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AGENDA

BOARD OF ENVIRONMENTAL REVIEW

FRIDAY, JULY 27, 2007

METCALF BUILDING, ROOM 111

1520 EAST SIXTH AVENUE, HELENA, MONTANA

NOTE: Individual agenda items are not assigned specific times. For public notice purposes, the Board will begin the meeting no earlier than the time specified. However, the Board might not address the specific agenda items in the order they are scheduled. Persons with disabilities, who need an accommodation in order to participate in this meeting, should contact the Board Secretary at (406) 444-2544

9:00 A.M.

I. ADMINISTRATIVE ITEMS

A. REVIEW AND APPROVE MINUTES

June 1, 2007, regularly scheduled Board meeting.

Draft Minutes

II. BRIEFING ITEMS

A. CONTESTED CASE UPDATE

1. Cases assigned to Hearing Officer Katherine Orr

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. On April 27, 2007, Hearing Examiner Katherine Orr issued an Order Requesting Status Report. On May 16, 2007, DEQ filed a Status Report.

b. In the matter of the issuance of the Air Quality Permit for the Roundup Power Project, Permit No. 3182-00, BER 2003-04 AQ. On July 29, 2005, the Board issued an Order Staying Contested Case Proceedings indefinitely. On August 24, 2005, Hearing Examiner Katherine Orr issued an Assumption of Jurisdiction referencing the Order Staying Contested Case Proceedings.

c. In the matter of Violations of the Water Quality Act by ASARCO, Inc., BER 2005-09 WQ. A Stay of Proceedings was issued by the Hearing Examiner on January 19, 2006, upon notification by the Department of the bankruptcy proceeding.

d. 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. On May 22, 2007, Hearing Examiner Katherine Orr issued an Order on Motion to Dismiss for Mootness, and on July 12, 2007, issued an Order on Cross Motions for Summary Judgment. On July 16, 2007, two of the parties each filed a Notice of Intent to File Exceptions, and Bull Mountain filed a Request to Postpone Consideration until the September 28, 2007 Board meeting. Ms. Orr is granting this postponement.

e. 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. On March 30, 2007, the parties filed a Stipulation for Continuing Stay of Board Proceedings. By order dated June 8, 2007, the proceedings are stayed until June 29, 2007.

f. In the matter of the appeal by Willow Creek Sewer District regarding violations of the

Water Quality Act, BER 2006-13 WQ. Upon a request for an extension, the parties have until April 13, 2007, to submit a hearing schedule or reach settlement. On May 9, DEQ filed a Request for Extension, which Ms. Orr granted on May 11. The parties have until June 29, 2007, to file a pre-hearing order or settlement documents.

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. The matter proceeded to hearing on May 3, 4, and 17, 2007. Hearing Examiner Katherine Orr issued an order for the parties to submit post-hearing proposed findings of facts and conclusions of law and post-hearing briefs by June 29, 2007. On May 26, the parties filed a request for extension of that deadline to August 1, 2007. An Order Granting Extension of Time for Filing Proposed Findings of Fact and Conclusions of Law was entered by the Hearing Examiner on July 2, 2007. This order extends the deadline for filing proposed finding of fact and conclusions of law until August 1, 2007.

h. 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. A hearing is set for July 30, 2007.

i. 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. On May 3, the parties filed another Request for Extension. On June 8, Hearing Examiner Katherine Orr granted the extension, giving the parties until July 3, 2007, to file a proposed schedule.

j. In the matter of the appeal by the Butte-Silver Bow Public Works Department, regarding Final MPDES Permit No. MT0022012, BER 2006-27 WQ. An extension was granted until July 3, 2007, to submit a hearing schedule or settlement documents. The parties have until August 29, 2007, to submit a hearing schedule or settlement documents.

k. 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. On May 14, DEQ filed a second Request for Extension. On June 8, 2007, Hearing Examiner Katherine Orr granted the extension, giving the parties until June 29, 2007, to file a proposed schedule.

m. In the matter of violations of the Clean Air Act of Montana by Flathead County, BER 2007-01 AQ. On March 22, 2007, the County filed a Motion for Stay. Hearing Examiner Katherine Orr issued an Order for Stay on May 11, 2007, giving the parties until May 25, 2007, to attempt to settle the case. On June 13, 2007, the Hearing Examiner entered a scheduling order. A hearing is scheduled for December 13, 2007.

n. In the matter of the appeal by the Missoula County Public Works Department regarding MPDES Permit No. MT0020168 and DEQ's response to public comments and submitted documents regarding the permit, BER 2007-02 WQ. On June 5, 2007, DEQ filed a second Request for Extension to file a proposed scheduling order. Hearing Examiner Katherine Orr granted the extension on June 15, 2007, giving the parties until July 5, 2007 to file a pre-hearing schedule or settlement documents.

o. In the matter of the appeal by Jill and Joseph Slevin regarding Gallatin County's denial of a request for waiver to build a home, BER 2007-03 SUB. Hearing Examiner Katherine Orr issued a First Prehearing Order on May 14, 2007, giving the parties until May 24, 2007, to file a proposed schedule. On May 31, 2007, DEQ filed a Request for Extension. The parties were given until June 28, 2007, to conduct settlement discussions or propose a pre-hearing scheduling order.

p. In the matter of the request for hearing by John Pendleton regarding alleged violations of the Montana Public Water Supply Laws at the Ponderosa Mobile Home Court in Corvallis, BER 2007-04 PWS. The parties submitted a proposed schedule on May 25, 2007. Hearing Examiner Katherine Orr issued a First Scheduling Order on June 8, 2007. This matter has be set for hearing on November 20, 2007.

B. CASES IN LITIGATION

1. In the matter of the Petition for Review of Hazardous Waste Final Permit No. MTHWP-03-01 issued to Flying J Petroleum, Inc. (BER 2003-14 HW). On September 27, 2006, the Board filed a Motion to Dismiss the Board. Flying J filed a response opposing the Motion to Dismiss on October 12, 2006. On November 9, 2006, the Board filed a Reply in Support of Motion to Dismiss. On June 25, 2007, the Court issued an Order Denying the Board's Motion to Dismiss and on July 6, 2007, entered an Order Setting Briefing Schedule and Hearing Date. Under this Order, the Petitioner is required to file all briefs on or before August 10, 2007, and the Respondents are ordered to file their respective responsive briefs on or before September 21, 2007.

III. ACTION ITEMS

A. INITIATION OF RULEMAKING AND APPOINTMENT OF HEARING OFFICER:

The Department will propose that the Board concur in its recommendation to initiate rulemaking to:

1. Amend ARM 17.38.101 and 106 of the public water supply rules, in accordance with MCA, 75-6-104 and 75-6-108, to allow the department to collect fees commensurate with the costs of engineering plan and specification review and to clarify existing rules.

Executive Summary

Notice of Public Hearing on Proposed Amendment

B. REPEAL, AMENDMENT OR ADOPTION OF FINAL RULES

1. In the matter of the amendment of ARM 17.30.617 to designate the mainstem Gallatin River from the Yellowstone National Park boundary to the confluence of Spanish Creek as an Outstanding Resource Water (ORW) and to amend ARM 17.30.638 to add a new sub-section clarifying that discharges to ground water with a direct hydrologic connection to an ORW are within the statutory mandate prohibiting any permanent change in the water quality of an ORW resulting from point source discharges. The Department will request that the Board issue a notice of supplemental rulemaking to extend the comment period.

Executive Summary

Notice of Extension of Comment Period on Proposed Amendment

C. NEW CONTESTED CASE APPEALS

1. In the matter of the appeal by the Town of Superior, BER 2007-05 WQ, regarding final MPDES Permit No. MT0020664, issued to the Town of Superior. The Board received the appeal on May 2, 2007. Interim Hearing Examiner Katherine Orr issued a First Prehearing Order on May 14, 2007, giving the parties until May 26, 2007, to file a scheduling order. The matter came before the Board at its June 1 meeting and the Board took no action at that time. The parties filed a Request for Extension on May 17, 2007, which Ms. Orr granted on June 8, 2007, giving the parties until July 17, 2007, to file a proposed schedule. The Board may appoint a permanent hearing examiner or decide to hear the matter.

2. In the matter of the appeal by Southern Montana Electric (SME) regarding its Air Quality Permit No. 3423-00 for the Highwood Generation Station, BER 2007-06 AQ. The Board received the appeal on May 24, 2007, followed by an affidavit on May 31, 2007. On June 8, 2007, Standing Interim Hearing Examiner Katherine Orr issued a combined First Prehearing Order for Case Nos. 2007-06 and 2007-08. On June 28, 2007, DEQ submitted a proposed schedule on behalf of the parties, which included a request to combine the two cases. On June 28, 2007, the parties filed a proposed pre-hearing and hearing schedule. The proposed schedule states that the parties wish to consolidate these two appeals for purposes of pre-hearing proceedings and reserve decision on whether they should be consolidated for hearing. On July 9, 2007, SME filed a Notice of Intent to be Considered an Intervenor Party in the Appeal Filed by Citizens for Clean Energy and Montana Environmental Information Center. SME's first set of interrogatories to MEIC and Citizens for Clean Energy and SME's Request for Production of Documents directed to MEIC and Citizens for Clean Energy. The Board may appoint a permanent hearing examiner or decide to hear the matter.

3. In the matter of the appeal by Citizens for Clean Energy (CCE) and Montana Environmental Information Center (MEIC) regarding Air Quality Permit No. 3423-00 issued to Southern Montana Electric (SME) for its Highwood Generation Station, BER 2007-07 AQ. The Board received the appeal on May 29, 2007, followed by an affidavit on June 8, 2007. On June 8, 2007, Standing Interim Hearing Examiner Katherine Orr issued a combined First Prehearing Order for Case Nos. 2007-06 and 2007-08. On June 28, 2007, DEQ submitted a proposed schedule on behalf of the parties, which included a request to combine the two cases. The Board may appoint a permanent hearing examiner or decide to hear the matter. (See entry III.C.2.)

4. In the matter of violations of the Water Quality Act by North Valley Hospital, Flathead County, BER 2007-08 WQ. The Board received the request for hearing on June 5, 2007. Standing Interim Hearing Examiner Katherine Orr issued a First Prehearing Order on June 13, 2007. On July 2, 2007, DEQ filed a Request for Extension [of time] to file a proposed schedule. The parties have until August 29, 2007, to file a pre-hearing schedule or settlement documents. The Board may appoint a permanent hearing examiner or decide to hear the matter.

5. In the matter of violations of the Montana Public water Supply laws by Gallatin National Forest at Soda Butte Campground, BER 2007-09 WQ. The Board received the request for hearing on June 6, 2007. A First Pre-Hearing Order was issued on July 13, 2007. The Board may appoint a permanent hearing examiner or decide to hear the matter.

6. In the matter of violations of the Montana Public Water Supply laws by Malsam Water Conditioning, Inc., d/b/a Culligan of Great Falls, Inc., at Culligan Water Conditioning Great Falls, BER 2007-10 WQ. The Board received the appeal on June 8, 2007. A First Pre-Hearing Order was issued on July 13, 2007. The Board may appoint a permanent hearing examiner or decide to hear the matter.

7. In the matter of violations of the Opencut Mining Act by Big Rock, LLC, at the Wheeler Gravel Pit, Missoula County, BER 2007-11 OC. The Board received the request for hearing on June 22, 2007. A First Pre-Hearing Order was issued on July 13, 2007. The Board may

appoint a permanent hearing examiner or decide to hear the matter.

8. In the matter of the appeal by ExxonMobil regarding its final MPDES Permit No. MT-0028321 for its Billings Refinery, BER 2007-12 WQ. The Board received the appeal on June 26, 2007. A First Pre-Hearing Order was issued on July 13, 2007. The Board may appoint a permanent hearing examiner or decide to hear the matter.

9. In the matter of violations of the Open Cut Mining Act by John Schlecht, d/b/a John Schlecht Excavating, at the Schlecht Sand and Gravel Pit, Ravalli County, BER 2007-13 OC. The Board received the appeal on July 5, 2007. The Board may appoint a permanent hearing examiner or decide to hear the matter.

10. In the matter of violations of the Montana Public Water Supply Laws by Broadway Flying J, Belgrade, BER 2007-14 PWS. The Board received the request for hearing on July 6, 2007. The Board may appoint a permanent hearing examiner or decide to hear the matter.

11. In the matter of violation of the Water Quality Act by Jack Mountain Estates Subdivision, Jefferson County, BER 2007-15 WQ. The Board received the request for hearing on July 13, 2007. The Board may appoint a permanent hearing examiner or decide to hear the matter.

D. FINAL ACTION ON CONTESTED CASES

1. In the matter of violations of the Montana Strip and Underground Mine Reclamation Act by Westmoreland Mining, LLC, d/b/a Western Energy Co., BER 2006-30 SM. On July 16, 2007, the parties filed a Stipulation To Dismiss and an Administrative Order on Consent. An order to dismiss the case will be presented for the Board's approval.

IV. GENERAL PUBLIC COMMENT

Under this item, members of the public may comment on any public matter within the jurisdiction of the Board that is not otherwise on the agenda of the meeting. Individual contested case proceedings are not public matters on which the public may comment.

V. ADJOURNMENT