





7 request for hearing of the Yellowstone Energy  
8 Limited Partnership. The second one, it says,  
9 "Mr. Reed said the parties anticipate stipulating  
10 by December 16th." Is stipulating correct on  
11 that? Is that the correct way for that to read?

12 MR. REED: I believe it is. They've in  
13 fact filed a stipulation. It's kind of an  
14 inelegant phrasing. Let me ask this. We'll get  
15 to it. I think that's an accurate description of  
16 what they plan to do and --

17 UNKNOWN SPEAKER: Now joining.

18 MR. MIREs: -- (inaudible) -- changed  
19 the law. But that's fine. Thank you.

20 MR. REED: Not at all.

21 CHAIRMAN SHROPSHIRE: Who joined?

22 (Mr. Tweeten present)

23 MR. TWEETEN: This is Chris.

24 CHAIRMAN SHROPSHIRE: All right. So any  
25 other questions or comments on the minutes?

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1 MR. NORTH: Madam Chair -- go ahead.<sup>4</sup>

2 MS. CANTY: Marietta. So I was just  
3 going to comment, and it's just a small thing, but  
4 I believe that I participated last time by  
5 teleconference, and the minutes say that I was  
6 present, unless I can't remember correctly.

7 CHAIRMAN SHROPSHIRE: John, is  
8 participating by teleconference, is that  
9 consistent with being present, or should we amend  
10 that?

11 MR. NORTH: Madam Chair, it is  
12 consistent with being present, but I see there is  
13 a category "Board members present via  
14 teleconference," so perhaps that should be  
15 corrected.

16 CHAIRMAN SHROPSHIRE: So can we just  
17 make a note there that Marietta attended by  
18 teleconference then?

19 MR. NORTH: Sure. And Madam Chair, the  
20 second thing is that on Page 2, Item II(A)(1)(d)  
21 contains a small error as well, and that is it  
22 says no discussion took place regarding this  
23 matter, and actually there was discussion as  
24 revealed right below that, so that phrase needs to  
25 be stricken, too. So perhaps someone could move

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1 to approve the minutes with those two changes if<sup>5</sup>  
2 there are no other ones.

3 CHAIRMAN SHROPSHIRE: Any other comments  
4 or questions on the minutes?

5 MR. MIREs: This is Larry, and I would  
6 move to approve the minutes with the recommended  
7 changes that were identified.

8 MS. MILES: This is Joan. I would  
9 second.

10 CHAIRMAN SHROPSHIRE: Any further  
11 discussion?

12 (No response)

13 CHAIRMAN SHROPSHIRE: Hearing none, all  
14 those in favor signify by saying eye.

15 (Response)

16 CHAIRMAN SHROPSHIRE: Opposed.

17 (No response)

18 CHAIRMAN SHROPSHIRE: All right. Motion  
19 carries unanimously.

20 The next item on the agenda are  
21 contested case updates under briefing items, and  
22 Ben, can you step us through these, please.

23 MR. REED: Certainly. Under 1(a), I  
24 received a withdrawal of request for hearing from  
25 Dennis Rasmussen. I haven't received anything

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1 formal from DEQ, but I believe that this is going  
2 to have the effect of concluding this matter. It  
3 would appear that the matter has been resolved to  
4 both parties' satisfaction.

5 Under (b), the Bay Materials is ongoing.  
6 Somont similarly, discovery is ongoing.

7 Under the Highlander Bar and Grill, a  
8 scheduling order is in the process of being  
9 issued. I'm in the process of issuing a  
10 scheduling order that should go out today, I would  
11 think.

12 Under nonenforcement cases, Yellowstone  
13 Energy Limited Partnership has agreed to partially  
14 withdraw the bulk of its appeal. They've reached  
15 an agreement with DEQ on all of their permit  
16 conditions but for some issues on reporting  
17 requirements for copper, and copper effluent, and  
18 recoverable copper. But the parties will be

19 resolving that through March, or they intend to  
20 resolve it by March with a hearing, if necessary,  
21 set in July of this year.

22 In the matter of Phillips 66, that  
23 matter is ongoing; and the Columbia Falls Aluminum  
24 Company is similarly ongoing. I haven't received  
25 any recent correspondence in either of those two.

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1 And then I have no updates in either <sup>7</sup>  
2 3(a) or I'm afraid 3(b). 3(b) there are two  
3 summary judgment motions filed. One of them I  
4 will be issuing an order on that motion for  
5 summary judgment next week; and the other motion  
6 for summary judgment is likely to require a  
7 hearing, which I think could be tentatively  
8 scheduled for the March meeting.

9 CHAIRMAN SHROPSHIRE: Thanks, Ben. Any  
10 questions from the Board?

11 (No response)

12 CHAIRMAN SHROPSHIRE: Hearing none, the  
13 next item on the agenda is action items, and the  
14 first one is initiation of rulemaking. DEQ is  
15 proposing the Board to initiate rulemaking to  
16 amend ARM 17.8.102 and 17.8.103, and to  
17 incorporate by reference updated Federal and State  
18 statutes and regulations. John, I don't know if  
19 you're hosting the meeting. I'm assuming Tom is  
20 not there. But I'll turn it over to you guys to  
21 give the update on that.

22 MR. NORTH: Yes, Madam Chair. I

23 apologize. As you know, Tom is now the Director,  
24 and the Legislature is going on, so he had  
25 legislative commitments, so he asked that I step

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1 in and take his role for this meeting.

2 And with regard to the rulemaking  
3 proceeding, Liz Ulrich from our Air Quality  
4 Program will make our presentation.

5 MS. ULRICH: Good morning, Madam Chair,  
6 members of the Board. For the record, my name is  
7 Liz Ulrich, and I'm here representing the  
8 Department's Air Resources Management Bureau.

9 I'm here today to request that the Board  
10 initiate rulemaking to adopt the current editions  
11 of Federal and State air quality statutes, rules,  
12 and regulations that are incorporated by reference  
13 in the Administrative Rules of Montana. The  
14 Department is requesting that the Board  
15 incorporate revisions that were published in the  
16 July 1st, 2014 edition of the Code of Federal  
17 Regulations, the 2013 edition of the United States  
18 Code, and the Administrative Rules of Montana as  
19 they existed on September 30th, 2014.

20 The Federal regulations we would like  
21 incorporate include new source performance  
22 standards, and national emission standards for  
23 hazardous air pollutants. This action will ensure  
24 that Montana's air quality rules are at least as  
25 stringent as Federal air quality regulations,

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1 maintain federal delegation of Montana's air<sup>9</sup>  
2 quality program, and ensure the timely  
3 implementation of federal emission standards. A  
4 table of proposed revisions has been included in  
5 your packet.

6 With that, the Department recommends  
7 that the Board initiate rulemaking, and issue a  
8 notice of public hearing on the proposed  
9 amendments. Thank you. Are there any questions?

10 CHAIRMAN SHROPSHIRE: Thanks, Liz. Any  
11 questions from the Board?

12 MS. MILES: It looks pretty straight  
13 forward to me.

14 CHAIRMAN SHROPSHIRE: I was agreeing.  
15 It seems pretty straight forward.

16 MS. MILES: -- (inaudible) --  
17 discussion, I would move that the Board initiate  
18 rulemaking and -- I forget the exact wording.

19 CHAIRMAN SHROPSHIRE: Let me check to  
20 make sure there is nobody on the phone or anybody  
21 in the audience, any public comment.

22 (No response)

23 MR. NORTH: Madam Chair, the audience  
24 appears to be totally composed of DEQ employees,  
25 and none of them are raising their hand or coming

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1 to the podium, so I don't think here in the room<sup>10</sup>  
2 there is anybody who wants to submit public  
3 comment.



4 CHAIRMAN SHROPSHIRE: Thanks, John. I  
5 would entertain a motion to have the Board  
6 initiate rulemaking and appoint a Hearing Examiner  
7 to conduct a public hearing as described in the  
8 attached draft notice of public hearing on  
9 proposed amendments.

10 MS. MILES: This is Joan. So moved.

11 CHAIRMAN SHROPSHIRE: It has been moved  
12 by Joan. Is there a second?

13 MR. RUSSELL: Second. Joe.

14 CHAIRMAN SHROPSHIRE: Seconded by Joe.  
15 Any discussion?

16 (No response)

17 CHAIRMAN SHROPSHIRE: Hearing none, all  
18 those in favor, signify by saying aye.

19 (Response)

20 CHAIRMAN SHROPSHIRE: Opposed.

21 (No response)

22 CHAIRMAN SHROPSHIRE: Motion carries  
23 unani mousl y.

24 We're getting close to the end here. So  
25 the next item on the agenda is final action on

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1 contested cases, and the matter in front of us is  
2 violations of the Sanitation and Subdivisions Act  
3 and Public Water Supply Law by Roger Emery at the  
4 Sunrise Motel, Sidney, Richland County, BER  
5 2013-06-SUV. Ben, do you want to update us on  
6 this.

7 MR. REED: Certainly, Madam Chair. The  
Page 9

8 long and the short of it -- First, let me  
 9 apologize. Through inadvertence and neglect, the  
 10 order that was included in your packet was an  
 11 order of dismissal, which is not in fact what it  
 12 should be. That I think has been remedied.

13 Fundamentally, what we have here is a  
 14 gentleman who was in violation of wide variety of  
 15 water quality regulations, who applied for  
 16 a hearing, and his application for a hearing was  
 17 his last action in the matter. DEQ filed for a  
 18 motion for summary judgment, and Mr. Emery never  
 19 responded to that. So it was appropriate, in my  
 20 view, it is appropriate for the Board to grant DEQ  
 21 that summary judgment.

22 MS. MILES: Could you explain the  
 23 consequences of that, what happens next.

24 MR. REED: Often what will happen is  
 25 when an individual has a fine levied against him

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1 or her, that individual will simply file a request  
 2 for a hearing to, as it were, kick the can further  
 3 down the road. Essentially all it does, or all it  
 4 did in this case, since Mr. Emery never filed  
 5 anything, was to delay what became the inevitable.  
 6 So what we'll do is, I think this case will be  
 7 turned back to Mr. Arrigo, who will then talk to  
 8 Mr. Emery about complying with the order that was  
 9 originally issued by the Department.

10 MS. MILES: Okay. Thank you.

11 CHAIRMAN SHROPSHIRE: Any other  
 Page 10

12 questions?

13 MR. TWEETEN: This is Chris. Can you  
14 outline for the Board the steps that were taken to  
15 provide Mr. Emery notice of the fact that the  
16 Board was going to take final action on this  
17 today, and that the result could be the imposition  
18 of the sanctions that were originally imposed.

19 MR. REED: Certainly. Mr. Emery  
20 received his scheduling order. The scheduling  
21 order had a variety of deadlines in it, and he  
22 complied with none of the deadlines.

23 CHAIRMAN SHROPSHIRE: When you say he  
24 received that, was that emailed to him, or mailed  
25 to him, and does he have to acknowledge that he

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13

1 received it?

2 MR. REED: It was mailed to him. He did  
3 not acknowledge receipt of it. I subsequently in  
4 November spoke both to Mr. Emery and to Paul  
5 Nickel (phonetic) about the matter. Mr. Emery  
6 indicated to me that he had received it, and was  
7 in the process of responding to DEQ but never  
8 actually did anything about it. I asked my  
9 paralegal to contact Mr. Nickel subsequently in  
10 December, and Mr. Emery, and the status quo had  
11 not changed. So I did mail out the recommended  
12 order on the motion for summary judgment on the  
13 first of January to Mr. Emery and to DEQ. I  
14 wouldn't expect to hear anything from DEQ, but I  
15 heard nothing from Mr. Emery. So those were the

16 actions that I took.

17 Mr. Emery has been on notice since March  
18 25th that this was sort of going to be the  
19 sequence of events.

20 MR. TWEETEN: What notice did he receive  
21 of the fact that the Board was going to be taking  
22 some sort of final action on this pending motion  
23 which was dispositive of this case?

24 MR. REED: On January 1st he received  
25 this recommended order on motion for summary

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1 judgment.

2 MR. TWEETEN: Did that include the fact  
3 that we were going to take action on this today?

4 MR. REED: Do you have the order,  
5 recommended order on the motion for summary  
6 judgment in front of you, Mr. Tweeten?

7 MR. TWEETEN: I don't. I'm sorry.

8 MR. REED: That's not a problem. It  
9 essentially says that the Board will be issuing a  
10 final decision, and gave Mr. Emery until January  
11 14th to file any exception that he chose to file,  
12 and explained that any party that wanted to file  
13 exceptions and/or present oral argument had a  
14 deadline of January 21st to file notice that they  
15 would be doing so.

16 So I'm not certain that there was  
17 absolutely no ambiguity in the matter, but I think  
18 a reasonable person would have known that. It  
19 states that there was going to be a Board meeting



24 exists down there?

25 I am very familiar with the Emery

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1 facility, and I don't recall what the fine was,<sup>16</sup>  
2 but if you do a Google Earth, and you look at the  
3 number of trailers that are jammed in there -- and  
4 what is showing on the Google Earth is nothing  
5 compared about with what is actually there today  
6 -- and the prices that they are charging people to  
7 park these campers is absolutely atrocious.

8 And I don't know, but looking at the  
9 surrounding area, it appears to me very easy for  
10 any sewage to quickly and easily leak into an  
11 irrigation ditch that would eventually end up in  
12 the Yellowstone River. And I'm not so sure, but I  
13 am thinking the raw sewage would be as big a deal  
14 as the oil spills, if not worse.

15 MR. RUSSELL: May I intervene here for a  
16 minute? John, are you getting an uncomfortable  
17 feeling? I hope this is all part of the record,  
18 Larry, because we're supposed to be acting upon  
19 the record.

20 MR. MIRES: And so I'll just end my  
21 comments here at that point. But -- (inaudible)  
22 -- down here.

23 CHAIRMAN SHROPSHIRE: All right.  
24 Thanks. Any other comments from the Board related  
25 to this matter, questions?

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1 If not, I would entertain a motion to  
2 recommend that the Board issue an order granting  
3 the Department's motion for summary judgment.

4 MR. RUSSELL: This is Joe. Don't we  
5 have an order? Should we be acting specifically  
6 upon the order that was sent by Joyce a couple  
7 days ago?

8 CHAIRMAN SHROPSHIRE: When I saw the  
9 order this morning, Joe, it was an order to  
10 dismiss, not an order granting summary judgment.  
11 And so the order that I have -- good question, so  
12 I don't know how --

13 MS. MILES: Wasn't that the one we were  
14 sent just a couple of days ago? Because I just  
15 read it. It's the order for summary judgment.

16 MR. RUSSELL: I think we have to act  
17 specifically on the order.

18 MS. MILES: But we did receive it --

19 MR. RUSSELL: But we did receive it --

20 MS. MILES: -- (inaudible) -- just a  
21 couple days ago.

22 MR. REED: Madam Chair, if I can perhaps  
23 clarify. The recommended order, the caption on  
24 the recommended order is correct, and it says  
25 "Recommended order on motion for summary

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1 judgment." The caption on the order is incorrect.  
2 The caption on the order reads "Order of  
3 dismissal." The body of the text in the order is

4 correct. It is actually an order granting the  
5 Department summary judgment. It is only the  
6 caption that's incorrect.

7 CHAIRMAN SHROPSHIRE: All right. Thank  
8 you for that clarification. So the motion would  
9 be to authorize the Board Chair to sign the order  
10 granting the Department's motion for summary  
11 judgment.

12 MR. RUSSELL: -- (inaudible) -- but we  
13 have an order for dismissal, and we should be  
14 acting specifically on that, and it's because of  
15 the argument about motion for summary judgment  
16 that we are going to order the dismissal.

17 CHAIRMAN SHROPSHIRE: That's what I was  
18 trying to clarify, Joe, is that I don't think -- I  
19 think that order of dismissal is incorrect. It's  
20 an order granting summary judgment.

21 MR. RUSSELL: We're probably arguing  
22 over something picayune, so I won't continue.

23 MS. MILES: It's summary judgment that  
24 we want to -- that's what we want to do.

25 CHAIRMAN SHROPSHIRE: So I don't know if

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19  
1 you can comment on this, or Ben, but my  
2 understanding was that there is a single motion,  
3 and it is to grant -- or the option to grant  
4 summary judgment, not the order -- (inaudible) --  
5 MR. REED: That's correct, Madam Chair,  
6 and I think if the motion to grant the  
7 Department's -- the motion to order summary



8 judgment as requested by the Department, if that  
9 motion carries, then all that's needed is a simple  
10 administrative fix on this end, and the document  
11 that will be signed will be amended as necessary.

12 CHAIRMAN SHROPSHIRE: So I guess I look  
13 at two options, just for any absence of doubt.  
14 One is: We can vote on an order granting the  
15 Department's motion for summary judgment with the  
16 Board, authorizing me to sign that order, the  
17 amended order; or we could wait until the document  
18 is corrected, we could resend out the corrected  
19 document, maybe have a quick meeting to vote on  
20 it, or wait until the next meeting. Those are the  
21 options I see. Ben, do you want to comment on  
22 that?

23 MR. REED: Honestly, Madam Chair, I  
24 don't see a problem with voting on an order  
25 granting the summary judgment that the Department

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1 has requested. That document has been prepared  
2 and is here. But it is dependent on the Board's  
3 comfort level with that. I don't think there is a  
4 legal problem with the Board taking the action  
5 today.

6 MR. RUSSELL: I'll make a motion to  
7 amend the document that was submitted to the Board  
8 electronically on the 27th of January on or about  
9 ten twenty-eight to change that order of dismissal  
10 to an order granting summary judgment.

11 CHAIRMAN SHROPSHIRE: Thanks, Joe. Is

12 there a second?

13 MS. MILES: This is Joan. I would  
14 second.

15 MR. TWEETEN: Madam Chair, this is  
16 Chris. Can I try my hand at a substitute motion?

17 CHAIRMAN SHROPSHIRE: Sure.

18 MR. TWEETEN: I agree with Ben. This is  
19 an error of formality, not an error of substance.  
20 As I read it, the substance of the document that's  
21 captioned "Order of dismissal" is correct, it is  
22 just that the caption doesn't agree with the body  
23 of what's in the order.

24 So what I would suggest, and I would  
25 offer as a substitute motion, is that Ben be

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1 directed to -- first of all, that the Board<sup>21</sup>  
2 approve and authorize the signature of the  
3 recommended order on the motion for summary  
4 judgment that was circulated on the 28th; second,  
5 that Ben be directed to prepare a new document to  
6 substitute for the one that's captioned "Order of  
7 Dismissal" that would be captioned "Order granting  
8 sanctions;" and the third, that the Chair be  
9 authorized to sign that corrected order as soon as  
10 it's prepared to constitute the agency's final  
11 action on this matter.

12 MR. RUSSELL: This is Joe. I would  
13 accept that friendly amendment.

14 MR. REED: Just one point, Chris and  
15 Joe. I would change "sanctions" to "summary

16 judgment." I'm not sure "sanctions" is exactly  
17 the phrasing that's captured in either the law or  
18 the original order coming out of Mr. Arrigo's  
19 office.

20 MR. TWEETEN: I'm fine with that as long  
21 as Joe is.

22 MR. RUSSELL: I as well. I've never  
23 seen "sanctions" in an order.

24 CHAIRMAN SHROPSHIRE: And just one other  
25 point of clarification, is that it's already been

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1 corrected in front of Ben right now. So the<sup>22</sup>  
2 correction has been made, we just want to  
3 circulate the corrected document. I guess we've  
4 asked Ben to correct it.

5 So is the motion -- Let me clarify,  
6 Chris. Are you suggesting two separate motions or  
7 just one?

8 MR. TWEETEN: No, I'm suggesting a  
9 single motion with three parts, the first part  
10 being the approval of the recommended Order on  
11 Motion for Summary Judgment; the second part I  
12 guess, now that I've gone on more and more what's  
13 in front of everybody, would be to direct Ben to  
14 place in front of the Chair for signature the  
15 Order Granting the Motion for summary Judgment, or  
16 whatever it is captioned now, containing the body  
17 of the former Order of Dismissal with the  
18 corrected caption; and third, that the Chair be  
19 authorized by the Board to sign that corrected

20 order as the final agency action for the Board in  
21 this matter.

22 CHAIRMAN SHROPSHIRE: Is there a second?

23 MS. MILES: This is Joan. I'll second.

24 CHAIRMAN SHROPSHIRE: Seconded by Joan.

25 Any further discussion?

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1 (No response)

2 CHAIRMAN SHROPSHIRE: Hearing none, all  
3 those in favor, signify by saying aye.

4 (Response)

5 CHAIRMAN SHROPSHIRE: Opposed.

6 (No response)

7 CHAIRMAN SHROPSHIRE: Motion carries  
8 unani mousl y.

9 Well, I guess the last thing on the  
10 agenda is reserved for public comment. Is there  
11 anyone that would like to address the Board?

12 (No response)

13 MR. NORTH: Madam Chair, I'm looking  
14 out, and no one appears to want to address the  
15 Board on any other matter.

16 CHAIRMAN SHROPSHIRE: Thanks, John.

17 MR. NORTH: Madam Chair, I would just  
18 like to add that the next meeting is on March  
19 20th, and given where we stand today, it looks  
20 pretty certain that that will need to be an  
21 in-person meeting, because there is at least one  
22 significant contested case matter to be resolved,  
23 and also some rather significant proposed

24 rulemaking to be brought before the Board then.

25 CHAIRMAN SHROPSHIRE: All right.

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1 Thanks, John. Any other comments from the Board?<sup>24</sup>

2 (No response)

3 CHAIRMAN SHROPSHIRE: If not, I'll

4 entertain a motion to adjourn.

5 MR. TWEETEN: Chris. So moved.

6 CHAIRMAN SHROPSHIRE: I think I heard a  
7 second. Moved by Chris. Is that Joan or Heidi?

8 MS. MILES: Second.

9 CHAIRMAN SHROPSHIRE: All those in  
10 favor, significant by saying aye.

11 (Response)

12 CHAIRMAN SHROPSHIRE: Thanks, guys.  
13 We'll see you on March 20th. We're adjourned.

14 (The proceedings were concluded  
15 at 9:34 a.m. )

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C E R T I F I C A T E

STATE OF MONTANA )  
 : SS.  
COUNTY OF LEWIS & CLARK )

I, LAURIE CRUTCHER, RPR, Court Reporter,  
Notary Public in and for the County of Lewis &  
Clark, State of Montana, do hereby certify:

That the proceedings were taken before me at  
the time and place herein named; that the  
proceedings were reported by me in shorthand and  
transcribed using computer-aided transcription,  
and that the foregoing - 25 - pages contain a true  
record of the proceedings to the best of my  
ability.

IN WITNESS WHEREOF, I have hereunto set my  
hand and affixed my notarial seal  
this                      day of                      , 2015.

LAURIE CRUTCHER, RPR  
Court Reporter - Notary Public  
My commission expires  
March 12, 2016.

♀