



**BOARD OF ENVIRONMENTAL REVIEW
MEETING MINUTES
OCTOBER 14, 2022**

Call to Order

Vice Chair Aguirre led the meeting as Chairman Ruffatto was not feeling well. The meeting was called to order at 9:00 a.m.

Attendance

Board Members Present

In Person: Vice Chair Stacy Aguirre; Board Members David Simpson and Joe Smith.

Remotely: Chairman Steven Ruffatto; Board members Julia Altemus, Jon Reiten and David Lehnherr.

Roll was called and a quorum was present.

Board Attorney Present

Michael Russell

DEQ Personnel Present

Board Liaison: James Fehr

Board Secretary: Sandy Moisey Scherer

Director: Chris Dorrington

DEQ Legal: Catherine Armstrong, Kirsten Bowers, Loryn Johnson, Sam King, Kurt Moser, Nicholas Whitaker, Jessica Wilkerson

Public Policy: Moira Davin, Rebecca Harbage

Water Quality: Lauren Sweeney, Lindsey Krywaruchka

Air, Energy & Mining: Emily Lode, Bob Smith, Katie Garcin-Forba

Enforcement: Chad Anderson, Heidi Barnes

Other Parties Present

Laurie Crutcher, Crutcher Court Reporting

Elena Hagen - Montana DOJ Agency Legal Services Bureau

John Martin (Holland and Hart) – Signal Peak Energy

Vicki Marquis (Crowley Fleck) – Teck Coal

Murry Warhank (Jackson Murdo & Grant) – Board of County Commissioners of Lincoln County, MT

Jon Metropoulos (Metropoulos Law Firm, PLLC)

Kayla, Yellowstone Public Radio

Andy Janes

Tonya Fish, EPA

Russell Batie, Westmoreland Rosebud Mining

Dicki Peterson, Westmoreland Rosebud Mining

Wade Steere, Westmoreland Rosebud Mining

Anne

Commissioners of Lincoln County, MT

I. ADMINISTRATIVE MATERIALS

A. Review and Approve Minutes

A.1. The Board will vote on adopting the August 12, 2022, Meeting Minutes

Board member Simpson moved to APPROVE the August 12, 2022, meeting minutes. Vice Chair Aguirre SECONDED. The motion PASSED unanimously.

There was no board discussion or public comment.

B.1. Adoption of Rules for the Form of Exceptions to proposed FOFCOLS

This was an item that was carried forward from the last meeting, but the Board decided not to discuss the matter.

C. Review and discuss 2023 Board meeting schedule

This item will be presented and discussed at the December Board meeting.

II. BRIEFING ITEMS

Vice Chair Aguirre reviewed the briefing items and asked the Board for comments.

Board Attorney Russell brought the Board's attention to II.A.2.c. (MEIC v. DEQ, BER and Signal Peak Energy (DV-56-2022-0000722-JR). The Board will file a Motion to Dismiss.

Board Attorney Russell brought the Board's attention to II.A.3.e. (Western Sugar, BER 2020-05 WQ). The parties have filed for an extension of time. The parties were to submit an updated scheduling order, and there was a subsequent filing where the parties indicated that they were exploring settlement options.

Board member Simpson asked for an update on III.A.3.h (Request for Hearing by Harry Richards, Lincoln County, MT, Case No. BER 2022-02 HW). Board member Simpson asked if anyone had an idea what the appeal is about. He saw that Mr. Richards was ordered to file a more definite statement by October 14th. Board Attorney Russell said he did not have any information.

III. ACTION ITEMS

III.a. **In the Matter of: Petitions of Teck Coal Limited and the Board of County Commissioners of Lincoln County, Montana, for Review of ARM 17.30.632(7)(A) Pursuant to Mont. Code Ann. Section 75-5-203 – Stringency Review of Rule Pertaining to Selenium Standard for Lake Koocanusa, BER 2021-04 and 08 WQ**

The Board reviewed the discussion and vote from the last meeting regarding DEQ's Motion to Alter or Amend the Board's Final Agency Decision. In the August Board meeting, the Board voted 3-2 to DENY DEQ's Motion but Chairman Ruffatto concluded that the vote at issue was insufficient because it was not supported by a majority of all Board members.

Board member Simpson motioned to DENY DEQ's Motion to Alter or Amend the Board's Final Agency Decision. Discussion ensued and the Board allowed counsel to briefly give their positions.

Chairman Ruffatto moved to TERMINATE the oral arguments and only hear specific questions from Board members. Board member Altemus SECONDED. The motion PASSED unanimously.

Vice Chair Aguirre asked if there were specific questions for the motion on the table. The Board engaged in discussion and Board member Simpson WITHDREW his motion as it was a repeat of a motion from the last meeting.

The Board held a vote and the motion PASSED 5-2 to deny DEQ's Motion to Alter or Amend the Board's Final Agency Decision, with Board members Lehnherr and Reiten dissenting.

The Board then discussed the Joint Notice and Motion to Submit Final Agency Action to EPA. Oral argument was held, and discussion ensued.

Board member Altemus moved to GRANT the Joint Notice and Motion to Submit Final Agency Action to EPA. Board member Simpson SECONDED. Discussion ensued. The motion PASSED 5-2 to grant the Joint Notice and Motion to Submit Final Agency Action to EPA, with Board members Lehnherr and Reiten dissenting.

Chairman Ruffatto motioned to DIRECT Board Counsel, working with the Chairman, to draft a reasoned decision to deny DEQ's Request to Amend, for consideration at the December Board meeting. Vice Chair Aguirre SECONDED. The motion PASSED 5-2, with Board members Lehnherr and Reiten dissenting.

Chairman Ruffatto motioned that the Board REQUEST that Lincoln County and Teck Coal jointly file a proposed letter to EPA transmitting the Board's order, and to submit that to the Board by November 4, 2022. Vice Chair Aguirre SECONDED. The motion PASSED 5-2, with Board members Lehnherr and Reiten dissenting.

IV. NEW CONTESTED CASE

IV.a. | **In the Matter of: Appeal and Request for Hearing by Westmoreland Rosebud Mining LLC
Regarding Issuance of MPDES Permit No. MT0032042, Colstrip, MT, BER 2022-06 WQ**

Vice Chair Aguirre MOVED to assign the case in entirety to Board Attorney Michael Russell as the Hearing Examiner. Board member Simpson SECONDED. The motion PASSED unanimously.

V. BOARD COUNSEL UPDATE

Board Attorney Russell briefed the Board regarding a Water Policy Interim Committee meeting that he recently attended.

VI. GENERAL PUBLIC COMMENT

No public comment was given.

VII. ADJOURNMENT

Board member Smith MOVED to adjourn the meeting; Board member Simpson SECONDED. The motion PASSED unanimously. The meeting adjourned at 10:58 AM.

Board of Environmental Review October 14, 2022, minutes approved:

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

December 9, 2022
DATE