



**BOARD OF ENVIRONMENTAL REVIEW  
MEETING MINUTES  
FEBRUARY 24, 2023**

**Call to Order**

Vice Chair Aguirre called the meeting to order at 9:00 a.m.

**Attendance**

**Board Members Present**

By Zoom: Vice Chair Stacy Aguirre; Board Members Julia Altemus, David Simpson, and Joe Smith.

Roll was called and a quorum was present.

**Board Attorney Present**

Aislinn Brown

**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, Colson Williams

Public Policy: Moira Davin, Rebecca Harbage

Water Quality: Katie Makarowski, Christy Meredith

Air, Energy & Mining: Adam Bradley

Enforcement: Chad Anderson

Subdivisions: Rachel Clark

**Other Parties Present**

Laurie Crutcher, Crutcher Court Reporting

Aislinn Brown, Elena Hagen – Montana DOJ Agency Legal Services Bureau

Samuel Yemington, Holland & Hart

Barbara Chillcott, WELC

Shiloh Hernandez, Earthjustice

Todd Briggs

Ray Stout, Kootenai Valley Record

**I. ADMINISTRATIVE MATERIALS**

**A. Review and Approve Minutes**

**A.1. The Board will vote on adopting the December 9, 2022, Meeting Minutes**

Board member Simpson moved to APPROVE the December 9, 2022, meeting minutes. Board member Smith SECONDED. The motion PASSED unanimously.

There was no board discussion or public comment.

**B. Introduction of new Board members and Board Attorney, and election of officers**

Aislinn Brown was introduced as Board Counsel.

**C. Change of Date for April Board meeting**

Vice Chair Aguirre motioned to MOVE the next Board meeting date to April 7th at 9:00 a.m. Board member Altemus SECONDED. The motion PASSED unanimously.

**II. BRIEFING ITEMS**

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.**

Vice Chair Aguirre moved that the Board TAKE no further action at this time. Board member Simpson SECONDED. Discussion ensued.

Vice Chair Aguirre amended her motion that the Board TAKE no further action in response to the letter from the EPA at this time. Board member Simpson SECONDED. The motion passed unanimously.

b. **Montana Department of Environmental Quality v. Montana Board of Environmental Review, Teck Coal Limited, and the Board of County Commissioners of Lincoln County, Case No. CDV 2023-21.**

Vice Chair Aguirre moved to RECESS this meeting and MOVE to executive committee discussion to discuss legal strategy with regard to the litigation. Board member Simpson SECONDED. The motion passed unanimously.

Recess was taken at 9:20 a.m. and the meeting reconvened at 10:05 a.m. Roll was called and a quorum was present.

Vice Chair Aguirre asked Sandy Moisey Scherer, Board Secretary, to identify who was on the call. Those present were Aislinn Brown, DEQ Deputy Director James Fehr, Laurie Crutcher, Barbara Chillcott, Catherine Armstrong, Chad Anderson, Colson Williams, Elena Hagen, Jessica Wilkerson, Katie Makarowski, Kirsten Bowers, Kurt Moser, Loryn Johnson, Ray Stout, Sam King, Samuel Yemington, Todd Briggs, and Nicholas Whitaker.

Board member Simpson moved that the Board CONTINUE with this litigation and respond accordingly, represented by Aislinn Brown of Agency Legal Services. Vice Chair Aguirre SECONDED. The motion passed unanimously.

c. **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.**

Vice Chair Aguirre moved to APPOINT Agency Legal Services to be the Hearing Examiner in this matter. Board member Simpson SECONDED. The motion passed unanimously.

d. **In the Matter of: Appeal and Request for Hearing by Westmoreland Rosebud Mining LLC Regarding Issuance of MPDES Permit No. MT0032042, Colstrip, MT, BER 2022-6 WQ.**

Vice Chair Aguirre motioned to APPROVE the Stipulation, and as part of that approval, that Montana DEQ and Westmoreland provide updates to the board on the process, and also specifically addressing the administrative questions that have been put forth in this meeting. Board member Altemus SECONDED. Discussion ensued.

Vice Chair Aguirre amended her motion to APPROVE the Stipulation as presented, and asked that the parties present at the April 7th meeting to answer the questions discussed today in this meeting, and at the April 7th meeting the Board will establish some kind of update to the schedule from there.

Board Counsel Brown advised Vice Chair Aguirre that since there was a motion already on the table, the motion would need to be withdrawn before another motion could be made. Vice Chair Aguirre WITHDREW her amended motion.

Board member Simpson motioned to APPROVE both the Stipulation and Final Action, and REQUESTED the parties at the April meeting address the questions of defining the receiving waters, and management of discharges prior to development of the new rule. The motion died for lack of a second.

Vice Chair Aguirre moved that the Board APPROVE the Stipulation and Final Action as presented. Board member Altemus SECONDED. The motion passed unanimously.

Vice Chair Aguirre moved to DIRECT Board Attorney Brown to draft an Order to the parties with the questions raised by Board member Simpson, and asked that the parties respond to that order at the April 7th Board meeting, and then at that meeting the Board will determine what kind of update schedule the parties will be providing to the Board on this project. Board member Simpson SECONDED. The motion passed unanimously.

#### IV. NEW CONTESTED CASE

a. **In the Matter of: Denial of Opencut Mine Permit #3115 for FirstMark Materials – Oscar’s Site.**

Board Member Smith MOVED to assign the case to Agency Legal Services for the totality of the case. Vice Chair Aguirre SECONDED. The motion PASSED unanimously.

#### V. BOARD COUNSEL UPDATE

No update was provided.

Sandy Moisey Scherer, Board Secretary, asked for clarification regarding the five cases that were assigned to Rob Cameron at the last meeting. In the December meeting, five cases were assigned to Rob Cameron but the case numbers were not specified. DEQ has asked the Board Secretary for clarification.

Board Attorney Brown said that the following cases have been assigned to Rob Cameron as Hearing Examiner:

BER 2020-05 WQ – Western Sugar  
BER 2022-02 HW – Harry Richards  
BER 2022-04 OC – Valley Garden Land & Cattle  
BER 2022-05 SM – Rosebud  
BER 2022-06 WQ – Rosebud  
BER 2022-07 WQ – CHS

#### VI. GENERAL PUBLIC COMMENT

No public comment was given.

#### VII. ADJOURNMENT

Board member Altemus MOVED to adjourn the meeting; Board member Smith SECONDED. The motion PASSED unanimously. The meeting adjourned at 10:56 A.M.

Board of Environmental Review February 24, 2023, minutes approved:

/s/ David Simpson  
CHAIRMAN  
BOARD OF ENVIRONMENTAL REVIEW  
April 7, 2023  
DATE