

BOARD OF ENVIRONMENTAL REVIEW  
FRIDAY, FEBRUARY 8, 2019  
METCALF BUILDING, ROOM 111  
1520 EAST 6<sup>th</sup> AVENUE, HELENA, MONTANA

**NOTE:** Interested persons, members of the public, and the media are welcome to attend at the location stated above. 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 [Lindsay.Ford@mt.gov](mailto:Lindsay.Ford@mt.gov) no later than 24 hours prior to the meeting to advise her of the nature of the accommodation needed.

**9:00 AM**

**I. ADMINISTRATIVE ITEMS**

**A. REVIEW AND APPROVE MINUTES**

1. The Board will vote on adopting the December 7, 2018 meeting minutes.

Public Comment.

**II. BRIEFING ITEMS**

**A. CONTESTED CASE UPDATE**

1. Enforcement cases assigned to the Hearing Examiner
  - a. **In the matter of the Notice of Appeal and Request for Hearing by CMG Construction, Inc. Regarding Notice of Violations and Administrative Compliance and Penalty Order, Docket No. OC-17-12, BER 2017-08 OC.** This matter has been stayed at the request of the parties since July 23, 2018. In December 2018, Ms. Clerget held a scheduling conference to place this matter back on a litigation schedule. Ms. Clerget issued an Amended Scheduling Order on January 8, 2019 and the parties are proceeding accordingly.
  - b. **In the Matter of Appeal Revocation of Cosa, Fischer Land Development Subdivision [ES# 42-78-S3-173] and Fischer Homes [ES# 42-80-T1-15], Roger Emery, Sidney, Richland County, Montana. [FID# 2214], BER 2018-03 SUB.** This matter has been stayed since July 24, 2018. The parties have stated in their Status Reports that they have come to an agreement in principle and are working toward finalizing the terms of their agreement. A status conference is set for February 11, 2019.
  - c. **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.** On December 20, 2018, the parties filed a Stipulation of Dismissal requesting that this matter be dismissed pursuant to Rule 41(a)(1)(A)(ii) of the Montana Rules of Civil Procedure. This matter was dismissed with prejudice.
  - d. **In the Matter of Violation of the Metal Mine Reclamation Act by Little Bear Construction, Inc. at Bob Weaver Pit, Granite County, Montana. (SMED NO. 46-117C; FID # 2567), BER 2018-02 MM.** This matter has been proceeding

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pursuant to a scheduling order issued May 31, 2018. The parties participated in a scheduling conference on January 22, 2019, at which they indicated the matter is in the final stages of settlement. The parties will submit either a notice of stipulation or status report by February 7, 2019.

2. Non-enforcement cases assigned to the Hearings Examiner
  - a. **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.** This matter has been stayed since March 28, 2018, pending the Montana Supreme Court decision in *MEIC and Sierra Club v. DEQ and Western Energy*. The parties will file a status report within 30 days of the Supreme Court's decision, which has not yet occurred.
  - b. **An appeal in the matter of amendment application AM3, Signal Peak Energy LLC's Bull Mountain Coal Mine #1 Permit No. C1993017, BER 2016-07 SM.** On December 14, 2018 MEIC filed a Motion requesting an extension of time in which to file a motion for summary judgment. Hearing examiner Clerget issued an Order granting that motion the same day. The parties were given until February 1, 2019 in which to file a motion for summary judgment.
  - c. **In the matter of Appeal Amendment AM4, Western Energy Company Rosebud Strip Mine Area B, Permit No. C1984003B, BER 2016-03 SM.** Ms. Clerget conducted a four-day hearing in this matter that concluded on March 22, 2018. After several extensions, the parties submitted their post-hearing filings on September 27, 2018. On October 23, 2018, Western Energy filed a notice of bankruptcy. On November 16, 2018, the parties held a status conference and agreed that the bankruptcy filing does not stay this proceeding. Ms. Clerget is reviewing the filings and will issue a Proposed Order. This matter will be before the Board at its April 2019 meeting.
  - d. **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, BER2017-03 WQ.** A two-day hearing on this matter was held on December 3-4, 2018. Ms. Clerget issued a Scheduling Order setting the deadlines for post-hearing submissions on January 9, 2019. The parties are currently working on their proposed FOFCOLs and responses, and oral argument on those proposed FOFCOLs is set for March 22, 2019.
  - e. **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.** This matter has been stayed since March 14, 2018. This appeal began with six distinct issues and only one remains. The remaining issue is tied to a rule regarding permit modifications that DEQ currently has out for public comment, and there is a pending permit modification that may affect the continuation of this case. Also, the parties have indicated settlement is possible. On September 13, 2018, Ms. Clerget granted a six month stay until February 25, 2019.

- f. **In the Matter of Notice of Appeal of Opencut Mining Permit #2351 Issued to Golden West Properties, LLC by Frank and Paulette Wagner Regarding Concerns and Unanswered Questions. BER 2018-04 OC, and In the Matter of Notice of Appeal of Opencut Mining Permit #2351 Issued to Golden West Properties, LLC by David Weyer on behalf of the Residents of Walden Meadows Subdivision. BER 2018-05 OC.** Ms. Clerget issued the Scheduling Order on September 20, 2018. On January 3, 2019, counsel for Golden West Properties filed an unopposed motion to modify the scheduling order. The motion was granted on January 8, 2019, and the parties are proceeding according to that schedule.
- g. **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.** The parties appeared before the Board at its October 2018 meeting for oral argument on the proposed Findings of Fact and Conclusions of law. At the meeting, the parties reached a settlement and the Board stayed the case until February 2019.

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 Order Granting the Joint Unopposed Motion for Partial Remand of Permit to Department of Environmental Quality and for Suspension of Proceedings. This matter was stayed while action proceeded. On March 14, 2016, the Judge issued Order on Summary Judgment invalidating the permit renewal and modification and remanding the matter for consideration consistent with the opinion. On January 25, 2018, the Department of Environmental Quality entered a Stipulated Judgement resolving the issue of attorney's fees. The Department of Environmental Quality and Western Energy have appealed the District Court's Order on Summary Judgment to the Montana Supreme Court and the matter is now fully briefed. The Parties are awaiting request for oral argument and/or final Order of the Montana Supreme Court.

### III. ACTION ITEMS

A. APPEAL, AMEND, OR ADOPT FINAL RULES

- 1. **The department requests that the board extend the comment period by 45 days for proposed amendments to Administrative Rules of Montana (ARM) pertaining to ground water standards incorporated by reference into Department Circular DEQ-7.** The board initiated rulemaking for the affected board rules at its December 7, 2018 regular meeting.

Public Comment.

## B. NEW CONTESTED CASE

1. **In the Matter of: Notice of Appeal and Request for Hearing by CHS, Inc. Regarding Issuance of MPDES Permit No. MT0000264, BER 2019-01 WQ.** On January 3, 2019, the Board received a request for hearing. The Board can decide to assign a hearings examiner for procedural issues in this case, hear the case itself, or assign a hearing examiner for the totality of the case.

Public Comment.

## C. ACTION ON CONTESTED CASES

1. **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 and 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.** On July 16, 2018, Ms. Clerget issued her Proposed Findings of Fact Conclusions of Law and a separate order on exceptions. Copper Ridge and Reflections at Copper Ridge submitted their exceptions to the Proposed Order on September 17, 2018. DEQ filed its response on October 31, 2018. This matter was fully briefed and before the Board for oral argument at the December meeting, but the Board lacked a quorum. The Board requested additional briefing from the parties on the owner/operator issue, which the parties have submitted. The Board will hear additional oral argument and then this matter is ripe for decision by the Board.

## IV. BOARD COUNSEL UPDATE

Counsel for the Board will report on general Board business, procedural matters, and questions from Board Members.

## V. 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.

## VI. ADJOURNMENT