

**BOARD OF ENVIRONMENTAL REVIEW  
MINUTES**

**October 4, 2019**

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 4, 2019 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

**Board Members Present by Phone:** Chris Tweeten, Dexter Busby, Hillary Hanson, Melissa Hornbein, David Lehnherr, John DeArment

**Board Members Absent:** None

**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:** Ed Hayes, Kirsten Bowers, Kurt Moser, Sandy Scherer, Galen Steffens, Eric Severs, Ed Coleman, Craig Henriksen, Rhonda Payne, Liz Ulrich, Rebecca Harbage, Eugene Pizzini, Myla Kelly, Tim Davis

**Interested & Other Persons Present:** Peggy Trenk – Treasure State Resources Association

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

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

**I.A.1. August 9, 2019 Meeting Minutes**

Ms. Hornbein moved to approve the meeting minutes. Chairperson Deveny seconded the motion, which 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 case is no longer stayed. The parties have approximately 30 days for discovery responses, and then she's set it through a summary judgement schedule.

**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 initial disclosures are coming. The parties requested staggered initial disclosures and will provide a schedule outlining additional discovery. The parties expect to include depositions and written discovery in the additional discovery, so it will probably take a few months. The case will then be set for a hearing.

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

Ms. Clerget stated a scheduling order has been issued and the case is in early stages of discovery.

**II.A.2.b. 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.**

Ms. Clerget said the case is stayed. The parties are working on a settlement and have until November 29, 2019, to provide a status update, or to propose a schedule for litigation.

- II.A.2.c. **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 noted this case has been combined with case BER 2019-01 WQ.

- II.A.2.d. **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 the parties have until October 10, 2019, to issue a status report.

- II.A.2.e. **In the matter of amendment application AM3, Signal Peak Energy LLC's Bull Mountain Coal Mine #1 Permit No. C1993017, BER 2016-07 SM.**

Chairperson Deveny reported the Board filed a notice of nonparticipation in the District Court matter, and expects the Board to take similar action in the appeal that is pending before the Montana Supreme Court.

Ms. Clerget reported on the contested case: there are summary judgement motions containing cross motions for summary judgement, and the party is waiting for her decision.

- II.A.2.f. **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.**

Ms. Clerget stated the case is stayed pending the parties' appeal to the Supreme Court. The decision about continuing this case will be made after it has progressed in the Supreme and/or District Court.

- II.A.2.g. **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 an order on motions has been issued, including motions for summary judgement. One party requested an additional round of summary judgement, which she granted. The parties have until November to finish that, and there will be a hearing in January.

- II.A.2.h. **In the Matter of the Application for an Amendment of a Major Facility Siting Act Certificate by Talen Montana LLC.**

Ms. Clerget stated the case is proceeding rapidly and will be before the Board at their December meeting. A four-day hearing is scheduled for November.



**II.A.2.i. In the Matter of the Notice of Appeal and Request for Hearing by Spring Creek Coal, LLC Regarding Issuance of MPDES Permit No. MT0024619.**

Ms. Clerget stated the case is proceeding according to the scheduling order.

**II.A.2.j. 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.**

Ms. Clerget stated an intervention order has been ruled on. The mine and the union intervened and are proceeding according to the scheduling order.

**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 said the Supreme Court issued an order favorable to the Department, but the case is remanded to District Court on some questions of fact.

**II.A.3.b. 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).**

Chairperson Deveny shared a written update from Amy Christensen, outside counsel: "MEIC and the Sierra Club filed a petition for judicial review of BER's decision to approve the permit for the Rosebud Mine. BER filed a motion to dismiss because BER should not have been named in the petition, since it was the deciding agency, not a party to the underlying contested case proceeding. MEIC and Sierra Club filed their response brief on September 26, and BER will file its reply brief no later than October 10, 2019."

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

**III.A.1. In 2012, to meet the requirements of the federal Regional Haze program, the U.S. Environmental Protection Agency adopted a Federal Implementation Plan establishing emission limits for several power plants and industrial facilities in Montana. Recently, the Department's Air Quality Bureau has been working with stakeholders to develop a State Implementation Plan to replace the federal requirements and put the state of Montana back in the lead for Regional Haze. The Air Quality Bureau is asking the Board, on behalf of the parties, to issue Orders adopting the federal requirements. Effective on adoption in and issuance of a Board Order, the requirements will be enforceable by the Department.**

Chairperson Deveny called for public comments; none were made.

Ms. Ulrich briefed the Board and answered questions.

Chairperson Deveny moved to request the orders proposed for the Regional Haze issue be adopted. Ms. Hornbein seconded the motion which passed unanimously.

### III.B. New Contested Cases

#### III.B.1. In the Matter of the Notice of Appeal and Request for Hearing by City of Great Falls Regarding Issuance of MPDES Permit No. MT0021920.

Ms. Clerget gave the Board members their options, including assigning it to the Hearings Examiner.

Mr. Tweeten moved to assign Sarah Clerget as the hearing examiner for the totality of the case. Mr. Busby seconded the motion which passed unanimously.

### IV. Board Counsel Update

Ms. Clerget stated she and chairperson Deveny are working with the Department on statutory obligations of the biennial rule review.

Chairperson Deveny noted that the schedule for the 2020 Board meetings will be voted on at the December meeting.

### V. Public Comment

None were offered.

### VI. Adjournment

Mr. Busby moved to adjourn the meeting. Chairperson Deveny seconded the motion, which passed unanimously. Chairperson Deveny adjourned the meeting at 9:35 a.m.

Board of Environmental Review October 4, 2019 minutes approved:



CHRISTINE DEVENY  
CHAIRPERSON  
BOARD OF ENVIRONMENTAL REVIEW

2/7/20  
DATE

