

**MINUTES OF THE  
NEW MEXICO MINING COMMISSION MEETING**  
April 7, 1999

The New Mexico Mining Commission meeting was convened at 9:14 a.m., April 7, 1999 in the Oil Conservation Division (OCD) Conference Room, 2<sup>ND</sup> Floor of the Energy, Minerals and Natural Resources Department building located at 2040 South Pacheco Street, Santa Fe, New Mexico. The following members were present:

Terry Fletcher	Chairman and Public Representative
Pete Maggiore	Vice Chairman, Environment Department
Jon Klingel	Department of Game and Fish
Bob Rogers	State Engineer's Office
Larry Kehoe	State Land Office
John Bartlit	Public Representative
J. R. Roybal	Designee, NM Soil and Water Conservation Commission
Robert Light	Alternate
Pat Freeman	Alternate
Pat Simpson	Commission Attorney

The following members were absent:

Charles Chapin	NM Bureau of Mines and Mineral Resources
Bob McCaslin	Ex-Officio, NM Agricultural Experiment Station

**Announcements** Chairman Fletcher welcomes Pete Maggiore and Larry Kehoe to the Commission, and welcomes Jon Klingel who is sitting in for Amy Fisher.

**1. Roll Call**

The Commissioners announce their own names.

**2. Approval of agenda**

Chairman Fletcher requests that an item be added to the agenda: a presentation. Mr. Light moves to accept the agenda as amended, with second by Mr. Rogers. Motion passes unanimously on a voice vote.

**3. Presentation**

Chairman Fletcher presents a Certificate of Appreciation to Bill Brancard for his years of service on the Commission. Mr. Brancard responds with a short talk expressing his appreciation to the Commission.

**4. Adoption of the Minutes of December 16, 1998**

After the Commission took a short time to review the minutes, Mr. Rogers moves to accept the minutes, with second by Mr. Kehoe. Motion passes unanimously on a voice vote.

**5. Discussion and action on the selection of a Commission Vice Chairman**

Chairman Fletcher asks for nominations or volunteers for a new Vice Chairman. Mr. Bartlit nominates Pete Maggiore as Vice Chairman; with second by Mr. Light. Mr. Maggiore inquires about the tasks and responsibilities of the Vice Chairman. Mr. Simpson provides a brief explanation of the responsibilities followed by Mr. Freeman who describes his tenure in the position. Chairman Fletcher states that on occasion he may be asked to be a hearing officer. Chairman Fletcher asks for a vote on the nomination. The nomination passes unanimously on a voice vote.

**6. Discussion and action on the District Court ruling on the Copar case**

Mr. Simpson discusses some of the history and specifics of the Copar case. He explains that the basis of Judge Encinias' written ruling is that the Mining and Minerals Division had no authority, under the Mining Act, to amend the permit to include another mine site, whether it was an existing mine site, or a new unit to an existing mine site, because the Division had set the permit area and did not have the authority, by statute or regulation, to amend it once it was set. He explains that through the Final Order the Judge was effectively reversing the permit approved by the Division and that the Judge gave the Commission no residual discretion to act any further.

Mr. Simpson then discusses the 12-505 Petition for Writ of Certiorari. The Writ was filed by himself, the Division and Mr. Lou Rose. The Court of Appeals granted the Writ of Certiorari which means the appeal is on the Certiorari track. The Court of Appeals will get the record from the District Court. Mr. Simpson discusses why he filed without first getting permission from the Commission and how the Court of Appeals may act, which could result in a ruling in as short as two months or as long as a year. He requests that the Commission break into Executive Session for further discussion.

There is further discussion on a variety of topics including contiguous land issues at the mine site, Mr. Simpson's thoughts on why the Judge ruled the way he did, a plea by Mr. Bartlit to look for solutions out of a courtroom setting and a statement by Mr. Light expressing disappointment with the Judge's decision and his concern for the mining industry in the state.

Chairman Fletcher states his belief that it was appropriate for Mr. Simpson to file the Writ of Certiorari on behalf of the Commission and requests a motion to break into Executive Session for the purpose of getting legal advice from Council, second by Mr. Freeman and unanimously approved through a roll call vote.

Mr. Brancard requests an opportunity to speak to the Commission. He states his belief that Mr. Simpson appropriately filed the Writ and states reasons why he believes the Judge had erred in his Final Order. He offers some suggestions about topics of

discussion with legal council. Mr. Bartlit amplifies on Mr. Brancard's discussion. Mr. Freeman asks Mr. Bland about the status of the permit, whether a stay had been issued, and whether the decision may represent a hardship to the operator. Mr. Bland responds that no stay was issued.

Commission adjourns to Executive Session.

Motion by Chairman Fletcher to return to regular session, second by Mr. Rogers. Motion passes unanimously on a roll call vote. Meeting returns to regular session at 10:40 a.m.

Mr. Simpson makes a statement that the only items discussed during the Executive Session were ongoing litigation issues related to the Copar case and the Adjudicatory Review procedures.

Chairman Fletcher asks for a motion to support or deny the Copar appeal to the Court of Appeals. Mr. Light motions to support the appeal, second by Mr. Freeman. Motion passes by a majority on a voice vote with two nays recorded.

Chairman Fletcher asks for a motion to appoint a 3-member Commission mediation committee which will meet with the parties and attempt to mediate a solution. Mr. Maggiore makes a motion to appoint a 3-member committee, second by Mr. Kehoe. Chairman Fletcher recommends that Mr. Rogers, Mr. Bartlit and Mr. Freeman be on the committee, second by Mr. Kehoe. Motion passes unanimously on a voice vote.

Mr. Wolf questions whether the Commission is going to take action on the order from the court to vacate the permit revision. A discussion between Mr. Bartlit, Mr. Maggiore, Mr. Simpson and Mr. Rose ensues. Mr. Simpson, on behalf of the Commission, develops a motion stating that the filing of the Writ of Certiorari by the Commission, and by the Mining and Minerals Division, acts as a stay of the District Court's order and therefore the permit is still in force and effect. Mr. Rogers moves to adopt this language, second by Mr. Freeman. Motion passes by a majority on a voice vote with one nay recorded.

**7. Discussion and adoption of a revised Code of Conduct**

Mr. Simpson discusses the Code, its history and meaning and the specific changes he has made since concerns were raised by Mr. Brancard at the previous meeting. A short discussion between Mr. Freeman and Chairman Fletcher ensues. Motion is made by Mr. Rogers to accept the Code of Conduct as presented, second by Mr. Freeman. Motion passes unanimously on a voice vote. Mr. Simpson provides some clarification on the meaning of the Code in response to a question by Mr. Light.

**8. Discussion and action on setting a hearing date on the Mining and Minerals Division Petition for Rulemaking 99-01 regarding annual fees**

Mr. Bland provides a brief summary statement regarding the annual fee provisions of the New Mexico Mining Act. He states that a continuation of the current funding level would suffice for the next two year period and requests that a hearing date be set. Mr.

Simpson cautions Mr. Bland that because the meeting was not advertised as a hearing the speakers should not attempt to prejudice the Commission.

Mr. Andrew Murphy of the New Mexico Mining Association provides a short statement supporting the process and the adoption of a hearing date.

Mr. Freeman requests that an MMD budget be prepared for the hearing in order that he and the Commission can better judge the applicability and equitability of the fee structure on small miners in the state, including fees related to appeals. He also states that the NM Mining Association does not represent all mines that may be affected by the fee schedule.

Chairman Fletcher requests that Mr. Bland include a consideration of prior reclamation sites in the fee schedule. Mr. Bland explains that it is the Division's hope that this issue could be dealt with separately because of its controversial nature, and that possibly the Division could have something to the Commission by the end of the year. Chairman Fletcher states that because of its effects on the budget, prior reclamation sites should be included.

A discussion on the selection of a hearing date ensues. Motion by Mr. Rogers to hold the meeting on June 11, 1999, second by Mr. Bartlit. Motion passes unanimously on voice vote.

**9. Discussion and action on setting a hearing date on the Game and Fish Department Petition for Rulemaking 99-02 regarding mining and exploration application and annual fees**

Mr. Mark Watson, Mining Habitat Specialist with the Game and Fish Department, gives a presentation to the Commission. Mr. Watson states that the Petition proposes the reduction of the surcharge from 4.2 to 3.2 percent based on the expected workload and other considerations. He briefly mentions tasks associated with the position and requests the Commission set a hearing date.

Mr. Freeman praises the Department for their fiscal responsibility and states that they've done a good job at administering the requirements under the Act. Mr. Freeman makes a motion that the hearing for 99-02 take place at the same time and place as the hearing for 99-01. Chairman Fletcher expresses some concern that the Department's role under the Mining Act may be coming to an end and requests that the Department consider this in their presentation at the hearing. Chairman Fletcher asks for a vote on the motion. Motion passes unanimously on a voice vote.

**10. Discussion on the revised Petition for Rulemaking, Mining Commission 98-04 (Adjudicatory Review)**

Ms. Carol Leach provides a discussion of the process for the development of the Petition and a summary of changes since the last revision. Ms. Leach introduces Mr. Bruce Rogoff, a new EMNRD attorney, to the Commission. Ms. Leach discusses, point by

point, the questions raised by the Commission and how they are addressed in the revised Petition.

Chairman Fletcher asks for comments from people that participated in the process. Mr. Brancard, Mr. Murphy and Mr. Wolf all express support for the process and the revised Petition.

Mr. Light makes a motion to put the revised Petition on the June 11, 1999 agenda, second by Mr. Roybal. Motion passes unanimously on a voice vote.

**11. Other business**

No formal business. Larry Kehoe expresses his hope that he can work with the Commission to fill Mr. Brancard position. Mr. Bland introduces Kerrie Neet as the new Bureau Chief of the Regulatory Bureau; she is welcomed by Chairman Fletcher. Concern is expressed by Mr. Freeman regarding Dr. Chapins retirement. Chairman Fletcher states that he will contact Dr. Chapin to ensure his chair is filled in upcoming meetings of the Commission.

**12. Adjourn**

Motion by Mr. Light to adjourn, second by Mr. Freeman. Motion passes unanimously on a voice vote. Meeting adjourns at 11:50 a.m.

Approved:

Minutes by:

\_\_\_\_\_  
Terry Fletcher, Chairman

\_\_\_\_\_  
Date

\_\_\_\_\_  
John J. Pfeil, Commission Clerk