Permanent Regulation – Informational Statement

A Permanent Regulation Related to Environmental Programs

Legislative Review of Adopted Permanent Regulations as Required
by Administrative Procedures Act, NRS 233B.066

State Environmental Commission
Permanent No: R137-24P

The Nevada State Environmental Commission (SEC) offers the following informational statement in compliance with Nevada Revised Statute (NRS) 233B.066.

1. Need for Regulation

The purpose of this regulatory amendment is to increase permit application fees and annual service fees, last updated more than 20 years ago, to account for inflation and ensure the financial viability of the Regulation and Closure Program (Program) within the Bureau of Mining Regulation and Reclamation, and the agency's ability to serve the regulated community and the public effectively, with the addition of three new positions. The increases are necessary to maintain Program viability and adequate staffing. Agency costs have increased due to inflation while fees have remained unchanged. At this time, the Program has been in a revenue short fall for the past 4-5 fiscal years and project that without fee increase, the reserve will be depleted in FY26-27. Staff time and resources necessary to review permit application and maintain existing permits (including inspection and compliance support) have increased substantially due to increased project complexity and modeling in greater detail. In addition, the proposed regulations update the fees to better reflect workload and resources required to implement the Program.

2. A 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.

The Division held one hybrid (in-person and virtual) public workshop for R137-24P on July 26, 2024. The public was invited to participate in person in the Bryan Building at 901 South Stewart Street in Carson City, Nevada. The workshops were held to present the substance of, and receive public comment on, the proposed regulation. Three members of the public and/or regulated industry attended the workshop either in-person or virtually. The proposed regulations were also distributed to the Bureau of Mining Regulation and Reclamation’s email distribution list.

The Legislative Counsel Bureau published its draft, R137-24P, in the Nevada Register on July 19, 2024. The Division accepted written comments on R137-24I and R137-24P. The

Division received one verbal comment concerning R137-24I and/or R137-24P during the public workshop. Kyle Davis, representing the Nevada Mining Association (NvMA), stated for the record that the Association looks forward to continuing to work with the Division on the proposed fees. Bureau staff acknowledged the comment. A summary of the workshop, including public comment and bureau response, is included on the NDEP website as well as the SEC website at https://sec.nv.gov/meetings/sec-meeting-september-5-2024. The Division also received written comments/questions from four entities. Questions received from NvMA were concerned with justifications for revenue, expenditure, and reserve calculations, new positions, and level of service predictions. The NvMA also proposed several modifications to the proposed fee schedule, including a reduction in number of requested new positions, lower percent growth built into revenue projections, and development of a plan to address the current inadequate level of service. Several comments were also received from smaller businesses, generally expressing disapproval of the proposed fee increase, particularly for smaller placer mines; one suggested an option to retain an existing category for gold placer mines with a smaller increase in fees, citing less oversight required by the Division for such facilities. The Division responded to each and as a result of these comments, further amended the petition to reduce the proposed fees for certain types of mining projects. These amendments to R137-24 are being submitted as a green-line edit. A summary of comments and agency responses can be found in the NDEP Presentation to SEC for R137-24P (https://sec.nv.gov/uploads/mtg_0924/R137-24P_presentation.pdf).

The SEC held a hybrid regulatory hearing on September 5, 2024, to consider possible action on R137-24P. The SEC posted its public notice, which included a link[1] and instructions to access R137-24P and pertinent documents and information supporting the regulation, for the regulatory meeting at the State Library in Carson City, at Division offices located in both Carson City and Las Vegas, at all county libraries throughout the state, and to the SEC email distribution list. The SEC also posted the public notice at the Division of Minerals in Carson City, at the Department of Agriculture, on the LCB website, on the Division of Administration website, and on the SEC website.

The SEC also published the public notice in the Las Vegas Review Journal and Reno Gazette Journal newspapers once per week for three consecutive weeks prior to the SEC regulatory meeting.

3. The number of persons who attended the SEC Regulatory Hearing:

(a) Attended September 5, 2024, hearing: 35 (approximately)
(b) Testified on this Petition at the hearing: 2

1. Danilo Dragoni, on behalf of the Nevada Division of Environmental Protection
   901 South Stewart Street, Suite 4001

[1] https://sec.nv.gov/meetings/sec-regulatory-meeting-sept-5-2024

Carson City, Nevada 89701
(775) 687-9373
ddragoni@ndep.nv.gov

2. Natasha Zittel, on behalf of the Nevada Division of Environmental Protection
   901 South Stewart Street, Suite 4001
   Carson City, Nevada 89701
   (775) 687-9413
   nzittel@ndep.nv.gov

3. Kyle Davis, representing the Nevada Mining Association

(c) Submitted to the agency written comments: four (attached)

1. Nevada Mining Association
   3185 Lakeside Drive,
   Reno, Nevada 89431
   (775) 829-2121

2. Mike Pasek
   Dig M Excavation Services, Inc.
   (702) 525-6750

3. John M. Heizer, Jr.
   P.O. Box 1
   Lovelock, Nevada 89419

4. Joe Sawyer, P.E.
   Thor Gold Mining LLC
   1318 Gambrel Drive
   Carson City, Nevada 89501

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

Comments were solicited from affected businesses through one public workshop and at the September 5, 2024, SEC hearing as noted in number 2 above. The Division received written comments/questions from representatives from four affected businesses. Questions received from NvMA were concerned with justifications for revenue, expenditure, and reserve calculations, new positions, and level of service predictions. The NvMA also proposed several modifications to the proposed fee schedule, including a reduction in number of requested new positions, lower percent growth built into revenue projections, and development of a plan to address the current inadequate level of service. Several comments were also received from smaller businesses, generally expressing disapproval of the proposed fee increase, particularly for smaller placer mines; one suggested an option to retain an existing category for gold placer mines with a smaller increase in fees, citing less oversight required by the Division for such facilities. The Division responded to each and as a result of these comments, further amended the petition to reduce the proposed fees for certain types of mining projects. These amendments to R137-24 are being submitted as a green-line edit. A summary of comments and agency responses can be found in the NDEP Presentation to SEC for R137-24P (https://sec.nv.gov/uploads/mtg_0924/R137-24P_presentation.pdf).

5. 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 Commissioners adopted the green-line version of R137-24P with NDEP-added sections three and four redacted. Two Commissioners opposed the adoption and eight voted in favor.

6. The estimated economic effect of the adopted regulation on the business which it is to regulate and on the public.

Regulated Business/Industry: The proposed regulation raises application and annual service fees for all regulated mines. However, it also updates the categories used to determine fees. This results in a new redistribution of fees with large, established mines being most impacted by the annual fee increase. For example, a small mine operation permitted to process less than 18,500 tons per year currently pays $250 in annual fees; regulation change would result in this same operation paying a $415 annual fee. A large mine operator permitted to process more than 2 million tons annually currently pays $20,000 in annual fees; regulation change would result in this same operation paying $33,000 annual fee if processing less than 5 million tons, but up to $50,000 if processing more than 40 million tons. Additionally, physical separation sites could see a substantial increase in their annual fees since the current annual fee is $500 annually; regulation change would result in the fee being based on the tonnage processed therefore any physical separation facility that mines more than 18,500 tons per year will have a fee increase.

The proposed regulations raise fees for all regulated mines. However, the additional funds collected will enable the agency to maintain program viability by ensuring a balanced budget and adequate staffing. The agency anticipates that hiring the additional staff will allow for more efficient permitting that will lead to positive impact to the regulated industry, decrease delays due to insufficient agency resources, and will allow for more detailed reviews of the monitoring reports and spill reports.

The new fee schedule will be effective on January 1, 2025, for application fees, and July 1, 2025, for annual fees. The proposed regulation also sought to establish a 5%

annual increase. The SEC agreed that a 5% annual increase is the proper solution for a more stable and predictable way to manage the budget and avoid sudden increases in fees. However, the SEC removed the 5% annual increase to allow the Division to first develop a strategy to define what constitutes a manageable budget reserve.

Public: There are no adverse or beneficial economic impacts on the public associated with this action, in the short- or long-term.

7. The estimated cost to the agency for enforcement of the adopted regulation.

Enforcing Agency. The proposed regulations do not impose additional functions or costs on the agency.

8. 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 amendments in R137-24P do not overlap or duplicate other state or government agencies.

9. If the regulation includes provisions which are more stringent than a federal regulation, which regulates the same activity, a summary of such provisions.

The regulatory amendments in R137-24P are no more stringent than what is established by federal law.

10. 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 agency anticipates collecting approximately between $3,000,000 and $4,000,000 in application and annual maintenance fees as a result of R137-24 during the first fiscal years on implementation, of which approximately between $1,300,000 and $2,000,000 will be because of the proposed fee increase. The agency plans to use these additional funds to ensure the fiscal stability of the Program, and to provide two or three more positions to improve the Program's efficiency and services to the regulated industry.

BMRR Comment #1 R137-24

BMRR Regs <bmrrregs@ndep.nv.gov>
Mon 8/19/2024 11:44 AM
To:Sheryl Fontaine <sfontaine@ndep.nv.gov>

Natasha Zittel, P.E.
Regulation Branch Supervisor
Bureau of Mining Regulation and Reclamation
Nevada Division of Environmental Protection
Department of Conservation and Natural Resources
901 S. Stewart Street, Suite 4001
Carson City, NV 89701
nzittel@ndep.nv.gov
(O) 775-687-9413

From: BMRR Regs <bmrrregs@ndep.nv.gov>
Sent: Tuesday, July 30, 2024 2:25 PM
To: Mike Pasek <minermike777@gmail.com>; BMRR Regs <bmrrregs@ndep.nv.gov>
Subject: RE: Fee increase proposal

Mike,

The Division has received your comment.

BMRR has a general permit for physical separation facilities that is $200 annually.

Sincerely,
Natasha

Natasha Zittel, P.E.
Regulation Branch Supervisor
Bureau of Mining Regulation and Reclamation
Nevada Division of Environmental Protection
Department of Conservation and Natural Resources
901 S. Stewart Street, Suite 4001
Carson City, NV 89701
nzittel@ndep.nv.gov
(O) 775-687-9413

From: Mike Pasek <minermike777@gmail.com>
Sent: Friday, July 19, 2024 6:19 PM
To: BMRR Regs <bmrrregs@ndep.nv.gov>
Subject: Fee increase proposal

Small operators such as my company will get hurt or put out of business by your proposed fee increase! Start up companies will be deterred from mining in Nevada.

Should we just snap our fingers and make more money appear out of thin air just for government to take?   Stop trying to be like California. It wont end well!

As President of my small company, I am 100% opposed to your rate increase proposal.

Mike Pasek
President
Dig M Excavation Services, Inc
7025256750

BMRR Comment #2 R137-24

BMRR Regs <bmrrregs@ndep.nv.gov>
Mon 8/19/2024 11:43 AM
To:Sheryl Fontaine <sfontaine@ndep.nv.gov>

1 attachments (154 KB)
image2024-08-07-101241.pdf;

Here you go.

Natasha Zittel, P.E.
Regulation Branch Supervisor
Bureau of Mining Regulation and Reclamation
Nevada Division of Environmental Protection
Department of Conservation and Natural Resources
901 S. Stewart Street, Suite 4001
Carson City, NV 89701
nzittel@ndep.nv.gov
(O) 775-687-9413

From: BMRR Regs <bmrrregs@ndep.nv.gov>
Sent: Wednesday, August 7, 2024 3:39 PM
To: Melissa Shields <booksntax273@gmail.com>; BMRR Regs <bmrrregs@ndep.nv.gov>
Subject: RE: Rose Gulch-NEV2004101

The physical separation general permit does not limit any tonnage shipped to another permitted facility. Although with the physical septation general permit no crussing is allowed at the permitted facility.

Natasha Zittel, P.E.
Regulation Branch Supervisor
Bureau of Mining Regulation and Reclamation
Nevada Division of Environmental Protection
Department of Conservation and Natural Resources
901 S. Stewart Street, Suite 4001
Carson City, NV 89701
nzittel@ndep.nv.gov
(O) 775-687-9413

From: Melissa Shields <booksntax273@gmail.com>
Sent: Wednesday, August 7, 2024 3:28 PM
To: BMRR Regs <bmrrregs@ndep.nv.gov>
Subject: Re: Rose Gulch-NEV2004101

WARNING - This email originated from outside the State of Nevada. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Thank you for this information, I will pass it along to Mr. Heizer

Does the physical separation facilities permit restrict the client from removing any tonnage going forward?

On Wed, Aug 7, 2024 at 3:16 PM BMRR Regs <bmrrregs@ndep.nv.gov> wrote:

> Good afternoon,
>
> The Division has received your comment.
>
> BMRR has a general permit for physical separation facilities that is $200 annually. More information can be found here: https://ndep.nv.gov/uploads/land-mining-regs-forms-docs/20210914LK_Appl_GenPrmt_FS_PhysSep_G2020PS_ADA.pdf
>
> Sincerely,
> Natasha
>
> **Natasha Zittel, P.E.**
> Regulation Branch Supervisor
> Bureau of Mining Regulation and Reclamation
> Nevada Division of Environmental Protection
> Department of Conservation and Natural Resources
> 901 S. Stewart Street, Suite 4001
> Carson City, NV 89701
> nzittel@ndep.nv.gov
> (O) 775-687-9413
>
> NEVADA DIVISION OF ENVIRONMENTAL PROTECTION | Nevada Department of CONSERVATION & NATURAL RESOURCES Connect with us:
>
> ---
>
> **From:** Melissa Shields <booksntax273@gmail.com>
> **Sent:** Wednesday, August 7, 2024 10:02 AM
> **To:** BMRR Regs <bmrrregs@ndep.nv.gov>
> **Subject:** Rose Gulch-NEV2004101
>
> **WARNING** - This email originated from outside the State of Nevada. Exercise caution when opening attachments or clicking links, especially from unknown senders.
>
> To whom it may concern,
>
> Please see the attached response from John M. Heizer, Jr. regarding the proposed fee revision for permitting fees.
>
> Thank you
>
> --

Shields Bookkeeping & Tax Service, LLC
P.O. Box 13
920 Cornell Ave
Lovelock NV, 89419
booksntax273@gmail.com
775-273-2968

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BMRR Reg Comment

Natasha Zittel <nzittel@ndep.nv.gov>
Tue 8/20/2024 10:49 AM
To:Sheryl Fontaine <sfontaine@ndep.nv.gov>
Cc:Karl McCrea <kmccrea@ndep.nv.gov>;Danilo Dragoni <ddragoni@ndep.nv.gov>

1 attachments (3 MB)
20240703 NDEP-NMRG Proposed Fee Revision.pdf;

Here is the third comment that we have received on the regulations for BMRR Fee increase

Natasha Zittel, P.E.
Regulation Branch Supervisor
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Nevada Division of Environmental Protection
Department of Conservation and Natural Resources
901 S. Stewart Street, Suite 4001
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nzittel@ndep.nv.gov
(O) 775-687-9413

From: Joseph Sawyer <jsawyernevada@hotmail.com>
Sent: Tuesday, August 20, 2024 8:13 AM
To: Natasha Zittel <nzittel@ndep.nv.gov>
Cc: Brad Hueberger <bheuberger@gmail.com>; MCU Tom Manz <tommanz@tmassociates.biz>; jd@sunriseminerals.net; Shawn Harrison <nevcon.001@gmail.com>
Subject: Sunrise Minerals Discussion Follow Up

Hi Natasha

I really appreciated your time yesterday and meeting with you to review some of the projects I am working on. As discussed, the Sunrise Minerals Section 17 Mine and company were sold at the end of July and the company name will remain the same, the transfer will be an update to responsible contacts and addresses only.

The recent proposed fee increase for physical separation was a surprise and it was helpful to understand why the changes were proposed to capture the BMRR regulating cost of physical separation barite operations. I also appreciate your suggestion for the Section 17 mine to apply for the general permit which will retain the existing $200 annual fee. Once Section 17 completes the transfer of the current permit, we will work quickly towards completing the application for the general permit.

Still the proposed new fees are a tremendous increase for physical separation (gold placer) miners that may not qualify for the general permit. Miners understand we all have to do our part to support the fee based BMRR program. Please note the chemical facilities are seeing fee increases that are less than double their current fees. If the Section 17 mine remains in the same fee category the proposed change shows the annual fee increases by 53 times more than the Section 17 current fee ($250 to $13,200 over two years). Many placer miners in Nevada operate on very close margins and this type of fee increase is not sustainable for some. Some placer mines go dormant during periods of severe weather, low gold prices, and/or financing issues. During these time periods placer miners would be significantly burdened by the higher fees. Could there be an option to leave a category for gold placer miners with less of a fee increase since the amount of oversight by BMRR is considerably less than the average chemical facility?

When the original program fees were put into place in the late 1980s the fee structure was designed to place a greater burden on the larger mining operations and to not overly burden the smaller operators. We still see that today in the fee structure and hope that that can remain a consideration with fee changes going forward.

You mentioned a State Environmental Commission hearing on September 5th. Can you provide me with information on the meeting and if there are any options for public comment prior to and/or at the meeting? I would be happy to volunteer time if there is anything I can help with the program.

Good Luck Regulating!

Thanks,
Joe

Joe Sawyer, P.E.
Thor Gold Mining LLC

1318 Gambrel Drive

Carson City, NV 89701

775-720-3792

NVMA
Nevada Mining Association
EST. 1913
NEVADAMINING.ORG
3185 LAKESIDE DRIVE, RENO, NV 89509 TEL: 775-829-2121

The Nevada Mining Association's Environmental Committee (NVMA) respectfully submit the following questions, concerns, and comments to the Nevada Division of Environmental Protection (the Division) regarding the proposed revision to fees for Operating Permit Applications and Maintenance Fees for Water Pollution Control Permits. NVMA members are grateful for the Division's commitment to engagement and collaboration with the regulated community. Based on the information provided, the industry can expect fees to increase approximately 50%-100% starting in 2025, with a 5% increase in cost annually for the foreseeable future. This will result in an increase in fees for the industry of approximately 270% in the period from 2025 to 2034 (Figure 1).

NVMA appreciates the Division's response to the following questions, which we feel will help inform further discussion regarding the proposed fee changes:

1. The graphs presented during the meeting between the NVMA and the Division on June 3 (Figure 2.) indicate cash reserves for the 445A have declined more since 2016 than the cumulative difference in expenses vs revenue. The graphs indicate a shortfall of approximately $1.35M over the period from 2016 to 2024, which should have resulted in a 2024 reserve balance of $1.45M. What explains the decline, and what will prevent the Division from finding itself in a similar situation in the future in which reserves drop below target?
2. What happens when a program's reserve account balance falls below zero? Does this deficit roll over year-to-year in the program budget?
3. The expenses for the 445A program showed relatively little change in the graphs (Figure 2.) from 2016 until 2022, why does the assumption that the current expenses (i.e. with no fee increase) show an annual 5% increase assumption from 2025 on? What is driving this anticipated increase in costs?
4. The Division shared a policy goal to build one year of cash reserves for all programs. Is this defined in regulation, how much cash will be accumulated across all of the Division's programs if this is implemented universally, and what additional justification can be shared for this target given that a reduction in revenue would also result in a reduction in the Division's workload?
5. Can the Division provide an explanation for increasing the number of fee categories to more closely reflect the costs associated with the maintenance of the operating permit, modifying fee categories to be based on tonnage

processed only, and increasing the renewal fee for monitoring of a mining facility that has completed all physical closure activities and is undergoing source stabilization to ½ the renewal fee?

6. The Division has fallen behind in achieving the regulatory timelines required by NAC 445A.392- 445A.420 in recent years despite the increase in expenses from 2023 to 2024, what will the agency do to address the level of service for permit applications and reviews and how will the proposed increased fees be used to ensure the Division meets these requirements?
7. The fee proposal fact sheet states that the Division is seeking in increase fees to reflect the workload required to implement the BMRR programs and provide timely reviews, but the revenue line in the presented graphs (Figure 2.) shows no increase in revenues (i.e. permit submissions, EDC, Minor Mods, Major Mods). Can you help us understand how and why the Division's workload has increased without a correlating increase in revenue from fees?
8. The fee proposal fact sheets states that the Division is seeking in increase fees to provide timely reviews and that an additional inspector, hydrologist, and compliance supervisor will be hired with the increased revenues. Can you help us understand how these three positions will help to provide timely reviews?
9. Division representatives stated that the 5% annual increase in fees would be binary (i.e. either zero fee increase or 5%), why is this mechanism proposed rather than a sliding scale?
10. It would be helpful to the NVMA to understand the sum total impact of proposed fee increases across all branches which regulate the mining industry from 2025 on. Can the Division provide this information?
11. Division representatives mentioned initiatives to retain talent and maintain consistency in level of service during the June 3 meeting, can the Division provide details of these talent retention initiatives to the NVMA to further our understanding and outlook on performance and fees?

NVMA recognizes that certain cost increases, including increased wages, are beyond the control of the Division and that to maintain the same, or an improved, level of service a change to 445A program fees is needed. Recognizing these constraints, the NVMA would like to propose the following structure for the

Alternative proposals and comments:

1. Provide an annual report detailing workload, revenues, expenses, reserve account status, and review and processing timeframes for the 445A program to provide transparency in the level of service to permittees.

2. Hire only the hydrologist role in the next several years unless your revenue base (number of permittees) increases organically.
3. Assume a lower annual increase in expense growth of 3% per year to match historical rates from 2016-2023.
4. Increase revenue overall through fee increases by 83% (or the equivalent of 110% of operating expenses) in 2025 rather than ~220% per the proposal with a 3% increase in annual fees thereafter (Figure 3.)
5. Revisit hiring the additional positions in 2 years' time.
6. Share a plan to improve the level of service with timely permit reviews and processing.

Figures.

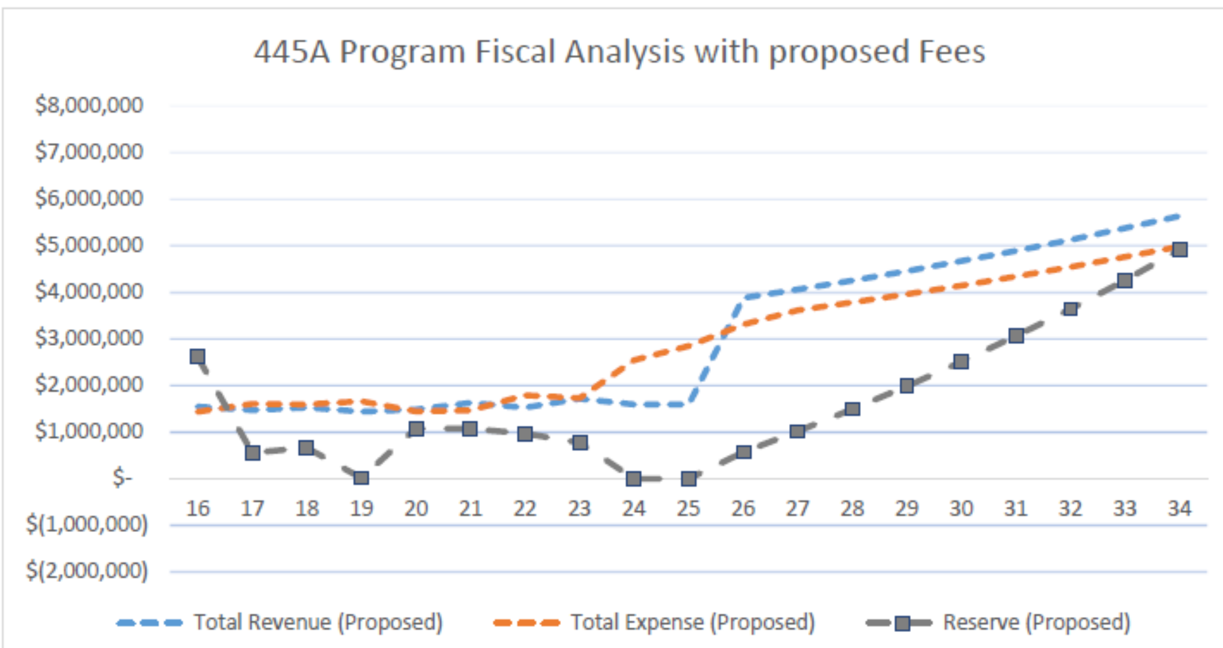

Figure 1. NDEP Proposed fee increase and expenses presented June 3, 2024.

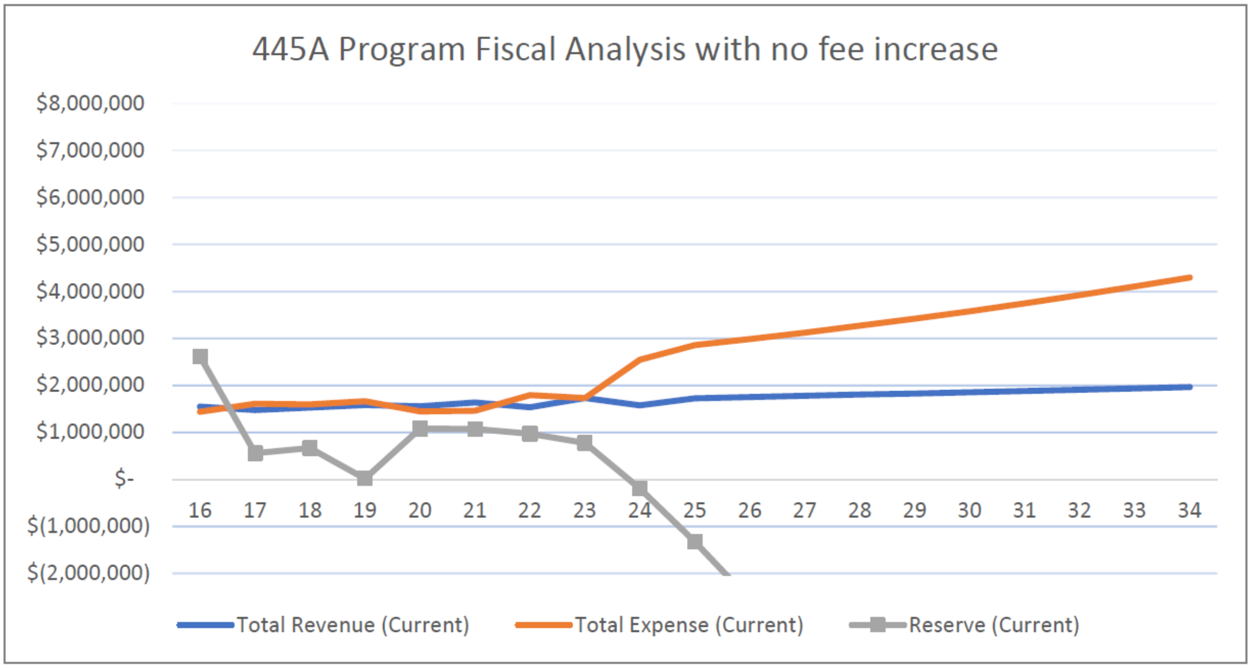

Figure 2. NDEP Current fees and expenses presented June 3, 2024

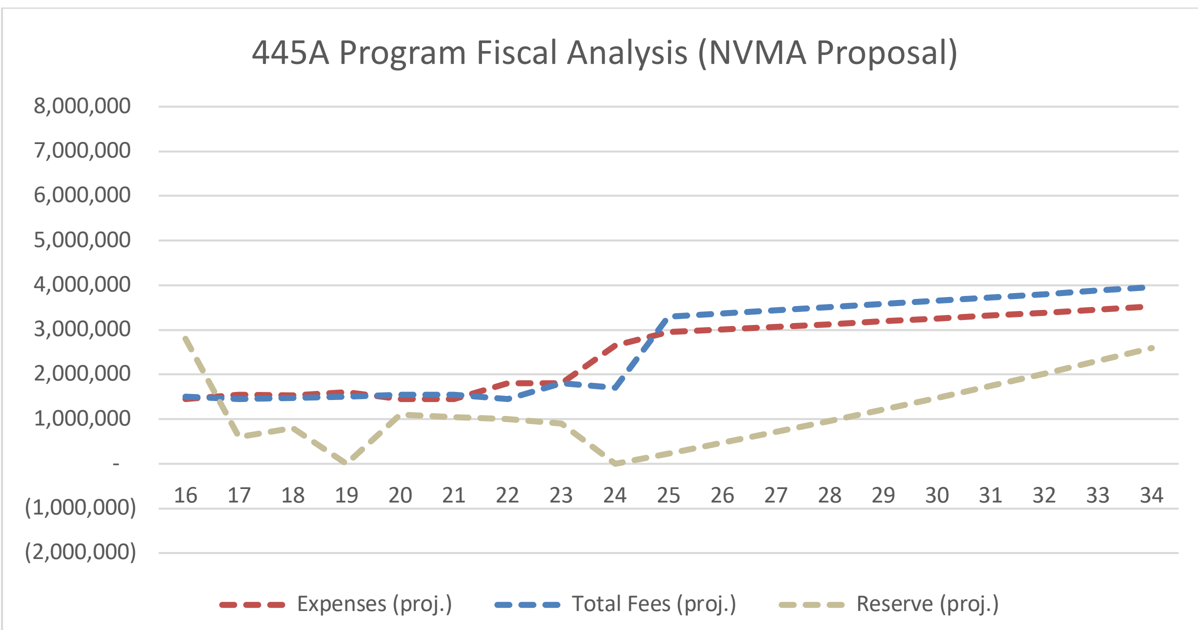

Figure 3. NVMA proposed fee increase assuming a 3% increase in annual expenses, hiring one additional position, and a slower increase in reserves.

STATE OF NEVADA
Department of Conservation & Natural Resources
Joe Lombardo, *Governor*
James A. Settelmeyer, *Director*
Jennifer L. Carr, *Administrator*

To the Nevada Mining Association
Re: Response to questions and comments relating to Regulatory Petition R137-24 for the increase in fees for the Mining Regulation and Closure Program.

The Nevada Division of Environmental Protection (NDEP) thanks the NVMA for sharing their questions, concerns, and comments to the regulatory proposal and for the continuing dialogue. Following in red, are our responses to your questions and comments (in black). However, please be aware that as the result of earlier discussions with members of the Association, the regulatory proposal has been changed to reflect some of the feedback. We have included the most up-to-date factsheet explaining the fee increase; in general:

A) The fee increase has been split in two years. The first year (FY2026, or fees paid in Spring of 2025), only approximately 50% of the proposed fee increase will be implemented. Starting from FY2027 (or fees paid in Spring of 2026), the full increase will take effect.

B) While NDEP revised the regulation to allow for up to 5% increase in fees every year, the Legislative Counsel Bureau did not approve it, citing the risk of 'ad-hoc regulation'.

1. The graphs presented during the meeting between the NVMA and the Division on June 3 (Figure 2.) indicate cash reserves for the 445A have declined more since 2016 than the cumulative difference in expenses vs revenue. The graphs indicate a shortfall of approximately $1.35M over the period from 2016 to 2024, which should have resulted in a 2024 reserve balance of $1.45M. What explains the decline, and what will prevent the Division from finding itself in a similar situation in the future in which reserves drop below target?

Good observation. In this case, there are several aspects of tracking revenues, expenses, and reserves that are not always conducive to an accurate retrospective analysis, without investing substantial resources into long research of historical records. The Bureau of Mining Reclamation and Regulation is organized in two distinct programs, regulated by different Statutes and regulations, and with different sources of revenues: a) the Regulation and Closure Program (NRS and NAC 445A – Water Pollution Control) and b) the Reclamation Program (NRS and NAC 519A – Reclamation). Revenues and expenditures are coded to each of the two programs, and so are the resulting reserves. However, conditions may arise when changes in reserve may not be the direct effect of changes in revenues and expenditures, for example in the case of transfer of funds from one program to another (e.g., transfer from BMRR to the NDEP's Abandoned Mine Program). We tried to estimate the most accurate future estimates for revenues and expenditure using the most recent 3-5 years of, for instance, number of applications, salaries, and operating costs, and applied the resulting trends to the current status of the reserve.

We commit to perform this type of analysis annually to determine the near-term and long terms trends and to implement small adjustments (like the option of applying the 5% increase), rather than recurring to much larger adjustments every decade (or more, like in this case).

2. What happens when a program's reserve account balance falls below zero? Does this deficit roll over year-to-year in the program budget?

The reserve account balance cannot fall below zero. If the balance of the reserve account goes to zero, the program will only be able to pay for costs (salaries, travel, operating costs) as sufficient revenues come in. This is not sustainable, especially for programs that receive the bulk of their revenues only during a specific period of the year (i.e., annual fees in May-June)

3. The expenses for the 445A program showed relatively little change in the graphs (Figure 2.) from 2016 until 2022, why does the assumption that the current expenses (i.e. with no fee increase) show an annual 5% increase assumption from 2025 on? What is driving this anticipated increase in costs?

Please, also refer to the answer to question 1 for an overview of the issues. More specifically:

a) Salaries for state employees were subject to a 12% increase in FY24 and 11% increase for FY25.
b) After FY25 we assumed an increase in salaries of 5% and increase in other costs of 3% (which is very close to the current estimated inflation rate for US). Important to know is that salaries are approximately 80% of the total costs.
c) There are 10 steps of merit increase for each position. Employees increase their step annually and get 5% merit increase if they are anywhere between steps 1 and 10. Once step 10 is reached, there is no additional merit increase. Cost of living adjustments (COLA, decided by the Legislation and approved by the Governor) can also increase salaries.
d) New hired rarely start at high steps, and the Program has been subject to a significant turnover. In fact, currently, only 5 out of 15 employees in the Regulation and Closure Program have reached step 10
e) While COLA are unpredictable, we assumed a 1-2% increase annually, on average.
f) Given the above considerations, we believe that 3% increase in all costs but salaries, and 5% in salaries is an accurate estimate.

4. The Division shared a policy goal to build one year of cash reserves for all programs. Is this defined in regulation, how much cash will be accumulated across all of the Division's programs if this is implemented universally, and what additional justification can be shared for this target given that a reduction in revenue would also result in a reduction in the Division's workload?

Maintaining one year of cash reserve equivalent to one year of expenses is a Division's practice, not defined in any regulation or official policy. It comes from the fact that it takes approximately one year to amend regulations to adjust for revenue and expenditure changes in case of sudden offsets (e.g., decline in revenues, increase in costs, etc.). From the time the shortage in reserve is predicted and the new regulation is drafted to the time the regulation becomes effective there are several steps: review by the Legislative Counsel Bureau

(LCB), approval by the SEC and Legislative Commission, and finally filing with Secretary of State. The full year of cash reserve allows for this process to take place without impacting the functions of the programs.
Each Bureau (and sometimes Programs within Bureaus) operate on independent budget accounts, and transfers among cash reserves are not generally allowed.
We agree that a reduction in revenues driven by a reduction in mining activities would result in lower workload. But this is not the situation we are trying to resolve with these fee increases. On one hand, we are trying to catch up with the increase in costs the Program incurred since last time fees were adjusted (approx. 20 years ago). We understand that these sudden increases every decade or so are not a good practice, and we are suggesting using the 5% annual increase as a tool for long term planning. On the other hand, we are also trying to catch up with an increase in workload that is associated with the number of applications received or with the number of regulated entities. For the Program, applications have become more complex (e.g., geochemistry and characterization requirements, pit lake modeling, groundwater modeling,) and mining operations larger, requiring more resources and increasing the workload from BMRR's staff. This is why we are also seeking 3 additional positions.

5. Can the Division provide an explanation for increasing the number of fee categories to more closely reflect the costs associated with the maintenance of the operating permit, modifying fee categories to be based on tonnage processed only, and increasing the renewal fee for monitoring of a mining facility that has completed all physical closure activities and is undergoing source stabilization to ½ the renewal fee?

As with the fee increases, the fee categories have not been changed since 2001, which currently 'top out' at greater than 2,000,000 tons. Since that time, the operations have become much larger, with most sites mining below the water table. The top limit of 2,000,000 tons for the fee category is now anachronistic. As production rates increase and mines go deeper in the ground, the complexity of the site increases, e.g. geochemistry and characterization requirements, pit lake modeling, groundwater modeling, etc., ultimately resulting in more extensive and detailed reviews by staff. In addition, a handful of industrial mineral sites, mainly barite, have been historically permitted as physical separation. These sites have also mined below the water table resulting in the same site complexities and requiring more detailed studies and reviews.
Changing all categories to represent tons processed eliminates the potential for projects that do not use chemical processes, i.e., cyanide, sulfuric acid, thiocyanide, etc., such as flotation, gravity separation (jigging), etc., to be captured for their true potential to degrade Water of the States, WOTS.

6. The Division has fallen behind in achieving the regulatory timelines required by NAC 445A.392- 445A.420 in recent years despite the increase in expenses from 2023 to 2024, what will the agency do to address the level of service for permit applications and reviews and how will the proposed increased fees be used to ensure the Division meets these requirements?

We acknowledge the issue, and we understand that adjustments in our business processes may need to be made. Some of the factors causing the backlog are out of our control (very large vacancy rate, lower competitivity with industry and local government, inability to hire professional engineer or skilled professional and therefore more resources devoted to train staff). We hope that the recent increase in salaries and the opening of the NDEP's office in Reno will address some of these problems. We expect the additional positions that will be requested with the FY26-27 biennial budget to provide additional help. We commit to an open dialogue with the industry and welcome feedback and suggestions on how these problems can be addressed. We assume that with the 'despite the increase in expenses from 2023 to 2024' the question refers to the increase in fees for the Reclamation Program. If so, these fee increases were specific to the NAC.519A program (Reclamation) which operates a separate budget from the NAC445A program (Regulation). As mentioned above, we commit to an open dialogue with the industry and welcome feedback and suggestions.

7. The fee proposal fact sheet states that the Division is seeking in increase fees to reflect the workload required to implement the BMRR programs and provide timely reviews, but the revenue line in the presented graphs (Figure 2.) shows no increase in revenues (i.e. permit submissions, EDC, Minor Mods, Major Mods). Can you help us understand how and why the Division's workload has increased without a correlating increase in revenue from fees?

Please, see also response to questions 5. The workload is not only associated with the number of applications, inspections, etc., but also with the complexity that each activity carries. In past years, the complexity of sites increased (e.g. geochemistry and characterization requirements, pit lake modeling, groundwater modeling, monitoring reports, etc.), ultimately resulting in more extensive and detailed reviews by staff. As mining projects have been getting larger, the volume of data in the reports that are submitted to the BMRR-WPC has increased.

8. The fee proposal fact sheets states that the Division is seeking in increase fees to provide timely reviews and that an additional inspector, hydrologist, and compliance supervisor will be hired with the increased revenues. Can you help us understand how these three positions will help to provide timely reviews?

The additional position of the compliance supervisor will allow us to split the existing Permitting, Compliance and Inspection Branch into two branches. The Permitting Branch and the Compliance and Inspection Branch (both under the NRS 445A Water Pollution Control). The existing Permitting supervisor will focus only on tasks and programmatic needs related to the permitting process. Similarly, the new supervisor for the Compliance and Inspection Branch will focus on tasks and programmatic needs for the new Compliance and Inspection Branch. We think this will lead to substantially more efficiency in both branches and the Program.
With the additional hydrologist position, we are seeking to create a new Hydrology Branch, with the existing hydrologist position assuming the supervisor role. As described also in the other responses above, this will allow for more timely reviews of the geochemical, pit lake, and groundwater models.
We are seeking approval for both the Compliance supervisor position and the hydrologist position for fiscal year 2026 (hiring starting in October of 2025). This is because we believe that these are our highest priorities. The addition of a compliance inspector will allow for a more even distribution of workload to each inspector and more timely reviews of compliance monitoring reports for assigned projects. There are approximately 160 permitted projects split between three inspectors. This correlates to approximately 50 sites each. A fourth inspector would decrease this number to approximately 40 sites per inspector. At least 35% of the operations require quarterly inspections due to size and complexity, 50% semi-annual, and 15% annual inspection frequency. This would allow the compliance inspectors to complete reviews of the monitoring reports in a shorter amount of time and catch issues quicker resulting in quicker mitigation efforts.
The Division is seeking this position for FY27 (hiring starting on October of 2026). We are aware of some comments from the Association's members suggesting that an additional permit writer may be more

appropriate, rather than an inspector. Given that there are more than 2 years from now to the time we will be allowed to start the hiring process for this position, we are open to reevaluate the specific needs for this position later, potential to have the position work in the Hydrology Branch. But because of how the state budget process works, it is critical that we account for this additional position in our projections for fee increases.

9. Division representatives stated that the 5% annual increase in fees would be binary (i.e. either zero fee increase or 5%), why is this mechanism proposed rather than a sliding scale?

Upon this suggestion, we introduced a change in the regulation that was submitted to LCB to allow for 'up to 5%' increase. Unfortunately, LCB rejected this option as this would be 'ad-hoc rulemaking' which would be an issue under the Nevada Administrative Procedure Act. While a more flexible option would have provided a better tool to manage the revenues vs. expenditure and the cash reserve, we believe that a fixed 5% will work as well.

10. It would be helpful to the NVMA to understand the sum total impact of proposed fee increases across all branches which regulate the mining industry from 2025 on. Can the Division provide this information?

Four other fee increases outside BMRR have been approved in the past year or so. The listed links provide the petitions as Filed and Effective with the Secretary of State, but they are not codified yet. Additional material, background (possibly graphs) and other discussion are available on the State Environmental Commission website for the meeting in which the proposal was heard. www.sec.nv.gov

- Bureau of Safe Drinking Water, General Fees R155-22
- Bureau of Safe Drinking Water, Lab Certification Program Fees R130-22
- Bureau of Water Pollution Control fees R112-22 (For mines that have NPDES Permits separate from BMRR)
- Bureau of Air Pollution Control, Chemical Accident Prevention Program Fees R103-22

Unfortunately, it would be very hard to quantify the direct impact of all these fee increases just on the mining industry, as the different Bureaus regulate a quite broad range of regulated entities.

11. Division representatives mentioned initiatives to retain talent and maintain consistency in level of service during the June 3 meeting, can the Division provide details of these talent retention initiatives to the NVMA to further our understanding and outlook on performance and fees?

The Division or the Department does not have a lot of options when it comes to retention or competitiveness, as salaries and benefits are decided collectively for all state employees (e.g., Legislation, retirement and health benefit Boards, etc.).
We strive for a fair, cordial, friendly work environment (recognized even outside the Department). We offer flexibility in the work schedule, etc.
The most significant and exciting development is the opening of the NDEP's offices in Reno (Fall of 2024). Hopefully, this will go along with increasing our retention and hiring potential.

NVMA recognizes that certain cost increases, including increased wages, are beyond the control of the Division and that to maintain the same, or an improved, level of service a change to 445A program fees is needed. Recognizing these constraints, the NVMA would like to propose the following structure for the

Alternative proposals and comments:

1. Provide an annual report detailing workload, revenues, expenses, reserve account status, and review and processing timeframes for the 445A program to provide transparency in the level of service to permittees

NDEP acknowledges that communication is critical and agrees that some form of reporting on the financial and performance status of the Program is needed. This could take place at least annually during an organized meeting. We also would like to suggest more frequent meetings of the NVMA's mining working-group, to discuss relevant issues and expectations (from both the industry and NDEP's perspective) timely. To reinforce the Division's commitment to transparency, we also included the following requirement in the proposed regulation
Section 1(5) " The Director shall post on the Internet website of the Division the fees required pursuant to this section that are applicable to each fiscal year.

2. Hire only the hydrologist role in the next several years unless your revenue base (number of permittees) increases organically.

As discussed during some of the meetings and in this document, the programmatic issues and increase in workload are not directly related to the number of permittees or applications, but rather to the complexity and size of the activities. While we understand the additional financial burden that we are putting on the industry, we also believe that a more structural adjustment needs to be made for the Program. The creation of the Hydrology Branch and Compliance and Inspection Branch will provide such adjustment and lead to an improvement in performance. As discussed above, we are open to considering and re-evaluate the need of an additional compliance inspector (rather than an additional permit writer or hydrologist). The hiring of this position will occur only starting October of 2026, leaving enough time to evaluate how things are proceeding.

3. Assume a lower annual increase in expense growth of 3% per year to match historical rates from 2016-2023.

See response to question 3 above.

4. Increase revenue overall through fee increases by 83% (or the equivalent of 110% of operating expenses) in 2025 rather than ~220% per the proposal with a 3% increase in annual fees thereafter (Figure 3.)

Please, see discussion above for more details on why the creation of 3 positions is critical and why we believe that assuming a 5% annual increase in salaries and 3% in other costs (and hence a 5% increase in annual fees) is more appropriate and will lead to a more manageable budget. The following are the projections for revenues, costs and reserve for the scenario where a 3% annual fee increase is adopted, all other assumptions being kept the same.

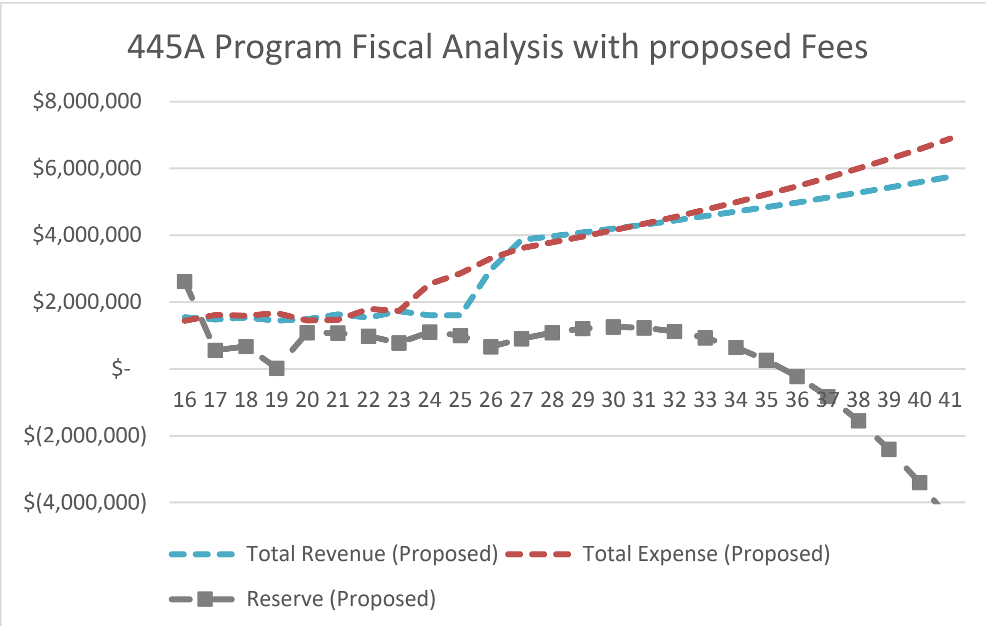

Figure A : Projections for the scenario where annual fee increase is set to 3%, salary increase is 5% and all other implementation costs are 3%.

In order to reduce the burden of the steep first year increase, we are now proposing a two-year step increase. For 2025, only 50% of the fee increase will be implemented and 100% of the fee increase will be effective in 2026. The figure below shows the projections adjusted for this new approach.

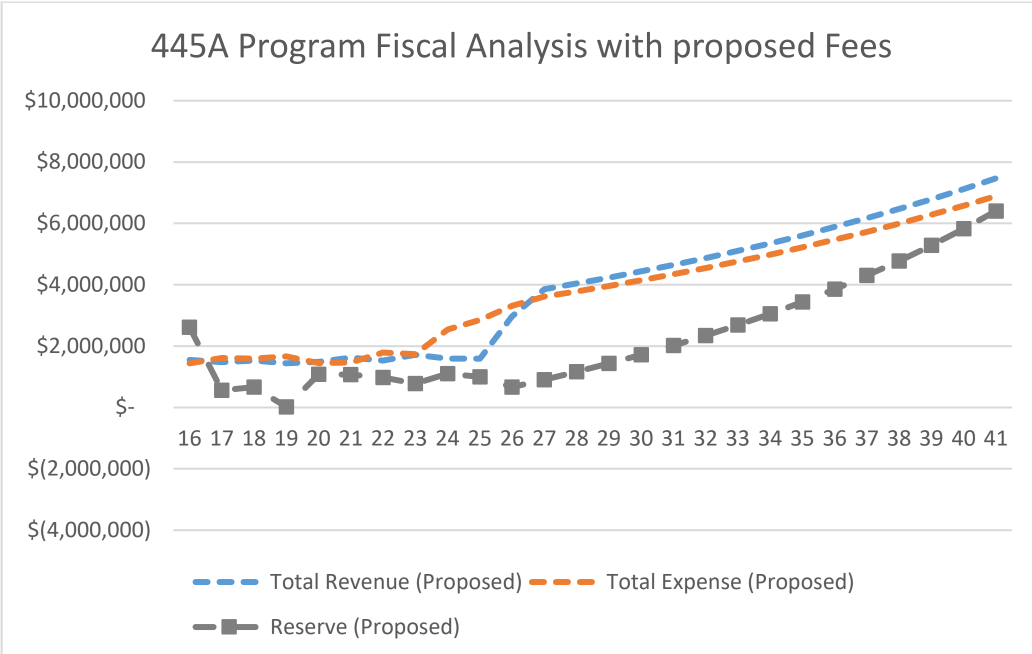

Figure B: Projections under the new proposal.

Under the new proposal, the reserve reaches the target of covering 100% of annual costs much later, but NDEP considers this an acceptable risk. The above figure is using more recent budget data for FY24, where substantial savings were achieved because of several vacancies in the Program. Those positions have been filled and we are not expecting the same level of savings for the following years.

5. Revisit hiring the additional positions in 2 years' time.

As mentioned above, the hiring will occur in October of 2025 (hydrologist and supervisor of Compliance and Inspection) and October of 2026 (compliance inspector). However, because of how the state budget process works, the Division will need to request these positions in the biennial budget that is currently developed and show financial stability starting with FY 2025. In addition, we strongly believe that the addition of the hydrologist and compliance supervisor as soon as it's financially possible will benefit the performance of the Program.

6. Share a plan to improve the level of service with timely permit reviews and processing.

The Regulation and the Closure Branches have recently hired 3 vacant positions (2 for Regulation and 1 for Closure). These positions have been vacant anywhere between 6 months to a year and 10 months. The two regulation positions were filled for a short time, max 6 months, before they moved on to other opportunities. While the newly hired staff will need training, we are expecting that this will provide some relief in workload and improvement in backlog. There is still currently one vacant Regulation Permit Writer position that we hope will be filled in September.

For the proposed new positions, we are prioritizing the hiring of the hydrologist position and compliance supervisor as they will provide direct support (i.e., the hydrologist position) to the permit reviews and allow (i.e., the compliance supervisor) the current supervisor of the Regulation Branch to focus solely on permitting process and work with staff to manage and prioritize permitting workloads.

We commit to regular meetings with the Association and the industry to discuss issues and solutions about the backlog and our business processes.

Figures from original NVMA document, for reference

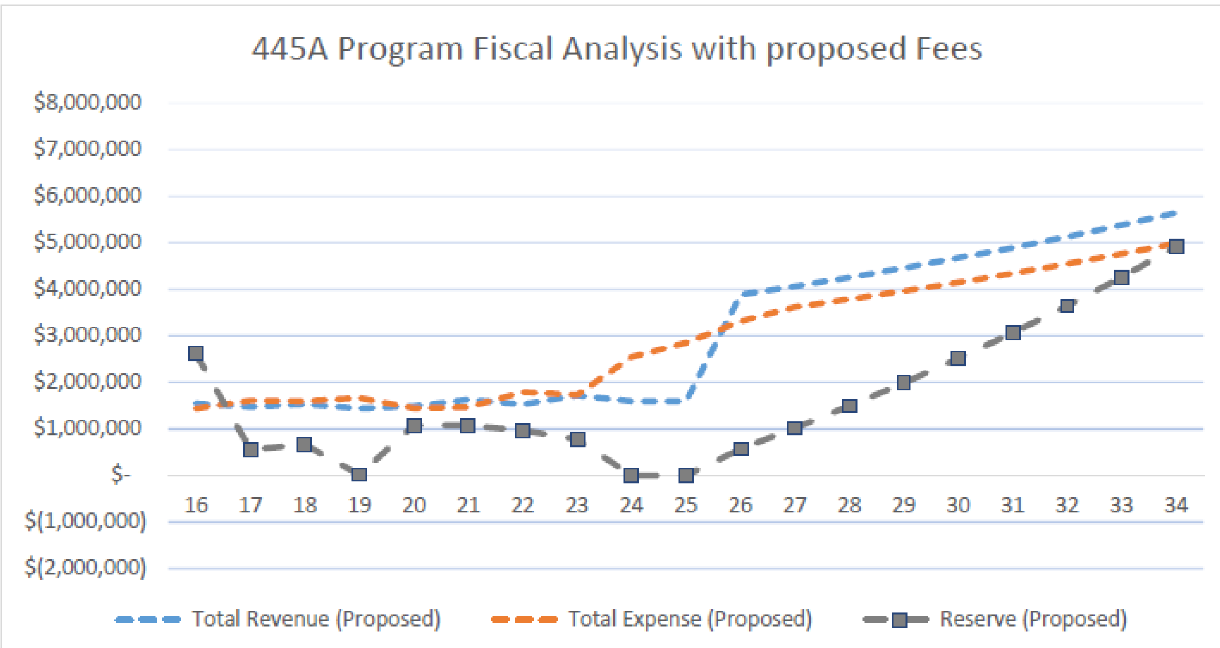

Figure 1. NDEP Proposed fee increase and expenses presented June 3, 2024.

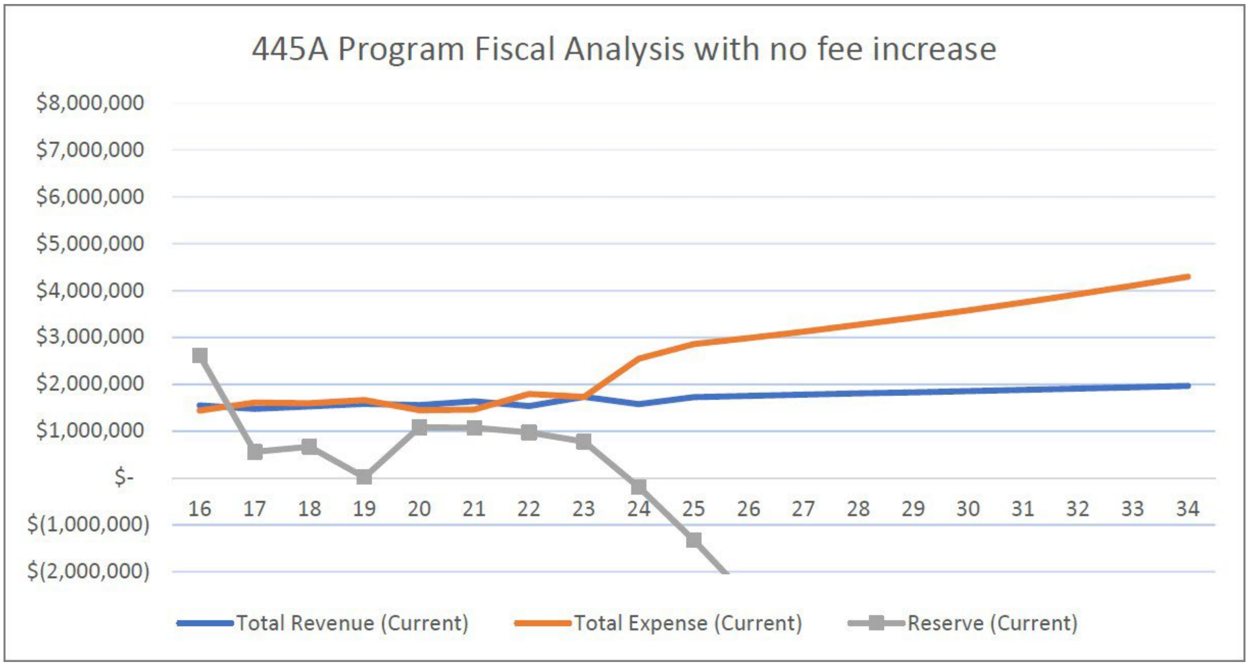

Figure 2. NDEP Current fees and expenses presented June 3, 2024

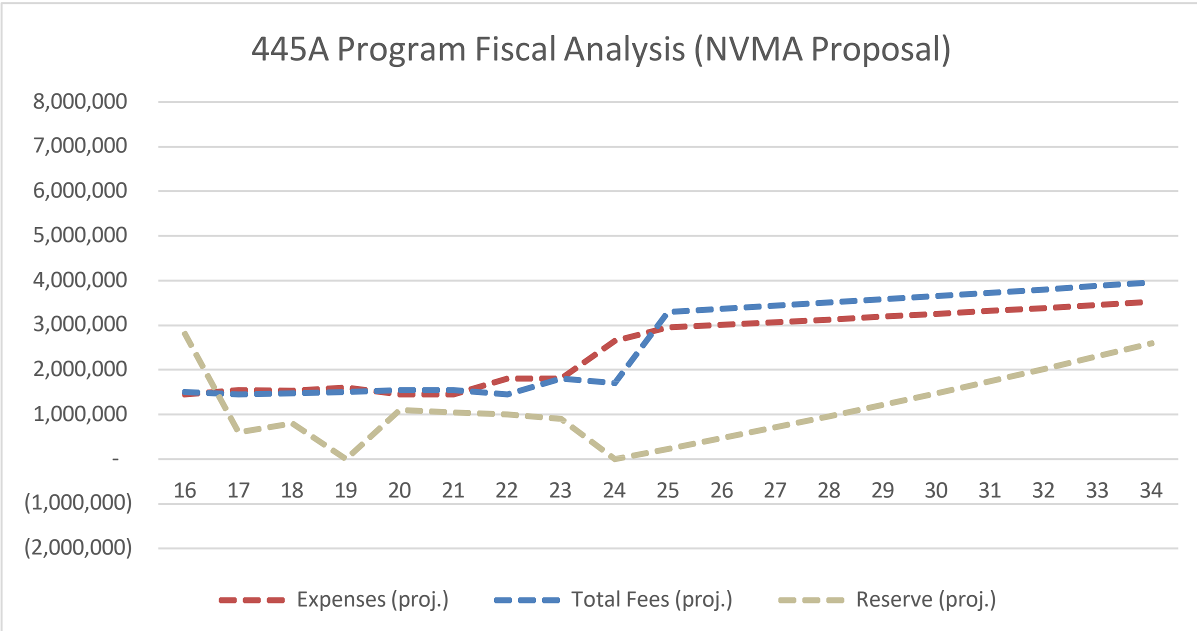

Figure 3. NVMA proposed fee increase assuming a 3% increase in annual expenses, hiring one additional position, and a slower increase in reserves.