

COAL SURFACE MINING COMMISSION MEETING

R. Q. ROGERS, CHAIR

MEETING AND PUBLIC HEARING

APRIL 2, 1998

9:00 A.M.

CAPITOL BUILDING, ROOM 321

SANTA FE, NM

AGENDA

1. Roll Call
2. Approval of the Agenda
3. Adoption of Minutes of the December 2, 1997 Coal Surface Mining Commission Meeting and Public Hearing
4. Open Meetings Act Resolution
5. Discussion of Adoption of Proposed Revegetation Standards
6. Adjourn to Executive Session; Discussion of Combined Appeals (Pursuant to NMSA 1978, Section 10-15-1H3).
7. Return to Open Session.
8. Action on Combined Appeals Concerning Permit No. 96-04, before the New Mexico Coal Surface Mining Commission. No Oral Arguments or Testimony.
9. Other Business
10. Future Meetings

MINUTES
NEW MEXICO COAL SURFACE MINING COMMISSION MEETING

April 2, 1998

A New Mexico Coal Surface Mining Commission Meeting was held on April 2, at 9:00 a.m., in Santa Fe, New Mexico in Room 321 of the State Capital 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
Dr. Robert McCaslin	Agricultural Experiment Station
Ms. Jami Bailey	State Land Office
Mr. John Bokich	Public Member
Marshall Conover	Public Member

The following members were absent:

Dr. Ed Kelley	Environment Department
Mr. J. R. Roybal	N. M. Soil and Water Conservation Districts

Also Present:

Ms. Linda Duran	Clerk
Ms. Tanis Fox	Office of the Attorney General
Ms. Carol Leach	Attorney for the Mining and Minerals Division
Ms. Rebecca Dempsey	Attorney for Pueblo of Zuni
Ms. Susan Jordan	Attorney for Ghahate, et al.
Mr. Douglas Meilkejohn	Attorney for Ghahate, et al.
Mr. Mark Smith	Attorney for SRP

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

1. Roll Call.

Chairman Rogers performs roll call.

2. Approval of the Agenda.

Chairman Rogers asks if there were any changes to the agenda. No changes were made.

Dr. Bailey motions to accept the agenda, with second by Mr. Conover. The motion passes unanimously.

3. Review of the Minutes of the December 2, 1997 meeting.

Chairman Rogers asks if there is any comments or corrections to the December 2, 1997 meeting minutes. Ms. Dempsey asks if there are copies of the minutes available to the audience. Chairman Rogers states that there are no extra copies but that one can be made available after the meeting. Mr. Bokich moves that the minutes be accepted, second by Ms. Hoffman. The motion passes unanimously.

4. Discussion of Adoption of Proposed Revegetation Standards and Open Meetings Act Resolution

Because of the absence of Mining and Mineral Division staff, Chairman Rogers postpones discussion on these topics until staff arrive.

5. Adjourn to Executive Session; Discussion of Combined Appeals.

Chairman Rogers asks if there is a motion to adjourn to Executive Session. Ms. Hoffman moves to close the meeting. Prior to a second Ms. Dempsey asks about the appearance of impropriety, particularly in the matter of Commissioner Jami Bailey. Ms. Dempsey states that the Pueblo of Zuni had written the Commission but had not received a response. Chairman Rogers responds that he discussed the subject with Ms. Bailey and that she has prepared a response which is provided to Ms. Dempsey. Ms. Dempsey states that it is unfortunate that the issue hadn't been resolved earlier because the Pueblo believes that the commissioner should be disqualified; and she questions how the issue can be resolved just prior to deliberations on the appeal. Doug Meiklejohn and Mark Smith also request a copy of the response. Ms. Bailey states that there was no response date in the letter that she received and that Patrick Simpson had recommended she simply bring copies of the response to the hearing. Chairman Rogers recesses the meeting at 9:09 a.m. for 10 minutes to give the parties an opportunity to review the response.

Chairman Rogers reconvenes the meeting at 9:20 a.m. He states there is a motion, asks for a second, and states that the discussion will include Ms. Dempsey's concerns. Mr. Bokich seconds the motion.

Ms. Dempsey states that Zuni felt obliged to inquire further into the matter, but that after review of Ms. Bailey's answers no longer believes there is a conflict of interest and has no objection to Commissioner Bailey participating in the decision on the case.

Chairman Rogers then conducts a roll call vote on the motion to move into executive session. The motion passed unanimously and everyone is asked to evacuate the room at about 9:35 a.m. Chairman Rogers states that the Commission will be in executive session for approximately one hour.

The Commission goes into executive session.

Chairman Rogers reopens the meeting and asks for a statement regarding the closed meeting. Ms. Hoffman states that the New Mexico Coal Surface Mining Commission discussed in closed session only those matters specified in the motion, and no action was taken.

4. (revisited) Discussion of Adoption of Proposed Revegetation Standards and Open Meetings Act Resolution

Chairman Rogers asks the clerk if she has a copy of the Open Meetings Resolution. The Clerk answers no. Chairman Rogers opens the discussion on proposed revegetation standards. Mr. Bokich states that because of a change of address he had not had an opportunity to review the standards and asks that he be provided the history of the development of the standards, particularly whether there had been input from the New Mexico Mining Association or coal operators. Chairman Rogers calls on James O'Hara of MMD for a response.

Mr. O'Hara states that MMD has formed an ad hoc committee comprised of coal operators and that the committee has had input to both language and policies/regulations. Mr. O'Hara requests that the Commission table the standards until the committee has more time to work out the details. Mr. McCaslin makes a motion to table the standards. A discussion ensues between Mr. Bailey and Mr. O'Hara. Mr. Bailey states that the cover letter attached to the standards implies that they are recommended for adoption and questions the change. Mr. O'Hara explains due to the loss of the MMD vegetation expert and questions raised regarding some of the details in the document, that they are not quite at the adoption point. Mr. Bailey then provides Mr. O'Hara with some comments written in on the margins on the draft standards. Mr. Conover seconds the motion to table the adoption of the revegetation standards. The motion passes unanimously.

6. Action of Combined Appeals.

Mr. Rogers states that the next item is Zuni's motion regarding new evidence. Mr., Bailey moves to grant Zuni's alternative motion to exclude the materials referenced in their motion regarding new evidence. Mr. Conover seconds the motion. Chairman Rogers takes roll call. The motion passes unanimously.

Chairman Rogers states that the next item is action on Permit 96-04. Mr. Bokich makes a motion to uphold the decision of the Director of the Mining and Minerals Division to issue Permit 96-04, as modified by number 97-02. Mr. Bailey seconds the motion. Mr. Rogers takes roll call. The motion passes unanimously.

There is some discussion between Mr. Smith, Chairman Rogers and Ms. Dempsey regarding striking a document reattached by the Zunis. The discussion is resolved when Chairman Rogers states that the document has not, and will not be considered.

Ms. Dempsey asks whether the Commission will issue a written order. Chairman Rogers states that

a written order will be issued in an expeditious manner, but that a time frame can not be given.

7. Other Business

None discussed.

8. Future Meetings

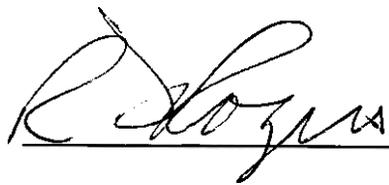
Mr. McCaslin states that both the Open Meetings Resolution and the revegetation standards should be on the agenda for the next meeting and that the Commission should receive a clean copy of the standards well beforehand. Mr. Rogers states that the next meeting can not be presently scheduled but that the public would be given adequate notice of it.

9. Adjourn

Mr. Bokich moves to adjourn the meeting, second by Mr. Bailey. Meeting adjourns at 10:44 a.m.

Approved:

Minutes by:



R. Q. Rogers, Chairman

December 15, 1998

Date



John J. Pfeil, Commission Clerk