

**MINUTES**  
**MARCH 19, 2010**

Call to Order

The Board of Environmental Review's regularly scheduled meeting was called to order by Chairman Russell at 9:03 a.m., on Friday, March 19, 2010, in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana.

Attendance

Board Members Present via Telephone: Chairman Russell, Robin Shropshire, Larry Anderson, Larry Mires, Heidi Kaiser, Joe Whalen, and Marvin Miller

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

Board Secretary Present: Joyce Wittenberg

Court Reporter Present: Cheryl Romsa

Department Personnel Present: Richard Opper (Director), Tom Livers (Deputy Director); Misty Gable, - Director's Office; John North, David Rusoff, Claudia Massman, Jane Amdahl, Tom Root, Ed Hayes, and Norman Mullen – Legal; Judy Hanson – Permitting & Compliance Division; Jenny Chambers – Water Protection Bureau; Jon Dilliard, Eugene Pizzini, Steve Kilbreath, Rachel Clark – Public Water Supply & Subdivisions Bureau; Charles Homer and Vickie Walsh – Air Resources Management Bureau; Rick Thompson, Waste & Underground Tank Management Bureau; George Mathieus, Planning Division; Mark Bostrom, Bob Bukantis, and Rod McNeil – Water Quality Planning Bureau; John Arrigo – Enforcement Division; John Koerth & Tom Henderson, Abandoned Mine Lands Bureau

Interested Persons Present (*Disclaimer: Names are spelled as best they can be read from the official sign-in sheet.*): John Camden, Montana Rural Water Systems; David Novotny, Division of Banking & Financial Institutions; Tina Laidlaw, Environmental Protection Agency (EPA); Brenda Lindlief-Hall, Tongue River Water Users; Don Allen, Western Environmental Trade Association; Chris Hiltunen, Bison Engineering; Van Hildreth, Knife River Corporation

Interested Persons Present via Telephone: Mark Pearson, Greater Yellowstone Coalition; Rebecca Fischer, Northern Plains Resource Council

- I.A.1 | Review and approve January 14, 2010, teleconference meeting minutes.
- Mr. Mires MOVED to approve the January 14, 2010, teleconference minutes. Mr. Miller SECONDED the motion. The motion CARRIED with a unanimous VOTE.
- I.A.2 | Review and approve January 22, 2010, teleconference meeting minutes.
- Mr. Whalen MOVED to approve the January 22, 2010, teleconference minutes. Ms. Kaiser 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. [*No discussion took place regarding this agenda item.*]
- II.A.1.b | In the matter of Violations of the Water Quality Act by ASARCO, Inc., BER 2005-09 WQ. [*No discussion took place regarding this agenda item.*]
- II.A.1.c | In the matter of violations of the Metal Mine Reclamation Act by Saturday Sunday, LLC. Deer Lodge County, BER 2009-02 MM. [*No discussion took place regarding this agenda item.*]
- II.A.1.d | 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. [*No discussion took place regarding this agenda item.*]
- II.A.1.e | 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. [*No discussion took place regarding this agenda item.*]
- II.A.1.f | In the matter of violations of the Clean Air Act of Montana by Sheep Mountain Properties, LLC, Jefferson County, BER 2009-11 AQ.
- Ms. Orr reported that an order granting a motion for sanctions had been issued and the order set a deadline.
- II.A.1.g | In the matter of violations of the Montana Septage Disposal and Licensure Laws by Steven Kunkel, d/b/a Montana Septic Service, at Great Falls Wastewater Treatment Plant, Great Falls, Cascade County, BER 2009-17 SDL.
- Ms. Orr reported that this is an example of a case where one of the parties is acting pro se, but needs an attorney. A status conference will be held on March 26 regarding what the parties might envision for proceeding with the case.

- II.A.1.h In the matter of violations of the Montana Underground Storage Tank Act by Juniper Hill Farm, LLC, at Lakeside General Store, Lewis and Clark County, BER 2009-18 UST.
- Ms. Orr reported that this has developed into a summary judgment, on which she will be ruling.
- II.A.1.i In the matter of the request for hearing regarding the revocation of certificate of approval ES#34-93-C1-4 for the Fort Yellowstone Subdivision, Park County, BER 2009-20/22 SUB. [*No discussion took place regarding this agenda item.*]
- II.A.1.j In the matter of the request for hearing by the City of Great Falls regarding the DEQ's notice of final decision for MPDES Permit No. MT0021920, BER 2009-21 WQ. [*No discussion took place regarding this agenda item.*]
- II.A.1.k In the matter of violations of the Montana Public Water Supply Laws by Jason Ellsworth at SFE Unapproved, Hamilton, Ravalli County, BER 2010-01 PWS
- Ms. Orr reported that she issued a second order granting extension of time on March 11, 2010.
- II.A.1.l In the matter of violations of the Public Water Supply Laws by High Spirits Entertainment, LLC, at High Spirits Club and Casino, Florence, Ravalli County, BER 2010-02 PWS.
- Ms. Orr stated that the Department filed a request for extension on March 12, 2010.
- II.A.1.m In the matter of the request for hearing by AquaFlo, LLC, of DEQ's Notice of Final Decision regarding Montana Ground Water Pollution Control System Permit No. MTX000121 and the Permit Fact Sheet, Helena, Lewis and Clark County, BER 2010-03 WQ. [*No discussion took place regarding this agenda item.*]
- II.A.2.a In the matter of the appeal and request for hearing by Fidelity Exploration & Production Co. of the DEQ's denial of the request for modification of Fidelity's MPDES Permit No. MT0030457, BER 2009-24 WQ.
- Ms. Orr reported that the Department filed a request for extension on March 12, 2010.
- II.A.2.b In the matter of violations of the Montana Strip and Underground Mine Reclamation Act by Signal Peak Energy, LLC, at Bull Mountain Mine #1, Roundup, Musselshell County, BER 2009-23 SM.
- Ms. Orr stated that an order granting extension was issued on March 11, 2010.

III.A.1 In the matter of the DEQ's request for initiation of rulemaking to amend ARM 17.50.403 and 410.

Mr. Thompson explained that the proposed amendments are clerical in nature and no public hearing is contemplated for this rulemaking. The proposed amendments would correct citations and references in a repealed rule. Mr. Thompson responded to Board member questions.

Chairman Russell called for a motion to initiate rulemaking. Mr. Whalen so MOVED. Mr. Miller SECONDED the motion. Chairman Russell asked for public comment; there was no response. Chairman Russell called for a VOTE and the motion CARRIED unanimously.

III.A.2 In the matter of amending, clarifying, and deleting of ARM 17.38.201A(1), 17.38.216(3)(k) through (o), and 17.38.234(6)(d)(ii).

Mr. Pizzini presented the Department's proposed changes to update the adoption by reference to reflect the newest edition of the applicable federal regulations, to bring department requirements into conformance with federal requirements, and to amend existing rules to remove language that may cause confusion to the regulated public. He said the Department recommends initiation of rulemaking and appointment of a hearing examiner for a public hearing.

Chairman Russell called for questions from the Board; there was no response.

Chairman Russell called for motion to initiate rulemaking and appoint Ms. Orr as the hearing examiner. Mr. Miller so MOVED. Ms. Shropshire SECONDED the motion. Chairman Russell asked for public comment; there was no response. He called for a VOTE and the motion CARRIED unanimously.

III.A.3 In the matter of the DEQ's request to obtain public comment on Montana's water quality standards as part of the 2010 triennial review.

Mr. Bukantis provided a PowerPoint presentation regarding the requested changes to DEQ 7, including addition of 21 new pesticide standards, changes to footnotes, formatting updates, and a rewrite of the introduction. Mr. Bukantis, Mr. McNeil, and Mr. North responded to Board member questions.

Chairman Russell called for public comment.

Mr. Allen said opposition is not anticipated from WETA members, but was concerned about the inclusion of comments on other issues as part of the rulemaking.

Ms. Lindlief-Hall said the Tongue River Water Users support the rulemaking; she said it is appropriate to do the review and take comment in this fashion.

Ms. Fischer said NPRC does not want the standards reopened, but is okay with the review and accepting comments.

Chairman Russell called for a motion to initiate the review with a 45-day comment period and to appoint Ms. Orr as the presiding officer. Mr. Whalen so MOVED. Mr. Miller SECONDED the motion. Chairman Russell asked for public comment; there was no response. He called for a VOTE and the motion CARRIED unanimously.

III.B.1 In the matter of the DEQ's request for final adoption of amendments to ARM 17.38.106 regarding engineering plan fees.

Mr. Pizzini explained that as part of the Department's primacy agreement with the EPA, the Department is required to have a program in place to assure that the design and construction of new or substantially modified public water systems will be capable of compliance with the state primary drinking water regulations. He explained that Legislative audits conducted in fiscal year 1999-2000 and fiscal year 2001-2002 concluded the Department does not recover costs commensurate with the cost of doing reviews of plans and specifications. In December 2005 and July 2007, the Board initiated rule amendments to the engineering fees to address the issues identified in the audits. Because of the amount of increase needed, the Department decided to phase in the increase over a few years. There were no significant negative comments received. The comment period ended January 2010.

Chairman Russell called for public comment.

Mr. Camden commented that Montana Rural Water supports the purpose of the fee increase, but does not agree with all the proposed fee increases. Montana Rural Water would prefer to see no increases greater than 75 percent. Mr. Camden asked the Board to not adopt the rule at this time, and asked the Public Water Supply program to make some amendments and corrections to the distribution side.

Chairman Russell called for a motion to adopt the rule as noticed and to accept the presiding officer's report and the Department's House Bill 521 and 311 analyses. Ms. Shropshire so MOVED and Ms. Kaiser SECONDED.

Ms. Kaiser stated that Mr. Camden had a valid concern, but it's unfortunate that it was submitted after the comment period. Ms. Kaiser recommended that the Department look into it for future changes.

Mr. Livers said that it was unfortunate timing regarding the comment, but it doesn't preclude the Department from reconsidering this issue outside of this rulemaking.

Chairman Russell called for a VOTE and the motion CARRIED unanimously.

III.B.2 In the matter of the DEQ's request for final adoption of amendment of ARM

17.24.1109 regarding criteria for banking institutions.

Mr. Hayes explained that the proposed amendment would delete subsection (f) and would amend the definition of total stockholders' equity. Mr. Hayes answered a question from Mr. Whalen that was brought up when the Department proposed to initiate the rulemaking. He said the Department recommends adoption as proposed.

Chairman Russell called for public comment.

Mr. Whalen thanked the Department for following through with his request for more information.

Chairman Russell called for a motion to adopt the rule as noticed and the House Bill 311 analysis. Mr. Mires so MOVED. Mr. Miller SECONDED the motion. Chairman Russell called for further discussion; there was no response. He called for a VOTE and the motion CARRIED.

III.C.1 In the matter of the appeal by the 7<sup>th</sup> Day Adventist Church/Christian School, Hamilton, Ravalli County, BER 2010-04 PWS.

Ms. Orr provided background on the case and listed the various violations.

Mr. Arrigo responded to Board member questions regarding calculation of penalties.

Mr. Miller MOVED to appoint Ms. Orr as the permanent hearing examiner for this matter. Mr. Whalen SECONDED the motion. The motion CARRIED with a unanimous VOTE.

III.D.1 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 provided background on this case. She said before the Board is an order remanding the case to the hearing examiner for further consideration. Ms. Orr responded to Board member questions.

Chairman Russell called for a motion to sign the order on reversal remanding the matter to the hearing examiner. Ms. Shropshire so MOVED. Mr. Mires SECONDED the motion. Chairman Russell called for further discussion; there was no response. The motion CARRIED with a unanimous VOTE.

III.E.1 In the matter the McLaren tailings near Cooke City.

Mr. Henderson provided a PowerPoint presentation outlining the reclamation

project and explained that the Board and the Department are property owners in that they own the mining tailings. He said the Department priced out three options and believes that option two is the most desirable. This would involve trucking some of the tailings to Whitehall for reprocessing. Mr. Henderson and Mr. Root responded to Board member questions.

Mr. Pearson stated that the Greater Yellowstone Coalition expresses their strong support of the motion and urges the Board to support it.

Chairman Russell asked for any further public comment; there was no response. Chairman Russell called for a motion to sign a material purchase agreement when finalized. Ms. Shropshire so MOVED and Mr. Miller SECONDED. Chairman Russell called for a VOTE and the motion CARRIED unanimously.

IV. General Public Comment

Chairman Russell asked if anyone in the audience would like to speak on any matters that pertain to the Board. No one responded.

V. Adjournment

Chairman Russell called for a motion to adjourn. Mr. Miller so MOVED. Ms. Kaiser SECONDED the motion. The motion CARRIED with a unanimous VOTE.

The meeting adjourned at 11:47 a.m.

Board of Environmental Review March 19, 2010, minutes approved:

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

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DATE