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**TELECONFERENCE MINUTES
SEPTEMBER 23, 2011**

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, September 23, 2011, in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana.

Attendance

Board Members Present via Telephone: Marvin Miller, Larry Mires, Robin Shropshire, Larry Anderson, Joe Whalen, Heidi Kaiser, Chairman Joe Russell

Board Attorney Present: Katherine Orr, Attorney General's Office, Department of Justice

Board Secretary Present: Joyce Wittenberg, DEQ Director's Office

Court Reporter Present: Laurie Crutcher, Crutcher Court Reporting

Department Personnel Present: Tom Ellerhoff (Director's Office); John North, James Madden, Jane Amdahl, and Claudia Massman (Legal); Jenny Chambers and Tom Reid (Water Protection Bureau); David Klemp, Charles Homer, Bob Habeck, Debra Wolfe, Julie Merkel, Eric Merchant, and Becky Frankforter (Air Resources Management Bureau); Ed Coleman and Eric Urban (Industrial & Energy Minerals Bureau); Jon Dilliard (Public Water Supply Bureau); Frank Gessaman (Enforcement Division)

Interested Persons Present: Kathy Moore & Melanie Reynolds (Lewis & Clark County)

Interested Persons Present via Telephone: Karl Knuchel (Max & Sue Berg); Todd Shea (Gardiner-Park County Water District); Signe Lahren (John McInerney, Bob Haney, & Marwin Hofer)

I.A.1 | Review and approve July 22, 2011, meeting minutes.

Chairman Russell called for a motion to approve the July 22, 2011, meeting minutes. Mr. Mires so MOVED. Ms. Kaiser SECONDED the motion. The motion CARRIED with a unanimous vote.

II.A.1.a | In the matter of 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 reported that a hearing was held September 21 and post-hearing briefs are due October 18.

II.A.1.b | In the matter of the request for hearing regarding the revocation of certificate of approval ES#34-93-C1-4 for the Fort Yellowstone Subdivision, Park County, BER 2009-20/22 SUB.

Ms. Orr informed the Board that this item was ready for final action and should be postponed until the end of Section III.B, Final Action on Contested Cases.

(The Board returned to this item after taking action on item III.B.4.)

Ms. Orr said she had drafted a recommended order on a motion for summary judgment. She said oral argument had been held and there were cross motions for summary judgment. Ms. Orr described exceptions filed by the water district, which included a suggested minor language change, and noted that the recommended order included the suggested language.

Mr. Shea requested that the recommended order not be implemented. He requested the language be revised to say that disconnection of the water main was done "with" department approval.

After much discussion, Chairman Russell suggested the parties get together and agree on an order, that the Board would then hold a quick teleconference to take up the matter.

(The Board jumped forward and re-addressed item III.A.2.)

II.A.1.c | In the matter of violations of the Opencut Mining Act by Deer Lodge Asphalt, Inc., at the Olsen Pit, Powell County, BER 2011-02 OC.

Ms. Orr said a hearing was held September 19 and post-hearing briefs are due October 11.

II.A.1.d | In the matter of violations of the Opencut Mining Act by Concrete Materials of Montana, LLC, at the Mauritzson Site, Yellowstone County, BER 2011-04 OC. *(No*

discussion took place regarding this item.)

II.A.1.e In the matter of violations of the Public Water Supply Laws by Jore Corporation at Jore Corporation, Lake County, BER 2011-05 PWS. *(No discussion took place regarding this item.)*

II.A.1.f 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. *(No discussion took place regarding this item.)*

II.A.1.g 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.

Ms. Orr said a proposed hearing schedule was submitted and that she expected to issue an order adopting that schedule.

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. *(No discussion took place regarding this matter.)*

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 reported that she had issued an order vacating the dates in the third scheduling order and setting a telephone conference for October 3.

II.A.2.c In the matter of the appeal and request for hearing by Maurer Farms, Inc.; Somerfeld & Sons Land & Livestock, LLC; Larry Salois, POA; 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 informed the Board that one of the appellants, Mr. Salois, had filed a withdrawal of appeal, and that she had issued an order denying a motion to dismiss and an order denying cross motions for summary judgment. She said MATL had filed to reconsider the ruling on the dismissal and summary judgment, and that Maurer Farms recently had filed a response.

II.A.2.d In the matter of the appeal and request for hearing by Meat Production Inc., a.k.a. Stampede Packing Co., regarding the DEQ's notice of final decision for Montana Ground Water Pollution Control System (MGWPCS) Permit No. MTX000100, BER 2010-18 WQ.

Ms. Orr said the hearing date was vacated, and a request for dismissal is being

contemplated by the parties.

- II.A.2.e 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 she had issued a second order granting extension of time for the parties to either settle the matter or submit a proposed schedule.

- II.A.3.a In the matter of violations of the Montana Strip and Underground Mine Reclamation Act by Carbon County Holdings, LLC, at Carbon County Holdings, Carbon County, BER 2011-01 SM.

Ms. Orr informed the Board that the parties submitted a stipulation for dismissal so this will be before the Board at the December 2 meeting.

- II.B.1 In the matter of Air Quality Permit Fees.

Mr. Habeck briefed the Board on the annual air quality fees and said the DEQ is not requesting rulemaking to increase fees.

Chairman Russell asked if the Board had any questions for the department. No one responded.

- III.A.1 In the matter of the amendment of ARM 17.30, Subchapter 12.

Mr. Reid said the Board initiated the rulemaking in May and a public hearing was held July 7. He said there was only one commenter during the comment period, and he summarized the comments. He said DEQ recommends adoption of the rules as proposed.

Chairman Russell called for public comment. There was no response.

Chairman Russell called for a motion to adopt the proposed amendments, as submitted, accept the Presiding Officer's Report, the 521 and 311 Analyses, and the Department's responses to comments. Mr. Miller so MOVED. Mr. Whalen SECONDED the motion. The motion CARRIED with a unanimous vote.

- III.A.2 In the matter of the amendment of ARM 17.8.801, 17.8.804, 17.8.818, 17.8.820, 17.8.822, 17.8.825, 17.8.901, 17.8.904, and 17.8.1007.

Ms. Wolfe said a public hearing was held July 7 for the proposed amendments and that no public comments were received during the comment period. She said the department supports the proposed amendments and recommends the Board adopt the amendments as proposed.

Discussion took place regarding an inconsistency throughout the rules with the use

of sulphur dioxide, SO₂, particulate matter, PM₁₀, hydrogen dioxide, and NO₂.

Chairman Russell called for public comment. There was no response.

Chairman Russell called for a motion to adopt the proposed amendments, accept the Presiding Officer's report, and the department's 521 and 311 Analyses. Mr. Mires so MOVED. Mr. Miller SECONDED the motion.

Mr. Whalen amended the motion to correct the acronyms (spell out) in this rulemaking to be consistent throughout the rules. After further discussion, Mr. Whalen withdrew his amended motion pending Mr. North's review of the request and his report to the Board prior to the end of this meeting.

Chairman Russell deferred action for this matter to allow Mr. North time to look into the matter.

(The Board returned to this item after re-addressing item IIA1b.)

Mr. North said he determined that, in Subchapters 8 and 9 of Chapter 8, these rules are the only places where the terms are used. He said in order to implement the changes the Board suggested, two changes should be made: sulfur dioxide be written out with the acronym SO₂ in parentheses and nitrogen dioxide be written out with the acronym NO₂. He said making changes to the PM_{2.5} and PM₁₀ could have substantive effects.

Mr. Mires rescinded his original motion. Mr. Miller rescinded his second on the motion.

Chairman Russell called for a motion to adopt the proposed amendments with the modifications noted, and to adopt the presiding officer's report and the House Bill 521 and 311 analyses. Mr. Mires so MOVED. Mr. Miller SECONDED the motion. Chairman Russell called for public comment; there was no response. The motion CARRIED with a unanimous roll-call vote.

(The Board returned to the scheduled agenda order at item III.C.1.)

III.B.1 In the matter of the appeal and request for hearing by Ronald and Debbie Laubach regarding the DEQ's final decision to amend the MATL's certificate of compliance, BER 2010-15 MFS.

Ms. Orr introduced the item. She noted that the case had been through a full contested case hearing, but that the parties had come to agreement prior to the issuance of a recommended decision on the findings. Ms. Orr said a proposed order of dismissal under Rule 41(a) was before the Board.

Chairman Russell called for motion to authorize the Board Chair to sign the order of dismissal. Mr. Miller so MOVED. Ms. Kaiser SECONDED the motion. The

motion CARRIED with a unanimous vote.

- III.B.2 In the matter of violations of the water Quality Act by Circle B, LLC at Circle B Feedyard, Hysham, Treasure County, BER 2011-07 WQ.

Ms. Orr provided brief background information regarding this matter.

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

- III.B.3 In the matter of the request for hearing by Western Energy Company, Permit No. C1985003C, regarding the DEQ's Notice of Noncompliance and Abatement Order No. 11-03-01, BER 2011-10 SM.

Ms. Orr provided background information regarding this matter. She said the appealing party had submitted a withdrawal of the appeal, and that a proposed order of dismissal was before the Board.

Chairman Russell called for a motion to authorize him to sign the order. Mr. Mires so MOVED. Ms. Shropshire SECONDED the motion. The motion CARRIED with a unanimous vote.

- III.B.4 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, 301 Missouri Avenue, Fort Peck, Valley County, BER 2010-08 UST.

Ms. Orr briefed the Board regarding the case. She said the department had filed a motion for summary judgment, which was fully briefed. She said the recommended order granting the motion for summary judgment was before the Board. She also noted that no exceptions were filed by the Appellant.

Chairman Russell called for a motion to authorize him to sign the order. Ms. Orr interjected to note a discrepancy on page 2, line 14 of the order and requested to make the change prior to the Board signing. Chairman Russell called for a motion to authorize him to sign the order with the amendment. Mr. Miller so MOVED. Mr. Anderson SECONDED the motion. The motion CARRIED with a unanimous vote.

(At this time, the Board returned to item II.A.1.b.)

- III.C.1 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.

Ms. Orr provided information regarding the appeal.

Chairman Russell said he would entertain a motion to assign Ms. Orr as the permanent hearings examiner for this matter, and then called for a vote. The

assignment to Ms. Orr CARRIED with a unanimous roll-call vote.

- III.C.2 In the matter of the request for hearing by Marshall Warrington, Jr., regarding Opencut Permit No. 487, issued to Plum Creek Timberlands, LP, for the Dorr Skeels site in Lincoln County, BER 2011-12 OC. *(see III.C.8 for action)*
- III.C.3 In the matter of the request for hearing by Patricia Warrington, regarding Opencut Permit No. 487, issued to Plum Creek Timberlands, LP, for the Dorr Skeels site in Lincoln County, BER 2011-13 OC. *(see III.C.8 for action)*
- III.C.4 In the matter of the request for hearing by Steven K. Endicott & Ruth Ann Endicott, regarding Opencut Permit No. 487, issued to Plum Creek Timberlands, LP, for the Dorr Skeels site in Lincoln County, BER 2011-14 OC. *(see III.C.8 for action)*
- III.C.5 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 regarding Opencut Permit No. 487, issued to Plum Creek Timberlands, LP, for the Dorr Skeels site in Lincoln County, BER 2011-15 OC. *(see III.C.8 for action)*
- III.C.6 In the matter of the request for hearing by Glenn Miller, Rick Sant, Ralph & Edna Neils, Berneice 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. *(see III.C.8 for action)*
- III.C.7 In the matter of the request for hearing by John Hutton regarding Opencut Permit No. 487, issued to Plum Creek Timberlands, LP, for the Dorr Skeels site in Lincoln County, BER 2011-17 OC. *(see III.C.8 for action)*
- III.C.8 In the matter of the request for hearing by Robert W. Gambill regarding Opencut Permit No. 487, issued to Plum Creek Timberlands, LP, for the Dorr Skeels site in Lincoln County, BER 2011-18 OC.

Ms. Orr recommended the Board consider items 2 through 8 together, since they are very similar in content. She provided an overview of the appeals and said the department had filed a motion to dismiss and/or for summary judgment. She said

some of the landowners have responded to the motion. She said a proposed prehearing schedule is in process.

Chairman Russell called for a motion to appoint Ms. Orr as the permanent hearings examiner for items 2 through 8. Mr. Miller so MOVED. Ms. Shropshire SECONDED the motion. Further discussion took place and the motion CARRIED with a 5-2 roll-call vote.

III.C.9 In the matter of the appeal by Jerry McRae of Section A. Diamond Valley South – Laubach Amendment portion of the DEQ’s final decision to amend MATL, LLP’s Certificate of Compliance, BER 2011-19 MFS.

Ms. Orr explained that the Appellant had chosen to proceed to District Court, as provided by statute, therefore the matter is out of Board’s jurisdiction.

III.C.10 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.

Ms. Orr provided brief details of the appeal.

Chairman Russell called for a motion to appoint Ms. Orr as the permanent hearings examiner for this matter. Mr. Miller so MOVED. Ms. Kaiser SECONDED the motion. The motion CARRIED with a unanimous roll-call vote.

III.D.1 In the matter of Lewis & Clark County’s Outdoor Air Quality Rules.

Chairman Russell explained that the Board is holding a hearing to take comment on the Lewis and Clark County outdoor air quality regulations. He took comment from proponents first.

Ms. Moore said the Lewis and Clark County Board of Commissioners approved the changes to the regulations on September 1. She described the public participation process. She said the stringency analysis provided shows only one item, a prohibition on the use of coal, more stringent than State standards. She said public comment was taken and summarized, responded to, and posted to the Web.

Ms. Moore described the changes made to the regulations. She then responded to questions from members of the Board.

Mr. Habeck spoke affirmatively to the county’s procedural processes, saying that they are in conformance with the State Clean Air Act and that the program meets the stringency requirements.

There were no other proponents or opponents present, on the phone or in person, who chose to speak to the matter.

Chairman Russell called the hearing closed. He noted that the date on the memo for the Board's signature was for November and would need to be changed.

Chairman Russell called for a motion for him to sign the memorandum of order. Mr. Miller so MOVED. Mr. Mires SECONDED the motion. Further discussion took place among the Board. The motion CARRIED with a unanimous vote.

IV. General Public Comment

Chairman Russell called for public comment. There was no response.

Chairman Russell noted that this was a very difficult meeting – the sound system cutting out, couldn't hear some of the comments.

A brief discussion took place regarding the anticipated length of the December meeting. Since the Carbon County case settled, there will be no hearing for that in December. The agenda is still expected to be full, but will not take two days.

V. Adjournment

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

The meeting adjourned at 10:56 a.m.

Board of Environmental Review September 23, 2011, minutes approved:



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

Dec 2, 2011
DATE