



**BOARD OF ENVIRONMENTAL REVIEW  
MEETING MINUTES  
DECEMBER 9, 2022**

**Call to Order**

Chairman Ruffatto called the meeting to order at 9:00 a.m.

**Attendance**

**Board Members Present**

By Zoom: Chairman Steven Ruffatto; Vice Chair Stacy Aguirre; Board Members Julia Altemus, David Lehnerr, Jon Reiten, David Simpson, and Joe Smith.

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, Kurt Moser, Nicholas Whitaker, Jessica Wilkerson, Jeremiah Langston, Ed Hayes

Public Policy: Moira Davin, Rebecca Harbage, Nick Danielson

Water Quality: Lauren Sweeney, Lindsey Krywaruchka, Katie Makarowski

Air, Energy & Mining: Emily Lodman

Enforcement: Heidi Barnes, Sarah Ogden

Subdivisions: Rachel Clark

**Other Parties Present**

Laurie Crutcher, Crutcher Court Reporting

Elena Hagen - Montana DOJ Agency Legal Services Bureau

Vicki Marquis (Crowley Fleck) – Teck Coal, CHS

Ray Stout

Brian Balmer, USFWS

Jennifer Eckstrom

Corey Bullock, CBC News

Brad Smith, ICL

Haley Williams

Amanda Eggert, Montana Free Press

Grace Judge

Barbara Chillcott, WELC

Tonya Fish, EPA

Lynsey Gaudisio, Confederated Salish and Kootenai Tribes

Sam Yemington (Holland and Hart)

MEIC Official

Derf Johnson, MEIC

Francesca Fionda, The Narwal

Hayden Blackford

Stephen Pfeiffer

Peggy Trenk, Treasure State Resources Association

Emily Qiu, Mary Cochenour – Earthjustice

Sean

Chelsea Colwyn

Andy Janes

Adank

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

**I. ADMINISTRATIVE MATERIALS**

**A. Review and Approve Minutes**

**A.1. The Board will vote on adopting the October 14, 2022, Meeting Minutes**

Board member Reiten moved to APPROVE the October 14, 2022, meeting minutes. Board member Smith SECONDED. The motion PASSED unanimously.

There was no board discussion or public comment.

**B. Consider informal procedure process**

Chairman Ruffatto moved that an informal order will be ISSUED only when the Chair or some member of the Board believes that informal procedures may be likely or more likely to be agreed to. Board member Simpson SECONDED. The motion PASSED unanimously.

**C. Hearing Examiner Assignments**

Chairman Ruffatto said that due to employee turnover at ALS, the Board has lost two Hearing Examiners since the last meeting. Also, Board Attorney Michael Russell has taken another position with the Attorney General's Office and will be unable to handle Hearing Examiner matters for the Board. Michelle Dietrich and Liz Leman of ALS will be available to handle Hearing Examiner matters, as well as Rob Cameron of Jackson Murdo and Grant. Rob Cameron's contract with the Board will expire after one year, which is in January.

Chairman Ruffatto moved that the Board approve the EXTENSION of the contract for Rob Cameron. Board member Reiten SECONDED. The motion PASSED unanimously.

Chairman Ruffatto moved to ASSIGN Liz Leman of ALS to the Rippling Woods case in place of Caitlin Buzzas. Vice Chair Aguirre SECONDED. The motion PASSED unanimously.

Chairman Ruffatto moved to ASSIGN Michelle Dietrich of ALS to the Ployhar and Oreo's Refining cases in place of Caitlin Buzzas. Board member Lehnerr SECONDED. The motion passed unanimously.

Chairman Ruffatto moved that the five remaining cases assigned to Michael Russell be ASSIGNED to Rob Cameron. Board member Reiten SECONDED. The motion PASSED unanimously.

**D. Review and discuss 2023 Board meeting calendar**

Chairman Ruffatto discussed the 2023 Board meeting calendar. Board member Altemus stated that this was her last meeting and said that three Board members will not be members after this meeting. She recused herself from this vote.

Board member Smith moved to APPROVE the 2023 Board meeting calendar. Vice Chair Aguirre SECONDED. The motion PASSED unanimously.

## II. BRIEFING ITEMS

Board Attorney Russell updated the Board regarding current cases. The Board did not have any comments.

## III. ACTION ITEMS

- 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 Kooconusa, BER 2021-04 and 08 WQ.**

The Board considered the draft reasoned decision stating the basis for the Board’s denial of DEQ’s motion to alter or amend. Board member Altemus moved to APPROVE the decision. Vice Chair Aguirre SECONDED. The motion PASSED 5-2, with Board members Lehnherr and Reiten dissenting.

The Board considered a draft letter to EPA transmitting the Board’s Final Agency Action. Vice Chair Aguirre moved to ACCEPT the draft letters as presented for submittal to EPA. Board member Altemus SECONDED.

Board member Simpson moved to AMEND the motion to revise the sentence in the first paragraph under “Background on the lake water column standard” to read “In both the initial publication and in response to comments, the Board asserted that the lake water column standard using EPA approved methods, and hence was not set more stringent than the federal guideline, and that the stringency statute therefore did not apply.” Vice Chair Aguirre SECONDED.

After further discussion, Board member Simpson moved to WITHDRAW his motion. Vice Chair Aguirre WITHDREW her second.

The motion PASSED 5-2, with Board members Lehnherr and Reiten dissenting.

## IV. NEW CONTESTED CASE

- a. **In the Matter of: Renewal of MPDES Permit No. MT0000264, Issued September 30, 2022, to CHS, Inc., for Discharges from the Laurel Refinery, BER 2022-07 WQ.**

Board Member Simpson MOVED to assign the case in entirety to a Hearing Examiner. Board member Lehnherr SECONDED. The motion PASSED unanimously.

Chairman Ruffatto moved to ASSIGN Rob Cameron to this case. Board member Smith seconded. The motion PASSED unanimously.

## V. BOARD COUNSEL UPDATE

No update was provided.

**VI. GENERAL PUBLIC COMMENT**

No public comment was given.

Chairman Ruffatto thanked those Board members who would not be returning after this meeting for their service and hard work. He also stated that he was resigning from the Board, and this would be his last meeting.

**VII. ADJOURNMENT**

Chairman Ruffatto MOVED to adjourn the meeting; Board member Altemus SECONDED. The motion PASSED unanimously. The meeting adjourned at 9:54 AM.

Board of Environmental Review December 9, 2022, minutes approved:

/s/ Stacy Aguirre  
VICE CHAIR  
BOARD OF ENVIRONMENTAL REVIEW

February 24, 2023  
DATE