

**BOARD OF ENVIRONMENTAL REVIEW
MEETING MINUTES**

JUNE 11, 2021

Call to Order

Chairperson Ruffatto called the meeting to order at 9:01 a.m.

Attendance

Board Members Present

By Zoom: Chairman Ruffatto; Board Members, David Lehnherr, David Simpson, 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

DEQ Legal: Angie Colamaria, Kirsten Bowers, Aaron Pettis, Sarah Clerget, Sarah Christopherson, Catherine Armstrong

Water Protection: Joanna McLaughlin

Mining: Chris Cronin, Emily Lodman, Martin VanOort

Other Parties Present

Laurie Crutcher, Laurie Crutcher Court Reporting

Vicki Marquis, Sam Yemington, John Martin - Holland & Hart

Catherine Laughner - representing Western Sugar Cooperative

Andrew Cziok, Caitlin Buzzas, - Montana DOJ Agency Legal Services Bureau

Derf Johnson - Montana Environmental Information Center

Julia Griffin

I. ADMINISTRATIVE MATERIALS

A. REVIEW AND APPROVE MINUTES

I.A.1. The Board will vote on adopting the April 23, 2021 meeting Minutes

There was no board discussion and no public comment.

Board member Simpson moved to approve the April 23, 2021 meeting minutes; Board Member Smith seconded. The motion passed unanimously.

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.c. 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. Katherine Orr provided an update to the Board. There were no questions from the Board members.

II.A.2.f. In the Matter of Notice of Appeal and Request for Hearing by Western Energy Company Regarding Approval of Surface Mining Permit No. C2011003F, BER 2019-05 OC. Katherine Orr provided an update to the Board. There were no questions from the Board members.

II.A.2.h. 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. Hearing Examiner Cziok clarified that the briefing should have stated, "On May 27, 2021, Hearing Examiner Cziok issued an Order dismissing this case *without* prejudice pending the District Court's final disposition of the SPE District Court Appeal and final resolution of any appeals from the District Court's final disposition."

II.A.2.i. 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. Angela Colamaria gave an update to the Board on behalf of the lead DEQ attorney on this matter.

IV. NEW CONTESTED CASES

IV.1. **In the matter of the request for appeal and hearing of the permit revocation order for the Lucy Sandbox Gravel Pit (Permit # 2328, Lucy's Sandbox Gravel Pit, Richland County, MT), BER 2021-03 OC.** Chair Ruffatto shared that he does not feel that there is enough information in front of the Board to decide whether or not to hear the case or assign it to a hearing examiner. DEQ Counsel Sarah Clerget explained that she did not feel comfortable supplementing the record as nothing further is in the record than is in front of the Board at this time. Ms. Clerget requested that the matter be kept with the Board for the purpose of the Board hearing the entire matter, in the interest of resolving the matter quickly and providing an opportunity for the Board to practice its judicial authority. Board members discussed the merits of tabling the matter until August vs. keeping the matter with the Board, and unanimously voted to end the discussion.

Chair Ruffatto moved to table the matter until there is further information available to the board; Dave Simpson seconded the motion. The motion passed four to one with Board Member Lehnherr dissenting.

Ms. Clerget clarified that since the issue of assigning the case was tabled until August, in the intervening time if DEQ need submit motions, it would be appropriate to submit to the Board. Chair Ruffatto confirmed.

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.

V. BOARD COUNSEL UPDATE

Ms. Orr gave an update to the Board on Senate Bill 233. Based on some precedent, the Board will retain authority for rule making over itself for procedural reasons.

Board Member Simpson shared some thoughts on the way that the Board approaches new contested cases. Board Liaison George Mathieus asked that the Board work with him as they are planning on working on procedural changes from a budgetary standpoint. Board member Smith and Vicki Marquis provided some comments.

Lindsey Simon has left ALSB. The three cases she had assigned to her have been reassigned to other hearings examiners. There were no questions from Board members regarding this.

VI. GENERAL PUBLIC COMMENT

No public comment was offered.

VII. ADJOURNMENT

Board Member Altemus moved to adjourn; Board Member Lehnherr seconded. The motion passed unanimously. The meeting adjourned at 9:43 AM.

Board of Environmental Review August 13, 2021, minutes approved:

/s/

STEVEN RUFFATTO
CHAIRMAN
BOARD OF ENVIRONMENTAL REVIEW

DATE