

**BOARD OF ENVIRONMENTAL REVIEW
MEETING MINUTES
FEBRUARY 16, 2024**

Call to Order

Chair Simpson called the meeting to order at 9:03 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 member Julia Altemus was not present.

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 Communications: Moira Davin

DEQ Legal: Kirsten Bowers, Sarah Christopherson, Sam King, Loryn Johnson, Jeremiah Langston, Kurt Moser, Aaron Pettis, and Kaitlin Whitfield

DEQ Air, Energy and Mining: Kevin Krogstad, Emily Lodman, and Madeline VerWey

DEQ Enforcement: Marley Held-Wilson

Other Parties Present

Laurie Crutcher, Crutcher Court Reporting

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

Sarah Bordelon – Holland & Hart

Todd Briggs, Robert Smith - Westmoreland

Vicki Marquis – Crowley Fleck

John Bloomquist, Marlana Reichert – Parsons Behle & Latimer

Nancy Jacobsen

Jennifer Lint

Frank Tabish

I. ADMINISTRATIVE MATERIALS

A. Review and Approve Minutes

A.1. The Board will vote on adopting the December 8, 2023, Meeting Minutes.

Board member Smith moved to APPROVE the December 8, 2023, meeting minutes. Board member Rankosky 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 cases. Chair Simpson asked for an update in BER 2022-05 WQ (Westmoreland Rosebud Mining MPDES permit). Sarah Christopherson of DEQ and Sarah Bordelon of Holland and Hart provided an update to the Board. Chair Simpson asked about the Peabody Big Sky Mine drainages on that side of the divide. Counsel for the parties will follow up regarding data that may have been collected and provide an update to the Board at the next meeting.

The Board did not have any questions.

III. ACTION ITEMS

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

Chair Simpson asked if the parties were present. Aaron Pettis of DEQ was present and Mr. Deveny was absent. Mr. Pettis provided a review of the case for the Board.

Vice Chair Aguirre moved to ADOPT the Hearing Examiner's Order of Dismissal Without Prejudice, and issue a Final Agency Action dismissing this matter. Board member Reiten SECONDED. The motion PASSED unanimously.

b. In the Matter of the Notice of Appeal by the Rippling Woods Homeowners Association, et al., Regarding Approval of Opencut Mining Permit No. 2949, Moudy Pit Site, Ravalli County, MT, BER 2019-08 through 21 OC

Chair Simpson asked if the parties were present. John Bloomquist from Parsons Behle & Latimer and Kaitlin Whitfield from DEQ presented oral argument before the Board.

Discussion ensued.

Vice Chair Aguirre moved to ADOPT the Hearing Examiner's Findings of Facts with DEQ's exceptions added to MODIFY Conclusions of Law ¶¶149 and 155 and REJECT ¶150, for the Conclusions of Law. Chair Simpson SECONDED.

Discussion ensued and the motion PASSED unanimously.

IV. GENERAL PUBLIC COMMENTS

None.

V. BOARD CHAIR UPDATE

- A. Chair Simpson gave a short update. He was thankful that today’s meeting was virtual rather than in person, due to bad weather and roads. Chair Simpson provided a short update about the Selenium case and said he was working on developing a bill for the Board’s responsibilities for the upcoming Legislative Session. He asked Board Secretary Sandy Moisey Scherer about the next meeting in April, as she had mentioned previously about a possible schedule conflict. She was able to work things out for the next meeting (April 19th), so there is no need to reschedule.

Board Counsel Oomens said she is hopeful to have the remand for BER 2016-03 SM shortly, so it can be discussed at the Board meeting in April. Chair Simpson said that, with enough lead time, we might be able to schedule something in the way of a status conference.

Board Counsel Oomens asked if there was news of a replacement for the attorney for the Board. Board Secretary Sandy Moisey Scherer said she had not heard anything yet from the Governor’s Office.

VI. ADJOURNMENT

Vice Chair Aguirre MOVED to adjourn the Board Meeting; Board member Smith SECONDED. The motion PASSED unanimously. The meeting was adjourned at 10:41 A.M.

Board of Environmental Review February 16, 2024, minutes approved:

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

April 19, 2024
DATE