



# Montana Board of Environmental Review

P. O. Box 200901 • Helena, MT 59620-0901 • (406) 444-2544 • Website: [www.deq.state.mt.us](http://www.deq.state.mt.us)

## MINUTES JULY 24, 2009

### 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, July 24, 2009, 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 Absent: 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: Richard Opper (Director), Tom Livers (Deputy Director); John North, Jim Madden, Carol Schmidt, David Rusoff, and Norman Mullen – Legal; Judy Hanson and Karen Simpson – Permitting & Compliance Division; Jenny Chambers, Kari Smith, and Freddi Haab – Water Protection Bureau; Jon Dilliard, Eugene Pizzini, Steve Kilbreath, Rachel Clark, Barb Kingery, Shelley Nolan, and Eric Regensburger – Public Water Supply & Subdivisions Bureau; David Klemp, Paul Skubinna, and Debra Wolfe – Air Resources Management Bureau; Warren McCullough – Environmental Management Bureau; Janet Kessler – Office of Financial Services; Bob Bukantis and Rod McNeil – Water Quality Planning Bureau; John Arrigo – Enforcement Division

Interested Persons Present (*Disclaimer: Names are spelled as best they can be read from the official sign-in sheet.*): Aart Dolman; Stuart Lewin; Jenny Harbine – Earthjustice; Jim Jensen – Montana Environmental Information Center; John Camden – Montana Rural Water; Gary Zadick and Jeff Chaffee – Southern Montana Electric; Don Allen – Western Environmental Trade Association; Tyler Evelsizer – SAVE Foundation

- I.A PUBLIC HEARING: In the matter of the amendment of ARM 17.30.702, 17.36.101, 17.36.102, 17.36.103, 17.36 104, 17.36.323, 17.36.345, 17.36.911, 17.36.912, 17.36.914, 17.36.916, 17.36.918, 17.36.922, 17.38.101, 17.55.102, the amendment of Department Circular DEQ-4, and the adoption of New Rules I and II pertaining to gray water reuse.
- The public hearing began at 9:03 a.m. and concluded at 9:32 a.m.
- II.A.1 Review and approve May 29, 2009, meeting minutes.
- Chairman Russell called for a motion to approve the May 29, 2009, minutes as presented. Mr. Miller so MOVED. Mr. Mires SECONDED the motion. The motion CARRIED with a unanimous VOTE.
- Mr. Livers noted that there is a new appointment to the Board, Larry Anderson, who replaces Bill Rossbach. Larry was unable to be at this meeting due to a prior commitment.
- III.A.1.a In the matter of CR Kendall Corporation's request for a hearing to appeal a decision to deny a minor permit amendment under the Metal Mine Reclamation Act, BER 2002-09 MM.
- There was no discussion regarding this matter.
- III.A.1.b In the matter of violations of the Water Quality Act by ASARCO, Inc., BER 2005-09 WQ.
- There was no discussion regarding this matter.
- III.A.1.c In the matter of the appeal by Southern Montana Electric (SME) regarding its Air Quality Permit No. 3423-00 for the Highwood Generation Station, BER 2007-06 AQ.
- There was no discussion regarding this matter.
- III.A.1.d In the matter of the appeal by Eastgate Water and Sewer Association of Helena Sand and Gravel, Inc.'s Opencut Permit No. HSG-017, BER 2008-08 OC.
- Ms. Orr said this case will be presented at the next meeting for dismissal.
- III.A.1.e In the matter of violations of the Montana Water Quality Act by Wilderness Club, LLC., at the Wilderness Club Eureka, Lincoln County, Montana, BER 2008-13 WQ.
- Ms. Orr said a summary judgment motion had been filed by the Wilderness Club, had been fully briefed, and the parties had waived oral argument. She suggested that she review the motion and write a proposed decision for the Board to adopt at the

next meeting. The Board concurred.

III.A.1.g In the matter of violations of the Metal Mine Reclamation Act by Saturday Sunday, LLC., Deer Lodge County, BER 2009-02 MM.

Ms. Orr said the department had filed a motion for summary judgment, which had been briefed. She said it would be ready for the next meeting.

III.A.1.h In the matter of violations of the Montana Public Water Supply Laws by Hugh Black-ST. Mary Enterprises, Inc. at the ST. Mary Lodge and Resort Public Water Supply System, PWSID# MT0002754, ST. Mary, Glacier County, BER 2009-04 PWS.

There was no discussion regarding this matter.

III.A.1.i In the matter of the appeal by the River Rock County Water and Sewer District regarding its MDEQ Permit No. MTX000147 for its wastewater treatment facility, BER 2009-05 WQ.

Ms. Orr noted that the parties had just submitted a fourth request for extension.

III.A.1.j In the matter of violations of the Montana Underground Storage Tank Act by Flying J Inc. at Flying J Travel Plaza, 112000 Browns Gulch Road, Butte, Silver Bow County, BER 2009-06 UST.

There was no discussion regarding this matter.

III.A.1.k In the matter of the request for hearing by Sandy Rose regarding the Notice of violation of the Montana Public Water Supply Laws by Canyon Ferry Mansion, Inc., at Canyon Ferry Mansion, PWSID #MT0004387, Helena, Lewis and Clark County, BER 2009-08 PWS.

There was no discussion regarding this matter.

III.A.1.l 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 the parties have proposed a schedule for the hearing and she will be issuing a scheduling order.

III.A.1.m In the matter of violations of the Clean Air Act of Montana by Sheep Mountain Properties, LLC, Jefferson County, BER 2009-11 AQ.

There was no discussion regarding this matter.

III.A.1.f In the matter of the appeal and request for hearing by Montana Environmental Information Center, Citizens for Clean Energy, Sierra Club, and National Parks Conservation Association of the Southern Montana Electric Generation and Transmission Cooperative (SME) Highwood Generating Station Air Quality Permit No. 3423-01, BER 2008-23 AQ.

Ms. Orr said the issue of whether to continue the stay is before her and she wants the Board to hear the pros and cons from the parties with her.

Mr. Zadick provided a status of construction and permitting affecting the plant.

Ms. Harbine questioned SME's intent regarding the coal plant permit and indicated that the Board should revoke the permit. Discussion began as to whether the Board had authority to revoke a permit.

III.A.2.a In the matter of the Notice of Appeal and Request for Hearing of the Citizens Awareness Network, Women's Voices for the Earth, and the Clark Fork Coalition regarding DEQ's approval of the Thompson River CO-Gen, LLC, Air Quality Permit No. 3175-04, BER 2006-18 AQ.

Ms. Orr added that a Reply Brief was filed with the Supreme Court on July 13, 2009.

III.A.2.b In the matter of the appeal by Citizens for Clean Energy (CCE) and Montana Environmental Information Center (MEIC) regarding Air Quality Permit No. 3423-00 issued to Southern Montana Electric (SME) for its Highwood Generating Station, BER 2007-07 AQ.

There was no discussion regarding this matter.

IV.A.1 In the matter of DEQ's request to initiate rulemaking to amend ARM 17.30.617 and 17.30.638 regarding the ORW designation of a portion of the Gallatin River.

Mr. Livers provided some background regarding the rulemaking and the purpose behind the multiple requests to extend the public comment period.

Mr. Bukantis provided a more detailed history of the rulemaking and explained how the ORW designation would protect the water, but have other possible negative effects.

Chairman Russell called for public comment on the rulemaking request. There was no response. He called for a motion to adopt a new notice to extend the public comment period. Ms. Kaiser so MOVED. Mr. Miller SECONDED the motion. The motion CARRIED with a unanimous VOTE.

- IV.A.2 | In the matter of the DEQ's request to initiate rulemaking to amend ARM 17.38, Subchapters 1 and 2 regarding public water supplies.
- Mr. Pizzini described the amendments and said the department recommends appointment of a hearings officer and initiation of the rulemaking. He also responded to several questions from Chairman Russell.
- Chairman Russell called for a motion to initiate the rulemaking and appoint Katherine Orr as the hearing examiner. Mr. Whalen so MOVED. Mr. Mires SECONDED the motion. The motion CARRIED with a unanimous VOTE.
- IV.A.3 | In the matter of the DEQ's request to initiate rulemaking to amend ARM 17.30.201 to adjust the water discharge permit fee schedule.
- Ms. Chambers provided information regarding the proposed rulemaking and responded to questions from the Board.
- Chairman Russell called for a motion to initiate the rulemaking and to appoint Katherine Orr as the hearing examiner. Mr. Mires so MOVED. Ms. Kaiser SECONDED the motion. The motion CARRIED with a unanimous VOTE.
- IV.B.1 | In the matter of violations of Montana Public Water Supply Laws by Anaconda Country Club, Deer Lodge County, BER 2009-12 PWS.
- Chairman Russell called for a motion to appoint Katherine Orr as the permanent hearings examiner for this case. Ms. Kaiser so MOVED. Mr. Miller SECONDED the motion. The motion CARRIED with a unanimous VOTE.
- IV.B.2 | In the matter of violations of Montana Public Water Supply Laws by Headwaters Livestock Auction, LLC at Headwaters Livestock Auction, Three Forks, Broadwater County, BER 2009-13 PWS.
- After some discussion, the Board chose to take no action on this and retain jurisdiction to hear contested case matters.
- IV.C.1 | In the matter of violations of the Montana Water Quality Act by Jim Gilman Excavating, Inc., at Augusta-South, Lewis and Clark County, BER 2008-24 WQ.
- Ms. Orr explained that the parties filed a motion for dismissal under Rule 41(a), meaning they're mutually withdrawing from the jurisdiction of the Board, leaving the Board nothing further to do than sign the dismissal order.
- Chairman Russell called for a motion to authorize him to sign the order. Mr. Mires so MOVED. Mr. Whalen SECONDED the motion. The motion CARRIED with a unanimous VOTE.

V. General Public Comment

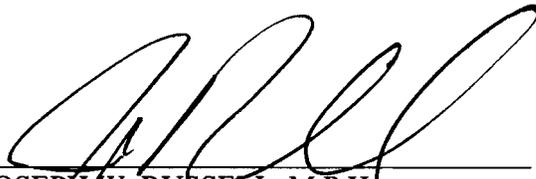
Mr. Don Allen provided comments regarding the Gallatin ORW matter and the water discharge permit fees rulemaking.

VI. 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 11:15 a.m.

Board of Environmental Review October 2, 2004, minutes approved:



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

Oct 2, 2009  
DATE