

**BOARD OF ENVIRONMENTAL REVIEW
MINUTES**

October 5, 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, October 5, 2018, in Room 111 of the Metcalf Building, 1520 East 6th Avenue, Helena, Montana.

Attendance

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

Board Members Present by Phone: Chris Tweeten

Board Members Absent: Tim Warner

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

Board Liaison Present: George Mathieus

Board Secretary Present: Meranda Bass,

Court Reporter Present: Laurie Crutcher, Crutcher Court Reporting

Department Personnel Present: Ed Hayes, Kirsten Bowers, mark Lucas, Aaron Pettis, Sandy Moisey-Scherer, Kurt Moser, Sarah Christopherson, Jonathan Morgan – LEGAL; Myla Kelly, Rainie Devaney, Tim Davis, Jon Kenning, Mindy McCarthy, Christine Weaver, Derek Fleming, Haley Sir, Joanna McLaughlin, Jason Garber, Eric Sivers, Eric Urban – WQD; Dick Sloan, Carolina Balliew – WMRD; Dave Klemp, Deb Grimm, Julie Merkel, Liz Ulrich, Rebecca Harbage, Shawn Juers, Ed Warner, Ed Coleman – AEMD; Chad Anderson – ENF

Interested & Other Persons Present: John Meyer – Cottonwood Environmental Law Center; Peggy Trenk – Treasure State Resources Association; 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. August 10, 2018 Meeting Minutes

Mr. Busby MOVED to approve the meeting minutes. 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 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.

The parties have requested a stay of proceeding due to settlement negotiations and are providing updates every thirty days.

II.A.1.b. 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 exceptions have been received and she is waiting on the responses to the exceptions. This should be on the December agenda for a final Board decision.

II.A.1.c. 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 and the parties filed a joint status report asking continue of the stay. Ms. Clerget gave them until October 4.

II.A.1.d. 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 said the parties indicated they need a stay because they're close to settling. The stay was issued and the parties continue to update Ms. Clerget.

II.A.1.e. 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 stated there's a scheduling order in place and the parties have filed a stipulated extension for deadlines, which was granted.

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.**
- Mr. Hayes stated the matter is before the Montana Supreme Court, is undergoing briefing, and will be heard in due course.
- 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 she issued a scheduling order. The underlying case before the Board is stayed while an ongoing proceeding regarding a motion to quash a subpoena is being litigated in District Court.
- 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 held a hearing and the parties have submitted their exceptions and responses.
- 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 stated she issued an order granting partial summary judgement, held a scheduling conference, and put a scheduling order in place 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 held a scheduling conference regarding the additional stay. The stay is not changing anything substantive for this permit.
- II.A.2.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 stated one of the parties moved for dismissal leaving only Mr. Weyer's appeal to continue. Mr. Weyer has obtained counsel and there's a scheduling order in place.

I.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.**

Ms. Bowers said parties are still in the briefing phase of that case. The reply briefs are due October 25, after that the case will be fully briefed.

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

- III.A.1. | **In the matter of final adoption of the proposed amendments to ARM 17.8.505 Air Quality Operation Fees, to increase air quality operation fees to allow the department to collect sufficient revenue to support the appropriate implementation of the air quality program, as noticed in MAR 17-397 with modifications.**

Ms. Ulrich said the department is requesting the Board adopt the proposed amendments to the air quality operating fees.

Ms. Ulrich briefed the Board and answered questions.

Ms. Hanson MOVED to adopt the amendments and the air quality operation fees as proposed. Mr. DeArment SECONDED. The motion PASSED unanimously.

III.B. Other Briefing Items

- III.B.1. | **The Department's Air Quality Bureau has been working with stakeholders on a rule package that would transition the regulation of portable sources of emissions from case-by-case permitting to a more efficient and effective registration program. The Air Quality Bureau would like to brief the Board prior to requesting initiation of this rulemaking at the December 7, 2018, meeting.**

Ms. Harbage briefed the Board and answered questions.

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. Meyer expressed his reasons and concerns on behalf of Cottonwood Environmental Law Center and urged the Board to move forward in support of the petition.

Mr. Meyer, Ms. Clerget, and Ms. Bowers discussed with and answered questions from the Board.

Mr. Busby MOVED that the Board decline the petition and support the Hearing Examiner's final written decision. Mr. Felton SECONDED. The motion PASSED on a 5-1 vote.

III.D. Action on Contested Cases

III.D.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.**

The Board heard oral arguments from the parties.

The parties reached a settlement and requested a stay from the Board on their decision on the proposed order until February 2019.

Ms. Clerget recommended the Board stay their decision based on the parties' settlement.

Mr. Busby MOVED to stay the decision until February 2019. Mr. Felton SECONDED. The motion PASSED unanimously.

IV. Board Counsel Update

Ms. Clerget had no updates.

V. General Public Comment

None were offered.

VI. Adjournment

Ms. Hanson MOVED to adjourn. Mr. Felton SECONDED. Chairperson Deveny adjourned the meeting at 3:00 p.m.

Board of Environmental Review October 5, 2018, minutes approved:


CHRISTINE DEVENY
CHAIRPERSON
BOARD OF ENVIRONMENTAL REVIEW

DATE