

COAL SURFACE MINING COMMISSION

R. Q. ROGERS, CHAIRMAN

PUBLIC MEETING AND HEARING

JANUARY 12, 2000

9:15 A.M.

**STATE LAND OFFICE BUILDING, MORGAN HALL,
310 OLD SANTA FE TRAIL, SANTA FE, NEW MEXICO**

AGENDA

- 1. Roll Call**
- 2. Approval of the Agenda**
- 3. Adoption of Minutes of November 3, 1999 Coal Surface Mining Commission Meeting and Hearing**
- 4. Discussion and possible action 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**
- 5. Setting of a hearing date for the appeal by the Pueblo of Zuni (99-02) of the MMD Director's determination not to conduct de novo review and hearing on the effect of the mining operations under permit 96-04 on the Sanctuary surrounding the Zuni Salt Lake**
- 6. Other business**
- 7. Adjourn**

NEW MEXICO COAL SURFACE MINING COMMISSION
MEETING and HEARING
January 12, 2000

A New Mexico Coal Surface Mining Commission Public Meeting was held on January 12, 2000 at 9:15 a.m., at the State Land Office, Morgan Hall, 310 Old Santa Fe Trail, Santa Fe, 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
Dr. Robert McCaslin	Agricultural Experiment Station
Ms. Jami Bailey	State Land Office
Mr. Greg Lewis	Environment Department
Mr. Tod W. Stevenson	Department of Game and Fish

The following members were absent:

Mr. J. R. Roybal	Soil and Water Conservation Districts
Mr. Dushan P. Milovich	Public Member
Mr. John Bokich	Public Member

Also present:

Mr. John Pfeil	Commission Clerk
Ms. Carol Leach	Attorney, Mining and Minerals Division
Ms. Bruce Rogoff	Attorney, Mining and Minerals Division
Ms. Kerrie Neet	Mining and Minerals Division
Mr. Fernando Martinez	Mining and Minerals Division
Mr. James O. Browning	Browning & Peifer, P.A.
Mr. Cody K. Kelley	Browning & Peifer, P.A.
Mr. Mark Smith	Rodey Law Firm
Ms. Rebecca Dempsey	White, Koch, Kelly Law Firm
Mr. Paul Bloom	White, Koch, Kelly Law Firm
Mr. David Cunningham	Counsel for Zuni

Chairman Rogers calls the meeting to order at 9:35 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. Motion by Dr. McCaslin to approve the agenda; second by Mr. Stevenson. The motion passes unanimously on a voice vote.

3. Adoption of Minutes of November 3, 1999 Coal Surface Mining Commission Meeting and Hearing.

Chairman Rogers asks if there is a motion to accept the minutes of November 3, 1999. A motion by Mr. Lewis to accept the minutes; second by Ms. Hoffman. The motion passes unanimously on a voice vote.

4. Discussion and possible action 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

After a short discussion on the appeal by the Pueblo of Zuni (99-01) it was determined that an executive session is needed to discuss the subject matter. A motion to move into executive session for legal counsel on the Appeal of Zuni 99-01 was made by Mr. Stevenson; second by Dr. McCaslin. Motion passes unanimously on a roll call.

Mr. Browning announced that the Coal Surface Mining Commission would go into executive session pursuant to Section 10-15-1(H)(3) and (H)(7) of the Open Meeting Act.

The commission went into executive session for approximately one half-hour.

A motion to adjourn from executive session was made by Mr. Stevenson; second by Dr. McCaslin. Motion passes unanimously on a voice vote.

A motion was made that the Commission uphold the Director's action regarding 99-01, the Order for extended time for the commencement of the Mining operation at Fence Lake Surface Mine by Mr. Stevenson; second by Ms. Hoffman. The motion passes unanimously by a voice vote.

Mr. Bowning announced that the Commission decided to uphold the Director of Mining & Minerals Division Order extending SRP's time to begin mining. The reasons for Commission's decision will be reflected in the Order.

5. Setting of a hearing date for the appeal by the Pueblo of Zuni (99-02) of the MMD Director's determination not to conduct de novo review and hearing on the effect of the mining operations under permit 96-04 on the Sanctuary surrounding the Zuni Salt Lake

Chairman Rogers asked Mr. Pfeil what time frame is necessary for setting a hearing date for appeal. Mr. Pfeil mentioned that the appeal was received on December 7, 1999 and other than the ten-day notice requirement it would be up to the Commission. After a discussion between the Commissioners and the Attorneys it was determined that a briefing schedule would be set up

for February 2 submittal by Zuni and February 23 submittal by MMD. A written order would follow. The next hearing date was set for March 15, 2000.

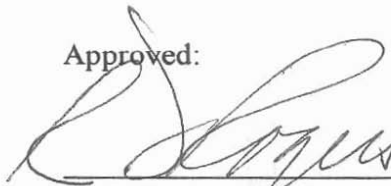
6. Other business

None.

7. Adjourn

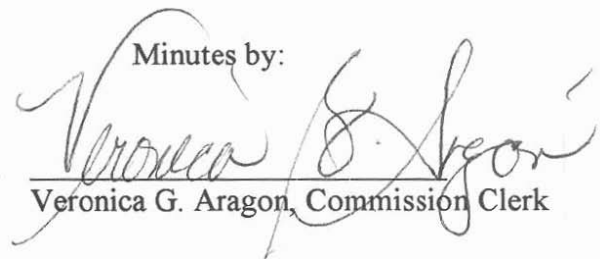
Chairman Rogers asks if there is any other business before the Commission. After hearing none he asks if there is a motion to adjourn. Motion to adjourn by Mr. Hoffman, second by Ms. Bailey. The motion passes unanimously on a voice vote. The meeting adjourns at 10:51 a.m.

Approved:


R. Q. Rogers, Chairman

January 12, 2000
Date

Minutes by:


Veronica G. Aragon, Commission Clerk

BEFORE THE COAL SURFACE MINING COMMISSION

**IN THE MATTER OF THE SALT RIVER
PROJECT AGRICULTURAL IMPROVEMENT
AND POWER DISTRICT'S PERMIT NO. 96-04
TO CONDUCT SURFACE COAL MINING
AND RECLAMATION OPERATIONS
AT THE FENCE LAKE SURFACE MINE**

**PUEBLO OF ZUNI'S APPEAL 99-01 FROM THE
MINING AND MINERALS DIRECTOR'S
GRANTING THE SALT RIVER PROJECT AN
EXTENSION OF TIME FOR COMMENCEMENT
OF MINING UNDER PERMIT No. 96-04**



99 JAN 27 11 10 29

DECISION OF THE COMMISSION

THIS MATTER came before the Coal Surface Mining Commission (the "Commission") on January 12, 2000 for discussion and possible action on the Pueblo of Zuni's appeal (99-01) of the Mining and Minerals Division Director's July 8, 1999, Order of Approval of the Salt River Project's extension request to extend the time for commencement of mining operations at the Fence Lake Surface Coal Mine pursuant to 19 NMAC 8.2, Section 1111. The Commission unanimously believed the parties had fully advised it about the matter in their briefs and that it could decide the issue raised by the appeal on the briefing that the parties submitted. Having considered the briefs submitted by the parties, the Commission unanimously decided to uphold the Director of the Mining and Mineral Division's Order extending Salt River Project's time to begin mining for the following reasons:

1. The Director of the Mining and Minerals Division granted the Salt River Project an extension to commence mining under Rule 1111. The extension gives the Salt

River Project until at least three years from the date that the Secretary of the Interior approves the Salt River Project's mining plan to commence mining under the permit.

2. The parties appear to agree that the rules and statutory provisions addressing extensions of time to begin mining differ from those that provide for modifications and revisions to permits. The Director gave notice of his Extension Order as Rule 1111 requires. That rule allows notice to be given after the extension has been granted. Thus, the Director could decide to act on the extension request without giving Zuni notice. Indeed, Zuni does not appear to dispute that it received the notice allowed by the rule; Zuni appears to be arguing that it is entitled to more notice than the rule requires and thus, in effect, is challenging the rule.

3. The Director expressly made his extension order "subject to review by the Coal Surface Mining Commission at its next regular meeting." On November 10, 1999, the Commission entered its Scheduling Order establishing a briefing schedule and hearing date for the appeal. By holding a hearing and giving the parties a full opportunity to brief the issue, Zuni has had an ample and fair opportunity to be heard on the extension. Because the Commission has given Zuni such notice and opportunity to be heard, the hearing before the Commission resolves any due process issues that Zuni raises on this matter. Neither the rules nor the Director has denied Zuni due process, and this Commission has given Zuni an opportunity to be heard that is consistent with federal and this state's due process rights.

4. Zuni did not bring to the Commission's attention any evidence, or arguments that, as to the propriety of granting the Salt River Project's request for an extension, Zuni wanted to present to the Director or to the Commission but did not or

01/28/00 12:10:23

could not. Thus, the Commission does not understand what purpose would be served by reversing and remanding this matter to the Mining and Minerals Division for further proceedings.

5. As to the merits of the Director's decision, the Director of Mining and Minerals Division properly found the Salt River Project had not been able to begin mining because: (i) the Department of Interior has not yet approved the mine plan; and (ii) Zuni's lawsuit threatens economic loss. Zuni does not dispute the factual basis of the Director's first ground for the extension. The Department of Interior's approval is required before the Salt River Project can begin mining.

As to the second ground for the Director's decision, given the enormous expense associated with mining coal, it was not unreasonable nor incorrect for the Director to conclude that Zuni's litigation threatened substantial economic loss to the Salt River Project. If the Salt River Project began mining, and a court later invalidated its permit, the Salt River Project would suffer substantial economic loss.

6. Zuni also disputes and challenges the Director's authority to grant any extension. Zuni argues that the extension order violates the Commission's prior order purportedly staying "any . . . further changes to Permit 96-04." In granting an extension, the Director did not violate any stay order of this Commission. The issuance of the permit is on appeal to the District Court. The Director merely maintained the status quo. The Commission's 1997 order did not take that ability away from the Director.

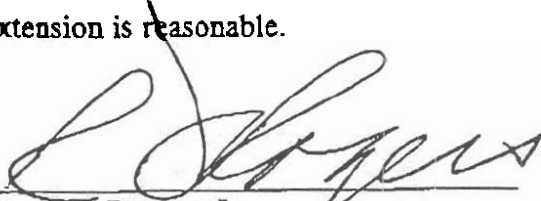
The Director's extension order is consistent with the Commission's 1997 order that there not be changes to this permit. The only way that there could be no change to

159 JAN 27 09 10 25

the permit was to extend the permit so that it did not expire while the question of its issuance is on appeal.

Moreover, Appeal No. 97-02 involved the change to the hydrology monitoring plan. The order disposing of that appeal remanded the case to the Director for consideration of a single issue. The Commission, by precluding further change to the permit, was limiting the scope of the remand to the Director.

7. Zuni appealed the extension, arguing, in part, that it violates federal law because it may extend the development period under the Permit beyond the development period allowed under Salt River Project's federal lease. The Commission believes that the extension, as issued by the Director, is sound. It would be speculative for this Commission to determine whether there will be extensions to the federal lease and when it will expire. Given that imprecision, and the limitations on the state's ability to assure that the development periods under the Permit and Salt River Project's federal leases are coextensive, the Director's extension is reasonable.

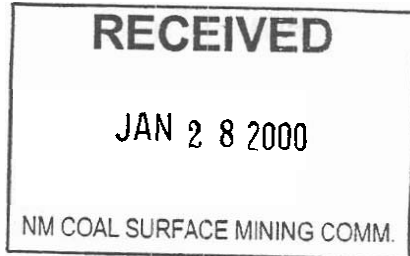

Robert Q. Rogers, Jr.
Chairman, Coal Surface Mining Commission

STATE ENGINEER
RECEIVED
JAN 28 1999

JAN 28 1999

BEFORE THE COAL SURFACE MINING COMMISSION

**IN THE MATTER OF THE SALT RIVER
PROJECT AGRICULTURAL IMPROVEMENT
AND POWER DISTRICT'S PERMIT NO. 96-04
TO CONDUCT SURFACE COAL MINING
AND RECLAMATION OPERATIONS
AT THE FENCE LAKE SURFACE MINE**



SCHEDULING ORDER FOR APPEAL 99-02


THIS MATTER came before the Coal Surface Mining Commission on January 12, 2000 for the setting of a hearing date for the appeal by the Pueblo of Zuni (99-02)(filed Dec. 7, 1999) of the Mining and Minerals Director's determination not to conduct de novo review and hearing on the effect of the mining operations under permit 96-04 on the Sanctuary surrounding the Zuni Salt Lake. The Commission heard arguments of the parties on the briefing schedule for this appeal. The parties have agreed to the following scheduling order, and the Commission so orders and establishes the following briefing schedule and hearing date for this appeal:

1. Zuni will file its brief-in-chief with the Commission by or on February 22, 2000.
2. All other parties shall submit their briefs by or on February 23, 2000.
3. No brief shall exceed twenty-four (24) pages in length.
4. The Commission will hold a hearing on this appeal on March 15, 2000 at 9:15 a.m. At that time, the Commission will discuss what action, if any, it will take at that

STATE ENGINEER
JAN 28 2000

JAN 28 2000

hearing, including whether it will hear any further argument on the appeal in addition to what is presented in the briefs.



Robert Q. Rogers, Jr.
Chairman, Coal Surface Mining Commission

01 JAN 27 09 10 29
STATE ENGINEER
BETHLEHEM, PA