

**BOARD OF ENVIRONMENTAL REVIEW
MINUTES**

December 13, 2019

Call to Order

The Board of Environmental Review's meeting was called to order by Chair Deveny at 9:00 a.m., on Friday December 13, 2019, in Room 111 of the Metcalf Building, 1520 East 6th Avenue, Helena, Montana.

Attendance

Board Members Present in person: Chair Christine Deveny, Dexter Busby, John DeArment, David Lehnerr

Board Members Present by Phone: Chris Tweeten, Hillary Hanson

Board Members Absent: None

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

Board Liaison Present: Tim Davis

Board Secretary Present: Sara Nelsen, Interim

Court Reporter Present: Laurie Crutcher, Crutcher Court Reporting

Department Personnel Present: Darryl Barton, Eric Sivers, Chris Cronin, Sarah Christopherson, Maya Rao, Melinda Horne, Chad Anderson, Joanna McLaughlin, Kirsten Bowers, Sandy Scherer, Kurt Moser, Ed Hayes, Angie Colamaria, Jon Kenning, Sarah Christopherson, Mark Lucas

Interested & Other Persons Present: Aleisha Solem-Agency Legal Services, Nancy Jacobson-Rippling Woods Homeowners Association, Vicki Marquis-Holland and Hart, Linda Slater, Michael Howell-Bitterroot Star, Kurt Vause, Kevin Maki/KECI-TV

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

I.A. Administrative Items – Review and Approve Minutes

I.A.1. October 4, 2019 Meeting Minutes

Chair Deveny requested section III.A.1, rulemaking, be corrected to reflect that she called for comments on the regional haze program requirements and none were made.

Chris Tweeten motioned for the corrected minutes to be approved, David Lehnerr seconded, which passed unanimously.

I.B.1. REVIEW AND APPROVE 2020 SCHEDULE

Chair Deveny moved to establish the 2020 meeting schedule as presented, Chris Tweeten seconded. The motion passed unanimously.

Chair Deveny called for public comments and received none.

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 indicated the parties have until December 16, 2019 to file either a stipulation or respond to discovery requests. Several extension have been given and no further extensions will be given to the parties.

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 that a Scheduling Order through dispositive motions has been issued to the parties. Dispositive motions, if any will be fully briefed in June of 2020.

II.A.2. Briefing Items – 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.

Ms. Clerget stated a Scheduling Order is in place and discovery closes in June of 2020.

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.

Ms. Clerget stated this case also has a Scheduling Order in place through dispositive motions. Dispositive motions will be fully briefed in September of 2020.

- 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 stated this is actually an action item that should be handled with the other CHS case. The update for this case will be handled with 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 a scheduling order was issued through dispositive motions which will be fully briefed in December of 2020.

- II.A.2.e. **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 Montana Supreme Court.

- II.A.2.f. **In the Matter of Notice of Appeal of Opencast 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 reported that a second round of motions for summary judgment have been fully briefed and a decision on those motions for summary judgment will be coming out shortly.

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

Ms. Clerget stated that the schedule has been dispensed pending the parties' filing motions to govern proceedings which are due December 17, 2020. Once the parties file their motions, Ms. Clerget will have a better idea about the remainder of the proceeding.

- II.A.2.h. **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 reported that the parties have until the end of the month to file either a stipulated settlement agreement or a joint proposed scheduling order.

- II.A.2.i. **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 the parties are in the process of completing discovery. Dispositive motions are due January 6, 2020.

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**

Kirsten Bowers indicated the Supreme Court has issued its decision reversing the First Judicial District Court. The case has been remanded back to the District Court. Western Energy Company filed a motion to substitute and the parties are waiting for the case to be assigned to another judge.

- 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).**

Chair Deveny relayed outside Counsel Amy Christensen's update: The judge has issued a scheduling order which indicates the Board's motion to dismiss will be decided by January 10, 2020. The scheduling order set additional deadlines for further briefing on the case.

II.B.1 Briefing Items – Other

- II.B.1.a. **Department Rulemaking Update** Tim Davis gave an update on rulemaking to increase engineering fees for public water wastewater systems; a municipal facilities exclusion is included. Due to objection from the Environmental Quality Council rulemaking is delayed until January 15, 2020 as the Department waits for the Council's decision.

- II.B.1.b. **Introduction of the Department's Chief Legal Counsel, Angie Colamaria**

III.A. Action Items – New Contested Case

- III.A.1.-14 **In the Matter of the Notice of Appeal and Request for Hearing 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 OC through 21 OC.**

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

Chairperson Deveny moved to consolidate the fourteen cases for procedural purposes. Member Lehnerr seconded the motion, which passed unanimously.

Member Busby moved to assign Sarah Clerget to the contested cases in their entirety. Chairperson Deveny seconded the motion, which passed unanimously.

III.B. Action Items – Contested Cases

III.B.1. **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 [update only]:** this portion of the case is not an action item but was kept with the contested case. Outside Counsel Amy Christenson's update was read by Chairperson Deveny. The Board has filed its notice of non-participation and Signal Peak has filed its opening brief and Respondents have received an extension until December 20, 2020 to file their response brief.
- ii. **Contested Case [action item]:** Ms. Clerget stated that there have been questions raised and she needs clarification from the Board as to whether the Board intended to grant the hearing examiner jurisdiction for the purpose of deciding summary judgment motions only or for the entirety of the case?

Member Busby moved to assign the remainder of the case in its entirety to the hearings examiner. Chairperson Deveny seconded the motion which passed unanimously.

III.B.2. **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, and 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.**

Chair Deveny moved to approve the stipulation in the case of Permit MT0000264 and approved the proposed Board order for final agency decision. Chris Tweeten seconded the motion which passed unanimously.

IV. Board Counsel Update

Ms. Clerget informed the Board that a letter involving one former and one current Board members was sent by the Coal Council. The Governor's office requested DEQ responded to the letter. DEQ did so and sent a copy to every party in any coal case that the Board currently has.

Ms. Clerget informed the Board about proposed stakeholder roundtables regarding the Board's statutory obligation to review their rules every two years.


V. Public Comment

Nancy Jacobson from the Rippling Woods Homeowners Association provided comments and requested future meetings be held in the Bitterroot, if possible.

VI. Adjournment

Mr. Busby moved to adjourn the meeting, Chair Deveny seconded, and the motion passed unanimously. Chair Deveny adjourned the meeting at 9:52 a.m.

Board of Environmental Review December 13, 2019, minutes approved:



CHRISTINE DEVENY
CHAIRPERSON
BOARD OF ENVIRONMENTAL REVIEW

2/7/20

DATE