

## NEW MEXICO MINING COMMISSION

IN THE MATTER OF THE BLACK  
MESA OPERATION, RIO ARRIBA  
COUNTY, NEW MEXICO

No. 97-07

### FINAL ORDER

The New Mexico Mining Commission held a regular meeting on January 14, 1998, at Santa Fe, New Mexico, at which the Commission heard the matter captioned above. After consideration of all the evidence and being otherwise duly advised, the Commission makes the following findings and conclusions.

#### **a. FINDINGS.**

1. On October 27, 1997, the Director of the Energy, Minerals and Natural Resources Department responded to an inquiry from Petitioner Vecinos del Rio regarding whether a mining operation known as the Black Mesa operation was to be regulated under the New Mexico Mining Act.

2. The Director's response was that the Energy, Minerals and Natural Resources Department, Mining and Minerals Division does not regulate the operation by the Act because the operator was producing basalt riprap, which was quarry rock used for aggregate in construction.

3. In a letter dated November 25, 1997, and addressed to the Director, Petitioner stated that it "wish[ed] to submit this letter as a formal appeal" of the Director's decision.

4. The Black Mesa operation in Rio Arriba County extracts basalt for use as riprap by the United States Bureau of Reclamation at Cochiti Dam.

5. Riprap is a gathering of different size rocks to form a larger structure on a river bank in order to inhibit the river's alterations of its banks.

6. There is no dispute that the basalt from the Black Mesa operation is generally not crushed before transport and use, and that it ranges in size from eight to sixty inches in diameter, although at times the operator breaks larger pieces prior to transporting them.

**b. CONCLUSIONS OF LAW.**

1. The Commission has jurisdiction to hear and decide this matter.

2. NMSA 1978, Section 69-36-3(H) (Repl. Pamp. 1997) excludes from the Mining Act regulation of "exploration and extraction of ... quarry rock used as aggregate in construction."

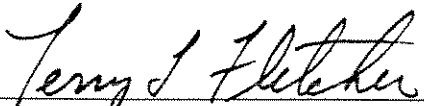
3. In 19 NMAC 10.2.107.W, the Commission has defined aggregate used in construction as "rock extracted from a surface mine which is actually used in construction. Construction use includes building materials, landscaping, erosion control and stabilization and road maintenance activities." This definition is without reference to size-based criteria.

4. The Black Mesa operation basalt is, pursuant to 19 NMAC 10.2.107.W, aggregate because its use at Cochiti Dam is in a gathering or aggregation of associated parts into a larger mass.

5. The Black Mesa operation basalt is, pursuant to 19 NMAC 10.2.107.W, used in construction because it is riprap, and riprap controls erosion and stabilizes river banks.

Accordingly, by a vote of four commissioners in favor and two opposed, the Commission orders that the Division's October 27, 1997, letter to Petitioner declining to regulate the Black Mesa operation is **AFFIRMED**.

DATED: 2/18/98

  
Terry L. Fletcher, Chair  
New Mexico Mining Commission