

**BOARD OF ENVIRONMENTAL REVIEW
MEETING MINUTES**

AUGUST 13, 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 Joseph Smith, Julia Altemus, David Lehnerr, Hillary Hanson, David Simpson

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

Public Policy: Rebecca Harbage

Water Quality: Myla Kelly

Mining: Bob Smith

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, Jeffrey Doud - Montana DOJ Agency Legal Services Bureau

Julia Griffin

Clayton Elliott

Brian Balmer

Marie Kellner

Paul Skubinna

Tanya Fish

Tamara Johnson

Julia Giffin

Randal McNair

Stu Levitt

William Hollahan

David Brooks

Shelly Mitchell

Ann Sexton

I. ADMINISTRATIVE MATERIALS

A. REVIEW AND APPROVE MINUTES

A.1. The Board will vote on adopting the August 13, 2021 meeting Minutes

There was no board discussion and no public comment.

Board member Smith moved to approve the August 13, 2021 meeting minutes; Chair Ruffatto seconded. The motion passed unanimously.

B. The Board will address the prohibition against *ex parte* contacts with the Board.

Chair Ruffatto cautioned Board Members on avoiding *ex parte* communication attempts. There was no discussion from Board Members on this point.

C. The Board will address a study to be assigned and conducted to determine how to reduce the time to process appeals to the Board including informal disposition, mediation, clarifying the scope of delegation including instances when review by the Board, if a case has been delegated to a hearing officer, may be referred to the Board in an interlocutory matter or when remand is appropriate.

Board members discussed the process for addressing matters before the Board and the timeframe associated with this process. Members discussed methods for improved efficiency. Chair Ruffatto moved to request Board Counsel Orr to conduct a study to respond to the questions posed in Board Member Simpson's memo; Board Member Simpson seconded. The motion passed unanimously.

D. The Board will address potential adoption of a policy regarding which underlying documents must be submitted in addition to or with an appeal such as the documents triggering the appeal in order for the Board to determine how to delegate the case or retain it.

Chair Ruffatto made a motion that the Board direct Board Counsel Orr to draft a policy that will be considered at the October 8 meeting that will provide a means for the Board to have sufficient information when considering new cases; Board Member Smith seconded. The members discussed examples of the topic, and clarified the desire. The motion passed unanimously.

E. The Board will address the delegation of authority to Agency Legal Services and Hearing Examiners within it that has occurred and may occur going forward.

Board members discussed the process for assigning Hearing Examiners. John Martin, representing Signal Peak Energy and Westmoreland Rosebud Mining, provided 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.

A.2.h. **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.** Chair Ruffatto asked Board Counsel Orr if the proposed order to dismiss is in place and in a position to proceed. Board Counsel Orr indicated that it is.

A.2.i. **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.** Chair Ruffatto asked if the matter is likely to proceed in the same was as II.A.2.h., 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. Board Counsel Orr indicated that she did not know.

III. ACTION ITEMS

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, BER 2019-07 WQ.** Chair Ruffatto moved that the Board accept the stipulation in the Great Falls case as presented in the Board materials; Board Member Lehnherr seconded. The motion passed unanimously. Board Counsel Orr will prepare the necessary order for Chair Ruffatto's signature as Board Chairman to implement the motion.
2. **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.** Signal Peak requested that the matter be put on the agenda with the request that the Board reclaim jurisdiction. Following the request, the Hearing Examiner made a decision on the request for the Board to reclaim jurisdiction, and also issued her proposed FOFCOL. Following that, Signal Peak requested that the item be removed from the agenda.
3. **Review of Administrative Rule 17.30.632 pertaining to selenium standards for Lake Koochanusa.** The petition filed by Teck Coal to review the selenium rule adopted by the Board in December 2020, pursuant to MCA 75-5-203. Chair Ruffatto moved that the Board Counsel draft a public notice requesting written comments on the appropriate process for addressing the Teck Coal petition; Board member Simpson seconded. Written comments are to be filed electronically with the Board Secretary by September 24. The motion passed by four to one with Board Member Lehnherr dissenting.

Chair Ruffatto moved that the public notice that the Board Counsel drafts will allow for written comments in response to the initial comments to be filed no later than September 29; Board Member Simpson seconded. The motion passed unanimously. Interested parties will have the opportunity to review and respond to the public comments, filed electronically with the Board Secretary by September 29.

IV. NEW CONTESTED CASES

