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**Minutes of the  
New Mexico Mining Commission Meeting  
December 13, 1993**

The New Mexico Mining Commission meeting was conducted at 1:30 p.m. December 13, 1993 in Morgan Hall of the State Land Office. The following members were present:

Val Green	New Mexico Institute of Mining and Technology
Art Montana	Public Representative
Ray Powell	State Land Commissioner
H.E. Whitacre	Public Representative
Alex Gonzales	Soil and Water Conservation Commission
Jeanie Cragin	Alternate
H.M. Conger	Alternate
Gary Cunningham	NMSU Agricultural Experiment Station
Ron Curry	Environment Department
Dick McCleskey	Game and Fish Department
Eluid Martinez	State Engineer

**Welcome:** Secretary Anita Lockwood of the Energy, Minerals and Natural Resources Department (EMNRD) welcomed the Commissioners, including the public members.

**Election of Chairman:** Dr. Powell was asked to serve as acting Commission Chairman while the Commission elected a chairman. Mr. Whitacre nominated Mr. Curry. Mr. Curry declined because he was only attending to represent Secretary Espinosa and nominated Secretary Espinosa instead. Mr. McCleskey nominated Dr. Powell, who declined due to other commitments. Mr. Green nominated Mr. Montana. Dr. Powell nominated Mr. Martinez, who declined due to other commitments, saying the chairman should have the time to devote to this endeavor.

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Mr. Whitacre moved to close the nominations and Mr. McCleskey seconded the motion. A vote was taken: Secretary Espinosa received three votes and Mr. Montana received three votes. Mr. Martinez said he had spoken with Secretary Espinosa about serving as chairman, and she indicated she was quite busy. Mr. Curry said he had recently spoken to Secretary Espinosa and she indicated she would like to serve as chairman, and was aware of the effort it would take. Mr. Martinez switched his vote to Secretary Espinosa and Secretary Espinosa was elected chairman. Mr. Martinez then moved that Mr. Montana serve as vice chairman, to act as chair in the event of Secretary Espinosa's absence, and Mr. Curry seconded the motion. No further nominations were made. The Commission elected Mr. Montana vice chairman on a voice vote. Mr. Montana presided over the remainder of the meeting.

**Open Meetings Act Resolution:** Bill Brancard of the Attorney General's Office presented to the Commission a proposed Open Meetings Act Resolution, and described the significant points of the proposed resolution. The resolution allowed the chairman or a majority of members to set meetings. Regular meetings must have a minimum of 10 days' advance notice, while special meetings require three days' advance notice, and emergency meetings 24 hours. He told Commissioners the agenda must be available in final form 24 hours prior to the meeting. Commissioners can bring up items for discussion during a meeting, but, if they are not listed on the agenda, cannot act on them.

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Mr. Martinez moved the Commission adopt the Open Meetings Act Resolution and Mr. Whitacre seconded the motion, which was unanimously approved.

**Mining Act/Regulations:** Carol Leach, EMNRD General Counsel, reviewed highlights of the New Mexico Mining Act and Commission duties. John Lingo, Acting Director of the Mining and Minerals Division of EMNRD, discussed the regulation development process with Commissioners, requesting they set public hearings on adoption of the proposed draft regulations in late March and early April in order to meet the June 18, 1994 statutory deadline for adoption of regulations. Vice Chairman Montana asked what the consequences of missing the deadline were, and Ms. Leach said the Commission would be in violation of the Act and could potentially face citizen suits.

**Guidelines for Rulemaking:** Mr. Brancard discussed the proposed Guidelines for Rulemaking of the New Mexico Mining Commission, which detail the structure of hearings and procedures to adopt regulations. He said the guidelines add structure to hearings, but allow flexibility, and that people are already familiar with the guidelines since they were patterned after ones used by the Environmental Improvement Board and Water Quality Control Commission.

He said the Commission could adopt the proposed Guidelines as simply guidelines, or could adopt them as official regulations. The Commission could

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adopt the Guidelines as guidelines during this meeting, but the guidelines could not be strictly enforced. If the Commission chose to adopt them as official regulations, Brancard said, it would need to first conduct a public hearing.

To clarify a point, Mr. Martinez asked if the Commission chose to adopt the Guidelines as guidelines, could they be modified or changed at any meeting without public notice and Mr. Brancard said that was correct. Mr. Martinez then asked if they were officially adopted as regulations through a public hearing, would the Commission have to conduct an additional public hearing each time it wanted to make a change and Mr. Brancard said that was also correct. Mr. Martinez then moved the proposed Guidelines be adopted as guidelines, and if the Commission chooses to change them at a later meeting, it could do so. Dr. Powell seconded the motion.

**Vice Chairman Asked for Public Comment:** Charles Roybal, Director of the New Mexico Mining Association, said this Commission differs from the EIB and WQCC because it has public, alternate and ex-officio members and suggested this difference be noted in the definition of "Commission" in the proposed Guidelines. He said this difference could affect issues like quorums.

Kathleen Sisneros of the New Mexico Environment Department, speaking on behalf of the Water Waste Management Division, requested the Commission

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withhold any action adopting the Guidelines at this meeting until the public had the opportunity to review and pass comment on them. She pointed out a few technical problems such the guidelines request an insufficient amount of copies under the "Filing and Service of Documents" section.

Lynda Taylor of the Southwest Research and Information Group asked the Commission to consider conducting additional hearings in the northern or southern part of the state, or consider extending the hours of the hearing through a weekend to allow people who would be unable to attend a weekday hearing to comment on the regulations.

Vice Chairman Montana asked Ms. Leach and Mr. Brancard if they would like to address issues raised by the audience. Ms. Leach said Mr. Roybal's concern about the quorum issue was addressed in the statute, which says a majority of the voting members shall be a quorum. Mr. Brancard said he had no problem with Ms. Sisneros' request the Commission delay action on adopting the guidelines to solicit comment from other agencies or the public. Addressing Ms. Taylor's comment, Mr. Brancard said he and Ms. Leach had debated the issue of the meaning of the statute saying the public hearing shall be held in Santa Fe, adding that they had a small difference of opinion on the issue.

Mr. Brancard said he thought the Act could be interpreted liberally to mean that

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a hearing must be held in Santa Fe, but additional ones could be held elsewhere. He said Ms. Leach took a more conservative approach of only having hearings in Santa Fe and the proposed Guidelines follow that approach. Vice Chairman Montana said it was an issue for legal minds to decide rather than the Commission.

Mr. Martinez said it would serve the public for the Commission to travel to other parts of the state. He asked if action were to only be taken in Santa Fe, would it remedy the Commission's holding meetings in other parts of the state. Vice Chairman Montana said he agreed with the public comments, but that the Commission still needed guidelines to operate by. He said he would support a motion to adopt the Guidelines knowing the Commission has the opportunity to change them at a later date, and then subject them to public comment.

Vice Chairman Montana reminded the Commission there was a motion to adopt the Guidelines made by Mr. Martinez and seconded by Dr. Powell. The motion was unanimously passed.

Mr. Brancard said he supported asking for public comment and placing a public notice indicating the Guidelines are available for public review and comments could be sent in or made at the next meeting. Mr. Martinez said it was better for the Commission to put together guidelines and then solicit comments rather than

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the other way around.

**Next Meeting:** The next meeting was scheduled for 10 a.m. February 24, 1994, in Morgan Hall at the State Land Office.

**Mileage and Per Diem/Other Business:** Ben Gallegos, Chief of the EMNRD Processing Bureau, briefed the Commissioners on mileage and per diem.

Mr. Martinez asked who would serve as a hearing officer for the public hearings. He asked if it would be agency staff since there was no money in the budget to hire an outside hearing officer. He said he did not need an answer immediately, but asked that something be prepared for the next meeting.

Ms. Taylor asked if there was a cut-off date for receipt of public comment on the draft regulations. Mr. Lingo said he expected it would be the end of January in order to allow the department to prepare its final recommendations for the Commission.

Mr. Whitacre asked if alternates were allowed to participate in per diem reimbursement. Vice Chairman Montana said in the case where an alternate were filling in for a member, per diem would be allowed. Ms. Leach said those present at this meeting could receive per diem, but that it was an issue which

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needed to be addressed by the Attorney General's Office in the future. Mr. Whitacre asked for an answer to the question at the next meeting.

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