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### AGENDA

BOARD OF ENVIRONMENTAL REVIEW

FRIDAY, JULY 24, 2009

**METCALF BUILDING, ROOM 111**

**1520 EAST SIXTH AVENUE, HELENA, MONTANA**

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**NOTE:** Individual agenda items are not assigned specific times. For public notice purposes, the meeting will begin 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) 444-6701.

**9:00 A.M.**

#### **I. HEARING**

- A. The Board will hold a public hearing in the Matter of the Amendment of ARM 17.30.702, 17.36.101, 17.36.102, 17.36.103, 17.36.104, 17.36.323, 17.36.345, 17.36.911, 17.36.912, 17.36.914, 17.36.916, 17.36.918, 17.36.922, 17.38.101, 17.55.102, the amendment of Department Circular DEQ-4, and the adoption of New Rules I and II pertaining to gray water reuse. [ATTACHMENT](#)

#### **II. ADMINISTRATIVE ITEMS**

- A. REVIEW AND APPROVE MINUTES

1. May 29, 2009, Board meeting.

#### **III. BRIEFING ITEMS**

- A. CONTESTED CASE UPDATE

1. Cases assigned to Hearing Officer Katherine Orr
- 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.** An EIS on the mine closure plan is on hold until collection of water quality data is completed. Once the data has been collected, the EIS will be completed and the case may become moot. The case is stayed pending completion of the EIS. The parties anticipate completion of the EIS in 2009.
  - 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.
  - 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.** On April 2, 2009, the Board received an *Unopposed Motion of Petitioner Southern Montana Electric Generation and Transmission Cooperative, Inc., For an Additional Stay of Proceedings*. Hearing Examiner Katherine Orr issued an *Order Granting Second Stay of Proceedings* on May 18, 2009. The stay is granted until January 4, 2010.
  - In the matter of the appeal by Eastgate Water and Sewer Association of Helena Sand and Gravel, Inc.'s Opencut Permit No. HSG-017, BER 2008-08 OC.** (The Board has retained jurisdiction on this case to hear contested case matters.) On March 25, 2009, the parties filed a *Second Proposed Prehearing Schedule*. Hearing Examiner Katherine Orr issued an *Order Adopting Second Proposed Prehearing Schedule* on April 2, 2009. A hearing before the Board is scheduled on September 2, 2009.

- e. **In the matter of violations of the Montana Water Quality Act by Wilderness Club, LLC., at the Wilderness Club Eureka, Lincoln County, Montana, BER 2008-13 WQ.** (The Board has retained jurisdiction on this case to hear contested case matters.) On May 14, 2009, the Wilderness Club filed a *Motion for Summary Judgment*. On June 4, 2009, DEQ filed an *Unopposed Request for Additional Time to File Briefs*, and on June 11, 2009, it filed a *DEQ Brief in Response to Appellant's Motion for Summary Judgment*. Hearing Examiner Katherine Orr issued an *Order Granting Additional Time to File Briefs* on June 19, 2009. A *Reply to the Motion for Summary Judgment* was filed on July 6, 2009.
- f. **In the matter of the appeal and request for hearing by Montana Environmental Information Center, Citizens for Clean Energy, Sierra Club, and National Parks Conservation Association of the Southern Montana Electric Generation and Transmission Cooperative (SME) Highwood Generating Station Air Quality Permit No. 3423-01, BER 2008-23 AQ.** (The Board has retained jurisdiction on this case to hear contested case matters.) On June 2, 2009, SME filed a *Respondent-Intervenor Southern Montana Electric's Motion to Continue Stay of Proceedings*. The Board received *Appellants' Response to SME's Motion to Continue Stay and Unopposed Request for Status Conference* on June 4, 2009. On June 11, 2009, the Board received *Respondent-Intervenor Southern Montana Electric's Reply to Appellant's Response to Motion to Continue Stay and Response to Unopposed Request for Status Conference*. On June 18, 2009, Hearing Examiner Katherine Orr issued a *Second Order Granting Stay* until July 24, 2009, at which time the parties will provide a status of the construction and permitting affecting the coal plant facility at the Highwood site and recommendations for proceeding with this appeal.
- g. **In the matter of violations of the Metal Mine Reclamation Act by Saturday Sunday, LLC. Deer Lodge County, BER 2009-02 MM.** The parties submitted a proposed pre-hearing and hearing schedule on February 26, 2009. Hearing Examiner Katherine Orr issued a *First Scheduling Order* on March 19, 2009. A contested case hearing had been set for June 19, 2009. The Department of Environmental Quality filed a *Motion for Summary Judgment* on May 26, 2009. The Appellant filed an *Opposition to the Department's Motion for Summary Judgment and Cross-Motion for Summary Judgment* on June 11, 2009. The Department filed a *Reply Brief* on June 29, 2009. In view of the motions, the hearing date was postponed.
- h. **In the matter of violations of the Montana Public Water Supply Laws by Hugh Black-ST. Mary Enterprises, Inc. at the ST. Mary Lodge and Resort Public Water Supply System, PWSID #MT0002754, ST. Mary, Glacier County, BER 2009-04 PWS.** The Board received the request for hearing on February 3, 2009. On February 6, 2009, Standing Interim Hearing Examiner Katherine Orr issued a *First Prehearing Order*. The parties filed a *Proposed Schedule* on June 25, 2009. A *Scheduling Order* was issued on July 8, 2009. A hearing is scheduled for December 11, 2009.
- i. **In the matter of the appeal by the River Rock County Water and Sewer District regarding its MDEQ Permit No. MTX000147 for its wastewater treatment facility, BER 2009-05 WQ.** The River Rock County Water and Sewer District filed a *Second Unopposed Motion for Extension of Time* on April 8, 2009. On May 7, 2009, Hearing Examiner Katherine Orr issued a *Second Order Granting Extension of Time* allowing the parties until June 1, 2009, to file a proposed hearing schedule or submit settlement documents. Upon an *Unopposed Motion for Extension of Time*, the parties were granted a third extension of time to file settlement documents or file a proposed hearing schedule.
- j. **In the matter of violations of the Montana Underground Storage Tank Act by Flying J Inc. at Flying J Travel Plaza, 112000 Browns Gulch Road, Butte, Silver Bow County, BER 2009-06 UST.** Hearing Examiner Katherine Orr issued the *First Prehearing Order* on March 19, 2009. The Board received a *Proposed Prehearing Schedule* from the parties on April 2, 2009. A *Scheduling Order* was issued on May 18, 2009. A hearing is set for September 21, 2009.

- k. **In the matter of the request for hearing by Sandy Rose regarding the Notice of violation of the Montana Public Water Supply Laws by Canyon Ferry Mansion, Inc., at Canyon Ferry Mansion, PWSID #MT0004387, Helena, Lewis and Clark County, BER 2009-08 PWS.** The Board received the request for hearing on April 30, 2009. A *First Prehearing Order* was issued on May 18, 2009. Upon a *Request for Extension*, the parties were granted until July 29, 2009, to either settle the case or file a proposed hearing schedule.
  - l. **In the matter of the Notice of Violations of the Montana Water Quality Act by North Star Aviation, Inc. at Ravalli County Airport, Ravalli County, BER 2009-10 WQ.** The Board received the request for hearing on May 13, 2009. A *First Prehearing Order* was issued on June 12, 2009.
  - m. **In the matter of violations of the Clean Air Act of Montana by Sheep Mountain Properties, LLC, Jefferson County, BER 2009-11 AQ.** The Board received the request for hearing from Joseph Schmaus on May 20, 2009. A *First Prehearing Order* was issued on June 15, 2009. The Department provided a *Proposed Prehearing Schedule* on July 2, 2009. A *Scheduling Order* was issued on July 8, 2009. A hearing is scheduled for November 19, 2009.
2. Cases in litigation
- a. **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.** Petitioners filed a Notice of Appeal to the Montana Supreme Court on January 30, 2009. The Petitioners filed their Supreme Court brief on May 21, 2009. The Department and Thompson River Power, Inc., filed answer briefs, as Intervenor-Respondents in the case, on June 18 and 22, 2009, respectively. The Board is named as the respondent, but has not appeared in the case. Any reply brief by the Petitioners is due within 14 days after service of the answer briefs.
  - b. **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 Generating Station, BER 2007-07 AQ.** On March 20, 2009, the district court granted SME's motion to stay scheduling of oral argument until at least June 17, 2009. On June 15, 2009, SME filed a motion to continue the stay through November 2, 2009, noting that the Department does not object to continuing the stay but that the Petitioners do object. On June 19, 2009, the Petitioners filed a response to the motion, stating that they do not object to the stay if SME intends to abandon the coal plant project and requesting that the court convene a status conference with the parties to determine the status of the project.

#### IV. 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. 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 subsection 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. [ATTACHMENT](#)
2. Amend Administrative Rules of Montana (ARM) Title 17, Chapter 38, subchapters 1 and 2. The proposed amendments are intended to update existing rules regarding public water supplies by; adopting new rules, clarifying existing rules, and incorporating by reference the most recent

applicable sections of the Code of Federal Regulations. New rules include adoption of three new federal requirements including the Ground Water Rule (GWR), Stage-2 Disinfection Byproducts Requirements rule (Stage-2), and the Enhanced Treatment for Cryptosporidium rule (LT-2). Amendments include updates to the Engineering Plan Review Fees and clarifications to existing rules to accommodate new federal requirements. [ATTACHMENT](#)

3. Amend ARM 17.30.201 to adjust the water discharge permit fee schedule for application, authorizations and annual permit fees. [ATTACHMENT](#)

#### B. NEW CONTESTED CASE APPEALS

1. **In the matter of violations of Montana Public Water Supply Laws by Anaconda Country Club, Anaconda, Deer Lodge County, BER 2009-12 PWS.** The Board received the appeal on May 22, 2009. Hearing Examiner Katherine Orr issued a *First Prehearing Order* on June 15, 2009. A *First Prehearing Order* was issued on June 15, 2009. A *Request for Extension* of the time set to file a proposed hearing schedule was filed on June 26, 2009. An *Order Granting Extension* was issued on July 8, 2009. The Board may appoint a permanent hearing examiner or decide to hear the matter. [ATTACHMENT](#)
2. **In the matter of Montana Public Water Supply Laws by Headwaters Livestock Auction, LLC at Headwaters Livestock Auction, Three Forks, Broadwater County, BER 2009-13 PWS.** The Board received the appeal on June 2, 2009. Hearing Examiner Katherine Orr issued the *First Prehearing Order* on June 12, 2009. The parties requested an extension of time in which to file a proposed hearing schedule or to settle this matter on June 26, 2009. An *Order of Extension* was issued on July 8, 2009. The Board may appoint a permanent hearing examiner or decide to hear the matter. [ATTACHMENT](#)

#### C. FINAL ACTION ON CONTESTED CASES

1. **In the matter of violations of the Montana Water Quality Act by Jim Gilman Excavating, Inc., at Augusta-South, Lewis and Clark County, BER 2008-24 WQ.** On July 9, 2009, a Stipulation to Dismiss, signed by the parties, was received. An order to dismiss the case will be presented for signature by the Chair. [ATTACHMENT](#)

#### V. GENERAL PUBLIC COMMENT

- A. 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.

#### VI. ADJOURNMENT