



**BOARD OF ENVIRONMENTAL REVIEW  
MEETING MINUTES**

**APRIL 23, 2021**

**Call to Order**

Chairperson Ruffatto called the meeting to order at 9:00 a.m.

**Attendance**

**Board Members Present**

By Zoom: Chairman Ruffatto; Board Members Hillary Hanson, David Lehnerr, David Simpson, Jon Reiten, Julia Altemus, and Joseph Smith

A quorum of the Board was present.

**Board Attorney(s) Present**

Katherine Orr, Attorney General's Office, Department of Justice

**DEQ Personnel Present**

Board Liaison: George Mathieus

Board Secretary: Regan Sidner, Joyce Wittenberg (*interim*)

DEQ Legal: Angie Colamaria, Kirsten Bowers, Aaron Pettis, Kurt Moser, Mark Lucas, Nick Whitaker, Sarah Clerget, Catherine Armstrong

Water Protection: Daryl Barton

Enforcement: Margarite Juarez Thomas

Coal & Opencut: Chris Cronin

**Other Parties Present**

Laurie Crutcher, Laurie Crutcher Court Reporting

Vicki Marquis, Holland & Hart – representing Copper Ridge Development and Reflections at Copper Ridge, LLC

Catherine Laughner – representing Western Sugar Cooperative

Andrew Cziok, Michele Snowberger, Linsey Simon, Caitlin Buzzas, Jeffrey Doud – Montana DOJ Agency Legal Services Bureau

## **I. ADMINISTRATIVE MATERIALS**

### **A. REVIEW AND APPROVE MINUTES**

#### **I.A.1. The Board will vote on adopting the December 11, 2020 meeting Minutes**

There was no board discussion and no public comment.

Board member Hanson moved to approve the December 11, 2020, meeting minutes; Board Member Lehnherr seconded. The motion passed unanimously.

#### **I.A.2. The Board will vote on adopting the February 26, 2021 meeting Minutes**

There was no board discussion and no public comment.

Board member Simpson moved to approve the February 26, 2021 meeting minutes; Chair Ruffatto seconded. The motion passed unanimously.

#### **I.B. Introduction of Hearing Officers from Agency Legal Services and Contracted Counsel**

Ms. Orr introduced each of the Hearing Officers from Agency Legal Services and allowed them to briefly introduce themselves. Ms. Orr introduced Amy Christiansen, Contracted Counsel, who was not present at the meeting.

#### **1.C. Discussion of Preference for Cases to be Assigned to Hearing Officers for Judicial Decision Making to be made by the Board**

Ms. Orr explained the process for and reasons why the Board could decide to delegate adjudication to a Hearings Officer, partially or fully, and the due diligence required of the Board if a case is or is not assigned to a Hearing Officer.

#### **1.D. Discussion of Disclosure of Board Members' Contact Information**

Chair Ruffatto moved that Board Member contact information not be published online and that the website contain a statement that all communication to BER Board Members go through the Board's Secretary. Board Member Lehnherr seconded the motion, which passed unanimously.

There was no public comment.

## **II. BRIEFING ITEMS**

### **A. CONTESTED CASE UPDATES**

Chair Ruffatto asked the Hearing Officer of each case for updates to the brief in the agenda, and provided an opportunity for Board Members to ask questions.

#### **II.A.1.a. 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.**

Board Member Simpson asked why there is a parallel case in District Court when the case has not cleared the BER. Ms. Orr explained that it is an interlocutory appeal.

- II.A.1.b. **In the matter of Notice of Appeal and Request for Hearing by Westmoreland Resources, Inc. Regarding October 27, 2020 Notice of Violation and Administrative Compliance and Penalty Order, BER 2020-06 SM.**
- There were no additions from the Hearing Officer and no questions from the Board Members.
- 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.**
- There were no additions from the Hearing Officer and no questions from the Board Members.
- II.A.2.b. **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.**
- There were no additions from the Hearing Officer and no questions from the Board Members.
- II.A.2.c. **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.**
- There were no additions from the Hearing Officer and no questions from the Board Members.
- II.A.2.d. **In the Matter of the Notice of Appeal and Request for Hearing by Spring Creek Coal, LLC Regarding Issuance of MPDES Permit No. MT0024619, BER 2019-02 WQ.**
- There were no additions from the Hearing Officer and no questions from the Board Members.
- II.A.2.e. **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.**
- This case was transferred to Hearing Officer Caitlin Buzzas. There were no questions from the Board Members.
- II.A.2.f. **In the Matter of the Notice of Appeal 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 through 21 OC.**
- Hearing Officers Michele Snowberger disclosed a potential conflict that she may have, which is currently under review. There were no questions from the Board Members.

- II.A.2.g. **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 and BER 2019-05 OC.**
- There were no additions from the Hearing Officer and no questions from the Board Members.
- II.A.2.h. **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).**
- No update was provided for this case.
- II.A.2.i. **In the Matter of Notice of Appeal by Nicholas and Janet Savko, Regarding Floodplain Setbacks, Gallatin County, MT, BER 2020-03 SUB.**
- There were no additions from the Hearing Officer and no questions from the Board Members.
- II.A.2.j. **In the Matter of Notice of Appeal by Signal Peak Energy LLC, Regarding Purporting to Rule on An Alleged Impairment of Water Rights Permit No. C1993017, Roundup, Musselshell County, MT, BER 2020-04 SM.**
- There were no additions from the Hearing Officer and no questions from the Board Members.
- II.A.2.k. **In the Matter of Notice of Appeal by Woodrock, Inc., Regarding Permit Suspension Order of Opencut Mining Permit No. 2677, Stipek Site, Dawson County, MT, BER 2020-02 OC.**
- There were no additions from the Hearing Officer and no questions from the Board Members.
- II.A.2.l. **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.**
- There were no additions from the Hearing Officer and no questions from the Board Members.
- II.A.2.m. **In the matter of the Notice of Appeal and Request for Hearing Regarding DEQ's Issuance of a Final Section 401 Water Quality Certification #MT4011079 to Transcanada Keystone Pipeline LP for the Keystone XL Pipeline Project, BER 2021-01 WQ.**
- II.A.2.n. **In the Matter Indigenous Environmental Network's and North Coast Rivers Alliance's Appeal of the Montana Department of Environmental Quality's Final Determination to Issue a 401 Water Quality Certification for the Keystone XL Pipeline, DEQ Application No. MT4011079, BER 2021-02 WQ.**
- Hearing Officer Orr reported that the status conference for this matter and the previous, which had been scheduled for the week prior to the Board meeting, has been stayed pending activities by the Federal Government regarding the Keystone permits.

- II.A.2.o. **In the Matter of Notice of Appeal and Request for Hearing Regarding DEQ's Approval of Riverside Contracting, Inc.'s Opencut Mining Permit #3234 (Arrow Creek Site), BER 2020-08 OC.**
- There were no additions from the Hearing Officer and no questions from the Board Members.
- II.A.2.p. **In the Matter of Contest and Request for Hearing by Talen Montana, LLC Regarding the Selection of a Remedy and Setting of Financial Assurance for the Colstrip Steam Electric Station Units 1 & 2 by the Montana Department of Environmental Quality, BER 2020-07 MFSA/WQA.**
- Hearing Officer Orr reported that the stay from December is still in effect. There were no questions from the Board Members.
- II.A.2.q. **In the matter of notice of appeal and request for hearing by the Western Sugar Cooperative regarding its Montana Pollutant Discharge Elimination System Permit No. MT0000281 issued October 29, 2020, BER 2020-05 WQ.**
- There were no additions from the Hearing Officer and no questions from the Board Members.
- 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 reported that the case is in front of District Court on a remand from the Supreme Court with action pending, expected in early May. The process before the Board is stayed pending the completion of the District Court case.

### III. ACTION ITEMS

#### A. ACTION ON CONTESTED CASES

- III.A.1. **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.**
- The Board heard oral argument from Vicki Marquis of Holland and Hart, representing Reflections at Copper Ridge, LLC, and Kirsten Bowers of DEQ.
- Board Member Simpson moved that the Board concludes that the Hearing Examiner complied with the Board's remand order, that the four excluded photographs were considered by the Hearing Examiner, and that DEQ was given the opportunity and failed to present additional evidence relating to the four excluded photographs. Board Member Reiten seconded the motion. The motion passed four to one, with Board Member Lehnherr dissenting.
- Board Member Simpson moved to accept the Hearing Examiner's Finding of Facts and Conclusions of Law and order; Board Member Smith seconded. The motion passed four to one, with Board Member Lehnherr dissenting.
- Ms. Orr will complete a summary write-up on behalf of the Board and submit it to Chair Ruffatto for approval.

III.A.2. | In the matter of the notice of appeal by Duane Murray regarding the notice of violations and administrative compliance and penalty order (Docket No. SUB-18-01; ES#36-93-L1-78; FID 2568), BER 2020-01 OC.

Mr. Murray was not present or represented at the meeting.

Board Member Lehnherr moved to approve the dismissal of the appeal recommended by the Hearing Examiner; Boarded Member Reiten seconded. The motion failed one to four with Chair Ruffatto and Board Members Simpson, Reiten, and Smith dissenting.

Chair Ruffatto moved that the appeal be remanded to the Hearing Examiner; Board Member Simpson seconded. The motion passed by four to one with Board Member Lehnherr dissenting.

**IV. BOARD COUNSEL UPDATE**

| Ms. Orr gave an update to the Board on Senate Bill 233, which has cleared the Legislature and is waiting to be ratified by the Governor. The Bill removes rulemaking responsibility and authority from the BER. The Board will continue to maintain quasi-judicial authority. Ms. Orr will research how this Bill will impact the Board's ability to initiate rules with respect to its own procedures before the June 11, 2021, Board meeting.

**V. GENERAL PUBLIC COMMENT**

| No public comment was offered.

**VI. ADJOURNMENT**

| Chair Ruffatto moved to adjourn; Board Member Reiten seconded. The motion passed unanimously. The meeting adjourned at 1:19 PM.

Board of Environmental Review April 23, 2021, minutes approved:

/s/ \_\_\_\_\_  
STEVEN RUFFATTO  
CHAIRMAN  
BOARD OF ENVIRONMENTAL REVIEW

\_\_\_\_\_  
DATE