

**MINUTES OF THE
NEW MEXICO MINING COMMISSION MEETING**
May 20, 1998

The New Mexico Mining Commission meeting was convened at 9:10 a.m., May 20, 1998 in Room 307, State Capitol building, Santa Fe, NM. The following members were present:

Terry Fletcher	Chairman and Public Representative
Bill Brancard	State Land Office
Amy Fisher	Department of Game and Fish
Charles Chapin	NM Bureau of Mines and Mineral Resources
Bob Rogers	State Engineer's Office
Pat Freeman	Alternate
Ed Kelley	Environment Department
Ray Roybal	Ex-Officio, NM Soil and Water Conservation Commission
John Bartlit	Public Representative

The following members were absent:

Bob McCaslin	Ex-Officio, NM Agricultural Experiment Station
Robert Light	Alternate

1. Roll Call

Doug Bland, Commission Clerk performed roll call.

2. Approval of agenda

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

3. Review of the minutes of the January 14, 1998 meeting

Motion by Dr. Chapin to accept the minutes as amended to identify Mr. Weidler instead of Mr. Kelley as the Environment Department representative present, with second by Mr. Fletcher. Motion passed unanimously.

4. Presentation of commendation plaques to Art Montana and Jeanie Cragin

Chairman Fletcher presented plaques commending Art Montana and Jeanie Cragin for their service on the Mining Commission. Dr. Montana accepted the plaque for Ms. Cragin, who was unable to attend.

5. Re-opening of hearing record for the November 12, 1996 Mining Commission hearing for the amendment of regulations to address the April 29, 1998 St. Cloud Mining Co. amended proposal

Mr. Fletcher as hearing officer conducted the hearing.

6. Discussion and possible action on the St. Cloud Mining Co. amended proposal

After brief discussion, Mr. Brancard moved to accept the proposal to modify the \$20 million figures in Section 1208.D.7 of the Mining Act Rules to \$10 million, based on testimony presented by John White of St. Cloud Mining Co., and that the provisions related to the 5-year history of the financial assurance provider be remanded back to MMD for evaluation. Second by Dr. Chapin. Motion passed unanimously.

7. Discussion of petitions by the Jemez Homeowner's Alliance (Mining Commission 98-02) and the Sierra Club (Mining Commission 98-03) for review of issuance of the El Cajete revision to the Las Conchas mining permit and possible setting of a hearing date(s), and discussion and possible action on other pending motions on the matter

Dr. Bartlit disclosed his association with the Western Environmental Law Center, attorneys for Jemez Homeowner's Alliance (JHA), but stated that he sees no conflict and will participate in this matter.

The Commission decided to address the request for a stay in two parts, at the request of Carol Leach, attorney for MMD. The first part is whether there is an automatic stay for all Director's Orders pending resolution of any appeals or the expiration of the time period allowed for submitting an appeal. If the Commission decided that no automatic stay applied to this Order, then the Commission would consider the second part of the stay request, which would be for a "discretionary stay" for the El Cajete site.

Doug Wolf, attorney for the Sierra Club, and Vickie Minor, attorney for the JHA, argued in favor of the automatic stay, stating that no Order is final unless it is not appealed within 60 days. Louis Rose, attorney for Copar Pumice Co., argued that the permit is effective pursuant to the Director's Order granting the permit revision, but not final. This would allow for operations to proceed. Carol Leach also argued against the automatic stay. Several members of the public, including Donna Goad, President of the Jemez Homeowners Alliance, gave brief statements. Mining Commissioners asked questions of those who gave testimony.

Motion by Mr. Brancard to deny the request for an automatic stay, stating wide impacts of granting the stay to all other types of Director's Orders. Second by Mr. Rogers. Motion passed unanimously.

Motion by Mr. Brancard that MMD provide to the Commission within 6 months draft regulations to address stays in appropriate cases. Second by Dr. Chapin. Motion passed unanimously.

The Commission then addressed the issue of the “discretionary stay”. Ms. Minor and Mr. Wolf testified in favor of the stay, discussing the fact that the permit Order does not give reasons for issuance, that serious questions have been raised, and the possibility of prevailing on appeal. Mr. Rose argued against the stay, citing a Tenneco case identifying 4 factors which must be met for a stay to be granted, and stating that they have not been met in this case. Kelly Armstrong, owner of Copar Pumice Co. testified regarding specifics of the operation and the effects the stay would have, if granted. Ms. Leach stated that she had no additional testimony. Abe Jacobson, speaking for the Sierra Club, gave a brief statement, followed by Donna Goad, who also made brief comments.

Motion by Dr. Chapin to deny the request for a discretionary stay, stating that Copar holds valid permits from MMD and the Forest Service with no outstanding violations, that the area was largely devoid of trees due to root rot, the mine must be reclaimed according to the permits, and that multiple use is the purpose of federal lands. Second by Mr. Freeman. The motion carried by a 4:3 margin, with Commissioners Fisher, Brancard and Bartlit against.

The Commission then discussed the setting of a hearing date, and established May 29, 1998 as the deadline for replies to the petition, June 5, 1998 for the petitioner’s replies, and June 22, 1998 at 9:10 in the State Capitol building for the hearing itself. Ms. Leach requested that a pre-hearing conference be set up to address issues to streamline the hearing, and suggested that Bill Brancard act as conference officer.

Motion by Dr. Kelley to appoint Mr. Brancard as conference officer, with second by Dr. Chapin. Motion passed unanimously.

Ms. Leach suggested that Frances Garcia be appointed as hearing clerk as Doug Bland, who would normally serve in this capacity is now Bureau Chief of the Mining Act Reclamation Bureau and may possibly be involved in the hearing. The Commission discussed the issue and agreed, asking that this be included in the pre-hearing order.

8. Public hearing on the February 27, 1998 petition for review of issuance of the Chino mine permit (Mining Commission 98-01)

Motion by Dr. Kelley, with second by Mr. Freeman, for Mr. Brancard to serve as hearing officer for the hearing.

Dal Moellenberg, Doug Wolf, and Jennifer McCumber introduced themselves as counsel

for Chino Mines Co., the petitioners, and MMD, respectively. Mr. Moellenberg explained his motion to dismiss the hearing, stating that since the petitioners did not participate in the permit review process, they do not have the right to appeal the permit issuance. Mr. Wolf argued against the motion, stating that participation is not necessary. Ms. McCumber stated that MMD had no position on the motion.

Motion by Mr. Brancard with second by Dr. Bartlit to deny the motion, citing other cases where participation was determined not to be required. Motion passed by a 6:0 margin with Dr. Chapin abstaining.

Mr. Moellenberg explained his motion to dismiss the Steelworkers Union as a party, stating that the union is not an affected party, and therefore does not have the right to appeal. Mr. Wolf argued this point. Ms. McCumber stated that MMD has no position on the motion.

After questions and discussion by the Commission, Dr. Kelley moved to postpone a decision on the motion until after the Commission receives additional information on the matter. Second by Dr. Chapin. Motion passed unanimously.

Mr. Brancard as hearing officer then conducted the hearing.

9. Discussion and possible action on the February 27, 1998 petition for review of issuance of the Chino mine permit

After brief discussion, motion by Mr. Fletcher that the Commission reconvene at a later date and deliberate the issues of the hearing. Second by Dr. Bartlit. He also asked that the parties be available for questions, although no new evidence will be taken. The Commission also asked if the parties can focus the issues. Mr. Fletcher amended his motion to have the Chino matter be the first major issue discussed at the next meeting. Motion passed unanimously.

10. Presentation of the MMD annual report to the Mining Commission

Due to the late hour, Mr. Fletcher asked that the presentation be postponed until the next meeting.

11. Other business

There was no other business.

12. Adjourn

Chairman Fletcher adjourned the meeting at 5:30 p.m.

Approved:

Minutes by:

Terry Fletcher, Chairman

Date

Douglas Bland, Clerk