

**BOARD OF ENVIRONMENTAL REVIEW  
MINUTES**

**June 8, 2018**

Call to Order

The Board of Environmental Review's meeting was called to order by Chairperson Deveny at 9:00 a.m., on Friday, June 8, 2018, in Room 111 of the Metcalf Building, 1520 East 6<sup>th</sup> Avenue, Helena, Montana.

Attendance

**Board Members Present in person:** Chairperson Christine Deveny, Dexter Busby, Hillary Hanson, John DeArment, Chris Tweeten

**Board Members Present by Phone:** John Felton

**Board Members Absent:** Tim Warner

**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:** Melissa Schaar, Myla Kelly, Eugene Pizzini, Eric Urban, Tim Davis – WQD; Sandy Moisey-Scherer, Mark Lucas, Kurt Moser, Norm Mullen – Legal; Liz Ulrich, Rebecca Harbage, Dave Klemp, Carla Trueblood, Hoby Rash – AEMD

**Interested & Other Persons Present:** Alan Olsen – Montana Petroleum Association; Peggy Trenk – Treasure State Resources Association; Gordon Criswell – Talen Montana

**Interested Persons Present by Phone:** Alan Olson – Montana Petroleum Association

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

**I.A. Administrative Items – Review and Approve Minutes**

**I.A.1. April 6, 2018, Meeting Minutes**

Mr. Tweeten MOVED to approve the meeting minutes. Mr. Busby 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 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.**

Ms. Clerget stated the parties are proceeding through the scheduling order.

**II.A.1.b. 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.**

Ms. Clerget is still reviewing the record and has not issued an order yet.

**II.A.1.c. 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 said the parties wanted more time for their exceptions briefs and this case should be before the Board at the next meeting.

**II.A.1.d. 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.**

This case is being handled in conjunction with the above-listed case, BER 2015-01 WQ, and its status is the same.

**II.A.1.e. 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.**

Ms. Clerget said the scheduling order is in place and the and the parties are proceeding accordingly.

**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 stated the case is in the penalty phase and the parties are proceeding according to the scheduling order.

**II.A.1.g. 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.**

Ms. Clerget said a scheduling order implementing additional scheduling deadlines was issued and the parties are proceeding accordingly.

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

- II.A.2.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.**

Ms. Clerget said there is a stay and the parties will provide her with an update within thirty days of the Supreme Court’s decision.

- II.A.2.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.**

Ms. Clerget said the case is proceeding according to the scheduling order but the mine issued two subpoenas which the Montana Environmental Law Center has moved to quash on constitutional grounds. This matter has been stayed pending resolution of the District Court case. Ms. Clerget sought permission from the Board to file a Notice of Appearance and Notice of Non-participation in the District Court case.

The Board discussed and Ms. Clerget answered questions.

Ms. Hanson MOVED to have Ms. Clerget continue to represent the Board on this case and before the District Court. Mr. Busby SECONDED. The motion passed unanimously.

- II.A.2.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 said the parties are working on their post hearing briefs.

- 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, BER 2017-03 WQ.**

Ms. Clerget said the summary judgement is pending. The hearing set for August 20 was vacated and the parties are waiting on summary judgment before setting a new schedule, if necessary.

- II.A.2.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.**

Ms. Clerget said the case is stayed until August at which time the parties are to provide an update.

- II.A.2.f. **In the matter of violation of the water quality act by JR Civil, LLC, Bozeman, Gallatin County, Montana (FID 2552, Permit MTG070826) BER 2017-07 WQ.**

Ms. Clerget said the case is stayed. The parties are filing a joint status report every 30 days and continuing to work on the settlement.

II.A.2.g. **In the Matter of the Denial of Motor Vehicle Wrecking Facility License MVWF-0376, BER 2018-01 SW.**

Ms. Clerget stated the case is stayed until June 1. Mr. Payne's counsel has withdrawn, and Mr. Payne cannot appear on his own behalf. He must have counsel since he is a corporation. The case cannot move forward without him having counsel, so another order dismissing the case will be issued shortly.

**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. Mullen said notices of appeal have been filed with the Supreme Court and the briefing schedule is in effect. He anticipates the case moving quickly under the briefing schedule.

**II.A.4. Briefing Items – Other Case Updates**

II.A.4.a. **Oilfield Rock and Logistics BDV 2018-451:**

Ms. Clerget stated the case has been appealed to the District Court.

**II.B. Other Briefing Items**

- II.B.1. Eric Urban briefed the Board and answered questions on revising water quality standards for naturally high arsenic in surface waters, as well as other potential water quality rule changes for the fall of 2018.

**III.A. Action Items – APPEAL, AMEND, OR ADOPT FINAL RULES:**

III.A.1. **DEQ will propose that the Board initiate rulemaking to Amend ARM 17.8.505 Air Quality Operation Fees, to increase air quality operating fees to allow the department to collect sufficient revenue to support the appropriate implementation of the air quality program.**

Liz Ulrich briefed the Board and said the department recommends the Board initiate rulemaking to Amend ARM 17.8.505 Air Quality Operation Fees and to increase air quality operating fees.

Ms. Ulrich, Mr. Mullen, Mr. Klemp and Mr. Rash answered questions from the Board.

Chairperson Deveny opened the floor for public comment.

Mr. Olson complimented Ms. Ulrich and Mr. Klemp for the time they've taken to come to Billings and explain the fee increase. He explained that he has concerns about the program being run by the EPA out of Butte and would prefer that DEQ run the program.

Ms. Trenk said she supports the rulemaking going forward and appreciates all the work that's been done to date.

Mr. Tweeten MOVED to initiate rulemaking and to appoint the Board attorney as the Hearings Examiner for purposes of conducting a rulemaking hearing. Mr. DeArment SECONDED. The motion passed unanimously.

### III.B. Petition for Rulemaking

III.B.1. On January 31, 2018 the Board received a petition from Cottonwood Environmental Law Center and The Gallatin Wildlife Association. Pursuant to MCA 75-5-316(3)(1), the petition requests that the Board classify the section of the Gallatin River from the boundary of Yellowstone National Park to the confluence with Spanish Creek in Gallatin Canyon as an Outstanding Resource Water.

Ms. Clerget briefed the Board answered questions on the process of the petition.

Mr. Davis explained the department compiled a cost analysis of a new or updated EIS and attempted to meet with the petitioners, but they were unable to meet.

Mr. Tweeten MOVED that the Board carry this agenda item to the next meeting and that the department make a concerted effort to contact the petitioners and ask them to appear at the next Board meeting. Chairperson Deveny SECONDED. The motion passed unanimously.

### IV. Board Counsel Update

Ms. Clerget had no updates.

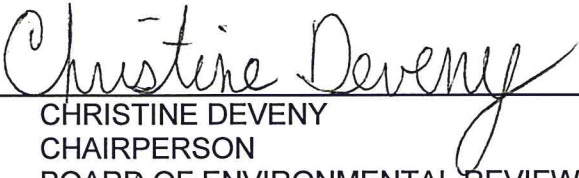
### V. General Public Comment

None were offered.

### VI. Adjournment

Mr. Tweeten MOVED to adjourn. Ms. Hanson SECONDED. Chairperson Deveny adjourned the meeting at 10:20 a.m.

Board of Environmental Review June 8, 2018, minutes approved:

  
CHRISTINE DEVENY  
CHAIRPERSON  
BOARD OF ENVIRONMENTAL REVIEW  
8/10/18  
DATE