

**SPECIAL
CASCADE COUNTY COMMISSION MEETING
September 26, 2012
COMMISSION CHAMBERS
COURTHOUSE ANNEX, ROOM 111
10:00 a.m.**

Notice: These minutes are paraphrased and reflect the proceedings of the Board of Commissioners. MCA 7-4-2611 (2) (b). These minutes were officially approved at the October 9, 2012 meeting. Attachments can be found in the Clerk & Records Office.

PRESENT:

Commission: Madam Chair Jane Weber, Commissioner Bill Salina, and Commissioner Joe Briggs.

Staff seated with the Commission: Vince Kolar, Brian Hopkins, Carey Ann Shannon, Bonnie Fogerty, and Marie Sickels.

Public Seating: D. W. Anderson, Doug Bennyhoff, Leonard Lundby, Bruce Treis, Rose Malisan, Rachel Ousleys, R. Wojciechowski, Karl Puckett, and media.

BACKGROUND: Madam Chair Weber called the special meeting to order and announced that the only agenda item under discussion was a decision on whether an exemption on the current burning closure would be granted to producers farming on irrigated land (ie. Agricultural Burning) in Cascade County.

PRESENTATION: *Vince Kolar DES/Fire Coordinator* announced that on September 17th the Rural Fire Council met and discussed whether to allow producers to burn the stubble off their irrigated fields in preparation for winter wheat seeding. As of June 29, 2012 open burning has been authorized in Cascade County; therefore, allows no one to burn permits cannot be activated.

Madam Chair Weber stated that Vince met with the Fire Chiefs to discuss their professional opinion on allowing/disallowing exemptions to the burn ban. These Volunteer Fire Department Chiefs have over 100 years of experience among them; and their main goal is to provide for public safety. When the weather service issues a red flag alert due to low relative humidity and high winds, all burning is automatically banned. When sustained dry conditions exist as this summer, the burn ban remains is issued and remains in place until a major wetting event changes the conditions.

In response to the producer's requests to allow burning in their fields, Vince prepared a draft of "Cascade County Agricultural Burning Requirements" (see exhibit "A").

Madam Chair Weber also stated that the previous Friday (September 21, 2012) she and Vince were invited to Simms by a producer to review his proposed

agricultural burn and visit his fields. In reality, 15 to 20 producers met them and shared their concerns in the Simms gas station parking lot. Many of them asked why the burn ban was in effect and why irrigated fields could not be exempted from the ban. The Fire Chief, Ed Wheeler, responded by stating these are extreme fire conditions. He further explained that they are not confident they could control an escaped controlled burn. The Fire Departments are concerned about their own liability if they are involved in allowing a controlled burn and it escapes and damages property or life. The Fire Chiefs also mentioned many Volunteer Fire Departments have already expended their annual budgets due to the large number of fires this year.

Madam Chair Weber also stated that the producers commented that they need to have seed in the ground by October 1st.

Vince Kolar stated that the producers need a process in which they could be allowed to burn under a County-wide burn ban. He explained that he and the Fire Chiefs can examine each request on a case by case basis.

Madam Chair Weber questioned Council Brian Hopkins and Carey Ann Shannon on what they thought of the “Cascade County Agricultural Burning Requirements” document?

Brian Hopkins stated it is a good effort to make these conditions for the sake of public health and safety. He did have concerns that with this high risk activity he was not sure if an insurance company would either issue an indemnity bond or provide insurance.

Carey Ann Shannon stated that making the producers obtain a \$5000 bond and insurance is a double whammy. She suggested the condition relating to the \$5000 bond include language that the funds would ultimately be forfeited to the Rural Fire Council for distribution.

Madam Chair Weber announced that the \$5,000 bond was money upfront to help the Rural Volunteer Fire Chiefs recoup costs in the event of an escaped controlled burn where the RVFDs were called to an emergency. She also noted one of the conditions specifies that a producer would pay a \$2,500 callout fee should an emergency RVFD run be necessary; thereafter all additional costs (manpower, equipment, gas, etc...) would be assessed using the DNRC rates

Commissioner Briggs questioned why they were creating a separate permit structure outside of the normal burn permit process.

Vince Kolar responded by that these requests need to be evaluated on a case by case and that the normal burn permit process does not allow for that.

Brian Hopkins agreed that they could and should be integrated into the on-line burn permit system with public notice and through the public process.

Vince Kolar stated he would require all requesting producers to have a valid burn permit; however, he is not able to override the on-line burn permit system to allow exempt them from the burn-ban. He explained while some burn permit programs can implement closures by fire districts or legal descriptions, the Cascade County system is County-wide, and does provide additional requirements.

Commissioner Briggs reiterated that the current system should be able to add requirements and allow them to go through the burn permit program on a case-by-case basis.

CALL FOR PRODUCERS: Madam Chair Weber called for producers three times and no one came forward.

CALL FOR FIRECHIEFS; Madam Chair Weber called for Fire Chiefs and Leonard Lundby of 101 Manchester approached the Commission. He began by saying he was not comfortable with any type of controlled burning and suggested the Commissioners keep the requirements. He further stated if insurance was not sufficient, he would prefer the Commissioners increase the bond. He said producers have requested and been denied exemptions to the burn restrictions in past years; and if we get no moisture it will be a problem again next year. Lundby said it might be best to institute something to try it out, although he is uncomfortable. He cited examples of fires that got out of hand this year due to the dry conditions. He said it scares him that with his experience in fire fighting he has seen some extreme fire behavior.

Madam Chair Weber requested that Leonard Lundby describe the field that is under request for a controlled burn making the request to burn. Lundby said the field is located west of Simms; it has a small fire break has been worked with a disk that is a third the width of a road. He said that the fire break is currently inadequate, and given excellent conditions with water, disk, manpower, they may be able to hold the fire. Mr Kolar described how the producer intends to burn the field in narrow strips adjacent to the fire break to create an even wider break before igniting the entire field.

There was further discussion about the County's liability if a fire escapes the field.

Dave Anderson, Simms-Fort Shaw Fire Chief, stated that he supports Leonard Lundby's comments and told the Commission of a recent fire on a small trailer of hay that burned 15 acres and in a very short time.

CALL FOR PRODUCERS: Madam Chair Weber called for producers three times in which no one came forward.

COMMENTS; Madam Chair Weber opened the special meeting for further comments in which Alicia Thompson Health Officer for the City/County Health Department reminded the Commission that they have had several weeks of unhealthy air quality due to the other fires in the area. She also stated that additional burning might compound the problem, and that the population has been impacted by the smoke. Bruce Treis Sanitarian for the City/County Health Department also spoke about the air quality and suggested they visit this website todaysair@mt.gov to check air quality prior to allowing someone to burn. Commissioner Briggs questioned if this station would monitor the Fairfield Bench area. Mr. Treis replied in the negative, but the general air quality would likely be similar in the outlying areas.

Doug Bennyhoff City Fire Chief advised the Commission to retain the conditions specifying the bond and insurance. He further said, if fire escaped and reached homes, or towns the funds would not be enough to cover it.

Madam Chair Weber noted some public members just arrived to the special meeting and again called for **PRODUCERS;**

Robin Baker of 1518 11th Ave. South spoke for the producers stating that they are aware of the dangers of the burning. She reminded the Commission that this is their livelihood, and that 12 Producers with their fire trucks would be at each burn. There was further discussion on the methods of burning strips of field at a time. Robin Baker stated that many of the producers are not in attendance of this meeting due to the fact they had to move cows today.

Randy Parker, a producer from the Fairfield Bench, stated that his irrigated ground produces denser stubble and fire is the most efficient method of treating the fields.

Commissioner Salina confirmed Leonard Lundby's stance on testing this exemption and allowing producers to burn on a case-by-case basis. Commissioner Salina characterized Mr. Lundby's position as "holding his nose," looking at each burn case by case; and possibly allowing some burning.

Commissioner Salina also addressed Robin Baker and the producers stating that it bothered him that a special meeting was requested and that the producers did not attend or take the time to bring their insurance agent to attest that they could insure neighbors if damages occurred. He also said that it bothers him that the burn ban has been in effect since June 29th and now there is urgency to burn; however none of the producers has come to provide input. He also questioned the fact that an insurance agency would cover any burn.

The Commission and Civil Attorney continued to discuss liability issues and whether the Producers would be covered by an intentional fire.

The Commission also questioned Randy Parker about the magical date of October 1st to plant winter wheat. Mr. Parker informed them that this date is a rule of thumb and is the earliest date to seed to allow it a chance to grow.

Rose Malisani from the County Extension Office stated that the producers could use mechanical processes instead of burning to prepare fields for seeding. There was further discussion on methods that might work and ones that were tried and did not work.

Commissioner Briggs stated this was a tough call due to the lack of time to review, and insurance issues that are still in question.

Madam Chair Weber thanked the producers, Randy Parker, Robin Baker, and the Rural Fire Chiefs for inviting her to their community last Friday. She felt the issues were thoroughly vetted and appreciated the opportunity to view the fields. She also thanked Vince Kolar for his hard work creating this draft and the Civil Attorneys for their review of the draft document. She especially thanked the RVFD Chiefs for their involvement in developing and commenting on the draft conditions.

Commissioner Salina stated that they just met with the Rural Fire Chiefs last week to discuss their concerns. He was pleased that this will be previewed on a case by case basis that might be allowed in their area. He also noted that he was not comfortable with the insurance questions and the October deadline.

The Commission sought the Civil Attorney's advice on their options during this special meeting. Brian Hopkins responded by giving the following options; table until the regular October 9th meeting, approve the burning requirements, deny the burning requirements, or re-evaluate and call for a meeting at a later date with 48 hour public notice. He also noted that they need to look at the requirements of insurance, indemnification and the bond requirement.

Vince Kolar also pointed out that the requirement for the producers to burn only in the morning which states "fields must be not smoldering or showing signs of smoke beyond noon". He requested that be changed to 2:00 p.m. because morning dew may delay ignition start to mid-morning and only allow a brief window for burning.

Dale Anderson reminded the Commission of a recent fire that jumped the river.

Commissioner Briggs announced that he was prepared to make a **MOTION**. Madam Chair Weber requested to make an announcement prior to a motion being made, she apologized that not all of the Rural Fire Chiefs were notified

due to the timeline of these requests and that only the Rural Fire Chiefs in the requested burning area (ie. irrigated areas) have been involved.

Leonard Lundby affirmed that the Rural Fire Chiefs will still have input to Vince Kolar on the decision whether to will allow burning in their district, and that the document captures everything they discussed at a previous meeting. He also stated that if test drive fails that it would be the responsibility of the producers.

Commissioner Briggs stated that this is a tough issue and he believes they should give the producers a methodology to have relief from the County- wide burn ban, and he believes that the document created does a good job of protecting the County. He is pleased to see that the Fire Chiefs make the final decision in allowing a burn to take place in their district.

Commissioner Briggs made a **MOTION** to adopt this document and the methodology on a case by case basis which overrules the ban in our permit system with one modification to one condition - changing the time from noon to 2:00 p.m. to end burning.

Prior to a call for the vote, Commissioner Salina affirmed that Commissioner Briggs accepts the conditions of the contract with the exception of the time change.

Commissioner Briggs stated he felt that it is up to the producers to meet all of the conditions in order to be granted exception and transfers the authority back to the Fire Chiefs who has the greatest understanding of what's best for public safety.

Madam Chair Weber announced that if this motion passes that exceptions will be granted on a case by case basis and that Vince Kolar will determine how many burns may occur simultaneously also her vote is based on the option to test drive this process this season since the situation has occurred two consecutive years.

Madam Chair Weber then called for the vote. **Motion carried 3-0** A revised recorded copy of this document is attached (see exhibit "B").

ADJOURNMENT: The meeting was adjourned at 11:20 p.m.