

FRIDAY DECEMBER 9, 2016  
METCALF BUILDING, ROOM 111  
1520 EAST 6<sup>th</sup> AVENUE, HELENA, MONTANA

**NOTE:** It is expected that most available Board members will be participating telephonically. The Board attorney and secretary, along with any Board members who so choose, will be present at the location stated above. Interested persons, members of the public, and the media are welcome to attend at the location stated above. Members of the public and press also may join Board members with prior arrangement. Contact information for Board members is available on the Board's Website (<http://deq.mt.gov/DEQAdmin/ber>) or from the Board Secretary (406-444-2544). The Board will make reasonable accommodations for persons with disabilities who wish to participate in this meeting. Please contact the Board Secretary by telephone or by e-mail at [hhoule@mt.gov](mailto:hhoule@mt.gov) no later than 24 hours prior to the meeting to advise her of the nature of the accommodation needed.

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**10:00 AM**

**I. ADMINISTRATIVE ITEMS**

**A. REVIEW AND APPROVE MINUTES**

1. The Board will vote on adopting the September 30, 2016 meeting minutes.
2. The Board will vote on adopting the November 15, 2016 Hearing minutes.

B. The Board will establish the 2017 meeting schedule.

**II. BRIEFING ITEMS**

**A. CONTESTED CASE UPDATE**

1. Enforcement cases assigned to the Hearing Examiner
  - a. **In the matter of violations of the Public Water Supply Laws by Rene Requa at Highlander Bar and Grill, PWISD MT0004764, Lewis and Clark County (FID 2299, Docket No. PWS-14-08), BER 2014-09 PWS. A Stipulation was filed on July 11, 2016.**
  - b. **In the matter of violations of the Water Quality Act by Reflections at Copper Ridge, LLC at Reflections at Copper Ridge Subdivision, Billings, Yellowstone County (MTR105376), BER 2015-01 WQ. A Second Scheduling Order was issued on August 31, 2016.**
  - c. **In the matter of violations of the Water Quality Act by Copper Ridge Development Corporation at Copper Ridge Subdivision, Billings, Yellowstone County (MTR105377), BER 2015-02 WQ. A Second Scheduling Order was issued on August 2, 2016.**
  - d. **In the matter of violations of the Water Quality Act by Buscher Construction and Development, Inc., at Poly Vista Estates, Trailhead, and Falcon Ridge II Subdivisions, Billings, Yellowstone County, BER 2015-03 WQ. An Order Vacating the Scheduling Order and Staying the case until November 30, 2016 was filed on September 26, 2016.**

- e. **In the matter of appeal of Violations of the Opencut Mining Act by Big Rock, LLC at Wheeler Gravel Pit, Missoula County, Montana BER2016-06 OC (Opencut No. 719; FID 2471).** A Motion to Dismiss and Brief in Support was filed by DEQ on October 12, 2016.
  - f. **An appeal in the matter of violation of the Opencut Mining Act by Goran, LLC at the Goran unpermitted gravel pit, Stillwater County, Montana (Opencut No. 2790; FID 2500), case number BER2016-09 OC.** A Proposed Scheduling Order was filed by DEQ on October 7, 2016.
2. Non-enforcement cases assigned to the Hearings Examiner
- a) **In the matter of Phillips 66 Company's appeal of Outfall 006 Arsenic Limits in Montana Pollution Discharge Elimination System Permit No. MT0000256, Billings, Yellowstone County, MT, BER 2014-05 WQ.** On March 25, 2015, the hearing examiner issued an Order Approving the Stipulation to Stay Appeal and ordered the parties to comply with the terms of the stipulation.
  - b) **In the matter of LT Trucking, LLC, appeal Riverside Contracting Inc., Reclamation Bond Release Permit #2083, CVID#17280, BER2016-04 OC.** The Parties were requested to propose a schedule by October 14, 2016.
  - c) **In the matter of Columbia Falls Aluminum Company's (CFAC) appeal of DEQ's modification of Montana Pollutant Discharge Elimination System Permit No. MT0030066, Columbia Falls, Flathead County, MT, BER 2014-06 WQ.** A Hearing was held on November 16 – 21, 2016.
  - d) **In the matter of Heart K Land & Cattle Co.'s appeal of its final 401 Certification with conditions, BER 2015-05 WQ, application No. MT4010948; MWO-2013-00590-MTB-Addendum, issued by DEQ for the Yellowstone River, Park County, MT.** Oral Arguments were heard on Summary Judgment on September 1, 2016.
  - e) **In the matter of Westmoreland Resources, Inc.'s, BER 2015-06 WQ, appeal of final MPDES permit No. MT0021229 issued by DEQ for the Absaloka Mine in Hardin, Big Horn County, MT.** A Second Prehearing Order was issued on May 17, 2016.
  - f) **In the matter of the notice of appeal of final MPDES Permit No. MT0000264 Issued by DEQ for the Laurel Refinery in Laurel, Yellowstone County, Montana, BER 2015-07 WQ.** An Order Modifying the Schedule was issued on July 22, 2016.
  - g) **An appeal in the matter of amendment application AM3, Signal Peak Energy LLC's Bull Mountain Coal Mine #1 Permit No. C1993017, case number BER2016-07 SM.** A Joint Proposed Scheduling Order was filed by the Parties on November 1, 2016.
  - h) **An appeal in the matter of section 401 Water Quality Certification issued for DEQ Application Number MT4011012, the Clark Hydroelectric Project, Beaverhead County, Montana, case number BER2016-08 WQ.** A Brief in Support of Motion for Summary Judgment and Declaration of John Gangemi in Support was filed by the Attorneys for

Clark Canyon Hydro, LLC, and the Appellant filed a Motion to Strike or Motion to Stay on November 4, 2016.

3. Contested Cases not assigned to a Hearing Examiner

- a. **In the matter of the notice of appeal and request for hearing by Western Energy Company (WECO) regarding its MPDES Permit No. MT0023965 issued for WECO's Rosebud Mine in Colstrip, BER 2012-12 WQ.** On April 9, 2014, the hearings examiner issued an Order Granting the Joint Unopposed Motion for Partial Remand of Permit to Department of Environmental Quality and for Suspension of Proceedings. This matter has been stayed while an informal judicial review action proceeded. On March 14, 2016, the Judge issued an Order on Summary Judgment invalidating the permit modification and remanding the matter for consideration consistent with the opinion. A motion for an order requiring payment of attorney fees has been briefed and submitted for decision.

**III. ACTION ITEMS**

A. NEW CONTESTED CASES

1. **In the matter of Appeal the Conditions of the Certification for Timbershor at Finley Point Wastewater subdivision rewrite Lake County E.Q. #15-1971, Lake County, Montana, case number BER2016-10 SUB.** The Board may decide to hear the matter or assign a permanent Hearing Examiner.

B. INITIATION OF RULEMAKING

DEQ will propose that the Board initiate rulemaking to:

1. Establish new and revised water quality standards in Circular DEQ-7. The revisions to Circular DEQ-7 will be incorporated by reference by amending rules in ARM 17.30 Subchapters 5, 6, 7, and 10, ARM 17.24 Subchapter 6, ARM 17.36 Subchapter 3, ARM 17.55 Subchapter 1, and ARM 17.56 Subchapters 5 and 6. Also proposed are the following revisions to ARM 17.30 Subchapter 6: revisions to the locations of surface water use class designations, reference to the state's compliance schedule authorizing provision for permits, and inclusion of most probable number as acceptable units for E. coli measurement. Additionally, a statement is proposed to be added to ARM 17.30.715 that will clarify that the Clark Fork River is subject to nonedegradation review.

C. FINAL ACTION ON CONTESTED CASES

1. **In the matter of termination by DEQ of the application by Payne Logging, Inc. Requesting to move boundaries of the Payne Logging facility in Libby, Lincoln County, Montana, BER 2015-08 JV.** Briefing has been completed and the matter is ready for final action.
2. **In the matter of Appeal Amendment AM4, Western Energy Company Rosebud Strip Mine Area B, Permit No. C1984003B hearing following the Parties submissions of briefs in support and opposition of Summary Judgment.** On November 15, 2016, the Board heard oral arguments from the parties on the Petitioners Motion for Summary Judgment. The Board will discuss the matter and may take final action.

#### **IV. GENERAL PUBLIC COMMENT**

Under this item, members of the public may comment on any public matter within the jurisdiction of the Board that is not otherwise on the agenda of the meeting. Individual contested case proceedings are not public matters on which the public may comment.

#### **V. ADJOURNMENT**