



Montana Board of Environmental Review

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MINUTES DECEMBER 2, 2011

Call to Order

The Board of Environmental Review's regularly scheduled meeting was called to order by Chairman Russell at 9:00 a.m., on Friday, December 2, 2011, in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana.

Attendance

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

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); Richard Oppen (Director); John North, Claudia Massman, Jim Madden, and Norman Mullen – Legal; Judy Hanson – Permitting & Compliance Division; Jon Dilliard, Barb Kingery, and Steve Kilbreath – Public Water Supply & Subdivisions Bureau; David Klemp, Charles Homer, Debra Wolfe, and Stephen Coe – Air Resources Management Bureau; Chris Yde, Bob Smith, Eric Urban, Chris Cronin, Kris Brewer, and Ed Coleman – Industrial & Energy Minerals Bureau; Rick Thompson – Waste & Underground Tank Management Bureau; Bob Bukantis, Mark Bostrom, Randy Apfelbeck, and Rod McNeil – Water Quality Planning Bureau; Todd Teegarden – Technical & Financial Assistance Bureau; John Arrigo – Enforcement Division; John Koerth – Mine Waste Cleanup Bureau

Interested Persons Present (*Disclaimer: Names are spelled as best they can be read from the official sign-in sheet.*): Mary Beth Marks – USDA Forest Service; Allan Kirk – Tetra Tech; Anne Hedges – Montana Environmental Information Center; Mark Lambrecht – Western Environmental Trade Association

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JAN 30 2012

FLORIAN COUNTY HEALTH DEPARTMENT

- I.A.1 | Review and approve September 23, 2011, Board meeting minutes.
- Mr. Mires questioned some language in III.C.1 on page 6, where Chairman Russell called for a motion to appoint Ms. Orr and then called for the vote, without the motion and second.
- Chairman Russell called for a motion to approve the minutes with the correction noted. Mr. Mires so MOVED. Mr. Miller SECONDED the motion. The motion CARRIED with a unanimous vote.
- Note: Upon review of the September 23, 2011, transcript of proceedings it appears no motion was made on item III.C.1. Therefore, no corrections were warranted and the minutes stand as presented.*
- I.A.2 | Review and approve November 3, 2011, Board meeting minutes.
- Chairman Russell called for a motion to approve the November 3, 2011, minutes. Ms. Kaiser so MOVED. Ms. Shropshire SECONDED the motion. The motion CARRIED with a unanimous VOTE.
- I.B. | Set 2012 BER Meeting Schedule
- Mr. Livers said the dates were proposed to accommodate rulemaking. The dates proposed were January 27, March 23, May 18, July 27, September 18, and either November 30 or December 7.
- Chairman Russell asked that the November/December dates be left open for discussion at a later date. The Board agreed on the remaining dates.
- II.A.1.a | 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.
- Ms. Orr said this matter went to hearing in October, that post hearing briefs were submitted, and she will issue the proposed findings of fact and conclusions of law.
- II.A.1.b | In the matter of violations of the Opencut Mining Act by Deer Lodge Asphalt, Inc., at the Olsen Pit, Powell County, Montana, BER 2011-02 OC.
- Ms. Orr said this matter went to hearing in September, that it has been deemed submitted, and that a decision would be issued in the next few weeks.
- II.A.1.c | 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.d | 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 said she had ruled on the motion for a protective order both denying and granting it. She said the case has been reset for hearing on April 16.

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

II.A.1.f In the matter of violations of the Opencut Mining Act by Ell Dirt Works, LLC, at the Gene Foss Pit 1, Richland County, BER 2011-11 OC.

Ms. Orr said that Ell Dirt Works had just obtained counsel and that she was expecting a status report.

II.A.1.g In the matter of violations of the Water Quality Act by SK Construction, Inc. on US Highway 2 near Bainville, Roosevelt County, BER 2011-20 WQ. *(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.

Mr. Miller questioned the January 2010 date. Ms. Orr noted that the date was correct – the case has been around for quite a while – and that it may be time to move it along.

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.

Ms. Orr said a motion for summary judgment was filed by the appellant and that DEQ has asked for an extension on that. She also noted that the parties had asked to vacate and reset the dates of the prehearing conference and the hearing, which would be done.

II.A.2.c In the matter of the appeal and request for hearing by Maurer Farms, Inc.; Somerfeld & Sons Land & Livestock, LLC; 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 a contested case hearing was held on both October 19 and November 9, and that post-hearing briefs are due on December 22.

- II.A.2.d | 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 said the parties had submitted a proposed scheduling order on November 17.
- II.A.2.e | In the matter of the request for hearing by Marshall Warrington, Jr., regarding Opencut Permit No. 487, issued to Plum Creek Timberlands, LP, for the Dorr Skeels site in Lincoln County, BER 2011-12 OC.
- II.A.2.f | In the matter of the request for hearing by Patricia Warrington, regarding Opencut Permit No. 487, issued to Plum Creek Timberlands, LP, for the Dorr Skeels site in Lincoln County, BER 2011-13 OC.
- II.A.2.g | In the matter of the request for hearing by Steven K. Endicott & Ruth Ann Endicott, regarding Opencut Permit No. 487, issued to Plum Creek Timberlands, LP, for the Dorr Skeels site in Lincoln County, BER 2011-14 OC.
- II.A.2.h | In the matter of the request for hearing by Nancy Scott, Dale Whitton, Kimberly Mole, Jess Hodge, Katherine G. Potter, Sharon B. Johnson, Clinton C. Johnson, James, D. Ward, and Korrie L. Ward regarding Opencut Permit No. 487, issued to Plum Creek Timberlands, LP, for the Dorr Skeels site in Lincoln County, BER 2011-15 OC.
- II.A.2.i | In the matter of the request for hearing by Glenn Miller, Rick Sant, Ralph & Edna Neils, Berneiee A. Zucker, Patricia Anderson, Tina K. Moore, Marc Zahner, Donald E. White, Jacki Bruemmer, Betty Longo, Tracy Nicely, Michael Dunn, Dennis Thayer, James Hopkins, Debbie Zahner, James P. Tomlin, Howard C.A. Hunter, George Stachecki, Marie Mabee, Harold Mabee, Patricia Warrington, Lily S. Parker, Linda S. Fisher, Steven E. Fisher, Connie Karns, John Ritchie, Grant Denton, Karen & Ben Pelzel, Richard L. Johnson, N.E.W. Boss, Jane O. Drayton, Leonard H. Drayton, Warren Robbe, Katherine G. Potter, Robert B. Potter, Bonnie Gannon, Kim F. Taylor, Linda Cochran, Helen R. Lockard, Marshall Warrington, Jr., Bruce Kinney, Devan Kinney, Jon Kinney, Joel Kinney, Karen Legue, Angeline R. Allen, Gary Allen, Bonnie Sonnenberg, Bud Biddle, Eunice Boeve, Ron Boeve, Kathleen Burbridge, Harold Lewis, Ken Mole, and Lois M. Mole, regarding Opencut Permit No. 487, issued to Plum Creek Timberlands, LP, for the Dorr Skeels site in Lincoln County, BER 2011-16 OC.
- II.A.2.j | In the matter of the request for hearing by John Hutton regarding Opencut Permit No. 487, issued to Plum Creek Timberlands, LP, for the Dorr Skeels site in Lincoln County, BER 2011-17 OC.

II.A.2.k In the matter of the request for hearing by Robert W. Gambill regarding Opencut Permit No. 487, issued to Plum Creek Timberlands, LP, for the Dorr Skeels site in Lincoln County, BER 2011-18 OC.

Regarding items e through k above, Ms. Orr said there is a pending motion to dismiss, and in the alternative for summary judgment, and that she has a draft order prepared. She noted that the parties are not represented by counsel and that the relief sought is a public hearing.

II.A.3.a 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, Valley County, BER 2010-08 UST.

Ms. Orr said this case went to district court with a petition for judicial review.

III.A.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 the amendment of ARM 17.30.638.

Mr. Livers said the department is recommending another extension.

Mr. Bukantis provided a brief overview of the rulemaking, saying it was brought to the Board by American Wildlands in December 2001 and had been handed over to the Greater Yellowstone Coalition, but that currently American Rivers is the active environmental group. He said the department had brought the rulemaking to the Board in October 2006, and that the ORW designation would offer the highest protection provided for waters under state law. Mr. Bukantis explained that the environmental groups and the development community have been conversing to try to craft a local solution to provide the same or better protection, and that the intent of the extensions is to encourage and support those conversations.

In response to questions from the Board, Mr. Teegarden said there is snowmaking taking place in Vermont, Arizona, Colorado, and Idaho. He explained that the group has not actively met recently, that they have been waiting for the snowmaking pilot this winter.

After further discussion, Chairman Russell called for a motion to "accept the department's recommendation and move forward with an extension of rulemaking for the Gallatin ORW." Mr. Miller so MOVED. Mr. Mires SECONDED the motion.

A brief discussion took place regarding the survivability of the EIS, the Chairman Russell called for public comment regarding the rulemaking. There was no response.

Chairman Russell called for a vote and the motion CARRIED.

III.A.2 In the matter of the amendment of Circular DEQ 4.

Mr. Kilbreath said DEQ 4 is the design standards that all the counties adopt and that the department uses for onsite wastewater treatment systems in the state. He described the process used for this revision, which involved consultants, county staff, and department staff drafting the document; a blog to take public comment; and public meetings in Polson, Helena, and Billings to take further comment. He said the draft before them had been heard and approved by the Water Pollution Control Advisory Council, that the department is requesting the Board move forward with the rulemaking, and the department would like a longer public comment period rather than the typical 30 days. Mr. Kilbreath also said some new chapters had been added.

Ms. Kingery described the major changes in the document, and both she and Mr. Kilbreath responded to questions and comments from the Board.

The Board suggested that instead of starting rulemaking, department staff continue work on the verbiage and complete the chapters that are in progress and put it back out for comment, then come back to the Board with a more up-to-date version.

Mr. Livers concurred that there is value in not initiating at this time and confirmed that there was no tight deadline on it.

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

The Board did not take action on this item.

III.A.3 In the matter of the amendment of ARM Title 17, chapter 24, subchapters 3, 4, 5, 6, 7, 9, 10, 11, and 12, implementing the Montana Strip and Underground Mine Reclamation Act.

Mr. Urban described the changes being proposed. He said the department had held a stakeholders meeting, which included representatives from the coal industry, property owners, and private interest organizations, and that the comments received were addressed in the rule package. He responded to questions from the Board.

Ms. Kaiser recused herself from this rulemaking item.

Chairman Russell called for public comment.

Ms. Hedges said she thought the rule package was different than what was out for public comment last May, but that the Montana Environmental Information Center supports moving forward with the rulemaking.

Chairman Russell called for a motion to “move forward with this rulemaking, and adopt the MAR, and get it published.” Mr. Whalen so MOVED. Mr. Miller SECONDED the motion. The motion CARRIED with a 6-0 vote.

III.B In the matter of the three-year review of temporary water quality standards for the New World Mining District.

Mr. Bukantis provided background on this saying that in 1999 the Forest Service requested the Board adopt temporary water quality standards for the purpose of providing protection from liability for standards exceedences while they cleaned up legacy mine waste on federal property. He said the Forest Service has worked closely with the department and has reported back to the Board on progress every three years since then. He said the standards are set to expire in 2014. He said the department recommends the Board take no action at this time, so that the standards continue.

Chairman Russell announced the public hearing.

Ms. Marks provided details of the progress made at the site through 2011. She said the adoption of the temporary water quality standards has allowed cleanup actions on an established schedule that resulted in significant water quality improvement in the district. She said the Forest Service recommends there be no adjustments to the temporary standards at this time.

Chairman Russell asked if anyone else wanted to speak to the matter. There was no response. He called the hearing to close.

Ms. Marks and Mr. Bukantis responded to Board member questions.

The Board took no action on this matter.

III.C.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 background on the matter and said the AOC was included in their packet, and that they have before them a stipulation to dismiss under rule 41(a) and an order.

Chairman Russell called for a motion to “authorize the Board Chair to sign [the dismissal order].” Ms. Kaiser so MOVED. Mr. Miller SECONDED the motion. The motion CARRIED with a unanimous vote.

III.C.2 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 provided a brief overview of the case and said the parties had reached agreement. She said the Board had before it a motion to dismiss under rule 41(a)(1) and an order.

Chairman Russell called for a motion to “authorize the Board Chair to sign [the dismissal order].” Mr. Mires so MOVED. Mr. Whalen SECONDED the motion. The motion CARRIED with a unanimous vote.

- III.C.3 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.

Ms. Orr provided background on the matter and said the AOC was included in their packet, and that they had before them a stipulation to dismiss and an order.

Chairman Russell called for a motion to “authorize the Board Chair to sign [the dismissal order].” Ms. Kaiser recused herself from this matter. Mr. Miller so MOVED. Mr. Mires SECONDED the motion. The motion CARRIED with a unanimous vote.

- III.C.4 In the matter of the appeal by Jerry McRae of Section A. Diamond Valley South – Laubach Amendment portion of the DEQ’s final decision to amend MATL, LLP’s Certificate of Compliance, BER 2011-19 MFS.

Ms. Orr explained the details of this case and said the Intervenor and Applicant filed a notice to have the case removed to District Court, that she issued an order recommending dismissal, and that the Board had before it an order adopting by reference the order recommending dismissal with prejudice.

Chairman Russell called for a motion to “authorize the Board Chair to sign the order of dismissal for Case No. BER 2011-19 MFS.” Ms. Shropshire so MOVED. Ms. Kaiser SECONDED the motion. The motion CARRIED with a unanimous vote.

- III.D.1 In the matter of the request for hearing by Plum Creek regarding the DEQ’s final decision on the amendment of their Groundwater Permit No. MTX000092, BER 2011-21 WQ.

Ms. Orr provided information regarding the appeal.

Chairman Russell called for a motion to “appoint Katherine the permanent hearings examiner on this matter.” Ms. Kaiser so MOVED. Mr. Miller SECONDED the motion. The motion CARRIED with a unanimous vote.

- III.D.2 In the matter of the request for hearing by Frank Gruber, Broadwater Estates, regarding the DEQ’s denial of permit modifications to Groundwater Permit No. MTX000157, BER 2011-22 WQ.

Ms. Orr provided information regarding the appeal.

Chairman Russell called for a motion to “appoint Katherine the permanent hearings examiner on this matter.” Ms. Shropshire so MOVED. Mr. Anderson SECONDED the motion. The motion CARRIED with a unanimous vote.

IV. General Public Comment

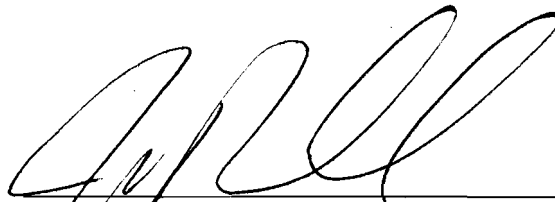
Chairman Russell asked if there was anyone in the audience that would like to speak to the Board on matters within the Board’s jurisdiction. There was no response.

V. Adjournment

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

The meeting adjourned at 12:47 p.m.

Board of Environmental Review December 2, 2011, minutes approved:



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

Jan 30, 2012
DATE