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TELECONFERENCE MINUTES

JULY 22, 2011

Call to Order

The Board of Environmental Review's regularly scheduled meeting was called to order by Chairman Russell at 9:04 a.m., on Friday, July 22, 2011, in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana.

Attendance

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

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: Tom Livers (Deputy Director); John North and Jim Madden, – Legal; Ed Coleman – Industrial and Energy Minerals Bureau; John Arrigo – Enforcement Division; Tom Ring and Lisa Boettcher – Environmental Management Bureau; Jon Dilliard, Steve Kilbreath, and Eugene Pizzini – Public Water Supply and Subdivisions Bureau

Interested Persons Present: *No interested parties or members of the public were present or on the phone.*

I.A.1 | Review and approve May 13, 2011, meeting minutes.

Chairman Russell called for a motion to approve the May 13, 2011, meeting minutes. Mr. Mires so MOVED. Ms. Kaiser SECONDED the motion. The motion CARRIED with a unanimous vote.

II.A.1.a | 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 matter.)*

II.A.1.b | 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 matter.)*

II.A.1.c | 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 matter.)*

II.A.1.d | 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 matter.)*

II.A.1.e | 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. *(No discussion took place regarding this matter.)*

II.A.1.f | In the matter of violations of the Public Water Supply Laws by Jore Corporation at Jore Corporation, Lake County, BER 2011-05 PWS. *(No discussion took place regarding this matter.)*

II.A.1.g | 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. *(No discussion took place regarding this matter.)*

II.A.2.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 matter.)*

II.A.2.b | 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 matter.)*

II.A.2.c | 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.

Ms. Orr said a hearing on this matter was held April 21, 2011, and that a decision is forthcoming.

- II.A.2.d 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.

Ms. Orr said she issued a decision denying the motions for summary judgment.

- II.A.2.e 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. *(No discussion took place regarding this matter.)*

- II.A.3.a 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 matter.)*

- II.B.1 In the matter Battelle's submittal of 2010 Hydrologic/Water Quality Study of Cow and Pony Creek Drainages, Rosebud County, Montana.

Mr. Ring provided background information regarding the monitoring, and a summary of the report. He responded to questions from Board members.

- III.A.1 In the matter of the amendment of ARM 17.38.101 and 17.38, Subchapter 5.

Mr. Pizzini provided background and details regarding the rulemaking. He clarified the pronunciation of "potable," and discussed comments received concerning the rules. He said the department recommends adoption of the rules.

Chairman Russell called for a motion to adopt the rules, the Presiding Officer's Report, the 521 and 311 Analyses, and the responses to comments. Mr. Anderson so MOVED. Ms. Kaiser SECONDED the motion. Chairman Russell called for public comment; there was no response. The motion CARRIED with a unanimous vote.

- III.A.2 In the matter of the amendment of ARM 17.36.922 and 17.36.924.

Mr. Madden provided background information regarding the rulemaking and discussed comments received. He said the department recommends the Board adopt the rules as proposed. Discussion took place and Mr. Madden responded to questions from the Board.

Chairman Russell called for a motion to adopt the rulemaking, the Presiding Officer's report, the 521 and 311 Analyses, and the responses to comments. 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.1 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.

Ms. Orr introduced the item and provided details of the appeal. She said the parties have reached resolution and are seeking dismissal under 41(a).

Chairman Russell called for a motion to authorize him to sign the dismissal order. Mr. Mires so MOVED. Mr. Anderson SECONDED the motion. The motion CARRIED unanimously.

- III.B.2 In the matter of violations of the Montana Public Water Supply Laws by Bellecreeke, LLC, at Belle Creeke Dental, PWSID #MT0004553, Butte, Silver Bow County, BER 2010-20 PWS.

Ms. Orr introduced the item and provided details of the violation notice and the appeal of it. She said the parties have reached agreement.

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

- III.B.3 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.

Ms. Orr introduced the item and provided details of the appeal.

Chairman Russell called for a motion to authorize him to sign the order dismissing the appeal. Mr. Mires so MOVED. Mr. Whalen SECONDED the motion. Ms. Kaiser recused herself from this action and from item IIIB4. The motion CARRIED 5-0.

- III.B.4 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. *(Ms. Kaiser previously recused herself from this matter.)*

Ms. Orr introduced the matter and provided details of the violations. Chairman Russell noted that it was being dismissed pursuant to Rule 41(a).

Chairman Russell called for a motion to authorize him to sign the dismissal order. Mr. Whalen so MOVED. Mr. Mires SECONDED the motion. The motion CARRIED with a 5-0 vote.

III.C.1 In the matter of violations of the Water Quality Act by Circle B, LLC at Circle B Feedyard, Hysham, Treasure County, BER 2011-07 WQ.

Ms. Orr introduced the item and provided details of the violations. She also noted that a Stipulation to Dismiss had been received, but will be addressed at the September meeting.

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

III.C.2 In the matter of the appeal and request for hearing by the City of Helena regarding the DEQ's Notice of Final Decision for Montana Pollutant Discharge Elimination System (MPDES) Permit No. MT0022641, BER 2011-08 WQ.

Ms. Orr introduced the matter and provided details of the appeal, and said she had issued a First Prehearing Order.

Ms. Kaiser recused herself from this matter.

Chairman Russell called for a motion to appoint Ms. Orr as the permanent hearing examiner for this matter. Mr. Mires so MOVED. Ms. Shropshire SECONDED the motion. The motion CARRIED 5-0.

III.C.3 In the matter of violations of the Public Water Supply Laws by Olson's Lolo Hot Springs, Inc. at Lolo Hot Springs, PWSID #MT0000805, Missoula County, BER 2011-09 PWS.

Ms. Orr provided details regarding this matter.

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

IV. General Public Comment

Mr. Livers noted that the next meeting is September 23.

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

V. Adjournment

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

The meeting adjourned at 10:05 a.m.

Board of Environmental Review July 22, 2011, minutes approved:



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

9/28/2011

DATE