

MINUTES
Teleconference
December 9, 2016

Call to Order

The Board of Environmental Review's meeting was called to order by Chairperson Miles at 9:00 a.m., on Friday September 30, 2016 in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana.

Attendance

Board Members Present: Chairperson Joan Miles, Dr. Robert Byron, Roy O'Connor

Board Members Present by Phone: Michele Reinhart Levine, Marietta Canty, Chris Tweeten

Board Members Absent: Robin Shropshire

Board Attorney Present: Ben Reed, Attorney General's Office, Department of Justice and Andres Haladay, Department of Justice

Board Liaison Present: George Mathieus

Board Secretary Present: Hillary Houle

Court Reporter Present: Laurie Crutcher, Crutcher Court Reporting

Department Personnel Present: Amy Steinmetz, Christine Weaver, Emilie Erich Hoffman - WQD; Martin Van Oort, Kevin Krogstad, Adam McMahon, Pete Schade, Chris Yde, Christopher Dorrington – COMB; Aaron Pettis, Norman Mullen, Rebecca Convery, John North, Bradley Jones - Legal

Interested Persons Present: Wade Steere, Rusty Batie, Andy Forsythe – WECO; Steve Gross – Local 400; Shiloh Hernandez – WELC; Anne Hedges, Derf Johnson – MEIC; Jim Brown – Payne Logging Legal.

Interested Persons Present by Phone: Peter Mohr, John Caughman, Steve Wade, Rob Ericson, John Tietz, Tom Coxs, Jeff Wiseman, Frank Bartlett

Review and Approve Minutes

I.A.1. September 30, 3016 Meeting Minutes

Chairperson Miles called for a motion to adopt the minutes. Ms. Levine so MOVED and Dr. Byron SECONDED. The motion CARRIED unanimously.

I.A.2 November 15, 2016 Meeting Minutes

Chairperson Miles called for a motion to adopt the minutes. Dr. Byron so MOVED and Mrs. Levine SECONDED. The motion CARRIED unanimously.

I.B. Establish the 2017 Meeting Schedule

There was discussion about the proposed scheduling date and a conflict for the Board on the proposed first meeting on February 3, 2017. The Board agreed to move the date to January 31, 2017. The remaining proposed dates remain unchanged.

Briefing Items Contested Case Update Enforcement Cases assigned to a Hearing Examiner

II.A.1.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.

Mr. Reed reported the matter is being resolved per the Stipulation.

II.A.1.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.

Mr. Reed reported the Parties are following the Scheduling Order.

II.A.1.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.

Mr. Reed reported the Parties are following the Scheduling Order.

II.A.1.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.

Mr. Reed reported a mediation was unsuccessful and the Parties will continue with the contested case.

II.A.1.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).

Mr. Reed reported he was drafting a Dismissal Order, and will be submitted at another meeting to the Board for Examination. The parties will be given an opportunity to be heard at that meeting.

II.A.1.f. An appeal in the matter of violation of the Opencut Mining Act by Goran, LLC and the Goran unpermitted gravel pit, Stillwater County, Montana (Opencut No. 2790; FID 2500), case number BER2016-09 OC.

Mr. Reed reported a Proposed Scheduling Order had been filed but he had not issued an order yet, but planned on doing so.

Briefing Items Contested Cases non-enforcement cases assigned to a Hearing Examiner

II.A.2.a. In the matter of Phillips 66 Company's appeal of Outfall 06 Arsenic Limits in Montana Pollution Discharge Elimination System Permit No. MT0000256, Billings, Yellowstone County, MT, BER 2014-05 WQ.

Mr. Reed reported the Stipulation to Stay the Appeal is still in effect.

II.A.2.b. In the matter of LT Trucking, LLC, appeal Riverside Contracting Inc., Reclamation Bond Release Permit #2083, CVID#17280, BER2016-04 OC.

Mr. Reed reported the Department was coordinating with the Appellant as to the status of the Appellants legal counsel and he anticipated resolution by the next Board meeting.

II.A.2.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.

Mr. Reed reported that a hearing was held, that he will retain the case, and that the matter will probably be ready to be heard by the March Board meeting.

II.A.2.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; MWQ-2013-00590-MTB-Addendum, issued by DEQ for the Yellowstone River, Park County, MT.

Mr. Reed reported that he is working on finalizing his response to the Motion for Summary Judgment.

II.A.2.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.

Mr. Reed reported that an Order Staying the Proceedings will be issued.

II.A.2.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.

Mr. Reed reported that the appeal is ongoing.

II.A.2.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.

Mr. Reed reported that a Scheduling Order would be issued.

II.A.2.h. An appeal in the matter of 401 Water Quality Certification issued for DEQ Application Number MT4011012, the Clark Canyon Hydroelectric Project, Beaverhead County, Montana, case number BER2016-08 WQ.

Mr. Reed reported there was some confusion amongst the parties in regards to filing procedures. Intervenor Clark Canyon Hydro filed a summary judgment motion before its' motion before its' intervention was granted. These procedural matters will be clarified in the next few days.

II.A.3. **Briefing Items Contested Cases Not Assigned to a Hearing Examiner**

II.A.3.a. In the matter of 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.

Mr. Reed reported that the case is currently in litigation regarding attorney fees.

III. **Action Items**

III.A. New Contested Cases

III.A.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.

Chairperson Miles called for a motion to assign the case to Andres Haladay as the Hearing Examiner. Mrs. Levine SO MOVED. Mr. O'Connor SECONDED. The motion CARRIED unanimously.

III.B. **Initiation of Rulemaking**

III.B.1. Establish new and revised water quality standards in Circular DEQ-7.

Mrs. Steinmetz briefed the Board on the rulemaking. There were no questions from

the Board.

Chairperson Miles called for a motion to initiate the rulemaking. Mr. O'Connor SO MOVED. Dr. Byron SECONDED. The motion CARRIED unanimously.

III.C. Final Action on Contested Cases

III.C.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.

The Board heard arguments for and against Motion for Summary Judgment.

Mr. Tweeten moved the Board reject the Hearing Examiner's proposed decision. and remand the matter to the Hearing Examiner for the purposes of conducting future proceedings with respect to all possible issues that the parties may wish to raise with respect to the appropriateness of the Department's action on the application. Mrs. Levin SECONDED the motion. The motion CARRIED with Chairperson Miles and Mr. O'Connor voting against the motion.

III.C.2. In the matter of Appeal Amendment AM4, Western Energy Company Rosebud Strip Mine Area B, Permit No. C1984003B, case number 2016-03 SM hearing following the Parties submissions of brief in support and opposition of Summary Judgment.

The Board discussed the arguments heard at the November 15, 2016 Special Hearing and options for proceeding with the case.

Mr. Tweeten moved the Board overrule the Petitioner's Motion for Summary Judgment, and that the Board appoint a Hearing Examiner to preside over proceedings in this matter on remand, and direct the Hearing Examiner to conduct a hearing with respect to all issues factual and legal that is present in the matter. Mr. O'Connor SECONDED the motion. The motion passed UNANIMOUSLY.

IV. **General Public Comment**

None was offered.

V. **Adjournment**

Chairperson Miles adjourned the meeting at 1:23 p.m.

Board of Environmental Review December 9, 2016 minutes approved:

JOAN MILES
CHAIRMAN
BOARD OF ENVIRONMENTAL REVIEW

DATE