

**MINUTES OF THE
NEW MEXICO MINING COMMISSION
REGULAR MEETING and HEARING
Monday-Tuesday, May 7-8, 2018**

Chairman Heaton convened the New Mexico Mining Commission (NMMC) at 9:00 AM, Monday, May 7, 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. In addition, the Modrall Sperling Law Firm stenographically recorded the hearing on Petition 18-01.

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 McLemore moved to adopt the agenda; seconded by Commissioner McQuillan, the motion passed unanimously (7-0).

Adoption of the minutes of the February 23, 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 motion passed unanimously (7-0).

Hearing on NMMC Petition 18-01 received from Multicultural Alliance for a Safe Environment and Amigos Bravos (Petitioners) for review of the Mining and Minerals Division (MMD) Director's action permitting Rio Grande Resources Corporation's (RGR) application to transition from standby status to operating status at the Mt. Taylor Mine
Chairman Heaton, presiding as the Hearing Officer, commenced the hearing at 9:07 AM. At the Chairman's request, members of the Commission introduced themselves, as did the parties involved in the hearing: Gabriel Wade, counsel for MMD; Stuart Butzier and Christina Sheehan,

counsel for Joe Lister and RGR; Eric Jantz and Douglas Meiklejohn, counsel for Petitioners; Kathryn Becker and Kurt Vollbrecht of New Mexico Environment Department (NMED); and Dalva Moellenberg, TJ Trujillo, and Rikki Lee Chavez on behalf of the New Mexico Mining Association (NMMA).

Hearing Officer Heaton asked the parties if there were any objections to RGR's request to have Kathy Townsend Court Reporters stenographically record the hearing and make copies available to the Commission and other parties, as requested. There were no objections.

Hearing Officer Heaton informed the parties that NMED's motion for leave to intervene was granted as a matter of right as NMED is an agency represented on the Commission.

Mr. Butzier asked that the administrative record, as posted on MMD's website, be admitted, with the addition of a letter of determination from NMED that was not yet posted. There were no objections from any parties and it was admitted as Exhibit 10.

Hearing Officer Heaton asked for discussion of RGR's motion to summarily dismiss the Petitioners' appeal and allowed RGR and Petitioners 15 minutes each for their comments. MMD had nothing to add and supported the motion. Following questions from commissioners, Hearing Officer Heaton entertained a motion to adjourn to executive session. Commissioner McLemore moved to adjourn to executive session to deliberate only on the motion to dismiss; seconded by Commissioner Wust, the motion passed unanimously (7-0). The executive session commenced about 9:45 AM.

At 10:50 AM, the commissioners returned, and the hearing resumed. Hearing Officer Heaton informed the parties that only the motion to summarily dismiss was discussed and no decisions were made. Commissioner McQuillan moved to take the motion under advisement and to proceed with the hearing; seconded by Commissioner McLemore, the vote was five in favor (commissioners Heaton, McLemore, McQuillan, Musharrafieh and Freeman) and two against (commissioners Wunder and Wust).

Hearing Officer Heaton asked MMD to present its testimony. Mr. Wade introduced David Ohori as a fact witness, Holland Shepherd as an expert witness, and Director Fernando Martinez as a rebuttal witness, if necessary. Mr. Ohori was sworn in as a witness and, as the current permit lead for the Mt. Taylor Mine, presented a brief overview of the history of the mine and MMD's involvement beginning in July 1995 when the mine was permitted under the New Mexico Mining Act as an existing mine, Permit CI002RE. Mr. Jantz asked clarifying follow-up questions as did some commissioners.

Hearing Officer Heaton invited members of the public to make comments. Speaking in support of the Petition were: Petuuche Gilbert, Acoma Pueblo; Laura Watchempino, MASE/Amigos Bravos; Marlene Perotta, Sisters of Mercy; Christine Lowery, Laguna Pueblo on behalf of herself, Candice and Steve Dylla and Milton and Jonnie Head; Jon Klingel, MASE/Amigos Bravos; Leona Morgan, Navajo Nation; and Kevin Kamps, radioactive waste specialist. Speaking against the Petition were Les Gaines on behalf of the Grants mayor; Robert Windhorst, citizen of Cibola County; and Aaron Sims, Acoma Pueblo General Counsel (based on his understanding of and compliance to all rules and regulations). After receiving public comments, the commission recessed for lunch.

Following the lunch break, Mr. Wade asked to admit exhibits 3, 4, and 6-9 into the record; there were no objections. MMD continued its testimony with the swearing in of Holland Shepherd and

no objections to his expert status. Mr. Shepherd explained how MMD defines "mining" under the Mining Act and Rules and how the Act and Rules were applied to Revision 13-2 and that Revision 13-2 was granted based on the unique facts and situation of the mine. Mr. Shepherd explained how the terms of Revision 13-2 ensure that MMD monitors the mine's status and will act on the status according to the situation. Mr. Shepherd noted that economic analysis is not required under the Act or Rules for a mine to come off stand-by status. Mr. Jantz cross examined Mr. Shepherd with questions for clarification of "active" and "standby" status and what activities can occur in those statuses. Mr. Butzier asked follow-up questions as did commissioners including an explanation of the punitive nature of MARP's notices of violations, and determination of length of standby status. Following a brief break, MMD asked that exhibits 2 and 5 be admitted to the record; there were no objections. That ended MMD's testimony.

Mr. Moellenberg introduced Michael Bowen, Executive Director of the New Mexico Mining Association, who was sworn in as an interested participant. Mr. Bowen spoke in opposition to the Petitioners and expressed the support of the mining industry and Mining Association for mining in the state in general and for this specific mine. Following a question to Mr. Bowen about the future of nuclear power, Mr. Wade made a motion to curtail economic analysis testimony since that analysis is not required of MMD to issue a permit to come off standby and therefore is not relevant to the hearing. RGR joined MMD in the motion. Mr. Jantz objected saying that the Mining Act mentions "saleable" and "usable." Hearing Officer Heaton sustained the motion to exclude economic analysis discussions.

Mr. Jantz introduced James Kuipers, P.E., as an expert technical witness in mine design, permitting and development, cessation and reclamation. Hearing Officer Heaton declared him qualified as an expert. Mr. Kuipers discussed equating flooding a mine and removing crucial operating equipment with closing a mine, not with putting it on standby. Mr. Butzier asked follow-up questions including whether the Mining Act defines it that way. Questions from commissioners followed.

Mr. Jantz moved to admit Exhibit 1 into the record; there were no objections. He also moved that Exhibit 8 should only include pages one through ten, since the rest is an economic analysis, and that it be renumbered Exhibit 2. That ended the Petitioners' presentation.

Hearing Officer Heaton invited public comment. Deborah Reade of Santa Fe spoke in support of the Petition.

Hearing Officer Heaton then adjourned the meeting at 4:48 PM until Tuesday morning at 9:00 AM.

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Hearing Officer Heaton called the hearing to order at 9:00 AM on Tuesday, May 8.

RGR began its presentation of evidence and technical testimony with Mr. Joe Lister, an RGR employee and manager of the Mt. Taylor Mine operations. Mr. Butzier moved that he be admitted as an expert witness; there were no objections. Mr. Butzier moved to admit exhibits 1 and 2; Mr. Jantz objected to Exhibit 2. Hearing Officer Heaton allowed admittance of both exhibits. Mr. Lister provided an overview of the mine, the relevant history, and standby status. He also explained reactivation activities, operational requirements for ore production and the reasonableness of returning to active status. Mr. Jantz and commissioners asked several follow-up questions.

Hearing Officer Heaton invited public comment. Speaking in support of the Petition were: June Lorenzo, Laguna Pueblo; Teresa Seamster, a medical researcher; Susan Gordon, MASE coordinator; Leona Morgan, Navajo Nation.

Ms. Sheehan introduced Alan Kuhn, PhD, as an expert witness; there were no objections. She also moved to admit exhibits 4, 4 and 9; there were no objections. Dr. Kuhn provided an overview of the mine's permitting and licensing history; discussed specific changes to the mine required by the MMD Permit Revision 13-2; and discussed reactivation activities and their timelines. Mr. Jantz and commissioners asked follow-up questions.

Hearing Officer Heaton allowed another public comment from Rachel Conn of Amigos Bravos who spoke in support of the Petition.

Commissioners asked additional follow-up questions of Mr. Kuipers, Mr. Lister and Mr. Shepherd.

Ms. Becker stated that rather than putting on a rebuttal witness, the Environment Department was ready to make a closing statement. Hearing Officer Heaton informed the group that the commissioners would first adjourn to executive session to review the record thus far and determine next steps, including closing statements. Commissioner McLemore moved to go into executive session, as permitted by Section 10-15-1(H)(3) of the Open Meetings Act, for the limited purpose of reviewing the record and considering next steps; seconded by Commissioner Wust, the vote was unanimous (7-0). Proceedings were in recess from 1:28 PM to 2:47 PM.

After reconvening at 2:47 PM, Hearing Officer Heaton informed the parties that only the record and next steps were discussed, including that the Commission would deliberate in executive session and announce its decision in an open meeting following the deliberations at a later to-be-determined date. The parties informed the Commission of their preference to submit written closing statements, which was approved. It was determined the record would remain open for public comments through May 29, 2018. A deadline of three weeks following the submittal of the hearing transcripts was set for submittal of closing statements. Exhibits admitted into the record were enumerated: MMD – exhibits 2-9; RGR – administrative record and exhibits 1-4 and 9; Petitioners – Exhibit 1 and the first ten pages of Exhibit 8 which should be renumbered as Exhibit 2; and NMMA's Statement of Intent to Present Evidence.

Adjourn

Hearing Officer Heaton adjourned the meeting/hearing at 3:11 PM.

Approved:

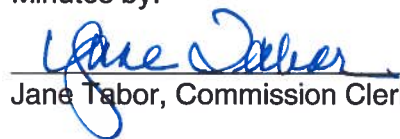


John Heaton, Chair

Date

7/2/18

Minutes by:



Jane Tabor, Commission Clerk