

**STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT**

**MULTICULTURAL ALLIANCE FOR A SAFE ENVIRONMENT
and
AMIGOS BRAVOS,**

Appellants,

v.

No. D-101-CV-2012-02318

NEW MEXICO MINING COMMISSION

**Appellee,
and**

**NEW MEXICO MINING AND MINERALS DIVISION
and
RIO GRANDE RESOURCES,**

Intervenors-Appellees.

**ORDER VACATING NEW MEXICO MINING COMMISSION ORDER AND
CERTIFYING CASE No. D-101-CV-2012-02318 TO THE COURT OF APPEALS**

This matter came before the Court pursuant to NMRA 1-074 on Appellants' appeal of the New Mexico Mining Commission's ("Commission") July 23, 2012 Memorandum Opinion and Order ("Commission Order") upholding the New Mexico Mining and Minerals Division Director's ("Director") decision to grant Rio Grande Resources' ("RGR") a renewal of standby status for its Mt. Taylor uranium mine permit ("Standby Renewal") under the New Mexico Mining Act ("Act"), NMSA 1978, § 69-36-1 *et. seq.* In addition to their appeal of the Commission Order, the Appellants filed a Motion to Certify this matter to the New Mexico Court of Appeals.

The Court has considered Appellants' Statement of Appellate Issues, the Commission's, the Mining and Minerals Division's ("Division"), and RGR's Responses, and Appellants' Replies and having heard arguments on the issues FINDS:

- 1) Sections 19.10.7.701, 19.10.5.505 and 19.10.12.1206 of the New Mexico Administrative Code and the statutory scheme of the New Mexico Mining Act require the Director to review and evaluate an applicant's financial assurance before a Standby Renewal is approved;
- 2) Sections 19.10.7.701, 19.10.5.505 and 19.10.12.1206 of the New Mexico Administrative Code and the statutory scheme of the New Mexico Mining Act also require that the Director hold a public hearing on the adequacy of a Standby Renewal applicant's financial assurance before a permit application is approved;
- 3) The record in this matter demonstrates that the Director and Commission failed to review and evaluate RGR's financial assurance before approving RGR's Standby Renewal application;
- 4) The record in this matter demonstrates that the Director and the Commission failed to give Appellants a meaningful opportunity to present views, data or argument on RGR's financial assurance;
- 5) The New Mexico Mining Act, § 69-36-7(E)(6) requires a standby permit applicant to provide an analysis of its operation's economic viability;
- 6) The applicant's economic analysis must be subject to meaningful review and evaluation, which entails meaningful public participation;
- 7) Meaningful public participation is futile if there has not been advance disclosure, as permitted by law, of the data upon which an administrative decision is made.
- 8) While NMSA 1978, § 69-36-10 requires that information such as maps, financial information, information concerning the grade or location of ore reserves and trade secret information be kept confidential, when requested and substantiated by the operator, the Act and

its implementing regulations do not contemplate allowing an operator's entire economic viability analysis to be kept confidential;

9) The record in this matter demonstrates the Director and Commission kept RGR's entire economic viability analysis confidential;

10) The record demonstrates that the Director and Commission failed to give Appellants a meaningful opportunity to present views, data and argument on RGR's economic viability analysis;

11) The Mining Act and its implementing regulations require the Director to independently evaluate all submissions of standby renewal permit applications for environmental impacts and compliance with environmental standards and regulations pursuant to 19.10.7.701 (B)(3) NMAC, including the determination submitted by the Secretary of the Environment Department pursuant to 19.10.7.701(B)(3) ("Determination").

12) The public also must have the opportunity for review and input on RGR's standby renewal application, including the Determination.

13) The record in this matter demonstrates the Director and Commission failed to conduct an independent and critical review of the Determination and failed to allow the Appellants a meaningful opportunity to present views, data or argument on the Determination;

14) The New Mexico Supreme Court case, Colonias Development Council v. Rhino Environmental Services, Inc., 138 N.M. 133, 117 P.3d 939 (N.M. 2005), ("Rhino") is directly applicable to this matter;

15) Like the public participation requirements at issue in Rhino, the Mining Act's public participation requirements mandate broad and meaningful public participation;

16) The record in this matter demonstrates that the requirements of Rhino were not met here: Appellants and the public were precluded from presenting evidence on the Determination and RGR's financial assurance;

17) The Director and the Commission acted arbitrarily, capriciously, and contrary to law by failing to review and evaluate RGR's financial assurance prior to approving RGR's Standby Renewal application and by denying Appellants a meaningful opportunity to present views, data, and argument on RGR's financial assurance prior to approving the Standby Renewal application;

18) The Director and Commission acted arbitrarily, capriciously, and contrary to law by keeping RGR's entire economic analysis confidential and failing to provide Appellants a meaningful opportunity to present views, data and arguments on RGR's economic viability analysis;

19) The Director and Commission acted arbitrarily, capriciously, and contrary to law by failing to conduct an independent review of the Determination and RGR's ability to comply with all applicable environmental laws and standards and by failing to provide Appellants a meaningful opportunity to submit views, data and arguments on the Determination and RGR's ability to comply with all applicable environmental laws and standards;

Further, having reviewed Appellants' Motion to Certify, Appellees' and Appellee-Intervenor's Responses, Appellants' Replies and having heard arguments on the Motion, the Court FINDS:

20) The issues raised in this matter are predominantly public, rather than pertaining to a private interest, and therefore meet the requirement for certification to the Court of Appeals provided for in NMRA 1-074(S)(4);

21) The issues raised in this case are not specifically limited to the Grants locale but have statewide applicability because a statewide statutory and regulatory scheme are at issue; the requirements of NMRA 1-074(S)(3) are therefore met;

22) Because the issues of interpretation of the New Mexico Mining Act and its implementing regulations raised in this case have never before been addressed, they are issues of first impression and therefore satisfy the requirements of NMRA 1-074(S)(1);

23) The issues raised in this case are likely to recur. The record indicates that it is very likely that permit applications involving this statutory and regulatory scheme will be presented in another context. Therefore, the requirements of NMRA 1-074(S)(5) are met;

24) NMRA 1-074(S) does not provide that every factor be satisfied in order to certify an appeal; however, each independent ground is sufficient to justify certification in this case;

25) Further independent grounds for certification are found in the public interest justification provided in NMSA 1978, § 39-3-1.1.

It is therefore ORDERED:

1. The July 23, 2012 New Mexico Mining Commission Memorandum and Order upholding the Director's granting of the Standby Renewal revision 10-1 to permit no. CI002RE is hereby VACATED;

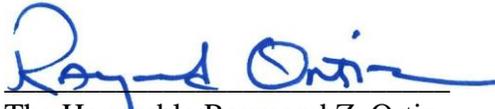
2. This matter is REMANDED to the New Mexico Mining Commission for further public hearings, consistent with this Order, on the sufficiency of Rio Grande Resources' financial assurance, the Determination, Rio Grande Resources' ability to comply with all applicable environmental laws and standards and Rio Grande Resources' economic viability analysis;

3. Consistent with NMSA 1978, Section 69-3-10, Rio Grande Resources and the Division shall provide Appellants and the public access to non-confidential portions of Rio Grande Resources' economic viability analysis.

4. This matter, Case No. D-101-CV-2012-02318, is CERTIFIED to the New Mexico Court of Appeals pursuant to NMRA 1-074(S) and NMSA 1978, § 39-3-1.1;

5. The parties shall copy this Court on all pleadings filed with the New Mexico Court of Appeals in the event this matter is accepted for certification.

Dated: August 27, 2013.



The Honorable Raymond Z. Ortiz
District Judge

Approved as to form:

Approved by electronic mail on 8/14/13
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