

**BOARD OF ENVIRONMENTAL REVIEW
MINUTES**

December 8, 2017

Call to Order

The Board of Environmental Review's meeting was called to order by Chairperson Deveny at 9:02 a.m., on Friday, December 8, 2017, in Room 111 of the Metcalf Building, 1520 East 6th Avenue, Helena, Montana.

Attendance

Board Members Present: Chairperson Christine Deveny

Board Members Present by Phone: John Felton, Dexter Busby, Hillary Hanson, Tim Warner, John DeArment

Board Members Absent: Chris Tweeten

Board Attorney Present: Sarah Clerget, Attorney General's Office (AGO)

Board Liaison Present: George Mathieus

Board Secretary Present: Lindsay Ford

Court Reporter Present: Laurie Crutcher, Crutcher Court Reporting

Department Personnel Present: Tim Davis, Myla Kelly, Eric Urban, Jon Kenning, Jason Garber, Joanna McLaughlin, Christine Weaver, Hannah Riedl, Rachel Clark, Eric Sivers, Emilie Erich Hoffman, Melissa Schaar – WQD; Dave Klemp – AEMD; John Arrigo, Chad Anderson – ENFD; John North, Kurt Moser, Kirsten Bowers, Mark Lucas – Legal; Jen Lane – MEPA

Interested & Other Persons Present: Catherine Laughner – BKBH; Alan Olson – Montana Petroleum Association; Aleisha Solem – AGO Agency Legal Services Bureau

Interested Persons Present by Phone: Mark Fix – Northern Plains Resource Council; Brenda Lindlief-Hall – Tongue River Water Users Association; Guy Alsentzer – Upper Missouri Waterkeeper; Andrew Gorder – Clark Fork Coalition; Derf Johnson – Montana Environmental Information Center

Roll was called: Chairperson Deveny was present in person, and five Board members were present via teleconference, providing a quorum.

I.A. Administrative Items – Review and Approve Minutes

I.A.1. September 29, 2017, Meeting Minutes

Mr. Mathieus proposed an amendment to Section III.C.1. Following “reassigned to the present hearing examiner” DEQ proposed “for all procedural matters” be added to the text. Ms. Clerget agreed on the amendment.

Chairperson Deveny MOVED to include the amendment into the meeting minutes. Mr. Busby SECONDED. The motion PASSED unanimously.

Chairperson Deveny proposed an amendment to the General Public Comments section to reflect the discussion acknowledging the work and public service of the former Board members.

Chairperson Deveny MOVED to include the amendment into the meeting minutes. Ms. Hanson SECONDED. The motion PASSED unanimously.

I.B.1 Establish the 2018 Meeting Schedule

There was discussion about the proposed dates. Chairperson Deveny pointed out a few changes: Proposed date of April 2, 2018 is a Monday and will be moved to Friday, April 6, 2018. Proposed date of December 8, 2018 is a Saturday and will be moved to Friday, December 7, 2018.

Chairperson Deveny made a motion to approve the 2018 schedule with those changes. Ms. Hanson MOVED, Mr. Felton SECONDED. The motion PASSED unanimously.

II.A.1. Briefing Items – Enforcement Cases assigned to the Hearing Examiner

II.A.1.a. 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.

Ms. Clerget had a recent status conference with the parties and the hearing originally set for January 9 through January 11 is going to be rescheduled. Another status conference will be held to discuss scheduling the hearing.

II.A.1.b. 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.

Ms. Clerget had a recent status conference with the parties and the hearing originally set for January 9 through January 11 is going to be rescheduled. Another status conference will be held to discuss scheduling the hearing.

II.A.1.c. In the matter of violation of the Opencut Mining Act by Goran, LLC, at the Goran gravel pit, Stillwater County, Montana (Opencut No. 2790; FID 2500), BER 2016-09 OC.

Ms. Clerget said the parties have exchanged settlement agreements and are finalizing language. Ms. Clerget said she expects this case to settle relatively quickly.

II.A.1.d. In the matter of Appeal of Oil Field Rock and Logistics, Docket No. OC-16-12 (FID 2506), Redstone, Montana, BER 2016-11 OC.

Ms. Clerget said there is a scheduling order for briefing motions for summary judgement and it is moving along at a good pace.

II.A.1.e. In the matter of Dennis and Sandra Dickenson's appeal of DEQ Subdivision Section Contract Reviewer's decision to deny the Dickenson's subdivision application, EQ#17-1398, Jefferson County, BER 2017-06 SUB.

Ms. Clerget said a scheduling order was issued. She then granted motion to stay for 60 days. The parties will file a status update and Ms. Clerget will update the Board at its next meeting.

II.A.1.f. In the matter of violations of the Opencut Mining Act by Wagoner Family Partnership, d/b/a Wagoner's Sand and Gravel, at River Gravel Pit, Flathead County, Montana (Opencut No. 1798; FID 2512), BER 2017-02 OC.

Ms. Clerget has issued an order on summary judgement. The parties will have an opportunity to give exceptions and have oral argument before the Board at the next meeting.

II.A.2. Briefing Items – Non-Enforcement Cases Assigned to a Hearing Examiner

II.A.2.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.

Ms. Clerget said this case has been dismissed.

II.A.2.b. In the matter of LT Trucking, LLC's appeal of Riverside Contracting Inc.'s, Reclamation Bond Release for Permit #2083, CVID#17280, BER 2016-04 OC.

Ms. Clerget said this case has been dismissed.

II.A.2.c. In the Matter of Westmoreland Resources, Inc.'s appeal of final MPDES Permit No. MT0021229 issued by DEQ for the Absaloka Mine in Hardin, Big Horn County, MT, BER 2015-06 WQ.

Ms. Clerget said there is a stay for thirty days and is still waiting for notification by the parties of a final order issued by the Montana Supreme Court. Mr. North declined to comment because Counsel for the other parties were not present.

II.A.2.d. In the matter of appeal of amendment application AM3, Signal Peak Energy, LLC's Bull Mountain Coal Mine #1, Permit No. C1993017, BER 2016-07 SM.

Ms. Clerget received an update stating they are working on discovery issues and have proposed a schedule for motions. Ms. Clerget anticipates getting another scheduling order in place and said it's moving along at a good pace.

II.A.2.e. In the matter of appeal of Amendment AM4, Western Energy Company Rosebud Strip Mine Area B, Permit No. C1984003B, BER 2016-03 SM.

- Ms. Clerget and the parties had a recent scheduling conference with another to follow next week. They are working through discovery issues and getting a schedule in place.
- II.A.2.f. **In the matter of the notice of appeal and request for hearing by Montanore Minerals Corporation regarding issuance of MPDES Permit No. MT0030279, Libby, Montana, BER 2017-03 WQ.**
- Ms. Clerget said there is a relatively new scheduling order in place and the parties are in the discovery stage.
- II.A.2.g. **In the matter of appeal by Glacier Ranch Subdivision for PWSID #MT0004700 Phase 4 Review of Public Water and Sewer Main Extensions, EQ#17-1391, Somers, MT, BER 2017-04 SUB.**
- Ms. Clerget said this case has been dismissed.
- II.A.2.h. **In the matter of Montana Northwest Company's Appeal of DEQ Waiver Review Committee's decision to deny Alla and Yevegeniy Kirilovich's request for a source specific mixing zone for Block 1, Lot 3 of Sol Acreage Tracts #2, EQ# 17-1160, Missoula, Montana, BER 2017-05 SUB.**
- Ms. Clerget said this case has been dismissed.
- II.A.2.i. **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.**
- Ms. Clerget said there is a stay in place until February 16, 2018 and the parties are in discussions amongst themselves.
- II.A.2.j. **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.**
- Ms. Clerget said this case is ready for decision but the parties requested it be moved to the next meeting. The Board will hear oral arguments and decide the case at the next meeting.

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

- II.A.3.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.**
- Mr. North said there is no change in the status of the case. The matter is still before the District Court to determine attorney's fees before a notice of appeal can be filed with the Supreme Court.
- Chairperson Deveny asked if there was a reason for the delay that the Board should know about. Mr. North responded that negotiations didn't go as smoothly as he had anticipated and are still ongoing.

III.A. Action Items – Initiation of Rulemaking; DEQ propose that the Board initiate rulemaking to:

III.A.1. Initiation of Rulemaking for Variances from Standards due to Anthropogenic Contamination.

Ms. Kelly said the department is requesting initiation of rulemaking to implement 75-5-222(2), MCA, and briefed the Board on the components of the proposed rule. She explained the proposal represents commitment of thought, work and time on the part of DEQ staff, work group members and the EPA reviewers.

Chairperson Deveny opened the floor for public comment.

Mr. Olson commended Ms. Kelly and DEQ staff for all the work put in over the last couple of years. Mr. Olson proposed an amendment to New Rule I Subsection (1) and said if a permittee can meet all the conditions stated in the proposed rule then the Department should definitely grant the variance.

Mr. Gorder suggested more work to be done before the rule is final and that he and the Clark Fork Coalition would be happy to work with the Department on those issues.

Ms. Lindlief-Hall suggested changes be made before the rule is final.

Mr. Alsentzer suggested changes be made before the rule is final.

Mr. Fix suggested changes be made before the rule is final.

Mr. Mathieus, Mr. North and Ms. Kelly responded to questions from the Board.

Mr. Busby MOVED on the rulemaking. Mr. Felton SECONDED. The Motion PASSED unanimously.

III.B. New Contested Cases

III.B.1 In the matter of violations of the water quality act by JR Civil, LLC, Bozeman, Gallatin County, Montana (FID 2552, Permit MTG070826) BER 2017-07 WQ.

Ms. Clerget gave the Board Members their options, including assigning it to the Hearings Examiner.

Chairperson Deveny MOVED to assign the matter to the Hearings Examiner. Mr. Felton SECONDED. The motion PASSED unanimously.

III.C.1 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, Montana, BER 2014-06 WQ.

Mr. DeArment stated that he would be recusing himself from this case.

Ms. Clerget briefed the Board on her proposed order and four suggested recommendations: 1. Find Mr. Reed unavailable as a Hearing Examiner, 2. Order a new hearing, 3. Decide whether and how to assign the case, 4. Address the disclosure of DEQ’s proposed findings of fact and conclusions of law by finding that it was

inadvertent and should be disregarded with the final decision being based on the record before the Board.

Ms. Clerget, Mr. Mathieus, Mr. Moser and Ms. Laughner answered questions from the Board.

Chairperson Deveny MOVED to have the Board accept the fourth recommendation. Mr. Felton SECONDED. The motion PASSED unanimously.

Mr. Felton MOVED to find Mr. Reed unavailable as a Hearing Examiner. Chairperson Deveny SECONDED. The motion PASSED unanimously.

Chairperson Deveny MOVED to postpone deciding on items 2 and 3 until the Board could hold a special meeting on the matters. Ms. Hanson SECONDED. The motion PASSED unanimously.

V. Board Counsel Update

Ms. Clerget said she is updating the memo that's posted on the Board website that outlines the procedure for appearing and getting filings before the Board. She will have a draft update of the memo to the Board at the next meeting.

V. General Public Comment

None were offered.

VI. Adjournment

Chairperson Deveny MOVED to adjourn. Mr. Busby SECONDED. Chairperson Deveny adjourned the meeting at 11:25 a.m.

Board of Environmental Review December 8, 2017, minutes approved:

CHRISTINE DEVENY
CHAIRPERSON
BOARD OF ENVIRONMENTAL REVIEW

DATE