

**MINUTES OF THE
NEW MEXICO MINING COMMISSION MEETING**
April 16, 1997

The New Mexico Mining Commission meeting was convened at 9:10 a.m., April 16, 1997, in Room 317 of the State Capitol building in Santa Fe, NM. The following members were present:

Art Montana	Chairman and Public Representative
Larry Kehoe	State Land Office
Terry Fletcher	Public Representative
Jim Bailey	Department of Game and Fish
Charles Chapin	NM Bureau of Mines and Mineral Resources
Bob Rogers	State Engineer's Office
Pat Freeman	Alternate
Mark Weidler	Environment Department
Jeanie Cragin	Alternate

The following members were absent:

Bob McCaslin	Ex-Officio, NM Agricultural Experiment Station
Ray Roybal	Ex-Officio, NM Soil and Water Conservation Commission

1. Roll Call

Each Commissioner announced his name for roll call.

2. Approval of agenda

Mr. Rogers moved to accept the agenda, with second by Mr. Fletcher. Motion passed unanimously.

3. Review of the minutes of the February 4, 1997 meeting

Motion by Mr. Kehoe to accept the minutes, with second by Dr. Bailey. Motion passed unanimously.

4. 1997 Legislature review

Chairman Montana gave a summary of HB 1095, the bill passed by the 1997 Legislature to amend the Mining Act, including a discussion of its provisions. Dr. Garland, MMD Director, provided further details.

5. Review of activities of the Director's Advisory Committee, including potential upcoming Rulemaking proposals to the Mining Commission

Dr. Garland briefly discussed the role of the Director's Advisory Committee and the issues it has addressed recently. These include a Memorandum of Understanding being developed between the BLM, the Forest Service and the Energy, Minerals and Natural Resources Dept., proposed Mining Act Rule changes, and other items. Chairman Montana asked that a list of the members of the Committee be sent to the Mining Commission.

6. Review and possible action on letters to petitioners who have appeals pending before the Commission that have been stayed indefinitely

This item was delayed until Commissioners review draft letters prepared by Mr. Pat Simpson, attorney for the Commission.

7. Review and possible action on proposed findings and conclusions and final order on the petition for review of an Order of the Director submitted by Agronics, Inc., hearing held March 04, 1997 (Mining Commission 97-02)

Mr. Simpson discussed all Agronics appeals currently before the Mining Commission and the courts, and reviewed the provisions of the draft Order for Mining Commission 97-02.

Mr. Fletcher requested that the Commission go into executive session to discuss this matter. Motion by Mr. Fletcher to go into executive session with second by Ms. Cragin. Motion passed unanimously.

Mr. Fletcher moved to go back into open session, with second by Dr. Bailey. Motion passed unanimously. The only matters discussed in executive session were legal issues related to the Commission's decision on the Agronics Order. The Commission decided to postpone until later in this meeting the final action on the Order.

8. Discussion of whether to hold a public hearing on the April 04, 1997 Petition for Rulemaking submitted by the Mining and Minerals Division, which specifies what constitutes ownership and control of a mining operation, (Mining Commission 97-04) and date for the hearing, if any. The Commission may make decisions on procedural matters related to the hearing

Dr. Garland gave an explanation of the petition and why MMD has proposed language additions to the Mining Act rules to clarify these provisions.

Motion by Ms. Cragin to set a hearing date, with second by Mr. Fletcher. Motion passed unanimously.

Chairman Montana recommended selecting a hearing officer for the hearing. After discussion, July 01, 1997 at 9:10 a.m. in the State Capitol was chosen.

9. **Discussion of whether to hold a public hearing on the April 04, 1997 Petition for Rulemaking submitted by the Mining and Minerals Division, which addresses changes to the Mining Act passed by the 1997 Legislature that need to be incorporated into the Mining Act Rules, (Mining Commission 97-05) and date for the hearing, if any. The Commission may make decisions on procedural matters related to the hearing**

Dr. Garland gave a brief explanation of the reasons for this petition.

Motion by Mr. Weidler with second by Dr. Bailey to hold a hearing on this petition at the July 01, 1997 meeting previously established. Motion passed unanimously.

Motion by Mr. Rogers with second by Mr. Fletcher that Mr. Freeman be selected as hearing officer for both hearings. Motion passed unanimously.

10. **Public hearing on the January 06, 1997 petition for review of an Order of the Director submitted by the San Pedro Neighborhood Association regarding a permit issued to the San Pedro mine in southern Santa Fe County (Mining Commission 97-01)**

Mr. Freeman recused himself from participation in this hearing, stating possible conflict of interest due to a business association between his company, St. Cloud, and the San Pedro mine. As hearing officer, Chairman Montana conducted the hearing.

11. **Possible discussion and action on the January 06, 1997 petition for review of an Order of the Director submitted by the San Pedro Neighborhood Association (Mining Commission 97-01)**

Motion by Dr. Bailey to go into executive session with second by Mr. Fletcher. Motion passed unanimously.

Mr. Weidler moved to go back into open session, with second by Dr. Chapin. Motion passed unanimously. The only matters discussed in executive session were legal issues related to the San Pedro hearing and the Commission's decision on the petition. Commissioners briefly discussed the merits of the petition and expressed their opinions regarding whether the Director's Order issuing the permit should be affirmed or denied. Dr. Chapin asked that an appropriate map of the sites in question be provided in future hearings.

Mr. Simpson suggested that the Commission affirm San Pedro's mining permit with two conditions. They are: 1) MMD, the mine operator and the San Pedro Neighborhood

Association shall confer and decide on a schedule for approval of the closeout plan which shall include deadlines for public participation and approval by MMD, with the opportunity for extensions if necessary; and 2) MMD shall submit an analysis by July 01, 1997 of the affects of the mining operation on the community based on the permitting record.

Mr. Weidler moved to accept Mr. Simpson's recommendation, with second by Mr. Rogers. Motion passed unanimously.

Mr. Simpson set a three week deadline for parties choosing to submit proposed findings and conclusions.

12. Public hearing on the January 24, 1997 petition for Rulemaking submitted by the Mining and Minerals Division proposing to continue the current fee schedule from 1997 through 1999 (Mining Commission 97-03)

Chairman Montana as hearing officer conducted the hearing.

14. Possible discussion and action on the January 24, 1997 petition for Rulemaking submitted by the Mining and Minerals Division (Mining Commission 97-03)

After brief discussion, Mr. Weidler moved to accept the proposal and adopt the recommended rule change. Second by Ms. Cragin. Mike Koranda, representing the New Mexico Mining Association and Phelps Dodge Mining Company, expressed his support for the proposal. Mr. Weidler amended the motion to include the hearing record of the 1995 Rule 2 Fees hearings of the Mining Commission in the hearing record of the current hearing, Mining Commission 97-03. Second by Ms. Cragin. Motion passed unanimously.

13. Public hearing on the October 23, 1996 petition for Rulemaking submitted by the Department of Game and Fish, revised February 07, 1997, regarding the collection and distribution of fees to fund the Department's Mining Act activities

Chairman Montana as hearing officer conducted the hearing.

15. Possible discussion and action on the October 23, 1996 petition for Rulemaking submitted by the Department of Game and Fish, revised February 07, 1997

After discussion, Mr. Fletcher moved to adopt the proposed rule change, with the provision that the surcharge be modified from 3.9% to 4.2% of the applicable fee. Second by Dr. Chapin. Mike Koranda, again representing the New Mexico Mining Association and Phelps Dodge Mining Company, expressed his support for this proposal as well. Motion passed unanimously.

6. Review and possible action on letters to petitioners who have appeals pending before the Commission that have been stayed indefinitely

Mr. Simpson explained the purpose and form of the letters, and to whom they will be sent.

Motion by Mr. Rogers with second by Mr. Fletcher to accept the proposed letters and their distribution. Motion passed unanimously.

7. Review and possible action on proposed findings and conclusions and final order on the petition for review of an Order of the Director submitted by Agronics, Inc., hearing held March 04, 1997 (Mining Commission 97-02)

After a short discussion, Mr. Weidler moved to accept the proposed findings, conclusions and order in this matter, as amended. Second by Mr. Rogers. Mr. Simpson further discussed the Commission final Order. Mr. Weidler and Mr. Rogers amended their motion to reopen the hearing record to include a January 09, 1997 letter from Holland Shepherd to Agronics, Inc. Motion passed unanimously.

16. Other business

Ms. Cragin noted that the terms for the Mining Commission positions for Dr. Montana and herself expire at the end of June, 1997. She expressed her thanks to Chairman Montana for serving on the Commission. Chairman Montana also stated his thanks to Ms. Cragin for her contributions to the Commission.

17. Adjourn

There being no further business, Mr. Weidler moved to adjourn, with second by Mr. Fletcher. Motion passed unanimously.

Approved:

Minutes by:

Chairman, Mining Commission

Date

Douglas Bland, Clerk