

**MINUTES OF THE
NEW MEXICO MINING COMMISSION MEETING AND HEARING**
August 25, 1999

The New Mexico Mining Commission meeting and hearing was convened at 9:18 a.m., August 25, 1999 in Room 322 of the State Capitol Building (the Roundhouse), Santa Fe, New Mexico. The following members were present:

Terry Fletcher	Chairman and Public Representative
Pete Maggiore	Vice Chairman, Environment Department
Charles Chapin	NM Bureau of Mines and Mineral Resources
Amy Fisher	Department of Game and Fish
Bob Rogers	State Engineer's Office
Bob McCaslin	Ex-Officio, NM Agricultural Experiment Station
Larry Kehoe	State Land Office
John Bartlit	Public Representative
Robert Light	Alternate
Pat Freeman	Alternate
Daniel Rubin	Commission Attorney

The following members were absent:

J. R. Roybal	Designee, NM Soil and Water Conservation Comm.
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Announcements Chairman Fletcher introduces Daniel Rubin as the new Commission Attorney.

- 1. Roll Call**
The Commissioners announce their own names.
- 2. Approval of Agenda**
Mr. Light moves to adopt the agenda, with second by Mr. Kehoe. Motion passes unanimously on a voice vote.
- 3. Approval of the Minutes of the June 14, 1999 Meeting**
Mr. Light moves to adopt the minutes, with second by Mr. Rogers. Motion passes unanimously on a voice vote.
- 4. Public Hearing on the Agronics' Appeal (99-03)**

Chris Schatzman, MMD Assistant General Counsel, makes a statement about Agronic's omissions in their brief and exhibits and passes out new exhibits for the Record Proper.

Mr. Schatzman states there are two procedural motions before the Commission: one by Mr. Taylor to dismiss for lack of jurisdiction; the second by MMD to stay because the issue is currently before the District Court. He states that the motion to stay discusses the fact that the Commission previously decided this issue on a prior appeal (96-07) in February 1996 and that that decision was appealed to District Court. He requests that the Commission rule on the motions which may make a hearing unnecessary. Chairman Fletcher states that the Commission will hear both motions prior to possibly retiring to Executive Session for legal Counsel. Mr. Taylor states that he does not object to MMD's submittals and Chairman Fletcher stipulates to allowing exhibits 9,10,11,12 and 13.

The motion to dismiss by Agronics is heard first by the Commission. Agronics attorney, Chris Shaw of Dolan and Domenici, states to the Commission that the dismissal motion is based on the fact that the Commission does not have jurisdiction over the case, as covered by the Act. Mr. Shaw presents the Commission with a detailed statement of why Mr. Taylor's operation is exempt from the provisions of the NM Mining Act Rules.

Mr. Schatzman calls Kerrie Neet, MMD Regulatory Programs Bureau Chief, and Fernando Martinez, Mining Act Reclamation Program Leader, to rebut Agronics motion to dismiss. Ms. Neet and Mr. Martinez are sworn in. Ms. Neet provides the Commission with her background and education, then she provides a detailed rebuttal of the argument for dismissal. Mr. Schatzman then summarizes MMD's rebuttal.

Mr. Taylor introduces himself and asks that he be given the opportunity to cross-examine the witnesses. He, and later the Agronics attorney Mr. Shaw, proceed to cross-examine the witnesses.

Mr. Shaw rebuts earlier statements by Mr. Schatzman regarding the Agronics bankruptcy. A discussion ensues.

The motion to stay by MMD is then heard by the Commission. Mr. Schatzman states several of the conclusions in the Commission's Findings and Conclusions in Agronics appeal 96-07 and requests that the Commission stay any further action until the case is decided in District Court. Chairman Fletcher asks Mr. Taylor if he would object to the Commission ordering a stay until the issue is resolved in the District Court. Mr. Taylor states that he does object and states the basis for his objections.

5. Deliberation and action on the Agronics' appeal (99-03)

Motion by Mr. Maggiore that the Commission go into Executive Session to discuss the case with legal council, second by Mr. Kehoe. The motion is amended by Mr. Freeman to indicate that the Commission is going into Executive Session pursuant to NM Statute 10-13-1 (h).

The Commission goes into Executive Session on a unanimous roll call vote at approximately 10:30 a.m.

The Commission comes out of Executive Session at approximately 11:00 a.m.

There is a motion by Mr. Maggiore that the Commission deny Agronics motion to dismiss, that the Commission find that Agronics arguments in support of dismissal are immaterial and not relevant, that the Commission grant the Department's motion to stay further proceedings pending resolution of the issue in the District Court, and that the Commission attorney should draft an interim order stating such. The motion is seconded by Dr. Chapin. Unanimous roll call vote in favor of the motion.

6. Public hearing on the Joint Petition for Rulemaking (99-04) regarding extension of closeout plan approval deadlines

Doug Wolf, Dale Doremus, Andrew Murphy, Joe Brunner and Kerrie Neet are sworn in and individually identify themselves. They each provide testimony in support of the Joint Petition. Kerrie Neet provides the Commission with a copy of an amendment regarding application deadlines.

There is some discussion of the effect of the Petition on small miners.

7. Deliberation and action on the Joint Petition for Rulemaking (99-04) regarding extension of closeout plan approval deadlines

There is a motion by Mr. Light, second by Mr. Kehoe, to accept the Joint Petition for Rulemaking, including the amendment. Motion passes unanimously on a roll call vote.

There is a motion by Mr. Rogers, second by Dr. Chapin, to accept the Order Adopting Amendment to Mining Act Rule 501, 19 NMAC 10.2 501, as written. Motion passes unanimously on a voice vote.

8. Discussion of request to postpone hearing date for Quivira Mining Company's Petition (99-05) regarding review of the director's order on prior reclamation

Concerns are raised as to how to properly deal with this issue. Ms. Leach points out that according to 1420.F of the NM Mining Act Rules "A request for postponement of a hearing shall be granted if parties agree or if good cause is shown."

Motion by Mr. Light, second by Mr. Maggiore, that the hearing date be indefinitely postponed pending resolution of the issue. Motion passes unanimously on a voice vote.

9. Discussion and setting of a hearing date for Challenge Mill's Petition (99-06) regarding review of the director's order on failure to pay annual fees

At the request of Chairman Fletcher there is some discussion by MMD staff of the nature of the Challenge Mill operation and the specifics of the petition. There is also a discussion on determining a hearing date that works for the Commissioners and meets the statutory deadlines. An October 6, 1999 hearing date is set.

10. Other business

Chairman Fletcher announces that this is Dr. Chapin's final Commission meeting and thanks him for his years of service. Dr. Chapin announces his replacement, Peter Scholle.

11. Adjourn

The meeting is adjourned at approximately 12:25 p.m.

Approved:

Minutes by:

Terry Fletcher, Chairman

Date

John J. Pfeil, Commission Clerk