

RESOLUTION MCM 2012-057

A RESOLUTION REGARDING THE MESA COUNTY FEDERAL MINERAL LEASE DISTRICT, FIXING THE INITIAL TERMS OF ALL EXISTING DIRECTORS, AND BRINGING RESOLUTIONS PREVIOUSLY PASSED INTO CONFORMITY WITH SENATE BILL 12-31

Recitals

- A. In 2011, the Board of County Commissioners for Mesa County, Colorado (hereinafter "BOCC"), passed three resolutions (hereinafter collectively "the Resolutions") pursuant to the Federal Mineral Lease District Act, which was Colorado House Bill 11-1218, later codified as § 30-20-1301, *et seq.*, C.R.S. (2011) (hereinafter the "Act"). These resolutions concerned the Mesa County Federal Mineral Lease District (hereafter "MCFMLD"). These resolutions are:
1. Resolution MCM-2011-050, A Resolution Establishing the Mesa County Federal Mineral Lease District and Setting Forth the Purpose and Duties of the Mesa County Federal Mineral Lease District, adopted June 20, 2011; and
  2. Resolution MCM-2011-058, A Resolution Appointing the Initial Members of the Mesa County Federal Mineral Lease District Board, adopted June 27, 2011; and
  3. Resolution MCM-2011-077, Resolution Approving the Mesa County Federal Mineral Lease District Service Plan, adopted August 29, 2011.
- B. In 2011, eight Colorado Counties formed federal mineral lease districts pursuant to the Act: Delta, Garfield, Mesa, Moffat, Rio Blanco, Routt, Park, and Weld.
- C. As these districts began their work, it became clear the Act, as written, was in need of clarification and refinement.
- D. In its 2012 Regular Session, the General Assembly passed Senate Bill 12-31 (hereinafter "SB 12-31") Concerning Federal Mineral Lease Districts, which with the Governor's signature became law on April 6, 2012 (hereinafter "Effective Date").
- E. SB 12-31 substantially amended the Act and directed those Counties that had formed federal mineral lease districts in 2011 to pass a resolution within 90 days of the Effective Date fixing the initial terms of all existing directors.

- F. In addition, the SB 12-31 amendments reiterated that each federal mineral lease district is an independent body politic and corporate and a public instrumentality, not an agency of county or state government, and not subject to administrative direction by any department, commission, board, or agency of a county or the State.
- G. Finally, the SB 12-31 amendments have by operation of law voided portions of the Resolutions referenced above.
- H. The instant Resolution affirms the creation of the Mesa County Federal Mineral Lease District, fixes the initial terms of the existing board of directors, and brings the Resolutions into conformity with the Act as amended by SB 12-31.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Mesa County, State of Colorado, as follows:

**Directors**

1. Regarding §§ 30-20-1306(1)(a)(I) and (II), C.R.S., as amended by SB 12-31, directors of the board of directors of the MCFMLD (hereinafter "Directors") shall be appointed by the BOCC.
2. There shall be three (3) Directors of the MCFMLD. Directors shall be as determined by § 30-20-1306(1)(b), C.R.S., as amended by SB 12-31.
3. The BOCC resolves that one Director be a sitting County Commissioner, one Director be an energy industry representative, and one Director be an at-large member of the public. Commissioners may serve as Directors, but shall not constitute a majority on the MCFMLD board. § 30-20-1306(1)(c), C.R.S., as amended by SB 12-31.
4. As required by § 30-20-1306(1)(e), C.R.S., as amended by SB 12-31, the BOCC affirms the appointments of the Directors as set out in Resolution MCM-2011-058 and fixes the initial terms of the Directors as follows:
  - a. Director Craig Meis's initial term shall expire on January 15, 2013.
  - b. Director Craig Springer's initial term shall expire on January 15, 2014.
  - c. Director David Ludlam's initial term shall expire on January 15, 2015.
5. Successor directors shall serve three-year terms, and each term shall commence on January 15. Terms shall be staggered so that not more than one Director's term expires in any one year. § 30-20-1306(1)(e), C.R.S., as amended by SB 12-31.

6. Each Director shall hold office until the expiration of the term to which such Director is appointed or until a successor Director is appointed. Vacancies among the Directors shall be filled by a majority vote of the BOCC. The BOCC may remove any Director for official misconduct, incompetence, neglect of duty, or other good cause shown, so long as the removal occurs after the Director in question is given notice and an opportunity to be heard before the BOCC at a public hearing. § 30-20-1306(2), C.R.S., as amended by SB 12-31.
7. Those portions of Resolution MCM-2011-050 at Page 2, Section 2 inconsistent with § 30-20-1306, C.R.S., as amended by SB 12-31, and the instant Resolution are void as a matter of law.

#### **District Boundaries**

8. As contemplated by § 30-20-1304(2)(c), C.R.S., as amended by SB 12-31, the boundaries of the MCFMLD shall be all of Mesa County including all municipalities within Mesa County. Language to the contrary at Page 2, Section 1 of Resolution MCM-2011-050 is hereby superseded by the instant Resolution and operation of law.
9. Resolution MCM-2011-077 regarding adoption of the MCFMLD Service Plan and that portion of Resolution MCM-2011-050 at Page 2, Section 1 requiring a Service Plan are void as a matter of law pursuant to SB 12-31, which repealed § 30-20-1305, C.R.S. in its entirety. Instead the powers and limits of the MCFMLD and the Directors are statutorily defined and set forth respectively at §§ 30-20-1305.5 and 30-20-1306, C.R.S., as amended by SB 12-31. The BOCC has no power to determine the powers and limits of the MCFMLD and its Directors.
10. The MCFMLD is an independent public body politic and corporate. The MCFMLD is a public instrumentality, not an agency of county or state government and is not subject to administrative direction by any department, commission, board, or agency of Mesa County, or any county, or the State of Colorado. § 30-20-1305.5(1), C.R.S.

#### **Directors – Powers and Duties**

11. Because the powers and duties of the MCFMLD Directors are statutorily defined at § 30-20-1307, C.R.S., as amended by SB 12-31., Section 3.a. at Page 3 of Resolution MCM-2011-050 is void as a matter of law.
12. Regarding the distribution of funding, those portions of Resolution MCM-2011-050 at Page 3, Section 3.b. inconsistent with § 30-20-1307, C.R.S., as amended by SB 12-31, are void as a matter of law. The BOCC has no authority over the MCFMLD or the Directors regarding the distribution of funding the MCFMLD receives.

**Effective Date**

13. Resolution MCM-2011-050 at Page 3, Section 5 is void as a matter of law insofar as it suggests a two-year period of activity for the MCFMLD. The BOCC expressly declines its one-time option under § 30-20-1304(6), C.R.S., as amended by SB 12-31, to initiate and pass a resolution to dissolve the MCFMLD.
14. Hereafter the MCFMLD shall, by operation of law, have perpetual existence unless and until dissolved by the MCFMLD Directors, following a notice and opportunity to be heard and as set forth in § 30-20-1304(5) C.R.S., as amended by SB 12-31.

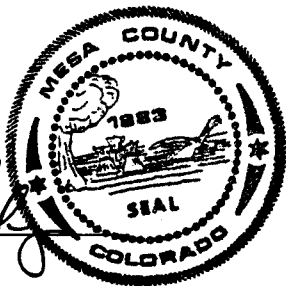
**Meetings**

15. Resolution MCM-2011-050 at Page 3, Sections 4 is void as a matter of law because the BOCC has no authority over the MCFMLD such that is could dictate frequency, location, or conduct of meetings of the Directors. SB 12-31.
16. Pursuant to § 30-20-1306 (3) C.R.S., as amended by SB 12-31, all special and regular meetings of the Directors shall be held pursuant to the Open Meetings Law, § 24-6-401, *et seq*, C.R.S., as amended.

DATED this 25<sup>th</sup> day of June, 2012.

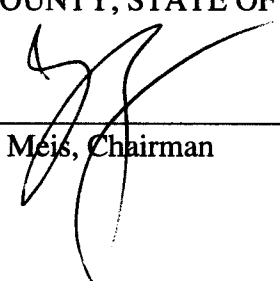
ATTEST:

  
Clerk to the Board



BOARD OF COUNTY COMMISSIONERS OF  
MESA COUNTY, STATE OF COLORADO

By: \_\_\_\_\_

  
Craig Meis, Chairman