

**DRAFT
MINUTES OF THE
NEW MEXICO MINING COMMISSION
REGULAR MEETING
Monday, July 2, 2018**

Chairman Heaton convened the New Mexico Mining Commission (NMMC) at 9:00 AM, Monday, July 2, 2018, in Porter Hall (1st floor of the Wendell Chino Building), Energy, Minerals and Natural Resources Department, 1220 South St. Francis Drive in Santa Fe, New Mexico. The meeting was recorded, and the digital audio files are in the custody of the Commission clerk.

Roll call

Commission clerk Jane Tabor called the roll:

Members present:

John Heaton, Chair	Public Representative – Environment
Patrick Freeman	Public Representative – Industry
Virginia McLemore	Bureau of Geology and Mineral Resources
Dennis McQuillan	Environment Department
Ghassan Musharrafi	Office of the State Engineer
Matthew Wunder	Department of Game and Fish
Stephen Wust	State Land Office
Erich Bower	Alternate for Public Representative – Industry
Roderick Ventura	Alternate for Public Representative – Environment
Sally Malavé	Commission Attorney

Members absent:

Steve Loring	New Mexico Agricultural Experiment Station
Vacant	New Mexico Soil and Water Conservation Commission

Approval of the agenda

Chairman Heaton asked for any change to the agenda; there was none. Commissioner Wust moved to adopt the agenda; seconded by Commissioner McLemore, the vote was unanimous (7-0).

Adoption of the minutes of the May 7-8, 2018, meeting

Chairman Heaton asked for any change to the minutes; there was none. Commissioner McLemore moved to adopt the minutes; seconded by Commissioner McQuillan, the vote was unanimous (7-0).

Chairman Heaton made a statement in answer to objections from members of the public during the May 7-8, 2018, hearing and from parties in their closing statements regarding their perception of bias on his part due to his involvement in nuclear waste storage. He explained that his unpaid volunteer work on various projects (Energy Advisor to the City of Carlsbad, Chairman of the Mayor's Nuclear Task Force (focused on WIPP and clean-up of Cold War weapons complex residuals), and Chairman of the Eddy Lea Energy Alliance) has nothing to do with mining and in his view creates no conflict with his ability to render an impartial decision.

However, to not impugn his fellow commissioners acting in good faith, Chairman Heaton recused himself from the rest of the day's proceedings and appointed Roderick Ventura, the environmental alternate on the Mining Commission, as Chairman of this meeting and hearing process.

Commissioner McLemore and Commissioner McQuillan stated that Commissioner Heaton's experience is the very reason that he is on the Commission, as is also true for the other commissioners, and that his recusal sets a dangerous precedent that is contrary to the Legislature's intent to have people of varying experiences and interests representing various aspects of society. However, they did support his recusal since his alternate was present today and at the hearing in May (as also attested to by Commissioner Wust).

Deliberation on NMMC Petition 18-01 received from Multicultural Alliance for a Safe Environment and Amigos Bravos for review of the Director's action regarding Rio Grande Resources' application to transition from standby status to operating status at the Mt. Taylor Mine in Cibola County

Chairman Ventura called for a motion to adjourn into executive session, as authorized by §10.15.1.H(3) NMSA, to discuss item 4 on the agenda. Commissioner McLemore moved to enter executive session to discuss how to move forward; seconded by Commissioner McQuillan, the vote was unanimous (7-0).

Mr. Eric Jantz, Environmental Law Center, asked for confirmation that the meeting was being recorded and when a written decision would be delivered. Ms. Malavé informed him that, by rule, the Commission has 30 days from the date it announces its decision. Mr. Jantz then stated two objections. With Commissioner Heaton's recusal, he objected to the evidentiary ruling that excluded economic testimony and moved that the hearing be redone. He also objected to the Commission entering executive session. After conferring with counsel, Chairman Ventura said the Commission would defer on deciding to rehear the Petition and informed the parties that the Commission would adjourn to executive session as allowed by the Open Meetings Act.

Mr. Stuart Butzier, for Rio Grande Resources (RGR), commented that one of Mr. Jantz's objections was made in the form of a motion. He stated that the evidentiary ruling to exclude economic analysis testimony was correct, and that Commissioner Heaton informed the parties that the allegations against him were unfounded. Mr. Butzier reiterated that Commissioner Heaton did not recuse himself due to a conflict and that, therefore, the decisions made in the hearing were appropriate. Chairman Ventura then adjourned the Commission into executive session at 9:24 AM.

The Commission reconvened at 2:56 PM and Chairman Ventura stated that only agenda item 4, Deliberation on Petition 18-01, was discussed in executive session. He overruled Mr. Jantz's objection and denied his motion for a rehearing of the petition and stated that Commissioner Heaton acted within his discretion and authority during the course of the hearing. On an earlier deferred motion from the hearing in May, Chairman Ventura asked for a motion on RGR's motion to summarily dismiss the Petition. Commissioner McQuillan moved to deny the motion; seconded by Commissioner McLemore, the vote was unanimous (7-0).

Mr. Butzier was recognized to state an additional objection on behalf of RGR as to the spurious and unfounded allegations made against Commissioner Heaton that were without basis in fact or law.

Chairman Ventura asked for any discussion or motions on Petition 18-01. Commissioner McQuillan spoke in support of the Mining and Minerals Division (MMD) Director's decision based on decades of broadly interpreting the definition of "mining" that provides the greatest environmental protection. He noted that while an economic analysis could have been requested, it is not required by statute or rule. Permit Revision 13-2 includes many provisions to address reclamation at the mine site and covers MMD's enforcement authority. Commissioner McQuillan moved to deny the Petition, seconded by Commissioner McLemore. Commissioner Freeman stated that the MMD Director followed the rules and acted within his authority. Commissioner McLemore stated that she sees no evidence that MMD will not enforce the rules and regulations and encouraged the public to continue to participate. Commissioner Wust remarked that his decision would not have been based on economic analysis. He also stated that, if operations were conducted as the permit prescribes, the environment would be protected; however, he was concerned about MMD's enforcement of Revision 13-2. Chairman Ventura thanked the commissioners for their time and commitment and stated his concern about the arbitrariness of enforcement. He then called for a roll call vote; by a vote of 4-3 the Petition was denied. Commissioners Freeman, McLemore, McQuillan and Musharrafieh voted in favor of denying Petition 18-01 and commissioners Ventura, Wunder and Wust voted against denying the Petition.

Rather than meeting again in a public session, Chairman Ventura appointed Commissioner McQuillan to review and sign the final order prepared by Commission Counsel Malavé.

Other Business

Chairman Ventura asked for any other business; there was none.

Adjourn

Commissioner Ventura asked for a motion to adjourn. Commissioner McLemore moved to adjourn; seconded by Commissioner Wust, the meeting adjourned at 3:20 PM.

Approved:

Matt Wunder, Digitally signed by Matt Wunder, Ph.D.
Date: 2022.01.14 14:31:26 -07'00'
Ph.D.

Roderick Ventura, Chair

Date _____

Minutes by:

Jane Tabor, Commission Clerk