



**NEW MEXICO ENERGY, MINERALS
& NATURAL RESOURCES DEPARTMENT**

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Jennifer A. Salisbury
CABINET SECRETARY

October 3, 1997

TO:

FROM: Linda M. Duran
Clerk, NMCSMC

RE: October 16, 1997 Commission Meeting

Enclosed, for your review, is material pertaining to the October 16th Coal Surface Mining Commission Hearing. Enclosures include:

1. Minutes from the Commission's August 6, 1997 Meeting
2. Notice of Appeal (2)
3. Agenda
4. Copy of the Public Notice

The Administrative Record will be available for review. Thank you.

Sincerely,

LINDA M. DURAN
Clerk
Coal Surface Mining Commission

Encls

10/03/97
Sent All Commission Members L. Duran

NEW MEXICO COAL SURFACE MINING COMMISSION MEETING AND PUBLIC HEARING

October 16, 1997

A New Mexico Surface Coal Mining Commission Special Meeting was held on October 16, 1997, at 9:00 a.m., in Santa Fe, New Mexico in Room 321 of the Capitol Building.

The following members were present:

Mr. Robert Q. Rogers, Jr.	Chairman, State Engineer's Office
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. Bobby McCaslin	Agricultural Experiment Station
Mr. John Bokich	Public Member

Also Present:

Ms. Carol Leach	MMD, Attorney
Mr. Patrick Simpson	Office of the Attorney General
Ms. Kay Hatton	Acting Clerk
Mr. Doug Wolf	Ghahate Appellants, Attorney
Mr. Brian Lematta	Salt River Project, Attorney
Mr. Mark Smith	Salt River Project, Attorney
Ms. Rebecca Dempsey	Pueblo of Zuni, Attorney

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

Item 1 Roll Call

Item 2 Approval of the Agenda

Ms. Carol Leach pointed out that Item 4 of the Agenda should read "Hearing of Appeal on the Decision of the Director of the Mining and Minerals Division to Deny the Pueblo of Zuni and the Ghahate Appellants a Hearing on the Granting of a Modification" and is not an appeal of the modification.

Mr. Rogers asked if there is a motion to approve the agenda as modified by Ms. Leach.

Dr. Kelley made a motion to approve the agenda.

Mr. Bokich seconded the motion.

The motion was passed unanimously.

Item 3 Adoption of minutes of the August 6, 1997 Coal Surface Mining Commission Meeting.

Ms. Carol Leach suggested that the following changes be made to the minutes of the previous meeting:

- 1) Page 2, Item 4 - Indicate that there was a vote regarding the adjournment to an executive session and that the vote was unanimous.
- 2) Page 3, Last Item - Indicate that the Mining and Minerals Division filed a motion to strike Exhibit 2 and that the motion was voted on and approved.
- 3) Page 4, Item 8 - Correct the spelling of "weather" to "whether".

Mr. Rogers asked if there was a motion to accept the minutes as modified.

Dr. McCaslin made the motion.

Dr. Kelley seconded the motion.

The motion was passed unanimously.

Item 4 Hearing of the Appeal on the Decision of the Director of the Mining and Minerals Division to Deny the Pueblo of Zuni and the Ghahate Appellants a Hearing on the Granting of a Modification

Mr. Rogers indicated the Commission would like to have the briefs filed simultaneously within 20 days, by November 5, 1997, on whether the matter of the appeal is a modification or a revision and another 20 days, November 25, 1997, for response briefs with no reply briefs.

Ms. Rebecca Dempsey reminded the Commission that the Pueblo of Zuni filed a second motion to remand that also deals with the modification and recommended that the Commission put off any briefings on this appeal until the Commission has disposed of that motion for remand.

Ms. Dempsey indicated that the Zuni believes that they are entitled to a hearing whether this is a modification or a revision.

Ms. Leach suggested staying on track by dealing with each issue separately and possibly delay any decision on the appeal in chief until some other time.

Mr. Lematta suggested to stay on track with the main appeal, and then decide the modification issue, and the Zuni's would still have the right to argue that they have the right to appeal minor modifications.

Mr. Rogers decided to proceed with his original suggestion with submitting briefs on November 5 and response briefs November 25 and will consider Zuni's second motion at that time. Mr. Rogers also denied the Zuni,s request for oral argument.

Mr. Lematta asked if the briefs are served by mail, will they will be granted additional time or do they need to be hand delivered.

Mr. Rogers said the briefs should be faxed.

Item 5 Other Business

Ms. Jami Bailey advised the Commission that she had some concern of a possible conflict of interest over some recent information that she had received. Ms. Bailey indicated that she felt that this information would not influence her decisions concerning the issues before the Commission.

Mr. Patrick Simpson indicated that if this was just a matter of duplication of role, he believed that this would not be enough to create an appearance of impropriety.

Ms. Bailey believed that this was the case.

Ms. Dempsey indicated that as long as Ms. Bailey determined that her extrajudicial knowledge would not impair her ability to sit impartially, then she believed the Pueblo of Zuni would not argue otherwise.

Mr. Doug Wolf indicated that he had the same position.

Minutes

Page 4

October 16, 1997

Ms. Bailey expressed to Chairman Rogers that she was satisfied that she had no conflict, but didn't want any other party to assume there was a conflict.

Mr. Rogers indicated that he was confident that Ms. Bailey will make an unbiased decision.

Item 9 Future Meetings

Mr. Rogers asked if there was a motion to adjourn.

Dr. Kelley made a motion to adjourn.

Mr. Bokich seconded the motion.

The motion was passed and the meeting adjourned at 9:35 a.m.