interstate commerce be placed at a disadvantage compared with intrastate commerce? Because that's the whole idea of this principle is to imagine a country in which everyone had Nevada's approach, and then ask, what kind of world would that be? Is that a world which we would endorse or is it a world that would have problems?

And so when you apply that principle -- and that's what I do on page 4, starting in the carryover paragraph -- if all states had the Nevada tax structure, coal mined in one state and used in another would be taxed in both the state where it was mined -- because we assume they would have Nevada's special tax on mining --

and it would be taxed in the state where it was used. And that would be your interstate transaction.

So it would pay two taxes, one to the state where the coal was mined and then a second use tax to the state where the coal was used. And by contrast -- and here's really the key -- coal mined and used in the same state would pay only one tax.

And so when you apply this principle and stand back, you would see that interstate commerce would be more heavily taxed than intrastate commerce.

Q And, Professor Pomp, in looking at this principle in the context of the statutes at issue here, am I correct that you have focused on two -- or the interaction between two Nevada statutes, one, NRS 372.270 -- and I think we can put this up on the screen in case you don't have it -- 372.270 -- I guess we don't have that one on the screen.

A Okay. Well, I can read it. That exempts from the taxes imposed by this chapter -- and that would include the sales and use tax -- so they're exempted from, if I could just paraphrase, from sales and use tax, the gross receipts from the sale of and the storage, use or other consumption in Nevada, of the proceeds of mines which are subject to taxes levied under the mining tax.

Q And that reference is to Chapter 362 of the Nevada Revised Statutes?

A Correct.

Q And broadly speaking, you understand that Chapter 362 to be the net proceeds of minerals tax?

A Yes. That's what I short-handed when I said "the mining tax," so --

Q Just so we're clear, how is it that the interplay of 372.270 and Chapter 362 results in or is evaluated in terms of the internal consistency principle?

A We would assume that every state in the union has the combination of 372.270 and Chapter 362. So that is what the Court means when it uses the word "clone," we'll clone 372.270 and 362, and then we will examine an interstate transaction and compare it to an entirely intrastate transaction and see if the interstate transaction is taxed more heavily than the intra-.

Q And now, could you tell us, how does the Nevada tax framework of 372.270 and the net proceeds of minerals, how does that structure fare under the internal consistency principle?

A The structure would flunk the internal consistency principle or test because if we were to mine the minerals in, let's say, Arizona and if Arizona had

the Chapter 362 tax, which I call, for short, just "the mining tax," there would be a mining tax paid to Arizona, whatever the state of production would be.

Then when the output of that mine were brought into another state for use, it would be subject to a use tax, at least if you read this statute the way the Department reads 372.270.

And so if you read it that way so that these minerals that are mined in one state and then brought into Nevada for use here are subject to the Nevada use tax, you would have your two taxes on an interstate transaction, whereas someone who both mined and sold in Nevada would benefit from the exemption and pay only one tax, and that's a violation of the internal consistency doctrine, at least as 372.270 is interpreted by the Department.

Again, it's the province, obviously, of His Honor to see whether you agree with that interpretation by the Department or not, but...

Q Let me take a step back from the failure of the structure under internal consistency, because I think you indicated that this was based upon the way in which the Department is interpreting these statutes.

But is there a way in which to interpret

mine in Nevada, it would have been exempted.

Q Let's go back now to the internal consistency analysis. And you've indicated the structure, if interpreted as the Department seeks to interpret it, flunks, I think was your word, this test.

In the case of a statutory scheme that flunks an internal consistency principle, what is the result of that? What happened to such a statute or interplay of statutes?

A Well, for that we would turn to what the legislature has provided in the case of an unconstitutional or illegal tax.

Q Let me stop you there. I want to be sure.

A tax structure that flunks internal consistency is the -- the result of that is that that statute or structure is unconstitutional?

A That is correct. That is why the Court formulated that doctrine, to -- that when you apply that doctrine and you end up with interstate commerce being taxed more heavily than intrastate commerce, that is a violation of the commerce clause, and so you have an unconstitutional statute.

That's the implication of the internal consistency principle. That's why we apply it, that's

be widely adopted by others. That's sort of the history of the use tax in this country.

And in a way, the internal consistency principle says: You know what? We're not going to wait until this tax is adopted by other states and then we have a problem on our hands. We're going to examine what that world will look like today. So we're simply going to ask the question, what if everyone were to adopt this tax regime, what kind of world would that be?

And if it turns out it's a world in which interstate commerce is taxed more heavily than intrastate commerce, we're not going to wait until that situation actually materializes. We will move today -- it's better to provide guidance to taxpayers and states earlier rather than later, that people are going to make costly investment decisions and they ought to know what the rules are today, before they spend a lot of money on major investments.

Q And going back for a moment to NRS 372.265, which is the exemption for paying taxes that are imposed by an unconstitutional statute, is there anything in that statute that indicates that the exemption is dependent upon showing that there's been some competitive advantage conferred by this unconstitutional tax?

subject to due process constraints -- and, again, that approach might not be available under state law, but if it is available and if the nature of the complaint is one of discrimination, well, then this would also constitute backward-looking relief.

Q Is there anything in the McKesson decision that indicates that in order to get a refund, that the taxpayer must show specific advantaged competitors?

A Actually, to the contrary. One of the arguments made by the Florida Supreme Court was that giving a refund would be a windfall since the cost of the tax had been passed forward to customers. And the Supreme Court said, you know what? You really have it backwards, Florida, that to pass this cost forward means McKesson raised its prices, and if it raised its prices, well, it's going to suffer a decline in revenue unless it's -- this isn't what the Court said, but, you know, the caveat would be if McKesson had a completely inelastic demand curve, so that no matter what it did, people would continue to buy. But obviously, unless it's some addictive type of situation, you don't have inelastic demand curves.

So if McKesson raised its prices, then it probably lost market share or it lost profits or it had

increased costs, the Supreme Court speculated. It might have had to spend more in advertising to convince people that even though its products were now more expensive, they were worth buying.

And the Court said, well, that's exactly what we're trying to guard against, putting people at a disadvantage in order to protect the home team, so to speak.

So the Court basically said that McKesson doesn't have to show anything about how the competition hurt it or what it did in response or anything else, that it is entitled to backward-looking relief. And, indeed, the Court cited some of those cases I cited earlier, Your Honor.

Q Let me take a step back from McKesson and its remedy guidance and ask you, based on your analysis and indications of legislative intent, in terms of remedies in cases of illegal or unconstitutional taxes, in Nevada, in this case, is it necessary to even consider the McKesson remedy options in view of the legislative provisions you have discussed?

A Well, that is obviously in the province of His Honor, who will have to make a decision whether the state constitution allows a retroactive assessment

the extent it's relevant here in Nevada. You've quoted the phrase, "meaningful backward-looking relief," I believe, for the taxpayer in the case of an unconstitutional tax.

Now, McKesson does talk about the possibility of applying a retroactive tax to others; is that right?

A Yes, it does.

Q Now, I guess let's start with your explanation, at least conceptually.

What would that retroactive tax consist of in any given situation?

A Well, the Court has suggested that what you could do would be to take away the benefit that a group has received from the exemption that's being challenged or the provision that's being challenged, the provision that makes the statute unconstitutional.

So depending on state law on severability, reformation -- because the State may not be able to do this -- but one of the possibilities would be to go back and assess the tax on the group that is viewed to have benefited in competition with the taxpayer.

Q Is there anything in McKesson or any other case following it that suggests that if there is no identified taxpayer who benefited from this

unconstitutional statute, that the taxpayer who paid the tax is not entitled to a refund?

A No. You are certainly entitled to a refund.

Q Now, in your experience and your study of tax cases and state -- and applications of state law, have you seen very many or have you seen any effective applications of this retroactive tax concept as a remedy?

A It is a difficult approach to implement if for no other reason the politics of it, because what you are trying to do is say to a group of taxpayers that filed a return, paid the tax that was appropriate under the law as it existed that day, and now tell them years, perhaps, after the fact that they have to pony up and write a check.

And we saw this most recently in California, actually, that had a provision providing preferential capital gains treatment in stock in California and Oregon corporations, and someone challenged it. And the Court said, you're right, that's unconstitutional.

And then the question is, okay, how do we cure it? And the tax department wanted to go back and assess everyone who filed a return taking advantage of that provision. Well, you can imagine the political backlash, and the governor finally signed a bill saying,

tax returns and there's a confidentiality prohibition on the department's ability to show one person's tax return to another, there could be a due process issue in that you won't be able to verify that your complaint has been adequately addressed. So it gets complicated pretty fast, which may be why there's really no U.S. Supreme Court case evaluating it.

Now, it could be states have done it and we don't know about it, and it could be states have done it and they've gotten away with it, but it's certainly not common.

Q And your research and your scholarship would include looking for cases or press releases, articles, information about such cases?

A Yes. And, again, most presently I think everyone in the field knows the California situation, so...

Q Let me shift for a little bit here to ask you about another opinion in your written report where you conclude that, at least as the Department interprets these, the interplay of the net proceeds of minerals tax and the sales and use tax exemption, that that operates to create an illegal tariff on interstate commerce.

Do you recall that opinion?

A I do.

Q Okay. Now, briefly, could you explain how this opinion, an illegal tariff, varies from or is distinguished from the conclusion of a facial unconstitutionality, if it does?

A Well, a tariff is a levy on an import. An import in this sense actually going back to the original use of the word "import," which did not mean things from other countries, it meant things from other states.

If you have a levy that singles out a good or product from another state and the equivalent domestic situation is not subject to a tax, you have a tariff, a tariff on an import, and that is your quintessential unconstitutional tax, so quintessential that the U.S. Supreme Court has said, everyone knows a tariff is unconstitutional and no state has the audacity to even do it.

They don't use the word "audacity," I'm paraphrasing, but the Court has said that no state would even try to do this because everyone knows it is unconstitutional.

You know, this is what touches off trade wars on the international level, and it's exactly what the commerce clause was meant to protect on our domestic

level. It wanted to make sure that there weren't trade wars, that there wasn't a vulcanization of the U.S. economy, that there was a free flow of goods.

In a way we were hundreds of years ahead of the game when you look at the economic unions, because that's what they're trying to do is get everything to be a free trade zone and make sure goods can flow from one country to the other. Well, 200 years ago we resolved this.

So we have a doctrine that says tariffs are unconstitutional. They are, in a sense, kind of your epitome of a facially discriminatory levy.

Q In view of that being, as you say, such a clear understanding these days in the U.S. among the states, why would the Nevada Legislature have enacted a set of tax statutes that, at least in your opinion, is obviously an illegal tariff?

A Well, I'm not sure the legislature thought that that was the implication of what they were doing. They were clearly on notice in 1988, and this is -- I'm reading from -- I guess we don't have a -- Footnote 13 of your opening statement. There is a letter from legislative counsel --

Q Trial brief.

IN THE SUPREME COURT OF THE STATE OF NEVADA

SOUTHERN CALIFORNIA EDISON,

Appellant,

vs.

THE STATE OF NEVADA DEPARTMENT OF TAXATION,

Respondent.

No.: 67497

JOINT APPENDIX

VOLUME V

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Docket 67497 Document 2015-26115

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Norman J. Azevedo, Attorney at Law, and that on the 27th day of August, 2015, I caused to be served a true and correct copy of the foregoing JOINT APPENDIX in the following manner:

(ELECTRONIC SERVICE) Pursuant to Rule5(D) of the Nevada Rules of Civil Procedure, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by the Court's Facilities to the Service List as follows:

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Rhonda Azevedo

Rhonda Azevedo, Legal Assistant

Nevada Bureau of Mines and Geology

Special Publication MI-1998

The Nevada Mineral Industry 1998

Metals

Industrial Minerals

Oil and Gas

Geothermal

Exploration

Development

Mining

Processing

This report, twentieth of an annual series, describes 1998 mineral, oil and gas, and geothermal activities and accomplishments in Nevada: production statistics, exploration and development including drilling for petroleum and geothermal resources, discoveries of orebodies, new mines opened, and expansion and other activities of existing mines. Statistics of known gold and silver deposits, and directories of mines and mills are included.

Mackay School of Mines
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The Nevada Mineral Industry 1998

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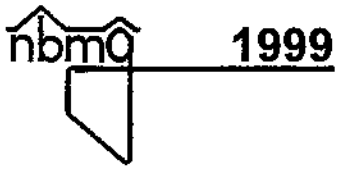

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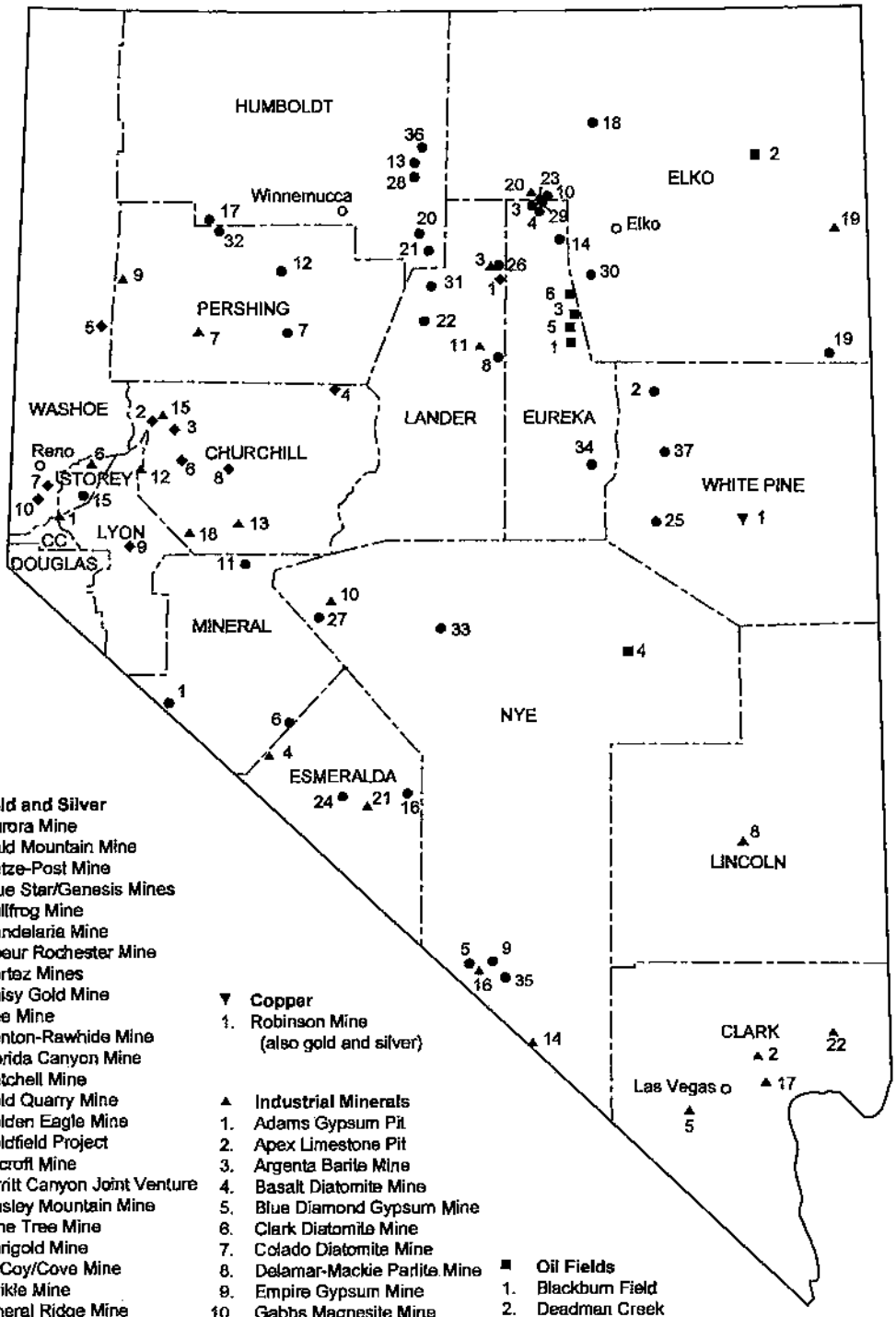

- **Gold and Silver**
1. Aurora Mine
2. Bald Mountain Mine
3. Betze-Post Mine
4. Blue Star/Genesis Mines
5. Bullfrog Mine
6. Candelaria Mine
7. Coeur Rochester Mine
8. Cortez Mines
9. Daisy Gold Mine
10. Dee Mine
11. Denton-Rawhide Mine
12. Florida Canyon Mine
13. Getchell Mine
14. Gold Quarry Mine
15. Golden Eagle Mine
16. Goldfield Project
17. Hycroft Mine
18. Jerritt Canyon Joint Venture
19. Kinsley Mountain Mine
20. Lone Tree Mine
21. Marigold Mine
22. McCoy/Cove Mine
23. Meikle Mine
24. Mineral Ridge Mine
25. Mount Hamilton Mine
26. Mule Canyon Mine
27. Paradise Peak Mine
28. Pinson Mine
29. Post Mine
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12. Hazen Diatomite Mine
13. Huck Salt Mine
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15. Moltan Diatomite Mine
16. New Discovery Montmorillonite Mine
17. PABCO Gypsum
18. Popcorn Perlite Mine
19. Pilot Peak Limestone Quarry
20. Rossi Barite Mine
21. Silver Peak lithium carbonate
22. Simplot Silica Products

- **Oil Fields**
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2. Deadman Creek
3. North Willow Creek Field
4. Railroad Valley (Eagle Springs, Trap Spring, Currant, Grant Canyon, Bacon Flat, Kate Spring, Duckwater Creek, Sans Spring, and Ghost Ranch Fields)
5. Three Bar Field
6. Tomera Ranch Field

- **Geothermal Power Plants**
1. Beowawe
2. Bradys Hot Springs
3. Desert Peak
4. Dixie Valley
5. Empire
6. Soda Lake No. 1 and No. 2
7. Steamboat I, IA, II, and III
8. Stillwater
9. Wabuska
10. Yankee Caithness

Major mines, oil fields, and geothermal plants, 1998.

Overview

by Jonathan G. Price and Richard O. Meeuwig

Mineral and energy production in Nevada in 1998, valued at $3.3 billion, continues to be a major factor in the state and national economies. Nevada ranks first in the nation in production of gold, silver, barite, lithium, and mercury, which are sold on both national and international markets. The quantity of Nevada gold production rose to a record high of nearly 8.9 million troy ounces (276 metric tons) in 1998, although lower prices (down from an average price of $331 per ounce in 1997 to $294 in 1998) prevented the overall value from changing substantially. Contributions to the Nevada and U.S. economies are significant in terms of jobs, commerce, taxes, improvements to the infrastructure, and lowering of the U.S. trade deficit. Construction of new homes, casinos, other businesses, schools, and roads continues the strong demand for local sources of sand, gravel, crushed stone, gypsum, and cement.

Nevada ranked first in the United States in terms of the value of nonfuel (excluding oil, gas, coal, and geothermal energy) mineral production in 1998. California, boosted by large demands for construction raw materials, was the second largest nonfuel mineral producer in 1998, and Arizona, which is a world leader in copper production, was third.

This report highlights activities through 1998 in metals, industrial minerals, geothermal energy, and petroleum. Numerous graphs and charts are incorporated for rapid inspection of trends in production and price.

Through a survey conducted early in 1998, the Nevada Division of Minerals collected data for Nevada Bureau of Mines and Geology Special Publication P-10, *Major Mines of Nevada 1998.* This publication includes, in handbook form, location maps, names and telephone numbers of operators, numbers of employees, and preliminary, non-proprietary production figures for most mines in Nevada. The full contents of this publication are available on the World Wide Web (www.nbmg.unr.edu/mm98.htm). The data from this survey are used, along with information from other sources, in this publication and will be used to update, revise, and check preliminary statistics collected and released by the U.S. Geological Survey.

The section on **Metals** and the table of **Major Precious-Metal Deposits** provide details on new deposit discoveries, new mine openings, mine closures, additions to reserves, and mine expansions. As has been the case in recent years, gold has been the leading commodity produced in Nevada. Production of gold was valued at $2.6 billion and came from 33 major mining operations. The Carlin Trend in northeastern Nevada accounted for 45% of the total production. Thirteen additional mining operations, not on the Carlin Trend, each produced over 100,000 ounces of gold from mostly multimillion-ounce deposits.

Barrick's Betze-Post Mine in Eureka County, which produced 1.50 million ounces in 1998, is the largest gold mine in the United States. Nearby in Elko County, Barrick's Meikle Mine, with production of 847,000 ounces in 1998, had the highest production among underground gold mines in the United States. Newmont's Carlin Trend operations produced 1.58 million ounces in 1998, and the Cortez Joint Venture in Crescent Valley increased output substantially to 1.14 million ounces in 1998.

MINERAL, GEOTHERMAL POWER, AND PETROLEUM PRODUCTION IN NEVADA[1]

Minerals	1997		1998 preliminary		% change from 1997 to 1998	
	Quantity	Value (millions)	Quantity	Value (millions)	Quantity	Value
Gold (thousand troy ounces)	7,828	$2,591.1	8,865	$2,606.3	13	1
Silver (thousand troy ounces)	24,645	120.5	21,519	109.7	-13	-9
Copper (thousand pounds)	148,600	160.5	148,500	118.8	0	-26
Aggregate (thousand short tons)	28,000	126.0	26,500	119.2	-5	-5
Gypsum (thousand short tons)	1,578	25.2	1,819	29.1	15	15
Barite (thousand short tons)	586	29.3	490	24.5	-16	-16
Geothermal energy (thousand megawatt-hours)	1,348	101.0	1,327	93.0	-2	-8
Petroleum (thousand 42-gallon barrels)	980	15.0	779	8.1	-21	-46
Other minerals[2]	—	187.6	—	200.4	—	7
Total	—	$3,356.2	—	$3,309.1	—	-1

[1] Production as measured by mine shipments, sales, or marketable production (including consumption by producers); compiled by the Nevada Division of Minerals and the Nevada Bureau of Mines and Geology. Products milled or processed in Nevada but mined from deposits in California are excluded. Specifically, colmanite from a mill in Amargosa Valley in Nye County and zeolite from the Ash Meadows plant in Nye County are not included in these totals.

[2] Building stone, cement, clay, diatomite, lime, lithium carbonate, magnesite, mercury, perlite, salt, and silica sand.

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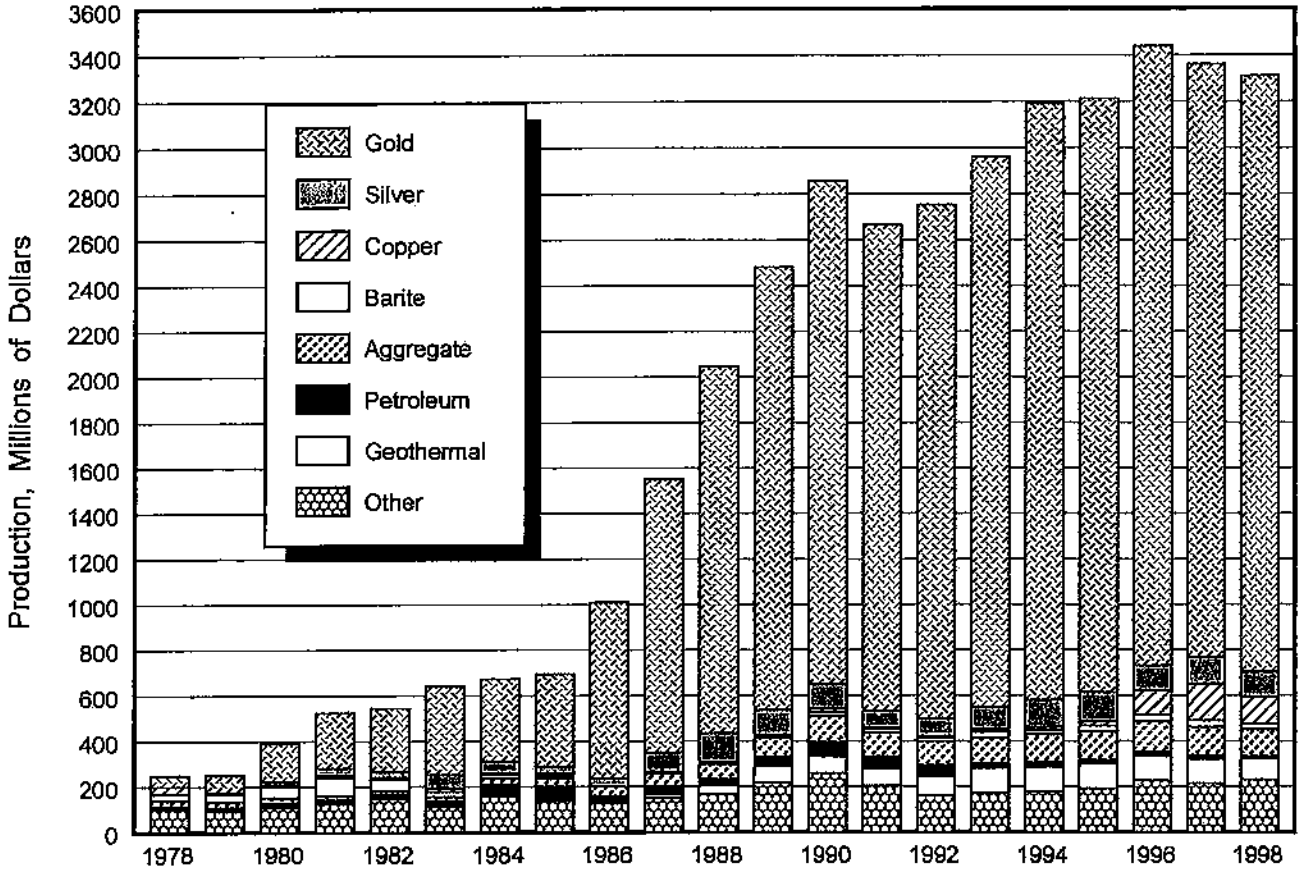
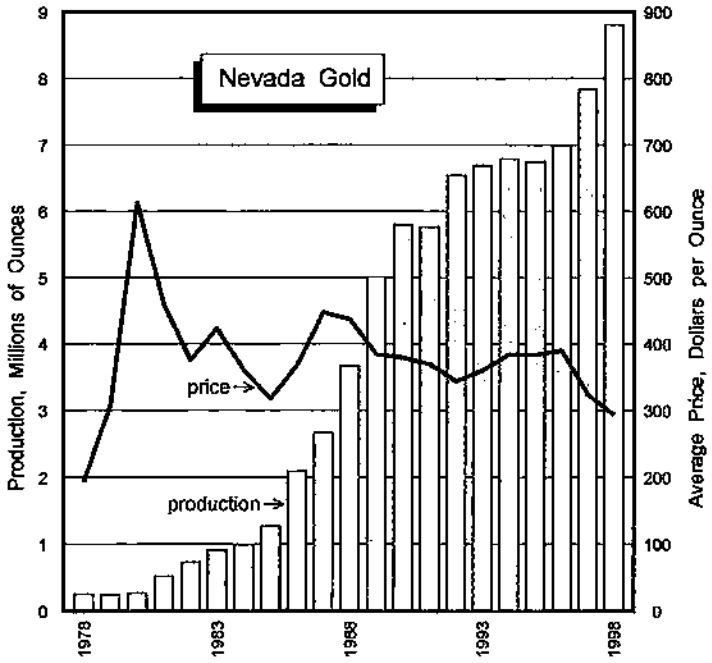


Nevada mineral, geothermal power, and petroleum production, 1978–1998.

Five new mines came into production in 1998: Midas Joint Venture's Ken Snyder Mine in Elko County, Independence Mining Company's SSX underground operation at Jerritt Canyon in Elko County, Getchell Gold Corporation's (now Placer Dome) Turquoise Ridge Mine in Humboldt County, and Alta Gold Company's Olinghouse Mine in Washoe County and its Griffon Gold Property in White Pine County.

Nevada is a major force in the national and international gold markets, accounting for approximately 74% of U.S. production and 11% of world gold production. These numbers are calculated using statistics reported for areas outside Nevada by the U.S. Geological Survey. Nevada's production makes the United States a net exporter of gold and helps offset the trade deficit, which has averaged approximately $10 billion per month in recent years. The United States is the second leading gold producer in the world, behind only South Africa. Nevada's 1998 production alone exceeded that of all other countries except South Africa and Australia.

Nevada is clearly one of the most productive and enriched areas in the world for gold. One way of measuring the relative production of different



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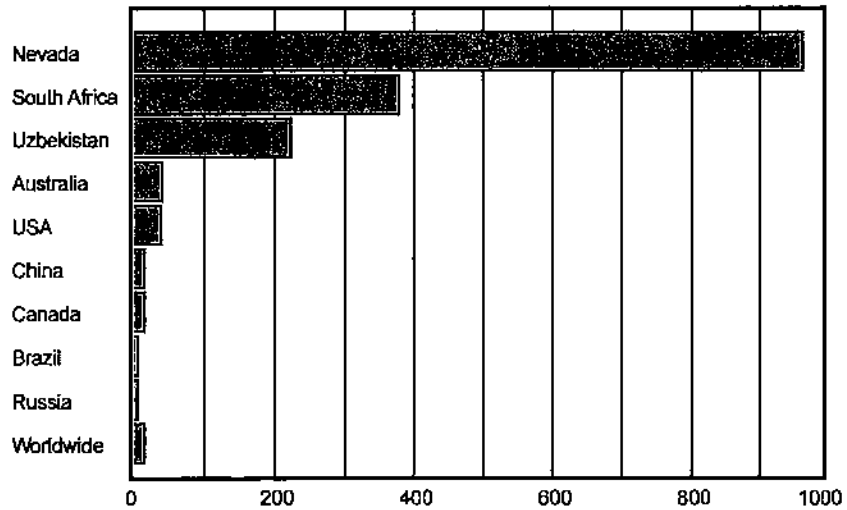
1998 WORLD PRODUCTION OF SELECTED MINERAL COMMODITIES (metric tons)*

Country/State	Area (10^6 km^2)	Gold	Silver	Copper	Gypsum	Barite	Industrial Sand
WORLD	149.90	2,425	16,400	12,200,000	107,000,000	5,890,000	110,000,000
USA	9.37	375	2,060	1,860,000	19,000,000	476,000	28,200,000
Nevada	0.29	276	670	67,500	1,654,000	445,000	640,000
Arizona	0.30	2	211	1,190,000	—	—	307,000
Australia	7.68	312	1,469	600,000	2,100,000	15,000	2,500,000
Austria	0.84	—	—	—	1,000,000	—	6,000,000
Belgium	0.03	—	—	—	—	40,000	2,400,000
Brazil	8.51	60	—	40,000	1,400,000	52,000	2,700,000
Canada	9.96	166	1,179	710,000	8,095,000	80,000	1,700,000
Chile	0.76	45	1,340	3,690,000	781,000	1,400	300,000
China	9.57	178	1,400	480,000	9,000,000	3,000,000	NA
Egypt	1.00	—	—	—	2,000,000	—	750,000
France	0.57	4.5	2	—	4,500,000	75,000	6,500,000
Germany	0.36	—	—	—	3,000,000	120,000	6,000,000
India	3.28	2.4	34	37,000	2,400,000	430,000	1,400,000
Indonesia	1.90	105	190	750,000	1,000	—	300,000
Iran	1.65	0.6	60*	128,000	9,000,000	180,000	1,000,000
Italy	0.30	—	10	—	2,000,000	30,000	3,000,000
Japan	0.38	8.6	94	—	5,300,000	—	3,043,000
Kazakhstan	2.72	12.5	470*	340,000	—	9,000	NA
Mexico	1.97	25.4	2,700	385,000	7,045,000	162,000	1,600,000
Morocco	0.45	0.5	260	—	450,000	353,000	NA
Netherlands	0.04	—	—	—	—	—	5,000,000
Paraguay	0.41	—	—	—	5,000	—	10,000,000
Peru	1.28	89	1,900	520,000	35,000	63,000	1,600,000
Poland	0.31	0.6	1,000	415,000	1,000,000	25,000	1,300,000
Russia	17.07	105	350*	515,000	500,000	60,000	NA
Spain	0.50	2	65	40,000	7,400,000	28,000	5,800,000
South Africa	1.22	474	140	163,000	360,000	—	3,000,000
Sweden	0.45	6	275	86,000	—	—	500,000
Thailand	0.51	—	—	—	9,000,000	111,000	400,000
Turkey	2.59	1	90*	35,000	750,000	130,000	1,300,00
United Kingdom	2.44	—	—	—	2,000,000	75,000	4,800,000
Uzbekistan	0.45	80	70*	73,000	—	—	NA
Zambia	0.75	0.7	—	320,000	11,000	—	NA

* All production data except for Nevada are from the U.S. Geological Survey (USGS) minerals information publications (http://minerals.usgs.gov/minerals), with revisions for some data from USGS mineral commodity specialists; data on areas are from The World Almanac and Book of Facts, 1992, Pharos Books, New York, 960 p.

*Estimate

states or countries is to calculate the amount of gold produced per unit area. By this measure, Nevada's gold production was substantially higher in 1998 than that of major producing countries, including South Africa, Australia, Canada, Russia, China, Brazil, and Uzbekistan. Such high relative production is one of the reasons why Nevada continues to be an excellent place for gold exploration. It should be noted, however, that if only the most productive regions of South Africa, Australia, Canada, or other countries were compared, other provinces or states may surpass Nevada in this type of analysis. Nonetheless, Nevada is highly productive in terms of gold by nearly any measure.



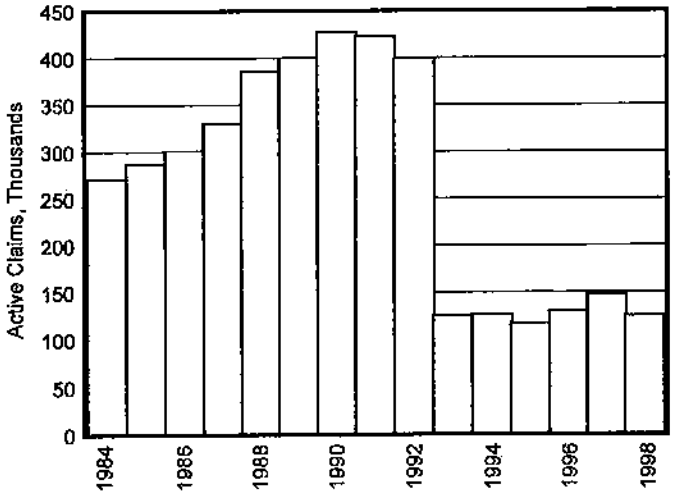
1998 Gold production in metric tons per million square kilometers

Exploration, including grass roots activity, work in known mining districts, and development of extensions to known deposits, added to the Nevada resource base in 1999. New mineable deposits continue to be discovered. Exploration activities are summarized in the section on Metals. In 1998, companies explored in or near at least 69 of Nevada's 526 mining districts, down significantly from the 106 districts reported for 1997.

Exploration for near-surface deposits that can be mined from open pits is becoming increasingly difficult, because exploration in Nevada for these types of deposits has been vigorous for nearly 20 years. Nonetheless, targets continue to be identified below the cover of alluvium and volcanic rocks that are younger than the ore deposits. In some areas, exciting discoveries of high-grade deposits are being made at depths requiring underground mining. These are commonly along veins or faults within districts with previous near-surface production. Underground mining continues to increase, with 1.97 million ounces of gold (22% of the total) coming from these operations in 1998.

At the end of 1998 the published gold resources in Nevada, including mineable reserves and perhaps some subeconomic resources, totaled approximately 100 million ounces of gold, enough to sustain gold production at substantial levels for 15 to 20 years, assuming stable prices. The term "reserve" has special meaning with regard to U.S. securities laws. To be called a reserve, the deposit must be rich enough to be mined profitably. With relatively low gold prices, some of the reserves of previous years have been downgraded to subeconomic resources. When prices rise or when new technologies allow mining and gold processing costs to be lower, subeconomic resources can become reserves.

As measured by the numbers of active claims on public lands, grass-roots exploration activity has remained fairly steady in the last five years, after dropping precipitously in 1992, when a new claim-holding fee was imposed by the federal government. The decrease in the number of claims from 1997 to 1998 reflected further downturns in exploration.



Number of active claims in Nevada as of October 1, 1984–1998.
Data from the Nevada State Office of the Bureau of Land Management.

The Nevada Division of Minerals recently completed its fifth annual survey of companies active in exploration in Nevada (D. Driesner, 1999, *Nevada Exploration Summary 1998*: Nevada Division of Minerals, Carson City). The 47 companies that responded to the questionnaire spent $90.8 million on exploration in Nevada in 1998, a decrease of 35% from the $138.8 million spent in 1997. These companies employed 214 geologists in Nevada in 1998, a decrease of 31% from the 309 geologists reported in 1997. The decrease in exploration in Nevada in 1998, which is the direct result of low gold prices combined with political risk, reflects cutbacks in worldwide and U.S. exploration as a whole. The 47 companies reported a 64% decrease in worldwide exploration (expenditures of $389.6 million in 1998 compared to $1.082 billion in 1997) and a 47% decrease in total U.S. exploration (with expenditures of $119.3 million in 1998 compared with $226.4 million in 1997).

The companies answered questions regarding the factors influencing their exploration activities in the United States. Chief among these are, in order of importance to the companies who are spending more than $1 million each on Nevada exploration: existence of favorable geology (consistently a major attraction for Nevada), commodity prices (which was less of a concern last year), uncertainty in permitting timeframes, corporate demands, uncertainty over mining law reform, actual length of permitting timeframes, wilderness study areas, mining claim holding fees, announcements of new discoveries, land exchanges/withdrawals, changes in foreign mining laws, and mergers.

Productivity of Nevada mining operations is exceptionally high. Measured simply by the value of the commodities produced divided by the number of employees, productivity of Nevada miners is outstanding. On the average, each person in the nonfuel mineral industry in Nevada produced approximately $242,000 in mined products in 1998. In discussing the economic impacts of mining, the Division of Minerals (Nevada Bureau of Mines and Geology Special Publication P-10) reported that in 1998 Nevada mining operations employed 13,236 workers, with an average annual pay of $52,824, the highest for any employment sector in the state. The 1998 direct payroll alone from the mining industry in Nevada was approximately $699 million. The Division of Minerals further estimates, using U.S. Department of Commerce multipliers, that there are 43,000 additional jobs created in Nevada to provide goods and services needed by the mining industry and its workers.

Economic, safety, and environmental challenges face the precious metal mines in Nevada. These include fluctuating metal prices, hazards of underground mining, regulatory changes, treating refractory (iron sulfide and/or carbon-bearing) ores, dewatering mines, ultimate chemical compositions of pit lakes, and treatment and disposal of large volumes of water (some of which may

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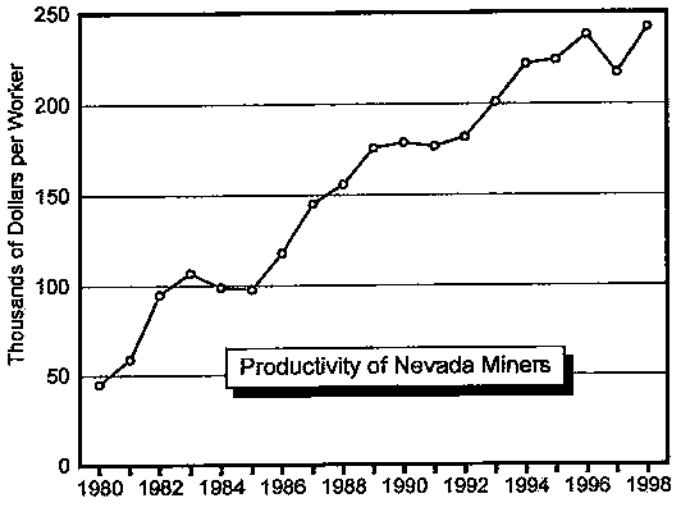


Total value of mined product per worker in Nevada (exclusive of petroleum and gethermal energy)

contain potentially toxic elements that need to be removed or may be too warm to introduce directly into streams). Through research on new technologies and engineering approaches, industry is responding to these challenges.

Perhaps the single largest impact on the gold mining industry in the last two years has been the remarkable decrease in price. The average sales price in 1998 was $294 per ounce, down considerably from the average price of $388 per ounce in 1996 and $331 in 1997. By the summer of 1999, the price had dropped to slightly less than $255, causing the closure of several mines.

Two primary reasons for the drop in price were weakened Asian economies and a trend of central banks' selling off their gold for paper money. The central banks collectively hold approximately 34,000 metric tons of gold (U.S. Geological Survey Mineral Commodity Summaries 1999 [USGS MCS 1999]). Of this, according to the World Gold Council, as of mid-1999, the U.S. held approximately 8,139 tons; Germany, 3,469; the International Monetary Fund, 3,217; France, 3,024; Switzerland, 2,590; Italy, 2,452; Netherlands, 1,012; Japan, 754; United Kingdom, 690; and Portugal, 622; collectively these ten entities hold 25,969 tons. In addition, the U.S. Geological Survey estimates that worldwide the public holds about 72,000 tons as coins, bullion, and jewelry (USGS MCS 1999).

The overall holdings of central banks and the public are, therefore, about 106,000 tons or 3.4 billion ounces. Given that the world population reached 6 billion people in 1999, and that people have prized gold as a commodity of real value for over 5,000 years, this total amount of more-or-less available gold is not excessive. A rebound in the world economy, particularly in Asia, where individuals have traditionally bought gold as a hedge against inflation and uncertainty, will undoubtedly increase demand for gold as an investment. In addition, gold has numerous applications in the high-tech electronics industry as well as in dentistry, jewelry, and the arts.

TAX ON NET PROCEEDS OF MINERALS

Fiscal year[1]	Net proceeds[2] (thousands)	Tax (thousands)
1984	$245,892	$4,157
1985	185,123	3,224
1986	198,338	3,528
1987	374,664	6,091
1988	627,330	12,179
1989	778,253	13,568
1990	748,052	36,238
1991	887,035	42,734
1992	677,342	32,446
1993	727,396	34,718
1994	839,578	40,409
1995	994,416	48,205
1996	786,843	37,568
1997	613,167	29,198
1998	632,503	30,059

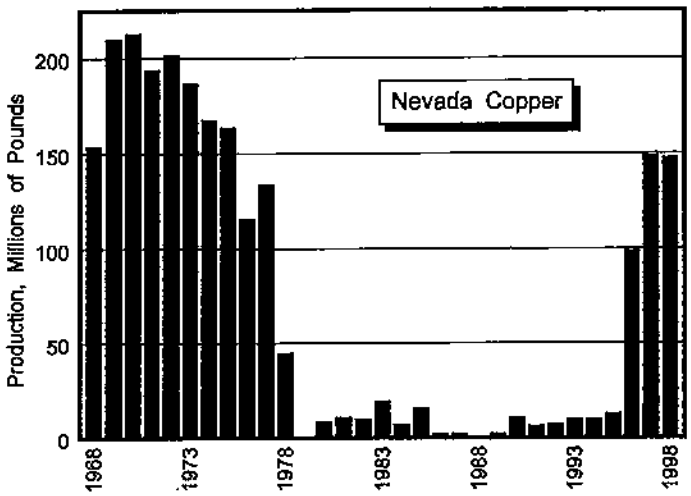
[1] July 1 through June 30

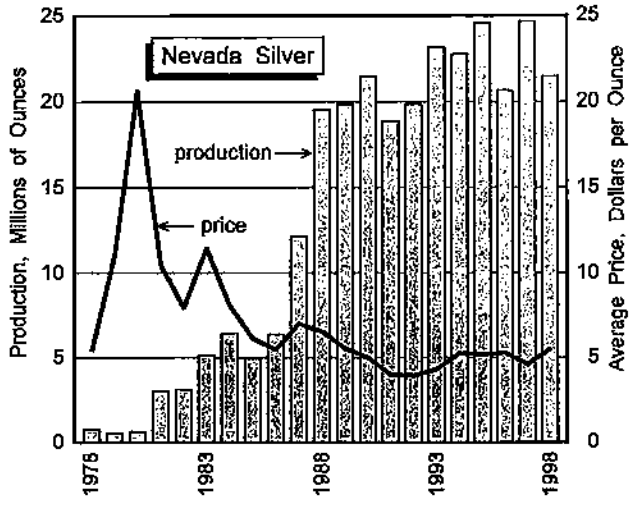
[2] Net proceeds are gross income minus direct costs incurred at the mine site.

Source: Nevada Department of Taxation

Silver production in Nevada dropped to 21.5 million troy ounces (670 metric tons) in 1998, down from the record year of 24.7 million troy ounces (777 metric tons) in 1997. Nonetheless, the U.S. ranks second, behind Mexico, slightly above Peru and well above Canada and Australia, in world silver production. Much of this silver was a by-product of gold mining. With a ratio of value (average price of gold to average price of silver) of 57:1 in 1998, only those deposits with more than 57 times as much silver as gold can be considered primary silver deposits. One such deposit operated in Nevada in 1998 — the Kinross-Candelaria Mine in Mineral County (with a silver to gold production ratio of 369:1 and total silver production of 1.1 million ounces). The largest silver producer in the United States, Echo Bay's McCoy-Cove Mine complex in Lander County, is primarily a co-product gold and silver mine; it yielded 9.4 million ounces of silver from ore with an average silver to gold ratio of 56:1. Similarly, the Coeur Rochester Mine in Pershing County (with a silver to gold production ratio of 47:1 and total silver production of 7.2 million ounces) is also a co-product gold-silver operation. These three operations produced 82% of Nevada's silver in 1998.

At the end of the year the published silver resources in Nevada, including mineable reserves and some subeconomic resources, totaled approximately 300 million ounces. Nevada's production in 1998 accounted for 35% of the U.S. total and 4% of the world total. Depending on price, Nevada is likely to retain the present-day distinction of its nickname, the "Silver State."





Copper production stayed nearly steady from 1997 to 1998, as BHP Copper produced at nearly full, planned capacity at its Robinson property near Ely in White Pine County. The company closed the operation in mid-1999 as a result of low commodity prices. Nevada's copper production represented 4% of total U.S. production in 1998.

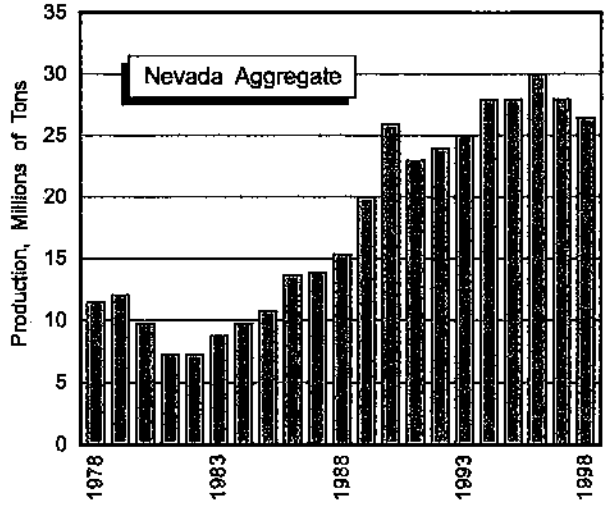
The section on **Industrial Minerals** covers developments during 1998 and gives details on important commodities produced from Nevada, such as aggregate, barite, building stone, cement, clays, diatomite, dolomite, gypsum, lime, limestone, lithium, magnesia, perlite, salt, and silica. In terms of dollar value, the most significant industrial mineral commodity is aggregate (sand, gravel, and crushed stone), with a value of $119 million, second in mineral value behind gold in 1998. Aggregate production remains high as a result of Nevada's expanding population with its demands for construction materials for homes, schools, streets, resort hotels and other businesses, airports, and highways. However, 1998 production was lower than in 1997, perhaps as a response to fewer large-scale construction projects.

Demand for construction raw materials is likely to remain strong owing to Nevada's increasing population. The U.S. Census Bureau estimates that Nevada's population will rise to 1,871,000 in 2000, up from 1,202,000 in 1990. The Nevada State Demographer projects populations of 2.0 million in 2000 and 2.8 million in 2010.

The table on 1998 world production of selected mineral commodities demonstrates that Nevada is particularly enriched in barite and gypsum. These two commodities illustrate the wide difference in markets for industrial minerals. Barite, which is used primarily as a well-drilling additive to prevent blowouts during drilling for oil and gas, is traded chiefly on international markets. Nevada barite accounted for 67% of the U.S. total production and 7% of the total world production in 1998. Barite production decreased from 1997 to 1998 primarily as a result of lower prices for oil. Gypsum, which is used primarily in the manufacture of wallboard or sheetrock, is a relatively common mineral and rarely is transported long distances. Nevada's deposits, which feed wallboard plants near the mines to meet not only demands in Nevada but also in neighboring states, accounted for 9% of total U.S. production and 2% of total world production in 1998.

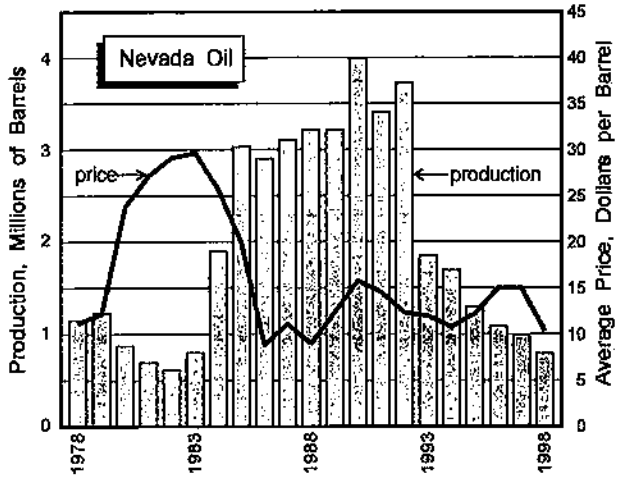
Developments in the geothermal industry are covered in the section on **Geothermal Energy**. Electric power production in 1998 was slightly less than in 1997. Fourteen power plants (operating at ten sites) sold $93 million in electricity, far surpassing the value of petroleum production. Additionally, geothermal energy is used at numerous places in Nevada for space heating, warm water, recreation, and dehydrating vegetables. Relatively low prices for coal and an end of price subsidies have discouraged development of known geothermal resources and exploration for new resources.

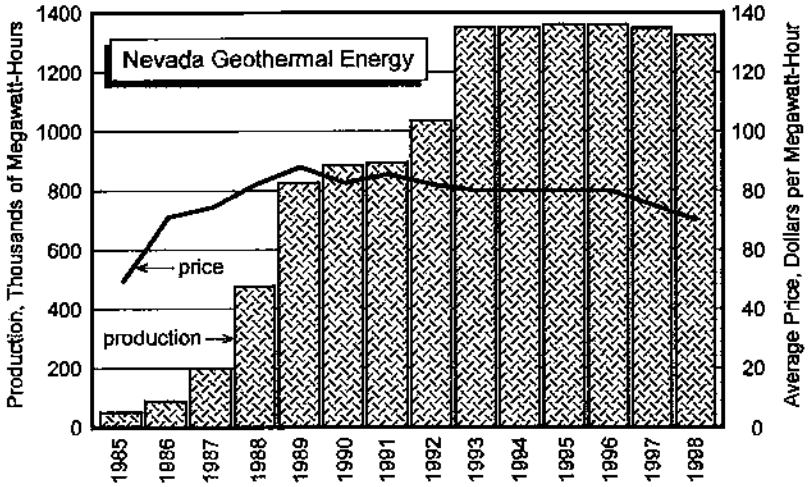
Developments in the Nevada petroleum industry are covered in the section on **Oil and Gas**. Oil is produced primarily in two areas — Railroad Valley in Nye County and Pine Valley in Eureka County. The only producing well in the Deadman Creek Field in Elko County was plugged and abandoned in 1998 after disappointing cumulative production. Nonetheless, its existence proves wider



distribution of oil in Nevada than just in Railroad and Pine Valleys. Total annual oil production from Nevada decreased to 779,000 barrels ($8.1 million) in 1998. Only ten wells were drilled, and only two wells came into production in 1998. Exploration for oil in Nevada is encouraged by the cumulative production from the two premier fields in Railroad Valley, Grant Canyon and Trap Spring (20.3 million and 12.5 million barrels, respectively). Historically, few exploration wells have been drilled in the state (less than 1,000 wells, or fewer than one well per 111 square miles or 286 square kilometers). With so much area unexplored, even discounting areas underlain by granitic intrusions and high-grade metamorphic rocks, the potential for finding more multimillion-barrel fields remains high.

Additional information about the Nevada mineral industry and the U.S. gold industry, including the contents of selected publications, is readily available online through the World Wide Web from the Nevada Bureau of Mines and Geology (www.nbmg.unr.edu) and the Nevada Division of Minerals (www.state.nv.us/minerals). Useful national and international data on nonfuel minerals can be obtained from the U.S. Geological Survey (http://minerals.usgs.gov/minerals) and the U.S. Energy Information Administration (www.eia.doe.gov/index.html) provides data on oil and gas, geothermal, and other energy sources.





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Metals

by Joseph V. Tingley and Daphne D. LaPointe

The information in this section was compiled from news releases in The Mining Record (DMR), Mining Engineering (ME), International California Mining Journal (ICMJ), The Northern Miner (NM), Society of Economic Geologists Newsletter (SEG), Rocky Mountain Pay Dirt (RMPD), and Reno Gazette-Journal (RGJ). Information was also extracted from various company websites, annual reports, and news releases on file at the Nevada Bureau of Mines and Geology, from the Nevada Division of Minerals monthly newsletter, and from the Nevada Mining Association monthly newsletter.

Nevada produced 8.87 million oz (troy ounces) of gold and 21.52 million oz of silver in 1998. Nevada broke its own gold production record set in 1997, and for the first time exceeded the 8 million oz mark. Silver production, however, was down from the record set in 1997. Nevada remained the leading gold- and silver-producing state in the United States with 36 mines reporting gold production and 30 mines producing silver during 1998.

Newmont Mining Corp. continued as the largest gold-producing company in Nevada with 2,704,104 oz of gold produced in 1998 from its operations, which include Twin Creeks and the Lone Tree Complex as well as all of the company's Carlin Trend mines. Newmont's gold production was down slightly from the 1997 figure of 2,776,500 oz.

Barrick Gold was second in Nevada gold production, with 2,345,996 oz, and for the fourth consecutive year, Barrick's Betze-Post Mine was the largest individual Nevada gold producer with 1,498,683 oz. This figure was lower than the 1997 Betze-Post production of 1,605,836 oz, but Barrick Gold's Meikle Mine reported 1998 production of 847,313 oz, up from the 1997 figure of 574,308 oz. Other major gold producers in 1998 included Smoky Valley Common Operation's Round Mountain Mine with 510,502 oz, Placer Dome's Cortez Gold Mines (including Pipeline) with 1.14 million oz, Independence Mining Co.'s Jerritt Canyon Mine with 347,000 oz, Echo Bay Minerals with 167,494 oz from its McCoy/Cove operation, and Getchell Gold's Getchell Mine with 175,302 oz.

Echo Bay Minerals' McCoy/Cove operation was Nevada's largest silver producer in 1998, yielding 9.4 million oz. Coeur d'Alene Mines' Rochester Mine produced 7.2 million oz of silver, and Kinross' Candelaria Mine produced 1.1 million oz of silver. Other large silver-producing operations included Kennecott Rawhide Mining Co.'s Denton Rawhide Mine with 848,000 oz, Round Mountain Mine with 511,320 oz., and Hecla Mining's Rosebud Mine, which produced 477,956 oz.

BHP Copper continued to operate its Robinson Copper Mine during 1998, producing 148.4 million pounds of copper in concentrate, along with 86,000 oz of gold and 299,500 oz of silver. The Yerington and MacArthur copper mines in Lyon County did not produce in 1998.

EXPLORATION

Metals exploration continued in Nevada in 1998 although at a lower level than the previous year. As in the recent past, 1998 exploration activity was concentrated along the major trends in the northern part of the state, the Battle Mountain-Eureka, Carlin, Getchell, and Midas trends. Several projects were pursued in Mineral, Esmeralda, and western Nye Counties along the Walker Lane, but no new activity was reported in Lincoln or Clark Counties, or along the eastern borderlands of the state. Figure 1 shows the location of Nevada mining districts in which exploration activity was reported during 1998.

CHURCHILL COUNTY

Aspen district

MK Gold Co. drilled on its Lodi Project, located northwest of Burnt Cabin at the north end of Lodi Valley. Five holes drilled in June showed a significant increase in gold and previously unrecognized mineral zoning (MK Gold Co. news release, 10/23/98).

Holy Cross district

Pacific Rim Resorts entered into an agreement with Breckenridge Minerals Inc. to do about 10,000 feet of drilling on Breckenridge's Pyramid Mine property, where a resource of approximately 60,000 oz of gold and 3.5 million oz of silver was identified by previous work. The companies anticipate that the drilling program will upgrade the resource to mineable reserves, to be mined by underground methods (Breckenridge Minerals Inc. news release, 7/7/98).

Jessup district

Echo Bay Mines Ltd. terminated its joint venture with Americomm Resources Corp. on Americomm's Jessup Gold Property. Between 1996 and March of 1998, exploration by Echo Bay identified two new areas within the property containing potentially mineable gold and silver. Although Echo Bay stated it was encouraged by the results of its exploration, it elected to discontinue exploration of the Jessup Property to concentrate exploration resources on other projects (Americomm Resources Corp. news release, 6/1/98).

New Pass district

White Knight submitted a Plan of Operations to the Bureau of Land Management for a 12-hole drill program

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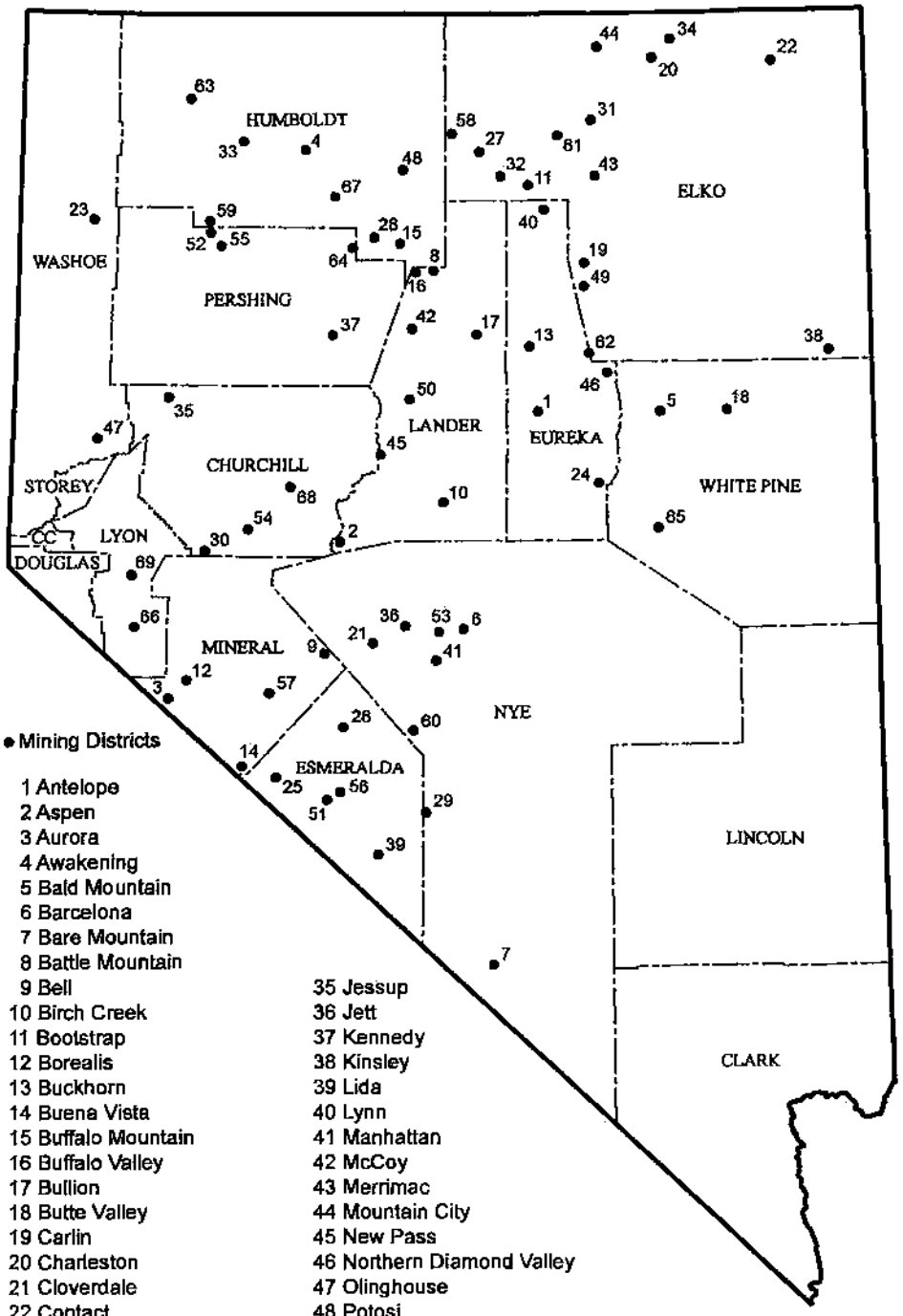

- Mining Districts

1 Antelope
2 Aspen
3 Aurora
4 Awakening
5 Bald Mountain
6 Barcelona
7 Bare Mountain
8 Battle Mountain
9 Bell
10 Birch Creek
11 Bootstrap
12 Borealis
13 Buckhorn
14 Buena Vista
15 Buffalo Mountain
16 Buffalo Valley
17 Bullion
18 Butte Valley
19 Carlin
20 Charleston
21 Cloverdale
22 Contact
23 Deephole
24 Eureka
25 Fish Lake Valley
26 Gilbert
27 Gold Circle
28 Gold Run
29 Goldfield
30 Holy Cross
31 Independence Mountains
32 Ivanhoe
33 Jackson Mountains
34 Jarbidge
35 Jessup
36 Jett
37 Kennedy
38 Kinsley
39 Lida
40 Lynn
41 Manhattan
42 McCoy
43 Merrimac
44 Mountain City
45 New Pass
46 Northern Diamond Valley
47 Olinghouse
48 Potosi
49 Railroad
50 Red Butte Area
51 Red Mountain
52 Rosebud
53 Round Mountain
54 Sand Springs
55 Scossa
56 Silver Peak
57 Silver Star
58 Snowstorm Mountains
59 Sulphur
60 Tonopah
61 Tuscarora
62 Union
63 Varyville
64 Washiki
65 White Pine
66 Wilson
67 Winnemucca
68 Wonder
69 Yerington

Figure 1. Nevada mining districts with reported 1998 precious metals exploration activity.

at its New Pass property located 27 miles west of Austin. The 2,520-acre project contains a gold resource of 3,100,000 tons grading 0.055 opt (ounces per ton) gold developed in jasperoids in calcareous siltstones of the Triassic Augusta Mountain Formation (White Knight news release, 7/29/98).

Sand Springs district

Explore Technologies, Inc. under terms of a joint venture agreement signed by the two companies in 1998, will conduct exploration at Miranda's Sand Springs project east of Fallon. Earlier drilling by a previous operator identified a gold-copper zone associated with skarn mineralization. The prospective area remains open to the west and southwest (Miranda news release, 12/29/98).

Wonder district

Grand Central Silver Mines Inc. signed an option to joint venture on Arizuma Resources' holdings in the Wonder district. The joint venture will explore for and develop deep (>500 feet) ore mineable by underground methods on its 2,200-acre property in the heart of the district. Surface exploration will be followed by drilling to test both the strike and depth potential of the Wonder vein system (Denver Mining Record, 4/29/98).

ELKO COUNTY

Bootstrap district

Rayrock Resources Inc. reported a 1998 increase in reserves at the Dee Mine with the addition of 155,000 oz of gold from underground high-grade zones and another 125,000 oz from the extension of open pit mineable zones. Barrick Gold Exploration Inc. is continuing a drilling program at Dee that has identified sub-economic gold values at depths of about 1,200 feet in the eastern part of the property within the favorable Popovich-Bootstrap units (Rayrock Resources Inc. news release, 11/13/98, Denver Mining Record, 1/20/99). In the same district, Barrick Gold Corp. completed a joint venture agreement on Meridian Gold Inc.'s Rossi property, which contains the Storm resource, a high-grade, deep geologic resource of 3.1 million tons grading 0.371 opt gold. In order to earn a 60% interest in the property, Barrick will spend $15 million on exploration and development. This work will include a 7,000-foot-long exploration decline collared in the high wall of the Dee Mine pit and designed to explore and define the Storm resource (Meridian Gold Inc. news release, 9/14/98; Elko Daily Free Press, 12/19/98).

Carlin district

White Knight Resources Ltd. and International Pursuit Corp. announced the start of an 8,500-foot drilling program designed to test four target areas on the Tonka property, which is located between the town of Carlin and the Rain Mine. In the same area, Nevada Pacific Gold completed mapping, soil and rock sampling, and geophysical surveying on its Woodruff Creek Property and planned initial drill testing for the 1999 field season. The lithology and structural setting of both the Tonka and Woodruff Creek prospects closely resembles that of the nearby Rain deposit. Gold mineralization is hosted in the basal Mississippian Webb Formation rocks at the contact with the underlying Devonian Devils Gate Limestone. Mineralization at Tonka occurs in elongate zones along high angle structures (White Knight Resources Ltd. and International Pursuit Corp. news release, 5/5/98; Nevada Pacific Gold Ltd. news release, 2/23/99).

Charleston district

In August 1998, an induced polarization survey was underway on Golden Hope Mines Ltd.'s Golden Creek (Gold Creek) property. The focus of this survey was to delineate structural features associated with the St. Elmo Mine (contained within the Gold Creek property) and to define possible extensions of the St. Elmo mineralization as targets for a drilling program (Golden Hope Mines Limited news release, 8/26/98).

Contact district

Golden Phoenix Minerals, Inc. completed an evaluation of the Banner Fissure zone on its Contact project. This work included 9,400 feet of new drilling that expanded the known mineral inventory defined by drilling in the 1960s and 1970s. The deposit is now estimated to contain a mineral resource of 39.5 million tons grading 0.952% copper (using a manual cross-sectional inventory based on composite samples) or 51.4 million tons grading 0.703% copper (using a block model mineral inventory). The deposit is still open on three sides, and considerable potential exists to increase the estimated size of the overall deposit (Golden Phoenix Minerals, Inc. news release, 10/20/98; Denver Mining Record, 10/28/98).

Gold Circle district

Several projects surrounding the town of Midas were underway in 1998. At the Midas Joint Venture Ken Snyder Mine, (Franco-Nevada Mining Corp., Limited and Euro-Nevada Mining Corp.), $5.9 million was spent on surface exploration during 1998. This resulted in the increase of mineable reserves to 2.73 million tons grading 1.12 opt gold and 12.82 opt silver by year's end (a total of 3.04 million oz of gold plus 35 million oz of silver), representing a 36% increase over year end 1997 mineable reserves. The Ken Snyder 500-ton-per-day mill came on line on November 21, underground development was completed, and the first doré was poured on December 9, weighing in at over 3,000 oz (Midas Joint Venture news release, 1/26/99). In addition to its development work at the mine, the Midas Joint Venture acquired 350 acres of patented

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and unpatented land from Romarco Minerals Inc. The Romarco ground includes the Belnap Claims, adjacent to proven reserves at the Ken Snyder Mine, and covers the extension of the Gold Crown vein. Reserve estimates for the Belnap property are 589,300 tons grading 0.61 opt gold and 6.9 opt silver (The Northern Miner, 10/12/98; Denver Mining Record, 10/14/98).

In a nearby part of the district, Romarco Minerals Inc. announced that it has entered into an exploration agreement on the South Midas property with Blue Desert Mining Inc. and Golden Glacier Resources. The South Midas property comprises 60 unpatented mining claims located 7 miles southwest of Midas. Romarco is targeting a high-grade gold vein structure exposed at the surface, which returned assays of up to 1.5 opt gold (Blue Desert Mining Inc. news release, 3/31/98; Romarco Minerals Inc. news release, 7/28/98).

Ten miles west-southwest of Midas, Romarco Minerals Inc. announced the results of its Phase Two Drill Program on the Jake Creek Project. Through its exploration efforts, Romarco is earning into a joint venture on Jake Creek with Echo Bay Mines Ltd. High-grade gold mineralization was encountered in two of the Phase Two holes. Romarco was to review all of the Jake Creek data in preparation for renewed drilling in the spring of 1999 (Romarco Minerals Inc. news release, 1/19/99).

Between Midas and the Ivanhoe districts, White Knight Resources Ltd. and Chapleau Resources Ltd. completed 5,488 feet of reverse circulation and diamond drilling at their Squaw Creek property located 42 miles due north of Battle Mountain. Drill holes encountered weakly anomalous gold as well as anomalous mercury and arsenic values. The property was staked to cover an inferred window of Lower Plate Paleozoic rocks underlying volcanic and alluvial cover (White Knight Resources Ltd. and Chapleau Resources Ltd. news release, 7/29/98).

Independence Mountains district

In the Jerritt Canyon Mine area, Independence Mining Co.'s new SSX underground mine was dedicated on October 15 and commenced commercial production. The portal of the SSX Mine, which stands for Saval-Steer Extension, is at the bottom of the mined-out Pattani open-pit mine. Mine reserves are 460,000 oz of gold at a grade of 0.384 opt gold (Elko Daily Free Press, 10/16/98). At the end of 1998, it was announced that South Africa-based Anglo Gold, the world's largest gold producer, was purchasing Minorco's 70% interest in Independence Mining Co. The remaining 30% is held by Meridian Gold (Meridian Gold Inc. news release; Elko Daily Free Press, 12/10/98).

Ivanhoe district

Drilling in 1998 by Great Basin Gold Ltd. on the Hollister property encountered at least 17 intercepts of greater than 0.5 opt gold (many greater than 1 opt gold) along northwest- and northeast-trending structures below the shallower, bulk tonnage, Hollister deposit. The high-grade gold and silver drill-hole intercepts are interpreted to be feeder veins to the overlying 2.8 million ounce Hollister deposit. Great Basin started additional drilling to determine the size and continuity of the high-grade vein system (Great Basin Gold Ltd. news release, 7/14/98).

Jarbidge district

San Antonios Resources acquired the Pick and Shovel patented claims and carried out reconnaissance geological mapping and sampling on the claims and the surrounding area. The claims cover outcrops of the undeveloped Pick and Shovel vein, located south of Bonanza Gulch about 2 miles south of the town of Jarbidge (San Antonios Resources, NBMG files, 9/26/98).

Kinsley district

Mining was completed at the Kinsley Mine in March, partially due to the diminution of the size and metallurgical characteristics of the two remaining orebodies at Kinsley (Alta Gold Co. news release, 4/23/98).

Merrimac district

Homestake Mining Co. drilled gold-bearing jasperoid targets on the Lone Mountain project to test anomalies identified through earlier detailed surface work. The Lone Mountain property is held under a joint venture agreement between Tri Origin (40%) and Homestake Mining Co. (60%). Homestake is funding the current drill program to earn additional interest in the property from Tri Origin (Tri Origin news release, 9/2/98).

Mountain City district

Cordex Exploration continued exploration drilling on its Mountain City Project (Humboldt-Toiyabe National Forests plan of operations supplement, 1/29/98).

Railroad district

Several companies were active in the Railroad district during 1998. At year's end, Kinross Gold Corp. was continuing a drilling program at the Railroad Project, thereby earning a 60% joint venture interest in the project with Exploration Mirandor Inc. (Denver Mining Record, 8/5/98). The Railroad project consists of over 600 patented and unpatented claims plus 15 square miles of fee land located adjacent to Newmont Gold Inc.'s producing Rain Mine and their new Emigrant Springs Mine as well as the South Bullion and Trout Creek deposits. Mirandor drilling on the property in 1997 resulted in three new gold and polymetallic discoveries: LT East, EHR, and Bunker Hill. Drilling also expanded the potential of the POD gold deposit (Exploration Mirandor Inc. news release, 2/23/98; Elko Daily Free

Press, 8/15/98; Brex Inc. news release, 12/11/98). In November, Exploration Brex Inc. completed its acquisition of the POD group of claims by signing an agreement that purchases all its advance production royalties. Brex owns 50% of the POD group allocated by Exploration Mirandor Inc. (Exploration Brex Inc. news release, 11/17/98). The geological resource of the POD deposit is 1.4 million tons grading 0.085 opt gold hosted in altered lower plate Devonian rocks. The POD claims are subject to the earlier Kinross joint venture agreement (Exploration Brex Inc. news release, 11/17/98). Not far away, International Calneva Gold Corp. conducted surface sampling and mapping on the Pine Mountain property, located 7 miles southwest of the Rain Mine (Denver Mining Record, 8/5/98).

Snowstorm Mountains district

Northwest of Midas, Blue Desert Mining Inc. carried out mapping and sampling on its Snowstorm property. The mapping indicates that the property is underlain by the same package of volcanic rocks that hosts gold veins at the nearby camp of Midas. Blue Desert Mining considers that there is an excellent possibility for steeply dipping, high-grade veins similar to those found at Midas to occur in association with the Winter's Creek fault or parallel structures. Adjacent to the Winter's Creek fault, the volcanic rocks are brecciated, pervasively argillized and silicified over a strike length of 4,000 feet and a width of approximately 500 feet. Further work including detailed mapping, sampling, and bulldozer trenching is planned to delineate the structure (Blue Desert Mining Inc. news release, 3/31/98).

Tuscarora district

International Calneva Gold Corp. has completed ten drill holes on its Castile Mountain Project located on Beard Hill. In addition to the drilling, 20 claims have been staked west of Beard Hill and north of the Berry Creek Mercury mine to cover an area of silicified andesite that yielded anomalous gold, silver, arsenic, and mercury values in surface samples (Elko Daily Free Press, 6/27/98; Denver Mining Record, 8/5/98). Newcrest Resources is also active in the district and is planning a drilling project south and east of the old town of Tuscarora (Elko Daily Free Press, 6/20/98).

Union district

MK Gold conducted geologic mapping, sampling, geophysical surveys, and drilling on its 100%-owned Red Rock Project located 25 miles southeast of Carlin, near the Eureka County line. The property consists of 913 unpatented lode claims covering approximately 21,000 acres in an area where1997 drilling produced encouraging results (MK Gold Co. news release, 10/23/98).

ESMERALDA COUNTY

Buena Vista district

Big Sky Resources is in the process of acquiring all the outstanding shares of Dos Amigos Inc., which owns 100% of the Tip Top Gold Project. Dos Amigos is in the final stages of permitting for an open-pit heap-leach gold mine on the project, which has an indicated resource of 109,000 tons grading 0.103 opt gold and 0.88 opt silver (11,227 oz of gold and 95,920 oz of silver). The inferred geologic resource is 168,000 tons grading 0.088 opt gold (14,784 oz of gold). The mineralized zone is open both along strike and at depth with good potential for definition of additional resources. Big Sky planned further exploration to investigate the southwestern extension of the 50- to 100-foot-wide fault zone that hosts both the Tip Top Gold vein system and the Brownie gold-silver property some 5,000 feet southwest of the Tip Top underground workings (Denver Mining Record, 6/17/98).

Fish Lake Valley district

Romarco Minerals Inc. completed the first phase of drilling on the Red Rock property located about 70 miles southwest of Tonopah. Romarco acquired the property in early 1998 and commenced drilling in late April to test a blind, high-grade, epithermal quartz-adularia vein system discovered by Phelps Dodge in the late 1980s under several hundred feet of post-mineral gravels.

Ten of Romarco's 19 holes encountered significant high-grade intercepts of at least 5 feet assaying greater than 0.10 opt gold and one hole contained an intercept of 115 feet grading 1.61 opt gold and 8.04 opt silver. Romarco's drilling has confirmed the presence of several high-grade gold veins and substantially extended the strike length of the mineralization (Romarco Minerals Inc. news release, 7/28/98; The Northern Miner, 8/16/98).

Gilbert district

Rayrock Yellowknife Resources Inc. acquired an option to earn a 75% interest in the Castle Gold deposit, where previous exploration had outlined a resource of 10 million tons of ore grading 0.03 opt gold. Rayrock's 1998 drilling confirmed the resource, and a preliminary valuation study indicated that the west half of this deposit, which is under shallow overburden, could be mined at a $300 per ounce gold price (Rayrock Resources Inc. news releases, 5/27/98, 11/13/98).

Goldfield district

Romarco Minerals Inc. was active at Goldfield in 1998 and spent the year consolidating 100% interest in a landholding covering more than 21 square miles along a strike length of more than 6 miles of prospective ground in the gold district. Since 1996, Romarco has been compiling geologic and geochemical data at Goldfield and

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is currently mapping and sampling throughout the district. High-grade samples have come from Romarco's Black Butte and Tognoni Springs areas, where a sample from the dump of the Bull Dog Fraction returned 18.7 opt gold and 14.8 opt silver. Select samples from the Excelsior patent at the north end of the Nevada Gold and Casino lease returned 5.3 opt gold, 17.2 opt silver and 10.4 opt gold and 54.3 opt silver respectively. These workings pass through the barren, near surface, acid-leached alteration layer and encounter high-grade mineralization at depth (Romarco Minerals Inc. news release, 8/12/98).

Lida district

Cascade Metals Inc. announced the results of 1998 exploration on its 100%-owned Texas and Florida-Wisconsin Projects. The Texas Project covers about 1.2 square miles including 120 workings dating from the early 1900s in the heart of the district. Surface samples widely distributed over a 0.8 square mile area have averaged 0.02 opt gold and 1.4 opt silver. Cascade's geophysical work indicates that mineralization is associated with three discrete structural trends and is concentrated at the intersection of the northeast and northwest trends. Extensive gold soil anomalies and alteration zones coincide markedly with known structural trends and VLF-EM anomalies. A geophysical survey on the Florida-Wisconsin Project confirmed known silver-gold bearing structures, and defined previously unrecognized mineralized structures. Extensive historical workings were sampled and returned up to 0.08 opt gold and 1.3 opt silver. The Florida-Wisconsin project has potential for expansion both along strike and down dip and represents the most advanced stage target in the Lida district. Cascade's Mozart project adjoins the Texas and Florida-Wisconsin project areas in the northeast portion of the Lida district. It features a silver-rich zone in a west-trending fault contact between a felsic dyke and altered limestone. An open stope approximately 430 feet long has exposed the mineralized fault horizon where a quartz-carbonate vein hosts silver-chloride mineralization. Grab samples from the area have assayed up to 93 opt silver (Cascade Metals Inc. news release, 11/4/98).

Red Mountain district

Camnor Resources Ltd. and Twin Star Minerals Ltd. planned additional exploration on the Argentite property located west of Silver Peak, after an earlier nine-hole drilling program encountered significant gold mineralization in the Adit zone. This drilling demonstrated that the zone is up to 200 feet wide and extends more than 600 feet along strike with gold values as high as 0.025 opt gold over 270 feet. Geologic mapping indicates that the Adit zone is open in both directions, extending well beyond the drilled areas. Mapping and sampling elsewhere on the property have identified zones similar to the Adit zone. The most significant of these, the Baseline, is located 300 feet to the north of the Adit zone and has been traced for 700 feet. Within the Baseline zone, anomalous gold values occur within a 200-foot wide zone of argillic alteration. The 1998 exploration program was designed to define the potential of the Baseline zone and other targets located on the property (Camnor Resources Ltd. news release, 5/1/98).

Silver Peak district

Vista Gold Corp. acquired the Mineral Ridge Mine from Cornucopia Resources Ltd. in October 1998. The mine is located near the town of Silver Peak about 35 miles southwest of Tonopah and began producing in mid-1997 but was shut down at the end of the year after it failed to meet production expectations. Vista Gold restarted the mining operation in November 1998 and implemented modifications to the processing facility designed to improve the rate of gold recovery. Vista also began a short-hole drilling program to test for additional gold reserves. By year's end, assay results indicated that 13 of 19 holes had encountered economic mineralization. Following evaluation of these results, drilling was to continue on the 50-to 60-hole program. Vista now estimates the proven and probable reserves to be 4 million tons at a grade of 0.06 opt containing 243,000 oz of gold (Vista Gold Corp. news release, 10/22/98, 1/18/99, 4/1/99).

Tonopah district

Eastfield Resources Ltd. and Prism Resources Inc granted an option to Royal Silver Mines, Inc. to explore part of the Three Hills property in the Esmeralda County portion of the Tonopah district. Eastfield and Prism will retain ownership of the existing bulk tonnage gold resources of the Three Hills deposit. Royal planned a minimum 6,000-foot drill program on the property to complete its due diligence. The focus of Royal's exploration will be in the largely unexplored northern portion of the property. Past work in this area by Eastfield and Prism has shown good potential for extensions of the high-grade silver-gold vein/lode systems which characterized the historic Tonopah district (Eastfield Resources Ltd. and Prism Resources Inc. news release, 7/8/98).

EUREKA COUNTY

Antelope district

White Knight Resources Ltd. and Chapleau Resources Ltd. announced results from the 1998 exploration program at the Indian Ranch property about 15 miles southeast of Gold Acres-Cortez. A 12-hole, 17,000-foot drill program was initiated on the 607-claim property in October of 1998. Drill holes identified pervasive gold mineralization in altered silty limestones of the Roberts Mountains

Formation over an area measuring 2,800 feet by 3,500 feet in a fault block. Mineralization and alteration remain open in several directions. Gravity and CSAMT surveys were to be conducted to better define the edges of the uplifted lower plate rocks and structures within them.

Initial attention was drawn to the Indian Ranch property because of the discovery of an extensive zone of jasperoid float assaying up to 0.40 opt gold. White Knight's and Chapleau's 1998 work, combined with their 1997 results and pre-1997 drilling by other parties combine to indicate an area of gold mineralization 1,200 feet wide which can be traced for over 2,000 feet in strike length with thicknesses of 10 to 520 feet. Grades are typically 0.015 opt gold, with higher grades up to 0.22 opt gold over 10-foot intervals (White Knight Resources Ltd. news release, 2/22/99).

At the Tonkin Springs Mine, Globex Mining Enterprises Inc. did wide-spaced drilling in the planned open-pit area (TSP1), with the objective of upgrading previously drilled gold intersections into either proven or probable minable resource categories in the TSP1 Main Zone and to explore deeper gold zones in specific areas. The Tonkin Springs Mine is a bio-oxidation-heap-leach project with processing infrastructure already in place. Final ore column tests were underway with production anticipated by mid to late 1999. The project's present drill-defined gold reserves and resources stand at 1,365,000 contained oz. (Globex Mining Enterprises Inc. news release, 5/11/98).

Buckhorn district

Independence Mining Co. Inc. (IMC, since acquired by AngloGold) exercised its option to acquire Royal Gold's working interest in the Buckhorn South property, consisting of 265 unpatented mining claims located at the north end of the Simpson Park Mountains. Royal Gold had been conducting exploration work on the property since its acquisition in 1994. The Zeke deposit, located within the Buckhorn South property, has known reserves of 2.4 million tons grading 0.0465 opt (about 100,000 oz of gold). IMC's 1998 drilling program at Buckhorn South focused on possible high-grade and disseminated gold mineralization in some previously unknown 'windows' of lower plate carbonaceous limestone of the Roberts Mountains Formation. IMC designed a program to test these new targets at Buckhorn South, and also to achieve further delineation of the existing Zeke deposit. IMC exceeded the exploration work requirements on Buckhorn South in order to gain Royal's interest in the property in exchange for various net profits and net smelter return royalties to Royal on IMC properties in Elko and Lander Counties (Royal Gold news releases, 8/10/98; 11/11/98).

Eureka district

Homestake Mining Co.'s new Ruby Hill Mine near Eureka achieved commercial production in January and produced 116,500 oz of gold at a cash cost of $122 per ounce during 1998. The operation is now Homestake's lowest cost gold producer (Homestake Mining Co. news release, 2/7/99).

Alta Gold Co. acquired the Lookout Mountain gold property from Echo Bay Exploration Co. in 1998. The property consists of 4,500 acres of unpatented mining claims 8 miles south of Eureka. Ore grade gold was intersected in drill holes over a strike length exceeding 2 miles, and mineralized intercepts were encountered from the surface to a depth of nearly 700 feet. Six separate deposits have been defined on the property: Lookout Mountain, South Lookout Mountain, Pinnacle Peak, Triple Junction, South Ridge, and South Adit (Elko Daily Free Press, 1/24/98).

In the same district, White Knight Resources entered into a four-year exploration agreement with Inmet Mining (U.S.) Inc. to explore the Yahoo Property comprising 259 unpatented lode mining claims covering mineralized rock in the Yahoo Canyon. White Knight's earlier mapping and surface sampling of jasperoid outcrops had identified several targets containing up to 0.046 opt gold and strongly anomalous pathfinder elements along the Yahoo Canyon fault system. Inmet's initial three-hole drill program on the property identified a 50-foot interval of hydrothermally altered, brecciated Devonian limestone containing anomalous arsenic, antimony, and mercury. White Knight and Inmet are evaluating the results of the drilling program and additional untested targets to the east, which lie along a prominent west-northwest structural zone (White Knight Resources Ltd. news release, 10/16/98).

Lynn district

Newmont Gold Co. is planning a new underground mine on the Carlin Trend, called Goldbug/Deep Post, and shaft sinking could begin next year. Goldbug will be just north of the Betze-Post open-pit mine, and the shaft will be sunk between the Betze-Post pit and Barrick's new Rodeo underground mine, still under development. Goldbug is expected to produce more than 400,000 oz of gold annually and be similar in size to the proposed Leeville underground mine (Elko Daily Free Press, 2/6/98).

Northern Diamond Valley

MK Gold Co. finalized a joint venture with Phelps Dodge Exploration Co. to explore the Diamond Valley property located on the northwest flank of the Diamond Mountains along the Elko-Eureka County line. The property contains Carlin-type sediment-hosted gold deposit targets in Paleozoic limestones and marine black shales. Gold assays up to 0.064 opt have been obtained from jasperoid outcrops along a major north-south fault zone on the property. MK Gold plans a 1999 exploration program consisting of rock chip and soil sampling, geophysics, and drilling on the property in order to earn up to an 80% interest in the venture (MK Gold Co. news release, 12/23/98).

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HUMBOLDT COUNTY

Awakening district

X-Cal contracted Mineral Resources Development Inc. (MRDI) to complete a resource estimate of lower grade disseminated mineralization in the Silica Cap, Saddle, Wood and West Wood portions of the Sleeper Mine, adjacent to the present pit. Based in part on this study and on their own data, X-Cal estimates an in-ground mineral inventory of 182 million tons of 0.042 opt gold (7.6 million oz) remaining adjacent to and under the Sleeper Pit. Calculations were based upon unconstrained geostatistical parameters, kriged blocks, models, and variograms, with no consideration given to continuity, economics or mine modeling, as the study was intended only as a calculation of the potential size of the system. (X-Cal Resources news release, 6/17/98).

Battle Mountain district (Humboldt County portion)

At the Marigold Mine, the discovery of the Terry Zone and additional drilling on the Ridge and Top Zones in 1998 added 170,000 oz of gold to the property reserves. Continued drilling was expected to add 100,000 to 200,000 oz to these reserves in 1999 (Denver Mining Record, 1/20/99; Rayrock Resources Inc. press release, 2/19/99).

Gold Run district

White Knight Resources began compiling and evaluating previous work on the Rock Creek Ranch property under an exploration agreement with North Mining Inc. The property is located between Kramer Hill and the Adelaide Crown Mine and contains large areas of silicification and jasperoid development.

Drilling is planned for 1999 in hopes of discovering a deeper sediment-hosted deposit (Denver Mining Record, 3/4/98; White Knight Resources news release, 2/19/99).

Jackson Mountains district

Meridian Minerals Corp. terminated its option agreement with Gerle Gold (U.S.) Inc. on the Happy Creek property. Meridian performed over $200,000 of work on the property in 1997 and 1998 including new aerial photography, surface mapping, and data compilation. Geochemical sampling returned anomalous gold and silver values in a quartz carbonate zone, but 5,400 feet of reverse circulation drilling failed to penetrate into a postulated underlying epithermal bonanza gold zone (Gerle Gold Ltd. news release, 9/18/98).

Potosi district

Placer Dome Inc. and Getchell Gold Corp. announced a merger plan whereby Placer Dome will acquire a 100% interest in Getchell Gold Corp., which operates the adjoining Getchell and Turquoise Ridge gold mines.

The Getchell property contains two operating underground mines and a mill facility that includes a pressure oxidation plant. The mines are expected to produce more than 400,000 oz per year from 1999 to 2002 at a cash production cost below $230/oz (Placer Dome Inc. and Getchell Gold Corp. news release, 12/13/98.

Development continued at Turquoise Ridge in 1998 with the primary focus on waste development ramping, drifting, and stope access. The Turquoise Ridge Mine's ventilation and production shafts as well as all hoisting infrastructure were completed in 1998. The production shaft was excavated to the 1,850-foot level in 1998 and was commissioned into production service in January 1999 with a hoisting capacity of about 8,000 tons per day. Total proven and probable gold reserves on the Getchell property at year end were 6.6 million oz of mainly underground ore averaging 0.381 opt. In 1998, 0.2 million contained oz were mined, 0.5 million contained oz were removed from reserves due to low gold price, and 1.1 million contained oz were added through development drilling and exploration. Geologic resources total an additional 9.4 million contained oz of gold (Getchell Gold Corp. news release, 2/15/99).

Sulphur district

Sustained low gold prices caused mining activity to be reduced and then suspended in December 1998 at Vista Gold's Hycroft Mine. Production of gold from ore stockpiles will continue in 1999 and 2000 with 1999 production expected to be approximately 25,000 oz. Vista intends to maintain the plant and facilities in stand-by condition while investigating the potential for additional or higher grade oxide ore which will permit an early restart of the operation (Vista Gold Corp. news release, 1/18/99).

Varyville district

Mustang Gold Corp. drilled 24 holes totaling 7,905 feet on its Pearl Canyon property. The program was designed to test the R-1 Zone where the company's previous drill programs intersected significant oxide copper and silver values over a strike length of 1,050 feet at depths up to 300 feet. Drilling results extended the copper-silver values for an additional 1,275 feet of strike length and the R-1 Zone remains open along strike and at depth. Additional step-out drill holes tested the covered stratigraphy up to 3,000 feet along strike from the main copper-silver area and intersected a new zone up to 100 feet thick adjacent to a porphyry intrusion. The zone of strongly argillized, bleached, iron-oxide- and quartz-rich, weakly pyritized rock represents a new copper-gold exploration target at Pearl Camp (Mustang Gold Corp. news release, 8/13/98).

Winnemucca district

Pallaum Minerals began a preliminary exploration program on the W property near Winnemucca preparatory to planned drilling in the latter part of the year. The work

centered on an area of gold mineralization that graded 0.04 opt gold over 100 feet. Pallaum Minerals is evaluating potential joint venture opportunities (Pallaum Minerals news release, 8/24/98).

Buffalo Mountain district

Drilling in 1998 on the Converse project, located 9 miles south of Newmont Gold's Lone Tree Mine, has focused on the North Redline deposit. This deposit, discovered in 1997, is less than 0.5 miles north of the Redline deposit. High-grade mineralization was intersected in one hole (45 feet grading 0.293 opt), demonstrating the presence of a structurally controlled high-grade quartz vein stockwork. Previous drilling by Romarco Minerals and joint venture partners, Uranerz USA and Newmont Gold outlined a drill indicated gold resource on the property of 49.9 million tons grading 0.021 opt for a total of 1,036,000 oz of gold (Denver Mining Record, 8/5/98). More drilling was planned on the North Redline deposit, the Redline deposit, and other selected targets on the property with the objective of adding to the current gold resource. Newmont Gold has indicated that it will take over operating the project on completion of the earn-in by the Nike Joint Venture (Romarco/Uranerz) which was expected to occur by the end of 1998. Uranerz is currently the operator of the project and is in the process of being acquired by Cameco (Romarco Minerals Inc. news release, 7/20/98).

LANDER COUNTY

Battle Mountain district

At Battle Mountain Gold Co.'s Battle Mountain Complex, work on the Phoenix project progressed significantly in 1998 where more than 145,000 feet of drilling added approximately 1 million oz of gold to the reserve base. Drill results from West Midas, mid-Midas and Fortitude pits were very encouraging. It now appears that the footprint of the new mine model is going to be much larger than originally anticipated, spanning from the old Fortitude pit to the north, to the Midas deposits in the south, a distance of about 3 miles. Drilling at West Midas intersected appreciable gold mineralization, which remains open to the south. Targets beneath the eastern part of Fortitude pit in the middle Battle Formation and the Virgin fault zone also returned encouraging results. In 1999, 150,000 feet of development, metallurgical, and exploration drilling is planned with the emphasis on reserve development.

At the nearby Copper Basin project, 1998 drilling identified high-grade gold-copper-silver mineralization beneath the east highwall of the old Surprise pit. Continued work in 1999 is planned to confirm the viability of the high-grade East Surprise target as well as to develop other targets in the area (Battle Mountain Gold Co. news releases, 4/23/98, 7/30/98, 10/27/98, 2/2/99).

Great Basin Gold Ltd. announced positive results from the first two core holes on its Wilson Independence gold property located west of Copper Canyon. The two successful drill holes targeted favorable calcareous host rocks of the Antler sequence below the Golconda thrust. Both drill holes encountered geologically significant gold values in the lower member of the Battle Conglomerate and also in the Harmony Formation, the latter previously unrecognized as a favorable host unit (Great Basin Gold Ltd. news release, 7/7/98).

Oro Nevada Resources Inc. dropped its lease on the DeWitt property, west of Copper Basin, following discouraging results from an eight-hole drilling program designed to test replacement and skarn targets near a copper-rich intrusive (Elko Daily Free Press, 9/26/98).

Birch Creek district

White Knight Resources Ltd. is earning a 100% interest in the Quito project, south of Austin, from Meridian Minerals Corp. for $2 million in exploration expenditures over a 4-year period. White Knight's work in 1997 and 1998 identified three separate areas of significant gold mineralization on the property: the Russ' Zone, the Spires area, and the "Newly Discovered Zone." Drilling, rock-chip sampling, and geological mapping at the Russ' Zone defined 9,000 feet of strike length containing erratic gold mineralization in upper plate rocks, which may represent leakage above a disseminated gold deposit in lower plate carbonate rocks. Additional drilling to test the model and extend mineralized areas along strike is planned for next season. The Spires target is located about 8,000 feet northeast of the old Main and Satellite Pits, which produced 180,000 oz of gold during 1986–88. Prospecting and geological mapping in this area defined an anomalous gold zone associated with altered dikes along a fault zone separating upper plate cherts from lower plate Roberts Mountains Formation. In 1998, rock chip sampling and geologic mapping defined a 4,000-foot-long "Newly Discovered Zone" of decalcification and scattered jasperoid development in thin-bedded carbonates cut by altered dikes on the northern part of the Quito property (White Knight Resources Ltd. news release, 2/19/99).

Buffalo Valley district

Fairmile Gold Corp. drilled eight holes at its Buffalo Valley property in 1998: seven holes were drilled at Target L and one hole was drilled at Section 3 on ground leased from Santa Fe/Newmont. Continuity of gold mineralization between the Water Well Pod (Target L) and one of the pods along the Front fault (Target B) was established by the program. The Section 3 hole did not encounter gold mineralization and the lease on this ground was terminated (Fairmile Gold Corp. news release, 2/1/99).

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Bullion district

Cortez Joint Venture poured its one-millionth ounce of gold from the Pipeline Mine on January 31, 1998, one month ahead of earlier predictions. The mine went into production in June 1997, and 1998 was the first full year of production (Elko Daily Free Press, 1/30/98). At the South Pipeline deposit, Placer Dome U.S. Inc., the operator of the Cortez Joint Venture, revised its reserve estimate of the South Pipeline deposit, as of December 31, 1998, to 122,340,000 tons proven and probable ore at an average grade of 0.037 opt gold. This is an increase of more than 1.4 million contained oz of gold, representing a growth of some 45% in the size of the reserves since June 30, 1998. All required permits for the full-scale mining and processing of South Pipeline ore are expected to be issued by mid-year 1999, pre-stripping operations will begin in 2001, and significant production from the deposit will commence in 2002. The South Pipeline project involves approximately 4,000 acres of mining claims located about 500 feet south of the Pipeline deposit that is currently being mined by Cortez (Royal Gold news releases, 8/6/98, 11/11/98, 12/22/98, 2/16/99).

Oro Nevada Resources Inc. reported the sale of surface rights of the Dean Ranch, also in Crescent Valley, to the Cortez Joint Venture for $4,750,000. Oro Nevada retained the mineral rights on 96% of the 48,437-acre ranch (Elko Daily Free Press, 11/21/98). Farther north, Coral Gold Corp. completed an option agreement with Placer Dome on Coral Gold's Robertson project (Coral Gold Corp. news release, 10/8/98).

McCoy district

At the McCoy/Cove Mine, exploration work in 1998 identified a small pod of higher-grade mineralization located off to the side of the Cove pit. An engineering study has been completed that confirms the economics of using underground methods to mine the 10–15,000 oz of contained gold and 0.5–1.0 million oz of contained silver within this pod.

In order to compensate for lower grade ore encountered in 1998, McCoy/Cove increased the number of tons milled, exceeding the mill's rated capacity by over 15%, thus increasing total production. McCoy/Cove continues a waste rock removal program that will allow access to approximately 400,000 oz of contained gold and 22 million oz of contained silver located directly below the waste rock area. The material to be mined from this portion of the deposit will progress from low-grade heap-leach material in the second half of 1999 to higher grade material starting in early 2000 (Echo Bay Minerals news release, 2/11/99).

Red Butte area

MK Gold Co. conducted rock chip and soil sampling and a geophysical survey on the RBX project, located about 50 miles southwest of Battle Mountain. Drilling on targets generated from this work began in August 1998. MK Gold Co. owns 100% of this gold property consisting of 88 unpatented lode claims on approximately 1,760 acres (MK Gold Co. news release, 10/23/98).

LYON COUNTY

Wilson district

Inmet Mining has submitted an amendment to their approved mining plan of operations to drill 43 reverse circulation holes in sections 9, 10, 15, 16, and 17 of T9N, R26E, near the old camp of Rockland (Humboldt-Toiyabe National Forests amendment to mining plan, 5/28/98).

Yerington district

International Taurus Resources acquired the Lyon copper-magnetite property from Cyprus Metals Exploration. A due diligence field program will test gold content of the copper mineralization as well as determine the engineering parameters required for an underground mining operation at the Lyon site. Mineralization at the Lyon deposit is in six zones: the North and South porphyries, and the Northwest, East, E-2, and Southwest skarns. Preliminary resource estimates, based on 358 holes drilled by Cyprus are: 138 million tons grading 0.71% copper, 27% magnetite, and 0.001 opt gold in the North Porphyry; 203 million tons grading 0.36% copper, 31% magnetite, and 0.001 opt gold in the South Porphyry; 3 million tons grading 3.35% copper in the Northwest Zone skarn; 7.1 million tons grading 3.35% copper, 23.6% magnetite, and 0.01 opt gold in the East skarn; 2 million tons grading 3.6% copper, 27.9% magnetite, and 0.02 opt gold in the E-2 skarn (Denver Mining Record, 6/15/98).

Arimetco Inc. was forced by the Nevada Division of Environmental Protection to cease mining at the Yerington and MacArthur mine sites due to failure to obtain a $945,000 reclamation bond and violation of other state regulations. Arimetco had filed for bankruptcy protection in January 1997 (Humboldt Sun, 12/28/98).

MINERAL COUNTY

Aurora district

After producing 1,911 oz of gold in the first quarter of 1998, the Aurora Mine was placed on care and maintenance in March because of low gold price and needed capital improvements. Real Del Monte Mining Corp., (formerly Consolidated Nevada Goldfields Corp.) is seeking joint-venture partners to continue exploration on its large land holdings in the historical Aurora gold district (Real Del Monte Mining Corp., news releases, 3/23/98, 5/29/98).

Bell district

Prism Resources (U.S.) Inc. entered into a joint venture agreement with Teck Resources Inc. on Prism's 570-acre CMA property in the Cedar Mountains. The CMA Property is a sulfide-rich gold-copper-silver occurrence exhibiting the characteristics of the peripheral portions of a high temperature gold-bearing porphyry copper system. The sedimentary and intrusive rocks that host mineralization are covered to the north by post-mineral volcanics. Earlier drilling by Standard Slag Co., Elmwood Resources, Battle Mountain Gold Co. and USMX Inc. confirmed the presence of gold mineralization under these cover rocks to the northeast. Historical mines on the current CMA property produced 10,000 tons of gold, silver, and copper ore (Prism Resources Inc. news release, 10/19/98).

In the same district, Royal Silver Mines Inc. secured a lease-option on the Simon Silver-Lead Mine. Royal Silver plans surface geologic, geochemical, and geophysical surveys, followed by combination core and reverse-circulation drilling. Royal's staff is studying the possibility of rehabilitating a 1,100-foot exploration shaft and other infrastructure dating from the 1960s on the property (Royal Silver Mines Inc. news release, 3/31/98).

MK Gold Co. is also working in the Bell district where it has located 54 claims on the Dawn property. The 1998 exploration program consisted of geologic mapping, rock and soil sampling, and geophysics intended to identify drilling targets (MK Gold Co. news release, 10/23/98).

Borealis district

In late July, Cambior Exploration USA completed a ten-hole drill program on the Borealis Joint Venture to test portions of five different targets. Cambior is the operating partner of a joint venture with Golden Phoenix Minerals, Inc. on the project. Drilling in the Graben area was successful in extending the strike length of the known mineralization. The Graben/Freedom Flats sulfide resource area is reported to contain an estimated inferred 205,000 oz of gold at an average grade of 0.22 opt. Three holes drilled in the Sunset Wash area substantiate Cambior's interpretation that the alteration and a strong IP anomaly indicate significant potential for gold mineralization similar to the Freedom Flats and Graben deposits (Golden Phoenix Minerals, Inc. news release, 9/1/98).

Silver Star district

Under the terms of an exploration agreement with Cimarron Minerals Ltd., Hecla Mining Co. began a 5,000-foot reverse-circulation drilling program at Cimarron's Sunset Gold Property. Three to four angle holes are planned to test a surface rock geochemical gold anomaly coincident with an induced polarization (IP) anomaly along the north-trending Maryann Basin structures. Epithermal gold-silver mineralization is hosted by intermediate to felsic Tertiary volcanic rocks at the Sunset Property (Cimarron Minerals Ltd. news release, 12/15/98).

NYE COUNTY

Barcelona district

Royal Standard Minerals Inc. announced results from exploration completed on its Antone Canyon property located 8 miles east of the Round Mountain Mine. Limited drilling, trenching, and soil geochemistry indicate that a 4,000-foot-long structural zone has the potential to host a near surface bulk mineable resource of 1 million oz of gold. An extensive diamond drilling program is planned to prove the resource and establish a reserve (Royal Standard Minerals Inc. news release, 11/4/98).

Bare Mountain district

Rayrock Resources Inc. completed the purchase of the remaining 65% interest in the Daisy Gold Mine. Exploration and reserve definition drilling on the Reward property, located approximately 6 miles southwest of the Daisy Mine, established a mineable open-pit reserve containing 77,500 oz of gold. Ore will be hauled to the Daisy Mine for processing. This addition to the existing Daisy reserve extends the life of the Daisy operations to at least 2002. Rayrock plans to continue its exploration program on the Reward property, which it acquired from Barrick Bullfrog in early 1998 (Rayrock Resources Inc. news releases, 9/30/98, 11/13/98).

Cloverdale district

Rayrock Resources Inc. was active at the Golden Wash Prospect in the Cloverdale district, where drilling was planned to test for extensions of a prospective gold-bearing epithermal vein and stockwork system under shallow cover (Rayrock Resources Inc. news release, 5/27/98).

Jett district

Pittston Nevada Gold Co. proposes to continue exploration drilling of 100 drill holes on the Boyd Canyon project in the southern Toiyabe Range (Humboldt-Toiyabe National Forests Plan of Operation, 6/5/98)

Manhattan district

Royal Gold, Inc. entered into a joint venture with a subsidiary of Battle Mountain Gold Co. on Battle Mountain's Black Mammoth project area, located about 2 miles due west of the town of Manhattan. Royal Gold may earn a 50% interest in the Black Mammoth property through a 4-year exploration program on the property. Royal had a 10,000-foot reverse circulation drilling program under way on the prospect in 1998. The agreement with Battle Mountain further consolidates Royal Gold's holdings in the district, and provides a number of highly prospective drilling targets (Royal Gold, Inc. news release, 8/19/98).

Golconda Resources Ltd. decided to expand its exploration program at the Ralston Valley project by

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drilling deep holes to test for a potential high-grade Carlin-type gold deposit at depth. The prospect is located south of Baxter Spring in the south part of the Manhattan district and includes two altered, gold-bearing jasperoid zones (250 feet and 450 feet wide) in a Paleozoic limestone-shale sequence (Golconda Resources Ltd. news release, 7/13/98).

Round Mountain district

The Round Mountain Mine had an excellent year with record gold production of 510,504 oz at a cash operating cost of $198 per ounce. This is the highest production level ever reached at Round Mountain and is partially attributable to production from the site's new mill. The lower cost per ounce was a result of the higher production level and the benefit of a full year of operation under a new mining plan, introduced in 1997. At year end 1998, Round Mountain's gold reserves stood at 6.4 million oz, down from 1997 due to mining. Mine life is currently estimated to be about 12 more years even if no new gold reserves are discovered, which is highly unlikely. In 1998, over $1.2 million was spent on exploration in a surrounding region defined by the partners (Echo Bay Minerals; Homestake Mining Co.; and Case, Pomeroy and Co.) This work identified a number of targets, three of which were drilled during the year in order to gain a better understanding of the underlying geological structures of these targets and their ability to support gold mineralization. A million-dollar exploration program planned for 1999 includes additional drilling (Echo Bay Minerals news release, 2/11/99).

Also in the Round Mountain district, Boreal Exploration has an agreement with HagelAugen, a private company, to acquire the Gold Hill property consisting of 168 mining claims located about 4½ miles north of the Round Mountain Mine. Based on a 1995 study done for the previous owners, Gold Hill contains a potential resource of 306,622 oz of gold and 4,871,890 oz of silver. Boreal plans a drilling program to confirm known lateral and deep extensions of the mineralization and to upgrade the quality of the already identified resources. The Gold Hill property produced about 41,200 oz of gold and 248,000 oz of silver in the 1930s, mainly from the Gold Hill vein (Boreal Exploration news release, 3/16/98).

PERSHING COUNTY

Kennedy district

Oro Nevada Resources Inc. completed a four-hole reverse circulation drill program totaling 1,809 feet on its Kennedy property, with reportedly encouraging results. Oro Nevada will continue to evaluate the gold project and has renegotiated the lease on the Cobb claims to hold the property another year (Elko Daily Free Press, 9/26/98).

Rosebud district

At the Rosebud underground gold mine, ore reserves were reestimated based on a higher cutoff grade. As of December 31, 1998, Rosebud's proven and probable reserves stood at 242,000 tons grading 0.392 opt gold and 1.80 opt silver (Hecla Mining Co. news release, 2/11/99).

Scossa district

BWI Industries reached an agreement with Romios Gold Resources to acquire a 50% interest in the Scossa gold property, consisting of 16 unpatented mining claims totaling 320 acres. The Scossa property contains a number of gold-bearing quartz breccia veins and fault breccias. During July 1998, Romios carried out a preliminary sampling program on the property (BWI Industries news release, 12/9/98).

Washiki district

Following a successful 1997 drilling program on its Clear Property, Minefinders Corp. Ltd. has secured its land position around the drilled area and is performing an extensive surface mapping and sampling effort in order to define mineralized trends and geologic anomalies (Denver Mining Record, 4/29/98).

WASHOE COUNTY

Deephole district

Breckenridge Minerals Inc. is purchasing the Mountain View Gold property from Canyon Resources for a total of $3 million in cash and shares to be paid over three years. The property consists of 8,700 acres of primarily unpatented mining claims located about 90 miles north of Reno. Drilling in the Buffalo Hills and Severence areas of the property has defined a mostly oxidized gold resource of 589,000 oz at an average grade of 0.055 opt under a few hundred feet of gravel. Additional drilling is required to define an open-pit, heap-leach reserve, and there is potential for a higher grade (+0.25 opt) underground-mineable reserve in the area (Breckenridge Minerals Inc. news release, 11/23/98).

Olinghouse district

Production began at the Alta Gold Co.'s Olinghouse Mine with first production from the gravity mill followed by leach-pad production in October (Denver Mining Record, 9/23/98).

WHITE PINE COUNTY

Bald Mountain district

Royal Gold has reached an agreement with Placer Dome U.S. Inc. on the Alligator Ridge property whereby Royal Gold will spend approximately $4 million in exploration over the next six years. Depending upon exploration results, Royal Gold can either acquire ownership of up to 1,638 unpatented claims (subject to a 5% NPI [net profit interest] royalty to Placer Dome) or else Placer Dome will reimburse Royal Gold for 200% of its cumulative investment and grant Royal Gold a 22% NPI royalty in any future production. Basic geologic and geochemical studies have been conducted to define both near-surface and deeper targets. These data will be used to lay out a 1999 drilling program (Royal Gold, Inc. news release, 11/11/98).

From 1980 through 1992, Alligator Ridge produced approximately 700,000 oz of gold. Since Placer Dome acquired the property in 1993, it has produced approximately 160,000 oz, primarily from heap leach operations in the Yankee and Vantage Basins.

As of December 31, 1998, Placer Dome US revised its reserve estimate at the Bald Mountain Gold Mine to 10,800,000 tons proven and probable gold reserves grading an average of 0.075 opt, containing approximately 811,000 oz of gold. This compares with the previous estimate, as of June 30, 1998, when proven and probable reserves on the property were 12,594,000 tons, with an average grade of 0.061 opt, containing approximately 771,000 oz of gold. Royal Gold holds a 1.75% net smelter return royalty on approximately 81% of the Bald Mountain Mine.

Butte Valley district

Detailed mapping and soil/rock sampling are currently underway at the Limousine Butte property where Nevada Pacific Gold Ltd. is exploring for disseminated and skam-hosted gold deposits related to a large mineralized porphyry complex located beneath the valley floor. Copper exploration carried out on the property between 1960 and 1980 identified porphyry-related gold mineralization up to 0.070 opt gold and skam-style gold mineralization grading up to 0.19 opt gold in drill holes. A 1999 drilling program is planned for the property (Nevada Pacific Gold Ltd. news release 2/23/99).

White Pine district

The Griffon Mine of Alta Gold Co. poured its first gold in January 1998. Gold production for 1998 totaled 37,921 oz at an average grade of 0.0309 opt (Elko Daily Free Press, 1/17/98; Alta Gold Co. news releases, 4/23/98, 3/21/99).

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Major Precious-Metal Deposits

by Joseph V. Tingley and Harold F. Bonham, Jr.

The information in this compilation was obtained from the Nevada Division of Minerals and from published reports, articles in mining newsletters, and company annual reports and press releases. Locations of most of these deposits are shown on NBMG Map 91, and most active mines are shown on page 2 of this publication. opt = troy ounces per short ton.

Deposit name	Reserves/resources	Production	Host rock	Mineralization age
CHURCHILL COUNTY				
Bell Mountain (Bell Mountain district)	1989: *reserves*—30,000 oz Au, 125,000 oz Ag 1997: 2.5 million tons, 0.059 opt Au equiv. oz	1997: exploration	rhyolitic tuff	Miocene
Buffalo Valley gold property (Eastgate district)	1996: 96,000 oz Au		rhyolitic ash-flow tuff	Tertiary
Dixie Comstock (Dixie Valley district)	1991: 2.4 million tons, 0.049 opt Au 1995: 100,000 oz Au	1989: development 1990–93: exploration	Tertiary rhyolite	Miocene?
Fondaway Canyon (Shady Run district)	1988: 400,000 tons, 0.06 opt Au 1990: 400,000 tons, 0.06 opt Au	1989: 1,065 oz Au, 87 oz Ag 1990: 12,000 oz Au 1993: idle	Triassic slate and phyllite	Cretaceous
New Pass property (New Pass district)	1994: 3.4 million tons, 0.042 opt Au 1997: 3.1 million tons, 0.055 opt Au		Permian greenstone	Mesozoic?
CLARK COUNTY				
Crescent property (Crescent district)	1992: 390,000 tons, 0.05 opt Au; 3.3 million tons, 0.022 opt Au			
Keystone (Goodsprings district)	1990: *estimated geologic resource* 64 million tons, 0.05 opt Au 1992: 110,000 tons, 0.11 opt Au	1990: ~1,000 oz Au 1993: idle	lower Paleozoic carbonate rocks	Triassic
ELKO COUNTY				
Big Springs (Independence Mountains district)	1989: 1.55 million tons, 0.172 opt Au	1987–88: ~106,000 oz Au 1989–92: 274,000 oz Au, 48,000 oz Ag 1993: 52,752 oz Au 1994: 28,315 oz Au, 2,597 oz Ag 1995: 1,780 oz Au, 280 oz Ag	Mississippian to Permian overlap assemblage clastic and carbonate rocks	Cretaceous or Tertiary
Bootstrap/Capstone (Bootstrap district)	1988: *geologic resource*—25.1 million tons, 0.039 opt Au 1990: 18.3 million tons, 0.044 opt Au 1994: 169,000 oz Au, *geologic resource*—1 million oz Au	1988-90: *see* "Newmont Gold Production" on page 38	dacitic dikes, Paleozoic siltstone and laminated limestone/chert	~37 Ma
Bootstrap/Capstone/ Tara (Bootstrap district)	1996: 20.2 million tons, 0.046 opt Au proven and probable reserves; 1 million tons, 0.088 opt Au mineralized material	1996: 19,800 oz Au	dacitic dikes, Paleozoic siltstone and laminated limestone/chert	~37 Ma
Cobb Creek (Mountain City district)	1988: *geologic resource*—3.2 million tons, 0.045 opt Au			
Cord Ranch (Robinson Mountain district)	1991: 3.5 million tons, 0.037 opt Au 1992: 6.0 million tons, 0.03 opt Au 1994: 350,000 oz Au in 3 deposits		Webb Formation Devils Gate Formation Tomera Formation Diamond Peak Formation	

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MAJOR PRECIOUS METAL DEPOSITS (continued)

Deposit name	Reserves/resources	Production	Host rock	Mineralization age
ELKO COUNTY (continued)				
Dee (Bootstrap district)	1990: 4.5 million tons, 0.059 opt Au 1992: 5.2 million tons, 0.049 opt Au 1994: *geologic resource*—958,000 oz Au 1995: 550,000 oz Au 1996: 579,000 oz Au 1997: 400,000 oz Au 1998: 1.8 million tons, 0.155 opt Au proven and probable reserves	1987–88: ~97,000 oz Au 1989–92: 135,000 oz Au, 142,000 oz Ag 1993: 25,860 oz Au 1994: 24,219 oz Au 1995: 45,000 oz Au 1996: 45,070 oz Au, 50,322 oz Ag 1997: 35,000 oz Au 1998: 33,156 oz Au	Vinini Formation Devonian carbonates, dacitic dikes	Cretaceous or Tertiary
Deep Star (Lynn district)	1996: 1.4 million tons, 0.8765 opt Au proven and probable reserves	1995: 2,800 oz Au; 1996: 93,400 oz Au	Popovich Formation	
Doby George (Aura district)	1995: 3.7 million tons, 0.060 opt Au 1997: 250,000 oz Au		Schoonover Formation	
Gnome (Carlin district)	1988: 2.7 million tons, 0.048 opt Au		Paleozoic sedimentary rocks	Cretaceous or early Tertiary
Jerritt Canyon (includes Savel Canyon and Burns Basin) (Independence Mountains district)	1989: 21.6 million tons, 0.143 opt Au mill ore; 6.5 million tons, 0.043 opt Au leachable 1990: new discovery south of current mine has a geologic resource of 3.2 million tons, 0.284 opt Au 1991: *geologic resource*—4.7 million oz Au 1997: 2.1 million tons, 0.269 opt Au 1998: 1.6 million oz Au proven and probable reserves, 4.2 million oz Au other mineralized material	1981–90: ~2.6 million oz Au 1991–94: 1,380,000 oz Au, 25,000 oz Ag 1995: 328,000 oz Au 1996: 309,477 oz Au 1997: 312,015 oz Au 1998: 347,000 oz Au	Hanson Creek and Roberts Mountains Formations	~40 Ma
Ken Snyder Mine (Gold Circle district)	1995: 13 million tons, 0.16 opt Au, 2.7 opt Ag, announcad resource, proven Au reserve <500,000 oz 1996: 1.1 million tons, 1.324 opt Au, 14.85 opt Ag 1997: 2.17 million tons, 1.04 opt Au, 11.65 opt Ag	1998: 4,357 oz Au, 55,329 oz Ag	Tertiary volcanic rocks	15.3 Ma
Kinsley Mountain (Kinsley district)	1988: 2.1 million tons, 0.048 opt Au 1993: 2.6 million tons, 0.047 opt Au 1994: 3.5 million tons, 0.044 opt Au 1995: 3.5 million tons, 0.045 opt Au 1996: 3.4 million tons, 0.032 opt Au	1993: evaluation 1995: 44,040 oz Au, 8,050 oz Ag 1996: 44,553 oz Au, 10,930 oz Ag 1997: 38,472 oz Au, 5,472 oz Ag 1998: 9,543 oz Au	upper Paleozoic carbonate rocks	Oligocene?
Meikle (Lynn district)	1992: *geologic resource*—7.9 million tons, 0.613 opt Au 1993: *geologic resource*—6.6 million oz Au 1996: 8.5 million tons, 0.716 opt Au proven and probable reserves; 1.4 million tons, 0.717 opt Au mineralized material 1998: 6.6 million tons, 0.713 opt Au proven and probable reserves; 5.0 million tons, 0.455 opt Au mineralized material	1996: 78,442 oz Au 1997: 574,308 oz Au, 194,030 oz Ag 1998: 847,313 oz Au, 232,000 oz Ag	Popovich and Roberts Mountains Formations	Eocene
Pifion (South Bullion and Dark Star) (Robinson Mountain district)	1996: 38.3 million tons, 0.026 opt Au geologic mineral inventory			
Pony Creek (Carlin district)	1994: *geologic resource*—1.1 million tons, 0.057 opt Au			
Railroad Property (POD zone) (Railroad district)	1997: 1.5 million tons, 0.085 opt Au drill-indicated resource			
Rain Emigrant Springs (Carlin district)	1989: 30.3 million tons, 0.021 opt Au 1995: 169,000 oz Au 1996: 16 million tons, 0.028 opt Au proven and probable reserves; 10.4 million tons, 0.021 opt Au mineralized material	1994: 79,000 oz Au 1995: 32,100 oz Au 1996: 48,900 oz Au	Webb Formation	38–37 Ma
Rossi Mine (Storm resource) (Bootstrap district)	1998: 3.1 million tons, 0.371 opt Au resource			
SMZ (Carlin district)	1989: *geologic resource*—1.6 million tons, 0.019 opt Au			

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Deposit name	Reserves/resources	Production	Host rock	Mineralization age
ELKO COUNTY (continued)				
Trout Creek (Carlin district)	1988: 1.5 million tons, 0.04 opt Au	1988: exploration	lower Paleozoic rocks	Cretaceous or Tertiary
Tuscarora (Dexter) (Tuscarora district)	1987: 2 million tons, 0.039 opt Au, 1.9 opt Ag 1988: 1.8 million tons, 0.037 opt Au, 0.74 opt Ag	1898–1902: 29,940 oz Au, 28,543 oz Ag 1987–89: 33,000 oz Au, 143,000 oz Ag 1990: 1,163 oz Au, 41,865 oz Ag 1992–93: idle	Eocene rhyolitic ignimbrite and andesite	39 Ma
Winters Creek (Independence Mountains district)	1986: 1.4 million tons, 0.145 opt Au		lower Paleozoic carbonate rocks	Cretaceous or Tertiary
Wright Window (Independence Mountains district)	1986: 1.3 million tons, 0.095 opt Au	1992: 3,500 oz Au	lower Paleozoic carbonate rocks	Cretaceous or Tertiary
ESMERALDA COUNTY				
Boss (Gilbert district)	1987: 500,000 tons, 0.07 opt Au 1990: *reserves*—637,500 tons, 0.023 opt Au *geologic resource*—31,000 oz Au 1996: *see* Castle		Ordovician sedimentary rocks	Miocene?
Castle (includes Boss) (Gilbert district)	1996: 3.7 million tons, 0.03 opt Au 1997: 10 million tons, 0.03 opt Au resource		Palmetto Formation	
Gemfield	1996: 9.5 million tons, 0.04 opt Au 1998: 500,000 oz, 0.04 opt Au		Oligocene Sandstorm Rhyolite	21 Ma?
Goldfield Project (Goldfield district)	1983: 1.75 million tons, 0.087 opt Au 1991: 1.2 million tons, 0.05 opt Au 1993: 2.3 million tons, 0.073 opt Au 1994: 3.48 million tons, 0.071 opt Au	1903–45: 4.19 million oz Au, 1.45 million oz Ag 1989: 1,987 oz Au, 200 oz Ag 1993: 11,350 oz Au 1995: 9,850 oz Au 1996: 3,810 oz Au, 1,349 oz Ag 1997: 1,376 oz Au, 435 oz Ag	andesite, rhyodacite, rhyolite	21 Ma
Hasbrouck (Divide district)	1986: 12.9 million tons, 0.0291 opt Au, 0.59 opt Ag 1998: 7.7 million tons, 0.036 opt Au, 0.7 opt Ag	1986–92: exploration 1993: idle	Siebert Formation tuff and volcaniclastic rocks	16 Ma
Hill of Gold deposit (Divide district)	1988: 500,000 tons, 0.04 opt Au, 0.40 opt Ag 1995: *geologic resource*—100,000 oz Au, including reserves of 20,000 oz at 0.036 opt Au 1996: 1.6 million tons, 0.026 opt Au	1991–93: idle	Miocene silicic tuff	16 Ma
Mary-Drinkwater (Silver Peak district)	1991: 531,300 tons, 0.124 opt Au	1991: 25,000 oz Au, 8,000 oz Ag	Wyman Formation	Mesozoic?
Mineral Ridge (Silver Peak district)	1995: 5.2 million tons, 0.068 opt Au proven and probable reserves (includes Mary-Drinkwater) 1998: 4 million tons, 0.06 opt Au; 241,000 oz Au	1997: 13,793 oz Au, 7,907 oz Ag 1998: 8,582 oz Au, 4,877 oz Ag	Wyman Formation	Mesozoic?
Tip Top (Fish Lake Valley district)	1997: 109,000 tons, 0.103 opt Au, 0.88 opt Ag indicated resource 1998: 168,000 tons, 0.088 opt Au inferred geologic resource	1997: exploration	Tertiary quartz latite	
Three Hills (Tonopah district)	1996: 3.2 million tons, 0.036 opt Au 1997: 6.3 million tons, 0.023 opt Au		Miocene Siebert Formation and Oddie Rhyolite	
Weepah (Weepah district)	1986: 200,000 tons, 0.1 opt Au, 0.4 opt Ag	1986–87: 58,000 oz Au 1986–90: idle	Wyman Formation	Cretaceous

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Deposit name	Reserves/resources	Production	Host rock	Mineralization age
EUREKA COUNTY				
Afgan **(Antelope district)**	1996: 80,000 oz Au drill indicated resource		Webb Formation	
Betze, Post **(Lynn district)**	1988: 128.4 million tons, 0.095 opt Au 1990: *geologic resource*—18.4 million oz Au 1992: 112.1 million tons, 0.180 opt Au, *geologic resource*—21 million oz Au 1993: *geologic resource*—29.1 million oz Au 1994: *reserves*—29.6 million oz Au 1995: 23 million oz Au 1996: 122.7 million tons, 0.192 opt Au proven and probable reserves: 55.8 million tons, 0.189 opt Au mineralized material 1998: 123.1 million tons, 0.172 opt Au proven and probable reserves: 30.2 million tons, 0.060 opt Au mineralized material	1980–88: 440,000 oz Au 1989: 207,264 oz Au, 15,500 oz Ag 1990: 352,880 oz Au, 20,112 oz Ag 1991: 546,146 oz Au, 22,000 oz Ag 1992: 1,108,218 oz Au, 34,735 oz Ag 1993: 1,439,929 oz Au 1994: 1,649,503 oz Au, 107,330 oz Ag 1995: 2,031,883 oz Au, 68,217 oz Ag 1996: 1,934,968 oz Au, 73,140 oz Ag 1997: 1,605,836 oz Au, 65,716 oz Ag 1998: 1,498,663 oz Au, 58,000 oz Ag	Ordovician to Devonian chert, shale, siltstone, and impure carbonates; in part, Vinini Formation	Cretaceous or early Tertiary
Blue Star **(Lynn district)**	1989: *geologic resource*—22.2 million tons, 0.030 opt Au	1974–84: intermittent 1988–97: *see* "Newmont Gold Production" on page 38	lower Paleozoic sandy siltstone and carbonate rocks, granodiorite	Cretaceous or early Tertiary
Bobcat **(Lynn district)**	1988: *geologic resource*—17.7 million tons, 0.029 opt Au		lower Paleozoic rocks	Cretaceous or Eocene
Buckhorn property **(Buckhorn district)**	1990: 700,000 tons, 0.05 opt Au; *geologic resource*—200,350 oz Au 1991: 409,000 tons, 0.062 opt Au 1992: open-pit ore mined out 1993: *geologic resource*—1.1 million tons, 0.11 opt Au	1988–91: 97,922 oz Au, 376,487 oz Ag 1992: 7,700 oz Au, 28,800 oz Ag 1993: 3,800 oz Au, 4,600 oz Ag	basaltic andesite, sinter, silicified sedimentary rocks	14.8 Ma
Buckhorn South/ **Zeke deposit** **(Buckhorn district)**	1989: 2 million tons, 0.056 opt Au, 0.224 opt Ag 1996: 2 million tons, 0.056 opt Au 1998: 2.4 million tons, 0.046 opt Au		lower Paleozoic rocks	
Bullion Monarch **(Lynn district)**	1987: 1 million tons, 0.10 opt Au		lower Paleozoic sedimentary rocks	Tertiary or Mesozoic
Carlin/Pete/ **Lantern** **(Lynn district)**	1995: 14.8 million tons, 0.031 opt Au 1998: 13.7 million tons, 0.048 opt Au proven and probable reserves; 14.7 million tons, 0.046 opt Au mineralized material	1994: 27,700 oz Au 1995: 9,300 oz Au 1996: 31,700 oz Au	Roberts Mountains Formation	Cretaceous or early Tertiary
Genesis **(Lynn district)**	1989: *geologic resource*—35.8 million tons, 0.044 opt Au 1990: 32 million tons, 0.047 opt Au (includes Blue Star)	1986: production commenced 1988–93: *see* "Newmont Gold Production" on page 38	Ordovician-Devonian limestone, argillite chert	Cretaceous or early Tertiary
Genesis/North Star/ **Sold** **(Lynn district)**	1996: 22.7 million tons, 0.034 opt Au proven and probable reserves; 11 million tons, 0.050 opt Au mineralized material	1994: 417,200 oz Au 1995: 257,400 oz Au 1996: 245 oz Au	Ordovician-Devonian limestone, argillite chert	Cretaceous or early Tertiary
Gold Bar **(Antelope district)**	1988: 2.75 million tons, 0.10 opt Au 1989: *geologic resource*—1.45 million oz Au 1990: mined out in December 1994: 240,000 oz Au 1995: 190,000 oz Au	1987–88: 91,000 oz Au 1989: 88,000 oz Au 1990: 81,263 oz Au 1991: 80,727 oz Au, 3,000 oz Ag 1992: 80,000 oz Au 1993: 55,080 oz Au 1994: 20,000 oz Au	Devonian Nevada Formation	Eocene?
Gold Canyon **(Antelope district)**	1992: *reserves*—86,500 oz Au, *geologic resource*—131,000 oz Au 1993: 770,000 tons, 0.080 opt Au		Paleozoic sedimentary rocks	Eocene?
Gold Pick **(Antelope district)**	1988: 10 million tons, 0.06 opt Au 1990: 9.7 million tons, 0.057 opt Au includes Gold Ridge and Goldstone 1991: 4.5 million tons, 0.055 opt Au 1992: *geologic resource*—329,700 oz Au, includes eastern deposit 1993: 1.4 million tons, 0.079 opt Au		Paleozoic sedimentary rocks	Eocene?

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Deposit name	Reserves/resources	Production	Host rock	Mineralization age
EUREKA COUNTY (continued)				
Gold Quarry (Maggie Creek district)	1987: 197.8 million tons, 0.042 opt Au 1988: *geologic resource*—503 million tons, 0.04 opt Au 1990: 212.6 million tons, 0.042 opt Au, *geologic resource*—534.3 million tons, 0.037 opt Au 1991: *reserves*—9.3 million oz Au	1985 170,000 oz Au 1988-93: *see* "Newmont Gold Production" on page 38	Ordovician to Devonian chert, shale, siltstone, and impure carbonates; in part, Vinini Formation	Cretaceous or early Tertiary
Gold Quarry/Mac/Tusc (Maggie Creek district)	1996: 174.8 million tons, 0.046 opt Au proven and probable reserves; 51.9 million tons, 0.058 opt Au mineralized material	1994: 967,700 oz Au; 1995: 1,094,000 oz Au; 1996: 916,300 oz Au		
Gold Ridge (Antelope district)	1988: 4 million tons, 0.06 opt Au 1990: *see* Gold Pick 1991: 2.9 million tons, 0.04 opt Au 1992: 1.4 million tons, 0.038 opt Au 1993: 426,000 tons, 0.059 opt Au		Paleozoic sedimentary rocks	Eocene?
Goldstone (Antelope district)	1988: 1.7 million tons, 0.08 opt Au 1990: *see* Gold Pick 1991: 845,000 tons, 0.063 opt Au 1992: 878,000 tons, 0.061 opt Au 1993: 130,928 tons, 0.104 opt Au		Paleozoic sedimentary rocks	Eocene?
Horse Canyon (Cortez district)	1984: 3.94 million tons, 0.055 opt Au 1988: included in Cortez Joint Venture figures	1984: 40,000 oz Au 1988–93: included with Cortez Joint Venture	Vinini Formation, Wenban Limestone	34 Ma?
Maggie Creek (Maggie Creek district)	1988: *geologic resource*—303,000 tons, 0.092 opt Au	1984: 1,250,000 tons 1986: intermittent production 1988: no production reported	Ordovician to Devonian siltstone, chert, sandstone, impure limestone	Cretaceous or early Tertiary
North Star (Lynn district)	1989: *geologic resource*—6.9 million tons, 0.052 opt Au 1990: 3.9 million tons, 0.052 opt Au	1988: 4,250 oz Au	lower Paleozoic sedimentary rocks	Cretaceous or early Tertiary
Post/Goldbug (Lynn district)	1996: 25.6 million tons, 0.190 opt Au proven and probable reserves; 43.6 million tons, 0.079 opt Au mineralized material			
Ratto Canyon (Eureka district)	1984: ~200,000 oz Au	1995: idle	Dunderberg Shale, Hamburg Dolomite	Oligocene
Rock Creek (Eureka-Lander Co. line)	1997: 800,000 tons, 0.045 opt Au	1997: exploration	Tertiary latite tuff	
Rodeo/Griffin Projects (Lynn district)	1998: 2.9 million tons, 0.487 opt Au proven and probable reserves; 5.8 million tons, 0.302 opt Au mineralized material			
Ruby Hill (Eureka district)	1994: *geologic resource*—20 million tons, 0.08 opt Au 1995: 7.62 million tons, 0.099 opt Au 1997: 7.028 million tons, 0.098 opt proven and probable, plus 7.173 million tons, 0.073 opt mineralized material	1997: 16,600 oz Au, 250 oz Ag 1998: 116,500 oz Au, 8,436 oz Ag	Goodwin Limestone	Cretaceous?
Tonkin Springs (Antelope district)	1987: *oxide*—1.5 million tons, 0.05 opt Au; *sulfide*—2.5 million tons, 0.09 opt Au 1991: 9 million tons, 0.05 opt Au 1995: proven and probable reserves—956,000 oz Au 1996: 9.8 million tons, 0.056 opt Au 1998: 1,365,000 oz Au drill-defined reserves and resources	1987: ~9,700 oz Au 1988: 565 oz Au 1989: 1,753 oz Au, 1,402 oz Ag 1990: 2,068 oz Au, 470 oz Ag 1992: idle, exploration, metallurgical testing	Vinini Formation, dacitic dikes	Oligocene?
Turf (Lynn district)	1996: 2.5 million tons, 0.367 opt Au mineralized material		Roberts Mountains Formation	
Tusc (Maggie Creek district)	1988: *geologic resource*—15.8 million tons, 0.059 opt Au 1990: 13.3 million tons, 0.062 opt Au	1995: in production	lower Paleozoic sedimentary rocks	Cretaceous or early Tertiary

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MAJOR PRECIOUS METAL DEPOSITS (continued)

Deposit name	Reserves/resources	Production	Host rock	Mineralization age
EUREKA COUNTY (continued)				
West Leeville (Newmont) (Lynn district)	1996: 2 million tons, 0.377 opt Au proven and probable reserves; 581,000 tons 0.354 opt Au mineralized material	1995: 99,800 oz Au 1996: 173,000 oz Au	Roberts Mountains Formation	
West Leeville (Newmont-Barrick) (Lynn district)	1996: 7.1 million tons, 0.425 opt Au proven and probable reserves; 500,000 tons 0.328 opt Au mineralized material		Roberts Mountains Formation	
HUMBOLDT COUNTY				
Adelaide Crown (Gold Run district)	1989: *south pit*—585,000 tons, 1.313 opt Ag, 0.043 opt Au; *additional area* - 185,000 tons, 0.015 opt Au, 1.10 opt Ag	1990: 3,068 oz Au, 37,537 oz Ag 1991: 1,849 oz Au, 15,937 oz Ag 1992: idle	Preble Formation	Tertiary
Ashdown (Vicksburg district)	1988: 1 million tons, 0.11 opt Au 1992: 1.1 million tons, 0.12 opt Au		Mesozoic granite	Mesozoic
Buckskin (National district)	1997: 50,221 oz Au, 488,243 oz Ag estimated resource		Miocene rhyolite flows and flow breccias	15 Ma
Chimney Creek (Potosi district)	1988: *proven, probable*—26.9 million tons, 0.068 opt Au; *inferred in south pit*—2.1 million oz Au 1989: *geologic resource*—4.8 million oz Au 1993: *see* Twin Creeks	1987–88: 300,000 oz Au 1989: 222,556 oz Au, 55,953 oz Ag 1990: 220,000 oz Au 1991: 228,065 oz Au, 100,000 oz Ag 1992: 247,969 oz Au, 113,463 oz Ag 1993: *see* Twin Creeks	upper Paleozoic sedimentary rocks	41.9 Ma
Getchell (Potosi district)	1989: 8.1 million tons, 0.154 opt Au mill grade and 1.43 million tons, 0.049 opt Au heap-leach ore; *additional geologic resource* - 5.7 million tons, 0.092 opt Au sulfide and 2.6 million tons, 0.055 opt Au oxide 1991: 6.5 million tons, 0.192 opt Au sulfide and 1.8 million tons, 0.039 opt Au oxide. 1992: *sulfide*—7.0 million tons, 0.194 opt Au; *oxide*—2.5 million tons, 0.031 opt Au 1993: *geologic resource*—1.3 million oz Au 1994: *reserves*—1.59 million oz Au 1995: *resource*—6.2 million tons, 0.354 opt Au, *reserves*—1.25 million oz Au (Turquoise Ridge only) 1996: 15 million tons, 0.304 opt Au (underground and surface, includes Turquoise Ridge) 1997: 6.2 million oz Au, proven and probable reserves 1998: 6.6 million oz Au, proven and probable reserves 9.4 million oz Au, additional resources	1938–50, 1962-67: 788,875 oz Au 1987–88: ~35,000 oz Au 1989: 120,730 oz Au, 9,407 oz Ag 1990: 172,029 oz Au 1991: 200,958 oz Au 1992: 230,600 oz Au, 78,700 oz Ag 1993: 210,000 oz Au, 51,000 oz Ag 1994: 230,000 oz Au, 57,000 oz Ag 1995: 120,000 oz Au, 72,000 oz Ag 1996: 171,286 oz Au 1997: 177,231 oz Au 1998: 175,302 oz Au, 52,490 oz Ag	Comus and Preble Formations, granodiorite dikes, granodiorite	90 Ma?
Hycroft (formerly Crofoot/Lewis) (Sulphur district)	1988: 25 million tons, 0.025 opt Au 1990: 12 million tons, 0.020 opt Au 1991: 13.9 million tons, 0.019 opt Au 1992: 29.8 million tons, 0.024 opt Au, *geologic resource*—45 million tons, 0.021 opt Au 1993: 29.8 million tons, 0.024 opt Au 1994: *geologic resource*—56.7 million tons, 0.018 opt Au 1994: *geologic resource*—56.1 million tons, 0.019 opt Au 1995: 66.5 million tons, 0.019 opt Au 1997: 25.2 million tons, 0.02 opt Au, estimated proven and probable	1988: 75,800 oz Au 1989: 82,000 oz Au, 123,000 oz Ag 1990: 92,000 oz Au, 110,000 oz Ag 1991: 94,340 oz Au, 151,553 oz Ag 1992: 100,000 oz Au, 280,000 oz Ag 1993: 86,516 oz Au, 310,559 oz Ag 1994: 94,500 oz Au, 297,000 oz Ag 1995: 101,128 oz Au, 417,623 oz Ag 1996: 89,361 oz Au, 321,315 oz Ag 1997: 117,379 oz Au, 479,920 oz Ag 1998: 11,300 oz Au, 226,000 oz Ag	Camel conglomerate, rhyolite dikes	1–2 Ma
Lone Tree (Buffalo Mountain district)	1990: 5.4 million tons oxide mill ore, 0.159 opt Au, 5.7 million tons heap-leach ore, 0.025 opt Au and 1.2 million oz Au in sulfide ore 1991: *reserves*—1 million oz Au 1992: 3.14 million oz Au 1993: 3.8 million oz Au 1994: 4 million oz Au	1991: 36,424 oz Au 1992: 128,000 oz Au 1993: 155,000 oz Au 1994: 226,911 oz Au 1995: 240,000 oz Au, 11,000 oz Ag 1996: 205,738 oz Au 1997: 331,082 oz Au 1998: 257,702 oz Au, 27,484 oz Ag	Havallah Formation and dacite porphyry	38 Ma

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Deposit name	Reserves/resources	Production	Host rock	Mineralization age
HUMBOLDT COUNTY (continued)				
Marigold (Battle Mountain district)	1990: 4.3 million tons, 0.105 opt Au mill ore, 7.6 million tons, 0.026 opt Au heap-leach ore 1992: 10 million tons, 0.055 opt Au 1996: 648,000 oz Au 1998: 19.8 million tons, 0.032 opt Au	1989: 16,000 oz Au, 484 oz Ag 1990: 60,750 oz Au, 1,600 oz Ag 1991: 65,469 oz Au, 2,000 oz Ag 1992: 90,000 oz Au, 4,000 oz Ag 1993: 90,000 oz Au, 1,700 oz Ag 1994: 84,895 oz Au 1995: 59,800 oz Au 1996: 73,500 oz Au 1997: 73,640 oz Au 1998: 71,936 oz Au	Paleozoic chert, argillite, and carbonate rocks	early Oligocene
North Stonehouse (Buffalo Mountain district)	1991: 2.5 million tons, 0.103 oz Au mill ore		Havallah Formation and porphyry dikes	39 Ma
Pinson (includes Mag pit) (Potosi district)	1989: 480,000 oz Au 1992: 4.98 million tons, 0.064 opt Au 1996: 2.6 million tons, 0.072 opt Au	1980: 56,000 oz Au 1986–88: 189,864 oz Au 1989: 72,489 oz Au (includes Preble) 1990: 56,382 oz Au 1991: 55,640 oz Au 1992: 50,340 oz Au, 5,730 oz Ag 1993: 50,870 oz Au, 3,470 oz Ag 1994: 44,000 oz Au, 3,500 oz Ag 1995: 44,854 oz Au 1996: 42,431 oz Au, 2,850 oz Ag 1997: 51,600 oz Au, 4,500 oz Ag 1998: 34,904 oz Au, 640 oz Ag	Comus Formation	90 Ma?
Preble (Potosi district)	1989: 15,110 oz Au 1992: idle, mined out	1985: 17,000 oz Au 1987: 28,000 oz Au 1988: 18,828 oz Au 1989: included with Pinson 1990: 1,161 oz Au	Preble Formation	90 Ma?
Rabbit Creek (Potosi district)	1989: 4.1 million oz Au; additional geologic *resource*—1 million Au in refractory material 1990: *reserves*—2.5 million oz Au; *geologic resource*—5.1 million oz Au 1992: *reserves*—3.26 million oz Au 1993: *see* Twin Creeks	1990: 25,000 oz Au 1991: 115,500 oz Au 1992: 156,000 oz Au 1993: *see* Twin Creeks	Ordovician	Eocene?
Sleeper (Awakening district)	1989: 1,975,000 oz Au 1990: 44.1 million tons, 0.038 opt Au, 0.152 opt Ag 1991: 1.7 million oz Au, 6.7 million oz Ag 1993: 751,000 oz Au 1997: 2.27 million oz Au measured, indicated, inferred geologic resource 1998: 182 million tons, 0.042 opt Au, (7.6 million oz Au) estimated in-ground inventory	1986: 126,000 oz Au, 94,000 oz Ag 1987: 158,696 oz Au 1988: 230,410 oz Au 1989: 256,000 oz Au, 339,650 oz Ag 1990: 250,131 oz Au, 391,886 oz Ag 1991: 183,346 oz Au, 289,463 oz Ag 1992: 132,383 oz Au, 285,011 oz Ag 1993: 100,020 oz Au, 254,690 oz Ag 1994: 106,912 oz Au, 142,597 oz Ag 1995: 82,062 oz Au, 98,694 oz Ag 1996: 38,200 oz Au, 36,800 oz Ag 1997: exploration	Miocene "latite" flows and dikes, silicic ash-flow tuff, Triassic slate and phyllite	16.1 Ma
Trenton Canyon (Buffalo Valley district)	1994: *oxide resource*—14.6 million tons, 0.035 opt Au, (517,000 oz Au) 1996: 20 million tons, 0.029 opt Au (590,000 oz Au)		Vinini Formation	
Trout Creek (Battle Mountain district)	1969: 50,000 oz Au			
Twin Creeks (Chimney and Rabbit Creeks) (Potosi district)	1993: 5.7 million oz Au 1994: *geologic resource*—8.5 million oz Au 1996: 10.5 million oz Au	1993: 482,600 oz Au, 206,200 oz Ag 1994: 501,897 oz Au, 244,710 oz Ag 1995: 451,285 oz Au, 265,462 oz Ag 1996: 459,083 oz Au, 137,914 oz Ag 1997: 572,150 oz Au, 210,493 oz Ag 1998: 871,011 oz Au, 252,677 oz Ag	Paleozoic	Eocene?
Winnemucca Gold property (Winnemucca district)	1998: 130,000 to 140,000 oz Au proven, 300,000 oz Au indicated			

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Deposit name	Reserves/resources	Production	Host rock	Mineralization age
LANDER COUNTY				
Austin Gold Venture (Birch Creek district)	1989: mined out	1986–88: 141,000 oz Au 1989: 50,000 oz Au	Antelope Valley Limestone	Cretaceous or Tertiary
Battle Mountain Complex (Battle Mountain district)	1992: 500,000 oz Au 1993: *geologic resource*—900,000 oz Au 1995: *resource* (overall Battle Mountain complex)—60.2 million tons, 0.036 opt Au, including *reserves*—46.6 million tons, 0.040 opt Au 1996: 52.9 million tons, 0.038 opt Au 1998 (Phoenix): 3,515,000 oz Au proven and probable reserves; 1,000,000 oz Au additional mineralization	1994: 12,000 oz Au, 15,000 oz Ag 1995: 74,958 oz Au, 206,807 oz Ag 1996: 73,100 oz Au, 201,460 oz Ag 1997: 77,896 oz Au, 129,147 oz Ag 1998: 36,787 oz Au, 80,325 oz Ag		Eocene
Buffalo Valley Gold Project (Buffalo Valley district)	1988: 1.5 million tons, 0.05 opt Au 1991: idle 1994: 4.8 million tons, 0.07 opt Au 1995: 511,000 oz Au 1996: 301,000 oz Au 1997: 600,106 oz Au resource; 100,797 oz Au, other mineralized material	1988: 9,238 oz Au 1989: 14,660 oz Au 1990: 15,770 oz Au 1997: exploration		Eocene?
Cortez Joint Venture (Bullion district) CJV includes original Cortez Mine, Pipeline, and South Pipeline	1987: 4.8 million tons, 0.105 opt Au 1988: 5.4 million tons, 0.093 opt Au 1992: *reserves*—3.1 million tons, 0.05 opt Au; 0.4 opt Ag 1997: 107.7 million tons, 0.089 opt Au proven and probable; 156.5 million tons, 0.046 opt Au mineralized material	1942–84: 2.4 million tons, 0.13 oz Au/ton; 2 million tons, 0.041 opt Au leached. Little Gold Acres: 600,000 tons, 0.124 opt Au 1988: 42,322 oz Au (includes Horse Canyon) 1989: 39,993 oz Au, 12,234 oz Ag (includes Horse Canyon) 1990: 53,845 oz Au, 10,150 oz Ag 1991: 53,500 oz Au, 6,800 oz Ag 1992: 75,000 oz Au 1993: 86,850 oz Au 1995: 111,215 oz Au, 6,804 oz Ag 1996: 160,782 oz Au, 6,800 oz Ag 1997: 406,551 oz Au, 10,868 oz Ag 1998: 1,138,725 oz Au, 6,860 oz Ag	Roberts Mountains Formation, Wenban Limestone, Valmy Formation, quartz porphyry dikes	92.8–94 Ma and 36 Ma
Crescent Pit (Bullion district)	1994: 1.97 million tons mill grade, 0.125 opt Au, 2.2 million tons heap-leach, 0.029 opt Au 1997: included in Cortez Joint Venture			
Crescent Valley (Bullion district)	1994: *placer reserve*—8 million cu yd, 0.031 oz Au/cu yd 1995: *placer resource*—6 million cu yd, 0.03 oz Au/cu yd			
Dean (Lewis district)	1995: *proven reserve*—11,000 oz Au *possible to probable resource*—240,000 oz Au			
Elder Creek Project/Shoshone (Lewis district)	1989: 91,500 oz Au 1990: 1.5 million tons, 0.041 opt Au	1990: 17,400 oz Au 1991: 2,702 oz Au	Valmy Formation	Cretaceous or Eocene
Fire Creek (northeast of Bullion district)	1982: 350,000 tons, 0.06 opt Au	1983–84: 767 oz Au	basaltic andesite	Miocene
Fortitude Extension (Battle Mountain district)	1992: 500,000 oz Au 1993: *geologic resource*—900,000 oz Au 1996: *see* Battle Mountain Complex			
Hilltop (Hilltop district)	1984: 10.5 million tons, 0.073 opt Au 1989: 10 million tons, 0.049 opt Au		Valmy Formation	Oligocene?
Klondike property	1989: 100,000 oz Au equivalent			

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MAJOR PRECIOUS METAL DEPOSITS (continued)

Deposit name	Reserves/resources	Production	Host rock	Mineralization age
LANDER COUNTY (continued)				
McCoy/Cove (McCoy district)	1989: *proven and probable reserves* - 2.9 million oz Au, 128 million oz Ag *geologic resource*—3.5 million oz Au, 1.50 million oz Ag 1990: *reserves*—58.7 million tons, 0.045 opt Au, 2.32 opt Ag 1993: *reserves*—63.3 million tons, 0.037 opt Au, 1.66 opt Ag, *geologic resource*—2.43 million oz Au, 107 million oz Ag 1998: 699,000 oz Au, 38,809,000 oz Ag	1986: 50,000 oz Au 1987: 200,000 oz Au, 5 million oz Ag 1988: 100,000 oz Au, 700,000 oz Ag 1989: 214,566 oz Au, 2.26 million oz Ag 1990: 255,044 oz Au, 1.98 million oz Ag 1991: 284,327 oz Au, 5.62 million oz Ag 1992: 301,512 oz Au, 7.92 million oz Ag 1993: 395,610 oz Au, 12.45 million oz Ag 1994: 359,360 oz Au, 10.44 million oz Ag 1995: 310,016 oz Au, 11.91 million oz Ag 1996: 271,731 oz Au, 7.10 million oz Ag 1997: 187,000 oz Au, 11.00 million oz Ag 1998: 167,494 oz Au, 9.41 million oz Ag	Panther Canyon Formation (conglomerate, sandstone), Augusta Mountain Formation (limestone), granodiorite	39.5 Ma
Mud Springs (Bald Mtn. Zone) (Bullion district)	1993: *geologic resource*—42,000 oz Au			
Mule Canyon (Argenta district)	1992: 8.5 million tons, 0.136 opt Au 1995: *reserves*—oxide 4.222 million tons, 0.058 opt Au; sulfide 5.780 million tons, 0.145 opt Au 1996: 9 million tons, 0.112 opt Au	1992: exploration 1996: 6,743 oz Au	basalt and basaltic andesite	15–16 Ma
Pipeline (Bullion district)	1991: *geologic resource*—11.3 million tons, 0.237 opt Au 1993: 35.3 million tons, 0.120 opt Au 1994: *reserves*—21.2 million tons, 0.145 oz Au/ton; *plus other resources*—8.3 million tons, 0.035 opt Au 1995: 4.3 million oz Au 1996: 136.7 million tons, 8.7 million oz Au measured resource, includes South Pipeline 1997: included in Cortez Joint Venture		Roberts Mountains Formation	Cretaceous or early Tertiary
Robertson (Bullion district)	1988: 11 million tons, 0.04 opt Au 1993: *geologic resource*—20 million tons, 0.036 opt Au 1996: *geologic resource*—1 million oz Au	1989: 3,700 oz Au	Valmy Formation	early Oligocene
Slaven Canyon property (Bateman Canyon district)	1994: 50,000 oz Au			
South Pipeline (Bullion district)	1992: 9 million tons, 0.062 opt Au 1993: *geologic resource*—31.4 million tons, 0.106 opt Au 1994: *geologic resource*—76.5 million tons, 0.048 opt Au 1996: *see* Pipeline 1997: included in Cortez Joint Venture		Roberts Mountains Formation	Cretaceous or early Tertiary
Surprise (Battle Mountain district)	1987: 225,000 oz Au 1988-91: production and reserve included in Fortitude figures 1994: mined out	1987: 2,000 oz Au	skarn	37 Ma
Toiyabe	1988: 813,400 tons, 0.086 opt Au	1988: 32,000 oz Au, 10,300 oz Ag 1990: 11,700 oz Au, 9,100 oz Ag 1991: 8,780 oz Au, 8,025 oz Ag	lower Paleozoic calcareous siltstone	Eocene?
Victorine (Kingston district)	1992: 915,000 tons, 0.304 opt Au 1995: *proven and probable reserves*—256,000 tons, 0.36 opt Au, plus *additional geologic resource*—31,160 oz Au		Cambrian to Ordovician Broad Canyon sequence	

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MAJOR PRECIOUS METAL DEPOSITS (continued)

Deposit name	Reserves/resources	Production	Host rock	Mineralization age
LINCOLN COUNTY				
Atlanta gold property (Atlanta district)	1980: 1.1 million tons, 0.06 opt Au, 1.6 opt Ag 1996: 300,000 oz Au, 3 million oz Ag	1980: 88,000 oz Au, 1,710,000 oz Ag 1987–89: idle 1990–93: idle	Pogonip Group, Ely Springs and Laketown Dolomites, Oligocene silicic tuff, dacite dikes	early Miocene
Caliente property (Pennsylvania district)	1997: *geologic reserves*—50,000 tons, 0.03 opt Au, 0.80 opt Ag; *geologic resource*—700,000 tons, 0.039 opt Au		Tertiary diorite Tertiary andesite	
Easter and Delamar Project (Delamar district)	1994: *geologic resource*—3.36 million tons, 0.069 opt Au 1995: 1.5 million tons, 0.069 opt Au	1994: exploration	Cambrian quartzite	Miocene
LYON COUNTY				
Fire Angel (Como district)	1989: 5,600 oz Au, *geologic resource*—148,500 oz Au			
Hydra-Hercules (Como district)	1997: 259,329 oz Au, 1,956,511 oz Ag	1997: exploration	Tertiary andesite	
Pine Grove (Pine Grove district)	1994: 2.5 million tons, 0.061 opt Au		Cretaceous granodiorite	
South Comstock Joint Venture (Silver City district)	1994: 3 million tons, 0.05 opt Au 1995: 100,000 oz Au			
Talapoosa (Talapoosa district)	1988: 2.5 million tons, 0.041 opt Au, 0.53 opt Ag *oxide* 14.9 million tons, 0.03 opt Au, 0.49 opt Ag *sulfide* 1989: *additional resources delineated* - 2.7 million tons, 0.054 opt Au, 0.654 opt Ag 1991: *geologic resource* - 19.6 million tons, 0.045 opt Au, 0.61 opt Ag 1992: *geologic resource*—18 million tons, 0.044 opt Au, 0.61 opt Ag 1994: *geologic resource*—50 million tons, 0.026 opt Au, 0.35 opt Ag 1995: *geologic resource*—45 million tons, 0.025 opt Au and 0.33 opt Ag, including *proven and probable reserves* of 29.9 million tons, 0.026 opt Au and 0.4 opt Ag		Kate Peak Formation	Miocene
MINERAL COUNTY				
Aurora Mine (Aurora district)	1989: 347,000 tons, 0.253 opt Au 1990: 433,000 tons, 0.21 opt Au 1992: 493,000 tons, 0.15 opt Au 1993: 537,400 tons, 0.123 opt Au, *geologic resource*—100,000 oz Au 1994: 316,000 tons, 0.120 opt Au 1995: 1.54 million tons, 0.055 opt Au 1996: 900,000 tons, 0.1 opt Au	1989: 12,683 oz Au, 16,400 oz Au 1990: 12,973 oz Au, 18,182 oz Ag 1991: 15,000 oz Au 1992: 15,000 oz Au, 35,000 oz Ag 1993: 8,600 oz Au, 17,200 oz Ag 1995: 15,000 oz Au, 35,000 oz Ag 1996: 10,374 oz Au 1997: 13,284 oz Au, 37,327 oz Ag 1998: 2,130 oz Au, 7,287 oz Ag	andesite, rhyolite	10 Ma
Aurora Partnership (Aurora district)	1983: 1.5 million tons, 0.129 opt Au, 0.3 opt Ag 1990: 816,880 tons, 0.103 opt Au 1992: 790,000 tons, 0.13 opt Au *geologic resource*—267,640 oz Au 1994: 1.5 million tons, 0.1 opt Au (underground) 1995: 230,000 tons, 0.208 opt Au (in portion of Humboldt vein system)	1930s: 100,000 oz Au 1983: 10,000 oz Au 1988: 10,302 oz Au 1989: 27,825 oz Au, 26,000 oz Ag 1991: 36,000 oz Au, 68,000 oz Ag 1992: 39,100 oz Au, 79,200 oz Ag 1993: 30,120 oz Au, 59,880 oz Ag 1994: 30,000 oz Au, 57,000 oz Ag 1995: 15,048 oz Au, 39,853 oz Ag 1996: 7,528 oz Au, 15,000 oz Ag	andesite, rhyolite	10 Ma

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MAJOR PRECIOUS METAL DEPOSITS (continued)

Deposit name	Reserves/resources	Production	Host rock	Mineralization age
MINERAL COUNTY (continued)				
Borealis (Borealis district)	1988: 1.792 million tons, 0.046 oz Au/ton 1991: known reserves mined out 1997: 960,000 tons, 0.24 opt Au sulfide resource	1981–84: 170,000 oz Au 1986–88: 116,256 oz Au 1989: 89,060 oz Au, 37,032 oz Ag 1990: 18,435 oz Au, 15,396 oz Ag, production ceased 1992: exploration 1997: exploration	rhyolite flow dome, andesite flows, breccias, volcaniclastic rocks	5 Ma
Candelaria Mine (Candelaria district)	1988: 24 million tons, 1.267 opt Ag, 0.011 opt Au 1992: mine idle, heap-leaching continuing 1993: *geologic resource*—20,000 oz Au, 5.8 million oz Ag 1994: *surface-mineable reserve*—15 million oz Ag, 42,000 oz Au *underground reserve*—45 million oz Ag, 46,000 oz Au 1995: *geologic resource*—44 million oz Ag, 45,000 oz Au, including reserves of 6.663 million tons, 0.005 opt Au and 1.68 opt Ag 1996: 1.4 million tons, 1.76 opt Ag and 0.005 opt Au proven ore; 10.8 million tons, 4.21 opt Ag and 0.0045 opt Au drill indicated resources	1982: 1.7 million oz Ag, 9,000 oz Au 1987: total production was 10 million oz Ag as of June 1987 1988: 3.8 million oz Ag, 11,000 oz Au 1989: 4.36 million oz Ag, 13,800 oz Au 1990: 4.89 million oz Ag, 11,796 oz Au, 1991: 1.68 million oz Ag, 2,870 oz Au 1992: 1.06 million oz Ag, 2,431 oz Au 1993: 904,810 oz Ag, 1,810 oz Au 1994: 3.19 million oz Ag, 12,800 oz Au 1995: 2.87 million oz Ag, 10,720 oz Au 1996: 3.86 million oz Ag, 15,030 oz Au 1997: 2.95 million oz Ag, 9,955 oz Au 1998: 1.11 million oz Ag, 3,006 oz Au	Candelaria Formation serpentinite, granitic dikes	Cretaceous
Denton-Rawhide (Rawhide district)	1989: *reserves*—29.4 million tons, 0.040 oz Au and 0.368 opt Ag; *geologic resource*—59.3 million tons, 0.0274 opt Au, 0.298 opt Ag 1991: 29.4 million tons, 0.040 opt Au, 0.368 opt Ag; *geologic resource*—59.3 million tons, 0.0274 oz Au and 0.298 opt Ag 1992: *geologic resource*—54 million tons, 0.026 opt Au with 29.4 million tons, 0.04 opt Au, 0.39 opt Ag and 29.9 million tons, 0.015 opt Au, 0.23 opt Ag 1993: 1.3 million oz Au, 15 million oz Ag 1995: 470,000 oz Au, 6 million oz Ag 1996: 535,000 oz Au, 7.3 million oz Ag proven ore 1997: 447,000 oz Au, 3.9 million oz Ag	1990: 39,000 oz Au, 170,000 oz Ag 1991: 76,000 oz Au, 500,000 oz Ag 1992: 92,000 oz Au, 804,000 oz Ag 1993: 105,000 oz Au, 1 million oz Ag 1994: 118,000 oz Au, 952,000 oz Ag 1995: 117,000 oz Au, 960,000 oz Ag 1996: 126,000 oz Au, 1,073,000 oz Ag 1997: 120,000 oz Au, 1,131,000 oz Ag 1998: 123,800 oz Au, 848,000 oz Ag	rhyolite plugs, flows, tuffs, breccias	16 Ma
Mina Gold (Bell district)	1997: 1.77 million tons, 0.055 opt Au geologic resource	1997: exploration	Tertiary feldspar porphyry	
Mindora (Garfield district)	1988: 1.0 million tons, 0.037 opt Au and 1.78 opt Ag	1988: exploration		
Santa Fe (Santa Fe district)	1990: 6.8 million tons, 0.035 opt Au and 0.241 opt Ag	1989: 60,000 oz Au, 150,000 oz Ag 1990: 64,336 oz Au, 177,244 oz Ag 1991: 67,102 oz Au, 149,168 oz Ag 1992: 61,000 oz Au, 100,000 oz Ag 1993: 54,030 oz Au, 64,950 oz Ag 1994: 22,361 oz Au, 28,267 oz Ag 1995: 16,670 oz Au, 41,000 oz Ag	Luning Formation	Miocene
NYE COUNTY				
Baxter Springs (Manhattan district)	1988: 1 million tons, 0.050 opt Au 1990: *geologic resource*—5 million tons 0.050 opt Au			
Bruner property, Duluth zone (Bruner district)	1992: *geologic resource*—15 million tons, 0.026 opt Au	1993: exploration	Tertiary volcanic rocks	Miocene
Bullfrog (Bullfrog district)	1989: 18.6 million tons, 0.097 opt Au 1992: 8.8 million tons, 0.14 opt Au plus an additional *geologic resource*—1.8 million tons, 0.102 opt Au 1996: 10.2 million tons, 0.062 opt Au proven and probable reserves; 3.7 million tons, 0.040 opt Au mineralized material	1989: 50,011 oz Au, 40,905 oz Ag 1990: 220,000 oz Au, 229,000 oz Ag 1991: 205,000 oz Au, 189,000 oz Ag 1992: 323,800 oz Au, 313,000 oz Ag 1993: 340,000 oz Au, 400,000 oz Ag 1994: 301,000 oz Au, 410,000 oz Ag 1995: 177,631 oz Au, 413,587 oz Ag 1996: 205,348 oz Au, 288,700 oz Ag 1997: 206,571 oz Au, 351,348 oz Ag 1998: 208,123 oz Au, 299,944 oz Ag	rhyolitic ash-flow tuff	9.5 Ma

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MAJOR PRECIOUS METAL DEPOSITS (continued)

Deposit name	Reserves/resources	Production	Host rock	Mineralization age
NYE COUNTY (continued)				
Daisy (Bare Mountain district)	1993: 4.7 million tons, 0.024 opt Au *geologic resource*—430,000 oz Au 1994: *geologic resource*—18 million tons, 425,000 oz Au 1995: 12 million tons, 0.018 opt Au, *geologic resource*—51.1 million tons, 0.026 opt Au (includes five orebodies listed below) 1997: 17.3 million tons, 0.024 opt Au mineable reserves 1998: 4.2 million tons, 0.033 opt Au proven and probable reserves	1997: 32,000 oz Au 1998: 32,504 oz Au	Cambrian Bonanza King, Nopah, and Carrara Formations	11–13 Ma(?)
Gold Bar (Bullfrog district)	1987: 1.23 million tons Au ore 1993: idle		silicic volcanic rocks	Miocene
Golden Arrow (Golden Arrow district)	1997: 12.4 million tons, 0.039 opt Au resource	1997: exploration	Tertiary rhyolite tuff	
Gold Hill property (Round Mt. district)	1998: 306,620 oz Au, 4,871,890 oz Ag potential resource		rhyolite ash-flow tuff	26 Ma(?)
Longstreet property (Longstreet district)	1989: 4 million tons, 0.024 opt Au, *geologic resource*—9.6 million tons, 0.024 opt Au		rhyolitic volcanic rocks	Oligocene
Manhattan property (Manhattan district)	1989: *geologic resource*—100,000 tons, 0.50 opt Au 1996: *geologic resource*—161,000 oz Au 1997: 1.7 million tons, 0.13 opt Au proven and probable	1997: exploration	Cambrian Gold Hill Formation	
Midway (Rye Patch district)	1997: 270,000 oz Au preliminary resource	1997: exploration	Ordovician Palmetto Formation	
Montgomery Shoshone (Bullfrog district)	1988: 3.1 million tons, 0.072 opt Au, 0.240 opt Ag		rhyolitic ash-flow tuff	9.5 Ma
Nevada Mercury	1994: *geologic resource*—50,000 oz Au			
Northumberland (Northumberland district)	1988: 12 million tons, 0.06 opt Au	1939–42: 327,000 oz Au 1981–84: 950,000 tons/year 1988: 29,667 oz Au, 130,394 oz Ag 1990-93: idle	Roberts Mountains and Hanson Creek Formations, granodiorite, tonalite, quartz porphyry dikes	85 Ma
Paradise Peak/ Ketchup Flats pit (Fairplay district)	1989: 5.22 million tons, 0.09 opt Au, 3.62 opt Ag, mill ore; 11.52 million tons, 0.036 opt Au, 0.445 opt Ag, leachable 1991: ~ 2 year mine life 1992: *reserves*—197,000 oz Au, 4.3 million oz Ag 1993: mining ceased, remaining resource refractory sulfides, heap-leaching continued 1996: 5 million tons, 0.022 opt Au, 0.2 opt Ag (Ketchup Flats pit)	1986–88: 560,000 oz Au, 8.5 million oz Ag 1989: 228,000 oz Au, 5.17 million oz Ag 1990: 198,600 oz Au, 5.42 million oz Ag 1991: 182,000 oz Au, 2.26 million oz Ag 1992: 251,000 oz Au, 1.85 million oz Ag 1993: 156,000 oz Au, 795,000 oz Ag 1994: 39,084 oz Au, 130,086 oz Ag	rhyolite and andesite flows, ash-flow and air-fall tuffs	Miocene
Reward property (Bare Mountain district)	1998: 77,500 oz Au		Cambrian Wood Canyon Formation	
Round Mountain (Smoky Valley) (Round Mountain district)	1989: *geologic resource*—271 million tons, 0.032 opt Au 1990: 256.8 million tons, 0.033 opt Au 1993: 151.2 million tons, 0.024 opt Au, *geologic resource*—3,876,000 oz Au 1995: 10 million oz Au 1996: 9 million oz Au 1997: 401.3 million tons, 0.018 opt Au proven and probable plus 142.2 million tons, 0.016 opt Au mineralized material 1998: 6.4 million oz Au proven and probable reserves	1977–84: 313,480 oz Au, 160,419 oz Ag 1984: 70,000 oz Au 1987: 190,600 oz Au 1988: 233,700 oz Au 1989: 386,227 oz Au, 211,297 oz Ag 1990: 483,192 oz Au, 236,800 oz Ag (includes Manhattan) 1991: 339,000 oz Au, 260,000 oz Ag 1992: 370,600 oz Au, 316,700 oz Ag 1993: 370,000 oz Au, 300,000 oz Ag 1994: 423,000 oz Au, 268,000 oz Ag 1995: 344,437 oz Au, 250,529 oz Ag 1996: 410,977 oz Au, 345,258 oz Ag 1997: 480,430 oz Au, 356,085 oz Ag 1998: 510,502 oz Au, 511,320 oz Ag	rhyolite ash-flow tuff	26 Ma

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MAJOR PRECIOUS METAL DEPOSITS (continued)

Deposit name	Reserves/resources	Production	Host rock	Mineralization age
NYE COUNTY (continued)				
Sterling (Bare Mountain district)	1989: 469,000 tons, 0.21 opt Au 1990: 519,000 tons, 0.209 opt Au 1992: 403,000 tons, 0.24 opt Au *geologic resource*—765,000 tons, 0.178 opt Au 1995: 483,000 tons, 0.19 opt Au 1996: 129,000 tons, 0.245 opt Au	1983–88: 75,900 oz Au 1990: 12,626 oz Au 1991: 12,215 oz Au 1995: 14,000 oz Au 1996: 14,000 oz Au 1997: 4,841 oz Au 1998: 3,970 oz Au	Wood Canyon and Bonanza King Formations	14 Ma
South Monitor (west of Ellendale district)	1996: 250,000 oz Au 1997: 14 million tons, 0.028 opt Au, 0.12 opt Ag		Tertiary volcanic rock	
Sullivan (Fairplay district)	1987: 10.2 million tons, 0.039 opt Au, 0.086 opt Ag and 0.37% Cu 1988: *proven*—10.8 million tons, *probable* - 2.7 million tons, 0.025 opt Au 1995: *proven and possible*—17 million tons of 0.34% Cu, 0.0255 opt Au, + 8.5 million tons of 0.32% Cu		Mesozoic granodiorite and metavolcanic rocks	Mesozoic
PERSHING COUNTY				
Bunce (Velvet district)	1989: *geologic reserve* - 600,000 tons, 0.04 opt Au 1990: 500,000 tons, 0.04 opt Au		rhyolite	
Colado Gold (Willard district)	1997: 15 million tons, 0.022 opt Au resource	1997: exploration	Triassic-Jurassic metasedimentary rocks	
Florida Canyon (Imlay district)	1988: 37 million tons, 0.023 opt Au 1991: 48.3 million tons, 0.018 opt Au 1995: *reserves*—72.4 million tons, 0.019 opt Au, *additional geologic resource*—8 million tons, 0.061 opt Au, sulfide 1997: *reserves*— 45.5 million tons, 0.024 opt Au proven and probable mineralized material, 122.8 million tons, 0.022 opt Au	1987–88: 109,300 oz Au 1989: 81,484 oz Au, 24,721 oz Ag 1990: 83,200 oz Au, 19,300 oz Ag 1991: 80,586 oz Au, 20,951 oz Ag 1992: 89,954 oz Au, 37,775 oz Ag 1993: 109,190 oz Au, 37,550 oz Ag 1994: 92,000 oz Au, 25,000 oz Ag 1995: 111,167 oz Au, 62,624 oz Ag 1996: 183,176 oz Au, 104,684 oz Ag 1997: 163,321 oz Au, 146,568 oz Ag 1998: 152,080 oz Au, 131,153 ozAg	Grass Valley Formation	Cretaceous or Tertiary
Goldbanks Project (Goldbanks district)	1994: 900,000 oz Au 1995: *reserves*—45.6 million tons, 0.019 opt Au, 0.044 opt Ag, *plus geologic resource*—60 million tons, 0.017 opt Au, 0.071 opt Ag 1996: 80.8 million tons, 0.019 opt Au proven and probable reserves; 7.4 million tons, 0.014 opt Au possible reserves; 106.8 million tons, 0.028 opt Au drill indicated resources			
Relief Canyon (Antelope Springs district)	1988: ~ 1.3 million tons, 0.03 opt Au 1991: mined out 1994: 1.5 million tons, 0.035 opt Au 1996: 8.6 million tons, 0.022 opt Au	1984: 24,500 oz Au 1987–88: 82,000 oz Au 1989: 30,266 oz Au, 32,835 oz Ag 1990: 4,000 oz Au, 6,400 oz Ag	Natchez Pass Limestone, Grass Valley Formation	Cretaceous?
Rochester (Rochester district)	1989: *geologic resource*—94.5 million tons, 0.012 opt Au, 1.40 opt Ag 1993: 75 million tons, 1.32 opt Ag, 0.0113 opt Au 1996: *reserves*—81 million oz Ag, 696,000 oz Au 1997: 74.2 million oz Ag, 603,000 oz Au	1986–88: 122,400 oz Au, 13 million oz Ag 1989: 76,032 oz Au, 4.63 million oz Ag 1990: 59,000 oz Au, 4.8 million oz Ag 1991: 61,000 oz Au, 5.8 million oz Ag 1992: 57,000 oz Au, 5.6 million oz Ag 1993: 66,412 oz Au, 5.9 million oz Ag 1994: 56,000 oz Au, 5.9 million oz Ag 1995: 59,226 oz Au, 6.5 million oz Ag 1996: 74,293 oz Au, 6.3 million oz Ag 1997: 90,351 oz Au, 6.7 million oz Ag 1998: 88,615 oz Au, 7.2 million oz Ag	Koipato Group, Weaver Rhyolite	Late Cretaceous
Rosebud Project (Rosebud district)	1992: 570,000 oz Au (0.362 opt), 5.5 million oz Ag (5.5 opt) 1994: 512,000 oz Au 1995: 1.6 million tons, 0.36 opt Au, 2.3 opt Ag 1996: 1.2 million tons, 0.45 opt Au, 2.75 opt Ag 1997: 500,000 oz Au, 3.4 million oz Ag 1998: 484,000 tons, 0.392 opt Au, 1.80 opt Ag	1997: 93,948 oz Au, 337,167 oz Ag 1998: 131,703 oz Au, 477,956 oz Ag	Tertiary volcanic rocks	Miocene

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Deposit name	Reserves/resources	Production	Host rock	Mineralization age
PERSHING COUNTY (continued)				
Tag-Wildcat (Farrel district)	1989: *geologic resource*—1.5 million tons, 0.043 opt Au; *reserves*—416,000 tons, 0.076 opt Au	1989: exploration	Tertiary volcanic rocks	Miocene
STOREY COUNTY				
Comstock heap leach project (Comstock district)	1992: 475,000 tons, 0.072 opt Au, 0.60 opt Ag 1993: *geologic resource*—3.2 million tons, 0.05 opt Au, 0.5 opt Ag 1996: 100,000 oz Au, 1.2 million oz Ag			
Flowery (Golden Eagle) (Comstock district)	1989: 1 million tons, 0.037 opt Au 1990: 6.3 million tons, 0.043 opt Au *geologic resource*—1.16 million oz Au 1991: *geologic resource*—29.3 million tons, 0.04 opt Au 1993: 362,000 tons, 0.064 opt Au, 0.97 opt Ag, *geologic resource*—88,128 oz Au and 1 million oz Ag	1988: 836 oz Au, 9,473 oz Ag 1990: 6,000 oz Au, 70,000 oz Ag 1992: 2,253 oz Au, 34,572 oz Ag 1993: 2,200 oz Au, 30,000 oz Ag 1994: 5,000 oz Au, 41,000 oz Ag 1995: 5,300 oz Au, 58,000 oz Ag 1996: 2,080 oz Au, 31,500 oz Ag 1997: 116 oz Au, 629 oz Ag	Alta Formation	12 Ma
Oliver Hills (Comstock district)	1990: 3.37 million tons, 0.054 opt Au, 1.2 opt Ag 1991: *geologic resource*—8.5 million tons, 0.060 opt Au, 0.60 opt Ag 1993: 4 million tons, 0.05 opt Au, 0.5 opt Ag, *geologic resource*—225,000 oz Au and 2.25 million oz Ag	1991: 573 oz Au, 6,947 oz Ag		
WASHOE COUNTY				
Mountain View Gold Project (Deephole district)	1995: 19.5 million tons, 0.027 opt Au 1996: 10.7 million tons, 0.055 opt Au		rhyolite	Miocene
Olinghouse (Olinghouse district)	1994: *geologic resource*—500,000 opt Au, 0.057 opt Au 1995: *geologic resource*—775,000 oz Au, *proven and probable reserves*—9,655,000 tons, 0.036 opt Au 1997: 512,800 oz Au proven and probable reserves, 0.042 opt Au	1998: 2,912 oz Au, 1,879 oz Au	Miocene andesite	Miocene
WHITE PINE COUNTY				
Alligator Ridge (Bald Mountain district)	1989: 1 million tons, 0.064 opt Au 1990: 824,000 tons, 0.059 opt Au, *geologic resource*—2.1 million tons 0.043 opt Au 1992: 11.5 million tons, 0.046 opt Au; *geologic resource*—661,888 oz Au, includes Casino/Winrock	1981–88: 560,000 oz Au, 70,000 oz Ag 1989: 54,057 oz Au, 10,188 oz Ag 1990: 18,000 oz Au, 4,000 oz Ag 1991: 17,000 oz Au 1992: 10,450 oz Au 1993: *see* Bald Mountain 1994: 40,000 oz Au 1995: idle 1996: *see* Bald Mountain	Pilot Shale	Mesozoic or early Tertiary
Bald Mountain (Top) (Bald Mountain district)	1989: 6.7 million tons, 0.069 opt Au 1990: 8.7 million tons, 0.062 opt Au 1992: *geologic resource*—600,000 oz Au 1996: 30 million tons, 0.033 opt Au proven and probable reserves; 21 million tons, 0.05 opt Au other resources 1997: 921,000 oz Au 1998: 10,800,000 tons, 0.075 opt Au proven and probable reserves	1986: 50,000 oz Au 1988: 48,619 oz Au 1989: 55,112 oz Au 1990: 60,000 oz Au, 5,000 oz Ag 1991: 55,000 oz Au, 12,000 oz Ag 1992: 81,500 oz Au, 33,600 oz Ag 1993: 90,610 oz Au, 26,145 oz Ag (includes Alligator Ridge and Yankee Projects) 1994: 80,000 oz Au 1995: 114,200 oz Au, 11,600 oz Ag 1996: 107,708 oz Au, 50,680 oz Ag (includes Alligator Ridge) 1997: 113,500 oz Au, 61,416 oz Ag 1998: 130,000 oz Au, 2,000 oz Ag	quartz porphyry, Cambrian shale and limestone	Jurassic?

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MAJOR PRECIOUS METAL DEPOSITS (continued)

Deposit name	Reserves/resources	Production	Host rock	Mineralization age
WHITE PINE COUNTY (continued)				
Bellview (White Pine district)	1988: 277,000 tons, 0.04 opt Au, *geologic resource*—1 million tons, 0.036 opt Au			
Casino/Winrock (Bald Mountain district)	1989: Casino - 804,000 tons, 0.054 opt Au; Winrock 1.3 million tons, 0.037 opt Au 1990: Winrock - 993,000 tons, 39,000 oz Au 1992: *see* Alligator Ridge	1990: 7,000 oz Au 1991: 20,000 oz Au 1992: 19,800 oz Au	late Paleozoic sedimentary rocks	Eocene
Easy Junior (Nighthawk Ridge) (White Pine district)	1989: 5.68 million tons, 0.031 opt Au 1991: 137,000 oz Au	1990: 11,500 oz Au, 900 oz Ag 1997: 510 oz Au, 76 oz Ag	Devonian and Mississippian rocks	Eocene
Golden Butte (Cherry Creek district)	1989: 4.23 million tons, 0.031 opt Au	1989: 12,187 oz Au, 1,448 oz Ag 1990: 22,362 oz Au, 7,700 oz Ag 1991: 8,970 oz Au, 7,763 oz Ag	Chainman Shale	Cretaceous or Eocene
Griffon Gold property (White Pine district)	1993: *geologic resource*—60,000 oz Au 1994: *geologic resource*—50,454 oz Au, 0.039 opt Au 1995: *proven and probable reserves*—2,737,000 tons, 0.025 opt Au 1997: 100,000 oz Au	1998: 37,921 oz Au, 269 oz Ag	upper Joana Limestone	
Horseshoe (Bald Mountain district)	1991: 1.5 million tons, 0.039 opt Au		Pilot Shale and intrusive quartz porphyry	36–38 Ma
Illipah (Illipah district)	1988: mined out	1987: ~25,000 oz Au/year 1988: 25,324 oz Au, mining ended 1989: 3,874 oz Au, heap-leached 1996: exploration	Paleozoic sedimentary rocks	Eocene?
Little Bald Mtn. (Bald Mountain district)	1988: 200,000 tons, 0.13 opt Au; *geologic resource*—280,000 tons, 0.127 opt Au 1993: 140,000 tons, 0.13 opt Au, *geologic resource*—21,800 oz Au	1985–88: 21,700 oz Au 1989: 5,500 oz Au, 1,500 oz Ag	Antelope Valley Formation	35–38 Ma
Mt. Hamilton (White Pine district)	1988: 7.7 million tons, 0.05 opt Au, 0.5 opt Ag 1994: *reserve*—9.04 million tons, 0.052 opt Au, 0.38 opt Ag 1996: 10.8 million tons, 0.038 opt Au, 0.24 opt Ag 1997: 7.72 million tons, 0.035 opt Au	1988: preproduction 1993: idle 1995: 52,000 oz Au, 100,000 oz Ag 1996: 35,000 oz Au, 71,500 oz Ag 1997: 12,500 oz Au, 36,000 oz Ag (data revised after NBMG Special Publication P-9 was published)	Dunderberg Shale	Cretaceous
Pan (White Pine district)	1989: 241,000 oz Au 1998: 10.86 million tons, 0.022 opt Au drill indicated and inferred		Mississipian rocks	
Robinson (Robinson district)	1989: 46.0 million tons, 0.019 opt Au; *geologic resource*—1 million oz Au 1991: *geologic resource*—200 million tons 0.012 opt Au 1992: 1.2 million oz Au, *geologic resource*—2.21 million oz Au 1994: *geologic resource*—252 million tons, 0.553% Cu, 0.0102 opt Au	1986: 48,000 oz Au, 96,000 oz Ag 1987: 50,207 oz Au 1988: 38,750 oz Au 1989: 78,828 oz Au, 66,340 oz Ag 1990: 75,000 oz Au, 55,000 oz Ag 1991: 21,674 oz Au 1992: 35,581 oz Au, 55,000 oz Ag 1993: 13,432 oz Au 1996: 39,000 oz Au, 170,000 oz Ag, and 84 million pounds of Cu 1997: 71,000 oz Au, 314,000 oz Ag and 138 million pounds of Cu 1998: 86,000 oz Au, 299,500 oz Ag and 148 million pounds of Cu	Rib Hill Sandstone Riepe Spring Limestone intrusions	Cretaceous
Taylor (Taylor district)	1980: 10 million tons, 3 opt Ag	1980: 1,200 tons/day 1995: idle	Guilmette and Joana Limestones, rhyolite dikes	Eocene or Oligocene
White Pine (White Pine district)	1989: 63,000 oz Au, 0.04 opt Au	1989: 20,654 oz Au	Pilot Shale	Oligocene?
Yankee (Bald Mountain district)	1992: 683,000 oz Au	1990: ~15,000 oz Au 1992: 10,800 oz Au 1993: *see* Bald Mountain	Pilot Shale	36–38 Ma?

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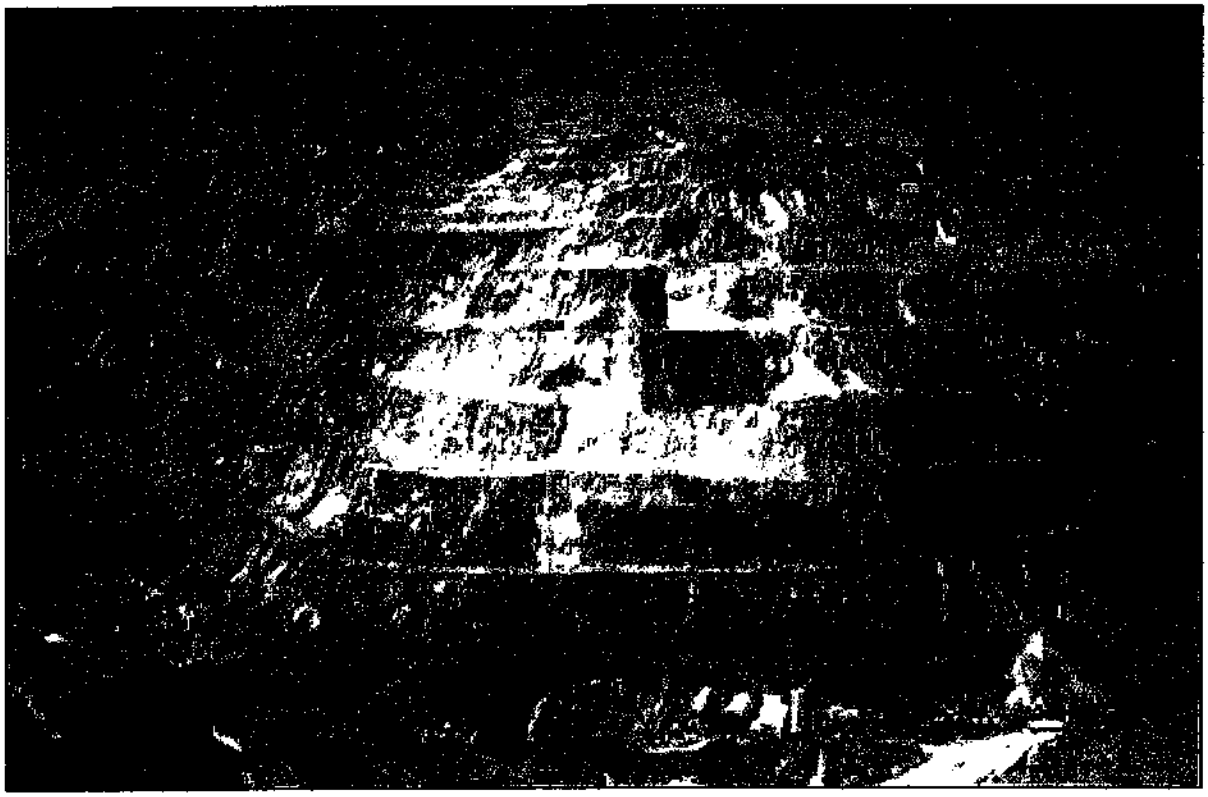
Newmont Gold Production

Production data for individual mines in the Carlin Trend owned by Newmont Gold Co. are not available in some cases, particularly during 1988–1993. Total production of Newmont operations in Nevada by the Carlin Trend is as follows:

Year	Gold (oz)	Silver (oz)
1988	895,500	NA
1989	1,467,800	117,400
1990	1,676,000	NA
1991	1,575,700	NA
1992	1,588,000	98,000
1993	1,666,400	175,000
1994	1,554,000	158,000
1995	1,634,500	188,000
1996	1,700,000	322,000
1997	1,819,000	118,000
1998	1,575,391	150,400

NA= not available



Carlin east portal and pit. *Photo: Chris Henry*

Industrial Minerals

by Stephen B. Castor

At an estimated $373 million, the total value of industrial minerals produced in Nevada in 1998 is slightly above that for 1997. In order of estimated dollar value the most important Nevada industrial minerals produced in 1998 were aggregate, lime, diatomite, gypsum, cement, barite, lithium, silica, clay, and magnesia. Data used for these estimates, and data reported for individual commodities below, were obtained from the Nevada Division of Minerals or directly from companies that produced industrial minerals.

AGGREGATE (SAND, GRAVEL, AND CRUSHED STONE) In 1998, construction aggregate production in Nevada had an approximate total value of $119 million and was ranked second among the state's mined commodities behind gold. For 1998, statewide aggregate production is estimated at 26.5 million tons, 5% below production in 1997. Aggregate produced from sand and gravel deposits accounted for about 75% of aggregate production statewide, with crushed stone and lightweight aggregate making up the balance. Aggregate produced in the Las Vegas area, which accounted for about 17 million tons, decreased about 9% from 1997, while production in the Reno-Sparks-Carson City area, at 5.5 million tons, was 10% higher than in 1997.

Companies in the Las Vegas area that produced more than a million tons of aggregate in 1998, ranked in approximate order of tonnage produced, were Nevada Ready Mix Corp., Hanson Aggregates West (formerly Bonanza Materials Inc.), CSR (formerly WMK Transit Mix Inc.), Frehner Construction Inc, Wells Cargo Inc., and Blue Diamond Materials Co. The largest producer, Nevada Ready Mix, produced most of its aggregate from a single open pit in an alluvial fan in the Lone Mountain area. Hanson Aggregates purchased Lopke Granite Products in 1998 and plans to shut down its Stephanie Pit operation in Henderson in 1999. Community pits and other aggregate mining facilities on land administered by the U.S. Bureau of Land Management and operated by at least seven different companies provided about 2.4 million tons to the Las Vegas area total in 1998. Production from portable crushers operating at construction sites has increased dramatically over the past 5 years, making calculations of total production difficult.

In 1998, sand and gravel operations accounted for about 85% of aggregate used in the Las Vegas metropolitan area, with crushed stone and lightweight aggregate making up the balance. Major crushed stone producers in the Las Vegas area were Frehner Construction Co., Lopke Granite Products, and Southern Nevada Lightweight.

As in the past seven years, the most important source of Las Vegas area aggregate was the Lone Mountain area northwest of Las Vegas. Once located a considerable distance from heavily urbanized areas, the impact of Lone Mountain aggregate operations, particularly on residential traffic, is now coming under scrutiny due to encroaching urbanization. Significant production still comes from sites located in more heavily urbanized parts of the Las Vegas metropolitan area, but it is likely that future production will come increasingly from more distant sources. Since 1997, common aggregate has been hauled into Las Vegas from sites as far as 50 miles away in Lincoln County.

In the Reno-Sparks-Carson City area, Granite Construction Co. and All-Lite Aggregate Co. produced more than a million tons of aggregate in 1998. Companies that produced 500,000 or more tons in 1998 included Rocky Ridge Inc. and Rilite Aggregate Co. Paiute Pit Aggregates, 30 miles east of the Reno-Sparks metropolitan area, was also a major producer. Crushed rock continued to be an important source of aggregate in this area; crushed rock operations of Granite Construction and Rocky Ridge Inc. and lightweight rhyolite aggregate from All-Lite Aggregate Co, Rilite Aggregate Co, and Basalite Lightweight Aggregate Corp. accounted for about 70% of the aggregate used in 1998 in the Reno-Sparks-Carson City area.

BARITE In 1998, barite shipments from Nevada totaled 490,000 tons, 16% less than in 1997. M.I. Drilling Fluids Co. was once again the largest Nevada barite producer, with combined production of nearly 300,000 tons of screened and crushed high-grade ore from the Greystone Mine and ground and bagged barite from its Battle Mountain plant, both in Lander County.

In late 1997, Dresser acquired and dissolved Baroid Drilling Fluids. The company shipped barite from the Dunphy mill in Eureka County and the Rossi Mine in Elko County in 1998. In the fall of 1998, Halliburton acquired Dresser and agreed to sell its 36% ownership of M.I. Drilling Fluids to Smith International.

Baker Hughes INTEQ also produced significant amounts of barite for drilling materials at its Argenta property near Battle Mountain, Lander County. Standard Industrial Minerals shipped a small amount of barite in 1998 from the P and S Mine in Nye County to a processing plant in Bishop, California. The company markets high value white paint-grade barite for use in paint and as a filler.

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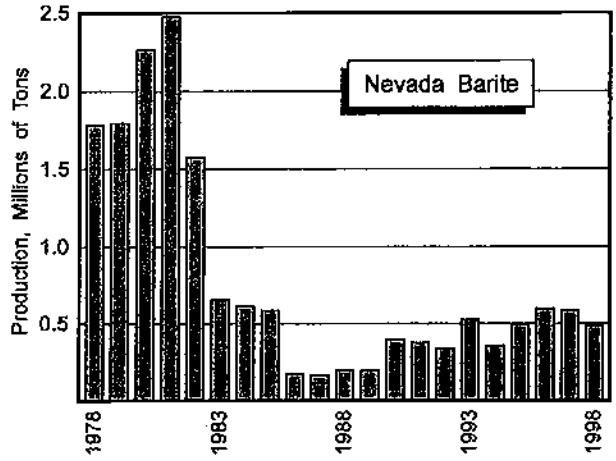

BORATE American Borate Co. mined borate minerals from an underground operation in Death Valley, California, in 1998. The ore is processed at the Lathrop Wells Mill in Nye County, but because the ore is from out of state, this production is not included in the estimate of total value of Nevada minerals.

BUILDING STONE Although the company mainly produces crushed landscape rock, Las Vegas Rock produced some sandstone building stone at Goodsprings, Clark County. Nevada Neanderthal Stone, which quarries and cuts Tertiary tuff near Beatty in Nye County for floor tile and other stone products, has seen its sales decline to 20% of former levels due to foreign competition.

CEMENT The Nevada Cement Co., a subsidiary of Centex Construction Products, Inc., produces portland cement at a plant at Fernley in Lyon County. Annual production exceeds 500,000 tons of cement. The Royal Cement Co. owns a cement plant near Logandale in Clark County. Annual production from this plant between1995 and 1997 was as much as 50,000 tons of cement. The plant was inactive during 1998.

According to U.S. Geological Survey mineral industry surveys, the total consumption of cement in the United States reached record levels in 1998, and cement shipments to Nevada destinations totaled more than 2 million tons. At least two companies have been researching feasibility for new cement plants near Las Vegas. One of these, U.S. Cement, is working on a scheme to process clinker produced outside Nevada, and another company has been studying the possibility of the utilization of local raw materials. Limestone, silica, and gypsum are common in the Las Vegas area and power is relatively cheap. Alumina and iron may not be available from local sources, but could readily be acquired outside Nevada.

CLAY Clay production in Nevada in 1998 declined somewhat from 1997. IMV Nevada, which is owned by Mud Camp Mining Co. of California, is the largest producer. The operation consists of sepiolite, montmorillonite, and saponite mines and a processing plant in Amargosa Valley, Nye County. The company is the only producer of sepiolite and saponite in the United States, and exports clay mineral products with a variety of uses worldwide.

Other Nevada producers ship relatively minor amounts of clay minerals. Vanderbilt Minerals Co. shipped a small amount of clay from several Nevada deposits from a crushing plant near Beatty in Nye County in 1998. The Art Wilson Co. sold a small amount of montmorillonite from the Jupiter Mine in Lyon County in 1998 for aquaculture and mined halloysite clay from a deposit in Washoe County for Nevada Cement Co. The latter is not reported as clay in NBMG mineral production figures because it is included in portland cement.

American Colloid Co. has mined small amounts of clay in Nevada for many years, particularly in the Lovelock area, but the company did not ship clay from Nevada in 1998. In order to concentrate on clumpable clay for cat litter, the company sold its calcium bentonite business, which included a property near Wabuska in Lyon County, to Oil Dri Inc. in 1998. However, American Colloid retained specialty clay properties near Lovelock in Pershing County along with its McDermitt caldera hectorite deposits in Humboldt County. Oil Dri, which ships large amounts of cat litter clay to the west coast, continued to wait for approval on patents for clay on the west side of the Smoke Creek Desert.

DIATOMITE Eagle-Picher Minerals, Inc., a division of Eagle-Picher Industries, Inc., produces most of Nevada's diatomite at three different operations. The largest operation is the Colado plant near Lovelock in Pershing County, which produces diatomaceous earth filtration products from diatomite mined northwest of Lovelock. The company also produced diatomite that is mainly used in fillers and absorbents at its Clark plant and mine in Storey County, and diatomite used in insulation from a pit near Hazen in Lyon County.

Moltan Co. of Memphis, Tennessee is the second largest diatomite miner in Nevada, producing cat litter, oil absorbent, and soil conditioner from diatomite mined in Churchill County northeast of Fernley. Other companies that produced diatomite in Nevada in 1998 were Grefco Inc. at its Basalt operation in Esmeralda and Mineral Counties, and CR Minerals at Hazen in Lyon County.

GYPSUM Gypsum production in Nevada increased from 1.6 million tons in 1997 to 1.8 million tons. The Blue Diamond operation of James Hardie Gypsum, just southwest of Las Vegas in Clark County, was the largest producer at more than 750,000 tons. This gypsum was used to make wallboard and plaster. The company shipped more than 500,000 million square feet of wallboard and 100,000 tons of plaster in 1998. USG Corp., which mines gypsum at the other end of the state (northern Pershing County), was the second largest producer at nearly 525,000 tons. USG processes the gypsum into wallboard and plaster at its Empire plant in

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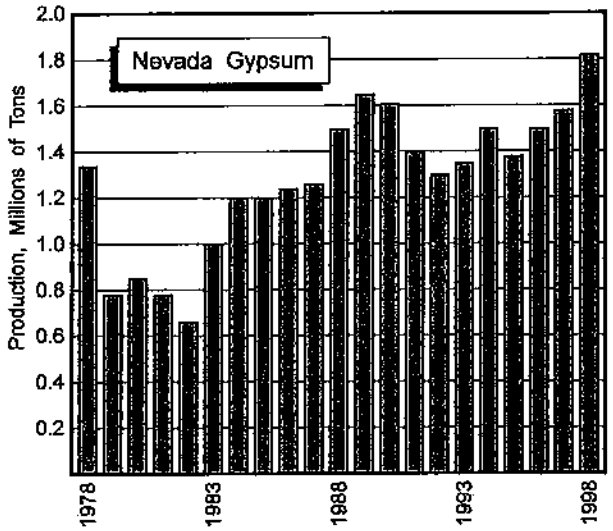
central Washoe County. Although PABCO Gypsum in Clark County east of Las Vegas mined nearly 585,000 tons of ore in 1998, actual gypsum production was lower because the ore must be beneficiated to produce a gypsum concentrate. PABCO processes most of this gypsum into wallboard. The Art Wilson Co., Carson City, shipped about 115,000 tons of gypsum from the Adams Mine in Lyon County for use in cement and agricultural markets.



LIME, LIMESTONE, AND DOLOMITE In 1998, lime production in Nevada continued at record levels, increasing 7% over 1997. The Continental Lime, Inc. Pilot Peak high-calcium lime operation near Wendover in Elko County shipped the most lime in 1998, mainly to Nevada gold mining operations for use in pH control. Chemical Lime Co. produced high-calcium and dolomitic lime at Apex near Las Vegas. Hydrated lime is made from Apex quicklime at a plant in Henderson. The high-calcium lime is mainly used for copper and gold mine processing, paper and steel manufacturing, and environmental markets; the dolomitic lime is mostly used in construction. In late 1997, Chemical Lime shut down its dolomite mining operation at Sloan, south of Las Vegas, where limestone and dolomite had been mined since 1910.

In addition to lime, Chemical Lime Co. shipped crushed limestone for glass flux and flue gas desulfurization. Other carbonate rock producers in Nevada were Min-Ad, Inc. and Nutritional Additives Corp., which are both located near Winnemucca and produce ground dolomite for agricultural use. Min-Ad, the larger of the two agricultural dolomite producers, shipped more than 60,000 tons in 1998, a slight increase over 1997.

LITHIUM In October 1998, the Silver Peak lithium operation in Esmeralda County was sold to Chemetall GmbH, a subsidiary of the giant Metallgesellschaft AG, for $305 million by Cyprus Amax Minerals Co. The operation, which produces lithium carbonate and lithium hydroxide compounds from brine that is pumped from beneath the Clayton Valley playa and evaporated in nearby ponds, has been active since 1966. A similar lithium brine facility in Chile and other lithium operations in the U.S. were included in the sale. In recent years, Cyprus Amax earnings from lithium sales have been strong and prices high; however, the new SQM Chemicals (formerly Minsal) lithium brine operation in Chile caused price reductions in 1998. The Journal *Industrial Minerals* listed the price of lithium carbonate at about $2.00 per pound early in the year; but by June, a price of about $0.90 per pound for large orders was also listed. On the basis of Securities Exchange information, production at Silver Peak for 1998 is estimated at 12 million pounds lithium carbonate and 5 million pounds lithium hydroxide.

MAGNESIA Annual production of magnesia from magnesite at Gabbs, Nye County, by Premier Services Corp. was approximately the same in 1998 as in 1997. Brucite (magnesium hydroxide) production was up sharply, though still relatively small in comparison to past brucite production from the deposit.

PERLITE In 1998, Eagle-Picher Minerals Inc. produced expanded perlite at the Colado diatomaceous earth facility in Pershing County from perlite mined in Churchill County. In addition, the Wilkin Mining and Trucking Co. mined perlite from the Mackie Mine in Lincoln County.

SALT The Huck Salt Co. of Fallon produced about 18,000 tons of salt in 1998. The salt, mined from Fourmile Flat near the Sand Springs mining district in Churchill County, is now mainly used for deicing roads. Salt has been harvested from this playa deposit more-or-less continuously since salt was hauled to Virginia City for ore processing in the 1860s.

SILICA The Simplot Silica Products plant at Overton in Clark County shipped 640,000 tons of silica sand in 1998, the same as in 1997. The sand is mined from a large deposit of friable sandstone, washed in the pit, and transported via a slurry pipeline to the plant where it is screened and bagged.

ZEOLITES The American Resource Corp. processing plant near Amargosa Valley, Nye County, shipped clinoptilolite for water processing, odor control, and horticultural uses in 1998. The company was placed in receivership along with its parent company, Rea Gold Corp., in March 1998. An offer to buy the zeolite operation by Badger Mining Corp., a Wisconsin-based industrial mineral company, was accepted in 1998. It is anticipated that the acquisition will be finalized in 1999. The clinoptilolite deposit extends from California, where it is presently mined, into Nevada. The operation has plans for plant expansion and development of a mine in Nevada.

American Colloid Inc. sold the Eastgate plant in Churchill County to an unnamed buyer. The plant, which was acquired from American Resource Corp. in 1995, was originally constructed by East West Minerals in 1987 to process mordenite into cat litter and absorbent products.

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Geothermal Energy

by Ronald H. Hess

Twenty new geothermal well permits were issued during 1998 by the Nevada Division of Minerals: they include 1 industrial/commercial class well, 13 gradient/observation wells, 4 injection wells, and 2 domestic wells. In addition 4 permits were issued to rework existing wells. During this same period 1 industrial class production well, 6 observation wells, 1 injection well, and one domestic well were reported to have been drilled.

During 1997, 14 new well permits were issued by the Nevada Division of Minerals: they included 4 industrial/commercial class wells, 9 gradient/observation wells, and 1 domestic well. During this same period 1 industrial class production well, 2 observation wells, and 1 domestic well were drilled.

There were 74 federal geothermal noncompetitive leases covering 110,800 acres and 54 competitive federal leases covering 58,900 acres in Nevada during 1998. This is an increase of 1,817 noncompetitive lease acres and an increase of 11,354 competitive lease acres from 1997 totals.

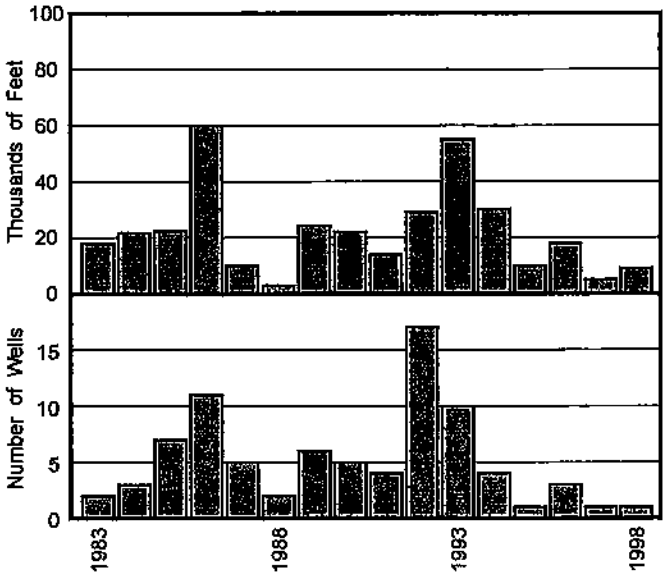
Total gross electrical production from geothermal resources on federal lands was 1.2 million megawatt-hours (MWh); net production was approximately 998,000 MWh. Gross electrical sales from federal lands was 80 million dollars. Production royalties on that amount equaled $4,200,000.

By regulation, half of all Federal geothermal lease rental fees and production royalties are returned to the state. For 1998 $2.1 million dollars in royalty production fees should be returned to Nevada. Lease rental fee data for 1998 was not available as of press time. (R. Hoops, Bureau of Land Management, personal commun., 1999)

Total Nevada geothermal electrical production from both federal and fee lands combined in 1998 was 1,630,579 MWh gross; net production was 1,326,851 MWh (Nevada Division of Minerals, 1999) with an approximate sales value of $93,000,000. Production capacity from the currently developed geothermal resources at ten existing geothermal power plants in Nevada is 210.5 megawatts (MW). Installed equipment capacity based on equipment nameplate rating is 242.4 MW. Nevada is second only to California in total installed geothermal generating capacity.

Bradys Hot Springs and Desert Peak

The **Desert Peak** geothermal power plant, owned by **Western States Geothermal Co.,** is now connected to the general grid at the **Bradys Hot Springs** geothermal plant operated by **Brady Power Partners.** This change in point of sales means that the combined net production from both plants within the Known Geothermal Resource Area is now being purchased through the Bradys Hot Springs power purchase agreement with Sierra Pacific Power Company.



Industrial-class (power generating) wells drilled in Nevada 1982–1998. Depth taken from original drilling permit.

NONDOMESTIC GEOTHERMAL WELLS REPORTED AS DRILLED OR COMPLETED IN NEVADA DURING 1997 AND 1998

Area	Company	Well name	Permit#	Location	Type
Churchill County					
Brady Hot Springs	Brady Power Partners	Industrial Injection Well 74-25	460	NE¼, S25, T22N, R26E	Injection
	Brady Power Partners	Observation Well BCH #1	448	SE¼ SE¼, S36, T23N, R26E	Observation
	Brady Power Partners	Observation Well BCH #2	450	SE¼ NW¼, S1, T22N, R26E	Observation
	Brady Power Partners	Observation Well BCH #3	451	NW¼ SW¼, S12, T22N, R26E	Observation
	Brady Power Partners	Observation Well BCH #5	455	NE¼ SW¼, S25, T22N, R26E	Observation
	Brady Power Partners	Observation Well BCH #7	457	NW¼ SE¼, S25, T22N, R26E	Observation
	Brady Power Partners	Observation Well BCH #8	474	NE¼ NE¼, S25, T22N, R26E	Observation
	Brady Power Partners	Observation Well BCH #9	475	NE¼ NE¼, S25, T22N, R26E	Observation
	Brady Power Partners	Observation Well BCH #10	476	NE¼ NE¼, S25, T22N, R26E	Observation
Dixie Valley	Oxbow Geothermal	Production Well #46-32	446	NE¼ SW¼, S32, T25N, R37E	Industrial
Stillwater	AMOR IV Corp.	Production Well Stillwater #12A-6	447	NW¼ NW¼, S6, T19N, R31E	Industrial

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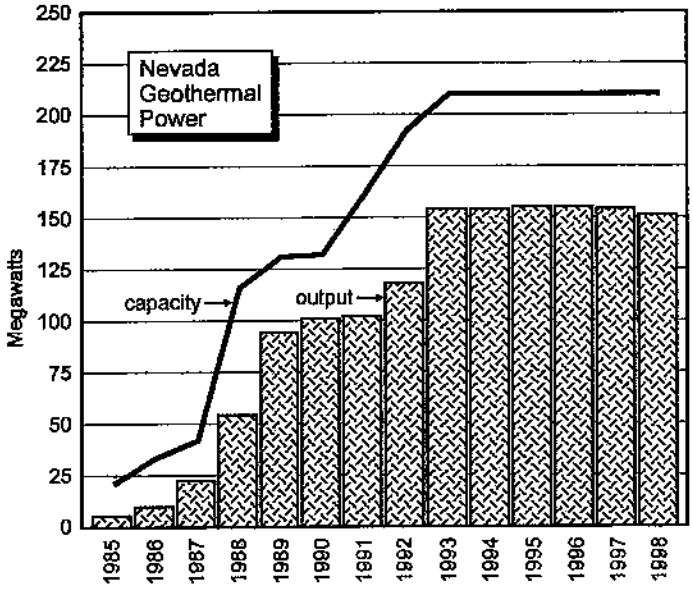
This arrangement insures that the Brady plant will be able to continue providing the minimum net electrical supply required by their existing power purchase agreement. (R. Hoops, personal commun., 1999; and J. Snow, Nevada Division of Minerals, personal commun., 1999)

The Bradys Power Plant produced 153,300 MWh gross (117,701 MWh net) and the Desert Peak Power Plant produced 69,488 MWh gross (59,638 MWh net) during 1998. (Nevada Division of Minerals, 1999)

Dixie Valley

The **Dixie Valley** power plant utilizes 250°C geothermal fluids, produced from a zone approximately 9,000 feet deep in a range-front fault/fracture system, to generate approximately 65 MW of electricity. The plant has been in production for 11 years and produces 5 million pounds per hour of mass flow from 10 production wells. Eight wells are used to re-inject 80% of the produced fluid. (Newsletter, Nevada Petroleum Society, April 29, 1999: Vol. XIV, Issue 2)

During 1998, small amounts of low-maturity oil was found trapped in some small wing valves on one production well and as scale on some hang down strings of several other production wells. This discovery has spurred oil exploration interests in the area and speculation as to the potential source rocks for the oil. The potential also exists to use the trace amounts of oil found in the fluids as a tracer in the geothermal system to help better understand the reservoir flow pattern and other sub-surface mechanisms associated with the resource. (Proceedings, Twenty-fourth Workshop on Geothermal Reservoir Engineering, Stanford University, Stanford, CA., January 25–27, 1999 and Newsletter, Nevada Petroleum Society, April 29, 1999: Vol. XIV, Issue 2)



Rated capacity and average net output of Nevada geothermal plants, 1985–1998. Average net output is annual sales in megawatt-hours divided by the number of hours in a year (8,760). No commercial geothermal power was produced in Nevada before 1985.

Rye Patch

During 1995 **Rye Patch Limited Partnership (OESI)** terminated work on the 95% complete 12.5 MW binary power plant located at **Rye Patch.** At the time they were only able to identify a 6 MW proven resource. Due to funding constraints and reservoir engineering problems Sierra Pacific cancelled the projects power purchase agreement and the project went into default. (Geothermal Resources Council Bulletin, May 1995, vol. 24, no. 5 and NBMG MI 1995)

Rye Patch Energy Company and **Mount Wheeler Power Company** are currently in negotiations which may allow the Rye Patch geothermal plant to be completed and brought on-line producing 6–7 MW of electricity from the already proven well field resource. After the plant is brought on-line ongoing development in the well field should provide enough additional resources to eventually bring the plant up to its rated net capacity of 12.5 megawatts. (J. Wood, Rye Patch Energy Co., personal commun., 1999)

Steamboat Hot Springs

S.B. Geo, Inc. at **Steamboat Geothermal Power Plant** have had some success in the development, construction, and testing of some high volume, high temperature down hole submersible pumps. It is reported that these pumps can deliver as much as 3,000 gallons per minute of 400°F+ geothermal fluids. (J. Snow, personal commun., 1999)

S.B. Geo, Inc. filed a drilling permit application for designation of an ongoing project area at their Steamboat area site. It has been approved as State geothermal permit number 458PA. The project area encompasses sections 28, 29, 32, and 33, T18N, R20E in Washoe County. The project area permit allows for future drilling of up to 15 production wells, 7 injection wells, and 6 observation wells. (Nevada Division of Minerals, 1999)

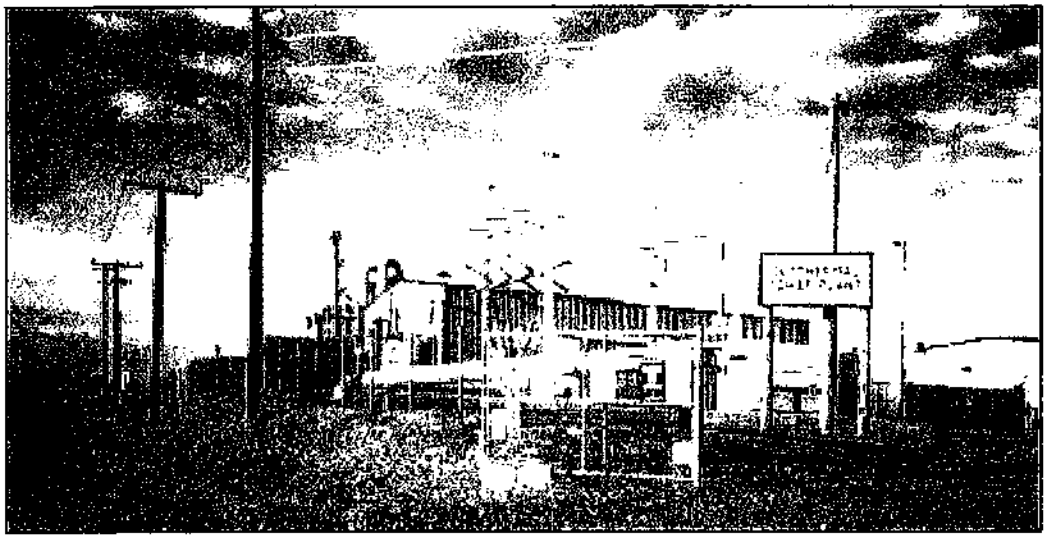
Reno Energy, owned by Far West Capital Group, has been granted approval to develop a heating district with the potential to eventually heat 30 million square feet of industrial and commercial space. The Reno Energy project is currently putting together the financing package necessary to start construction on phase I of the project and it is anticipated that they will be moving forward with the project in the near future. The project is located in southern Reno, which is a rapidly developing area. It will use left over brine from electrical generation plants currently operating at the Steamboat geothermal area to heat a freshwater closed loop system that will circulate throughout the heat district. The freshwater in the closed loop system will be heated to 240°F with connections to energy users metered for volume and energy consumption. The used brine from this process will be re-injected to the geothermal resource. Phase one of the project includes completion of the first loop through the

South Truckee Meadows area. (S. Johnson, Oxbow Power Services, Inc., personal commun., 1999; and Snow, J. personal commun., 1999) Projected cost of phase I is $41 million. It is estimated that this system could save its customers between 35 and 55% of the long-term cost of conventional heating and cooling. (Reno Energy LLC News Release, 1996)

NEVADA GEOTHERMAL POWER PLANTS 1998

Plant name (year on line)	Production capacity[1] (MW)	1998 Production (MWh) Gross	Net (sales)	Location	Operator
Beowawe (1985)	16.7 (16.6)	131,351	108,854	S13,T31N,R47E	Oxbow Power of Beowawe, Inc. HC 66, Unit 1, Box 16 Beowawe, NV 89821
Bradys Hot Springs (1992)	21.1 (26.4)	153,300	117,701	S12,T22N,R28E	Brady Power Partners P.O. Box 649 Fernley, NV 89408
Desert Peak (1985)	9.9 (11.0)	69,488	59,638	S21,T22N,R27E	Western States Geothermal Co. c/o Brady Power Partners P.O. Box 649 Fernley, NV 89408
Dixie Valley[2] (1988)	66.0 (62.0)	526,020	471,151	S7,T24N,R37E S33,T25N,R37E	Oxbow Geothermal Corp. 9790 Gateway Dr. Suite 220 Reno, NV 89511
Empire (1987)	3.6 (4.8)	33,069	30,103	S21,T29N,R23E	San Emidio Resources P.O. Box 40 Empire, NV 89405
Soda Lake No. 1 (1987) and Soda Lake No. 2 (1991)	16.6 (26.1)	121,419	87,538	S33,T20N,R28E	Constellation Operating Services 5500 Soda Lake Road Fallon, NV 89406
Steamboat I, I-A (1986) and Steamboat II, III (1992)	48.0 (58.6)	413,458	310,428	S29,T18N,R20E	S.B. Geo, Inc. P.O. Box 18199 1010 Power Plant Dr. Reno, NV 89511
Stillwater (1989)	13.0 (21.0)	98,356	67,843	S1,T19N,R30E S6,T19N,R31E	Constellation Operating Services 5500 Soda Lake Road Fallon, NV 89406
Wabuska (1984)	1.2 (1.45)	7,995	7,995	S15,16,T15N, R25E	Tad's Enterprises 3535 Southampton Dr. Reno, NV 89502
Yankee Caithness (1988)	14.4 (14.44)	76,123	67,600	S5,6,T17N,R20E	Yankee Caithness J.V.L.P. P.O. Box 16160 Reno, NV 89511
TOTAL	210.5 (242.4)	1,630,579	1,326,851		

[1]Production capacity from currently developed geothermal resources (equipment nameplate capacity in parenthesis).
[2]Gross output of the Dixie Valley plant occasionally exceeds 66 MW.
Sources: Plant operators, Nevada Division of Minerals, and NBMG files.



Brady Power Partners Geothermal Power Plant. ***Photo by Megan Hess, 1999.***

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Oil and Gas

by David A. Davis

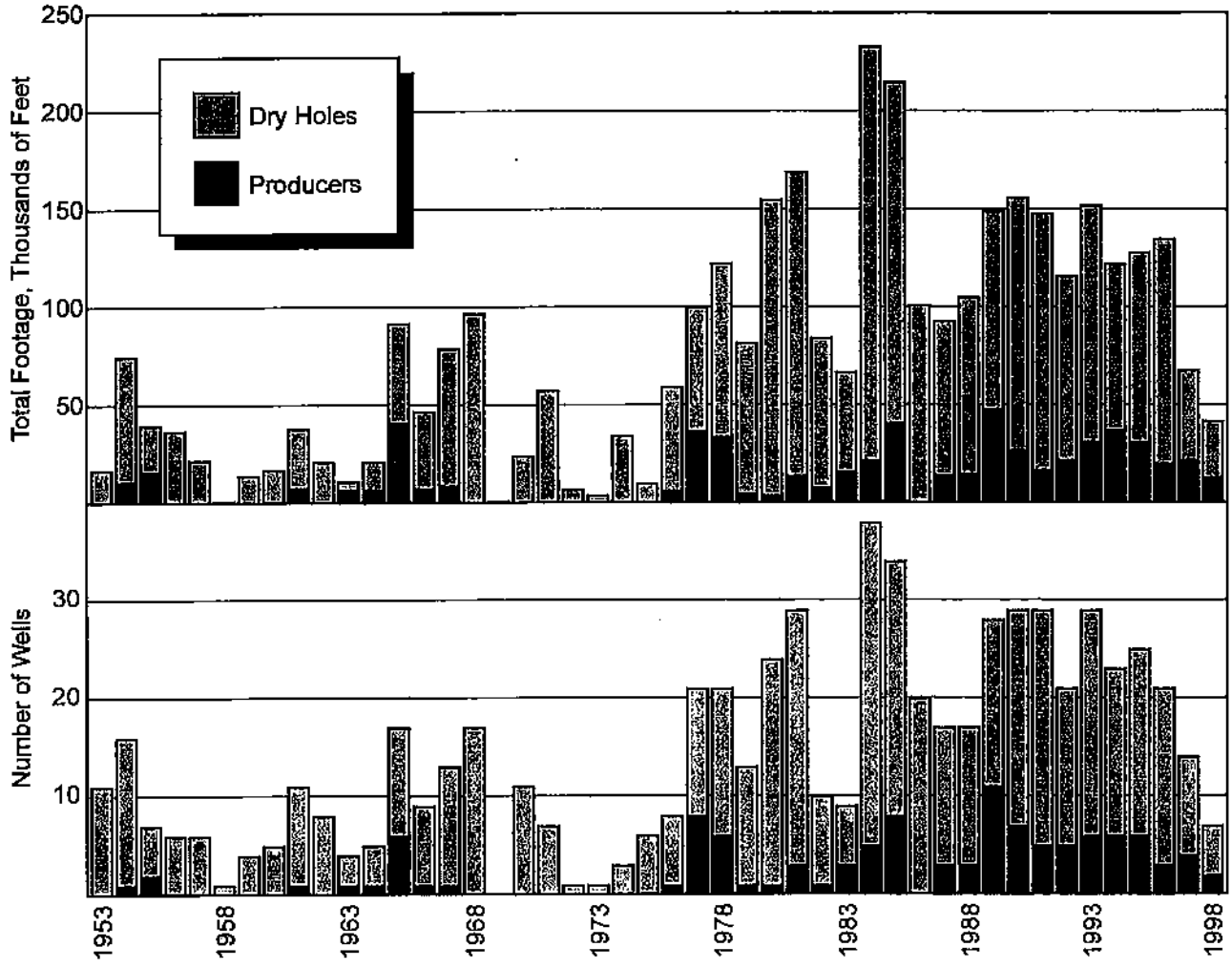
Production

In 1998, Nevada produced oil from 14 of its 15 fields in Nye, Eureka, and Elko Counties. One hundred wells were listed as producers in 1998. Two were new producers and two were plugged and abandoned. Twenty-six were shut in for 6 months or more. Twenty-two of these had been shut in for more than a year, and 17 had been shut in for more than 2 years.

According to the Nevada Division of Minerals, the net oil production in 1998 was 778,770 barrels, which is 0.034% of the total U.S. production. Oil production declined 18.5% from 1997 to 1998 due to an overall drop of 19.8% in production in nine fields that was only partially offset by production increases in four small fields and the bringing on line of the new Sand Dune Field. The average net wellhead price for Nevada crude oil in 1998 dropped 31% to about $10.37 per barrel, and the sales volume was $8,075,845, of which $982,412 was paid out in royalties to the State of Nevada.

Nevada's highest volume producer was Grant Canyon No. 9, which averaged 278 barrels of oil and 448 barrels of water per day during 1998. Nevada's second highest volume producer was Blackburn Unit No. 19, which averaged 172 barrels of oil and 1038 barrels of water per day. Both have held these rankings since 1996.

Oil production from the Trap Spring Field decreased 10.7% while water production decreased 19.8%. Of the 43 wells listed as producers at Trap Spring, six were shut in throughout 1997, three were shut in for 6 to 12 months, and three were shut in for 1 to 6 months. Three have been shut in for 1 to 2 years, and four have been shut in for more than 6 years. Of the 36 wells actually producing, 13 had production increases, and 23 had production



Number and total footage of Nevada oil wells completed as producers or plugged and abandoned, 1953–1998.

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decreases. One that produced a little last year was shut in throughout 1998. One that had been shut in for 6 years produced for a few days in March.

Oil production from the Blackburn Field decreased 25.9% while water production increased 9%. Oil production dropped in five wells, and increased in two. Oil production from the Bacon Flat Field decreased 16.5% while water production decreased 85.2%. Only one of its three producers was in operation during 1997. The other two have been shut-in for more than 5 years.

The Eagle Springs field gained one new producer in May, but the field's overall oil production decreased 18.7% while water production increased 12.4%. Of the 20 older wells listed as producers at Eagle Springs, six were shut in throughout 1998, two were shut in for 6 to 12 months, and two were shut in for 1 to 6 months. Five have been shut in for 1 to 3 years, and one has been shut in for 12 years. Of the 14 wells actually producing, one had a production increase, but 13 had production decreases. Three that produced in 1997 were shut in throughout 1998.

Beginning in late 1997, Foreland Corp. began an Enhanced Oil Recovery (EOR) program in the Eagle Springs Field by injecting air at 1200 psi into the well Eagle Springs No. 24-36. The recovery forecast was to produce an extra 8.8 million barrels. However, the program did not produce the desired results and was terminated in November 1998 (www.foreland.com).

Oil production from the Grant Canyon Field decreased 12.2% while water production increased 12.5%. Two of Grant Canyon's four producers remained shut-in throughout 1998 and have been so for more than 5 years. Oil production from the other two declined.

Oil production from the Kate Spring Field decreased 7.8% while water production decreased 10.0%. Production decreased at three wells, increased at one, and remained constant at one. One well shut-in last year remained shut-in throughout 1998. A second well has been shut-in for 5 years. A total of 8,658 thousand cubic feet of gas was produced from the Kate Spring Field in 1998, a decrease of 7.7% from 1997. The gas is used to operate production and related equipment at the lease sites of Makoil, Inc. and Western General, Inc.

Oil production from the Ghost Ranch Field decreased 42.2% while water production increased 72.0%. One well completed as a producer in 1997 and then was shut in throughout 1998. Oil production decreased from the other three producers.

Oil production from the Sans Spring Field decreased 51.7% while water production increased 56.1%. Of Sans Spring's three producers, one has been shut in for 5 years, and the other two had decreases in production (one only producing January through March).

The new Sand Dune Field came on line with one producer in July 1998 and ended the yeer as the ninth out of Nevada's 14 producing fields.

Oil production from the North Willow Creek Field decreased 1.6% while water production ceased. Of North Willow's three producers, one produced only through October, one remained shut-in since February 1997, and one (Foreland-Southern Pacific No. 5-27), which has been shut in since 1992, was plugged and abandoned in October 1998.

Oil production from the only producer in the Tomera Ranch Field decreased 12.9% while water production

OIL WELL DRILLING ACTIVITY IN NEVADA IN 1998

Company	Well	Permit No.	Location	Permit Date	Spud Date	Completion Date	Depth (Ft.)	Status
ELKO COUNTY								
Foreland Corp.	North Humboldt Federal No. 1-2	824	NE¼ NE¼ S2 T36N R56E	Sep-98				Not Drilled
EUREKA COUNTY								
Foreland Corp.	North Pine Creek No. 1-6	823	NW¼ SE¼ S6 T28N R52E	Aug-98	Oct-98	Oct-98	5627	P&A
Foreland Corp.	Hot Creek No. 2-7	825	SE¼ SE¼ S7 T28N R52E	Sep-98				Not Drilled
LINCOLN COUNTY								
Falcon Energy/Kriac Energy, Inc.	Kriac No. 3	810	SE¼ SE¼ SE¼ S18 T8N R70E	Dec-97	Jan-98			Suspended
Conley P. Smith Operating	Flat Top Federal No. 27-16	811	SE¼ SE¼ S27 T7N R63E	Jan-98	May-98	Jun-98	6090	P&A
Conley P. Smith Operating	Flat Top Federal No. 27-15	812	SW¼ SE¼ S27 T7N R63E	Jan-98	Jul-98	Jul-98	5320	P&A
NYE COUNTY								
Connelly Exploration, Inc.	Gap Mountain No. 33-1	817	SE¼ NW¼ NW¼ S33 T5N R62E	Aug-98	Aug-98	Aug-98	4447	P&A
MKJ Xploration, Inc.	Trough Spring Canyon Federal No. 25-7	808	SW¼ NE¼ S25 T6N R61E	Nov-97	Dec-97	Sep-98		TA
Eagle Springs Production, LLC	Eagle Springs Federal No. 44-35	813	SE¼ SE¼ NW¼ S35 T9N R57E	Feb-98	Feb-98	May-98	6825	Producer
Eagle Springs Production, LLC	Eagle Springs Federal No. 14-35	814	SW¼ SW¼ NW¼ S35 T9N R57E	Feb-98	Mar-98	Apr-98	7326	P&A
Eagle Springs Production, LLC	Eagle Springs Federal No. 33-36	815	NW¼ SE¼ NW¼ S36 T9N R57E	Apr-98				Not Drilled
Eagle Springs Production, LLC	Sand Dune Federal No. 68-35	816	SE¼ SE¼ SE¼ S35 T9N R57E	Apr-98	Apr-98	Jul-98	8411	Producer
Eagle Exploration, Inc.	Meteor Federal Well No. 1	822	SW¼ NW¼ S34 T10N R56E	Jul-98	Aug-98			Drilling
PERSHING COUNTY								
Evans-Barton, Ltd.	Kyle Spring No. 11-23	819	NE¼ SW¼ S11 T28N R36E	Jul-98				Not Drilled
Evans-Barton, Ltd.	Kyle Spring No. 11-42	820	NE¼ SW¼ S11 T28N R36E	Jul-98				Not Drilled
Evans-Barton, Ltd.	Kyle Spring No. 11-43	821	NE¼ SE¼ S11 T28N R36E	Jul-98	Sep-98			Testing
WHITE PINE COUNTY								
Paleozoic Prospects, Inc.	PPI Bugs No. 1	809	NE¼ NW¼ S33 T33N R59E	Nov-97	Nov-97			Suspended

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increased 10.9%. Both of the producers in the Three Bar Field remained shut in throughout 1998 as they have been for over 4 years. Oil production from the only producer in the Duckwater Field increased 192.3% while water production increased 149.3%. Oil production from the only well in the Currant Field increased 13.9%. The only well in the Deadman Creek Field produced 258 barrels of oil with no water in November only and then was plugged and abandoned.

Most Nevada oil is used to make such products as No. 1 and No. 2 diesel fuel, kerosene, stove oil, and asphalt. Nevada crude oil is transported by tank trucks to the Foreland Corp. (formerly: Petro Source Refining Corp.) 8,000 barrel per day capacity refinery and asphalt storage plant near Currant in Railroad Valley and the Foreland Corp. (formerly: Petro Source Refining Partners') refinery and asphalt storage facility at Tonopah. The Crysen Refining refinery at Woods Cross, Utah, was purchased by Inland Refining, Inc., and is not presently refining Pine Valley crude oil as it has in the past.

New Producers

Two new wells were completed as producers in 1998, both in Railroad Valley. These were Eagle Springs Production, LLC, wells Eagle Springs Federal No. 44-35 and Sand Dune Federal No. 88-35.

Eagle Springs Production, LLC, Sand Dune Federal No. 88-35 was located using 3-D seismic methods and was drilled to a total depth of 6,411 feet. This is the discovery well for the new Sand Dune Field. Production began July 6, 1998, with an initial daily production rate of 248 barrels of 25.5-gravity oil and 240 barrels of water. It averaged 72 barrels of oil and 135 barrels of water per day through the rest of the year. The casing was perforated in seven places between 5,974 and 6,212 feet. The upper three sets of perforations were in porous and fractured Permian limestone, and the rest were in porous and fractured Pennsylvanian limestone. An oil show was reported between 4,590 and 4,616 feet consisting of globs of oil and a brown stain with a blue white cut in brownish cryptocrystalline to very fine microcrystalline limestone conglomerate. A second oil show was reported between 5,090 and 5,105 feet consisting of oil and a strong odor in the mud shaker but no show in the sample. Two more shows were reported between 5,262 and 5,290 feet consisting of black asphaltic stains with no fluorescence and a yellow streaming cut in brown cryptocrystalline limestone conglomerate. Four major shows and five lesser shows occur between 5,888 and 6,070 feet ranging from block spotty stains on fracture faces with dull golden fluorescence and a good streaming cut to free oil in mostly brown to gray cryptocrystalline to microcrystalline limestone and some dolomite. Seven shows also occur between 6,148 to 6,278 feet. These shows are similar to the previous ones and occur in the same type of rock.

In the Eagle Springs Field, Eagle Springs Production, LLC, Eagle Springs Federal No. 44-35 was drilled to a total depth of 6,925 feet. Production began May 11, 1998, with an initial 24-hour production rate of 63 barrels of 27.0-gravity oil and 250 barrels of water. It averaged 44 barrels of oil and 226 barrels of water per day through the rest of the year. The casing was perforated in two places between 6,400 and 6,545 feet; all in the Tertiary

FEDERAL OIL AND GAS LEASES IN EFFECT IN FISCAL YEARS 1997 AND 1998[1]

County	NUMBER OF LEASES						ACREAGE					
	Competitive		Noncompetitive		Simultaneous[2]		Competitive		Noncompetitive		Simultaneous[2]	
	FY97	FY98	FY97	FY98	FY97	FY98	FY97	FY98	FY97	FY98	FY97	FY98
Carson City	0	0	0	0	0	0	0	0	0	0	0	0
Churchill	0	0	0	0	2	2	0	0	0	0	5,278	5,278
Clark	0	0	1	0	2	2	0	0	640	0	5,761	5,761
Douglas	0	0	0	0	0	0	0	0	0	0	0	0
Elko	29	1	61	10	5	5	45,923	720	107,641	14,237	10,435	10,435
Esmeralda	0	0	22	0	0	0	0	0	47,810	0	0	0
Eureka	46	14	86	2	13	13	68,239	18,076	136,847	3,120	14,358	14,358
Humboldt	0	0	0	0	0	0	0	0	0	0	0	0
Lander	0	0	2	0	0	0	0	0	3,874	0	0	0
Lincoln	24	2	157	1	4	4	42,530	1,271	284,919	2,080	17,805	17,805
Lyon	0	0	0	0	0	0	0	0	0	0	0	0
Mineral	0	0	2	0	0	0	0	0	12,441	0	0	0
Nye	294	42	275	23	28	28	247,202	38,873	509,332	28,719	13,137	13,137
Pershing	18	0	10	0	0	0	38,604	0	18,794	0	0	0
Storey	0	0	0	0	0	0	0	0	0	0	0	0
Washoe	0	0	0	0	0	0	0	0	0	0	0	0
White Pine	70	6	134	10	6	6	104,393	5,634	234,831	17,703	22,331	22,331
TOTAL	481	65	750	46	60	60	544,891	64,374	1,357,128	65,859	89,106	89,106

[1]Data from the U.S. Bureau of Land Management FY97 = Oct. 1996-Sept. 1997; FY98 = Oct. 1997-Sept. 1998

[2]These are the remaining leases that were issued under the simultaneous leasing program that was terminated by the December 22, 1987 amendment to the 1920 Mineral Leasing Act.

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PRODUCTION OF NEVADA'S OIL FIELDS (barrels)

Compiled from Producer's Reports filed with the Nevada Division of Minerals

Field (year discovered)	Thru 1990	1991	1992	1993	1994	1995	1996	1997	1998	Total
Eagle Springs (1954)	3,987,201	42,043	49,767	7,075	66,565	162,266	171,638	137,278	111,562	4,735,425
Trap Spring (1976)	9,235,632	690,257	554,410	427,150	378,955	362,985	306,858	288,686	257,921	12,502,854
Currant (1979)	641	0	0	0	0	278	0	202	230	1,351
Bacon Flat (1981)	314,660	0	178,845	102,030	192,601	43,057	28,891	22,465	18,757	901,306
Blackburn (1982)	2,143,744	203,023	231,719	599,857	578,853	435,975	239,934	151,151	112,008	4,694,264
Grant Canyon (1983)	14,184,526	2,124,021	2,499,631	495,934	308,709	202,129	166,163	143,707	126,128	20,253,148
Kate Spring (1986)	705,497	339,310	203,274	150,309	122,436	104,574	87,789	76,280	69,768	1,859,237
Tomera Ranch 1987)	9,083	3,067	2,295	2,140	1,970	1,405	387	659	574	21,580
N. Willow Creek (1988)	16,662	2,365	4,491	3,928	3,736	6,419	3,619	1,476	1,502	44,200
Three Bar (1990)	3,801	17,684	362	1,961	229	0	0	0	0	23,837
Duckwater Creek (1990)	3,095	4,190	2,764	2,256	1,269	655	433	168	491	15,321
Sans Spring (1993)				69,478	44,279	22,174	17,226	45,001	21,736	219,896
Ghost Ranch (1996)							34,166	113,016	65,370	212,552
Deadman Creek (1996)								109	258	367
Sand Dune (1998)									12,465	12,465
TOTAL	30,604,342	3,425,960	3,727,758	1,862,118	1,697,602	1,341,947	1,059,106	980,200	798,770	45,497,803
Change from previous year		-15%	9%	-50%	-9%	-21%	-21%	-7%	-19%	

Garrett Ranch Volcanics. The Garrett Ranch Volcanics consists of mottled light gray to light green to reddish brown quartz and biotite rich tuff with a microcrystalline groundmass. It extends from 6,364 feet to TD, and the show is reported to extend down through that entire length. The show ranges from brown stains with 50 to 70% dull golden fluorescence with streaming yellow cut to black asphalt stains.

Exploration

Ten wells were spudded for oil and gas in 1998, down from fourteen spudded in 1997. One well spudded in 1997 was listed as temporarily abandoned in 1998. Drilling was completed on seven wells totaling 42,146 feet during 1998. At year-end, one well was temporarily abandoned, one had drilling suspended, one was being drilled, and one was being tested. The peak drilling rig count reached

Production of Water from Nevada's Oil Fields (barrels)

	1994	1995	1996	1997	1998	Total since 1993
Eagle Springs	160,982	331,999	432,300	364,900	410,290	1,700,471
Trap Spring	3,086,458	3,079,869	2,670,437	3,046,366	2,444,444	14,507,374
Currant	0	0	0	0	0	0
Bacon Flat	341	127,111	107,164	100,708	14,929	350,253
Blackburn	2,035,611	2,041,599	1,788,791	1,777,941	1,937,981	9,581,923
Grant Canyon	153,794	260,390	284,006	335,603	377,934	1,411,727
Kate Spring	467,059	514,034	560,219	529,503	476,347	2,567,162
Tomera Ranch	27,676	38,645	15,013	31,948	35,441	146,723
N. Willow Creek	671	923	727	135	0	2,656
Three Bar	5,958	0	0	0	0	5,958
Duckwater Creek	23,336	12,592	6,787	1,853	4,620	49,188
Sans Spring	252,190	263,659	273,928	233,046	363,845	1,386,668
Ghost Ranch			2,775	99,945	171,921	274,641
Deadman Creek				0	0	0
Sand Dune					23,335	23,335
Total	6,194,276	6,668,621	6,362,147	6,521,948	6,261,087	32,008,079
Change from previous year		10.8%	-4.5%	2.5%	-4.0%	

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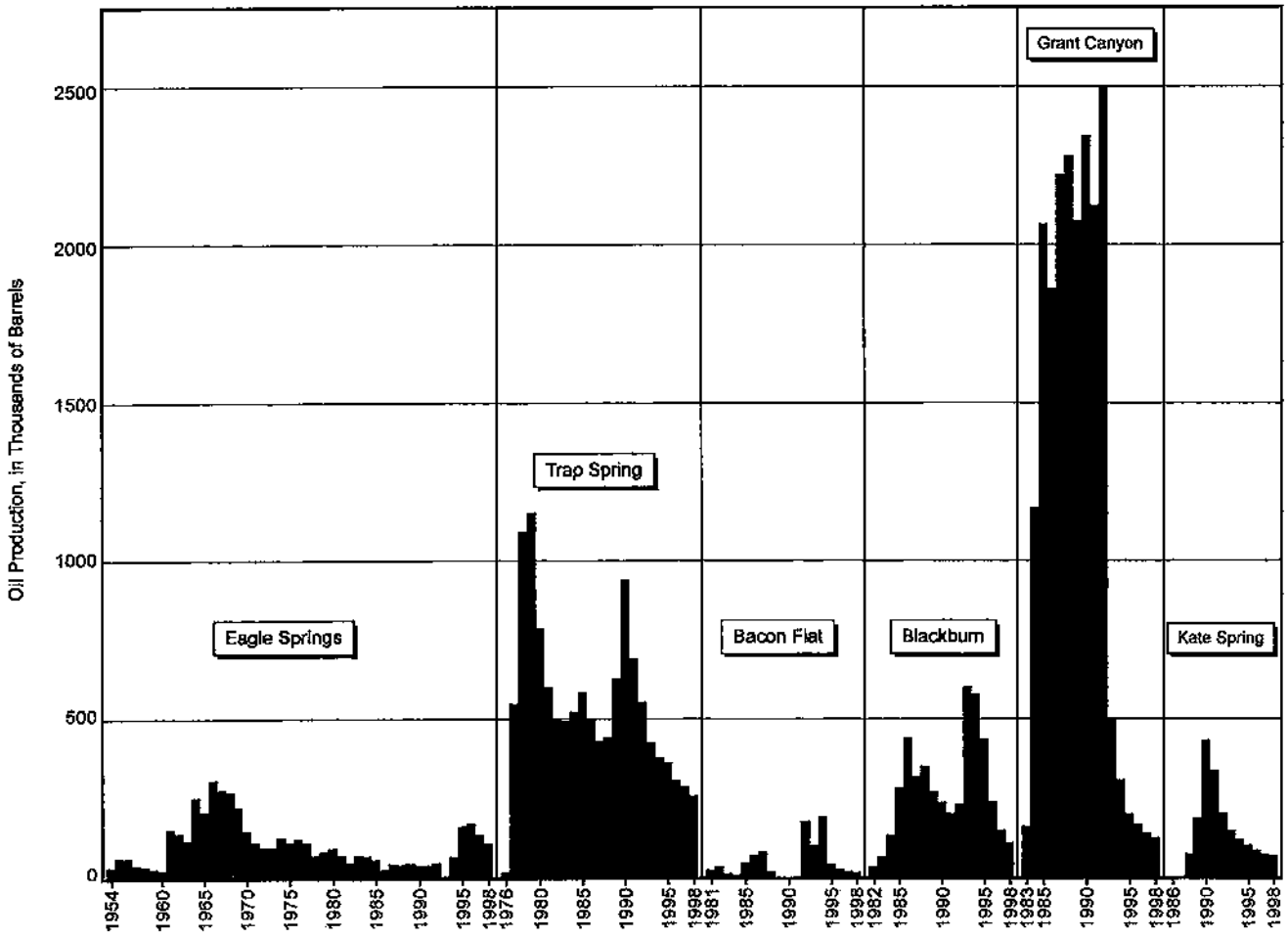
five between July through August but varied between two and three the rest of the year dropping to one between November and December.

Significant oil shows were reported for one well in Lincoln County. Conley P. Smith Operating's Flat Top Federal No. 27-15 contained about 21 minor shows. Fifteen shows occurred between 3,974 and 4,146 feet in light brown, fossiliferous, microcrystalline limestone, light brown to light gray, very fine grained, poorly sorted sandstone, and gray, micaceous shale of the Pennsylvanian Ely Limestone. These shows consisted of brown stains with yellow fluorescence and slow to fair yellow streaming cut. Another show occurred between 4,654 and 4,640 feet in light brown to light gray, very fine grained sandstone of the Scotty Wash and had no stain but left a faint ring cut in a spot dish. Four shows occurred in brown, fine to medium grained, fairly porous sandstone of the Mississippian-Pennsylvanian Scotty Wash Quartzite and consisted of good brown stains with dull gold fluorescence and good streaming yellow cut. The last show was between 5,340 and 5,314 feet in grown to gray, fine-grained, quartzose sandstone of the upper Scotty Wash Quartzite and consisted of a brown stain with no fluorescence and a streaming yellow cut. This well also crossed narrow bands of black vitrinite coal at 4,098 feet, 4,204 feet, 4,254 feet, 4,256 feet, and about 5,310 feet.

Significant oil shows were reported for two wells in Nye County. Eagle Springs Production, LLC, reported its Eagle Springs Federal No. 14-35 contained about 13 minor shows. At 7,326 feet, Eagle Springs Production, LLC, Eagle Springs Federal No. 14-35 was the deepest well drilled in Nevada in 1998. The first show was between 7,064 and 7,072 feet in light gray, quartz rich, bentonitic tuff of the Tertiary Garrett Ranch Volcanics and consisted of a trace golden fluorescence and a faint yellow cut but no stain. The remaining shows were in the Eocene Sheep Pass Formation. Three shows were between 7,154 and 7,188 feet in light brown, cryptocrystalline limestone and ranged from black asphaltic stains to scattered brown stains with scattered yellow fluorescence and fair yellow cut. The remaining shows were between 7,230 feet to TD in interbedded light brown, cryptocrystalline limestone and black to brown, carbonaceous, calcareous shale. They ranged from trace to scattered brown stains with yellow fluorescence and fair to streaming yellow cut.

Connelly Exploration, Inc., reported its Gap Federal No. 33-1 contained two minor shows. One was between 2,788 and 2,796 feet and the other was between 3,004 and 3,220 feet. Both were in the Mississippian Chainman Shale.



The February 1999 edition of the U. S. Department of Energy "Geothermal Technologies" noted that in 1998, Oxbow Power Services found small amounts of oil in some of its geothermal production wells in the Dixie Valley Geothermal Field. These production wells are 28-33, 37-33, 45-33, and 76A-7. These wells are cased down to 2600 m with open holes only between 2600 to 2800 m. The Dixie Valley geothermal reservoir temperature is about 250°C, which is well above the oil window range of 90 to 150°C. The molecular configuration of the oil indicates it had formed around 120°C, and that it had been in the hot-water reservoir for a very small fraction of the geothermal system's probable age of tens to hundreds of thousands of years. It is thought that the presence of the oil is a recent phenomenon, and that oil is drawn in from some outside source at the rate of several kilometers per year by a production induced "pressure sink." A paper concerning this occurrence, "Oils in the Dixie Valley and Kyle Hot Springs Geothermal Systems, Nevada - Potentially Sensitive Indicators of Natural and Induced Reservoir Processes" by J. Hulen, J.W. Collister, S.D. Johnson, and R. Allis, was presented at the 24th Workshop on Geothermal Reservoir Engineering, Stanford University, January 25–27, 1999. Their work cites nearby Tertiary sedimentary rocks as being the source of the oil.

In an effort to streamline permitting and record keeping processes, the Nevada Division of Minerals and the U.S. Bureau of Land Management combined their application for drilling, well completion, plugging and abandoning, sundry notices, and other forms in 1997 (John Snow, personal commun.). In 1998, the Nevada Division of Minerals and the Bureau of Land Management also began a study of the 450 cultural resources reports done in Railroad Valley over the last 20 years that have identified over 1,300 archaeological sites. Oil exploration projects are required by the National Historic Preservation Act to conduct costly and time-consuming cultural resource surveys, some of which may be redundant. The purpose is to use these reports and related data in a Geographic Information System (GIS) to predict which parts of Railroad Valley were occupied by prehistoric hunter-gatherers. It is reasoned that if such predictions can be successfully made, then for large areas of Railroad Valley, separate cultural resource surveys may not be necessary, thereby saving time and money. As of the end of 1998, a preliminary report on this project was under review (www.state.nv.us/minerals/oil_gas.htm).

Transfers

No transfers of wells occurred in 1998. However, on 12 Aug 1998, Foreland Corp. acquired the refineries at Currant and Tonopah from Petro Source Corp. of Houston, Texas, for $8 million in cash and stock. The deal also included 24 tractor trailer rigs from Petrosource Transportation that are used to pick up and deliver crude and refined products in a five state area. The combined capacity of the two refineries is 12,000 barrels per day, but 1998 throughput was about 2,400 barrels per day. Foreland plans to refine the crude from both their Eagle Springs and Ghost Ranch Fields at these refineries (www.foreland.com).

U.S. Oil Production and Consumption

According to the Energy Information Agency (EIA) of the Department of Energy (www.eia.doe.gov), petroleum imports accounted for 57.8% of U. S. consumption in 1998, which surpasses the previous annual peak of 56.0% set in 1997. Domestic crude oil production dropped to its lowest level since 1951, and dependence on imports reached a new high. U.S. crude oil production averaged about 6,243,000 barrels per day in 1998, 3.2% less than in 1997. Petroleum consumption increased by 0.34%. Oil provided about 40.4% of the nation's total energy supply in 1998, according to EIA. This percentage has hovered near 40% since 1991. The use of oil for the production of electricity increased 30.2% in 1998, up from 10.5% in 1997; however, it only accounted for 2.6% of oil consumption in 1998, up from 1.8% in 1997. The use of oil for gasoline production increased 2.3% and accounted for 43.9% of oil consumption in 1998, up from 43.1% in 1997. Because of overproduction, a drop in Asian demand due to recession, and a relatively warm heating season, the price of oil declined 36.5% from an average $16.94 in 1997 to $10.75 per barrel in 1998 for imported oil, and 36.8% from an average $17.23 to $10.88 per barrel for domestic oil.

In comparison to oil, natural gas consumption decreased 2.9% to 2,132 billion cubic feet in 1998, the second drop in consumption since 1996. Production of electricity accounted for 15.2% of natural gas consumption in 1998, up from 13.5% in 1997. Natural gas provided 24.1% of the nation's total energy supply in 1998, according to EIA. This percentage peaked in 1995 at 25.3% and dropped to 23.1% by 1997. The use of natural gas for the production of electricity increased 8.9%, but other commercial and residential use declined. The average wellhead price declined 15.5% from an average $2.32 in 1997 to $1.96 per thousand cubic feet in 1998 (www.eia.doe.gov).

Coal consumption increased 1.6% in 1998 and was 1,045,600,000 short tons, a new record and the third year of consumption over 1 billion short tons. Production of electricity accounted for 90.1% of coal consumption in 1998, up from 89.6% in 1997. Coal provided 23.4% of the nation's total energy supply in 1998, according to EIA. This percentage has hovered near 23% since 1983. The price of coal delivered to electrical utilities declined 1.7% from an average $26.16 in 1997 to $25.70 per short ton in 1998 (www.eia.doe.gov).

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NEVADA OIL PRODUCERS

Company	Field	Contact	Address and Phone and FAX Numbers
Big West Oil and Gas, Inc.	Bacon Flat Sans Spring	J. Philips Adams	333 West Center Street North Salt Lake, UT 84054 Phone (801) 296-7700
Eagle Springs Production, LLC	Deadman Creek Eagle Springs Ghost Ranch Sand Dune	Bruce C. Decker	2561 South 1560 West Suite 200 Woods Cross, UT 84087 Phone (801) 298-9866 FAX (801) 298-9889
Evans-Barton, Ltd.	Trap Spring	David M. Evans	P. O. Box 3153 Reno, NV 89505 Phone (775) 827-1613
Foreland Corp.	North Willow Creek Tomera Ranch	David T. Greene	143 Union Blvd., Suite 210 Lakewood, CO 80228 Phone (303) 986-3122 FAX (303) 986-3234
Frontier Exploration, Co.	Trap Spring	Andy Pierce	3006 Highland Drive No. 206 Salt Lake City, UT 84106 Phone (801) 486-5555 FAX (801) 486-5575
Makoil, Inc.	Currant Duckwater Creek Grant Canyon Kate Spring Trap Spring	Eugene Kozlowski	500 North Rainbow Blvd. No. 300 Las Vegas, NV 89107 Phone (714) 939-7560 FAX (714) 939-7552
Petroleum Corp. of Nevada	Blackburn	Ken Chattin	P.O. Box 1447 Elko, NV 89801 Phone (775) 753-6810
Trail Mountain, Inc.	Three Bar		105 South 4th St. Artesia, NM 88210 Phone (505) 748-1471
Western General	Kate Spring	Rick Taylor	4899 South Torrey Pines No. 201 Las Vegas, NV 89103 Phone (702) 220-7065 FAX (702) 220-7066

NEVADA OIL REFINERIES

Company	Refinery	Address and Phone Number
Foreland Refining	Currant	86 Miles South of Ely Ely, NV 89301 Phone (775) 863-0229
Foreland Refining	Tonopah	105 Refinery Road Tonopah, NV 89049 Phone (775) 482-3555

Directory of Mining and Milling Operations

Compiled from information supplied by the Nevada Division of Minerals, Nevada Division of Mine Inspection, and U.S. Mine Safety and Health Administration. Sand and gravel operations with less than 300,000 tons annual production are not listed.

CIL = carbon-in-leach, CIP = carbon-in-pulp, HL = heap leach, ML = mill, OP = open-pit mine, OS = other surface, PL = placer, UG = underground mine.

Mine/plant name	Operator	Location	Commodity	Type	Process/ activity	Employees	Address
CHURCHILL COUNTY							
Huck Salt	Huck Salt Co.	S12,T16N,R31E	salt	OS	solar evaporation	4	2900 Phritzie Fallon, NV 89406 775-423-2055 Fax: 423-0467
Moltan Mine and Plant	Moltan Co.	S28,32, T23N,R27E	diatomaceous earth	OP,ML	drying crushing screening	49	P.O. Box 860 Fernley, NV 89408-0860 775-423-6668 Fax: 423-6411
Popcorn Perlite Mine	Eagle-Picher Minerals, Inc.	S24,T16N,R28E S19,T16N,R29E	perlite	OP		1	P.O. Box 10480 Reno, NV 89510 775-343-1818 Fax: 343-1821
CLARK COUNTY							
Apex Quarry and Plant	Chemical Lime Co.	S14,22,23,26,27,34,35 T18S,R63E	lime	OP,ML	crushing calcining hydrating	60	P.O. Box 3609 North Las Vegas, NV 89036 702-643-7702 Fax: 643-9517
Blue Diamond Mine and Mill	James Hardie Gypsum, Inc.	S20,29-31, T21S,R59E; S5-8,T22S,R59E S24-26,T21S,R58E	gypsum	OP,ML	grinding calcining	121	HCR 69033, Box 2900 Las Vegas, NV 89124 702-875-4111 Fax: 875-4213
Bonanza Materials Pit and Plant	Hanson Aggregates West	S9,16,T22S,R62E	sand gravel	OP,ML	multiple bench crushing screening	40	P.O. Box 92170 Henderson, NV 89109 702-565-1313 Fax: 565-3324
Buffalo Road Pit and Mill	CSR West	S21,T21S,R60E	sand gravel	OP,ML	single bench crushing screening	18	4511 S. Buffalo Road Las Vegas, NV 89117 702-876-2699 Fax: 871-8139
El Dorado Pit	Hanson Aggregates West	S11,T23S,R63E	crushed stone	OP	single bench crushing screening	20	4905 Portraits Place Las Vegas, NV 89129 702-293-2083
Gomowich Plant	Gomowich Sand & Gravel, Inc.	S15,22,T23S, R63E	sand gravel	OP	single bench screening	8	3450 S. Procyon Avenue Las Vegas, NV 89102 702-876-2777
Henderson Plant	Chemical Lime Co.	S18,T22S,R63E	dolomitic lime	ML	calcining	43	P.O. Box 127 Henderson, NV 89015 702-565-8991
Jones Pit	Blue Diamond Materials	S26,T22S,R60E	sand gravel	OP	single bench crushing screening	17	89 Glen Carran Circle Sparks, NV 89431 775-263-2150
Lone Mountain Mendenhall Pit	Las Vegas Paving Corp.	S35,T19S,R59E	sand gravel	OP	single bench	7	4420 S. Decatur Boulevard Las Vegas, NV 89103 702-378-6102
Lone Mountain Nevada Ready Mix Pit	Nevada Ready Mix Corp.	S36,T19S,R59E	sand gravel	OP,ML	single bench crushing screening	32	P.O. Box 42755 Las Vegas, NV 89104 702-457-1115
Lone Mountain Stocks Pit	Southern Nevada Paving	S3,4,T20S,R59E; S34,35,T19S,R59E	sand gravel	OP	single bench	35	3555 Polaris Avenue Las Vegas, NV 89102 702-876-5226
Money Pit	Southern Nevada Liteweight, Inc.	S9,16,T25S,R61E	lightweight aggregate	OP	crushing screening	12	1101 E. Alexander Road Las Vegas, NV 89030 702-399-8621 Fax: 633-5830
PABCO Gypsum Pit and Plant	Pacific Coast Building Products, Inc.	S7,T20S,R64E	gypsum	OP	single bench wash plant	83	1973 N. Nellis Boulevard #328 Las Vegas, NV 89115 702-643-1016 Fax: 643-6249
Simplot Silica Products Pit and Mill	Simplot Industries	S30,T16S,R68E	silica sand	OP,ML	flotation drying screening	44	P.O. Box 308 Overton, NV 89040 702-397-2667 Fax: 397-2798

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DIRECTORY OF MINING AND MILLING OPERATIONS (continued)

Mine/plant name	Operator	Location	Commodity	Type	Process/ activity	Employees	Address
CLARK COUNTY (continued)							
Sloan rock pit	Frehner Construction Co.	S13,T23S,R60E	sand gravel	OS,ML	single bench crushing screening	11	124 West Brooks Avenue North Las Vegas, NV 89030 702-649-6250
Spring Mountain Pit and Mill	Wells Cargo, Inc.	S15,T21S,R60E	sand gravel	OS,ML	multiple bench crushing screening	8	P.O. Box 81170 Las Vegas, NV 89160 702-873-7440
ELKO COUNTY							
Dee Gold Mine	Rayrock Mines, Inc.	S33,34,T37N,R49E; S3,4,T36N,R49E	gold silver	OP,ML	milling HL	37	P.O. Box 160 Valmy, NV 89438 775-635-8810 Fax: 635-8858
Dunphy Mill	Baroid Drilling Fluids, Inc.	S26,T33N,R48E	barite	ML	crushing grinding	46	912 Dunphy Ranch Road Battle Mountain, NV 89820 775-468-0515 Fax: 468-2060
Jerritt Canyon Joint Venture	Independence Mining Co.	T39-41N,R52-54E	gold silver	OP,ML, UG	CIP, CIL HL	449	HC31, Box 78 Elko, NV 89801 775-758-9221 Fax: 758-9231
Ken Snyder Mine	Dynatec Mining Corp.	S21,22,27,28,33,34 T39N,R48E	gold silver	UG	milling	108	P.O. Box 2310 Winnemucca, NV 89446 775-529-0611 Fax: 529-0612
Kinsley Mountain Mine	Alta Gold Co.	S4,5,6,T26N,R68E	gold	OP	HL	9	778 S. Pioche Highway Ely, NV 89301 775-289-3007 Fax: 289-4138
Meikle Mine	Barrick Goldstrike Mines, Inc.	S13,T38N,R50E	gold	UG	CIL cyanide autoclaving	354	P.O. Box 29 Elko, NV 89803 775-778-8196 Fax: 738-6543
Pilot Peak Lime Plant	Continental Lime, Inc.	S14,15,22,23,26, T34N,R68E	lime	OP,ML	multiple bench roasting grinding rotary kiln	43	P.O. Box 2520 Wendover, NV 89883 775-478-5463 Fax: 478-5149
Rossi Mine	Baroid Drilling Fluids, Inc.	S14-16,21-23,26-28, 34-35; S15,21,22, T37N,R49E	barite	OP	multiple bench crushing	14	912 Dunphy Ranch Road Battle Mountain, NV 89820 775-468-0515 Fax: 468-2060
ESMERALDA COUNTY							
Basalt Mine and Mill	Grefco Minerals, Inc.	S29-32,T2N,R34E	diatomaceous earth	OP,ML	grinding	6	P.O. Box 288 Mina, NV 89422 Dicalite Toll Station #1 Fax: 760-872-6006
Blanco Mine	Vanderbilt Minerals Corp.	S22,T1N,R37E	clay	OP	single bench	6	2320 Viking Road Las Vegas, NV 89109 775-732-3174
Mineral Ridge Mine	Mineral Ridge Resources, Inc.	S1,2,12, T2S,R38E S6,T2S,R39E	gold silver	OP	HL	74	P.O. Box 87 Silver Peak, NV 89047 775-937-2266 Fax: 937-2201
Silver Peak Operations	Chemetall Foote Co.	S22,T2S,R39E	lithium carbonate	OS	solar evaporation precipitation	82	P.O. Box 98 Silver Peak, NV 89047 775-937-2222 Fax: 937-2250
EUREKA COUNTY							
Betze-Post Mine	Barrick Goldstrike Mines, Inc.	S12,20,29,30, T36N,R50E; S23-26,T36N,R49E	gold silver	OP,Mi.	CIL cyanide milling	1,455	P.O. Box 29 Elko, NV 89803 775-778-8196 Fax: 738-6543
Gold Bar Mine	Atlas Gold Mining, Inc.	S26,27,T22N,R49E	gold	OP,ML, HL	CIL,CIP	7	P.O. Box 282 Eureka, NV 89316 775-237-5621
Newmont Gold Operations	Newmont Mining Corp.	T31-36N, R49-53E	gold silver mercury	OP,ML, UG	bioleaching HL roasting	1,773	P.O. Box 669 Carlin, NV 89822-0669 775-778-4000 Fax: 778-4757
Ruby Hill Mine	Homestake Mining Co.	S9-11,14,15 T19N,R53E	gold silver	OP,ML	HL	105	P.O. Box 676 Eureka, NV 89316 775-237-6060 Fax: 237-5408

DIRECTORY OF MINING AND MILLING OPERATIONS (continued)

Mine/plant name	Operator	Location	Commodity	Type	Process/ activity	Employees	Address
HUMBOLDT COUNTY							
Bonanza Opal Mine	Lloyd H. Olds	S13,T45N,R25E	precious opal	OP	single bench	3	P.O. Box 13 Denio, NV 89404
Crofoot/Lewis Mine (Hycroft)	Hycroft Resources & Development, Inc.	S35,T35N,R29E; S19,T35N,R30E	gold silver	OP	crushing HL	44	P.O. Box 3030 Winnemucca, NV 89446 775-623-5260 Fax: 625-0215
Disaster Peak Clay Mine	American Colloid Co.	S26,T47N,R34E	hectorite	OP	single bench		1500 West Shure Drive Arlington Heights, IL 60004 847-392-4600 Fax: 506-6199
Getchell Mine	Getchell Gold Corp.	S33,T39N,R42E	gold silver	UG	milling	635	P.O. Box 220 Golconda, NV 89414 775-529-5001
Kelley Mine	C. George Hewitt	S30,T45N,R26E	precious opal	OP		1	P.O. Box 33 Denio, NV 89404
Lone Tree Mine	Newmont Gold Corp.	S1,11,13,15,23, T34N,R42E	gold silver	OP,ML	HL oxide milling flotation	373	P.O. Box 388 Valmy, NV 89438 775-635-9000 Fax: 635-0111
Marigold Mine	Rayrock Mines, Inc.	S8,9,18-20, T33N,R43E	gold	OP,ML	HL	88	P.O. Box 9 Valmy, NV 89438 775-623-9571 Fax: 635-2551
MIN-AD Mine and Mill	MIN-AD, Inc.	S25,T36N,R37E; S28,T35N,R38E	dolomite	OP	grinding air separation screening	18	4210 W. Jungo Road Winnemucca, NV 89445 775-623-5944 Fax: 623-9028
Pinson Mine	Pinson Mining Co.	S28,29,32,33, T38N,R42E	gold silver	OP,ML	HL, CIL	66	P.O. Box 2260 Winnemucca, NV 89445 775-529-5026 Fax: 529-5030
Sexton Mill	Nutritional Additives Corp.	S20,T36N,R38E	dolomite	ML	crushing screening	8	1230 Bridge Street Winnemucca, NV 89445
Twin Creeks Mine	Newmont Gold Co.	S3-10,15-22,27-32 T39N,R43E	gold silver	OP	HL milling	781	P.O. Box 69 Golconda, NV 89414 775-635-9400 Fax: 635-4596
LANDER COUNTY							
Argenta Mine and Mill	Baker Hughes INTEQ	S13,14,T32N,R46E; S6,18,19,T32N,R47E	barite	OP	gravity grinding	20	P.O. Box 277 Battle Mountain, NV 89820 775-635-5441
Battle Mountain Complex (Fortitude)	Battle Mountain Gold Co.	S22,27,33,34, T31N,R43E	gold silver	OP	HL	21	P.O. Box 1627 Battle Mountain, NV 89820 775-635-2485 Fax: 635-8877
Battle Mountain Grinding Plant	M-I Drilling Fluids LLC	S18,T32N,R45E	barite	ML	gravity grinding	25	P.O. Box 370 Battle Mountain, NV 89820 775-635-5135 Fax: 635-2191
Cortez Gold Mines	Placer Dome, North America	S33,34, T27N,R47E	gold silver	OP,ML	HL CIL	455	HC66-50 Beowawe, NV 89821 775-468-4400 Fax: 468-4496
Greystone Mine	M-I LLC	S35,T28N,R45E	barite	OP	gravity	48	P.O. Box 370 Battle Mountain, NV 89820 775-635-5135 Fax: 635-2191
McCoy/Cove Mine	Echo Bay Minerals Co.	S2-11,T28N,R42E; S36,T29N,R42E	gold silver	OP,ML	HL milling	356	P.O. Box 1658 Battle Mountain, NV 89820 775-635-5500 Fax: 635-5098
Mule Canyon Mine	Newmont Gold Co.	T31/32N,R47E	gold	OP			P.O. Box 388 Valmy, NV 89438 775-635-9000 Fax: 635-0111
LINCOLN COUNTY							
Delamar-Mackie Perlite Mine and Caliente Plant	Wilkin Mining & Trucking Co.	S34,T4S,R62E (mine); S5,T4S,R67E (plant)	perlite	UG,ML	room piller crushing expansion	10	P.O. Box 829 Panaca, NV 89042 775-728-4463 Fax: 728-4456

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DIRECTORY OF MINING AND MILLING OPERATIONS (continued)

Mine/plant name	Operator	Location	Commodity	Type	Process/ activity	Employees	Address
LYON COUNTY							
Adams Claim	Art Wilson Co.	S25,T18N,R20E	gypsum/ anhydrite	OP,ML	crushing	7	P.O. Box 1160 Carson City, NV 89701 775-882-0700 Fax: 882-0790
Hazen Pit	Eagle-Picher Minerals, Inc.	S8,9,T19N,R28E	diatomite	OP	crushing drying calcining	2	P.O. Box 10408 Reno, NV 89510 775-343-1818 Fax: 343-1821
Nevada Cement Mine and Plant	Nevada Cement Co.	S3-6,9,T19N,R25E S36,T40N,R24E; S31-33,T20N,R25E S2,3,10,11, T20N,R25E	limestone cement	OP,ML	rotary kiln	139	P.O. Box 840 Fernley, NV 89408 775-575-2281 Fax: 575-4387
Section 8 Mine and Fernley Mill	CR Minerals Corp.	S8,17,T19N,R26E S11,T20N,R24E	diatomaceous earth	OP,ML	grinding drying milling	18	P.O. Box 858 Fernley, NV 89408 775-575-2536 Fax: 575-4857
MINERAL COUNTY							
Aurora Mine	Nevada Goldfields, Inc.	S17-20, T5N,R28E	gold silver	OP,UG, ML	crushing grinding CIL	4	P.O. Box 3070 Hawthorne, NV 89415 775-945-3368 Fax: 945-3360
Candelaria Mine	Kinross Candelaria Mining Co.	S32-34,T4N,R35E;	silver gold	OP	HL Merrill-Crowe	18	P.O. Box 1240 Hawthorne, NV 89415 775-573-2471 Fax: 573-2520
Denton-Rawhide Mine	Kennecott Rawhide Mining Co.	S4,5,8,16,17, T13N,R32E	silver gold	OP	HL	183	P.O. Box 2070 Fallon, NV 89407 775-945-1015 Fax: 945-1213
NYE COUNTY							
Ash Meadows Plant	American Resource Corp.	S25,T18S,R50E	zeolite	ML	screening drying bagging	4	State Route 15 P.O. Box 7006 Amargosa Valley, NV 89020 775-372-5524
Bullfrog Mine	Barrick Bullfrog, Inc.	S15-22 T12S,R46E	gold silver	OP,UG	milling	127	P.O. Box 519 Beatty, NV 89003 775-553-2800 Fax: 553-2983
Cinder Cone Pit	Cind-R-Lite Co.	S36,T14S,R48E; S1,T15S,R48E	cinder	OP	gravity	2	3333 Cinder Lane Las Vegas, NV 89103 702-876-1775
Crown Mine/Ione Placer/ Primary Mill	Ione Gold Mining Co.	S28,34, T13N,R39E	gold silver	ML,OP	screening washing	15	Route 1, Box 29A Austin (Ione), NV 89310 775-964-2003
Daisy Gold Mine	Reyrock Mines, Inc.	S11-15,22,23, T12S,R47E; S7,8,18, T12S,R48E	gold	OP	HL	14	P.O. Box 190 Beatty, NV 89003 775-553-2234 Fax: 553-2295
Gabbs Mine and Mill	Premier Refractories International	S23,25-27,34-36, T12N,R36E	magnesite	OP,ML	calcining gravity grinding packaging	79	P.O. Box 177 Gabbs, NV 89409 775-285-2601 Fax: 285-4021
Imvite Plant and Pits	IMV Nevada	S28,29,T17S,R49E; S6,21,T17S,R51E	clay minerals	OP	screening grinding drying	38	Route Box 549 Amargosa Valley, NV 89020 775-372-5341 Fax: 372-5640
Lathrop Mill	American Borate Co.	S36,T17S,R49E	calcium borate	ML	flotation calcination	9	Star Route 15 Box 610 Amargosa Valley, NV 89020 775-372-5339
Nevada Neanderthal Plant	Nevada Neanderthal Stone	S10,T11S,R47E	dimension stone	ML	stone cutting	6	P.O. Box 897 Beatty, NV 89003 775-553-2454
New Discovery Mine and Mill	Vanderbilt Minerals Corp.	S13,14,T12S,R48E; S18,19,T12S,R47E	clay	UG,ML	grinding bagging	6	2320 Viking Road Las Vegas, NV 89109 775-732-3174 Fax: 731-3621
Round Mountain Mine	Round Mountain Gold Corp.	S19,20,29,30, T10N,R44E	gold silver	OP,ML	HL	873	P.O. Box 480 Round Mountain, NV 89045 775-377-2366 Fax: 377-3240

continued

Mine/plant name	Operator	Location	Commodity	Type	Process/ activity	Employees	Address
NYE COUNTY (continued)							
Sterling Mine	Cathedral Gold US Corp.	S13,T13S,R48E	gold	UG,OP	HL	12	P.O. Box 549 Beatty, NV 89003 775-222-4844 Fax: 372-1720
PERSHING COUNTY							
Buff Mine	Vanderbilt Minerals Corp.	S2,T27N,R32E	clay	OP	single bench	6	2020 Viking Road Las Vegas, NV 89109 702-732-3174
Coeur Rochester Mine	Coeur D'Alene Mines Corp.	S9,10,11,15,16, 21,22,27,28, T28N,R34E	silver gold	OP	HL Merrill-Crowe	255	P.O. Box 1057 Lovelock, NV 89419 775-273-7995 Fax: 273-7423
Colado Mine and Plant	Eagle-Picher Minerals, Inc.	S6,7,16,18,21,25, T28N,R29E; S33,T28N,R32E	diatomite perlite	OP,ML	drying classification grinding calcining	157	150 Coal Canyon Road Lovelock, NV 89419 775-273-2636 Fax: 273-7553
Empire Quarry	United States Gypsum Co.	S31,T31N,R24E	gypsum	OP	crushing calcining	10	P.O. Box 130 Empire, NV 89405 775-557-2341
Florida Canyon Mine	Florida Canyon Mining, Inc.	S1-4,9-15,T31N,R33E S37-39,T31½N,R33E S33-35,T32N,R33E	gold silver	OP	HL	227	P.O. Box 330 Imlay, NV 89418 775-538-7300 Fax: 538-7324
Rosebud Mine	Hecla Mining Co.	S13,24,T34N,R29E S18,19,T34N,R30E	gold silver	UG		103	P.O. Box 2610 Winnemucca, NV 89448 775-623-6912 Fax: 623-6967
Section 8 Mine	American Colloid Co.	S8,T27N,R33E	clay	OP	single bench		1500 West Shure Drive Arlington Heights, IL 60004 847-392-4600 Fax: 506-6199
Sexton Mine and Mill	Nutritional Additives Corp.	S5,8,T34N,R38E	dolomite	OP	milling	8	415 Wellington Street Winnemucca, NV 89445 775-623-3328
STOREY COUNTY							
Clark Mine and Mill	Eagle-Picher Minerals, Inc.	S27,33,34, T20N,R23E; S35,T20N,R22E	diatomite	OP,ML	grinding drying	62	P.O. Box 10408 Reno, NV 89510 775-343-1818 Fax: 343-1821
Lower Naturalite Pit and Plant	Naturalite Aggregate Corp.	S16,T17N,R22E	lightweight aggregate	OS,ML	multiple bench crushing screening	6	2600 Boeing Way Carson City, NV 89701
WASHOE COUNTY							
Bella Vista Pit	A&K Earth Movers Inc.	S3,T18N,R20E	rock gravel	OP	single bench screening		P.O. Box 1059 Fallon, NV 89407 775-423-8898
Clay Mine	Art Wilson Co., contractor for Nevada Cement Co.	S13,T27N,R19E	clay	OP	single bench	5	P.O. Box 1160 Carson City, NV 89702 775-246-0282
Empire Mill	United States Gypsum Co.	S11,13,T31N,R23E	gypsum	ML	grinding calcining	132	P.O. Box 130 Empire, NV 89405 775-557-2341
Lockwood Quarry	Granite Construction Co.	S17,T19N,R21E	aggregate	OP	single bench crushing screening	7	P.O. Box 2087 Sparks, NV 89432 775-358-8792
Olinghouse Mine	Alta Gold Co.	S20,29,T21N,R23E	gold silver	OP	HL	135	1525 E. Newlands Drive #5 Fernley, NV 89408 775-575-0583 Fax: 575-0617
Paiute Pit	Paiute Pit Aggragates, Inc.	S22,27,34, T21N,R24E	sand gravel	OP	single bench	7	1437 Fumeaux Road Marysville, CA 950801 530-742-7124 Fax: 742-3707
Rillite Aggregate Pit	Rillite Aggregate Co.	S23,T18N,R20E	aggregate	OP	grinding crushing	8	P.O. Box 11767 Reno, NV 89511 775-853-1463

continued

DIRECTORY OF MINING AND MILLING OPERATIONS (continued)

Mine/plant name	Operator	Location	Commodity	Type	Process/ activity	Employees	Address
WASHOE COUNTY (continued)							
Sha-Neva Pits	Rocky Ridge Inc.	S24,T21N,R19E; S17,T19N,R21E	aggregate	OP	screening	6	11059 State Route 445 Sparks, NV 89436 775-425-4455 Fax: 425-5131
Sky Ranch Pit	Rocky Ridge, Inc.	S15,T21N,R20E	sand gravel	OS,ML	multiple bench crushing screening	15	11059 State Route 445 Sparks, NV 89436 775-425-4455 Fax: 425-5131
WHITE PINE COUNTY							
Bald Mountain Mine (includes Alligator Ridge, Yankee Projects)	Placer Dome U.S. Inc.	S14,15,19,20 T24N,R57E	gold	OP	HL	148	P.O. Box 2706 Elko, NV 89803 775-744-4227 Fax: 744-4218
Griffon Mine	Alta Gold Co.	S24,25,T14N,R58E	gold silver	OP	HL	51	778 Great Basin Blvd. Ely, NV 89301 775-289-3007 Fax: 289-4138
Robinson Mine	BHP Copper North America	S7-18,T16N,R62E	copper gold silver	OP,ML	milling	440	P.O. Box 382 Ruth, NV 89319 775-289-7000 Fax: 289-7009

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Iron (B53)
Mercury (B41)
Montmorillonite, bentonite, and fuller's earth (B96)
Oil and gas (B104)
Radioactive minerals (B81)
Talcose minerals (B84)
Thermal waters (B91)
Tungsten (B105)
Zeolites (B79)

County Mineral Resource Bulletins

Carson City (B75)
Churchill (B83)
Clark (B62)
Douglas (B75)
Elko (B106)
Esmeralda (B78)
Eureka (B64)
Humboldt (B59)
Lander (B88)
Lincoln (B73)
Lyon (B75)
Mineral (B58)
Nye (B77, B99B)
Pershing (B89)
Storey (B70)
Washoe (B70)
White Pine (B85)

Special Publications

Oil and gas wells drilled in Nevada since 1986 (L-8)
Geothermal wells drilled since 1979 (L-5)
Nevada mining and you (SP8)
Nevada ore and concentrate buyers, custom mills, and smelters available to mine operators (L-7)
Major mines of Nevada 1997 (P-9)
Outline of Nevada mining history (SP15)
Mining districts of Nevada (R47)

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mining claim data
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general geologic studies
indexes and ordering information for maps, air photos, and remote sensing imagery

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Report of Sharon R. Byram, Esq.
Southern California Edison Company v. The State of Nevada, ex rel. Department of Taxation

I. Background and Qualifications

A. I am a Director at Ryan, a global tax services firm with the largest indirect tax practice in North America. I am the founding Practice Leader of Ryan's Net Proceeds Tax Practice which we developed in June of 2011. Prior to joining Ryan, I was Director, Domestic Tax and Tax Litigation for Newmont Mining Corporation. I worked for Newmont for over 22 years in the accounting and tax departments, during which time I managed all of Newmont's net proceeds tax, property tax, and sales and use tax compliance, audits, and appeals. During this time, I managed taxes in about 10 states and 40 jurisdictions, but most of the property and operations were in Nevada, which is where I focused most of my efforts.

B. My education includes a Bachelor's Degree in Business Administration from National University, San Diego, CA; a Master's Degree in Business Administration from the University of Nevada, Reno, Reno, NV; and a Juris Doctorate Degree from the University of Nevada, Las Vegas, William S. Boyd School of Law, Las Vegas, NV. I have a license to practice law in Nevada (Bar #9990), and have a professional designation of Certified Member of the Institute ("CMI") with the Institute of Professionals in Taxation.

C. I am a member of the Board of Directors of the Nevada Taxpayer's Association, a member of the Nevada Bar Association, American Bar Association, Nevada Mining Association Taxation and Suppliers' Committees, Colorado Mining Association, and Northwest Mining Association. I previously chaired the Taxation Committee of the Nevada Mining Association for ten years. My experience includes presenting numerous net proceeds educational seminars, proposing and commenting on net proceeds regulations and statutes, presenting cases and testifying at numerous county and state boards of equalization, the Nevada legislature, and the Nevada Tax Commission.

D. In my current position with Ryan, I provide tax compliance, audit defense, consulting, and appeal work for mining clients in multiple states, with minerals including gold, silver, copper, coal, uranium, aggregate, diatomaceous earth, perlite, etc.

E. Publications authored in preceding ten years: None

F. Compensation: My rate for consulting in this matter is $375.00 per hour

G. Previous expert witness testimony within preceding four years: None

II. Opinions and Basis

I was asked to opine regarding taxpayer conduct and the Department of Taxation's treatment of taxpayers with respect to the net proceeds of minerals tax and mineral sales and use tax exemptions in Nevada. I am not opining on Nevada law but have cited laws relevant to provide the framework for my opinions.

A. In my experience, producers of all minerals mined in Nevada (with the exception of sand and gravel products) pay the net proceeds of minerals tax on the net proceeds from the sale of the minerals but do not charge sales tax to the purchaser of the minerals.

1. Article 10, Section 5 of The Nevada Constitution states that "The legislature shall provide by law for a tax upon the net proceeds of all minerals, including oil, gas and other hydrocarbons, extracted in this state, at a rate not to exceed 5 percent of the net proceeds. No other tax may be imposed upon a mineral or its proceeds until the identity of the proceeds as such is lost."

2. NRS Chapter 362 is titled, "Taxes on Patented Mines and Proceeds of Minerals." Coal is specifically mentioned in the definition of a mine (NRS 362.010), and is intended to be subject to the net proceeds provisions, even though it may not presently be mined in Nevada.

a) The net proceeds of minerals tax applies to a wide range of minerals mined in Nevada. A "Mine" is defined in NRS 362.010 as "an excavation in the earth from which ores, *coal* or other mineral substances are extracted, or a subterranean natural deposit of minerals located and identified as such by the staking of a claim or other method recognized by law. The term includes a well drilled to extract minerals." (emphasis added) "Mineral" is defined to include "oil, gas and other hydrocarbons, but does not include sand, gravel or water, except hot water or steam in an operation extracting geothermal resources for profit." According to the Department of Taxation's 2000-2001 Net Proceeds of Minerals Bulletin, mines operating during 2000 included those producing gold, silver, geothermal, gypsum, oil, barite, basalt, bentonite, clay, copper, copper concentrates, diatomaceous earth, dolomite, fluorspar, iron, limestone, lithium, magnasite, opals, perlite, salt, silica, trace minerals and turquoise.

b) NRS 362 includes minerals not mined at all times in Nevada or even specified in the statute. Orpiment crystal was subject to NRS 362, even though it is very rare, and may have only existed in a small pocket of gold ore in Humboldt County, Nevada. In a well-publicized incident in 1999, Newmont's Twin Creeks mine operators encountered rare orpiment crystals while mining for gold in Humboldt County, Nevada. The orpiment required careful handling and processing, and specialists were used to assist with the deposit. The Department of Taxation treated the orpiment crystals in the definition of "minerals" for purposes of net proceeds as evidenced in the annual Net Proceeds of Minerals Bulletin.

3. NRS 372.270 exempts proceeds of mines from sales and use taxes. That statute states, "There are exempted from the taxes imposed by this chapter the gross receipts from the sale of, and the storage, use or other consumption in this State of, the proceeds of mines which are subject to taxes levied pursuant to chapter 362 of NRS."

4. NRS 362.120(2) identifies the point at which minerals mined in Nevada are reported for purposes of gross proceeds on the net proceeds of minerals annual statement (and therefore exempt from sales and use taxes). It provides that "The gross yield must include the value of any mineral extracted which was: (a) Sold; (b) Exchanged for any thing or service; (c) Removed from the State in a form ready for use or sale; or (d) Used in a manufacturing process or in providing a service."

a) In my experience, most mineral production in Nevada falls under the first category; it is sold and therefore reportable for net proceeds purposes at that time (and exempt from sales and use taxes).

b) Minerals exchanged for any thing or service also are reportable for net proceeds purposes (and exempt from sales and use taxes).

c) I am familiar with situations where minerals are removed from the state in a form ready for use or sale, although not actually sold, and they were reportable for net proceeds purposes (and exempt from sales and use taxes). Orpiment crystals from Twin Creeks are one example. The crystals were very rare, and most of them were sent to be displayed in museums rather than sold. An estimate of the price that would have been charged was recorded as the gross proceeds for the orpiment crystals.

d) I also have observed situations where the minerals were used in a manufacturing process within Nevada, and were reportable at that point for gross proceeds purposes (and exempt from sales and use tax).

5. However, there is a point *beyond* a mineral's sale, exchange, removal in a form ready for use or sale, or use in a manufacturing process at which minerals mined in Nevada may be included in an item that is subject to sales and use tax. Pursuant to the Nevada Constitution, this cannot occur until "the identity of the proceeds as such is lost." *See* Nev. Constit. Art. 10, § 5.

a) For example, to the extent that a mineral used in a manufacturing process then becomes a component part of a finished product that is sold, the portion of the product's sale price not already subject to the net proceeds tax would be subject to sales and use tax.

b) Gold splatters provide another example. Gold splatters are droplets of liquid gold, often with a small percentage of silver, that are dropped into a container of water when doré bars are being poured. They generally form a cup shape, but can take any form. It is a common practice for gold mining companies to create gold splatters when pouring gold. The mining companies sell the gold splatters to their employees or at mining expos and events. For net proceeds purposes, all of the gold produced and sold is recorded as gross proceeds, and is subject to the net proceeds tax. No sales tax is charged on the sale of gold splatters in Nevada. However, in some cases, the mining company contracts with a jeweler to turn the splatters into pins, pendants, earrings, and other jewelry, often with a pearl or other stone mounted in the center of the cup shape. In these cases, when the mining company sells the jewelry item to employees or the public, the Department requires that sales tax be charged and remitted to the state of Nevada.

B. In my experience, minerals are sold and purchased by various Nevada entities without triggering a sales and use tax liability. Any claim by the Department of Taxation that no taxpayers have received an exemption pursuant to NRS 372.270 is simply untrue.

1. Each mining operation is unique, and can vary over time. The mineral type, quality and quantity vary; the processing requirements and methodology vary based on a number of factors, including the nature of the ore encountered, current technology, market prices, regulatory structure, etc.; and the location, access to utilities and a skilled workforce all play into the decision of how best to structure and manage a mining operation. Despite these differences, minerals sold and purchased in Nevada are exempt from sales and use taxes. This is true even for minerals sold and purchased in interstate transactions.

a) For example, there are mining operations where a mineral is encountered that requires processing not available at the operating site and not in a quantity where it is cost effective to construct such a facility. In cases such as this, ore may be sold in slurry, concentrate, or stockpile to another entity for processing. In my experience, if both entities are located in Nevada, the mineral is generally reported on both entities' net proceeds filings, but no sales or use tax is applied. If the mine is located in Nevada and the purchasing entity is located out-of-state, the mine reports the mineral on its net proceeds filing, and no sales or use tax is applied. If the mine is located out-of-state and the purchasing entity is located in Nevada, then neither entity reports the mineral for net proceeds purposes, and no sales or use tax is applied.

b) Gold ore is also sold as loaded carbon, some to out-of-state processors, and is recorded in gross proceeds as it meets the statutory requirement; no Nevada sales or use tax is applied to this transaction.

2. It is my understanding that the Department is attempting to assess use tax on the purchase of coal transported through a pipeline from the Black Mesa mine in Arizona to the Mohave power plant in Laughlin, Nevada. The extraction of gold and many other minerals in Nevada involves sophisticated processing that the coal does not. Based on my experience, coal slurry (or coal suspended in water) is the same as copper concentrates, stockpiles or gold slurry for purposes of taxation, i.e., no Nevada sales or use taxes should apply.

C. The Department is attempting to assess use tax on the purchase of coal in Nevada where it would not be taxable if purchased from an in-state producer. However, as noted above, other minerals are purchased within Nevada without the application of Nevada sales and use tax. This is a violation of the Nevada Taxpayers' Bill of Rights Section One. Section One provides:

> Every taxpayer is liable for the correct amount of tax that is due under the law. The Department endeavors to apply the law consistently and fairly to all taxpayers and treat them with courtesy and consideration...

I certainly agree that each "taxpayer is liable for the correct amount of tax that is due under the law" as noted in this provision. But this section also requires that the "... Department endeavor ... to apply the law consistently and fairly to all taxpayers..." My experience with the Department is that it generally attempts to treat taxpayers with fairness and consistency. However, treating coal purchasers within the state differently than the purchasers of gold slurry, stockpiles, or copper concentrates is unfair and inconsistent.

D. Any assertion by the Department that the use tax should apply during years when coal is not produced in Nevada, but should not apply when such production takes place is not a practical way to administer the exemption in NRS 372.270, and provides no guidance to a taxpayer on how to comply with the requirement.

1. An exemption from Nevada sales and use taxes applies to the proceeds of mines subject to taxes levied through the net proceeds tax in NRS 372.270. I believe there would be no question that any coal deposits that exist in Nevada, once produced, would be subject to the provisions of NRS 362, the net proceeds tax statute, and would be exempt from Nevada sales and use taxes.

2. The fact that in any particular year coal or any other covered mineral is not mined in Nevada does not change the fact that such mineral produced from a Nevada mine would be subject to net proceeds. It would be difficult, if not impossible, for a Nevada power plant operator making purchases of coal from an out-of-state coal producer to know if any coal was being mined within the state. Whether or not the plant operator should accrue use tax on this purchase when it won't be known to the general public if any coal is produced until the Department publishes its Net Proceeds of Minerals Bulletin the following year creates a difficulty in proper compliance. It is not practical to use this treatment because the taxpayer would be unable to comply with that interpretation of the law without risking the assessment of penalties and interest.

3. There is no mechanism, to my knowledge, by which the Department concurrently monitors the beginning or resumption of the production of individual minerals covered by the Nevada net proceeds tax. An initial filing of a net proceeds of minerals statement is due in February following the year in which production is reportable. A temporary projection and prepayment scheme exists, but the projection of gross proceeds does not identify the specific mineral or minerals to be mined. Through the property tax reporting required by mine operators, the filing form queries whether a mine is presently in operation and, if not, the date of shut down. But again, is not used to inform the Department about the timing of the end of production of an individual mineral.

4. For taxes to be efficiently administered, the law must be clear to those administering it as well as those who must apply its requirements. The idea of applying this tax only in periods when a particular mineral is mined within the state by an unrelated third party would be unprecedented and unworkable. Since disparate treatment cannot be administered to similarly situated taxpayers, use tax cannot be assessed on purchasers of coal from out-of-state suppliers when it would not apply if sourced in Nevada.

III. Conclusion

A. Coal is a "mineral" contemplated by the legislature when enacting the net proceeds of minerals statutes. Because coal is subject to the provisions of the net proceeds statutes, it is exempt from the provisions of the sales and use tax statutes. Some minerals subject to the net proceeds statutes are manufactured in Nevada into a final product and the added value is subject to Nevada sales and use tax (but not the amount subject to the net proceeds statutes). But transactions of minerals themselves take place in Nevada without the Department applying sales and use tax to them. Based on my experience, from a tax perspective, there is no difference between the coal purchased by Southern California Edison for use at the Mohave power plant and other minerals on which no sales tax is paid.

B. The Taxpayers' Bill of Rights exists in order to protect taxpayers from unfair and inconsistent treatment by the Department. Given that the taxation of coal purchases by Southern California Edison conflicts with the statutory exemption and treatment of other mineral sales in the state, the only proper remedy is a refund of the use taxes unfairly collected.

IV. Exhibits

A. Sharon Byram Résumé

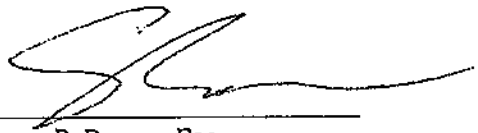
B. 1998-1999 Nevada Department of Taxation Net Proceeds of Minerals Bulletin

C. 1999-2000 Nevada Department of Taxation Net Proceeds of Minerals Bulletin

D. 2000-2001 Nevada Department of Taxation Net Proceeds of Minerals Bulletin

E. State of Nevada Taxpayers' Bill of Rights

Respectfully Submitted:



Sharon R. Byram, Esq.

4-5-2013

Date

SOUTHERN CALIFORNIA EDISON V. NEVADA DEPARTMENT OF TAXATION
Opinion of Professor Richard D. Pomp

I. Introduction

A. My Qualifications

I am the Alva P. Loiselle Professor of Law at the University of Connecticut Law School, and an adjunct Professor of Law at NYU Law School in the LL.M. Program in Taxation.

For nearly 40 years, I have studied, lectured, taught, published, consulted, and testified on issues of state taxation. I have served as a consultant to Alaska, California, Connecticut, Delaware, Hartford, Illinois, Kansas, Louisiana, Montana, New Jersey, New York, North Dakota, San Francisco, South Carolina, Texas, Utah, West Virginia, the Multistate Tax Commission, the Internal Revenue Service, the Department of Justice, the U.S. Congress, the International Monetary Fund, the World Bank, the United Nations, and numerous foreign countries. These assignments all involved issues of tax policy.

I have been qualified and testified as an expert witness on various aspects of state tax policy in state and federal courts and before state administrative agencies in Alabama, Alaska, California, Colorado, Connecticut, Delaware, Illinois, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Montana, New Jersey, New York, New York City, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Texas, Utah, and West Virginia.

I have received the NYU Institute on State and Local Taxation Award for Outstanding Achievement in State and Local Taxation and the BNA Award for Distinguished Service in State and Local Tax Law. My

curriculum vitae, attached to this Opinion, describes my career in further detail.

II. Overview

A. The Facts

During the audit years at issue, Southern California Edison ("Edison") owned a majority interest in the Mohave Generating Station ("Plant") in Nevada. The Plant generated electricity by burning coal. Edison purchased the coal burned at the Plant from Peabody Western Coal Company ("Peabody"), an unrelated party located in Arizona.

Edison determined that transporting the coal by pipeline would cost less than transporting it by rail or truck. Peabody arranged to transport the coal in a slurry (coal suspended in water) over a pipeline operated by Black Mesa Pipeline, Inc. to the Plant. When the coal arrived at the Plant, the water was removed and the coal was burned.

B. Legal Backdrop

I was not asked to opine on Nevada law, which is the province of this court. Instead, I was asked to apply principles of state tax policy to the issues being contested in order to provide a useful background to help facilitate and inform the court's decision making.

Nevada has adopted a sales tax. Like every state with a sales tax, Nevada has also adopted a complementary use tax. That tax applies to tangible personal property purchased from a retailer for storage, use, or other consumption in Nevada.[1]

The sales tax and use tax regime operates as an integrated whole to ensure that goods purchased out-of-state are treated the same as

[1] Nev. Rev. Stat. Ann. 372.185.

equivalent goods purchased in-state. The goal is that there should be no disadvantage or advantage to purchasing goods out-of-state. The objective is to maintain a level playing field.[2] Consequently, Nevada provides that the use tax is imposed "with respect to all property which was acquired out of state in a transaction that would have been a taxable sale if it had occurred within this State."[3]

Nevada also imposes a special tax on minerals extracted in Nevada.[4] The sale or use of minerals subject to this special extraction tax is exempt from the Nevada sales or use tax.[5]

If Edison had purchased coal from a Nevada mine there would have been no sales tax imposed.[6] Consequently, both the statute and the policy underlying the sales and use tax require that no use tax be imposed on the use in Nevada of coal purchased in Arizona. Any other interpretation would: violate the goals of the sales and use tax regime, violate the internal consistency principle, violate the non-discrimination principle, and impose an unreasonable burden on interstate commerce. Edison would be entitled to a meaningful remedy for these violations.

The Nevada Department of Taxation ("Department") rejects Edison's position because during the audit period it claims that there was no coal being mined in Nevada. Because of that fact, the Department argues that Edison must pay the use tax on coal mined outside of Nevada but used within Nevada.

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[2] See Pomp, State and Local Taxation, 6-37 to 6-40 (7th ed. 2011).
[3] Nev. Rev. Stat. Ann. 372.185.
[4] Nev. Rev. Stat. Ann. 362.120; Nev. Rev. Stat. Ann. 362.110(1).
[5] Nev. Rev. Stat. Ann. 372.270.
[6] Id.

III. Analysis

A. Nevada Law Violates the Internal Consistency Principle

One of the policy tools to evaluate a state tax system is known as the internal consistency principle. That principle is applied by taking the state tax structure that is being challenged and cloning it. That is, all states in the country are assumed to have adopted an identical set of statutes to the one being analyzed. The principle is satisfied if interstate commerce does not bear a higher burden than intrastate commerce. Internal consistency has its roots in the theory of apportionment rather than discrimination.

The internal consistency principle is entirely hypothetical and asks nothing about the actual existing state of affairs. The analysis proceeds by cloning the challenged tax system and assuming that it has been adopted by every other state. The interaction of the resulting cloned statutes is then examined to see whether interstate commerce is placed at a disadvantage compared with intrastate commerce. Whether such a disadvantage actually exists in reality is irrelevant.

A failure of internal consistency shows that as a matter of policy a state is trying to tax more than its apportioned fair share of interstate transactions. Put differently, allowing such a state's tax regime to stand would place interstate commerce at the mercy of other states that might impose an identical tax regime. Whether other states do or do not have identical tax regimes to the one being challenged is irrelevant under the principle, which examines an entirely hypothetical world.[7]

The Nevada tax regime easily flunks internal consistency. If all states had the Nevada tax structure, coal mined in one state and used in another would be taxed in both the state where it was mined[8] and the state where

[7] The U.S. Supreme Court applied the internal consistency test to a sales tax in Oklahoma Tax Commission v. Jefferson Lines, 514 U.S. 175 (1995).

[8] The assumed tax would be identical to Nevada's special tax on minerals. See supra note 4 and accompanying text.

it was used.[9] By contrast, coal mined and used in the same state would pay only one tax.[10] Consequently, interstate commerce would be more heavily taxed than intrastate commerce.

1. Whether Coal is Mined in Nevada is Irrelevant in Concluding that the State's Tax Regime Violates Internal Consistency

Under internal consistency, whether coal is actually mined in Nevada is irrelevant. Consequently, the actual state of affairs in Nevada is irrelevant (other than Nevada law). The doctrine is one of statutory analysis, and assumes that all other states have the Nevada statutory regime. Put differently, it is no defense to a charge of internal inconsistency to argue about the nature of the Nevada mining industry; the doctrine renders that inquiry irrelevant.

An important policy consideration underlying the internal consistency doctrine is judicial economy. Suppose that instead of the way the doctrine is applied by the courts, where a state's taxing structure is assumed to be cloned by other states, the doctrine were revised to use the status quo as its point of comparison. Assume that Nevada's tax structure would satisfy this revised doctrine because no other state had a tax system similar to Nevada's.

The problem that results from that approach is that once a court upheld the challenged tax structure under this revised doctrine, other states could then be expected to adopt similar laws to the ones just upheld, a copycat phenomenon that is common in state taxation. A taxpayer doing business in these states would then prevail in a challenge under internal consistency. Instead of waiting for that situation to materialize, the actual doctrine as applied by the courts assumes that all other states have already adopted identical laws. The virtue of the actual doctrine as applied today is that a court can anticipate states adopting identical

[9] The assumed tax would be identical to Nevada's use tax. See supra note 3 and accompanying text.
[10] See supra note 5 and accompanying text.

statutes and analyze that resulting situation without waiting for that situation to actually occur.

As a matter of judicial economy, it is better to provide guidance to taxpayers and states earlier rather than later. Both states and taxpayers benefit from this early warning, before costly investment decisions have been made and before legislative resources have been spent on debating and adopting tax statutes that might ultimately be struck down. The internal consistency doctrine thus provides all parties with predictability and certainty at the earliest time possible.

The doctrine makes it irrelevant if coal is actually mined in Nevada. If that were relevant (contrary to how the doctrine is actually applied), the results under the internal consistency doctrine could vary from year-to-year based on the nature of the Nevada mining industry. For example, if there were no coal mined in Nevada, the tax regime would pass muster. If a mine opened up, the tax regime would be struck down. If that mine were subsequently abandoned, the tax regime would again be upheld. Accordingly, a major investment decision by a taxpayer might be undermined by events over which it would have no control, and might even be unaware of.

This "yo-yo" effect would damper investment because a taxpayer could not anticipate how its activities would be treated. The goal of providing certainty and guidance to taxpayers would be undercut.

This yo-yo effect would also not be in the interests of a state. Nevada, for example, has a tax structure that offers an incentive to mine minerals in the State. It invites companies into Nevada with the promise that no sales tax will apply to the sale of their extracted minerals. A company that is considering accepting that invitation needs to know whether that incentive will survive legal challenge *before* it makes a substantial investment in Nevada. The internal consistency doctrine provides that information.

The internal consistency doctrine also avoids the problem of one taxpayer being forced to determine as a factual matter whether there is a third party that: (a) mines coal in Nevada; (b) pays the Nevada extraction tax on that coal; (c) sells that coal free of the Nevada sales tax; and (d) uses that coal to generate electricity in Nevada. At a minimum, a taxpayer would not be in a position to determine whether (c) existed. Under Nevada law, tax returns cannot be disclosed except under very narrow circumstances.[11] The Department could not provide a taxpayer the tax returns of a third party. Because a taxpayer has no right to see the tax returns of third parties, it could not determine whether any coal subject to the extraction tax was subsequently exempt from the sales tax. In addition, a taxpayer might have no way of verifying whether condition (d) existed.

Finally, the internal consistency doctrine avoids the need to determine the resources with which coal competes, an analysis that might change from year-to-year. Comparing out-of-state coal with competing Nevada resources is too granular and too narrow a perspective. The doctrine analyzes a tax regime based on hypothetical, cloned statutes, regardless of what actually occurs in a state. The doctrine thus renders a detailed, year-by-year analysis unnecessary and irrelevant.

For all of these reasons, whether coal is mined in Nevada is no defense to an internal consistency analysis.

2. Remedy Under the Internal Consistency Doctrine

The Nevada statutory regime violates the internal consistency doctrine. The internal consistency doctrine is independent of the actual state of affairs in a state; in fashioning a remedy it is irrelevant whether coal is mined in Nevada. As a policy matter, Edison is entitled to a meaningful remedy whether coal is mined in Nevada or not. Otherwise, Edison would have a right without a meaningful remedy.

[11] The Department would not be able to allow a taxpayer to see the returns filed by others. Nev. Rev. Stat. 360.255.

B. Nevada Law Violates the Non-Discrimination Principle and Imposes an Unreasonable Burden on Interstate Commerce

The Nevada statutes as interpreted by the Department provide a tax advantage to Nevada-mined minerals and a tax disadvantage to non-Nevada minerals. Coal is one of the minerals covered by the statute. The statute also includes as minerals gold, silver, oil, gas, and geothermal.

A bedrock normative principle of state tax policy prohibits discriminatory tax provisions that are protectionist in purpose or effect and that provide a direct commercial advantage to local businesses. Such provisions invite retaliation, economic Balkanization, and the spread of preferential trade zones throughout the states.

Even if protectionism is not an issue, normative principles still prohibit a state from using discriminatory tax measures to impose greater burdens on economic activities taking place outside the state than on those imposed on similar activities taking place within the state, or from imposing greater burdens on activities taking place in certain states than on those taking place in others. From a national perspective, a legislature should not induce business operations to be performed in the state if they could be more efficiently performed elsewhere.

These fundamental normative principles are violated by Nevada law, which favors intrastate activities over interstate commerce. Under the Department's interpretation, Nevada law discriminates against coal purchased out-of-state. Consequently, a burden is imposed on interstate commerce that would not be imposed on intrastate commerce. The Department's interpretation creates pressure toward concentrating activities in one state, thus interfering with the efficient flow of economic resources. And other states are invited to retaliate against what would be perceived as discrimination against their businesses by Nevada.

1. Whether Coal is Mined in Nevada is Irrelevant in Concluding that the State's Tax Regime Violates the Non-Discrimination Principle and Imposes an Unreasonable Burden on Interstate Commerce

For the reasons discussed above in the context of the internal consistency doctrine, in analyzing the Nevada tax structure it is irrelevant whether coal is being mined in Nevada. Otherwise, there would be the very odd result that the Nevada statutes might be non-discriminatory in one year because coal was not being mined at that point in time, but discriminatory should a mine be subsequently opened, and yet non-discriminatory again should a mine be closed. That very uncertainty would impose an undue burden on interstate commerce. Nor would that yo-yo effect be in the interests of Nevada, which presumably is trying to encourage its domestic mining industry with its statutes.

The Department wrongly thinks it is relevant whether coal is being mined in Nevada. But if the Department is going to improperly reject Edison's position, then its focus on whether coal is mined in Nevada is too narrow. Coal is only one of the minerals covered by the statute. The statute also includes as minerals oil, gas, and geothermal. Out-of-state coal competes not only with Nevada coal but also with other minerals that can be used to generate electricity.

But even that view, which Edison rejects, would be too narrow. Coal competes with other minerals covered by the statute, such as oil, gas, and geothermal as feedstocks in industrial processes. If the Department is going to improperly require mining to occur in Nevada before it grants Edison a remedy, the inquiry should be whether any minerals are mined in Nevada with which coal competes as a feedstock in an industrial process.

The nature of that competition, however, changes based on market conditions and technological innovations. For example, Houston-based Noble Energy Inc. recently announced plans to use fracking to explore

for oil and natural gas in Nevada, with a projected 50,000 barrels of oil a day by 2020.[12] Consequently, whether coal competes with any other minerals mined in Nevada is question that might be answered differently from year to year, producing the yo-yo effect described above.

The Department's erroneous position that Edison must prove there are persons mining coal in Nevada that pay the extraction tax and that sell that coal free of the Nevada sales tax imposes an impossible burden on Edison, which simply does not have access to the tax returns of third parties. Edison would be at the mercy of the Department to make that determination, with no easy way to challenge what it would be told. From a policy perspective, that impossibility would impose an undue burden on the purchasers of out-of-state coal.

Finally, it should be obvious that a state could not impose a tariff on goods from other states even if no similar goods were manufactured locally. For example, suppose Nevada imposed a special excise tax on bourbon imported into the State from other states. That tax would have the characteristics of a tariff, the quintessential tax that violates the non-discrimination principle. It is no defense to a tariff to claim that there is no equivalent Nevada bourbon industry that the tariff is seeking to protect.

The statutory regime under challenge acts like a tariff because it imposes a special tax on imported coal. It is no defense to claim there is no coal in Nevada, any more than it would be a defense to a tariff on bourbon to claim that no bourbon was made in Nevada.

[12] http://www.reviewjournal.com/business/energy/oilgas-search-fracking-comes-nevada.

2. Remedy Under the Non-Discrimination Principle and the Imposition of an Unreasonable Burden on Interstate Commerce

The Nevada statutory regime violates the non-discrimination principle and imposes an unreasonable burden on interstate commerce. This conclusion is independent of whether coal is mined in Nevada. As a policy matter, Edison is entitled to a meaningful remedy whether coal is mined in Nevada or not.

The Department would deny Edison a remedy unless it could prove that coal was mined in Nevada that was subject to the severance tax and exempt from the sales tax. If Edison could not prove that there was such coal, then under the Department's theory Edison would win the battle but lose the war because it would not be entitled to any remedy. A right without a meaningful remedy is no right at all.

IV. Conclusion

The Nevada tax regime as interpreted by the Department violates fundamental principles of state tax policy. It is discriminatory, internally inconsistent, imposes an undue burden on interstate commerce, and acts as a tariff. It favors the in-state production and sale of minerals, including coal. It invites retaliation by other states. In fashioning a remedy, it is no defense to these policy defects that no coal is currently mined in Nevada. Whether coal is mined in Nevada is irrelevant.

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Visiting Professor, Harvard Law School, 1999-2000.

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Visiting Professor, NYU Law School, Fall 1988.

Distinguished Professor in Residence, Chulalongkorn Law School, Bangkok, January 1988.

Visiting Scholar, University of Tokyo Law School, December 1987.

Visiting Professor, Boston College, Fall 1987.

Visiting Scholar, Harvard Law School, 1984-1985.

Visiting Professor, University of Texas, Spring 1981.

Director of Training, International Tax Program, Harvard Law School, 1973-1976.

Instructor of Law, Boston College Law School, 1975-1976.

Courses Taught

Federal Income Taxation, Corporate Income Taxation, International Taxation, Tax Policy, State and Local Taxation, American Indian Taxation.

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Harvard Law School, Cambridge, Massachusetts
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RECENT PRIZES AND AWARDS

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Bureau of National Affairs (BNA), Distinguished Service in State and Local Tax Law (2011).

NYU Institute on State and Local Taxation, Outstanding Achievement in State and Local Taxation (2008).

PROFESSIONAL ACTIVITIES

BNA Tax Advisory Board, 2011-present.

Member, California Commission on the 21st Century Economy, 2009-2010.

Co-Reporter for the revision of the Uniform Division of Income for Tax Purposes Act (UDITPA), 2008-2009.

Member, Connecticut Streamlined Sales Tax Commission, 2007 – 2008.

Advisory Board, State Sales Tax Alert, 2008 – present.

Advisory Board, Pew Charitable Foundation Tax Project, 2007 – 2008

General Editor, Lexis Connecticut Practice Insights, 2006-present

Consultant, Montana Department of Revenue, 1998-1999, 2004-2008.

Consultant, South Carolina Department of Revenue, 2002-2003, 2005-2006.

Consultant, Connecticut Attorney General, 1986, 2002-2004.

Consultant, Treasurer, State of New Jersey, 2002-2003.

Consultant, City of San Francisco, 2001-2003.

Consultant, Tennessee Attorney General, 1998-1999, 2001-2003.

Consultant, State of Delaware, 2002.

CCH, State Tax Advisory Board, 2000-2011.

Advisory Board, Interstate Tax Report, 2000-present.

BNA Tax Management State Tax Advisory Board, 2000-present.

Consultant, California Legislature, 2000.

Consultant, State of West Virginia, 2000.

Consultant, California Franchise Tax Board, 2000.

Consultant, Alaska Department of Revenue, 1999-2010.

Consultant, North Dakota Department of Revenue, 1992-1993, 1999-2005.

Consultant, IMF, 1993, 1999.

Consultant, New York Department of Taxation and Finance, 1998-1999.

Consultant, Pew Charitable Foundation, 1998-2000.

Consultant, U.S. Department of the Treasury, 1998-2000.

Consultant, U.S. Department of Justice, 1997, 2001.

Advisory Board, Deloitte & Touche Center for Multistate Taxation at University of Wisconsin, 1997-present.

Consultant, Multistate Tax Commission, 1993, 1996-2004, 2009-2010.

Consultant, Louisiana Department of Revenue, 1995-2000.

Consultant, Utah Attorney General, 1994-1995.

Consultant, IRS, 1992-94.

Property Revaluation Task Force, Connecticut Institute of Municipal Studies, 1993.

Consultant, Illinois Department of Revenue, 1993.

Editorial Advisory Board, State Income Tax Alert, 1992-present.

Book Review Editor, State Tax Notes, 1992-1994.

Columnist, Natural Resources Tax Review, 1992-1993.

Member, Blue Ribbon Committee on Municipal Overburden for the City of Hartford, 1991.

Advisory Board, State Tax Notes, 1991-present.

Consultant, Texas Comptroller of Public Accounts, 1991, 2002-2004.

Advisory Board, Center for State and Local Taxation, 1990-present.

Short Review Editor, Tax Notes International, 1989-1994.

Member, Connecticut Task Force to Study and Evaluate State Tax Revenue and the Current Tax Base, 1989-1991.

Special Counsel, Connecticut Senate Majority Leader, 1989, 1991.

Consultant, Ministries of Justice and Finance, The Gambia, 1989 (HIID).

Member, Consulting Group on Tax Policy and its Impact on Land Use, Lincoln Institute of Land Policy, 1988-present.

Consultant, Ministry of Finance, Republic of Indonesia, 1988-1989 (HIID).

Instructor, NYU-IRS Continuing Legal Education Program, 1988, 1989, 1991.

Educational Leader, Soviet-American Legal Tour, 1987.

Consultant, Connecticut Conference of Municipalities, 1987, 1989, 1991.

Consultant, Navajo Nation, 1983-1985.

Director, New York State Tax Study Commission, 1982-1987.

Consultant, Citizens for Tax Justice, 1981.

Consultant, Appalachian Research and Defense Fund, 1981.
Referee, National Tax Journal, 1980-present.

Consultant, World Bank, 1980.

Chairman of the Board, Institute on Taxation and Economic Policy, 1979-present.

Consultant, People's Republic of China, 1979-1982, 1987.

Advisory Committee, Assessment and Valuation Legal Reporter, 1979-1993.

Consultant, City of Hartford, 1978-1980.

Consultant, Connecticut Department of Education, 1978-1979.

Consultant, Hartford Chamber of Commerce, 1978-1979.

Consultant, United Nations Conference on Trade and Development, 1977-1978.

Consultant, U.S. Office of Technology Assessment, 1977.

Consultant, Ministry of Finance, Mexico, 1977.

Consultant, Commissioner of Taxation, Republic of Zambia, 1976-1978.

Consultant, United Nations Development Program, 1975.

Editor, *European Taxation*, and Research Associate, International Bureau of Fiscal Documentation, the Netherlands, 1972-1973.

Commissioned Officer, U.S. Public Health Service, 1968-1970.

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Book Review, 3 *Tax Notes International* 1030 (1991) (reviewing B. Arnold, *Tax Discrimination Against Aliens, Nonresidents, and Foreign Activities: Canada, Australia, New Zealand, the United Kingdom, and the United States* (1991)).

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Book Review, 3 *Tax Notes International* 339 (1991) (reviewing A. Easson & J. Li, *Taxation of Foreign Investment in the People's Republic of China* (1991)).

Book Review, 3 *Tax Notes International* 1031 (1991) (reviewing *U.S. Tax Treatment of Financial Transactions Involving Foreign Currency* (1991)).

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Book Review, 2 *Tax Notes International* 418 (1990) (reviewing R. Doernberg, *International Taxation* (1990)).

Book Review, 43 *Tax Notes* 1543 (1989) (reviewing M. McIntyre, *The International Income Tax Rules of the United States* (1989)).

Expert Report
of
Dr. John L. Jurewitz

I. Qualifications

I received my BA in Economics from the University of San Francisco in 1969 and my PhD in Economics from the University of Wisconsin, Madison, in 1978. I taught as a Visiting Instructor of Economics at Pomona College from 1974 to 1977, and then as an Assistant Professor at Williams College in Massachusetts from 1977 through 1978. I began full-time employment at the Southern California Edison Company (SCE) in late 1978 and worked there for 28 years before retiring in 2007. During my employment at SCE, I worked mainly on matters directly related to electric industry market structure and electric utility regulation by the California Public Utilities Commission (CPUC) and the Federal Energy Regulatory Commission (FERC). During the last 15 years of my employment at SCE, I served as Manager, and later Director, of Regulatory Policy. During my career, I testified on numerous occasions before regulatory bodies including the CPUC, the FERC, the California Energy Commission, and the California State Legislature. From 1980 to the present day, I have also taught continuously as an adjunct instructor of Economics at Pomona College, and occasionally at the Claremont Graduate University.

When I first joined SCE in late 1978, my primary assignment was a project that required me to understand the structure of the power markets and extent of electricity competition throughout the Western Interconnection, the interconnected electric transmission network that spreads across all or portions of the 14 Western states, as well as British Columbia, Alberta, and northern Baja California, Mexico. This specific project involved separate legal proceedings at both the FERC and in federal district court regarding allegations by certain of SCE's wholesale power customers that SCE had engaged in vertical foreclosure of wholesale power supplies and had implemented a "price squeeze" on these wholesale customers. I ultimately testified in Federal District Court regarding some of these wholesale market structural and pricing issues. The Federal District Court ultimately found SCE not liable for any wrongdoing regarding these alleged antitrust violations.

Throughout the rest of my career at SCE, my major focus was on the changes that were taking place in electricity regulation at both the state and federal levels, and the impacts that these changes were likely to have on the market structure of the electricity industry. During the 1980s I testified on numerous occasions regarding the implementation of avoided-cost pricing for independent renewable generators and cogenerators pursuant to the Public Utility Regulatory Policies Act of 1978. I also closely monitored the FERC's policy initiatives during the 1980s to encourage the emergence of competition in wholesale electricity markets, especially the FERC's market-based pricing initiative. At the beginning of the 1990s, I monitored the progress of the Energy Policy Act of 1992 and advised SCE management as to the significance of the provisions that facilitated the emergence of competitive wholesale electricity markets by mandating open-access

transmission for wholesale power transactions and authorizing the creation of non-utility generators called Exempt Wholesale Generators. During the 1990s, I participated in proceedings at the CPUC and the FERC regarding the design of California's restructured wholesale electricity markets. After the California Electricity Crisis hit 2000 and 2001, I delivered talks at about 30 conferences in the U.S. and foreign venues regarding exactly what was happening in the California electricity markets and why.

After California's 2000-2001 Electricity Crisis ended, I was placed directly in charge of SCE's regulatory initiatives at the CPUC directed toward SCE getting back into the business of generating or purchasing all of the residual electricity requirements of its retail customers. As part of these initiatives, the CPUC authorized and required utilities to establish Procurement Review Groups and meet with non-commercial stakeholders (such as representatives of consumers and regulatory staff) on a quarterly basis to discuss power procurement policies and practices. From the inception of SCE's Procurement Review Group until I retired in mid-2007, I was responsible for convening and conducting these meetings. In this capacity, I became very knowledgeable in the more finite details of the modern Western power markets.

Throughout my career, I actively participated in nationwide electric industry forums. I taught courses at most of the national electric industry educational programs including the utility regulation and ratemaking schools conducted by the Center for Public Utilities at New Mexico State University, the Edison Electric Institute's program at Indiana University, and the programs sponsored by the National Association of Regulatory Utility Commissioners (NARUC) and conducted by the Institute for Public Utilities at Michigan State University. I also lectured nationwide at utility industry conferences, delivering roughly 200 presentations over the course of my career. Frequently in a somewhat more formal capacity, including the provision of expert testimony, I have participated in electric industry restructuring proceedings sponsored by the state public utility commissions in California, Oregon, Arizona, Hawaii, Illinois, Kansas, Kentucky, Oklahoma, Michigan, Missouri, Florida, Massachusetts, Vermont, and Virginia, as well as New Zealand, Germany, Spain, and the Canadian provincial regulators in Ontario and Quebec, Canada.

For more details, please see my attached Curriculum Vitae.

II. Scope of Testimony

I have been asked by SCE to offer testimony regarding the nature and geographic extent of competition within the Western electricity markets and associated electric generation fuel markets, and to offer my expert opinions regarding the competitive implications of Nevada's differential tax structure for "domestic" in-state and "imported" out-of-state fuels and substances used to power electric generation. The following are my expert opinions that I may offer during the upcoming trial:

1. **Expert Opinion 1:** About 93% of the coal used commercially in the United States is used to produce electricity. As a primary energy input to producing electricity, coal competes with all other primary sources of energy that can be used to produce electricity by various means, including natural gas, oil, biomass, geothermal steam, nuclear reactors, falling water, running rivers, blowing wind, flowing tides, etc.

   Basis for Expert Opinion 1: In 1831, Michael Faraday discovered that an electric current can be induced to flow in a coil of wire by passing magnets over the coil. This principle, called electromagnetic induction, is the principle that underlies the operation of electric generators and electric motors. Today, it is still the way in which over 99% of commercial electricity is produced in the United States. (The only other technique used to produce electricity in commercially meaningful amounts is by means of the photovoltaic effect, as used in photovoltaic electric generation systems.) All of the ways in which electricity is produced commercially by means of electromagnetic induction involve a fan-like structure, called a turbine, which spins causing a shaft at the center of the fan blades to rotate. This spinning shaft is used to rotate either the magnets or the wire armature relative to the other causing a flow of electricity to be induced in the wire coil. The only difference among the various ways in which electricity is produced through electromagnetic induction relates to the methods used to cause the magnets to rotate relative to a coiled wire armature. These differences involve the specific identity of the substance used to spin the turbine: usually steam, water, or blowing wind.

   The central engine in the electromagnetic induction process is the fan-like turbine that is spun by the kinetic energy of some working fluid, such as steam, falling water, or blowing wind. This turbine might be a steam turbine, a water turbine, or a wind turbine. Each of these different turbines is optimally designed to capture the kinetic energy from another substance such as compressed steam, falling water, or blowing wind and transform that kinetic energy into the mechanical energy of the spinning turbine. Thus, when it comes to the production of electricity, everything beginning with the spinning turbine and moving downstream to the process of electromagnetic induction is essentially the same.

   The economic relevance of these observations is that all sources of kinetic energy capable of propelling a turbine and creating electromagnetic induction are in commercial competition with one another in the market to produce commercial electricity—steam, falling water, running rivers, blowing wind, compressed air, flowing tides, etc. As a share of the total market, the most important of these sources of kinetic energy by far is steam. About 88% of the electricity produced in the United States is produced by first making or procuring steam and then using it to propel a steam turbine. This steam is either produced by burning a fossil fuel such as coal, natural gas, or oil, or by boiling water in a nuclear reactor, or by burning biomass. Alternatively, steam can be obtained dircetly from underground geothermal sources. In recent decades, the production of electricity using geothermal energy has been steadily rising in importance as a result of

technological advances and increased public policy interest in developing renewable forms of electricity generation.

Both oil and natural gas can also be used to produce electricity without going through the intermediate step of producing steam. Both of these fossil fuels can be used to propel either simple internal combustion engines or more sophisticated combustion turbines. These are alternative ways of spinning a shaft to rotate magnets relative to a coiled armature and inducing a flow of electricity.

In summary, any method that can be used to produce the mechanical energy of a spinning shaft can be used to produce electricity by spinning magnets relative to a coiled wire to induce an electric current to flow in the wire. Thus, coal, oil, natural gas, biomass, nuclear reactors, blowing wind, running or falling water, and geothermal sources of steam all compete with one another as a means for producing electricity.

2. **Expert Opinion 2:** During almost all hours of the years at issue in this case (1998-2000), the geographic scope of the electricity market in which the Mohave Generation Station was located was coincident with the entire Western Interconnected Grid managed for reliability by the Western Electricity Coordinating Council (WECC). This very large area is comprised of all or portions of the 14 Western states, as well as British Columbia, Alberta, and northern Baja California, Mexico. Within this area, there is a very active market for electricity comprised of many buyers and many sellers. In most locations, the buyers in these markets are regulated monopoly utilities with obligations to serve retail customers. However, in some locations such as California and Alberta, retail customers or their competitive retail suppliers can also choose to directly participate in these wholesale power markets. Moreover, retail customers always have the option of "self-generation"—i.e., producing the electricity themselves, typically by such means as photovoltaic arrays, small wind turbines, conventional combustion engines, combustion turbines, or small steam turbines.

   Basis for Expert Opinion 2: The entire Western Interconnection has to be operated for reliability purposes as one giant coordinated electricity production and delivery machine consisting of numerous generation stations and interconnecting transmission lines. Maintaining a reliable flow of high-quality power within this network requires that overall injections of electricity into the grid are always and continuously balanced with the electricity withdrawals that consumers are taking from the grid to power their end-use equipment. This balance of injections and withdrawals must also be accomplished in a manner that individual transmission lines do not become overloaded with local power flows. During almost all hours of the year, the grid is sufficiently flexible to accommodate transactions among generators and customers located throughout the grid. Only during periods of very high consumer demand do the transfer capabilities of various transmission links become sufficiently constrained that the Western market becomes divided into several sub-markets based on limitations on additional electricity transfer capability from one region to another.

Within this Western market, there are many buyers and many sellers of electricity. The sellers include traditional utilities, independent power producers, and power marketers. The buyers are mostly utilities with obligations to provide service to retail customers, but also include power marketers who buy and sell electricity but do not serve end-use customers. In California and Alberta, the markets have been restructured to allow final consumers to shop for their own retail suppliers of electricity other than their traditional local utility. Moreover, retail consumers can, and sometimes do, produce some amount of power for their own consumption.

The economic relevance of these observations is that during its active power production lifetime, the Mohave Generation Station competed to supply power with many other suppliers of power throughout the Western Interconnection in all but the highest demand hours of the year. Even during these high-demand hours, there would have been a sizable number of alternative sources of power within their temporarily constrained smaller geographic market for electricity.

3. **Expert Opinion 3.** The geographic extent of the market over which coal competes with all other forms of primary energy to produce electricity is essentially coextensive with the geographic scope of the electricity market and, therefore, during almost all hours of the year this market extends over the entire Western Interconnection. The geographic scope of this competition among primary energy sources to produce electricity is a result not only of the transportability of some of these primary sources of energy, but more importantly, it is the result of the transportability of electricity. In short, electric generation equipment is very "footloose" and can readily be located near the primary source of energy rather than having the primary energy source transported to the site of the electricity equipment. Indeed, the choice between whether to transport the primary energy to a distant generation site or to locate the generation equipment at the original source of the primary energy and then transport the produced electricity is basically an economic decision.

   Basis of Expert Opinion 3. As previously noted, just about any form of primary energy can be used to spin a turbine that spins an electric generator that produces electricity. Many of these primary energy forms are readily and commonly transported over long distances. These include such fuels as coal, oil, natural gas, and nuclear fuel. Other forms of basic energy are more geographically constrained. These include sources of running or falling water, blowing wind, or geothermal steam. Thus, even though good wind power resources are geographically concentrated in several local areas with favorable wind conditions (e.g., the Columbia Gorge, Altamont Pass, the Tehachapi Mountains, the San Gorgonio Pass), these concentrated local areas of wind compete with other fuels for producing steam to spin a steam turbine or with falling water to spin a water turbine. Likewise, even though geothermal steam cannot be transported long distances without unacceptable losses of heat energy, this fact does not restrict the geographic scope of its economic competition with all other forms of primary energy to spin a turbine to produce electricity. Instead of constructing an electric

generation station in close proximity to a gas pipeline, a coal mine or railroad link, a source of falling water, or an area of strongly blowing wind, an electric generator can just as readily be built at the source of geothermal energy and then interconnected to the electric grid through a transmission line to deliver electricity anywhere in the Western Interconnection. Thus, even primary energy sources that are geographically concentrated and not easily transported across space, nonetheless compete with more mobile sources of primary energy such as oil, gas, and coal that are more feasibly and economically transported.

4. **Expert Opinion 4.** The cost of operating an electric power plant is extremely important in determining the ability of the power plant to compete in the wholesale electricity market. The cost of operating an electric generation plant is primarily determined by the cost of acquiring the fuel to boil the water to make the steam or the cost of accessing the steam or other kinetic substance, such as falling water or blowing wind, used to spin the turbine.

   Basis of Expert Opinion 4. The main costs of generating electric power are the initial capital costs of building the power plant, the costs of operating the power plant, and the ongoing capital additions and labor costs necessary to maintain the readiness of the power plant to produce electricity. In the case of a "thermal" power plant (i.e., one in which the turbine is powered by steam), the costs of operating the power plant are almost entirely the costs of producing or accessing the steam. This steam can be produced in a wide variety of ways: by burning coal, oil, natural gas or biomass to boil the water to produce the steam; or by operating a nuclear reactor to boil the water to produce the steam; or by using solar energy to heat a working fluid to produce the steam; or simply by accessing the steam or hot water from a geothermal heat resource.

   On a day-to-day basis, the cost of producing or acquiring the steam will determine the competitive advantage of the owner in operating the generation plant because the per-unit cost of producing or acquiring the steam will determine the short-run operating cost of producing a kilowatthour of electricity from the power plant. In a power system that is centrally dispatched on a "command-and-control" basis, the system operator will "dispatch" the various generating units according to their so-called "merit order" by giving operating priority to those generating units with the lowest operating costs. Thus, when overall consumer demands for power are low (for instance, in the very early hours of the morning), only those power plants with the very lowest operating costs will be operating in excess of some minimal production level needed to maintain plant readiness for the next day. As consumer demands for power increase during the day, the system operator will increase the electricity produced by the various power plants according to their "merit order" based on their operating costs, proceeding from lowest operating cost to higher operating cost. The first plants to have their production ramped up as demand increases will be those plants with the very lowest operating costs. Only as consumer demands increase to higher levels, will power plants with

higher operating costs be ramped up to supply the greater amount of electricity demanded by consumers.

Thus, on a day-to-day basis, the operational priority of power plants will be rank-ordered in accordance with their operating cost per kilowatthour of production. This operating cost will be almost entirely determined by the cost of producing steam by burning fuel or by the operating costs of acquiring the steam from a geothermal source. The total number of power plants being operated at any moment must be sufficient to meet total customer power demands. Finally, ideally no power plant should be operated whose operating cost per kilowatthour exceeds the value placed on the electricity by consumers. Whether or not this is actually achieved will depend on retail pricing policies that are usually determined by the electric utility regulators.

In certain portions of the Western Interconnection, the regional system operator does not determine the dispatch priority order of generators by command-and-control directives, but rather this operating priority is determined through competitive auctions. For instance, dispatch priority is determined mostly by competitive auctions in California by the California Independent System Operator (CAISO) and in Alberta, Canada by the Alberta Electric System Operator (AESO). Nonetheless, when these electric markets are operating reasonably competitively, this competitive bidding process should result in a system dispatch order that tracks very closely with the dispatch order that would be used by a system operator using a command-and-control approach. Those power plants with the lowest operating costs per kilowatthour should be able and willing to underbid their competitors and secure the right to be dispatched with higher priority than those plants with higher operating costs.

Over longer periods of time (i.e., years), two categories of longer-term decisions need to be made about power plants:

1) whether to continue to incur the costs of maintenance and capital additions necessary to maintain the ability of the power plant to produce electricity; and

2) whether to build additional power plants and, if so, what kind of power plants to build.

First, consider the decision to maintain or extend the life of an existing power plant. A power plant will tend to be "mothballed" for a time (i.e., not maintained for immediate operation but also not dismantled) if the expected value of the electricity over some near-term time horizon (e.g., 1-5 years) does not provide enough "operating margin" to justify the costs of maintaining the immediate operational readiness of the unit. This near-term "operating margin" is equal to the difference between the market value of the electricity produced and the avoidable operating costs of producing this power (almost entirely the cost of

producing or accessing the steam). This "operating margin" entirely ignores the sunk capital costs of originally constructing the power plant because these costs have already been expended and are, therefore, "sunk" and irrelevant to short-term decisions about how best to operate the plant. Thus, any increase or decrease in operating cost will tend to decrease or increase the operating margin and make the owner less likely or more likely to undertake the expenditures needed to maintain or extend the life of the plant. Thus, the competitive implications of operating costs go considerably beyond determining the short-run dispatch priority of power plants. Operating costs also affect whether plants are maintained or have their lives extended by undertaking necessary capital additions and improvements.

Next, consider the second category of long-run decisions: whether to build additional power plants and, if so, what kind of power plant to build. In general additional power plants will be built for either or both of the following reasons:

1) The peak demands of consumers are expected to increase sufficiently that total instantaneous power demands during some periods will exceed the ability of power suppliers to meet this higher demand with existing power plants. If this is the case, then the need for additional power plants is said to be driven by "reliability" concerns since the system will be unable to meet consumer peak-period demands unless additional power plants are added to the system. When power plants of some sort must be added to maintain system reliability by meeting peak demand, the specific choice among alternative possible plant technologies and fuels will be determined by the total economics of the power plant, including both capital costs as well as operating costs.

2) Even if additional power plants are not needed to maintain system reliability, it will also make sense to add more power plants so long as these newly added power plants will operate at sufficiently low cost as to displace the need to operate existing more expensive-to-operate plants. In this case, the addition of the new power plant is said to be motivated by "fuel savings" alone. In essence, the considerably lower operating cost of the new power plant can render one or more existing power plants economically obsolete.

Thus, whether new plants are added for reliability purposes or for "fuel savings" purposes, the operating costs of alternative possible plant additions will be very influential in determining exactly what new power plants are added and when.

5. **Expert Opinion 5.** Nevada's overall tax framework provided preferential treatment to domestic users of oil, natural gas, and geothermal heat extracted in Nevada. This conveyed an unfair advantage to these domestic users relative to a taxpayer who

imported coal from out-of-state sources, or contemplated doing so but did not do so due to its higher cost.

Basis of Expert Opinion 5. The importation of coal was subject to Nevada's use tax. On the other hand, domestic extractors of oil, natural gas, and geothermal heat were exempted from Nevada's sales tax and instead were subject only to a lower net proceeds of minerals tax. This difference in tax treatment provided the domestic extractors and users of these commodities with an unfair and improper competitive advantage compared to the users who imported coal from out-of-state sources or contemplated doing so but did not due to the higher taxes levied on these out-of-state sources.

6. **Expert Opinion 6.** The electricity produced at the Mohave Generation Station was produced in the same market as electricity that could have been produced, or was actually produced, by favored users of domestic Nevada oil, natural gas, and geothermal heat. In a complete market analysis, it is appropriate to consider the impacts on both potential entrants to a market as well as actual incumbent competitors. Thus, it is not necessary to identify actual advantaged competitors. Instead, it is sufficient to identify theoretically advantaged competitors. But in addition, based on public data, we know that oil, gas, and geothermal heat were extracted in Nevada, that electricity was or could have been generated in Nevada from these sources, and that those generators would have benefitted from the discriminatory tax treatment afforded them relative to the Mohave Generation Station that purchased out-of-state coal to produce its electricity.

Basis of Expert Opinion 6. The Nevada Bureau of Mines and Geology publishes an annual publication reviewing the Nevada Mineral Industry (Special Publication MI-1998, MI-1999, and MI-2000). According to this publication, geothermal energy in Nevada was used in power plants with the following capacities and output levels in 1998, 1999, and 2000:

Year	Nameplate Capacity (Megawatts)	Effective Capacity (Megawatts)	Gross Production (Megawatthours)	Net Production (Megawatthours)
1998	242.4	210.5	1,630,579	1,326,851
1999	237.5	211.5	1,599,040	1,288,649
2000	242.5	216.5	1,572,958	1,257,781

Unlike the owners of the Mohave Generation Station who were required to pay the use tax on the importation of coal they used to produce steam at the Mohave power plant, the owners of these geothermal power plants would have been able to produce electricity using steam that was subject only to the lower "net proceeds of minerals tax" and not subject to the Nevada sales or use tax.

These same publications by the Nevada Bureau of Mines and Geology also state that the following amounts of oil were produced domestically in Nevada in 1998, 1999, and 2000:

Year	Barrels
1998	798,793
1999	705,980
2000	620,651

The Reports state that this oil was used to make such products as No. 1 and No. 2 diesel fuel, kerosene, and stove oil. Fuels of this type have been frequently used to produce electricity using internal combustion engines (such as diesel engines) as well as used to create steam to drive steam turbines to produce electricity. Thus, as fuels for potentially generating electricity, these fuels were in competition with the coal imported by the Mohave Generation Station to produce steam and generate electricity.

Finally, this same publication of the Nevada Bureau of Mines and Geology also states that natural gas was produced from the Kate Spring Field and "used to operate production and related equipment at the lease sites of Makoil Inc. and Western General, Inc." in the following amounts:

Year	Thousands of Cubic Feet
1998	8,658
1999	7,987
2000	6,752

The publication does not state whether this gas was used to propel internal combustion engines or gas turbines to produce mechanical energy or to produce electric power. However, regardless of these specific facts, electricity could also have been used to power this equipment by means of electric motors. Therefore, in driving machinery, these favorably taxed quantities of gas were in competition with all other fuels used to produce electricity including the unfairly taxed quantities of coal used at the Mohave Generating Station.

7. **Expert Opinion 7.** In order for the owners of the Mohave Generating Station to have been injured by an improperly levied tax, it is not necessary to identify some in-state user who was given a competitive advantage by the improper Nevada tax framework. Regardless of the existence or non-existence of favored in-state users of steam and fuels used to produce steam, the Mohave Generation Station nonetheless found it more difficult to compete with sources of electricity located outside the state of

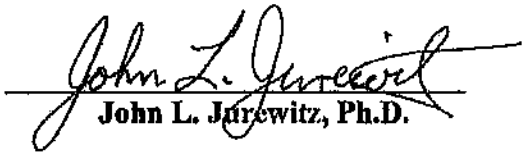
Nevada, and therefore suffered competitive harm in the broader Western power market as a result of being charged an improperly high facially discriminatory tax.

Basis of Expert Opinion 7. If the court finds that the Nevada tax was facially discriminatory, then there can be no doubt that the Mohave Generating Station was competitively disadvantaged by a facially discriminatory tax regardless of whether any specific Nevada in-state company was competitively advantaged. As previously explained, the Mohave Generating Station participated in an electricity market that included all the Western states during almost all hours of the day. Furthermore, as already explained, the operating costs of a power plant are critical in determining whether or not it will prevail over competitors in both the short term and the long term. A facially discriminatory tax that unfairly increased the operating cost of the Mohave plant would have imposed a competitive disadvantage on Mohave when compared to a lower tax level that was not facially discriminatory.

8. **Expert Opinion 8.** Even assuming for the sake of argument that there were no actual or potential tax-favored in-state producers of electricity in Nevada during the time period relevant to this proceeding, the Nevada state tax structure cannot be reasonably defended as being neutral with respect to interstate electricity competition. If all states in the Western electricity market were to adopt a tax structure similar to the features in the Nevada tax structure, then competitive electricity markets in the Western states would be adversely affected by the introduction of a competitive bias favoring the users of in-state fuels compared to imported out-of-state fuels.

   Basis of Expert Opinion 8. Oil, gas, coal, and geothermal steam are produced in many other Western states. If each of these states were to adopt a tax structure that adversely taxed the import of these fuels compared to domestic sources of these fuels, then electricity producers using these domestic fuel sources would obviously be advantaged relative to electricity producers using imported out-of-state fuel supplies. The result would be a competitive disadvantage for any electric power producer operating in any state in which it was importing fuels from out of state. This would serve broadly to stifle the free and competitive flow of interstate fuels for producing electricity and, thereby, distort the locational decisions made by power plant owners in favor of locating their power plants in the states where they could access the cheaper in-state fuels. This would be inconsistent with the promotion of free-flowing competitive interstate electricity competition.

Dated: April 8, 2013



John L. Jurewitz, Ph.D.

ATTACHMENTS TO JUREWITZ REPORT

List of Materials Consulted

List of Recent Depositions

Curriculum Vitae

Documents Reviewed

I have reviewed and/or relied upon the following documents in forming my opinions in this case:

1. Pleadings and discovery responses from *SCE v. State of Nevada, ex rel. Department of Taxation*, Case No. 09-0C-00016-1B
2. Briefs filed before the Nevada Supreme Court in *Sierra Pacific Power Co. v. Dep't of Taxation*, Docket No. 61193
3. Net Proceeds of Minerals Bulletins, State of Nevada Department of Taxation (1998, 1999, and 2000)
4. The Nevada Mineral Industry Special Publication MI-1998, MI-1999, and MI-2000, Nevada Bureau of Mines and Geology (1998, 1999, and 2000)
5. Expert reports of Ralph Barbaro and Richard Pomp in *SCE v. State of Nevada, ex rel. Department of Taxation*, Case No. 09-0C-00016-1B

List of Recent Depositions and Testimony

(within part 4 years)

Deposition of John Jurewitz, PhD, in Electric Refund Cases, JCCP No. 4512, Superior Court of the State of California in and for the County of Los Angeles, January 18, 2010.

Deposition of John Jurewitz, PhD, in the Electric refund Cases, Case No. JCCP No. 4512, Superior Court of the state of California, County of Los Angeles, Central District, November 15, 2011.

Curriculum Vitae

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EDUCATION

UNIVERSITY OF WISCONSIN
Ph.D., Economics, 1978
M.A., Economics, 1972

Dissertation: "The Internalization of Environmental Costs in the Private Electric Utility Industry: A Theoretical Analysis of Alternative Environmental Policies Under Rate-of Return Regulation"

Fields of Concentration: Microeconomic Theory, Public Finance, International Trade, Econometrics

UNIVERSITY OF SAN FRANCISCO
B.A., Economics, 1969

INDEPENDENT CONSULTANT ACTIVITIES

2007-2013 Occasional consulting for Southern California Edison regarding electric industry structural issues and regulatory strategies; quarterly orientation program for new Edison employees regarding the basic economics, structure and regulation of the electric power industry; co-authoring of history book commemorating Edison's 125th anniversary.

2009-2011 Expert witness in California Electric Refund Case JCCP 4512

1976 Analysis of school closure proposal for Citizens for Quality Education

1973 **FORD FOUNDATION'S ENERGY POLICY PROJECT**
(Public Interest Economic Center - Subcontractor)

Associate Director, Electricity Sub-Project

BUSINESS EMPLOYMENT

SOUTHERN CALIFORNIA EDISON COMPANY

1999-2007	Director, Regulatory Policy Regulatory Policy and Affairs Department
1992-1998	Manager, Regulatory Policy Regulatory Policy and Affairs Department
1991-1992	Manager, Energy Policy and Regulation System Planning and Fuel Supply Department
1985-1991	Manager, Regulatory Policy and Coordination Revenue Requirements Department
1982-1985	Supervisor of Regulatory Economics Revenue Requirements Department
1978-1981	Senior Economist Treasurers Department
1965-1972	Business Trainee (Summer employment) Economics Division; Valuation Division

ACADEMIC EMPLOYMENT

Courses of Instruction: Micro- and Macroeconomic Theory, Statistics, Government Expenditure and Tax Policy, Law and Economics, Environmental and Natural Resource Economics, Energy Economics and Policy, Seminar in Public Policy

1980-2011	POMONA COLLEGE, CLAREMONT, CALIFORNIA Adjunct Lecturer of Economics
1993-1998	CLAREMONT GRADUATE SCHOOL, CLAREMONT, CALIFORNIA Adjunct Lecturer
1977-1978	WILLIAMS COLLEGE, WILLIAMSTOWN, MASSACHUSETTS Assistant Professor of Economics

1974-1977	POMONA COLLEGE, CLAREMONT, CALIFORNIA Visiting Instructor of Economics
1969 – 1973	UNIVERSITY OF WISCONSIN, MADISON Teaching Assistant

SOUTHERN CALIFORNIA EDISON: SELECTED PROJECT MANAGEMENT RESPONSIBILITIES

2006 – 2007	Phase 2 of CPUC Greenhouse Gas Rulemaking and Related Implementation of Climate Change Policies Pursuant to AB 32
2006	Evaluation of Solar Photovoltaic Economics and Public Policy
2003 – 2004	EIX Strategic Planning Project
2003 – 2004	Application to the CPUC for Approval of Acquisition and Ratemaking Treatment of Mountainview Powerplant
2003	California Generation Project
2002 – 2007	Project Management of SCE's Procurement Review Group
2001 – 2002	CPUC Rulemaking (R. 01-10-024) on Return to Utility Power Procurement
2001 – 2002	SCE Strategic Planning Project (Post-Crisis Business Strategies)
2001	Extension of SCE's Non-Generation Performance-Based Ratemaking (PBR) and Conversion to a Revenue-Indexing Mechanism
2000 – 2001	Performance-Based Ratemaking for Transmission
2000	Utility Procurement Contingencies and Retail Strategy for Retail Rate Stabilization
2000	Distribution Business Unit Strategy: Regulatory Scenarios Project
1999	Default Procurement and Retail Strategy Project
1998 – 2000	Natural Gas Industry Restructuring
1998	Role of the UDC (Utility Distribution Company) Project
1998	Post-Transition Ratemaking Project

1997 – 2000 Regulatory Approval of Reliability Must-Run (RMR) Generation Contracts

1996 – 1997 Generation Performance-Based Ratemaking Project

1993 – 1996 Non-Generation Performance-Based Ratemaking (PBR)

1994 – 1996 Alternative Competitive Retail Market Structures

1991 – 1992 Regulatory Strategies Sub-Team of the SCE Strategic Planning Project

1986 – 1988 Response to CPUC Rulemaking on Revising Ratemaking Mechanisms in Response to Changing Conditions in the Electric Industry (R. 86-10-001)

1984 – 1986 Long-Run Avoided Cost Pricing (Final Standard Offer No. 4)

NATIONAL AND INTERNATIONAL ELECTRICITY RESTRUCTURING ACTIVITIES

1993 - 2007 Testified or participated in electric industry restructuring proceedings sponsored by the state public utility commissions in California, Oregon, Arizona, Hawaii, Illinois, Kansas, Kentucky, Oklahoma, Michigan, Missouri, Florida, Massachusetts, Vermont, and Virginia, and as well as New Zealand, Germany, Spain, and the Canadian provincial regulators in Ontario and Quebec, Canada.

PROFESSIONAL PROGRAM INSTRUCTION ACTIVITIES

CENTER FOR PUBLIC UTILITIES
NEW MEXICO STATE UNIVERSITY

1992-2007 Instructor, **Basics of Regulation and the Ratemaking Process**
(A twice-annual one-week course of instruction)
References: Professor David Smith
Professor Douglas Gegax

NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS (NARUC), AND INSTITUTE OF PUBLIC UTILITIES
Graduate School of Business Administration
Michigan State University

1988-1992 Instructor, **NARUC Advanced Regulatory Studies Program**
Williamsburg, Virginia
(A biennial course of instruction)

1989-1996 Instructor, **NARUC Annual Regulatory Studies Program**
East Lansing, Michigan
(A two-week annual course, dubbed "Camp NARUC")
References: Professor Harry Trebing
Professor Charles Stalon
Professor Johannes Bauer

EDISON ELECTRIC INSTITUTE

1984-1991 Instructor, **EEI Electric Rate Advanced Course**
(An annual 3-day course of instruction)
Indiana University, Bloomington
Reference: Professor James Suelflow

HONORS AND PROFESSIONAL ACTIVITIES

Member of the 2007 Annual Review Panel for **The Center for the Study of Energy Markets** (CSEM), the in-house research arm of the University of California Energy Institute (UCEI), Berkeley, California, April 2007.

Steering Committee for Western Conference (1988-2007)
Advanced Workshop in Regulation and Public Utility Economics
Center for Research in Regulated Industries
Rutgers Graduate School of Management

Reference: Professor Michael A. Crew

HONORS AND PROFESSIONAL ACTIVITIES – Continued

Advisory Council (1987-2007)
Center for Public Utilities
New Mexico State University
References: Professor David Smith
Professor Douglas Gegax

Corporate Representative (1994-1995)
Harvard Energy Policy Group

Corporate Representative (1993-1994)
Keystone Electricity Policy Discussion Group

Corporate Representative (1992-1993)
Environmental Externalities Project Advisory Committee
Consumer Energy Council of America Research Foundation

Designated Corporate Representative (1989-2000)
Economics Committee, Edison Electric Institute

Member, Power Supply Policy Technical Task Force (1992-2000)
Edison Electric Institute

Acting Corporate Representative (1991-1995)
Program On Workable Energy Regulation (POWER)
Institute of Governmental Affairs
University of California, Davis

Designated Corporate Representative (1989-1991)
Keystone II Project on Transmission

Reviewer for the following professional journals: **Land Economics** (1974 1976), **Journal of Regulatory Economics** (1989-1992)

Ford Fellowship (1971-1973)

Non-Resident Scholarship, University of Wisconsin (1969)

Alpha Signa Nu (1967-1968) at University of San Francisco
(comparable to Phi Beta Kappa at Jesuit institutions);
President of local chapter (1968)

Student Body Treasurer, University of San Francisco (1967-1968)

Who's Who at American Universities and Colleges (1968)

MILITARY SERVICE

1969-1982	U.S. Army Reserves (Resigned at the rank of Captain, 1982)
1974	U.S. Army Active Duty First Lieutenant, Adjutant General Corps Fort Benjamin Harrison, Indiana
1969	Distinguished Military Graduate (Army ROTC), University of San Francisco Commissioned as Second Lieutenant, U.S. Army

PUBLISHED PAPERS, ARTICLES AND BOOKS

"The Paradox of 'Acting Globally While Thinking Locally': Discordance in Climate Change Adaption Policy Formation". Co-authored with Dan Mazmanian and Hal Nelson. *Journal of Environment and Development.* January 2013.

Edison International: Celebrating 125 Years of Innovation, co-authored with Scott Huler, Essex Publishing, St. Louis, 2011.

"The Current Outlook for the Nuclear Power Industry in the United States", in Lutz Mez, Mcle Schneider, and Steven Thomas (eds.), International Perspectives on Energy Policy and the Role of Nuclear Power, Multi-Science Publishing Co., 2009.

"When a Sub-National State Actor Confronts a Global Challenge: California Setting the Pace and Tone of U.S. Climate Change Policy". Co-authored with Dan Mazmanian and Hal Nelson. *Journal of Environment and Development.* Special Issue. 17 (4); 401-423, December, 2008.

"Challenges in Designing Default Retail Electric Service", chapter 5 in Ahmad Faruqui and Kelly Eakin (eds.), Electricity Pricing in Transition, Springer, 2002.

"California's Electricity Debacle: A Guided Tour", Electricity Journal, May 2002, pp. 10-29.

"The Right Safety Net", Electric Perspectives, March/April 2002, Edison Electric Institute, pp. 24-32.

"The U.S. Nuclear Power Industry: Past, Present, and Possible Futures", Energy and Environment, Vol. 13 No. 2, Multi-Science Publishing, 2002.

"Wholesale Generator Incentives to Exercise Market Power in the California Electricity Market", Electricity Journal, August/September 2001, pp. 51-56.

"Business Strategies Evolving in Response to Regulatory Changes in the U.S. Electric Power Industry", chapter in Atle Midttun (ed.), European Energy Industry Business Strategies, Elsevier, 2001.

"Regulatory Impact: U.S. Business Strategies Are Evolving in Response to Regulatory Changes", Energy Markets, Vol. 5, No. 4, April 2000, pp. 72-73.

"Must-Run Generation: Can We Mix Regulation and Competition Successfully?", co-authored with Robin J. Walther, Electricity Journal, December 1997, pp. 44-55.

"Restructuring of Electric Energy and the Environmental Policy Implications: The Case of California", co-authored with Daniel Mazmanian, Doris Fuchs, and Diane Roseman, paper published by Center for Politics and Economics at the Claremont Graduate School, December 1995.

"Spotlight on Direct Access: Perspectives on DR Planning under Competition (Lovins, Hirst, Singer, Jurewitz, and Fessler)", DR Connection, Electric Power Research Institute, November 1994.

PUBLISHED PAPERS, ARTICLES AND BOOKS – Continued

"Retail Wheeling: Why the Proponents Must Bear the Burden of Proof," Electricity Journal, April 1994, pp. 62-70.

"The Energy Policy Act of 1992: What Did it Do?", in Gregory B. Enholm and J. Robert Malko (eds.), Electric Utilities Moving into the 21st Century, Arlington, Virginia: Public Utilities Reports, Inc., 1994.

"Toward an Effective Definition of Market Power: The Key to Competition for Delivered Bulk Power," co-authored with Albert V. Carr, Jr., John Mandt, Patrick J. McCormick 111, and Louis Harris, Power Supply Monograph No. 1, Edison Electric Institute, January 1994.

"Life After the Energy Policy Act", Electricity Journal, June 1993.

"Wheeling Issues: An IOU Perspective," in James L. Plummer and Susan Tropmarm (eds.), Competition in Electricity: New Markets and New Structures. Arlington, Virginia: Public Utilities Reports, Inc.; and Palo Alto, California: QED Research, Inc., 1990.

"Transmission Pricing Issues", in Harry M. Trebing and Robert G. Holetz (eds.), New Regulatory Concepts, Issues and Controversies. East Lansing, Michigan: Institute of Public Utilities, Michigan State University, 1989.

"Deregulation of Electricity: A View From Utility Management," Contemporary Policy Issues, July 1988. Later translated into Italian and published in Energia, September 1989.

Studies in Electric Utility Regulation, co-edited with Charles J. Cicchetti. Ballinger: 1975, 266 pages, A volume in the Ford Foundation sponsored Energy Policy Project.

"Public Utility Pricing: A Synthesis of Marginal Cost, Regulatory Constraints, Averch-Johnson Bias, Peak-Load and Block Pricing," co-authored with Charles J. Cicchetti, published in Studies in Electric Utility Regulation (see above); also appears as Appendix B in Perspectives on Power, Ballinger, 1974.

TESTIMONY

BEFORE THE FEDERAL DISTRICT COURT

July 1985 — Rebuttal testimony in an antitrust proceeding regarding the existence of, and/or harm caused by, an alleged "price squeeze" involving wholesale electricity rates charged by Edison to certain municipal utilities.

BEFORE THE FEDERAL ENERGY REGULATORY COMMISSION

June 1998 — (ER98-441-000) Testimony providing general background concerning the rates and performance terms in the Must-Run Agreements filed by Edison on October 31, 1997.

January 1997 — Statement of John Jurewitz on behalf of Southern California Edison Company before the FERC Technical Conference on WEPEX Market Power Issues.

May 1996 — (ER96-1663-000) Testimony submitted on local must-run generation constraints and local market power mitigation strategies as part of SCE's and SDG&E's application for authority to sell electric energy at market-based rates.

Feb 1990 — (EC89-5-000) Rebuttal testimony in the proposed merger of Southern California Edison and San Diego Gas and Electric rebutting certain allegations of misconduct and anti-competitive effects relative to Edison's purchases from QFs and affiliated QF development by Mission Energy Company.

Oct 1987 — Statement of John L. Jurewitz, before the FERC Technical Conference on Regulation of Independent Power Producers.

Aug 1985 — (ER79-150) Quantification of benefits of economy energy purchases made by the Cities of Anaheim and Riverside during the locked-in ratemaking period.

April 1984 — (ER82-426) Rebuttal testimony regarding certain statistical and ratemaking considerations in estimating depreciation expenses.

Feb 1984 — (ER83-301) Proper rate treatment of test energy produced from San Onofre Nuclear Generating Stations No. 2 and 3.

Nov 1983 — (ER84-075) Explanation of the bases for Edison's choice of time-of-use pricing periods and analysis of Edison's forecast of marginal operating costs during these time-of-use periods for the 1984 test period.

July 1983 — (ER76-205) Quantification of benefits of economy energy purchases made by the Cities of Anaheim and Riverside during the locked-in period.

TESTIMONY – Continued

BEFORE THE CALIFORNIA PUBLIC UTILITIES COMMISSION

April 2007 (R. 06-02-013) Rebuttal testimony in the Long-Term Procurement Proceeding regarding Procurement Review Group activities and slice-of-load procurement auctions to supply default retail service.

August 2005 (R. 04-04-003 / R. 04-04-025) Direct and rebuttal testimony regarding revisions to avoided-cost pricing and various contractual issues for power purchases from Qualifying Facilities (QFs) pursuant to the Public Utility Regulatory Policies Act (PURPA).

August 2004 (R. 04-04-003) Rebuttal testimony addressing proposal to adopt a "slice-of-load" procurement auction for the provision of default electricity service.

July 2003 (A. 03-07-032) Direct and rebuttal testimony in support of an application by Southern California Edison Company to acquire the Mountainview powerplant into a utility subsidiary and enter into a specific wholesale contract to purchase power from this subsidiary.

Feb. 2003 (A. 02-05-004) Rebuttal to testimony of William Marcus filed on behalf of TURN in SCE's 2003 Test Year General Rate Case regarding the history of SCE's advocacy and activities related to resource planning.

Oct. 2002 (A. 02-05-004) Supplemental testimony in SCE's 2003 Test Year General Rate Case regarding funding for SCE's generation and procurement activities in the wake of the 2000-2001 electricity crisis and the roll-back of industry restructuring.

April 2002 (R. 01-10-024) Direct, supplemental, and rebuttal testimony in support of SCE's positions regarding the return of utilities to long-term power procurement subject to the provisions of Assembly Bill 57.

Oct. 2001 (A. 93-12-029) Testimony in support of modifying SCE's CPUC-approved performance-based non-generation ratemaking mechanism so that it would become a revenue-indexing, instead of a rate-indexing mechanism, consistent with newly enacted Section 739.10 of the Public Utilities Code.

May 2000 (R. 99-10-025) Direct and rebuttal testimony in CPUC Rulemaking addressing policies to promote distributed generation resources; testimony primarily addressed jurisdictional and wholesale tariff issues related to the possibility of providing wheeling service for distributed generation resources.

March 2000 Direct and rebuttal testimony regarding the proper calcualtion of short-run avoided-cost pricing for Qualifying Facilities (QFs) pursuant to PURPA and pursuant to Section 390(c) of the Public Utilities Code requiring QFs to be paid based on the wholesale market-clearing price.

TESTIMONY – Continued

BEFORE THE CALIFORNIA PUBLIC UTILITIES COMMISSION

April 1998	(A. 97-12-048) Testimony regarding the potential impact on electricity customers due to the proposal of SoCalGas to re-allocate interstate pipeline capacity costs between core and noncore customers.
Feb. 1998	Rebuttal testimony in reasonableness review of multiple years of power purchases from QFs pursuant to CPUC regulations implementing PURPA.
Nov. 1997	(A. 92-05-047) Rebuttal testimony regarding reasonableness of SCE's actions in entering into contracts with Qualifying Facilities (QFs) pursuant to the Public Utility Regulatory Policies Act (PURPA).
Nov. 1996	(A. 96-11-047) Testimony in support of application to recover the costs of certain transmission facility upgrades in accordance with the provisions of PU Code §376.
Nov. 1996/ March, May 1997	(A. 96-11-046) Direct and rebuttal testimony regarding the maintenance of local reliability by means of local reliability dispatch agreements following generation divestiture.
May 1997	(A. 96-08-071) Rebuttal regarding market power issues related to the Competition Transition Charge (CTC).
August 1996	(A. 96-08-071) Rebuttal regarding market power issues raised in Phase II of the Competition Transition Charge (CTC) proceeding.
July 1996	(A. 96-07-009) Policy testimony responding to CPUC directive that utilities file applications for Performance-Based Ratemaking for certain generation facilities.
May 1996	(R.94-04-031;I.94-04-032) Filing at the CPUC of SCE and SDG&E's FERC Testimony regarding Application for FERC Authority to Sell Elecrtricity at Market-Based Rates Using a Power Exchange
Dec 1994	(R.94-04-031/I.94-04-032) Policy testimony regarding proper regulatory treatment for so-called uneconomic transitional costs resulting from the potential adoption of direct retail access in California.
Oct 1994	(A.93-12-029) Direct and rebuttal testimony in support of Edison's non-generation performance-based ratemaking proposal including rebuttal to the testimony of The Consumer Alliance for Electric Rate Reductions (CAERR Study).
May 1994	(R.91-08-003/I.91-08-002) Policy testimony in support of SCE's proposal for a shareholder incentive mechanism for demand-side management programs.

TESTIMONY – Continued

BEFORE THE CALIFORNIA PUBLIC UTILITIES COMMISSION

May 1994	(R.93-12-025) Testimony in support of off-system power and transmission sales Incentives
Dec. 1993	(A. 93-12-029) Direct, supplemental and rebuttal testimony in support of SCE's application for performance-based ratemaking for base-rate revenues; application subsequently modified to apply only to non-generation base-rate revenues following the CPUC's initiative to adopt retail competition.
Oct 1993	(A. 93 -02-010) Testimony in support of SCE's proposal for accelerated cost recovery of nuclear investment costs.
May 1992	(A.90-12-018) Rebuttal testimony regarding proper remedy to be applied in reasonableness review of extended outages at Palo Verde Nuclear Generation Station.
Feb 1991	(Rehearing of D.90-09-088) Appeal for modification of the remedy methodology adopted pursuant to a finding of unreasonableness in SCE's purchase of power from its Mission Energy affiliate, Kern River Cogeneration Company.
Nov 1990	(BRPU) Testimony regarding proper auction format and utility ability to participate in generation bidding process.
June 1990	(A.88-12-035) Rebuttal testimony in the proposed merger of Southern California Edison and San Diego Gas and Electric rebutting certain allegations of misconduct and anti-competitive effects relative to Edison's dealings with QFs and its affiliate, Mission Energy Company.
May 1987	(OIR-2) Rebuttal testimony regarding incremental cost of capital, cost effectiveness, and payments to short-run standard offer QFs.
April 1987	Prepared Statement of John L. Jurewitz, before the California Public Utilities Commission En Banc Hearing on Baseline Rates, Santa Ana, California, April 27, 1987.
March 1987	(OIR-2) Testimony addressing various issues related to the implementation of Final Standard Offer No. 4 including updating, the QFs In/QFs Out valuation method, updating of Standard Offer No. 2 capacity prices, and miscellaneous coordination issues.
Oct./Nov. 1986	(OIR-2) Direct and rebuttal testimony respectively, regarding design and implementation of Final Standard Offer No. 4 related to pricing, adders, and allocation of contracts in the event of oversubscription.

TESTIMONY – Continued

BEFORE THE CALIFORNIA PUBLIC UTILITIES COMMISSION

Sept 1986	(OIR-2) Testimony regarding availability and updating of a potentially reinstated Standard Offer No. 2.
May 1986	(A.82-02-040) Testimony regarding the cost-effectiveness of San Onofre Nuclear Generating Stations No. 2 and 3.
Jan 1986	(OIR-2) Testimony regarding design and implementation of Final Standard Offer No. 4 related to inframarginal resources, pricing options, updating, and bidding.
Sept 1985	(OII 83-10-02) Testimony supporting the cost-effectiveness of making certain incremental plant investments at San Onofre Nuclear Generating Station No. 1.
Aug 1985	(OII 85-05-001) Testimony rebutting the use of avoided-cost ratemaking for Edison's share of Palo Verde Nuclear Generating Station.
July 1984	(OIR-2) Testimony proposing a methodology for calculating avoided costs based on a long-run marginal cost methodology.
May 1984	(A.82-02-40) Testimony rebutting a proposal to apply trended ratebase ratemaking to San Onofre Nuclear Generating Stations No. 2 and 3.
Dec 1983	(A.83-12-53: 1985 Test Year General Rate Case) Cost-effectiveness methodology and calculations for evaluating conservation and load management programs.
Dec 1983/ April 1984	(A. 83-12-53: 985 Test Year General Rate Case) Direct and rebuttal testimony respectively, regarding calculation of marginal costs and avoided costs.
March 1983	(A.82-02-40) Testimony rebutting the need to impose an operating incentive mechanism on San Onofre Nuclear Generating Stations No. 2 and 3.
Sept 1982 in	(OIR-2: A. 82-03-037) Testimony regarding the appropriate level of shortage costs for use calculating Edison's avoided cost of capacity.
July 1982	(OIR-2: A. 82-03-037) Testimony regarding level of Edison's avoided cost rates for use in Standard Offers No. 1, 2, and 3.
June 1982	(A.61138, 1983 Edison General Rate Case) Testimony rebutting CPUC Staff calculations of Edison's avoided costs.

May 1982 (A.61066 and A.61067) Rebuttal testimony addressing avoided cost calculation and appropriate discount rate to be used for evaluating proposed conservation financing programs.

TESTIMONY -- Continued

BEFORE THE CALIFORNIA ENERGY COMMISSION

April 1992 (Electricity Report 1992) Delivery of Edison's policy position at hearings on valuing out-of-state air emissions.

1986 – 1989 Oral testimony on three separate occasions regarding the cost-effectiveness methodology used for evaluating DSM programs.

BEFORE THE CALIFORNIA STATE LEGISLATURE

1989 – 1993 Oral testimony on numerous bills before the Assembly Committee on Utilities and Commerce, the Assembly Committee on Natural Resources, and the Senate Committee on Energy and Public Utilities.

Jan. 1990 Assembly Committee on Utilities and Commerce Informational Hearing on: "Why Are Residential Electric Bills So High?", Los Angeles, California.

Feb. 1992 (UM 409: Investigation into Electric Utility Incentives for Acquisition of Conservation Resources) Invited by Chairman Ron Eachus to participate in a panel to discuss decoupling and utility shareholder incentives for conservation.

Sept. 1994 Participant in "Workshop on Competition in Electric Services" (Docket No. U-0000-94-165)

BEFORE THE MICHIGAN STATE LEGISLATURE

Feb. 2004 "Electricity Restructuring: Past Lessons and Future Challenges", Testimony before the Technology and Energy Committee of the Michigan State Senate, Lansing, Michigan

BEFORE A PARLIAMENTARY COMMITTEE IN NEW ZEALAND

Mar. 2001 Regarding potential implications of California Electricity Crisis of 2000-2001 for the structure of competitive electricity markets in New Zealand.

REGULATORY FILINGS

Southern California Edison Company's Comments on Staff White Paper Titled "Renewable Energy Certificates and the California Renewables Portfolio Standard Program", filed with the California Public Utilities Commission, May 31, 2006, 24 pages.

Southern California Edison's Comments to the Interagency Task Force on Wholesale and Retail Electricity Competition, filed with the Federal Energy Regulatory Commission, November 18, 2005, 84 pages.

Response of Southern California Edison Company to Order Instituting Rulemaking to Assess and Revise the Regulatory Structure Governing California's Natural Gas Industry, filed with the California Public Utilities Commission (R. 98-01-011), March 23, 1998, 64 pages.

Comments of the Southern California Edison Company on the Division of Strategic Planning's Electricity Strategies Report, served to the California Public Utilities Commission, March 15, 1993.

Pre-filed statement of the Southern California Edison Company in Advance of the California Public Utilities Commission's En Banc Hearing on DSM (initiated California's DSM Collaborative Process), San Francisco, California, July 20, 1989.

Comments of the Southern California Edison In Advance of the Public Workshop to Consider Integration of Price and Non-Price Factors in Procuring QF Resources, filed with the California Public Utilities Commission, November 1988.

Comments of the Southern California Edison Company Regarding Notice of Proposed Rulemaking on Regulations Governing the Public Utility Regulatory Policies Act of 1978, filed with the Federal Energy Regulatory Commission (Docket No. RM88-17-000), October 27, 1988, 38 pages.

Comments of the Southern California Edison Company Regarding Notice of Proposed Rulemaking on Regulations Governing Bidding Programs, filed with the Federal Energy Regulatory Commission (Docket No. RM88-5-000), July 1988, 48 pages.

Comments of the Southern California Edison Company Regarding Notice of Proposed Rulemaking on Regulations Governing Independent Power Producers, filed with the Federal Energy Regulatory Commission (Docket No. RM88-4000), July 1988, 45 pages (with Ann P. Cohn).

Comments of the Southern California Edison Company Regarding Notice of Proposed Rulemaking on Administrative Determination of Full Avoided Costs, Sales of Power to QFs, and Interconnection Facilities, filed with the Federal Energy Regulatory Commission (Docket No. RM88-6-000), June 1988, 31 pages; Supplemental comments filed July 1988.

REGULATORY FILINGS – continued

Response of the Southern California Edison Company to FERC Staff's Whitepaper on Regulation of Independent Power Producers (EL87-67-000), November 1987, 71 pages.

Comments of the Southern California Edison Company Concerning the Implementation of Section 210 of the Public Utility Regulatory Policies Act of 1978, filed with the Federal Energy Regulatory Commission (Docket No. RM87-12-000), April 1987, 55 pages.

Comments of the Southern California Edison Company for the Commission's En Banc Proceeding on the Proposed Rulemaking to Revise Electric Utility Ratemaking Mechanisms (CPUC OIR 86-10-001), March 1987, 155 pages.

Response of the Southern California Edison Company to the Commission's Proposed Rulemaking to Revise Electric Utility Ratemaking Mechanisms (CPUC OIR 86-10-001), November 1986, 79 pages.

SPEECHES, CONFERENCE PAPERS, AND PRESENTATIONS

"In Search of a Robust Strategy for Governing Climate Change Adaptation", with Dan Mazmanian and Hal Nelson. Paper presented at The Governance of Adaptation—an International Symposium, Amsterdam, the Netherlands, March 22-23, 2012.

"The Paradox of 'Acting Globally While Thinking Locally': Discordance in Climate Change Adaptation Policy Formation", with Daniel Mazmanian and Hal Nelson, Annual Meeting of the REFORM Group, Salzburg, Austria, August 29 – September 2, 2011.

"California's Approach to Climate Change: Policy, Challenges, and Implementation", with Daniel Mazmanian and Hal Nelson, Annual Meeting of the REFORM Group, Salzburg, Austria, September 24-28, 2007.

"Decoupling and Energy Efficiency Incentives: The California Experience", presentation to the Edison Electric Institute's 2007 Spring Legal Conference, Charleston, South Carolina, April 16, 2007.

"Two Important Environmental Initiatives: GHG Control and the California Solar Initiative", presentation made to Meeting of SCE's Business Customer Division, March 6, 2007.

"Climate Change Policy: Leading the Way", presentation made to the Edison International Senior Leadership Offsite, Palm Springs, California, January 22, 2006.

"Russia on the Pacific: Oil, Gas, and Strategic Security", discussant at a symposium sponsored by The Pacific Basin Institute at Pomona College, November 14, 2006.

"California's Electricity Markets: Will Inconsistent Societal Demands Lead to Another Nervous Breakdown?", presentation in the Senior Colloquium Series, Pomona College, November 9, 2006.

"Current and Future Horizons in the Electric Power Industry: Public Policy, Regulation, Technology and Economics", presentation and discussion facilitation at the Customer Experience 2012 Workshops, an internal strategic planning workshop conducted by SCE's Customer Service Business Unit, Los Angeles, October 2, 2006.

"The California Electric Market: Between a Disastrous Past and an Uncertain Future", presentation to the Society of Depreciation Professionals Annual Conference, Long Beach, California, September 17, 2006.

"Greenhouse Gas Policy Initiatives in the United States", a conference paper delivered at the 2006 (11th) Annual Meeting of the Energy Reform Group, Salzburg, Austria, September 28, 2005.

"An Historical Overview of the Basic Statutory and Regulatory Foundations of the Electric Power Industry: How Did We Get the Way We are Today?", presentation made for the SCE Law Department's Minimum Continuing Legal Education (MCLE) program, April 19, 2006.

SPEECHES, CONFERENCE PAPERS, AND PRESENTATIONS -- Continued

"China, Energy, and U.S. National Security", discussant at a symposium sponsored by The Pacific Basin Institute at Pomona College, March 2, 2006.

"The Energy Policy Act of 2005: What's In It? What Does It Mean for the Electric Industry?", presentation made for SCE Law Department's Minimum Continuing Legal Education (MCLE) program, March 29, 2006.

"The U.S. Nuclear Power Industry: Past, Present and Possible Futures", a conference paper delivered at the 2005 Annual Meeting of the Energy Reform Group, Salzburg, Austria, September 30, 2005.

"California's Renewable Power Policies: An Exploration of the Evolution and Interaction of Multiple Incremental Policies", conference paper delivered at 18th Annual Western Conference of the Advanced Workshop in Regulation and Competition sponsored by the Center for Research in Regulated Industries at Rutgers University, Monterey, California, June 23, 2005.

"Resource Adequacy and Capacity Markets in California", presentation made at the EIX Senior Leadership Council Meeting, Newport Beach, California, April 8, 2005.

"Is Retail Competition Compatible with Generation Resource Adequacy?", presentation to the 2005 Current Issues in Utility Regulation conference sponsored by the New Mexico State University Center for Public Utilities, Santa Fe, New Mexico, March 22, 2005.

Panel Discussant at "China 21: Productivity, Pollution and Politics – A Conference on China's Environment", sponsored by the Pacific Basin Institute at Pomona College, March 4, 2005.

"The California 'Model': Can Some Semblance of Order Be Restored from the Chaos?", presentation to an EEI Member-only conference on Resource Procurement in Restructured Markets, Seattle, September 22, 2004.

"Resource Adequacy, Market Power, and Market-Based Rate Authority: Is There Trouble Brewing?", presentation and panel discussion sponsored by Edison Electric institute at NARUC's Summer Committee Meetings, Salt Lake City, July 10, 2004.

"Securing Adequate Investment Funds to Meet Consumer Needs in a Risk-Averse Financial Market", presentation made to the National Utility Commissioners/Wall Street dialogue sponsored by the Edison Electric Institute, New York City, May 6-7, 2004.

"Transmission Line Siting: Let FERC Do It – Or Not?", presentation made to the 4th Annual Western Energy Summit sponsored by the Arizona Chamber of Commerce, Phoenix, Arizona, April 23, 2004.

SPEECHES, CONFERENCE PAPERS AND PRESENTATIONS -- Continued

"'Avoided Costs' and Its Various Incarnations: 25 Years of Politicized Resource Evaluation", presentation made for SCE Law Department's Minimum Continuing Legal Education (MCLE) program, April 20, 2004.

"U.S. Electricity Restructuring: Past Lessons and Future Challenges", presentation made to visiting Executive and Advisory Boards of ENECO Energie (Netherlands), March 31, 2004.

"Competitive Retail Electricity Markets: Whither Restructuring?", presentation to the 2004 Current Issues in Utility Regulation conference sponsored by New Mexico State University Center for Public Utilities, Santa Fe, New Mexico, March 22, 2004.

"Basic Economics of Power System Supply Operations and Long-Term Planning", presentation for the SCE Law Department's Minimum Continuing Legal Education (MCLE) program, February 24, 2004.

"California's 'Second Wave' of Electricity Restructuring: What Will It Bring?", presentation to the Retail Market Summit, Lake Buena Vista, Florida, February 26, 2004.

"U.S. Electricity Markets and Restructuring: Where Are We Now and Where Are We Going?", presentation to the Executive Meeting of the State Business Roundtable, Carmel, California, October 16, 2003.

"Who Will Plan, Pay for and Construct New Generation Investments?, panel discussion at the Second Annual Energy Conference sponsored by Analysis Group, Chicago, October 29, 2003.

"Long-Term Resource Commitments: Can We Solve the Puzzle?", "Generation Resource Selection: How Do We Resolve the Build vs. Buy Decision?', and "Retail Competition: Is There A Sustainable Structure?", discussion kick-off presentations made to the Edison International Leadership Council Offsite, Santa Barbara, California, November 17-18, 2003.

"A Review of Electricity Restructuring in the U.S.", presentation to the Energy Reform Group, Salzburg, Austria, September 29, 2003.

"The Scene of the Disaster: A California Update", presentation to the 17th Annual National Low-Income Energy Conference, Sacramento, California, June 12, 2003.

"Emerging Issues in Power Procurement in Restructured Markets", presentation to the 16th Annual Western Advanced Workshop in Regulation and Competition sponsored by the Rutgers University Center for Research in Regulated Industries, San Diego, California, June 25, 2003.

"A Sick Industry: How Did We Fall Into This Hole, and How Do We Get Out?", presentation to the 2003 Mid-Year Meeting of the National Association of State Utility Consumer Advocates, Portland, Oregon, June 10, 2003.

SPEECHES, CONFERENCE PAPERS AND PRESENTATIONS -- Continued

"Major Issues Facing Utilities as Retail Power Suppliers", presentation to the 2003 Current Issues in Utility Regulation conference sponsored by New Mexico State University Center for Public Utilities, Santa Fe, New Mexico, March 18, 2003.

"The Electric Utility and Independent Power Businesses: Where From Here?", presentation to the Edison International Senior Leadership Council Offsite, La Quinta, California, March 27, 2003.

"We Have Seen the Future and It Doesn't Work", panel discussion at the Thirtieth Plenary Session of the Harvard Energy Policy Group, Palm Springs, January 30, 2003.

"Electricity Restructuring in the U.S.: An Update", presentation to New Zealand Energy Conference 2002, Wellington, New Zealand, October 7, 2002.

"Resource Procurement in Restructured Markets: A View from California", presentation to an EEI Member-Only Internet Conference on Resource Procurement in Restructured Markets, October 2, 2002.

"The Looming Crisis in Electricity Transmission", presentation to the Western Chapter of the Energy Bar Association, Napa, California, September 2002.

"Challenges in Designing Default Electric Service", presentation and paper delivered to the 16th Annual Western Advanced Workshop in Regulation and Competition sponsored by the Rutgers University Center for Research in Regulated Industries, Lake Tahoe, June 20, 2002.

"U.S. Nuclear Power Industry: Past, Present and Possible Futures", presentation and panel discussion at a conference on "A New Direction in Energy Policy: The Phase-Out of Nuclear Power and Climate Protection" sponsored by the German Federal Ministry of the Environment and the Free University of Berlin, Berlin, Germany, February 15-16, 2002.

"POLR Options: Services, Procurement, Consumer Flexibility, and Cost Recovery", presentation to the Workshop on POLR in Restructured Electricity Markets sponsored by Illinois State University, Springfield, Illinois, December 6, 2001.

"FERC's Market Power Standards and Market-Based Pricing Authority", presentation to the EEI Transmission Policy Task Force, Scottsdale, Arizona, November 30, 2001.

"Energy and Environment", panel discussion at the Fifth Annual Miller Forum on Government, Business and the Economy, "The New California: A Call to Action", sponsored by the School of Policy, Planning and Development at the University of Southern California, October 18, 2001.

"The Structure of the Electricity Industry in California and How Communities and Individuals Can Respond", presentation to an open meeting "Toward Sustainable Communities: It All Begins at Home", sponsored by the League of Women Voters and the Politics Department of Pomona College, Claremont, California, September 16, 2001.

SPEECHES, CONFERENCE PAPERS AND PRESENTATIONS -- Continued

"California's Electricity Crisis: What Went Wrong and Why?", presentation to the 70th Annual Conference of the Utility Purchasing Management Group, Orlando, Florida, September 11, 2001.

"California's Electricity Crisis: What Went Wrong and Why?", presentation to the 2001 Energy and Technical Services Conference, Cleveland, Ohio, September 9, 2001.

"Power Industry Performance and Investment Challenges: Restructuring Lessons from California and the U.S.", presentation to the Electricity Industry Reform Conference, Wellington, New Zealand, August 15, 2001.

"The California Power Market", and "The Role of Transmission in Workably Competitive Power Markets", presentation and panel discussion at EEI's Transmission Pricing School, Madison, Wisconsin, July 26, 2001.

"California's Electricity Crisis: What Went Wrong and Why?", presentation to the Florida Energy 2020 Study Commission, Orlando, Florida, May 31, 2001.

"California's Power Crisis: What Went Wrong and Why?", presentation to the joint AGA/EEI Accounting and Valuation Meeting, Denver, Colorado, May, 21, 2001.

"California's Power Crisis: What's Happened So Far?", and "California's Power Crisis: Causes and Remedies", "Anatomy of California's Electricity Crisis", presentations to the World Bank Seminar on the California Power Crisis, Washington, D.C., May 9, 2001.

"The California Power Crisis: A Dangerous Opportunity", panel discussion organized by the California Council of Churches, May, 5, 2001.

"Public Policy and the California Electricity Crisis: Can We Possibly Do Any Worse?", presentation to the Western Power Market Conference, Denver, Colorado, May 1, 2001.

"What Happened in California that Resulted in Skyrocketing Energy Prices? And What Should Be Done About It?", moderator of a debate at the 2001 Current Issues in Utility Regulation conference sponsored by New Mexico State University Center for Public Utilities, Santa Fe, New Mexico, March 26, 2001.

"Inside California's Electricity Crisis: What's Going On and Why?", presentation on EEI-sponsored internet E-Forum, March 22, 2001.

"California Electricity Restructuring: What's Going On and Why?", presentation to visiting German journalists, San Francisco, California, March 20, 2001.

"Anatomy of California's Electricity Crisis: How to Turn Crisis into Disaster", presentation to the Spring 2001 Meeting of the NARUC Staff Subcommittee on Accounting and Finance, San Antonio, Texas, March 19, 2001.

SPEECHES, CONFERENCE PAPERS AND PRESENTATIONS -- Continued

"The California Electricity Crisis: Causes and Lessons Learned", presentation made to various forums in Wellington, New Zealand, March 9-17, 2001.

"California's Energy Crisis: Who's to Blame and What to Do", panel discussion sponsored y the Claremont Graduate University Department of Economics, Claremont McKenna College, Claremont, California, March 5, 2001.

"California's Electric Industry Restructuring: An Overview", presentation to visiting Japanese delegation, February 26, 2001.

"Anatomy of California's Electricity Crisis: How to Turn Crisis into Catastrophe", Faculty Lecture Series, Pomona College, February 6, 2001.

"Anatomy of California's Electricity Crisis: How to Make a Bad Thing Worse", presentation to the Massachusetts Electric Restructuring Roundtable, Boston, Massachusetts, January 29, 2001.

"California's Electricity Market Crisis and the Potential Impact of RECLAIM", presentation to the South Coast Air Quality Management District Advisory Board, Diamond Bar, California, December 14, 2000.

"What Happened in California and Why?", presentation to the National Conference of State Legislatures, Energy and Transportation Committee, Washington, D.C., December 13, 2000.

"California's Electricity Restructuring: An Overview", presentation to visiting Chinese utility executives, December 12, 2000.

"Fear and Loathing on the California Grid", presentation to a Special Session of the Harvard Energy Policy Group, Houston, Texas, December 8, 2000.

"The California 'Earth Quake' and Its Aftershocks", presentation to the Iowa Utility Association's Industry Issues Conference, West Des Moines, Iowa, November 29, 2000.

"California's Electricity Market: Year 2000 Performance and Year 2001 Outlook", presentation to EEI's Internet E-Forum on "Will California's Restructuring Tremors Be Felt in Your Region", November 17, 2000.

"California's Electricity Deregulation Trainwreck", presentation to the Senior Economics Colloquium, Pomona College, Claremont, California, November 14, 2000.

"Default Supplier: What Structure Should We Choose?", presentation to EUCI conference on "Lessons Learned: Deregulation Progress Report", Denver, Colorado, October 27, 2000.

"An Overview of California's Electricity Restructuring", presentation to the Educational Conference conducted by the Vermont Public Service Board, Burlington, Vermont, October 24, 2000.

SPEECHES, CONFERENCE PAPERS AND PRESENTATIONS -- Continued

"What's Going on in California's Electricity Market?", presentation to the EEI E-Forum on State Restructuring, October 13, 2000.

"What's Going on in California's Electricity Markets?", presentation to the Economics Seminar of the Claremont Colleges, September 27, 2000.

"What's Going on in California's Electricity Markets?", presentation to the EEI's E-Forum on State Restructuring, August 24, 2000.

"The Continuing Regulation of Wires and Retailing in the California Restructuring Model", presentation to the international conference on "New Energy in a New Century", Oviedo, Spain, June 28-30, 2000.

"Utility-Sponsored DSM Funding and the Impact of Electric Industry Restructuring in California and the United States", presentation and paper delivered to the Fifth Annual Energy Experts Meeting on "new Directions in Energy and Climate Change Policies", Berlin, Germany, June 19, 2000.

"Consumer Protection in Restructured Electricity Markets: The Role of Default Provider", presentation to the 14th Annual National Low Income Energy Conference, Los Angeles, California, June 14, 2000.

"Southern California Edison's Distribution PBR", presentation to the EEI Workshop on Perfomance-Based Ratemaking, San Antonio, Texas, April 27, 2000.

"Retail Choice in California's Restructured Electricity Market", presentation to the 2000 Current Issues Challenging the Regulatory Process conference sponsored by New Mexico State University Center for Public Utilities, Santa Fe, New Mexico, March 14, 2000.

"Galloping Structural Changes in the U.S. Electric Power Industry", presentation to the Utility Communicators International Conference, Long Beach, California, January 27, 2000.

"Third-Party Metering, Billing and Information Services", presentation at the EEI Electric Advanced Course conducted by the Kelley School of Business at Indiana University, Indianapolis, Indiana, August 10, 1999.

"California's New Electricity Market: A Status Report", presentation to SCE's Outside Executive Council Meeting, Costa Mesa, California, April 26, 1999.

"Electricity Restructuring and the U.S. Nuclear power Industry", a presentation and paper delivered to the 1999 Meeting of the Reform Group addressing New Directions in Energy Policy, Liberalization, Corporate Strategies, and Green Energy, Salzburg, Austria, October 17-22, 1999.

SPEECHES, CONFERENCE PAPERS AND PRESENTATIONS -- Continued

"Evolving Structural Change and Business Strategies in the U.S. Electric Power Industry", a presentation and paper delivered to the 1999 Meeting of the Reform Group addressing New Directions in Energy Policy, Liberalization, Corporate Strategies, and Green Energy, Salzburg, Austria, October 17-22, 1999.

"Learning from the Experiences in the California Energy Market", presentation to a conference on Pricing, Hedging, and Measuring Energy & Power Risk sponsored by ICM, Houston, Texas, September 13-14, 1999.

"California's New Electricity Market: A Status Report", presentation to the 20th Annual North American Conference of the USAEE/IAEE, Orlando, Florida, August 30, 1999.

"An Overview of California's Electric Restructuring", a presentation to the Congressional Energy Forum sponsored by WEST Associates, Lake Tahoe, California, August 26, 1999.

"California's New Electricity Market: A Status Report", Executive Council Meeting (Edison Vendors), Costa Mesa, California, April 26, 1999.

"An Overview of California's Electric Restructuring", presentation to executives of Carolina Power & Light Company, Rosemead, California, March 25, 1999.

"Electric Utility Restructuring: Doing It Right for Consumers or Not at All", panel discussant at the 1999 Capitol Hill Conference sponsored by the National Association of State Utility Consumer Advocates, Washington, D.C., March 15, 1999.

"Basic Features of the Restructured California Electricity Market", presentation to the 1999 Current Issues Challenging the Regulatory Process conference sponsored by New Mexico State University Center for Public Utilities, Santa Fe, New Mexico, March 9, 1999.

"Market Power Issues in Restructured Electricity Markets", a panel discussion at a conference on Electricity Business Issues After Restructuring sponsored by the Alliance for Competitive Electricity to brief key U.S. Congressional Staff, Santa Fe, New Mexico, February 19, 1999.

"Is There a Missing Capacity Market? (and So What?)", presentation to the American Power Conference sponsored Illinois Institute of Technology, Chicago, Illinois, April 16, 1998.

"An Overview of Renewables Programs", presentation to the Faculty Lunch Seminar, Pomona College, April 14, 1998.

"Must-Run Generation: Can We Mix Regulation and Competition Successfully?", presentation and paper delivered to the POWER Conference on Electricity Industry Restructuring, Berkeley, California, March 20, 1998.

SPEECHES, CONFERENCE PAPERS AND PRESENTATIONS -- Continued

"An Overview of the California Electric Restructuring Plan", presentation to the NARUC Subcommittee on Accounts, San Diego, California, March 16, 1998.

"The New Marketplace: Restructuring Overview", presentation to the Annual AEE Energy Seminar, Long Beach, California, March 11, 1998.

"California's New Deregulated Electricity Market and the Mohave Generating Station", Mohave Information Meeting conducted by the U.S. Environmental Protection Agency, Clark County Government Center, Las Vegas, Nevada, January 8, 1998.

"Must-Run Generation: Can We Mix Regulation and Competition Successfully?", presentation to the 29th Annual Conference of the Michigan State University Institute of Public Utilities, Williamsburg, Virginia, December 4, 1997.

"Ensuring the Reliable Supply of Electricity in a Deregulated Market," presentation to conference on Wholesale and Retail Wheeling in North America, sponsored by Institute for International Research, Toronto, Canada, October 21, 1997.

"Implementing Retail Direct Access", presentation to Electricite De France, Rosemead, California, October 2, 1997.

"Preparing for Retail Access: Issues from the California Experience," presentation to Deloitte & Touche Energy/Utility Conference, Los Angeles, California, July 29, 1997.

"Where Are We Now and Where Are We Headed?", panel discussant at Infocast conference on Opportunities in the Competitive California Energy Market, San Francisco, California, July 14, 1997.

"Mitigating Local Market Power: The Problem of Must-Run Generation," presentation to the Advanced Workshop on Regulation and Competition, sponsored by the Center for Research in Regulated Industries at Rutgers University, San Diego, California, July 10, 1997.

"Fundamental Issues in Electric Industry Competition," presentation to Workshop on Electric Industry Competition, sponsored by the Hawaiian Public Utilities Commission, Honolulu, Hawaii, May 30, 1997.

"Anticipating and Preparing for Wholesale and Retail Access: The California Experience," presentation to conference on Restructuring Energy Industries in Quebec, sponsored by the Institute for International Research, Montreal, Canada, May 2, 1997.

"Structural Revolution in the Electric Power Industry", presentations to faculty and MBA seminars at Vanderbilt University, April 4, 1997.

"Mitigating Market Power: The Problem of Must-Run Generation", paper presented to Infocast conference on Market Power and Competition in Electricity, Washington, DC, February 27, 1997.

SPEECHES, CONFERENCE PAPERS AND PRESENTATIONS -- Continued

Panel participant in Renew America's Environmentally Sustainable Energy: A National Town Hall Meeting, sponsored by the South Coast Air Quality Management District, League of Women Voters, and Southern California Council on Environment and Development, February 19, 1997.

"California's Electricity Restructuring," presentation to annual meeting of Association of Energy Engineers, Long Beach, California, February 13, 1997.

"Anticipating Organizational Impacts of Electric Industry Restructuring," presentation to conference on Restructuring in the Electric Industry sponsored by Institute for International Research, the Canadian Electricity Association and the Canadian Energy Research Institute, Toronto, Canada, November 18, 1996.

"Using Generation PBR as a Bridge to Direct Access," presentation to conference on Performance Based Ratemaking and Market Driven Pricing, New Orleans, Louisiana, October 24, 1996.

"California's Electric Industry Restructuring: Implications for Environmental and Climate Change Policies," paper delivered to Climate Change Conference sponsored by Free University of Berlin in cooperation with the Ministry of Urban Development, Environmental Protection and Technology, Energy Task Force, Berlin, Germany, October 7, 1996.

"California's Electric Industry Restructuring," presentation to Conference on the Future of Water and Energy: A Perspective sponsored by Southern California Edison and American Water Works Association, Irwindale, California, September 26, 1996.

"Transmission Pricing: The California Model," presentation to Transmission Pricing Conference sponsored by Edison Electric Institute, Electric Utility Consultants, Stone and Webster Management Consultants, Vail, Colorado, September 13, 1996.

"Electric Restructuring: Can We Maintain Environmental Values?", presentation to WEST Associates Congressional Energy Forum, Santa Fe, New Mexico, August 19, 1996.

"Structural Change in the Electric Power Industry", presentation to NARUC Annual Regulatory Studies Program, East Lansing, Michigan, August 5, 1996.

"Moving from Monopoly to Competition: A Transitional Role for Performance-Based Ratemaking for Generation," presentation to Advanced Workshop on Regulation, Ninth Annual Western Conference, sponsored by Rutgers University Center for Research in Regulated Industries, San Diego, California, July 11, 1996.

"Effectively Restructuring Power Purchase Contracts, " presentation to Institute for International Research conference on Best Practices in Stranded Cost Recovery, Washington, DC, June 20, 1996.

SPEECHES, CONFERENCE PAPERS AND PRESENTATIONS -- Continued

"Exploring the CPUC Plan: Where Do We Go From Here?", panel discussion at Infocast conference on Preparing for Competitive Power in California, San Francisco, California, June 10, 1996.

"Generation PBR in a Pool Model," presentation to conference on Energy Restructuring and Alternative Ratesetting sponsored by Michigan State University Institute of Public Utilities, May 14, 1996.

"Moving from Monopoly to Competition: A Transitional Role for Performance-Based Ratemaking for Generation," presentation to the Fourteenth National Regulatory Conference, Beyond Ratemaking: Alternatives to Rate of Return Regulation, sponsored by the Virginia State Corporation Commission, The Administrative Law Section of the Virginia State Bar, and The Marshall-Wythe School of Law, Williamsburg, Virginia, May 6, 1996.

"The Restructuring of California's Electric Industry: A Utility Perspective", presentation to Federal Facility Council's Conference on Competition in the Electric Industry, Washington, DC, May 1, 1996.

"Shifting from Monopoly to Competition: A Transitional Role for Performance-Based Ratemaking for Generation," presentation delivered to AIC Conference on Performance-Based Ratemaking, Orlando, Florida, April 30, 1996.

"Edison's Non-Generation PBR," presentation delivered to conference on "Performance Based Ratemaking for Electric and Gas Utilities" sponsored by International Business Communications, San Francisco, California, April 25, 1996.

"California's Electric Industry Restructuring," presentation delivered to Department of Justice/Federal Trade Commission Electricity Workshop, Washington, DC, April 23, 1996.

"Shifting from Monopoly to Competition: The Role for a Transitional Performance-Based Generation Contract," presentation delivered at 1996 Power Fair sponsored by Enerdata, New Orleans, March 26, 1996.

"Utility Deregulation: The Utility Perspective," presentation delivered at WEST Associates Annual Information Meeting, Phoenix, March 15, 1996.

"Electric Industry Restructuring: Will It Follow the Natural Gas Model?," paper delivered at conference on "Current Issues Challenging the Regulatory Process" sponsored by the New Mexico State University Center for Public Utilities, Santa Fe, New Mexico, March 12, 1996.

SPEECHES, CONFERENCE PAPERS AND PRESENTATIONS -- Continued

"Stranded Cost Recovery: Let's Stay on a Principled Course," speech delivered to NASUCA's 1996 Capitol Hill Conference on "Restructuring the Electric Industry: What Are the Costs and Benefits to Consumers?," cosponsored by Energy and Power Subcommittee Chairman Dan Schaeffer, Rayburn House Office Building, Washington, D.C., February 29, 1996.

"Will We See the U.S. Power Industry Restructured Around Pool-Based Spot Markets," speech delivered to conference on "Preparing for the New Power Industry" sponsored by Infocast, Washington, D.C., February 12, 1996.

"Electric Industry Restructuring: An Update", presentation to the Edison Educational Advisory Council Meeting, Huntington Beach, January 11, 1996.

"Generation PBR as a Valuable Transition Mechanism in Industry Restructuring," presentation delivered at the 27th Annual Public Utilities Conference sponsored by Michigan State University and NARUC, Williamsburg, Virginia, December 12, 1995.

"Cooperative Federalism," roundtable panelist, Illinois Electricity Policy Summit sponsored by the Illinois Commerce Commission, Northwestern University, November 28-29, 1995.

Participant, Working.Group Meeting of the Stanford Energy Modeling Forum, Palo Alto, November 9-10, 1995.

"Using Generation PBR as a Valuable Transition Mechanism in Industry Restructuring," presentation delivered at 1995 Power Forum and Power Mart, San Diego, October 24, 1995.

"Edison's Performance-Based Ratemaking Proposal for T&D", presentation delivered at conference on "Regulating Wires and Pipes: Surely We Can Do Better," London Business School, London, October 20, 1995.

"Conceptual Issues in Defining, Identifying, and Recovering 'Stranded Costs,'" presentation delivered at conference on "Valuing and Recovering Stranded Costs" sponsored by the Center for Business Intelligence, Washington, D.C., September 21, 1995.

"California's Electricity Restructuring: Taking Stock of Where We Stand and Defining a Transitional Role for Generation PBR," a paper delivered at the Annual Conference of the Western Economic Association International, San Diego, July 7, 1995.

"Electricity Restructuring: Can't We Just Follow the Natural Gas Model?," paper delivered at Rutgers Advanced Workshop in Regulation and Public Utility Economics, Eighth Annual Western Conference, San Diego, July 6, 1995.

SPEECHES, CONFERENCE PAPERS AND PRESENTATIONS -- Continued

"The Role of 'Incentive' or 'Performance-Based' Ratemaking in a Restructured Electricity Industry," presentation delivered at 18th International Conference of the International Association of Energy Economists, Washington, D.C., July 6, 1995.

"Future Trends in Regulation and Competition in the Electric Power Industry", presentation delivered at 21st Annual Rate and Regulation Symposium, "Competitive Utility Services and the Changing Function of Regulation," cosponsored by the public utility commissions of Kansas, Missouri, and Oklahoma; St. Louis, Missouri, May 17, 1995.

Participant in conference on "Public Policy Responsibilities and Electric Industry Restructuring: Shaping the Research Agenda," sponsored by Department of Energy and Oak Ridge National Laboratory, Chicago, April 3-4, 1995.

"Electric Industry Restructuring in California," presentation delivered at conference on "Retail Competition and Restructuring Conference," sponsored by Electric Utility Consultants, Inc., Denver, March 30, 1995.

"Electric Industry Restructuring: Wither Regulation?," presentation delivered at conference on "Current Issues Challenging the Regulatory Process," sponsored by the Center for Public Utilities at New Mexico State University, Santa Fe, New Mexico, March 13, 1995.

"How Would a Highly Competitive Power Market be Organized?," presentation delivered at conference on "Power Industry Finance: The Impact of Competition" sponsored by Infocast, New York City, March 6, 1995.

Speaker in Closing Roundtable Discussion, at Conference on "New Horizons in Electric Power Deregulation," cosponsored by the Cato Institute and the Institute for Energy Research, Washington, D.C., March 2, 1995.

"Electric Restructuring: Wholesale and Retail Competition," presentation delivered at Conference on Restructuring in the Electricity Industry sponsored by the Institute for International Research, Toronto, Canada, February 23, 1995.

"California's 'Blue Book': Restructuring the Electric Utility Industry," presentation made to the EEI Economics Committee, San Francisco, January 26, 1995.

"Extending Lessons Learned in Restructuring Natural Gas Markets to the Electric Power Industry," a paper co-authored with Curtis Cramer of the' University of Wyoming and delivered at the annual meeting of the American Economic Association, Transportation and Public Utility Group, Washington, D.C., January 6, 1995.

"Recent Developments in California: Implications for Transmission Pricing," speech delivered at Transmission Planning and Pricing Conference sponsored by Electric Utility Consultants, Inc., and Coopers and Lybrand, Denver, Colorado, November 9, 1994.

SPEECHES, CONFERENCE PAPERS, AND PRESENTATIONS – continued

"Performance Based Ratemaking and Electric Industry Restructuring," remarks delivered to Seminar on Regulating in a Market Environment jointly sponsored by NARUC and EEI, Washington, D.C., October 31, 1994.

"Performance Based Ratemaking," a speech delivered to the Conference on the Changing Regulatory and Competitive Environment of Electric Utilities in Kentucky, sponsored by the University of Kentucky College of Business and Economics and the Kentucky Public Service Commission, Lexington, KY, October 18, 1994.

"Utility Strategic Planning in a Direct Access Power Market," presentation made at the INFOCAST Conference on California's New Direct Access Power Market, San Francisco, California, September 22, 1994.

"Retail Direct Access: What It Means," speech delivered at Vision 2002: The Future of California's Competitive Electric Market sponsored by Pacific Coast Operators Group, San Francisco, CA, September 16, 1994.

"Current Experiences with Innovative Incentives in the Electric Industry," a speech delivered at the "Carrots and Sticks" Conference sponsored by the Center for Regulatory Studies and Institute of Governmental and Public Affairs, Chicago, Illinois, April 28, 1994.

"Retail Wheeling: Why the Proponents Must Bear the Burden of Proof," speech delivered to the NMSU Conference on Current Issues Challenging the Regulatory Process, Santa Fe, New Mexico, March 15, 1994.

"The Changing Structure of the Electric Utility Industry," speech delivered at the NMSU conference on Current Issues Challenging the Regulatory Process, Santa Fe, New Mexico, March 14, 1994.

"The Energy Policy Act and the Changing Structure of the Electric Industry," speech delivered to the Edison Electric Institute's Visual Communications Annual Meeting, Long Beach, CA, January 26, 1994

"Retail Wheeling: Why the Proponents Must Bear the Burden of Proof," speech delivered to Retail Wheeling Conference sponsored by Electric Utility Consultants and National Economic Research Associates, Denver, Colorado, November 8, 1993.

"The Prospect for Electric Industry Structural Change Following the Energy Policy Act," presentation delivered to EEI's Annual Senior Middle Management Seminar, Newport Beach, CA, May 27, 1993.

"Transmission Access: Business Opportunities and Challenges," speech delivered to the Electric Utility Business Environment Conference, Denver, Colorado, March 16, 1993.

SPEECHES, CONFERENCE PAPERS, AND PRESENTATIONS – continued

"Externalities and Electric Utilities -- Updating the California Experience," a presentation made at the NMSU conference on Current Issues Challenging the Regulatory Process, Santa Fe, N.M., March 16, 1993.

"Implications of the Energy Policy Act for the West," a presentation made at Newsdata Flightline Forum on the National Energy Policy Act, Portland, OR, January 29, 1992.

"The Electricity Title of the Energy Policy Act of 1992: What Changes Will It Bring to the Electric Industry?", a paper delivered at the Annual Meeting of the American Economics Association, Anaheim, California, January 6, 1993.

"Recent Environmental Initiatives By Electric Utility Regulators: A Utility Management Perspective," a presentation made at INFOCAST Conference on Externalities and Electric Power, Washington, D.C., October 26, 1992.

"Recent Environmental Initiatives by Electric Utility Regulators: A Utility Management Perspective," a paper co-authored with Robin J. Walther and presented at the Western Economics Association annual meeting, San Francisco, CA, July 11, 1992.

"Transmission Policy and the Evolving Electricity Industry," presentation delivered to conference on Advanced Topics In Utility Regulation, a course of instruction for the staff of the California Public Utilities Commission by the University of California at Berkeley, Asilomar, California, June 1992.

"Incorporating Environmental Externalities in Electric Resource Planning," a speech delivered at NewsData Western Region Flightline Forum, "Externalities: Reckoning Environmental Energy Costs," Seattle, Washington, May 29, 1992.

"The Implementation of Environmental Adders in California's BRPU Proceeding: Nth Best Environmental Policy, Protective Tariff, or QF Pork Barrel," a paper and presentation presented at New Mexico State University's Center for Public Utilities' Conference on Current Issues Challenging the Regulatory Process, Santa Fe, New Mexico, March 8-11, 1992.

"Decoupling, ERAM and DSM Shareholder Incentives: Regulatory Practices in California," a presentation delivered at EXNET's conference on "Incentive Regulation: The New Regulatory Compact," Washington, D.C., March 19-20, 1992.

"Southern California Edison's Perspective on Transmission Issues," a presentation delivered at Smith Barney, Harris Upham's "Utility Transmission Seminar," Boston, Massachusetts, February 4, 1992.

SPEECHES, CONFERENCE PAPERS, AND PRESENTATIONS – continued

Acted as co-facilitator with David Moskovitz in workshop on "Ratemaking and Economic Analysis" at a conference on "Photovoltaics for Utilities: Developing a National Photovoltaic Strategy for Utilities," sponsored by EEI, EPRI, DOE, NARUC, NASUCA, et al., Tucson, Arizona, December 8-10, 1991.

"Federal Transmission Access Legislation: The View from a Utility Manager," a paper and speech delivered at Electric Utility Planning Conference, Denver, Colorado, November 21, 1991.

"DSM Bidding and Economic Efficiency," a paper delivered at Rutgers Center for Research in Regulated Industries, Advanced Workshop in Regulation and Public Utility Economics, San Diego, California, July 8-10, 1991.

"Pricing Transmission Access," a paper and speech delivered at Electric Utility Planning Conference sponsored by Electric Utility Consultants, Inc., and University of Denver Environmental Policy and Management Program, Denver, Colorado, June 20-21, 1991.

"Wholesale Transmission Access: Facing the New Realities," a paper and presentation delivered at New Mexico State University's Center for Public Utilities' Conference on Current Issues Challenging the Regulatory Process, Santa Fe, New Mexico, March 12, 1991.

"Future Transmission Access: Issues and Policies," an invited paper and speech delivered at the Ninth Annual Meeting of the Independent Energy Producers, Fallen Leaf Lake, California, October 23, 1990.

"Pricing and Access in Bulk Power Markets", presentation to the NARUC Annual Regulatory Studies Program, Lansing, Michigan, August 1990.

"When Avoided Costs Become an Endogenous Variable: Emerging Problems in California," a paper delivered at Rutgers Center for Research in Regulated Industries, Advanced Workshop in Regulation and Public Utility Economics, San Diego, California, July 1990.

"Current Pricing Challenges in the Electric Industry," a presentation delivered at New Mexico State University's Center for Public Utilities' Conference on Advanced Analysis of Pricing and Utility Revenues, San Francisco, California, June 6, 1990. "Electric Transmission Problems and Perspectives," a presentation delivered at 16th Energy Technology Conference, Washington, D.C., March 1, 1989.

"The Possibilities for Better Mexico-U.S. Energy Cooperation in the Context of World Petroleum Oversupply," a panel discussion conference on "Neighbors in Crisis: A Call for Joint Solutions," sponsored by University of California Consortium on Mexico and the United States (UC MEXUS), February 9, 1990.

"Utility Incentives and Demand Side Management," a presentation made to the California DSM Collaborative, Oakland, California, October 26, 1989.

SPEECHES, CONFERENCES PAPERS AND PRESENTATIONS -- Continued

"Transmission Access: A Survey of Current Proposals," a presentation to the EEI System Planning Committee, Key Biscayne, Florida, October 25, 1989.

"Transmission Access and Pricing", presentation to the NARUC Annual Regulatory Studies Program, East Lansing, Michigan, August 1989.

"Transmission Pricing Issues," a paper presented at NARUC's 20th Annual Williamsburg Conference, "New Regulatory Concepts, Issues and Controversies," Williamsburg, Virginia, December 5-7, 1988.

"The Role of Competition in Providing Future Electric Capacity," a presentation delivered at New Mexico State University's Center for Public Utilities' Conference on "The Electric Industry in Transition: A Roadmap to the Future," El Paso, Texas, September 11-14, 1988,

"The Electricity Transmission Access Debate," a paper delivered at Rutgers Center for Research in Regulated Industries, Advanced Workshop in Regulation and Public Utility Economics, Monterey, California, July 1988.

"Interconnection and Wheeling Issues: The IOU Perspective," a paper delivered at conference on "Assuring Our Energy Future: A Symposium on Electricity Competition," sponsored by the California Energy Commission in association with The Institute of Governmental Affairs, University of California, Davis, California, June 30, 1988.

"Competition: Where Is It Coming From? How Extensive Is It?", a presentation delivered at New Mexico State University's Center for Public Utilities' Conference on "Current Issues Challenging the Regulatory Process," Albuquerque, New Mexico, April 22, 1988.

"Competition, Pricing, and Structural Change: A Management Perspective," a presentation delivered at NARUC Advanced Regulatory Studies Program, Williamsburg, Virginia, February 1988.

"Electricity Bypass: What Is It? What Should Be Done About It?", a presentation delivered at the RETSIE/IPEC conference on Energy Technologies in Transition, Anaheim, California, June 2, 1987.

"Is It Fair to Second Guess Management?", a paper delivered at New Mexico State University's Center for Public Utilities' Conference on "Current Issues Challenging the Regulatory Process," Albuquerque, New Mexico, April 22, 1987,

"Value-Based Pricing: Industry's Response," a paper delivered at New Mexico State University's Center for Public Utilities' Conference on "Current Issues Challenging the Regulatory Process," Albuquerque, New Mexico, April 15, 1986.

SPEECHES, CONFERENCE PAPERS AND PRESENTATIONS – Continued

"The Development of Cogeneration Policy in California," speech delivered to the IEEE Power Engineering Society, Monterey Park, California, January 14, 1986.

"An Econometric Evaluation of Electricity Demand Reductions Resulting from Water Heater Insulation Blankets and Low-Flow Shower Heads," co-authored with Paul T. Hunt, Jr., a paper presented at the Western Economics Association Annual Meeting in Los Angeles, July 1982.

"A Conditional Demand Analysis of Electricity End Use in the Household Sector," co-authored with Paul T. Hunt, Jr., a paper presented at the Western Economics Association Annual Meeting in San Francisco, July 1981.

EXPERT REPORT

of

Dr. James E. Faulds

State Geologist/Director/Professor

Nevada Bureau of Mines and Geology, University of Nevada, Reno

May 2013

I have been asked by the Attorney General's office of the State of Nevada to provide testimony in the case of Southern California Edison vs. The State of Nevada, Department of Taxation, pertaining to the period from March 1998 to December 2000.

I. Qualifications

I received my Bachelors of Science in Geology (with highest honors) from the University of Montana in 1981, Masters of Science in Geology at the University of Arizona in 1986, and Ph.D. in Geology at the University of New Mexico in 1989. Following completion of my education, I held postdoctoral research positions at the University of Nevada, Las Vegas and at the University of Southern California. From 1991 to 1997, I served as an Assistant Professor in the Department of Geology at the University of Iowa. In 1997, I joined the faculty at the Nevada Bureau of Mines and Geology (NBMG) at the University of Nevada, Reno, as a Research Geologist and Professor. In February 2012, I was appointed Director of NBMG and State Geologist.

I began studying the geology of Nevada in 1985 as part of my dissertation research. From 1985 to 1997, most of my work was focused in southern Nevada and adjoining states. After joining NBMG in 1997, I began working in other parts of Nevada and have since conducted projects throughout many parts of the State. I specialize in structural geology and tectonics (i.e., how the Earth's crust deforms), the stratigraphy of the Great Basin region (i.e., the many different rock units that comprise Nevada and neighboring states), and the controls on geothermal systems (i.e., what fault patterns and rock units provide favorable conditions for geothermal activity). I have also studied crustal deformation in other parts of the world, including Europe, western Turkey, and New Zealand. Much of my research has focused on how fault systems initiate and evolve through time. I have published widely on the geology of the Great Basin region (see attached curriculum vitae).

I have taught courses in structural geology, tectonics, geothermal exploration, and field geology, including directing UNR's geology field camp for 5 years. I have also served as advisor for about 20

graduate students since 1992. In addition, I have served as President of the Nevada Petroleum and Geothermal Society and was recently elected as a fellow with the Geological Society of America.

My work experiences and education have given me substantial expertise on the geology of Nevada and much of the western U.S. This includes substantive knowledge of Nevada's natural resources (e.g., mineral deposits, petroleum, and geothermal) and natural hazards (e.g., earthquakes and floods).

II. Scope of Testimony

The Attorney General's office of Nevada has requested that I provide testimony on the general availability of coal resources from Nevada.

Coal Resources in Nevada.

Coal is a type of sedimentary rock formed by the burial and consolidation of plant material originally deposited in low-lying wetland areas, such as swamps or lagoons. It typically requires millions of years to form. As the low-lying area further subsides, the original plant material is buried under younger layers rock layers, such as sand and silt. The plant-rich layers are then protected from biodegradation and oxidation by acidic water and mud. Due to relatively deep burial, the plant material is compressed and subjected to higher pressures and temperatures. This process slowly converts the plant material to coal.

Coal primarily consists of carbon and lesser amounts of hydrogen, oxygen, nitrogen, sulfur, and other elements. It usually occurs as distinct layers, beds, or seams in rock strata. Depending on the local conditions, coal can be mined underground or in open pits (e.g., strip mining).

Coal is ranked on the basis of carbon and volatile content. The rank increases with greater carbon content and lesser volatiles (e.g., oxygen and hydrogen). In ascending order, these ranks include lignite, sub-bituminous, bituminous, and anthracite. The extractable energy from coal (e.g., BTU's) increases with ascending rank.

Due to the geologic conditions in the past 300+ million years, Nevada lacks any significant coal deposits. Based on the reports by Horton (1964) and Garside and others (1980), there are no known coal deposits in Nevada of sufficient size to feed a commercial electrical power plant. Attempts have been made to mine small coal deposits near Elko and in Esmeralda County, but known beds are less than a few feet thick and discontinuous. Horton (1964, p. 53) stated that "without exception the coal deposits of Nevada are too small and too impure to support significant mining...The high ash content and low heating value even makes local use questionable as mining costs probably would be greater than the cost of coal delivered from Utah." Similarly, Garside and others (1980, p. 1) stated that "it is obvious from this study that Nevada has only minor coal resources; the total tonnage is very small, its quality is poor, and it is mostly in small, difficult-to-mine seams". I am not aware of any further investigations or reports on coal resources in

Nevada. The lack of more recent reports is understandable given the limited extent of coal resources in Nevada. It is notable that the historic production of coal from Nevada is so small that production figures have not been reported. Accordingly, there is no recorded production of coal in Nevada from 1998 to 2000 or during the entire life of the Mohave Generating Station.

The geologic conditions that have precluded development of significant coal resources in Nevada have also limited formation of large oil and gas deposits. Oil has been produced primarily in two areas — Railroad Valley in Nye County and Pine Valley in Eureka County. The Railroad Valley area has been the most prolific and has historically produced 20.3 and 12.5 million barrels from the Grant Canyon and Trap Spring fields, respectively. However, compared to other parts of the U.S., few exploration wells have historically been drilled in the state (less than 1,000 wells, or less than one well per 111 square miles). In 2000, oil production in Nevada represented only 0.01% of total U.S. production (Price and others, 2001).

References:

Garside, L.J, and Papke, K.G., 1980, A preliminary first stage study of Nevada coal resources: Nevada Bureau of Mines and Geology Open-File Report 80-5, 73 p.

Horton, R.C., 1964, Mineral and water resources of Nevada (Chapter on Coal): Nevada Bureau of Mines and Geology Bulletin 65, p. 49-53.

Price, J.G., Meeuwig, R.O., Tingley, J.V., LaPointe, D.D., Castor, S.B., Hess, R.H., and Davis, D.D., 2001, The Nevada mineral industry 2000: Nevada Bureau of Mines and Geology Special Publication MI-2000, 63 p.

James E. Faulds, Ph.D.

5-21-13
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BRIAN SANDOVAL
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ALAN R. COYNER
Administrator

Report of
Alan R. Coyner, Administrator
Nevada Division of Minerals

May 13, 2013

I have been asked by the Attorney General's Office of the State of Nevada to provide expert witness in the case Southern California Edison v. The State of Nevada, ex. rel. Department of Taxation. The case pertains to tax periods March 1998 to December 2000. I am currently the Administrator of the Nevada Division of Minerals (NDOM) and I was the Administrator of NDOM during the period 1998 to 2000.

I am an employee of the State of Nevada and receive my normal state salary and per diem for work on this case.

Mines Registry
Nevada statute NRS 513.073 requires NDOM to maintain a register of all mining operations and operations for the production of oil, gas and geothermal energy in the State and to record annually the production of each registered operation. I was responsible for the mine registry for the years 1998 to 2000.

Electrical Energy Production in Nevada
Mineral production in Nevada that was or could have been used for the production of electricity in the years 1998 to 2000 is limited to; 1) oil and gas, and 2) geothermal energy. Coal and uranium occur in Nevada in only very minor quantities and neither has been mined on a scale that could support a commercial electric power plant. No production of coal or uranium was reported to NDOM during the years 1998 to 2000. Other forms of alternative energy (wind, solar, and biomass) are not reported to NDOM, but to my knowledge no commercial power plant production from these sources occurred during the years 1998 to 2000.

Oil and Gas Production
The amount of oil and gas produced in Nevada can be found in the publication "Mineral Industries of Nevada" which is published annually by the Nevada Bureau of Mines and Geology (NBMG). The amount of production given in the NBMG publications is based on the mine registry maintained by NDOM. The majority of Nevada's oil and gas production comes from fields in the Railroad Valley near Ely, Nevada. A lesser amount comes from a field in Pine Valley near Carlin, Nevada.

For the years 1998 to 2000 the following amounts of oil and gas production were reported:

Year	Oil in Barrels	Gas in Thousands of Cubic Feet
1998	778,770	8,658
1999	705,980	7,987
2000	620,651	6,752

Dennis Bryan; *Small-Scale Mining and Prospecting*
Richard DeLong; *Large-Scale Mining*
Johnny Stout; *Oil and Gas*

Commission on Mineral Resources
Fred D. Gibson, Jr., Chairman; General Public

John Mudge; *Large-Scale Mining*
David Parker; *Exploration and Development*
John H. Snow; *Geothermal Resources*

Nevada's oil production accounted for about 0.03% of U.S. production in the years 1998 to 2000, based on data from the U.S. Energy Information Administration. Most of the crude oil was refined in a small refinery in Railroad Valley, although some may have been trucked to Salt Lake City for refining. While some refined products may have been used in Nevada to produce electricity on a small scale at an isolated mine or ranch, to my knowledge none was used as fuel to produce electricity in a commercial power plant in Nevada. Further, no oil pipelines are available in Railroad Valley or Pine Valley. Only truck or a combination of truck and rail could be used to transport the crude oil or refined oil products.

Nevada's natural gas production accounted for about 0.000040% of U.S. production in the years 1998 to 2000, based on data from the U.S. Energy Information Administration. The natural gas was used at one oil field in Railroad Valley near Ely to operate production equipment in the oil field. This is an insufficient amount of natural gas to be used as fuel to produce electricity in a commercial power plant in Nevada. Further, no natural gas pipelines or compression facilities are available in Railroad Valley to transport the natural gas.

Geothermal Energy

The amount of geothermal energy produced in Nevada can be found in the publication "Mineral Industries of Nevada" which is published annually by the Nevada Bureau of Mines and Geology (NBMG). The amount of production given in the NBMG publications is based on the mine registry maintained by NDOM. During the years 1998 to 2000 the geothermal energy used for the commercial production of electricity was produced at ten sites in the northern portion of the state.

For the years 1998 to 2000 the following amounts of geothermal energy production were reported:

Year	Nameplate Capacity (Megawatts)	Production Capacity (Megawatts)	Gross Production (Megawatthours)	Net Production (Megawatthours)
1998	242.4	210.5	1,630,579	1,326,851
1999	237.5	211.5	1,599,040	1,288,649
2000	242.5	216.5	1,572,958	1,257,781

During the years 1998 to 2000 Nevada was second in geothermal energy production in the U.S. During those same years, California was first in geothermal energy production. The commercial production of electricity from geothermal energy is highly dependent on the temperature of the geothermal fluids. The electricity must be produced at the site where the geothermal fluids are extracted. Further, the geothermal power plant must be connected to the electrical grid infrastructure, which is a challenge in rural Nevada.

Alan R. Coyner

5/13/13

Alan R. Coyner Date

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IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

SOUTHERN CALIFORNIA EDISON,

Plaintiff,

vs.

THE STATE OF NEVADA, *ex rel.* DEPARTMENT OF TAXATION,

Defendant.

Case No. 09-OC-00016 1B

Department No. I

DEFENDANT'S SUPPLEMENT TO SECOND REBUTTAL EXPERT DISCLOSURE

The State of Nevada, *ex rel.* its Department of Taxation, through its attorneys, Catherine Cortez Masto, Attorney General; Gina C. Session, Chief Deputy Attorney General; and Andrea Nichols, Senior Deputy Attorney General, hereby supplements its Second Rebuttal Expert Disclosure pursuant to NRCP 16.1(a)(2) and the Court's Amended Pretrial Order filed October 7, 2013.

///

///

The Expert Report of J. Steven Gardner, PE, PS, is attached hereto as Exhibit 1.

DATED this 14th day of November, 2013.

CATHERINE CORTEZ MASTO
Attorney General

By: _____
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on this 14th day of November 2013, I served a copy of the foregoing **DEFENDANT'S SUPPLEMENT TO SECOND REBUTTAL EXPERT DISCLOSURE** via email and by depositing for mailing at Carson City, Nevada a true and correct copy thereof in first class mail, postage prepaid, addressed as follows:

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EXHIBIT 1

EXHIBIT 1

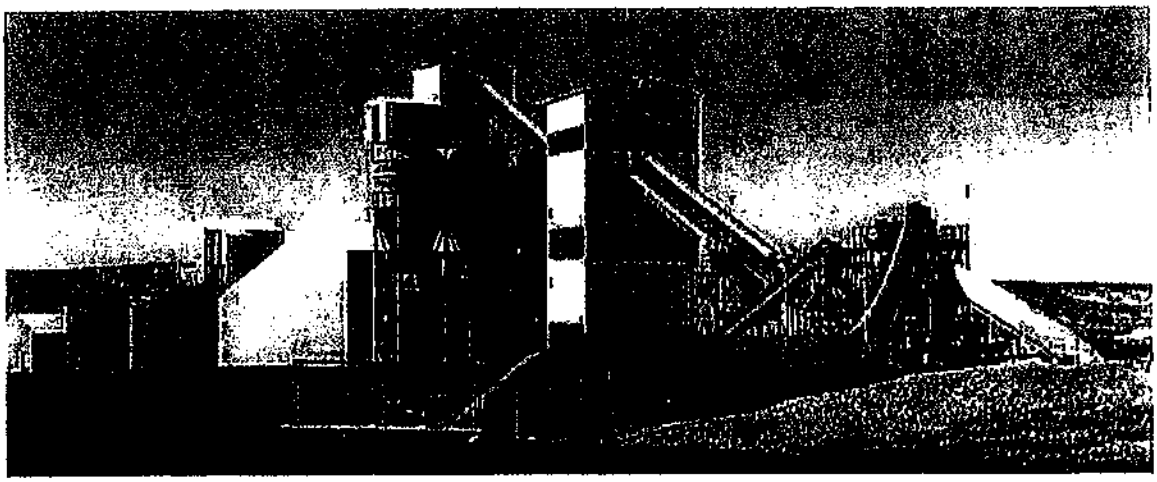
Expert Report of J. Steven Gardner, PE, PS
November 14, 2013

Rebuttal of
Ralph W. Barbaro Report dated March 19, 2012

The First Judicial District Court of the State of Nevada

Case No. 09-0C-00015-1B

SOUTHERN CALIFORNIA EDISON
VS
THE STATE OF NEVADA, EX REL. DEPARTMENT OF TAXATION



Black Mesa Coal Preparation Plant, 1971

J. Steven Gardner, PE, PS
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EXECUTIVE SUMMARY

ECSI, LLC (ECSI) and J. Steven Gardner, PE, PS were retained by the Nevada Office of the Attorney General to provide expert opinion, testimony and other litigation support in the matter of *Southern California Edison v. The State of Nevada, ex rel. Department of Taxation*; First Judicial District Court of the State of Nevada; Case No. 09-0C-00016-1B. ECSI was specifically tasked with evaluating whether the fuel delivered to the Mohave Generating Station via the Black Mesa Pipeline was coal enhanced by preparation and processing after being mined and prior to being transported to the Mohave Generating Station.

It is ECSI's assessment that the engineered fuel product delivered to Southern California Edison Company from the Black Mesa Mine in Arizona via the Mohave Project coal slurry pipeline was a processed, enhanced, engineered fuel material and not run-of-mine coal. Consequently, Nevada Department of Taxation aptly denoted this deviation from coal by categorizing this engineered material as "coal slurry product." This report provides support for the conclusion that the coal mined at the Black Mesa Mine was altered and enhanced coal preparation to form a coal slurry, or in other terms a processed and/or manufactured product. A list of the documents reviewed and relied upon by ECSI in forming this opinion is attached hereto as Appendix A.

QUALIFICATIONS

J. Steven Gardner holds a Bachelor's degree in Agricultural Engineering (now Biosystems), a Masters degree in Mining Engineering and an Environmental Systems Certification from the University of Kentucky. He is a licensed Professional Engineer in several states. His career began in 1975 with coal mining operations in Eastern Kentucky owned by Bethlehem Steel where he worked on projects involving mining operations, coal preparation, coal refuse and slurry areas and environmental issues associated with mining. During his career he has worked for and owned consulting firms, been a partner in mining operations and served on a volunteer mine rescue team.

Since Mr. Gardner founded ECSI over thirty years ago, the firm has prepared thousands of mine plans and permit actions throughout the U.S. and abroad ranging from small underground mines, to large scale longwall and multi-seam surface mines. ECSI has also provided a multitude of multi-disciplinary services for preparation plant facilities with refuse and slurry disposal areas. Providing professional environmental and mining engineering services for over 38 years, Mr. Gardner's consulting practice focuses on mine planning and design, environmental permitting, mine reclamation, mine feasibility, reserve analysis, environmental, health and safety issues, environmental site analysis and design, sensitive land use issues and MSHA coal slurry modifications. He has participated in projects throughout the U.S. coalfields as well as internationally in South America and Africa.

In 2010 ECSI became part of the Ecology and Environment, LLC (E & E) family of companies. E & E is a publically traded corporation (NASDAQ: EEI) with offices worldwide. E & E employs specialists in more than 100 scientific, engineering, and technical disciplines, based in offices in major cities across the United States and around the globe. Their client lists include governments, commercial industries and multinational corporations, and multilateral development banks worldwide. Since its founding in 1970, E & E has provided practical solutions to human health and environmental problems for over 50,000 assignments in over 122 countries.

Mr. Gardner has served and is active in many professional organizations. He is Chairman of the Government and Public Affairs Committee of the Society of Mining, Metallurgy and Exploration's (SME), and has been nominated as the Society's 2015 President. He served as a Board Member (8 years) and past Chairman of the Kentucky Board of Licensure for Professional Engineers and Surveyors. He is a member and past Chairman of the University of Kentucky's Mining Engineering Foundation and in 2011 was named to the College of Engineering's Hall of Distinction. The Governor of Kentucky appointed him to serve on the Kentucky Geological Survey Advisory Board and he also serves on UK's Biosystems and Agricultural Engineering Advisory Board. Mr. Gardner's Resume is attached hereto as Appendix B.

HISTORY OF THE BLACK MESA PROJECT

The Black Mesa region of Arizona, near Four Corners, is home to both Navajo and Hopi tribes. The region is host to one of the largest coal deposits in the United States, with an estimated 21 billion tons of coal reserves.

Peabody Western Coal Company began mining at the Black Mesa Mine in 1968, utilizing traditional dragline and truck/shovel area surface mining techniques. The run-of-mine coal is delivered to a preparation plant, where it is altered prior to being transported to the Mohave Generating Station in Laughlin, NV via a 273 mile long coal slurry pipeline. Peabody pumped over a billion gallons of water from the Black Mesa aquifer each year to produce the coal slurry product transported by the pipeline; the removal of this water was a major source of controversy for the operation due to its scarcity in this arid region.

The slurry product pumped from the mine processing plant to the Mohave Generating Station ***Is not run-of-mine coal and must be altered at the preparation plant before introduction into the pipeline***. Coal slurry is a finely crushed and sized coal mixed with sufficient water to form a fluid. The slurry is then placed in a pipeline where it is sent to the end-user for drying and dewatering before it can be used as a fuel. See Figure 1 for the location map for the complete Black Mesa Project.

The Black Mesa mining, processing, and pumping system is discussed in detail in the journal, "Coal Mining and Processing," February 1971 issue. The complete article is provided in Appendix C.

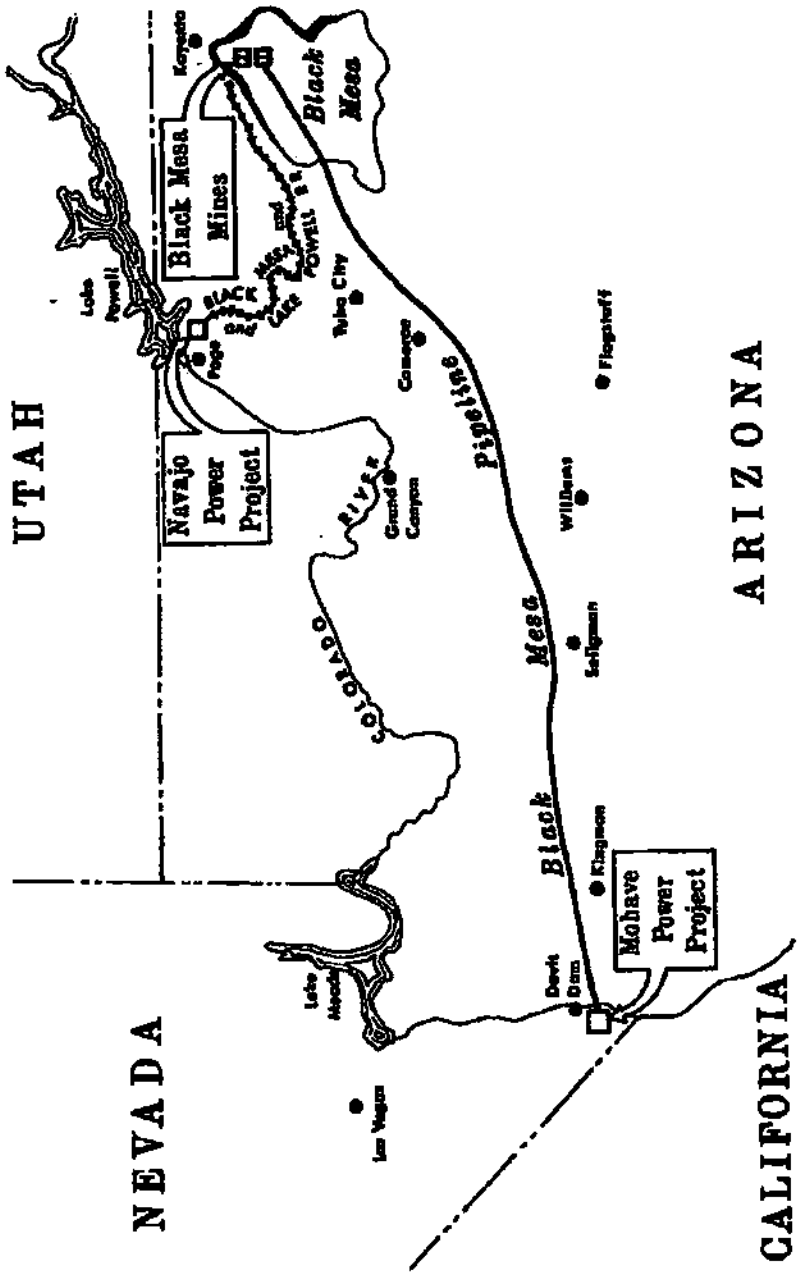

Figure 1. Location map of the Black Mesa project, showing the mine, pipeline, and Mohave Power Station. ("Coal Mining and Processing" Feb 1971)

MINING VS. POSTMINING OPERATIONS

There is a clear distinction between what constitutes a mining versus a postmining process. The overall sequence of activities involved in modern mining can be expressed as *stages in the life of a mine*. There are four: prospecting, exploration, development, and exploitation. The latter two stages constitute *mining proper* and are the germane terms for this report.

Development of the mine is the stage of mine life where the coal or ore deposit is opened up for production. This stage includes the following:

- Acquisition of mining rights
- Financing and budget
- Permits, environmental impact assessments
- Construction of transportation infrastructure
- Location and construction of surface facilities
- Excavation of ore deposit

Exploitation of the mine is production of coal or ore on a large scale, which includes several factors: geologic, geographical, economic, environmental, societal and safety. Exploitation is also dependent on the type of mining method employed, being surface mined (open pit, open cast, etc.) or underground mined (room and pillar, block caving, longwall, etc.).

Postmining Operations include all of the steps in processing raw coal or minerals that occur following extraction, including storage and transportation, processing, and sales and marketing. Coal or mineral processing is a postmining operation for cleaning or washing, pulverizing, blending (in this case with water and other chemicals to create slurry) or any other process to prepare the mineral for market. These processes are distinctly different from development and exploitation/extraction of the mineral.[1]

COAL PREPARATION AND PROCESSING

Coal is a solid, sedimentary rock composed primarily of carbon from prehistoric plant material. Coal is generally hydrophobic, which means it repels water. Water introduced to the surface of coal will bead up and fine coal does not mix well with water. The creation of a coal and water based slurry that will remain blended while being pumped 273 miles requires the product to be engineered, controlling the coal particle size distributions, the solids to liquids blending, the resistance to settling and

[1] Hartman, Howard, SME Mining Engineering Handbook, 2nd Edition, Volume 1 pp. 27-37 (1992)

deposition, and the chemical corrosive properties of the slurry. This slurry is created in a coal preparation plant that removes impurities and facilitates long-distance pipeline transportation. The Black Mesa coal slurry fuel product should not be confused with the more common coal ***refuse*** slurry which is a fine waste product generated at some coal preparation plants and disposed of in slurry impoundments (similar to tailings impoundments).

The first sentence in the Introduction for the 5th Edition of Coal Preparation, 1991, states that; "The purpose of coal preparation is to improve the quality of coal to make it suitable for a specific purpose by (1) cleaning to remove inorganic impurities; (2) sizing-crushing or screen, or both; and (3) special treatment, such as dedusting." Coal Preparation is the generally accepted industry term describing this process of improving the quality of coal or any mineral after mining to create a processed and/or manufactured product. A selection of technical definitions for key terms related to the coal mining and preparation processes discussed in this report is provided below.

From the Dictionary of Mining, Mineral, and Related Terms, 1st Edition, 1967:

> *Preparation Plant*: Strictly speaking, a preparation plant may be any facility where coal is prepared for market, but by common usage it has come to mean a rather elaborate collection of facilities where coal is separated from its impurities, washed and sized, and loaded for shipment. Syn: cleaning plant. *Coal Slurry*: Finely crushed coal mixed with sufficient water to form a fluid. To use coal slurry pumped through a pipeline as fuel, expensive drying and dewatering pretreatment has been necessary. Recent tests indicate that coal slurry can be fired in a cyclone furnace as it is received from a pipeline; i.e., a coal and water mixture. *Preparation*: (a) The treatment of ore or coal to reject waste.
>
> *Run-of-mine*: A. The raw coal (or ore) as it is delivered by the mine cars, skips, or conveyors and prior to treatment of any sort. *See also* ROM. Nelson. B. *N.S.W.* Average grade of ore produced from a mine. *New South Wales*

From the Coal Mining Reference Book, Sixth Edition, 2012:

> *Preparation Plant*: A place where coal is cleaned, sized, and prepared for market.
>
> *Processing*: (a) The methods employed to clean, process, and prepare coal and metallic ores into the final marketable product. (Nelson, 1965) (b) The various artificial methods adopted for strengthening a soil, such as compaction, treatment with bitumen, lime, cement, etc.

Pulverize: To reduce (as by crushing or grinding) to very small particles (as in fine powder or dust).

Run-of-mine: Raw material as it exists in the mine; average grade or quality

From the Dictionary of Mining, Mineral, and Related Terms, Second Edition, 1996:

> *Run-of-mine:* (a) The raw mined materials as it is delivered by the mine cars, skips, or conveyors and prior to treatment of any sort. See also: pithead output. (Nelson, 1965) (b) Average grade of ore produced from a mine. (New South Wales, 1958) (c) Said of ore in its natural, unprocessed state; pertaining to ore just as it is mined. (AGI, 1987)

Processing and preparation of the coal mined at Black Mesa took place at a preparation plant near the mine before the coal was sent via slurry pipeline to the Mohave Generating Station. In his report dated March 19, 2012, Mr. Barbaro concludes that the coal which arrived at the Mohave Generating Station was simply coal rather than a coal slurry product. This assertion is inaccurate since run-of-mine coal is a solid which can be burned, whereas slurry is a processed coal product that must be dried and dewatered prior to use as a fuel. Mr. Barbaro's assertion that conversion to coal slurry from coal did not change the coal into some other product is inaccurate. While the Mohave plant burned coal, Mr. Barbaro misses a crucial series of steps that occurred between extraction of the coal and the burning of the coal. Namely:

- The run-of-mine coal was processed to remove impurities, as rock was separated from the coal by twin Pennsylvania rotary breakers, then discharged into a 60-ton bin, and hauled back to the mine pit for disposal (See Figure 2);[2]
- the coal was then pulverized to a fine consistency;
- the coal was then blended with water creating a coal slurry prior to being transported to the power station (See Figure 3);
- chemicals were blended with the slurry to inhibit corrosion and prevent clumping of the coal slurry in the pipeline;
- upon receiving the coal slurry product, the power station had to dewater and dry the coal back to a usable solid product prior to use as fuel; and
- the delivered water (a component of the coal slurry) was also purchased as part of the coal supply contract and utilized by the power plant in its generation process.

[2] "Coal Mining and Processing," Feb 1971

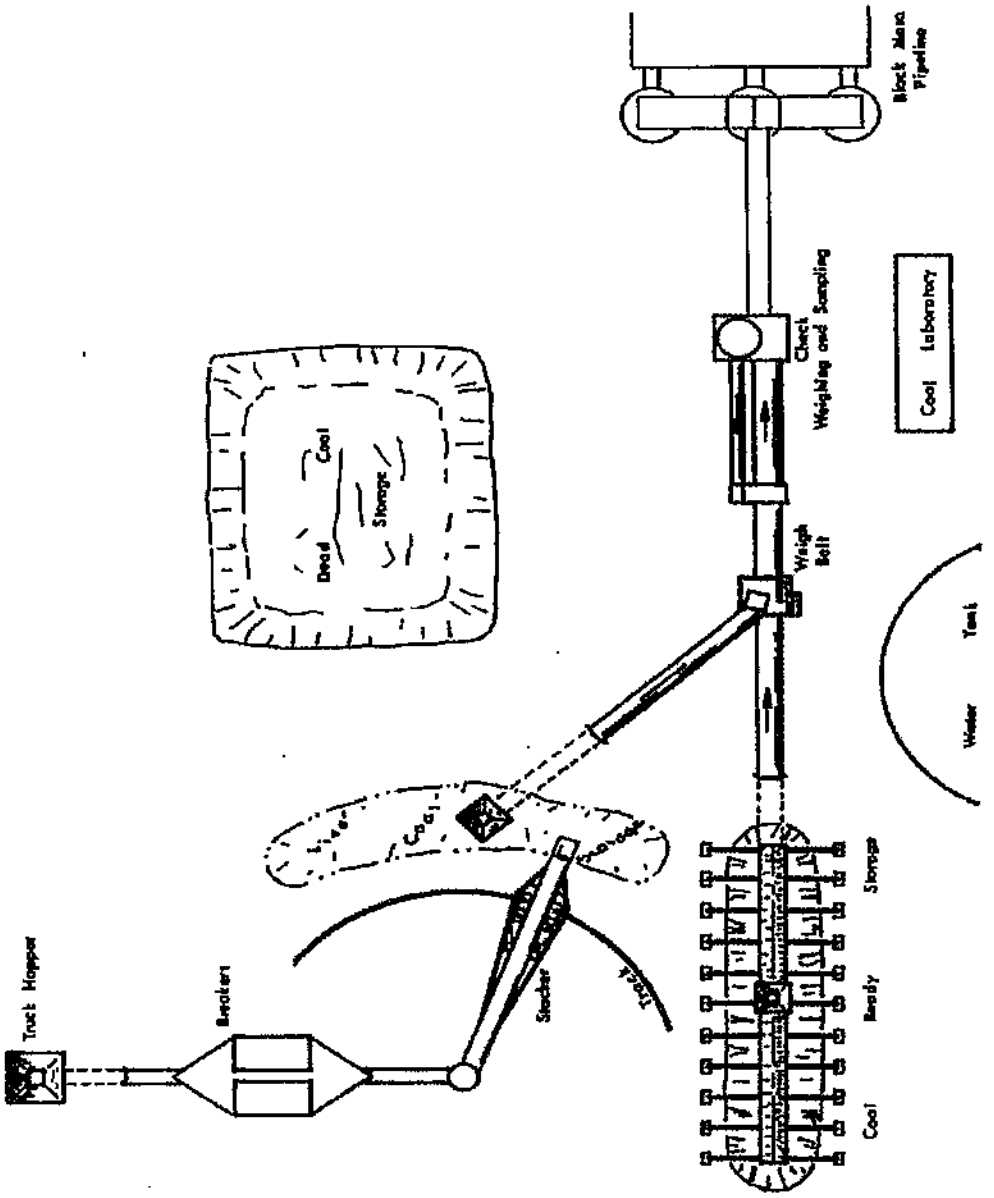

Figure 2. Layout of the preparation plant coal delivery system. The run-of-mine coal is delivered to the truck hopper and fed into the rotary breakers, where the coal is sized to 2" x 0" and rock is removed to be sent back to the mine pit for disposal. The 2" x 0" coal is stockpiled in the live coal storage, coal ready storage, or the dead coal storage areas. ("Coal Mining and Processing" Feb 1971)

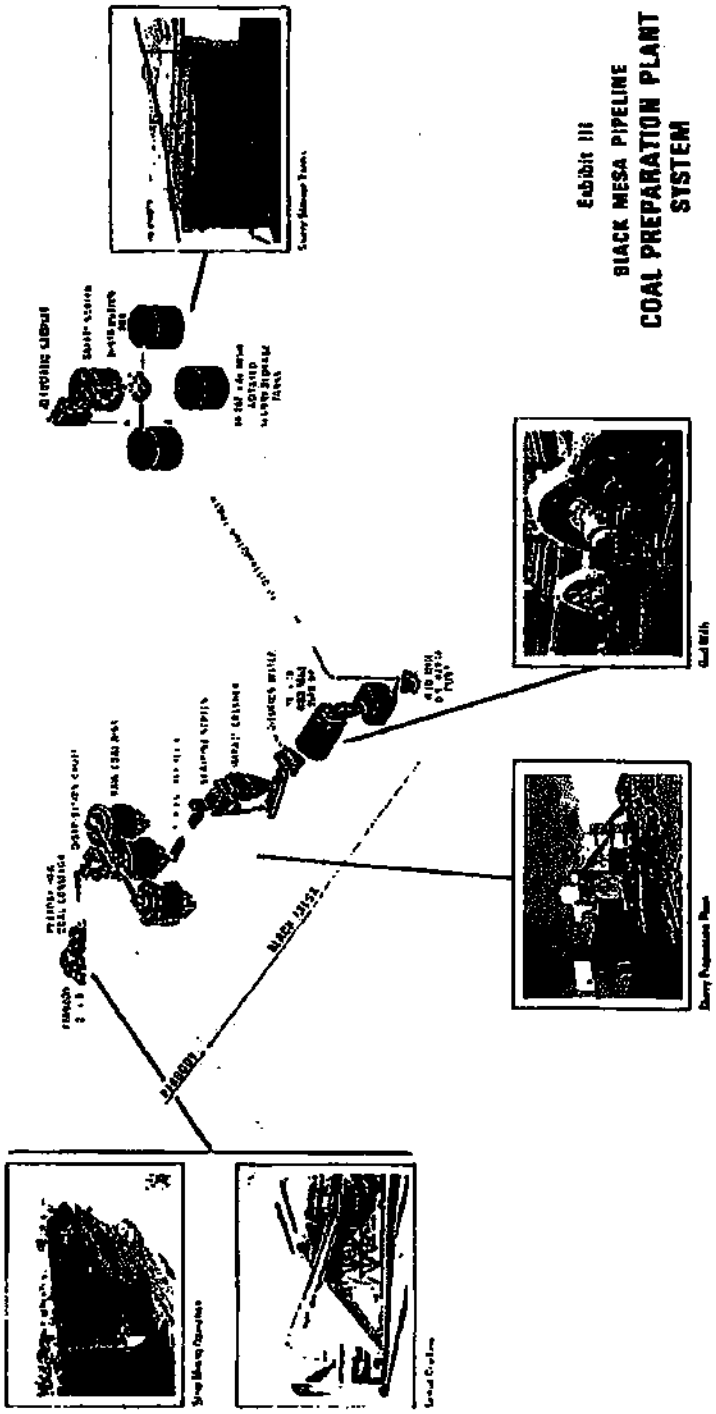

Figure 3. The Black Mesa preparation plant ("Terminal Facilities for Western Coal Slurry Pipelines" 1976).

Coal is highly variable with respect to the physical and chemical properties that affect its use. Industries that use coal specify a range of properties that are required for their intended process. Coal suppliers try to find coals that most closely match those requirements. Coal is processed in order *to prepare a material that meets the customer's needs* and is as homogenous as possible. Samples of coal from both cores and mines are taken to determine the treatment that must be performed. Preparation plants that perform specific processing functions are constructed as near as possible to the location where the coal is mined.[3]

Three kinds of processes may be performed at the preparation plants: (1) sizing, controlled by a crushing and screening process, (2) increasing heating value, by removing noncombustible ash and rock by gravity separation, (3) removing or controlling undesirable mineral and chemical components (sulfur, sodium, and trace elements) by a combination of gravity separation and blending. In the specific case of the Mohave Generating Station, they had a specific coal stock requirement calling for slurry.

Payment for the Mohave Project coal is based on the dry tonnage and quality of the coal product prior to conversion to slurry in the preparation plant. However, the "Amended Mohave Project Coal Supply Agreement" (May 26, 1976) recognizes the altered state of the delivered fuel by clarifying in §4.01 (A) that "Title to the **coal, slurry and water** [emphasis added] shall pass to Buyers at the point of such delivery," which is in reference to the terminus of the pipeline at the Mohave Generating Station. The Mohave Generating Station takes ownership of this amalgamated coal slurry product in toto at their generating plant, not just coal as Mr. Barbaro's report would attempt to lead one to believe.

Details provided in §2.3 of the "Amended Coal Slurry Pipeline Agreement" (May 26, 1976), specify tight sizing control requirements and water/solid blending ratios for the minus 14 mesh material transported in the slurry pipeline. This material is engineered so that fluid turbulence (fluid agitation) induced by the pumping process and the frictional interaction with the pipeline walls will maintain suspension of fine particles, maximize product delivery, minimize cost, and balance increased flowability with minimizing the wear and deterioration on the pipe sections and pipeline components.

Treatment chemicals are added to further alter the properties of the slurry. The "Coal Slurry Pipeline Agreement" (January 6, 1967) under §4.3 (b)(2) lists the three components that comprise the "Operating Material Index" used to adjust operating material costs. The first of the three components listed is the Wholesale Price Index of Sodium Bichromate. This was changed in the "Amended Coal Slurry Pipeline Agreement" (May 26, 1976); there are still three components which are now listed in §4.3 (a)(2), however the Sodium Bichromate was replaced with Sodium

[3] http://www.uky.edu/KGS/coal/beneficiation.htm

Tripolyphosphate as the price index to adjust the "Material Operating Index." These two chemicals are recognized coal slurry additives that further change the chemical properties of the coal slurry product to inhibit corrosion, and prevent the fine particles from clumping. Rai, C (1985) also wrote about the use of the chemical additive Calgon T G-10 in that, "...Black Mesa pipeline has used this corrosion inhibitor on a regular basis with very satisfactory results."

The resulting slurry has unique properties that are neither inherent to the solid coal nor to the fluid water. Most hydraulic materials do not exhibit the physical behaviors exhibited by coal slurry products. The slurry is *thixotripic*; thick and hard to move when at rest, but becomes less thick and easier to move when it is agitated. It is also *pseudoplastic*; reverts back to the thick and hard to move state when agitation is removed. These properties are not properties of the coal or the water, but rather hydraulic properties of a processed coal slurry product.

The preparation of the coal in this case was performed to separate specific constituents to provide the end user with the product specified under the coal supply agreement. The coal at issue in this case was processed for the end user by crushing, removing impurities, and converting the solid coal to a fluid for the purposes of improvement, refinement and facilitetion of transportation.

COAL TRANSPORTATION

Transformation of the coal to a slurry product provided benefits to the purchaser of the fuel, especially in the form of transportation cost savings. The pipeline transportation takes 2 ½ days to pump the coal slurry product from Black Mesa to the Mohave Generating Station. To transport raw, run-of-mine coal to the power plant via railroad or truck over 270 miles would have meant a significant increase in transportation cost over the life of the project. To transport the coal from the Black Mesa Mine to the generating station over such a distance by any method other than creating a coal slurry product and moving it through a slurry pipeline would have significantly increased delivered fuel and operating costs. To move the coal by unit train would have involved the building of 150 miles of new railroad and a total haul of 408 miles. The pipeline, shortened the distance to 273 miles, dependably moved the equivalent of 1.5 unit train loads every day.[4]

[4] *The longest, largest coal slurry pipeline ever built*, Coal Mining and Processing magazine, June 1971 p. 37

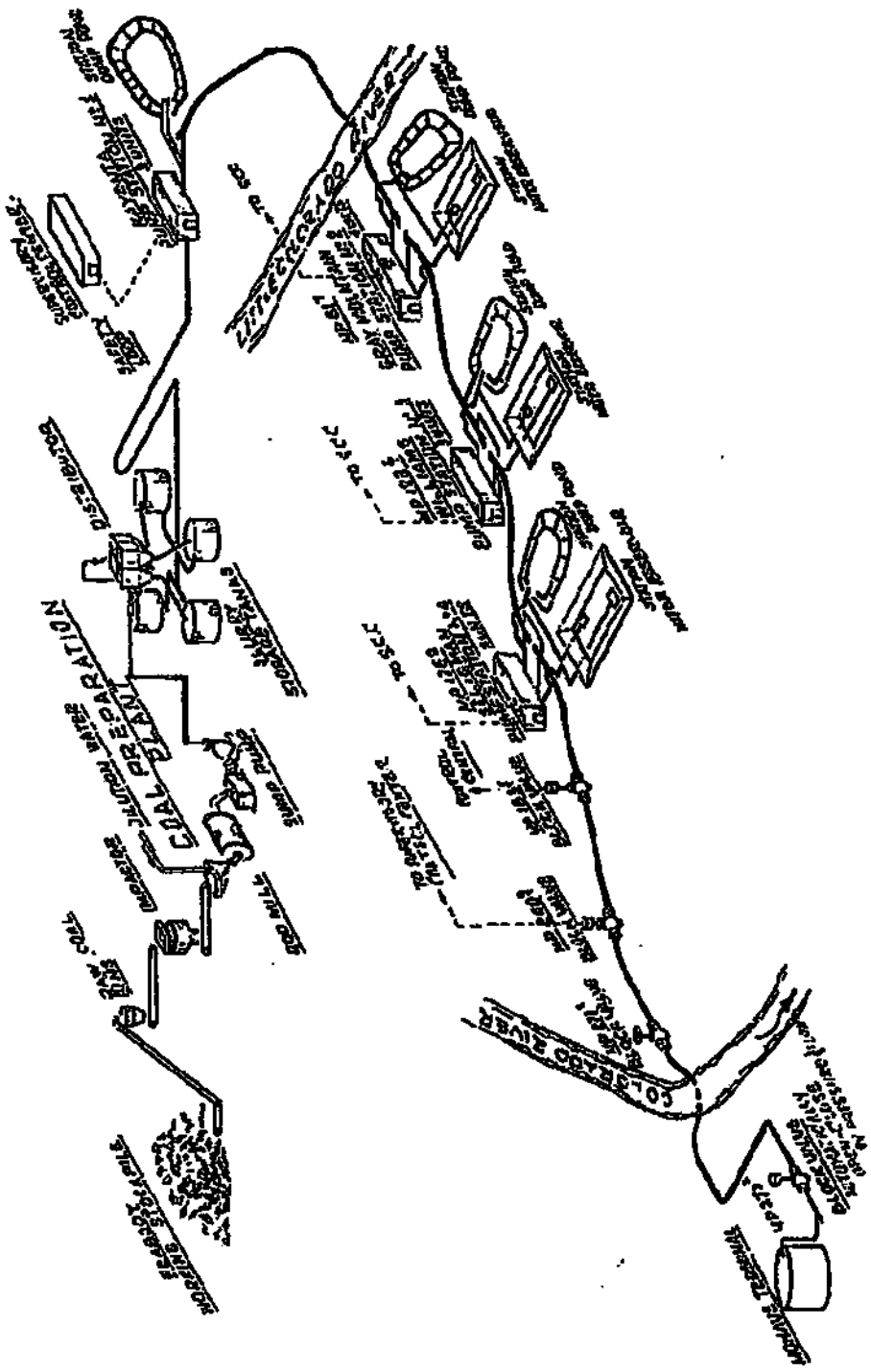

Figure 4. Schematic of the Black Mesa preparation plant and 275 mile pipeline slurry delivery system to the Mohave Generation Station Terminal.
(SME Mining Engineering Handbook, 1973)

MOHAVE GENERATING STATION

The Mohave Generating Station, a 1,580 MW coal fired power plant, shut down in 2005 as a result of a Clean Air Act lawsuit and is in the process of being dismantled. Mohave was the sole customer of the Black Mesa Mine. Without a customer and also due to water availability issues to create the slurry, Peabody idled the Black Mesa Mine. Until its suspension, the Black Mesa mining operation produced about 4.8 million tons of coal annually, all of which was utilized by Mohave Generating Station.

Removing the water from the coal slurry product to finally create the desired fuel product feed for the Mohave Generating Station required additional, costly dewatering and processing equipment. However, the Mohave Generating Station was able to use the water recovered from the slurry in its power generation process. Water is extremely scerce in the area where the generating station was sited and it requires a tremendous amount of water to operate a 1,580 MW coal fired power plant for steam and cooling. (See Figure 5).

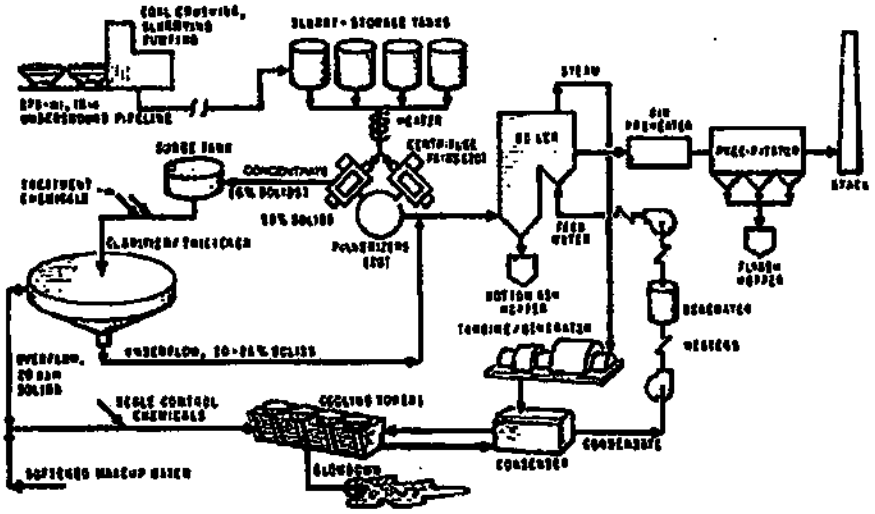

Figure 4-6. Wastewater treatment and reuse for a one-way coal slurry pipeline [4]

Figure 5. Source - http://www.che.utexas.edu/course/che359&384/lecture_notes/topic_3/coal_transportation.ppt

SUMMARY AND CONCLUSIONS

The coal that arrived at the Mohave Generating station lost its identity as "coal," per se, and was a coal slurry product. The coal was:

- crushed and sized;
- impurities were removed;
- finely pulverized, and
- blended with water and other chemicals ***to form an engineered fluid,*** **coal slurry.**

The resulting slurry was transported via the long-distance pipeline to the power plant. The process of converting the run-of-mine coal to slurry requires coal preparation processes. The fluid transported in the pipeline was an altered and enhanced coal slurry product that required further dewatering to concentrate the solids into a usable fuel, making it a processed and/or manufactured product.

COMPENSATION

Mr. Gardner's Resume is included in Appendix B. His standard rate is $250/hour.

Appendix A. DOCUMENTS REVIEWED

Deposition of Paul Phelan – Marla D. Sharp – 5/13/13 – Los Angeles, CA – PG 1 to 121 – **5-13-13 – Southern – Phelan – Compressed**

Deposition of Paul Phelan – Debora L. Cecere – 4/5/13 – Reno, Nevada – PG 1 to 55 – **Phelan depo**

Contract to terminate water user contract No. 14-06-300-1877 – 3/1/93 – PG 1 to 6 – **19930301 Termination of Water User Contrat 14-06-300-1877 and 14-06-300-1876**

Contract for the provision of water to Mohave generation station – 3/1/93 – PG 1 to 29 – **19930301 Contract fro the Provision of Water Mohave Generating Station**

Water User Contract Assignment 2 – Between (Department of water and power of the city of Los Angeles and Southern California Edison Company) – 5/29/67 – **19670529 Water User Contract Agmt 2 Dept of Water Power and City of LA Southern CAL Edison**

Colorado River Commission of Nevada and Southern California Edison Company Water Use Contract – (Original 7/15/66 and Revised 9/12/66) - PG 1 to 25 – **19661026 Water User Contract CRC SO Cal Edision 14-06-300-1877**

United States Department of the interior Bureau of Reclamation Boulder Canyon Project Contract for Delivery of Water – (Original 7/15/66 and Revised 9/12/66) – PG 1 to 28 – **19661026 USDOI BOR BCP Contract for Delivery of Water 14-06-300-1876**

Amended Mohave Project Coal Supply Agreement (Between Peabody Coal Company and Southern California Edison Company, Department of Water and Power of the City of Los Angeles, Nevada Power Company, Salt River Project Agricultural Improvement & Power district) – 5/26/76 – **Amended Coal Supply Agreement**

Mohave Project Coal Supply Agreement (Between Peabody Coal Company and Southern California Edison Company) – 1/6/67 – **Coal Supply Agreement 1-6-67 [1-25]**

Coal Slurry Pipeline Agreement (Between Peabody Coal Company and Black Mesa Pipeline, INC.) – 1/6/67 – **Coal Supply Agreement 1-6-67 [26-44]**

Black Mesa Pipeline: Slurry Transportation Technology FAQ – 12/2/03 – PG 1 to 4 – **Article-Black Mesa Pipeline**

Supreme Court of the United States Association of Data Processing Service Organizations, INC., et al., Petitioners V. William B. Camp, Comptroller of the Currency of the United States, et al. – (Argued 11/18/69, and decided 3/3/70) – PG 1 to 11 – **AssocDataPRoc**

Memorandum of Administrative Guidelines and Review of Factors for 1985 (Between Southern California Edison Company and Peabody Coal Company – 3/26/85 – PG SCE11774 to SCE11864 – **SCE Peabody Admin Guidelines**

Application of an electric field to enhance the flow of coal-water slurries in pipelines. D.D. Patil, R.J. Snow, S.N. Bhattacharya, C.U. Jones. *Minerals & Metallurgical Processing*. April, 2000. Melbourne, Victoria, Australia. PG 25 to 28.

The Black Mese Project. *Coal Mining & Processing*. February, 1971.

Black Mesa studies to resume, slurry appears dead. Marley, Shebala. *Navajo Times*. April 17, 2008

Coal Slurry Pipelines: The ETSI Project. Coffey, George & Partridge, Virginia. *International Right of Way Association*. August, 1982. PG 11 to 16

Comparative Coal Transportation Costs: An Economic and Engineering Analysis of Truck, Belt, Rail, Barge and Coal Slurry and Pneumatic Pipelines. Center for Advanced Computation. August, 1977. Urbana, Illinois.

Concept and performance of coal-log pipelines. J.W. Wilson and T.R. Marrero. *Journal of The South African Institute of Mining and Metallurgy*. October, 1993. PG 267 to 271.

Discovery and Development of Peabody Coal Company's Black Mesa Mine. Arnold, John. St. Louis, Missouri. September 1969.

Dry grinding studies of coal in a rod mill. S, Das and J.S. Murty. *Minerals and Metallurgical Processing*. August 1986. PG 177 to 179.

Economics of alternative coal slurry pipeline concepts. R.H. Derammelaere and E.J. Wasp. March 1998. PG 1 to 7.

Estimating the floatability of western coal. F.F. Aplan. University Park, Pennsylvania. . PG 380 to 398.

Updating materials handling and heulage. *Mining Engineering*. November 1970. PG 50 to 51.

Future Slurry Transport of Large Particles Based on Operations with Coarse Coal. D. L. McCain. Ponca City, Oklahoma. February 1975. PG 1 to 11.

Hydraulic Transportation of Coal from Collieries to Coast. Bede E. Boyle and Lloyd A. Boyle. . May 1976. PG 303 to 311.

Hydraulic Transportation of Coal – N.S.W. Coal Industry the Need, Current Research and Potential. C.T. Anderson. New Zealand. PG 265 to 274.

Long Distance Slurry Transportation. P.E. Snoek, R.L. Gandhi, and C.S. Miller. San Francisco, California. PG 295 to 307.

Long-Distance Coal Transport: Unit Trains or Slurry Pipelines. T.C. Campbell and Sidney Katell. Morgantown. West Virginia. 1975. PG 1 to 31.

Pending Legislation Affecting the Minerals Industry. Sheldon P. Wimpfen. Washinton, D.C. February 1976. PG 1 to 8.

Pipelining Bulk Materials. James M. Link. Golden, Colorado. *Mining Engineering*. October 1982. PG 1,444 to 1,447.

Slurried Coal – Storage, Reclaiming and Ship Loading. W. Norman Sims. Salt Lake City, Utah. PG 1 to 38.

Slurry Pipelines – Recent Developments. N.T. Cowper and E.J. Wasp. October 1973. PG 87 to 102.

Mesa plan: Energy today, better land tomorrow. *Coal Age*. March 1971.

Transportation: A Vital Element in Coal's Future. John P. Smith. *Mining Engineering*. October 1982. PG 1,433 to 1,437.

Unit Trains, Slurry Pipelines and Supercargo Carriers to Save Money on Long Distance Coal Shipments. Paul Averitt. Denver, Colorado. October 1969. *Mining Engineering. PG 76.*

Washability Characteristics of Coals from the Black Mesa Field, Ariz. W.L. Crentz. April 1955. PG 1 to 20.

Environmental and Pollution Aspects of Coal Slurry Pipelines, EPA report EPA-600 2-79-067, March 1979.

Method of Reducing Metal Losses in Coal Slurry Transportation Pipelines, Consolidation Coal Co. Patent US2791472, May 1957.

Microbial Desulfurization of Coals in a Slurry Pipeline Reactor Using Thiobacillus ferrooxidans. Charanjit Rai. Biotechnology Progress Volume 1, Issue 3. September 1985. PG 200–204.

Terminal Facilities for Western Coal Slurry Pipelines, E.J. Wasp, T.C. Aude, and F.B. Raymer. Bechtel Incorporated, San Francisco, California. Prepared for Presentation at the 1976 AIME Annual Meeting

Operating experience is described for Black Mesa coal-slurry pipeline, J.G. Montfort. Oil and Gas Journal. July 27, 1981. PG 182.

Appendix B

J. STEVEN GARDNER, PE, PS, RMSME

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Lexington, KY 40508-2553 jsgardner@engrservices.com

www.engrservices.com

DETAILED RESUME AND RECORD OF EXPERIENCE

PROFESSIONAL LICENSURE/REGISTRATION

Professional Engineer: Kentucky, Tennessee, West Virginia, Virginia, Colorado and Pennsylvania
Professional Surveyor, West Virginia
Registered Member – Society for Mining, Metallurgy and Exploration

EDUCATION

M.S. Mining Engineering – University of Kentucky 1991
Environmental Systems Certificate - University of Kentucky 1991
B.S. Agricultural Engineering – University of Kentucky 1975

PROFESSIONAL EXPERIENCE

Engineering Consulting Services, Inc. (ECSI)

ECSI, LLC

1983-Present: Chairman/President/CEO

- Responsible for business and project management, planning and development for the firm. ECSI provides civil, mining, and environmental engineering services, surveying, health and safety evaluation and training, litigation support, and laboratory and analytical services.

- Mr. Gardner specializes in Natural Resources, energy, mining, environmental, hydrology, health and safety, sensitive land use issues and industrial heritage projects.

- Supervised mine planning and preparation of mine permit applications in Kentucky, West Virginia, Virginia, and Tennessee; performed coal property evaluations, environmental, health and safety assessments and audits, general engineering services for limestone quarry operations; mine operations assessments, reserve assessments, hydro geologic assessments, Cumulative Impact Assessments, provided construction management and contracting supervision on mine reclamation operations.

- Served on Advisory Committee to Kentucky Cabinet for Energy and Environment who provided funding to the University of Kentucky Center for Visualization and Virtual Environments (Vis Center) to produce a video documentary exploring the enduring significance of coal in Kentucky. The concept for this project originated after a "Comment on Kentucky" episode on KET in April 2009 titled "Mountaintop Mining" with a conversation between host Bill Goodman and panel participant Steve Gardner. Gardner was serving as Chairman of the University of Kentucky's College of Engineering's Mining Engineering Foundation. He is a graduate of the UK Agricultural Engineering Department and has a Masters in Mining Engineering and Environmental Systems. Gardner proposed the idea to Dr. Len Peters, Secretary of the Energy and Environment Cabinet which led to the project's funding.

- Representative Projects:

  - Managed project for Strata Products to provide oversight and Professional Engineering Certification for the first Mine Refuge Chamber approved by West Virginia in March, 2007.
  - Managed project for Strata Products to design mine seals; 120 psi, 50 psi. ECSI's Design received the first MSHA approval for seals under the new standards on 9-17-08.
  - Managed contract with Kentucky Department of Energy Development and Independence for "Renewable Energy Resources Inventory" reviewing feasibility of wind, solar and biomass projects on reclaimed mine sites in KY, 2008.
  - Managed contract for Kentucky's FutureGen submittal with Kentucky Office of Energy Policy, 2006.
  - Expert testimony/reports/investigations provided in cases involving regulatory takings, lands unsuitable petitions, lost coal and mineral claims, mineral appraisals, operations, environmental assessments, hydrology, defense of environmental non-compliance violations before state and federal agencies, lease/contract/property disputes, and accidents.
  - Accident investigations including vehicle, rail, limestone, and coal mining.
  - Supervised/reviewed numerous limestone quarry/non-coal permits, mine plans and projects; and updated surveys and mapping.
  - Co-edited the ***"Coal Mining Reference Book" 6th Edition*** published by the Kentucky Mining Institute and used by the Kentucky Department of Mines and Minerals as a study guide for the mine foreman's guide. Assisted in updating for KMI under a grant from the Kentucky Energy and Environment Cabinet in 2011.
  - Health and safety audit programs and training for numerous limestone and coal mine operations.
  - Design plans and specs for underground tourist mine at Blue Heron, Big South Fork National River and Park for the Army Corp of Engineers.

- Kentucky Coal Mining Museum, Portal 31 – Lynch. Project manager for public funded exhibition mine. Approximate cost of $2.5 million. The project was selected for one of 16 Engineering Excellence National Honor awards from ACEC in 2010.
- Principal investigator and author of environmental audits, assessments, and reclamation evaluations of numerous mining operations and properties involving hundreds of thousands of acres of acquisition purposes.
- Subsidence investigations of longwall and room and pillar mining.
- Post-mine land use plans for mountaintop mining operations for commercial/industrial, residential, and recreational uses.
- Long-term underground mine plans and projections for federal lease and permit requirements.
- Study of alternative waste disposal methods for thoroughbred racetrack in Kentucky by recycling organic materials as compost for use in landscaping and mine reclamation.
- Internet design and hosting services focusing on the mining industry. Selected Internet projects include: www.coaleducation.org, www.miningusa.com, www.kycoalmuseum.org, and www.portal31.org.

Specialty Coal Processing, Inc.

2003 – 2006: Chairman/CEO

Company organized to provide management and operational services to foreign owner. Operations included the former Gatliff Coal Plant and Blue Gem Mining Company providing coal products for the international Silicon Metals Industry and other specialty markets. Coordinated Blue Gem seam' underground contract mine operations. Contract ended when foreign owner sold operation.

University of Kentucky: Department of Mining Engineering

Lexington, Kentucky

1987 – 1988: Graduate Research Assistant

- Worked on grant from Institute of Mining and Mineral Research (IMMR) to Mining Engineering Department entitled "Mountaintop Mine Planning as Part of Long-Range Post-Mining Land Use," part of a multi-disciplinary study at UK to optimize development potential of 17,000 acres control by Cyprus Mineral's Starfire operation in Eastern Kentucky, 5000 mined by mountaintop mining operations. Conducted a review of "State-of the Art" mine planning computer models.

Kenwill, Inc.

Maryville, Tennessee

1980 – 1982: Vice-President – Engineering Division

- Organized new engineering division, supervising buyout of existing consulting group and established three branch offices. Responsibilities included: division management, business development, and project management. Supervised approximately 20 engineering/scientific/surveying personnel. Coordinated contact engineering services for approximately 20 underground mines.

- Representative Projects:

    - Assisted Koppers Co. in development and presentation of 10-year, 40,000-tons per month mining plan.
    - Supervised re-survey of underground limestone mine, projections and mine plans.
    - Responsible for coal transportation study phases of proposed Kopper's synfuels plant near Oak Ridge, Tennessee, and coordinated background air-quality monitoring.
    - Project manager for design of treatment facilities for runoff from utility coal stockpiles, Milan Army Ammunition Plant, U.S. Corp of Engineers, Mobile District.
    - Accident investigation and reporting. Assisted mining company in investigation of roof fall fatality; provided professional testimony and reports.

Consulting Engineer and Partner in Mining Operation

LaFollette, Tennessee

1979 – 1980: Partner/Consulting Engineer – Big K Operating Co./U.S. Coal Co. – now part of National Coal

- Partner in small underground mining operation. Responsible for engineering, surveying, regulatory liason, labor relations, coal sales, organization and future development plans for 2500 acres. Supervised installation and maintenance of tipple facilities, ponds, and drainage controls.
- Developed engineering consulting practice with several small mining companies and other engineering firms providing reserve evaluations, mine feasibility, mine planning and permitting services.

Hittman Associates, Inc.

Lexington, Kentucky

1977 – 1979: Engineer

Representative Projects:

- Project engineer for U.S. Bureau of Mines and Department of Energy project, "Design Evaluation and Demonstration of Cross Ridge Mountaintop Mining." Responsible for environmental assessments of potential mining sites in Kentucky and Tennessee.
- Project manager – coal reserve evaluation and mining feasibility studies.
- Project engineer for joint EPA/KY Department of Natural Resources project to evaluate feasibility of vegetative filters for control of sediment from surface mines.
- Technical contributor to audiovisual instructional course entitled "Surface Mining and the Natural Environment" prepared jointly for the Interstate Mining Compact Commission, EPA, and OSM; utilized to train mine inspectors.

Tennessee Gas Pipeline Company Tenneco, Inc.

Greensburg, Kentucky

1977: Assistant Operator

- Summer training program in process control at hydrocarbon recovery plant; gas chromatograph lab analysis, general plant engineering and pipeline operations.

Beth Elkhorn Corporation

Jenkins, Kentucky

1975 – 1977: Project Engineer – Elkhorn Division of Bethlehem Mines Corp.

- Spent six (6) months in corporate orientation loop program rotating in all departments of division. Responsible for Division's environmental quality control, permits, monitoring, lab analyses and reporting, impoundments and coal refuse area inspection. Assisted in ventilation surveys and time studies of existing underground mines and mine projects for longwall and shortwall sections. Served as company liaison with local, state, and federal agencies involving regional planning and environmental issues.

- Representative Projects:
  - Project manager for grouting operation designed to seal water infiltration in main entries of large underground operation.
  - Coal exploration and reserve evaluation in Letcher, Knott, and Pike Counties, Kentucky, managing two contract core drillers. Assisted Dr. John Ferm in Beta

Testing new computerized core logging protocols for Central Appalachian region.

- Responsible for developing plans for potential uses of surface mined land for recreation, housing, business, and industrial sites. Coordinated company efforts with local, state, and federal officials to secure funding for federally-financed housing development on surface mined lands.

PROFESSIONAL AND COMMUNITY ACTIVITIES:

a. Kentucky Geological Survey
   - 2012 – Present - Advisory Board

b. National Council of Examiners for Engineering & Surveying
   - 2008 – Member of Uniform Procedures Legislative Committee

c. Kentucky State Board of Licensure for Professional Engineers and Land Surveyors
   - 2004-2012
   - Reappointed to four-year term by Governor 2008
   - 2008 – Chairman
   - 2007 – Vice Chair
     - Chair – CPD Committee
     - Member – Engineering and Surveying Committee
   - 2006 – Secretary
     - Executive Committee
     - Member – Engineering Surveying, CPD, and Ruse Committee
   - 2005
     - Chairman – Engineering Committee
     - Member – Surveying Committee and CPD Ad Hoc Committee
     - Board observer ABET Accreditation Team – Western Kentucky University
   - Appointed to four-year term by Governor 2004
   - Member – Surveying and Engineering Committees

d. University of Kentucky
   Member of Mining Engineering Foundation

   - 2008 – 2010 Chairman
   - 2007 – 2008 Vice Chair
   - 2005 Board of Directors
   - 1997 Department of Mining Engineering ABET Employer Team
   - 2012 – Present Member of Biosystems and Agricultural Engineering Advisory Board

e. Kentucky Society of Professional Engineers and NSPE:
   - 2001 – 2009 Professional Engineers in Mining (PEM) Secretary Treasurer
   - 1995 – 2000 KSPE – Professional Development Committee
   - 1993 – 1994 Chairman, Legislative and Government Affairs Committee
   - 1992 – 1993 Co-Chairman – Legislative and Government Affairs Committee

- 1991 – 1992 Co-Chairman – Legislative and Government Affairs Committee
  - Bluegrass Chapter Director
  - Member – Energy and Environmental Committee
- 1990 – 1991 KSPE "Achievement in Mining" Award
- 1989 – 1990 Chairman Professional Engineers in Mining (PEM) Practice Section
- 1989 – 1994 Member Legislative and Government Affairs Committee
  - Appointed to Special Committee by Board of Registration to study
  - KRS 322 as related to Certification of Mine Maps by Surveyors and Engineers
- 1988 – 1989 Secretary – Treasurer of PEM Section
- 1987 – Present PEM Annual Seminar Committee

f. Society for Mining, Metallurgy, & Exploration of AIME (SME)
- 2010 – 2014 Chairman – Government and Public Affairs Committee
- 2008 - 2010 Chairman – Government, Education, and Mining Committee (GEM)
- 2007 – 2010 Member – Mining Unit Committee
- 2005 – Present SME – Vice Chairman – GEM
- 2005 – 2007 Member – Sustainable Development Committee – Coal and Energy Division
- 2004 – 2007 Member – Woomer Award Committee
- 2004 – 2005 SME – Coal and Energy Distinguished Service Award
- 2003 – 2005 Internet Committee – Member
- 2002 – 2003 Vice President Southeast Region and member of SME Executive Committee
- 2002 – 2003 Member – Nominating Strategic Committee
- 2002 – 2005 Member – Coal & Energy Division Executive Committee
- 2002 National GEM Award Recipient
- 2002 – 2003 Board of Directors, Southeast Region Vice President
- 2002 – 2003 Internet Committee – Member
- 2002 – 2003 Chair – Distinguished Member Award Nominating Committee
- 2001 – 2002 Chair – Coal and Energy Membership Committee
- 2001 – 2002 Membership Committee Division Representative – Coal and Energy Division
- 2001 – 2002 Vice President Southeast Region, Mining Engineering Regional Representativee
- 2000 – 2003 GEM – Regional Vice President
- 2000 – 2002 Southeast Region Vice President, Board of Directors Regional Representatives, Distinguished Member Award Nominating Committee Mining Engineering Committee
- 2000 – 2001 Chair-Elect – Coal and Energy Membership Committee
- 2000 – 2001 Membership Committee Division Representative – Southeast Region
- 1999 – 2000 Member – Coal and Energy Membership Committee
- 1999 – 2002 Mining Engineering Regional Representatives, Southeast Region Past Chair
- 1999 – 2000 Vice President Elect – Southeast Region
- 1998 – 1999 Chairman – Southeast Region
- 1998 Chairman – Central Appalachian Section

- 1998 – 1999 Board of Directors Regional Representatives – Southeast Region, Standby Alternate
- 1996 – 1997 Vice Chairman – Central Appalachian Section
- 1996 – 1997 Membership Committee
- 1995 Vice Chairman – Central Appalachian Section
- 1994 Teller – Central Appalachian Section
- Numerous presentations/papers presented at SME Annual Meeting or Section and published in Mining Engineering

f. SME/GEM – Minerals Education Coalition

- 2008 Co – Chair Cincinnati Regional National Science Teachers Association Meeting
- 2003 Chairman Louisville Regional National Science Teachers Association (raised $15,000 for funding)
- 2001 Chaired and organized National Minerals Education Conference in Lexington, Kentucky (raised $27,000 for conference funding)

g. Woodford County Historical Society

- 2006 – 2007 President
- 2004 – 2007 Board of Directors
- 2003 – Present Landmarks' Recognition Program Review Committee

h. Coal Prep Society of America - Member

- 2007 Coal Prep 07 – Organized and moderated – "Coal Waste Disposal Symposium"

i. 1994 – Present Chairman COALPAC

j. 1994 – Present Kentucky Coal Association (KCA) Board of Directors

1994 – Present KCA Health and Safety Committee

1994 – Present KCA Environmental Committee

k. Coal Operators and Associates Environmental Committee

l. Organized and coordinate mini-course "The Mining Professional as an Expert Witness" for the 1985 National Symposium of Surface Mining Hydrology Sedimentology and Reclamation.

m. Tennessee Department of Labor Division of Mines, Volunteer Mine Rescue Team, 1981-82. Served as member of state-sponsored mine rescue organization on call to the Tennessee mining industry. Trained in mine rescue techniques and apparatus.

n. Roane State Community College – part-time instructor for Tennessee Coal Mine Technology program. Taught soil test and analysis 1981.

o. Facts About Coal in Tennessee (FACT) – Underground Mining Advisory Committee 1981.

p. 1979 KSPE Public Relations Committee – assisted in planning the Teleconference on Engineering Continuing Education.

q. 1978 Assisted with Hydrology & Sedimentology short course taught by Dr. Bill Barfield and Dr. C. T. Huan.

r. Whitesburg-Letcher County Airport Board 1977.

s. Big Sandy Chapter, KSPE, 1976 Industrial Professional Development Award Selection Committee.

t. Member – National Mine Rescue Association, "Smoke Eaters"

Kentucky Mining Institute (KMI)

National Mining History Association

American Society Mining Reclamation (ASMR)

West Virginia Coal Mining Institute (WVCMI)

American Society of Agricultural & Biological Engineers (ASABE)

PUBLICATIONS/PRESENTATIONS

Gardner, J., et al., Coal Mining Reference Book Sixth Edition, Kentucky Mining Institute, 2012.

Chairman SME 2008 Annual Meeting – GEM Session – "The Community of Mining: From Disasters to Sustainability Communications is the Key.

Gardner, J., K. Houston, and K. Rose, Slurry Cells prove Successful Alternatives to Impoundments.

Gardner, J., K. Houston, R. Paton-Ash, B. Lusk and S. Lusk, Mine Emergency Shelters/Chambers approved by West Virginia.

Gardner, J.S. and Paul Sainato, Mountaintop Mining and Sustainable Development in Appalachia, Mining Engineering Vol. 59, Issue 3, pp 48-55, 2007.

Gardner, J.S. and Paul Sainato, Sustainable Development in Appalachia – A New Way of Looking at Mountaintop Mining. ASMR June 2005.

Gardner, J.S.; Mountaintop Mining, Energy and Sustainable Development, Energia Vol 16 No. 1. 2005

Goode, James, Editor, *The Cutting Edge, Mining in the 21st Century* (Reference Book targeting 4th and 5th Grades). Wrote several chapters and edited book. Published by Jesse Stuart Press, 2002.

Gardner, J.S., K.E. Houston and A. Campoli. Alternatives Analysis for Coal Slurry Impoundments. SME 2003, Mining Engineering Vol. 56, Issue 8, pp 47-52, 2004.

Gardner, J.S., P.D. Robinson, R. Woolacott. Kentucky's Portal 31 Exhibition Mine. SME 2003.

Gardner, J.S., reviewer, Coal Waste Impoundments – Risks, Responses, and Alternatives. National Research Council, National Academy of Sciences 2002

Rusk, George A. Esq. and J. Steven Gardner; Mountain Top Mining: New Challenges and New Opportunities, EMLF – 2004

Zaluski, J.J., S. Gardner and L. Adams. Black Mountain – An Overview, The Resolution of the Lands Unsuitable Petition from the Legal and Technical Perspectives. SME 2000.

Zaluski, J.J., J.S. Gardner. Surface Mining after the Bragg Decision. SME 2001.

Zaluski, J.J., M.M. Rajkovich, Jr., S. J. Gardner. Crisis Management and Emergency Response - What would You do if Disaster Strikes? SME 2003

J. S. Gardner, P. E., P. S.

Record of Experience

Expert Testimony, Depositions, & Technical Investigations Utilized in Litigation Support

Currently involved in several ongoing cases involving mine or quarry operations, accidental injury and death, hydrology and groundwater, regulatory jurisdiction, engineering liability, and insurance investigations of surety bond liability.

- Graham v. R.M. Johnson, et al.
  Counsel: Fulkerson & Kinkel, PLLC — Campbell, Collins & Collins
  Calvin Fulkerson — Adam Collins
  2009-Present

  Case involving a surface mine moving machinery fatality where plaintiff is alleging negligence/lack of care on the part of the engineer that performed permitting services for the mine. Case is currently in discovery stages. Deposition August 2013.

- Estate of Tamara Roberts v. Sterling Materials, LLC and Fayette Trucking
  Counsel: Ward, Hocker & Thornton, PLLC — Helmer, Martins, Rice & Popham
  Licha H. Farah, Jr. — Jennifer L. Lambert, and
  2011-Present — Meredith L. Lawrence, PSC

  Case alleging fatality auto accident was caused by water and material seeping out of the back of a haul truck. Case settled.

- Ratliff vs. Big Sandy
  Counsel: Woodward, Hobson & Fulton, LLP for Big Sandy — Dinsmore & Shohl
  Alice Herrington — Chauncey Curtz
  Amy Eason — Gwen Pinson
  2008/2009

  Case alleging liability for slide from 70-year old coal refuse fill on Big Sandy Land Company property that damaged a house. Case involved investigation, surveying, mapping, testimony in May 2009. Jury decision awarded Ratliffs' damages. Appeal decision pending.

- CSX Transportation vs. West Virginia Department of Transportation Litigation
  Counsel: Huddleston Bolen, LLP for CSXT
  Andy Zettle
  2007/2008

  Case involved hydrologic/hydraulic analysis of culvert blockage under state highway and railroad tracks, cost analysis and financial responsibility. Investigation of alleged negligence by WVDOT of sediment cleanup in Godby Branch resulting in damage of CSX culvert and

rail lines. Expert report prepared. Deposition. Testimony. Decision awarded compensation to CSXT.

- Realco vs. CSXT
  Counsel: Huddleston Bolen, LLP
  Andy Zettle
  2008

  Flood damage claims by Realco against CSXT claiming inadequate culvert capacity caused flood damage to a segment of White Oak Creek in Greenup County, Kentucky. Expert report prepared for CSXT. Depositions. Case dismissed.

- Jones Family Trust
  Counsel: Furman, Nilsen & Lomond
  C. Dean Furman
  Bubalo, Hiestand & Rotman PLC
  Leslie Cronen
  2008

  Retained on behalf of landowners to evaluate lease and permitting regulatory and compliance issued on quarry permit. Expert report prepered. Case settled.

- Michael Wright vs. Pilgrim Mining Co., Inc.
  Counsel: Jackson Kelly
  Robert Duncan
  2008

  Retained to investigate safety and highwall procedures in fatality of Ronnie Wright. Investigations performed and deposition given. Case settled.

- Phillip Crum vs. Martin County Coal Corporation
  Counsel: Baird & Baird
  Russell Davis
  2008

  Expert analysis of events and circumstances surrounding the injury of Phillip Crum. Case settled.

- Johnson/Cline Heirs
  Counsel: Pruitt and de Bourbon Law Firm
  Jim Pruitt
  2007 and 2011

  Conducted an investigation to quantify the value of a portion of the mineral ownership of Johnson/Cline Heirs. Expert report prepared. Case settled.

NOTE: All information provided based on best available records. Dates referenced are approximate.

Appendix C

Coal Mining and Processing, February1971

COAL
MINING & PROCESSING

The Black Mesa Project

- The Interim Compliance Panel
- SBA Assistance Program

COAL FEATURE

Two mining operations, one presently active, will produce 13 million tons annually by 1976 for pipeline and rail delivery to power plants in Nevada and Arizona, respectively

Peabody puts Arizona on the coal map

by Harold D. Levene

One of the more ambitious coal mining projects of recent years is the Black Mesa project of northeastern Arizona. Located atop the Black Mesa which lies just south of Monument Valley, the project involves the mining of 13 million tons of coal annually and transporting it to two separate power plants in Arizona and Nevada. The area involved is shown in Fig. 1.

Arizona's coal production in the past has been so minimal that the state name has not appeared on coal production tabulations prior to 1970. Peabody Coal Co. operations on the Black Mesa have changed that, and Arizona will now take its place with other western states in the list of important coal producers.

The Peabody leases with the Navajo and Hopi Indian tribes cover mineral rights on 64,858 acres, with coal under approximately 14,000 acres. The company expects to mine an average of 400 acres per year during the 35 years of the power plant contracts.

The initial Peabody operation, the Black Mesa No. 1 Mine, is currently producing about half of its projected 5½ million ton annual capacity which will place it among the larger producers in the country. When the nearby Black Mesa No. 2 Mine, not yet in operation, reaches full production of 7½ million tons annually in 1976, Peabody production on Black Mesa will be a respectable 13 million tons annually.

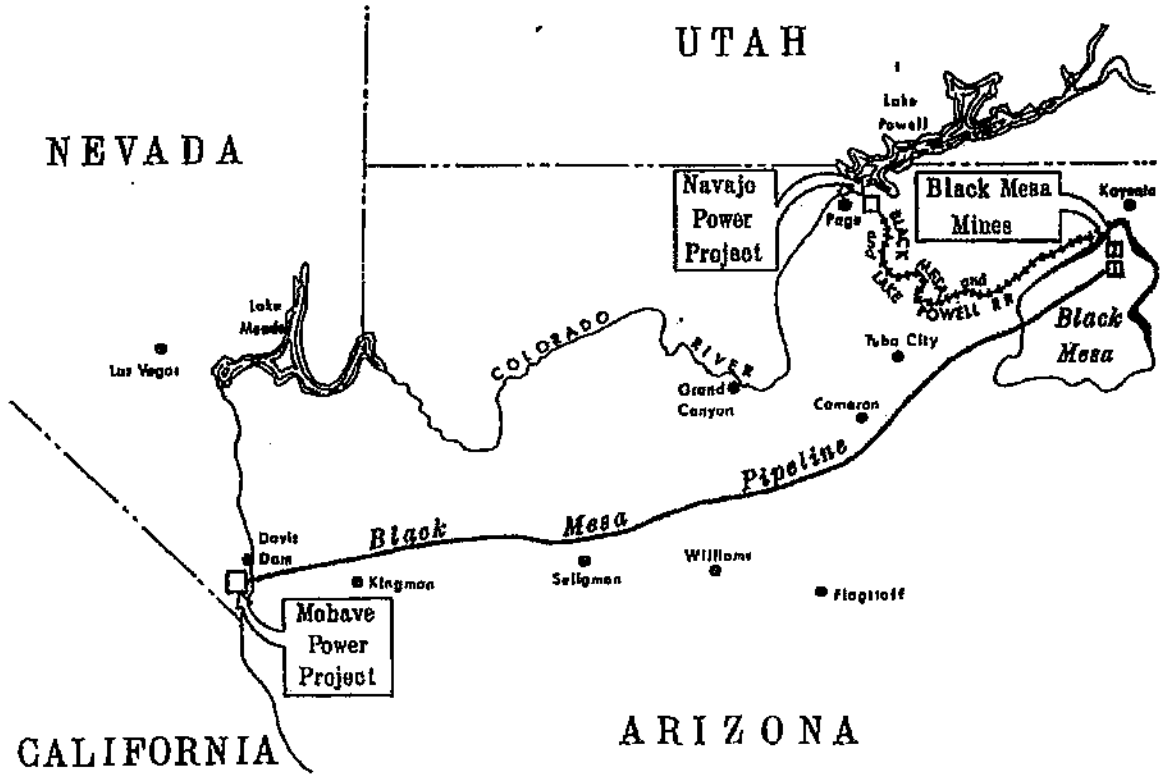
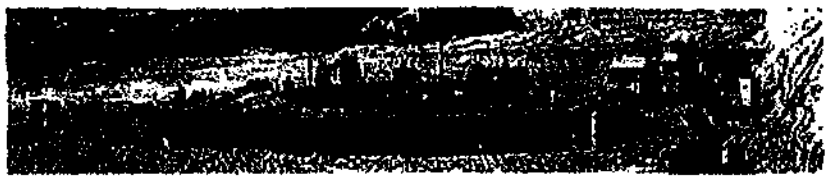


Fig. 1—Location map of the Black Mesa project. Peabody's Black Mesa mines are located in the northeastern part of Arizona, just south of Kayenta. The No. 1 Mine is now supplying coal via the 273-mile Black Mesa pipeline to the Mohave Power Project in southern Nevada. The No. 2 Mine will supply coal in the near future to the Navajo Power Project near Page, Ariz. via a 5-mile long belt conveyor and an 80-mile unit train haul on the Lake Powell and Black Mesa Railroad now under construction



Above: Black Mesa No. 1 Mine office and maintenance building. Right: The prehistoric Indian ruins in the foreground, dating back to about 1100 AD, were excavated by an archeological team from an Arizona state university, identified and photographed for records. Those hills in the background are natural hummocks, not spoilbanks. The spoilbanks are not visible but are located behind the motor crane about a half mile away. Below right: Where possible, Navajos are hired for mining jobs. In this view Navajo workmen are rebuilding a Bucyrus-Erie 50-R drill. The group in the foreground is comprised of, from left, Lee Bradley, Sr., Public Relations & Mine Safety Director & Interpreter, a Navajo workman, and Harold R. Combs, Black Mesa No. 1 Mine Superintendent. Below: Welders, predominantly Navajos, start initial construction of a Bucyrus-Erie BE-1260W, 35-yd walking dragline.

The coal produced in No. 1 Mine is delivered to the adjacent facilities of the Black Mesa Pipeline Co., a subsidiary of Southern Pacific Pipeline, Inc. At those facilities the coal is ground in water to form a slurry which is pumped 273 miles westward to the Mohave Power Project in southern Nevada. Ownership of that 1,500-megawatt power plant is divided between the Los Angeles Dept. of Water and Power, Nevada Power Co., the Salt River Project and Southern California Edison Co., with the last company serving as the operating agent for the Mohave plant.

Coal produced in No. 2 Mine will be carried out of the mesa by a 5-mile long belt conveyor, then will travel about 80 miles to its destination by unit train on a system to be built and called the Lake Powell and Black Mesa Railroad. Trains will deliver the coal to the Navajo Power Project now under construction adjacent to Lake Powell near Page, Ariz. Peabody has contracted to provide 220 million tons of Black Mesa coal over a 35-year period to fuel this 2,310-megawatt plant.

The Black Mesa

The Black Mesa lies on the reservations of the Navajo and Hopi Indians of northeastern Arizona and Peabody's coal leases involve both tribes.

The mesa was formed from remnants of the Mesa Verde formation in which the coal deposits are located. The massive Mesa Verde protected the mesa top as the surrounding area was eroded. An impervious shale 500-600 ft thick underlies the Mesa Verde strata and seals off water supplies near the surface from deeper aquifers.

The mesa is roughly triangular in shape and has a perimeter of about 180 miles. The northern and eastern edges have steep escarpments, with the rim at the northeast corner towering 2,000 ft above the town of Kayenta.

Contrary to preconceived notions of some visitors and despite the name, the top of the mesa is not flat like a table. Its shape is generally like a gigantic bowl sloping inward from the rims and the terrain is quite rough. It is dotted with hills, knolls and hummocks and cut by some rather large canyons.

Vegetation is sparse by reason of the arid climate, with grasses, sage, greasewood and occasional gnarled cedar and pinon pine trees persisting in spite of the lack of water. Human habitation is sparse also, with Indian hogans, predominantly primitive wood and mud huts, dotting the landscape at intervals of perhaps a mile.

This is the area in which the Peabody Coal Co. is developing its Black Mesa mining project at a point roughly 100 miles west of Farmington, N.M., and 150 miles northeast of Flagstaff, Ariz., the nearest railhead. To those members of the Navajo and Hopi tribes who now have regular jobs by reason of the project, it means a steady income far beyond that of their sheep-herding days. And to the area it means a stimulation of the economy from which all residents benefit.

Access and plant development

Access to the selected location for the initial operations of No. 1 Mine and the plant structures is by a newly-constructed 60-ft wide all-weather road. It starts at a point on Arizona state highway 164 about 18 miles southwest of Kayenta and winds 13 miles in a southeastly direction through the rugged mesa landscape. Prior to the construction of the present road, travel was by necessity over a bulldozed trail.

The new road, capable of handling the heavy equipment required to haul the machinery and mining equipment for the processing facilities and mine, was excavated by a Marion 191-M shovel. It was erected near the paved state highway, then worked its way up the steep escarpment to the rim of the Black Mesa. In this two-mile stretch the road climbs 700 ft, then drops about the same distance by the time it reaches the mine location.

The roadbed consists of a 3-ft layer of broken rock, then a minimum of 12 in. of crushed scoria is added to form the roadway surface. The scoria was obtained from old coal burns at outcrops which are encountered frequently in the area. A Cat 988 frontend loader, two 35-ton LW Haulpaks, Cat D8 and D9 dozers, a Cat No. 16 roadgrader and a rock crusher were used in addition to the 191-M shovel in constructing the road.

The mine office occupies space in a building which also houses a warehouse and maintenance shop. The remoteness of the location necessitates a generous supply of repair parts and repair facilities capable of handling equipment repair.

Archeological excavations

The Black Mesa area has been inhabited for centuries and mining operations are expected to disturb locations containing Indian ruins.

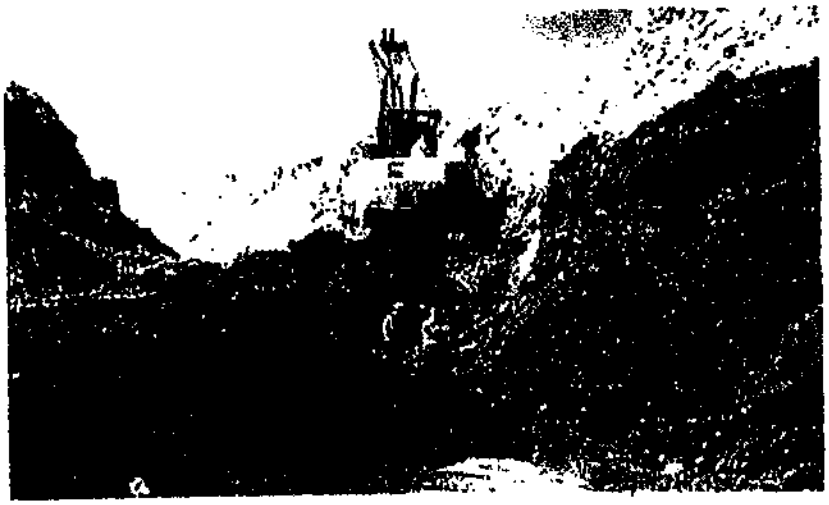
Well in advance of mining activities, archeologists were flown over the areas to be disturbed so they could pick out probable ruin sites. These were then methodically excavated, and some sites were found to have Indian ruins dating back to about 1100 A.D. Ruins investigated during the summer of 1970 were carefully photographed and the artifacts were recovered for posterity.

Although mining practices at this Peabody Coal operation are comparable to other surface mines, the necessity for supplying pipeline transportation water and maintaining a sizeable coal reserve to assure a constant supply to the power plant customer has resulted in a different kind of mine plant

Black Mesa No. 1 Mine is different

Mining operations during the visit to Peabody Coal's Black Mesa No. 1 Mine in northeastern Arizona were conducted in two separate pits developed along the outcrop of the "Red Bed" about two miles northwest of the surface plant. The seam dips gently in a northwesterly direction so mining will progress away from the surface plant. Eventually the overburden will thicken to a point where surface mining is not economical and it will be necessary to recover the coal by deep mining methods. That move, however, will not take place for years.

Coal was first produced in the No. 1 pit during the summer of 1970. A Marion 191-M shovel using a 12-yd dipper removed the 12 to 20-ft thick overburden on the initial pass, then loaded out the coal with a 16-yd dip-



In the No. 1 pit a Marion 191-M stripped overburden with a 12-yd rock dipper, then switched to a 16-yd coal dipper for loading coal into KW-Dart 100-ton trucks. Total seam thickness in the foreground was 22 ft. About 7 or 8 ft of coal in the foreground remain to be loaded out

per. By September 1970 four passes had been completed and the shovel was nearing its stripping height limit of 35 ft. One more pass was planned after which the stripping job would be turned over to a dragline.

The Red Bed (this is Peabody's name) in the No. 1 pit totaled 22 ft in thickness. Two partings, one about 4 in. thick at a depth of 3 to 3½ ft from the top, the other 12 to 18 in. thick about 9 to 10 ft below, were removed during mining operations.

No. 1 pit had no water problems except during rainy seasons when surface runoff might impede pit operations 3 or 4 times a year. A 4-in. Gorman-Rupp gas powered pump and a 6-in. Gorman-Rupp diesel-powered pump were available for dewatering the pit when necessary.

No. 2 pit was about 1,000 ft southwest of No. 1 and eventually would be connected to it so as to form a single pit. The initial pass was made by a Marion 191-M shovel equipped with a boom lengthened to 45 ft and a 12-yd dipper. However, the thicker overburden at this location necessitated the use of a Cat D9 dozer to move dirt from the adjacent ridge so the shovel could spoil its load with a minimum of spillage into the pit.

A Marion 7400 walking dragline with a 14-yd Page bucket was developing a box cut along the crop line at the south end of No. 2 pit. Eventually it would take over the stripping duties of the 191-M shovel.

The overburden fragmentation program in the No. 2 pit involved a Bucyrus-Erie 30-R drill which sunk 5½-in. holes on 20-ft centers to the coal, an average of 60 ft. Each hole was bulk loaded with from 200 to 300 lb of ANFO, primed with ¾-lb Dupont primers, and detonated with Austin detonators and detonating cord. About 20 to 25 holes were shot at one time.

The coal in either pit was loosened for loading by drilling 5½-in. holes on 10-ft centers, charging each hole with about 25 lb of ANFO and a primer, then firing 15 to 30 holes at one time.

Bulk storage of the ANFO is provided by two 40-ton hoppers supplied by I&M Equipment Sales. The hoppers, located near the mine office, are filled pneumatically from tank trucks by the Apache Powder Co. An 8-ton I&M bulk service truck, loaded from the hoppers by gravity, transports the ANFO to the mining operations for bulk loading of the drill holes.

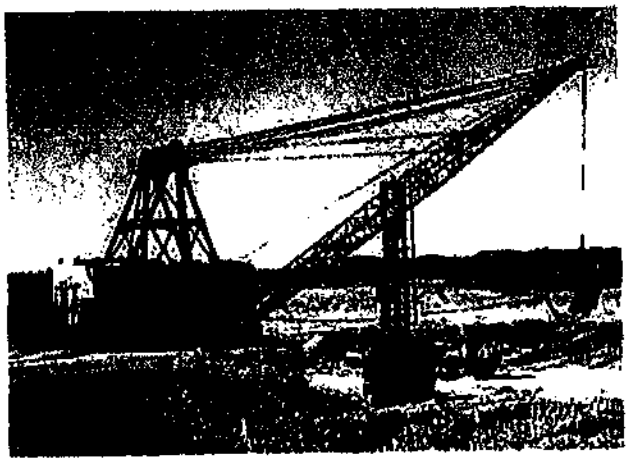
Coal was hauled from the pits to the Peabody storage area by a fleet of five KW-Dart 120-ton tractors with 100-ton bottom dump semitrailers. These discharged their loads into a 400-ton hopper as the initial step in feeding the coal to the processing plant of Black Mesa Pipeline Inc.

Under construction at the time of the mine visit was a Bucyrus-Erie 1260W walking dragline which would be fitted with a 36-yd bucket. Expected to be available for service in the spring of 1971, this unit would team up with the Marion 7400 drag in stripping operations and permit use of both 191-M shovels in loading of coal under an accelerated production schedule.

Also under construction was a Bucyrus-Erie 50-R drill which will be equipped with a 10⅝-in. bit. It was expected to take over much of the overburden drilling program.

Coal storage facilities

Power plants normally provide adjacent facilities for storage of coal reserves to be used in emergencies.



Right: In the No. 2 pit a second 191-M shovel with a 12-yd dipper and an extended 45-ft boom stripped overburden on the first pass. The Cat D9 at the right dozed dirt from the adjacent pile so the shovel could spoil dirt with a minimum of spillage into the pit. The roadway in the background leads to the No. 1 pit 1,100 ft northwest. Eventually the two pits will be connected. Below: A Marion 7400 dragline with a 14-yd bucket and a Bucyrus-Erie 30-R, 5½-in. drill combine efforts in developing a box cut at the south crop line of No. 2 pit. The coal is about 65 ft deep at this point. The Cat D8 dozer, behind the drill, works with the dragline. Below right: Ammonium nitrate-fuel oil explosive is loaded pneumatically into these two I&M 40-ton storage tanks by the supplier, Apache Powder Co., then transferred by gravity to the I&M 8-ton bulk loading service truck for distribution to the pits

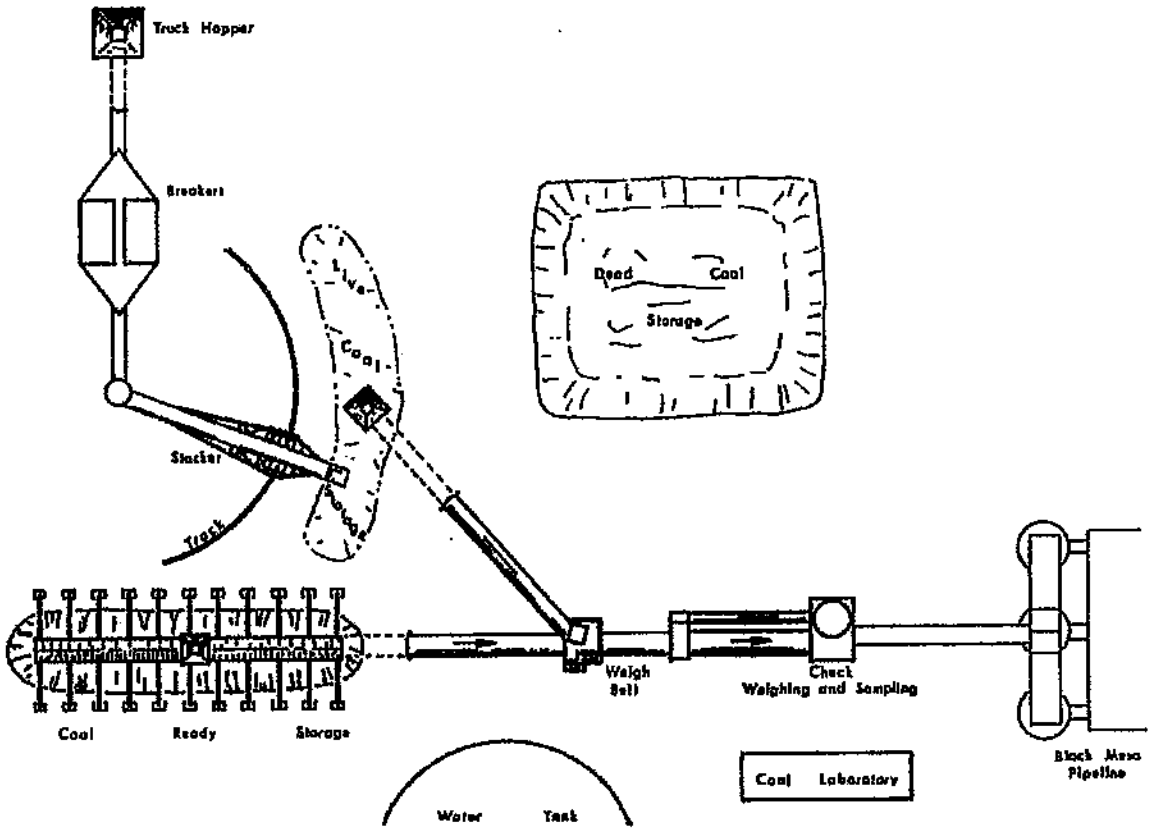


Fig. 2—General layout of Peabody's coal handling and storage area. Raw coal delivered by truck to the hopper first passes through the rotary breakers where rock is removed and the coal is reduced to minus 2-in. size, then it is stored by the stacker in either live or ready piles. Dead storage is developed by frontend loaders and dozers. Coal from any of the storage piles passes over a special weighbelt section, then via a sampling tower to the Black Mesa Pipeline processing plant

However, in the Black Mesa project the Mohave power plant will be receiving coal in the form of a slurry and, while some reserves can be maintained at the plant, it is essential that the bulk of the reserves be placed at the initiating point of coal delivery or at the mine.

Peabody, therefore, developed coal handling and storage facilities adjacent to the Black Mesa Pipeline processing plant as illustrated in Fig. 2. The storage facilities provide for "live," "ready" and "dead" or "reserve" stockpiles.

Coal from the mine delivered by truck to the 400-ton surge hopper is fed by an 84-in. reciprocating feeder to a 60-in. belt that delivers at 1700 tph to twin Pennsylvania rotary breakers. These 14x28-ft units reduce the coal to minus 2-in. size and also remove the rock which is discharged to a 60-ton bin. Coal trucks are loaded with rock from the bin and haul it to the pits for disposal.

The 2x0 coal from the rotary breakers is fed to a 48-in. belt equipped with an ABC belt scale, then is discharged to a Hewitt-Robins

This view of the coal handling and storage area, taken from the Black Mesa Pipeline processing plant, illustrates the layout shown in Fig. 2. The truck hopper is hidden behind the conical "live" storage pile at right center, the "ready" storage pile is under the A-frame structure at left center, the "dead" storage at right front was being built up by frontend loaders and dozers, and the weighbelt section is at left front. The mine is off view in left background. Natural hummocks in right background resemble spoil piles

stacker equipped with a 48-in. belt. The stacker moves on a semicircular track over a 160-degree arc.

At the midpoint of its arc of travel the stacker discharges coal to a maximum of 25,000 to 30,000 tons on top of a ground-level open hopper that feeds a 42-in. reclaim belt in a withdraw tunnel underneath. This is the live or active surge pile that is used to provide regular feed to the pipeline processing plant. Coal discharged by the stacker at adjacent points in its arc of travel can be dozed into the live surge pile hopper as needed.

At its extreme right position the stacker discharges to a hopper on top of an elongated structure equipped with a shuttle belt. Underneath this structure at ground level is a V-shaped hopper. This is filled to overflowing by the shuttle conveyor to a maximum capacity of 37,000 tons, with about half this amount showing above ground. This is the ready storage pile, ready to supply coal to the plant when necessary but normally reserved for weekend supply when the flow of coal from the mine is stopped.

A withdraw tunnel under the ready storage pile is equipped with a 42-in. belt for delivery of coal to the processing plant. The V-shaped hopper has an inverted V-shaped bottom with side openings that allow the coal to flow onto shelves on either side. A traveling plow moves the coal from each shelf onto the loadout belt.

A dead or reserve storage pile has been developed a short distance from the live surge pile area. Coal from live storage was carried by frontend loaders to the dead storage area, then shaped into a rectangular pile and compressed by dozers. This reserve pile now holds about 100,000 tons of coal which, together with other storage, constitutes about a 15-day reserve for the Mohave power plant with only one generator in operation. When the second generator is started in late 1971, the dead storage pile will be increased to 200,000 tons.

Weighing and sampling

Coal from either the live or ready coal storage piles is conveyed by belts to a weighbelt station, as shown in Fig. 2. If coal from the reserve storage pile is needed, it can be loaded out by frontend loaders and carried to the live storage pile tunnel opening for belt transfer to that station.

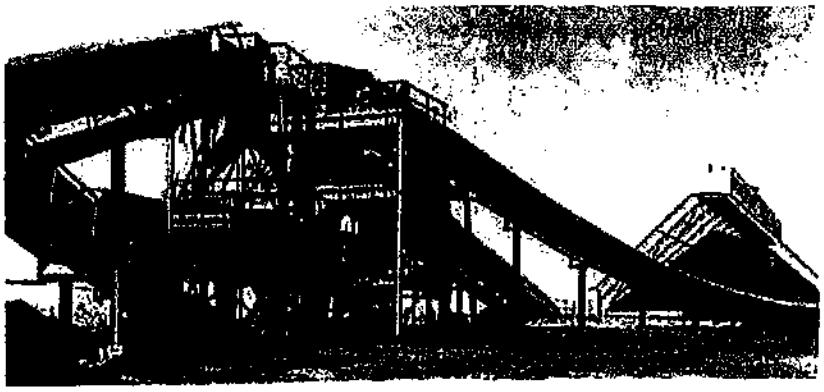
Because all three parties—Peabody Coal, Black Mesa Pipeline and Southern California Edison—have an interest in both the quantity and quality of the coal at this point, elaborate precautions have been taken to assure accurate weights and analyses. Operation of the equipment has been assigned to a fourth party—Commercial Testing & Engineering Co. of Chicago.

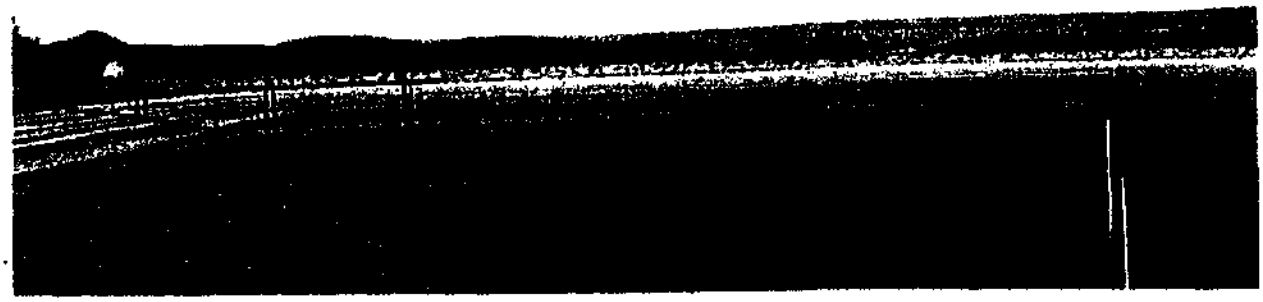
The weighbelt station consists of a 40-ft section of 48-in. belt installed horizontally to insure maximum accuracy of the ABC belt scale. A built-in chain weight can be used to calibrate the scale but a second check on weight has been provided also.

This involves diverting a "slug" of coal from the plant delivery conveyor to a 300-ton bin in the sampling tower located between the weighbelt station and the plant. The bin is mounted on load cells and provisions have been made to check load cell calibration by hanging standard weights on the bin.

In periodically checking the weighbelt the coal feed is stopped until the weighbelt and plant delivery belt have been cleared of coal. The coal feed is then resumed and continued until about 270 tons have passed over the weighbelt and have been diverted into the 300-ton bin. The weight of coal in the bin provides a precise check on the accuracy of the weighbelt scale reading. The coal in the bin is then returned to the plant delivery belt at a point downstream from the weighbelt station so it will not be recorded a second time.

Commercial Testing & Engineering is responsible for accurate weighing, sampling and analysis of coal at the weighbelt/sampling location. A Gallagher automatic sampler located in the sampling tower diverts samples from the plant delivery belt for analysis as





Right: The weighbelt station at the left is the point where the raw coal is weighed accurately before it is processed. The conveyors from the live storage pile, off view at right, and the ready storage pile at right background discharge to the 40-ft horizontal weighbelt section before the coal is conveyed to, first, the sampling tower, then to the Black Mesa Pipeline plant for processing prior to delivery via pipeline to the Mohave power plant in Nevada. Below: Water provided by five deep well pumps is stored in this 3-million gallon reservoir. Gravity flow via a 14-in. line to the Black Mesa plant site two miles away, right background, assures a water supply even if power outages shut down pumps. Water level controls, which are on the structure at left center, start and stop supply pumps automatically

to quality, using ASTM standards. Mr. Gail Palmer is in charge of the Commercial Testing operations which are headquartered in a prefabricated, modern coal laboratory building located adjacent to the sampling tower.

Water supply

The Black Mesa is a high plateau with an arid climate. What might be termed stream beds in the east are called "washes" in the west. These are normally dry but carry a torrent of water after an infrequent rain. The mine access road had a near washout after a "gully washer" in September, 1970, and it was necessary to install larger culverts.

It was evident from the start that such intermittent surface runoff could not be depended on to supply the amount of water needed for continuous transport of coal slurry from the Black Mesa operations to the Mohave power plant.

Surface wells a few hundred feet deep would yield only about two gallons per minute each. It would have been necessary to develop a multitude of such wells to obtain the needed amount of transport water. This would have deprived the Indian residents of the area of the water needed for their sheep and cattle so the idea of using surface wells was abandoned.

Peabody solved the water supply problem by going to deep wells. The first, a pilot hole drilled in 1965, reached a total depth of 5,780 ft and penetrated several deep aquifers that were tested for both quality and quantity and found to be quite satisfactory.

The hole was drilled at a diameter of 26 in. to a depth of 100 ft, then a 20-in. casing was cemented in place. The next 2,000 ft of hole was drilled at a diameter of 17½ in. and cased the full depth.

Aquifers were noted above this depth but Peabody had an agreement with the Indian tribes to not deplete the water table at depths less than 2,000 ft for fear of drying up the surface wells. Casing all subsequent wells to a depth of 2,000 ft also insured that water brought up from greater depths would not mix with the water sources for surface wells.

Five additional wells were drilled, using the pattern of the pilot hole, and these five now provide the present water supply. They average about 3,500 ft deep and the water rises to within 500 to 900 ft of the surface when pumping is stopped.

Each well is equipped with a 17-stage Reda submersible pump with a 300-hp Reda tandem motor installed about 1,600 ft below the surface. The pump assembly has a maximum diameter of 8⅝ in. and is over 67 ft long. Each well will produce at least 500 gpm, and they are spaced far enough apart so drawdown from one well will not affect the supply of water to adjacent wells.

The wells are tied to a network of 12 miles of pipe lines which allow delivery to either a storage reservoir or the main storage tank near the Black Mesa Pipeline processing plant as shown in Fig. 2. The tank, 150 ft in diameter and 48 ft high, has a capacity of 6,300,000 gallons and is the dominant object in the plant area. It supplies water to both Peabody and Black Mesa Pipeline operations.

The 3-million gallon reservoir was purposely built at an elevation 100 ft higher than the main storage tank so water can flow by gravity to the tank in the event a power outage would shut down pump operations. A 14-in. diameter pipeline two miles long connects the reservoir and tank. Level controllers at the reservoir provide remote control of the pumps to maintain the proper water level.

Power

Power for both the Peabody and Black Mesa Pipeline operations in the Black Mesa area is provided by the Navajo Tribal Utility Authority. A 69-kv line originating at a substation near Kayenta generally follows Arizona highway 164 and the access road to deliver power to the Peabody operations. A similar line reaches the Black Mesa Pipeline plant via a separate route. Provisions have been made to supply both operations from either line should the other fail.

The 69-kv power is reduced in a substation near the coal handling and storage area to 4160 and 440 volts for Peabody operations in that area and the mine office and maintenance building. A portable Peabody substation reduces the 69-kv power to 4160 volts for 191-M shovels. A second portable substation will provide 7200-volt power for the 1260W dragline presently under construction.

Black Mesa No. 1 Mine Data

Operator ..... Peabody Coal Co.
Location ..... Near Kayenta, northeastern Arizona
Present production ..... About 2½ million tpy
Type of operation ..... Surface mining
Management personnel ..... Herb Fox, Gen. Supt., Western States Div.
Douglas B. Cook, Chief Eng., Western States Div.
Harold R. Combs, Supt.
William Walker, Asst. Supt.
Robert Wunderlich, Master Mechanic
William Graham, Chief Electrician

MAJOR EQUIPMENT REFERENCE

MINING EQUIPMENT	
Draglines, 7400, Page archless 14-yd bucket	Marion Power Shovel Co.
BE 1260W, 36 yd (under construction)	Bucyrus-Erie Co.
Shovels, 191-M, 12-yd rock & 16-yd coal dippers (2)	Marion Power Shovel Co.
Haulage units, 120-ton tractors, 100-ton trailers (5)	Dart Truck Co.
LW Haulpak 35-ton (2)	WABCO Constr. Equip. Div.
Drills, 30-B (& 50-R under construction)	Bucyrus-Erie Co.
Bits, 5½ (& 10-5/8) in.	Hughes Tool Co.
Explosives, ANFO	Apache Powder Co., Benson, Ariz.
Primers	du Pont de Nemours, E.I. & Co.
Detonators & detonating cord	Austin Powder Co.
Storage hoppers, 40 ton (2)	I&M Equipment Sales, Inc.
8-ton bulk service truck	I&M Equipment Sales, Inc.
Tractor dozers, D8 (2) & D9	Caterpillar Tractor Co.
Wheel loaders, 988, 6 yd & 992, 15 yd	Caterpillar Tractor Co.
Roadgrader, No. 15	Caterpillar Tractor Co.
Pit pumps, 4-in. gas & 6-in. diesel	Gorman-Rupp Co.
Motor crane, 90 ton, Lorain	Thew Shovel Co.
Lubricants, oil	Shell Oil Co.
Grease	Whitmore Mfg. Co.
PROCESSING EQUIPMENT	
Rotary breakers, Pennsylvania, 14x28 (22)	Pennsylvania Crusher Div., Bath Iron Works Corp.
Belt scales, ABC(2)	McDowell-Wellman Eng. Co.
Coal stacker	Hewitt-Robins Inc.
Deep well pumps, 500 gpm, 300-hp tandem motors	Reda Pump Co.
Automatic coal sampler	Gallgher Co.

1014

The 18-in. line of the Black Mesa Pipeline Co. will carry coal slurry 273 miles from Peabody's Black Mesa No. 1 Mine in northeastern Arizona to the Mohave power plant in southern Nevada at a speed of 4 mph and a rate of 16,000 tpd

The longest, largest coal slurry pipeline ever built

A major technological advance is represented in the pipeline that moves finely ground coal as a slurry in water 273 miles from the Black Mesa No. 1 Mine in northeastern Arizona to the Mohave Power Project in southern Nevada. Quietly and unseen, except for the occasional pumping stations, the buried 18-in. line moves the equivalent of one and one-half unit train loads every day.

The coal might have been moved by unit train except that studies indicated the cost would exceed that of pipelining. Unit train movement would have involved the building of 150 miles of new railroad and a total haul of 408 miles. The pipeline, with only 273 miles of travel, was not only feasible but dependable and economically attractive.

The coal slurry is prepared in a plant located adjacent to the coal handling facilities of Peabody Coal Co. at their Black Mesa No. 1 Mine as described in preceding articles. The slurry preparation plant and pipeline were built by and are operated by Black Mesa Pipeline, Inc. (BMPL), a subsidiary of Southern Pacific Pipe Lines, Inc.

Peabody maintains live, ready and reserve storage piles from which coal can be delivered selectively, under control of the BMPL plant operators, to the plant for processing. Also as described in preceding articles, both the quality and quantity of the coal are determined accurately enroute to the plant. The weighing and analysis operations are conducted by Commercial Testing & Engineering Co. staff members from a laboratory located adjacent to the weighing/sampling location.

Fig. 3 illustrates the processing flow in the plant from delivery of coal to delivery of slurry to the pipeline.

Dry processing section

The 2x0 coal delivered by 48-in. belt to the dry processing section of the plant at rates up to 1,000 tph is discharged to a distributing tower, then by means of flop gates, chutes and shuttle conveyors to three surge bins holding 580 tons each. Sonar devices in the bins provide indication of the amount of coal in each bin. They also control the automatic switching of coal flow from a full bin to one that can still receive coal during the filling process.

Each bin is the starting point for three identical processing circuits. Coal is discharged to a 54-in. belt, controllable from 0 to 50 fpm, which delivers to a W. S. Tyler Ty-Rock scalping screen. The belt speed is indicated on the plant control panel in tons per hour of coal feed.

The 6x10-ft Ty-Rock screen is equipped with a ⅜-in. screen deck. The 2x⅜ fraction over the screen deck is discharged to a Jeffrey 48x56 Wedag Impactor for reduction to minus ⅜ in., after which it rejoins the ⅜x0 fraction through the screen deck as feed to the wet processing section of the plant.

All coal transfer points in the dry processing section are hooded and

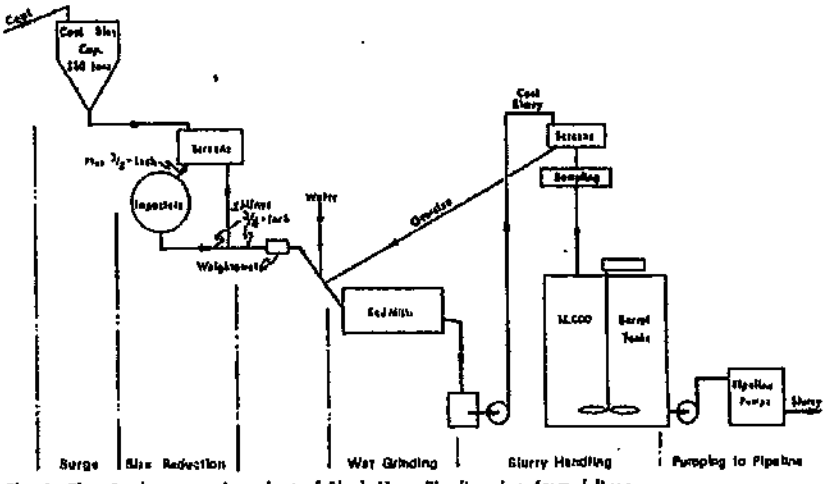


Fig. 3—Flow in the processing plant of Black Mesa Pipeline, Inc. from delivery of coal to the plant to delivery of slurry to the pipeline

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Left: Raw coal (2x0) delivered by 42-in. belt to the plant is distributed by chute to the near 48-in. belt, at left, or far belt, beyond chutes, to 650-ton surge bins, or by means of a bypass chute to the middle surge bin. Distribution is controlled automatically from the plant control room, using sonar level devices in the bins for selection. Right: Coal feed from the 650-ton surge bins is conveyed by 54-in. belts (three flow circuits) to Ty-Rock 6x10 scalping screens for separation at ¾ in. All transfer points in the dry processing section are hooded and connected to two Roto-Clone dust collectors where the dust is wetted and discharged to the rod mills in the wet processing section

connected to two American Air Filter Type R Roto-Clone dust collecting systems. These collectors, equipped with 40,000 cfm fans, use the wet impingement principle to develop a dust slurry that gravitates to the rod mills in the wet processing section.

Wet processing section

The ¾x0 feed from each circuit in the dry processing section is delivered to a 36-in. feed belt that conveys it to the individual rod mill in the wet processing section. Water is sprayed on the coal at the point of delivery to this belt to hold down the dust.

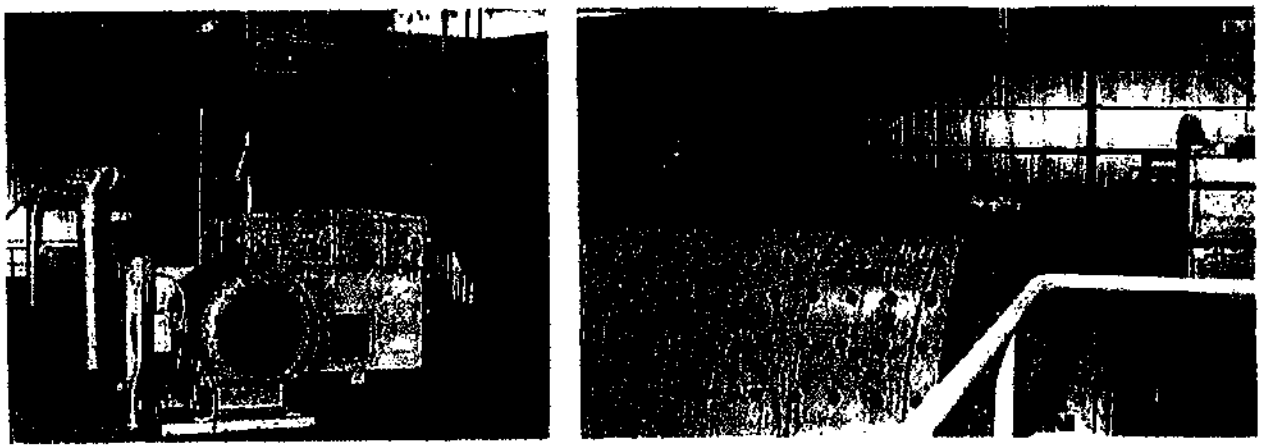
A dust collecting hood also provides for collection of any airborne dust and transportation to the AAF dust collectors.

The Nordberg rod mills have an inside diameter of 13 ft and a length of 18 ft. Water is added to each mill in proportion to the weight of coal feed determined by a Compudyne weightometer on the feed belt. The desirable coal water proportion in the mill discharge is 53 percent solids by weight. Each rod mill is driven by a 1500-hp, 225 rpm synchronous motor. The mill rotates at 13.8 rpm, and the mill capacity is 290 tph.

Slurry overflow from the mills is discharged to a slurry surge tank from where it is pumped by a Wilfley 8-in. centrifugal sludge pump through a 10-in. line to a sampling and distribution station located on the top level of an adjacent building. An Ohmart density meter mounted on the pump discharge line monitors the coal concentration in the slurry and transmits this information to the plant control panel where it is tied in with the Compudyne weightometer and rod mill water feed controls.

Pipeline slurry supply

The initial step in maintaining the



Left: The plus ¾-in. fraction from the Ty-Rock screens is reduced to minus ¾-in. in Jeffrey Wedag Impactors and combined with the ¾x0 fraction as feed to the rod mills in the wet processing section. Right: Three 13x18-ft Nordberg rod mills reduce the ¾x0 coal to minus 14-mesh size. Water is added with the coal feed, with the amount controlled by an Ohmart density meter on the slurry discharge line coordinated with a Compudyne belt scale on the feed belt to each mill so the mills will discharge slurry with about 53 percent solids

pipeline slurry at less than 14-mesh size, the desirable top particle size for pipelining, takes place in the sampling and distribution station on the top level of a building adjacent to the wet processing structure.

The slurry is screened on two Syntron 3x4-ft screens equipped with Wedgewire screening decks. The oversize is sluiced via a 6-in. line to the rod mills for regrinding. The underflow is sampled by a Denver Equipment two-stage automatic sampler. Samples are sent to the plant laboratory for immediate analysis of size consist and solids concentration of the slurry.

Although the slurry particle size should not exceed 14 mesh for good pipelining, the power plant also has a restriction of not more than 20 percent of the solids through a 325-mesh screen.

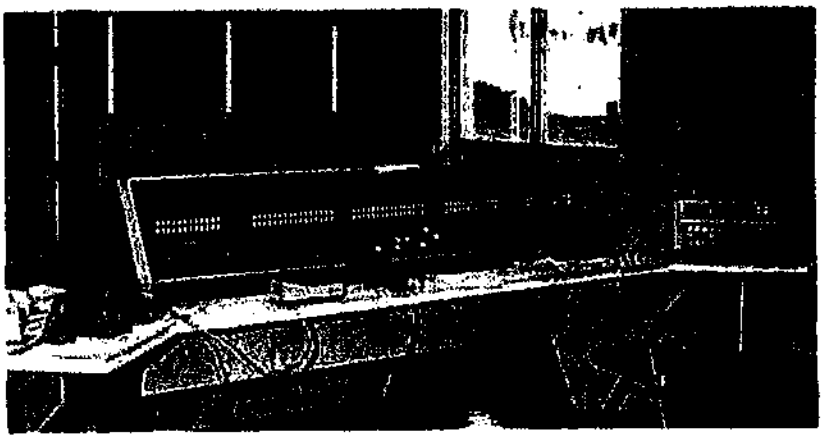
The underflow of the sampling screens flows to a distributor which feeds selectively by gravity to any of four slurry holding tanks. These are 49 ft in diameter and 45 ft high, and have a maximum capacity of 15,000 barrels or 630,000 gallons. The working level capacity of 12,000 barrels is enough to supply the pipeline for about two hours, and they are called "two-hour tanks."

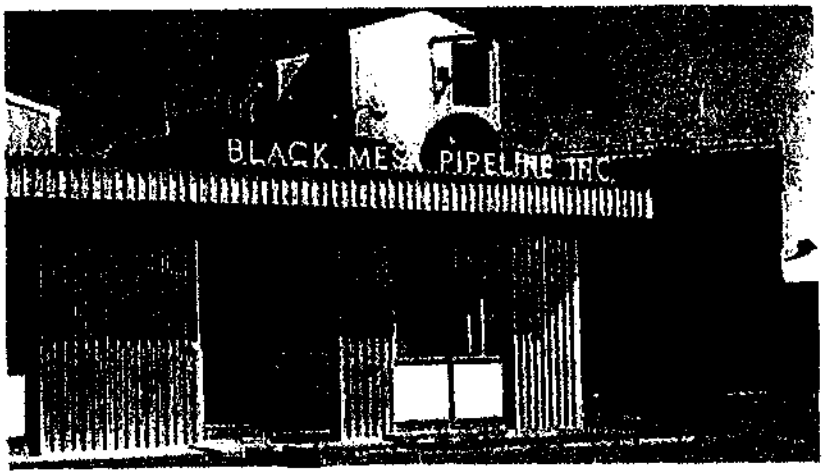
In normal practice one tank is being filled, a second is held pending sampling analysis, and the third is "on line" supplying slurry to the pipeline. A fourth tank is considered a spare, to be used in the event any of the others develop trouble. Also, the contents of the fourth tank can be pumped into the pipeline to serve as a slug separating cleaning water and coal slurry if it becomes necessary to clean the pipeline.

Obviously the laboratory must test the composite sample of the coal slurry directed to a holding tank being filled and report the size consist and solids concentration within the 2-hour period that tank is on "hold." This provides time for a decision as to allowing the contents to be pumped into the pipeline. If the slurry must be returned to the wet processing section for adjustment, the spare tank provides feed to the pipeline.

Each holding tank is equipped with a Denver propeller-type agitator. The 125-hp drive is bridge-mounted on top of the tank and the 10-ft diameter propeller is centered near the bottom. Circulation induced by the propeller is downward in the center, horizontally outward along the bottom and vertically upward along the inner wall.

The holding tanks are manifolded





Above: Coal slurry is discharged, after sampling, to three 15,000 barrel (630,000 gallon) holding tanks, each providing a 2-hour supply for the 273-mile pipeline that delivers to the Mohave Power Project in Nevada. The No. 1 pump station at the Black Mesa plant has three Wilson-Snyder 1700-hp double-acting duplex pumps that can be used in any combination to provide the 660 tph pipeline flow. Three other stations with similar equipment move the slurry through the pipeline. Center: The pipeline system control center at the Black Mesa plant uses microwave transmission of signals for operation of all pumping stations and for telephone communication. The control system also provides readout of both operations and equipment troubles. Maintenance personnel headquartered in Flagstaff can be alerted in the event of trouble to fly to the trouble location. Below: The offices and control room of Black Mesa Pipeline, Inc. are located in this plant building. Two of the 15,000 barrel slurry holding tanks are behind the building. The No. 1 pump station is located in the building at the extreme right. A microwave transmitting and receiving "dish" is visible behind the "Pipe" in the company sign

at the bottoms to two Wilfley 12-in. centrifugal sludge pumps, one maintained as a spare. The operating pump circulates the coal slurry through a pipe loop past the suction of the high pressure pipeline pumps, maintaining a pressure of 60 to 70 psi.

Pipeline operation

Coal slurry is pumped into or through the pipeline by any combination in parallel of three Wilson-Snyder 1700 SP pumps, supplied by the Oilwell Div. of U.S. Steel, at each of three stations. The fourth uses four pumps with slightly smaller bores by reason of the pressures required at that location.

Each pump has a 4160-volt, 1750-hp drive. The double-acting duplex units can be varied from 0 to 65 strokes per minute. The bore is 12 in., the stroke length is 18 in., and the displacement per stroke is 33 gallons. At the maximum speed of 65 strokes per minute, the pump displacement is 2,145 gpm which is equivalent to about 330 tons per hour of slurry. Two pumps running at maximum capacity can therefore maintain a pipeline flow of 660 tph.

The four pump stations are located at the Black Mesa plant and near the towns of Cameron, Williams and Seligman as shown on Fig. 1 in the initial article. The Cameron station has the four smaller-bore pumps because of the need to develop a pressure of 1,600 psi, about 600 psi higher than the other stations, in order to push the slurry over Gray Mountain with a 1,600-ft higher elevation.

Each station has its own water facilities, with the storage tanks filled via the pipeline from the Black Mesa plant. Each station also has a dump pond which will hold two volumes of the upstream pipeline section in the event of an emergency. Coal dumped into these ponds will not be reclaimed for pipeline use.

The pipeline has an outside diameter of 18 in. for most of its length.

Please turn to page 54

Table I—Comparison of Cadiz-Cleveland and Black Mesa pipelines

Operator	Consolidation Coal Co., Hanna Div.	Black Mesa Pipeline, Inc.
Point of origin	Cadiz, Ohio	Kayenta, Ariz.
Point of termination	Cleveland, Ohio	Davis Dam, Nev.
Pipeline data:		
Length, miles	108	273
Pumping stations	3	4
Pipe diameter, OD, in.	10	18
Pumps:		
No. per station	3	3, except Sta. No. 2 which has 4
Manufacturer	U. S. Steel Oilwell Div.	U. S. Steel Oilwell Div.
Name	Wilson-Snyder	Wilson-Snyder
Type	Reciprocating, piston, double-acting duplex	Reciprocating, piston, double-acting duplex
Elec. motor drive, hp	450	1,750
Pump strokes per minute	30 to 49	0 to 65
Station spacing, miles	30 to 45	50 to 100
Operations:		
Flow rate, gpm	Approx. 1,100	Approx. 4,300
Flow velocity, fps	4 to 6	About 5.4 in 18-in. pipe; about 11 in 12-in. pipe
Solids conc., percent wt.	50	45 to 50
Specific gravity of slurry	1.15 to 1.16	1.13 to 1.18
Particle size in slurry	Minus ¼-in.	Minus ¼-in.
Station manning:		
Station No. 1	4, 1/shift	4, 1/shift
Other stations, each	1, day shift	1, day shift
Notes	Delivery in 1959 and 1960 was 14% above expectations. Use factor was 96%	Delivery started late in 1970

Black Mesa Pipeline, Inc., Management

B. K. Smith ..... President
J. G. Montfort ..... Manager
P. V. Flint ..... Superintendent of Black Mesa processing plant & pipeline
M. J. Hogan ..... Maintenance Superintendent, stations 2, 3 & 4

MAJOR EQUIPMENT REFERENCE

Scalping screens, Ty-Rock, 6x10 (3) ..... W. S. Tyler Co.
Crushers, Wedag Impactor, 48x56 (3) ..... Jeffrey Mining Mach. Co.
Dust collectors, Type R Roto-Clone (2) ..... American Air Filter Co., Inc.
Weightometers (8) ..... Compudyne Corp.
Rod mills, 13x13 ft (5) ..... Nordberg Mfg. Co
Plant slurry pumps, 8-in. (1), 12-in. (2) ..... Wilfley, A. R. & Sons
Slurry density meter ..... Ohmart Corp.
Slurry screens, 8x4 ft (2) ..... Syntron Div. of FMC Corp.
Automatic slurry sampler, two stage ..... } Denver Equipment Co.
Slurry tank agitators (4) ..... }
Processing plant motor drives ..... Westinghouse Elec. Corp.
Pipeline pumps, Wilson-Snyder 1700 SP, reciprocating piston type (18) ..... Oilwell Div., U.S. Steel Corp.
Drives, 4160 v, 1750 hp (18) ..... General Electric Co.
Pipeline pipe, 18 & 12¾-in. ..... U.S. Steel Corp.

Slurry delivered to the Mohave power plant in southern Nevada, shown under construction, will be held in the three tanks, lower right, then dewatered and dried prior to burning in the plant furnaces. Emergency storage will be provided by three ponds, each 800 ft in diameter and 20 ft deep, where the water will be drained off and the coal can be reclaimed, when necessary, by conventional earthmoving equipment and reconverted to slurry

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EXPERT REPORT OF JOHN A. SWAIN

Prepared for the Nevada Attorney General
Attorney for the Nevada Department of Taxation

Southern California Edison

v.

State of Nevada, *ex. rel.* Department of Taxation

In the First Judicial District Court of the State of Nevada
In and for Carson City
Case No. 09-OC-00016 1B
Department No. 1

I. QUALIFICATIONS

My name is John A. Swain, and I have prepared this report for the use of the Defendant in connection with the above-captioned litigation. I am a professor of law at the University of Arizona Rogers College of Law, where I have taught since 2001. I have devoted most of my professional life to the practice and study of state and local taxation. I have written extensively in the field, including coauthoring both the leading treatise on state taxation, Hellerstein, Hellerstein, & Swain, State Taxation (3rdth ed. 1998-2012) and one of the leading casebooks on state taxation, Hellerstein, Stark, Swain, & Youngman, State and Local Taxation (9th ed. 2009). My experience and scholarly work in the field of state and local taxation are reflected in my current resume, which I have attached as Exhibit A.

II. SCOPE OF OPINION

I have been asked to evaluate, from a tax policy perspective, the proposed remedies for the Commerce Clause violation that has been alleged in this case. For the purposes of my opinion, it is assumed that the Nevada sales and use tax exemption for minerals subject to the Nevada net proceeds of mines tax unlawfully discriminates against interstate commerce. Additional assumptions underlying this opinion are set forth in Part V.

III. CASE SUMMARY

During the years at issue, Southern California Edison ("SCE") owned a majority interest in the Mohave Generating Station in Nevada, which generated electricity by burning coal. SCE purchased coal from an unrelated party located in Arizona. SCE accrued and remitted Nevada

use tax on its use of the coal. It later filed a refund claim for those taxes, arguing, among other things, that the Nevada sales and use tax exemption for minerals that are subject to the Nevada net proceeds of mines tax unlawfully discriminates against interstate commerce. The Nevada Department of Taxation (the "Department") denied the claim on the grounds, among others, that the Nevada exemption is not discriminatory and, even if it is discriminatory, that SCE suffered from no discrimination in fact, and so there is no actual harm that supports the award of a refund.

IV. THE STATUTORY SCHEME

A. Sales Tax

Like many states, Nevada has adopted a retail sales tax. The sales tax is generally considered to be a tax on final consumption. Thus, for example, wholesale transactions and purchases of raw materials that are later incorporated into finished products are exempt. Sales taxes sometimes deviate, however, from the ideal consumption tax model. For example, consumer purchases of services, food, medicine, and housing are often exempt. In addition, although wholesale transactions and purchases of physical inputs to finished goods are usually exempt, purchases of other business inputs, such as overhead materials, are often taxed.

B. Use Tax

Soon after sales taxes were first adopted, it was recognized that tax could be avoided by purchasing items out-of-state and then bringing them into the consumer's home state for use. In response, states adopted compensating use taxes to level the competitive playing field between in-state and out-of-state sellers. Nevada, for example, imposes use tax on "all property which

was acquired out of state in a transaction that would have been a taxable sale if it had occurred in Nevada."[1]

C. Nevada Sales and Use Tax Exemptions

Nevada provides a number of exemptions from sales and use tax. Pertinent to this report are exemptions for (1) sales-for-resale, (2) ingredients and component parts, (3) gas, water, and electricity, (4) fuels, (5) out-of-state delivery, and (6) mining proceeds.

1. Sale-for-resale. Wholesale transactions are excluded from the definition of taxable retail sales, which are defined to mean sales of tangible personal property "for any purpose other than resale in the regular course of business."[2] Thus, for example, the sale of golf clubs to a sporting goods store is excluded from tax. Only the store's sale of the clubs to the ultimate consumer is subject to tax. This prevents "pyramiding" of the sales and use tax.

2. Ingredients and component parts. Ingredient and component parts are also excluded from the Nevada sales and use tax. A Nevada regulation provides: "The tax does not apply to sales of tangible personal property to persons who purchase it for the purpose of incorporating it into the manufactured article to be sold."[3] Thus, for example, the sale of titanium to a golf club manufacturer for incorporation into its finished clubs would be excluded from tax. As a technical legal matter, the ingredients and component parts exclusion is simply one example of the application of the broader sale-for-resale exclusion.

[1] NRS 372.185(2).
[2] NRS 372.050(1).
[3] NAC 372.370(2).

3. Gas, water and electricity. Nevada exempts from sales and use tax "gas, electricity and water when delivered to consumers through mains, lines or pipes."[4] The rationale for this exemption is probably rooted in the politically popular notion that essential products and services should not be taxed.[5] The exemption is not limited to households, however, and also applies to business purchases of gas, water and electricity.

4. Fuels. A Nevada sales and use tax exemption applies to "any combustible gas, liquid or material of a kind used in an internal or combustion or diesel engine for the generation of power to propel a motor vehicle on the highways."[6] Such fuels are instead generally subject to specialized fuel excise taxes. Nevada also exempts from sales and use tax wood, coal, petroleum, gas, and other fuel used to produce domestic heat by a burning process.[7]

5. Out-of-state delivery. Like most states, Nevada exempts the sale of items delivered to a point outside the state.[8] This is consistent with the view that the sales tax is a consumption tax. Thus, it is appropriate to impose the tax in the state of consumption (the destination state) rather than in the state of origin.

6. Mining proceeds. There is an exemption from Nevada sales and use tax for minerals which are subject to the Nevada net proceeds of mines tax.[9] The exemption does not apply, however, at the stage in the supply chain where the mining proceeds lose their "identity as such."[10] For example, the sale of a golf club that was made from titanium extracted from a

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[4] NRS 372.295.
[5] In fact, granting exemptions to all purchasers of necessities, including wealthy purchasers, is a very inefficient approach to redistribution.
[6] NRS 372.275.
[7] NRS 372.300.
[8] See NAC 372.704.
[9] NRS 372.270.
[10] Nev. Const. Article 10, § 5(1).

Nevada mine still would be subject to the retail sales tax because the titanium has by that time lost its identity as a raw material. Minerals subject to the net mining proceeds tax include "oil, gas and other hydrocarbons," but not "sand, gravel or water, except hot water or steam in an operation extracting geothermal resources for profit."[11] As noted, SCE's refund claim is based on the contention that this exemption discriminates against producers and purchasers of out-of-state coal, because they do not enjoy the benefit of the exemption.

V. ASSUMPTIONS

This opinion is based in part on the following assumptions, some of which may be contested matters in the litigation. I make these assumptions not because I necessarily view each assumption to be true. Rather, the assumptions are made to clarify that my opinions would hold even if certain matters were held to be true.

A. Coal is not mined in Nevada, nor does Nevada have sufficient coal deposits to support commercial coal mining. Thus, there are no in-state miners of coal competing with out-of-state miners of coal, nor are there in-state electrical utilities that purchase coal mined in-state.

B. Sellers and users of coal used in coal burning electrical generation plants are in competition with seller and users of other sources of energy used in electrical generation plants. Such competing sources of energy include oil, gas, and geothermal energy.

C. All oil, gas, and geothermal energy extracted in Nevada is either (a) subject to Nevada sales or use tax because it loses its identity as a mining proceed or (b) exempt from Nevada sales

[11] NRS 362.010(2).

and use tax under lawful, non-discriminatory exemption statutes other than the net mining proceeds tax exemption.

1. Oil. Crude oil extracted in Nevada is either subject to sales or use tax because, through refining or other processes, it has lost its identity as a mining proceed as such, or because it qualifies for exemption under any number of lawful, nondiscriminatory sales and use tax exemptions, such as the sale-for-resale exemption or the various exemptions for fuels.

2. Gas. Natural gas extracted in Nevada is either subject to sales or use tax because, through refining or other processes, it has lost its identity as a mining proceed as such, or because it qualifies for exemption under any number of lawful, nondiscriminatory sales and use tax exemptions, such as the sale-for-resale exemption, the various exemptions for fuels, or the exemption for gas, electricity, and water delivered through mains, lines or pipes.

3. Geothermal energy. Geothermal energy (including associated hot water and steam) extracted in Nevada is either subject to sales or use tax because, through conversion to electricity or other processes, it has lost its identity as a mining proceed as such, or because it qualifies for exemption under any number of lawful, nondiscriminatory sales and use tax exemptions, such as the sale-for-resale exemption, the exemption for gas, electricity, and water delivered through mains, lines or pipes, or the general exclusion of services from the definition of "tangible personal property."

D. Even if there were some oil or gas that is exempt from Nevada sales and uses tax due solely to the application of the mining proceeds exemption, such oil and gas is not used in the production of electricity in Nevada.

E. The coal purchased by SCE would be exempt from sales or use tax if it were purchased from an in-state mine.

F. The sales and use tax exemption for items subject to the net mining proceeds tax unlawfully discriminates against interstate commerce.

VII. OPINIONS

A. Tax Policy and Discrimination against Interstate Commerce

In general, policymakers should seek to minimize the distorting effect of taxes on economic activity. Thus, a fundamental goal of good tax policy is to maintain a level playing field among economic competitors. Taxes that discriminate against out-of-state producers, for example, may encourage consumers to favor goods produced by less efficient local producers, thus distorting resource allocation, impairing overall economic efficiency, and reducing general welfare. This value is embodied in dormant Commerce Clause jurisprudence, which forbids taxes that discriminate against interstate commerce. Thus, a tax that imposes greater burdens on out-of-state goods, activities, or enterprises than on competing in-state goods, activities, or enterprises will be struck down as discriminatory under the Commerce Clause. For example, if a

state imposed a 4% sales tax and a 5% use tax, the use tax would unconstitutionally discriminate against out-of-state purchases.[12]

B. Tax Policy and Remedies for Discriminatory Taxes

1. In general. Relief for a party aggrieved by an unconstitutionally discriminatory tax has two components. First, the offending statute will be struck down, providing prospective relief. Additionally, provided that the aggrieved party was denied a meaningful predeprivation remedy, courts will seek to level the playing field retroactively by either (1) providing an equalizing refund to the aggrieved party, (2) imposing an equalizing assessment against the favored competitors, or (3) some combination of (1) and (2).[13] To take a simple example, if an aggrieved out-of-state competitor were taxed at 6% and in-state competitors were taxed at 4%, three basic retroactive remedial options would be available: (a) a 2% refund could be awarded to the aggrieved out-of state competitor; (b) a 2% additional assessment could be levied against the in-state competitors, or (c) a refund of x% (assuming $0 < x < 2$) could be awarded to the out-of-state competitor and a (2% - x%) additional assessment could be levied against the in-state competitors. This remedial scheme is consistent with good tax policy. It seeks to level the competitive playing field on both a prospective and retroactive basis.

2. Prospective relief in the instant case. Either the remedy of striking down the sale and use tax exemption for Nevada-source minerals or extending the sales and use tax exemption to non-Nevada source minerals eliminates the alleged discriminatory defect. Thus,

[12] Note that this is the "flip-side" of the level playing field concern that initially led states to adopt compensating use taxes. That is, without a use tax (i.e., with a 0% use tax rate), state sales taxes inadvertently favored interstate sellers. This was not a Commerce Clause violation, however, since such an approach actually promotes interstate commerce. Additionally, enfranchised local populations are thought to possess sufficient political safeguards against states, in effect, discriminating against local commercial interests.

[13] McKesson Corp. v. Division of Alcoholic Beverages & Tobacco, 496 U.S. 18, 110 S. Ct. 2238 (1990).

the tax policy value of leveling the playing field between in-state and out-of-state competitors suggests no preference for either remedy.[14] It can also be noted that either prospective remedy would eliminate any concern that a taxpayer will not know whether to report tax until it can determine whether or not there is an in-state competitor for the taxable period. This is because the tax rule would be the same regardless of the existence of in-state competitors.

3. Retroactive relief in the instant case. As noted, the traditional retroactive relief for a taxpayer aggrieved by an unconstitutionally discriminatory taxing regime is either the award of a refund or the retroactive assessment of tax against the taxpayer's competitors.[15] Without addressing the question of which approach may or may not be legally required, it can be noted at the outset that either approach is logically and practically possible to implement in this case. It is self-evident that a refund could be issued (assuming Nevada could write the check). Further, the class of in-state competitors is null (there are no members), and so a retroactive assessment against that empty class is unnecessary. Maintaining the status quo has the same effect as a retroactive assessment, and thus is a workable remedy as well.

Turning from logical possibilities to tax policy, the non-discrimination principle would not be not furthered by the grant of a refund to SCE. This is because there is no class of in-state competitors that obtains a discriminatory advantage by benefiting from the challenged exemption for proceeds of mines. Specifically, no coal is extracted in Nevada, and so there is no in-state coal producer or user that enjoys this exemption. Further, Nevada-source oil, gas and

[14] It can be argued that the remedy of striking down the mining proceeds exemption is supported by other tax policy values. For example, it can be argued that Nevada has made a sensible choice to tax both extraction of resources and consumption. Striking down the mining proceeds exemption is more consistent with this choice than preserving and expanding the sales and use tax exemption for mining proceeds. As a practical matter, however, it is only in unusual circumstances that a mining proceed that has not lost its identity as such is the subject of a taxable retail transaction.
[15] Or some combination of the two.

geothermal resources are either exempt from Nevada sales and use tax by application of other, clearly non-discriminatory exemption statutes, or are in fact subject to Nevada sales or use tax because their "identity as such is lost" when a sales or use taxable transaction occurs. Thus, there is no class of taxpayers that is given a discriminatory advantage over SCE by the mining proceeds exemption. As a result, adherence to the tax policy principle of non-discrimination requires no equalizing refund.

Date: May 10, 2013

John A. Swain
Professor of Law
University of Arizona Rogers College of Law
Tucson, Arizona
May 10, 2013

Exhibit A

JOHN A. SWAIN

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EDUCATION

Yale Law School, J.D., 1984.
Editor, Yale Law and Policy Review.

Dartmouth College, A.B., government, *summa cum laude*, 1978.

ACADEMIC POSITIONS

Professor of Law
The University of Arizona
James E. Rogers College of Law
(2009 to present)
Courses taught: Federal Income Tax; State and Local Tax; International Tax; Corporate Tax; Advanced Corporate Tax; Nonprofit Organizations; Estates and Trusts; Property; and Professional Responsibility

L.L.M. Tax Faculty
The University of Alabama School of Law
(2009 to 2011)
Courses taught: Corporate Tax; International Tax; Advanced Corporate Income Tax.

Associate Professor of Law
The University of Arizona
James E. Rogers College of Law
(2001-02 to 2008-09)

Associate Professor of Law
The Appalachian School of Law
(Associate professor 2000-01; assistant professor spring 1999, 1999-2000)

Adjunct Professor of Law
Arizona State University
(Fall 1997)

NON-ACADEMIC LEGAL EXPERIENCE

Partner
Streich Lang (now Quarles & Brady)
Phoenix, Arizona
(Partner 1992-1998; Associate 1987-1992).

Associate
Rodey, Dickason, Sloan, Akin & Robb
Albuquerque, New Mexico
(1984-1987).

AWARDS AND HONORS

Named to "The All-Decade State and Local Tax Team," 55 ST. TAX NOTES 127 (Jan. 11, 2010).

Leslie F. and Patricia Bell Faculty Service Award (2010-11).

EXPERT WITNESS AND RELATED EXPERIENCE

Consultant to multinational telecommunications company regarding New York telecommunications tax matter.

Consultant and Expert Witness, South Carolina Department of Revenue 2011-present (Duke Energy Corp. v. South Carolina Dept. of Revenue, No. 10-ALJ-17-0270-CC, S.C. Admin. Law Ct.) (income tax apportionment case).

Consultant and Expert Witness, Vodafone Americas Holdings 2011-present (Vodafone Americas Holdings, Inc. v. Farr, Docket No. 07-1860-IV, Tenn. Chancery Court, 20th Jud. Dist., Davidson Cty., Tennessee (income tax apportionment).

Consultant and Expert Witness, Trans-Alaskan Pipeline Owners, 2010-12 (BP Pipelines (Alaska) Inc. et al. v. State of Alaska Dept. of Revenue, et al. – Superior Court for the State of Alaska, Cause No. 3AN=06-8446 CI) (property tax valuation of Alaskan Pipeline).

Consultant and Expert Witness, State of Minnesota, 2004-06 (MBNA America Bank, N.A. v. Minnesota Commissioner of Revenue, No. 7598-R; and Providian Financial Corporation and Subsidiaries v. Minnesota Commissioner of Revenue, No. C3-03-010083) (income tax nexus cases)

Consultant, State of Mississippi, 2004-05 (WorldCom bankruptcy tax claim).

SCHOLARSHIP

BOOKS

STATE TAXATION (3d ed., Warren, Gorham & Lamont 2012) (co-author, with Walter Hellerstein).

STATE AND LOCAL TAXATION: CASES AND MATERIALS (9th ed., West 2009) (co-author, with Walter Hellerstein, Kirk Stark, & Joan Youngman).

THE STREAMLINED SALES AND USE TAX (co-author, with Walter Hellerstein) (updated and republished annually since 2004).

CHAPTERS

State and Local Tax Aspects of Bankruptcy, *in* 1A COLLIER ON BANKRUPTCY (15th ed. 1992).

ARTICLES

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Speaker, *When the shoe doesn't fit: Equitable Apportionment and other Division of Income Conundrums* (Federation of Tax Administrators Annual Meeting, Albuquerque, NM, June 10, 2013) (forthcoming).

Keynote Panelist, *The Future of Amazon.com and the Implications for Traditional Retailers and E-Commerce Competitors* (Telsey Advisory Group's 5th Annual Spring Consumer Conference, New York, NY, April 8, 2013).

Paper Presentation, *State and Local Taxation of Cloud Computing: A Normative Approach* (National Tax Association Annual Conference, Providence, RI, Nov. 17, 2012).

Speaker, *Equity Challenges to Property Tax Assessments in Theory and Practice* (American Property Tax Counsel, San Francisco, CA, Oct. 13, 2012).

Speaker, *The Federal Role in State Tax Reform: Overview of the State Budget Situation and the Federal Policies that Make State Budgets Worse* (AARP National Policy Council, Santa Fe, NM, June 8, 2011).

Panelist, *Shall We Dance? Coordinating Federal and State Tax Policy* (American Bar Association, Section of Taxation, Midyear Meeting, Boca Raton, Fl., Jan. 22, 2011).

Panelist, *Taxing Internet Sales: The Battle Between States and Retailers* (Association of American Law School Annual Meeting, San Francisco, CA, Jan. 6, 2011).

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Speaker, *Corporate Income Tax Apportionment*, (New Mexico Tax Research Institute, 7th Annual Tax Policy Conference, Albuquerque, NM, June 21, 2010).

Discussant, *Checking in on Check the Box*, paper by Heather Field (National Tax Association, 101st Annual Conference on Taxation, Philadelphia, PA, Nov. 21, 2008).

Speaker, *Walter Hellerstein: the Annotation is in the Grooves* (National Tax Association, 101st Annual Conference on Taxation, Philadelphia, PA, Nov. 21, 2008) (ceremony awarding Holland Medal to Walter Hellerstein).

Speaker, *Recent Federal Income Tax Developments* (Arizona Society of Certified Public Accountants, 24th Annual Federal Tax Institute Tax Conference, Phoenix, AZ, Nov. 7, 2008).

Paper Presentation, *State Tax Nexus Issues in a Mobile Economy: The Evolving Legal Landscape* (University of Tennessee conference on "Mobility and Tax Policy: Do Yesterday's Taxes Fit Tomorrow's Economy?", Oct. 2-3, 2008.)

Speaker and Panelist, *The Uniform Division of Income for Tax Purposes Act—Past and Present* (Multistate Tax Commission 41st Annual Meeting, Santa Fe, NM, July 31, 2008).

Speaker, *Amazon & Ecommerce: Sales Tax Overview & Potential Implications* (Oppenheimer Conference Call, July 1, 2008).

Speaker and Panelist, *Basic Constitutional Issue in State Taxation* (27th Annual State and Local Tax Conference, National Conference of State Tax Court Judges, Cambridge, Mass., Sept. 28-29, 2007).

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Moderator and Speaker, *A Cross-Border Colloquy: What State/Local and International Tax Lawyers Can Learn from Each Other* (American Bar Association, Section of Taxation, Midyear Meeting, Hollywood, Fl., Jan. 19, 2007).

Speaker, *Streamlined Sales Tax: The Fundamentals and the Future* (Annual Sales and Use Tax Symposium, Institute for Professionals in Taxation, Tucson Ariz., Sept. 27, 2006).

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Speaker, *The Internet and the American Sales Tax* (University of Arizona Rogers College of Law and the Eller College of Management, Tucson, Ariz., November 3, 2004).

Enrichment Speaker, *Taxing Dotcom Affiliates of Brick and Mortar Retailers: The Personal Jurisdiction Analogue* (University of San Diego School of Law, San Diego, Cal., April 15, 2004).

Paper Presentation, *An Economic Nexus Standard for the 21st Century* (Tax Council Policy Institute Annual Symposium, Washington, D.C., Feb. 27, 2003).

Speaker, *Internet Taxation: Where Are We Now?* (Arizona Society of Certified Public Accountants 18th Annual Tax Conference, Phoenix, Ariz., Nov. 7, 2002).

Moderator, *Factor Presence Nexus or H.R. 2526?* (Multistate Tax Commission, Washington, D.C., Oct. 16 2002).

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Invited Participant, *Tax Exemptions for Charities: The War Within the States* (Urban Institute, Washington, D.C., June 2000).

SELECTED INSTITUTIONAL SERVICE

Chair, Budget Committee, 2013-present
Chair, Curriculum Committee, 2012-present
Chair, Peer Review Committee, 2011
Co-Chair, Strategic Planning Committee, 2009-10
Chair, Promotion and Tenure Committee, 2009-10

Member, Institutional Review Committee, 2009-2012 (university-wide committee)
Chair, Faculty Enrichment Committee, 2008-09
Member, Peer Review Committee, 2008-09
Chair, Faculty Retreat Committee, 2006-07
Chair, Awards Committee, 2006-07, 2005-06
Member, Admissions Committee, 2006-07, 2005-06
Advisor, Law School Community Service Bd., 2004-05, 2004-03, 2003-02, 2002-01
Member, Future Planning Committee, 2003-04
Member, Faculty Recruitment Committee, 2002-03, 2001-02

ADMITTED TO PRACTICE LAW

Arizona, 1987 to present.

Reg. Sol. L.A. Draft 7/15/66
Rev. L.A. 9/12/66

Contract No. 14-06-300-1877

COLORADO RIVER COMMISSION OF NEVADA
AND
SOUTHERN CALIFORNIA EDISON COMPANY

DUPLICATE--ORIGINAL

WATER USER CONTRACT

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Reg. Sol. L.A. Draft 7/15/66
Rev. L.A. 9/12/66

Contract No. 14-06-300-1877

COLORADO RIVER COMMISSION OF NEVADA

AND

SOUTHERN CALIFORNIA EDISON COMPANY

WATER USER CONTRACT

1. THIS CONTRACT, made this 26th day of October, 19 66, between THE COLORADO RIVER COMMISSION OF NEVADA (hereinafter referred to as "Commission"), said Commission acting in the name of the State of Nevada, but as a principal in its own behalf, as well as in behalf of the State, and SOUTHERN CALIFORNIA EDISON COMPANY, a California corporation (hereinafter referred to as "Water User");

WITNESSETH THAT:

Explanatory Recitals

2. WHEREAS, the Colorado River Commission of Nevada, acting for this purpose in the name of the State of Nevada, but as principal in its own behalf, as well as on behalf of the State has entered into a contract with the United States of America (hereinafter referred to as "United States") through the Secretary of the Interior (hereinafter referred to as "Secretary"), acting for this purpose by the Regional Director, Region 3, Bureau of Reclamation (hereinafter referred to as "contracting officer"), for the delivery from Lake Mead of not to exceed thirty thousand (30,000) acre-feet of water annually for domestic

use by the Commission, a copy of which contract is annexed hereto, marked Exhibit A, and which is hereinafter referred to as "Water Delivery Contract"; and

3. WHEREAS, said Water Delivery Contract provides that Commission may contract for the temporary use of said water by another, provided such Water User Contract is first approved by the United States; and

4. WHEREAS, the Commission is empowered by Sections 538.040 to 538.260, inclusive, of Nevada Revised Statutes, to contract for the sale of Colorado River water, and to deliver it through water service facilities constructed by the United States under water sales contracts to be approved by the United States; and

5. WHEREAS, Water User desires to utilize the water contracted for by Commission under the Water Delivery Contract until July 1, 2006, and to obtain delivery thereof through the diversion works for use at the plant site, all as described in the Water Delivery Contract;

6. NOW, THEREFORE, in consideration of the mutual covenants herein contained the parties hereto agree as follows, to wit:

Definitions

7. (a) The term "domestic", as used in this contract, shall include water uses defined as "domestic" in the Colorado River Compact.

(b) The term "diversion works" as used in this contract shall mean the water service facilities as described in Article 10 of the Water Delivery Contract.

(c) The term "plant site" as used in this contract shall mean that parcel of land which is located in Clark County, Nevada,

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and more particularly described in Exhibit A attached to the Water Delivery Contract, and

(d) The term "plant facilities" as used in this contract shall mean two (2) steam electric generating units capable of being fueled with either coal or gas, each with a nameplate rating of approximately seven hundred fifty (750) megawatts, and all appurtenances and related works which may be constructed on said plant site.

Contract to Build Generating Units

8. Water User will sufficiently complete the construction of the first of the aforementioned two (2) steam electric generating units and all appurtenances thereto so as to place said first unit in commercial production during the year 1970, and will so complete the construction of the second unit during the year 1971; provided, however, that if Water User, in the exercise of good faith and its best judgment, based on conditions prevalent at any time prior to completion of major construction work upon said units, should deem it necessary to defer the construction of either or both of said units, Water User may give notice thereof to the Commission and defer said construction in accordance therewith. In the event that said completion of construction of the first unit would thereby be deferred beyond the year 1973, and the second unit would thereby be deferred beyond the year 1974, and the deferral should not result from an "uncontrollable force" as defined in Article 25, either the Commission or the Water User at its election, upon notice given within ninety (90) days after the receipt by the

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Commission of notice from the Water User of such deferment, may terminate this contract.

Construction of Works

9. Water User agrees to furnish to the Commission Water User's proposals as to the designs, plans, and specifications for the diversion works described in Article 10 of the Water Delivery Contract and to make available to the Commission all of the funds required to be advanced by the Commission to the United States under said Article 10 on the terms and conditions set forth in said Article 10. Commission agrees to utilize the funds, designs, plans, and specifications provided by the Water User in order to meet its requirements under said Article 10 of the Water Delivery Contract; to give written notice to the United States as required by said Article 10 in accordance with advice from Water User as to the conditions thereof; to utilize all of the services of the Water User in complying with the requirements of said Article 10; and to approve the designs, plans, and specifications of said diversion works only after written approval thereof by the Water User. Upon completion of construction of said diversion works and notice thereof pursuant to said Article 10(b), title thereto shall vest in Water User. Water User shall maintain and operate such diversion works in a manner consistent with the requirements imposed on the Commission by the United States under the terms of the Water Delivery Contract. In addition, Water User shall construct, install, operate and maintain at its own cost and in such manner as shall be

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satisfactory to the contracting officer, all turnouts, gates, checks, pumps, pipelines, equipment and appurtenances of whatever nature necessary to convey the water delivered to it by the United States to the place of use specified in Article 11 of the Water Delivery Contract, and the diversion and conveyance of such water to the place of use shall be without expense to or obligation of the United States, regardless of any fluctuation, for whatever reason, in the water surface elevation of Lake Mead, Lake Mohave or the Colorado River or with respect to the physical location of the stream flow of the Colorado River; provided, however, that the rate of diversion of water delivered hereunder shall not at any time exceed fifty (50) cubic feet per second. Water User shall remove and/or bear the entire cost of removal of said diversion works upon notice to do so from the United States pursuant to Article 10(c) of the Water Delivery Contract.

Term for Availability of Water

10. After execution of the Water Delivery Contract and approval of this contract by the Secretary, the Commission shall, so long as both of said contracts are in effect, but in no event after July 1, 2006, make available to the Water User, at the point of delivery and pursuant to all of the terms and conditions contained in Article 11 of the Water Delivery Contract, all of the water delivered to the Commission by the United States under the Water Delivery Contract, said water to be used by the Water User on the plant site for cooling, sluicing, and make-up water for said steam electric generating units, as well as for the purpose of constructing and testing said units and

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providing all other domestic and industrial requirements of the Water User, its employees, agents and subcontractors on the plant site.

Duties of Water User

11. So long as the Water User takes delivery of water under this contract, the Water User agrees at its sole cost and expense, before delinquency, to perform all the obligations of the Commission to the United States as provided in the Water Delivery Contract (other than the payment of money as required under Articles 16 and 17 of the Water Delivery Contract) within the authority of the Water User to perform. Nothing contained in this contract shall relieve the Commission or the Water User from the performance of any obligation made the responsibility of the Commission and/or the Water User pursuant to the provisions of the Water Delivery Contract including, but not limited to the obligation to make the United States whole for the period of this contract for all losses or damage occasioned by failure of the Commission or the Water User to pay for the water delivered to or diverted by the Commission or the Water User hereunder.

Water Pollution Control

12. (a) Water User shall install and diligently operate on the plant site such waste water, waste material and sewage control and disposal facilities as may be necessary to prevent any significant and measurable pollution of the waters of the Colorado River, intermittent tributary stream or underground waters and/or any measurable return of waste water thereto by reason of any development, operations

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or activities on the plant site, unless agreed to otherwise by the Commission and the Secretary.

(b) Water User's designs and plans for waste water, waste material and sewage disposal facilities on or connected with the plant site shall be submitted to the Secretary for approval in advance of construction or installation and no such facilities shall be constructed or installed in the first instance, or thereafter modified or removed, without the prior written approval of the Secretary. In the event agreement cannot be reached between Water User and the Secretary on any matter relating to the aforesaid designs or plans or facilities, the matter shall be submitted to arbitration in accordance with the provisions of Article 15.

(c) The covenants and obligations of Water User in this Article are made and assumed expressly for the benefit of the United States as well as for the benefit of the Commission and any breach thereof by Water User shall constitute grounds for the United States to exercise the rights reserved to it under Articles 19 and 20 of the Water Delivery Contract.

(d) Nothing herein shall be construed to relieve Water User from complying with all valid, applicable water pollution control laws and regulations under Federal, State, or County jurisdiction now or hereafter in force.

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Air Pollution Control

13. (a) To minimize smoke, fly ash, and dust in stack emissions on the plant site, Water User shall install and diligently operate as part of its plant facilities, equipment employing the most effective, commercially proven, electrostatic concept available under the technology known at the time of design of said facilities. Water User shall operate such air pollution control equipment so as to remove not less than 97% of the particulate matter in the stack emissions in each month and not less than 96% thereof in any twenty-four hour period, unless Water User shall be prevented from so operating such air pollution control equipment by reason of uncontrollable forces as provided in Article 25. Water User's designs and plans for its air pollution control equipment, stack and other plant features that may affect air pollution, and facilities for control and disposal of waste or residue from burned fuel, shall be subject to written approval by the Secretary in advance of construction, installation, removal or major modification thereof; and provided, however, that the Secretary's approval shall not be deemed, by implication or otherwise, to relieve Water User of any obligation it has assumed under this contract; and provided, further, that the height of the stack for each steam electric generating unit shall be not less than 500 feet above ground grade. From time to time, but not less often than once in every ten (10) years, Water User and designated representatives of the Secretary will meet to review technological advances in air pollution control equipment and mutually weigh and decide upon the feasibility of installing additional equipment

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or modifying existing equipment in the plant facilities, taking into account costs as well as the benefits of improved air pollution control. In the event agreement cannot be reached between Water User and the Secretary on the aforesaid designs, plans, equipment or features, or the modification or supplementation thereof, or the feasibility of installing additonal equipment or modifying existing equipment, the matter shall be submitted to arbitration in accordance with the provisions of Article 15.

(b) In the operation of the plant facilities, Water User will keep such continuous records as will enable Water User to make accurate and complete reports to the Secretary relating to the operation and efficiency of the air pollution control equipment. Said reports shall be furnished by Water User to the Secretary not less often than once in each calendar year. The continuous recording equipment will be calibrated against tests performed in conformance with American Society of Mechanical Engineers (ASME) Test Procedures for Determining Dust Concentration in a Gas Stream, and such test procedures will be conducted at least every six months. Water User shall also furnish the Secretary with monthly reports showing the average monthly assay of the ash and sulphur content of the coal employed.

(c) Water User, during normal working hours, will permit representatives of the Secretary to have access to, inspect and copy all records relating to air pollution from its plant facilities including assays of the ash and sulphur content of the coal employed therein, and

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Water User will permit such representatives to enter upon and inspect such plant facilities and all parts thereof and appurtenances thereto.

(d) The covenants and obligations of Water User in this Article are made and assumed for the benefit of the United States as well as for the benefit of the Commission and any breach thereof by Water User shall constitute grounds for the United States to exercise the rights reserved to it under Articles 19 and 20 of the Water Delivery Contract.

(e) Nothing herein shall be construed to relieve Water User from complying with all valid, applicable air pollution control laws and regulations under Federal, State or County jurisdiction now or hereafter in force.

Fuel Supply

14. (a) Prior to the initial delivery of water for plant operation under this contract, Water User expects to have entered into contractual arrangements providing for the availability throughout the term of this contract of coal mined from the Black Mesa area located on Indian Reservation land in Arizona as the fuel supply for the plant facilities. Such coal from the Black Mesa area shall be used in the Water User's plant facilities unless the Secretary shall give his prior written approval for the use of other coal; Provided, That natural gas may be used for ignition purposes at any time, and provided further, that during such time or times as (i) by reason of emergencies, Black Mesa coal is not or cannot be made available in sufficient quantities

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at the plant site either for direct use or replenishment of the coal stock pile, or (ii) the performance of maintenance or repair operations on the plant facilities requires the substitution of other coal or gas fuel for Black Mesa coal, Water User's plant facilities may be fueled with natural gas or with other coal, but in such event the Secretary shall be notified of the use of other coal.

(b) The covenants and obligations of Water User in this Article are made and assumed for the benefit of the United States as well as for the benefit of the Commission and any breach thereof by Water User shall constitute grounds for the United States to exercise the rights reserved to it under Articles 19 and 20 of the Water Delivery Contract.

Arbitration

15. Whenever a controversy arises as to which arbitration is provided for under Article 12 or Article 13 hereof and such controversy cannot be resolved by the Secretary and the Water User, either of said parties by written notice to the other may require such controversy to be submitted to arbitration. Within thirty (30) days from the date of the notice the Secretary and the Water User shall each name one arbitrator and the two arbitrators so selected shall within sixty (60) days from the date of said notice select a third arbitrator. In the event of the failure of the two arbitrators to select the third arbitrator either the Secretary or the Water User may make application to the appropriate District Court of the United States for the appointment

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of the third arbitrator substantially in accord with the procedure provided in the Federal Arbitration Act (9 U.S.C.A. 1). The Secretary and Water User shall each pay the compensation and bear the costs and expenses of their respective arbitrators and the compensation and cost and expense of the third arbitrator together with all other costs and expenses incident to said arbitration shall be shared equally by the United States and Water User. The decision of any two of the three arbitrators shall be a valid and binding award of the arbitration.

Breach of Contract

16. The Water User's breach of any of the provisions of Articles 12 through 14, inclusive, shall constitute grounds for termination of this contract pursuant to the provisions of Article 17 hereof or for termination of the Water Delivery Contract pursuant to Article 20 thereof.

Termination of Contract

17. Upon default of the Water User in the performance of its obligations under this contract or the obligations of the Commission required of the Water User to be performed under the terms and in the manner required by the Water Delivery Contract and this contract, and the Water User's failure to cure such default within thirty (30) days after service by the Secretary or the Commission of written notice upon the Water User specifying the nature of such default (unless the Secretary, after consultation with the Commission and the Water User, determines that by reason of the nature or cause of the default, a

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period longer than thirty (30) days within which to cure the same is required in which case he shall specify such longer period in the notice), the Commission shall have the right to terminate this contract by written notice to the Water User; provided, however, that nothing herein contained shall affect the right of the United States to terminate the Water Delivery Contract at any time for any breach thereof in the manner provided in the Water Delivery Contract. If, after receipt of such written notice from the Secretary or the Commission specifying the nature or the cause of the default, the Water User shall, within the number of days specified in said notice, remedy the default, and the United States shall not have terminated the Water Delivery Contract, then this contract shall not terminate.

Receipt, Measurement and Record of Water Delivered

18. Water User shall take delivery, measure and make written reports of water delivered by the United States to the Commission, as provided in Articles 12, 14, 15, and 21 of the Water Delivery Contract, and Water User shall specifically undertake to perform all of the obligations required by the United States of the Commission under the terms of said Water Delivery Contract except as herein otherwise provided.

Charge for Delivery of Water

19. Water User shall pay Commission One and 05/100ths Dollars ($1.05) per acre-foot for all water delivered to Commission by the United States under the Water Delivery Contract and made available by the Commission to Water User under the terms of this contract. Of said

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amount that portion payable by the Commission to the United States under Article 16 of the Water Delivery Contract, i.e., fifty cents (50¢), shall be adjustable, as provided under the terms of said Water Delivery Contract. Commission will submit bills to Water User by the 15th day of each month immediately following the month during which the water is delivered to Water User, and payment shall be due not later than the 25th day of the month immediately following the month in which said water is delivered. If such charges are not paid when due, an interest charge of one percentum (1%) of the amount unpaid shall be added thereto, as liquidated damages, and, as further liquidated damages, an additional interest charge of one percentum (1%) of the principal sum unpaid shall be added on the 26th day of each succeeding calendar month until the amount due, including such interest, is paid in full.

Access to Books and Records

20. The United States and Commission shall have free access at all reasonable times to books and records of Water User relating to any matter pertaining to this contract or the Water Delivery Contract and the United States and Commission shall have the right at any time during office hours to make copies of or from books and records. Water User shall have like rights with regard to the books and records of Commission and United States.

Duties of Commission

21. Commission covenants to perform all the terms and conditions of the Water Delivery Contract on its part to be performed, except as otherwise provided by this contract to be performed by Water User, and

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to indemnify and hold harmless Water User for any damages suffered by Water User as a result of any failure on the part of Commission so to do. Commission further agrees not to abridge, cancel, terminate or amend said Water Delivery Contract during the term of this contract, without the prior written approval of the Water User. In the event the United States claims that the Commission has breached any provision of the Water Delivery Contract, the Commission shall forthwith in writing notify and invite the Water User to participate in any proceeding, formal or informal, involving the alleged breach of the Water Delivery Contract.

Termination of Commitment

22. All of the covenants on the part of the Water User herein agreed to be performed under this contract shall continue in full force and effect only so long as the Water User is entitled to receive delivery of water upon and subject to the terms and conditions of this contract.

Transferability

23. The rights of the Water User hereunder are transferable only under the terms and conditions described in Article 26 of the Water Delivery Contract; provided, however, that the Water User may transfer an undivided interest in this contract to any public agency or private company participating with the Water User in the ownership and/or operation of the plant facilities. Approval of this contract by the Secretary shall constitute approval by the United States of any such transfer of interests by the Water User; provided, however, that the

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Water User shall give the Commission and the Secretary contemporaneous written notice of all such transfers, including authenticated copies of all documents relating thereto. Notwithstanding any such transfer of interest contemplated in this Article, the Water User shall be and remain liable to the Commission and the United States to keep and perform all of the conditions and covenants in this contract on its part to be kept and performed.

Relationship to Water Delivery Contract

24. The respective rights and obligations of the parties under the Water Delivery Contract are not and shall not be affected by any provisions of this contract or by any action taken hereunder, or by any agreement between the parties to this contract relating hereto or to the Water Delivery Contract. In the event of any conflict or inconsistency between any provision of the Water Delivery Contract and any provision of this contract or any other agreement made by either of the parties to this contract, the provisions of the Water Delivery Contract shall be controlling. This contract shall be terminated automatically upon termination of the Water Delivery Contract. So long as the Water User shall take water pursuant to this contract and water is delivered hereunder, the Water User accepts and agrees to be bound by each and all of the terms, provisions, conditions and limitations in the Water Delivery Contract, including, but not limited to, all of the obligations to be performed by the Commission thereunder (other than the payment of money as required under Articles 16 and 17 of the Water

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Delivery Contract) and the Commission agrees that the Water User may, in the absence of the Commission pursuing its rights under the Water Delivery Contract, exercise such rights of the Commission under the Water Delivery Contract as are necessary to permit the Water User to carry out its obligations under this contract.

Uncontrollable Forces

25. Neither party shall be considered to be in default in respect to any obligation hereunder, if prevented from fulfilling such obligation by reason of uncontrollable forces, the term "uncontrollable forces" being deemed, for the purposes of this contract, to mean any cause beyond the control of the party affected, including, but not limited to, inadequacy of water, failure of facilities, flood, earthquake, storm, lightning, fire, epidemic, war, riot, civil disturbance, labor disturbance, sabotage, and restraint by court or public authority, which by exercise of due diligence and foresight, such party could not reasonably have been expected to avoid. Either party rendered unable to fulfill any obligation by reason of uncontrollable forces shall exercise due diligence to remove such inability with all reasonable dispatch.

Releases and Indemnity

26. (a) To the extent that the Water User exercises the rights of the Commission under the Water Delivery Contract and exercises its rights under this contract, the Water User hereby releases, and agrees that it will hold harmless, the United States, its officers, agents, employees and successors or assigns, from every claim for damages to

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persons or property, direct or indirect, and of whatever nature, arising by reason of the diversion, pumping, transportation or use of said water by the Commission or the Water User. The Water User hereby covenants and agrees that the United States, its officers, agents, employees, successors or assigns, shall not be liable for damages when suspensions or reductions in delivery of water occur because of drouth, fluctuations in the levels of Lake Mead or Lake Mohave or in the Colorado River, errors in operation of facilities for the release or delivery of water stored in Lake Mead or Lake Mohave, an insufficient supply of water, as determined by the Secretary, or because of hostile diversion, interruption of service occasioned by necessary repairs to any of the works by means of which water is stored or released, or for damages caused by floods, unlawful acts of others or unavoidable accidents, or for other similar causes. Water will be delivered hereunder without treatment of any kind and without any warranty whatsoever by the United States as to the quality or fitness of such water for the uses or purposes of the Commission or the Water User. The Water User hereby expressly relieves and releases the United States, its officers, agents and employees, from any liability or responsibility whatsoever for the quality, composition or contents of the water delivered hereunder, or for any lack of fitness of such water for any use thereof intended by the Commission or the Water User.

(b) To the extent that the Water User exercises the rights of the Commission under the Water Delivery Contract, the Water User

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releases and agrees that it will hold harmless, the Commission, its officers, agents, employees and successors and assigns, from every claim for damages to persons or property, direct or indirect, and of whatever nature, arising by reason of the diversion, pumping, transportation or use of said water by the Commission. The Water User hereby covenants and agrees that the Commission, its officers, agents, employees, successors or assigns, shall not be liable for damages when suspensions or reductions in delivery of water occur because of drouth, fluctutations in the levels of Lake Mead or Lake Mohave or in the Colorado River, errors in operation of facilities for the release or delivery of water stored in Lake Mead or Lake Mohave, an insufficient supply of water, as determined by the Secretary, or because of hostile diversion, interruption of service occasioned by necessary repairs to any of the works by means of which water is stored or released, or for damages caused by floods, unlawful acts of others or unavoidable accidents, or for other similar causes. The Water User expressly hereby relieves and releases the Commission, its officers, agents and employees, from any liability or responsibility whatsoever for the quality, composition or contents of the water delivered hereunder, or for any lack of fitness of such water for any use thereof intended by the Water User.

Approval by Secretary

27. This contract must be approved by the Secretary as a condition precedent to its becoming effective. Upon execution by both parties this contract shall be submitted to the Secretary for his approval. Both

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parties understand and agree that the Secretary's approval shall not relieve the Commission of any obligation or duty assumed by it under the Water Delivery Contract, nor will such approval be deemed to constitute or imply any opinion of the Secretary as to the merits of this contractual arrangement, or any part thereof, nor constitute the Water User a party to the Water Delivery Contract or the holder of any right of any kind thereunder against the United States for any purpose whatsoever, except to the extent of its rights thereunder as a third party beneficiary by reason of its rights under this contract. Each of the foregoing provisions of this Article shall be applicable to any proposed amendment to this contract.

Notices

28. (a) Any notice, demand or request required or authorized by this contract or the Water Delivery Contract shall be delivered or mailed to the United States or the Commission as provided for in the Water Delivery Contract, and to the Water User by delivery to Secretary, Southern California Edison Company, 601 West Fifth Street, Los Angeles, California 90017, or mailed, postage prepaid, to the Secretary, Southern California Edison Company, P.O. Box 351, Los Angeles, California 90053.

(b) The delivery or mailing address for any such notice, demand or request may be changed at any time by notice given in the same manner as provided in this Article for other notices.

Covenant Against Contingent Fees

29. The Water User warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an

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agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Water User for the purpose of securing business. For breach or violation of this warranty the United States or the Commission shall have the right to annul this contract without liability or in its discretion to add to the contract repayment obligation or consideration the full amount of such commission, percentage, brokerage, or contingent fee.

Equal Employment Opportunity

30. During the performance of this contract, the Water User, hereinafter referred to as the contractor, agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

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(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules,

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regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, That in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Inclusion of the Equal Opportunity Clause may be by reference to Section 202 of Executive Order 11246, dated September 24, 1965. Subcontracts below the second tier, other than subcontracts calling for construction work at the site of construction are exempt from inclusion of the clause.

Civil Rights

31. Water User hereby agrees as follows:

(a) To comply with Title VI (Section 601) of the Civil Rights Act of July 2, 1964 (78 Stat. 241) which provides that "No person in the

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United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance," and to be bound by the regulations of the Department of the Interior for the effectuation thereof, as set forth in 43 CFR 17.

(b) To obligate his subcontractors, subgrantees, transferees, successors in interest, or any other participants receiving Federal financial assistance hereunder, to comply with the requirements of this provision.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed the day and year first above written.

COLORADO RIVER COMMISSION OF NEVADA

By _____
Chairman

By _____
Secretary

Ratified and approved this 26th day of October, 1966

_____
Governor of the State of Nevada

SOUTHERN CALIFORNIA EDISON COMPANY

By _____

CHAIRMAN OF THE BOARD

Approved this 26th day of October, 1966.

_____
Secretary of the Interior

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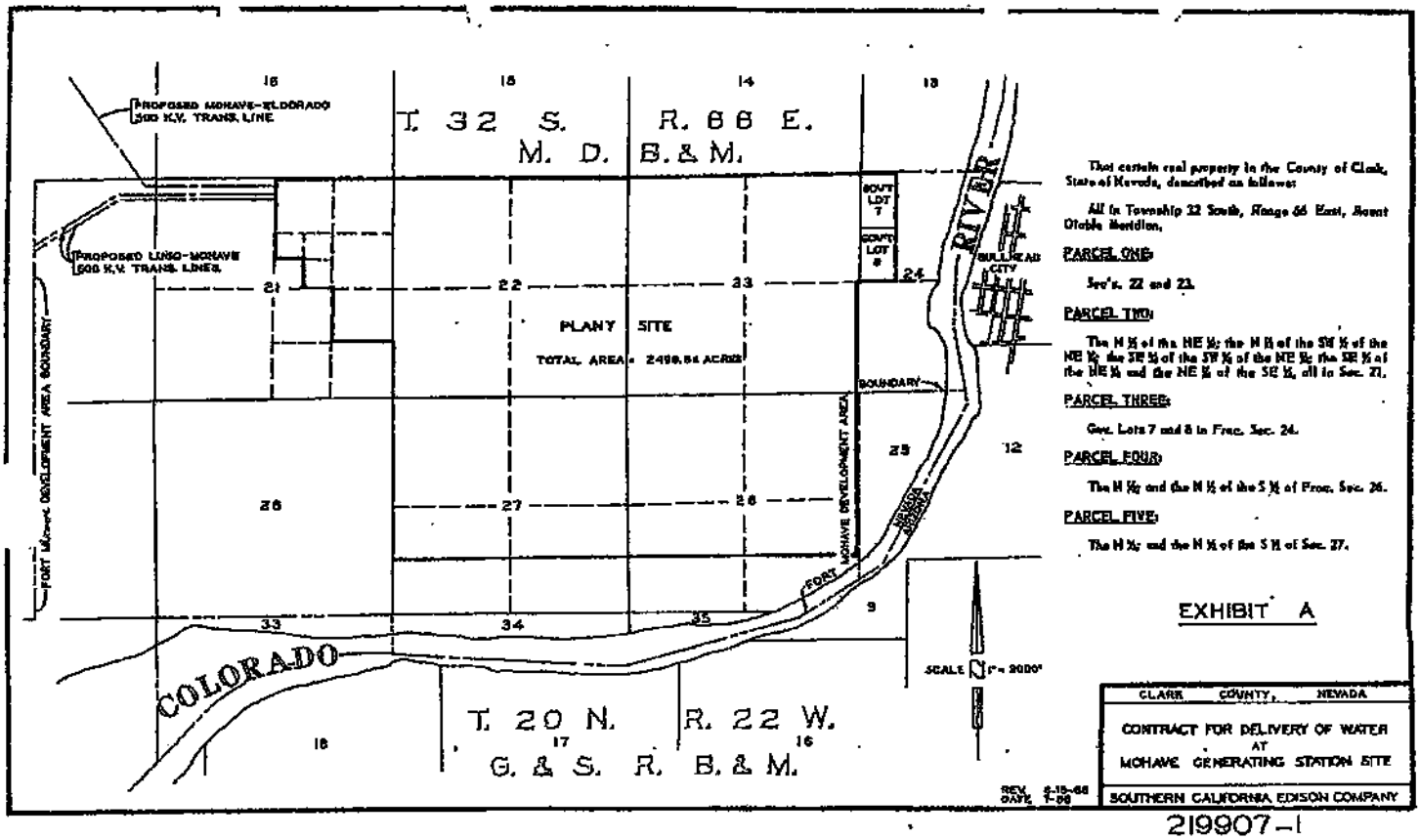

That certain real property in the County of Clark, State of Nevada, described as follows:

All in Township 32 South, Range 66 East, Mount Diablo Meridian.

PARCEL ONE:

Sec's. 22 and 23.

PARCEL TWO:

The N ½ of the NE ¼; the N ½ of the SW ¼ of the NE ¼; the SE ¼ of the SW ¼ of the NE ¼; the SE ¼ of the NE ¼; and the NE ¼ of the SE ¼, all in Sec. 21.

PARCEL THREE:

Gov. Lots 7 and 8 in Frac. Sec. 24.

PARCEL FOUR:

The N ½ and the N ½ of the S ½ of Frac. Sec. 26.

PARCEL FIVE:

The N ½ and the N ½ of the S ½ of Sec. 27.

EXHIBIT A

CLARK COUNTY, NEVADA
CONTRACT FOR DELIVERY OF WATER AT MOHAVE GENERATING STATION SITE
SOUTHERN CALIFORNIA EDISON COMPANY

REV. DATE 6-15-66 T-DG

219907-1

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Contract No. 3-07-30-W0293

CONTRACT
TO TERMINATE WATER USER CONTRACT NO. 14-06-300-1877
BETWEEN THE COLORADO RIVER COMMISSION OF NEVADA
AND THE SOUTHERN CALIFORNIA EDISON COMPANY, AS ASSIGNED
AND
TO TERMINATE WATER DELIVERY CONTRACT NO. I4-06-300-1876
FOR DELIVERY OF COLORADO RIVER WATER
TO THE MOHAVE GENERATING STATION
BETWEEN THE UNITED STATES DEPARTMENT OF THE INTERIOR,
BUREAU OF RECLAMATION, AND THE
COLORADO RIVER COMMISSION OF NEVADA
AND
TO REQUIRE THE USE OF A CERTAIN FUEL SUPPLY
AMONG THE UNITED STATES DEPARTMENT OF THE INTERIOR,
BUREAU OF RECLAMATION, AND THE CO-TENANTS
OF THE MOHAVE GENERATING STATION

Preamble

1. This Contract, effective the 1st day of March, 1993, is made pursuant to the Act of Congress approved June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, all of which acts are commonly known and referred to as Federal Reclamation law, and particularly the Act of Congress approved December 21, 1928 (45 Stat. 1057), and acts amendatory thereof or supplementary thereto, hereinafter collectively referred to as the "Boulder Canyon Project Act," among the UNITED STATES OF AMERICA, hereinafter referred to as the "United States," acting for this purpose through the Secretary of the Interior (Secretary); and the State of Nevada and its COLORADO RIVER COMMISSION, hereinafter referred to as "CRC," said CRC acting in the name of the State of Nevada but as principal in its own behalf as well as in behalf of the State of Nevada; and the CO-TENANTS of the Mohave Generating Station, which include the Southern California Edison Company, the Nevada Power Company, the City of Los Angeles Department of Water and Power, and the Salt River Project Agricultural Improvement and Power District;

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WITNESSETH THAT:

Explanatory Recitals

2. (a) WHEREAS, on October 26, 1966, Reclamation and CRC entered into Water Delivery Contract No. 14-06-300-1876 (Water Delivery Contract) for supplying Colorado River water to the MGS and approving the Water User Contract; and

(b) WHEREAS, on October 26, 1966, CRC and the Southern California Edison Company (Edison), with the approval of the United States Department of the Interior, Bureau of Reclamation (Reclamation), entered into Water User Contract No. 14-06-300-1877 (Water User Contract), for supplying Colorado River water to the Mohave Generating Station (MGS) through July 1, 2006; and

(c) WHEREAS, Edison subsequently assigned interests in the Water User Contract to the Nevada Power Company, the City of Los Angeles Department of Water and Power, and the Salt River Project Agricultural Improvement and Power District who, together with Edison, are co-tenants of the MGS (CO-TENANTS); and

(d) WHEREAS, to be effective as of March 1, 1993, the CO-TENANTS are concurrently entering into a "Contract for the Provision of Water to MGS" with water purveyors in Clark County, Nevada, for a firm supply of cooling water for MGS until July 1, 2026, and the CO-TENANTS desire to concurrently terminate the Water User Contract; and

(e) WHEREAS, article 14(a) of the Water User Contract institutes an obligation upon the CO-TENANTS, for the benefit of CRC and the United States, which requires the CO-TENANTS to use within the MGS coal mined from the Black Mesa area located on Indian reservation land in Arizona; and

(f) WHEREAS, the United States has determined that there is a need to continue this requirement contained in article 14(a) of the Water User Contract

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so long as the CO-TENANTS use any Colorado River water at the MGS.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

TERMINATION OF CONTRACTS

3. The Water User Contract is hereby terminated.

4. The Water Delivery Contract is hereby terminated.

USE OF COAL AT MGS

5. (a) The CO-TENANTS have entered into contracts to provide, by way of a slurry pipeline, coal mined from the Black Mesa area located on Indian reservation land in Arizona as the primary fuel supply for the MGS. Except as provided in subarticle 5(b), the CO-TENANTS shall use coal from the Black Mesa Indian Reservation lands to fuel MGS unless the Secretary provides written approval for use of other coal or fuel prior to its use.

(b) Natural gas may be used at MGS:

(1) For ignition purposes at any time; or

(2) During emergencies when Black Mesa coal is not or cannot be made available in sufficient quantities either for direct use or replenishment of the coal stock pile; or

(3) During the performance of maintenance or repair operations which require the temporary substitution of other coal or fuel for Black Mesa coal; or

(4) To the extent necessary, but not to exceed fifteen percent (15%) of MGS full-load capability, to meet all Federal and State of Nevada pollution laws.

(c) The Secretary shall be notified of the use of other coal or fuel (including natural gas) as provided under subarticle 5(b) by the CO-TENANTS by

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the fifteenth (15th) day of each February for the previous year, or as directed by the Secretary.

(d) The CO-TENANTS shall comply with this article as long as any Colorado River water is used at MGS, unless the Secretary determines in writing that the requirements of this article are no longer needed and releases the Co-Tenants from those requirements.

(e) If the CO-TENANTS fail or refuse to comply with the requirements of article 5, the CO-TENANTS hereby agree that they shall cease to divert or receive any Colorado River water upon the written demand of Reclamation. Reclamation may use this remedy in addition to any other remedy it may have. The CO-TENANTS agree to reimburse the United States for all costs of enforcement of this article 5.

GENERAL PROVISIONS

6. This Contract is made for the sole protection and benefit of the parties hereto, and no other person shall have any rights of any nature under this Contract, except as a successor or assignee of a party.

7. The CO-TENANTS hereby release, and agree to hold harmless, defend, and indemnify the United States and CRC, and their officers, employees, agents, successors or assigns, from any claims, demands, costs, losses, causes of action, damages, or liability, of whatsoever kind or nature, arising out of or resulting from the termination of the contracts described in articles 3 and 4 above or the performance of article 5 of this Contract.

8. The termination of the contracts described in articles 3 and 4 above and the requirements of article 5 are several commitments, and the breach of any article in this Contract shall not affect the validity of any other article.

9. (a) This Contract shall become effective:

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(1) As of March 1, 1993; and

(2) Only if the water delivery contract with the purveyors described in subarticle 2(d) becomes effective as of March 1, 1993.

(b) This Contract may be executed in multiple parts, each of which shall be deemed an original. This Contract shall be deemed executed upon the signing by all the parties listed below.

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IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed as of March 1, 1993.

NEVADA POWER COMPANY

BY: James C. Holcombe

TITLE: PRESIDENT

ATTEST: David B. Barney

DATE: 8.19.93

SOUTHERN CALIFORNIA EDISON COMPANY

BY: John E. Bryson

TITLE: CHAIRMAN/CEO

ATTEST: Lawrence D. Hamlin

DATE: 8/19/93

APPROVED
BRYANT C. DANNER
Senior Vice President
and General Counsel
By: [illegible] Attorney
8/13, 1993

SALT RIVER PROJECT
AGRICULTURAL IMPROVEMENT AND
POWER DISTRICT

BY: John R. Larson

TITLE: President

ATTEST: William P. Rinehart

DATE: 8/12/93

APPROVED AS TO FORM
SALT RIVER PROJECT LEGAL SERVICES DEPT.
BY
DATE 8/12/93

DEPARTMENT OF WATER AND POWER
OF THE CITY OF LOS ANGELES BY
BOARD OF WATER AND POWER COMMISSIONERS
OF THE CITY OF LOS ANGELES

BY: [illegible]

AND [illegible]
Secretary

DATE: AUG 19 1993

STATE OF NEVADA ACTING THROUGH
ITS COLORADO RIVER COMMISSION

BY: Jean Ingalls

TITLE: Chairman

Director: Pamela E. Keil

DATE: 8/19/93

UNITED STATES OF AMERICA

BY: Wilford Beard

TITLE: Commissioner

Bureau of Reclamation

DATE: 8/19/93

Ratified and approved by:

Governor of the State of Nevada

Legal Approval and Sufficiency:

Field Solicitor
Phoenix, Arizona

Approved as to form:

Attorney General of the State of Nevada

TAX61030
1070

JIM GIBBONS
Governor
THOMAS R. SHEETS
Chair, Nevada Tax Commission
DINO DICIANNO
Executive Director

STATE OF NEVADA
DEPARTMENT OF TAXATION
Web Site: http://tax.state.nv.us
1550 College Parkway, Suite 115
Carson City, Nevada 89706-7937
Phone: (775) 684-2000 Fax: (775) 684-2020

LAS VEGAS OFFICE
Grant Sawyer Office Building, Suite 1300
555 E. Washington Avenue
Las Vegas, Nevada, 89101
Phone: (702) 486-2300 Fax: (702) 486-2373

RENO OFFICE
4600 Kietzke Lane
Building L, Suite 235
Reno, Nevada 89502
Phone: (775) 688-1295
Fax: (775) 688-1303

HENDERSON OFFICE
2550 Paseo Verde Parkway Suite 180
Henderson, Nevada 89074
Phone: (702) 486-2300
Fax: (702) 486-3377

February 27, 2009

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Terri Williams, Esq.
Assistant City Attorney
City of Henderson
240 Water Street
PO Box 95050
Las Vegas, NV 89009-5050

Certified Mail 7005 1820 0003 8674 0856

IN THE MATTER OF: *Southern California Edison*

The Nevada Supreme Court on April 24, 2008 issued a decision in *Chanos v. Nevada Tax Commission, et.al.* 181 P.3d 675, Nev., April 24, 2008 (no. 48292), voiding a decision by the Nevada Tax Commission ("Commission") approving a refund of Nevada use tax. The refund at issue was for use tax paid by Southern California Edison ("Edison") for coal slurry product purchased in Arizona and used at Edison's power plant in southern Nevada. Because its previous decision was void, the Commission scheduled this matter for a new hearing. The parties, which included Edison, the Department of Taxation ("Department"), Clark County and the city of Henderson, stipulated to a briefing and hearing schedule.

A hearing was held before the Commission on September 9, 2008. The Department was represented by counsel, Gina C. Session, Chief Deputy Attorney General. Clark County was represented by Deputy District Attorney Paul Johnson. The City of Henderson was represented by Assistant City Attorney Terri A. Williams. Edison was represented by Norman Azevedo, Esq. and Christopher Campbell, Esq. Post-hearing briefs were filed, and on December 1, 2008, closing arguments were presented to the Commission. The matter having been submitted to the Commission, the Commission by a vote of 6-2 now enters the following findings of fact, conclusions of law and decision.

FINDINGS OF FACT

1. The coal slurry product purchased by Edison in this case was a processed and/or manufactured product consisting of approximately fifty percent water and fifty percent finely pulverized coal.

2. The coal slurry product was prepared in Arizona, from coal and water derived in Arizona, and delivered to Edison via a coal slurry pipeline more than two hundred and fifty miles long.

3. All of the coal slurry product was used by Edison at its power plant in Nevada.

4. Edison filed claims for refund on use taxes paid between March 1, 1998 and December 31, 2000.

5. The only stated basis for Edison's claims in its original requests for refund was for credit against taxes paid to other jurisdictions.

6. After Edison's initial refund requests were denied, Edison untimely sought to amend its claims to assert new grounds for refund not previously asserted.

7. There is not now, nor was there during the time period covered by Edison's refund requests, any source of commercial coal production in Nevada.

8. There is not now, nor was there during the time period covered by Edison's refund requests, any vendor of coal or coal products produced from Nevada sources, nor did the State of Nevada collect any net proceeds tax from any producer of coal or coal products during the relevant time period.

9. None of the taxes or fees for which Edison sought a credit for were sales taxes or *net* proceeds taxes for which a credit could be given.

10. Neither Edison, nor its coal slurry provider, were subject to any discriminatory tax in Nevada; inasmuch as, there were neither providers nor potential providers of coal or coal slurry originating from Nevada sources.

CONCLUSIONS OF LAW

1. The coal slurry product at issue in this case is not a raw mineral that would be subject to the exemption in NRS 372.270[1] and/or Article 10, Section 5 of the Nevada Constitution.

2. The payment of use tax by Edison does not violate the Commerce Clause of the United States Constitution, nor any Nevada statutory or constitutional provision.

3. Edison's claims related to the Commerce Clause of the United States Constitution, NRS 372.265, NRS 372.270 and Article 10, Section 5 of the Nevada Constitution or any other basis not raised in Edison's original claims for refund were waived and are barred by NRS 372.635, NRS 372.645 and NRS 372.650.

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[1] The sales and use tax statutes relevant to this case found in chapters 372 and 374 of the NRS are identical; hence, only the statutes in Chapter 372 are cited herein.

4. None of the taxes and/or fees paid by Edison or Peabody Coal Company in Arizona were entitled to a credit against Nevada's use tax. Use tax was properly collected in Nevada on the coal slurry product purchased by Edison in Arizona and used in Nevada.

DECISION

Based on the above Findings of Fact and Conclusions of Law, Edison's request for refund of use tax on coal slurry product purchased in Arizona and used in Nevada is DENIED.

FOR THE COMMISSION:

DINO DICIANNO
Executive Director
Nevada Department of Taxation

cc: Jennifer Crandell, Senior Deputy Attorney General
Gina Session, Chief Deputy Attorney General
Tax Managers
Anthony Smith, Southern California Edison
Dolores Sandler, Southern California Edison
Christopher Campbell, O'Melveny & Myers LLP

IN THE SUPREME COURT OF THE STATE OF NEVADA

SOUTHERN CALIFORNIA EDISON, Appellant, vs. THE STATE OF NEVADA DEPARTMENT OF TAXATION, Respondent.	No.: 67497

JOINT APPENDIX

VOLUME IV

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JONES DAY
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Los Angeles, CA 90071-2300
213.489.3939
hmmcintosh@jonesday.com

Attorneys for Appellants

Docket 67497 Document 2015-26115

IN THE SUPREME COURT OF THE STATE OF NEVADA

SOUTHERN CALIFORNIA EDISON, Appellant, vs. THE STATE OF NEVADA DEPARTMENT OF TAXATION, Respondent.	No.: 67497

JOINT APPENDIX

VOLUME IV

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Attorneys for Appellants

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10/04/12	Order Denying Motion for Judgment on the Pleadings	0176-0178	I
06/19/13	Order Denying Motion in Limine Regarding Voided Decision	0188-0190	I
07/25/12	Order Granting Defendant's Motion to Stay Discovery Pending Ruling on Dispositive Motion	0174-0175	I

Date Filed	Pleading Title	Bate-Stamped Numbers	Volume Number
06/19/13	Order Granting Extension of Time to Produce Rebuttal Expert Reports	0191-0193	I
07/13/11	Order Granting Motion for Stay of Proceeding	0110-0113	I
12/24/09	Order Granting Plaintiff's Motion to Stay Proceedings Pending Resolution of a Writ of Petition	0105-0107	I
07/18/12	Order on Defendant's Request for Judicial Notice	0171-0173	I
04/30/14	Order Staying Determination Pending Decision by Nevada Supreme Court	0254-0256	II
07/21/09	Order to Consolidate	0096-0097	I
11/19/09	Order to Proceed as Petition for Judicial Review	0098-0102	I
01/27/12	Order to Set for Hearing	0114-0115	I
10/29/12	Order to Vacate Trial Date	0179-0180	I
09/10/13	Order to Vacate Trial	0197-0198	I
06/01/11	Order Vacating Order dated November 19, 2009 and Allowing Matter to Proceed as an Independent Action	0108-0109	I
06/13/13	Order Vacating Pretrial Conference & Trial Date & Stay of Proceedings	0187-0187	I
01/28/13	Pretrial Order	0181-0186	I
10/07/13	Pretrial Order - Amended	0199-0204	I
04/13/09	Proof of Service (x5)	0062-0073	I
05/22/12	Proof of Service (AG-04/10/12)	0163-0168	I
11/24/09	Statement of Intent to Participate	0103-0104	I
01/16/14	Trial Statement of Edison	0205-0249	I

Trial Exhibit No.	Exhibit Title	Bate-Stamped Numbers	Volume Number
42	Coal Slurry Pipeline Agreement	0509-0524	III
43	Coal Slurry Pipeline Agreement - Amended	0525-0614	III
32	Commission's Decision	0345-0351	II
38	Compilation of supporting documents for refund calculations (*Partial portions only)*	0358-0366	II
83	Contract - Colorado River Comm'n of NV & Edison	1038-1064	V
134	CPUC Decision 04-12-016	1093-1169	VI
107	Department's Decision Letter Denying Edison's Refund Request 02/09	1071-1073	V
54	Department's Exemption & Refund Report	0615-0734	IV
55	Department's Net Proceeds of Minerals Bulletin	0735-0763	IV
56	Department's Net Proceeds of Minerals Bulletin	0764-0793	IV
57	Department's Net Proceeds of Minerals Bulletin	0794-0824	IV
67	Expert Report of Sharon R. Byram	0886-0892	V
69	Expert Report of Professor Richard D. Pomp	0893-0917	V
70	Expert Report of Dr. John L. Jurewitz	0918-0967	V
72	Expert Report of Dr. James E. Faulds	0968-0970	V
73	Expert Report of Alan R. Coyner	0971-0972	V
74	Expert Report of J. Steven Gardner	0973-1018	V
75	Expert Report of John A. Swain	1019-1037	V
112	Federal Depletion Allowance Guidelines	1074-1091	VI
138	Legislative Counsel Bureau Letter to Sen. Charles W. Joerg	1170-1174	VI
113	Legislative History for Net Proceeds of Minerals Tax	1092-1092	VI
40	Mohave Project Coal Supply Agreement	0367-0390	II
41	Mohave Project Coal Supply Agreement - Amended	0391-0508	III
59	NV Bureau of Mines & Geology Special Publication MI-1998	0825-0885	V

Trial Exhibit No.	Exhibit Title	Bate-Stamped Numbers	Volume Number
9	Order of 2nd Judicial District Court in *Sierra Pacific* matter	0329-0344	II
36	Spreadsheet of Refund Calculations (Claims for Relief Nos. 1 & 2)	0352-0352	II
37	Spreadsheet of Refund Calculations (Claims for Relief Nos. 3 - 7)	0353-0357	II
91	Termination/Water User Contract between Colorado River Comm'n of NV & Edison	1065-1070	V

Transcript Date	Transcript Description	Bate-Stamped Numbers	Volume Number
01/23/14	Excerpts from Byram, Oliver & Pomp	1288-1320	VI
01/28/14	Excerpts from Gardner, Faulds & Coyner	1391-1412	VII
01/29/14	Excerpts from Oliver, Rubald & McCann	1413-1450	VII
01/22/14	Excerpts from Phelan, Cunningham, Barbaro & Byram	1205-1287	VI
01/24/14	Excerpts from Pomp & Jurewitz	1321-1390	VII
01/21/14	Excerpts from Read, Smith & Phelan	1175-1204	VI
01/30/14	Excerpts from Rubald & Swain	1451-1484	VII

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Norman J. Azevedo, Attorney at Law, and that on the 27th day of August, 2015, I caused to be served a true and correct copy of the foregoing JOINT APPENDIX in the following manner:

(ELECTRONIC SERVICE) Pursuant to Rule5(D) of the Nevada Rules of Civil Procedure, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by the Court's Facilities to the Service List as follows:

Gina Sessions, Esq.
Office of the Attorney General
100 North Carson St.
Carson City, NV 89701

Rhonda Azevedo

Rhonda Azevedo, Legal Assistant

NEVADA DEPARTMENT OF TAXATION

Executive Director's Exemption and Refund Report

February 1999

Sales and Use Taxes

372.265 **Constitutional and statutory exemptions**
Due to an Attorney General's opinion, this exemption now has a significant affect on Nevada. Property purchased in other states for use in Nevada, which has been legally taxed in the other state, is no longer subject to Nevada use tax. While no information or estimate is available, two areas of potential significant revenue loss are motor vehicles and construction components.

372.270 **Proceeds of Mines.**
Based on March 1998 estimated figures: $217.7 million.

372.275 **Fuel used to propel motor vehicle.**
Estimate of annual revenue gain if the exemption did not exist is as follows. Diesel = $22.3** million (255.2 million gallons); Gasoline = $75.6** million (864.1 million gallons). Neither figure includes potential governmental exemptions. Diesel figure does not take into account for gallonage which may have been refunded for various reasons. Information is from actual gallonage consumed in FY 98 and is based on an average price of $1.25 per gallon for both types of fuel.

372.280 **Animals and plants intended for human consumption; feed; fertilizer.**
Based on 1995 information received from Nevada Agricultural Statistics Service, the estimate for this exemption is $16.7 million.

372.283 **Prosthetic devices, orthotic appliances and certain supports and casts; appliances and supplies relating to ostomy; products for hemodialysis; medicine.**
This estimate is for prosthetic devices, orthotic appliances, casts and supports only. It does not include ostomy, hemodialysis or medicines as no information is available for these products. Estimate of annual revenue gain if exemption did not exist is $553,200*.

372.284 **Food for human consumption.**
Based on a prior fiscal study completed by the Department, the revenue loss due to the exemption for food is approximately $81.4* million annually.

372.285 **Meals and food products sold to students or teachers by school, organization of students or parent-teacher association.**
Based on estimate for K-12 school districts: $3.5* million. Figure does not include university or college information.

374.291 **Works of fine art for public display.**
The result of this exemption is a reduction in tax collected (Local school support and City/County taxes). For various reasons, the actual amount cannot be determined at this time. Based on the first two years of the program, the initial annual loss will range from $152,827 to $7,192,651.

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372.287 **Textbooks sold within the University and Community College System of Nevada.**
While no current information is available, the fiscal note completed on this bill during the 1989 session indicated a tax loss of $75-80,000 per year was anticipated. No update has been completed since the original fiscal note.

372.290 **Containers.**
No information is available.

372.295 **Gas, electricity and water.**
Based on information received from the PUC, based on calendar year 1997: $109.9 million.

372.300 **Domestic fuels.**
Not including propane, $41,224* estimated annually from firewood.

372.305 **Personal property used for performance of contract on public works executed before July 1, 1955, and**

372.310 **Personal property used for performance of written contract executed before March 29, 1955.**
Time frame for qualification for these two exemptions was over 40 years ago. No information is available.

372.315 **Newspapers.**
Based on study of Nevada published newspapers in February 1999: $7.6 million.

372.316 **Manufactured homes and mobile homes.**
Based on the assumption that all reported sales of mobile home dealers are sales that qualify for exemption, if the exemption did not exist $4.18** million in revenue would be gained annually.

374.322 **Aircraft, aircraft engines and component parts of aircraft.**
No information is available. Sellers of aircraft are permitted to sell tax exempt. However, the purchaser must pay the 2% portion. There are no records of who those purchasers are.

372.320 **Occasional sales. (property other than vehicles)**
Based on rough estimate of ¼ of 1 percent of all taxable sales, estimate is $4 million.

374.040.2 **"Occasional sale" defined. (vehicles)**
Based on information provided by DMV reports to the Department, the general fund loss for FY 98 was $5.35** million per year for the 2% portion that was not taxed.

372.325 **Sale to United States, state or political subdivision.**
Not including sales to the United States (constitutional issue), March 1999 estimate for state and local sales equals $18.1* million.

372.326 **Personal property sold by or to nonprofit organization created for religious, charitable or educational purposes.**
This issue has vacillated until once again voted on (November 6, 1996) by the people of Nevada. Now, the exemption as interpreted since 1955 has been restored. The fiscal note developed at the time this bill was written indicated a potential tax loss of $1.3 million. However, it is important to note the actual taxing of sales made by this group of organizations was for a short period of time.

372.327 **Loan or donation to United States, state, political subdivision or religious or eleemosynary organization.**
No information is available, however it is felt this would be minimal.

372.330 **Sale to common carrier.**
No information is available, however it is felt this would be minimal.

372.335 **Property shipped outside state pursuant to sales contract; delivery by vendor.**
To lose this exemption would put Nevada at a competitive disadvantage with virtually all other states, as most all states have this exemption. However, information received from the Attorney General's office indicates this would be a constitutional matter. The revenue loss for this exemption is estimated to be $91.3* million.

374.287.1.d **Any ophthalmic or ocular devices or appliance prescribed by a physician or optometrist.**
Annual loss due to this exemption is approximately $2.18* million.

374.030.3.e.1 & .2 **Trade-in value of used vehicle or farm equipment.**
Annual loss due to this exemption for vehicles is approximately $14.55* million. While no information available for farm equipment, it is believed to be minimal.

372.340 **Personal property sold to or used by contractor who is a constituent part of governmental, religious or charitable entity.**
No information is available, however it is felt this also would be minimal.

374.357 **Abatement for eligible machinery or equipment used by certain businesses.**
Sales tax abated for FY 98 $1,512,779.72

CONCLUSION

BASED ON THIS STUDY, THE TOTAL CURRENT DOLLAR AMOUNT OF SALES AND USE TAX EXEMPTION CONSERVATIVELY WOULD BE $677,995,029. (678 M)

* Revenue loss based on prior study or fiscal note, using Economic Forum growth figures for current calculation.

** Revenue loss based on actual Department reports, other agency filings with this Department, or from information obtained from other agencies.

Business Tax

364A.151 **Exclusion of hours from calculation for employment of pupil as part of program that provides work-study.**
No information available.

364A.1525 **Requirements to qualify as organization created for religious, charitable or educational purposes.**
No information available.

364A.160 **Exemption for natural person with no employees during calendar year.**
No information available.

364A.170 **Exemption for proposed business; eligibility for exemption; repayment of amount of exemption for failure to comply; adoption of regulations.**
Business tax abated for FY98 $59,625.

364A.175 **Exemption for activities conducted pursuant to certain contracts executed before July 1, 1991.**
No information available.

Excise Tax

Note: All excise tax statutes contain provisions for refund of previously collected taxes, or restrictions on the Department of Taxation collecting taxes under certain conditions. These refund and restriction provisions are listed with each excise tax.

Insurance Premium Tax:

Exemptions:

679A.160 **Application of code to particular types of insurers.** Unless otherwise provided, no provision of this code applies to:

Fraternal benefit societies, as identified in chapter 695A of NRS, except as stated in chapter 695A of NRS.

Hospital, medical or dental service corporations, as identified in chapter 695B of NRS, except as stated in chapter 695B of NRS.

Motor clubs, as identified in chapter 696A of NRS, except as stated in chapter 696A of NRS.

Bail bondsmen, as identified in chapter 697 of NRS, except as stated in NRS 680B.025 to 680B.039, inclusive, and chapter 697 of NRS.

Risk retention groups, as identified in chapter 695E of NRS, except as stated in chapter 695E of NRS.

Health and welfare plans arising out of collective bargaining under chapter 288 of NRS, except that the commissioner may review the plan to ensure that the benefits are reasonable in relation to the premiums and that the fund is financially sound.

No information is available.

Adjustments 680B120 Refund of overpayments.

FY 98 $214,468.37

680B.050 Credit if home office or regional home office is in Nevada in an amount equal to 50% of the aggregate amount of tax and the full amount of ad valorem taxes paid by the insurer, however, the total credit shall not reduce the amount of tax payable to less than 20% of the tax otherwise payable by the insurer.

FY 98 $6,758,830.14

686C.280 Life/Health Guaranty Association offset is issued to each insurer paying an assessment under this chapter in the form of a certificate of contribution. The insurer may offset an amount equal to 20% of the amount certified against its liability for 5 years.

FY 98 $3,249,179.99

687A.060 Property/Casualty Guaranty Association credit is issued to each insurer paying an assessment under this chapter in regards to insolvent insurance companies. The insurer may apply this credit in an amount equal to 20% of the assessment against its liability for 5 years.

FY 98 $1,850,397.18

Tire Tax:

Exemptions:

No Exemptions

Cigarettes Tax:

Exemptions:

370.070 **The provisions of NRS 370.001 to 370.430, inclusive, do not apply to common carriers while engaged in interstate commerce which sell or furnish cigarettes on their trains, buses or airplanes.**
No information available.

370.290 **Exemption for cigarettes exported from state; notice to department of taxation and state of destination; penalty.**
No information available.

Refunds:

370.280 **Tax refunds.**

1. Upon proof satisfactory to the department, refunds shall be allowed for the face value of the cigarette revenue stamp tax paid, less any discount previously allowed, upon cigarettes that are sold to:

(a) The United States Government for Army, Air Force, Navy or Marine Corps purposes and are shipped to a point within this state to a place which has been lawfully ceded to the United States Government for Army, Air Force, Navy or Marine Corps purposes;

(b) Veterans' hospitals for distribution or sale to disabled service or ex-servicemen interned therein, but not to civilians or civilian employees;

(c) Any person if sold and delivered on an Indian reservation or colony where an excise tax has been imposed which is equal to or greater than the rate of the cigarette tax imposed under this chapter; or

(d) An Indian if sold and delivered on an Indian reservation or colony where no excise tax has been imposed or the excise tax is less than the rate of the cigarette tax imposed under this chapter.

2. Upon proof satisfactory to the department, refunds shall be allowed to cigarette dealers, or to manufacturers or their representatives, for the face value of the cigarette revenue stamp tax paid, less any discount previously allowed upon cigarettes destroyed because the cigarettes had become stale. Applications for refunds shall be submitted in an amount of not less than $15 and shall be accompanied by an affidavit of the applicant setting forth:

(a) The number of packages of cigarettes destroyed for which refund is claimed;

(b) The date or dates on which the cigarettes were destroyed and the place where destroyed;

(c) That the cigarettes were actually destroyed because they had become stale;
(d) By whom the cigarettes were destroyed; and
(e) Other information which the department may require.

3. Upon proof satisfactory to the department, refunds may be allowed to licensed wholesale cigarette dealers for the face value of the cigarette metered machine stamp tax paid, less any discount previously allowed upon:
(a) The balance of unused stamps on the descending register of a cigarette meter machine destroyed by fire, if the cigarette meter counting positions can be determined by the manufacturer of the meter stamping machine;
(b) Cigarettes which were stamped on their carton covers because of stamping machine failure to open the carton and stamp the cigarette packs; or
(c) Cigarettes which were not stamped but were registered on the machine as being stamped because of failure of the meter counters.

4. Any refund shall be paid as other claims against the state are paid.

Military Sales cannot be compiled.
Tribal Refunds for FY 98 $4,226.80
Other Refunds for FY 98 $449,163.89

Restrictions:

370.515 **Restriction on collection by department of tax for products sold on Indian reservation or colony.**
Tribal Sales approximated $13,445,250 in FY 1998.

Tobacco Products Other Than Cigarettes:

Exemptions:

No Exemptions

Refunds:

370.503 Allowance of refund for certain taxes paid.

1. Upon proof satisfactory to the department, a refund must be allowed for the taxes paid pursuant to NRS 370.450, upon products made from tobacco other than cigarettes, that are sold to:
(a) The United States Government for the purposes of the Army, Air Force, Navy or Marine Corps and are shipped to a point within this state to a place which has been lawfully ceded to the United States Government for the purposes of the Army, Air Force, Navy or Marine Corps;
(b) Veterans' hospitals for distribution or sale to disabled servicemen or ex-servicemen interned therein, but not to civilians or civilian employees;
(c) Any person if sold and delivered on an Indian reservation or colony where an excise tax has been imposed which is equal to or greater than the rate of the tax imposed pursuant to NRS 370.501; or
(d) An Indian if sold and delivered on an Indian reservation or colony where no excise tax has been imposed or the excise tax is less than the rate of the tax imposed pursuant to NRS 370.501.

2. Any refund must be paid as other claims against the state are paid.

Military Sales cannot be compiled.
Tribal Refunds for FY 98 $863.18
Other Refunds for FY 98 $0.00

Restrictions:

370.515 **Restriction on collection by department of tax for products sold on Indian reservation or colony.**
Tribal Sales approximated $1,429,687.46 in FY 1998.

Controlled Substance:

Exemptions:

No Exemptions

Estate Tax:

Exemptions:

No Exemptions

Refunds:

375A.220 **Refund of overpayment.**

1. Whenever the department determines that an overpayment of the tax due under NRS 375A.100 has been made, the person making payment is entitled to a refund of the amount erroneously paid on presentation of proof satisfactory to the department that he is entitled to a refund.

2. An application for the refund must be made to the department within 1 year after the date the federal estate tax has been finally determined.

3. On proof satisfactory to the department that the applicant is entitled to a refund, the department shall refund that amount plus interest as provided by NRS 375A.225.

4. The amount of the refund must be paid from the estate tax account in the state general fund.

Total Refunds for FY 1998 = $1,260,592.34

Liquor Tax:

Exemptions:

369.175 **Common carriers engaged in interstate commerce. (Trains, buses or airplanes)**

369.335 **Sales to certain instrumentalities of Armed Forces.**

369.370(2) **Exports**

369.370(4) **Shipments lost, stolen or damaged in transit, or damaged or spoiled on the premises.**
Total losses, exports, military and airlines exemptions for FY 1998 = $188,760.62

Refunds:

Same statutes as above
Total Refunds in FY 1998 = $22,875.

Motor Vehicle Fuel Excise Tax:

Exemptions:

365.220 **Exempt transactions and sales**

1. Motor vehicle fuel so long as it remains in interstate or foreign commerce.

2. Motor vehicle fuel or fuel for jet or turbine-powered aircraft exported from this state by a dealer.

3. Motor vehicle fuel or fuel for jet or turbine-powered aircraft sold to the United States Government for official use of the United States Armed Forces.

4. Motor vehicle fuel or fuel for jet or turbine-powered aircraft distributed, or delivered on the order of the owner, to a dealer.

5. Leaded racing fuel.

Total exempt for FY98 - unavailable

365.230 **Exempt sales by dealer in individual quantities of 500 gallons or less for export.**
Total exempt for FY98 - unavailable

Refunds:

365.370 Any person who exports any motor vehicle or fuel for jet or turbine-powered aircraft from this state, or who sells any such fuel to the United State Government for official use of the United States Armed Forces, or who buys and uses any such fuel for purposes other than for the propulsion of motor vehicles or jet or turbine-powered aircraft, and who has paid any tax on such fuel levied or directed to be paid as provided by this chapter, either directly by the collection of the tax by the vendor from the customer or indirectly by the addition of the amount of the tax to the price of the fuel, must be reimbursed and repaid the amount of the tax so paid by him except as follows:

1. Refund claims must be paid by prescribed classes in accordance with the department's regulations.

2. The minimum claim for refund must be based on at least 200 gallons purchased and used in a 6-month period.

3. No refund of motor vehicle fuel taxes may be made for off-highway use of motor vehicle fuel consumed in watercraft in this state for recreational purposes.

4. A person who exports, sells, buys or uses aviation fuel for any purpose is not entitled to reimbursement of any tax paid by him on such fuel.

Total refunded for FY98 - $959,482.06

Explanation of BDR 32-154

This BDR repeals a variety of statutory exemptions from property taxes and from all of the sales and use taxes other than the basic 2 percent sales and use tax (the referred measure that requires a vote of the people to amend) which are not required for the necessities of life, not constitutionally required, or whose repeal would merely increase administrative costs without increasing the net public revenue.

A. Repealed Provisions

Section 81 repeals 90 sections of NRS and 2 sections of Statutes of Nevada that relate to tax exemptions:

NRS 361.017 and 361.042 are repealed to delete definitions that occur only in other repealed sections.

NRS 361.0605 is repealed to remove the exemption from the property tax for land used by the public at no charge as a park.

NRS 361.061 is repealed to remove the exemption from the property tax for privately owned airports that are used by the public.

NRS 361.062 is repealed to remove the exemption from the property tax for property of trusts that are created for the benefit and furtherance of public functions.

NRS 361.065 is repealed to remove the exemption from the property tax for the property of school districts and charter schools. (Note that most of this property will remain exempt pursuant to section 3).

NRS 361.0685 is repealed to remove a partial abatement of the property tax for personal property and real property of certain businesses that are involved with recycling and are certified by the Commission on Economic Development.

NRS 361.0687 is repealed to remove a partial abatement of the property tax for certain new or expanded businesses that are approved by the Commission on Economic Development.

NRS 361.077 is repealed to remove the exemption from the property tax for property that is used for the control of air or water pollution.

NRS 361.078 is repealed to remove the exemption from the property tax for residential property that contains a shelter for protection against radioactive fallout.

NRS 361.079 is repealed to remove the exemption from the property tax for qualified systems that use wind, geothermal resources, solid wastes or water for heating, cooling or providing electricity.

NRS 361.080 is repealed to remove the exemption from the property tax for property of surviving spouses and orphans.

NRS [illegible] is repealed to remove the exemption from the property tax for the property of the Nathan Adelson Hospice.

NRS [illegible] is repealed to remove the exemption from the property tax for the property of the Nevada Museum of Art.

NRS [illegible] is repealed to remove the exemption from the property tax for the property of foundations that are established by the Board of Regents of the University of Nevada.

NRS [illegible] is repealed to remove the exemption from the property tax for the property leased or rented to the University and Community College System of Nevada.

NRS [illegible] is repealed to remove the exemption from the property tax for property owned by a fraternity or sorority at the University of Nevada, Reno, or University of Nevada, Las Vegas.

NRS [illegible] is repealed to remove the exemption from the property tax for the property of nonprofit private schools.

NRS [illegible] is repealed to remove the exemption from the property tax for the property of certain apprenticeship programs.

NRS [illegible] is repealed to remove the exemption from the property tax for the property of Pershing County Kids, Horses, Rodeo, Inc.

NRS [illegible] is repealed to remove the exemption from the property tax for certain property of the Nevada Museum of Art, YMCA, YWCA, Red Cross, Salvation Army, Girl Scouts, Camp Fire Girls, Boy Scouts and Sierra Arts Foundation.

NRS [illegible] is repealed to remove the exemption from the property tax for the property of The Nature Conservancy, Southern Land Conservancy and Nevada Land Conservancy.

NRS [illegible] is repealed to remove the exemption from the property tax for the Nevada Children's Foundation, Inc.

NRS [illegible] is repealed to remove the exemption from the property tax for the Nevada Heritage Association, Inc.

NRS [illegible] is repealed to remove the exemption from the property tax for certain property of the Nevada Museum of Art.

NRS [illegible] is repealed to remove the exemption from the property tax for the property of Nevada Humanities and Nevada Arts Council.

NRS [illegible] is repealed to remove the exemption from the property tax for the property of the Nevada Museum of Art, the Nevada Historical Society, the Nevada State Museum and Historical Society, the Nevada State Railroad Museum and the Nevada State Museum, Las Vegas

NRS 361.150 is repealed to remove the exemption from the property tax for the property of volunteer fire departments.

NRS 361.186 and 361.187 are repealed for statutory consistency with section 4, which repeals an exemption from the property tax for certain fine art on public display. NRS 361.186 reduces that exemption if an admission fee is collected for the exhibition and NRS 361.187 applies that exemption to a person who leases the fine art on public display.

NRS 361.797 is repealed to remove the allowance against the property tax for an owner of property that has been admitted to the program for the physical preservation of certain lines of railroad on which service has been discontinued.

NRS 371.101 is repealed to remove the partial exemption from the governmental services tax for a vehicle registered by a surviving spouse or an orphan.

NRS 371.102 is repealed to remove the partial exemption from the governmental services tax for a vehicle registered by a blind person.

NRS 374.280 is repealed to remove the exemption from the LSST and related taxes for fuel used to propel motor vehicles. Note that the repeal of this exemption authorizes the imposition of those taxes on the sales of motor vehicle fuel, and that section 5 of article 9 of the Nevada Constitution requires that the proceeds from the imposition of such a tax on motor vehicle fuel must be used for the construction, maintenance and repair of public highways.

NRS 374.285 is repealed to remove the exemptions from the LSST and related taxes for animals and plants if their products are ordinarily intended for human consumption, for the feed for such animals, and for the fertilizer for such plants.

NRS 374.286 is repealed to remove the exemption from the LSST and related taxes for farm machinery and equipment.

NRS 374.291 is repealed to remove the exemption from the LSST and related taxes for certain works of fine art for public display.

NRS 374.2911 is repealed for statutory consistency with the repeal of NRS 374.291. NRS 374.2911 reduces the exemption for works of fine art for public display if an admission fee is charged for their exhibition.

NRS 374.292 is repealed to remove the exemption from the LSST and related taxes for textbooks sold within the University and Community College System of Nevada.

NRS 374.295 is repealed to remove the exemption from the LSST and related taxes for certain containers.

NRS 374.310 is repealed to remove the exemption from the LSST and related taxes for personal property used for the performance of certain contracts on public works.

NRS 374.315 is repealed to remove the exemption from the LSST and related taxes for personal property used for the performance of certain written contracts.

NRS 374.320 is repealed to remove the exemption from the LSST and related taxes for newspapers.

NRS 374.321 is repealed to remove exemptions from the LSST and related taxes for manufactured homes and mobile homes.

NRS 374.322 is repealed to remove the exemption from the LSST and related taxes for aircraft, aircraft engines and component parts of aircraft.

NRS 374.323 is repealed to remove the exemption from the LSST and related taxes for engines, chassis, parts and components of professional racing vehicles and for certain vehicles used by a professional racing team or sanctioning body.

NRS 374.325 is repealed to remove the exemption from the LSST and related taxes for occasional sales of tangible personal property.

NRS 374.3305 is repealed to remove the exemption from the LSST and related taxes for personal property sold by or to nonprofit organizations created for religious, charitable or educational purposes.

NRS 374.3306 and 374.3307 are repealed for statutory consistency with the repeal of NRS 374.3305. NRS 374.3306 and 374.3307 provide prerequisites for claiming the repealed exemption.

NRS 374.357 is repealed to remove the partial abatement from the LSST and related taxes for eligible machinery and equipment used by certain new or expanded businesses.

NRS 374.388 is repealed for statutory consistency with the repeal of NRS 374.321. NRS 374.388 sets forth a presumption applicable only to the repealed exemption.

NRS 374.643 is repealed to remove the credit against or refund of the LSST and related taxes for a business within a specially benefited zone for economic development.

NRS 427A.450, 427A.455, 427A.460, 427A.465, 427A.470, 427A.475, 427A.480, 427A.485, 427A.490, 427A.495, 427A.500, 427A.505, 427A.510, 427A.515, 427A.520, 427A.522, 427A.525, 427A.530, 427A.535, 427A.540, 427A.545, 427A.550, 427A.555, 427A.560, 427A.565, 427A.570, 427A.575, 427A.580, 427A.585, 427A.590, 427A.595 and 427A.600 are repealed to remove the provisions requiring a partial refund of property taxes to certain senior citizens.

NRS 439.660 is repealed for statutory consistency with the repeal of NRS 427A.450 to 427A.600, inclusive. NRS 439.660 provides for the coordination of procedures for the administration of the repealed provisions and certain provisions regarding subsidies for pharmaceutical services for senior citizens.

Section 3 of chapter 335, Statutes of Nevada 2001, is repealed to prevent a future amendment to NRS 361.0687 from becoming effective because that section is being repealed by this BDR.

Section 8 of chapter 335, Statutes of Nevada 2001, is repealed to delete certain transitory provisions regarding the granting of two partial abatements from taxes that are being repealed by this BDR.

Please note that the following sections containing tax exemptions are not being repealed for the following reasons:

NRS 361.050, which provides an exemption from the property tax for the property of the United States, since the exemption is required by the U.S. Constitution.

NRS 361.055, which provides an exemption from the property tax for the property of this state, since the imposition of the property tax on that property would merely increase administrative costs without increasing the net public revenue.

NRS 361.067, which provides an exemption from the property tax for vehicles, since, pursuant to section 1 of article 10 of the Nevada Constitution, vehicles are subject to the governmental services tax in lieu of the property tax. (Note that this BDR repeals certain exemptions from the governmental services tax.)

NRS 374.275, which provides an exemption from the LSST and related taxes for the proceeds of mines, since this exemption is required by section 5 of article 10 of the Nevada Constitution.

NRS 374.335, 374.340 and 374.350, which respectively provide exemptions from the LSST and related taxes for certain sales to common carriers, property shipped outside the State pursuant to a sales contract and property on which a sales tax has already been paid, since these exemptions are required by the Commerce Clause of the U.S. Constitution and to avoid double taxation.

B. Amendatory Provisions

Section 1 amends NRS 360.225 to remove references to the partial abatement of property taxes on new and expanded businesses currently provided for in NRS 361.0687 and the abatement of LSST and related taxes on eligible machinery or equipment currently provided for in NRS 374.357, since both of those abatements are being repealed.

Section 2 removes from NRS 360.750 all references to the partial abatements from the taxes imposed pursuant to chapters 361 (property tax) and 374 (LSST and related taxes) on new or expanded businesses, since those partial abatements are being repealed.

Section 3 amends NRS 361.060 to restrict the exemption from the property tax for local governmental entities to the Nevada Rural Housing Authority (who is required to make certain payments in lieu of taxes pursuant to NRS 315.990) and those local governmental entities that receive any portion of the proceeds of the property tax (since the imposition of the property tax on their property would merely increase administrative costs without increasing the net public revenue). Note that school districts and charter schools, whose exemption from the property tax is being repealed by section 81, would now be exempt under this section as a result of their receipt of proceeds of the property tax.

Section 4 amends NRS 361.068 to repeal the exemptions from the property tax for livestock, colonies of bees, boats, slide-in campers and camper shells, certain fine art for public display, and personal property owned by a nonresident who is located in this state solely for an event that is transient in nature. This section retains exemptions for business inventories (as required by section 1 of article 10 of the Nevada Constitution), pipe used to convey water and personal property for which the annual taxes would be less than the cost of collecting those taxes.

Section 5 amends NRS 361.155 to delete references to the exemptions from the property tax provided for certain organizations pursuant to NRS 361.088 and 361.098 to 361.150, inclusive, since those exemptions are being repealed.

Section 6 amends NRS 361.1565 to delete references to the exemptions from the property tax provided for surviving spouses, orphan children and blind persons pursuant to NRS 361.080 and 361.085, since those exemptions are being repealed.

Section 7 amends NRS 361.157, which provides that any real estate which is otherwise exempt from the property tax becomes subject to taxation if it is used as a residence or in a business conducted for profit. The following properties to which that provision currently does not apply have been deleted, in effect making them subject to taxation when used as a residence or in a business conducted for profit:

1. Property located upon a public airport, park, market or fairground;
2. Property of any state-supported educational institution;
3. Vending stand locations and facilities operated by blind persons;
4. Leases held for development of geothermal resources;
5. Property that is made available to a public officer or employee, incident to or in the course of public employment;
6. A parsonage;
7. Property owned by a charitable or religious organization which is used as a residence by a person carrying out the activities of the organization;
8. Rental of meeting rooms for periods of less than 30 consecutive days; and
9. Property used by a nonprofit organization to provide day care for children.

Section 8 amends NRS 361.159, which provides that any personal property which is otherwise exempt from the property tax becomes subject to taxation if it is used by a business conducted for profit. The subsection currently providing that this provision does not apply to personal property used in vending stands operated by blind persons and personal property owned and used by a public airport is deleted, thus making them subject to taxation.

Section 9 amends NRS 361.484, which currently provides for the abatement of property taxes on real property acquired by the Federal Government or the State or any of its political subdivisions for the portion of the fiscal year in which that property is owned by the governmental entity. This section is amended to limit the abatement solely to the governmental entities whose property will be exempt from taxation after the enactment of this BDR.

Section 10 amends NRS 361A.286 to delete a reference to property exempted from taxation as a result of its ownership by the Nature Conservancy, the American Land Conservancy or the Nevada Land Conservancy, since the property tax exemption for these organizations is being repealed.

Section 11 amends NRS 365.210, which restricts the authority of certain local governmental entities to levy excise, privilege or occupation taxes on motor vehicle fuel and fuel for jet or turbine-powered aircraft. Since this BDR repeals the exemption from the LSST and related taxes for motor vehicle fuel, this section is amended to allow the imposition of those taxes on motor vehicle fuel and fuel for jet or turbine-powered aircraft.

Section 12 amends NRS 371.100, which currently exempts governmental vehicles, emergency vehicles and certain vehicles operated for elderly or handicapped persons from the governmental services tax. This section limits the exemptions to vehicles owned exclusively by the United States (as required by the U.S. Constitution), and by the State of Nevada or any local governmental entity that receives a portion of the proceeds of the tax (since the imposition of the property tax on that property would merely increase administrative costs without increasing the net public revenue). This section also repeals the exemption for vehicles used by a private person as part of a system that uses public money to operate the system for public transportation in an urban area.

Sections 13 and 14 respectively amend NRS 371.105 and 371.106 to delete references to NRS 371.101 and 371.102, which are being repealed.

Section 15 amends NRS 372.7263 to replace a reference to NRS 374.286, which contains a definition of "farm machinery and equipment" and is being repealed by this BDR, with a reference to NRS 374.7273, to which this definition is being added (see section 22).

Section 16 amends NRS 374.040, which defines "occasional sale" for purposes of the LSST and related taxes. Since all occurrences in chapter 374 of NRS of "occasional sale" are being repealed other than a reference to the "occasional sale of a vehicle," all irrelevant portions of the definition are being repealed.

Section 17 amends NRS 374.055, which defines "retail sale" and "sale by retail," by deleting the exclusion from those definitions of certain works of fine art for public display, in effect including them in those definitions and repealing this definitional exemption from the LSST and related taxes.

Section 18 amends NRS 374.085, which defines "storage, use or other consumption," by deleting the exclusion from that definition of certain works of fine art for public display, in effect including them in that definition and repealing this definitional exemption from the LSST and related taxes.

Section 19 amends NRS 374.330, which currently exempts from the LSST and related taxes property sold to the Federal Government, to the State of Nevada or its unincorporated agencies and instrumentalities, or to the political subdivisions of the State. The exemption is being limited to the Federal Government (as required by the U.S. Constitution), and to the State of Nevada, state entities who receive legislative appropriations or whose expenditures of public money are approved by the Legislature, and political subdivisions of the State (since the imposition of the tax on these governmental entities would merely increase administrative costs without increasing the net public revenue).

Section 20 amends NRS 374.331, which currently exempts from the LSST and related taxes property loaned or donated to the Federal Government, to the State of Nevada or its unincorporated agencies and instrumentalities, or to the political subdivisions of the State. The exemption is being limited to the Federal Government (as required by the U.S. Constitution), and to the State of Nevada, state entities who receive legislative appropriations or whose expenditures of public money are approved by the Legislature, and political subdivisions of the State (since the imposition of the tax on these governmental entities would merely increase administrative costs without increasing the net public revenue). In addition, this section deletes the exemption for religious or charitable organizations.

Section 21 amends NRS 374.345, which applies the LSST and related taxes to contractors of certain exempt entities unless the contractors are a constituent part of those entities, to delete a reference to exempt religious or charitable entities. (The exemption for religious and charitable entities is being repealed by section 81).

Section 22 amends NRS 374.7273 by removing a reference to NRS 374.286, which defines "farm machinery and equipment" and is being repealed by this BDR, and adding the definition to this section.

Section 23 amends NRS 374.729 in conformity with the amendment to NRS 374.330 (see section 19).

Section 24 amends NRS 374.785 for statutory consistency with the repeal of the exemption from the LSST and related taxes for motor vehicle fuel. Since section 5 of article 9 of the Nevada Constitution requires that the proceeds from the imposition of any excise tax on motor vehicle fuel must be used for highway construction, the amendatory provisions of this section provide a mechanism for the separate accounting and appropriate use of those proceeds from the LSST.

Section 25 amends NRS 374A.020, which provides procedures for the collection and administration of a local tax for school facilities, for statutory consistency with the repeal of the exemption from the LSST and related taxes for motor vehicle fuel. Since section 5 of article 9 of the Nevada Constitution requires that the proceeds from the imposition of any excise tax on motor vehicle fuel must be used for highway construction, the amendatory provisions of this section clarify that the expenditures authorized by NRS 374A.020 do not apply to those proceeds allocated for highway construction pursuant to NRS 374.785 (see section 24).

Sections 26 to 30, inclusive, amend the first parallel section of NRS 376A.040, which is effective through September 30, 2029, the second parallel section of NRS 376A.040, which becomes effective on October 1, 2029, the first parallel section of NRS 376A.050, which is effective through September 30, 2029, the second parallel section of NRS 376A.050, which becomes effective on October 1, 2029, and NRS 376A.080, for statutory consistency with the repeal of the exemption from the LSST and related taxes for motor vehicle fuel. Since section 5 of article 9 of the Nevada Constitution requires that the proceeds from the imposition of any excise tax on motor vehicle fuel must be used for highway construction, the amendatory provisions of these sections provide a mechanism for the separate accounting and appropriate use of those proceeds from the taxes for the development of open-space land imposed pursuant to chapter 376A of NRS.

Sections 31, 32 and 33 respectively amend NRS 377.050, 377.055 and 377.057 for statutory consistency with the repeal of the exemption from the LSST and related taxes for motor vehicle fuel. Since section 5 of article 9 of the Nevada Constitution requires that the proceeds from the imposition of any excise tax on motor vehicle fuel must be used for highway construction, the amendatory provisions of these sections provide a mechanism for the separate accounting and appropriate use of those proceeds from the city-county relief tax imposed pursuant to chapter 377 of NRS.

Sections 34 to 37, inclusive, amend NRS 377A.050, 377A.064, 377A.070 and 377A.100, for statutory consistency with the repeal of the exemption from the LSST and related taxes for motor vehicle fuel. Since section 5 of article 9 of the Nevada Constitution requires that the proceeds from the imposition of any excise tax on motor vehicle fuel must be used for highway construction, the amendatory provisions of these

sections provide a mechanism for the separate accounting and appropriate use of those proceeds from the taxes imposed pursuant to chapter 377A of NRS for a public transit system, for the construction, maintenance and repair of public roads and for the promotion of tourism.

Sections 38 to 43, inclusive, amend NRS 377B.100, 377B.110, 377B.130, 377B.150, 377B.190 and 377B.200, for statutory consistency with the repeal of the exemption from the LSST and related taxes for motor vehicle fuel. Since section 5 of article 9 of the Nevada Constitution requires that the proceeds from the imposition of any excise tax on motor vehicle fuel must be used for highway construction, the amendatory provisions of these sections provide a mechanism for the separate accounting and appropriate use of those proceeds from the tax for infrastructure imposed pursuant to chapter 377B of NRS.

Section 44 amends NRS 266.267 to delete a reference to a partial abatement from the LSST and related taxes pursuant to NRS 374.357, since that abatement is being repealed.

Section 45 amends NRS 274.230 to delete a reference to NRS 374.643, which is being repealed.

Section 46 amends NRS 274.270 to delete a reference to NRS 374.643, which is being repealed.

Section 47 amends NRS 387.1235 for statutory consistency with the repeal of the exemption from the LSST and related taxes for motor vehicle fuel. Since section 5 of article 9 of the Nevada Constitution requires that the proceeds from the imposition of any excise tax on motor vehicle fuel must be used for highway construction, the amendatory provisions of this section clarify that those proceeds of the LSST and related taxes must not be included in the local money available for public schools.

Section 48 amends NRS 408.235 for statutory consistency with the repeal of the exemption from the LSST and related taxes for motor vehicle fuel. NRS 408.235, which provides that the proceeds from excise taxes on motor vehicle fuel must be deposited in the State Highway Fund, is amended to allow the administration of those proceeds from the LSST and related taxes in the manner provided in this BDR.

Sections 49, 50 and 51 respectively amend NRS 422.2725, 439.640 and 439.645 to replace certain definitions contained in NRS 427A.480 and 427A.485, which are being repealed by this BDR.

Section 52 amends NRS 482.3795 to repeal an exemption from the governmental services tax for certain fire trucks.

Section 53 amends NRS 482.3811 to repeal an exemption from the governmental services tax for certain antique trucks and truck-tractors.

Section 54 amends NRS 484.473 to replace a definition contained in NRS 361.017, which is being repealed by this BDR.

Section 55 amends NRS 488.075 for statutory consistency with the repeal of the exemption from the LSST and related taxes for the occasional sales of boats. This section prevents the certification of a boat upon proof of its exemption solely from the sales tax imposed by chapter 372 of NRS.

Section 56 amends NRS 502.075 to replace a definition contained in NRS 361.085, which is being repealed by this BDR.

Sections 57, 58 and 59 respectively amend NRS 543.630, 543.650 and 543.690 for statutory consistency with the repeal of the exemption from the LSST and related taxes for motor vehicle fuel. Since section 5 of article 9 of the Nevada Constitution requires that the proceeds from the imposition of any excise tax on motor vehicle fuel must be used for highway construction, the amendatory provisions of these sections provide a mechanism for the separate accounting and appropriate use of those proceeds from the taxes imposed for the control of floods pursuant to NRS 543.170 to 543.830, inclusive.

Section 60 amends NRS 694C.450 to repeal an exemption from sales taxes for captive insurers.

Section 61 amends NRS 695A.550 to repeal an exemption from personal property taxes and sales taxes for fraternal benefit societies.

Section 62 amends NRS 705.425 to repeal a reference to an allowance from the property tax provided by NRS 361.797, which is being repealed by this BDR.

Sections 63 to 67, inclusive, amend sections 8A.070, 8A.100, 8A.120, 8A.130 and 8A.140 of the Charter of Carson City, for statutory consistency with the repeal of the exemption from the LSST and related taxes for motor vehicle fuel. Since section 5 of article 9 of the Nevada Constitution requires that the proceeds from the imposition of any excise tax on motor vehicle fuel must be used for highway construction, the amendatory provisions of these sections provide a mechanism for the separate accounting and appropriate use of those proceeds from the taxes imposed pursuant to article 8A of the Charter of Carson City.

Section 68 amends section 2.320 of the Charter of the City of Henderson to delete a reference to a partial abatement from the LSST and related taxes pursuant to NRS 374.357, since that abatement is being repealed.

Section 69 amends section 29 of the Local Government Tax Act of 1991, for statutory consistency with the repeal of the exemption from the LSST and related taxes for motor vehicle fuel. Since section 5 of article 9 of the Nevada Constitution requires that the proceeds from the imposition of any excise tax on motor vehicle fuel must be used for highway construction, the amendatory provisions of this section provide a mechanism for the separate accounting and appropriate use of those proceeds from the taxes imposed pursuant to section 29 of the Local Government Tax Act of 1991.

Sections 70 to 73, inclusive, amend sections 3, 6, 8 and 10 of the Elko County Hospital Tax, for statutory consistency with the repeal of the exemption from the LSST and related taxes for motor vehicle fuel. Since section 5 of article 9 of the Nevada Constitution requires that the proceeds from the imposition of any excise tax on motor vehicle fuel must be used for highway construction, the amendatory provisions of these sections provide a mechanism for the separate accounting and appropriate use of those proceeds from the Elko County Hospital Tax.

Section 74 amends section 24 of the Railroad Grade Separation Projects Act, for statutory consistency with the repeal of the exemption from the LSST and related taxes for motor vehicle fuel. Since section 5 of article 9 of the Nevada Constitution requires that the proceeds from the imposition of any excise tax on motor vehicle fuel must be used for highway construction, the amendatory provisions of this section provide a mechanism for the separate accounting and appropriate use of those proceeds from the tax imposed pursuant to section 24 of the Railroad Grade Separation Projects Act.

Sections 75 to 79, inclusive, amend sections 17, 20, 22, 23 and 24 of the Douglas County Sales and Use Tax Act of 1999, for statutory consistency with the repeal of the exemption from the LSST and related taxes for motor vehicle fuel. Since section 5 of article 9 of the Nevada Constitution requires that the proceeds from the imposition of any excise tax on motor vehicle fuel must be used for highway construction, the amendatory provisions of these sections provide a mechanism for the separate accounting and appropriate use of those proceeds from the tax imposed pursuant to Douglas County Sales and Use Tax Act of 1999.

Section 80 consists of technical amendments which repeal the effective date of a future amendment to a section of NRS which is being repealed by this BDR and causes the expiration by limitation of amendments to two sections of NRS being repealed by this BDR.

Section 81 is the list of repealed sections that is described in detail at the beginning of this document.

Section 82 consists of transitory provisions regarding the effect of this BDR regarding certain taxes and agreements existing before this BDR becomes effective.

Section 83 provides that this BDR becomes effective on July 1, 2003. Subsections 2 and 3 simply make the same change to both parallel sections of NRS 376A.040 and 376A.050 which are set in current law so that the first parallel sections expire by limitation and the second parallel sections become effective on October 1, 2029.

SB293 Relating to Repealed Exemptions – Revenue Gains
March 19, 2003

With the exception of NRS 374.286, NRS 374.323 and NRS 360.750, those figures are from a study done in 1999. The Department has no way to accurately estimate what the revenue gain would be for any of these exemptions. Also, the revenue gain is only for the 5% portion of the tax. There is no revenue gain on the 2% general fund portion, as these repealed exemptions were in NRS 374, not 372.

Section 2 NRS 360.750 Sales/use tax abatement on new or expanded Business (FY02)	Estimated $ 3.4 million
Section 81 NRS.374.280 Fuel used to propel motor vehicle	Estimated $69.9 million
NRS 374.285 Animals and plants intended for human consumption; feed; fertilizer	Estimated $11.9 million
NRS 374.286 Farm machinery and equipment (7/1/02 – 1/31/03)	Estimated $ 0.5 million
NRS 374.291 Works of fine art for public display	Estimated $ 0.15 to $ 7.1 million
NRS 374.292 Textbooks sold within University and Community College System of Nevada	Estimated $ 0.053 to $ 0.057 million
NRS 374.295 Containers	No information available
NRS 374.320 Newspapers	Estimated $ 5.4 million
NRS 374.321 Manufactured homes and mobile homes (if all sales qualified)	Estimated $ 2.95 million
NRS 374.322 Aircraft, aircraft engines and component parts of aircraft	No information available
NRS 374.323 Engines, chassis, parts and components of professional racing vehicles; certain vehicles used by professional racing team or sanction body (10/1/01)	0
NRS 374.3325 Occasional sales	Estimated $ 2.85 million

EXHIBIT G Committee on Taxation
Date: 03/27/03 Page 1 of 2

NRS 374.3305 Personal property sold by or to nonprofit organization created for religious, charitable or educational purposes	Estimated $ 0.9 million

SB293

Introduced on: Mar 14, 2003

By: (**Bolded** name indicates primary sponsorship)
Neal , Titus , O'Connell , Coffin

Repeals certain exemptions and abatements from taxes on property and on retail sales or use of property. (BDR 32-154)

Fiscal Notes

Effect on Local Government: No.
Effect on State: No.

Most Recent History Action: (Pursuant to Joint Standing Rule No. 14.3.1, no further action allowed.)
(See full list below)

Past Hearings

Senate Taxation	Mar-20-2003 02:00 PM		Not Heard
Senate Taxation	Mar-27-2003 02:00 PM	**Minutes**	No Action

Votes (2/3 Majority Required)

Bill Text (PDF) **As Introduced**
Bill Text (HTML) **As Introduced**
Amendments (HTML)

Bill History

Mar 14, 2003
- Read first time. Referred to Committee on Taxation. To printer.

Mar 17, 2003
- From printer. To committee.

Apr 12, 2003
- (Pursuant to Joint Standing Rule No. 14.3.1, no further action allowed.)

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REQUIRES TWO-THIRDS MAJORITY VOTE (§§ 3, 4, 7, 8, 11, 12, 17-21, 52, 53, 62, 81)

S.B. 293

SENATE BILL NO. 293–SENATORS NEAL, TITUS, O'CONNELL AND COFFIN

MARCH 14, 2003

Referred to Committee on Taxation

SUMMARY—Repeals certain exemptions and abatements from taxes on property and on retail sales or use of property. (BDR 32-154)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

EXPLANATION – Matter in *bolded italics* is new; matter between ~~brackets [omitted material]~~ is material to be omitted.

AN ACT relating to taxation; repealing certain exemptions and abatements from taxes on property and on the retail sales or use of property; providing for the disposition and use of the proceeds of certain taxes on the retail sales or use of fuel used to propel motor vehicles; and providing other matters properly relating thereto.

WHEREAS, The rapid growth in Nevada's population and the failure of current sources of governmental revenue to keep pace with that growth have resulted in serious budgetary deficits for the State and its political subdivisions; and

WHEREAS, Additional revenue is urgently required to provide the basic governmental services necessary to ensure the health, safety and welfare of the people of this state; and

WHEREAS, The severity of this economic situation necessitates the review or repeal of those exemptions from taxes on property and on the sales or use of property which are not essential to the health, safety and welfare of the people of this state; and

WHEREAS, It is the intention of the Nevada Legislature to retain only those tax exemptions which are necessary for the people of this state to obtain the necessities of life or required to prevent any unnecessary loss of revenue for the provision of basic governmental services; now, therefore,

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 360.225 is hereby amended to read as follows:

360.225 1. During the course of an investigation undertaken pursuant to NRS 360.130 of a person claiming:

(a) ~~[A partial abatement of property taxes pursuant to NRS 361.0687;~~

~~(b)]~~ An exemption from taxes upon the privilege of doing business in this state pursuant to NRS 364A.170;

~~[(c)]~~ ***or***

(b) A deferral of the payment of taxes on the sale of capital goods pursuant to NRS 372.397 or 374.402, ~~[; or~~

~~(d) An abatement of taxes on the gross receipts from the sale, storage, use or other consumption of eligible machinery or equipment pursuant to NRS 374.357,]~~

the Department shall investigate whether the person meets the eligibility requirements for the ~~[abatement, partial abatement,]~~ exemption or deferral that the person is claiming.

2. If the Department finds that the person does not meet the eligibility requirements for the ~~[abatement,]~~ exemption or deferral which the person is claiming, the Department shall report its findings to the Commission on Economic Development and take any other necessary actions.

Sec. 2. NRS 360.750 is hereby amended to read as follows:

360.750 1. A person who intends to locate or expand a business in this state may apply to the Commission on Economic Development for a partial abatement of ~~[one or more of the taxes]~~ ***the tax*** imposed on the new or expanded business pursuant to chapter ~~[361, 364A or 374]~~ ***364A*** of NRS.

2. The Commission on Economic Development shall approve an application for a partial abatement if the Commission makes the following determinations:

(a) The business is consistent with:

(1) The state plan for industrial development and diversification that is developed by the Commission pursuant to NRS 231.067; and

(2) Any guidelines adopted pursuant to the state plan.

(b) The applicant has executed an agreement with the Commission which states that the business will, after the date on which a certificate of eligibility for the abatement is issued pursuant to subsection 5, continue in operation in this state for a period specified by the Commission, which must be at least 5 years, and will continue to meet the eligibility requirements set forth in this

subsection. The agreement must bind the successors in interest of the business for the specified period.

(c) The business is registered pursuant to the laws of this state or the applicant commits to obtain a valid business license and all other permits required by the county, city or town in which the business operates.

(d) ~~[Except as otherwise provided in NRS 361.0687, if]~~ *If* the business is a new business in a county whose population is 100,000 or more or a city whose population is 60,000 or more, the business meets at least two of the following requirements:

(1) The business will have 75 or more full-time employees on the payroll of the business by the fourth quarter that it is in operation.

(2) Establishing the business will require the business to make a capital investment of at least $1,000,000 in this state.

(3) The average hourly wage that will be paid by the new business to its employees in this state is at least 100 percent of the average statewide hourly wage as established by the Employment Security Division of the Department of Employment, Training and Rehabilitation on July 1 of each fiscal year and:

(I) The business will provide a health insurance plan for all employees that includes an option for health insurance coverage for dependents of the employees; and

(II) The cost to the business for the benefits the business provides to its employees in this state will meet the minimum requirements for benefits established by the Commission by regulation pursuant to subsection ~~[9.~~

~~(e) Except as otherwise provided in NRS 361.0687, if]~~ *8.*

(e) If the business is a new business in a county whose population is less than 100,000 or a city whose population is less than 60,000, the business meets at least two of the following requirements:

(1) The business will have 25 or more full-time employees on the payroll of the business by the fourth quarter that it is in operation.

(2) Establishing the business will require the business to make a capital investment of at least $250,000 in this state.

(3) The average hourly wage that will be paid by the new business to its employees in this state is at least 100 percent of the average statewide hourly wage as established by the Employment Security Division of the Department of Employment, Training and Rehabilitation on July 1 of each fiscal year and:

(I) The business will provide a health insurance plan for all employees that includes an option for health insurance coverage for dependents of the employees; and

(II) The cost to the business for the benefits the business provides to its employees in this state will meet the minimum requirements for benefits established by the Commission by regulation pursuant to subsection ~~[9.]~~ *8.*

(f) If the business is an existing business, the business meets at least two of the following requirements:

(1) The business will increase the number of employees on its payroll by 10 percent more than it employed in the immediately preceding fiscal year or by six employees, whichever is greater.

(2) The business will expand by making a capital investment in this state in an amount equal to at least 20 percent of the value of the tangible property possessed by the business in the immediately preceding fiscal year. The determination of the value of the tangible property possessed by the business in the immediately preceding fiscal year must be made by the:

(I) County assessor of the county in which the business will expand, if the business is locally assessed; or

(II) Department, if the business is centrally assessed.

(3) The average hourly wage that will be paid by the existing business to its new employees in this state is at least 100 percent of the average statewide hourly wage as established by the Employment Security Division of the Department of Employment, Training and Rehabilitation on July 1 of each fiscal year and:

(I) The business will provide a health insurance plan for all new employees that includes an option for health insurance coverage for dependents of the employees; and

(II) The cost to the business for the benefits the business provides to its new employees in this state will meet the minimum requirements for benefits established by the Commission by regulation pursuant to subsection ~~[9.]~~ *8.*

3. Notwithstanding the provisions of subsection 2, the Commission on Economic Development may:

(a) Approve an application for a partial abatement by a business that does not meet the requirements set forth in paragraph (d), (e) or (f) of subsection 2;

(b) Make the requirements set forth in paragraph (d), (e) or (f) of subsection 2 more stringent; or

(c) Add additional requirements that a business must meet to qualify for a partial abatement,

if the Commission determines that such action is necessary.

4. If a person submits an application to the Commission on Economic Development pursuant to subsection 1, the Commission shall provide notice to the governing body of the county and the city or town, if any, in which the person intends to locate or expand a business. The notice required pursuant to this subsection must set

forth the date, time and location of the hearing at which the Commission will consider the application.

5. If the Commission on Economic Development approves an application for a partial abatement, the Commission shall immediately forward a certificate of eligibility for the abatement to:

(a) The Department; *and*

(b) The Nevada Tax Commission. ~~[; and~~

~~(c) If the partial abatement is from the property tax imposed pursuant to chapter 361 of NRS, the county treasurer.]~~

6. An applicant for a partial abatement pursuant to this section or an existing business whose partial abatement is in effect shall, upon the request of the Executive Director of the Commission on Economic Development, furnish the Executive Director with copies of all records necessary to verify that the applicant meets the requirements of subsection 2.

7. If a business whose partial abatement has been approved pursuant to this section and is in effect ceases:

(a) To meet the requirements set forth in subsection 2; or

(b) Operation before the time specified in the agreement described in paragraph (b) of subsection 2,

the business shall repay to the Department ~~[or, if the partial abatement was from the property tax imposed pursuant to chapter 361 of NRS, to the county treasurer,]~~ the amount of the exemption that was allowed pursuant to this section before the failure of the business to comply unless the Nevada Tax Commission determines that the business has substantially complied with the requirements of this section. Except as otherwise provided in NRS 360.232 and 360.320, the business shall, in addition to the amount of the exemption required to be paid pursuant to this subsection, pay interest on the amount due at the rate most recently established pursuant to NRS 99.040 for each month, or portion thereof, from the last day of the month following the period for which the payment would have been made had the partial abatement not been approved until the date of payment of the tax.

8. ~~[A county treasurer:~~

~~(a) Shall deposit any money that he receives pursuant to subsection 7 in one or more of the funds established by a local government of the county pursuant to NRS 354.6113 or 354.6115; and~~

~~(b) May use the money deposited pursuant to paragraph (a) only for the purposes authorized by NRS 354.6113 and 354.6115.~~

~~9.]~~ The Commission on Economic Development:

(a) Shall adopt regulations relating to:

(1) The minimum level of benefits that a business must provide to its employees if the business is going to use benefits paid to employees as a basis to qualify for a partial abatement; and

(2) The notice that must be provided pursuant to subsection 4.

(b) May adopt such other regulations as the Commission on Economic Development determines to be necessary to carry out the provisions of this section.

~~[10.]~~ *9.* The Nevada Tax Commission:

(a) Shall adopt regulations regarding:

(1) The capital investment that a new business must make to meet the requirement set forth in paragraph (d) or (e) of subsection 2; and

(2) Any security that a business is required to post to qualify for a partial abatement pursuant to this section.

(b) May adopt such other regulations as the Nevada Tax Commission determines to be necessary to carry out the provisions of this section.

~~[11.]~~ *10.* An applicant for an abatement who is aggrieved by a final decision of the Commission on Economic Development may petition for judicial review in the manner provided in chapter 233B of NRS.

Sec. 3. NRS 361.060 is hereby amended to read as follows:

361.060 ~~[All]~~ ***Except as otherwise provided by specific statute, all*** lands and other property owned by the Nevada Rural Housing Authority or any ~~[county, domestic municipal corporation, irrigation drainage or reclamation district or town in this state]~~ ***local governmental entity that receives any portion of the proceeds of the tax*** are exempt from taxation . ~~[, except as provided in NRS 539.213 with respect to certain community pastures.]~~

Sec. 4. NRS 361.068 is hereby amended to read as follows:

361.068 1. The following personal property is exempt from taxation:

(a) Personal property held for sale by a merchant;

(b) Personal property held for sale by a manufacturer;

(c) Raw materials and components held by a manufacturer for manufacture into products, and supplies to be consumed in the process of manufacture;

(d) Tangible personal property purchased by a business which will be consumed during the operation of the business; ***and***

(e) ~~[Livestock;~~

~~(f) Colonies of bees;~~

~~(g)]~~ Pipe and other agricultural equipment used to convey water for the irrigation of legal crops . ~~[;~~

~~(h) All boats;~~

~~(i) Slide-in campers and camper shells;~~

~~(j) Except as otherwise provided in NRS 361.186, fine art for public display; and~~

~~(k) All personal property that is:~~

~~(1) Owned by a person who is not a resident of this state; and~~

~~(2) Located in this state solely for the purposes of a display, exhibition, convention, carnival, fair or circus that is transient in nature.~~]

2. The Nevada Tax Commission may exempt from taxation that personal property for which the annual taxes would be less than the cost of collecting those taxes. If such an exemption is provided, the Nevada Tax Commission shall annually determine the average cost of collecting property taxes in this state which must be used in determining the applicability of the exemption.

~~[3. A person claiming the exemption provided for in paragraph (j) of subsection 1 shall:~~

~~(a) On or before June 15 for the next ensuing fiscal year, file with the county assessor an affidavit declaring that the fine art will, during that ensuing fiscal year, meet all the criteria set forth in paragraph (b) of subsection 4; and~~

~~(b) During any fiscal year in which he claims the exemption, make available for educational purposes and not for resale, upon written request and without charge to any public school as defined in NRS 385.007, private school as defined in NRS 394.103 and parent of a child who receives instruction in a home pursuant to NRS 392.070, one copy of a poster depicting the fine art that the facility has on public display if such a poster is available for purchase by the public at the time of the request.~~

~~4. As used in this section:~~

~~(a) "Boat" includes any vessel or other watercraft, other than a seaplane, used or capable of being used as a means of transportation on the water.~~

~~(b) "Fine art for public display":~~

~~(1) Except as otherwise provided in subparagraph (2), means a work of art which:~~

~~(I) Is an original painting in oil, mineral, water colors, vitreous enamel, pastel or other medium, an original mosaic, drawing or sketch, an original sculpture of clay, textiles, fiber, wood, metal, plastic, glass or a similar material, an original work of mixed media or a lithograph;~~

~~(II) Was purchased in an arm's length transaction for $25,000 or more, or has an appraised value of $25,000 or more;~~

~~(III) Is on public display in a public or private art gallery, museum or other building or area in this state for at least 20 hours per week during at least 35 weeks of each year for which the~~

~~exemption is claimed or, if the facility displaying the fine art disposes of it before the end of that year, during at least two-thirds of the full weeks during which the facility had possession of it, or if the gallery, museum or other building or area in which the fine art will be displayed will not be opened until after the beginning of the fiscal year for which the exemption is claimed, these display requirements must be met for the first full fiscal year after the date of opening, and the date of opening must not be later than 2 years after the purchase of the fine art being displayed; and~~

~~(IV) Is on display in a facility that is available for group tours by pupils or students for at least 5 hours on at least 60 days of each full year for which the exemption is claimed, during which the facility in which it is displayed is open, by prior appointment and at reasonable times, without charge; and~~

~~(2) Does not include:~~

~~(I) A work of fine art that is a fixture or an improvement to real property;~~

~~(II) A work of fine art that constitutes a copy of an original work of fine art, unless the work is a lithograph that is a limited edition and that is signed and numbered by the artist;~~

~~(III) Products of filmmaking or photography, including, without limitation, motion pictures;~~

~~(IV) Literary works;~~

~~(V) Property used in the performing arts, including, without limitation, scenery or props for a stage; or~~

~~(VI) Property that was created for a functional use other than, or in addition to, its aesthetic qualities, including, without limitation, a classic or custom-built automobile or boat, a sign that advertises a business, and custom or antique furniture, lamps, chandeliers, jewelry, mirrors, doors or windows.~~

~~(c) "Personal property held for sale by a merchant" includes property that:~~

~~(1) Meets the requirements of sub-subparagraphs (I) and (II) of subparagraph (1) of paragraph (b);~~

~~(2) Is made available for sale within 2 years after it is acquired; and~~

~~(3) Is made available for viewing by the public or prospective purchasers, or both, within 2 years after it is acquired, whether or not a fee is charged for viewing it and whether or not it is also used for purposes other than viewing.~~

~~(d) "Public display" means the display of a work of fine art where members of the public have access to the work of fine art for viewing during publicly advertised hours. The term does not include the display of a work of fine art in an area where the public does not generally have access, including, without limitation, a private office,~~

~~hallway or meeting room of a business, a room of a business used for private lodging and a private residence.~~

~~(c) "Pupil" means a person who:~~

~~(1) Is enrolled for the current academic year in a public school as defined in NRS 385.007 or a private school as defined in NRS 394.103; or~~

~~(2) Receives instruction in a home and is excused from compulsory attendance pursuant to NRS 392.070.~~

~~(f) "Student" means a person who is enrolled for the current academic year in:~~

~~(1) A community college or university; or~~

~~(2) A licensed postsecondary educational institution as defined in NRS 394.099 and a course concerning fine art.]~~

Sec. 5. NRS 361.155 is hereby amended to read as follows:

361.155 1. All claims for ~~[personal]~~ tax exemptions on real property ~~[, the initial claim of an organization for a tax exemption on real property]~~ and the designation of any amount to be credited to the Veterans' Home Account pursuant to NRS 361.0905 must be filed on or before June 15. All exemptions provided for pursuant to this chapter apply on a fiscal year basis and any exemption granted pursuant to this chapter must not be in an amount which gives the taxpayer a total exemption greater than that to which he is entitled during any fiscal year.

2. Each claim for an exemption provided for pursuant to this chapter must be filed with the county assessor of:

(a) The county in which the claimant resides for personal tax exemptions; or

(b) Each county in which property is located for the tax exemption of an organization.

~~[3. After the initial claim for an exemption pursuant to NRS 361.088 or 361.098 to 361.150, inclusive, an organization is not required to file annual claims if the property remains exempt. If any portion of the property loses its exemption pursuant to NRS 361.157 or for any other reason becomes taxable, the organization must notify the county assessor.~~

~~4. If an exemption is granted or renewed in error because of an incorrect claim or failure of an organization to give the notice required by subsection 3, the assessor shall assess the taxable portion of the property retroactively pursuant to NRS 361.769 and a penalty of 10 percent of the tax due for the current year and any prior years must be added.]~~

Sec. 6. NRS 361.1565 is hereby amended to read as follows:

361.1565 The personal property tax exemption to which a ~~[surviving spouse, orphan child, blind person,]~~ veteran or surviving spouse of a disabled veteran is entitled pursuant to NRS ~~[361.090,~~

~~361.085,~~ 361.090 or 361.091 is reduced to the extent that he is allowed an exemption from the governmental services tax pursuant to chapter 371 of NRS.

Sec. 7. NRS 361.157 is hereby amended to read as follows:

361.157 1. When any real estate or portion of real estate which for any reason is exempt from taxation is leased, loaned or otherwise made available to and used by a natural person, association, partnership or corporation in connection with a business conducted for profit or as a residence, or both, the leasehold interest, possessory interest, beneficial interest or beneficial use of the lessee or user of the property is subject to taxation to the extent the:

(a) Portion of the property leased or used; and

(b) Percentage of time during the fiscal year that the property is leased by the lessee or used by the user, in accordance with NRS 361.2275,

can be segregated and identified. The taxable value of the interest or use must be determined in the manner provided in subsection 3 of NRS 361.227 and in accordance with NRS 361.2275.

2. Subsection 1 does not apply to:

(a) ~~[Property located upon a public airport, park, market or fairground, or any property owned by a public airport, unless the property owned by the public airport is not located upon the public airport and the property is leased, loaned or otherwise made available for purposes other than for the purposes of a public airport, including, without limitation, residential, commercial or industrial purposes;~~

~~(b)]~~ Federal property for which payments are made in lieu of taxes in amounts equivalent to taxes which might otherwise be lawfully assessed;

~~[(c) Property of any state-supported educational institution;~~

~~(d)]~~ *(b)* Property leased or otherwise made available to and used by a natural person, private association, private corporation, municipal corporation, quasi-municipal corporation or a political subdivision under the provisions of the Taylor Grazing Act or by the United States Forest Service or the Bureau of Reclamation of the United States Department of the Interior;

~~[(e)]~~ *(c)* Property of any Indian or of any Indian tribe, band or community which is held in trust by the United States or subject to a restriction against alienation by the United States;

~~[(f) Vending stand locations and facilities operated by blind persons under the auspices of the Bureau of Services to the Blind and Visually Impaired of the Rehabilitation Division of the Department of Employment, Training and Rehabilitation, whether or not the property is owned by the federal, state or a local government;~~

~~(g) Leases held by a natural person, corporation, association, municipal corporation, quasi-municipal corporation or political subdivision for development of geothermal resources, but only for resources which have not been put into commercial production;~~

~~(h) The use of exempt property that is leased, loaned or made available to a public officer or employee, incident to or in the course of public employment;~~

~~(i) A parsonage owned by a recognized religious society or corporation when used exclusively as a parsonage;~~

~~(j) Property owned by a charitable or religious organization all, or a portion, of which is made available to and is used as a residence by a natural person in connection with carrying out the activities of the organization;~~

~~(k)~~] *or*

(d) Property owned by a governmental entity and used to provide shelter at a reduced rate to elderly persons or persons having low incomes . ~~[;~~

~~(l) The occasional rental of meeting rooms or similar facilities for periods of less than 30 consecutive days; or~~

~~(m) The use of exempt property to provide day care for children if the day care is provided by a nonprofit organization.]~~

3. Taxes must be assessed to lessees or users of exempt real estate and collected in the same manner as taxes assessed to owners of other real estate, except that taxes due under this section do not become a lien against the property. When due, the taxes constitute a debt due from the lessee or user to the county for which the taxes were assessed and, if unpaid, are recoverable by the county in the proper court of the county.

Sec. 8. NRS 361.159 is hereby amended to read as follows:

361.159 1. ~~[Except as otherwise provided in subsection 3, when]~~ *When* personal property, or a portion of personal property, which for any reason is exempt from taxation is leased, loaned or otherwise made available to and used by a natural person, association or corporation in connection with a business conducted for profit, the leasehold interest, possessory interest, beneficial interest or beneficial use of any such lessee or user of the property is subject to taxation to the extent the:

(a) Portion of the property leased or used; and

(b) Percentage of time during the fiscal year that the property is leased to the lessee or used by the user, in accordance with NRS 361.2275,

can be segregated and identified. The taxable value of the interest or use must be determined in the manner provided in subsection 3 of NRS 361.227 and in accordance with NRS 361.2275.

2. Taxes must be assessed to lessees or users of exempt personal property and collected in the same manner as taxes assessed to owners of other personal property, except that taxes due under this section do not become a lien against the personal property. When due, the taxes constitute a debt due from the lessee or user to the county for which the taxes were assessed and, if unpaid, are recoverable by the county in the proper court of the county.

~~[3. The provisions of this section do not apply to personal property:~~

~~(a) Used in vending stands operated by blind persons under the auspices of the Bureau of Services to the Blind and Visually Impaired of the Rehabilitation Division of the Department of Employment, Training and Rehabilitation.~~

~~(b) Owned by a public airport and used for the purposes of the public airport.]~~

Sec. 9. NRS 361.484 is hereby amended to read as follows:

361.484 1. As used in this section, "acquired" means acquired either by purchase and deed or by condemnation proceedings pursuant to chapter 37 of NRS.

2. Taxes levied on real property which ~~[is acquired by the Federal Government or the State or any of its political subdivisions]~~ ***becomes exempt from taxation as a result of the acquisition of the property by a governmental entity*** must be abated ratably for the portion of the fiscal year in which the real property is owned by the ~~[Federal Government or the State or its political subdivision.]~~ ***governmental entity whose property is exempt from taxation.***

3. For the purposes of abatement, the ~~[Federal Government or the State or its political subdivision]~~ ***governmental entity*** shall be deemed to own real property acquired by purchase commencing with the date the deed is recorded and to own real property acquired by condemnation from the date of judgment pursuant to NRS 37.160 or the date of occupancy of the property pursuant to NRS 37.100, whichever occurs earlier.

Sec. 10. NRS 361A.286 is hereby amended to read as follows:

361A.286 1. The deferred tax and penalty assessed pursuant to NRS 361A.280 and 361A.283 are a perpetual lien until paid as provided in NRS 361.450. If the property continues to be used exclusively for agricultural use or approved open-space use for 7 fiscal years after the date of attachment, the lien for that earliest year expires. The lien is for an undetermined amount until the property is converted and the amount is determined pursuant to NRS 361A.280. Any liens calculated and recorded before July 1, 1989, for property that had not been converted shall be deemed to have expired on that date.

2. If agricultural or open-space real property receiving agricultural or open-space use assessment is sold or transferred to an ownership making it exempt from taxation ad valorem, any such liens for deferred taxes must be cancelled . ~~[, except for such liens on property acquired by the Nature Conservancy, American Land Conservancy or Nevada Land Conservancy.]~~

3. The provisions of this section do not apply to any portion of agricultural or open-space real property if the deferred tax and any penalty have been paid pursuant to NRS 361A.265.

4. Each year, the county assessor must record a list of parcel numbers and owner's names for all parcels on which a lien exists pursuant to subsection 1.

Sec. 11. NRS 365.210 is hereby amended to read as follows:

365.210 1. No county, city or other political subdivision or municipal corporation may levy or collect any excise, privilege or occupation tax upon or measured by the receipt, storage, sale, distribution, transportation or use of motor vehicle fuel, fuel for jet or turbine-powered aircraft or any other inflammable or combustible liquids except:

(a) The county motor vehicle fuel tax authorized by chapter 373 of NRS.

(b) A tax on fuel for jet or turbine-powered aircraft authorized by NRS 365.203.

(c) A tax on aviation fuel authorized by NRS 365.203.

(d) Any motor vehicle fuel taxation in effect on January 1, 1935, in any city or town.

(e) A ***tax upon the gross receipts of retailers from the sale at retail or the storage, use or other consumption of tangible personal property, which is imposed pursuant to statute or special legislative act.***

(f) Except as otherwise provided in subsection 2, a tax or fee imposed upon a business by a county or city that is authorized by law . ~~[, except as otherwise provided in subsection 2 or pursuant to subsection 1 of NRS 364.210.]~~

2. After March 25, 1991, no county, city or other political subdivision or municipal corporation responsible for the operation of an airport may impose a new tax or fee upon the sale or distribution of fuel for jet or turbine-powered aircraft except:

(a) A tax on fuel for jet or turbine-powered aircraft authorized by NRS 365.203.

(b) Any fuel flowage fee imposed upon aircraft or organizations servicing aircraft in lieu of rent for use of the terminal, landing fees or other airport charges.

(c) A tax upon the gross receipts of retailers from the sale at retail or the storage, use or other consumption of tangible

personal property, which is imposed pursuant to statute or special legislative act.

Sec. 12. NRS 371.100 is hereby amended to read as follows:

371.100 1. The governmental services tax imposed by this chapter does not apply to vehicles owned by ~~[the]~~ *:*

(a) The United States ~~[, the]~~ *;*

(b) The State of Nevada ~~[, any political subdivision of the State of Nevada, or any county, municipal corporation, city, unincorporated town or school district in the State of Nevada, or to vehicles for whose operation money is provided by the State or Federal Government and which are operated solely for the transportation of or furnishing services to elderly or handicapped persons, or to the emergency vehicles owned by any volunteer fire department or volunteer ambulance service based in this state.]~~ *; or*

(c) Any local governmental entity that receives a portion of the proceeds of the tax.

2. Any vehicle which ceases to be ~~[used exclusively for the purpose for which it is exempted from the governmental services tax by this section]~~ *owned exclusively by a governmental entity described in subsection 1* becomes immediately subject to ~~[that tax.~~

~~3. Except as otherwise provided in subsection 4, vehicles]~~ *the governmental services tax.*

3. Vehicles exempted from the governmental services tax by this section which are leased, loaned or otherwise made available to and used by a private person, association or corporation in connection with a business conducted for profit are subject to taxation in the same amount and to the same extent as though the lessee or user were the owner of such vehicle.

~~[4. Vehicles which are used by a private person and are dedicated for exclusive use as part of a system which:~~

~~(a) Operates vehicles for public transportation in an urban area;~~

~~(b) Transports persons who pay the established fare; and~~

~~(c) Uses public money to operate the system or acquire new equipment,~~

~~are exempted from the governmental services tax imposed by this chapter.]~~

Sec. 13. NRS 371.105 is hereby amended to read as follows:

371.105 Claims pursuant to NRS ~~[371.101, 371.102,]~~ 371.103 or 371.104 for tax exemption on the governmental services tax and designations of any amount to be credited to the Veterans' Home Account pursuant to NRS 371.1035 must be filed annually at any time on or before the date when payment of the tax is due. All exemptions provided for in this section must not be in an amount which gives the taxpayer a total exemption greater than that to which he is entitled during any fiscal year.

Sec. 14. NRS 371.106 is hereby amended to read as follows:

371.106 1. Whenever any vehicle ceases to be exempt from taxation under NRS ~~[371.101, 371.102,]~~ 371.103 or 371.104 because the owner no longer meets the requirements for the exemption provided in those sections, its owner shall immediately notify the Department of the fact.

2. If a person fails to notify the Department as required by subsection 1 and as a result of such failure is allowed a tax exemption to which he is not entitled, there shall be added to and collected with the tax otherwise due a penalty equal to double the amount of the tax. If the person's failure is fraudulent and results in his receiving a tax exemption to which he is not entitled, the person is also guilty of a gross misdemeanor.

Sec. 15. NRS 372.7263 is hereby amended to read as follows:

372.7263 In administering the provisions of NRS 372.335, the Department shall apply the exemption for the sale of tangible personal property delivered by the vendor to a forwarding agent for shipment out of state to include:

1. The sale of a vehicle to a nonresident to whom a special movement permit has been issued by the Department of Motor Vehicles pursuant to subsection 1 of NRS 482.3955; and

2. The sale of farm machinery and equipment, as defined in NRS ~~[374.286,]~~ *374.7273,* to a nonresident who submits proof to the vendor that the farm machinery and equipment will be delivered out of state not later than 15 days after the sale.

Sec. 16. NRS 374.040 is hereby amended to read as follows:

374.040 ~~[1. "Occasional sale," except as otherwise provided in subsection 2, includes:~~

~~(a) A sale of property not held or used by a seller in the course of an activity for which he is required to hold a seller's permit, provided such sale is not one of a series of sales sufficient in number, scope and character to constitute an activity requiring the holding of a seller's permit.~~

~~(b) Any transfer of all or substantially all the property held or used by a person in the course of such an activity when after such transfer the real or ultimate ownership of such property is substantially similar to that which existed before such transfer.~~

~~2. The term does not include the sale of a vehicle other than]~~ ***"Occasional sale of a vehicle" means*** the sale or transfer of a used vehicle to the seller's spouse, child, grandchild, parent, grandparent, brother or sister. For the purposes of this section, the relation of parent and child includes adoptive and illegitimate children and stepchildren.

~~[3. For the purposes of this section, stockholders, bondholders, partners or other persons holding an interest in a corporation or~~

~~other entity are regarded as having the "real or ultimate ownership" of the property of such corporation or other entity.]~~

Sec. 17. NRS 374.055 is hereby amended to read as follows:

374.055 1. "Retail sale" or "sale at retail" means a sale for any purpose other than resale in the regular course of business of tangible personal property. ~~[The terms do not include a sale of property that:~~

~~(a) Meets the requirements of subparagraphs (1) and (2) of paragraph (a) of subsection 4 of NRS 374.291;~~

~~(b) Is made available for sale within 2 years after it is acquired; and~~

~~(c) Is made available for viewing by the public or prospective purchasers, or both, within 2 years after it is acquired, whether or not a fee is charged for viewing it and whether or not it is also used for purposes other than viewing.]~~

2. The delivery in a county of tangible personal property by an owner or former owner thereof or by a factor, or agent of such owner, former owner or factor, if the delivery is to a consumer or person for redelivery to a consumer, pursuant to a retail sale made by a retailer not engaged in business in the county, is a retail sale in the county by the person making the delivery. He shall include the retail selling price of the property in his gross receipts.

Sec. 18. NRS 374.085 is hereby amended to read as follows:

374.085 "Storage, use or other consumption" does not include ~~[:~~

~~1. The]~~ ***the*** keeping, retaining or exercising any right or power over tangible personal property for the purpose of subsequently transporting it outside the State for use thereafter solely outside the State, or for the purpose of being processed, fabricated or manufactured into, attached to, or incorporated into, other tangible personal property to be transported outside the State and thereafter used solely outside the State. ~~[; or~~

~~2. The keeping, retaining or exercising any right or power over tangible property that:~~

~~(a) Meets the requirements of subparagraphs (1) and (2) of paragraph (a) of subsection 4 of NRS 374.291;~~

~~(b) Is made available for sale within 2 years after it is acquired; and~~

~~(c) Is made available for viewing by the public or prospective purchasers, or both, within 2 years after it is acquired, whether or not a fee is charged for viewing it and whether or not it is also used for purposes other than viewing.]~~

Sec. 19. NRS 374.330 is hereby amended to read as follows:

374.330 There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of any tangible personal property to:

1. The United States ~~[,]~~ *or any of* its unincorporated agencies ~~[and]~~ *or* instrumentalities.

2. Any incorporated agency or instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States.

3. The State of Nevada ~~[, its unincorporated agencies and instrumentalities.]~~ *or any agency, bureau, board, commission, department, division or other unit of the government of this state that is required to submit information to the Chief of the Budget Division of the Department of Administration pursuant to subsection 1 or 6 of NRS 353.210.*

4. Any county, city, district or other political subdivision of this state.

Sec. 20. NRS 374.331 is hereby amended to read as follows:

374.331 There are exempted from the taxes imposed by this chapter on the storage, use or other consumption of tangible personal property any such property loaned or donated to:

1. The United States ~~[,]~~ *or any of* its unincorporated agencies ~~[and]~~ *or* instrumentalities.

2. Any incorporated agency or instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States.

3. The State of Nevada ~~[, its unincorporated agencies and instrumentalities.]~~ *or any agency, bureau, board, commission, department, division or other unit of the government of this state that is required to submit information to the Chief of the Budget Division of the Department of Administration pursuant to subsection 1 or 6 of NRS 353.210.*

4. Any county, city, district or other political subdivision of this state.

~~[5. Any organization created for religious, charitable or eleemosynary purposes, provided that no part of the net earnings of any such organization inures to the benefit of any private shareholder or individual.]~~

Sec. 21. NRS 374.345 is hereby amended to read as follows:

374.345 The taxes imposed under this chapter apply to the sale to and the storage, use or other consumption in this state of tangible personal property by a contractor for a governmental ~~[, religious or charitable]~~ entity which is otherwise exempted from the tax, unless the contractor is a constituent part of that entity.

Sec. 22. NRS 374.7273 is hereby amended to read as follows:

374.7273 *1.* In administering the provisions of NRS 374.340, the Department shall apply the exemption for the sale of tangible personal property delivered by the vendor to a forwarding agent for shipment out of state to include:

~~[1.]~~ *(a)* The sale of a vehicle to a nonresident to whom a special movement permit has been issued by the Department of Motor Vehicles pursuant to subsection 1 of NRS 482.3955; and

~~[2.]~~ *(b)* The sale of farm machinery and equipment ~~[, as defined in NRS 374.286,]~~ to a nonresident who submits proof to the vendor that the farm machinery and equipment will be delivered out of state not later than 15 days after the sale.

2. As used in this section:

(a) "Agricultural use" has the meaning ascribed to it in NRS 361A.030.

(b) "Farm machinery and equipment" means a farm tractor, implement of husbandry, piece of equipment used for irrigation, or a part used in the repair or maintenance of farm machinery and equipment. The term does not include:

(1) A vehicle required to be registered pursuant to the provisions of chapter 482 or 706 of NRS; or

(2) Machinery or equipment only incidentally employed for the agricultural use of real property.

(c) "Farm tractor" means a motor vehicle designed and used primarily for drawing an implement of husbandry.

(d) "Implement of husbandry" means a vehicle that is designed, adapted or used for agricultural purposes, including, without limitation, a plow, machine for mowing, hay baler, combine, piece of equipment used to stack hay, till, harvest, handle agricultural commodities or apply fertilizers, or other heavy, movable equipment designed, adapted or used for agricultural purposes.

Sec. 23. NRS 374.729 is hereby amended to read as follows:

374.729 In administering the provisions of NRS 374.330, the Department shall apply the exemption for the sale of tangible personal property to ~~[the State of Nevada, its unincorporated agencies and instrumentalities,]~~ *a state entity described in subsection 3 of that section* to include all tangible personal property that is transferred for use by *such* a state entity in accordance with an agreement executed pursuant to NRS 353.500 to 353.630, inclusive.

Sec. 24. NRS 374.785 is hereby amended to read as follows:

374.785 1. All fees, taxes, interest and penalties imposed and all amounts of tax required to be paid to counties under this chapter must be paid to the Department in the form of remittances payable

to the Department. ***The amounts derived from taxes on fuel used to propel motor vehicles must be accounted for separately.***

2. The Department shall deposit the payments in the State Treasury to the credit of the Sales and Use Tax Account in the State General Fund.

3. The State Controller, acting upon the collection data furnished by the Department, shall, each month, from the Sales and Use Tax Account in the State General Fund:

(a) Transfer ~~[.75]~~ ***0.75*** percent of all fees, taxes, interest and penalties collected in each county during the preceding month to the appropriate account in the State General Fund as compensation to the State for the costs of collecting the tax.

(b) Transfer ~~[.75]~~ ***0.75*** percent of all fees, taxes, interest and penalties collected during the preceding month from out-of-state businesses not maintaining a fixed place of business within this state to the appropriate account in the State General Fund as compensation to the State for the costs of collecting the tax.

(c) Determine for each county the amount of money equal to the fees, taxes, interest and penalties collected in the county pursuant to this chapter during the preceding month less the amount transferred pursuant to paragraph (a).

(d) ~~[Transfer the total]~~ ***From the*** amount of taxes collected pursuant to this chapter during the preceding month from out-of-state businesses not maintaining a fixed place of business within this state, ~~[less]~~ ***after deducting*** the amount transferred pursuant to paragraph (b), ***transfer:***

(1) The amount derived from taxes on fuel used to propel motor vehicles to the Intergovernmental Fund, and remit to the county treasurer of each county the proportion of that amount which the population of that county bears to the total population of all the counties in this state. The amount transferred pursuant to this subparagraph must be used exclusively for the construction, maintenance and repair of public roads and highways.

(2) The remaining money to the State Distributive School Account in the State General Fund.

(e) ~~[Except as otherwise provided in NRS 387.528,]~~ ***From the amount determined pursuant to paragraph (c),*** transfer the amount owed to each county to the Intergovernmental Fund and ***:***

(1) Remit the amount derived from taxes on fuel used to propel motor vehicles to the county treasurer. The amount remitted pursuant to this subparagraph must be used exclusively for the construction, maintenance and repair of public roads and highways.

(2) Except as otherwise provided in NRS 387.528, remit the ***remaining*** money to the credit of the county school district fund.

4. For the purpose of the distribution required by this section, the occasional sale of a vehicle shall be deemed to take place in the county to which the governmental services tax payable by the buyer upon that vehicle is distributed.

5. As used in this section, "fuel used to propel motor vehicles" means any combustible gas, liquid or material of a kind used in an internal-combustion or diesel engine for the generation of power to propel a motor vehicle on the highways.

Sec. 25. NRS 374A.020 is hereby amended to read as follows:

374A.020 1. The collection of the tax imposed by NRS 374A.010 must be commenced on the first day of the first calendar quarter that begins at least 30 days after the last condition in subsection 1 of NRS 374A.010 is met.

2. The tax must be administered, collected and distributed in the manner set forth in chapter 374 of NRS.

3. The board of trustees of the school district shall transfer ~~[the proceeds of the tax imposed by NRS 374A.010 from the county school district fund]~~ to the fund described in NRS 354.6105 , which must be established by the board of trustees ~~[.]~~ ***, the amount of the proceeds of the tax imposed by NRS 374A.010 which is deposited in the county school district fund.*** The money deposited in the fund described in NRS 354.6105 pursuant to this subsection must be accounted for separately in that fund and must only be expended by the board of trustees for the cost of the extraordinary maintenance, extraordinary repair and extraordinary improvement of school facilities within the county.

Sec. 26. NRS 376A.040 is hereby amended to read as follows:

376A.040 1. In addition to all other taxes imposed on the revenues from retail sales, a board of county commissioners of a county whose population is less than 400,000 may by ordinance, but not as in a case of emergency, impose a tax at the rate of up to 1/4 of 1 percent of the gross receipts of any retailer from the sale of all tangible personal property sold at retail, or stored, used or otherwise consumed in the county, after receiving the approval of a majority of the registered voters of the county voting on the question at a primary, general or special election. The question may be combined with questions submitted pursuant to NRS 375.025, 376A.050 and 376A.070 , or any combination thereof.

2. If a county imposes a sales tax pursuant to this section and NRS 376A.050, the combined additional sales tax must not exceed 1/4 of 1 percent. A tax imposed pursuant to this section applies throughout the county, including incorporated cities in the county.

3. Before the election may occur, an open-space plan must be adopted by the board of county commissioners pursuant to NRS 376A.020 and the adopted open-space plan must be endorsed by resolution by the city council of each incorporated city within the county.

4. All fees, taxes, interest and penalties imposed and all amounts of tax required to be paid pursuant to this section must be paid to the Department of Taxation in the form of remittances payable to the Department of Taxation. ***The amounts derived from taxes on fuel used to propel motor vehicles must be accounted for separately.*** The Department of Taxation shall deposit the payments with the State Treasurer for credit to the Sales and Use Tax Account in the State General Fund. The State Controller, acting upon the collection data furnished by the Department of Taxation, shall transfer monthly all fees, taxes, interest and penalties collected during the preceding month to the Intergovernmental Fund and remit the money to the county treasurer. ***The amounts derived from taxes on fuel used to propel motor vehicles must be used exclusively for the construction, maintenance and repair of public roads and highways.***

5. The money received from the tax imposed pursuant to subsection 4 must be retained by the county, or remitted to a city or general improvement district in the county. ~~[The]~~ ***Except as otherwise provided in subsection 4, the*** money received by a county, city or general improvement district pursuant to this section must only be used to pay the cost of:

(a) The acquisition of land in fee simple for development and use as open-space land;

(b) The acquisition of the development rights of land identified as open-space land;

(c) The creation of a trust fund for the acquisition of land or development rights of land pursuant to paragraphs (a) and (b);

(d) The principal and interest on notes, bonds or other obligations issued by the county, city or general improvement district for the acquisition of land or development rights of land pursuant to paragraphs (a) and (b); or

(e) Any combination of the uses set forth in paragraphs (a) to (d), inclusive.

6. The money received from the tax imposed pursuant to this section and any applicable penalty or interest must not be used for any neighborhood or community park or facility.

7. Any money used for the purposes described in this section must be used in a manner:

(a) That is consistent with the provisions of the open-space plan adopted pursuant to NRS 376A.020; and

(b) That provides an equitable allocation of the money among the county and the incorporated cities within the county.

Sec. 27. NRS 376A.040 is hereby amended to read as follows:

376A.040 1. In addition to all other taxes imposed on the revenues from retail sales, a board of county commissioners of a county whose population is 100,000 or more but less than 400,000 ~~[,]~~ may by ordinance, but not as in a case of emergency, impose a tax at the rate of up to 1/4 of 1 percent of the gross receipts of any retailer from the sale of all tangible personal property sold at retail, or stored, used or otherwise consumed in the county, after receiving the approval of a majority of the registered voters of the county voting on the question at a primary, general or special election. The question may be combined with questions submitted pursuant to NRS 375.025, 376A.050 and 376A.070 , or any combination thereof.

2. If a county imposes a sales tax pursuant to this section and NRS 376A.050, the combined additional sales tax must not exceed 1/4 of 1 percent. A tax imposed pursuant to this section applies throughout the county, including incorporated cities in the county.

3. Before the election may occur, an open-space plan must be adopted by the board of county commissioners pursuant to NRS 376A.020 and the adopted open-space plan must be endorsed by resolution by the city council of each incorporated city within the county.

4. All fees, taxes, interest and penalties imposed and all amounts of tax required to be paid pursuant to this section must be paid to the Department of Taxation in the form of remittances payable to the Department of Taxation. ***The amounts derived from taxes on fuel used to propel motor vehicles must be accounted for separately.*** The Department of Taxation shall deposit the payments with the State Treasurer for credit to the Sales and Use Tax Account in the State General Fund. The State Controller, acting upon the collection data furnished by the Department of Taxation, shall transfer monthly all fees, taxes, interest and penalties collected during the preceding month to the Intergovernmental Fund and remit the money to the county treasurer. ***The amounts derived from taxes on fuel used to propel motor vehicles must be used exclusively for the construction, maintenance and repair of public roads and highways.***

5. The money received from the tax imposed pursuant to subsection 4 must be retained by the county, or remitted to a city or general improvement district in the county. ~~[The]~~ ***Except as otherwise provided in subsection 4, the*** money received by a county, city or general improvement district pursuant to this section must only be used to pay the cost of:

(a) The acquisition of land in fee simple for development and use as open-space land;

(b) The acquisition of the development rights of land identified as open-space land;

(c) The creation of a trust fund for the acquisition of land or development rights of land pursuant to paragraphs (a) and (b);

(d) The principal and interest on notes, bonds or other obligations issued by the county, city or general improvement district for the acquisition of land or development rights of land pursuant to paragraphs (a) and (b); or

(e) Any combination of the uses set forth in paragraphs (a) to (d), inclusive.

6. The money received from the tax imposed pursuant to this section and any applicable penalty or interest must not be used for any neighborhood or community park or facility.

7. Any money used for the purposes described in this section must be used in a manner:

(a) That is consistent with the provisions of the open-space plan adopted pursuant to NRS 376A.020; and

(b) That provides an equitable allocation of the money among the county and the incorporated cities within the county.

Sec. 28. NRS 376A.050 is hereby amended to read as follows:

376A.050 1. Except as otherwise provided in subsection 2, in addition to all other taxes imposed on the revenues from retail sales, a board of county commissioners in each county whose population is less than 400,000 may by ordinance, but not as in a case of emergency, impose a tax at the rate of up to 1/4 of 1 percent of the gross receipts of any retailer from the sale of all tangible personal property sold at retail, or stored, used or otherwise consumed in the county, after receiving the approval of a majority of the registered voters of the county voting on the question at a primary, general or special election. The question may be combined with questions submitted pursuant to NRS 375.025, 376A.040 and 376A.070 , or any combination thereof.

2. If a county imposes a sales tax pursuant to this section and NRS 376A.040, the combined additional sales tax must not exceed 1/4 of 1 percent. A tax imposed pursuant to this section applies throughout the county, including incorporated cities in the county.

3. Before the election occurs, an open-space plan must be adopted by the board of county commissioners pursuant to NRS 376A.020 and the adopted open-space plan must be endorsed by resolution by the city council of each incorporated city in the county.

4. All fees, taxes, interest and penalties imposed and all amounts of tax required to be paid pursuant to this section must be

paid to the Department of Taxation in the form of remittances payable to the Department of Taxation. ***The amounts derived from taxes on fuel used to propel motor vehicles must be accounted for separately.*** The Department of Taxation shall deposit the payments with the State Treasurer for credit to the Sales and Use Tax Account in the State General Fund. The State Controller, acting upon the collection data furnished by the Department of Taxation, shall transfer monthly all fees, taxes, interest and penalties collected during the preceding month to the Intergovernmental Fund and remit the money to the county treasurer. ***The amounts derived from taxes on fuel used to propel motor vehicles must be used exclusively for the construction, maintenance and repair of public roads and highways.***

Sec. 29. NRS 376A.050 is hereby amended to read as follows:

376A.050 1. Except as otherwise provided in subsection 2, in addition to all other taxes imposed on the revenues from retail sales, a board of county commissioners in each county whose population is 100,000 or more but less than 400,000 ~~[,]~~ may by ordinance, but not as in a case of emergency, impose a tax at the rate of up to 1/4 of 1 percent of the gross receipts of any retailer from the sale of all tangible personal property sold at retail, or stored, used or otherwise consumed in the county, after receiving the approval of a majority of the registered voters of the county voting on the question at a primary, general or special election. The question may be combined with questions submitted pursuant to NRS 375.025, 376A.040 and 376A.070 , or any combination thereof.

2. If a county imposes a sales tax pursuant to this section and NRS 376A.040, the combined additional sales tax must not exceed 1/4 of 1 percent. A tax imposed pursuant to this section applies throughout the county, including incorporated cities in the county.

3. Before the election occurs, an open-space plan must be adopted by the board of county commissioners pursuant to NRS 376A.020 and the adopted open-space plan must be endorsed by resolution by the city council of each incorporated city in the county.

4. All fees, taxes, interest and penalties imposed and all amounts of tax required to be paid pursuant to this section must be paid to the Department of Taxation in the form of remittances payable to the Department of Taxation. ***The amounts derived from taxes on fuel used to propel motor vehicles must be accounted for separately.*** The Department of Taxation shall deposit the payments with the State Treasurer for credit to the Sales and Use Tax Account in the State General Fund. The State Controller, acting upon the collection data furnished by the Department of Taxation, shall transfer monthly all fees, taxes, interest and penalties collected

during the preceding month to the Intergovernmental Fund and remit the money to the county treasurer. ***The amounts derived from taxes on fuel used to propel motor vehicles must be used exclusively for the construction, maintenance and repair of public roads and highways.***

Sec. 30. NRS 376A.080 is hereby amended to read as follows:

376A.080 1. The money received from any tax imposed pursuant to NRS 376A.050 or 376A.070 and any applicable penalty or interest must be retained by the county, or remitted to a city or general improvement district in the county, and used as provided in this section ~~[.~~

~~2. The]~~ ***and NRS 376A.050.***

2. ***Except as otherwise provided in NRS 376A.050, the*** money received by a county, city or general improvement district pursuant to NRS 376A.050 and 376A.070 must only be used to pay the cost of:

(a) Planning the acquisition and other administrative acts relating to the acquisition of open-space land; and

(b) The operation and maintenance of open-space land.

3. The money received from the tax imposed pursuant to NRS 376A.050 and 376A.070 and any applicable penalty or interest must not be used for any neighborhood or community park or facility.

4. Any money used for the purposes described in this section ***or NRS 376A.050*** must be used in a manner:

(a) That is consistent with the provisions of the open-space plan adopted pursuant to NRS 376A.020; and

(b) That provides an equitable allocation of the money among the county and the incorporated cities within the county.

Sec. 31. NRS 377.050 is hereby amended to read as follows:

377.050 1. All fees, taxes, interest and penalties imposed and all amounts of tax required to be paid to counties under this chapter must be paid to the Department in the form of remittances made payable to the Department. ***The amounts derived from taxes on fuel used to propel motor vehicles must be accounted for separately.***

2. The Department shall deposit the payments with the State Treasurer for credit to the Sales and Use Tax Account in the State General Fund.

3. The State Controller, acting upon the collection data furnished by the Department ~~[,]~~ ***and before making the distributions required by NRS 377.055 and 377.057,*** shall monthly transfer from the Sales and Use Tax Account ~~[.75]~~ ***to:***

(a) The appropriate account in the State General Fund, 0.75 percent of all fees, taxes, interests and penalties collected pursuant to this chapter during the preceding month ~~[to the appropriate~~

~~account in the State General Fund, before making the distributions required by NRS 377.055 and 377.057,~~ as compensation to the State for the cost of collecting the tax ~~.~~ ***; and***

(b) The county treasurer of each county:

(1) The amount derived from taxes on fuel used to propel motor vehicles collected in that county during the preceding month, less the corresponding amount transferred to the State General Fund pursuant to paragraph (a); and

(2) That proportion of the total amount derived from taxes on fuel used to propel motor vehicles collected during the preceding month from out-of-state businesses not maintaining a fixed place of business within this state, less the corresponding amount transferred to the State General Fund pursuant to paragraph (a), which the population of that county bears to the total population of all counties which have in effect a city-county relief tax ordinance.

4. All money transferred to a county treasurer pursuant to this section must be accounted for separately in the county treasury and used exclusively for the construction, maintenance and repair of public roads and highways.

Sec. 32. NRS 377.055 is hereby amended to read as follows:

377.055 1. The Department shall monthly determine for each county an amount of money equal to the sum of:

(a) Any fees and any taxes, interest and penalties which derive from the basic city-county relief tax collected in that county pursuant to this chapter during the preceding month, less the corresponding amount transferred ~~[to the State General Fund]~~ pursuant to subsection 3 of NRS 377.050; and

(b) That proportion of the total amount of taxes which derive from that portion of the tax levied at the rate of one-half of 1 percent collected pursuant to this chapter during the preceding month from out-of-state businesses not maintaining a fixed place of business within this state, less the corresponding amount transferred ~~[to the State General Fund]~~ pursuant to subsection 3 of NRS 377.050, which the population of that county bears to the total population of all counties which have in effect a city-county relief tax ordinance,

and deposit the money in the Local Government Tax Distribution Account created by NRS 360.660 for credit to the respective subaccounts of each county.

2. For the purpose of the distribution required by this section, the occasional sale of a vehicle shall be deemed to take place in the county to which the governmental services tax payable by the buyer upon that vehicle is distributed.

Sec. 33. NRS 377.057 is hereby amended to read as follows:

377.057 1. The State Controller, acting upon the relevant information furnished by the Department ~~,~~ ***and after making the distributions required by subsection 3 of NRS 377.050,*** shall distribute monthly from the fees, taxes, interest and penalties which derive from the supplemental city-county relief tax collected in all counties and from out-of-state businesses during the preceding month, except as otherwise provided in subsection 2, to:

(a) Douglas, Esmeralda, Eureka, Lander, Lincoln, Lyon, Mineral, Nye, Pershing, Storey and White Pine counties, an amount equal to one-twelfth of the amount distributed in the immediately preceding fiscal year multiplied by one plus:

(1) The percentage change in the total receipts from the supplemental city-county relief tax for all counties and from out-of-state businesses, from the fiscal year 2 years preceding the immediately preceding fiscal year to the fiscal year preceding the immediately preceding fiscal year; or

(2) Except as otherwise provided in this paragraph, the percentage change in the population of the county, as certified by the Governor pursuant to NRS 360.285, added to the percentage change in the Consumer Price Index for the year ending on December 31 next preceding the year of distribution,

whichever is less, except that the amount distributed to the county must not be less than the amount specified in subsection 5. If the Bureau of the Census of the United States Department of Commerce issues population totals that conflict with the totals certified by the Governor pursuant to NRS 360.285, the percentage change calculated pursuant to subparagraph (2) for the ensuing fiscal year must be an estimate of the change in population for the calendar year, based upon the population totals issued by the Bureau of the Census.

(b) All other counties, the amount remaining after making the distributions required by paragraph (a) to each of these counties in the proportion that the amount of supplemental city-county relief tax collected in the county for the month bears to the total amount of supplemental city-county relief tax collected for that month in the counties whose distribution will be determined pursuant to this paragraph.

2. If the amount of supplemental city-county relief tax collected in a county listed in paragraph (a) of subsection 1 for the 12 most recent months for which information concerning the actual amount collected is available on February 15 of any year exceeds by more than 10 percent the amount distributed pursuant to paragraph (a) to that county for the same period, the State Controller shall distribute that county's portion of the proceeds from the

supplemental city-county relief tax pursuant to paragraph (b) of subsection 1 in all subsequent fiscal years, unless a waiver is granted pursuant to subsection 3.

3. A county which, pursuant to subsection 2, is required to have its portion of the proceeds from the supplemental city-county relief tax distributed pursuant to paragraph (b) of subsection 1 may file a request with the Nevada Tax Commission for a waiver of the requirements of subsection 2. The request must be filed on or before February 20 next preceding the fiscal year for which the county will first receive its portion of the proceeds from the supplemental city-county relief tax pursuant to paragraph (b) of subsection 1 and must be accompanied by evidence which supports the granting of the waiver. The Commission shall grant or deny a request for a waiver on or before March 10 next following the timely filing of the request. If the Commission determines that the increase in the amount of supplemental city-county relief tax collected in the county was primarily caused by:

(a) Nonrecurring taxable sales, it shall grant the request.

(b) Normal or sustainable growth in taxable sales, it shall deny the request.

A county which is granted a waiver pursuant to this subsection is not required to obtain a waiver in any subsequent fiscal year to continue to receive its portion of the proceeds from the supplemental city-county relief tax pursuant to paragraph (a) of subsection 1 unless the amount of supplemental city-county relief tax collected in the county in a fiscal year again exceeds the threshold established in subsection 2.

4. The amount apportioned to each county must be deposited in the Local Government Tax Distribution Account created by NRS 360.660 for credit to the respective accounts of each county.

5. The minimum amount which may be distributed to the following counties in a month pursuant to paragraph (a) of subsection 1 is as follows:

Douglas	$580,993
Esmeralda	53,093
Lander	155,106
Lincoln	72,973
Lyon	356,858
Mineral	118,299
Nye	296,609
Pershing	96,731
Storey	69,914
White Pine	158,863

6. As used in this section, unless the context otherwise requires:

(a) "Enterprise district" has the meaning ascribed to it in NRS 360.620.

(b) "Local government" has the meaning ascribed to it in NRS 360.640.

(c) "Special district" has the meaning ascribed to it in NRS 360.650.

Sec. 34. NRS 377A.050 is hereby amended to read as follows:

377A.050 1. All fees, taxes, interest and penalties imposed and all amounts of tax required to be paid to the counties under this chapter must be paid to the Department in the form of remittances payable to the Department. ***The amounts derived from taxes on fuel used to propel motor vehicles must be accounted for separately.***

2. The Department shall deposit the payments with the State Treasurer for credit to the Sales and Use Tax Account in the State General Fund.

3. The State Controller, acting upon the collection data furnished by the Department, shall monthly:

(a) Transfer from the Sales and Use Tax Account ~~[.75]~~ ***0.75*** percent of all fees, taxes, interest and penalties collected pursuant to this chapter during the preceding month to the appropriate account in the State General Fund as compensation to the State for the cost of collecting the tax.

(b) Determine for each county an amount of money equal to any fees, taxes, interest and penalties collected in or for that county pursuant to this chapter during the preceding month, less the amount transferred to the State General Fund pursuant to paragraph (a).

(c) Transfer the amount determined for each county to the Intergovernmental Fund and remit the money to the county treasurer.

Sec. 35. NRS 377A.064 is hereby amended to read as follows:

377A.064 1. ~~[The]~~ ***A*** county treasurer shall deposit ***any*** money received from the State Controller pursuant to NRS 377A.050 for ~~[promotion of]~~ ***a tax to promote*** tourism ***, except for any proceeds of that tax derived from fuel used to propel motor vehicles,*** in the county treasury for credit to a fund to be known as the county fund for promotion of tourism.

2. The county fund for promotion of tourism must be accounted for as a separate fund and not as a part of any other fund.

3. Any money derived from taxes on fuel used to propel motor vehicles must be accounted for separately in the county treasury and used exclusively for the construction, maintenance and repair of public roads.

Sec. 36. NRS 377A.070 is hereby amended to read as follows:

377A.070 1. ~~[The]~~ *A* county treasurer shall deposit ~~[the]~~ *any* money received from the State Controller pursuant to NRS 377A.050 for a *tax to establish and maintain a* public transit system or for the construction, maintenance and repair of public roads, or both, *except for any proceeds of that tax derived from fuel used to propel motor vehicles,* in the county treasury for credit to a fund to be known as the public transit fund.

2. The public transit fund must be accounted for as a separate fund and not as a part of any other fund.

3. Any money derived from taxes on fuel used to propel motor vehicles must be accounted for separately in the county treasury and used exclusively for the construction, maintenance and repair of public roads.

Sec. 37. NRS 377A.100 is hereby amended to read as follows:

377A.100 1. Each ordinance providing for the issuance of any bond or security issued under this chapter payable from the receipts of the tax for a public transit system or for the construction, maintenance and repair of public roads, or both, may, in addition to covenants and other provisions authorized in the Local Government Securities Law, contain a covenant or other provision to pledge and create a lien upon the receipts of the tax , *except for any receipts derived from fuel used to propel motor vehicles,* or upon the proceeds of any bond or security pending their application to defray the cost of establishing or operating a public transit system, or both *those* tax proceeds and security proceeds, to secure the payment of any bond or security issued under this chapter.

2. Any money pledged to the payment of bonds or other securities pursuant to subsection 1 may be treated as pledged revenues of the project for the purposes of subsection 3 of NRS 350.020.

Sec. 38. NRS 377B.100 is hereby amended to read as follows:

377B.100 1. The board of county commissioners of any county may by ordinance, but not as in a case of emergency, impose a tax for infrastructure pursuant to this section and NRS 377B.110.

2. An ordinance enacted pursuant to this chapter may not become effective before a question concerning the imposition of the tax is approved by a two-thirds majority of the members of the board of county commissioners. Any proposal to increase the rate of the tax or change the previously approved uses for the proceeds of the tax , *other than any proceeds derived from fuel used to propel motor vehicles,* must be approved by a two-thirds majority of the members of the board of county commissioners. The board of county commissioners shall not change a previously approved use for the proceeds of the tax , *other than any proceeds derived from*

fuel used to propel motor vehicles, to a use that is not authorized for that county pursuant to NRS 377B.160.

3. An ordinance enacted pursuant to this section must:

(a) Specify the date on which the tax must first be imposed or on which an increase in the rate of the tax becomes effective, which must occur on the first day of the first month of the next calendar quarter that is at least 60 days after the date on which a two-thirds majority of the board of county commissioners approved the question.

(b) In a county whose population is 400,000 or more, provide for the cessation of the tax not later than:

(1) The last day of the month in which the Department determines that the total sum collected since the tax was first imposed, exclusive of any penalties and interest, exceeds $2.3 billion; or

(2) June 30, 2025,

whichever occurs earlier.

4. The board of county commissioners in a county whose population is 400,000 or more and in which a water authority exists shall review the necessity for the continued imposition of the tax authorized pursuant to this chapter at least once every 10 years.

5. Before enacting an ordinance pursuant to this chapter, the board of county commissioners shall hold a public hearing regarding the imposition of a tax for infrastructure. In a county whose population is 400,000 or more and in which a water authority exists, the water authority shall also hold a public hearing regarding the tax for infrastructure. Notice of the time and place of each hearing must be:

(a) Published in a newspaper of general circulation in the county at least once a week for the 2 consecutive weeks immediately preceding the date of the hearing. Such notice must be a display advertisement of not less than 3 inches by 5 inches.

(b) Posted at the building in which the meeting is to be held and at not less than three other separate, prominent places within the county at least 2 weeks before the date of the hearing.

6. Before enacting an ordinance pursuant to this chapter, the board of county commissioners of a county whose population is less than 400,000 or a county whose population is 400,000 or more and in which no water authority exists ~~[,]~~ shall develop a plan for the expenditure of the proceeds of a tax imposed pursuant to this chapter *, other than any proceeds derived from fuel used to propel motor vehicles,* for the purposes set forth in NRS 377B.160. The plan may include a regional project for which two or more such counties have entered into an interlocal agreement to expend jointly all or a portion of the proceeds of a tax imposed in each county

pursuant to this chapter. Such a plan must include, without limitation, the date on which the plan expires, a description of each proposed project, the method of financing each project and the costs related to each project. Before adopting a plan pursuant to this subsection, the board of county commissioners of a county in which a regional planning commission has been established pursuant to NRS 278.0262 shall transmit to the regional planning commission a list of the proposed projects for which a tax for infrastructure may be imposed. The regional planning commission shall hold a public hearing at which it shall rank each project in relative priority. The regional planning commission shall transmit its rankings to the board of county commissioners. The recommendations of the regional planning commission regarding the priority of the proposed projects are not binding on the board of county commissioners. The board of county commissioners shall hold at least one public hearing on the plan. Notice of the time and place of the hearing must be provided in the manner set forth in subsection 5. The plan must be approved by the board of county commissioners at a public hearing. Subject to the provisions of subsection 7, on or before the date on which a plan expires, the board of county commissioners shall determine whether a necessity exists for the continued imposition of the tax. If the board determines that such a necessity does not exist, the board shall repeal the ordinance that enacted the tax. If the board of county commissioners determines that the tax must be continued for a purpose set forth in NRS 377B.160, the board shall adopt, in the manner prescribed in this subsection, a new plan for the expenditure of the proceeds of the tax ***, other than any proceeds derived from fuel used to propel motor vehicles,*** for such a purpose.

7. No ordinance imposing a tax which is enacted pursuant to this chapter may be repealed or amended or otherwise directly or indirectly modified in such a manner as to impair any outstanding bonds or other obligations which are payable from or secured by a pledge of a tax enacted pursuant to this chapter until those bonds or other obligations have been discharged in full.

Sec. 39. NRS 377B.110 is hereby amended to read as follows:

377B.110 An ordinance enacted pursuant to this chapter must include provisions in substance as follows:

1. A provision imposing a tax upon retailers at the rate of not more than:

(a) In a county whose population is 100,000 or more but less than 400,000, one-eighth of 1 percent; or

(b) In all other counties, one-quarter of 1 percent,

of the gross receipts of any retailer from the sale of all tangible personal property sold at retail, or stored, used or otherwise consumed, in the county.

2. Provisions substantially identical to those contained in chapter 374 of NRS, insofar as applicable.

3. A provision that all amendments to chapter 374 of NRS after the date of enactment of the ordinance, not inconsistent with this chapter, automatically become a part of an ordinance enacted pursuant to this chapter.

4. A provision stating the specific purpose for which the proceeds of the tax , ***other than any proceeds derived from fuel used to propel motor vehicles,*** must be expended.

5. A provision that the county shall contract before the effective date of the ordinance with the Department to perform all functions incident to the administration or operation of the tax in the county.

6. A provision that exempts from the tax or any increase in the tax the gross receipts from the sale of, and the storage, use or other consumption in a county of, tangible personal property used for the performance of a written contract:

(a) Entered into on or before the effective date of the tax or the increase in the tax; or

(b) For the construction of an improvement to real property for which a binding bid was submitted before the effective date of the tax or the increase in the tax if the bid was afterward accepted,

if, under the terms of the contract or bid, the contract price or bid amount cannot be adjusted to reflect the imposition of the tax or the increase in the tax.

Sec. 40. NRS 377B.130 is hereby amended to read as follows:

377B.130 1. All fees, taxes, interest and penalties imposed and all amounts of tax required to be paid to the counties pursuant to this chapter must be paid to the Department in the form of remittances payable to the Department. ***The amounts derived from taxes on fuel used to propel motor vehicles must be accounted for separately.***

2. The Department shall deposit the payments with the State Treasurer for credit to the Sales and Use Tax Account in the State General Fund.

3. The State Controller, acting upon the collection data furnished by the Department, shall monthly:

(a) Transfer from the Sales and Use Tax Account to the appropriate account in the State General Fund a percentage of all fees, taxes, interest and penalties collected pursuant to this chapter during the preceding month as compensation to the State for the cost of collecting the taxes. The percentage to be transferred pursuant to this paragraph must be the same percentage as the percentage of proceeds transferred pursuant to paragraph (a) of subsection 3 of

NRS 374.785, but the percentage must be applied to the proceeds collected pursuant to this chapter only.

(b) Determine for each county an amount of money equal to any fees, taxes, interest and penalties collected in or for that county pursuant to this chapter during the preceding month, less the amount transferred to the State General Fund pursuant to paragraph (a).

(c) Transfer the amount determined for each county to the Intergovernmental Fund and remit the *:*

(1) Amount derived from taxes on fuel used to propel motor vehicles to the county treasurer. The amount remitted pursuant to this subparagraph must be accounted for separately in the county treasury and used exclusively for the construction, maintenance and repair of public roads and highways.

(2) Remaining money:

~~[(1)]~~ *(I)* In each county whose population is 400,000 or more and in which a water authority exists, to the treasurer for the water authority.

~~[(2)]~~ *(II)* In each county whose population is less than 400,000 or each county whose population is 400,000 or more and in which no water authority exists, to the county treasurer.

Sec. 41. NRS 377B.150 is hereby amended to read as follows:

377B.150 1. In a county whose population is less than 400,000 or a county whose population is 400,000 or more and in which no water authority exists, the county treasurer shall deposit the money received from the State Controller pursuant to *subparagraph (2) of paragraph (c) of subsection 3 of* NRS 377B.130 in the county treasury for credit to a fund to be known as the infrastructure fund. The infrastructure fund must be accounted for as a separate fund and not as a part of any other fund. The money for each project included in the plan adopted pursuant to subsection 6 of NRS 377B.100 must be accounted for separately in the fund.

2. In a county whose population is 400,000 or more and in which a water authority exists, the water authority shall deposit the money received from the State Controller pursuant to *subparagraph (2) of paragraph (c) of subsection 3 of* NRS 377B.130 in a separate account of the water authority to be known as the infrastructure fund. This fund must be accounted for as a separate fund and not as part of any other fund of the water authority.

Sec. 42. NRS 377B.190 is hereby amended to read as follows:

377B.190 1. Money for the payment of the cost of one or more projects for which the board of county commissioners has imposed all or a portion of the tax authorized pursuant to this chapter *, other than the tax on fuel used to propel motor vehicles,* may be obtained by the issuance of bonds and other securities as

provided in this section, or, subject to any pledges, liens and other contractual limitations made pursuant to this chapter, may be obtained by direct distribution from the infrastructure fund, or may be obtained both by the issuance of such securities and by such direct distribution as determined by the board of county commissioners or, in a county whose population is 400,000 or more and in which a water authority exists, by the water authority.

2. The board of county commissioners of a county whose population is less than 400,000 or of a county whose population is 400,000 or more and in which no water authority exists may, after the enactment of an ordinance imposing a tax for infrastructure as authorized by NRS 377B.100, from time to time issue bonds and other securities, which are general or special obligations of the county and which may be secured as to principal and interest by a pledge authorized by this chapter of the receipts from the taxes imposed by this chapter ~~,~~ ***, other than any receipts derived from fuel used to propel motor vehicles.*** The ordinance authorizing the issuance of any bond or other security must describe the purpose for which it was issued.

3. After the enactment of an ordinance imposing a tax for infrastructure by the board of county commissioners of a county whose population is 400,000 or more and in which a water authority exists, the water authority or, if so provided in an interlocal agreement to which the water authority is a party, one or more of the members of the water authority ~~,~~ may from time to time issue bonds and other securities, which are general or special obligations and which may be secured as to principal and interest by a pledge authorized by this chapter of the receipts from the taxes imposed by this chapter ~~,~~ ***, other than any receipts derived from fuel used to propel motor vehicles.***

4. In a county whose population is 400,000 or more, no bonds or other securities may be issued pursuant to this section which are payable from or secured by, in whole or in part, any revenue from a tax enacted pursuant to this chapter to be collected after:

(a) The last day of the month in which the Department determines that the total sum collected since the tax was first imposed, exclusive of any penalties and interest, exceeds $2.3 billion; or

(b) June 30, 2025,

whichever occurs earlier.

Sec. 43. NRS 377B.200 is hereby amended to read as follows:

377B.200 1. Each document providing for the issuance of any bond or security issued pursuant to this chapter which is payable from the receipts of the taxes imposed by this chapter , ***other than any receipts derived from fuel used to propel motor vehicles,*** or

revenue generated by one or more projects for which the board of county commissioners has imposed all or a portion of the tax authorized pursuant to this chapter, ***other than the tax on fuel used to propel motor vehicles,*** may, in addition to covenants and other provisions authorized in the Local Government Securities Law, contain a covenant or other provision to pledge and create a lien upon the receipts of the tax ***, other than any receipts derived from fuel used to propel motor vehicles,*** or the revenue generated by one or more projects for which the board of county commissioners has imposed all or a portion of the tax authorized pursuant to this chapter, ***other than the tax on fuel used to propel motor vehicles,*** or upon the proceeds of any bond or security pending their application to defray the cost of one or more projects for which the board of county commissioners has imposed all or a portion of the tax authorized pursuant to this chapter, ***other than the tax on fuel used to propel motor vehicles,*** or any combination of the tax proceeds, generated revenue or security proceeds, to secure the payment of any bond or security issued pursuant to this chapter.

2. Any money pledged to the payment of bonds or other securities pursuant to subsection 1 may be treated as pledged revenues of the project for the purposes of subsection 3 of NRS 350.020.

Sec. 44. NRS 266.267 is hereby amended to read as follows:

266.267 ~~[1.]~~ A city council shall not enter into a lease of real property owned by the city for a term of 3 years or longer or enter into a contract for the sale or exchange of real property until after the property has been appraised by one disinterested appraiser employed by the city. Except as otherwise provided in this section and paragraph (a) of subsection 1 of NRS 268.050, a lease, sale or exchange must be made at or above the current appraised value of the real property as determined by the appraiser unless the city council, in a public hearing held before the adoption of the resolution to lease, sell or exchange the property, determines by affirmative vote of not fewer than two-thirds of the entire city council based upon specified findings of fact that a lesser value would be in the best interest of the public. For the purposes of this subsection, an appraisal is not considered current if it is more than 3 years old.

~~[2. The city council may sell, lease or exchange real property for less than its appraised value to any person who maintains or intends to maintain a business within the boundaries of the city which is eligible pursuant to NRS 374.357 for an abatement from the sales and use taxes imposed pursuant to chapter 374 of NRS.]~~

Sec. 45. NRS 274.230 is hereby amended to read as follows:

274.230 When a specially benefited zone is designated and approved under this chapter, the governing body of the designating municipality may:

1. Apply with the United States Department of Commerce to have the specially benefited zone declared to be a free trade zone.

2. When any federal legislation concerning specially benefited zones is enacted or becomes effective, prepare and submit, with the assistance of the Administrator and in a timely fashion, all information and forms necessary to permit the specially benefited zone designated and approved under this chapter to be considered as an eligible area under the federal program.

3. Apply for all available assistance from the federal, state, and in the case of a city, the county government, including the suspension or modification of their regulations within the specially benefited zone that have the characteristics described in subsection 1 of NRS 274.110.

4. Develop and carry out a program to improve police protection within the zone.

5. Give priority to the use in the zone of any federal assistance for urban development or job training.

6. By ordinance adopt regulations for qualifying employers for the benefits authorized specifically for qualified businesses under this chapter. ~~[and NRS 374.643.]~~

Sec. 46. NRS 274.270 is hereby amended to read as follows:

274.270 1. The governing body shall investigate the proposal made by a business pursuant to NRS 274.260 ~~[,]~~ and, if it finds that the business is qualified by financial responsibility and business experience to create and preserve employment opportunities in the specially benefited zone and improve the economic climate of the municipality and finds further that the business did not relocate from a depressed area in this state or reduce employment elsewhere in Nevada in order to expand in the specially benefited zone, the governing body may, on behalf of the municipality, enter into an agreement with the business, for a period of not more than 20 years, under which the business agrees in return for one or more of the benefits authorized in this chapter ~~[and NRS 374.643]~~ for qualified businesses, as specified in the agreement, to establish, expand, renovate or occupy a place of business within the specially benefited zone and hire new employees at least 35 percent of whom at the time they are employed are at least one of the following:

(a) Unemployed persons who have resided at least 6 months in the municipality.

(b) Persons eligible for employment or job training under any federal program for employment and training who have resided at least 6 months in the municipality.

(c) Recipients of benefits under any state or county program of public assistance, including, without limitation, temporary assistance for needy families, Medicaid and unemployment compensation who have resided at least 6 months in the municipality.

(d) Persons with a physical or mental handicap who have resided at least 6 months in the State.

(e) Residents for at least 1 year of the area comprising the specially benefited zone.

2. To determine whether a business is in compliance with an agreement, the governing body:

(a) Shall each year require the business to file proof satisfactory to the governing body of its compliance with the agreement.

(b) May conduct any necessary investigation into the affairs of the business and may inspect at any reasonable hour its place of business within the specially benefited zone.

If the governing body determines that the business is in compliance with the agreement, it shall issue a certificate to that effect to the business. The certificate expires 1 year after the date of its issuance.

3. The governing body shall file with the Administrator, the Department of Taxation and the Employment Security Division of the Department of Employment, Training and Rehabilitation a copy of each agreement, the information submitted under paragraph (a) of subsection 2 and the current certificate issued to the business under that subsection. The governing body shall immediately notify the Administrator, the Department of Taxation and the Employment Security Division of the Department of Employment, Training and Rehabilitation whenever the business is no longer certified.

Sec. 47. NRS 387.1235 is hereby amended to read as follows:

387.1235 1. Except as otherwise provided in subsection 2, local funds available are the sum of:

(a) The amount computed by multiplying .0025 times the assessed valuation of the school district as certified by the Department of Taxation for the concurrent school year; and

(b) The proceeds of the local school support tax imposed by chapter 374 of NRS ~~[.]~~, ***other than any proceeds derived from fuel used to propel motor vehicles.*** The Department of Taxation shall furnish an estimate of ~~[these proceeds]~~ ***the local funds available pursuant to this paragraph*** to the Superintendent of Public Instruction on or before July 15 for the fiscal year then begun, and the Superintendent shall adjust the final apportionment of the

current school year to reflect any difference between the estimate and actual receipts.

2. The amount computed under subsection 1 that is attributable to any assessed valuation attributable to the net proceeds of minerals must be held in reserve and may not be considered as local funds available until the succeeding fiscal year.

Sec. 48. NRS 408.235 is hereby amended to read as follows:

408.235 1. There is hereby created the State Highway Fund.

2. Except as otherwise provided ~~[in subsection 6 of NRS 482.180 and NRS 482.1805,]~~ ***by specific statute,*** the proceeds from the imposition of any:

(a) License or registration fee and other charges with respect to the operation of any motor vehicle upon any public highway, city, town or county road, street, alley or highway in this state; and

(b) Excise tax on gasoline or other motor vehicle fuel,

must be deposited in the State Highway Fund and must, except for ***the*** costs of administering the collection thereof, be used exclusively for ***the*** administration, construction, reconstruction, improvement and maintenance of highways as provided for in this chapter.

3. The interest and income earned on the money in the State Highway Fund, after deducting any applicable charges, must be credited to the Fund.

4. Costs of administration for the collection of the proceeds for any license or registration fees and other charges with respect to the operation of any motor vehicle must be limited to a sum not to exceed 22 percent of the total proceeds so collected.

5. Costs of administration for the collection of any excise tax on gasoline or other motor vehicle fuel must be limited to a sum not to exceed 1 percent of the total proceeds so collected.

6. All bills and charges against the State Highway Fund for administration, construction, reconstruction, improvement and maintenance of highways under the provisions of this chapter must be certified by the Director and must be presented to and examined by the State Board of Examiners. When allowed by the State Board of Examiners and upon being audited by the State Controller, the State Controller shall draw his warrant therefor upon the State Treasurer.

Sec. 49. NRS 422.2725 is hereby amended to read as follows:

422.2725 1. The Director shall include in the State Plan for Medicaid a requirement that any senior citizen who purchases and receives benefits for at least 3 years pursuant to a policy of health insurance for long-term care that is approved by the Director and whose annual household income is less than $200,000 is eligible for Medicaid for long-term care.

2. As used in this section:

(a) "Household" means a senior citizen and spouse.

(b) "Household income" ~~[has the meaning ascribed to it in NRS 427A.480.~~

~~(b)]~~ *means the income received by a senior citizen and the spouse of the senior citizen.*

(c) "Income" means adjusted gross income, as defined in the Internal Revenue Code, and includes:

(1) Tax-free interest;

(2) The untaxed portion of a pension or annuity;

(3) Railroad retirement benefits;

(4) Veterans' pensions and compensation;

(5) Payments received pursuant to the federal Social Security Act, including supplemental security income, but excluding hospital and medical insurance benefits for the aged and disabled;

(6) Public welfare payments, including allowances for shelter;

(7) Unemployment insurance benefits;

(8) Payments for lost time;

(9) Payments received from disability insurance;

(10) Disability payments received pursuant to workers' compensation insurance;

(11) Alimony;

(12) Support payments;

(13) Allowances received by dependents of servicemen;

(14) The amount of recognized capital gains and losses excluded from adjusted gross income;

(15) Life insurance proceeds in excess of $5,000;

(16) Bequests and inheritances; and

(17) Gifts of cash of more than $300 not between household members and such other kinds of cash received by a household as the Department specifies by regulation.

(d) "Senior citizen" means a person who is domiciled in this state and is 55 years of age or older.

Sec. 50. NRS 439.640 is hereby amended to read as follows:

439.640 "Household income" ~~[has the meaning ascribed to it in NRS 427A.480.]~~ *means the income received by a senior citizen and the spouse of the senior citizen.*

Sec. 51. NRS 439.645 is hereby amended to read as follows:

439.645 "Income" has the meaning ascribed to it in NRS ~~[427A.485.]~~ *422.2725.*

Sec. 52. NRS 482.3795 is hereby amended to read as follows:

482.3795 1. The Department may issue special license plates and registration certificates to residents of Nevada for a fire truck pursuant to this section. Except as otherwise provided in subsection

3, the fire truck must not be used for general transportation, but may be used for musters, exhibitions, parades or similar activities.

2. In lieu of the annual registration and fees required by this chapter, ~~[and of the governmental services tax imposed by chapter 371 of NRS,]~~ the owner of a fire truck may submit:

(a) An affidavit to the Department indicating that the fire truck:

(1) Will only be used for the permitted purposes enumerated in subsection 1;

(2) Has been inspected and found safe to be operated on the highways of this state; and

(3) Qualifies as a fire truck pursuant to regulations adopted by the Department for this purpose.

(b) The following fees ***, in addition to the governmental services tax,*** for the issuance of these license plates:

(1) For the first issuance $15

(2) For a renewal sticker 5

3. If the owner elects to use the fire truck as general transportation, he shall pay the regular annual registration and fees prescribed by law . ~~[and the governmental services tax imposed by chapter 371 of NRS.]~~

4. License plates issued pursuant to this section must bear the inscription "Fire Truck" and the plates must be numbered consecutively.

5. The cost of the die and the modifications necessary for the issuance of a license plate pursuant to this section must be paid from private sources without any expense to the State of Nevada.

Sec. 53. NRS 482.3811 is hereby amended to read as follows:

482.3811 1. Except as otherwise provided in this subsection, the Department may design, prepare and issue special license plates and registration certificates to residents of Nevada for an antique truck or truck-tractor pursuant to this section. The Department shall not design, prepare or issue the license plates unless it receives at least 250 applications for the issuance of those plates. Except as otherwise provided in subsection 3, the antique truck or truck-tractor must not be used for general transportation, but may be used for antique truck shows, exhibitions, parades or similar activities.

2. In lieu of the annual registration and fees required by this chapter, ~~[and of the governmental services tax imposed by chapter 371 of NRS,]~~ the owner of an antique truck or truck-tractor may submit:

(a) An affidavit to the Department indicating that the antique truck or truck-tractor:

(1) Will be used only for the purposes enumerated in subsection 1;

(2) Has been inspected and found safe to be operated on the highways of this state;

(3) Will be at least 25 years old on the date on which the owner of the antique truck or truck-tractor applies for license plates pursuant to this section; and

(4) Has a manufacturer's rated carrying capacity of more than 1 ton.

(b) The following fees , ***in addition to the governmental services tax,*** for the issuance of license plates pursuant to this section:

(1) For the first issuance..... $15

(2) For a renewal sticker 5

3. If the owner elects to use the antique truck or truck-tractor as general transportation, he shall pay the regular annual registration and fees prescribed by law . ~~[and the governmental services tax imposed by chapter 371 of NRS.]~~

4. License plates issued pursuant to this section must bear the inscription "Antique Truck," and the plates must be numbered consecutively.

5. The cost of the die and the modifications necessary for the issuance of a license plate pursuant to this section must be paid from private sources without any expense to the State of Nevada.

6. If, during a registration year, the holder of license plates issued pursuant to the provisions of this section disposes of the vehicle to which the plates are affixed, the holder shall:

(a) Retain the plates and affix them to another vehicle that meets the requirements of this section if the transfer and registration fees are paid as set out in this chapter; or

(b) Within 30 days after removing the plates from the vehicle, return them to the Department.

Sec. 54. NRS 484.473 is hereby amended to read as follows:

484.473 1. Except as otherwise provided in subsections 2 and 4, a driver shall not permit a person, with regard to a motor vehicle being operated on a paved highway within a county whose population is 100,000 or more, to ride upon or within any portion of the vehicle that is primarily designed or intended for carrying goods or other cargo or that is otherwise not designed or intended for the use of passengers, including, without limitation:

(a) Upon the bed of a flatbed truck; or

(b) Within the bed of a pickup truck.

2. A driver may permit a person to ride upon the bed of a flatbed truck or within the bed of a pickup truck if the person is:

(a) Eighteen years of age or older; or

(b) Under 18 years of age and the motor vehicle is:

(1) Not being operated on a freeway or other road that has two or more lanes for traffic traveling in one direction;

(2) Being used in the course of farming or ranching; or

(3) Being driven in a parade authorized by a local authority.

3. A citation must be issued to a driver who permits a person to ride upon the bed of a flatbed truck or within the bed of a pickup truck in violation of subsection 1. A driver who is cited pursuant to this subsection shall be punished by a fine of at least $35 but not more than $100.

4. The provisions of subsection 1 do not apply to the portion of the bed of a truck that is covered by a camper shell or slide-in camper.

5. A violation of this section:

(a) Is not a moving traffic violation for the purposes of NRS 483.473; and

(b) May not be considered as:

(1) Negligence or causation in a civil action; or

(2) Negligent or reckless driving for the purposes of NRS 484.377.

6. As used in this section:

(a) "Camper shell" ~~[has the meaning ascribed to it in NRS 361.017.]~~ ***means a covered canopy which is mounted on a truck, and which is not equipped with permanent facilities for the preparation or storage of food or for sleeping purposes.***

(b) "Freeway" has the meaning ascribed to it in NRS 408.060.

(c) "Slide-in camper" has the meaning ascribed to it in NRS 482.113.

Sec. 55. NRS 488.075 is hereby amended to read as follows:

488.075 1. The owner of each motorboat requiring numbering by this state shall file an application for a number and for a certificate of ownership with the Division of Wildlife of the State Department of Conservation and Natural Resources on forms approved by it accompanied by:

(a) Proof of ***the*** payment of ~~[Nevada]~~ ***any applicable*** sales or use tax ***imposed in this state,*** as evidenced by proof of sale by a Nevada dealer , ~~[or by]~~ a certificate of use tax paid issued by the Department of Taxation, or ~~[by]~~ proof of exemption from those taxes . ~~[as provided in NRS 372.320.]~~

(b) Such evidence of ownership as the Division of Wildlife may require.

The Division of Wildlife shall not issue a number, a certificate of number or a certificate of ownership until this evidence is presented to it.

2. The application must be signed by the owner of the motorboat and must be accompanied by a fee of $15 for the

certificate of ownership and a fee according to the following schedule as determined by the straight line length which is measured from the tip of the bow to the back of the transom of the motorboat:

Less than 13 feet	$10
13 feet or more but less than 18 feet	15
18 feet or more but less than 22 feet	30
22 feet or more but less than 26 feet	45
26 feet or more but less than 31 feet	60
31 feet or more	75

Except as otherwise provided in this subsection, all fees received by the Division of Wildlife under the provisions of this chapter must be deposited in the Wildlife Account in the State General Fund and may be expended only for the administration and enforcement of the provisions of this chapter. On or before December 31 of each year, the Division of Wildlife shall deposit with the respective county school districts 50 percent of each fee collected according to the motorboat's length for every motorboat registered from their respective counties. Upon receipt of the application in approved form, the Division of Wildlife shall enter the application upon the records of its office and issue to the applicant a certificate of number stating the number awarded to the motorboat, a certificate of ownership stating the same information and the name and address of the registered owner and the legal owner.

3. A certificate of number may be renewed each year by the purchase of a validation decal. The fee for a validation decal is determined by the straight line length of the motorboat and is equivalent to the fee set forth in the schedule provided in subsection 2. The fee for issuing a duplicate validation decal is $10.

4. The owner shall paint on or attach to each side of the bow of the motorboat the identification number in such manner as may be prescribed by regulations of the Commission in order that the number may be clearly visible. The number must be maintained in legible condition.

5. The certificate of number must be pocket size and must be available at all times for inspection on the motorboat for which issued, whenever the motorboat is in operation.

6. The Commission shall provide by regulation for the issuance of numbers to manufacturers and dealers which may be used interchangeably upon motorboats operated by the manufacturers and dealers in connection with the demonstration, sale or exchange of those motorboats. The fee for each such number is $15.

Sec. 56. NRS 502.075 is hereby amended to read as follows:

502.075 The Division shall issue to a blind person, as defined in ~~[subsection 4 of NRS 361.085,]~~ *NRS 426.041,* a hunting license which:

1. Authorizes a person selected by the blind person to hunt on his behalf if:

(a) The person selected is a resident of the State of Nevada and possesses a valid Nevada hunting license; and

(b) The blind person is in the company of or in the immediate area of the person selected.

2. Is issued pursuant and subject to regulations prescribed by the Commission.

3. Contains the word "Blind" printed on the face of the license.

Sec. 57. NRS 543.630 is hereby amended to read as follows:

543.630 1. The body having authority to levy taxes within each county shall levy the taxes provided in NRS 543.170 to 543.830, inclusive.

2. ***Except as otherwise provided in subsection 3:***

(a) All officials charged with the duty of collecting taxes shall collect those taxes at the time and in the same form and manner, and with like interest and penalties, as other taxes are collected and when collected shall pay the taxes to the district ordering its levy and collection. ***(b)*** The payment of the collections must be made monthly to the treasurer of the district and paid into the depository thereof to the credit of the district.

3. ***All proceeds of any taxes on the retail sales and the storage, use or other consumption of fuel used to propel motor vehicles must be remitted to the county treasurer, accounted for separately in the county treasury and used exclusively for the construction, maintenance and repair of public roads and highways.***

4. All taxes levied under NRS 543.170 to 543.830, inclusive, together with interest thereon and penalties for default in payment thereof, and all costs of collecting the taxes constitute, until paid, a perpetual lien on and against the property taxed, and the lien is on a parity with the tax lien of other general taxes.

Sec. 58. NRS 543.650 is hereby amended to read as follows:

543.650 1. ~~[The]~~ ***Except as otherwise provided in NRS 543.630, the*** proceeds of all taxes and charges levied or imposed for the support of the district and all other revenues received for its account from any source must be deposited in the regional fund for the control of floods. No money may be drawn from the fund except for the use of the district.

2. Whenever any indebtedness has been incurred by a district, the board may also levy taxes and collect revenue for the purpose of

creating a reserve fund in such amount as the board may determine, which may only be used to meet the obligations of the district, for maintenance and operating charges and depreciation, and to provide extension of and betterments to the improvements of the district.

3. The board shall not use money in the regional fund for the control of floods or the reserve fund:

(a) For the construction, operation, maintenance, extension or repair of streets, highways or bridges, except as authorized pursuant to NRS 543.170 to 543.830, inclusive; or

(b) To supplement the budget of the county in which the district is located.

Sec. 59. NRS 543.690 is hereby amended to read as follows:

543.690 1. Upon the conditions and under the circumstances set forth in NRS 543.170 to 543.830, inclusive, a district or, if requested by the district, the board of county commissioners of the county in which the district is situated, may:

(a) Borrow money and issue the following securities to evidence the borrowing, subject to the provisions of NRS 350.020 to 350.070, inclusive:

(1) Notes;

(2) Warrants;

(3) Bonds;

(4) Temporary bonds;

(5) Interim debentures; and

(6) Special assessment bonds; and

(b) Make any other contract creating an indebtedness.

2. Subject to the provisions of subsection 1, the board of directors of a district or the board of county commissioners may, on the behalf and in the name of the district or the county, as the case may be, issue the securities, and in connection with any undertaking or facilities authorized in NRS 543.170 to 543.830, inclusive, may otherwise proceed as provided in the Local Government Securities Law.

3. The payment of general obligation securities issued pursuant to subsection 1 may be additionally secured by a pledge of any revenue from a tax imposed pursuant to NRS 543.600 on retail sales and the storage, use or other consumption of tangible personal property in the county ~~[.]~~ ***, other than any revenue derived from fuel used to propel motor vehicles.***

4. At least 60 days before any general obligation bonds for a term of more than 10 years are issued pursuant to this section, the board of directors of the district shall publish a notice of the proposed issuance of long-term general obligation bonds in a newspaper of general circulation within the district. The notice must be published at least twice during the first 3 weeks of the 60 days.

Each time the notice is published it must be at least as large as 5 inches high by 4 inches wide.

Sec. 60. NRS 694C.450 is hereby amended to read as follows:

694C.450 1. Except as otherwise provided in this section, a captive insurer shall pay to the Division, not later than March 1 of each year, a tax at the rate of:

(a) Two-fifths of 1 percent on the first $20,000,000 of its net direct premiums;

(b) One-fifth of 1 percent on the next $20,000,000 of its net direct premiums; and

(c) Seventy-five thousandths of 1 percent on each additional dollar of its net direct premiums.

2. Except as otherwise provided in this section, a captive insurer shall pay to the Division, not later than March 1 of each year, a tax at a rate of:

(a) Two hundred twenty-five thousandths of 1 percent on the first $20,000,000 of revenue from assumed reinsurance premiums;

(b) One hundred fifty thousandths of 1 percent on the next $20,000,000 of revenue from assumed reinsurance premiums; and

(c) Twenty-five thousandths of 1 percent on each additional dollar of revenue from assumed reinsurance premiums.

The tax on reinsurance premiums pursuant to this subsection must not be levied on premiums for risks or portions of risks which are subject to taxation on a direct basis pursuant to subsection 1. A captive insurer is not required to pay any reinsurance premium tax pursuant to this subsection on revenue related to the receipt of assets by the captive insurer in exchange for the assumption of loss reserves and other liabilities of another insurer that is under common ownership and control with the captive insurer, if the transaction is part of a plan to discontinue the operation of the other insurer and the intent of the parties to the transaction is to renew or maintain such business with the captive insurer.

3. If the sum of the taxes to be paid by a captive insurer calculated pursuant to subsections 1 and 2 is less than $5,000 in any given year, the captive insurer shall pay a tax of $5,000 for that year.

4. Two or more captive insurers under common ownership and control must be taxed as if they were a single captive insurer.

5. Notwithstanding any specific statute to the contrary and except as otherwise provided in this subsection, the tax provided for by this section constitutes all the taxes collectible pursuant to the laws of this state from a captive insurer, and no occupation tax or other taxes may be levied or collected from a captive insurer by this state or by any county, city or municipality within this state, except for *taxes upon the gross receipts of retailers from the sale at retail*

or the storage, use or other consumption of tangible personal property, and ad valorem taxes on real or personal property located in this state used in the production of income by the captive insurer.

6. Ten percent of the revenues collected from the tax imposed pursuant to this section must be deposited with the State Treasurer for credit to the Account for the Regulation and Supervision of Captive Insurers created pursuant to NRS 694C.460. The remaining 90 percent of the revenues collected must be deposited with the State Treasurer for credit to the State General Fund.

7. As used in this section, unless the context otherwise requires:

(a) "Common ownership and control" means:

(1) In the case of a stock insurer, the direct or indirect ownership of 80 percent or more of the outstanding voting stock of two or more corporations by the same member or members.

(2) In the case of a mutual insurer, the direct or indirect ownership of 80 percent or more of the surplus and the voting power of two or more corporations by the same member or members.

(b) "Net direct premiums" means the direct premiums collected or contracted for on policies or contracts of insurance written by a captive insurer during the preceding calendar year, less the amounts paid to policyholders as return premiums, including dividends on unabsorbed premiums or premium deposits returned or credited to policyholders.

Sec. 61. NRS 695A.550 is hereby amended to read as follows:

695A.550 Every society organized or licensed under this chapter is hereby declared to be a charitable and benevolent institution, and is exempt from every state, county, district, municipal and school tax other than taxes on ~~[real property and office equipment.]~~ ***property and taxes upon the gross receipts of retailers from the sale at retail or the storage, use or other consumption of tangible personal property.***

Sec. 62. NRS 705.425 is hereby amended to read as follows:

705.425 1. A state program for the physical preservation, in place, of property of lines of railroad, while service on such lines is discontinued, is hereby established to provide an alternative to actual abandonment.

2. The Department of Transportation shall determine whether a line of railroad is eligible for admission to the program. A rail line may be admitted if:

(a) The Surface Transportation Board has approved the line for abandonment or discontinuance of service or the Department of Transportation has determined that the line is potentially subject to abandonment;

(b) The owners, operators and users of the line, the Department of Transportation and all counties and cities affected have agreed to the admission of the line to the program; and

(c) The owners and operators of the line agree to suspend service on the line for 5 years without removing or disposing of any of the trackage or other operating rail properties of the line, as an alternative to abandonment, to permit consideration by interested parties of means of preventing the ultimate abandonment of the line.

3. At the end of 5 years the Department of Transportation may grant an extension, admitting the line of railroad to the program for not more than 5 additional years, if, in the judgment of the Director of the Department of Transportation:

(a) The line is still potentially subject to abandonment; and

(b) The extension will facilitate the restoration of service on the line.

~~[4. The owner of a line of railroad which has been admitted to the program is entitled to an allowance for taxes on the trackage and other operating rail properties of the line admitted. The Department of Transportation shall provide to the Department of Taxation all information requested by the Department of Taxation to carry out the system of allowances for taxes on the operating property of lines admitted to the program.]~~

Sec. 63. Section 8A.070 of the Charter of Carson City, being chapter 213, Statutes of Nevada 1969, as added by chapter 16, Statutes of Nevada 1997, at page 42, is hereby amended to read as follows:

Sec. 8A.070 Imposition of tax; use of proceeds.

1. The Board may enact an ordinance imposing a local sales and use tax for the acquisition, development, construction, equipping, operation, maintenance, improvement and management of open spaces, parks, trails and recreational facilities located within Carson City.

2. ~~[The]~~ ***Except for any money allocated pursuant to subsection 3 of section 8A.120, the*** proceeds from the tax imposed pursuant to this article and the interest and other income earned on the proceeds of the tax must be used as follows:

(a) Forty percent of the proceeds of the tax, including interest and other income, may be used for the acquisition, development, construction, equipping, improvement, maintenance and management of real property for open spaces.

(b) Except as otherwise provided in paragraph (e), 40 percent of the proceeds of the tax, including interest and other income, may be used for the acquisition, development,

construction, equipping and improvement of parks, trails and recreational facilities.

(c) Twenty percent of the proceeds of the tax, including interest and other income, may be used for the operation, maintenance and management of parks, trails and recreational facilities.

(d) Except as otherwise provided in paragraph (e), the Board may authorize expenditures in an amount that varies from the percentage stated in paragraphs (a), (b) and (c) by not more than 2 percent for each use.

(e) If operation, maintenance and management expenses for parks, trails and recreational facilities do not equal or exceed 20 percent of the proceeds of the tax, including interest and other income, the balance of the proceeds of the tax, including interest and other income, authorized in paragraph (c) may be used for the acquisition, development, construction, equipping and improvement of parks, trails and recreational facilities in addition to the amount authorized in paragraph (b).

(f) At the end of a fiscal year, the proceeds of the tax, including interest and other income, not expended or otherwise obligated for the purposes set forth in this section must be carried forward and become part of the total proceeds of the tax, including interest and other income, available in the next fiscal year.

3. The Board shall submit to the voters any proposal to change the previously approved uses for the proceeds of the tax, including interest and other income ~~[.]~~ , ***authorized pursuant to this section.***

Sec. 64. Section 8A.100 of the Charter of Carson City, being chapter 213, Statutes of Nevada 1969, as added by chapter 16, Statutes of Nevada 1997, at page 44, is hereby amended to read as follows:

Sec. 8A.100 Payment of proceeds of tax to Department; distribution of proceeds.

1. All fees, taxes, interest and penalties imposed and all amounts of a tax required to be paid to Carson City pursuant to this article must be paid to the Department in the form of remittances payable to the Department. ***Any amounts derived from taxes on fuel used to propel motor vehicles must be accounted for separately.***

2. The Department shall deposit the payments with the State Treasurer for credit to the Sales and Use Tax Account in the State General Fund.

3. The State Controller, acting upon the collection data furnished by the Department, shall monthly:

(a) Transfer from the sales and use tax account to the appropriate account in the State General Fund a percentage of all fees, taxes, interest and penalties collected pursuant to this article during the preceding month as compensation to the State for the cost of collecting the tax. The percentage to be transferred pursuant to this paragraph must be the same percentage as the percentage of proceeds transferred pursuant to paragraph (a) of subsection 3 of NRS 374.785 , but the percentage must be applied to the proceeds collected pursuant to this article only.

(b) Determine the amount equal to all fees, taxes, interest and penalties collected in or for Carson City pursuant to this article during the preceding month, less the amount transferred to the State General Fund pursuant to paragraph (a).

(c) Transfer the amount determined pursuant to paragraph (b) to the Intergovernmental Fund and remit the money to the Treasurer for Carson City.

Sec. 65. Section 8A.120 of the Charter of Carson City, being chapter 213, Statutes of Nevada 1969, as added by chapter 16, Statutes of Nevada 1997, at page 44, is hereby amended to read as follows:

Sec. 8A.120 Creation of fund for use of proceeds from tax.

1. The Treasurer for Carson City shall deposit money received from the State Controller pursuant to paragraph (c) of section 8A.100 , ***except for any money derived from taxes on fuel used to propel motor vehicles,*** into the Treasury of Carson City for credit to the fund created for the use of the proceeds from the tax authorized by this article.

2. The fund of Carson City created for the use of the proceeds from the tax authorized by this article must be accounted for as a separate fund and not as a part of any other fund.

3. Any money derived from taxes on fuel used to propel motor vehicles must be accounted for separately in the Treasury of Carson City and used exclusively for the construction, maintenance and repair of public roads and highways.

Sec. 66. Section 8A.130 of the Charter of Carson City, being chapter 213, Statutes of Nevada 1969, as added by chapter 16, Statutes of Nevada 1997, at page 45, is hereby amended to read as follows:

Sec. 8A.130 Use of proceeds of tax; issuance of bonds and other securities.

1. Money for the acquisition, development, construction, equipping, operation, maintenance, improvement and management of open spaces, parks, trails and recreational facilities located within Carson City may be obtained:

(a) By the issuance of bonds and other securities as provided in subsection 2, subject to any pledges, liens and other contractual limitations made pursuant to this article;

(b) By direct distribution from the fund created pursuant to ***subsection 1 of*** section 8A.120; or

(c) By both the issuance of such securities and by direct distribution, as the Board may determine appropriate.

2. The Board may, after the enactment of the ordinance imposing the tax, from time to time issue bonds and other securities, which are general or special obligations of Carson City and that may be secured as to principal and interest by a pledge of the proceeds from the tax authorized by this article ~~[.]~~ ***, other than any proceeds derived from fuel used to propel motor vehicles.***

3. An ordinance authorizing the issuance of such a bond or other security must describe the purpose for which the bond or other security is issued.

Sec. 67. Section 8A.140 of the Charter of Carson City, being chapter 213, Statutes of Nevada 1969, as amended by chapter 456, Statutes of Nevada 2001, at page 2337, is hereby amended to read as follows:

Sec. 8A.140 Types of securities; pledged revenue.

1. For the acquisition, development, construction, equipping, operation, maintenance, improvement and management of open spaces, parks, trails and recreational facilities authorized by this article, the Board may issue:

(a) General obligation bonds;

(b) General obligation bonds for which payment is additionally secured by a pledge of the proceeds of the tax imposed pursuant to this article, ***other than any proceeds derived from fuel used to propel motor vehicles,*** and if so determined by the Board, further secured by a pledge of the gross or net revenues derived from the operation of the recreational facilities, and any other project of the City which produces income, or from any license fees or other excise

taxes imposed for revenue by the City, or otherwise, as may be legally made available for payment of the bonds;

(c) Revenue bonds for which payment is solely secured by a pledge of the proceeds of the tax imposed pursuant to this article, ***other than any proceeds derived from fuel used to propel motor vehicles,*** and if so determined by the Board, further secured by a pledge of the gross or net revenues derived from the operation of the recreational facilities, and any other project of the City which produces income, or from any license fees or other excise taxes imposed for revenue by the City, or otherwise, as may be legally made available for payment of the bonds; and

(d) Medium-term obligations pursuant to NRS 350.087 to 350.095, inclusive.

2. Money pledged to the payment of bonds or other securities pursuant to subsection 1 may be treated for the purposes of subsection 3 of NRS 350.020 as pledged revenue for the uses authorized by this article.

Sec. 68. Section 2.320 of the Charter of the City of Henderson, being chapter 266, Statutes of Nevada 1971, as last amended by chapter 48, Statutes of Nevada 1997, at page 89, is hereby amended to read as follows:

Sec. 2.320 Sale, lease ~~[,]~~ *or* exchange of real property owned by the City: Procedure; disposition of proceeds.

1. Subject to the provisions of this section, the City may sell, lease or exchange real property in Clark County, Nevada, acquired by the City pursuant to federal law from the United States of America.

2. Except as otherwise provided in subsection 3:

(a) The City may sell, lease or exchange real property only by resolution. Following the adoption of a resolution to sell, lease or exchange, the City Council shall cause a notice of its intention to sell, lease or exchange the real property to be published once in a newspaper qualified pursuant to the provisions of chapter 238 of NRS and published in the City. The notice must be published at least 30 days before the date set by the City Council for the sale, lease or exchange, and must state:

(1) The date, time and place of the proposed sale, lease or exchange.

(2) The place where and the time within which applications and deposits may be made by prospective purchasers or lessees.

(3) Such other information as the City Council desires.

(b) Applications or offers to purchase, lease or exchange pursuant to the notice required in paragraph (a) must be in writing, must not be accepted by the City Council for consideration before the date of publication of the notice and must be accompanied by a deposit of not less than 1 percent of the total offer to purchase. If a lease, sale or exchange is not consummated because:

(1) The City refuses or is unable to consummate the lease, sale or exchange, the deposit must be refunded.

(2) The person who made the application or offer to lease, buy or exchange refuses or is unable to consummate the lease, sale or exchange, the City shall retain an amount of the deposit that does not exceed 5 percent of the total offer to purchase.

3. The City Council may waive the requirements of subsection 2 for any lease of residential property that is for a term of 1 year or less.

4. The City Council shall not make a lease for a term of 3 years or longer or enter into a contract for the sale or exchange of real property until after the property has been appraised by one disinterested appraiser employed by the City Council. Except as otherwise provided in ~~[subsections 7 and 8,]~~ ***subsection 7,*** it must be the policy of the City Council to require that all such sales, leases or exchanges be made at or above the current appraised value as determined by the appraiser unless the City Council, in a public hearing held before the adoption of the resolution to sell, lease or exchange the property, determines by affirmative vote of not fewer than two-thirds of the entire City Council based upon specified findings of fact that a lesser value would be in the best interest of the public. For the purposes of this subsection, an appraisal is not considered current if it is more than 3 years old.

5. It must be the policy of the City Council to sell, lease and exchange real property in a manner that will result in the maximum benefit accruing to the City from the sales, leases and exchanges. The City Council may attach any condition to the sale, lease or exchange as appears to the City Council to be in the best interests of the City.

6. The City Council may sell unimproved real property owned by the city on a time payment basis. The down payment must be in an amount determined by the City Council, and the interest rate must be in an amount determined by the City Council, but must not be less than 6 percent per annum on the declining balance.

7. Notwithstanding the provisions of subsection 4, the City Council may dispose of any real property belonging to the City to the United States of America, the State of Nevada, Clark County, any other political subdivision of the State, or any quasi-public or nonprofit entity for a nominal consideration whenever the public interest requires such a disposition. In any such case, the consideration paid must equal the cost of the acquisition to the City.

8. ~~[The City Council may sell, lease or exchange real property for less than its appraised value to any person who maintains or intends to maintain a business within the boundaries of the City which is eligible pursuant to NRS 374.357 for an abatement from the sales and use taxes imposed pursuant to chapter 374 of NRS.~~

~~9.]~~ Proceeds from all sales and exchanges of real property owned by the City, after deduction of the cost of the real property, reasonable costs of publication, title insurance, escrow and normal costs of sale, must be placed in the land fund previously created by the City in the City Treasury and hereby continued. Except as otherwise provided in subsection ~~[10,]~~ *9*, money in the land fund may be expended only for:

(a) Acquisition of assets of a long-term character which are intended to continue to be held or used, such as land, buildings, machinery, furniture, computer software and other equipment.

(b) Capital improvements of improvements thereon.

(c) Expenses incurred in the preparation of a long-term comprehensive master planning study and any expenses incurred in the master planning of the City.

(d) All costs, including salaries, for administration of the land fund, and the land within the City.

(e) Expenses incurred in making major improvements and repairs to the water, sewer and street systems as differentiated from normal maintenance costs.

Money received from leases of real property owned by the City must be placed in the land fund if the term of lease is 20 years or longer, whether the 20 years is for an initial term of lease or for an initial term and an option for renewal. Money received by the City from all other leases and interest on time payment sales of real property owned by the City must be apportioned in the ratio of 20 percent to current operational expenses of the City, 20 percent to the land fund, and 60 percent divided between the land fund and current operational expenses as determined by the Council.

~~[10.]~~ *9.* If available, money in the land fund may be borrowed by the City pursuant to the provisions of NRS ~~[354.430 to 354.460,]~~ *350.087 to 350.095,* inclusive.

Sec. 69. Section 29 of the Local Government Tax Act of 1991, being chapter 491, Statutes of Nevada 1991, as amended by chapter 426, Statutes of Nevada 1993, at page 1370, is hereby amended to read as follows:

Sec. 29. 1. Except as otherwise provided in this section and in section 34 of this act and in addition to all other sales and use taxes, the Board of County Commissioners of Churchill, Elko, Humboldt, Washoe and Lander Counties and the Board of Supervisors of Carson City may by ordinance, but not as in a case of emergency, impose a tax at the rate of up to ~~[1/4]~~ *one-quarter* of 1 percent of the gross receipts of any retailer from the sale of all tangible personal property sold at retail, or stored, used or otherwise consumed in the county.

2. The tax imposed pursuant to this section applies throughout the county, including incorporated cities in the county.

3. The ordinance enacted pursuant to this section must include provisions in substance as follows:

(a) Provisions substantially identical to those of the Local School Support Tax Law, insofar as applicable.

(b) A provision that all amendments to the provisions of the Local School Support Tax Law subsequent to the date of enactment of the ordinance, not inconsistent with this section, automatically become a part of the ordinance enacted pursuant to subsection 1.

(c) A provision that the county shall contract before the effective date of the ordinance enacted pursuant to subsection 1 with the Department *of Taxation* to perform all functions incident to the administration or operation of the tax imposed pursuant to subsection 1.

(d) A provision that exempts from the additional ~~[one quarter of one]~~ *one-quarter of 1* percent tax increase authorized pursuant to this section, the gross receipts from the sale of, and the storage, use or other consumption in a county of, tangible personal property used for the performance of a written contract for the construction of an improvement to real property which was executed before July 30, 1991, or for which a binding bid was submitted before that date if the bid was afterward accepted, if under the terms of the contract or bid the contract price or bid amount cannot be adjusted to

reflect the imposition of the additional tax pursuant to this section.

4. All fees, taxes, interest and penalties imposed and all amounts of tax required to be paid to the county under this section must be paid to the Department of Taxation in the form of remittances made payable to the Department of Taxation. ***Any amounts derived from taxes on fuel used to propel motor vehicles must be accounted for separately.***

5. The Department of Taxation shall ~~[deposit the payments]~~ :

(a) Remit any money derived from taxes on fuel used to propel motor vehicles to the county treasurer. The amount remitted pursuant to this paragraph must be accounted for separately in the county treasury and used exclusively for the construction, maintenance and repair of public roads and highways.

(b) Deposit any remaining money with the State Treasurer for credit to the tax distribution fund for the county in which it was collected.

6. Any ordinance enacted pursuant to this section is deemed to include the provisions set forth in paragraph (d) of subsection 3.

Sec. 70. Section 3 of the Elko County Hospital Tax, being chapter 14, Statutes of Nevada 1997, at page 29, is hereby amended to read as follows:

Sec. 3. 1. The Board may enact an ordinance imposing a tax for the construction of a hospital pursuant to section 4 of this act.

2. A tax so imposed may be collected for not more than 4 years after the date upon which it is first imposed. The ending date of the tax must be specified in the ordinance.

3. An ordinance enacted pursuant to this act may not become effective before a question concerning the imposition of the tax is approved by a majority of the registered voters of Elko County voting upon the question. The Board may submit the question to the voters at a special election held at the same time and places as a municipal election or at a general election. The Board shall also submit to the voters at such a special or general election any proposal to increase the rate of the tax or change the previously approved uses for the proceeds of the tax ~~[.]~~ , ***other than any proceeds derived from fuel used to propel motor vehicles.***

4. Any ordinance enacted pursuant to this section must specify the date on which the tax must first be imposed or on which an increase in the rate of the tax becomes effective,

which must not be earlier than the first day of the second calendar month following the approval of the question by the voters.

Sec. 71. Section 6 of the Elko County Hospital Tax, being chapter 14, Statutes of Nevada 1997, at page 30, is hereby amended to read as follows:

Sec. 6. 1. All fees, taxes, interest and penalties imposed and all amounts of tax required to be paid to Elko County pursuant to the taxing ordinance and this act must be paid to the Department in the form of remittances payable to the Department. ***Any amounts derived from taxes on fuel used to propel motor vehicles must be accounted for separately.***

2. The Department shall deposit the payments with the State Treasurer for credit to the Sales and Use Tax Account in the State General Fund.

3. The State Controller, acting upon the collection data furnished by the Department, shall monthly:

(a) Transfer from the Sales and Use Tax Account to the appropriate account in the State General Fund a percentage of all fees, taxes, interest and penalties collected pursuant to this act during the preceding month as compensation to the State for the cost of collecting the tax. The percentage to be transferred pursuant to this paragraph must be the same percentage as the percentage of proceeds transferred pursuant to paragraph (a) of subsection 3 of NRS 374.785, but the percentage must be applied to the proceeds collected pursuant to this act only.

(b) Determine the amount equal to all fees, taxes, interest and penalties collected in or for Elko County pursuant to this act during the preceding month, less the amount transferred to the State General Fund pursuant to paragraph (a).

(c) Transfer the amount determined pursuant to paragraph (b) to the Intergovernmental Fund and remit the money to the County Treasurer of Elko County.

Sec. 72. Section 8 of the Elko County Hospital Tax, being chapter 14, Statutes of Nevada 1997, at page 31, is hereby amended to read as follows:

Sec. 8. 1. The County Treasurer shall deposit the money received from the State Controller pursuant to section 6 of this act , ***except for any money derived from taxes on fuel used to propel motor vehicles,*** in the County Treasury for credit to a fund to be known as the Fund for the Hospital Tax.

2. The Fund for the Hospital Tax must be accounted for as a separate fund and not as a part of any other fund, and all interest and other income earned on the money in the fund must be deposited in the fund.

3. Any money derived from taxes on fuel used to propel motor vehicles must be accounted for separately in the County Treasury and used exclusively for the construction, maintenance and repair of public roads and highways.

Sec. 73. Section 10 of the Elko County Hospital Tax, being chapter 14, Statutes of Nevada 1997, at page 31, is hereby amended to read as follows:

Sec. 10. 1. Money for the construction of a hospital located within Elko County may be obtained:

(a) By the issuance of bonds and other securities as provided in subsection 2, subject to any pledges, liens and other contractual limitations made pursuant to this act;

(b) By direct distribution from the Fund for the Hospital Tax; or

(c) By both the issuance of such securities and by direct distribution as the Board may determine appropriate.

2. The Board may, after the enactment of the ordinance imposing the tax, from time to time issue bonds and other securities, which are general or special obligations of Elko County and that may be secured as to principal and interest by a pledge authorized by this act of the proceeds from the tax ~~[.]~~ ***, other than any proceeds derived from fuel used to propel motor vehicles.***

3. An ordinance authorizing the issuance of such a bond or other security must describe the purpose for which the bond or other security is issued.

Sec. 74. Section 24 of the Railroad Grade Separation Projects Act, being chapter 506, Statutes of Nevada 1997, as last amended by chapter 28, Statutes of Nevada 1999, at page 64, is hereby amended to read as follows:

Sec. 24. 1. The Board of County Commissioners of Washoe County may by ordinance, but not as in a case of emergency, impose a tax upon the retailers at the rate of not more than one-eighth of 1 percent of the gross receipts of any retailer from the sale of all tangible personal property sold at retail, or stored, used or otherwise consumed in the County if:

(a) The City of Reno imposes a tax on the rental of transient lodging pursuant to NRS 268.7845 in the maximum amount allowed by that section; and

(b) The Board receives a written commitment from one or more sources for the expenditure of not less than one-half of

the total cost of a project for the acquisition, establishment, construction or expansion of railroad grade separation projects in Washoe County, including the estimated proceeds of the tax described in paragraph (a).

2. An ordinance enacted pursuant to subsection 1 may not become effective before a question concerning the imposition of the tax is approved by a two-thirds majority of the members of the Board of County Commissioners.

3. An ordinance enacted pursuant to subsection 1 must specify the date on which the tax must first be imposed which must occur on the first day of the first month of the next calendar quarter that is at least 60 days after the date on which a two-thirds majority of the Board of County Commissioners approved the question.

4. An ordinance enacted pursuant to subsection 1 must include provisions in substance as follows:

(a) Provisions substantially identical to those contained in chapter 374 of NRS, insofar as applicable.

(b) A provision that all amendments to chapter 374 of NRS after the date of enactment of the ordinance, not inconsistent with this section, automatically become a part of an ordinance enacted pursuant to subsection 1.

(c) A provision stating the specific purpose for which the proceeds of the tax , ***other than any proceeds derived from fuel used to propel motor vehicles,*** must be expended.

(d) A provision that exempts from the tax the gross receipts from the sale of, and the storage, use or other consumption in a county of, tangible personal property used for the performance of a written contract:

(1) Entered into on or before the effective date of the tax; or

(2) For the construction of an improvement to real property for which a binding bid was submitted before the effective date of the tax if the bid was afterward accepted,

if under the terms of the contract or bid the contract price or bid amount cannot be adjusted to reflect the imposition of the tax.

5. No ordinance imposing a tax which is enacted pursuant to subsection 1 may be repealed or amended or otherwise directly or indirectly modified in such a manner as to impair any outstanding bonds or other obligations which are payable from or secured by a pledge of a tax enacted pursuant to subsection 1 until those bonds or other obligations have been discharged in full.

6. All fees, taxes, interest and penalties imposed and all amounts of tax required to be paid to the County pursuant to this section must be paid to the Department of Taxation in the form of remittances payable to the Department of Taxation. ***Any amounts derived from taxes on fuel used to propel motor vehicles must be accounted for separately.***

7. The Department of Taxation shall deposit the payments with the State Treasurer for credit to the Sales and Use Tax Account in the State General Fund.

8. The State Controller, acting upon the collection data furnished by the Department of Taxation, shall monthly:

(a) Transfer from the Sales and Use Tax Account to the appropriate account in the State General Fund a percentage of all fees, taxes, interest and penalties collected pursuant to this section during the preceding month as compensation to the State for the cost of collecting the taxes. The percentage to be transferred pursuant to this paragraph must be the same percentage as the percentage of proceeds transferred pursuant to paragraph (a) of subsection 3 of NRS 374.785 , but the percentage must be applied to the proceeds collected pursuant to this section only.

(b) Determine for the County an amount of money equal to any fees, taxes, interest and penalties collected in or for the County pursuant to this section during the preceding month, less the amount transferred to the State General Fund pursuant to paragraph (a).

(c) Transfer the amount determined for the County to the Intergovernmental Fund and remit the money to the County Treasurer.

9. The County Treasurer shall deposit the money received pursuant to subsection 8 , ***except for any money derived from taxes on fuel used to propel motor vehicles,*** in the County Treasury for credit to a fund to be known as the Railroad Grade Separation Projects Fund. The Railroad Grade Separation Projects Fund must be accounted for as a separate fund and not as a part of any other fund. ***Any money derived from taxes on fuel used to propel motor vehicles must be accounted for separately in the County Treasury and used exclusively for the construction, maintenance and repair of public roads and highways.***

10. The money in the Railroad Grade Separation Projects Fund, including interest and any other income from the Fund must be used by the Board of County Commissioners for the cost of the acquisition, establishment, construction or expansion of one or more railroad grade

separation projects, including the payment and prepayment of principal and interest on notes, bonds or other obligations issued to fund such projects.

Sec. 75. Section 17 of the Douglas County Sales and Use Tax Act of 1999, being chapter 37, Statutes of Nevada 1999, at page 82, is hereby amended to read as follows:

Sec. 17. 1. The Board may enact an ordinance imposing a local sales and use tax to:

(a) Acquire, develop, construct, equip, operate, maintain, improve and manage libraries, airports, and facilities and services for senior citizens located in the County; and

(b) Operate and maintain parks and recreational programs and facilities located in the County.

2. Annually, the Board shall allocate the proceeds from the tax imposed pursuant to this section from the preceding fiscal year, ***except for any money allocated pursuant to subsection 3 of section 22 of this act,*** the interest and other income earned on those proceeds, and any amount carried forward pursuant to subsection 3, among the uses set forth in subsection 1 and include ~~[those]~~ ***the*** allocations ***required by this subsection*** in the final budget adopted by the Board pursuant to NRS 354.598. ~~[The]~~ ***Except as otherwise provided in subsection 3 of section 22 of this act, the*** proceeds from the tax, including interest and other income earned thereon, must be used in accordance with ~~[those allocations.]~~ ***the allocations required by this subsection.***

3. At the end of a fiscal year, the proceeds from the tax, including interest and other income earned thereon, not expended or otherwise obligated for the purposes set forth in this section, ***except for any money allocated pursuant to subsection 3 of section 22 of this act,*** must be carried forward and become part of the total proceeds of the tax, including interest and other income earned thereon, available in the next fiscal year.

4. The Board ~~[of county commissioners]~~ shall, before submitting to the Legislature any request to change the uses for the proceeds from the tax authorized by this section, including interest and other income earned thereon, submit an advisory question to the voters of the county pursuant to NRS 293.482, asking whether the uses for the proceeds from the tax should be so changed. The Board shall not submit such a request to the Legislature if a majority of the voters in the County disapprove the proposed change.

Sec. 76. Section 20 of the Douglas County Sales and Use Tax Act of 1999, being chapter 37, Statutes of Nevada 1999, at page 84, is hereby amended to read as follows:

Sec. 20. 1. All fees, taxes, interest and penalties imposed and all amounts of tax required to be paid to the County pursuant to this act must be paid to the Department in the form of remittances payable to the Department. ***Any amounts derived from taxes on fuel used to propel motor vehicles must be accounted for separately.***

2. The Department shall deposit the payments with the State Treasurer for credit to the Sales and Use Tax Account in the State General Fund.

3. The State Controller, acting upon the collection data furnished by the Department, shall monthly:

(a) Transfer from the Sales and Use Tax Account to the appropriate account in the State General Fund a percentage of all fees, taxes, interest and penalties collected pursuant to this act during the preceding month as compensation to the State for the cost of collecting the tax. The percentage to be transferred pursuant to this paragraph must be the same percentage as the percentage of proceeds transferred pursuant to paragraph (a) of subsection 3 of NRS 374.785, but the percentage must be applied to the proceeds collected pursuant to this act only.

(b) Determine the amount equal to all fees, taxes, interest and penalties collected in or for the County pursuant to this act during the preceding month, less the amount transferred to the State General Fund pursuant to paragraph (a).

(c) Transfer the amount determined pursuant to paragraph (b) to the Intergovernmental Fund and remit the money to the County Treasurer.

Sec. 77. Section 22 of the Douglas County Sales and Use Tax Act of 1999, being chapter 37, Statutes of Nevada 1999, at page 84, is hereby amended to read as follows:

Sec. 22. 1. The County Treasurer shall deposit money received from the State Controller pursuant to paragraph (c) of subsection 3 of section 20 of this act , ***except for any money derived from taxes on fuel used to propel motor vehicles,*** into the County Treasury for credit to the fund created for the use of the proceeds from the tax authorized by this act.

2. The fund of the County created for the use of the proceeds from the tax authorized by this act must be accounted for as a separate fund and not as a part of any other fund.

3. Any money derived from taxes on fuel used to propel motor vehicles must be accounted for separately in the County Treasury and used exclusively for the construction, maintenance and repair of public roads and highways.

Sec. 78. Section 23 of the Douglas County Sales and Use Tax Act of 1999, being chapter 37, Statutes of Nevada 1999, at page 84, is hereby amended to read as follows:

Sec. 23. 1. Money to acquire, develop, construct, equip, improve and manage libraries, airports, and facilities and services for senior citizens located in the County may be obtained:

(a) By the issuance of bonds and other securities as provided in subsection 3, subject to any pledges, liens and other contractual limitations made pursuant to this act;

(b) By direct distribution from the fund created pursuant to ***subsection 1 of*** section 22 of this act; or

(c) By both the issuance of such securities and by direct distribution,

as the Board may determine appropriate.

2. Money to operate and maintain libraries, airports, facilities and services for senior citizens, parks and recreational programs and facilities located in the County may be obtained by direct distribution from the fund created pursuant to ***subsection 1 of*** section 22 of this act.

3. The Board may, after the enactment of the ordinance imposing the tax, from time to time, issue bonds and other securities, which are general or special obligations of the County and that may be secured as to principal and interest by a pledge of the proceeds from the tax authorized by this act ~~.~~ ***, other than any proceeds derived from fuel used to propel motor vehicles.***

4. An ordinance authorizing the issuance of such a bond or other security must describe the purpose for which the bond or other security is issued.

Sec. 79. Section 24 of the Douglas County Sales and Use Tax Act of 1999, being chapter 37, Statutes of Nevada 1999, as amended by chapter 456, Statutes of Nevada 2001, at page 2337, is hereby amended to read as follows:

Sec. 24. 1. To acquire, develop, construct, equip, improve and manage libraries, airports, and facilities and services for senior citizens located in the County, the Board may issue:

(a) General obligation bonds;

(b) General obligation bonds for which payment is additionally secured by a pledge of the proceeds of the tax

imposed pursuant to this act, ***other than any proceeds derived from fuel used to propel motor vehicles,*** and if so determined by the Board, further secured by a pledge of the gross or net revenues derived from the operation of libraries, airports or facilities and services for senior facilities or any other project of the County which produces income, or from any license fees or other excise taxes imposed for revenue by the County, or otherwise, as may be legally made available for payment of the bonds;

(c) Revenue bonds for which payment is solely secured by a pledge of the proceeds of the tax imposed pursuant to this act, ***other than any proceeds derived from fuel used to propel motor vehicles,*** and if so determined by the Board, further secured by a pledge of the gross or net revenues derived from the operation of the libraries, airports or facilities for senior citizens or any other project of the County which produces income, or from any license fees or other excise taxes imposed for revenue by the County, or otherwise, as may be legally made available for payment of the bonds; and

(d) Medium-term obligations pursuant to NRS 350.087 to 350.095, inclusive.

2. Money pledged to the payment of bonds or other securities pursuant to subsection 1 may be treated for the purposes of subsection 3 of NRS 350.020 as pledged revenue for the uses authorized by this act.

Sec. 80. Section 9 of chapter 335, Statutes of Nevada 2001, at page 1585, is hereby amended to read as follows:

Sec. 9. 1. This section and sections 1, 2 and 4 to 8, inclusive, of this act become effective on July 1, 2001.

2. Sections 2 and 5 of this act expire by limitation on June 30, ~~[~~2005.

~~3. Section 3 of this act becomes effective on July 1, 2005.]~~ ***2003.***

Sec. 81. 1. NRS 361.017, 361.042, 361.0605, 361.061, 361.062, 361.065, 361.0685, 361.0687, 361.077, 361.078, 361.079, 361.080, 361.085, 361.088, 361.096, 361.098, 361.099, 361.100, 361.105, 361.106, 361.107, 361.110, 361.111, 361.115, 361.123, 361.125, 361.130, 361.132, 361.135, 361.140, 361.145, 361.150, 361.186, 361.187, 361.797, 371.101, 371.102, 374.280, 374.285, 374.286, 374.291, 374.2911, 374.292, 374.295, 374.310, 374.315, 374.320, 374.321, 374.322, 374.323, 374.325, 374.3305, 374.3306, 374.3307, 374.357, 374.388, 374.643, 427A.450, 427A.455, 427A.460, 427A.465, 427A.470, 427A.475, 427A.480, 427A.485, 427A.490, 427A.495, 427A.500, 427A.505, 427A.510, 427A.515,

427A.520, 427A.522, 427A.525, 427A.530, 427A.535, 427A.540, 427A.545, 427A.550, 427A.555, 427A.560, 427A.565, 427A.570, 427A.575, 427A.580, 427A.585, 427A.590, 427A.595, 427A.600 and 439.660 are hereby repealed.

2. Sections 3 and 8 of chapter 335, Statutes of Nevada 2001, at pages 1581 and 1585, respectively, are hereby repealed.

Sec. 82. The provisions of this act do not affect:

1. The amount of any tax due for any period ending on or before June 30, 2003.

2. The terms of any agreement made on or before June 30, 2003, for the sale, lease or exchange of real property pursuant to NRS 266.267 or section 2.320 of the Charter of the City of Henderson.

3. The terms of any agreement made pursuant to NRS 274.270 on or before June 30, 2003.

4. The duration and other terms of any partial abatement from taxes approved by the Commission on Economic Development pursuant to NRS 360.750 on or before June 30, 2003.

5. The requirements in effect on June 30, 2003, for:

(a) The repayment of any exemption from property taxes allowed pursuant to a partial abatement approved by the Commission on Economic Development pursuant to NRS 360.750 on or before June 30, 2003, by a business that fails to comply with the terms of the partial abatement; and

(b) The disposition and use of any such repayments.

6. Any property tax assistance provided or to which a person may be entitled pursuant to NRS 427A.450 to 427A.600, inclusive, for any period ending on or before June 30, 2003.

7. The terms of any admission on or before June 30, 2003, of a line of railroad to the program established by NRS 705.425.

Sec. 83. 1. This section and sections 1 to 26, inclusive, 28 and 30 to 82, inclusive, of this act become effective on July 1, 2003.

2. Sections 26 and 28 of this act expire by limitation on October 1, 2029.

3. Sections 27 and 29 of this act become effective on October 1, 2029.

LEADLINES OF REPEALED SECTIONS OF NRS AND TEXT OF REPEALED SECTIONS OF STATUTES OF NEVADA

361.017 "Camper shell" defined.
361.042 "Slide-in camper" defined.

361.0605 Property related to public use of privately owned park exempted; exclusion.

361.061 Property related to public use of privately owned airport exempted; exclusion.

361.062 Property of trusts for furtherance of public functions exempted.

361.065 Property of school districts and charter schools exempted.

361.0685 Exemption of percentage of personal and real property of certain businesses certified by Commission on Economic Development.

361.0687 Partial abatement of taxes imposed on certain new or expanded businesses.

361.077 Exemption of property used for control of air or water pollution.

361.078 Exemption of residential property containing shelter protecting against radioactive fallout.

361.079 Exemption of qualified systems for heating, cooling or provision of electricity.

361.080 Exemption of property of surviving spouses and orphan children.

361.085 Exemption of property of blind persons.

361.088 Exemption of property of Nathan Adelson Hospice.

361.096 Exemption of certain property leased or rented to charter school.

361.098 Exemption of property of charitable foundations established by Board of Regents of University of Nevada.

361.099 Exemption of certain real and personal property leased or rented to University and Community College System of Nevada.

361.100 Exemption of property of university fraternities and sororities.

361.105 Exemptions of nonprofit private schools.

361.106 Exemption of property of certain apprenticeship programs.

361.107 Exemption of property of Pershing County Kids, Horses, Rodeo Inc.

361.110 Exemptions of certain organizations.

361.111 Exemption of certain property of Nature Conservancy, American Land Conservancy and Nevada Land Conservancy.

361.115 Exemption of property of Nevada Children's Foundation, Inc.

361.123 Exemption of property of Nevada Heritage Association, Inc.

361.125 Exemption of churches and chapels.
361.130 Exemption of public cemeteries and graveyards.
361.132 Exemption of certain private cemeteries and places of burial.
361.135 Exemptions of lodges and other charitable organizations.
361.140 Exemptions of certain charitable corporations.
361.145 Exemptions of noncommercial theaters.
361.150 Exemptions of volunteer fire departments.
361.186 Collection of admission fee for exhibition of art: Conditions; reduction of exemption; payment of and credit against resulting tax.
361.187 Applicability of exemption to owner of leased art.
361.797 Filing of claims; duties of county assessor, Department, county auditor and tax receiver; reimbursement of county by State; penalty.
371.101 Exemption of vehicle registered by surviving spouse or orphan.
371.102 Exemption of vehicle registered by blind person.
374.280 Fuel used to propel motor vehicle.
374.285 Animals and plants intended for human consumption; feed; fertilizer.
374.286 Farm machinery and equipment.
374.291 Works of fine art for public display: General requirements.
374.2911 Works of fine art for public display: Collection of admission fee for exhibition.
374.292 Textbooks sold within University and Community College System of Nevada.
374.295 Containers.
374.310 Personal property used for performance of contract on public works.
374.315 Personal property used for performance of certain written contracts.
374.320 Newspapers.
374.321 Manufactured homes and mobile homes.
374.322 Aircraft, aircraft engines and component parts of aircraft.
374.323 Engines, chassis, parts and components of professional racing vehicles; certain vehicles used by professional racing team or sanctioning body.
374.325 Occasional sales.
374.3305 Personal property sold by or to nonprofit organization created for religious, charitable or educational purposes.

374.3306 Requirements for organization created for religious, charitable or educational purposes.
374.3307 Procedure for claim of exemption by nonprofit organization created for religious, charitable or educational purposes; regulations.
374.357 Abatement for eligible machinery or equipment used by certain new or expanded businesses.
374.388 Presumption of payment: Certificate of ownership for used manufactured home or used mobile home.
374.643 Credit or refund of tax for business within zone for economic development. 427A.450 Legislative findings and declaration.
427A.455 Definitions.
427A.460 "Claim" defined.
427A.465 "Claimant" defined.
427A.470 "Home" defined.
427A.475 "Household" defined.
427A.480 "Household income" defined.
427A.485 "Income" defined.
427A.490 "Lot" defined.
427A.495 "Property taxes accrued" defined.
427A.500 "Rent" defined.
427A.505 "Senior citizen" defined.
427A.510 Determination of which member of household is claimant.
427A.515 Homeowner's refund: Entitlement; limitation.
427A.520 Renter's refund: Entitlement; limitation.
427A.522 Calculation of homeowner's refund and renter's refund.
427A.525 Rent deemed to constitute accrued property tax.
427A.530 Filing of claims with county assessor; processing of claim.
427A.535 Action by Division on claim.
427A.540 Disallowance of claim: Ownership of real property other than home.
427A.545 Eligibility unaffected by receipt of other assistance if claim for exemption filed; assessed valuation reduced by amount of exemption.
427A.550 Division may expend money from Senior Citizens' Property Tax Assistance Account for audit of claims processed by county assessor.
427A.555 Multiple claims prohibited.
427A.560 Survival of right to assistance on death of claimant.

427A.565 Revocation of grant of assistance for improper claim; restitution.
427A.570 Claim to be disallowed and refund to be repaid with penalty if property acquired to obtain benefits.
427A.575 Excessive or fraudulent claim; penalty.
427A.580 Penalty for false statement or use of fraudulent device.
427A.585 Administrative and judicial review.
427A.590 Administration by Division; regulations.
427A.595 Senior Citizens' Property Tax Assistance Account: Purposes; use.
427A.600 Disclosure of personal or confidential information prohibited.
439.660 Administration: Cooperation between state and local agencies.

Section 3 of chapter 335, Statutes of Nevada 2001:

Sec. 3. NRS 361.0687 is hereby amended to read as follows:

361.0687 1. A person who intends to locate or expand a business in this state may, pursuant to NRS 360.750, apply to the commission on economic development for a partial abatement from the taxes imposed by this chapter.

2. For a business to qualify pursuant to NRS 360.750 for a partial abatement from the taxes imposed by this chapter, the commission on economic development must determine that, in addition to meeting the other requirements set forth in subsection 2 of that section:

(a) If the business is a new business in a county or city whose population is 50,000 or more:

(1) The business will make a capital investment in the county of at least $50,000,000 if the business is an industrial or manufacturing business or at least $5,000,000 if the business is not an industrial or manufacturing business; and

(2) The average hourly wage that will be paid by the new business to its employees in this state is at least 100 percent of the average statewide hourly wage as established by the employment security division of the department of employment, training and rehabilitation on July 1 of each fiscal year.

(b) If the business is a new business in a county or city whose population is less than 50,000:

(1) The business will make a capital investment in the county of at least $5,000,000 if the business is an industrial or

manufacturing business or at least $500,000 if the business is not an industrial or manufacturing business; and

(2) The average hourly wage that will be paid by the new business to its employees in this state is at least 100 percent of the average statewide hourly wage as established by the employment security division of the department of employment, training and rehabilitation on July 1 of each fiscal year.

3. ~~[If]~~ ***Except as otherwise provided in NRS 361.0685, if*** a partial abatement from the taxes imposed by this chapter is approved by the commission on economic development pursuant to NRS 360.750:

(a) The partial abatement must:

(1) Be for a duration of at least 1 year but not more than 10 years;

(2) Not exceed 50 percent of the taxes ***on personal property*** payable by a business each year pursuant to this chapter; and

(3) Be administered and carried out in the manner set forth in NRS 360.750.

(b) The executive director of the commission on economic development shall notify the county assessor of the county in which the business is located of the approval of the partial abatement, including, without limitation, the duration and percentage of the partial abatement that the commission granted. The executive director shall, on or before April 15 of each year, advise the county assessor of each county in which a business qualifies for a partial abatement during the current fiscal year as to whether the business is still eligible for the partial abatement in the next succeeding fiscal year.

Section 8 of chapter 335, Statutes of Nevada 2001:

Sec. 8. 1. Except as otherwise provided in this section, notwithstanding subsection 2 of section 9 of this act, if the commission on economic development, during the period from July 1, 2001, through June 30, 2005, grants a partial abatement of tax pursuant to NRS 360.750 for a facility for the production of electricity from renewable energy and the partial abatement is for the tax imposed pursuant to:

(a) Chapter 361 of NRS, the duration of the partial abatement must be 10 years and the terms and conditions of the partial abatement must be as set forth in NRS 361.0687, as amended by section 2 of this act.

(b) Chapter 374 of NRS, the duration of the partial abatement must be 2 years and the terms and conditions of

the partial abatement must be as set forth in NRS 374.357, as amended by section 5 of this act.

2. The provisions of subsection 1 do not prevent the commission on economic development, the department of taxation or the Nevada tax commission from exercising any enforcement authority provided by law to ensure that the facility for which the abatement was granted continues to be operated in a manner that is consistent with the terms and conditions pursuant to which the abatement was granted.

3. As used in this section, "facility for the generation of electricity from renewable energy":

(a) For the purposes of the partial abatement described in NRS 361.0687, has the meaning ascribed to it in section 2 of this act.

(b) For the purposes of the partial abatement described in NRS 374.357, has the meaning ascribed to it in section 5 of this act.

MINUTES OF THE
SENATE COMMITTEE ON TAXATION

Seventy-second Session
March 27, 2003

The Senate Committee on Taxation was called to order by Chairman Mike McGinness, at 2:09 p.m., on Thursday, March 27, 2003, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Mike McGinness, Chairman
Senator Dean A. Rhoads, Vice Chairman
Senator Randolph J. Townsend
Senator Ann O'Connell
Senator Sandra J. Tiffany
Senator Joseph Neal
Senator Bob Coffin

GUEST LEGISLATORS PRESENT:

Senator William J. Raggio, Washoe County Senatorial District No. 3
Senator Mark E. Amodei, Capital Senatorial District

STAFF MEMBERS PRESENT:

Rick Combs, Fiscal Analyst
Ardyss Johns, Committee Secretary

OTHERS PRESENT:

Jim J. Avance, Lobbyist, Herbst Gaming, Incorporated
Kevin Welsh, Public Finance Economist, K. D. Welsh and Associates
Michael Lee, Lee Brothers Leasing
Dino DiCianno, Deputy Executive Director, Department of Taxation
Christina Dugan, Lobbyist, Las Vegas Chamber of Commerce
Samuel J. Routson, Chief Executive Officer, Winnemucca Farms, Incorporated
John Sande, III, Lobbyist, Airport Authority of Washoe County
Dan Hetrick, Orovada Hetrick Bros., Incorporated
Matthew Young, Alpha Tau Omega
Erin Lankowsky, House Manager, Alpha Tau Omega
Randall H. Walker, Director of Aviation, McCarran International Airport
Krys T. Bart, A.A.E., Executive Director, Airport Authority of Washoe County
Robert E. Shriver, Executive Director, Division of Economic Development, Commission on Economic

Development
Chuck Alvey, President and Chief Executive Officer, Economic Development Authority of Western Nevada
A. Somer Hollingsworth, President and Chief Executive Officer, Nevada Development Authority
William (Jeff) Johnson, Assessor, Humboldt County
Doug Sonnemann, Assessor, Douglas County
Mark Schofield, Assessor, Clark County
Doug D. Busselman, Lobbyist, Nevada Farm Bureau
Gaylyn J. Spriggs, Lobbyist, Nevada Taxpayers Association
Steve K. Walker, Lobbyist, Truckee Meadows Water Authority
Lucille Lusk, Lobbyist, Nevada Concerned Citizens
Benjamin J. Blinn
Myla C. Florence, Director, Department of Employment, Training and Rehabilitation
Paul "Luke" Puschnig, Lobbyist, Las Vegas Convention and Visitors Authority
Keith L. Lee, Lobbyist, Southwest Airlines
Robert V. Payant, Lobbyist, Nevada Catholic Conference
James L. Wadhams, Lobbyist, Nevada Hospital Association
Charles Chinnock, Executive Director, Department of Taxation

CHAIRMAN MCGINNESS:

We will open this meeting with Senate Bill (S.B.) 343.

SENATE BILL 343: Authorizes rebate of certain taxes on motor vehicle fuel paid by certain retailers determined to be operating at competitive disadvantage to retailers of neighboring states. (BDR 32-1160)

JIM J. AVANCE, LOBBYIST, HERBST GAMING, INCORPORATED:
Jerry Herbst, owner of Herbst Oil, owns a gas station in Laughlin, and he owns another one right across the river in Bullhead City, Arizona. You can virtually see one station from the other. Because of the difference in gasoline tax between Arizona and Nevada, he sells right at 4 million gallons a year in Bullhead City and 1 million gallons in Laughlin. Being a good corporate citizen, he thought if there was some way there could be equalization, then the increased fuel sales on the Nevada side would generate more tax for Nevada and help its citizens. I passed out to you a chart showing the difference in the fuel taxes (Exhibit C). Customers can save 14 cents by purchasing their gas in Arizona as opposed to Nevada. Now Mr. Herbst is going to sell the gas one way or the other but would prefer to sell it in Nevada.

I engaged Mr. Welsh, a public finance economist with K. D. Welsh and Associates, to see if there was some way this could be done. In his research he found some precedent which he will briefly explain to you. Since I understand there is little chance of passage of this bill, at least during this session, after Mr. Welsh gives you the results of his research, we would suggest S.B. 343 not be processed. After you have had some time to digest this information, maybe we could come back and process it in 2 years.

KEVIN WELSH, PUBLIC FINANCE ECONOMIST, K. D. WELSH AND ASSOCIATES:
At the request of Mr. Avance, we looked at this problem to see if we could find any precedence in the way this has been addressed before, and we did. We found that a rebate on fuel taxes has been done by this State in the past. It was done by processing the rebate through the Department of Taxation on their forms. We have the precedent, we have the process, and the Department of Taxation just as recently as 4 years ago has been processing these rebates. So if you decide to proceed with this bill, we do have the mechanisms in place to accomplish what this bill is trying to do.

SENATOR O'CONNELL MOVED TO INDEFINITELY POSTPONE S.B. 343

SENATOR TOWNSEND SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS TIFFANY, NEAL, AND COFFIN WERE ABSENT FOR THE VOTE.)

*****

CHAIRMAN MCGINNESS:
We will close the hearing on S.B. 343 and open the hearing on S.B. 313.

SENATE BILL 313: Clarifies provisions governing collection of tax on use of leased property. (BDR 32-295)

SENATOR WILLIAM J. RAGGIO, WASHOE COUNTY SENATORIAL DISTRICT NO. 3:
Senate Bill 313 is designed to address a situation that has been looked at for about 3 or 4 years with the Department of Taxation. They have been very cooperative in attempting to deal with it through regulation and it is apparently a matter needing to be resolved by statute. I will introduce the bill and then Michael Lee, of Lee Brothers Leasing will give you the real reason for the bill and the practical situations it addresses. Mr. Lee leases motor vehicles to local governments, particularly Reno and, in some instances, Washoe County. What occurs is, if the City of Reno Police Department needs a number of vehicles, the city leases those vehicles instead of purchasing

them. Under the interpretation now existing in the statutes, Lee Brothers Leasing purchases the vehicles and is assessed a sales tax on that purchase. When they lease them to the city or local government, they have to pass on that tax, which is a sizable amount. In essence, this means the public is paying the tax. If the city were to purchase those vehicles, it would be exempt from the sales tax.

So what this bill tries to accomplish is to not require a tax under those situations where the property is acquired by the lessor and then immediately leased to the city or local government. It would allow for a more cost-efficient and economical lease situation.

There is a fiscal note and I talked with Mr. Chinnock, Executive Director, Department of Taxation, on this matter. He indicated the department would be supportive of this measure. Also, you have been given a copy of a letter from Washoe County Purchasing (Exhibit D) signed by John L. Balentine who is the purchasing and contracts administrator. He indicates Washoe County would be in support of this measure as well.

The fiscal note indicates there would be a loss of several million dollars if this were enacted and utilized in full. However, I think it is probably pretty speculative that it would be utilized by everyone. I think that is based on the language that says "tangible personal property," which is of course, rather broad. The situation bringing this bill forward would be dealing primarily with motor vehicles and so it might be better, if the committee is interested in processing the bill, to limit it to particular items such as motor vehicles maybe for specific purposes. Simply put, it recognizes a situation where the tax is being collected in a lease situation where it would not be collected under a purchase situation.

CHAIRMAN MCGINNESS:
With a fiscal note, would Senate finance like to look at this as well?

SENATOR RAGGIO:
This is not a situation where it would affect any of our budget. I think the fiscal note was based on the potential loss of revenue if, in fact, it applied to every lease of tangible personal property that could possibly exist. That is why I suggested as a starting point, it might be wise to deal with certain specific property we know has been involved in this kind of a process.

MICHAEL LEE, LEE BROTHERS LEASING:
When a city or a local government purchases a vehicle they are exempt from the tax. In a lease situation, even if the entity leasing the vehicle is exempt, the lessor is still responsible for the tax when buying the vehicle. Because we have to collect this item, it excludes us from offering a service to a state, county, or city that, at this time with tight budgets, is a great asset. Via this letter (Exhibit D), you will see Washoe County has stepped up and agreed it would be a great benefit to them. I am paid 1.25 percent of what I collect to conduct the transaction of the money and pay taxation.

CHAIRMAN MCGINNESS:
Just to clarify, if the City of Reno bought a car, they would be exempt from the tax. If they lease the car, under the current interpretation, they are liable for the tax.

MR. M. LEE:
They are not liable but the lessor is liable and passes the tax along to the lessee. Bidding is so

competitive these days and the lessee is very aware of what I do. In order to operate on a 1.2 percent profit, we have to pay out an additional 7 percent.

CHAIRMAN MCGINNESS:
This obviously would be a benefit to all leasing companies, not just yours.

SENATOR O'CONNELL:
I am interested in the contents of the letter from Washoe County (Exhibit D) because I think leasing automobiles is a good cost-saving measure. How much do you feel you save the department by leasing to them as opposed to their having to buy the vehicles?

MR. M. LEE:
Many years ago when Richard Kirkland took over the Reno Police Department, he was faced with some huge deficits and his budgets had to be trimmed quite a bit. He came out publicly in the *Reno Gazette-Journal* and said in the first year he was able to save the department over $300,000. When you lease a vehicle, you are leasing it for a term of usually 12 months or more. In doing this, a vehicle can be leased for a specific job or a specific need and then it can be turned back. Another advantage is because vehicles are becoming so advanced, the standard mechanics are not able to work on them anymore. A city or the State rarely can fund or own the computers required to analyze the vehicles, but they can lease the vehicles for just the warranty period or a period getting the best operating life out of the vehicle. It can then be turned back in, justly saving quite a bit of money.

SENATOR O'CONNELL:
How many vehicles would have been involved in the $300,000?

MR. M. LEE:
It extended over a 2-year period and there were approximately 100 vehicles involved.

DINO DICIANNO, DEPUTY EXECUTIVE DIRECTOR, DEPARTMENT OF TAXATION:
First of all, I need to go on record in saying this would definitely clear up a situation for the department with respect to leasing. We do understand the particular situation Mr. Lee is experiencing. Senator Raggio is correct in the characterization he provided in his testimony earlier. What occurs under this particular situation is when the lease is written, the exempt entity does not take title or possession of the property. Therefore, the lessor is subject to the tax. If the exempt entity were to take title and possession of the vehicle then there would be no tax due, either from the exempt entity or from the lessor.

With respect to the fiscal note, your question was dead-on-point Mr. Chairman. Because of the language contained in the current bill, it applies to all tangible personal property, not just automobiles. It could be furniture, televisions, refrigerators, or washers and dryers. The list goes on and on. Clearly, if it was possible to amend the language specifically to the particular issue at hand, it would probably diminish the fiscal note down to a very minimal amount.

CHAIRMAN MCGINNESS:
Do you have any ideas on language? Can we limit it to motor vehicles? I am not sure that would be specific enough.

MR. DICIANNO:
Since I am not legal counsel Mr. Chairman I hate to go that far, but I can speak to Brenda Erdoes, Legislative Counsel.

CHAIRMAN MCGINNESS:
We will now open the hearing on S.B. 293.

SENATE BILL 293: Repeals certain exemptions and abatements from taxes on property and on retail sales or use of property. (BDR 32-154)

SENATOR NEAL:
Senate Bill 293 is presented to the committee to review, and if necessary, remove those exemptions we think do not enhance the State in terms of its well-being. You have several handouts relating to exemptions, repealed provisions, and revenue gains (Exhibit E, Exhibit F, and Exhibit G). We had a difficult time in terms of acquiring this particular information as to what these exemptions would mean in terms of cost if they were repealed by the State. What we have done is included most all the exemptions with the exception of very few coming under the general welfare, which was a statement given to the bill drafter in order to draft this bill. Also, we indicated in the preamble to the bill this would represent a review and repeal of these various exemptions. Some of you probably have received information relative to exemptions involving religious organizations. Of course that was not our intention, but these are things we have to put on the table and take a look at. Rick Combs, Fiscal Analyst, and the tax people have put together a bill explanation (Exhibit H), setting out the sales and use tax, the property tax exemption, and the tax on governmental services. I will go through the exemptions in terms of the repeal section, and then answer any questions you might have.

Starting with the property tax exemptions and abatements on page 2 (Exhibit H), those areas we have highlighted are those things we are attempting to repeal. Some of those might have to be put back in the bill. Those not highlighted are those we attempted to leave in this particular bill. Where the amount of an exemption could be determined, the revenue estimate is written directly after the particular statute. As you can see on page 2, item 3, "The Property of Local Government" (Exhibit H), indicates that section was amended and no money was involved, or it could not be determined what amount the exemption would be. Looking at the property used to control pollution, on the next page, we see the revenue estimated for that exemption is $7 million. We estimated the radioactive fallout shelters would cost us nothing right now. Systems for heating and cooling or providing electricity, in *Nevada Revised Statutes* (NRS) 361.079, also would cost nothing. The property of surviving spouses and orphans exemption costs us about $300,000. We decided to leave the low-income housing projects in as well as the property used for relief of orphans or of sick, infirm, or indigent persons. The property of blind persons is estimated to cost us $50,000. I do not know whether or not we would take that out but it is there for the committee's consideration.

We thought property for housing elderly or handicapped persons in NRS 361.086, should remain, but you can consider whether or not you want to take it out. Going on down page page 4 (Exhibit H), our staff had included the Nathan Adelson Hospice to be taken out based upon instruction given them, but we might want to consider whether or not that would go back in the bill. And of course we are leaving all of the veterans' exemptions in place.

We could not determine what the cost of the property of a charter school would be. We could look at and consider property of charitable foundations as well as the property leased or rented to the University and Community College System of Nevada (UCCSN). Then we have the fraternities and sororities at the various universities. They came to see me yesterday and said if we did tax them we would not get the money because most of the money would go to the counties. They asked that we not repeal that particular exemption. I did not have a problem with it. I told them since they are very young people, if they go in and complete their university training, they might add more to the State in terms of what these exemptions would cost the State.

We do not know what the property of nonprofit private schools would cost the State. Property of Pershing County Kids, Horses, Rodeo, Incorporated, is something Senator Rhoads might be concerned about. I remember when this was put into statute as an exemption. We might want to consider whether or not we want it to remain as a part of our law. With regard to the property of various nonprofit organizations, we have a list of those: the Nevada Museum of Art, Incorporated, the Young Men's Christian Association, the Young Women's Christian Association, the American National Red Cross, the Boy Scouts of America, the Girl Scouts of America, and the Sierra Arts Foundation. After "Revenue Estimate," it says "See Other Total on Page Six." I do not seem to find a figure on that.

RICK COMBS, FISCAL ANALYST:
I put all the totals for all three different types of taxes on the first page (Exhibit H). The estimated property tax exemptions we could come up with, and make an estimate on, by our calculations, were about $30.4 million.

SENATOR NEAL:
The property of Nevada Children's Foundation, Incorporated is one we would probably have to reconsider. In considering the property of Nevada Heritage Association, Incorporated and the property of churches and chapels, we did not intend to get into a fight with the churches, nor did we intend to get into a fight with the people who own the cemeteries. I have already been contacted by the Catholic Church relative to removing those exemptions for public cemeteries and graveyards and the property of churches and chapels and non-private cemeteries and places of burial. We will probably have to reconsider the property of lodges and charitable organizations because as you know, we have all of the secret organizations listed there and we might not want to be having to battle the Benevolent and Protective Order of the Elks, the Fraternal Order of Eagles, the Free and Accepted Masons, the Independent Order of Odd Fellows, and all of those.

The property of certain charitable corporations takes in all of the buildings belonging to charitable corporations, together with the land actually occupied by the corporation for the purpose described, and the personal property actually used in connection therewith, so I think this is something we should consider.

SENATOR O'CONNELL:
If I can take you back to number 45 on page 6 (Exhibit H) where you are talking about the property of lodges and other charitable organizations, did you consider whether or not some of these are still active?

SENATOR NEAL:
We do not know, which is why we need to look at these on an individual basis so we can sort them out as to which should be exempt. You might want to consider whether or not it is worth keeping or removing property of noncommercial theaters, which are the buildings, furniture, and equipment of noncommercial theaters owned and operated by nonprofit educational corporations organized for the exclusive purpose of conducting classes in theater practice and the productions of plays.

As I indicated, those we did not highlight are those we recommended staying in the bill. The note highlighted under real estate leased or loaned to a for-profit business is an exemption we could look at in terms of removing. Vending stands located and operated by the blind under the auspices of the Department of Employment, Training and Rehabilitation is something I think we are probably going to have to take a look at and examine some more in terms of what they actually cost to determine whether or not we should keep those within the exemptions. Regarding the parsonages, you pay for the houses in which your preachers live. You have to figure out whether or not we want to tax that particular house. It is not a part of a church. It could be, but in some cases is not. Because it is a stand-alone facility I think the committee should consider it. But my personal opinion is we should not remove from the exemptions places associated with religious worship.

I think we would probably want to maintain the exemptions for use of exempt property to provide day care for children if the day care is provided by a nonprofit organization. The exemption for personal property leased or loaned to a for-profit business, I think, is something we could look at in terms of taking out. As we noted in prior pages, the use of vending machines located by the blind persons under the auspices of the Department of Employment, Training, and Rehabilitation is something you might want to consider. This State has shown it has an obligation to the blind where they could be self-sustaining and has allowed them to have these particular vending machines.

The issue has come up time and again regarding businesses that conserve energy or reduce reliance on fossil fuels. The exemptions for those businesses have not shown a particular benefit to the State. Therefore, we might want to look very closely and consider taking out that exemption. Of course this would apply as well to the new and expanded businesses, and as you indicated here, this exemption is between $2.5 million and $5.5 million. The revenue estimate of all of the other exemptions is about $20 million as is indicated at the bottom of page 7 (Exhibit H).

The next page starts the governmental services tax exemptions. We did not want to bother government vehicles, emergency vehicles, or vehicles operated for elderly or handicapped persons, except to the extent of vehicles owned by any political subdivision of the State of Nevada and vehicles owned by any county, municipal corporation, city, unincorporated town, or school district in Nevada. We probably want to look at that in terms of what the private connection would be. If it is used for a private purpose, then I think the exemption should go. However, if it is not government and is not strictly used for public transportation, then I think this should be removed.

SENATOR NEAL:
Another exemption under NRS 371.101 is for vehicles registered by surviving spouses or orphans. As you see, that exemption costs between $500,000 and $700,000 a year. We might want to garner some testimony on that and see whether or not we might want to revise it in some way in terms of its costs. Vehicles registered to blind persons are vehicles registered by bona fide residents of this State who are blind. I guess we are talking about this blind person who cannot

drive a car who has to have somebody drive for him or her. As you can see, that exemption is $80,000 a year, which is only minor as compared to some others.

Of course vehicles registered by veterans and anything related to veterans, in light of the war, we left as is.

Fees required for registration of fire trucks not used for general transportation, are limited to $15. We do not have a figure on what the cost of that would be to the State. We might want to take a look at antique trucks or tractors used for general transportation in terms of what the value of the antique is to the general public. If there is no value there, we will probably have to repeal the exemption for those.

The next page lists the "Local School Support Tax" (LSST) and "City-County Relief Tax Exemptions and Abatements." These exemptions are something the committee can consider. We tried to leave in the trade-in value of used vehicles when applied to the purchase price of another vehicle. We did not bother with gross receipts nor did we bother with the proceeds of mines because, as you know, that is a constitutional amendment.

But, when we get down to fuel used to propel motor vehicles, as you can see, the estimated exemption of that is about $80 million. I think this one is going to require us to really take a look and probably remove the exemption. The estimated revenue for animals and plants intended for human consumption and feed and fertilizer is about $12 million in terms of exemptions. We are talking gross receipts from the sale or storage and use of other consumables such as any form of animal life of the kind which ordinarily constitutes food for human consumption. We might not want to deal with that because right now, as you know, we did not touch food in terms of what you purchase in a grocery store. We might be able to stretch this in terms of that relationship and you might want to maintain the exemption. We might also want to maintain the exemption for farm machinery and equipment since we are looking at agriculture as part of a food-production activity. We also want to leave in number 7, which is on page 10, certain medical supplies and medicines.

On page 11 (Exhibit H), food for human consumption was something put on the ballot and passed in the 1970s when Mary Gojack was here. We did not bother with that exemption, or the exemption on the food sold to students or teachers by schools or organizations of students, parents or teachers. I think we should get rid of the exemption for works of fine art for public display. We should not remove the exemption for textbooks sold within UCSSN because if a person is trying to get an education for betterment, I think it would be in the context of the general welfare of the State. The exemption for newspapers is approximately $5.4 million.

SENATOR O'CONNELL:
I would love to see us be able to go after those filthy rags they hand out on the street. Mr. Combs, are you aware of anyone on our research staff who has done anything in this area? It might not be under the heading of newspapers but under the heading of publications or pamphlets.

SENATOR COFFIN:
In 1991 the large newspapers brought a bill hoping to remove the exemption from the weekly independents. They were going to go after the little guys and then they decided to pull the bill because they realized it would give them some bad press. In fact, we had a hearing and the representative of the press association refused to answer questions about how much taxable revenue there would be if the newspapers were taxed. There was quite an interesting debate. It

would yield more than $5 million if you removed the exemption from all newspapers.

SENATOR O'CONNELL:
I wonder if we could ask research to find those minutes so we could take a look at them.

SENATOR COFFIN:
We will not find much because they refused to testify. They withdrew the bill and the controversy went away but the point is, constitutionally, further research found if you had some editorial content, you had to exempt. If there is any kind of editorial or any kind of opinion, and it does not have to be a specific percentage of content, then you can do whatever you want with the rest of it.

SENATOR O'CONNELL:
So advertising would apply but it would depend on how much editorial space was used?

SENATOR COFFIN:
I just do not think a percentage applies. In other words, you cannot determine so much percentage is advertisement and so much is editorial. The bill proposed by the press association in 1991 did call for a minimum amount of editorial or story content, but they backed away when they realized it was creating more problems for them than they intended to cause for the others.

SENATOR NEAL:
Continuing with the proposed exemptions of the LSST document on page 12 (Exhibit H), number 15 is manufactured homes and mobile homes, and the language reads:

> Forty percent of the gross receipts from the sales and storage, use or other consumption of new manufactured homes and new mobile homes and all the gross receipts from the sales and storage, use or other consumption of used manufactured homes and used mobile homes for which sales and use taxes have been paid as a result of a previous sales, storage, use or consumption.

You might want to consider this because the language seems to suggest once the home has been sold and you have collected sales tax, you are not supposed to collect it again. The estimated revenue for this is $3 million to $3.5 million.

We did not know what aircraft and major components of aircraft represented and we had a difficult time getting that particular information. We also did not know what engines, chassis, parts, and components of professional racing vehicles and certain vehicles used by racing teams and sanctioning bodies represented. That was a bill we passed during the last session and we have not had time to collect any data in terms of what the actual cost is to the State.

If we repeal the exemptions on the gross receipts from occasional sales of tangible personal property and the storage, use, or other consumption in this State of tangible personal property, the transfer of which to the purchaser is an occasional sale, we could bring in $3 million to $4 million. The exemption for a nonprofit organization created for religious, charitable, or educational purposes, is estimated at several million dollars. However, I would ask if, upon further examination, the organization is associated in any way with the churches, and not just the profit arm of the church, we leave that exemption in the law.

As far as loans or donations to the United States, State, political subdivisions, or religious or eleemosynary organizations, we thought maybe we could look at some of those activities and the exemption might be taken out. It would require further examination in terms of testimony from some individuals associated with those organizations.

The local school support tax, abatement, and provisions of NRS 374.357, which authorizes certain new or expanded businesses to apply for an abatement, is estimated to be between $5 million and $6 million.

Repeal of the property tax exemption would bring approximately $30,400,000 back to the State, the government services tax exemptions would bring approximately $680,000, and local school support tax exemptions represent $121,000,000 in tax exemption. This is all we could justify because we had difficulty in trying to get a lot of this information from our tax department. I do not know whether they had it or just did not give it to us. They could not supply us with some of the information because it was an exemption and as an exemption, they did not follow it in terms of what it was costing the State. If it is the desire of the committee, we probably want an amendment to the bill requiring the tax department to keep up with what the exemptions are costing the State and then report back to us at the next session of the Legislature.

When we look at the total exemptions across the board, we are looking at something over $700 million. After excluding food, which is the largest portion of the exemptions, we come down to about $150 million or so.

CHRISTINA DUGAN, LOBBYIST, LAS VEGAS CHAMBER OF COMMERCE:
I am here to testify in favor of S.B. 293. We believe some of these exemptions need to be examined. Not all of them need to be removed, but we do believe the current number of exemptions is eroding our tax base and in our current situation we need to find as many tax dollars as possible. As you know, some of those do apply to business taxes and we are willing to step up and put ourselves forward to pay more.

CHAIRMAN MCGINNESS:
We have a lot of people in opposition to S.B. 293 and we still have another bill up today so I am going to ask you to combine testimony. If someone says something you were going to say, you can put your testimony on the record. Obviously, if you have 8 to 10 minutes of prepared testimony, we are not going to be able to hear it today, but we want to try to hear as many people as we can.

SENATOR O'CONNELL:
I would ask people who are testifying in opposition to the bill to declare for the record if they are talking against a specific exemption or the exemptions as a whole.

SAMUEL J. ROUTSON, CHIEF EXECUTIVE OFFICER, WINNEMUCCA FARMS, INCORPORATED:
My written testimony and a brief description and background of Winnemucca Farms have been submitted for the record (Exhibit I). I will read my testimony and then answer any questions you may have.

SENATOR NEAL:
What section of the bill are you referring to?

MR. ROUTSON:
It would be those provisions in NRS 374.285. You had mentioned those during your presentation before the committee. I believe Senator Rhoads had worked with the committee in those provisions and you wondered whether it would be wise to repeal those areas as they dealt with the essentials of life; food, fiber, and so on.

CHAIRMAN MCGINNESS:
Is the Weight Watchers handout yours (Exhibit J)?

MR. ROUTSON:
It is. We included it just for information for the committee. That is the type of value product we produce and market overseas, in this case, the United Kingdom. It is a proprietary product requiring a great deal of development and if sales tax exemptions dealing with agriculture were repealed, it would prevent our company from entering into that new product development so essential for us to compete in that market.

JOHN SANDE III, LOBBYIST, AIRPORT AUTHORITY OF WASHOE COUNTY:
Under the statute that created the airport authority in 1977, it specifically says in section 4 the airport authority is exempt from all types of taxes including property taxes. We just want to clarify for the record and in the bill, if it is processed, that we would be exempt just like we are under existing statute.

SENATOR NEAL:
Is there a particular section of the proposed bill you are referring to?

MR. SANDE:
There are a couple of places. For example if you look at section 3, it reads now "local governmental entity that receives any portion of the proceeds of the tax are exempt from taxation." There are several places in the bill making that reference. We just want to make sure we would be exempt from taxation as a government entity that does not impose those types of taxes.

SENATOR NEAL:
But as far as you are concerned now, in reading the bill, you are not listed as a repeal of the exemption right now.

MR. SANDE:
That is correct.

DAN HETRICK, OROVADA HETRICK BROS., INCORPORATED:
Much of my testimony is very similar to Mr. Routson's so I will not read my prepared comments (Exhibit K) but I will leave them for the record. I want to reiterate one thing Mr. Routson was saying. One of the exemptions other states have that we do not enjoy is our agrochemical. If the fertilizer exemption were removed as well, it would be even more difficult for us. I am of the opinion the sales tax on inputs is unrecoverable. However, taxing the final product or the retail food sales would be the most practical way to go. I realize it is a real political issue, one that has been around awhile, but it is broad-based and catches everyone uniformly.

MATTHEW YOUNG, ALPHA TAU OMEGA:
We are members of Alpha Tau Omega fraternity, an organization in existence on the campus since 1921. We have some concerns specifically regarding section 81, which permits our exemption from property taxes. We have provided for you a spreadsheet (Exhibit L) demonstrating what the various organizations on campus would be paying based on the assessed taxable value of the property. It actually only affects 10 organizations within the State of Nevada. The total is $37,210 and only .0015 percent, or $1559, is actually allocated towards the State General Fund. Just our organization alone would have a tax liability of $6878 based on the taxable value of our property. It is not hard to understand how an additional almost $7000 cost annually could definitely place an extreme hardship on an organization, if not force us to close our doors.

Due to recent events, the number of participants in Greek organizations on campus has declined and we are currently having a very difficult time making ends meet. Therefore, we offer this information for your consideration. We have great faith you will make a good decision regarding these exemptions and some of the others included in Senator Neal's bill.

ERIN LANKOWSKY, HOUSE MANAGER, ALPHA TAU OMEGA:
This $6878 represents about 10 percent of our current budget and as the current treasurer, I know we cannot afford this. We have already cut back on food we supply to our members. We have no social functions due to our current budget crisis and this almost $7000 would certainly hamper us even more, maybe even closing down the house. For the record, "the fraternities and sororities on this campus house over 250 members and if you are aware that there is currently a housing shortage on campus with the dorms, this is almost the size of a dorm they are putting up now." I just want you to know these organizations produce great leaders for the State and greatly enhance the State. We have submitted a proposed amendment (Exhibit M) and would appreciate your consideration.

RANDALL H. WALKER, DIRECTOR OF AVIATION, MCCARRAN INTERNATIONAL AIRPORT:
I am representing the Clark County Department of Aviation, McCarran International Airport, and its associated general aviation airports. Specifically, section 7 of the bill, subsection 2, paragraph (a), repeals an existing exemption for leases at an airport. This exemption has been on the books for a while and, basically, it does not require those entities operating at an airport to pay property taxes on the lease holds they currently have at the airport. I think currently, if it were a good idea to repeal this exemption, which I am not suggesting it is, the current environment would be very poor timing. If this exemption were repealed we would have to pass on around $8 million to the airlines. You may have noticed, if you have been reading the newspapers, aviation is not exactly a healthy business right now with several airlines filing bankruptcy and a couple more close to bankruptcy.

The cost of an airport does have a direct impact on how much service you get at the airport. In fact, Southwest Airlines pulled out of San Francisco as a result of the cost of the airport and moved their flights somewhere else. We are a very, what we call, low-yield market. That is, we are a discretionary destination market, which means the fares you get to Las Vegas are much less than you can get in a business market. In fact, traditionally, Las Vegas is the second lowest-yield market in the United States only to Hawaii. It is very important to not become a high-cost airport because we will drive away service.

You have to remember, somewhere between 46 and 50 percent of tourists, who drive our economy, come through the airport. If you do not have tourists staying in the hotels and paying their room tax, and gambling, which goes to the gaming tax, eating in the restaurants, which goes to the sales tax, and shopping in the shopping malls, which also goes to the sales tax, I would guess you would probably lose more revenue than you would gain. The first 2 months of this year our traffic was down 2 percent compared to pre-September 11, 2001, levels. The average nationwide was about 10 percent, but I will tell you, a high-cost airport like San Francisco was down 30 percent and Los Angeles was down 28 percent. Therefore, I would recommend this exemption not be eliminated.

SENATOR O'CONNELL:
These tax-exempt leases do not apply to the kiosk, food courts, gift stores, and magazine shops.

MR. WALKER:
Yes, they do. They apply to all leases at the airport. Not the leases off the airport, such as where we bought land and converted it to commercial use. Those are not exempt, but all leases on the airport proper are exempt.

SENATOR NEAL:
How do you pay for the additions to the airport?

MR. WALKER:
We sell bonds and then pass those costs along to the airlines. There is an annual payment to repay those bonds, which goes into the rate calculation of what the airlines pay to operate at our airport.

SENATOR NEAL:
I fail to gather how the cost of the operation of McDonalds or Burger King could be passed on to the airline. I am not getting the picture.

MR. WALKER:
It is a little complicated, but I will explain. First off, two leases would impact the airlines. The airlines' leases themselves would be a direct impact on the airline because they would pay it themselves. The concessions, if we are doing our job, we are maximizing the revenues we receive from the concessions by charging them as much as we can. In the event their costs go up, then obviously, in order to have successful concessions, what we can charge them for rent will then go down. If we generate less revenue from our concessions, we have to generate more revenue from the airlines, which means we have to drive up their cost because we are what we call a residual-based airport. What happens is, the airlines pay a basic-plug figure. They pay whatever it costs to run the airport that we do not collect from everybody else. So, if you drive down the profitability of the people who are operating at the airport, and our revenue from those sources goes down, then

we have to collect the additional revenue from the airlines, which will drive up their costs.

SENATOR NEAL:
The last time I passed through your airport, you were not selling hamburgers for $1.50.

MR. WALKER:
We also do not pay $6 an hour for employees. Employees of McDonalds and Burger King are culinary union members and are paid $11 an hour.

SENATOR NEAL:
Yes, but you are leasing to an individual who actually hires the people, so those individuals are responsible.

MR. WALKER:
Yes, but when you pay $11 an hour versus $6 an hour for an employee, you generally have to charge a little bit more for your product.

SENATOR COFFIN:
Are all of the concessions there required to hire organized employees?

MR. WALKER:
All of the food establishments are doing so.

SENATOR TOWNSEND:
Approximately how many people are you averaging through the airport per day?

MR. WALKER:
On an annual basis we have around 36 million passengers. That is in and out, so probably 18 million passengers in. Eighty percent of those are tourists or conventioneers, eight percent are connecting traffic and do not leave the airport, and about twelve percent are local.

KRYS T. BART, A.A.E., EXECUTIVE DIRECTOR, AIRPORT AUTHORITY OF WASHOE COUNTY:
John Sande adequately asked for clarification, which I support. I also support what Mr. Walker has indicated to this committee. Both of the major airports in this State, Las Vegas and Reno, must operate in conjunction with one another given the north-south traffic. Also, both of us have Southwest Airlines as our primary carrier. Mr. Walker gave you a great explanation and the Reno-Tahoe Airport operates in a similar fashion so it is necessary for both of us to be considered in this because the traffic does connect one to another.

SENATOR NEAL:
We are talking about sales tax?

MR. WALKER:
We are talking about property tax.

SENATOR NEAL:
You also have sales tax.

MR. WALKER:

Sales tax is collected on all sales at the airport.

SENATOR NEAL:
You do not have a problem with it?

MR. WALKER:
No, there is no exemption for sales tax currently at the airport.

ROBERT E. SHRIVER, EXECUTIVE DIRECTOR, DIVISION OF ECONOMIC DEVELOPMENT, COMMISSION ON ECONOMIC DEVELOPMENT:
We would like to maintain the abatements on sales and use tax and the abatements on personal property tax. As you know, we are required by statute to report to this body each biennium. I provide a report to the director of the Legislative Counsel Bureau and over the years have reported to a joint committee hearing of Senate Taxation and Assembly Taxation to report on the activity level of our incentives. As you know, our incentives are not administratively provided. You have to qualify and be approved by the Commission on Economic Development. You have to meet what I would consider qualifying standards of wage rates. That is at least a minimum average wage of the Statewide nongovernmental average wage, which is $15.48 and involves property and capital investment and employees into the State. Over time, we have created an impact. The idea is to induce investment in Nevada. Those grants and abatements are not granted unless the company can prove they will be a net benefit to the well-being and general benefit of the State of Nevada. We in turn invest, as it were, in those companies and over time, since January 1, 2000, through December of last year, we have generated tax revenues of about $255 million. This was accomplished by inducing investment through these companies by providing sales- and use-tax abatement and business-tax abatements. I do not have all the figures on our personal property tax abatement, but it would certainly increase that number considerably. We feel for every dollar we excuse inducing an investment, we get approximately $8.50 back in tax revenue to the State of Nevada.

The abatements were first provided by this Legislature beginning in 1985 with the deferral, and continuing with the sales and use tax abatement, and then the personal property tax abatement. We think the track record speaks for itself. We have been very productive in providing an inducement for investment, which has provided significant tax revenue. Add to that $1.7 billion in payroll of these companies just from January 2000 through December 31 of last year. That is $1.7 billion in the State of Nevada that may not have been here without these abatements.

CHUCK ALVEY, PRESIDENT AND CHIEF EXECUTIVE OFFICER, ECONOMIC DEVELOPMENT AUTHORITY OF WESTERN NEVADA:
I support Ms. Bart's position on the airport issues. I also want to say to Senator Neal, this is a good idea. There are too many exemptions in too many places and they do need to be looked at and weaned down. I think you are using due diligence and are being very careful about which ones you repeal. However, these abatements are necessary as incentives for companies who are coming and looking at our State. They do not always use them. Some of them actually get approved and then do not use them, but they are incredible tools to have and for us not to have this would put us at a distinct disadvantage with our competing states who offer a variety of incentives. Of course in many states, the taxes are higher and therefore they have more to abate. Ours are pretty modest, but it does help us in many, many cases. In essence, it creates new taxes and I would sum up by saying we need these abatements to do our job to help build the economy of northern Nevada.

A. SOMER HOLLINGSWORTH, PRESIDENT AND CHIEF EXECUTIVE OFFICER, NEVADA DEVELOPMENT AUTHORITY:
The only thing I would like to add is this is one of the few exemptions we have in this State probably generating more money than it takes out of the system. We look at them as the State's investment in these companies. The exemption dollars are not in the system, so we are not taking something out of the present system. You have to look at the return on your investment. In anywhere from 9 to 24 months, a company has already put the money back in the system. Because we have a 5-year plan set up with the companies, the years after the 5-year period are all gravy. It is a tax program that stays in the system and keeps generating. As the companies add employees, it gets bigger and better. It has been a great program for us. Everything is based on quality jobs and on benefits the companies offer their employees. If they do not have good, quality benefits, they do not get the exemptions. It has been an extremely successful program and I think you really need to take a look at this because it is something we need in order to entice these companies to come into southern Nevada.

WILLIAM (JEFF) JOHNSON, ASSESSOR, HUMBOLDT COUNTY:
I will submit written testimony (Exhibit N) and then would like you to hear from two of my colleagues.

DOUG SONNEMANN, ASSESSOR, DOUGLAS COUNTY:
I would like to start with NRS 361.017 and NRS 361.042, camper shells and slide-in campers. This came on as an exemption about 20 years ago because of the difficulty in pursuing these items. Currently, we have a minimum threshold of $15 on a personal property bill. A lot of the camper shells would fall below $15 so it would be a lot of paperwork for us to collect that revenue. There are not a lot of slide-in campers out there and that would be a difficult one for us to discover and bill. We appreciate the fact you are eliminating cemeteries.

Finally, NRS 361.150 is the exemption for volunteer fire departments. I would request that exemption be continued. There are 11 volunteer fire departments in Douglas County, which I think is fairly typical for a lot of the counties. The property we own ourselves, as organizations, is fire suppression equipment, training equipment, and all your visual aids as well as fund-raising equipment to buy more fire suppression equipment. Those items are used for the benefit of the public. They are used for putting out fires, saving the taxpayers money, and as a worst-case scenario, we would just transfer those over to the counties.

CHAIRMAN MCGINNESS:
How are most volunteer fire departments organized? Are they nonprofit organizations, or do they operate under the auspices of the county?

MR. SONNEMANN:
You are correct on both instances. We operate under the auspices of the East Fork Fire and Paramedic District. We are a nonprofit organization. We get equipment and support training from the district, and then we use our fund-raising activities to supplement it for the greater good. I think it is fairly typical of the non-career departments throughout the State.

SENATOR NEAL:
I do not think it was our intention to get rid of the exemption for the volunteer fire departments because they fall within the category of the health and safety and life-sustaining activities.

MARK SCHOFIELD, ASSESSOR, CLARK COUNTY:
To avoid any redundancy, I echo the sentiments of my colleagues. Additionally, I am in opposition to every repeal of the property tax exemptions. It took a great deal of time and effort and a great deal of deliberation on your part to create these exemptions to begin with. Mr. Walker spoke to the one relative to the airport, which is a perfect example. It is an exemption created by the State Legislature in 1997. I think Mr. Walker articulated very eloquently the reasons why it should not be repealed.

Most recently, the exemption for surviving spouses came into effect in the 2001 Session of the State Legislature and was one the assessors had been supporting for the last decade. One exemption, however, we are in favor of repealing is the renewal of the orphan exemption. In fact, it now rests in Assembly Bill (A.B.) 533.

ASSEMBLY BILL 533: Makes various changes to provisions governing the recordation and taxation of property. (BDR 32-122)

I think to remove any exemption the State Legislature has afforded, whether it be the business community or the taxpayers themselves, will require a great deal of thought and deliberation. I am not sure you can do this in one session but I commend Senator Neal for bringing forward this issue. In fact, I believe this is an issue to be studied by one of the interim committees reviewing taxation.

DOUG D. BUSSELMAN, LOBBYIST, NEVADA FARM BUREAU:
The two specific exemptions for which we have concerns deal with NRS 374.285 and NRS 374.286. These are the agricultural exemptions.

> For the record, the farm machinery and equipment exemption is currently a partial exemption. In the last Legislative Session, the legislation was passed to alleviate the local portion of that sales tax. The State still maintains its share of that particular tax. In the case of NRS 374.285, the animals and plants intended for human consumption, feed, and fertilizer; the farmers who have come before me have spoken to that but we want to very much emphasize the disastrous effects this kind of exemption change would have on Nevada agriculture. You are basically requiring farmers and ranchers to pay a premium on the input they would be using in their production and you would also be requiring them to take a discount of that same sales tax percent off of the sale of their products. That combination would be disastrous for farm and ranch families in this State. So, that particular exemption, we believe, is critical.

I have furnished the committee with written testimony (Exhibit O).

GAYLYN J. SPRIGGS, LOBBYIST, NEVADA TAXPAYERS ASSOCIATION:
The Nevada Taxpayers Association did have some concerns with some of the exemptions in the bill but we have always been in favor of diminishing the exemptions in order to broaden the tax base. We would like to thank Senator Neal for presenting the bill and bringing about the debate. I would just like to bring your attention to section 10 on page 13 where this bill creates a new exemption not existing before. I believe it is just opposite of what we are trying to do. In subsection 2, on the agricultural deferred liens, always before, if the Nature Conservancy or one of those groups purchased agricultural property with a deferred lien, they had to pay the lien. This removes that language so they do not have to pay the lien anymore. We thought maybe that had slipped by in the process.

SENATOR NEAL:
Yes, it did.

MS. SPRIGGS:
On another note, section 4, page 6, on the bees, the camper shells, and the boats, those items the assessors are concerned about, we have worked a lot with the assessors association to provide the exemptions for those items. It did not make sense to try to collect on those because it costs more to collect it than what it brought in.

STEVE K. WALKER, LOBBYIST, TRUCKEE MEADOWS WATER AUTHORITY:
Truckee Meadows Water Authority was created almost 2 years ago with Reno, Sparks, and Washoe County agreeing on something, which is unusual. The purchase of the water company and the water resources in northern Nevada was very important to those citizens. It was a competitive environment at that time in water companies being sold, particularly by a foreign company. When the negotiations were going on, Reno, Sparks, and Washoe County counted on the Truckee Meadows Water Authority being exempt. We were afraid this legislation would make us vulnerable to motor vehicles privilege tax and property tax. Basically, the impact, including sales tax would be approximately $2.4 million. To cover the $2.4 million we would then increase water rates by 5 percent. Therefore we ask to be exempted.

SENATOR NEAL:
What section are you referring to?

MR. WALKER:
The section I am referring to on the motor vehicle privilege tax in section 12.

LUCILLE LUSK, LOBBYIST, NEVADA CONCERNED CITIZENS:
Nevada Concerned Citizens do support a careful review of categories of tax exemptions and of individual exemptions within those categories based on specific, valid criteria recognizing constitutional and practical implications. We initially thought we would be opposed to this bill because it seemed to be a broad-brushed elimination of virtually all exemptions without a careful review. It now appears that is not Senator Neal's intention. Instead, his intention seems to be a careful review, which we certainly support and urge you to carry it forward.

BENJAMIN J. BLINN, LOBBYIST:
I am interested in the aircraft aspect of the bill in NRS 374.322. I am concerned about aircraft parts and components and used aircraft. I think you need to audit the aircraft parts and the industry and how they are being used because it is a high-dollar deal.

MYLA C. FLORENCE, DIRECTOR, DEPARTMENT OF EMPLOYMENT, TRAINING AND REHABILITATION:
I am testifying in opposition to section 7, subsection 2, paragraph (f) and section 8, subsection 3, paragraph (a), which repeals real and personal property exemptions for blind vendors operating under the auspices of the Bureau of Services to the Blind and Visually Impaired of the Rehabilitation Division of the Department of Employment, Training and Rehabilitation. The blind enterprise program established under the Randolph-Sheppard Act in NRS 426 provides blind vendors priority rights to operate vending facilities on State, local, and federal properties where locations are determined to be appropriate. The program is self-sustaining and funded by fees paid by operators. The amount of fees is based on the operator's net proceeds. The net proceeds are the amount of money remaining after the operator has deducted ordinary and normal business expenses from their gross income. Consequently, the repeal of these exemptions would have an impact on their gross profits and net proceeds, which in turn, would impact the program as a whole, reducing

opportunities for program growth and new operators.

PAUL "LUKE" PUSCHNIG, LOBBYIST, LAS VEGAS CONVENTION AND VISITORS AUTHORITY:
I am legal counsel for the Las Vegas Convention and Visitors Authority (LVCVA). I would like to point out a couple of things to the committee, specifically sections 7 and 12. In regard to section 7, it would seem from a quick reading a possible argument could be made in the removal of paragraph (l) of NRS 361.157. The LVCVA could possibly be subject to the tax to which it refers. In addition, under the current language in section 12, LVCVA would also be subject to this particular tax. We use our money to market Las Vegas to the rest of the world and in today's trying times, we need to be able to have every dime in order to do that.

KEITH L. LEE, LOBBYIST, SOUTHWEST AIRLINES:
Southwest Airlines is the largest commercial carrier in this State. I will simply echo the objections registered with you previously by Mr. Walker, Ms. Bart, and Mr. Schofield regarding section 7 with respect to the cost it would pass on to the airlines.

I would also echo the comments and objections of Mr. Shriver, Mr. Alvey, and Mr. Hollingsworth with respect to the exemptions regarding economic development. *Nevada Revised Statutes* 374.322 exempts from sales tax, aircraft and aircraft engine component parts. When the airline industry recovers, we would hope we could continue to convince airlines they need to open maintenance facilities to a greater extent than they already have, particularly at McCarran International Airport. That exemption is a great economic development incentive.

SENATOR COFFIN:
We had a huge increase in our contract rate for flying with Southwest Airlines. What was the reason?

MR. K. LEE:
It is simply the cost of doing business. Southwest Airlines' standard rate is not the State rate. As you know the State rate is much less than the standard rate. It is barely a break-even rate for Southwest in the Reno-Las Vegas market, given the additional costs the Transportation Security Administration (TSA) and the federal government have placed on the airlines. In addition, a year ago we were paying $0.60 to $0.62 cents per gallon for aviation fuel, we now are paying about $1.35. To put that in some perspective, for every penny increase in the cost of aviation fuel, it costs the industry $11 million annually so you can see what a doubling of the cost of aviation fuel does to the airlines.

ROBERT V. PAYANT, LOBBYIST, NEVADA CATHOLIC CONFERENCE:
While the Catholic Church of Nevada would oppose an elimination of the exemptions for property tax and other exemptions existing now, we think the idea of a review of the charitable and other exemptions should be examined. We would participate and do our best to help in any way we can.

CHAIRMAN MCGINNESS:
If there is no further testimony, we will close the hearing on S.B. 293 and begin testimony on S.B. 353.

SENATE BILL 353: Clarifies requirements for determining whether charitable organization qualifies for exemption from taxes on retail sales. (BDR 32 593)

JAMES L. WADHAMS, LOBBYIST, NEVADA HOSPITAL ASSOCIATION:
As this committee is aware, we have many nonprofit hospitals in our State. Some are religious-based and some are just nonprofit 501 Internal Revenue Code (c)(3) hospitals and they have been exempt from taxation since the beginning of the sales tax as far as we can determine. They have never been taxed. In the course of the last biennium, the Department of Taxation, in doing a review of the tax exempt statuses, decided to review these facilities and the question arose as to whether they were tax exempt. The reason we have asked for this bill was actually in cooperation with the tax commission and the tax department to clarify the status. As some of the longer-serving members may recall, this issue actually came in front of this committee and the Assembly committee in 1995 clarifying and ensuring the hospitals remained tax-exempt.

CHAIRMAN MCGINNESS:
The fiscal note on this just arrived. It is under the heading of Bill Draft Request (BDR) 32-593, as S.B. 353 and it is a zero-dollar fiscal note. Mr. Chinnock, could you give us your comments?

CHARLES CHINNOCK, EXECUTIVE DIRECTOR, DEPARTMENT OF TAXATION:
I will echo everything Mr. Wadhams has said. The reason the fiscal note shows no impact is as he stated. This would just be a clarification and because they were already tax-exempt, continuing this would cause no impact.

CHAIRMAN MCGINNESS:
This would just continue what has been historical.

MR. CHINNOCK:
This would provide further definition as to legislative intent that nonprofit hospitals were indeed intended to be exempt.

CHAIRMAN MCGINNESS:
Since there is no further testimony, we will close the hearing on S.B. 353.

SENATOR RHOADS MOVED TO DO PASS S.B. 353.

SENATOR O'CONNELL SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

*****

CHAIRMAN MCGINNESS:
The meeting is adjourned at 4:29 p.m.

RESPECTFULLY SUBMITTED:

_____
Ardyss Johns,
Committee Secretary

APPROVED BY:

_____
Senator Mike McGinness, Chairman

DATE:_____

STATE OF NEVADA

DEPARTMENT OF TAXATION

1998-99

NET PROCEEDS OF MINERALS

BASED ON 1998 CALENDAR YEAR REPORT

PREPARED BY THE

DIVISION OF ASSESSMENT STANDARDS

CENTRALLY ASSESSED PROPERTIES

FOR CERTIFICATION BY THE DEPARTMENT OF TAXATION

April 20, 1999

003378

0735

NEVADA TAX COMMISSION

Honorable Kenny C. Guinn
Governor, Ex Officio Member

Barbara Smith Campbell
Chairwoman

Members

Dean Baker Valerie Cooke
Candace Evart Harley E. Harmon Charles A. Lenzie
John E. Marvel Robert E. Robinson

STATE BOARD OF EQUALIZATION

Chairman
Reese Perkins

Members

Rose M. K. Dominguez Dan Kessler
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DEPARTMENT OF TAXATION

David P. Pursell
Executive Director

DIVISION OF ASSESSMENT STANDARDS

Lila Clark
Chief

Ernest J. Wood
Supervisor
Locally Assessed Properties

Terry Rubald
Supervisor
Centrally Assessed Properties

Jack W. Moore
Supervisor
Local Government Finance

CALENDAR YEAR 1998 GROSS PROCEEDS OF MINERALS

STATEWIDE

	OPERATORS
CARSON CITY	$0
CHURCHILL	75,426,316
CLARK	22,933,419
DOUGLAS	58,923
ELKO	447,416,809
ESMERALDA	15,364,112
EUREKA	946,588,326
HUMBOLDT	365,445,759
LANDER	487,542,114
LINCOLN	848,018
LYON	17,294,892
MINERAL	48,280,893
NYE	241,260,274
PERSHING	164,415,377
STOREY	4,471,248
WASHOE	22,614,920
WHITE PINE	138,580,297
TOTAL	$2,998,541,697

COMPARATIVE GROSS PROCEEDS

STATEWIDE

	1993	1994	1995	1996	1997
CARSON CITY	$1,940	$0	$0	$0	$0
CHURCHILL	79,518,980	83,245,380	90,319,194	91,182,171	95,164,481
CLARK	19,303,427	22,069,923	23,651,122	24,000,646	24,651,712
DOUGLAS	44,503	56,898	59,202	60,332	59,400
ELKO	195,560,100	185,538,925	183,468,317	232,491,376	436,306,177
ESMERALDA	19,088,992	14,871,432	20,093,078	22,404,550	17,091,459
EUREKA	1,132,322,831	1,296,256,179	1,412,680,742	1,378,356,628	1,081,393,284
HUMBOLDT	433,637,339	502,013,010	441,823,937	411,940,651	405,242,328
LANDER	269,313,384	256,397,592	279,941,477	257,310,613	304,581,894
LINCOLN	504,149	811,225	703,140	775,301	867,282
LYON	12,823,382	16,084,643	20,364,101	23,072,952	22,204,144
MINERAL	82,665,338	97,984,533	86,967,240	89,576,759	71,073,192
NYE	348,301,200	328,099,904	229,547,869	266,856,846	260,895,658
PERSHING	100,424,571	101,037,671	111,601,851	145,511,941	163,044,935
STOREY	5,265,044	8,637,883	6,794,526	5,374,116	4,630,319
WASHOE	30,219,678	25,663,503	22,734,738	20,472,633	20,234,732
WHITE PINE	50,250,209	58,242,380	60,872,905	141,296,133	210,645,681
TOTAL	$2,779,245,067	$2,997,011,081	$2,991,623,439	$3,110,683,648	$3,118,086,678

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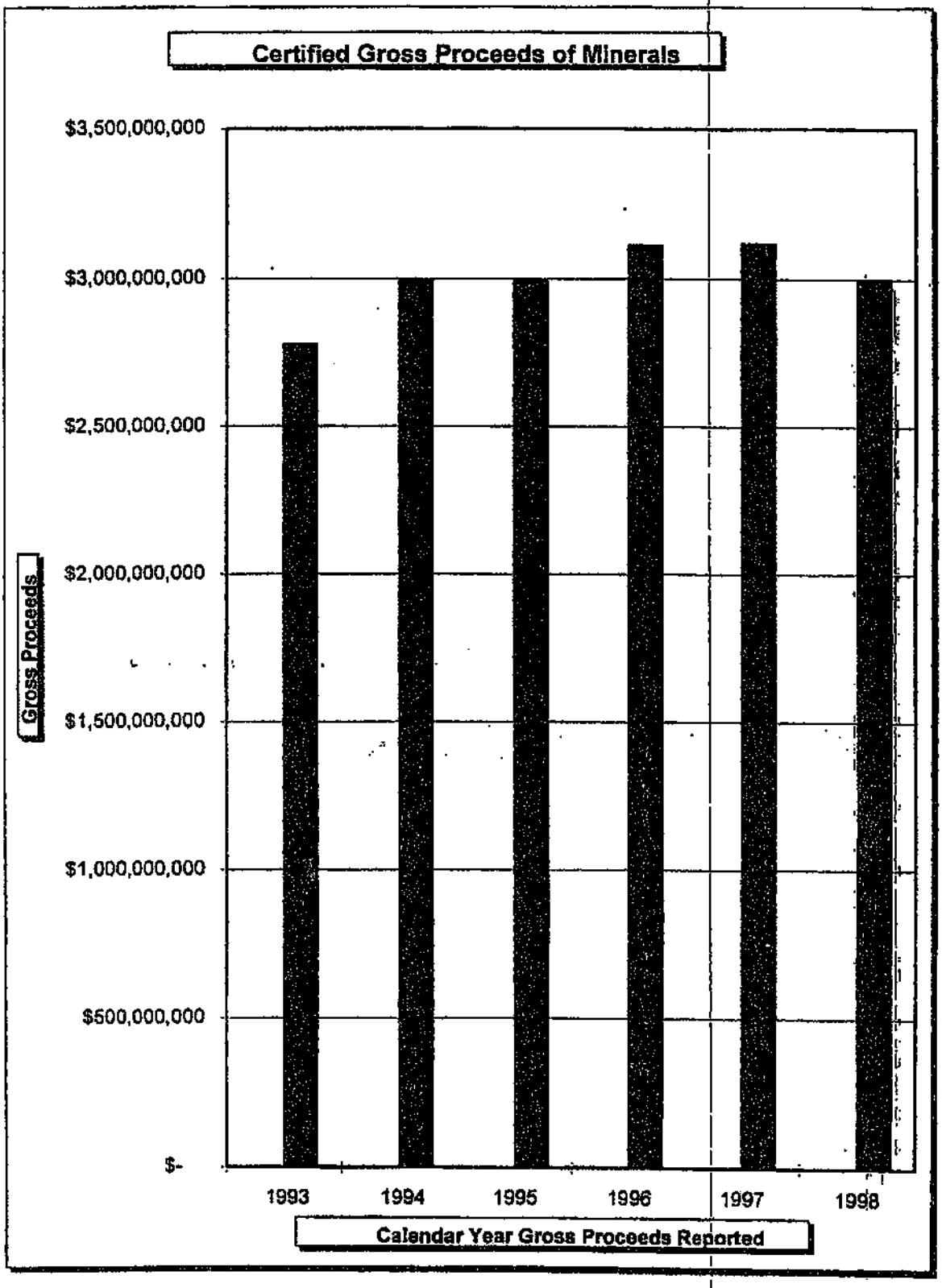
Certified Gross Proceeds of Minerals
$3,500,000,000
$3,000,000,000
$2,500,000,000
$2,000,000,000
$1,500,000,000
$1,000,000,000
$500,000,000
$-
Gross Proceeds
1993
1994
1995
1996
1997
1998
Calendar Year Gross Proceeds Reported

003381

0738

CALENDAR YEAR 1998 NET PROCEEDS OF MINERALS
CERTIFIED BY THE DEPARTMENT OF TAXATION

STATEWIDE

	OPERATORS	ROYALTIES	TOTAL
CARSON CITY	$0	$0	$0
CHURCHILL	24,844,828	3,101,392	$27,946,220
CLARK	6,178,497	60,000	$6,238,497
DOUGLAS	48,794	0	$48,794
ELKO	128,811,904	10,788,701	$139,600,605
ESMERALDA	761,250	280,502	$1,041,752
EUREKA	147,599,560	38,031,802	$185,631,362
HUMBOLDT	1,654,456	3,889,066	$5,543,522
LANDER	210,378,410	12,744,151	$223,122,561
LINCOLN	72,441	36,495	$108,936
LYON	1,906,724	0	$1,906,724
MINERAL	4,983,978	2,111,207	$7,095,185
NYE	23,652,806	10,260,176	$33,912,982
PERSHING	38,311,439	2,728,413	$41,039,852
STOREY	564,014	61,331	$625,345
WASHOE	852,667	843,143	$1,695,810
WHITE PINE	10,740,666	1,686,385	$12,427,051
TOTAL	$601,362,434	$86,622,764	$687,985,198

COMPARATIVE NET PROCEEDS

STATEWIDE

	1993	1994	1995	1996	1997
CARSON CITY	$334	0	$0	$0	$0
CHURCHILL	34,445,224	35,589,915	43,917,772	$43,400,645	$46,511,564
CLARK	5,275,143	7,653,730	7,146,357	$7,913,255	$8,115,530
DOUGLAS	29,398	43,203	48,689	$50,337	$38,857
ELKO	30,769,334	$17,537,908	9,132,318	$21,501,161	$144,562,766
ESMERALDA	4,939,379	4,434,288	7,013,556	$9,236,968	$926,241
EUREKA	356,015,120	465,812,474	474,563,434	$357,833,953	$263,248,542
HUMBOLDT	108,548,554	127,538,854	40,071,034	$14,171,786	$23,396,041
LANDER	95,482,829	88,373,027	92,741,822	$37,698,138	$19,613,701
LINCOLN	174,238	210,288	87,926	$71,553	$112,469
LYON	27,094	857,167	2,617,447	$3,283,792	$1,939,058
MINERAL	23,139,826	34,587,846	22,728,585	$20,466,698	$17,360,325
NYE	139,752,125	166,400,006	55,705,167	$67,706,345	$61,004,913
PERSHING	29,030,392	24,823,456	17,149,633	$25,025,267	$36,293,866
STOREY	479,447	1,168,407	694,062	$590,241	$770,140
WASHOE	4,163,694	3,626,062	1,703,879	$1,386,921	$870,920
WHITE PINE	7,305,976	15,759,391	11,521,765	$2,829,619	$7,737,773
TOTAL	$839,578,107	$994,416,022	$786,843,446	$613,166,679	$632,502,706

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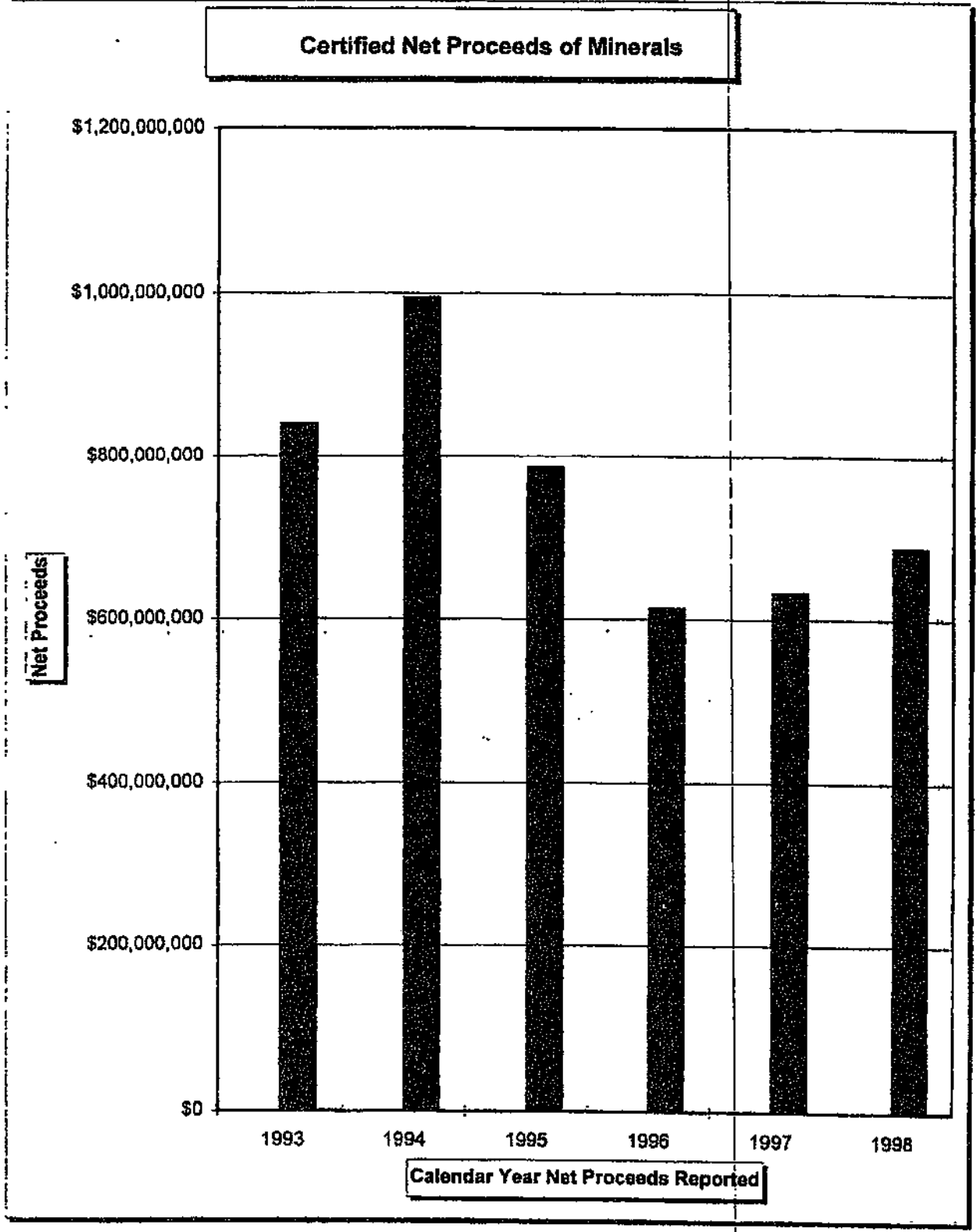
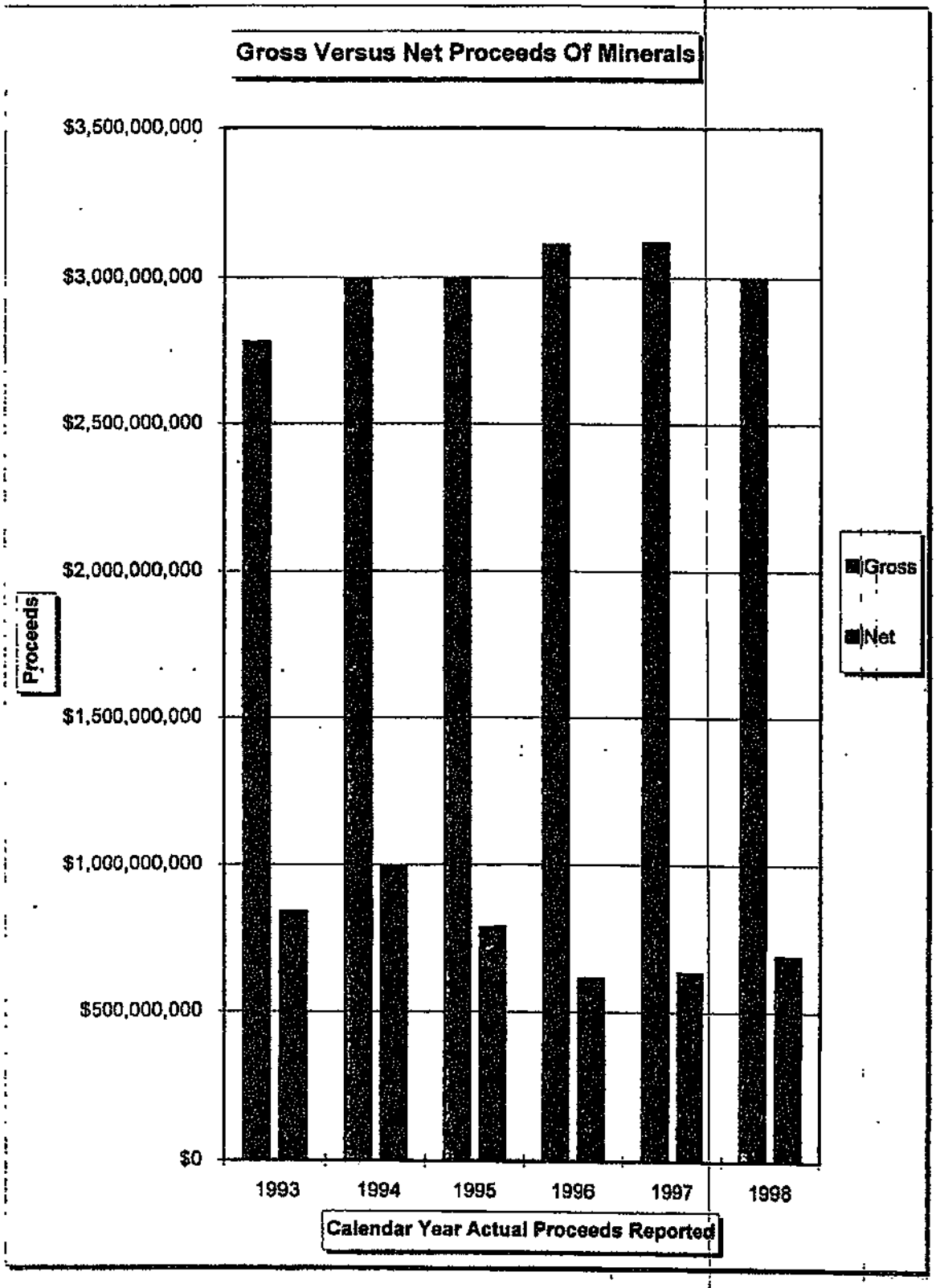

Certified Net Proceeds of Minerals
$1,200,000,000
$1,000,000,000
$800,000,000
$600,000,000
$400,000,000
$200,000,000
$0
Net Proceeds
1993
1994
1995
1996
1997
1998
Calendar Year Net Proceeds Reported

003383

0740


Gross Versus Net Proceeds Of Minerals
$3,500,000,000
$3,000,000,000
$2,500,000,000
$2,000,000,000
$1,500,000,000
$1,000,000,000
$500,000,000
$0
Proceeds
1993
1994
1995
1996
1997
1998
Calendar Year Actual Proceeds Reported
Gross
Net

COMPARATIVE SURVEY OF NET PROCEEDS OF MINERALS
ANNUAL TAX REVENUES
BASED ON CALENDAR YEAR 1998 REPORTS

CALENDAR YEAR	ANNUAL NET PROCEEDS	ANNUAL COUNTY TAX	ANNUAL STATE TAX	AVERAGE COUNTY TAX RATE	AVERAGE STATE TAX RATE	AVERAGE COMBINED TAX RATE
1963	$20,502,707	$703,686		3.43		
1964	16,612,968	563,455		3.39		
1965	17,806,578	605,304		3.40		
1966	27,084,338	904,289		3.34		
1967	23,542,134	771,693		3.28		
1968	30,984,767	1,089,661		3.52		
1969	58,424,028	2,105,351		3.60		
1970	59,043,306	2,106,078		3.57		
1971	40,173,554	1,457,110		3.63		
1972	53,115,680	1,994,296		3.75		
1973	57,362,409	2,177,059		3.80		
1974	78,319,357	2,977,649		3.80		
1975	49,434,863	1,813,128		3.67		
1976	36,034,946	1,300,130		3.61		
1977	49,474,846	1,842,284		3.72		
1978	53,786,490	1,967,717		3.66		
1979	80,690,289	1,979,849		2.45		
1980	128,872,213	3,243,145		2.52		
1981	164,738,579	1,912,754		1.16		
1982	159,999,360	1,799,734		1.12		
1983	245,688,351	4,152,133		1.69		
1984	184,986,780	3,221,588		1.74		
1985	198,263,327	3,526,911		1.78		
1986	374,664,142	6,091,451		1.63		
1987	627,330,373	12,083,696		1.93		
1988	778,252,531	13,567,632		1.74		
1989	748,051,856	14,374,372	21,863,394	1.92	2.92	4.84
1990	887,035,290	18,838,751	23,896,151	2.12	2.69	4.81
1991	677,341,905	14,265,644	18,179,877	2.11	2.68	4.79
1992	727,396,245	15,878,428	18,839,425	2.18	2.59	4.77
1993	839,578,107	18,278,640	22,130,656	2.18	2.64	4.82
1994	994,416,022	21,481,588	26,723,326	2.16	2.69	4.85
1995	786,843,446	15,536,905	22,031,121	1.97	2.80	4.77
1996	613,166,679	12,641,648	16,556,640	2.06	2.70	4.76
1997	632,502,706	13,948,654	16,110,703	2.21	2.55	4.76
1998	687,985,198	17,333,035	15,934,116	2.52	2.32	4.84

003385

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CALENDAR YEAR 1998 NET PROCEEDS OF MINERALS

	INDUSTRY	1998 ACTUAL GROSS PROCEEDS	1998 ACTUAL NET PROCEEDS	1998 ACTUAL COUNTY TAX DUE	1998 ACTUAL STATE DEBT DUE	1998 ACTUAL STATE GF DUE	1998 ACTUAL TOTAL TAX DUE
36	GOLD	$2,663,104,019	$ 544,122,306	$13,896,822.51	$816,183.48	$12,209,566.92	$26,922,572.91
39	OTHER *	221,946,290	29,028,704	761,239.58	43,543.06	436,686.03	1,241,468.67
13	GEOTHERMAL	90,989,010	23,505,064	556,024.92	35,257.60	$0.00	591,282.52
5	GYPSUM	14,524,288	2,904,077	80,319.44	4,356.11	21,667.83	106,343.38
16	OIL	7,978,090	1,802,283	47,598.14	2,703.43	24,042.98	74,344.55
109	TOTAL	$2,998,541,697	$ 601,362,434	$15,342,004.59	$902,043.68	$12,691,963.76	$28,936,012.03
	GOLD	88.81%	90.48%	90.58%	90.48%	96.20%	93.04%
	OTHER *	7.40%	4.83%	4.96%	4.83%	3.44%	4.29%
	GEOTHERMAL	3.03%	3.91%	3.62%	3.91%	0.00%	2.04%
	GYPSUM	0.48%	0.48%	0.52%	0.48%	0.17%	0.37%
	OIL	0.27%	0.30%	0.31%	0.30%	0.19%	0.26%
	TOTAL	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%

* BARITE
BASALT
BENTONITE
CLAY
COPPER CONCENTRATE
COPPER
DITOMACEOUS EARTH
DOLOMITE
FLOUSPAR
IRON
LIMESTONE
LITHIUM
MAGNESITE
OPALS
PERLITE
RHYOLITE
SALT
SILICA
THULITE
TRACE MINERALS
TURQUOISE
ZEOLITE

003386

0743

CALENDAR YEAR 1998 NET PROCEEDS OF MINERALS

	GOLD OPERATOR	1998 ACTUAL GROSS PROCEEDS	1998 ACTUAL NET PROCEEDS	1998 ACTUAL COUNTY TAX DUE	1998 ACTUAL STATE DEBT DUE	1998 ACTUAL STATE GF DUE	1998 ACTUAL TOTAL TAX DUE
1	NEWMONT GOLD	469,082,655	88,836,000	1,374,559.43	133,254.00	2,933,986.57	4,441,800.00
2	BARRICK GOLDSTRIKE	440,779,413	43,044,410	666,026.16	64,566.62	1,421,627.73	2,152,220.51
3	CORTEZ GOLD MINES - VENTURE I	328,661,513	202,382,147	6,559,812.53	303,573.22	3,255,721.60	10,119,107.35
4	BARRICK GOLDSTRIKE-MEIKLE	252,482,490	115,821,346	2,650,803.15	173,732.02	2,966,532.14	5,791,067.31
5	SANTA FE PACIFIC - TWIN CREEK	203,918,889	0	0.00	0.00	0.00	0.00
6	ROUND MOUNTAIN GOLD	153,026,362	14,362,550	501,253.00	21,543.83	195,330.68	718,127.51
7	INDEPENDENCE MINING - JERRITT	102,098,677	3,807,625	87,145.11	5,711.44	0.00	92,856.55
8	ECHO BAY MINES - McCOY	97,165,735	3,017,363	97,801.79	4,526.04	0.00	102,327.83
9	COEUR ROCHESTER	64,093,784	18,561,748	530,940.24	27,842.62	369,304.54	928,087.40
10	BARRICK BULLFROG INC	63,713,118	4,676,594	150,263.64	7,014.89	76,551.17	233,829.70
11	GETCHELL GOLD	46,901,985	0	0.00	0.00	0.00	0.00
12	FLORIDA CANYON	45,432,489	0	0.00	0.00	0.00	0.00
13	SANTA FE PACIFIC - LONE TREE	44,265,194	0	0.00	0.00	0.00	0.00
14	ROSEBUD MINING	41,566,308	15,089,297	431,614.25	22,633.95	300,216.65	754,464.85
15	KENNECOTT - RAWHIDE	41,179,871	4,558,526	159,092.56	6,837.79	61,995.95	227,926.30
16	BALD MOUNTAIN MINING - BALD M	38,707,975	7,400,444	238,227.69	11,100.67	120,693.84	370,022.20
17	HOMESTAKE MINING	34,966,885	15,227,730	235,618.67	22,841.60	502,926.24	761,386.51
18	NEWMONT - CAP/BOOT	34,859,246	0	0.00	0.00	0.00	0.00
19	HYCROFT - CROFOOT MINE	32,582,095	0	0.00	0.00	0.00	0.00
20	NEWMONT GOLD MINING - MULE CA	30,888,672	0	0.00	0.00	0.00	0.00
21	MARIGOLD MINING	21,187,994	1,581,729	32,234.06	2,372.59	0.00	34,606.65
22	ALTA GOLD - GRIFFON	11,135,314	3,340,222	107,525.09	5,010.33	4,372.35	116,907.77
23	BATTLE MOUNTAIN GOLD - REONA/	10,568,936	0	0.00	0.00	0.00	0.00
	DEE GOLD	10,497,807	0	0.00	0.00	0.00	0.00
	PINSON - PINSON	10,350,048	0	$0.00	$0.00	$0.00	$0.00
26	DAISY GOLD MINING CO - M L	9,575,690	1,328,338	42,680.83	1,992.51	0.00	44,673.34
27	KINROSS CANDELARIA	7,081,821	423,786	14,790.13	635.68	0.00	15,425.81
28	NEWMONT - RAIN	6,887,004	0	0.00	0.00	0.00	0.00
29	ALTA GOLD - KINSLEY	2,825,145	501,558	$11,479.16	$752.34	$307.46	$12,538.96
30	MINERAL RIDGE RESOURCES	2,745,862	0	$0.00	$0.00	$0.00	$0.00
31	CATHEDRAL GOLD	1,153,887	160,893	4,955.02	241.34	0.00	5,196.36
32	AMAX GOLD INC - E	957,703	0	0.00	0.00	0.00	0.00
33	ALTA GOLD COMPANY	860,088	0	$0.00	$0.00	$0.00	$0.00
34	MT HAMILTON MINING CO	538,645	0	0.00	0.00	0.00	0.00
35	INDEPENDENCE MINING - BIG SPR	278,972	0	$0.00	$0.00	$0.00	$0.00
36	AMERICAN PACIFIC MINERALS LTD	84,747	0	$0.00	$0.00	$0.00	$0.00
	TOTAL	2,663,104,019	544,122,306	13,896,822.51	816,183.48	12,209,566.92	26,922,572.91

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CALENDAR YEAR 1998 NET PROCEEDS OF MINERALS

	OTHER OPERATOR	1998 ACTUAL GROSS PROCEEDS	1998 ACTUAL NET PROCEEDS	COMMODITY	1998 ACTUAL COUNTY TAX DUE	1998 ACTUAL STATE DEBT DUE	1998 ACTUAL STATE GF DUE	1998 ACTUAL TOTAL TAX DUE
1	B H P NV MINING - ROBINSON	88,198,363	-	COPPER	-	-	-	-
2	CONTINENTAL LIME INC	26,497,747	8,656,417	LIMESTONE	198,119.42	12,984.63	221,716.68	432,820.86
3	ARIMETCO - E	12,858,116	1,742,900	COPPER	52,895.27	2,614.35	-	55,509.62
4	CYPRUS - FOOTE	11,927,429	579,849	LITHIUM	18,117.98	1,019.77	-	19,137.75
5	BAROID CORP - ROSES	10,925,325	-	BARITE	-	-	-	-
6	SIMPLOT SILICA	9,862,772	4,386,573	SILICA	98,947.93	6,579.86	113,800.86	219,328.65
7	M-I - GREYSTONE	9,838,437	1,359,768	BARITE	44,074.16	2,039.65	-	46,113.81
8	EAGLE PICHER	7,650,369	2,378,720	D.E.	68,040.91	3,568.08	11,646.21	83,255.20
9	MOLTAN	6,449,905	910,508	CLAY	21,545.35	1,365.76	4,404.13	27,315.24
10	CHEMSTAR - APEX	5,240,285	1,241,225	LIMESTONE	27,750.07	1,861.84	7,624.85	37,236.76
11	MIN-AD INC	5,198,531	44,798	DOLOMITE	955.41	67.20	-	1,022.61
12	BAKER HUGHES - E	4,945,495	3,613,947	BARITE	117,138.86	5,420.92	58,137.57	180,697.35
13	EAGLE PICHER	4,471,248	564,014	D.E.	13,233.46	846.02	20.87	14,100.35
14	MUD CAMP MINING	4,217,619	916,887	CLAY	31,752.71	1,375.33	-	33,128.04
15	C R MINERALS	4,117,746	1,133,223	D.E.	26,815.46	1,699.83	11,147.51	39,662.80
16	PREMIER SERVICES - CABBS MAG	2,574,401	733,503	MAGNESITE	25,599.25	1,100.25	-	26,699.50
17	NEVADA CEMENT	2,483,494	-	LIMESTONE	-	-	-	-
18	NEVADA CEMENT	552,368	-	LIMESTONE	-	-	-	-
19	WILKIN MINING	532,404	66,239	PERLITE	1,648.03	99.36	-	1,747.39
20	EAGLE PICHER	444,860	173,658	D.E.	4,109.27	260.49	2,576.56	6,946.32
21	NV EARTH - SAZA EXPLORATION	410,527	88,103	IRON	1,363.22	132.15	1,147.72	2,643.09
22	GREFCO	389,338	33,785	BASALT	900.37	50.68	-	951.05
23	ROCK SALT CO	365,120	-	SALT	-	-	-	-
24	PELLER STONE	305,178	6,202	RYOLITE	154.31	9.30	-	163.61
25	M-I - MOUNTAIN SPRINGS	284,597	-	BARITE	-	-	-	-
26	VANDERBILT - BLANCO	216,736	47,616	CLAY	1,268.97	71.42	88.09	1,428.48
27	NUTRITIONAL ADDITIVES -	215,598	12,014	DOLOMITE	343.65	18.02	-	361.67
28	AMERICAN RESOURCE CORP	214,225	-	ZEOLITE	-	-	-	-
29	VANDERBILT	145,853	1,196	CLAY	34.21	1.79	-	36.00
30	VANDERBILT	93,621	21,310	CLAY	684.71	31.97	-	716.68
31	AMERICAN COLLOID	78,910	78,910	BENTONITE	2,257.14	118.37	1,569.99	3,945.50
32	HODSON, G. KEITH	72,547	21,478	OPALS	434.93	22.22	284.58	751.73
33	CROWELL, J	62,107	53,765	FLOUSPAR	1,727.52	80.65	880.08	2,688.25
34	STANDARD MAGNESIA	58,923	46,794	IRON	970.17	73.19	1,396.34	2,439.70
35	GREFCO	19,201	1,666	BASALT	58.14	2.50	-	60.64
36	INTERNATIONAL TRACE MINERALS INC	10,436	-	T. MINERALS	-	-	-	-
37	MINTLE, JAY	6,686	5,185	TURQUOISE	168.06	7.76	83.41	259.25
38	ROYAL PEACOCK OPAL	5,500	2,180	OPALS	44.15	3.27	39.79	87.21
39	AMERICAN COLLOID	4,271	4,271	BENTONITE	86.49	6.41	120.66	213.56
	TOTAL	$221,946,290	$29,028,704		$761,239.58	$43,543.06	$436,686.03	$1,241,468.67

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CALENDAR YEAR 1998 NET PROCEEDS OF MINERALS

	GEOTHERMAL OPERATOR	1998 ACTUAL GROSS PROCEEDS	1998 ACTUAL NET PROCEEDS	1998 ACTUAL COUNTY TAX DUE	1998 ACTUAL STATE DEBT DUE	1998 ACTUAL STATE GF DUE	1998 ACTUAL TOTAL TAX DUE
1	OXBOW GEOTHERMAL	53,782,459	22,167,907	524,559.18	33,251.86	-	557,811.04
2	STEAMBOAT DEVELOPMENT CORP	13,969,673	0	-	-	-	-
3	BRADY POWER PARTNERS	6,830,159	0	-	-	-	-
4	OXBOW POWER OF BEOWAWE INC	5,182,043	0	-	-	-	-
5	CAITHNESS POWER	3,675,039	0	-	-	-	-
6	BRADY POWER - DESERT PEAK	1,998,358	459,532	10,873.91	689.30	-	11,563.21
7	EMPIRE LIM PART - EMPIRE	1,807,753	852,667	20,020.62	1,279.00	-	21,299.62
8	STEAMBOAT ENVIROSYSTEMS	1,749,999	0	-	-	-	-
9	OESI POWER - SODA LAKE	929,622	0	-	-	-	-
10	TAD'S ENTERPRISE	491,422	0	-	-	-	-
11	CALIFORNIA ENERGY-DESERTPEAK	258,579	0	-	-	-	-
12	OESI POWER - STILLWATER	249,508	0	-	-	-	-
13	ELKO HEAT COMPANY	64,396	24,958	571.21	37.44	-	608.65
	TOTAL	90,989,010	23,505,064	556,024.92	35,257.60	0.00	591,282.52

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CALENDAR YEAR 1998 NET PROCEEDS OF MINERALS

	GYPSUM OPERATOR	1998 ACTUAL GROSS PROCEEDS	1998 ACTUAL NET PROCEEDS	1998 ACTUAL COUNTY TAX DUE	1998 ACTUAL STATE DEBT DUE	1998 ACTUAL STATE GF DUE	1998 ACTUAL TOTAL TAX DUE
1	HARDIE GYPSUM	5,724,000	405,484	9,888.94	608.23	-	10,497.17
2	U S GYPSUM	5,232,066	2,189,554	62,630.00	3,284.33	21,667.83	87,582.16
3	PACIFIC COAST	2,106,362	145,215	3,469.48	217.82	-	3,687.30
4	ART WILSON - ADAMS	1,450,185	163,181	4,314.02	244.77	-	4,558.79
5	N B A	11,675	643	17.00	0.96	-	17.96
	TOTAL	14,524,288	2,904,077	80,319.44	4,356.11	21,667.83	106,343.38

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CALENDAR YEAR 1998 NET PROCEEDS OF MINERALS

	OIL OPERATOR	1998 ACTUAL GROSS PROCEEDS	1998 ACTUAL NET PROCEEDS	1998 ACTUAL COUNTY TAX DUE	1998 ACTUAL STATE DEBT DUE	1998 ACTUAL STATE GF DUE	1998 ACTUAL TOTAL TAX DUE
1	PETCON - BLACKBURN UNIT	1,330,973	403,317	6,240.52	604.98	7,270.60	14,116.10
2	MAKOIL - MONSON/TRAP	1,297,827	26,627	787.17	39.94	-	827.11
3	MAKOIL - GRANT	1,205,731	730,851	21,606.15	1,095.28	13,840.13	36,542.56
4	MAKOIL INC - TRAP SPRINGS	1,073,061	249,171	7,366.24	373.76	-	7,740.00
5	FORELAND - EAGLE SPRINGS	964,082	0	-	-	-	-
6	FORELAND - GHOST RANCH	533,947	217,663	6,434.77	326.49	1,945.25	8,706.51
7	BIG WEST OIL & GAS	477,205	29,660	876.84	44.49	-	921.33
8	WESTERN GENERAL INC - KATE SPRINGS	431,845	78,608	2,323.89	117.91	-	2,441.80
9	MAKOIL INC - BRITTON 13-21	154,397	12,465	368.50	18.70	-	387.20
10	MAKOIL - KATE SPRINGS 2-12	134,179	0	-	-	-	-
11	FRONTIER EXPLORATION 7403	130,778	0	-	-	-	-
12	FORELAND - SAND DUNE	97,625	52,120	1,540.82	78.18	987.00	2,606.00
13	WESTERN GENERAL INC - TAYLOR FEDERAL 1	71,031	0	-	-	-	-
14	FRONTIER EXPLORATION 14-43	57,536	1,801	53.24	2.70	-	55.94
15	FORELAND - NORTH WILLOW CREEK FIELD	13,409	0	-	-	-	-
16	FORELAND 1-5 - TONERA RANCH	4,464	0	-	-	-	-
	TOTAL	7,978,090	1,802,283	$47,598.14	$2,703.43	$24,042.98	$74,344.55

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CALENDAR YEAR 1998 NET PROCEEDS OF MINERALS

COUNTY - CARSON CITY OPERATOR	1998 ACTUAL GROSS PROCEEDS	1998 ACTUAL NET PROCEEDS	1998 ACTUAL COUNTY TAX DUE	1998 ACTUAL STATE DEBT DUE	1998 ACTUAL STATE GF DUE	1998 ACTUAL TOTAL TAX DUE
0						
TOTAL	0	0	$0.00	$0.00	$0.00	$0.00

OPERATOR COUNTY - CHURCHILL	1998 ACTUAL GROSS PROCEEDS	1998 ACTUAL NET PROCEEDS	1998 ACTUAL COUNTY TAX DUE	1998 ACTUAL STATE DEBT DUE	1998 ACTUAL STATE GF DUE	1998 ACTUAL TOTAL TAX DUE
1 OXBOW GEOTHERMAL	53,782,459	0	524,559.18	33,251.86	0.00	557,811.04
2 BRADY POWER PARTNERS	6,830,159	459,532	0.00	0.00	0.00	0.00
3 MOLTAN	6,449,905	1,133,223	21,545.35	1,369.76	4,404.13	27,319.24
4 C R MINERALS	4,117,746	0	26,815.46	1,699.83	11,147.51	39,662.80
5 BRADY POWER - DESERT PEAK *	1,998,358	173,658	10,873.91	689.30	0.00	11,563.21
6 OESI POWER - SODA LAKE	929,622	0	0.00	0.00	0.00	0.00
7 EAGLE PICHER	444,860	910,508	4,109.27	260.49	2,576.56	6,946.32
8 HUCK SALT CO	365,120	0	0.00	0.00	0.00	0.00
9 CALIFORNIA ENERGY-DESERTPEAK	258,579	0	0.00	0.00	0.00	0.00
10 OESI POWER - STILLWATER	249,508	22,167,907	0.00	0.00	0.00	0.00
TOTAL	75,426,316	24,844,828	$587,903.17	$37,267.24	$18,128.20	$643,298.61

OPERATOR COUNTY - CLARK	1998 ACTUAL GROSS PROCEEDS	1998 ACTUAL NET PROCEEDS	1998 ACTUAL COUNTY TAX DUE	1998 ACTUAL STATE DEBT DUE	1998 ACTUAL STATE GF DUE	1998 ACTUAL TOTAL TAX DUE
1 SIMPLOT SILICA	9,862,772	4,386,573	98,947.93	6,579.86	113,800.86	219,328.65
2 HARDIE GYPSUM	5,724,000	405,484	$9,888.94	$608.23	$0.00	$10,497.17
3 CHEMSTAR - APEX	5,240,285	1,241,225	27,750.07	1,861.84	7,624.85	37,236.76
4 PACIFIC COAST	2,106,362	145,215	3,469.48	217.82	0.00	3,687.30
TOTAL	22,933,419	6,178,497	$140,056.42	$9,267.75	$121,425.71	$270,749.88

OPERATOR COUNTY - DOUGLAS	1998 ACTUAL GROSS PROCEEDS	1998 ACTUAL NET PROCEEDS	1998 ACTUAL COUNTY TAX DUE	1998 ACTUAL STATE DEBT DUE	1998 ACTUAL STATE GF DUE	1998 ACTUAL TOTAL TAX DUE
1 STANDARD MAGNESIA	58,923	48,794	$970.17	$73.19	$1,396.34	$2,439.70
TOTAL	58,923	48,794	$970.17	$73.19	$1,396.34	$2,439.70

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OPERATOR / COUNTY - ELKO	1998 ACTUAL GROSS PROCEEDS	1998 ACTUAL NET PROCEEDS	1998 ACTUAL COUNTY TAX DUE	1998 ACTUAL STATE DEBT DUE	1998 ACTUAL STATE GF DUE	1998 ACTUAL TOTAL TAX DUE
1 BARRICK GOLDSTRIKE-MEIKLE	252,482,490	115,821,346	2,650,803.15	173,732.02	2,966,532.14	5,791,067.31
2 INDEPENDENCE MINING - JERRITT	102,098,677	3,807,625	87,145.11	5,711.44	0.00	92,856.55
3 NEWMONT - CAP/BOOT	34,859,246	0	0.00	0.00	0.00	0.00
4 CONTINENTAL LIME INC	26,497,747	8,656,417	198,119.42	12,984.63	221,716.81	432,820.86
5 BAROID CORP - ROSSI	10,925,325	0	0.00	0.00	0.00	0.00
6 DEE GOLD	10,497,807	0	0.00	0.00	0.00	0.00
7 NEWMONT - RAIN	6,887,004	0	0.00	0.00	0.00	0.00
8 ALTA GOLD - KINSLEY	2,825,145	501,558	11,479.16	752.34	307.46	12,538.96
9 INDEPENDENCE MINING - BIG SPRINGS	278,972	0	0.00	0.00	0.00	0.00
10 ELKO HEAT COMPANY	64,396	24,958	$571.21	$37.44	$0.00	$608.65
TOTAL	447,416,809	128,811,904	$2,948,118.05	$193,217.87	$3,188,556.41	$6,329,892.33

OPERATOR / COUNTY - ESMERALDA	1998 ACTUAL GROSS PROCEEDS	1998 ACTUAL NET PROCEEDS	1998 ACTUAL COUNTY TAX DUE	1998 ACTUAL STATE DEBT DUE	1998 ACTUAL STATE GF DUE	1998 ACTUAL TOTAL TAX DUE
1 CYPRUS - FOOTE	11,927,429	679,849	18,117.98	1,019.77	0.00	19,137.75
2 MINERAL RIDGE RESOURCES	2,745,862	0	0.00	0.00	0.00	0.00
3 GREFCO	389,338	33,785	$900.37	$50.68	$0.00	$951.05
4 VANDERBILT - BLANCO	216,736	47,616	1,268.97	71.42	88.09	1,428.48
5 AMERICAN PACIFIC MINERALS LTD	84,747	0	0.00	0.00	0.00	0.00
TOTAL	15,364,112	761,250	$20,287.32	$1,141.87	$88.09	$21,517.28

OPERATOR / COUNTY - EUREKA	1998 ACTUAL GROSS PROCEEDS	1998 ACTUAL NET PROCEEDS	1998 ACTUAL COUNTY TAX DUE	1998 ACTUAL STATE DEBT DUE	1998 ACTUAL STATE GF DUE	1998 ACTUAL TOTAL TAX DUE
1 NEWMONT GOLD	469,082,655	88,836,000	1,374,559.43	133,254.00	2,933,986.57	4,441,800.00
2 BARRICK GOLDSTRIKE	440,779,413	43,044,410	666,026.16	64,566.62	1,421,627.73	2,152,220.51
3 HOMESTAKE MINING	34,966,885	15,227,730	235,618.67	22,841.60	502,926.24	761,386.51
4 PETCON - BLACKBURN UNIT	1,330,973	403,317	6,240.52	604.98	7,270.60	14,116.10
5 NV BARTH - SAGA EXPLORATION	410,527	88,103	1,363.22	132.15	1,147.72	2,643.09
6 FORELAND - NORTH WILLOW CREEK FIELD	13,409	0	0.00	0.00	0.00	0.00
7 FORELAND 1-6 - TOMERA RANCH	4,464	0	$0.00	$0.00	$0.00	$0.00
TOTAL	946,588,326	147,599,560	$2,283,808.00	$221,399.35	$4,866,958.86	$7,372,166.21

OPERATOR / COUNTY - HUMBOLDT	1998 ACTUAL GROSS PROCEEDS	1998 ACTUAL NET PROCEEDS	1998 ACTUAL COUNTY TAX DUE	1998 ACTUAL STATE DEBT DUE	1998 ACTUAL STATE GF DUE	1998 ACTUAL TOTAL TAX DUE
1 SANTA FE PACIFIC - TWIN CREEKS	203,919,889	0	0.00	0.00	0.00	0.00
2 GETCHELL GOLD	46,901,985	0	0.00	0.00	0.00	0.00
3 SANTA FE PACIFIC - LONE TREE	44,265,194	0	0.00	0.00	0.00	0.00
4 HYCROFT - CROFOOT MINE	32,582,095	0	0.00	0.00	0.00	0.00
5 MARIGOLD MINING	21,187,994	1,581,729	32,234.06	2,372.59	0.00	34,606.65
6 PINSON - PINSON	10,350,048	0	$0.00	$0.00	$0.00	$0.00
7 MIN-AD INC	5,198,533	44,798	955.41	67.20	0.00	1,022.61
8 AMAX GOLD INC - E	957,703	0	0.00	0.00	0.00	0.00
9 HODSON, G. KEITH	72,547	21,478	434.93	32.22	284.58	751.73
10 ROYAL PEACOCK OPAL	5,500	2,180	44.15	3.27	39.79	87.21
11 AMERICAN COLLOID	4,271	4,271	86.49	6.41	120.66	213.56
TOTAL	365,445,759	1,654,456	$33,755.04	$2,481.69	$445.03	$36,681.76

OPERATOR COUNTY - LANDER	1998 ACTUAL GROSS PROCEEDS	1998 ACTUAL NET PROCEEDS	1998 ACTUAL COUNTY TAX DUE	1998 ACTUAL STATE DEBT DUE	1998 ACTUAL STATE GF DUE	1998 ACTUAL TOTAL TAX DUE
1 CORTEZ GOLD MINES - VENTURE II	328,661,513	202,382,147	6,559,812.53	303,573.22	3,255,721.60	10,119,107.35
2 ECHO BAY MINES - McCOY	97,165,735	3,017,363	97,801.79	4,526.04	0.00	102,327.83
3 NEWMONT GOLD MINING - MULE CANYON	30,888,672	0	0.00	0.00	0.00	0.00
4 BATTLE MOUNTAIN GOLD - REONA/CANYON	10,568,936	0	0.00	0.00	0.00	0.00
5 M-I - GREYSTONE	9,838,437	1,359,768	44,074.16	2,039.65	0.00	46,113.81
6 OXBOW POWER OF BEOWAWE INC	5,182,043	0	0.00	0.00	0.00	0.00
7 BAKER HUGHES - E	4,945,495	3,613,947	117,138.86	5,420.92	58,137.57	180,697.35
8 M-I - MOUNTAIN SPRINGS	284,597	0	0.00	0.00	0.00	0.00
9 WINTLE, JAY	6,686	5,185	168.06	7.78	83.41	259.25
TOTAL	487,542,114	210,378,410	$6,818,995.40	$315,567.61	$3,313,942.58	$10,448,505.59

OPERATOR COUNTY - LINCOLN	1998 ACTUAL GROSS PROCEEDS	1998 ACTUAL NET PROCEEDS	1998 ACTUAL COUNTY TAX DUE	1998 ACTUAL STATE DEBT DUE	1998 ACTUAL STATE GF DUE	1998 ACTUAL TOTAL TAX DUE
1 WILKIN MINING	532,404	66,239	1,648.03	99.36	0.00	1,747.39
2 FELLER STONE	305,178	6,202	154.31	9.30	0.00	163.61
3 INTERNATIONAL TRACE MINERALS INC - E	10,436	0	$0.00	$0.00	$0.00	$0.00
TOTAL	848,018	72,441	$1,802.34	$108.66	$0.00	$1,911.00

OPERATOR COUNTY - LYON	1998 ACTUAL GROSS PROCEEDS	1998 ACTUAL NET PROCEEDS	1998 ACTUAL COUNTY TAX DUE	1998 ACTUAL STATE DEBT DUE	1998 ACTUAL STATE GF DUE	1998 ACTUAL TOTAL TAX DUE
1 ARIMETCO - E	12,858,116	1,742,900	$52,895.27	$2,614.35	$0.00	$55,509.62
2 NEVADA CEMENT	2,483,494	0	0.00	0.00	0.00	0.00
3 ART WILSON - ADAMS	1,450,185	163,181	4,314.02	244.77	0.00	4,558.79
4 TAD'S ENTERPRISE	491,422	0	0.00	0.00	0.00	0.00
5 NBA	11,675	643	17.00	0.96	0.00	17.96
TOTAL	17,294,892	1,906,724	$57,226.29	$2,860.08	$0.00	$60,086.37

OPERATOR COUNTY - MINERAL	1998 ACTUAL GROSS PROCEEDS	1998 ACTUAL NET PROCEEDS	1998 ACTUAL COUNTY TAX DUE	1998 ACTUAL STATE DEBT DUE	1998 ACTUAL STATE GF DUE	1998 ACTUAL TOTAL TAX DUE
1 KENNECOTT - RAWHIDE	41,179,871	4,558,526	159,092.56	6,837.79	61,995.95	227,926.30
2 KINROSS CANDELARIA	7,081,821	423,786	$14,790.13	$635.68	$0.00	$15,425.81
3 GREFCO	19,201	1,666	58.14	2.50	0.00	60.64
TOTAL	48,280,893	4,983,978	$173,940.83	$7,475.97	$61,995.95	$243,412.75

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OPERATOR / COUNTY - NYE	1998 ACTUAL GROSS PROCEEDS	1998 ACTUAL NET PROCEEDS	1998 ACTUAL COUNTY TAX DUE	1998 ACTUAL STATE DEBT DUE	1998 ACTUAL STATE GF DUE	1998 ACTUAL TOTAL TAX DUE
1 ROUND MOUNTAIN GOLD	153,026,362	14,362,550	$01,253.00	21,543.83	195,330.68	718,127.51
2 BARRICK BULLFROG INC	63,713,118	4,676,594	150,263.64	7,014.89	76,551.17	233,829.70
3 DAISY GOLD MINING CO - M L	9,575,690	1,328,338	42,680.83	1,992.51	0.00	44,673.34
4 MUD CAMP MINING	4,217,619	916,887	$31,752.71	$1,375.33	$0.00	$33,128.04
5 PREMIER SERVICES - GABBS MAG	2,574,401	733,503	25,599.25	1,100.25	0.00	26,699.50
6 MAKOIL - MUNSON/TRAP	1,297,827	26,627	787.17	39.94	0.00	827.11
7 MAKOIL - GRANT	1,205,731	738,851	21,606.15	1,096.28	13,840.13	36,542.56
8 CATHEDRAL GOLD	1,153,887	160,893	4,955.02	241.34	0.00	5,196.36
9 MAKOIL INC - TRAP SPRINGS	1,073,061	249,171	7,366.24	373.76	0.00	7,740.00
10 FORELAND - EAGLE SPRINGS	964,082	0	0.00	0.00	0.00	0.00
11 FORELAND - GHOST RANCH	533,947	217,663	6,434.77	326.49	1,945.25	8,706.51
12 BIG WEST OIL & GAS	477,205	29,660	876.84	44.49	0.00	921.33
13 WESTERN GENERAL INC - KATE SPRINGS	431,845	76,608	2,323.89	117.91	0.00	2,441.80
14 AMERICAN RESOURCE CORP	214,225	0	0.00	0.00	0.00	0.00
15 MAKOIL INC - BRITTON 12-21	154,397	12,465	368.50	18.70	0.00	387.20
16 MAKOIL - KATE SPRINGS 2-12	134,179	0	0.00	0.00	0.00	0.00
17 FRONTIER EXPLORATION 7403	130,778	0	0.00	0.00	0.00	0.00
18 FORELAND - SAND DUNE *	97,625	52,120	1,540.82	78.18	987.00	2,606.00
19 VANDERBILT	93,621	21,310	684.71	31.97	0.00	716.68
20 WESTERN GENERAL INC - TAYLOR FEDERAL 1 & 2	71,031	0	0.00	0.00	0.00	0.00
21 CROWELL, J	62,107	53,765	1,727.52	80.65	880.08	2,688.25
22 FRONTIER EXPLORATION 14-42	57,536	1,801	53.24	2.70	0.00	55.94
TOTAL	241,260,274	23,652,806	$800,274.30	$35,479.22	$289,534.31	$1,125,287.83

OPERATOR / COUNTY - PERSHING	1998 ACTUAL GROSS PROCEEDS	1998 ACTUAL NET PROCEEDS	1998 ACTUAL COUNTY TAX DUE	1998 ACTUAL STATE DEBT DUE	1998 ACTUAL STATE GF DUE	1998 ACTUAL TOTAL TAX DUE
1 COEUR ROCHESTER	64,093,784	18,561,748	530,940.24	27,842.62	369,304.54	928,087.40
2 FLORIDA CANYON	45,432,489	0	0.00	0.00	0.00	0.00
3 ROSEBUD MINING	41,566,308	15,089,297	431,614.25	22,633.95	300,216.65	754,464.85
4 EAGLE PICHER	7,650,369	2,378,720	68,040.91	3,568.08	11,646.21	83,255.20
5 U S GYPSUM	5,232,066	2,189,554	$62,630.00	$3,284.33	$21,667.83	$87,582.16
6 NUTRITIONAL ADDITIVES	215,598	12,014	343.65	18.02	0.00	361.67
7 VANDERBILT	145,853	1,196	34.21	1.79	0.00	36.00
8 AMERICAN COLLOID	78,910	78,910	2,257.14	118.37	1,569.99	3,945.50
TOTAL	164,415,377	38,311,439	$1,095,860.40	$57,467.16	$704,405.22	$1,857,732.78

OPERATOR / COUNTY - STOREY	1998 ACTUAL GROSS PROCEEDS	1998 ACTUAL NET PROCEEDS	1998 ACTUAL COUNTY TAX DUE	1998 ACTUAL STATE DEBT DUE	1998 ACTUAL STATE GF DUE	1998 ACTUAL TOTAL TAX DUE
1 EAGLE PICHER	4,471,248	564,014	$13,233.46	$846.02	$20.87	$14,100.35
TOTAL	4,471,248	564,014	$13,233.46	$846.02	$20.87	$14,100.35

OPERATOR COUNTY - WASHOE	1998 ACTUAL GROSS PROCEEDS	1998 ACTUAL NET PROCEEDS	1998 ACTUAL COUNTY TAX DUE	1998 ACTUAL STATE DEBT DUE	1998 ACTUAL STATE GF DUE	1998 ACTUAL TOTAL TAX DUE
1 STEAMBOAT DEVELOPMENT CORP	13,969,673	0	0.00	0.00	0.00	0.00
2 CAITHNESS POWER	3,675,039	0	0.00	0.00	0.00	0.00
3 EMPIRE LIM PART - EMPIRE	1,807,753	852,667	20,020.62	1,279.00	0.00	21,299.62
4 STEAMBOAT ENVIROSYSTEMS	1,749,999	0	0.00	0.00	0.00	0.00
5 ALTA GOLD COMPANY *	860,088	0	0.00	0.00	0.00	0.00
6 NEVADA CEMENT	552,368	0	0.00	0.00	0.00	0.00
TOTAL	22,614,920	852,667	$20,020.62	$1,279.00	$0.00	$21,299.62

OPERATOR COUNTY - WHITE PINE	1998 ACTUAL GROSS PROCEEDS	1998 ACTUAL NET PROCEEDS	1998 ACTUAL COUNTY TAX DUE	1998 ACTUAL STATE DEBT DUE	1998 ACTUAL STATE GF DUE	1998 ACTUAL TOTAL TAX DUE
1 B H P NV MINING - ROBINSON	88,198,363	0	0.00	0.00	0.00	0.00
2 BALD MOUNTAIN MINING - BALD MOUNTAIN	38,707,975	7,400,444	238,227.69	11,100.67	120,693.84	370,022.20
3 ALTA GOLD - GRIFFON *	11,135,314	3,340,222	107,525.09	5,010.33	4,372.35	116,907.77
4 MT HAMILTON MINING CO	538,645	0	$0.00	$0.00	$0.00	$0.00
TOTAL	138,580,297	10,740,666	$345,752.78	$16,111.00	$125,066.19	$486,929.97

OPERATORS STATEWIDE	1998 TOTAL ACTUAL GROSS PROCEEDS	1998 TOTAL ACTUAL NET PROCEEDS	1998 TOTAL ACTUAL COUNTY TAX DUE	1998 TOTAL ACTUAL STATE DEBT DUE	1998 TOTAL ACTUAL STATE GF DUE	1998 GRAND TOTAL ACTUAL TAX DUE
7 EUREKA	946,588,326	147,599,560	2,283,808.00	221,399.35	4,866,958.86	7,372,166.21
9 LANDER	487,542,114	210,378,410	6,818,995.40	315,567.61	3,313,942.58	10,448,505.59
10 ELKO	447,416,809	128,811,904	2,948,118.05	193,217.87	3,188,556.41	6,329,892.33
11 HUMBOLDT	365,445,759	1,654,456	33,755.04	2,481.69	445.03	36,681.76
22 NYE	241,260,274	23,652,806	800,274.30	35,479.22	289,534.31	1,125,287.83
8 PERSHING	164,415,377	38,311,439	1,095,860.40	57,467.16	704,405.22	1,857,732.78
4 WHITE PINE	138,580,297	10,740,666	$345,752.78	$16,111.00	$125,066.19	$486,929.97
10 CHURCHILL	75,426,316	24,844,828	587,903.17	37,267.24	18,128.20	643,298.61
3 MINERAL	48,280,893	4,983,978	173,940.83	7,475.97	61,995.95	243,412.75
4 CLARK	22,933,419	6,178,497	140,056.42	9,267.75	121,425.71	270,749.88
6 WASHOE	22,614,920	852,667	20,020.62	1,279.00	0.00	21,299.62
5 LYON	17,294,892	1,906,724	$7,226.29	2,860.08	0.00	60,086.37
5 ESMERALDA	15,364,112	761,250	20,287.32	1,141.87	88.09	21,517.28
1 STOREY	4,471,248	564,014	13,233.46	846.02	20.87	14,100.35
3 LINCOLN	848,018	72,441	1,802.34	108.56	0.00	1,911.00
1 DOUGLAS	58,923	48,794	970.17	73.19	1,396.34	2,439.70
0 CARSON CITY	0	0	0.00	0.00	0.00	0.00
109 TOTAL	2,998,541,697	601,362,434	$15,342,004.59	$902,043.68	$12,691,963.76	$28,936,012.03

A - ADJUSTED (AUDITS AND/OR REFUNDS)
D - DELETED FOR 1998
E - ESTIMATED
G - GEOTHERMAL
N - NAME CHANGE
R - REVISED (ESTIMATE ONLY)
* - NEW FOR 1998

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CALENDAR YEAR 1999 NET PROCEEDS OF MINERALS

ROYALTY RECIPIENTS		1998 ACTUAL ROYALTIES	1998 ACTUAL COUNTY TAX DUE	1998 ACTUAL STATE DEBT DUE	1998 ACTUAL STATE GF DUE	1998 ACTUAL TOTAL TAX DUE
COUNTY - CARSON CITY						
0		0	$0.00	$0.00	$0.00	$0.00
TOTAL		0	$0.00	$0.00	$0.00	$0.00

	COUNTY - CHURCHILL ROYALTY RECIPIENTS		1998 ACTUAL ROYALTIES	1998 ACTUAL COUNTY TAX DUE	1998 ACTUAL STATE DEBT DUE	1998 ACTUAL STATE GF DUE	1998 ACTUAL TOTAL TAX DUE
1	ELK RIVER MINERALS	DIXIE VALLEY	1,886,622	44,643.14	2,829.93	46,858.03	94,331.10
2	CALIFORNIA ENERGY	DIXIE VALLEY	522,347	12,360.30	783.52	12,973.53	26,117.35
3	WESTERN STATES GEOTHERMAL *	DESERT PEAK	279,851	6,622.11	419.78	6,950.66	13,992.55
4	NEVADA LAND & RESOURCE CO	BRADY POWER PTNR	189,597	4,486.43	284.40	4,709.02	9,479.85
5	F F & R	DESERT PEAK	37,777	893.92	56.67	938.27	1,888.86
6	DeBRAGA, LYLE	STILLWATER	14,711	348.11	22.07	365.38	735.56
7	WEISHAUPT, RICHARD - E	STILLWATER	11,978	283.44	17.97	297.50	598.91
8	STILLWATER FARMS INC	STILLWATER	11,939	282.51	17.91	296.53	596.95
9	JERNIGAN, MARGARET	STILLWATER	9,595	227.05	14.39	238.31	479.75
10	WEISHAUPT, MARVIN	STILLWATER	8,954	211.88	13.43	222.39	447.70
11	WEISHAUPT, RODNEY A	STILLWATER	8,954	211.88	13.43	222.39	447.70
12	VIERA, EDWARD W	STILLWATER	8,590	203.27	12.89	213.35	429.51
13	ENERGY MINERALS	DESERT PEAK	7,027	166.28	10.54	174.53	351.35
14	LAWRENCE, DALE E	STILLWATER	6,977	165.10	10.47	173.29	348.86
15	DARLEY, W O	DESERT PEAK	6,865	162.45	10.30	170.51	343.26
16	DeBRAGA, TED	STILLWATER	5,969	141.24	8.95	148.25	298.44
17	KOHL, OTTO JR	NI-BR-HA	5,764	136.39	8.65	143.16	288.20
18	KOHL, RICHARD	NI-BR-HA	5,466	129.34	8.20	135.76	273.30
19	HETTICK, JANET	NI-BR-HA	5,465	129.32	8.20	135.73	273.25
20	JOHNNY, TONY + E *	STILLWATER	5,112	120.97	7.67	126.97	255.61
21	HOENIG, J	SODA LAKE	4,668	110.46	7.00	115.94	233.40
22	MARTIN, MABLE - E	STILLWATER	4,492	106.29	6.74	111.57	224.60
23	WEISHAUPT, RANDY	STILLWATER	4,477	105.94	6.72	111.20	223.86
24	WEISHAUPT, LYNN	STILLWATER	4,344	102.79	6.52	107.89	217.20
25	ARAI, KATHERINE - E	SODA LAKE	4,210	99.62	6.32	104.56	210.50
26	NELSON, LOLA M	STILLWATER	3,992	94.46	5.99	99.15	199.60
27	RONNOW, SHARON EXEC	STILLWATER	3,597	85.12	5.40	89.34	179.86
28	MEACHAM, NANCY & SUSAN - E	SODA LAKE	3,475	82.23	5.21	86.31	173.75
29	HUGHES, ROBERT	SODA LAKE	3,079	72.86	4.62	76.47	153.95
30	MULLINS, A J - E	SODA LAKE	2,942	69.62	4.41	73.07	147.10
31	JORDAN, THOMAS D JR	STILLWATER	2,704	63.98	4.06	67.16	135.20
32	KENT, ELEANOR	STILLWATER	2,556	60.48	3.83	63.48	127.79
33	KENT, ROBERT	STILLWATER	2,548	$60.29	$3.82	$63.28	$127.39
34	WEGGE, LOUISE - E	SODA LAKE	2,317	54.83	3.48	57.55	115.86
35	FITZ, HAROLD - E	STILLWATER	2,134	50.50	3.20	53.00	106.70
36	NICHOLS, D - E *	SODA LAKE	1,533	36.28	2.30	38.08	76.66
37	KING, VAL - E	STILLWATER	1,273	30.12	1.91	31.62	63.65
38	WARD, W JR	SODA LAKE	1,268	30.00	1.90	31.49	63.39
39	THRASHER, J	SODA LAKE	1,163	27.52	1.74	28.89	58.15
40	ISENBERG, E	SODA LAKE	1,158	27.40	1.74	28.76	57.90
41	VAN DYKE, JOHN	STILLWATER	963	22.79	1.44	23.92	48.15
42	VAN DYKE, JOHN D	STILLWATER	963	22.79	1.44	23.92	48.15
43	KENT, BRUCE K	STILLWATER	812	19.21	1.22	20.17	40.60
44	HARVEY, W	SODA LAKE	582	13.77	0.87	14.46	29.10
45	FEIGHERY, C - N	SODA LAKE	582	13.77	0.87	14.46	29.10
TOTAL			3,101,392	$73,388.25	$4,652.12	$77,029.30	$155,069.67

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ROYALTY RECIPIENTS COUNTY - CLARK		1998 ACTUAL ROYALTIES	1998 ACTUAL COUNTY TAX DUE	1998 ACTUAL STATE DEBT DUE	1998 ACTUAL STATE GF DUE	1998 ACTUAL TOTAL TAX DUE
1 ALY, DENYS	FLORENCE	30,000	$676.71	$45.00	$778.29	$1,500.00
2 GUSTAFSON, C	FLORENCE	30,000	676.71	45.00	778.29	1,500.00
TOTAL		60,000	$1,353.42	$90.00	$1,556.58	$3,000.00

ROYALTY RECIPIENTS COUNTY - DOUGLAS		1998 ACTUAL ROYALTIES	1998 ACTUAL COUNTY TAX DUE	1998 ACTUAL STATE DEBT DUE	1998 ACTUAL STATE GF DUE	1998 ACTUAL TOTAL TAX DUE
0		0	$0.00	$0.00	$0.00	$0.00
TOTAL		0	$0.00	$0.00	$0.00	$0.00

COUNTY - ELKO ROYALTY RECIPIENTS		1998 ACTUAL ROYALTIES	1998 ACTUAL COUNTY TAX DUE	1998 ACTUAL STATE DEBT DUE	1998 ACTUAL STATE GF DUE	1998 ACTUAL TOTAL TAX DUE
1 EURO-NEVADA MINING CORP	MEIKLE	10,022,667	229,388.78	15,034.00	256,710.57	501,133.35
2 EURO-NEVADA MINING CORP	DEE MINE	204,442	4,679.06	306.66	5,236.37	10,222.09
3 FRANCO-NEVADA MINING CORP	DEE MINE	204,441	4,679.04	306.66	5,236.35	10,222.05
4 ELLISON MINERALS	JERRITT	203,666	4,661.30	305.50	5,216.50	10,183.30
5 JACKSON, PALMER	RAIN	66,452	1,532.65	99.68	1,690.27	3,322.60
6 JACKSON, PETER	RAIN	33,226	766.32	49.84	845.14	1,661.30
7 MONTROSE, D & G	RAIN	16,613	383.16	24.92	422.57	830.65
8 MONTROSE, P & T	RAIN	16,613	383.16	24.92	422.57	830.65
9 MONTROSE, A & F	RAIN	12,459	287.35	18.69	316.91	622.95
10 HAMMOND, HELEN	RAIN	4,153	95.78	6.23	105.64	207.65
11 BOYACK, A & P	RAIN	2,400	55.35	3.60	61.05	120.00
12 PIONEER NATURAL RESOURCES	DEADMAN CREEK FIELD	533	12.20	0.80	13.65	26.65
13 KONCHER TRUST	JERRITT	259	5.93	0.39	6.63	12.95
14 URGEL, P & D	JERRITT	259	5.93	0.39	6.63	12.95
15 VAN NORMAN, C & D	JERRITT	259	5.93	0.39	6.63	12.95
16 ZUNINO, S & N	JERRITT	259	5.93	0.39	6.63	12.95
TOTAL		10,788,701	$246,947.87	$16,183.06	$276,304.11	$539,435.04

COUNTY - ESMERALDA ROYALTY RECIPIENTS		1998 ACTUAL ROYALTIES	1998 ACTUAL COUNTY TAX DUE	1998 ACTUAL STATE DEBT DUE	1998 ACTUAL STATE GF DUE	1998 ACTUAL TOTAL TAX DUE
1 BNY WESTERN TRUST CO	SILVER PEAK	200,000	5,330.00	300.00	4,370.00	10,000.00
2 LEPRECHAUN MINING	SILVER PEAK	50,000	1,332.50	75.00	1,092.50	2,500.00
3 MARY MINING CO INC - E	MARY DUMPS	30,502	812.88	45.75	666.47	1,525.10
TOTAL		280,502	$7,475.38	$420.75	$6,128.97	$14,025.10

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COUNTY - EUREKA

ROYALTY RECIPIENTS

			1998 ACTUAL ROYALTIES	1998 ACTUAL COUNTY TAX DUE	1998 ACTUAL STATE DEBT DUE	1998 ACTUAL STATE GF DUE	1998 ACTUAL TOTAL TAX DUE
1	FRANCO NEVADA	GOLDSTRIKE	25,727,505	398,081.68	38,591.26	849,702.31	1,286,375.25
2	BARRICK BULLFROG	GOLDSTRIKE	3,220,992	49,838.41	4,831.49	106,379.70	161,049.60
3	GOLD QUARRY TRUST	CARLIN I & II	2,817,544	43,597.41	4,226.47	93,058.33	140,882.21
4	ASH, DANKO, HANNA	CARLIN I & II	1,312,437	20,307.34	1,968.66	43,345.86	65,621.86
5	ASH, ROY	CARLIN I & II	1,312,437	20,307.34	1,968.66	43,345.86	65,621.86
6	SANTA FE PACIFIC GOLD CORP	CARLIN I & II	1,112,859	17,219.27	1,669.29	36,754.39	55,642.95
7	PACINI, G & D	CARLIN TREND	971,794	15,036.57	1,457.69	32,095.44	48,589.70
8	HIGH DESERT MINERAL - E	GOLDSTRIKE	751,152	11,622.57	1,126.73	24,808.30	37,557.60
9	EURO-NEVADA	GOOD HOPE	346,875	5,367.20	520.31	11,456.24	17,343.75
10	FRANCO NEVADA	DEEP STAR	333,529	5,160.69	500.29	11,015.46	16,676.44
11	NEVADA BARTH	BARTH	39,522	611.52	59.28	1,305.29	1,976.09
12	EURO-NEVADA	MAGGIE CREEK	26,997	417.72	40.50	891.63	1,349.85
13	BUCY, SUZANNE	BLACKBURN	10,166	157.30	15.25	335.75	508.30
14	BARSTOW, MIKE	CARLIN I & II	6,827	105.63	10.24	225.48	341.35
15	MOBIL OIL	BLACKBURN	5,923	91.65	8.88	195.62	296.15
16	ACKMAN, EDWARD	BLACKBURN	4,985	77.13	7.48	164.64	249.25
17	BARSTOW, KATHRYN	CARLIN TREND	4,464	69.07	6.70	147.43	223.20
18	VEAL, H K & COMPANY	BLACKBURN	3,521	54.48	5.28	116.29	176.05
19	MOBIL OIL	FEDERAL 25A	3,099	47.95	4.65	102.35	154.95
20	HARNESS, JAMES - E	CARLIN TREND	2,881	44.58	4.32	95.15	144.05
21	PIONEER NATURAL RES	N WILLOW CREEK	2,542	39.33	3.81	83.95	127.09
22	MAXUS ENERGY	BLACKBURN	2,134	33.02	3.20	70.48	106.70
23	HARNESS, LES	CARLIN TREND	1,913	29.60	2.87	63.18	95.65
24	U S MINERALS	BLACKBURN	1,869	28.92	2.80	61.73	93.45
25	BUCY, SUZANNE	FEDERAL 25A	1,762	27.26	2.64	58.19	88.09
26	McLISH, H P	BLACKBURN	1,633	25.27	2.45	53.93	81.65
27	KWOK-KEATING, MAY	BLACKBURN	1,225	$18.95	$1.84	$40.46	861.25
28	SANDERS, RICHARD	BLACKBURN	924	14.30	1.39	30.52	46.21
29	KLIKOFF, W ALEXANDER	BLACKBURN	859	13.29	1.29	28.37	42.95
30	PIONEER NATURAL RES	TOMERA RANCH	846	13.09	1.27	27.94	42.30
31	McLISH, H P	FEDERAL 25A	429	6.64	0.64	14.17	21.45
32	DEETER, JACK	TOMERA RANCH	57	0.88	0.09	1.88	2.85
	TOTAL		38,031,802	$588,466.06	$57,047.72	$1,256,076.32	$1,901,590.10

COUNTY - HUMBOLDT

ROYALTY RECIPIENTS

			1998 ACTUAL ROYALTIES	1998 ACTUAL COUNTY TAX DUE	1998 ACTUAL STATE DEBT DUE	1998 ACTUAL STATE GF DUE	1998 ACTUAL TOTAL TAX DUE
1	EURO-NEVADA	GETCHELL	976,063	19,891.19	1,464.09	27,447.87	48,803.15
2	CROFOOT, DAN	LEWIS	578,328	11,711.14	867.49	16,337.77	28,916.40
3	INDEPENDENCE MINING	MARIGOLD	393,955	8,028.41	590.93	11,078.41	19,697.75
4	SANTA FE PACIFIC CAPITAL	TWIN CREEKS	383,560	7,816.57	575.34	10,786.09	19,178.00
5	F W LEWIS INC	LEWIS	344,025	6,966.51	516.04	9,718.71	17,201.26
6	DECKER, DONALD	MARIGOLD	323,286	6,598.25	484.93	9,091.13	16,164.31
7	CENTURY GOLD - E	MARIGOLD	215,524	4,392.16	323.29	6,060.75	10,776.20
8	LITTLE VALLEY RANCH	MARIGOLD	215,524	4,392.16	323.29	6,060.75	10,776.20
9	DECKER, UNITRUST	MARIGOLD	107,762	2,196.08	161.64	3,030.38	5,388.10
10	LIVERMORE, J S	PINSON	85,672	1,745.91	128.51	2,409.18	4,283.60
11	GALLI, P	PINSON	57,115	1,163.95	85.67	1,606.13	2,855.75
12	CHRISTISON, JO HIBBS	PINSON	42,278	861.58	63.42	1,188.90	2,113.90
13	NOCETO, BARBARA	PINSON	38,111	776.66	57.17	1,071.72	1,905.55
14	CHRISTISON, DIANA	PINSON	18,813	383.39	28.22	529.04	940.65
15	CHRISTISON, JAMES	PINSON	18,813	383.39	28.22	529.04	940.65
16	CHRISTISON, VICTOR	PINSON	18,813	383.39	28.22	529.04	940.65
17	MURPHY, KATE	PINSON	16,447	335.17	24.67	462.51	822.35
18	MURPHY, MICHAEL	PINSON	16,447	335.17	24.67	462.51	822.35
19	PHILLIPS, PATRICIA	PINSON	16,447	335.17	24.67	462.51	822.35
20	GETCHELL GOLD	PINSON	16,234	330.83	24.35	456.52	811.70
21	EURO-NEVADA	PINSON	2,920	59.51	4.38	82.11	146.00
22	AUSTIN - W G TRUST	PINSON	1,711	34.87	2.57	48.12	85.56
23	EURO-NEVADA	MARIGOLD	649	13.23	0.97	18.25	32.45
24	LARSON, PANSILEE	HI HOPES	427	8.65	0.64	12.06	21.35
25	VEK ASSOCIATES	MARIGOLD	142	$2.89	$0.21	$3.99	$7.09
	TOTAL		3,889,066	$79,136.23	$5,833.60	$109,483.49	$194,453.12

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COUNTY - LANDER

	ROYALTY RECIPIENTS		1998 ACTUAL ROYALTIES	1998 ACTUAL COUNTY TAX DUE	1998 ACTUAL STATE DEBT DUE	1998 ACTUAL STATE GF DUE	1998 ACTUAL TOTAL TAX DUE
1	PLACER DOME US	GOLD ACRES	2,436,425	78,971.84	3,654.64	39,194.77	121,821.25
2	HOSPAH COAL COMPANY	MULE CANYON	2,267,416	73,493.75	3,401.12	36,475.92	113,370.79
3	TAYLOR, VERNON F	GOLD ACRES	1,828,038	59,252.20	2,742.06	29,407.65	91,401.91
4	KENNECOTT	GOLD ACRES	1,724,181	55,889.88	2,586.27	27,736.90	86,209.05
5	HOWARD HUGHES CORP	McCOY	989,606	32,076.10	1,484.41	15,919.79	49,480.30
6	CURTIS, JOANN W	GOLD ACRES	910,932	29,526.04	1,366.40	14,654.16	45,546.60
7	WILSON, JOAN B	GOLD ACRES	455,468	14,763.08	683.20	7,327.11	22,773.39
8	WILSON, W L	GOLD ACRES	455,442	14,762.24	683.16	7,326.70	22,772.10
9	SPRENGER, H B FAMILY TRUST	GOLD ACRES	433,766	14,059.66	650.65	6,977.99	21,688.30
10	ROYAL GOLD INC	SO. PIPELINE PROJECT	301,851	9,783.90	452.78	4,855.88	15,092.56
11	WALDECK, W G	GOLD ACRES	202,429	6,561.33	303.64	3,256.48	10,121.45
12	WILSON, BRENT - E	GOLD ACRES	96,394	3,124.42	144.59	1,550.69	4,819.70
13	E C M INC	SO. PIPELINE PROJECT	91,614	2,969.48	137.42	1,473.79	4,580.69
14	LAYTON TRUST	GREYSTONE	68,847	2,231.54	103.27	1,107.54	3,442.35
15	BARATTA, DEBORAH	GOLD ACRES	48,197	1,562.21	72.30	775.35	2,408.86
16	MATTEONI, SUSAN	GOLD ACRES	48,197	1,562.21	72.30	775.35	2,409.86
17	WILSON, GREGORY	GOLD ACRES	48,197	1,562.21	72.30	775.35	2,409.86
18	WILSON, HOLLIS	GOLD ACRES	48,197	$1,562.21	$72.30	$775.35	$2,409.86
19	WILSON, JULIET	GOLD ACRES	48,197	1,562.21	72.30	775.35	2,409.86
20	WILSON, SUZANNE	GOLD ACRES	48,197	1,562.21	72.30	775.35	2,409.86
21	WILSON, TIMOTHY	GOLD ACRES	48,197	1,562.21	72.30	775.35	2,409.86
22	STANFORD MGMT/MINERALS ADM	BEOWAWE	31,896	1,033.85	47.84	513.11	1,594.80
23	GINN, ALLEN - E	BEOWAWE	23,980	777.26	35.97	385.77	1,199.00
24	CLINTON, N	GREYSTONE	22,951	743.91	34.43	369.21	1,147.55
25	WILLIAMS, F	GREYSTONE	22,951	743.91	34.43	369.21	1,147.55
26	DENVER MINING CO	SO. PIPELINE PROJECT	17,442	565.35	26.16	280.59	872.10
27	WEITZMAN, LAWRENCE - E	BEOWAWE	6,762	219.18	10.14	108.78	338.10
28	BATZ, LILLIAN	BEOWAWE	4,497	145.76	6.75	72.34	224.85
29	HARRIS, LLOYD	BEOWAWE	2,106	68.26	3.16	33.88	105.30
30	SIMMONS, C & P	BEOWAWE	2,106	68.26	3.16	33.88	105.30
31	AHERN, DOROTHY	BEOWAWE	1,411	45.73	2.12	22.70	70.55
32	DERMENGIAN, ANNIE	BEOWAWE	1,411	45.73	2.12	22.70	70.55
33	STOCCKETTI, D G - E	BEOWAWE	1,411	45.73	2.12	22.70	70.55
34	UYEDA, TOMOCHIKA	BEOWAWE	1,411	45.73	2.12	22.70	70.55
35	THOMAS, GERALDINE	BEOWAWE	1,389	45.02	2.08	22.34	69.44
36	ROSSI, LORETTA	BEOWAWE	1,359	44.05	2.04	21.86	67.95
37	TOWNSEND, ADA	BEOWAWE	1,280	41.49	1.92	20.59	64.00
	TOTAL		12,744,151	$413,076.15	$19,116.27	$205,015.18	$637,207.60

COUNTY - LINCOLN

	ROYALTY RECIPIENTS		1998 ACTUAL ROYALTIES	1998 ACTUAL COUNTY TAX DUE	1998 ACTUAL STATE DEBT DUE	1998 ACTUAL STATE GF DUE	1998 ACTUAL TOTAL TAX DUE
1	FELLER HOLDING CORPORATION	BLACKSTONE	34,030	$846.67	$51.06	$803.79	$1,701.51
2	JONES, MARSHA	ROBIN #1,#2	311	7.74	0.47	7.35	15.56
3	HARRINGTON, SID	ROBIN #1,#2	290	7.22	0.44	6.85	14.51
4	SONNENBERG, AMY	MACKIE PERLITE	233	5.80	0.35	5.50	11.65
5	SONNENBERG, CAMILLE	MACKIE PERLITE	233	5.80	0.35	5.50	11.65
6	SONNENBERG, DEVIN	MACKIE PERLITE	233	5.80	0.35	5.50	11.65
7	SONNENBERG, TRAVIS	MACKIE PERLITE	233	5.80	0.35	5.50	11.65
8	WILKIN, JENNA	MACKIE PERLITE	233	5.80	0.35	5.50	11.65
9	WILKIN, LAUNA	MACKIE PERLITE	233	5.80	0.35	5.50	11.65
10	WILKIN, SUSI	MACKIE PERLITE	233	5.80	0.35	5.50	11.65
11	WILKIN, TESSA	MACKIE PERLITE	233	5.80	0.35	5.50	11.65
	TOTAL		36,495	$908.03	$54.76	$861.99	$1,824.78

ROYALTY RECIPIENTS		1998 ACTUAL ROYALTIES	1998 ACTUAL COUNTY TAX DUE	1998 ACTUAL STATE DEBT DUE	1998 ACTUAL STATE GF DUE	1998 ACTUAL TOTAL TAX DUE
COUNTY - LYON						
0		0	$0.00	$0.00	$0.00	$0.00
TOTAL		0	$0.00	$0.00	$0.00	$0.00

COUNTY - MINERAL ROYALTY RECIPIENTS		1998 ACTUAL ROYALTIES	1998 ACTUAL COUNTY TAX DUE	1998 ACTUAL STATE DEBT DUE	1998 ACTUAL STATE GF DUE	1998 ACTUAL TOTAL TAX DUE
1 KENNECOTT RAWHIDE	DENTON-RAWHIDE	1,060,280	37,003.77	1,590.42	14,419.81	$3,014.00
2 KINROSS RAWHIDE MINING	DENTON-RAWHIDE	1,018,701	35,552.66	1,528.05	13,854.33	$0,935.04
3 TEXACO INC.	DENTON-RAWHIDE	32,226	1,124.69	48.34	438.27	1,611.30
TOTAL		2,111,207	$73,681.12	$3,166.81	$28,712.41	$105,560.34

COUNTY - NYE ROYALTY RECIPIENTS		1998 ACTUAL ROYALTIES	1998 ACTUAL COUNTY TAX DUE	1998 ACTUAL STATE DEBT DUE	1998 ACTUAL STATE GF DUE	1998 ACTUAL TOTAL TAX DUE
1 ORORICH GOLD RESOURCES	ROUND MOUNTAIN	5,360,592	187,084.66	8,040.89	72,304.05	268,029.60
2 LOUISIANA LAND & EXP - E	ROUND MOUNTAIN	2,319,463	80,949.26	3,479.19	31,544.70	115,973.15
3 LAYNE, H B	BULLFROG	1,678,022	53,916.52	2,517.03	27,467.54	83,901.09
4 HOMESTAKE MINING CO	MOTHER LODE MINE	192,206	6,175.77	288.31	3,146.22	9,610.30
5 CORN / AHERN	MOTHER LODE MINE	95,577	3,070.98	143.37	1,564.50	4,778.85
6 AMERICAN COMETRA INC	GRANT CANYON	36,528	1,079.88	54.79	691.73	1,826.40
7 FINA OIL & CHEMICAL	GRANT CANYON	34,172	1,010.23	51.26	647.12	1,708.61
8 SAGA EXPLORATION	STERLING MINE	32,971	1,015.41	49.46	583.69	1,648.56
9 ENERGY INCOME FUND *	EAGLE SPRINGS	23,364	690.71	35.05	442.44	1,168.20
10 ENEROYAL	TRAP SPRINGS	22,414	662.63	33.62	424.45	1,120.70
11 FINA OIL & CHEMICAL	TRAP SPRINGS	18,260	539.82	27.39	345.79	913.00
12 CRAWFORD, THOMAS	BULLFROG	17,263	554.68	25.89	282.58	863.15
13 CRISP, CLAIR	BULLFROG	17,263	554.68	25.89	282.58	863.15
14 POPP, THOMAS F	EAGLE SPRINGS	16,994	502.39	25.49	321.82	849.70
15 ROBERTSON-FINLEY RES INC	TRAP SPRINGS	15,313	452.70	22.97	289.98	765.65
16 LIVERMORE, J S	STERLING	14,284	439.90	21.43	252.87	714.20
17 TAYLOR, LISA	KATE SPR #1	12,955	382.99	19.43	245.33	647.75
18 BURNETT, VIOLA	BULLFROG	12,473	400.77	18.71	204.17	623.65
19 DAVIS, THOMAS E	BULLFROG	12,473	400.77	18.71	204.17	623.65
20 DAVIS, VIRGINIA	BULLFROG	12,473	400.77	18.71	204.17	623.65
21 T H C COMPANY	GRANT CANYON	12,172	359.84	18.26	230.50	608.60
22 ENERGY INCOME FUND *	GHOST RANCH	11,977	354.08	17.97	226.81	598.86
23 MITCHELL, JAY	BRITTON 13-21/ M RANC	11,551	341.48	17.33	218.74	577.55
24 BEAIRD, PAUL	GRANT CANYON	11,405	337.17	17.11	215.98	570.26
25 McJUNKIN, KATHY	BRITTON 13-21	11,257	332.79	16.89	213.17	562.85
26 POPP, THOMAS F	GHOST RANCH	10,679	315.70	16.02	202.23	533.95
27 RANSOM, KENNETH	EAGLE SPRINGS	10,135	299.62	15.20	191.93	506.75
28 GALLI, P E	STERLING	9,509	292.85	14.26	168.34	475.45
29 LYDDON, JOHN	EAGLE SPRINGS	8,492	251.05	12.74	160.81	424.60
30 BERRY PETROLEUM	TRAP SPRINGS	8,439	249.48	12.66	159.81	421.95
31 HEMUS INC	GRANT CANYON	8,256	244.07	12.38	156.34	412.79
32 JACKSON, AVA MARIE	BRITTON 13-21	7,194	212.68	10.79	136.23	359.70
33 McGONNIGAL, S & P	MUNSONRANCH TS	6,603	195.20	9.90	125.04	330.14
34 HINMAN, HARRY	GRANT CANYON	5,943	175.69	8.91	112.54	297.14
35 BEAIRD, PAUL	TRAP SPRINGS	5,936	175.49	8.90	112.41	296.80
36 RANSOM, KENNETH	GHOST RANCH	5,858	173.18	8.79	110.93	292.90
37 TAYLOR, THOMAS & ASSOC. *	TRAP SPRINGS	5,745	169.84	8.62	108.79	287.25
38 T H C COMPANY	TRAP SPRINGS	5,686	168.10	8.53	107.68	284.31
39 ROEMER, LAMAR	KATE SPR 2-12	5,510	162.89	8.27	104.34	275.50
40 FRENCH, DON	KATE SPR #1	5,286	156.27	7.93	100.10	264.30
41 PETCON	FX 7403	5,270	155.80	7.91	99.80	263.51
42 HEMUS INC	TRAP SPRINGS-APC	4,899	144.83	7.35	92.77	244.95
43 LEVY, MARK	KATE SPR #1	4,296	127.00	6.44	81.35	214.79

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44	BEAIRD, PAUL	KATE SPR #1	4,276	126.41	6.41	80.97	213.79
45	FERGUSON TRUST	TRAP SPRINGS	3,816	112.81	5.72	72.26	190.79
46	CHATTIN, KEN	BRITTON 13-21	3,441	101.73	5.16	65.16	171.05
47	TAYLOR, USA	TAYLOR FED #1	3,374	99.75	5.06	63.89	168.70
48	McGONNIGAL, W-L	MUNSONRANCH TS	3,302	97.62	4.95	62.53	165.10
49	ELAND ENERGY	FX 7403	3,214	95.02	4.82	60.86	160.70
50	EURO-NEVADA	STERLING	3,137	96.61	4.71	55.53	156.85
51	PYES, HUGO	TRAP SPRINGS	3,115	92.09	4.67	58.99	155.75
52	GENE F LANG & CO	FX 7403	3,089	91.32	4.63	58.50	154.45
53	BRITTON, ERNEST	BRITTON 13-21	2,934	86.74	4.40	55.56	146.70
54	FINLEY, J D	GRANT CANYON	2,792	82.54	4.19	52.87	139.60
55	FINLEY, MARK	GRANT CANYON	2,792	82.54	4.19	52.87	139.60
56	BEAIRD, PAUL	BACON FLAT 23-17	2,781	82.21	4.17	52.66	139.04
57	DUNCAN, ANGELINA	FX 7403	2,759	81.56	4.14	52.25	137.95
58	GILMORE, J C	CENEX 5-14, 5-14 A	2,686	79.41	4.03	50.86	134.30
59	GILMORE, M REED JR	CENEX 5-14, 5-14 A	2,686	79.41	4.03	50.86	134.30
60	GILMORE, PRISCILLA F	CENEX 5-14, 5-14 A	2,686	79.41	4.03	50.86	134.30
61	GRIESS, VALERIE G	CENEX 5-14, 5-14 A	2,686	79.41	4.03	50.86	134.30
62	LINDQUIST, JOAN GILMORE	CENEX 5-14, 5-14 A	2,686	79.41	4.03	50.86	134.30
63	HINMAN, HARRY	TRAP SPRINGS	2,658	78.58	3.99	50.33	132.90
64	KNEUBUHL, SUZANNE	EAGLE SPRINGS	2,635	77.90	3.95	49.90	131.75
65	NELSON, ARGYLE	EAGLE SPRINGS	2,635	77.90	3.95	49.90	131.75
66	FINA OIL & CHEMICAL	BACON FLAT 23-17	2,601	76.89	3.90	49.26	130.05
67	ENERGY INCOME FUND *	SAND DUNE	2,372	70.12	3.56	44.92	118.60
68	PARADOR MINING COMPANY INC	BULLFROG	2,232	71.72	3.35	36.54	111.61
69	T H C COMPANY	BACON FLAT 23-17	2,229	65.90	3.34	42.21	111.45
70	TRAMMEL, ALICE	TRAP SPRINGS	2,218	65.57	3.33	42.00	110.90
71	FINLEY, J D	TRAP SPRINGS	2,158	63.80	3.24	40.87	107.91
72	FINLEY, MARK	TRAP SPRINGS	2,158	63.80	3.24	40.87	107.91
73	HINMAN, HARRY	KATE SPRINGS	2,148	63.50	3.22	40.68	107.40
74	McGONNIGAL, S & P - E	TRAP SPRINGS	2,004	59.24	3.01	37.95	100.20
75	COREXCAL - E	BACON FLAT 23-17	1,979	58.51	2.97	37.48	98.96
76	POPP, THOMAS F *	SAND DUNE FIELD	1,953	57.74	2.93	36.98	97.65
77	AMERICAN COMETRA INC	BACON FLAT 23-17	1,842	54.46	2.76	34.88	92.10
78	GUIDERA, JACK	TRAP SPRINGS	1,581	46.74	2.37	29.94	79.05
79	FINLEY, DANA	GRANT CANYON	1,402	41.45	2.10	26.55	70.10
80	FINLEY MANAGEMENT CO	GRANT CANYON	1,401	41.42	2.10	26.53	70.05
81	KNEUBUHL, SUZANNE	GHOST RANCH	1,335	39.47	2.00	25.28	66.75
82	NELSON, ARGYLE	GHOST RANCH	1,335	39.47	2.00	25.28	66.75
83	ALEXANDER, BARBARA K	MUNSONRANCH TS	1,291	38.17	1.94	24.45	64.56
84	RONNING, GRABLE BOSWORTH	MUNSONRANCH TS	1,291	38.17	1.94	24.45	64.56
85	RANSOM, KENNETH *	KATE SPRING FIELD	1,244	36.78	1.87	23.56	62.21
86	EVANS, DAVID - E	TAYLOR FED #1&#2	1,243	36.75	1.86	23.54	62.15
87	PRIDE ENERGY - E	BACON FLAT 23-17	1,085	32.08	1.63	20.55	54.26
88	FINLEY, DANA	TRAP SPRINGS	1,074	31.75	1.61	20.34	53.70
89	FINLEY MANAGEMENT CO	TRAP SPRINGS	1,074	31.75	1.61	20.34	53.70
90	D & R INVESTMENTS	EAGLE SPRINGS	1,041	30.78	1.56	19.71	52.05
91	KANOWA PETROLEUM	EAGLE SPRING FIELD	1,041	30.78	1.56	19.71	52.05
92	McGONNIGAL, W-L - E	TRAP SPRINGS	1,002	29.62	1.50	18.97	50.09
93	HINMAN, HARRY	BACON FLAT 23-17	1,001	29.59	1.50	18.96	50.05
94	GOLDSTEIN TRUST	MUNSONRANCH TS	995	29.42	1.49	18.84	49.75
95	RANSOM, KENNETH *	SAND DUNE FIELD	902	26.67	1.35	17.08	45.10
96	ROOP, JAMES	TRAP SPRINGS	818	24.18	1.23	15.49	40.90
97	AMERICAN COMETRA INC	FX 7403	770	22.76	1.16	14.58	38.50
98	DUNCAN, ANGELINA	MNSONRNCH TS1423	754	22.29	1.13	14.28	37.70
99	ENERGY INCOME FUND *	KATE SPRINGS	721	21.31	1.08	13.65	36.04
100	ALEXANDER, B 1983 TRUST	MUNSONRANCH TS	684	20.22	1.03	12.95	34.20
101	RONNING, G B 1983 TRUST	MUNSONRANCH TS	684	20.22	1.03	12.95	34.20
102	CUNNINGHAM, PAUL S	MUNSONRANCH TS	663	19.60	0.99	12.56	33.15
103	LASRICH, B	MUNSONRANCH TS	627	18.54	0.94	11.87	31.35
104	FORELAND CORP	KATE SPRINGS 2-12	612	18.09	0.92	11.59	30.60
105	BEVERIDGE, R C	TRAP SPRINGS-APC	585	17.29	0.88	11.08	29.25
106	FASH, LEAH	GRANT CANYON	515	15.22	0.77	9.75	25.74
107	BUTLER, WOHLFORD FAMILIES	FX 7403	511	15.11	0.77	9.68	25.56
108	WARBURTON, MICHELLE	MUNSONRANCH TS	498	14.72	0.75	9.43	24.90
109	BRAVO IV	TRAP SPRINGS-APC	495	14.63	0.74	9.37	24.74
110	RAYBOURN, W B	FX 7403	488	14.43	0.73	9.24	24.40
111	SHIDLER, M & M	FX 7403	488	14.43	0.73	9.24	24.40
112	FINLEY COMPANY	FX 7403	486	14.37	0.73	9.20	24.30
113	FINLEY PETROLEUM INC	FX 7403	483	14.28	0.72	9.15	24.15
114	ROBERTSON-FINLEY RES INC	FX 7403	483	$14.28	$0.72	$9.15	24.15
115	SETSER, DICK	TRAP SPRINGS	475	14.04	0.71	9.00	23.75

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115	BARESH, ROGER	GRANT CANYON	465	13.75	0.70	8.81	23.26
117	SHAPIRO, MARVIN	GRANT CANYON	453	13.39	0.68	8.58	22.65
118	FINLEY, MARK	FX 7403	394	11.65	0.59	7.46	19.70
119	EVANS, DAVID - E	FX 7403	388	11.47	0.58	7.35	19.40
120	RONNING, GARY	TRAP SPRINGS	368	10.88	0.55	6.97	18.40
121	BABINEC, JOSEPH - E	TRAP SPRINGS	364	10.76	0.55	6.89	18.20
122	A - 8 INVESTMENTS	MUNSONRANCH TS	354	10.47	0.53	6.70	17.70
123	HATCH GROUP	MUNSONRANCH TS	354	10.47	0.53	6.70	17.70
124	BARTON, ROY	TAYLOR FED #1&#2	346	10.23	0.52	6.55	17.30
125	HERRING, DONNA M	TAYLOR FED #1&#2	346	10.23	0.52	6.55	17.30
126	KNEUBUHL, SUZANNE	KATE SPRNG	335	9.90	0.50	6.34	16.74
127	NELSON, ARGYLE	KATE SPRINGS	335	9.90	0.50	6.34	16.74
128	FINLEY, J D	FX 7403	332	9.81	0.50	6.29	16.60
129	FASH, LEAH	TRAP SPRINGS	313	9.25	0.47	5.93	15.65
130	FINLEY, J D	BACON FLAT 23-17	297	8.78	0.45	5.62	14.85
131	FINLEY, MARK	BACON FLAT 23-17	297	8.78	0.45	5.62	14.85
132	SHAPIRO, MARVIN	TRAP SPRINGS	271	8.01	0.41	5.13	13.55
133	BARESH, ROGER	TRAP SPRINGS	259	7.66	0.39	4.90	12.95
134	T H C COMPANY	FX 7403	257	7.60	0.39	4.87	12.86
135	FINNERMAN, PAT	MUNSONRANCH TS	249	7.36	0.37	4.72	12.45
136	LOVITCH, KAREN	MUNSONRANCH TS	249	7.36	0.37	4.72	12.45
137	KNEUBUHL, SUZANNE *	SAND DUNE FIELD	244	7.21	0.37	4.62	12.20
138	NELSON, ARGYLE *	SAND DUNE FIELD	244	7.21	0.37	4.62	12.20
139	COREXCAL - E	TRAP SPRINGS	140	4.14	0.21	2.65	7.00
140	PETTY, KENNETH	MUNSONRANCH TS	112	3.31	0.17	2.12	5.60
	TOTAL		10,260,176	$349,622.70	$15,390.28	$147,995.85	$513,008.83

COUNTY - PERSHING

	ROYALTY RECIPIENTS		1998 ACTUAL ROYALTIES	1998 ACTUAL COUNTY TAX DUE	1998 ACTUAL STATE DEBT DUE	1998 ACTUAL STATE GF DUE	1998 ACTUAL TOTAL TAX DUE
1	EURO-NEVADA MINING CORP	ROSEBUD MINE	1,652,375	47,264.53	2,478.56	32,875.65	82,618.74
2	RANLEIGH INTERNATIONAL	FLORIDA CANYON	706,851	20,218.77	1,060.28	14,063.51	35,342.56
3	SANTA FE PACIFIC GOLD	EAGLE PICHER	340,367	9,735.86	510.55	6,771.94	17,018.35
4	HALL, HANNAH	FLORIDA CANYON	22,168	634.09	33.25	441.05	1,108.39
5	SANTA FE PACIFIC GOLD	SEXTON	6,652	190.27	9.98	132.35	332.60
	TOTAL		2,728,413	$78,043.52	$4,092.62	$54,284.50	$136,420.64

COUNTY - STOREY

	ROYALTY RECIPIENTS		1998 ACTUAL ROYALTIES	1998 ACTUAL COUNTY TAX DUE	1998 ACTUAL STATE DEBT DUE	1998 ACTUAL STATE GF DUE	1998 ACTUAL TOTAL TAX DUE
1	KNIGHT, JAMES	CELATOM	58,748	1,378.40	88.12	1,470.87	2,937.39
2	CHICAGO NEVADA GOLD	FLOWERY (GOLDEN EA	2,583	60.60	3.87	64.67	129.14
	TOTAL		61,331	$1,439.00	$91.99	$1,535.54	$3,066.53

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COUNTY - WASHOE

	ROYALTY RECIPIENTS		1998 ACTUAL ROYALTIES	1998 ACTUAL COUNTY TAX DUE	1998 ACTUAL STATE DEBT DUE	1998 ACTUAL STATE GF DUE	1998 ACTUAL TOTAL TAX DUE
1	FLEETWOOD CORPORATION	STEAMBOAT II & III	334,671	9,470.85	502.01	6,760.69	16,733.55
2	SIERRA PACIFIC POWER COMPANY	STEAMBOAT SPGS GEO	174,825	4,947.37	262.24	3,531.64	8,741.25
3	GUISTI TRUST	STEAMBOAT II & III	93,740	2,652.75	140.61	1,893.64	4,687.00
4	CONSTELLATION POWER - E *	EMPIRE GEOTHERMAL	90,161	2,116.98	135.24	2,255.83	4,508.05
5	BENSON, S & H	STEAMBOAT SPGS	66,060	1,869.43	99.09	1,334.48	3,303.00
6	KOSMOS COMPANY	EMPIRE GEOTHERMAL	31,452	738.49	47.18	786.93	1,572.60
7	REDFIELD TRUST	STEAMBOAT SPGS	18,817	513.33	28.23	399.30	940.86
8	GEOTHERMAL RESOURCES INT	STEAMBOAT SPGS	9,231	251.82	13.85	195.88	461.55
9	T M B ASSOCIATES	WIND MOUNTAIN	4,691	110.14	7.04	117.37	234.55
10	CATON PROPERTIES	STEAMBOAT SPGS	4,591	125.24	6.89	97.42	229.55
11	WEST, RAYMOND & BETTY	STEAMBOAT SPRS	2,225	60.70	3.34	47.21	111.25
12	BOOTH, MARTIN	STEAMBOAT SPGS	1,376	38.94	2.06	27.80	68.80
13	HARRIS, RICHARD	STEAMBOAT SPGS	1,333	37.72	2.00	26.93	66.65
14	CALPINE GEYSERS CO L P	STEAMBOAT SPGS	1,147	31.29	1.72	24.34	57.35
15	PRICE, ESTATE OF ESTA - E	STEAMBOAT SPGS	930	25.37	1.40	19.73	46.50
16	BEAVER, GRACE	STEAMBOAT SPGS	890	24.28	1.34	18.89	44.51
17	SWIGER, JANET	STEAMBOAT SPGS	890	24.28	1.34	18.89	44.51
18	VELEY, JOHN	STEAMBOAT SPGS	890	24.28	1.34	18.89	44.51
19	VINING, MERLIN	STEAMBOAT SPGS	890	24.28	1.34	18.89	44.51
20	POWERS, RAYMOND	STEAMBOAT SPGS	594	16.20	0.89	12.60	29.69
21	POWERS, WINONA L	STEAMBOAT SPGS	594	16.20	0.89	12.60	29.69
22	SNOOK, JULIE	STEAMBOAT SPGS	593	16.18	0.89	12.58	29.65
23	NOBLE, DONALD E *	STEAMBOAT SPGS	382	10.42	0.57	8.11	19.10
24	NOBLE, JOHN E *	STEAMBOAT SPGS	382	$10.42	$0.57	$8.11	$19.10
25	ETZWILER, R	STEAMBOAT SPGS	232	6.33	0.35	4.92	11.60
26	VINING, JOHN	STEAMBOAT SPGS	223	6.08	0.33	4.73	11.14
27	VINING, MAYBELLE	STEAMBOAT SPGS	223	6.08	0.33	4.73	11.14
28	DONAHUE, OLLIE	STEAMBOAT SPGS	222	6.06	0.33	4.71	11.10
29	VINING, EDWARD - E	STEAMBOAT SPGS	222	6.06	0.33	4.71	11.10
30	VINING, JAMES	STEAMBOAT SPGS	222	6.06	0.33	4.71	11.10
31	VINING, RAYMOND - E	STEAMBOAT SPGS	222	6.06	0.33	4.71	11.10
32	VINING, MARGARET	STEAMBOAT SPGS	222	6.06	0.33	4.71	11.10
	TOTAL		843,143	$23,205.75	$1,264.73	$17,686.68	$42,157.15

COUNTY - WHITE PINE

	ROYALTY RECIPIENTS		1998 ACTUAL ROYALTIES	1998 ACTUAL COUNTY TAX DUE	1998 ACTUAL STATE DEBT DUE	1998 ACTUAL STATE GF DUE	1998 ACTUAL TOTAL TAX DUE
1	EURO-NEVADA MINING CORP	ALLIGATOR RIDGE	462,535	14,889.46	693.80	7,543.48	23,126.74
2	REDSTONE USA	ROBINSON MINE	408,968	13,165.09	613.45	6,669.86	20,448.40
3	GRIFFON RESOURCES *	GRIFFON	375,106	12,075.04	562.66	6,117.60	18,755.30
4	ROYAL GOLD INC. *	BALD MOUNTAIN	153,036	4,926.38	229.55	2,495.86	7,651.79
5	HAGER, HAROLD	BALD MOUNTAIN	106,225	3,419.49	159.34	1,732.42	5,311.25
6	HAGER, ROBERT R - E	BALD MOUNTAIN	106,225	3,419.49	159.34	1,732.42	5,311.25
7	CAMBELL, LYLE TRUST	ALLIGATOR-YANKEE	74,290	2,391.47	111.44	1,211.60	3,714.51
	TOTAL		1,686,385	$54,286.42	$2,529.58	$27,503.24	$84,319.24

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STATEWIDE

ROYALTY RECIPIENTS

		1998 TOTAL ACTUAL ROYALTIES	1998 TOTAL ACTUAL COUNTY TAX DUE	1998 TOTAL ACTUAL STATE DEBT DUE	1998 TOTAL ACTUAL STATE GF DUE	1998 GRAND TOTAL ACTUAL TAX DUE
32	EUREKA	38,031,802	588,466.06	57,047.72	1,256,076.32	1,901,590.10
37	LANDER	12,744,151	413,076.15	19,116.27	205,015.18	637,207.60
16	ELKO	10,788,701	246,947.87	16,183.06	276,304.11	539,485.04
140	NYE	10,260,176	349,622.70	15,390.28	147,995.85	513,008.83
25	HUMBOLDT	3,889,066	79,136.23	5,833.60	109,483.49	194,453.32
45	CHURCHILL	3,101,392	73,388.25	4,652.12	77,029.30	155,069.67
5	PERSHING	2,728,413	78,043.52	4,092.62	54,284.50	136,420.64
3	MINERAL	2,111,207	73,681.12	3,166.81	28,712.41	105,560.34
7	WHITE PINE	1,686,385	54,286.42	2,529.58	27,503.24	84,319.24
32	WASHOE	843,143	23,205.75	1,264.73	17,686.68	42,157.16
3	ESMERALDA	280,502	7,475.38	420.75	6,128.97	14,025.10
2	STOREY	61,331	$1,439.00	$91.99	$1,535.54	$3,066.53
2	CLARK	60,000	1,353.42	90.00	1,556.58	3,000.00
11	LINCOLN	36,495	908.03	54.76	861.99	1,824.78
0	CARSON CITY	0	0.00	0.00	0.00	0.00
0	DOUGLAS	0	0.00	0.00	0.00	0.00
0	LYON	0	0.00	0.00	0.00	0.00
360	TOTAL	86,622,764	1,991,029.90	129,934.29	2,210,174.16	4,331,138.35

A - ADJUSTMENT (REFUNDS)
D - DELETED FOR 1998
E - ESTIMATED
G - GEOTHERMAL
N - NAME CHANGE
R - REVISED (ESTIMATE ONLY)
* - NEW FOR 1998

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STATEWIDE	1998 TOTAL ACTUAL GROSS PROCEEDS	1998 TOTAL ACTUAL NET PROCEEDS	1998 TOTAL ACTUAL COUNTY TAX DUE	1998 TOTAL ACTUAL STATE DEBT DUE	1998 TOTAL ACTUAL STATE GF DUE	1998 GRAND TOTAL ACTUAL TAX DUE
109 OPERATORS	$2,998,541,697	$ 601,362,434	$15,342,004.59	$902,043.68	$12,691,963.75	$28,936,012.03
360 ROYALTY RECIPIENTS		$ 86,622,764	$1,991,029.90	$129,934.29	$2,210,174.16	$4,331,138.35
469 GRAND TOTAL		$ 687,985,198	$17,333,034.49	$1,031,977.97	$14,902,137.92	$33,267,150.38

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STATE OF NEVADA

DEPARTMENT OF TAXATION

1999-00

NET PROCEEDS OF MINERALS

BASED ON 1999 CALENDAR YEAR REPORT

PREPARED BY THE

DIVISION OF ASSESSMENT STANDARDS

CENTRALLY ASSESSED PROPERTIES

FOR CERTIFICATION BY THE DEPARTMENT OF TAXATION

April 20, 2000

1999-2000

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NEVADA TAX COMMISSION

Honorable Kenny C. Guinn
Governor, Ex Officio Member

Barbara Smith Campbell
Chairwoman

Members

Dean Baker Candace Evart
Harley E. Harmon Joan Lambert Charles A. Lenzie
John E. Marvel

STATE BOARD OF EQUALIZATION

Chairwoman
Rose M. K. Dominguez

Members
Stephen R. Johnson Clay Fitch
Gayle Robertson William Wright

DEPARTMENT OF TAXATION

David P. Pursell
Executive Director

DIVISION OF ASSESSMENT STANDARDS

Terry Rubald
Acting Chief

Ernest J. Wood
Supervisor
Locally Assessed Properties

Terry Rubald
Supervisor
Centrally Assessed Properties

Jack W. Moore
Supervisor
Local Government Finance

CALENDAR YEAR 1999 GROSS PROCEEDS OF MINERALS

STATEWIDE	1999 OPERATORS
CARSON CITY	$0
CHURCHILL	47,009,120
CLARK	25,243,004
DOUGLAS	60,252
ELKO	529,340,222
ESMERALDA	18,772,754
EUREKA	731,861,772
HUMBOLDT	310,592,488
LANDER	487,954,267
LINCOLN	682,798
LYON	5,057,205
MINERAL	36,777,787
NYE	199,695,435
PERSHING	138,836,806
STOREY	4,114,661
WASHOE	28,430,001
WHITE PINE	66,819,679
TOTAL	$2,631,248,251

COMPARATIVE GROSS PROCEEDS

STATEWIDE	1994	1995	1996	1997	1998
CARSON CITY	$0	$0	$0	$0	$0
CHURCHILL	83,245,380	90,319,194	91,182,171	95,164,481	75,426,316
CLARK	22,069,923	23,651,122	24,000,646	24,651,712	22,933,419
DOUGLAS	56,898	59,202	60,332	59,400	58,923
ELKO	185,538,925	183,468,317	232,491,376	436,306,177	447,416,809
ESMERALDA	14,871,432	20,093,078	22,404,550	17,091,459	15,364,112
EUREKA	1,296,256,179	1,412,680,742	1,378,356,628	1,081,393,284	946,588,326
HUMBOLDT	502,013,010	441,823,937	411,940,651	405,242,328	365,445,759
LANDER	256,397,592	279,941,477	257,310,613	304,581,894	487,542,114
LINCOLN	811,225	703,140	775,301	867,282	848,018
LYON	16,084,643	20,364,101	23,072,952	22,204,144	17,294,892
MINERAL	97,984,533	86,967,240	89,576,759	71,073,192	48,280,893
NYE	328,099,904	229,547,869	266,856,846	260,895,658	241,260,274
PERSHING	101,037,671	111,601,851	145,511,941	163,044,935	164,415,377
STOREY	8,637,883	6,794,526	5,374,116	4,630,319	4,471,248
WASHOE	25,663,503	22,734,738	20,472,633	20,234,732	22,614,920
WHITE PINE	58,242,380	60,872,905	141,296,133	210,645,681	138,580,297
TOTAL	$2,997,011,081	$2,991,623,439	$3,110,683,648	$3,118,086,678	$2,998,541,697

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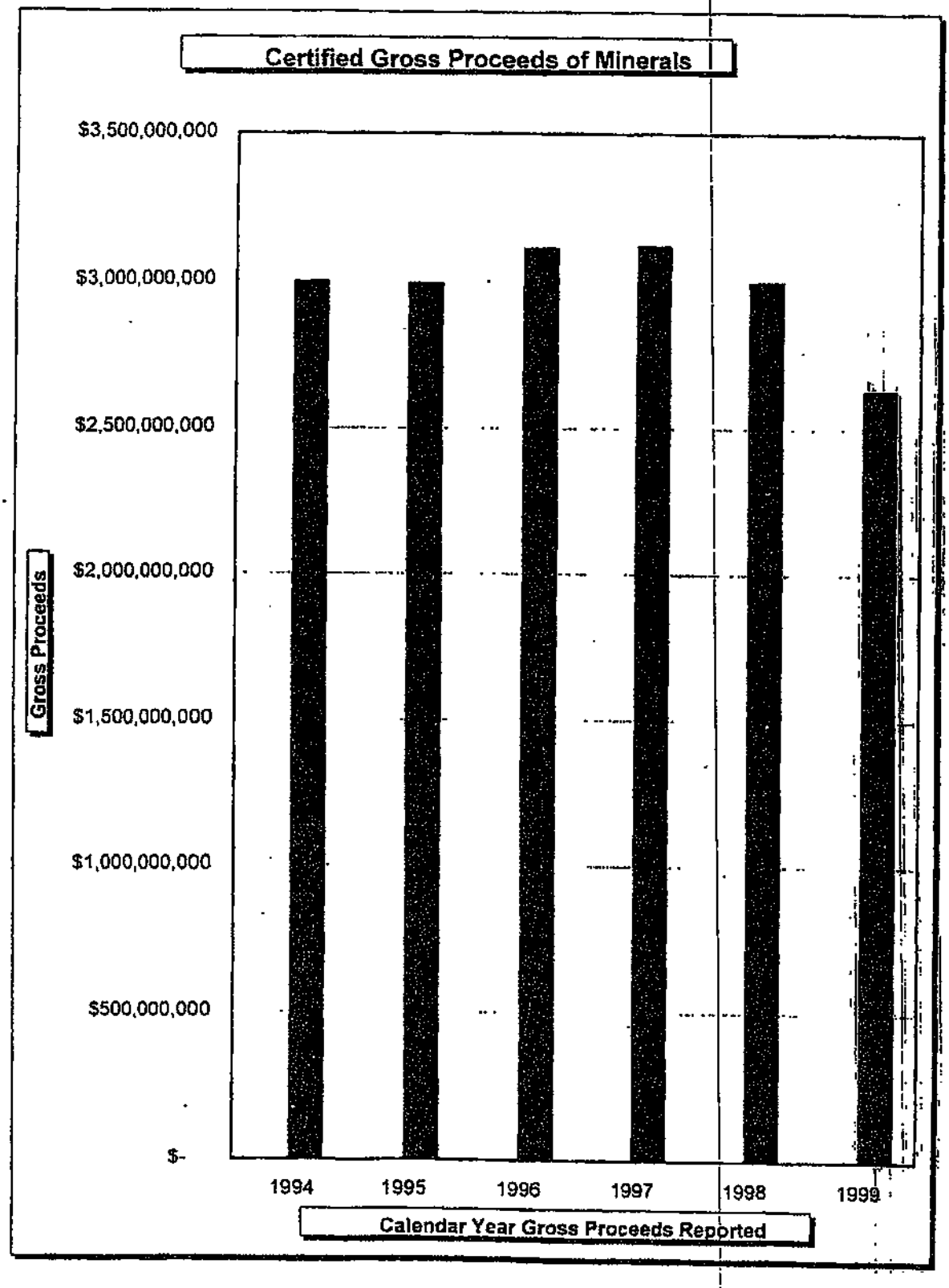
Certified Gross Proceeds of Minerals
$3,500,000,000
$3,000,000,000
$2,500,000,000
$2,000,000,000
$1,500,000,000
$1,000,000,000
$500,000,000
$-
Gross Proceeds
1994
1995
1996
1997
1998
1999
Calendar Year Gross Proceeds Reported

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CALENDAR YEAR 1999 NET PROCEEDS OF MINERALS
CERTIFIED BY THE DEPARTMENT OF TAXATION

STATEWIDE

		OPERATORS	ROYALTIES	1999 TOTAL
CARSON CITY		$0	$0	$0
CHURCHILL		4,381,074	1,823,762	$6,204,836
CLARK		6,381,783	62,500	$6,444,283
DOUGLAS		54,768	0	$54,768
ELKO	(1)	129,601,234	10,533,488	$140,134,722
ESMERALDA		2,108,616	181,417	$2,290,033
EUREKA		83,996,170	33,767,269	$117,763,439
HUMBOLDT	(1)	946,284	2,028,958	$2,975,242
LANDER	(1)	239,637,948	16,114,581	$255,752,529
LINCOLN		90,666	21,001	$111,667
LYON		353,778	0	$353,778
MINERAL		69	1,861,843	$1,861,912
NYE		11,290,051	9,071,089	$20,361,140
PERSHING		23,963,930	2,481,811	$26,445,741
STOREY		114,718	14,560	$129,278
WASHOE		932,826	775,229	$1,708,055
WHITE PINE		3,123,769	1,538,868	$4,662,637
TOTAL		$506,977,684	$80,276,376	$587,254,060

(1) Operator's net subject to change depending on SBE decision.

COMPARATIVE NET PROCEEDS

STATEWIDE

	1994	1995	1996	1997	1998
CARSON CITY	0	$0	$0	$0	$0
CHURCHILL	35,589,915	43,917,772	$43,400,645	$46,511,564	$27,946,220
CLARK	7,653,730	7,146,357	$7,913,255	$8,115,530	$6,238,497
DOUGLAS	43,203	48,689	$50,337	$38,857	$48,794
ELKO	$17,537,908	9,132,318	$21,501,161	$144,562,766	$139,600,605
ESMERALDA	4,434,288	7,013,556	$9,236,968	$926,241	$1,041,752
EUREKA	465,812,474	474,563,434	$357,833,953	$263,248,542	$185,631,362
HUMBOLDT	127,538,854	40,071,034	$14,171,786	$23,396,041	$5,543,522
LANDER	88,373,027	92,741,822	$37,698,138	$19,613,701	$223,122,561
LINCOLN	210,288	87,926	$71,553	$112,469	$108,936
LYON	857,167	2,617,447	$3,283,792	$1,939,058	$1,906,724
MINERAL	34,587,846	22,728,585	$20,466,698	$17,360,325	$7,095,185
NYE	166,400,006	55,705,167	$67,706,345	$61,004,913	$33,912,982
PERSHING	24,823,456	17,149,633	$25,025,267	$36,293,866	$41,039,852
STOREY	1,168,407	694,062	$590,241	$770,140	$625,345
WASHOE	3,626,062	1,703,879	$1,386,921	$870,920	$1,695,810
WHITE PINE	15,759,391	11,521,765	$2,829,619	$7,737,773	$12,427,051
TOTAL	$994,416,022	$786,843,446	$613,166,679	$632,502,706	$687,985,198

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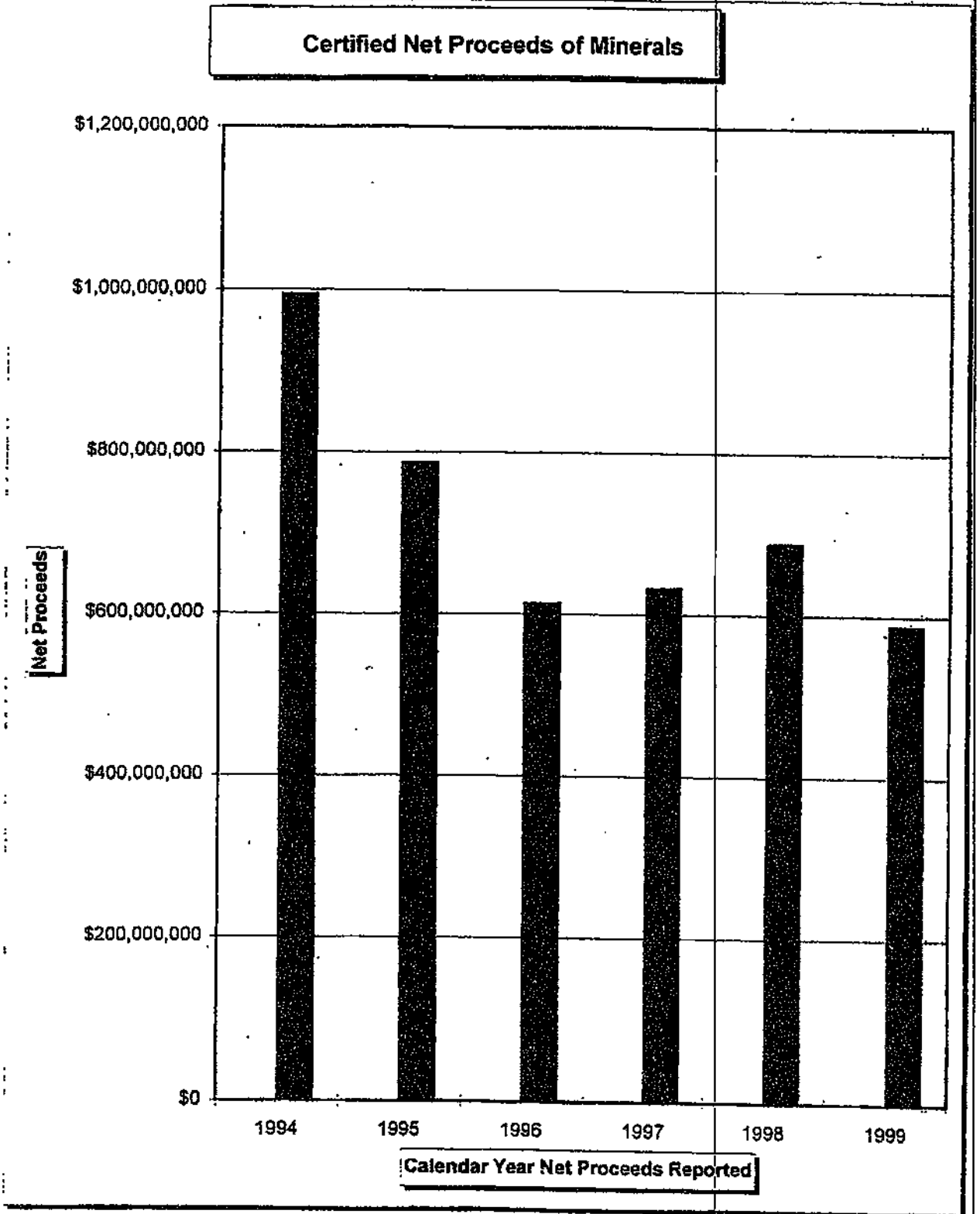
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$1,200,000,000
$1,000,000,000
$800,000,000
$600,000,000
$400,000,000
$200,000,000
$0
Net Proceeds
1994
1995
1996
1997
1998
1999
Calendar Year Net Proceeds Reported

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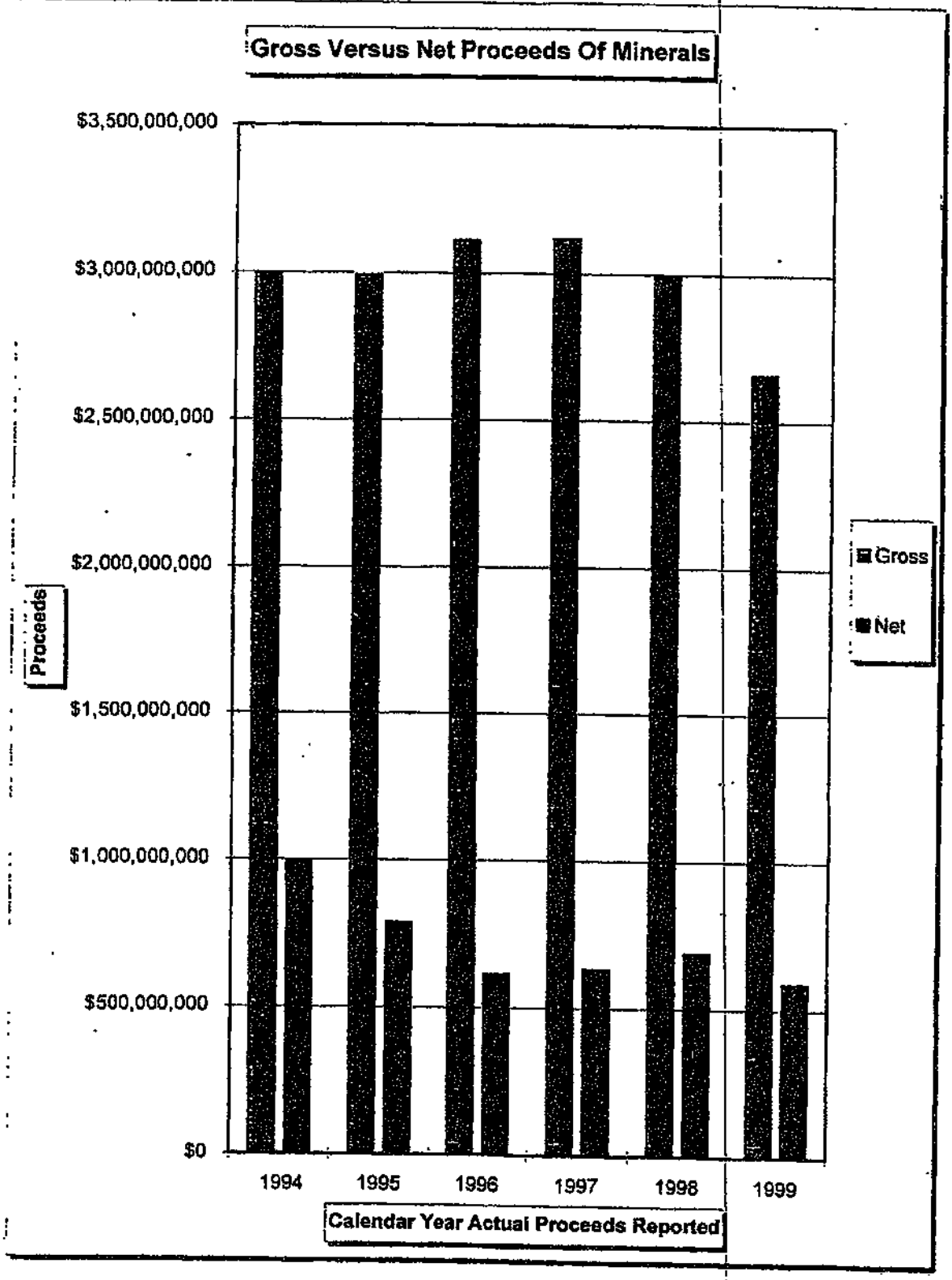
Gross Versus Net Proceeds Of Minerals
$3,500,000,000
$3,000,000,000
$2,500,000,000
$2,000,000,000
$1,500,000,000
$1,000,000,000
$500,000,000
$0
Proceeds
Gross
Net
1994
1995
1996
1997
1998
1999
Calendar Year Actual Proceeds Reported

COMPARATIVE SURVEY OF NET PROCEEDS OF MINERALS
ANNUAL TAX REVENUES
BASED ON CALENDAR YEAR 1999 REPORTS

CALENDAR YEAR	ANNUAL NET PROCEEDS	ANNUAL COUNTY TAX	ANNUAL STATE TAX	AVERAGE COUNTY TAX RATE	AVERAGE STATE TAX RATE	AVERAGE COMBINED TAX RATE
1963	$20,502,707	$703,686		3.43		
1964	16,612,968	563,455		3.39		
1965	17,806,578	605,304		3.40		
1966	27,084,338	904,289		3.34		
1967	23,542,134	771,693		3.28		
1968	30,984,767	1,089,661		3.52		
1969	58,424,028	2,105,351		3.60		
1970	59,043,306	2,106,078		3.57		
1971	40,173,554	1,457,110		3.63		
1972	53,115,680	1,994,296		3.75		
1973	57,362,409	2,177,059		3.80		
1974	78,319,357	2,977,649		3.80		
1975	49,434,863	1,813,128		3.67		
1976	36,034,946	1,300,130		3.61		
1977	49,474,846	1,842,284		3.72		
1978	53,786,490	1,967,717		3.66		
1979	80,690,289	1,979,849		2.45		
1980	128,872,213	3,243,145		2.52		
1981	164,738,579	1,912,754		1.16		
1982	159,999,360	1,799,734		1.12		
1983	245,688,351	4,152,133		1.69		
1984	184,986,780	3,221,588		1.74		
1985	198,263,327	3,526,911		1.78		
1986	374,664,142	6,091,451		1.63		
1987	627,330,373	12,083,696		1.93		
1988	778,252,531	13,567,632		1.74		
1989	748,051,856	14,374,372	21,863,394	1.92	2.92	4.84
1990	887,035,290	18,838,751	23,896,151	2.12	2.69	4.81
1991	677,341,905	14,265,644	18,179,877	2.11	2.68	4.79
1992	727,396,245	15,878,428	18,839,425	2.18	2.59	4.77
1993	839,578,107	18,278,640	22,130,656	2.18	2.64	4.82
1994	994,416,022	21,481,588	26,723,326	2.16	2.69	4.85
1995	786,843,446	15,536,905	22,031,121	1.97	2.80	4.77
1996	613,166,679	12,641,648	16,556,640	2.06	2.70	4.76
1997	632,502,706	13,948,654	16,110,703	2.21	2.55	4.76
1998	687,985,198	17,333,035	15,934,116	2.52	2.32	4.84
1999	587,254,060	14,805,200	14,152,644	2.52	2.41	4.93

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CALENDAR YEAR 1999 NET PROCEEDS OF MINERALS

	INDUSTRY	1999 ACTUAL GROSS PROCEEDS	1999 ACTUAL NET PROCEEDS	1999 ACTUAL COUNTY TAX DUE	1999 ACTUAL STATE DEBT DUE	1999 ACTUAL STATE GF DUE	1999 ACTUAL TOTAL TAX DUE
36	GOLD	$2,401,151,540	$ 473,123,451	$12,097,128.20	$709,685.18	$10,737,727.99	$23,544,541.37
36	OTHER *	143,182,373	24,486,733	600,319.99	36,730.11	421,321.24	$1,058,371.34
12	GEOTHERMAL	61,374,874	3,112,462	76,314.54	4,668.69	$0.00	$80,983.23
5	GYPSUM	15,524,059	2,602,361	72,515.83	3,903.54	32,266.33	$108,685.70
16	OIL	10,015,405	3,652,677	101,321.52	5,479.02	44,643.07	$151,443.61
105	TOTAL	$2,631,248,251	$ 506,977,684	$12,947,600.08	$760,466.54	$11,235,958.63	$24,944,025.25
	GOLD	91.26%	93.32%	93.43%	93.32%	95.57%	94.39%
	OTHER *	5.44%	4.83%	4.64%	4.83%	3.75%	4.24%
	GEOTHERMAL	2.33%	0.61%	0.59%	0.61%	0.00%	0.32%
	GYPSUM	0.59%	0.51%	0.56%	0.51%	0.29%	0.44%
	OIL	0.38%	0.72%	0.78%	0.72%	0.40%	0.61%
	TOTAL	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%

* BARITE
BASALT
BENTONITE
CLAY
COPPER CONCENTRATE
COPPER
DITOMACEOUS EARTH (D.E.)
DOLOMITE
FLOUSPAR
IRON
LIMESTONE
LITHIUM
MAGNESITE
OPALS
PERLITE
RHYOLITE
SALT
SILICA
TRACE MINERALS
TURQUOISE

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CALENDAR YEAR 1999 NET PROCEEDS OF MINERALS

	GOLD OPERATOR	1999 ACTUAL GROSS PROCEEDS	1999 ACTUAL NET PROCEEDS	1999 ACTUAL COUNTY TAX DUE	1999 ACTUAL STATE DEBT DUE	1999 ACTUAL STATE GF DUE	1999 ACTUAL TOTAL TAX DUE
1	NEWMONT GOLD	384,686,835	47,958,003	742,054.18	71,937.00	1,583,908.97	2,397,900.15
2	CORTEZ GOLD MINES - VENTURE II	364,878,187	239,310,968	7,152,525.21	358,986.45	4,454,055.74	11,965,548.40
3	BARRICK GOLDSTRIKE	310,583,611	16,598,338	256,828.08	24,897.51	548,193.31	829,916.90
4	BARRICK GOLDSTRIKE-MEIKLE	274,154,419	87,308,849	1,987,324.02	130,963.27	2,247,155.16	4,365,442.45
5	SANTA FE PACIFIC - TWIN CREEKS	170,288,143	0	0.00	0.00	0.00	0.00
6	ROUND MOUNTAIN GOLD	152,710,392	4,929,385	172,035.54	7,394.08	67,039.84	246,469.28
7	INDEPENDENCE MINING - JERRITT	101,639,987	4,416,365	100,525.30	6,624.55	113,668.40	220,818.25
8	ECHO BAY MINES - McCOY	89,389,328	0	0.00	0.00	0.00	0.00
9	SANTA FE PACIFIC - LONE TREE	67,001,850	0	0.00	0.00	0.00	0.00
10	MIDAS JOINT VENTURE	60,117,322	27,603,142	628,302.72	41,404.71	710,449.67	1,380,157.10
11	COEUR ROCHESTER	52,251,450	9,345,855	267,323.12	14,018.48	185,941.15	467,282.75
12	FLORIDA CANYON	42,431,735	2,599,039	74,342.91	3,898.56	0.00	78,241.47
13	NEWMONT - CAP/BOOT	41,534,597	0	0.00	0.00	0.00	0.00
14	KENNECOTT - RAWHIDE	36,004,005	0	0.00	0.00	0.00	0.00
15	HOMESTAKE MINING	34,502,500	18,744,057	290,026.79	28,116.09	619,059.97	937,202.85
16	ROSEBUD MINING	32,560,492	9,003,158	257,526.33	13,504.74	179,126.83	450,157.90
17	GETCHELL GOLD	31,739,646	0	0.00	0.00	0.00	0.00
18	BALD MOUNTAIN MINING - BALD MTN	28,020,691	0	0.00	0.00	0.00	0.00
19	BARRICK BULLFROG INC	22,462,324	0	0.00	0.00	0.00	0.00
20	MARIGOLD MINING	20,574,610	803,511	15,803.45	1,205.27	0.00	17,008.72
21	NEWMONT GOLD MINING - MULE CYN	15,337,410	0	0.00	0.00	0.00	0.00
22	DEE GOLD	11,262,294	0	0.00	0.00	0.00	0.00
23	HYCROFT - CROFOOT MINE	11,197,698	0	0.00	0.00	0.00	0.00
24	DAISY GOLD MINING CO - M L	8,415,069	1,379,212	45,756.74	2,068.82	0.00	47,825.56
25	ALTA GOLD COMPANY	8,000,619	0	0.00	0.00	0.00	0.00
26	ALTA GOLD - GRIFFON	6,727,849	3,123,769	106,754.81	4,885.85	29,129.15	140,569.81
27	MINERAL RIDGE RESOURCES	6,714,170	0	0.00	0.00	0.00	0.00
28	NEWMONT - RAIN	6,621,096	0	0.00	0.00	0.00	0.00
29	PINSON - PINSON	3,536,379	0	0.00	0.00	0.00	0.00
30	BATTLE MTN GOLD - REONA/CANYON	3,041,173	0	0.00	0.00	0.00	0.00
31	KINROSS CANDELARIA	763,797	0	0.00	0.00	0.00	0.00
32	ALTA GOLD - KINSLEY	653,726	0	0.00	0.00	0.00	0.00
33	AMAX GOLD INC	614,294	0	0.00	0.00	0.00	0.00
34	CATHEDRAL GOLD	215,723	0	0.00	0.00	0.00	0.00
35	INDEPENDENCE MINING - BIG SPRIN	211,060	0	0.00	0.00	0.00	0.00
36	WIND MOUNTAIN MINING COMPANY	124,960	0	0.00	0.00	0.00	0.00
	TOTAL	$ 2,401,151,540	$ 473,123,451	$ 12,097,128.20	$ 709,685.18	$ 10,737,727.99	$ 23,544,541.37

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CALENDAR YEAR 1999 NET PROCEEDS OF MINERALS

	OTHER OPERATOR	1999 ACTUAL GROSS PROCEEDS	1999 ACTUAL NET PROCEEDS	COMMODITY	1999 ACTUAL COUNTY TAX DUE	1999 ACTUAL STATE DEBT DUE	1999 ACTUAL STATE GF DUE	1999 ACTUAL TOTAL TAX DUE
1	BHP NEVADA MINING- ROBINSON	32,071,039	0	COPPER	0.00	0.00	0.00	0.00
2	CONTINENTAL LIME INC	30,007,232	10,272,878	LIMESTONE	233,831.25	15,409.32	264,403.36	513,643.90
3	CHEMETALL FOOTE CORP	11,617,061	2,105,847	LITHIUM	56,120.82	3,158.77	3,895.82	63,175.41
4	SIMPLOT SILICA	10,527,449	4,903,343	SILICA	112,237.52	7,355.01	125,574.61	245,167.14
5	M-I - GREYSTONE	7,998,915	135,718	BARITE	4,056.34	203.58	0.00	4,259.92
6	EAGLE PICHER	6,438,071	779,939	D.E.	22,309.38	1,169.91	0.00	23,479.29
7	MOLTAN	5,943,006	746,667	CLAY	18,425.50	1,120.00	0.00	19,545.50
8	CHEMSTAR - APEX -	5,910,875	1,246,413	LIMESTONE	28,281.11	1,869.62	7,241.66	37,392.39
9	MIN-AD INC	5,513,626	120,503	DOLOMITE	2,507.31	180.75	0.00	2,688.06
10	C R MINERALS	4,408,728	1,295,201	D.E.	31,981.66	1,942.80	11,427.58	45,332.04
11	MUD CAMP MINING	4,360,126	909,652	CLAY	31,716.84	1,364.48	0.00	33,081.32
12	EAGLE PICHER	4,114,561	114,718	D.E.	2,859.81	172.08	0.00	3,031.89
13	BAROID CORP - ROSSI	3,084,450	0	BARITE	0.00	0.00	0.00	0.00
14	PREMIER SERVICES - GABBS MAG	2,836,988	931,775	MAGNESITE	32,518.95	1,397.66	0.00	33,916.61
15	NEVADA CEMENT	2,596,810	103,199	LIMESTONE	2,794.63	154.80	0.00	2,949.43
16	BAKER HUGHES	2,020,709	190,444	BARITE	5,691.99	285.67	0.00	5,977.66
17	EAGLE PICHER	531,171	204,195	D.E.	5,038.92	306.29	2,822.59	8,167.80
18	WILKIN MINING	497,284	90,666	PERLITE	2,279.43	136.00	304.55	2,719.98
19	NEVADA CEMENT	475,397	0	LIMESTONE	0.00	0.00	0.00	0.00
20	NV BARTH - SAGA EXPLORATION	410,853	115,838	IRON	1,792.38	173.76	2,088.21	4,054.33
21	HUCK SALT CO	307,100	0	SALT	0.00	0.00	0.00	0.00
22	GREFCO	260,859	2,769	BASALT	73.78	4.15	0.00	77.94
23	VANDERBILT - BLANCO	180,664	0	CLAY	0.00	0.00	0.00	0.00
24	NUTRITIONAL ADDITIVES	176,311	8,850	DOLOMITE	253.15	13.28	0.00	266.43
25	NEVADA CEMENT COMPANY	161,773	0	LIMESTONE	0.00	0.00	0.00	0.00
26	FELLER STONE	156,700	0	RYOLITE	0.00	0.00	0.00	0.00
27	HODSON, G. KEITH	120,742	20,090	OPALS	389.79	30.14	82.33	502.26
28	VANDERBILT	118,038	0	CLAY	0.00	0.00	0.00	0.00
29	VANDERBILT	105,645	26,093	CLAY	932.01	42.14	9.10	983.25
30	AMERICAN COLLOID	62,909	62,909	BENTONITE	1,798.45	94.36	1,251.64	3,145.45
31	STANDARD INDUSTRIAL MINERAL	60,252	54,768	IRON	1,078.60	82.15	1,577.65	2,738.40
32	CROWELL, J.	49,736	39,191	FLOUSPAR	1,300.20	58.79	600.56	1,959.55
33	INTERNATIONAL TRACE MINERAL	26,834	0	T. MINERALS	0.00	0.00	0.00	0.00
34	WINTLE, JAY	11,096	818	TURQUOISE	24.45	1.23	0.00	25.68
35	GREFCO	9,985	89	BASALT	2.41	0.10	0.00	2.51
36	ROYAL PEACOCK OPAL	5,500	2,160	OPALS	42.30	3.27	41.63	87.20
	TOTAL	$ 143,162,373	$ 24,486,733		$ 600,319.99	$ 36,730.11	421,321.24	$ 1,058,371.34

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CALENDAR YEAR 1999 NET PROCEEDS OF MINERALS

	GEOTHERMAL OPERATOR	1999 ACTUAL GROSS PROCEEDS	1999 ACTUAL NET PROCEEDS	1999 ACTUAL COUNTY TAX DUE	1999 ACTUAL STATE DEBT DUE	1999 ACTUAL STATE GF DUE	1999 ACTUAL TOTAL TAX DUE
1	OXBOW GEOTHERMAL	26,041,295	1,435,755	35,430.13	2,153.63	0.00	37,583.76
2	STEAMBOAT DEVELOPMENT CORP	13,117,180	0	0.00	0.00	0.00	0.00
3	BRADY POWER PARTNERS	5,881,673	0	0.00	0.00	0.00	0.00
4	OXBOW POWER OF BEOWAWE INC	5,297,449	0	0.00	0.00	0.00	0.00
5	CAITHNESS POWER	3,559,851	0	0.00	0.00	0.00	0.00
6	BRADY POWER - DESERT PEAK	2,938,827	699,256	17,255.54	1,048.88	0.00	18,304.42
7	EMPIRE LIM PART - EMPIRE	1,921,203	932,628	22,275.88	1,399.24	0.00	23,675.12
8	STEAMBOAT ENVIROSYSTEMS	1,230,791	0	0.00	0.00	0.00	0.00
9	TAD'S ENTERPRISE	537,018	44,625	1,352.99	66.94	0.00	1,419.93
10	CONSTELLATION OPER - SODA LAK	499,757	0	0.00	0.00	0.00	0.00
11	CONSTELLATION OPER -STILLWATE	295,790	0	0.00	0.00	0.00	0.00
12	ELKO HEAT COMPANY	54,040	0	0.00	0.00	0.00	0.00
	TOTAL	$ 61,374,874	$ 3,112,462	$ 76,314.54	$ 4,668.69	0.00	$ 80,983.23

CALENDAR YEAR 1999 NET PROCEEDS OF MINERALS

	GYPSUM OPERATOR	1999 ACTUAL GROSS PROCEEDS	1999 ACTUAL NET PROCEEDS	1999 ACTUAL COUNTY TAX DUE	1999 ACTUAL STATE DEBT DUE	1999 ACTUAL STATE GF DUE	1999 ACTUAL TOTAL TAX DUE
1	HARDIE GYPSUM	5,347,089	0	0.00	0.00	0.00	0.00
2	U S GYPSUM	4,795,802	2,164,380	61,909.93	3,246.57	32,240.60	97,397.10
3	PACIFIC COAST	3,457,791	232,027	5,284.69	348.04	0.00	5,632.73
4	ART WILSON - ADAMS	1,921,417	204,614	5,311.65	307.22	0.00	5,618.87
5	N B A	1,960	1,140	29.56	1.71	25.73	57.00
	TOTAL	$ 16,524,059	$ 2,602,361	$ 72,515.83	$ 3,903.54	$ 32,266.33	$ 108,685.70

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CALENDAR YEAR 1999 NET PROCEEDS OF MINERALS

	OIL OPERATOR	1999 ACTUAL GROSS PROCEEDS	1999 ACTUAL NET PROCEEDS	1999 ACTUAL COUNTY TAX DUE	1999 ACTUAL STATE DEBT DUE	1999 ACTUAL STATE GE DUE	1999 ACTUAL TOTAL TAX DUE
1	MAKOIL - MUNSON/TRAP	1,799,872	519,999	15,628.05	780.00	1,791.92	18,199.97
2	MAKOIL - GRANT	1,656,563	1,116,204	33,546.40	674.31	20,589.50	55,810.21
3	MAKOIL INC - TRAP SPRINGS	1,590,956	353,972	10,638.27	530.98	0.00	11,169.23
4	PETCON - BLACKBURN	1,467,245	579,934	8,973.32	869.90	13,354.14	23,197.36
5	FORELAND - EAGLE SPRINGS	1,069,208	354,468	10,653.18	531.70	0.00	11,184.88
6	FORELAND - GHOST RANCH	611,946	294,156	8,840.56	441.23	3,955.22	13,237.01
7	WESTERN GENERAL - KATE SPRING	428,900	202,086	6,073.49	303.13	2,717.25	9,093.87
8	BIG WEST OIL AND GAS	382,712	0	0.00	0.00	0.00	0.00
9	FRONTIER EXPLORATION 7403	249,513	12,421	373.30	18.63	0.00	391.93
10	FORELAND - SAND DUNE	199,779	103,240	3,102.77	154.86	1,804.37	5,162.00
11	MAKOIL INC - BRITTON 13-21	197,848	34,222	1,028.51	51.33	0.00	1,079.84
12	MAKOIL - KATE SPRINGS 2-12	181,641	42,824	1,287.03	64.24	0.00	1,351.27
13	FRONTIER EXPLORATION 14-42	100,151	39,151	1,176.64	58.73	330.67	1,566.04
14	WESTERN GENERAL - TAYLOR 1 & 2	72,345	0	0.00	0.00	0.00	0.00
15	FORELAND 1-5 - TOMERA RANCH	5,832	0	0.00	0.00	0.00	0.00
16	FORELAND - N WILLOW CREEK FIELD	2,896	0	0.00	0.00	0.00	0.00
	TOTAL	10,015,405	3,652,677	101,321.52	5,479.02	44,643.07	151,443.61

CALENDAR YEAR 1999 NET PROCEEDS OF MINERALS

COUNTY - CARSON CITY OPERATOR	1999 ACTUAL GROSS PROCEEDS	1999 ACTUAL NET PROCEEDS	1999 ACTUAL COUNTY TAX DUE	1999 ACTUAL STATE DEBT DUE	1999 ACTUAL STATE GF DUE	1999 ACTUAL TOTAL TAX DUE
0	0	0	0.00	0.00	0.00	0.00
TOTAL	0	0	$0.00	$0.00	$0.00	$0.00

COUNTY - CHURCHILL OPERATOR	1999 ACTUAL GROSS PROCEEDS	1999 ACTUAL NET PROCEEDS	1999 ACTUAL COUNTY TAX DUE	1999 ACTUAL STATE DEBT DUE	1999 ACTUAL STATE GF DUE	1999 ACTUAL TOTAL TAX DUE
1 OXBOW GEOTHERMAL	28,041,296	1,435,755	35,430.13	2,153.63	0.00	$7,583.76
2 MOLTAN	5,943,006	746,667	18,425.50	1,120.00	0.00	19,545.50
3 BRADY POWER PARTNERS	5,881,873	0	0.00	0.00	0.00	0.00
4 C R MINERALS	4,408,728	1,295,201	31,961.66	1,942.80	11,427.56	45,332.04
5 BRADY POWER - DESERT PEAK	2,938,827	699,256	17,255.54	1,048.88	0.00	18,304.42
6 EAGLE PICHER	531,171	204,195	5,038.82	306.29	2,822.59	8,167.80
7 CONSTELLATION OPER - SODA LAKE	499,757	0	0.00	0.00	0.00	0.00
8 HUCK SALT CO	307,100	0	0.00	0.00	0.00	0.00
9 CONSTELLATION OPER -STILLWATER	295,790	0	0.00	0.00	0.00	0.00
10 NEVADA CEMENT COMPANY	161,773	0	0.00	0.00	0.00	0.00
TOTAL	47,008,120	4,381,074	$108,111.77	$6,571.60	$14,250.15	$126,933.52

COUNTY - CLARK OPERATOR	1999 ACTUAL GROSS PROCEEDS	1999 ACTUAL NET PROCEEDS	1999 ACTUAL COUNTY TAX DUE	1999 ACTUAL STATE DEBT DUE	1999 ACTUAL STATE GF DUE	1999 ACTUAL TOTAL TAX DUE
1 SIMPLOT SILICA	10,527,449	4,903,343	112,237.52	7,355.01	125,574.61	245,167.14
2 CHEMSTAR - APEX	5,910,675	1,246,413	28,281.11	1,869.62	7,241.66	37,392.39
3 HARDIE GYPSUM	5,347,089	0	0.00	0.00	0.00	0.00
4 PACIFIC COAST	3,457,791	232,027	5,264.69	348.04	0.00	5,612.73
	25,243,004	6,381,783	$145,783.32	$9,572.67	$132,816.27	$288,172.26

COUNTY - DOUGLAS OPERATOR	1999 ACTUAL GROSS PROCEEDS	1999 ACTUAL NET PROCEEDS	1999 ACTUAL COUNTY TAX DUE	1999 ACTUAL STATE DEBT DUE	1999 ACTUAL STATE GF DUE	1999 ACTUAL TOTAL TAX DUE
1 STANDARD INDUSTRIAL MINERALS	60,252	54,768	1,076.60	82.15	1,577.65	2,736.40
TOTAL	60,252	54,768	$1,076.60	$82.15	$1,577.65	$2,736.40

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CALENDAR YEAR 1999 NET PROCEEDS OF MINERALS

COUNTY - ELKO OPERATOR	1999 ACTUAL GROSS PROCEEDS	1999 ACTUAL NET PROCEEDS	1999 ACTUAL COUNTY TAX DUE	1999 ACTUAL STATE DEBT DUE	1999 ACTUAL STATE GF DUE	1999 ACTUAL TOTAL TAX DUE
1 BARRICK GOLDSTRIKE-MEIKLE	274,154,419	87,308,849	1,987,324.02	130,959.27	2,247,155.16	4,365,442.45
2 INDEPENDENCE MINING - JERRITT	101,639,987	4,416,365	100,525.30	6,624.55	113,668.40	220,818.25
3 MIDAS JOINT VENTURE	60,117,322	27,603,142	628,302.72	41,404.71	710,449.87	1,380,157.10
4 NEWMONT - CAP/BOOT	41,534,597	0	0.00	0.00	0.00	0.00
5 CONTINENTAL LIME INC	30,007,232	10,272,678	233,831.25	15,409.32	264,403.33	513,643.90
6 DEE GOLD	11,282,294	0	0.00	0.00	0.00	0.00
7 NEWMONT - RAIN	6,621,096	0	0.00	0.00	0.00	0.00
8 BAROID CORP - ROSSI	3,084,450	0	0.00	0.00	0.00	0.00
9 ALTA GOLD - KINSLEY	653,726	0	0.00	0.00	0.00	0.00
10 INDEPENDENCE MINING - BIG SPRIN	211,060	0	0.00	0.00	0.00	0.00
11 ELKO HEAT COMPANY	54,040	0	0.00	0.00	0.00	0.00
TOTAL	529,340,222	129,601,234	$2,949,983.29	$194,401.85	$3,335,676.56	$6,480,061.70

COUNTY - ESMERALDA OPERATOR	1999 ACTUAL GROSS PROCEEDS	1999 ACTUAL NET PROCEEDS	1999 ACTUAL COUNTY TAX DUE	1999 ACTUAL STATE DEBT DUE	1999 ACTUAL STATE GF DUE	1999 ACTUAL TOTAL TAX DUE
1 CHEMETALL FOOTE CORP	11,617,061	2,105,847	56,120.82	3,156.77	3,895.82	63,173.41
2 MINERAL RIDGE RESOURCES	6,714,170	0	0.00	0.00	0.00	0.00
3 GREFCO	260,859	2,769	73.79	4.15	0.00	77.94
4 VANDERBILT - BLANCO	180,664	0	0.00	0.00	0.00	0.00
TOTAL	18,772,754	2,108,616	$56,194.61	$3,162.92	$3,895.82	$63,253.35

COUNTY - EUREKA OPERATOR	1999 ACTUAL GROSS PROCEEDS	1999 ACTUAL NET PROCEEDS	1999 ACTUAL COUNTY TAX DUE	1999 ACTUAL STATE DEBT DUE	1999 ACTUAL STATE GF DUE	1999 ACTUAL TOTAL TAX DUE
1 NEWMONT GOLD	384,886,835	47,958,003	742,054.18	71,937.00	1,583,908.97	2,397,900.15
2 BARRICK GOLDSTRIKE	310,583,611	16,598,338	256,826.08	24,897.51	548,193.31	829,916.90
3 HOMESTAKE MINING	34,502,500	18,744,057	290,026.79	28,116.09	619,059.97	937,202.85
4 PETCON - BLACKBURN	1,467,245	579,934	8,973.32	869.90	13,354.14	23,197.36
5 NV BARTH - SAGA EXPLORATION	410,653	115,838	1,792.36	173.76	2,088.21	4,054.33
6 FORELAND 1-5 - TOMERA RANCH	5,832	0	0.00	0.00	0.00	0.00
7 FORELAND - N WILLOW CREEK FIELD	2,896	0	0.00	0.00	0.00	0.00
TOTAL	731,861,772	83,996,170	$1,299,672.73	$125,994.26	$2,766,604.60	$4,192,271.59

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CALENDAR YEAR 1999 NET PROCEEDS OF MINERALS

COUNTY - HUMBOLDT OPERATOR	1999 ACTUAL GROSS PROCEEDS	1999 ACTUAL NET PROCEEDS	1999 ACTUAL COUNTY TAX DUE	1999 ACTUAL STATE DEBT DUE	1999 ACTUAL STATE GF DUE	1999 ACTUAL TOTAL TAX DUE
1 SANTA FE PACIFIC - TWIN CREEKS	170,289,143	0	0.00	0.00	0.00	0.00
2 SANTA FE PACIFIC - LONE TREE	67,001,850	0	0.00	0.00	0.00	0.00
3 GETCHELL GOLD	31,739,646	0	0.00	0.00	0.00	0.00
4 MARIGOLD MINING	20,574,810	603,511	15,803.45	1,205.27	0.00	17,008.72
5 HYCROFT - CROFOOT MINE	11,197,695	0	0.00	0.00	0.00	0.00
6 MIN-AD INC	5,513,626	120,503	2,507.31	180.75	0.00	2,688.06
7 PINSON - PINSON	3,536,379	0	0.00	0.00	0.00	0.00
8 AMAX GOLD INC	614,294	0	0.00	0.00	0.00	0.00
9 HODSON, G. KEITH	129,742	20,090	389.79	30.14	82.33	502.26
10 ROYAL PEACOCK OPAL	5,500	2,180	42.30	3.27	41.63	87.20
TOTAL	310,592,488	946,284	$18,742.85	$1,419.43	$123.96	$20,286.24

COUNTY - LANDER OPERATOR	1999 ACTUAL GROSS PROCEEDS	1999 ACTUAL NET PROCEEDS	1999 ACTUAL COUNTY TAX DUE	1999 ACTUAL STATE DEBT DUE	1999 ACTUAL STATE GF DUE	1999 ACTUAL TOTAL TAX DUE
1 CORTEZ GOLD MINES - VENTURE II	384,878,187	239,310,988	7,152,526.21	358,958.45	4,454,055.74	11,965,548.40
2 ECHO BAY MINES - McCOY	89,369,328	0	0.00	0.00	0.00	0.00
3 NEWMONT GOLD MINING - MULE CYN	15,337,410	0	0.00	0.00	0.00	0.00
4 M-I - GREYSTONE	7,998,915	135,718	4,058.34	203.58	0.00	4,258.92
5 OXBOW POWER OF BEOWAWE INC	5,297,449	0	0.00	0.00	0.00	0.00
6 BATTLE MTN GOLD - REONA/CANYON	3,041,173	0	0.00	0.00	0.00	0.00
7 BAKER HUGHES	2,020,709	190,444	5,691.99	285.57	0.00	5,977.56
8 WINTLE, JAY	11,096	818	24.46	1.23	0.00	25.68
TOTAL	487,954,267	239,637,948	$7,162,296.99	$359,456.83	$4,454,055.74	$11,975,811.56

COUNTY - LINCOLN OPERATOR	1999 ACTUAL GROSS PROCEEDS	1999 ACTUAL NET PROCEEDS	1999 ACTUAL COUNTY TAX DUE	1999 ACTUAL STATE DEBT DUE	1999 ACTUAL STATE GF DUE	1999 ACTUAL TOTAL TAX DUE
1 WILKIN MINING	497,264	90,666	2,279.43	136.00	304.55	2,719.98
2 FELLER STONE	156,700	0	0.00	0.00	0.00	0.00
3 INTERNATIONAL TRACE MINERALS IN	28,834	0	0.00	0.00	0.00	0.00
TOTAL	682,798	90,666	$2,279.43	$136.00	$304.55	$2,719.98

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CALENDAR YEAR 1999 NET PROCEEDS OF MINERALS

COUNTY - LYON OPERATOR	1999 ACTUAL GROSS PROCEEDS	1999 ACTUAL NET PROCEEDS	1999 ACTUAL COUNTY TAX DUE	1999 ACTUAL STATE DEBT DUE	1999 ACTUAL STATE GF DUE	1999 ACTUAL TOTAL TAX DUE
1 NEVADA CEMENT	2,596,810	103,199	2,794.83	154.60	0.00	2,949.43
2 ART WILSON - ADAMS	1,921,417	204,814	5,311.65	307.22	0.00	5,618.87
3 TAD'S ENTERPRISE	537,018	44,625	1,352.99	66.94	0.00	1,419.93
4 N B A	1,960	1,140	29.56	1.71	25.73	57.00
TOTAL	5,057,205	353,778	$9,488.83	$530.67	$25.73	$10,045.23

COUNTY - MINERAL OPERATOR	1999 ACTUAL GROSS PROCEEDS	1999 ACTUAL NET PROCEEDS	1999 ACTUAL COUNTY TAX DUE	1999 ACTUAL STATE DEBT DUE	1999 ACTUAL STATE GF DUE	1999 ACTUAL TOTAL TAX DUE
1 KENNECOTT - RAWHIDE	36,004,005	0	0.00	0.00	0.00	0.00
2 KINROSS CANDELARIA	763,797	0	0.00	0.00	0.00	0.00
3 GREFCO	9,985	69	2.41	0.10	0.00	2.51
TOTAL	36,777,787	69	$2.41	$0.10	$0.00	$2.51

COUNTY - NYE OPERATOR	1999 ACTUAL GROSS PROCEEDS	1999 ACTUAL NET PROCEEDS	1999 ACTUAL COUNTY TAX DUE	1999 ACTUAL STATE DEBT DUE	1999 ACTUAL STATE GF DUE	1999 ACTUAL TOTAL TAX DUE
1 ROUND MOUNTAIN GOLD	152,710,392	4,929,385	172,035.54	7,394.08	67,039.64	246,469.26
2 BARRICK BULLFROG INC	22,462,324	0	0.00	0.00	0.00	0.00
3 DAISY GOLD MINING CO - M L	8,415,059	1,379,212	45,756.74	2,069.82	0.00	47,826.56
4 MUD CAMP MINING	4,360,128	909,652	31,716.84	1,364.48	0.00	33,081.32
5 PREMIER SERVICES - GABBS MAG	2,836,988	931,775	32,518.95	1,397.66	0.00	33,916.61
6 MAKOIL - MUNSON/TRAP	1,799,872	519,999	15,628.05	780.00	1,791.92	18,199.97
7 MAKOIL - GRANT	1,856,563	1,116,204	33,546.40	1,674.31	20,589.50	55,810.21
8 MAKOIL INC - TRAP SPRINGS	1,590,956	353,972	10,638.27	530.98	0.00	11,169.25
9 FORELAND - EAGLE SPRINGS	1,069,208	364,468	10,953.18	531.70	0.00	11,484.88
10 FORELAND - GHOST RANCH	811,946	294,156	8,840.56	441.23	3,955.22	13,237.01
11 WESTERN GENERAL - KATE SPRINGS	426,900	202,086	6,073.49	303.13	2,717.25	9,093.87
12 BIG WEST OIL & GAS	382,712	0	0.00	0.00	0.00	0.00
13 FRONTIER EXPLORATION 7403	249,513	12,421	373.30	18.63	0.00	391.93
14 CATHEDRAL GOLD	215,723	0	0.00	0.00	0.00	0.00
15 FORELAND - SAND DUNE	199,779	103,240	3,102.77	154.88	1,904.37	5,162.02
16 MAKOIL INC - BRITTON 13-21	197,848	34,222	1,028.51	51.33	0.00	1,079.84
17 MAKOIL - KATE SPRINGS 2-12	181,641	42,824	1,287.03	64.24	0.00	1,351.27
18 VANDERBILT	105,845	28,093	932.01	42.14	9.10	983.25
19 FRONTIER EXPLORATION 14-42	100,151	39,151	1,176.64	58.73	330.67	1,566.04
20 WESTERN GENERAL - TAYLOR 1 & 2	72,345	0	0.00	0.00	0.00	0.00
21 CROWELL, J	49,736	39,191	1,300.20	58.79	600.56	1,959.55
TOTAL	199,695,435	11,290,051	$376,608.48	$16,935.09	$98,938.23	$492,481.80

CALENDAR YEAR 1999 NET PROCEEDS OF MINERALS

COUNTY - PERSHING OPERATOR	1999 ACTUAL GROSS PROCEEDS	1999 ACTUAL NET PROCEEDS	1999 ACTUAL COUNTY TAX DUE	1999 ACTUAL STATE DEBT DUE	1999 ACTUAL STATE GF DUE	1999 ACTUAL TOTAL TAX DUE
1 COEUR ROCHESTER	52,251,450	9,345,655	267,323.12	14,018.48	185,941.15	467,282.75
2 FLORIDA CANYON	42,431,735	2,599,039	74,342.91	3,898.56	0.00	78,241.47
3 ROSEBUD MINING	32,560,492	9,003,158	257,526.33	13,504.74	179,126.83	450,157.90
4 EAGLE PICHER	6,438,071	779,939	22,309.36	1,169.91	0.00	23,479.28
5 U S GYPSUM	4,795,802	2,164,380	61,909.93	3,246.57	32,240.60	97,397 10
6 NUTRITIONAL ADDITIVES	178,311	8,850	253.15	13.28	0.00	266.43
7 VANDERBILT	118,036	0	0.00	0.00	0.00	0.00
8 AMERICAN COLLOID	62,909	62,909	1,799.45	94.36	1,251.64	3,145.45
TOTAL	138,836,806	23,963,930	$685,464.27	$35,945.90	$398,560.22	$1,119,970.19

COUNTY - STOREY OPERATOR	1999 ACTUAL GROSS PROCEEDS	1999 ACTUAL NET PROCEEDS	1999 ACTUAL COUNTY TAX DUE	1999 ACTUAL STATE DEBT DUE	1999 ACTUAL STATE GF DUE	1999 ACTUAL TOTAL TAX DUE
1 EAGLE PICHER	4,114,661	114,718	2,859.81	172.08	0.00	3,031.89
TOTAL	4,114,661	114,718	$2,859.81	$172.08	$0.00	$3,031.89

COUNTY - WASHOE OPERATOR	1999 ACTUAL GROSS PROCEEDS	1999 ACTUAL NET PROCEEDS	1999 ACTUAL COUNTY TAX DUE	1999 ACTUAL STATE DEBT DUE	1999 ACTUAL STATE GF DUE	1999 ACTUAL TOTAL TAX DUE
1 STEAMBOAT DEVELOPMENT CORP	13,117,180	0	0.00	0.00	0.00	0.00
2 ALTA GOLD COMPANY	6,000,619	0	0.00	0.00	0.00	0.00
3 CAITHNESS POWER	3,559,851	0	0.00	0.00	0.00	0.00
4 EMPIRE LIM PART - EMPIRE	1,921,203	932,826	22,275.88	1,399.24	0.00	23,675.12
5 STEAMBOAT ENVIROSYSTEMS	1,230,791	0	0.00	0.00	0.00	0.00
6 NEVADA CEMENT	475,397	0	0.00	0.00	0.00	0.00
7 WIND MOUNTAIN MINING COMPANY	124,960	0	0.00	0.00	0.00	0.00
TOTAL	26,430,001	932,826	$22,275.88	$1,399.24	$0.00	$23,675.12

COUNTY - WHITE PINE OPERATOR	1999 ACTUAL GROSS PROCEEDS	1999 ACTUAL NET PROCEEDS	1999 ACTUAL COUNTY TAX DUE	1999 ACTUAL STATE DEBT DUE	1999 ACTUAL STATE GF DUE	1999 ACTUAL TOTAL TAX DUE
1 B H P NV MINING - ROBINSON	32,071,039	0	0.00	0.00	0.00	0.00
2 BALD MOUNTAIN MINING - BALD MTN	28,020,691	0	0.00	0.00	0.00	0.00
3 ALTA GOLD - GRIFFON	6,727,949	3,123,769	106,764.81	4,685.65	29,129.15	140,569.81
TOTAL	66,819,679	3,123,769	$106,764.81	$4,685.65	$29,129.15	$140,569.81

CALENDAR YEAR 1999 NET PROCEEDS OF MINERALS

	STATEWIDE - OPERATORS	1999 TOTAL ACTUAL GROSS PROCEEDS	1999 TOTAL ACTUAL NET PROCEEDS	1999 TOTAL ACTUAL COUNTY TAX DUE	1999 TOTAL ACTUAL STATE DEBT DUE	1999 TOTAL ACTUAL STATE GF DUE	1999 GRAND TOTAL ACTUAL TAX DUE
7	EUREKA	731,851,772	83,996,170	1,299,672.73	125,994.26	2,766,504.60	4,192,271.59
11	ELKO	529,340,222	129,601,234	2,949,983.29	194,401.85	3,335,676.56	6,480,061.70
8	LANDER	487,954,267	239,637,948	7,162,298.99	359,456.93	4,454,055.74	11,975,811.66
10	HUMBOLDT	310,592,488	946,284	18,742.85	1,419.43	123.96	20,286.24
21	NYE	199,695,435	11,290,051	376,608.48	18,935.09	96,938.23	492,481.80
8	PERSHING	138,836,806	23,963,930	685,484.27	35,945.80	398,560.22	1,119,970.39
3	WHITE PINE	66,819,679	3,123,769	106,754.81	4,685.65	29,129.15	140,569.61
10	CHURCHILL	47,009,120	4,381,074	106,111.77	8,571.60	14,250.15	128,933.52
3	MINERAL	36,777,767	69	2.41	0.10	0.00	2.51
7	WASHOE	28,430,001	932,826	22,275.88	1,399.24	0.00	23,675.12
4	CLARK	25,243,004	6,381,783	145,763.32	9,572.67	132,816.27	288,172.26
4	ESMERALDA	18,772,754	2,108,616	56,194.61	3,162.82	3,895.82	63,253.25
4	LYON	5,057,205	353,778	9,488.83	530.67	25.73	10,045.23
1	STOREY	4,114,661	114,718	2,859.81	172.08	0.00	3,031.89
3	LINCOLN	682,798	90,556	2,279.43	136.00	304.55	2,719.98
1	DOUGLAS	60,252	54,788	1,078.60	82.15	1,577.65	2,738.40
0	CARSON CITY	0	0	0.00	0.00	0.00	0.00
105	TOTAL	2,631,248,251	506,977,684	12,947,600.08	760,466.54	11,235,958.63	$ 24,944,025.25

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CALENDAR YEAR 1999 NET PROCEEDS [redacted] INERALS

COUNTY - CARSON CITY ROYALTY RECIPIENT	MINE	1999 ACTUAL ROYALTIES	1999 ACTUAL COUNTY TAX DUE	1999 ACTUAL STATE DEBT DUE	1999 ACTUAL STATE GF DUE	1999 ACTUAL TOTAL TAX DUE
0		0	0.00	0.00	0.00	0.00
TOTAL		0	$0.00	$0.00	$0.00	$0.00

	COUNTY - CHURCHILL ROYALTY RECIPIENT	MINE	1999 ACTUAL ROYALTIES	1999 ACTUAL COUNTY TAX DUE	1999 ACTUAL STATE DEBT DUE	1999 ACTUAL STATE GF DUE	1999 ACTUAL TOTAL TAX DUE
1	CALIFORNIA ENERGY	DESERT PEAK	900,255	22,215.59	1,350.38	21,448.77	45,012.74
2	ELK RIVER MINERALS	DIXIE VALLEY	389,215	9,604.66	583.82	9,272.27	19,460.75
3	NEVADA LAND & RESOURCE CO	BRADY POWER PTNR	186,514	4,601.96	282.77	4,490.97	9,425.70
4	CALIFORNIA ENERGY	DIXIE VALLEY	101,609	2,507.41	152.41	2,420.63	5,080.45
5	F F & R	DESERT PEAK	46,479	1,146.96	69.72	1,107.27	2,323.95
6	DeBRAGA, LYLE	STILLWATER	14,769	364.45	22.15	351.84	738.44
7	DARLEY, W O	DESERT PEAK	13,526	333.78	20.29	322.23	676.30
8	ENERGY MINERALS	DESERT PEAK	12,415	306.36	18.62	295.76	620.74
9	WEISHAUPT, RICHARD	STILLWATER	12,049	297.33	18.07	287.04	602.44
10	STILLWATER FARMS INC	STILLWATER	12,049	297.33	18.07	287.04	602.44
11	JERNIGAN, MARGARET	STILLWATER	9,918	244.75	14.88	236.28	495.91
12	WEISHAUPT, RODNEY A	STILLWATER	9,037	223.01	13.56	215.29	451.86
13	WEISHAUPT, MARVIN	STILLWATER	9,037	223.01	13.56	215.29	451.86
14	VIERA, EDWARD W	STILLWATER	8,670	213.95	13.01	206.55	433.51
15	LAWRENCE, DOROTHY	STILLWATER	7,041	173.75	10.56	167.74	352.05
16	KOHL, RICHARD	NI-BR-HA	6,030	148.80	9.05	143.65	301.50
17	KOHL, OTTO JR	NI-BR-HA	6,030	148.80	9.05	143.65	301.50
18	HETTICK, JANET	NI-BR-HA	6,030	148.80	9.05	143.65	301.50
19	DeBRAGA, TED	STILLWATER	6,022	148.60	9.03	143.46	301.09
20	HOENIG, J	SODA LAKE	5,256	129.95	7.90	125.45	263.30
21	ARAI, KATHERINE	SODA LAKE	4,876	120.33	7.31	116.16	243.80
22	WEISHAUPT, RANDY	STILLWATER	4,519	111.52	6.78	107.69	225.98
23	WEISHAUPT, LYNN	STILLWATER	4,518	111.49	6.76	107.63	225.90
24	MARTIN, MABLE	STILLWATER	4,518	111.49	6.76	107.63	225.90
25	NELSON, LOLA M	STILLWATER	4,029	99.42	6.04	95.98	201.44
26	MEACHAM, NANCY & SUSAN	SODA LAKE	3,950	97.47	5.93	94.10	197.50
27	RONNOW, SHARON	STILLWATER	3,630	89.58	5.45	86.48	181.51
28	HUGHES, ROBERT	SODA LAKE	3,485	86.00	5.23	83.02	174.25
29	JORDAN, THOMAS D JR	STILLWATER	3,293	81.26	4.94	78.45	164.65
30	KENT, ROBERT	STILLWATER	2,571	63.44	3.86	61.25	128.55
31	KENT, ELEANOR	STILLWATER	2,571	63.44	3.86	61.25	128.55
32	MULLINS, A J	SODA LAKE	2,438	60.16	3.66	58.08	121.90
33	WEGGE, LOUISE	SODA LAKE	2,220	54.78	3.33	52.89	111.00
34	FITZ, HAROLD	STILLWATER	2,141	52.83	3.21	51.01	107.05
35	HUGHES, CARTER	SODA LAKE	2,009	49.58	3.01	47.86	100.45
36	KING, VAL	STILLWATER	1,277	31.51	1.92	30.42	63.85
37	WARD, W JR	SODA LAKE	1,219	30.08	1.83	29.04	60.95
38	THRASHER, J	SODA LAKE	1,209	29.83	1.81	28.80	60.44
39	ISENBERG, E	SODA LAKE	1,204	29.71	1.81	28.68	60.20
40	VAN DYKE, JOHN D	STILLWATER	1,071	26.43	1.61	25.51	53.55
41	VAN DYKE, JOHN	STILLWATER	1,071	26.43	1.61	25.51	53.55
42	KENT, BRUCE K	STILLWATER	819	20.21	1.23	19.51	40.95
43	HARVEY, W	SODA LAKE	606	14.95	0.91	14.44	30.30
44	FEIGHERY, C	SODA LAKE	557	13.75	0.84	13.27	27.86
TOTAL			1,823,762	$45,004.94	$2,735.69	$43,447.48	$91,188.09

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CALENDAR YEAR 1999 NET PROCEEDS OF MINERALS

COUNTY - CLARK ROYALTY RECIPIENT	MINE	1999 ACTUAL ROYALTIES	1999 ACTUAL COUNTY TAX DUE	1999 ACTUAL STATE DEBT DUE	1999 ACTUAL STATE GF DUE	1999 ACTUAL TOTAL TAX DUE
1 ALY, DENYS	FLORENCE	31,250	715.31	46.88	800.31	1,562.50
2 GUSTAFSON, C	FLORENCE	31,250	771.16	46.88	744.47	1,562.51
TOTAL		62,500	$1,486.47	$93.76	$1,544.78	$3,125.01

COUNTY - DOUGLAS ROYALTY RECIPIENT	MINE	1999 ACTUAL ROYALTIES	1999 ACTUAL COUNTY TAX DUE	1999 ACTUAL STATE DEBT DUE	1999 ACTUAL STATE GF DUE	1999 ACTUAL TOTAL TAX DUE
0		0	0.00	0.00	0.00	0.00
TOTAL		0	$0.00	$0.00	$0.00	$0.00

COUNTY - ELKO ROYALTY RECIPIENT	MINE	1999 ACTUAL ROYALTIES	1999 ACTUAL COUNTY TAX DUE	1999 ACTUAL STATE DEBT DUE	1999 ACTUAL STATE GF DUE	1999 ACTUAL TOTAL TAX DUE
1 EURO-NEVADA MINING CORP	MEIKLE	9,477,825	215,734.25	14,216.74	243,940.26	473,891.25
2 FRANCO-NEVADA MINING CORP	DEE MINE	273,675	6,229.39	410.51	7,043.85	13,683.75
3 EURO-NEVADA MINING CORP	DEE MINE	273,675	6,229.39	410.51	7,043.85	13,683.75
4 ELLISON MINERALS	JERRITT	229,995	5,235.15	344.99	5,919.61	11,499.75
5 JACKSON, PALMER	RAIN	75,337	1,728.83	113.01	1,925.81	3,766.85
6 ALBISU, EVELYN	KEN SNYDER	71,785	1,633.97	107.68	1,847.60	3,589.25
7 JACKSON, PETER	RAIN	37,670	864.45	56.51	962.54	1,883.50
8 HUTTON, DAVID A.	DEE MINE	26,472	602.56	39.71	681.34	1,323.61
9 MONTROSE, P & T	RAIN	18,834	432.20	28.25	481.25	941.70
10 MONTROSE, D & G	RAIN	18,834	432.20	28.25	481.25	941.70
11 MONTROSE, A & F	RAIN	14,127	324.19	21.19	360.97	706.35
12 BOYACK, A & P	RAIN	10,210	234.30	15.32	260.89	510.51
13 HAMMOND, HELEN	RAIN	5,049	115.86	7.57	129.01	252.44
TOTAL		10,533,488	$239,798.74	$15,800.24	$271,077.43	$526,674.41

COUNTY - ESMERALDA ROYALTY RECIPIENT	MINE	1999 ACTUAL ROYALTIES	1999 ACTUAL COUNTY TAX DUE	1999 ACTUAL STATE DEBT DUE	1999 ACTUAL STATE GF DUE	1999 ACTUAL TOTAL TAX DUE
1 MARY MINING CO INC	MARY DUMPS	181,417	4,834.76	272.13	3,963.96	9,070.85
TOTAL		181,417	$4,834.76	$272.13	$3,963.96	$9,070.85

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CALENDAR YEAR 1999 NET PROCEEDS [redacted] INERALS

	COUNTY - EUREKA ROYALTY RECIPIENT	MINE	1999 ACTUAL ROYALTIES	1999 ACTUAL COUNTY TAX DUE	1999 ACTUAL STATE DEBT DUE	1999 ACTUAL STATE GF DUE	1999 ACTUAL TOTAL TAX DUE
1	FRANCO NEVADA	GOLDSTRIKE	18,586,418	287,587.65	27,879.63	613,853.68	929,320.91
2	BARRICK BULLFROG	GOLDSTRIKE	5,180,075	80,151.30	7,770.11	171,082.34	259,003.75
3	GOLD QUARRY TRUST	CARLIN I & II	3,610,995	55,872.93	5,416.49	119,260.35	180,549.75
4	ASH, ROY	CARLIN I & II	1,686,730	26,098.77	2,530.10	55,707.68	84,336.50
5	ASH, DANKO, HANNA	CARLIN I & II	1,686,730	26,098.77	2,530.10	55,707.68	84,336.50
6	HIGH DESERT MINERAL	GOLDSTRIKE	1,112,282	17,210.34	1,668.42	36,735.34	55,614.10
7	SANTA FE PACIFIC GOLD CORP	CARLIN I & II	838,145	12,937.67	1,254.22	27,615.36	41,807.25
8	PACINI, G & D	CARLIN TREND	262,658	4,064.11	393.99	8,674.81	13,132.91
9	EURO-NEVADA	MAGGIE CREEK	254,278	3,934.44	381.42	8,398.04	12,713.90
10	FRANCO NEVADA	DEEP STAR	240,835	3,726.44	361.25	7,954.06	12,041.75
11	EURO-NEVADA	GOOD HOPE	100,198	1,550.36	150.30	3,309.24	5,009.90
12	BARSTOW, MIKE	CARLIN I & II	72,650	1,124.11	108.98	2,399.41	3,632.50
13	BARSTOW, KATHRYN	CARLIN TREND	47,502	735.00	71.25	1,568.85	2,375.10
14	HARNESS, LES	CARLIN TREND	20,359	315.01	30.54	672.40	1,017.95
15	HARNESS, JAMES	CARLIN TREND	20,359	315.01	30.54	672.40	1,017.95
16	MOBIL OIL	BLACKBURN	12,584	194.71	18.88	415.61	629.20
17	BUCY, SUZANNE	BLACKBURN	10,210	157.98	15.32	337.21	510.51
18	ACKMAN, EDWARD	BLACKBURN	4,863	75.25	7.29	160.61	243.15
19	SANTA FE PACIFIC GOLD	BARTH	4,675	72.34	7.01	154.40	233.75
20	VEAL, H K & COMPANY	BLACKBURN	3,829	59.25	5.74	126.46	191.45
21	McLISH, H P	BLACKBURN	3,464	53.60	5.20	114.41	173.21
22	KWOK-KEATING, MAY	BLACKBURN	2,596	40.17	3.89	85.74	129.80
23	U S MINERALS	BLACKBURN	1,951	30.19	2.93	64.44	97.56
24	MARKS, T., KEITH	BLACKBURN	1,275	19.73	1.91	42.11	63.75
25	KLIKOFF, W ALEXANDER	BLACKBURN	1,018	15.75	1.53	33.62	50.90
26	ROYALTY ACQUISITIONS, LLP	BLACKBURN	944	14.61	1.42	31.18	47.21
27	SANDERS, RICHARD	BLACKBURN	928	14.36	1.39	30.65	46.40
28	PIONEER NATURAL RES	TOMERA RANCH	718	11.11	1.08	23.71	35.90
	TOTAL		33,787,269	$522,480.56	$50,650.93	$1,115,231.62	$1,688,363.51

	COUNTY - HUMBOLDT ROYALTY RECIPIENT	MINE	1999 ACTUAL ROYALTIES	1999 ACTUAL COUNTY TAX DUE	1999 ACTUAL STATE DEBT DUE	1999 ACTUAL STATE GF DUE	1999 ACTUAL TOTAL TAX DUE
1	EURO-NEVADA	GETCHELL	792,174	15,580.48	1,188.26	22,839.96	39,608.70
2	INDEPENDENCE MINING	MARIGOLD	400,781	7,882.56	601.17	11,555.32	20,039.05
3	DECKER, DONALD	MARIGOLD	217,364	4,275.12	326.05	6,267.04	10,868.21
4	LITTLE VALLEY RANCH	MARIGOLD	144,910	2,850.09	217.37	4,178.05	7,245.51
5	CENTURY GOLD	MARIGOLD	144,910	2,850.09	217.37	4,178.05	7,245.51
6	F W LEWIS INC	LEWIS	123,111	2,388.80	184.67	3,582.28	6,155.55
7	DECKER, UNITRUST	MARIGOLD	72,455	1,425.04	108.68	2,089.02	3,622.74
8	LIVERMORE, J S	PINSON	39,742	781.65	59.61	1,145.84	1,987.10
9	GALLI, P	PINSON	26,495	521.10	39.74	763.90	1,324.74
10	GETCHELL GOLD	PINSON	14,485	284.89	21.73	417.63	724.25
11	NOCETO, BARBARA	PINSON	10,401	204.57	15.60	299.88	520.05
12	CHRISTISON, VICTOR	PINSON	7,794	153.29	11.69	224.72	389.70
13	CHRISTISON, JAMES	PINSON	7,794	153.29	11.69	224.72	389.70
14	CHRISTISON, DIANA	PINSON	7,794	153.29	11.69	224.72	389.70
15	EURO-NEVADA	PINSON	6,111	120.19	9.17	176.19	305.55
16	MURPHY, MICHAEL	PINSON	4,289	84.36	6.43	123.66	214.45
17	PHILLIPS, PATRICIA	PINSON	3,895	76.61	5.84	112.30	194.75
18	MURPHY, KATE	PINSON	3,896	76.61	5.84	112.30	194.75
19	EURO-NEVADA	MARIGOLD	558	10.97	0.84	16.09	27.90
	TOTAL		2,028,958	$39,872.80	$3,043.44	$58,531.67	$101,447.91

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CALENDAR YEAR 1999 NET PROCEEDS [redacted] MINERALS

	COUNTY - LANDER ROYALTY RECIPIENT	MINE	1999 ACTUAL ROYALTIES	1999 ACTUAL COUNTY TAX DUE	1999 ACTUAL STATE DEBT DUE	1999 ACTUAL STATE GF DUE	1999 ACTUAL TOTAL TAX DUE
1	PLACER DOME US	GOLD ACRES	3,355,228	100,281.05	5,032.84	62,447.50	167,761.39
2	TAYLOR, VERNON F	GOLD ACRES	2,943,477	87,974.84	4,415.22	54,783.99	147,173.85
3	KENNECOTT	GOLD ACRES	2,236,819	66,854.05	3,355.23	41,631.68	111,840.96
4	ROYAL GOLD INC	PIPELINE PROJECT	2,215,475	66,216.12	3,323.21	41,234.42	110,773.75
5	CURTIS, JOANN W	GOLD ACRES	1,058,715	31,642.87	1,588.07	19,704.80	52,935.74
6	HOSPAH COAL COMPANY	MULE CANYON	786,660	23,511.69	1,179.89	14,641.32	39,333.00
7	HOWARD HUGHES CORP	McCOY	690,177	20,628.01	1,035.27	12,845.57	34,508.85
8	WILSON, JOAN B	GOLD ACRES	529,371	15,821.84	794.06	9,852.85	26,468.55
9	WILSON, W L	GOLD ACRES	529,344	15,821.03	794.02	9,852.15	26,467.20
10	SPRENGER, H B FAMILY TRUST	GOLD ACRES	504,149	15,068.01	756.22	9,383.22	25,207.45
11	E C M INC	PIPELINE PROJECT	251,791	7,525.53	377.69	4,686.33	12,589.55
12	WALDECK, W G	GOLD ACRES	235,270	7,031.75	352.91	4,378.85	11,763.51
13	WILSON, BRENT	GOLD ACRES	112,035	3,348.50	168.05	2,085.20	5,601.75
14	DENVER MINING CO	PIPELINE PROJECT	83,930	2,508.50	125.90	1,562.11	4,196.51
15	WILSON, SUZANNE	GOLD ACRES	63,732	1,904.82	95.60	1,186.18	3,186.60
16	WILSON, JULIET	GOLD ACRES	63,732	1,904.82	95.60	1,186.18	3,186.60
17	WILSON, HOLLIS	GOLD ACRES	63,732	1,904.82	95.60	1,186.18	3,186.60
18	LAYTON TRUST	GREYSTONE	57,673	1,723.73	86.51	1,073.41	2,883.65
19	WILSON, TIMOTHY	GOLD ACRES	56,016	1,674.21	84.02	1,042.57	2,800.80
20	WILSON, GREGORY	GOLD ACRES	56,016	1,674.21	84.02	1,042.57	2,800.80
21	MATTEONI, SUSAN	GOLD ACRES	56,016	1,674.21	84.02	1,042.57	2,800.80
22	BARATTA, DEBORAH	GOLD ACRES	56,016	1,674.21	84.02	1,042.57	2,800.80
23	STANFORD MGMT/MINERALS AD	BEOWAWE	29,786	889.85	44.65	554.00	1,488.30
24	WILLIAMS, F	GREYSTONE	20,231	604.66	30.35	376.54	1,011.55
25	CLINTON, N	GREYSTONE	20,231	604.66	30.35	376.54	1,011.55
26	GINN, ALLEN	BEOWAWE	19,864	593.70	29.80	369.71	993.21
27	WEITZMAN, LAWRENCE	BEOWAWE	6,601	197.40	8.40	104.25	280.05
28	BATZ, LILLIAN	BEOWAWE	2,375	70.98	3.56	44.20	118.74
29	SIMMONS, C & P	BEOWAWE	1,679	50.18	2.52	31.25	83.95
30	HARRIS, LLOYD	BEOWAWE	1,679	50.18	2.52	31.25	83.95
31	STOCCKETTI, D G	BEOWAWE	1,169	34.94	1.75	21.76	58.45
32	UYEDA, TOMOCHIKA	BEOWAWE	1,125	33.62	1.69	20.94	56.25
33	DERMENGIAN, ANNIE	BEOWAWE	1,125	33.62	1.69	20.94	56.25
34	AHERN, DOROTHY	BEOWAWE	1,125	33.62	1.69	20.94	56.25
35	THOMAS, GERALDINE	BEOWAWE	1,108	33.12	1.66	20.62	55.40
36	ROSSI, LORETTA	BEOWAWE	1,108	33.12	1.66	20.62	55.40
37	TOWNSEND, ADA	BEOWAWE	1,021	30.52	1.53	19.00	51.05
	TOTAL		18,114,581	$481,632.59	$24,171.89	$299,924.58	$805,729.06

	COUNTY - LINCOLN ROYALTY RECIPIENT	MINE	1999 ACTUAL ROYALTIES	1999 ACTUAL COUNTY TAX DUE	1999 ACTUAL STATE DEBT DUE	1999 ACTUAL STATE GF DUE	1999 ACTUAL TOTAL TAX DUE
1	FELLER HOLDING CORPORATIO	BLACKSTONE	18,156	456.46	27.23	424.11	907.80
2	HARRINGTON, SID	ROBIN #1,#2	461	11.59	0.69	10.77	23.05
3	JONES, MARSHA	ROBIN #1,#2	440	11.06	0.66	10.28	22.00
4	SONNENBERG, AMY	MACKIE PERLITE	243	6.11	0.36	5.68	12.15
5	SONNENBERG, CAMILLE	MACKIE PERLITE	243	6.11	0.36	5.68	12.15
6	SONNENBERG, DEVIN	MACKIE PERLITE	243	6.11	0.36	5.68	12.15
7	SONNENBERG, TRAVIS	MACKIE PERLITE	243	6.11	0.36	5.68	12.15
8	WILKIN, JENNA	MACKIE PERLITE	243	6.11	0.36	5.68	12.15
9	WILKIN, LAUNA	MACKIE PERLITE	243	6.11	0.36	5.68	12.15
10	WILKIN, SUSI	MACKIE PERLITE	243	6.11	0.36	5.68	12.15
11	WILKIN, TESSA	MACKIE PERLITE	243	6.11	0.36	5.68	12.15
	TOTAL		21,001	$527.99	$31.46	$490.60	$1,050.05

CALENDAR YEAR 1999 NET PROCEEDS OF MINERALS

COUNTY - LYON ROYALTY RECIPIENT	MINE	1999 ACTUAL ROYALTIES	1999 ACTUAL COUNTY TAX DUE	1999 ACTUAL STATE DEBT DUE	1999 ACTUAL STATE GF DUE	1999 ACTUAL TOTAL TAX DUE
0		0	0.00	0.00	0.00	0.00
TOTAL		0	$0.00	$0.00	$0.00	$0.00

COUNTY - MINERAL ROYALTY RECIPIENT	MINE	1999 ACTUAL ROYALTIES	1999 ACTUAL COUNTY TAX DUE	1999 ACTUAL STATE DEBT DUE	1999 ACTUAL STATE GF DUE	1999 ACTUAL TOTAL TAX DUE
1 KENNECOTT RAWHIDE	DENTON-RAWHIDE	949,539	33,138.91	1,424.31	12,913.73	47,476.95
2 KINROSS RAWHIDE MINING	DENTON-RAWHIDE	912,304	31,839.41	1,368.46	12,407.33	45,615.20
TOTAL		1,861,843	$64,978.32	$2,792.77	$25,321.06	$93,092.15

COUNTY - NYE ROYALTY RECIPIENT	MINE	1999 ACTUAL ROYALTIES	1999 ACTUAL COUNTY TAX DUE	1999 ACTUAL STATE DEBT DUE	1999 ACTUAL STATE GF DUE	1999 ACTUAL TOTAL TAX DUE
1 ORDRICH GOLD RESOURCES	ROUND MOUNTAIN	4,836,746	168,802.44	7,255.12	65,779.75	241,837.31
2 BURLINGTON RESOURCES	ROUND MOUNTAIN	2,341,092	81,704.11	3,511.64	31,836.85	117,054.60
3 LAYNE, H B	BULLFROG	858,293	28,474.73	1,287.44	13,152.48	42,914.65
4 HOMESTAKE MINING CO	MOTHER LODE MINE	188,339	5,921.19	282.51	3,213.25	9,416.95
5 CORN / AHERN	MOTHER LODE MINE	84,151	2,781.79	126.23	1,289.53	4,207.55
6 AMERICAN COMETRA INC	GRANT CANYON	82,588	2,482.10	123.88	1,523.42	4,129.40
7 CRISP, CLAIR	BULLFROG	42,600	1,413.30	63.90	652.80	2,130.00
8 FINA OIL & CHEMICAL	GRANT CANYON	36,180	1,087.35	54.27	667.38	1,809.00
9 TAYLOR, THOMAS & ASSOC.	TRAP SPRINGS	28,736	883.63	43.10	530.06	1,436.79
10 ENEROYAL	TRAP SPRINGS	24,850	748.84	37.28	456.38	1,242.50
11 ROBERTSON-FINLEY RES INC	TRAP SPRINGS	23,936	719.37	35.90	441.52	1,196.79
12 ENERGY INCOME FUND	EAGLE SPRINGS	22,914	688.66	34.37	422.67	1,145.70
13 GALLI, P E	STERLING	21,158	701.94	31.74	324.23	1,057.91
14 CRAWFORD, THOMAS	BULLFROG	17,600	583.90	26.40	269.70	880.00
15 POPP, THOMAS F	EAGLE SPRINGS	15,401	462.66	23.10	284.09	770.05
16 BURNETT, VIOLA	BULLFROG	14,753	469.45	22.13	226.07	737.65
17 T H C COMPANY	GRANT CANYON	14,737	442.91	22.11	271.84	736.86
18 SAGA EXPLORATION	STERLING MINE	14,457	454.51	21.69	245.65	722.85
19 TAYLOR, LISA	KATE SPR #1	13,030	391.60	19.55	240.35	651.50
20 ENERGY INCOME FUND	GHOST RANCH	12,897	387.61	19.35	237.90	644.86
21 MITCHELL, JAY	BRITTON / M RANCH	12,418	373.21	18.63	229.06	620.90
22 McJUNKIN, KATHY	BRITTON 13-21	12,412	373.03	18.62	228.95	620.60
23 HINMAN, HARRY	GRANT CANYON	12,272	368.82	18.41	226.37	613.60
24 DAVIS, VIRGINIA	BULLFROG	12,240	406.07	18.36	187.57	612.00
25 POPP, THOMAS F	GHOST RANCH	11,028	331.44	16.54	203.42	551.40
26 DAVIS, THOMAS E	BULLFROG	10,832	359.36	16.25	165.99	541.60
27 RANSOM, KENNETH	EAGLE SPRINGS	9,901	297.56	14.85	182.63	495.04
28 HEMUS INC	GRANT CANYON	9,264	278.42	13.90	170.88	463.20
29 BEAIRD, PAUL	GRANT CANYON	9,264	278.42	13.90	170.88	463.20
30 McGONNIGAL, S & P	MUNSONRANCH TS	9,210	276.80	13.82	169.89	460.51
31 BEAIRD, PAUL	TRAP SPRINGS	9,167	275.51	13.75	169.09	458.35
32 T H C COMPANY	TRAP SPRINGS	8,743	262.76	13.11	161.27	437.14
33 BERRY PETROLEUM	TRAP SPRINGS	8,536	256.54	12.80	157.46	426.80
34 JACKSON, AVA MARIE	BRITTON 13-21	8,428	253.30	12.64	155.46	421.40

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CALENDAR YEAR 1999 NET PROCEEDS [redacted] INERALS

	COUNTY - NYE ROYALTY RECIPIENT	MINE	1999 ACTUAL ROYALTIES	1999 ACTUAL COUNTY TAX DUE	1999 ACTUAL STATE DEBT DUE	1999 ACTUAL STATE GR DUE	1999 ACTUAL TOTAL TAX DUE
35	LYDDON, JOHN	EAGLE SPRINGS	6,371	251.58	12.58	154.41	418.55
36	FORELAND CORP	KATE SPRINGS 2-12	6,255	248.10	12.38	152.27	412.75
37	PETCON	FX 7403	6,219	247.01	12.33	151.61	410.95
38	REDSTONE, USA	ASH MEADOWS	7,584	263.73	11.35	103.12	378.20
39	ROEMER, LAMAR	KATE SPR 2-12	7,459	224.17	11.19	137.59	372.95
40	ELAND ENERGY	FX 7403	5,903	177.41	8.85	108.89	295.15
41	HEMUS INC	TRAP SPRINGS-APC	5,563	167.19	8.34	102.62	278.15
42	PRIDE ENERGY	BACON FLAT 23-17	5,506	165.46	8.26	101.55	275.26
43	RANSOM, KENNETH	GHOST RANCH	5,503	165.39	8.25	101.51	275.15
44	NELSON, ARGYLE	EAGLE SPRINGS	5,269	158.35	7.90	97.19	263.44
45	FRENCH, DON	KATE SPR #1	5,219	156.85	7.83	96.27	260.95
46	DUNCAN, ANGELINA	FX 7403	4,980	149.97	7.49	92.05	249.51
47	GENE F LANG & CO	FX 7403	4,822	144.92	7.23	88.95	241.10
48	McGONNIGAL, W-L	MUNSONRANCH TS	4,606	138.43	6.91	84.96	230.30
49	ALBANY GOLD CORPORATION	STERLING	4,475	140.69	6.71	76.35	223.75
50	PYES, HUGO	TRAP SPRINGS	4,337	130.34	6.51	80.09	216.85
51	ENERGY INCOME FUND	SAND DUNE	4,313	129.62	6.47	79.56	215.65
52	T H C COMPANY	KATE SPR 2-12	4,245	127.58	6.37	78.30	212.25
53	LEVY, MARK	KATE SPR #1	4,245	127.58	6.37	78.30	212.25
54	CHATTIN, KEN	BRITTON 13-21	4,165	125.17	6.25	76.83	208.25
55	AMERICAN COMETRA INC	BACON FLAT 23-17	3,992	119.98	5.99	73.64	199.61
56	HINMAN, HARRY	TRAP SPRINGS	3,932	118.17	5.90	72.53	196.60
57	POPP, THOMAS F	SAND DUNE FIELD	3,676	110.48	5.51	67.81	183.80
58	DUNE PARTNERS, LLC	EAGLE SPRINGS	3,632	109.16	5.45	67.00	181.61
59	FERGUSON TRUST	TRAP SPRINGS	3,561	107.02	5.34	65.69	178.05
60	TAYLOR, LISA	TAYLOR FED #1	3,403	102.27	5.10	62.77	170.14
61	TRAMMEL, ALICE	TRAP SPRINGS	3,239	97.34	4.86	59.75	161.95
62	LIVERMORE, J S	STERLING	3,238	101.80	4.86	55.24	161.90
63	McGONNIGAL, S & P	TRAP SPRINGS	3,215	96.62	4.82	59.30	160.74
64	FINLEY, MARK	GRANT CANYON	3,123	93.86	4.68	57.61	156.15
65	FINLEY, J D	GRANT CANYON	3,123	93.86	4.68	57.61	156.15
66	NELSON, ARGYLE	GHOST RANCH	3,060	91.97	4.59	56.44	153.00
67	FINA OIL & CHEMICAL	BACON FLAT 23-17	2,859	85.92	4.29	52.74	142.95
68	COREXCAL	BACON FLAT 23-17	2,753	82.74	4.13	50.78	137.65
69	FINLEY, MARK	TRAP SPRINGS	2,721	81.78	4.08	50.19	136.05
70	FINLEY, J D	TRAP SPRINGS	2,721	81.78	4.08	50.19	136.05
71	T H C COMPANY	BACON FLAT 23-17	2,267	68.13	3.40	41.82	113.35
72	HINMAN, HARRY	KATE SPRINGS	2,122	63.77	3.18	39.14	106.09
73	GUIDERA, JACK	TRAP SPRINGS	2,118	63.65	3.18	39.07	105.90
74	RANSOM, KENNETH	KATE SPRING FIELD	1,937	58.21	2.91	35.73	96.85
75	RANSOM, KENNETH	SAND DUNE FIELD	1,849	55.57	2.77	34.11	92.45
76	TRUFFLE HUNTER GROUP, LLC	BACON FLAT 23-17	1,807	54.31	2.71	33.33	90.35
77	PARADOR MINING COMPANY INC	BULLFROG	1,789	58.35	2.68	27.41	89.44
78	BABINEC, JOSEPH	TRAP SPRINGS	1,733	52.08	2.60	31.97	86.65
79	McGONNIGAL, W-L	TRAP SPRINGS	1,607	48.30	2.41	29.64	80.35
80	FINLEY, DANA	GRANT CANYON	1,562	46.94	2.34	28.81	78.09
81	LINDQUIST, JOAN GILMORE	CENEX 5-14, 5-14 A	1,547	46.49	2.32	28.54	77.35
82	GRIESS, VALERIE G	CENEX 5-14, 5-14 A	1,547	46.49	2.32	28.54	77.35
83	GILMORE, PRISCILLA F	CENEX 5-14, 5-14 A	1,547	46.49	2.32	28.54	77.35
84	GILMORE, M REED JR	CENEX 5-14, 5-14 A	1,547	46.49	2.32	28.54	77.35
85	GILMORE, J C	CENEX 5-14, 5-14 A	1,547	46.49	2.32	28.54	77.35
86	FINLEY MANAGEMENT CO	TRAP SPRINGS	1,502	45.14	2.25	27.71	75.10
87	ALEXANDER, BARBARA K	MUNSONRANCH TS	1,479	44.45	2.22	27.28	73.95
88	FINLEY MANAGEMENT CO	GRANT CANYON	1,420	42.68	2.13	26.19	71.00
89	AMERICAN COMETRA INC	FX 7403	1,405	42.23	2.11	25.92	70.26
90	DUNE PARTNERS, LLC	GHOST RANCH FIELD	1,396	41.96	2.09	25.76	69.80
91	FINLEY, DANA	TRAP SPRINGS	1,361	40.90	2.04	25.11	68.05

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CALENDAR YEAR 1999 NET PROCEEDS [redacted] INERALS

	COUNTY - NYE ROYALTY RECIPIENT	MINE	1999 ACTUAL ROYALTIES	1999 ACTUAL COUNTY TAX DUE	1999 ACTUAL STATE DEBT DUE	1999 ACTUAL STATE GF DUE	1999 ACTUAL TOTAL TAX DUE
92	RONNING, GRABLE BOSWORTH	MUNSONRANCH TS	1,205	36.22	1.81	22.23	60.26
93	ENERGY INCOME FUND	KATE SPRINGS	1,202	36.12	1.80	22.17	60.09
94	GOLDSTEIN TRUST	MUNSONRANCH TS	1,167	35.07	1.75	21.53	58.35
95	D & R INVESTMENTS	EAGLE SPRINGS	1,157	34.77	1.74	21.34	57.85
96	ROOP, JAMES	TRAP SPRINGS	1,102	33.12	1.65	20.33	55.10
97	KANOWA PETROLEUM	EAGLE SPRING FIELD	1,024	30.78	1.54	18.89	51.21
98	NELSON, ARGYLE	SAND DUNE FIELD	999	30.02	1.50	18.43	49.95
99	EURO-NEVADA	STERLING	980	30.81	1.47	16.72	49.00
100	HINMAN, HARRY	BACON FLAT 23-17	950	28.55	1.43	17.52	47.50
101	CUNNINGHAM, PAUL S	MUNSONRANCH TS	949	28.52	1.42	17.51	47.45
102	LASRICH, B	MUNSONRANCH TS	937	28.16	1.41	17.28	46.85
103	BRITTON, ERNEST	BRITTON 13-21	919	27.62	1.38	16.95	45.95
104	BUTLER, WOHLFORD & 4-W PET	FX 7403	797	23.95	1.20	14.70	39.85
105	BRAVO IV	TRAP SPRINGS-APC	776	23.32	1.16	14.31	38.79
106	RAYBOURN, W B	FX 7403	761	22.87	1.14	14.04	38.05
107	FINLEY COMPANY	FX 7403	759	22.81	1.14	14.00	37.95
108	ROBERTSON-FINLEY RES INC	FX 7403	754	22.66	1.13	13.91	37.70
109	FINLEY PETROLEUM INC	FX 7403	754	22.66	1.13	13.91	37.70
110	EVANS, DAVID	FX 7403	725	21.78	1.09	13.37	36.25
111	DUNCAN, ANGELINA	MNSONRNCH TS1423	713	21.43	1.07	13.15	35.65
112	ALEXANDER, B 1983 TRUST	MUNSONRANCH TS	696	20.92	1.04	12.84	34.80
113	SHIDLER, M & M	FX 7403	658	19.72	0.98	12.10	32.80
114	BEVERIDGE, R C	TRAP SPRINGS-APC	642	19.29	0.96	11.84	32.09
115	FINLEY, MARK	FX 7403	640	19.23	0.96	11.81	32.00
116	WARBURTON, MICHELLE	MUNSONRANCH TS	584	17.55	0.88	10.77	29.20
117	RONNING, G B 1983 TRUST	MUNSONRANCH TS	567	17.04	0.85	10.46	28.35
118	FINLEY, J D	FX 7403	540	16.23	0.81	9.96	27.00
119	SHAPIRO, MARVIN	GRANT CANYON	508	15.27	0.76	9.37	25.40
120	T H C COMPANY	FX 7403	494	14.85	0.74	9.11	24.70
121	BARESH, ROGER	GRANT CANYON	492	14.79	0.74	9.08	24.61
122	RONNING, GARY	TRAP SPRINGS	483	14.52	0.72	8.91	24.15
123	DUNE PARTNERS, LLC	SAND DUNE	483	14.52	0.72	8.91	24.15
124	FINLEY, MARK	BACON FLAT 23-17	468	14.07	0.70	8.63	23.40
125	FINLEY, J D	BACON FLAT 23-17	468	14.07	0.70	8.63	23.40
126	NELSON, ARGYLE	KATE SPRINGS 12-2	454	13.64	0.68	8.37	22.69
127	KNEUBUHL, SUZANNE	KATE SPRNG	454	13.64	0.68	8.37	22.69
128	BARESH, ROGER	TRAP SPRINGS	440	13.22	0.66	8.12	22.00
129	SHAPIRO, MARVIN	TRAP SPRINGS	429	12.89	0.64	7.91	21.44
130	FASH, LEAH	GRANT CANYON	398	11.96	0.60	7.34	19.90
131	FINLEY MANAGEMENT CO	BACON FLAT 23-17	382	11.48	0.57	7.05	19.10
132	HATCH GROUP	MUNSONRANCH TS	377	11.33	0.57	6.95	18.85
133	A - 8 INVESTMENTS	MUNSONRANCH TS	377	11.33	0.57	6.95	18.85
134	BARTON, ROY	TAYLOR FED #1&#2	371	11.15	0.56	6.84	18.55
135	HERRING, DONNA M	TAYLOR FED #1&#2	369	11.09	0.55	6.81	18.45
136	FASH, LEAH	TRAP SPRINGS	327	9.83	0.49	6.03	16.35
137	FINLEY, DANA	BACON FLAT 23-17	319	9.58	0.48	5.88	15.95
138	LOVITCH, KAREN	MUNSONRANCH TS	292	8.78	0.44	5.39	14.61
139	FINNERMAN, PAT	MUNSONRANCH TS	292	8.78	0.44	5.39	14.61
140	VAUGHN PETROLEUM INC.	TRAP SPRINGS	243	7.30	0.36	4.48	12.14
141	PINEY FORK PRODUCTION	FX 7403	213	6.40	0.32	3.93	10.65
142	FINLEY, DANIEL R	FX 7403	213	6.40	0.32	3.93	10.65
143	FINLEY, DANA	FX 7403	125	3.76	0.19	2.31	6.26
144	FINLEY MANAGEMENT CO	FX 7403	125	3.76	0.19	2.31	6.26
	TOTAL		9,071,089	$311,055.58	$13,606.65	$128,892.22	$453,554.45

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CALENDAR YEAR 1999 NET PROCEEDS [redacted] INERALS

	COUNTY - PERSHING ROYALTY RECIPIENT	MINE	1999 ACTUAL ROYALTIES	1999 ACTUAL COUNTY TAX DUE	1999 ACTUAL STATE DEBT DUE	1999 ACTUAL STATE GF DUE	1999 ACTUAL TOTAL TAX DUE
1	EURO-NEVADA MINING CORP	ROSEBUD MINE	1,408,094	40,277.12	2,112.14	28,015.44	70,404.70
2	RANLEIGH INTERNATIONAL	FLORIDA CANYON	728,350	20,833.72	1,092.53	14,491.25	36,417.50
3	SANTA FE PACIFIC GOLD	EAGLE PICHER	264,471	7,564.93	396.71	5,261.92	13,223.56
4	HALL, HANNAH	FLORIDA CANYON	73,995	2,116.84	111.00	1,472.28	3,699.90
5	SANTA FE PACIFIC GOLD	SEXTON	5,898	197.31	10.35	137.24	344.90
	TOTAL		2,481,811	$70,989.72	$3,722.73	$49,378.11	$124,090.56

	COUNTY - STOREY ROYALTY RECIPIENT	MINE	1999 ACTUAL ROYALTIES	1999 ACTUAL COUNTY TAX DUE	1999 ACTUAL STATE DEBT DUE	1999 ACTUAL STATE GF DUE	1999 ACTUAL TOTAL TAX DUE
1	KNIGHT, JAMES	CELATOM	14,560	362.97	21.84	343.19	728.00
	TOTAL		14,560	$362.97	$21.84	$343.19	$728.00

	COUNTY - WASHOE ROYALTY RECIPIENT	MINE	1999 ACTUAL ROYALTIES	1999 ACTUAL COUNTY TAX DUE	1999 ACTUAL STATE DEBT DUE	1999 ACTUAL STATE GF DUE	1999 ACTUAL TOTAL TAX DUE
1	FLEETWOOD CORPORATION	STEAMBOAT II & III	375,029	10,762.56	562.54	7,426.32	18,751.44
2	GUISTI TRUST	STEAMBOAT II & III	131,774	3,781.85	197.66	2,609.39	6,588.70
3	SIERRA PACIFIC POWER COMPA	STEAMBOAT SPGS	127,576	3,661.18	191.36	2,526.26	6,378.80
4	BENSON, S & H	STEAMBOAT SPGS	52,371	1,502.94	78.56	1,037.05	2,618.55
5	KOSMOS COMPANY	EMPIRE GEOTHERMA	45,576	1,088.35	68.36	1,122.08	2,278.79
6	REDFIELD TRUST	STEAMBOAT SPGS	18,183	503.31	27.27	378.57	909.15
7	GEOTHERMAL RESOURCES INT	STEAMBOAT SPGS	9,053	250.59	13.58	188.48	452.65
8	CATON PROPERTIES	STEAMBOAT SPGS	4,503	124.64	6.75	93.75	225.14
9	WEST, RAYMOND & BETTY	STEAMBOAT SPRS	1,572	43.51	2.36	32.73	78.60
10	CALPINE GEYSERS CO L P	STEAMBOAT SPGS	1,126	31.17	1.69	23.44	56.30
11	HARRIS, RICHARD	STEAMBOAT SPGS	1,091	30.20	1.64	22.71	54.55
12	BOOTH, MARTIN	STEAMBOAT SPGS	1,034	28.67	1.55	20.48	51.70
13	VINING, MERLIN	STEAMBOAT SPGS	629	17.41	0.94	13.10	31.45
14	VELEY, JOHN	STEAMBOAT SPGS	629	17.41	0.94	13.10	31.45
15	SWIGER, JANET	STEAMBOAT SPGS	629	17.41	0.94	13.10	31.45
16	BEAVER, GRACE	STEAMBOAT SPGS	629	17.41	0.94	13.10	31.45
17	NOBLE, JOHN E	STEAMBOAT SPGS	628	17.38	0.94	13.07	31.39
18	NOBLE, DONALD E	STEAMBOAT SPGS	628	17.38	0.94	13.07	31.39
19	POWERS, WINONA L	STEAMBOAT SPGS	420	11.63	0.63	8.74	21.00
20	POWERS, RAYMOND	STEAMBOAT SPGS	420	11.63	0.63	8.74	21.00
21	SNOOK, JULIE	STEAMBOAT SPGS	419	11.60	0.63	8.72	20.95
22	VINING, MAYBELLE	STEAMBOAT SPGS	184	5.09	0.28	3.83	9.20
23	VINING, JOHN	STEAMBOAT SPGS	184	5.09	0.28	3.83	9.20
24	VINING, RAYMOND	STEAMBOAT SPGS	157	4.35	0.24	3.27	7.86
25	VINING, MARGARET	STEAMBOAT SPGS	157	4.35	0.24	3.27	7.86
26	VINING, JAMES	STEAMBOAT SPGS	157	4.35	0.24	3.27	7.86
27	VINING, EDWARD	STEAMBOAT SPGS	157	4.35	0.24	3.27	7.86
28	ETZWILER, R	STEAMBOAT SPGS	157	4.35	0.24	3.27	7.86
29	DONAHUE, OLLIE	STEAMBOAT SPGS	157	4.35	0.24	3.27	7.86
	TOTAL		775,229	$21,985.33	$1,162.85	$15,613.28	$38,761.46

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CALENDAR YEAR 1999 NET PROCEEDS [redacted]NERALS

	COUNTY - WHITE PINE ROYALTY RECIPIENT	MINE	1999 ACTUAL ROYALTIES	1999 ACTUAL COUNTY TAX DUE	1999 ACTUAL STATE DEBT DUE	1999 ACTUAL STATE GF DUE	1999 ACTUAL TOTAL TAX DUE
1	ROYAL GOLD INC.	BALD MOUNTAIN	410,246	14,020.18	615.37	5,876.77	20,512.30
2	FRANCO - NEVADA MINING	ROBINSON MINE	354,887	12,128.28	532.33	5,083.76	17,744.35
3	HAGER, ROBERT R	BALD MOUNTAIN	208,200	7,115.24	312.30	2,982.47	10,410.01
4	HAGER, HAROLD	BALD MOUNTAIN	205,073	7,008.37	307.61	2,937.67	10,253.65
5	EURO-NEVADA MINING CORP	ALLIGATOR RIDGE	197,875	6,762.38	296.81	2,834.56	9,893.75
6	GRIFFON RESOURCES	GRIFFON	140,615	4,805.52	210.92	2,014.31	7,030.75
7	CAMBELL, LYLE TRUST	ALLIGATOR-YANKEE	21,972	750.89	32.96	314.75	1,098.60
	TOTAL		1,538,868	$52,590.82	$2,308.30	$22,044.29	$76,943.41

	STATEWIDE	1999 TOTAL ACTUAL ROYALTIES	1999 TOTAL ACTUAL COUNTY TAX DUE	1999 TOTAL ACTUAL STATE DEBT DUE	1999 TOTAL ACTUAL STATE GF DUE	1999 GRAND TOTAL ACTUAL TAX DUE
28	EUREKA	33,767,269	922,460.96	50,850.93	1,115,231.62	1,888,383.51
37	LANDER	16,114,581	481,832.59	24,171.89	299,924.58	805,729.06
13	ELKO	10,533,488	239,796.74	15,800.24	271,077.43	526,674.41
144	NYE	9,071,089	311,055.58	13,608.65	128,892.22	453,554.45
5	PERSHING	2,481,811	70,989.72	3,722.73	49,378.11	124,090.56
19	HUMBOLDT	2,028,956	39,872.60	3,043.44	58,531.67	101,447.91
2	MINERAL	1,861,843	64,976.32	2,792.77	25,321.06	93,092.15
44	CHURCHILL	1,823,762	45,004.94	2,735.69	43,447.46	91,188.09
7	WHITE PINE	1,538,868	52,590.82	2,308.30	22,044.29	76,943.41
29	WASHOE	775,229	21,985.33	1,162.85	15,513.28	38,761.46
1	ESMERALDA	181,417	4,834.76	272.13	3,963.96	9,070.85
2	CLARK	62,500	1,486.47	93.76	1,544.78	3,125.01
11	LINCOLN	21,001	527.99	31.46	490.60	1,050.05
1	STOREY	14,560	362.97	21.84	343.19	728.00
0	LYON	0	0.00	0.00	0.00	0.00
0	DOUGLAS	0	0.00	0.00	0.00	0.00
0	CARSON CITY	0	0.00	0.00	0.00	0.00
343	STATEWIDE TOTAL	80,276,376	1,857,599.99	120,414.66	2,035,804.25	4,013,818.92

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STATEWIDE	1999 TOTAL ACTUAL GROSS PROCEEDS	1999 TOTAL ACTUAL NET PROCEEDS	1999 TOTAL ACTUAL COUNTY TAX DUE	1999 TOTAL ACTUAL STATE DEBT DUE	1999 TOTAL ACTUAL STATE GF DUE	1999 GRAND TOTAL ACTUAL TAX DUE
105 OPERATORS	$2,631,248,251	$506,977,684	$12,947,600.08	$760,466.54	$11,235,958.63	$24,944,025.25
343 ROYALTY RECIPIENTS		$ 80,276,376	$1,857,599.99	$120,414.68	$2,035,804.25	$4,013,818.92
448 GRAND TOTAL		$587,254,060	$14,805,200.07	$880,881.22	$13,271,762.88	$28,957,844.17

STATE OF NEVADA

DEPARTMENT OF TAXATION

2000-01

NET PROCEEDS OF MINERALS

BASED ON 2000 CALENDAR YEAR REPORT

PREPARED BY THE

DIVISION OF ASSESSMENT STANDARDS

CENTRALLY ASSESSED PROPERTIES

FOR CERTIFICATION BY THE DEPARTMENT OF TAXATION

April 20, 2001

003440

2000-2001 Net Proceeds of Minerals Report

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Net Proceeds of Minerals Tax

Introduction

The net proceeds of minerals tax is annually determined by the Department of Taxation, and is based on the actual production of minerals from all operating mines, oil and gas wells, as well as geothermal operations in Nevada.

The 2001 Legislature amended taxpayer reporting requirements in AB 361. Partial year reporting and payments are no longer required. Mine operators are required to file a statement showing the gross yield and claimed net proceeds from each geographically separate operation where a mineral is extracted on or before February 16th of each year. Statements can be amended up to 30 days after filing on February 16th if a written application to the department is made and the department finds good cause to allow the amendment. (NRS 362.110). Royalty recipients must also annually file a report by February 16th showing the amount of royalties received.

The Department determines the net proceeds of minerals tax due based on the information filed by the taxpayer, as well as from all obtainable data, evidence and reports available. The net proceeds are determined by subtracting from the gross yield certain deductions for costs incurred during the calendar year immediately preceding the reporting year. Costs available for deduction may be ascertained from Nevada Revised Statutes (NRS) 362.120 and Nevada Administrative Code (NAC) 362.030 through 362.070. Royalty recipients simply report the amount of royalties received, as no costs are available for deduction from the royalty. The Department certifies the net proceeds no later than April 20th for production occurring in the previous year. Taxes must be paid on or before May 10th of the year in which the certificate is received. (NRS 362.130).

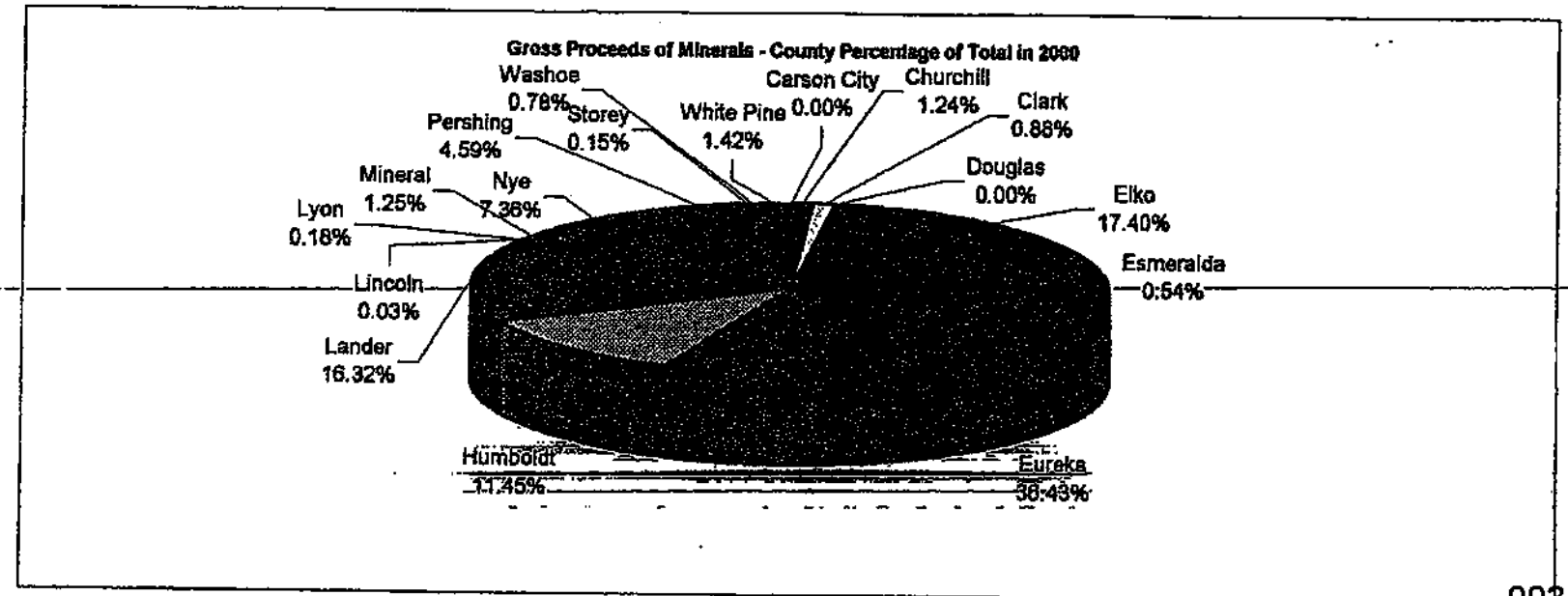
The tax rate applied to the net proceeds is based on a sliding scale between 2% and 5%, depending on the ratio of net proceeds to gross proceeds. (NRS 362.140). Of the total tax rate, the local portion of the overall tax liability is based on the local rate where the mine is located, and the balance, up to the constitutional limit of five percent, is the state portion of the tax. For example, if a company generates $1,000,000 in net proceeds, out of a total of $2,000,000 gross yield, then, according to the statutes, the ratio of net proceeds to gross proceeds is 50%, and the rate of tax would be 5%. If the local tax rate where the mine is located is .0364, then the balance after subtraction from 5% would be the state portion of the tax, or .0136.

Nevada Department of Taxation

Gross Proceeds of Minerals

1995-2000

	2000	1999	1998	1997	1996	1995	Percent Change 1995-2000
Carson City	-	-	-	-	-	-	
Churchill	33,145,479	47,009,120	75,426,316	95,164,481	91,182,171	90,319,194	-63.30%
Clark	23,510,294	25,243,004	22,933,419	24,651,712	24,000,646	23,651,122	-0.60%
Douglas	64,661	60,252	58,923	59,400	60,332	59,202	9.22%
Elko	464,066,484	529,340,222	447,416,809	436,306,177	232,491,376	183,468,317	152.95%
Esmeralda	14,274,836	18,772,754	15,364,112	17,091,459	22,404,550	20,093,078	-28.96%
Eureka	971,904,129	731,861,772	946,588,326	1,081,393,284	1,378,356,628	1,412,680,742	-31.20%
Humboldt	305,352,473	310,592,488	365,445,759	405,242,328	411,940,651	441,823,937	-30.89%
Lander	435,345,234	487,954,267	487,542,114	304,581,894	257,310,613	279,941,477	55.51%
Lincoln	669,608	682,798	848,018	867,282	775,301	703,140	-4.77%
Lyon	4,779,537	5,057,205	17,294,892	22,204,144	23,072,952	20,364,101	-76.53%
Mineral	33,287,932	36,777,787	48,280,893	71,073,192	89,576,759	86,967,240	-61.72%
Nye	196,460,168	199,695,435	241,260,274	260,895,658	266,856,846	229,547,869	-14.41%
Pershing	122,333,476	136,836,806	164,415,377	163,044,935	145,511,941	111,601,851	9.62%
Storey	4,073,972	4,114,661	4,471,248	4,630,319	5,374,116	6,794,526	-40.04%
Washoe	20,832,451	28,430,001	22,614,920	20,234,732	20,472,633	22,734,738	-8.37%
White Pine	37,809,013	66,819,679	138,580,297	210,645,681	141,296,133	60,872,905	-37.89%
Statewide Total	**2,667,929,747**	**2,631,248,251**	**2,998,541,697**	**3,118,086,678**	**3,110,683,648**	**2,991,623,439**	**-10.82%**



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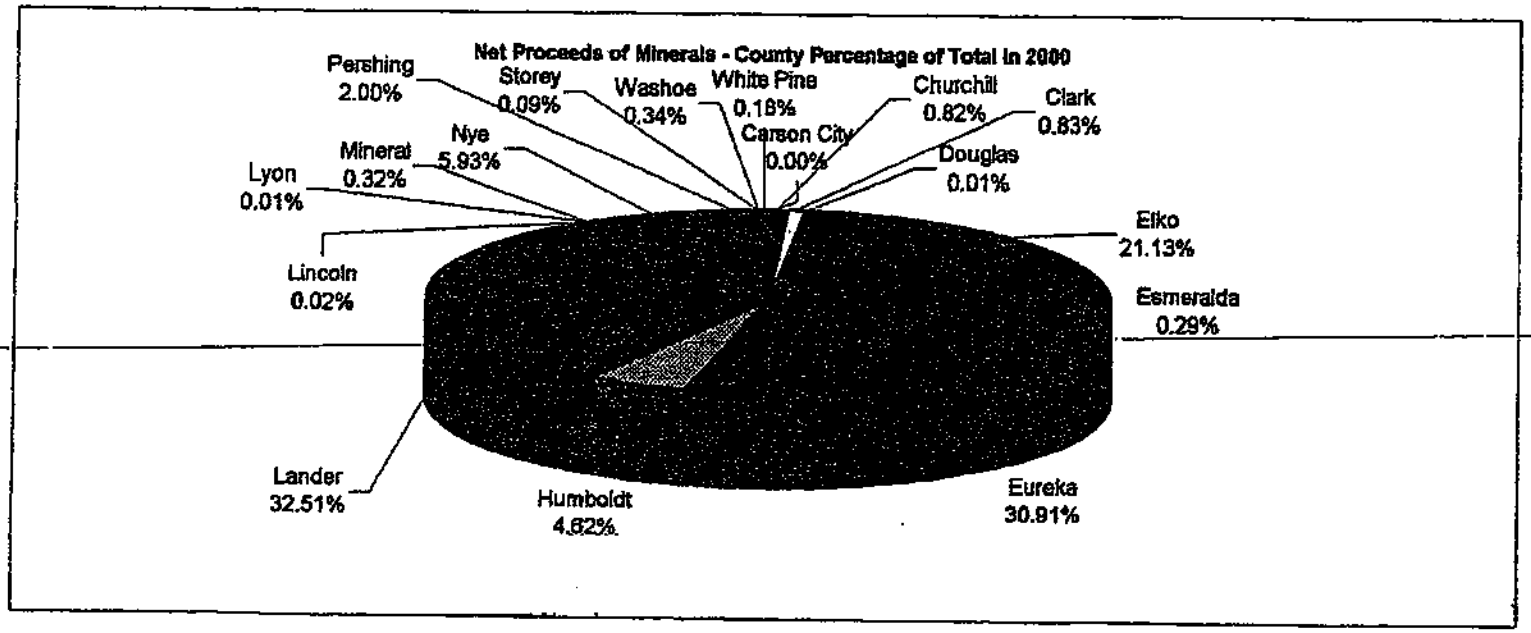
Nevada Depa. ent of Taxation

Net Proceeds of Minerals

1995-2000

	2000	1999	1998	1997	1996	1995	Percent Change 1995-2000
Carson City	-	-	-	-	-	-	
Churchill	4,919,905	6,204,836	27,946,220	46,511,564	43,400,645	43,917,772	-88.80%
Clark	5,010,878	6,444,283	6,238,497	8,115,530	7,913,255	7,146,357	-29.88%
Douglas	58,195	54,768	48,794	38,857	50,337	48,689	19.52%
Elko	127,092,163	140,134,722	139,600,605	144,562,766	21,501,161	9,132,318	1291.67%
Esmeralda	1,720,531	2,290,033	1,041,752	926,241	9,236,968	7,013,556	-75.47%
Eureka	185,854,627	117,763,439	185,631,362	263,248,542	357,833,953	474,563,434	-60.84%
Humboldt	27,782,049	2,975,242	5,543,522	23,396,041	14,171,786	40,071,034	-30.67%
Lander	195,507,746	255,752,529	223,122,561	19,613,701	37,698,138	92,741,822	110.81%
Lincoln	110,336	111,667	108,936	112,469	71,553	87,926	25.49%
Lyon	39,262	353,778	1,906,724	1,939,058	3,283,792	2,617,447	-98.50%
Mineral	1,901,068	1,861,912	7,095,185	17,360,325	20,466,698	22,728,585	-91.64%
Nye	35,637,339	20,361,140	33,912,982	61,004,913	67,706,345	55,705,167	-36.03%
Pershing	12,055,214	26,445,741	41,039,852	36,293,866	25,025,267	17,149,633	-29.71%
Storey	568,032	129,278	625,345	770,140	590,241	694,062	-18.16%
Washoe	2,019,597	1,708,055	1,695,810	870,920	1,386,921	1,703,879	18.53%
White Pine	1,085,867	4,662,637	12,427,051	7,737,773	2,829,619	11,521,765	-90.58%
Statewide Total	**601,362,809**	**587,254,060**	**687,985,198**	**632,502,706**	**613,166,679**	**786,843,446**	**-23.57%**



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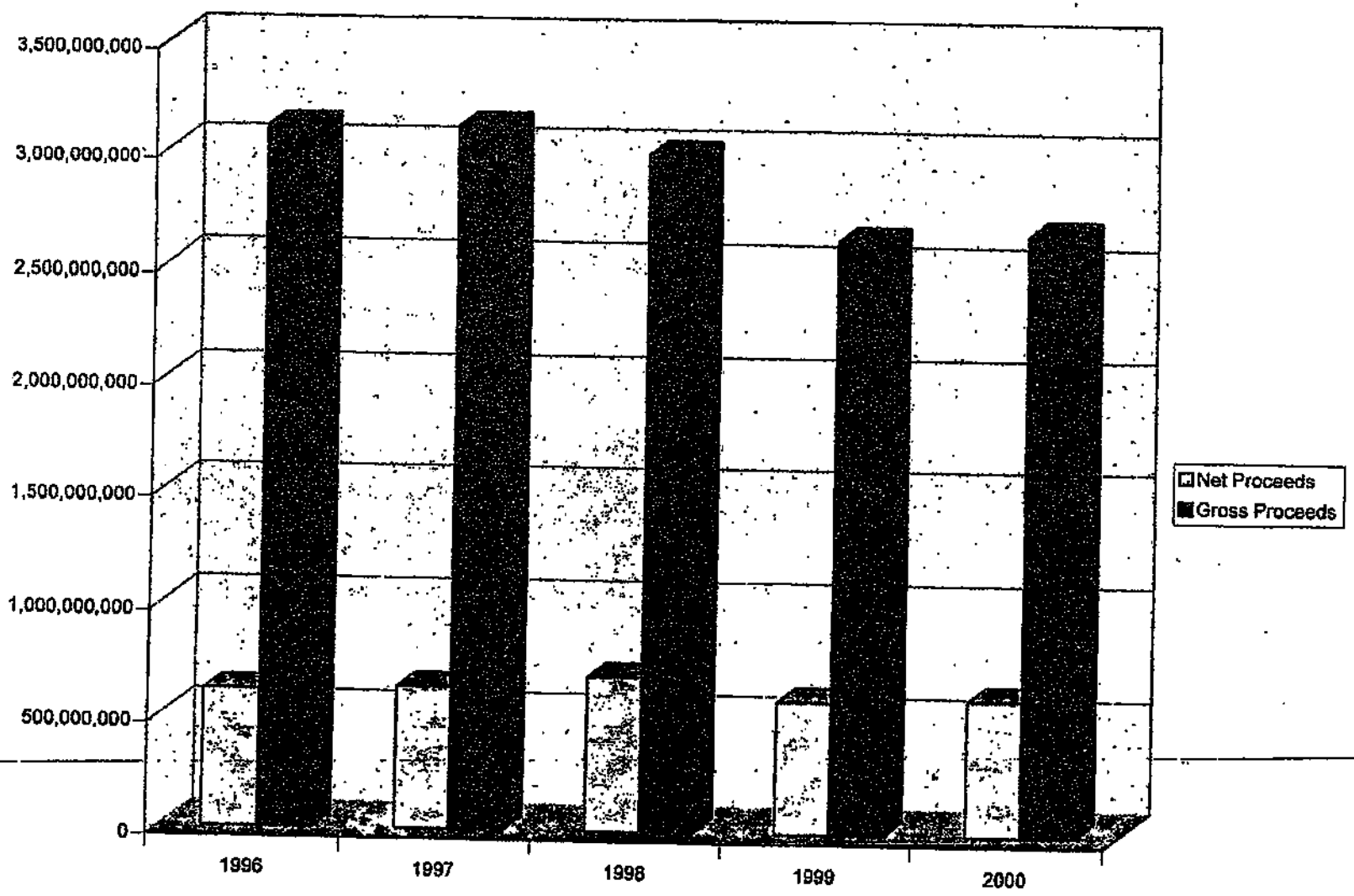
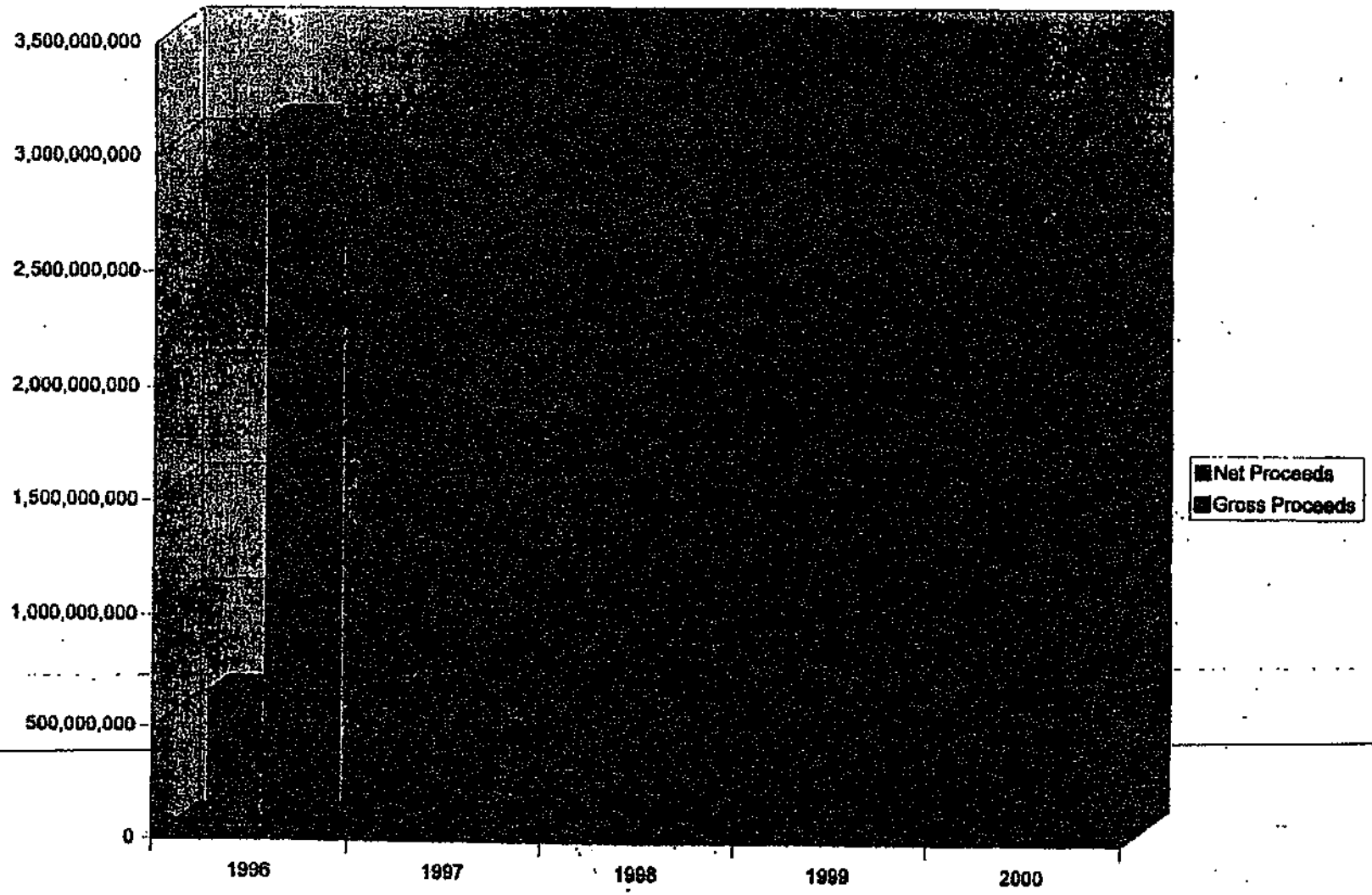
Calendar Year Gross to Net Proceeds Reported



Calendar Year Gross to Net Proceeds Reported



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COMPARATIVE SURVEY OF NET PROCEEDS OF MINERALS
ANNUAL TAX REVENUES - OPERATORS AND ROYALTIES
BASED ON CALENDAR YEAR 2000 REPORTS

CALENDAR YEAR	ANNUAL NET PROCEEDS	ANNUAL COUNTY TAX	ANNUAL STATE TAX	AVERAGE COUNTY TAX RATE	AVERAGE STATE TAX RATE	AVERAGE COMBINED TAX
1963	20,502,707	703,686	0	3.43	0.00	0.00
1964	16,612,968	563,455	0	3.39	0.00	0.00
1965	17,806,578	605,304	0	3.40	0.00	0.00
1966	27,084,338	904,289	0	3.34	0.00	0.00
1967	23,542,134	771,693	0	3.28	0.00	0.00
1968	30,984,767	1,089,661	0	3.52	0.00	0.00
1969	58,424,028	2,105,351	0	3.60	0.00	0.00
1970	59,043,306	2,106,078	0	3.57	0.00	0.00
1971	40,173,554	1,457,110	0	3.63	0.00	0.00
1972	53,115,680	1,994,296	0	3.75	0.00	0.00
1973	57,362,409	2,177,059	0	3.80	0.00	0.00
1974	78,319,357	2,977,849	0	3.80	0.00	0.00
1975	49,434,883	1,813,128	0	3.67	0.00	0.00
1976	36,034,946	1,300,130	0	3.67	0.00	0.00
1977	49,474,846	1,842,284	0	3.72	0.00	0.00
1978	53,786,490	1,967,717	0	3.66	0.00	0.00
1979	80,690,289	1,979,849	0	2.45	0.00	0.00
1980	128,872,213	3,243,145	0	2.52	0.00	0.00
1981	164,736,579	1,912,754	0	1.16	0.00	0.00
1982	159,999,360	1,799,734	0	1.12	0.00	0.00
1983	245,668,351	4,152,133	0	1.69	0.00	0.00
1984	184,986,780	3,221,586	0	1.74	0.00	0.00
1985	198,283,327	3,526,911	0	1.78	0.00	0.00
1986	374,664,142	6,091,451	0	1.63	0.00	0.00
1987	627,330,373	12,083,896	0	1.93	0.00	0.00
1988	778,252,531	13,567,832	0	1.74	0.00	0.00
1989	748,051,858	14,374,372	21,863,394	1.92	2.92	4.84
1990	887,035,290	18,836,751	23,896,161	2.12	2.69	4.81
1991	677,341,905	14,266,644	18,179,877	2.11	2.68	4.79
1992	727,398,245	15,878,428	18,839,425	2.18	2.59	4.77
1993	839,578,107	18,276,640	22,130,656	2.18	2.64	4.82
1994	994,416,022	21,481,588	26,723,326	2.16	2.69	4.85
1995	786,843,446	15,538,905	22,031,121	1.97	2.80	4.77
1996	613,166,679	12,641,648	16,556,640	2.06	2.70	4.76
1997	632,502,706	13,948,654	16,110,703	2.21	2.55	4.76
1998	687,985,198	17,333,035	15,934,116	2.52	2.32	4.84
1999	587,254,080	14,805,200	14,152,644	2.52	2.41	4.93
2000	601,362,809	14,124,892	15,476,252	2.35	2.57	4.92

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CALENDAR YEAR 2000 NET PROCEEDS OF MINERALS

OPERATORS	INDUSTRY	2000 ACTUAL GROSS PROCEEDS	2000 ACTUAL NET PROCEEDS	2000 ACTUAL COUNTY TAX DUE	2000 ACTUAL STATE DEBT DUE	2000 ACTUAL STATE GF DUE	2000 ACTUAL TOTAL TAX DUE
42	GOLD/SILVER	2,473,305,450	482,761,151	11,245,505	724,142	11,996,070	23,965,717
34	OTHER *	119,731,967	27,330,141	687,486	40,995	417,889	1,146,350
5	GEOTHERMAL	45,716,494	1,373,977	33,050	2,061	0	35,111
5	GYPSUM	14,581,101	2,056,452	58,660	3,085	19,962	81,707
18	OIL	14,594,735	7,206,123	199,731	10,809	129,966	340,506
104	TOTAL	2,667,929,747	520,727,844	12,224,412	781,092	12,663,887	25,569,391
	GOLD/SILVER	92.71%	92.71%	91.99%	92.71%	95.48%	93.73%
	OTHER *	4.49%	5.25%	5.62%	5.25%	3.33%	4.48%
	GEOTHERMAL	1.71%	0.26%	0.27%	0.26%	0.00%	0.14%
	GYPSUM	0.55%	0.39%	0.48%	0.39%	0.16%	0.32%
	OIL	0.55%	1.38%	1.63%	1.38%	1.03%	1.33%
	TOTAL	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%

* BARITE
BASALT
BENTONITE
CLAY
COPPER CONCENTRATE
COPPER
DITAMACEOUS EARTH (D.E.)
DOLOMITE
FLOUSPAR
IRON
LIMESTONE
LITHIUM
MAGNESITE
OPALS
PERLITE
RHYOLITE
SALT
SILICA
TRACE MINERALS
TURQUOISE

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CALENDAR YEAR 2000 NET PROCEEDS OF MINERALS

GOLD OPERATOR	2000 ACTUAL GROSS PROCEEDS	2000 ACTUAL NET PROCEEDS	2000 ACTUAL COUNTY TAX DUE	2000 ACTUAL STATE DEBT DUE	2000 ACTUAL STATE GF DUE	2000 ACTUAL TOTAL TAX DUE
1 NEWMONT GOLD - CARLIN	477,154,954	101,832,461	1,572,559.07	152,448.69	3,356,815.29	5,081,823.05
2 BARRICK GOLDSTRIKE	459,845,766	35,675,586	552,008.34	53,513.38	1,178,257.58	1,783,779.30
3 CORTEZ GOLD MINES - VENTURE II	276,268,664	144,331,259	4,320,557.14	216,496.93	2,679,510.38	7,216,564.45
4 BARRICK GOLDSTRIKE-MEIKLE	221,360,784	78,430,482	1,785,234.63	117,645.72	2,018,643.75	3,921,524.10
5 NEWMONT - TWIN CREEKS	217,193,669	25,719,127	455,254.27	38,578.69	792,123.39	1,285,956.35
6 ROUND MOUNTAIN GOLD	171,966,027	17,085,165	596,272.26	25,627.75	232,358.24	854,258.25
7 ECHO BAY MINES - McCOY	109,623,650	30,500,780	913,130.65	45,765.97	566,302.68	1,525,199.00
8 INDEPENDENCE MINING - JERRITT	92,573,670	0	0.00	0.00	0.00	0.00
9 MIDAS JOINT VENTURE	64,438,229	19,817,996	451,097.22	29,726.99	510,675.58	990,899.79
10 NEWMONT - LONE TREE	59,601,609	1,220,288	21,600.32	1,830.43	975.03	24,405.78
11 COEUR ROCHESTER	48,446,983	3,188,785	91,212.01	4,783.18	0.00	95,995.19
12 FLORIDA CANYON	47,454,260	3,247,929	92,903.76	4,871.89	0.00	97,775.65
13 BALD MOUNTAIN MINING - BALD MTN	37,809,013	0	0.00	0.00	0.00	0.00
14 NEWMONT - CAP/BOOT	37,054,697	4,057,803	92,383.71	6,086.70	104,439.73	202,890.14
15 KENNECOTT - RAWHIDE	33,228,108	0	0.00	0.00	0.00	0.00
16 HOMESTAKE MINING	32,317,107	16,488,283	255,123.20	24,732.42	544,558.52	824,414.14
17 NEWMONT GOLD - TRENTON CYN	18,631,807	0	0.00	0.00	0.00	0.00
18 MARIGOLD MINING	18,296,272	0	0.00	0.00	0.00	0.00
19 DEE GOLD	17,223,659	0	0.00	0.00	0.00	0.00
20 ROSEBUD MINING	13,678,679	0	0.00	0.00	0.00	0.00
21 NEWMONT GOLD MINING - MULE CYN	11,137,625	0	0.00	0.00	0.00	0.00
22 NEWMONT - RAIN	7,020,175	0	0.00	0.00	0.00	0.00
23 HYCROFT - CROFOOT MINE	3,235,284	0	0.00	0.00	0.00	0.00
24 DAISY GOLD MINING CO - M I.	2,948,198	1,288,228	43,828.02	1,932.34	12,209.81	57,970.17
25 MINERAL RIDGE RESOURCES	1,929,498	0	0.00	0.00	0.00	0.00
26 STERLING GOLD MINING CORP	1,280,350	73,951	2,360.29	110.93	0.00	2,471.22
27 BATTLE MTN GOLD - REONA/CANYON	525,809	0	0.00	0.00	0.00	0.00
28 AMAX GOLD INC	382,162	0	0.00	0.00	0.00	0.00
29 PINSON - PINSON	328,457	0	0.00	0.00	0.00	0.00
30 INDEPENDENCE MINING - BIG SPRING	136,750	0	0.00	0.00	0.00	0.00
31 KINROSS CANDELARIA	32,507	0	0.00	0.00	0.00	0.00
TOTAL	2,473,305,466	482,781,161	11,245,604.89	724,141.71	11,996,069.98	23,965,816.58

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CALENDAR YEAR 2000 NET PROCEEDS OF MINERALS

OTHER OPERATOR	2000 ACTUAL GROSS PROCEEDS	2000 ACTUAL NET PROCEEDS	COMMODITY	2000 ACTUAL COUNTY TAX DUE	2000 ACTUAL STATE DEBT DUE	2000 ACTUAL STATE GF DUE	2000 ACTUAL TOTAL TAX DUE
1 GRAYMONT WESTERN US INC.	30,897,763	10,595,553	limestone(quicklime)	241,244.26	15,897.83	272,785.56	529,927.65
2 M-I - GREYSTONE	12,563,925	3,054,951	Barite	91,449.96	4,582.43	0.00	96,032.39
3 CHEMETALL FOOTE CORP	11,549,570	1,655,288	Lithium Carbonate	44,113.43	2,482.93	0.00	46,596.36
4 SIMPLOT SILICA	10,536,914	4,636,210	Silica	108,876.76	6,954.32	115,979.43	231,810.51
5 EAGLE PICHER	7,110,887	1,384,168	Diatomaceous Earth	39,020.68	2,046.25	0.00	41,066.91
6 MOLTAN	6,621,301	775,715	Clay	18,754.46	1,163.57	0.00	19,918.03
7 MIN-AD INC	6,193,975	284,305	Dolomite	5,348.63	426.46	0.00	5,775.09
8 CHEMSTAR - APEX	5,405,033	309,668	Limestone	7,210.31	464.50	0.00	7,674.81
9 C R MINERALS	4,568,290	1,311,086	Diatomaceous Earth	31,697.84	1,966.80	12,223.67	45,887.31
10 MUD CAMP MINING	4,523,762	758,350	Clay	26,441.39	1,137.53	0.00	27,578.92
11 EAGLE PICHER	4,073,972	550,332	Diatomaceous Earth	13,976.23	825.50	0.00	14,801.73
12 BAROID CORP - ROSS	3,324,295	63,337	Crude	1,441.68	95.01	0.00	1,536.69
13 PREMIER SERVICES - GABBS MAG	3,087,054	744,004	Magnesite	25,966.74	1,116.01	0.00	27,081.75
14 NEVADA CEMENT	2,569,922	0	Limestone	0.00	0.00	0.00	0.00
15 BAKER HUGHES	1,968,794	-135,203	Barite	4,137.11	207.30	0.00	4,344.41
16 EAGLE PICHER	633,774	292,942	Diatomaceous Earth	7,082.48	439.41	5,660.52	13,182.39
17 NEVADA CEMENT	616,716	0	Clay	0.00	0.00	0.00	0.00
18 NV BARTH - SAGA EXPLORATION	507,566	116,092	Iron Ore	1,766.83	174.09	1,511.94	3,451.86
19 GREFCO	494,227	0	Diatomaceous Earth	0.00	0.00	0.00	0.00
- WILKIN MINING	493,106	95,361	Perlite	2,409.30	143.04	308.49	2,860.83
21 HUCK SALT CO	460,864	0	Salt	0.00	0.00	0.00	0.00
22 M-I - MOUNTAIN SPRINGS	303,099	258,286	Barite	7,731.19	387.40	4,794.71	12,913.30
23 VANDERBILT - BLANCO	301,241	35,243	Clay	939.29	52.66	0.00	992.09
24 NUTRITIONAL ADDITIVES	163,024	0	Dolomite	0.00	0.00	0.00	0.00
25 VANDERBILT	116,568	47,975	Clay	1,372.36	71.97	474.79	1,919.12
26 HODSON, G. KEITH	112,255	23,566	Opal	410.44	35.38	261.76	707.58
27 VANDERBILT	106,906	35,226	Clay	1,198.46	52.84	0.00	1,251.30
28 AMERICAN COLLOID	73,473	73,473	Bentonite	2,101.82	110.21	1,461.62	3,673.65
29 STANDARD INDUSTRIAL MINERALS	64,661	58,195	Iron ore	1,151.74	87.29	1,670.72	2,909.75
30 CROWELL, J	49,860	41,627	Fluorspar	1,416.23	82.44	602.68	2,081.35
31 GREFCO	29,319	0	Diatomaceous Earth	0.00	0.00	0.00	0.00
32 COTNER, TONY - TURQUOISE	11,400	3,089	Turquoise	92.47	4.63	0.00	97.10
33 WINTLE, JAY	9,883	0	Turquoise	0.00	0.00	0.00	0.00
34 ROYAL PEACOCK OPAL	7,740	4,943	Opal	86.02	7.41	153.72	247.15
TOTAL	119,555,467	27,330,141		687,486.61	40,996.21	417,889.21	1,146,350.03

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CALENDAR YEAR 2000 NET PROCEEDS OF MINERALS

GEOTHERMAL OPERATOR	2000 ACTUAL GROSS PROCEEDS	2000 ACTUAL NET PROCEEDS	2000 ACTUAL COUNTY TAX DUE	2000 ACTUAL STATE DEBT DUE	2000 ACTUAL STATE GF DUE	2000 ACTUAL TOTAL TAX DUE
1 OXBOW GEOTHERMAL	17,662,412	0	0.00	0.00	0.00	0.00
2 STEAMBOAT DEVELOPMENT CORP	13,884,620	0	0.00	0.00	0.00	0.00
3 CAITHNESS POWER	4,483,892	0	0.00	0.00	0.00	0.00
4 OXBOW POWER OF BEOWAWE INC	4,099,678	0	0.00	0.00	0.00	0.00
5 BRADY POWER - DESERT PEAK	2,466,593	458,627	11,088.22	687.94	0.00	11,776.16
6 EMPIRE LIM PART - EMPIRE	2,035,229	893,767	21,343.16	1,340.65	0.00	22,683.81
7 TAD'S ENTERPRISE	484,163	0	0.00	0.00	0.00	0.00
8 CONSTELLATION OPER - SODA LAKE	435,098	0	0.00	0.00	0.00	0.00
9 CONSTELLATION OPER -STILLWATER	295,347	0	0.00	0.00	0.00	0.00
10 ELKO HEAT COMPANY	57,462	21,583	619.07	32.37	0.00	651.44
TOTAL	46,718,494	1,373,977	33,050.45	2,060.96	0.00	35,111.41

CALENDAR YEAR 2000 NET PROCEEDS OF MINERALS

GYPSUM OPERATOR	2000 ACTUAL GROSS PROCEEDS	2000 ACTUAL NET PROCEEDS	2000 ACTUAL COUNTY TAX DUE	2000 ACTUAL STATE DEBT DUE	2000 ACTUAL STATE GF DUE	2000 ACTUAL TOTAL TAX DUE
1 U S GYPSUM	5,287,302	2,017,190	57,899.70	3,025.79	19,982.11	80,857.60
2 HARDIE GYPSUM	4,550,152	0	0.00	0.00	0.00	0.00
3 PACIFIC COAST	3,018,195	0	0.00	0.00	0.00	0.00
4 ART WILSON - ADAMS	1,725,452	39,262	960.66	58.89	0.00	1,019.55
TOTAL	14,581,101	2,056,452	58,860.36	3,084.68	19,982.11	81,707.15

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CALENDAR YEAR 2000 NET PROCEEDS OF MINERALS

OIL OPERATOR	2000 ACTUAL GROSS PROCEEDS	2000 ACTUAL NET PROCEEDS	2000 ACTUAL COUNTY TAX DUE	2000 ACTUAL STATE DEBT DUE	2000 ACTUAL STATE GF DUE	2000 ACTUAL TOTAL TAX DUE
1 MAKOIL - MUNSON/TRAP	2,947,566	1,392,998	41,885.16	2,089.50	18,730.25	62,684.91
2 MAKOIL INC - TRAP SPRINGS	2,516,449	1,489,242	44,767.58	2,233.98	27,470.56	74,462.10
3 MAKOIL - GRANT	2,276,981	1,583,578	47,592.85	2,375.07	29,210.68	79,178.90
4 PETCON - BLACKBURN	2,067,156	1,155,051	17,672.10	1,752.58	38,147.87	57,752.55
5 DEERFIELD PRODUCTION - EAGLE SP	1,381,700	400,486	12,038.21	600.73	1,380.07	14,017.01
6 DEERFIELD PRODUCTION - GHOST RA	920,229	558,295	16,779.00	837.44	10,298.31	27,914.75
7 BIG WEST OIL & GAS	576,941	77,779	2,337.57	116.67	0.00	2,454.24
8 WESTERN GENERAL - KATE SPRINGS	476,542	147,569	4,435.04	221.35	508.52	5,164.91
9 FRONTIER EXPLORATION 7403	380,781	104,036	3,126.70	156.05	358.51	3,641.26
10 DEERFIELD PRODUCTION - SAND DUN	295,391	173,292	5,208.12	259.94	3,196.54	8,664.60
11 MAKOIL INC - BRITTON 13-21	294,303	82,473	2,478.64	123.71	284.20	2,886.55
12 MAKOIL - KATE SPRINGS 2-12	269,872	0	0.00	0.00	0.00	0.00
13 FRONTIER EXPLORATION 14-42	106,696	38,183	1,147.55	57.27	322.49	1,527.31
14 WESTERN GENERAL - TAYLOR 1 & 2	66,729	0	0.00	0.00	0.00	0.00
15 FORELAND 1-5 - TOMERA RANCH	11,570	0	0.00	0.00	0.00	0.00
16 MAKOIL INC - ZUSPANN 24-3	3,607	3,141	94.40	4.71	57.94	157.05
TOTAL	14,554,735	7,206,123	199,731.02	10,809.18	129,966.94	340,506.14

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CALENDAR YEAR 2000 NET PROCEEDS OF MINERALS

COUNTY - CARSON CITY OPERATOR	2000 ACTUAL GROSS PROCEEDS	2000 ACTUAL NET PROCEEDS	2000 ACTUAL COUNTY TAX DUE	2000 ACTUAL STATE DEBT DUE	2000 ACTUAL STATE GF DUE	2000 ACTUAL TOTAL TAX DUE
	0	0	0.00	0.00	0.00	0.00
TOTAL	0	0	0.00	0.00	0.00	0.00

COUNTY - CHURCHILL OPERATOR	2000 ACTUAL GROSS PROCEEDS	2000 ACTUAL NET PROCEEDS	2000 ACTUAL COUNTY TAX DUE	2000 ACTUAL STATE DEBT DUE	2000 ACTUAL STATE GF DUE	2000 ACTUAL TOTAL TAX DUE
1 OXBOW GEOTHERMAL	17,662,412	0	0.00	0.00	0.00	0.00
2 MOLTAN	6,621,301	775,715	18,754.46	1,183.57	0.00	19,918.03
3 C R MINERALS	4,868,290	1,311,056	31,697.64	1,966.80	12,223.07	45,887.31
4 BRADY POWER - DESERT PEAK	2,466,593	468,827	11,088.22	687.94	0.00	11,776.16
5 EAGLE PICHER	633,774	292,942	7,082.46	439.41	5,660.52	13,182.39
6 HUCK SALT CO	460,664	0	0.00	0.00	0.00	0.00
7 CONSTELLATION OPER - SODA LAKE	435,098	0	0.00	0.00	0.00	0.00
8 CONSTELLATION OPER -STILLWATER	296,347	0	0.00	0.00	0.00	0.00
TOTAL	33,148,479	2,848,360	68,622.78	4,257.52	17,883.59	90,763.89

COUNTY - CLARK OPERATOR	2000 ACTUAL GROSS PROCEEDS	2000 ACTUAL NET PROCEEDS	2000 ACTUAL COUNTY TAX DUE	2000 ACTUAL STATE DEBT DUE	2000 ACTUAL STATE GF DUE	2000 ACTUAL TOTAL TAX DUE
1 SIMPLOT SILICA	10,536,914	4,836,210	108,876.76	6,954.52	115,979.43	231,810.51
2 CHEMSTAR - APEX	5,406,033	309,669	7,210.31	464.50	0.00	7,674.81
3 HARDIE GYPSUM	4,560,152	0	0.00	0.00	0.00	0.00
4 PACIFIC COAST	3,018,195	0	0.00	0.00	0.00	0.00
TOTAL	23,510,294	4,845,879	116,087.07	7,418.82	115,979.43	239,485.32

COUNTY - DOUGLAS OPERATOR	2000 ACTUAL GROSS PROCEEDS	2000 ACTUAL NET PROCEEDS	2000 ACTUAL COUNTY TAX DUE	2000 ACTUAL STATE DEBT DUE	2000 ACTUAL STATE GF DUE	2000 ACTUAL TOTAL TAX DUE
1 STANDARD INDUSTRIAL MINERALS	64,661	58,195	1,151.74	87.29	1,670.72	2,909.75
TOTAL	64,661	58,195	1,151.74	87.29	1,670.72	2,909.75

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CALENDAR YEAR 2000 NET PROCEEDS OF MINERALS

COUNTY - ELKO OPERATOR	2000 ACTUAL GROSS PROCEEDS	2000 ACTUAL NET PROCEEDS	2000 ACTUAL COUNTY TAX DUE	2000 ACTUAL STATE DEBT DUE	2000 ACTUAL STATE GF DUE	2000 ACTUAL TOTAL TAX DUE
1 BARRICK GOLDSTRIKE-MEIKLE	221,360,784	78,430,462	1,785,234.63	117,646.72	2,018,643.75	3,921,524.10
2 INDEPENDENCE MINING - JERRITT	82,573,670	0	0.00	0.00	0.00	0.00
3 MIDAS JOINT VENTURE	64,438,229	19,817,996	451,097.22	29,726.99	510,075.58	990,899.79
4 NEWMONT - CAP/BOOT	37,054,697	4,057,603	92,363.71	6,086.70	104,439.73	202,890.14
5 GRAYMONT WESTERN US INC.	30,897,763	10,596,553	241,244.26	15,897.83	272,785.56	529,927.65
6 DEE GOLD	17,223,659	0	0.00	0.00	0.00	0.00
7 NEWMONT - RAIN	7,020,175	0	0.00	0.00	0.00	0.00
8 BAROID CORP - ROSSI	3,324,295	63,337	1,441.68	95.01	0.00	1,536.69
9 INDEPENDENCE MINING - BIG SPRING	135,750	0	0.00	0.00	0.00	0.00
10 ELKO HEAT COMPANY	57,462	21,583	619.07	32.37	0.00	651.44
TOTAL	464,086,484	112,989,754	2,572,000.57	169,484.62	2,905,944.62	5,647,429.81

COUNTY - ESMERALDA OPERATOR	2000 ACTUAL GROSS PROCEEDS	2000 ACTUAL NET PROCEEDS	2000 ACTUAL COUNTY TAX DUE	2000 ACTUAL STATE DEBT DUE	2000 ACTUAL STATE GF DUE	2000 ACTUAL TOTAL TAX DUE
1 CHEMETALL FOOTE CORP	11,549,870	1,655,289	44,113.43	2,462.93	0.00	46,576.36
2 MINERAL RIDGE RESOURCES	1,929,498	0	0.00	0.00	0.00	0.00
3 GREFCO	494,227	0	0.00	0.00	0.00	0.00
4 VANDERBILT - BLANCO	301,241	35,243	939.23	52.86	0.00	992.09
TOTAL	14,274,836	1,690,531	45,052.66	2,515.79	0.00	47,568.45

COUNTY - EUREKA OPERATOR	2000 ACTUAL GROSS PROCEEDS	2000 ACTUAL NET PROCEEDS	2000 ACTUAL COUNTY TAX DUE	2000 ACTUAL STATE DEBT DUE	2000 ACTUAL STATE GF DUE	2000 ACTUAL TOTAL TAX DUE
1 NEWMONT GOLD - CARLIN	477,154,964	101,832,461	1,572,559.07	152,448.69	3,356,615.29	5,081,623.05
2 BARRICK GOLDSTRIKE/betz	459,545,766	35,675,556	552,006.34	53,513.33	1,178,257.58	1,783,779.30
3 HOMESTAKE MINING	32,317,107	16,488,283	256,123.20	24,732.42	544,558.52	824,414.14
4 PETCON - BLACKBURN	2,067,158	1,155,051	17,872.10	1,732.58	38,147.87	57,752.55
5 NV BARTH - SAGA EXPLORATION	507,566	116,062	1,795.83	174.09	1,511.94	3,481.86
6 FORELAND 1-5 - TOMERA RANCH	11,570	0	0.00	0.00	0.00	0.00
TOTAL	971,904,129	155,087,443	2,399,358.54	232,601.16	5,119,091.20	7,751,050.90

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CALENDAR YEAR 2000 NET PROCEEDS OF MINERALS

COUNTY - HUMBOLDT OPERATOR	2000 ACTUAL GROSS PROCEEDS	2000 ACTUAL NET PROCEEDS	2000 ACTUAL COUNTY TAX DUE	2000 ACTUAL STATE DEBT DUE	2000 ACTUAL STATE GF DUE	2000 ACTUAL TOTAL TAX DUE
1 NEWMONT - TWIN CREEKS	217,193,669	25,719,127	455,254.27	36,578.69	792,123.39	1,285,956.35
2 NEWMONT - LONE TREE	59,601,809	1,220,288	21,600.32	1,830.43	975.01	24,405.76
3 MARIGOLD MINING	18,296,272	0	0.00	0.00	0.00	0.00
4 MIN-AD INC	5,193,975	284,305	5,346.63	426.46	0.00	5,775.09
5 HYCROFT - CROFOOT MINE	3,238,264	0	0.00	0.00	0.00	0.00
6 AMAX GOLD INC	382,162	0	0.00	0.00	0.00	0.00
7 PINSON - PINSON	326,457	0	0.00	0.00	0.00	0.00
8 HODSON, G. KEITH	112,285	23,586	410.44	35.38	261.76	707.58
9 ROYAL PEACOCK OPAL	7,740	4,943	86.02	7.41	153.72	247.15
TOTAL	305,352,473	27,252,249	482,699.68	40,878.37	793,513.38	1,317,091.93

COUNTY - LANDER OPERATOR	2000 ACTUAL GROSS PROCEEDS	2000 ACTUAL NET PROCEEDS	2000 ACTUAL COUNTY TAX DUE	2000 ACTUAL STATE DEBT DUE	2000 ACTUAL STATE GF DUE	2000 ACTUAL TOTAL TAX DUE
1 CORTEZ GOLD MINES - VENTURE II	278,288,884	144,331,289	4,320,567.14	218,496.93	2,679,510.38	7,218,564.46
2 ECHO BAY MINES - McCOY	109,623,650	30,503,760	913,130.65	45,755.87	566,302.68	1,525,189.00
3 NEWMONT GOLD - TRENTON CYN	18,831,807	0	0.00	0.00	0.00	0.00
4 M-I - GREYSTONE	12,563,828	3,054,961	91,449.96	4,582.43	0.00	96,032.39
5 NEWMONT GOLD MINING - MULE CYN	11,137,625	0	0.00	0.00	0.00	0.00
6 OXBOW POWER OF BEOWAWE INC	4,099,678	0	0.00	0.00	0.00	0.00
7 BAKER HUGHES	1,068,794	138,203	4,137.11	207.30	0.00	4,344.41
8 BATTLE MTN GOLD - REONA/CANYON	526,809	0	0.00	0.00	0.00	0.00
9 M-I - MOUNTAIN SPRINGS	303,096	258,266	7,731.19	387.40	4,794.71	12,913.30
10 COTNER, TONY - TURQUOISE	11,400	3,088	92.47	4.63	0.00	97.10
11 WINTLE, JAY	9,865	0	0.00	0.00	0.00	0.00
TOTAL	435,345,234	178,289,575	5,337,096.52	267,434.36	3,250,807.77	8,855,140.65

COUNTY - LINCOLN OPERATOR	2000 ACTUAL GROSS PROCEEDS	2000 ACTUAL NET PROCEEDS	2000 ACTUAL COUNTY TAX DUE	2000 ACTUAL STATE DEBT DUE	2000 ACTUAL STATE GF DUE	2000 ACTUAL TOTAL TAX DUE
1 WILKIN MINING	493,108	95,361	2,409.30	143.04	308.49	2,860.83
2 FELLER STONE	140,500	0	0.00	0.00	0.00	0.00
3 INTERNATIONAL TRACE MINERALS INC	36,000	0	0.00	0.00	0.00	0.00
TOTAL	669,608	95,361	2,409.30	143.04	308.49	2,860.83

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CALENDAR YEAR 2000 NET PROCEEDS OF MINERALS

COUNTY - LYON OPERATOR	2000 ACTUAL GROSS PROCEEDS	2000 ACTUAL NET PROCEEDS	2000 ACTUAL COUNTY TAX DUE	2000 ACTUAL STATE DEBT DUE	2000 ACTUAL STATE GF DUE	2000 ACTUAL TOTAL TAX DUE
1 NEVADA CEMENT	2,569,922	0	0.00	0.00	0.00	0.00
2 ART WILSON - ADAMS	1,726,452	39,282	960.66	58.89	0.00	1,019.55
3 TAD'S ENTERPRISE	484,163	0	0.00	0.00	0.00	0.00
TOTAL	4,779,537	39,282	960.66	58.89	0.00	1,019.55

COUNTY - MINERAL OPERATOR	2000 ACTUAL GROSS PROCEEDS	2000 ACTUAL NET PROCEEDS	2000 ACTUAL COUNTY TAX DUE	2000 ACTUAL STATE DEBT DUE	2000 ACTUAL STATE GF DUE	2000 ACTUAL TOTAL TAX DUE
1 KENNECOTT - RAWHIDE	33,228,106	0	0.00	0.00	0.00	0.00
2 KINROSS CANDELARIA	32,507	0	0.00	0.00	0.00	0.00
3 GREFCO	29,319	0	0.00	0.00	0.00	0.00
TOTAL	33,287,932	0	0.00	0.00	0.00	0.00

COUNTY - NYE OPERATOR	2000 ACTUAL GROSS PROCEEDS	2000 ACTUAL NET PROCEEDS	2000 ACTUAL COUNTY TAX DUE	2000 ACTUAL STATE DEBT DUE	2000 ACTUAL STATE GF DUE	2000 ACTUAL TOTAL TAX DUE
1 ROUND MOUNTAIN GOLD	171,968,027	17,065,165	596,272.26	25,627.75	232,358.24	854,258.25
2 MUD CAMP MINING	4,523,762	756,350	26,441.39	1,137.53	0.00	27,578.92
PREMIER SERVICES - GABBS MAG	3,087,064	744,004	25,966.74	1,116.01	0.00	27,081.75
4 DAISY GOLD MINING CO - M L	2,946,199	1,288,229	43,828.02	1,932.34	12,209.81	57,970.17
5 MAKOIL - MUNSON/TRAP	2,947,588	1,392,998	41,866.16	2,089.50	18,730.25	62,684.91
6 MAKOIL INC - TRAP SPRINGS	2,515,449	1,489,242	44,767.68	2,233.89	27,470.58	74,462.10
7 MAKOIL - GRANT	2,279,981	1,585,575	47,592.65	2,375.37	29,210.68	79,178.90
8 DEERFIELD PRODUCTION - EAGLE SP	1,381,700	400,486	12,036.21	600.73	1,380.07	14,017.01
9 STERLING GOLD MINING CORP	1,260,350	73,951	2,360.29	110.93	0.00	2,471.22
10 DEERFIELD PRODUCTION - GHOST RA	920,229	558,295	18,779.00	837.44	10,299.31	27,914.75
11 BIG WEST OIL & GAS	576,941	77,779	2,337.57	116.67	0.00	2,454.24
12 WESTERN GENERAL - KATE SPRINGS	476,542	147,569	4,436.04	221.35	506.52	5,164.91
13 FRONTIER EXPLORATION 7403	360,781	104,036	3,126.70	156.05	358.51	3,641.26
14 DEERFIELD PRODUCTION - SAND DUN	295,391	173,292	5,208.12	259.94	3,196.54	8,664.60
15 MAKOIL INC - BRITTON 13-21	284,303	82,473	2,478.64	123.71	284.20	2,886.55
16 MAKOIL - KATE SPRINGS 2-12	269,672	0	0.00	0.00	0.00	0.00
17 VANDERBILT	106,906	35,226	1,198.48	52.64	0.00	1,251.30
18 FRONTIER EXPLORATION 14-42	100,888	38,183	1,147.55	57.27	322.49	1,527.31
19 WESTERN GENERAL - TAYLOR 1 & 2	88,729	0	0.00	0.00	0.00	0.00
20 CROWELL, J	49,860	41,627	1,416.23	62.44	602.68	2,081.35
21 MAKOIL INC - ZUSPANN 24-3	3,807	3,141	94.40	4.71	57.94	157.05
TOTAL	196,460,168	26,077,621	879,341.31	39,115.44	336,988.80	1,255,445.55

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CALENDAR YEAR 2000 NET PROCEEDS OF MINERALS

STATEWIDE - OPERATORS	2000 TOTAL ACTUAL GROSS PROCEEDS	2000 TOTAL ACTUAL NET PROCEEDS	2000 TOTAL ACTUAL COUNTY TAX DUE	2000 TOTAL ACTUAL STATE DEBT DUE	2000 TOTAL ACTUAL STATE GF DUE	2000 GRAND TOTAL ACTUAL TOTAL TAX
10 EUREKA	971,904,129	155,067,443	2,399,358.54	232,691.16	5,119,091.20	7,751,050.90
12 ELKO	484,069,484	112,989,754	2,572,000.57	169,464.82	2,905,944.62	5,647,429.81
15 LANDER	435,345,234	178,269,578	5,337,088.52	267,434.36	3,250,607.77	8,855,140.65
11 HUMBOLDT	305,352,473	27,252,249	482,699.68	40,875.37	793,513.88	1,317,091.93
25 NYE	196,460,188	26,077,621	879,341.31	39,118.44	336,988.80	1,255,446.55
11 PERSHING	122,333,476	9,939,523	284,310.11	14,909.29	21,898.72	321,118.12
5 WHITE PINE	37,809,013	0	0.00	0.00	0.00	0.00
11 MINERAL	33,267,932	0	0.00	0.00	0.00	0.00
12 CHURCHILL	33,145,479	2,838,350	68,622.78	4,257.52	17,883.59	90,763.89
7 CLARK	23,510,294	4,946,878	116,087.07	7,418.82	115,979.43	239,485.32
7 WASHOE	20,632,451	893,797	21,343.16	1,340.65	0.00	22,683.81
5 ESMERALDA	14,274,836	1,899,531	45,052.66	2,535.79	0.00	47,588.45
8 LYON	4,779,537	39,262	960.68	58.89	0.00	1,019.55
2 STOREY	4,073,972	550,332	13,976.23	826.50	0.00	14,801.73
3 LINCOLN	669,606	95,361	2,409.30	143.04	308.49	2,860.83
2 DOUGLAS	84,881	56,196	1,151.74	67.29	1,670.72	2,909.76
TOTAL	2,667,929,747	520,727,844	12,224,412.33	781,091.74	12,583,887.23	25,589,391.29

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CALENDAR YEAR 2000 NET PROCEEDS OF MINERALS

COUNTY - PERSHING OPERATOR	2000 ACTUAL GROSS PROCEEDS	2000 ACTUAL NET PROCEEDS	2000 ACTUAL COUNTY TAX DUE	2000 ACTUAL STATE DEBT DUE	2000 ACTUAL STATE GF DUE	2000 ACTUAL TOTAL TAX DUE
1 COEUR ROCHESTER	48,446,953	3,188,795	91,212.01	4,783.18	0.00	95,995.19
2 FLORIDA CANYON	47,454,280	3,247,929	92,903.76	4,871.89	0.00	97,775.65
3 ROSEBUD MINING	13,678,679	0	0.00	0.00	0.00	0.00
4 EAGLE PICHER	7,110,867	1,364,168	39,020.65	2,046.25	0.00	41,066.91
5 U S GYPSUM	5,287,302	2,017,190	57,699.70	3,025.79	19,962.11	80,687.60
6 NUTRITIONAL ADDITIVES	163,024	0	0.00	0.00	0.00	0.00
7 VANDERBILT	116,888	47,978	1,372.36	71.97	474.79	1,919.12
8 AMERICAN COLLOID	73,473	73,473	2,101.82	110.21	1,461.82	3,673.85
TOTAL	122,333,476	9,939,533	284,310.11	14,909.29	21,898.72	321,118.12

COUNTY - STOREY OPERATOR	2000 ACTUAL GROSS PROCEEDS	2000 ACTUAL NET PROCEEDS	2000 ACTUAL COUNTY TAX DUE	2000 ACTUAL STATE DEBT DUE	2000 ACTUAL STATE GF DUE	2000 ACTUAL TOTAL TAX DUE
1 EAGLE PICHER	4,073,972	550,332	13,976.23	825.50	0.00	14,801.73
TOTAL	4,073,972	550,332	13,976.23	825.50	0.00	14,801.73

COUNTY - WASHOE OPERATOR	2000 ACTUAL GROSS PROCEEDS	2000 ACTUAL NET PROCEEDS	2000 ACTUAL COUNTY TAX DUE	2000 ACTUAL STATE DEBT DUE	2000 ACTUAL STATE GF DUE	2000 ACTUAL TOTAL TAX DUE
1 STEAMBOAT DEVELOPMENT CORP	13,694,620	0	0.00	0.00	0.00	0.00
2 CAITHNESS POWER	4,483,692	0	0.00	0.00	0.00	0.00
3 EMPIRE LIM PART - EMPIRE	2,035,229	893,787	21,343.18	1,340.68	0.00	22,683.81
4 NEVADA CEMENT	818,710	0	0.00	0.00	0.00	0.00
TOTAL	20,832,451	893,787	21,343.18	1,340.68	0.00	22,683.81

COUNTY - WHITE PINE OPERATOR	2000 ACTUAL GROSS PROCEEDS	2000 ACTUAL NET PROCEEDS	2000 ACTUAL COUNTY TAX DUE	2000 ACTUAL STATE DEBT DUE	2000 ACTUAL STATE GF DUE	2000 ACTUAL TOTAL TAX DUE
1 BALD MOUNTAIN MINING - BALD MTN	37,809,013	0	0.00	0.00	0.00	0.00
TOTAL	37,809,013	0	0.00	0.00	0.00	0.00

CALENDAR YEAR 2000 NET PROCEEDS OF MINERALS

COUNTY - CARSON CITY

ROYALTY RECIPIENT	2000 ACTUAL ROYALTIES	2000 ACTUAL COUNTY TAX DUE	2000 ACTUAL STATE DEBT DUE	2000 ACTUAL STATE GF DUE	2000 ACTUAL TOTAL TAX DUE
	0	0.00	0.00	0.00	0.00
TOTAL	0	0.00	0.00	0.00	0.00

COUNTY - CHURCHILL

ROYALTY RECIPIENT		2000 ACTUAL ROYALTIES	2000 ACTUAL COUNTY TAX DUE	2000 ACTUAL STATE DEBT DUE	2000 ACTUAL STATE GF DUE	2000 ACTUAL TOTAL TAX DUE
1 CALIFORNIA ENERGY	DESERT PEAK	666,685	20,954.09	1,300.04	21,080.62	43,334.75
2 ELK RIVER MINERALS	DIXIE VALLEY	539,172	15,453.26	958.76	15,546.58	31,958.60
3 CALIFORNIA ENERGY	DIXIE VALLEY	171,382	4,143.02	257.04	4,188.04	8,588.10
4 BURLINGTON NORTHERN SANTA FE	BRADY POWER PRO	159,460	3,855.26	239.19	3,878.55	7,973.00
5 F F & R	DESERT PEAK	48,088	1,162.58	72.13	1,169.60	2,404.31
6 DeBRAGA, LYLE	STILLWATER	14,451	349.38	21.68	351.49	722.55
7 OARLEY, W O	DESERT PEAK	12,656	310.62	19.28	312.70	642.60
8 STILLWATER FARMS INC	STILLWATER Cath	11,766	284.47	17.65	286.18	588.30
9 WEISHAUPT, RICHARD	STILLWATER	11,766	284.47	17.65	286.18	588.30
10 ENERGY MINERALS	DESERT PEAK	11,810	285.69	17.42	287.39	590.50
11 JERNIGAN, MARGARET	STILLWATER	9,688	234.15	14.53	235.97	484.25
12 WEISHAUPT, MARVIN	STILLWATER	8,824	213.34	13.24	214.83	441.21
13 WEISHAUPT, RODNEY A	STILLWATER	8,824	213.34	13.24	214.83	441.21
14 VIERA, EDWARD W	STILLWATER	8,466	204.68	12.70	205.92	423.30
15 LAWRENCE, DOROTHY	STILLWATER	6,876	166.24	10.31	167.24	343.79
16 KOHL, RICHARD	NI-BR-HA	6,216	150.28	9.32	151.19	310.79
KOHL, OTTO JR	NI-BR-HA	6,216	150.28	9.32	151.19	310.79
18 HETTICK, JANET	NI-BR-HA	6,216	150.28	9.32	151.19	310.79
19 DeBRAGA, TED	STILLWATER	5,883	142.23	8.82	143.09	294.14
20 POWELSON, ROBERT	SODA LAKE	5,600	135.39	8.40	136.21	280.00
21 HOENIG, J	SODA LAKE	4,694	113.49	7.04	114.17	234.70
22 WEISHAUPT, LYNN	STILLWATER	4,462	107.88	6.69	108.53	223.10
23 WEISHAUPT, RANDY	STILLWATER	4,412	106.67	6.62	107.31	220.60
24 MARTIN, MABLE	STILLWATER	4,412	106.67	6.62	107.31	220.60
25 ARAI, KATHERINE	SODA LAKE	4,242	102.56	6.36	103.18	212.10
26 NELSON, LOLA M	STILLWATER	3,934	95.11	5.90	95.69	196.70
27 RONNOW, SHARON EXEC	STILLWATER	3,544	85.68	5.32	86.20	177.20
28 MEACHAM, NANCY & SUSAN	SODA LAKE	3,521	85.13	5.28	85.64	176.05
29 HUGHES, ROBERT	SODA LAKE	3,107	75.12	4.66	75.57	155.35
30 JORDAN, THOMAS D JR	STILLWATER	2,941	71.10	4.41	71.53	147.04
31 VAN DYKE, JOHN	STILLWATER	2,544	61.51	3.82	61.88	127.21
32 KENT, ELEANOR	STILLWATER	2,511	60.71	3.77	61.08	125.56
33 KENT, ROBERT	STILLWATER	2,511	60.71	3.77	61.08	125.56
34 MULLINS, A J	SODA LAKE	2,122	51.30	3.18	51.81	106.09
35 HUGHES, CARTER	SODA LAKE	1,554	37.57	2.33	37.80	77.70
36 KING, VAL	STILLWATER	1,250	30.22	1.88	30.40	62.50
37 THRASHER, J	SODA LAKE	1,174	28.38	1.76	28.56	58.70
38 ISENBERG, E	SODA LAKE	1,174	28.38	1.76	28.56	58.70
39 WARD, W JR	SODA LAKE	1,174	28.38	1.76	28.56	58.70
40 KENT, BRUCE K	STILLWATER	800	19.34	1.20	19.46	40.00
41 HANSEN, JIM	SODA LAKE	800	19.34	1.20	19.46	40.00
42 WEGGE, LOUISE	SODA LAKE	754	18.23	1.13	18.34	37.70
43 HARVEY, W	SODA LAKE	587	14.19	0.88	14.28	29.35
44 FEIGHERY, C	SODA LAKE	535	12.93	0.80	13.01	26.74
45 FITZ, HAROLD	STILLWATER	451	10.90	0.68	10.97	22.55
46 CASEY, MICHAEL A.	SODA LAKE	347	8.39	0.52	8.44	17.35
47 SPEAR, JAMES A.	SODA LAKE	320	7.74	0.48	7.78	16.00

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CALENDAR YEAR 2000 NET PROCEEDS OF MINERALS

48 WORKMAN, REX	SODA LAKE	242	5.85	0.36	5.89		12.10
SPRENGER FAMILY TRUST	SODA LAKE	240	5.80	0.36	5.84		12.00
HAMMOND, MARK & LINDA	SODA LAKE	180	4.36	0.27	4.38		9.00
51 SLOAN, FLORENCE	SODA LAKE	160	3.87	0.24	3.89		8.00
52 HOPKINS, MELVIN J.	SODA LAKE	160	3.87	0.24	3.89		8.00
53 BITSCHENAUER, RONALD K.	SODA LAKE	130	3.14	0.20	3.16		6.50
54 MITCHELL, CARL	SODA LAKE	98	2.37	0.15	2.38		4.90
55 KNOX, LESLIE B.	SODA LAKE	98	2.37	0.15	2.38		4.90
56 COLMERY, HARRY W.	SODA LAKE	80	1.93	0.12	1.95		4.00
57 BROWN, MARSHALL L.	SODA LAKE	80	1.93	0.12	1.95		4.00
58 WORKMAN, EDWARD P.	SODA LAKE	66	1.60	0.10	1.61		3.31
59 LAWSON, TIM	STILLWATER	60	1.45	0.09	1.46		3.00
60 BISHOP,GEORGE & JENNIE	SODA LAKE	40	0.97	0.06	0.97		2.00
61 WORKMAN, EDMUND T.	SODA LAKE	14	0.34	0.02	0.34		0.70
TOTAL		2,081,555	50,325.72	3,122.34	50,629.68		104,077.74

COUNTY - CLARK

ROYALTY RECIPIENT		2000 ACTUAL ROYALTIES	2000 ACTUAL COUNTY TAX DUE	2000 ACTUAL STATE DEBT DUE	2000 ACTUAL STATE GF DUE	2000 ACTUAL TOTAL TAX DUE
1 ALY, DENYS	FLORENCE	32,500	763.23	46.75	813.02	1,625.00
2 GUSTAFSON, C	FLORENCE	32,500	763.23	46.75	813.02	1,625.00
TOTAL		65,000	1,526.46	97.50	1,626.04	3,250.00

COUNTY - ELKO

ROYALTY RECIPIENT		2000 ACTUAL ROYALTIES	2000 ACTUAL COUNTY TAX DUE	2000 ACTUAL STATE DEBT DUE	2000 ACTUAL STATE GF DUE	2000 ACTUAL TOTAL TAX DUE
1 FRANCO-NEVADA MINING CORP	MEIKLE	12,896,636	293,553.23	19,344.95	331,933.62	644,831.80
2 FRANCO-NEVADA MINING CORP	DEE MINE	699,229	15,916.71	1,048.83	17,996.60	34,961.14
3 ELLISON MINERALS	JERRITT	293,210	6,674.06	439.82	7,546.64	14,660.51
4 JACKSON, PALMER	RAIN	55,078	1,264.70	82.62	1,406.58	2,753.90
5 HUTTON, DAVID A.	DEE MINE	46,823	1,065.79	70.23	1,205.13	2,341.15
6 ALBISU, EVELYN	KEN SNYDER	28,215	642.23	42.32	726.20	1,410.75
7 JACKSON, PETER	RAIN	27,539	632.35	41.31	703.29	1,378.95
8 MONTROSE, P & T	RAIN	13,770	316.19	20.66	351.66	688.51
9 BOYACK, A & P	RAIN	13,770	316.19	20.66	351.66	688.51
10 MONTROSE, D & G	RAIN	13,770	316.19	20.66	351.66	688.51
11 MONTROSE, A & F	RAIN	10,327	237.13	15.49	263.73	516.35
12 HAMMOND, HELEN	RAIN	4,048	92.95	6.07	103.38	202.40
TOTAL		14,102,409	321,026.71	21,153.62	362,940.15	705,120.48

COUNTY - ESMERALDA

ROYALTY RECIPIENT		2000 ACTUAL ROYALTIES	2000 ACTUAL COUNTY TAX DUE	2000 ACTUAL STATE DEBT DUE	2000 ACTUAL STATE GF DUE	2000 ACTUAL TOTAL TAX DUE
1 MARY MINING CO INC	MARY DUMPS	30,000	799.50	45.00	655.50	1,500.00
TOTAL		30,000	799.50	45.00	655.50	1,500.00

CALENDAR YEAR 2000 NET PROCEEDS OF MINERALS

COUNTY - EUREKA YALTY RECIPIENT		2000 ACTUAL ROYALTIES	2000 ACTUAL COUNTY TAX DUE	2000 ACTUAL STATE DEBT DUE	2000 ACTUAL STATE GF DUE	2000 ACTUAL TOTAL TAX DUE
1 FRANCO NEVADA	GOLDSTRIKE	19,269,090	282,677.63	27,403.64	603,373.24	913,454.51
2 BARRICK BULLFROG	GOLDSTRIKE	6,216,783	96,191.97	9,325.14	205,321.03	310,838.14
3 GOLD QUARRY TRUST	CARLIN I & II	2,050,034	31,726.18	3,075.05	67,706.47	102,501.70
4 HIGH DESERT MINERAL	GOLDSTRIKE	1,338,414	20,678.33	2,004.62	44,137.75	66,820.70
5 ASH, DANKO, HANNA	CARLIN I & II	1,025,017	15,860.09	1,537.53	33,853.24	51,250.86
6 ASH, ROY	CARLIN I & II	1,025,017	15,860.09	1,537.53	33,853.24	51,250.86
7 FRANCO NEVADA	DEEP STAR	564,496	8,734.45	846.74	18,643.61	28,224.80
8 FRANCO-NEVADA	MAGGIE CREEK	106,129	1,642.13	159.19	3,505.12	5,306.44
9 PACINI, G & D	CARLIN TREND	40,818	631.58	61.23	1,348.10	2,040.91
10 BARSTOW, MIKE	CARLIN I & II	31,309	484.44	46.96	1,034.04	1,565.44
11 BARSTOW, KATHRYN	CARLIN TREND	20,471	316.75	30.71	676.10	1,023.56
12 BUGY, SUZANNE	BLACKBURN	17,216	266.37	25.82	568.56	860.75
13 MOBIL OIL	BLACKBURN	15,650	242.15	23.48	516.87	782.50
14 FRANCO-NEVADA	GOOD HOPE	11,128	172.15	16.69	367.46	556.30
15 ACKMAN, EDWARD	BLACKBURN	8,022	139.60	13.53	297.97	451.10
16 HARNESS, JAMES	CARLIN TREND	8,774	135.75	13.16	289.79	438.70
17 HARNESS, LES	CARLIN TREND	8,774	135.76	13.16	289.78	438.70
18 VEAL, H K & COMPANY	BLACKBURN	6,456	99.89	9.68	213.22	322.79
19 HIGH DESERT MINERAL RES.	LEEVILLE (NEWMON	5,529	85.53	8.29	182.57	276.39
20 McLISH, H P	BLACKBURN	4,325	66.92	6.49	142.84	216.25
21 KWOK-KEATING, MAY	BLACKBURN	3,228	49.95	4.84	106.61	161.40
22 U S MINERALS	BLACKBURN	3,228	49.95	4.84	106.61	161.40
23 MARKS, T., KEITH	BLACKBURN	2,250	34.81	3.38	74.31	112.50
24 ROYALTY ACQUISITIONS, LLP	BLACKBURN	1,663	25.73	2.49	54.92	83.14
SANDERS, RICHARD	BLACKBURN	1,565	24.22	2.36	51.69	78.26
26 KLIKOFF, W ALEXANDER	BLACKBURN	1,536	23.77	2.30	50.73	76.80
27 SADLER, PAUL	RUBY HILL	750	11.60	1.13	24.77	37.50
28 CHAPMAN, MARK	TOMERA RANCH	121	1.87	0.18	4.00	6.05
29 DUNE PARTNERS, LLC	TOMERA RANCH	116	1.79	0.17	3.83	5.79
30 PENDLETON, ED	N WILLOW CREEK	50	0.77	0.08	1.65	2.50
31 GENE FRAN CO	TOMERA RANCH	41	0.63	0.06	1.35	2.04
32 PENDLETON, W	TOMERA RANCH	38	0.58	0.05	1.19	1.80
33 PENDLETON, ED	TOMERA RANCH	38	0.58	0.05	1.19	1.80
34 UPHAM, F	TOMERA RANCH	38	0.58	0.05	1.19	1.80
35 DEETER, JACK	TOMERA RANCH	38	0.58	0.05	1.19	1.80
36 STEELE, GRANT	TOMERA RANCH	29	0.45	0.04	0.96	1.45
37 RANSOM, KENNETH	TOMERA RANCH	25	0.39	0.04	0.83	1.26
38 UPHAM, F	N WILLOW CREEK	10	0.15	0.02	0.33	0.50
TOTAL		30,787,184	476,370.09	46,160.78	1,016,808.34	1,539,339.19

COUNTY - HUMBOLDT ROYALTY RECIPIENT		2000 ACTUAL ROYALTIES	2000 ACTUAL COUNTY TAX DUE	2000 ACTUAL STATE DEBT DUE	2000 ACTUAL STATE GF DUE	2000 ACTUAL TOTAL TAX DUE
1 INDEPENDENCE MINING	MARIGOLD	391,854	6,936.21	587.78	12,068.71	19,592.70
2 FRANCO-NEVADA	GETCHELL	50,144	887.60	75.22	1,544.39	2,507.21
3 F W LEWIS INC	LEWIS	36,939	642.81	55.41	1,148.73	1,846.95
4 HUTTON, DAVID	MARIGOLD	32,891	582.20	49.34	1,013.01	1,644.55
5 DECKER, DONALD	MARIGOLD	9,190	162.67	13.79	283.04	459.50
6 CENTURY GOLD	MARIGOLD	2,412	42.69	3.62	74.29	120.60
7 DECKER, UNITRUST	MARIGOLD	1,838	32.53	2.76	56.61	91.90
8 GETCHELL GOLD	PINSON	1,817	32.16	2.73	55.96	90.85
9 LIVERMORE, J S	PINSON	1,447	25.61	2.17	44.57	72.35
10 FRANCO-NEVADA	PINSON B-D	818	14.48	1.23	25.19	40.90

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CALENDAR YEAR 2000 NET PROCEEDS OF MINERALS

11 GALLI, P	PINSON	347	8.14	0.52	10.69	17.35
AUSTIN - W G TRUST	PINSON	92	1.63	0.14	2.83	4.60
13 FAITH MINERALS & LAND CO.	MARIGOLD	11	0.19	0.02	0.34	0.55
TOTAL		529,500	9,366.92	794.73	16,328.36	26,490.01

COUNTY - LANDER

ROYALTY RECIPIENT		2000 ACTUAL ROYALTIES	2000 ACTUAL COUNTY TAX DUE	2000 ACTUAL STATE DEBT DUE	2000 ACTUAL STATE GF DUE	2000 ACTUAL TOTAL TAX DUE
1 ROYAL GOLD INC	SO. PIPELINE PROJ	8,717,903	260,970.43	13,076.88	161,847.87	435,895.15
2 PLACER DOME US	GOLD ACRES	2,739,002	81,962.09	4,107.00	50,831.01	136,900.10
3 KENNECOTT	GOLD ACRES	1,825,335	54,641.40	2,738.00	33,887.34	91,266.74
4 HOWARD HUGHES CORP	McCOY	1,262,790	37,801.82	1,894.19	23,443.70	63,139.51
5 HOSPAH COAL COMPANY	MULE CANYON	569,695	17,053.82	854.54	10,576.39	28,484.75
6 CURTIS, JOANN W	GOLD ACRES	481,218	14,406.26	721.83	8,933.81	24,060.90
7 WILSON, JOAN B	GOLD ACRES	240,608	7,202.60	360.91	4,466.89	12,030.40
8 WILSON, W L	GOLD ACRES	240,608	7,202.60	360.91	4,466.89	12,030.40
9 SPRENGER, H B FAMILY TRUST	GOLD ACRES	229,151	6,859.64	343.73	4,254.18	11,457.56
10 E C M INC	SO. PIPELINE PROJ	191,204	5,723.69	286.81	3,549.70	9,560.20
11 WALDECK, W G	GOLD ACRES	106,937	3,201.16	160.41	1,985.29	5,346.86
12 LAYTON TRUST	GREYSTONE	73,372	2,196.39	110.08	1,362.13	3,668.60
13 DENVER MINING CO	SO. PIPELINE PROJ	60,268	1,804.06	90.40	1,118.84	3,013.30
14 WILSON, JULIET	GOLD ACRES	50,924	1,524.41	76.39	945.40	2,546.20
15 WILSON, HOLLIS	GOLD ACRES	50,924	1,524.41	76.39	946.40	2,546.20
16 WILSON, SUZANNE	GOLD ACRES	50,924	1,524.41	76.39	945.40	2,546.20
17 WILSON, BRENT	GOLD ACRES	50,916	1,524.17	76.37	946.26	2,546.80
18 GINN, ALLEN	BEOWAWE	42,956	1,285.89	64.43	797.48	2,147.80
19 STANFORD MGMT/MINERALS ADM	BEOWAWE	34,970	1,046.83	52.46	649.22	1,748.51
20 WILLIAMS, F	GREYSTONE	26,894	805.07	40.34	499.29	1,344.70
21 CLINTON, N	GREYSTONE	26,894	805.07	40.34	499.29	1,344.70
22 WILSON, TIMOTHY	GOLD ACRES	25,462	762.20	38.19	472.70	1,273.09
23 BARATTA, DEBORAH	GOLD ACRES	25,462	762.20	38.19	472.70	1,273.09
24 MATTEONI, SUSAN	GOLD ACRES	25,462	762.20	38.19	472.70	1,273.09
25 WILSON, GREGORY	GOLD ACRES	25,462	762.20	38.19	472.70	1,273.09
26 WEITZMAN, LAWRENCE	BEOWAWE	12,341	369.43	18.51	229.11	617.05
27 BATZ, LILLIAN	BEOWAWE	7,483	224.00	11.22	138.92	374.14
28 HARRIS, LLOYD	BEOWAWE	3,014	90.22	4.52	55.95	150.69
29 SIMMONS, C & P	BEOWAWE	3,014	90.22	4.52	55.95	150.69
30 TOWNSEND, ADA	BEOWAWE	2,694	80.64	4.04	50.01	134.69
31 DERMENGIAN, ANNIE	BEOWAWE	2,575	77.08	3.86	47.80	128.74
32 AHERN, DOROTHY	BEOWAWE	2,570	76.93	3.86	47.71	128.50
33 UYEDA, TOMOCHIKA	BEOWAWE	2,570	76.93	3.86	47.71	128.50
34 STOCCKETTI, D G	BEOWAWE	2,527	75.65	3.79	46.91	126.35
35 ROSSI, LORETTA	BEOWAWE	2,525	75.59	3.79	46.88	126.26
36 THOMAS, GERALDINE	BEOWAWE	2,516	75.32	3.77	46.71	125.80
TOTAL		17,218,163	515,425.83	25,827.25	319,655.27	860,908.35

COUNTY - LINCOLN

ROYALTY RECIPIENT		2000 ACTUAL ROYALTIES	2000 ACTUAL COUNTY TAX DUE	2000 ACTUAL STATE DEBT DUE	2000 ACTUAL STATE GF DUE	2000 ACTUAL TOTAL TAX DUE
1 FELLER HOLDING CORPORATION	BLACKSTONE	12,500	315.81	18.75	290.44	625.00
2 HARRINGTON, SID	ROBIN #1,#2	287	7.25	0.43	6.67	14.35
3 JONES, MARSHA	ROBIN #1,#2	287	7.25	0.43	6.67	14.35
4 SONNENBERG, STEVEN	MACKIE PERLITE	259	6.54	0.39	6.02	12.95

CALENDAR YEAR 2000 NET PROCEEDS OF MINERALS

5 SONNENBERG, TRAVIS	MACKIE PERLITE	259	6.54	0.39	5.02	12.95
SONNENBERG, NICOLE	MACKIE PERLITE	259	6.54	0.39	6.02	12.95
SONNENBERG, DEVIN	MACKIE PERLITE	259	6.54	0.39	6.02	12.95
8 SONNENBERG, CAMILLE	MACKIE PERLITE	259	6.54	0.39	6.02	12.95
9 BETTY ROLLINS	MACKIE PERLITE	259	6.54	0.39	6.02	12.95
10 SONNENBERG, AMY	MACKIE PERLITE	125	3.16	0.19	2.90	6.25
11 SONNENBERG, DENNIS	MACKIE PERLITE	125	3.16	0.19	2.90	6.25
12 BLEAK, KATHRYN	ROBIN #1,#2	97	2.45	0.15	2.25	4.85
TOTAL		14,978	378.32	22.48	347.96	748.75

COUNTY - MINERAL ROYALTY RECIPIENT		2000 ACTUAL ROYALTIES	2000 ACTUAL COUNTY TAX DUE	2000 ACTUAL STATE DEBT DUE	2000 ACTUAL STATE GF DUE	2000 ACTUAL TOTAL TAX DUE
1 KENNECOTT RAWHIDE	DENTON-RAWHIDE	892,239	31,139.04	1,336.35	12,134.41	44,611.80
2 DAYTON MINING US, INC.	DENTON-RAWHIDE	555,537	19,388.24	833.31	7,555.30	27,776.85
3 KINROSS RAWHIDE MINING	DENTON-RAWHIDE	436,286	15,226.38	654.43	5,933.49	21,814.30
4 NADEAN BEDFORD	MARBLE	17,009	593.61	25.51	231.32	850.44
TOTAL		1,901,068	66,347.27	2,851.60	25,854.52	95,053.39

COUNTY - NYE ROYALTY RECIPIENT		2000 ACTUAL ROYALTIES	2000 ACTUAL COUNTY TAX DUE	2000 ACTUAL STATE DEBT DUE	2000 ACTUAL STATE GF DUE	2000 ACTUAL TOTAL TAX DUE
ORDRICH GOLD RESOURCES	ROUND MOUNTAIN	5,797,908	202,346.99	8,696.86	78,851.55	289,895.40
2 BURLINGTON RESOURCES	ROUND MOUNTAIN	2,315,226	80,801.39	3,472.84	31,487.07	115,761.30
3 LAYNE, H B	BULLFROG	228,687	7,780.38	343.03	3,310.93	11,434.34
4 HOMESTAKE MINING CO	MOTHER LODE MINE	161,792	5,504.49	242.69	2,342.42	8,089.60
5 AMERICAN COMETRA INC	GRANT CANYON	98,091	2,946.03	147.14	1,809.39	4,904.56
6 FINA OIL & CHEMICAL	GRANT CANYON	63,046	1,894.78	94.57	1,162.98	3,152.30
7 TAYLOR, THOMAS & ASSOC.	TRAP SPRINGS	53,942	1,621.16	80.91	995.01	2,697.09
8 DEERFIELD PRODUCTION CORPORATI	KATE SPRINGS 2-12	49,813	1,497.08	74.72	918.65	2,490.65
9 ROBERTSON-FINLEY RES INC	TRAP SPRINGS	45,926	1,380.26	68.89	847.15	2,296.30
10 ENEROYAL	TRAP SPRINGS	42,906	1,289.47	64.36	791.43	2,145.26
11 ENERGY INCOME FUND	EAGLE SPRINGS	33,487	1,006.42	50.23	617.70	1,674.35
12 T H C COMPANY	GRANT CANYON	25,388	762.94	38.08	468.28	1,269.26
13 POPP, THOMAS F	EAGLE SPRINGS	25,323	761.06	37.98	467.11	1,266.15
14 CORN / AHERN	MOTHER LODE MINE	24,087	918.81	36.16	348.44	1,203.35
15 TRUFFLE HUNTER GROUP, LLC	GRANT CANYON	23,008	691.48	34.51	424.40	1,150.39
16 ENERGY INCOME FUND	GHOST RANCH	22,362	739.14	33.54	345.40	1,118.08
17 McJUNKIN, KATHY	BRITTON 13-21	21,458	644.89	32.19	395.81	1,072.89
18 MITCHELL, JAY	BRITTON / M RANCH	21,446	644.54	32.17	395.59	1,072.30
19 POPP, THOMAS F	GHOST RANCH	20,619	619.68	30.93	380.34	1,030.95
20 BERRY PETROLEUM	TRAP SPRINGS	18,373	552.18	27.56	338.91	918.65
21 TAYLOR, LISA	KATE SPR #1	15,766	473.84	23.65	290.82	788.31
22 McGONNIGAL, S & P	MUNSONRANCH TS	15,197	456.72	22.79	280.32	759.83
23 VAUGHN PETROLEUM ROYALTY PART	GRANT CANYON	14,290	429.47	21.44	263.59	714.50
24 DUNE PARTNERS, LLC	EAGLE SPRINGS	13,817	415.26	20.73	254.87	690.86
25 RANSOM, KENNETH	EAGLE SPRINGS	13,513	406.12	20.27	249.26	675.65
26 T H C COMPANY	TRAP SPRINGS	13,469	405.41	20.23	248.82	674.46
27 JACKSON, AVA MARIE	BRITTON 13-21	13,180	395.51	19.74	242.75	658.00
28 PETCON	FX 7403	12,983	390.19	19.47	239.46	649.14
29 PRIDE ENERGY	BACON FLAT 23-17	12,609	378.86	18.91	232.53	630.30
30 TRUFFLE HUNTER GROUP, LLC	TRAP SPRINGS	12,521	376.31	18.78	230.96	626.05
31 STERLING GOLD MINING CORP	STERLING	12,460	397.37	16.68	206.46	622.51

CALENDAR YEAR 2000 NET PROCEEDS OF MINERALS

32 VAUGHN PETROLEUM ROYALTY PART	TRAP SPRINGS	12,416	373.15	18.62	229.03	620.80
33 HINMAN, HARRY	GRANT CANYON	12,381	371.49	18.54	228.00	618.03
LYDDOM, JOHN	EAGLE SPRINGS	11,842	355.90	17.78	218.44	592.10
35 RANSOM, KENNETH	GHOST RANCH	9,362	281.37	14.04	172.69	468.10
36 DUNE PARTNERS, LLC	GHOST RANCH FIEL	9,202	304.16	13.80	142.13	460.09
37 PYES, HUGO	TRAP SPRINGS	8,577	257.77	12.87	158.21	428.85
38 ELAND ENERGY	FX 7403	8,426	253.23	12.64	155.42	421.29
39 FERGUSON TRUST	TRAP SPRINGS	8,268	248.49	12.40	152.51	413.40
40 GENE F LANG & CO	FX 7403	7,823	229.11	11.44	140.62	381.17
41 McGONNIGAL, W-L	MUNSONRANCH TS	7,598	228.36	11.40	140.16	379.92
42 ROEMER, LAMAR	KATE SPR 2-12	7,547	226.82	11.32	139.23	377.36
43 DUNCAN, ANGELINA	FX 7403	7,216	216.87	10.82	133.11	360.80
44 ENERGY INCOME FUND	SAND DUNE	7,178	215.73	10.77	132.41	358.91
45 SAGA EXPLORATION	STERLING MINE	7,169	228.81	10.75	118.88	358.44
46 AMERICAN COMETRA INC	BACON FLAT 23-17	6,948	208.81	10.42	128.16	347.39
47 DEES GROUP	BULLFROG	6,636	225.77	9.95	96.08	331.80
48 CHATTIN, KEN	BRITTON 13-21	6,605	198.52	9.91	121.84	330.27
49 HINMAN, HARRY	TRAP SPRINGS	6,238	187.46	9.36	115.07	311.91
50 FRENCH, DON	KATE SPR #1	5,892	177.09	8.84	108.69	294.62
51 NELSON, ARGYLE	KATE SPRINGS 12-2	5,350	160.79	8.03	98.69	267.51
52 KNEUBUHL, SUZANNE	EAGLE SPRINGS	5,350	160.79	8.03	98.69	267.51
53 TRUFFLE HUNTER GROUP, LLC	KATE SPR #1	5,192	156.04	7.79	95.77	259.60
54 LEVY, MARK	KATE SPR #1	5,144	154.60	7.72	94.89	257.21
55 T H C COMPANY	KATE SPR 2-12	5,144	154.60	7.72	94.89	257.21
56 TRAMMEL, ALICE	TRAP SPRINGS	4,941	148.50	7.41	91.14	247.05
57 FINLEY, J D	GRANT CANYON	4,797	144.17	7.20	88.48	239.85
58 FINLEY, MARK	GRANT CANYON	4,797	144.17	7.20	88.48	239.85
59 McGONNIGAL, S & P	TRAP SPRINGS	4,729	142.13	7.09	87.24	236.46
60 TAYLOR, LISA	TAYLOR FED #1	4,296	129.11	6.44	79.24	214.79
61 FINLEY, J D	TRAP SPRINGS	4,255	128.17	6.40	78.67	213.24
62 FINLEY, MARK	TRAP SPRINGS	4,255	128.17	6.40	78.67	213.24
63 T H C COMPANY	BACON FLAT 23-17	3,914	117.63	5.87	72.20	195.70
64 GUIDERA, JACK	TRAP SPRINGS	3,439	103.36	5.16	63.43	171.94
65 DUNE PARTNERS, LLC	SAND DUNE	2,954	88.78	4.43	54.49	147.70
66 RANSOM, KENNETH	SAND DUNE FIELD	2,908	87.40	4.36	53.64	145.40
67 RONNING, GRABLE BOSWORTH	MUNSONRANCH TS	2,800	84.15	4.20	51.65	140.00
68 ALEXANDER, BARBARA K	MUNSONRANCH TS	2,769	83.22	4.16	51.08	138.45
69 FINLEY, DANA	GRANT CANYON	2,782	83.00	4.14	50.94	138.08
70 CRISP, CLAIR	BULLFROG	2,646	90.03	3.97	38.31	132.31
71 CRAWFORD, THOMAS	BULLFROG	2,646	90.03	3.97	38.31	132.31
72 RANSOM, KENNETH	KATE SPRING FIELD	2,620	78.73	3.93	48.32	130.98
73 HINMAN, HARRY	KATE SPRINGS	2,572	77.30	3.86	47.44	128.60
74 FINLEY, DANA	TRAP SPRINGS	2,474	74.35	3.71	45.64	123.70
75 FINLEY MANAGEMENT CO	GRANT CANYON	2,398	72.08	3.60	44.24	119.92
76 McGONNIGAL, W-L	TRAP SPRINGS	2,344	70.43	3.52	43.23	117.18
77 FINLEY MANAGEMENT CO	TRAP SPRINGS	2,133	64.11	3.20	39.35	106.66
78 EVANS, DAVID	TAYLOR FED #1&#2	2,064	62.03	3.10	38.07	103.20
79 GOLDSTEIN TRUST	MUNSONRANCH TS	1,982	59.57	2.97	36.56	99.10
80 AMERICAN COMETRA INC	FX 7403	1,968	59.15	2.95	36.30	98.40
81 GILMORE, M REED JR	CENEX 5-14, 5-14 A	1,851	55.63	2.78	34.14	92.55
82 GILMORE, J C	CENEX 5-14, 5-14 A	1,851	55.63	2.78	34.14	92.55
83 GRIESS, VALERIE G	CENEX 5-14, 5-14 A	1,851	55.63	2.78	34.14	92.55
84 GILMORE, PRISCILLA F	CENEX 5-14, 5-14 A	1,851	55.63	2.78	34.14	92.55
85 LINDQUIST, JOAN GILMORE	CENEX 5-14, 5-14 A	1,851	55.63	2.78	34.14	92.55
86 ROOP, JAMES	TRAP SPRINGS	1,784	53.63	2.68	32.92	89.23
87 FRANCO NEVADA MINING CORP LTD	STERLING	1,779	56.77	2.67	29.49	88.93
88 DUNCAN, ANGELINA	MNSONRNCH TS142	1,747	52.50	2.62	32.23	87.35
89 ENERGY INCOME FUND	KATE SPRINGS	1,705	51.23	2.56	31.46	85.24

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CALENDAR YEAR 2000 NET PROCEEDS OF MINERALS

90 LASRICH, B	MUNSONRANCH TS	1,681	50.52	2.52	31.01	84.05
[illegible]ANOWA PETROLEUM	EAGLE SPRING FIEL	1,423	42.77	2.13	26.25	71.15
92 D & R INVESTMENTS	EAGLE SPRINGS	1,423	42.77	2.13	26.25	71.15
93 BRAVO IV	TRAP SPRINGS-APC	1,407	42.29	2.11	25.95	70.35
94 BURNETT, VIOLA	BULLFROG	1,348	45.75	2.02	19.47	67.24
95 RONNING, G B 1983 TRUST	MUNSONRANCH TS	1,316	39.51	1.98	24.31	65.80
96 ALEXANDER, B 1983 TRUST	MUNSONRANCH TS	1,303	39.16	1.95	24.04	65.15
97 RAYBOURN, W B	FX 7403	1,204	36.19	1.81	22.21	60.21
98 SHIDLER, M & M	FX 7403	1,204	36.19	1.81	22.21	60.21
99 FINLEY COMPANY	FX 7403	1,200	36.06	1.80	22.14	60.00
100 ROBERTSON-FINLEY RES INC	FX 7403	1,198	36.00	1.80	22.10	59.90
101 FINLEY PETROLEUM INC	FX 7403	1,192	35.82	1.79	21.99	59.60
102 EVANS, DAVID	FX 7403	1,124	33.78	1.69	20.73	56.20
103 BUTLER, WOHLFORD & 4-W PETROLEO	FX 7403	1,099	33.03	1.65	20.27	54.95
104 FINLEY, MARK	FX 7403	1,045	31.41	1.57	19.28	52.26
105 FASH, LEAH	GRANT CANYON	939	28.22	1.41	17.32	46.95
106 WARBURTON, MICHELLE	MUNSONRANCH TS	903	27.14	1.36	16.66	45.16
107 FINLEY, J D	FX 7403	882	26.51	1.32	16.27	44.10
108 BARESH, ROGER	GRANT CANYON	838	25.19	1.26	15.46	41.91
109 SHAPIRO, MARVIN	GRANT CANYON	831	24.98	1.25	15.33	41.56
110 RONNING, GARY	TRAP SPRINGS	825	24.81	1.24	15.23	41.28
111 A - 8 INVESTMENTS	MUNSONRANCH TS	803	24.13	1.20	14.81	40.14
112 HATCH GROUP	MUNSONRANCH TS	803	24.13	1.20	14.81	40.14
113 FASH, LEAH	TRAP SPRINGS	783	23.53	1.17	14.44	39.14
114 FINLEY, MARK	BACON FLAT 23-17	770	23.16	1.16	14.21	38.52
115 FINLEY, J D	BACON FLAT 23-17	770	23.14	1.16	14.20	38.50
116 SHAPIRO, MARVIN	TRAP SPRINGS	726	21.81	1.09	13.38	36.29
117 BARESH, ROGER	TRAP SPRINGS	724	21.76	1.09	13.35	36.20
118 VAUGHN PETROLEUM ROYALTY PART	BACON FLAT 23-17	715	21.49	1.07	13.19	35.75
119 BABINEC, JOSEPH	TRAP SPRINGS	711	21.37	1.07	13.12	35.56
120 T H C COMPANY	FX 7403	690	20.74	1.04	12.73	34.51
121 TRUFFLE HUNTER GROUP, LLC	BACON FLAT 23-17	640	19.25	0.96	11.81	32.02
122 RICH, CAREN	MUNSONRANCH TS	493	14.82	0.74	9.09	24.65
123 FINNERMAN, PAT	MUNSONRANCH TS	493	14.82	0.74	9.09	24.65
124 BARTON, ROY	TAYLOR FED #1&2	446	13.38	0.67	8.21	22.26
125 BARTON, ROY	TAYLOR FED #1&2	445	13.37	0.67	8.21	22.25
126 HERRING, DONNA M	TAYLOR FED #1&2	442	13.27	0.66	8.15	22.08
127 FINLEY, DANA	BACON FLAT 23-17	439	13.19	0.66	8.10	21.95
128 FINLEY MANAGEMENT CO	BACON FLAT 23-17	385	11.57	0.58	7.10	19.25
129 HINMAN, HARRY	BACON FLAT 23-17	319	9.59	0.48	5.88	15.95
130 FINLEY, DANIEL R	FX 7403	300	9.02	0.45	5.53	15.00
131 PINEY FORK PRODUCTION	FX 7403	299	8.98	0.45	5.51	14.94
132 DAVIS, VIRGINIA	BULLFROG	235	8.00	0.35	3.40	11.75
133 DAVIS, THOMAS E	BULLFROG	235	7.99	0.35	3.40	11.74
134 FINLEY, DANA	FX 7403	222	6.67	0.33	4.10	11.10
135 FINLEY MANAGEMENT CO	FX 7403	221	6.64	0.33	4.07	11.04
136 FINLEY, T J	FX 7403	177	5.32	0.27	3.26	8.85
137 BEVERIDGE, R C	TRAP SPRINGS-APC	130	3.91	0.20	2.40	6.51
138 ZUSPANN, VIRGIL	ZUSPANN 24-3	113	3.40	0.17	2.08	5.65
139 PETTY, KENNETH	MUNSONRANCH TS	54	1.62	0.08	1.00	2.70
140 PARADOR MINING COMPANY INC	BULLFROG	39	1.33	0.06	0.56	1.95
141 KEY PRODUCTION CO	TRAP SPRINGS	21	0.63	0.03	0.39	1.05
TOTAL		9,559,718	328,458.24	14,339.66	135,188.16	477,986.06

CALENDAR YEAR 2000 NET PROCEEDS OF MINERALS

COUNTY - WHITE PINE

ROYALTY RECIPIENT		2000 ACTUAL ROYALTIES	2000 ACTUAL COUNTY TAX DUE	2000 ACTUAL STATE DEBT DUE	2000 ACTUAL STATE GF DUE	2000 ACTUAL TOTAL TAX DUE
1 ROYAL GOLD INC.	BALD MOUNTAIN	365,841	13,466.85	578.76	5,247.44	19,292.06
2 FRANCO-NEVADA MINING CORP	ALLIGATOR RIDGE	245,838	8,579.75	368.76	3,343.40	12,291.91
3 HAGER, HAROLD	BALD MOUNTAIN	192,921	6,732.94	289.38	2,623.73	9,646.05
4 HAGER, ROBERT R	BALD MOUNTAIN	185,466	6,472.83	278.20	2,522.36	9,273.39
5 CAMBELL, LYLE TRUST	ALLIGATOR-YANKEE	46,040	1,606.80	69.06	626.14	2,302.00
6 FRANCO - NEVADA MINING	ROBINSON MINE	29,759	1,038.59	44.64	404.72	1,487.95
TOTAL		1,065,887	37,896.76	1,628.80	14,767.79	54,293.36

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CALENDAR YEAR 2000 NET PROCEEDS OF MINERALS

STATEWIDE	2000 TOTAL ACTUAL ROYALTIES	2000 TOTAL ACTUAL COUNTY TAX DUE	2000 TOTAL ACTUAL STATE DEBT DUE	2000 TOTAL ACTUAL STATE GF DUE	2000 GRAND TOTAL ACTUAL TOTAL TAX
72 EUREKA	30,787,184	476,370.09	46,180.76	1,016,808.34	1,539,359.19
46 LANDER	17,218,168	515,425.83	25,827.25	319,655.27	860,908.36
28 ELKO	14,102,409	321,026.71	21,153.62	362,940.15	705,120.48
69 NYE	9,559,716	328,458.24	14,339.66	135,186.16	477,986.06
13 PERSHING	2,115,691	60,517.22	3,173.54	42,093.78	105,784.54
73 CHURCHILL	2,081,555	50,325.72	3,122.34	50,629.68	104,077.74
16 MINERAL	1,901,068	66,347.27	2,851.60	25,854.52	95,053.39
33 WASHOE	1,125,830	31,591.02	1,688.72	23,015.11	56,294.85
14 WHITE PINE	1,085,857	37,896.76	1,628.80	14,767.79	54,293.35
32 HUMBOLDT	529,600	9,366.92	794.73	18,328.36	28,490.01
2 CLARK	65,000	1,526.46	97.50	1,626.04	3,250.00
4 ESMERALDA	30,000	799.50	45.00	656.50	1,500.00
3 STOREY	17,700	449.51	26.55	408.94	885.00
18 LINCOLN	14,975	378.32	22.46	347.95	748.75
TOTAL	80,634,965	1,900,479.57	120,952.56	2,010,319.59	4,031,751.71

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CALENDAR YEAR 2000 NET PROCEEDS OF MINERALS

STATEWIDE	2000 TOTAL ACTUAL GROSS PROCEEDS	2000 TOTAL ACTUAL NET PROCEEDS	2000 TOTAL ACTUAL COUNTY TAX DUE	2000 TOTAL ACTUAL STATE DEBT DUE	2000 TOTAL ACTUAL STATE GF DUE	2000 GRAND TOTAL ACTUAL TOTAL TAX
144 OPERATORS	2,667,929,747	520,727,844	12,224,412.33	781,091.74	12,563,887.22	25,569,391.2
520 ROYALTY RECIPIENTS		80,634,965	1,900,479.57	120,952.55	2,010,319.59	4,031,751.7
664 GRAND TOTAL	2,667,929,747	601,362,809	14,124,891.90	902,044.29	14,574,206.81	29,601,143.0

= 2.42%

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CALENDAR YEAR 2000 NET PROCEEDS OF MINERALS

STATEWIDE - GRAND TOTAL	2000 TOTAL ACTUAL GROSS PROCEEDS	2000 TOTAL ACTUAL NET PROCEEDS	2000 TOTAL ACTUAL COUNTY TAX DUE	2000 TOTAL ACTUAL STATE DEBT DUE	2000 TOTAL ACTUAL STATE GF DUE	2000 GRAND TOTAL ACTUAL TOTAL TAX
CARSON CITY	0	0	0.00	0.00	0.00	0.00
CHURCHILL	33,145,479	4,919,905	118,948.50	7,379.88	68,513.27	194,841.63
CLARK	23,510,294	5,010,878	117,813.53	7,518.32	117,605.47	242,735.32
DOUGLAS	84,881	58,195	1,151.74	87.29	1,670.72	2,909.75
ELKO	464,088,484	127,092,163	2,693,027.28	190,638.24	3,268,884.77	6,352,550.29
ESMERALDA	14,274,836	1,720,531	45,862.18	2,580.79	655.50	49,098.46
EUREKA	971,904,129	185,854,627	2,875,728.63	278,781.92	6,135,899.54	9,290,410.09
HUMBOLDT	305,392,473	27,782,049	492,066.60	41,673.10	809,842.24	1,343,581.94
LANDER	435,345,234	195,507,746	5,862,524.35	293,281.81	3,570,263.04	9,716,048.00
LINCOLN	669,608	110,336	2,787.82	165.52	656.44	3,609.58
LYON	4,779,537	39,262	960.66	58.89	0.00	1,019.55
MINERAL	33,267,932	1,901,068	66,347.27	2,851.60	25,854.52	95,053.39
NYE	196,460,168	35,637,339	1,207,799.55	53,456.10	472,176.96	1,733,432.61
PERSHING	122,333,476	12,055,214	344,827.33	18,082.83	63,992.50	426,902.66
STOREY	4,073,972	568,032	14,425.74	852.06	406.94	15,686.73
WASHOE	20,832,451	2,019,597	52,934.18	3,029.37	23,015.11	78,978.66
WHITE PINE	37,899,013	1,085,867	37,899.76	1,628.80	14,767.79	54,293.35
GRAND TOTAL	2,867,929,747	601,362,809	14,124,891.90	902,044.29	14,574,206.81	29,601,143.00

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IN THE SUPREME COURT OF THE STATE OF NEVADA

SOUTHERN CALIFORNIA EDISON, Appellant, vs. THE STATE OF NEVADA DEPARTMENT OF TAXATION, Respondent.	No.: 67497

JOINT APPENDIX

VOLUME III

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Docket 67497 Document 2015-26115

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Date Filed	Pleading Title	Bate-Stamped Numbers	Volume Number
01/15/09	Complaint *(Case No. 09-0C-00016-1B)*	0001-0009	I
03/27/09	Complaint *(Case No. 09-0C-00113-1B)*	0010-0061	I
05/22/09	Complaint - Amended *(corrected version)*	0074-0092	I
04/10/12	Complaint - Second Amended	0116-0151	I
05/18/12	Defendant's Answer to Second Amended Complaint	0155-0162	I
12/17/14	Findings of Fact, Conclusions of Law & Decision - Amended	0276-0293	II
12/15/14	Findings of Fact, Conclusions of Law & Decision	0258-0275	II
02/26/15	Notice of Appeal	0327-0328	II
08/12/14	Notice of Entry of Order	0257-0257	II
12/17/14	Notice of Entry of Amended Findings of Fact, Conclusions of Law & Decision	0294-0315	II
02/03/15	Notice of Entry of Order Denying Edison's Motion to Amend Findings of Fact, Conclusions of Law & Decision & to Amend Judgment of Direct Entry of New Judgment	0319-0326	II
01/02/14	Order After Pretrial Conference	0250-0253	II
06/30/09	Order Denying Defendant's Motion to Dismiss	0093-0095	I
01/30/15	Order Denying Edison's Motion to Amend Findings of Fact, Conclusions of Law & Decision & to Amend Judgment of Direct Entry of New Judgment	0316-0318	II
06/21/13	Order Denying Motion in Limine Regarding Competitor Fuels - Amended	0194-0196	I
05/10/12	Order Denying Motion to Strike	0152-0154	I
06/22/12	Order Denying Motion to Strike	0169-0170	I
10/04/12	Order Denying Motion for Judgment on the Pleadings	0176-0178	I
06/19/13	Order Denying Motion in Limine Regarding Voided Decision	0188-0190	I
07/25/12	Order Granting Defendant's Motion to Stay Discovery Pending Ruling on Dispositive Motion	0174-0175	I

Date Filed	Pleading Title	Bate-Stamped Numbers	Volume Number
06/19/13	Order Granting Extension of Time to Produce Rebuttal Expert Reports	0191-0193	I
07/13/11	Order Granting Motion for Stay of Proceeding	0110-0113	I
12/24/09	Order Granting Plaintiff's Motion to Stay Proceedings Pending Resolution of a Writ of Petition	0105-0107	I
07/18/12	Order on Defendant's Request for Judicial Notice	0171-0173	I
04/30/14	Order Staying Determination Pending Decision by Nevada Supreme Court	0254-0256	II
07/21/09	Order to Consolidate	0096-0097	I
11/19/09	Order to Proceed as Petition for Judicial Review	0098-0102	I
01/27/12	Order to Set for Hearing	0114-0115	I
10/29/12	Order to Vacate Trial Date	0179-0180	I
09/10/13	Order to Vacate Trial	0197-0198	I
06/01/11	Order Vacating Order dated November 19, 2009 and Allowing Matter to Proceed as an Independent Action	0108-0109	I
06/13/13	Order Vacating Pretrial Conference & Trial Date & Stay of Proceedings	0187-0187	I
01/28/13	Pretrial Order	0181-0186	I
10/07/13	Pretrial Order - Amended	0199-0204	I
04/13/09	Proof of Service (x5)	0062-0073	I
05/22/12	Proof of Service (AG-04/10/12)	0163-0168	I
11/24/09	Statement of Intent to Participate	0103-0104	I
01/16/14	Trial Statement of Edison	0205-0249	I

Trial Exhibit No.	Exhibit Title	Bate-Stamped Numbers	Volume Number
42	Coal Slurry Pipeline Agreement	0509-0524	III
43	Coal Slurry Pipeline Agreement - Amended	0525-0614	III
32	Commission's Decision	0345-0351	II
38	Compilation of supporting documents for refund calculations (*Partial portions only)*	0358-0366	II
83	Contract - Colorado River Comm'n of NV & Edison	1038-1064	V
134	CPUC Decision 04-12-016	1093-1169	VI
107	Department's Decision Letter Denying Edison's Refund Request 02/09	1071-1073	V
54	Department's Exemption & Refund Report	0615-0734	IV
55	Department's Net Proceeds of Minerals Bulletin	0735-0763	IV
56	Department's Net Proceeds of Minerals Bulletin	0764-0793	IV
57	Department's Net Proceeds of Minerals Bulletin	0794-0824	IV
67	Expert Report of Sharon R. Byram	0886-0892	V
69	Expert Report of Professor Richard D. Pomp	0893-0917	V
70	Expert Report of Dr. John L. Jurewitz	0918-0967	V
72	Expert Report of Dr. James E. Faulds	0968-0970	V
73	Expert Report of Alan R. Coyner	0971-0972	V
74	Expert Report of J. Steven Gardner	0973-1018	V
75	Expert Report of John A. Swain	1019-1037	V
112	Federal Depletion Allowance Guidelines	1074-1091	VI
138	Legislative Counsel Bureau Letter to Sen. Charles W. Joerg	1170-1174	VI
113	Legislative History for Net Proceeds of Minerals Tax	1092-1092	VI
40	Mohave Project Coal Supply Agreement	0367-0390	II
41	Mohave Project Coal Supply Agreement - Amended	0391-0508	III
59	NV Bureau of Mines & Geology Special Publication MI-1998	0825-0885	V

Trial Exhibit No.	Exhibit Title	Bate-Stamped Numbers	Volume Number
9	Order of 2nd Judicial District Court in *Sierra Pacific* matter	0329-0344	II
36	Spreadsheet of Refund Calculations (Claims for Relief Nos. 1 & 2)	0352-0352	II
37	Spreadsheet of Refund Calculations (Claims for Relief Nos. 3 - 7)	0353-0357	II
91	Termination/Water User Contract between Colorado River Comm'n of NV & Edison	1065-1070	V

Transcript Date	Transcript Description	Bate-Stamped Numbers	Volume Number
01/23/14	Excerpts from Byram, Oliver & Pomp	1288-1320	VI
01/28/14	Excerpts from Gardner, Faulds & Coyner	1391-1412	VII
01/29/14	Excerpts from Oliver, Rubald & McCann	1413-1450	VII
01/22/14	Excerpts from Phelan, Cunningham, Barbaro & Byram	1205-1287	VI
01/24/14	Excerpts from Pomp & Jurewitz	1321-1390	VII
01/21/14	Excerpts from Read, Smith & Phelan	1175-1204	VI
01/30/14	Excerpts from Rubald & Swain	1451-1484	VII

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Norman J. Azevedo, Attorney at Law, and that on the 27th day of August, 2015, I caused to be served a true and correct copy of the foregoing JOINT APPENDIX in the following manner:

(ELECTRONIC SERVICE) Pursuant to Rule5(D) of the Nevada Rules of Civil Procedure, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by the Court's Facilities to the Service List as follows:

Gina Sessions, Esq.
Office of the Attorney General
100 North Carson St.
Carson City, NV 89701

Rhonda Azevedo

Rhonda Azevedo, Legal Assistant

AMENDED MOHAVE PROJECT COAL SUPPLY AGREEMENT

Between

PEABODY COAL COMPANY

and

SOUTHERN CALIFORNIA EDISON COMPANY

DEPARTMENT OF WATER AND POWER OF THE CITY OF LOS ANGELES

NEVADA POWER COMPANY

SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT & POWER DISTRICT

May 26, 1976

St. Louis Law Printing Co., Inc., 812 Olive Street 63101 314-231-4477

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AMENDED

MOHAVE PROJECT COAL SUPPLY AGREEMENT

THIS AGREEMENT, made and entered into as of the 26th day of May, 1976, by and between PEABODY COAL COMPANY, a Delaware corporation, successor of the interests of an Illinois corporation of the same name pursuant to an assignment as of March 29, 1968 (herein called "Seller") and SOUTHERN CALIFORNIA EDISON COMPANY, a California corporation (herein called "Edison"), NEVADA POWER COMPANY, a Nevada corporation (herein called "Nevada"), SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT, an agricultural improvement district organized and existing under the laws of the state of Arizona (herein called "Salt River"), and the DEPARTMENT OF WATER AND POWER OF THE CITY OF LOS ANGELES, a department organized and existing under the Charter of the City of Los Angeles, a municipal corporation of the state of California (herein called "Department"), with Edison, Nevada, Salt River and Department referred to herein collectively as "Buyers" or "Mohave Participants," and individually as a "Mohave Participant."

W I T N E S S E T H:

WHEREAS, Seller's predecessor in interest and Edison entered into the Mohave Project Coal Supply Agreement dated January 6, 1967 (herein called "Original Agreement") and thereafter Edison assigned interests therein to the Department, Salt River, and Nevada so the following shows in percentages the present interests therein:

Department	20%
Salt River	10%
Nevada	14%
Edison	56%

WHEREAS, there has since occurred a number of unforeseen developments which the parties did not and could not have reasonably anticipated and which have substantially affected the Original Agreement in varying ways and which, it is recognized by all of such parties, have produced serious inequities, such as the effects of intervening legislation, including the Federal Coal Mine Health and Safety Act of 1969 and the Occupational Safety and Health Act of 1970, reclamation requirements, environmental requirements, unforeseen difficulties being experienced, with the attendant impact upon the operations of the Mohave Project and the adverse consequences to Buyers, the occurrence of greater rates of inflation than were projected, and the need, which experience has shown to exist, for improved coal quality and more stringent quality controls, all of which require certain equitable modifications; and

WHEREAS, because of such intervening developments and the resulting serious inequities, Seller and Buyers agree that it would be in the mutual interest of all parties to make appropriate modifications for such inequities at this time;

NOW, THEREFORE, the parties desire to enter into this Amended Mohave Project Coal Supply Agreement (hereinafter called "Amended Agreement") to resolve certain problems which have arisen as aforesaid to enable Buyers to receive the quality and quantity of coal needed for the efficient operation of the Mohave Project and to enable Seller to earn a reasonable profit as provided for herein, and in consideration of the mutual covenants, agreements, and undertakings of the parties hereto, it is hereby mutually agreed that Seller agrees to sell and deliver to Buyers and Buyers agree

to purchase and receive from Seller, coal in the quantity at the times and of the quality hereinafter stated, upon the following terms and conditions:

Section 1. TERM.

§1.01 Initial Term. Deliveries of coal commenced pursuant to the Original Agreement as of November 1, 1970. The Initial Term of this Amended Agreement shall be the period commencing on the effective date hereof (which shall be deemed to be the first day of the month following the date when this Amended Agreement is executed by all parties) and ending on December 31, 2005.

§1.02 Buyers' Right to Extend Term. Seller hereby grants to Buyers the right to extend the Initial Term, at Buyers' option, exercised by Buyers having a majority percentage interest in the Mohave Project, for one (1) or more periods designated by Buyers, which period or periods shall not exceed fifteen (15) years in the aggregate. Such option or options shall be exercised by notice given on behalf of Buyers to Seller not more than five (5) years and not less than one (1) year prior to the expiration of the Initial Term or any Extended Term. The right of Buyers to exercise its option or options to extend the Initial Term is conditioned upon Seller having adequate reserves of coal available which it has a legal right to mine and deliver resulting from actions contemplated pursuant to Section 32 hereof to Buyers from the area shown on Exhibit A for the period of such extension with specifications acceptable to Buyers. The reference to Mohave Dedicated Area and Exhibit A as used throughout this Amended Agreement shall include any revised Exhibit A and any revised Mohave Dedicated Area made pursuant to any provisions hereof.

§1.03 Extension of Term. If Buyers elect, in the manner specified herein, to exercise the option or options under §1.02 hereof, Seller shall provide Buyers within thirty (30) days thereafter detailed information showing the quantity and quality of such reserves and the price of such coal to Buyers pursuant to Section 31 hereof. Buyers shall have the right to verify the quantity and quality of such reserves by employment of consultants. If Buyers determine such reserves are not adequate for the Extended Term or Terms but are adequate for a shorter period, Buyers may extend the Initial Term or any Extended Term for such shorter period. If Buyers determine the price for such coal as quoted by Seller makes any Extended Term not feasible for Buyers, they may rescind any notice given pursuant to §1.02 hereof and this Amended Agreement shall terminate at the end of the Initial Term or any effective Extended Term. All acts by Buyers under this §1.03 shall be completed prior to one (1) year in advance of the beginning of the Extended Term requested and notice thereof shall be given to Seller.

§1.04 Transportation of Coal. The transportation of coal during an Extended Term and for any generating units other than the first two units now existing at the Mohave Project shall be the responsibility of Buyers.

Section 2. SOURCE OF COAL AND RIGHT OF SUBSTITUTION.

§2.01 Source of Coal. Subject to Seller's right of substitution hereinafter set forth, the coal to be supplied hereunder shall be mined and delivered from Seller's Black Mesa Mine in Arizona, and the source of said coal shall be the Mohave Dedicated Area shown on the map attached hereto as Exhibit A, the boundaries of which may be adjusted

from time to time for convenience in mining operations of Seller subject to Buyers' approval, it being understood that Buyers shall have the right to utilize coal from said Mohave Dedicated Area during the Initial Term and any Extended Term hereof as primary fuel for electric generation in the first two units at the Mohave Project, and as primary fuel for electric generation at any other practical location, including a third generating unit at the Mohave Project. Seller will not sell or otherwise dispose of coal from said Mohave Dedicated Area other than to Buyers during the Initial Term or any subsequent Extended Term of this Amended Agreement, except with the written consent of Buyers. Seller will timely develop said Mine and install all facilities at said Mine necessary for it to fulfill its oligations under this Amended Agreement. Seller warrants that it has valid coal mining leases covering the total area outlined on Exhibit A granting Seller the right to mine and sell the coal to be supplied under this Amended Agreement, and agrees to correct any defects in said Leases as now exist or may hereafter arise. Copies of Seller's Coal Mining Leases have been delivered to Buyers.

§2.02 Right of Substitution. While it is Seller's intention to supply Buyers with the coal hereunder from the Mohave Dedicated Area, Seller shall have the right to supply coal provided for in §3.01 to Buyers hereunder from another source or sources in the Black Mesa area located on Indian Reservation land in Arizona, provided said coal meets the quality specifications set forth herein and provided that the cost to Buyers of such substituted coal shall be the same as if furnished from the Mohave Dedicated Area.

Section 3. QUANTITY AND STORAGE.

§3.01 Quantity. The quantity of coal to be supplied hereunder

shall be the total fuel requirements, excluding ignition fuel, of the first two generating units at the Mohave Generating Station, located near the Colorado River below Davis Dam in Clark County, Nevada, said first two units and all pertinent equipment and facilities being referred to herein as the "Mohave Project." Buyers, however, may use fuel (including fuel to replenish their stockpile) for said first two generating units from other suppliers whenever Seller is unable to deliver fuel as required hereunder. Buyers shall also have the right to use fuels other than coal at any time for the purpose of increasing generation over and above that obtainable solely from coal. Seller agrees to deliver and Buyers agree to purchase during the Initial Term of this Amended Agreement set forth in Section 1 hereof a minimum of 117 million tons of coal of the quality specified in §5.02 hereof less quantities of coal delivered under the Original Agreement. For the purpose of this Amended Agreement, a ton shall mean 2,000 lbs. of coal having an "as received" moisture content of 10.74%. It is anticipated by the parties hereto that during the remaining term of this Amended Agreement, the average and the maximum total annual fuel requirements of said two generating units will be 4.1 million and 4.8 million tons, respectively. Seller hereby agrees to implement plans promptly which will enable it to produce at least 400,000 tons of coal per month at the Black Mesa Mine.

§3.02 Storage. Buyers represent that they have sufficient storage capacity at the Mohave Project to maintain an inventory of coal equivalent to at least 15 days supply of full load requirements, and that Buyers presently plan to arrange for additional storage

capacity at Mohave Project. After Buyers advise Seller that such additional storage capacity is available to receive coal, Seller agrees to provide coal to fill such storage facilities within 12 months, provided, however, that in no event shall Seller be obligated to deliver more than 4.8 million tons of coal in said 12 month period.

Section 4. DELIVERY.

§4.01 Manner and Place of Delivery and Transfer of Title.

A. Coal to be supplied hereunder for the Mohave Project shall be delivered by Seller to the receiving facilities at the Mohave Project and such delivery will be made by means of a coal slurry pipeline. Title to the coal, slurry and water shall pass to Buyers at the point of such delivery. The risks of loss shall follow the title.

B. In order to continue such delivery of coal, Seller, simultaneously with the execution of this Amended Agreement, is entering into an "Amended Coal Slurry Pipeline Agreement" with Black Mesa Pipeline, Inc., a Delaware corporation, and a wholly-owned subsidiary of Southern Pacific Pipe Lines, Inc. (hereinafter called "BMP"), a copy of which Amended Coal Slurry Pipeline Agreement (not including this Amended Agreement which is attached thereto as Exhibit A) is attached hereto as Exhibit B. Seller agrees that it will not, without the prior written consent of Buyers, enter into any agreement, understanding or arrangement with BMP, its successors or assigns, amending the terms, conditions, obligations or covenants of said Amended Coal Slurry Pipeline Agreement. Seller shall not terminate the Amended Coal Slurry Pipeline Agreement pursuant to its terms until it has completed alternate arrangements for delivery

of coal to Buyers which have been approved by Buyers in advance of such termination.

§4.02 Buyers' Estimates of Requirements and Orders for Delivery.

A. Buyers shall purchase and accept delivery of the annual quantities of coal to be sold and purchased hereunder in as nearly equal weekly and monthly shipments as is compatible with the operation of the Mohave Project.

B. Buyers shall advise Seller in writing at least ninety (90) days prior to each calendar year period of Buyers' then estimate of the quantity of coal required to be delivered by Seller under this Amended Agreement during each calendar month of such calendar year period.

C. On or before the twenty-fifth (25th) day of each month preceding that in which coal is to be delivered hereunder, Buyers shall deliver an order in writing to Seller stating the quantity of coal which Buyers shall require during each week of said next succeeding month and Seller shall deliver coal to Buyers in accordance with such order, except for deviations in deliveries which are not substantial, as hereinafter defined; provided, however, that in the event conditions make it necessary or desirable for Buyers to increase or decrease the quantity of coal to be delivered to them during any such week, Buyers shall give Seller a revised order in writing or by telephone (later confirmed in writing) not less than twenty-four (24) hours before such increase or decrease, and Seller will use its best efforts to comply with such revised order; and provided further that Buyers shall not order for pipeline delivery quantities in excess of the designed maximum pipeline capacity.

§4.03 Variations, Delays and Interruptions in Delivery. Seller shall notify the Superintendent of the Mohave Project as far in advance as possible of any expected substantial deviation from the delivery schedule specified by Buyers in such respective monthly orders and of the cause and the expected extent of any such deviation. Any variation in the volumes delivered of fifteen (15) per cent or less in any week which is corrected by increased or decreased deliveries in the following thirty (30) day period, as the case may require, shall not be deemed to be a substantial deviation in delivery.

§4.04 Stockpiling of Coal.

A. Seller shall maintain at all times a sufficient supply of uncovered coal in advance of its loading shovels so that at least a thirty (30) day breakdown of its stripping shovels or draglines, as the case may be, could be experienced without resulting in a suspension or curtailment of deliveries hereunder.

B. Seller shall further maintain at all times a stockpile of coal adjacent to the slurry preparation plant equivalent to at least a fifteen (15) days' supply of the full load requirements of the Mohave Project.

C. Buyers will maintain an inventory of coal at the Mohave Project equivalent to at least fifteen (15) days' supply of the full load requirements of the Mohave Project.

Section 5. QUALITY OF COAL.

§5.01 Quality Range. The coal to be supplied under this Amended Agreement is expected to be produced from the Red, Blue, Green and Brown seams of Seller's Black Mesa Mine, and Seller represents the coal to be supplied hereunder will have the characteristics as set

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forth in the (ulation attached hereto as Exhibit C, as(evised by mutual consent pursuant to the actions set forth in Section 32 hereof.

§5.02 Average Quality. Seller warrants that the coal delivered hereunder will have the following monthly average quality characteristics:

Btu's per lb. (dry basis)	12,325 or more
Sulfur (dry basis)	0.6% or less
Ash (dry basis)	9.9% or less except as provided for in §5.07

and shall be substantially free from impurities, such as bone, slate, earth, rock, pyrite, or wood which can be kept out or removed with the exercise of reasonable care during mining and preparation. The coal shall be delivered in a manner that will insure reasonably uniform consistency as to size and quality.

§5.03 Coal Size. The coal size shall be 2" x 0 when received at the coal slurry preparation plant at Seller's Black Mesa Mine.

§5.04 Rejection of Coal. Seller shall take all steps as are reasonably available to prevent delivering to the coal slurry preparation plant, except by prior consent of Buyers, promptly confirmed in writing, coal for which the average analysis over a twenty-four (24) hour period shows any of the following characteristics (hereinafter referred to as "Rejection Points"):

Coal Characteristics	Rejection Point
1. Heating value Btu/lb. (dry basis)	Less than 11,150
2. Ash content (dry basis)	More than 13.1%
3. Sulfur content (dry basis)	More than 1.5%
4. Alkali as Na_2O (dry basis)	More than 0.35%
5. Chlorine (dry basis)	More than 0.1%

6. Ash softening temperature in reducing temperature (H=W) — Less than 2100°F.

7. Grindability (Hardgrove Index) — Less than 40

All analyses shall be in accordance with American Society for Testing and Materials procedures (ASTM) and at the option of Seller, the ASTM "same laboratory permissible differences" as set forth in ASTM Designation D 271-64 as revised in 1964 may be applied provided, however, when no current ASTM procedure exists, analysis shall be in accordance with procedure used by Commercial Testing and Engineering Company or other mutually acceptable procedures.

In the event that coal should be delivered to the Mohave Project (without prior consent of Buyers) for which the average analysis of deliveries over a twenty-four (24) hour period shows any of the characteristics above mentioned, Buyers at their election may give Seller notice of the delivery of such inferior coal and Seller shall thereupon within 90 days remove from the station site all of such inferior coal unless Seller undertakes and accomplishes in a manner, within a period of time, and to an extent, satisfactory to Buyers to blend or by other means improve the quality of such coal.

§5.05 Delivery to Meet Current Fuel Requirements. Anything in §3.01, §4.02, §4.03 and §5.02 to the contrary notwithstanding, Seller shall, from time to time, upon request of Buyers, and when necessary to meet the then current fuel requirements of the Mohave Project, deliver hourly coal having a total calorific content of at least 14,520,000,000 Btu's provided, however, that Seller shall not be obligated to deliver coal at a rate in excess of the designed maximum capacity of the pipeline, i.e., 660 tons per hour of coal having a moisture content of 10.74%, 358 days per year, and the maximum

total annual ( ) requirements set forth in §3.01 hereof( ) Buyers and Seller recognize that it will take approximately two and one-half days for slurry to reach the Mohave Project after it is placed in the pipeline at the slurry preparation plant at Seller's Black Mesa Mine and that therefore it will require approximately three days to effect a change in the quality of coal delivered to Buyers at its receiving facilities at the Mohave Project.

§5.06 Quality Control Program of Seller. Experience has shown that the operations of the Mohave Project can be adversely affected by the delivery of coal having an ash content between two and three percentage points below the 24-hour average rejection points specified in §5.04 hereof. Accordingly, Seller agrees to institute the Quality Control Program described in Exhibit D hereto in an effort to minimize such operating problems at the Mohave Project and the Mine Price per ton shall be adjusted in accordance with the provisions and schedules set forth in Exhibit E hereto.

The "zero adjustment point" for the Daily Quality Incentive Adjustment provided for in Exhibit E shall be reviewed solely for the purpose of determining the appropriateness of the "zero adjustment point" then applicable in light of the inherent ash content in the coal seams in the areas to be mined in accordance with Seller's mining plans, the partings between such coal seams, Seller's improved mining techniques and quality control procedures including blending operations, and when appropriate in the light of such factors, the "zero adjustment point" shall be changed by mutual agreement, from time to time, but not more frequently than once each year or as provided in Exhibit E hereto. If the parties are unable to agree on a

revised "zero adjustment point" or if any revision is appropriate, the matter shall be submitted to arbitration under the terms of Section 13 hereof, provided, however, that the arbitrators shall not be authorized to modify the provisions of §5.02 hereof or to revise the zero adjustment point above 10.5% (dry basis). Until such time as the "zero adjustment point" is changed it shall remain as last effective and changes will not be imposed retroactively.

§5.07 Special Provision on Quality. Notwithstanding the provisions of §5.02, Buyers and Seller agree that the coal delivered from the date of this Amended Agreement through December 31, 1977, shall have a warranted monthly average ash content of 10.5% (dry basis) or less. Furthermore, Seller shall operate in such a manner so as to avoid delivering coal during this period for which the average ash content exceeds 11.5% (dry basis) for each 48,000 tons of coal delivered.

The measurement of damages to Buyers resulting from the failure of Seller to meet the quality provisions set forth in this §5.07 is recognized by the parties to be difficult, if not impossible, on most occasions to calculate and no other remedy would be adequate, convenient, or feasible. Therefore, in the event that Seller shall fail to meet the quality provisions set forth in this §5.07 during the period of its applicability, Buyers and Seller agree with respect to all those occasions where the circumstances are such that it is impractical or extremely difficult to fix the actual damage, that in addition to Buyers' other remedies, Seller shall pay Buyers on each such occasion as liquidated damages, amounts as set forth below:

(A) $100,000 for each 48,000 tons of coal delivered

consecutively which has a weighted average ash content exceeding 11.5% (dry basis).

(B) $50,000 for each 0.1% monthly average ash content above 10.5% (dry basis), provided, however, that Buyers may waive the payment of all or any part of such liquidated damages where a review by Buyers of the circumstances surrounding Seller's delivery of coal during any month which has a monthly average ash content of more than 10.5% (dry basis) determines that Seller had diligently and in good faith taken such steps as were reasonably available in the light of Seller's mining plan previously approved by the Operating Agent and the mining conditions actually encountered to deliver coal during the month in accordance with the monthly average ash content standard warranted in this §5.07.

§5.08 Blending and Washing of Coal. Within six months following the effective date of this Amended Agreement, Seller shall complete and deliver to Buyers, feasibility studies which evaluate alternatives designed to minimize fluctuations in the quality of coal delivered to the Mohave Project.

Three alternative Cases shall be studied, specifically:

A - Mechanical Blending to produce coal having an average daily ash content of 10.0% (dry basis).

B - Coal Washing to produce coal having an average daily ash content of 9.0% (dry basis).

C - Coal Washing to produce coal having an average daily ash content of 8.0% (dry basis).

In any Case, the maximum allowable daily ash content shall be 11.0% (dry basis).

For each Case, information supplied to Buyers shall be sufficient to permit an assessment of its technical and economic feasibility. Such information shall include the capital cost of each Case; the operating costs associated with each Case; a mining plan covering the term of this Amended Agreement for each Case designed to meet the requirements of the Case; a critical path timetable for implementation of the alternative studied in each Case; an appraisal of the environmental, legal, or other constraints associated with each Case, including the availability of water and the impact upon Seller's coal leases.

Buyers shall have the right to employ consultants to participate in the Case studies and shall be given access to all relevant information thereto, including the work of consultants employed by Seller.

Upon completion of their review of the Case studies, Buyers may elect to require Seller to go forward with an alternative found to be feasible. In such event, Buyers' share of Seller's increased capital and operating costs required for the implementation of such alternative shall be recovered through the applicable provisions of this Amended Agreement. Seller shall share in such costs to the extent that its costs of compliance with Section 5 of this Amended Agreement (excluding this §5.08) are reduced by the implementation of such Case.

Section 6. PRICE.

§6.01 Delivered Price. The Delivered Price is the price to be paid for coal delivered to the Mohave Project, and shall be the sum of:

A. The Mine Price which is the price of the coal delivered to the coal slurry preparation plant at Seller's Black Mesa Mine, and

B. The price for transportation which is the price provided for in said Amended Coal Slurry Pipeline Agreement, or the price provided in any alternate coal delivery arrangement approved by Buyers pursuant to §4.01(B).

The initial Mine Price per ton under this Amended Agreement (based on coal having 12,325 Btu's per pound on a "dry" basis) shall be $3.798 for deliveries made on and after the effective date hereof. The Mine Price per ton shall be said initial Mine Price per ton as adjusted from time to time pursuant to Section 8 hereof.

§6.02 Certain Taxes. Buyers shall pay, or reimburse Seller where Seller is required to pay, all sales, use, production and severance taxes upon the coal delivered hereunder which are properly and regularly levied or imposed thereon. Any such taxes paid by Seller shall, upon request by Buyers, be paid under protest and Seller shall fully cooperate with and assist Buyers in contesting the imposition or the amount of any such taxes and Seller shall make available to Buyers for examination and audit and for use in any such contest such of its records as are pertinent thereto. Buyers shall be entitled to all refunds of any such taxes.

§6.03 Favored Nations. Except for the Amended Navajo Station Coal Supply Agreement, if during the Initial or any Extended Term of this Amended Agreement, Seller shall sell to another party a substantial quantity of coal from its Black Mesa Mine at a price which is equivalent to a Mine Price that is less than the Mine Price to the Buyers herein provided, the Buyers shall receive the benefit of an equally low price for an equivalent quantity of Btu's in the coal which it received from Seller hereunder.

Section 7. DETERMINATION OF TONNAGE.

This Amended Agreement is based upon coal having an average "as received" moisture content of 10.74% when delivered by Seller onto the conveyor to the coal slurry preparation plant of BMP. In order to determine the number of tons sold in each month under this Amended Agreement, an adjustment shall be made at the conclusion of each month for variations in said "as received" moisture content during said month, and shall be calculated according to the following formula:

$$\text{Number of scale tons of 2,000 lbs. each delivered by Seller onto conveyor during said month} \times \frac{\text{100-Average "as received" Moisture Content of Coal delivered by Seller onto conveyor during month}}{100 - 10.74\%} = \text{Number of tons sold during month}$$

All adjustments in tonnage because of moisture content shall be based on the weighted analysis for coal for the month for which such adjustment is being made.

Section 8. MINE PRICE ADJUSTMENTS.

§8.01 Cost Levels. The initial Mine Price specified in §6.01 hereof is based in part on estimates of labor and labor-related terms, materials, supplies, services and taxes (other than sales, use, production and severance taxes) and other items of expense at wage and price levels existing in July, 1965. Labor and labor-related costs, including straight time pay, overtime and overtime pay, vacations and vacation pay, hours of work, shift differential pay, working practices, and union welfare and retirement fund are based upon the levels and provisions set forth in the National Bituminous Coal Wage Agreement of 1950, as amended effective April 2, 1964 between the coal producers of Colorado and New Mexico and the United Mine Workers of America, District 15. Other labor-related costs such as Social Security,

Workmen's Compensation and compensation to supervisory and clerical employees and group insurance and non-union retirement benefits are based upon the level of rates in effect in July of 1965.

§8.02 Labor Costs. The Mine Price per ton shall be revised upward or downward, as the case may be, to reflect changes in the level of rates of pay and labor-related costs for mining, preparation and production of coal by strip or surface methods at Seller's Black Mesa Mine as follows:

A. As of the first day of the calendar year following any such change or as of the effective date of a union contract or other general wage adjustment making such a change, the labor component of the unit cost of mining, preparing and producing one ton of coal shall be computed at the level of rates of pay and labor-related costs then in effect and compared with the similar unit cost of such coal at the cost levels existing in July, 1965. The difference, if any, shall be expressed as a percentage of the computed July, 1965, cost level. In computing such labor component there shall not be included the portion of any increases in compensation, group insurance and retirement benefits to supervisory and clerical employees which would result in an overall percentage increase to them in excess of the overall percentage increase to employees at the Black Mesa Mine covered by the union contract, unless approved by the Operating Agent pursuant to §22.01 hereof.

B. Buyers and Seller agree that the appropriate factor for revision of the Mine Price for rates of pay and labor-related costs as set forth above (excluding amounts payable to the United Mine Workers of America Welfare and Retirement Fund, hereinafter called

"UMW Fund") should be 3.5 mills ($0.0035) for each one percent (1%) increase or decrease from the cost levels existing in July, 1965. The initial Mine Price per ton includes $0.20 per ton for the UMW Fund, and any payments required to be made by Seller to said UMW Fund pursuant to collective bargaining agreements which are greater or less than said amount per ton shall be reflected in a like adjustment to the Mine Price per ton when any such changes become effective.

C. Seller agrees that it will inform the Operating Agent for the Mohave Project regarding proposed changes to collective bargaining agreements or proposed new collective bargaining agreements with unions which represent Seller's employees at the Black Mesa Mine prior to making such changes or entering into such new agreements whenever the cost of coal mined and delivered to Buyers hereunder shall be materially affected thereby.

§8.03 Materials and Supplies.

A. The Mine Price per ton also shall be revised upward or downward, as the case may be, to reflect changes in the level of prices of materials and supplies, including consumable equipment, fuel, explosives, and rates for electric power used at the Black Mesa Mine as follows: As of the first day of the calendar quarter following any such change, the cost on a representative basis of diesel fuel, rubber tires, finished steel, repair parts, explosives, and electric power procured during the preceding 3-month period shall be computed at the price levels existing on said first day of the quarter and compared with the cost of such items computed on the same basis at the price levels existing therefore as of July, 1965. The difference, if any, shall be expressed as a percentage of

the computed July, 1965 cost of such items. The Mine Price shall be increased or decreased 6.5 mills ($0.0065) for each one percent (1%) increase or decrease, as the case may be, in the cost of such items. If at any time any of the foregoing items are no longer representative of changes in levels of prices of materials and supplies used at the Black Mesa Mine, Buyers and Seller shall select mutually acceptable substitute items.

B. Seller agrees to submit to the Operating Agent of the Mohave Project an annual plan not later than November 15 of each year for the ensuing calendar year relating to the purchase of materials and supplies for the Black Mesa Mine, which plan shall include estimated costs and sources of supply of such items. Said plans shall be reviewed promptly by said Operating Agent, and said Operating Agent shall assist Seller in any way deemed practicable in obtaining such items at the lowest possible costs, including the purchase of such items through said Operating Agent, consistent with existing contracts of Seller for the purchase of such items and Seller's needs and practices in supplying its other mines with such items.

§8.04 Administrative Costs. The Mine Price per ton also shall be revised upward or downward, as the case may be, to reflect changes in the levels of administrative and general expense, including engineering, exploration drilling and general insurance (but excluding labor costs described in §8.02 hereof) as follows:

After any revision of the Mine Price per ton made pursuant to §8.02 and §8.03 hereof, the Mine Price per ton also shall be further revised upward or downward as the case may be by 14.6 percent of such revision.

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§8.05 Inflation-Deflation. The Mine Price per ton also shall be revised upward or downward as the case may be to compensate for inflationary and deflationary factors, as follows:

As of the first day of January, April, July and October following any change in the Index of Wholesale Prices (all commodities except farm and foods) issued by the United States Department of Labor, Bureau of Labor Statistics, the Mine Price shall be increased or decreased two (2) mills ($0.002) per ton for each one (1) point change, increase or decrease, as the case may be, in said index number above 104.1 or below 100.1, and proportionately for fractional parts thereof (the index number for the month of April, 1965, was 102.1 on the basis that the years 1957 through 1959 equal 100).

§8.06 Ad Valorem Taxes. The parties are unable to determine property tax rates and assessments applicable to the Black Mesa Mine as of the dates hereof, and for this reason the initial Mine Price per ton set forth in §6.01 hereof does not include any amounts for ad valorem property taxes. As soon as the actual amounts of such taxes become known for any year beginning with 1975, Seller shall include one-twelfth (1/12) thereof on the next twelve monthly invoices for coal transmitted pursuant to Section 11 hereof as a part of the total purchase price for coal delivered during the preceding month.

§8.07 Law Changes. The Mine Price per ton shall also be revised upward or downward, as the case may be, to reflect changes in Seller's costs at the Black Mesa Mine arising from changes in applicable Federal, State or Tribal laws and regulations, including but not limited to, reclamation and the Mine, Health and Safety Act enacted, promulgated, implemented or enforced (excluding those provided for in §8.06 hereof)

on or after April 1, 1975. Increased costs arising from changes in such laws and regulations prior to April 1, 1975 have been incorporated into the initial Mine Price per ton set forth in §6.01 hereof. It is further agreed that revisions to the Mine Price per ton arising from such laws and regulations shall become effective only from that date on which Seller actually incurs such costs. Seller shall undertake to resist and litigate the validity of any such laws and regulations deemed by it to be of questionable validity. At the request of Buyers, Seller shall undertake to resist, and litigate if directed by Buyers, the validity of any such laws and regulations deemed by Buyers to be of questionable validity. Buyers agree to bear the reasonable costs of such litigation if instituted at the direction of Buyers. Buyers shall be entitled to their equitable share of all refunds, proceeds, and/or benefits resulting from any such actions successfully resisting such impositions.

§8.08 Indian Royalties. The Mine Price per ton shall also be revised upward or downward, as the case may be, to reflect changes in royalties payable to the Navajo and Hopi Indian Tribes because of increases in the applicable price per ton of coal under the existing provisions of the coal leases Seller has with such Indian Tribes which are applicable on the effective date hereof.

§8.09 Capital Investment. The Mine Price per ton shall also be increased or decreased to reflect changes in capital investments (which may include leasing to the extent provided in Section 30 hereof) made by Seller in the Black Mesa Mine in accordance with Exhibit F attached hereto and made a part hereof provided that such changes in capital investments shall have been determined by the Operating Agent of

Buyers to be reasonable as to their cost and need, through the use of consultants pursuant to Section 21 herein or otherwise.

§8.10 Review of Factors. Buyers and Seller recognize that the Mine Price escalation factors (expressed as mills or percent) set forth in §8.02 through §8.05 should be adjusted upwards or downwards, from time to time, based on Seller's operating experience at the Black Mesa Mine, and the effects of inflation or deflation. Upon the request of Buyers or Seller, from time to time, but not more frequently than once every 12 months, the parties agree to review all such factors in light of Seller's actual operating experience at the Black Mesa Mine and the effects of inflation or deflation. If any such review indicates changes are necessary in order to reflect accurately the aggregate net effect of variations in costs described in Section 8 hereof and the effects of inflation or deflation experienced by Seller, the parties will in good faith negotiations consider such changes, which shall not be imposed retroactively. If agreement cannot be reached as to any changes, the matter will be submitted to arbitration under the provisions of Section 13 hereof.

§8.11 Adjustment for Reduced Quantities. The Mine Price per ton shall be increased in accordance with Exhibit H attached hereto to compensate Seller during any year when Buyers purchase less than 4.1 million tons of coal from Seller pursuant to this Amended Agreement, except as hereinafter provided in the event of certain force majeure events. Exhibit H shall become effective as of the date hereof, and shall be applied on a pro rata annualized basis for the fractional part of any calendar year. Appropriate pro rata annualized calculations will likewise be made for any part of any

calendar year during which the provisions of subsections A or B of this §8.11 are applicable.

A. Force majeure events which wholly or partly prevent the accepting, unloading, or utilizing of the coal at one or both units of the Mohave Project by Buyers shall be treated as follows for the purpose of computing payments under Exhibit H:

(1) If such force majeure extends for 30 days or less, the payments provided for in Exhibit H shall not be affected.

(2) If such force majeure extends beyond 30 days, pro rata adjustments shall be made to the computation of such payments in accordance with the concepts reflected in Exhibit H, provided that in no event shall payments to Seller be less than those provided for in Exhibit G, except that if such force majeure extends beyond 3 consecutive months, Buyers shall not be obligated to make the minimum payment set forth in Exhibit G for a period in excess of 3 consecutive months.

B. If any force majeure on Seller's side of the Terminal Point (which term is defined in Exhibit B) wholly or partly prevents Seller from mining or delivering coal hereunder, then no payments are to be made by Buyers except for quantities of coal delivered, and the 4.1 million ton annual quantity on which Exhibit H is based shall be reduced pro rata in accordance with the concepts reflected in Exhibit H.

C. Any disputes arising from the application of this §8.11 which cannot be resolved by mutual agreement shall be submitted to arbitration pursuant to Section 13 hereof.

§8.12 Verification of Data. Seller shall submit promptly all

data reasonably required to establish revisions in the Mine Price authorized by any of the provisions of this Amended Agreement. Buyers or their authorized representative shall have the right at any reasonable time or times to examine or audit Seller's records to the extent necessary to verify any price revision provided for by any of the provisions of this Amended Agreement. In this regard, Seller shall permit Buyers or their authorized representatives to inspect any records and reports relating to the operations of the Black Mesa Mine prepared or compiled at the Black Mesa Mine by Seller at reasonable times upon request of Buyers.

§8.13 Computations. Changes in the Mine Price per ton in each instance shall be made to the nearest one (1) mill and shall be converted from dollars per ton of coal to cents per million Btu by dividing any such change by twenty-two (22).

§8.14 Changes in Indices. If the basis for any index number which is used for price revisions hereunder is changed during the term of this Amended Agreement, the index will be adjusted to take into account such changed basis. If any such index is discontinued or otherwise becomes unavailable, the parties shall utilize a mutually satisfactory substitute index or a mutually agreeable substitute method of price revision.

§8.15 Maximum Adjustments.

(A) Notwithstanding the provisions of this Section 8, commencing January 1, 1977, and subject to the provisions of §8.15(B) hereof, any increase in the Mine Price per ton shall not exceed ten percent (10%) per calendar year, applicable to the Mine Price per ton in effect at the end of the previous year. Increases in excess of 10% in any one

calendar year may be carried forward to succeeding years. In calculating said limitation upon increases of the Mine Price per ton pursuant to this §8.15(A), any increase in payments to the UMW Fund pursuant to §8.02, increases for electric power rates pursuant to §8.03, and any increase pursuant to §8.06, §8.07, §8.09, and §8.11 hereof shall be excluded.

(B) The limitation on maximum adjustments pursuant to §8.15(A) may be suspended in whole or in part for any year or applicable part thereof by the Operating Agent, upon proof satisfactory to the Mohave Participants submitted by Seller that such suspension has been necessitated (1) by reasons other than circumstances within Seller's control and (2) in order to maintain efficient operations at the Black Mesa Mine to meet rates of delivery scheduled by Buyers pursuant to §4.02 hereof.

Section 9. PRICE REVIEWS AND OTHER ADJUSTMENTS.

§9.01 Price Reviews. In addition to the review provided for in §8.10 hereof, either Buyers or Seller within ninety (90) days following the fifth (5th) anniversary of the effective date hereof, and within ninety (90) days following each fifth (5th) anniversary thereafter, may give notice to the other party of its desire for a review to determine if the price adjustments made in the Mine Price pursuant to the provisions of Section 8 hereof correctly reflect the cumulative cost changes experienced to the date of such review resulting from changes in the rates and levels and the effect of inflation or deflation which the price adjustment provisions specified in Section 8 state they are intended to reflect. If such review demonstrates that the price adjustments made pursuant to Section 8

have not correctly reflected said cumulative cost changes and the effect of inflation or deflation, then said Mine Price and also, if appropriate, said price adjustment provisions shall be changed for subsequent deliveries of coal so as to more nearly reflect such cumulative cost changes and the effect of inflation or deflation and to provide more appropriately for such future cost changes and the effect of inflation or deflation.

§9.02 Technological Improvements. It is recognized that technological improvements not now foreseen may result in productivity substantially higher than is now possible through existing technology. The parties agree with respect to any such improvement to share equitably the resulting cost savings, if any, occurring more than five (5) years after the date of this Amended Agreement, after taking into account offsetting factors such as, but not limited to, capital investment required to achieve the cost savings and the increased cost of material and supplies and electric power which may be associated with improvement in technology.

§9.03 Information to be made Available. Seller and Buyers each shall make available for the purpose of a review under this Section 9 all pertinent information in their respective possessions and in the event the parties are unable to agree upon provisions deemed appropriate by either party as the result of such review, appropriate revisions, if any, shall be determined by arbitration, except as otherwise provided in §9.04 and §9.05 hereof.

§9.04 Inequities and Hardship. If at any time Buyers or Seller shall be of the opinion that, due to any significant change in circumstances, compliance with this Amended Agreement by such party, despite

the price revisions and adjustments provided for by other provisions of this Amended Agreement, would produce a serious inequity or subject it to financial hardship, such party may by notice call on the other to review and discuss the effects of such change of circumstances, and within thirty days of such notice the parties shall meet to consider in good faith negotiations how to deal with such inequities or hardship in a manner which is fair for both parties in the light of all changes and circumstances occurring since the last previous adjustment made pursuant hereto and place promptly into effect all adjustments mutually agreed to. Notwithstanding anything to the contrary, this §9.04 is not to be subject to arbitration and this Amended Agreement shall remain in effect unless and until the parties agree on changes.

§9.05 Price Adjustments by Mutual Agreement. It is recognized that it may become desirable to adjust the Base Mine Price or the provisions of Section 8 hereof to take account of changed circumstances not otherwise provided for herein. In this event, Buyers and Seller may by mutual agreement make any such changes. In no event shall any adjustments or proposed adjustments made pursuant to this §9.05 be subject to arbitration.

Section 10. ADJUSTMENT FOR CALORIFIC VALUE.

§10.01 Formula for Adjustment. The Delivered Price for coal sold and purchased hereunder is based upon coal having an average calorific value of 12,325 Btu's per lb. on a "dry" basis. A price adjustment shall be made at the conclusion of each month for variations in said average calorific value during said month. The price adjustment for variations in the calorific content of the coal shall be calculated according to the following formula:

$$\text{Adjustment} = \text{Delivered Price Per Ton} \times \frac{\text{Average Number of Btu's per pound on a dry basis of coal delivered during month}}{12{,}325} - \text{Delivered Price Per Ton}$$

The Adjustment shall be computed in cents per ton, calculated to the nearest tenth of a cent which shall be added if positive and subtracted if negative from the Delivered Price per ton. All adjustments for calorific value shall be based on weighted analysis for coal for each month. The adjustment for calorific value, if any, for each month for such coal shall be the product of the adjustment in cents per ton (to the nearest tenth of a cent) as calculated above, multiplied by the number of tons (determined as provided in Section 7) of such coal delivered during such month.

§10.02 Invoicing Such Adjustments. The adjustment for calorific value, if any, for each month shall be invoiced by Seller as a separate item as soon as practicable, after the pertinent information is received by Seller. At the termination of this Amended Agreement, all incompleted billings and adjustments shall be rendered and payments made as soon as practicable.

§10.03 Effective Date for Calorific Adjustments. Such adjustments for calorific value shall be made only for coal delivered under this Amended Agreement following the effective date hereof.

Section 11. BILLING AND PAYMENT.

§11.01 Billings. Seller shall transmit to Buyers, on or before the tenth (10th) day of each calendar month an invoice which shall set forth the total purchase price for coal delivered during the preceding calendar month determined by multiplying the total number of said tons purchased (determined as provided in Section 7) by the then existing

Mine Price plus all transportation charges incurred by Seller during said month for the transportation and delivery of coal hereunder under said Amended Coal Slurry Pipeline Agreement. If weights and analyses are not available to Seller at time of invoicing, invoicing shall be made on a tentative basis and an appropriate adjustment made upon receipt of weights and analyses from Buyers. In the event any adjustment in the Mine Price is in process, invoicing shall be made on the basis of the existing Mine Price, and an appropriate adjustment shall be made as soon as the new Mine Price is determined. Seller's invoices to Buyers shall promptly reflect in an appropriate manner any adjustments in transportation costs to Seller under said Amended Coal Slurry Pipeline Agreement. Interest at the prime rate in effect from time to time at the Bank of America in Los Angeles, California shall be payable on additional amounts due pursuant to any such adjustments.

§11.02 Payment. Buyers shall within ten (10) days after receipt of said invoice remit to Seller payment in the net amount shown on the invoice.

Section 12. WEIGHING, SAMPLING AND ANALYSIS OF COAL.

§12.01 Weights and Analysis. The weights and characteristics of coal delivered by Seller to Buyers and Btu content of such coal shall be determined in accordance with Exhibits I and J hereto.

Section 13. ARBITRATION.

§13.01 Notices. In the event the parties should be unable to reach agreement with respect to a matter herein specified to be established or determined by agreement of the parties, either party may, except where provided to the contrary in this Amended Agreement, call for submission of such matter to arbitration in the manner herein

set forth. The party calling for arbitration shall give notice to the other party, setting forth in such notice in adequate detail the issues to be arbitrated, and within ten (10) days from receipt of such notice the other party may by notice to the first party set forth, in adequate detail, additional related issues to be arbitrated.

§13.02 Appointment of Arbitrators. Within twenty (20) days from its notice calling for the arbitration, the first party shall appoint a person to serve as one arbitrator with notice to the other party of such appointment, and, within fifteen (15) days after receipt of notice of appointment of the first arbitrator, the other party shall appoint a person to serve as a second arbitrator with notice to the first party of such appointment. The two persons so appointed shall then agree upon and secure a third arbitrator. If the third arbitrator should not be secured within fifteen (15) days from the appointment of the second, or if the second should not be appointed within 15 days of the first, either party with notice to the other party may call for such appointment or appointments upon American Arbitration Association (or upon a similar organization if American Arbitration Association should not at that time exist). Regardless of the manner of his selection, the third arbitrator shall be one who is qualified by knowledge and experience in the field with respect to the subject matter out of which the matter to be arbitrated arises.

§13.03 Conduct of Arbitration. The arbitrators so appointed shall hear evidence submitted by the respective parties and may call for additional relevant information, which additional information the party called upon shall furnish to the extent feasible. A decision or determination signed by a majority of the arbitrators

shall be conclusive with respect to the issues submitted and shall be binding on the parties.

§13.04 Costs of Arbitration. Each party shall bear the fee and personal expenses of the arbitrator appointed by or for it together with the fees and expenses of its counsel and of its own witnesses, and all other costs and expenses of the arbitration shall be borne in equal parts by the parties, unless the decision of the arbitrators shall specify a different apportionment of any or all of such costs and expenses.

Section 14. FORCE MAJEURE.

§14.01 Effect of Force Majeure. If because of force majeure either Seller or Buyers is unable to carry out its obligations under this Amended Agreement, and if such party promptly gives to the other party written notice of such force majeure, then the obligations of the party giving notice shall be suspended, except for the payment of money due for coal delivered theretofore and except for payments of money provided for in §8.11 during certain specified force majeure events, to the extent made necessary by such force majeure and during its continuance, provided the effect of such force majeure is eliminated insofar as possible with all reasonable dispatch. The failure or delay of any person or corporation, including BMP, with whom Seller may contract in connection with mining, loading or delivery of coal hereunder shall not suspend the obligations of the Seller unless such a failure or delay is because of force majeure. Any deficiencies in deliveries of coal under this Amended Agreement which are caused by force majeure shall be made up by Seller as soon as practicable after the termination of the emergency caused by such force majeure to the

extent requested by Buyers.

§14.02 Definition of Force Majeure. The term "force majeure" as used herein shall mean any causes beyond the control and without fault or negligence of the party affected thereby, including, but not restricted to, acts of God, acts of the public enemy, insurrections, riots, labor disputes, labor or material shortages, fires, explosions, floods, breakdowns of or damage to plants, equipment or facilities, interruptions to transportation, embargoes, orders or acts of civil or military authority, and other causes of a similar nature which wholly or partly prevent the mining, loading and/or delivering of the coal by Seller, or the accepting, unloading and/or utilizing of the coal by Buyers.

Section 15. WAIVERS AND REMEDIES.

§15.01 Waiver. The failure of either Buyers or Seller to insist in any one or more instances upon strict performance of any of the provisions of this Amended Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or the relinquishment of any such rights for the future, but the same shall continue and remain in full force and effect.

§15.02 Correction of Defaults. No default of either party to this Amended Agreement in the performance of any of its covenants or obligations hereunder, which except for this provision would be the legal basis for rescission or termination of this Amended Agreement by the other party hereto, shall give or result in such a right unless and until the party committing such default shall fail to correct the default within ninety (90) days after written notice of claim of such default and a statement setting forth the nature thereof is given to

such defaulting party by the party claiming such default.

Section 16. INTERPRETATION.

§16.01 Nevada Law to Govern. The terms and provisions of this Amended Agreement shall be interpreted and construed in accordance with the laws of the State of Nevada.

Section 17. NOTICES.

§17.01 Notices. All notices under this Amended Agreement shall be in writing, and shall be either delivered in person to the President or Secretary of the party to be notified, or sent by registered or certified mail addressed to the attention of such person at the following addresses:

Southern California Edison Company Post Office Box 800 Rosemead, California 91770	Attention: (President) or (Secretary)
Peabody Coal Company 301 North Memorial Drive St. Louis, Missouri 63102	Attention: (President) or (Secretary)

Section 18. SUCCESSORS AND ASSIGNS.

§18.01 Assignments. This Amended Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns; and the provisions hereof shall not be changed because of any transfer to a third party by divestiture or otherwise, but this Amended Agreement may not be assigned by Buyers or by Seller without the written consent of the other party or parties, except that any Mohave Participant without the consent of Seller may assign interests in this Amended Agreement to other Mohave Participants, and except that either Buyers or Seller may, without the consent of the other party, assign this Amended Agreement as follows:

A. As a pledge to secure indebtedness incurred or to be

incurred for the purpose of or in connection with the performance of this Amended Agreement;

B. As an assignment to any financing institution of any monies due or to become due Seller hereunder;

C. As an assignment to a successor to all or substantially all of the property and assets of any party hereto, either by purchase, merger, consolidation or otherwise, provided no such assignment shall be effective unless and until such assignee shall assume in writing the obligations of the assignor;

D. As a transfer under and pursuant to a mortgage, deed of trust of indenture, including, without limitation, a transfer by foreclosure or sale under the power of sale contained in any such mortgage, deed of trust or indenture.

§18.02 Obligations of Buyers. The obligations of Buyers under this Amended Agreement shall be several and not joint and shall be in the proportion of their respective interests in the Mohave Project.

Section 19. BUYERS' OBLIGATIONS TO USE COAL.

§19.01 Use of Coal. Nothing in this Agreement shall be construed to require the use of coal for the generation of electrical energy at the Mohave Generating Station (other than as herein provided for the first two generating units at said Station) or to prohibit Buyers from utilizing other sources of energy, nor shall anything in this Agreement be construed to require Buyers to operate the Mohave Project to any greater extent than Buyers, in their sole discretion, may desire, either as to hours of operation or as to load carried on the units

at said Station or otherwise; provided, however, that nothing contained in this Section 19 shall be deemed to relieve the Buyers from or affect its obligations to purchase the minimum amount of coal specified in §3.01 hereof during the Initial Term of this Amended Agreement.

Section 20. TERMINATION OF THIS AGREEMENT BY BUYERS.

§20.01 Buyers' Right to Terminate. In the event that economic conditions should become such that it is no longer economical, in the opinion of Buyers, to continue the operation of the Mohave Project and Buyers elect to discontinue further operation of the Mohave Project prior to the expiration of this Amended Agreement, then Buyers, upon not less than six months' prior written notice to Seller, may terminate this Amended Agreement at any time on or after January 1, 1977. Upon such termination, Buyers shall be obligated to make the following payments to Seller:

A. Reimbursement of all properly capitalized costs and expenditures of Seller (or a subsidiary of Seller) for the construction of facilities, equipment and unamortized costs of engineering, development, planning, drilling and related matters for the performance of this Amended Agreement, together with the cost of abandoning such facilities, minus (A) depreciation upon such equipment and facilities accrued to the date of such termination and (B) the net realizable salvage value of said equipment and facilities; and

B. Fifty per cent (50%) of the then present value at the date of such termination of the profit which it is estimated that Seller would have derived but for such termination

during the remaining term of this Amended Agreement upon that portion, if any, of the minimum amount of coal required to be purchased during the Initial Term of this Amended Agreement as specified in §3.01 which was not delivered prior to the date of such termination.

§20.02 Seller's Right to Assign Certain Contracts to Buyers. In the event that Seller, with the written approval of Buyers, shall have entered into contracts required for the performance of this Amended Agreement by Seller, which contracts continue beyond such termination, Seller shall have the right to assign to Buyers at the time of such termination such of said contracts as Seller may elect (including said Amended Coal Slurry Pipeline Agreement) and Buyers following such assignment shall indemnify and save harmless Seller from any costs, expense, damages or liability thereafter accruing with respect to said contracts so assigned. Each of the aforesaid amounts and matters shall be determined by agreement between Seller and Buyers and in the event that they shall be unable to reach agreement with respect thereto, then any such amount or matter with respect to which agreement has not been reached shall be determined by arbitration in accordance with Section 13 hereof.

Section 21. RIGHT TO EMPLOY CONSULTANTS.

§21.01 Consultants. In order to obtain information related to this Amended Agreement from an independent source including verification of price adjustments pursuant to Section 8 hereof and a claim pursuant to §9.04 hereof, performance in mining operations and meeting the quality and quantity provisions of this Amended Agreement, and the reasonableness as to cost and need of capital additions pursuant to

Exhibit F, Buyers shall have the right to employ qualified consultants to make a study and review of Seller's Black Mesa Mine from time to time, including exploratory drilling on Seller's leases in the dedicated areas described in Section 2 hereof in order to verify quality. Seller agrees to cooperate fully with any such study and review, and to provide such information pertaining to its Black Mesa Mine operations as may be reasonably required by such consultant.

Section 22. DESIGNATION OF OPERATING AGENT.

§22.01 Operating Agent. Buyers hereby confirm the designation of Edison as Operating Agent for the Mohave Project and as such Operating Agent, confirm that Edison shall be vested with authority to administer the provisions of this Amended Agreement with Seller, including matters such as administering the Quality Control Program set forth in Exhibits D and E hereto (including any modifications thereto deemed necessary or equitable by Edison and Seller as therein provided), giving of notice and orders contemplated herein, the administration of Section 8 of this Amended Agreement, including any necessary adjustments pursuant to Section 8; other matters relating to billing, weighing, sampling, as provided in Exhibits I and J, orders for coal and other matters relating to the proper administration of this Amended Agreement.

Section 23. WATER SUPPLY TO NAVAJO FAMILIES.

§23.01 Water Supply. Seller represents to Buyers that it has undertaken, in the event Seller endangers the supply of underground water in the areas on or near Black Mesa by lowering the water table of others who extract water from the same geologic formation as Seller on Black Mesa, at its own expense to lower the wells of any person whose supply is so endangered and will pay the additional cost of

supplying water in the amount formerly available to such person. Seller may, at its option, haul water extracted from its own wells in Black Mesa in order to make whole the supply heretofore mentioned. Seller represents that in addition, it has undertaken to make available to all Indians residing on Black Mesa, free of charge, reasonable amounts of water for domestic use from the Seller's supply at its headquarters on Black Mesa.

Section 24. WATER MONITORING PROGRAM.

§24.01 Monitoring Program. Seller further represents that it has undertaken to continue to participate in and pay one-fourth the annual cost of funding a Black Mesa Monitoring Program. Such a monitoring program was commenced in 1971, and has been and continues to be funded annually on the following basis:

United States Geological Survey	50%
Peabody Coal Company	25%
Hopi Tribe of Arizona	12.5%
The Navajo Tribe of Indians	12.5%

§24.02 Purposes. The monitoring program to which Seller is and represents it will continue to be committed so long as the other entities described above continue to participate consists of:

A. Monitoring the effect of Seller's deep-well pumping on Black Mesa through five observation wells equipped with digital recorders that record water levels twice daily.

B. Periodically measuring by tape the water levels of additional stock wells on Black Mesa which have a water level history.

C. Maintaining a gauging station on Moenkopi Wash, approximately three miles upstream from Moenkopi, at which the stream flow sediment load and chemical quality of water

will be measured.

D. Making detailed studies and comparisons of two basins in the Black Mesa mining area which are simliar in topography, geologic formation, vegetation and climate. Mining was commenced in Basin "A" in 1973, while mining in Basin "B" will commence in the mid-1980's. To collect data for comparative purposes, each basin will be equipped to record the discharge and monitor the chemical characteristics and sediment load of the surface runoff.

§24.03 Cooperation with Others. Seller represents that it will undertake to continue to cooperate with the other aforesaid entities to the monitoring program in any additional studies, tests, or measurements agreed to by them.

Section 25. RIGHT OF FIRST REFUSAL TO PURCHASE BLACK MESA MINE.

§25.01 Buyers' Right. In the event Seller desires or is required, to divest itself of the Black Mesa Mine, or any portion thereof or interest therein, whether voluntarily or involuntarily, and for whatever reason, Buyers have a right of first refusal to acquire the Black Mesa Mine, or such portion thereof or interest therein, including all mining equipment, facilities and improvements located thereon, and Seller's leasehold interests or allocable share thereof, at the same price and on the same terms offered in a bona fide arms length offer from a third party which Seller desires to accept. Seller shall give written notice to Buyers of any such bona fide offer which it desires to accept as promptly as possible following receipt of such offer, and Buyers shall notify Seller in writing within 180 days of the receipt of any such offer of its decision on the exercise of such right of

first refusal. In the event Buyers fail to notify Seller in writing within said 180 day period, or in the event Buyers expressly decline to exercise such right of first refusal, Seller shall be free to accept such offer from a third party.

§25.02 Exception. This right of first refusal shall not be applicable to a divestiture of substantially all of the mines and other assets of Seller pursuant to the Final Order of the Federal Trade Commission entered on May 5, 1971 against Kennecott Copper Corporation (Docket No. 8765), which said Final Order became final by the denial of the Writ of Certiorari by the United States Supreme Court on April 1, 1974.

§25.03 Required Approvals. Any sale of Black Mesa Mine or portion thereof or interest therein pursuant to this Section 25 shall be subject to any required approvals from governmental authorities, including Indian tribes. Seller agrees to assist and cooperate to the fullest extent possible in the obtaining of any such approvals.

§25.04 Certain Details. In the event Buyers exercise the right of first refusal herein granted, the parties shall by mutual consent determine the various details pertaining to such purchase of the Black Mesa Mine, including but not limited to the following:

A. The date of closing.

B. The date on which Buyers become entitled to possession, which shall be the closing date unless circumstances dictate otherwise.

C. The form of assignments, bills of sale and other documents of title required to effect the sale.

D. Provisions for the payment of any claims of creditors or

others which constitute liens or encumbrances on the Black Mesa Mine, or satisfactory assurances to Buyers that Seller's title to the assets is unencumbered.

E. The taking of physical inventories of repair parts, supplies, coal inventories, both in the pit and otherwise, and any other such inventories as may be required.

F. Pro-ration of property taxes.

Any disagreement relating to any details of the purchase herein provided for shall be subject to arbitration in accordance with the provisions of Section 13 of this Amended Agreement.

§25.05 Payment of Purchase Price. Payment of the purchase price shall be made in cash on the date of closing, or in accordance with the terms of the bona fide arms length offer from the third party which Seller notified Buyers it desired to accept.

Section 26. RIGHT TO PURCHASE BLACK MESA MINE.

§26.01 Right to Purchase Mine. In the event this Amended Agreement terminates for any reason other than as provided in Section 20, Seller hereby grants to Buyers the right to purchase the Black Mesa Mine (which shall include all of Seller's mining, loading, handling and transportation equipment, roads, power lines, shops, and offices then assigned to the Black Mesa Mine, all inventories of supplies, spare parts and coal then on hand at the Black Mesa Mine and, if desired by Buyers, the portion of Seller's leasehold interests comprising the Mohave Dedicated Area) on the terms and conditions hereinafter outlined and in accordance with the provisions hereinafter set forth.

§26.02 Procedure. In the event Buyers elect to purchase the

Black Mesa Mine pursuant to the provisions of this Section 26, Buyers shall notify Seller in writing of the exercise of such right to purchase. Representatives of Seller and Buyers shall thereupon meet promptly to implement the details of such purchase in accordance with this Section 26. Seller shall continue to operate the Black Mesa Mine until the effective date of such purchase unless Buyers otherwise direct. Other details relating to the purchase of the Black Mesa Mine shall be agreed upon in accordance with the procedures set forth in §25.04 of this Amended Agreement relating to Buyer's Right of First Refusal to Purchase Black Mesa Mine.

§26.03 Price. The price to be paid by Buyers for the Black Mesa Mine shall be agreed upon by Buyers and Seller within 180 days following the notice given pursuant to §26.02 hereof at the fair market value thereof. If Seller and Buyers cannot agree upon a price for the Black Mesa Mine, the price shall be determined by an appraisal made by an independent mining consultant having broad experience in the appraisal and valuation of such mines and the art of coal mining in general, to be agreed upon by Buyers and Seller within 180 days of their failure to reach agreement on such price. The independent mining consultant shall consider all factors as may be relevant to the determination of fair market value. If Buyers and Seller cannot agree upon an independent mining consultant, the selection thereof shall be submitted to arbitration pursuant to Section 13 hereof.

§26.04 Assignments of Leases and Seller's Right to Operate Mine. In the event Buyers elect to purchase Black Mesa Mine pursuant to this Section 26, the following provisions shall be applicable:

A. At Buyers' request, Seller will assign such portion of its

leasehold interests at Black Mesa as comprise the Mohave Dedicated Area. Seller will assist and cooperate with Buyers to the fullest extent possible in obtaining all needed approvals for such assignment. If Buyers deem it inadvisable to take such assignments, Seller will use its best efforts to continue such leases in full force and effect for the benefit of Buyers, with Buyers reimbursing Seller for all costs of maintaining such leases as they apply to the area outlined on Exhibit A hereto as revised from time to time.

B. If Seller is in the business of operating coal mines in the Western United States and is a viable coal mining company at the time of such purchase by Buyers, Seller shall have the right of first refusal to continue operating the Black Mesa Mine for a reasonable competitive management fee to be negotiated. In the event of a dispute concerning this matter, it shall be determined by arbitration pursuant to Section 13 hereof.

Section 27. ASSIGNMENT OF CERTAIN AGREEMENTS.

§27.01 Assignments. In the event of a sale of the Black Mesa Mine to Buyers pursuant to the provisions of either Sections 25 or 26 hereunder, Seller shall assign its interest in the Amended Coal Slurry Pipeline Agreement and the Service Agreements with Commercial Testing and Engineering Company relating to the Black Mesa Mine, and related agreements entered into pursuant to §20.02, and Buyers agree to assume Seller's obligations pursuant to such agreements effective

with such assignment.

Section 28. DIVESTITURE OF SELLER.

§28.01 Divestiture of Seller. The provisions of this Amended Agreement prescribing and affecting the price to be paid by Buyers for coal hereunder shall not be affected or changed because of any transfer to a third party, by divestiture or otherwise, which has a capital structure different from that which Seller has used to calculate the Mine Price herein, nor shall the existing guarantee of Kennecott Copper Corporation be affected thereby.

Section 29. CONDITIONAL PARTIAL ASSIGNMENT.

§29.01 Conditional Partial Assignment. In further consideration hereof, Seller has agreed to enter into the conditional partial assignment with Buyers attached hereto as Exhibit K.

Section 30. LEASE OF EQUIPMENT BY SELLER.

§30.01 Treatment of Leased Equipment. Seller may acquire certain equipment for the Black Mesa Mine from time to time through leasing subject to terms and conditions, including how such leases shall be treated for the purposes of §8.09 hereof, satisfactory to the Mohave Participants.

Section 31. PRICE OF COAL UNDER EXTENDED TERM. The price for coal delivered hereunder during an Extended Term relating to the first two generating units at the Mohave Project shall be determined and agreed upon among the parties in the light of conditions and circumstances existing and foreseeable at the time Buyers elect to extend the Initial Term or an Extended Term. Said price shall include provisions for price changes or cost changes of Seller during the Extended Term and shall be patterned after the provisions of Sections 8 and 9

hereof (subject to revisions to take into account any new or changed conditions or circumstances then existing). In the event such agreement as to the price of such coal shall not have been reached twelve (12) months in advance of the effective date of the Extended Term, the price shall be the highest of the following:

(1) The Mine Price, as computed under Section 8 hereof.

(2) A price which will cover all of Seller's costs of producing coal during the Extended term plus a reasonable margin of profit to Seller, including a reasonable return on Seller's investment. In determining a reasonable margin of profit to Seller, including a reasonable return on Seller's investment, consideration shall be given to prices Seller is receiving, or has a contract to receive, from other parties for coal mined and delivered, or to be mined and delivered, from the Kayenta Mine and Black Mesa Mine, taking into account differences in quantity, quality, and point of delivery.

In the event Buyers and Seller are unable to agree as to any of the prices computed under this Section 31 and Buyers do not rescind the notice to extend the Initial Term or an Extended Term pursuant to §1.03 hereof, the disagreement shall be submitted to arbitration pursuant to Section 13 hereof.

Section 32. DEDICATION AND RESERVATION OF COAL.

§32.01 Under the Original Agreement, dated January 6, 1967, there was dedicated to the Mohave Project coal from areas specified therein to supply the total fuel requirements, excluding ignition fuel, for the two generating units of the Mohave Project.

§32.02 Under the original Navajo Station Coal Supply Agreement dated June 1, 1970, (Original Navajo Agreement) there was dedicated to the Navajo Station, surface mineable coal tonnage equal to 234 million tons minus the tonnage mined for said Station to date. In addition, there was dedicated to the Navajo Station 36 million tons of deep coal.

§32.03 Seller believes that the area included within the perimeter of the boundaries of Seller's Coal Leases contains surface mineable coal substantially greater than the quantity required for the fuel requirements of the two generating units of the Mohave Project and the three generating units of the Navajo Station for the Initial Term of the Original Agreement and the Original Navajo Agreement ("Navajo Agreement") if a deeper recovery line than originally contemplated by Seller is utilized. Pursuant to Exhibit L hereto, it is recognized that 154 million tons of coal is dedicated to the Mohave Project, and 270 million tons of coal is dedicated to the Navajo Station which is hereinafter referred to as "Dedicated Coal." All coal which becomes recoverable in excess of Dedicated Coal as a result of utilizing surface mining methods to a deeper recovery line within the boundaries of Seller's Coal Leases shall hereinafter be referred to as "Additional Coal."

§32.04 Seller hereby dedicates coal as specified in Exhibit L of this Amended Agreement to supply the total fuel requirements, excluding ignition fuel, for the Mohave Project during the Initial Term or any Extended Term of this Amended Agreement.

§32.05 Seller hereby agrees that Additional Coal and "Reserved Coal" as defined in Exhibit L shall be reserved for and made available

to the Mohave Project and the Navajo Station for use in existing or additional steam electric generating units at said Project or Station or elsewhere, in accordance with the principles and criteria set forth in Exhibit L of this Amended Agreement.

§32.06 Seller represents that it is entering into an Amended Navajo Station Coal Supply Agreement ("Amended Navajo Agreement") with the Co-Owners of the Navajo Station and that the Amended Navajo Agreement shall contain provisions substantially similar to this Section 32 and applicable paragraphs of Exhibit L hereto. Seller agrees that it shall not amend, revise, supplement or otherwise change the provisions of the Amended Navajo Agreement in a manner to make them inconsistent with the similar provisions of this Amended Agreement. Buyers and Seller recognize that due to changes in circumstances, it may become desirable to make changes to the provisions of this Section 32 and related Exhibit L. In this event, Buyers and Seller may by mutual agreement, make any such changes, provided that any such proposed changes shall not be determined by arbitration.

Section 33. SECTION HEADINGS. Section headings are inserted for the convenience of the parties only and shall not be construed as limiting in any way the provisions thereof. References made in this Amended Agreement to a particular Section shall be deemed to include all Subsections thereof.

IN WITNESS WHEREOF, the parties hereto have caused this Amended Mohave Project Coal Supply Agreement to be executed by their duly authorized officers and agents as of the date hereof.

ATTEST:

Secretary

PEABODY COAL COMPANY

By

Executive Vice President

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ATTEST:

Elaine Betenston
Assistant Secretary

SOUTHERN CALIFORNIA EDISON COMPANY

By W. H. Seaman
Vice President

APPROVED AS TO FORM AND LEGALITY.
BURT PINES, CITY ATTORNEY.

JAN 30 1976

By Ralph Guy Wesson
RALPH GUY WESSON
Assistant City Attorney

DEPARTMENT OF WATER AND POWER OF
THE CITY OF LOS ANGELES
BY
THE BOARD OF WATER AND POWER
COMMISSIONERS OF THE CITY OF
LOS ANGELES

By Lewis DeWisson
General Manager & Chief Engineer

and Yasuko Endo
ASSISTANT Secretary

AUTHORIZED BY RES. 607 FEB 26 1976

ATTEST:

M. Gene Mattoon
Secretary

NEVADA POWER COMPANY

By A. D. Person

ATTEST AND COUNTERSIGNED:

By Don E. Smith
Ass't Secretary

SALT RIVER PROJECT AGRICULTURAL
IMPROVEMENT AND POWER DISTRICT

By Karl F. Rebel
President

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SCHEDULE OF EXHIBITS TO
AMENDED MOHAVE PROJECT COAL SUPPLY AGREEMENT

EXHIBIT A	-	Map of Reserve Areas
EXHIBIT B	-	Amended Coal Slurry Pipeline Agreement
EXHIBIT C	-	Coal Characteristics of Black Mesa Area
EXHIBIT D	-	Quality & Quantity Control Program
EXHIBIT E	-	Daily Quality Incentive Adjustment
EXHIBIT F	-	Formula for Computation of Price Adjustment to Reflect Changes in Capital Investment at Black Mesa Mine
EXHIBIT G	-	Method of computation of fixed sum due in the event of force majeure on the Mohave Participants' side of the Terminal Point
EXHIBIT H	-	Schedule of Mine Price Adjustments for annual quantities of less than 4.1 million tons
EXHIBIT I	-	Procedure for Preparation of Monthly Invoice for Coal Delivered
EXHIBIT J	-	Procedures for Weighing, Sampling and Analysis of Coal
EXHIBIT K	-	Conditional Partial Assignment
EXHIBIT L	-	Principles and Criteria for the Dedication and Reservation of Coal.

Agreement of Kennecott Copper Corporation

In consideration of the benefits accruing to its wholly-owned subsidiary, Peabody Coal Company, from the foregoing Amended Mohave Project Coal Supply Agreement, the undersigned hereby agrees that the guarantee of performance of the Mohave Project Coal Supply Agreement dated January 6, 1967 made by the undersigned effective as of March 29, 1968, shall continue to be effective and equally applicable to the foregoing Amended Mohave Project Coal Supply Agreement.

KENNECOTT COPPER CORPORATION

By _____
President

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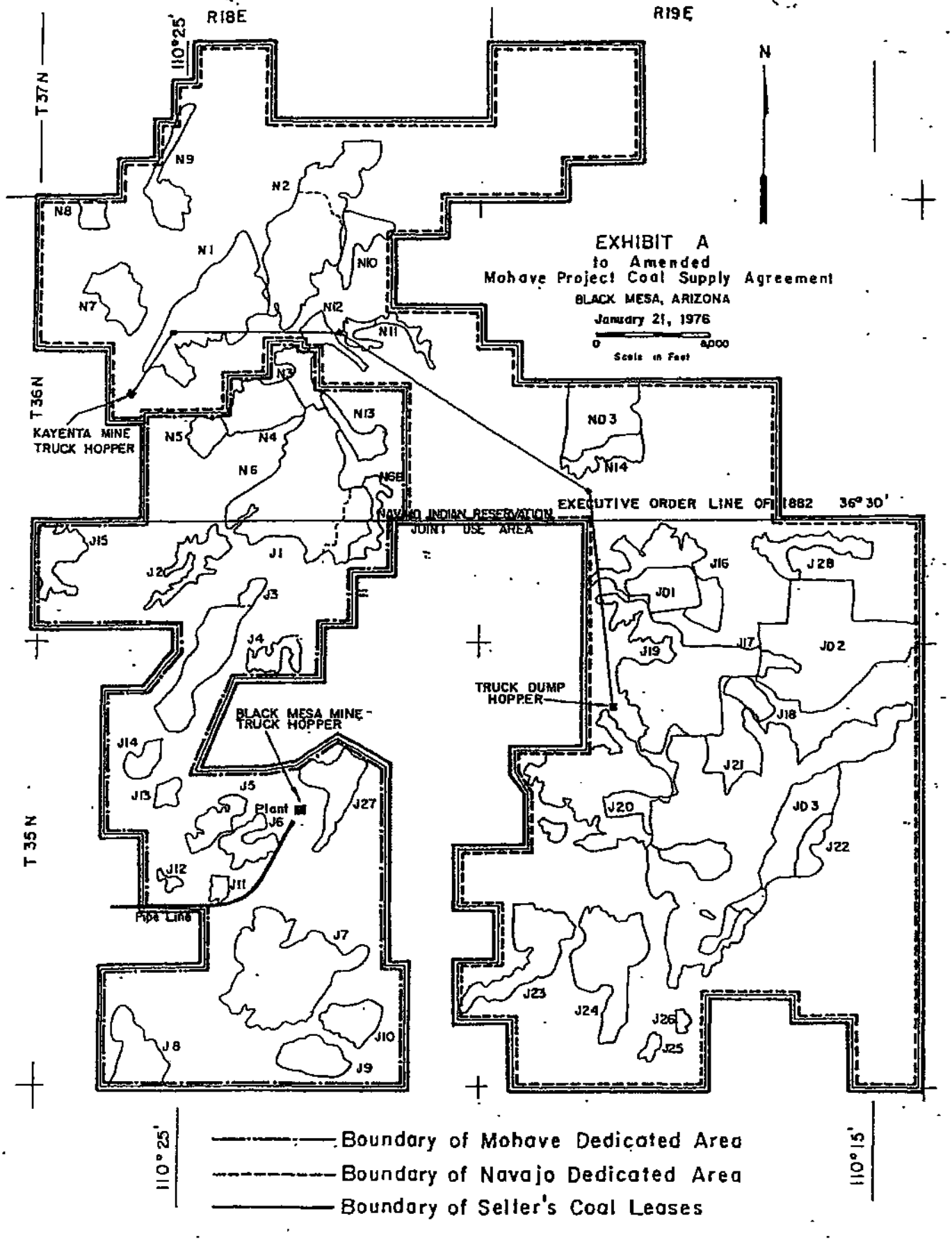
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EXHIBIT A
to Amended
Mohave Project Coal Supply Agreement
BLACK MESA, ARIZONA
January 21, 1976
0
4000
Scale in Feet
N1
N2
N3
N4
N5
N6
N6B
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N8
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N03
N14
KAYENTA MINE
TRUCK HOPPER
NAVAJO INDIAN RESERVATION
JOINT USE AREA
EXECUTIVE ORDER LINE OF 1882
36°30'
J1
J2
J3
J4
J5
J6
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J11
J12
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J14
J15
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J17
J18
J19
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J23
J24
J25
J26
J27
J28
J01
J02
J03
BLACK MESA MINE
TRUCK HOPPER
TRUCK DUMP
HOPPER
Plant
Pipe Line
110°15'
Boundary of Mohave Dedicated Area
Boundary of Navajo Dedicated Area
Boundary of Seller's Coal Leases

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EXHIBIT B

TO

AMENDED MOHAVE PROJECT COAL SUPPLY AGREEMENT

DATED

MAY 26, 1976

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Exhibit B is the Amended Coal Slurry Pipeline Agreement dated May 26, 1976.

It is omitted as an Exhibit to this Coal Supply Agreement.

EXHIBIT C
TO

AMENDED MOHAVE PROJECT
COAL SUPPLY AGREEMENT

BLACK MESA MINE

	Red Seam	Blue Seam	Green Seam	Brown Seam	Average All Seams Weighted by Tons
Estimated Reserves, M²Tons	107	166	76	51	400 (total)
Proximate Analysis					
A.R. Btu; Range *	9,596-11,699	8,465-11,713	9,723-11,784	9,632-11,831	8,465-11,831
Av. **	11,081	10,946	10,847	11,046	11,002
Moisture; Range	7.68 -13.11	3.13 -15.82	6.39 -14.24	7.76 -13.49	3.13 -15.82
Av.	10.58	10.84	10.26	10.58	10.74
Ash; Range	3.48 -16.65	3.94 -28.85	5.13 -18.47	5.13 -16.33	3.48 -28.85
Av.	7.91	8.25	9.31	8.15	7.93
Volatile Matter; Range	34.41 -42.60	32.74 -44.10	35.25 -40.80	34.43 -47.59	32.74 -47.59
Av.	38.88	38.67	39.14	39.18	38.91
Fixed Carbon; Range	32.03 -46.72	31.63 -46.68	34.62 -46.81	36.08 -46.36	31.63 -46.81
Av.	42.62	42.24	41.29	42.09	42.42
Sulphur; Range	0.30 - 1.72	0.29 - 1.42	0.21 - 0.98	0.32 - 1.44	0.21 - 1.72
Av.	.55	0.48	0.42	0.71	.51
Mineral Analysis of Ash					
P_2O_5; Range	0.08 - 0.57	0.09 - 1.29	0.13 - 0.63	0.07 - 0.57	0.07 - 1.29
Av.	0.27	0.25	0.33	0.23	.27
SiO_2; Range	32.96 -64.34	37.48 -62.68	40.63 -61.30	49.07 -59.12	32.96 -64.34
Av.	52.44	52.46	53.55	55.19	52.99
Fe_2O_3; Range	4.44 -17.73	3.02 - 9.84	3.70 - 6.72	4.27 - 8.28	3.02 -17.73
Av.	7.11	5.04	5.00	6.38	5.77
Al_2O_3; Range	14.25 -25.56	14.87 -28.91	19.18 -28.09	16.61 -27.08	14.25 -28.91
Av.	19.33	22.07	21.73	21.28	21.17

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Page 2 (continued)
BLACK MESA MINE

		Red Seam	Blue Seam	Green Seam	Brown Seam	Average All Seams Weighted by Tonnage
TiO_2;	Range	0.69 - 1.23	0.86 - 1.26	0.69 - 1.18	0.98 - 1.71	0.69 - 1.71
	Av.	1.01	1.05	1.00	1.19	1.05
CaO;	Range	2.23 -14.83	1.24 -16.63	3.72 -16.55	3.29 -11.33	1.24 -16.55
	Av.	7.72	7.83	8.05	7.42	7.78
MgO;	Range	0.71 - 3.66	0.45 - 3.39	1.07 - 2.59	0.97 - 2.34	0.45 - 3.66
	Av.	1.83	1.92	1.85	1.86	1.88
SO_3;	Range	1.05 -18.18	0.48 -13.72	2.14 - 9.96	0.42 - 7.33	0.42 -18.18
	Av.	7.11	6.55	6.12	4.36	6.34
K_2O;	Range	0.05 - 1.19	0.27 - 0.99	0.21 - 1.13	0.15 - 0.87	0.05 - 1.19
	Av.	0.71	0.59	0.63	0.49	0.62
Na_2O;	Range	0.28 - 3.45	0.04 - 2.96	0.45 - 2.50	0.11 - 1.85	0.04 - 3.45
	Av.	1.85	1.56	1.36	1.02	1.53
Und;	Range	0.03 - 0.97	0.01 - 0.98	0.03 - 0.95	0.00 - 0.95	0.00 - 0.98
	Av.	0.62	0.68	0.38	0.58	0.60
Fusion Temperature of Ash, Reducing						
Initial Deformation;	Range	1,960- 2,600	1,960- 2,750+	2,040- 2,750+	2,025- 2,700	
	Av.	2,194	2,245	2,274	2,251	2,237
Softening H=W;	Range	1,980- 2,685	2,015- 2,750+	2,110- 2,750+	2,100- 2,750+	
	Av.	2,299	2,329	2,367	2,361	2,332
Softening H=1/2W;	Range	1,985- 2,750+	2,030- 2,750+	2,150- 2,750+	2,145- 2,750+	
	Av.	2,383	2,407	2,450	2,447	2,413
Fluid;	Range	1,990- 2,750+	2,035- 2,750+	2,210- 2,750+	2,150- 2,750+	
	Av.	2,490	2,413	2,534	2,532	2,470
Fusion Temperature of Ash, Oxidizing						
Initial Deformation;	Range	2,080- 2,650	2,030- 2,750+	2,090- 2,750+	2,135- 2,750+	
	Av.	2,315	2,324	2,348	2,363	2,331

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Page 3 (continued)
BLACK MESA MINE

		Red Seam	Blue Seam	Green Seam	Brown Seam	Average All Seam Weighted by Tonn.
Softening H=W;	Range	2,120- 2,750+	2,035- 2,750+	2,120- 2,750+	2,235- 2,750+	
	Av.	2,419	2,401	2,439	2,453	2,419
Softening H=1/2W;	Range	2,130- 2,750+	2,050- 2,750+	2,170- 2,750+	2,240- 2,750+	
	Av.	2,500	2,474	2,513	2,510	2,492
Fluid;	Range	2,140- 2,750+	2,060- 2,750+	2,260- 2,750+	2,265- 2,750+	
	Av.	2,567	2,550	2,590	2,590	2,566
Grindability Hardgrove;	Range	39.0 - 44.5	37.4 - 58.4	40.6 - 47.1	40.4 - 54.4	
	Av.	41.6	41.9	42.6	44.3	42.2
Alkali as Na_2O;	Range	0.11 - 0.37	0.03 - 0.50	0.13 - 0.41	0.02 - 0.28	
	Av.	.20	.17	.19	.13	0.19
T-250°F;	Range	2,160- 2,950	2,235- 2,930	2,440- 2,920	2,540- 2,895	
	Av.	2,655	2,693	2,702	2,710	2,686

* Known Range From Core Analysis

** Average Calculated by Weighting Cores According to Seam Thickness

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EXHIBIT D
TO
AMENDED MOHAVE PROJECT COAL SUPPLY AGREEMENT
QUALITY AND QUANTITY CONTROL PROGRAM
FOR BLACK MESA MINE

PURPOSE

The purpose of this Program is to establish procedures designed to assure that proper quantity and quality coal will be delivered in the future to Buyers. The Mohave Project has experienced operational and loss of availability problems due to

a. the high ash content of the coal delivered

b. the soft physical nature of the coal

c. the low pH level of the slurry or coal

It is recognized that technology and improvements in the Quality Control Program may result in a more effective program and Exhibit D can be modified by written agreement of the Operating Agent and Seller from time to time.

1. Seller's Objectives

1.1 While Seller's objectives are to produce coal having a monthly average ash content as near as possible to 8.9% dry ash and to operate as near as possible to 90% recovery of in-place reserves, based upon the experience to date, Seller represents that it cannot average 8.9% dry ash each month and Buyers represent that it is very difficult for the Mohave Project to operate satisfactorily with daily deliveries of soft coal, low pH coal slurry or coal in excess of 11% dry ash. A daily delivery is considered to constitute approximately 16,000 tons.

1.2 Seller's quantity and quality control objectives are to minimize, through pit operation and blending, any daily shipments of coal having in excess of 11% dry ash or less than 7.0 slurry pH and to make extreme effort to avoid daily shipments of coal having in excess of 12.5% dry ash or less than 6.5 slurry pH, and avoid any daily shipments in excess of 13.1% dry ash or less than 6.0 slurry pH while maintaining daily deliveries consistent with the requirements of the Mohave Project. Soft and low pH coal are the result of gradual oxidation of coal in-place and these characteristics are normally association with coal produced on the crop line or very near the surface. The slurry pH is determined on a 50-50 by weight mixture of crushed coal and Black Mesa deep well water.

1.3 Seller, in addition to its Black Mesa Mine Supervisory Staff, will employ a Supervisor and qualified assistants to implement this Quality Control Program. The Supervisor's title will be Quality Control Supervisor, and he will have general supervision and control over the following activities:

1.3.1 To estimate expected ash and slurry pH - using data and samples from drill holes, pit test holes, core holes, adjacent pit data and other information as required by the Quality Control Supervisor who shall keep the Mine Superintendent and other operating personnel advised of expected quality.

1.3.2 To determine the actual quality of coal delivered to

the blending area on a two hour basis and subsequently as delivered to the Coal Slurry Preparation Plant on not less than a four hour basis from separate samples taken at each point. The slurry pH will be determined on these samples when necessary. When it is suspected that the quality of the coal delivered to the Coal Slurry Preparation Plant may exceed 11.0% dry ash, the sample frequency shall be increased to a two hour basis. Samples shall be taken, tested and analyzed by a laboratory technician or by another testing method as approved by Seller and the Operating Agent.

1.3.3 To determine the quantities of coal delivered to the Coal Slurry Preparation Plant on the same time basis as the delivered quality is determined. Such quantity data shall be recorded and transmitted with the quality data determined pursuant to Section 1.3.2.

1.3.4 To compare the estimated ash with the actual ash delivered, and to see that such information from S 1.3.1, 1.3.2 & 1.3.4, for each production shift is provided to the Mine Superintendent and other appropriate operating personnel.

1.3.5 To see that information described in S 1.3.4 and a computed average ash analysis for each production shift will be transmitted by the person making the tests to the Coal Slurry Preparation Plant control room.

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1.4 Seller shall provide that the Superintendent, Assistant Superintendent,

Pit Foreman, Plant Foreman, and any employee of Seller involved in the production, blending or storage of coal shall make themselves aware of the estimated and actual quality of the coal that is being produced and the quantity of such coal.

1.5 Seller shall provide that the Quality Control Supervisor in carrying out his responsibilities shall:

1.5.1 Recommend procedures designed to assist Seller to minimize any daily shipments in excess of 11.0% dry ash, or less than 7.0 slurry pH.

1.5.2 Recommend procedures designed to assist Seller to deliver coal which has an ash content as low as practicable provided that such ash content delivered is not in excess of 11.0% dry ash. Such procedures shall consider the impact of quality control upon the ability of Seller to deliver the required quantity and shall be designed whenever possible to meet both goals.

1.5.3 Supervise and direct testing in the pit to determine the location and thickness of the partings and low pH coal.

1.5.4 Observe the coal high wall to identify the location and thickness of the partings.

1.5.5 Predict the ash levels and pH of the coal resulting from several alternate methods of pit blending and convey his recommendations as to the methods to be implemented to the Superintendent.

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1.5.6 With the assistance of Seller's Engineering Department, prepare a plan or elevation view of the pit showing the benches of coal to be loaded and the estimated ash content of the coal as produced. The actual ash content of the coal produced shall be recorded on this view.

1.5.7 Mark on this view the partings that should be spoiled.

1.5.8 Have this plan or elevation view placed on a wall in the Mine Office where it can be viewed by all of Seller's supervisory personnel.

1.5.9 Monitor pit operation on a routine basis and advise the Superintendent of any unusual conditions that would affect the quality of the coal produced.

1.5.10 Have the responsibility of recommending and overseeing modifications or maintenance on the sampling and laboratory equipment to provide a high degree of reliability.

1.5.11 Report to the Seller's Director of Operations - Western Division on a weekly basis his recommendations made pursuant to Sections 1.5.1 and 1.5.2 and the results of implementation of, or failure to implement those recommendations.

1.5.12 Report to the immediate superior of the Director of Operations - Western Division any instances of repeated deviations from his recommendations which in his opinion have a significant adverse effect upon the quality and

quantity control objectives of the program.

1.5.13 Review procedures with the operating agent upon its request and take such other steps to meet the quality control objectives as are reasonably requested by Buyers. Require any steps necessary to be taken to minimize shipments in excess of 11.0% dry ash or less than 7.0 slurry pH, and avoid any daily shipment in excess of 13.1% dry ash or less than 6.0 slurry pH.

1.6 The Operating Agent and Seller shall study from time to time the physical facilities necessary for the Quality Control Supervisor to perform an effective and efficient program. Such study include an evaluation of the ability of the staff of the Quality Control Supervisor to fulfill the objectives of this Exhibit D including a determination of the requisite pay level necessary to attract and retain the services of qualified personnel. Seller shall provide the necessary facilities and pay to achieve the above goals, and shall undertake all activities hereinafter provided for.

1.6.1 Modifications and additions to the physical facilities consist of installing and providing a continuous nuclear ash analyzer that will provide an immediate and continuous output signal indicating the ash content of the coal as it is delivered to the Coal Slurry Preparation Plant, such analyzer to be installed within three months of the effective date of this amended Agreement. After

this installation is proven, which is contemplated to require no more than three months from the date of installation, provision for automated delivery of this information to a location determined by the Operating Agent will be made. An additional continuous analyzer shall be installed, once proven on the sampling system immediately after the raw coal breakers. This information shall be utilized to monitor the quality of the coal as produced and shall be continuously delivered to the facilities of the Quality Control Supervisor and used as a guide to modify pit and/or blending operations. Examination shall be made of the availability of an analyzer which can provide a continuous analysis of the ash content of the coal slurry as it leaves the Coal Slurry Preparation Plant. Such examination shall include cost, accuracy, and time required for acquisition and installation. Within three months of the effective date of this Agreement, Seller shall report the results of such study to the Operating Agent and take immediate action to implement a decision to acquire and install such equipment if so determined by said Operating Agent. Provisions for automated delivery of this information shall be made consistent with such provision concerning the output of the above mentioned nuclear ash analyzer. An office

area and laboratory facilities shall be provided for the Quality Control Supervisor and his staff. Telephone or other communication capabilities shall be installed within three months of the effective date of this amended Agreement to provided for ease of transfer of information from the mining area to the Mohave Project, and to the general offices of the Operating Agent.

2. Normal Reporting Procedures

2.1 The daily ash of the coal produced as determined by a weighted average of the analysis made in accordance with Section 1.3.2 will be logged on a copy of the Quality Control report form.

2.2 Such average shall be phoned to the Operating Agent prior to 9:00 A. M. on the following work day by an employee of Seller designated by the Superintendent except as hereinafter provided under Section 3.

2.3 Provide the Operating Agent with a written monthly summary of the test results and copies of his reports to the Director of Operations - Western Division or his superiors.

2.4 Provide in daily telephone reports to the Operating Agent such information as may affect the attainment of both long and short term quality and quantity objectives. Such information shall include, but not be limited to the current status of labor and equipment and specific problems relating to production and quality control.

2.5 Alternate methods of reporting and logging information shall be investigated and incorporated into the system by agreement of the parties.

3. Alarm Report Procedures

3.1 An "alarm condition" exists when the ash content of the coal delivered to the Coal Slurry Preparation Plant exceeds 11.0% dry ash or is below 6.0 slurry pH for any shift. It shall be Seller's responsibility to report by telephone as promptly as possible to the Mohave Project in the event of such an "alarm condition". This report shall be phoned by Seller's man in charge to one of the following Operating Agent's personnel in the order specified:

Watch Engineer	(702) 298-2553 or Black Mesa (hot line)
Plant Engineer	(702) 298-2553
Plant Superintendent	(702) 298-2553
Dispatcher	(702) 570-1822

and shall include information as to the ash content and pH of the coal being delivered to the blending pile as well as to the Coal Slurry Preparation Plant.

3.2 The information reported and the persons reporting and receiving the information shall be logged on the Quality Control report form.

4. Operating Procedures for Preventing Delivery of High Ash and low pH coal.

4.1 A corrective action condition exists for Seller when the coal produced exceeds 11.0% ash or is less than 6.0 slurry pH for two consecutive hour sampling periods at either point as described in Section 1.3.2. The corrective action may consist of:

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4.1.1 Changing pit loading procedures

4.1.2 Pit blending

4.1.3 Storage blending

4.1.4 Other appropriate steps

4.2 When either sampling system is out of service or if for any reason the actual ash determination is not available, Operating Agent personnel shall be notified in the order specified in Section 3.1 and an "estimated ash" shall be reported along with the reason the actual ash determination is not available and when it will be available. This information shall be logged on the Quality Control report form. The sampling system shall be maintained and/or modified to provide a high degree of reliability.

5. Specific Responsibilities of Seller's Personnel

5.1 The Superintendent shall:

5.1.1 Outline pit loading procedures based on recommendations provided by the Quality Control Supervisor.

5.1.2 Have the information described in Section 2.2 transmitted to the Mohave Project by 9:00 A.M. the following work day.

5.1.3 Cause operation of the storage and blending facilities so that ash content and pH of the coal delivered to the Coal Slurry Preparation Plant is reasonably uniform and daily shipments in excess of 11.0% dry ash or less than 7.0 slurry pH are minimized and daily shipments in excess of 13.1%

dry ash or pH less than 6.0 slurry pH are avoided.

5.1.4 Cause "alarm information" to be promptly reported to the Mohave Project.

5.1.5 Provide maintenance on the sampling system in general cause operations of the entire Quality Control System to be carried on efficiently and reliably.

5.2 The Preparation Foreman shall be responsible for:

5.2.1 Receiving his instructions as outlined by the Superintendent.

5.2.2 Making himself and the men under him aware of the importance of quality control.

5.2.3 Making himself aware of the estimated and actual ash and pH content of the coal as produced during the shift.

5.2.4 Transmitting the ash analysis and pH information obtained during the shift to the Pit Foreman.

5.2.5 Reporting at the end of his shift the ash and pH level and the tons produced during his shift to the Mine Office.

5.2.6 Reporting promptly as set forth in Section 3. in the event of an "alarm condition" when coal produced exceeds 11.0% ash or less than 6.0 slurry pH for one shift.

5.2.7 Diverting high ash and very low pH coal produced to storage or blending coal to be delivered to the Coal Slurry Preparation Plant as outlined by the Superintendent. In any event, whenever the coal exceeds 12.5% ash or is less than 5.5 slurry pH for any single sample taken prior to the blending pile, he shall divert the coal from the live

storage and notify the Superintendent or Assistant Superintendent as promptly as possible.

5.2.8 Reporting to the Mine Office an estimated ash at the end of his shift, when the actual data is not available and when the situation will be corrected.

5.2.9 Overall surveillance and operation of the coal sampling system.

5.3 Pit Foreman shall be responsible for:

5.3.1 Receiving his instructions as outlined by the Superintendent.

5.3.2 Making himself and the men under him aware of the importance of quality control.

5.3.3 Making himself aware of the estimated and actual ash and slurry pH content of the coal as produced during the shift.

5.3.4 Taking action as promptly as possible to correct the situation as outlined in this procedure, Paragraph 4.1, when the ash exceeds 11.0% for two consecutive sampling periods in accordance with Section 1.3.2.

5.3.5 Diverting coal from the truck hopper to a storage stockpile or cease loading in the contaminated area, when the ash exceeds 12.5% for any single sample taken prior to the blending pile.

5.3.6 Overseeing the drilling of the coal before it is shot to make certain that no undesired partings or bottom is shot with the coal.

5.3.7 Reporting to the Superintendent and Quality Control Supervisor any factors that may change the actual ash and pH content as compared to the estimated ash and slurry pH content.

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EXHIBIT E
TO
AMENDED MOHAVE PROJECT COAL SUPPLY AGREEMENT
DAILY QUALITY INCENTIVE ADJUSTMENT

1. For the period from the date of execution of this amended Agreement through December 31, 1977, the Dry Ash Zero Adjustment point shall be 10.5% provided that during this period any premiums that would be accrued for delivering coal below the Zero Adjustment Point, shall only be used to reduce charges for delivering coal above the Zero Adjustment Point but below 11.6%.

2. For the period beginning January 1, 1978, the Dry Ash Zero Adjustment Point shall be 9.9% unless otherwise agreed to pursuant to S 5.06 and this Exhibit E.

The Dry Ash Zero Adjustment Point shall be based on a mining plan agreed to by Seller and the Operating Agent utilizing the most recent analytical data and mining experience. An effort shall be made in developing the mining plan to make the Dry Ash Zero Adjustment Point near the field average and it shall not exceed 10.5% dry basis ash.

If during any three consecutive months the cumulative calculated premiums or charges exceed 100,000 dollars, the Dry Ash Zero Adjustment Point shall be reviewed and may be adjusted if appropriate to reflect a dry ash level which better represents Seller's ability to mine low ash coal.

EXHIBIT E-1
TO
AMENDED MOHAVE PROJECT COAL SUPPLY AGREEMENT
(to be effective only until December 31, 1977)

% Ash Dry)	Adjustment Expressed as a decimal	% Ash (Dry)	Adjustment Expressed as a decimal	% Ash (Dry)	Adjustment Expressed as a decimal
.0	+.20625	9.1	+.08750	11.2	-.04375
.1	+.20125	9.2	+.08125	11.3	-.05000
.2	+.19625	9.3	+.07500	11.4	-.05625
.3	+.19125	9.4	+.06875	11.5	-.06250
.4	+.18625	9.5	+.06250	11.6	-.06875
.5	+.18125	9.6	+.05625	11.7	-.07500
.6	+.17625	9.7	+.05000	11.8	-.08125
.7	+.17125	9.8	+.04375	11.9	-.08750
.8	+.16625	9.9	+.03750	12.0	-.09375
.9	+.16125	10.0	+.03125	12.1	-.10000
.0	+.15625	10.1	+.02500	12.2	-.10625
.1	+.15000	10.2	+.01875	12.3	-.11250
.2	+.14375	10.3	+.01250	12.4	-.11875
.3	+.13750	10.4	+.00625	12.5	-.12500
	+.13125	10.5	-	12.6	-.25000
	+.12500	10.6	-.00625	12.7	-.37500
.6	+.11875	10.7	-.01250	12.8	-.50000
.7	+.11250	10.8	-.01875	12.9	-.62500
.8	+.10625	10.9	-.02500	13.0	-.75000
.9	+.10000	11.0	-.03125	13.1	-.87500
.0	+.09375	11.1	-.03750	13.2	-1.00000

xample 1.
ssumptions
. 16,000 tons at 10.74% moisture
. Dry Ash 11.7%
. Mine Price $6.00 per ton

alculations of Adjustment
6,000 x $6.00 x (-.07500) = $7,200 deduction from monthly billing

xample 2.
ssumptions
16,000 tons at 10.74% moisture
ry Ash 10.2%
Mine Price $6.00 per ton

lculations of Adjustment
,000 x $6.00 x (+.01875) = $1,800 increase to monthly billing

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EXHIBIT E-2
TO
AMENDED MOHAVE PROJECT COAL SUPPLY AGREEMENT
(effective beginning January 1, 1978)

% Ash (Dry)	Adjustment Expressed as a decimal	% Ash (Dry)	Adjustment Expressed as a decimal	% Ash (Dry)	Adjustment Expressed as a decimal
7.0	+.16875	9.1	+.05000	11.2	-.08125
7.1	+.16375	9.2	+.04375	11.3	-.08750
7.2	+.15875	9.3	+.03750	11.4	-.09375
7.3	+.15375	9.4	+.03125	11.5	-.10000
7.4	+.14875	9.5	+.02500	11.6	-.10625
7.5	+.14375	9.6	+.01875	11.7	-.11250
7.6	+.13875	9.7	+.01250	11.8	-.11875
7.7	+.13375	9.8	+.00625	11.9	-.12500
7.8	+.12875	9.9	-	12.0	-.13125
7.9	+.12375	10.0	-.00625	12.1	-.13750
8.0	+.11875	10.1	-.01250	12.2	-.14375
8.1	+.11250	10.2	-.01875	12.3	-.15000
8.2	+.10625	10.3	-.02500	12.4	-.15625
8.3	+.10000	10.4	-.03125	12.5	-.16250
8.4	+.09375	10.5	-.03750	12.6	-.28214
8.5	+.08750	10.6	-.04375	12.7	-.40179
8.6	+.08125	10.7	-.05000	12.8	-.52143
8.7	+.07500	10.8	-.05625	12.9	-.64107
8.8	+.06875	10.9	-.06250	13.0	-.76071
8.9	+.06250	11.0	-.06875	13.1	-.88036
9.0	+.05625	11.1	-.07500	13.2	-1.00000

Example 1.
Assumptions
1. 16,000 tons at 10.74% moisture
2. Dry Ash 11.7%
3. Mine Price $6.00 per ton

Calculations of Adjustment
16,000 x $6.00 x (-.11250) = $10,800 deduction from monthly billing

Example 2.
Assumptions
1. 16,000 tons at 10.74% moisture
2. Dry Ash 9.2%
3. Mine Price $6.00 per ton

Calculations of Adjustment
16,000 x $6.00 x (+.04375) = $4,200 increase to monthly billing

000634

EXHIBIT F

TO

AMENDED MOHAVE PROJECT COAL SUPPLY AGREEMENT

FORMULA FOR COMPUTATION OF PRICE
ADJUSTMENT TO REFLECT CHANGES IN
CAPITAL INVESTMENT AT BLACK MESA MINE

If in any year during the period of 1975 through 1982 the actual amount of Seller's Expenditures for Depreciable Capital and Working Capital and Land is more or less than the amounts shown on Schedule I attached hereto, an adjustment will be made to the Base Mine Price in accordance with the formula that follows. The change in price so computed will be effective on January 1 of the year following such change.

PART A - DEPRECIABLE CAPITAL

STEP 1

Multiply the difference between the actual amount of expenditures for the year and the amount of anticipated expenditures per Schedule I of Exhibit F times the appropriate factor for the year in Table A on Schedule II of Exhibit F.

STEP 2

(a) Multiply the difference between the actual amount of depreciable expenditures for the year and the amount of anticipated depreciable expenditures per Schedule I of Exhibit F times 5.714%.

(b) Multiply the amount obtained in (a) by 49.01%.

(c) Multiply the amount obtained in (b) by the appropriate factor for the year in Table B on Schedule II of Exhibit F.

STEP 3

Multiply the amount computed in Step 2(a) by the appropriate factor for the year in Table B on Schedule II of Exhibit F.

STEP 4

(a) Multiply the amount computed in Step 2(a) by the number of years from the beginning of the year for which the Price Change is being computed to December 31, 1983.

(b) Subtract the difference between the actual amount of expenditures for the year and the amount of anticipated expenditures per Schedule I of Exhibit F from the amount obtained in (a).

(c) Multiply the amount obtained in (b) by 21.5%.

STEP 5

(a) Multiply the difference between the actual amount of "Qualified Sec. 38 Property" (as defined in Section 38 of the Internal Revenue Code of 1954) and the anticipated amount per Schedule III of Exhibit F by 6.598%.

(b) Multiply the amount obtained in (a) by the appropriate factor for the year in Table A on Schedule II of Exhibit F.

STEP 6

(a) Compute the difference between the sum of the amounts

PART A; STEP 6 continued

obtained in Steps 1 and 2 and the sum of the amounts obtained in Steps 3 and 4. If actual expenditures in the year are greater than anticipated expenditures, enter this difference as a negative number. If the actual expenditures in the year are less than the anticipated expenditures enter this difference as a positive number.

(b) Enter the amount computed in Step 5 as a positive number if the actual "Qualified Sec. 38 Property" is greater than the anticipated amount. Enter the amount computed in Step 5 as a negative number if the actual "Qualified Sec. 38 Property" is less than the anticipated amount.

(c) Divide the sum of the amounts obtained in (a) and (b) by the appropriate figure for the year in Table C on Schedule II of Exhibit F.

(d) Divide the amount obtained in (c) by 53.534%. If the sum of the amounts obtained in (a) and (b) is a negative figure the amount computed in (d) represents an increase in the Price. If the sum of the amounts obtained in (a) and (b) is a positive figure, the amount computed in (d) represents a decrease in the Price.

PART B - WORKING CAPITAL AND LAND

STEP 1

Multiply the difference between the actual amount of expenditures for the year and the amount of anticipated expenditures per Schedule I of Exhibit F by the appropriate factor for the year in Table A on Schedule II of Exhibit F.

STEP 2

Multiply the difference between the actual amount of expenditures for the year and the amount of anticipated expenditures per Schedule I of Exhibit F by 21.5%.

STEP 3

(a) Compute the difference between the amounts obtained in Steps 1 and 2. If actual expenditures are greater than anticipated expenditures enter this difference as a negative number. If actual expenditures are less than anticipated expenditures enter this difference as a positive number.

(b) Divide the amount obtained in (a) by the appropriate figure for the year in Table C on Schedule II of Exhibit F.

(c) Divide the amount obtained in (b) by 53.534%. (If the amount computed in (a) is a negative figure the amount computed in (c) represents an increase in the Price. If the amount obtained in (a) is a positive figure the amount computed in (c) represents a decrease in the Price.)

EXHIBIT F

EXAMPLE OF COMPUTATION
(in thousands)

ASSUMPTIONS

Year 1977		
Amounts - Actual		
Depreciable Capital	1,000	
Working Capital & Land	50	
Qualified Sec. 38 Property	1,000	

PART A

STEP 1

Actual Expenditures	1,000	
Anticipated Expenditures	671	
	329	
Factor From Table A	.572	188

STEP 2

(a) Actual Expenditures	1,000	
Anticipated Expenditures	671	
	329	
(b) Factor	5.714%	
	19	
(c) Factor	49.01%	
	9	
Factor From Table B	2.735	25

STEP 3

Amount From Step 2 (a)	19	
Factor From Table B	2.735	52

STEP 4

(a) Amount From Step 2(a)	19	
Number of Years	7	
	133	
(b) Subtract Difference in Expenditures	329	
	196	
(c) Factor	21.5%	42

EXHIBIT F; PART A Continued

STEP 5

(a) Acutal Sec. 38 Property	1,000	
Anticipated Sec. 38 Property	632	
	368	
Factor	6.598%	
	24	
(b) Factor	.572	14

STEP 6

(a) Step 1 Amount	188	
Step 2 Amount	25	213
Step 3 Amount	52	
Step 4 Amount	42	94
Difference (Negative Number Since Actual is Greater than Anticipated)		(119)
(b) Step 5 Amount (Positive Number Since Actual Qualified Property is Greater than Anticipated)		14
		(105)
(c) Factor From Table C		8,869
(105) ÷ 8,869		.01184
(d) Amount obtained in (c)		.01184
Factor		53.534%
.01184 ÷ 53.534%		.02212

This represents an Increase in the Mine Price since the Sum of (a) and (b) is a Negative Number.

PART B

STEP 1

Actual Expenditures	50	
Anticipated Expenditures	146	
	96	
Factor From Table A	.572	55

EXHIBIT F; PART B Continued

STEP 2

Actual Expenditures	50	
Anticipated Expenditures	146	
	96	
Factor	21.5%	21

STEP 3

(a) Step 1 Amount	55	
Step 2 Amount	21	34
(Actual is less than Anticipated so the difference is a Positive Number)		
(b) Factor From Table C	8,869	
34 ÷ 8,869	.00383	
(c) Amount obtained in (b)	.00383	
Factor =	53.534%	
.00383 ÷ 53.534	.00715	

This represents a Decrease in the Price Since the Difference computed in Step 3(a) is a Positive Number.

SUMMARY

Price Increase in PART A	.02212
Price Decrease in PART B	(.00715)
Net Pricd Increase Effective 1/1/78	$ .015

000641

EXHIBIT F

CAPITAL EXPENDITURE SCHEDULE

ANTICIPATED EXPENDITURES
(in thousands of dollars)

SCHEDULE I

Year	Depreciable Capital	Working Capital and Land
1975	204	(33)
1976	564	75
1977	671	146
1978	1,232	19
1979	1,188	(13)
1980	605	1
1981	281	(13)
1982	1,089	30
1983	231	7

EXHIBIT F

SCHEDULES OF TABLES

SCHEDULE II

Year of Change	Table A	Table B	Table C
1975	.756	4.148	13,912
1976	.657	3.392	11,214
1977	.572	2.735	8,869
1978	.497	2.163	6,831
1979	.432	1.666	5,060
1980	.376	1.234	3,518
1981	.327	.858	2,177
1982	.284	.531	1,013

EXHIBIT F

QUALIFYING PROPERTY

SCHEDULE III

Year	(in thousands) Amount
1975	295
1976	416
1977	632
1978	1,232
1979	1,155
1980	605
1981	221
1982	1,089

000643

EXHIBIT G

TO

AMENDED MOHAVE PROJECT COAL SUPPLY AGREEMENT

Mine Office Labor	$ 375,000
Mine Office Expenditures	105,000
Mine Office Labor - Fringes @ 27%	101,000
Engineering, Land & Drilling	250,000
Ad Valorem Taxes	1,100,000
Insurance - General	65,000
Division Overhead	150,000
Administrative	500,000
Demand Charge - Power	144,000
Total Annual	$2,790,000
Monthly (1/12)	$ 341,000

EXHIBIT H

TO

AMENDED MOHAVE PROJECT COAL SUPPLY AGREEMENT

The intent of this Exhibit H is to set forth procedures to be used to adjust the Mine Price per ton of coal delivered to Buyers by Seller during any year when Buyers purchase from Seller less than 4.1 million tons of coal, in order to compensate Seller in accordance with §8.11. To provide for timely adjustments which will approximate such compensation, the Mine Price shall be tentatively adjusted at the end of every calendar quarter in accordance with this Exhibit H, and in addition to other adjustments to the Mine Price as provided for in this Amended Agreement. The Mine Price as adjusted quarterly pursuant to this Exhibit H shall represent the annual price to be paid for coal deliveries assuming that previous deliveries made during the year of adjustment, plus those deliveries projected to be made during the remainder of the year, accurately reflect the rate of delivery for the entire year. A final adjustment made at the end of the year shall be calculated so as to cause the total payments made to Seller for all coal delivered during the year to be equal to the total payments which would have been made had Buyers and Seller known, at the beginning of the year, that the coal delivered during the year would have been delivered in such quantities, and during such times, as deliveries were actually made, with appropriate consideration given to force majeure events as hereinafter discussed in this Exhibit H.

If total deliveries made by Seller to Buyers during any calendar year equal or exceed 4.1 million tons or such lower number as may be

determined as a result of force majeure events, then the total of payments made by Buyers to Seller during such year shall equal the total payments which would have been made during the year had no quarterly adjustments been made pursuant to this Exhibit H. If any force majeure event should occur on Seller's side of the Terminal Point which wholly or partly prevents Seller from mining or delivering coal hereunder, then no payments are to be made by Buyers except for quantities of coal delivered during such force majeure, and the 4.1 million ton annual quantity upon which Exhibit H is based shall be reduced by an amount equal to 15,840 tons per day multiplied by the number of days the force majeure event shall last. In the event a force majeure wholly or partly prevents the accepting, unloading, or utilizing of coal at one or both units of the Mohave Project by Buyers, and if such force majeure extends beyond 30 days, the 4.1 million ton annual quantity upon which this Exhibit H is based shall be reduced as follows:

(1) If the force majeure event wholly or partly prevents the operation of both units, the reduction shall be equal to 11,388.9 tons per day multiplied by the number of days the force majeure event shall last.

(2) If the force majeure event wholly or partially prevents the operation of one unit, the reduction shall be equal to 7,500 tons per day multiplied by the number of days the force majeure event shall last.

Should circumstances occur whereby Buyers are wholly or partially unable to receive coal at the same time that Seller is wholly or partially unable to deliver coal, the 4.1 million ton annual quantity upon which this Exhibit H is based shall be reduced by applying the reduction during the period of such concurrence calculated in

accordance with this Exhibit H which most reduces said annual quantity.

The Mine Price adjustment shall be determined as follows:

(1) Cost components shall be listed and apportioned between fixed and variable:

(A) These shall be reviewed once each calendar year or upon request of Seller or Edison acting on behalf of Buyers.

(B) The total of fixed cost + profit shall represent the Mine Price less variable costs and be expressed as a percentage of the Mine Price.

(2) The percentage from 1(B) above, multiplied times the applicable Mine Price provides a base $/Ton fixed cost + profit amount which, when multiplied times the 4,100,000 ton minimum annual ton requirement, provides an annual required total fixed cost + profit.

(3) The annual required total fixed cost + profit is divided by the sum of the tons delivered during the year to date of adjustment and the tons ordered for the remainder of the year. This results in a required adjusted fixed cost + profit per ton. The adjusted fixed cost + profit per ton, less the base fixed cost + profit per ton provides a $/Ton adjustment.

(4) The $/Ton adjustment, added to the Mine Price per ton for the entire year, times the total annual tons, provides the adjusted gross revenues required. Such adjusted Mine Price shall be utilized as follows:

(A) The adjusted Mine Price shall be applied in invoicing for the remainder of the year unless modified by a subsequent

adjustment.

(B) An amount equal to the difference between payments previously made during the year, and payments which would have been made if the adjusted Mine Price had been utilized shall be distributed, on a per ton basis, over the remaining billing periods of the year. If the adjustment has resulted in a diminished Mine Price, the distributed difference shall be regarded as a credit against the amount computed using the adjusted Mine Price, while an increased Mine Price shall result in an addition to the amount due computed on such basis.

(5) The percentage referred to in 1(B) above, shall be deemed to be 65% of the Mine Price unless and until modified pursuant to 1(A) above.

(6) In the event a force majeure event occurs which shall reduce the 4,100,000 ton minimum annual requirement, the annual required total fixed cost + profit in 2 above shall be determined by multiplying the percentage referred to in 1(B) and 5 above times the applicable Mine Price times the new minimum annual ton requirement as determined pursuant to this Exhibit H.

						JUNE							
TONS ORDERED	350,000	350,000	350,000	400,000	400,000	400,000	[illegible]	[illegible]	[illegible]				
TONS DELIVERED	350,000	58,333[1]	350,000	--------[2]	333,333	400,000	--------[3]	200,000[3]	400,000	175,000[4]	233,333[5]	116,667[6]	
MINE PRICE	$7.00	$7.00	$7.00	7.00	$7.00	$7.00	$7.00	$7.00	$7.00	$7.00	$7.00	$7.00	
ADJUSTED MINE PRICE	--------	--------	--------	--------	--------	--------	$7.03	$7.03	$7.03	$7.03	$7.03		
PAYMENTS	$2,450,000	$408,331	$2,450,000		$2,333,331	$2,800,000		$1,406,000	$2,812,000	$1,230,250	$1,640,331	$2,487,7	
				I			II			III			IV

ADJUSTMENT I: Actual 1st quarter deliveries + tons ordered for last three quarters = 4,158,333 tons per year. Since actual and projected is in excess of 4,100,000 tons, no adjustment is required. The February Mohave force majeure was not of sufficient duration to qualify for a reduction in the 4,100,000 minimum annual requirement.

ADJUSTMENT II: Actual 1st and 2nd quarter deliveries + tons ordered for last two quarters = 3,691,666 tons. However, the reduced annual tonnage is due to a 35 day, 2 unit force majeure. Since the force majeure is in excess of 30 days, the annual required fixed cost + profit shall be determined by multiplying the 65% from paragraph 6, page 4 times the Mine Price, times the new minimum annual tonnage requirement. The 4.1 million tons is reduced by 35 x 11,388.9, to 3,704,189. $7.00 x .65 = $4.55. $4.55 x 3,704,189 = $16,854,060 annual required fixed cost + profit. $16,854,060/3,691,666 = $4.57/ton. $4.57 - $4.55 = $.02/ton required Mine Price increase per ton for the year. 1,491,666 tons already delivered x .02/ton = $29,833 required adjustment for previous tons. $29,833/2,200,000 tons ordered for remainder of year = $.01/ton. Therefore, the Adjusted Mine Price = $7.03/ton.

ADJUSTMENT III: Actual 1st three quarters deliveries + tons ordered for last quarter = 3,141,666 tons. However, during the 3rd quarter there was a mine force majeure which reduces the minimum annual tonnage required from 3,704,189 to 3,704,189 - (45 days x 15,840 tons per day) = 2,991,389. Since 3,141,666 > 2,991,389, no adjustment is required.

ADJUSTMENT IV: Actual deliveries for sample year = 2,616,666 tons. 4th quarter force majeure events did not qualify to reduce the required minimum annual tonnage of 2,991,389. The new annual required fixed cost + profit shall be determined as in Adjustment II, above, to be .65 x 7.00 x 2,991,389 = $13,610,820. $13,610,820/2,616,666 = $5.20/ton. $5.20/ton - $4.55/ton = $.65/ton required Mine Price increase per ton for the year. 1,491,666 tons were delivered with no increase per ton. 1,491,666 x $.65 = $969,583. 1,008,333 tons were delivered with a $.03 per ton increases. 1,008,333 x $.62 = $625,166. Therefore, payments through November were $1,594,749 less than they would have been had it been known at the beginning of the year that deliveries would be 2,616,666 tons for the year, and that the force majeure events would have occurred as they did. The adjustment on the December invoice should reflect 116,667 tons delivered as $7.65/ton plus $1,594,749 annual adjustment, for a December payment of $2,487,252.

1. 25 day - 2 unit force majeure at Mohave: coal delivered = 5/30 x 350,000 tons ordered.
2. 35 day - 2 unit force majeure at Mohave: coal delivered in May = 25/30 x 400,000 tons ordered.
3. 45 day - force majeure at Mine.
4. 15 day - 2 unit force majeure at Mohave: coal delivered = 1/2 x 350,000 tons ordered.
5. 10 day - 2 unit force majeure at Mohave: coal delivered = 2/3 x 350,000 tons ordered.
6. 20 day - 2 unit force majeure at Mohave: coal delivered = 1/3 x 350,000 tons ordered.

SLR:ljs
1/16/76

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						JUNE 400,0						
TONS DELIVERED	59,333[1]	145,833[2]	350,000	400,000	266,667[3]	333,333[4]	400,000	400,000	350,000	-------[5]	-------	350,000
MINE PRICE	$7.00	$7.00	$7.00	$7.00	$7.00	$7.00	$7.00	$7.00	$7.00	$7.00	$7.00	$7.00
ADJUSTED MINE PRICE	$7.00	$7.00	$7.00	$7.20	$7.20	$7.20	$7.63	$7.63	$7.63	$7.63	$7.63	$1,953,223
PAYMENTS	$415,331	$1,020,831	$2,450,000	$2,880,000	$1,920,002	$2,399,998	$3,052,000	$3,052,000	$2,670,050	-------	-------	
				I			II			III		

ADJUSTMENT I: Actual 1st quarter deliveries + tons ordered for last three quarters = 3,955,166 tons. No force majeure events occurred which qualify to reduce the minimum annual tons required. The annual required fixed cost + profit shall be determined by multiplying the 65% from paragraph 6, page 4 times the Mine Price, times the minimum annual tonnage requirement. $7.00 x .65 x 4,100,000 = $18,655,000 annual required fixed cost + profit. $18,655,000/3,955,166 = $4.72/ton. $4.72 - 4.55 = $.17 required Mine Price increase per ton for the year. 555,166 tons already delivered x $.17/ton = $94,378 required adjustment for previous tons. $94,378/3,400,000 tons ordered for remainder of year = $.03/ton. Therefore, the adjusted Mine Price = $.20/ton.

ADJUSTMENT II: Actual 1st and 2nd quarter deliveries + tons ordered for last two quarters = 3,755,166 tons. No force majeure events occurred which qualify to reduce the minimum annual tons required. The annual required fixed cost + profit, as in Adjustment I, above, = $18,655,000. $18,655,000/3,755,166 = $4.97/ton. $4.97 - 4.55 = $.42/to required Mine Price increase per ton for the year. 555,166 tons already delivered x $.42/ton = $233,170. 1,000,000 tons already delivered x $.22/ton = $220,000. Required adjustment for previous tons = $453,170/2,200,000 tons ordered for remainder of year = $.21/ton. Therefore, the Adjusted Mine Price for the remainder of the year = $.42 + $.21 + $7.00 = $7.63/ton.

ADJUSTMENT III: None necessary since 3rd quarter deliveries = tons ordered.

ADJUSTMENT IV: Actual deliveries during the year were 3,055,166 tons. However, during the 4th quarter there was a 60-day mine force majeure. Since the force majeure qualifies to reduce the minimum annual tonnage requirement, the adjusted minimum annual required fixed cost + profit is determined by multiplying the .65 x Mine Price x 4,100,000 - (60 x 15,840). $7.00 x .65 x 3,149,000 = $14,330,680. $14,330,680/3,055,166 = $4.69. $4.69 - 4.55 = $.14. Therefore, the Adjusted Mine Price, had annual events been known at the beginning of the year, would have been $7.14/ton for the year. 555,166 tons were delivered at $7.00/ton, requiring a positive adjustment of $77,723. 1,000,000 tons were delivered at $7.20/ton, requiring a negative adjustment of $60,000. 1,150,000 tons were delivered at $7.63/ton, requiring a negative adjustment of $563,500. Therefore, the December billing should reflect 350,000 tons x $7.14 = $2,499,000 with a deduction of $545,777 for previous payments made in excess of the finally Adjusted Mine Price, giving an invoice total of $1,953,223 for December.

1. 25 day - 2 unit force majeure at Mohave; coal delivered = 5/30 (tons ordered).
   10 day - 2 unit force majeure at Mohave; coal delivered = 25/60 (tons ordered).
2. 15 day - 1 unit force majeure at Mohave; coal delivered = 25/60 (tons ordered).
3. 10 day - 2 unit force majeure at Mohave; coal delivered = 2/3 (tons ordered).
4. 10 day - 1 unit force majeure at Mohave; coal delivered = 5/6 (tons ordered).
5. 60 day Mine force majeure.

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EXHIBIT I
TO
AMENDED MOHAVE PROJECT COAL SUPPLY AGREEMENT

PROCEDURE FOR PREPARATION OF MONTHLY INVOICE FOR COAL DELIVERED

1 The monthly invoice to be transmitted by Seller to the Mohave Participants pursuant to this Amended Agreement for the Mine Price, plus all transportation charges incurred during the month for the transportation and delivery of coal shall be determined as follows:

1.1 For the purpose of such monthly invoice it shall be assumed that a total of three days (72 hours) is required to convey coal from the master scale at the Coal Slurry Preparation Plant ("Point of Origin", as defined in Section 1.1(1) of Exhibit B to this Amended Agreement) to the receiving facilities at the Mohave Project ("Terminal Point", as defined in Section 1.1(2) of Exhibit B to this Amended Agreement).

1.2 The weights (adjusted for moisture content as provided in Section 7 of this Amended Agreement) and corresponding analysis of such coal as conveyed to said Coal Slurry Preparation Plant shall be considered the weights and analyses of said quantity of coal delivered to the receiving facilities of the Mohave Project three days later.

1.3 The invoice for each calendar month shall be based on the weights and analysis of coal (adjusted as provided in Sections 7 and 10 of this Amended Agreement) conveyed to the Coal Slurry Preparation Plant during the last three calendar days of the preceding month and all but the last three days of the calendar month for which the invoice is prepared.

2 If for any reason coal conveyed to said Coal Slurry Preparation Plant should fail to reach the receiving facilities of the Mohave Project, except as otherwise provided in Paragraph 3 below, Seller and the Operating Agent will by mutual agreement determine as accurately as is practicable the quantity of coal (adjusted as provided in Sections 7 and 10 of this Amended Agreement) thus undelivered. The applicable Mine Price and transportation charges for coal thus undelivered shall be deducted from the amount otherwise due from the Mohave Participants for coal and transportation charges.

3 If for any reason coal conveyed by Seller to the Coal Slurry Preparation Plant is not delivered by the Coal Slurry pipeline to the Mohave Project due to a request by the Mohave Participants that said pipeline be shut down and that coal then in said pipeline be diverted to storage reservoirs or otherwise dumped

there shall be no deduction for such coal in said pipeline at the time of such request which may be diverted into a storage reservoir, or otherwise dumped pursuant to such request nor for the transportation charges incurred therefor. Seller and the Operating Agent will, by mutual agreement, determine as accurately as is practicable the quantity of coal (adjusted as provided in Sections 7 and 10 of this Amended Agreement) thus diverted or dumped and not delivered by said pipeline. At the request of the Mohave Participants Seller will use its best efforts to salvage the quantities of its coal which may be diverted into a storage reservoir as provided in this Paragraph 3. The Mohave Participants will be responsible for all expenses reasonably incurred by Seller in connection with such salvage and disposition of such coal if any be thus diverted or dumped. Any coal thus salvaged and pumped back into the pipeline for delivery to the Mohave Project shall not be invoiced again by Seller. If Seller should retain any such coal thus salvaged for delivery to other parties, the Mohave Participants shall receive full credit for the amounts of money received by Seller for such salvage coal less any delivery charges which may be incurred.

4 The monthly invoice for coal and transportation charges shall be forwarded by Seller to the Operating Agent acting on behalf of the Mohave Participants within the time limits specified in Section 11 of this Amended Agreement, and the Operating Agent shall arrange for the payment of said invoice by the Mohave Participants in accordance with their respective obligations under the applicable Mohave Project Agreements within the time limit specified in Section 11 of this Amended Agreement. Payment to Seller hereunder shall be arranged for by Operating Agent but each Mohave Participant, including the Operating Agent, shall be liable for its respective share of each said invoice only to the extent of its interest in this Amended Agreement, it being contemplated, however, that Mohave Participants will make payment of such amounts through the Operating Agent.

5 Pursuant to the Mohave Project Operating Agreement, the Mohave Participants shall appoint or have appointed Edison as Operating Agent responsible for the performance of operating work of the Mohave Project, including administration of this Amended Agreement, and hereby delegate to Edison, herein referred to as Operating Agent, all matters of administration of this Exhibit I. The Mohave Participants have the right to withdraw the delegation to Edison and make such delegation to any other Mohave Participant who may have become Operating Agent for the Mohave Project at any time upon written notice to Seller. Edison, in its capacity as the Operating Agent, or any successor Operating Agent, shall have full authority to act as principal on its own behalf and as agent in behalf of the Mohave Participants in enforcing any right, giving any notice and taking any action with respect to matters under this Exhibit I, except that the Operating Agent shall have no authority to amend the Amended Agreement.

EXHIBIT J

TO

AMENDED MOHAVE PROJECT COAL SUPPLY AGREEMENT

PROCEDURES FOR WEIGHING,
SAMPLING, AND ANALYSIS OF COAL

Section 1. WEIGHING OF COAL.

§1.1 A slow speed, 40 foot, horizontal, 48" self-contained belt scale shall be the master scale. A conventional 42" conveyor scale on the belt feeding the sampling tower shall be a check scale, which can serve as the master scale when required. A bulk material test system for use in calibrating the belt scales is to be provided in the initial coal handling equipment installation. Several bulk material tests shall be run by the Service Contractor ("Service Contractor" when used herein refers to Service Contractor as designated in Section 5 hereof) during initial operation to prove the accuracy and repeatability of the belt scales. Thereafter, bulk material tests shall be conducted by the Service Contractor at such intervals as to insure accurate operation of the belt scale system, and at such other times upon request by any party to this agreement subject to Section 1.5 hereof. The time period between these tests other than tests required by any party to this agreement, shall be determined and agreed upon by Seller and the Operating Agent.

§1.2 Service Contractor shall promptly furnish Operating Agent and Seller a daily written report showing the belt scale readings at the start, and belt scale readings at the end, of each sampling period for the preceding day with the difference in tons of coal conveyed

to the coal slurry preparation plant of Black Mesa Pipeline, Inc. The Operating Agent and/or Seller may be present at the time belt scale readings are made and shall have access to weight totalizers at any time. The Service Contractor shall zero balance the belt scales daily and shall check the belt scales once each week, with calibrated test chains. The Seller and/or Operating Agent may be present at such calibration test if they desire. In the performance of a belt scale check, the following items will be recorded:

(a) Percent of error at end of period....(found error)

(b) Percent of error at beginning of period or the percent of error at which the scale was left after previous check. (left error)

(c) Tonnage registered by the belt scale for the period since last scale check.

The belt scale shall be adjusted to as near zero (0) error as possible with 2/10 of 1% (0.2%) being the maximum tolerable error.

§1.3 The bulk material test system shall also be certified by a method agreed upon by Seller and the Operating Agent to provide accuracy to within plus or minus one-tenth of one percent (0.1%) of full scale. The bulk material test shall be the standard of accuracy. The adjusted weight for each period shall be used along with the average heating value for coal conveyed for the corresponding period and the coal price in effect at the time in order to determine a dollar adjustment for each period. Immediately following each bulk material weighing test, an adjustment shall be made for the amounts of coal conveyed during that weighing period by adjusting the weight for the period by one-half (1/2) of the difference between the "left

error" and the "found error." The percent adjustment in weight for each weighing period shall be applied to the tonnage and to the dollar amount invoiced by Seller for the fuel delivered during the delivery period to determine the dollar adjustment.

§1.4 The expenses incurred in having the bulk test equipment certified shall be shared by the parties hereto in the ratio of thirty-three and one-third (33-1/3%) percent by the Mohave Participants and sixty-six and two-thirds (66-2/3%) percent by Seller, when done at agreed upon intervals. The Operating Agent will arrange for the payment of such costs to be paid by the Mohave Participants, and such payment shall be made by each Mohave Participant through the Operating Agent in proportion to its respective interest in the Amended Coal Supply Agreement, as aforesaid, and each Mohave Participant, including the Operating Agent, shall be liable only for its respective share of such costs.

§1.5 The expense incurred in having the bulk test equipment certified when done at the request of any party to this Amended Agreement at times other than the intervals agreed upon between Seller and Operating Agent shall be billed to and paid for directly by the party requesting such certification.

Section 2. SAMPLING OF COAL.

§2.1 Crushed coal of size 2" x 0 shall be conveyed over Seller's 42" conveying system traveling at approximately 600 feet per minute at the normal continuous rate of 660 tons per hour. The maximum conveying rate shall be 1,000 tons per hour; however, the maximum amount of coal to be conveyed during an 8-hour period shall be 7,000 tons. The minimum conveying rate shall be approximately 430 tons per hour.

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The design of the sampling system shall be such that, regardless of the coal conveying rate over the conveying system, the final sample shall be representative of the coal conveyed during selected daily sampling periods of 2 hours, 4 hours or 8 hours, said periods as agreed to by Seller and Operating Agent.

§2.2 Samples will be taken by a mechanical sampler with a primary, secondary and tertiary sampling mechanism. The primary sampler will be located in the main stream, followed by a primary crusher, the secondary sampler, secondary crusher and tertiary sampler. Final samples shall be collected on an automatic indexing machine located downstream of the teritary sampler. Reduction of final samples shall be accomplished with a rotary splitting machine located in a manner such that it is divorced from the automatic sample taking and collecting operations.

§2.3 For a two-hour sampling period, the primary sampling mechanism shall operate every 1-1/4 minutes and shall take a total of not less than 96 primary sample increments during the two-hour sampling period. For a four-hour sampling period, the primary sampling mechanism shall operate every 2-1/2 minutes and shall take a total of not less than 96 primary sample increments during the four-hour sampling period. For an eight-hour sampling period, the primary sampling mechanism shall operate very five minutes and shall take a total of not less than 96 primary sample increments during the eight-hour sampling period. The primary sample increments shall be directed to a hopper, from which the primary sample shall be fed at a uniform rate of approximately 5 tons per hour to the primary crusher, so that the hopper will be empty each time the primary

cutting mechanism operates. The primary crusher shall reduce the primary sample to size 3/4" x 0 and discharge to the secondary sampling mechanism through a collecting hopper.

§2.4 The secondary sampling mechanism shall operate so that a minimum of 6 secondary increments shall be taken for each primary increment. The secondary sample increments shall be directed to a holding bin and shall accumulate for the entire sampling period. Commencing 5 to 15 minutes before the end of the sampling period, the accumulated secondary sample shall be fed at a uniform rate from the holding bin to the secondary crusher. The secondary crusher shall reduce the secondary sample to 95% - 8 mesh, 100% - 4 mesh, and shall discharge to the tertiary sampling mechanism through a collecting hopper.

§2.5 The tertiary sampling mechanism shall operate at approximate intervals of 4 seconds, so that a minimum of 60 tertiary increments shall be taken for the entire accumulated secondary sample. The tertiary, or final, sample increments shall be directed to a final sample collecting container located on an automatic indexing machine. At the normal conveyor system delivery rate of 660 tons per hour, the final sample shall weigh approximately 20 pounds.

§2.6 The feeder at the secondary sample holding bin discharge, the secondary crusher, the crushed secondary sample feeder and the tertiary sampling mechanism shall operate for a period of approximately 5 to 15 minutes before the end of the sampling period. At the end of the 5 to 15 minute period, when the accumulated secondary sample shall have been crushed, resampled and collected in the final sample collecting container, the indexing machine shall automatically

index one position.

§2.7 The sample obtained from the tertiary sampler will be reduced to eight approximately equal sub-samples by passing the sample through a rotary splitter capable of eight splits.

§2.8 The average heat content for the day's coal delivery will be determined as described in Section 3.2 herein. Tonnage on belt scale totalizer will be recorded when each sample is terminated.

§2.9 The sub-samples obtained as described in Section 2 shall be distributed as follows:

§2.9.1 Two (2) shall be prepared and analyzed by Service Contractor as provided in Section 5 herein.

§2.9.2 Two (2) shall be held for the Seller.

§2.9.3 Three (3) shall be held for the Operating Agent and, upon demand made to the Operating Agent for any Mohave Participant.

§2.9.4 One (1) shall be retained by the Service Contractor to be used by an outside laboratory should Seller or Operating Agent request an umpire analysis. This sample shall be retained for the period agreed upon by Seller and the Operating Agent, unless it has been forwarded to the outside laboratory.

§2.9.5 Each sub-sample shall be placed in an air-tight container.

§2.10 In order to verify the adequacy and accuracy of the sampling system, bias check points will be provided. Laboratory analysis of all bias samples shall be performed by a mutually agreed upon outside laboratory. If Seller and Operating Agent fail to agree upon a party to analyze bias samples, the party shall be selected by arbitration in accordance with the provisions of this Amended Agreement.

§2.11 In the event the sampler fails to take a sample, the Weighted Average Analysis, as herein defined, of the lots immediately preceding and immediately following the unsampled lot shall be used to determine a billing analysis for the unsampled lot. If two (2) or more consecutive lots are not sampled, then the Weighted Average Analysis of a number of lots immediately preceding and immediately following the unsampled lots, each equal in number to the number of the unsampled lots, shall be used to determine a billing analysis for the unsampled lots. As used herein, the Weighted Average Analysis is the summation of the products of a characteristic determined by analysis from each sample, and the weight (expressed in Tons) of the quantity represented by that sample, for all samples during a period, divided by the number of Tons weight for all quantities represented during that period, computed according to the following formula:

(1) Multiply the value of such characteristic to be averaged times the weight (expressed in Tons) of the quantity represented by the sample analyzed.

(2) Sum the products derived in (1) for all quantities represented during the specified period.

(3) Divide the sum obtained under (2) by the total number of Tons in the quantity represented.

(4) The quotient thus obtained is the "weighted average analysis."

§2.12 Should it be deemed desirable by the Seller and the Operating Agent to substitute different makes or models of equipment from these herein specified, such substitution shall be made where mutually agreeable.

Section 3. LABORATORY PROCEDURES FOR DETERMINING COAL CHARACTERISTICS.

§3.1 The following coal characteristics shall be reported for each sampling period:

(a) Heating value, Btu's per pound. (Dry Basis)

(b) Ash content. (Dry Basis)

(c) Moisture content. (As received)

(d) Sulfur content. (Dry Basis)

§3.2 The analysis for each sampling period shall be weight averaged to determine the daily characteristics of coal conveyed to the coal slurry preparation plant of Black Mesa Pipeline, Inc.

§3.3 Any one (1) or all of the following coal characteristics shall be reported at intervals as agreed upon by Seller and the Operating Agent:

(a) Volatile matter. (Dry Basis)

(b) Alkali as Na_2O.

(c) Ash softening temperature in reducing atmosphere.

(d) Grindability (Hardgrove index)

(e) Sodium and potassium by the use of the Beckman D.U. Spectrophotometer.

§3.4 Laboratory practices shall be agreed upon by Seller and the Operating Agent, and shall be followed by the Service Contractor's laboratory. Service Contractor shall furnish Seller and Operating Agent daily with copies of all analyses run.

§3.4.1 Automated analytical equipment agreed upon by Seller and the Operating Agent shall be used wherever possible to reduce human errors in analytical results.

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§3.4.2 Service Contractor's analysis shall be the billing analysis. Any disagreement between Seller and Operating Agent as to the analytical results of a sample used for determining acceptability of and/or payment for coal may be settled by an outside laboratory, as referred to in Section 2.10 hereof. In the event of such disagreement or if Seller and the Operating Agent question an analysis, either party may elect within thirty (30) days of the date the sample was taken to call for an analysis of the characteristic or characteristics by an outside laboratory mutually agreed upon by Seller and the Operating Agent. Service Contractor shall thereupon immediately mail or deliver the sealed sample to the outside laboratory. If the umpire analysis as to the disputed coal characteristic or coal characteristics in question falls between Service Contractor's analysis and the questioning parties' analysis, it shall be accepted for final settlement. If the umpire analysis falls outside Service Contractor's analysis or questioning parties' analysis as to the disputed or questioned characteristic, whichever of the two (2) is closer to the umpire analysis shall be accepted for final settlement. The cost of umpire analysis shall be shared by the parties hereto in the ratio of thirty-seven and one-half (37-1/2%) percent by the Mohave Participants and sixty-two and one-half (62-1/2%) percent by Seller. The Operating Agent will arrange for the payment of such costs to be paid by the Mohave Participants, and such payment shall be made by each Mohave Participant through the Operating Agent in proportion to its respective interest in this Amended Agreement, as aforesaid, and each Mohave Participant, including the Operating Agent, shall be liable only for its respective share

of such costs.

Section 4. METHODS AND PROCEDURES FOR SAMPLING AND ANALYSIS.

§4.1 Sampling and analysis of coal shall meet the requirements of the following standards of the American Society for Testing and Materials (referred to herein as "ASTM"), and acceptable procedures, or in a later ASTM revision or other acceptable procedures if mutually agreed upon by Seller and the Operating Agent:

(a) D 271-64 Laboratory Sampling and Analysis of Coal and Coke.

(b) D 409-51 (1961) Grindability of Coal by the Hardgrove Machine Method.

(c) D 431-44 (1961) Designating the Size of Coal from its Screen Analysis.

(d) D 1857-68 Fusability of Coal and Coke Ash.

(e) D 2013-68 Preparing Coal Samples for Analysis.

(f) D 2015-66 Gross Calorific Value of Solid Fuel by the Adiabatic Bomb Calorimeter.

(g) D 2234-68 Sampling of Coal.

(h) Sodium and potassium by the use of the Beckman D.U. Spectrophotometer with an emission attachment for potassium and sodium.

(i) One (1) stage moisture determination may be made on minus one-half (1/2) inch or minus eight (8) mesh sample.

Should any inequities arise from procedures and practices adopted, Seller and the Operating Agent shall meet and agree upon methods to change the procedures and practices to avoid such inequities.

§4.2 The above procedures and practices and all future procedures and practices hereinafter adopted may be revised at any time

by a method agreed upon by Seller and the Operating Agent. All established procedures and practices which may be revised by such mutual agreement are not subject to compulsory arbitration. In the event of disagreement concerning proposed revisions, the original agreement shall remain in effect.

Section 5. SERVICE CONTRACTOR.

§5.1 Seller and Operating Agent on behalf of the Mohave Participants, (including the Operating Agent), pursuant to the Mohave Project Operating Agreement, shall enter into a service agreement (referred to herein as "Service Agreement") with an independent third party (referred to herein as "Service Contractor"). Pursuant to the Service Agreement, the Service Contractor shall operate the weighing and sampling facilities and prepare and analyze the coal samples collected and determine independently, for all parties, the quantity of coal conveyed to the coal slurry preparation plant.

§5.2 Service Contractor: It is the purpose of this Section 5 to briefly describe the duties of Service Contractor and not to set forth in detail the contractual provisions of the Service Agreement to be renegotiated and entered into among Service Contractor, Seller, and the Operating Agent on behalf of the Mohave Participants as provided herein, to perform the services set forth in Sections 1, 2, 3, 4, and 5 hereof. Black Mesa Pipeline, Inc., may also be a party to such Service Agreement.

§5.3 Weighing of Coal.

§5.3.1 During the initial testing period, estimated to have a duration of from two (2) to six (6) months, Service Contractor shall perform the check weighings of the scales. Frequency of the

initial check weighings shall be determined by mutual agreement between Seller and the Operating Agent.

§5.3.2 After the initial check weighings, Service Contractor shall perform routine check weighings of the scales and shall record the weight of coal corresponding to the individual samples collected.

§5.4 Sampling of Coal.

§5.4.1 When the coal sampling system is installed, Service Contractor shall conduct an acceptance test of the system for bias, to permit Seller and Operating Agent to determine whether the collected sample is representative of the coal being conveyed to the coal slurry preparation plant.

§5.4.2 Service Contractor shall operate the sampling system and shall maintain a continuing review of its maintenance and repair. In this regard, it is not expected that Service Contractor shall make repairs to the equipment, other than minor repairs, but shall call to the attention of the Seller and the Operating Agent conditions which require attention and correction, as determined by periodic checks of the sampling system. These checks shall be made by Service Contractor as often as operating conditions require, as determined by mutual agreement between Seller and the Operating Agent.

§5.4.3 Sampling procedures shall be in accordance with ASTM Designation: D 2234 (1968) - "Standard Methods of Test for Sampling of Coal." If mutually agreed upon by Seller and the Operating Agent, conformance to any subsequently approved amendment and supplement to the noted standard shall be adopted.

§5.4.4 The mechanical sampler shall be operated as required on a 7-day per week, 24-hour per day basis to insure that all coal

is sampled. In the event that sampling equipment is inoperative for more than twenty-four (24) hours as the result of a mechanical failure, an alternative sampling procedure as determined by Seller and the Operating Agent shall be followed until the mechanical sampler is once again in service.

§5.4.5 Initially the sampling period shall be for every two (2) hours. By mutual agreement of Seller and Operating Agent, the sampling period may be extended to four (4) hours or eight (8) hours.

§5.5 Analysis of Coal.

§5.5.1 Preparation of samples for analysis from the gross sub-samples collected shall be in accordance with ASTM Designation: D 2013 (1968) - "Standard Method of Preparing Coal Samples for Analysis." Conformance to any subsequently approved amendment and supplement to the noted standard shall be observed as determined by mutual agreement between Seller and the Operating Agent.

§5.5.2 Service Contractor shall prepare and analyze duplicate sub-samples for Seller and Operating Agent if requested by either of them. Unless otherwise notified specifically, all reserve sub-samples will be discarded after thirty (30) days.

§5.6 The cost of the services of the Service Contractor shall be shared by each party hereto in the following percentages:

§5.6.1 Costs related to the weighing and sampling of coal in the ratio of thirty-three and one-third (33-1/3%) percent to the Mohave Participants and sixty-six and two-thirds (66-2/3%) percent to Seller, provided this Section 5.6.1 shall in no way affect Section 1.5 hereof.

§5.6.2 Costs related to analysis of coal in the ratio of

thirty-seven and one-half (37-1/2%) percent to the Mohave Participants and sixty-two and one-half (62-1/2%) percent to Seller.

§5.6.3 The Operating Agent will arrange for the payment of the portion of such costs to be paid by the Mohave Participants and such payment shall be made by each Mohave Participant through the Operating Agent in proportion to its respective interest in this Amended Agreement and each Mohave Participant including the Operating Agent, shall be liable only for its respective share of such invoice.

Section 6. OPERATING AGENT FOR MOHAVE PARTICIPANTS.

§6.1 Pursuant to the Mohave Project Operating Agreement, the Mohave Participants shall appoint or have appointed Edison as Operating Agent responsible for the performance of operating work of the Mohave Project, including administration of this Amended Agreement, and hereby delegate to Edison, hereiñ referred to as Operating Agent, all matters of administration of this Exhibit J relating to the methods and procedures for determining the weights and characteristics of coal delivered to the coal slurry preparation plant.

The Mohave Participants have the right to withdraw the delegation to Edison and make such delegation to any other Mohave Participant who may have become Operating Agent for the Mohave Project at any time upon written notice to Seller. Edison, in its capacity as the Operating Agent, or as successor Operating Agent, shall have full authority to act as principal on its own behalf and as agent in behalf of the Mohave Participants in enforcing any right, giving any notice and taking any action with respect to matters under this Exhibit J, except that the Operating Agent shall have no authority to amend this Amended Agreement without the express consent of the other Mohave Participants.

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EXHIBIT K

TO

AMENDED MOHAVE PROJECT COAL SUPPLY AGREEMENT

CONDITIONAL PARTIAL ASSIGNMENT

KNOW ALL MEN BY THESE PRESENTS:

Peabody Coal Company, a Delaware corporation (Peabody) for value received, hereby conveys, assigns, transfers and sets over unto Southern California Edison Company (Edison) as to an undivided 56% interest, Nevada Power Company (Nevada) as to an undivided 14% interest, Salt River Project Agricultural Improvement & Power District (Salt River), as to an undivided 10% interest, and the Department of Water & Power of the City of Los Angeles (Department) as to an undivided 20% interest as Buyers under the Amended Mohave Project Coal Supply Agreement dated the ____ day of _____, 1976 (Mohave Agreement) with Edison, Nevada, Salt River and Department (collectively referred to herein as "Buyers"), as tenants-in-common, certain rights and interests of Peabody in certain portions of the following three mining leases (hereinafter called "Indian Leases") to wit:

(1) Mining Lease between Sentry Royalty Company and the Navajo Tribe dated February 1, 1964, Contract No. 14-20-0603-8580;

(2) Mining Lease between Sentry Royalty Company and the Navajo Tribe dated June 6, 1966, Contract No. 14-20-0603-9910; and

(3) Mining Lease between the Hopi Tribe and Sentry Royalty Company dated June 6, 1966, Contract No. 14-20-0450-5743;

the right, title, and interest of Sentry Royalty Company in the three (3) foregoing leases have been duly assigned to Peabody;

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subject to all of the obligations of Peabody under said Indian Leases and all of the terms and conditions contained in said Indian Leases but only insofar as said rights, interests, obligations, terms and conditions relate to the Mohave Dedicated Area shown on Exhibit A to the Mohave Agreement, as said Exhibit A may be revised from time to time pursuant to the terms of the Mohave Agreement.

Anything herein to the contrary notwithstanding, this instrument shall be of no force and effect unless and until Peabody shall become in default under the Mohave Agreement (as such default is hereinafter defined); but at such time as Peabody shall be deemed in default under said Mohave Agreement this instrument shall become of full force and effect and Buyers shall succeed to all of the rights, interest and obligations of Peabody under the said Indian Leases as to the Mohave Dedicated Area, subject, however, to any and all approvals as may be appropriately required by the Lessors in said Indian Leases and by the United States.

Peabody shall be deemed in default under the Mohave Agreement at such time as the existence of such default has been determined either

(1) by agreement between Peabody and Buyers that Peabody is in default; or

(2) by order or judgment of a Court having jurisdiction over the matter that a material default by Peabody exists, of a nature going to the essence of the consideration, and

(a) Peabody has not within 60 days after notice of the order or judgment taken or commenced taking the action specified in the order of judgment and has thereafter received not less than sixty days' notice of the intent of the Buyers under the Mohave Agreement to declare the Mohave Agreement cancelled because of such default unless it is cured by taking such action; and

(b) Peabody has not within such sixty-day period either cured the default by taking such action, or if the nature of the action to be taken is such that it cannot be completed within sixty days, using reasonable diligence, commenced action in good faith to so cure the default and thereafter continued action diligently in good faith to so cure the default. In the event such court order or judgment has been made and notices given and Peabody remains in default at the end of such period, Buyers may then, and only then, declare Peabody in default for the purposes of succeeding to Peabody's interest under this instrument of assignment. If the order or judgment of default resulting in the effectiveness of this instrument of assignment shall be appealed and shall be finally reversed on appeal, this assignment shall cease to be effective as to such default, and Peabody shall reassume its full rights as Lessee under the said Indian Leases.

This instrument shall become void and of no further force and effect upon the happening of the earliest of the following events:

(1) The Buyers shall become in default under said Mohave Agreement, with such default to be determined in the same manner as in the case of Peabody, or

(2) The obligations of Peabody to deliver coal under the Mohave Agreement have been fulfilled, or

(3) The Mohave Agreement terminates for any reason other than the default of Peabody.

Notwithstanding any other provision hereof, if this instrument shall not have become effective as hereinabove provided on or before the expiration of twenty-one years following the date of death of the last survivor of all of the members of the Navajo Tribe living on the date of execution of this instrument, as said members of the Navajo Tribe are shown on the rolls of the Office of Vital Statistics of the Bureau of Indian Affairs in Window Rock, Arizona, this instrument shall on such date twenty-one years after the date of death of such last survivor become null and void and shall not thereafter become effective.

IN WITNESS WHEREOF Peabody has caused this instrument to be executed on its behalf by its duly authorized officers on this _____ day of _____, 1976.

PEABODY COAL COMPANY

By_____

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EXHIBIT L

TO

AMENDED MOHAVE PROJECT
COAL SUPPLY AGREEMENT

PRINCIPLES AND CRITERIA FOR THE
DEDICATION AND RESERVATION OF COAL

There is dedicated to the Mohave Project, as Dedicated Coal, all coal within the area designated as "Mohave Dedicated Area" on Exhibit A recoverable by surface mining methods utilizing an average recovery line of 130 feet or such greater depth as may be required not to exceed 154 million tons minus the tons of coal heretofore mined and delivered to the Mohave Project. In any revision of Exhibit A made pursuant hereto, the quality of Dedicated Coal for the Mohave Project shall be equivalent to or better than the coal dedicated to the Mohave Project in the Original Agreement.

2. There is dedicated to the Navajo Station, as Dedicated Coal, all coal within the area designated as "Navajo Dedicated Area" as shown on Exhibit A recoverable by surface mining methods utilizing an average recovery line of 130 feet or such greater depth as may be required, not to exceed 270 million tons minus the tons of coal heretofore mined and delivered to the Navajo Station.

All Additional Coal up to 90 million tons within the Mohave Dedicated Area as shown on Exhibit A is reserved for the Mohave Project.

The first 90 million tons of Additional Coal in the Navajo Dedicated Area as shown on Exhibit A is reserved for the Navajo Station prior to the reservation of any coal from said area to the Mohave Project. In the event the Additional

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Coal in the Mohave Dedicated Area as shown on Exhibit A is less than 90 million tons, the difference shall next be reserved for the Mohave Project from the Navajo Dedicated Area as shown on Exhibit A prior to reservation of coal pursuant to paragraphs 5 and 6 hereof.

All Additional Coal remaining in the Mohave Dedicated Area and Navajo Dedicated Area as shown on Exhibit A over and above the dedications described in paragraphs 1 and 2 above and the reservations described in paragraphs 3 and 4 above shall be reserved on a ton-for-ton basis, one-half to the Mohave Project and one-half to the Navajo Station.

Any coal mineable by underground methods remaining in the Mohave Dedicated Area and Navajo Dedicated Area shown on Exhibit A over and above the dedications and reservations described in paragraphs 1 through 5 hereof, together with any coal mineable by any method and located outside such Areas as shown on Exhibit A but adjacent thereto or in the area commonly known as the Black Mesa, shall be reserved on a ton-for-ton basis, one-half to the Mohave Project and one-half to the Navajo Station, if Seller acquires leases thereto and the right to mine such coal. Such coal reserved as provided for in this paragraph 6 is hereinafter referred to as "Reserved Coal".

In making the reservation described in paragraph 4 above, the following criteria shall apply:

(a) The coal first reserved for the Navajo Station shall be that which is in closest proximity to the existing and proposed conveyor loading facilities and which will result in the lowest estimated expense of mining and delivering to the rail loading facilities of the Navajo

Station with due consideration given to all costs of mining as well as transportation.

(b) The coal next reserved for the Mohave Project shall be that which will be available to such Project and which will result in the lowest estimated expense of mining and delivery to the coal slurry preparation plant with due consideration given to all costs of mining as well as transportation.

In making the reservations described in paragraphs 5 and 6, the coal reserved for the Mohave Project and the coal reserved for the Navajo Station, to the extent possible, shall have a similar delivered cost and quality.

All of the reservations described in paragraphs 3 through 6 shall be implemented in a manner so that none of the coal reserved for either the Mohave Project or the Navajo Station shall be in the area containing coal for either the Navajo Station or the Mohave Project, respectively.

10. A drilling program of about 3,000 holes and evaluation of the drilling information is required to establish with certainty the location and depth of the Additional Coal, to give greater definition to its quantity and quality, and to estimate the costs of mining coal from the Seller's Coal Leases. The drilling program and evaluation of results is anticipated to take 18 to 24 months and to cost approximately $400,000. Seller shall undertake and complete the drilling and evaluation program and furnish a report showing the location, quality, and quantity of Additional Coal and the additional costs required to implement new mining plans utilizing deeper recovery lines in order to make the quantities of Additional Coal herein specified recoverable by surface mining. Seller shall also provide a proposed new

Exhibit A prepared in accordance with the principles and criteria set forth in this Exhibit L. The cost of the drilling and evaluation program shall be shared one-third by Seller, one-third by the Navajo Station Co-Owners, and one-third by the Buyers herein. Within 60 days following receipt of such report and proposed new Exhibit A from Seller, the Navajo Station Co-Owners, Buyers, and Seller shall determine whether any changes are required in the designation of the areas containing the dedications and reservations described in paragraphs 1 through 6 hereof and shall agree upon such changes, if any. In the event of a dispute between such parties regarding the designation of areas containing such dedications and reservations, the dispute shall be submitted to the John T. Boyd Company or such other qualified consultant mutually agreed to by the Navajo Station Co-Owners, Buyers, and Seller (hereinafter called "Consultant") for resolution pursuant to paragraph 11 hereof.

The Consultant called upon to resolve any dispute arising under paragraph 10 hereof, shall be governed by the following principles and criteria:

(a) Consultant will make its determination in writing and will submit a final revision of Exhibit A within 120 days of submittal of the matter.

(b) Consultant's determination will be final, conclusive, and binding upon the Navajo Station Co-Owners, Buyers, and Seller.

(c) Consultant shall follow the principles and criteria set forth in this Exhibit L in making its determination.

(d) All expenses of the Consultant shall be shared one-half by the Navajo Station Co-Owners and one-half by the Buyers herein.

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Following the designation of the areas to be set aside to implement the reservations described in paragraphs 3 through 6, Buyers shall promptly notify Seller whether Seller and Buyers shall proceed with appropriate steps required to mine Additional Coal and whether or not Buyers elect to release the Additional and Reserved Coal pertaining to the Mohave Project. Should Buyers determine to proceed, the following principles shall apply:

(a) The Additional Coal and the Reserved Coal reserved for the Mohave Project shall be available for use in first expanding said existing Mohave Project or extending its useful life or if not to be so used, then for use in any other steam electric generating station existing or proposed in which two or more Buyers are to have a generation entitlement, provided that appropriate compensation shall be paid to Buyers who elect not to participate.

(b) The increased capital and operating costs of implementing new mining plans for Dedicated Coal shall be recovered through the applicable provisions of this Amended Agreement and all such coal mined and delivered to the Mohave Project shall be pursuant to the terms, covenants, and conditions of this Amended Agreement.

(c) Seller shall use its best efforts to obtain all necessary authorizations, permits, agreements, approvals and consents from all Indian, federal, and state governmental agencies. If any of the foregoing are required from the Navajo Tribe of Indians and/or the Hopi Tribe of Indians, Seller shall coordinate its efforts to obtain same with the Operating Agent.

As a part of the appropriate steps to be taken pursuant to paragraph 12 hereof, the parties shall negotiate and execute a new Coal Supply Agreement for the mining and delivery of Additional Coal, utilizing the pricing provisions set forth in Section 31 of this Amended Agreement.

Seller, and Buyers involved, shall negotiate and execute a new Coal Supply Agreement for any Reserved Coal as provided in Paragraph 12(a) of this Exhibit L.

The Navajo Station Co-Owners and Buyers may employ an independent consultant (who may be the same as the Consultant described in paragraphs 10 and 11 hereof) to review, comment, and give advice with regard to the drilling and evaluation program described in paragraph 11 hereof. Seller will cooperate with any such consultant, provide him with all information and data, and make every reasonable effort to follow his advice.

The Navajo Station Co-Owners, acting in that capacity, shall have no right, title, or interest in and to any coal dedicated, reserved, or to be dedicated to the Mohave Project. The Mohave Project Co-Owners, acting in that capacity, shall have no right, title or interest in and to any coal dedicated, reserved, or to be dedicated to the Navajo Station Co-Owners.

COAL SLURRY PIPELINE AGREEMENT

between

PEABODY COAL COMPANY

and

BLACK MESA PIPELINE, INC.

DATED JANUARY 6, 1967

EXHIBIT B

COAL SLURRY PIPELINE AGREEMENT

THIS AGREEMENT, entered into this 6th day of January, 1967, between PEABODY COAL COMPANY, an Illinois corporation (herein called "Peabody"), and BLACK MESA PIPELINE, INC., a Delaware corporation (herein called "Black Mesa"):

WITNESSETH:

WHEREAS, Peabody has entered into, or will simultaneously with the execution of this Agreement enter into, a contract with Southern California Edison Company (herein called "Edison"), under which Peabody has the obligation to supply coal for the total fuel requirements, excluding ignition fuel, of the first two generating units of the Mohave Generating Station (herein called "Mohave Project") on the Colorado River near Davis Dam in Clark County, Nevada, for a period commencing with the date of the first delivery of coal thereto, which is expected to be some time in 1970, and ending on the thirty-first (31st) day of December of the thirty-fifth (35th) full calendar year thereafter, the minimum number of tons of coal to be sold and bought under said contract to be not less than 117 million tons; and

WHEREAS, Peabody desires to have available facilities capable of transporting and delivering coal in quantities of not less than the quantities to be supplied under said contract for said first two generating units from the Point of Origin (as herein defined) to the Terminal Point (as herein defined); and

WHEREAS, Black Mesa is willing to undertake the design, construction and operation of a coal slurry pipeline to effect such transportation and delivery, or to develop such alternate means of providing such transportation and delivery as may be mutually agreeable to Peabody and Black Mesa and shall be approved by and will meet the requirements of Edison;

NOW, THEREFORE, in consideration of the mutual agreements herein contained, it is hereby covenanted and agreed between Peabody and Black Mesa as follows:

Section 1

DEFINITIONS

1.1 For purposes of this Agreement, the following terms shall have the following meanings:

(1) "Point of Origin" means a point in the State of Arizona near Kayenta in Section 14, Township 38 North, Range 18 East, to be designated by mutual agreement of Peabody and Black Mesa, or such other point as may be mutually agreed upon by Peabody and Black Mesa, at which Peabody will deliver and Black Mesa will receive the coal to be transported and delivered hereunder by Black Mesa by Pipeline (as herein defined).

(2) "Terminal Point" means a point in the State of Nevada near Davis Dam and adjacent to the Mohave Project in the Southeast one-quarter of the Northwest one-quarter of Section 23, Township 32 South, Range 66 East, to be designated by Edison, at which Black Mesa will deliver and Edison will receive the coal to be transported and delivered hereunder by Pipeline.

(3) "Pipeline" means a pipeline and all appurtenant facilities, including but not limited to the slurry preparation plant, all equipment for preparing and grinding the coal, and all measuring, pumping and communication facilities, designed to transport and deliver and capable of transporting and delivering from the Point of Origin, at which said slurry preparation plant will be located, to the Terminal Point three hundred and fifty-eight (358) days per year at a maximum rate of 660 tons per hour, coal having a moisture content of ten and seventy-four hundredths per cent (10.74%), and average quality characteristics as specified in Section 3.1.

(4) "Contract Year" means a period of twelve (12) calendar months, commencing on the Completion Date, or on any subsequent anniversary thereof, while this Agreement is in force.

(5) "Month" means the calendar month of the Contract Year to which a particular provision of this Agreement has application.

(6) "Completion Date" means the first day of the month during which the Pipeline is placed in operating condition and commences the transportation of coal hereunder.

(7) "Authorization" means all servitudes and/or grants of right-of-way (whether from private parties or any public or governmental agency), all patents, patent licenses or permits, and all governmental permits, authorizations, licenses and approvals, which are necessary for the construction and/or operation of the Pipeline and/or for the preparation of the slurry. Each such servitude, grant, patent, patent license or permit, authorization, license or approval may be herein referred to as an "Authorization".

(8) Unless otherwise specified, a "ton" means a short ton of 2,000 pounds (avdp.), subject to adjustment for moisture as herein provided.

(9) "Force Majeure" means Force Majeure as defined in Section 10 hereof.

Section 2

OBLIGATIONS OF BLACK MESA

2.1 Black Mesa represents that it possesses all needed Authorizations and that it will maintain and keep said Authorizations in force. Black Mesa shall permit Peabody from time to time to inspect all such Authorizations.

2.2 Black Mesa shall, at its expense, construct, test and place the Pipeline in operating condition in sufficient time to enable Black Mesa to commence the transportation and delivery of coal when required by Edison under said contract between Peabody and Edison attached hereto as Exhibit "A" (not including this Agreement which is attached thereto as Exhibit B).

2.3 Black Mesa, at its expense, shall operate the Pipeline and cause to be transported and delivered thereby, for a period commencing with the date of the first delivery of coal hereunder, which is expected to be some time in 1970, and ending on the thirty-first day of December of the thirty-fifth full calendar year thereafter, the coal to be supplied by Peabody to the first two generating units of the Mohave Project pursuant to said contract between Edison and Peabody attached hereto as Exhibit "A". Black Mesa shall not be required to operate the Pipeline in excess of its designed capacity, provided, however, that to the extent consistent with good pipeline operating practice, as reasonably determined by Black Mesa, Black Mesa will, upon request by Peabody, operate the Pipeline at a greater capacity when necessary to compensate for temporary reductions in through-put of coal, regardless of how caused.

2.4 Black Mesa shall take possession of the coal on a conveyor running into said coal slurry preparation plant, the delivery rate of which shall be as reasonably specified by Black Mesa. Black Mesa shall then prepare the coal for transportation and then transport and deliver the coal to the Terminal Point. Said conveyor shall be constructed, operated and maintained by Peabody at its expense. Black Mesa shall pump the coal at an approximate concentration of 45 to 55 per cent solids by weight, and the coal as pumped shall have the following approximate size consist:

+14 mesh	0 to 2 per cent
14 x 28 mesh	0 to 15 per cent
28 x 325 mesh	70 to 84 per cent
-325 mesh	16 to 20 per cent

2.5 If Edison shall approve the same, Peabody and Black Mesa may agree upon an alternate means of transporting the coal to said first two units, and in such event the obligations of Black Mesa with respect to the time, capacity and coal characteristics shall be as herein specified, and Black Mesa's other obligations shall be comparable as determined by characteristics of said alternate transportation.

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Section 3

OBLIGATIONS OF PEABODY

3.1 Peabody, at its expense shall deliver by said conveyor the coal to be transported hereunder by Black Mesa. Such coal shall be substantially free from impurities, such as bone, slate, earth, rock, pyrite or wood which can be kept out with the exercise of reasonable care during mining, and shall have the following size and monthly average quality charactsristics:

Size	2" x 0"
Ash (Dry Basis)	8.9% or less
Sulfur (Dry Basis)	.6% or less
Grindability (Hardgrove Index)	More than 40

If the pH of said coal slurry at 50% by weight coal concentration and the size consist specified in Section 2.4 is less than 7.0, Peabody shall assume the expense of such action or treatment as selected by Peabody as shall be required to increase the pH of said coal to 7.0 or more.

Black Mesa may reject for shipment:

(i) Any coal that is not substantially free from impurities as aforesaid.

(ii) Any coal for which the average analysis over a twenty-four (24) hour period shows an ash content (on a dry basis) of more than 14.5% or a sulfur content (on a dry basis) of more than 1.5%.

(iii) Any coal slurry for which the average pH over a twenty-four (24) hour period is 4.5 or less.

Peabody shall furnish Black Mesa, without charge, at said slurry preparation plant, sufficient coal for all reasonable test purposes.

Title to coal to be transported to said Mohave Project shall remain in Peabody until delivered at the Terminal Point.

3.2 Peabody shall furnish to Black Mesa at Black Mesa's slurry preparation plant sufficient water (presently estimated at 2,000 g.p.m.) for the operation of the Pipeline, including water for all necessary testing, cleaning and flushing of the Pipeline from and after a date not less than three hundred (300) days prior to the Completion Date. Such water shall be delivered to the grade elevation of the slurry preparation plant, shall have a pH of 7.0

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r higher, and shall be without excessive dissolved or suspended solid
eabody shall, at its expense, supply all labor and furnish, construct, operate and maintain all wells and other facilities needed to supply water to Black Mesa as aforesaid. In exchange for Peabody's furnishing water to Black Mesa as aforesaid, Black Mesa shall pay Peabody four cents (4¢) for each ton of coal (adjusted to 10.74% moisture) transported and delivered hereunder by Black Mesa to the Mohave Project, plus 0.2 mills ($0.0002) per gallon for all water necessary to test, clean and flush the Pipeline after commencement of the first contract year. Except for the tonnage charge of four cents (4¢) as aforesaid, Peabody shall make no charge for water furnished during the initial testing, cleaning and flushing period. Peabody shall on or before the tenth (10th) day of the month invoice Black Mesa for water furnished during the previous calendar month, and Black Mesa shall pay said invoice on or before the twentieth (20th) day of the month.

3.3 In the event alternate transportation shall be used as herein set forth, Peabody's obligations shall be comparable as determined by the characteristics of said alternate transportation.

3.4 Peabody shall advise Black Mesa promptly, in writing, of any changes in the scheduled date when the first generating unit will be placed in operation at said Mohave Project, as provided in Section 3 of Exhibit "A" hereto, within seven (7) days after Peabody is advised, in writing, of any such changes by Southern California Edison Company.

3.5 Peabody shall have all of its necessary facilities ready, and shall furnish coal for testing during a three (3) month period prior to the scheduled date when the first generating unit will be placed in operation at said Mohave Project, as provided in Section 3 of Exhibit "A" hereto. Coal shall be available throughout the aforesaid 3-month period sufficient to permit Pipeline to operate at design capacity for a total of fifteen (15) days, and Peabody shall pay $1.60 per ton to Black Mesa for transportation of such coal.

Section 4

TRANSPORTATION CHARGES

4.1 The basic charges per ton to be paid by Peabody to Black Mesa for transportation of coal from the Point of Origin to the Terminal Point under this Agreement shall depend upon the number of tons (adjusted for moisture content as provided in Section 5) transported during the month. Said basic charges are as follows (subject to adjustment as provided in Section 4.3):

If the Total Tons Transported during the month are	The Basic Charge per ton shall be

FIRST SIX MONTHS OF FIRST CONTRACT YEAR

0 thru 170,833	$1.60		
170,834 thru 200,000	$1.50 +	(200,000 − tons shipped) / (29,167)	x $0.10
200,001 thru 220,833	$1.45 +	(220,833 − tons shipped) / (20,833)	x $0.05
220,834 and above	$1.45		

LAST SIX MONTHS OF FIRST CONTRACT YEAR AND CONTRACT YEARS TWO THROUGH ELEVEN, INCLUSIVE

0 thru 341,667	$1.60		
341,668 thru 400,000	$1.50 +	(400,000 − tons shipped) / (58,333)	x $0.10
400,001 thru 441,667	$1.45 +	(441,667 − tons shipped) / (41,667)	x $0.05
441,668 and above	$1.45		

CONTRACT YEARS TWELVE THROUGH TWENTY-ONE, INCLUSIVE

0 thru 316,667	$1.60		
316,668 thru 391,667	$1.50 +	(391,667 − tons shipped) / (75,000)	x $0.10
391,668 thru 433,333	$1.45 +	(433,333 − tons shipped) / (41,666)	x $0.05
433,334 and above	$1.45		

REMAINING CONTRACT YEARS (APPROXIMATELY FIFTEEN)

0 thru 216,667	$1.60		
216,668 thru 316,667	$1.50 +	(316,667 − tons shipped) / (100,000)	x $0.10
316,668 thru 350,000	$1.45 +	(350,000 − tons shipped) / (33,333)	x $0.05
350,001 and above	$1.45		

4.2 The minimum number of tons to be shipped monthly by Peabody shall be as follows:

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FIRST SIX MONTHS OF FIRST CONTRACT YEAR

170,833 tons per month

LAST SIX MONTHS OF FIRST CONTRACT YEAR AND CONTRACT YEARS TWO THROUGH ELEVEN, INCLUSIVE

341,667 tons per month

CONTRACT YEARS TWELVE THROUGH TWENTY-ONE, INCLUSIVE

316,667 tons per month

REMAINING CONTRACT YEARS (APPROXIMATELY FIFTEEN)

216,667 tons per month

If, at the end of any month, the cumulative tonnage offered to date by Peabody for transportation shall be less than the cumulative minimum monthly tonnage to date set forth above, Peabody shall, in addition to paying for the tonnage actually shipped during the month, pay Black Mesa for the balance of the applicable minimum monthly tonnage not offered for transportation during such month, at the basic charge (adjusted as provided in Section 4.3) provided for such minimum monthly tonnage. With respect to any month during which it offers for transportation coal in excess of the applicable tonnage for that month, Peabody shall be entitled to a credit for tonnage (not previously credited) for which it has paid but which was not actually transported, which credit shall be applied on a ton-for-ton basis in payment for tonnage in excess of the applicable minimum monthly tonnage. In determining the applicable basic charge for any month with reepect to which such a credit is received, tonnage for which such credit is received shall not be considered in determining the total tons offered for transportation by Peabody during such month.

4.3 The basic charges per ton set forth in Section 4.1 above shall be adjusted as follows:

(a) Capital Costs Adjustment

To reflect changee in price levels of materials and supplies, and rates of pay and labor related costs from January 1, 1966, to the time of construction of the Pipeline

(i) the total cost of materials and supplies of the Pipeline (which shall be deemed to be $16 million) will be increased or decreased as the case may be by a multiplier calculated by dividing the average "Capital Material Index", as defined herein, for the months during which the pipe for the Pipeline

was ordered by the value of the same "Capital Material Index" for January 1966 which was 99.4; and

(ii) installation cost (which shall be deemed to be $8 million) will be increased or decreased as the case may be by a multiplier calculated by dividing the average of the average weekly earnings of workers in the "other heavy construction" classification during January following the date of the initial construction of the Pipeline, as reported by the United States Department of Labor, Bureau of Labor Statistics (SIC Code 162 final values) by the average weekly earnings of such workers during January 1966 which was $137.28.

The basic charges per ton shall be increased or decreased as the case may be by 2.9 mills ($0.0029) for each full $100,000 by which the total cost of the materials and supplies of the Pipeline (increased or decreased as provided herein) and installation cost (increased or decreased as provided herein) is more or less than $24,000,000. The Capital Material Index is to be the weighted average of the following three final indices from the Wholesale Price Index, 1957-1959=100, as reported by the United States Department of Labor, Bureau of Labor Statistics:

Index	B.L.S. Code	Weight (%)
Line Pipe, carbon (100 feet)	1014 58.05	62
Oil Field Machinery and Tools	1151	23
Mining Machinery and Equipment	1152	15
TOTAL		100

(b) Operating Costs Adjustment

(1) Electricity: To reflect changes in the cost of electricity, the basic charges will be increased or decreased as the case may be on a current month's basis at the rate of 3.3 mills ($0.0033) for each full one per cent (1%) by which the average cost per KWH to Black Mesa for electricity used in the operation of the Pipeline during that month was more than or less than one cent (1¢) per KWH.

(2) Material: To reflect changes in the level of prices of material and supplies of Black Mesa in operating the Pipeline, the basic charges shall be increased or decreased as the case may be on January 1 of each year at the rate of 1.8 mills ($0.0018) for each full one per cent (1%) by which the "Operating

Material Index", as defined herein, for January of the year in question is more or less than the "Operating Material Index" for January of 1966 which is 104.54. The "Operating Material Index" is to be the weighted average of the following three final indices from the Wholesale Price Index, 1957-1959=100, reported by the United States Department of Labor, Bureau of Labor Statistics:

Index	B.L.S. Code	Weight (%)
Sodium Bichromate	0611 67.01	22
Pumps, Compressors and Equipment	1141	22
Wire Rods, Carbon	1013	56
TOTAL		100

(3) Labor: To reflect changes in the level of rates of pay and labor related costs of Black Mesa in operating the Pipeline, monthly bills for each ensuing calendar year shall be increased or decreased as the case may be, beginning on January 1 of each year, by an amount equal to the difference between Fifty Thousand Dollars ($50,000) and Fifty Thousand Dollars ($50,000) times a multiplier calculated by dividing the January 1 amount of average weekly earnings for the year in question for production workers in the "pipeline transportation" classification as reported by the United States Department of Labor's Bureau of Labor Statistics by the January 1, 1966 amount which is $150.32. This adjustment calculation shall be made as near January 1 of each year as availability of published indices permits.

(4) Insurance and Taxes: To reflect changes in the cost of insurance and ad valorem taxes incurred by Black Mesa in operating the Pipeline, monthly bills for each ensuing calendar year shall be increased or decreased as the case may be, beginning on January 1 of each year, by an amount equal to one-twelfth (1/12) of the amount by which such total cost of insurance and ad valorem taxes during the preceding year was more or less than $562,000.

(c) Supporting Data, etc. re Price Adjustment

Black Mesa shall submit promptly all data reasonably required to establish adjustments in the basic charges per ton authorized by any of the provisions of this Agreement. Peabody, or its authorized representatives, shall have the right at any reasonable time or times to examine or audit Black Mesa's records to the extent necessary to verify any adjustment provided for by any of the provisions of this Agreement, and should Peabody and Black Mesa be in disagreement as to any such adjustment, it shall not become effective until such disagreement has been resolved by arbitration or agreement of the parties, and

any such adjustment thereby determined shall be retroactive to the time it would have gone into effect had the parties not been in disagreement.

If the United States Department of Labor, Bureau of Labor Statistics, should discontinue the reporting of any item specified for use in making a price adjustment, or if such item is otherwise unavilable, the parties shall utilize a mutually acceptable substitute item or mutually acceptable method of price adjustment.

(d) Transportation charges shall not be increased solely by reason of use of alternate transportation as herein set forth.

Section 5

ADJUSTMENT OF TONNAGE FOR MOISTURE

5.1 The basic charges per ton are based upon coal having an average "as received" moisture content of 10.74% . In order to determine the number of tons transported by Black Mesa during the month, an adjustment shall be made at the conclusion of each month for variations in said average "as received" moisture content during said month, and shall be calculated according to the following formula:

$$\text{Number of tons delivered by Peabody onto conveyor during month} \times \frac{100 - \text{Average "as received" moisture content of coal delivered by Peabody onto conveyor during month}}{100 - 10.74\%} = \text{Number of tons transported during month adjusted to an "as received" moisture content of 10.74\%}$$

All adjustments for moisture content shall be based on the weighted analysis for coal for the month for which such adjustment is being made.

Section 6

OPERATION OF THE PIPELINE

6.1 Black Mesa agrees that any tariff filed for the transportation of coal hereunder shall, to the extent permitted by law, conform to the provisions of this Agreement, and that it will use its best efforts to defend any such tariff. Peabody agrees that it will not contest any such tariff which conforms to the provisions of this Agreement, but it shall have the right to contest any such tariff which does not in any way conform to the terms of this Agreement. Black Mesa agrees that if it is required to operate the Pipeline as a common carrier it will at all times provide adequate facilities to perform its obligations under this

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Agreement without interruption as well as any service it is required to perform as a common carrier for others.

Section 7

BILLING

7.1 Black Mesa shall, on or before the tenth (10th) day of each calendar month, submit an invoice to Peabody (or Edison if Peabody shall so direct) for coal transported and delivered hereunder during the previous calendar month, plus applicable minimum tonnage for such month, if any, less applicable credits, if any, which invoice Peabody shall pay, or cause to be paid by Edison, within ten (10) days after receipt thereof. If a price adjustment is in process under Section 4.3, invoicing shall be made on a tentative basis, and an appropriate adjustment shall be made as soon as the price adjustment is determined.

Section 8

WEIGHING & SAMPLING

8.1 The weight of the coal transported hereunder shall be determined by a calibrated weightometer located at the slurry preparation plant.

8.2 For the purpose of determining the quality of coal transported by Black Mesa, Black Mesa shall collect fair representative daily samples from the conveyor to the slurry preparation plant by a method agreed upon by representatives of Black Mesa and Peabody. Each sample shall be divided into three portions, each portion to be placed and sealed in an air-tight receptacle and properly labeled, one to be retained and analyzed by Black Mesa, one held by Black Mesa for Peabody, and the third to be held by Black Mesa for a referee sample analysis in case of disagreement as to the results of the analysis.

All original samples collected by Black Mesa shall be delivered to Black Mesa's chemist who shall analyze one sample and report the results thereof promptly, both to Black Mesa and Peabody, and deliver one sample to Peabody. Within five (5) days of receipt of such report, and upon written request of Peabody, Black Mesa will ship the third sealed portion of the sample to a testing laboratory, or to a chemist of recognized ability in handling fuel analyses to be mutually agreed upon, for analysis at the expense of Peabody. The results of such latter analysis shall be final and binding. All sampling and analyses shall be in accordance with methods approved by the American Society for Testing Materials at the time the sampling and analysis are made, or such other methods as may be agreed upon by Peabody and Black Mesa.

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Section 9

INDEMNIFICATION AND INSURANCE

9.1 Black Mesa agrees to indemnify and hold Peabody harmless against any and all demands and claims arising from infringement of patents and/or the unlawful use of rights of others in connection with Black Mesa's preparation and/or the transportation and delivery of coal hereunder (but not including any such demands or claims arising out of the handling and/or utilization of the coal after it is delivered hereunder by Black Mesa), and Black Mesa will, at its own cost and expense, defend any and all suits which may be brought against Peabody on account of such infringements or alleged infringements and/or such unlawful use or alleged unlawful use.

9.2 Black Mesa shall obtain and maintain public liability insurance of the kind or kinds and in the amount or amounts as are reasonable. Upon request of Peabody, Black Mesa shall furnish Peabody satisfactory evidence of such insurance.

Section 10

FORCE MAJEURE

10.1 If, because of force majeure, either party is unable to carry out its obligations under this Agreement, and if such party promptly gives to the other party written notice of such force majeure, then the obligations of the party giving such notice shall be suspended to the extent made necessary by such force majeure and during its continuance, provided the effect of such force majeure is eliminated insofar as practicable with all reasonable dispatch. Any deficiencies in the transportation of coal under this Agreement which are caused by force majeure shall be made up by Black Mesa as soon as practicable after the termination of the emergency caused by such force majeure to the extent requested by Peabody and to the extent permitted by the capacity of the Pipeline.

The term "force majeure" as used herein shall mean any causes beyond the control and without fault or negligence of the party affected thereby, including but not restricted to acts of God, acts of the public enemy, insurrections, riots, labor disputes, labor or material shortages, fires, explosions, floods, breakdowns of or damage to plants, equipment or facilities, interruptions to transportation, embargoes, orders or acts of civil or military authority, and other causes of a similar nature which wholly or partly prevent the mining and/or the delivering of coal by Peabody, the preparation and/or transportation and delivery of the coal by Black Mesa, or the accepting and/or utilizing of the coal by the Mohave Project. It is understood and agreed that settlement of labor disputes

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shall be entirely within the discretion of the party having the difficulty, and the above requirement that force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes or lockouts by acceding to the demands of the opposing party where such course is inadvisable in the discretion of the party having the difficulty.

Section 11

TERMINATION RIGHTS

11.1 If the Pipeline should be or become incapable of operating at its designed rate by reason of a failure in Black Mesa's design or operating technology, Peabody may, if adversely affected by said failure, in addition to any other legal remedies it may have, terminate this Agreement by giving Black Mesa at least ninety (90) days' advance notice, provided that such termination shall not become effective if Black Mesa, before the date thereof, has made such changes in the Pipeline's design or operating technology so as to make said Pipeline capable of operating at said rate. In the event of a termination of this Agreement pursuant to this Section 11.1, Peabody shall have no further obligations under this Agreement, except the payment of any sums already due, and Peabody, in addition to any other rights it may have under this Agreement, shall have the option to purchase said Pipeline from Black Mesa upon payment to Black Mesa of an amount equal to 1/35 of the original capital cost of the Pipeline system multiplied by the number of years remaining in the 35-year contract period.

Section 12

SUCCESSORS AND ASSIGNS

12.1 This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns, but this Agreement may not be assigned by Peabody or Black Mesa without the written consent of the other party, except as follows:

(a) As an assignment by Peabody to Edison and/or any or all of the participants with Edison in said Mohave Project;

(b) As an assignment to a successor to all or substantially all of the property and assets of any party hereto, either by purchase, merger, consolidation or otherwise;

(c) As an assignment by Peabody to Kennecott Copper Corporation or any wholly-owned subsidiary thereof; provided,

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however, that no assignment shall be effective unless and until the assignee or assignees shall assume, in writing, the obligations of the assignor.

Section 13

NOTICES

13.1 Until a different address is given, in writing, to the other party by the party entitled to receive notice, notices under this Agreement shall be in writing, addressed if directed to Peabody to:

Peabody Coal Company
301 North Memorial Drive
St. Louis, Missouri 63102

and if directed to Black Mesa to:

Black Mesa Pipeline, Inc.
610 South Main Street
Los Angeles, California 90014

Section 14

SECTION HEADINGS

14.1 Section headings are inserted for the convenience of the parties only, and shall not be construed as limiting in any way the provisions thereof.

Section 15

GOVERNING LAW

15.1 The terms and provisions of this Agreement shall be interpreted and construed in accordance with the laws of Arizona.

Section 16

ARBITRATION

16.1 In the event the parties should be unable to reach agreement with respect to a matter herein specified to be established or determined by agreement of the parties or by arbitration, either party may call for submission of such matter to arbitration in the manner herein set forth. The party calling for arbitration shall give notice to the other party, setting forth in such notice in adequate detail the issues to be arbitrated, and within ten (10) days from receipt of such notice the other party may by notice to the first party set forth in adequate detail additional related issues to be arbitrated.

Within twenty (20) days from its notice calling for the arbitration, the first party shall appoint a person to serve as one arbitrator with notice to the other party of such appointment, and within fifteen (15) days after receipt of notice of appointment of the first arbitrator the other party shall appoint a person to serve as a second arbitrator, with notice to the first party of such appointment. The two persons so appointed shall then agree upon and secure a third arbitrator. If the third arbitrator should not be secured within fifteen (15) days from the appointment of the second arbitrator, or if the second arbitrator should not be appointed within fifteen (15) days from the appointment of the first, either party with notice to the other party may call for such appointment or appointments upon American Arbitration Association (or upon a similar organization if American Arbitration Association should not at that time exist). Regardless of the manner of his selection, the third arbitrator shall be qualified with respect to the subject matter out of which the matter to be arbitrated arises.

The arbitrators so appointed shall hear evidence submitted by the respective parties and may call for additional information, which additional information the party called upon shall furnish to the extent feasible. A decision or determination signed by a majority of the arbitrators shall be conclusive with respect to the issues submitted and shall be binding on the parties.

Each party shall bear the fee and personal expenses of the arbitrator appointed by or for it, together with the fees and expenses of its counsel and of its own witnesses, and all other costs and expenses of the arbitration shall be borne in equal parts by the parties, unless the decision of the arbitrators shall specify a different apportionment of any or all of such costs and expenses.

Section 17

TERM

17.1 This Agreement shall be in effect from its date and until the thirty-first (31st) day of December of the thirty-fifth (35th) full calendar year after the date of the first delivery of coal.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in duplicate this _____ day of _____, 196___.

BLACK MESA PIPELINE, INC.

By_____
President

Attest:

_____
Secretary

PEABODY COAL COMPANY

By_____
President

Attest:

_____
Secretary

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Agreement No. 10964

AMENDED

COAL SLURRY PIPELINE AGREEMENT

Between

PEABODY COAL COMPANY

and

BLACK MESA PIPELINE, INC.

May 26, 1976
(Date)

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AMENDED

COAL SLURRY PIPELINE AGREEMENT

THIS AMENDED AGREEMENT as of the 26th day of May, 1976, between PEABODY COAL COMPANY, a Delaware corporation, a successor to an Illinois corporation of the same name as of March 29, 1968 (herein called "Peabody"), and BLACK MESA PIPELINE, INC., a Delaware corporation (herein called "Black Mesa");

WITNESSETH:

WHEREAS, Peabody and Black Mesa entered into the Coal Slurry Pipeline Agreement dated January 6, 1967, pursuant to which Black Mesa undertook to and did construct and operate a coal slurry pipeline as agreed upon to effect transportation and delivery of coal as contemplated therein; and

WHEREAS, there has since occurred a number of developments at an accelerated pace, the magnitude of which the parties did not and could not have reasonably anticipated and which have substantially adversely affected the interests of the parties hereto in varying ways and which, it is recognized by the parties hereto, have produced serious inequities such as less than anticipated coal throughput tonnages due to less than anticipated Mohave Project fuel requirements, increases in flush water throughput requirements during unanticipated outages and shutdowns, a lower than anticipated turndown ratio of the pipeline with a resulting need to consider possible additions to coal slurry storage capacity at Terminal Point, and

the occurrence of greater rates of inflation than were projected, all of which require equitable amendments in order for the Mohave Project to be able to perform more nearly as originally anticipated by the parties participating in such project and to provide greater assurance of maintenance of a high degree of reliability of operation of the pipeline in the future; and

WHEREAS, because of such intervening developments and the resulting serious inequities, the parties agree that it would be in their mutual interest to make appropriate amendments for such inequities at this time;

NOW THEREFORE, the parties hereto desire to enter into this Amended Agreement to resolve the aforesaid problems which have arisen, and in consideration of the mutual covenants, agreements, and understandings of the parties hereto, it is mutually agreed as follows:

Section 1. DEFINITIONS

1.1 For purposes of this Amended Agreement, the following terms shall have the following meanings:

(1) Point of Origin means a point in the State of Arizona near Kayenta in Section 15, Township 35 North Range 18 East, which has been designated by mutual agreement of Peabody and Black Mesa, or such other point as may be mutually agreed upon by Peabody and Black Mesa, at which Peabody will deliver and Black Mesa will receive the coal to be transported and delivered hereunder by Black Mesa by pipeline (as herein defined).

(2) Terminal Point means a point in the State of

Nevada near Davis Dam and adjacent to the Mohave Generating Station (herein called "Mohave Project") in the Southeast one-quarter of the Northwest one-quarter of Section 23, Township 32 South, Range 66 East, which has been designated by Edison, at which Black Mesa will deliver and Mohave Participants will receive the coal to be transported and delivered hereunder by Pipeline.

(3) Pipeline means a pipeline and all appurtenant facilities, including but not limited to the slurry preparation plant, all equipment for preparing and grinding the coal, and all measuring, pumping and communication facilities, designed to transport and deliver and capable of transporting and delivering from the Point of Origin, at which said slurry preparation plant has been located, to the Terminal Point three hundred and fifty-eight (358) days per year at a maximum rate of 660 tons per hour, coal having a moisture content of ten and seventy-four hundredths percent (10.74%), and average quality characteristics as specified in Section 3.1.

(4) Contract Year means a period of twelve (12) calendar months, commencing on the Completion Date (as herein defined), or on any subsequent anniversary thereof, while this Amended Agreement is in force.

(5) Month means a billing month to which a particular provision of the Amended Agreement has application. Such Month shall commence at 8:00 AM of the third day prior to the first day of the calendar month following.

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(6) Completion Date means the first day of the month during which the Pipeline was placed in operating condition and commenced the transportation of coal hereunder, which was November 1, 1970.

(7) Authorization means all servitudes and/or grants of right-of-way (whether from private parties or any public or governmental agency), all patents, patent licenses or permits, and all governmental permits, authorizations, licenses and approvals, which are necessary for the construction and/or operation of the Pipeline and/or for the preparation of the slurry. Each such servitude, grant, patent, patent license or permit, authorization, license or approval may be herein referred to as an "Authorization."

(8) Unless otherwise specified, a ton means a short ton of 2,000 pounds (avdp), subject to adjustment for moisture as herein provided.

(9) Force Majeure means Force Majeure as defined in Section 10 hereof.

(10) Mohave Participant - Southern California Edison Company, a California corporation (Edison); the Department of Water and Power of the City of Los Angeles, a department organized and existing under the Charter of the City of Los Angeles, a municipal corporation of the State of California (Department); Nevada Power Company, a Nevada corporation (Nevada); and Salt River Project Agricultural Improvement and Power District, an agricultural improvement district organized and existing under the laws of the State of Arizona

(Salt River), are sometimes herein collectively referred to as "Mohave Participants".

(11) Participants - Black Mesa, Peabody, and the Mohave Participants are sometimes herein referred to collectively as "Participants".

(12) Effective Date means the first day following the last date of execution by the parties of and consents of the Mohave Participants to, this Amended Agreement.

Section 2. OBLIGATIONS OF BLACK MESA

2.1 Black Mesa represents that it possesses all needed Authorizations and that it will maintain and keep said Authorizations in force. Black Mesa shall permit Peabody from time to time to inspect all such Authorizations.

2.2 Black Mesa, at its expense, shall operate the Pipeline and cause to be transported and delivered thereby, for a period commencing with the Effective Date and ending on the thirty-first day of December 2005, the coal to be supplied by Peabody to the first two generating units of the Mohave Project pursuant to the Amended Mohave Project Coal Supply Agreement between the Mohave Participants and Peabody attached hereto as Exhibit "A" (not including this Amended Agreement which is attached thereto as Exhibit "B"). Black Mesa shall not be required to operate the Pipeline in excess of its designed capacity, provided, however, that to the extent consistent with good pipeline operating practice, as reasonably determined by Black Mesa, Black Mesa will, upon request by Peabody, operate the Pipeline at a greater capacity when necessary to

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compensate for temporary reductions in throughput of coal, regardless of how caused.

2.3 Black Mesa shall take possession of the coal on a conveyor running into said coal slurry preparation plant, the delivery rate of which shall be as reasonably specified by Black Mesa. Black Mesa shall then prepare the coal for transportation and then transport and deliver the coal to the Terminal Point. Said conveyor shall be constructed, operated and maintained by Peabody at its expense. Black Mesa shall pump the coal at an approximate concentration of 45 to 55 percent solids by weight, and the coal as pumped shall have the following approximate size consist:

+14 mesh	0 to 2 percent
14 x 28 mesh	0 to 15 percent
28 x 325 mesh	70 to 84 percent
-325 mesh.	16 to 20 percent

2.4 If the Mohave Participants shall approve the same, Peabody and Black Mesa may agree upon an alternate means of transporting the coal to said first two units, and in such event the obligations of Black Mesa with respect to the time, capacity, and coal characteristics shall be as herein specified, and Black Mesa's other obligations shall be comparable as determined by characteristics of said alternate transportation.

2.5 In order to maintain desired pipeline system availability, Black Mesa agrees to keep one spare pumping unit installed and maintained at each pump station, and agrees to maintain in operation a microwave communication system

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between all points on the pipeline system.

2.6 Black Mesa agrees to maintain adequate and suitable spare parts in inventory commensurate with the type of pipeline operations anticipated and to have in effect an emergency maintenance plan, which is intended to minimize the time required to restore pipeline availability in the event of interruptions due to Force Majeure events, and which shall be subject to review by Edison acting on behalf of the Mohave Participants in connection with the Force Majeure events of the Black Mesa system as discussed in Section 4.4.

Section 3. OBLIGATIONS OF PEABODY

3.1 Peabody, at its expense, shall deliver by said conveyor the coal to be transported hereunder by Black Mesa. Such coal shall be substantially free from impurities, such as metal, bone, slate, earth, rock, pyrite, or wood, which can be kept out with the exercise of reasonable care during mining, and shall have the following size and monthly average quality characteristics:

Size	2" x 0"
Ash (Dry Basis)	9.9% or less (or as otherwise established pursuant to Exhibit A)
Sulfur (Dry Basis)	.6% or less
Grindability (Hardgrove Index)	More than 40

If the pH of said coal slurry (at 50% by weight coal concentration and the size consist specified in Section 2.3) is less than 7.0, Peabody shall assume the expense of such action or treatment as selected by Peabody as shall be required to increase the pH of said coal to 7.0 or more.

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Black Mesa may reject for shipment:

(i) Any coal that is not substantially free from impurities as aforesaid.

(ii) Any coal for which the average analysis over a twenty-four (24) hour period shows an ash content (on a dry basis) of more than 13.1% or a sulfur content (on a dry basis) of more than 1.5%.

(iii) Any coal slurry for which the average pH over a twenty-four (24) hour period is 6.0 or less.

Peabody shall furnish Black Mesa, without charge, at said slurry preparation plant, sufficient coal for all reasonable test purposes.

Title to coal to be transported to said Mohave Project shall remain in Peabody until delivered at the Terminal Point.

3.2 Peabody shall furnish to Black Mesa at Black Mesa's slurry preparation plant sufficient water (presently estimated at 2,000 gpm) for the operation of the Pipeline, including water for all necessary testing, cleaning, and flushing of the Pipeline. Such water shall be delivered to the grade elevation of the slurry preparation plant, shall have a pH of 7.0 or higher, and shall be without excessive dissolved or suspended solids. Peabody shall, at its expense, supply all labor and furnish, construct, operate, and maintain all wells and other facilities needed to supply water to Black Mesa as aforesaid. In exchange for Peabody's furnishing water to Black Mesa as aforesaid, Black Mesa shall pay Peabody four cents (4¢) for each ton of coal

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(adjusted to 10.74% moisture) transported and delivered hereunder by Black Mesa to the Mohave Project, plus 0.2 mills ($0.0002) per gallon for all water necessary to test, clean, and flush the Pipeline. Peabody shall on or before the tenth (10th) day of the month invoice Black Mesa for water furnished during the previous Month, and Black Mesa shall pay said invoice on or before the twentieth (20th) day of the month.

3.3 In the event alternate transportation shall be used as herein set forth, Peabody's obligations shall be comparable as determined by the characteristics of said alternate transportation.

Section 4. TRANSPORTATION CHARGES

4.1 The pipeline-related charge to be paid monthly by Peabody to Black Mesa for transporting and/or maintaining capacity to transport coal from Point of Origin to the Terminal Point under this Amended Agreement shall consist of a specified monthly demand charge, plus a specified commodity charge per ton (with tonnage adjusted for moisture content as provided in Section 5). Said pipeline-related charge shall be subject to certain adjustments for electricity, labor, material, taxes and insurance, overhead, and during Force Majeure, as provided in Section 4.3 (a) and Section 10 hereof. Said monthly demand charge shall be $707,086, beginning with the Effective Date. Said commodity charge shall be $0.215 per ton beginning with the Effective Date and continuing until January 12, 1977, or until the amount of coal

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transported by Black Mesa from August of 1970 aggregates 14.9 million tons (moisture content 10.74%), whichever occurs last, and then shall be $0.148 per ton thereafter for the remaining term of this Amended Agreement. Transportation charges for the period from the Effective Date to the first day of the following Month shall be determined in accordance with Exhibit D.

4.2 (a) It is agreed that the existing accrued balance of "prepaid tons" of record on March 1, 1975, which was 4,255,936 tons, shall be delivered at no charge to Peabody by Black Mesa until all prepaid tons have been delivered, provided that no prepaid tons will be delivered during any one Month until after 341,667 tons have been delivered, and except as provided in Section 4.2(b) below. No additional prepaid tons will accrue after March 1, 1975.

(b) The provisions of Section 4.2(a) shall be suspended until the seventh Month after the Effective Date or until the first day of the Month of March 1977, whichever occurs sooner, unless such suspension is extended by mutual agreement of the Participants. During such suspension period, all tons delivered in excess of 341,667 (or as adjusted for Force Majeure in any Month) shall be considered as "excess tons" for the delivery of which Peabody (or Edison on behalf of the Mohave Participants if designated by Peabody) agrees to pay Black Mesa at a unit rate per ton for each excess ton delivered, calculated by dividing the demand charge plus commodity charge (as adjusted for the price of materials as defined in Section 4.3(a)(2)

(ii) hereunder) for 341,667 tons as determined by provisions of this Amended Agreement by the number 341,667.

(c) Black Mesa agrees to pay to the Mohave Participants $360,000 in successive monthly increments of at least $60,000, beginning with the seventh Month after the Effective Date, but in no event to begin later than the first day of the Month of March 1977, unless such payment schedule is extended by mutual agreement of the Participants. As of the Effective Date, the Memorandum Re Revised Billing Procedures of April 1975, as extended, shall be superseded by Section 4.2(b) and this Section 4.2(c).

4.3 The charges set forth in Section 4.1 above shall be adjusted as follows:

(a) Operating Cost Adjustments

(1) Electricity: The pipeline-related charges shall be increased each Month by an amount equal to the total actual recorded monthly cost of electricity as billed to Black Mesa by the supplying utilities in the manner reflected in Exhibit C.

(2) Material: To reflect changes in the level of prices of materials and supplies of Black Mesa in operating the Pipeline, the demand and commodity charges shall be increased or decreased as the case may be, on January 1 of each year in two portions in accordance with changes in the "Operating Material Index" as defined herein. The "Operating Material Index" shall be the weighted average of the following three final indices from the Wholesale Price Index (1967= 100, except Sodium

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Tripolyphosphate 1974 = 100) reported by the United States Department of Labor, Bureau of Labor Statistics:

Index	B. L. S. Code	Weight %
Sodium Tripolyphosphate	0613-0267	22
Pumps, Compressors and Equipment	1141	22
Wire Rods, Carbon Steel	1013-011102	56
		100

(i) The demand charge related portion of this adjustment shall be a monthly amount equal to $33,627 times a multiplier calculated by dividing the January, current year, Operating Material Index by the January 1975 Operating Material Index (which is 180.1), minus $33,627.

(ii) The commodity charge related portion of this adjustment per ton delivered shall be an amount equal to $0.108 times a multiplier calculated by dividing the January, current year, Operating Material Index by the January 1975 Operating Material Index (which is 180.1), minus $0.108.

This commodity charge portion may be increased or decreased by mutual consent of Peabody, Black Mesa, and Edison, acting on behalf of the Mohave Participants, to reflect actual recorded cost of inhibitor.

(3) Labor: To reflect changes in the level of rates of pay and labor-related costs of Black Mesa in operating the Pipeline, monthly bills for each ensuing calendar year shall be increased or decreased as the case may be, beginning on January 1 of each year, by an amount equal to the difference between Ninety-Five

Thousand Eight Hundred Ninety-Eight Dollars ($95,898) and Ninety-Five Thousand Eight Hundred Ninety-Eight Dollars ($95,898) times a multiplier calculated by dividing the January amount of average weekly earnings for the year in question for production workers in the "pipeline transportation" classification as reported by the United States Department of Labor Bureau of Labor Statistics by the January 1975 amount, which is $269.45. This adjustment calculation shall be made as near January 1 of each year as availability of published indices permits.

(4) Insurance and Taxes: To reflect changes in the cost of insurance and ad valorem taxes incurred by Black Mesa in operating the Pipeline, monthly bills for each ensuing calendar year shall be increased or decreased, as the case may be, beginning on January 1 of each year, by an amount equal to one-twelfth (1/12) of the amount by which such total cost of insurance and ad valorem taxes during the preceding year was more or less than $562,000.

(5) Overhead: To reflect changes in overhead cost of Black Mesa in operating the Pipeline, monthly bills for the pipeline-related charge for each ensuing calendar year shall be increased or decreased, as the case may be, beginning on January 1 of each year, by an amount equal to the difference between Fifty-Thousand Seven Hundred Sixty-Nine Dollars ($50,769) and Fifty-Thousand Seven Hundred Sixty-Nine Dollars ($50,769) times a multiplier calculated by dividing the January, current

year, amount of average weekly earnings for the year in question for production workers in the "Pipeline Transportation" classification as reported by the United States Department of Labor Bureau of Labor Statistics by the January 1975 amount, which is $269.45. This adjustment calculation shall be made as near January 1 of each year as availability of published indices permits.

(b) Supporting Data Regarding Price Adjustment: Black Mesa shall submit promptly all data reasonably required to establish adjustments in the charges authorized by any of the provisions of this Amended Agreement. Peabody, or its authorized representatives, shall have the right at any reasonable time or times to examine or audit Black Mesa's records to the extent necessary to verify any adjustment provided for by any of the provisions of this Amended Agreement, and should Peabody and Black Mesa be in disagreement as to any such adjustment, it shall not become effective until such disagreement has been resolved by arbitration or agreement of the parties, and any such adjustment thereby determined shall be retroactive to the time it would have gone into effect had the parties not been in disagreement.

If the United States Department of Labor, Bureau of Labor Statistics, should discontinue the reporting of any item specified for use in making a price adjustment, or if such item is otherwise unavailable, the Participants shall utilize a mutually acceptable substitute item or mutually acceptable method of price adjustment.

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(c) Transportation charges shall not be increased solely by reason of use of alternate transportation as herein set forth.

4.4 It is agreed that during certain types of Force Majeure events as described in this Section 4.4 the following provisions shall apply to payment of transportation charges set forth in Section 4.1 as adjusted pursuant to Section 4.3:

(a) When Force Majeure events wholly or partly prevent accepting and/or utilizing coal at one or both units of the Mohave Project by the Mohave Participants then:

(1) If such Force Majeure extends for 30 days (720 hours) or less, the payments of transportation charges shall not be affected;

(2) If such Force Majeure extends beyond 30 days (720 hours), pro rata adjustments shall be made to the computation of monthly demand charge payments in accordance with the examples attached to this Amended Agreement as Exhibit C, provided that in no event shall payments made by Peabody, or the Mohave Participants when designated by Peabody, be less than $227,127 per month (or as such amount may be adjusted in a manner shown in Exhibit B), starting with the first day of such Force Majeure condition and continuing for as long as such Force Majeure condition exists, but not to exceed three consecutive months in any one period during which both units are shutdown because of Force Majeure.

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(3) If such Force Majeure exceeds three consecutive months in any period during which both units are shutdown there shall be no payment of transportation charges during the period of Force Majeure following such three consecutive months. Payment of transportation charges for a partial Month at the end of such three consecutive months of Force Majeure shall be prorated.

(b) When Force Majeure events occur at Peabody's Black Mesa Mine, which wholly or partly prevent Black Mesa from delivering coal, and if less than 341,667 tons of coal are delivered to the Mohave Project during the Month in which such Force Majeure occurs, the demand charge payments including certain adjustments shall be reduced in accordance with the examples attached to this Amended Agreement as Exhibit C by multiplying said payment by the larger of a factor the numerator of which is the product of 15,523 and the sum of the total number of days in the Month less the number of days of pipeline outage caused by Peabody plus the number of days of Mohave Project requested shutdown plus the number of days which the pipeline delivered coal (all of which days shall be computed to the nearest tenth of a day), less the total delivered tons in the Month, and the denominator of which is 15,523 times the total days in the billing Month, or a factor the numerator of which is the tonnage delivered in the billing Month and the

denominator of which is 341,667.

(c) (1) If any Force Majeure event lasting for twelve consecutive days (288 hours) or less occurs on the Black Mesa Pipeline system, which wholly or partly prevents Black Mesa from transporting coal to the Mohave Project, and if less than 341,667 tons of coal are delivered to the Mohave Project during the Month in which such Force Majeure event occurs, Edison, acting on behalf of the Mohave Participants, shall meet with Black Mesa to review on a case-by-case basis the circumstances causing such Force Majeure, the efforts made by Black Mesa to correct the situation and to restore pipeline availability, and the effects of such Force Majeure upon the operations of the Mohave Project, including the requirement of the Mohave Participants to maintain a minimum coal stockpile at the Mohave Project. If Edison determines by such review that Black Mesa undertook all action possible and practicable to restore the pipeline to service in the shortest time possible, then no reductions to the monthly demand charge payment shall be made for the time the pipeline was unavailable as a result of such Force Majeure event.

(2) In the event a Force Majeure event which wholly or partly prevents Black Mesa from transporting coal to the Mohave Project extends beyond twelve days (288 hours), or if the review described in Section 4 (c)(1) above determines adjustments should be made; and if less than 341,667 tons of coal are delivered to the Mohave Project during the Month in which such

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Force Majeure took place, the monthly demand charge payment including certain adjustments shall be reduced in accordance with the examples attached to this Amended Agreement as Exhibit C by multiplying said payment by the larger of a factor the numerator of which is the product of 15,523 and the sum of the total number of days in the Month less the number of Black Mesa Force Majeure days plus the number of days of Mohave Project requested shutdown plus the number of days which the pipeline delivered coal (all of which days shall be computed to the nearest tenth of a day), less the total delivered tons in the Month, and the denominator of which is 15,523 times the total days in the Month, or a factor the numerator of which is the tonnage delivered in the Month and the denominator of which is 341,667.

4.5 It is agreed that all costs of flushing water, inhibitors, and expendable pump parts incurred by Black Mesa in pumping said flushing water from the date hereof are to be the responsibility of Black Mesa, Peabody, and/or the Mohave Participants, whichever was responsible for creating the need to pump flushing water. The determination of the party or parties responsible shall be initially made by Black Mesa and will be subject to approval by Peabody and Edison, on behalf of the Mohave Participants. After approval, Black Mesa will render appropriate monthly billings to the party or parties responsible who will reimburse Black Mesa for the actual recorded cost of flushing water (which is estimated to be $0.000634 per gallon for 1975), provided

that said rate may be increased or decreased by mutual consent of Peabody, Black Mesa, and Edison, acting on behalf of the Mohave Participants, to cover increases or decreases in actual recorded cost to Black Mesa.

Section 5. ADJUSTMENT OF TONNAGE FOR MOISTURE

5.1 The commodity charges per ton are based upon coal having an average "as received" moisture content of 10.74%. In order to determine the number of tons transported by Black Mesa during the Month, an adjustment shall be made at the conclusion of each Month for variations in said average "as received" moisture content during said Month, and shall be calculated according to the following formula:

$$\text{Number of tons delivered by Peabody onto conveyor during Month} \times \frac{100 - \text{Average "as received" moisture content of coal delivered by Peabody onto conveyor during Month}}{100 - 10.74\%} = \text{Number of tons transported during Month adjusted to an "as received" moisture content of 10.74\%}$$

All adjustments for moisture content shall be based on the weighted analysis for coal for the Month for which such adjustment is being made.

Section 6. OPERATION OF THE PIPELINE

6.1 Black Mesa agrees that any tariff filed for the transportation of coal hereunder shall, to the extent permitted by law, conform to the provisions of this Amended Agreement, and that it will use its best efforts to defend any such tariff. Peabody agrees that it will not contest any such tariff which conforms to the provisions of the Amended Agreement, but it shall have the right to

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contest any such tariff which does not in any way conform to the terms of this Amended Agreement. Black Mesa agrees that if it is required to operate the Pipeline as a common carrier it will at all times provide adequate facilities to perform its obligations under this Amended Agreement without interruption as well as any service it is required to perform as a common carrier for others.

Section 7. BILLING

7.1 Black Mesa shall, on or before the tenth (10th) day of each calendar month, submit an invoice to Peabody (or Edison if Peabody shall so direct) for charges as outlined in Section 4 and Section 19 hereunder during the previous billing month, which invoice Peabody shall pay, or cause to be paid by Edison, within ten (10) days after receipt thereof. If a price adjustment is in process under Section 4.3, invoicing shall be made on a tentative basis, and an appropriate adjustment shall be made as soon as the price adjustment is determined.

Section 8. WEIGHING AND SAMPLING

8.1 The weight and quality of the coal transported hereunder shall be determined as specified in Exhibits I and J of the agreement which is attached hereto as Exhibit A.

Section 9. INDEMNIFICATION AND INSURANCE

9.1 Black Mesa agrees to indemnify and hold Peabody harmless against any and all demands and claims arising from infringement of patents and/or the unlawful use of rights of others in connection with Black Mesa's preparation and/or the transportation and delivery of coal hereunder

(but not including any such demands or claims arising out of the handling and/or utilization of the coal after it is delivered hereunder by Black Mesa), and Black Mesa will, at its own cost and expense, defend any and all suits which may be brought against Peabody on account of such infringements or alleged infringements and/or such unlawful use or alleged unlawful use.

9.2 Black Mesa shall obtain and maintain public liability insurance of the kind or kinds and in the amount or amounts as are reasonable. Upon request of Peabody, Black Mesa shall furnish Peabody satisfactory evidence of such insurance.

Section 10. FORCE MAJEURE

10.1 If, because of Force Majeure, either party is unable to carry out its obligations under this Amended Agreement, and if such party promptly gives to the other party written notice of such Force Majeure, then the obligations of the party giving such notice shall be suspended, except for the payment of money due for deliveries theretofore made and except for payments as specified in Section 4.4 herein during such Force Majeure, provided the effect of such Force Majeure is eliminated insofar as practicable with all reasonable dispatch. Any deficiencies in the transportation of coal under this Amended Ageeement which are caused by Force Majeure shall be made up by Black Mesa as soon as practicable after the termination of the emergency caused by such Force Majeure to the extent requested by Peabody and to the extent

permitted by the capacity of the Pipeline.

The term "Force Majeure" as used herein shall mean any causes beyond the control and without fault or negligence of the party affected thereby, including, but not restricted to, acts of God, acts of the public enemy, insurrections, riots, labor disputes, labor or material shortages, fires, explosions, floods, breakdowns of or damage to plants, equipment, or facilities, interruptions to transportation, embargoes, orders or acts of civil or military authority, and other causes of a similar nature which wholly or partly prevent the mining and/or delivering of coal by Peabody, the preparation and/or transportation and delivery of the coal by Black Mesa, or the accepting and/or utilizing of the coal by the Mohave Project. It is understood and agreed that settlement of labor disputes shall be entirely within the discretion of the party having the difficulty, and the above requirement that Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes or lockouts by acceding to the demands of the opposing party where such course is inadvisable in the discretion of the party having the difficulty.

Section 11. TERMINATION RIGHTS

11.1 If the Pipeline should be or become incapable of operating at its designed rate by reason of a failure in Black Mesa's design or operating technology, Peabody may, if adversely affected by said failure, in addition to any other legal remedies it may have, terminate this Amended Agreement (except as provided in Section 11.2 herein) by

giving Black Mesa at least ninety (90) days advance notice, provided that such termination shall not become effective if Black Mesa, before the date thereof, has made such changes in the Pipeline's design or operating technology so as to make said Pipeline capable of operating at said rate. In the event of a termination of this Amended Agreement pursuant to this Section 11.1, Peabody shall have no further obligation under this Amended Agreement (except as provided in Section 11.2 herein), except the payment of any sums already due, and Peabody, in addition to any other rights it may have under this Amended Agreement, shall have the option to purchase said Pipeline from Black Mesa upon payment to Black Mesa of an amount equal to 1/35 of the original capital cost of the Pipeline system multiplied by the number of years remaining in the term of this Amended Agreement.

11.2 If this Amended Agreement is terminated under Section 11.1 or if Peabody exercises its option to purchase said Pipeline under provisions of Section 11.1; the obligations of Peabody under this Amended Agreement with respect to the storage facilities shall continue in all respects.

Section 12. SUCCESSORS AND ASSIGNS

12.1 This Amended Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns, but this Amended Agreement may not be assigned by Peabody or Black Mesa without the written consent of the other party, except as follows:

(a) As an assignment by Peabody to the Mohave Participants and/or any or all of the participants with Edison in said Mohave Project;

(b) As an assignment to a successor to all or substantially all of the property and assets of any party hereto, either by purchase, merger, consolidation, or otherwise.

Section 13. NOTICES

13.1 Until a different address is given, in writing, to the other party by the party entitled to receive notice, notices under this Amended Agreement shall be in writing, addressed if directed to Peabody to:

Peabody Coal Company
301 North Memorial Drive
St. Louis, Missouri 63102

and if directed to Black Mesa to:

Black Mesa Pipeline, Inc.
610 South Main Street
Los Angeles, California 90014

and if directed to the Mohave Participants to:

Southern California Edison Company
P. O. Box 800
2244 Walnut Grove Avenue
Rosemead, California 91770

Section 14. SECTION HEADINGS

14.1 Section headings are inserted for the convenience of the parties only and shall not be construed as limiting in any way the provisions thereof.

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Section 15. GOVERNING LAW

15.1 The terms and provisions of this Amended Agreement shall be interpreted and construed in accordance with the laws of Arizona.

Section 16. ARBITRATION

16.1 In the event the parties should be unable to reach agreement with respect to a matter herein specified to be established or determined by agreement of the parties or by arbitration, either party may call for submission of such matter to arbitration in the manner herein set forth. The party calling for arbitration shall give notice to the other party, setting forth in such notice in adequate detail the issues to be arbitrated, and within ten (10) days from receipt of such notice to the other party may by notice to the first party set forth in adequate detail additional related issues to be arbitrated.

Within twenty (20) days from its notice calling for the arbitration, the first party shall appoint a person to serve as one arbitrator with notice to the other party of such appointment, and within fifteen (15) days after receipt of notice of appointment of the first arbitrator the other party shall appoint a person to serve as a second arbitrator, with notice to the first party of such appointment. The two persons so appointed shall then agree upon and secure a third arbitrator. If the third arbitrator should not be secured within fifteen (15) days from the appointment of the second arbitrator, or if the second arbitrator should not be appointed within fifteen

(15) days from the appointment of the first, either party with notice to the other party may call for such appointment or appointments upon American Arbitration Association (or upon a similar organization if American Arbitration Association should not at the time exist). Regardless of the manner of his selection, the third arbitrator shall be qualified with respect to the subject matter out of which the matter to be arbitrated arises.

The arbitrators so appointed shall hear evidence submitted by the respective parties and may call for additional information, which additional relevant information the party called upon shall furnish to the extent feasible. A decision or determination signed by a majority of the arbitrators shall be conclusive with respect to the issues submitted and shall be binding on the parties.

Each party shall bear the fee and personal expenses of the arbitrator appointed by or for it, together with the fees and expenses of its counsel and of its own witnesses, and all other costs and expenses of the arbitration shall be borne in equal parts by the parties, unless the decision of the arbitrators shall specify a different apportionment of any or all of such costs and expenses.

Section 17. TERM

17.1 This Amended Agreement shall be in effect from its Effective Date until the thirty-first (31st) day of December 2005, or until any extended date which may be agreed upon pursuant to Section 22.

Section 18. RENEGOTIATION FOR INEQUITIES AND HARDSHIPS

18.1 It is agreed that if at any time either Peabody (acting for itself or as instructed by Edison on behalf of the Mohave Participants) or Black Mesa shall be of the opinion that, due to any significant change in circumstances, compliance with any portion of this Amended Agreement (except Section 19 hereof), despite the price revisions and adjustments provided for by other provisions of this Amended Agreement, would produce a serious inequity or subject such Participant to financial hardship, it may cause written notice to be given to the other Participants to review and discuss the effects of such change of circumstances, and within 30 days of such notice, the Participants shall meet to consider in good-faith negotiations how to deal with such inequities or hardship in a manner which is fair for all Participants in the light of all changes and circumstances occurring since the last previous adjustment made pursuant hereto and place promptly in effect all agreed upon changes. Disagreements arising out of this Section 18.1 are not to be subject to arbitration and this Amended Agreement shall remain in effect unless and until agreement on changes is reached pursuant to this Section 18.1.

Section 19. STORAGE FACILITIES

19.1 It is agreed, if Edison on behalf of the Mohave Participants requests by written notice to proceed promptly, that Black Mesa provide additional

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storage facilities at Terminal Point (Mohave Project), provided said notice is received on or before January 1, 1978, that:

(a) Black Mesa will cause to be constructed through Edison, provided that appropriate financing within the parameters specified in (d) below can be arranged, at Terminal Point (Mohave Project) on land leased from Mohave Participants for the nominal rental fee of $1 per year for the remaining term of this Amended Agreement and will own such storage facilities provided that maximum expenditures, including all startup costs and interest during construction (calculated at a rate equal to the effective loan rate in the applicable financing), do not exceed $17,000,000 for Black Mesa.

(b) Black Mesa will make arrangements with Edison for Edison to provide on behalf of the Mohave Participants all design, engineering, inspection, and other appropriate supervisory personnel necessary for construction of storage facilities and Black Mesa shall reimburse Edison accordingly.

(c) Edison shall assume on behalf of the Mohave Participants operation and maintenance of storage facilities and all expenses associated therewith throughout the remaining terms of this Amended Agreement commencing with the date that Black Mesa and Edison, acting on behalf of the Mohave Participants, agree that storage facilities are ready for operation, provided that neither party shall arbitrarily withhold such agreement.

(d) Peabody will pay (or cause Edison to pay on behalf of the Mohave Participants) to Black Mesa a storage-related charge which shall be a certain fixed amount each month of $13.43 per $1,000 (or fraction thereof) of the investment in storage facilities. Said charge shall be increased or decreased at the rate of $0.42 per month per $1,000 for each change in the interest rate, at which the investment is financed, of one percent, or fraction thereof, above or below ten percent, provided said interest rate does not decrease below six percent or increase above twelve percent. Said payments shall be payable, beginning with the date as established in this Section 19.1(c) herein, continuously for the remaining term of this Amended Agreement, or for the term of the financing for these storage facilities, whichever is longer, and shall not be subject to Force Majeure as provided in Section 10 and shall not otherwise in any way be reduced because of Force Majeure.

(e) Peabody will reimburse (or cause Edison to reimburse on behalf of the Mohave Participants) Black Mesa annually for all actual ad valorem taxes, special assessments and/or taxes levied by governmental bodies, and insurance premiums paid by Black Mesa because of owning said storage facilities.

(f) The costs of all such activities on behalf of the Mohave Participants shall be shared by them in proportion to their interests in the Mohave Project.

(g) Any storage-related charge to be paid by

Peabody to Black Mesa for providing any additional storage-related facilities at Terminal Point shall be payable in accordance with this Section 19, and shall be in addition to the pipeline-related charge set forth in Section 4 hereof.

Section 20. CHANGES OF LAWS AND REGULATIONS

20.1 It is agreed that Peabody will reimburse (or cause Edison to reimburse on behalf of the Mohave Participants) Black Mesa for any increased costs arising with respect to the Mohave Project from applicable changes in laws or regulations enacted or implemented by any governmental agency or Indian Tribe on or after the Effective Date. It is agreed that such reimbursements shall be made only from the point in time it is collectible and payments are made and that Peabody at request of Mohave Participants shall undertake to resist and litigate any exactions deemed by them to be of questionable validity. The costs of all such activities on behalf of the Mohave Participants shall be shared by them in proportion to their interests in the Mohave Project.

Section 21. THIRD PARTY BENEFICIARIES

21.1 The parties hereto recognize that the coal being transported under the provisions hereof will be delivered by Peabody for the benefit of the Mohave Participants as defined herein and that the said Mohave Participants are therefore recognized by both parties as Third Party Beneficiaries of the provisions hereof and are therefore accorded the right to enforce those

provisions hereof which are manifestly for their benefit and to initiate, and/or participate in any arbitration proceedings as their interest may appear.

Section 22. EXTENSION OF CONTRACT TERM

22.1 Peabody and the Mohave Participants are negotiating the extension of their Coal Supply Agreement beyond the original 35-year term. In the event such term extension makes desirable the extension of the term of this Amended Agreement, Black Mesa agrees to negotiate in good faith for such extension based upon financial and physical conditions then current.

IN WITNESS WHEREOF, this Amended Coal Slurry Pipeline Agreement is executed by the undersigned in their respective names by their respective Officers thereunto duly authorized.

PEABODY COAL COMPANY

By Marvin O. Young
Vice President

Date January 26, 1976

Attest:
Assistant Secretary

BLACK MESA PIPELINE, INC.

By Lynn K. Smith
President

Date January 27, 1976

Attest: Arthur M. Cole
ASSISTANT Secretary

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CONSENTED TO:

SOUTHERN CALIFORNIA EDISON COMPANY

By W. H. Seaman
Vice President

Date January 27, 1976

DEPARTMENT OF WATER AND POWER
OF THE CITY OF LOS ANGELES
BY
BOARD OF WATER AND POWER COMMISSIONERS
OF THE CITY OF LOS ANGELES

By Leon D. Weiman
General Manager & Chief Engineer

and Frank Endo
ASSISTANT Secretary

Date May 25, 1976

AUTHORIZED BY RES. 207 FEB 26 1976

APPROVED AS TO FORM AND LEGALITY.
BURT PINES, CITY ATTORNEY.

JAN 30 1976

By Ralph Guy Wesson
RALPH GUY WESSON
Assistant City Attorney

NEVADA POWER COMPANY

By R. L. Ramm
President

Date May 26, 1976

SALT RIVER PROJECT AGRICULTURAL
IMPROVEMENT AND POWER DISTRICT

By Karl H. Rebel
President

Date 2-25-76

Attest and Countersign Don E. Smith
Ass't Secretary

EXHIBIT A

TO

AMENDED COAL SLURRY PIPELINE AGREEMENT

DATED

MAY 26, 1976

Exhibit A is the Amended Mohave Project Coal Supply Agreement dated May 26, 1976.

It is omitted as an Exhibit to this Coal Slurry Pipeline Agreement.

SCHEDULE OF EXHIBITS TO
AMENDED COAL SLURRY PIPELINE AGREEMENT

EXHIBIT A	-	Amended Mohave Project Coal Supply Agreement
EXHIBIT B	-	Basis for Minimum Payment Due to Edison Force Majeure
EXHIBIT C	-	Key to Sample Billings
EXHIBIT D	-	Sample of Proration in Billing Month in Which Amended Agreement is First Effective

EXHIBIT B

TO

AMENDED COAL SLURRY PIPELINE AGREEMENT

BASIS FOR MINIMUM PAYMENT

DUE TO EDISON FORCE MAJEURE

1. Costs other than capital and profit:

Material	33,627
Labor	95,898
Taxes & Insurance	46,833
Overhead	50,769
	$227,127

To the above total will be added the adjustments from Section 4.3 which include electricity, material labor, taxes and insurance, and overhead.

2. For the basis of prorating any tonnages or payments, the following tonnages shall be used:

One Unit 225,000 Tons/Month (7,500 T/D x 30 Day/Month)
Two Unit 341,667 Tons/Month (11,388.9 T/D x 30 Day/Month)

3. For the basis of calculating minimum payments only, fractional days will be rounded to the nearest full day.

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EXHIBIT "C"

AMENDED
COAL SLURRY PIPELINE AGREEMENT
KEY TO SAMPLE BILLINGS

Legend:

	Jan.	
#1	[illegible]	Denotes sample month
#2	25	Denotes 25 operating days for Mohave #1 unit
		Denotes 25 non-operating days for Mohave #2 unit

SAMPLE NO.		UNIT OPERATING CONDITIONS Previous Month	UNIT OPERATING CONDITIONS Current Month	REMARKS
1.	#1	Feb. [illegible]	Mar. [illegible] 5	No F. M. adjustments
	#2	[illegible]	[illegible]	
2.	#1	Mar. [illegible] 5	April 30	Adjust for 1 unit F. M. - 5 days on previous month & 30 days on current month
	#2	[illegible]	[illegible] 5	
3.	#1	April 30	May 31	Adjust for 2 unit F. M. - 5 days on previous month & 31 days on current month
	#2	[illegible] 5	31	
4.	#1	May 31	June 30	Adjust for 2 unit F. M. - 31 days on previous month & 30 days on current month
	#2	31	30	
5.	#1	July 31	Aug. 31	F. M. Minimum charge expires. Bill storage only
	#2	31	31	
6.	#1	Aug. 31	Sept. 20 [illegible] 5	Adjust for 2 unit F. M. - 15 days, and for 1 unit F. M. 5 days
	#2	31	15 [illegible]	
7.	#1	Oct. [illegible] 15	Nov. 15 [illegible]	Adjust for 1 unit F. M. - 15 days for previous month & 15 days for current month (723 hours continuous F. M.)
	#2	[illegible]	[illegible]	

EXHIBIT "C"

(Continued)

AMPLE NO.	UNIT OPERATING CONDITIONS	Previous Month	Current Month	REMARKS
8.	#1	Oct.	Nov.	No F.M. Adjustments - 30 outage days not consecutive
	#2	11	10	
9.	#1	Oct.	Nov.	No F.M. adjustments - 30 outage days not on same unit
	#2		15	
10.	#1	Oct.	Nov.	Payback of prepaid tons
	#2	31	30	
11.	#1	Oct.	Nov.	Adjust for 14 days Black Mesa F.M. current month
	#2	31	30	
	BMPL		14	
12.	#1	Oct.	Nov.	Adjust for 10 days Peabody F.M. current month
	#2	31	30	
	PCC		10	
13.	#1	Sept.	Oct.	Adjust for 12 days Peabody F.M. and 31 day 1 unit F.M.
	#2	30	31	
	PCC	30	31	
			12	
14.	#1	Sept.	Oct.	Adjust for 20 days Black Mesa F.M. and 31 day 1 unit F.M.
	#2	30	31	
	BMPL		20	

EXHIBIT "C"

(Continued)

SAMPLE NO.		UNIT OPERATING CONDITIONS Previous Month	Current Month		REMARKS
		Oct.	Nov.		
15.	#1	31	0		15 days Black Mesa F.M. followed by 15 days Peabody F.M. - no tons delivered - no payments
	#2	31	30		
	BMPL	31	15	15	
	PCC	31	15	15	
		Oct.	Nov.		
16.	#1	31	30		15 days Black Mesa F.M. and 15 days Peabody F.M. resulting in 20 days pipeline outage due to F.M.
	#2	31	30		
	BMPL	31	15	15	
	PCC	31	5	15	10
		Oct.	Nov.		
17.	#1	31	22	8	22 days Edison 2 unit F.M. concurrent with 25 days Peabody F.M. resulting in minimum payment
	#2	31	22	8	
	BMPL	31	30		
	PCC	31	5	25	

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BLACK MESA PIPELINE BILLING DETAIL SAMPLE NO. 1
PAGE 1 OF 2

BILLING PERIOD: 0800 HOURS 2/26/76 TO 0800 HOURS 3/29/76

OPERATING CONDITIONS - CURRENT MONTH (31 DAYS TOTAL):
FORCE MAJEURE - BLACK MESA - 0 DAYS (THRU)
- PEABODY - 0 DAYS (THRU)
- EDISON: UNIT 1 - 0 DAYS (THRU)
- UNIT 2 - 0 DAYS (THRU)

OPERATING CONDITIONS - PREVIOUS MONTH (28 DAYS TOTAL):
FORCE MAJEURE - BLACK MESA - 0 DAYS (THRU)
- PEABODY - 0 DAYS (THRU)
- EDISON: UNIT 1 - 0 DAYS (THRU)
- UNIT 2 - 0 DAYS (THRU)

TONS DELIVERED CURRENT MONTH: 340,000 TONS

PIPELINE RELATED CHARGES:

I. DEMAND (SEC 4.1) $707,066.00

II. COMMODITY (SEC 4.1&4.2)
TONS BILLED 340,000 @ $0.215 $73,100.00
TONS PREPAID 0

III. ADJUSTMENTS (SEC 4.3):
A. ELECTRICITY (A(1)).
KAYENTA $ 45,400.00
GRAY MTN $ 22,700.00
WILLIAMS $ 22,700.00
SELIGMAN $ 22,700.00 $113,500.00

B. MATERIAL (A(2)):
1. DEMAND RELATED PORTION:

$33,627 X 189.50(1-76) / 180.10(1-75) - $33,627 = $1,755.10

2. COMMODITY RELATED PORTION:

$0.108 X 189.50(1-76) / 180.10(1-75) - $0.108 = $0.005637/TON

$0.005637/TON X 340,000 TONS = $1,916.58

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C. LABOR (A(3)):

$95,898 X 282.92(1-76) / 269.45(1-75) - $95,898 = $4,794.01

D. INSURANCE AND TAXES (A(4)):

1975 TAXES	$1,500,000.00	
LESS	$562,000.00	
DIFFERENCE	$938,000.00 /12 =	$78,166.67

E. OVERHEAD (A(5)):

$50,769 X 282.92(1-76) / 269.45(1-75) - $50,769 = $2,537.98

SUBTOTAL ITEM III ADJUSTMENTS $202,670.34

IV. FLUSH WATER (SEC 4.5):

$0.000634 X 13,907,060 GALLONS = $8,817.08

SUBTOTAL PIPELINE RELATED CHARGES $991,673.42

V. FORCE MAJEURE CREDIT (SEC 4.4)

CREDIT FOR CURRENT MONTH -	$0.00	
CREDIT FOR PREVIOUS MONTH -	$0.00	$0.00

TOTAL ADJUSTED PIPELINE RELATED CHARGES $991,673.42

STORAGE RELATED CHARGES (SEC 19.1):

INVESTMENT BASE - $ 7,000,000
MONTHLY CHARGE PER $1,000 = $ 13.43
ON 7.5% = $0.42 X (10- 7.5) = $ 1.05
(13.43 - $1.05) X 7,000 = $86,660.00

TOTAL INVOICE AMOUNT $1,078,333.42

BILLING PERIOD: 0800 HOURS 3/29/76 TO 0800 HOURS 4/28/76

OPERATING CONDITIONS - CURRENT MONTH (30 DAYS TOTAL):

FORCE MAJEURE -	BLACK MESA	- 0 DAYS (		THRU	)
-	PEABODY	- 0 DAYS (		THRU	)
-	EDISON: UNIT 1	- 30 DAYS (	3/29/76	THRU	4/28/76)
-	UNIT 2	- 0 DAYS (		THRU	)

OPERATING CONDITIONS - PREVIOUS MONTH (31 DAYS TOTAL):

FORCE MAJEURE -	BLACK MESA	- 0 DAYS (		THRU	)
-	PEABODY	- 0 DAYS (		THRU	)
-	EDISON: UNIT 1	- 5 DAYS (	3/24/76	THRU	3/29/76)
-	UNIT 2	- 0 DAYS (		THRU	)

TONS DELIVERED CURRENT MONTH: 230,000 TONS

PIPELINE RELATED CHARGES:

I. DEMAND (SEC 4.1) $707,086.00

II. COMMODITY (SEC 4.1&4.2)
TONS BILLED - 230,000 @ 50.215 $49,450.00
TONS PREPAID 0

III. ADJUSTMENTS (SEC 4.3):
A. ELECTRICITY (A(1)).
KAYENTA $ 38,800.00
GRAY MTN $ 19,400.00
WILLIAMS $ 19,400.00
SELIGMAN $ 19,400.00 $97,000.00

B. MATERIAL (A(2)):
1. DEMAND RELATED PORTION:

$$\$33{,}627 \times \frac{189.50(1\text{-}76)}{180.10(1\text{-}75)} - \$33.627 = \$1{,}755.10$$

2. COMMODITY RELATED PORTION:

$$\$0.108 \times \frac{189.50(1\text{-}76)}{180.10(1\text{-}75)} - \$0.108 = \$0.005637/\text{TON}$$

$0.005637/TON X 230,000 TONS = $1,296.51

C. LABOR (A(3)):

$95,898 X $\frac{282.92(1-76)}{269.45(1-75)}$ - $95,898 = $4,794.01

D. INSURANCE AND TAXES (A(4)):

1975 TAXES	$1,500,000.00	
LESS	$562,000.00	
DIFFERENCE	$938,000.00 /12 =	$78,166.67

E. OVERHEAD (A(5)):

$50,769 X $\frac{282.92(1-76)}{269.45(1-75)}$ - $50,769 = $2,537.98

SUBTOTAL ITEM III ADJUSTMENTS $185,550.27

IV. FLUSH WATER (SEC 4.5):

$0.000634 X 26,732,070 GALLONS = $16,948.13

SUBTOTAL PIPELINE RELATED CHARGES $959,034.40

V. FORCE MAJEURE CREDIT (SEC 4.4)
(PER ATTACHED DETAIL)

CREDIT FOR CURRENT MONTH -	$241,444.45CR	
CREDIT FOR PREVIOUS MONTH -	$38,944.19CR	$280,388.64CR

TOTAL ADJUSTED PIPELINE RELATED CHARGES $678,645.76

I. STORAGE RELATED CHARGES (SEC 19.1):

INVESTMENT BASE - $ 7,000,000
MONTHLY CHARGE PER $1,000 = $ 13.43
ON 7.5% = $0.42 X (10- 7.5) = $ 1.05
(13.43 - $1.05) X 7,000 = $86,660.00

TOTAL INVOICE AMOUNT $765,305.76

FORCE MAJEURE CREDIT CALCULATION FOR EDISON (SEC 4.4):

I. CURRENT MONTH (30 DAY MONTH):

225,000 / 30 DAYS X 30(1 UNIT OPERATING DAYS) = 225,000 TONS
341,667 / 30 DAYS X 0(2 UNIT OPERATING DAYS) = 0 TONS

AGGREGATE TOTAL = 225,000 TONS

FIXED MONTHLY DEMAND CHARGE $707,086.00

A. CALCULATED CREDIT:

$707,086 - ($707,086 X 225,000 TONS / 341,667) = $241,444.45

B. MAXIMUM CREDIT:

$707,086 - $227,127 = $479,959.00

APPLICABLE CREDIT (LESSER OF A AND B) $241,444.45

II. PREVIOUS MONTH (31 DAY MONTH):

225,000 / 31 DAYS X 5(1 UNIT OPERATING DAYS) = 36,290 TONS
341,667 / 31 DAYS X 26(2 UNIT OPERATING DAYS) = 286,559 TONS

AGGREGATE TOTAL = 322,849 TONS

FIXED MONTHLY DEMAND CHARGE $707,086.00

A. CALCULATED CREDIT:

$707,086 - ($707,086 X 322,849 TONS / 341,667) = $38,944.19

B. MAXIMUM CREDIT:

$707,086 - $227,127 = $479,959.00

APPLICABLE CREDIT (LESSER OF A AND B) $38,944.19
LESS PREVIOUSLY CREDITED $0.00

NET CREDIT $38,944.19

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BILLING PERIOD: 0800 HOURS 4/28/76 TO 0800 HOURS 5/29/76

OPERATING CONDITIONS - CURRENT MONTH (31 DAYS TOTAL):
FORCE MAJEURE - BLACK MESA - 0 DAYS (THRU)
- PEABODY - 0 DAYS (THRU)
- EDISON: UNIT 1 - 31 DAYS (4/28/76 THRU 5/29/76)
- UNIT 2 - 31 DAYS (4/28/76 THRU 5/29/76)

OPERATING CONDITIONS - PREVIOUS MONTH (30 DAYS TOTAL):
FORCE MAJEURE - BLACK MESA - 0 DAYS (THRU)
- PEABODY - 0 DAYS (THRU)
- EDISON: UNIT 1 - 30 DAYS (3/29/76 THRU 4/28/76)
- UNIT 2 - 5 DAYS (4/24/76 THRU 4/28/76)

TONS DELIVERED CURRENT MONTH: 0 TONS

PIPELINE RELATED CHARGES:

I. DEMAND (SEC 4.1) $707,086.00

II. COMMODITY (SEC 4.1&4.2)
TONS BILLED 0 @ $0.215 $0.00
TONS PREPAID 0

III. ADJUSTMENTS (SEC 4.3):
A. ELECTRICITY (A(1)).
KAYENTA $ 34,000.00
GRAY MTN $ 17,000.00
WILLIAMS $ 17,000.00
SELIGMAN $ 17,000.00 $85,000.00

B. MATERIAL (A(2)):
1. DEMAND RELATED PORTION:

$$\$33{,}627 \times \frac{189.50(1-76)}{180.10(1-75)} - \$33{,}627 = \$1{,}755.10$$

2. COMMODITY RELATED PORTION:

$$\$0.108 \times \frac{189.50(1-76)}{180.10(1-75)} - \$0.108 = \$0.005637/\text{TON}$$

$0.005637/TON X 0 TONS = $0.00

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C. LABOR (A(3)):

$95,898 X 282.92(1-76) / 269.45(1-75) - $95,898 = $4,794.01

D. INSURANCE AND TAXES (A(4)):

1975 TAXES	$1,500,000.00	
LESS	$562,000.00	
DIFFERENCE	$938,000.00 /12 =	$78,166.67

E. OVERHEAD (A(5)):

$50,769 X 282.92(1-76) / 269.45(1-75) - $50,769 = $2,537.98

SUBTOTAL ITEM III ADJUSTMENTS $172,253.76

IV. FLUSH WATER (SEC 4.5):

$0.000634 X 0 GALLONS = $0.00

SUBTOTAL PIPELINE RELATED CHARGES $879,339.76

V. FORCE MAJEURE CREDIT (SEC 4.4)
(PER ATTACHED DETAIL)

CREDIT FOR CURRENT MONTH -	$479,959.00CR	
CREDIT FOR PREVIOUS MONTH -	$77,606.93CR	$557,565.93CR

TOTAL ADJUSTED PIPELINE RELATED CHARGES $321,773.83

STORAGE RELATED CHARGES (SEC 19.1):

INVESTMENT BASE - $ 7,000,000
MONTHLY CHARGE PER $1,000 = $ 13.43
ON 7.5% = $0.42 X (10- 7.5) = $ 1.05
(13.43 - $1.05) X 7,000 = $86,660.00

TOTAL INVOICE AMOUNT $408,433.83

FORCE MAJEURE CREDIT CALCULATION FOR EDISON (SEC 4.4):

I. CURRENT MONTH (31 DAY MONTH):

225,000 / 31 DAYS X 0(1 UNIT OPERATING DAYS) = 0 TONS
341,667 / 31 DAYS X 0(2 UNIT OPERATING DAYS) = 0 TONS

AGGREGATE TOTAL = 0 TONS

FIXED MONTHLY DEMAND CHARGE $707,086.00

A. CALCULATED CREDIT:

$707,086 - ($707,086 X $\frac{0 \text{ TONS}}{341,667}$) = $707,086.00

B. MAXIMUM CREDIT:

$707,086 - $227,127 = $479,959.00

APPLICABLE CREDIT (LESSER OF A AND B) $479,959.00

II. PREVIOUS-MONTH (30 DAY MONTH):

225,000 / 30 DAYS X 25(1 UNIT OPERATING DAYS) = 187,500 TONS
341,667 / 30 DAYS X 0(2 UNIT OPERATING DAYS) = 0 TONS

AGGREGATE TOTAL = 187,500 TONS

FIXED MONTHLY DEMAND CHARGE $707,086.00

A. CALCULATED CREDIT:

$707,086 - ($707,086 X $\frac{187,500 \text{ TONS}}{341,667}$) = $319,051.38

B. MAXIMUM CREDIT:

$707,086 - $227,127 = $479,959.00

APPLICABLE CREDIT (LESSER OF A AND B) $319,051.38
LESS PREVIOUSLY CREDITED $241,444.45

NET CREDIT $77,606.93

001525

LING PERIOD: 0800 HOURS 5/29/76 TO 0800 HOURS 6/28/76

OPERATING CONDITIONS - CURRENT MONTH (30 DAYS TOTAL):
FORCE MAJEURE - BLACK MESA - 0 DAYS (THRU)
- PEABODY - 0 DAYS (THRU)
- EDISON: UNIT 1 - 30 DAYS (5/29/76 THRU 6/28/76)
- UNIT 2 - 30 DAYS (5/29/76 THRU 6/28/76)

OPERATING CONDITIONS - PREVIOUS MONTH (31 DAYS TOTAL):
FORCE MAJEURE - BLACK MESA - 0 DAYS (THRU)
- PEABODY - 0 DAYS (THRU)
- EDISON: UNIT 1 - 31 DAYS (4/28/76 THRU 5/29/76)
- UNIT 2 - 31 DAYS (4/28/76 THRU 5/29/76)

TONS DELIVERED CURRENT MONTH: 0 TONS

PIPELINE RELATED CHARGES:

I. DEMAND (SEC 4.1) $707,086.00

II. COMMODITY (SEC 4.1&4.2)
TONS BILLED 0 @ $0.215 $0.00
TONS PREPAID 0

III. ADJUSTMENTS (SEC 4.3):
A. ELECTRICITY (A(1)).
KAYENTA $ 34,000.00
GRAY MTN $ 17,000.00
WILLIAMS $ 17,000.00
SELIGMAN $ 17,000.00 $85,000.00

B. MATERIAL (A(2)):
1. DEMAND RELATED PORTION:

$$\$33.627 \times \frac{189.50(1-76)}{180.10(1-75)} - \$33.627 = \$1,755.10$$

2. COMMODITY RELATED PORTION:

$$\$0.108 \times \frac{189.50(1-76)}{180.10(1-75)} - \$0.108 = \$0.005637/\text{TON}$$

$0.005637/TON X 0 TONS = $0.00

C. LABOR (A(3)):

$95,898 X 282.92(1-76) / 269.45(1-75) - $95,898 = $4,794.01

D. INSURANCE AND TAXES (A(4)):

1975 TAXES	$1,500,000.00	
LESS	$562,000.00	
DIFFERENCE	$938,000.00 /12 =	$78,166.67

E. OVERHEAD (A(5)):

$50,769 X 282.92(1-76) / 269.45(1-75) - $50,769 = $2,537.98

SUBTOTAL ITEM III ADJUSTMENTS $172,253.76

IV. FLUSH WATER (SEC 4.5):

$0.000634 X 0 GALLONS = $0.00

SUBTOTAL PIPELINE RELATED CHARGES $879,339.76

V. FORCE MAJEURE CREDIT (SEC 4.4)
(PER ATTACHED DETAIL)

CREDIT FOR CURRENT MONTH -	$479,959.00CR	
CREDIT FOR PREVIOUS MONTH -	$0.00	$479,959.00CR

TOTAL ADJUSTED PIPELINE RELATED CHARGES $399,380.76

STORAGE RELATED CHARGES (SEC 19.1):

INVESTMENT BASE - $ 7,000,000
MONTHLY CHARGE PER $1,000 = $ 13.43
ON 7.5% = $0.42 X (10- 7.5) = $ 1.05
(13.43 - $1.05) X 7,000 = $86,660.00

TOTAL INVOICE AMOUNT $486,040.76

FORCE MAJEURE CREDIT CALCULATION FOR EDISON (SEC 4.4):

I. CURRENT MONTH (30 DAY MONTH):

225,000 / 30 DAYS X 0(1 UNIT OPERATING DAYS) =	0 TONS
341,667 / 30 DAYS X 0(2 UNIT OPERATING DAYS) =	0 TONS
AGGREGATE TOTAL =	0 TONS

FIXED MONTHLY DEMAND CHARGE $707,086.00

A. CALCULATED CREDIT:

$707,086 - ($707,086 X 0 TONS) / 341,667 = $707,086.00

B. MAXIMUM CREDIT:

$707,086 - $227,127 = $479,959.00

APPLICABLE CREDIT (LESSER OF A AND B) = $479,959.00

II. PREVIOUS MONTH (31 DAY MONTH):

225,000 / 31 DAYS X 0(1 UNIT OPERATING DAYS) =	0 TONS
341,667 / 31 DAYS X 0(2 UNIT OPERATING DAYS) =	0 TONS
AGGREGATE TOTAL =	0 TONS

FIXED MONTHLY DEMAND CHARGE $707,086.00

A. CALCULATED CREDIT:

$707,086 - ($707,086 X 0 TONS) / 341,667 = $707,086.00

B. MAXIMUM CREDIT:

$707,086 - $227,127 = $479,959.00

APPLICABLE CREDIT (LESSER OF A AND B)	$479,959.00
LESS PREVIOUSLY CREDITED	$479,959.00
NET CREDIT	$0.00

001528

BLACK MESA PIPELINE BILLING DETAIL SAMPLE NO. 5
PAGE 1 OF 3

BILLING PERIOD: 0800 HOURS 7/29/76 TO 0800 HOURS 8/29/76

OPERATING CONDITIONS - CURRENT MONTH (31 DAYS TOTAL):
FORCE MAJEURE - BLACK MESA - 0 DAYS (THRU)
- PEABODY - 0 DAYS (THRU)
- EDISON: UNIT 1 - 31 DAYS (7/29/76 THRU 8/29/76)
- UNIT 2 - 31 DAYS (7/29/76 THRU 8/29/76)

OPERATING CONDITIONS - PREVIOUS MONTH (31 DAYS TOTAL):
FORCE MAJEURE - BLACK MESA - 0 DAYS (THRU)
- PEABODY - 0 DAYS (THRU)
- EDISON: UNIT 1 - 31 DAYS (6/29/76 THRU 7/29/76)
- UNIT 2 - 31 DAYS (6/29/76 THRU 7/29/76)

TONS DELIVERED CURRENT MONTH: 0 TONS

PIPELINE RELATED CHARGES:

I. DEMAND (SEC 4.1) $707,086.00

II. COMMODITY (SEC 4.1&4.2)
TONS BILLED 0 @ $0.215 $0.00
TONS PREPAID 0

III. ADJUSTMENTS (SEC 4.3):
A. ELECTRICITY (A(1)).
KAYENTA $ 34,000.00
GRAY MTN $ 17,000.00
WILLIAMS $ 17,000.00
SELIGMAN $ 17,000.00 $85,000.00

B. MATERIAL (A(2)):
1. DEMAND RELATED PORTION:

$$\$33.627 \times \frac{189.50(1-76)}{180.10(1-75)} - \$33.627 = \$1,755.10$$

2. COMMODITY RELATED PORTION:

$$\$0.108 \times \frac{189.50(1-76)}{180.10(1-75)} - \$0.108 = \$0.005637/\text{TON}$$

$0.005637/TON X 0 TONS = $0.00

C. LABOR (A(3)):

$95,898 X 282.92(1-76) / 269.45(1-75) - $95,898 = $4,794.01

D. INSURANCE AND TAXES (A(4)):

1975 TAXES	$1,500,000.00	
LESS	$562,000.00	
DIFFERENCE	$938,000.00 /12 =	$78,166.67

E. OVERHEAD (A(5)):

$50,769 X 282.92(1-76) / 269.45(1-75) - $50,769 = $2,537.98

SUBTOTAL ITEM III ADJUSTMENTS $172,253.76

IV. FLUSH WATER (SEC 4.5):

$0.000634 X 0 GALLONS = $0.00

SUBTOTAL PIPELINE RELATED CHARGES $879,339.76

V. FORCE MAJEURE CREDIT (SEC 4.4)
(PER ATTACHED DETAIL)

CREDIT FOR CURRENT MONTH -	$879,339.76CR	
CREDIT FOR PREVIOUS MONTH -	$0.00	$879,339.76CR

TOTAL ADJUSTED PIPELINE RELATED CHARGES $0.00

STORAGE RELATED CHARGES (SEC 19.1):

INVESTMENT BASE - $ 7,000,000
MONTHLY CHARGE PER $1,000 = $ 13.43
ON 7.5% = $0.42 X (10- 7.5) = $ 1.05
(13.43 - $1.05) X 7,000 = $86,660.00

TOTAL INVOICE AMOUNT $86,660.00

FORCE MAJEURE CREDIT CALCULATION FOR EDISON (SEC 4.4):

I. CURRENT MONTH (31 DAY MONTH):

225,000 / 31 DAYS X	0(1 UNIT OPERATING DAYS) =	0 TONS
341,667 / 31 DAYS X	0(2 UNIT OPERATING DAYS) =	0 TONS
	AGGREGATE TOTAL =	0 TONS

FIXED MONTHLY DEMAND CHARGE $707,086.00

A. CALCULATED CREDIT:
NOTE: ITEM III ADJUSTMENTS INCLUDED AFTER 90 DAYS F. M.

$$\$879{,}339 - \left(\$879{,}339 \times \frac{0 \text{ TONS}}{341{,}667}\right) = \$879{,}339.76$$

B. MAXIMUM CREDIT:
NOTE: MINIMUM NOT APPLICABLE AFTER 90 DAYS F. M.

$879,339 - $0 = $879,339.76

APPLICABLE CREDIT (LESSER OF A AND B) $879,339.76

II. PREVIOUS MONTH (31 DAY MONTH):

225,000 / 31 DAYS X	0(1 UNIT OPERATING DAYS) =	0 TONS
341,667 / 31 DAYS X	0(2 UNIT OPERATING DAYS) =	0 TONS
	AGGREGATE TOTAL =	0 TONS

FIXED MONTHLY DEMAND CHARGE $707,086.00

A. CALCULATED CREDIT:

$$\$707{,}086 - \left(\$707{,}086 \times \frac{0 \text{ TONS}}{341{,}667}\right) = \$707{,}086.00$$

B. MAXIMUM CREDIT:

$707,086 - $227,127 = $479,959.00

APPLICABLE CREDIT (LESSER OF A AND B)	$479,959.00
LESS PREVIOUSLY CREDITED	$479,959.00
NET CREDIT	$0.00

001531

LING PERIOD: 0800 HOURS 8/29/76 TO 0800 HOURS 9/28/76

OPERATING CONDITIONS - CURRENT MONTH (30 DAYS TOTAL):
FORCE MAJEURE - BLACK MESA - 0 DAYS (THRU)
- PEABODY - 0 DAYS (THRU)
- EDISON: UNIT 1 - 20 DAYS (8/29/76 THRU 9/18/76)
- UNIT 2 - 15 DAYS (8/29/76 THRU 9/13/76)

OPERATING CONDITIONS - PREVIOUS MONTH (31 DAYS TOTAL):
FORCE MAJEURE - BLACK MESA - 0 DAYS (THRU)
- PEABODY - 0 DAYS (THRU)
- EDISON: UNIT 1 - 31 DAYS (7/29/76 THRU 8/29/76)
- UNIT 2 - 31 DAYS (7/29/76 THRU 8/29/76)

ONS DELIVERED CURRENT MONTH: 140,000 TONS

IPELINE RELATED CHARGES:

I. DEMAND (SEC 4.1) $707,086.00

II. COMMODITY (SEC 4.1&4.2)
TONS BILLED 140,000 @ $0.215 $30,100.00
TONS PREPAID 0

III. ADJUSTMENTS (SEC 4.3):
A. ELECTRICITY (A(1)).
KAYENTA $ 34,000.00
GRAY MTN $ 17,000.00
WILLIAMS $ 17,000.00
SELIGMAN $ 17,000.00 $85,000.00

B. MATERIAL (A(2)):
1. DEMAND RELATED PORTION:

$$\$33{,}627 \times \frac{189.50(1-76)}{180.10(1-75)} - \$33{,}627 = \$1{,}755.10$$

2. COMMODITY RELATED PORTION:

$$\$0.108 \times \frac{189.50(1-76)}{180.10(1-75)} - \$0.108 = \$0.005637/\text{TON}$$

$0.005637/TON X 140,000 TONS = $789.18

C. LABOR (A(3)):

$95,898 X 282.92(1.76) / 269.45(1.75) - $95,898 = $4,794.01

D. INSURANCE AND TAXES (A(4)):

1975 TAXES	$1,500,000.00	
LESS	$562,000.00	
DIFFERENCE	$938,000.00 /12 =	$78,166.67

E. OVERHEAD (A(5)):

$50,769 X 282.92(1.76) / 269.45(1.75) - $50,769 = $2,537.98

SUBTOTAL ITEM III ADJUSTMENTS $173,042.94

IV. FLUSH WATER (SEC 4.5):

$0.000634 X 37,225,260 GALLONS = $23,600.81

SUBTOTAL PIPELINE RELATED CHARGES $933,829.75

V. FORCE MAJEURE CREDIT (SEC 4.4)
(PER ATTACHED DETAIL)

CREDIT FOR CURRENT MONTH -	$393,783.74CR	
CREDIT FOR PREVIOUS MONTH -	$0.00	$393,783.74CR

TOTAL ADJUSTED PIPELINE RELATED CHARGES $540,046.01

STORAGE RELATED CHARGES (SEC 19.1):

INVESTMENT BASE - $ 7,000,000
MONTHLY CHARGE PER $1,000 = $ 13.43
ON 7.5% = $0.42 X (10- 7.5) = $ 1.05
(13.43 - $1.05) X 7,000 = $86,660.00

TOTAL INVOICE AMOUNT $626,706.01

D. FORCE MAJEURE CREDIT CALCULATION FOR EDISON (SEC 4.4):

I. CURRENT MONTH (30 DAY MONTH):

225,000 / 30 DAYS X 5(1 UNIT OPERATING DAYS) = 37,500 TONS
341,667 / 30 DAYS X 10(2 UNIT OPERATING DAYS) = 113,869 TONS

AGGREGATE TOTAL = 151,369 TONS

FIXED MONTHLY DEMAND CHARGE $707,086.00

A. CALCULATED CREDIT:

$707,086 - ($707,086 X 151,389 TONS) / 341,667 = $393,783.74

B. MAXIMUM CREDIT:

$707,086 - $227,127 = $479,959.00

APPLICABLE CREDIT (LESSER OF A AND B) $393,783.74

II. PREVIOUS MONTH (31 DAY MONTH):

225,000 / 31 DAYS X 0(1 UNIT OPERATING DAYS) = 0 TONS
341,667 / 31 DAYS X 0(2 UNIT OPERATING DAYS) = 0 TONS

AGGREGATE TOTAL = 0 TONS

FIXED MONTHLY DEMAND CHARGE $707,086.00

A. CALCULATED CREDIT:
NOTE: ITEM III ADJUSTMENTS INCLUDED AFTER 90 DAYS F. M.
$879,339 - ($879,339 X 0 TONS) / 341,667 = $879,339.76

B. MAXIMUM CREDIT:
NOTE: MINIMUM NOT APPLICABLE AFTER 90 DAYS F. M.
$879,339 - $0 = $879,339.76

APPLICABLE CREDIT (LESSER OF A AND B) $879,339.76
LESS PREVIOUSLY CREDITED $879,339.76

NET CREDIT $0.00

001534

BILLING PERIOD: 0800 HOURS 10/29/76 TO 0800 HOURS 11/28/76

OPERATING CONDITIONS - CURRENT MONTH (30 DAYS TOTAL):
FORCE MAJEURE - BLACK MESA - 0 DAYS (THRU)
- PEABODY - 0 DAYS (THRU)
- EDISON: UNIT 1 - 15 DAYS (10/29/76 THRU 11/13/76)
- UNIT 2 - 0 DAYS (THRU)

OPERATING CONDITIONS - PREVIOUS MONTH (31 DAYS TOTAL):
FORCE MAJEURE - BLACK MESA - 0 DAYS (THRU)
- PEABODY - 0 DAYS (THRU)
- EDISON: UNIT 1 - 15 DAYS (10/14/76 THRU 10/29/76)
- UNIT 2 - 0 DAYS (THRU)

TONS DELIVERED CURRENT MONTH: 285,000 TONS

PIPELINE RELATED CHARGES:

I. DEMAND (SEC 4.1) $707,086.00

II. COMMODITY (SEC 4.1&4.2)
TONS BILLED 285,000 @ $0.215 $61,275.00
TONS PREPAID 0

III. ADJUSTMENTS (SEC 4.3):
A. ELECTRICITY (A(1)).
KAYENTA $ 42,100.00
GRAY MTN $ 21,050.00
WILLIAMS $ 21,050.00
SELIGMAN $ 21,050.00 $105,250.00

B. MATERIAL (A(2)):
1. DEMAND RELATED PORTION:

$33.627 X $\frac{189.50(1-76)}{180.10(1-75)}$ - $33.627 = $1,755.10

2. COMMODITY RELATED PORTION:

$0.108 X $\frac{189.50(1-76)}{180.10(1-75)}$ - $0.108 = $0.005637/TON

$0.005637/TON X 285,000 TONS = $1,606.55

C. LABOR (A(3)):

$95,898 X 282.92(1-76) / 269.45(1-75) - $95,898 = $4,794.01

D. INSURANCE AND TAXES (A(4)):

1975 TAXES	$1,500,000.00	
LESS	$562,000.00	
DIFFERENCE	$938,000.00 /12 =	$78,166.67

E. OVERHEAD (A(5)):

$50,769 X 282.92(1-76) / 269.45(1-75) - $50,769 = $2,537.98

SUBTOTAL ITEM III ADJUSTMENTS $194,110.30

IV. FLUSH WATER (SEC 4.5):

$0.000634 X 20,319,565 GALLONS = $12,882.60

SUBTOTAL PIPELINE RELATED CHARGES $975,353.90

V. FORCE MAJEURE CREDIT (SEC 4.4)
(PER ATTACHED DETAIL)

CREDIT FOR CURRENT MONTH -	$120,723.26CR	
CREDIT FOR PREVIOUS MONTH -	$116,828.43CR	$237,551.69CR

TOTAL ADJUSTED PIPELINE RELATED CHARGES $737,802.21

- STORAGE RELATED CHARGES (SEC 19.1):

INVESTMENT BASE - $ 7,000,000
MONTHLY CHARGE PER $1,000 = $ 13.43
ON 7.5% = $0.42 X (10- 7.5) = $ 1.05
(13.43 - $1.05) X 7,000 = $86,660.00

- TOTAL INVOICE AMOUNT $824,462.21

D. FORCE MAJEURE CREDIT CALCULATION FOR EDISON (SEC 4.4):

I. CURRENT MONTH (30 DAY MONTH):

225,000 / 30 DAYS X 15(1 UNIT OPERATING DAYS) = 112,500 TONS
341,667 / 30 DAYS X 15(2 UNIT OPERATING DAYS) = 170,833 TONS

AGGREGATE TOTAL = 283,333 TONS

FIXED MONTHLY DEMAND CHARGE $707,086.00

A. CALCULATED CREDIT:

$707,086 - ($707,086 X 283,333 TONS) / 341,667 = $120,723.26

B. MAXIMUM CREDIT:

$707,086 - $227,127 = $479,959.00

APPLICABLE CREDIT (LESSER OF A AND B) $120,723.26

II. PREVIOUS MONTH (31 DAY MONTH):

225,000 / 31 DAYS X 15(1 UNIT OPERATING DAYS) = 108,871 TONS
341,667 / 31 DAYS X 16(2 UNIT OPERATING DAYS) = 176,344 TONS

AGGREGATE TOTAL = 285,215 TONS

FIXED MONTHLY DEMAND CHARGE $707,086.00

A. CALCULATED CREDIT:

$707,086 - ($707,086 X 285,215 TONS) / 341,667 = $116,828.43

B. MAXIMUM CREDIT:

$707,086 - $227,127 = $479,959.00

APPLICABLE CREDIT (LESSER OF A AND B) $116,828.43
LESS PREVIOUSLY CREDITED $0.00

ET CREDIT $116,828.43

001537

BILLING PERIOD: 0800 HOURS 10/29/76 TO 0800 HOURS 11/28/76

OPERATING CONDITIONS - CURRENT MONTH (30 DAYS TOTAL):
FORCE MAJEURE - BLACK MESA - 0 DAYS (THRU)
- PEABODY - 0 DAYS (THRU)
- EDISON: UNIT 1 - 0 DAYS (THRU)
- UNIT 2 - 0 DAYS (THRU)

OPERATING CONDITIONS - PREVIOUS MONTH (31 DAYS TOTAL):
FORCE MAJEURE - BLACK MESA - 0 DAYS (THRU)
- PEABODY - 0 DAYS (THRU)
- EDISON: UNIT 1 - 0 DAYS (THRU)
- UNIT 2 - 0 DAYS (THRU)

TONS DELIVERED CURRENT MONTH: 300,000 TONS

PIPELINE RELATED CHARGES:

I. DEMAND (SEC 4.1) $707,086.00

II. COMMODITY (SEC 4.1&4.2)
TONS BILLED 300,000 @ $0.215 $64,500.00
TONS PREPAID 0

III. ADJUSTMENTS (SEC 4.3):
A. ELECTRICITY (A(1)).
KAYENTA $ 43,000.00
GRAY MTN $ 21,500.00
WILLIAMS $ 21,500.00
SELIGMAN $ 21,500.00 $107,500.00

B. MATERIAL (A(2)):
1. DEMAND RELATED PORTION:

$$\$33{,}627 \times \frac{189.50(1-76)}{180.10(1-75)} - \$33{,}627 = \$1{,}755.10$$

2. COMMODITY RELATED PORTION:

$$\$0.108 \times \frac{189.50(1-76)}{180.10(1-75)} - \$0.108 = \$0.005637/\text{TON}$$

$0.005637/TON X 300,000 TONS = $1,691.10

C. LABOR (A(3)):

$95,898 X $\frac{282.92(1-76)}{269.45(1-75)}$ - $95,898 = $4,794.01

D. INSURANCE AND TAXES (A(4)):

1975 TAXES	$1,500,000.00	
LESS	$562,000.00	
DIFFERENCE	$938,000.00 /12 =	$78,166.67

E. OVERHEAD (A(5)):

$50,769 X $\frac{282.92(1-76)}{269.45(1-75)}$ - $50,769 = $2,537.98

SUBTOTAL ITEM III ADJUSTMENTS $196,444.86

IV. FLUSH WATER (SEC 4.5):

$0.000634 X 18,570,700 GALLONS = $11,773.82

SUBTOTAL PIPELINE RELATED CHARGES $979,804.68

V. FORCE MAJEURE CREDIT (SEC 4.4)

CREDIT FOR CURRENT MONTH -	$0.00	
CREDIT FOR PREVIOUS MONTH -	$0.00	$0.00

TOTAL ADJUSTED PIPELINE RELATED CHARGES $979,804.68

STORAGE RELATED CHARGES (SEC 19.1):

INVESTMENT BASE - $ 7,000,000
MONTHLY CHARGE PER $1,000 = $ 13.43
ON 7.5% = $0.42 X (10- 7.5) = $ 1.05
(13.43 - $1.05) X 7,000 = $86,660.00

TOTAL INVOICE AMOUNT $1,066,464.68

BILLING PERIOD: 0800 HOURS 10/29/76 TO 0800 HOURS 11/28/76

OPERATING CONDITIONS - CURRENT MONTH (30 DAYS TOTAL):
FORCE MAJEURE - BLACK MESA - 0 DAYS (THRU)
- PEABODY - 0 DAYS (THRU)
- EDISON: UNIT 1 - 0 DAYS (THRU)
- UNIT 2 - 0 DAYS (THRU)

OPERATING CONDITIONS - PREVIOUS MONTH (31 DAYS TOTAL):
FORCE MAJEURE - BLACK MESA - 0 DAYS (THRU)
- PEABODY - 0 DAYS (THRU)
- EDISON: UNIT 1 - 0 DAYS (THRU)
- UNIT 2 - 0 DAYS (THRU)

TONS DELIVERED CURRENT MONTH: 225,000 TONS

PIPELINE RELATED CHARGES:

I. DEMAND (SEC 4.1) $707,086.00

II. COMMODITY (SEC 4.1&4.2)
TONS BILLED 225,000 @ $0.215 $48,375.00
TONS PREPAID 0

III. ADJUSTMENTS (SEC 4.3):
A. ELECTRICITY (A(1)).
KAYENTA $ 38,500.00
GRAY MTN $ 19,250.00
WILLIAMS $ 19,250.00
SELIGMAN $ 19,250.00 $96,250.00

B. MATERIAL (A(2)):
1. DEMAND RELATED PORTION:

$$\$33{,}627 \times \frac{189.50(1-76)}{180.10(1-75)} - \$33{,}627 = \$1{,}755.10$$

2. COMMODITY RELATED PORTION:

$$\$0.108 \times \frac{189.50(1-76)}{180.10(1-75)} - \$0.108 = \$0.005637/\text{TON}$$

$0.005637/TON X 225,000 TONS = $1,268.33

C. LABOR (A(3)):

$95,898 X 282.92(1-76) / 269.45(1-75) - $95,898 = $4,794.01

D. INSURANCE AND TAXES (A(4)):

1975 TAXES	$1,500,000.00	
LESS	$562,000.00	
DIFFERENCE	$938,000.00 /12 =	$78,166.67

E. OVERHEAD (A(5)):

$50,769 X 282.92(1-76) / 269.45(1-75) - $50,769 = $2,537.98

SUBTOTAL ITEM III ADJUSTMENTS $184,772.08

IV. FLUSH WATER (SEC 4.5):

$0.000634 X 27,315,025 GALLONS = $17,317.73

SUBTOTAL PIPELINE RELATED CHARGES $957,550.81

V. FORCE MAJEURE CREDIT (SEC 4.4)

CREDIT FOR CURRENT MONTH -	$0.00	
CREDIT FOR PREVIOUS MONTH -	$0.00	$0.00

TOTAL ADJUSTED PIPELINE RELATED CHARGES $957,550.81

STORAGE RELATED CHARGES (SEC 19.1):

INVESTMENT BASE - $ 7,000,000
MONTHLY CHARGE PER $1,000 = $ 13.43
ON 7.5% = $0.42 X (10- 7.5) = $ 1.05
(13.43 - $1.05) X 7,000 = $86,660.00

TOTAL INVOICE AMOUNT $1,044,210.81

001541

BILLING PERIOD: 0800 HOURS 10/29/76 TO 0800 HOURS 11/28/76

OPERATING CONDITIONS - CURRENT MONTH (30 DAYS TOTAL):
FORCE MAJEURE - BLACK MESA - 0 DAYS (THRU)
- PEABODY - 0 DAYS (THRU)
- EDISON: UNIT 1 - 0 DAYS (THRU)
- UNIT 2 - 0 DAYS (THRU)

OPERATING CONDITIONS - PREVIOUS MONTH (31 DAYS TOTAL):
FORCE MAJEURE - BLACK MESA - 0 DAYS (THRU)
- PEABODY - 0 DAYS (THRU)
- EDISON: UNIT 1 - 0 DAYS (THRU)
- UNIT 2 - 0 DAYS (THRU)

ONS DELIVERED CURRENT MONTH: 400,000 TONS

IPELINE RELATED CHARGES:

I. DEMAND (SEC 4.1) $707,086.00

II. COMMODITY (SEC 4.1&4.2)
TONS BILLED 341,667 @ $0.215 $73,458.40
TONS PREPAID 58,333 @ N.C.

III. ADJUSTMENTS (SEC 4.3):
A. ELECTRICITY (A(1)).
KAYENTA $ 49,000.00
GRAY MTN $ 24,500.00
WILLIAMS $ 24,500.00
SELIGMAN $ 24,500.00 $122,500.00

B. MATERIAL (A(2)):
1. DEMAND RELATED PORTION:

$$\$33{,}627 \times \frac{189.50(1-76)}{180.10(1-75)} - \$33{,}627 = \$1{,}755.10$$

2. COMMODITY RELATED PORTION:

$$\$0.108 \times \frac{189.50(1-76)}{180.10(1-75)} - \$0.108 = \$0.005637/\text{TON}$$

$0.005637/TON X 341,667 TONS = $1,925.98

001542

C. LABOR (A(3)):

$$\$95{,}898 \times \frac{282.92(1-.76)}{269.45(1-.75)} - \$95{,}898 = \$4{,}794.01$$

D. INSURANCE AND TAXES (A(4)):

1975 TAXES	$1,500,000.00	
LESS	562,000.00	
DIFFERENCE	$938,000.00 /12 =	$78,166.67

E. OVERHEAD (A(5)):

$$\$50{,}769 \times \frac{282.92(1-.76)}{269.45(1-.75)} - \$50{,}769 = \$2{,}537.98$$

SUBTOTAL ITEM III ADJUSTMENTS $211,679.74

IV. FLUSH WATER (SEC 4.5):

$0.000634 X 6,911,600 GALLONS = $4,381.95

SUBTOTAL PIPELINE RELATED CHARGES $996,606.09

V. FORCE MAJEURE CREDIT (SEC 4.4)

CREDIT FOR CURRENT MONTH -	$0.00	
CREDIT FOR PREVIOUS MONTH -	$0.00	$0.00

TOTAL ADJUSTED PIPELINE RELATED CHARGES $996,606.09

STORAGE RELATED CHARGES (SEC 19.1):

INVESTMENT BASE - $ 7,000,000
MONTHLY CHARGE PER $1,000 = $ 13.43
ON 7.5% = $0.42 X (10 - 7.5) = $ 1.05
(13.43 - $1.05) X 7,000 = $86,660.00

TOTAL INVOICE AMOUNT $1,083,266.09

001543

BLACK MESA PIPELINE BILLING DETAIL SAMPLE NO. 11
PAGE 1 OF 3

LING PERIOD: 0800 HOURS 10/29/76 TO 0800 HOURS 11/28/76

OPERATING CONDITIONS - CURRENT MONTH (30 DAYS TOTAL):
FORCE MAJEURE - BLACK MESA - 14 DAYS (10/29/76 THRU 11/12/76)
- PEABODY - 0 DAYS (THRU)
- EDISON: UNIT 1 - 0 DAYS (THRU)
- UNIT 2 - 0 DAYS (THRU)

OPERATING CONDITIONS - PREVIOUS MONTH (31 DAYS TOTAL):
FORCE MAJEURE - BLACK MESA - 0 DAYS (THRU)
- PEABODY - 0 DAYS (THRU)
- EDISON: UNIT 1 - 0 DAYS (THRU)
- UNIT 2 - 0 DAYS (THRU)

ONS DELIVERED CURRENT MONTH: 250,000 TONS

IPELINE RELATED CHARGES:

I. DEMAND (SEC 4.1) $707,086.00

II. COMMODITY (SEC 4.1&4.2)
TONS BILLED 250,000 @ $0.215 $53,750.00
TONS PREPAID 0

III. ADJUSTMENTS (SEC 4.3):
A. ELECTRICITY (A(1)).
KAYENTA $ 40,000.00
GRAY MTN $ 20,000.00
WILLIAMS $ 20,000.00
SELIGMAN $ 20,000.00 $100,000.00

B. MATERIAL (A(2)):
1. DEMAND RELATED PORTION:

$33.627 X 189.50(1-76) / 180.10(1-75) - $33.627 = $1,755.10

2. COMMODITY RELATED PORTION:

$0.108 X 189.50(1-76) / 180.10(1-75) - $0.108 = $0.005637/TON

$0.005637/TON X 250,000 TONS = $1,409.25

001544

0590

C. LABOR (A(3)):

$$\$95,898 \times \frac{282.92(1-76)}{269.45(1-75)} - \$95,898 = \$4,794.01$$

D. INSURANCE AND TAXES (A(4)):

1975 TAXES	$1,500,000.00	
LESS	$562,000.00	
DIFFERENCE	$938,000.00 /12 =	$78,166.67

E. OVERHEAD (A(5)):

$$\$50,769 \times \frac{282.92(1-76)}{269.45(1-75)} - \$50,769 = \$2,537.98$$

SUBTOTAL ITEM III ADJUSTMENTS $188,663.01

IV. FLUSH WATER (SEC 4.5):

$0.000634 X 24,400,250 GALLONS = $15,469.76

SUBTOTAL PIPELINE RELATED CHARGES $964,968.77

V. FORCE MAJEURE CREDIT (SEC 4.4)
(PER ATTACHED DETAIL)

CREDIT FOR CURRENT MONTH -	$213,121.36CR	
CREDIT FOR PREVIOUS MONTH -	$0.00	$213,121.36CR

TOTAL ADJUSTED PIPELINE RELATED CHARGES $751,847.41

STORAGE RELATED CHARGES (SEC 19.1):

INVESTMENT BASE - $ 7,000,000
MONTHLY CHARGE PER $1,000 = $ 13.43
ON 7.5% = $0.42 X (10- 7.5) = $ 1.05
(13.43 - $1.05) X 7,000 = $86,660.00

TOTAL INVOICE AMOUNT $838,507.41

E. FORCE MAJEURE CALCULATION FOR BLACK MESA (SEC 4.4):

I. CURRENT MONTH (30 DAY MONTH):
DAYS BLACK MESA FORCE MAJEURE = 14.1
TONS DELIVERED = 250,000

A. AVAILABILITY FACTOR (MAX OF 1.0000):

$$\frac{15{,}523 \times (30.0 - 14.1 + 15.9) - 250{,}000}{15{,}523 \times 30.0} = .5232$$

B. TONS DELIVERED FACTOR (MAX OF 1.0000):

$$\frac{250{,}000}{341{,}667} = .7317$$

APPLICABLE FACTOR (GREATER OF A AND B): .7317

TOTAL ITEMS I AND III	$895,749.01
LESS ITEM IIIA	$100,000.00
LESS ITEM IIIB2	$1,409.25
TOTAL	$794,339.76

TOTAL CREDIT: $794,339.76 X (1 - .7317) = $213,121.36

II. PREVIOUS MONTH (31 DAY MONTH):
DAYS BLACK MESA FORCE MAJEURE = 0.0
TONS DELIVERED = 341,667

A. AVAILABILITY FACTOR (MAX OF 1.0000):

$$\frac{15{,}523 \times (31.0 - 0.0 + 31.0) - 341{,}667}{15{,}523 \times 31.0} = 1.0000$$

B. TONS DELIVERED FACTOR (MAX OF 1.0000):

$$\frac{341{,}667}{341{,}667} = 1.0000$$

APPLICABLE FACTOR (GREATER OF A AND B): 1.0000

TOTAL ITEMS I AND III	$910,015.79
LESS ITEM IIIA	$113,750.05
LESS ITEM IIIB2	$1,925.98
TOTAL	$794,339.76

TOTAL CREDIT: $794,339.76 X (1 - 1.0000) = $0.00

BILLING PERIOD: 0800 HOURS 10/29/76 TO 0800 HOURS 11/28/76

OPERATING CONDITIONS - CURRENT MONTH (30 DAYS TOTAL):
FORCE MAJEURE - BLACK MESA - 0 DAYS (THRU)
- PEABODY - 10 DAYS (10/29/76 THRU 11/8/76)
- EDISON: UNIT 1 - 0 DAYS (THRU)
- UNIT 2 - 0 DAYS (THRU)

OPERATING CONDITIONS - PREVIOUS MONTH (31 DAYS TOTAL):
FORCE MAJEURE - BLACK MESA - 0 DAYS (THRU)
- PEABODY - 0 DAYS (THRU)
- EDISON: UNIT 1 - 0 DAYS (THRU)
- UNIT 2 - 0 DAYS (THRU)

TONS DELIVERED CURRENT MONTH: 250,000 TONS

PIPELINE RELATED CHARGES:

I. DEMAND (SEC 4.1) $707,086.00

II. COMMODITY (SEC 4.1&4.2)
TONS BILLED 250,000 @ $0.215 $53,750.00
TONS PREPAID 0

III. ADJUSTMENTS (SEC 4.3):
A. ELECTRICITY (A(1)).
KAYENTA $ 40,000.00
GRAY MTN $ 20,000.00
WILLIAMS $ 20,000.00
SELIGMAN $ 20,000.00 $100,000.00

B. MATERIAL (A(2)):
1. DEMAND RELATED PORTION:

$33,627 X $\frac{189.50(1-76)}{180.10(1-75)}$ - $33,627 = $1,755.10

2. COMMODITY RELATED PORTION:

$0.108 X $\frac{189.50(1-76)}{180.10(1-75)}$ - $0.108 = $0.005637/TON

$0.005637/TON X 250,000 TONS = $1,409.25

001547

0593

C. LABOR (A(3)):

$95,898 X 282.92(1-.76) / 269.45(1-.75) - $95,898 = $4,794.01

D. INSURANCE AND TAXES (A(4)):

1975 TAXES	$1,500,000.00	
LESS	$562,000.00	
DIFFERENCE	$938,000.00 /12 =	$78,166.67

E. OVERHEAD (A(5)):

$50,769 X 282.92(1-.76) / 269.45(1-.75) - $50,769 = $2,537.98

SUBTOTAL ITEM III ADJUSTMENTS $188,663.01

IV. FLUSH WATER (SEC 4.5):

$0.000634 X 24,400,250 GALLONS = $15,469.76

SUBTOTAL PIPELINE RELATED CHARGES $964,968.77

V. FORCE MAJEURE CREDIT (SEC 4.4)
(PER ATTACHED DETAIL)

CREDIT FOR CURRENT MONTH -	$172,212.86CR	
CREDIT FOR PREVIOUS MONTH -	$0.00	$172,212.86CR

TOTAL ADJUSTED PIPELINE RELATED CHARGES $792,755.91

STORAGE RELATED CHARGES (SEC 19.1):

INVESTMENT BASE - $ 7,000,000
MONTHLY CHARGE PER $1,000 = $ 13.43
ON 7.5% = $0.42 X (10- 7.5) = $ 1.05
(13.43 - $1.05) X 7,000 = $86,660.00

TOTAL INVOICE AMOUNT $879,415.91

E. FORCE MAJEURE CALCULATION FOR PEABODY (SEC 4.4):

I. CURRENT MONTH (30 DAY MONTH):
DAYS PEABODY FORCE MAJEURE = 10.2
TONS DELIVERED = 250,000

A. AVAILABILITY FACTOR (MAX OF 1.0000):

$$\frac{15{,}523 \times (30.0 - 10.2 + 19.8) - 250{,}000}{15{,}523 \times 30.0} = .7832$$

B. TONS DELIVERED FACTOR (MAX OF 1.0000):

$$\frac{250{,}000}{341{,}667} = .7317$$

APPLICABLE FACTOR (GREATER OF A AND B): .7832

TOTAL ITEMS I AND III	$895,749.01
LESS ITEM IIIA	$100,000.00
LESS ITEM IIIB2	$1,409.25
TOTAL	$794,339.76

TOTAL CREDIT: $794,339.76 X (1 - .7832) = $172,212.86

BILLING PERIOD: 0800 HOURS 9/29/76 TO 0800 HOURS 10/29/76

OPERATING CONDITIONS - CURRENT MONTH (31 DAYS TOTAL):
FORCE MAJEURE - BLACK MESA - 0 DAYS (THRU)
- PEABODY - 12 DAYS (10/10/76 THRU 10/21/76)
- EDISON: UNIT 1 - 31 DAYS (9/29/76 THRU 10/29/76)
- UNIT 2 - 0 DAYS (THRU)

OPERATING CONDITIONS - PREVIOUS MONTH (30 DAYS TOTAL):
FORCE MAJEURE - BLACK MESA - 0 DAYS (THRU)
- PEABODY - 0 DAYS (THRU)
- EDISON: UNIT 1 - 0 DAYS (THRU)
- UNIT 2 - 0 DAYS (THRU)

TONS DELIVERED CURRENT MONTH: 291,840 TONS

PIPELINE RELATED CHARGES:

I. DEMAND (SEC 4.1) $707,086.00

II. COMMODITY (SEC 4.1&4.2)
TONS BILLED 291,840 @ $0.215 $62,745.60
TONS PREPAID 0

III. ADJUSTMENTS (SEC 4.3):
A. ELECTRICITY (A(1)).
KAYENTA $ 42,510.40
GRAY MTN $ 21,255.20
WILLIAMS $ 21,255.20
SELIGMAN $ 21,255.20 $106,276.00

B. MATERIAL (A(2)):
1. DEMAND RELATED PORTION:

$$\$33{,}627 \times \frac{189.50(1-76)}{180.10(1-75)} - \$33{,}627 = \$1{,}755.10$$

2. COMMODITY RELATED PORTION:

$$\$0.108 \times \frac{189.50(1-76)}{180.10(1-75)} - \$0.108 = \$0.005637/\text{TON}$$

$0.005637/TON X 291,840 TONS = $1,645.10

001550

0596

C. LABOR (A(3)):

$95,898 X $\frac{282.92(1.76)}{269.45(1-75)}$ - $95,898 = $4,794.01

D. INSURANCE AND TAXES (A(4)):

1975 TAXES	$1,500,000.00	
LESS	$562,000.00	
DIFFERENCE	$938,000.00 /12 =	$78,166.67

E. OVERHEAD (A(5)):

$50,769 X $\frac{282.92(1.76)}{269.45(1-75)}$ - $50,769 = $2,537.98

SUBTOTAL ITEM III ADJUSTMENTS $195,174.86

IV. FLUSH WATER (SEC 4.5):

$0.000634 X 19,522,083 GALLONS = $12,377.00

SUBTOTAL PIPELINE RELATED CHARGES $977,383.46

V. FORCE MAJEURE CREDIT (SEC 4.4)
(PER ATTACHED DETAIL)

CREDIT FOR CURRENT MONTH -	$115,814.74CR	
CREDIT FOR PREVIOUS MONTH -	$0.00	$115,814.74CR

TOTAL ADJUSTED PIPELINE RELATED CHARGES $861,568.72

STORAGE RELATED CHARGES (SEC 19.1):

INVESTMENT BASE - $ 7,000,000
MONTHLY CHARGE PER $1,000 = $ 13.43
ON 7.5% = $0.42 X (10- 7.5) = $ 1.05
(13.43 - $1.05) X 7,000 = $86,660.00

TOTAL INVOICE AMOUNT $948,228.72

D. FORCE MAJEURE CREDIT CALCULATION FOR EDISON (SEC 4.4):

I. CURRENT MONTH (31 DAY MONTH):

225,000 / 31 DAYS X 31(1 UNIT OPERATING DAYS) = 225,000 TONS
341,667 / 31 DAYS X 0(2 UNIT OPERATING DAYS) = 0 TONS

AGGREGATE TOTAL = 225,000 TONS

FIXED MONTHLY DEMAND CHARGE $707,086.00

A. CALCULATED CREDIT:

$707,086 - ($707,086 X 225,000 TONS) / 341,667 = $241,444.45

B. MAXIMUM CREDIT:

$707,086 - $227,127 = $479,959.00

APPLICABLE CREDIT (LESSER OF A AND B) $241,444.45

II. PREVIOUS MONTH (30 DAY MONTH):

225,000 / 30 DAYS X 0(1 UNIT OPERATING DAYS) = 0 TONS
341,667 / 30 DAYS X 30(2 UNIT OPERATING DAYS) = 341,667 TONS

AGGREGATE TOTAL = 341,667 TONS

FIXED MONTHLY DEMAND CHARGE $707,086.00

A. CALCULATED CREDIT:

$707,086 - ($707,086 X 341,667 TONS) / 341,667 = $0.00

B. MAXIMUM CREDIT:

$707,086 - $227,127 = $479,959.00

APPLICABLE CREDIT (LESSER OF A AND B) $0.00
LESS PREVIOUSLY CREDITED $0.00

NET CREDIT $0.00

E. FORCE MAJEURE CALCULATION FOR PEABODY (SEC 4.4):

I. CURRENT MONTH (31 DAY MONTH):
DAYS PEABODY FORCE MAJEURE = 12.0
TONS DELIVERED = 291,840

A. AVAILABILITY FACTOR (MAX OF 1.0000):

$$\frac{15{,}523 \times (31.0 - 12.0 + 19.0) \div 291{,}840}{15{,}523 \times 31.0} = .6193$$

B. TONS DELIVERED FACTOR (MAX OF 1.0000):

$$\frac{291{,}840}{341{,}667} = .8542$$

APPLICABLE FACTOR (GREATER OF A AND B): .8542

TOTAL ITEMS I AND III	$902,260.86
LESS ITEM IIIA	$106,276.00
LESS ITEM IIIB2	$1,645.10
TOTAL	$794,339.76

TOTAL CREDIT: $794,339.76 X (1 - .8542) = $115,814.74

BILLING PERIOD: 0800 HOURS 9/29/76 TO 0800 HOURS 10/29/76

OPERATING CONDITIONS - CURRENT MONTH (31 DAYS TOTAL):

FORCE MAJEURE - BLACK MESA	- 20 DAYS	(10/2/76	THRU	10/21/76)
- PEABODY	- 0 DAYS	(	THRU	)
- EDISON: UNIT 1	- 31 DAYS	(9/29/76	THRU	10/29/76)
- UNIT 2	- 0 DAYS	(	THRU	)

OPERATING CONDITIONS - PREVIOUS MONTH (30 DAYS TOTAL):

FORCE MAJEURE - BLACK MESA	- 0 DAYS	(	THRU	)
- PEABODY	- 0 DAYS	(	THRU	)
- EDISON: UNIT 1	- 0 DAYS	(	THRU	)
- UNIT 2	- 0 DAYS	(	THRU	)

TONS DELIVERED CURRENT MONTH: 168,960 TONS

PIPELINE RELATED CHARGES:

I. DEMAND (SEC 4.1) $707,086.00

II. COMMODITY (SEC 4.1&4.2)
TONS BILLED 168,960 @-$0.215 $36,326.40
TONS PREPAID 0

III. ADJUSTMENTS (SEC 4.3):
A. ELECTRICITY (A(1)).
KAYENTA $ 35,137.60
GRAY MTN $ 17,568.80
WILLIAMS $ 17,568.80
SELIGMAN $ 17,568.80 $87,844.00

B. MATERIAL (A(2)):
1. DEMAND RELATED PORTION:

$$\$33{,}627 \times \frac{189.50(1-76)}{180.10(1-75)} - \$33{,}627 = \$1{,}755.10$$

2. COMMODITY RELATED PORTION:

$$\$0.108 \times \frac{189.50(1-76)}{180.10(1-75)} - \$0.108 = \$0.005637/\text{TON}$$

$0.005637/TON X 168,960 TONS = $952.43

C. LABOR (A(3)):

$95,898 X 282.92(1-76) / 269.45(1-75) - $95,898 = $4,794.01

D. INSURANCE AND TAXES (A(4)):

1975 TAXES	$1,500,000.00	
LESS	$562,000.00	
DIFFERENCE	$938,000.00 /12 =	$78,166.67

E. OVERHEAD (A(5)):

$50,769 X 282.92(1-76) / 269.45(1-75) - $50,769 = $2,537.98

SUBTOTAL ITEM III ADJUSTMENTS $176,050.19

IV. FLUSH WATER (SEC 4.5):

$0.000634 X 33,648,785 GALLONS = $21,460.13

SUBTOTAL PIPELINE RELATED CHARGES $940,922.72

~~FORCE MAJEURE CREDIT (SEC 4.4)~~
(PER ATTACHED DETAIL)

CREDIT FOR CURRENT MONTH -	$241,444.45CR	
CREDIT FOR PREVIOUS MONTH -	$0.00	$241,444.45CR

TOTAL ADJUSTED PIPELINE RELATED CHARGES $699,478.27

STORAGE RELATED CHARGES (SEC 19.1):

INVESTMENT BASE - $ 7,000,000
MONTHLY CHARGE PER $1,000 = $ 13.43
ON 7.5% = $0.42 X (10- 7.5) = $ 1.05
(13.43 - $1.05) X 7,000 = $86,660.00

TOTAL INVOICE AMOUNT $786,138.27

D. FORCE MAJEURE CREDIT CALCULATION FOR EDISON (SEC 4.4):

I. CURRENT MONTH (31 DAY MONTH):

225,000 / 31 DAYS X 31(1 UNIT OPERATING DAYS) = 225,000 TONS
341,667 / 31 DAYS X 0(2 UNIT OPERATING DAYS) = 0 TONS
AGGREGATE TOTAL = 225,000 TONS

FIXED MONTHLY DEMAND CHARGE $707,086.00

A. CALCULATED CREDIT:

$707,086 - ($707,086 X 225,000 TONS / 341,667) = $241,444.45

B. MAXIMUM CREDIT:

$707,086 - $227,127 = $479,959.00

APPLICABLE CREDIT (LESSER OF A AND B) $241,444.45

II. PREVIOUS MONTH (30 DAY MONTH):

225,000 / 30 DAYS X 0(1 UNIT OPERATING DAYS) = 0 TONS
341,667 / 30 DAYS X 30(2 UNIT OPERATING DAYS) = 341,667 TONS
AGGREGATE TOTAL = 341,667 TONS

FIXED MONTHLY DEMAND CHARGE $707,086.00

A. CALCULATED CREDIT:

$707,086 - ($707,086 X 341,667 TONS / 341,667) = $0.00

B. MAXIMUM CREDIT:

$707,086 - $227,127 = $479,959.00

APPLICABLE CREDIT (LESSER OF A AND B) $0.00
LESS PREVIOUSLY CREDITED $0.00
NET CREDIT $0.00

E. FORCE MAJEURE CALCULATION FOR BLACK MESA (SEC 4.4):

I. CURRENT MONTH (31 DAY MONTH):
DAYS BLACK MESA FORCE MAJEURE = 20.0
TONS DELIVERED = 168,960

A. AVAILABILITY FACTOR (MAX OF 1.0000):

$$\frac{15{,}523 \times (31.0 - 20.0 + 11.0) - 168{,}960}{15{,}523 \times 31.0} = .3586$$

B. TONS DELIVERED FACTOR (MAX OF 1.0000):

$$\frac{168{,}960}{341{,}667} = .4945$$

APPLICABLE FACTOR (GREATER OF A AND B): .4945

TOTAL ITEMS I AND III	$683,136.19
LESS ITEM IIIA	$87,844.00
LESS ITEM IIIB2	$952.43
TOTAL	$794,339.76

TOTAL CREDIT: $794,339.76 X (1 - .4945) = $401,538.75

II. PREVIOUS MONTH (30 DAY MONTH):
DAYS BLACK MESA FORCE MAJEURE = 0.0
TONS DELIVERED = 360,000

A. AVAILABILITY FACTOR (MAX OF 1.0000):

$$\frac{15{,}523 \times (30.0 - 0.0 + 30.0) - 360{,}000}{15{,}523 \times 30.0} = 1.0000$$

B. TONS DELIVERED FACTOR (MAX OF 1.0000):

$$\frac{360{,}000}{341{,}667} = 1.0000$$

APPLICABLE FACTOR (GREATER OF A AND B): 1.0000

TOTAL ITEMS I AND III	$910,015.74
LESS ITEM IIIA	$113,750.05
LESS ITEM IIIB2	$1,925.93
TOTAL	$794,339.76

TOTAL CREDIT: $794,339.76 X (1 - 1.0000) = $0.00

BILLING PERIOD: 0800 HOURS 10/29/76 TO 0800 HOURS 11/28/76

OPERATING CONDITIONS - CURRENT MONTH (30 DAYS TOTAL):
FORCE MAJEURE - BLACK MESA - 15 DAYS (10/29/76 THRU 11/12/76)
- PEABODY - 15 DAYS (11/13/76 THRU 11/27/76)
- EDISON: UNIT 1 - 0 DAYS (THRU)
- UNIT 2 - 0 DAYS (THRU)

OPERATING CONDITIONS - PREVIOUS MONTH (31 DAYS TOTAL):
FORCE MAJEURE - BLACK MESA - 0 DAYS (THRU)
- PEABODY - 0 DAYS (THRU)
- EDISON: UNIT 1 - 0 DAYS (THRU)
- UNIT 2 - 0 DAYS (THRU)

ONS DELIVERED CURRENT MONTH: 0 TONS

IPELINE RELATED CHARGES:

I. DEMAND (SEC 4.1) $707,086.00

II. COMMODITY (SEC 4.1&4.2)
TONS BILLED 0 @ $0.215 $0.00
TONS PREPAID 0

III. ADJUSTMENTS (SEC 4.3):
A. ELECTRICITY (A(1)).
KAYENTA $ 34,000.00
GRAY MTN $ 17,000.00
WILLIAMS $ 17,000.00
SELIGMAN $ 17,000.00 $85,000.00

B. MATERIAL (A(2)):
1. DEMAND RELATED PORTION:

$$\$33{,}627 \times \frac{189.50(1-76)}{180.10(1-75)} - \$33{,}627 = \$1{,}755.10$$

2. COMMODITY RELATED PORTION:

$$\$0.108 \times \frac{189.50(1-76)}{180.10(1-75)} - \$0.108 = \$0.005637/\text{TON}$$

$0.005637/TON X 0 TONS = $0.00

C. LABOR (A(3)):

$95,898 X $\frac{282.92(1-76)}{269.45(1-75)}$ - $95,898 = $4,794.01

D. INSURANCE AND TAXES (A(4)):

1975 TAXES	$1,500,000.00		
LESS	$562,000.00		
DIFFERENCE	$938,000.00	/12 =	$78,166.67

E. OVERHEAD (A(5)):

$50,769 X $\frac{282.92(1-76)}{269.45(1-75)}$ - $50,769 = $2,537.98

SUBTOTAL ITEM III ADJUSTMENTS $172,253.76

IV. FLUSH WATER (SEC 4.5):

$0.000634 X 0 GALLONS = $0.00

SUBTOTAL PIPELINE RELATED CHARGES $879,339.76

V. FORCE MAJEURE CREDIT (SEC 4.4)
(PER ATTACHED DETAIL)

CREDIT FOR CURRENT MONTH -	$879,339.76CR	
CREDIT FOR PREVIOUS MONTH -	$0.00	$879,339.76CR

TOTAL ADJUSTED PIPELINE RELATED CHARGES $0.00

STORAGE RELATED CHARGES (SEC 19.1):

INVESTMENT BASE - $ 7,000,000
MONTHLY CHARGE PER $1,000 = $ 13.43
ON 7.5% = $0.42 X (10- 7.5) = $ 1.05
(13.43 - $1.05) X 7,000 = $86,660.00

TOTAL INVOICE AMOUNT $86,660.00

FORCE MAJEURE CALCULATION FOR BLACK MESA/PEABODY (SEC 4.4):

I. CURRENT MONTH (30 DAY MONTH):
DAYS BLACK MESA/PEABODY FORCE MAJEURE = 30.0
TONS DELIVERED = 0

A. AVAILABILITY FACTOR (MAX OF 1.0000):

$$\frac{15{,}523 \times (30.0 - 30.0 + 0.0) - 0}{15{,}523 \times 30.0} = 0.0000$$

B. TONS DELIVERED FACTOR (MAX OF 1.0000):

$$\frac{0}{341{,}667} = 0.0000$$

APPLICABLE FACTOR (GREATER OF A AND B): 0.0000

TOTAL ITEMS I AND III	$879,339.76
LESS ITEM IIIB2	$0.00
TOTAL	$879,339.76

TOTAL CREDIT: $879,339.76 X (1 - 0.0000) = $879,339.76

II. PREVIOUS MONTH (31 DAY MONTH):
DAYS BLACK MESA FORCE MAJEURE = 0.0
TONS DELIVERED = 345,000

A. AVAILABILITY FACTOR (MAX OF 1.0000):

$$\frac{15{,}523 \times (31.0 - 0.0 + 31.0) - 345{,}000}{15{,}523 \times 31.0} = 1.0000$$

B. TONS DELIVERED FACTOR (MAX OF 1.0000):

$$\frac{345{,}000}{341{,}667} = 1.0000$$

APPLICABLE FACTOR (GREATER OF A AND B): 1.0000

TOTAL ITEMS I AND III	$910,015.74
LESS ITEM IIIA	$113,750.05
LESS ITEM IIIB2	$1,925.93
TOTAL	$794,339.76

TOTAL CREDIT: $794,339.76 X (1 - 1.0000) = $0.00

BLACK MESA PIPELINE BILLING DETAIL SAMPLE NO. 16
PAGE 1 OF 3

BILLING PERIOD: 0800 HOURS 10/29/76 TO 0800 HOURS 11/28/76

OPERATING CONDITIONS - CURRENT MONTH (30 DAYS TOTAL):
FORCE MAJEURE - BLACK MESA - 15 DAYS (10/29/76 THRU 11/12/76)
- PEABODY - 15 DAYS (11/ 3/76 THRU 11/17/76)
- EDISON: UNIT 1 - 0 DAYS (THRU)
- UNIT 2 - 0 DAYS (THRU)

OPERATING CONDITIONS - PREVIOUS MONTH (31 DAYS TOTAL):
FORCE MAJEURE - BLACK MESA - 0 DAYS (THRU)
- PEABODY - 0 DAYS (THRU)
- EDISON: UNIT 1 - 0 DAYS (THRU)
- UNIT 2 - 0 DAYS (THRU)

TONS DELIVERED CURRENT MONTH: 75,000 TONS

PIPELINE RELATED CHARGES:

I. DEMAND (SEC 4.1) $707,086.00

II. COMMODITY (SEC 4.1&4.2)
TONS BILLED 75,000 @ $0.215 $16,125.00
TONS PREPAID ----0----

III. ADJUSTMENTS (SEC 4.3):
A. ELECTRICITY (A(1)).
KAYENTA $ 34,000.00
GRAY MTN $ 17,000.00
WILLIAMS $ 17,000.00
SELIGMAN $ 17,000.00 $85,000.00

B. MATERIAL (A(2)):
1. DEMAND RELATED PORTION:

$$\$33{,}627 \times \frac{189.50(1-76)}{180.10(1-75)} - \$33{,}627 = \$1{,}755.10$$

2. COMMODITY RELATED PORTION:

$$\$0.108 \times \frac{189.50(1-76)}{180.10(1-75)} - \$0.108 = \$0.005637/\text{TON}$$

$0.005637/TON X 75,000 TONS = $422.78

001561

0607

C. LABOR (A(3)):

$95,898 X 282.92(1-76) / 269.45(1-75) - $95,898 = $4,794.01

D. INSURANCE AND TAXES (A(4)):

1975 TAXES	$1,500,000.00	
LESS	$562,000.00	
DIFFERENCE	$938,000.00 /12 =	$78,166.67

E. OVERHEAD (A(5)):

$50,769 X 282.92(1-76) / 269.45(1-75) - $50,769 = $2,537.98

SUBTOTAL ITEM III ADJUSTMENTS $172,676.54

IV. FLUSH WATER (SEC 4.5):

$0.000634 X 44,803,675 GALLONS = $28,405.53

SUBTOTAL PIPELINE RELATED CHARGES $924,293.07

V. FORCE MAJEURE CREDIT (SEC 4.4)
(PER ATTACHED DETAIL)

CREDIT FOR CURRENT MONTH -	$392,721.58CR	
CREDIT FOR PREVIOUS MONTH -	$0.00	$392,721.58CR

TOTAL ADJUSTED PIPELINE RELATED CHARGES $531,571.49

STORAGE RELATED CHARGES (SEC 19.1):

INVESTMENT BASE - $ 7,000,000
MONTHLY CHARGE PER $1,000 = $ 13.43
ON 7.5% = $0.42 X (10- 7.5) = $ 1.05
(13.43 - $1.05) X 7,000 = $86,660.00

TOTAL INVOICE AMOUNT $618,231.49

001562

FORCE MAJEURE CALCULATION FOR BLACK MESA/PEABODY (SEC 4.4):

I. CURRENT MONTH (30 DAY MONTH):
DAYS BLACK MESA/PEABODY FORCE MAJEURE = 20.0
TONS DELIVERED = 75,000

A. AVAILABILITY FACTOR (MAX OF 1.0000):

$$\frac{15{,}523 \times (30.0 - 20.0 + 10.0) - 75{,}000}{15{,}523 \times 30.0} = .5056$$

B. TONS DELIVERED FACTOR (MAX OF 1.0000):

$$\frac{75{,}000}{341{,}667} = .2195$$

APPLICABLE FACTOR (GREATER OF A AND B): .5056

TOTAL ITEMS I AND III	$879,762.53
LESS ITEM IIIA	$85,000.00
LESS ITEM IIIB2	$422.77
TOTAL	$794,339.76

TOTAL CREDIT: $794,339.76 X (1 - .5056) = $392,721.58

II. PREVIOUS MONTH (31 DAY MONTH):
DAYS BLACK MESA FORCE MAJEURE = 0.0
TONS DELIVERED = 345,000

A. AVAILABILITY FACTOR (MAX OF 1.0000):

$$\frac{15{,}523 \times (31.0 - 0.0 + 31.0) - 345{,}000}{15{,}523 \times 31.0} = 1.0000$$

B. TONS DELIVERED FACTOR (MAX OF 1.0000):

$$\frac{345{,}000}{341{,}667} = 1.0000$$

APPLICABLE FACTOR (GREATER OF A AND B): 1.0000

TOTAL ITEMS I AND III	$910,015.74
LESS ITEM IIIA	$113,750.05
LESS ITEM IIIB2	$1,925.93
TOTAL	$794,339.76

TOTAL CREDIT: $794,339.76 X (1 - 1.0000) = $0.00

BILLING PERIOD: 0800 HOURS 10/29/76 TO 0800 HOURS 11/28/76

OPERATING CONDITIONS - CURRENT MONTH (30 DAYS TOTAL):

FORCE MAJEURE -	BLACK MESA	- 0 DAYS (	THRU	)
-	PEABODY	- 25 DAYS (11/3/76	THRU	11/27/76)
-	EDISON: UNIT 1	- 22 DAYS (10/29/76	THRU	11/19/76)
-	UNIT 2	- 22 DAYS (10/29/76	THRU	11/19/76)

OPERATING CONDITIONS - PREVIOUS MONTH (31 DAYS TOTAL):

FORCE MAJEURE -	BLACK MESA	- 0 DAYS (	THRU	)
-	PEABODY	- 0 DAYS (	THRU	)
-	EDISON: UNIT 1	- 31 DAYS (9/28/76	THRU	10/28/76)
-	UNIT 2	- 31 DAYS (9/28/76	THRU	10/28/76)

TONS DELIVERED CURRENT MONTH: 0 TONS

PIPELINE RELATED CHARGES:

I. DEMAND (SEC 4.1) $707,086.00

II. COMMODITY (SEC 4.1&4.2)
TONS BILLED 0 @ $0.215 $0.00
TONS PREPAID 0

III. ADJUSTMENTS (SEC 4.3):
A. ELECTRICITY (A(1)).
KAYENTA $ 34,000.00
GRAY MTN $ 17,000.00
WILLIAMS $ 17,000.00
SELIGMAN $ 17,000.00 $85,000.00

B. MATERIAL (A(2)):
1. DEMAND RELATED PORTION:

$$\$33{,}627 \times \frac{189.50(1-76)}{180.10(1-75)} - \$33{,}627 = \$1{,}755.10$$

2. COMMODITY RELATED PORTION:

$$\$0.108 \times \frac{189.50(1-76)}{180.10(1-75)} - \$0.108 = \$0.005637/\text{TON}$$

$0.005637/TON X 0 TONS = $0.00

C. LABOR (A(3)):

$95,898 X 282.92(1-76) / 269.45(1-75) - $95,898 = $4,794.01

D. INSURANCE AND TAXES (A(4)):

1975 TAXES	$1,500,000.00	
LESS	$562,000.00	
DIFFERENCE	$938,000.00 /12 =	$78,166.67

E. OVERHEAD (A(5)):

$50,769 X 282.92(1-76) / 269.45(1-75) - $50,769 = $2,537.98

SUBTOTAL ITEM III ADJUSTMENTS $172,253.76

IV. FLUSH WATER (SEC 4.5):

$0.000634 X 0 GALLONS = $0.00

SUBTOTAL PIPELINE RELATED CHARGES $879,339.76

V. FORCE MAJEURE CREDIT (SEC 4.4)
(PER ATTACHED DETAIL)

CREDIT FOR CURRENT MONTH -	$479,959.00CR	
CREDIT FOR PREVIOUS MONTH -	$0.00	$479,959.00CR

TOTAL ADJUSTED PIPELINE RELATED CHARGES $399,380.76

STORAGE RELATED CHARGES (SEC 19.1):

INVESTMENT BASE - $ 7,000,000
MONTHLY CHARGE PER $1,000 = $ 13.43
ON 7.5% = $0.42 X (10- 7.5) = $ 1.05
(13.43 - $1.05) X 7,000 = $86,660.00

TOTAL INVOICE AMOUNT $486,040.76

D. FORCE MAJEURE CREDIT CALCULATION FOR EDISON (SEC 4.4):

I. CURRENT MONTH (30 DAY MONTH):

225,000 / 30 DAYS X	0(1 UNIT OPERATING DAYS) =	0 TONS
341,667 / 30 DAYS X	8(2 UNIT OPERATING DAYS) =	91,111 TONS
	AGGREGATE TOTAL =	91,111 TONS

FIXED MONTHLY DEMAND CHARGE $707,086.00

A. CALCULATED CREDIT:

$707,086 - ($707,086 X $\frac{91,111 \text{ TONS}}{341,667}$) = $518,530.15

B. MAXIMUM CREDIT:

$707,086 - $227,127 = $479,959.00

APPLICABLE CREDIT (LESSER OF A AND B) $479,959.00

II. PREVIOUS MONTH (31 DAY MONTH):

225,000 / 31 DAYS X	0(1 UNIT OPERATING DAYS) =	0 TONS
341,667 / 31 DAYS X	0(2 UNIT OPERATING DAYS) =	0 TONS
	AGGREGATE TOTAL =	0 TONS

FIXED MONTHLY DEMAND CHARGE $707,086.00

A. CALCULATED CREDIT:

$707,086 - ($707,086 X $\frac{0 \text{ TONS}}{341,667}$) = $707,086.00

B. MAXIMUM CREDIT:

$707,086 - $227,127 = $479,959.00

APPLICABLE CREDIT (LESSER OF A AND B)	$479,959.00
LESS PREVIOUSLY CREDITED	$479,959.00
NET CREDIT	$0.00

FORCE MAJEURE CALCULATION FOR PEABODY (SEC 4.4):

I. CURRENT MONTH (30 DAY MONTH):
DAYS PEABODY FORCE MAJEURE = 25.0
TONS DELIVERED = 0

A. AVAILABILITY FACTOR (MAX OF 1.0000):

$$\frac{15{,}523 \times (30.0 - 25.0 + 5.0) - 0}{15{,}523 \times 30.0} = .3333$$

B. TONS DELIVERED FACTOR (MAX OF 1.0000):

$$\frac{0}{341{,}667} = 0.0000$$

APPLICABLE FACTOR (GREATER OF A AND B): .3333

TOTAL ITEMS I AND III	$879,339.76
LESS ITEM IIIA	$85,000.00
LESS ITEM IIIB2	$0.00
TOTAL	$794,339.76

TOTAL CREDIT: $794,339.76 X (1 - .3333) = $529,586.32

EXHIBIT D

TO

AMENDED COAL SLURRY PIPELINE AGREEMENT

SAMPLE OF PRORATION

IN BILLING MONTH IN WHICH

AMENDED AGREEMENT IS FIRST EFFECTIVE

ASSUMPTIONS:

Latest Agreement Signature Date	20th
Effective Date	21st
Start of Following Billing Month	29th

Total Bill:	
Under Amended Agreement (1)	$1,000,000
Under Original Agreement	800,000
Difference	$ 200,000

PRORATION:

(29 -21) ÷ 31 x $200,000	$ 51,613
	800,000
Total Transportation Charges	$ 851,613

(1) Estimated to include demand and commodity charges plus adjustments for an assumed 341,667 ton delivery.

IN THE SUPREME COURT OF THE STATE OF NEVADA

SOUTHERN CALIFORNIA EDISON, Appellant, vs. THE STATE OF NEVADA DEPARTMENT OF TAXATION, Respondent.	No.: 67497

JOINT APPENDIX

VOLUME II

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Attorneys for Appellants

Docket 67497 Document 2015-26115

IN THE SUPREME COURT OF THE STATE OF NEVADA

SOUTHERN CALIFORNIA EDISON, Appellant, vs. THE STATE OF NEVADA DEPARTMENT OF TAXATION, Respondent.	No.: 67497

JOINT APPENDIX

VOLUME II

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Attorneys for Appellants

Alphabetical Index of Joint Appendix

Date Filed	Pleading Title	Bate-Stamped Numbers	Volume Number
01/15/09	Complaint *(Case No. 09-0C-00016-1B)*	0001-0009	I
03/27/09	Complaint *(Case No. 09-0C-00113-1B)*	0010-0061	I
05/22/09	Complaint - Amended *(corrected version)*	0074-0092	I
04/10/12	Complaint - Second Amended	0116-0151	I
05/18/12	Defendant's Answer to Second Amended Complaint	0155-0162	I
12/17/14	Findings of Fact, Conclusions of Law & Decision - Amended	0276-0293	II
12/15/14	Findings of Fact, Conclusions of Law & Decision	0258-0275	II
02/26/15	Notice of Appeal	0327-0328	II
08/12/14	Notice of Entry of Order	0257-0257	II
12/17/14	Notice of Entry of Amended Findings of Fact, Conclusions of Law & Decision	0294-0315	II
02/03/15	Notice of Entry of Order Denying Edison's Motion to Amend Findings of Fact, Conclusions of Law & Decision & to Amend Judgment of Direct Entry of New Judgment	0319-0326	II
01/02/14	Order After Pretrial Conference	0250-0253	II
06/30/09	Order Denying Defendant's Motion to Dismiss	0093-0095	I
01/30/15	Order Denying Edison's Motion to Amend Findings of Fact, Conclusions of Law & Decision & to Amend Judgment of Direct Entry of New Judgment	0316-0318	II
06/21/13	Order Denying Motion in Limine Regarding Competitor Fuels - Amended	0194-0196	I
05/10/12	Order Denying Motion to Strike	0152-0154	I
06/22/12	Order Denying Motion to Strike	0169-0170	I
10/04/12	Order Denying Motion for Judgment on the Pleadings	0176-0178	I
06/19/13	Order Denying Motion in Limine Regarding Voided Decision	0188-0190	I
07/25/12	Order Granting Defendant's Motion to Stay Discovery Pending Ruling on Dispositive Motion	0174-0175	I

Date Filed	Pleading Title	Bate-Stamped Numbers	Volume Number
06/19/13	Order Granting Extension of Time to Produce Rebuttal Expert Reports	0191-0193	I
07/13/11	Order Granting Motion for Stay of Proceeding	0110-0113	I
12/24/09	Order Granting Plaintiff's Motion to Stay Proceedings Pending Resolution of a Writ of Petition	0105-0107	I
07/18/12	Order on Defendant's Request for Judicial Notice	0171-0173	I
04/30/14	Order Staying Determination Pending Decision by Nevada Supreme Court	0254-0256	II
07/21/09	Order to Consolidate	0096-0097	I
11/19/09	Order to Proceed as Petition for Judicial Review	0098-0102	I
01/27/12	Order to Set for Hearing	0114-0115	I
10/29/12	Order to Vacate Trial Date	0179-0180	I
09/10/13	Order to Vacate Trial	0197-0198	I
06/01/11	Order Vacating Order dated November 19, 2009 and Allowing Matter to Proceed as an Independent Action	0108-0109	I
06/13/13	Order Vacating Pretrial Conference & Trial Date & Stay of Proceedings	0187-0187	I
01/28/13	Pretrial Order	0181-0186	I
10/07/13	Pretrial Order - Amended	0199-0204	I
04/13/09	Proof of Service (x5)	0062-0073	I
05/22/12	Proof of Service (AG-04/10/12)	0163-0168	I
11/24/09	Statement of Intent to Participate	0103-0104	I
01/16/14	Trial Statement of Edison	0205-0249	I

Trial Exhibit No.	Exhibit Title	Bate-Stamped Numbers	Volume Number
42	Coal Slurry Pipeline Agreement	0509-0524	III
43	Coal Slurry Pipeline Agreement - Amended	0525-0614	III
32	Commission's Decision	0345-0351	II
38	Compilation of supporting documents for refund calculations (*Partial portions only)*	0358-0366	II
83	Contract - Colorado River Comm'n of NV & Edison	1038-1064	V
134	CPUC Decision 04-12-016	1093-1169	VI
107	Department's Decision Letter Denying Edison's Refund Request 02/09	1071-1073	V
54	Department's Exemption & Refund Report	0615-0734	IV
55	Department's Net Proceeds of Minerals Bulletin	0735-0763	IV
56	Department's Net Proceeds of Minerals Bulletin	0764-0793	IV
57	Department's Net Proceeds of Minerals Bulletin	0794-0824	IV
67	Expert Report of Sharon R. Byram	0886-0892	V
69	Expert Report of Professor Richard D. Pomp	0893-0917	V
70	Expert Report of Dr. John L. Jurewitz	0918-0967	V
72	Expert Report of Dr. James E. Faulds	0968-0970	V
73	Expert Report of Alan R. Coyner	0971-0972	V
74	Expert Report of J. Steven Gardner	0973-1018	V
75	Expert Report of John A. Swain	1019-1037	V
112	Federal Depletion Allowance Guidelines	1074-1091	VI
138	Legislative Counsel Bureau Letter to Sen. Charles W. Joerg	1170-1174	VI
113	Legislative History for Net Proceeds of Minerals Tax	1092-1092	VI
40	Mohave Project Coal Supply Agreement	0367-0390	II
41	Mohave Project Coal Supply Agreement - Amended	0391-0508	III
59	NV Bureau of Mines & Geology Special Publication MI-1998	0825-0885	V

Trial Exhibit No.	Exhibit Title	Bate-Stamped Numbers	Volume Number
9	Order of 2nd Judicial District Court in *Sierra Pacific* matter	0329-0344	II
36	Spreadsheet of Refund Calculations (Claims for Relief Nos. 1 & 2)	0352-0352	II
37	Spreadsheet of Refund Calculations (Claims for Relief Nos. 3 - 7)	0353-0357	II
91	Termination/Water User Contract between Colorado River Comm'n of NV & Edison	1065-1070	V

Transcript Date	Transcript Description	Bate-Stamped Numbers	Volume Number
01/23/14	Excerpts from Byram, Oliver & Pomp	1288-1320	VI
01/28/14	Excerpts from Gardner, Faulds & Coyner	1391-1412	VII
01/29/14	Excerpts from Oliver, Rubald & McCann	1413-1450	VII
01/22/14	Excerpts from Phelan, Cunningham, Barbaro & Byram	1205-1287	VI
01/24/14	Excerpts from Pomp & Jurewitz	1321-1390	VII
01/21/14	Excerpts from Read, Smith & Phelan	1175-1204	VI
01/30/14	Excerpts from Rubald & Swain	1451-1484	VII

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Norman J. Azevedo, Attorney at Law, and that on the 27th day of August, 2015, I caused to be served a true and correct copy of the foregoing JOINT APPENDIX in the following manner:

(ELECTRONIC SERVICE) Pursuant to Rule5(D) of the Nevada Rules of Civil Procedure, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by the Court's Facilities to the Service List as follows:

Gina Sessions, Esq.
Office of the Attorney General
100 North Carson St.
Carson City, NV 89701

Rhonda Azevedo, Legal Assistant

REC'D & FILED
2014 JAN -2 AM 11:26
ALAN GLOVER
BY CLERK
DEPUTY

Case No.: 09 OC 00016 1B

Dept. No.: 1

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

SOUTHERN CALIFORNIA EDISON,

Plaintiff,

vs.

STATE OF NEVADA, EX REL. DEPARTMENT OF TAXATION,

Defendants.

ORDER AFTER PRETRIAL CONFERENCE

A Pretrial Conference was held in regards to this matter on December 19, 2013. Mr. Azevedo, Esq. and Mr. Read, Esq. both attended the hearing in representation of Plaintiff. Ms. Sessions, Esq. and Ms. Nichols, Esq. both attended the hearing in representation of Defendants.

At the hearing, Plaintiff asserted that Defendants have not disclosed a number of emails sent to Defendants' expert witness in violation of Rule 26 of the Nevada Rules of Civil Procedure. Defendants asserted that the emails are not discoverable by Plaintiff because the emails are privileged.

The Court conducted an in camera review of the emails in question. The Court notes that thirty-eight (38) emails were provided by Defendants to Plaintiff. However, there were sixty-one (61) emails that were not provided by Defendants to Plaintiff. The Court has determined that out of those sixty-one (61) emails that were not provided to Plaintiff, thirty-one (31) were identical copies of emails that were provided to Plaintiff, eighteen (18) were not previously provided to Plaintiff, and twelve (12) were partially provided to Plaintiff.

First, the Court has determined that there is no privilege with regard to the thirty-one (31) emails that were identical copies of emails that were already provided to Plaintiff; Defendant cannot claim privilege over information that has already been disclosed to opposing counsel.

Second, the Court has determined that there is no privilege with regard to seventeen (17) of the eighteen (18) emails that were not previously provided to Plaintiff. Seven (7) of those eighteen (18) emails do not have any verbiage; there is only an attachment. Nine (9) of those eighteen (18) emails only have limited verbiage explaining that a document has been attached. Rule 26(b)(4)(c) of the Federal Rules of Civil Procedure, which is similar to Rule 26(b)(4) of the Nevada Rules of Civil Procedure, provides that "communications between the party's attorney and any witness required to provide a report" are protected, "regardless of the form of the communications, ***except*** to the extend that the communications ... (ii) identify facts or data that the party's attorney provided and that the expect considered in forming the opinions to be expressed" (emphasis added); *see also United States v. Sierra Pac. Indus.*, 2011 U.S. Dist. LEXIS 60372, *10 (E.D. Cal. May 26, 2011) (stating that Fed. R. Civ. P. 26(b)(4)(c) "explicitly protects communications between a party's attorney and reporting experts."). From reading the name of the attachments in these emails, the Court has determined that although these emails are communications between Defendants' attorney and Defendants' expert, these emails were meant to identity facts or data that the expert would consider in forming his opinions; therefore, these emails are not protected pursuant to Rule 26(b)(5) of the Nevada Rules of Civil Procedure. One (1) of those eighteen (18) emails that were not previously provided to Plaintiff was an email explaining that a previous email was to be ignored. This email is certainly not privileged either. However, there was one email out of those eighteen (18) emails that were not previously provided to Plaintiff that is privileged. That one email, which was written on April 24, 2013, contains work product, so it is protected pursuant to Rule 26(b)(5) of the Nevada Rules of Civil Procedure.

Third, the Court has determined that there is no privilege with regard to the twelve (12) emails that were partially provided to Plaintiff. In five (5) of those twelve (12) emails, the only information that had not been previously disclosed in another email was a one word response. In

the other seven (7) of those twelve (12) emails, the only information that had not been previously disclosed in another email was innocuous. Further, the Court has determined that N.R.S. § 49.385 applies with regard to these twelve (12) emails as well all of the other emails that were not provided to Plaintiff, with one exception. N.R.S. § 49.385 states that "[a] person upon whom these rules confer a privilege against disclosure of a confidential matter waives the privilege if the person or the person's predecessor while holder of the privilege voluntarily discloses or consents to disclosure of any significant part of the matter." Sixty (60) of the sixty-one (61) email that were not provided by Defendants to Plaintiff involved communications by Defendants' attorney, Ms. Nichols, to Defendants' expert, Mr. Gardner. The thirty-eight (38) emails that were provided by Defendants to Plaintiff also involved communications by Defendants' attorney, Ms. Nichols, to Defendants' expert, Mr. Gardner. Therefore, because Defendant disclosed a significant part of the matter when it provided the thirty-eight (38) emails to Plaintiff, the Court has determined that Defendants have waived their privilege with regard to the sixty (60) other emails that were not provided to Plaintiff. However, the one (1) email, which was written on April 24, 2013 and which the court determined was work product, involved a communication to a third-party and not to Defendants' expert. This one (1) email involved a different matter than the other sixty (60) non-disclosed emails, so Defendants did not waive their privilege with regard to this one (1) email.

Therefore, good cause appearing,

IT IS HEREBY ORDERED that except for the one email that was written on April 24, 2013 and is protected by privilege, all of the other emails that have not already been provided to Plaintiff shall be provided to Plaintiff within five (5) days of the date of this order.

DATED this 2 day of January, 2014.

JAMES T. RUSSELL
District Judge

CERTIFICATE OF MAILING

I hereby certify that on the 2 day of January, 2014, I placed a copy of the foregoing Order in the United States Mail, postage prepaid, addressed as follows:

Norman Azevedo, Esq.
510 West Fourth Street
Carson City, NV 89703

Gina Sessions, Esq.
Andrea Nichols, Esq.
100 N. Carson Street
Carson City, NV 89701

Samantha Valerius
Law Clerk, Department One

REC'D & FILED

2014 APR 30 AM 8:27

ALAN GLOVER

BY _____ CLERK

DEPUTY

Case No.: 09 OC 00016 1B

Dept. No.: 1

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

SOUTHERN CALIFORNIA EDISON,

Plaintiff,

vs.

THE STATE OF NEVADA, ex rel, DEPARTMENT OF TAXATION,

Defendant.

ORDER STAYING DETERMINATION PENDING DECISION BY NEVADA SUPREME COURT

This matter is before this Court based on a Petition for Judicial Review filed by Plaintiff, Southern California Edison, as to a decision rendered by the Defendant, The State of Nevada, ex rel, Department of Taxation. An eight day bench trial was held January 21-29, 2014, with the requirement that post-trial opening briefs were to be filed by February 28, 2014, and reply briefs were to be filed by March 21, 2014.

At the conclusion of the bench trial, the Court informed the parties that it was inclined to not enter a decision on the matter until the Nevada Supreme Court had rendered its decision in *Sierra Pacific Power Company, et al. v. The State of Nevada, Department of Taxation*, Supreme Court Case No. 61193, which had already been argued at the Supreme Court. Based on this statement, Plaintiff, Southern California Edison, as amicus curiae in that action, filed a Motion of Amicus Curiae Southern California Edison to Defer Decision and Consolidate Appeals on February 21, 2014. The Nevada Supreme Court issued its Order Denying Motion to Defer Decision and Consolidate Appeals on March 17, 2014.

In its Motion of Amicus Curiae, the plaintiff correctly states that "the identical issue presented in this appeal [the NV Energy case]--*i.e.*, whether a taxpayer who paid Nevada use tax on imported coal is entitled to a refund" is the central issue in this case. Although, the Court acknowledges that there are certain differing issues in this case. Given the nature of the identical issue, this Court believes that judicial economy will be served by staying its decision pending the Supreme Court of Nevada's decision in the NV Energy case. No harm will come to either party as a result of this stay.

Therefore, good cause appearing,

IT IS HEREBY ORDERED that this Court is staying this matter pending the decision by the Nevada Supreme Court in *Sierra Pacific Power Company, et al. v. The State of Nevada, Department of Taxation*, Supreme Court Case No. 61193.

IT IS SO ORDERED.

Dated this 30th day of April, 2014.

JAMES T. RUSSELL
DISTRICT JUDGE

CERTIFICATE OF MAILING

I hereby certify that on the 30th day of April, 2014, I served a copy of the foregoing by placing the foregoing in the United States Mail, postage prepaid, addressed as follows:

Norman Azevedo, Esq.
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Carson City, Nevada 89703

Charles C. Read, Esq.
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Los Angeles, California 90017

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Chief Deputy Attorney General
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Carson City, Nevada 89701

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Norman J. Azevedo
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Charles C. Read
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Attorneys for Plaintiff

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ALAN GLOVER
BY _____ CLERK

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

SOUTHERN CALIFORNIA EDISON,

Plaintiff,

vs.

THE STATE OF NEVADA, *ex rel.* DEPARTMENT OF TAXATION

Defendant.

Case No. 09-0C-00016 1B

Dept. No. 1

NOTICE OF ENTRY OF ORDER

You and each of you will please take notice that an ORDER WITHDRAWING CAMPBELL & RYAN AS COUNSEL OF RECORD was entered in the above-entitled matter on the 6th day of August, 2014, a copy of which is attached hereto.

Dated this 12 day of August, 2014.

NORMAN J. AZEVEDO, ESQ.
State Bar No. 3204
405 North Nevada Street
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(775) 883.7000
Attorney for Plaintiff

Norman J. Azevedo Attorney at Law
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phone 775.883.7000 fax 775.888.7001

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ALAN GLOVER
BY _____ CLERK
DEPUTY

Case No.: 09 OC 00016 1B

Dept. No.: 1

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

SOUTHERN CALIFORNIA EDISON,

Plaintiff,

vs.

THE STATE OF NEVADA, EX REL. DEPARTMENT OF TAXATION,

Defendant.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

This matter is before this Court based on a Petition for Judicial Review filed by Plaintiff, Southern California Edison, as to a decision rendered by Defendant, The State of Nevada, ex rel, Department of Taxation. An eight day bench trial was held January 21-29, 2014. An Order Staying Determination Pending Decision by Nevada Supreme Court was entered on April 30, 2014, pending a decision in *Sierra Pacific Power Company, et al. v. The State of Nevada, Department of Taxation*, 130 Nev. Adv. Op. 93, which was rendered on December 4, 2014. Based on this decision, the following Findings of Fact and Conclusions of Law are entered in this case.

FINDINGS OF FACT

1. Defendant State of Nevada *ex rel.* Department of Taxation (the "Department") is an agency of the executive branch of the State of Nevada that is charged with the administration and enforcement of the tax laws set forth in Title 32 of the Nevada Revised Statutes, including

chapters 372 and 374 of the Nevada Revised Statutes governing sales and use taxes and local school support taxes, respectively.

2. The Plaintiff, Southern California Edison ("SCE") is a regulated public utility that operated the Mohave Generating Station ("Mohave"), a coal fired power plant in Clark County, Nevada, from 1970 to 2005. SCE owned a majority interest in Mohave.

3. As a result of an agreement with the Department of the Interior, SCE purchased coal in Arizona exclusively from Peabody Western Coal Company ("Peabody") pursuant to Mohave Coal Supply Agreement, dated January 6, 1967, and the Amended Mohave Project Supply Agreement, dated May 26, 1976, wherein Peabody is the seller and Mohave co-owners are the buyers. In exchange for the agreement to purchase coal mined on Indian Reservations in Arizona, SCE was able to purchase the water necessary to operate Mohave from the Colorado River Commission.

4. Peabody obtained the coal from the Black Mesa Mine located on Navajo and Hopi Indian reservations in Arizona. Peabody operated the Black Mesa Mine through lease agreements with the Navajo and Hopi Tribes.

5. SCE determined that the most inexpensive means to transport the coal from Arizona to Nevada was by means of a pipeline.

6. As part of the Coal Supply Agreement, Peabody entered into a Coal Slurry Pipeline Agreement with Black Mesa Pipeline ("BMP") to process the coal into a coal slurry that met SCE's specifications and could be transported to Mohave through the pipeline.

7. The tangible personal property purchased by SCE was the coal slurry product.

8. BMP operated the Coal Slurry Preparation Plant and the pipeline that transported the coal slurry to Mohave. Before delivery of the coal to BMP, Peabody processed the run-of-mine coal by separating rock in a rotary breaker lowering the ash content and reducing the coal

to a 2" x 0" size. At the Coal Slurry Preparation Plant, the coal was further crushed by various means to a certain size and blended with water to create coal slurry that could then be transported through the pipeline.

9. The processing by Peabody and BMP created a coal slurry that met SCE's transportation requirements.

10. The price SCE paid Peabody for the coal slurry is set forth in the Amended Mohave Project Coal Supply Agreement, Sec. 6. The price for the coal slurry is paid for the coal delivered to the Mohave Project and is based on the mine price, the price for transportation, and all sale, use, production and severance taxes paid by the seller, mainly Peabody. Thus, Peabody is the entity that paid all taxes, not SCE.

11. The coal slurry was transported more than 270 miles through a pipeline to the Mohave Generating Station.

12. Peabody retained title to the coal when it was transferred to BMP for processing and transportation. After processing and transportation by BMP, the sales transaction between Peabody and SCE took place in Nevada when title to the coal slurry passed to SCE upon delivery at Mohave.

13. Risk of loss for the coal slurry and water passed from Peabody to SCE at the same time title was passed at the receiving facilities of the Mohave Generating Station in Nevada.

14. Because Peabody did not have any physical presence in Nevada, SCE paid Use Tax to Nevada for the coal slurry beginning in 1970.

15. SCE de-watered the coal and burned it to generate electricity. SCE further pulverized the coal into a powder that could be blown into the burners, it did not have the means at Mohave to take run-of-mine coal and process it for burning as fuel. SCE also used the water from the coal slurry for cooling at the plant.

16. SCE could not purchase coal in Nevada because there are no commercially viable deposits of coal in Nevada and there were no coal mines operating in Nevada during the 1998 to 2000 period of time at issue in this case. There is no record that any coal mine in Nevada has been subject to the Net Proceeds of Minerals tax or that any coal miner or supplier has ever made a sale of coal in Nevada that was not subject to either sales or use tax.

17. Peabody did not compete with any Nevada companies that mined coal in Nevada.

18. Peabody did not compete with any oil, natural gas, or geothermal producers in Nevada.

19. There is no evidence that any coal transaction in Nevada was exempt from sales or use tax pursuant to NRS 372.270.

20. Beginning in April 2001, SCE filed claims for a partial refund filed with the Department of Taxation for the period between March 1998 and December 2000. This claim was limited to a request for credit toward Arizona sales tax paid by SCE to Peabody.

21. On January 31, 2003, after the Department denied SCE's claims for refund for the time period between Marcb 1998 and December 1999, SCE submitted a Petition for Redetermination limited to those periods arguing for the first time that its consumption of coal at the Mohave Plant was exempt based on the dormant Commerce Clause and that the taxable measure should not have included SMCRA and Black Lung payments, but SCE did not provide amended returns.

22. Thereafter, on October 27, 2003, SCE submitted a letter with revised returns referring to new claims but failed to articulate the grounds for its revised claims.

23. In November of 2003, SCE submitted a brief to the Nevada Tax Commission alleging, in the alternative, that either: (1) SCE's consumption of coal at the Mohave Plant was entirely exempt from Nevada's use tax; or (2) SCE is entitled to a refund based on its inadvertent

inclusion of royalties and transportation charges in the measure of its use tax obligation. The brief also alleged that SCE is entitled to a refund based upon taxes and fees remitted to Arizona, the United States, and the Navajo Nation.

24. After a previous decision on SCE's refund request was voided by the Nevada Supreme Court, the Nevada Tax Commission held open hearings on the claims for refund on September 9, 2008, and December 1, 2008.

25. At the December 1, 2008, hearing the Commission voted to deny SCE's refund claims.

26. On March 2, 2009, the Commission served its final written decision, dated February 27, 2009, denying SCE's claims for refund (Ex. E to Plaintiff's Second Amended Complaint).

27. SCE did not pay any sales tax to the State of Arizona on its purchase of the coal slurry. Any tax was paid by Peabody to the state of Arizona.

28. SCE did not pay any taxes to the United States or the Navajo Nation or Hopi Tribe on its purchase of coal slurry. Any tax was paid by Peabody to the state of Arizona.

29. SCE did not pay taxes to the State of Nevada imposed pursuant to Chapter 362 of the Nevada Revised Statutes ("NRS").

30. SCE has not been taxed differently than any other similarly situated taxpayer on the use of coal in the state of Nevada nor any other tax payer who has had a product delivered to Nevada for use in this State.

31. SCE did not suffer any discrimination in fact in comparison to any other purchaser of coal in Nevada.

32. SCE has not suffered any injury as a result of the exemption in NRS 372.270 that would entitle it to retroactive relief.

CONCLUSIONS OF LAW

1. Nevada imposes a sales tax upon retailers for the privilege of selling tangible personal property at retail in Nevada. NRS 372.105. In addition to the sales tax, Nevada imposes a use tax upon consumers for the storage, use or other consumption of tangible personal property in Nevada. NRS 372.185 and NRS 374.190.

2. The use tax is imposed with respect to tangible personal property ". . . purchased from any [out-of-state] retailer on or after July 1, 1955, for storage, use or other consumption in [Nevada]." NRS 372.185(1).

3. The tax applies to tangible personal property which was acquired out-of-state but which would have been subject to sales tax if the sale had occurred in Nevada. NRS 372.185(2).

4. The use tax is complementary to the sales tax and generally applies when tangible personal property avoids the imposition of sales tax at a point of purchase outside of Nevada. *Nevada Tax Comm'n v. Nevada Cement Co.*, 116 Nev. 877, 8 P.3d 147 (2000). *See also Sparks Nugget, Inc. v. State of Nevada ex rel. Dep't of Taxation*, 124 Adv. Op. No. 15 (March 27, 2008) ("any non-exempt retail sales of personal property that have escaped sales tax are nonetheless taxed when the property is utilized in the state").

5. SCE paid use tax pursuant to NRS 372.185 beginning in 1970 on the coal slurry.

6. NRS 372.185 provides:

> 1. An excise tax is hereby imposed on the storage, use or other consumption in this State of tangible personal property purchased from any retailer on or after July 1, 1955, for storage, use or other consumption in this State at the rate of 2 percent of the sales price of the property.

2. The tax is imposed with respect to all property which was acquired out of state in a transaction that would have been a taxable sale if it had occurred within this State.

7. Because there is no coal mined in Nevada, any sale of coal in Nevada would necessarily be subject to either sales or use tax. The transfer of title to the coal slurry took place in Nevada and pursuant to the Mohave Project Coal Supply Agreements, Nevada law governs.

8. The fundamental objective of the dormant Commerce Clause is "preserving a national market for competition undisturbed by preferential advantages conferred by a State upon its residents or resident competitors." *Gen. Motors Corp. v. Tracy*, 519 U.S. 279, 299 (1997).

9. When challenging a state tax based on the dormant Commerce Clause, the taxpayer has the burden to demonstrate that the state tax in question does, in fact, violate the Commerce Clause of the United States Constitution. *Container Corp. of America v. Franchise Tax Bd.*, 463 U.S. 159, 164 (1983).

10. In *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274 (1977), the United States Supreme Court set out a test to determine whether a state tax provision violates the Commerce Clause. A state tax provision will survive a Commerce Clause challenge so long as the tax: (1) is applied to an activity with a substantial nexus with the taxing state; (2) is fairly apportioned; (3) does not discriminate against interstate commerce; and (4) is fairly related to the services provided by the state. *See Quill v. N. Dakota*, 504 U.S. 298 (1992) (quoting *Complete Auto Transit v. Brady*).

11. The use tax paid by Taxpayers pursuant to NRS 372.185(1) does not violate the dormant Commerce Clause under the Constitution of the United States. *Great Am. Airways v. Nevada State Tax Comm'n*, 101 Nev. 422, 425 (1985).

12. The United States Supreme Court has identified the fundamental objective of the dormant Commerce Clause as "preserving a national market for competition undisturbed by preferential advantages conferred by a State upon its residents or resident competitors." *Gen. Motors Corp. v. Tracy*, 519 U.S. 279, 299 (1997). In this case, SCE has not been treated any differently than any of its market competitors. Since there is no unequal treatment and consequently no impediment to free trade, SCE's claim is not within the zone of interests to be protected by the Commerce Clause.

13. There are no facts in the record to support a finding that SCE, by paying use tax on its purchase of the coal slurry, is being discriminated against in comparison to a similarly situated taxpayer. To hold otherwise would be to give an unpalatable windfall to SCE.

14. SCE has not been subject to an illegal or improper tax that would entitle them to a refund of use tax.

15. There is no evidence in the record that SCE's market competitors have claimed an exemption from the payment of Sales and Use tax pursuant to NRS 372.270 on the purchase of coal.

16. Further, the Nevada Supreme Court in the *Sierra Pacific Power Company, et al* case held that NRS 372.270 was not severable and that it was to be stricken down in its entirely. *Sierra Pacific Power Company, et al. v. The State of Nevada, Department of Taxation*, 130 Nev. Adv. Op. 93 (Dec. 04, 2014). Therefore, it cannot be used to create an agreement that there was a benefit to any Nevada mining operation that would reflect a different treatment to an in state operation.

17. Dormant Commerce Clause case law makes clear that violations must be based on actual injury and it is the burden of the taxpayer to prove the injury. In *Gregg Dyeing Co. v. Query*, 286 U.S. 472, 481 (1932), the United States Supreme Court wrote: "Discrimination, like

interstate commerce itself, is a practical conception. We must deal in this matter, as in others, with substantial distinctions and real injuries." The practical effect here is that there was no discrimination.

18. Further, the United States Supreme Court in *McKesson Corp. v. Div. of Alcoholic Beverages and Tobacco, Dep't of Bus. Regulation of Florida*, 496 U.S. 18 (1990) analyzed the available remedies when a tax scheme is found to violate the dormant Commerce Clause. *McKesson* dealt with a Florida liquor tax that was found to discriminate against interstate commerce. The case addresses the means to address the injury suffered by a taxpayer in competition with a taxpayer that received beneficial treatment.

The Court concluded that the State had options available for addressing the injury. The State could refund the "difference between the tax [petitioner] paid and the tax [petitioner] would have been assessed were it extended the same rate reductions that **its competitors actually received.**" *Id.* at 40 (emphasis added).

Given the fact that SCE has not provided any facts to suggest that an actual competitor with SCE received tax rate reductions or exemptions that caused injury to SCE, there should be no applicable remedy.

19. The United States Supreme Court wrote:

Thus, in the absence of actual or prospective competition between the supposedly favored and disfavored entities in a single market there can be no local preference, whether by express discrimination against interstate commerce or undue burden upon it, to which the dormant Commerce Clause may apply. The dormant Commerce Clause protects markets and participants in markets, not taxpayers as such.

Gen. Motors Corp. v. Tracy, 519 U.S. 279, 300 (1997).

20. The Legislature enacted NRS 372.270 which provides "the gross receipts from the sale of and the storage, use or other consumption in this State of, the proceeds of mines which are subject to taxes levied pursuant to chapter 362 of NRS" are exempt from sales and use tax. NRS Chapter 362 levies a tax on the net proceeds of minerals extracted in Nevada. *See* NRS 362.120 *et seq*. In other words, minerals which are subject to the net proceeds of minerals of tax under NRS Chapter 362 are exempted from the sales and use tax assessed in NRS Chapter 372.

21. The exemption in NRS 372.270 is only a partial exemption that applies only to the extent of actual payment of the Nevada net proceeds tax. A.G.O. 76 (June 27, 1955). The Attorney General concluded "that the sales tax is placed upon that portion of the gross receipts constituting the value of the product which is not taxed under the Net Proceeds of Mines Tax." *Id.*

22. The Nevada Supreme Court has ruled that sales and use tax exemptions are to be narrowly construed in favor of taxability. *Shetakis Distributing Co. v. Dep't of Taxation,* 108 Nev. 901, 907, 839 P.2d 1315, 1319 (1992). The language of the Nevada Constitution Article X Section 5(1) and NRS 362.110[1] clearly limits the net proceeds tax, and the corresponding exemption from sales and use taxes, to minerals extracted in Nevada.

23. The coal in question was mined or extracted outside of Nevada and is, therefore, not subject to the net proceeds of minerals tax in Nevada and is not exempted from Nevada sales and use tax by NRS 372.270, which statute has been stricken by the Nevada Supreme Court.

[1] NRS 362.110 requires that the net proceeds form be filed by "every person extracting minerals in this State . . ."

24. Because of the requirement to narrowly construe tax exemptions, SCE is required to clearly show that the sales and use tax exemption of NRS 372.270 was intended to apply to coal mined outside Nevada. This is not the case.

25. The Constitutional provision is not ambiguous to a reasonably informed person but clearly applies only to minerals extracted in Nevada.

26. The Nevada Supreme Court in the *Sierra Pacific Power Company et al* case held that there was no refund available to the utility company in that case because there had been no actual injury. *Sierra Pacific Power Company, et al. v. The State of Nevada, Department of Taxation*, 130 Nev. Adv. Op. 93 (Dec. 04, 2014). Here, as in that case, SCE did not pay any higher tax than did its competitors. No competitor gained a competitive advantage under the tax scheme.

Although the exemption to the use tax set forth in NRS 372.270 is unconstitutional and in violation of the Dormant Commerce Clause, the use tax itself is not unconstitutional. Thus, the tax itself complained of was lawfully assessed. NRS 372.270 has no applicability because there was no competitor that obtained an advantage thereunder; and, as such, there was no actual discrimination against interstate commerce. *See Sierra Pacific Power Company, et al. v. The State of Nevada, Department of Taxation*, 130 Nev. Adv. Op. 93 (Dec. 04, 2014). In fact, to not charge a use tax would have given a benefit to SCE which other taxpayers did not enjoy. SCE is on an even playing field with all such companies in the state of Nevada in regard to this issue.

27. SCE is not entitled to a credit for the Arizona Transaction Privilege Tax that Peabody paid to the State of Arizona.

NAC 372.055 provides,

In determining the amount of use tax that is due from a taxpayer, the Department will allow a credit toward the amount due to this State in an amount equal to sales tax legitimately

paid for the same purchase of tangible personal property to a state or local government outside of Nevada, upon proof of payment deemed satisfactory to the Department. Here there was no "same purchase." SCE paid no direct tax to the state of Arizona.

In the contract between the parties SCE agreed to reimburse Peabody as part of the sale price the taxes that Peabody paid to Arizona. This reimbursement was a part of the purchase price SCE paid to Peabody for the coal slurry. The State of Nevada was entitled to collect use tax measured by the entire price of the coal slurry. HELLERSTEIN, STATE TAXATION, ¶ 17.08 (3d ed. 2013).

Even assuming that SCE was entitled to a credit for sales tax Peabody paid, this credit does not apply to the Arizona Transaction Privilege Tax because in this context it is not a sales tax, it is levied on a seller's, Peabody's, gross receipts rather than each individual sale and is for the privilege of doing business in the State of Arizona. *Arizona Dep't. of Revenue v. Robinson's Hardware,* 721 P.2d 137, 141 (Ariz. Ct. App. 1986).

28. SCE may not exclude taxes Peabody paid to the federal government from the measure of use tax. In the contract between the parties SCE agreed to reimburse Peabody for taxes and fees that Peabody paid to the federal government. This reimbursement was a part of the purchase price SCE paid to Peabody for the coal slurry. Peabody was the actual taxpayer, not SCE. SCE paid no direct tax to the federal government. The State of Nevada was entitled to collect use tax measured by the entire price of the coal slurry. HELLERSTEIN, STATE TAXATION, ¶ 17.08 (3d ed. 2013).

29. SCE claims that the federal taxes should not have been included in the sales price subject to Nevada use tax under NRS 372.025. Prior to its amendment NRS 372.025 provided,

1. "Gross receipts" means the total amount of the sale or lease or rental price, as the case may be, of the retail sales of retailers, valued in money, whether received in money or otherwise, without any deduction on account of any of the following:

(a) The cost of the property sold. However, in accordance with such rules and regulations as the Tax Commission may prescribe, a deduction may be taken if the retailer has purchased property for some other purpose than resale, has reimbursed his vendor for tax which the vendor is required to pay to the State or has paid the use tax with respect to the property, and has resold the property before making any use of the property other than retention, demonstration or display while holding it for sale in the regular course of business. If such a deduction is taken by the retailer, no refund or credit will be allowed to his vendor with respect to the sale of the property.

(b) The cost of the materials used, labor or service cost, interest paid, losses or any other expense.

(c) The cost of transportation of the property before its sale to the purchaser.

2. The total amount of the sale or lease or rental price includes all of the following:

(a) Any services that are a part of the sale.

(b) All receipts, cash, credits and property of any kind.

(c) Any amount for which credit is allowed by the seller to the purchaser.

3. "Gross receipts" does not include any of the following:

(a) Cash discounts allowed and taken on sales.

(b) The sale price of property returned by customers when the full sale price is refunded either in cash or credit, but this exclusion does not apply in any instance when

the customer, in order to obtain the refund, is required to purchase other property at a price greater than the amount charged for the property that is returned.

(c) The price received for labor or services used in installing or applying the property sold.

(d) The amount of any tax, not including any manufacturers' or importers' excise tax, imposed by the United States upon or with respect to retail sales, whether imposed upon the retailer or the consumer.

4. For purposes of the sales tax, if the retailers establish to the satisfaction of the Tax Commission that the sales tax has been added to the total amount of the sale price and has not been absorbed by them, the total amount of the sale price shall be deemed to be the amount received exclusive of the tax imposed.

In the contract between the parties, SCE agreed to reimburse Peabody for taxes that Peabody paid to the federal government. This reimbursement was a part of the price SCE paid to Peabody for the coal slurry. Again, Peabody was the actual taxpayer, not SCE. The State of Nevada was entitled to collect sue tax measured by the entire price of the coal slurry. HELLERSTEIN, STATE TAXATION, ¶ 17.08 (3d ed. 2013).

Further, the federal taxes paid by Peabody do not fall within the exclusion in NRS 372.025(3)(d) hecause the taxes did not concern retail sales. The fee imposed by the Surface Mining Control & Reclamation Act of 1977 is an assessment or excise tax on all coal produced for sale by surface or underground mining. *United States v. Tri-No Enterprises, Inc.*, 819 F.2d 154, 158 (7th Cir. 1987). The tax imposed by the Black Lung Benefits Revenue Act of 1977 is also an excise tax. *See e.g. Warrior Coal Mining Co. v. U.S.*, 72 F.Supp. 2d 747 (W.D. Ky. 1999) and *Costain Coal Inc. v. U.S.*, 126 F.3d 1437 (C.A. Fed. 1997). Since the federal taxes Peabody paid pursuant to the Surface Mining Control & Reclamation Act of 1977 and the Black Lung

Benefits Revenue Act of 1977 are excise taxes and not retail sales taxes, the exclusion does not apply.

30. SCE is not entitled to exclude from the measure of use tax taxes Peabody and/or Black Mesa paid to the Navajo Nation and Hopi tribe. In the contract between the parties SCE agreed to reimburse Peabody for taxes that Peabody and/or Black Mesa paid to the Navajo nation and/or the Hopi Tribe. This reimbursement was a part of the price SCE paid to Peabody for the coal slurry. Again, Peabody was the actual taxpayer, not SCE. The State of Nevada was entitled to collect use tax measured by the entire price of the coal slurry. HELLERSTEIN, STATE TAXATION, ¶ 17.08 (3d ed. 2013)

As set forth above, NRS 372.065(3)(d) excludes, "the amount of any tax, not including any manufacturers' or importers' excise tax, imposed by the United States upon or with respect to retail sales, whether imposed upon the retailer or the consumer" from the definition of sales price. The Navajo Nation Business Activity Tax and Possessor Interest Tax do not fall within this exclusion because these are not taxes imposed with respect to retail sales. The Business Activity Tax imposed by the Navajo Nation is a tax on the privilege of doing business on the Navajo Nation lands. *Pittsburg & Midway Coal Mining Co., v. Watchman,* 52 F.3d 1531, 1535 (10th Cir. 1995). The Possessory Interest Tax levied by the Navajo Nation is based on the value of property leased on tribal lands. *Peabody Coal Co. v. Navajo Nation,* 75 F.3d 457, 468 (9th Cir. 1996). These are not retail sales taxes and there is no basis for not including them in the sales price of the property used to compute the measure of the use tax.

31. SCE is not entitled to exclude from the measure of use tax taxes paid to the state of Arizona. SCE argues that it should not have paid use tax on amounts paid to Peabody for the Arizona Ad Valorem Tax and the Arizona Transaction Privilege Tax, "because such amounts are

not includable in the sales price subject to Nevada use tax under NRS 372.065." This argument fails because these taxes are not taxes on retail sales.

In other words, sales price does not include a tax imposed on a retail sale. The exclusion does not apply to Peabody's sales of coal to SCE because the taxes Peabody paid were not taxes on retail sales. The Arizona Transaction Privilege is not a tax on a retail sale. *See Arizona Dept. of Revenue v. Robinson's Hardware*, 721 P.2d 137 (Ariz. App. 1986); *In re Inselman*, 334 B.R. 267 (D.Ariz., 2005); and, *City of Phoenix v. West Publishing Co.*, 712 P.2d 944, 946-47 (Ariz. Ct. App. 1986). The Arizona Ad Valorem Tax is also not a sales tax; rather, it is a property tax paid to the State of Arizona based upon the assessed valuation of the property. *Bahr v. State of Arizona*, 985 P.2d 564, 565 (Ariz. Ct. App. 1999).

As such SCE may not exclude from the measure of use tax, taxes that Peabody paid to the state of Arizona.

32. SCE is not entitled to exclude transportation costs from the measure of use tax. Prior to its amendment in 2002 NAC 372.101 provided,

1. Except as otherwise provided in subsection 3, any charge for freight, transportation or delivery included in the sale of tangible personal property is subject to sales and use taxes.
2. Any charge for freight, transportation or delivery that appears on the invoice of the seller is part of the selling price even if stated separately and is not deductible from the price of the property as shown on the invoice.
3. A charge for freight, transportation or delivery is not taxable if:
   a. It is invoiced to the purchaser by the freight carrier; and
   b. Title to the property passes before shipment.

A charge for freight, transportation or delivery that is not connected with the sale of tangible personal property is a charge for a service and is not subject to sales and use taxes.

Transportation costs were included in the calculation of use tax at the time SCE incurred the tax liability. Therefore, SCE is not entitled to exclude from the sales price the amounts it paid for transportation costs.

33. Based on the evidence before the court, SCE is not entitled to any refund on its payment use tax on its consumption of a coal slurry product at the Mohave Generating Station in Nevada.

34. Based on this decision, this Court does not have to reach a decision on whether the coal lost its identity when it became coal slurry with the application of the transformation process.

DECISION

Based on the foregoing and good cause appearing,

IT IS HEREBY ORDERED that the Petition for Judicial Review is DENIED.

IT IS SO ORDERED.

Dated this 15th day of December, 2014.

JAMES T. RUSSELL
DISTRICT JUDGE

CERTIFICATE OF MAILING

The undersigned, an employee of the First Judicial District Court, hereby certifies that on the 15th day of December, 2014, I served the foregoing to counsel of record, as follows:

☒ By depositing a copy thereof in the United States Mail at Carson City, Nevada, postage paid, addressed as follows:

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Law Clerk, Dept. 1

filed 12/19

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2014 DEC 17 AM 9:48

ALAN GLOVER

BY _____ CLERK

DEPUTY

Case No.: 09 OC 00016 1B

Dept. No.: 1

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

SOUTHERN CALIFORNIA EDISON,

Plaintiff,

vs.

THE STATE OF NEVADA, EX REL. DEPARTMENT OF TAXATION,

Defendant.

AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

This matter is before this Court based on a Second Amended Complaint filed by Plaintiff, Southern California Edison, as to a decision rendered by Defendant, The State of Nevada, ex rel, Department of Taxation. An eight day bench trial was held January 21-29, 2014. An Order Staying Determination Pending Decision by Nevada Supreme Court was entered on April 30, 2014, pending a decision in *Sierra Pacific Power Company, et al. v. The State of Nevada, Department of Taxation*, 130 Nev. Adv. Op. 93, which was rendered on December 4, 2014. Based on this decision, the following Findings of Fact and Conclusions of Law are entered in this case. An Amended Findings of Fact, Conclusions of Law, and Decision is issued by this Court pursuant to NRCP Rule 60(a), to clarify that this Court heard this matter on the Second Amended Complaint filed as an independent action, and on a Trial De Novo standard, not as a Petition for Judicial Review, based on the decision by the Nevada Supreme Court in *Southern California Edison v. First Judicial District Court*, 127 Nev. Adv. Op. 22 (2011).

FINDINGS OF FACT

1. Defendant State of Nevada *ex rel.* Department of Taxation (the "Department") is an agency of the executive branch of the State of Nevada that is charged with the administration and enforcement of the tax laws set forth in Title 32 of the Nevada Revised Statutes, including chapters 372 and 374 of the Nevada Revised Statutes governing sales and use taxes and local school support taxes, respectively.

2. The Plaintiff, Southern California Edison ("SCE") is a regulated public utility that operated the Mohave Generating Station ("Mohave"), a coal fired power plant in Clark County, Nevada, from 1970 to 2005. SCE owned a majority interest in Mohave.

3. As a result of an agreement with the Department of the Interior, SCE purchased coal in Arizona exclusively from Peabody Western Coal Company ("Peabody") pursuant to Mohave Coal Supply Agreement, dated January 6, 1967, and the Amended Mohave Project Supply Agreement, dated May 26, 1976, wherein Peabody is the seller and Mohave co-owners are the buyers. In exchange for the agreement to purchase coal mined on Indian Reservations in Arizona, SCE was able to purchase the water necessary to operate Mohave from the Colorado River Commission.

4. Peabody obtained the coal from the Black Mesa Mine located on Navajo and Hopi Indian reservations in Arizona. Peabody operated the Black Mesa Mine through lease agreements with the Navajo and Hopi Tribes.

5. SCE determined that the most inexpensive means to transport the coal from Arizona to Nevada was by means of a pipeline.

6. As part of the Coal Supply Agreement, Peabody entered into a Coal Slurry Pipeline Agreement with Black Mesa Pipeline ("BMP") to process the coal into a coal slurry that met SCE's specifications and could be transported to Mohave through the pipeline.

7. The tangible personal property purchased by SCE was the coal slurry product.

8. BMP operated the Coal Slurry Preparation Plant and the pipeline that transported the coal slurry to Mohave. Before delivery of the coal to BMP, Peabody processed the run-of-mine coal by separating rock in a rotary breaker lowering the ash content and reducing the coal to a 2" x 0" size. At the Coal Slurry Preparation Plant, the coal was further crushed by various means to a certain size and blended with water to create coal slurry that could then be transported through the pipeline.

9. The processing by Peabody and BMP created a coal slurry that met SCE's transportation requirements.

10. The price SCE paid Peabody for the coal slurry is set forth in the Amended Mohave Project Coal Supply Agreement, Sec. 6. The price for the coal slurry is paid for the coal delivered to the Mohave Project and is based on the mine price, the price for transportation, and all sale, use, production and severance taxes paid by the seller, mainly Peabody. Thus, Peabody is the entity that paid all taxes, not SCE.

11. The coal slurry was transported more than 270 miles through a pipeline to the Mohave Generating Station.

12. Peabody retained title to the coal when it was transferred to BMP for processing and transportation. After processing and transportation by BMP, the sales transaction between Peabody and SCE took place in Nevada when title to the coal slurry passed to SCE upon delivery at Mohave.

13. Risk of loss for the coal slurry and water passed from Peabody to SCE at the same time title was passed at the receiving facilities of the Mohave Generating Station in Nevada.

14. Because Peabody did not have any physical presence in Nevada, SCE paid Use Tax to Nevada for the coal slurry beginning in 1970.

15. SCE de-watered the coal and burned it to generate electricity. SCE further pulverized the coal into a powder that could be blown into the burners, it did not have the means at Mohave to take run-of-mine coal and process it for burning as fuel. SCE also used the water from the coal slurry for cooling at the plant.

16. SCE could not purchase coal in Nevada because there are no commercially viable deposits of coal in Nevada and there were no coal mines operating in Nevada during the 1998 to 2000 period of time at issue in this case. There is no record that any coal mine in Nevada has been subject to the Net Proceeds of Minerals tax or that any coal miner or supplier has ever made a sale of coal in Nevada that was not subject to either sales or use tax.

17. Peabody did not compete with any Nevada companies that mined coal in Nevada.

18. Peabody did not compete with any oil, natural gas, or geothermal producers in Nevada.

19. There is no evidence that any coal transaction in Nevada was exempt from sales or use tax pursuant to NRS 372.270.

20. Beginning in April 2001, SCE filed claims for a partial refund filed with the Department of Taxation for the period between March 1998 and December 2000. This claim was limited to a request for credit toward Arizona sales tax paid by SCE to Peabody.

21. On January 31, 2003, after the Department denied SCE's claims for refund for the time period between March 1998 and December 1999, SCE submitted a Petition for Redetermination limited to those periods arguing for the first time that its consumption of coal at the Mohave Plant was exempt based on the dormant Commerce Clause and that the taxable measure should not have included SMCRA and Black Lung payments, but SCE did not provide amended returns.

22. Thereafter, on October 27, 2003, SCE submitted a letter with revised returns referring to new claims but failed to articulate the grounds for its revised claims.

23. In November of 2003, SCE submitted a brief to the Nevada Tax Commission alleging, in the alternative, that either: (1) SCE's consumption of coal at the Mohave Plant was entirely exempt from Nevada's use tax; or (2) SCE is entitled to a refund based on its inadvertent inclusion of royalties and transportation charges in the measure of its use tax obligation. The brief also alleged that SCE is entitled to a refund based upon taxes and fees remitted to Arizona, the United States, and the Navajo Nation.

24. After a previous decision on SCE's refund request was voided by the Nevada Supreme Court, the Nevada Tax Commission held open hearings on the claims for refund on Septemher 9, 2008, and December 1, 2008.

25. At the December 1, 2008, hearing the Commission voted to deny SCE's refund claims.

26. On March 2, 2009, the Commission served its final written decision, dated February 27, 2009, denying SCE's claims for refund (Ex. E to Plaintiff's Second Amended Complaint).

27. SCE did not pay any sales tax to the State of Arizona on its purchase of the coal slurry. Any tax was paid by Peabody to the state of Arizona.

28. SCE did not pay any taxes to the United States or the Navajo Nation or Hopi Tribe on its purchase of coal slurry. Any tax was paid by Peabody to the state of Arizona.

29. SCE did not pay taxes to the State of Nevada imposed pursuant to Chapter 362 of the Nevada Revised Statutes ("NRS").

30. SCE has not been taxed differently than any other similarly situated taxpayer on the use of coal in the state of Nevada nor any other tax payer who has had a product delivered to Nevada for use in this State.

31. SCE did not suffer any discrimination in fact in comparison to any other purchaser of coal in Nevada.

32. SCE has not suffered any injury as a result of the exemption in NRS 372.270 that would entitle it to retroactive relief.

CONCLUSIONS OF LAW

1. Nevada imposes a sales tax upon retailers for the privilege of selling tangible personal property at retail in Nevada. NRS 372.105. In addition to the sales tax, Nevada imposes a use tax upon consumers for the storage, use or other consumption of tangible personal property in Nevada. NRS 372.185 and NRS 374.190.

2. The use tax is imposed with respect to tangible personal property ". . . purchased from any [out-of-state] retailer on or after July 1, 1955, for storage, use or other consumption in [Nevada]." NRS 372.185(1).

3. The tax applies to tangible personal property which was acquired out-of-state but which would have been subject to sales tax if the sale had occurred in Nevada. NRS 372.185(2).

4. The use tax is complementary to the sales tax and generally applies when tangible personal property avoids the imposition of sales tax at a point of purchase outside of Nevada. *Nevada Tax Comm'n v. Nevada Cement Co.*, 116 Nev. 877, 8 P.3d 147 (2000). *See also Sparks Nugget, Inc. v. State of Nevada ex rel. Dep't of Taxation*, 124 Adv. Op. No. 15 (March 27, 2008) ("any non-exempt retail sales of personal property that have escaped sales tax are nonetheless taxed when the property is utilized in the state").

5. SCE paid use tax pursuant to NRS 372.185 beginning in 1970 on the coal slurry.

6. NRS 372.185 provides:

> 1. An excise tax is hereby imposed on the storage, use or other consumption in this State of tangible personal property purchased from any retailer on or after July 1, 1955, for storage, use or other consumption in this State at the rate of 2 percent of the sales price of the property.
> 2. The tax is imposed with respect to all property which was acquired out of state in a transaction that would have been a taxable sale if it had occurred within this State.

7. Because there is no coal mined in Nevada, any sale of coal in Nevada would necessarily be subject to either sales or use tax. The transfer of title to the coal slurry took place in Nevada and pursuant to the Mohave Project Coal Supply Agreements, Nevada law governs.

8. The fundamental objective of the dormant Commerce Clause is "preserving a national market for competition undisturbed by preferential advantages conferred by a State upon its residents or resident competitors." *Gen. Motors Corp. v. Tracy*, 519 U.S. 279, 299 (1997).

9. When challenging a state tax based on the dormant Commerce Clause, the taxpayer has the burden to demonstrate that the state tax in question does, in fact, violate the Commerce Clause of the United States Constitution. *Container Corp. of America v. Franchise Tax Bd.*, 463 U.S. 159, 164 (1983).

10. In *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274 (1977), the United States Supreme Court set out a test to determine whether a state tax provision violates the Commerce Clause. A state tax provision will survive a Commerce Clause challenge so long as the tax: (1) is applied to an activity with a substantial nexus with the taxing state; (2) is fairly apportioned; (3) does not discriminate against interstate commerce; and (4) is fairly related to the services

provided by the state. *See Quill v. N. Dakota*, 504 U.S. 298 (1992) (quoting *Complete Auto Transit v. Brady*).

11. The use tax paid by Taxpayers pursuant to NRS 372.185(1) does not violate the dormant Commerce Clause under the Constitution of the United States. *Great Am. Airways v. Nevada State Tax Comm'n*, 101 Nev. 422, 425 (1985).

12. The United States Supreme Court has identified the fundamental objective of the dormant Commerce Clause as "preserving a national market for competition undisturbed by preferential advantages conferred by a State upon its residents or resident competitors." *Gen. Motors Corp. v. Tracy*, 519 U.S. 279, 299 (1997). In this case, SCE has not been treated any differently than any of its market competitors. Since there is no unequal treatment and consequently no impediment to free trade, SCE's claim is not within the zone of interests to be protected by the Commerce Clause.

13. There are no facts in the record to support a finding that SCE, by paying use tax on its purchase of the coal slurry, is being discriminated against in comparison to a similarly situated taxpayer. To hold otherwise would be to give an unpalatable windfall to SCE.

14. SCE has not been subject to an illegal or improper tax that would entitle them to a refund of use tax.

15. There is no evidence in the record that SCE's market competitors have claimed an exemption from the payment of Sales and Use tax pursuant to NRS 372.270 on the purchase of coal.

16. Further, the Nevada Supreme Court in the *Sierra Pacific Power Company, et al* case held that NRS 372.270 was not severable and that it was to be stricken down in its entirely. *Sierra Pacific Power Company, et al. v. The State of Nevada, Department of Taxation*, 130 Nev. Adv. Op. 93 (Dec. 04, 2014). Therefore, it cannot be used to create an agreement that there was a

benefit to any Nevada mining operation that would reflect a different treatment to an in state operation.

17. Dormant Commerce Clause case law makes clear that violations must be based on actual injury and it is the burden of the taxpayer to prove the injury. In *Gregg Dyeing Co. v. Query*, 286 U.S. 472, 481 (1932), the United States Supreme Court wrote: "Discrimination, like interstate commerce itself, is a practical conception. We must deal in this matter, as in others, with substantial distinctions and real injuries." The practical effect here is that there was no discrimination.

18. Further, the United States Supreme Court in *McKesson Corp. v. Div. of Alcoholic Beverages and Tobacco, Dep't of Bus. Regulation of Florida*, 496 U.S. 18 (1990) analyzed the available remedies when a tax scheme is found to violate the dormant Commerce Clause. *McKesson* dealt with a Florida liquor tax that was found to discriminate against interstate commerce. The case addresses the means to address the injury suffered by a taxpayer in competition with a taxpayer that received beneficial treatment.

The Court concluded that the State had options available for addressing the injury. The State could refund the "difference between the tax [petitioner] paid and the tax [petitioner] would have been assessed were it extended the same rate reductions that **its competitors actually received.**" *Id.* at 40 (emphasis added).

Given the fact that SCE has not provided any facts to suggest that an actual competitor with SCE received tax rate reductions or exemptions that caused injury to SCE, there should be no applicable remedy.

19. The United States Supreme Court wrote:

Thus, in the absence of actual or prospective competition between the supposedly favored and disfavored entities in a single market there can be no local preference, whether by express

discrimination against interstate commerce or undue burden upon it, to which the dormant Commerce Clause may apply. The dormant Commerce Clause protects markets and participants in markets, not taxpayers as such.

Gen. Motors Corp. v. Tracy, 519 U.S. 279, 300 (1997).

20. The Legislature enacted NRS 372.270 which provides "the gross receipts from the sale of and the storage, use or other consumption in this State of, the proceeds of mines which are subject to taxes levied pursuant to chapter 362 of NRS" are exempt from sales and use tax. NRS Chapter 362 levies a tax on the net proceeds of minerals extracted in Nevada. *See* NRS 362.120 *et seq*. In other words, minerals which are subject to the net proceeds of minerals of tax under NRS Chapter 362 are exempted from the sales and use tax assessed in NRS Chapter 372.

21. The exemption in NRS 372.270 is only a partial exemption that applies only to the extent of actual payment of the Nevada net proceeds tax. A.G.O. 76 (June 27, 1955). The Attorney General concluded "that the sales tax is placed upon that portion of the gross receipts constituting the value of the product which is not taxed under the Net Proceeds of Mines Tax." *Id.*

22. The Nevada Supreme Court has ruled that sales and use tax exemptions are to be narrowly construed in favor of taxability. *Shetakis Distributing Co. v. Dep't of Taxation,* 108 Nev. 901, 907, 839 P.2d 1315, 1319 (1992). The language of the Nevada Constitution Article X Section 5(1) and NRS 362.110[1] clearly limits the net proceeds tax, and the corresponding exemption from sales and use taxes, to minerals extracted in Nevada.

[1] NRS 362.110 requires that the net proceeds form be filed by "every person extracting minerals in this State . . ."

23. The coal in question was mined or extracted outside of Nevada and is, therefore, not subject to the net proceeds of minerals tax in Nevada and is not exempted from Nevada sales and use tax by NRS 372.270, which statute has been stricken by the Nevada Supreme Court.

24. Because of the requirement to narrowly construe tax exemptions, SCE is required to clearly show that the sales and use tax exemption of NRS 372.270 was intended to apply to coal mined outside Nevada. This is not the case.

25. The Constitutional provision is not ambiguous to a reasonably informed person but clearly applies only to minerals extracted in Nevada.

26. The Nevada Supreme Court in the *Sierra Pacific Power Company et al* case held that there was no refund available to the utility company in that case because there had been no actual injury. *Sierra Pacific Power Company, et al. v. The State of Nevada, Department of Taxation*, 130 Nev. Adv. Op. 93 (Dec. 04, 2014). Here, as in that case, SCE did not pay any higher tax than did its competitors. No competitor gained a competitive advantage under the tax scheme.

Although the exemption to the use tax set forth in NRS 372.270 is unconstitutional and in violation of the Dormant Commerce Clause, the use tax itself is not unconstitutional. Thus, the tax itself complained of was lawfully assessed. NRS 372.270 has no applicability because there was no competitor that obtained an advantage thereunder; and, as such, there was no actual discrimination against interstate commerce. *See Sierra Pacific Power Company, et al. v. The State of Nevada, Department of Taxation*, 130 Nev. Adv. Op. 93 (Dec. 04, 2014). In fact, to not charge a use tax would have given a benefit to SCE which other taxpayers did not enjoy. SCE is on an even playing field with all such companies in the state of Nevada in regard to this issue.

27. SCE is not entitled to a credit for the Arizona Transaction Privilege Tax that Peabody paid to the State of Arizona.

NAC 372.055 provides,

In determining the amount of use tax that is due from a taxpayer, the Department will allow a credit toward the amount due to this State in an amount equal to sales tax legitimately paid for the same purchase of tangible personal property to a state or local government outside of Nevada, upon proof of payment deemed satisfactory to the Department. Here there was no "same purchase." SCE paid no direct tax to the state of Arizona.

In the contract between the parties SCE agreed to reimburse Peabody as part of the sale price the taxes that Peabody paid to Arizona. This reimbursement was a part of the purchase price SCE paid to Peabody for the coal slurry. The State of Nevada was entitled to collect use tax measured by the entire price of the coal slurry. HELLERSTEIN, STATE TAXATION, ¶ 17.08 (3d ed. 2013).

Even assuming that SCE was entitled to a credit for sales tax Peabody paid, this credit does not apply to the Arizona Transaction Privilege Tax because in this context it is not a sales tax, it is levied on a seller's, Peabody's, gross receipts rather than each individual sale and is for the privilege of doing business in the State of Arizona. *Arizona Dep't. of Revenue v. Robinson's Hardware,* 721 P.2d 137, 141 (Ariz. Ct. App. 1986).

28. SCE may not exclude taxes Peabody paid to the federal government from the measure of use tax. In the contract between the parties SCE agreed to reimburse Peabody for taxes and fees that Peabody paid to the federal government. This reimbursement was a part of the purchase price SCE paid to Peabody for the coal slurry. Peabody was the actual taxpayer, not SCE. SCE paid no direct tax to the federal government. The State of Nevada was entitled to collect use tax measured by the entire price of the coal slurry. HELLERSTEIN, STATE TAXATION, ¶ 17.08 (3d ed. 2013).

29. SCE claims that the federal taxes should not have been included in the sales price subject to Nevada use tax under NRS 372.025. Prior to its amendment NRS 372.025 provided,

1. "Gross receipts" means the total amount of the sale or lease or rental price, as the case may be, of the retail sales of retailers, valued in money, whether received in money or otherwise, without any deduction on account of any of the following:

(a) The cost of the property sold. However, in accordance with such rules and regulations as the Tax Commission may prescribe, a deduction may be taken if the retailer has purchased property for some other purpose than resale, has reimbursed his vendor for tax which the vendor is required to pay to the State or has paid the use tax with respect to the property, and has resold the property before making any use of the property other than retention, demonstration or display while holding it for sale in the regular course of business. If such a deduction is taken by the retailer, no refund or credit will be allowed to his vendor with respect to the sale of the property.

(b) The cost of the materials used, labor or service cost, interest paid, losses or any other expense.

(c) The cost of transportation of the property before its sale to the purchaser.

2. The total amount of the sale or lease or rental price includes all of the following:

(a) Any services that are a part of the sale.

(b) All receipts, cash, credits and property of any kind.

(c) Any amount for which credit is allowed by the seller to the purchaser.

3. "Gross receipts" does not include any of the following:

(a) Cash discounts allowed and taken on sales.

(b) The sale price of property returned by customers when the full sale price is refunded either in cash or credit, but this exclusion does not apply in any instance when the customer, in order to obtain the refund, is required to purchase other property at a price greater than the amount charged for the property that is returned.

(c) The price received for labor or services used in installing or applying the property sold.

(d) The amount of any tax, not including any manufacturers' or importers' excise tax, imposed by the United States upon or with respect to retail sales, whether imposed upon the retailer or the consumer.

4. For purposes of the sales tax, if the retailers establish to the satisfaction of the Tax Commission that the sales tax has been added to the total amount of the sale price and has not been absorbed by them, the total amount of the sale price shall be deemed to be the amount received exclusive of the tax imposed.

In the contract between the parties, SCE agreed to reimburse Peabody for taxes that Peabody paid to the federal government. This reimbursement was a part of the price SCE paid to Peabody for the coal slurry. Again, Peabody was the actual taxpayer, not SCE. The State of Nevada was entitled to collect sue tax measured by the entire price of the coal slurry. HELLERSTEIN, STATE TAXATION, ¶ 17.08 (3d ed. 2013).

Further, the federal taxes paid by Peabody do not fall within the exclusion in NRS 372.025(3)(d) because the taxes did not concern retail sales. The fee imposed by the Surface Mining Control & Reclamation Act of 1977 is an assessment or excise tax on all coal produced for sale by surface or underground mining. *United States v. Tri-No Enterprises, Inc.*, 819 F.2d 154, 158 (7th Cir. 1987). The tax imposed by the Black Lung Benefits Revenue Act of 1977 is also an excise tax. *See e.g. Warrior Coal Mining Co. v. U.S.*, 72 F.Supp. 2d 747 (W.D. Ky. 1999)

and *Costain Coal Inc. v. U.S.*, 126 F.3d 1437 (C.A. Fed. 1997). Since the federal taxes Peabody paid pursuant to the Surface Mining Control & Reclamation Act of 1977 and the Black Lung Benefits Revenue Act of 1977 are excise taxes and not retail sales taxes, the exclusion does not apply.

30. SCE is not entitled to exclude from the measure of use tax taxes Peabody and/or Black Mesa paid to the Navajo Nation and Hopi tribe. In the contract between the parties SCE agreed to reimburse Peabody for taxes that Peabody and/or Black Mesa paid to the Navajo nation and/or the Hopi Tribe. This reimbursement was a part of the price SCE paid to Peabody for the coal slurry. Again, Peabody was the actual taxpayer, not SCE. The State of Nevada was entitled to collect use tax measured by the entire price of the coal slurry. HELLERSTEIN, STATE TAXATION, ¶ 17.08 (3d ed. 2013)

As set forth above, NRS 372.065(3)(d) excludes, "the amount of any tax, not including any manufacturers' or importers' excise tax, imposed by the United States upon or with respect to retail sales, whether imposed upon the retailer or the consumer" from the definition of sales price. The Navajo Nation Business Activity Tax and Possessor Interest Tax do not fall within this exclusion because these are not taxes imposed with respect to retail sales. The Business Activity Tax imposed by the Navajo Nation is a tax on the privilege of doing business on the Navajo Nation lands. *Pittsburg & Midway Coal Mining Co., v. Watchman,* 52 F.3d 1531, 1535 (10th Cir. 1995). The Possessory Interest Tax levied by the Navajo Nation is based on the value of property leased on tribal lands. *Peabody Coal Co. v. Navajo Nation,* 75 F.3d 457, 468 (9th Cir. 1996). These are not retail sales taxes and there is no basis for not including them in the sales price of the property used to compute the measure of the use tax.

31. SCE is not entitled to exclude from the measure of use tax taxes paid to the state of Arizona. SCE argues that it should not have paid use tax on amounts paid to Peabody for the

Arizona Ad Valorem Tax and the Arizona Transaction Privilege Tax, "because such amounts are not includable in the sales price subject to Nevada use tax under NRS 372.065." This argument fails because these taxes are not taxes on retail sales.

In other words, sales price does not include a tax imposed on a retail sale. The exclusion does not apply to Peabody's sales of coal to SCE because the taxes Peabody paid were not taxes on retail sales. The Arizona Transaction Privilege is not a tax on a retail sale. *See Arizona Dept. of Revenue v. Robinson's Hardware*, 721 P.2d 137 (Ariz. App. 1986); *In re Inselman*, 334 B.R. 267 (D.Ariz., 2005); and, *City of Phoenix v. West Publishing Co.*, 712 P.2d 944, 946-47 (Ariz. Ct. App. 1986). The Arizona Ad Valorem Tax is also not a sales tax; rather, it is a property tax paid to the State of Arizona based upon the assessed valuation of the property. *Bahr v. State of Arizona*, 985 P.2d 564, 565 (Ariz. Ct. App. 1999).

As such SCE may not exclude from the measure of use tax, taxes that Peabody paid to the state of Arizona.

32. SCE is not entitled to exclude transportation costs from the measure of use tax. Prior to its amendment in 2002 NAC 372.101 provided,

1. Except as otherwise provided in subsection 3, any charge for freight, transportation or delivery included in the sale of tangible personal property is subject to sales and use taxes.
2. Any charge for freight, transportation or delivery that appears on the invoice of the seller is part of the selling price even if stated separately and is not deductible from the price of the property as shown on the invoice.
3. A charge for freight, transportation or delivery is not taxable if:
   a. It is invoiced to the purchaser by the freight carrier; and
   b. Title to the property passes before shipment.

A charge for freight, transportation or delivery that is not connected with the sale of tangible personal property is a charge for a service and is not subject to sales and use taxes.

Transportation costs were included in the calculation of use tax at the time SCE incurred the tax liability. Therefore, SCE is not entitled to exclude from the sales price the amounts it paid for transportation costs.

33. Based on the evidence before the court, SCE is not entitled to any refund on its payment use tax on its consumption of a coal slurry product at the Mohave Generating Station in Nevada.

34. Based on this decision, this Court does not have to reach a decision on whether the coal lost its identity when it became coal slurry with the application of the transformation process.

DECISION

Based on the foregoing and good cause appearing,

IT IS HEREBY ORDERED that the relief prayed for by the Plaintiff in its Second Amended Complaint is DENIED and judgment is awarded to the Defendant.

IT IS SO ORDERED.

Dated this 17th day of December, 2014.

JAMES T. RUSSELL
DISTRICT JUDGE

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CERTIFICATE OF MAILING

The undersigned, an employee of the First Judicial District Court, hereby certifies that on the 17th day of December, 2014, I served the foregoing to counsel of record, as follows:

☒ By depositing a copy thereof in the United States Mail at Carson City, Nevada, postage paid, addressed as follows:

Norman Azevedo, Esq.
405 North Nevada Street
Carson City, Nevada 89703

Charles C. Read, Esq.
Jones Day
555 S. Flower Street,
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Los Angeles, CA 90071-2300

Gina C. Session, Esq.
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Chief Deputy Attorney General
100 N. Carson Street
Carson City, Nevada 89701

☒ By emailing a copy thereof addressed as follows:

Gina Session: gsession@ag.nv.gov
Andrea Nichols: anichols@ag.nv.gov
Norman Azevedo: norm@nevadataxlawyers.com
Charles C. Read: ccread@jonesday.com

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Law Clerk, Dept. 1

CATHERINE CORTEZ MASTO
Nevada Attorney General
GINA C. SESSION
Nevada Bar No. 5493
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775 684-1207
Attorneys for Defendant
Nevada Dept. of Taxation

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

SOUTHERN CALIFORNIA EDISON, Plaintiff, vs. STATE OF NEVADA ex rel. DEPARTMENT OF TAXATION, Defendant.	Case No. 09 OC 00016 1B Department No. 1

NOTICE OF ENTRY OF AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW and DECISION

PLEASE TAKE NOTICE that the **AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, and DECISION**, was signed by Judge Russell on December 17, 2014, and was filed with this Court on December 17, 2014. A true and correct copy of the **AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, and DECISION**, is attached hereto as Exhibit 1.

Dated: December 17, 2014.

CATHERINE CORTEZ MASTO
Attorney General

By: _____
GINA C. SESSION
Chief Deputy Attorney General
Nevada State Bar No. 5493
100 N. Carson Street
Carson City, Nevada 89701-4717
Attorneys for Defendant

Nevada Office of the Attorney General
100 North Carson Street
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on December 17, 2014, I served a true and correct copy of the foregoing **NOTICE OF ENTRY OF AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW and DECISION** by mailing a copy thereof in the United States Mail, postage paid, fully addressed as follows:

Norman J. Azevedo, Esq.
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Carson City, NV 89703

Charles C. Reed, Esq.
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Dated: December 17, 2014.

Mary C. Wilson.
An Employee of the State of Nevada
Office of the Attorney General

Nevada Office of the Attorney General
100 North Carson Street
Carson City, NV 89701-4717

INDEX OF EXHIBIT TO NOTICE OF ENTRY OF AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW and DECISION

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Nevada Office of the Attorney General
100 North Carson Street
Carson City, NV 89701-4717

EXHIBIT 1

EXHIBIT 1

REC'D & FILED

2014 DEC 17 AM 9:48

ALAN GLOVER

BY _____ CLERK

DEPUTY

Case No.: 09 OC 00016 1B

Dept. No.: I

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

SOUTHERN CALIFORNIA EDISON,

Plaintiff,

vs.

THE STATE OF NEVADA, EX REL. DEPARTMENT OF TAXATION,

Defendant.

AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

This matter is before this Court based on a Second Amended Complaint filed by Plaintiff, Southern California Edison, as to a decision rendered by Defendant, The State of Nevada, ex rel, Department of Taxation. An eight day bench trial was held January 21-29, 2014. An Order Staying Determination Pending Decision by Nevada Supreme Court was entered on April 30, 2014, pending a decision in *Sierra Pacific Power Company, et al. v. The State of Nevada, Department of Taxation*, 130 Nev. Adv. Op. 93, which was rendered on December 4, 2014. Based on this decision, the following Findings of Fact and Conclusions of Law are entered in this case. An Amended Findings of Fact, Conclusions of Law, and Decision is issued by this Court pursuant to NRCP Rule 60(a), to clarify that this Court heard this matter on the Second Amended Complaint filed as an independent action, and on a Trial De Novo standard, not as a Petition for Judicial Review, based on the decision by the Nevada Supreme Court in *Southern California Edison v. First Judicial District Court*, 127 Nev. Adv. Op. 22 (2011).

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FINDINGS OF FACT

1. Defendant State of Nevada *ex rel.* Department of Taxation (the "Department") is an agency of the executive branch of the State of Nevada that is charged with the administration and enforcement of the tax laws set forth in Title 32 of the Nevada Revised Statutes, including chapters 372 and 374 of the Nevada Revised Statutes governing sales and use taxes and local school support taxes, respectively.

2. The Plaintiff, Southern California Edison ("SCE") is a regulated public utility that operated the Mohave Generating Station ("Mohave"), a coal fired power plant in Clark County, Nevada, from 1970 to 2005. SCE owned a majority interest in Mohave.

3. As a result of an agreement with the Department of the Interior, SCE purchased coal in Arizona exclusively from Peabody Western Coal Company ("Peabody") pursuant to Mohave Coal Supply Agreement, dated January 6, 1967, and the Amended Mohave Project Supply Agreement, dated May 26, 1976, wherein Peabody is the seller and Mohave co-owners are the buyers. In exchange for the agreement to purchase coal mined on Indian Reservations in Arizona, SCE was able to purchase the water necessary to operate Mohave from the Colorado River Commission.

4. Peabody obtained the coal from the Black Mesa Mine located on Navajo and Hopi Indian reservations in Arizona. Peabody operated the Black Mesa Mine through lease agreements with the Navajo and Hopi Tribes.

5. SCE determined that the most inexpensive means to transport the coal from Arizona to Nevada was by means of a pipeline.

6. As part of the Coal Supply Agreement, Peabody entered into a Coal Slurry Pipeline Agreement with Black Mesa Pipeline ("BMP") to process the coal into a coal slurry that met SCE's specifications and could be transported to Mohave through the pipeline.

7. The tangible personal property purchased by SCE was the coal slurry product.

8. BMP operated the Coal Slurry Preparation Plant and the pipeline that transported the coal slurry to Mohave. Before delivery of the coal to BMP, Peabody processed the run-of-mine coal by separating rock in a rotary breaker lowering the ash content and reducing the coal to a 2" x 0" size. At the Coal Slurry Preparation Plant, the coal was further crushed by various means to a certain size and blended with water to create coal slurry that could then be transported through the pipeline.

9. The processing by Peabody and BMP created a coal slurry that met SCE's transportation requirements.

10. The price SCE paid Peabody for the coal slurry is set forth in the Amended Mohave Project Coal Supply Agreement, Sec. 6. The price for the coal slurry is paid for the coal delivered to the Mohave Project and is based on the mine price, the price for transportation, and all sale, use, production and severance taxes paid by the seller, mainly Peahody. Thus, Peabody is the entity that paid all taxes, not SCE.

11. The coal slurry was transported more than 270 miles through a pipeline to the Mohave Generating Station.

12. Peabody retained title to the coal when it was transferred to BMP for processing and transportation. After processing and transportation by BMP, the sales transaction between Peabody and SCE took place in Nevada when title to the coal slurry passed to SCE upon delivery at Mohave.

13. Risk of loss for the coal slurry and water passed from Peabody to SCE at the same time title was passed at the receiving facilities of the Mohave Generating Station in Nevada.

14. Because Peabody did not have any physical presence in Nevada, SCE paid Use Tax to Nevada for the coal slurry beginning in 1970.

15. SCE de-watered the coal and burned it to generate electricity. SCE further pulverized the coal into a powder that could be blown into the burners, it did not have the means at Mohave to take run-of-mine coal and process it for burning as fuel. SCE also used the water from the coal slurry for cooling at the plant.

16. SCE could not purchase coal in Nevada because there are no commercially viable deposits of coal in Nevada and there were no coal mines operating in Nevada during the 1998 to 2000 period of time at issue in this case. There is no record that any coal mine in Nevada has been subject to the Net Proceeds of Minerals tax or that any coal miner or supplier has ever made a sale of coal in Nevada that was not subject to either sales or use tax.

17. Peabody did not compete with any Nevada companies that mined coal in Nevada.

18. Peabody did not compete with any oil, natural gas, or geothermal producers in Nevada.

19. There is no evidence that any coal transaction in Nevada was exempt from sales or use tax pursuant to NRS 372.270.

20. Beginning in April 2001, SCE filed claims for a partial refund filed with the Department of Taxation for the period between March 1998 and December 2000. This claim was limited to a request for credit toward Arizona sales tax paid by SCE to Peabody.

21. On January 31, 2003, after the Department denied SCE's claims for refund for the time period between March 1998 and December 1999, SCE submitted a Petition for Redetermination limited to those periods arguing for the first time that its consumption of coal at the Mohave Plant was exempt based on the dormant Commerce Clause and that the taxable measure should not have included SMCRA and Black Lung payments, but SCE did not provide amended returns.

22. Thereafter, on October 27, 2003, SCE submitted a letter with revised returns referring to new claims but failed to articulate the grounds for its revised claims.

23. In November of 2003, SCE submitted a brief to the Nevada Tax Commission alleging, in the alternative, that either: (1) SCE's consumption of coal at the Mohave Plant was entirely exempt from Nevada's use tax; or (2) SCE is entitled to a refund based on its inadvertent inclusion of royalties and transportation charges in the measure of its use tax obligation. The brief also alleged that SCE is entitled to a refund based upon taxes and fees remitted to Arizona, the United States, and the Navajo Nation.

24. After a previous decision on SCE's refund request was voided by the Nevada Supreme Court, the Nevada Tax Commission held open hearings on the claims for refund on September 9, 2008, and December 1, 2008.

25. At the December 1, 2008, hearing the Commission voted to deny SCE's refund claims.

26. On March 2, 2009, the Commission served its final written decision, dated February 27, 2009, denying SCE's claims for refund (Ex. E to Plaintiff's Second Amended Complaint).

27. SCE did not pay any sales tax to the State of Arizona on its purchase of the coal slurry. Any tax was paid by Peabody to the state of Arizona.

28. SCE did not pay any taxes to the United States or the Navajo Nation or Hopi Tribe on its purchase of coal slurry. Any tax was paid by Peabody to the state of Arizona.

29. SCE did not pay taxes to the State of Nevada imposed pursuant to Chapter 362 of the Nevada Revised Statutes ("NRS").

30. SCE has not been taxed differently than any other similarly situated taxpayer on the use of coal in the state of Nevada nor any other tax payer who has had a product delivered to Nevada for use in this State.

31. SCE did not suffer any discrimination in fact in comparison to any other purchaser of coal in Nevada.

32. SCE has not suffered any injury as a result of the exemption in NRS 372.270 that would entitle it to retroactive relief.

CONCLUSIONS OF LAW

1. Nevada imposes a sales tax upon retailers for the privilege of selling tangible personal property at retail in Nevada. NRS 372.105. In addition to the sales tax, Nevada imposes a use tax upon consumers for the storage, use or other consumption of tangible personal property in Nevada. NRS 372.185 and NRS 374.190.

2. The use tax is imposed with respect to tangible personal property ". . . purchased from any [out-of-state] retailer on or after July 1, 1955, for storage, use or other consumption in [Nevada]." NRS 372.185(1).

3. The tax applies to tangible personal property which was acquired out-of-state but which would have been subject to sales tax if the sale had occurred in Nevada. NRS 372.185(2).

4. The use tax is complementary to the sales tax and generally applies when tangible personal property avoids the imposition of sales tax at a point of purchase outside of Nevada. *Nevada Tax Comm'n v. Nevada Cement Co.*, 116 Nev. 877, 8 P.3d 147 (2000). *See also Sparks Nugget, Inc. v. State of Nevada ex rel. Dep't of Taxation*, 124 Adv. Op. No. 15 (March 27, 2008) ("any non-exempt retail sales of personal property that have escaped sales tax are nonetheless taxed when the property is utilized in the state").

5. SCE paid use tax pursuant to NRS 372.185 beginning in 1970 on the coal slurry.

6. NRS 372.185 provides:

> 1. An excise tax is hereby imposed on the storage, use or other consumption in this State of tangible personal property purchased from any retailer on or after July 1, 1955, for storage, use or other consumption in this State at the rate of 2 percent of the sales price of the property.
>
> 2. The tax is imposed with respect to all property which was acquired out of state in a transaction that would have been a taxable sale if it had occurred within this State.

7. Because there is no coal mined in Nevada, any sale of coal in Nevada would necessarily be subject to either sales or use tax. The transfer of title to the coal slurry took place in Nevada and pursuant to the Mohave Project Coal Supply Agreements, Nevada law governs.

8. The fundamental objective of the dormant Commerce Clause is "preserving a national market for competition undisturbed by preferential advantages conferred by a State upon its residents or resident competitors." *Gen. Motors Corp. v. Tracy*, 519 U.S. 279, 299 (1997).

9. When challenging a state tax based on the dormant Commerce Clause, the taxpayer has the burden to demonstrate that the state tax in question does, in fact, violate the Commerce Clause of the United States Constitution. *Container Corp. of America v. Franchise Tax Bd.*, 463 U.S. 159, 164 (1983).

10. In *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274 (1977), the United States Supreme Court set out a test to determine whether a state tax provision violates the Commerce Clause. A state tax provision will survive a Commerce Clause challenge so long as the tax: (1) is applied to an activity with a substantial nexus with the taxing state; (2) is fairly apportioned; (3) does not discriminate against interstate commerce; and (4) is fairly related to the services

provided by the state. *See Quill v. N. Dakota*, 504 U.S. 298 (1992) (quoting *Complete Auto Transit v. Brady*).

11. The use tax paid by Taxpayers pursuant to NRS 372.185(1) does not violate the dormant Commerce Clause under the Constitution of the United States. *Great Am. Airways v. Nevada State Tax Comm'n*, 101 Nev. 422, 425 (1985).

12. The United States Supreme Court has identified the fundamental objective of the dormant Commerce Clause as "preserving a national market for competition undisturbed by preferential advantages conferred by a State upon its residents or resident competitors." *Gen. Motors Corp. v. Tracy*, 519 U.S. 279, 299 (1997). In this case, SCE has not been treated any differently than any of its market competitors. Sinee there is no unequal treatment and consequently no impediment to free trade, SCE's claim is not within the zone of interests to be protected by the Commerce Clause.

13. There are no facts in the record to support a finding that SCE, by paying use tax on its purchase of the coal slurry, is being diseriminated against in comparison to a similarly situated taxpayer. To hold otherwise would be to give an unpalatable windfall to SCE.

14. SCE has not been subject to an illegal or improper tax that would entitle them to a refund of use tax.

15. There is no evidence in the record that SCE's market competitors have claimed an exemption from the payment of Sales and Use tax pursuant to NRS 372.270 on the purchase of coal.

16. Further, the Nevada Supreme Court in the *Sierra Pacific Power Company, et al* case held that NRS 372.270 was not severable and that it was to be stricken down in its entirely. *Sierra Pacific Power Company, et al. v. The State of Nevada, Department of Taxation*, 130 Nev. Adv. Op. 93 (Dec. 04, 2014). Therefore, it cannot be used to create an agreement that there was a

benefit to any Nevada mining operation that would reflect a different treatment to an in state operation.

17. Dormant Commerce Clause case law makes clear that violations must be based on actual injury and it is the burden of the taxpayer to prove the injury. In *Gregg Dyeing Co. v. Query*, 286 U.S. 472, 481 (1932), the United States Supreme Court wrote: "Discrimination, like interstate commerce itself, is a practical conception. We must deal in this matter, as in others, with substantial distinctions and real injuries." The practical effect here is that there was no discrimination.

18. Further, the United States Supreme Court in *McKesson Corp. v. Div. of Alcoholic Beverages and Tobacco, Dep't of Bus. Regulation of Florida*, 496 U.S. 18 (1990) analyzed the available remedies when a tax scheme is found to violate the dormant Commerce Clause. *McKesson* dealt with a Florida liquor tax that was found to discriminate against interstate commerce. The case addresses the means to address the injury suffered by a taxpayer in competition with a taxpayer that received beneficial treatment.

The Court concluded that the State had options available for addressing the injury. The State could refund the "difference between the tax [petitioner] paid and the tax [petitioner] would have been assessed were it extended the same rate reductions that **its competitors actually received.**" *Id.* at 40 (emphasis added).

Given the fact that SCE has not provided any facts to suggest that an actual competitor with SCE received tax rate reductions or exemptions that caused injury to SCE, there should be no applicable remedy.

19. The United States Supreme Court wrote:

Thus, in the absence of actual or prospective competition between the supposedly favored and disfavored entities in a single market there can be no local preference, whether by express

discrimination against interstate commerce or undue burden upon it, to which the dormant Commerce Clause may apply. The dormant Commerce Clause protects markets and participants in markets, not taxpayers as such.

Gen. Motors Corp. v. Tracy, 519 U.S. 279, 300 (1997).

20. The Legislature enacted NRS 372.270 which provides "the gross receipts from the sale of and the storage, use or other consumption in this State of, the proceeds of mines which are subject to taxes levied pursuant to chapter 362 of NRS" are exempt from sales and use tax. NRS Chapter 362 levies a tax on the net proceeds of minerals extracted in Nevada. *See* NRS 362.120 *et seq*. In other words, minerals which are subject to the net proceeds of minerals of tax under NRS Chapter 362 are exempted from the sales and use tax assessed in NRS Chapter 372.

21. The exemption in NRS 372.270 is only a partial exemption that applies only to the extent of actual payment of the Nevada net proceeds tax. A.G.O. 76 (June 27, 1955). The Attorney General concluded "that the sales tax is placed upon that portion of the gross receipts constituting the value of the product which is not taxed under the Net Proceeds of Mines Tax." *Id.*

22. The Nevada Supreme Court has ruled that sales and use tax exemptions are to be narrowly construed in favor of taxability. *Shetakis Distributing Co. v. Dep't of Taxation,* 108 Nev. 901, 907, 839 P.2d 1315, 1319 (1992). The language of the Nevada Constitution Article X Section 5(1) and NRS 362.110[1] clearly limits the net proceeds tax, and the corresponding exemption from sales and use taxes, to minerals extracted in Nevada.

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[1] NRS 362.110 requires that the net proceeds form be filed by "every person extracting minerals in this State . . ."

23. The coal in question was mined or extracted outside of Nevada and is, therefore, not subject to the net proceeds of minerals tax in Nevada and is not exempted from Nevada sales and use tax by NRS 372.270, which statute has been stricken by the Nevada Supreme Court.

24. Because of the requirement to narrowly construe tax exemptions, SCE is required to clearly show that the sales and use tax exemption of NRS 372.270 was intended to apply to coal mined outside Nevada. This is not the case.

25. The Constitutional provision is not ambiguous to a reasonably informed person but clearly applies only to minerals extracted in Nevada.

26. The Nevada Supreme Court in the *Sierra Pacific Power Company et al* case held that there was no refund available to the utility company in that case because there had been no actual injury. *Sierra Pacific Power Company, et al. v. The State of Nevada, Department of Taxation*, 130 Nev. Adv. Op. 93 (Dec. 04, 2014). Here, as in that case, SCE did not pay any higher tax than did its competitors. No competitor gained a competitive advantage under the tax scheme.

Although the exemption to the use tax set forth in NRS 372.270 is unconstitutional and in violation of the Dormant Commerce Clause, the use tax itself is not unconstitutional. Thus, the tax itself complained of was lawfully assessed. NRS 372.270 has no applicability because there was no competitor that obtained an advantage thereunder; and, as such, there was no actual discrimination against interstate commerce. *See Sierra Pacific Power Company, et al. v. The State of Nevada, Department of Taxation*, 130 Nev. Adv. Op. 93 (Dec. 04, 2014). In fact, to not charge a use tax would have given a benefit to SCE which other taxpayers did not enjoy. SCE is on an even playing field with all such companies in the state of Nevada in regard to this issue.

27. SCE is not entitled to a credit for the Arizona Transaction Privilege Tax that Peabody paid to the State of Arizona.

NAC 372.055 provides,

In determining the amount of use tax that is due from a taxpayer, the Department will allow a credit toward the amount due to this State in an amount equal to sales tax legitimately paid for the same purchase of tangible personal property to a state or local government outside of Nevada, upon proof of payment deemed satisfactory to the Department. Here there was no "same purchase." SCE paid no direct tax to the state of Arizona.

In the contract between the parties SCE agreed to reimburse Peabody as part of the sale price the taxes that Peabody paid to Arizona. This reimbursement was a part of the purchase price SCE paid to Peabody for the coal slurry. The State of Nevada was entitled to collect use tax measured by the entire price of the coal slurry. HELLERSTEIN, STATE TAXATION, ¶ 17.08 (3d ed. 2013).

Even assuming that SCE was entitled to a credit for sales tax Peabody paid, this credit does not apply to the Arizona Transaction Privilege Tax because in this context it is not a sales tax, it is levied on a seller's, Peabody's, gross receipts rather than each individual sale and is for the privilege of doing business in the State of Arizona. *Arizona Dep't. of Revenue v. Robinson's Hardware*, 721 P.2d 137, 141 (Ariz. Ct. App. 1986).

28. SCE may not exclude taxes Peabody paid to the federal government from the measure of use tax. In the contract between the parties SCE agreed to reimburse Peabody for taxes and fees that Peabody paid to the federal government. This reimbursement was a part of the purchase price SCE paid to Peabody for the coal slurry. Peabody was the actual taxpayer, not SCE. SCE paid no direct tax to the federal government. The State of Nevada was entitled to collect use tax measured by the entire price of the coal slurry. HELLERSTEIN, STATE TAXATION, ¶ 17.08 (3d ed. 2013).

29. SCE claims that the federal taxes should not have been included in the sales price subject to Nevada use tax under NRS 372.025. Prior to its amendment NRS 372.025 provided,

1. "Gross receipts" means the total amount of the sale or lease or rental price, as the case may be, of the retail sales of retailers, valued in money, whether received in money or otherwise, without any deduction on account of any of the following:

(a) The cost of the property sold. However, in accordance with such rules and regulations as the Tax Commission may prescribe, a deduction may be taken if the retailer has purchased property for some other purpose than resale, has reimbursed his vendor for tax which the vendor is required to pay to the State or has paid the use tax with respect to the property, and has resold the property before making any use of the property other than retention, demonstration or display while holding it for sale in the regular course of business. If such a deduction is taken by the retailer, no refund or credit will be allowed to his vendor with respect to the sale of the property.

(b) The cost of the materials used, labor or service cost, interest paid, losses or any other expense.

(c) The cost of transportation of the property before its sale to the purchaser.

2. The total amount of the sale or lease or rental price includes all of the following:

(a) Any services that are a part of the sale.

(b) All receipts, cash, credits and property of any kind.

(c) Any amount for which credit is allowed by the seller to the purchaser.

3. "Gross receipts" does not include any of the following:

(a) Cash discounts allowed and taken on sales.

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(b) The sale price of property returned by customers when the full sale price is refunded either in cash or credit, but this exclusion does not apply in any instance when the customer, in order to obtain the refund, is required to purchase other property at a price greater than the amount charged for the property that is returned.

(c) The price received for labor or services used in installing or applying the property sold.

(d) The amount of any tax, not including any manufacturers' or importers' excise tax, imposed by the United States upon or with respect to retail sales, whether imposed upon the retailer or the consumer.

4. For purposes of the sales tax, if the retailers establish to the satisfaction of the Tax Commission that the sales tax has been added to the total amount of the sale price and has not been absorbed by them, the total amount of the sale price shall be deemed to be the amount received exclusive of the tax imposed.

In the contract between the parties, SCE agreed to reimburse Peabody for taxes that Peabody paid to the federal government. This reimbursement was a part of the price SCE paid to Peabody for the coal slurry. Again, Peabody was the actual taxpayer, not SCE. The State of Nevada was entitled to collect sue tax measured by the entire price of the coal slurry. HELLERSTEIN, STATE TAXATION, ¶ 17.08 (3d ed. 2013).

Further, the federal taxes paid by Peabody do not fall within the exclusion in NRS 372.025(3)(d) because the taxes did not concern retail sales. The fee imposed by the Surface Mining Control & Reclamation Act of 1977 is an assessment or excise tax on all coal produced for sale by surface or underground mining. *United States v. Tri-No Enterprises, Inc.*, 819 F.2d 154, 158 (7th Cir. 1987). The tax imposed by the Black Lung Benefits Revenue Act of 1977 is also an excise tax. *See e.g. Warrior Coal Mining Co. v. U.S.*, 72 F.Supp. 2d 747 (W.D. Ky. 1999)

and *Costain Coal Inc. v. U.S.*, 126 F.3d 1437 (C.A. Fed. 1997). Since the federal taxes Peabody paid pursuant to the Surface Mining Control & Reclamation Act of 1977 and the Black Lung Benefits Revenue Act of 1977 are excise taxes and not retail sales taxes, the exclusion does not apply.

30. SCE is not entitled to exclude from the measure of use tax taxes Peabody and/or Black Mesa paid to the Navajo Nation and Hopi tribe. In the contract between the parties SCE agreed to reimburse Peabody for taxes that Peabody and/or Black Mesa paid to the Navajo nation and/or the Hopi Tribe. This reimbursement was a part of the price SCE paid to Peabody for the coal slurry. Again, Peabody was the actual taxpayer, not SCE. The State of Nevada was entitled to collect use tax measured by the entire price of the coal slurry. HELLERSTEIN, STATE TAXATION, ¶ 17.08 (3d ed. 2013)

As set forth above, NRS 372.065(3)(d) excludes, "the amount of any tax, not including any manufacturers' or importers' excise tax, imposed by the United States upon or with respect to retail sales, whether imposed upon the retailer or the consumer" from the definition of sales price. The Navajo Nation Business Activity Tax and Possessor Interest Tax do not fall within this exclusion because these are not taxes imposed with respect to retail sales. The Business Activity Tax imposed by the Navajo Nation is a tax on the privilege of doing business on the Navajo Nation lands. *Pittsburg & Midway Coal Mining Co., v. Watchman*, 52 F.3d 1531, 1535 (10th Cir. 1995). The Possessory Interest Tax levied by the Navajo Nation is based on the value of property leased on tribal lands. *Peabody Coal Co. v. Navajo Nation*, 75 F.3d 457, 468 (9th Cir. 1996). These are not retail sales taxes and there is no basis for not including them in the sales price of the property used to compute the measure of the use tax.

31. SCE is not entitled to exclude from the measure of use tax taxes paid to the state of Arizona. SCE argues that it should not have paid use tax on amounts paid to Peabody for the

Arizona Ad Valorem Tax and the Arizona Transaction Privilege Tax, "because such amounts are not includable in the sales price subject to Nevada use tax under NRS 372.065." This argument fails because these taxes are not taxes on retail sales.

In other words, sales price does not include a tax imposed on a retail sale. The exclusion does not apply to Peabody's sales of coal to SCE because the taxes Peabody paid were not taxes on retail sales. The Arizona Transaction Privilege is not a tax on a retail sale. *See Arizona Dept. of Revenue v. Robinson's Hardware*, 721 P.2d 137 (Ariz. App. 1986); *In re Inselman*, 334 B.R. 267 (D.Ariz., 2005); and, *City of Phoenix v. West Publishing Co.*, 712 P.2d 944, 946-47 (Ariz. Ct. App. 1986). The Arizona Ad Valorem Tax is also not a sales tax; rather, it is a property tax paid to the State of Arizona based upon the assessed valuation of the property. *Bahr v. State of Arizona*, 985 P.2d 564, 565 (Ariz. Ct. App. 1999).

As such SCE may not exclude from the measure of use tax, taxes that Peabody paid to the state of Arizona.

32. SCE is not entitled to exclude transportation costs from the measure of use tax. Prior to its amendment in 2002 NAC 372.101 provided,

1. Except as otherwise provided in subsection 3, any charge for freight, transportation or delivery included in the sale of tangible personal property is subject to sales and use taxes.
2. Any charge for freight, transportation or delivery that appears on the invoice of the seller is part of the selling price even if stated separately and is not deductible from the price of the property as shown on the invoice.
3. A charge for freight, transportation or delivery is not taxable if:
   a. It is invoiced to the purchaser by the freight carrier; and
   b. Title to the property passes before shipment.

A charge for freight, transportation or delivery that is not connected with the sale of tangible personal property is a charge for a service and is not subject to sales and use taxes.

Transportation costs were included in the calculation of use tax at the time SCE incurred the tax liability. Therefore, SCE is not entitled to exclude from the sales price the amounts it paid for transportation costs.

33. Based on the evidence before the court, SCE is not entitled to any refund on its payment use tax on its consumption of a coal slurry product at the Mohave Generating Station in Nevada.

34. Based on this decision, this Court does not have to reach a decision on whether the coal lost its identity when it became coal slurry with the application of the transformation process.

DECISION

Based on the foregoing and good cause appearing,

IT IS HEREBY ORDERED that the relief prayed for by the Plaintiff in its Second Amended Complaint is DENIED and judgment is awarded to the Defendant.

IT IS SO ORDERED.

Dated this 17th day of December, 2014.

JAMES T. RUSSELL
DISTRICT JUDGE

CERTIFICATE OF MAILING

The undersigned, an employee of the First Judicial District Court, hereby certifies that on the 17th day of December, 2014, I served the foregoing to counsel of record, as follows:

☒ By depositing a copy thereof in the United States Mail at Carson City, Nevada, postage paid, addressed as follows:

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Gina C. Session, Esq.
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Samantha Peiffer, Esq.
Law Clerk, Dept. I

Case No: 09 OC 00016 1B

Dept. No: I

REC'D & FILED
2015 JAN 30 AM 10:00
SUSAN MERRIWETHER
CLERK
BY
DEPUTY

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE CARSON CITY

SOUTHERN CALIFORNIA EDISON,

Plaintiff,

vs.

STATE OF NEVADA, EX REL. DEPARTMENT OF TAXATION,

Defendant.

ORDER DENYING SOUTHERN CALIFORNIA EDISON'S MOTION TO AMEND FINDINGS OF FACT AND CONCLUSIONS OF LAW AND TO AMEND JUDGMENT OR DIRECT ENTRY OF A NEW JUDGMENT

This matter is before this Court on Southern California Edison's Motion to Amend Findings of Fact and Conclusions of Law and to Amend Judgment or Direct Entry of a New Judgment, filed herein on December 24, 2014, and Defendant's Opposition thereto filed January 9, 2015. Southern California Edison did not file a Reply but did file a Request to Submit on January 15, 2015.

In its Motion, Southern California Edison argues that this Court incorrectly applied the Nevada Supreme Court's decision in *Sierra Pac. Power v. State Dep't of Tax*, 130 Nev. Adv. Op. 93, 338 P.3d 1244 (2014) to the facts of this case. The Motion further requests that this Court amend its Decision to include certain evidence and argument introduced by Plaintiff, Southern California Edison, at trial. Lastly, Southern California Edison asks that the Decision be amended so that it does not refer to "coal slurry" as a "coal slurry product." Southern California Edison does not indicate what term should be utilized instead.

This Court has reviewed the Amended Findings of Fact, Conclusions of Law and Decision entered December 17, 2014, and finds that it correctly applied the Nevada Supreme

Court's decision in *Sierra Pac. Power* and further that the findings are sufficient to indicate the factual basis for the Court's ultimate decision to deny Southern California Edison the relief prayed for in its Second Amended Complaint and to award judgment in favor of Defendant, Nevada Department of Taxation.

Therefore, good cause appearing, IT IS HEREBY ORDERED that Southern California Edison's Motion to Amend Findings of Fact and Conclusions of Law and to Amend Judgment or Direct Entry of a new Judgment is DENIED.

IT IS SO ORDERED this 30th day of January, 2015.

JAMES T. RUSSELL
DISTRICT COURT JUDGE

Submitted by:
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Nevada Department of Taxation

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I hereby certify that on the 30th day of January, 2015, I served a copy of the foregoing by placing the foregoing in the United States Mail, postage prepaid, addressed as follows:

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Carson City, NV 89701-4717

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

SOUTHERN CALIFORNIA EDISON, Plaintiff, vs. STATE OF NEVADA ex rel. DEPARTMENT OF TAXATION, Defendant.	Case No. 09 OC 00016 1B Department No. 1

NOTICE OF ENTRY OF ORDER DENYING SOUTHERN CALIFORNIA EDISON'S MOTION TO AMEND FINDINGS OF FACT AND CONCLUSIONS OF LAW AND TO AMEND JUDGMENT OR DIRECT ENTRY OF NEW JUDGMENT

PLEASE TAKE NOTICE that the **ORDER DENYING SOUTHERN CALIFORNIA EDISON'S MOTION TO AMENDED FINDINGS OF FACT and CONCLUSIONS OF LAW and TO AMEND JUDGMENT or DIRECT ENTRY OF A NEW JUDGMENT**, was signed by Judge Russell on January 30, 2015, and was filed with this Court on January 30, 2015. A true and correct copy of the **ORDER DENYING SOUTHERN CALIFORNIA EDISON'S MOTION TO AMENDED FINDINGS OF FACT and CONCLUSIONS OF LAW and TO AMEND**

///

///

JUDGMENT or DIRECT ENTRY OF A NEW JUDGMENT, is attached hereto as Exhibit 1.

Dated: February 3, 2015.

ADAM PAUL LAXALT
Attorney General

By: _____

GINA C. SESSION
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100 N. Carson Street
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Attorneys for Defendants

Nevada Office of the Attorney General
100 North Carson Street
Carson City, NV 89701-4717

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on February 3, 2015, I served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER OF ORDER DENYING SOUTHERN CALIFORNIA EDISON'S MOTION TO AMEND FINDINGS OF FACT AND CONCLUSION OF LAW AND TO AMEND JUDGMENT OR DIRECT ENTRY OF A NEW JUDGMENT** by mailing a copy thereof in the United States Mail, postage paid, fully addressed as follows:

Norman J. Azevedo, Esq.
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Carson City, NV 89703

Charles C. Reed, Esq.
Joe Ward, Esq.
Jones Day
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Los Angeles, CA 90071

Dated: February 3, 2015.

Mary C. Wilson

An Employee of the State of Nevada
Office of the Attorney General

Nevada Office of the Attorney General
100 North Carson Street
Carson City, NV 89701-4717

INDEX OF EXHIBIT

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Nevada Office of the Attorney General
100 North Carson Street
Carson City, NV 89701-4717

EXHIBIT 1

EXHIBIT 1

Case No: 09 OC 00016 1B

Dept. No: I

REC'D & FILED

2015 JAN 30 AM 10:00

SUSAN MERRIWETHER
CLERK

BY _____ DEPUTY

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE CARSON CITY

SOUTHERN CALIFORNIA EDISON,

Plaintiff,

vs.

STATE OF NEVADA, EX REL. DEPARTMENT OF TAXATION,

Defendant.

ORDER DENYING SOUTHERN CALIFORNIA EDISON'S MOTION TO AMEND FINDINGS OF FACT AND CONCLUSIONS OF LAW AND TO AMEND JUDGMENT OR DIRECT ENTRY OF A NEW JUDGMENT

This matter is before this Court on Southern California Edison's Motion to Amend Findings of Fact and Conclusions of Law and to Amend Judgment or Direct Entry of a New Judgment, filed herein on December 24, 2014, and Defendant's Opposition thereto filed January 9, 2015. Southern California Edison did not file a Reply but did file a Request to Submit on January 15, 2015.

In its Motion, Southern California Edison argues that this Court incorrectly applied the Nevada Supreme Court's decision in *Sierra Pac. Power v. State Dep't of Tax*, 130 Nev. Adv. Op. 93, 338 P.3d 1244 (2014) to the facts of this case. The Motion further requests that this Court amend its Decision to include certain evidence and argument introduced by Plaintiff, Southern California Edison, at trial. Lastly, Southern California Edison asks that the Decision be amended so that it does not refer to "coal slurry" as a "coal slurry product." Southern California Edison does not indicate what term should be utilized instead.

This Court has reviewed the Amended Findings of Fact, Conclusions of Law and Decision entered December 17, 2014, and finds that it correctly applied the Nevada Supreme

Court's decision in *Sierra Pac. Power* and further that the findings are sufficient to indicate the factual basis for the Court's ultimate decision to deny Southern California Edison the relief prayed for in its Second Amended Complaint and to award judgment in favor of Defendant, Nevada Department of Taxation.

Therefore, good cause appearing, IT IS HEREBY ORDERED that Southern California Edison's Motion to Amend Findings of Fact and Conclusions of Law and to Amend Judgment or Direct Entry of a new Judgment is DENIED.

IT IS SO ORDERED this 30th day of June, 2015.

JAMES T. RUSSELL
DISTRICT COURT JUDGE

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I hereby certify that on the 30th day of January, 2015, I served a copy of the foregoing by placing the foregoing in the United States Mail, postage prepaid, addressed as follows:

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2016 FEB 26 PM 3:45
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CLERK
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IN THE FIRST JUDICIAL DISTRICT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

SOUTHERN CALIFORNIA EDISON,

Plaintiff,

v.

THE STATE OF NEVADA, *ex rel.* DEPARTMENT OF TAXATION,

Defendant.

Case No. 09-OC-00016-1B

Dept. No.: 1

NOTICE OF APPEAL

Plaintiff Southern California Edison Company hereby appeals to the Supreme Court of Nevada from the Amended Findings of Fact, Conclusions of Law, and Decision entered by the District Court on December 17, 2014, and the Order Denying Plaintiff's Motion to Amend Findings of Fact and Conclusions of Law and to Amend Judgment or Direct Entry of a New Judgment entered by the District Court on January 30, 2015.

.../

.../

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.../

.../

Dated this 26th day of February, 2015

By: _____
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Attorneys for Plaintiff

CERTIFICATE OF MAILING

I hereby certify that on the 26 day of February, 2015, I mailed a copy of the foregoing document via U.S. Mail addressed as follows:

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100 N. Carson Street
Carson City, NV 89701

_____
Rhonda Azevedo

FILED
Electronically
06-13-2012:04:08:19 PM
Joey Orduna Hastings
Clerk of the Court
Transaction # 3016904

CODE 3370

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

SIERRA PACIFIC POWER CO.; NEVADA POWER COMPANY, jdba NV Energy,

Petitioners,

vs.

Case No. CV09-03554

Dept. No. 1

STATE OF NEVADA ex rel. NEVADA DEPARTMENT OF TAXATION; CLARK COUNTY, NEVADA,

Respondents.

/

ORDER

The controversy before this Court commenced when Petitioners Sierra Pacific Power Company, Inc. and Nevada Power Company, Inc., jointly doing business as NV Energy, sought a refund of use taxes accrued and remitted on the cost of purchasing out-of-state coal used to generate electricity in their power plants. The Nevada Department of Taxation's administrative law judge ("ALJ") denied the refund requests; and the Nevada Tax Commission affirmed the ALJ's decision by a 5:2 vote.

Thereafter, Petitioners filed a *Complaint* in the Second Judicial District Court, seeking a refund of the use taxes, pursuant to N.R.S. 372.680. On May 26, 2011, the Nevada Supreme Court established that a petition for judicial review is the proper vehicle for challenging Nevada Tax Commission decisions on sales and use tax refunds. See Southern California Edison v. First Judicial District Court, 255 P.3d 231 (2011).

On July 18, 2011, Petitioners timely filed a *Petition for Judicial Review*, in accordance with N.R.S. 372.680 and N.R.S. 233B.130. Respondents State of Nevada and Clark County, Nevada timely filed statements of intent to participate, pursuant to N.R.S. 233B.130(3). Neither the City of Henderson nor the City of Winnemucca (who had intervened in the proceedings before the Nevada Tax Commission) filed statements of intent to participate, and so are not parties to this action.

This Court, having heard oral argument on March 30, 2012, and having reviewed the parties' briefs and pleadings on file in this action, makes the following findings of fact, conclusions of law, and decision.

FINDINGS OF FACT

1. Nevada Power Company ("NPC") owns shares of the Reid Gardner Electric Generating Plant (the "Reid Gardner Plant") located in Clark County, Nevada; and is the operating agent for the entire Reid Gardner Plant.

2. Sierra Pacific Power Company ("SPPC") owns shares of the Valmy Electric Generating Plant ("the Valmy Plant") located in Humboldt County, Nevada; and is the operating agent for the Valmy Plant.

3. Both NPC and SPPC (hereinafter referred to as "NV Energy") burn coal to generate electricity; transmit that electricity to their customers; and then sell the excess capacity on the wholesale market.

4. NV Energy executed various coal supply agreements to supply the Reid Gardner Plant and the Valmy Plant. Under these supply agreements, all coal was purchased and shipped from various mines located in Utah, Wyoming, and Colorado.

5. The coal is purchased outside Nevada because Nevada does not have any coal deposits with the quality and quantity to support commercial operations. According to the Nevada State Geologist, the coal deposits which can be found in Nevada are "too small and too impure to support significant mining." ROA 531-534.

6. After the coal is mined, coal vendors crush the coal to the size specified by NV Energy. The coal is then weighed and sampled to ensure that it complies with NV Energy's strict quality standards. The coal is then transported to Nevada. NV Energy hired third-parties to transport the

coal by railcar to the Reid Gardner Plant and the Valmy Plant. Thereafter, NV Energy temporarily stores the coal at each facility, until it is fed into the plants and consumed to create electricity. Each power plant consumes approximately 6,000 tons of coal per day, when operating at maximum capacity. The coal is ground to the consistency of talcum powder, which is then carried into the plant furnaces by air. The furnaces burn the coal to heat water into steam. The steam then turns the plant turbines to create electricity.

7. The coal inventory at the Reid Gardner Plant and the Valmy Plant varies over the years at issue. As of November 2007, there was approximately 63 days of inventory at the Reid Gardner Plant and 87 days of inventory at the Valmy Plant.

8. NV Energy did not pay sales tax to the coal vendors on the coal it purchased out-of-state. However, NV Energy paid Nevada Use Tax on coal used at the Reid Gardner and Valmy plants. NV Energy then requested a refund of the use taxes paid on the coal for the period of April of 2002 through October of 2006.

9. NPC requested a refund of Nevada Use Tax paid on coal used at the Reid Gardner Plant in the amount of $14,430,504.68. SPPC requested a refund of Nevada Use Tax paid on coal used at the Valmy Plant in the amount of $11,502,231.14

10. In 2007, the Nevada Department of Taxation ("Department") audited NV Energy's claims and ultimately denied its' request for refunds. NV Energy then filed petitions for redetermination, disputing the Department's decision to deny the Nevada Use Tax refund requests. The matter was referred to Administrative Law Judge ("ALJ") Dena C. James for consideration and decision.

11. The ALJ upheld the Department's denial of NV Energy's refund requests in a decision dated July 3, 2008. NV Energy then appealed the ALJ's decision to the Nevada Tax Commission, which upheld the ALJ's findings on October 23, 2009.

12. Southern California Edison ("SCE") was an owner of and the operating agent for Mohave Plant, an electric power generating plant located in Clark County. In 2001 and 2002, SCE requested a refund of Nevada Use Tax which SCE paid on out-of-state coal used at the Mojave Plant. The Department denied the request and the Department's Hearing Officer upheld the denial.

The Nevada Tax Commission then granted a refund of these Nevada Use Taxes, by letter dated November 29, 2006. However, the Nevada Supreme Court declared the Nevada Tax Commission's decision void on the grounds that the Nevada Tax Commission had acted in violation of the Open Meeting Law. See Attorney General v. Nevada Tax Comm'n, 124 Nev. 232, 235, 181 P.3d 675, 677 (2008).

STANDARD OF REVIEW

1. The standard of review is governed by the Nevada Administrative Procedure Act. The burden of proof is on the party attacking or resisting the decision to show that it is invalid. N.R.S. 233B.135 provides that a court shall not substitute its judgment for that of an administrative agency as to the weight of evidence on a question of fact. However, a court "may remand or affirm the final decision or set it aside in whole or in part" if the petitioner's substantial rights have been prejudiced because the agency's final decision is "in violation of constitutional or statutory provisions." Id.

CONCLUSIONS OF LAW

NV Energy requests a refund of the Nevada Use Taxes it remitted on the cost to purchase coal from out-of-state mines on the grounds that the exemption from sales and use tax set forth in N.R.S. 372.270 facially discriminates against interstate commerce; and so should be declared unconstitutional under the Commerce Clause of the United States Constitution, art. I, § 8, cl. 3.

Nevada's Statutory Mineral Taxation Scheme

1. Nevada imposes a sales tax upon retailers for the privilege of selling tangible personal property in Nevada. N.R.S. 372.105.

2. In addition to the sales tax, Nevada also imposes a use tax upon consumers for the storage, use, or other consumption of tangible personal property in Nevada. N.R.S. 372.185. The use tax is imposed on "tangible personal property purchased from any [out-of-state] retailer on or after July 1, 1955, for storage, use or other consumption in [Nevada]." N.R.S. 372.185(1). The use tax applies to all tangible personal property which was acquired out-of-state, but which would have been subject to sales tax if the sale had occurred in Nevada. N.R.S. 372.185(2).

3. The use tax is complementary to the sales tax and serves to expand the sales tax beyond state boundaries. Great American Airways v. Nevada State Tax Com'n., 101 Nev. 422, 427, n.5,

705 P.2d 654, 657 (1985). The measure of the use tax is the sales price paid to the out-of-state vendor. N.R.S. 372.185; see also Sparks Nugget, Inc. v. State of Nevada ex rel. Dep't of Taxation, 124 Nev. 159, 164, 179 P.3d 570, 574 (2008) ["The use tax is complementary to the sales tax in that it guarantees that any *nonexempt* retail sales of personal property that have escaped sales tax liability are nonetheless taxed when the property is utilized in the state."] "The purpose of such a sales-use tax scheme is to make all tangible property used or consumed in the State subject to a uniform tax burden irrespective of whether it is acquired within the State, making it subject to the sales tax, or from without the State, making it subject to a use tax at the same rate." Halliburton Oil Well Cementing Co. v. Reily, 373 U.S. 64, 66, 83 S.Ct. 1201, 1202 (1963).

4. Petitioners paid use tax on the coal purchased from retailers outside Nevada, pursuant to N.R.S. 372.185.

5. Article X, Section 5(1) of the Nevada Constitution provides:

> The legislature shall provide by law for a tax upon the net proceeds of all minerals, including oil, gas and other hydrocarbons, extracted ***in this State***, at a rate not to exceed 5 percent of the net proceeds. No other tax may be imposed upon a mineral or its proceeds until the identity of the proceeds as such is lost. (emphasis added).

6. In accordance with Article X, Section 5(1)'s provision that "[n]o other tax may be imposed upon a mineral or its proceeds", the Nevada Legislature enacted N.R.S. 372.270. This provision exempts minerals subject to the "net proceeds of mines tax" from the sales and use tax. See N.R.S. 372.270, which provides:

> There are exempted from the taxes imposed by this chapter the gross receipts from the sale of, and the storage, use or other consumption in this State of, the proceeds of mines which are subject to taxes levied pursuant to chapter 362 of NRS.

7. N.R.S. Chapter 362 levies a property tax on the net proceeds of mines extracted within Nevada. See N.R.S. 362.120 *et seq.*

8. As such, N.R.S. 372.270 limits the sales and use tax exemption to retail sales of minerals extracted within Nevada that have been subjected to the net proceeds of mines tax found within N.R.S. Chapter 362. In other words, minerals which are subject to the net proceeds of mines tax

pursuant to N.R.S. Chapter 362 are exempt from the sales and use tax assessed in N.R.S. Chapter 372.

9. Accordingly, the Department of Taxation determined that the above sales and use tax exemption did not apply to the coal purchased by NV Energy, as that coal was extracted outside Nevada; and thus, was not subject to the net proceeds of mines tax levied pursuant to N.R.S. Chapter 362.

10. On the other hand, had NV Energy bought coal mined within Nevada, the coal would have been subject to the net proceeds of mines tax levied pursuant to N.R.S. Chapter 362; and NV Energy would not have had to pay the use tax imposed by N.R.S. 372.185.

11. NV Energy alleges that this Nevada mineral taxation scheme—specifically, the exemption set forth in N.R.S. 372.270—is facially discriminatory against interstate commerce because coal mined inside Nevada could potentially be subjected to different tax treatment than coal mined outside Nevada. Accordingly, NV Energy contends that N.R.S. 372.270 violates the Commerce Clause of the United States Constitution, art. 1, §8, cl. 3; and that NV Energy is entitled to a full refund of the use taxes it remitted on the purchase of out-of-state coal.

Dormant Commerce Clause

1. When challenging a state tax based on the dormant Commerce Clause, the taxpayer has the burden to demonstrate that the state tax in question does, in fact, violate the Commerce Clause of the United States Constitution. Container Corp. of America v. Franchise Tax Bd., 463 U.S. 159, 180, 103 S.Ct. 2933, 2948 (1983).

2. The United States Supreme Court has established that a state tax is not per se invalid by virtue of its imposition on interstate commerce since "interstate commerce may be made to pay its way." Complete Auto Transit, Inc. v. Brady, 430 U.S. 274, 289, 97 S.Ct. 1076, 1084, n.15 (1977). However, a state's right to tax interstate commerce is limited, and no state tax will be upheld unless the tax: (1) is applied to an activity with a substantial nexus with the taxing state; (2) is fairly apportioned; (3) does not discriminate against interstate commerce; and (4) is fairly related to the services provided by the state. Id. at 279.

3. The parties do not dispute that Nevada's mineral taxation scheme meets the first, second, and fourth prongs of the Complete Auto test. However, NV Energy asserts that the sales and use tax exemption set forth in N.R.S. 372.270 fails to comply with the third prong of the Complete Auto test, in that it facially discriminates against interstate commerce.

4. The United States Supreme Court has been especially vigilant in enforcing the third prong of the Complete Auto test, such that it is well established that "no State, consistent with the Commerce Clause, may impose a tax which discriminates against interstate commerce . . . by providing a direct commercial advantage to local business." Northwestern States Portland Cement Co. v. Minnesota, 358 U.S. 450, 458, 79 S.Ct. 357, 362 (1959). Stated another way, a state "may not tax a transaction or incident more heavily when it crosses state lines than when it occurs entirely within the State." Armco, Inc. v. Hardesty, 467 U.S. 638, 642, 104 S.Ct. 2620, 2622 (1984).

5. When a state's tax provisions patently discriminate against interstate commerce, the United States Supreme Court has applied a "virtually per se rule of invalidity." City of Philadelphia v. New Jersey, 437 U.S. 617, 624, 98 S.Ct. 2531, 2535 (1978).

6. In the context of state sales and use taxes, the United States Supreme Court has noted: "[t]he conclusion is inescapable: equal treatment for in-state and out-of-state taxpayers similarly situated is the condition precedent for a valid use tax on goods imported from out-of-state." Halliburton Oil Well Cementing Co. v. Reily, 373 U.S. 64, 70, 83 S.Ct. 1201, 1204 (1963); see also Maryland v. Louisiana, 451 U.S. 725, 756-57, 101 S.Ct. 2114, 2134 (1981) [use tax imposed on natural gas passing through Louisiana from gas wells on the Outer Continental Shelf violated the Commerce Clause because domestic gas distributors and consumers were largely exempt from the tax through the availability of various tax credits.]

7. As Respondents point out, the Nevada Supreme Court has found that Nevada's Use Tax complies with the dormant Commerce Clause of the United States Constitution. See Great American Airways v. Nevada State Tax Com'n, 101 Nev. 422, 428, 705 P.2d 654, 658 (1985) [air carrier headquartered in Nevada paid use tax on the out-of-state purchase of an airplane. The Court found Nevada's Use Tax, codified in N.R.S. 372.185(1), did not discriminate against interstate

commerce, as both intrastate and interstate carriers who used and stored their planes in Nevada were subject to the tax.]

8. Here, however, NV Energy is not challenging the constitutionality of Nevada's Use Tax itself, but the interplay between the use tax, codified in N.R.S. 372.185, and the sales and use tax exemption for minerals purchased from Nevada mines, codified in N.R.S. 372.270. See Maryland v. Louisiana, 451 U.S. 725, 756, 101 S.Ct. 2114, 2134 (1981) ["a state tax must be assessed in light of its actual effect considered in conjunction with other provisions of the State's tax scheme."]; Halliburton, 373 U.S. at 69, citing Galveston, H. & S.A.R. Co. v. Texas, 210 U.S. 217, 227, 28 S.Ct. 638, 640 (1908) [proper analysis must take "the whole scheme of taxation into account."].

9. Respondents advance two primary arguments in support of the constitutionality of Nevada's mineral taxation scheme. First, Respondents assert that Nevada's mineral taxation scheme is not facially discriminatory; and thus, falls outside the United States Supreme Court's "virtually per se rule of invalidity." City of Philadelphia, 437 U.S. at 624. Second, Respondents aver that even if Nevada's mineral taxation scheme is facially discriminatory, NV Energy does not have standing to bring a dormant Commerce Clause challenge, because NV Energy cannot demonstrate it has suffered actual discrimination in relation to a similarly situated taxpayer.[1]

10. Respondents first assert that Nevada's mineral taxation scheme is not facially discriminatory against interstate commerce. On the record before the Court, purchasers of out-of-state minerals, such as the coal purchased by NV Energy, are subject to a use tax of between 6.5% and 7.75% of the minerals' sales price. See N.R.S. 372.185(1). However, purchasers of in-state minerals are subject to the net proceeds of mines tax, which is 5% of the difference between the gross yield from the sale of minerals extracted in Nevada and various enumerated deductions, set forth in N.R.S. 362.120(3). Accordingly, out-of-state minerals are subject to different and unequal taxation as their in-state counterparts.

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[1] The Court notes that both the State of Nevada and Clark County have advanced other arguments in support of their claims. The Court has considered all arguments of counsel; and issues these *Findings of Fact and Conclusions of Law* based on the dispositive issues in this case.

11. In addition, the Court finds that the net proceeds of mines tax is not a compensating tax or complementary tax to the use tax. See Great American Airways v. Nevada State Tax Comm'n, 101 Nev. 422, 427 n.5, 702 P.2d 654, 657 (1985) ["The use tax is complementary to the sales tax."]; Associated Industries of Missouri v. Lohman, 511 U.S. 641, 647-48, 114 S.Ct. 1815, 1821 (1994) [for a tax to be compensatory, the tax must be imposed on "substantially equivalent events" and the tax burden must be the same.]. Here, the net proceeds of mines tax and the use tax are not imposed on substantially equivalent events because the calculation of the two taxes is substantially different. Further, the tax burden between the net proceeds of mines tax and use tax is uneven.

12. The ALJ noted that "the discrimination prong of the Complete Auto test requires that the state place no greater burden upon interstate commerce than it places upon competing intrastate commerce of like character." Great American Airways v. Nevada Tax Com'n, 101 Nev. 422, 428, 705 P.2d 654, 658 (1985), citing Complete Auto, 430 U.S. at 282. Accordingly, the ALJ opined:

> Although the use tax rates were higher than the net proceeds tax rate during the period in question, it cannot be assumed that the use tax assessments would have been higher, or more burdensome, than a potential net proceeds assessment during that period. Without knowing the measure on which those taxes would have been respectively calculated, there is no basis for comparing the two tax types. Although there are different taxes with differing tax rates for in-state and out-of-state coal, it cannot be assumed that the differences result in a burden on the out-of-state coal as compared to in-state coal. [NV Energy] simply "failed to show that, whatever distinction there existed in form, there was any substantial discrimination in fact." Gregg Dyeing co. v. Query, 286 U.S. 472, 482, 52 S.Ct. 631, 635 [(1932)].

13. This Court disagrees. See Bacchus Imports, Ltd. v. Dias, 468 U.S. 263, 269, 104 S.Ct. 3049, 3054 (1984), citing Maryland v. Louisiana, 451 U.S. 725, 760, 101 S.Ct. 2114, 2136 (1981) ["It is well settled that "[w]e need not know how unequal the Tax is before concluding that it unconstitutionally discriminates."] Here, the net proceeds of mines tax and the Nevada Use Tax are clearly unequal. It is unlikely the Nevada Legislature would exempt Nevada minerals from a lower sales or use tax, but subject Nevada minerals to a higher, more burdensome, net proceeds of mines tax.

14. Accordingly, the Court finds that the plain language of N.R.S. 372.270 facially discriminates against out-of-state proceeds of mines, by subjecting out-of-state minerals to use tax, while exempting domestic minerals from either sales or use tax.

15. Respondents next argue that even if Nevada's mineral taxation scheme is facially discriminatory against interstate commerce, NV Energy does not have standing to challenge the taxation scheme because NV Energy cannot demonstrate actual discrimination in relation to a similarly situated taxpayer. See Spears v. Spears, 95 Nev. 416, 418, 596 P.2d 210, 212 (1979) (citation omitted) ["The rule is well established that one who is not prejudiced by the operation of a statute cannot question its validity."]. Specifically, Respondents assert that because there are no presently-known, viable coal deposits in Nevada, neither NV Energy, nor its competitor, Southern California Edison, pay the net proceeds of mines tax, pursuant to N.R.S. Chapter 362. Consequently, neither NV Energy, nor Southern California Edison, are eligible for the sales and use tax exemption within N.R.S. 372.270. Accordingly, Respondents aver that NV Energy and Southern California Edison are on an equal playing field; and NV Energy cannot prove it has experienced the necessary discrimination to bring a dormant Commerce Clause challenge to Nevada's mineral taxation scheme.

16. In support of their contention that NV Energy must demonstrate actual injury in order to establish a dormant Commerce Clause violation, Respondents cite Gregg Dyeing co. v. Query, 286 U.S. 472, 481, 52 S.Ct. 631, 635 (1932) ["Discrimination, like interstate commerce itself, is a practical conception. We must deal in this matter, as in others, with substantial distinctions and real injuries."] However, the language in Gregg occurred in the context of competing sales and use taxes enacted upon gasoline bought inside South Carolina, and gasoline bought outside South Carolina, for use and consumption within the state. The Gregg Court simply found that appellants failed to establish an injury because there was "no distinction of substance" with respect to the amount of sales tax paid for in-state gasoline purchases and the amount of use tax paid for out-of-state gasoline purchases.

17. Respondents also rely on General Motors v. Tracy, 519 U.S. 279 (1997), to support their contention that the Department of Taxation's refusal to extend N.R.S. 327.270's sales and use tax

exemption to NV Energy's out-of-state coal purchases did not result in actual discrimination; and thus, NV Energy has no basis upon which to challenge Nevada's mineral taxation scheme. The Court finds Tracy to be distinguishable from the factual situation in this case.

18. Tracy involved a Commerce Clause challenge to an Ohio statutory scheme under which retail sales of natural gas by state-regulated local public utilities were exempt from the state's general sales and use taxes. However, retail sales of natural gas by other in-state and out-of-state sellers were subject to the state's general sales and use taxes. 519 U.S. at 281. While superficially, Ohio's statutory scheme appeared to violate the Commerce Clause by imposing a sales or use tax on natural gas purchased outside Ohio for use in Ohio, but exempting retail sales of natural gas made by domestic natural gas utilities, the United States Supreme Court discerned the existence of two separate markets: (1) a closely regulated domestic natural gas market for domestic consumers; and (2) an unregulated natural gas market for industrial or commercial consumers. See e.g. Tracy, 519 U.S. at 301-302.

19. The Court in Tracy determined, on the record before it, that there was no competition between the regulated market in which public utilities sold natural gas to domestic consumers, and the unregulated natural gas market from which industrial consumers purchased their natural gas. On this basis, the Court determined that no discrimination against interstate commerce existed because General Motors was purchasing its natural gas from the unregulated market, a market in which all retail sales of natural gas were subject to sales or use tax regardless of whether the gas was purchased inside Ohio or outside Ohio. See id. at 300 ["[i]n the absence of actual or prospective competition between the supposedly favored and disfavored entities in a single market there can be no local preference, whether by express discrimination against interstate commerce or undue burden upon it, to which the dormant Commerce Clause may apply."]

20. Here, unlike the situation in Tracy, there is no evidence of separate regulated and unregulated coal markets in Nevada. Respondents argue that since there are currently no known, viable coal deposits in Nevada, NV Energy cannot establish it has actually been discriminated against in relation to a similarly situate taxpayer, because neither NV Energy, nor Southern California Edison, are currently able to purchase tax-exempt coal from in-state suppliers.

21. When a taxation scheme is facially discriminatory against interstate commerce, the party challenging the tax does not have to demonstrate the existence of an actual competitor in the market who is favored by the discriminatory law. Healy v. The Beer Institute, 491 U.S. 324, 344 n.*, 109 S.Ct. 2491, 2504 (1989) (Scalia concurrence) ["As far as I know we have never required a plaintiff to show that a statute which facially discriminates against out-of-state business in fact benefits a particular in-state business . . .."]; New Energy Co. of Indiana v. Limbach, 486 U.S. 269, 276-77, 108 S.Ct. 1803, 1809 (1988).

22. Here, NV Energy is attacking N.R.S. 372.270's sales and use tax exemption on the ground that it facially discriminates against interstate commerce. NV Energy does not have to show it has suffered actual discrimination in relation to a competitor favored by Nevada's mineral taxation scheme, in order to assert a dormant Commerce Clause challenge. See Healy, 491 U.S. at 344 n.*; See also Tracy, 519 U.S. at 300 [Court recognized that a showing of even *prospective* competition is enough to support a claim of unconstitutional discrimination under the Commerce Clause.]

23. Accordingly, this Court finds that the lack of known, viable, coal deposits in Nevada does not vindicate the facial discrimination inherent in Nevada's mineral taxation scheme.[2] NV Energy has standing to bring a dormant Commerce Clause challenge to Nevada's mineral taxation scheme, regardless of whether NV Energy has suffered actual discrimination as a result of that scheme.

NV Energy's Remedy:

1. NV Energy contends that Nevada law already provides the appropriate remedy in this case—namely, that NV Energy is entitled to a full refund of the use taxes it remitted on the purchase of out-of-state coal for its Nevada power plants. See N.R.S. 372.630; N.R.S. 372.635; and N.R.S. 372.680; Worldcorp, Inc. v. State of Nevada, Dept. of Taxation, 113 Nev. 1032, 1038, 944 P.2d 824,

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[2] Further, the Court finds, and Clark County concedes, that if viable coal deposits were discovered in Nevada; and if a domestic coal mine was established with the capacity to supply coal to operators of power plants in Nevada, the use tax on out-of-state coal would constitute actual discrimination in light of N.R.S. 372.270's sales and use tax exemption for domestic coal.

828 (1997) ["When a tax statute is determined to be unconstitutional, the taxpayer is entitled to a refund."]

2. Respondents assert that NV Energy is not entitled to a full refund because NV Energy has not shown it has suffered a real injury that would entitle it to relief, i.e., a refund of the use taxes paid on the purchase of out-of-state coal. Respondents assert that NV Energy is unaffected by the tax exemption within N.R.S. 372.270; and that even if Nevada's entire mineral taxation scheme were struck down, it would have no impact on NV Energy or its competitors. Both sides to this dispute concede that moving forward, NV Energy would still be required to pay use tax on coal brought in from out-of-state, pursuant to N.R.S. 372.185. Respondents further assert that granting NV Energy a full refund in this case would amount to an unnecessary "windfall."

3. In McKesson Corp. v. Division of Alcoholic Beverages and Tobacco, 496 U.S. 18 (1990), the United States Supreme Court analyzed the available remedies when a tax scheme is found to violate the dormant Commerce Clause. In McKesson, a Florida statute provided a lower rate of excise tax on certain alcoholic beverages manufactured in Florida from specific agricultural products grown in Florida than the rate applied to imported alcoholic beverages. The taxpayer in McKesson sought to recover a refund of the excess excise taxes it paid on beverages that did not qualify for the rate reductions. The United States Supreme Court found that the Florida liquor tax discriminated against interstate commerce.

4. The McKesson Court noted that when a state requires a party to pay a disputed tax first, and then obtain review of the tax's validity in a later refund action, the State must afford "meaningful backward-looking relief" for taxes paid pursuant to a tax scheme ultimately found unconstitutional. Id. at 32. In its analysis, the McKesson Court described possible remedies for addressing such an injury, including: (1) refunding the aggrieved taxpayer the "difference between the tax it paid and the tax it would have been assessed were it extended the same rate reductions that its competitors actually received"; (2) assessing and collecting back-taxes from competitors who benefited from the rate reductions during the contested tax period, in order to retroactively create a nondiscriminatory scheme; or (3) a combination of a partial refund and a partial retroactive collection of back-taxes from competitors who benefited from the rate reductions. Id. at 40-41.

5. On the record before the Court, NV Energy has not identified a competitor who has received a use tax exemption, pursuant to N.R.S. 372.270. Thus, NV Energy cannot demonstrate that it should receive a refund to place NV Energy in the same position as its benefitted competitor. Likewise, because NV Energy cannot identify a favored competitor that actually benefitted from Nevada's mineral taxation scheme, there is no injury that can be addressed by collecting back-taxes to remove the alleged discrimination.

6. Accordingly, and good cause appearing, NV Energy's request for a full refund of use taxes it remitted between April of 2002 through October of 2006 at the Reid Gardner Plant and the Valmy Plant is hereby DENIED.

DECISION

Nevada's mineral taxation scheme—specifically, the interplay between the Nevada Use Tax set forth in N.R.S. 372.185, and the exemption to the sales and use tax set forth in N.R.S. 372.270—facially discriminates against interstate commerce. This statutory tax scheme subjects out-of-state proceeds of mines, i.e., minerals, to Nevada Use Tax, yet exempts domestic proceeds of mines from Nevada sales and use tax. In addition, the net proceeds of mines tax, which is imposed on domestic minerals is not a complimentary or compensating tax for the Nevada Use Tax.

Although there is currently no known, viable source of coal in Nevada for use in NV Energy's power plants, the existence of a competing domestic source of coal in Nevada is not necessary for NV Energy to assert a claim that Nevada's mineral taxation scheme facially discriminates against interstate commerce. Accordingly, the Court finds N.R.S. 372.270 is unconstitutional under the Commerce Clause of the United States Constitution, art. 1, §8, cl. 3; and NV Energy has standing to assert this claim.

However, on the record before the Court, NV Energy is not entitled to any refund of the use taxes it remitted to purchase out-of-state coal, as NV Energy has not shown the existence of a favored competitor who has received a use tax exemption, pursuant to N.R.S. 372.270. Accordingly, NV Energy has not shown it has been aggrieved by Nevada's unconstitutional mineral taxation scheme; and thus, does not warrant "meaningful backward-looking relief", pursuant to McKesson.

IT IS SO ORDERED.

DATED: This 13th day of June, 2012.

Janet Berry
DISTRICT JUDGE

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe; that on the 13th day of June, 2012, I electronically filed the foregoing with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

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November 29, 2006

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IN THE MATTER OF: ***Southern California Edison***

At a closed hearing on April 5, 2005 that was continued to May 9, 2005, the Nevada Tax Commission ("Commission") heard and decided the appeal of Southern California Edison ("Edison") from the denial by a Hearing Officer of the Department of Taxation ("Department") of Edison's claims for refund of Nevada use tax. Gregory L. Zunino, Senior Deputy Attorney General, appeared on behalf of the Department and Norman J. Azevedo, Esq., appeared on behalf of Edison. Also present, as intervenors supporting the denial of Edison's claims, were Paul Johnson, Deputy District Attorney for Clark County, and Terri Williams, Assistant City Attorney for the City of Henderson.

Edison has been paying Nevada use tax on the purchase of coal imported from Arizona since 1970. Edison timely filed administrative claims for refund of this tax for the periods of March, 1998 through September, 2003 on the grounds that section 372.270 of the Nevada Revised Statutes ("NRS"), a sales and use tax exemption, is applicable to Edison's purchase of coal as more fully described below.[1] The Department denied these claims for refund on December 17, 2002, December 30, 2002 and May 16, 2003. Edison appealed the denials, and a Hearing Officer heard the case on December 22, 2003 and January 28, 2004. In a decision issued on July 14, 2004, the Hearing Officer concluded that, as applied by the Department in this case, NRS 372.270 violated the Commerce Clause of the U.S. Constitution. Nonetheless, the Hearing Officer denied the claims for refund because he reasoned that the appropriate remedy would be to prohibit all taxpayers from using the exemption. We find that there are appropriate statutory and Nevada constitutional grounds to grant Edison's claims for refund.

[1] Reference in this Decision to the sales and use tax statutes contained in NRS chapter 372 shall be deemed to include reference to the identical provisions in chapter 374 (the local school support tax portion of the Nevada sales and use tax). There are no differences between such statutes for purposes of this Decision.

FINDINGS OF FACT

Edison operates the Mohave Generating Station (the "Mohave Plant") in Laughlin, Nevada, which is located within Clark County. Edison is also the majority owner of the Mohave Plant.[2] The Mohave Plant generates electricity by burning coal. All of the coal burned at the Mohave Plant is purchased from Peabody Western Coal Company ("Peabody"), which operates the Black Mesa coal mine located in the State of Arizona on lands belonging to the Navajo Nation and Hopi Tribe. The coal is transported from the Black Mesa mine to the Mohave Plant in a coal slurry (ground coal suspended in water) through a 273-mile long pipeline owned by Black Mesa Pipeline, Inc. The slurry travels through the pipeline at a rate of 580 to 650 tons of coal per hour, requiring one billion gallons of water annually.

After extraction, but prior to transport, the raw coal is broken into small pieces by Peabody and sent by conveyor to a coal weighing and sampling tower operated by Commercial Testing & Engineering, a third party. There the coal is tested to see whether it meets the standards pertaining to, for example, BTUs and sulfur content as specified in the agreement between Peabody and Edison. After testing, Peabody further grinds the coal to a sand-like consistency and delivers it to the pipeline. Black Mesa Pipeline mixes the coal with ground water pumped out of local wells – the mix is approximately 50/50. The water used to transport the coal is purchased by Peabody.

The coal purchased by Edison never becomes something other than coal between the time it is mined and the time it is delivered to Edison. The parties submitted expert testimony and written evidence on this issue and presented argument at the hearing. The mined coal is physically ground and suspended in water for transport. This "coal slurry" is not, as the Department argues, a manufactured mineral by-product. Rather, we find that Edison is purchasing a raw mineral – in this case coal – and the processes relating to the creation of the slurry do not convert the coal to something other than a raw mineral.

When the slurry arrives at the Mohave Plant, a centrifuge removes approximately 94% of the coal from the water. The remaining 6% of the coal is pumped into a settling tank where it settles to the bottom and is removed. Once dry, the coal is pulverized and blown into the burners for the boilers that make steam for the generating units. All of the water that comes through the pipeline is either used in the circulatory cooling system at the Mohave Plant or evaporated in the boilers when the coal is burned. Thus, the Mohave Plant uses 100% of the materials that are delivered to it through the pipeline.

CONCLUSIONS OF LAW

Edison claims that Nevada use tax does not apply to its purchase of coal for use at the Mohave Plant pursuant to NRS 372.185(2), 372.270, NRS 372.265, the federal Commerce Clause and Article 10, section 5(1) of the Nevada Constitution. NRS 372.185 imposes the use tax:

> 1. An excise tax is hereby imposed on the storage, use or other consumption in this State of tangible personal property purchased from any retailer on or after July 1, 2955, for storage, use or other consumption in this State at the rate of 2 percent of the sales price of the property.
>
> 2. The tax is imposed with respect to all property which was acquired out of state in a transaction that would have been a taxable sale if it had occurred within this State.

[2] Edison owns a 56% undivided interest in the Mohave Plant. Edison jointly owns the plant with Nevada Power Company, Salt River Project Agriculture Improvement and the Department of Water and Power of the City of Los Angeles.

NRS 372.270 is an exemption that applies to both the sales and use taxes:

> **Proceeds of mines.** There are exempted from the taxes imposed by this chapter the gross receipts from the sale of, and the storage, use or other consumption in this State of, the proceeds of mines which are subject to taxes levied pursuant to chapter 362 of NRS.

NRS 372.265 provides:

> **Constitutional and statutory exemptions.** There are exempted from the taxes imposed by this chapter the gross receipts from the sale of, and the storage, use or other consumption in this State of, tangible personal property the gross receipts from the sale of which, or the storage, use or other consumption of which, this State is prohibited from taxing under the Constitution or laws of the United States or under the Constitution of this State.

Article 10, § 5(1) of the Nevada Constitution provides:

> The legislature shall provide by law for a tax upon the net proceeds of all minerals, including oil, gas and other hydrocarbons, extracted in this state, at a rate not to exceed 5 percent of the net proceeds. No other tax may be imposed upon a mineral or its proceeds until the identity of the proceeds as such is lost.

The Commission was thoroughly briefed on the facts of this case and the interaction of the net proceeds of minerals tax and the sales and use tax by all parties. In addition, the Commission heard argument from, and asked questions of, all parties regarding the same. Edison argues that under NRS 372.185(2), use tax does not apply to its purchase of Arizona coal for the Mohave Plant because, had it purchased the coal in Nevada, that transaction would not have been taxable. A purchase of Nevada coal would not have been taxable because NRS 372.270 exempts from the sales and use tax "the proceeds of mines which are subject to taxes levied pursuant to chapter 362 of NRS," and had Edison purchased its coal from a Nevada mine, this exemption would have applied. Furthermore, Edison argues that due to restrictions imposed by the dormant Commerce Clause, which is taken into account under NRS 372.265, Nevada cannot impose its use tax on the purchase of imported coal when a sale or purchase of Nevada coal is exempt from such tax.

On the other hand, the Department argues that Edison's purchase of Arizona coal is taxable because NRS 372.270 exempts proceeds of mines that are "subject to taxes levied pursuant to chapter 362 of NRS," and coal imported from Arizona is *not subject* to the net proceeds of minerals tax imposed by chapter 362. We agree with Edison because the applicability of the use tax in this case is not dependent on whether the Arizona coal is subject to the net proceeds of minerals tax, but rather whether an equivalent in-state transaction would be subject to sales or use tax. *See* NRS 372.185(2).

The exemption in NRS 372.270 applies to minerals subject to taxes levied by NRS chapter 362 (the Net Proceeds of Minerals Tax).[3] The 5% net proceeds of minerals tax applies to the net proceeds of

[3] Although NRS 372.270 uses the term "proceeds of mines," in 1989, pursuant to an amendment to Article 10, § 5 of the Nevada Constitution, and related amendments to NRS chapter 362, NRS chapter 362 was amended to tax the "proceeds of minerals." The failure to change the reference from "mines" to "minerals" in NRS 372.270 appears to be an oversight. If the term "proceeds of mines" were given a substantive meaning in NRS 372.270, the remaining portion of that section would be rendered meaningless – NRS 372.270 still refers to NRS chapter 362, and that chapter now taxes net proceeds of "minerals" not "mines." There is no indication that the legislature intended to nullify NRS 372.270 when the Nevada Constitution was amended and NRS chapter 362 was

minerals extracted in Nevada. *See* NRS 362.110(1). *See also* Nev. Const., Art. 10, § 5(1) (directing the legislature to "provide by law for a tax upon the net proceeds of all minerals, including oil, gas and other hydrocarbons, extracted in this state..."). Coal is a mineral. *See* NRS 362.010(1) & (2) (referring to coal and hydrocarbons, respectively); Nev. Const., Art. 10, § 5(1) (referring to hydrocarbons). If a Nevada mine sells its coal to Edison for use at the Mohave Plant, no sales or use tax applies. NRS 372.270. Accordingly, by operation of NRS 372.185(2), Edison's purchase of coal from an out-of-state mine for use at the Mohave Plant is not a taxable transaction.[4]

Both sides looked to Article 10, Section 5(1) of the Nevada Constitution to support their arguments. That section provides:

> The legislature shall provide by law for a tax upon the net proceeds of all minerals, including oil, gas and other hydrocarbons, extracted in this state, at a rate not to exceed 5 percent of the net proceeds. ***No other tax may be imposed upon a mineral or its proceeds*** until the identity of the proceeds as such is lost. (Emphasis added.)

Under this constitutional provision, the only tax that may be imposed upon minerals or their proceeds is the 5% tax that the first sentence directs the legislature to impose. Both parties and the Commission agree that the net proceeds of minerals tax does not apply to minerals extracted outside of Nevada.

The parties disagreed regarding the application of the second sentence. Edison argued that the second sentence does not limit the prohibition against "other" taxes to minerals extracted in Nevada. Therefore, Edison concluded, since Edison was purchasing coal that had not lost its identity as coal, "[n]o other tax," namely the use tax, could be imposed upon the use of its imported coal. The Department, on the other hand, argued that the coal being delivered to Edison at the Mohave Plant was a by-product that had "lost its identity" as the mineral or its proceeds such that the second sentence of Article 10, § 5(1) did not apply.

We found, above, that the coal purchased by Edison and delivered to the Mohave Plant through the pipeline is a mineral. We also found, necessarily, that the coal slurry is not, as the Department argued, a manufactured mineral by-product. (We do not find the Department's citation to AGO No. 72, dated June 22, 1955, involving a mineral by-product to be authoritative here.) Because Edison purchased and received raw coal, we agree with Edison that Article 10, § 5(1) of the Nevada Constitution precludes imposition of the use tax on the purchase and use of that coal.

Further support for this conclusion can be found in the legislative history to the 1989 amendments to NRS chapter 362 (SB 61), and the history to the amendments to Article 10 of the Nevada Constitution (SJR 22). Section 1 of SB 61 of the 1989 Session of the Nevada Legislature provides:

> The legislature hereby declares that:
>
> 1. The legislature's intent in proposing and approving Senate Joint Resolution No. 22 of the 64th session is to provide a separate method of

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substantially revised. Thus, NRS 372.270 is still applicable and it exempts proceeds of minerals subject to the taxes imposed by NRS chapter 362. *Accord. Bartlett v. Brodigan*, 37 Nev. 245, 249 (1914).

[4] Because of our construction of the Nevada statutes and Constitution, we do not need to reach the Commerce Clause violation raised by Edison and found by the Hearing Officer. *See, e.g., Armco Inc. v. Hardesty*, 467 U.S. 638, 642 (1984) ("a State may not tax a transaction or incident more heavily when it crosses state lines than when it occurs entirely within the State."); *Halliburton Oil Well Cementing Co. v. Reily*, 373.U.S. 64, 70 (1963) ("The conclusion is inescapable: equal treatment for in-state and out-of-state taxpayers similarly situated is the condition precedent for a valid use tax on goods imported from out-of-state.").

taxation that is intended to be the only manner of taxation of mines, other than patented mines and mining claims upon which less than $100 worth of labor has been actually performed in the preceding year, and minerals, including oil, gas and other hydrocarbons until the mineral has been extracted and subjected to the ordinary mining processes involved in the extraction.

2. The legislature intends that the tax imposed by this act and the proposed constitutional limitations upon the taxation of the minerals and their proceeds ***preclude a tax upon***:

(a) The extraction and ordinary mining processes involved in the extraction of minerals, including oil, gas and other hydrocarbons;

(b) ***Minerals, including oil, gas and other hydrocarbons, until after the completion of the ordinary mining processes involved in the extraction of the mineral, and if exchanged at that time, until after the completion of the exchange***; and

(c) The proceeds received in exchange for minerals, including oil, gas and other hydrocarbons, if the minerals are exchanged upon the completion of the ordinary mining processes, until after the completion of the exchange.

3. The legislature's intent in proposing and approving Senate Joint Resolution No. 22 of the 64th session is to provide the opportunity for this and other legislatures to assess a tax on the net proceeds of minerals.

4. The legislature intends that the tax imposed by this act and the proposed constitutional imitations upon the taxation of minerals and their proceeds to not preclude or in any way affect the taxation of motor vehicle or diesel fuel, jewelry, profits or revenues of business, or any other tax upon property, sales or businesses, ***except as provided in subsection 2.*** (Emphasis added.)

This passage makes clear that minerals extracted in Nevada that have not been subject to more than "the ordinary mining processes involved in the extraction of the mineral" are not subject to tax until after completion of the first exchange.

The ordinary mining processes described in Section 1 of SB 61 are the processes set forth in NRS chapter 362 for which expense deductions are allowed in calculating the net proceeds of minerals tax (as may be amended by the Legislature and interpreted by the Commission from time to time). *See* NRS 362.120 and the applicable NACs. Specifically, on this topic, Legislative Counsel Malkiewich stated as follows:

> While the end of 'ordinary mining processes' may change, that is where the exemption ends -- once those processes are done, that is the part of the process that SJR-22 is intended to exempt. Yes, this is going to be effected by cases, **but I think more important to remember is that Nevada law does not track federal law exactly on when the end of ordinary mining processes are.** We define very clearly in our statutes what is allowable for

determining gross yield, and it includes the value received in exchange of the final sale. **Well, the sale of the mineral may well be past the end of ordinary mining processes under federal law, but for the purposes of determining gross yield, we include those processes. We also include a number of those processes in the allowable deductions to get to net proceeds. So, this is not necessarily tying our hands or saying that federal law is going to shift our tax, this is just saying that is the point that we feel before that we can't touch.** Wherever this cut-off is, wherever this end of ordinary mining processes is, before that point we cannot tax, that that is what SJR-22 is intended to do.

Senate and Assem. Comm. on Tax'n Minutes dated February 2, 1989 @ pp. 10.

Accordingly, the ordinary mining processes are determined by legislative determination which is intended to be consistent with current mining practices. Ordinary mining processes are not to be determined by relying upon the Federal Income Tax Laws addressing federal depletion. *See* IRC §613.

DECISION

In conclusion, based upon the plain language of NRS 372.185(2), the coal that Edison imports from Arizona for use at the Mohave Plant is exempt from use tax because the equivalent in-state transaction is exempt pursuant to NRS 372.270, Article 10, § 5(1) of the Nevada Constitution and NRS 372.265. Interest will accrue on the amount to be refunded pursuant to NRS 372.660 and NRS 374.665.

FOR THE COMMISSION:

DINO DICIANNO
Executive Director
Nevada Department of Taxation

cc: Dennis Belcourt, Deputy Attorney General
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the forgoing document upon all parties of record in this proceeding by mailing a copy thereof, properly addressed, with postage prepaid to:

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Dated at Carson City, Nevada, the 29th day of November 2006.

Eric F. Feeney
Signature

SCE's Claims for Refund

First and Second Claims for Relief - Statutory Exemption from Use Tax & Refund for Commerce Clause Violation

					Peabody Invoices					Black Mesa Invoices					Refund Calculations		
		A Nev. Use Tax Rate	B Total Nev. Sales & Use Tax Paid by SCE (Net of 1.25% Collection Allowance)	Sales	C SCE Nev. Use Tax Based on Peabody Invoices	Sales	D Total from Peabody Invoices	Sales	E Difference (C-D*A3)	F SCE Nev. Use Tax Based on Black Mesa Invoices	Sales	G Total from Black Mesa Invoices	Sales	H Difference (F-G*A3)	I Total (C+F)	J 1.25% Collection Allowance (I*1.25%)	K First and Second Claim for Refund (I-J)
1998	March	7.00%	$ 793,152.59	1364	$ 878,980.36	1365	$ 8,228,004.97	952	$ -	$ 122,931.72	1365	$ 1,756,189.89	10978	$ -	$ 998,991.47	$ 8,724.14	$ 990,185.33
	April	7.00%	$ 792,086.65	1367	$ 937,363.94	1368	$ 8,105,186.34	978	$ -	$ 128,003.62	1368	$ 1,800,065.96	11002	$ -	$ 765,366.95	$ 8,842.08	$ 772,824.87
	May	7.00%	$ 812,051.34	1372	$ 921,479.12	1371	$ 8,031,116.96	15287	$ 0.01	$ 114,186.81	1371	$ 1,600,060.28	11028	$ (0.01)	$ 636,944.69	$ 8,006.80	$ 628,941.07
	June	7.00%	$ 472,991.88	1373	$ 542,497.81	1374	$ 4,982,937.42	10302	$ -	$ 102,146.81	1374	$ 1,430,940.12	10002	$ -	$ 444,688.72	$ 5,556.08	$ 439,132.14
	July	7.00%	$ 625,809.72	1375	$ 847,744.13	1377	$ 7,934,816.13	14853	$ -	$ 122,944.00	1377	$ 1,747,772.28	10029	$ -	$ 970,688.13	$ 8,370.10	$ 962,717.99
	August	7.00%	$ 801,843.36	1378	$ 994,665.86	1380	$ 9,495,226.58	15972/10417/10418/10422	$ -	$ 135,042.00	1380	$ 1,928,600.00	10058	$ -	$ 789,719.86	$ 9,871.42	$ 779,848.43
	September	7.00%	$ 950,485.44	1382	$ 998,057.80	1383	$ 9,504,366.00	10452/10447/10692	$ (118.20) **	$ 130,849.20	1383	$ 1,719,988.70	10047	$ -	$ 799,060.62	$ 9,862.62	$ 778,178.00
	October	7.00%	$ 997,909.20	1385	$ 942,085.83	1386	$ 7,744,083.35	10457/10473	$ -	$ 120,763.67	1386	$ 1,772,133.92	10094	$ -	$ 883,344.50	$ 8,295.58	$ 874,958.84
	November	7.00%	$ 825,844.68	1388	$ 838,629.80	1389	$ 8,668,644.29	11281/10868	$ (0.14)	$ 123,666.51	1389	$ 1,767,121.58	11098	$ -	$ 782,827.41	$ 8,167.84	$ 723,459.57
	December	7.00%	$ 913,131.18	1391	$ 771,895.42	1392	$ 11,027,686.47	11282/10877	$ -	$ 128,099.25	1392	$ 1,844,974.84	11053	$ -	$ 900,991.47	$ 11,282.37	$ 889,719.30
1999	January	7.00%	$ 797,016.78	1394	$ 818,655.39	1395/1396	$ 6,809,592.85	10811/10863	$ -	$ 128,208.29	1395/1396	$ 1,802,822.74	11078	$ -	$ 742,698.95	$ 8,255.48	$ 733,553.46
	February	7.00%	$ 753,852.18	1398	$ 857,078.80	1399	$ 8,301,978.64	11280/11104	$ -	$ 127,455.57	1399	$ 1,820,908.09	11150	$ -	$ 778,538.93	$ 8,731.74	$ 769,427.19
	March	7.00%	$ 820,120.08	1401	$ 634,022.97	1402/1405	$ 9,114,613.89	11279/11139	$ -	$ 125,196.54	1402/1405	$ 1,787,994.84	11124	$ -	$ 759,191.91	$ 8,596.77	$ 750,642.14
	April	7.25%	$ 795,365.67	1406	$ 684,147.71	1408	$ 8,029,233.01	11439/11182	$ (20,146.13) *	$ 122,078.92	1408	$ 1,743,955.66	11191	$ (4,356.69) *	$ 686,226.63	$ 8,277.81	$ 677,948.82
	May	7.25%	$ 498,141.91	1409	$ 318,329.25	1409/1410	$ 4,581,845.93	11473/11350	$ (11,494.62) *	$ 112,692.06	1409/1410	$ 1,609,386.46	11139	$ (4,028.52) *	$ 431,979.29	$ 5,388.74	$ 426,590.55
	June	7.25%	$ 522,174.92	1412	$ 383,349.13	1413	$ 5,619,573.27	11548/11167	$ (14,086.16) *	$ 113,015.88	1413	$ 1,585,941.11	11141	$ (4,214.68) *	$ 811,365.01	$ 9,392.08	$ 804,972.98
	July	7.25%	$ 598,709.89	1415	$ 395,953.80	1418	$ 7,482,552.65	11479/11186	$ (18,881.55) *	$ 128,918.23	1416	$ 1,770,166.14	11147	$ (4,426.77) *	$ 480,599.88	$ 8,867.46	$ 872,188.41
	August	7.25%	$ 648,980.02	1418	$ 458,120.80	1419	$ 8,758,842.06	10601/11195	$ (14,887.36) *	$ 114,486.48	1418	$ 1,607,139.38	10078	$ (4,092.64) *	$ 817,725.80	$ 8,471.87	$ 811,253.93
	September	7.25%	$ 977,571.08	1421	$ 710,162.44	14227/428	$ 9,780,344.00	12990/1211	$ -	$ 250,980.20	14201/428	$ 1,711,226.98	10111	$ (26,598.67) *	$ 961,051.78	$ 12,013.12	$ 949,038.66
	October	7.25%	$ 918,291.93	1422	$ 805,723.01	14261/1427	$ 10,094,188.16	13177/1219	$ 84,194.97 *	$ 21,119.17	14200/427	$ 1,611,512.44 ***	11152	$ (110,265.32) *	$ 921,992.18	$ 10,273.39	$ 911,698.82
	November	7.25%	$ 825,882.88	1428	$ 788,988.24	1430	$ 11,056,741.22	13291/1525	$ -	$ 135,771.41	1430	$ 1,910,288.39	10100	$ 4,824.84 *	$ 924,759.65	$ 11,780.23	$ 912,979.42
	December	7.25%	$ 864,205.08	1432	$ 644,659.69	1433	$ 7,912,544.77	11599/1581	$ (0.01)	$ 123,557.76	1433	$ 1,705,924.61	11150	$ (0.01)	$ 868,217.38	$ (0.01)	$ 868,217.39
2000	January	7.25%	$ 806,231.10	1435	$ 636,264.26	1436	$ 8,466,841.93	12299/1291/10648	$ (0.01)	$ 128,147.85	1436	$ 1,761,381.11	10184	$ (0.01)	$ 815,474.23	$ (10,193.40)	$ 804,278.83
	February	7.25%	$ 694,022.74	1438	$ 485,576.04	1439	$ 8,626,119.99	12271/1259	$ -	$ 125,924.33	1439	$ 1,736,957.42	10177	$ (0.01)	$ 905,482.37	$ 7,990.78	$ 898,191.59
	March	7.25%	$ 736,908.71	1441	$ 561,841.30	1442	$ 8,028,938.75	12247/1245	$ -	$ 113,124.78	1442	$ 1,734,822.91	10192	$ -	$ 711,766.15	$ 8,887.08	$ 702,889.03
	April	7.25%	$ 782,719.02	1444	$ 654,210.83	1445	$ 8,066,426.89	10331/10353	$ -	$ 128,284.70	1445	$ 1,765,764.92	10210	$ -	$ 787,146.03	$ 9,823.52	$ 777,322.51
	May	7.25%	$ 823,919.06	1447	$ 498,350.78	1448	$ 8,631,182.84	12287/1260	$ -	$ 114,951.18	1448	$ 1,545,333.98	10232	$ -	$ 593,211.96	$ 8,548.15	$ 587,671.80
	June	7.25%	$ 784,993.56	1450	$ 699,406.07	1451	$ 9,180,498.14	12961/1987	$ -	$ 126,999.99	1451	$ 1,747,095.63	11131/11158	$ -	$ 790,996.19	$ 9,879.49	$ 780,182.30
	July	7.25%	$ 847,467.02	1453	$ 698,440.49	1454	$ 9,084,361.61	11999/1274	$ -	$ 126,791.28	1454	$ 1,676,864.92	11146	$ 59,463.59 ****	$ 852,171.77	$ 10,652.15	$ 841,519.62
	August	7.25%	$ 842,482.48	1456	$ 457,786.30	14877/458	$ 9,314,467.80	12780/12612/12621/1597	$ (8.68) **	$ 126,638.21	14877/458	$ 1,746,665.08	11174	$ (9.01)	$ 584,422.51	$ 7,305.28	$ 577,117.23
	September	7.25%	$ 876,994.03	1461	$ 709,817.92	1462/1463	$ 10,383,096.36	12977/1599	$ -	$ 133,999.45	14901/1599	$ 1,858,577.27	11183	$ -	$ 843,396.92	$ 11,076.89	$ 832,319.93
	October	7.25%	$ 838,188.97	1465	$ 587,186.50	1466	$ 7,003,892.36	12941/1300	$ -	$ 122,999.52	1466	$ 1,737,644.91	11205	$ -	$ 833,478.11	$ 7,918.49	$ 825,559.62
	November	7.25%	$ 799,492.91	1469	$ 627,246.77	1470	$ 8,067,729.78	11999/1603	$ -	$ 126,934.13	1470	$ 1,778,400.90	11225	$ -	$ 755,184.14	$ 9,429.30	$ 745,754.84
	December	7.25%	$ 791,402.72	1472	$ 695,496.74	1473/1474	$ 8,704,581.99	13096/1310	$ -	$ 136,362.79	1473/1474	$ 1,797,986.58	11289	$ -	$ 793,783.82	$ 9,672.28	$ 784,211.24
															Total:	$	$ 22,000,064.99

* SCE calculated the Nevada Use Tax at a rate of 7%, instead of 7.25%, April through October of 1999. In October 1999, SCE paid the extra 0.25% difference for April through September (except the extra amount from the Peabody invoice for September was paid in September).

	Use Tax Over (Under) Paid on Peabody Invoices	Use Tax Over (Under) Paid on Black Mesa Invoices
Apr. '99	$ (20,148.13)	$ (4,356.69)
May '99	$ (11,494.62)	$ (4,028.22)
June '99	$ (14,086.16)	$ (4,214.68)
July '99	$ (18,881.55)	$ (4,426.77)
Aug. '99	$ (14,887.36)	$ (4,092.64)
Sept. '99	$ -	$ 125,426.67
Oct. '99	$ 84,194.97	$ (110,265.32)
Nov. '99	$ -	$ 4,824.84
	Total: $ (26,744.47)	Total: $ -

SCE calculated October 1999's Nevada Use Tax at 7%. It did not include an extra 0.25% catch-up payment for the Peabody invoice, causing the $25,756.47 difference. (SCE did remit the extra amount attributable to October for the transportation costs in November)

	Total from Peabody Invoice	(X) NV Use Tax paid by SCE attributable to Oct. 1999	(Y) 7.25% of Total Peabody Invoice	Difference equals 0.25% (Y)-(X)
Oct. '99	$ 10,288,199.16	$ 720,873.17	$ 746,618.64	$ 25,745.47

**September 1999, Column E: an invoice from approximately Sept. 8, 1999 in the amount of $1,690.76 (7.0% of which is $118.25) was not included in the SCE tax return to Nevada.
August 2000, Column E: An invoice from approximately August 29, 2000 in the amount of $122.59 (7.25% of which is $8.87) was not included in the SCE tax return to Nevada.

*** Based on Black Mesa Invoice Payment Authorization

**** July 2000, Column H - The apparent discrepancy is due to Black Mesa invoice IA633271. This invoice is referred to in the amended tax return; use tax was paid on the amount of this invoice although a copy of the invoice itself has not been located.

SCE's Claims for Refunds

Third Claim for Relief - Credit Against the Use Tax for Sales Tax Paid to Arizona

		A (Nev. Use Tax Rate)	AZ Transaction Privilege Tax: B AZ Transaction Privilege Tax Paid by SCE	Bates	C SCE Nev. Use Tax Based on AZ Transaction Privilege Tax Paid (B*A)	Refund Calculations: D 1.25% Collection Allowance (C*1.25%)	E Third Claim for Refund (B+C-D)
1998	March	[redacted]	$ 247,339.06	962	$ 17,313.73	[redacted]	$ 264,436.37
	April	[redacted]	$ 302,258.97	975	$ 21,158.13	[redacted]	$ 323,152.62
	May	[redacted]	$ 200,300.45	10257/10295	$ 14,021.03	[redacted]	$ 214,146.22
	June	[redacted]	$ 121,044.68	1013	$ 8,473.13	[redacted]	$ 129,411.89
	July	[redacted]	$ 260,005.96	10323 / 1014	$ 18,200.42	[redacted]	$ 277,978.87
	August	[redacted]	$ 315,506.96	10372/10417/10418/10427	$ 22,085.49	[redacted]	$ 337,316.38
	September	[redacted]	$ 304,360.85	10432 / 10447/10452	$ 21,305.26	[redacted]	$ 325,399.79
	October	[redacted]	$ 257,320.06	10457/10473	$ 18,012.40	[redacted]	$ 275,107.31
	November	[redacted]	$ 289,049.46	1064/1066	$ 20,233.46	[redacted]	$ 309,030.00
	December	[redacted]	$ 343,455.67	11292/1075/1077	$ 24,041.90	[redacted]	$ 367,197.04
1999	January	[redacted]	$ 297,823.90	1091/1093	$ 20,847.67	[redacted]	$ 318,410.98
	February	[redacted]	$ 309,055.76	1102/1104	$ 21,633.90	[redacted]	$ 330,419.24
	March	[redacted]	$ 275,790.00	1117/1119	$ 19,305.30	[redacted]	$ 294,853.98
	April	[redacted]	$ 267,800.20	1130/1132	$ 19,415.51	[redacted]	$ 286,973.02
	May	[redacted]	$ 176,944.14	1148/1150	$ 12,828.45	[redacted]	$ 189,612.23
	June	[redacted]	$ 162,574.13	1165/1167	$ 11,786.62	[redacted]	$ 174,213.42
	July	[redacted]	$ 264,249.40	1183/1185	$ 19,158.08	[redacted]	$ 283,168.01
	August	[redacted]	$ 191,370.79	1196/1198	$ 13,874.38	[redacted]	$ 205,071.74
	September	[redacted]	$ 314,717.25	1209/1211	$ 22,817.00	[redacted]	$ 337,249.04
	October	[redacted]	$ 342,187.74	1317/1319	$ 24,808.61	[redacted]	$ 366,686.24
	November	[redacted]	$ 366,362.83	1323/1325	$ 26,561.31	[redacted]	$ 392,592.12
	December	[redacted]	$ 236,692.97	1329/1331	$ 17,160.24	[redacted]	$ 253,638.71
2000	January	[redacted]	$ 296,186.59	1229/1231	$ 21,473.53	[redacted]	$ 317,391.70
	February	[redacted]	$ 224,979.89	1237/1239	$ 16,311.04	[redacted]	$ 241,087.04
	March	[redacted]	$ 244,405.61	1244/1246	$ 17,719.41	[redacted]	$ 261,903.52
	April	[redacted]	$ 301,995.26	1251/1253	$ 21,894.66	[redacted]	$ 323,616.23
	May	[redacted]	$ 186,828.62	1258/1260	$ 13,545.07	[redacted]	$ 200,204.38
	June	[redacted]	$ 283,552.82	1265/1267	$ 20,557.58	[redacted]	$ 303,853.43
	July	[redacted]	$ 300,857.59	1272/1274	$ 21,812.18	[redacted]	$ 322,397.11
	August	[redacted]	$ 252,573.59	1279/1281	$ 18,311.59	[redacted]	$ 270,656.28
	September	[redacted]	$ 327,893.16	1287/1289	$ 23,772.25	[redacted]	$ 351,368.26
	October	[redacted]	$ 232,728.41	1294/1296	$ 16,872.81	[redacted]	$ 249,390.31
	November	[redacted]	$ 287,479.09	1301/1303	$ 20,842.23	[redacted]	$ 308,060.80
	December	[redacted]	$ 277,244.25	1308/1310	$ 20,100.21	[redacted]	$ 297,093.21

Total: $ 9,703,087.52

SCE's Claims for Refund

Fourth Claim for Relief - Exclude Taxes Paid to the Federal Government From the Measure of Use Tax

			SMCRA Tax			Refund Calculations	
		A Nev. Use Tax Rate	B SMCRA Tax Paid by SCE	Bates	C SCE Nev. Use Tax Based on SMCRA Tax Paid (A*B)	D 1.25% Collection Allowance (C*1.25%)	E Fourth Claim for Refund (C-D)
1998	March	7%	$ 142,239.30	962	$ 9,956.75	$ 124.46	$ 9,832.29
	April	7%	$ 160,930.00	975	$ 11,265.10	$ 140.81	$ 11,124.29
	May	7%	$ 67,609.85	10257/10295	$ 4,732.69	$ 59.16	$ 4,673.53
	June	7%	$ 37,184.70	1013	$ 2,602.93	$ 32.54	$ 2,570.39
	July	7%	$ 124,544.00	10323/1014	$ 8,718.08	$ 108.98	$ 8,609.10
	August	7%	$ 171,832.85	10372	$ 12,028.30	$ 150.35	$ 11,877.95
	September	7%	$ 148,937.60	10432/10447	$ 10,425.63	$ 130.32	$ 10,295.31
	October	7%	$ 126,134.40	10457	$ 8,829.41	$ 110.37	$ 8,719.04
	November	7%	$ 146,552.70	1064	$ 10,258.69	$ 128.23	$ 10,130.46
	December	7%	$ 163,669.80	1075	$ 11,456.89	$ 143.21	$ 11,313.67
1999	January	7%	$ 168,505.05	1091	$ 11,795.35	$ 147.44	$ 11,647.91
	February	7%	$ 166,759.95	1102	$ 11,673.20	$ 145.91	$ 11,527.28
	March	7%	$ 128,966.95	1117	$ 9,027.69	$ 112.85	$ 8,914.84
	April	7.25%	$ 134,265.95	1130	$ 9,734.28	$ 121.68	$ 9,612.60
	May	7.25%	$ 58,953.40	1148	$ 4,129.12	$ 51.61	$ 4,077.51
	June	7.25%	$ 81,946.20	1165	$ 5,941.10	$ 74.26	$ 5,866.84
	July	7.25%	$ 147,415.80	1183	$ 10,687.65	$ 133.60	$ 10,554.05
	August	7.25%	$ 84,165.55	1196/10531	$ 6,102.00	$ 76.28	$ 6,025.73
	September	7.25%	$ 174,303.15	1209	$ 12,636.98	$ 157.96	$ 12,479.02
	October	7.25%	$ 169,362.55	1317	$ 12,278.78	$ 153.48	$ 12,125.30
	November	7.25%	$ 172,968.60	1323	$ 12,540.22	$ 156.75	$ 12,383.47
	December	7.25%	$ 116,239.20	1329	$ 8,427.34	$ 105.34	$ 8,322.00
2000	January	7.25%	$ 162,102.15	1229	$ 11,752.41	$ 146.91	$ 11,605.50
	February	7.25%	$ 135,783.90	1237	$ 9,844.33	$ 123.05	$ 9,721.28
	March	7.25%	$ 148,508.15	1244	$ 10,766.84	$ 134.59	$ 10,632.26
	April	7.25%	$ 167,409.20	1251	$ 12,137.17	$ 151.71	$ 11,985.45
	May	7.25%	$ 60,883.20	1258	$ 4,414.03	$ 55.18	$ 4,358.86
	June	7.25%	$ 132,985.30	1265	$ 9,641.43	$ 120.52	$ 9,520.92
	July	7.25%	$ 165,395.65	1272	$ 11,991.18	$ 149.89	$ 11,841.29
	August	7.25%	$ 132,088.60	1279	$ 9,576.42	$ 119.71	$ 9,456.72
	September	7.25%	$ 170,985.15	1287	$ 12,396.42	$ 154.96	$ 12,241.47
	October	7.25%	$ 125,464.85	1294	$ 9,096.20	$ 113.70	$ 8,982.50
	November	7.25%	$ 136,561.60	1301	$ 9,900.72	$ 123.76	$ 9,776.96
	December	7.25%	$ 159,490.45	1308	$ 11,563.06	$ 144.54	$ 11,418.52
						Total:	$ 324,224.29

SCE's Claims for Refund

Fifth Claim for Relief - Exclude Taxes Paid to the Navajo Nation From the Measure of Use Tax

			PIT					BAT					Refund Calculations		
		A Nev. Use Tax Rate	B PIT Paid by SCE Based on Peabody Invoices	Bates	C PIT Paid by SCE Based on Black Mesa Invoices	Bates	D SCE Nev. Use Tax Based on PIT Tax Paid (A*(B+C))	E BAT Paid by SCE Based on Peabody Invoices	Bates	F BAT Paid by SCE Based on Black Mesa Invoices	Bates	G SCE Nev. Use Tax Based on BAT Paid (A*(D+E))	H Total (D+G)	I 1.25% Collection Allowance (H*1.25%)	J Fifth Claim for Refund (H-I)
1998	March	7%					$ -	$ 8,780,438.00	962	$ 17,349.00	10980	$ 56,265.09	$ 56,265.09	$ 703.31	$ 55,561.78
	April	7%					$ -						$ -	$ -	$ -
	May	7%	$ 937,606.73	10257/10295	$ 12,807.38	11034	$ 66,528.99						$ 66,528.99	$ 831.61	$ 65,697.38
	June	7%					$ -	$ 659,924.00	1013	$ 21,414.00	10005	$ 47,693.66	$ 47,693.66	$ 596.17	$ 47,097.49
	July	7%					$ -						$ -	$ -	$ -
	August	7%					$ -						$ -	$ -	$ -
	September	7%			$ 12,907.00	10059	$ 903.49	$ 396,273.00	1041	$ 20,024.00	10056	$ 29,140.79	$ 30,044.28	$ 375.55	$ 29,668.73
	October	7%					$ -						$ -	$ -	$ -
	November	7%					$ -						$ -	$ -	$ -
	December	7%	$ 921,000.00	11292			$ 64,470.00	$ 690,742.00	11292	$ 19,222.00	11058	$ 49,697.48	$ 114,167.48	$ 1,427.09	$ 112,740.39
1999	January	7%					$ -						$ -	$ -	$ -
	February	7%			$ 26,407.92	11102	$ 1,848.55						$ 1,848.55	$ 23.11	$ 1,825.45
	March	7%					$ -	$ 2,817,489.00	1117	$ 22,185.00	11127	$ 58,775.78	$ 58,775.78	$ 734.70	$ 58,041.08
	April	7.25%					$ -						$ -	$ -	$ -
	May	7.25%	$ 921,000.00	1148			$ 66,772.50						$ 66,772.50	$ 834.66	$ 65,937.84
	June	7.25%					$ -	$ 729,582.00	11651	$ 19,066.00	11143	$ 54,058.76	$ 54,058.76	$ 675.73	$ 53,383.02
	July	7.25%					$ -						$ -	$ -	$ -
	August	7.25%					$ -						$ -	$ -	$ -
	September	7.25%					$ -	$ 329,984.00	1209	$ 20,003.00	10135	$ 24,931.81	$ 24,931.81	$ 311.65	$ 24,620.16
	October	7.25%					$ -						$ -	$ -	$ -
	November	7.25%	$ 1,102,500.00	1323	$ 13,483.83	10151	$ 80,908.83						$ 80,908.83	$ 1,011.36	$ 79,897.47
	December	7.25%					$ -	$ 539,238.38	329	$ 20,525.00	11159	$ 40,582.70	$ 40,582.70	$ 507.28	$ 40,075.42
2000	January	7.25%					$ -						$ -	$ -	$ -
	February	7.25%					$ -						$ -	$ -	$ -
	March	7.25%					$ -	$ 669,226.00	10725	$ 15,018.00	10206	$ 49,607.62	$ 49,607.62	$ 620.10	$ 48,987.52
	April	7.25%					$ -						$ -	$ -	$ -
	May	7.25%	$ 1,102,500.00	1258			$ 79,931.25						$ 79,931.25	$ 999.14	$ 78,932.11
	June	7.25%			$ 13,483.83	11164	$ 977.58	$ 616,894.00	1285	$ 17,390.00	11164	$ 45,985.59	$ 46,963.17	$ 587.04	$ 46,376.13
	July	7.25%					$ -						$ -	$ -	$ -
	August	7.25%					$ -						$ -	$ -	$ -
	September	7.25%					$ -	$ 517,201.00	1287	$ 14,415.00	11201	$ 38,520.41	$ 38,520.41	$ 481.51	$ 38,038.90
	October	7.25%					$ -						$ -	$ -	$ -
	November	7.25%	$ 1,266,000.00	1301			$ 91,785.00						$ 91,785.00	$ 1,147.31	$ 90,637.69
	December	7.25%			$ 13,843.07	11239	$ 1,003.82	$ 570,857.00	1308			$ 41,387.13	$ 42,390.75	$ 529.88	$ 41,860.87
														Total:	$ 979,379.41

SCE's Claims for Refund

Sixth Claim for Relief - Exclude Taxes Paid to the State of Arizona From the Measure of Use Tax

			AZ Transaction Privilege Tax			AZ Ad Valorem			Refund Calculations		
		A Nev. Use Tax Rate	B AZ Transaction Privilege Tax Paid by SCE Based on Peabody Invoices	Bates	C SCE Nev. Use Tax Based on AZ Transaction Privilege Tax (A*B)	D Ad Valorem Tax Paid by SCE Based on Peabody Documentation	Bates	E SCE Nev. Use Tax Based on Ad Valorem Tax (A*D)	F Total (C+E)	G 1.25% Collection Allowance (F*1.25%)	H Sixth Claim for Refund (F-G)
1998	March	7%	$ 247,339.06	962	$ 17,313.73	$ 58,056.54	962/963	$ 4,063.89	$ 21,377.62	$ 267.22	$ 21,110.40
	April	7%	$ 302,258.97	975	$ 21,158.13	$ 59,610.62	975/976	$ 4,172.74	$ 25,330.87	$ 316.64	$ 25,014.24
	May	7%	$ 200,300.45	10257/10295	$ 14,021.03	$ 59,569.53	10257/10258	$ 4,169.87	$ 18,190.90	$ 227.39	$ 17,963.51
	June	7%	$ 121,044.68	1013	$ 8,473.13	$ 59,592.51	10302/10303	$ 4,171.48	$ 12,644.60	$ 158.06	$ 12,486.55
	July	7%	$ 260,005.96	10323 / 1014	$ 18,200.42	$ 59,635.66	10323/10324	$ 4,174.50	$ 22,374.91	$ 279.69	$ 22,095.23
	August	7%	$ 315,506.96	10372/10417/10418/10427	$ 22,085.49	$ 59,538.52	10372/10373	$ 4,167.70	$ 26,253.18	$ 328.16	$ 25,925.02
	September	7%	$ 304,360.85	10432 / 10447/10452	$ 21,305.26	$ 59,562.61	1041/10433	$ 4,169.38	$ 25,474.64	$ 318.43	$ 25,156.21
	October	7%	$ 257,320.06	10457/10473	$ 18,012.40	$ 57,560.54	1053/10464	$ 4,029.24	$ 22,041.64	$ 275.52	$ 21,766.12
	November	7%	$ 289,049.46	1064/1066	$ 20,233.46	$ 57,795.36	1064/10652	$ 4,045.68	$ 24,279.14	$ 303.49	$ 23,975.65
	December	7%	$ 343,455.67	11292/1075/1077	$ 24,041.90	$ 57,626.75	1075/1076	$ 4,033.87	$ 28,075.77	$ 350.95	$ 27,724.82
1999	January	7%	$ 297,823.90	1091/1093	$ 20,847.67	$ 57,435.43	1091/1092	$ 4,020.48	$ 24,868.15	$ 310.85	$ 24,557.30
	February	7%	$ 309,055.76	1102/1104	$ 21,633.90	$ 57,776.93	1102/1103	$ 4,044.32	$ 25,678.22	$ 320.98	$ 25,357.24
	March	7%	$ 275,790.00	1117/1119	$ 19,305.30	$ 57,763.27	1117/1118	$ 4,043.43	$ 23,348.73	$ 291.86	$ 23,056.87
	April	7.25%	$ 267,800.20	1130/1132	$ 19,415.51	$ 57,483.21	1130/1131	$ 4,167.53	$ 23,583.05	$ 294.79	$ 23,288.26
	May	7.25%	$ 176,944.14	1148/1150	$ 12,828.45	$ 57,591.50	1148/1149	$ 4,175.36	$ 17,003.83	$ 212.55	$ 16,791.29
	June	7.25%	$ 162,574.13	1165/1167	$ 11,786.62	$ 57,705.00	1165/1166	$ 4,183.61	$ 15,970.24	$ 199.63	$ 15,770.61
	July	7.25%	$ 264,249.40	1183/1185	$ 19,158.08	$ 57,720.72	1183/1184	$ 4,184.75	$ 23,342.83	$ 291.79	$ 23,051.05
	August	7.25%	$ 191,370.79	1196/1198	$ 13,874.38	$ 57,604.85	1196/1197	$ 4,176.35	$ 18,050.73	$ 225.63	$ 17,825.10
	September	7.25%	$ 314,717.25	1209/1211	$ 22,817.00	$ 57,444.89	1209/1210	$ 4,164.75	$ 26,981.76	$ 337.27	$ 26,644.48
	October	7.25%	$ 342,187.74	1317/1319	$ 24,808.61	$ 62,974.03	1317/1318	$ 4,565.62	$ 29,374.23	$ 367.18	$ 29,007.05
	November	7.25%	$ 366,362.83	1323/1325	$ 26,561.31	$ 63,341.98	1323/1324	$ 4,592.29	$ 31,153.60	$ 389.42	$ 30,764.18
	December	7.25%	$ 236,692.97	1329/1331	$ 17,160.24	$ 63,196.51	1329/1330	$ 4,581.73	$ 21,741.97	$ 271.77	$ 21,470.20
2000	January	7.25%	$ 296,186.59	1229/1231	$ 21,473.53	$ 63,011.77	1229/1230	$ 4,568.35	$ 26,041.88	$ 325.52	$ 25,716.36
	February	7.25%	$ 224,979.89	1237/1239	$ 16,311.04	$ 63,130.98	1237/1238	$ 4,577.00	$ 20,888.04	$ 261.10	$ 20,626.94
	March	7.25%	$ 244,405.61	1244/1246	$ 17,719.41	$ 63,187.16	1244/1245	$ 4,581.07	$ 22,300.48	$ 278.76	$ 22,021.72
	April	7.25%	$ 301,995.26	1251/1253	$ 21,894.66	$ 63,209.41	1251/1252	$ 4,582.68	$ 26,477.34	$ 330.97	$ 26,146.37
	May	7.25%	$ 186,828.62	1258/1260	$ 13,545.07	$ 63,127.82	10738/10768	$ 4,576.77	$ 18,121.84	$ 226.52	$ 17,895.32
	June	7.25%	$ 283,552.82	1265/1267	$ 20,557.58	$ 63,331.23	1265/1266	$ 4,591.51	$ 25,149.09	$ 314.36	$ 24,834.73
	July	7.25%	$ 300,857.59	1272/1274	$ 21,812.18	$ 63,383.69	1272/1273	$ 4,595.33	$ 26,407.51	$ 330.09	$ 26,077.41
	August	7.25%	$ 252,573.59	1279/1281	$ 18,311.59	$ 63,273.83	1279/1280	$ 4,587.35	$ 22,898.94	$ 286.24	$ 22,612.70
	September	7.25%	$ 327,893.16	1287/1289	$ 23,772.25	$ 63,112.00	1287/1288	$ 4,575.62	$ 28,347.87	$ 354.35	$ 27,993.53
	October	7.25%	$ 232,728.41	1294/1296	$ 16,872.81	$ 63,279.01	1294/1295	$ 4,587.73	$ 21,460.54	$ 268.26	$ 21,192.28
	November	7.25%	$ 287,479.09	1301/1303	$ 20,842.23	$ 55,032.98	11660/11663	$ 3,989.89	$ 24,832.12	$ 310.40	$ 24,521.72
	December	7.25%	$ 277,244.25	1308/1310	$ 20,100.21	$ 54,835.71	11695/11705	$ 3,975.59	$ 24,075.80	$ 300.95	$ 23,774.85
										Total:	$ 784,215.30

SCE's Claims for Refund

Seventh Claim for Relief - Exclude Transportation Costs From the Measure of Use Tax

			Black Mesa Invoices					Refund Calculations	
		A Nev. Use Tax Rate	B SCE Nev. Use Tax Based on Black Mesa Invoices	Bates	C Total from Black Mesa Invoices	Bates	D Difference (B-(C*A))	E 1.25% Credit Allowance (B*1.25%)	Seventh Claim for Refund Total (B-E)
1998	March	7.00%	$ 122,931.12	1385	$ 1,756,158.88	10976	$ -	$ 1,536.64	$ 121,394.48
	April	7.00%	$ 126,003.92	1388	$ 1,800,055.96	11005	$ -	$ 1,575.05	$ 124,428.87
	May	7.00%	$ 114,166.51	1371	$ 1,630,950.26	11029	$ (0.01)	$ 1,427.08	$ 112,739.43
	June	7.00%	$ 102,188.81	1374	$ 1,459,840.12	10002	$ -	$ 1,277.36	$ 100,911.45
	July	7.00%	$ 122,344.06	1377	$ 1,747,772.29	10026	$ -	$ 1,529.30	$ 120,814.76
	August	7.00%	$ 125,047.99	1380	$ 1,786,399.86	10036	$ -	$ 1,563.10	$ 123,484.89
	September	7.00%	$ 120,346.29	1383	$ 1,719,232.70	10047	$ -	$ 1,504.33	$ 118,841.96
	October	7.00%	$ 120,758.57	1386	$ 1,725,123.82	10096	$ -	$ 1,509.48	$ 119,249.19
	November	7.00%	$ 123,898.51	1389	$ 1,767,121.58	11038	$ -	$ 1,548.23	$ 122,352.28
	December	7.00%	$ 128,085.25	1392	$ 1,844,074.94	11053	$ -	$ 1,613.57	$ 127,471.68
1999	January	7.00%	$ 126,205.29	1395/1396	$ 1,802,932.74	11079	$ -	$ 1,577.57	$ 124,627.72
	February	7.00%	$ 127,463.57	1399	$ 1,820,908.09	11100	$ -	$ 1,593.29	$ 125,870.28
	March	7.00%	$ 126,158.94	1402/1403	$ 1,787,984.84	11124	$ -	$ 1,564.49	$ 123,594.45
	April	7.25%	$ 122,076.92	1405	$ 1,743,955.98	11131	$ (4,359.89) *	$ 1,525.96	$ 120,550.96
	May	7.25%	$ 112,850.05	1409/1410	$ 1,609,286.48	11136	$ (4,023.22) *	$ 1,410.63	$ 111,241.92
	June	7.25%	$ 119,015.68	1413	$ 1,685,941.11	11141	$ (4,214.85) *	$ 1,475.20	$ 116,540.68
	July	7.25%	$ 123,910.23	1416	$ 1,770,148.14	11147	$ (4,425.37) *	$ 1,548.88	$ 122,361.35
	August	7.25%	$ 114,599.55	1419	$ 1,637,136.38	10078	$ (4,092.84) *	$ 1,432.49	$ 113,167.06
	September	7.25%	$ 250,889.35	1422/1423	$ 1,711,206.68	10111	$ 126,926.87 *	$ 3,136.12	$ 247,753.23
	October	7.25%	$ 21,118.17	1426/1427	$ 1,811,812.44 **	11159	$ (110,240.23) *	$ 263.98	$ 20,852.22
	November	7.25%	$ 135,771.81	1430	$ 1,810,238.28	10140	$ 4,529.53 *	$ 1,697.15	$ 134,074.66
	December	7.25%	$ 123,857.76	1433	$ 1,705,624.41	11156	$ (0.01)	$ 1,545.72	$ 122,312.04
2000	January	7.25%	$ 129,147.95	1436	$ 1,781,351.11	10154	$ (0.01)	$ 1,614.35	$ 127,533.60
	February	7.25%	$ 125,924.33	1439	$ 1,736,887.42	10177	$ (0.01)	$ 1,574.05	$ 124,350.28
	March	7.25%	$ 130,124.73	1442	$ 1,794,823.91	10192	$ -	$ 1,626.56	$ 128,498.17
	April	7.25%	$ 128,234.70	1445	$ 1,768,754.52	10210	$ -	$ 1,602.93	$ 126,631.77
	May	7.25%	$ 114,951.19	1448	$ 1,585,533.68	10252	$ -	$ 1,436.89	$ 113,514.30
	June	7.25%	$ 126,680.08	1451	$ 1,747,035.53	11161 / 11163	$ -	$ 1,583.25	$ 125,076.83
	July	7.25%	$ 185,731.26	1454	$ 1,879,554.32	11168	$ 59,463.59 ***	$ 2,445.94	$ 183,284.64
	August	7.25%	$ 126,833.21	1457/1458	$ 1,748,885.09	11174	$ (0.01)	$ 1,582.92	$ 125,050.29
	September	7.25%	$ 133,369.40	1462/1463	$ 1,839,577.97	11188	$ -	$ 667.12	$ 131,702.28
	October	7.25%	$ 125,889.52	1466	$ 1,733,648.51	11206	$ -	$ 1,573.12	$ 124,116.40
	November	7.25%	$ 128,934.17	1470	$ 1,778,402.30	11225	$ -	$ 1,611.68	$ 127,322.49
	December	7.25%	$ 130,352.79	1473/1474	$ 1,797,969.59	11238	$ -	$ 1,629.41	$ 128,723.38
								Total:	$ 4,250,042.00

* SCE calculated the Nevada Use Tax at a rate of 7% instead of 7.25%, April through October of 1999. In October 1999, SCE paid the extra 0.25% difference for April through September. SCE paid the extra 0.25% for October 1998 in November.

	Use Tax Over (Under) Paid on Black Mesa
Apr. '99	$ (4,359.89)
May '99	$ (4,023.22)
June '99	$ (4,214.85)
July '99	$ (4,425.37)
Aug. '99	$ (4,092.84)
Sept. '99	$ 126,926.87
Oct. '99	$ (110,240.23)
Nov. '99	$ 4,529.53
Total:	$ -

** Based on Black Mesa Invoice Payment Authorization

*** July 2000, Column H - The discrepency appears to be from Black Mesa Invoice IA852271 (based on the amended tax return documentation), this invoice appears not to be with the other Black Mesa Invoices.

APRIL 2000

Peabody Western Coal Company

INVOICE

Apr 6 2000

SOLD TO:
Michael D. Manninger
Supervisor of Fuels Contracts
Southern California Edison
2244 Walnut Grove, Quad 1C
Rosemead, CA 91770

SHIP TO:
Mohave Generating Station
Laughlin, Nevada

Make checks payable to:	Remit to	Terms
Peabody Western Coal Company	Peabody Western - PNC Bank , N.A. ABA #0430-0009-6 Acct: 1006871308	Payment is due 10 days after receipt of invoice

Coal Delivered - March-00				
471,712	Tons @	$18.114	$ 8,544,591.17	
BTU Adjustment				
471,712	Tons @	(0.102)	(48,114.62)	
Surface Mining Control & Reclamation Act of 1977:				
478,312	Tons @	0.35	167,409.20	4/7
Ash Adjustment - March-00			(129,846.11)	
Black Lung Fees				
471,712	Tons @	0.55	259,441.60	4/7
Subtotal			8,793,481.24	
Arizona Taxes @ 3.437%			302,231.95	4/7
Arizona Tax Preparers Credit			(163.35)	
Total			$ 9,095,549.84	4/7

PLEASE PAY FROM THIS INVOICE | NO STATEMENT WILL BE MAILED

001251

5/7

0359

[illegible] FILE NAME [illegible]

MISCELLANEOUS INVOICE - [illegible]

TOTAL SCALE TONS	486,288
NAVAJO LEASE TONS	336,883
JOINT USE AREA NAVAJO TONS	73,837
JOINT USE AREA HOPI TONS	73,837
CONTRACT TONS	471,712
BTU PER LB	12,275
INITIAL MINE PRICE	3.798
LABOR MILLFACTOR	0.0054
LABOR INDEX	534.82
LABOR COMPONENT	1.816
WELFARE COMPONENT	0.442
M & S MILLFACTOR	0.0072
M & S INDEX	440.5
M & S COMPONENT	3.172
A & G PERCENTAGE	0.086
A & G COMPONENT	0.467
INFL/DEFL MILLFACTOR	0.0054
INFL/DEFL INDEX	80.9
INFL/DEFL COMPONENT	0.437
LAW CHANGE COMPONENT	2.134
AD VALOREM TAX COMPONENT	0.134
CAPITAL ESCALATOR COMPONENT	2.978

ROYALTIES:

NAVAJO LEASE	$792,603.35
JOINT USE - NAVAJO	$172,170.33
JOINT USE - HOPI	$161,041.24
WATER ROYALTIES	$281,934.54
TOTAL ROYALTIES	$1,407,749.46
TOTAL PER TON ROYALTIES	$2.984
ROY IN INITIAL MINE PRICE	0.250
ROYALTY COMPONENT	$2.734
BTU ADJUSTMENT COMPONENT	(0.102)
PIPELINE PER TON	4.021
BTU PERCENTAGE	0.995943205
BTU ADJUSTMENT DOLLARS	($48,114.62)
BLACK LUNG TAX COMPONENT	$259,441.60
PER TON	0.55

ASH COMPONENT	($129,846.11)
PER TON	(0.275)
SMCRA TAX COMPONENT	$167,409.20
PER TON	0.355
PIT PAYMENT	0.00
EXHIBIT H	0.00
Depr. Reconciliation Adj.	0.00
2nd Half Reconciliation Adj.	0.00
NAVAJO ROYALTY SIGNING BONUS	0.00
TOTAL TAXABLE ADJUSTMENTS	0.00
PER TON	0

INVOICE:

COAL DELIVERED PER TON AMT	18.114
COAL DELIVERED	$8,544,561.17
BTU ADJUSTMENT	(48,114.62)
SMCRA FEES	$167,409.20
EXHIBIT H	0.00
PIT PAYMENT	0.00
ASH ADJUSTMENT	(129,846.11)
Depr. Reconciliation Adj.	0.00
2nd Half Reconciliation Adj.	0.00
NAVAJO ROYALTY SIGNING BONUS	0.00
BLACK LUNG FEES	259,441.60
SUBTOTAL	$8,793,441.24
ARIZONA PREPARER'S TAX CREDIT	(163.35)
ARIZONA SALES TAX	302,231.95
ADJ	0.00
BAT PAYMENT	0.00
ADJ	0.00
TOTAL INVOICE	$9,095,649.84
PER TON	19.282
NEVADA TAXES	659,427.36
PER TON	1.398
TOTAL MINE PRICE	9,754,977.20
PER TON	20.68

TOTAL MINE PRICE LESS ASH AND ASH TAXES

PRICE FOR ASH COMPUTATION	$20.965
PIPELINE	$1,768,754.52
NEV TAX ON PIPELINE	128,234.70
TOTAL PIPELINE	1,896,989.22
PER TON	4.021
FOB MOHAVE	11,651,966.42
PER TON	24.701

001252

4/7

0360

Peabody Western Coal Company

INVOICE

Invoice Date
April 6, 2000

SOLD TO:	SHIP TO:
Michael D. Monninger Supervisor of Fuels Contracts Southern California Edison 2244 Walnut Grove, Quad 1C Rosemead, CA 91770	Mohave Generating Station Laughlin, Nevada

Make checks payable to:	Remit to	Terms
Peabody Western Coal Company	Peabody Western - PNC Bank, N.A. ABA #0430-0009-6 Acct: 1008971308	

CREDIT MEMO

Pursuant to the 1997 Hopi Coal Lease Amendments Three Party Agreement Effective January 1, 1998 -- Section 3 (E):

Credit for each ton of coal sold to the Mohave Participants which was mined from Hopi Coal Lease #14-20-0450-5743 in March-00	$ (6,886.49)	
Arizona Taxes @ 3.437%	(236.69)	4/7
Total Credit Due Mohave Participants	$ (7,123.18)	4/7

Federal ID#

PLEASE PAY FROM THIS INVOICE NO STATEMENT WILL BE ISSUED

001253

7/7

STATE OF NEVADA
COMBINED SALES/USE TAX RETURN
MAIL ORIGINAL TO:
NEVADA DEPARTMENT OF TAXATION

P. O. BOX 98596
LAS VEGAS NV 89193-8596

32,522

IF POSTMARKED AFTER DUE DATE, PENALTY AND INTEREST WILL APPLY.

PERMIT NUMBER: 465197254

FOR DEPARTMENT USE ONLY

THIS RETURN IS DUE ON OR BEFORE 05/31/00

MONTH ENDING 04/30/00

SOUTHERN CALIFORNIA EDISO
C/O DELORES SANDLER
2244 WALNUT GROVE AV
ROSEMEAD CA 91770

IF THE NAME OR ADDRESS AS SHOWN IS INCORR IF THE OWNERSHIP OR BUSINESS LOCATION HAS CHANGED, OR IF YOU ARE OUT OF BUSINESS, NOTIFY A NEVADA DEPARTMENT OF TAXATION DISTRICT OFFICE IMMEDIATELY.

A RETURN MUST BE FILED EVEN IF NO TAX LIABILITY EXIS

ENTER AMOUNTS IN COUNTY(IES) SALES/USE OR COUNTY OF REGISTRY	COLUMN A +	COLUMN B -	COLUMN C =	COLUMN D X	COLUMN E	= COLUMN
TAX CALCULATION FORMULA						
01 CHURCHILL					6.50%	
02 CLARK		10,932,732		10,932,732	7.25%	792,623.
03 DOUGLAS					6.50%	
04 ELKO					6.50%	
05 ESMERALDA					6.50%	
06 EUREKA					6.50%	
07 HUMBOLDT					6.50%	
08 LANDER					6.50%	
09 LINCOLN					6.50%	
10 LYON					6.50%	
11 MINERAL					6.50%	
12 NYE					6.75%	
13 ORMSBY					7.00%	
14 PERSHING					6.50%	
15 STOREY					7.60%	
16 WASHOE					7.25%	
17 WHITE PINE					6.85%	
TOTALS						

I HEREBY CERTIFY THAT THIS RETURN INCLUDING ANY ACCOMPANYING SCHEDULES AND STATEMENTS HAS BEEN EXAMINED BY ME AND TO THE BEST OF MY KNOWLEDGE AND BELIEF IS A TRUE, CORRECT AND COMPLETE RETURN.

RETURN MUST BE SIGNED

SIGNATURE OF TAXPAYER OR AUTHORIZED AGENT

Tax Manager (626) 302-1347
TITLE PHONE NUMBER (WITH AREA CODE)

95-1240335 5/19/00
FEDERAL TAX IDENT. NO. DATE

18. TOTAL CALCULATED TAX (COLUMN F)	18.	792,623.0
19. ENTER COLLECTION ALLOWANCE($1^1/_4$ % (.0125) OF LINE 18)	19.	9,907.7
20. NET TAXES (LINE 18 MINUS LINE 19)	20.	782,715.2
21. PENALTY (10% (.10) OF LINE 20)	21.	
22. INTEREST(1% (.01) OF LINE 20 X NO. MO. PAST DUE)	22.	
23. PLUS LIABILITIES ESTABLISHED BY THE DEPARTMENT	23.	
24. LESS CREDIT(S) APPROVED BY THE DEPARTMENT	24.	
25. TOTAL AMOUNT DUE AND PAYABLE	25.	
26. TOTAL AMOUNT REMITTED WITH RETURN	26.	782,715.2

STATE OF NEVADA DEPARTMENT OF TAXATION

IMPORTANT NOTICE

DOT-ST-19 (REV 03/99)

COMPLETE BUT DO NOT DETACH THIS COUPON - BANK USE ONLY

NEVADA DEPARTMENT OF TAXATION
CARSON CITY, NEVADA 89710-0003

PERMIT NUMBER 465197254

13 - 0 - 77

PERIOD ENDING 04/30/00

SOUTHERN CALIFORNIA EDISO
C/O DELORES SANDLER
2244 WALNUT GROVE AV
ROSEMEAD CA 91770

TOTAL AMOUNT REMITTED 782,715.2

001444

46519725413077043000000000000465197254?

0362

ACCOUNT NUMBER	DESCRIPTION	LOC. NO.	FUNC. NO.	SO. CODE	EXP. CODE	REF. NO.	CURRENT MONTH	YEAR TO DATE	BALANCE
236.675	ACCRUED NEVADA USE TAX	20	G/L ACCT	236.000					717,780.97-
236.675	VAN AUSDOLL, MI			011			5.01-		
236.675	LOMAN, RANDALL			011			135.61-		
236.675	BRENNIG, MARK			011			72.50-		
236.675	LAULO, KEITH			011			636.08-		
236.675	BEACOM, TONY R.			011			267.80-		
236.675	BOUDREAUX, AUDI			011			112.66-		
236.675	BEGLEY, BERNARD			011			108.39		
236.675	SONIER, HENRY C			011			53.46-		
236.675	FINNAN, THOMAS			011			283.00-		
236.675	ROBERTSON, RICK			011			6.96-		
236.675	ROBERTS, STEVEN			011			79.81-		
236.675	HENDREN, DONALD			011			263.24-		
236.675	ESQUIBEL, MARK			011			151.21-		
236.675	LECKIE, MICHAEL			011			174.28-		
236.675	MORRIS, JOHN C			011			98.50-		
236.675	MASTIN, JOSEPH			011			1,565.79-		
236.675	HOPKINS, NATHAN			011			297.89-		
236.675	KILLEN, GARY R			011			57.94-		
236.675	ROBLES, JOE T.			011			62.02-		
236.675	WALKER, KIM L.			011			13.38-		
236.675	HURLEY, WAYNE J			011			148.27-		
236.675	SMITH, ALEXANDE			011			100.08-		
236.675	CALAHAN, DONNA			011			356.51-		
236.675	CATT, JACK			011			19.10-		
236.675	KEEN, MICHAEL R			011			2.58-		
236.675	WISE, THOMAS M.			011			8.25-		
236.675	COOLWEATHER LIM	SA449995		044		J89068	15.37-		
236.675	BLACK MESA PIPE	IA700589		044		J89275	126,234.70-		
236.675	PEABODY WESTERN	IA700590		044		J91343	658,910.93-		
236.675	TONY'S ART	SA450000		044		J97773	30.45-		
236.675	NEVADA DEPARTME	TX036641		044		J98941	717,780.97 (1)		
236.675				053		516744	9.28		
236.675				053		518358	51.35-		
236.675				053		518904	29.00-		
236.675				053		522107	100.59-		
236.675				053		522108	98.31-		
236.675				053		522110	29.94-		
236.675				053		524838	19.15-		
	TOTAL 236.675						74,842.10-*	.00 *	792,623.07-*

<717,780.97>

<792,623.07>

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BLACK MESA PIPELINE, INC.
INVOICE

PAYMENT NUMBER [illegible]
Please Quote above number when remitting
Month's Account

DATE 29-Mar-00

TO

Southern California Edison
Fuel Supply Department
2244 Walnut Grove Avenue
Rm 390 (GO 1)
Rosemead CA 91770

REMIT TO

Black Mesa Pipeline Inc
General Account #2-000-0651-4
ABA #103 900 136
Bank of Oklahoma, N.A. Tulsa OK

Attn: Mike Moennger

FOR

SOUTHERN MARKET ZONE
Pipeline related charges for coal deliveries to Mohave Project per amended Coal Slurry Pipeline Agreement dated May 26, 1970, per details attached

$1,768,754.52

~~Interest charges on Feb 1998 - January 2000 invoices~~ ~~$809,642.45~~
~~February 2000 billing~~ ~~$794,322.91~~
~~Interest on underpayments~~ ~~($794,322.91)~~

~~Total due~~ ~~$3,608,264.82~~

Distribution
cc (with attachments)

Mr Frank McClennen, Peabody
Mr Sid Peele
Mr P Pettus III
Mr Jay D Squiers

FOR FURTHER INFORMATION
ADDRESS

Black Mesa Pipeline, Inc
1309 E. Butler Avenue
Flagstaff, AZ 86001

0.46.9445.2

Peabody Western Coal Company

INVOICE

INVOICE NO.
001 - Mar-00

INVOICE DATE
April 3, 2000

SOLD TO:
Michael D. Manninger
Supervisor of Fuels Contracts
Southern California Edison
2244 Walnut Grove, Quad 1C
Rosemead, CA 91770

SHIP TO:
Mohave Generating Station
Laughlin, Nevada

Make checks payable to:	Remit to:	Terms:
Peabody Western Coal Company	Peabody Western - PNC Bank N A ABA 30400-0003-6 Acct 1000971309	Payment is due 10 days after receipt of invoice

Coal Delivered - March-00				
471,712	Tons @	918.114	$	0,548,591.17
BTU Adjustment				
471,712	Tons @	(0.102)		(48,114.02)
Surface Mining Control & Reclamation Act of 1977:				
478,312	Tons @	0.35		167,409.20
Ash Adjustment - March-00				(129,846.11)
Black Lung Fees				
471,712	Tons @	0.56		269,441.00
Subtotal				6,706,481.24
Arizona Taxes @ 5.437%				302,231.06
Arizona Tax Preparers Credit				(103.35)
Total			$	6,005,548.04

PLEASE PAY FROM THIS INVOICE. NO STATEMENT WILL BE SENT.

0.49.419.2

SCE10231

0505

Exhibit 1

Peabody Western Coal Company
Request for Accounts Payable Wire Transfer

Amount $ 669,225.00 Due Date 2/15/00

Disbursing Company/Bank

Company Name Peabody Western Coal Company
Bank Name Chase Manhattan Bank Delaware
Bank Account # 6301464785-509

Company #722
Bank ABA # 031100267

Payee Name The Navajo Tribe Account # 4000901560
Payee Bank Name Norwest Bank ABA # 091000019

Reason for Payment
(Information to be included in Text of Wire)

For Tribal Taxes
Possessory Interest Tax/Business Activity Tax

INFORMATION TO BE KEYED INTO WIRE REMITTANCE:
Fourth Quarter 1999 BAT

Account Coding	Amount
44150-0002-39717 (PIT)	
44150-0001-39717 (BAT)	$ 669,225.00
42501-1000-04875	(669,225.00)

Requested by Dan Twelf *Date* 2/11/00
Approved by Chuck Tilly *Date* 2/11/00

Transmittal Information

TEMPLATE 722PITBA
Entered by _____ Date _____
Verified by _____ Date _____

NOTE: ALL REQUESTS MUST BE RECEIVED NO LATER THAN 2PM TWO DAYS PRIOR TO THE DUE DATE.
(ALL WIRES MUST BE KEYED ONE DAY IN ADVANCE)

Original - Funds Transmittal Copy 1 - Requestor Copy 2 - Human Cash Reporting Copy 3 - General Ledger Posting

SOUTHERN UNIT 1
Held in Current
Peabody Coal Co. file

MOHAVE PROJECT

COAL SUPPLY AGREEMENT

between

PEABODY COAL COMPANY

and

SOUTHERN CALIFORNIA EDISON COMPANY

DATED JANUARY 6, 1967

MOHAVE PROJECT
COAL SUPPLY AGREEMENT

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MOHAVE PROJECT
COAL SUPPLY AGREEMENT

THIS AGREEMENT made and entered into as of this 6th day of January, 1967, by and between PEABODY COAL COMPANY, an Illinois corporation (hereinafter called "Seller") and SOUTHERN CALIFORNIA EDISON COMPANY, a California corporation (hereinafter called "Buyer"):

WITNESSETH:

THE PARTIES HERETO AGREE AS FOLLOWS:

Seller agrees to sell and deliver to Buyer and Buyer agrees to purchase and receive from Seller, coal in the quantity, at the times and of the quality hereinafter stated, upon the following terms and conditions:

1. TERM

Deliveries of coal under and pursuant to this Agreement shall be made during the period commencing with the date of the first delivery of coal hereunder and ending on the thirty-first (31st) day of December of the thirty-fifth (35th) full calendar year thereafter. Buyer shall give Seller at least six (6) months' advance notice in writing of the approximate date upon which the delivery of coal is to begin.

2. SOURCE OF COAL

Subject to Seller's right of substitution hereinafter set forth, the coal to be supplied hereunder shall be mined and delivered from Seller's Black Mesa Mine in Arizona, and the source of said coal shall be the area outlined in red on the map attached hereto as Exhibit A (which shall be subject to such readjustment of boundaries as may be agreed upon by Seller and Buyer from time to time). Seller will not sell or otherwise dispose of coal from said area other than to Buyer during the term of this Agreement, except with the written consent of Buyer. Seller will timely develop said Mine and install all facilities at said Mine necessary for it to fulfill its obligations under this coal supply agreement. Seller warrants that it has valid coal mining leasee covering the area outlined in red on Exhibit A granting Seller the right to mine and sell the coal to be supplied under this Agreement, and agrees to correct any defects in said Lease as now exist or may hereafter arise.

Copies of Seller's Coal Mining Leases have been delivered to Buyer.

While it is Seller's intention to supply Buyer with the coal hereunder from the area outlined in red on Exhibit A, Seller shall have the right to supply coal provided for in Paragraph A of Section 3 to Buyer hereunder from another source or sources in the Black Mesa area located on Indian Reservation land in Arizona, provided said coal meets the quality specifications set forth herein and provided that the cost to Buyer of such substituted coal shall be the same as if furnished from the area outlined in red on Exhibit A.

3. QUANTITY

The quantity of coal to be supplied hereunder shall be the total fuel requirements, excluding ignition fuel, of the first two generating units (each to have a nominal capacity of 750 MW or more) to be placed in service at the Mohave Generating Station, which Buyer proposes to construct near the Colorado River below Davis Dam in Clark County, Nevada, said first two units and all pertinent equipment and facilities being hereinafter referred to as the "Mohave Project". Buyer, however, may use fuel (including fuel to replenish its stockpile) for said first two generating units from other suppliers whenever Seller is unable to deliver fuel as required hereunder. Buyer expects to place in operation the first of such generating units before July 1, 1970, and the second of such generating units before July 1, 1971. Buyer shall promptly advise Seller in writing of any changes in said anticipated dates. Seller agrees to deliver and Buyer agrees to purchase during the term of this Agreement not less than 117 million tons of coal of the quality specified in Paragraph B of Section 6 hereof. For the purpose of this Agreement, a ton shall mean 2,000 lbs. of coal having an "as received" moisture content of 10.74%. It is anticipated by the parties hereto that the average and the maximum aggregate annual fuel requirements of said two generating units will be as follows:

		Millions of Tons	
		Average	Maximum
First 10 years (2 unit operation)	41.0	4.1	5.2
Second 10 years (2 unit operation)	36.0	3.8	5.2
Last 14 years (2 unit operation)	36.4	2.6	5.2
	113.4		

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4. DELIVERY

A. Manner and Place of Delivery and Transfer of Title

Coal to be supplied hereunder for the Mohave Project shall be delivered by Seller to the receiving facilities at the Mohave Project and such delivery will be made by means of a coal slurry pipeline. Title to the coal, slurry and water shall pass to Buyer at the point of such delivery. The risks of loss shall follow the title.

In order to effect such delivery of coal, Seller, simultaneously with the execution of this Agreement, is entering into a "Coal Slurry Pipeline Agreement" with Black Mesa Pipeline, Inc., a Delware corporation, and a wholly-owned subsidiary of Southern Pacific Pipe Lines, Inc. (hereinafter called "Black Mesa"), a copy of which pipeline agreement (not including this Agreement which is attached thereto as Exhibit A) is attached hereto as Exhibit B. Seller agrees that it will not, without the prior written consent of Buyer, enter into any agreement, underetanding or arrangement with Black Mesa, its successors or assigns, amending the terms, conditions, obligations or covenants of said pipeline agreement.

B. Buyer's Estimates of Requirements and Orders for Delivery

Buyer shall purchase and accept delivery of the annual quantities of coal to be sold and purchased hereunder in as nearly equal weekly and monthly shipments as is compatible with the operation of the Mohave Project.

Buyer shall advise Seller in writing within twelve (12) months following the execution of this Agreement of its then estimate of the quantity of coal required to be delivered by Seller under this Agreement for each calendar month of the initial fractional contract year period, which shall be the period commencing with the month in which the first deliveries of coal are to be made under this coal supply agreement and ending on December 31 of that year. Similar advice shall be given in writing by Buyer to Seller, at least ninety (90) days prior to each calendar contract year period, including the initial fractional contract year period, of Buyer's then estimate of the quantity of coal required to be delivered by Seller under this Agreement during each calendar month of such contract year period.

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On or before the twenty-fifth (25th) day of each month preceding that in which coal is to be delivered hereunder, Buyer shall deliver its order in writing to Seller stating the quantity of coal which Buyer shall require during each week of said next succeeding month and Seller shall deliver coal to Buyer in accordance with such order, except for deviations in deliveries which are not substantial, as hereinafter defined; provided, however, that in the event conditions make it necessary or desirable for Buyer to increase or decrease the quantity of coal to be delivered to it during any such week, Buyer shall give Seller a revised order in writing or by telephone (later confirmed in writing) not less than twenty-four (24) hours before such increase or decrease, and Seller will use its best efforts to comply with such revised order; and provided further that Buyer shall not order for pipeline delivery quantities in excess of the designed maximum pipeline capacity.

C. Variations, Delays and Interruptions in Deliveries

Seller shall notify the Station Chief of the Mohave Project as far in advance as possible of any expected substantial deviation from the delivery schedule specified by Buyer in its respective monthly orders and of the cause and the expected extent of any such deviation. Any variation in deliveries of fifteen (15) per cent or less in any week which is corrected by increased or decreased deliveries in the following thirty (30) day period, as the case may require, shall not be deemed to be a substantial deviation in delivery.

D. Stockpiling of Coal

Seller shall maintain at all times a sufficient supply of uncovered coal in advance of its loading shovels so that at least a thirty (30) day breakdown of its stripping shovels or drag lines, as the case may be, could be experienced without resulting in a suspension or curtailment of deliveries hereunder. Seller shall further maintain at all times a stockpile of coal adjacent to the slurry preparation plant equivalent to at least a fifteen (15) days' supply of the full load requirements of the Mohave Project.

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Buyer will after commencement of operations maintain an inventory of coal at the Mohave Project equivalent to at least ten (10) days' supply of the full load requirements of the Mohave Project.

5. QUALITY OF COAL

A. Quality Range

The coal to be supplied under this Agreement is expected to be produced from the Red, Blue, Green and Brown seams of Seller's Black Mesa Mine, and Seller represents the coal to be supplied hereunder will have the characteristics as set forth in the tabulation attached hereto as Exhibit C.

B. Average Quality

Seller warrants that the coal delivered hereunder will have the following monthly average quality characteristics:

Btu's per lb. (dry basis)	12,325 or more
Ash (dry basis)	8.9% or less
Sulfur (dry basis)	.6% or less

and shall be substantially free from impurities, such as bone, slate, earth, rock, pyrite, or wood which can be kept out or removed with the exercise of reasonable care during mining and preparation. The coal shall be delivered in a manner that will insure reasonably uniform consistency as to size and quality.

C. Coal Size

The coal size shall be 2" x 0 when received at the coal slurry preparation plant at Seller's Black Mesa Mine.

D. Rejection of Coal

Seller shall take all practical precautions to prevent delivering to Buyer, except by prior consent of Buyer, coal for which the average analysis over a twenty-four (24) hour period shows any of the following characteristics (hereinafter referred to as "Rejection Points"):

Coal Characteristic	Rejection Point
1. Heating value Btu/lb. (dry basis)	Less than 11,150
2. Ash content (dry basis)	More than 14.5%
3. Sulfur content (dry basis)	More than 1.5%
4. Alkali as Na_2O (dry basis)	More than 0.35%
5. Chlorine (dry basis)	More than 0.1%
6. Ash softening temperature in reducing atmosphere (H = W)	Less than 2150°F
7. Grindability (Hardgrove Index)	Less than 40

All analyses shall be in accordance with American Society for Testing and Materials procedures (ASTM) and at the option of Seller, the ASTM "same laboratory permissible differences" as set forth in ASTM Designation D 271-64 as revised in 1964 may be applied provided, however, when no current ASTM procedure exists, analysis shall be in accordance with procedure used by Commercial Testing and Engineering Company or other mutually acceptable procedures.

In the event that coal should be delivered hereunder (without prior consent of Buyer) for which the average analysis of deliveries over a twenty-four (24) hour period shows any of the characteristics above mentioned, Buyer at its election may give Seller notice of the delivery of such inferior coal and Seller shall thereupon without delay remove from the station site all of such inferior coal unless Seller undertakes and accomplishes in a manner, within a period of time, and to an extent, satisfactory to Buyer, to blend or by other means improve the quality of such coal.

E. Delivery to Meet Current Fuel Requirements

Anything in Sections 4.B and 5.B to the contrary notwithstanding, Seller shall, from time to time, upon request of Buyer, and when necessary to

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t the then current fuel requirements of the Mohave Project, deliver [redacted] coal having a total calorific content of at least 14,520,000,000 Btu's provided, however, that Seller shall not be obligated to deliver coal at a rate in excess of the designed maximum capacity of the pipeline of 660 tons per hour of coal having a moisture content of 10.74%, 358 days per year. Buyer and Seller recognize that it will take approximately two and one-half days for slurry to reach the Mohave Project after it is placed in the pipeline at the slurry preparation plant at Seller's Black Mesa Mine and that therefore it will require approximately three days to effect a change in the quality of coal delivered to Buyer at its receiving facilities at the Mohave Project.

6. PRICE

A. The Delivered Price is the price to be paid for coal delivered to the Mohave Project, which shall be the sum of:

(i) The Mine Price which is the price of the coal delivered to the coal slurry preparation plant at Seller's Black Mesa Mine, and

(ii) The price for transportation which is the price provided for in said Coal Slurry Pipeline Agreement.

The initial Mine Price of such coal, until adjusted as provided in this Agreement, shall be 11.36 cents per million Btu's ($2.50 per ton of coal having 12,325 Btu's per lb. on a "dry" basis). The initial price of transportation, until adjusted as provided in said Coal Slurry Pipeline Agreement, shall be the applicable basic charge for transportation and delivery of the coal, as provided in said Coal Slurry Pipeline Agreement.

B. Buyer shall pay, or reimburse Seller where Seller is required to pay, all sales, use, production and severance taxes upon the coal delivered hereunder which are properly and regularly levied or imposed thereon. Any such taxes paid by Seller shall, upon request by Buyer, be paid under protest and Seller shall fully cooperate with and assist Buyer in contesting the imposition or the amount of any such taxes and Seller shall make available to Buyer for examination

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and audit and for use in any such contest such of its records as are pertinent thereto. Buyer shall be entitled to all refunds of any such taxes.

C. In the event that during the term of deliveries of coal under this Agreement, Seller shall sell to another party a substantial quantity of coal from its Black Mesa Mine at a price which is equivalent to a Mine Price that is less than the Mine Price to the Buyer herein provided, the Buyer shall receive the benefit of an equally low price for an equivalent quantity of Btu's in the coal which it received from Seller hereunder.

7. DETERMINATION OF TONNAGE

This Agreement is based upon coal having an average "as received" moisture content of 10.74% when delivered by Seller onto the conveyor to the coal slurry preparation plant of Black Mesa Pipe Line, Inc. In order to determine the number of tons sold in each month under this Agreement, an adjustment shall be made at the conclusion of each month for variations in said "as received" moisture content during said month, and shall be calculated according to the following formula:

$$\text{Number of scale tons of 2,000 lbs. each delivered by Seller onto conveyor during said month} \times \frac{\text{100 - Average "as received" Moisture Content of coal delivered by Seller onto conveyor during month}}{100 - 10.74\%} = \text{Number of tons sold during month}$$

All adjustments in tonnage because of moisture content shall be based on the weighted analysis for coal for the month for which such adjustment is being made.

8. MINE PRICE ADJUSTMENTS

The Mine Price of $2.50 per ton is based in part on estimates of labor and labor-related items, materials, supplies, services and taxes (other than sales, use, production and severance taxes) and other items of expense at wage and price levels existing in July, 1965. Labor and labor-related costs, including straight time pay, overtime and overtime pay, vacations and vacation pay, hours of work, shift differential pay, working practices, and union welfare and retirement fund are based upon the levels and provisions set forth in the National Bituminous Coal Wage Agreement of 1950, as amended effective April 2, 1964, between the coal producers of Colorado and New Mexico and the United Mine Workers of America, District 15.

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Other labor-related costs such as Social Security, Workmen's Compensation and compensation to supervisory and clerical employees and group insurance and non-union retirement benefits are based upon the rates estimated by the Seller to be payable in July of 1965.

A. The Mine Price per ton shall be revised upward or downward as the case may be to reflect changes in the level of rates of pay and labor-related costs for mining, preparation and production of coal by strip or surface methods at Seller's Black Mesa Mine as follows:

As of the first day of the calendar year following any such change or as of the effective date of a union contract or other general wage adjustment making such a change, the labor component of the unit cost of mining, preparing and producing one ton of coal shall be computed at the level of rates of pay and labor-related costs then in effect and compared with the similar unit cost of such coal at the cost levels existing in July, 1965. The difference, if any, shall be expressed as a percentage of the computed July, 1965, cost level. In computing such labor component there shall not be included the portion of any increases in compensation, group insurance and retirement benefits to supervisory and clerical employees which would result in an overall percentage increase to them in excess of the overall percentage increase to employees at the Black Mesa Mine covered by the union contract. The Mine Price shall be increased or decreased 5.5 mills ($0.0055) per ton for each one per cent (1%) increase or decrease in the change of such cost level.

B. The Mine Price per ton also shall be revised upward or downward as the case may be to reflect changes in the level of prices of materials and supplies, including consumable equipment, fuel, explosives and rates for electric power used at the Black Mesa Mine as follows:

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As of the first day of the calendar year following any such change, the cost on a representative basis of diesel fuel, rubber tires, finished steel, explosives and electric power procured during the preceding 12-month period shall be computed at the price levels existing on said first day of the year and compared with the cost of such items computed on the same basis at the price levels existing therefor in July, 1965. The difference, if any, shall be expressed as a percentage of the computed July, 1965, cost of such items. The Mine Price shall be increased or decreased 6.5 mills ($0.0065) for each one per cent (1%) increase or decrease, as the case may be, in the cost of such items. If at any time any of the foregoing items are no longer representative of changes in levels of prices of materials and supplies used at the Black Mesa Mine, Buyer and Seller shall select mutually acceptable substitute items.

C. The Mine Price per ton also shall be revised upward or downward as the case may be to reflect changes in the levels of administrative and general expense, including engineering, exploration drilling and general insurance as follows:

After any revision of the Mine Price made pursuant to Paragraph A or B hereof the Mine Price per ton also shall be further revised upward or downward as the case may be by 14.6 per cent of such revision.

D. The Mine Price also shall be revised upward or downward as the case may be to reflect changes in the applicable rates and assessment ratio of ad valorem taxes upon real and personal property at the Black Mesa Mine as follows:

As of the first day of the calendar year following such a change in the applicable tax rate or assessment ratio, the amount of taxes payable under the then effective tax rate and assessment ratio shall be compared with the computed taxes payable under the tax rate and assessment ratio effective in July, 1965, and the difference shall be expressed as a percentage of the July, 1965, computed tax. For each one per cent (1%) increase or decrease in such tax level, the Mine Price will be increased or decreased 0.4 mills ($0.0004).

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E. The Mine Price per ton also shall be revised upward or downward as the case may be to compensate for inflationary and deflationary factors, as follows:

As of the first day of the calendar year following any change in the Index of Wholesale Prices (all commodities except farm and foods) issued by the United States Department of Labor, Bureau of Labor Statistics, the Mine Price shall be increased or decreased two (2) mills ($0.002) per ton for each one (1) point change, increase or decrease, as the case may be, in said index number above 104.1 or below 100.1, and proportionately for fractional parts thereof (the index number for the month of April, 1965, was 102.1 on the basis that the years 1957 through 1959 equal 100).

Seller shall submit promptly all data reasonably required to establish revisions in the Mine Price authorized by any of the provisions of this Agreement. Buyer or its authorized representative shall have the right at any reasonable time or times to examine or audit Seller's records to the extent necessary to verify any price revision provided for by any of the provisions of this Agreement, and in the event Buyer and Seller should be in disagreement as to any such price revision, it shall not become effective until such disagreement has been resolved by arbitration and any price revision thereby determined shall become effective retroactively to the time it would have gone into effect had the parties not been in disagreement.

Notwithstanding the provisions of this Section 8, it is understood and agreed that any increases or decreases in the Mine Price per ton of coal or the revised Mine Price per ton of coal, as the case may be, shall not exceed six cents ($0.06) per ton per calendar year, or proportionately for fractional parts thereof, cumulative for any increases or decreases.

Changes in the Mine Price per ton in each instance shall be made to the nearest one (1) mill and shall be converted from dollars per ton of coal to cents per million Btu by dividing any such change by twenty-two (22).

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If the basis for any index number which is used for price revision hereunder is changed during the term of this Agreement, the index will be adjusted to take into account such changed basis. If any such index is discontinued or otherwise becomes unavailable, the parties shall utilize a mutually satisfactory substitute index or a mutually satisfactory substitute method of price revision.

9. PRICE REVIEWS AND ADJUSTMENTS

A. Either party, within ninety (90) days following the tenth (10th) anniversary of the first delivery of coal hereunder and within ninety (90) days following each fifth (5th) anniversary thereafter, may give notice to the other party of its desire for a review to determine if the price adjustments made in the Mine Price pursuant to the provisions of Section 8 hereof correctly reflect the cumulative cost changes experienced to the date of such review resulting from changes in the rates and levels and the effect of inflation or deflation which the price adjustment provisions specified in Section 8 state they are intended to reflect. If such review demonstrates that the price adjustments made pursuant to Section 8 have not correctly reflected said cumulative cost changes and the effect of inflation or deflation, then said Mine Price and also, if appropriate, said price adjustment provisions shall be changed for subsequent deliveries of coal so as to more nearly reflect such cumulative cost changes and the effect of inflation or deflation and to provide more appropriately for such future cost changes and the effect of inflation or deflation.

B. Either party, within ninety (90) days following the twentieth (20th) anniversary of the first delivery of coal hereunder and within ninety (90) days following each fifth (5th) anniversary thereafter, may give notice to the other party of its desire for a review of the Mine Price then in effect under this Agreement to determine if a gross inequity exists therein with respect to either party. In determining whether such a gross inequity exists consideration shall be given to, but not limited to, the cost reasonably incurred by Seller in supplying coal hereunder, the value thereof, the price being paid by Buyer in relation to the price of other sources of fuel which may be made available

at the Mohave Project, and the respective financial obligations of Buyer and Seller incurred in connection with the mining, production, delivery, sale and use of such coal. If such review demonstrates that a gross inequity exists with respect to either party then the Mine Price shall be changed for subsequent deliveries of coal to eliminate such inequity. The price adjustment to be made pursuant to this Paragraph B are intended to provide Seller and Buyer, over the remaining term of this Agreement, with protection against changes in price levels of cost and expense items which are reasonably required for the performance of this Agreement and, in addition, to preserve Seller's and Buyer's financial positions against substantial changes in the purchasing power of the dollar.

C. It is recognized that technological improvements not now foreseen may result in productivity substantially higher than is now possible through existing technology. The parties agree with respect to any such improvement to share equitably the resulting cost savings, if any, occurring more than ten (10) years after the first delivery of coal hereunder, after taking into account offsetting factors such as, but not limited to, capital investment required to achieve the cost savings and the increased cost of material and supplies and electric power which may be associated with improvement in technology.

D. Seller and Buyer each shall make available for the purpose of a review under this Section 9 all pertinent information in their respective possessions and in the event the parties are unable to agree upon provisions deemed appropriate by either party as the result of such review, appropriate revisions, if any, shall be determined by arbitration.

10. ADJUSTMENT FOR CALORIFIC VALUE

The Delivered Price for coal sold and purchased hereunder is based upon coal having an average calorific value of 12,325 Btu's per lb. on a "dry" basis. A price adjustment shall be made at the conclusion of each month for variations in said average calorific value during said month.

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The price adjustment for variations in the calorific content of the coal shall be calculated according to the following formula:

$$\text{Adjustment} = \text{Delivered Price per Ton} \times \frac{\text{Average Number of Btu's per pound on a dry basis of coal delivered during month}}{12,325} - \text{Delivered Price Per Ton}$$

The Adjustment shall be computed in cents per ton, calculated to the nearest tenth of a cent which shall be added if positive and subtracted if negative from the Delivered Price per ton.

All adjustments for calorific value shall be based on weighted analysis for coal for each month. If the average number of Btu's per lb. for the coal delivered for the month is within plus or minus 123 Btu's of 12,325 Btu's per lb. on a "dry" basis, no price adjustment shall be made for calorific value.

The adjustment for calorific value, if any, for each month for such coal shall be the product of the adjustment in cents per ton (to the nearest tenth of a cent) as calculated above, multiplied by the number of tons(determined as provided in Section 7) of such coal delivered during such month.

The adjustment for calorific value, if any, for each month shall be invoiced by Seller as a separate item as soon as practicable, after the pertinent information is received by Seller. At the termination of this Agreement, all incompleted billings and adjustments shall be rendered and payments made as soon as practicable.

11. BILLING AND PAYMENT

Seller shall transmit to Buyer, on or before the tenth (10th) day of each calendar month an invoice which shall set forth the total purchase price for coal delivered during the preceding calendar month determined by multiplying the total number of said tons purchased (determined as provided in Section 7) by the then existing Mine Price plus all transportation charges (including minimum charges) incurred by Seller during said month for the transportation and delivery of coal hereunder under said Coal Slurry Pipeline Agreement. Buyer shall within ten (10)

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days after receipt of said invoice remit to Seller payment in the net amount shown on the invoice. If weights and analyses are not available to Seller at time of invoicing, invoicing shall be made on a tentative basis and an appropriate adjustment made upon receipt of weights and analyses from Buyer. In the event any adjustment in the Mine Price is in process, invoicing shall be made on the basis of the existing Mine Price, and an appropriate adjustment shall be made as soon as the new Mine Price is determined. Seller's invoices to Buyer shall promptly reflect in an appropriate manner any adjustments in transportation costs to Seller under said Coal Slurry Pipeline Agreement.

12. WEIGHING, SAMPLING AND ANALYSIS OF COAL

A. Facilities shall be provided and methods shall be established for determining the weights and characteristics of coal delivered by Seller to Buyer and Btu content of such coal, in accordance with accepted good practice and with due regard for over-all economy in investment and in operation.

B. Since the aforesaid facilities and methods are in part related to and dependent upon the respective coal handling facilities of the parties, the specific design and actual locations of which will not be determined until after the execution of this Agreement, the following matters shall be determined hereafter by the parties:

(i) Specific designs of the facilities referred to in Paragraph A and of the portions or items thereof to be provided, owned, operated and maintained by each of the parties.

(ii) Methods referred to in Paragraph A and procedures to be followed in carrying out such methods, including the respective obligations of each of the parties in connection therewith, and arrangements with respect to umpire analyses, specific consideration to be given to procedures for sampling and analysis of coal to Buyer's satisfaction in such manner that failure of coal to meet the rejection points specified in Paragraph D of Section 5 can be determined in-

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sofar as feasible before such coal is taken into Buyer's receiving facilities and cannot be diverted for blending or removal.

13. ARBITRATION

In the event the parties should be unable to reach agreement with respect to a matter herein specified to be established or determined by agreement of the parties, either party may call for submission of such matter to arbitration in the manner herein set forth. The party calling for arbitration shall give notice to the other party, setting forth in such notice in adequate detail the issues to be arbitrated, and within ten (10) days from receipt of such notice the other party may by notice to the first party set forth, in adequate detail, additional related issues to be arbitrated.

Within twenty (20) days from its notice calling for the arbitration, the first party shall appoint a person to serve as one arbitrator with notice to the other party of such appointment, and, within fifteen (15) days after receipt of notice of appointment of the first arbitrator, the other party shall appoint a person to serve as a second arbitrator with notice to the first party of such appointment. The two persons so appointed shall then agree upon and secure a third arbitrator. If the third arbitrator should not be secured within fifteen (15) days from the appointment of the second arbitrator, or if the second arbitrator should not be appointed within fifteen (15) days from the appointment of the first, either party with notice to the other party may call for such appointment or appointments upon American Arbitration Association (or upon a similar organization if American Arbitration Association should not at that time exist). Regardless of the manner of his selection, the third arbitrator shall be one who is qualified by knowledge and experience in the field with respect to the subject matter out of which the matter to be arbitrated arises.

The arbitrators so appointed shall hear evidence submitted by the respective parties and may call for additional information, which additional information the party called upon shall furnish to the extent feasible. A decision or determination signed by a majority of the arbitrators shall be conclusive with respect to the issues submitted and shall be binding on the parties.

Each party shall bear the fee and personal expenses of the arbitra appointed by or for it together with the fees and expenses of its counsel and of its own witnesses, and all other costs and expenses of the arbitration shall be borne in equal parts by the parties, unless the decision of the arbitrators shall specify a different apportionment of any or all of such costs and expenses.

14. FORCE MAJEURE

If because of force majeure either Seller or Buyer is unable to carry out its obligations under this Agreement, and if such party promptly gives to the other party written notice of such force majeure, then the obligations of the party giving such notice shall be suspended to the extent made necessary by such force majeure and during its continuance, provided the effect of such force majeure is eliminated insofar as possible with all reasonable dispatch. The failure or delay of any person or corporation, including Black Mesa Pipeline, Inc., with whom Seller may contract in connection with mining, loading or delivery of coal hereunder shall not suspend the obligations of the Seller unless such a failure or delay is because of force majeure. Any deficiencies in deliveries of coal under this Agreement which are caused by force majeure shall be made up by Seller as soon as practicable after the termination of the emergency caused by such force majeure to the extent requested by Buyer.

The term "force majeure" as used herein shall mean any causes beyond the control and without fault or negligence of the party affected thereby, including, but not restricted to, acts of God, acts of the public enemy, insurrections, riots, labor disputes, labor or material shortages, fires, explosions, floods, breakdowns of or damage to plants, equipment or facilities, interruptions to transportation, embargoes, orders or acts of civil or military authority, and other causes of a similar nature which wholly or partly prevent the mining, loading and/or delivering of the coal by Seller, or the accepting, unloading and/or utilizing of the coal by Buyer.

15. WAIVERS AND REMEDIES

The failure of either Buyer or Seller to insist in any one or more instances upon strict performance of any of the provisions of this Agreement or to

take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or the relinquishment of any such rights for the future, but the same shall continue and remain in full force and effect.

No default of either party to this Agreement in the performance of any of its covenants or obligations hereunder, which except for this provision would be the legal basis for rescission or termination of this Agreement by the other party hereto, shall give or result in such a right unless and until the party committing such default shall fail to correct the default within ninety (90) days after written notice of claim of such default and a statement setting forth the nature thereof is given to such defaulting party by the party claiming such default.

16. INTERPRETATION

The terms and provisions of this Agreement shall be interpreted and construed in accordance with the laws of the State of Nevada.

17. NOTICES

All notices under this Agreement shall be in writing, and shall be either delivered in person to the President of the party to be notified, or sent by registered or certified mail addressed to the respective parties as follows:

Southern California Edison Company Post Office Box 351 Los Angeles, California 90053	Peabody Coal Company 301 North Memorial Drive St. Louis, Missouri 63102

18. SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns; but this Agreement may not be assigned by Buyer or by Seller without the written consent of the other party or parties, except that Buyer without the consent of Seller may assign interests in this Agreement to participants with Buyer in the Mohave Project, and except that either Buyer or Seller may, without the consent of the other party, assign this Agreement as follows:

A. As a pledge to secure indebtedness incurred or to be incurred for the purpose of or in connection with the performance of this Agreement;

B. As an assignment to any financing institution of any monies due or to become due Seller hereunder;

C. As an assignment to a successor to all or substantially all of the property and assets of any party hereto, either by purchase, merger, consolidation or otherwise, provided no such assignment shall be effective unless and until such assignee shall assume in writing the obligations of the assignor;

D. As a transfer under and pursuant to a mortgage, deed of trust, or indenture, including, without limitation, a transfer by foreclosure or sale under the power of sale contained in any such mortgage, deed of trust or indenture.

The Buyer shall be relieved of any obligation hereunder with respect to interests assigned to participants in the Mohave Project after such participants have assumed the obligations under this Agreement applicable to their respective interests, and Seller shall have been furnished an opinion by legal counsel for such participants that such assumptions are valid and binding legal obligations of such participants. The obligations of Buyer and such participants under this Agreement shall be several and not joint and shall be in the proportion of their respective interests in the Mohave Project.

19. MISCELLANEOUS

Nothing in this Agreement shall be construed to require the use of coal for the generation of electrical energy at the Mohave Generating Station (other than as herein provided for the first two generating units at said station) or to prohibit Buyer from utilizing other sources of energy, nor shall anything in this Agreement be construed to require Buyer to operate the Mohave Project to any greater extent than Buyer, in its sole discretion, may desire, either as to hours of operation or as to load carried on the units at said station or otherwise; provided, however, that nothing contained in this section shall be deemed to relieve the Buyer from or affect its obligations to purchase the amount of coal specified in Section 3 of this Agreement.

20. TERMINATION

In the event that economic conditions should become such that it is no longer economical, in the opinion of Buyer, to continue the operation of the Mohave Project and Buyer elects to discontinue further operation of the Mohave Project prior to the expiration of this Coal Supply Agreement, then Buyer, upon not less than six months' prior written notice to Seller, may terminate this agreement at any time on or after January 1, 1977. Upon such termination, Buyer shall be obligated to make the following payments to Seller:

(i) Reimbursement of all properly capitalized costs and expenditures of Seller (or a subsidiary of Seller) for the construction of facilities, equipment and unamortized costs of engineering, development, planning, drilling and related matters for the performance of this Agreement, together with the cost of abandoning such facilities, minus (A) depreciation upon such equipment and facilities accrued to the date of such termination and (B) the net realizable salvage value of said equipment and facilities; and

(ii) Fifty per cent (50%) of the then present value at the date of such termination of the profit which it is estimated that Seller would have derived but for such termination during the remaining term of this agreement upon that portion, if any, of the minimum amount of 117 million tons of coal not delivered prior to the date of such termination.

In the event that Seller, with the written approval of Buyer, shall have entered into contracts required for the performance of this Agreement by Seller, which contracts continue beyond such termination, Seller shall have the right to assign to Buyer at the time of such termination such of said contracts as Seller may elect (including said Coal Slurry Pipeline Agreement) and Buyer following such assignment shall indemnify and save harmless Seller from any costs, expense, damages or liability thereafter accruing with respect to said contracts so assigned. Each of the aforesaid amounts

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and matters shall be determined by agreement between Seller and Buyer and in event that they shall be unable to reach agreement with respect thereto, then any such amount or matter with respect to which agreement has not been reached shall be determined by arbitration in accordance with Section 13 of this Agreement.

Execution of this Agreement by Buyer shall for the purpose of this provision constitute written approval by Buyer of Seller's entering into the Coal Slurry Pipeline Agreement attached hereto as Exhibit B.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in sextuplicate in their respective names by their respective officers thereunto fully authorized, all as of the day and year first above written.

SOUTHERN CALIFORNIA EDISON COMPANY

(Seal)

Attest:

C. D. Lester
Secretary

By Robert P. O'Brien
Vice-President

(Seal)

PEABODY COAL COMPANY

Attest:

Richard P. Conerly
Assistant Secretary

By T. C. Mulling
President

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IN THE SUPREME COURT OF THE STATE OF NEVADA

SOUTHERN CALIFORNIA EDISON,

Appellant,

vs.

THE STATE OF NEVADA DEPARTMENT OF TAXATION,

Respondent.

No. 67497

Electronically Filed
Aug 28 2015 08:58 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

JOINT APPENDIX

VOLUME I

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Attorneys for Appellants

IN THE SUPREME COURT OF THE STATE OF NEVADA

SOUTHERN CALIFORNIA EDISON, Appellant, vs. THE STATE OF NEVADA DEPARTMENT OF TAXATION, Respondent.	No.: 67497

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Alphabetical Index of Joint Appendix

Date Filed	Pleading Title	Bate-Stamped Numbers	Volume Number
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05/22/09	Complaint - Amended *(corrected version)*	0074-0092	I
04/10/12	Complaint - Second Amended	0116-0151	I
05/18/12	Defendant's Answer to Second Amended Complaint	0155-0162	I
12/17/14	Findings of Fact, Conclusions of Law & Decision - Amended	0276-0293	II
12/15/14	Findings of Fact, Conclusions of Law & Decision	0258-0275	II
02/26/15	Notice of Appeal	0327-0328	II
08/12/14	Notice of Entry of Order	0257-0257	II
12/17/14	Notice of Entry of Amended Findings of Fact, Conclusions of Law & Decision	0294-0315	II
02/03/15	Notice of Entry of Order Denying Edison's Motion to Amend Findings of Fact, Conclusions of Law & Decision & to Amend Judgment of Direct Entry of New Judgment	0319-0326	II
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06/30/09	Order Denying Defendant's Motion to Dismiss	0093-0095	I
01/30/15	Order Denying Edison's Motion to Amend Findings of Fact, Conclusions of Law & Decision & to Amend Judgment of Direct Entry of New Judgment	0316-0318	II
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05/10/12	Order Denying Motion to Strike	0152-0154	I
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07/25/12	Order Granting Defendant's Motion to Stay Discovery Pending Ruling on Dispositive Motion	0174-0175	I

Date Filed	Pleading Title	Bate-Stamped Numbers	Volume Number
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32	Commission's Decision	0345-0351	II
38	Compilation of supporting documents for refund calculations (*Partial portions only)*	0358-0366	II
83	Contract - Colorado River Comm'n of NV & Edison	1038-1064	V
134	CPUC Decision 04-12-016	1093-1169	VI
107	Department's Decision Letter Denying Edison's Refund Request 02/09	1071-1073	V
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55	Department's Net Proceeds of Minerals Bulletin	0735-0763	IV
56	Department's Net Proceeds of Minerals Bulletin	0764-0793	IV
57	Department's Net Proceeds of Minerals Bulletin	0794-0824	IV
67	Expert Report of Sharon R. Byram	0886-0892	V
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70	Expert Report of Dr. John L. Jurewitz	0918-0967	V
72	Expert Report of Dr. James E. Faulds	0968-0970	V
73	Expert Report of Alan R. Coyner	0971-0972	V
74	Expert Report of J. Steven Gardner	0973-1018	V
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59	NV Bureau of Mines & Geology Special Publication MI-1998	0825-0885	V

Trial Exhibit No.	Exhibit Title	Bate-Stamped Numbers	Volume Number
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37	Spreadsheet of Refund Calculations (Claims for Relief Nos. 3 - 7)	0353-0357	II
91	Termination/Water User Contract between Colorado River Comm'n of NV & Edison	1065-1070	V

Transcript Date	Transcript Description	Bate-Stamped Numbers	Volume Number
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01/28/14	Excerpts from Gardner, Faulds & Coyner	1391-1412	VII
01/29/14	Excerpts from Oliver, Rubald & McCann	1413-1450	VII
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01/21/14	Excerpts from Read, Smith & Phelan	1175-1204	VI
01/30/14	Excerpts from Rubald & Swain	1451-1484	VII

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Norman J. Azevedo, Attorney at Law, and that on the 27th day of August, 2015, I caused to be served a true and correct copy of the foregoing JOINT APPENDIX in the following manner:

(ELECTRONIC SERVICE) Pursuant to Rule5(D) of the Nevada Rules of Civil Procedure, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by the Court's Facilities to the Service List as follows:

Gina Sessions, Esq.
Office of the Attorney General
100 North Carson St.
Carson City, NV 89701

Rhonda Azevedo

Rhonda Azevedo, Legal Assistant

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Attorney for Southern California Edison

REC'D & FILED
2009 JAN 15 PM 3:34
ALAN GLOVER
CLERK
M KAEP DEPUTY

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

SOUTHERN CALIFORNIA EDISON, Plaintiff, vs. THE STATE OF NEVADA, EX REL. DEPARTMENT OF TAXATION, Defendant.	Case No.: Dept No.: **COMPLAINT** **(NRS 372.680; NRS 374.685)**

COMES NOW Plaintiff, SOUTHERN CALIFORNIA EDISON, by and through its counsel of record, NORMAN J. AZEVEDO, ESQ., and hereby complains against Defendant, STATE OF NEVADA, Ex Rel. DEPARTMENT OF TAXATION, and alleges as follows:

ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF

1. Plaintiff Southern California Edison Company ("Edison") is a California corporation having its principal place of business in Los Angeles County, California. Southern California Edison is not a Debtor in bankruptcy.

2. Defendant State of Nevada ex rel. Department of Taxation (the "Department") is an agency of the executive branch of the State of Nevada that is charged with the administration and enforcement of the tax laws set forth in Title 32 of the Nevada Revised Statutes, including Chapters 372 and 374 of the Nevada Revised Statutes governing sales and use taxes and local school support taxes, respectively.

3. At all times relevant to this Complaint, the Mohave Project was a coal-fired power plant located on land within Clark County, Nevada.

4. Edison co-owned the Mohave Project with three other parties (collectively, the "Mohave

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REC'D & FILED
2009 JAN 15 PM 3:34
ALAN GLOVER
BY KAEE DEPUTY CLERK

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

SOUTHERN CALIFORNIA EDISON,

Plaintiff,

vs.

THE STATE OF NEVADA, EX REL. DEPARTMENT OF TAXATION,

Defendant.

Case No.:

Dept No.:

COMPLAINT
(NRS 372.680; NRS 374.685)

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3. At all times relevant to this Complaint, the Mohave Project was a coal-fired power plant located on land within Clark County, Nevada.

4. Edison co-owned the Mohave Project with three other parties (collectively, the "Mohave

and including December, 1999.

13. In the December 17 and December 30, 2002 denial letters, the Department advised Edison that, if Edison desired to appeal the Department's decision, it had to file a petition for redetermination within 45 days pursuant to NRS 360.360. On January 31, 2003, Edison filed a timely petition for redetermination for the periods covered by the denial letters - March, 1998 through and including December, 1999.

14. By letter dated May 16, 2003, the Department denied the claims for refund for the periods January, 2000 through and including December, 2000. The Department concurrently added these periods to the petition for redetermination previously filed by Edison.

15. In a letter dated May 28, 2003, Edison was notified that the Department had assigned the petition for redetermination to a Department Hearing Officer.

16. In a letter dated July 2, 2003, the Department acknowledged that its denial of Edison's claims for refund should have been referred to the Nevada Tax Commission ("Commission") pursuant to NRS 360.245(1) and redirected Edison's case to the Commission for a hearing.

17. On December 8, 2003, the Commission held its first hearing on the Department's denial of the claims for refund, and referred the claims to a Hearing Officer.

18. The Hearing Officer conducted hearings on the claims for refund on December 22, 2003 and January 28, 2004 and issued a written decision on July 14, 2004 denying some of the claims in their entirety and allowing some of the claims in part.

19. On February 26, 2004, Edison timely filed claims for refund of the use tax it paid on the coal with the Department for the periods January, 2001 through and including September, 2003 in the total amount of $24,331,667.62. The Department denied these claims.

20. The Commission held a series of closed hearings on all of Edison's claims for refund that had been filed, i.e. for the periods March, 1998 through and including September, 2003, beginning on November 1, 2004 and continuing on February 7, 2005, April 5, 2005 and May 9, 2005.

21. At the May 9, 2005 hearing, the Commission granted Edison's claims for refund in their entirety.

22. On June 7, 2005, Edison timely filed claims seeking a refund of use tax it paid on the coal with the Department for the periods October, 2003 through and including March, 2005 in the total amount of $14,745,838.13. Edison stopped paying use tax after March, 2005.

23. On July 7, 2005, the Attorney General of the State of Nevada ("Attorney General") filed a complaint against the Commission in the First Judicial Court, Carson City, alleging that the Commission violated Nevada's Open Meeting Law (NRS 240.010 et seq.) when it granted Edison's claims for refund in closed session on May 9, 2005. Among other things, the Attorney General prayed for a judgment that would declare the Commission's action granting Edison's claims for refund void.

24. The Commission hired independent counsel to represent it in the litigation filed by the Attorney General.

25. Edison was the real party in interest in the litigation filed by the Attorney General.

26. Following trial on August 26, 2006, the District Court dismissed the Attorney General's complaint and entered judgment for the Commission and Edison.

27. The Attorney General appealed to the Supreme Court of Nevada. In an opinion filed on April 24, 2008, the Supreme Court reversed the District Court and found that the Commission violated the Open Meeting Law when it granted Edison's claims for refund in closed session.

28. Pursuant to the amnesty program set forth in the Emergency Regulation of the Commission (LCB File No. E002-08) and a stipulation entered into between Edison and the Department dated September 30, 2008, Edison paid $9,927,822.47 in use tax for coal purchased from Peabody for use at the Mohave Project for the periods March, 2005 through and including December, 2005 (the "Amnesty Payment"). Concurrently, with entering into the stipulation and making the Amnesty Payment, Edison timely filed claims for refund of the use tax it paid on the coal for the periods March, 2005 through and including December, 2005, i.e. the Amnesty Payment. Pursuant to the stipulation, if Edison prevails on its claims for refund of the Amnesty Payment, the State of Nevada is not required to refund interest with respect to the Amnesty Payment.

29. On remand from the decision of the Supreme Court, the Commission held open hearings

on the claims for refund on September 9, 2008 and December 1, 2008.

30. On December 1, 2008, the Commission voted to deny Edison's claims for refund.

31. NRS 372.680(1) and NRS 374.685(1) each provide: "within 90 days after a final decision upon a claim filed pursuant to this chapter is rendered by the Nevada tax commission, the claimant may bring an action against the Department on the grounds set forth in the claim in a court of competent jurisdiction in Carson City ... for the recovery of the whole or any part of the amount with respect to which the claims has been disallowed."[1]

FIRST CLAIM FOR RELIEF

32. Plaintiff re-alleges and incorporates by reference herein the allegations set forth in paragraphs 1 through 31, inclusive.

33. Edison's use and consumption of coal purchased from Peabody is exempt from use tax under NRS 372.185(2) and 374.190(2). Under those statutes, use tax does not apply to property acquired outside of Nevada in a transaction that would not have been a taxable sale if it had occurred within this state. Under NRS 372.270 and 374.275, a purchase of coal or any other mineral from a mine located in Nevada, is not a taxable sale. Since an acquisition of coal from an in-state mine would not have been a taxable sale under Nevada law, Edison's use and consumption of coal purchased from Peabody's mine in Arizona is not subject to use tax.

34. Edison is entitled to recover a refund of $72,901,996.30 in use taxes it paid to the Department for the periods March, 1998 through and including December, 2005, together with interest at the appropriate statutory rate other than interest on the Amnesty Payment.

SECOND CLAIM FOR RELIEF

35. Edison re-alleges and incorporates by reference herein the allegations set forth in paragraphs 1 through 31, inclusive.

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[1] Edison does not believe that the Commission's vote denying Edison's claims at the December 1, 2008 meeting constitutes a "final decision" as that term is used in NRS 372.680(1) and NRS 374.685(1). Therefore, it is not Edison's present intent to serve this complaint on the Department until the Commission issues a written decision with findings of fact and conclusions of law. After review of such decision, Edison will either serve this or an amended complaint.

36. The application of Nevada's use tax to Edison's use and consumption of the coal acquired from Peabody discriminates against interstate commerce in violation of the Commerce Clause of the United States Constitution (U.S. Const. Art. 1 §8, cl. 3) because, as explained in paragraph 33 above, Nevada taxes the sales of minerals, including coal, extracted from mines in Nevada more favorably than it does the use or consumption of minerals, including coal, extracted and purchased from out-of-state mines for use in Nevada.

37. Edison is entitled to recover a refund of $ 72,901,996.30 in use taxes it paid to the Department for the periods March, 1998 through and including December, 2005, together with interest at the appropriate statutory rate other than interest on the Amnesty Payment.

THIRD CLAIM FOR RELIEF

38. Plaintiff re-alleges and incorporates by reference herein the allegations set forth in paragraphs 1 through 31, inclusive.

39. Edison reimbursed Peabody for the Arizona Transaction Privilege Tax imposed on the coal purchased from Peabody for use at the Mohave Project and that Peabody had paid to the State of Arizona. The Arizona Transaction Privilege Tax is Arizona's sales tax. In paying Nevada use tax, Edison included the amount reimbursed to Peabody for the Arizona Privilege Tax in the sales price subject to use tax.

40. Edison should not have paid use tax on amounts paid to Peabody for the Arizona Transaction Privilege Tax because such amounts are not includable in the meaning of "sales price" under NRS 372.065.

41. In addition, Edison is entitled to a credit against the Nevada use tax for the Arizona Transaction Privilege Tax it reimbursed to Peabody because NAC 372.055 provides such a credit for "sales tax legitimately paid for the same purchase ... to a state or local government outside of Nevada."

42. Edison expects to establish at trial the amount of the refund to which it is entitled for use taxes it paid to the Department for the periods March, 1998 through and including December, 2005, together with interest at the appropriate statutory rate other than interest on the Amnesty Payment.

FOURTH CLAIM FOR RELIEF

43. Edison re-alleges and incorporates by reference herein the allegations set forth in paragraphs 1 through 31, inclusive.

44. Edison reimbursed Peabody for taxes imposed by the United States under the Surface Mining Control & Reclamation Act of 1977 and the Black Lung Benefits Revenue Act of 1977 (collectively, the "Federal Taxes") on the purchase of coal from Peabody for use at the Mohave Project and that Peabody had paid to the United States. In paying the Nevada use tax, Edison included the Federal Taxes in the sales price subject to use tax.

45. Edison is entitled to exclude from gross receipts, the Federal Taxes that Edison reimbursed to Peabody because the Federal Taxes should not have been included in the sales price subject to Nevada use tax pursuant to NRS 372.065(3)(d).

46. Edison expects to establish at trial the amount of the refund to which it is entitled for use taxes it paid to the Department for the periods March, 1998 through and including December, 2005, together with interest at the appropriate statutory rate other than interest on the Amnesty Payment.

FIFTH CLAIM FOR RELIEF

47. Edison re-alleges and incorporates by reference herein the allegations set forth in paragraphs 1 though 31, inclusive.

48. Edison reimbursed Peabody for the Navajo Nation Business Activity Tax and Possessory Interest Tax imposed on the coal purchased from Peabody for use at the Mohave Project and that Peabody had paid to the Navajo Nation. In paying the Nevada use tax, Edison included the amount reimbursed to Peabody for the Navajo Nation's Business Activity Tax and possessory interest tax in the sale price subject to use tax.

49. Edison should not have accrued use tax on amounts paid to Peabody for the Navajo Nation's Business Activity Tax and possessory interest tax because such amounts are not includable in the meaning of "sales price" under NRS 372.065.

50. Edison expects to establish at trial the amount of the refund to which it is entitled for use taxes it paid to the Department for the periods March, 1998 though and including December,

2005, together with interest at the appropriate statutory rate other than interest on the Amnesty Payment.

SIXTH CLAIM FOR RELIEF

51. Edison re-alleges and incorporates by reference herein the allegations set forth in paragraphs 1 though 31, inclusive.

52. Edison reimbursed Peabody for Arizona's Ad Valorem Tax imposed on the coal purchased from Peabody for use at the Mohave Project and that Peabody had paid to the State of Arizona. In paying the Nevada use tax, Edison included the amount reimbursed to Peabody for the Arizona Ad Valorem Tax in the sales price subject to use tax.

53. Edison should not have paid use tax on amounts paid to Peabody for Arizona's Ad Valorem Tax because such amounts are not includable in the meaning of "sales price" under NRS 372.065.

54. Edison expects to establish at trial the amount of the refund to which it is entitled for use taxes it paid to the Department for the periods March, 1998 through and including December, 2005, together with interest at the appropriate statutory rate for periods other than the interest on the Amnesty Payment.

SEVENTH CLAIM FOR RELIEF

55. Edison re-alleges and incorporates by reference herein the allegations set forth in paragraphs 1 though 31, inclusive.

56. Edison paid use tax on amounts it paid for transportation costs to the third party that transported the coal from the mine operated by Peabody to the Mohave Plant.

57. Edison should not have paid use tax on amounts it paid for transportation costs pursuant to NRS 372.065 and NAC 372.101.

58. Edison expects to establish at trial the amount of the refund to which it is entitled for use taxes it paid to the Department for the periods March, 1998 through and including December,

..../

..../

...../

2005, together with interest at the appropriate statutory rate for periods other than interest on the Amnesty Payment.

WHEREFORE, Plaintiff requests that judgment be entered in its favor as follows:

1. That the Court ordered Defendant State of Nevada to issue Edison a refund of use tax previously paid in the total amount of $72,901,996.30 together with interest at the appropriate statutory rate other than interest on the Amnesty Payment.

2. For costs of suit; and

3. For such additional relief as the Court deems appropriate under the circumstances.

DATED this 15 day of January, 2009.

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ALAN GLOVER
BY C. Cooper CLERK
DEPUTY

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

SOUTHERN CALIFORNIA EDISON

Plaintiff,

vs.

THE STATE OF NEVADA, EX REL. DEPARTMENT OF TAXATION,

Defendant.

Case No.: _____

Dept. No.: _____

COMPLAINT

(NRS 372.680; NRS 374.685; NRS 30.030)

COMES NOW Plaintiff Southern California Edison, by and through its counsel Norman J. Azevedo, Esq., and hereby complains against Defendant, State of Nevada, ex rel. Department of Taxation, and alleges as follows:

NATURE OF THE ACTION

1. Plaintiff files this Complaint solely as a precaution in the event there should be any suggestion that the complaint in Case No. 09-0C-00016-1B (assigned to Judge Russell) was premature when filed and that such prematurity somehow might invalidate the amended complaint in Case No. 09-0C-00016-1B (as to which Plaintiff believes no prematurity argument can be made) that is being filed and served simultaneously with the filing and service of this Complaint. This Complaint and the amended complaint in Case No. 09-0C-00016-1B are materially identical in content, parties named, causes of action and relief requested.

2. This is an action to recover use taxes pursuant to Sections 372.680(1) and 374.685(1) of the Nevada Revised Statutes (NRS) following a final decision by the Nevada Tax Commission ("Commission") disallowing Plaintiff's claims for refund of use tax Plaintiff paid

to the Defendant for tax periods March 1998 through and including September 2003.

3. NRS 372.680(1) and 374.685(1) each provide: within 90 days after a final decision upon a claim filed pursuant to this chapter is rendered by the Nevada Tax Commission, the claimant may bring an action against the department on the grounds set forth in the claim in a court of competent jurisdiction in Carson City . . . for the recovery of the whole or any part of the amount with respect to which the claim has been disallowed.

4. Defendant illegally imposed use tax on the use and consumption of out-of-state coal at a coal-fired power plant in Nevada. All of the coal used and consumed at the power plant was purchased, extracted and shipped from a coal mine located entirely within the State of Arizona. Under NRS 372.185(2) and 374.190(2), Nevada use tax does not apply to the use or consumption of property acquired outside of Nevada in a transaction that would not have been a taxable sale if it had occurred within Nevada. Sales by mines located within Nevada of the minerals they extract, including coal, are expressly exempt from sales tax and therefore not taxable sales. Since the equivalent in-state transaction would not have been a taxable sale, Defendant imposition of tax on the use and consumption in Nevada of coal that was purchased, extracted and shipped from a mine located in Arizona is illegal.

5. Defendant's imposition of use tax on Plaintiff 's use and consumption of coal in Nevada discriminates against interstate commerce in violation of the Commerce Clause of the United States Constitution (U.S. Const. Art. 1. §8, cl. 3) by taxing minerals acquired from in-state mines more favorably than minerals acquired from out-of-state mines for use in Nevada. Indeed, Defendant's application of the sales and use tax statutes is facially unconstitutional because, as explained above, minerals acquired from in-state mines enjoy a complete exemption from Nevada's sales tax while minerals acquired from out-of-state mines for use or consumption in Nevada are subject to Nevada's use tax.

6. If the Court were to determine that Defendant's imposition of use tax in this case is neither illegal nor unconstitutional, Plaintiff alternatively claims that it is entitled to a refund of use tax in respect of each of the following reasons:

a. Plaintiff is entitled to a credit against the use tax for sales tax paid to Arizona;

b. The taxable sales price should exclude taxes imposed by various taxing jurisdictions; and

c. The taxable sales price should exclude the amounts paid for transportation of the coal pursuant to NRS 372.065 and Nevada Administrative Code (NAC 372.101).

7. Pursuant to NRS 30.030, Plaintiff also seeks a declaration from the Court that, notwithstanding Defendant assertions to the contrary, Plaintiff has exhausted its administrative remedies with respect to the claims for refund that it filed for the periods January 2001 through and including September 2003 and that such claims are properly before this Court.

8. Finally, pursuant to NRS 30.030, Plaintiff seeks a declaration that the decision of the Court in this litigation with respect to any factual or legal disputes shall apply, subject to any appellate review thereof, to the claims for refund that Plaintiff filed for the periods January 2001 through and including September 2003 (if the Court finds such claims are not properly before this Court), and to the claims for refund for the periods October 2003 through and including December 2005.

PARTIES

9. Plaintiff Southern California Edison Company (Edison) is a California corporation having its principal place of business in Los Angeles County, California. Edison is not a Debtor in bankruptcy.

10. Defendant State of Nevada ex rel. Department of Taxation (the Department) is an agency of the executive branch of the State of Nevada that is charged with the administration and enforcement of the tax laws set forth in Title 32 of the Nevada Revised Statutes, including chapters 372 and 374 of the Nevada Revised Statutes governing sales and use taxes and local school support taxes, respectively.

FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF

I. The Mohave Generating Station

11. At all times relevant to this Complaint, Edison owned a majority interest in the Mohave Generating Station (Mohave Project), a coal-fired power plant located in Clark County, Nevada. The Mohave Project generated electricity by burning coal. It had two generating units

and supplied enough electricity to power approximately 1.5 million homes. The Mohave Project provided energy to customers in Nevada, Arizona and Southern California.

12. The Mohave Project began operations in 1970. Edison co-owned the Mohave Project with three other parties (collectively, the Mohave Co-owners : Nevada Power Company, the Department of Water and Power of the City of Los Angeles and Salt River Project Agricultural Improvement and Power District. Edison owned the majority interest (a 56% undivided interest) in the Mohave Project.

13. Edison operated the Mohave Project pursuant to the Mohave Project Operating Agreement effective May 1, 1969 and dated July 6, 1970 (the Operating Agreement) . The Mohave Project ceased operations on December 31, 2005.

II. Out-of-State Purchase and Delivery of Coal

14. At all times relevant to this Complaint, all of the coal used and consumed at the Mohave Project was supplied by Peabody Western Coal Company (Peabody) pursuant to the Amended Mohave Project Coal Supply Agreement dated May 26, 1976 between Peabody (as seller) and the Mohave Co-owners (as buyers) (the Amended Coal Supply Agreement) .

15. All of the coal sold by Peabody for use at the Mohave Project was extracted from the Black Mesa Mine in northeastern Arizona.

16. The Black Mesa Mine is located on land owned by the Navajo Nation and Hopi Tribe. At all times relevant to this Complaint, Peabody operated the Black Mesa Mine through lease agreements with the Navajo Nation and the Hopi Tribe.

17. Pursuant to agreements between Peabody and Black Mesa Pipeline, Inc. (BMP), BMP constructed and operated a 273-mile pipeline to transport and deliver the coal from the Black Mesa Mine to the Mohave Project (the Pipeline). The coal was crushed and suspended in water for transportation through the Pipeline, and was separated from the water upon delivery to the Mohave Project.

18. The Amended Coal Supply Agreement required Edison to pay Peabody, on a monthly basis, for the price of the coal it purchased. Peabody invoiced Edison for this charge and Edison sent payment for the coal to Peabody. BMP invoiced Edison directly for the charges

for transporting and delivering the coal to the Mohave Project and Edison sent payment for such transportation charges directly to BMP.

19. Since 1970, Edison has paid Nevada use tax to the Department in respect of the coal used and consumed at the Mohave Project.

III. Exhaustion of Administrative Remedies

A. The Department Denies Edison's Claims for Refund for the Periods March 1998 Through and Including September 2003

20. Edison determined that several grounds existed for challenging Nevada imposition of use tax in respect of the out-of-state coal used and consumed at the Mohave Project.

21. Between April 26, 2001 and February 25, 2003, Edison timely filed claims for refund of the use tax it paid to the Department for the periods March 1998 through and including December 2000 (Claims Set 1). For these periods, Edison paid $23,896,668.08 in use tax to the Department in respect of the coal used and consumed at the Mohave Project.

22. By letter dated December 17, 2002 (Ex. A hereto), the Department denied the claims for refund filed for the periods March 1998 through and including September 1999. By letter dated December 30, 2002 (Ex. B hereto), the Department denied the claims for refund filed for the periods October 1999 through and including December 1999.

23. In the December 17 and December 30, 2002 denial letters, the Department advised Edison that, if Edison desired to appeal the Department's decision, it had to file a petition for redetermination within 45 days pursuant to NRS 360.360. On January 31, 2003, Edison filed a timely petition for redetermination for the periods covered by these denial letters March 1998 through December 1999.

24. By letter dated May 16, 2003 (Ex. C hereto), the Department denied the claims for refund for the periods January 2000 through and including December 2000. The Department's letter states that it will consider this denial in the same status as your previous requests and these periods will be added to the issue(s) under petition. Accordingly, the Department deemed Edison to have appealed its denial of the periods from January 2000 through and including December

2000 by considering them as part of the petition for redetermination previously filed by Edison.

25. In a letter dated July 2, 2003, the Department acknowledged that it should have instructed Edison to appeal the denial of its claims for refund to the Commission pursuant to NRS 360.245(1) rather than filing a petition for redetermination with the Department. The Department stated that it had rectified its mistake by redirecting Edison's claims for refund to the Commission for a hearing.

26. On February 26, 2004, Edison timely filed claims for refund of use tax with the Department for the use tax it paid in respect of the coal used and consumed at the Mohave Plant for the periods January 2001 through and including September 2003 (Claims Set 2). The total refund claimed for these periods is $24,331,667.62.

27. In a letter to Edison dated April 5, 2004 (Ex. D hereto), the Department denied Claims Set 2. The letter states: You have petitioned the Department's denial(s) for refund for prior periods on this same issue. We will consider this denial in the same status as your previous requests and these periods will be added to the issue(s) under petition. Accordingly, the Department deemed Edison to have appealed its denial of Claims Set 2 by considering Claims Set 2 as part of the petition for redetermination previously filed by Edison (and redirected by the Department to the Commission as explained above). The Department sent a copy of its April 5, 2004 letter to Greg Zunino who, at the time, was the Senior Deputy Attorney General representing the Department in connection with Edison's claims for refund pending before the Commission.

B. In 2005, the Commission Grants Edison's Claims For Refund

28. The Commission held a series of hearings on Claims Set 1 and Claims Set 2 beginning on November 1, 2004 and continuing on February 7, 2005, April 5, 2005 and May 9, 2005.[1]

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[1] On December 8, 2003, the Commission held an initial hearing on Edison's claims for refund and referred the claims to a hearing officer. The hearing officer issued a written decision on July 14, 2004. Significantly, while the hearing officer found that the Department's imposition of the use tax on Edison's use and consumption of coal at the Mohave Plant discriminated against interstate commerce in violation of the Commerce Clause, he refused to grant a refund of the

29. At the May 9, 2005 hearing, the Commission voted to grant Edison's claims for refund. The Commission issued a written decision dated November 29, 2006 (Ex. E hereto) granting Edison's claims for refund in their entirety. The written decision expressly stated that the Commission's decision included Claims Set 1 and Claims Set 2.

C. The Open Meeting Law Case

30. At Edison's request, the Commission closed each of the aforementioned hearings. Edison made the request because the Commission's determination of the refund claims required consideration of Edison and the other Mohave Co-owners proprietary and confidential information. The Commission closed the hearings at the request of the taxpayer in accordance with former NRS 360.247 and with the advice and consent of its counsel, the Attorney General Office of the State of Nevada (Attorney General).[2] The Commission had a thirty-year practice of closing hearings at the request of taxpayers.

31. Notwithstanding the fact that it served as legal counsel to the Commission (the decision-maker in respect of Edison's claims) and approved the closure of the hearings, the Attorney General filed a complaint on July 7, 2005 against the Commission in the First Judicial Court, Carson City, seeking to void the Commission's grant of Edison's claims for refund on the ground that the Commission had violated Nevada Open Meeting Law (NRS 241.010 et seq.) when it granted Edison claims for refund in closed session at the May 9, 2005 hearing (Open Meeting Law Case).

32. The Commission hired independent counsel to represent it in the Open Meeting Law Case. Edison was the real party in interest in the case.

33. Following a bench trial on August 26, 2006, the district court dismissed the Attorney General's complaint and entered judgment for the Commission and Edison.

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unconstitutional tax to Edison.

2 Former NRS 360.247 provided, in pertinent part: "Except as otherwise provided in this section, any appeal to the Nevada tax commission which is taken by a taxpayer concerning his liability for tax must be heard during a session of the commission which is open to the public. A hearing on such an appeal may be closed to the public if the taxpayer requests that it be closed."

34. The Attorney General appealed to the Supreme Court of Nevada. In an opinion filed on April 24, 2008, the Supreme Court reversed the district court and found that the Commission had violated the Open Meeting Law when it granted Edison's claims for refund in a closed hearing.

35. Edison is thus the only taxpayer whose grant of a claim for refund by the Commission has ever been voided pursuant to the Open Meeting Law, notwithstanding that the Commission had been closing hearings at taxpayers requests as provided by statute and with the consent of its counsel for the past thirty years (during which time the Attorney General acted as counsel to both the Commission and the Department at those hearings).

D. On Remand, the Commission Denies Edison's Claims for Refund

36. Since the Commission's prior decision in favor of Edison was voided by the Supreme Court decision, Edison's claims for refund were returned to the Commission for redetermination in open session.

37. The Commission held open hearings on the claims for refund on September 9, 2008 and December 1, 2008.

38. There were no changes in the facts or the law between the hearings held before the Commission in 2004 and 2005 and those that were held in 2008.

39. At the December 1, 2008 hearing, and notwithstanding the absence of any change in the applicable facts and law, the Commission voted to deny Edison's refund claims.

40. On March 3, 2009, the Commission served its final written decision denying Edison's claims for refund (Ex. F hereto).

41. The Commission's written decision fails to set forth any analysis of facts or law in support of its conclusions. The decision reaches the *ipse dixit* conclusion that what Edison purchased from Peabody as a processed and/or manufactured product, and not simply coal, in complete disregard of the uncontroverted evidence that Edison purchased coal from a coal mine, that Edison separately purchased water in order to transport the coal through the Pipeline, and that at the Mohave Project the coal was burned as fuel and the water was used for cooling purposes. In other words, Edison purchased and used two separate and distinct products.

Significantly, the Commission's written decision following the December 1, 2008 vote, by concluding that Edison purchased a combined coal/water product, completely and inexplicably contradicted a finding in the Commission's November 29, 2006 written decision that expressly reached the opposite conclusion, namely that we find that Edison is purchasing a raw mineral, in this case coal.

42. Having exhausted its administrative remedies, Edison now brings this suit against the Department in district court pursuant to NRS 372.680(1) and NRS 374.685(1), almost eight years after filing its initial claim for refund.

E. Claims for Refund for October 2003 through December 2005

43. On June 7, 2005, while the Open Meeting Law Case was pending, Edison timely filed claims seeking a refund of use tax it paid on the coal with the Department for the periods October 2003 through and including March 2005 in the total amount of $14,745,838.13. Edison stopped paying use tax on coal delivered to the Mohave Project after March 2005 in view of the Commission's vote in Edison's favor at the May 9, 2005 hearing.

44. Following the Supreme Court's decision in the Open Meeting Law Case, and pursuant to the amnesty program set forth in the Emergency Regulation of the Commission (LCB File No. E002-08) and a stipulation entered into between Edison and the Department dated September 30, 2008, Edison paid $9,927,822.47 in use tax for coal purchased from Peabody for use at the Mohave Project for the periods March 2005 through and including December 2005 (the Amnesty Payment). Concurrently with entering into the stipulation and making the Amnesty Payment, Edison timely filed claims for refund of the use tax it paid on the coal for periods March 2005 through and including December 2005, i.e., the Amnesty Payment. Pursuant to the stipulation, if Edison prevails on its claims for refund of the Amnesty Payment, the State of Nevada is not required to refund interest with respect to the Amnesty Payment only. (The claims for refund filed by Edison for the periods from October 2003 through and including December 2005 are referred to herein as Claims Set 3.)

45. According to a letter from the Department dated February 27, 2009 (Ex. G hereto), the Department is holding Claims Set 3 in abeyance until there is a final resolution in the

courts of Claims Set 1.

F. The Defendant's Refusal to Acknowledge that Both it and the Commission Denied the January 2001 through September 2003 Claims for Refund

46. Despite the fact that (1) the Department denied Edison's Claims Set 2 by letter dated April 5, 2004 and unequivocally added these periods to the periods covered by claims previously denied by the Department and placed before the Commission, i.e., Claims Set 1, and (2), the Commission's written decision in respect of the May 9, 2005 hearing expressly granted Edison's Claims Set 1 and Claims Set 2, the Department now takes the position that Claims Set 2 has not yet been the subject of a final Commission action and thus is not properly before the Court.

47. The Executive Director of the Department of Taxation sent a letter dated February 27, 2009 (Ex. G hereto) to the undersigned counsel for Edison to provide the Department's understanding of the status of the various claims for refund of use tax that Edison has on file with the Department.

48. The February 27, 2009 letter states, in relevant part, [c]laims from March 1998 until December 2000 were the subject of the December 1, 2008 decision of the Nevada Tax Commission. SCE [Edison] has filed on or about January 15, 2009 a Complaint that includes these claims in the First Judicial District Court. The Complaint referred to in the preceding sentence is the original complaint filed in Case No. 09-0C-00016-1B that has been assigned to Judge Russell as discussed in Paragraph 1, *supra*, (the "Original Complaint"). The letter also reaffirms that the Department intend[s] to hold the claims for the periods of October 2003 through December 2005 [Claims Set 3] in abeyance until there is a final resolution in the courts.

49. The Executive Director acknowledges that Edison included Claims Set 2 in its Original Complaint in this case, but fails to acknowledge that Claims Set 2 was necessarily denied by the Department and the Commission.

50. In response to the Executive Director letter, Edison sent a letter to the Executive Director and the Attorney General on March 13, 2009 (Ex. H hereto) proposing that the parties

enter into a stipulation to organize the litigation before the Court, and reminding them that the Department had denied Claims Set 2 and considered Claims Set 2 as having been appealed to the Commission.

51. By letter from its counsel dated March 17, 2009 (Ex. I hereto), the Department declined to enter into a stipulation and expressly asserted that [the Commission to date has not rendered a final decision on [Claims Set 2], despite the Department's letter dated April 5, 2004 denying Claims Set 2 and adding] them to the other periods before the Commission, just as the Department had done with the claims for the periods January 2000 through and including December 2000, over which there is no ripeness dispute.

52. Edison believes that Claims Set 2 was properly before the Commission at the time of the December 1, 2008 vote and that the Commission's March 3, 2009 denial of Edison's claims for refund necessarily included Claims Set 2 in addition to Claims Set 1, even though the written decision prepared by the Department's Executive Director on behalf of the Commission does not expressly mention Claims Set 2. Edison relied on the Department's denial of Claims Set 2 on April 5, 2004 and addition of Claims Set 2 to Edison's other claims for refund that were pending before the Commission, i.e., Claims Set 1. The Commission expressly granted Claims Set 1 and Claims Set 2 at the May 9, 2005 hearing (as memorialized in its written decision dated November 29, 2006). The Supreme Court decision in the Open Meeting Law Case voided the Commission's vote at the May 9, 2005 hearing and placed both sets of claims, i.e., Claims Set 1 and Claims Set 2, back in front of the Commission.

FIRST CLAIM FOR RELIEF

(Statutory Exemption from Use Tax)

53. Plaintiff re-alleges and incorporates by reference herein the allegations set forth in paragraphs 1 through 52 inclusive.

54. Edison's use and consumption of coal purchased from Peabody is exempt from use tax under NRS 372.185(2) and 374.190(2). Under those statutes, use tax does not apply to property acquired outside of Nevada in a transaction that would not have been a taxable sale if it had occurred within this state. Under NRS 372.270 and 374.275 a purchase of coal or any other

mineral from a mine located in Nevada is not a taxable sale. Since an acquisition of coal from an in-state mine would not be a taxable sale under Nevada law, Edison's use and consumption of coal purchased from Peabody mine in Arizona is not subject to use tax.

55. Edison is entitled to recover a refund of $48,228,335.70 in use taxes it paid to the Department for the periods March 1998 through and including September 2003, together with interest at the appropriate statutory rate.

SECOND CLAIM FOR RELIEF

(The Department's Imposition of Use Tax is in Violation of the Commerce Clause of the United States Constitution)

56. Edison re-alleges and incorporates by reference herein the allegations set forth in paragraphs 1 through 52, inclusive.

57. The application of Nevada's use tax to Edison's use and consumption of the coal acquired from Peabody discriminates against interstate commerce in violation of the Commerce Clause of the United States Constitution (U.S. Const. Art. I. §8, cl. 3) because, as explained in paragraph 33 above, Nevada taxes the sales of minerals, including coal, extracted from mines in Nevada more favorably than it does the use or consumption of minerals, including coal, extracted and purchased from out-of-state mines for use in Nevada.

58. Edison is entitled to recover a refund of $48,228,335.70 in use taxes it paid to the Department for the periods March 1998 through and including September 2003, together with interest at the appropriate statutory rate.

THIRD CLAIM FOR RELIEF

(Edison is Entitled to a Credit Against the Use Tax for Sales Tax Paid to Arizona)

59. Edison re-alleges and incorporates by reference herein the allegations set forth in paragraphs 1 through 52, inclusive.

60. Edison reimbursed Peabody for the Arizona Transaction Privilege Tax imposed on Edison's purchase of coal from Peabody and that Peabody paid to the State of Arizona. The Arizona Transaction Privilege Tax is Arizona sales tax. In self-assessing Nevada use tax, Edison included the amount reimbursed to Peabody for the Arizona Transaction Privilege Tax in

the sales price subject to use tax.

61. Edison is entitled to a credit against the Nevada use tax for the Arizona Transaction Privilege Tax it reimbursed to Peabody because NAC 372.055 provides such a credit for ales tax legitimately paid for the same purchase . . . to a state or local government outside of Nevada.

62. Edison will establish at trial the amounts it reimbursed to Peabody for Arizona Transactions Privilege Tax and will thereby establish the amount of the refund to which it is entitled for use taxes it paid to the Department for the periods March 1998 through and including September 2003, together with interest at the appropriate statutory rate.

FOURTH CLAIM FOR RELIEF

(Edison is Entitled to Exclude From the Measure of Use Tax Taxes Paid to the Federal Government)

63. Edison re-alleges and incorporates by reference herein the allegations set forth in paragraphs 1 through 52, inclusive.

64. Edison reimbursed Peabody for taxes imposed by the United States under the Surface Mining Control & Reclamation Act of 1977 and the Black Lung Benefits Revenue Act of 1977 (collectively, the "Federal Taxes") on the purchase of coal from Peabody and that Peabody paid to the United States. In paying the Nevada use tax, Edison included the Federal Taxes in the sales price subject to use tax.

65. Edison is entitled to exclude from the sales price the Federal Taxes that Edison reimbursed to Peabody because the Federal Taxes should not have been included in the sales price subject to Nevada use tax under NRS 372.025.

66. Edison will establish at trial the amount of Federal Taxes it reimbursed to Peabody and will thereby establish the amount of the refund to which it is entitled for use taxes it paid to the Department for the periods March 1998 through and including September 2003, together with interest at the appropriate statutory rate.

FIFTH CLAIM FOR RELIEF

(Edison is Entitled to Exclude From the Measure of

Use Tax Taxes Paid to the Navajo Nation and Hopi Tribe)

67. Edison re-alleges and incorporates by reference herein the allegations set forth in paragraphs 1 through 52, inclusive.

68. Edison reimbursed Peabody for the Navajo Nation Business Activity Tax and Possessor Interest Tax imposed on the coal purchased from Peabody for use at the Mohave Project and that Peabody paid to the Navajo Nation. In paying the Nevada use tax, Edison included the amount reimbursed to Peabody for the Navajo Nation Business Activity Tax and Possessor Interest Tax in the sales price subject to use tax.

69. Edison should not have accrued use tax on amounts paid to Peabody for the Navajo Nation Business Activity Tax and Possessor Interest Tax because such amounts are not inculpable in the meaning of ales price under NRS 372.065.

70. Edison will establish at trial the amount of the Navajo Nation Business Activity Tax and Possessor Interest Tax it reimbursed to Peabody and will thereby establish the amount of the refund to which it is entitled for use taxes it paid to the Department for the periods March 1998 through and including September 2003, together with interest at the appropriate statutory rate.

SIXTH CLAIM FOR RELIEF

(Edison is Entitled to Exclude From the Measure of Use Tax Taxes Paid to the State of Arizona)

71. Edison re-alleges and incorporates by reference herein the allegations set forth in paragraphs 1 through 52, inclusive.

72. Edison reimbursed Peabody for Arizona Ad Valorem Tax imposed on the coal purchased from Peabody for use at the Mohave Project and that Peabody paid to the State of Arizona. In paying the Nevada use tax, Edison included the amount reimbursed to Peabody for the Arizona Ad Valorem Tax in the sales price subject to use tax.

73. Edison reimbursed Peabody for the Arizona Transaction Privilege Tax imposed on the coal purchased from Peabody for use at the Mohave Project and that Peabody paid to the State of Arizona. In paying the Nevada use tax, Edison included the amount reimbursed to

Peabody for the Arizona Transaction Privilege Tax in the sales price subject to use tax.

74. Edison should not have paid use tax on amounts paid to Peabody for Arizona Ad Valorem Tax because such amounts are not inculpable in the meaning of ales price under NRS 372.065.

75. Edison should not have paid use tax on amounts paid to Peabody for the Arizona Transaction Privilege Tax because such amounts are not inculpable in the meaning of sales price under NRS 372.065.

76. Edison will establish at trial the amounts of Arizona Ad Valorem Tax and Arizona Transaction Privilege Tax it reimbursed to Peabody and will thereby establish the amount of the refund to which it is entitled for use taxes it paid to the Department for the periods March 1998 through and including September 2003, together with interest at the appropriate statutory rate.

SEVENTH CLAIM FOR RELIEF

(Edison is Entitled to Exclude From the Measure of Use Tax the Transportation Costs it Incurred in Transporting the Coal to the Mohave Project)

77. Edison re-alleges and incorporates by reference herein the allegations set forth in paragraphs 1 through 52, inclusive.

78. Edison paid use tax on amounts it paid for transportation costs to BMP.

79. Edison should not have paid use tax on amounts it paid for the transportation costs pursuant to NRS 372.065 and NAC 372.101.

80. Edison will establish at trial the amount of the transportation costs it paid to BMP and will thereby establish the amount of the refund to which it is entitled for use taxes it paid to the Department for the periods March 1998 through and including September 2003, together with interest at the appropriate statutory rate.

EIGHTH CLAIM FOR RELIEF

(Declaratory Judgment That Claims Set Two Is Properly Before This Court)

81. Edison re-alleges and incorporates by reference herein the allegations set forth in

paragraphs 1 through 52, inclusive.

82. Edison timely filed claims for refund of use tax in respect of the coal used and consumed at the Mohave Plant for the periods January 2001 through and including September 2003, and the Department denied these claims by letter dated April 5, 2004.

83. In addition, in its April 5, 2004 letter, the Department indicated that the periods from January 2001 through and including September 2003 would be considered as part of the petition for redetermination previously filed by Edison (and redirected by the Department to the Commission as explained above). This letter used exactly the same language to describe the status of Claims Set 2 as was used to describe the status of claims for the period January 2000 through and including December 2000 in the Department's letter of May 16, 2003. The Department does not dispute that the claims covered by the May 16, 2003 letter have been denied by the Commission and are properly before the Court.

84. Although the Commission's written decision dated November 29, 2006 granting Edison's claims for refund specifically includes the claims for refund for the periods January 2001 through and including September 2003, the written decision issued by the Executive Director of the Department on behalf of the Commission on March 3, 2009 fails to address the claims for refund for these periods.

85. The Department asserts that the claims for refund for the periods January 2001 through and including September 2003 have not been denied by the Commission. Edison disputes the Department's assertion.

86. Edison hereby requests a declaration from this Court that, notwithstanding Defendant assertions to the contrary, Edison has exhausted its administrative remedies with respect to the claims for refund that it filed for the periods January 2001 through and including September 2003 and that such claims were necessarily encompassed within the Commission's December 1, 2008 vote and are properly before this Court.

NINTH CLAIM FOR RELIEF

(Declaratory Judgment That the Court Findings of Fact and Conclusions of Law Will Apply Equally to Claims For Refund

Where Edison Has Not Yet Exhausted Its Administrative Remedies)

87. Edison re-alleges and incorporates by reference herein the allegations set forth in paragraphs 1 through 86, inclusive.

88. Edison paid the tax and timely filed claims for refund with the Department for the periods October 2003 through and including December 2005 (Claims Set 3).

89. The Department stated that it intended to hold the claims for refund for these periods in abeyance until there is a final resolution in the courts with respect to the periods prior to October 2003.

90. Edison believes that after there has been a final, non-appealable judgment in this litigation either granting or denying Edison's claims for refund for periods prior to October 2003, the Department must necessarily apply the Court's finding and conclusions to the refund claims held in abeyance, absent a determination that the later claims include any material, distinguishing factors (which Edison believes is not the case). Edison is informed and believes, and on that basis alleges, that the Department disputes this contention and contends that a final judgment in this case will not bind the Department as to its determination of the claims held in abeyance. Absent declaratory relief from this Court, even if Edison prevails on its statutory, constitutional or other arguments, the Department may consider itself free to compel Edison to re-litigate the same issues before the Commission and ultimately file another action before the District Court.

91. Following a final non-appealable judgment in this case, both Edison and the Department should be bound by this Court conclusions of law and findings of fact. Accordingly, because all of the legal and factual grounds asserted by Edison apply equally to Claims Sets 1, 2 and 3, this Court should include a declaration to that effect in its final judgment in this action to avoid duplicative, future litigation.

WHEREFORE, Edison requests that judgment be entered in its favor as follows:

1. That the Court order Defendant State of Nevada to issue Edison a refund of use tax previously paid in the total amount of $48,228,335.70 together with interest at the appropriate statutory rate other than interest on the Amnesty Payment;

2. For a declaration that Edison has exhausted its administrative remedies

with respect to the claims for refund that it filed for the periods January 2001 through and including September 2003 and that such claims are properly before the Court.

3. For a declaration that the findings of fact and conclusions of law applicable to this Court determination of those claims where the Court finds Edison has exhausted its administrative remedies shall also apply to those claims where such remedies have not yet been exhausted.

4. For costs of suit; and

5. For such additional relief as the Court deems appropriate under the circumstances.

Dated: March 27th, 2009

NORMAN J. AZEVEDO, ESQ.
State Bar No. 3204
510 West Fourth Street
Carson City, NV 89703
(775) 883.7000
Attorney for Plaintiff

EXHIBIT A

KENNY C GUINN
Governor

CHARLES E. CHINNOCK
Executive Director

DEPARTMENT OF TAXATION
[illegible] Way
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Carson City, Nevada 89706-7937
Phone: (775) 687-4820 • Fax: (775) 687-5981
In-State Toll Free: 800-992-0900
Web Site: http://tax.state.nv.us

[illegible]
Building B, Suite 353
Reno, Nevada 89502
Phone: [illegible]
Fax: [illegible]

December 17, 2002

Dolores Sandler
Edison International – Tax Dept
P O Box 800
Rosemead, CA 91770

Re: Southern California Edison Refund Requests
Account 465-197-254

Dear Ms. Sandler:

This letter is in response to your eight refund requests covering the periods March 1, 1998 through September 30, 1999 for a total of $4,904,490.59. You request a refund of "use taxes" paid to the State of Arizona on your purchases of coal. You purchase the coal from Peabody Western Coal Company in Arizona. The coal is shipped to your location via pipeline, F.O.B. Destination. Peabody charges you Arizona tax of 3.437%. The coal is consumed in your Mojave Generating Station, located in Clark County, Nevada.

Your refund requests are denied for the following reasons:

1) Nevada only allows credit for sales taxes legitimately paid to a state or local government outside of Nevada, Nevada Administrative Code (NAC) 372.055. Research shows that the taxes charged by Peabody are actually "severance" taxes for the removal of minerals and metals from Arizona not sales taxes. This tax is an excise tax, not a sales or use tax.

2) Nevada Revised Statute (NRS) 372.025 (3)(d), under the definition of gross receipts for Nevada sales tax purposes, excludes any tax imposed by the United States. However, this exclusion does not include any manufacturers' or importers' excise tax. The excise taxes paid to Peabody are properly included in your calculation for use taxes due Nevada.

I am enclosing a petition form and related statutes if you wish to appeal this decision. Any appeal needs to be in writing and post marked within 45 days of the date of this letter.

If you have any questions, please call me at (775) 687-6539 or e-mail me at kphillip@tax.state.nv.us .

Sincerely,

Katy Phillips
Supervising Auditor II

enclosures

EXHIBIT B

STATE OF NEVADA
DEPARTMENT OF TAXATION
1550 E. College Parkway
Suite 115
Carson City, Nevada 89706-7937
Phone: (775) 687-4820 Fax: (775) 687-5981
In-State Toll Free: 800-992-0900
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KENNY C. GUINN
Governor

CHARLES E. CHINNOCK
Executive Director

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Reno, Nevada 89502
Phone: (775) 688-1295
Fax: (775) 688-1303

December 30, 2002

Dolores Sandler
Edison International – Tax Dept
P O Box 800
Rosemead, CA 91770

Re: Southern California Edison Refund Requests
Account 463-197-254

Dear Ms. Sandler:

This letter is in response to your refund request covering the periods October 1, 1999 through December 31, 1999 for a total of $945,837.36. You request a refund of "use taxes" paid to the State of Arizona on your purchases of coal. You purchase the coal from Peabody Western Coal Company in Arizona. The coal is shipped to your location via pipeline, F.O.B. Destination. Peabody charges you Arizona tax of 3.437%. The coal is consumed in your Mojave Generating Station located in Clark County, Nevada.

Your refund requests are denied for the following reasons:

1) Nevada only allows credit for sales taxes legitimately paid to a state or local government outside of Nevada, Nevada Administrative Code (NAC) 372.055. Research shows that the taxes charged by Peabody are actually "severance" taxes for the removal of minerals and metals from Arizona nor sales taxes. This tax is an excise tax, not a sales or use tax.

2) Nevada Revised Statute (NRS) 372.025 (3)(d), under the definition of gross receipts for Nevada sales tax purposes, excludes any tax imposed by the United States. However, this exclusion does not include any manufacturers' or importers' excise tax. The excise taxes paid to Peabody are properly included in your calculation for use taxes due Nevada.

I am enclosing a petition form and related statutes if you wish to appeal this decision. Any appeal needs to be in writing and post marked within 45 days of the date of this letter.

If you have any questions, please call me at (775) 687-6539 or e-mail me at kphillip@tax.state.nv.us .

Sincerely,

Katy Phillips
Supervising Auditor II

enclosures

EXHIBIT C

KENNY C GUINN
Governor
BARBARA SMITH CAMPBELL
Chair, Nevada Tax Commission
CHARLES E CHINNOCK
Executive Director

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RENO OFFICE
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Reno, Nevada 89502
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Fax (775) 688-1303

May 16, 2003

Dolores Sandler
Edison International – Tax Dept
P O Box 800
Rosemead, CA 91770

RECEIVED
MAR 0 1 2004
STATE OF NEVADA
DEPARTMENT OF TAXATION

Re: Southern California Edison Refund Requests
Account 465-197-254

Dear Ms. Sandler:

This letter is in response to your refund request covering the periods January 1, 2000 through December 31, 2000 for a total of $3,526,625.70. You request a refund of "use taxes" paid to the State of Arizona on your purchases of coal. You purchase the coal from Peabody Western Coal Company in Arizona. The coal is shipped to your location via pipeline, F.O.B. Destination. Peabody charges you Arizona tax of 3.437%. The coal is consumed in your Mojave Generating Station located in Clark County, Nevada.

Your refund requests are denied for the following reasons:

1) Nevada only allows credit for sales taxes legitimately paid to a state or local government outside of Nevada, Nevada Administrative Code (NAC) 372.055. Research shows that the taxes charged by Peabody are actually "severance" taxes for the removal of minerals and metals from Arizona not sales taxes. This tax is an excise tax, not a sales or use tax.

2) Nevada Revised Statute (NRS) 372.025 (3)(d), under the definition of gross receipts for Nevada sales tax purposes, excludes any tax imposed by the United States. However, this exclusion does not include any manufacturers' or importers' excise tax. The excise taxes paid to Peabody are properly included in your calculation for use taxes due Nevada.

You have petitioned the Department's denial(s) for refund for prior periods on this same issue. We are in the process of scheduling an oral hearing on the matter. We will consider this denial in the same status as your previous requests and these periods will be added to the issue(s) under petition.

If you have any questions, please call me at (775) 687-6539 or e-mail me at kphillip@tax.state.nv.us .

Sincerely,

Katy Phillips
Supervising Auditor II

EXHIBIT D

KENNY C. GUINN
Governor
BARBARA SMITH CAMPBELL
Chair, Nevada Tax Commission
CHARLES E. CHINNOCK
Executive Director

DEPARTMENT OF TAXATION
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HENDERSON OFFICE
2550 Paseo Verde Parkway Suite 180
Henderson, Nevada 89074
Phone:(702) 486-2300
Fax: (702) 486-3377

April 5, 2004

Ms. Dolores Sandler, Tax Manager
Southern California Edison Company
2244 Walnut Grove
Rosemead, California 91770

Re: Account 465197254
Refund Request

Dear Ms. Sandler,

This letter is in response to your refund request for the periods January 1, 2001 through September 30, 2003 in the amount of $24,331,667.62. The Department is refuting the issues for which you are requesting this refund. Therefore this refund request is denied.

You have petitioned the Department's denial(s) for refund for prior periods on this same issue. We will consider this denial in the same status as your previous requests and these periods will be added to the issue(s) under petition.

If you have any questions, please call me at (775) 684-2039 or e-mail me at kphillip@tax.state.nv.us .

Sincerely,

Katy Phillips
Supervising Auditor II

cc: Greg Zunino, Senior Deputy Attorney General

EXHIBIT E

STATE OF NEVADA
DEPARTMENT OF TAXATION
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November 22, 2006

Norman J. Azevedo
Attorney at Law
712 E. Musser Street
Carson City NV 89701

IN THE MATTER OF: ***Southern California Edison***

At a closed hearing on April 5, 2005 that was continued to May 9, 2005, the Nevada Tax Commission ("Commission") heard and decided the appeal of Southern California Edison ("Edison") from the denial by a Hearing Officer of the Department of Taxation ("Department") of Edison's claims for refund of Nevada use tax. Gregory L. Zunino, Senior Deputy Attorney General, appeared on behalf of the Department and Norman J. Azevedo, Esq., appeared on behalf of Edison. Also present, as intervenors supporting the denial of Edison's claims, were Paul Johnson, Deputy District Attorney for Clark County, and Terri Williams, Assistant City Attorney for the City of Henderson.

Edison has been paying Nevada use tax on the purchase of coal imported from Arizona since 1970. Edison timely filed administrative claims for refund of this tax for the periods of March, 1998 through September, 2003 on the grounds that section 372.270 of the Nevada Revised Statutes ("NRS"), a sales and use tax exemption, is applicable to Edison's purchase of coal as more fully described below.[1] The Department denied these claims for refund on December 17, 2002, December 30, 2002 and May 16, 2003. Edison appealed the denials, and a Hearing Officer heard the case on December 22, 2003 and January 28, 2004. In a decision issued on July 14, 2004, the Hearing Officer concluded that, as applied by the Department in this case, NRS 372.270 violated the Commerce Clause of the U.S. Constitution. Nonetheless, the Hearing Officer denied the claims for refund because he reasoned that the appropriate remedy would be to prohibit all taxpayers from using the exemption. We find that there are appropriate statutory and Nevada constitutional grounds to grant Edison's claims for refund.

FINDINGS OF FACT

Edison operates the Mohave Generating Station (the "Mohave Plant") in Laughlin, Nevada, which is located within Clark County. Edison is also the majority owner of the Mohave Plant.[2] The

[1] Reference in this Decision to the sales and use tax statutes contained in NRS chapter 372 shall he deemed to include reference to the identical provisions in chapter 374 (the local school support tax portion of the Nevada sales and use tax). There are no differences between such statutes for purposes of this Decision.

[2] Edison owns a 56% undivided interest in the Mohave Plant. Edison jointly owns the plant with Nevada Power Company, Salt River Project Agriculture Improvement and the Department of Water and Power of the City of Los Angeles.

Mohave Plant generates electricity by burning coal. All of the coal burned at the Mohave Plant is purchased from Peabody Western Coal Company ("Peabody"), which operates the Black Mesa coal mine located in the State of Arizona on lands belonging to the Navajo Nation and Hopi Tribe. The coal is transported from the Black Mesa mine to the Mohave Plant in a coal slurry (ground coal suspended in water) through a 273-mile long pipeline owned by Black Mesa Pipeline, Inc. The slurry travels through the pipeline at a rate of 580 to 650 tons of coal per hour, requiring one billion gallons of water annually.

After extraction, but prior to transport, the raw coal is broken into small pieces by Peabody and sent by conveyor to a coal weighing and sampling tower operated by Commercial Testing & Engineering, a third party. There the coal is tested to see whether it meets the standards pertaining to, for example, BTUs and sulfur content as specified in the agreement between Peabody and Edison. After testing, Peabody further grinds the coal to a sand-like consistency and delivers it to the pipeline. Black Mesa Pipeline mixes the coal with ground water pumped out of local wells – the mix is approximately 50/50. The water used to transport the coal is purchased by Peabody.

The coal purchased by Edison never becomes something other than coal between the time it is mined and the time it is delivered to Edison. The parties submitted expert testimony and written evidence on this issue and presented argument at the hearing. The mined coal is physically ground and suspended in water for transport. This "coal slurry" is not, as the Department argues, a manufactured mineral by-product. Rather, we find that Edison is purchasing a raw mineral – in this case coal – and the processes relating to the creation of the slurry do not convert the coal to something other than a raw mineral.

When the slurry arrives at the Mohave Plant, a centrifuge removes approximately 94% of the coal from the water. The remaining 6% of the coal is pumped into a settling tank where it settles to the bottom and is removed. Once dry, the coal is pulverized and blown into the burners for the boilers that make steam for the generating units. All of the water that comes through the pipeline is either used in the circulatory cooling system at the Mohave Plant or evaporated in the boilers when the coal is burned. Thus, the Mohave Plant uses 100% of the materials that are delivered to it through the pipeline.

CONCLUSIONS OF LAW

Edison claims that Nevada use tax does not apply to its purchase of coal for use at the Mohave Plant pursuant to NRS 372.185(2), 372.270, NRS 372.265, the federal Commerce Clause and Article 10, section 5(1) of the Nevada Constitution. NRS 372.185 imposes the use tax:

> 1. An excise tax is hereby imposed on the storage, use or other consumption in this State of tangible personal property purchased from any retailer on or after July 1, 2955, for storage, use or other consumption in this State at the rate of 2 percent of the sales price of the property.
>
> 2. The tax is imposed with respect to all property which was acquired out of state in a transaction that would have been a taxable sale if it had occurred within this State.

NRS 372.270 is an exemption that applies to both the sales and use taxes:

> **Proceeds of mines.** There are exempted from the taxes imposed by this chapter the gross receipts from the sale of, and the storage, use or other consumption in this State of, the proceeds of mines which are subject to taxes levied pursuant to chapter 362 of NRS.

NRS 372.265 provides:

> **Constitutional and statutory exemptions.** There are exempted from the taxes imposed by this chapter the gross receipts from the sale of, and the storage, use or other consumption in this State of, tangible personal property the gross receipts from the sale of which, or the storage, use or other consumption of which, this State is prohibited from taxing under the Constitution or laws of the United States or under the Constitution of this State.

Article 10, § 5(1) of the Nevada Constitution provides:

> The legislature shall provide by law for a tax upon the net proceeds of all minerals, including oil, gas and other hydrocarbons, extracted in this state, at a rate not to exceed 5 percent of the net proceeds. No other tax may be imposed upon a mineral or its proceeds until the identity of the proceeds as such is lost.

The Commission was thoroughly briefed on the facts of this case and the interaction of the net proceeds of minerals tax and the sales and use tax by all parties. In addition, the Commission heard argument from, and asked questions of, all parties regarding the same. Edison argues that under NRS 372.185(2), use tax does not apply to its purchase of Arizona coal for the Mohave Plant because, had it purchased the coal in Nevada, that transaction would not have been taxable. A purchase of Nevada coal would not have been taxable because NRS 372.270 exempts from the sales and use tax "the proceeds of mines which are subject to taxes levied pursuant to chapter 362 of NRS," and had Edison purchased its coal from a Nevada mine, this exemption would have applied. Furthermore, Edison argues that due to restrictions imposed by the dormant Commerce Clause, which is taken into account under NRS 372.265, Nevada cannot impose its use tax on the purchase of imported coal when a sale or purchase of Nevada coal is exempt from such tax.

On the other hand, the Department argues that Edison's purchase of Arizona coal is taxable because NRS 372.270 exempts proceeds of mines that are "subject to taxes levied pursuant to chapter 362 of NRS," and coal imported from Arizona is *not subject* to the net proceeds of minerals tax imposed by chapter 362. We agree with Edison because the applicability of the use tax in this case is not dependent on whether the Arizona coal is subject to the net proceeds of minerals tax, but rather whether an equivalent in-state transaction would be subject to sales or use tax. *See* NRS 372.185(2).

The exemption in NRS 372.270 applies to minerals subject to taxes levied by NRS chapter 362 (the Net Proceeds of Minerals Tax).[3] The 5% net proceeds of minerals tax applies to the net proceeds of minerals extracted in Nevada. *See* NRS 362.110(1). *See also* Nev. Const., Art. 10, § 5(1) (directing the legislature to "provide by law for a tax upon the net proceeds of all minerals, including oil, gas and other hydrocarbons, extracted in this state..."). Coal is a mineral. *See* NRS 362.010(1) & (2) (referring to coal and hydrocarbons, respectively); Nev. Const., Art. 10, § 5(1) (referring to hydrocarbons). If a Nevada mine sells its coal to Edison for use at the Mohave Plant, no sales or use tax applies. NRS 372.270.

---

[3] Although NRS 372.270 uses the term "proceeds of mines," in 1989, pursuant to an amendment to Article 10, § 5 of the Nevada Constitution, and related amendments to NRS chapter 362, NRS chapter 362 was amended to tax the "proceeds of minerals." The failure to change the reference from "mines" to "minerals" in NRS 372.270 appears to be an oversight. If the term "proceeds of mines" were given a substantive meaning in NRS 372.270, the remaining portion of that section would be rendered meaningless – NRS 372.270 still refers to NRS chapter 362, and that chapter now taxes net proceeds of "minerals" not "mines." There is no indication that the legislature intended to nullify NRS 372.270 when the Nevada Constitution was amended and NRS chapter 362 was substantially revised. Thus, NRS 372.270 is still applicable and it exempts proceeds of minerals subject to the taxes imposed by NRS chapter 362. *Accord. Bartlett v. Brodigan,* 37 Nev. 245, 249 (1914).

Accordingly, by operation of NRS 372.185(2), Edison's purchase of coal from an out-of-state mine for use at the Mohave Plant is a taxable transaction.[4]

Both sides looked to Article 10, Section 5(1) of the Nevada Constitution to support their arguments. That section provides:

> The legislature shall provide by law for a tax upon the net proceeds of all minerals, including oil, gas and other hydrocarbons, extracted in this state, at a rate not to exceed 5 percent of the net proceeds. ***No other tax may be imposed upon a mineral or its proceeds*** until the identity of the proceeds as such is lost. (Emphasis added.)

Under this constitutional provision, the only tax that may be imposed upon minerals or their proceeds is the 5% tax that the first sentence directs the legislature to impose. Both parties and the Commission agree that the net proceeds of minerals tax does not apply to minerals extracted outside of Nevada.

The parties disagreed regarding the application of the second sentence. Edison argued that the second sentence does not limit the prohibition against "other" taxes to minerals extracted in Nevada. Therefore, Edison concluded, since Edison was purchasing coal that had not lost its identity as coal, "[n]o other tax," namely the use tax, could be imposed upon the use of its imported coal. The Department, on the other hand, argued that the coal being delivered to Edison at the Mohave Plant was a by-product that had "lost its identity" as the mineral or its proceeds such that the second sentence of Article 10, § 5(1) did not apply.

We found, above, that the coal purchased by Edison and delivered to the Mohave Plant through the pipeline is a mineral. We also found, necessarily, that the coal slurry is not, as the Department argued, a manufactured mineral by-product. (We do not find the Department's citation to AGO No. 72, dated June 22, 1955, involving a mineral by-product to be authoritative here.) Because Edison purchased and received raw coal, we agree with Edison that Article 10, § 5(1) of the Nevada Constitution precludes imposition of the use tax on the purchase and use of that coal.

Further support for this conclusion can be found in the legislative history to the 1989 amendments to NRS chapter 362 (SB 61), and the history to the amendments to Article 10 of the Nevada Constitution (SJR 22). Section 1 of SB 61 of the 1989 Session of the Nevada Legislature provides:

> The legislature hereby declares that:
>
> 1. The legislature's intent in proposing and approving Senate Joint Resolution No. 22 of the 64th session is to provide a separate method of taxation that is intended to be the only manner of taxation of mines, other than patented mines and mining claims upon which less than $100 worth of labor has been actually performed in the preceding year, and minerals, including oil, gas and other hydrocarbons until the mineral has been extracted and subjected to the ordinary mining processes involved in the extraction.

---

[4] Because of our construction of the Nevada statutes and Constitution, we do not need to reach the Commerce Clause violation raised by Edison and found by the Hearing Officer. *See, e.g., Armco Inc. v. Hardesty*, 467 U.S. 638, 642 (1984) ("a State may not tax a transaction or incident more heavily when it crosses state lines than when it occurs entirely within the State."); *Halliburton Oil Well Cementing Co. v. Reily*, 373 U.S. 64, 70 (1963) ("The conclusion is inescapable: equal treatment for in-state and out-of-state taxpayers similarly situated is the condition precedent for a valid use tax on goods imported from out-of-state.").

2. The legislature intends that the tax imposed by this act and the proposed constitutional limitations upon the taxation of the minerals and their proceeds ***preclude a tax upon***:

(a) The extraction and ordinary mining processes involved in the extraction of minerals, including oil, gas and other hydrocarbons;

(b) ***Minerals, including oil, gas and other hydrocarbons, until after the completion of the ordinary mining processes involved in the extraction of the mineral, and if exchanged at that time, until after the completion of the exchange***; and

(c) The proceeds received in exchange for minerals, including oil, gas and other hydrocarbons, if the minerals are exchanged upon the completion of the ordinary mining processes, until after the completion of the exchange.

3. The legislature's intent in proposing and approving Senate Joint Resolution No. 22 of the 64th session is to provide the opportunity for this and other legislatures to assess a tax on the net proceeds of minerals.

4. The legislature intends that the tax imposed by this act and the proposed constitutional limitations upon the taxation of minerals and their proceeds to not preclude or in any way affect the taxation of motor vehicle or diesel fuel, jewelry, profits or revenues of business, or any other tax upon property, sales or businesses, ***except as provided in subsection 2.*** (Emphasis added.)

This passage makes clear that minerals extracted in Nevada that have not been subject to more than "the ordinary mining processes involved in the extraction of the mineral" are not subject to tax until after completion of the first exchange.

The ordinary mining processes described in Section 1 of SB 61 are the processes set forth in NRS chapter 362 for which expense deductions are allowed in calculating the net proceeds of minerals tax (as may be amended by the Legislature and interpreted by the Commission from time to time). *See* NRS 362.120 and the applicable NACs. Specifically, on this topic, Legislative Counsel Malkiewich stated as follows:

> While the end of 'ordinary mining processes' may change, that is where the exemption ends -- once those processes are done, that is the part of the process that SJR-22 is intended to exempt. Yes, this is going to be effected by cases, **but I think more important to remember is that Nevada law does not track federal law exactly on when the end of ordinary mining processes are.** We define very clearly in our statutes what is allowable for determining gross yield, and it includes the value received in exchange of the final sale. **Well, the sale of the mineral may well be past the end of ordinary mining processes under federal law, but for the purposes of determining gross yield, we include those processes. We also include a number of those processes in the allowable deductions to get to net proceeds. So, this is not necessarily tying our hands or saying that federal law is going**

> **to shift our tax, this is just saying that is the point that we feel before tha(e can't touch.** Wherever this cut-off i(herever this end of ordinary mining processes is, before that point we cannot tax, that that is what SJR-22 is intended to do.
>
> *Senate and Assem. Comm. on Tax'n Minutes dated February 2, 1989* @ pp. 10.

Accordingly, the ordinary mining processes are determined by legislative determination which is intended to be consistent with current mining practices. Ordinary mining processes are not to be determined by relying upon the Federal Income Tax Laws addressing federal depletion. *See* IRC §613.

DECISION

In conclusion, based upon the plain language of NRS 372.185(2), the coal that Edison imports from Arizona for use at the Mohave Plant is exempt from use tax because the equivalent in-state transaction is exempt pursuant to NRS 372.270, Article 10, § 5(1) of the Nevada Constitution and NRS 372.265. Interest will accrue on the amount to be refunded pursuant to NRS 372.660 and NRS 374.665.

FOR THE COMMISSION:

_____

DINO DICIANNO
Executive Director
Nevada Department of Taxation

cc: Dennis Belcourt, Deputy Attorney General
Paul Johnson, Esq., Clark County District Attorney's Office
Terri A. Williams, Esq., City of Henderson

EXHIBIT F

JIM GIBBONS
Governor
THOMAS R. SHEETS
Chair, Nevada Tax Commission
DINO DICIANNO
Executive Director

STATE OF NEVADA
DEPARTMENT OF TAXATION
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February 27, 2009

Norman J. Azevedo, Esq.
510 West Fourth Street
Carson City, Nevada 89703

Certified Mail 7005 1820 0003 8674 0870

Paul D. Johnson, Esq.
Deputy District Attorney
Clark County District Attorney's Office
500 South Grand Central Parkway
PO Box 552215
Las Vegas, NV 89155-2215

Certified Mail 7005 1820 0003 8674 0863

Terri Williams, Esq.
Assistant City Attorney
City of Henderson
240 Water Street
PO Box 95050
Las Vegas, NV 89009-5050

Certified Mail 7005 1820 0003 8674 0856

IN THE MATTER OF: ***Southern California Edison***

The Nevada Supreme Court on April 24, 2008 issued a decision in *Chanos v. Nevada Tax Commission, et.al,* 181 P.3d 675, Nev., April 24, 2008 (no. 48292), voiding a decision by the Nevada Tax Commission ("Commission") approving a refund of Nevada use tax. The refund at issue was for use tax paid by Southern California Edison ("Edison") for coal slurry product purchased in Arizona and used at Edison's power plant in southern Nevada. Because its previous decision was void, the Commission scheduled this matter for a new hearing. The parties, which included Edison, the Department of Taxation ("Department"), Clark County and the city of Henderson, stipulated to a briefing and hearing schedule.

A hearing was held before the Commission on September 9, 2008. The Department was represented by counsel, Gina C. Session, Chief Deputy Attorney General. Clark County was represented by Deputy District Attorney Paul Johnson. The City of Henderson was represented by Assistant City Attorney Terri A. Williams. Edison was represented by Norman Azevedo, Esq. and Christopher Campbell, Esq. Post-hearing briefs were filed, and on December 1, 2008, closing arguments were presented to the Commission. The matter having been submitted to the Commission, the Commission by a vote of 6-2 now enters the following findings of fact, conclusions of law and decision.

FINDINGS OF FACT

1. The coal slurry product purchased by Edison in this case was a processed and/or manufactured product consisting of approximately fifty percent water and fifty percent finely pulverized coal.

2. The coal slurry product was prepared in Arizona, from coal and water derived in Arizona, and delivered to Edison via a coal slurry pipeline more than two hundred and fifty miles long.

3. All of the coal slurry product was used by Edison at its power plant in Nevada.

4. Edison filed claims for refund on use taxes paid between March 1, 1998 and December 31, 2000.

5. The only stated basis for Edison's claims in its original requests for refund was for credit against taxes paid to other jurisdictions.

6. After Edison's initial refund requests were denied, Edison untimely sought to amend its claims to assert new grounds for refund not previously asserted.

7. There is not now, nor was there during the time period covered by Edison's refund requests, any source of commercial coal production in Nevada.

8. There is not now, nor was there during the time period covered by Edison's refund requests, any vendor of coal or coal products produced from Nevada sources, nor did the State of Nevada collect any net proceeds tax from any producer of coal or coal products during the relevant time period.

9. None of the taxes or fees for which Edison sought a credit for were sales taxes or net proceeds taxes for which a credit could be given.

10. Neither Edison, nor its coal slurry provider, were subject to any discriminatory tax in Nevada; inasmuch as, there were neither providers nor potential providers of coal or coal slurry originating from Nevada sources.

CONCLUSIONS OF LAW

1. The coal slurry product at issue in this case is not a raw mineral that would be subject to the exemption in NRS 372.270[1] and/or Article 10, Section 5 of the Nevada Constitution.

2. The payment of use tax by Edison does not violate the Commerce Clause of the United States Constitution, nor any Nevada statutory or constitutional provision.

3. Edison's claims related to the Commerce Clause of the United States Constitution, NRS 372.265, NRS 372.270 and Article 10, Section 5 of the Nevada Constitution or any other basis not raised in Edison's original claims for refund were waived and are barred by NRS 372.635, NRS 372.645 and NRS 372.650.

---

[1] The sales and use tax statutes relevant to this case found in chapters 372 and 374 of the NRS are identical; hence, only the statutes in Chapter 372 are cited herein.

4. None of the taxes and/or fees paid by Edison or Peabody Coal Company in Arizona were entitled to a credit against Nevada's use tax. Use tax was properly collected in Nevada on the coal slurry product purchased by Edison in Arizona and used in Nevada.

DECISION

Based on the above Findings of Fact and Conclusions of Law, Edison's request for refund of use tax on coal slurry product purchased in Arizona and used in Nevada is DENIED.

FOR THE COMMISSION:

DINO DICIANNO
Executive Director
Nevada Department of Taxation

cc: Jennifer Crandell, Senior Deputy Attorney General
Gina Session, Chief Deputy Attorney General
Tax Managers
Anthony Smith, Southern California Edison
Dolores Sandler, Southern California Edison
Christopher Campbell, O'Melveny & Myers LLP

EXHIBIT G

Jim Gibbons
Governor
THOMAS R. SHEETS
Chair, Nevada Tax Commission
DINO DICIANNO
Executive Director

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February 27, 2009

Norman J. Azevedo, Esq.
510 West Fourth Street
Carson City, Nevada 89703

Dear Mr. Azevedo:

I am writing in regards to the status of the various claims for refund of use tax paid on coal products that Southern California Edison (SCE) has on file with the Department. As it stands, the Department has the following understanding of the status of the claims:

1. Claims from March 1998 until December 2000 were the subject of the December 1, 2008 decision of the Nevada Tax Commission. SCE has filed on or about January 15, 2009 a Complaint that includes these claims in the First Judicial District Court.
2. Claims from January 2001 and March 2005 have been included for resolution in the Complaint filed by SCE in the First Judicial District Court.
3. SCE under the Amnesty program paid the use tax due to the Department for the period of time between March 2005 and December 2005. SCE's claims for refund of use tax paid under the Amnesty program are also included in the Complaint filed by SCE in the First Judicial District Court.

Based on the above, it is my understanding that currently SCE does not have any pending administrative proceedings at the Department for claims on use tax paid for the purchase of coal products. We intend to hold the claims for the periods of October 2003 through December 2005 in abeyance until there is a final resolution in the courts. If my understanding is incorrect, please notify me immediately at 775-684-2060.

Sincerely,

Dino DiCianno, Executive Director
Nevada Department of Taxation

EXHIBIT H

Norman J. Azevedo
Attorney at Law

775.883.7000
775.883-7001 (fax)

www.nevadataxlawyers.com

510 W. Fourth Street
Carson City, Nevada 89703

March 13, 2009

Dino DiCianno, Executive Director
State of Nevada Department of Taxation
1550 College Parkway, Suite 115
Carson City, NV 89706-7937

RECEIVED
MAR 13 2009
STATE OF NEVADA
DEPARTMENT OF TAXATION

Hand-Delivered

Gina Session, Chief Deputy Attorney General
Office of the Attorney General
100 N. Carson Street
Carson City, NV 89701

Hand-Delivered

Re: Southern California Edison ("SCE").

Dear Dino and Gina:

I would like to propose that SCE and the Department of Taxation ("Department") enter into a stipulation that would organize the litigation now pending in the First Judicial District Court, Department 1. The purpose of the stipulation would be to establish our mutual understanding as to the subjects at issue before the Court and an initial schedule of filings. Such a stipulation would preserve each party's claims and arguments while avoiding unnecessary pleadings and motions.

As I envision it, the stipulation would include the following:

1. Set a date by which time SCE will file an amended complaint in light of the issuance of the February 27, 2009 decision of the Nevada Tax Commission ("Commission") and for the purpose of addressing any additional issues that SCE deems appropriate. Pending the filing of the amended complaint, the Department would not be required to respond to SCE initial complaint.

2. Set a date by which time the Department will answer or otherwise respond to SCE's amended complaint. Presumably, this date would be 45 days after the amended complaint is filed as provided by statute.

3. Stipulate that the District Court may treat all of SCE's claims for refund as having been denied by the Commission based on the findings of fact and conclusions of law set forth in the February 27, 2009 decision. The decision specifically mentions only SCE's claims for the periods March 1, 1998 through December 31, 2000 ("Claims Set 1"), but I believe that the

Department's letter of April 5, 2004, see Exhibit 1, clearly indicates that the additional claims for January 2001 through September 2003 ("Claims Set 2") were to be given the "same status" as Claims Set 1 and that these periods would be "added to the issue(s) under petition," i.e., added to Claims Set 1 that SCE had already appealed to the Commission. As far as SCE's remaining claims for refund are concerned (October 2003 through March 2005 and April 2005 through December 2005) ("Claims Set 3"), they are the subject of the Department's February 27, 2009 letter, see Exhibit 2, indicating that they are being "held in abeyance" pending the outcome of the District Court litigation. However, there is no reason not to include Claims Set 2 and Claims Set 3 in the present litigation. Presumably, all of the decision's findings and conclusions apply to these other claims (other than findings and conclusions purporting to deny certain grounds for refund as having been untimely asserted by SCE, which apply only to Claims Set 1). Holding some claims "in abeyance" simply creates piecemeal litigation with extra work for the Department, SCE and, eventually, the District Court. Of course, this stipulation would preserve the right of the Department to apply to Claims Sets 2 and 3 all of its arguments in support of its denial of refunds for Claims Set 1 (again, other than findings and conclusions purporting to deny certain grounds for refund on timeliness grounds, which apply only to Claims Set 1).

There may be a number of other issues that the stipulation should cover and I am open to your suggestions. I think the District Court will greatly appreciate the efforts of the parties to clarify and organize this case. To the extent we are unable to reach an accord on the foregoing items, we can list the open issues in the stipulation so that the Court can resolve them promptly.

I will call you Monday to discuss your willingness to proceed along these lines.

Sincerely,

NORMAN J. AZEVEDO, ESQ.

NJA/jm

Enclosures as stated

cc: Client (via email)
Christopher Campbell, Esq. (via email)

EXHIBIT 1

KENNY C. GUINN
Governor
BARBARA SMITH CAMPBELL
Chair, Nevada Tax Commission
CHARLES E. CHINNOCK
Executive Director

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April 5, 2004

Ms. Dolores Sandler, Tax Manager
Southern California Edison Company
2244 Walnut Grove
Rosemead, California 91770

Re: Account 465197254
Refund Request

Dear Ms. Sandler,

This letter is in response to your refund request for the periods January 1, 2001 through September 30, 2003 in the amount of $24,331,667.62. The Department is refuting the issues for which you are requesting this refund. Therefore this refund request is denied.

You have petitioned the Department's denial(s) for refund for prior periods on this same issue. We will consider this denial in the same status as your previous requests and these periods will be added to the issue(s) under petition.

If you have any questions, please call me at (775) 684-2039 or e-mail me at kphillip@tax.state.nv.us .

Sincerely,

Katy Phillips
Supervising Auditor II

cc: Greg Zunino, Senior Deputy Attorney General

EXHIBIT 2

JIM GIBBONS
Governor
THOMAS R. SHEETS
Chair, Nevada Tax Commission
DINO DICIANNO
Executive Director

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February 27, 2009

Norman J. Azevedo, Esq.
510 West Fourth Street
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Terri Williams, Esq.
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240 Water Street
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IN THE MATTER OF: ***Southern California Edison***

The Nevada Supreme Court on April 24, 2008 issued a decision in *Chanos v. Nevada Tax Commission, et.al,* 181 P.3d 675, Nev., April 24, 2008 (no. 48292), voiding a decision by the Nevada Tax Commission ("Commission") approving a refund of Nevada use tax. The refund at issue was for use tax paid by Southern California Edison ("Edison") for coal slurry product purchased in Arizona and used at Edison's power plant in southern Nevada. Because its previous decision was void, the Commission scheduled this matter for a new hearing. The parties, which included Edison, the Department of Taxation ("Department"), Clark County and the city of Henderson, stipulated to a briefing and hearing schedule.

A hearing was held before the Commission on September 9, 2008. The Department was represented by counsel, Gina C. Session, Chief Deputy Attorney General. Clark County was represented by Deputy District Attorney Paul Johnson. The City of Henderson was represented by Assistant City Attorney Terri A. Williams. Edison was represented by Norman Azevedo, Esq. and Christopher Campbell, Esq. Post-hearing briefs were filed, and on December 1, 2008, closing arguments were presented to the Commission. The matter having been submitted to the Commission, the Commission by a vote of 6-2 now enters the following findings of fact, conclusions of law and decision.

FINDINGS OF FACT

1. The coal slurry product purchased by Edison in this case was a processed and/or manufactured product consisting of approximately fifty percent water and fifty percent finely pulverized coal.

2. The coal slurry product was prepared in Arizona, from coal and water derived in Arizona, and delivered to Edison via a coal slurry pipeline more than two hundred and fifty miles long.

3. All of the coal slurry product was used by Edison at its power plant in Nevada.

4. Edison filed claims for refund on use taxes paid between March 1, 1998 and December 31, 2000.

5. The only stated basis for Edison's claims in its original requests for refund was for credit against taxes paid to other jurisdictions.

6. After Edison's initial refund requests were denied, Edison untimely sought to amend its claims to assert new grounds for refund not previously asserted.

7. There is not now, nor was there during the time period covered by Edison's refund requests, any source of commercial coal production in Nevada.

8. There is not now, nor was there during the time period covered by Edison's refund requests, any vendor of coal or coal products produced from Nevada sources, nor did the State of Nevada collect any net proceeds tax from any producer of coal or coal products during the relevant time period.

9. None of the taxes or fees for which Edison sought a credit for were sales taxes or net proceeds taxes for which a credit could be given.

10. Neither Edison, nor its coal slurry provider, were subject to any discriminatory tax in Nevada; inasmuch as, there were neither providers nor potential providers of coal or coal slurry originating from Nevada sources.

CONCLUSIONS OF LAW

1. The coal slurry product at issue in this case is not a raw mineral that would be subject to the exemption in NRS 372.270[1] and/or Article 10, Section 5 of the Nevada Constitution.

2. The payment of use tax by Edison does not violate the Commerce Clause of the United States Constitution, nor any Nevada statutory or constitutional provision.

3. Edison's claims related to the Commerce Clause of the United States Constitution, NRS 372.265, NRS 372.270 and Article 10, Section 5 of the Nevada Constitution or any other basis not raised in Edison's original claims for refund were waived and are barred by NRS 372.635, NRS 372.645 and NRS 372.650.

---

[1] The sales and use tax statutes relevant to this case found in chapters 372 and 374 of the NRS are identical; hence, only the statutes in Chapter 372 are cited herein.

4. None of the taxes and/or fees paid by Edison or Peabody Coal Company in Arizona were entitled to a credit against Nevada's use tax. Use tax was properly collected in Nevada on the coal slurry product purchased by Edison in Arizona and used in Nevada.

DECISION

Based on the above Findings of Fact and Conclusions of Law, Edison's request for refund of use tax on coal slurry product purchased in Arizona and used in Nevada is DENIED.

FOR THE COMMISSION:

DINO DICIANNO
Executive Director
Nevada Department of Taxation

cc: Jennifer Crandell, Senior Deputy Attorney General
Gina Session, Chief Deputy Attorney General
Tax Managers
Anthony Smith, Southern California Edison
Dolores Sandler, Southern California Edison
Christopher Campbell, O'Melveny & Myers LLP

Jim Gibbons
Governor
THOMAS R. SHEETS
Chair, Nevada Tax Commission
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February 27, 2009

Norman J. Azevedo, Esq.
510 West Fourth Street
Carson City, Nevada 89703

Dear Mr. Azevedo:

I am writing in regards to the status of the various claims for refund of use tax paid on coal products that Southern California Edison (SCE) has on file with the Department. As it stands, the Department has the following understanding of the status of the claims:

1. Claims from March 1998 until December 2000 were the subject of the December 1, 2008 decision of the Nevada Tax Commission. SCE has filed on or about January 15, 2009 a Complaint that includes these claims in the First Judicial District Court.
2. Claims from January 2001 and March 2005 have been included for resolution in the Complaint filed by SCE in the First Judicial District Court.
3. SCE under the Amnesty program paid the use tax due to the Department for the period of time between March 2005 and December 2005. SCE's claims for refund of use tax paid under the Amnesty program are also included in the Complaint filed by SCE in the First Judicial District Court.

Based on the above, it is my understanding that currently SCE does not have any pending administrative proceedings at the Department for claims on use tax paid for the purchase of coal products. We intend to hold the claims for the periods of October 2003 through December 2005 in abeyance until there is a final resolution in the courts. If my understanding is incorrect, please notify me immediately at 775-684-2060.

Sincerely,

Dino DiCianno, Executive Director
Nevada Department of Taxation

EXHIBIT I

STATE OF NEVADA

OFFICE OF THE ATTORNEY GENERAL

100 North Carson Street
Carson City, Nevada 89701-4717

CATHERINE CORTEZ MASTO
Attorney General

KEITH G. MUNRO
Assistant Attorney General

JIM SPENCER
Chief of Staff

March 17, 2009

Via Facsimile and U.S. Mail (775) 883-7001
Norman J. Azevedo, Esq.
510 W. Fourth Street
Carson City, Nevada 89703

Re: *Southern California Edison*

Dear Norm:

I am in receipt of your letter of March 13, 2009 wherein you propose that Southern California Edison (SCE) and the Department of Taxation (Department) enter into a stipulation to establish our mutual understanding as to the subjects at issue before the First Judicial District Court and an initial schedule of filings.

In regards to your suggestion that the Department enter into a stipulation with SCE to include refund claims that were not a part of the February 27, 2009 decision by the Nevada Tax Commission (Commission) I do not believe pursuant to NRS 372.680 the court has jurisdiction to hear the additional claims for refund. NRS 372.660 explicitly limits the court's jurisdiction to those claims that the Commission has rendered a final decision on. The Commission to date has not rendered a final decision on the claims you refer to as Claims Set 2 and Claims Set 3. SCE and the Department cannot create jurisdiction by stipulating to the inclusion of Claims Set 2 and 3 in the absence of a final decision, after an administrative hearing, by the Commission.

As far as SCE's intention to file an amended complaint, the Department believes the Nevada Rules of Civil Procedure offer sufficient guidance to the parties regarding when an amended complaint must be filed and, if one is filed, when the Department would be required to respond. The Department is prepared to respond to the complaint in compliance with those rules.

Thank you for your letter. I am happy to consider any other suggestions you may have regarding this case.

Sincerely,

Catherine Cortez Masto
Attorney General

By: G C. Session
Gina C. Session
Chief Deputy Attorney General
(775) 684-1207

GCS:djb

cc: Dino DiCianno, Executive Director (via facsimile)
Department of Taxation

Case No.: 09 0C 00016 1B

Department No.: I

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

2009 APR 13 AM 9:30

ALAN GLOVER
BY C. FRANZ CLERK
DEPUTY

SOUTHERN CALIFORNIA EDISON,

Plaintiff,

vs.

THE STATE OF NEVADA, EX REL. DEPARTMENT OF TAXATION,

Defendant.

SUMMONS

THE STATE OF NEVADA SENDS GREETINGS TO THE ABOVE-NAMED DEFENDANT:

NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE INFORMATION BELOW.

TO THE DEFENDANT: A civil Complaint has been filed by the plaintiff against you.

1. If you wish to defend this lawsuit, you must, within 20 days after this Summons is served on you, exclusive of the day of service, file with this Court a written pleading* in response to this Complaint.
2. Unless you respond, your default will be entered upon application of the plaintiff, and this Court may enter a judgment against you for the relief demanded in the Complaint**, which could result in the taking of money or property or the relief requested in the Complaint
3. If you wish to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time.
4. You are required to serve your response upon plaintiff's attorney, whose address is

Norman J. Azevedo, Esq.
510 West Fourth Street
Carson City, NV 89703
(775) 883.7000

ALAN GLOVER
Clerk of the Court

By: _____
Deputy Clerk

Date: April 2, 2009

*There is a fee associated with filing a responsive pleading. Please refer to fee schedule.
**Note – When service by publication, insert a brief statement of the object of the action. See Rule 4.

RETURN OF SERVICE ON REVERSE SIDE

In the First Judicial District Court of the State of Nevada in and for Carson City

Southern California Edison

PLAINTIFF(S)

vs.

The State of Nevada ex rel. Department of Taxation

DEFENDANT(S)

CASE NO: 09-OC-00113-1B Dept I

AFFIDAVIT OF SERVICE

STATE OF NEVADA
COUNTY OF CLARK

Nicholas DiFraia, being first duly sworn, deposes and says: That affiant is, and was a citizen of the United States, over 18 years of age, and not a party to, nor interested in the proceeding in which this affidavit is made. That affiant received copies of the Summons and Complaint, on April 3, 2009 and served the same on April 6, 2009 at 8:25 AM, in the following manner:

By serving Dino DiCianno Secretary Nevada Tax Commission personally, by delivering and leaving a copy with Lesleigh Knack as Secretary, an agent lawfully designated by statute to accept service of process;

Said service was effected at: 1550 College Pkwy Ste 115, Carson City, NV 89706.

Nicholas DiFraia, Process Server
License No: 999A

SUBSCRIBED AND SWORN TO before me today Friday, April 10, 2009.

NOTARY PUBLIC

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Notary Public-State of Nevada
APPT. NO. 97-115-2
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Prepared for:
Norman J. Azevedo
712 E. Musser Street
Carson City, NV 89701
Legal Slip # 67599-reno/Norman

Case No.: 09 0C 00113 1B

Department No.: I

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

FILED
2009 APR 13 AM 9:30
ALAN GLOVER
BY C. FRANZ CLERK
DEPUTY

SOUTHERN CALIFORNIA EDISON,

Plaintiff,

vs.

THE STATE OF NEVADA, EX REL. DEPARTMENT OF TAXATION,

Defendant.

ADDITIONAL SUMMONS

THE STATE OF NEVADA SENDS GREETINGS TO THE ABOVE-NAMED DEFENDANT:

NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE INFORMATION BELOW.

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3. If you wish to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time.
4. You are required to serve your response upon plaintiff's attorney, whose address is

Norman J. Azevedo, Esq.
510 West Fourth Street
Carson City, NV 89703
(775) 883.7000

ALAN GLOVER
Clerk of the Court

By: _____
Deputy Clerk

Date: April 2, 2009

*There is a fee associated with filing a responsive pleading. Please refer to fee schedule.
**Note – When service by publication, insert a brief statement of the object of the action. See Rule 4.

RETURN OF SERVICE ON REVERSE SIDE

In the First Judicial District Court of the State of Nevada in and for Carson City

Southern California Edison

PLAINTIFF(S)

vs.

The State of Nevada ex rel. Department of Taxation

DEFENDANT(S)

CASE NO: 09-0C-00113-1B Dept I

AFFIDAVIT OF SERVICE

STATE OF NEVADA
COUNTY OF CLARK

Nicholas DiFraia, being first duly sworn, deposes and says: That affiant is, and was a citizen of the United States, over 18 years of age, and not a party to, nor interested in the proceeding in which this affidavit is made. That affiant received copies of the Additional Summons and Amended Complaint, on April 3, 2009 and served the same on April 6, 2009 at 8:25 AM, in the following manner:

By serving Dino DiClanno Secretary Nevada Tax Commission personally, by delivering and leaving a copy with Lesleigh Knack as Secretary, an agent lawfully designated by statute to accept service of process:

Said service was effected at: 1550 College Pkwy Ste 115, Carson City, NV 89706.

Nicholas DiFraia, Process Server
License No: 999A

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License No(s): 999/999A

Service Fees: $21.00

Prepared for:
Norman J. Azevedo
712 E. Musser Street
Carson City, NV 89701
Legex Slip # 87600-reno/Norman

Case No.: 09 OC 00113 1B

Department No.: I

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR CARSON CITY

SOUTHERN CALIFORNIA EDISON,

Plaintiff,

vs.

THE STATE OF NEVADA, EX REL. DEPARTMENT OF TAXATION,

Defendant.

ADDITIONAL SUMMONS

THE STATE OF NEVADA SENDS GREETINGS TO THE ABOVE-NAMED DEFENDANT:

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3. If you wish to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time.
4. You are required to serve your response upon plaintiff's attorney, whose address is

ALAN GLOVER

Clerk of the Court

Norman J. Azevedo, Esq.
510 West Fourth Street
Carson City, NV 89703
(775) 883.7000

By: C. Cooper
Deputy Clerk

Date: Dec 2, 2009

*There is a fee associated with filing a responsive pleading. Please refer to fee schedule.
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RETURN OF SERVICE ON REVERSE SIDE

In the First Judicial District Court of the State of Nevada in and for Carson City

Southern California Edison

PLAINTIFF(S)

vs.

The State of Nevada ex rel. Department of Taxation

DEFENDANT(S)

CASE NO: 09-OC-00113-1B Dept I

AFFIDAVIT OF SERVICE

ALAN GLOVER
BY C. FRANZ
DEPUTY

REC'D & FILED
2009 APR 13 AM 9:33

STATE OF NEVADA
COUNTY OF CLARK

Nicholas DiFraia, being first duly sworn, deposes and says: That affiant is, and was a citizen of the United States, over 18 years of age, and not a party to, nor interested in the proceeding in which this affidavit is made. That affiant received copies of the Additional Summons; Complaint, on April 3, 2009 and served the same on April 6, 2009 at 8:52 AM, in the following manner:

By serving Kate Marshall Nevada State Treasurer personally, by delivering and leaving a copy with Mark Winebarger as Chief Deputy Treasurer, an agent lawfully designated by statute to accept service of process:

Said service was effected at: 101 N Carson Street Ste 4, Carson City, NV 89701.

Nicholas DiFraia, Process Server
License No: 999A

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mailto:legex@aol.com
License No(s): 999/999A

Service Fees: $38.50

Prepared for:
Norman J. Azevedo
712 E. Musser Street
Carson City, NV 89701
Legex Slip # 67602-reno/Norman

Case No.: 09 OC 00113 1B

Department No.: I

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR CARSON CITY

SOUTHERN CALIFORNIA EDISON,

Plaintiff,

vs.

THE STATE OF NEVADA, EX REL. DEPARTMENT OF TAXATION,

Defendant.

ADDITIONAL SUMMONS

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3. If you wish to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time.
4. You are required to serve your response upon plaintiff's attorney, whose address is

Norman J. Azevedo, Esq.
510 West Fourth Street
Carson City, NV 89703
(775) 883.7000

ALAN GLOVER
Clerk of the Court

By: C. Cooper
Deputy Clerk

Date: Nov 2, 2009

*There is a fee associated with filing a responsive pleading. Please refer to fee schedule.
**Note – When service by publication, insert a brief statement of the object of the action. See Rule 4.

RETURN OF SERVICE ON REVERSE SIDE

In the First Judicial District Court of the State of Nevada in and for Carson City

Southern California Edison
PLAINTIFF(S)

vs.

The State of Nevada ex rel. Department of Taxation
DEFENDANT(S)

CASE NO: 09-OC-00113-1B Dept I

AFFIDAVIT OF SERVICE

REC'D & FILED
2009 APR 13 AM 9:34
SUSAN C. FRANZ
BY ALAN GLOVER
DEPUTY

STATE OF NEVADA
COUNTY OF CLARK

Nicholas DiFraia, being first duly sworn, deposes and says: That affiant is, and was a citizen of the United States, over 18 years of age, and not a party to, nor interested in the proceeding in which this affidavit is made. That affiant received copies of the Additional Summons; Complaint, on April 3, 2009 and served the same on April 6, 2009 at 8:50 AM, in the following manner:

By serving Kim Wallin Nevada State Controller personally, by delivering and leaving a copy with Michelle Mann as Secretary, an agent lawfully designated by statute to accept service of process;

Said service was effected at:101 N Carson Street Ste 5, Carson City, NV 89701.

Nicholas DiFraia, Process Server
License No: 999A

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License No(s): 999/999A

Service Fees: $21.00

Prepared for:
Norman J. Azevedo
712 E. Musser Street
Carson City, NV 89701
Legex Slip # 87595-reno/Norman

Case No.: 09 OC 00070 1B

Department No.: I

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

SOUTHERN CALIFORNIA EDISON,

Plaintiff,

vs.

THE STATE OF NEVADA, EX REL. DEPARTMENT OF TAXATION,

Defendant.

ADDITIONAL SUMMONS

THE STATE OF NEVADA SENDS GREETINGS TO THE ABOVE-NAMED DEFENDANT:

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3. If you wish to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time.
4. You are required to serve your response upon plaintiff's attorney, whose address is

Norman J. Azevedo, Esq.
510 West Fourth Street
Carson City, NV 89703
(775) 883.7000

ALAN GLOVER
Clerk of the Court

By: M. KALE
Deputy Clerk

Date: April 2, 2009

*There is a fee associated with filing a responsive pleading. Please refer to fee schedule.
**Note – When service by publication, insert a brief statement of the object of the action. See Rule 4.

RETURN OF SERVICE ON REVERSE SIDE

In the First Judicial District Court of the State of Nevada in and for Carson City

Southern California Edison
PLAINTIFF(S)

vs.

The State of Nevada ex rel. Department of Taxation
DEFENDANT(S)

CASE NO: 09-OC-00016-1B Dept I

AFFIDAVIT OF SERVICE

REC'D & FILED
2009 APR 13 AM 9:35
ALAN GLOVER
CLERK
DEPUTY

STATE OF NEVADA
COUNTY OF CLARK

Nicholas DiFraia, being first duly sworn, deposes and says: That affiant is, and was a citizen of the United States, over 18 years of age, and not a party to, nor interested in the proceeding in which this affidavit is made. That affiant received copies of the Additional Summons; Amended Complaint, on April 3, 2009 and served the same on April 8, 2009 at 8:45 AM, in the following manner:

By serving Catherine Cortez Masto Nevada Attorney General personally. by delivering and leaving a copy with Julie A. Slabaugh as Deputy Attorney General, an agent lawfully designated by statute to accept service of process;

Said service was effected at: 100 N Carson Street. Carson City, NV 89701.

Nicholas DiFraia, Process Server
License No: 999A

SUBSCRIBED AND SWORN TO before me today Friday, April 10, 2009.

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mailto:legex@aol.com
License No(s): 999/999A

Service Fees: $38.50

Prepared for:
Norman J. Azevedo
712 E. Musser Street
Carson City, NV 89701
Legex Slip # 67598-reno/Norman

Case No.: 09 0C 00113 1B

Department No.: I

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR CARSON CITY

SOUTHERN CALIFORNIA EDISON,

Plaintiff,

vs.

THE STATE OF NEVADA, EX REL. DEPARTMENT OF TAXATION,

Defendant.

ADDITIONAL SUMMONS

THE STATE OF NEVADA SENDS GREETINGS TO THE ABOVE-NAMED DEFENDANT:

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3. If you wish to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time.
4. You are required to serve your response upon plaintiff's attorney, whose address is

ALAN GLOVER

Clerk of the Court

Norman J. Azevedo, Esq.
510 West Fourth Street
Carson City, NV 89703
(775) 883-7000

By: C. Cooper
Deputy Clerk

Date: [illegible], 2009

*There is a fee associated with filing a responsive pleading. Please refer to fee schedule.
**Note – When service by publication, insert a brief statement of the object of the action. See Rule 4.

RETURN OF SERVICE ON REVERSE SIDE

In the First Judicial District Court of the State of Nevada In and for Carson City

Southern California Edison

PLAINTIFF(S)

vs.

The State of Nevada ex rel. Department of Taxation

DEFENDANT(S)

CASE NO: 09-OC-00113-1B Dept I

AFFIDAVIT OF SERVICE

ALAN GLOVER
CLERK
BY C. FRANZEN
DEPUTY

REC'D & FILED
2009 APR 13 AM 9:34

STATE OF NEVADA
COUNTY OF CLARK

Nicholas DiFraia, being first duly sworn, deposes and says: That affiant is, and was a citizen of the United States, over 18 years of age, and not a party to, nor interested in the proceeding in which this affidavit is made. That affiant received copies of the Additional Summons; Complaint, on April 3, 2009 and served the same on April 6, 2009 at 8:45 AM, in the following manner:

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Nicholas DiFraia, Process Server
License No: 999A

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NOTARY PUBLIC

MELISSA C. SCOTT
Notary Public-State of Nevada
APPT. NO. 97-115-2
My App. Expires Feb. 9, 2013

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mailto:legex@aol.com
License No(s): 999/999A

Service Fees: $21.00

Prepared for:
Norman J. Azevedo
712 E. Musser Street
Carson City, NV 89701
Legex Slip # 67601-reno/Norman

Norman J. Azevedo, Esq.
State Bar No. 3204
510 West Fourth Street
Carson City, Nevada 89703
(775) 883.7000
Attorney for Southern California Edison

REC'D & FILED
2009 MAY 22 PM 3:11
ALAN GLOVER
BY _____ CLERK
DEPUTY

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

SOUTHERN CALIFORNIA EDISON, Plaintiff, v. THE STATE OF NEVADA, *ex rel.* DEPARTMENT OF TAXATION Defendant.	Case No. 09-0C-00016-1B Dept. No.: 1 **AMENDED COMPLAINT (Corrected Version)** (NRS 372.680; NRS 374.685; NRS 30.030)

Comes now Plaintiff Southern California Edison, by and through its counsel Norman J. Azevedo, Esq., and hereby complains against Defendant, State of Nevada, *ex rel.* Department of Taxation, and alleges as follows:

NATURE OF THE ACTION

1. This is an action to recover use taxes pursuant to Sections 372.680(1) and 374.685(1) of the Nevada Revised Statutes ("NRS") following a final decision by the Nevada Tax Commission ("Commission") disallowing Plaintiff's claims for refund of use tax Plaintiff paid to the Defendant for tax periods March 1998 through and including September 2003.

2. NRS 372.680(1) and 374.685(1) each provide: "Within 90 days after a final decision upon a claim filed pursuant to this chapter is rendered by the Nevada tax commission, the claimant may bring an action against the department on the grounds set forth in the claim in a court of competent jurisdiction in Carson City . . . for the recovery of the whole or any part of the amount with respect to which the claim has been

disallowed."

3. Defendant illegally imposed use tax on the use and consumption of out-of-state coal at a coal-fired power plant in Nevada. All of the coal used and consumed at the power plant was purchased, extracted and shipped from a coal mine located entirely within the State of Arizona. Under NRS 372.185(2) and 374.190(2), Nevada's use tax does not apply to the use or consumption of property acquired outside of Nevada in a transaction that would not have been a taxable sale if it had occurred within Nevada. Sales by mines located within Nevada of the minerals they extract, including coal, are expressly exempt from sales tax and therefore not taxable sales. Since the equivalent in-state transaction would not have been a taxable sale, Defendant's imposition of tax on the use and consumption in Nevada of coal that was purchased, extracted and shipped from a mine located in Arizona is illegal.

4. Defendant's imposition of use tax on Plaintiff's use and consumption of coal in Nevada discriminates against interstate commerce in violation of the Commerce Clause of the United States Constitution (U.S. Const. Art. I. §8, cl. 3) by taxing minerals acquired from in-state mines more favorably than minerals acquired from out-of-state mines for use in Nevada. Indeed, Defendant's application of the sales and use tax statutes is facially unconstitutional because, as explained above, minerals acquired from in-state mines enjoy a complete exemption from Nevada's sales tax while minerals acquired from out-of-state mines for use or consumption in Nevada are subject to Nevada's use tax.

5. If the Court were to determine that Defendant's imposition of use tax in this case is neither illegal nor unconstitutional, Plaintiff alternatively claims that it is entitled to a refund of use tax in respect of each of the following reasons:

a. Plaintiff is entitled to a credit against the use tax for sales tax paid to Arizona;

h. The taxable sales price should exclude taxes imposed by various taxing jurisdictions; and

c. The taxable sales price should exclude the amounts paid for transportation

of the coal pursuant to NRS 372.065 and Nevada Administrative Code ("NAC") 372.101.

6. Pursuant to NRS 30.030, Plaintiff also seeks a declaration from the Court that, notwithstanding Defendant's assertions to the contrary, Plaintiff has exhausted its administrative remedies with respect to the claims for refund that it filed for the periods January 2001 through and including September 2003 and that such claims are properly before this Court.

7. Finally, pursuant to NRS 30.030, Plaintiff seeks a declaration that the decision of the Court in this litigation with respect to any factual or legal disputes shall apply, subject to any appellate review thereof, to the claims for refund that Plaintiff filed for the periods January 2001 through and including September 2003 (if the Court finds such claims are not properly before this Court), and to the claims for refund for the periods October 2003 through and including December 2005.

PARTIES

8. Plaintiff Southern California Edison Company ("Edison") is a California corporation having its principal place of business in Los Angeles County, California. Edison is not a Debtor in bankruptcy.

9. Defendant State of Nevada *ex rel.* Department of Taxation (the "Department") is an agency of the executive branch of the State of Nevada that is charged with the administration and enforcement of the tax laws set forth in Title 32 of the Nevada Revised Statutes, including chapters 372 and 374 of the Nevada Revised Statutes governing sales and use taxes and local school support taxes, respectively.

FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF

I. The Mohave Generating Station

10. At all times relevant to this Complaint, Edison owned a majority interest in the Mohave Generating Station ("Mohave Project"), a coal-fired power plant located in Clark County, Nevada. The Mohave Project generated electricity by burning coal. It had two generating units and supplied enough electricity to power approximately 1.5 million

homes. The Mohave Project provided energy to customers in Nevada, Arizona and Southern California.

11. The Mohave Project began operations in 1970. Edison co-owned the Mohave Project with three other parties (collectively, the "Mohave Co-owners"): Nevada Power Company, the Department of Water and Power of the City of Los Angeles and Salt River Project Agricultural Improvement and Power District. Edison owned the majority interest (a 56% undivided interest) in the Mohave Project.

12. Edison operated the Mohave Project pursuant to the Mohave Project Operating Agreement effective May 1, 1969 and dated July 6, 1970 (the "Operating Agreement"). The Mohave Project ceased operations on December 31, 2005.

II. Out-of-State Purchase and Delivery of Coal

13. At all times relevant to this Complaint, all of the coal used and consumed at the Mohave Project was supplied by Peabody Western Coal Company ("Peabody") pursuant to the Amended Mohave Project Coal Supply Agreement dated May 26, 1976 between Peabody (as seller) and the Mohave Co-owners (as buyers) (the "Amended Coal Supply Agreement").

14. All of tbe coal sold by Peabody for use at the Mohave Project was extracted from the Black Mesa Mine in northeastern Arizona.

15. The Black Mesa Mine is located on land owned by the Navajo Nation and Hopi Tribe. At all times relevant to this Complaint, Peabody operated the Black Mesa Mine through lease agreements with the Navajo Nation and the Hopi Tribe.

16. Pursuant to agreements between Peabody and Black Mesa Pipeline, Inc. ("BMP"), BMP constructed and operated a 273-mile pipeline to transport and deliver the coal from the Black Mesa Mine to the Mohave Project (the "Pipeline"). The coal was crushed and suspended in water for transportation through the Pipeline, and was separated from the water upon delivery to the Mohave Project.

17. The Amended Coal Supply Agreement required Edison to pay Peabody, on a monthly basis, for the price of the coal it purchased. Peabody invoiced Edison for this

charge and Edison sent payment for the coal to Peabody. BMP invoiced Edison directly for the charges for transporting and delivering the coal to the Mohave Project and Edison sent payment for such transportation charges directly to BMP.

18. Since 1970, Edison has paid Nevada use tax to the Department in respect of the coal used and consumed at the Mohave Project.

III. Exhaustion of Administrative Remedies

A. The Department Denies Edison's Claims for Refund for the Periods March 1998 Through and Including September 2003

19. Edison determined that several grounds existed for challenging Nevada's imposition of use tax in respect of the out-of-state coal used and consumed at the Mohave Project.

20. Between April 26, 2001 and February 25, 2003, Edison timely filed claims for refund of the use tax it paid to the Department for the periods March 1998 through and including December 2000 ("Claims Set 1"). For these periods, Edison paid $23,896,668.08 in use tax to the Department in respect of the coal used and consumed at the Mohave Project.

21. By letter dated December 17, 2002 (Ex. A hereto), the Department denied the claims for refund filed for the periods March 1998 through and including September 1999. By letter dated December 30, 2002 (Ex. B hereto), the Department denied the claims for refund filed for the periods October 1999 through and including December 1999.

22. In the December 17 and December 30, 2002 denial letters, the Department advised Edison that, if Edison desired to appeal the Department's decision, it had to file a petition for redetermination within 45 days pursuant to NRS 360.360. On January 31, 2003, Edison filed a timely petition for redetermination for the periods covered by these denial letters—March 1998 through December 1999.

23. By letter dated May 16, 2003 (Ex. C hereto), the Department denied the claims for refund for the periods January 2000 through and including December 2000.

The Department's letter states that it will "consider this denial in the same status as your previous requests and these periods will be added to the issue(s) under petition." Accordingly, the Department deemed Edison to have appealed its denial of the periods from January 2000 through and including December 2000 by considering them as part of the petition for redetermination previously filed by Edison.

24. In a letter dated July 2, 2003, the Department acknowledged that it should have instructed Edison to appeal the denial of its claims for refund to the Commission pursuant to NRS 360.245(1) rather than filing a petition for redetermination with the Department. The Department stated that it had rectified its mistake by redirecting Edison's claims for refund to the Commission for a hearing.

25. On February 26, 2004, Edison timely filed claims for refund of use tax with the Department for the use tax it paid in respect of the coal used and consumed at the Mohave Plant for the periods January 2001 through and including September 2003 ("Claims Set 2"). The total refund claimed for these periods is $24,331,667.62.

26. In a letter to Edison dated April 5, 2004 (Ex. D hereto), the Department denied Claims Set 2. The letter states: "You have petitioned the Department's denial(s) for refund for prior periods on this same issue. We will consider this denial in the same status as your previous requests and these periods will be added to the issue(s) under petition." Accordingly, the Department deemed Edison to have appealed its denial of Claims Set 2 by considering Claims Set 2 as part of the petition for redetermination previously filed by Edison (and redirected by the Department to the Commission as explained above). The Department sent a copy of its April 5, 2004 letter to Greg Zunino who, at the time, was the Senior Deputy Attorney General representing the Department in connection with Edison's claims for refund pending before the Commission.

B. In 2005 The Commission Grants Edison's Claims For Refund

27. The Commission held a series of hearings on Claims Set 1 and Claims Set 2 beginning on November 1, 2004 and continuing on February 7, 2005, April 5, 2005 and

May 9, 2005.[1]

28. At the May 9, 2005 hearing, the Commission voted to grant Edison's claims for refund. The Commission's written decision dated November 29, 2006 (Ex. E hereto) granting Edison's claims for refund expressly stated that the Commission's decision included Claims Set 1 and Claims Set 2.

C. The Open Meeting Law Case

29. At Edison's request, the Commission closed each of the aforementioned hearings. Edison made the request because the Commission's determination of the refund claims required consideration of Edison's and the other Mohave Co-owners' proprietary and confidential information. The Commission closed the hearings at the request of the taxpayer in accordance with former NRS 360.247 and with the advice and consent of its counsel, the Attorney General's Office of the State of Nevada ("Attorney General").[2] The Commission had a thirty-year practice of closing hearings at the request of taxpayers.

30. Notwithstanding the fact that it served as legal counsel to the Commission (the decision-maker in respect of Edison's claims) and approved the closure of the hearings, the Attorney General filed a complaint on July 7, 2005 against the Commission in the First Judicial Court, Carson City, seeking to void the Commission's grant of Edison's claims for refund on the ground that the Commission had violated Nevada's Open Meeting Law (NRS 241.010 et seq.) when it granted Edison's claims for refund in closed session at the May 9, 2005 hearing ("Open Meeting Law Case").

31. The Commission hired independent counsel to represent it in the Open Meeting Law Case. Edison was the real party in interest in the case.

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[1] On December 8, 2003, the Commission held an initial hearing on Edison's claims for refund and referred the claims to a hearing officer. The hearing officer issued a written decision on July 14, 2004. Significantly, while the hearing officer found that the Department's imposition of the use tax on Edison's use and consumption of coal at the Mohave Plant discriminated against interstate commerce in violation of the Commerce Clause, he refused to grant a refund of the unconstitutional tax to Edison.

[2] Former NRS 360.247 provided, in pertinent part: "Except as otherwise provided in this section, any appeal to the Nevada tax commission which is taken by a taxpayer concerning his liability for tax must be heard during a session of the commission which is open to the public. A hearing on such an appeal may be closed to the public if the taxpayer requests that it be closed."

32. Following a bench trial on August 26, 2006, the district court dismissed the Attorney General's complaint and entered judgment for the Commission and Edison.

33. The Attorney General appealed to the Supreme Court of Nevada. In an opinion filed on April 24, 2008, the Supreme Court reversed the district court and found that the Commission had violated the Open Meeting Law when it granted Edison's claims for refund in a closed hearing.

34. Edison is thus the only taxpayer whose grant of a claim for refund by the Commission has ever been voided pursuant to the Open Meeting Law, notwithstanding that the Commission had been closing hearings at taxpayers' requests as provided by statute and with the consent of its counsel for the past thirty years (during which time the Attorney General acted as counsel to both the Commission and the Department at those hearings).

D. On Remand, the Commission Denies Edison's Claims for Refund

35. Since the Commission's prior decision in favor of Edison was voided by the Supreme Court's decision, Edison's claims for refund were returned to the Commission for redetermination in open session.

36. The Commission held open hearings on the claims for refund on September 9, 2008 and December 1, 2008.

37. There were no changes in the facts or the law between the hearings held before the Commission in 2004 and 2005 and those that were held in 2008.

38. At the December 1, 2008 hearing, and notwithstanding the absence of any change in the applicable facts and law, the Commission voted to deny Edison's refund claims.

39. On March 3, 2009, the Commission served its final written decision denying Edison's claims for refund (Ex. F hereto).

40. The Commission's written decision fails to set forth any analysis of facts or law in support of its conclusions. The decision reaches the *ipse dixit* conclusion that what Edison purchased from Peabody "was a processed and/or manufactured product," and not

simply coal, in complete disregard of the uncontroverted evidence that Edison purchased coal from a coal mine, that Edison separately purchased water in order to transport the coal through the Pipeline, and that at the Mohave Project the coal was burned as fuel and the water was used for cooling purposes. In other words, Edison purchased and used two separate and distinct products. Significantly, the Commission's written decision following the December 1, 2008 vote, by concluding that Edison purchased a combined coal/water product, completely and inexplicably contradicted a finding in the Commission's November 29, 2006 written decision that expressly reached the opposite conclusion, namely that "we find that Edison is purchasing a raw mineral — in this case coal. . . ."

41. Having exhausted its administrative remedies, Edison now brings this suit against the Department in district court pursuant to NRS 372.680(1) and NRS 374.685(1), almost eight years after filing its initial claim for refund.

E. Claims for Refund for October 2003 Through December 2005

42. On June 7, 2005, while the Open Meeting Law Case was pending, Edison timely filed claims seeking a refund of use tax it paid on the coal with the Department for the periods October 2003 through and including March 2005 in the total amount of $14,745,838.13. Edison stopped paying use tax on coal delivered to the Mohave Project after March 2005 in view of the Commission's vote in Edison's favor at the May 9, 2005 hearing.

43. Following the Supreme Court's decision in the Open Meeting Law Case, and pursuant to the amnesty program set forth in the Emergency Regulation of the Commission (LCB File No. E002-08) and a stipulation entered into between Edison and the Department dated September 30, 2008, Edison paid $9,927,822.47 in use tax for coal purchased from Peabody for use at the Mohave Project for the periods March 2005 through and including December 2005 (the "Amnesty Payment"). Concurrently with entering into the stipulation and making the Amnesty Payment, Edison timely filed claims for refund of the use tax it paid on the coal for periods March 2005 through and including

December 2005, i.e., the Amnesty Payment. Pursuant to the stipulation, if Edison prevails on its claims for refund of the Amnesty Payment, the State of Nevada is not required to refund interest with respect to the Amnesty Payment only. (The claims for refund filed by Edison for the periods from October 2003 through and including December 2005 are referred to herein as "Claims Set 3".)

44. According to a letter from the Department dated February 27, 2009 (Ex. G hereto), the Department is holding Claims Set 3 "in abeyance until there is a final resolution in the courts" of Claims Set 1.

F. The Defendant's Refusal to Acknowledge that Both it and the Commission Denied the January 2001 through September 2003 Claims for Refund

45. Despite the fact that (1) the Department denied Edison's Claims Set 2 by letter dated April 5, 2004 and unequivocally added these periods to the periods covered by claims previously denied by the Department and placed before the Commission, *i.e.*, Claims Set 1, and (2), the Commission's written decision in respect of the May 9, 2005 hearing expressly granted Edison's Claims Set 1 and Claims Set 2, the Department now takes the position that Claims Set 2 has not yet been the subject of a final Commission action and thus is not properly before the Court.

46. The Executive Director of the Department of Taxation sent a letter dated February 27, 2009 (Ex. G hereto) to the undersigned counsel for Edison to provide the Department's "understanding" of "the status of the various claims for refund of use tax" that Edison has "on file with the Department."

47. The February 27, 2009 letter states, in relevant part, "[c]laims from March 1998 until December 2000 were the subject of the December 1, 2008 decision of the Nevada Tax Commission. SCE [Edison] has filed on or about January 15, 2009 a Complaint that includes these claims in the First Judicial District Court." The letter also reaffirms that the Department "intend[s] to hold the claims for the periods of October 2003 through December 2005 [Claims Set 3] in abeyance until there is a final resolution in the courts."

48. The Executive Director acknowledges that Edison included Claims Set 2 in its original Complaint in this case, but fails to acknowledge that Claims Set 2 was necessarily denied by the Department and the Commission.

49. In response to the Executive Director's letter, Edison sent a letter to the Executive Director and the Attorney General on March 13, 2009 (Ex. H hereto) proposing that the parties enter into a stipulation to organize the litigation before the Court, and reminding them that the Department had denied Claims Set 2 and considered Claims Set 2 as having been appealed to the Commission.

50. By letter from its counsel dated March 17, 2009 (Ex. I hereto), the Department declined to enter into a stipulation and expressly asserted that "[t]he Commission to date has not rendered a final decision on [Claims Set 2]," despite the Department's letter dated April 5, 2004 denying Claims Set 2 and "add[ing]" them to the other periods before the Commission, just as the Department had done with the claims for the periods January 2000 through and including December 2000, over which there is no ripeness dispute.

51. Edison believes that Claims Set 2 was properly before the Commission at the time of the December 1, 2008 vote and that the Commission's March 3, 2009 denial of Edison's claims for refund necessarily included Claims Set 2 in addition to Claims Set 1, even though the written decision prepared by the Department's Executive Director on behalf of the Commission does not expressly mention Claims Set 2. Edison relied on the Department's denial of Claims Set 2 on April 5, 2004 and addition of Claims Set 2 to Edison's other claims for refund that were pending before the Commission, *i.e.*, Claims Set 1. The Commission expressly granted Claims Set 1 and Claims Set 2 at the May 9, 2005 hearing (as memorialized in its written decision dated November 29, 2006). The Supreme Court's decision in the Open Meeting Law Case voided the Commission's vote at the May 9, 2005 hearing and placed both sets of claims, *i.e.*, Claims Set 1 and Claims Set 2, back in front of the Commission.

FIRST CLAIM FOR RELIEF

(Statutory Exemption from Use Tax)

52. Plaintiff re-alleges and incorporates by reference herein the allegations set forth in paragraphs 1 through 51, inclusive.

53. Edison's use and consumption of coal purchased from Peabody is exempt from use tax under NRS 372.185(2) and 374.190(2). Under those statutes, use tax does not apply to property acquired outside of Nevada in a transaction that would not have been a taxable sale if it had occurred within this state. Under NRS 372.270 and 374.275 a purchase of coal or any other mineral from a mine located in Nevada is not a taxable sale. Since an acquisition of coal from an in-state mine would not be a taxable sale under Nevada law, Edison's use and consumption of coal purchased from Peabody's mine in Arizona is not subject to use tax.

54. Edison is entitled to recover a refund of $48,228,335.70 in use taxes it paid to the Department for the periods March 1998 through and including September 2003, together with interest at the appropriate statutory rate.

SECOND CLAIM FOR RELIEF

(The Department's Imposition of Use Tax is in Violation of the Commerce Clause of the United States Constitution)

55. Edison re-alleges and incorporates by reference herein the allegations set forth in paragraphs 1 through 51, inclusive.

56. The application of Nevada's use tax to Edison's use and consumption of the coal acquired from Peabody discriminates against interstate commerce in violation of the Commerce Clause of the United States Constitution (U.S. Const. Art. I. §8, cl. 3) because, as explained in paragraph 53 above, Nevada taxes the sales of minerals, including coal, extracted from mines in Nevada more favorably than it does the use or consumption of minerals, including coal, extracted and purchased from out-of-state mines for use in Nevada.

57. Edison is entitled to recover a refund of $48,228,335.70 in use taxes it paid

to the Department for the periods March 1998 through and including September 2003, together with interest at the appropriate statutory rate.

THIRD CLAIM FOR RELIEF

(Edison is Entitled to a Credit Against the Use Tax for Sales Tax Paid to Arizona)

58. Edison re-alleges and incorporates by reference herein the allegations set forth in paragraphs 1 through 51, inclusive.

59. Edison reimbursed Peabody for the Arizona Transaction Privilege Tax imposed on Edison's purchase of coal from Peabody and that Peabody paid to the State of Arizona. The Arizona Transaction Privilege Tax is Arizona's sales tax. In self-assessing Nevada use tax, Edison included the amount reimbursed to Peabody for the Arizona Transaction Privilege Tax in the sales price subject to use tax.

60. Edison is entitled to a credit against the Nevada use tax for the Arizona Transaction Privilege Tax it reimbursed to Peabody because NAC 372.055 provides such a credit for "sales tax legitimately paid for the same purchase . . . to a state or local government outside of Nevada."

61. Edison will establish at trial the amounts it reimbursed to Peabody for Arizona's Transactions Privilege Tax and will thereby establish the amount of the refund to which it is entitled for use taxes it paid to the Department for the periods March 1998 through and including September 2003, together with interest at the appropriate statutory rate.

FOURTH CLAIM FOR RELIEF

(Edison is Entitled to Exclude From the Measure of Use Tax Taxes Paid to the Federal Government)

62. Edison re-alleges and incorporates by reference herein the allegations set forth in paragraphs 1 through 51, inclusive.

63. Edison reimbursed Peabody for taxes imposed by the United States under the Surface Mining Control & Reclamation Act of 1977 and the Black Lung Benefits Revenue Act of 1977 (collectively, the "Federal Taxes") on the purchase of coal from

Peabody and that Peabody paid to the United States. In paying the Nevada use tax, Edison included the Federal Taxes in the sales price subject to use tax.

64. Edison is entitled to exclude from the sales price the Federal Taxes that Edison reimbursed to Peabody because the Federal Taxes are not includable in the sales price subject to Nevada use tax under NRS 372.065.

65. Edison will establish at trial the amount of Federal Taxes it reimbursed to Peabody and will thereby establish the amount of the refund to which it is entitled for use taxes it paid to the Department for the periods March 1998 through and including September 2003, together with interest at the appropriate statutory rate.

FIFTH CLAIM FOR RELIEF

(Edison is Entitled to Exclude From the Measure of Use Tax Taxes Paid to the Navajo Nation and Hopi Tribe)

66. Edison re-alleges and incorporates by reference herein the allegations set forth in paragraphs 1 through 51, inclusive.

67. Edison reimbursed Peabody for the Navajo Nation Business Activity Tax and Possessory Interest Tax imposed on the coal purchased from Peabody for use at the Mohave Project and that Peabody paid to the Navajo Nation. In paying the Nevada use tax, Edison included the amount reimbursed to Peabody for the Navajo Nation's Business Activity Tax and Possessory Interest Tax in the sales price subject to use tax.

68. Edison is entitled to exclude from the sales price the amounts paid to Peabody for the Navajo Nation's Business Activity Tax and Possessory Interest Tax because such taxes are not includable in the sales price subject to Nevada use tax under NRS 372.065.

69. Edison will establish at trial the amount of the Navajo Nation's Business Activity Tax and Possessory Interest Tax it reimbursed to Peabody and will thereby establish the amount of the refund to which it is entitled for use taxes it paid to the Department for the periods March 1998 through and including September 2003, together with interest at the appropriate statutory rate.

SIXTH CLAIM FOR RELIEF

(Edison is Entitled to Exclude From the Measure of Use Tax Taxes Paid to the State of Arizona)

70. Edison re-alleges and incorporates by reference herein the allegations set forth in paragraphs 1 through 51, inclusive.

71. Edison reimbursed Peabody for Arizona's Ad Valorem Tax imposed on the coal purchased from Peabody for use at the Mohave Project and that Peabody paid to the State of Arizona. In paying the Nevada use tax, Edison included the amount reimbursed to Peabody for the Arizona Ad Valorem Tax in the sales price subject to use tax.

72. Edison reimbursed Peabody for the Arizona Transaction Privilege Tax imposed on the coal purchased from Peabody for use at the Mohave Project and that Peabody paid to the State of Arizona. In paying the Nevada use tax, Edison included the amount reimbursed to Peabody for the Arizona Transaction Privilege Tax in the sales price subject to use tax.

73. Edison is entitled to exclude from the sales price the amounts paid to Peabody for Arizona's Ad Valorem Tax because such amounts are not includable in the sales price subject to Nevada use tax under NRS 372.065.

74. Edison is entitled to exclude from the sales price the amounts paid to Peabody for the Arizona Transaction Privilege Tax because such amounts are not includable in the sales price subject to Nevada use tax under NRS 372.065.

75. Edison will establish at trial the amount of Arizona's Ad Valorem Tax and Arizona Transaction Privilege Tax it reimbursed to Peabody and will thereby establish the amount of the refund to which it is entitled for use taxes it paid to the Department for the periods March 1998 through and including September 2003, together with interest at the appropriate statutory rate.

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SEVENTH CLAIM FOR RELIEF

(Edison is Entitled to Exclude From the Measure of Use Tax the Transportation Costs it Incurred in Transporting the Coal to the Mohave Project)

76. Edison re-alleges and incorporates by reference herein the allegations set forth in paragraphs 1 through 51, inclusive.

77. Edison paid use tax on amounts it paid for transportation costs to BMP.

78. Edison is entitled to exclude from the sales price the amounts it paid for the transportation costs pursuant to NRS 372.065 and NAC 372.101.

79. Edison will establish at trial the amount of the transportation costs it paid to BMP and will thereby establish the amount of the refund to which it is entitled for use taxes it paid to the Department for the periods March 1998 through and including September 2003, together with interest at the appropriate statutory rate.

EIGHTH CLAIM FOR RELIEF

(Declaratory Judgment That Claims Set Two Is Properly Before This Court)

80. Edison re-alleges and incorporates by reference herein the allegations set forth in paragraphs 1 through 51, inclusive.

81. Edison timely filed claims for refund of use tax in respect of the coal used and consumed at the Mohave Plant for the periods January 2001 through and including September 2003, and the Department denied these claims by letter dated April 5, 2004.

82. In addition, in its April 5, 2004 letter, the Department indicated that the periods from January 2001 through and including September 2003 would be considered as part of the petition for redetermination previously filed by Edison (and redirected by the Department to the Commission as explained above). This letter used exactly the same language to describe the status of Claims Set 2 as was used to describe the status of claims for the periods January 2000 through and including December 2000 in the Department's letter of May 16, 2003. The Department does not dispute that the claims covered by the May 16, 2003 letter have been denied by the Commission and are properly before the Court.

83. Although the Commission's written decision dated November 29, 2006 granting Edison's claims for refund specifically includes the claims for refund for the periods January 2001 through and including September 2003, the written decision issued by the Executive Director of the Department on behalf of the Commission on March 3, 2009 fails to address the claims for refund for these periods.

84. The Department asserts that the claims for refund for the periods January 2001 through and including September 2003 have not been denied by the Commission. Edison disputes the Department's assertion.

85. Edison hereby requests a declaration from this Court that, notwithstanding Defendant's assertions to the contrary, Edison has exhausted its administrative remedies with respect to the claims for refund that it filed for the periods January 2001 through and including September 2003 and that such claims were necessarily encompassed within the Commission's December 1, 2008 vote and are properly before this Court.

NINTH CLAIM FOR RELIEF

(Declaratory Judgment That the Court's Findings of Fact and Conclusions of Law Will Apply Equally to Claims For Refund Where Edison Has Not Yet Exhausted Its Administrative Remedies)

86. Edison re-alleges and incorporates by reference herein the allegations set forth in paragraphs 1 through 85, inclusive.

87. Edison paid the tax and timely filed claims for refund with the Department for the periods October 2003 through and including December 2005 (Claims Set 3).

88. The Department stated that it intended to hold the claims for refund for these periods "in abeyance until there is a final resolution in the courts" with respect to the periods prior to October 2003.

89. Edison believes that that after there has been a final, non-appealable judgment in this litigation either granting or denying Edison's claims for refund for periods prior to October 2003, the Department must necessarily apply the Court's findings and conclusions to the refund claims held in abeyance, absent a determination that the

later claims include any material, distinguishing factors (which Edison believes is not the case). Edison is informed and believes, and on that basis alleges, that the Department disputes this contention and contends that a final judgment in this case will not bind the Department as to its determination of the claims held in abeyance. Absent declaratory relief from this Court, even if Edison prevails on its statutory, constitutional or other arguments, the Department may consider itself free to compel Edison to re-litigate the same issues before the Commission and ultimately file another action before the District Court.

90. Following a final non-appealable judgment in this case, both Edison and the Department should be bound by this Court's conclusions of law and findings of fact. Accordingly, because all of the legal and factual grounds asserted by Edison apply equally to Claims Sets 1, 2 and 3, this Court should include a declaration to that effect in its final judgment in this action to avoid duplicative, future litigation.

WHEREFORE, Edison requests that judgment be entered in its favor as follows:

1. That the Court order Defendant State of Nevada to issue Edison a refund of use tax previously paid in the total amount of $48,228,335.70 together with interest at the appropriate statutory rate;

2. For a declaration that Edison has exhausted its administrative remedies with respect to the claims for refund that it filed for the periods January 2001 through and including September 2003 and that such claims are properly before the Court.

3. For a declaration that the findings of fact and conclusions of law applicable to this Court's determination of those claims where the Court finds Edison has exhausted its administrative remedies shall also apply to those claims where such remedies have not yet been exhausted.

4. For costs of suit; and

5. For such additional relief as the Court deems appropriate under the circumstances.

Dated: May 22nd, 2009

NORMAN J. AZEVEDO, ESQ.
State Bar No. 3204
510 W. Fourth Street
Carson City, NV 89703
(775) 883.7900
Attorney for Plaintiff

Case No.: 09 RP 00016 1B

Dept. No.: I

RECD & FILED
2009 JUN 30 PM 3:53
C. COOPER

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

SOUTHERN CALIFORNIA EDISON,

Plaintiff,

v.

STATE OF NEVADA, EX REL. DEPARTMENT OF TAXATION,

Defendants.

/

ORDER DENYING DEFENDANT'S MOTION TO DISMISS

On June 16, 2009 before the Honorable James T. Russell, Defendant's April 20, 2009 Motion to Dismiss pursuant to NRCP 12(b)(5) ("Motion") came on regularly for hearing. The parties were represented by the respective counsel of record: Norman J. Azevedo and Charles C. Read for Plaintiff Southern California Edison and Catherine Cortez Masto, Attorney General of the State of Nevada, by Gina C. Session, Chief Deputy Attorney General, for Defendant Nevada Department of Taxation. The Court has read and considered the points and authorities and other materials submitted in support of, and in opposition to the Motion, and has considered the arguments of counsel at the hearing on the Motion. Based on the foregoing, and good cause appearing, the Court hereby rules as follows:

1. On February 27, 2009 the Nevada Tax Commission's ("Commission") issued a final decision denying Plaintiff's claims for refund of use taxes. Plaintiff filed its Amended Complaint against Defendant on March 27, 2009 pursuant to NRS 372.680. NRS 372.680 provides, in relevant part:

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"1. Within 90 days after a final decision upon a claim filed pursuant to this chapter is rendered by the Nevada Tax Commission, the claimant may bring an action against the Department on grounds set forth in the claim . . . for the recovery of the whole or any part of the amount with respect to which the claim has been disallowed.

2. Failure to bring an action within the time specified constitutes a waiver of any demand against the State on account of alleged overpayments."

Defendant's argument is that Plaintiff should have filed a Petition for Judicial Review pursuant to NRS 233B.130, and the failure to do so should result in the dismissal of its Amended Complaint.

The Defendants argument would have this Court ignore and give no meaning to NRS 372.680. This violates the requirement that the Court must consider the statutes in pari materia, such that legal effect is given to each statute. Whether the Plaintiff filed its Amended Complaint under NRS 372.680 or NRS 233B.130, it was timely filed; and as such, this Court will not dismiss the Amended Complaint. See, ***Campbell v. State, Dept of Taxation,*** 108 Nev. 215, 219, 827 P.2d 833 (1992).

2. This Court reserves the right to treat the Amended Complaint as a Petition for Judicial Review as to the February 27, 2009 final decision of the Nevada Tax Commission. See, NRS 360.245(5), and ***Campbell,*** supra at 219.

3. The Court directs the parties to meet and confer to resolve issues relating to the nature of the proceedings in this Court pursuant to NRS 372.680 and NRS 233B.135. To the extent the parties are unable to resolve such issues that arise, the parties by cross-motions shall request the Court to resolve such issues.

4. Defendant may request that the Court certify its denial of Defendant's Motion as a final judgment pursuant to NRCP 54(b), which this Court based on the unresolved issue of the standard of review to be applied, is not inclined to grant. Any such request for certification shall be by motion, pursuant to FJDCR 15.

IT IS SO ORDERED.

Dated this 30th day of June, 2009

JAMES T. RUSSELL
District Judge

CERTIFICATE OF MAILING

I hereby further certify that on the 30th day of June, 2009, I placed a copy of the foregoing in the United States Mail postage prepaid, addressed as follows:

Norman Azevedo, Esq.
510 West Fourth Street
Carson City NV 89703

Gina Sessions, Esq.
100 N. Carson Street
Carson City NV 89701

Christine Erven
Judicial Assistant

Case No. 09 OC 00113 1B

Dept. No. 1

REC'D & FILED

2009 JUL 21 AM 10:47

C. COOPER CLERK

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

SOUTHERN CALIFORNIA EDISON,

Plaintiffs,

vs.

THE STATE OF NEVADA, ex. rel., DEPARTMENT OF TAXATION,

Defendants.

ORDER TO CONSOLIDATE

This matter comes before the Court on Defendant's Motion for Consolidation and/or Motion to Strike and/or Motion to Dismiss filed on May 22, 2009. The action shares common questions of law, both substantive and procedural, as well as fact, with a separate action in Case Number 09 OC 00016 1B, with the same entitlement. Plaintiff's filed a Response to Motion to Consolidate and/or Motion to Strike and/or Motion to Dismiss on June 8, 2009. A Request to Submit was filed by Plaintiff on July 16, 2009.

Therefore, pursuant to NRCP 42(a) and good cause appearing,

IT IS HEREBY ORDERED that these two actions be consolidated. All further pleadings and papers shall be filed under Case No. 09 OC 00016 1B.

DATED this 17th day of July, 2009.

JAMES T. RUSSELL
District Judge

CERTIFICATE OF MAILING

The undersigned, an employee of the District Judge, hereby certifies that on the 17th day of July, 2008, I served the foregoing Order to Consolidate by depositing a copy thereof in the U.S. Mail at Carson City, Nevada, postage paid, addressed as follows:

Gina C. Sessions, Esq.
100 North Carson Street
Carson City NV 89701

Norman Azevedo, Esq.
510 West Fourth Street
Carson City NV 89703

Judicial Assistant

CATHERINE CORTEZ MASTO
Nevada Attorney General
GINA C. SESSION
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Attorneys for Defendant
Nevada Dept. of Taxation

REC'D & FILED
2009 NOV 19 PM 3:55
ALAN GLOVER
BY _____ CLERK
DEPUTY

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

Southern California Edison,

Plaintiff,

vs.

STATE OF NEVADA ex rel. Department of Taxation,

Defendants.

Case No. 09 OC 00016 1B

Department No. 1

ORDER TO PROCEED AS PETITION FOR JUDICIAL REVIEW

This matter was originally before the Court as a motion to dismiss filed by Defendants. As part of the Court's order denying the motion dismiss, the Court directed the parties to meet and confer as to the nature of the proceedings before this Court. After meeting, the parties were unable to agree as to the nature of the proceedings and stipulated to a briefing schedule to brief the issues to the Court. Plaintiff filed a motion that this action be conducted as a trial de novo pursuant to NRS 372.680. The Defendants filed its brief arguing that the action is subject to NRS Chapter 233B and should proceed as a petition for judicial review. Each party filed an answering brief. On October 8, 2009 a hearing was held to determine the proper nature of the proceedings before this Court.

The Court has read and considered the points and authorities and other materials

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submitted by Plaintiff and Defendants and considered the arguments of counsel at the hearing. Based on the foregoing, and good cause appearing the Court hereby rules as follows:

1. The proceedings in this case are controlled by NRS 233B.130(6) which states that: "The provisions of this chapter are the exclusive means of judicial review of, or judicial action concerning, a final decision in a contested case involving an agency to which this chapter applies."
2. NRS Chapter 233B applies to all administrative agencies within the state unless exempt. The Department of Taxation ("Department") and the Nevada Tax Commission ("Commission") are not exempt from the provisions of NRS Chapter 233B. NRS 233B.039. All decisions by the Commission are therefore subject to NRS 233B.130(6).
3. The judicial review standards imposed by NRS Chapter 233B apply unless there is a specified exception. NRS 372.680 which states in pertinent part: "Within 90 days after a final decision upon a claim filed pursuant to this chapter is rendered by the Nevada Tax Commission, the claimant may bring an action against the Department..." does not contain specific language authorizing the Court to conduct a trial de novo.
4. NRS 372.680 is, to some extent, only a venue statute, informing a claimant that has received a denial from the Commission of its claim for refund of sales or use tax where it may file its action to seek a recovery of taxes it has overpaid.
5. Local governments that were parties to the proceedings below filed a petition for judicial review of an earlier decision by the Commission in this matter. The Nevada Supreme Court voided the earlier decision. Uniform standards and uniform application of the law demands that both the local government agencies and the taxpayers be treated the same and supports treating the current action as a petition for judicial review.
6. The Legislature made the following changes to NRS Chapter 233B and NRS

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372.680 indicating that decisions by the Nevada Tax Commission on refund claims are subject to NRS 233B:

1989

The legislature removes language authorizing original actions when a statute authorizes such an action and replaces it with the language in NRS Chapter 233B.130(6) "The provisions of this chapter are the exclusive means of judicial review of, or **judicial action** concerning, **a final decision** in a contested case involving an agency to which this chapter applies." (emphasis added)

1997

The legislature adds the language in NRS 360.245(5) that states "A decision of the Nevada Tax Commission is **a final decision** for the purposes of judicial review." (emphasis added)

1999

Prior to 1999, NRS 372.680 permitted an action for a claim for refund to be filed once a refund claim had been filed with the Department of Taxation without an administrative proceeding. The legislature changed the language and it now reads in pertinent part: "Within 90 days after **a final decision** upon a claim filed pursuant to this chapter is rendered by the **Nevada Tax Commission**, the claimant may bring **an action** against the Department on the grounds set forth in the claim..." (emphasis added). "Thus, [the legislation] contemplates a change from past practice where **refund claims** upon passage of [the legislation] will now be subject to the requirements of Chapter 233B of the Nevada Revised Statutes." Memorandum dated May 7, 1999 to Assemblyman Bernie Anderson, Chairman, Assembly Committee on Judiciary from Norm Azevedo, Sr. Deputy Attorney General. (emphasis added)

7. Two cases relied upon by Plaintiff, *State v. Obexer & Sons*, 99 Nev. 233, 660 P.2d 981 (1983) and *Saveway Super Serv. Stations, Inc. v. Cafferata*, 104 Nev. 402, 760 P.2d 127 (1989) were both decided before any of the legislative changes noted

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above. Specifically, the change in 1999 was meant to change the past practice where a taxpayer seeking a refund could go directly to district court after a denial by the Department without a contested case going before the Nevada Tax Commission. *See* Memorandum dated May 7, 1999 to Assemblyman Bernie Anderson, Chairman, Assembly Committee on Judiciary from Norm Azevedo, Sr. Deputy Attorney General.

8. The legislative change made to NRS 372.680 in 1999 ensured that there would be the opportunity for an evidentiary hearing, findings of facts and conclusions of law and the opportunity for review by the Commission prior to a decision becoming final. With the change, the legislature limited the scope of NRS 372.680 and brought it within the umbrella of NRS Chapter 233B.

9. Plaintiff participated in an evidentiary hearing before the Commission. Plaintiff is not entitled to a second evidentiary hearing in district court, but is entitled to judicial review of the Commission's February 27, 2009 decision. *Campbell v. State of Nevada*, 108 Nev. 215, 219, 827 P.2d 833, 836 (1992).

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Therefore, this matter will proceed as a Petition for Judicial Review pursuant to NRS Chapter 233B.

IT IS SO ORDERED.

Dated this 19 day of ~~October~~ November, 2009.

JAMES T. RUSSELL
District Judge

Submitted by:

CATHERINE CORTEZ MASTO
Attorney General

By: _____
GINA C. SESSION
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Attorneys for Defendant
Nevada Dept. of Taxation

NOV 2 3 2009

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

Southern California Edison,

Plaintiff,

vs.

STATE OF NEVADA ex rel. Department of Taxation,

Defendants.

Case No. 09 OC 00016 1B

Department No. 1

STATEMENT OF INTENT TO PARTICIPATE

Defendant State of Nevada, ex rel. Department of Taxation, by and through its counsel Catherine Cortez Masto, Attorney General, and Gina C. Session, Chief Deputy Attorney General, hereby states its intent to participate in the Petition for Judicial Review.

Dated this 24th day of November, 2009.

CATHERINE CORTEZ MASTO
Attorney General

By: G C. Session
GINA C. SESSION
Chief Deputy Attorney General
Nevada State Bar No. 5493
100 N. Carson Street
Carson City, Nevada 89701-4717
Attorneys for Defendants

Nevada Office of the Attorney General
100 North Carson Street
Carson City, NV 89701-4717

CERTIFICATE OF SERVICE

I certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on this 24th day of November, 2009, I served a copy of the foregoing, by mailing a true copy to the following:

Norman J. Azevedo, Esq.
405 N. Nevada St.
Carson City, Nevada 89703

Employee of the Office of the Attorney General

Nevada Office of the Attorney General
100 North Carson Street
Carson City, NV 89701-4717

Case No.: 09 0C 00016 1B

Dept. No. : I

REC'D & FILED

2009 DEC 24 PM 2:38

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

ALAN GLOVER
BY C. FRANZ CLERK
DEPUTY

SOUTHERN CALIFORNIA EDISON,

Plaintiff,

vs.

THE STATE OF NEVADA, EX REL. DEPARTMENT OF TAXATION,

Defendant.

ORDER GRANTING PLAINTIFF'S MOTION TO STAY PROCEEDINGS PENDING RESOLUTION OF A WRIT PETITION

On November 30, 2009, Plaintiff Southern California Edison ("Edison") filed a Motion pursuant to NRAP 8(a)(1)(A) to stay the above-captioned proceedings in this Court pending final resolution of a Petition for a Writ of Mandamus which Edison indicated they would file on or before January 8, 2010. On December 18, 2009, the Nevada Department of Taxation filed in response to Edison's request a Non Opposition to Stay the Proceedings Pending Writ of Mandamus.

Based on the foregoing, and good cause appearing,

IT IS HEREBY ORDERED that these proceedings shall be stayed until the Nevada Supreme Court makes a final disposition of Edison's Writ Petition.

IT IS SO ORDERED.

Dated this 23 day of December, 2009.

JAMES T. RUSSELL
District Court Judge

Submitted by:

NORMAN J. AZEVEDO, ESQ.
Nevada Bar No. 3204
405 North Nevada Street
Carson City, NV 89703
775.883.7000

Case No.: 09 0C 00016 1B

Dept. No. : I

REC'D & FILED

2009 DEC 24 PM 2:38

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

BY _____ DEPUTY CLERK

SOUTHERN CALIFORNIA EDISON,

Plaintiff,

vs.

THE STATE OF NEVADA, EX REL. DEPARTMENT OF TAXATION,

Defendant.

ORDER GRANTING PLAINTIFF'S MOTION TO STAY PROCEEDINGS PENDING RESOLUTION OF A WRIT PETITION

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IT IS SO ORDERED.

Dated this 23 day of December, 2009.

JAMES T. RUSSELL
District Court Judge

Submitted by:

NORMAN J. AZEVEDO, ESQ.
Nevada Bar No. 3204
405 North Nevada Street
Carson City, NV 89703
775.883.7000

Case No.: 09 0C 00016 1B

Dept. No. : I

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

SOUTHERN CALIFORNIA EDISON,

Plaintiff,

vs.

THE STATE OF NEVADA, EX REL. DEPARTMENT OF TAXATION,

Defendant.

ORDER GRANTING PLAINTIFF'S MOTION TO STAY PROCEEDINGS PENDING RESOLUTION OF A WRIT PETITION

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Based on the foregoing, and good cause appearing,

IT IS HEREBY ORDERED that these proceedings shall be stayed until the Nevada Supreme Court makes a final disposition of Edison's Writ Petition.

IT IS SO ORDERED.

Dated this ____ day of December, 2009.

JAMES T. RUSSELL
District Court Judge

Submitted by:

NORMAN J. AZEVEDO, ESQ.
Nevada Bar No. 3204
405 North Nevada Street
Carson City, NV 89703
775.883.7000

Case No.: 09 RP 00016 1B

Dept. No.: I

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ALAN GLOVER
BY Adrian
DEPUTY CLERK

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

SOUTHERN CALIFORNIA EDISON,

Plaintiff,

v.

STATE OF NEVADA, EX REL. DEPARTMENT OF TAXATION,

Defendants.

/

ORDER VACATING ORDER DATED NOVEMBER 19, 2009, AND ALLOWING MATTER TO PROCEED AS AN INDEPENDENT ACTION

This matter is before this Court on a Writ of Mandamus issued by the Nevada Supreme Court on May 26, 2011, which directed this Court to vacate the Order that provides that the matter will proceed as an NRS Chapter 233B Petition for Judicial Review, and to instead allow the matter to proceed as filed, an independent action. Therefore, good cause appearing,

IT IS HEREBY ORDERED that the Order dated November 19, 2009, is hereby vacated.

IT IS FURTHER ORDERED that the parties appear before the Court's Judicial Assistant on Wednesday, June 15, 2011, at 9:00 a.m. to set this matter as an independent action for trial.

Dated this 1st day of June, 2011.

JAMES T. RUSSELL
District Judge

CERTIFICATE OF MAILING

I hereby further certify that on the 1st day of June, 2011, I placed a copy of the foregoing in the United States Mail postage prepaid, addressed as follows:

Norman Azevedo, Esq.
405 North Nevada Street
Carson City NV 89703

Gina Sessions, Esq.
Office of the Attorney General
100 N. Carson Street
Carson City NV 89701

Christine Erven
Judicial Assistant

CATHERINE CORTEZ MASTO
Nevada Attorney General
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gsession@ag.nv.gov
Attorneys for Nevada Department of Taxation

REC'D & FILED
2011 JUL 13 PM 12: 15
ALAN GLOVER
J. HARKLEROAD
BY _____ CLERK
DEPUTY

Nevada Office of the Attorney General
100 North Carson Street
Carson City, NV 89701-4717

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

SOUTHERN CALIFORNIA EDISON,

Plaintiff,

v.

STATE OF NEVADA *ex rel.* DEPARTMENT OF TAXATION,

Defendants.

Case No. 09-OC-00016 1B

Department No. I

ORDER GRANTING MOTION FOR STAY OF PROCEEDING

On June 14, 2011, the Department of Taxation filed a Motion for Stay of Proceeding. On June 13, 2011 the Department filed a Petition for Rehearing on Judicial Estoppel in this matter with the Nevada Supreme Court. The merits of the Motion and all other relevant pleadings have been fully considered. In the interest of judicial economy and pursuant to NRAP 8, this matter shall be stayed until such time as the Nevada Supreme Court decides the Petition for Rehearing.

IT IS HEREBY ORDERED that the Department's Motion for Stay of Proceeding is GRANTED.

Dated: July 13, 2011

James T. Russell

JAMES T. RUSSELL
DISTRICT COURT JUDGE
DEPARTMENT ONE

Submitted by:

CATHERINE CORTEZ MASTO
Attorney General

By: _____

Gina C. Session
Chief Deputy Attorney General
Nevada Bar No. 5493
100 North Carson Street
Carson City, Nevada 89701-4717
775-684-1219
Attorneys for the Nevada Department of Taxation

Nevada Office of the Attorney General
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CATHERINE CORTEZ MASTO, Attorney General
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(775) 684-1156 (f)
Attorneys for Department of Taxation

Electronically Filed
Sep 21 2011 10:33 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

IN THE SUPREME COURT OF THE STATE OF NEVADA

SOUTHERN CALIFORNIA EDISON,

Petitioner,

vs.

THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, in and for Carson City, and THE HONORABLE JAMES T. RUSSELL, District Judge,

Respondents,

and

THE STATE OF NEVADA, DEPARTMENT OF TAXATION,

Real Party in Interest.

Case No. 09-OC-00016 1B

Supreme Court Case No. 55228

Nevada Office of the Attorney General
100 North Carson Street
Carson City, NV 89701-4717

CERTIFICATE OF SERVICE

I certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on this 21st day of September, 2011, I served a copy of the **Order Denying Rehearing** in the above-entitled matter, by mailing a file-stamped copy to the following:

THE HONORABLE JAMES T. RUSSELL
FIRST JUDICIAL DISTRICT COURT
885 E. MUSSER STREET
CARSON CITY, NEVADA 89701

NORMAN J. AZEVEDO, ESQ.
405 N. NEVADA STREET
CARSON CITY, NEVADA 89703

Docket 55228 Document 2011-28806

CHARLES C. READ, ESQ.
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SENIOR PRINCIPAL DEPUTY
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BRENDA J. ERODES, ESQ.
LEGISLATIVE COUNSEL BUREAU
LEGAL DIVISION
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CARSON CITY, NEVADA 89701

/s/ Susan Johnson
SUSAN JOHNSON
Employee of the Office of the Attorney General

Nevada Office of the Attorney General
100 North Carson Street
Carson City, NV 89701-4717

Case No.: 09 TRT 00016 1B

Dept. No.: I

FILED
2012 JAN 27 PM 1:10
ALAN GLOVER
BY: CLERK
DEPUTY

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

SOUTHERN CALIFORNIA EDISON,

Plaintiff,

v.

ORDER TO SET FOR HEARING

STATE OF NEVADA, EX REL.
DEPARTMENT OF TAXATION,

Defendants.

/

This Court has reviewed the case file and good cause appearing;

IT IS HEREBY ORDERED that the parties appear before the Court's Judicial Assistant on Wednesday, February 22, 2012, at 9:00 a.m. to set this matter for a hearing.

DATED this 27 day of January, 2012.

JAMES T. RUSSELL
District Judge

CERTIFICATE OF MAILING

I hereby certify that on the 27th day of January, 2012, I placed a copy of the foregoing Order in the United States Mail postage prepaid, addressed as follows:

Norman Azevedo, Esq.
405 North Nevada Street
Carson City NV 89703

Gina Sessions, Esq.
Office of the Attorney General
100 N. Carson Street
Carson City NV 89701

CHRISTINE ERVEN
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Charles C. Read (admitted pro hac vice)
JONES DAY
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Los Angeles, California 90071
(213) 243-2818

Attorneys for Plaintiff, Southern California Edison

REC'D & FILED
2012 APR 10 AM 11:53
ALAN GLOVER
BY V. GUTIERREZ CLERK
DEPUTY

IN THE FIRST JUDICIAL DISTRICT OF THE STATE OF NEVADA'IN AND FOR CARSON CITY

SOUTHERN CALIFORNIA EDISON,

Plaintiff,

v.

THE STATE OF NEVADA, *ex rel.* DEPARTMENT OF TAXATION

Defendant.

Case No. 09-0C-00016-1B

Dept. No.: 1

SECOND AMENDED COMPLAINT
(NRS 372.680; NRS 374.685; NRS 30.030)

Comes now Plaintiff Southern California Edison, by and through its counsel Norman J. Azevedo, Esq., and hereby complains against Defendant, State of Nevada, *ex rel.* Department of Taxation, and alleges as follows:

NATURE OF THE ACTION

1. This is an action to recover use taxes pursuant to Sections 372.680(1) and 374.685(1) of the Nevada Revised Statutes ("NRS") following a final decision by the Nevada Tax Commission ("Commission") disallowing Plaintiff's claims for refund of use tax Plaintiff paid to the Defendant for tax periods March 1998 through and including December 2000.

2. NRS 372.680(1) and 374.685(1) each provide: "Within 90 days after a final decision upon a claim filed pursuant to this chapter is rendered by the Nevada Tax Commission, the claimant may bring an action against the Department on the grounds set

forth in the claim in a court of competent jurisdiction in Carson City . . . for the recovery of the whole or any part of the amount with respect to which the claim has been disallowed."

3. Defendant illegally imposed use tax on the use and consumption of out-of-state coal at a coal-fired power plant in Nevada. All of the coal used and consumed at the power plant was purchased, extracted and shipped from a coal mine located entirely within the State of Arizona. Under NRS 372.185(2) and 374.190(2), Nevada's use tax does not apply to the use or consumption of property acquired outside of Nevada in a transaction that would not have been a taxable sale if it had occurred within Nevada. Sales by mines located within Nevada of the minerals they extract, including coal, are expressly exempt from sales tax and therefore not taxable sales. Since the equivalent in-state transaction would not have been a taxable sale, Defendant's imposition of tax on the use and consumption in Nevada of coal that was purchased, extracted and shipped from a mine located in Arizona is illegal.

4. Defendant's imposition of use tax on Plaintiff's use and consumption of coal in Nevada discriminates against interstate commerce in violation of the Commerce Clause of the United States Constitution (U.S. Const. Art. I. §8, cl. 3) by taxing minerals acquired from in-state mines more favorably than minerals acquired from out-of-state mines for use in Nevada. Indeed, Defendant's application of the sales and use tax statutes is facially unconstitutional because, as explained above, minerals acquired from in-state mines enjoy a complete exemption from Nevada's sales tax while minerals acquired from out-of-state mines for use or consumption in Nevada are subject to Nevada's use tax.

5. If the Court were to determine that Defendant's imposition of use tax in this case is neither illegal nor unconstitutional, Plaintiff alternatively claims that it is entitled to a refund of use tax in respect of each of the following reasons:

a. Plaintiff is entitled to a credit against the use tax for sales tax paid to Arizona;

b. The taxable sales price should exclude taxes imposed by various taxing jurisdictions; and

c. The taxable sales price should exclude the amounts paid for transportation of the coal pursuant to NRS 372.065 and Nevada Administrative Code ("NAC") 372.101.

PARTIES

6. Plaintiff Southern California Edison Company ("Edison") is a California corporation having its principal place of business in Los Angeles County, California. Edison is not a Debtor in bankruptcy.

7. Defendant State of Nevada *ex rel.* Department of Taxation (the "Department") is an agency of the executive branch of the State of Nevada that is charged with the administration and enforcement of the tax laws set forth in Title 32 of the Nevada Revised Statutes, including chapters 372 and 374 of the Nevada Revised Statutes governing sales and use taxes and local school support taxes, respectively.

FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF

I. The Mohave Generating Station

8. At all times relevant to this Complaint, Edison owned a majority interest in the Mohave Generating Station ("Mohave Project"), a coal-fired power plant located in Clark County, Nevada. The Mohave Project generated electricity by burning coal. It had two generating units and supplied enough electricity to power approximately 1.5 million homes. The Mohave Project provided energy to customers in Nevada, Arizona and Southern California.

9. The Mohave Project began operations in 1970. Edison co-owned the Mohave Project with three other parties (collectively, the "Mohave Co-owners"): Nevada Power Company, the Department of Water and Power of the City of Los Angeles and Salt River Project Agricultural Improvement and Power District. Edison owned the majority interest (a 56% undivided interest) in the Mohave Project.

10. Edison operated the Mohave Project pursuant to the Mohave Project Operating Agreement effective May 1, 1969 and dated July 6, 1970 (the "Operating Agreement"). The Mohave Project ceased operations on December 31, 2005.

II. Out-of-State Purchase and Delivery of Coal

11. At all times relevant to this Complaint, all of the coal used and consumed at the Mohave Project was supplied by Peabody Western Coal Company ("Peabody") pursuant to the Amended Mohave Project Coal Supply Agreement dated May 26, 1976 between Peabody (as seller) and the Mohave Co-owners (as buyers) (the "Amended Coal Supply Agreement").

12. All of the coal sold by Peabody for use at the Mohave Project was extracted from the Black Mesa Mine in northeastern Arizona.

13. The Black Mesa Mine is located on land owned by the Navajo Nation and Hopi Tribe. At all times relevant to this Complaint, Peabody operated the Black Mesa Mine through lease agreements with the Navajo Nation and the Hopi Tribe.

14. Pursuant to agreements between Peabody and Black Mesa Pipeline, Inc. ("BMP"), BMP constructed and operated a 273-mile pipeline to transport and deliver the coal from the Black Mesa Mine to the Mohave Project (the "Pipeline"). The coal was crushed and suspended in water for transportation through the Pipeline, and was separated from the water upon delivery to the Mohave Project.

15. The Amended Coal Supply Agreement required Edison to pay Peabody, on a monthly basis, for the price of the coal it purchased. Peabody invoiced Edison for this charge and Edison sent payment for the coal to Peabody. BMP invoiced Edison directly for the charges for transporting and delivering the coal to the Mohave Project and Edison sent payment for such transportation charges directly to BMP.

16. Since 1970, Edison paid Nevada use tax to the Department in respect of the coal used and consumed at the Mohave Project.

III. Exhaustion of Administrative Remedies

A. The Department Denies Edison's Claims for Refund for the Periods March 1998 Through and Including December 2000

17. Edison determined that several grounds existed for challenging Nevada's imposition of use tax in respect of the out-of-state coal used and consumed at the Mohave Project.

18. Between April 26, 2001 and February 25, 2003, Edison timely filed claims for refund of the use tax it paid to the Department for the periods March 1998 through and including December 2000 ("Claims Set 1"). For these periods, Edison paid $23,896,668.08 in use tax to the Department in respect of the coal used and consumed at the Mohave Project.

19. By letter dated December 17, 2002 (Ex. A hereto), the Department denied the claims for refund filed for the periods March 1998 through and including September 1999. By letter dated December 30, 2002 (Ex. B hereto), the Department denied the claims for refund filed for the periods October 1999 through and including December 1999.

20. In the December 17 and December 30, 2002 denial letters, the Department advised Edison that, if Edison desired to appeal the Department's decision, it had to file a petition for redetermination within 45 days pursuant to NRS 360.360. On January 31, 2003, Edison filed a timely petition for redetermination for the periods covered by these denial letters—March 1998 through December 1999.

21. By letter dated May 16, 2003 (Ex. C hereto), the Department denied the claims for refund for the periods January 2000 through and including December 2000. The Department's letter states that it will "consider this denial in the same status as your previous requests and these periods will be added to the issue(s) under petition." Accordingly, the Department deemed Edison to have appealed its denial of the periods from January 2000 through and including December 2000 by considering them as part of the petition for redetermination previously filed by Edison.

22. In a letter dated July 2, 2003, the Department acknowledged that it should have instructed Edison to appeal the denial of its claims for refund to the Commission pursuant to NRS 360.245(1) rather than filing a petition for redetermination with the Department. The Department stated that it had rectified its mistake by redirecting Edison's claims for refund to the Commission for a hearing.

B. In 2005 The Commission Grants Edison's Claims For Refund

23. The Commission held a series of hearings beginning on November 1, 2004 and continuing on February 7, 2005, April 5, 2005 and May 9, 2005.[1]

24. At the May 9, 2005 hearing, the Commission voted to grant Edison's claims for refund. The Commission's written decision dated November 29, 2006 (Ex. D hereto) granted Edison's claims for refund.

C. The Open Meeting Law Case

25. At Edison's request, the Commission closed each of the aforementioned hearings. Edison made the request because the Commission's determination of the refund claims required consideration of Edison's and the other Mohave Co-owners' proprietary and confidential information. The Commission closed the hearings at the request of the taxpayer in accordance with former NRS 360.247 and with the advice and consent of its counsel, the Attorney General's Office of the State of Nevada ("Attorney General").[2] The Commission had a thirty-year practice of closing hearings at the request of taxpayers.

26. Notwithstanding the fact that it served as legal counsel to the Commission (the decision-maker in respect of Edison's claims) and approved the closure of the hearings, the Attorney General filed a complaint on July 7, 2005 against the Commission

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[1] On December 8, 2003, the Commission held an initial hearing on Edison's claims for refund and referred the claims to a hearing officer. The hearing officer issued a written decision on July 14, 2004. Significantly, while the hearing officer found that the Department's imposition of the use tax on Edison's use and consumption of coal at the Mohave Plant discriminated against interstate commerce in violation of the Commerce Clause, he refused to grant a refund of the unconstitutional tax to Edison.

[2] Former NRS 360.247 provided, in pertinent part: "Except as otherwise provided in this section, any appeal to the Nevada tax commission which is taken by a taxpayer concerning his liability for tax must be heard during a session of the commission which is open to the public. A hearing on such an appeal may be closed to the public if the taxpayer requests that it be closed."

in the First Judicial Court, Carson City, seeking to void the Commission's grant of Edison's claims for refund on the ground that the Commission had violated Nevada's Open Meeting Law (NRS 241.010 et seq.) when it granted Edison's claims for refund in closed session at the May 9, 2005 hearing ("Open Meeting Law Case").

27. The Commission hired independent counsel to represent it in the Open Meeting Law Case. Edison was the real party in interest in the case.

28. Following a bench trial on August 26, 2006, the district court dismissed the Attorney General's complaint and entered judgment for the Commission and Edison.

29. The Attorney General appealed to the Supreme Court of Nevada. In an opinion filed on April 24, 2008, the Supreme Court reversed the district court and found that the Commission had violated the Open Meeting Law when it granted Edison's claims for refund in a closed hearing.

30. Edison is thus the only taxpayer whose grant of a claim for refund by the Commission has ever been voided pursuant to the Open Meeting Law, notwithstanding that the Commission had been closing hearings at taxpayers' requests as provided by statute and with the consent of its counsel for the past thirty years (during which time the Attorney General acted as counsel to both the Commission and the Department at those hearings).

D. On Remand, the Commission Denies Edison's Claims for Refund

31. Since the Commission's prior decision in favor of Edison was voided by the Supreme Court's decision, Edison's claims for refund were returned to the Commission for redetermination in open session.

32. The Commission held open hearings on the claims for refund on September 9, 2008 and December 1, 2008.

33. There were no changes in the facts or the law between the hearings held before the Commission in 2004 and 2005 and those that were held in 2008.

34. At the December 1, 2008 hearing, and notwithstanding the absence of any change in the applicable facts and law, the Commission voted to deny Edison's refund claims.

35. On March 2, 2009, the Commission served its final written decision, dated February 27, 2009, denying Edison's claims for refund (Ex. E hereto).

36. The Commission's written decision fails to set forth any analysis of facts or law in support of its conclusions. The decision reaches the *ipse dixit* conclusion that what Edison purchased from Peabody "was a processed and/or manufactured product," and not simply coal, in complete disregard of the uncontroverted evidence that Edison purchased coal from a coal mine, that Edison separately purchased water in order to transport the coal through the Pipeline, and that at the Mohave Project the coal was burned as fuel and the water was used for cooling purposes. In other words, Edison purchased and used two separate and distinct products. Significantly, the Commission's written decision following the December 1, 2008 vote, by concluding that Edison purchased a combined coal/water product, completely and inexplicably contradicted a finding in the Commission's November 29, 2006 written decision that expressly reached the opposite conclusion, namely that "we find that Edison is purchasing a raw mineral—in this case coal. . . ."

37. Having exhausted its administrative remedies with regard to Claims Set 1, Edison now brings this suit against the Department in district court pursuant to NRS 372.680(1) and NRS 374.685(1), almost eight years after filing its initial claim for refund.

38. Edison also has timely filed claims for refund of use tax with the Department for the use tax it paid in respect of the coal used and consumed at the Mohave Project for the periods January 2001 through and including September 2003 ("Claims Set 2")[3] and claims for the refund of the use tax it paid to the Department for the periods

[3] The Commission hearings on November 1, 2004, February 7, 2005, April 5, 2005 and May 9, 2005, included both Claims Set 1 and Claims Set 2. The Commission's written decision dated November 29, 2006 (Ex. D hereto) granting Edison's claims for refund expressly stated that the Commission's decision included Claims Set 1 and Claims Set 2.

October 2003 through and including December 2005 ("Claims Set 3"). The parties have reached an agreement (attached as Ex. F) that to the extent a final judgment in this proceeding (including appellate review) is based upon conclusions of law and findings of fact applicable to Claims Set 2 and Claims Set 3, the parties agree that the final judgment should be dispositive of Claims Set 2 and Claims Set 3.[4]

FIRST CLAIM FOR RELIEF

(Statutory Exemption from Use Tax)

39. Plaintiff re-alleges and incorporates by reference herein the allegations set forth in paragraphs 1 through 38, inclusive.

40. Edison's use and consumption of coal purchased from Peabody is exempt from use tax under NRS 372.185(2) and 374.190(2). Under those statutes, use tax does not apply to property acquired outside of Nevada in a transaction that would not have been a taxable sale if it had occurred within this state. Under NRS 372.270 and 374.275 a purchase of coal or any other mineral from a mine located in Nevada is not a taxable sale. Since an acquisition of coal from an in-state mine would not be a taxable sale under Nevada law, Edison's use and consumption of coal purchased from Peabody's mine in Arizona is not subject to use tax.

41. Edison is entitled to recover a refund of $23,896,668.08 in use taxes it paid to the Department for the periods March 1998 through and including December 2000, together with interest at the appropriate statutory rate.

[4] In other words, if a final judgment requires the Department to refund the use tax SCE paid to the Department for the periods March 1998 through and including December 2000, or any portion thereof, and is based upon conclusions of law and findings of fact applicable to Claims Set 2 and Claims Set 3, then the Department shall at that same time provide applicable refunds to SCE for the period of January 2001 through and including December 2005 without additional administrative or legal action. If a final judgment finds that the Department is not required to refund the use tax SCE paid to the Department for the periods of March 1998 through and including December 2000, and is based upon conclusions of law and findings of fact applicable to Claims Set 2 and Claims Set 3, then SCE will not pursue refunds for the period of January 2001 through and including December 2005 and will not bring any further administrative or legal action on those claims.

SECOND CLAIM FOR RELIEF

(The Department's Imposition of Use Tax is in Violation of the Commerce Clause of the United States Constitution)

42. Edison re-alleges and incorporates by reference herein the allegations set forth in paragraphs 1 through 38, inclusive.

43. The application of Nevada's use tax to Edison's use and consumption of the coal acquired from Peabody discriminates against interstate commerce in violation of the Commerce Clause of the United States Constitution (U.S. Const. Art. I. §8, cl. 3) because, as explained in paragraph 40 above, Nevada taxes the sales of minerals, including coal, extracted from mines in Nevada more favorably than it does the use or consumption of minerals, including coal, extracted and purchased from out-of-state mines for use in Nevada.

44. Edison is entitled to recover a refund of $23,896,668.08 in use taxes it paid to the Department for the periods March 1998 through and including December 2000, together with interest at the appropriate statutory rate.

THIRD CLAIM FOR RELIEF

(Edison is Entitled to a Credit Against the Use Tax for Sales Tax Paid to Arizona)

45. Edison re-alleges and incorporates by reference herein the allegations set forth in paragraphs 1 through 38, inclusive.

46. Edison reimbursed Peabody for the Arizona Transaction Privilege Tax imposed on Edison's purchase of coal from Peabody and that Peabody paid to the State of Arizona. The Arizona Transaction Privilege Tax is Arizona's sales tax. In self-assessing Nevada use tax, Edison included the amount reimbursed to Peabody for the Arizona Transaction Privilege Tax in the sales price subject to use tax.

47. Edison is entitled to a credit against the Nevada use tax for the Arizona Transaction Privilege Tax it reimbursed to Peabody because NAC 372.055 provides such a credit for "sales tax legitimately paid for the same purchase . . . to a state or local government outside of Nevada."

48. Edison will establish at trial the amounts it reimbursed to Peabody for Arizona's Transactions Privilege Tax and will thereby establish the amount of the refund to which it is entitled for use taxes it paid to the Department for the periods March 1998 through and including December 2000, together with interest at the appropriate statutory rate.

FOURTH CLAIM FOR RELIEF

(Edison is Entitled to Exclude From the Measure of Use Tax Taxes Paid to the Federal Government)

49. Edison re-alleges and incorporates by reference herein the allegations set forth in paragraphs 1 through 38, inclusive.

50. Edison reimbursed Peabody for taxes imposed by the United States under the Surface Mining Control & Reclamation Act of 1977 and the Black Lung Benefits Revenue Act of 1977 (collectively, the "Federal Taxes") on the purchase of coal from Peabody and that Peabody paid to the United States. In paying the Nevada use tax, Edison included the Federal Taxes in the sales price subject to use tax.

51. Edison is entitled to exclude from the sales price the Federal Taxes that Edison reimbursed to Peabody because the Federal Taxes are not includable in the sales price subject to Nevada use tax under NRS 372.065.

52. Edison will establish at trial the amount of Federal Taxes it reimbursed to Peabody and will thereby establish the amount of the refund to which it is entitled for use taxes it paid to the Department for the periods March 1998 through and including December 2000, together with interest at the appropriate statutory rate.

FIFTH CLAIM FOR RELIEF

(Edison is Entitled to Exclude From the Measure of Use Tax Taxes Paid to the Navajo Nation and Hopi Tribe)

53. Edison re-alleges and incorporates by reference herein the allegations set forth in paragraphs 1 through 38, inclusive.

54. Edison reimbursed Peabody for the Navajo Nation Business Activity Tax and Possessory Interest Tax imposed on the coal purchased from Peabody for use at the Mohave Project and that Peabody paid to the Navajo Nation. In paying the Nevada use tax, Edison included the amount reimbursed to Peabody for the Navajo Nation's Business Activity Tax and Possessory Interest Tax in the sales price subject to use tax.

55. Edison is entitled to exclude from the sales price the amounts paid to Peabody for the Navajo Nation's Business Activity Tax and Possessory Interest Tax because such taxes are not includable in the sales price subject to Nevada use tax under NRS 372.065.

56. Edison will establish at trial the amount of the Navajo Nation's Business Activity Tax and Possessory Interest Tax it reimbursed to Peabody and will thereby establish the amount of the refund to which it is entitled for use taxes it paid to the Department for the periods March 1998 through and including December 2000, together with interest at the appropriate statutory rate.

SIXTH CLAIM FOR RELIEF

(Edison is Entitled to Exclude From the Measure of Use Tax Taxes Paid to the State of Arizona)

57. Edison re-alleges and incorporates by reference herein the allegations set forth in paragraphs 1 through 38, inclusive.

58. Edison reimbursed Peabody for Arizona's Ad Valorem Tax imposed on the coal purchased from Peabody for use at the Mohave Project and that Peabody paid to the State of Arizona. In paying the Nevada use tax, Edison included the amount reimbursed to Peabody for the Arizona Ad Valorem Tax in the sales price subject to use tax.

59. Edison reimbursed Peabody for the Arizona Transaction Privilege Tax imposed on the coal purchased from Peabody for use at the Mohave Project and that Peabody paid to the State of Arizona. In paying the Nevada use tax, Edison included the amount reimbursed to Peabody for the Arizona Transaction Privilege Tax in the sales price subject to use tax.

60. Edison is entitled to exclude from the sales price the amounts paid to Peabody for Arizona's Ad Valorem Tax because such amounts are not includable in the sales price subject to Nevada use tax under NRS 372.065.

61. Edison is entitled to exclude from the sales price the amounts paid to Peabody for the Arizona Transaction Privilege Tax because such amounts are not includable in the sales price subject to Nevada use tax under NRS 372.065.

62. Edison will establish at trial the amount of Arizona's Ad Valorem Tax and Arizona Transaction Privilege Tax it reimbursed to Peabody and will thereby establish the amount of the refund to which it is entitled for use taxes it paid to the Department for the periods March 1998 through and including December 2000, together with interest at the appropriate statutory rate.

SEVENTH CLAIM FOR RELIEF

(Edison is Entitled to Exclude From the Measure of Use Tax the Transportation Costs it Incurred in Transporting the Coal to the Mohave Project)

63. Edison re-alleges and incorporates by reference herein the allegations set forth in paragraphs 1 through 38, inclusive.

64. Edison paid use tax on amounts it paid for transportation costs to BMP.

65. Edison is entitled to exclude from the sales price the amounts it paid for the transportation costs pursuant to NRS 372.065 and NAC 372.101.

66. Edison will establish at trial the amount of the transportation costs it paid to BMP and will thereby establish the amount of the refund to which it is entitled for use taxes it paid to the Department for the periods March 1998 through and including December 2000, together with interest at the appropriate statutory rate.

WHEREFORE, Edison requests that judgment be entered in its favor as follows:

1. That the Court order Defendant State of Nevada to issue Edison a refund of use tax previously paid in the total amount of $23,896,668.08 together with interest at the appropriate statutory rate;

2. For costs of suit; and

3. For such additional relief as the Court deems appropriate under the circumstances.

Dated: April 9, 2012

Charles C. Read (admitted pro hac vice)
JONES DAY
555 S. Flower Street
Los Angeles, California 90071
(213) 243-2818
Attorney for Plaintiff

CERTIFICATE OF MAILING

I hereby certify that on the 10th day of April, 2012, I hand-delivered a copy of the foregoing addressed as follows:

Gina Session, Esq.
Office of the Attorney General
100 N. Carson Street
Carson City, NV 89701

Johanna Maher

Johanna Maher

EXHIBIT A

DEPARTMENT OF TAXATION
Carson City, Nevada 89706-7937
Phone: (775) 687-4820 • Fax: (775) 687-5981
In-State Toll Free: 800-992-0900
Web Site: http://tax.state.nv.us

KENNY C. GUINN
Governor

CHARLES E. CHINNOCK
Executive Director

December 17, 2002

Dolores Sandler
Edison International – Tax Dept
P O Box 800
Rosemead, CA 91770

Re: Southern California Edison Refund Requests
Account 465-197-254

Dear Ms. Sandler:

This letter is in response to your eight refund requests covering the periods March 1, 1998 through September 30, 1999 for a total of $4,904,490.59. You request a refund of "use taxes" paid to the State of Arizona on your purchases of coal. You purchase the coal from Peabody Western Coal Company in Arizona. The coal is shipped to your location via pipeline, F.O.B. Destination. Peabody charges you Arizona tax of 3.437%. The coal is consumed in your Mojave Generating Station, located in Clark County, Nevada.

Your refund requests are denied for the following reasons:

1) Nevada only allows credit for sales taxes legitimately paid to a state or local government outside of Nevada, Nevada Administrative Code (NAC) 372.055. Research shows that the taxes charged by Peabody are actually "severance" taxes for the removal of minerals and metals from Arizona not sales taxes. This tax is an excise tax, not a sales or use tax.

2) Nevada Revised Statute (NRS) 372.025 (3)(d), under the definition of gross receipts for Nevada sales tax purposes, excludes any tax imposed by the United States. However, this exclusion does not include any manufacturers' or importers' excise tax. The excise taxes paid to Peabody are properly included in your calculation for use taxes due Nevada.

I am enclosing a petition form and related statutes if you wish to appeal this decision. Any appeal needs to be in writing and post marked within 45 days of the date of this letter.

If you have any questions, please call me at (775) 687-6539 or e-mail me at kphillip@tax.state.nv.us .

Sincerely,

Katy Phillips
Supervising Auditor II

enclosures

EXHIBIT B

KENNY C. GUINN
Governor

CHARLES E. CHINNOCK
Executive Director

STATE OF NEVADA
DEPARTMENT OF TAXATION
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Reno, Nevada 89502
Phone: (775) 688-1295
Fax: (775) 688-1303

December 30, 2002

Dolores Sandler
Edison International – Tax Dept
P O Box 800
Rosemead, CA 91770

Re: Southern California Edison Refund Requests
Account 465-197-254

Dear Ms. Sandler:

This letter is in response to your refund request covering the periods October 1, 1999 through December 31, 1999 for a total of $945,837.56. You request a refund of "use taxes" paid to the State of Arizona on your purchases of coal. You purchase the coal from Peabody Western Coal Company in Arizona. The coal is shipped to your location via pipeline, F.O.B. Destination. Peabody charges you Arizona tax of 3.437%. The coal is consumed in your Mojave Generating Station located in Clark County, Nevada.

Your refund requests are denied for the following reasons:

1) Nevada only allows credit for sales taxes legitimately paid to a state or local government outside of Nevada, Nevada Administrative Code (NAC) 372.055. Research shows that the taxes charged by Peabody are actually "severance" taxes for the removal of minerals and metals from Arizona not sales taxes. This tax is an excise tax, not a sales or use tax.

2) Nevada Revised Statute (NRS) 372.025 (3)(d), under the definition of gross receipts for Nevada sales tax purposes, excludes any tax imposed by the United States. However, this exclusion does not include any manufacturers' or importers' excise tax. The excise taxes paid to Peabody are properly included in your calculation for use taxes due Nevada.

I am enclosing a petition form and related statutes if you wish to appeal this decision. Any appeal needs to be in writing and post marked within 45 days of the date of this letter.

If you have any questions, please call me at (775) 687-6539 or e-mail me at kphillip@tax.state.nv.us .

Sincerely,

Katy Phillips
Supervising Auditor II

enclosures

EXHIBIT C

KENNY C GUINN
Governor
BARBARA SMITH CAMPBELL
Chair, Nevada Tax Commission
CHARLES E CHINNOCK
Executive Director

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Fax (775) 688-1303

May 16, 2003

RECEIVED
MAR 0 1 2004
STATE OF NEVADA
DEPARTMENT OF TAXATION

Dolores Sandler
Edison International – Tax Dept
P O Box 800
Rosemead, CA 91770

Re: Southern California Edison Refund Requests
Account 465-197-254

Dear Ms. Sandler:

This letter is in response to your refund request covering the periods January 1, 2000 through December 31, 2000 for a total of $3,526,625.70. You request a refund of "use taxes" paid to the State of Arizona on your purchases of coal. You purchase the coal from Peabody Western Coal Company in Arizona. The coal is shipped to your location via pipeline, F.O.B. Destination. Peabody charges you Arizona tax of 3.437%. The coal is consumed in your Mojave Generating Station located in Clark County, Nevada.

Your refund requests are denied for the following reasons:

1) Nevada only allows credit for sales taxes legitimately paid to a state or local government outside of Nevada, Nevada Administrative Code (NAC) 372.055. Research shows that the taxes charged by Peabody are actually "severance" taxes for the removal of minerals and metals from Arizona not sales taxes. This tax is an excise tax, not a sales or use tax.

2) Nevada Revised Statute (NRS) 372.025 (3)(d), under the definition of gross receipts for Nevada sales tax purposes, excludes any tax imposed by the United States. However, this exclusion does not include any manufacturers' or importers' excise tax. The excise taxes paid to Peabody are properly included in your calculation for use taxes due Nevada.

You have petitioned the Department's denial(s) for refund for prior periods on this same issue. We are in the process of scheduling an oral hearing on the matter. We will consider this denial in the same status as your previous requests and these periods will be added to the issue(s) under petition.

If you have any questions, please call me at (775) 687-6539 or e-mail me at kphillip@tax.state.nv.us .

Sincerely,

Katy Phillips
Supervising Auditor II

EXHIBIT D

KENNY C. GUINN
Governor
THOMAS R. SHEETS
Chair, Nevada Tax Commission
DINO DICIANNO
Executive Director

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Fax: (702) 486-3377

CERTIFIED MAIL 7003 1680 0001 3689 4453

November 29, 2006

Norman J. Azevedo
Attorney at Law
712 E. Musser Street
Carson City NV 89701

IN THE MATTER OF: ***Southern California Edison***

At a closed hearing on April 5, 2005 that was continued to May 9, 2005, the Nevada Tax Commission ("Commission") heard and decided the appeal of Southern California Edison ("Edison") from the denial by a Hearing Officer of the Department of Taxation ("Department") of Edison's claims for refund of Nevada use tax. Gregory L. Zunino, Senior Deputy Attorney General, appeared on behalf of the Department and Norman J. Azevedo, Esq., appeared on behalf of Edison. Also present, as intervenors supporting the denial of Edison's claims, were Paul Johnson, Deputy District Attorney for Clark County, and Terri Williams, Assistant City Attorney for the City of Henderson.

Edison has been paying Nevada use tax on the purchase of coal imported from Arizona since 1970. Edison timely filed administrative claims for refund of this tax for the periods of March, 1998 through September, 2003 on the grounds that section 372.270 of the Nevada Revised Statutes ("NRS"), a sales and use tax exemption, is applicable to Edison's purchase of coal as more fully described below.[1] The Department denied these claims for refund on December 17, 2002, December 30, 2002 and May 16, 2003. Edison appealed the denials, and a Hearing Officer heard the case on December 22, 2003 and January 28, 2004. In a decision issued on July 14, 2004, the Hearing Officer concluded that, as applied by the Department in this case, NRS 372.270 violated the Commerce Clause of the U.S. Constitution. Nonetheless, the Hearing Officer denied the claims for refund because he reasoned that the appropriate remedy would be to prohibit all taxpayers from using the exemption. We find that there are appropriate statutory and Nevada constitutional grounds to grant Edison's claims for refund.

[1] Reference in this Decision to the sales and use tax statutes contained in NRS chapter 372 shall be deemed to include reference to the identical provisions in chapter 374 (the local school support tax portion of the Nevada sales and use tax). There are no differences between such statutes for purposes of this Decision.

FINDINGS OF FACT

Edison operates the Mohave Generating Station (the "Mohave Plant") in Laughlin, Nevada, which is located within Clark County. Edison is also the majority owner of the Mohave Plant.[2] The Mohave Plant generates electricity by burning coal. All of the coal burned at the Mohave Plant is purchased from Peabody Western Coal Company ("Peabody"), which operates the Black Mesa coal mine located in the State of Arizona on lands belonging to the Navajo Nation and Hopi Tribe. The coal is transported from the Black Mesa mine to the Mohave Plant in a coal slurry (ground coal suspended in water) through a 273-mile long pipeline owned by Black Mesa Pipeline, Inc. The slurry travels through the pipeline at a rate of 580 to 650 tons of coal per hour, requiring one billion gallons of water annually.

After extraction, but prior to transport, the raw coal is broken into small pieces by Peabody and sent by conveyor to a coal weighing and sampling tower operated by Commercial Testing & Engineering, a third party. There the coal is tested to see whether it meets the standards pertaining to, for example, BTUs and sulfur content as specified in the agreement between Peabody and Edison. After testing, Peabody further grinds the coal to a sand-like consistency and delivers it to the pipeline. Black Mesa Pipeline mixes the coal with ground water pumped out of local wells – the mix is approximately 50/50. The water used to transport the coal is purchased by Peabody.

The coal purchased by Edison never becomes something other than coal between the time it is mined and the time it is delivered to Edison. The parties submitted expert testimony and written evidence on this issue and presented argument at the hearing. The mined coal is physically ground and suspended in water for transport. This "coal slurry" is not, as the Department argues, a manufactured mineral by-product. Rather, we find that Edison is purchasing a raw mineral – in this case coal – and the processes relating to the creation of the slurry do not convert the coal to something other than a raw mineral.

When the slurry arrives at the Mohave Plant, a centrifuge removes approximately 94% of the coal from the water. The remaining 6% of the coal is pumped into a settling tank where it settles to the bottom and is removed. Once dry, the coal is pulverized and blown into the burners for the boilers that make steam for the generating units. All of the water that comes through the pipeline is either used in the circulatory cooling system at the Mohave Plant or evaporated in the boilers when the coal is burned. Thus, the Mohave Plant uses 100% of the materials that are delivered to it through the pipeline.

CONCLUSIONS OF LAW

Edison claims that Nevada use tax does not apply to its purchase of coal for use at the Mohave Plant pursuant to NRS 372.185(2), 372.270, NRS 372.265, the federal Commerce Clause and Article 10, section 5(1) of the Nevada Constitution. NRS 372.185 imposes the use tax:

> 1. An excise tax is hereby imposed on the storage, use or other consumption in this State of tangible personal property purchased from any retailer on or after July 1, 2955, for storage, use or other consumption in this State at the rate of 2 percent of the sales price of the property.
>
> 2. The tax is imposed with respect to all property which was acquired out of state in a transaction that would have been a taxable sale if it had occurred within this State.

[2] Edison owns a 56% undivided interest in the Mohave Plant. Edison jointly owns the plant with Nevada Power Company, Salt River Project Agriculture Improvement and the Department of Water and Power of the City of Los Angeles.

NRS 372.270 is an exemption that applies to both the sales and use taxes:

> **Proceeds of mines.** There are exempted from the taxes imposed by this chapter the gross receipts from the sale of, and the storage, use or other consumption in this State of, the proceeds of mines which are subject to taxes levied pursuant to chapter 362 of NRS.

NRS 372.265 provides:

> **Constitutional and statutory exemptions.** There are exempted from the taxes imposed by this chapter the gross receipts from the sale of, and the storage, use or other consumption in this State of, tangible personal property the gross receipts from the sale of which, or the storage, use or other consumption of which, this State is prohibited from taxing under the Constitution or laws of the United States or under the Constitution of this State.

Article 10, § 5(1) of the Nevada Constitution provides:

> The legislature shall provide by law for a tax upon the net proceeds of all minerals, including oil, gas and other hydrocarbons, extracted in this state, at a rate not to exceed 5 percent of the net proceeds. No other tax may be imposed upon a mineral or its proceeds until the identity of the proceeds as such is lost.

The Commission was thoroughly briefed on the facts of this case and the interaction of the net proceeds of minerals tax and the sales and use tax by all parties. In addition, the Commission heard argument from, and asked questions of, all parties regarding the same. Edison argues that under NRS 372.185(2), use tax does not apply to its purchase of Arizona coal for the Mohave Plant because, had it purchased the coal in Nevada, that transaction would not have been taxable. A purchase of Nevada coal would not have been taxable because NRS 372.270 exempts from the sales and use tax "the proceeds of mines which are subject to taxes levied pursuant to chapter 362 of NRS," and had Edison purchased its coal from a Nevada mine, this exemption would have applied. Furthermore, Edison argues that due to restrictions imposed by the dormant Commerce Clause, which is taken into account under NRS 372.265, Nevada cannot impose its use tax on the purchase of imported coal when a sale or purchase of Nevada coal is exempt from such tax.

On the other hand, the Department argues that Edison's purchase of Arizona coal is taxable because NRS 372.270 exempts proceeds of mines that are "subject to taxes levied pursuant to chapter 362 of NRS," and coal imported from Arizona is *not subject* to the net proceeds of minerals tax imposed by chapter 362. We agree with Edison because the applicability of the use tax in this case is not dependent on whether the Arizona coal is subject to the net proceeds of minerals tax, but rather whether an equivalent in-state transaction would be subject to sales or use tax. *See* NRS 372.185(2).

The exemption in NRS 372.270 applies to minerals subject to taxes levied by NRS chapter 362 (the Net Proceeds of Minerals Tax).[3] The 5% net proceeds of minerals tax applies to the net proceeds of

[3] Although NRS 372.270 uses the term "proceeds of mines," in 1989, pursuant to an amendment to Article 10, § 5 of the Nevada Constitution, and related amendments to NRS chapter 362, NRS chapter 362 was amended to tax the "proceeds of minerals." The failure to change the reference from "mines" to "minerals" in NRS 372.270 appears to be an oversight. If the term "proceeds of mines" were given a substantive meaning in NRS 372.270, the remaining portion of that section would be rendered meaningless – NRS 372.270 still refers to NRS chapter 362, and that chapter now taxes net proceeds of "minerals" not "mines." There is no indication that the legislature

minerals extracted in Nevada. *See* NRS 362.110(1). *See also* Nev. Const., Art. 10, § 5(1) (directing the legislature to "provide by law for a tax upon the net proceeds of all minerals, including oil, gas and other hydrocarbons, extracted in this state..."). Coal is a mineral. *See* NRS 362.010(1) & (2) (referring to coal and hydrocarbons, respectively); Nev. Const., Art. 10, § 5(1) (referring to hydrocarbons). If a Nevada mine sells its coal to Edison for use at the Mohave Plant, no sales or use tax applies. NRS 372.270. Accordingly, by operation of NRS 372.185(2), Edison's purchase of coal from an out-of-state mine for use at the Mohave Plant is not a taxable transaction.[4]

Both sides looked to Article 10, Section 5(1) of the Nevada Constitution to support their arguments. That section provides:

> The legislature shall provide by law for a tax upon the net proceeds of all minerals, including oil, gas and other hydrocarbons, extracted in this state, at a rate not to exceed 5 percent of the net proceeds. ***No other tax may be imposed upon a mineral or its proceeds*** until the identity of the proceeds as such is lost. (Emphasis added.)

Under this constitutional provision, the only tax that may be imposed upon minerals or their proceeds is the 5% tax that the first sentence directs the legislature to impose. Both parties and the Commission agree that the net proceeds of minerals tax does not apply to minerals extracted outside of Nevada.

The parties disagreed regarding the application of the second sentence. Edison argued that the second sentence does not limit the prohibition against "other" taxes to minerals extracted in Nevada. Therefore, Edison concluded, since Edison was purchasing coal that had not lost its identity as coal, "[n]o other tax," namely the use tax, could be imposed upon the use of its imported coal. The Department, on the other hand, argued that the coal being delivered to Edison at the Mohave Plant was a by-product that had "lost its identity" as the mineral or its proceeds such that the second sentence of Article 10, § 5(1) did not apply.

We found, above, that the coal purchased by Edison and delivered to the Mohave Plant through the pipeline is a mineral. We also found, necessarily, that the coal slurry is not, as the Department argued, a manufactured mineral by-product. (We do not find the Department's citation to AGO No. 72, dated June 22, 1955, involving a mineral by-product to be authoritative here.) Because Edison purchased and received raw coal, we agree with Edison that Article 10, § 5(1) of the Nevada Constitution precludes imposition of the use tax on the purchase and use of that coal.

Further support for this conclusion can be found in the legislative history to the 1989 amendments to NRS chapter 362 (SB 61), and the history to the amendments to Article 10 of the Nevada Constitution (SJR 22). Section 1 of SB 61 of the 1989 Session of the Nevada Legislature provides:

> The legislature hereby declares that:
>
> 1. The legislature's intent in proposing and approving Senate Joint Resolution No. 22 of the 64th session is to provide a separate method of

---

substantially revised. Thus, NRS 372.270 is still applicable and it exempts proceeds of minerals subject to the taxes imposed by NRS chapter 362. *Accord Bartlett v. Brodigan*, 37 Nev. 245, 249 (1914).

[4] Because of our construction of the Nevada statutes and Constitution, we do not need to reach the Commerce Clause violation raised by Edison and found by the Hearing Officer. *See, e.g., Armco Inc. v. Hardesty*, 467 U.S. 638, 642 (1984) ("a State may not tax a transaction or incident more heavily when it crosses state lines than when it occurs entirely within the State."); *Halliburton Oil Well Cementing Co. v. Reily*, 373 U.S. 64, 70 (1963) ("The conclusion is inescapable: equal treatment for in-state and out-of-state taxpayers similarly situated is the condition precedent for a valid use tax on goods imported from out-of-state.").

taxation[illegible]at is intended to be the only manner of [illegible]ation of mines, other than patented mines and mining claims upon which less than $100 worth of labor has been actually performed in the preceding year, and minerals, including oil, gas and other hydrocarbons until the mineral has been extracted and subjected to the ordinary mining processes involved in the extraction.

2. The legislature intends that the tax imposed by this act and the proposed constitutional limitations upon the taxation of the minerals and their proceeds ***preclude a tax upon***:

(a) The extraction and ordinary mining processes involved in the extraction of minerals, including oil, gas and other hydrocarbons;

(b) ***Minerals, including oil, gas and other hydrocarbons, until after the completion of the ordinary mining processes involved in the extraction of the mineral, and if exchanged at that time, until after the completion of the exchange***; and

(c) The proceeds received in exchange for minerals, including oil, gas and other hydrocarbons, if the minerals are exchanged upon the completion of the ordinary mining processes, until after the completion of the exchange.

3. The legislature's intent in proposing and approving Senate Joint Resolution No. 22 of the 64th session is to provide the opportunity for this and other legislatures to assess a tax on the net proceeds of minerals.

4. The legislature intends that the tax imposed by this act and the proposed constitutional imitations upon the taxation of minerals and their proceeds to not preclude or in any way affect the taxation of motor vehicle or diesel fuel, jewelry, profits or revenues of business, or any other tax upon property, sales or businesses, ***except as provided in subsection 2***. (Emphasis added.)

This passage makes clear that minerals extracted in Nevada that have not been subject to more than "the ordinary mining processes involved in the extraction of the mineral" are not subject to tax until after completion of the first exchange.

The ordinary mining processes described in Section 1 of SB 61 are the processes set forth in NRS chapter 362 for which expense deductions are allowed in calculating the net proceeds of minerals tax (as may be amended by the Legislature and interpreted by the Commission from time to time). *See* NRS 362.120 and the applicable NACs. Specifically, on this topic, Legislative Counsel Malkiewich stated as follows:

> While the end of 'ordinary mining processes' may change, that is where the exemption ends -- once those processes are done, that is the part of the process that SJR-22 is intended to exempt. Yes, this is going to be effected by cases, **but I think more important to remember is that Nevada law does not track federal law exactly on when the end of ordinary mining processes are.** We define very clearly in our statutes what is allowable for

determi g gross yield, and it includes the valu ceived in exchange of the final sale. **Well, the sale of the mineral may well be past the end of ordinary mining processes under federal law, but for the purposes of determining gross yield, we include those processes. We also include a number of those processes in the allowable deductions to get to net proceeds. So, this is not necessarily tying our hands or saying that federal law is going to shift our tax, this is just saying that is the point that we feel before that we can't touch.** Wherever this cut-off is, wherever this end of ordinary mining processes is, before that point we cannot tax, that that is what SJR-22 is intended to do.

Senate and Assem. Comm. on Tax'n Minutes dated February 2, 1989 @ pp. 10.

Accordingly, the ordinary mining processes are determined by legislative determination which is intended to be consistent with current mining practices. Ordinary mining processes are not to be determined by relying upon the Federal Income Tax Laws addressing federal depletion. *See* IRC §613.

DECISION

In conclusion, based upon the plain language of NRS 372.185(2), the coal that Edison imports from Arizona for use at the Mohave Plant is exempt from use tax because the equivalent in-state transaction is exempt pursuant to NRS 372.270, Article 10, § 5(1) of the Nevada Constitution and NRS 372.265. Interest will accrue on the amount to be refunded pursuant to NRS 372.660 and NRS 374.665.

FOR THE COMMISSION:

DINO DICIANNO
Executive Director
Nevada Department of Taxation

cc: Dennis Belcourt, Deputy Attorney General
Paul Johnson, Esq., Clark County District Attorney's Office
Certified Mail 7003 1680 0001 3689 4446
Terri A. Williams, Esq., City of Henderson
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EXHIBIT E

JIM GIBBONS
Governor
THOMAS R. SHEETS
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February 27, 2009

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Certified Mail 7005 1820 0003 8674 0856

IN THE MATTER OF: ***Southern California Edison***

The Nevada Supreme Court on April 24, 2008 issued a decision in *Chanos v. Nevada Tax Commission, et.al,* 181 P.3d 675, Nev., April 24, 2008 (no. 48292), voiding a decision by the Nevada Tax Commission ("Commission") approving a refund of Nevada use tax. The refund at issue was for use tax paid by Southern California Edison ("Edison") for coal slurry product purchased in Arizona and used at Edison's power plant in southern Nevada. Because its previous decision was void, the Commission scheduled this matter for a new hearing. The parties, which included Edison, the Department of Taxation ("Department"), Clark County and the city of Henderson, stipulated to a briefing and hearing schedule.

A hearing was held before the Commission on September 9, 2008. The Department was represented by counsel, Gina C. Session, Chief Deputy Attorney General. Clark County was represented by Deputy District Attorney Paul Johnson. The City of Henderson was represented by Assistant City Attorney Terri A. Williams. Edison was represented by Norman Azevedo, Esq. and Christopher Campbell, Esq. Post-hearing briefs were filed, and on December 1, 2008, closing arguments were presented to the Commission. The matter having been submitted to the Commission, the Commission by a vote of 6-2 now enters the following findings of fact, conclusions of law and decision.

FINDINGS OF FACT

1. The coal slurry product purchased by Edison in this case was a processed and/or manufactured product consisting of approximately fifty percent water and fifty percent finely pulverized coal.

2. The coal slurry product was prepared in Arizona, from coal and water derived in Arizona, and delivered to Edison via a coal slurry pipeline more than two hundred and fifty miles long.

3. All of the coal slurry product was used by Edison at its power plant in Nevada.

4. Edison filed claims for refund on use taxes paid between March 1, 1998 and December 31, 2000.

5. The only stated basis for Edison's claims in its original requests for refund was for credit against taxes paid to other jurisdictions.

6. After Edison's initial refund requests were denied, Edison untimely sought to amend its claims to assert new grounds for refund not previously asserted.

7. There is not now, nor was there during the time period covered by Edison's refund requests, any source of commercial coal production in Nevada.

8. There is not now, nor was there during the time period covered by Edison's refund requests, any vendor of coal or coal products produced from Nevada sources, nor did the State of Nevada collect any net proceeds tax from any producer of coal or coal products during the relevant time period.

9. None of the taxes or fees for which Edison sought a credit for were sales taxes or net proceeds taxes for which a credit could be given.

10. Neither Edison, nor its coal slurry provider, were subject to any discriminatory tax in Nevada; inasmuch as, there were neither providers nor potential providers of coal or coal slurry originating from Nevada sources.

CONCLUSIONS OF LAW

1. The coal slurry product at issue in this case is not a raw mineral that would be subject to the exemption in NRS 372.270[1] and/or Article 10, Section 5 of the Nevada Constitution.

2. The payment of use tax by Edison does not violate the Commerce Clause of the United States Constitution, nor any Nevada statutory or constitutional provision.

3. Edison's claims related to the Commerce Clause of the United States Constitution, NRS 372.265, NRS 372.270 and Article 10, Section 5 of the Nevada Constitution or any other basis not raised in Edison's original claims for refund were waived and are barred by NRS 372.635, NRS 372.645 and NRS 372.650.

[1] The sales and use tax statutes relevant to this case found in chapters 372 and 374 of the NRS are identical; hence, only the statutes in Chapter 372 are cited herein.

4. None of the taxes and/or fees paid by Edison or Peabody Coal Company in Arizona were entitled to a credit against Nevada's use tax. Use tax was properly collected in Nevada on the coal slurry product purchased by Edison in Arizona and used in Nevada.

DECISION

Based on the above Findings of Fact and Conclusions of Law, Edison's request for refund of use tax on coal slurry product purchased in Arizona and used in Nevada is DENIED.

FOR THE COMMISSION:

DINO DICIANNO
Executive Director
Nevada Department of Taxation

cc: Jennifer Crandell, Senior Deputy Attorney General
Gina Session, Chief Deputy Attorney General
Tax Managers
Anthony Smith, Southern California Edison
Dolores Sandler, Southern California Edison
Christopher Campbell, O'Melveny & Myers LLP

EXHIBIT F

AGREEMENT REGARDING CLAIMS SET 2 AND CLAIMS SET 3

This agreement ("Agreement") is entered into between the Nevada Department of Taxation (the "Department") and Southern California Edison Company ("SCE") (the Department and SCE each referred to as a "Party," and collectively the "Parties").

WHEREAS, SCE commenced an action in the First Judicial District Court of the State of Nevada ("Court"), captioned *Southern California Edison v. The State of Nevada, ex rel. Department of Taxation,* Case No. 09-0C-00016-1B (the "Action") and filed its Amended Complaint (Corrected Version) on May 22, 2009 ("Complaint");

WHEREAS, SCE seeks in its Action to recover use taxes pursuant to Sections 372.680(1) and 374.685(1) of the Nevada Revised Statutes ("NRS"), including claims for the refund of the use taxes it paid to the Department for the periods March 1998 through and including December 2000 ("Claims Set 1"), claims for the refund of the use taxes it paid to the Department for the periods January 2001 through and including September 2003 ("Claims Set 2"), and claims for the refund of the use taxes it paid to the Department for the periods October 2003 through and including December 2005 ("Claims Set 3");

WHEREAS, pursuant to NRS 30.030, SCE seeks in the Action a declaration from the Court that, notwithstanding the Department's assertions to the contrary, SCE has exhausted its administrative remedies with respect to Claims Set 2 and that such claims are properly before the Court;

WHEREAS, pursuant to NRS 30.030, SCE seeks in the Action a declaration that the decision of the Court in the Action with respect to any factual or legal disputes shall apply, subject to any appellate review thereof, to Claims Set 2 (if the Court finds such claims are not properly before the Court) and to Claims Set 3;

WHEREAS, the Department intends to move to strike references to Claims Set 2 and Claims Set 3 from SCE's Complaint on the grounds that the Court lacks jurisdiction over these claims, *i.e.*, paragraphs 6, 7, 25, 26, 42, 43, 44, 45, 47 (partial), 48, 49, 50, 51, 54 (partial), 57 (partial), 61 (partial), 65 (partial), 69 (partial), 75 (partial), 79 (partial), 81, 82, 83, 84, 85, 87, 88, 89, and Exhibits G and H of SCE's Complaint;

WHEREAS, SCE included Claims Set 2 and Claims Set 3 in its Complaint so that a final decision regarding Claims Set 1 would apply to Claims Set 2 and Claims Set 3 without having to re-litigate identical issues for Claims Set 2 and Claims Set 3 before the Department, the Nevada Tax Commission, the district court, and appellate court(s); and

WHEREAS, the Parties believe if the final judgment on Claim Set 1 in the Action (including appellate review) is based upon conclusions of law and findings of fact applicable to Claims Set 2 and Claims Set 3, then the final judgment should be dispositive of Claims Set 2 and Claims Set 3.

NOW THEREFORE, in consideration of the mutual promises and other good and valuable consideration in this Agreement, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. The Parties agree that SCE may amend its Complaint. SCE shall file within 10 days of execution of this Agreement the Second Amended Complaint attached hereto as Exhibit 1.

2. To the extent a final judgment in the Action (including appellate review) is based upon conclusions of law and findings of fact applicable to Claims Set 2 and Claims Set 3, the Parties agree that the final judgment should be dispositive of Claims Set 2 and Claims Set 3. In other words:

a. If a final judgment requires the Department to refund the use taxes SCE paid to the Department for the periods March 1998 through and including December 2000, or any portion thereof, and is based upon conclusions of law and findings of fact applicable to Claims Set 2 and Claims Set 3, then the Department shall at that same time provide applicable refunds to SCE for the period of January 2001 through and including December 2005 without additional administrative or legal action.

b. If a final judgment finds that the Department is not required to refund the use taxes SCE paid to the Department for the periods of March 1998 through and including December 2000, and is based upon conclusions of law and findings of fact applicable to Claims Set 2 and Claims Set 3, then SCE will not pursue refunds for the period of January 2001 through and including December 2005 and will not bring any further administrative or legal action on those claims.

3. This Agreement does not alter the terms of the stipulation entered into by the Parties dated September 30, 2008 regarding the Amnesty Payment for use taxes made to the Department for the periods March 2005 through and including December 2005, or to SCE's claims for refund thereon.

4. Miscellaneous Provisions.

4.1 Counterparts. This Agreement may be executed by the Parties in counterparts, each of which shall be deemed an original regardless of the date of its execution and delivery, and said counterparts together shall constitute one and the same agreement. Copies of such counterparts, even if delivered by facsimile or by email as .pdf or .tif documents, or in any equivalent format, shall be deemed originals and fully binding.

4.2 Headings. The headings in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement or any provision hereof.

4.3 Construction and Interpretation. This Agreement is a product of negotiation between the Parties and is not to be interpreted more strongly in favor of one or the other in any later interpretation or enforcement. The making, execution and delivery of this Agreement have been induced by no representations, statements, warranties, or agreements other than those set forth in this Agreement.

4.4 Applicable Law. This Agreement shall be governed by, interpreted and construed in accordance with the laws of the State of Nevada. The Parties agree that the state and/or federal courts of Nevada shall be the sole and exclusive forums for the resolution of any action to

construe or enforce the terms or provisions of this Agreement, or arising out of the alleged breach of this Agreement.

4.5 Costs and Expenses. Each Party shall bear its own costs and expenses arising out of the negotiation, execution, delivery, and performance of this Agreement and the consummation of all transactions contemplated hereby.

4.6 Integration Clause; No Oral Modifications. This Agreement constitutes the entire agreement and understanding between the Parties concerning the subject matter hereof and supersedes any and all prior or contemporaneous agreements, understandings or negotiations, whether written or oral, between the Parties or their counsel. This Agreement may only be modified, amended, or otherwise changed by a signed writing, executed by all of the Parties hereto. No provision hereof may be waived unless in writing and signed by the Party whose rights are thereby waived. Waiver of one provision hereof shall not be deemed to be a waiver of any other provision.

4.7 Implementation. The Parties agree to sign such further documents, and to otherwise reasonably cooperate, as necessary to carry out the purpose and intent of this Agreement.

4.8 Disclosure. The Parties agree that either or both of them may submit an informational copy of this Agreement to Judge Russell after it has been executed by both Parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized representatives.

DATED: April 6th, 2012

Nevada Department of Taxation

By: D.C. Smith

DATED: April 6, 2012

Southern California Edison Company

By: Marlen D. Read

Case No. 09 OC 00016 1B

Dept. No. 1

FILED

2012 MAY 10 AM 8:07

ALAN GLOVER CLERK

BY

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

SOUTHERN CALIFORNIA EDISON,

Plaintiff(s),

vs.

STATE OF NEVADA, EX REL. DEPARTMENT OF TAXATION,

Defendant (s).

/

ORDER DENYING MOTION TO STRIKE

This matter is before this Court on a Motion to Strike filed by the State of Nevada, ex rel., its Department of Taxation on April 12, 2012. The Plaintiff, Southern California Edison, filed its Opposition to Motion to Strike on April 25, 2012. A Reply to Opposition to Motion to Strike was filed on May 4, 2012, along with a Request to Submit.

The Motion to Strike seeks to strike a number of allegations set forth in Plaintiff's Second Amended Complaint concerning the prior historical proceedings and actions before the Nevada Tax Commission and the Department of Taxation based on this matter proceeding as a trial de novo before this Court.

It appears to the Court that the historical proceedings and the prior determinations have some relevance to the matter, but this Court in a trial de novo will give them the weight that they are due. Therefore, good cause appearing,

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IT IS HEREBY ORDERED that the Motion to Strike is DENIED.

DATED this 9th day of May, 2012.

JAMES T. RUSSELL
District Judge

CERTIFICATE OF MAILING

I hereby certify that on the 10th day of May, 2012, I placed a copy of the foregoing in the United States Mail, postage prepaid, addressed as follows:

Norman Azevedo, Esq.
510 West Fourth Street
Carson City NV 89703

Gina Sessions, Esq.
100 N. Carson Street
Carson City NV 89701

CHRISTINE ERVEN
Judicial Assistant

CATHERINE CORTEZ MASTO
Attorney General
GINA C. SESSION
Chief Deputy Attorney General
Nevada Bar No. 5493
100 N. Carson Street
Carson City, Nevada 89701-4717
Attorneys for the Nevada Department of Taxation

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

SOUTHERN CALIFORNIA EDISON,

Plaintiff,

vs.

THE STATE OF NEVADA, EX REL. DEPARTMENT OF TAXATION,

Defendant.

Case No.: 09 OC 00016 1B

Department No. 1

DEFENDANT'S ANSWER TO SECOND AMENDED COMPLAINT

The State of Nevada, Ex rel. its Department of Taxation ("the Department"), through its attorneys, Catherine Cortez Masto, Attorney General of the State of Nevada, and Chief Deputy Attorney General, Gina Session, hereby answers Plaintiff's Second Amended Complaint in the above-entitled action, and admits, denies, and avers as follows:

1. Defendant admits the allegations of paragraphs 1 and 2 of Plaintiff's Second Amended Complaint.

2. Answering paragraph 3 of Plaintiff's Second Amended Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of Plaintiff's allegations, that, "[A]ll of the coal used and consumed at the power plant was purchased, extracted and shipped from a coal mine located entirely within the State of Arizona," and on that basis denies them. Defendant admits Plaintiff's allegation that, "Under NRS 372.185(2) and 374.190(2), Nevada use tax does not apply to the use or consumption of property acquired outside of Nevada in a transaction that would not have been a taxable sale if it had

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Carson City, Nevada 89701-4717

occurred within Nevada." Defendant denies the remainder of the allegations of paragraph 3 of Plaintiff's Second Amended Complaint.

3. Defendant denies the allegations of paragraphs 4 and 5 of Plaintiff's Second Amended Complaint.

4. Answering paragraph 6 of Plaintiff's Second Amended Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of Plaintiff's allegations, and on that basis denies them.

5. Defendant admits the allegations of paragraph 7 of Plaintiff's Second Amended Complaint.

6. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 8, 9, 10, 11, 12, 13, 14 and 15 of Plaintiff's Second Amended Complaint, and on that basis denies them.

7. Defendant admits the allegations of Paragraph 16 of Plaintiff's Second Amended Complaint.

8. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 17 of Plaintiff's Second Amended Complaint, and on that basis denies them.

9. Defendant denies the allegations of paragraph 18 of Plaintiff's Second Amended Complaint.

10. Defendant admits the allegations of paragraphs 19 of Plaintiff's Second Amended Complaint.

11. Answering paragraph 20 of Plaintiff's Second Amended Complaint Defendant denies Plaintiff's allegations that on January 31, 1003 Edison filed a timely petition for redetermination for the periods covered by the denial letters—March 1998 through December 1999. Defendant admits the remainder of the allegations in paragraph 20.

12. Answering paragraph 21 of Plaintiff's Second Amended Complaint Defendant denies Plaintiff's allegations that the Department deemed Edison to have appealed its denial of the periods from January 2000 through and including December 2000 by considering them

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as part of the petition for redetermination previously filed by Edison. Defendant admits the remainder of the allegations in paragraph 21.

13. Defendant admits the allegations in paragraphs 22, 23 and 24. Defendant affirmatively alleges that the decision attached as Ex. D to Plaintiff's Second Amended Complaint was voided by the Nevada Supreme Court in *Chanos v. Nevada Tax Commission, et al.*, 181 P.3d 675 (Nev. 2008).

14. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 25 of Plaintiff's Second Amended Complaint, and on that basis denies them.

15. Answering paragraph 26 of Plaintiff's Second Amended Complaint Defendant denies Plaintiff's allegations that, the Attorney General approved the closure of the hearings. Defendant admits the remainder of the allegations of paragraph 26 of Plaintiff's Second Amended Complaint.

13. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 27 of Plaintiff's Second Amended Complaint, and on that basis denies them.

14. Defendant admits the allegations of paragraphs 28 and 29 of Plaintiff's Second Amended Complaint.

15. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 30 of Plaintiff's Second Amended Complaint, and on that basis denies them.

16. Defendant admits the allegations of paragraphs 31 and 32 of Plaintiff's Second Amended Complaint.

17. Defendant denies the allegations of paragraph 33 of Plaintiff's Second Amended Complaint.

18. Answering paragraph 34 of Plaintiff's Second Amended Complaint, Defendant admits that at the December 1, 2008 hearing, the Commission voted to deny Edison's refund claims. Defendant denies the remainder of the allegations therein.

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19. Defendant admits the allegations of paragraph 35 of Plaintiff's Second Amended Complaint.

20. Defendant denies the allegations of paragraphs 36 and 37 of Plaintiff's Second Amended Complaint.

21. Answering paragraph 38 of Plaintiff's Second Amended Complaint Defendant admits that the parties have reached an agreement concerning Claims Set 2 and Claims Set 3. Defendant denies the remainder of the allegations of paragraph 38 of Plaintiff's Second Amended Complaint.

22. Answering paragraph 39 of Plaintiff's Second Amended Complaint, Defendant repeats, realleges and incorporates by reference its responses to paragraphs 1 through 38 of Plaintiff's Second Amended Complaint.

23. Defendant denies the allegations of paragraphs 40 and 41 of Plaintiff's Second Amended Complaint.

24. Answering paragraph 42 of Plaintiff's Second Amended Complaint, Defendant repeats, realleges and incorporates by reference its responses to paragraphs 1 through 41 of Plaintiff's Second Amended Complaint.

25. Defendant denies the allegations of paragraphs 43 and 44 of Plaintiff's Second Amended Complaint.

26. Answering paragraph 45 of Plaintiff's Second Amended Complaint, Defendant repeats, realleges and incorporates by reference its responses to paragraphs 1 through 44 of Plaintiff's Second Amended Complaint.

27. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 46 of Plaintiff's Second Amended Complaint and on that basis denies them.

28. Defendant denies the allegations of paragraphs 47 and 48 of Plaintiff's Second Amended Complaint.

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29. Answering paragraph 49 of Plaintiff's Second Amended Complaint, Defendant repeats, realleges and incorporates by reference its responses to paragraphs 1 through 48 of Plaintiff's Second Amended Complaint.

30. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 50 of Plaintiff's Second Amended Complaint, and on that basis denies them.

31. Defendant denies the allegations of paragraphs 51 and 52 of Plaintiff's Second Amended Complaint.

32. Answering paragraph 53 of Plaintiff's Second Amended Complaint, Defendant repeats, realleges and incorporates by reference its responses to paragraphs 1 through 52 of Plaintiff's Second Amended Complaint.

33. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 54 of Plaintiff's Second Amended Complaint, and on that basis denies them.

34. Defendant denies the allegations of paragraphs 55 and 56 of Plaintiff's Second Amended Complaint.

35. Answering paragraph 57 of Plaintiff's Second Amended Complaint, Defendant repeats, realleges and incorporates by reference its responses to paragraphs 1 through 56 of Plaintiff's Second Amended Complaint.

36. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 58 and 59 of Plaintiff's Second Amended Complaint, and on that basis denies them.

37. Defendant denies the allegations of paragraphs 60, 61 and 62 of Plaintiff's Second Amended Complaint.

38. Answering paragraph 63 of Plaintiff's Second Amended Complaint, Defendant repeats, realleges and incorporates by reference its responses to paragraphs 1 through 62 of Plaintiff's Second Amended Complaint.

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Carson City, Nevada 89701-4717

39. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 64 of Plaintiff's Second Amended Complaint, and on that basis denies them.

40. Defendant denies the allegations of paragraphs 65 and 66 of Plaintiff's Second Amended Complaint.

AFFIRMATIVE DEFENSES

1. Plaintiff's claims are barred by administrative res judicata.

2. Plaintiff's claims are barred by laches.

3. Plaintiff's claims are barred by unclean hands.

4. Plaintiff's claims are barred by the doctrine of estoppel.

5. Plaintiff failed to state a claim upon which relief can be granted.

6. Plaintiff failed to exhaust administrative remedies.

7. Plaintiff lacks standing.

8. Plaintiff failed to mitigate damages, if any.

9. The relief Plaintiff requests is contrary to public policy.

10. Pursuant to NRCP 11, as amended, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of Defendant's Answer to Second Amended Complaint, therefore, Defendant reserves the right to amend this Answer to allege additional affirmative defenses if subsequent investigation warrants.

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Attorney General's Office
100 N. Carson Street
Carson City, Nevada 89701-4717

WHEREFORE, Defendant prays as follows:

(1) That Plaintiff take nothing by virtue of its Second Amended Complaint.

(2) That Defendant have judgment for its costs and attorneys' fees as determined by law.

(3) For such other and further relief as the Court may deem just and proper.

Respectfully submitted this 18th day of May, 2012.

CATHERINE CORTEZ MASTO
Attorney General

By: _____
GINA C. SESSION
Chief Deputy Attorney General
Nevada State Bar No. 5493
100 N. Carson Street
Carson City, Nevada 89701-4717
(775) 684-1207

Attorneys for State of Nevada
Department of Taxation

Attorney General's Office
100 N. Carson Street
Carson City, Nevada 89701-4717

///

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///

CERTIFICATE OF SERVICE

I certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on this 18th day of May, 2012, I served a copy of the foregoing **ANSWER TO SECOND AMENDED COMPLAINT** by mailing a copy, via U.S. Mail, to the following:

Norman J. Azevedo, Esq.
405 N. Nevada Street
Carson City, Nevada 89703

Charles C. Read, Esq.
Haley McIntosh, Esq.
JONES DAY
555 S. Flower Street 50th fl.
Los Angeles, California 90071-2300

Christopher W. Campbell, Esq.
Ryan M. Austin, Esq.
LOEB & LOEB LLP
10100 Santa Monica Blvd., Suite 2200
Los Angeles, California 90067

Sally A. Bullard
An employee of the Office of the Attorney General

Attorney General's Office
100 N. Carson Street
Carson City, Nevada 89701-4717

Norman J. Azevedo
State Bar No. 3204
405 N. Nevada Street
Carson City, NV 89703
(775) 883.7000

Charles C. Read
Admitted Pro Hac Vice
Haley McIntosh
State Bar No. 9442
JONES DAY
555 South Flower Street
Los Angeles, CA 90071-2300
(213) 243.2818

Attorneys for Plaintiff, Southern California Edison

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

SOUTHERN CALIFORNIA EDISON, Plaintiff, vs. THE STATE OF NEVADA, *ex rel.* DEPARTMENT OF TAXATION Defendant.	Case No. 09-0C-00016 1B Dept. No. 1

PROOF OF SERVICE

COMES NOW Plaintiff, SOUTHERN CALIFORNIA EDISON, by and through its counsel of record, NORMAN J. AZEVEDO, ESQ., and files its PROOF OF SERVICE of the SECOND AMENDED COMPLAINT issued to THE STATE OF NEVADA on April 10, 2012.

DATED this 22nd day of May, 2012.

NORMAN J. AZEVEDO, ESQ.
State Bar No. 3204
405 North Nevada Street
Carson City, NV 89703
(775) 883.7000
Attorney for Plaintiff

CERTIFICATE OF MAILING

I hereby certify that on the 22nd day of May, 2012, I mailed a copy of the following document via U.S. Mail addressed as follows:

Gina Session, Esq.
Office of the Attorney General
100 N. Carson Street
Carson City, NV 89701

Johanna Maher

Johanna Maher

AFFIDAVIT OF SERVICE

State of Nevada | County of Carson City | Carson City District Court

Case Number: 09-0C-00016-1B

Plaintiff:
SOUTHERN CALIFORNIA EDISON,
vs.
Defendant:
THE STATE OF NEVADA, ex rel. DEPARTMENT OF TAXATION

For:
Normal J. Azevedo
Norman J. Azevedo, Attorney at Law
405 North Nevada Street
Carson City, NV 89703

Received by Legal Express on the 10th day of April, 2012 at 1:55 pm to be served on **The State Of Nevada ex rel. Department Of Taxation, 100 North Carson Street, Carson City, NV 89701.**

I, Nicholas DiFraia, being duly sworn, depose and say that on the **12th day of April, 2012 at 9:32 am**, I:

SERVED an authorized entity by delivering a true copy of the **Summons, Second Amended Complaint to Gina Session as Deputy Attorney General.**

Said service was made at the address of: **100 North Carson Street, Carson City, NV 89701 .**

Affiant is, and was, a citizen of the United States, over 18 years of age, and not a party to, nor interested in, the proceeding in which this affidavit is made.

SIGNED and SWORN TO before me on the 17th day of April, 2012 by the affiant who is personally known to me.

NOTARY PUBLIC

Nicholas DiFraia
Process Server

Legal Express
Nevada License 999/999a
911 South 1st Street
Las Vegas, NV 89101
(702) 877-0200
Our Job Serial Number: 2012000975
Ref: Edison
Service Fee: $38.50

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Norman J. Azevedo, Esq.
State Bar No. 3204
405 North Nevada Street
Carson City, Nevada 89703
(775) 883.7000

Charles C. Read (admitted pro hac vice)
JONES DAY
555 S. Flower Street
Los Angeles, California 90071
(213) 243-2818

Attorneys for Plaintiff, Southern California Edison

REC'D & FILED
2012 APR 10 AM 11:53
ALAN GLOVER
BY V. GUTIERREZ
DEPUTY

IN THE FIRST JUDICIAL DISTRICT OF THE STATE OF NEVADA IN AND FOR CARSON CITY

SOUTHERN CALIFORNIA EDISON, Plaintiff, v. THE STATE OF NEVADA, *ex rel.* DEPARTMENT OF TAXATION Defendant.	Case No. 09-0C-00016-1B Dept. No.: 1 **SECOND AMENDED COMPLAINT** (NRS 372.680; NRS 374.685; NRS 30.030)

Comes now Plaintiff Southern California Edison, by and through its counsel Norman J. Azevedo, Esq., and hereby complains against Defendant, State of Nevada, *ex rel.* Department of Taxation, and alleges as follows:

NATURE OF THE ACTION

1. This is an action to recover use taxes pursuant to Sections 372.680(1) and 374.685(1) of the Nevada Revised Statutes ("NRS") following a final decision by the Nevada Tax Commission ("Commission") disallowing Plaintiff's claims for refund of use tax Plaintiff paid to the Defendant for tax periods March 1998 through and including December 2000.

2. NRS 372.680(1) and 374.685(1) each provide: "Within 90 days after a final decision upon a claim filed pursuant to this chapter is rendered by the Nevada Tax Commission, the claimant may bring an action against the Department on the grounds set

CERTIFICATE OF MAILING

I hereby certify that on the 10th day of April, 2012, I hand-delivered a copy of the foregoing addressed as follows:

Gina Session, Esq.
Office of the Attorney General
100 N. Carson Street
Carson City, NV 89701

Johanna Maher

Johanna Maher

Norman J. Azevedo
Attorney at Law

April 10, 2012

Mr. William Chisel, Executive Director
State of Nevada Department of Taxation
1550 College Parkway, Suite 115
Carson City, NV 89706-7937

Via Certified Mail
7007 3020 0003 1071 5608

Re: SOUTHERN CALIFORNIA EDISON VS. THE STATE OF NEVADA, ex rel, DEPARTMENT OF TAXATION - SECOND AMENDED COMPLAINT

Dear Mr. Chisel:

Enclosed please find a file-stamped copy of the above referenced document for your review.

Sincerely,

Norman J. Azevedo / Johanna Mabek

NORMAN J. AZEVEDO, ESQ.

NJA//jm

cc: Client

Enclosure as stated

405 N. Nevada Street
Carson City, NV 89703
www.nevadataxlawyers.com

phone 775.883.7000
fax 775.883.7041

REC'D & FILED
2012 JUN 22 PM 2:59
J. HALVANGEOVAD
BY_____DEPUTY CLERK

Norman J. Azevedo
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555 South Flower Street
Los Angeles, CA 90071-2300
(213) 243.2818

Attorneys for Plaintiff, Southern California Edison

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

SOUTHERN CALIFORNIA EDISON,

Plaintiff,

vs.

THE STATE OF NEVADA, *ex rel.* DEPARTMENT OF TAXATION

Defendant.

Case No. 09-0C-00016 1B

Dept. No. 1

ORDER DENYING MOTION TO STRIKE

On April 12, 2012, Defendant filed a Motion to Strike. On April 25, 2012, Plaintiff filed an Opposition to Motion to Strike. Defendant filed a Reply to Opposition to Motion to Strike on May 4, 2012. The merits of the Motion, Opposition and Reply have been fully considered.

Ruling on this Motion to Strike is within the sound jurisdiction of the trial court. *See Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th Cir. 1993). The Court is required to view the pleadings in the light most favorable to the non-moving party. *See Fourth St. Place, LLC v. Travelers Indem. Co.*, 270 P.3d 1235 (Nev. 2011).

The paragraphs of Plaintiff's Second Amended Complaint that Defendant moves to strike pertain to the procedural history of the administrative claims for refund and are relevant to this action. Allowing them to remain would result in no prejudice to the State. Furthermore, the

Court can give the allegations contained in the paragraphs sought to be stricken in the Second Amended Complaint, if admitted or proven, their due weight in evaluating Plaintiff's claims for refund. Defendant's Motion to Strike is denied.

IT IS SO ORDERED.

Dated this 17th day of ~~May~~ June, 2012.

James T. Russell

JAMES T. RUSSELL
DISTRICT COURT JUDGE

SUBMITTED BY:

NORMAN J. AZEVEDO, ESQ.
State Bar No. 3204
405 North Nevada Street
Carson City, NV 89703
(775) 883.7000
Attorney for Plaintiff

Case No. 09 OC 00016 1B

Dept. No. I

REC'D & FILED

2012 JUL 18 AM 7:58

ALAN GLOVER

BY _____ CLERK

DEPUTY

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

SOUTHERN CALIFORNIA EDISON,

Plaintiff(s),

vs.

STATE OF NEVADA, EX REL. DEPARTMENT OF TAXATION,

Defendant (s).

_____/

ORDER ON DEFENDANT'S REQUEST FOR JUDICIAL NOTICE

This matter is before this Court on Defendant's Request for Judicial Notice filed on June 22, 2012, as to an Order entered by the Second Judicial District Court of the State of Nevada in and for the County of Washoe on June 13, 2012. Southern California Edison Company's Qualified Opposition to the Department of Taxation's Motion and Request for Judicial Notice was filed on July 5, 2012. A Reply thereto was filed by the State of Nevada, *ex rel.* its Department of Taxation on July 11, 2012, along with a Request for Submission on July 13, 2012.

Based on a review of the Motion, Opposition and Reply, and the obvious fact that the Court can review the Decision rendered by the Second Judicial Court and the non-binding effect thereof, and good cause appearing,

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IT IS HEREBY ORDERED that this Court will duly give to the facts, arguments, and decisions asserted in the Order of the Second Judicial District Court the weight that they deserve based on the arguments made in this case, with the Court independently evaluating all facts and legal issues.

DATED this 17th day of July, 2012.

JAMES T. RUSSELL
District Judge

CERTIFICATE OF MAILING

I hereby certify that on the 18th day of July, 2012, I placed a copy of the foregoing in the United States Mail, postage prepaid, addressed as follows:

Norman Azevedo, Esq.
510 West Fourth Street
Carson City NV 89703

Gina Sessions, Esq.
100 N. Carson Street
Carson City NV 89701

CHRISTINE ERVEN
Judicial Assistant

AG1

REC'D & FILED
2012 JUL 25 PM 3:23
ALAN GLOVER
BY _____ CLERK
DEPUTY

Case No. 09-OC-00016 1B

Department No. I

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

SOUTHERN CALIFORNIA EDISON,

Plaintiff,

vs.

STATE OF NEVADA, *ex rel.* DEPARTMENT OF TAXATION,

Defendant.

ORDER GRANTING DEFENDANT'S MOTION TO STAY DISCOVERY PENDING RULING ON DISPOSITIVE MOTION

This matter is before this Court on Defendant's Motion to Stay Discovery Pending Ruling on Dispositive Motion filed herein on July 11, 2012, requesting that discovery be stayed until such time as the Court rules on the Motion for Judgment on the Pleadings filed May 21, 2012. Southern California Edison Company's Opposition to Motion to Stay Discovery was filed July 18, 2012. A Reply thereto was filed by the State of Nevada *ex rel.* its Department of Taxation on July 23, 2012, along with a Request for Submission.

Based on review of the Motion, Opposition and Reply, and good cause appearing,

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IT IS HEREBY ORDERED that Defendant's Motion to Stay Discovery is granted and discovery in this matter shall be stayed until such time as this Court issues a ruling on the pending Motion for Judgment on the Pleadings.

DATED this 24th day of July, 2012.

JAMES T. RUSSELL
DISTRICT COURT JUDGE

Submitted by:

CATHERINE CORTEZ MASTO
Attorney General

By: _____
Gina C. Session
Chief Deputy Attorney General
Nevada Bar No. 5493
100 North Carson Street
Carson City, Nevada 89701-4717
775-684-1207
Attorneys for the Nevada Department of Taxation

Order Granting Defendant's Motion to Stay Discovery Pending Ruling on Dispositive Motion

RECEIVED
OCT 05 2012
NORMAN J. AZEVEDO
ATTORNEY AT LAW
REC'D & FILED
2012 OCT -4 PM 1:28
ALAN GLOVER
BY CLERK
DEPUTY

Case No. 09 OC 00016 1B

Dept. No. 1

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

SOUTHERN CALIFORNIA EDISON,

Plaintiff(s),

vs.

STATE OF NEVADA, EX REL. DEPARTMENT OF TAXATION,

Defendant (s).

/

ORDER DENYING MOTION FOR JUDGMENT ON THE PLEADINGS

This matter is before this Court on a Motion for Judgment on the pleadings filed on May 21, 2012. An Opposition to this Motion was duly filed on June 7, 2012. A Reply to Opposition to Motion for Judgement on the Pleadings was filed on June 18, 2012. A Request for Submission was filed on June 19, 2012.

It is noted by this Court that a trial on this matter has been set for October 29, 2012.

A review of the arguments of the parties and the pleadings reflect that there are some limited factual issues that the Court should hear, and given the Supreme Court Decision in *Southern California Edison v. Dist. Ct.*, 127 Nev. Ad. Op. 22, 255 P.3d 231 (2011) requiring a trial de novo in this case, this Court will conduct a hearing on all issues in this matter. See also, *Lawrence v. Clark County,* 127 Nev. Ad. Op. 32, 254 P.3d 606, 608,(2011).

Additionally, an Order was previously issued by this Court on July 25, 2012, Granting Defendants Motion to Stay Discovery Pending Ruling on Dispositive Motion. Based on the denial of the Motion for Judgment on the Pleadings, if the parties believe that additional time to

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complete discovery is required, this Court will vacate the October 29, 2012 trial date and reset this matter at a time convenient to the parties.

Therefore good cause appearing,

IT IS HEREBY ORDERED that the Motion for Judgment on the Pleadings is DENIED; and

IT IS FURTHER HEREBY ORDERED that the parties can request a continuance of the trial date, if discovery can not be completed by the trial date.

DATED this 4th day of October, 2012.

JAMES T. RUSSELL
District Judge

CERTIFICATE OF MAILING

I hereby certify that on the 4th day of October, 2012, I placed a copy of the foregoing in the United States Mail, postage prepaid, addressed as follows:

Norman Azevedo, Esq.
510 West Fourth Street
Carson City NV 89703

Gina Sessions, Esq.
100 N. Carson Street
Carson City NV 89701

CHRISTINE ERVEN
Judicial Assistant

Norman J. Azevedo
State Bar No. 3204
405 N. Nevada Street
Carson City, NV 89703
(775) 883.7000

Charles C. Read
Admitted Pro Hac Vice
Haley McIntosh
State Bar No. 9442
JONES DAY
555 South Flower Street
Los Angeles, CA 90071-2300
(213) 243.2818

Attorneys for Plaintiff, Southern California Edison Company

REC'D & FILED
2012 OCT 29 AM 9:13
ALAN GLOVER
BY _____ CLERK
DEPUTY

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

SOUTHERN CALIFORNIA EDISON, Plaintiff, vs. THE STATE OF NEVADA, *ex rel.* DEPARTMENT OF TAXATION Defendant.	Case No. 09-0C-00016 1B Dept. No. 1

ORDER TO VACATE TRIAL DATE

On October 17, 2012, Plaintiff Southern California Edison ("Edison") and the Department of Taxation ("Department") filed a Stipulation and Notice to Vacate Trial Date and To Set For Hearing.

Based on the stipulation of the parties, and good cause appearing,

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.../

IT IS HEREBY ORDERED that the trial date be vacated and the parties participate in a setting at a date and time mutually convenient for both parties.

IT IS SO ORDERED.

Dated this 29th day of October, 2012.

JAMES T. RUSSELL
District Court Judge

Submitted by:

NORMAN Y. AZEVEDO, ESQ.
Nevada Bar No. 3204
405 North Nevada Street
Carson City, NV 89703
775.883.7000

Case No. 09 OC 00016 1B

Dept. No. 1

REC'D & FILED

2013 JAN 28 AM 8:37

ALAN GLOVER

BY _____ CLERK

DEPUTY

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

SOUTHERN CALIFORNIA EDISON,

Plaintiff,

vs.

PRETRIAL ORDER

STATE OF NEVADA, EX REL. DEPARTMENT OF TAXATION,

Defendants.

_____/

A bench trial of this matter has been scheduled by the parties for **July 8, 2013, beginning at 1:30 p.m. and lasting 7 ½ days.** Therefore,

IT IS HEREBY ORDERED that:

I. MANDATORY PRETRIAL CONFERENCE

A. Counsel for the parties shall set a mandatory pretrial conference with the Court to be held within 60 days of the trial date. The dates set out in this Order may be changed as a result of the pretrial conference.

B. The purpose of this conference is to expedite settlement or other appropriate disposition of the case. Counsel and the parties must be prepared to discuss the following:

1. Status of 16.1 settlement discussions and a review of possible court assistance;

2. Alternative dispute resolution techniques appropriate to this case;

3. Simplification of issues;

4. The nature, extent, limitations, and timing of all discovery;

5. Any special case management procedures appropriate to this case;

6. Any trial setting issues;

7. Any possible amendments to pleading or additional parties; and

8. Any other matters that may aid in the prompt disposition of this action. (See NRCP 1)

C. The following persons are required to attend the conference unless excused by the Court, which can be accomplished at the setting.

1. Trial or lead counsel for all parties.

2. Out of town attorneys may request to appear telephonically.

3. If the parties wish to discuss settlement, the parties shall attend. (If the party is an entity, an authorized representative shall attend).

D. Parties desiring a settlement conference before another judge shall so notify the court at the setting.

II. DISCOVERY

A. The parties will complete discovery in this case no later than **June 7, 2013.**

B. Expert disclosures pursuant to NRCP 16.1(a)(2) shall be made no later than **April 8, 2013** and rebuttal expert disclosures pursuant to NRCP 16.1(a)(2) shall be made no later than **April 24, 2013.** The Court may, upon good cause or by stipulation of the parties, relieve a party of the duty to prepare a written report pursuant to NRCP 16.1 (a)(2)B.

C. Prior to filing any discovery motion, the attorney for the moving party must consult with opposing counsel about the disputed issues. Counsel for each side must present to each other the merits of their respective positions with the same candor, specificity, and support as during the briefing of discovery motions.

D. If both sides desire a dispute resolution conference pursuant to NRCP 16.1(d), counsel must contact the Court's Judicial Assistant at (775) 882-1996 to obtain a date and time for the conference that is convenient to all parties and the Court. If the parties cannot agree upon the need for a conference, the party seeking the conference must file and submit a motion in that regard.

///

E. A continuance of trial does not extend the deadline for completing discovery. A request for an extension of the discovery deadline, if needed, must be included as part of any motion for continuance.

F. A party objecting to a written discovery request must, in the original objection, specifically detail the reasons that support the objection, and include affidavits or other evidence for any factual assertions upon which an objection is based.

G. Any materials which are requested by either party to which an objection is made on the grounds of privilege, work product or relevance are to be produced to the Court in camera on or before the date upon which the response to those requests are due. This procedure will apply to any request to which a reply is required, regardless of its for or when it is made.

III. PRETRIAL MOTIONS

A. All motions to amend pleadings, add parties or motions that are dispositive shall be served, filed and submitted for decision no later than **May 24, 2013.**

B. Motions in limine shall be served, filed and submitted for decision no later than **June 21, 2013.** Except upon a showing of unforeseen extraordinary circumstances, the Court will not entertain any pretrial motions filed or orally presented after these deadlines.

C. Unless the Court orders otherwise, legal memoranda submitted in support of any motion shall not exceed fifteen (15) pages in length; opposition memoranda shall not exceed fifteen (15) pages in length, and reply memoranda shall not exceed five (5) pages in length. These limitations are exclusive of exhibits.

IV. TRIAL STATEMENT

A. A trial statement on behalf of each party, pursuant to Rule 10 of F.J.D.C.R., shall be hand-delivered to opposing counsel, filed herein and a copy delivered to chambers no later than **5:00 o'clock p.m., July 3, 2013, five (5) calendar days before trial.**

B. The trial statement shall contain:

1. A concise statement of the claimed facts supporting the party's claims or defenses.

2. A statement of admitted or undisputed facts.

3. A statement of issues of law supported by a memorandum of points and authorities.

4. In non-jury cases, a list of summaries or schedules referring to attached itemized exhibits concerning any subject matter which involves accounting, computation, chronology, or similar detail data reasonably calling for orderly itemization (e.g., wages, income, expenses, inventories, business operations, tax computations, disability periods, property losses, itemizations of claimed losses or injuries, the data and reasons upon which an expert bases his or her opinion (not the opinion itself) which clearly reflects the claims, defenses, or offers of proof of the party in such respects, together with reference to the records or other source upon which such summaries or schedules are based.

5. The names and addresses of all witnesses, except impeaching witnesses.

6. A list of special questions requested to be propounded to prospective jurors.

7. Any other appropriate comment, suggestion, or information which may assist the Court in the trial or disposition of the case.

V. PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Each side shall provide the Court, two (2) working days prior to the start of trial, a detailed proposed Findings of Fact and Conclusions of Law.

VI. MISCELLANEOUS

A. The Court expects that all counsel will cooperate to try the case within the time set. Trial counsel are strongly encouraged to meet and confer regarding the order of witnesses, stipulated exhibits and any other matters which will expedite trial of the case.

B. Trial counsel for all parties shall contact the Carson City Court Clerk's Office at (775) 887-2082 no later than one week prior to trial, to arrange a date and time to mark trial exhibits. All exhibits shall be marked in one numbered series (Exhibit 1, 2, 3, etc.). All exhibits shall be placed in binders provided by counsel with a bound copy provided to the Court. Once trial exhibits are marked by the clerk, they shall remain in the custody of the clerk. When marking exhibits with the clerk, counsel shall advise the clerk of all exhibits which may be admitted without objection and those that may be admissible subject to reserved objections.

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E. Any memorandum of costs and disbursements must comply with ***Bergmann v. Boyce***, 109 Nev. 670, 856 P.2d 560 (1993) and ***Bobby Berosini v. PETA***, 114 Nev. 1348, 971 P.2d 383 (1998).

F. All applications for attorney's fees shall state services rendered and fees incurred for such services with sufficient specificity to enable an opposing party and the Court to review such application. See, ***Brunzell v. Golden Gate National Bank,*** 85 Nev. 345, 455 P.2d 31 (1969).

Failure to comply with any provision of this Pretrial Order may result in the imposition of sanctions.

DATED this 28th day of January, 2013.

JAMES T. RUSSELL
District Judge

CERTIFICATE OF MAILING

I hereby certify that on the 28th day of January, 2013, I placed a copy of the foregoing in the United States Mail, postage prepaid, addressed as follows:

Norman Azevedo, Esq.
510 West Fourth Street
Carson City NV 89703

Gina Sessions, Esq.
100 N. Carson Street
Carson City NV 89701

CHRISTINE ERVEN
Judicial Assistant

RECD & FILED
6/13/13
Date
CLERK
Deputy

IN THE FIRST JUDICIAL DISTRICT OF THE STATES OF NEVADA

IN AND FOR CARSON CITY

SOUTHERN CALIFORNIA EDISON, Plaintiff, v. THE STATE OF NEVADA, *ex rel.* DEPARTMENT OF TAXATION, Defendant.	Case No. 09-0C-00016-1B Dept. No.: 1

~~[PROPOSED]~~ ORDER VACATING PRE-TRIAL CONFERENCE AND TRIAL DATE AND STAY OF PROCEEDINGS

Good cause having been shown, the Court hereby vacates the pre-trial conference in this matter set for June 11, 2013; vacates the July 8, 2013 trial date; and stays all proceedings to permit the parties to pursue settlement negotiations.

This stay will be lifted twenty days after receipt by one party and the Court of written notice from the other party.

The Court will re-schedule this matter for trial at the earliest possible date consistent with the Court's other trial obligations and will notify the parties of that re-scheduled trial date.

Dated: June 13, 2013

James T. Russell
James T. Russell
District Judge

LAI-3193694v1

Case No. 09 OC 00016 1B
Dept. No. I

RECD & FILED
2013 JUN 19 AM 9:55
ALAN GLOVER
BY _____ CLERK
DEPUTY

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

SOUTHERN CALIFORNIA EDISON,

Plaintiff,

v.

STATE OF NEVADA, *ex rel.* DEPARTMENT OF TAXATION,

Defendant.
_____/

ORDER DENYING MOTION IN LIMINE REGARDING VOIDED DECISION

This matter is before the Court on Defendant Nevada Department of Taxation's Motion in Limine to Exclude Evidence of Voided Decision filed on May 16, 2013. Plaintiff's Opposition to Department of Taxation's Motion in Limine to Exclude Evidence of Voided Decision was filed on May 29, 2013. Nevada Department of Taxation's Reply to Opposition to Motion in Limine to Exclude Evidence of Voided Decision was filed on June 7, 2013. A Request for Submission was filed on June 10, 2013.

In its motion, Defendant seeks to exclude any evidence of a November 29, 2006, decision of the Nevada Tax Commission, as well as any evidence of a decision by the Nevada Supreme Court, entered on April 24, 2008, voiding the earlier decision of the Tax Commission. The Court finds that the evidence of the voided decision has some relevance in this matter. Further, the Court finds that the probativeness of the evidence is not outweighed by any risk of undue prejudice. Given that this matter is set for a bench trial, the risk of undue prejudice, if any, is slight because the Court, being the finder of fact, is more versed in issues of relevance, probativeness, and the risk of undue prejudice than a lay finder of fact would be. Its judgment will be tempered accordingly. Therefore, the evidence should be admitted, and the Court will give it the proper weight it deserves.

Therefore, good cause appearing,

IT IS HEREBY ORDERED that Defendant Nevada Department of Taxation's Motion in Limine to Exclude Evidence of Voided Decision is DENIED.

DATED this 19 day of June, 2013.

JAMES T. RUSSELL
District Judge

CERTIFICATE OF MAILING

I hereby certify that on the 19th day of June, 2013, I placed a copy of the foregoing in the United States Mail, postage prepaid, addressed as follows:

Norman Azevedo, Esq.
405 North Nevada Street
Carson City, NV 89703

Charles Read, Esq.
Haley McIntosh, Esq.
JONES DAY
555 South Flower Street
Los Angeles, CA 90071

Gina Sessions, Esq.
Chief Deputy Attorney General
Nevada Office of the Attorney General
100 North Carson Street
Carson City, NV 89701

for Scott Walker
Law Clerk, Department I

Case No. 09 OC 00016 1B
Dept. No. I

REC'D & FILED
2013 JUN 19 AM 9:58
ALAN GLOVER
BY _____ CLERK
DEPUTY

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

SOUTHERN CALIFORNIA EDISON,

Plaintiff,

v.

STATE OF NEVADA, *ex rel.* DEPARTMENT OF TAXATION,

Defendant.
_____/

ORDER GRANTING EXTENSION OF TIME TO PRODUCE REBUTTAL EXPERT REPORTS

This matter is before the Court on Defendant Nevada Department of Taxation's Motion for Extension of Time to Produce Rebuttal Expert Reports filed on May 3, 2013. Southern California Edison Company's Opposition to Motion for Extension of Time to Produce Rebuttal Expert Reports was filed on May 16, 2013. Nevada Department of Taxation's Reply to Southern California Edison Company's Opposition to Motion for Extension of Time to Produce Rebuttal Expert Reports was filed on May 24, 2013, along with a Request for Submission.

Defendant's motion indicates that the rebuttal expert reports were due to be filed on May 8, 2013. However, the original trial date was vacated by stipulation of the parties and rescheduled for October 1, 2013, and Defendant's First Supplement to Rebuttal Expert Disclosures was filed on May 23, 2013. Thus, Plaintiff will have had ample time by the date of trial to review the rebuttal expert reports. Accordingly, this Court finds that Plaintiff will not be prejudiced by the granting of the motion.

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Therefore, good cause appearing,

IT IS HEREBY ORDERED that Defendant Nevada Department of Taxation's Motion for Extension of Time to Produce Rebuttal Expert Reports is GRANTED, and Defendant's First Supplement to Rebuttal Expert Disclosures will be deemed timely despite having been filed prior to the granting of the motion for extension of time.

DATED this 18 day of June, 2013.

JAMES T. RUSSELL
District Judge

CERTIFICATE OF MAILING

I hereby certify that on the 19th day of June, 2013, I placed a copy of the foregoing in the United States Mail, postage prepaid, addressed as follows:

Norman Azevedo, Esq.
405 North Nevada Street
Carson City, NV 89703

Charles Read, Esq.
Haley McIntosh, Esq.
JONES DAY
555 South Flower Street
Los Angeles, CA 90071

Gina Sessions, Esq.
Chief Deputy Attorney General
Nevada Office of the Attorney General
100 North Carson Street
Carson City, NV 89701

for Scott Walker
Law Clerk, Department I

REC'D & FILED

2013 JUN 21 AM 8:22

ALAN GLOVER

BY _____ CLERK

DEPUTY

Case No. 09 OC 00016 1B
Dept. No. I

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

SOUTHERN CALIFORNIA EDISON,

Plaintiff,

v.

STATE OF NEVADA, *ex rel.* DEPARTMENT OF TAXATION,

Defendant.

/

AMENDED ORDER DENYING MOTION IN LIMINE REGARDING "COMPETITOR FUELS"

This matter is before the Court on Defendant Nevada Department of Taxation's Motion in Limine to Exclude Evidence of "Competitor Fuels" filed on May 16, 2013. Plaintiff's Opposition to Department of Taxation's Motion in Limine to Exclude Evidence of "Competitor Fuels" was filed on May 29, 2013. Defendant Nevada Department of Taxation's Reply to Opposition to Motion in Limine to Exclude Evidence of "Competitor Fuels" was filed on June 7, 2013. A Request for Submission was filed on June 10, 2013.

In its motion, Defendant seeks to exclude any evidence of so called "competitor fuels" such as oil, geothermal, and natural gas that might compete with coal as a fuel source. The Court finds that the evidence of competitor fuels has some relevance in this matter. Further, the Court finds that the probativeness of the evidence is not outweighed by any risk of undue prejudice. Given that this matter is set for a bench trial, the risk of undue prejudice, if any, is slight because the Court, being the finder of fact, is more versed in issues of relevance, probativeness, and the risk of undue prejudice than a lay finder of fact would be. Its judgment will be tempered accordingly. Therefore, the evidence of the competitor fuels should be admitted, and the Court will give it the proper weight it deserves.

Therefore, good cause appearing,

IT IS HEREBY ORDERED that Defendant Nevada Department of Taxation's Motion in Limine to Exclude Evidence of "Competitor Fuels" is DENIED.

DATED this 21 day of June, 2013.

JAMES T. RUSSELL
District Judge

CERTIFICATE OF MAILING

I hereby certify that on the 24th day of June, 2013, I placed a copy of the foregoing in the United States Mail, postage prepaid, addressed as follows:

Norman Azevedo, Esq.
405 North Nevada Street
Carson City, NV 89703

Charles Read, Esq.
Haley McIntosh, Esq.
JONES DAY
555 South Flower Street
Los Angeles, CA 90071

Gina Sessions, Esq.
Chief Deputy Attorney General
Nevada Office of the Attorney General
100 North Carson Street
Carson City, NV 89701

Scott Walker
Law Clerk, Department I

Case No.: 07 TRT 01535 1B

Dept. No.: I

REC'D & FILED

2013 SEP 10 PM 3:04

ALAN GLOVER

BY _____ CLERK

DEPUTY

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

SOUTHERN CALIFORNIA EDISON,

Plaintiff,

v.

STATE OF NEVADA, EX REL.
DEPARTMENT OF TAXATION,

Defendants.

_____/

ORDER TO VACATE TRIAL

A jury has been summoned to convene for a jury trial in 13 CR 00081 1B at 9:00 a.m., on Tuesday, October 1, 2013 for eight (8) days. Therefore, it is necessary to vacate the bench trial in the above-entitled matter set for October 1, 2013 at 9:00 a.m.

IT IS HEREBY ORDERED that the trial set to begin October 1, 2013 at 9:00 a.m. is hereby vacated.

IT IS FURTHER ORDERED that the trial be continued until the alternate date of January 21, 2014, beginning at 1:30 p.m.

DATED this 5th day of September, 2013.

JAMES T. RUSSELL
District Judge

CERTIFICATE OF MAILING

I hereby certify that on the 11th day of September, 2013, I placed a copy of the foregoing Order in the United States Mail postage prepaid, addressed as follows:

Norman Azevedo, Esq.
405 North Nevada Street
Carson City NV 89703

Gina Sessions, Esq.
Office of the Attorney General
100 N. Carson Street
Carson City NV 89701

CHRISTINE ERVEN
Judicial Assistant

Case No. 09 OC 00016 1B

Dept. No. 1

REC'D & FILED

2013 OCT -7 PM 1:11

ALAN GLOVER

BY _____ CLERK
DEPUTY

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

SOUTHERN CALIFORNIA EDISON,

Plaintiff,

vs.

STATE OF NEVADA, EX REL.
DEPARTMENT OF TAXATION,

Defendants.

_____/

AMENDED
PRETRIAL ORDER

A trial of this matter has been scheduled by the parties for **January 21, 2014, beginning at 9:00 a.m. and lasting 7 ½ days.** Therefore,

IT IS HEREBY ORDERED that:

I. MANDATORY PRETRIAL CONFERENCE

A. Counsel for the parties shall set a mandatory pretrial conference with the Court to be beld within 60 days of the trial date. The dates set out in this Order may be changed as a result of the pretrial conference.

B. The purpose of this conference is to expedite settlement or other appropriate disposition of the case. Counsel and the parties must be prepared to discuss the following:

1. Status of 16.1 settlement discussions and a review of possible court assistance;

2. Alternative dispute resolution techniques appropriate to this case;

3. Simplification of issues;

4. The nature, extent, limitations, and timing of all discovery;

5. Any special case management procedures appropriate to this case;

6. Any trial setting issues;

7. Any possible amendments to pleading or additional parties; and

8. Any other matters that may aid in the prompt disposition of this action. (See NRCP 1)

C. The following persons are required to attend the conference unless excused by the Court, which can be accomplished at the setting.

1. Trial or lead counsel for all parties.

2. Out of town attorneys may request to appear telephonically.

3. If the parties wish to discuss settlement, the parties shall attend. (If the party is an entity, an authorized representative shall attend).

D. Parties desiring a settlement conference before another judge shall so notify the court at the setting.

II. DISCOVERY

A. The parties will complete discovery in this case no later than **December 20, 2013.**

B. Expert disclosures pursuant to NRCP 16.1(a)(2) shall be made no later than **October 23, 2013** and rebuttal expert disclosures pursuant to NRCP 16.1(a)(2) shall be made no later than **November 7, 2013.** The Court may, upon good cause or by stipulation of the parties, relieve a party of the duty to prepare a written report pursuant to NRCP 16.1 (a)(2)B.

C. Prior to filing any discovery motion, the attorney for the moving party must consult with opposing counsel about the disputed issues. Counsel for each side must present to each other the merits of their respective positions with the same candor, specificity, and support as during the briefing of discovery motions.

D. If both sides desire a dispute resolution conference pursuant to NRCP 16.1(d), counsel must contact the Court's Judicial Assistant at (775) 882-1996 to obtain a date and time for the conference that is convenient to all parties and the Court. If the parties cannot agree upon the need for a conference, the party seeking the conference must file and submit a motion in that regard.

///

E. A continuance of trial does not extend the deadline for completing discovery. A request for an extension of the discovery deadline, if needed, must be included as part of any motion for continuance.

F. A party objecting to a written discovery request must, in the original objection, specifically detail the reasons that support the objection, and include affidavits or other evidence for any factual assertions upon which an objection is based.

G. Any materials which are requested by either party to which an objection is made on the grounds of privilege, work product or relevance are to be produced to the Court in camera on or before the date upon which the response to those requests are due. This procedure will apply to any request to which a reply is required, regardless of its for or when it is made.

III. PRETRIAL MOTIONS

A. All motions to amend pleadings, add parties or motions that are dispositive shall be served, filed and submitted for decision no later than **December 6, 2013.**

B. Motions in limine shall be served, filed and submitted for decision no later than **January 6, 2014.** Except upon a showing of unforeseen extraordinary circumstances, the Court will not entertain any pretrial motions filed or orally presented after these deadlines.

C. Unless the Court orders otherwise, legal memoranda submitted in support of any motion shall not exceed fifteen (15) pages in length; opposition memoranda shall not exceed fifteen (15) pages in length, and reply memoranda shall not exceed five (5) pages in length. These limitations are exclusive of exhibits.

IV. TRIAL STATEMENT

A. A trial statement on behalf of each party, pursuant to Rule 10 of F.J.D.C.R., shall be hand-delivered to opposing counsel, filed herein and a copy delivered to chambers no later than **5:00 o'clock p.m., January 16, 2014, five (5) calendar days before trial.**

B. The trial statement shall contain:

1. A concise statement of the claimed facts supporting the party's claims or defenses.

2. A statement of admitted or undisputed facts.

3. A statement of issues of law supported by a memorandum of points and authorities.

4. In non-jury cases, a list of summaries or schedules referring to attached itemized exhibits concerning any subject matter which involves accounting, computation, chronology, or similar detail data reasonably calling for orderly itemization (e.g., wages, income, expenses, inventories, business operations, tax computations, disability periods, property losses, itemizations of claimed losses or injuries, the data and reasons upon which an expert bases his or her opinion (not the opinion itself) which clearly reflects the claims, defenses, or offers of proof of the party in such respects, together with reference to the records or other source upon which such summaries or schedules are based.

5. The names and addresses of all witnesses, except impeaching witnesses.

6. A list of special questions requested to be propounded to prospective jurors.

7. Any other appropriate comment, suggestion, or information which may assist the Court in the trial or disposition of the case.

V. PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Each side shall provide the Court, two (2) working days prior to the start of trial, a detailed proposed Findings of Fact and Conclusions of Law.

VI. MISCELLANEOUS

A. The Court expects that all counsel will cooperate to try the case within the time set. Trial counsel are strongly encouraged to meet and confer regarding the order of witnesses, stipulated exhibits and any other matters which will expedite trial of the case.

B. Trial counsel for all parties shall contact the Carson City Court Clerk's Office at (775) 887-2082 no later than one week prior to trial, to arrange a date and time to mark trial exhibits. All exhibits shall be marked in one numbered series (Exhibit 1, 2, 3, etc.). All exhibits shall be placed in binders provided by counsel with a bound copy provided to the Court. Once trial exhibits are marked by the clerk, they shall remain in the custody of the clerk. When marking exhibits with the clerk, counsel shall advise the clerk of all exhibits which may be admitted without objection and those that may be admissible subject to reserved objections.

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E. Any memorandum of costs and disbursements must comply with ***Bergmann v. Boyce***, 109 Nev. 670, 856 P.2d 560 (1993) and ***Bobby Berosini v. PETA***, 114 Nev. 1348, 971 P.2d 383 (1998).

F. All applications for attorney's fees shall state services rendered and fees incurred for such services with sufficient specificity to enable an opposing party and the Court to review such application. See, ***Brunzell v. Golden Gate National Bank,*** 85 Nev. 345, 455 P.2d 31 (1969).

Failure to comply with any provision of this Pretrial Order may result in the imposition of sanctions.

DATED this 7th day of October, 2013.

JAMES T. RUSSELL
District Judge

CERTIFICATE OF MAILING

I hereby certify that on the 7th day of October, 2013, I placed a copy of the foregoing in the United States Mail, postage prepaid, addressed as follows:

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IN THE FIRST JUDICIAL DISTRICT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

SOUTHERN CALIFORNIA EDISON,

Plaintiff,

v.

THE STATE OF NEVADA, *ex rel.* DEPARTMENT OF TAXATION

Defendant.

Case No. 09-0C-00016-1B

Dept. No.: 1

TRIAL STATEMENT OF SOUTHERN CALIFORNIA EDISON COMPANY

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I. INTRODUCTION AND SUMMARY OF LEGAL AND FACTUAL ISSUES

The issue to be decided in this trial is whether Southern California Edison Company ("SCE") is entitled to a refund of use tax it paid to the Nevada Department of Taxation ("Department") from March 1998 through December 2000.[1] SCE paid the tax based on its purchase of coal from the Black Mesa mine in Arizona, which is operated by Peabody Western Coal Company ("Peabody"), and the transport of that coal via a slurry pipeline, which was built and run by Black Mesa Pipeline, Inc. ("BMP"), from the mine to the Mohave Generating Station ("Mohave") near Laughlin, Nevada. SCE used the coal as fuel to generate electricity at Mohave.

Through its Trial Statement, exhibits, and testimony, SCE will provide detailed legal and factual support justifying a complete refund of the use tax it paid for the coal and its transport.[2] The refund claim is premised upon the undisputed fact that the Department imposes this tax on specified minerals–including coal–if they are mined ***outside*** the state while the same minerals, if mined ***inside*** the state, are exempt from the comparable tax. Such a tax practice is considered facially discriminatory against interstate commerce and is unconstitutional under the Commerce Clause of the U.S. Constitution. The Department has explicitly conceded this point in another case now pending before the Nevada Supreme Court, and, in this case, the Department's legal policy expert ***assumes*** this tax scheme is unconstitutional.[3]

As a matter of law, this Court must correct this facially unconstitutional practice and provide SCE the refund it is owed. There are two alternatives to accomplish that result. First,

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[1] These refund claims are known as Claims Set 1. SCE has also timely filed claims for refund of use tax paid from January 2001 through and including September 2003 ("Claims Set 2") and from October 2003 through and including December 2005 when the Mohave shut down ("Claims Set 3"). In an agreement attached to the Second Amended Complaint, SCE and the Department have agreed that to the extent a final judgment in this trial (including any appellate review) is based upon conclusions of law and findings of fact applicable to Claims Set 2 and 3, that final judgment should also be dispositive of Claims Set 2 and 3 with no further administrative or judicial proceedings being necessary or required.

[2] Attachment 1 to this Trial Statement is a set of the written reports of SCE's five expert witnesses. These were timely served on the Department on April 8, 2013 per Rule 16.1(a)(2) of the Nevada Rules of Civil Procedure and this Court's Pretrial Order dated January 28, 2013.

[3] *Sierra Pacific Power Co., et al v. State of Nevada Department of Taxation* and *Clark County*, Nevada Supreme Court Docket No. 61193; Respondent's Answering Brief, Jan. 28, 2013 at 4 ("The District Court acted properly in finding the exemption in NRS 372.270 facially discriminatory and therefore invalid . . . ."). *See also* Expert Report of John Swain, May 10, 2013 at 7 (Assumption F: "The sales and use tax exemption for items subject to the net mining proceeds tax unlawfully discriminates against interstate commerce.") .

and most directly, the Court can interpret NRS 372.270 and NRS 372.185(2) to prohibit the Department from imposing use tax on the importation into the state of any mineral--including coal--that would be exempt from the comparable sales tax if it were mined in Nevada. Such a result would avoid any declaration that the statutes at issue are unconstitutional, while still correcting the Department's erroneous interpretation of those statues and providing SCE the complete refund to which it is entitled.

Alternatively, this Court could simply rule that NRS 372.270 is facially discriminatory and an unconstitutional burden on interstate commerce. Such a determination would require that SCE be ***exempt*** from the use tax pursuant to NRS 372.265, which specifies that a taxpayer is exempt from paying an unconstitutional tax, and compel the Department to issue SCE a complete refund of the illegal tax it should not have been required to pay.

The Department has raised two factual issues in an effort to avoid the inexorable result of the foregoing legal analysis. Neither has any merit. First, the Department claims that even in the case of a facially discriminatory tax statute, the taxpayer engaged in interstate commerce and who paid the tax is not necessarily entitled to a refund. The Department argues that SCE must prove the existence of actual in-state competitors who benefitted from a comparable and simultaneous advantage as a result of the offending tax scheme. That is not the law, nor is it sound or practical tax policy. Even so, SCE's evidence at trial will show there were in-state generators of electricity who could or did take advantage of the Department's interpretation of NRS 370.270.

Second, the Department tries to avoid the constitutional issue altogether by arguing that the Black Mesa coal—which was suspended in water at a preparation plant near the mine and subsequently transported by pipeline to Mohave—had "lost its identity" as the "proceeds" of that coal by the time it arrived and was thus a "coal slurry product" that could be taxed as a new and distinct product. The evidence simply does not support the Department's distinction:

- the Black Mesa coal was unchanged in its chemical composition and its total BTU content from the time it was extracted from the mine to the time it arrived at Mohave;
- every contemporaneous document refers to SCE's purchase of "coal," not "coal slurry";

- the Department's expert on this subject acknowledged that "coal slurry product" is not a recognized term in the mining industry, but rather something he came up with for this case;
- the Department's expert's opinion as to when a mineral "loses its identity" conflicts with the mining industry's interpretation of NRS 370.270 and with the Department's own tax practices.

The Department's "coal slurry product" argument is designed to distract from the fact that SCE was forced to pay an illegal tax on coal that it purchased out-of-state when the very same purchases would not have been subject to the tax had the coal been extracted in Nevada.

As detailed in the remainder of this Trial Statement, the facts and the law support SCE's claim to a complete refund of the use tax paid.[4]

II. STATEMENT OF FACTS SUPPORTING SCE'S CLAIMS

The facts set forth below are either undisputed or will be supported by testimony and exhibits introduced at trial.[5]

A. THE MOHAVE GENERATING STATION

1. SCE is an electric utility serving more than 14 million people in central, coastal and Southern California, excluding the City of Los Angeles and certain other cities.

2. At all times relevant to this action, SCE owned a majority interest in the Mohave Generating Station ("Mohave"), a coal-fired power plant located in Clark County, Nevada. Mohave generated electricity by burning coal. It had two generating units and supplied enough electricity to power approximately 1.5 million homes.

3. Mohave began operations in 1970. SCE co-owned Mohave with three other parties (collectively, the "Mohave Co-owners"): Nevada Power Company, the Department of Water and Power of the City of Los Angeles, and Salt River Project Agricultural Improvement and Power District. SCE owned the majority interest (a 56% undivided interest) in Mohave.

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[4] SCE's complaint also seeks ***partial refunds*** of the use tax based on several Nevada tax statutes and policies. The legal grounds for these partial refunds are discussed in Section II.E of the Trial Statement. However, the Court need not consider any of these partial refund claims if it determines, as it should, that a complete refund is required.

[5] Non-stipulated facts are identified in italics, the remaining facts in this section are undisputed.

4. SCE operated Mohave pursuant to the Mohave Project Operating Agreement effective May 1, 1969 and dated July 6, 1970 (the "Operating Agreement") and the amendments thereto. Mohave ecased operations on December 31, 2005.

B. OUT-OF-STATE PURCHASE AND DELIVERY OF COAL

5. SCE purchased coal from Peabody Western Coal Company ("Peabody") for use at Mohave.

6. All of the coal used and consumed at Mohave was supplied by Peabody pursuant to the Mohave Project Coal Supply Agreement, dated January 6, 1967, between Peabody and SCE, and the Amended Mohave Project Coal Supply Agreement, dated May 26, 1976, between Peabody (as seller) and the Mohave Co-owners (as buyers) (the "Amended Coal Supply Agreement").

7. All of the coal sold by Peabody for use at Mohave was extracted from the Black Mesa Mine in northeastern Arizona.

8. The Black Mesa Mine is located on land owned by the Navajo Nation and Hopi Tribe. Peabody operated the Black Mesa Mine through lease agreements with the Navajo Nation and the Hopi Tribe.

9. After exploring various transportation alternatives, SCE determined that transporting the coal by pipeline would cost less than transporting it by rail car or truck.

10. Pursuant to agreements between Peabody and Black Mesa Pipeline, Inc. ("BMP"), BMP constructed and operated a 273-mile pipeline to transport and deliver the coal from the Black Mesa Mine to Mohave (the "pipeline"). The coal was crushed and suspended in water (i.e., coal slurry) for transportation through the pipeline.

11. The coal was no different in its chemical composition or total BTU content from the time it was extracted from the Black Mesa mine to the time it arrived at Mohave.

12. The coal was separated from the water upon delivery to Mohave. Because coal must be relatively dry before it can be burned efficiently, it was dewatered after it arrived at the power plant. Most of the water was separated from the coal by centrifuges; the finer particles were recovered by settling in clariflocculators.

13. The Amended Coal Supply Agreement required SCE to pay Peabody, on a monthly basis, for the price of the coal it purchased. Peabody billed SCE for this charge and SCE remitted payment to Peabody for the coal.

14. BMP billed SCE for transporting the coal to Mohave and SCE remitted payment for the charges directly to BMP. BMP's services were not connected to the sale of the coal.

15. Since 1970, SCE paid Nevada use tax to the Department for coal used and consumed at Mohave.

16. During the period covered in this lawsuit (March 1998 through December 2000), SCE, as part of the price of the coal, reimbursed Peabody for Arizona transaction privilege tax and ad valorem tax imposed by the State of Arizona.

17. During the period covered in this lawsuit, SCE, as part of the price of the coal, reimbursed Peabody for taxes imposed on Peabody by the United States under the Surface Mining Control & Reclamation Act of 1977 ("SMCRA").

18. During the period covered in this lawsuit, SCE, as part of the price of the coal, reimbursed Peabody for taxes imposed on Peabody by the Navajo Nation, including the Business Activity Tax ("BAT") and the Possessory Interest Tax ("PIT").

19. In paying the Nevada use tax for the period from March 1998 through December 2000, SCE included in the sales price subject to Nevada use tax the Arizona transaction privilege tax and ad valorem tax, the SMCRA tax, the BAT and PIT, and the transportation charges related to the coal purchased from Peabody.

C. EXHAUSTION OF ADMINISTRATIVE REMEDIES AND DEPARTMENT'S DENIAL OF CLAIMS

20. Between April 26, 2001 and February 25, 2003, SCE timely filed claims for a partial refund of the use tax it paid to the Department for the periods March 1998 through and including December 2000.

21. The refund claims indicated that SCE was paying Nevada use tax on coal extracted in Arizona. For these periods, SCE paid $23,896,668 in use tax to the Department for the coal used and consumed at Mohave. In each letter acknowledging these claims, the

Department indicated that the request was forwarded "to a Department of Taxation auditor for further review."

22. By letter dated December 17, 2002, the Department denied the claims for refund filed for the periods March 1998 through and including September 1999. By letter dated December 30, 2002, the Department denied the claims for refund filed for the periods October 1999 through and including December 1999.

23. *In each of its denial letters, the Department advised SCE that, if SCE desired to appeal the Department's decision, it had to file a petition for redetermination within 45 days (pursuant to NRS 360.360).*

24. On January 31, 2003, SCE filed a timely petition for redetermination for the periods covered by these denial letters—March 1998 through December 1999.

25. *Among other claims, the petition for redetermination sought a complete refund of all use taxes paid on coal extracted in Arizona on the grounds that the tax violated the Commerce Clause of the U.S. Constitution.*

26. By letter dated May 16, 2003, the Department denied the claims for refund for the periods January 2000 through and including December 2000.

27. The Department's May 16, 2003 letter states that it will "consider this denial in the same status as your previous requests and these periods will be added to the issue(s) under petition." Accordingly, the Department deemed SCE to have appealed its denial of the periods from January 2000 through and including December 2000 by considering them as part of the petition for redetermination previously filed by SCE.

28. In a letter dated July 2, 2003, the Department redirected SCE's claims for refund to the Commission for a hearing.

29. In its July 2, 2003 letter, the Department acknowledged that it should have instructed SCE to appeal the denial of its claims for refund to the Commission pursuant to NRS 360.245(1) rather than filing a petition for redetermination with the Department.

D. COMMISSION'S GRANT AND THEN DENIAL OF CLAIMS

30. On December 8, 2003, the Commission held an initial hearing on SCE's claims for

refund and referred the claims to a hearing officer. The hearing officer issued a written decision on July 14, 2004.

31. *While the hearing officer found that the Department's imposition of the use tax on SCE's use and consumption of coal at Mohave discriminated against interstate commerce in violation of the Commerce Clause, he declined to grant SCE refund for the amounts it had paid due to the unconstitutional tax.*

32. The Commission held a series of hearings on SCE's claims beginning on November 1, 2004 and continuing on February 7, 2005, April 5, 2005 and May 9, 2005.

33. At the May 9, 2005 hearing, the Commission voted to grant SCE's claims for refund. The Commission's written decision dated November 29, 2006 granted SCE's claims for refund.

34. At SCE's request, the Commission had closed each of the aforementioned hearings. Notwithstanding a 30-year practice of closing hearings at the taxpayer's request, the Attorney General's Office of the State of Nevada ("Attorney General") filed suit against the Commission, claiming that it had violated Nevada's Open Meeting Law (NRS 241.010 et seq.). Ultimately, the Nevada Supreme Court agreed with the Attorney General. SCE's claims for refund were returned to the Commission for redetermination in open session.

35. The Commission held open hearings on the claims for refund on September 9, 2008 and December 1, 2008.

36. *The parties neither introduced new facts nor offered new or additional legal arguments at those hearings.*

37. Nevertheless, the Commission voted to deny SCE's refund claims at the December 1, 2008 hearing.

38. On March 2, 2009, the Commission served its final written decision, dated February 27, 2009, denying SCE's claims for refund.

39. SCE filed this action seeking a de novo trial pursuant to NRS 372.680. The Department sought a dismissal of SCE's complaint, arguing that the Nevada Administrative Procedure Act applied, providing SCE with only judicial review of the administrative record.

Ultimately, the Nevada Supreme Court, applying the principle of judicial estoppel, ruled that the Department could not limit SCE to the remedy of judicial review and that SCE was entitled to a de novo trial in this Court. Southern Calif. Edison Co. v. First Judicial District Court, 127 Nev. Adv. Rep. 22, 255 P.3d 231 (Nev. 2011). Discovery and trial preparation followed thereafter in this Court, culminating in this trial, almost 13 years after SCE filed its first claim for refund.

E. CLAIMED REFUND AMOUNTS

40. If SCE prevails on its First and/or Second Claims for Relief, the Department must issue a complete refund to SCE in the total amount of $23,896,668, plus interest calculated according to the applicable statutory rate.[6]

41. If SCE does not prevail on its First and/or Second Claims for Relief, but prevails on other claims for relief, the Department must issue a partial refund to SCE in the following amount(s), plus interest calculated according to the appropriate statutory rate: Third Claim for Relief: $9,703,088; Fourth Claim for Relief: $324,224; Fifth Claim for Relief: $979,379; Sixth Claim for Relief: $784,215[7]*; and Seventh Claim for Relief: $4,250,042.*

F. COMPETITORS WERE ADVANTAGED BY THE USE TAX SCE HAD TO PAY

42. NRS 372.270 provides an exemption to Nevada sales and use taxes for "Proceeds of mines." The statute states: "There are exempted from the taxes imposed by this chapter the gross receipts from the sale of, and the storage, use or other consumption in this State of, the proceeds of mines which are subject to taxes levied pursuant to chapter 362 of NRS."

43. Minerals, including copper concentrates, geothermal resources, stockpiles and gold slurry, which are sold and purchased in Nevada are exempt from sales and use taxes,.

44. *According to the Department Executive Director's Exemption Report, dated February 1999, the estimated exemptions taken pursuant to NRS 372.270 were $217.7 million (based on March 1998 estimated figures).*

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[6] As stated in fn. 1, SCE and the Department have agreed that Claims Sets 2 and 3 will be resolved in accordance with the final decision in this case, except to the extent there are factual distinctions among these claims sets.

[7] If SCE prevails on its Third Claim for Relief, the refund due on its Sixth Claim for Relief would drop to $144,064 to prevent a double recovery of the Arizona transaction privilege tax.

45. As a primary energy input for the production of electricity, coal competes with all other primary sources of energy that can be used to produce electricity by various means, including natural gas, oil, biomass, geothermal steam, nuclear reactors, falling water, running rivers, blowing wind, flowing tides.

46. Mohave coal competed withall other actual or potential fuel sources and the power plants using these fuels located in Nevada and throughout the Western U.S.

47. Oil, gas, and geothermal heat were extracted in Nevada, electricity was or could have been generated in Nevada from these sources, and those generators did or could have benefitted from the discriminatory tax treatment afforded them relative to SCE which purchased out-of-state coal to produce electricity at Mohave.

48. The use tax imposed by the Department made it more difficult for Mohave to compete with other sources of electricity. Accordingly, Mohave suffered competitive harm in the Nevada and Western U.S. power market as a result of being charged use tax.

49. If all states in the Western power market were to adopt a tax structure similar to the features in the Nevada tax structure, then electricity markets in the Western states would be adversely affected by the introduction of a competitive bias favoring the users of in-state fuels compared to imported out-of-state fuels.

50. Owners of mining operations in Nevada and throughout the Western states compete with each other for inputs to the mining process such as skilled mining engineers and specialized mining equipment. Nevada's tax scheme advantages in-state mining operations and disadvantages out-of-state mining operations in the competition of such inputs.

51. *Mohave's owners, including SCE, decided to shut down the plant at the end of 2005 because its current and future capital and operating costs were not competitive with other sources of electricity. Use taxes paid to Nevada were part of those costs.*

III. STATEMENT OF ISSUES OF LAW SUPPORTED BY MEMORANDUM OF POINTS AND AUTHORITIES

A. FIRST CLAIM FOR RELIEF – STATUTORY EXEMPTION FROM USE TAX

Under Nevada law, use tax applies only to "property which was acquired out of state in a transaction that would have been a taxable sale if it had occurred within this State." NRS 372.185(2). Nevada expressly exempts from its sales and use tax "the gross receipts from the sale of, and the storage, use or other consumption in this State of, the proceeds of mines which are subject to taxes levied pursuant to chapter 362 of NRS." NRS 372.270. Coal is one of the specifically enumerated minerals subject to the net proceeds of minerals tax pursuant to chapter 362. *See* NRS 362.010.[8] Because coal produced ***by a Nevada mine*** would be subject to the net proceeds tax, the sale of that coal would not be a taxable sale. Since use tax only applies to "property which was acquired out of state in a transaction that would have been a taxable sale if it had occurred within this State," coal acquired out-of-state by SCE should not have been subject to use tax.

The Department argues that SCE is not exempt from use tax, because there is no coal produced in Nevada and therefore there are no sales of coal in Nevada that would be exempt from sales and use tax.[9] This suggests that only if a Nevada mine had been producing coal at the time SCE purchased coal from out-of-state would SCE be entitled to an exemption from Nevada use tax under NRS 372.185(2). The Department's argument ignores the plain language of NRS 372.185(2), which imposes use tax on "property which was acquired out of state in ***a transaction that would have been a taxable sale if*** it had occurred within this State." NRS 372.185(2) (emphasis added). A purchase of coal from a Nevada mine would be exempt from tax under NRS

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[8] NRS 362.010 states, in relevant part, "1. 'Mine' means an excavation in the earth from which ores, ***coal*** or other mineral substances are extracted . . . ." (emphasis added).

[9] The Department's argument seems to be entirely manufactured by its lawyers. Paulina Oliver was identified as the Department employee most knowledgeable about sales and use tax exemptions. In deposition, she was asked: "in determining whether the NRS 372.270 exemption applies, does the department consider whether the mineral at issue is being mined in Nevada during the time?" She responded, "No, I don't think so." Oliver Dep. at 27:15-19 (May 23, 2013). Terry Rubald, the Department employee identified for her expertise re the Net Proceeds of Minerals Tax, testified that she had no opinion on this issue. Rubald Dep. at 57:4-24 (May 16, 2013).

372.270, and therefore coal acquired from an out-of-state mine must also be exempt from use tax. There is no further requirement that there be any coal ***actually*** mined in Nevada; that is clear by the statute's use of the conditional tense, "would have been."

Indeed, the Department's suggested approach would place taxpayers in the untenable position of not being able to predict whether they will owe the use tax in any particular reporting period unless they have conducted a thorough and continuing state-wide investigation to confirm whether or not the mineral in question is being extracted and sold in Nevada during that period. The Department's position also means that applicability of the use tax may vary from month-to-month (or reporting period-to-reporting period) depending on the independent and changing commercial activities of third parties. The impracticality of this position is compounded if one considers the burden it would impose on out-state purchasers of every mineral which, if mined in Nevada, would be subject to the Net Proceeds of Minerals Tax.

The Department also argues that the use tax exemption does not apply to SCE because Mohave coal was never taxed pursuant to NRS Chapter 362. However, whether use tax can be imposed on SCE's consumption of coal that was acquired from an out-of-state mine is not dependent on whether the mine paid the Net Proceeds of Minerals Tax on that coal. Again, the plain language of NRS 372.185(2) requires only a theoretical determination of whether an equivalent in-state transaction "***would have been a taxable sale if***" it occurred in Nevada. The equivalent and hypothetical in-state transaction–SCE's purchase of coal from a Nevada mine–would be exempt from sales tax under NRS 372.270.

When interpreting statutes, the aim is to give effect to the Legislature's intent. The canon of statutory interpretation laid out by the Nevada Supreme Court is to "first examine[] the language, and if the statute is plain and unambiguous, [to] give the language its ordinary meaning and not go beyond it." *Mason v. Cuisenaire,* 122 Nev. 43, 50, 28 P.3d 446, 450, 28 P.3d 446, 450 (Nev. 2006); *see also Worldcorp v. State, Dep't of Taxation,* 113 Nev. 1032, 1035-36, 944 P.2d 824, 826 (1997) (citing *Cleghorn v. Hess,* 109 Nev. 544, 548, 853 P.2d 1260, 1262 (1993)) ("When the language of a statute is clear on its face, [the legislature's] intention must be deduced from such language."). In order for SCE's use of coal to be exempt from use tax, the plain

language of NRS 372.185(2) only requires that if an in-state mine *were* making retail sales of coal within the state, that coal *would* be exempt from sales tax pursuant to NRS 372.270.

Accordingly, the simplest way for the Court to dispose of this case is to instruct the Commission to apply NRS 372.270 in concert with NRS 372.185(2) to exempt out-of-state minerals from use tax. Such a judgment would entitle SCE and those similarly situated to a complete refund of use taxes paid on coal and other out-of-state minerals. This approach eliminates any concern about unconstitutionality, no changes to current statutory language would be required, and no present in-state mining operations would be affected. By treating identically property acquired in equivalent in-state and out-of-state transactions, this scheme "would add no burden to interstate commerce that intrastate commerce would not also bear." *Okla. Tax Comm'n v. Jefferson Lines, Inc.*, 514 U.S. 175, 185 (1995) (holding superseded by 49 U.S.C. § 14505); *see also* NRS 372.265.[10]

B. SECOND CLAIM FOR RELIEF – NEVADA'S DISPARATE TAX TREATMENT OF IN-STATE AND OUT-OF-STATE MINERALS VIOLATES THE COMMERCE CLAUSE OF THE UNITED STATES CONSTITUTION

As an alternative to its First Claim for Relief, SCE argues in its Second Claim for Relief that by exempting in-state minerals from sales tax while providing no similar exemption to out-of-state minerals, NRS 372.270 and NRS 372.185(2) violate the Commerce Clause of the U.S. Constitution. The Department has all but conceded this point through its failure to appeal the decision of the Second Judicial District Court in *Sierra Pacific Power v. State of Nevada,* Case No. CV09-03554, filed June 13, 2012 ("*NV Energy*"), which found that "the plain language of NRS 372.270 facially discriminates against out-of-state proceeds of mines, by subjecting out-of-state minerals to use tax, while exempting domestic minerals from either sales or use tax."[11]

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[10] NRS 372.265 provides an exemption from use tax where its imposition would be unconstitutional: "There are exempted from the taxes imposed by this chapter the gross receipts from the sale of, and the storage, use or other consumption in this State of, tangible personal property the gross receipts from the sale of which, or the storage, use or other consumption of which, this State is prohibited from taxing under the Constitution or laws of the United States or under the constitution of this State."

[11] The court held that NRS 372.270 is "unconstitutional under the Commerce Clause of the U.S. Constitution, art. 1, § 8, cl. 3," but went on to find that NV Energy is "not entitled to any refund of the use taxes it remitted to purchase out-of-state coal, as NV Energy has not shown the existence of a favored competitor who has received use tax exemption, pursuant to NRS 372.270." *Id.* at 14-15. As noted earlier, this case is pending before the Nevada

Nevertheless, counsel for the Department refused to agree on a stipulation to this effect, on the grounds that the Nevada Supreme Court has not yet issued a decision in the *NV Energy* case. Therefore, and because the analysis supporting a finding of "facial discrimination" is relevant to the consideration of an appropriate remedy in this case, SCE will set forth here the basis for finding a violation of the Commerce Clause.

1. ON ITS FACE, NRS 372.270 DISCRIMINATES AGAINST INTERSTATE COMMERCE

The U.S. Supreme Court "will sustain a tax against a Commerce Clause challenge so long as the 'tax [1] is applied to an activity with a substantial nexus with the taxing State, [2] is fairly apportioned, [3] does not discriminate against interstate commerce, and [4] is fairly related to the services provided by the State.'" *Quill Corp. v. North Dakota*, 504 U.S. 298, 311 (1992) (quoting *Complete Auto Transit, Inc. v. Brady,* 430 U.S. 274, 279 (1977)). The Department's imposition of use tax on coal fails the second and third prongs of this test. Interpreting NRS 372.185(2) and NRS 372.270 to apply–in all respects–only to minerals extracted within Nevada discriminates against interstate commerce by imposing a tax on minerals extracted outside Nevada that would not be imposed if the minerals were extracted within Nevada. Moreover, the imposition of use tax on imported coal violates internal consistency (an analytical principle with roots in the theory of apportionment), because if all states had the Nevada tax structure, coal mined in one state and used in another would be taxed in both the state where it was mined and the state where it was used.

According to numerous Supreme Court Commerce Clause cases addressing discrimination against interstate commerce, "a State may not tax a transaction or incident more heavily when it crosses state lines than when it occurs entirely within the State." *Armco Inc. v. Hardesty*, 467 U.S. 638, 642 (1984) (invalidating West Virginia's gross receipts tax where two taxpayers selling at wholesale were treated differently when one conducted manufacturing in the State and the other did not); *see also Maryland v. Louisiana*, 451 U.S. 725, 756 (1981). Furthermore, "[a] discriminating tax imposed by a state, operating to the disadvantage of the products of other

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Supreme Court.

states . . .is, in effect, a regulation in restraint of commerce among the states, and as such is a usurpation of the power conferred by the constitution upon the congress of the United States." *Walling v. Michigan*, 116 U.S. 446, 455 (1886). In this context, "'discrimination' simply means differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter. If a restriction on commerce is discriminatory, it is virtually *per se* invalid." *Oregon Waste Sys., Inc. v. Dep't of Environ. Quality*, 511 U.S. 93, 99 (1994). Particularly in the context of sales and use taxes, the Court has said: "The conclusion is inescapable: equal treatment for in-state and out-of-state taxpayers similarly situated is the condition precedent for a valid use tax on goods imported from out-of-state." *Halliburton Oil Well Cementing Co. v. Reily*, 373 U.S. 64, 70 (1963). If the Department's interpretation of the Nevada sales and use tax exemption prevails, a purchase of minerals extracted outside of Nevada for use or consumption in Nevada will always be taxed more heavily than a purchase of minerals extracted from a Nevada mine for use or consumption in Nevada. This would be similar to an unconstitutional tariff, which a state could not impose on goods from other states even if no similar goods were manufactured locally. *See* Attachment 1, Tab E (Opinion of Professor Richard D. Pomp at 10).

2. COMMERCE CLAUSE JURISPRUDENCE DOES NOT REQUIRE SCE TO PROVE ACTUAL DISCRIMINATION

It is constitutionally irrelevant that no coal is being mined in Nevada. The Supreme Court has repeatedly rejected the argument that the taxpayer must "prove actual discriminatory impact on it . . . ." *Armco*, 467 U.S. at 644; *see also Healy v. Beer Inst., Inc.*, 491 U.S. 324 (1989) (holding, *inter alia*, that Connecticut's beer-price affirmation statute facially discriminated against interstate commerce in violation of the Commerce Clause because it only applied to brewers and importers who sold beer in interstate commerce and did not apply to brewers who only sold beer in the domestic market, despite the fact that Connecticut did not have any in-state brewing companies who could benefit from the statutory exemption).[12]

[12] In a concurring opinion in *Healy*, Justice Scalia joined the opinion of the Court and specifically addressed and rejected the argument the Department advances. Justice Scalia stated: "The dissent argues that the facial discrimination inherent in the present statute does not establish its invalidity because no brewer does business solely in Connecticut and because there is no evidence that any shipper sells beer exclusively within that State. *Post*, at 2505. ***As far as I know we have never required a plaintiff to show that a statute which facially discriminates***

When a tax appears to be discriminatory by its very terms, as the Department's interpretation of NRS 372.270 does, the constitutional test requires not an empirical inquiry into actual discriminatory impact, but the logical test for internal consistency. *See Armco*, 467 U.S. at 644 (holding that the test for internal consistency applies "where the allegation is that a tax on its face discriminates against interstate commerce"); *see also Jefferson Lines*, 514 U.S. at 185. The Court in *Jefferson Lines* stated:

> Internal consistency is preserved when the imposition of a tax identical to the one in question by every other State would add no burden to interstate commerce that intrastate commerce would not also bear. ***This test asks nothing about the degree of economic reality reflected by the tax, but simply looks to the structure of the tax at issue*** to see whether its identical application by every State in the Union would place interstate commerce at a disadvantage as compared with commerce intrastate. A failure of internal consistency shows as a matter of law that a State is attempting to take more than its fair share of taxes from the interstate transaction . . . .

514 U.S. at 185 (emphasis added); *see also* Attachment 1, Tab E (Opinion of Professor Richard Pomp at 4-7 (discussing violation of internal consistency principle in this case)). The only relevant inquiry is whether the laws of Nevada afford the same use tax exemptions for property acquired out-of-state as are available for sales taxes for property acquired in an equivalent in-state transaction. *See Armco*, 467 U.S. at 644. If NRS 372.270 and NRS 372.185(2) are interpreted to apply in all respects to exempt only minerals extracted in Nevada, there would be a failure of internal consistency because purchases and sales of minerals extracted outside of Nevada would always be disadvantaged (taxed more heavily) than purchases and sales of minerals extracted in Nevada.

New Energy Co. of Ind. v. Limbach, 486 U.S. 269, 274 (1988), involved an issue substantially identical to the issue presented in this case. In *New Energy*, an Ohio statute provided a tax credit against the Ohio motor vehicle fuel sales tax for each gallon of ethanol (as a

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against out-of-state business in fact benefits a particular in-state business, and we have flatly rejected the kindred contention that the plaintiff could not prevail if the benefit to in-state business was minimal, see *New Energy Co. of Indiana v. Limbach*, [486 U.S. 269, 276-277] (1988). It would make little sense to require a showing that an in-state business in fact exists without also requiring a showing that it is in fact benefited. I see no reason to impose such a burden in order to strike down a statute that is facially discriminatory under the Commerce Clause, any more than we would require the person challenging under the Fourteenth Amendment a state law permitting only Aleuts to vote by mail to show that there are in fact Aleut citizens of the State capable of benefiting from that discrimination." *Healy*, 491 U.S. at 344 n* (Scalia, J. concurring) (emphasis added).

component of gasohol, which is ethanol mixed with gasoline) sold by fuel dealers, but only if the ethanol was produced in Ohio or in a state that granted a similar tax advantage to ethanol produced in Ohio. The Supreme Court stated that the "Ohio provision at issue here explicitly deprives certain products of generally available beneficial tax treatment because they are made in certain other States, and thus on its face appears to violate the cardinal requirement of nondiscrimination." *Id.* Ohio argued that any discrimination was extremely limited and thus there was no violation of the Commerce Clause. The Court refused to entertain a defense predicated on the lack of actual economic impact of the discriminatory tax regime and instead held that when a statute is patently discriminatory, actual discriminatory impact need not be proved. Referring to *Bacchus Imports, Ltd. v. Dias,* 468 U.S. 263 (1984) and *Lewis v. BT Investment Managers, Inc.*, 447 U.S. 27 (1980), where the Court had found the statutes discriminated against interstate commerce, the Court stated that ***"[i]n neither of these cases did we consider the size or number of the in-state businesses favored or the out-of-state businesses disfavored relevant to our determination.*** Varying the strength of the bar against economic protectionism according to the size and number of in-state and out-of-state firms affected would serve no purpose except the creation of new uncertainties in an already complex field." *New Energy,* 486 U.S. at 276-77 (emphasis added). Thus, the Supreme Court has repeatedly rejected the Department's arguments that SCE is required to prove actual discrimination. It is constitutionally irrelevant whether coal was being mined in Nevada at the time SCE used coal in Nevada that was purchased from an out-of-state mine.

C. SCE IS ENTITLED TO A COMPLETE REFUND OF THE USE TAX PAID

1. NEVADA LAW MANDATES A REFUND WHEN TAX HAS BEEN COLLECTED PURSUANT TO AN UNCONSTITUTIONAL STATUTE

A refund is the remedy dictated by Nevada law in cases where a statute is determined to be unconstitutional. NRS 372.265; NRS 372.630 (amended 2009); *Worldcorp,* 113 Nev. at 1038, 944 P.2d at 828 ("[w]hen a tax statute is determined to be unconstitutional, the taxpayer is entitled to a refund.").

NRS 372.265 provides an exemption from use tax where its imposition would be unconstitutional:

> There are exempted from the taxes imposed by this chapter the gross receipts from the sale of, and the storage, use or other consumption in this State of, tangible personal property the gross receipts from the sale of which, or the storage, use or other consumption of which, this State is prohibited from taxing under the Constitution or laws of the United States or under the Constitution of this State.

As set forth above, the imposition of use tax on out-of-state minerals violates the Commerce Clause and is therefore unconstitutional. NRS 372.630 (amended 2009) requires the Department to refund any tax that "has been paid more than once or has been erroneously or illegally collected or computed." Accordingly, a refund is due to SCE.

In *Worldcorp,* taxpayers challenged a statute (NRS 372.317) that exempted from sales and use taxes the gross receipts from an air carrier's sales of aircraft and major aircraft components, but only if the air carrier maintained its central office and based the majority of its aircraft in Nevada. *Worldcorp,* 113 Nev. at 1033-34, 944 P.2d at 825-26. The Court found that this "disparate treatment between domestic and foreign corporations is precisely the type of economic protectionism prohibited by the Commerce Clause" and concluded that the statute "must be stricken from our statutory scheme because it runs afoul of the Commerce Clause." *Id.* at 1037-38, 944 P.2d at 827-28. The Court remanded the case and ordered the district court to instruct the Department to refund the stipulated amount. *Id.* at 1038, 944 P.2d at 828; *see also State v. Bakst,* 122 Nev. 1403, 1416-17, 148 P.3d 717, 726 (2006) (concluding plaintiffs are entitled to a refund of unconstitutional property taxes: ***"[w]hen a tax statute is determined to be unconstitutional, the taxpayer is entitled to a refund."***) (quoting *Worldcorp,* 133 Nev. at 103, 944 P.2d at 828) (emphasis added).

The Department has conceded that NRS 372.270 is facially discriminatory and therefore invalid. *See NV Energy* Respondent'sAnswering Brief at 17 (Jan. 28, 2013) ("The Department has not appealed the finding that the exemption in NRS 372.270 is facially discriminatory and, as a result, the statute is rendered invalid."). NRS 372.265 provides an exemption from use tax where its imposition would be unconstitutional, and NRS 372.630 (amended 2009) requires the

Department to refund any tax that is "illegally collected or computed." ***Accordingly, no further analysis is required–a refund is due to SCE as a matter of Nevada law.***

The Department suggests that this Court must give it the remedy options that the United States Supreme Court outlined. *McKesson Corp. v. Division of Alcoholic Beverages & Tobacco*, 496 U.S. 18 (1990). The Court discussed three possible remedies that may provide "meaningful backward-looking relief" to the taxpayer: (1) the state may grant the taxpayers a refund, (2) the state may assess and collect back taxes against those who benefited from the unconstitutional tax scheme (to the extent doing so is consistent with other constitutional restrictions), or (3) the state may fashion a combination of a partial refund and a partial retroactive assessment against those who benefited from the unconstitutional tax. *Id.* at 40-41.

Although *McKesson* speaks of three remedy options, only one–a refund–is available to the State pursuant to Nevada case law and the Nevada Constitutional provision which prohibits the imposition of tax, other than a net proceeds tax, on minerals. Specifically, article 10, section 5 of Nevada's Constitution says:

> 1. The legislature shall provide by law for a tax upon the net proceeds of all minerals, including oil, gas and other hydrocarbons, extracted in this state, at a rate not to exceed 5 percent of the net proceeds. ***No other tax may be imposed upon a mineral or its proceeds until the identity of the proceeds as such is lost.***

Nev. Const. art. 10, § 5 (emphasis added). Because no tax other than the net proceeds of minerals tax may be imposed on minerals no sales or use taxes may be imposed on minerals (until the identity of the proceeds is lost). The Department is thus prohibited from considering the option of retroactively assessing sales and use taxes against persons who benefited from the statutory exemption that the lower court found unconstitutional. Accordingly, the retroactive tax option discussed in *McKesson* is not available in Nevada because of article 10, section 5.[13]

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[13] The legislative history of article 10, section 5 supports this position. The legislature was well aware of the Commerce Clause violation that would occur if a sales or use tax were imposed on out-of-state minerals: "If items produced from minerals extracted in this state are exempt from taxation, the Commerce Clause . . . will prohibit Nevada from taxing these items if they are produced in other states." Letter from Legislative Counsel L. Malkiewich to C. Joerg at 2, Dec. 12, 1988.

2. EVEN *MCKESSON* DOES NOT REQUIRE THE EXISTENCE OF A "FAVORED COMPETITOR" FOR A REFUND

As demonstrated in the preceding subsection, Nevada statutes and the state constitution ***mandate*** a refund as the only lawful remedy in the circumstances of this case. *McKesson* and other U.S. Supreme Court cases discuss remedies for unconstitutional taxes in states that do not have Nevada's clear refund mandates. However, if for whatever reason, this Court chooses to consider *McKesson*, that case does not require SCE as the taxpayer to identify a competitor favored by the subject tax as the Department argues.

As SCE noted in its *amicus* brief in the *NV Energy* appeal, the district court's denial of a remedy to NV Energy is based on dicta in *McKesson*, which is taken out of context and used to reach an illogical conclusion. *See, e.g., United States v. Flores-Montano,* 541 U.S. 149, 152 (2004) (criticizing a court for seizing upon a single word in a prior decision to support the creation of a new legal standard); *Bryson v. United States,* 396 U.S. 64, 70 n.9 (1969) (criticizing a court for taking a phrase in a Supreme Court decision "out of context" and giving it "a meaning both unsupported by the holding and inconsistent with the spirit of that decision"). In *McKesson,* the U.S. Supreme Court discussed the ways in which Florida could provide a remedy for an unconstitutional liquor tax. In setting out the State's remedial options, the Court mentioned the taxpayer's "competitors," saying that "the State may cure the invalidity of the Liquor Tax by refunding to petitioner the difference between the tax it paid and the tax it would have been assessed were it extended the same rate reductions that its competitors actually received." *McKesson,* 496 U.S. at 40. The case uses the word "competitors" but does ***not*** suggest that a taxpayer has to prove that it is in competition with in-state taxpayers. Because the liquor tax applied to participants in the Florida liquor market, the Court assumed they were all competitors in that market. When the Court described the appropriate amount of refund (the difference between the tax paid and the tax it would have paid if taxed at the lower rate), it referred to the taxpayer's "competitors" as synonymous with all of those persons singled out for preferential treatment (*i.e.*, paying a lower tax rate) under the statutory tax scheme found to be unconstitutional. *Id.* at 40-41. *McKesson* did not hold that when a taxpayer seeks a refund of an

unconstitutional tax, the state need not provide a refund or any other meaningful backward-looking relief unless the taxpayer first proves the existence of a favored domestic competitor.

As set forth above, the Supreme Court repeatedly has rejected the argument that the taxpayer must "prove actual discriminatory impact on it . . . ." *See Armco*, 467 U.S. at 644; *Healy*, 491 U.S. 324 (1989); *Fulton Corp. v. Faulkner*, 516 U.S. 325, 333 n.3 (1996) ("Although the [State] does suggest that the tax is so small in amount as to have no practical impact at all, we have never recognized a '*de minimis*' defense to a charge of discriminatory taxation under the Commerce Clause."); *New Energy*, 486 U.S. at 276-77 ("Varying the strength of the bar against economic protectionism according to the size and number of in-state and out-of-state firms affected would serve no purpose except the creation of new uncertainties in an already complex field."). These cases and others repeatedly rejecting arguments that a taxpayer is required to prove actual discrimination before a statute is found to be unconstitutional are irreconcilable with a requisite showing of actual discrimination in evaluating the remedy to which a taxpayer who pays an unconstitutional tax is entitled. A finding otherwise would render the constitutional analysis meaningless.

Furthermore, a "favored competitor" theory--placing the burden on the taxpayer to identify a specific favored domestic competitor--is unworkable and unfair. While the State publishes an annual Net Proceeds of Minerals Bulletin, which identifies taxpayers who paid the net proceeds of minerals tax, there is no publicly available information regarding the taxes paid (or not paid) on the sales and use of minerals in Nevada. Given rules governing the confidentiality of tax returns and other taxpayer records and information (*see* NRS 360.255 (previously NRS 372.750)), unless a "competitor" is willing to share its financial information with other competitors, which is unlikely, taxpayers who paid a constitutionally discriminatory tax may never know whether, when, and to what extent other entities gained a competitive advantage by virtue of the unconstitutional tax scheme and thus may not be able to show competitive disadvantage. It is clear from the Department's own reporting that the exemptions taken pursuant to NRS 372.270 are significant. *See* Attachment 2 (February 1999 Executive Director's Exemption Report (estimating exemptions taken pursuant to NRS 372.270 were $217.7 million based on March

1998 estimated figures)).

Finally, if the "favored competitor" theory were the law, it would substantially diminish the Commerce Clause's ability to deter unconstitutional discrimination. States could collect taxes that discriminate against interstate commerce, knowing that they would never have to pay refunds to taxpayers who could not identify a specific domestic competitor that was advantaged by the tax at the same time they were disadvantaged. This is inconsistent with the Commerce Clause's prohibition on discrimination against interstate commerce and the Due Process Clause's guarantee of meaningful backward-looking relief.

3. ALTHOUGH NOT REQUIRED BY NEVADA LAW, SCE WILL PRESENT EVIDENCE THAT IT HAS BEEN COMPETITIVELY DISADVANTAGED BY IMPOSITION OF THE USE TAX

Despite the fact that SCE does not need to show actual discrimination in order to prove that the Department's interpretation of NRS 372.270 and NRS 372.185(2) violates the Commerce Clause, there is ample evidence of actual discrimination in this case. First, NRS 372.270 provides a broad exemption for a variety of in-state mining, not just coal. Accordingly, an actual discrimination analysis would be focused on sellers and purchasers of all in-state minerals. According to the Department Executive Director's Exemption Report, dated February 1999, the estimated exemptions taken pursuant to NRS 327.270 were $217.7 million (based on March 1998 estimated figures).[14] In the absence of access to other taxpayers' returns and workpapers, it is reasonable to assume that some portion of these estimated exemptions were taken by entities extracting minerals that were or could have been used as fuel to generate electricity in competition with Mohave[15] *See* Attachment 2. SCE's expert witness Sharon Byram also will testify how all mines in the Western U.S. compete against each other for critical ***inputs*** into the mining process (*e.g.*, skilled mining engineering and specialty mining equipment) regardless of

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[14] Moreover, the State's own annual Net Proceeds of Minerals Bulletins show that there was significant mining and production of in-state minerals during the contested period.

[15] Given *McKesson's* holding obligating the State to provide meaningful backward-looking relief and given the State's confidentiality laws for tax returns and other tax information, if a competition analysis were required, the burden of proof regarding competition should be placed squarely on the Department to establish that there were no in-state persons that were or could have been advantaged by NRS 372.270.

the fact that the various ***outputs*** of these mines may not compete in the same markets.

More specific than in-state versus out-of-state mining competition are mining outputs in Nevada, other than coal, that can be used as fuel to produce electricity. In Nevada, during the years at issue in SCE's pending case (1998-2000), there were at least three fuels in addition to coal that were being mined in Nevada, that were or could have been used to generate electricity, and that would have been exempt from sales or use tax pursuant to NRS 372.270: geothermal, natural gas, and oil. As explained in the expert report of economist Dr. John Jurewitz:

> The electricity produced at [SCE's] Mohave Generation Station was produced in the same market as electricity that could have been produced, or was actually produced, by these favored users of domestic Nevada oil, natural gas, and geothermal heat. In a complete market analysis, it is appropriate to consider the impacts on both potential entrants to a market as well as actual incumbent competitors. Thus, it is not necessary to identify actual advantaged competitors. Instead, it is sufficient to identify theoretically advantaged producers. But in addition, based on public data, we know that oil, gas, and geothermal were extracted in Nevada, that electricity was or could have been generated in Nevada from these sources, and that those generators would have benefitted from the discriminatory tax treatment afforded them relative to Mohave Generation Station which purchased out-of-state coal to produce its electricity.

Attachment 1, Tab D (Expert Report of Dr. John L. Jurewitz at 9). Thus, some minerals extracted in Nevada that compete (or could compete) with coal as a fuel for electricity generation are entitled to claim an exemption from Nevada sales tax, but another mineral used for electricity production but not currently mined in Nevada (*i.e.,* coal) does not benefit from the exemption, despite the fact that coal is expressly identified in NRS 362.010(1) as a mineral subject to the Net Proceeds of Minerals Tax. Furthermore, Professor Jurewitz will explain that Nevada's unconstitutional burden on interstate commerce put SCE at a competitive disadvantage vis-à-vis competitors outside Nevada as well, which also must be considered in fashioning a remedy. The fact that Mohave was able to sell all of its output during this claim period does not insulate SCE from the very real competitive disadvantage of diminished profit. In all, SCE's evidence will establish a clear case of actual discrimination should the Court decide that such proof is required for a refund.

D. THE DEPARTMENT'S "COAL SLURRY PRODUCT" IS A FICTION

Recognizing the constitutional problems that Nevada's tax scheme has created, the Department alleges that the coal from the Black Mesa mine "lost its identity as mining proceeds" and, in doing so, it became a "coal slurry product." Thus, according to the Department, this "coal slurry product" could be subject to new taxes whether it had been mined in or out of state, because it was no longer subject to the constraints of NRS 372.270 or article 10, section 5 of the Nevada Constitution.

This argument depends entirely on the testimony of J. Steven Gardner. Mr. Gardner's report concludes that the Black Mesa coal "lost its identity" as mining proceeds as soon as it was subject to any processing at all (separation from overburden, crushing and certainly transport by a slurry pipeline). Yet, the coal slurry in question was nothing more than crushed coal particles suspended in water. The coal's chemical composition and total BTU content remained constant from the time it was extracted from the Black Mesa mine to the time it arrived at Mohave. The coal and water slurry was simply the most efficient and cost effective method available to transport the coal from the Black Mesa mine to Mohave. Not a single contemporaneous document uses the term "coal slurry product."

Most important, it is uncontested that the Department itself does not apply Mr. Gardner's definition as to when a mineral "loses its identity" as mining proceeds. If it did, the Department would upend more than a century of administering Nevada's tax on the net proceeds of mines.[16] SCE bought Black Mesa coal that was unchanged as the proceeds of mining in Arizona. The Department cannot change the identity of coal by calling it a "coal slurry product" in order to evade the constitutional issues described earlier.

E. ALTERNATIVELY, SCE IS ENTITLED TO VARIOUS PARTIAL REFUNDS OF THE USE TAX PAID

As set forth above, SCE is entitled to a complete refund of use tax paid on the coal used in Nevada because the Department's imposition of use tax in this case is illegal and unconstitutional.

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[16] In computing the net proceeds tax, mine operators are specifically permitted to deduct from gross proceeds "[t]he actual cost of transporting the mineral to the place or places of reduction, refining and sale." NRS 362.120(3)(b). It would be a clear violation of article 10, section 5 to use Mr. Gardner's point of loss of identity because it would mean imposing both a net proceeds tax and a sales tax on the same proceeds.

However, if the Court were to determine that SCE is not entitled to a complete refund, SCE alternatively claims that it is entitled to partial refunds of use tax based on several Nevada tax statutes.

1. THIRD CLAIM FOR RELIEF – SCE IS ENTITLED TO A CREDIT AGAINST THE USE TAX FOR SALES TAX PAID TO ARIZONA

SCE is entitled to a credit against the Nevada use tax for the amount of Arizona transaction privilege tax it paid to Peabody on its purchase of coal. NAC 372.055 provides that in "determining the amount of use tax that is due from a taxpayer," a credit is allowed "in an amount equal to sales tax legitimately paid for the same purchase of tangible personal property to a state or local government outside of Nevada."[17] SCE's payment of Arizona's transaction privilege tax qualifies for the credit under NAC 372.055.

The Nevada Administrative Code does not define the phrase "sales tax legitimately paid" in NAC 372.055, but a sales tax is "a tax imposed on the sale of goods and services." *See Black's Law Dictionary*, 1597 (9th ed. 2009). In Nevada, if a statute is clear and unambiguous, the court gives effect to the plain and ordinary meaning of the statute's language. *Orion Portfolio Servs 2, LLC v. Cnty. of Clark ex rel. Univ. Med. Ctr. of S. Nev.*, 126 Nev. Adv. Op. 39, 245 P.3d 527, 531 (2010). The phrase "sales tax legitimately paid" is clear in its meaning. The Arizona transaction privilege tax is a tax levied by Arizona Revised Statute section 42-5008 (amended 1999, 1998). The tax is applicable to seventeen classifications of industrial and commercial taxpayers. *Atchison, Topeka & Santa Fe Ry. Co. v.Arizona*, 78 F.3d 438, 439 (9th Cir. 1996). One of the seventeen classifications is mining and was defined as "the business of mining, quarrying or producing for sale, profit or commercial use any nonmetalliferous mineral product" A..R. S. § 42-5072(A) (amended 2010, 2003). The tax base for the transaction privilege tax in the mining classification is the "gross proceeds of sales or gross income derived from the business." *Id.* at §

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[17] NAC 372.055 states:

> In determining the amount of use tax that is due from a taxpayer, the Department will allow a credit toward the amount due to this State in an amount equal to sales tax legitimately paid for the same purchase of tangible personal property to a state or local government outside of Nevada, upon proof of payment deemed satisfactory to the Department.

42-5072 (B). Accordingly, the Arizona transaction privilege tax is a sales tax because it is a tax imposed on the sale of goods and services.

In 2010, the Arizona Court of Appeals recognized that the transaction privilege tax is a sales tax, with two differences. The court stated:

> The transaction privilege tax is akin to a sales tax with two differences: (1) the transaction privilege tax is levied on gross receipts instead of individual sales, and (2) the transaction privilege tax is levied on the seller, whereas a sales tax may be levied directly upon the buyer.

Rigel Corp. v. State, 234 P.3d 633, 635 (Ariz. Ct. App. 2010). These differences are irrelevant to a determination of whether the tax qualifies as a sales tax for purposes of Nevada law. First, it should not matter that the transaction privilege tax is levied on gross receipts instead of individual sales, because Nevada's own sales tax is levied on gross receipts. Compare A.R.S. § 42-5008(A) (amended 1999, 1998) with NRS § 372.105 ("For the privilege of selling tangible personal property at retail a tax is hereby imposed upon all retailers at the rate of 2 percent of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in this State on or after July 1, 1955.").[18] Similarly, it is irrelevant whether the tax falls upon the seller or the buyer. Like the Arizona transaction privilege tax, the Nevada sales tax is imposed upon the seller (or retailer) "[f]or the privilege of selling tangible persoual property." NRS 372.105. The Arizona transaction privilege tax is essentially the same as the Nevada sales tax but with a different title.[19] Such a superficial difference should not alter the determination that this was a sales tax subject to a credit under NAC 372.055.[20] *See also* Walter Hellerstein, Michael

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18 See NRS 372.050(1) ("'Retail sale' or 'sale at retail' means a sale for any purpose other than resale in the regular course of business of tangible personal property."). SCE purchased coal from Peabody for consumption at the Mohave plant. The coal was not repackaged or resold, making the Peabody sale a retail sale.

19 Further, the IRS defines the term "general sales tax" as "a tax imposed at one rate with respect to the sale at retail of a broad range of classes of items." 26 U.S.C. § 164(b)(5)(B) (2013) (added in 2004). In determining whether a tax is a sales tax, title 26, section 1.164-5 of the Code of Federal Regulations states: "The fact that, under the law imposing it, the incidence of such State or local tax does not fall on the consumer is immaterial."

20 In prior briefing on this issue, the only authority the Department relied on is an Arizona case involving the City of Phoenix's privilege license tax, not the Arizona state tax at issue here. *See City of Phoenix v. West Publ'g Co.*, 712 P.2d 944 (Ariz. Ct. App. 1985) (addressing the applicability of Phoenix's privilege license tax to out-of-state taxpayer).

J.McIntyre, Richard D. Pomp, *Commerce Clause Restraints on State Taxation After Jefferson Lines*, 51 Tax L. Rev. 47, 92 (1995) ("Arizona levies what it calls a transaction privilege tax, but that levy is functionally equivalent to a retail sales tax.").

2. FOURTH CLAIM FOR RELIEF – SCE IS ENTITLED TO EXCLUDE TAXES PAID TO THE FEDERAL GOVERNMENT FROM THE MEASURE OF USE TAX

Under NRS 372.065(3)(d) (amended 2005), the measure of the use tax (the "sales price")[21] does not include the "amount of any tax (not including any manufacturers' or importers' excise tax) imposed by the United States upon or with respect to retail sales, whether imposed upon the retailer or the consumer." SCE reimbursed Peabody for taxes imposed on Peabody by the United States under the Surface Mining Control & Reclamation Act of 1977 ("SMCRA Tax"). In paying the Nevada use tax, SCE included the SMCRA Tax in the sales price subject to use tax.

The SMCRA Tax reimbursed by SCE to Peabody qualifies for the exclusion because the tax was imposed by the United States on the coal Peabody produced for sale to SCE, with the amount of the tax determined by the weight and value of the coal at the time Peabody sold it to SCE. *See* 30 U.S.C. § 1232 (amended 2006, 2005, 2004); 30 C.F.R. § 870.12(a), (b) (amended 2004). It is neither a manufacturers' or importers' excise tax, which would allow its inclusion in the measure of use tax pursuant to NRS 372.065(3)(d) (amended 2005). The tax was imposed on ***mining operations in Arizona,*** not manufacturing or foreign operations, and it is not listed among

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21 Pursuant to NRS 372.185, use tax is calculated based upon the sales price of the property: "An excise tax is hereby imposed on the storage, use or other consumption in this State of tangible personal property purchased from any retailer on or after July 1, 1955, for storage, use or other consumption in this State at the rate of 2 percent of the sales price of the property." NRS 372.185 (emphasis added). Sales price is defined by NRS 372.065 (amended 2005) and is the base against which the use rate is imposed to determine the tax liability; the basic determination of the sales price is "the total amount for which tangible property is sold." NRS 372.065. *See also* NAC 372.028 (defining "purchase price" as "the measure subject to use tax and has the meaning ascribed to 'sales price' in NRS 360B.480.") (added to NAC in 2008); NRS 360B.480(1) ("'Sales price' means the total amount of consideration, including cash, credit, property and services, for which personal property is sold, leased or rented, valued in money, whether received in money or otherwise...") (added to NRS in 2005).

the excise taxes on manufacturers or importers codified in 26 U.S.C. §§ 4064 *et seq.* (*see* Chapter 32 "Manufacturers Excise Taxes" of Subtitle D within the Internal Revenue Code). [22]

3. FIFTH CLAIM FOR RELIEF – SCE IS ENTITLED TO EXCLUDE TAXES PAID TO THE NAVAJO NATION FROM THE MEASURE OF USE TAX

SCE also is entitled to a partial refund because the Business Activity Tax ("BAT") (24 N.N.C. [Navajo Nation Code] §§ 401 *et seq.* (printed 10/18/01)) and the Possessory Interest Tax ("PIT") (24 N.N.C. §§ 201 *et seq.* (printed 2/12/02)) were improperly included in the measure of the use taxes paid to the State. Although these taxes were imposed by the Navajo Nation and not directly by the United States, they should have been excluded from the measure of the Nevada use tax (*i.e.*, the "sales price" pursuant to NRS 372.065(3)(d)) (amended 2005),[23] because the Navajo Nation's taxing authority is subject to constraints imposed by the federal government. *Kerr-McGee Corp. v. Navajo Tribe of Indians*, 471 US 195, 198 (1985) (citing *Merrion v. Jicarilla Apache Tribe, 455 U.S. 130, 155 (1982)); Merrion*, 455 U.S. at 156 ("Congress, of course, retains plenary power to limit tribal taxing authority or to alter the current scheme under which the tribes may impose taxes."). Accordingly, for purposes of NRS 372.065(3)(d) (amended 2005), the BAT and PIT should be considered taxes imposed by the United States. These taxes exist because Congress has not limited the Navajo Nation's ability to impose them. *See Kerr-McGee*, 471 US at 97. Indian Nations tax only through the implicit assent of the federal government.

Both types of taxes also are taxes "upon or with respect to retail sales" pursuant to NRS 372.065(3)(d) (amended 2005). BAT is a tax "imposed on the source-gains of a branch at [an established rate]. The tax due for a period is computed by multiplying the source-gains of the branch for the period by the tax rate." 24 N.N.C. § 402 (printed 10/18/01). "Branch" means "any

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[22] U.S. taxes paid in connection with the Black Lung Benefits Revenue Act of 1977 are codified in the Internal Revenue Code as a "manufacturers excise tax." Even though it is difficult to see how mining can be considered to be a form of manufacturing, in view of this explicit categorization, SCE has decided to drop the portion of its Fourth Claim for Relief seeking to exclude from the measure of Nevada's use tax Black Lung taxes reimbursed to Peabody.

[23] As set forth above, NRS 372.065(3)(d) excludes from the measure of use tax the amount of tax (not including manufacturers' or importers' excise tax) imposed by the United States upon or with respect to retail sales.

persons engaged in trade, commerce, manufacture, power production, or any other productive activity, whether for profit or not, wholly or in part within the Navajo Nation." *Id.* at § 404(A). "Source-gains" are the "gross receipts of that branch from the sale, either within or without the Navajo Nation, of Navajo goods, or services." *Id.* at § 404(B). Here, Peabody (the branch) was taxed on its sale to SCE of coal extracted from the Black Mesa Mine in the Navajo Nation (the source-gains). Accordingly, the BAT was imposed with respect to retail sales of the coal and should be excluded from the measure of Nevada's use tax.

Similarly, the PIT is another tax imposed with respect to retail sales. It is imposed on possessory interests within the Navajo Nation and is computed by multiplying the taxable value of a possessory interest on the assessment date by the tax rate. 24 N.N.C. § 202(A)-(B) (printed 2/12/02). The present value of net income was used to value the possessory interests that relate to coal mines and/or coal reserves. Navajo Nation Possessory Interest Tax Regulations, § 1.234 (printed 7/21/08). The valuation method for the PIT includes the coal production schedule. *See id.* at § 1.234(E). "Average production for the three calendar years immediately preceding the assessment date shall be considered in conjunction with a forecast to project future production for the life of reserves or twenty-five years, whichever is less. The production schedule will be utilized in conjunction with price and operating cost data to determine future net income and/or cash flow." *Id.* In other words, the PIT is imposed based on net income, which is based on coal sales.

4. SIXTH CLAIM FOR RELIEF – SCE IS ENTITLED TO EXCLUDE AD VALOREM AND TRANSACTION PRIVILEGE TAXES PAID TO THE STATE OF ARIZONA FROM THE MEASURE OF USE TAX

SCE also is entitled to exclude the ad valorem and transaction privilege taxes paid to the State of Arizona from the measure of use tax.

The ad valorem tax is a property tax and not appropriately considered part of the "sales price" of the coal purchased by SCE. NRS 372.065 (amended 2005) ("'Sales price' means the total amount for which tangible property [coal] is sold . . . "). The ad valorem tax is assessed by the State of Arizona in accordance with Arizona Revised Statute, section 42-15001, which

imposes a rate against the full cash value of the property – in this case, a producing mine. *See* A.R.S.§ 42-15001 (amended 2007, 2005, 1999); A.R.S. § 42-12001(1) (amended 2009, 2003, 2000).[24] Pursuant to contracts between the parties, SCE reimbursed Peabody for 1/12th of the annual property tax every month without regard to the amount of coal SCE purchased from Peabody. *See* Amended Coal Supply Agreement at 21 (dated May 26, 1976). Because the ad valorem tax was paid for the privilege of owning property and not part of the amount for which tangible property (coal) was sold, the ad valorem tax should be excluded from the measure of the use tax. NRS 372.065 (amended 2006).

Nor should the Arizona transaction privilege tax have been included in determining the sales price of the coal (under NRS 372.065 (amended 2005)) to determine the amount of SCE's use tax liability to Nevada. As set forth in Section II.E.1, above, NAC 372.055 provides that a sales tax legitimately paid for the same purchase to another state should be not included in the determination of the amount of use tax that was due. Because SCE included the Arizona transaction privilege tax in the "sales price" of the coal purchased for Mohave, it is entitled to both a credit for the amount of the transaction privilege tax paid to Arizona and is entitled to exclude this same amount from the measure of the Nevada use tax. [25]

5. SEVENTH CLAIM FOR RELIEF – SCE IS ENTITLED TO A REFUND OF USE TAX PAID ON THE TRANSPORTATION COSTS IT INCURRED IN TRANSPORTING COAL TO MOHAVE

The amounts paid to BMP for transportation charges should not have been included in the "sales price" on which the Nevada use tax was calculated. Transportation charges were paid directly to BMP and not to Peabody and were therefore not part of the price at which the coal was sold. BMP invoiced SCE directly for the charges for transporting and delivering the coal to Mohave, and SCE sent payment for such transportation charges directly to BMP. Accordingly, the charges are not taxable under NAC 372.101(4), because they are "charge[s] for a service" and

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[24] A producing mine in Arizona is classified as a "class one property" and valued at full cash value. A.R.S. § 42-12001(1) (amended 2009, 2003, 2000).

[25] If the Court grants SCE's Third Claim for Relief, then it need only exclude the ad valorem tax paid to Arizona from the measure of Nevada use tax.

"not connected with the sale of tangible personal property." *See* NAC 372.101(4) (amended 2009, 2008, 2002);[26] NRS 372.065 (amended 2005) ("'Sales price' means the total amount for which tangible property [coal] is sold..."). NRS 372.065(1)(c) (amended 2005) does not apply. *See* NRS 372.065(1)(c) (amended 2005) (disallowing a deduction from the "sales price" for the "cost of transportation of the property prior to its purchase").

Moreover, as set forth above, SCE's first and second claims for relief entitle SCE to a complete refund of the use tax on the coal used at the Mohave Plant. If SCE prevails on either of these claims, SCE also is entitled to a refund of the use tax paid on the transportation of the coal. Simply stated, transportation costs alone are not "tangible personal property purchased" on which use tax may be imposed. *See* NRS 372.185 (imposing use tax on the "storage, use or other consumption in this State of ***tangible personal property purchased*** from any retailer") (emphasis added).

F. STATUTE OF LIMITATIONS

There is no dispute that SCE timely filed its original claims for refund for the period at issue in this case (March 1998 through December 2000).[27] The Department argues that because SCE raised additional grounds for relief after the statute of limitations had run on some of the claims periods (but long before the Tax Commission issued either of its final decisions), the statute of limitations bars consideration of the additional grounds.[28] The Department's argument fails. Under well-settled state and federal law, SCE was permitted to amend its original, timely-filed claims to state additional, alternative grounds for refund because all the grounds for a refund

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[26] This regulation was added to the NAC by the Department of Taxation, effective August 2, 1990, i.e., "A charge for freight, transportation, or delivery that is not connected with the sale of tangible personal property is a charge for a service and is not subject to sales and use taxes." NAC 372.101(4) (amended 2009, 2008, 2002) The regulation was amended in 2002, 2008, and 2009; today, subsection (2) similarly states, "A delivery charge that is not connected with the sale of tangible personal property is a charge for a service and is not subject to sales and use taxes." NAC 372.10112.

[27] All original claims were filed within 3 years. *See* NRS 372.635 (amended 2003) ("No refund may be allowed unless a claim for it is filed with the Department within 3 years after the last day of the month following the close of the period for which the overpayment was made.").

[28] Even the Department must concede that its statute of limitations arguments do not apply to all of SCE's claims. Specifically, there is no argument that SCE's original claims for credit for the amount of Arizona transaction privilege tax are barred, and there is no argument that SCE's claims for a complete refund for the period January to December 2000 are barred. Nor are there any statute of limitations issues affecting Claims Sets 2 and 3.

asserted by SCE in its amended claims are based on the same set of facts contained in SCE original claims—*i.e.*, that SCE paid Nevada use tax on coal extracted in Arizona which would not have been imposed had the coal come from Nevada. *See United States v. Memphis Cotton Oil*, 288 U.S. 62, 72-73 (1933); *Hansen-Neiderhauser, Inc. v. Nev. Tax Comm'n*, 81 Nev. 307, 310-11, 402 P.2d 480, 481-82 (1965); *City of Reno v. Fields*, 69 Nev. 300, 306-07, 250 P.2d 140, 142-43 (1952).

SCE's ***original*** claims for refund included the following information:

> Southern California Edison Company ("SCE") legitimately paid Arizona sales tax to its vendor, Peabody Coal Company (see enclosed invoice), on coal products used at SCE's Mohave Generating Station, located in Clark County, Nevada. SCE also paid the Nevada use tax on these purchases.

The invoices SCE enclosed with its original claims showed charges for "coal delivered" and various taxes and fees.

Every letter from the Department acknowledging SCE's filing of its original refund claims states: "I have forwarded your request with all accompanying documentation to a Department of Taxation auditor for further review. You will be notified of the results when the review is completed."[29] Each denial letter from the Department states:

> You purchase the coal from Peabody Western Coal Company in Arizona. The coal is shipped to your location via pipeline, F.O.B. Destination. Peabody charges you Arizona tax of 3.437%. The coal is consumed in your Mojave Generating Station located in Clark County, Nevada.

Thus, the Department understood from the beginning that SCE was paying Nevada use tax on coal extracted in Arizona. The Department's Tax Manager testified that it is standard Department practice when examining claims for refund to determine whether there are applicable exemptions that could apply–and that she considered possible exemptions in examining SCE's claims, including the exemption for net proceeds of minerals (NRS 372.270).[30]

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[29] The Department began this audit and internally acknowledged that an audit of the claims "hold[s] all periods open." *See* Attachment 3.

[30] Q. (By Mr. Azevedo) Does the Department, when looking for a claim for refund of use tax, make a determination whether there are any applicable exemptions available for sales tax had the transaction occurred in Nevada?
A. Yes.
Q. In this case, did you do that?

After SCE's original claims for refund were denied, SCE complied with the Department's instruction to file a petition for redetermination. SCE timely filed its petition on January 31, 2003 for the periods covered by the denial letters, setting forth its grounds for refund (including a request for a refund based on a violation of the Commerce Clause) and reserving the right to further supplement the grounds for refund.[31]

These additional claims are based on the same set of facts as are contained in SCE original claims—*i.e.*, that SCE paid Nevada use tax on coal extracted in Arizona—and are therefore not barred. While NRS 372.645 and NAC 360.480(2) (amended 2003, 2002, 2001) govern the form and content of claims,[32] state and federal courts have uniformly drawn a sharp distinction between compliance with this type of regulation and compliance with statutes of limitations for filing claims for refund. *See Memphis Cotton Oil*, 288 U.S. at 71 ("The function of the statute, like that of limitations generally, is to give protection against stale demands," whereas, "[t]he function of the regulation is to facilitate research.") Thus, "where the facts constituting the claim are not changed, at least as great a liberality should be afforded the claim as is afforded by the courts in permitting amendment of pleadings in analogous instances." *City of Reno*, 69 Nev. at 306, 250 P.2d at 143. In a Nevada Supreme Court case involving NRS 372.645–the very statute at issue here–the Court reasoned that a timely filed claim for refund "enable[s] the agency to investigate the claim and the claimant while the occurrence is recent and the evidence available to the end that it may protect itself against spurious and unjust claims." *Hansen-Neiderhauser, Inc.*, 81 Nev. at 311, 402 P.2d at 482. For that reason, the Court permitted the taxpayer to include in its complaint a basis for relief not contained in the claim for refund because "where the facts constituting the claim encompass the same basic dispute, substantial compliance with the statute

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A. Yes.
Q. And you were aware it was coal that was the subject of the claim for refund?
A. Yes.
Testimony of K. Phillips at 55:4-14 (Dec. 22, 2003) (001906); *see also id.* at 56:19-57:13 (001907-001908).

[31] SCE filed final "revised amended claims for refunds" on October 27, 2003, and notified the Department that SCE was entitled to exclude from the measure of use tax the amounts incurred in transporting coal to Mohave.

[32] *See* NRS 372.645 ("Every claim must be in writing and must state the specific grounds upon which the claim is founded."); NAC 360.480(2) (amended 2003, 2002, 2001) (requiring a statement setting forth "the amount" and "all grounds upon which the claim is based").

requiring the filing of a claim is sufficient." *Id.* at 310.

Moreover, a taxpayer has the right to amend his claim for refund until there has been a final decision by the taxing authority. *See Memphis Cotton Oil*, 288 U.S. at 72-73 (permitting taxpayer to amend its claim for refund where the Commissioner had not sent a formal notice of denial that would have allowed the taxpayer to bring suit in district court). It was not until the Tax Commission denied SCE's claims that they were final for purposes of judicial review. *See* NRS 360.245; NRS 372.680(1). In fact, the Department acknowledged that its audit of SCE's claims "hold[s] all periods open." *See* Attachment 3; *see also* NRS 372.635 (amended 2003); NRS 360.265, NRS 360.395 (amended 1999). This makes sense considering that "'[t]he ultimate question presented for decision, upon a claim for refund, is whether the taxpayer has overpaid his tax. This involves a determination of the entire tax liability.'" *Memphis Cotton Oil*, 288 U.S. at 70 (quoting *Lewis v. Reynolds*, 284 U.S. 281, 283 (1932)). For this reason, taxpayers are permitted to amend their claims up until the time the claim is finally rejected by the taxing authority (assuming the claim is either itself within the statute of limitations or is based on the same facts as are contained in a timely-filed claim).

Here, not only did the Department know that SCE had paid use tax on coal extracted in Arizona, it knew that this set of facts formed the basis for a potential ground for exemption from use tax pursuant to NRS 372.270. And, the Department actually considered this ground in denying SCE's original claims for refund.[33]

As a result, SCE was entitled to amend its claims, which it did based on the facts originally presented to the Department. The Department's ability to investigate the claims and fully evaluate its arguments was in no way limited or prejudiced by SCE's later amendments.

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[33] Q. Are you familiar with the statute NRS 372.270?
A. Would you repeat the number again, please?
Q. Yes. NRS 372.270.
...
Q. And you have been aware of that statute?
A. I took that into consideration, actually, when I wrote my denial letter.
Testimony of K. Phillips at 56:19-57:13 (Dec. 22, 2003) (001907-001908).

IV. LIST OF SUMMARIES OR SCHEDULES REFERRING TO ATTACHED ITEMIZED EXHIBITS

SCE prepared spreadsheets summarizing each of its claims for complete or partial refunds on a month-by-month basis. These are attachments 4 and 5 to this Trial Statement. In addition, SCE prepared a separate binder of all of the historic accounting records that provide the use tax payment amounts shown on the spreadsheets. This binder is too voluminous to be attached to the Trial Statement but it will be marked as an exhibit at trial. SCE provided the spreadsheets and supporting binder to Department counsel over a month ago and provided an explanation of how to read the spreadsheets and locate backup documentation in the binder. Nevertheless, the Department declined to stipulate to the admissibility of either the spreadsheets or the binder.

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VI. OTHER INFORMATION THAT MAY ASSIST THE COURT

The following SCE expert reports are attached to this Trial Statement:

Attachment 1, Tab A: Report of Ralph Barbaro, Ph.D., P.E. (coal issues)

Attachment 1, Tab B: Report of Glenn Cunningham (coal and pipeline issues)

Attachment 1, Tab C: Report of Sharon Byram, Esq. (Nevada tax practices)

Attachment 1, Tab D: Report of Professor John Jurewitz (competition issues)

Attachment 1, Tab E: Report of Professor Richard Pomp (state tax issues)

VII. CONCLUSION

For all the reasons stated above, following the trial of this matter, the Court should enter judgment for SCE for the complete refund of the use tax paid for the purchase and transport of coal to Mohave for the period March 1998 through December 2000 plus interest at the applicable statutory rate.

Dated: January 16, 2014

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IN THE FIRST JUDICIAL DISTRICT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

SOUTHERN CALIFORNIA EDISON,

Plaintiff,

v.

THE STATE OF NEVADA, *ex rel.* DEPARTMENT OF TAXATION

Defendant.

Case No. 09-0C-00016-1B

Dept. No.: 1

SOUTHERN CALIFORNIA EDISON COMPANY'S CERTIFICATE OF COMPLIANCE WITH RULE 10 OF THE FIRST JUDICIAL DISTRICT COURT LOCAL RULES

TO THE COURT AND ALL COUNSEL OF RECORD: Plaintiff Southern California Edison Company ("SCE's") hereby certifies that, pursuant to Rule 10 of the Local Rules of the this Court, counsel for the parties exchanged correspondence and engaged in a series of telephonic discussions to formulate a list of stipulated facts and issues for the upcoming trial. Those efforts began on or about December 12, 2013. The facts and issues to which the parties stipulated are reflected in SCE's Trial Statement, which has been filed concurrently herewith.

Dated: January 16, 2014

Respectfully submitted,

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