

**STATE OF NEVADA
BOARD OF WILDLIFE COMMISSIONERS
NEVADA DEPARTMENT OF WILDLIFE**

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS
AS REQUIRED BY NRS 233B.066
Informational Statement**

LCB FILE NO. R014-16

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) Chapter 502.

1. A clear and concise explanation of the need for the adopted regulation:

The proposed regulation change will update and modernize the Industrial Artificial Pond (IAP) assessment fee structure to create a fee structure that is equitable across a diverse array of industries. The result of the change will be an expanded number of active permit holders that are required to pay an annual assessment, which supports the cost of the program and meets the original intent of the supporting legislation.

While the regulation amendment will not change which entities are required to obtain a permit, it will expand which industries are included in the assessment structure. The original language was adopted in 1991 and has become outdated with the advent of new industries and technologies. The existing fee structure is based solely on the “tons of material processed through a mill or heap leach pad.” The current language results in approximately 45 percent of active permit holders not being required to pay an annual assessment, but still requiring the same level of monitoring and administration by the Nevada Department of Wildlife (NDOW) for those non-paying permittees. This has created a funding shortfall for the IAP program that is currently subsidized with sportsman dollars.

Under the proposed assessment fee structure, nearly 100 percent of active permit holders will be required to pay an assessment, and the fees are tiered so smaller operations pay less. The restructured assessment fees will eliminate the budget shortfall, allow sportsman dollars to be re-directed to programs benefitting wildlife and their habitats, and create a sustainable industrial permitting program that is funded by the permitted industries. The proposed regulation changes were created collaboratively and vetted with industry partners and are supported by the Nevada Mining Association.

2. Description of how public comment was solicited, a summary of public response, and an explanation of how other interested persons may obtain a copy of the summary:

NDOW staff met with industry and environmental focus groups and conducted three stakeholder meetings in Elko, Reno, and Las Vegas with relevant partners to receive and incorporate stakeholder comments. Attendance at each stakeholder

meeting ranged from 4 to 12 and totaled 21 participants. NDOW staff also attended meetings of the Nevada Mining Association (NvMA) to discuss the proposed regulation changes. Comments received from industry interests, primarily the Nevada Mining Association, led to modifications of the proposed regulation language. Comments from other interested members of the public were minimal at the stakeholder meetings. NDOW is not aware of any outstanding substantive comments from the interested public or industry partners.

A summary of public participation, comments, and NDOW's response to comments is available by contacting Matt Maples, Staff Specialist, NDOW (mmaples@ndow.org).

3. The number of persons who:

(a) Attended each hearing:

A total of 58 members of the public attended the Nevada Board of Wildlife Commissioners Meeting (NBWC) on May 13, 2016 in Reno. The workshop for the proposed regulation was held during this meeting as Agenda Item #15.

A total of 28 members of the public attended the NBWC Meeting on June 25, 2016 in Elko. The proposed regulation was heard for possible adoption and ultimately adopted unanimously during this meeting as Agenda Item #26.

(b) Testified at each hearing:

May 13, 2016: A total of one member of the public provided testimony at the workshop. The public testimony was from a representative from the NvMA and expressed their appreciation to NDOW for early and collaborative involvement in the development of the final proposed language. NvMA is supportive of the proposed regulation change and all of NvMA's concerns with prior versions of the regulation have been satisfied.

A total of one member of the public requested clarification on the result of the regulation change regarding a specific project in southern Nevada. NDOW and NBWC responded to the question.

June 25, 2016: No members of the public provided testimony at the Nevada Board of Wildlife Commissioners meeting when the regulation was heard for possible adoption and ultimately adopted.

(c) Submitted written comments:

May 13, 2016: No written comments were submitted.

June 25, 2016: The NvMA submitted informal written comments to NDOW stating the organization appreciated NDOW's coordination on the regulation change and did not oppose the proposed changes.

4. For each person identified in number 3 above, the following information if provided to the agency conducting the hearing:

- (a) Name: Allen Biaggi
- (b) Telephone number: 775-781-2112
- (c) Business address: PO Box 741, Minden, NV 89423
- (d) Business telephone number:
- (e) Electronic mail address: freelpeak@gmail.com
- (f) Name of entity or organization represented: Nevada Mining Association

5. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary:

NDOW assessed the potential impact of the proposed regulation change on business by soliciting comments through several venues. An assessment of potential impacts included a quantitative and qualitative analysis of comments.

The assessment started with a series of focus group meetings that solicited a variety of industry and environmental leaders in early January 2016. After the focus groups helped provide general input and direction, a broad array of interested parties were invited to attend stakeholder meetings, participate in a small business impact survey, and submit questions or comments on the proposed regulation to NDOW. The invitation was delivered to all 87 active IAP permittees, members of the Nevada Mining Association, the notification list used by the Nevada Division of Environmental Protection's Bureau of Mining Regulation and Reclamation, the NBWC, NDOW County Advisory Boards, and NDOW's interested parties list.

Three stakeholder meetings were conducted during mid-January, 2016, in Reno, Las Vegas, and Elko. Coincident with the stakeholder meeting process, NDOW accepted input into the Small Business Impact Survey. Seven responses to the small business impact survey were received, but only two surveys were fully completed. The first company noted the costs associated with obtaining and maintaining a permit, but did not differentiate between the existing and proposed fee structure. The company provided no specific information on the effect of the proposed regulation change. The second company reported an increase in annual fees under the proposed fee structure, but also indicated the potential for a modest public image benefit. Because several surveys were incomplete, NDOW sent a follow-up email asking those participants why they did not complete the entire survey. One company responded that the proposed fee increase associated with the regulation change was too insignificant to justify performing the accounting needed to determine the effect it would have on the company. As only two completed surveys

were returned from 87 active permittees, the regulation change is not anticipated to have a significant effect on business.

All of the substantive comments from industry were incorporated into the proposed regulation and fully addressed during the focus group and stakeholder meeting processes.

The regulation workshop was conducted in May 2016 and no substantive negative comments were received from industry or the general public. The Nevada Mining Association noted the collaborative process and expressed their support of the regulation change.

The Small Business Impact Statement and record of public comments can be obtained from the Nevada Department of Wildlife by contacting Matt Maples at mmaples@ndow.org or 775-688-1568.

6. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change:

The workshop for the regulation was conducted at the May 13, 2016 NBWC Meeting. At the request of the Commission, some minor clarifying language was added to the regulation.

There was no additional public comment between the workshop and adoption. The regulation was adopted without further changes at the June 25, 2016 NBWC Meeting.

7. The estimated economic effect of the adopted regulation on the businesses which it is to regulate and on the public. These must be stated separately, and each case must include:

Business:

(a) Adverse and beneficial effects:

An adverse effect may be realized by industrial development operators because they could be subject to increased annual assessment fees. The effect of the proposed fee change will vary among businesses and is based on the size or production rate of the facility. NDOW used permit information to make predictions on fee increases for all permittees. Using this information, NDOW predicts that approximately 25 percent of the active IAP permits are issued to small businesses and the average increase for these small businesses is predicted to be approximately \$3,000 each, per year. These costs have the potential to adversely affect business to some degree; however, the *significance and scope* of the impact is expected to be minimal based on feedback and analyses.

A beneficial effect may be realized by small business contractors that work on habitat improvement projects or “conservation contractors.” Under the

modified fee structure, NDOW can re-vitalize the Industry Project Fund which traditionally funded wildlife habitat improvement and research projects associated with industrial development. The Industry Project Fund is supported by sportsman and industrial development partners. Additionally, the Industry Project Fund often uses contractors to complete habitat improvement and wildlife research projects and may create an associated beneficial effect to businesses.

(b) Immediate and long-term effects:

An immediate economic effect of the regulation change to industrial development operators and conservation contractors would not occur as the revised assessment fees would not be due until July 1, 2017. Dialog with the NvMA resulted in agreement to defer new fee payments until July 1, 2017, thus providing permittees with time to anticipate and prepare for the revised fee structure.

The long-term effect to industrial development operators would include continued payment of assessment fees for active IAP permittees. Due to the effects of inflation, the long-term economic effect (both adverse and beneficial) would be reduced over time as inflationary pressures increase, but the assessment fees remain stable. The amended assessment fee structure results in a sustainable permitting system that ensures permittees and NDOW comply with NRS 502.390.

Public

(a) Adverse and beneficial effects:

There are no known or anticipated adverse effects to the general public as a result of this regulation change.

A beneficial effect will be realized by sportsmen and the general public as a result of this regulation. This regulation will substantially decrease the use of sportsman's dollars to fund the IAP program, which will maximize the ability to direct sportsman's dollars to conservation programs with tangible and beneficial effects to sportsmen and the general public. Additionally, a re-vitalized Industry Project Fund benefits sportsmen, the public, and businesses by completing on the ground habitat improvement and wildlife research projects.

(b) Immediate and long-term effects:

An immediate economic effect of the regulation change to the general public would not occur as the amended assessment fee schedule and additional funding sources will not be available until July 1, 2017.

The regulation change will produce a long-term beneficial effect to sportsmen and the general public as it creates a sustainable funding source for the IAP program with limited expense of sportsman dollars.

- 8. The estimated cost to the agency for enforcement of the adopted regulation:**
The proposed regulation will not increase the estimated cost to enforce IAP regulations. Currently, the agency is performing all required duties associated with NRS 502.390, but is forced to subsidize the program with sportsman dollars as the full cost of the program cannot be funded with the outdated fee structure. The proposed regulations will update and modernize the assessment fee structure by incorporating new industries and technologies into the assessment fee structure. This will allow the agency to fully and more sustainably fund the program with industry-provided dollars.
- 9. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency:**
The proposed regulation does not overlap with any other existing regulations.
- 10. If the regulation includes provisions that are more stringent than a federal regulation which regulates the same activity, a summary of such provisions:**
The proposed regulation does not include provisions that are more stringent or duplicate an existing federal regulation that regulates the same activity.
- 11. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.**
The proposed regulation includes an increase to an existing fee. The increased fee would result in approximately \$320,000 of revenue per year. The money will be used to fund agency costs associated with the IAP program (NRS 502.390) and limit the use of sportsman dollars to subsidize the IAP program. Federal Pittman-Robertson funds obtained as a result of using the assessment fees as state match will be used to fund a portion of NDOW's technical review program, which coordinates industrial development among proponents and agencies, and complete on-the-ground habitat improvement and research projects through the Industry Project Fund.