

**BOARD OF ENVIRONMENTAL REVIEW
MINUTES**

August 10, 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, August 10, 2018, in Room 111 of the Metcalf Building, 1520 East 6th Avenue, Helena, Montana.

Attendance

Board Members Present in person: Chairperson Christine Deveny

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

Board Members Absent: John DeArment

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, Eric Sivers, Darrell Barton, Jason Garber, Jon Kenning, Eric Urban, Johanna McLaughlin – WQD; Mark Lucas, Sandy Scherer, Ed Hayes – Legal; Ed Coleman, Meranda Bass, – AEMD

Interested & Other Persons Present: Keaton Williams – Cottonwood Environmental Law Center; Peggy Trenk – Treasure State Resources Association; Molly Kelly – AGO Agency Legal Services Bureau

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. June 8, 2018, Meeting Minutes

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

On July 23, 2018, Ms. Clerget granted a stay as the parties are in settlement negotiations. The parties are required to file status updates every 30 days.

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 stated a proposed decision is forthcoming such that the case will be before the Board for oral argument and decision at its October meeting.

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 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.

Ms. Clerget stated the decision has been issued and the parties requested more time for their exceptions briefs. This matter will be before the Board for oral argument and decision at the December meeting.

II.A.1.d. 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 granted a stay as the parties are working on a settlement agreement.

II.A.1.e. 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 parties have reached a settlement and a motion to dismiss is forthcoming.

II.A.1.f. 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 there is a scheduling order in place 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 stated there is a stay pending decision from the Supreme Court.

- 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 stated this case is stayed because there is action pending in District Court in which the Board is named as a defendant regarding a subpoena issue. Summary judgement regarding that issue was recently filed and the underlying case in front of the Board is stayed until the District Court's case is resolved.

- 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 stated the parties have filed their proposed findings of fact conclusions of law and will file their response briefs by the end of September. She will issue her proposed decision afterwards and this will be before the Board, probably at its February meeting.

- 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 there is a summary judgement motion pending. Once the decision is out, she will issue a scheduling order for the remainder of the case.

- 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 the end of 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 dismissed.

- 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 dismissed.

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. Hayes said parties are still in the briefing phase of that case.

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

- III.A.1. | DEQ will propose that the Board initiate rulemaking to amend Administrative Rules of Montana (ARM) Title 17, chapter 30, subchapter 1, adopted under authority of Section 75-5-401, Montana Code Annotated (MCA), pertaining to state certification of activities requiring federal permits issued under Section 401 of the federal Clean Water Act, 33 USC Section 1341. The proposed amendments will clarify, and update policies and procedures related to the state Section 401 certification process.

Mr. Garber presented to the Board.

Mr. Tweeten MOVED to initiate the rulemaking as requested. Mr. Felton SECONDED. The motion passed unanimously.

III.B. New 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.**

- III.B.2. | **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 Subdivisions. BER 2018-05 OC.**

Ms. Clerget stated these cases involve the same mining permit and pursuant to Montana Rule of Civil Procedure 42, this allows the cases to be combined. She then gave the Board members their options, including assigning it to a hearings examiner.

Ms. Clerget answered questions from the Board and recommended the cases be combined.

Chair Deveny MOVED to consolidate the cases and assign the matter to hearing Examiner for the totality of the case. Mr. Tweeten SECONDED. The motion PASSED unanimously.

III.C. Petition for Rulemaking

- III.C.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.

Mr. Williams stated Cottonwood would like to continue with the permitting process and deal with the EIS cost issues after acceptance or rejection of the petition.

Mr. Williams, Ms. Clerget, Mr. Hayes, Mr. Mathieus and Mr. Davis discussed with and answered questions from the Board.

Mr. Tweeten MOVED that the Board find there is sufficient credible evidence in the petition to justify moving forward as provided under the statute. Chair Deveny SECONDED. The motion PASSED unanimously.

Ms. Clerget went through the next steps of the petition with the Board. Chair Deveny MOVED to have Ms. Clerget prepare a memo with involvement from Cottonwood and DEQ to determine whether the petition meets all of the requirements. Mr. Tweeten SECONDED. The motion PASSED unanimously.

IV. Board Counsel Update

Ms. Clerget had no updates.

V. General Public Comment

None were offered.

VI. Adjournment

Chair Deveny MOVED to adjourn. Mr. Tweeten SECONDED. Chairperson Deveny adjourned the meeting at 10:00 a.m.

Board of Environmental Review August 10, 2018, minutes approved:



CHRISTINE DEVENY
CHAIRPERSON
BOARD OF ENVIRONMENTAL REVIEW

10-5-18

DATE