

**BOARD OF ENVIRONMENTAL REVIEW
MEETING MINUTES**

AUGUST 11, 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 Jennifer Rankosky, Jon Reiten, and Joe Smith. Board members Julia Altemus and Lee Bruner were not able to attend due to scheduling conflicts.

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, Angie Colamaria, Loryn Johnson, Aaron Pettis, and Nick Whitaker

Public Policy: Moira Davin, Mae Vader

Water Quality: Rachel Clark

Other Parties Present

Laurie Crutcher, Crutcher Court Reporting

Elena Hagen, Montana DOJ Agency Legal Services Bureau

Bill Mercer, Holland & Hart

Vicki Marquis, Crowley Fleck

Andy Mefford, PCI Montana

Terry Martin-Denning

Ray Stout, Kootenai Valley Record

Jason Mohr, MT Legislative Services

I. ADMINISTRATIVE MATERIALS

A. Review and Approve Minutes

A.1. The Board will vote on adopting the June 9, 2023, Meeting Minutes.

Vice Chair Aguirre moved to APPROVE the June 9, 2023, meeting minutes. Board member Reiten SECONDED. The motion PASSED unanimously.

There was no board discussion or public comment.

II. BRIEFING ITEMS

- a. Chair Simpson and Board Counsel Oomens offered clarification regarding some cases. The Board did not have any 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. Bill Mercer of Holland & Hart said that Kirsten Bowers of DEQ had provided an update and DEQ will finalize the quality assurance project plan by the end of this month. Westmoreland has provided comments and will be reviewing what DEQ has completed by the end of the month.

b. In the Matter of Westmoreland Resources, Inc.'s Appeal of Final MPDES Permit No. MT0021229 issued by DEQ for the Absaloka Mine in Hardin, Big Horn County, MT, BER 2015-06 WQ.

Chair Simpson asked representatives for DEQ and Westmoreland to provide a status update. Bill Mercer of Holland & Hart and Angie Colamaria of DEQ provided an update. In addition, the permit for this mine is coming up for renewal. There has been an initial conversation about proposing additional time frames and an additional calendar pursuant to a stipulation, but nothing has been settled as to what those dates might look like. An additional proposal may be forthcoming at the next meeting. There may be another permit appeal based upon what the final terms are, and the Settlement Agreement may need to be updated.

Chair Simpson said he has concerns as this case has been going on for years and asked the parties to keep moving towards a conclusion. He requested a status report from the parties for the next meeting.

- c. **In the Matter of: Request for Hearing by Harry Richards, Lincoln County, MT, Case No. BER 2022-02 HW.**

Chair Simpson said he had not received a request for any oral argument regarding the Hearing Examiner's Finds of Fact, Conclusions of Law and Summary Judgment Order in this case. He asked if the parties were on the call.

Nick Whitaker of DEQ said that documents had been filed earlier this week by DEQ, asking that this item not be addressed at this meeting and time be allowed for Exceptions. The Hearing Examiner has issued an order setting out the Exceptions deadline. Chair Simpson said that this matter will be addressed at the October meeting, to give all parties time for filing of Exceptions to the Hearing Examiner's proposed order as required in statute.

- d. **In the Matter of: Denial of Opencut Mine Permit #3115 for FirstMark Materials – Oscar's Site, BER 2022-08 OC.**

Chair Simpson asked questions regarding the Settlement Stipulation, and Vicki Marquis of Crowley Fleck gave a short overview. Angie Colamaria also commented on behalf of DEQ.

Vice Chair Aguirre motioned that the Settlement Agreement and adoption of the Hearing Examiner's Motion for Dismissal with Prejudice be APPROVED. Board member Smith SECONDED. The motion PASSED unanimously.

IV. NEW CONTESTED CASES

- a. **In the Matter of: Appeal and Request for Hearing by The Dairy Subdivision, Missoula County EQ #23-1751, BER 2023-04 SUB.**

- b. **In the Matter of: Request for Hearing on Order of Revocation of Certified Operator License Number 9301, BER 2023-05 PWS.**

Board Member Reiten moved to ASSIGN these two new contested cases in entirety to a Hearing Examiner at Agency Legal Services. Board member Smith SECONDED.

Discussion ensued.

Board member Reiten amended his motion to ASSIGN these two new contested cases in entirety to a Hearing Examiner at Agency Legal Services, and that the Hearing Examiner or Examiners be directed to make available to the parties the informal procedures that were established by the Board. Board member Rankosky SECONDED. The motion PASSED unanimously.

V. BOARD COUNSEL UPDATE

No update was provided.

VI. GENERAL PUBLIC COMMENT

No public comment was given.

Chair Simpson mentioned that the Board had considered making this meeting an in-person meeting. After consultation with Board Counsel, Chair Simpson said he changed his mind about having an in person meeting as it did not make sense to have everyone travel long distances for a relatively short meeting. It may make sense to schedule the October Board meeting in Helena in person but again, that is dependent upon the agenda. The decision about the next meeting will be made a couple of weeks before the meeting.

Also, in discussions with the Department on budget matters, Chair Simpson said he did an analysis of cases that are in progress, with hours billed and projected hours going forward. It is incumbent on the Board to try to keep cases moving. He asked Board Counsel to provide guidance as to how to tighten up the criteria for awarding extensions going forward as a topic for the next meeting.

Angie Colamaria of DEQ asked if there would be an opportunity for the parties that regularly appear before the Board to have a chance to comment on the discussion. Chair Simpson agreed to allow comment.

Vice Chair Aguirre clarified that the Board was not setting a policy but looking for guidance. Board member Reiten said that generic examples of how things have been handled in the past may be of interest to the Board.

VII. ADJOURNMENT

Board member Smith MOVED to adjourn the Board Meeting; Board member Reiten SECONDED. The motion PASSED unanimously. The meeting was adjourned at 10:02 A.M.

Board of Environmental Review August 11, 2023, minutes approved:

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

October 20, 2023
DATE