

The other officers are typically (1) the vice-chair in the event that the chair is not available to serve as chair and (2) the secretary, whose general role is to review the minutes of the previous meeting and confirm that they reflect what transpired at that meeting.

Action item for nominating the chair. Discussion of whether Commission Chair Wunder was still interested in the position of chair. Commission Chair Wunder declined. Commission McLemore moved to nominate Commissioner Bloom as chair, seconded by Commissioner Ventura; the vote in favor was unanimous (6-0). Mr. Bloom was declared the Commission chair.

Commissioner Bower motioned to nominate Commissioner McLemore as vice-chair, seconded by Commissioner Wunder. The vote was unanimously in favor (6-0). Ms. McLemore was declared vice-chair of the Commission.

Commissioner Zemlick was nominated for the role of Commission secretary. The first motion was made by Commissioner McLemore, seconded by Commissioner Ventura, and the vote in favor was unanimous (6-0). Ms. Zemlick was declared the Commission secretary.

4. Adoption of the minutes of the January 12, 2022, meeting

Commission Chair Bloom asked for any changes to the minutes of the January 12, 2022, regular meeting; there were none. Commissioner Vice Chair McLemore moved to adopt the minutes, seconded by Commissioner Bloom. The vote was (4-0). Commissioner Ventura and Commissioner Zemlick abstained because they did not participate in the January 12, 2022, Commission Meeting.

5. Brief Overview of the 2024 Open Meetings Act and Duties of Commissioners

The 2024 Open Meetings Act (“OMA”) was presented by the N.M. Department of Justice. Daniel R. Rubin is designated counsel of the Commission. Commission Attorney Rubin explained the OMA, citing, “NMSA 1978, Sections, 10-15-1 to 10-15-4, is known as a “sunshine law.” All states have such laws, which are essentially motivated by the belief that the democratic ideal is best served by a well-informed public. Sunshine laws generally require that public business be conducted in full public view, that the actions of public bodies be taken openly, and that the deliberations of public bodies be open to the public.”

Commission Attorney Rubin further explained the OMA, Formation of Public Policy 10-15-1 (B). Citing, "All meetings of a quorum of members of any board, commission, administrative adjudicatory body or other policymaking body of any state agency, any agency or authority of any county, municipality, district or any political subdivision, held for the purpose of formulating public policy, including the development of personnel policy, rules, regulations or ordinances, discussing public business or for the purpose of taking any action within the authority of or the delegated authority of any board, commission or other policymaking body are declared to be public meetings open to the public at all times, except as otherwise provided in the constitution of New Mexico or the OMA. No public meeting once convened that is otherwise required to be open pursuant to the OMA shall be closed or dissolved into small groups or committees for the purpose of permitting the closing of the meeting.”

Commission Attorney Rubin discussed the importance of avoiding rolling quorum issues, explaining that the OMA generally prohibits a public body from conducting public business in

secret or in closed meetings and requires that such business be conducted by the public body acting as a whole at meetings open to all persons who wish to attend and listen. The OMA requires members of a public body to conduct business in public and to allow all persons desiring to attend and listen to the proceedings. These requirements effectively preclude members of a public body from conferring privately during meetings by passing notes, sending emails and texts, or by other means.

6. Discussion and possible adoption of the 2024 Open Meetings Resolution

Commission Attorney Rubin explained that the OMA requires the public body to meet every year to pass a resolution that states what the commission or body deems reasonable public notice. Notice of regular meetings: 10 days; 72 hours for special meetings; emergency matters may be called at any time. Agendas are required 72 hours before every meeting.

Commissioner McLemore moved to adopt the 2024 Open Meetings Resolution as written, seconded by Commissioner Wunder. The vote was unanimous (6-0).

7. Delegation of Power to Commission Chairperson to appoint hearing examiners and to set required commission meetings as required.

Commissioner Chair Bloom asked what role a hearing examiner or officer performs for the Commission. Commission Attorney Rubin described the hearing officer as taking in evidence, conducting the hearing, and making recommendations. The hearing officer has no authority to make any final decisions. They can simply rule on procedural matters. Anything dispositional would require a commission decision.

Commission Chair Gregory Bloom called for a motion to appoint Hearing Officer Felicia Orth in an effort to address matters of adjudicatory nature before the New Mexico Mining Commission. The first motion was made in favor of Commission Vice-Chair Virginia McLemore, seconded by Commissioner Erich Bower. Commission Chair Gregory Bloom asked for a vote of approval for the appointment of Hearing Officer Felicia Orth. The vote was unanimous in favor of (6-0).

8. Scheduling of hearing and appointment of hearing examiner on NMMC Petition 23-01 received from Stanley E. King, Authorized Representative of Mogollon Concerned Citizens, for review of the Director's action regarding Approval of Permit Modification 23-1 to Permit No. CA027EM Summa Silver Mogollon Minimal Impact Exploration Project.

The Energy, Minerals, and Natural Resources Department ("EMNRD"), Office of the General Counsel Gabriel Wade, cited his name and agency affiliation for the record. EMNRD Attorney Wade explained that he represented EMNRD's Mining and Minerals Division ("MMD"). EMNRD-MMD Attorney Wade stated the dates the Division was able to meet for the hearing of Petition 23-01.

Stanely E. King cited his name and affiliation as an authorized representative of Mogollon Concerned Citizens. He asked if an electronic media platform could be made available for members who may not be able to attend the hearing in person. Mr. King provided dates of availability for the Petition 23-01 hearing.

Attorney Stuart Butzier of Modrall Sperling stated his name and affiliation for the record. Attorney Stuart Butzier stated that he has assisted mining, energy, high-tech, industrial, and

ranching clients throughout his thirty-plus year legal career and would be subject to representing his client Summa Silver at the future determined hearing. Attorney Butzier provided dates available for the hearing of Petition 23-01.

Hearing Officer Felicia Orth approached the commission, cited her name for the record, and provided her dates of availability for the Petition 23-01 hearing. She also provided a brief description of her experience as a professional hearing officer. She cited the Commission rules found in 19.10.14 NMAC (“Rules”), which set the conduct of the hearing that would be occurring. The Rules state that the Commission will be present with the hearing officer during the hearing. The Rules state that the Commissioners may cross-examine any witnesses. The Rules also set out the pre-hearing process, which includes the exchange of witnesses and exhibits. Any person who wishes to present evidence has to submit it 10 days in advance of the hearing, setting out what they are going to say, who their witnesses are, their exhibits, and even a summary of their testimony. It allows all parties to do their homework, and the hearing will go more smoothly. It allows all parties to anticipate the issues that will be contested during the hearing.

A motion was made by the Commission Vice Chair to appoint Felicia Orth as the hearing officer, seconded by Commissioner Wunder. The vote was unanimous in favor of the motion (6-0).

The Commission decided to live stream the hearing without public participation. A motion was made by Commission Vice-chair McLemore to schedule the Commission hearing for Petition 23-01 on February 15th and 16th, 2024, starting at 9:00 a.m. The second motion was made by Commissioner Zemlick. The vote was unanimously in favor (6-0).

Mr. King made statements regarding the petition. Attorney Stuart Butzier stated that the special meeting was noticed as an occasion to decide whether to appoint a hearing officer and to schedule the hearing. He objected to and asked to strike from the record the statements that Mr. King made, as they go to the merits of the issue and go outside the scope of the special meeting. EMNRD-MMD Attorney Gabe Wade also joined the objection. The statements made by Mr. King were struck from the record.

9. Mining Act Reclamation Program’s Presentation of Its Annual Report to the Commission.

Per (§§ 19.10.13.1301), Mining Act Reclamation Program (“MARP”), Manager David (DJ) Ennis, presented the 2022 Annual Report. MARP Manager, David (DJ) Ennis introduced Mining and Minerals Division Director, Albert C.S. Chang to include all MMD - MARP staff who were present in the audience during the public meeting. Commission Vice Chair Virginia McLemore cited a small typo within the annual report. MARP Manager David (DJ) Ennis thanked Commission Vice Chair McLemore for catching the error and expressed that he would correct the annual report and post the updated version on the EMNRD-MMD website.

10. Adjournment

The Commission Chair Bloom cited that there was no further business to discuss at the Commission Special Meeting. Commission Chair Bloom adjourned the meeting at 11:36 a.m.

Approval of January 3rd, 2024 New Mexico Mining Commission Special Meeting Minutes Approved and adopted this _____ day of February 2024.

N.M. Mining Commissioner Chair Gregory Bloom

Gregory B. Bloom

Date: 02/19/2024

Attest: NMMC Clerk/Administrator Stephanie J. Rodriguez

Stephanie J. Rodriguez

Date: 02/16/2024