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AGENDA

TUESDAY, JANUARY 21, 2014
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. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this meeting. Please contact the Board Secretary by telephone at (406) 444-6701 or by e-mail at jwittenberg@mt.gov no later than 4 days 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. The Board will vote on adopting the December 6, 2013, meeting minutes.

II. BRIEFING ITEMS

A. CONTESTED CASE UPDATE

1. Enforcement cases assigned to the Hearing Examiner
 - a. **In the matter of violations of the Public Water Supply Laws by Trailer Terrace Mobile Park, LLC, Dennis Deschamps and Dennis Rasmussen at the Trailer Terrace, PWSID No. MT0000025, Great Falls, Cascade County, BER 2012-11 PWS.** A *Fourth Order Granting Extension* was issued on December 1, 2013, giving the parties through April 1, 2014, to settle the matter or file a joint proposed prehearing schedule.
2. Other Cases Assigned to a Hearing Examiner
 - a. **In the matter of violations of the Sanitation in Subdivisions Act and Public Water Supply Laws by Roger Emery at the Sunrise Motel, Sidney, Richland County, BER 2013-06 SUB.** On November 4, 2013, a *First Prehearing Order* was issued. An *Order Extending the Deadline for Filing Proposed Schedule* was issued on December 4, 2013.

3. Contested Cases not assigned to a Hearing Examiner
- a. **In the matter of the notice of appeal and request for hearing by Western Energy Company (WECO) regarding its MPDES Permit No. MT0023965 issued for WECO's Rosebud Mine in Colstrip, BER 2012-12 WQ.** A hearing on a *Motion to Intervene* occurred on May 7, 2013. On June 13, 2013, counsel for Western Energy filed *Motion for Pro Hac Vice Admission for Good Cause Shown* to admit John C. Martin. On July 9, 2013, an *Order Granting the Pro Hac Vice Admission* was issued. On July 31, 2013, the interim hearing examiner issued an order granting the motion to intervene to WECO. A *Second Scheduling Order* was issued on October 4, 2013. On October 22, 2013, an *Order Amending Second Scheduling Order* was issued. A telephonic prehearing conference is set for April 14, 2014. The date of the hearing before the Board will be set at the prehearing conference.
 - b. **In the matter of the notice of appeal for hearing by Montana Environmental Information Center regarding DEQ's approval of coal mine permit No. C1993017 issued to Signal Peak Energy, LLC, for Bull Mountain Mine No. 1 in Roundup, MT, BER 2013-07 SM.** Signal Peak Energy filed a *Motion to Intervene and Brief in Support* on December 4, 2013. On December 9, 2013, an *Order on Motion to Intervene* granting the intervention was issued. On December 13, 2013, an *Order on Waiver and Prehearing Schedule* was issued. A *Joint Motion to Adopt Joint Stipulated Procedural Schedule for Administrative Review* was filed on December 23, 2013. On January 6, 2014, an *Order Adopting Joint Stipulated Procedural Schedule for Administrative Review* was issued.
 - c. **In the matter of the request for hearing by Montana Environmental Information Center and Sierra Club regarding DEQ's issuance of Montana Air Quality Permit No. OP0513-08 for the Colstrip Steam Electric Station, Colstrip, BER 2013-01 AQ.** On August 9, 2013, the interim hearing examiner issued *Third Amended Scheduling Order*. Oral arguments on pending motions occurred on October 22, 2013. Multiple prehearing motions were filed. The motions are listed with their respective disposition:
 - Motion for Partial Summary Judgment (Appellants-Montana Environmental Information Center and Sierra Club) (denied)
 - Motion in Limine to Preclude Appellant's Expert Witnesses from, testifying about Certain issues (PPL) (denied in part and granted in part)
 - Motion to Dismiss Appellant's Third Claim (PPL) or in the Alternative for Summary Judgment on Appellant's Third Claim; Cross-Motion for Summary Judgment (PPL) (denied; written order to follow)
 - Motion and Brief for Summary Judgment (DEQ) (denied; written order to follow)
 - Motion and Brief in Limine (DEQ) (granted in part and denied in part)
 - Stipulation for Partial Dismissal (all parties)
 - Motion for Leave to Amend Affidavit together with Amended Affidavit (Appellants) (granted)
 - Motion for Leave to Supplement Briefs with Appellants' Discovery Responses with supporting Brief (granted)

d. **In the matter of the request for hearing by Montana Environmental Information Center and Sierra Club regarding DEQ's issuance of Montana Air Quality Permit No. OP2953-07 for the JE Corette Steam Electric Station, Billings, BER 2013-02 AQ.** On August 9, 2013, the interim hearing examiner issued *Third Amended Scheduling Order*, setting oral argument on pending motions for October 22, 2013. Oral arguments on pending motions occurred on October 22, 2013. The following prehearing motions were filed:

- Motion for Partial Summary Judgment (Appellants- Montana Environmental Information Center and Sierra Club) (denied)
- Motion for Summary Judgment (PPL) (denied; written order to follow)
- Motion to Dismiss Appellant's Third claim or in the Alternative for summary Judgment on Appellant's Third Claim (PPL)
- Cross Motion for Summary Judgment (PPL) (denied; written order to follow)
- Motion and Brief for Summary Judgment (DEQ) (denied)
- Stipulation for Partial Dismissal (all parties)
- Appellants' Motion for Leave to Amend Affidavit with an Amended Affidavit (Appellants) (granted)
- Motion to Dismiss Appellants' Fourth Claim or in the Alternative, for Summary Judgment on Appellants' Fourth Claim and Its Motion for Summary Judgment for Appellants' Failure to Designate an Expert Witness.
- Motion for Leave to Supplement Briefs with Appellants' Discovery Responses (granted)

III. ACTION ITEMS

A. INITIATION OF RULEMAKING

DEQ will propose that the Board initiate rulemaking to:

1. Amend ARM 17.8.102 to incorporate by reference updated federal and state regulations and other non-substantive "housekeeping" revisions to the ARM.
2. Adopt new nutrient standards for surface waters throughout Montana. The proposed nutrient standards also require the adoption of variances rules by the Department. Together the nutrient standards and the variances rules combine to make the nutrient package, which is necessary to protect the waters of Montana while minimizing the economic hardship. The rulemaking associated with the nutrient package will be in part made by the Board (nutrient standards) and in part by the Department (variance rules). The Department is proposing that these rulemakings proceed concurrently.
3. Amend Title 17, Chapter 38, Sub-Chapter 1, Public Water and Sewer Plans, Cross Connections, and Drilling Water Wells, by updating Department Circulars DEQ-1 and DEQ-3 related to public drinking water design standards, clarification of the requirements for the submission of plans and specifications, updating its expedited checklists, and adding new Department Circular DEQ-10 describing the use of

springs as a public source, and adding new Department Circular DEQ-16 describing the use of cisterns for non-community public water systems.

4. Extend the expiration date for the temporary water quality standards adopted for the New World Mining District at ARM 17.30.630. The Board adopted the temporary water quality standards in June 1999 and conducted triennial reviews in July 2002, July 2005, May 2008, and December 2011. The implementation plan to restore Daisy Creek, Fisher Creek, and portions of the Stillwater Rivers is being administered by the U.S. Forest Service. After a review of available water quality data, the department will propose that the expiration date for the temporary standards be extended 5 years.

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