



*Sent via Electronic Mail to:*  
[AsmNR@asm.state.nv.us](mailto:AsmNR@asm.state.nv.us)

April 7, 2023

The Honorable Lesley E. Cohen, Chair  
Nevada Assembly Committee on Natural Resources  
Nevada State Legislature  
401 South Carson Street  
Carson City, NV 89701

**RE: Updated Testimony in Opposition to AB 313 – Pit Backfilling/Un-Mining Bill**

Dear Chairwoman Cohen and Members of the Assembly Natural Resources Committee:

The Women's Mining Coalition (WMC) is submitting this updated testimony in response to the March 29, 2023 amendment to this bill and to emphasize that the amendment does not alleviate our concerns about the pit lake backfilling mandate in AB 313. Our March 24, 2023 testimony, which we submitted prior to the hearing being postponed, outlines our concerns in detail and is attached as Exhibit 1 for your convenience.

The amendment to AB 313 still includes the faulty assumption that pit backfilling to eliminate a pit lake is the best way to reclaim a pit and close a mine. AB 313 fails to recognize that backfilling is not the best closure option for many sites – and is the wrong option at some sites. Consequently, the one-size-fits-all pit backfilling mandate in AB 313 is technically flawed. The universal pit lake backfilling requirement in AB 313 will harm the environment at some open-pit mine sites; chill investment in mineral exploration and development; reduce mining jobs, community investments, and tax revenues; and interfere with Nevada's objectives to become the Nation's lithium mining capital.

Nevada's environmental laws and regulations prohibit degrading Waters of the State<sup>1</sup> and require mine operators to use best available science and the best technology to determine the optimal closure plan that both protects the environment and is economically feasible. AB 313 turns that evaluation on its ear by requiring operators seeking an exemption to the backfilling requirement to prove the negative – that backfilling the pit will not harm the environment. Nevada's regulations must continue to demand what's best for the environment rather than settling for a second-rate outcome of what will not harm the environment.

The decision whether to backfill a pit lake must be based on a site's geology, hydrology, topography, and economics. Because each mine site is different, there can be no absolute

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<sup>1</sup> NRS 445A.415 defines "Waters of the State" as applying to all surface water and groundwater and includes both natural and artificial water bodies, thus applying the definition to pit lakes.

blueprint. At some sites, operators backfill pits to eliminate a pit lake for environmental and/or economic reasons. At other sites, pit lakes can provide long-term benefits including valuable wildlife habitat and recreational opportunities.

We also have significant concerns about the amended language that gives the Division the option to contract with independent consultants to assist in the exception review process and to charge the permit applicant for this review. It is not appropriate for the Division to outsource the permit review and decision-making process. Operators are already required to pay for consultants to provide the Division with technical documentation supporting their rationale for backfilling or not backfilling a pit. If third parties wish to contribute technical information demonstrating why backfilling will not harm the environment, they should provide that analysis using their own resources. It is inappropriate for them to attempt to use this bill as a vehicle to seek funding for their work.

AB 313 simultaneously seeks to ban future pit lakes (Section 4) and also to provide the public with greater access to pit lakes (Section 12). This irreconcilable internal contradiction demonstrates that this bill is ill-conceived and unworkable. For the reasons stated above and outlined in our March 24<sup>th</sup> testimony, WMC respectfully requests this committee to vote against AB 313.

Sincerely yours,



Debra W. Struhsacker  
WMC Co-Founder and Board Member

Attachment: Exhibit 1: WMC's March 24, 2023 Testimony in Opposition to AB 313

cc via email: Assemblywoman Natha Anderson, Vice Chair  
Assemblywoman Shannon Bilbray-Axelrod  
Assemblywoman Tracy Brown-May  
Assemblywoman Venicia Considine  
Assemblywoman Bea Duran  
Assemblywoman Selena La Rue Hatch  
Assemblyman Howard Watts  
Assemblyman Rich DeLong  
Assemblyman Bert Gurr  
Assemblywoman Alexis Hansen  
Assemblyman Tobey Yurek



Exhibit 1

Women's Mining Coalition March 24, 2023 Testimony in Opposition to AB 313



*Sent via Electronic Mail to:*  
[AsmNR@asm.state.nv.us](mailto:AsmNR@asm.state.nv.us)

March 24, 2023

The Honorable Lesley E. Cohen, Chair  
Nevada Assembly Committee on Natural Resources  
Nevada State Legislature  
401 South Carson Street  
Carson City, NV 89701

**RE: Testimony in Opposition to AB 313 – Pit Backfilling/Un-Mining Bill**

Dear Chairwoman Cohen and Members of the Assembly Natural Resources Committee:

The Women's Mining Coalition (WMC) is submitting this testimony in opposition to AB 313 because it presumes that pit backfilling to eliminate a pit lake is the best way to reclaim a pit and close a mine. Unfortunately, this presumption is incorrect for many sites, making the one-size-fits-all pit backfilling mandate in AB 313 an ill-conceived measure that will harm the environment at many of Nevada's open-pit mine sites; severely curtail mining in Nevada; significantly reduce mining jobs, community investments, and tax revenues; and interfere with Nevada's objectives to become the Nation's lithium mining capital.

Stringent and effective state and federal environmental regulations already apply to Nevada's open-pit mines. These regulations require a site-specific and technically detailed evaluation of the geochemistry of the mined materials and the rocks exposed in the pit walls and the site's hydrology to determine the best closure plan for each open-pit mine. At some sites, backfilling a pit to a level that will eliminate an exposed pit lake will reduce environmental impacts and is therefore the best approach. At other sites, backfilling will increase environmental impacts and should not be part of a mine's closure plan.

AB 313 will cause unnecessary and undue environmental impacts because backfilling Nevada's largest open pit mines will require decades-long "un-mining" operations. Some of Nevada's largest open-pit mines, like the Goldstrike Mine in Eureka and Elko Counties and the Round Mountain Mine in Nye County, started operating in the 1980s. The backfilling operations at these mines would be on the same scale as the original mining operations. Un-mining to backfill these pits will take decades to complete, will take enormous volumes of diesel fuel or electricity if a mining fleet is electrified, and will consume huge quantities of water for dust control.

Because the fuel and water consumption and fugitive dust and greenhouse gas emissions associated with these backfilling operations will be similar in magnitude and duration to the

impacts created during mining, they will cause significant long-term impacts that will need to be evaluated in a project's state and federal permit applications. Additionally, the U.S. Bureau of Land Management (BLM) or the U.S. Forest Service will have to consider these impacts in the Environmental Impact Statement (EIS) or Environmental Assessment (EA) that these agencies must prepare for a proposed mining operation on federal land.

The environmental impacts associated with pit backfilling potentially run afoul of federal laws. The Federal Land Policy and Management Act (FLPMA) and BLM's 43 CFR 3809 surface management regulations for mining require operators to prevent unnecessary or undue degradation. Additionally, the National Environmental Policy Act (NEPA), the law that requires the BLM and the Forest Service to prepare EIS and EA documents, mandates that federal agencies carefully consider project alternatives that avoid, minimize, or mitigate impacts. The additional decades of air emissions and water consumption associated with backfilling operations may not be compatible with these federal statutory directives to prevent unnecessary or undue degradation and to avoid or minimize impacts.

Lakes create valuable habitat and recreational opportunities that are rare in Nevada. Consequently, the premise in AB 313 that all pit lakes are a problem and need to be eliminated by backfilling is seriously flawed because it will deprive Nevada of future opportunities to manage some pit lakes as environmental and recreational assets. The unique setting of each pit needs to be carefully considered in determining whether a pit lake might create environmental or recreational benefits.

Nevada's current mining regulations demand that regulators and operators carefully use best available science to determine the best closure plan for the environment at each mine. Section 4 of AB 313 eliminates the "best for the environment" standard and substitutes the dramatically inferior standard of proving that backfilling "is technically not possible without indefinite long-term management to avoid groundwater degradation." In this manner, AB 313 precludes the use of best available science and factual analysis to determine the optimal pit closure plan at each mine site.

Curiously, Section 12 of AB 313 appears to acknowledge that pit lakes provide the public with recreational opportunities and benefits. Current law at NRS 519A.230 requires operators to provide the public with non-motorized access to pit lakes larger than 200 acres. AB 313 would amend NRS 519A.230 by lowering the threshold for this access requirement to 85 acres. AB 313 thus contains two diametrically different and conflicting objectives that: 1) seek to abolish pit lakes by mandating a universal backfilling requirement; and 2) simultaneously make more pit lakes accessible to the public. These contradictory aspects of AB 313 are fatal flaws that should be more than sufficient reason for Nevada lawmakers to categorically reject this half-baked and poorly drafted bill.

AB 313 purports to include an exemption to the backfilling mandate. However, the two exemption criteria in Section 4 of AB 313 are illusory because they are mutually exclusive and therefore make it impossible for an operator to be granted an exemption. Section 4.2(b)(2) states that an operator can request an exemption if "backfilling the pit would result in undue hardship on the operator." However, Section 4.3(b) nullifies the "undue hardship" criterion by stating that

“the Division may not take the economics of the operator into consideration when determining whether to deny or approve the application” [for an exemption from the backfilling mandate]. Because undue hardship on an operator must consider economics as the main gauge of hardship, the sham exemption provisions in AB 313 are, in reality, an inflexible and universally applicable backfilling requirement.

AB 313 threatens the first stage of the lithium-ion battery supply chain – lithium mining – and thus stands in the way of Governor Lombardo’s vision to create The Lithium Loop with Nevada-based companies providing products at each stage of the lithium-ion battery supply chain. The draconian changes to Nevada’s mining regulations proposed in AB 313 send a strong signal to investors that Nevada is not a good place to explore for lithium and develop lithium mines. Beyond lithium mining, AB 313 may cause other investors to avoid Nevada due to concerns that Nevada has a volatile regulatory climate and is therefore a risky place for business investment.

Nevada’s lithium, copper, vanadium, gold, silver, zinc, and other mineral deposits can help the Nation achieve its clean energy and electrification objectives by providing the minerals essential for building clean energy infrastructure and manufacturing and powering EVs. Because Nevada is fortunate to have significant deposits of these minerals, we stand poised to become a significant clean energy minerals supply chain center. However, AB 313 will significantly impede if not completely prevent responsible mining of these resources and perpetuate the Nation’s dangerous reliance on foreign minerals. By obtaining minerals from countries where mining is not done as cleanly or as safely as in Nevada, and by adding the greenhouse-gas emissions associated with transporting minerals across the globe to the U.S., we are increasing the environmental impacts of our mineral supply chain.

The backfilling analysis requirement in AB 313 is triggered when an operator applies to the Nevada Division of Environmental Protection (NDEP) to renew a Water Pollution Control Permit, which must happen every five years, or submits an application to expand or modify a Reclamation Permit. In this manner, AB 313 will apply retroactively to all Nevada mining operations and create an inflexible backfilling requirement for every Nevada open-pit mine.

The retroactive applicability of the backfilling requirement to existing open-pit mines raises a distinct possibility that AB 313 may expose the State of Nevada to significant takings lawsuits under the Fifth Amendment of the U.S. Constitution. The operators of these mines have investment-backed expectations spanning many years – and in some cases decades – that have carefully considered mine closure costs, including the post-mining costs to close the pit.

Nevada mining companies have made financial decisions to proceed with project development that have assumed that Nevada has a stable and fair regulatory environment that warrants investing the billions of dollars it takes to develop a major mining operation.<sup>2</sup> AB 313 upends

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<sup>2</sup> Mr. Rich Haddock, Barrick Gold Corporation General Counsel, testified before the U.S. Senate Committee on Natural Resources on October 5, 2021 that Barrick had invested over \$40 billion over the life of its Carlin Complex in Eureka and Elko Counties, NV.

<https://www.energy.senate.gov/services/files/51D230E5-C618-4836-BBF1-81A5255AC17F>

these decisions. This radical, unprecedented, and unwarranted change to Nevada's mining regulations would impose substantial new and heretofore unanticipated costs on Nevada mine operators.

WMC is a grassroots organization created 30 years ago in Nevada. WMC's mission is to advocate for today's modern domestic mining industry, which is essential to our Nation. Our membership includes over 200 women who work nationwide in hardrock, coal, and industrial minerals mining, and in the energy, manufacturing, transportation, and service industry sectors.

On behalf of WMC, I very much appreciate this opportunity to provide testimony in opposition to AB 313 and urge the Assembly Natural Resources Committee to reject AB 313. Please do not hesitate to contact me if you have any questions.

Sincerely yours,



Debra W. Struhsacker  
WMC Co-Founder and Board Member

cc via email: Assemblywoman Natha Anderson, Vice Chair  
Assemblywoman Shannon Bilbray-Axelrod  
Assemblywoman Tracy Brown-May  
Assemblywoman Venicia Considine  
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