

February 23, 2022

The Lincoln County Board of Commissioners met for a regular session on February 23, 2022 in the Lincoln County Courthouse, Libby, Montana. Present were Commissioner Teske, Commissioner Letcher, County Administrator Jim Hammons and Clerk and Recorder Robin Benson. Commissioner Bennett was excused.

Meeting allows for teleconferencing and VisionNet availability.

Commissioner Letcher opened the meeting with the **Pledge of Allegiance and Prayer**

10:30 AM **Administrative Issues:** Present were Veronica Bovee-Anderson, Derrick Perkins, Ray Stout, and Rebecca Nelson.

- Robin submitted the minutes for February 16, 2022 regular meeting for approval. **Motion** by Commissioner Teske to approve minutes as submitted. Second by Commissioner Letcher, motion carried.
- Commissioner Letcher and Commissioner Teske talked about refining a commissioner editorial/statement to DEQ regarding selenium and the standard set by DEQ. **Motion** by Commissioner Teske to approve edited Op Ed/Statement to DEQ to support changing the selenium standard set by DEQ. Second by Commissioner Letcher, motion carried.

Commissioner Approved Statement:

Politically Motivated Lake Kooconusa Standard Has Negative Consequences for Montana

By Jerry Bennett, Josh Letcher and Brent Teske

We have listened intently for over a year as State regulators imposed a new, very stringent site-specific water quality standard for selenium in Lake Kooconusa, while reassuring those who live here that this unusual action is both scientifically justified and in our best interests. As county commissioners, we want to believe both assurances, but after a great deal of study and analysis the reality is: neither is valid. It is important for all Montanans to understand that the flaws in the Department of Environmental Quality's (DEQ) work would negatively impact Montana.

Selenium is a natural, essential trace mineral in Montana and Canada that leaches from rocks and soil and is also disturbed through processes like mining and other activities such as irrigation. DEQ claims the Lake Kooconusa site-specific standard, which is far more stringent than the Environmental Protection Agency's guideline, as well as standards in the rest of Montana, is necessary to protect fish and water quality.

We don't question the need to protect water quality. But we have an obligation to our constituents to raise questions when things don't pass the smell test. The fact is the process and data used in this case does not support this standard.

The rulemaking began in September 2020 and resulted in a final standard just three months later of 0.8 micrograms per litre. That such a standard was passed so quickly is extremely unusual given that it is a site-specific standard (of which there are very few in Montana) and one that is based on fish tissue, of which there are no others in Montana.

Even more unusual, the standard of 0.8 micrograms per litre is nearly two times more stringent than the federally recommended guideline of 1.5 micrograms per litre. And most peculiar of all the new standard is below natural background levels in some upstream waterways and in other waterways feeding into Lake Kooconusa.

Why the rush to set this standard at the tail end of the Bullock administration? We do not know what, exactly, makes Lake Kooconusa so different from other Montana lakes that it needs such a standard. We don't know where, how, when or from what species fish tissue will be sampled to determine whether the standard is met. We don't know what impact the operation of the Libby Dam has on selenium concentrations. And we don't know why DEQ insists on a standard lower than the federal guideline, which is designed to protect the most sensitive fish, including white sturgeon.

DEQ and others point the finger at mining operators in Canada, who are addressing upstream selenium, spending billions of dollars on science-based water treatment plants. But how – with a straight face – do we suggest they have an obligation to reduce selenium levels in Lake Kooconusa to a level below what naturally occurs upstream and in other tributaries to Lake Kooconusa?

We have also NOT received scientifically justifiable reasons for this standard. Our fish remain completely safe to eat as recently confirmed by Montana FWP, and we see no credible fish tissue data exceeding EPA's selenium criterion.

Many of us also have grown increasingly concerned about how the DEQ has portrayed some of the findings regarding selenium, to often mischaracterizing them when it suits the agency's purpose. For example, citing a US Geological Survey report, regulators and activists have repeatedly stated that the site-specific standard for selenium is necessary because levels in Lake Kooconusa are rising rapidly. News articles quote them using words like "sharp" or "alarming" increases. Yet when we look at the data, average selenium levels in the US-side of Lake Kooconusa have remained stable, with very few samples ever exceeding the EPA criteria.

We've also heard Montana must set this low standard to protect fish downstream in Idaho. But the protective standard in Idaho is 3.1 micrograms per liter, more than three times DEQ's standard, twice that of the EPA standard and well above even the current level of selenium in the lake.

DEQ's standard risks the very real possibility that the lake will end up on EPA's list of impaired waters. We do not want one of our county's greatest assets on such a list, which will have serious, negative ramifications for both development and tourism.

At the end of the day, the standard is not in Lincoln County's or Montana's best interest, is not scientifically justified, and could have long-term negative impacts across Montana.

Jerry Bennett, Brent Teske and Josh Letcher are the elected county commissioners for Lincoln County which includes Lake Kooconusa

10:45 AM **Public Comment Time:** Present were Veronica Bovee-Anderson, Derrick Perkins, Ray Stout, and Rebecca Nelson. There were no public comments.

11:00 AM **Planning: Berzins Lakeshore Construction Permit / Regier Lakeshore Construction Permit / Dutton Acres Minor Sudivision / Family Transfer Process:** Present were County Planner Nick Raines, Noah Pyle, Veronica Bovee-Anderson, Derrick Perkins, Ray Stout and Rebecca Nelson.

- **Berzins Lakeshore Permit and Regier Lakeshore Permit,** both on Middle Thompson Lake. Property owners are requesting to install a deck along the steep bank of Middle Thompson Lake with steps leading down to the shoreline. Nick explained the projects are within the private 130' ACM Road easement immediately adjacent to and inclusive of the lakeshore. After further research of the easement and legal counsel, (MACO and County Attorney), the Planning Department recommends approval of Berzins Lakeshore and Regier Lakeshore Construction Permits subject to 6 conditions. Nick gave an overview of the recommended conditions of approval. **Motion** by Commissioner Teske to approve Berzins Lakeshore Construction Permit and Regier Lakeshore Construction Permit subject to 6 conditions and based on Planning Department recommendations.
- **Dutton Acres, 1 Residential Lot:** The proposed first minor subdivision of Parcel A of COS 1638 is located approximately 5 miles south of Libby. Access is from Honeysuckle Lane via Farm to Market Road. The developer intends to remove sanitary restrictions from the 4.09-acre parcel that was previously created in 1988. The lot will be served by an individual septic system and individual well. Planning Department recommends preliminary approval to Dutton Acres Subdivision, subject to 9 conditions. Commissioner Letcher questioned naming Ziplly Fiber in the report when there are other communication services. Nick said Ziplly Fiber was named because they have transmission mains buried along Honeysuckle Lane but will remove naming Ziplly Fiber specifically. **Motion** by Commissioner Teske to approve preliminary plat for Dutton Acres Subdivision, subject to 9 conditions, removing Ziplly Fiber specifically, and based on Planning Department recommendation. Second by Commissioner Letcher, motion carried.
- **Family Transfer Process:** Nick provided a section of the Lincoln County Subdivision Regulations under Procedures and Examination of Subdivision Exemptions. Nick explained the exemption process historically is a little different then what the county process has been. In regulations, planning staff reviewed the exemption request, and they determine if the exemption is the proper use of the claimed exemption and complies with the requirements set forth in the Montana Subdivision & Platting Act. Nick proposed to follow county regulations and allow planning staff to make those decisions administratively but bring a monthly report to commissioners showing exemptions that have been approved. Commissioner Teske commented this is standard policy in our subdivision regulations and with other counties. Commissioner Letcher agreed to follow county subdivision regulations moving forward. Nick commented that it is very clear in statutes what the criteria is for exemption use.

11:30 PM **Meeting Adjourned**

LINCOLN COUNTY BOARD OF COMMISSIONERS

Josh Letcher, Acting Chairman

ATTEST: _____
Robin Benson, Clerk of the Board