

BEFORE THE BOARD OF ENVIRONMENTAL QUALITY  
STATE OF IDAHO

HECLA MINING COMPANY )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 IDAHO DEPARTMENT OF )  
 ENVIRONMENTAL QUALITY, )  
 )  
 Respondent, )  
 )  
 IDAHO CONSERVATION LEAGUE, )  
 )  
 Intervenor. )  
 \_\_\_\_\_ )

Docket No. 0102-03-13  
  
 ORDER DISMISSING  
 CONTESTED CASE  
 WITH PREJUDICE

**RECEIVED**  
 JUN 15 2004  
 DEQ Hearings Coordinator  
 DOCKET NO. \_\_\_\_\_

1. Facts and relevant procedural history. Hecla Mining Company and the Idaho Department of Environmental Quality ("DEQ") have filed a Stipulation and Motion for Dismissal in which the Petitioner and Respondent indicate they have reached a full and complete settlement of all claims and issues raised or that could have been raised in the above-captioned contested case. The settlement is based on a modified 401 certification.

Intervenor, Idaho Conservation League ("ICL") has not agreed to the terms of the settlement and is not a party to the Settlement Agreement. The record establishes that ICL has not been provided the opportunity to participate in settlement negotiations or discussions between DEQ and Hecla. ICL has, however, been provided with the opportunity to review the proposed modified 401 certification and supporting documentation, an opportunity to state its position regarding the proposed modifications, to request an evidentiary hearing, or to request additional time for evaluation of the

proposed revisions to the 401 certification, all in accordance with IDAPA58.01.23.612 through 614. The record also establishes that the final Settlement Agreement with Exhibit A has been presented to ICL and ICL has declined to accept the settlement without certain modifications to the agreement. ICL has not objected to the settlement or requested an evidentiary hearing regarding the settlement in this contested case proceeding.

2. Consideration of Settlements. When one or more parties to a proceeding is not a party to the settlement, or when the settlement presents issues of significant implication for other persons, the settlement agreement shall be presented to the presiding officer for approval. The presiding officer may hold an evidentiary hearing to consider the reasonableness of the settlement and whether acceptance of the settlement is consistent with the Board's charge under the law. IDAPA 58.01.23.612. Neither the Petitioner, Respondent, nor Intervenor in this proceeding have requested an evidentiary hearing, and the presiding officer has determined that an evidentiary hearing is not necessary in order to properly evaluate the reasonableness of the settlement and whether acceptance of the settlement is consistent with the Board's charge under the law.

The Rules do not bind the presiding officer to accept settlement agreements that are not unanimously accepted by all parties or that have significant implications for persons not parties. In these instances, the presiding officer has a duty to independently review any proposed settlement to determine whether the settlement is in accordance with the law. IDAPA 58.01.23.614. The settlement proposed in the instant proceeding has not been unanimously accepted by all the parties and the presiding officer has independently reviewed the proposed settlement for adherence to legal requirements.

ORDER DISMISSING CONTESTED CASE WITH PREJUDICE  
Page 2 of 4

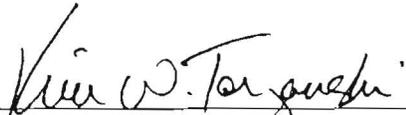
3. Burden of Proof Regarding Settlements. Proponents of a proposed settlement carry the burden of showing that the settlement is in accordance with the law. The presiding officer may require the development of an appropriate record in support of or opposition to a proposed settlement as a condition of accepting or rejecting the settlement. IDAPA 58.01.23.613. In this case, the presiding officer finds that an appropriate record has been created to document each party's position regarding the Settlement Agreement.

The presiding officer has determined that the Settlement Agreement does not necessitate further clarification in order to establish that its terms are in accordance with the law. Exhibit A to the Settlement Agreement is a copy of the agreed upon modified 401 certification which DEQ agrees to issue by June 30, 2004, subject to public notice and comment. The final paragraph of Exhibit A states, "This section 401 certification and associated conditions may be appealed by submitting to DEQ a petition to initiate a contested case, pursuant to Idaho Code §39-107(5) and the Rules of Administrative Procedure Before the DEQ Board IDAPA 58.01.23, within 35 days of the date of this letter." The presiding officer finds that the Settlement Agreement incorporating Exhibit A is sufficient under IDAPA 58.01.23.613 and that DEQ and Hecla have met their burden.

IT IS HEREBY ORDERED that the Stipulation and Motion to Dismiss Contested Case is Granted and the above-captioned contested case be dismissed with prejudice. Pursuant to Idaho Code §67- 5245 and IDAPA 58.01.23.730, this is a preliminary order which will become a final order without further notice unless a petition for review by Board of Environmental Quality is filed with the Hearing Coordinator within fourteen

(14) days after the service date of this preliminary order. Pursuant to Idaho Code §67-5245(4), the basis for review must be stated in the petition.

DATED this 15th day of June, 2004.

  
KIM W. TORYANSKI  
Hearing Officer

ORDER DISMISSING CONTESTED CASE WITH PREJUDICE  
Page 4 of 4



