

**Hard Rock Mining Impact Board**

**Meeting Minutes**

**May 31st, 2019**

Department of Commerce 301 South Park Ave, Helena, MT

**Board Members Present**

Chair Donna von Nieda, Vice-chair Mark Thompson, Jane Weber, Keith Kelly, and John Rogers

**Montana Department of Commerce Staff Present**

Jennifer Olson, Division Administrator; A.C. Rothenbuecher, Operations Manager; Anne Pichette, Administrative Officer; Amy Barnes, Attorney; and Anita Proul, Executive Assistant.

**Public Present by Phone**

No public present by phone

**Public Present**

Nancy Schlepp                      Tintina Montana/Sandfire Resources America  
Dan Burmeister                      Burmeister Enterprises

**Welcome – Call to order**

Chair von Nieda called to order the Hard Rock Mining Impact Board at 9:13 a.m.

**Roll call**

Ms. Pichette called the roll for board members. The following board members were present: Chair von Nieda, Vice-chair Thompson, Keith Kelly, John Rogers, and Jane Weber.

- Chair von Nieda welcomed visitors in the room and welcomed Commerce Director, Tara Rice

**Opportunity for Public Comment on Items Not on the Agenda, but within the Board’s Jurisdiction**

- No public comments present or on phone

**Approval of Minutes**

- Ms. Pichette explained that three sets of meeting minutes needed to be approved.
  - September 11, 2018 – a transcript and only need be acknowledged for acceptance.
  - December 10, 2018 – minutes that action can be taken on
  - November 15, 2018 – Ms. Olson explained the lack of a recording of the meeting which normally serves as the permanent record. The minutes were created from notes taken during meeting. Board has following options: Board can choose to amend as necessary and take action or take no action; latter is recommendation

**Action by the Board:**

- Chair von Nieda acknowledged September 11, 2018 minutes.
- Chair von Nieda asked for a motion to approve December 10, 2018 minutes. Mr. Kelly moved to approve. Ms. Weber seconded. Chair von Nieda assumed motion.
- Chair von Nieda asked for discussion from board on November 15 minutes
  - Ms. Weber indicated since Dane Ogle, John Beaudry, and Maureen Davey were present at meeting they should be given the opportunity to review for comments

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- Ms. Olson confirmed that board staff would reach out to individuals mentioned to have minutes reviewed
- Chair von Nieda assumed concurrence by rest of board to go with Ms. Weber's recommendation to not take any action pending communication with the individuals mentioned

**Commerce updates**

- Ms. Pichette reviewed the documents that were available for the board
  - Copy of Allocation letter to the MT Dept. of Revenue
  - Packet of documents from Dan Burmeister – Mr. Burmeister present in audience
- Ms. Pichette informed board that IT assistance was available for anyone having difficulties getting into their state email

Chair von Nieda asked if the board had any questions on items presented by Ms. Pichette

- Vice-Chair Thompson asked what was being asked of board after reviewing packet from Mr. Burmeister
- Ms. Rothenbuecher replied that Mr. Burmeister requested that the information be presented to the board and that the board should reach out to Mr. Burmeister with any questions or requests of action he might have
- Vice-Chair Thompson asked Chair von Nieda if Mr. Burmeister would like to address board. Chair von Nieda confirmed Mr. Burmeister did request to make a public comment and asked if the board concurred to allow Mr. Burmeister opportunity for public comment – board concurred
- Mr. Burmeister spoke, explained connection to the Stillwater Mine, the impact plan, and his packet
- Chair von Nieda paused Mr. Burmeister and confirmed with Ms. Barnes that the board was only able to receive public comment and take no action as this was not on the agenda
- Discussion between Ms. Barnes and Mr. Burmeister regarding his project and specific needs
- Chair von Nieda commented that the role of the board is one of oversight of the impact plan, not approving or disapproving funding
- Suggestion by Mr. Rogers referring Mr. Burmeister to board staff or legal counsel to help determine if there is/is not a role for the board regarding Mr. Burmeister's situation and/or advise board. Chair von Nieda specifically referred Mr. Burmeister to legal counsel
- Vice-Chair Thompson requested if this project comes back in front of the board that there is representation from the local government unit and the mine developer
- Chair von Nieda asked if any other comments, none provided, thanked Mr. Burmeister and moved to next agenda item

**Sandfire Resources America, Black Butte Copper Project Impact Plan**

- Chair von Nieda opened floor for public comment

**Opportunity for Public Comment**

- Nancy Schlep with Sandfire Resources present to answer any questions board may have

**Discussion of Impact Plan**

- Ms. Pichette discussed plan and modifications

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- Previously approved extension
- Chair von Nieda asked if in receipt of official written agreement or financial agreement
- Ms. Barnes confirmed MDOC received written guarantee in the form of a letter. Financial guarantee provided by developer in the form of an escrow agreement
- Chair von Nieda asked if the board needs to take any action on the escrow agreement at this time
- Ms. Barnes indicated modifications need to be reviewed. If met, then action can be taken.

**Action by the Board:**

Mr. Thompson made a motion to approve the Black Butte Copper Project Impact Plan with modifications. Ms. Weber seconded motion. Motion passed.

**Discussion of Escrow Agreement**

- Chair von Nieda asked Ms. Olson if they are at the place to look at the escrow agreement.
  - Ms. Olson replied no as that is a further next step.
- Ms. Olson did reference that a jurisdictional revenue disparity is noted in the plan and now that the plan is approved, it would be wise and advised that the Board acknowledge the jurisdictional revenue disparity as it causes an action to be carried out.
  - Action to promptly notify the developer, affected local government, and Department of Revenue of revenue disparity

**Opportunity for Public Comment**

None provided

**Action by the Board:**

Mr. Rogers made a motion to recognize jurisdictional revenue disparity in the approved impact plan. Mr. Kelly seconded. Motion carried as presented. Chair von Nieda directed staff to notify within 30 days.

**Further Discussion**

Vice-Chair Thompson asked the Chair what action in the future the Board needs to take on the escrow agreement? Chair von Nieda deferred to Ms. Olson.

- Two next steps
  - Approved impact plan starts the 30-day period of the written guarantee
  - Within 30 days the written guarantee needs to be received by the Department of Commerce
  - A financial guarantee also needs to be submitted
  - Subsequent to this the Board needs to take an action to take public comment and approve the financial guarantee
- Important point of interest, the financial guarantee must be approved prior to any mining work beginning

Vice-Chair Thompson asked the Chair, for the purposes of narrowing down next meeting, could the Board ask Ms. Schelpp when mining may begin. Chair von Nieda called on Ms. Schelpp

- Ms. Schelpp
  - Expecting record of decision in third quarter of this year
  - Hoping to be in construction right after that
- Ms. Schelpp indicated that she thought they had submitted everything that was needed and asked for clarification on what would be needed differently from them?

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Chair von Nieda deferred to Ms. Barnes

- Ms. Barnes indicated that the written guarantee and financial guarantee were submitted before the impact plan was approved and recommended to request developer to resubmit to guarantee the approved impact plan
- Ms. Schlepp asked question on jurisdictional revenue disparity and what it was
- Ms. Barnes indicated disparity between White Sulphur Springs (city) and the county
- Mine located in the county jurisdiction, not city, there is a jurisdictional revenue disparity between the two and since they are within the same category it triggers the tax base sharing act
- Ms. Olson advised Ms. Schlepp to make some grammatical corrections on the written guarantee before they resubmit
- Chair von Nieda confirmed that the financial and written guarantees are to be dated after today's board meeting
- Ms. Weber asked Chair von Nieda if she could ask a procedural question of Ms. Schlepp - Is there an appeal period for public after a decision is made by DEQ? Do they still anticipate that being within third quarter or possibly fourth quarter? 45-day period for appeal?
  - Ms. Schlepp answered but also indicated that Vice-Chair Thompson might have better answer – understanding is that money must be in the escrow account within 30 days of getting record of decision and that is the trigger point
  - Thinks there is a 90-day appeal period
- Vice-Chair Thompson indicated that DEQ will issue the final EIS, then period of 30 days, then they can issue record of decision, and then time period after when appeal can be filed

**Opportunity for public comment**

Mr. Rogers proposed moving the final opportunity for public comment up to before the work session.

Chair von Nieda opened floor to public comment

- Mr. Burmeister asked if there was a time frame for an additional meeting to address the items that were brought up at the current meeting.
- Chair von Nieda confirmed with Mr. Burmeister that they referred him to legal counsel to determine if his concerns fell within the board's jurisdiction and that the board would take direction from legal counsel

**Hard Rock Mining Impact Guide work session**

Chair von Nieda explained that the previous board felt the guide was difficult to read through because of all the citations and many examples, some of which were no longer applicable or difficult to read

- A lot to digest with regard to changes

Three different activities that the board undertook in changing the guide

- Footnote all the references to the Montana Code Annotated (MCA) in one document in the back called footnotes
- Formatting changes/improvements suggested
- Feeling some examples were not relevant or causing the document to be unnecessarily long and moving them to an appendices

Regarding what you see at the beginning, a preface and introduction, it was felt it was redundant and much that could be incorporated together to make reading of and guiding purpose of document much clearer

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Chair von Nieda asked of board – do they like the direction/intention the prior board was moving or leave the guide as is?

Maybe make improvements to guide in a step by step and not do all of it today, Ms. Weber thought this was a good idea

Mr. Rogers suggested a disclaimer at the beginning for public to know the guide is not law

- Vice Chair Thompson and Ms. Weber agreed
- Chair von Nieda asked if legal counsel could craft something

Vice-Chair Thompson asked who the target audience was, Chair von Nieda confirmed it was developers and counties/public entities

Chair von Nieda asked, in general as a board, do we like the idea of moving forward and cleaning up, clarifying, and streamlining - board verbalized agreement

No substantive changes until more streamlined – simpler language

**Action by the Board:**

Accept footnote streamlining – moving to back

Examples addressed individually – reduced to simple language or possibly deleted

- Hi-light all examples

Work sessions via webinar

- Chapter by chapter
- One-hour max
- Monthly suggested
- Start in July

Contact/address information be updated by staff as needed

Accept all changes prior to old chapter two

Correct/adjust footers and pagination

**Opportunity for public comment**

Ms. Schlepp suggested one place/page with all the necessary deadlines

**Adjournment**

Chair von Nieda entertained a motion to adjourn. Ms. Weber made a motion to adjourn, Vice-Chair Thompson seconded, meeting adjourned at approximately 12:35 p.m.