

**BOARD OF ENVIRONMENTAL REVIEW
MEETING MINUTES**

OCTOBER 29, 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 Joseph Smith, David Lehnherr, Jon Reiten David Simpson, Julia Altemus, Stacy Aguirre

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: Lauren Anderson

DEQ Legal: Angela Colamaria, Kirsten Bowers

Public Policy: Kevin Stone

Water Quality: Amy Steinmetz, Lauren Sullivan, Myla Kelly

Other Parties Present

Laurie Crutcher, Laurie Crutcher Court Reporting

Andy Janes

C Pepino

Derf Johnson

Ellie Hudson-Heck

Erin Sexton

Jason Gildea

Murry Warhank

Steven Fifer

Tonya Fish

Wyatt Petrychen

Vicki Marquis

Josh Letcher

Peggy Trenk

I. RULE REVIEW

I.1. In the matter of adoption of new rule I pertaining to selenium standards for Lake Koocanusa, BER 2021-04 WQ / BER 2021-08 WQ.

The Special Meeting of the Board was convened to discuss the petitions of Teck Coal Limited and the Board of County Commissioners of Lincoln County, Montana, regarding the adoption of new rule I pertaining to selenium standards for Lake Koocanusa.

Board member Smith moved to combine the petition from Teck Coal and the Petition from the Lincoln County Commissioners; Board Member Lehnherr seconded. The motion passed unanimously.

Board member Lehnherr moved to dismiss the petitions immediately; board member Reiten seconded. The motion was not carried with Board Members Reiten and Lehnherr assenting and Chair Ruffatto and Board Members Smith, Altemus, Aguirre and Simpson dissenting.

Chair Ruffatto moved that the Board adopt a process to consider the petitions of Teck Coal and Lincoln County; Board Member Simpson seconded. The motion passed with board members Lehnherr and Reiten dissenting.

Chair Ruffatto moved that the board follow the non-contested case, less formal, more streamlined process, as proposed by Teck Coal; Board Member Simpson seconded. The motion passed with board members Lehnherr and Reiten dissenting.

Board Member Simpson moved to proceed in the consolidated matter of the petitions of Teck Coal and Lincoln County Commissioners based upon the date of the filing of the Lincoln County Commissioners' petition; Board Member Altemus seconded. The motion passed unanimously. The Lincoln County Commissioners' petition was filed October 14.

Chair Ruffatto moved that the Board Delegate to Katherine Orr the responsibility of compiling the record, placing it on the website, and in doing so, she can consult with whoever she, in her discretion, feels it would be appropriate to compile that record accurately; Board Member Smith seconded. The motion passed unanimously.

Chair Ruffatto moved that BER counsel prepare a scheduling order for the Chairman's signature which establishes a process by which interested parties may comment in writing and orally in a public meeting on BER's stringency review of ARM 17.30.632(17)(a) under Mont. Code Ann. Section 75-5-203 pursuant to the petitions of Teck Coal Limited and the Board of County Commissioners of Lincoln County, Montana, including an opportunity for responsive written comments. Such scheduling order shall be consistent with the determinations and discussions of this Board previously in this meeting and shall provide for the comments to be submitted to the Board as soon as reasonably possible but no later than January 31, 2022; Board Member Aguirre seconded. The motion passed unanimously.

Chair Ruffatto moved to deny the DEQ's motion to intervene; Board Member Simpson seconded. The motion passed with Board Member Lehnherr absenting.

