

**MINUTES OF THE  
NEW MEXICO MINING COMMISSION MEETING**

**FEBRUARY 24, 1994**

The New Mexico Mining Commission meeting was conducted at 10a.m. February 24, 1994 in Morgan Hall of the State Land Office. The following members were present:

Judith Espinosa	Chairwoman, Environment Dept.
Art Montana	Public Representative
Val Green	New Mexico Institute of Mining and Technology
Ray Powell	State Land Commissioner
H.E. Whitacre	Public Representative
Jeanie Cragin	Alternate
H.M. Conger	Alternate
Dick McCleskey	Game and Fish Department
Eluid Martinez	State Engineer
Dinus M. Briggs	NMSU - College of Agriculture Station, Ex-Officio

**Item 1: Roll Call.**

Doug Bland from the Mining and Minerals Division took roll call.

**Item 2: Approval of the Agenda.**

Commissioner Martinez moved to approve the agenda as amended. Mr. Montana seconded the motion, and the agenda was unanimously approved by all members present.

**Item 3: Review of the Minutes from the December 13, 1993 Meeting.**

After review and discussion, H.E. Whitacre asked that in the future, the person who writes the minutes put their name on the minutes. Chairwoman Espinosa asked that the following corrections be made: identifying Mr. Gonzales and Mr. Cunningham as ex-officio members; on page 4, second line, it should say "New Mexico Mining Association, said this Commission differs"; page 4, last line, it should say "Water and Waste Management Division"; on page 5, strike "amount" and replace with "number"; and add at the end of copies "for the number of Mining Commission members,"; on the second paragraph should read the "Southwest Research and Information Center." Mr. Martinez moved to approve the minutes as amended. Mr. Green seconded the motion, and all members present voted in favor.

#### **Item 4: Review of and Possible Action on the Adopted Guidelines for Rulemaking**

Mr. Bill Brancard, from the N.M. Attorney General's Office said that at the last Commission Meeting the Guidelines for Rulemaking were presented to the Commission, and the Commission at that time adopted these guidelines as an interim measure, and then requested that public comment be solicited.

Mr. Brancard reviewed the written comments received from the Environment Department, James Catron, and Grove Burnett and agreed with most of the proposed revisions.

Chairwoman Espinosa opened the issue for public comment. Ms. Carol Leach, EMNRD General Counsel, said there were only two points in the Guidelines discussion by Mr. Brancard that the Department was concerned about: (1) if the rules are changed to require fifteen days between the time the petition is filed and the time the Commission meets to set a hearing, what does that do to the petition that has already been filed; and (2) the possibility of meeting places other than Santa Fe. She said the Department's concern was that someone might challenge a section or part of the process because conducting public hearings in places other than Santa Fe is contrary to the statute.

Douglas Meiklejohn, Lawyer with the N.M. Environmental Law Center, said he would prefer that sixty days be required between the time the Commission decides to hold the hearing on regulations on the date that hearing is held. He said the statute was clear on calling for one hearing in Santa Fe.

Grove Burnett of the Burnett Law Firm representing NM Citizens for Clean Air and Water said witnesses should be examined based strictly on subject matter. Mr. Martinez asked how witness testimony could be evaluated without questioning as to the person's background and credentials for making that statement. Mr. Burnett replied he was not proposing that the matter was not open to cross examination. Charles Roybal of the New Mexico Mining Association and Paul Robinson of the Southwest Research and Information Center also voiced their concerns with the Guidelines.

Chairwoman Espinosa said the Commission could review Mr. Brancard's proposals along with the public comment and have Mr. Brancard revise the guidelines for the next meeting based on what the Commission wants in the Guidelines. Mr. Martinez recommended the Commission deal with the Guidelines section by section, and Chairwoman Espinosa agreed. Commissioners expressed no reservations about the first three sections and reached consensus on NMED's proposed change to Section 104.

Mr. Martinez expressed a concern on the proposed change to Section 301.C. He said the Commission had before it a petition from EMNRD to consider proposing a hearing for adoption of regulations and asked if the Commission adopted the proposed 15-day stet, wouldn't it require the Commission to wait two weeks to move forward with the petition. Mr. Brancard said that if the change was made, it would be effective after the date of the meeting.

Chairwoman Espinosa and Mr. Brancard reviewed the significance of the HM 103 Legislative memorial and its effect on the proceedings. Mr. Brancard said the Commission has seen draft regulations since it's December meeting. When the Division officially submitted a petition asking the Commission to set a hearing, the guidelines as they were now written required a copy of the draft be attached. Mr. Martinez said he understood what the memorial said concerning public participation, but that he also realized what the law said, adding that he placed more weight on the law than on a memorial.

Chairwoman Espinosa asked what the Commission wished to do about the proposal to amend Section 301-C. Mr. Martinez suggested that they amend it and make it prospective, moving forward as expeditiously as possible in an effort to meet the June 18th deadline. He said he personally would rather go before a committee and admit he did not follow a memorial than to have to explain why he did not follow the law. The Chairwoman asked for consensus and all members present agreed.

Mr. Brancard asked if the Commission preferred to go with the Environment Department suggestion of 15-day notice, or the 10 day period contained in the memorial. Commissioners expressed approval of the 10-day notice. The proposal to add a sentence to Section 301.C allowing public response to a petition was approved by consensus.

The Commissioners debated the public notice provisions of Section 302. Mr. Martinez said the notice could be published in two newspapers, local and general circulation. Mr. Lingo estimated the cost of placing such notices at \$20 to \$30 per notice, depending on the paper. Chairwoman Espinosa indicated the Department should place notices in a general circulation newspaper in each county and in additional papers if it was deemed necessary. Commission members present agreed.

Addressing the notice time, Mr. Martinez said he thought the 45-day notice would be compatible with most other commissions. Mr. Montana asked Mr. Meiklejohn if he specifically objected to 45 days, or was it 30? Mr. Meiklejohn said he would prefer sixty days, but that 45 was acceptable. Chairwoman Espinosa said she prefers 60 days' notice. Mr. Brancard said if the Commission wanted to go with 60 days' notice, he would suggest the 60-45-day split -- 60 days for all notice except the New Mexico Register, which would be 45 days. Chairwoman Espinosa said she agreed with the suggested language changes.

Discussing Section 305 and the location issue, Mr. Martinez recommended the Commission follow the statute and Mr. Montana concurred. Chairwoman Espinosa said she herself took the more liberal view that the Commission can go outside Santa Fe and have hearings, but that she agreed the main hearing should be in Santa Fe. Chairwoman Espinosa said the Commission would stand by the language as written.

Section 402: Mr. Martinez suggested a change so it will read, "Any person who testifies in a hearing is subject to cross-examination on the subject matter of his direct testimony. Any person who testifies on technical issues at the hearing are subject to cross-examination

**on subject matter on a testimony, and background and qualifications."** Chairwoman Espinosa said she has no problem with that, and if there were no objections, she would change the language.

Section 405: Mr. Brancard recommended in the first sentence to delete the words "additional evidence," and then add a sentence that states "The hearing officer may for good cause allow the submission of additional evidence into the record after the hearing, and shall provide for ability to respond to such given additional evidence." Chairwoman Espinosa suggested the language be adopted.

Section 407: Chairwoman Espinosa said she thought the intent was to have a decision made and generally state the reason for adopting or making that decision, not have the Commissioners address the issue individually. The Commissioners agreed to add to the end of 407.A: "based on a motion that includes reasons for the decision", and to add the word "written" in Section 407.D.

Section 408: The Commissioners agreed to add "including a copy of the written decision and any regulatory change" as proposed by Paul Robinson.

Section 409: The Commission agreed to the change proposed by Mr. Catron.

Part V. The Commission agreed to the change proposed by NMED.

Mr. Martinez moved the Commission adopt the guidelines with the amendments agreed to in the Commission discussion and direct Mr. Brancard to prepare the revised guidelines, which are to be effective after this meeting in order not to affect action on today's petition from MMD. Mr. Whitacre seconded the motion. Commissioners present unanimously approved the motion.

**Item 5: Report by the Mining and Minerals Division (MMD) on the Public Meetings (Held in December) and the Comments Received by MMD on the November 23, 1993 Draft New Mexico Mining Act Regulations.**

Mr. Lingo reviewed the regulation development process with the Commission. Chairwoman Espinosa asked Mr. Lingo if he changed any of the November 23rd draft after receiving the comments from the various groups. Mr. Lingo said the draft was altered in response to comments voiced at public hearings, meetings with interested parties and correspondence. Mr. Lingo said the Department met with any party that asked, primarily with members of the Mining Association, and members of the environmental community.

**Item 6: Discussion on MMD's Latest Draft New Mexico Mining Act Regulations.**

Chairwoman Espinosa asked the Commission members if they would like to keep the agenda the way it is, or move items 7, 8, and 9 forward. Mr. Martinez suggested leaving the agenda as it was.

Chairwoman Espinosa asked Mr. Lingo to tell the Commission about how the regulations have changed from the previous draft and the draft they received the week before. He said the Department had received numerous letters of concern from numerous individuals and organizations and the current draft was the result of that.

Mr. Lingo summarized comments received for the Commission. Concerns expressed included: the definition of "owner"; minimal impact concerns; site-specific issues; design criteria; fees; recreational prospecting; regulations exceeding the scope of the Act; financial assurances; post-mining land use; definitions; and the confidentiality rule. Chairwoman Espinosa asked Mr. Lingo if he attempted on certain sections to get those who were disagreeing on certain issues together, and he said the Department met with them separately, not together. Ms. Leach added that the Department spent about four months working with all interested parties trying to build consensus, but it did not happen.

Chairwoman Espinosa opened the floor to comments on the regulations. Highlights are as follows:

Paula Gassner from Albuquerque - Thanked Mr. Lingo for his quick response in answering letters. She said she would like some of the language to be a little more specific.

Phil Hontz from Albuquerque - Said recreational prospecting is not clearly defined in the Act.

Lewis Lubers from Albuquerque - Requested the Commission consider applying a specific exemption for recreational miners. He said that the letter he received from Mr. Lingo was one of the nicest letters he's ever gotten from an agency.

Mr. Meiklejohn - Commended the Department for all the hard work. He said many of the environmental community's concerns have been addressed, but more remain, and that is the reason why he has filed an alternate Petition for Adoption of regulations with the Commission. He requests that the Commission consider both drafts.

Mr. Roybal - Suggested that perhaps the concerns which are in the NMMA draft and the Environmental draft also might be able to be addressed in terms of amendments to the department draft.

Mildred Benton, Edgewood, - Said that the fees will cost more than what her claim is worth. She thanked Mr. Lingo for his prompt response to her letter, and said he's a very gracious letter writer. She said she was attending the hearing to represent herself and others who couldn't get time off from their jobs.

Brenda Thompson, Hanover - Said that Mr. Lingo really deserved a pat on the back. She commended Carol Leach and her staff on their hard work. She stated it was difficult for many people to come to Santa Fe for meetings. Ms. Thompson said she was not happy with the

60-day notification.

Joan Oller, Sandia Park - Said the fees are to be levied under the state laws. She said she doesn't think they're going to cost the State of New Mexico \$250.00 a year or \$5,000 plus \$2,500 per acre worth of damage. She said part of what they do is to reclaim as they go along.

Chris Hazard - Said his family was asking him if they're going to be able to go out and prospect, but the way the regulations looked now, he could not give them a definite answer. He said it's not clear in the regulations what everybody else can do. He said he hoped the regulations would specify what the small miner or prospector can do.

Mr. Robinson - Said public meetings would be a way to take the discussion of the Mining and Minerals draft to other parts of the state so the Commission could hear from diverse groups.

John Robb, Albuquerque - Said he would like to encourage the Commission to go forward on the draft given by MMD, but to do it in an orderly fashion. He did not think it was fair to the Commission to have parties throwing parallel drafts at it and forcing it to decide what the differences are and the reasons for the differences.

Louis Rose, Montgomery Law Firm, Santa Fe - Said he sees no reason to forestall going forward to the formal hearing. He said that going forward with more than one petition not only would be difficult, but would be impossible to review and digest for a court to understand.

Jim Costello, Los Alamos - Expressed displeasure with the fee schedule because it will be a terrific burden on individual miners.

Lou Osmer, Tyrone - Said he was having a hard time figuring out what the specific effective date of the Act is.

**Item 7: Discussion and Action on the Request by MMD to Schedule a Public Hearing to Consider the Proposed New Mexico Mining Regulations.**

Mr. Lingo reviewed possible dates for the public hearings. A lengthy discussion ensued on meeting the 60-day notice requirement. Mr. Brancard said he understood the earliest MMD could get a notice concerning the parallel drafts published was March 5th. He said that would leave open the possibility of setting up a hearing starting May 5th or May 6th.

Chairwoman Espinosa suggested making an evening session on a week day rather than a Friday because many people cannot or will not attend a Friday evening hearing. Mr. Martinez said he would like to allow an additional week to allow people to get ready for it, and Chairwoman Espinosa agreed. Mr. Brancard said the only difficulty with that was getting the hearing transcript completed in enough time to allow the Commission to review it before meeting. He proposed having the Commission meeting deliberate and make the decision be starting on June 13th, and leaving the entire week open for Commission deliberation. Mr. Brancard said he

believed the Commission ought to make a good faith attempt to make the statutory deadline.

Chairwoman Espinosa proposed there be a public hearing on the proposed regulations from MMD to begin on Thursday, May 12th, through the 13th, 14th and the week thereafter.

Mr. Martinez moved that the Commission set a hearing on the MMD Petition to begin May 12th, and to continue May 13th and 14th and the following week, and the Commission meets on June 13 to 17 to take final action. Mr. Whitacre seconded the motion. The motion was unanimously passed by all members present.

**Item 8: Consideration of a Hearing Officer for the Public Hearing on the Proposed Regulations.**

Commissioner Montana proposed that the Commission sit as the hearing body, with Mr. Brancard as the hearing officer. Mr. Brancard stated that he needed the approval of Attorney General Tom Udall. However, he urged the Commission to appoint its own member to act as hearing officer, and offered to assist whomever is selected. Mr. Brancard said he thought having Commissioners directly involved in the hearings was a good idea.

Chairwoman Espinosa asked Commissioners what their preference was. After a discussion Chairwoman Espinosa proposed that the first choice for hearing officer be Mr. Brancard, subject to Mr. Udall's approval, and if that was not acceptable, to rotate Commission members as hearing officers. All Commissioners approved except Commissioner Montana. Commissioners Espinosa, Conger and Montana volunteered to serve as hearing officer if necessary.

Concerning publication of notices in newspapers, Mr. McCleskey proposed that a list be prepared and in the event areas are left uncovered, the Commissioners could revise the list. The proposal was passed unanimously. Chairwoman Espinosa asked that the Commission receive copies of notices sent, and copies of the newspapers they were sent to.

Mr. Brancard said that there will be a court reporter at the public hearings. More than 400 letters concerning the hearing were to be sent out. He was said he was working on scheduling a pre-hearing conference to set up some sort of framework.

**Item 9: Discussion on the Date and Possible Subjects to be Considered at the Next Meeting.**

Commissioner Montana said he believed the next meeting was to be held within 60 days of February 23 in order to determine the disposition of the two alternate petitions for adoption of regulations put before the Commission at the meeting.

Mr. Bill Brancard told the Commissioners they can hold a special meeting with three days public notice.

Mr. Meiklejohn said that if the Commission did establish a meeting date for consideration of the petitions, he would discuss it with his clients as soon as he could. If his clients indicated they wished to withdraw the petition, he would inform them they wouldn't have to have that meeting. Mr. Roybal said that if Mr. Meiklejohn's petition were withdrawn, he would withdraw his also.

Mr. Martinez moved the Commission set a meeting for two weeks from February 24. Seconded by Mr. Whitacre. Chairwoman Espinosa said the next Mining Commission meeting would be held on March 7th at 10:00a.m. to consider the two alternate petitions (Concerned Citizens of Del Norte and Sierra Club, Rio Grande Chapters, and the New Mexico Mining Association ). This meeting will be cancelled if both petitions are withdrawn.

**Item 10: Other Business.**

Mr. Brancard said alternate Commission members who attend meetings for legitimate reasons are entitled to per diem and mileage.

There being no further business, the meeting adjourned at 3:55 p.m.

\_\_\_\_\_  
Chairwoman

\_\_\_\_\_  
Date

Minutes by:

\_\_\_\_\_  
Frances Garcia  
Mining and Minerals Division - EMNRD