

COAL SURFACE MINING COMMISSION

R. Q. ROGERS, CHAIRMAN

**MEETING
DECEMBER 15, 1998
9:00 A.M.**

**PUBLIC EMPLOYEES RETIREMENT ASSOCIATION
(PERA) BUILDING, ROOM 408
SANTA FE, NEW MEXICO**

AGENDA

- 1. Roll Call**
- 2. Approval of the Agenda**
- 3. Adoption of Minutes of April 2, 1998 Coal Surface Mining Commission Meeting and Public Hearing**
- 4. Introduction of the New Commission Clerk**
- 5. Final Order on the Fence Lake Appeal**
- 6. Open Meetings Act Resolution**
- 7. Code of Conduct**
- 8. Discussion and Consideration of Coal Regulatory Amendments and Update on the Status of the Regulations**
- 9. Other Business**
- 10. Future Meetings**

MINUTES
NEW MEXICO COAL SURFACE MINING COMMISSION MEETING
December 15, 1998

A New Mexico Coal Surface Mining Commission Meeting was held on December 15 at 9:00 a.m., in Santa Fe, New Mexico in the PERA Building, Room 408.

The following members were present:

Mr. Robert Q. Rogers, Jr.,	Chairman, State Engineer's Office
Ms. Gretchen Hoffman	Bureau of Mines and Mineral Resources
Ms. Amy Fisher	Department of Game and Fish
Dr. Robert McCaslin	Agricultural Experiment Station
Mr. John Bokich	Public Member
Mr. Marshall Conover	Public Member
Dr. Ed Kelley	Environment Department
Mr. R. J. Roybal	Soil and Water Conservation Districts

The following members were absent:

Ms. Jami Bailey	State Land Office
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Also Present:

Mr. John Pfeil	Commission Clerk
Mr. Patrick Simpson	Office of the Attorney General
Ms. Carol Leach	Attorney for the Mining and Minerals Division
Ms. Jenny McCumber	Attorney for the Mining and Minerals Division
Mr. Doug Bland	Mining and Minerals Division
Mr. Mark Smith	
Mr. Tom Outler	
Mr. Robert Barnard	
Mr. Mark Hilos	
Mr. Bill Brancard	

Chairman Rogers calls the meeting to order at 9:05 a.m.

1. Roll Call.

Chairman Rogers performs roll call.

2. Approval of the Agenda

Chairman Rogers asks if there are any changes to the agenda. No changes were made. Dr. Kelley motions to accept the agenda, with second by Dr. McCaslin. The motion passes unanimously.

3. Review of the Minutes of the April 2, 1998 meeting.

Chairman Rogers asks if there is any comments or changes to the April 2, 1998 meeting minutes. Mr. Bokich moves that the minutes be accepted, second by Dr. Kelley. The motion passes unanimously.

4. Introduction of the New Commission Clerk

Chairman Rogers introduces John Pfeil to the Commission and Mr. Pfeil spends a few minutes discussing his background and experience.

5. Final Order on the Fence Lake Appeal

Chairman Rogers asks whether there is any discussion on the final order in the Fence lake Appeal. He initiates the discussion by indicating that under *C. Cultural and Religious Issues* of the Final Order, No. 5 the word "surface" should be injected before the word "mining". Mr. Bokich states that under the same section, No. 13 the word "reasonably" should be injected before the word "mitigate". Mr. Simpson agrees with the proposed changes.

Mr. Simpson states that he has additional comments from Commissioner Bailey, who was unable to attend the meeting, and from Mr. Brancard, both from the State Land Office. Mr. Simpson states that Ms. Bailey wanted the following interlineated, "The regulations allow the Director of the Mining and Minerals Division to determine permit changes or modifications or revisions without public notice or input". Mr. Simpson went on to state that Ms. Bailey and Mr. Brancard also thought it appropriate to add 7a to the *Conclusions of Law* section of the order which states that "The proposed mining operation will not cause material damage to the surrounding hydrologic regime or existing water uses". Mr. Brancard, who is asked whether Ms. Bailey's input was accurately reflected, indicates that it was but states he has one additional change. Under *A. Description of the Proposed Mine*, No. 1 he suggests that the word "public" is confusing and should be replaced with the words "state and federal".

Mr. Bokich states that he is uncomfortable with the term "substantial" as it is used in *C. Cultural and Religious Issues* of the Final Order, No. 12. Some discussion ensues between Mr. Bokich and Mr. Simpson. Chairman Rogers asks for a vote on removing the word "substantial". The Commission votes unanimously to remove it.

Chairman Rogers asks if there are any other comments and whether a vote should be taken. Mr. Simpson states that he would like the Commission to vote on the form of the order, either as revised or further revised, as well as the designation of the person who will sign the final version of the order. Chairman Rogers indicates that he will sign the order and calls for a motion to accept the Findings of Fact, Conclusions of Law and the Final Order as amended by the discussion.

Mr. Conover moves to accept the order, as amended. Mr. Bokich seconds. The motion is adopted unanimously.

Mr. Mark Smith, representing SRP, questions the ruling on the SRP/MMD motion to strike the alternative findings and conclusions that were submitted by the appellants. Some discussion ensues about the legal effects of such an action after which Chairman Rogers makes a motion to deny SRP/MMD motion to strike petitioner's alternative proposed findings and conclusion. Second by Dr. Kelley. Motion passes unanimously after some additional discussion and clarification

6. Open Meetings Act Resolution

Mr. Simpson states that the resolution is exactly proforma from what the Commissioners have adopted in the past. Chairman Rogers asks if there are any comments about the resolution or any motions. Dr. McCaslin moves to accept the Open Meetings Resolution as presented. Dr. Kelley seconds. The motion passes unanimously.

7. Code of Conduct

Mr. Simpson states that the code is proforma, that it is based on a form that was developed by the Secretary of States Office, and that he has made one minor addition. The addition is "Commission members shall not state their vote on any matter before the Commission prior to the time the Commission formally calls for a vote on the matter. Mr. Simpson states that the language was added based on procedures of administrative law and problems that had arisen on other boards and commissions.

Chairman Rogers asks if there is any other discussion. Dr. Kelley makes a motion to adopt the Code of Conduct as written. Second by Mr. Conover. Motion is adopted unanimously.

8. Discussion and Consideration of Coal Regulatory Amendments and Update on the Status of the Regulations

James O'Hara introduces himself as the permit coordinator for the Mining and Minerals Division. He states that he comes before the Commission to rectify a number of Office of Surface Mining (OSM) deficiencies prior to recodification of the state's regulations. He explains that the prior regulations had been recodified but that in the meanwhile additional OSM comments required additional changes which he wanted to explain to the Commission. Mr. O'Hara describes changes requested by OSM including changes to several definitions, cross-referencing sections to various technical documents, subsidence control and associated buffer zones, and the removal of Subpart 15 relating to mine reclamation.

Mr. Bokich suggests changes to the definition of material impairment. Mr. O'Hara explains that changes are often difficult gaining acceptance from OSM and that unless the change is seen by the Commission as necessary, it could be problematic and time-consuming. Mr. Bokich asks additional questions about impoundments and suggests new language in the section 2071, *Subsidence Control buffer Zones*. Mr. O'Hara again states the difficulty of language changes and that it would not effect any operations in the state.

Mr. Conover expresses concern over the meaning of the word "correct". A discussion ensues about who defines the term, who is involved in determining how it's used, and OSM's oversight role.

Mr. Bokich discusses the importance of having regulations responsive to the needs of this state, not just OSM's needs. Mr. O'Hara expresses his willingness to work with the Commission on any important changes that they think are necessary.

Chairman Rogers asks if there is a motion to accept the changes as presented by MMD. Dr. McCaslin moves to accept. Mr. Bokich seconds. The motion passes unanimously.

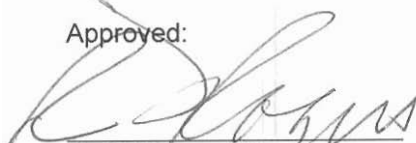
9. Other Business

Chairman Rogers asks if there is any other business. Carol Leach, General Counsel for EMNRD states that the Commission is under the Sunset Act and that if not reaffirmed during this session, it dies. She states that the Legislature is considering some changes to the makeup of the Commission. In response to a question from Chairman Rogers Ms. Leach states that the sunset first applies to the Commission, which can continue to operate for one year, and then both the Commission and the statute enabling it, dies.

10. Adjourn

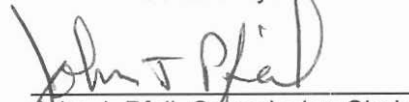
Chairman Rogers expresses his thanks to Linda Duran for her service as Commission Clerk expressing that she was appointed at a difficult time and did a very good job. Mr. Bokich moves to adjourn the session. Dr. Kelley seconds. Motion passes unanimously. Meeting adjourned at 10:03 a.m.

Approved:


R. Q. Rogers, Chairman

Nov 3 1999
Date

Minutes by:


John J. Pfeil, Commission Clerk

COAL SURFACE MINING COMMISSION

OPEN MEETINGS RESOLUTION

_____ WHEREAS, the Coal Surface Mining Commission met in regular session on December ____, 1998, as per law; and

_____ WHEREAS, Section 10-15-1(B) of the Open Meetings Act (NMSA 1978, Sections 1-15-1 through 10-15-4) states that, except as may be otherwise provided in the Constitution or the provisions of the Open Meetings Act, all meetings of a quorum of members of any board, council, commission or other policy-making body of any state agency held for the purpose of formulating public policy, discussing public business or for the purpose of taking any action within the authority of or the delegated authority of such body, are declared to be public meetings open to the public at all times; and

_____ WHEREAS, any meetings subject to the Open Meetings Act at which the discussion or adoption of any proposed resolution, rule, regulation or formal action occurs shall be held only after reasonable notice to the public; and

WHEREAS, Section 10-15-1(C) of the Open Meetings Act requires the New Mexico Coal Surface Mining Commission to determine annually what constitutes reasonable notice of its public meetings;

NOW, THEREFORE, BE IT RESOLVED by the Coal Surface Mining Commission that:

1. All meetings shall be held in the City of Santa Fe or as indicated on the meeting notice.
2. Regular meetings shall be held as needed at the call of the Chair or a majority of commissioners. A proposed agenda will be available from the New Mexico Energy, Minerals and Natural Resources Department during the week before the meeting. Items on which the Commission may take action may be added to the agenda up to twenty-four (24) hours prior to the meeting. Notice of regular meetings will be given ten (10) days in advance of the meeting date.
3. Special meetings may be called by the Chairperson or a majority of the members upon three (3) days notice.
4. Emergency meetings will be called only under circumstances which demand immediate action to protect the health, safety and property of citizens. The Coal Surface Mining Commission will avoid emergency meetings whenever possible. Emergency meetings may be called by the Chairperson or a majority of the members upon twenty-four (24) hours' notice, unless threat of personal injury or property damage require less notice.

NEW MEXICO COAL SURFACE MINING COMMISSION


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

Permit No. 96-04

ADDENDUM TO FINAL ORDER

This matter is before the Chair of the Coal Surface Mining Commission *sua sponte* to correct an editing error in the Final Order dated December 15, 1998. The word "substantial" appears in Finding no. 12, on page 6 of the Final Order. At the December 15, 1998, hearing on the form of final order, the Commission, on motion, voted unanimously to strike that word but in the editing process the word was not stricken. Therefore, the Chair orders the word "substantial" is stricken from Finding no. 12, page 6 of the Final Order in order to accurately reflect the vote of the Commission.

DATED January 12, 1999.


Robert Q. Rogers, Chair
Coal Surface Mining Commission

JAN 1999
FLETC-01-004
Mining & Minerals
Division

mailed to Commission and
Attorneys: Inc.