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**MINUTES  
MAY 13, 2011**

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, May 13, 2011, in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana.

Attendance

Board Members Present: Chairman Joseph Russell, Larry Mires, Joe Whalen, Robin Shropshire, Larry Anderson

Board Members Present via Telephone: Heidi Kaiser

Board Members Absent: Marvin Miller

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); John North, Claudia Massman, Jim Madden, David Rusoff – Legal; Judy Hanson – Permitting & Compliance Division; Jenny Chambers, Freddi Haab – Water Protection Bureau; Jon Dilliard – Public Water Supply & Subdivisions Bureau; David Klemp, Vickie Walsh, Debra Wolfe – Air Resources Management Bureau; Bob Bukantis, Art Compton, Mark Bostrom – Water Quality Planning Bureau; Ed Coleman – Industrial and Energy Minerals Bureau; John Arrigo – Enforcement Division; Todd Teegarden, Technical & Financial Assistance Bureau;

Interested Persons Present: Gerald Douthit and Mac Mader, Montana Gold and Sapphire; Gail Abercrombie, Gaila Consulting; Jason Gildra, Environmental Protection Agency; Jon Metropoulis, Fidelity Exploration; Anne Hedges, Montana Environmental Information Center; Brenda Lindlieff-Hall, Tongue River Water Users Association

Interested Persons Present via Telephone: Mark Fix, Roger Muggli, and Charlie, Tongue River Water Users Association;

I.A.1 | Review and approve March 25, 2011, meeting minutes.

Chairman Russell called for a motion to approve the March 25, 2011, meeting minutes. Mr. Whalen so MOVED. Mr. Mires 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 item.)*

II.A.1.b | In the matter of 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 item.)*

II.A.1.c | 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.

Ms. Orr said a motion for summary judgment, a response to the motion for summary judgment, a motion to strike the defense, and a motion to enter judgment in favor of the department had all been filed and are pending.

II.A.1.d | 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 Fort Peck Station, 301 Missouri Avenue, Fort Peck, Valley County, BER 2010-08 UST. *(No discussion took place regarding this item.)*

II.A.1.e | In the matter of the appeal and request for hearing by Roseburg Forest Products Co. of DEQ's Notice of Final Decision regarding Montana Ground Water Pollution Control System Permit NO. MTX000099, BER 2010-09 WQ. *(No discussion took place regarding this item.)*

II.A.1.f | In the matter of the appeal and request for hearing by Holcim Incorporated regarding the DEQ's Notice of Final Decision for MPDES Permit No. MT 0000485, BER 2010-13 WQ. *(No discussion took place regarding this item.)*

II.A.1.g | In the matter of the appeal and request for hearing by Ronald and Debbie Laubach regarding the DEQ's final decision to amend the MATL's certificate of compliance, BER 2010-15 MFS. *(No discussion took place regarding this item.)*

II.A.1.h | In the matter of the appeal and request for hearing by Maurer Farms, Inc.; Somerfeld & Sons Land & Livestock, LLC; Larry Salois, POA; Jerry McRae; and Katrina Martin regarding the DEQ's final decision to amend the MATL's certificate of compliance, BER 2010-16 MFS. *(No discussion took place regarding this item.)*

II.A.1.i 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 2010-17 SM. *(No discussion took place regarding this item.)*

II.A.1.j In the matter of the appeal and request for hearing by Meat Production Inc., a.k.a. Stampede Packing Co., regarding the DEQ's notice of final decision for Montana Ground Water Pollution Control System (MGWPCS) Permit No. MTX000100, BER 2010-18 WQ.

Ms. Orr noted that there had been a request to change the hearing date and the schedule leading up to it, and that the new hearing date will be August 29 in Kalispell.

II.A.1.k In the matter of violations of the Montana Public Water Supply Laws by Bellecreeke, LLC, at Bellecreeke Dental, PWSID #MT0004553, Butte, Silver Bow County, BER 2010-20 PWS. *(No discussion took place regarding this item.)*

II.A.1.l In the matter of violations of the Opencut Mining Act by Deer Lodge Asphalt, Inc., at the Olsen Pit, Powell County, BER 2011-02 OC. *(No discussion took place regarding this item.)*

II.A.2.a 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 2010-19 SM. *(No discussion took place regarding this item.)*

II.A.2.b In the matter of violations of the Montana Strip and Underground Mine Reclamation Act by Carbon County Holdings, LLC, at Carbon County Holdings, Carbon County, BER 2011-01 SM. *(No discussion took place regarding this item.)*

#### II.B.1 Legislative Briefing

Mr. Livers noted that DEQ took some budget reductions, as did all departments.

Mr. North provided a handout outlining legislation that 1) will require rulemaking action by the Board; 2) are major amendments to statutes that the Board hears contested cases on and adopts rules on, but that won't require rulemaking by the Board; and 3) are general bills that pertain to the Administrative Procedures Act.

Mr. North responded to a few questions from the Board.

#### III.A.1 In the matter of Updated Rationale for EC & SAR Standards.

Mr. Livers provided a brief background of the initiation of the triennial review.

Mr. Compton talked about the history of the EC/SAR Standards and showed a PowerPoint while providing the Board with information regarding the results of the Triennial Review. He said DEQ recommends that the board move to not initiate rulemaking at this time. He said the department intends to submit the updated

rationale to EPA Region 8 and ask them to reapprove the standards adopted in 2003 and the non-deg approach adopted in 2006.

Chairman Russell asked if any member of the public wanted to speak.

Mr. Fix said it was not worth going through the whole rulemaking process again; that they should go with the current standards.

Mr. Muggli indicated that crops have decreased yields and they can't get the production back. He said the standards are not protective enough.

Mr. Metropoulis said Fidelity Exploration does not believe any change in the standards is necessary, and it supports the department's recommendation.

Ms. Lindlief-Hall said the Tongue River Water Users support the department's recommendations, including resubmitting to the EPA. She noted that non-deg has not been applied to date and should be.

Ms Chambers, Mr. Compton, and Mr. Bukantis discussed the non-deg issue and responded to questions from the Board.

Mr. Livers noted that the Board had several options for formal action. He reminded that the DEQ recommends reaffirming the standards, and said the Board can disagree, choose to take no action, or initiate rulemaking.

Chairman Russell stated that based on the information that the Board has received today, that the current standards in rule for EC and SAR are necessary for water quality and soil protection. Mr. Whalen so MOVED. Mr. Mires SECONDED. The motion CARRIED unanimously.

III.B.1 In the matter of the department's request to initiate rulemaking to amend rules implementing the Montana Pollutant Discharge Elimination System Permit Program.

Ms. Chambers said the department requests that the Board concur with its request to initiate rulemaking, and that the rule amendments are to maintain compliance with federal regulations. Ms. Chambers responded to questions from the Board.

Discussion took place regarding whether Ms. Shropshire needed to recuse herself since she works for a power plant outside of Montana, but that could come into Montana at some point in the future. She did not recuse herself.

Chairman Russell called for public comment. There was no response. He called for motion to initiate the rulemaking and to appoint Ms. Orr as the permanent hearings examiner. Mr. Mires so MOVED. Mr. Anderson SECONDED the motion. The motion CARRIED with a unanimous vote.

III.B.2 In the matter of the department's request to initiate rulemaking to amend ARM 17.8.801, 17.8.804, 17.8.818, 17.8.820, 17.8.822, 17.8.825, 17.8.901, 17.8.904, and 17.8.1007 to incorporate provisions for major source permitting regarding the emissions of fine particulate matter (PM-2.5).

Ms. Wolfe provided details of the rulemaking and said the department requests that the Board initiate the rulemaking and appoint a hearings examiner.

Ms. Shropshire recused herself from this rulemaking.

Ms. Wolfe discussed the reasoning for initiating rules now that were set by the EPA in 2006, in response to questions from the Board.

Chairman Russell called for a motion to initiate the rulemaking and appoint Ms. Orr as the hearings examiner. Mr. Whalen so moved. Mr. Mires SECONDED the motion. Chairman Russell called for public comment; there was no response. The motion CARRIED with a unanimous vote.

III.B.3 In the matter of the department's request to initiate rulemaking to amend ARM 17.30.617 to designate a portion of the Gallatin River as an Outstanding Resource Water (ORW) and to amend ARM 17.30.638 to add a new subsection for clarity.

Mr. Livers said the department is requesting extension of the rulemaking again. He said although it has been going on for several years, the department still believes it is the right course of action. He also noted that progress continues.

Chairman Russell called for public comment. There was no response. He called for a motion to extend the rulemaking. Ms. Shropshire so MOVED. Mr. Mires SECONDED the motion. The motion CARRIED with a unanimous vote.

III.C.1 In the matter of final action regarding the amendment of ARM 17.30.201, water discharge permit fee schedule, and ARM 17.30.1341 to add a general permit category for pesticides.

Ms. Chambers said the department requests that the Board adopt the final rules. She said a public hearing took place in January and noted that over 30 comments were received during the comment period. She also pointed out the need to correct an error on page 2 of the notice.

Discussion took place and Mr. Madden responded to questions from the Board.

Chairman Russell called for public comment; no one responded. He called for a motion to adopt the rules as amended, with the changes noted by Ms. Chambers, and accept the Presiding Officer's report, the House Bill 521 and 311 analyses, and the responses to comments. Mr. Whalen so moved. Mr. Anderson SECONDED the motion. The motion CARRIED with a unanimous vote.

III.D.1 In the matter of violations of the Opencut Mining Act by M.K. Weeden Construction, Inc., at the Stahl Pit, Fergus County, BER 2011-03 OC.

Ms. Orr provided details of the case and said the penalty had been paid.

Chairman Russell called for a motion to authorize him to sign the dismissal order. Mr. Anderson so MOVED. Ms. Kaiser SECONDED the motion. The motion CARRIED with a unanimous vote.

III.E.1 In the matter of violations of the Opencut Mining Act by Concrete Materials of Montana, LLC, at the Mauritzson Site, Yellowstone County, BER 2011-04 OC.

Ms. Orr provided details of the case.

Chairman Russell called for a motion to appoint Ms. Orr as the permanent hearings examiner. Ms. Shropshire so MOVED. Mr. Mires SECONDED the motion. The motion CARRIED with a unanimous vote.

III.E.2 In the matter of violations of the Public Water Supply Laws by Jore Corporation at Jore Corporation, Lake County, BER 2011-05 PWS.

Chairman Russell noted that he was contacted by a representative of the company in this case, but that he referred the person to the Board secretary.

Ms. Orr explained that this was an appeal of an amended notice of violation.

Chairman Russell called for a motion to appoint Ms. Orr as the permanent hearing examiner for this case. Mr. Whalen so MOVED. Ms. Shropshire SECONDED the motion. The motion CARRIED with a unanimous vote.

III.E.3 In the matter of violations of the Montana Septage Disposal and Licensure Laws by James Vaughn, d/b/a Any Time Septic & Porta-Potty, Lake County, BER 2011-06 SDL.

Ms. Orr provided details of the case.

Chairman Russell called for a motion to appoint Ms. Orr as the permanent hearing examiner for this case. Mr. Anderson so MOVED. Mr. Mires SECONDED the motion. The motion CARRIED with a unanimous vote.

IV. General Public Comment

Chairman Russell called for public comment. There was no response.

Mr. Livers reminded everyone that the next meeting is scheduled for July 22, but he was unsure if it would be a teleconference or in-person meeting. He also noted that

the four members who were reappointed were also successfully confirmed by the Senate.

V. Adjournment

Chairman Russell called for a motion to adjourn. Mr. Whalen so MOVED. Mr. Anderson SECONDED the motion. The motion CARRIED with a unanimous vote.

The meeting adjourned at 12:47 p.m.

Board of Environmental Review May 13, 2011, minutes approved:



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JOSEPH W. RUSSELL, M.P.H.  
CHAIRMAN

BOARD OF ENVIRONMENTAL REVIEW

July 22, 2011  
DATE