

**MINUTES OF THE  
NEW MEXICO MINING COMMISSION MEETING**  
April 3, 1996

The New Mexico Mining Commission meeting was convened at 9:10 a.m., April 3, 1996, in room 307 of the State Capital Building, Paseo de Peralta, Santa Fe. The following members were present:

Art Montana Chairman and Public Representative  
Ed Kelley Environment Department  
David Vackar State Land Office  
H.M. Conger Public Representative  
Jim Bailey Department of Game and Fish  
Charles Chapin NM Bureau of Mines and Mineral Resources  
Jeanie Cragin ALTERNATE  
Terry Fletcher ALTERNATE  
Bob Rogers State Engineer Office  
Bob McCaslin Ex-Officio, NM Agricultural Experiment Station

**ABSENT:**

Alex Gonzales Ex-Officio, NM Soil and Water Conservation Commission

**1. Roll Call**

Each Commissioner announced his name for roll call.

**2. Approval of Agenda**

Mr. Conger moved to approve the agenda. Second by Dr. Kelley. Motion passed unanimously.

**3. Review of the Minutes of the February 27, 1996 Meeting**

Mr. Conger discussed arrangements for the April 24 meeting. Following discussion regarding the inclusion of additional information on the HB 466 discussion, Dr. Bailey moved to add the following language to the end of the first sentence in item #4: "and criticized certain aspects of the bill." Second by Mr. Vackar. Motion passed unanimously.

Mr. Vackar moved to accept the minutes as amended. Second by Ms. Cragin. Motion passed unanimously.

**4. Report by MMD Director on a schedule of meetings for public input on Mining Act Regulations**

Kathleen Garland, MMD Director, proposed a schedule for public meetings, and asked the Commission how they would like for the meetings to be conducted and information analyzed. The Commission agreed with the meeting dates, suggested that the MMD Director conduct the meetings, and that the Director's Advisory Committee manage the problem-solving and drafting of proposals to modify regulations.

**5. Public Hearing on three 09/08/95 United Nuclear Corporation Petitions for Review of Notice of Violation and Penalty Assessment**

The Commission discussed whether to allow public testimony and exhibits in this administrative adjudicatory proceeding. Motion by Mr. Fletcher to go into executive session to discuss this issue. Second by Mr. Conger. Motion passed unanimously on a roll call vote.

Mr. Conger moved to return to open session. Mr. Fletcher seconded. Motion passed. The only matter discussed in closed session was the issue referred to in the motion for closure.

Chairman Montana as Hearing Officer conducted the public hearing for the petitions by United Nuclear Corporation. During the hearing, Mr. Conger and Chairman Montana left the meeting. Chairman Montana passed the chair to Ms. Cragin.

**6. Deliberation and Possible Action on United Nuclear Petitions**

The Commission discussed the merits of the arguments by United Nuclear and Mining and Minerals, including additional points raised by United Nuclear beyond the Notices of Violation and Penalty Assessment. The Commission discussed whether to make a decision today or postpone the decision until the next meeting. Motion by Mr. Fletcher to table the decision until later. Motion failed for lack of second.

After further discussion, motion was made by Mr. Vackar to uphold the Director's Orders and deny the appeals of UNC in all three cases. Mr. Vackar explained that his motion is based on the conclusions that uranium is a mineral under the Mining Act, United Nuclear was an owner or operator at the facilities, the notices of violation were specific enough, and the Mining Act has retroactive intent. Second by Mr. Bailey. Mr. Vackar clarified that the motion was intended to deny all issues raised by United Nuclear, but was not intended to address the amount of the penalty assessments. After discussion, motion carried on a roll call vote by a 6:0 vote with Mr. Fletcher abstaining.

Motion was made by Dr. Kelley to remand back to MMD the task of further evaluation and explanation of the amount of the penalty assessments. Second by Mr. Fletcher. Motion passed unanimously.

The Commission requested that MMD prepare an order for the Commission to review.

**7. Deliberation and possible action on Copar Petition for Review (hearing held on 02/27/96)**

Mr. Brancard summarized the issues raised at the hearing, and the Commission discussed the merits of the testimony. Motion by Dr. Chapin to deny the petition by Copar and uphold the Director's Order, with the

understanding that the denial applies to all arguments and issues raised by Copar. Second by Dr. Kelley. Motion passed by 6:1 with Mr. Fletcher opposed.

The Commission discussed the proposed findings of fact and conclusions of law submitted by MMD, and whether to adopt them. Motion was made by Mr. Vackar to postpone the adoption of this document pending review by Mr. Brancard. Second by Mr. Fletcher. Motion passed unanimously.

#### **8. Other Business**

Mr. Vackar announced that this will be his last meeting as a Commissioner. There being no further business, motion was made to adjourn by Mr. Vackar with second by Mr. Fletcher. Motion passed unanimously. Meeting was adjourned at 5:40 p.m.

Approved: Minutes by:

Art Montana, Chairman Douglas Bland, Commission Clerk