



TELECONFERENCE AGENDA
BOARD OF ENVIRONMENTAL REVIEW
FRIDAY, MAY 14, 2010
METCALF BUILDING, ROOM 111
1520 EAST SIXTH AVENUE, HELENA, MONTANA

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. It is expected that most or all available Board members will be participating via teleconference. The Board’s attorney and secretary will be present at the location stated above. Interested persons, members of the public, and the media are welcome to attend at the location stated above. Members of the public and press also may join Board members with prior arrangement. Contact information for the Board members is available from the Board secretary at (406) 444-2544 or at <http://www.deq.mt.gov/ber/index.mcp.x>. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this meeting. Please contact the Board secretary by telephone or by e-mail at mgable@mt.gov no later than 24 hours prior to the meeting to advise her of the nature of the accommodation you need.

9:00 A.M.

I. ADMINISTRATIVE ITEMS

A. REVIEW AND APPROVE MINUTES

- 1. March 19, 2010, Board teleconference meeting. [ATTACHMENT](#)

B. OCTOBER MEETING SCHEDULE

The Board will discuss conflicts with the scheduled October 1 meeting and may vote to change the date.

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 January 12, 2010, the Department filed a status report in the case stating that the parties agree that the case should continue to be stayed.
 - b. **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.
 - c. **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.** On February 17, 2010, the district court remanded the case to the Board with instructions for the Board to remit the matter to the hearing examiner. At its March 19 meeting, the Board assigned this matter back to the Hearing Examiner, Katherine Orr. On April 12, 2010, Ms. Orr issued an *Order Granting the Petitioners’ Motion for Leave to File Amended Affidavit and Ordering the Submission of a Proposed Prehearing Schedule*. The attorney for the appellant filed an *Unopposed Motion for Extension of Time* on April 22, 2010. The parties filed a *Joint Proposed Schedule* on April 28, 2010.

- d. **In the matter of violations of the Metal Mine Reclamation Act by Saturday Sunday, LLC, Deer Lodge County, BER 2009-02 MM.** Hearing Examiner Katherine Orr issued an *Order Regarding Submission of Prehearing & Hearing Dates*, giving the parties until February 20, 2010, to propose a schedule.
- e. **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 *Appellant's Motion to Vacate Scheduling Requirements & to Continue Hearing* on October 13, 2009. Hearing Examiner Katherine Orr issued an *Order Vacating Scheduling Order* on November 6, 2009, giving the parties until January 15, 2010, to provide a status of the case or propose a new schedule. On January 15, 2010, the Department filed a *Second Proposed Schedule*. Ms. Orr issued the *Second Scheduling Order* on February 12, 2010, setting the hearing for June 14, 2010. The Board received *Appellant's Motion to Extend the Discovery Deadline for a Period of Thirty Days* on March 19, 2010. Ms. Orr issued an *Order Granting Extension of Discovery Deadline* on March 23, 2010, giving the parties until April 23, 2010, to complete discovery.
- f. **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.** On December 4, 2009, the Department submitted a *Request for Stay of Scheduling Order* to allow the parties time to pursue settlement discussions. An *Order Granting Stay of Scheduling Order* was issued on January 6, 2010, giving the parties until April 5, 2010, to file settlement documents or a proposed hearing schedule. The Department filed a *Proposed Schedule* on April 22, 2010. The Hearing Examiner issued a *Second Scheduling Order* on April 30, 2010.
- g. **In the matter of violations of the Clean Air Act of Montana by Sheep Mountain Properties, LLC, Jefferson County, BER 2009-11 AQ.** On August 25, 2009, the Department filed *The Department's Motion to Compel and for Sanctions*. No response was filed by Sheep Mountain. On September 21, 2009, the Board received *The Department's Motion to Vacate Schedule Until After Ruling on Discovery Motion*. Hearing Examiner Katherine Orr issued an *Order Vacating Scheduling Order* on November 5, 2009, and an *Order Granting Motion to Compel* on November 6, 2009. On December 11, 2009, the Board received *The Department's Motion for Sanctions*. An *Order Granting Motion for Sanctions* was issued on January 8, 2010. On January 29, 2010, Sheep Mountain filed a *Response to Department's First and Second Request for Discovery*. On April 30, 2010, the Hearing Examiner issued an *Order to Submit Proposed Scheduling Order*.
- h. **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.** The Board received an *Admission of Violation* from the Appellant on March 23, 2010. Ms. Orr issued an *Order Setting Telephonic Hearing Conference* on March 18, 2010. An *Order Regarding March 26, 2010, Status Conference* was issued on April 15, 2010. A *Stipulation for Partial Summary Judgment* was filed with the Board on April 19, 2010. On April 20, 2010, the Department filed a *Proposed Summary Judgment on Stipulation in Matter of Violations of Septic Disposal Laws by Steven Kunkel*. A status conference is scheduled for May 7, 2010.
- i. **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. A *Scheduling Order* was issued on January 6, 2010. On January 12, 2010, the Department filed *The Department's Motion to Modify Scheduling Order*, and on January 15, 2010, Counsel for the appellant filed a *Motion for Telephonic Pretrial Conference*. Hearing Examiner Katherine Orr issued a *Second Scheduling Order* on January 25, 2010, to address the Department's unopposed January 12, 2010, submittal. On March 1, 2010, the Board received *The Department's Motion for Summary Judgment* and *Brief in Support of the Department's Motion for Summary Judgment*. Counsel for the Petitioner filed *Petitioner's Answer to Motion for Summary Judgment* on March 11, 2010, and the Department filed *The Department's Reply in Support of its Motion for Summary Judgment* on March 19, 2010.

- j. **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.** On January 14, 2010, the Department, after consultation with attorney for the Appellants, filed a *Request for Consolidation and Extension* to consolidate cases BER 2009-20 SUB and BER 2009-22 SUB. On January 25 and February 9, 2010, Hearing Examiner Katherine Orr issued an *Order Granting Request for Consolidation and Extension*, giving the parties until April 23, 2010, to settle or file a proposed hearing schedule. The Department filed a *Request for Extension* on April 22, 2010. On April 30, 2010, the Hearing Examiner issued an *Order Granting Extension*.
 - k. **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.** On February 17, 2010, the parties filed a *Joint Request for Second Extension to Reply to First Prehearing Order*. On March 23, 2010, Hearing Examiner Katherine Orr issued a *Second Order Granting Extension* giving the parties until April 16, 2010, to settle or file a proposed hearing schedule.
 - l. **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.** On March 3, 2010, the Department filed a second *Request for Extension*. A *Second Order Granting Extension of Time* was issued on March 11, 2010, by Ms. Orr. On April 8, 2010, the Department filed a third *Request for Extension*, and Ms. Orr granted the extension on April 23, 2010.
 - 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.** On March 31, 2010, Counsel for the Petitioner filed a *Request for Extension of Time to File a Proposed Schedule*. On April 23, 2010, Ms. Orr issued a *Second Order Granting Request for Extension of Time*, giving the parties until May 7, 2010, to file settlement documents or a proposed schedule.
2. Cases the Board has retained unto itself or has not assigned to a hearings examiner
 - 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.** (At its January 22, 2010, meeting, the Board voted to retain this matter unto itself.) On March 12, 2010, the parties filed a *Stipulation for Extension*, and Ms. Orr granted the extension on March 23, 2010, giving the parties until June 14, 2010, to reach a settlement or file a proposed hearing schedule.

- 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.** (At its December 11, 2009, meeting, the Board chose to not appoint a hearing examiner.) The Board received the appeal on November 4, 2009. Hearing Examiner Katherine Orr issued the *First Prehearing Order* on November 12, 2009. On December 7, 2010, Counsel for the Petitioner filed a *Request for Extension to Submit Proposed Schedule*. On March 11, 2010, Ms. Orr issued an *Order Granting Extension to Submit Proposed Schedule* giving the parties until April 9, 2010, to file a proposed settlement or a proposed schedule.

III. ACTION ITEMS

A. REPEAL, AMENDMENT OR ADOPTION OF FINAL RULES

1. In the matter of the amendment of ARM 17.8.745 to reduce the per-ton threshold exempting de minimis changes at permitted facilities from the requirement to obtain a Montana Air Quality Permit. The existing threshold would be amended from 15 tons per year to 5 tons per year. [ATTACHMENT](#)
2. Amend 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](#)

B. NEW CONTESTED CASE APPEALS

1. **In the matter of violations of the Public Water Supply Laws by Red Cliff Estates Homeowners Association, Inc. at Red Cliff Estates HOA, Clancy, Jefferson County, BER 2010-05 PWS.** The Board received the appeal on March 22, 2010. On March 31, 2010, Interim Hearing Examiner Katherine Orr issued a *First Prehearing Order* giving the parties until April 14, 2010, to file a proposed schedule. The Department filed a *Request for Extension* on April 14, 2010. On April 23, 2010, the Interim Hearing Examiner issued an *Order Granting Extension of Time* to May 14, 2010, to reach settlement or to file a proposed hearing schedule. The Board may appoint a permanent hearing examiner or decide to hear the matter. [ATTACHMENT](#)
2. **In the matter of the Appeal and Request for Hearing by the City of Belgrade of DEQ'S Notice of Final Decision Regarding Montana Ground Water Pollution Control System Permit No. MTX000116, Belgrade, Gallatin County, BER 2010-06 WQ.** The Board received the appeal on March 23, 2010. On March 31, 2010, Interim Hearing Examiner Katherine Orr issued a *First Prehearing Order* giving the parties until April 14, 2010, to file a proposed schedule. On April 15, 2010, the Board received an *Unopposed Request for an Extension of Time to Respond to First Prehearing Order*. On April 23, 2010, the Interim Hearing Examiner issued an *Order Granting Extension of Time* to file First Prehearing Order until May 30, 2010. The Board may appoint a permanent hearing examiner or decide to hear the matter. [ATTACHMENT](#)
3. **In the matter of violations of the Public Water Supply Laws by Aces Wild, LLC at Aces and Eights Casino, PWSID #MT0003321, Glasgow, Valley County, BER 2010-07 PWS.** The Board received the appeal on April 13, 2010. On April 30, 2010, a *First Prehearing Order* was issued. The Board may appoint a permanent hearing examiner or decide to hear the matter. [ATTACHMENT](#)

4. **In the matter of violations of the Montana Underground Storage Tank Act by Jeanny Hlavka, individually and d/b/a J.R. Enterprise, LLC, at the Fork Peck Station, 301 Missouri Avenue, Fort Peck, Valley County, BER 2010-08 UST** The Board received the appeal on April 28, 2010. 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 the appeal by the 7th Day Adventist Church/Christian School, Hamilton, Ravalli County, BER 2010-04 PWS.** On April 14, 2010, the parties filed a Stipulation for Dismissal under Rule 41(a). An order to dismiss the case will be presented for the Chair's signature. [ATTACHMENT](#)
2. **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.** On March 12, 2010, the department filed a second *Request for Extension* and Ms. Orr issued a *Second Order Granting Extension of Time* on March 23, 2010. The Department filed a third *Request for Extension* on March 26, 2010, and a *Third Order Granting Extension of Time* was issued on March 31, 2010, giving the parties until April 30, 2010, to file settlement documents or a proposed schedule. On April 30, 2010, the parties filed a *Stipulation for Dismissal* to Rule 41(a) M.R. Civ. P. An *Order of Dismissal* will be presented for the Board Chairman's signature. [ATTACHMENT](#)

D. OTHER ACTION

1. **In the matter of Missoula City-County Air Pollution Control Program Revisions.** Missoula County adopted changes to its local air quality program rules. The changes, approved following a local process, include adoption of revised federal regulations, changes to local rules, and clarification of administrative processes. Missoula City-County Air Pollution Control Program requests the Board issue an order approving revisions to the local air quality program. [ATTACHMENT](#)

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