



New Mexico Environmental Law Center

The Honorable Carol Bowman-Muskett
The Honorable Genevieve Jackson
The Honorable Bill Lee
207 West Hill Avenue
Gallup, New Mexico 87301

VIA CERTIFIED MAIL, RETURN
RECEIPT REQUESTED

Re: McKinley County Resolution No. JAN-17-006: Notice of Intent to Sue

February 13, 2017

Dear Members of the McKinley County Commission:

On behalf of Eastern Navajo Diné Against Uranium Mining ("ENDAUM") and its members, and the Redwater Pond Road Community Association ("RWPRCA") and its members, I write to provide you with notice that ENDAUM and RWPRCA intend to file suit under the New Mexico Open Meetings Act, NMSA 1978, § 10-15-1 *et. seq.* ("Open Meetings Act" or "Act"), based on the McKinley County Commission's ("Commission") failure to provide reasonable public notice of its January 3, 2017 meeting or provide the public a copy of the agenda prior to that meeting. Pursuant to § 10-15-3(B) of the Open Meetings Act, if the Commission fails to act upon or denies the Open Meetings Act violations outlined below within fifteen (15) days of receiving this letter, ENDAUM and RWPRCA may file a complaint in District Court.

I. INADEQUATE NOTICE

The Open Meetings Act provides that "[a]ny meetings 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." NMSA 1978, § 10-15-1(D). The Act does not define "reasonable notice", but it does provide certain minimum requirements: that public notice shall be provided by publication in newspapers of general circulation and by broadcast on broadcast stations licensed by the federal communications commission ("FCC"). NMSA 1978, § 10-15-1(D).

Contrary to the notice provisions of the Open Meetings Act, the Commission failed to provide adequate public notice of its January 3, 2017 meeting. Inquiries into how the Commission published notice revealed that while the Commission published notice of the January 3, 2017 meeting in the Gallup Independent, it failed to broadcast on any FCC licensed station, either radio or television. This failure to broadcast the Commission meeting violates the Open Meetings Act's mandate.

The Commission's failure to properly notify the public of its January 3, 2017 is particularly significant because at the December 13, 2016 Commission meeting, Commissioner Bowman-Muskett indicated that the next Commission meeting would be January 10, 2017. Community members relied on this representation about the next Commission meeting to make their schedules and prepare for their participation.

ENDAUM's and RWPRCA's members are residents of McKinley County who are concerned about the impacts of uranium mining and processing. Had they received proper notice of the January 3, 2017 McKinley County Commission meeting, they would have attended that meeting and sought to provide public comment on the uranium moratorium proposal. However, because the Commission failed to provide public notice as required by the Open Meetings Act, ENDAUM's and RWPRCA's members were denied their basic right to participate in governmental functions.

II. UNAVAILABLE AND INADEQUATE AGENDA

In addition to requiring public notice of Commission meetings, the Open Meetings Act also requires that meeting notices include an agenda. NMSA 1978, § 10-15-1(F). Moreover, if the public body who is meeting maintains a web site, the agenda must be published on the website at least seventy-two hours prior to the meeting. *Id.*

The Commission violated this provision of the Act. The agenda for the January 3, 2017 Commission meeting was not made publicly available prior to the Commission meeting on the McKinley County website. Indeed, several community groups checked the McKinley County website on January 2, 2017 - the night before the January 3 meeting - and no agenda had been posted¹.

Moreover, even assuming for the sake of argument that the Commission properly made the agenda publicly available prior to the January 3 meeting, the agenda's contents were insufficient to fairly apprise the public of the matters the

¹ A meeting agenda for the January 3 meeting was posted on the County website only sometime after the January 3 meeting.

Commission were going to consider. The New Mexico Attorney General's *Open Meetings Act Compliance Guide* indicates that:

A public body may discuss a matter, but cannot take action, unless the matter is listed as a specific item of business on the agenda. Action on items that are not listed on the agenda for a meeting must be taken at a subsequent special or regular meeting.

Id. at 17, No. 2 (interpreting NMSA 1978, § 10-15-1(F)). The Attorney General's Guidance likewise provides:

The agenda must contain a list of "specific items" of business to be discussed or transacted at the meeting. The requirement for a list of specific items of business ensures that interested members of the public are given reasonable notice about the topics a public body plans on discussing or addressing at a meeting. A public body should avoid describing agenda items in general, broad or vague terms, which might be interpreted as an attempt to mislead the public about the business the public body intends to transact. This is an especially important consideration when a public body intends to act on an agenda item.

Id., No. 3. The agenda for the January 3, 2017 Commission meeting, attached hereto as Exhibit A, provides the following information relating to the proposed uranium moratorium:

ACTION:

...

8. 4th reading of Ordinance No. NOV-16-004 Establishing a Moratorium on Uranium Mining, Processing, and exploration; Establishing Information gathering meetings; and Establishing penalties. Holding a hearing to receive public comment; and, Action if desired by the Commission. Janene Yazzie, Citizen.

Nothing in this description indicates that the Commission intended to take action on any matter other than the above-described proposed ordinance, which had been previously discussed at prior Commission meetings. Thus, the only actions a member of the public could reasonably anticipate occurring at the January 3 meeting would be that the Commission would adopt or reject the above-described ordinance, or adopt the ordinance with some changes to specific language.

The Commission did none of these things. Instead, it considered and adopted a resolution - which unlike an ordinance does not have the force of law - that bears no relationship to the language or intent of the proposed ordinance on the agenda. Nothing in the agenda gave the public fair notice of the Commission's action.

Had ENDAUM's and RWPRCA's members had access to the agenda for the January 3, 2017 McKinley County Commission meeting with a reasonable description of the actions the Commission might take, they would have been informed that the Commission was going to consider the proposed uranium mining moratorium **and** three other proposed alternatives. This information would have allowed ENDAUM's and RWPRCA's members to prepare for the hearing and advocate for their preferred policy. However, because the Commission failed to provide the meeting agenda to the public prior to the meeting as required by the Open Meetings Act, ENDAUM's and RWPRCA's members were denied their basic right to participate in governmental functions.

In sum, the Commission failed to follow the most basic processes that the Open Meetings Act mandates. As a result, ENDAUM and RWPRCA intend to file suit under the Open Meetings Act in District Court in order to vindicate their rights. Should the Commission decide to remedy its violations of the Open Meetings Act, ENDAUM and RWPRCA request that the Commission notify them personally, through legal counsel, of any meeting where such remedy may be considered, at least seven (7) days prior to the date of such meeting.

Thank you for your attention to this matter.

Sincerely,



Eric Jantz
Staff Attorney

cc: Douglas Decker, County Attorney