

**COAL SURFACE MINING COMMISSION**

**R. Q. ROGERS, CHAIRMAN**

**RULEMAKING HEARING AND PUBLIC MEETING**

**November 3, 1999**

**9:30 A.M.**

**NEW MEXICO TECH LIBRARY, ROOM 212  
SOCORRO, NEW MEXICO**

**AGENDA**

- 1. Roll Call**
- 2. Approval of the Agenda**
- 3. Adoption of Minutes of December 15, 1998 Coal Surface Mining Commission Meeting**
- 4. Adoption of Minutes of October 12, 1999 Coal Surface Mining Commission Special Meeting**
- 5. Discussion and possible adoption of the Open Meetings Act Resolution**
- 6. Discussion and Consideration of Proposed Amendments to the Coal Surface Mining Regulations (19 NMAC 8.2)**
- 7. Discussion of possible action on Zuni's October 8, 1999 letter regarding selective disclosure of discussions from the Commission's Executive Session of September 2, 1999**
- 8. Discussion and possible setting of a hearing date on the appeal by the Pueblo of Zuni (99-01) of the MMD Director's order to extend the time for commencement of mining operations at the Fence Lake Surface Coal Mine pursuant to 19 NMAC 8.2, Section 1111. Includes discussion and possible action on Motion by the Pueblo of Zuni for Summary Reversal**
- 9. Director's request for review of the Director's Order of Approval granting Salt River Project's request for an extension of time to begin mining**
- 10. Update from Pat Simpson on legal representation issues associated with the Zuni appeal in district court**
- 11. Adjourn**

**DRAFT MINUTES**  
**NEW MEXICO COAL SURFACE MINING COMMISSION**  
**MEETING and HEARING**  
**November 3, 1999**

A New Mexico Coal Surface Mining Commission Rulemaking Hearing and Public Meeting was held on November 3, 1999 at 9:30 a.m., in Room 212 of the New Mexico Tech Library, Socorro, New Mexico.

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
Ms. Jami Bailey	State Land Office
Mr. Greg Lewis	Environment Department
Mr. J. R. Roybal	Soil and Water Conservation Districts
Mr. Dushan P. Milovich	Public Member

The following member was absent:

Mr. John Bokich	Public Member
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Also Present:

Mr. Patrick Simpson	Office of the Attorney General
Mr. John Pfeil	Commission Clerk
Ms. Carol Leach	Attorney, Mining and Minerals Division
Ms. Bruce Rogoff	Attorney, Mining and Minerals Division
Mr. Doug Bland	Mining and Minerals Division
Ms. Kerrie Neet	Mining and Minerals Division
Mr. Jim O'Hara	Mining and Minerals Division
Mr. David Clark	Mining and Minerals Division
Mr. James O. Browning	Browning and Peifer Law Firm
Mr. Cody K. Kelley	Browning and Peifer Law Firm
Mr. Mark Smith	Rodey Law Firm
Ms. Rebecca Dempsey	White, Koch, Kelly Law Firm
Mr. Robert Barnard	Salt River Project
Mr. Mark Hiles	Lee Ranch Coal Mine
Mr. Bill Sanderford	Pittsburg and Midway Coal Mining Co.
Mr. Jim Luther	BHP-San Juan Coal Company
Mr. Jim Stuart	NM Department of Game and Fish

Chairman Rogers calls the meeting to order at 9:30 a.m.

### **1. Roll call**

Chairman Rogers asks the Commission Clerk to perform the roll call.

### **2. Approval of the agenda**

Chairman Rogers asks if there are any changes to the agenda. Dr. McCaslin requests that an update on legal representation be provided to the Commission. Chairman Rogers states that this new agenda item will go under "New Business". Motion by Dr. McCaslin to approve the agenda, as amended; second by Mr. Milovich. The motion passes unanimously on a voice vote.

### **3. Adoption of minutes of December 15, 1998 Coal Surface Mining Commission Meeting**

Chairman Rogers asks if there is a motion to accept the minutes of December 15, 1998. Motion by Ms. Bailey to accept the minutes; second by Ms. Fisher. The motion passes unanimously on a voice vote.

### **4. Adoption of minutes of October 12, 1999 Coal Surface Mining Commission Special Meeting**

Chairman Rogers asks if there is a motion to accept the minutes of October 12, 1999. Mr. Milovich states that one attendee, Mr. Cody Kelley, should be added to the list of attendees. Chairman Rogers states that he brought someone from Mexico to attend the meeting and requests that her name be added. Motion by Mr. Milovich to accept the minutes, as amended; second by Dr. McCaslin. The motion passes unanimously on a voice vote.

### **5. Discussion and adoption of the Open Meetings Act Resolution**

Mr. Simpson states that Mr. Pfeil prepared the resolution and that there was no substantive changes over the previously adopted resolution. He states that the Commission is required to readopt the resolution on a periodic basis. Motion by Ms. Bailey to adopt the Open Meetings Resolution as presented; second by Ms. Hoffman. The motion passes unanimously on a voice vote.

**6. Discussion and adoption of proposed amendments to the Coal Surface Mining Regulations (19 NMAC 8.2)**

Mr. James O'Hara introduces himself as the permit coordinator for the Mining and Minerals Division. He states that the Commission had previously reviewed and approved most of the proposed regulations but due to problems with the public notice they were not adopted. Mr. O'Hara briefly goes through the proposed changes. Chairman Rogers asks if there are any comments from the public. Mr. Bill Sanderford and Mark Hiles make statements supporting the revegetation standards. Ms. Fisher commends MMD for the excellent job they did on the standards. She offers some suggestions for wording changes in the standards. After some discussion it is determined that the Commission will consider the proposed regulations, as presented, with the addition of one minor typographical error which will be included. The substantive issues raised by Ms. Fisher will be discussed by the ad hoc committee and brought before the Commission as future modifications to the regulations, if appropriate. Motion by Dr. McCaslin to adopt the proposed regulations as written; second by Ms. Bailey. The motion passes unanimously on a voice vote.

**7. Discussion on Zuni's October 8, 1999 letter regarding selective disclosure of discussions from the Commission's Executive Session of September 2, 1999**

There is a lengthy and spirited discussion of Zuni's October 8 letter. Participants are primarily Chairman Rogers, Mr. Simpson, Mr. Rogoff, Ms. Leach, Ms. Dempsey, Mr. Smith, Ms. Fisher and Mr. Lewis. There is a motion by Ms. Fisher that the Commission disavow Mr. Mertz's letter and state that it does not represent the sentiments of the Commission. Mr. Lewis states that it would be inappropriate for the Commission to decide one way or the other on the contents of the letter. Chairman Rogers states there is a motion and asks if there is a second. Hearing no second the motion dies.

**8. Discussion and setting of a hearing date on the appeal by the Pueblo of Zuni (99-01) of the MMD Director's order to extend the time for commencement of mining operations at the Fence Lake Surface Coal Mine**

Mr. Simpson describes the concept of summary reversal to the Commission at the request of Chairman Rogers. He states that the Commission, if issues are reasonably clear and they have made up their minds, can go ahead and summarily dispose of an appeal without a whole briefing process. He states that ironically the summary reversal has already created a flurry of briefing. He also states that the Commission can set a future hearing date and allow the parties further briefing on the issue. Chairman Rogers asks if there is a motion to summarily reverse the Director's order extending the time. There being none, he states that a date will be set and that one brief by Zuni and one responsive brief each from MMD and SRP will be allowed. There is a request by Ms. Dempsey for additional evidence taking and that the briefing schedule make provision for that. Chairman Rogers sets a 25 page maximum for each of the briefs. There is a lengthy discussion regarding submittal deadlines for briefs, after which it is determined that November 24 will be the deadline for the Zuni brief and December 17 will be the

deadline for MMD and SRP briefs. Motion by Ms. Bailey to give authority to Chairman Rogers to sign an order reflecting the details with respect to the briefing schedule; second by Mr. Milovich. The motion passes unanimously on a voice vote. In response to Mr. Smith's concerns regarding mailing time or delivery it is determined that Ms. Dempsey would commit to hand-delivering, e-mailing or faxing a copy to Mr. Smith's Santa Fe office on November 24. Chairman Rogers asks that Mr. Simpson add this provision to the order. After resolving questions regarding legal advertising the Commission sets a hearing date of January 12, 2000. Chairman Rogers asks Mr. Simpson to put the hearing date in the order as well.

**9. Director's request for review of the Director's Order of Approval granting Salt River Project's request for an extension of time to begin mining**

Chairman Rogers asks Mr. Rogoff whether the previous actions satisfy the agenda item for Director's request for review. Mr. Rogoff states that it does satisfy and that it's all the same anyway.

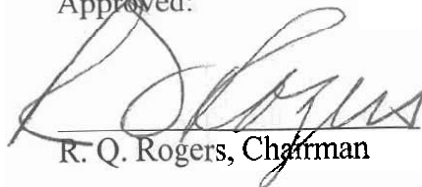
**10. Update from Pat Simpson on legal representation issues associated with the Zuni appeal in district court**

Mr. Simpson asks that Mr. Cody Kelley stand up and acknowledge his presence. Mr. Kelley stands and states that he and Mr. Jim Browning of Browning and Peifer were hired to represent the Commission in the lawsuit in front of Judge Pfeffer involving the Zuni Pueblo. There is some discussion of the nature of the representation and who specifically will be representing the Commission in the upcoming hearing before Judge Pfeffer. Mr. Simpson assures the Commission that he will work with Mr. Kelly to ensure that the Commission's representation is not interrupted in the district court case in any way that prejudices any of the parties. Mr. Kelley asks whether the Commission had requested of Mr. Simpson and the Attorney General's office a detailed account of all conversations that took place while the Attorney General's office was representing the Commission. Chairman Rogers answers no.

**11. 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. Roybal, second by Dr. McCaslin. The motion passes unanimously on a voice vote. The meeting adjourns at 11:00 a.m.

Approved:

  
R. Q. Rogers, Chairman

Jan 12, 2000  
Date

Minutes by:

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John J. Pfeil, Commission Clerk

**STATE OF NEW MEXICO  
COAL SURFACE MINING COMMISSION**

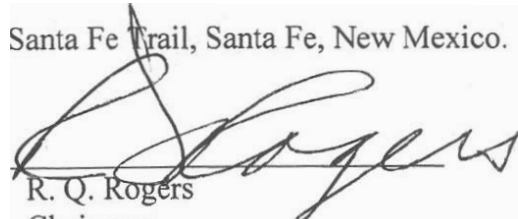
APPEAL OF EXTENSION OF COMMENCEMENT  
PERIOD FOR MINING UNDER PERMIT NO. 96-04

NO. 99-01

**SCHEDULING ORDER**

This matter is before the Commission on Pueblo of Zuni's Notice of Appeal and Motion for Summary Reversal and the Director's request for review of extension of time. The Commission consolidates all the foregoing matters for the purposes of hearing. The Commission orders that the Pueblo will submit a brief of all its issues on or before November 24, 1999. The brief will be no longer than twenty-five (25) pages and shall include any motions. The Pueblo will hand deliver or otherwise serve a copy of its brief on SRP and MMD on the due date. SRP and MMD shall file a brief on or before December 17, 1999, responding to the Pueblo's brief. SRP and MMD's briefs shall be no longer than twenty-five (25) pages. This matter is set for hearing on January 12, 2000, at 9:15 am, State Land Office, Morgan Hall, 310 Old Santa Fe Trail, Santa Fe, New Mexico.

November 10, 1999

  
R. Q. Rogers  
Chairman



# DRAFT

## COAL SURFACE MINING COMMISSION

### OPEN MEETINGS RESOLUTION

WHEREAS, the Coal Surface Mining Commission met in regular session on November 3, 1999, 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 3<sup>rd</sup> day of November, 1999

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Chairman, Coal Surface Mining Commission