BEFORE THE STATE TAX APPEAL BOARD

OF THE STATE OF MONTANA

DECKER COAL COMPANY,	)	
	)	DOCKET NO.: MT-1995-1
Appellant,	)	&
	)	MT-1996-6
-vs-	)	
	)	
THE DEPARTMENT OF REVENUE	)	FINDINGS OF FACT,
OF THE STATE OF MONTANA,	)	CONCLUSIONS OF LAW,
	)	ORDER and OPPORTUNITY
Respondent.	)	FOR JUDICIAL REVIEW

The above-entitled appeal came on regularly for hearing on the 22nd day of January, 1998, in the City of Helena, Montana, in accordance with an order of the State Tax Appeal Board of the State of Montana (the Board). The notice of the hearing was duly given as required by law. The hearing was held for the purpose of taking additional oral argument by the parties in accordance with The Order of Remand of the Thirteenth Judicial District Court dated December 16, 1997. The taxpayer, represented by attorneys Terry Cosgrove and Joseph E. Jones, presented testimony in support of the appeal. The Department of Revenue (DOR), represented by attorney Milo Vukelich, presented testimony in opposition to the appeal. Testimony was presented and the Board then took the appeal

under advisement; and the Board having fully considered the testimony, exhibits and all things and matters presented to it by all parties as existing in the record, finds and concludes as follows:

STATEMENT OF THE ISSUE BEFORE THE BOARD.

The District Court Order of Remand instructs this Board to address two issues concerning additional natural resource taxes and interest due for the years 1987 through 1992:

1. Whether the contracts between Decker Coal Company and Big Horn Coal Company and the contract between Decker Coal Company and Black Butte Coal Company were arms length transactions; and,

2. Whether the imputation of value as done by Department of Revenue in this case "approximates market value F.O.B" as provided in Section 15-35-107(1)(c), MCA.

FINDINGS OF FACT

1. Due, proper and sufficient notice was given of this matter, the hearing hereon, and of the time and place of said hearing. All parties were afforded opportunity to present oral argument on the issues.

2. Decker Coal Company is a Montana fifty-fifty

joint venture between Kiewit Mining Group, Inc. (KMG) and Western Minerals, Inc. (Western Minerals). KMG is a wholly owned subsidiary of Peter Kiewit Sons' Inc. Western Minerals is a wholly owned subsidiary of NERCO, Inc. (NERCO).

3. Decker is operated and managed by Kiewit. A majority of a management committee comprised of an equal number of persons designated by Kiewit and NERCO must authorize sales of coal made by Decker.

4. Black Butte Coal Company (Black Butte) is a Wyoming fifty/fifty joint venture between KMG and Bittercreek Coal Company (Bittercreek). Bittercreek is a wholly owned subsidiary of Union Pacific Corporation. Black Butte's operations consist of a coal mine located at Point of Rocks, Wyoming. Coal produced from the mine is sold by Black Butte to various customers. Kiewit operates and manages Black Butte.

5. Big Horn Coal Company (Big Horn) is a Wyoming coal company that is 100% owned by KMG. Kiewit operates and manages Big Horn.

6. During the period in question, KMG actually was engaged in the mining of coal at five locations in Montana and Wyoming. Besides Decker, Big Horn, and Black Butte, they operated the Rosebud Mine in south-central Wyoming and the

Leucite Hills Mine near Black Butte. (Ex C Respondents Brief in Opposition to Appellants Motion for Summary Judgement)

7. Decker entered into a contract with Commonwealth Edison Company (Commonwealth) to sell coal from the Decker mine in Montana in June, 1974. The contract, among other specifics, contains provisions for coal quantity, quality, price and price escalators, and term. The price, under the terms established in 1974 for the period in question, ranges from $26.79 to $28.04 per ton.

8. Black Butte entered into a contract with Commonwealth to sell coal over a long term in May, 1976. The contract contained the coal base price and escalator provisions. Coal mined in and shipped from Wyoming under this contract is not at issue here.

9. Big Horn entered into a contract with Commonwealth to sell coal over a long term in November, 1976. The contract contained the coal base price and escalator provisions. Coal mined in and shipped from Wyoming under this contract is not at issue here.

10. Decker entered into three separate coal contracts during the time period relevant to the years in question. Decker had two contracts with Big Horn dated

December 31, 1986, and December 31, 1987. Decker had one contract with Black Butte dated January 1, 1988. The price contained in the short term contracts ranged from $7.62 per ton to $10.42 per ton. These contracts are referred to as the "Wyoming Contracts".

11. Black Butte entered into the contract with Decker because they were having problems (unexplained) with the Environmental Protection Agency at their Wyoming mine. They purchased coal from the Decker mine in Montana to fulfill their contract with Commonwealth.

12. Big Horn entered into the contracts with Decker because they had encountered coal in thinner layers as a ratio of coal to overburden. This meant the cost of production at their Wyoming mine was increasing as a cost per ton of coal mined. They purchased coal from the Decker Mine in Montana to fulfill their contract with Commonwealth.

13. The amount and value of the coal at issue here is coal that was mined by Decker and sold at its mine in Montana. None of the coal at issue here was mined at or sold from another location. The coal was transported to the buyer Commonwealth. Big Horn and Black Butte received $23.71 to $29.47 per ton from Commonwealth under their 1976 contracts.

14. The 1980's contracts between Decker and Black Butte and between Decker and Big Horn were negotiated for Decker by KMG's partner at Decker, NERCO.

15. Decker has paid the taxes due on the declared prices as stated in the "Wyoming Contracts".

16. The Montana Thirteenth Judicial District Court partially granted an interlocutory petition of the taxpayer on January 25, 1996. Decker sought a ruling that this Board must apply the common law definitions of "market value" and "arms length agreement" when interpreting and applying 15-35-107, MCA, and must exclude the 1974 contract between Commonwealth Edison Company and Decker for purposes of determining the market value of the coal sold from 1987 to 1990. The Court ordered that the term "market value" in 15-35-107(1) and (3), MCA, means the price that a willing buyer would pay to a willing seller under the market and economic conditions at the time of the sale; and the term "arms length agreement" found in 15-35-107(1)(c), MCA, means an agreement between independent non-controlled persons with opposing economic interests. The court order left the decision on the admissibility and use of the 1974 contracts up to this Board as to whether they are relevant or not.

17. The price described as the DOR imputed price is the contract price paid by Commonwealth to Decker during the years at issue under the 1974 contract. The imputed price is the value the DOR applied to the coal at issue.

18. This Board has jurisdiction over this matter.

19. The time of sale is the time the coal is loaded for shipment f.o.b. at the mine.

TAXPAYER'S CONTENTIONS

Decker argues that the 1980's contracts were negotiated by NERCO officials to achieve the highest price possible at the time from Black Butte and Big Horn. They contend that NERCO is in no way involved in the control of the separate entities of Black Butte and Big Horn and, in fact, is a competitor of Decker in other mines with which NERCO is involved. The negotiations with Black Butte were between a NERCO official and an official from the KMG partner in Black Butte, Union Pacific; therefore, Union Pacific and NERCO were actually negotiating as unrelated parties. The contract between Decker and Big Horn was negotiated between NERCO and KMG, again as independent non-controlled entities.

Decker contends that the prices negotiated in these

"Wyoming Contracts" is the price upon which the subject taxes should be paid, since that price represents the best possible price attainable under the economic conditions of 1986, 1987, and 1988. The DOR should not be able to impute a value for the coal utilizing the 1974 contract with Commonwealth, because the market influences prevailing at that time were entirely different. The influences of an oil embargo, energy crisis, and coal capacity made the earlier coal prices higher than could be attained in the 1980's. Decker also argued that the 1974 contract price with the escalators that are added to it is not representative of market value, let alone for the time period at issue here.

Decker contends the DOR has not correctly determined that the sales price between Decker and Big Horn and Decker and Black Butte is below market value, a determination that must be made before DOR may impute a value for the coal. Decker also contends the DOR has not established that the price differential is more than $0.10 per ton or 1% of f.o.b. mine, whichever is greater, as required by statute.

Decker believes that the DOR must limit its consideration of value to the period of time represented in the "Wyoming" contracts since they represent the economic and

market forces prevalent at the time, not the forces present in the earlier 1970's contracts. It is Decker's contention that to be in accord with the Order Partially Granting Interlocutory Petition, the DOR must use the "Wyoming" contracts provisions since those conditions were the prevailing conditions at the "time of sale."

DOR CONTENTIONS

The DOR audited the taxpayer and sent an audit assessment for Decker Coal Company on April 17, 1992 for tax periods 1987-1988. On April 14, 1994 the DOR sent the taxpayer an additional assessment for tax periods 1989-1990.

Decker and the DOR held informal conferences to discuss the audit and additional assessments. Decker timely filed appeals to the DOR for an Division Administrator's decision and on through the DOR internal review process to the Director's office.

On April 30, 1996 the DOR assessed additional taxes and interest for coal taxes for the years 1991-1992. Decker filed timely appeals and by Stipulation to the Administrative Record in this matter appealed those assessments to this Board.

The DOR argued that the contracts entered into between Decker and Big Horn and between Decker and Black Butte were "sham" contracts, not at arm's-length, and should be disregarded for taxation purposes. The coal mined at Decker was purchased by Commonwealth through contracts agreed to in the 1970's. If Commonwealth did not purchase coal from Big Horn and Black Butte, Big Horn and Black Butte did not purchase coal from Decker. The coal purchased by Commonwealth was mined at Decker, shipped f.o.b. from the Decker mine and delivered to Commonwealth.

The DOR considers that all coal sales made by Decker to Commonwealth, whether by Decker, Big Horn or Black Butte are arm's-length sales. The imputed price for the Decker coal was arrived at by reviewing the price Commonwealth was paying for the coal mined and shipped from Decker whether they were paying Big Horn, Black Butte or Decker. These prices received by the KMG clearly exceed the sales prices received from the transactions between Decker and the Wyoming operations by more than $0.10 per ton and 1% of the f.o.b. mine price as required in statute.

The DOR did not appeal the decision of the Thirteenth Judicial District Court in the Order Partially Granting

Interlocutory Petition because in its opinion it has recognized the conditions present at the time of sale, and those conditions are found in the 1970's contracts. The DOR argues that since the 1980's contracts are dependent on the 1970's contracts, and the price paid by the buyer Commonwealth is directly related to the earlier contracts, the imputed price does consider the conditions present at the time of sale, as defined in the Court Order.

BOARD'S DISCUSSION

These appeals were filed by Decker in a timely fashion after the DOR made its final decision. Decker filed for Interlocutory Adjudication with the Thirteenth Judicial District for a definition of the term "market value" as found in 15-35-107, MCA. Judge Baugh issued an Order defining the term and the DOR did not appeal that decision.

This Board then proceeded with its actions to bring the matter to hearing. Both parties to this action filed Motions for Summary Judgement with this Board. After a hearing on the Motions this Board granted the Motion of the DOR. The taxpayer sought Judicial Review of the Board's Order, and the matter was

remanded to this Board for the preparation of Findings of Facts and Conclusions of Law supporting its decision granting Summary Judgement. The Board prepared its Findings in accordance with that Order and submitted them to the Court. Again the Court remanded the matter to this Board because those Findings of Fact and Conclusions of Law were not in the manner and form required since they did not address the issues of the arm's length nature of the short term contracts and the propriety of the imputed value of the coal at question. The Court Order required this Board to submit its Findings of Fact and Conclusions of Law on or before February 10, 1998.

This Board relies on the record made to date and the oral argument held in accordance with the most recent Order of Remand for its decision. The Board did not request proposed Findings of Facts and Conclusions of Law from the parties.

The Board must first take up the issue of the arm's length nature of the Wyoming contracts to arrive at its decision on the value of the coal. The definition of arm's length both as provided by the Thirteenth Judicial District and the Administrative Rules of Montana (ARM), refer to parties who are not controlled by commonality or who have no business relationship other than the subject agreement. The parties to

the Wyoming contracts are not, in the opinion of this Board, independent non-controlled parties, and there are business relationships other than the subject contracts. The relationships within the Wyoming contracts to the 1974 Commonwealth contracts is irrefutable. The coal quantity, quality, and other specific contract references found in the Wyoming contracts are driven by the Commonwealth contracts. Without the Commonwealth contracts, the Wyoming contracts are unnecessary.

Exhibit C to the Respondent's Brief in Opposition to Appellant's Motions for Summary Judgement is a form 10-K. This form is an annual report by Peter Kiewit Sons', Inc. to the Securities and Exchange Commission for the year ended December 31, 1988. The relationship of Peter Kiewit Sons', Inc. to a variety of industries is documented in this report. The description of the "Company" and its activities in mining includes the five locations in Montana and Wyoming, its 50% interest in Decker Coal Company, its 50% interest in Black Butte Coal Company, and the leases (for coal) held through "subsidiary corporations" at the Rosebud mine and the Big Horn mine. The Leucite Hills mine is described as a half interest, "the assets of which include three long term coal contracts".

This 10-K report also discusses contracts for the coal production. It apparently considers the contracts as assets for the "Company" through the KMG since it refers to them as the "Company's long-term contracts. The two largest contracts were originally negotiated in the 1970's with Commonwealth Edison Company and Detroit Edison Company."

The report goes on with statements concerning other contracts as: "Sales contracts for the Decker and Black Butte (including Leucite Hills) mines provide for the minimum deliveries of coal through the year 2015." and "The principal coal contracts of the Big Horn and Rosebud Mines expired in 1988. In comparison to prior years, minimal coal production and revenues are anticipated in 1989."

It is clear in this report that, throughout the structure of Peter Kiewit Sons', Inc., the mining group is considered a principle structure with direction and control of the various members as joint ventures or subsidiaries. The "Company" obviously considers the sales contracts from the various members of the mining group as assets of its own through those joint ventures and subsidiaries.

Exhibit F to the Respondents Brief in Opposition to Appellant's Motion for Summary Judgement is a grouping of

Decker invoices. The "Remit To" address is:

Decker Coal Company
attn: coal accounting
1000 Kiewit Plaza
Omaha, NE 68131

The "Bill To" address is:

Bighorn Coal Company
attn: coal accounting
1000 Kiewit Plaza
Omaha, NE 68131

or:

Black Butte Coal Company
attn: coal accounting
1000 Kiewit Plaza
Omaha, NE 68131

The "Shipped To" indication is always Commonwealth Edison at various locations in either Indiana or Illinois. This commonality of addresses for billing, collection, and apparently accounting is, in the opinion of the Board, further indication of commonality of control of the various interests of KMG.

Finally, the Board examined the contracts themselves attached as Exhibits G,H,I, and J to the Respondent's Brief in Opposition to Appellant's Motion for Summary Judgement. Exhibit G is entitled a "COAL PURCHASE OPTION AGREEMENT" between Big Horn and Decker as entered into on December 31,

1986. Decker is granting to Big Horn the "option" to purchase coal produced from the Decker mine. Big Horn must notify Decker in writing of the quantity of coal it will buy from Decker by the 15th of the month preceding the month it wishes the coal. Big Horn is not required to purchase coal every month, nor is there a minimum monthly or annual purchase required. If Big Horn does decide to purchase Decker coal, the scheduling and delivery of that coal "shall be in accordance with Article VI of the Coal Purchase Contract, dated November 1, 1976, as amended, between Big Horn and Edison ('Big Horn-Edison Contract')." Quantities of coal already ordered may be varied if "reduced by quantities that are deferred or terminated as a result of events of force majeure." Section 9 of this agreement describes Force Majeure as: "The Parties adopt and incorporate by reference the provisions of Sections 11.01 through 11.06 of the Big Horn-Edison Contract."

The quality of the coal sold by Decker to Big Horn is overseen by "the provisions of the last paragraph of Section 4.02 of the Coal Purchase Contract dated June 20, 1974 between Decker and Edison ('Decker-Edison Contract') shall apply."

The Weighing, Sampling and Analysis section states that coal purchased under this agreement "shall be weighed,

sampled and analyzed in accordance with Article VII of the Big Horn-Edison Contract."

Paragraph 10 describes Notices as; "The Parties adopt and incorporate by reference the provisions of Article XIII of the Decker-Edison Contract;".

Paragraph 11 outlines Other Adopted Provisions as: "The Parties adopt by reference the following provisions of the Decker-Edison Contract: Articles XIV - XIX and XXI."

Exhibit H is the 1987 purchase agreement between Decker and Big Horn. This agreement specifies coal quantity for the years 1987, 1988, 1992, 1993, 1994, 1995, and 1998. The same provisions for the obligation of Big Horn to purchase are based on the purchase by Commonwealth found in exhibit G and expressed in Exhibit H. This agreement is much more specific in details of price and price adjustments.

Section 8 of the agreement details the Force Majeure and qualifies the buyer as "where the term 'Buyer' appears it should be understood to mean Edison as well as Black Butte Coal Company (Black Butte); where there are references to Buyer's receipt, transportation or utilization of coal they should be understood to refer to Edison as well as Black Butte; where there are references to generating units, equipment, etc. they

should be understood to refer to Edison as well as Black Butte, and so forth." The reference to Black Butte brings in a different dimension to this contract between Big Horn and Decker in that it appears that Black Butte may also be considered a buyer from Decker through Big Horn to supply coal to Commonwealth. The agreement is signed for Big Horn Coal Company by Donald L. Sturm, Vice President. The Board notes that Donald L. Sturm is signatory to the 1988 form 10-K (exhibit C) as a Director of Peter Kiewit Sons', Inc.

Thirty days after entering into that agreement with Big Horn, on January 1, 1988, Decker entered into a seperate agreement with Black Butte. (Exhibit I) Again the term is for specific years and they are detailed through the year 2015. There is again specific delineation of price adjustment factors as found in Exhibit H. Section 8 of this agreement is again the Force Majeure that states: "Therefore for the purposes of this Section 8, where the term 'Buyer' appears it should be understood to mean Edison as well as Black Butte Coal Company...."

Exhibit J is the 1974 Contract between Commonwealth and Decker. The coal quality specified in this contract is reflected in Exhibits G, H, and I. It is specific as to price

adjustments throughout the period. This contract is signed for Decker by Donald L. Sturm.

It is the opinion of this Board that these contracts show a relationship between all three of the parties here that cannot be described as supporting an "agreement between independent non-controlled persons with opposing economic interests" as contained in the Baugh decision partially granting the Interlocutory Petition. Given the interchangeableness of "Buyer" in the contracts it is Commonwealth that is always at the end of the train, and it is Decker that is always at the beginning. The fact that a member of the Decker management team was involved in the negotiations, even though from NERCO, and the taxpayer argument that this was enough to make them arm's-length, fails in this Board's opinion. It is clear that if Big Horn profits Decker profits, if Black Butte profits Decker profits, and if Decker profits NERCO and Peter Kiewit profit. That is of course why they are in business, but they can hardly claim to have "opposing economic interest." Under these agreements when Commonwealth is the buyer from Bighorn, they need never put a shovel in the coal; they merely pass the order to Decker and it gets filled. If Black Butte does not get an order for coal from

Commonwealth, Black Butte is not obligated to take coal for that month from Decker, and vice versa. If, as it was testified to, that Big Horn (100% Kiewit) finds that it is getting more expensive to mine coal from its mine and it can cut that cost and still sell coal to its ultimate buyer by ordering the required amount from its corporate parent (Decker), and both profit, then there is no "opposing economic interest." There is, in fact, a mutual economic interest with a satisfied customer, Commonwealth. It is hard to believe, that if a competitor of Decker or Kiewit found it was becoming more expensive to mine its coal to meet contract obligations, a party with an "opposing economic interest" would be so quick to come to their aid. Most likely a party with an opposing economic interest would have a sales representative knocking on the door of the consumer with a contract in hand to satisfy their requirements.

The value as determined or imputed by the DOR in this matter is the only value left for them to use. The Wyoming contracts are not at arm's-length and everything refers back to the 1974 contract with Commonwealth which has price plus escalator provisions that are in place at the "time of the sale". The time of sale is when the coal is loaded on the

train f.o.b. the Decker mine for delivery to Commonwealth.

Judge Baugh ordered that the "market value" must consider "the market and economic conditions at the time of the sale". This coal was not sold under world economic conditions that clearly change. They are not static and no one could argue they are, but the coal is sold under the economic conditions in place at the time of sale, meaning those conditions found in the long term contracts with Commonwealth, that likewise are not static. There was no disagreement on the base price and escalator provisions of any of the contracts in evidence here. Decker did not sell this coal on the "spot" market. There certainly would be a difference if all coal was sold that way. But the industry knew that to protect its investment in a long term operation it needed something other that "spot" market sales.

The form 10-K (Ex C) states, "While the Company sells a limited amount of coal on the spot market, most of the coal the Company produces is sold under long-term contracts to utility companies for use in steam generation to produce electricity." They go on to say that, "Spot coal prices have fallen substantially below the prices determined under the company's long-term contracts. The two largest contracts were

originally negotiated in the 1970's with Commonwealth Edison Company and Detroit Edison Company. These contracts have been frequently litigated and amended." They also provide that "The price at which coal is sold under the Company's long-term contracts is determined at or near the time of sale; therefore, a dollar amount of backlog is not readily determinable."

Exhibit D of Respondents Brief in Opposition to the Motion for Summary Judgement is form 10-K for the year 1994. It addresses the amount of coal sold in the spot market as, "The coal is sold primarily to electric utilities, which burn coal in order to generate steam to produce electricity. Approximately 89% of sales are made under long-term contracts, and the remainder are made on the spot market."

The market and economic conditions at the time of the sale are reflected in the 1970's contracts as to the terms of the sales involved here. These are not spot market sales. The Sansom Report relied on by Decker in these proceedings is clearly a description of spot market acquisitions. In his report Sansom states that, "In real, mid-1970's dollars recent PRB (Powder River Basin) coal prices are one-half mid 1970's levels." He is again describing a trend in the spot market

price. This Board has no reason to doubt the validity of his report as it pertains to the various transactions, bid prices or competitive data, but the long-term contracts with price escalators control the situation here, not the spot market.

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CONCLUSIONS OF LAW

1. 15-35-101(b),MCA,; coal is the only mineral which is so often marketed through sales contracts of many years' duration;

2. 15-35-102(1),MCA,;"Agreement" means a signed contract that is valid under Montana law between a coal mine operator and purchaser or broker for the sale of coal that is produced in Montana.

3. 15-35-102(13),MCA; "Purchaser" means a person who purchases or contracts to purchase Montana coal directly from a coal mine operator or indirectly from a broker who utilizes that coal in any industrial, commercial, or energy conversion process. A coal broker or any other third party intermediary is not a purchaser under the provisions of this chapter.

4. 15-35-107(1), MCA; The department may or shall at the request of the taxpayer impute a value to the coal which approximates market value f.o.b. mine in a case where:

© a person sells coal under a contract which is not an arm's-length agreement;

5. 15-35-107(3), MCA; When imputing value, the department may apply the factors used by the federal government under 26 U.S.C. 613, or that provision as it may be labeled or amended, in determining gross income from mining or the department may apply any other or additional criteria it considers appropriate. Each subject taxpayer shall upon request by the department furnish a copy of its federal income tax return, with any amendments, filed for the year in which the value of coal is being imputed and copies of the contracts under which it is selling coal at the time. When the department's estimate of market value is contested in any proceeding, the burden of proof is on the contesting party.

6. 42.25.501(1), ARM; "Agreement not at arm's length" is defined as an agreement between two parties when there are business relationships other than the agreement between the buyer and seller which in the opinion of the department have influenced the sellers price. (emphasis applied)

7. 42.25.512(1)(b), ARM; When coal is sold or used under the following circumstances the department may impute the value:
(b) a person sells coal under a contract which is not an arm's length agreement and the transaction price is less than market value;

8. Order of the Thirteenth Judicial District Court in cause DV 95-31 dated January 25, 1996;
1. "market value" means the price that a willing buyer would pay to a willing seller under the market and economic conditions at the time of the sale; and
2. "Arms length agreement" means an agreement between independent non-controlled person with opposing economic interests. (emphasis applied)

It is the Opinion of this Board that the "Wyoming"

contracts are not at arm's-length, and that the DOR has correctly determined the imputed value for the coal at issue here, and the appeal of the taxpayer Decker Coal is denied.

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ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board

of the State of Montana that the appeal of the taxpayer Decker Coal Company is denied and the additional assessments of the Department of Revenue for the Montana Coal Severance Tax, the Montana Resource Indemnity Trust Tax, and the Montana Coal Gross Proceeds Tax and the additional interest as assessed for the production tax years 1987 through 1992 are affirmed.

Dated this 6th of February, 1998.

BY ORDER OF THE
STATE TAX APPEAL BOARD

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PATRICK E. McKELVEY, Chairman

(S E A L)

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GREGORY A. THORNQUIST, Member

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LINDA L. VAUGHEY, Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.