

**BOARD OF ENVIRONMENTAL REVIEW  
MEETING MINUTES**

**JUNE 9, 2023**

**Call to Order**

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

**Attendance**

**Board Members Present**

By Zoom: Chair Dave Simpson; Vice Chair Stacy Aguirre; Board Members Julia Altemus, Lee Bruner, Jennifer Rankosky, Jon Reiten, and Joe Smith.

Roll was called and a quorum was present.

**Board Attorney Present**

Terisa Oomens

**DEQ Personnel Present**

Board Secretary: Sandy Moisey Scherer

DEQ Legal: Catherine Armstrong, Kirsten Bowers, Angie Colamaria, Jeremiah Langston, Nick Whitaker, Colson Williams

Public Policy: Rebecca Harbage

Air, Energy & Mining: Whitney Bausch, Ruby Hopkins, Bailey Tasker, Dan Walsh

**Other Parties Present**

Laurie Crutcher, Crutcher Court Reporting

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

Sarah Bordelon – Holland & Hart

Diane Conradi

Mary Cochenour – Earthjustice

Jane Grochowski

Andy Janes

Derf Johnson – MEIC

Jon

Libby Langston

Vicki Marquis – Crowley Fleck

Terry Martin-Denning

Shelly Mitchell, Oreo's Refining

Ray Stout, Kootenai Valley Record

**I. ADMINISTRATIVE MATERIALS**

**A. Review and Approve Minutes**

**A.1. The Board will vote on adopting the April 7, 2023, Meeting Minutes.**

Vice Chair Aguirre moved to APPROVE the April 7, 2023, meeting minutes. Board member Reiten SECONDED. The motion PASSED unanimously.

There was no board discussion or public comment.

**B. Presentation by DEQ regarding the relationship/administrative attachment between DEQ and BER.**

Angie Colamaria gave a brief presentation to the Board.

**C. Appointment of Vice Chair**

Chair Simpson said that shortly after he received notification that he had been appointed Chair, he contacted Board member Aguirre and asked her to continue as Vice Chair. She agreed to do so, and Chair Simpson wanted to be sure that this was included in the record.

**D. Nomination of subcommittee for 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.**

Chair Simpson commented that since DEQ filed its action against the BER, he has been thinking about the best approach to handle it. His conclusion is to have an ad hoc committee to handle communications expeditiously and have the committee be the primary contact. Chair Simpson said that he spoke with Vice Chair Aguirre and Board member Bruner about being on this committee, and both agreed to serve.

Chair Simpson moved to ESTABLISH an ad hoc committee to manage the DEQ v. BER litigation, to handle the day-to-day communications. Board member Smith SECONDED. Discussion ensued. Board member Altemus mentioned that, according to the agenda, MEIC has also filed a lawsuit against the Board. Would the subcommittee review both?

Board member Altemus offered an amended motion and moved that a subcommittee be FORMED to look at the day-to-day communications on the lawsuits filed by DEQ and MEIC against the Board. Board member Smith SECONDED. The motion PASSED unanimously.

**II. BRIEFING ITEMS**

Board Counsel Oomens offered clarification regarding some cases. The Board did not have any further questions.

### III. ACTION ITEMS

- 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.**

Chair Simpson asked representatives for DEQ and Westmoreland to provide a status update. Kirsten Bowers from DEQ responded that DEQ and Westmoreland jointly provided a written update, which was included in the agenda.

- b. **In the matter of Notice of Appeal and Request for Hearing by Oreo's Refining Regarding Solid Waste License Expiration (License #574), BER 2021-06 SWP.**

This matter is now before the Board to hear argument from Ms. Shelly Mitchell and DEQ, and consideration of the Hearing Examiner's Order on Motions for Summary Judgment.

Chair Simpson allowed each party fifteen minutes, with an additional five minutes for rebuttal. The Board members asked questions from both parties.

Board member Bruner motioned to ADOPT the proposed Findings of Fact and Conclusions of Law of the Hearing Examiner, which supports DEQ's position in the matter. Board member Aguirre SECONDED. Discussion ensued. The motion passed unanimously.

- c. **Montana Environmental Information Center, Clark Fork Coalition, Idaho Conservation League, Idaho Rivers United v. Montana Board of Environmental Review, Teck Coal Limited, and The Board of County Commissioners of Lincoln County, DDV-25-2023-0000366-JR.**

Chair Simpson moved to ASSIGN Alan Zackheim, current Counsel for the DEQ v. BER case since Terisa Oomens resigned from the case due to a conflict. Board member Bruner SECONDED. The motion PASSED unanimously.

### IV. NEW CONTESTED CASES

- a. **In the Matter of the Hearing Request for Exploration License #00680, Butte Highlands Site; Five-Year Bond Determination, BER 2023-01 OC.**

- b. **In the Matter of the Formal Appeal Challenging the Department of Environmental Quality's ("DEQ") Approval of Riverside Contracting's Opencut Mining Permit #3415 for the Marvin Rehbein Site Near Arlee in Lake County, Montana, BER 2023-02 OC.**

- c. **In the Matter of Appeal and Request by Protect the Clearwater Regarding Issuance of Opencut Mining Permit #3473, BER 2023-03 OC.**

Board Member Reiten moved to ASSIGN these three new contested cases in entirety to a Hearing Examiner at Agency Legal Services. Board member Altemus SECONDED. The motion PASSED unanimously.

**V. BOARD COUNSEL UPDATE AND EXECUTIVE SESSION**

No update was provided. The Board moved to Executive Session after Adjournment of the Board Meeting.

**VI. GENERAL PUBLIC COMMENT**

No public comment was given.

Chair Simpson mentioned that it had been suggested to schedule the August meeting in Helena in person. He would like to wait to see what the agenda looks like before making this decision. If the agenda would require extended discussion, he would be in favor of having a meeting in Helena. Board member Bruner suggested having a meeting in Billings. Chair Simpson said that a decision of where to hold the next meeting will be made two weeks before the August 11th meeting.

Board member Bruner motioned that this decision be LEFT to the Chair's discretion whether the next meeting would be live or by Zoom, based on his review of the agenda, and timely as possible to allow people to make travel arrangements. Board member Reiten SECONDED. The motion PASSED unanimously.

**VII. ADJOURNMENT**

Board member Reiten MOVED to adjourn the Board Meeting and move to Executive Session; Board member Smith SECONDED. The motion PASSED unanimously. The meeting adjourned at 10:59 A.M.

Board of Environmental Review June 9, 2023, minutes approved:

/s/ David Simpson  
DAVID SIMPSON  
CHAIR  
BOARD OF ENVIRONMENTAL REVIEW

August 11, 2023  
DATE