

**MINUTES
JANUARY 26, 2007**

Call to Order

The Board of Environmental Review's regularly scheduled meeting was called to order by Chairman Russell at 9:17 a.m., on Friday, January 26, 2007, in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana.

Attendance

Board Members Present: Chairman Joseph Russell, Don Marble, Heidi Kaiser, Gayle Skunkcap, Bill Rossbach, Robin Shropshire, and Larry Mires

Board Attorney Present: Katherine Orr, Attorney General's Office, Department of Justice

Board Secretary Present: Joyce Wittenberg

Court Reporter Present: Laurie Crutcher, Crutcher Court Reporting

Department Personnel Present: Richard Opper, Director; Tom Livers, Deputy Director; Tom Ellerhoff, Director's Office; John North, Chief Legal Counsel; Claudia Massman, Legal; Jane Amdahl, Legal; James Madden, Legal; Norm Mullen, Legal; John Arrigo, Administrator, Enforcement Division (ENF); Dan Kenney, ENF; Bob Bukantis, Planning, Prevention & Assistance Division (PPAD); Christian Levine, PPAD; Steve Welch, Administrator, Permitting & Compliance Division (PCD); Charles Homer, Air Resources Management Bureau (ARMB), PCD; David Klemp, ARMB, PCD; Bonnie Lovelace, Water Protection Bureau (WPB), PCD; Kari Smith, WPB, PCD

Interested Persons Present (Disclaimer: Names are spelled as best they can be read from the official sign-in sheet.): Robin Meguire, Montana Environmental Information Center; Michael Kakuk

I.B Welcome New Board Members

Mr. Mires was welcomed to the Board. He provided some information regarding his background.

Chairman Russell noted that both Heidi Kaiser and he had been reappointed to the Board.

I.A.1 Review and approve December 2, 2006, meeting minutes.

Chairman Russell noted that the meeting date was December 1, not December 2. He called for a motion to approve the minutes with the date change. Ms. Kaiser MOVED. Mr. Marble SECONDED the motion. The motion CARRIED with a unanimous VOTE.

II.A.1.a In the matter of CR Kendall Corporation's request for a hearing to appeal DEQ's decision to deny a minor permit amendment under the Metal Mine Reclamation Act, BER 2002-09 MM.

Ms. Orr had no further information beyond that provided in the agenda.

II.A.1.b In the matter of violations of the Water Quality Act by ASARCO, Inc., BER 2005-09 WQ.

Ms. Orr had no further information beyond that provided in the agenda.

II.A.1.c In the matter of the issuance of the Air Quality Permit for the Roundup Power Project, Permit No. 3182-00, BER 2003-04 AQ.

Ms. Orr had no further information beyond that provided in the agenda.

II.A.1.d In the matter of the request for hearing of Kountry Korner Enterprises, d/b/a Kountry Korner Café, regarding violations of the Montana Public Water Supply Laws, BER 2006-09 PWS.

Ms. Orr had no further information beyond that provided in the agenda.

II.A.1.e In the matter of the Montana Environmental Information Center's appeal of Air Quality Permit No. 3182-01, issued for the Roundup Power Project, BER 2005-21 AQ.

Ms. Orr said she was in the process of ruling on cross motions for summary judgment in this case.

II.A.1.f In the matter of the appeal by Willow Creek Sewer District regarding violations of the Water Quality Act, BER 2006-13 WQ.

Ms. Orr had no further information beyond that provided in the agenda.

II.A.1.g In the matter of the request for hearing of the Teton County Airport Commission regarding violations of the Montana Underground Storage Tank Act at the Choteau Airport, BER 2006-15 UST.

Ms. Orr said settlement discussions are taking place in regard to this case.

II.A.1.h In the matter of the request for hearing of U.S. Customs and Border Protection regarding a notice of violation concerning the Del Bonita Border Station, BER 2006-16 PWS.

Ms. Orr said she had received a stipulation for dismissal in this case.

II.A.1.i In the matter of the Notice of Appeal and Request for Hearing of the Citizens Awareness Network, Women's Voices for the Earth, and the Clark Fork Coalition regarding DEQ's approval of the Thompson River CO-Gen, LLC, Air Quality Permit No. 3175-04, BER 2006-18 AQ.

Ms. Orr said she had received a motion for limine and that she was in the process of ruling on some of the pending motions in this case.

II.A.1.j In the matter of violations of the Montana Underground Storage Tank Act at Elliston Store, BER 2006-20 UST.

Ms. Orr said settlement discussions are taking place in regard to this case.

II.A.1.k In the matter of violations of the Metal Mine Reclamation Act by Marty J. and Sinda M. Puryer, as individuals and d/b/a Paul Kurth Mining, for the failure to post reclamation bond, BER 2006-21 MM.

Ms. Orr said a hearing for this case has been set for July.

II.A.1.l In the matter of the appeal by Dan Fuchs, Broken 7 Subdivision, regarding Gallatin City-County Health Department's denial of a request to change a provision of the original certificate of subdivision approval, BER 2006-22 SUB.

Ms. Orr said a hearing for this case has been set for July.

II.A.1.m In the matter of the appeal by the City of Bozeman regarding the DEQ's final decision for MPDES Permit No. MT0022608, BER 2006-23 WQ.

Ms. Orr had no further information to provide regarding this case.

II.A.1.n In the matter of violations of the Montana Strip and Underground Mine Reclamation Act by BMP Investments, Inc., at the Bull Mountains Mine #1, BER 2006-24 SM.

Ms. Orr said a hearing for this case has been set for July.

II.A.1.o In the matter of the appeal by the Butte-Silver Bow Public Works Department regarding final MPDES Permit No. MT0022012, BER 2006-27 WQ.

Ms. Orr had no further information to provide regarding this case.

II.A.1.p In the matter of violations of the Water Quality Act at Cenex Harvest States fueling facility on Highway 83, Condon, BER 2006-28 WQ.

Ms. Orr had no further information to provide regarding this case.

II.A.1.q In the matter of violations of the Water Quality Act and the Public Water Supply Laws by Brady County Water and Sewer District, BER 2006-29 WQ.

Ms. Orr had no further information to provide regarding this case.

II.B.1 Cases in Litigation -- In the matter of the Petition for Review of Hazardous Waste Final Permit No. MTHWP-03-01 issued to Flying J Petroleums, Inc., BER 2003-14 HW.

Ms. Orr said she was still waiting for a ruling on her motion to dismiss the Board from the case. She also noted that there is a new judge presiding over the case.

II.C.1 Legislative Briefing

Mr. Livers provided some guidance to the Board regarding Board members testifying on bills. He provided copies of House Bill 271 and Senate Bill 221, both directly related to the Board, and provided a summary of them. Mr. Livers discussed Senate Bill 180 and House Bill 460. He said there were a couple of draft bills dealing with mercury, which had not yet been introduced. He also discussed some proposals pertaining to Swift Gulch.

Mr. Livers provided information about the department's budget with regard to legislative activities.

Mr. North discussed bills and bill draft requests that pertain to the rulemaking process and the Administrative Procedures Act: House Bills 209, 254 and 276. He also provided information regarding Senate Bills 71, 47, 340 and 176, and House Bill 97.

III.A.1 In the matter of the amendment of ARM 17.30.617 and ARM 17.30.638 regarding Outstanding Resource Waters (ORW) and the Gallatin River.

Mr. Livers said the department is requesting that the Board issue a notice of supplemental rulemaking to extend the comment period. He provided background information regarding the rulemaking. Mr. Livers said the request to extend the public comment period comes at the request of several of the parties, particularly the

petitioners. He said there have been more aggressive discussions among the parties and that they're working on alternate solutions.

Mr. Rossbach MOVED to extend the comment period and issue a supplemental notice. Mr. Marble SECONDED the motion. A brief discussion took place regarding the decision options available. The motion CARRIED with a unanimous VOTE.

III.A.2 In the matter of the amendment of ARM 17.30.1303 and 1330 regarding the incorporation by reference of current federal regulations pertaining to concentrated animal feeding operations (CAFO).

Ms. Smith provided Board members with a document that included descriptions of the different types of CAFOs. She said the proposed incorporation by reference will adopt several new CAFO deadlines promulgated by the EPA. She requested that Board adopt the rules as proposed.

Mr. Marble MOVED to adopt the amendments and the 521 and 311 analyses. Mr. Rossbach SECONDED the motion. The motion CARRIED with a unanimous VOTE.

III.B.1 In the matter of the request for hearing of Tom and Noel Gorton, d/b/a Creston Topsoil, regarding a notice of violation of the Opencut Mining Act, BER 2006-07 OC.

Chairman Russell called for a motion to authorize him to sign the order to dismiss the case. Mr. Rossbach so MOVED. Mr. Marble SECONDED the motion. The motion CARRIED with a unanimous VOTE.

III.B.2 In the matter of the appeal by Wesley Gillespie regarding the 2006 fee for MPDES Permit No. MTG370275, BER 2006-25 WQ.

Chairman Russell called for a motion to authorize him to sign the order to dismiss the case. Mr. Rossbach so MOVED. Mr. Mires SECONDED the motion. The motion CARRIED with a unanimous VOTE.

III.B.3 In the matter of the request for hearing of Bruce Wood, d/b/a Big Sky Ready Mix, regarding a notice of violations of the Opencut Mining Act, BER 2006-06 OC.

Ms. Orr provided information regarding the history of this case.

Mr. Rossbach moved that the Board authorize the Chair to sign the order dismissing the case. Ms. Kaiser SECONDED the motion. The motion CARRIED with a unanimous VOTE.

III.C.1 In the matter of violations of the Montana Strip and Underground Mine Reclamation Act by Westmoreland Resources, Inc., d/b/a Western Energy Co., BER 2006-30 SM.

Mr. Rossbach moved that the Board hear this case. Mr. Marble SECONDED the

motion. Further discussion took place and the motion CARRIED with a unanimous VOTE.

IV. General Public Comment

Mr. Rossbach discussed an editorial from the Missoulian regarding a study that was published in part by Mr. Kuipers and others who had testified before the Board on mining issues. He requested that the DEQ circulate the study or a summary of it to the Board.

V. Adjournment

Mr. Rossbach MOVED to adjourn. Ms. Shropshire SECONDED the motion. The motion CARRIED with a unanimous VOTE.

The meeting adjourned at 10:52 a.m.

Board of Environmental Review January 26, 2007, minutes approved:

JOSEPH W. RUSSELL, M.P.H.
CHAIRMAN
BOARD OF ENVIRONMENTAL REVIEW

DATE