

**BOARD OF ENVIRONMENTAL REVIEW
MEETING MINUTES
OCTOBER 20, 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, Jon Reiten, and Joe Smith. Board member Jennifer Rankosky arrived later to the meeting.

Roll was called and a quorum was present.

Board Attorney Present

Terisa Oomens

DEQ Personnel Present

Board Secretary: Sandy Moisey Scherer

Board Liaison: Deputy Director James Fehr

DEQ Legal: Catherine Armstrong, Sarah Christopherson, Angie Colamaria, Loryn Johnson, Kurt Moser, Aaron Pettis, Nick Whitaker, Kaitlyn Whitfield, and Jessica Wilkerson

Air, Energy and Mining: Emily Lodman, Sonja Nowakowski, Gabrielle Ostermayer, and Elizabeth Torske

Other Parties Present

Laurie Crutcher, Crutcher Court Reporting

Elena Hagen, Montana DOJ Agency Legal Services Bureau

Bill Mercer, Holland & Hart

Vicki Marquis, Crowley Fleck

Barbara Chilcott, Western Environmental Law Center

Ryen Godwin, Schwabe, Williamson & Wyatt

Ray Stout, Kootenai Valley Record

Matthew Adams

I. ADMINISTRATIVE MATERIALS

A. Review and Approve Minutes

A.1. The Board will vote on adopting the August 11, 2023, Meeting Minutes.

Vice Chair Aguirre moved to APPROVE the August 11, 2023, meeting minutes. Board member Reiten SECONDED. The motion PASSED unanimously.

There was no board discussion or public comment.

II. BRIEFING ITEMS

Chair Simpson and Board Counsel Oomens offered clarification regarding some cases. The Board did not have any questions.

For future meeting agendas, Chair Simpson asked that case updates that comments be bolded, for ease of review.

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. Kurt Moser of DEQ and Bill Mercer of Holland and Hart gave an update to the Board.

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. Kurt Moser of DEQ and Bill Mercer of Holland and Hart gave an update to the Board.

Discussion ensued. Board members asked for clarification from Mr. Moser and Mr. Mercer.

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

Chair Simpson asked if the parties were present, and Mr. Richards was not on the call. Nick Whitaker from DEQ gave a recap of the case.

Vice Chair Aguirre moved to ADOPT the Hearing Examiner's proposed Findings of Fact, Conclusions of Law, and Summary Judgment Order. Board member Altemus SECONDED.

Discussion ensued and the motion PASSED unanimously.

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

Chair Simpson asked representatives for DEQ and Butte Highlands to provide a status update. Vicki Marquis of Crowley Fleck and Jessica Wilkerson of DEQ gave an update to the Board.

Vice Chair Aguirre motioned to ADOPT the Order Dismissing the Appeal with Prejudice. Board member Smith SECONDED.

Discussion ensued and the motion PASSED unanimously.

IV. BOARD DISCUSSION ITEMS

1. **Granting of Stays.**

Chair Simpson asked Board Attorney Oomens to update the Board on her findings. Board Attorney Oomens updated the Board and Chair Simpson asked that Hearing Examiners review requests critically, to preserve the rights of the parties involved.

Also, Board Attorney Oomens wanted to bring to the attention of the Board that when licenses for professions are involved, informal MAPA procedure is not allowed under statute. This applies to BER 2023-05 PWS (Deveny).

Discussion ensued but no motions were made.

2. **2025 Legislature Statute Changes.**

Chair Simpson said he had been working on a summary of the extent of the Board's authority and role. Discussion ensued.

Chair Simpson proposed that the Board DIRECT the Chair to begin developing a summary, with assistance from various Board members, to summarize what is in the statutes right now, and to present ideas for clarification, for a possible bill in the next Legislature. Board member Reiten SECONDED.

Discussion ensued and the motion PASSED unanimously.

V. GENERAL PUBLIC COMMENT

No public comment was given.

VI. BOARD CHAIR UPDATE

Chair Simpson noted that Board member Bruner was appointed by the Governor to be a Workman Compensation judge, leaving an absence on the Board. There is no news on a replacement.

In December, the Board's agenda will be quite full as there is an appeal for an Opencut statute. Chair Simpson said it may be appropriate to have an in-person meeting in December but that is weather dependent. He plans to review the Opencut law as it stands right now as preparation for the December meeting and recommended other Board members to do the same.

VII. ADJOURNMENT

Board member Altemus MOVED to adjourn the Board Meeting; Board member Smith SECONDED. The motion PASSED unanimously. The meeting was adjourned at 10:16 A.M.

Board of Environmental Review October 20, 2023, minutes approved:

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

December 8, 2023
DATE