

BOARD OF ENVIRONMENTAL REVIEW
FRIDAY, JUNE 12, 2020
via ZOOM CONFERENCE
HELENA, MONTANA

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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 at 444-6443, or by e-mail at DSutliff@mt.gov, at least 24 hours before the meeting to advise her of the nature of the accommodation(s) needed.

9:00 AM

I. ADMINISTRATIVE ITEMS

A. REVIEW AND APPROVE MINUTES

1. The Board will vote on adopting the April 17, 2020, meeting minutes.

Public Comment.

II. BRIEFING ITEMS

A. CONTESTED CASE UPDATES

1. Enforcement cases assigned to the Hearing Examiner

- 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 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 April 17, 2015, Copper Ridge Development Corporation and Reflections at Copper Ridge, LLC filed a Notice of Appeal and Request for hearing with the Board.
 - i. **Contested Case:** At its August 9, 2019 meeting the Board remanded this case back to Ms. Clerget for additional findings concerning the 4 photographs excluded at the June 13th owner/operator hearing. On February 21, 2020 Ms. Clerget issued an Order denying CR/REF's motion to sever these cases and ordering that the cases proceed as combined for procedural purposes. On April 23, 2020 Ms. Clerget issued an order requesting that the parties indicate whether a stay of the underlying contested case was appropriate, given the District Court appeal (below). The parties indicated they did not want a stay and therefore the underlying contested case has continued simultaneous to the appeal. CR/REF have filed a Motion in Limine and a Motion for Summary Judgment. The Motion in Limine is fully briefed and awaiting decision, the Motion for Summary Judgment is not yet fully briefed. On May 21, 2020 DEQ filed a Motion for Amended Scheduling Order and on May 27, 2020 CR/REF responded in opposition. That motion is not yet fully briefed.

- ii. **District Court case:** On April 20, 2020, BER became aware of a Petition for Judicial Review, Cause No. DV 20-0445, filed in the Thirteenth Judicial District court by CR/REF. The Petition appeals, pursuant to § 2-4-701, MCA (“Immediate review of agency action”), Ms. Clerget’s February 21, 2020 Order denying CR/REF’s Motion to Sever the cases. The Board was named as a party in that action and has retained outside counsel, Amy Christensen, to represent it. On May 15, 2020, the hearing assistant transmitted the administrative record to the District Court.
 - b. **In the Matter of the Notice of Appeal and Request for Hearing by Signal Peak Energy, LLC Regarding November 13, 2019 Notice of Violation and Administrative Compliance and Penalty Order, BER 2019-22 SM.** On December 16, 2019, the Board received an appeal from Signal Peak Energy, LLC. On April 1, 2020, Ms. Clerget issued an Order directing the parties to file a Joint status report or joint stipulation by April 30, 2020 or in the alternative a proposed litigation schedule with the status report. On April 30, 2020, the parties filed a Joint Status Report and Proposed Schedule. Ms. Clerget issued a Scheduling Order on May 7, 2020 and the parties are proceeding accordingly, with discovery closing in September 2020.
2. Non-enforcement cases assigned to the Hearings Examiner
- a. **In the matter of the Notice of Appeal and Request for Hearing by Alpine Pacific Utilities Regarding Issuance of MPDES Permit No. MTX000164, BER 2019-06 WQ.** This matter was stayed on February 10, 2020. As ordered, the parties filed a joint status report and proposed scheduling order on April 13, 2020. On April 20, 2020, Ms. Clerget issued an Amended Scheduling Order and the parties are proceeding accordingly, with expert disclosures due at the end of June.
 - b. **In the Matter of the Notice of Appeal and Request for Hearing by City of Great Falls Regarding Issuance of MPDES Permit No. MT0021920.** On August 9, 2019, the City of Great Falls filed a request for hearing with the Board. The Board assigned Sarah Clerget as hearing examiner on October 4, 2019. Ms. Clerget issued an Amended Scheduling Order on March 20, 2020, based on a Motion from the parties. Calumet Montana Refining, LLC has filed a motion to file brief as amicus curiae, Ms. Clerget issued an Order partially granting Calumet’s request on May 18, 2020. The parties are proceeding according to the Amended Scheduling Order and are in the initial discovery phase.
 - 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.** On September 25, 2015, Westmoreland Resources, Inc. filed a notice of appeal and request for hearing and Ms. Clerget assumed jurisdiction on September 8, 2017. The case was stayed pending a Montana Supreme Court decision, which was issued in September 2019. On April 24, 2020, the parties filed a Joint Motion for Stay indicating that they are working toward settlement of the case. That motion was granted on April 28, 2020 and the

case is stayed until July 24, 2020, at which time the parties must file either a joint motion for dismissal, a joint motion for remand of the permit to DEQ, or a joint proposed schedule.

- 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 on held on December 3-4, 2018. An oral argument on the parties' proposed FOFCOLs was held on May 7, 2019, making it ripe for decision from the hearing examiner. On July 24, 2019, the First Judicial District Court had issued its Order on cross motions for summary judgment in Cause No. CDV 2017-641, a declaratory relief action brought in District Court challenging DEQ's issuance of MPDES Permit No. MT0030279. While the District Court action was limited to conditions of the MPDES Permit that were not at issued before the Board, the District Court Order vacated the entire Permit, thus affecting the status of this case. On September 13, 2019, DEQ and Montanore requested a stay of this case pending the outcome of any Supreme Court appeal of the District Court Order, which was granted on September 17, 2019. The parties have cross-appealed the District Court's decision to the Supreme Court under Cause No. DA 19-0553, briefing is now completed and awaiting decision from the Supreme Court.
- e. **In the Matter of the Application for an Amendment of a Major Facility Siting Act Certificate by Talen Montana LLC.** On May 17, 2019, Westmoreland Mining LLC and Westmoreland Rosebud Mining LLC filed a Notice of Contest with the Board. Sarah Clerget was appointed hearing examiner on May 22, 2019. On December 17, 2019, the parties filed a Joint Motion to Govern Proceedings which suspended the proceedings through January 17, 2020. On January 17, 2020, Talen filed a Motion requesting a continued stay or, in the alternative, a return to active litigation. Westmoreland filed a Motion to Vacate, which essentially requests dismissal of the case. Ms. Clerget issued an Order on those Motions on May 1, 2020, granting in part and denying in part Talen's Motion, denying Westmoreland's Motion, and ordering the parties to file either a proposed schedule or request for scheduling conference by May 15, 2020. On May 15, 2020, the parties filed a "Joint Response to the May 1st Order" indicating that they had reached an agreement on a path forward that did not require a completed case management schedule. Ms. Clerget ordered the parties to file a status report by July 1, 2020 indicating whether they have reached a final settlement in this case. Absent a final settlement, Talen will inform Ms. Clerget that they relinquish the MFSA certificate amendment they challenged in the proceeding and then will complete the relinquishment by August 31, 2020. The parties agreed to move to dismiss this proceeding on or before September 30, 2020.
- f. **In the Matter of the Notice of Appeal and Request for Hearing by Spring Creek Coal, LLC Regarding Issuance of MPDES Permit No. MT0024619.** On April 12, 2019, the BER appointed Sarah Clerget as hearing examiner to preside over this contested case. On May 1, 2020, the parties filed a Joint Motion for Scheduling Order. On May 8, 2020, the parties filed a Joint Motion to Substitute, requesting that Navajo Transitional Energy Company, LLC replace

Spring Creek Coal as a party, as it had replaced Spring Creek Coal as the permit holder. The motion to substitute was granted on May 13, 2020 and an Amended Scheduling Order was issued on May 12, 2020. The parties are proceeding according to that order, with discovery closing in January 2021.

- g. **In the matter of the Notice of Appeal and Request for Hearing by CHS, Inc. regarding issuance of MPDES Permit No. MT0000264, BER 2019-01 WQ.** On February 8, 2019, the BER appointed Sarah Clerget as hearing examiner to preside over this contested case. The Board directed Ms. Clerget to consolidate this case with BER 2015-07 WQ for scheduling purposes. On December 13, 2019, the Board issued an Order for Final Agency Decision adopting the Stipulation of Appeal Issues Nos. 3, 4, 6, 7, and partially No. 5. Ms. Clerget conducted a scheduling conference in January and March and subsequently issued Orders continuing a stay in this case due to rulemaking regarding arsenic that has the potential to affect the remaining issues in the case. Ms. Clerget conducted a status conference with the parties on April 24, 2020 and subsequently issued an Order continuing the stay and setting a scheduling conference for September 4, 2020.
- h. **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.** On February 8, 2019, the BER appointed Sarah Clerget as hearing examiner to preside over this contested case. The Board directed Ms. Clerget to consolidate this case with BER 2019-01 WQ (CHS) for scheduling purposes, and therefore update on this case is the same as above.
- i. **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.**
 - i. **District Court Case:** The parties took a subpoena dispute to the District Court on June 1, 2018 with Cause No. DV 18-0869. The BER was named as a Defendant in that District Court case, and Ms. Clerget filed a "Notice of Non-Participation" before the District Court on behalf of the BER. The District Court issued a ruling on the subpoena issue on November 14, 2018 and attorney's fees on March 25, 2019. On May 22, 2019 Signal Peak appealed to the Montana Supreme Court in Cause No. DA 19-0299. Opening briefs were filed September 20, 2019. The BER has retained Amy Christensen to represent it before the Supreme Court.
 - ii. **Contested Case:** On May 31, 2019 the Board assigned the case to Ms. Clerget. Ms. Clerget issued an Order on Cross Motions for Summary Judgment on November 14, 2019, which granted partial summary judgment on one issue, and denied summary judgment on the remaining issues. On November 27, 2019, Ms. Clerget issued a Scheduling Order setting the procedural deadlines in this case. The parties filed Motions in Limine in February 2020 and an oral argument was held in March of 2020. The parties have fully briefed motions in limine which Ms. Clerget will issue an order on. The hearing in this matter has been rescheduled to August 2020.

- j. **In the Matter of the Notice of Appeal by the Rippling Woods Homeowners Association, et al., Regarding Approval of Opencut Mining Permit No. 2949, Moudy Pit Site, Ravalli County, MT, BER 2019-08 through 21 OC.** Between November 8, 2019 and November 29, 2019, the Board received fourteen appeals from various parties regarding the approval of Opencut Mining Permit No. 2949. On December 13, 2019, the Board consolidated for procedural purposes BER 2019-08 through 21 OC. Several parties were dismissed from the appeals and a Scheduling Order was issued on January 31, 2020. On May 26, 2020, DEQ filed a Motion to Dismiss, which is not yet fully briefed.
 - k. **In the Matter of Notice of Appeal and Request for Hearing by Western Energy Company Regarding Approval of Surface Mining Permit No. C2011003F, BER 2019-03 OC and BER 2019-05 OC.** On May 31, 2019, the BER appointed Sarah Clerget as hearing examiner to preside over the contested case for procedural purposes only. At the Board's last meeting, it voted to assign the case in its entirety to Ms. Clerget. The parties have cross moved for partial summary judgment, and the Motions are fully briefed.
 - l. **Montana Environmental Information Center, and Sierra Club v. Montana Department of Environmental Quality, Montana Board of Environmental Review, and Western Energy Co. (DV-2019-34, Rosebud County, District Court).** On June 6, 2019, the BER issued its final agency action in BER 2016-03 SW ("Western Energy"). On July 3, 2019 Conservation Groups filed a Petition for Review of Final Agency Action. The BER is named as a Defendant in the Petition. The BER has retained Amy Christensen to represent it in this matter at the District Court. On March 12, 2020, the Court issued an Order denying the Board's Motion to Dismiss.
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.**

B. DEQ Briefing Items:

- 1. Tim Davis will give the Board some background and an update on recent developments in Water Quality Standards including Numeric Nutrient Criteria.
- 2. Myla Kelley will give the Board some background and an update on Lake Koocanusa.

III. ACTION ON CONTESTED CASES

None

IV. BOARD COUNSEL UPDATE

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

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

**BOARD OF ENVIRONMENTAL REVIEW
MINUTES**

April 17, 2020

Call to Order

The Board of Environmental Review's meeting was called to order by Chairperson Deveny at 9:00 a.m., on Friday, April 17, 2020, electronically via Zoom Meeting.

Attendance

Board Members present via Zoom: Chairperson Chris Deveny, Dexter Busby, David Lehnherr, John DeArment, Chris Tweeten, Jeremiah Lynch

Board Members Absent: Hilary Hanson

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:

Angie Colamaria, Sandy Scherer, Tim Davis, Kirsten Bowers, Mike Suplee, Rainie DeVaney, Martin VanOort, Christine Weaver, Joanna McLaughlin, Chris Cronin, Myla Kelly, Jon Kenning, Mark Lucas, Kurt Moser, Sarah Christopherson, Darryl Barton, Matt Dorrington, Lauren Sullivan, Galen Steffens, Maya Rao, Ed Hayes

Interested and other parties present: Vicki Marquis, Sarah Bordelon, Sam Yemington – Holland and Hart, Shiloh Hernandez – Western Environmental Law Center, John Martin – Westmoreland Rosebud Mining, and the International Union of Operating Engineers Local 400, Amy Christensen – Christensen & Prezeau, Peggy Trenk – Treasure State Resources Association, Alan Olson – Montana Petroleum Association, Aleisha Solem – Agency Legal Services, Shane LaCasse, George Fink – CHS, Caroline Canarios, Emma Kerr-Carpenter – Northern Plains Resource Council, Bobby Cheren, Corey Barnes – Baker Hostetler

Roll was called: six Board Members were present via Zoom, forming a quorum.

I.A. Administrative Items - Review and Approve Minutes

I.A.1. January 24, 2020, Meeting Minutes

Dr. Lehnherr moved to approve the meeting minutes. Chairperson Deveny seconded the motion, which passed unanimously.

I.A.2. February 7, 2020, Meeting Minutes

Chairperson Deveny moved to approve the meeting minutes. Mr. DeArment seconded the motion which passed unanimously.

II.A.1. Briefing Item - Contested Case Updates - 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 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.

Copper Ridge and Reflections at Copper Ridge made a motion to sever the two cases. Ms. Clerget denied the motion as the cases are combined only for procedural purposes. The parties are proceeding according to the scheduling order and discovery closes at the end of April 2020. Motions in *Limine* have been filed but are not fully briefed.

II.A.1.b. In the Matter of the Notice of Appeal and Request for Hearing by Signal Peak Energy, LLC Regarding November 13, 2019 Notice of Violation and Administrative Compliance and Penalty Order, BER 2019-22 SM.

The parties filed separate status reports. Ms. Clerget continued the stay and ordered the parties either file a stipulated dismissal or a proposed litigation schedule.

II.A.2. Briefing Item - Contested Case Updates - Non-Enforcement Cases Assigned to the Hearing Examiner

II.A.2.a. In the matter of the Notice of Appeal and Request for Hearing by Alpine Pacific Utilities Regarding Issuance of MPDES Permit No. MTX000164, BER 2019-06 WQ.

The case has been stayed pending a proposed settlement from the parties. Since the agenda issuance, the parties filed a proposed settlement on April 13, 2020. The parties indicated settlement discussions are ongoing and asked for a litigation

schedule. Ms. Clerget entered a scheduling order that set a proposed hearing in late January 2021.

II.A.2.b. In the Matter of the Notice of Appeal and Request for Hearing by City of Great Falls Regarding Issuance of MPDES Permit No. MT0021920, BER 2019-07 WQ.

A scheduling order was issued in October of 2019 and amended in March. Calumet Refinery has made a motion to file an amicus brief which is before Ms. Clerget for decision.

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.

On November 22, 2019, the parties submitted a joint proposed schedule. Ms. Clerget then issued a scheduling order. The case is proceeding and dispositive motions should be fully briefed in December.

II.A.2.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.

This matter is stayed pending the outcome of a Supreme Court appeal.

Mr. Lynch noted that he is recusing himself from the case.

II.A.2.e. In the Matter of the Application for an Amendment of a Major Facility Siting Act Certificate by Talen Montana LLC, BER 2019-04 MFSA.

On January 17, 2020, Talen filed a motion requesting a continued stay while Westmoreland filed a motion to vacate. The motions are fully briefed and awaiting Ms. Clerget's decision.

II.A.2.f. In the Matter of the Notice of Appeal and Request for Hearing by Spring Creek Coal, LLC Regarding Issuance of MPDES Permit No. MT0024619, BER 2019-02 WQ.

Ms. Clerget granted motions for extensions for settlement negotiations until May 1, 2020.

II.A.2.g. In the Matter of the Notice of Appeal and Request for Hearing by CHS, Inc. regarding issuance of MPDES Permit No. MT0000264, BER 2019-01 WQ.

The case is stayed pending DEQ rulemaking. A scheduling conference is set for April 24, 2020.

II.A.2.h. **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.**

The case is stayed pending DEQ rulemaking. A scheduling conference is set for April 24, 2020.

II.A.2.i. **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.**

- i. **District Court Case:** Ms. Christensen stated the case is before the Montana Supreme Court and is fully briefed. BER filed a notice of non-participation and is awaiting a decision from the Supreme Court.
- ii. **Contested Case:** The parties have filed Motions in *Limine*. A telephonic oral argument on the motions was held March 30, 2020. The motions are fully briefed and before Ms. Clerget. The parties have agreed to reschedule the contested case hearing in this matter to August 2020.

II.A.2.j. **In the Matter of the Notice of Appeal by the Rippling Woods Homeowners Association, et al., Regarding Approval of Opencut Mining Permit No. 2949, Moudy Pit Site, Ravalli County, MT, BER 2019-08 through 21 OC.**

A scheduling order is in place and the parties are proceeding accordingly.

II.A.3. 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.**

Ms. Bowers stated DEQ and Western Energy Company jointly filed a status report for the Court's consideration and also requested a stay of the case until the renewed permit issues or for six months. MEIC has indicated they would oppose the stay. The case is awaiting an order for scheduling conference.

III.A.1. Action Item - Appeal, Amend, Or Adopt Final Rules

III.A.1. **The Department requests the Board initiate rulemaking for NEW RULE I.**

Dr. Suplee briefed the Board. Dr. Suplee, Mr. Kenning and Mr. Moser answered questions.

Chairperson Deveny opened it up for public comment.

Mr. Hernandez commented his concern whether DEQ and the Board considered the additional constraints from the Federal Clean Water Act.

Ms. Marquis commented on behalf of CHS and suggested edits to the rulemaking.

Ms. Trenk commented on behalf of Treasure Resources Association in support of the rulemaking and urged the department to continue working with the stakeholders.

Ms. Canarios commented on behalf of Western Plains Resource Association in support of the rulemaking.

Mr. Fink commented in support of moving forward with an annual standard.

Mr. Tweeten moved to initiate rulemaking as proposed by the Department and to appoint Sarah Clerget to conduct the rulemaking hearing. Mr. Lynch seconded the motion which passed unanimously.

III.A.2. **The Department will propose that the Board initiate rulemaking for proposed amendments to ARM 17.30.1202, 17.30.1203, 17.30.1304, 17.30.1322, 17.30.1331, 17.30.1340, 17.30.1341, 17.30.1342, 17.30.1344, 17.30.1345, 17.30.1346, 17.30.1350, 17.30.1354, 17.30.1361, and 17.30.1372 to:**

- a. maintain consistency with the federal program,
- b. adopt the updated federal individual permit application forms,
- c. provide flexibility in the public notice process by eliminating the requirement to publish notice in newspapers,
- d. and provide clarity and reduce redundancy through editorial corrections.

Ms. McLaughlin briefed the Board. Ms. McLaughlin answered questions.

Chairperson Deveny opened it up for public comment. None were offered.

Mr. DeArment moved to initiate rulemaking as proposed by the Department. Mr. Tweeten seconded the motion which passed unanimously.

III.B.1. Action on Contested Cases

III.B.1. **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 briefed the Board and answered questions.

Mr. Tweeten moved to adopt the Hearing Examiner's proposed findings of fact conclusion of law, and August Order as the Board's decision and that the request for dismissal with prejudice be overruled. Chairperson Deveny seconded the motion which passed unanimously.

III.B.2. Montana Environmental Information Center, and Sierra Club v. Montana Department of Environmental Quality, Montana Board of Environmental Review, and Western Energy Co. (DV-2019-34, Rosebud County)(District Court.

Ms. Christensen briefed the Board, answered questions, and gave the Board their options.

The Board had discussion.

Mr. Tweeten moved to direct Ms. Christensen to initiate discussions with the parties regarding a stipulation that the Board may be dismissed as a party in this case; in the event Ms. Christensen is unsuccessful securing a stipulation, she be authorized to file a petition for a writ of supervisory control, asking the Court to rule that in all cases such as this, it is not necessary or appropriate to have the BER as a party when reviewing the Board's decisions in the District Court or on appeal. Dr. Lehnherr seconded the motion which passed unanimously.

III.B.3. In the Matter of Notice of Appeal and Request for Hearing by Western Energy Company Regarding Approval of Surface Mining Permit No. C2011003F, BER 2019-03 OC and BER 2019-05 OC.

Ms. Clerget briefed the Board, answered questions, and gave the Board their options.

Mr. Tweeten moved to assign all remaining issues in this matter to Sarah Clerget for her determination as the Hearing Examiner. Mr. Busby seconded the motion, which passed unanimously.

IV. Board Counsel Update

Ms. Clerget updated the Board on recent EPA action and litigation that raised issued with the Board's rules on numeric water quality standards.

Ms. Clerget also stated the BER rule review is progressing.

V. Public Comment

None were offered.

VI. Adjournment

Mr. Tweeten moved to adjourn the meeting. Mr. Lynch seconded the motion which passed unanimously. Chairperson Deveny adjourned the meeting at 1:54 p.m.

Board of Environmental Review April 17, 2020, minutes approved:

CHRISTINE DEVENY
CHAIRPERSON
BOARD OF ENVIRONMENTAL REVIEW

DATE