

**NEW MEXICO COAL SURFACE MINING COMMISSION MEETING
AND PUBLIC HEARING**

**AUGUST 6, 1997
(Revised October 21, 1997)**

A New Mexico Surface Coal Mining Commission Meeting was held on August 6, 1997 at 9:00 a.m., in Santa Fe, New Mexico in Morgan Hall of the State Land Office Building.

The following members were present:

Mr. Robert Q. Rogers, Jr.	Chairman, State Engineer's Dept.
Ms. Gretchen Hoffman	Bureau of Mines and Mineral Resources
Dr. James Bailey	Department of Game and Fish
Ms. Jami Bailey	State Land Office
Dr. Ed Kelley	Environment Department
Mr. J.R. Roybal	N.M. Soil and Water Conservation Division
Dr. Robert McCaslin	Agricultural Experiment Station
Mr. Marshal Conover	Public Member

Also Present:

Ms. Rosemary Maestas	Council for the Commission
Mr. William Sanderford	MMD, Clerk for the Commission

Chairman Rogers called the meeting to order at 9:00 a.m.

Item 1 Roll Call

Item 2 Approval of the Agenda

Mr. Paul Bloom, on behalf of the Zuni Pueblo, asked to make a statement under Item 8 of the agenda regarding a recent modification of the permit.

Mr. Rogers agreed that Mr. Bloom can make a statement under Item 8 of the agenda.

No other changes were made to the agenda.

Mr. Bailey moved to accept the agenda.

Mr. Kelly seconded the motion.

The motion was passed.

Item 3 Adoption of minutes of the June 13, 1997 Coal Surface Mining Commission Special Meeting.

Ms. Susan Jordan, on behalf of the Ghahate, et al., asked if Mr. Bill Sanderford (clerk for the Commission) was present during the executive session. Mr. Sanderford, indicated that he was present during the entire session.

There were no other discussions of the minutes.

Mr. Kelley made a motion to accept the minutes.

Mr. Bailey seconded the motion.

The Motion was passed.

Item 4 Adjourn to Executive Session (Pursuant to NMSA 1978, Section 10-15-1H3)

Mr. Conover made a motion to close the meeting for the executive session.

Mr. Kelley seconded the motion.

~~The vote was unanimous.~~

The Commission goes into executive session (at 9:08 a.m.).

Item 5 Return to Open Session

The session resumed at 11:18 a.m.

Item 6 Action on Motion to Remand Based on Evidence Before Commission

Mr. Rogers indicated that there was a statement regarding the executive session.

Mr. Conover indicated that only matters specified in the motion were discussed.

Mr. Rogers indicated that the following motions were before the Commission:

- Jon F. Ghahate, et al., motion for remand.
- Appellant, Pueblo of Acoma, motion to remand for further fact finding.
- Appellant, Pueblo of Zuni's motion for leave to present additional evidence.
- SRP's motion for additional discovery.

Mr. Bailey moved to deny all four motions.

Mr. Kelley seconded the motion.

The motion was passed unanimously.

Mr. Rogers indicated that the following motions were before the Commission:

- Salt River Project's motion regarding and response to Appellants docketing statements.
- Appellant's joint response to Salt River Project's motion regarding and response to Appellant's docketing statements.
- Salt River Project's reply to Appellant's joint response to Salt River Project's motion regarding and response to Appellant's docketing statements.

Mr. Kelley made a motion to deny all three motions.

Mr. Bailey seconded the motion.

The motion was passed unanimously.

MMD had also filed a motion to strike Exhibit 2 of the Pueblo of Zuni's docketing statement.

The motion was passed unanimously.

Mr. Rogers indicated that Exhibit 2 of the Pueblo of Zuni's docketing statement is stricken from the record effective today.

Item 7 Commission Discussion of Motions Pending in the Fence Lake Mine Appeal

No discussions were made.

Item 8 Other Business

Mr. Rogers asked Mr. Bloom to make his statement.

Mr. Bloom expressed concern and surprise that the Mining and Minerals Division approved a modification without the Pueblo's knowledge or input or without consulting the commission. He believed it would be necessary to file an additional motion for remand and would need until next Wednesday to do it.

Ms. Susan Jordan indicated that she learned of this modification yesterday and filed a request for a hearing.

Mr. Bloom offered to answer any questions as to why he believed that the modifications were significant.

Ms. Leach indicated that she thought Mr. Bloom was only going to make a statement and not a request to stay or change the calendar and the briefing schedule. Ms. Leach believed that this was an issue to be heard by the Director at their request and was not an issue for the Commission today.

Mr. Bloom indicated that the permit whose decision he was appealing is changing in significant measures.

Mr. Lematta indicated that it is SRP's position that this matter is not an issue of the appeal, that the appeal is on the record before the commission and it was a matter of whether or not the Director acted properly in approving the permit at that time. Mr. Lamatta also indicated that otherwise, every time SRP comes in for a modification to the permit, which happens routinely, then they will use

the same argument and will need additional time to take new evidence.

Mr. Rogers made a decision to continue with the existing schedule, and that the matter brought up by Mr. Bloom is before the Director.

Mr. Sanderford suggested adding an alternate clerk to provide better service for times that he was not available.

Ms. Jordan indicated a concern about Mr. Sanderford's function as a clerk and believed there was an appearance of impropriety because Mr. Sanderford was involved in the permitting process while still communicating with the Coal Commission.

Ms. Leach indicated that under the statute, and in many circumstances, the Division staff have served as Commission staff. Ms. Leach offered to come up with a person who is not in the coal bureau and suggested Ms. Linda Duran.

Ms. Jordan thought that Linda Duran would be acceptable unless she learned of some other information.

Mr. Bailey accepted this decision but noted for the record that he knows of no such impropriety on the part of Mr. Sanderford.

Item 9 Future Meetings

Mr. Rogers indicated that the next meeting is tentatively set for October 23, 1997.

Ms. Jordan asked if oral arguments will be accepted.

Mr. Rogers indicated that this will be decided later and all parties will be notified in a timely fashion.

Mr. Kelley made a motion to adjourn.

Mr. Conover seconded the motion.

The motion was passed.

The meeting adjourned at 11:45 a.m.

BEFORE THE NEW MEXICO
COAL SURFACE MINING COMMISSION

RECEIVED
DEC 1 1997
MINING & MINERALS DIV. 96-04
PERMIT NO. 96-04

IN THE MATTER OF THE SALT RIVER)
PROJECT AGRICULTURAL IMPROVEMENT)
AND POWER DISTRICT'S)
APPLICATION FOR A PERMIT)
TO CONDUCT COAL SURFACE MINING)
AND RECLAMATION OPERATIONS)
AT THE FENCE LAKE SURFACE MINE)

ORDER OF THE COMMISSION

The New Mexico Coal Surface Mining Commission (Commission) having received argument on the following motions took action upon them at the August 6, 1997 meeting. In public session, the Commission took the following actions by unanimous vote:

1. Gahate, et al., motion for remand was denied.
2. Pueblo of Acoma's motion to remand for further fact finding was denied.
3. Pueblo of Zuni's motion for leave to present additional evidence was denied.
4. Salt River Project's (SRP) motion for additional evidence and additional discovery was denied.
5. SRP's motion regarding and response to Appellants docketing statements was denied.
6. Appellants' joint response to SRP's motion regarding and response to Appellants docketing statements was denied.
7. SRP's reply to Appellants' joint response to SRP's motion regarding and response to Appellants docketing statements was denied.

The Commission also acted to strike Exhibit 2 of the Pueblo of Zuni's docketing statement from the record.

The actions of the Commission took effect during the August 6, 1997 meeting. This Order is entered to memorialize the oral decisions of the Commission.

The Clerk of the Commission shall provide copies of this Order to all parties.

It is so ordered.

COAL SURFACE MINING COMMISSION


R. Q. Rogers, Chairman


Date