

**MINUTES OF THE
NEW MEXICO MINING COMMISSION MEETING**
November 12, 1996

The New Mexico Mining Commission meeting was convened at 10:30 a.m., November 12, 1996, in room 307 of the State Capitol building in Santa Fe, NM. The following members were present:

Art Montana	Chairman and Public Representative
Mark Weidler	Environment Department
Larry Kehoe	State Land Office
Terry Fletcher	Public Representative
Jim Bailey	Department of Game and Fish
Charles Chapin	NM Bureau of Mines and Mineral Resources
Bob Rogers	State Engineer's Office
Jeanie Cragin	Alternate
Pat Freeman	Alternate
Bob McCaslin	Ex-Officio, NM Agricultural Experiment Station
Ray Roybal	Ex-Officio, NM Soil and Water Conservation Commission

1. Roll Call

Each Commissioner announced his name for roll call.

2. Approval of Agenda

Mr. Kehoe moved to accept the agenda, with second by Dr. Bailey. Motion passed unanimously.

3. Review of amendments to the draft minutes of the July 16, 1996 meeting

Discussion of this agenda item was temporarily postponed.

4. Review of the draft minutes of the August 20, 1996 meeting

Mr. Fletcher moved to accept the minutes of the August 20, 1996 meeting, with second by Dr. McCaslin. Motion passed unanimously.

5. Discussion and Possible Election of a Vice Chair of the Mining Commission

After brief discussion, Mr. Weidler moved to nominate Mr. Fletcher as Vice Chair of the Commission. Mr. Rogers seconded the motion. Motion passed unanimously.

Dr. Bailey moved to set the current term of Vice Chair such that it will end at the same time that Chairman Montana's term ends, which is June 1997. Second by Ms. Cragin. Motion passed unanimously.

3. Review of amendments to the draft minutes of the July 16, 1996 meeting

Chairman Montana stated that the concerns he had with the previous draft of the minutes had been addressed through proposed changes. Mr. Weidler indicated that he did not wish to propose any further changes.

Mr. Weidler moved to accept the minutes of the July 16, 1996 meeting as amended, with second by Mr. McCaslin. Motion passed unanimously.

6. Update on pending litigation involving the Mining Commission

The Mining Commission read an update provided by Bill Brancard, Commission Attorney.

Ms. Cragin moved for the Commission to go into executive session to discuss pending litigation involving the Commission. Second by Dr. Bailey. Motion passed unanimously on a roll call vote.

Mr. Weidler moved to reopen the meeting. Second by Dr. Bailey. Motion passed unanimously. The Commission returned to regular session. The only matters discussed during the closed session were pending litigation involving the Commission.

7. Discussion of whether to hold a public hearing on the October 23, 1996 Petition for Rulemaking submitted by the Department of Game and Fish and date for the hearing, if any.

Dr. Bailey explained the reasoning and circumstances surrounding this revised petition and the original petition submitted on September 9, 1996. He indicated that the Department of Game and Fish has not spent all the funds collected under the current fee schedule, and therefore does not request that funds be collected during FY 97. However, he would like for his department to be able to spend some of the accrued fees after June 30, 1997, the current regulatory deadline. The petition extends that deadline for one year.

Following discussion, Ms. Cragin moved to set a hearing at a date to be determined later. Second by Mr. Weidler. Motion passed unanimously.

8. Public hearing on the September 13, 1996 amended petition for the revision of regulations submitted by the Mining and Minerals Division.

Chairman Montana as hearing officer conducted the hearing.

9. Possible discussion and action on the September 13, 1996 petition

Mr. Fletcher moved to close the hearing record and deliberate and take possible action on the petition at a later date. Second by Dr. Chapin. Motion passed unanimously. The Commission decided to deliberate at 10:00 a.m. the following day, November 13, 1996.

10. Other business

There being no further business, the meeting was recessed at 6:10 p.m. until 10:00 a.m. following day.

The Mining Commission reconvened at 10:00 a.m. November 13, 1996 in room 307 of the State Capitol building in Santa Fe. All Commissioners were present.

9. Possible discussion and action on the September 13, 1996 petition

Mr. Brancard discussed the current contents of the Hearing Record, and materials not yet included. Mr. Kehoe moved to supplement the hearing record with all minutes, tape recordings and documents related to the Small Miners Initiative previously submitted to the Mining Commission. Second by Ms. Cragin. Motion passed unanimously.

The Commissioners provided their general views on the proposed amendments. Dr. Chapin asked that the Mining and Minerals Division inspect as many General Permit sites as possible by the end of 1997 and then submit a written report on their findings, including conditions in the field, and how the Mining Commission and the Division can improve the General Permit process, if improvement is necessary.

Mr. Weidler moved to accept the MMD proposal, with second by Mr. Rogers. Discussion of individual aspects of the proposal followed, with the commission entertaining amendments to the motion.

Motion by Dr. Bailey to replace 'consult' with 'obtain written consultation from' in Section 107.W.2.c. Second by Mr. Weidler. Motion passed by a 6:1 vote with Mr. Rogers opposed.

Motion by Dr. Bailey to add the sentence 'For the purposes of this subsection, "unreclaimed" means the failure to meet the commitments of section 301.D.2.b. through d.' to Section 302.B.2 (301.B.2 in the final rules). Second by Ms. Cragin. Motion passed unanimously.

Motion by Dr. Chapin to modify Section 302.D. to read: 'safeguard against hazards to the health and safety of humans and domestic animals'. Second by Dr. Bailey. Motion passed

by a 5:2 vote with Mr. Fletcher and Mr. Rogers against.

Motion by Ms. Cragin to eliminate language in 302.D. after 'Subpart 11' which would make all general permit inspections mandatory. Second by Mr. Kehoe. Motion failed by a 0:6 vote with Chairman Montana abstaining.

Motion by Dr. Bailey to move discretionary inspection language in 302.D. to 302.E. Second by Mr. Fletcher. Motion passed unanimously.

Motion by Mr. Weidler to omit 'or fees' from 302.E and add a provision for a \$50.00 application fee to 302.E. Second by Mr. Kehoe. Motion passed by a 6:1 vote with Dr. Chapin opposed.

A vote was called for on the motion to adopt the MMD proposal as amended. Motion passed unanimously.

Mr. Weidler issued a challenge to General Permit holders to comply with the new rules, and to meet the spirit and intent of these changes.

Motion by Dr. Chapin that during the first year that General Permits are issued, MMD compile statistics on General Permits, including number, location and types of operations, positive or negative economic and environmental impacts to the state, and problems the Mining Commission may remedy, and report back to the Commission at the end of 1997. Second by Ms. Cragin. Motion passed unanimously.

Motion by Mr. Weidler that, at the discretion of the Director of Mining and Minerals, each General Permit application submittal contain photographs of the site indicating the condition of the site, preexisting disturbances, and recognizable geographic references. Second by Mr. Rogers. Motion passed unanimously.

Motion by Mr. Fletcher to remand back to MMD for study the proposals by St. Cloud to amend the MMD proposal, and to either propose rule changes or report back to the Commission their findings. Second by Mr. Kehoe. Motion passed unanimously.

The Commission requested that Mr. Brancard draft a statement of reasons for the regulation changes, circulate the statement to the commissioners and have the chairman sign the document.

10. Other business

Mr. Chapin said that he believes it would be useful to have the Secretary of the Energy, Minerals and Natural Resources Department sit on the Mining Commission as a non-voting Chair. He cited the deliberation session today as an example of how this addition

to the Commission would assist in rulemaking by having better insight as to how the Commission's decisions affect the Energy, Minerals and Natural Resources Department's implementation of proposed rules, since the Commission may not confer with the Department while deliberating various proposals. Ms. Cragin asked Mr. Brancard if such a scenario would create a problem with additional information being provided after the hearing record was closed. Mr. Brancard replied that the Department Secretary was more likely to provide general information that would be acceptable, and that a precedent has already been set with the Secretary of Environment sitting on the Water Quality Control Commission. Dr. Montana indicated that the suggestion of a non-voting chair was more acceptable than last year's proposal in HB 466 which added the Secretary of Energy, Minerals and Natural Resources and a small miner representative as voting members, changing the voting balance of the Commission.

11. Adjourn

There being no further business, Mr. Weidler moved to adjourn, with second by Mr. Fletcher. Motion passed unanimously. The meeting was adjourned at 12:30 p.m.

Approved:

Minutes by:

Art Montana, Chairman

Date

Douglas Bland, Clerk