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**TELECONFERENCE MINUTES
MARCH 23, 2012**

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, March 23, 2012, 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, and Joe Whalen

Board Members Present via Telephone: Larry Anderson

Board Members Absent: Robin Shropshire

Board Attorney Present: Katherine Orr, Agency Legal Services Bureau

Board Secretary Present: Joyce Wittenberg

Court Reporter Present: Laurie Crutcher, Crutcher Court Reporting

Department Personnel Present: Tom Livers (Deputy Director); John North, Jane Amdahl, Jim Madden, Dana David, Claudia Massman – Legal; Judy Hanson – Permitting & Compliance Division; Jon Dilliard, Steve Kilbreath – Public Water Supply & Subdivisions Bureau; Dave Aguirre, David Klemp – Air Resources Management Bureau; Ed Coleman, Chris Yde, Eric Urban, Bob Smith – Industrial & Energy Minerals Bureau; Jenny Chambers – Water Protection Bureau; John Arrigo, Frank Gessaman – Enforcement Division; George Mathieus – Planning, Prevention & Assistance Division; Amy Steinmetz, Michael Suplee, Rod McNeil, Bob Bukantis – Water Quality Planning Bureau; Terry Campbell, Mike Abrahamson, Paul LaVigne, Todd Teegarden – Technical & Financial Assistance Bureau

Interested Persons Present: Stephen Brown – North Star Aviation; Kim Wilson, Darrel James, Harley Harris – Montana-Alberta Tie Ltd.; Tina Laidlaw – Environmental Protection Agency

- I.A.1 Review and approve January 27, 2012, Board meeting minutes.
- Mr. Mires MOVED for the Board to approve the January 27, 2012, meeting minutes. Ms. Kaiser SECONDED the motion. The motion CARRIED with a unanimous vote.
- Mr. Livers explained to the Board that DEQ4 was not on the agenda for this meeting, as he had indicated it would be at the January meeting. He said it will be at least a couple of months before staff can carve out another window to work on it.
- Mr. Whalen requested a roll call on Board members present, and Chairman Russell noted that Mr. Anderson was present via telephone, Ms. Shropshire was absent, and the rest of the Board members were present in the room.
- II.A.1.a In the matter of violations of the Public Water Supply Laws by Jore Corporation at Jore Corporation, Lake County, BER 2011-05 PWS.
- II.A.1.c 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.
- II.A.1.d 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.
- II.A.1.e 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.
- II.A.1.f In the matter of violations of the Opencut Mining Act by the City of Ronan at Ronan, Lake County, BER 2011-23 OC.
- II.A.1.g In the matter of violation of the Metal Mine Reclamation Act by Noble Excavating, Inc. at Nickleback Rock Quarry, Lincoln County, BER 2011-24 MM.
- Ms. Orr said AOCs are expected in the above matters II.A.1.a, c, d, e, f, and g. She said dismissals would be forthcoming.
- II.A.1.b 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 a ruling was forthcoming on the pending motion.
- 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.
- Ms. Orr said the information provided in the agenda in regard to this item is current.
- 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 oral argument on the motion for summary judgment is scheduled for April.

II.A.2.c 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 a second amended scheduling order was issued on March 9.

II.A.2.d 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, Marshall Warrington, Jr., Patricia Warrington, and John Hutton regarding Opencut Permit No. 487, issued to Plum Creek Timberlands, LP, for the Dorr Skeels site in Lincoln County, BER 2011-15 OC, BER 2011-12 OC, BER 2011-13 OC, and BER 2011-17 OC.

II.A.2.e In the matter of the request for hearing by Steven K. Endicott, Ruth Ann Endicott, and Robert W. Gambill regarding Opencut Permit No. 487, issued to Plum Creek Timberlands, LP, for the Dorr Skeels site in Lincoln County, BER 2011-14 OC and BER 2011-18 OC.

II.A.2.f In the matter of the request for hearing by Glenn Miller, Rick Sant, Ralph & Edna Neils, Berneiece 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.

Ms. Orr said she expects to issue rulings in the above matters II.A.2.d, e, and f.

II.A.3.a In the matter of violations of the Opencut Mining Act by Brad Blakeman at the Camas Prairie Gravel Pit, Sanders County, BER 2012-01 OC.

Ms. Orr said she had issued a first scheduling order on March 1 setting a hearing for September 28.

II.A.4.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 she had issued a summary judgment in this matter. It was then appealed to District Court. The court analyzed whether a summary judgment was appropriate and decided it was not appropriate under the exchange of the burden of proof regarding motions for summary judgment and remanded the case back to the Board. Ms. Orr said there is talk of settling the case.

II.B.1 DEQ's Role in Oil and Gas Development Briefing

Mr. Livers said DEQ staff would give a high-level overview of the department's authority in oil patch regulation. He said the department is not the primary regulating agency on production, but that DEQ does touch several areas on both production and impacts from production.

Ms. Hanson provided a summary of the areas where DEQ does not have authority and provided some websites where the Board could find more information. She talked about department laws that are triggered by oil production itself, and the laws that are triggered as a result of the increase in people. Ms. Hanson said DEQ has sent staff to eastern Montana for public meetings with citizens and legislators, and has a staffer from the Billings Office going to Glendive and Sidney on a monthly basis to provide assistance with permitting processes.

Mr. Kilbreath responded to questions from the Board. He said DEQ is actively pursuing compliance on recreational camping vehicle parks, mobile home parks, and work camps.

Mr. Mires requested Ms. Hanson provide a paper list of the items she identified that the BER has oversight on, or that they need to be concerned about. Ms. Hanson agreed to do so.

Further discussion included: the Major Facility Siting Act and when it is triggered; the new Montana Oil Pipeline Safety Review Council; the roles of the Department of Transportation and the Board of Oil and Gas; municipalities and their ability to accommodate additional water requirements and wastewater treatment; and the Silvertip pipeline oil spill.

II.B.2 Nutrient Reduction Strategy Briefing

Mr. Mathieus said the reason for this briefing is the complexity of some of the rulemakings and also to show how they are all interrelated. He provided an overview of recent legislative history on regulation of nutrients in water, stakeholder involvement, and nonpoint source pollution issues.

Dr. Suplee discussed numeric nutrient criteria development and offered an overview of the scientific analysis used to establish these criteria, including: the need for numeric standards versus narrative; phosphorus and nitrogen; and authority and criteria for granting a variance from standards. Dr. Suplee said that the Board would review a new DEQ 12 when the rulemaking is presented to them. He said DEQ expects to request initiation at the July 2012 meeting. Dr. Suplee responded to questions from the Board.

Mr. Lavigne talked about the Water Pollution Control State Revolving Fund. He explained some of the design circulars and discussed circular DEQ2 in detail, saying it is based on the Ten States Standards document. He said the upcoming proposal will include a lot of cleanup and significant modifications to the land application guidelines, as well as adding in the reuse standards. Mr. Lavigne said DEQ expects to request rulemaking at the May 2012 Board meeting, and he responded to questions.

Mr. Teegarden talked about DEQ's draft nutrient trading policy and how it will enhance TMDL development. He said DEQ presented the draft policy to the Water Pollution Control Advisory Council in February and is hoping to request initiation of rulemaking at the May 2012 Board meeting. Mr. Teegarden, Ms. Chambers, Ms. Massman, and Mr. Mathieus responded to questions.

[Upon the Board's return from the lunch break, Mr. Anderson did not rejoin the meeting.]

III.A.1 In the matter of the DEQ's proposal to initiate rulemaking to amend ARM Title 17, Chapter 14, Subchapter 9, to regulate underground mining using in situ coal gasification.

Mr. Smith said DEQ is requesting initiation of rulemaking to amend rules that implement the Montana Strip and Underground Mine Reclamation Act, specifically, ARM Title 17, Chapter 24, Subchapter 9. He said the rulemaking is required by Senate Bill 292, which passed in the 2011 legislative session and requires adoption of the rules by October 1, 2012. He provided a brief description of the proposal and said there were no significant changes.

Ms Kaiser recused herself from this matter.

Chairman Russell called for a motion to initiate the rulemaking. Mr. Whalen so MOVED. Mr. Miller SECONDED the motion. Chairman Russell called for public comment on the rulemaking request; there was no response. The motion CARRIED with a 4-0 vote.

III.B.1 In the matter of final adoption of amendments to 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 said DEQ is requesting final adoption of rulemaking to amend rules that implement the Montana Strip and Underground Mine Reclamation Act. He said the rulemaking includes modifications to nine subchapters within ARM Title 17, Chapter 24. Mr. Urban said DEQ held a public hearing and comments were received. He said the comments have been addressed and that DEQ recommends the Board adopt the amended rules with the revisions.

Ms. Kaiser recused herself from this matter.

Chairman Russell called for public comment on the rulemaking; there was no response. He called for a motion to adopt the amendments, the 311 Analysis, DEQ's responses to comments, and the revisions to the amendments. Mr. Mires so MOVED. Mr. Whalen SECONDED the motion. The motion CARRIED 4-0.

III.C.1 In the matter of the notice 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 the Board would decide whether to accept, reject, or modify her proposed findings of fact and conclusions of law. She said the appellants are objecting to two of the findings of fact and one conclusion of law, and that the Board is required to review the complete record if it chooses to modify a finding of fact. Ms. Orr provided information about the parties' exceptions.

Ms. Brown described the situation that brought about the violation notice, and described North Star's response to the situation. He said DEQ imposed a fine of \$8,500, which is what North Star is appealing. Mr. Brown outlined the two findings of fact and the conclusion of law that North Star is challenging.

Mr. Madden responded to Mr. Brown's comments and said that the two findings of fact in questions are supported by substantial evidence and that the conclusion of law in question is legally sound.

Mr. Brown, Mr. Madden, and Ms. Orr responded to questions from the Board.

Ms. Orr said she had reduced the fine by \$1,000 based on North Star's intention to install something that would prevent the event from recurring.

Mr. Whalen MOVED to uphold the findings of fact and conclusions of law. Mr. Miller SECONDED the motion. The motion CARRIED 5-0.

III.C.2 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 there were no exceptions filed in this matter.

Chairman Russell called for a motion to authorize him to sign the order adopting the proposed findings of fact and conclusions of law. Ms. Kaiser so MOVED. Mr. Mires SECONDED the motion. The motion CARRIED 5-0.

III.C.3 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 there no exceptions were filed by the appellant, but that DEQ had filed a clarification and exception requesting that Finding of Fact No. 11 be altered. She said another of the findings of fact addresses the issue brought by DEQ.

Mr. North said DEQ withdraws its objection and request for clarification.

Chairman Russell called for a motion to authorize him to sign the new order. Mr. Mires so MOVED. Mr. Miller SECONDED the motion. The motion CARRIED 5-0.

III.C.4 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 said the parties have reached settlement and are requesting the Board dismiss the matter.

Chairman Russell called for a motion to authorize him to sign the order. Mr. Miller so MOVED. Ms. Kaiser SECONDED the motion. The motion CARRIED 5-0.

III.C.5 In the matter of violations of the Opencut Mining Act by Emerald Hills Development Company at the Emerald Hills Pit, Yellowstone County, BER 2011-25 OC.

Ms. Orr said a stipulation and order to dismiss under Rule 41(a) is included in the packet.

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

III.D.1 In the matter of violations of the Montana Strip and Underground Mine Reclamation Act by Westmoreland Resources, Inc., at the Absaloka Mine, Big Horn County, BER 2012-02 SM.

Ms. Orr described the appeal.

Ms. Kaiser recused herself from taking action on this matter.

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

IV. General Public Comment

Mr. Livers reminded that the next meeting is scheduled for May 18 and would most likely be in person.

Chairman Russell called for other comments. No one responded.

V. Adjournment

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

The meeting adjourned at 2:03 p.m.

Board of Environmental Review March 23, 2012, minutes approved:



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

MAY 18th 2012
DATE