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BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

BOARD MEETING)
OCTOBER 29, 2020)

TRANSCRIPT OF PROCEEDINGS - VIA ZOOM

Heard at Room 111 of the Metcalf Building
1520 East Sixth Avenue
Helena, Montana
October 29, 2020
9:00 a.m.

BEFORE CHAIR CHRIS DEVENY,
BOARD MEMBERS CHRIS TWEETEN, DEXTER BUSBY,
JEREMIAH LYNCH,
HILLARY HANSON, and DAVID LEHNHERR

PREPARED BY: LAURIE CRUTCHER, RPR
COURT REPORTER, NOTARY PUBLIC
P.O. Box 1192, Helena, MT 59624
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1 WHEREUPON, the following proceedings were
2 had and testimony taken, to-wit:

3 * * * * *

4 (Board Member Tweeten not present)

5 CHAIR DEVENY: It's 9:02, according to
6 my computer, so I think we'll go ahead and get
7 started. I'd like to call this meeting to order
8 of the Board of Environmental Review. For the
9 record, we're meeting via Zoom because of the
10 Corona Virus Pandemic.

11 I'd like to ask everybody if possible to
12 please mute their phones and their computers.
13 With that, I'll take roll call. I'm here. Dexter
14 Busby.

15 BOARD MEMBER BUSBY: I'm here.

16 CHAIR DEVENY: Jerry Lynch.

17 BOARD MEMBER LYNCH: Present.

18 CHAIR DEVENY: Hillary Hanson.

19 BOARD MEMBER HANSON: Here.

20 CHAIR DEVENY: David Lehnherr.

21 BOARD MEMBER LEHNHERR: Here.

22 CHAIR DEVENY: John DeArment.

23 (No response)

24 CHAIR DEVENY: Chris Tweeten.

25 (No response)

1 CHAIR DEVENY: Who did I miss? Okay.
2 Anyway we have a quorum. So with that, could DEQ
3 go ahead and introduce the staff that are on, and
4 then we'll ask for public introductions.

5 MR. DAVIS: Madam Chair, members of the
6 Board, again, Tim Davis. I'm the Water Quality
7 Division Administrator for DEQ. I have Kurt
8 Moser, DEQ attorney. He'll be the one speaking on
9 the stipulation today.

10 There's Jon Kenning, Melinda Horn,
11 Hannah New, Rainie DeVaney, Kayla Glossner,
12 Christine Weaver, and Sandy Scherer, as well as
13 Deb Sutliff, who is still sitting in as the acting
14 BER secretary. I would let the Board know that we
15 are in the process of hiring the permanent BER
16 secretary replacement at this time. So I think
17 that's everyone from DEQ.

18 CHAIR DEVENY: Okay. Thank you. And we
19 have Sarah Clerget, our Board attorney on with us.
20 Sarah, is anybody else with you today?

21 MS. CLERGET: No.

22 CHAIR DEVENY: And how about members of
23 the public?

24 MS. MARQUIS: Good morning, Madam Chair,
25 members of the Board. This is Vicki Marquis. I'm

1 an attorney with Holland and Hart, here today⁴
2 representing CHS, and first of all, I want to
3 thank you for having this special meeting and
4 taking the time to deal with this today.

5 CHAIR DEVENY: Thank you, Vicki. Any
6 other members of the public on today?

7 MS. SUTLIFF: Madam Chair, we have
8 Laurie Crutcher. She is Clerk and Recorder today.
9 Thank you, Laurie.

10 CHAIR DEVENY: Welcome, Laurie. Okay.
11 With that, we'll go ahead. Sarah, I'll turn it
12 over to give us a little background on the cases
13 and why we're here today.

14 MS. CLERGET: So as you all may
15 remember, and is outlined in the materials that
16 was in your packet, you resolved most of the
17 issues in this case before, and so there were only
18 two, one and a half really, that were remaining.
19 So this stipulation, both of the parties agree,
20 and they put it in front of you for approval.

21 And I really want to commend the parties
22 on the work that they've done on this case. I
23 know it's a lot to have you guys here for a
24 special meeting, but they really have worked hard
25 on this, and it's really impressive, the

1 collaboration that Kurt and Vicki have done. I⁵
2 want to commend them for that, because they've
3 worked really hard together with a lot of
4 cooperating to make this happen.

5 So I think it's pretty straight forward.
6 It's just a matter of the Board approving these
7 last few pieces, and we had to wait for them until
8 the arsenic rules as well. I think that's all
9 I've got, unless the parties have more as you
10 wish.

11 CHAIR DEVENY: If either of the parties
12 have anything to add to that, this would be a good
13 time.

14 MR. MOSER: Madam Chair, members of the
15 Board, DEQ, we really don't have anything specific
16 to add. We just thank Sarah for those comments.
17 And we'd just ask that you move forward and
18 approve this stip as presented.

19 CHAIR DEVENY: Thank you, Mr. Moser.
20 And it's great when the parties can work together.
21 And Vicki, did you have something to say?

22 (Board Member Tweeten present)

23 MS. MARQUIS: Madam Chair, members of
24 the Board, I just echo what Kurt had said, and
25 thank you, Sarah, for your kind words. And it's

1 a renewal permit -- which in this case CHS has
2 done -- and the Department issues a letter
3 recognizing that, and then the permit is
4 administratively extended. So the conditions of
5 that permit continue in force until the agency
6 approves the renewal.

7 BOARD MEMBER LYNCH: This is Board
8 Member Lynch. Madam Chair. Kurt, if you could,
9 please tell me what the length of the permit will
10 be, or is generally.

11 MR. MOSER: Generally speaking permits
12 are for five years. They can be up to five years,
13 but because it is a very extensive process to go
14 through a permit review, and takes quite a bit of
15 time, typically the agency will approve a permit
16 for a five-year period.

17 After that, the permit will be
18 administratively extended for sometimes a number
19 of years until the next one is approved.
20 Generally the agency tries to shoot for no more
21 than two years being administratively continued.
22 Sometimes we're not successful at reaching that
23 number either.

24 BOARD MEMBER LYNCH: So I take it
25 there's a review process at the end of the five

1 years, a review process of some kind?

2 MR. MOSER: Yes. Every five years as a
3 condition of a permit, a permittee has to submit a
4 renewal if they plan to continue obviously, or
5 would like the opportunity or potential, they will
6 submit an application I believe six months prior
7 to the permit's expiration, which it happened
8 here.

9 BOARD MEMBER LYNCH: But the Department
10 is not bound by this stipulation with regard to
11 the new permit five years down the road, if
12 circumstances change?

13 MR. MOSER: Yes. It's the Department's
14 position that we re-evaluate a permit every time
15 it's renewed. If a permit is modified during its
16 term, then the review is bounded by the
17 limitations of that modification; but if it's a
18 renewal permit, then the Department looks at the
19 entire, all of the circumstances and issues of a
20 new permit.

21 BOARD MEMBER LYNCH: All right. Thank
22 you.

23 CHAIR DEVENY: Any other questions from
24 Board members? David, I'm seeing your hand.

25 BOARD MEMBER LEHNHERR: Madam Chair, I'm

1 just clarifying for myself. So if we approve this
2 action, then CHS can have a permit for another
3 five years. If we don't, what would happen?

4 MR. MOSER: Well, if you approve this
5 action, then I guess the conditions that the
6 parties have agreed to would be included in the
7 permit, and this case, the two cases that are
8 related on the Board's docket would be closed.

9 And then the agency would simply be
10 beginning to evaluate the application that CHS had
11 submitted for the next five years. This basically
12 just closes a chapter.

13 I guess if the stipulation and order
14 that have been submitted is not approved, then the
15 parties would have to -- I guess it depends. It
16 depends on what the Board would say. If there's a
17 reason, we'd have to address that. So it's kind
18 of hard to speculate, but potentially we would go
19 back to a contested case proceeding.

20 BOARD MEMBER LEHNHERR: Thank you.

21 CHAIR DEVENY: Any other questions or
22 comments from Board members, clarification that's
23 needed?

24 (No response)

25 CHAIR DEVENY: Hearing none, I would

1 like to move that the Board approve the
2 stipulations that were set forth on these two
3 contested cases, and ask that they be approved by
4 the Board.

5 BOARD MEMBER LEHNHERR: I'll second that
6 motion.

7 CHAIR DEVENY: Where did that second
8 come from?

9 BOARD MEMBER LEHNHERR: David.

10 CHAIR DEVENY: Thank you, David. It's
11 been moved and seconded. Is there any further
12 discussion?

13 (No response)

14 CHAIR DEVENY: Hearing none, all those
15 Board members in favor, please signify by saying
16 aye.

17 (Response)

18 CHAIR DEVENY: Are any Board members
19 opposed?

20 (No response)

21 CHAIR DEVENY: Hearing none, the motion
22 passes. And with that, we are required to open
23 this meeting up for a quick public comment period.
24 If there's anybody in the public that wishes to
25 comment on any issues that were not discussed

1 today, this is an opportunity.

2 (No response)

3 CHAIR DEVENY: Hearing none, I'll move
4 to adjourn this meeting.

5 BOARD MEMBER BUSBY: Second.

6 MR. DAVIS: Thank you, Madam Chair,
7 Board members.

8 CHAIR DEVENY: It's been moved and
9 seconded that this meeting be adjourned.

10 (The proceedings were concluded
11 at 9:13 a.m.)

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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 - 11 - 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 1st day of
November, 2020.

LAURIE CRUTCHER, RPR
Court Reporter - Notary Public
My commission expires
March 9, 2024.

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