

COAL SURFACE MINING COMMISSION

R. Q. ROGERS, CHAIRMAN

**RULEMAKING HEARING AND PUBLIC MEETING
NOVEMBER 16, 2001
10:00 A.M.**

**ENERGY MINERALS AND NATURAL RESOURCES
DEPARTMENT
OIL CONSERVATION DIVISION CONFERENCE ROOM
SANTA FE, NEW MEXICO**

- 1. Roll call**
- 2. Approval of the agenda**
- 3. Adoption of minutes of November 14, 2000 New Mexico Coal Surface Mining Commission Meeting and Hearing**
- 4. Regulations 19.8 NMAC, pursuant to NMSA 1979 69-25A-6**
- 5. Discussion and possible adoption of the Open Meetings Act Resolution**
- 6. Update on pending litigation, with possible executive session**
- 7. Other business**
- 8. Adjourn**

**NEW MEXICO COAL SURFACE MINING COMMISSION
MEETING and HEARING**

November 16, 2001

A New Mexico Coal Surface Mining Commission Public Meeting was held on November 16, 2001 at 10:00 a.m., in the Oil Conservation Division conference room on 1220 So. St. Francis Drive, Santa Fe, New Mexico.

The following members were present:

Mr. Robert Q. Rogers, Jr.,	Chairman, State Engineer's Office
Ms. Jami Bailey	State Land Office
Mr. Greg Lewis	Environment Department
Mr. Tod W. Stevenson	Department of Game & Fish
Mr. Dushan P. Milovich	Public Member
Dr. Dinus Briggs	Agricultural Experiment Station
Ms. Gretchen Hoffman	Bureau of Mines & Mineral Resources
Mr. J.R. Roybal	Soil & Water Conservation Districts

The following members were absent:

Mr. Dan Rubin	Assistant Attorney General
---------------	----------------------------

Also present:

Mr. Ted Apodaca	Attorney, Mining & Minerals Division
Ms. Carol Leach	Attorney, Mining & Minerals Division
Mr. Jim O'hara	Mining & Minerals Division

Chairman Rogers calls the meeting to order at 10:00 a.m.

1. Roll call

Chairman Rogers performs the roll call.

2. Approval of the agenda

Chairman Rogers asks if there are any changes to the agenda. Motion by Mr. Greg Lewis to approve the agenda; second by Mr. Dushan Milovich. The motion passes unanimously on a voice vote.

3. Adoption of minutes of November 28, 2000 New Mexico Coal Surface Mining Commission Meeting and Hearing

Chairman Rogers asks if there is a motion to accept the minutes of November 28, 2000. Amendments and corrections were made to the minutes. With these changes a motion by Mr. Stevenson to accept the minutes; second by Dr. Dinus Briggs. The motion passes unanimously on a voice vote.

4. Regulations 19.8 NMAC, pursuant to NMSA 1979 69-25A-6

Jim O'Hara gave a detailed explanation of all the regulatory changes. Amendments, corrections and clarifications were made. A motion was made by Ms. Jami Bailey to accept the rules changes with editorial changes, after an independent editorial review is made with those changes and to provide Mr. O'Hara the authority to check to compare languages between federal and the state to ensure that the language for the state is correct; second by Mr. Tod Stevenson. The motion passes unanimously.

5. Discussion and possible adoption of the Open Meetings Act Resolution

Chairman Rogers opened discussion of the adoption of the Open Meeting Act Resolution. Mr. Rubin was not present to defend the act. No questions or issues on the act. A motion to accept the Open Meeting Act Resolution was made by Dr. Dinus Briggs; second by Mr. Dushan Milovich. The motion passes unanimously on a voice vote.

6. Update on pending litigation, with possible executive session

Ted Apodaca provided the Commission with an update on the Fence Lake litigation. The various appeals taken by Zuni Pueblo from the Commission's actions are all pending before the First Judicial District Court. This involves the permit for the Fence Lake coal mine that is operated by Salt River Project or SRP.

On October 11th of this year Judge James Hall, who is the judge assigned to this case, held a hearing, which is oral argument, on all the pending appeals that were filed by Zuni. Paul Ritzma represented the Commission at that hearing. At the end of the hearing, the judge announced that he was taking the matter under advisement.

The Court in this particular instance sits as an appeal court reviewing the Commission's action and he is going to write an opinion. The issues that were presented at the hearing are the same issues that were argued by the Zunis involving hydrology, due process and historic properties. There are four separate appeals.

The first appeal or the lead appeal is from the Commission's action approving Permit 96-04. That is the permit that was issued by the MMD Director for the Fence Lake coal mine. That

appeal, involves issues of hydrology, due process claims raised by the Zunis and also issues involving traditional cultural properties.

A second appeal was taken by the Zunis and is also before the district court from this Commission's order, which approved a modification to the permit, made by the director, which approved a modification to the monitoring plan. The monitoring plan is for wells that will monitor levels in the aquifer to protect and assure the protection of Zuni Salt Lake.

A third appeal from the Zunis involves the Commission's January 2000 order which affirmed an earlier order by the MMD Director approving an extension of time for Salt River Project to commence mining. Due to the litigation and other delays associated with actual mining has not started, and the director, has approved an extension for mining to occur.

The fourth appeal that is pending before the district court -- are all being consolidated in one matter. This involves the Commission's April 2000 order which affirmed an earlier MMD Director's order not to reopen the permit as requested by Zuni Pueblo to conduct a de novo review of the impact of SRP's mine on the neutral zone, the sanctuary district. During the litigation, the neutral zone and sanctuary district was declared eligible for listing on the National Register, and the Zuni wanted that matter reconsidered and re-evaluated and the director declined to do so. This Commission upheld that decision.

This is a five-year permit, and by its terms it had to be renewed this summer. And on July 12, 2001, the MMD Director issued a permit renewal of that permit - permit 2001-04. The Zunis have also appealed that permit renewal, and is now on an administrative appeal. The Zunis are not the only parties to that appeal. Salt River Project and an environmental group called The Center for Biological Diversity also have filed appeals, or are requesting hearings in this matter. The MMD Director will conduct administrative hearings and has entered a schedule.

The schedule that has been adopted starts with preliminary motions, which have been filed. Later this year, all parties will file additional motions. Sometime in the spring, discovery will start followed by additional motions. The hearing has been tentatively set for June 26, 2002. We have a rather unusual situation where the fate of the original permit is before the district court, but the renewal of that permit is now before the MMD Director, and depending on the outcome of that matter, may find its way before this Commission as well sometime late next year or the fall of next year.

7. Other business

No other business.

7. Adjourn

Chairman Rogers asks if there is any other business before the Commission. After hearing none he asks if there is a motion to adjourn. Motion to adjourn by Mr. Greg Lewis, second by Dr. Dinus Briggs. The motion passes unanimously on a voice vote. The meeting adjourns at 11:12 a.m.

Approved:

Minutes by:

R. Q. Rogers, Chairman

Date

Veronica G. Aragon
Commission Clerk

COAL SURFACE MINING COMMISSION

OPEN MEETINGS RESOLUTION

WHEREAS, the Coal Surface Mining Commission met in regular session on November 16, 2001, 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.

5. For the purposes of regular meetings described in paragraph 2 of this resolution, notice requirements are met if notice of the date, time, place and general subject matter to be discussed is placed in newspapers of general circulation in the state. The Coal Surface Mining Commission shall also mail copies of the written notice to those broadcast stations licensed by the Federal Communications Commission and newspapers of general circulation which have made a written request for notice of public meetings. Notice shall also be mailed to those who have previously requested advance notice of such meetings and whose names and addresses are on a mailing list maintained by the Energy, Minerals and Natural Resources Department. The notice shall indicate where the public may obtain a copy of the proposed agenda.
6. For the purposes of special meetings and emergency meetings described in paragraphs 3 and 4 of this resolution, notice requirements shall be met by posting notices in the main office of the Energy, Minerals and Natural Resources Department in Santa Fe, and by telephonic notice to those broadcast stations licensed by the Federal Communications Commission and newspapers of general circulation that have made a written request for notice of public meetings.
7. The Coal Surface Mining Commission may close a meeting to the public only if the subject matter of such discussion or action is exempted from the open meeting requirement under Section 10-15-1(E) of the Open Meetings Act.
 - (a) If any meeting is closed during an open meeting, such closure shall be approved by a majority vote of a quorum of the Coal Surface Mining Commission taken during the open meeting. The authority for the closure and the subjects to be discussed shall be stated in the motion for closure and the vote on closure of each individual member shall be recorded in the minutes. Only those subjects specified in the motion may be discussed in a closed meeting; and
 - (b) If the decision to hold a closed meeting is made when the Coal Surface Mining Commission is not in an open meeting, the closed meeting shall not be held until public notice, appropriate under the circumstances and stating the specific provision of law authorizing the closed meeting and the subjects to be discussed, is given to the members and to the general public, and
 - (c) Except as provided in Section 10-15-1(E), any action taken as a result of discussions in a closed meeting shall be made by vote of the Coal Surface Mining Commission in an open public meeting.

Passed by the New Mexico Coal Surface Mining Commission this 16th day of November, 2001


Chairman, Coal Surface Mining Commission

Nov 15, 2001