

**BOARD OF ENVIRONMENTAL REVIEW
MINUTES**

February 7, 2020

Call to Order

The Board of Environmental Review's meeting was called to order by Chairperson Deveny at 9:00 a.m., on Friday, February 7, 2020, in Room 111 of the Metcalf Building, 1520 East 6th Avenue, Helena, Montana.

Attendance

Board Members present in person: Chairperson Chris Deveny, Dexter Busby

Board Members Present by telephone: David Lehnherr, Hillary Hanson, Chris Tweeten

Board Members absent: John DeArment

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

Board Liaison Present: George Mathieus

Board Secretary Present: Sara Nelsen

Court Reporter Present: Laurie Crutcher, Crutcher Court Reporting

Department personnel present:

Kirsten Bowers, Kurt Moser, Ed Hayes, Angie Colamaria, Sarah Christofferson, Sandy Scherer, William George, Galen Steffens, Derek Fleming, Mike Suplee, Jon Kenning, Joanna McLaughlin, Melinda Horne, Darryl Barton, Rainey DeVaney, Ed Coleman

Interested and other parties present: Vicki Marquis – Holland and Hart

Roll was called: two Board Members were present in person, and three members joined via conference call, forming a quorum.

I.A. Administrative Items - Review and Approve Minutes

I.A.1. December 13, 2019, Meeting Minutes

Chairperson Deveny moved to approve the meeting minutes. Mr. Busby seconded the motion, which passed unanimously.

II.A.1. Briefing Item - Contested Case Updates - 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 stated the case was dismissed.

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 a fully briefed motion to sever the cases is before her for decision. The case is proceeding according to the scheduling order.

II.A.2. Briefing Item - Contested Case Updates - 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.

The scheduling order is in place and the parties are proceeding accordingly.

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.

The scheduling order is in place and the parties are proceeding accordingly.

II.A.2.c. 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.

The scheduling order is in place and the parties are proceeding accordingly.

- II.A.2.d. 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.**
- The case is stayed pending the outcome of the Supreme Court appeal.
- II.A.2.e. In the Matter of Notice of Appeal of Opencut 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 issued an order granting summary judgement. Parties have a schedule for exception briefs and will present oral arguments to the Board at the April meeting.
- Chairperson Deveny noted the Board should plan on attending in-person, and Ms. Clerget emphasized the benefits to that, due to the number of parties and complexity. She added that the April date is quite definite.
- II.A.2.f. In the Matter of the Application for an Amendment of a Major Facility Siting Act Certificate by Talen Montana LLC, BER 2019-04 MFSA.**
- The parties are amid negotiations. Ms. Clerget stated the case may be before the Board.
- II.A.2.g. 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.**
- The parties have until February 28, 2020, to file a settlement agreement or ask for a scheduling order.
- II.A.2.h. 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 clarified this will be referred to as "Western Energy Area F" due to multiple-named cases. Parties have filed for partial summary judgement and a decision will be issued shortly.
- II.A.2.i. 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.**
- The case is stayed pending finalization of DEQ rulemaking.
- II.A.2.j. 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.**
- The case is stayed pending finalization of DEQ rulemaking.

II.A.2.k. 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.

Chairperson Deveny read outside counsel Amy Christensen's update:

i. District Court Case

Signal Peak appealed the District Court's order denying its request to obtain discovery. BER filed a notice of non-participation. If the oral argument is not ordered by the court, the case will be submitted for decision after the reply brief is filed.

ii. Contested Case

The hearing is scheduled for April 2020.

II.A.2.l. 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.

Ms. Clerget reminded the Board there were 14 separate cases that were combined for procedural purposes. Several of the appeals were dismissed, leaving the Homeowners Association and a few appellants who are proceeding according to the scheduling order.

II.A.3. 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.

Ms. Bowers stated the case was remanded to the First Judicial District Court after the Montana Supreme Court's order.

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).

Chairperson Deveny read outside counsel Amy Christensen's update: the motion is fully briefed and awaiting decision. The court issued an amended scheduling order and the case is ongoing.

II.B. Other Briefing Items

II.B.1. The Department will update the Board about upcoming proposed rulemaking to establish a nonanthropogenic water quality standard for arsenic in the Yellowstone River.

Dr. Suplee of DEQ gave a status update on this matter, and notified the Board of DEQ's intent to appear before the Board in April to request rulemaking for these standards.

Chairperson Deveny clarified the Board's expectation for a detailed summary of the proposal at the April meeting.

III.A.1. Action Item - Appeal, Amend, Or Adopt Final Rules

III.A.1. The Department is requesting that the Board solicit comments from all interested persons on any water quality standard found in the Administrative Rules of Montana, Title 17, chapter 30.

Ms. Steffens requested the water quality standards be opened a 60-day public comment period followed with a hearing, to initiate DEQ's mandated triennial review. Public outreach and input will continue, and Ms. Steffens intends to ask the Board to authorize rulemaking activities this summer.

Chairperson Deveny moved to direct the Department to solicit comments on the water quality standards, initiate public comment process, and assign the process to Hearings Officer Sarah Clerget. Mr. Tweeten seconded the motion which, passed unanimously.

III.B.1. Action Item – New Contested Case

III.B.1. In the Matter of the Notice of Appeal and Request for Hearing by Signal Peak Energy, LLC, BER 2019-22 SM, Regarding November 13, 2019 Notice of Violation and Administrative Compliance and Penalty Order.

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

Mr. Busby moved to assign the case for all purposes to Ms. Clerget. Mr. Lehnher seconded the motion which passed unanimously.

IV. Board Counsel Update

Ms. Clerget talked about the required rule review they're performing, with DEQ.

V. Public Comment

None were offered.

VI. Adjournment

Chairperson Deveny moved to adjourn the meeting. Mr. Busby seconded the motion which passed unanimously. Chairperson Deveny adjourned the meeting at 9:51 a.m.

Board of Environmental Review February 7, 2020, minutes approved:



CHRISTINE DEVENY
CHAIRPERSON
BOARD OF ENVIRONMENTAL REVIEW

5-9-20

DATE