

NEW MEXICO MINING COMMISSION

IN THE MATTER OF REVISION 96-02  
TO PERMIT NO. SA001RE, EL CAJETE  
MINE, RIO ARRIBA COUNTY, NEW  
MEXICO

RECEIVED  
SEP 16 1998  
MINING & MINERALS DIV.  
No. 98-02  
98-03  
Consolidated.

FINAL ORDER

The New Mexico Mining Commission held a regular meeting on May 20, 1998, at Santa Fe, New Mexico to consider Petitioners Rio Grande Chapter of the Sierra Club and Jemez Homeowners' Alliance motions to stay the permit revision until the Commission could enter a final order. On June 16, 1998, the parties entered a Stipulated Statement of Facts and on June 19, 1998, the parties entered a Supplemental Stipulated Statement of Facts. The Commission held a second meeting on June 22, 1998, at Santa Fe, New Mexico, and heard the merits of the Petitions for Review of Issuance of Permit Revision. The Commission adopts the parties' stipulations as its own findings for the purposes of disposing of this appeal. After consideration of the stipulations and arguments of counsel and being otherwise duly advised, the Commission makes the following decision.

**a. Decision on Motions for Stay.**

1. Section 69-36-15(A) does not allow for an automatic stay upon filing of a petition for review, but rather defines the period during which a party has a right to appeal the order and when it becomes final for the purposes of legal repose.
2. The evidence of injury to the mining operator resulting from a stay was at least as compelling as the evidence of injury to the environment resulting from the commencement of operations.

3. Petitioners failed to carry their burden of persuasion that the equities favor imposition of a stay.

**b. Conclusions of Law.**

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

2. The New Mexico Mining Act (the Act), NMSA 1978, Sections 69-36-1 through 69-36-20 (1993), only recognizes three types of mines for permitting purposes, and those are:

a. existing mining operations, defined at Section 69-36-3(E) as extraction operations that "produced marketable minerals for a total of at least two years" between 1970 and 1993;

b. new units of existing mining operations, defined at Section 69-36-7(D) as any "new discrete processing, leaching, excavation, storage or stockpile unit located within the permit area of an existing mining operation and not identified in the permit of an existing mining operation, and for each expansion of such a unit identified in the permit for an existing mining operation that exceeds the design limits specified in the permit;" and

c. new mining operations, defined at Section 69-36-3(I) as any "mining operation that engages in a development or extraction operation after the effective date of the [Act] and that is not an existing mining operation."

3. The issue in this matter is whether the Division properly categorized the El Cajete site as a new unit to an existing mine or should have categorized the site as a new mine.

4. The legislature's reason for distinguishing between new units of existing operations and new mining operations was that at some point new activity becomes so unassociated with prior activities it would be fair to subject the new activities to the most stringent environmental thresholds under the Act.

4. The legislature's means of distinguishing between interrelated and unassociated mining activity is through site assessments and permits; if an operator foresees a new or expanded activity and includes it in the site assessment and the Division includes it in the permit, then by operation of Section 69-36-7(D) the new or expanded activity is interrelated with the existing activity.

5. An operator's inclusion of proposed new or expanded activity into the site assessment and the Division's inclusion of the same into the permit implicitly must be reasonable, and 19 NMAC 10.2.502.F defines that reasonableness.

6. 19 NMAC 10.2.502.F lists two criteria, common ownership and physical proximity, as factors in determining whether a new activity is interrelated enough with existing activity to be included in the site assessment and permit.

7. The 19 NMAC 10.2.502.F criteria for interrelatedness are reasonably related to Section 69-36-5(B) because:

a. Site assessments are to account for an operation's effects on the surrounding environment, and the cumulative effects of activities in close physical proximity to each other are best accounted for when said effects are described in one site assessment; and

b. Permits establish responsibility for reclamation, and common ownership of all operations in the same permit area clarifies responsibility for reclamation of everything within the permit area.

8. A distance of 1.1 miles between the external boundaries of the El Cajete and Las Conchas sites meets the physical proximity threshold in 19 NMAC 10.2.502.F.

9. Because the same party owns the El Cajete and Las Conchas sites and they are in close physical proximity, 19 NMAC 10.2.502.F applies and the Division appropriately categorized El Cajete as a new unit of an existing mining operation.

**c. Order.**

The Commission voted unanimously that there is no automatic stay upon filing of a petition for review, and voted four in favor and three opposed to deny the stay on the facts. The Commission voted four in favor and three opposed to affirm Revision 96-02 to Permit no. SA001RE. Accordingly, Revision 96-02 to Permit no. SA001RE is **AFFIRMED** without a stay.

DATED: 9/15/98

  
Terry L. Fletcher, Chair  
New Mexico Mining Commission