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BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

BOARD MEETING)
September 26, 2014)

TRANSCRIPT OF PROCEEDINGS

Heard at Room 111 of the Metcalf Building
1520 East Sixth Avenue
Helena, Montana
September 26, 2014
9:00 a.m.

BEFORE CHAIRMAN ROBIN SHROPSHIRE,
BOARD MEMBERS MARIETTA CANTY;
LARRY MIRES, JOSEPH RUSSELL,
CHRIS TWEETEN, and HEIDI KAISER (by telephone)

PREPARED BY: LAURIE CRUTCHER, RPR
COURT REPORTER, NOTARY PUBLIC

ORIGINAL

1 WHEREUPON, the following proceedings were
2 had and testimony taken, to-wit:

3 * * * * *

4 CHAIRMAN SHROPSHIRE: We'll go ahead and
5 get started. We've got a quorum. So it is 9:00
6 a.m., and I'll call this Board of Environmental
7 Review meeting to order.

8 I think I'll do a quick roll call, if
9 that's all right, since we're having a
10 teleconference call. I've got the names here, so
11 it's probably just simpler if I do it. Marietta?

12 MS. CANTY: Here.

13 CHAIRMAN SHROPSHIRE: Joe.

14 MR. RUSSELL: Here.

15 CHAIRMAN SHROPSHIRE: Larry.

16 MR. MIRES: Here.

17 CHAIRMAN SHROPSHIRE: Chris.

18 MR. TWEETEN: Here.

19 CHAIRMAN SHROPSHIRE: Heidi.

20 MS. KAISER: Here.

21 CHAIRMAN SHROPSHIRE: And I think Joan
22 is absent, and Robin is here.

23 The first thing on the agenda is the
24 review and approval of the minutes. Any comments
25 on the minutes?

1 (No response)

2 MR. MIRES: This is Larry, and I move we
3 approve the minutes as written.

4 CHAIRMAN SHROPSHIRE: I've got Larry's
5 motion to approve. Do I have a second?

6 MS. CANTY: I'll second.

7 CHAIRMAN SHROPSHIRE: Larry has moved
8 and Marietta seconded. Any other discussion?

9 (No response)

10 CHAIRMAN SHROPSHIRE: All right. All
11 those in favor, signify by saying aye.

12 (Response)

13 CHAIRMAN SHROPSHIRE: Opposed.

14 (No response)

15 CHAIRMAN SHROPSHIRE: Motion carries
16 unanimously.

17 The next thing on the agenda are
18 contested case updates, so Ben, I'll turn it over
19 to you if you would update us on that.

20 MR. REED: Certainly. In the matter of
21 Trailer Terrace, that's sort of as written.
22 That's (a).

23 Under (b) at the Sunrise Motel, the
24 current status of that is that there is going to
25 be a final hearing sometime in the second week of

1 October. The Department of Environmental Quality
2 has filed a variety of documents with me. Mr.
3 Emory has filed nothing. The final document filed
4 by the Department of Environmental Quality is a
5 motion for summary judgment. I believe that the
6 Department and Mr. Emory have come to some
7 agreement, but that hasn't been finalized yet as
8 far as I know, so that would be at least -- the
9 hearing will be sometime in the second week of
10 October, depending on the availability of the
11 parties.

12 With (c), I believe that the Board left
13 the matter to see whether it would get picked up
14 by the District Court, or when it would be filed
15 by the District Court, and when it was filed in
16 District Court, then the Board was going to
17 stipulate to dismiss the matter.

18 That's it for contested case hearings.

19 CHAIRMAN SHROPSHIRE: Any questions for
20 Ben on contested case hearings?

21 MR. RUSSELL: I learned a new word today
22 when I was just reviewing the -- I probably
23 shouldn't have said today. While reviewing the
24 documents. Is it sur or ser by --

25 MR. REED: I'm sorry. I couldn't really

1 make out what you were saying.

2 MR. RUSSELL: You may not have gotten to
3 this.

4 CHAIRMAN SHROPSHIRE: I think we're not
5 there yet, Joe.

6 MR. RUSSELL: But I did learn a new word
7 today.

8 MR. REED: The surreply?

9 MR. RUSSELL: Is it surreply?

10 MR. REED: That case is lovely
11 procedurally. Yes, we do -- that's not a real
12 word. You didn't actually learn that word, I'm
13 afraid, Joe, actually.

14 MR. TWEETEN: This is Chris. It is a
15 real word.

16 MR. REED: Just because lawyers use it
17 doesn't make it a real word.

18 MR. RUSSELL: I am with you on that.

19 MR. TWEETEN: We've got a million of
20 them.

21 CHAIRMAN SHROPSHIRE: So I should have
22 asked this when we started. I think we only have
23 Board members on the phone. Is there anybody else
24 on the phone that's not a Board member?

25 (No response)

1 CHAIRMAN SHROPSHIRE: Okay. The next
2 item on the agenda are non-enforcement cases
3 assigned to the Hearing Examiner. So can you talk
4 about YELP.

5 MR. REED: The status of YELP I believe
6 is the same as it was when the Board last met. I
7 was contacted by YELP's attorney, Mr. Crowley
8 (phonetic), and it is my understanding that DEQ
9 and YELP are still working through the process of
10 settling this matter in a relatively amicable
11 fashion, but nothing has been filed with me since
12 then.

13 CHAIRMAN SHROPSHIRE: Then contested
14 cases not assigned to a Hearing Examiner. Who
15 briefs us on those?

16 MR. NORTH: It would be the Board's
17 attorney. I can tell you on that one that it was
18 remanded with the stipulation that the Department
19 and the Appellant had reached an agreement on an
20 amended permit, it was put out in June for public
21 comment, and we received public comment, and the
22 Department issued the permit then on September
23 8th. So the appeal period for that runs for
24 thirty days, so we don't know what's going to
25 happen at this point, but the permit has been

1 issued.

2 CHAIRMAN SHROPSHIRE: Thanks, John.
3 Then next item, the MEIC, do you have an update on
4 that, Ben?

5 MR. REED: I do. To summarize the
6 matter for the Board, which is somewhat difficult,
7 as you can see, the procedural history of this is
8 pretty convoluted, primarily because both -- I
9 would say sides -- but DEQ and Signal Peak are
10 using one set of standards for water quality, and
11 MEIC is using a second set. So the initial motion
12 for summary judgment had that as the primary
13 contested issue.

14 The subsequent briefing and the
15 subsequent motions in support of the cross motions
16 and surreplies for summary judgment basically
17 involve those specific Administrative Rules. It
18 does look as if we're going to need to have
19 summarized -- we're going to need to have oral
20 argument, and we may need some more briefing on
21 the matter, but I believe that the matter should
22 be concluded or it will be presented to the Board
23 at the December meeting.

24 CHAIRMAN SHROPSHIRE: Thank you. Any
25 questions from the Board on the contested cases?

1 (No response)

2 CHAIRMAN SHROPSHIRE: All right. Moving
3 on to briefing items. The next item is the
4 Department will provide the Board with a report
5 regarding the air quality permit fees.

6 MR. NORTH: Madam Chair, Chuck Homer
7 will give you that briefing.

8 MR. HOMER: Madam Chair, members of the
9 Board, thank you. My name is Chuck Homer. I'm
10 Program Manager with the Air Resources Management
11 Bureau for DEQ.

12 The Air Quality Rules require that the
13 Department report to the Board annually on the
14 status of the air quality fees. So I'll just sort
15 of quickly go through these in a summary manner,
16 and if you have any follow-up questions or need
17 more detail, I'm certainly to willing to answer
18 any questions you have.

19 In fiscal year 2014, the Department
20 billed \$3.6 million approximately for annual
21 operating fees; we collected an additional
22 \$300,000 in various types of application fees; for
23 an overall collection of \$3.9 million. Our
24 expenses during that time, Fiscal Year 2014, were
25 about \$4.2 million. The difference there is

1 funded by our fund balance, which is a little over
2 \$2.4 million, and that fund balance has been
3 accumulated over time primarily through keeping
4 positions vacant and trying to reduce
5 expenditures, and it is approximately around 50
6 percent of our annual fee appropriation.

7 Our collections are approximately 99 and
8 a half percent of what we bill. We get almost
9 everything we bill, so we're pretty good on that.

10 The annual billing is primarily based on
11 emissions, and then also numbers of sources. So
12 over the last say three years, the number of
13 sources that have been billed have increased about
14 100 sources per year, 100 new sources, primarily
15 new oil and gas facilities.

16 Emissions go up and down each year,
17 depending upon the economy, and production, and
18 changes in facilities, and new emission controls,
19 and so they went down by 5,000 tons from 2011 to
20 2012. 2014 fees were based on 2013 emissions. In
21 2013 they went up back to approximately the same
22 as in 2011.

23 Again, our collection rate is about the
24 same as it has always been, a little over 99
25 percent. Later on I'll be discussing the

10
1 specifics of this year's fee rule proposal. But
2 our revenue and expense projections came up as we
3 had projected at the time of initiation of that
4 fee rule back in May.

5 So if any members of the Board have any
6 questions, I'll be happy to answer.

7 CHAIRMAN SHROPSHIRE: You said five
8 tons?

9 MR. HOMER: Excuse me. There was a
10 5,000 ton difference.

11 CHAIRMAN SHROPSHIRE: 5,000 tons of
12 what?

13 MR. HOMER: Of the total amount of
14 emissions that we bill for. So we bill for four
15 criteria pollutants: SO₂, particulate, NO_x, and
16 VOC's.

17 CHAIRMAN SHROPSHIRE: So those were all
18 lumped --

19 MR. HOMER: So that's the total amount
20 of all those emissions that are billed.

21 CHAIRMAN SHROPSHIRE: Anybody have
22 questions for Chuck?

23 (No response)

24 CHAIRMAN SHROPSHIRE: All right. Thanks
25 for the update.

1 Moving along here. The next item are
2 action items. The first item is In the Matter of
3 the Final Adoption of the Proposed Amendments to
4 ARM 17.8.501.

5 MR. NORTH: Madam Chair, this will be an
6 encore performance from Mr. Homer, I believe.

7 MR. HOMER: Thank you, Madam Chair,
8 members of the Board. The Board initiated
9 rulemaking for the air quality fees in May. The
10 Department usually brings a proposal to the Board
11 to set a fee rate that collects sufficient revenue
12 to fund our appropriation.

13 This is the first year since 2009 that
14 we've come before the Board with a fee change. We
15 didn't need a change of the annual operating fee,
16 so this change was limited exclusively to
17 application fees. The Board held a hearing in
18 July on the fees. There was only one comment, and
19 that was from the Department. Inadvertently one
20 of the existing application fees had been left
21 out, and so we propose that that be reinserted.

22 Because the notice had not indicated
23 that we intended to leave that out, so we proposed
24 it be reinstated at its current rate of \$500, that
25 application fee for minor modifications at major

1 sources.

2 So there was no other comments other
3 than that at the hearing.

4 CHAIRMAN SHROPSHIRE: Okay. Any
5 questions?

6 (No response)

7 CHAIRMAN SHROPSHIRE: Any public
8 comment?

9 (No response)

10 CHAIRMAN SHROPSHIRE: I would entertain
11 a motion to accept the Presiding Officer report
12 and the HB311 and 521 analyses, and adopt the
13 response to comment in the proposed rule
14 amendments with modifications as contained in the
15 attached notice of amendment. Do I have a motion?

16 MR. TWEETEN: This is Chris. I'll move
17 it.

18 CHAIRMAN SHROPSHIRE: It's been moved by
19 Chris.

20 MR. RUSSELL: This is Joe. Second.

21 CHAIRMAN SHROPSHIRE: Second by Joe.
22 Any further discussion?

23 (No response)

24 CHAIRMAN SHROPSHIRE: Hearing none, all
25 those in favor, signify by saying aye.

1 (Response)

2 CHAIRMAN SHROPSHIRE: Opposed.

3 (No response)

4 CHAIRMAN SHROPSHIRE: Motion carries
5 unanimately.

6 The next item on the agenda is In the
7 Matter of Final Adoption of Proposed Amendments to
8 ARM 17.8.818, review of major stationary sources
9 and major modifications. Is that going to be Mr.
10 Homer?

11 MR. NORTH: No, Madam Chair, it is going
12 to be Eric Merchant.

13 MR. MERCHANT: Thank you, Madam Chair,
14 members of the Board. For the record, my name is
15 Eric Merchant, and I'm here representing the
16 Department requesting that the Board adopt
17 rulemaking to remove and modify certain major
18 source permitting program revisions.

19 This action was initiated before the
20 Board in May, and more specifically what we're
21 asking is that the Board remove significant impact
22 levels or SILs for fine particulate matter or
23 PM2.5 from Montana's major source permitting
24 program provisions, and also that the Board modify
25 the existing significant monitoring concentration

1 or SMC rule for PM2.5 also contained in the major
2 source permitting program rules.

3 Again, the proposed action was initiated
4 before the Board on May 30th. We conducted a
5 public hearing on July 16th, 2014. The Department
6 received a single comment related to the
7 Department's open burning program which was
8 outside of the scope of the current rulemaking.

9 The purpose of this rulemaking is to
10 ensure that Montana's air quality rules are at
11 least as stringent as federal requirements, air
12 quality regulations, in order to maintain
13 Montana's major source permitting program primacy.

14 CHAIRMAN SHROPSHIRE: All right.
15 Thanks, Eric. Are there any questions from the
16 Board?

17 (No response)

18 CHAIRMAN SHROPSHIRE: I had a question,
19 but I'm not sure if I'm on the right item. There
20 was one item where basically the threshold for
21 PM2.5 was made zero; is that --

22 MR. MERCHANT: Yes. Madam Chair,
23 members of the Board, yes, that is the significant
24 monitoring concentration, which is a provision
25 that allows applicants to demonstrate that

1 preapplication monitoring is not required. So
2 there was a threshold that was set at four
3 micrograms per cubic meter prior to this action.
4 Federal Courts and the EPA revised that down to a
5 level of zero, and so that effectively means that
6 there is no increase in particulate matter
7 contamination emissions that doesn't warrant
8 preapplication monitoring. There are ways around
9 that still. You can use existing monitoring in
10 the state, in that area, that type of thing.

11 So the tool to avoid preapplication
12 monitoring is not completely gone. However, the
13 threshold for that purpose has been changed to
14 zero.

15 CHAIRMAN SHROPSHIRE: So my question was
16 in looking at it, it looked like -- It wasn't
17 clear what the significant figures were. And so
18 in terms of measuring zero, is it one significant
19 figure, or is it 0.00, and how do you know what
20 zero is?

21 MR. MERCHANT: Madam Chair, members of
22 the Board, I'm not prepared to answer that
23 question right now. As I understand it, it was
24 set at zero, meaning any, but I'm not sure what
25 significant --

1 CHAIRMAN SHROPSHIRE: Because depending
2 on how you measure it, you could get zero if your
3 accuracy is not very good; but if you use a more
4 accurate method, it is greater than zero. So it
5 just occurred to me if, depending on the
6 methodology, you could get zero or you could get
7 something greater than zero, so --

8 MS. CANTY: Change your units.

9 MR. MERCHANT: Madam Chair, yes, in
10 certain circumstances there are situations where
11 0.4 is still zero, whereas 0.5 might be over. But
12 I'm not sure. I don't have that question -- I'm
13 not ready to answer that question right now. We
14 can come back to the Board with that information
15 at a later date, unless we have someone available
16 to answer that question.

17 MR. KLEMP: Madam Chair, members of the
18 Board, good morning. My name is David Klemp. I'm
19 the Bureau Chief of the Air Resources Management
20 Bureau. And I think I was here two minutes, so
21 the two minute rule is not in effect. I think I
22 can speak.

23 CHAIRMAN SHROPSHIRE: 2.5 minutes?

24 MR. KLEMP: That's a very good question,
25 Madam Chair. How the significant monitoring

1 concentration is used is that applicants will run
2 a model to determine whether or not they need to
3 monitor; and models are very capable of predicting
4 values at pretty low thresholds. So Eric was
5 exactly right. If you were to model anything less
6 than 0.49, you would still be insignificant, and
7 may not be required to monitor at that point in
8 time. So it is very important that folks
9 understand that the threshold is set at zero, not
10 at 0.0 or 0.00.

11 CHAIRMAN SHROPSHIRE: Okay. Thank you.

12 MS. CANTY: I have one more quick
13 question for you. So the zero, what are the units
14 for your zero?

15 CHAIRMAN SHROPSHIRE: I think it's
16 micrograms.

17 MR. KLEMP: Madam Chair, yes, it's
18 micrograms per cubic liter.

19 CHAIRMAN SHROPSHIRE: Any other comments
20 or questions?

21 (No response)

22 CHAIRMAN SHROPSHIRE: Anybody from the
23 public wishing to comment?

24 (No response)

25 CHAIRMAN SHROPSHIRE: With that, I would

1 entertain a motion to accept the Presiding Officer
2 report and the HB311 and 521 analyses, and adopt
3 the response to comment, and the proposed rule
4 amendments with modification as contained in the
5 -- actually I don't know that there was an
6 amendment. Sorry.

7 MR. NORTH: That's right.

8 CHAIRMAN SHROPSHIRE: So adopt the
9 response to comment --

10 MR. NORTH: -- and the proposed
11 amendments.

12 CHAIRMAN SHROPSHIRE: -- and the
13 proposed -- and the attached notice of amendments.
14 There isn't an attached. Is there an attached
15 notice of amendment?

16 MR. NORTH: There is an attached notice
17 of amendment, yes, and it has a response to
18 comment, but then it doesn't propose any
19 additional modification, so it would I guess be
20 with the amendments, or with the response to
21 comment in the attached notice of amendment, and
22 to adopt the proposed amendments as proposed
23 initially.

24 CHAIRMAN SHROPSHIRE: Let me try this
25 again. So I'll entertain a motion to accept the

1 Presiding Officer report, HB311 and 521 analyses,
2 and adopt the response to comment with the
3 modifications as contained in the attached notice
4 of amendment.

5 MS. CANTY: I'll move.

6 CHAIRMAN SHROPSHIRE: It's been moved by
7 Marietta. Do I have a second?

8 MR. RUSSELL: I'll second.

9 CHAIRMAN SHROPSHIRE: Seconded by Joe.
10 It's been moved by Marietta and seconded by Joe.
11 Any further discussion?

12 (No response)

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

15 (Response)

16 CHAIRMAN SHROPSHIRE: Opposed.

17 (No response)

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

20 So the next item on the agenda are new
21 contested cases. Ben, are you going to update us
22 on that, or who is going to update us on the new
23 contested cases?

24 MR. NORTH: I guess what I would say
25 with regard to these is that these are new ones

1 that have come in since the Board's last meeting,
2 and really it is not appropriate to discuss the
3 merits of any of these, but it is really at this
4 point just for the Board to know that the
5 contested cases came in, and to decide whether or
6 not to appoint a Hearing Officer.

7 CHAIRMAN SHROPSHIRE: So in the matter
8 of Phillips 66 Company's appeal of Outfall 006
9 arsenic limits in Montana Pollution Discharge
10 Elimination System permit, I don't know if there
11 are any questions from the Board, or if there is
12 any discussion about whether or not we want to
13 appoint a permanent Hearing Examiner, or hear the
14 matter ourselves. Any comments on that?

15 (No response)

16 CHAIRMAN SHROPSHIRE: So I'm going to
17 move forward, and entertain a motion -- Ben, if
18 you're available -- to appoint Ben as the
19 permanent Hearing Examiner.

20 MR. REED: I am. I've reviewed all
21 three of the appeals, and have them on my desk,
22 and will be available for all three.

23 CHAIRMAN SHROPSHIRE: Is there a motion
24 to appoint Ben as the permanent Hearing Examiner?

25 MR. MIRES: This is Larry, and I'd so

1 move.

2 CHAIRMAN SHROPSHIRE: It's been moved by
3 Larry. Is there a second?

4 MS. CANTY: I'll second the motion.

5 CHAIRMAN SHROPSHIRE: It's been seconded
6 by Marietta. Any further discussion?

7 (No response)

8 CHAIRMAN SHROPSHIRE: All those in
9 favor, signify by saying aye.

10 (Response)

11 CHAIRMAN SHROPSHIRE: Opposed.

12 (No response)

13 CHAIRMAN SHROPSHIRE: Motion carries
14 unanimously.

15 So the second new contested case is in
16 the matter of Columbia Falls Aluminum Company
17 appeal of DEQ's modification of Montana Pollutant
18 Discharge Elimination System permit number. So
19 the same situation here. I don't know if there is
20 any comments from the Board or discussion. Any
21 desire to hear this ourselves?

22 MR. RUSSELL: I have a general comment.
23 How long are we going to have Columbia Falls
24 Aluminum do stuff when they don't actually
25 operate? No reply is necessary, but this is nuts.

1 CHAIRMAN SHROPSHIRE: Do you want to
2 hear this case, Joe?

3 MR. RUSSELL: No. I want it to go away.
4 I want them to -- They don't operate. They don't
5 discharge. The only thing that's being discharged
6 is what they have done in the past. This
7 shouldn't be an MPDES permit, this should be a --
8 I'd better be quiet.

9 CHAIRMAN SHROPSHIRE: I appreciate the
10 comment, Joe.

11 MR. NORTH: Madam Chair, John Arrigo
12 could provide some information about that facility
13 that is not related to this contested case. So if
14 you would like that.

15 CHAIRMAN SHROPSHIRE: Joe, do you want
16 to hear about that?

17 MR. RUSSELL: I'd like the Board to
18 understand what's going on here.

19 CHAIRMAN SHROPSHIRE: So John, if you
20 could update us on non-related matters, matters
21 non-related to this contested case.

22 MR. ARRIGO: Madam Chair, members of the
23 Board. My name is John Arrigo, Administrator of
24 the Enforcement Division.

25 Mr. Russell, in an attempt to answer

1 your question and provide more information, I can
2 tell you that the Department is working with
3 Columbia Falls Aluminum Company to attempt to
4 negotiate an Administrative Order on Consent to
5 address State Superfund issues, and those
6 negotiations are ongoing.

7 Also from a hazardous waste perspective,
8 we are talking to them about disposal of the pot
9 liners that are at the facility. Those are
10 regulated hazardous waste, and they're only
11 allowed to store them for ninety days without a
12 storage permit. They do not have a storage
13 permit, so again we're negotiating on a possible
14 avenue to allow them to store them for longer, and
15 get them off site. But it is a large volume of
16 material. And both of those actions have nothing
17 to do with this discharge permit appeal.

18 CHAIRMAN SHROPSHIRE: Thanks, John. Any
19 further discussion?

20 MS. CANTY: I might just add that on the
21 new contested cases, the first one and the second
22 one, I would have to recuse myself from both of
23 those if we were to hear them.

24 CHAIRMAN SHROPSHIRE: Thanks for letting
25 us know that. John, help me out here. If

1 Marietta is going to recuse herself, can she still
2 vote to appoint Ben as the Hearings Examiner?

3 MR. NORTH: At this point she should
4 probably recuse on this vote.

5 MS. KAISER: Robin, I also need to
6 recuse myself on this.

7 CHAIRMAN SHROPSHIRE: So let's see.
8 We've got Chris, Larry, Joe, and me. We still
9 have a quorum that can vote on this. I'll
10 entertain a motion from either Larry, Chris, or
11 Joe to appoint Ben as the permanent Hearing
12 Examiner.

13 MR. TWEETEN: This is Chris. I'll move
14 it.

15 MR. MIRES: Larry. I'll second it.

16 CHAIRMAN SHROPSHIRE: It's been moved by
17 Chris and seconded by Larry. Any further
18 discussion?

19 MS. CANTY: Robin, is that for the
20 second one or both? Because I think I moved or
21 seconded on the first one.

22 CHAIRMAN SHROPSHIRE: This is for the
23 second one, so let's talk about that after we vote
24 on this one, and we can decide if we need to redo
25 that, just to clarify that.

1 All those in favor, signify by saying
2 aye.

3 (Response)

4 CHAIRMAN SHROPSHIRE: Opposed.

5 (No response)

6 CHAIRMAN SHROPSHIRE: Heidi, I don't
7 think you're voting on this, so it is Larry,
8 myself, Joe, and Chris that are voting on this,
9 just for the record, and it passes unanimously.

10 So just for clarity, John, should go we
11 go back and redo the first one? I think it
12 doesn't hurt, and it will take two seconds, so why
13 don't we do that.

14 MR. NORTH: I would say that would be
15 the most appropriate thing to do.

16 CHAIRMAN SHROPSHIRE: Let's do that. I
17 don't know how to strike that from the record, but
18 if we just revote, is that sufficient?

19 MR. REED: Did you move or second?

20 MS. CANTY: I can't remember. I think I
21 did one of the two.

22 MR. TWEETEN: Excuse me, Robin. This is
23 Chris. Perhaps a motion to reconsider might be
24 appropriate.

25 CHAIRMAN SHROPSHIRE: That sounds good.

1 So I will entertain a motion to reconsider Item
2 No. 1 under contested cases.

3 MR. TWEETEN: I'll so move.

4 CHAIRMAN SHROPSHIRE: It's been moved by
5 Chris. Joe or Larry, can I --

6 MR. MIRES: Larry will second it.

7 CHAIRMAN SHROPSHIRE: It's been seconded
8 by Larry. All those in favor, signify by saying
9 aye.

10 (Response)

11 CHAIRMAN SHROPSHIRE: Opposed.

12 (No response)

13 CHAIRMAN SHROPSHIRE: Motion carries
14 unanimously. So Heidi, are you recusing yourself
15 from No. 1 also, or is it just Marietta?

16 MS. KAISER: I recused myself from the
17 second item.

18 CHAIRMAN SHROPSHIRE: So I will
19 entertain a motion on Item B(1) of the new
20 contested cases to appoint Ben as the permanent
21 Hearing Examiner, and acknowledging that Marietta
22 is going to recuse herself.

23 MR. MIRES: This is Larry, and I would
24 again move.

25 CHAIRMAN SHROPSHIRE: Thanks, Larry.

1 It's been moved by Larry. Do I have a second?

2 MR. RUSSELL: Second.

3 CHAIRMAN SHROPSHIRE: Is that you, Joe?

4 MR. RUSSELL: Yes.

5 CHAIRMAN SHROPSHIRE: Any further
6 discussion?

7 (No response)

8 CHAIRMAN SHROPSHIRE: All those in
9 favor, signify by saying aye.

10 (Response)

11 CHAIRMAN SHROPSHIRE: Opposed.

12 (No response)

13 CHAIRMAN SHROPSHIRE: Motion carries
14 unanimously.

15 Moving on to the third new contested
16 case, In the Matter of Violations of the Opencut
17 Mining Act by Bay Materials at Normont Farms Pit.
18 Do we have any discussion on that questions from
19 the Board?

20 (No response)

21 CHAIRMAN SHROPSHIRE: You're just items
22 one and two, right?

23 MS. CANTY: I'm just double checking to
24 make sure I don't have to recuse myself from the
25 third. I don't think I have to.

1 CHAIRMAN SHROPSHIRE: So Ben is
2 available to hear. If there is no further
3 discussion, do I have a motion to appoint Ben as
4 the permanent Hearing Examiner?

5 MS. KAISER: This is Heidi. I would
6 move.

7 CHAIRMAN SHROPSHIRE: It's been moved by
8 Heidi. Is there a second?

9 MS. CANTY: I'll second the motion.

10 CHAIRMAN SHROPSHIRE: It's been seconded
11 by Marietta. Any further discussion?

12 (No response)

13 CHAIRMAN SHROPSHIRE: All those in
14 favor, signify by saying aye.

15 (Response)

16 CHAIRMAN SHROPSHIRE: Opposed.

17 (No response)

18 CHAIRMAN SHROPSHIRE: Motion carries
19 unanimously.

20 Well, we're now at the part of the
21 agenda that's reserved for general public comment.
22 Is there anybody that from the public or otherwise
23 that would like to address the Board?

24 (No response)

25 CHAIRMAN SHROPSHIRE: I have a general

1 question comment that you're probably
2 anticipating. Governor Schweitzer came out with
3 comments on the proposed greenhouse gas Rule
4 111(d) situation.

5 MR. NORTH: Madam Chair, the Director
6 did tell me that if this matter comes up, that she
7 would like to address it. So if you could just
8 take a second, I could get the Director.

9 CHAIRMAN SHROPSHIRE: I'm not asking you
10 address it now. If you would like to, maybe that
11 would be appropriate, but I was going to say that
12 I know that the public comment period has been
13 extended. I don't know if -- when is the next
14 Board meeting -- if we have time to, if we could
15 maybe have an update then. If now is more
16 appropriate, but maybe the next Board meeting
17 would make more sense. I just wanted to get that
18 out there that I think it would be helpful if
19 somebody could update the Board on that matter.

20 MR. NORTH: Madam Chair, as I understand
21 it, the comment period closes on December 1st, and
22 the Board meeting is after that.

23 CHAIRMAN SHROPSHIRE: If she is
24 prepared, if it is appropriate for her to comment
25 on it at this meeting, I think it makes sense

1 considering we won't have a Board meeting before
2 comments are due.

3 MR. NORTH: They're getting her right
4 now. She's in her office, so she'll be here in a
5 second.

6 CHAIRMAN SHROPSHIRE: Okay.

7 (Off the record briefly)

8 CHAIRMAN SHROPSHIRE: It sounds like
9 she's on the phone, and I don't know what the
10 process would be to get an update in the interim
11 before the next meeting, but it may be that we
12 could have call a short meeting. I think it is an
13 important topic, and considering that DEQ may be
14 submitting comments to the EPA, it's just one that
15 I'd like for us to get an update on at some point.
16 So why don't we consider maybe have a quick
17 telephonic meeting at some point, if that's
18 appropriate, prior to comments being submitted.

19 MR. NORTH: It certainly would be. I
20 would suggest that perhaps the Director would like
21 to give you maybe something in writing first, and
22 then we could discuss it, and then schedule a
23 teleconference meeting.

24 CHAIRMAN SHROPSHIRE: Whatever is the
25 most appropriate.

1 MR. NORTH: We'll do that, Madam Chair,.

2 CHAIRMAN SHROPSHIRE: Any other

3 comments?

4 (No response)

5 CHAIRMAN SHROPSHIRE: When is the next
6 meeting? Do you have that handy?

7 MR. NORTH: I know it is in early -- I
8 believe it is in early December. December 5.

9 CHAIRMAN SHROPSHIRE: Hearing no
10 comments, I guess I'll entertain a motion to
11 adjourn. Did I forget something?

12 MR. NORTH: Madam Chair, I just thought
13 of two things that I perhaps ought to bring up at
14 this point just on the matter of next meeting, and
15 that one is that that's the meeting where the
16 Board traditionally sets its meeting schedule for
17 the next year, so we'll be doing that.

18 And the second thing is that the
19 Department will provide the Board with a
20 legislative briefing at that point concerning
21 proposed bills that may affect the Board in some
22 way.

23 CHAIRMAN SHROPSHIRE: Okay. Thank you.

24 MR. MIRES: Should we expect that to be
25 an in-person meeting, John?

1 MR. NORTH: I would assume that it would
2 be, especially in view of the fact that it appears
3 as if there will be oral argument in front of
4 Board on summary judgment motions, and that sort
5 of thing. So it will probably be in person.

6 CHAIRMAN SHROPSHIRE: Do I have a motion
7 to adjourn?

8 MR. TWEETEN: This is Chris. I'll move
9 it.

10 CHAIRMAN SHROPSHIRE: Moved by Chris.
11 Do I have a second?

12 MS. CANTY: I'll second the motion.

13 CHAIRMAN SHROPSHIRE: It's been moved by
14 Chris, seconded by Marietta. All those in favor,
15 signify by saying aye.

16 (Response)

17 CHAIRMAN SHROPSHIRE: Opposed.

18 (No response)

19 CHAIRMAN SHROPSHIRE: Motion carries
20 unanimously. We're adjourned.

21 (The proceedings were concluded

22 at 9:42 a.m.)

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C E R T I F I C A T E

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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 - 32 - 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 18th day of October, 2014.

Laurie Crutcher

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

