

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

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BOARD MEETING )  
OCTOBER 8, 2010 )  
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TRANSCRIPT OF PROCEEDINGS

Heard at Room 111 of the Metcalf Building  
Helena, Montana  
October 8, 2010  
9:00 a.m.

BEFORE CHAIRMAN JOSEPH RUSSELL,  
BOARD MEMBERS LARRY MIRES, HEIDI KAISER,  
ROBIN SHROPSHIRE, and MARVIN MILLER  
(all by telephone)

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

3                           \* \* \* \* \*

4           CHAIRMAN RUSSELL: So it is -- I have  
5 9:03, and I will call this regular meeting of the  
6 Board of Environmental Review to order. Tom, why  
7 don't we go ahead and do a roll call. If there is  
8 not too many in the audience, that's an idea.

9           MR. LIVERS: Yes, we can do that. Let  
10 me do the Board roll call first, and I'll do it by  
11 the order folks patched in. Ms. Shropshire.

12           MS. SHROPSHIRE: Here.

13           MR. LIVERS: Ms. Kaiser.

14           MS. KAISER: Here.

15           MR. LIVERS: Mr. Mires.

16           MR. MIRES: Here.

17           MR. LIVERS: Mr. Miller.

18           MR. MILLER: Here.

19           MR. LIVERS: Chairman Russell.

20           CHAIRMAN RUSSELL: Present.

21           MR. LIVERS: Mr. Chairman, if I could,  
22 maybe before we get started with the agenda, I  
23 just wanted to take a minute, and just maybe  
24 remember former Board member Don Marble. I think  
25 you got my email a couple weeks ago that he had

1 passed away after his battle with pancreatic  
2 cancer, and just wanted to really recognize his  
3 service on the Board.

4           He was a person I really enjoyed. He  
5 was an incredibly conscientious Board member. One  
6 of the things I really respected about Don was  
7 while he would be very supportive of the  
8 Department, he was also willing to challenge and  
9 stretch us if he thought we weren't doing enough,  
10 or disagreed with some of our decisions.

11           I learned a lot about him just reading  
12 his obituary, things I didn't know, like his  
13 masters in aeronautical engineering, and his work  
14 on the lunar module before he decided to seek a  
15 more rural lifestyle, and went back to law school.  
16 He was also a smoke jumper in his youth, did a lot  
17 of work with legal services across the Highline,  
18 including Liberty, Hill, and Blaine Counties, and  
19 did a lot of work on both the Fort Belknap and  
20 Rocky Boy Reservation legal services.

21           So he was a good member, and I know  
22 several of you were able to serve with him, and  
23 others knew him from his work. So I wanted to  
24 recognize that. Thank you.

25           CHAIRMAN RUSSELL: Just to voice the

1 same, I agree. He generally sat right next to me,  
2 and I would get quite an earful, and it was always  
3 productive. I also have a common acquaintance.  
4 One of our public health nurses was a good friend  
5 of his, and always spoke very, very highly of him.  
6 So we'll miss Don, and I knew from his other  
7 service that he was of high benefit to Montana.  
8 Thanks, Tom.

9 Let's go ahead and review and approve  
10 the July 23rd Board meeting minutes.

11 MR. MIRES: This is Larry Mires. I'll  
12 move to approve.

13 MR. MILLER: Second. Miller.

14 CHAIRMAN RUSSELL: Any discussion?

15 (No response)

16 CHAIRMAN RUSSELL: It takes me a little  
17 bit. I've got a lag this time because my  
18 attachments actually are -- I think they're going  
19 through the web, so it's taking a little bit of  
20 time.

21 MR. MIRES: I noticed that also on mine.  
22 It's not running like it used to run, very  
23 quickly. There must be some reason for it, but  
24 I'm not sure what it is.

25 CHAIRMAN RUSSELL: I think probably it

1 thinks it's going out to the web to get them, and  
2 it looks like -- it may be actually going to the  
3 web and getting the documents, and that's slowing  
4 the process down a little bit. So there was no  
5 further discussion. All in favor of approving the  
6 minutes, signify by saying aye.

7 (Response)

8 CHAIRMAN RUSSELL: Opposed.

9 (No response)

10 CHAIRMAN RUSSELL: Carried unanimously.

11 The next item on the agenda is briefing items,  
12 contested case updates. Katherine.

13 MS. ORR: Good morning, Mr. Chairman,  
14 members of the Board. You've reviewed these  
15 synopses of the cases, and I'll just quickly go  
16 through some of the changes that occurred since we  
17 wrote the agenda.

18 On Item II(A)(1)(b), Saturday Sunday,  
19 there was a hearing, and I issued an order on  
20 default, and now there needs to be a final  
21 proposed order submitted to the Board for your  
22 approval, and that will be done in December.

23 North Star Aviation, we had a status  
24 conference yesterday. The hearing date of October  
25 21st was vacated, and the parties have been given

1 60 days to work out a basis for maybe settling the  
2 case. The composition of ownership of the company  
3 has changed, so that is going to require some  
4 additional steps for the company.

5 Sheep Mountain, there has been quite a  
6 lot of activity in that case. A motion for  
7 summary judgment was filed. We were going to have  
8 oral argument on that motion on September 28th,  
9 and the Appellant moved and we determined that the  
10 Appellant probably did not receive notice of that  
11 oral argument time; and we did contact him, and  
12 with consent of the Department's Counsel, we have  
13 reset oral argument on summary judgment for  
14 October 19th.

15 The next Item (e) involving Todd Michael  
16 Mihalko in Jefferson County, there has been a  
17 motion for consolidation of that case with the  
18 Sheep Mountain case, and I have not ruled on that.  
19 I have let that die, so to speak.

20 The next case, Juniper Hill Farm, there  
21 was a hearing on the proposed penalties in that  
22 case, and I issued a proposed order, and have  
23 received a notice of clerical errors on the  
24 proposed order from the Department, and I will  
25 decide whether or not to amend the proposed order

1 to include the suggested changes. October 15th is  
2 the last day for the Appellant or the Petitioner  
3 to file exceptions to that proposed order on  
4 penalties, and then that will be taken to the  
5 Board in December.

6 The Fort Yellowstone case, Item (g), a  
7 request for extension was filed on October 4th  
8 requesting until January 7th of 2011 to determine  
9 whether to have that case settled.

10 City of Great Falls, the parties are  
11 apparently moving toward settlement in that case.

12 Item (i), which I call the JR Enterprise  
13 case, the parties have agreed upon a proposed  
14 prehearing schedule, and I have to enter an order  
15 adopting that proposed prehearing schedule.

16 And those are the changes that have  
17 occurred since the agenda was written.

18 CHAIRMAN RUSSELL: All right. Thanks,  
19 Katherine. Any questions before we move on?

20 (No response)

21 CHAIRMAN RUSSELL: Thank you. The next  
22 item on the agenda is a briefing item on air  
23 quality permit fees. Tom.

24 MR. LIVERS: Mr. Chairman, thank you,  
25 and presenting for the Department is Bob Habeck.

1           MR. HABECK: Thank you, Mr. Livers, Mr.  
2 Chairman, members of the Board. For the record,  
3 my name is Bob Habeck. I'm a program manager with  
4 the Air Resources Management Bureau for the  
5 Department of Environmental Quality, here to brief  
6 you on the status of the annual air quality permit  
7 fee rule.

8           The State Clean Air Act allows the  
9 Department to charge an annual air quality  
10 operation fee, and an air quality fee and open  
11 burning permit application fee, sufficient to  
12 cover the Department's costs of developing and  
13 administering the permitting requirements of the  
14 State Clean Air Act.

15           Typically if there is a need to revise  
16 permit fees, the Department requests the Board to  
17 initiate rulemaking to propose new permit fees.  
18 However this year the Department is not proposing  
19 to initiate rulemaking. Rather the Department  
20 calculated that it could maintain existing  
21 services using the existing fee schedule for  
22 fiscal year 2011. Therefore, formal rulemaking is  
23 not being requested at this time, and this action  
24 is only a briefing item.

25           The Department discussed this decision



1 not to increase fees with the Clean Air Act  
2 Advisory Council and the major open burners, and  
3 received no adverse comments regarding this  
4 decision. The fees were not raised this year  
5 because over the past year, the State witnessed  
6 severe economic adversity, and stakeholders voiced  
7 concern over potential for an increase in permit  
8 fees.

9 In response, the Department  
10 significantly reduced expenses in order to avoid  
11 increasing fees in fiscal year 2011. The  
12 Department reduced expenses primarily through  
13 leaving positions vacant, reducing contracted  
14 services, limiting travel and training, and chose  
15 not to implement a legislatively-approved project  
16 for online reporting system.

17 Therefore, the calendar year 2011 target  
18 fee collection is \$3.9 million compared to the  
19 previous year 2009 target fee collection of \$4.4  
20 million, a reduction of \$500,000. The air quality  
21 permit fee charge can remain at \$38.24 a ton as  
22 currently published in the rules. The application  
23 and administrative fees can also remain the same  
24 as currently published in the rules.

25 That concludes my briefing. Are there

1 any questions of the Department?

2 CHAIRMAN RUSSELL: Thanks, Bob. Any  
3 questions for Bob?

4 (No response)

5 CHAIRMAN RUSSELL: I just commend the  
6 Department on the ability to ramp down on your  
7 expenses. That's good.

8 MR. LIVERS: Mr. Chairman, this is Tom.  
9 Thank you. Long term we're not sure we can  
10 maintain that without some impact on services  
11 certainly, but I really appreciate the air  
12 program's work on this, recognizing that despite  
13 the fact we have the ability to come to the Board  
14 and request a fee increase, just recognizing  
15 economic conditions out there, and really trying  
16 to hold the line.

17 CHAIRMAN RUSSELL: And the only reason I  
18 commend is the fact that if they've reduced their  
19 emissions -- I mean this is a public health  
20 program. It is clearly as clear a public health  
21 program as the Department operates, and there is  
22 numerous studies that will support my position.  
23 So I'm not in favor of reducing program activities  
24 if the burning continues at the same rate or  
25 higher, because this smoke impacts our

1 communities, and this is a public health concern.  
2 So it's just nice to see you responding to their  
3 economic down turn also.

4 MR. LIVERS: Thank you, Mr. Chairman. I  
5 appreciate that.

6 CHAIRMAN RUSSELL: Thanks, Bob. And  
7 we'll continue on with initiation of rulemaking.  
8 Item III(A)(1), amend ARM 17.38.204, to correct  
9 adoption by reference of the Code of Federal  
10 Regulations Part 141.64(a)(1), which I will not  
11 read any further. Tom.

12 MR. LIVERS: Mr. Chairman, thank you.  
13 We've got Eugene Pizzini here to speak to this  
14 issue.

15 MR. PIZZINI: Good morning, Chairman  
16 Russell, members of the Board. For the record, my  
17 name is Eugene Pizzini, and I'm the rules expert  
18 for the Public Water Supply Section.

19 What we are doing here today is trying  
20 to correct a mistake from a previous adoption in  
21 which we adopted language 141.64(a)(1) which by  
22 itself does not adopt 141.64(a). The MCL language  
23 that we adopted by adopting (a)(1) was previously  
24 in (a)(1), and when the feds changed the language  
25 in their rule, I didn't catch the change, and

1 therefore I do not currently have the MCL's for  
2 bromate and chloride adopted by reference which I  
3 need.

4           There are all kinds of issues with this.  
5 In an effort to be expeditious, I'm going to waive  
6 that unless the Board wishes to hear those. The  
7 one thing I would say is we are trying to do this  
8 without a public hearing because we have to have  
9 this change, and I have a current primacy  
10 application with EPA that is on hold because these  
11 MCL's have not been adopted.

12           So if there are questions, I can  
13 continue on. Otherwise I would leave it at that.

14           CHAIRMAN RUSSELL: All right. Thanks,  
15 Gene. It's too bad we can't even act faster. So  
16 is there anyone in the audience or in the  
17 telephone air waves that would like to speak to  
18 this matter before the Board? You guys are amazed  
19 right now, aren't you, that no one even had to  
20 prompt me to say that. So is there anyone --

21           MR. LIVERS: Let me pick up my jaw, Mr.  
22 Chairman.

23           CHAIRMAN RUSSELL: I'm sure you just  
24 thought --

25           MS. SHROPSHIRE: I do have a technical

1 question.

2 CHAIRMAN RUSSELL: Robin.

3 MS. SHROPSHIRE: In the background it  
4 says that bromate and chloride are disinfectant  
5 byproducts foreign to the use of ozone and  
6 chlorine dioxide, and --

7 MR. PIZZINI: Correct.

8 MS. SHROPSHIRE: You can't -- You need  
9 bromide in the water in order to get that. You  
10 can't turn ozone or chlorine dioxide into bromate,  
11 you need the bromide. Does that happen under --  
12 Is bromide is already in the water, or where does  
13 the bromide come from to cause the bromate?

14 MR. PIZZINI: From the water itself, and  
15 then the oxidation with the ozone that creates  
16 that as a disinfection byproduct.

17 MS. SHROPSHIRE: So if you have enough  
18 bromide in the water -- Are there some sources of  
19 water that have higher bromide in them or --

20 MR. PIZZINI: Correct.

21 MS. SHROPSHIRE: Where does that come  
22 from, do you know?

23 MR. PIZZINI: I do not.

24 CHAIRMAN RUSSELL: We generally  
25 disinfect with bromine. Only in pools.

1           MR. PIZZINI: Right. No, the problem is  
2 that systems that use ozone as their disinfectant  
3 can create bromate as a disinfection byproduct,  
4 which is regulated under the disinfection  
5 byproducts rules. What happened was when we  
6 didn't adopt chloride and bromate MCL's, because  
7 we adopted the language that said -- that adopts  
8 their treatment technique, EPA had to put our  
9 primacy application on hold for that.

10           MS. SHROPSHIRE: Right. That part I  
11 understand. I'm just curious if there is -- Are  
12 there any limits for bromide in the water?

13           MR. PIZZINI: Not to my knowledge.

14           MS. SHROPSHIRE: Okay. Just curious. I  
15 don't have any problem with anything else. I was  
16 just curious where the bromide was coming from.

17           MR. LIVERS: Mr. Chairman, just for  
18 process, I forgot to mention at the beginning of  
19 the meeting just kind of what -- The audience is  
20 entirely the small contingent of DEQ staff who  
21 have agenda items, so we don't have any members of  
22 the public here. I'm not aware of anyone from the  
23 public on the line, although there was that one  
24 entry that we didn't get a name with.

25           CHAIRMAN RUSSELL: I'll keep asking

1 anyway. I'm sorry I chuckled. So let's go ahead,  
2 and I would entertain a motion to initiate  
3 rulemaking, and follow the Department's process on  
4 rulemaking on this one.

5 MR. MILLER: I so move. This is Miller.

6 CHAIRMAN RUSSELL: It's been moved by  
7 Marvin. Is there a second?

8 MS. SHROPSHIRE: Second. This is Robin.

9 CHAIRMAN RUSSELL: Seconded by Robin.  
10 Any further discussion?

11 (No response)

12 CHAIRMAN RUSSELL: Hearing none, all  
13 those in favor, signify by saying aye.

14 (Response)

15 CHAIRMAN RUSSELL: Opposed.

16 (No response)

17 CHAIRMAN RUSSELL: Gene, we're going to  
18 have to talk about that job title.

19 MR. PIZZINI: Why is that?

20 CHAIRMAN RUSSELL: I'm just kidding.

21 MR. LIVERS: Mr. Chairman, let me just  
22 clarify. It sounds like the Board has no concerns  
23 if we proceed with this without public hearing; is  
24 that correct?

25 CHAIRMAN RUSSELL: Absolutely not. I

1 wish we could expedite it even faster, but there  
2 is no way to get any more expedited.

3 MR. LIVERS: Sounds good. Thank you.

4 MR. PIZZINI: Thank you, Mr. Chairman,  
5 members of the Board.

6 CHAIRMAN RUSSELL: The next item on the  
7 agenda -- This is really interesting on opening  
8 attachments, because this one is actually not  
9 coming up right now.

10 MS. SHROPSHIRE: If you go back to  
11 original zip file that was sent, though, you can  
12 open it. If you save it to your hard drive, you  
13 can open it that way.

14 CHAIRMAN RUSSELL: I did, though. It's  
15 still directing me through the website.

16 MR. LIVERS: We'll check on that, Mr.  
17 Chairman, prior to the next meeting.

18 CHAIRMAN RUSSELL: I actually am not  
19 able to open this one now. It says "Page is not  
20 found on mt.gov." Tom, I'm just going to turn  
21 this one over to you.

22 MR. LIVERS: Why don't we try walking  
23 through, Mr. Chairman. I think this is going to  
24 be pretty straight forward. If there is any  
25 concerns, we can certainly drop back and punt, and



1 try something else, but I think we'll be able to  
2 walk you through this.

3 CHAIRMAN RUSSELL: Okay. It's items on  
4 air quality incorporation by reference, Rules ARM  
5 17.8.102.

6 MR. LIVERS: Debra Wolfe will be  
7 handling this for the Department.

8 MS. WOLFE: Good morning, Chairman  
9 Russell, and members of the Board. My name is  
10 Debra Wolfe, and I work in the Air Resources  
11 Management Bureau, and I'm here today to represent  
12 the Department regarding action on the proposed  
13 incorporation by reference rulemaking. I think I  
14 can just describe it very simply for you.

15 As you know, the Department annually  
16 requests that the Board update the rules  
17 incorporating by reference the federal statute and  
18 regulation, and State Administrative Rules adopted  
19 during the course of previous year. The IBR  
20 updating is accomplished by amending the dates of  
21 the additions of the CFR, the US Code, and the  
22 ARM. The current years are set forth at ARM  
23 17.8.102(1).

24 Failing to adopt the most recent  
25 addition to the CFR may result in the loss of

1 state primacy for administering the air program,  
2 and would create an inconsistency between state  
3 federal rules applicable to Montana.

4 The Department prepared for the Board's  
5 consideration a draft notice of rule amendment in  
6 this matter. The Department recommends the Board  
7 publish the notice of the proposed rule amendment,  
8 appoint a Hearing Officer, set a date for hearing  
9 and take comment on the proposal. Thank you.

10 CHAIRMAN RUSSELL: All right. And  
11 Robin, I actually didn't go to the zip file, and  
12 went down to the download, and it did open it. So  
13 thanks for your assistance. Thanks, Deb. All  
14 right. Any questions before we get rolling on  
15 this one?

16 (No response)

17 CHAIRMAN RUSSELL: Hearing none,  
18 Katherine, you're available?

19 MS. ORR: Yes, I am.

20 CHAIRMAN RUSSELL: So I would entertain  
21 a motion to initiate rulemaking, and appoint  
22 Katherine the Hearings Officer for this action.

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

25 CHAIRMAN RUSSELL: It's been moved by

1 Larry. Is there a second?

2 MR. MILLER: I'll second it. Miller.

3 CHAIRMAN RUSSELL: It's been seconded by  
4 Marv. Is there anyone in the audience who would  
5 like to speak to this?

6 (No response)

7 MR. LIVERS: There does not appear to  
8 be, Mr. Chairman.

9 CHAIRMAN RUSSELL: Any questions for the  
10 Board before we take action?

11 (No response)

12 CHAIRMAN RUSSELL: Hearing no questions,  
13 all those in favor, signify by saying aye.

14 (Response)

15 CHAIRMAN RUSSELL: Opposed.

16 (No response)

17 CHAIRMAN RUSSELL: Motion carries  
18 unanimously. All right. The next item on the  
19 agenda. Katherine.

20 MS. ORR: Mr. Chairman, members of the  
21 Board, this is a new case in the matter of  
22 violations of Montana Underground Storage Tank Act  
23 by High Noon Petroleum, Inc. This is a company  
24 over in Missoula. It has an operating permit for  
25 these underground storage tanks.

1           And there was a compliance inspection on  
2     September 14th of 2009 for the facilities for the  
3     underground storage tank, and they found that  
4     there were no release detection records for six of  
5     the previous months. Some more time went by, and  
6     a violation letter went out March 24th. There  
7     were no leak detection monitoring records, and  
8     then therefore an inference that no leak detection  
9     was conducted, and a penalty is sought of \$660 for  
10    failure to maintain records for previous four out  
11    of twelve months.

12           CHAIRMAN RUSSELL: All right. With that  
13    in mind, do you have any questions? Does the  
14    Board have any questions for Katherine?

15           (No response)

16           CHAIRMAN RUSSELL: All right. I would  
17    entertain a motion to appoint Katherine the  
18    permanent Hearings Officer for this.

19           MS. KAISER: So moved.

20           CHAIRMAN RUSSELL: It's been moved by  
21    Heidi. Is there a second?

22           MR. MILLER: This is Miller. I'll  
23    second it.

24           CHAIRMAN RUSSELL: It's been moved and  
25    seconded by Marv. Is there any further

1 discussion?

2 (No response)

3 CHAIRMAN RUSSELL: Hearing none, all  
4 those in favor, signify by saying aye.

5 (Response)

6 CHAIRMAN RUSSELL: Opposed.

7 (No response)

8 CHAIRMAN RUSSELL: Motion carries  
9 unanimously. Katherine, next one.

10 MS. ORR: Mr. Chairman, members of the  
11 Board, this is the Holcim, Inc. out of Bozeman.  
12 It was issued an MPDES permit, and that was  
13 appealed on July 20th of this year. There was an  
14 appeal of the limit for total nitrogen from two  
15 pounds per day to .6 pounds per day, and the  
16 appellant Holcim is saying that there was not  
17 sufficient reasoning for the reduced value of  
18 nitrogen in the permit.

19 CHAIRMAN RUSSELL: All right. So any  
20 further questions for Katherine on this one?

21 (No response)

22 CHAIRMAN RUSSELL: Katherine, I'm  
23 guessing you're available to keep working on this  
24 one.

25 MS. ORR: Yes.

1           CHAIRMAN RUSSELL: With that in mind, I  
2 will entertain a motion to appoint Katherine the  
3 permanent Hearings Examiner on this matter.

4           MR. MIRES: This is Larry Mires. I  
5 would so move.

6           CHAIRMAN RUSSELL: It's been moved by  
7 Larry. Is there a second?

8           MR. MILLER: I'll second it. This is  
9 Miller.

10          CHAIRMAN RUSSELL: Seconded by Marv.  
11 Further discussion?

12          (No response)

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

15          (Response)

16          CHAIRMAN RUSSELL: Opposed.

17          (No response)

18          CHAIRMAN RUSSELL: Motion carries  
19 unanimously. Now we're on to final action on  
20 contested cases. The first one is Montana Septage  
21 Disposal and Licensure Laws by Stephen Kunkel,  
22 Great Falls.

23          MS. ORR: Mr. Chairman, members of the  
24 Board, the Department worked hard on this case to  
25 put it in a posture for dismissal. There wasn't

1 exactly, I'm going to say, a cooperative  
2 appellant. It involves a case out of Great Falls  
3 where allegedly there was a disposal of septage  
4 without a license into the Great Falls wastewater  
5 treatment plant.

6 In the course of this case, there was a  
7 motion to dismiss filed by the Department, a  
8 motion for summary judgment, and there was a  
9 discovery dispute involving an entry of an order  
10 on my part imposing sanctions for failure to  
11 cooperate in the discovery process.

12 And there was an action filed, a second  
13 administrative action -- Well, there was a  
14 revocation of the license of Mr. Kunkel also,  
15 which resulted in his appealing also to the Board,  
16 and that's the second item in this section  
17 regarding final action.

18 Then there was a third case filed in  
19 District Court in Cascade County, the details of  
20 which I don't know, except you have in your  
21 materials reference to the fact that in that  
22 District Court action, the parties agreed to  
23 dismiss both of these administrative actions, and  
24 that's the posture that we find ourselves today.

25 And there is reference in that District

1 Court stipulation that was filed in District Court  
2 to dismissal of these two actions, and therefore  
3 the Department filed for dismissal before the  
4 Board in both of these cases, and is signifying  
5 that there is agreement for the dismissal based  
6 upon the stipulation in District Court.

7 So that's the posture we find ourselves,  
8 and I would recommend that you adopt that  
9 dismissal notice or dismissal order, and have the  
10 Chairman sign it. There is only one kind of  
11 technical issue. The reference for the basis for  
12 the dismissal is Montana Rules of Civil Procedure  
13 41(a)(2), and I would recommend that that be  
14 41(a)(1)(ii), and the reason is that section  
15 refers to a proposed agreement for dismissal by  
16 both parties, and that can be easily inserted in  
17 the order of dismissal.

18 CHAIRMAN RUSSELL: This seems really  
19 odd, what you just described.

20 MS. ORR: It is odd. It's a very odd  
21 posture.

22 CHAIRMAN RUSSELL: How do you feel about  
23 it? It just seems like the parties agreed to do  
24 this, right?

25 MS. ORR: The Board has to decide



1 basically that the signification or the reference  
2 of stipulating to dismiss the case in the  
3 stipulation for District Court is sufficient to  
4 dismiss the case in these venues. And I think  
5 part of the subtext here frankly is that Mr.  
6 Kunkel is a very difficult party to have him be  
7 signing several documents.

8 CHAIRMAN RUSSELL: Oh, really.

9 MS. ORR: That's my editorial comment.

10 CHAIRMAN RUSSELL: We need to read well  
11 between the lines on that one, but I think most of  
12 us probably did. Thank you, Katherine. And on  
13 your recommendation, I would ask the Board to  
14 entertain a motion to authorize the Board Chair to  
15 sign the order of dismissal with the change to  
16 41(a)(1)(ii) instead of 41(a)(2).

17 MS. ORR: Mr. Chairman, we can supply  
18 that changed dismissal order to you.

19 CHAIRMAN RUSSELL: Okay. So do I have a  
20 motion?

21 MR. MILLER: This is Miller. So moved.

22 CHAIRMAN RUSSELL: It's been moved by  
23 Marv. Is there a second?

24 MS. SHROPSHIRE: Second. This is Robin.

25 CHAIRMAN RUSSELL: It's been seconded by

1 Robin. Any further discussion?

2 (No response)

3 CHAIRMAN RUSSELL: Hearing none, all  
4 those in favor, signify by saying aye.

5 (Response)

6 CHAIRMAN RUSSELL: Opposed.

7 (No response)

8 CHAIRMAN RUSSELL: Hearing none, it must  
9 have carried unanimously. Next item. Item 2 is  
10 another Kunkel that you had mentioned.

11 MS. ORR: That's correct. Mr. Chairman,  
12 and that's the one involving a revocation of a  
13 license, and the same posture applies here. And I  
14 guess I just recommend that you adopt the order of  
15 dismissal with a change that the reference to the  
16 Rule of Civil Procedure be 41(a)(1)(ii).

17 CHAIRMAN RUSSELL: Interesting that  
18 there is also some action by the Department on  
19 this one. This is the order that was moved. I'm  
20 looking at what Director Opper had signed. That's  
21 all right. Okay. My computer is really slow  
22 today.

23 So I have an order of dismissal for BER  
24 2010-12-SDL, and I would ask for a motion to  
25 authorize the Board Chair to sign with the

1 condition that the citation for the Montana Rules  
2 of Civil Procedure be changed to 41(a)(1)(ii).

3 MR. MIRES: This is Larry Mires. So  
4 moved.

5 CHAIRMAN RUSSELL: It's been moved by  
6 Larry. Is there a second?

7 MR. MILLER: I'll second it. Miller.

8 CHAIRMAN RUSSELL: Seconded by Marv. So  
9 any further discussion on this one?

10 (No response)

11 CHAIRMAN RUSSELL: Hearing none, all  
12 those in favor, signify by saying aye.

13 (Response)

14 CHAIRMAN RUSSELL: Opposed.

15 (No response)

16 CHAIRMAN RUSSELL: Motion carries  
17 unanimously. No. 3, violations of the Montana  
18 Strip and Underground Mine Reclamation Act by  
19 Signal Peak Energy, LLC at Bull Mountain Mine No.  
20 1, Roundup. Katherine.

21 MS. ORR: Mr. Chairman, members of the  
22 Board, this was a case that the Board did not  
23 delegate as far as disposition of the merits of  
24 the case. Just thought I'd mention that.

25 Bull Mountain, as you know, operates a

1 surface coal mine in the Roundup area, Musselshell  
2 County. And there was a notice of violation that  
3 was issued involving construction of a road that  
4 was not approved in the facility plan area;  
5 failure to use temporary sediment control measures  
6 during access road and loop construction; failure  
7 to handle soil materials and salvage properly;  
8 there was a failure to handle the subsurface and  
9 the top soil materials properly.

10 And there was a significant amount of  
11 penalties asked for in each of those violations.  
12 The parties entered into an Administrative Order  
13 on Consent, which is in your materials, and have  
14 submitted a request for dismissal under 41(a).  
15 And I recommend that the Board adopt that  
16 dismissal.

17 CHAIRMAN RUSSELL: Okay. Questions for  
18 Katherine?

19 (No response)

20 CHAIRMAN RUSSELL: Hearing none, I have  
21 an order of dismissal in front of me for Case No.  
22 BER-2009-23-SM, and I would entertain a motion to  
23 authorize the Board Chair to sign on behalf of the  
24 Board.

25 MS. KAISER: Joe, this is Heidi. I

1 don't wish to move, but I would like to recuse  
2 myself from taking action on this item.

3 CHAIRMAN RUSSELL: Please note that  
4 Heidi has recused herself on this action, and we  
5 still have a quorum. Any further questions?

6 (No response)

7 CHAIRMAN RUSSELL: All right. I'll  
8 entertain that motion.

9 MR. MILLER: So moved. This is Miller.

10 CHAIRMAN RUSSELL: It's moved by Marv.  
11 Is there a second?

12 MR. MIRES: Larry will second.

13 CHAIRMAN RUSSELL: It's been moved and  
14 seconded. Further discussion?

15 (No response)

16 CHAIRMAN RUSSELL: Hearing none, all  
17 those in favor, signify by saying aye.

18 (Response)

19 CHAIRMAN RUSSELL: That should be a  
20 quorum, a majority of the Board, unless someone  
21 says "nay" when I say all those opposed.

22 (No response)

23 CHAIRMAN RUSSELL: Okay. It carried  
24 unanimously. The next item on the agenda is in  
25 the matter of appeal and request for hearing by

1 the City of Belgrade. Katherine.

2 MS. ORR: Mr. Chairman, I didn't want to  
3 interrupt, but on Signal Peak Energy, this is just  
4 a comment. The dismissal was under the Montana  
5 Rules of Civil Procedure 41(a)(1)(ii). Just a  
6 clarification.

7 CHAIRMAN RUSSELL: Okay. Thank you.

8 MS. ORR: The next case is in the matter  
9 of the appeal and request for hearing by the City  
10 of Belgrade. There also is a request for  
11 dismissal under 41(a)(1)(ii). The parties have  
12 agreed that they're going to have a reapplication.  
13 The permit will be withdrawn. This is a ground  
14 water discharge permit that's going to be  
15 withdrawn, and there is going to be a new  
16 application for a renewal basically. The parties  
17 are starting again to try to, I guess, reach a  
18 meeting of the minds on the terms of the permit.

19 CHAIRMAN RUSSELL: So we're going to  
20 dismiss this one and they're going to start again.

21 MS. ORR: Right.

22 CHAIRMAN RUSSELL: I have in front of me  
23 an order granting notice of appeal to Case No.  
24 BER-2010-06-WQ. I would entertain a motion to  
25 authorize the Board Chair to sign.

1 MS. SHROPSHIRE: So moved. This is  
2 Robin.

3 CHAIRMAN RUSSELL: It's been moved by  
4 Robin. Is there a second?

5 MR. MIRES: Larry will second.

6 CHAIRMAN RUSSELL: It's been moved and  
7 seconded by Larry. Any further discussion?

8 (No response)

9 CHAIRMAN RUSSELL: Hearing none, all  
10 those in favor, signify by saying aye.

11 (Response)

12 CHAIRMAN RUSSELL: Opposed.

13 (No response)

14 CHAIRMAN RUSSELL: All right. Motion  
15 carries unanimously. The last matter in front of  
16 us is in the matter of violations of the Montana  
17 Public Water Supply Act by Aces Wild in Glasgow.

18 MS. ORR: Mr. Chairman, members of the  
19 Board, this case involves a casino, Aces and  
20 Eights Casino, which is a supplier that serves  
21 customers, and therefore is a supplier of water.  
22 It's not a community system, however. The notice  
23 of violation that was issued was for failure to  
24 monitor for coliform bacteria, failure to give  
25 notification of that violation, and there was a

1 penalty sought of \$1,000, and there is an order of  
2 dismissal also under 41(a)(1)(ii).

3 CHAIRMAN RUSSELL: That's a real popular  
4 order this time.

5 MS. ORR: It is, isn't it?

6 CHAIRMAN RUSSELL: It is. Okay.

7 Questions for Katherine.

8 (No response)

9 CHAIRMAN RUSSELL: Hearing none, I have  
10 an order of dismissal for Case No. BER  
11 2010-07-PWS, and would like a motion to authorize  
12 the Board Chair to sign.

13 MS. KAISER: This is Heidi. So moved.

14 CHAIRMAN RUSSELL: It's been moved by  
15 Heidi. Is there a second?

16 MS. SHROPSHIRE: This is Robin. I'll  
17 second.

18 CHAIRMAN RUSSELL: It's been moved and  
19 seconded by Robin. Further discussion.

20 (No response)

21 CHAIRMAN RUSSELL: Hearing none, all  
22 those in favor, signify by saying aye.

23 (Response)

24 CHAIRMAN RUSSELL: Opposed.

25 (No response)



1           CHAIRMAN RUSSELL: Motion carries  
2 unanimously. Okay. Now comes the time in the  
3 meeting for general public comment. Is there  
4 anyone on the phone or in the audience that would  
5 like to speak to the Board on matters that pertain  
6 to the Board's jurisdiction?

7           MR. LIVERS: No one here in Helena, Mr.  
8 Chairman.

9           CHAIRMAN RUSSELL: Any Board comments  
10 before we shut down?

11          MR. MILLER: This is Miller. I'd just  
12 like to thank Katherine for all of her work. It  
13 seems like we're keeping her pretty darn busy  
14 here, so thank you.

15          CHAIRMAN RUSSELL: Thanks, Katherine.

16          MS. ORR: You're welcome. I enjoy it.

17          CHAIRMAN RUSSELL: We do appreciate your  
18 work, Katherine. Actually Tom and I were  
19 mentioning that yesterday, weren't we, Tom?

20          MR. LIVERS: Yes.

21          CHAIRMAN RUSSELL: So it's not just from  
22 one, it's from many. So thank you.

23          MR. LIVERS: Mr. Chairman, just a couple  
24 of quick administrative items. The next meeting  
25 is December 3rd. I don't know yet how heavy an

1 agenda, so we don't have a read as to whether it's  
2 likely to be a teleconference. And then I'm  
3 working from memory here, but I believe we have  
4 three terms that will be up at the end of this  
5 year: Heidi, Larry Mires, and Chairman.

6 So I'm certainly hoping that all three  
7 of you are interested in continuing. I know it's  
8 a time commitment, but regardless of your  
9 decision, if you do choose to reup, we'll  
10 certainly help facilitate that request to the  
11 Governor's Office. What I'll probably do is send  
12 out an email to you individually in the next  
13 couple of weeks and just kind of prompt that. But  
14 I wanted to -- If you're not thinking about it, I  
15 just wanted to bring that up for folks' attention.

16 I think I've got that list right,  
17 because as I recall as a cross check, Robin was  
18 reappointed last time, and then we had Marv, Larry  
19 Anderson, and Joe Whalen come on the Board at that  
20 time.

21 CHAIRMAN RUSSELL: That's correct. I  
22 would encourage certainly Heidi and Larry to  
23 reapply. You've done a very good job on the  
24 Board.

25 MR. LIVERS: I think this is a very well

1 functioning board right now. I appreciate the  
2 learning curve that goes into this. I just think  
3 that we've got a good balance, good deliberations,  
4 and certainly I would like to see the dynamic  
5 continue.

6 MS. SHROPSHIRE: It's because Katherine  
7 is doing all our work for us.

8 MR. MIRES: This is Larry Mires. Since  
9 Katherine is doing all the work, I really would  
10 like to continue on if possible.

11 MR. LIVERS: Great. I'll be in touch.  
12 And like I say, we'll help the facilitate that  
13 request to the Governor's Office.

14 CHAIRMAN RUSSELL: All right. Thanks,  
15 Tom. All right, if nothing else, I would  
16 entertain a motion to adjourn.

17 MR. MILLER: So moved.

18 CHAIRMAN RUSSELL: It's been moved by  
19 Marvin. Is there a second?

20 MS. KAISER: This is Heidi. I'll  
21 second.

22 CHAIRMAN RUSSELL: It's been seconded by  
23 Heidi. All those in favor of adjourning, signify  
24 by saying aye.

25 (Response)

1 CHAIRMAN RUSSELL: Opposed.

2 (No response)

3 CHAIRMAN RUSSELL: Motion carries. Good  
4 meeting. Quick meeting. Good job. We will talk  
5 soon.

6 (The proceedings were concluded

7 at 9:49 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 - 36 - 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                      , 2010.

LAURIE CRUTCHER, RPR  
Court Reporter - Notary Public  
My commission expires  
March 9, 2012.