

**MINUTES OF THE  
NEW MEXICO MINING COMMISSION MEETING AND HEARING  
December 15, 1999**

The New Mexico Mining Commission meeting and hearing was convened at 9:20 a.m., December 15, 1999 in Room 317 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
Peter Scholle	NM Bureau of Mines and Mineral Resources
Tod Stevenson	Department of Game and Fish
Bob Rogers	State Engineer's Office
Bob McCaslin	Ex-Officio, NM Agricultural Experiment Station
Larry Kehoe	State Land Office
J. R. Roybal	Designee, NM Soil and Water Conservation Comm.
John Bartlit	Public Representative
Robert Light	Alternate
Pat Freeman	Alternate
Daniel Rubin	Commission Attorney

**Announcements:** Chairman Fletcher states that many Commissioner's have busy schedules and requests that the parties cooperate to move the proceedings along as expeditiously as possible. He introduces two new Commissioners: Mr. Peter Scholle with the NM Bureau of Mines and Mineral Resources; and Mr. Tod Stevenson, designee with the Department of Game and Fish. Additionally, he states that Mr. Maggiore, while not present for roll call, would be appearing later. Chairman Fletcher declares a quorum for purposes of conducting the meeting.

**1. Roll Call**

The Commissioners announce their own names.

**2. Approval of Agenda**

Chairman Fletcher adds a new agenda item after item #9 which is the setting of a hearing date for Agronics appeal 99-09 of the Director's decision regarding pro-rated cost for closeout plan extension. Mr. Light moves to adopt the agenda as amended, with second by Mr. Rogers. Motion passes unanimously on a voice vote.

**3. Approval of the Minutes of the August 25, 1999 NMMC Meeting**

Mr. Kehoe moves to adopt the minutes, with second by Mr. Rogers. Motion passes unanimously on a voice vote.

**4. Discussion and possible adoption of the Open Meetings Act Resolution**

Mr. Rubin states that: the Resolution is essentially unchanged from the previous year; the Commission is required to adopt the Resolution yearly; the Commission has some discretion as to specifics in the Resolution they adopt; and that almost every Commission decision is effected by the Resolution.

There is some discussion by Mr. Bartlit and others about the difference between regular and special meetings. Mr. Bartlit offers the following amendment at the end of the discussion: under #3 of the Resolution add the words “of an urgent nature” after the words “Special meetings”. He then makes a motion to adopt the Resolution, as amended, with second by Mr. Freeman. Motion passes unanimously on a voice vote.

At a later time Mr. Light suggests that somewhere in #5 of the Resolution should be language indicating that the Department will update their notice list on an annual basis. It is decided that Commission Counsel will research and provide advice at the next meeting

**5. Withdrawal of Quivira Mining Company’s appeal 99-05 regarding review of the Director’s order on prior reclamation**

Chairman Fletcher states that Commissioners received a letter from Quivira Mining Company requesting that appeal 99-05 be withdrawn. He thanks the Mining and Minerals Division for their cooperation in resolving the issue. Motion by Mr. Rogers to accept the letter from Quivira Mining Company and withdraw the appeal from consideration. Second by Mr. Kehoe. Motion passes unanimously on a voice vote.

**6. Setting of a hearing date for consideration of a petition for rulemaking submitted by MMD and others regarding a formula for reducing fees on substantially reclaimed acreage (99-08)**

Doug Bland, MMD Director, provides the Commission with background information on the petition.

There is some discussion about notice requirements. Motion by Mr. Kehoe to set a hearing date of February 23, 2000 at 9:10 a.m. Second by Mr. McCaslin. Motion passes unanimously on a voice vote.

**7. Deliberation and action on the Challenge Mill appeal (99-06) of the director’s order regarding failure to pay annual fees**

Chairman Fletcher states that this appeal will be decided based on briefs submitted. Mr. Rubin suggests that the Commission may wish to consider going

into executive session to discuss the appeal and appeal 99-03 which has very similar issues.

Motion by Mr. Kehoe to go into executive session to discuss 99-06 and 99-03. Second by Mr. Light. The motion passes unanimously on a roll call vote.

The Commission goes into executive session at about 9:45 a.m.

Chairman Fletcher states that Commissioner Maggiore has now joined the Commission and will be voting on upcoming issues. He states that the only issues discussed during executive session were those related to advice from legal counsel on the appeals. He asks for a motion to reconvene to return to regular session. Motion by Mr. Kehoe to reconvene, second by Mr. Rogers. Motion passes unanimously on a roll call vote and the Commission reconvenes at 10:14 a.m.

Motion by Mr. Kehoe to uphold the Director's Order on Section 202 regarding annual fees and direct Counsel to prepare an order to that effect. Second by Mr. Rogers. Motion passed unanimously on a voice vote

**8. Public hearing, deliberation and action on the Agronics appeal (99-07) of the director's decision of September 24, 1999 regarding confidentiality of certain documents in MMD's permit file**

Chris Schatzman, Attorney for MMD makes a statement on MMD's petition to limit the witness list. He states that after a discussion with the petitioner he has ascertained that Mr. Taylor is the only witness and a land owner agreement the only exhibit, and that MMD has no further objections. Chairman Fletcher asks Mr. Taylor if he has any objections and he states he does not.

There is a lengthy discussion about whether the Commission should consider the petition in executive session. This discussion includes a statement by Mr. Barboa, the landowner.

Motion by Mr. Rogers to go into executive session to discuss the petition. Second by Mr. Bartlit. Motion does not pass on a roll call vote. Commissioners voted as follows: Mr. Maggiore, no; Mr. Rogers, yes; Chairman Fletcher, no; Mr. Stevenson, no; Mr. Kehoe, no; Mr. Bartlit, yes.

In response to Chairman Fletcher's request to begin the presentation in open session, Mr. Shaw objects that the information is confidential, that it cannot be disclosed in an open session, and consequently declines to make a presentation.

MMD begins its testimony. Mr. Chris Schatzman makes a statement discussing specifics of confidentiality and how it is applied under New Mexico statutes. Mr. Doug Bland, Director-MMD, testifies about confidentiality and how it applies under Mining Act Rules and Regulations, and specifics about interactions

between Agronics and MMD in the Division's attempts to resolve the issue. Mr. Schatzman requests that MMD exhibits be accepted into the record. Chairman Fletcher states the commission will enter MMD's exhibits into the record, as submitted.

Mr. Taylor cross-examines Mr. Bland. This is followed by a great deal of discussion on a wide variety of topics.

Motion by Mr. Maggiore to go into executive session. Second by Mr. Kehoe. Motion passes on a unanimous roll call vote. Chairman Fletcher states that the Commission goes into the executive session pursuant to provisions in the Open-Meetings Act regarding discussions with Counsel.

The Commission goes into executive session.

Motion by Mr. Stevenson to reconvene to open session. Second by Mr. Rogers. Motion passes on a unanimous roll call vote.

The Commission goes into open session.

Motion by Mr. Scholle to go into executive session to hear from Agronics on issues related to confidentiality. Second by Mr. McCaslin. Motion passes on a roll call vote with all voting yes except Mr. Bartlit.

The Commission goes into executive session.

Motion by Mr. Maggiore to reconvene to open session. Second by Mr. Scholle. Motion passes on a unanimous roll call vote.

Commission goes into open session. Motion by Mr. Freeman to uphold the Director's decision regarding 99-07 and that the Commission direct their attorney to develop an order reflecting this. Second by Mr. Kehoe. Motion passes on a unanimous roll call vote.

**9. Discussion and possible action related to the interim order in Agronics appeal (99-03)**

Chairman Fletcher states that on advice of Counsel the interim order is continued pending final order by the court and that there would be no discussion.

**10. Setting of a hearing date on Agronics appeal 99-09 of the Director's decision relating to pro-rated cost of close-out plan extension (note: this agenda item was added at the beginning of meeting.)**

Motion by Mr. Light to set a hearing date of February 23, 2000 for appeal 99-09. Second by Mr. Rogers.

**11. Presentation of MMD's Annual Report to the Commission**

After introductory statements by Mr. Bland, John Pfeil and Fernando Martinez present the 1999 annual report to the Commission

**12. Other business**

None

**13. Adjourn**

Chairman Fletcher adjourns the meeting at about 2:45 p.m.

Approved:

Minutes by:

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Terry Fletcher, Chairman

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Date

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John J. Pfeil, Commission Clerk