

**MINUTES OF THE  
NEW MEXICO MINING COMMISSION  
REGULAR MEETING and HEARING  
Friday, February 23, 2018**

Chairman Heaton convened the New Mexico Mining Commission at 9:00 AM, Friday, February 23, 2018, in the Rio Grande Conference Room at the Toney Anaya Building, 2550 Cerrillos Road, 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
Sally Malavé	Commission Attorney

Members absent:

Roderick Ventura	Alternate for Public Representative – Environment
Steve Loring	NM Agricultural Experiment Station

**Approval of the agenda**

Chairman Heaton asked for any changes to the agenda; there were none. Commissioner McLemore moved to adopt the agenda; seconded by Commissioner Wust, the motion passed unanimously (7-0).

**Adoption of the minutes of the November 2, 2017, meeting**

Chairman Heaton asked for any changes to the minutes; there were none. Commissioner Wunder moved to adopt the minutes; seconded by Commissioner McLemore, the motion passed unanimously (7-0).

**Consideration and Adoption of the Commission's 2018 Open Meetings Act Resolution**

Chairman Heaton asked for any comments or changes to the Open Meetings Act Resolution; there were none. Commissioner McLemore moved to adopt the resolution; seconded by Commissioner McQuillan, the motion passed unanimously (7-0).

**Rulemaking Hearing on Mining and Minerals Division's Petition for Rulemaking (17-01) regarding adopting proposed rule 19.10.15 NMAC, Mining Commission Rulemaking**

Chairman Heaton commenced the hearing at approximately 9:10 AM and swore in those providing testimony on the petition: William Brancard, General Counsel for Energy, Minerals and Natural Resources, and Mike Bowen, Executive Director of the New Mexico Mining Association.

Mr. Brancard's presentation explained and discussed the 31 subsections of the proposed new rule and their origin. The new rule will replace *Guidelines for Rulemaking*. Questions were posed by the commissioners and by Dalva Moellenberg on behalf of the New Mexico Mining Association. Several modifications to the proposed rule were made and accepted by the Commission as follows:

Section 19.10.15.12 General Provisions – Recusal. The Commission discussed the meaning and intent of this section in the rulemaking context. Commissioner McLemore moved that the Commission modify Section 19.10.15.12 by adopting the alternative language proposed by the New Mexico Mining Association in place of the language proposed by MMD; seconded by Commissioner Wust, the motion passed unanimously (7-0);

Section 19.10.15.14 Document Requirements – Filing and Service of Documents. The Commission found subsections D and E to be duplicative of Section 19.10.15 Examination of Documents Filed. Commissioner Wust moved that the Commission modify Section 19.10.15.14 by deleting subsection D and E; seconded by Commissioner McLemore; the motion passed unanimously (7-0);

Section 19.10.15.15 Examination of Documents Filed. Because documents filed in connection with a rulemaking proceeding are public record under the Inspection of Public Records Act, Commissioner Wust moved to remove the phrase “or by the commission’s administrator, as appropriate” from the last sentence in subsection A; seconded by Commissioner McLemore, the motion passed unanimously (7-0);

Following explanations and origin on 19.10.15.16 and 19.10.15.17, Mr. Brancard informed the Commission that the numbering for the rest of the rule in the petition was off by one as there were two subsections 17. The citations in the sections below follow the corrected numbering:

Section 19.10.15.19 Motions. Upon noting that as proposed, this section placed no limit on who might be able to file a motion, Commissioner McQuillan moved that subsection A be modified to include language that “Any person who has filed an entry of appearance may file a motion” to the beginning of subsection A; seconded by Commissioner McLemore, the motion passed unanimously (7-0);

Section 19.10.15.20 Technical Testimony. After noting that she had dropped the word “working” from the phrase “no later than 10 days prior to the hearing,” Ms. Malavé asked the Commission add “working” or “calendar” after the number “10. Commissioner McQuillan moved that the Commission modify subsection A by adding the word “working” after the number “10”; seconded by Commissioner McLemore, the motion passed unanimously (7-0);

Section 19.10.15.24 Testimony and Cross-Examination. After discussing the meaning of “incompetent” in the context of testimony provided to the Commission in a rulemaking proceeding, Commissioner McQuillan moved that the words “incompetent or” be deleted from the first sentence of subsection C; seconded by Commissioner Wust, the motion passed unanimously (7-0);

Section 19.10.15.29 Deliberation and Decision. To ensure that there would be no confusion regarding the adoption date of a rule for purposes of providing notice under the State Rules Act or filing an appeal, Mr. Brancard suggested that the Commission add language that the Commission’s written decision shall constitute the adoption of the rule. Commissioner McQuillan moved that the Commission add a new subsection G to Section 19.10.15.29 that reads: “The adoption of the commission’s written decision shall constitute adoption of the rule. Within 15 days of the written decision, the commission shall file the rule and the written decision in

accordance with the State Rules Act”; seconded by Commissioner McLemore, the motion passed unanimously (7-0);

Section 19.10.15.30 Notice of Commission Action. To ensure that the provision of notice of the Commission’s action following a rulemaking proceeding complies with the State Rules Act, Mr. Brancard suggested that the Commission modify Section 19.10.15.29 to read that “The commission administrator shall provide notice of the commission’s action in accordance with the State Rules Act.” Commissioner McQuillan made a motion to that effect; seconded by Commissioner McLemore, the motion passed unanimously (7-0);

Section 19.10.15.18 Entry of Appearance. After discussing the function of this proposed section as it relates to any appeal that might be taken of a Commission rule, Mr. Brancard suggested that the Commission modify the section by adding language that the filing of a petition or notice of intent to present technical testimony could also serve as an entry of appearance in rulemaking proceeding. Commissioner McQuillan moved that the Commission add language to the end of Section 19.10.15.18 that reads “The filing of a petition or notice of intent to present technical testimony shall serve as an entry of appearance”; seconded by Commissioner McLemore, the motion passed unanimously (7-0).

There being no further public comment or discussion, the hearing closed at 11:40 AM.

**Action on Mining and Minerals Division’s Petition for Rulemaking (17-01) regarding adopting proposed rule 19.10.15 NMAC, Mining Commission Rulemaking**

Commissioner McQuillan moved to adopt the amended rule for the reasons stated in 19.10.15.6 NMAC, Objective; seconded by Commissioner McLemore, the motion passed unanimously (7-0). Following the suggestion by Commissioner Freeman, Commissioner McQuillan moved that the Commission allow Sally Malavé, the Commission’s attorney, to make the changes to the rule and to allow Chairman Heaton to provide the final approval to those changes; seconded by Commissioner McLemore, the motion passed unanimously (7-0). Chairman Heaton directed Attorney Malavé to prepare the Final Order that will include information about the amendments made to the rule and reasons to adopt it.

**The Mining Act Reclamation Program’s 2016 annual report to the Commission**

David (DJ) Ennis presented the [MARP report for calendar year 2016](#) that included a general description of mining operations, a general description of reclamation practices, financial assurance update, 2016 amendments to the Mining Act Rules, and 2016 state mineral production statistics. Petition 15-02, approved in April 2016, expanded minimal impact mining operations for nonenergy fuel minerals that lack the potential for significant acid drainage from 10 to 40 acres in all areas of New Mexico except Bernalillo County, Doña Ana County, and Santa Fe County. A modified proposal refined the language to operations extracting dolomite, garnet, humate, perlite and zeolite.

The report also included information on the status of the Copper Flat Mine that is in the permitting process with MMD and several other agencies. Even though there is now an issue with the Office of the State Engineer regarding water rights, the operator still wants to continue the process.

Commissioners Freeman and McQuillan complimented MARP staff on the great website and on the well prepared and highly informative presentation.

**Other business**

Commissioner Freeman informed the group that Commissioner McLemore received the Environmental Stewardship Award from The Society for Mining, Metallurgy & Exploration for

“actively promoting the sharing of technical information, via publications, technical sessions and alliances with other industry groups, for the betterment of the mining industry and the environment.” Commissioner McLemore is a principal senior economic geologist with the New Mexico Bureau of Geology and Mineral Resources and has worked with the Bureau since 1980.

**Adjourn**

Commissioner Heaton called for a motion to adjourn at 12:20 PM. Moved by Commissioner McLemore and seconded by Commissioner McQuillan, the motion passed unanimously (7-0).

Approved:



John Heaton, Chair

Date 5-7-2019

Minutes by:



Jane Tabor, Commission Clerk