SENATE BILL 473

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Ben D. Altamirano

AN ACT

RELATING TO MINES; PROVIDING FOR THE ESTABLISHMENT OF MINING DISTRICTS; AMENDING AND ENACTING SECTIONS OF THE NEW MEXICO MINING ACT; AMENDING THE WATER QUALITY ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 69-36-3 NMSA 1978 (being Laws 1993, Chapter 315, Section 3) is amended to read:

"69-36-3. DEFINITIONS.--As used in the New Mexico Mining Act:

A. "affected area" means the area outside of the permit area where the land surface, surface water, ground water and air resources are impacted by mining operations within the permit area;

B. "commission" means the mining commission established in the New Mexico Mining Act;
C. "director" means the director of the division or his designee;

D. "division" means the mining and minerals division of the energy, minerals and natural resources department;

E. "existing mining operation" means an extraction operation that produced marketable minerals for a total of at least two years between January 1, 1970 and [the effective date of the New Mexico Mining Act] June 18, 1993;

F. "exploration" means the act of searching for or investigating a mineral deposit, including sinking shafts, tunneling, drilling core and bore holes, digging pits, making cuts and other works for the purpose of extracting samples prior to commencement of development or extraction operations and the building of roads, access ways and other facilities related to such work; however, activities that cause no or very little surface disturbance, such as airborne surveys and photographs, use of instruments or devices that are hand carried or otherwise transported over the surface to perform magnetic, radioactive or other tests and measurements, boundary or claim surveying, location work or other work that causes no greater disturbance than is caused by ordinary lawful use of the area by persons not engaged in exploration, are excluded from the meaning of "exploration";

G. "mineral" means a nonliving commodity that is
extracted from the earth for use or conversion into a saleable
or usable product, but does not include clays, adobe,
flagstone, potash, sand, gravel, caliche, borrow dirt, quarry
rock used as aggregate for construction, coal, surface water or
subsurface water, geothermal resources, oil and natural gas
together with other chemicals recovered with them, commodities,
byproduct materials and wastes that are regulated by the
nuclear regulatory commission or waste regulated under Subtitle
C of the federal Resource Conservation and Recovery Act of
1976:

H. "mining" means the process of obtaining useful
minerals from the earth's crust or from previously disposed or
abandoned mining wastes, including exploration, open-cut mining
and surface operation, the disposal of refuse from underground
and in situ mining, mineral transportation, concentrating,
milling, evaporation, leaching and other processing. "Mining"
does not mean the exploration and extraction of potash, sand,
gravel, caliche, borrow dirt [and] or quarry rock used as
aggregate in construction; the exploration and extraction of
natural petroleum in a liquid or gaseous state by means of
wells or pipes; the development or extraction of coal; the
extraction of geothermal resources; smelting, refining,
cleaning, preparation, transportation or other off-site
operations not conducted on permit areas; or the extraction,
processing or disposal of commodities, byproduct materials or
wastes or other activities regulated by the federal nuclear regulatory commission;

I. "mining district" means the geographical area designated by the director as a mining district, including privately owned land that is owned or leased by one or more owners or operators of mining operations. "Mining district" does not include land used for residential purposes:

[J-] J. "new mining operation" means a mining operation that engages in a development or extraction operation after [the effective date of the New Mexico Mining Act] June 18, 1993 and that is not an existing mining operation;

[K-] K. "permit area" means the geographical area defined in the permit for a new mining operation or for an existing mining operation on which mining operations are conducted or cause disturbance; and

[L-] L. "reclamation" means the employment during and after a mining operation of measures designed to mitigate the disturbance of affected areas and permit areas and, to the extent practicable, provide for the stabilization of a permit area following closure that will minimize future impact to the environment from the mining operation and protect air and water resources."

Section 2. Section 69-36-7 NMSA 1978 (being Laws 1993, Chapter 315, Section 7, as amended) is amended to read:

"69-36-7. COMMISSION--DUTIES. --The commission shall:
A. before June 18, 1994, adopt and file reasonable
regulations consistent with the purposes and intent of the New
Mexico Mining Act necessary to implement the provisions of the
New Mexico Mining Act, including regulations that:

(1) consider the economic and environmental
effects of their implementation;

(2) require permitting of all new and existing
mining operations and exploration; and

(3) require annual reporting of production
information to the commission, which shall be kept confidential
if otherwise required by law;

B. adopt regulations for new mining operations that
allow the director to select a qualified expert who may:

(1) review and comment to the director on the
adequacy of baseline data gathered prior to submission of the
permit application for use in the permit application process;

(2) recommend to the director additional
baseline data that may be necessary in the review of the
proposed mining activity;

(3) recommend to the director methodology
guidelines to be followed in the collection of all baseline
data; and

(4) review and comment on the permit
application;

C. adopt regulations that require and provide for
the issuance and renewal of permits for new and existing mining operations and exploration and that establish schedules to bring existing mining operations into compliance with the requirements of the New Mexico Mining Act; provided the term of a permit for a new mining operation shall not exceed twenty years and the term of renewals of permits for new mining operations shall not exceed ten years;

D. adopt regulations that provide for permit modifications. The commission shall establish criteria to determine which permit modifications may have significant environmental impact. Modifications that the director determines will have significant environmental impact shall require public notice and an opportunity for public hearing pursuant to Subsection K of this section. A [permit] modification to the permit for an existing mining operation shall be obtained for each new discrete processing, leaching, excavation, storage or stockpile unit located within the permit area of an existing mining operation and not identified in the permit of an existing mining operation; and for each expansion of [such] a discrete processing, leaching, excavation, storage or stockpile unit identified in the permit for an existing mining operation that exceeds the design limits for that unit specified in the permit. The regulations shall require that permit modifications for [such] new units be approved if the director determines that the unit will:

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(1) comply with the regulations regarding permit modifications;

(2) incorporate the requirements of Paragraphs (1), (2), (4), (5) and (6) of Subsection [H] I of this section; and

(3) be [sited and] constructed in a manner that facilitates, to the maximum extent practicable, [contemporaneous] reclamation consistent with the closeout plan;

E. adopt regulations that require new and existing mining operations to obtain and maintain permits for standby status. A permit for standby status shall be issued for a maximum term of five years; provided that upon application the director may renew a permit for standby status for no more than three additional five-year terms. The regulations shall require that, before a permit for standby status is issued or renewed, an owner or operator shall:

(1) identify the projected term of standby status for each unit of the new or existing mining operation;

(2) take measures that reduce to the extent practicable, considering the intended future resumption of operations, the formation of acid and other toxic drainage to prevent releases that cause federal or state environmental standards to be exceeded;

(3) meet applicable federal and state
environmental standards and regulations during the period of standby status;

[(4) stabilize waste and storage units, leach piles, impoundments and pits during the term of standby status;

(5)] (4) comply with applicable requirements of the New Mexico Mining Act and the regulations adopted pursuant to that act; and

[(6)] (5) provide an analysis of the economic viability of each unit proposed for standby status;

F. establish by regulation closeout plan requirements for existing mining operations that incorporate site-specific characteristics, including consideration of disturbances from previous mining operations, and that take into account the mining method utilized;

G. establish by regulation a procedure for the issuance of a permit for an existing mining operation and for modifications of that permit to incorporate approved closeout plans or portions of closeout plans and financial assurance requirements for performance of the closeout plans. The permit shall describe the permit area of the existing mining operation and the design limits of units of the existing mining operation based upon the site assessment submitted by the operator. The permit shall contain a schedule for completion of a closeout plan. The permit shall thereafter be modified to incorporate the approved closeout plan or portions of the closeout plan.

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once financial assurance has been provided for completion of
the closeout plan or the approved portions of the closeout plan
The permit may be modified for new mining units, expansions
beyond the design limits of a unit at an existing mining
operation or standby status;

H. by June 30, 2004, establish by regulation
requirements for mining operations within a mining district
that include:

(1) assurance that the mining operations will
employ measures to ensure that the operations do not cause or
contribute to water pollution outside of the mining district;

(2) requirements for the mine operator to
demonstrate that no discharge of water contaminants from its
mining operations within the mining district will cause or
contribute to a violation of water quality standards
promulgated by the water quality control commission under the
Water Quality Act at any point outside of the mining district;
and

(3) requirements that measures necessary to
comply with the requirements of this paragraph, including
appropriate monitoring and reporting requirements, be
incorporated into each mining operation's permit issued under
the New Mexico Mining Act;

[H.-] L. establish by regulation permit and
reclamation requirements for new mining operations that

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incorporate site-specific characteristics. These requirements shall, at a minimum:

(1) require that new mining operations be designed and operated using the most appropriate technology and the best management practices, considering the nature of the mining operation, technical and economic feasibility and standard industry practices;

(2) assure protection of human health and safety, the environment, wildlife and domestic animals;

(3) include backfilling or partial backfilling only when necessary to achieve reclamation objectives that cannot be accomplished through other mitigation measures;

(4) require approval by the director that the permit area will achieve a self-sustaining ecosystem appropriate for the life zone of the surrounding areas following closure, unless conflicting with the approved post-mining land use or unless the new mining operation is located within a mining district;

(5) require that new mining operations be designed in a manner that incorporates measures to reduce to the extent practicable, considering the nature of the mining operation and the role of acid in mineral production, the formation of acid and other toxic drainage that may otherwise occur following closure to prevent releases that cause federal or state standards to be exceeded;

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require that nonpoint source surface releases of acid or other toxic substances shall be contained within the permit area;

(7) require that all waste, waste management units, pits, heaps, pads and any other storage piles are designed, sited and constructed in a manner that facilitates to the maximum extent practicable, considering the nature of the mining operation, technical and economic feasibility and standard industry practices, contemporaneous reclamation and are consistent with the new mining operation's approved reclamation plan; and

(8) where sufficient topsoil is present, take measures to preserve it from erosion or contamination and assure that it is in a usable condition for sustaining vegetation when needed;

[1-] J. adopt regulations that establish a permit application process for new mining operations that includes:

(1) disclosure of ownership and controlling interests in the new mining operation or submission of the applicant's most recent form 10K required by the federal securities exchange commission;

(2) a statement of all mining operations within the United States owned, operated or directly controlled by the applicant, owner or operator and by persons or entities that directly control the applicant and the names and the

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addresses of regulatory agencies with jurisdiction over the
environmental aspects of those operations and that could
provide a compliance history for those operations [and] over
the preceding ten years. The operator shall assist the
applicant in obtaining compliance history information;

(3) a description of the type and method of
mining and the engineering techniques proposed;

(4) the anticipated starting and termination
dates of each phase of the new mining operation and the number
of acres of land to be affected;

(5) the names of all affected watersheds, the
location of any perennial, ephemeral or intermittent surface
stream or tributary into which surface or pit drainage will be
discharged or may possibly be expected to reach and the
location of any spring within the permit area and the affected
area;

(6) a determination of the probable hydrologic
consequences of the new mining operation and reclamation, both
on and off the permit area, with respect to the hydrologic
regime, quantity and quality of surface and ground water
systems, including the dissolved and suspended solids under
seasonal flow conditions;

(7) cross-sections or plans of the permit area
depicting:

(a) the nature and depth of the various
formations of overburden;
(b) the location of subsurface water, if encountered, and its quality;
(c) the nature and location of any ore body to be mined;
(d) the location of aquifers and springs;
(e) the estimated position and flow of the water table;
(f) the proposed location of waste rock, tailings, stockpiles, heaps, pads and topsoil preservation areas; and
(g) premining vegetation and wildlife habitat features present at the site;

(8) the potential for geochemical alteration of overburden, the ore body and other materials present within the permit area;

(9) a reclamation plan that includes a detailed description of the proposed post-mining land use and how that use is to be achieved; and

(10) premining baseline data as required by regulations adopted by the commission;

[J-] K. adopt regulations to coordinate the roles of permitting agencies involved in regulating activities related to new and existing mining operations and exploration.
including regulatory requirements, to avoid duplicative and
conflicting administration of the permitting process and other
requirements;

[\textendash] \textbf{L.} except for regulations enacted pursuant to
Subsection \textbf{L} \textit{M} of this section, adopt regulations that ensure
that the public and permitting agencies receive notice of each
application for issuance, renewal or revision of a permit for a
new or existing mining operation, for standby status, or
exploration, a variance or an application for release of
financial assurance and any inspection prior to the release of
financial assurance, including a provision that no action shall
be taken on any application until an opportunity for a public
hearing, held in the locality of the operation, is provided and
that all interested persons shall be given a reasonable chance
to submit data, views or arguments orally or in writing and to
examine witnesses testifying at the hearing. An additional
opportunity for a public hearing may be provided if the
applicant makes substantial changes in the proposed action, if
there are significant new circumstances or information bearing
on the proposed action or if the applicant proposes to
substantially increase the scale or substantially change the
nature of the proposed action and there is public interest and
a request for a public hearing. These regulations shall
require at a minimum that the applicant for issuance, renewal
or revisions of a permit or a variance or an application for
release of financial assurance and any inspection prior to
release of financial assurance shall provide to the director,
at the time of filing the application with the director, proof
that notice of the application and of the procedure for
requesting a public hearing has been:

(1) provided by certified mail to the owners
of record, as shown by the most recent property tax schedule,
of all properties within one-half mile of the property on which
the mining operation is located or is proposed to be located;

(2) provided by certified mail to all
municipalities and counties within a ten-mile radius of the
property on which the mining operation is or will be located;

(3) published once in a newspaper of general
circulation in each county in which the property on which the
mining operation is or will be located; provided that this
notice shall appear in either the classified or legal
advertisements section of the newspaper and at one other place
in the newspaper calculated to give the general public the most
effective notice and, when appropriate, shall be printed in
both English and Spanish;

(4) posted in at least four publicly
accessible and conspicuous places, including the entrance to
the new or existing mining operation if that entrance is
publicly accessible and conspicuous;

(5) mailed to all persons who have made a
written request to the director for notice of this application;

and

(6) mailed by certified mail to all persons on

a list, maintained by the director, of individuals and

organizations who have requested notice of applications under

[thesis] the New Mexico Mining Act.

If the application is determined to be administratively

complete by the director, the applicant shall provide to the

director timely proof that notice of that determination has

been provided by first class mail to everyone who has indicated

to the applicant in writing that they desire information

regarding the application and to a list, maintained by the

director, of individuals and organizations who have requested

notice of applications under this act;

[M-] N. adopt regulations to provide for permits,

without notice and hearing, to address mining operations that

have minimal impact on the environment; provided that such

permits shall require general plans and shall otherwise reduce

the permitting requirements of the New Mexico Mining Act;

[M-] N. establish by regulation a schedule of

annual administrative and permit fees, which shall [equal—and]

not exceed the estimated costs of administration,

implementation, enforcement, investigation and permitting

pursuant to the provisions of the New Mexico Mining Act. The

size of the operation, anticipated inspection frequency and
other factors deemed relevant by the commission shall be
considered in the determination of the fees. The fees
established pursuant to this subsection shall be deposited in
the mining act fund;

[N-] Q. establish by regulation a [continuing]
process of review of mining and reclamation practices in New
Mexico that provides for [periodic], not less than every five
years, review and amendment of regulations and procedures to
provide for the protection of the environment [and]. The
commission shall consider the economic effects of the
regulations;

[O-] P. adopt regulations governing the provision
of variances issued by the director, stating the procedures for
seeking a variance, including provisions for public notice and
an opportunity for a hearing in the locality where the variance
will be operative, the limitations on provision of variances,
requiring the petitioner to present sufficient evidence to
prove that failure to grant a variance will impose an undue
economic burden and that granting the variance will not result
in a significant threat to human health, safety or the
environment;

[P-] Q. provide by regulation that, prior to the
issuance of any permit for a new mining operation pursuant to
the provisions of the New Mexico Mining Act, [the] a permit
applicant or operator [(†)] shall provide evidence to the
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director that other applicable state and federal permits
required to be obtained by the new or existing mining operation
either have been or will be issued before the activities
subject to those permits begin [and

(2) shall provide to the director a written
determination from the secretary of environment stating that
the permit applicant has demonstrated that the activities to be
permitted or authorized will be expected to achieve compliance
with all applicable air, water quality and other environmental
standards if carried out as described];

[Q-] R require by regulation that [the] an
applicant file with the director, prior to the issuance of a
permit, financial assurance. The amount of the financial
assurance shall be sufficient to assure the completion of the
performance requirements of the permit, including closure and
reclamation, if the work had to be performed by the director or
a third party contractor and shall include periodic review to
account for any inflationary increases and anticipated changes
in reclamation or closure costs. The regulations shall specify
that financial requirements shall neither duplicate nor be less
comprehensive than the federal financial requirements. The
form and amount of the financial assurance shall be subject to
the approval of the director as part of the permit application
[provided, financial assurance does not include any type or
variety of self-guarantee or self-insurance];
require by regulation that a permittee may file an application with the director for the release of all or part of the permittee's financial assurance. The permittee shall not file an application for release of financial assurance more than once per year for each mining operation. The application shall describe the reclamation measures completed and shall contain an estimate of the costs of reclamation measures that have not been completed. Prior to release of any portion of the permittee's financial assurance, the director shall conduct an inspection and evaluation of the reclamation work involved. The director shall notify persons who have requested advance notice of the inspection. Interested members of the public shall be allowed to be present at the inspection of the reclamation work by the director.

(1) The director shall release in whole or in part the financial assurance if the reclamation covered by the financial assurance has been accomplished as required by the New Mexico Mining Act; provided that the director shall retain financial assurance at least equal to the approved estimated costs of completing reclamation measures that have not been completed; and provided further that, for revegetated areas, the director shall retain the amount of financial assurance necessary for a third party to reestablish vegetation for a period of twelve years after the last year of augmented seeding, fertilizing, irrigation or other work, unless a post-
mining land use is achieved that is inconsistent with the
further need for revegetation. For new mining operations only,
no part of the financial assurance necessary for a third party
to reestablish vegetation shall be released so long as the
lands to which the release would be applicable are contributing
suspended solids above background levels to streamflow of
intermittent and perennial streams.

(2) A person with an interest that is or will
be adversely affected by release of the financial assurance may
file with the director, within thirty days of the date of the
inspection, written objections to the proposed release from
financial assurance. If written objections are filed and a
hearing is requested, the director shall inform all the
interested parties of the time and place of the hearing at
least thirty days in advance of the public hearing, and hold a
public hearing in the locality of the new or existing mining
operation or exploration operation proposed for release from
financial assurance. The date, time and location of the public
hearing shall be advertised by the director in a newspaper of
general circulation in the locality for two consecutive weeks,
and all persons who have submitted a written request in advance
to the director to receive notices of hearings shall be
provided notice at least thirty days prior to the hearing;

[S-] T. establish coordinated procedures that avoid
duplication for the inspection, monitoring and sampling of air,
soil and water and enforcement of applicable requirements of
the New Mexico Mining Act, regulations adopted pursuant to that
act and permit conditions for new and existing mining
operations and exploration. The regulations shall require, at
a minimum:

(1) inspections by the director occurring on
an irregular basis according to the following schedule:

(a) at least one inspection per month
when the mining operation is conducting significant reclamation
activities;

(b) at least two inspections per year
for active mining operations;

(c) at least one inspection per year on
inactive sites;

(d) at least one inspection per year
following completion of all significant reclamation activities,
but prior to release of financial assurance; and

(e) mining operations having a minimal
impact on the environment and exploration operations will be
inspected on a schedule to be established by the commission:

(2) inspections shall occur without prior
notice to the permittee or his agents or employees except for
necessary on-site meetings with the permittee;

(3) when the director determines that a
condition or practice exists that violates a requirement of the
New Mexico Mining Act, a regulation adopted pursuant to that act or a permit issued under that act, which condition, practice or violation also creates an imminent danger to the health or safety of the public or will cause significant imminent environmental harm, the director shall immediately order a cessation of the new or existing mining operation or the exploration operation or the portion of that operation relevant to the condition, practice or violation. The cessation order shall remain in effect until the director determines that the condition, practice or violation has been abated or until modified, vacated or terminated by the director or the commission;

(4) when the director determines that an owner or operator is in violation of a requirement of the New Mexico Mining Act, a regulation adopted pursuant to that act or a permit issued pursuant to that act but the violation does not create an imminent danger to the health or safety of the public or will not cause significant imminent environmental harm, the director shall issue a notice to the owner or operator fixing a reasonable time, not to exceed sixty days, for the abatement of the violation. If, upon expiration of the period of time as originally fixed or subsequently extended for good cause shown, the director finds that the violation has not been abated, he shall immediately order a cessation of new or existing mining operations or exploration operations or the portion thereof
relevant to the violation. The cessation order shall remain in
effect until the director determines that the violation has
been abated; and

(5) When the director determines that a
pattern of violations of the requirements of the New Mexico
Mining Act or of the regulations adopted pursuant to that act
or the permit required by that act exists or has existed and,
if the director also finds that such violations are caused by
the unwarranted failure of the owner or operator to comply with
the requirements of that act, regulation or permit or that such
violations are willfully caused by the owner or operator, the
director shall immediately issue an order to the owner or
operator to show cause as to why the permit should not be
suspended or revoked;

[T-] U. provide for the transfer of a permit to a
successor operator, providing for release of the first operator
from obligations under the permit, including financial
assurance, following the approved assumption of such
obligations and financial assurance by the successor operator;

[U-] V. adopt regulations providing that the owner
or operator of an existing mining operation or a new mining
operation who has completed some reclamation measures prior to
the effective date of the regulations adopted pursuant to the
New Mexico Mining Act may apply for an inspection of those
reclamation measures and a release from further requirements
pursuant to that act for the reclaimed areas if, after an
inspection, the director determines that the reclamation
measures satisfy the requirements of that act and the
substantive requirements for reclamation pursuant to the
applicable regulatory standards; and

[V-] W. develop and adopt other regulations
necessary and appropriate to carry out the purposes and
provisions of the New Mexico Mining Act."

Section 3. Section 69-36-9 NMSA 1978 (being Laws 1993,
Chapter 315, Section 9) is amended to read:

"69-36-9. DIRECTOR--DUTIES. --The director shall:
A. exercise all powers of enforcement and
administration [arising under] authorized by the New Mexico
Mining Act not otherwise expressly delegated to the commission,
execute and administer the commission's regulations and
coordinate the review and issuance of permits for new and
existing mining operations and exploration with all other state
or federal permit processes applicable to the proposed
operations;

B. enter into agreements with appropriate federal
and state agencies for coordinating the review and issuance of
all necessary permits to conduct new and existing mining
operations and exploration in New Mexico;

C. create an advisory committee, the membership of
which shall balance the interests of affected government
entities, the mining industry, environmental groups, regulatory
agencies and other persons as determined by the director to
represent a constituency that will be affected by the
provisions of the New Mexico Mining Act;

D. confer and cooperate with the secretary of
environment [in administering the New Mexico Mining Act, in
developing proposed regulations and obtain the concurrence of
the secretary of environment] regarding areas of the
regulations that have an impact upon programs administered by
the department of environment;

E. approve a permit area and design limits for new
and existing mining operations and exploration following
submission of the site assessment, where applicable and prior
to issuing a permit. The director shall incorporate the permit
area and design limits into the permit issued;

F. review at least twelve months of baseline data
and other information submitted by the applicant for a permit
for a new mining operation, before the permit is approved or
denied; and

G. prepare an environmental evaluation, before a
permit for a new mining operation is approved or denied,
[which] that shall include an analysis of the reasonably
foreseeable impacts of proposed activities on the pre-mining and
post-mining environment and the local community, including
other past, present and reasonably foreseeable future actions,
regardless of the agency or persons that undertake the other
action or whether the actions are on private, state or federal
land. The director may contract with, and the applicant shall
pay for, a third party to prepare the analysis and assessment."

Section 4. A new section of the New Mexico Mining Act is
enacted to read:

"[NEW MATERIAL] MINING DISTRICTS--DESIGNATION--DIRECTOR'S
DUTIES.--In designation of mining districts, the director
shall:

A. by January 1, 2004, designate mining districts.
A district shall include all lands for which mining is the
highest and best use of the land and that meet at least one of
the following criteria:

(1) the lands have been historically used for
exploration, mining and uses ancillary to mining;

(2) the lands have mineral resources, the
recovery of which is either technically and economically
feasible now or reasonably likely to be in the future;

(3) the lands are affected in such a way that
designation as a mining district is necessary to protect human
health and safety or the environment outside the proposed
mining district due to exploration, mining and uses ancillary
to mining; or

(4) the lands are not needed for other
commercial or residential uses now or expected to be needed in
the future to meet local economic development needs;

B. approve or disapprove an application to designate
a new mining district or modify an existing mining district
within ninety days after one or more operators of mining
operations files an application pursuant to the New Mexico
Mining Act. The director shall approve an application for a
new mining district or a modification of an existing mining
district if:

(1) the application filed with the director
contains:
    (a) the name and mailing address of and
    the telephone number for the contact person of each mining
    operation applying for modification of the mining district;
    (b) a map and a description of the
    geographical boundaries for the proposed modification;
    (c) a description of the known mineral
    resources in the proposed modification;
    (d) a description of the historic use of
    the land in the mining district for mining; and
    (e) a statement describing why mining is
    the highest and best use for the land included in the mining
district; and

(2) the application meets the requirements
specified in Subsection A of this section;

C. if the director does not approve an application
to designate or modify a mining district, provide a written
explanation stating the reasons for denial and including
recommendations for correcting the unacceptable parts of the
application;

D. hold a public hearing on the initial designation
of a mining district and on an application to designate a new
mining district or modify a mining district within sixty days
of the proposed designation or the submission of an
application. The public hearing shall be held at a location
within reasonable proximity to the mining district. A
representative of the applicant shall attend the hearing and
respond to questions;

E. give notice of the subject, time and place of a
hearing, the manner in which interested persons may present
their views and the method by which copies of an application to
establish or modify a mining district may be obtained:

(1) by publication at least thirty days prior
to the hearing date in a newspaper of general circulation in
the state and in the New Mexico register, if published; and

(2) by mail at least thirty days prior to the
hearing date to all persons who have made a written request to
the director for advance notice of hearings;

F. allow all interested persons a reasonable
opportunity to submit arguments on the initial designation or
modification of a mining district, including the effect of the
mining district on interests outside the district; and

G. provide to a person appearing or represented at a
hearing, upon a written request, a written notice of the
director's action on the initial designation or modification of
a mining district."

Section 5. Section 69-36-11 NMSA 1978 (being Laws 1993,
Chapter 315, Section 11) is amended to read:

"69-36-11. EXISTING MINING OPERATIONS--CLOSEOUT PLAN
REQUIRED.--

A. An owner or operator of an existing mining
operation shall submit a permit application to the director by
December 31, 1994. The permit application shall contain all
information required by regulation of the commission, including
a proposed compliance schedule for submission of a closeout
plan within the shortest time practicable. The director shall
approve or deny the permit application within six months after
it has been deemed complete.

B. The owner or operator of an existing mining
operation shall submit a closeout plan in accordance with the
compliance schedule in the permit. The compliance schedule in
the permit shall require submission of a closeout plan by
December 31, 1995 unless the operator shows good cause for a
further extension of time. The director shall approve a
modification of a permit for an existing mining operation
incorporating a closeout plan or portion of a closeout plan if:

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(1) the closeout plan and permit application is complete;

(2) the closeout plan permit fee has been paid and the financial assurance is adequate and has been provided; and

(3) for an existing mining operation or portion of an existing mining operation that is not within a mining district, the closeout plan specifies incremental work to be done within specific time frames that, if followed, will reclaim the physical environment of the permit area to a condition that allows for the reestablishment of a self-sustaining ecosystem on the permit area following closure, appropriate for the life zone of the surrounding areas unless conflicting with the approved post-mining land use; provided that for purposes of this section, upon a showing that achieving a post-mining land use or self-sustaining ecosystem is not technically or economically feasible or is environmentally unsound, the director may waive the requirement to achieve a self-sustaining ecosystem or post-mining land use for an open pit or waste unit if measures will be taken to ensure that the open pit or waste unit will meet all applicable federal and state laws, regulations and standards for air, surface water and ground water protection following closure and will not pose a current or future hazard to public health or safety [and]. For purposes of determining whether the
achievement of a self-sustaining ecosystem or a post-mining
land use is technically or economically feasible, the director
shall consider whether the probable cost of undertaking the
reclamation measures:

(a) outweighs the probable benefits of
those measures;

(b) imposes an undue burden on
exploration or mining industry operations as a whole, including
making exploration or mining operations economically infeasible
due to the probable cost of undertaking the reclamation
measures; or

(c) imposes an undue burden on the local
economy and communities; or

(4) [the secretary of environment has provided
a written determination in the form prescribed in Paragraph (2)
of Subsection P of Section 7 of the New Mexico Mining Act] for
an existing mining operation or portion of an existing mining
operation that is within a mining district. the closeout plan
specifies measures that will be taken to reclaim the disturbed
area so that it will meet all applicable federal and state
laws, regulations and standards for air, surface water and
ground water protection following closure and will not pose a
current or future hazard to public health or safety.

C. An approval granted pursuant to this section may
be revoked or suspended by order of the director for violation
of a provision of the approved closeout plan or permit for the
existing mining operation, an approval condition, a regulation
of the commission or a provision of the New Mexico Mining Act.

D. An owner or operator of an existing mining
operation or a portion of an existing mining operation that is
included within a mining district may submit an application to
modify the applicable permit by submitting a revised closeout
plan that incorporates the reclamation measures pursuant to
this section for such operations or portions of operations.
Within ninety days after receiving a complete application to
modify the permit, the director shall notify the applicant in
writing whether the application is approvable or shall identify
in writing any deficiencies in the application. Within thirty
days after receiving an amended application responding to any
deficiencies, the director shall notify the applicant in
writing whether the application is approvable. Within thirty
days after receiving notice that the application is approvable,
the applicant shall submit a cost estimate for the approvable
closeout plan. The director shall notify the applicant in
writing that the closeout plan is approvable or identify any
deficiencies within thirty days after receiving the cost
estimate. Following approval of a cost estimate or revised
cost estimate, within thirty days after receiving a request to
adjust the financial assurance, the director shall adjust the
amount of financial assurance required for the mining

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operation."

Section 6. Section 69-36-14 NMSA 1978 (being Laws 1993, Chapter 315, Section 14, as amended) is amended to read:

"69-36-14. [CITIZENS] CITIZENS’ SUITS.--

A. A person having an interest that is or may be adversely affected may commence a civil action on his own behalf to compel compliance with the New Mexico Mining Act. Such action may be brought against:

(1) [the department of environment] the energy, minerals and natural resources department or the commission alleging a violation of the New Mexico Mining Act or of a rule, regulation, order or permit issued pursuant to that act;

(2) a person who is alleged to be in violation of a rule, regulation, order or permit issued pursuant to the New Mexico Mining Act; or

(3) [the department of environment] the energy, minerals and natural resources department or the commission alleging a failure to perform any nondiscretionary act or duty required by the New Mexico Mining Act; provided, however, that no action pursuant to this section shall be commenced if [the department of environment] the energy, minerals and natural resources department or the commission has commenced and is diligently prosecuting a civil action in a court of this state or an administrative enforcement proceeding
to require compliance with that act. In an administrative or
court action commenced by [the department of environment] the
energy, minerals and natural resources department or the
commission, a person whose interest may be adversely affected
and who has provided notice pursuant to Subsection B of this
section prior to the initiation of the action may intervene as
a matter of right.

B. No action shall be commenced pursuant to this
section prior to sixty days after the plaintiff has given
written notice to [the department of environment] the energy,
minerals and natural resources department, the commission, the
attorney general and the alleged violator of the New Mexico
Mining Act; provided, however, when the violation or order
complained of constitutes an immediate threat to the health or
safety of the plaintiff or would immediately and irreversibly
impair a legal interest of the plaintiff, an action pursuant to
this section may be brought immediately after notification of
the proper parties.

C. [Except as otherwise provided herein] Suits
against [the department of environment] the energy, minerals
and natural resources department or the commission shall be
brought in the district court of Santa Fe county. Suits [only
against] in which only one or more owners or operators of one
or more mining operations are named as defendants shall be
brought in the district court where one of the mining
operations is located. If an action is brought against [the department of environment] the energy, minerals and natural resources department or the commission and [the] an owner or operator of a mining operation, [such] the owner or operator may apply for a change of venue to the judicial district in which the mining operation is located. If not already a party, an owner or operator may intervene, upon a showing that the action relates primarily to a dispute regarding [the] a single mining operation, and apply for [such] a change of venue. The district court shall grant a change of venue upon a showing that the action relates primarily to a dispute regarding the [subject] single mining operation and a showing that a forum non conveniens analysis suggests that the location of the mining operation is a superior venue.

D. In an action brought pursuant to this section, [the department of environment] the energy, minerals and natural resources department or the commission, if not a party, may intervene.

E. The court, in issuing a final order in an action brought pursuant to this section, may award costs of litigation, including attorney and expert witness fees, to a party whenever the court determines such award is appropriate. The court may, if a temporary injunction or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the rules of civil procedure.
procedure."

Section 7. Section 74-6-4 NMSA 1978 (being Laws 1967, Chapter 190, Section 4, as amended by Laws 2001, Chapter 240, Section 1 and by Laws 2001, Chapter 281, Section 1) is amended to read:

"74-6-4. DUTIES AND POWERS OF COMMISSION.--The commission:

A. may accept and supervise the administration of loans and grants from the federal government and from other sources, public or private, which loans and grants shall not be expended for other than the purposes for which provided;

B. shall adopt a comprehensive water quality management program and develop a continuing planning process;

C. shall adopt water quality standards for surface and ground waters of the state based on credible scientific data and other evidence appropriate under the Water Quality Act. The standards shall include narrative standards and as appropriate the designated uses of the waters and the water quality criteria necessary to protect such uses. The standards shall at a minimum protect the public health or welfare, enhance the quality of water and serve the purposes of the Water Quality Act. In making standards, the commission shall give weight it deems appropriate to all facts and circumstances, including the use and value of the water for water supplies, propagation of fish and wildlife, recreational

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purposes and agricultural, industrial and other purposes. The standards for waters in a mining district established pursuant to the New Mexico Mining Act shall be set at appropriate levels to maintain the use of the land within the district for mining:

D. shall adopt, promulgate and publish regulations to prevent or abate water pollution in the state or in any specific geographic area, aquifer or watershed of the state or in any part thereof, or for any class of waters, and to govern the disposal of septage and sludge and the use of sludge for various beneficial purposes. The regulations governing the disposal of septage and sludge may include the use of tracking and permitting systems or other reasonable means necessary to assure that septage and sludge are designated for disposal in, and arrive at, disposal facilities, other than facilities on the premises where the septage and sludge is generated, for which a permit or other authorization has been issued pursuant to the federal act or the Water Quality Act. Regulations shall not specify the method to be used to prevent or abate water pollution but may specify a standard of performance for new sources that reflects the greatest reduction in the concentration of water contaminants that the commission determines to be achievable through application of the best available demonstrated control technology, processes, operating methods or other alternatives, including where practicable a standard permitting no discharge of pollutants. In making
regulations, the commission shall give weight it deems appropriate to all relevant facts and circumstances, including:

(1) character and degree of injury to or interference with health, welfare, environment and property;

(2) the public interest, including the social and economic value of the sources of water contaminants;

(3) technical practicability and economic reasonableness of reducing or eliminating water contaminants from the sources involved and previous experience with equipment and methods available to control the water contaminants involved;

(4) successive uses, including but not limited to domestic, commercial, industrial, pastoral, agricultural, wildlife and recreational uses;

(5) feasibility of a user or a subsequent user treating the water before a subsequent use;

(6) property rights and accustomed uses; and

(7) federal water quality requirements;

E. shall assign responsibility for administering its regulations to constituent agencies so as to assure adequate coverage and prevent duplication of effort. To this end, the commission may make such classification of waters and sources of water contaminants as will facilitate the assignment of administrative responsibilities to constituent agencies. The commission shall also hear and decide disputes between
constituent agencies as to jurisdiction concerning any matters
within the purpose of the Water Quality Act. In assigning
responsibilities to constituent agencies, the commission shall
give priority to the primary interests of the constituent
agencies. The department of environment shall provide
technical services, including certification of permits pursuant
to the federal act, and shall maintain a repository of the
scientific data required by this act;

F. may enter into or authorize constituent agencies
to enter into agreements with the federal government or other
state governments for purposes consistent with the Water
Quality Act and receive and allocate to constituent agencies
funds made available to the commission;

G. may grant an individual variance from any
regulation of the commission whenever it is found that
compliance with the regulation will impose an unreasonable
burden upon any lawful business, occupation or activity. The
commission may only grant a variance conditioned upon a person
effecting a particular abatement of water pollution within a
reasonable period of time. Any variance shall be granted for
the period of time specified by the commission. The commission
shall adopt regulations specifying the procedure under which
variances may be sought, which regulations shall provide for
the holding of a public hearing before any variance may be
granted;

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H. may adopt regulations to require the filing with it or a constituent agency of proposed plans and specifications for the construction and operation of new sewer systems, treatment works or sewerage systems or extensions, modifications of or additions to new or existing sewer systems, treatment works or sewerage systems. Filing with and approval by the federal housing administration of plans for an extension to an existing or construction of a new sewerage system intended to serve a subdivision solely residential in nature shall be deemed compliance with all provisions of this subsection;

I. may adopt regulations requiring notice to it or a constituent agency of intent to introduce or allow the introduction of water contaminants into waters of the state;

J. may adopt regulations establishing pretreatment standards that prohibit or control the introduction into publicly owned sewerage systems of water contaminants that are not susceptible to treatment by the treatment works or that would interfere with the operation of the treatment works;

K. shall not require a permit respecting the use of water in irrigated agriculture, except in the case of the employment of a specific practice in connection with such irrigation that documentation or actual case history has shown to be hazardous to public health or the environment; and

L. shall coordinate application procedures and
funding cycles for loans and grants from the federal

government and from other sources, public or private, with

the local government division of the department of finance

and administration pursuant to the New Mexico Community

Assistance Act."

Section 8. Section 74-6-12 NMSA 1978 (being Laws 1967,

Chapter 190, Section 11, as amended) is amended to read:

"74-6-12. LIMITATIONS.--

A. The Water Quality Act does not grant to the

commission or to any other entity the power to take away or

modify the property rights in water, nor is it the intention of

the Water Quality Act to take away or modify such rights.

B. The Water Quality Act does not apply to any

activity or condition subject to the authority of the

environmental improvement board pursuant to the Hazardous Waste

Act, the Ground Water Protection Act or the Solid Waste Act

except to abate water pollution or to control the disposal or

use of septage and sludge.

C. The Water Quality Act does not authorize the

commission to adopt any regulation with respect to any

condition or quality of water if the water pollution and its

effects are confined entirely within the boundaries of property

within which the water pollution occurs when the water does not

combine with other waters.

D. The Water Quality Act does not grant to the
commission any jurisdiction or authority affecting the relation
between employers and employees with respect to or arising out
of any condition of water quality.

E. The Water Quality Act does not supersede or limit
the applicability of any law relating to industrial health,
safety or sanitation.

F. Except as required by federal law, in the
adoption of regulations and water quality standards and in an
action for enforcement of the Water Quality Act and regulations
adopted pursuant to that act, reasonable degradation of water
quality resulting from beneficial use shall be allowed. Such
degradation shall not result in impairment of water quality to
the extent that water quality standards are exceeded.

G. The Water Quality Act does not apply to any
activity or condition subject to the authority of the oil
conservation commission pursuant to provisions of the Oil and
Gas Act [Section 79-2-12 NMSA 1978] and other laws conferring
power on the oil conservation commission to prevent or abate
water pollution.

H. The Water Quality Act does not apply to any
activity or condition subject to the authority of the mining
commission pursuant to provisions of the New Mexico Mining Act.
This subsection shall not affect the authority of a constituent
agency to require abatement of water pollution at any location
outside of an approved mining district in accordance with the
requirements of the Water Quality Act and regulations
promulgated pursuant to that act.

[HM] When changes in dissolved oxygen,
temperature, dissolved solids, sediment or turbidity in a water
of the state is attributable to natural causes or to the
reasonable operation of irrigation and flood control facilities
that are not subject to federal or state water pollution
control permitting, numerical standards for temperature,
dissolved solids content, dissolved oxygen, sediment or
turbidity adopted under the Water Quality Act do not apply.
"Reasonable operation", as used in this subsection, shall be
defined by regulation of the commission."