

**MINUTES OF THE  
NEW MEXICO MINING COMMISSION  
REGULAR MEETING AND HEARING**

**DECEMBER 14, 2001**

The New Mexico Mining Commission meeting was convened December 14, 2001 in Room 322, State Capitol Building (the Roundhouse), Old Santa Fe Trail, Santa Fe, New Mexico. **Note:** The meeting room was changed from room 326 to room 322 to accommodate more people. A sign was posted outside room 326 to direct participants to the new room which was no more than about 20 feet away. A sign was also posted outside the new meeting room. Staff checked room 326 several times to ensure there was no confusion about the meeting place.

The following members were present:

Terry Fletcher	Chairman, Public Representative
Peter 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
Larry Kehoe	State Land Office
Dinus Briggs	NMSU Agricultural Experiment Station
John Bartlit	Public Representative
Bruce Thomson	Alternate, Public Representative
Pat Freeman	Alternate, Public Representative
Pat Simpson	Commission Attorney

The following member was absent:

J. R. Roybal	NM Soil and Water Conservation Commission
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**Announcements:** Chairman Fletcher declares a quorum for purposes of conducting the meeting.

The Meeting starts at 9:13 a.m.

- 1. Roll call**  
The Commissioners announce their own names.
- 2. Approval of the agenda**  
Mr. Briggs moves to approve the agenda, with second by Mr. Maggiore. Motion passes unanimously on a voice vote.
- 3. Adoption of the minutes of the October 3, 2001 Special Meeting**  
Mr. Bartlit states that the October 3 meeting actually ended at 9:21, not 8:21 as indicated on the minutes. Mr. Rogers moves to adopt the minutes as amended, with second by Mr. Stevenson. The motion passes unanimously on a voice vote.

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

Pat Simpson, Commission Attorney, states that the resolution should be tabled until he can update legal cites appropriately. Motion by Mr. Maggiore to table the resolution until the next Commission meeting with second by Mr. Rogers. The motion passes unanimously on a voice vote.

**5. Public hearing on the August 6, 2001 Game and Fish Department's Petition for Rulemaking (01-03) relating to amending Rule 205 of the Mining Act Rules**

Jim Stuart of the Game and Fish Department testifies on behalf of the Petition 01-03. After Mr. Bartlit asks several questions about program automation, data collection and program efficiency there is a motion by Mr. Rogers to accept the Petition as presented with second by Mr. Briggs. The motion passes unanimously on a voice vote.

**6. Public hearing on the September 21, 2001 Joint Petition for Rulemaking (01-04) submitted by the NM Environment Department and others relating to extending the current deadline for approval of closeout plans for certain existing mining operations from December 31, 2001 until July 1, 2002.**

Mr. Maggiore recuses himself because NMED is one of the petitioners. He states he would like to designate Ralph Gruebel, Division Director of NMED's Environmental Protection Division, to be his designee during consideration of Petition 01-04. A discussion ensues culminating in a motion by Mr. Bartlit to seat Mr. Gruebel as a participant able to ask questions but not vote; second by Mr. Scholle. Roll call vote of voting members: Scholle – yes; Stevenson – no; Gruebel – abstain; Kehoe – yes; Rogers – no; Bartlit – yes; Fletcher – no. Pat Simpson informs the Commission that in the case of a tie the motion loses allowing Mr. Grubel to vote on the Petition.

Individuals providing technical or factual testimony are identified and sworn in, including: John Draper for LAC Minerals; Harry Browne for Gila Resources Information Project (GRIP); Jim Kuipers for GRIP; Doug Wolf for GRIP; Joseph Brunner for Phelps Dodge; Marcy Leavitt for the Ground Water Quality Bureau of the NM Environment Department; John Pugh for Molycorp; Carol Leach for Mining and Minerals Division (MMD); Doug Bland for MMD; and Ted Apodaca for MMD.

Doug Bland, Carol Leach and Ted Apodaca testify on behalf of MMD. Followup questions are asked by several Commissioners.

Chairman Fletcher adjourns the meeting for lunch at 11:55 a.m and reconvenes the meeting at 1:13 p.m.

Tannis Fox presents introduction and Marcy Leavitt testifies on behalf of the Ground Water Quality Bureau. Ms. Leavitt provides the Commission with NMED Exhibit 1, an NMED timeline for issuing Mining Act determinations. Followup questions are asked by several Commissioners.

Dalva Moellenberg presents introduction and Joseph Brunner testifies on behalf of Phelps Dodge. Followup questions are asked by several Commissioners.

Chairman Fletcher asks Doug Wolf whether he would have any objections if Molycorp and LAC Minerals testified before GRIP. Mr. Wolf states that he would not object. John Draper testifies on behalf of LAC Minerals followed by questions from Commissioners. John Pugh and Amanda Ashford testify on behalf of Molycorp.

Doug Wolf presents introduction on behalf of GRIP with Harry Browne and Jim Kuipers seated next to him. He also provides to the Commission a document entitled "Gila Resources Information Project's revised proposed changes to the petitioners proposal". Chairman Fletcher points out that Harry Browne is a fact witness, not a technical witness. Mr. Wolf acknowledges that this is correct and proceeds with questioning Mr. Browne. There is an objection by Dal Moellenberg to the level of testimony by Mr. Browne. After Mr. Browne's questioning by Mr. Wolf ends, Chairman Fletcher allows Commissioners to question Mr. Browne. Followup questions are asked by several Commissioners of Mr. Browne, and others including Ms. Leavitt, Mr. Brunner and Mr. Bland. After Jim Kuipers provides the Commission with his background and qualifications he is asked and responds to a series of questions from Mr. Wolf.

Chairman Fletcher opens the hearing to questions from any Commissioners of any testifier. Followup questions are asked by several Commissioners.

The Chairman then opens the floor to any attorneys wishing to cross-examine any of the witnesses. It is determined that no attorneys wish to do so.

There is a suggestion by Chairman Fletcher that the Commission retire to executive session to seek legal advice about crafting a resolution regarding the Petition. There is a motion by Mr. Rogers to go into Executive Session with second by Mr. Stevenson. Tannis Fox, Attorney for NMED strongly objects with ensuing discussion among several participants. Mr. Rogers withdraws the motion.

There is a motion by Mr. Freeman to instruct Pat Simpson to draft an appropriate amendment to grant a 6-month extension which will allow the parties to complete the work in a timely manner. Chairman Fletcher requests that Mr. Freeman amend the motion to allow the Chairman to sign on behalf of the Commission. Mr. Freeman agrees to the amendment. Motion is seconded by Chairman Fletcher. A discussion occurs prior to the vote. Mr. Briggs amends motion to grant a 9-month extension with second by Mr. Scholle.

Mr. Bartlit makes a statement. Chairman Fletcher asks Ms. Leach for some clarification on Mining Act rule 506i. Ms. Leach provides clarification.

There is some discussion of protocol and exact wording of the amendment. Chairman Fletcher asks Mr. Simpson whether taking the Amigos Bravos language previously provided to the Commission and replacing the July 1, 2002 with an October 1, 2002 date would provide the proper amendment. The answer is affirmative.

A roll call vote on the Briggs amendment extending the time period to October 1, 2002 passes with all voting members except Mr. Bartlit voting yes.

The roll call vote on accepting the language suggested by Amigos Bravos with the inclusion of the October 1, 2002 language is unanimous.

Mr. Kehoe requests that the Commission be apprised of the progress being made in meeting the October 1, 2002 deadline. After some discussion between Mr. Kehoe, Mr. Thomson and Director Bland, Chairman Fletcher directs Director Bland to prepare a gantt chart showing both MMD and NMED major milestones and present the chart at either the next meeting, or sooner if a draft is available.

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

Mr. Kehoe moves that a copy of MMD's annual report be provided to the Commission with second from Mr. Briggs. The motion passes unanimously on a voice vote. The Clerk provides a hardcopy annual report to each of the Commissioners.

**8. Other business**

Mr. Briggs questions whether the minutes of commission meetings could be posted on the Division's website. After some discussion Chairman Fletcher requests that the Commission Clerk research the issue.

**9. Update on pending litigation**

Motion by Mr. Kehoe to retire to executive session to discuss pending litigation. Second by Mr. Scholle. Motion passes on a roll call vote with Mr. Maggiore voting no.

The Commission goes into executive session.

Motion by Mr. Maggiore to reconvene to open session at 5:16 p.m. Second by Mr. Stevenson. Motion passes unanimously on a roll call vote. Chairman Fletcher comments that the only items discussed in executive session were pending litigation issues.

**10. Adjourn**

Motion to adjourn by Mr. Briggs, with second by Mr. Stevenson. Motion passes by unanimous vote. Meeting adjourns at 5:19 P.M.

Approved:

Minutes by:

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Terry Fletcher, Chairman

Date

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John J. Pfeil, Commission Clerk