

COAL SURFACE MINING COMMISSION MEETING

R. Q. ROGERS, CHAIR

MEETING AND PUBLIC HEARING

DECEMBER 2, 1997

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 October 23, 1997 Coal Surface Mining Commission Meeting and Public Hearing; and Adoption of Minutes of of the October 16, 1997 Special Meeting of the Coal Surface Mining Commission.
4. Action on Motions Pending, Concerning Permit No. 96-04 and Modification No. 97-02, before the New Mexico Coal Surface Mining Commission.
5. Adjourn to Executive Session, Discussion of the Fence Lake Appeals, Briefs and Pleadings (Pursuant to NMSA 1978, Section 10-15-1H3).
6. Return to Open Session, Discussion and Possible Action on the Fence Lake Appeals, No Oral Arguments or Testimony.

Other Business

Future Meetings

NEW MEXICO COAL SURFACE MINING COMMISSION MEETING

December 2, 1997

A New Mexico Coal Surface Mining Commission Meeting was held on December 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 Office
Ms. Gretchen Hoffman	Bureau of Mines and Mineral Resources
Dr. James Bailey	Department of Game and Fish
Dr. Ed Kelley	Environment Department
Dr. Robert McCaslin	Agricultural Experiment Station
Mr. John Bokich	Public Member

Also Present:

Ms. Linda Duran	Clerk
Mr. Patrick Simpson	Office of the Attorney General
Ms. Rosemary Maestas	Office of The Attorney General
Ms. Carol Leach	Attorney for the Mining and Minerals Division
Ms. Jennifer McCumber	Attorney for the Mining and Minerals Division
Ms. Rebecca Dempsey	Attorney for Pueblo of Zuni
Ms. Susan Jordan	Attorney for Ghahate, et al.
Mr. Brian Lematta	Attorney for Salt River Project

Chairman Rogers called the meeting to order at 9:04 a.m.

Item 1- Roll Call

Item-2 - Approval of the Agenda.

Mr. Rogers asked if there were any changes to the agenda.

No changes were made.

Dr. McCaslin motioned to accept the agenda.

Mr. Bokich seconded the motion.

The motion was passed unanimously.

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Commission Meeting
December 2, 1997

Item 3 - Adoption of Minutes of the October 23, 1997, Coal Surface Mining Commission Meeting and Public Hearing; and Adoption of the October 16, 1997, Special Meeting of the Coal Surface Mining Commission.

Dr. Bailey indicated that in the October 16, minutes, the apostrophe in the word "Zuni's" on page 3, paragraph 4 should be removed and an "s" should be added to the word "Zuni" in paragraph 2, page 3, for consistency.

No other changes were noted.

Dr. McCaslin made a motion to adopt the minutes.

Mr. Bokich seconded the motion.

The motion was passed unanimously.

The minutes were accepted for both dates.

Item 4 - Action on Motions Pending, Concerning Appeals of Permit No. 96-04 and Modification No. 97-02, before the New Mexico Coal Surface Mining Commission.

Mr. Rogers indicated that Ms. Jami Bailey, one of the commissioners, had submitted a letter recusing herself and gave it to all counsel to read. Mr. Rogers asked for comments, for the record, as to whether there would be any objection to Ms. Bailey voting on these issues, pointing out that she would not be voting on issues decided today.

Ms. Dempsey said that she didn't know if Ms. Bailey being married to the man who wrote a memo would create a conflict, but that it did create a perception of conflict. Ms. Dempsey indicated that she would need more information.

Ms. Jordan also indicated that more information would be needed.

Mr. Lematta indicated that SRP would have no objection to Ms. Bailey's participation and indicated that this relationship does not even create an appearance of conflict, much less an actual conflict of interest.

Ms. Leach indicated that she believed the mere fact of marriage to someone who has written a document years ago is not enough to disqualify or raise the appearance of impropriety, and had no objection with Ms. Bailey participating.

Item 5 - Adjourn to Executive Session, Discussion of the Fence Lake Appeals, Briefs and Pleadings (Pursuant to NMSA 1978, Section 10-15-1H3).

Mr. Rogers asked for a motion to move to executive session.

Ms. Hoffman made the motion.

Mr. Bokich seconded the motion.

The motion was passed unanimously.

The meeting adjourned to close session at 9:13 a.m.

Item 6 - Return to Open Session, discussion and Possible Action on the Fence Lake Appeals, no Oral Arguments or Testimony.

The meeting resumed in open session at 11:01 a.m.

Ms. Hoffman indicated that the Commission only discussed matters specified in the motion.

Mr. Patrick Simpson read the decision and indicated that:

- Appeal Number 97-02 is affirmed. The change to the hydrology monitoring plan is a modification.
- Appeal Number 96-04 is moot in part because the hydrology issue is an issue on appeal in 96-04 and the modification directly affects that issue.
- The Commission remands this matter to the Director to reconsider only the issue of whether the hydrology information existing in the record, including the monitoring wells added by Modification 97-02 is adequate.
- The Director shall issue her decision by February 1, 1998.
- The Chairman will then set a briefing schedule for the hydrology issue only. Then the Commission will consider the hydrology issue together with all others under Number 96-04.
- The Commission orders a stay of any further changes to the permit.

Dr. Kelley made a motion to accept the statement as read.

Dr. Bailey seconded the motion.

Mr. Rogers made a roll call vote.

The vote was unanimous.

Mr. Rogers indicated the briefing schedule will be 40 days, which means there will be a commission meeting on Number 96-04 in the end of March 1998.

Ms. Dempsey asked the Chairman what the Division Director is supposed to reconsider if there is no new evidence.

Mr. Simpson indicated that they wanted the Director to reconsider the adequacy of the hydrology section including the two new monitoring wells.

Mr. Lematta asked if the permit has been affirmed, but is being remanded in part.

Mr. Rogers indicated that they have not acted on the permit, only the modification.

Mr. Lematta asked if the decision could be repeated.

Mr. Simpson reread the Commission's decision.

Item 7 - Other Business

Mr. Rogers asked if there was any other business to come before the Commission.

No other business was voiced.

Dr. Kelley made a motion to recess.

Dr. McCaslin seconded the motion.

The motion was unanimous.

The meeting recessed at 11:06 a.m.