

**Minutes of the
New Mexico Mining Commission
Regular Meeting and Hearing
August 26-27, September 17, 2013**

Note: Draft minutes subject to review and approval by the Commission

The New Mexico Mining Commission meeting convened at 9:04 AM, Monday, August 26, 2013, in Porter Hall (1st floor of the Wendell Chino Building), Energy, Minerals and Natural Resources Department, located at 1220 South St. Francis Drive in Santa Fe, NM. The meeting was recorded and the digital audio files are in the custody of the commission clerk; the hearing was also transcribed by a court reporter.

The following members were present:

Doug Bland	Chairman, NM Bureau of Geology and Mineral Resources
Mary Rose	Environment Department
Mike Johnson	Office of the State Engineer
Larry Roybal	State Land Office
Matthew Wunder	Department of Game and Fish
Roderick Ventura	Public Representative – Environment
Patrick Freeman	Public Representative – Industry (participated telephonically)
John Brack	Alternate for Public Representative – Industry
Sally Malavé	Commission Attorney

The following members were absent:

Charlie Sanchez	NM Soil and Water Conservation Commission
Steve Loring	NM Agricultural Experiment Station
Vacant	Alternate for Public Representative - Environment

Roll call

John Pfeil, commission clerk, called the roll with the results provided above.

Approval of the agenda

Chairman Bland asked if there were any changes to the agenda; there were none. Dr. Wunder moved to adopt the agenda, with a second by Ms. Rose. The motion passed unanimously.

Adoption of the minutes of the July 17, 2013, regular meeting

Chairman Bland asked if there were any changes to the minutes; there were none. Mr. Johnson moved to adopt the minutes, with a second by Mr. Ventura. The motion passed unanimously.

Hearing, deliberation and possible action on Mineris Vitae, LLC's Petition for Rulemaking (13-01) regarding amending 19.10.3 NMAC (Minimal Impact Operations)

Mineris Vitae, LLC presented the basis of its petition to amend the acreage limitations specifically for minimal impact humate mines from the current 10 acres to 60 acres in New Mexico. The petitioner called witnesses to testify: Michael Meyer, Owner, Mineris Vitae, LLC; Daniel Reiff, Consultant; Dr. Craig White, UNM Anderson School of Management; Dan Kwiecinski, PE; Dr. Jerry Peace, Los Alamos National Laboratories; and Michael Farnar, Owner, Horizon Ag and Miocene. Following direct testimony from each witness, Amigos Bravos conducted its cross examination, followed by questions from the commissioners.

Amigos Bravos presented the basis for its opposition to the petition and called witnesses to testify: Rachel Conn, Amigos Bravos; William Paul Robinson, Southwest Research and Information Center; Jon Klingel, Biologist; and James K. Kuipers, PE. Following direct testimony from each witness, Mineris Vitae, LLC conducted its cross examination, followed by questions from the commissioners.

Public comments were made or submitted in writing by six interested parties. Those supporting the petitioner: Mike Bowen, New Mexico Mining Association; Timothy Strosnider, Enchantment Organics; Richard Cervantes, New Mexico Tech; Michael Mechenbier, Four Daughters Land & Cattle Company; and Steven Walsh, UNM Anderson School of Management. In opposition to the rule change: Michelle M. Ensey, Department of Cultural Affairs, Historic Preservation Division.

At the conclusion of the scheduled two-day meeting and hearing, it was determined that the proceedings would be continued to a later date. All parties agreed to reconvene on Tuesday, September 17, 2013, at 8:30 AM and the Commission agreed to table its executive session until the hearing resumes on September 17, 2013.

Mr. Johnson moved to adjourn, with a second by Mr. Ventura. Motion passed unanimously and the Commission adjourned at 5:20 PM.

The hearing reconvened on Tuesday, September 17, 2013, at 8:34 AM. Commissioners Brack, Sanchez and Loring were absent; all others were present as was the Commission's attorney.

The petitioner cross-examined Amigos Bravos' witness, Mr. Kuipers, followed by questions from Amigos Bravos and the commissioners.

Public comments were made or submitted in writing by four interested parties, all supporting the petitioner: Richard Muirhead; Jeffrey Pappas, Department of Cultural Affairs, Historic Preservation Division, who requested that the Commission not consider the division's original letter in support of Amigos Bravos; Secretary John Barela, New Mexico Environment Department; and Rainero Leonette Peru y Colón de Portugal, Ph.D., Harvard Medical School.

Mineris Vitae called rebuttal witnesses: Dr. Jerry Peace and Michael Farmer. Following rebuttal testimony from each witness, Amigos Bravos conducted its cross examination, followed by questions from the commissioners.

Following a lunch break, a motion was made by Commissioner Wunder, seconded by Commissioner Roybal and passed unanimously that the hearing be suspended and the Commission enter executive session: **Executive session to be held in accordance with NMSA 1978, Section 10-15-1(H)(7), regarding status of pending litigation: Multicultural Alliance for a Safe Environment and Amigos Bravos v. New Mexico Mining Commission, No. D-101-CV-2012-02318.**

The meeting reconvened at 1:35 PM. Chairman Bland stated that the only item discussed during the executive session was the matter identified in the motion to go into executive session and no action was taken.

A motion was made by Commissioner Johnson and seconded by Commissioner Rose that the hearing be reopened. The motion passed unanimously.

Amigos Bravos called Mr. James Kuipers as a rebuttal witness. Mineris Vitae asked follow-up questions; the commissioners had no additional questions.

The Commission called Mr. Fernando Martinez, Mining and Minerals Division Director, to answer questions. MMD Counsel stated that Mr. Martinez was not providing technical expertise. Mineris Vitae asked follow-up questions; there were no questions from Amigos Bravos.

Closing remarks by attorneys for Mineris Vitae and Amigos Bravos concluded the hearing.

The hearing record closed at 3:15 PM, and the Commission began its open deliberations.

Following discussion, a motion to adopt the petition was made by Commissioner Freeman and seconded by Commissioner Rose. A motion for an amendment to the petition to change the word "expeditious" to "concurrent" in relation to reclamation was made by Commissioner Rose and seconded by Commissioner Freeman. The Commission's clerk called the roll: in favor of the petition – commissioners Rose, Freeman and Johnson; against the petition – commissioners Ventura, Wunder and Roybal; abstaining – Commissioner Bland. It was noted that, by rule, a petition must have four votes to pass; therefore, the petition did not pass.

After further discussion, Commissioner Ventura made a motion to adjourn; there was no second and deliberations continued.

A motion to deny the petition was made by Commissioner Ventura and seconded by Commissioner Johnson. The Commission's clerk called the roll: in favor of denying the petition – commissioners Ventura, Wunder and Roybal; against denying the petition – commissioners Rose, Freeman and Johnson; abstaining – Commissioner Bland. Denial of the petition failed to pass as the four-vote rule was not met.

After additional discussion, a motion was made by Commissioner Wunder and seconded by Commissioner Roybal to amend the petition from the requested 60 acres for humate mining operations to 20 acres rather than the current ten acres, and to include the amendment changing "expeditious" to "concurrent" reclamation. Following more discussion, the Commission's clerk called the roll: in favor of the petition as twice amended – commissioners Rose, Freeman, Johnson, Wunder, Roybal and Bland; against the petition as twice amended – Commissioner Ventura.

The Commission will accept statements of reason from attorneys for Mineris Vitae and Amigos Bravos – due in four weeks' time.

Other business

No other business was discussed.

Adjourn

A motion to adjourn was made by Commissioner Johnson and seconded by Commissioner Wunder. With unanimous approval, the Mining Commission adjourned at 5:15 PM.

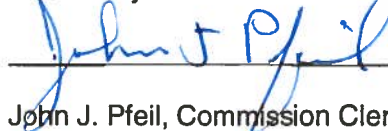
Approved:



Matthew Wunder, Commissioner

Date 10-2-13

Minutes by:



John J. Pfeil, Commission Clerk