



**BOARD OF ENVIRONMENTAL REVIEW  
MEETING MINUTES  
FEBRUARY 26, 2021**

**Call to Order**

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

**Attendance**

**Board Members Present**

By ZOOM: Chairman Ruffatto; Board Members Hillary Hanson, David Lehnherr, David Simpson, Jon Reiten, 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: Joyce Wittenberg (*interim*)

DEQ Legal: Angie Colamaria, Kirsten Bowers, Kurt Moser, Mark Lucas, Nick Whitaker, Sarah Christopherson, Sarah Clerget, Ed Hayes

Water Protection: Daryl Barton

Coal and Opencut: Ed Coleman, Chris Cronin, Alex Mackey

Public Policy: Moira Davin

**Other Parties Present**

Laurie Crutcher, Laurie Crutcher Court Reporting

Catherine Laughner – Montana Coal Board

Vicki Marquis (Holland and Hart) – Westmoreland Resources

Bronya Lechtman – Northern Plains Resource Council

Dave Kuzara – Westmoreland

Julie Griffin – Fort Peck

Mark Stermitz (Crowley Fleck Law Firm), Stacy Hill – Riverside Contracting

Martha Thomsen (Baker Botz), Rob Sterup – Talen Montana

Ryen Godwin [*no affiliation identified*]

## I. MEMBER ORIENTATION

### A. Onboarding Information for Incoming Members

#### I.A.1 How the agency interacts with the Board

Ms. Clerget provided information regarding the relationship between the Board and DEQ, and how they interact with each other.

#### I.A.2 Legal duties and authority of the Board

Ms. Orr and Ms. Clerget provided information regarding the purpose and responsibilities of the Board, including rulemaking, appeals, ex parte communications, and the Montana Administrative Procedures Act. Also discussed was ethics, open meetings and public participation, right to privacy versus right to know, and submitting materials to the BER.

#### I.A.3 Administrative matters

Ms. Wittenberg discussed the OSM and W-9 forms that are required to be completed by the Board members. She also provided information regarding Board honorariums and travel expense reimbursement, the Board meeting packets timeline, and Board member information on the BER website.

## II. ACTION ITEMS

### A. New Contested Cases

Ms. Colamaria explained that the Board must, according to rule, appoint a hearing examiner for the two Keystone Pipeline matters because they pertain to 401 Certification.

#### III.A.1 In the matter of notice 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, BER 2020-07 MFSA/WQA.

Board Member Lehnerr moved to assign the case to Agency Legal Services' attorneys for all procedural and substantive matters. Board Member Hanson seconded the motion. The motion passed 5-1 with Board Member Simpson dissenting.

#### III.A.2 In the matter of the Notice of Appeal and request for hearing regarding DEQ's approval of Riverside Contracting, Inc.'s Opencut Mining Permit #3234 (Arrow Creek Site) by multiple appellants, BER 2020-08 OC.

Board Member Simpson moved to assign the case to Agency Legal Services' attorneys for all procedural and substantive matters. Board Member Lehnerr seconded the motion, which passed unanimously.

#### III.A.3 In the matter of the notice of appeal and request for hearing (by "Conservation Groups") 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.

III.A.4 | **In the matter of the 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.**

Chairman Ruffatto moved to assign both Keystone cases to Agency Legal Services’ attorneys for all procedural and substantive matters. Board member Simpson seconded the motion, which passed unanimously.

Board Member Lehnherr moved that the Board approve consolidation of the two Keystone Pipeline cases if the hearing examiner finds it appropriate. Board member Reiten seconded the motion, which passed unanimously.

**V. GENERAL PUBLIC COMMENT**

| No public comment was offered.

**VI. ADJOURNMENT**

| Chairman Ruffatto moved to adjourn. Board member Simpson seconded the motion, which passed unanimously. The meeting adjourned at 11:52 a.m.

Board of Environmental Review February 26, 2021, minutes approved:

/s/ Steven Ruffatto  
STEVEN RUFFATTO  
CHAIRMAN  
BOARD OF ENVIRONMENTAL REVIEW

April 27, 2021  
DATE