



**BOARD OF ENVIRONMENTAL REVIEW
MEETING MINUTES
AUGUST 23, 2024**

Call to Order

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

Attendance

Board Members Present

Chair Dave Simpson; Vice Chair Stacy Aguirre; Board Members Julia Altemus, Amanda Knuteson, 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 Director: Sonja Nowakowski

DEQ Communications: Rebecca Harbage

DEQ Waste Management and Remediation: Deb Sutliff

DEQ Legal: Catherine Armstrong, Kirsten Bowers, Sarah Christopherson, Loryn Johnson, Sam King, Kurt Moser, Abby Sherwood, and Kaitlin Whitfield

DEQ Air, Energy and Mining: Whitney Bausch, Ruby Hopkins, Dan Walsh

Other Parties Present

Laurie Crutcher, Crutcher Court Reporting

Elena Hagen, Montana DOJ Agency Legal Services Bureau

Vicki Marquis, Mark Stermitz – Crowley Fleck

Graham Coppes – Ferguson & Coppes PLLC

Kim Wilson – Morrison Sherwood Wilson & Deola

Samuel Yemington, Holland & Hart

Todd Briggs - Westmoreland

David Smith, MT Contractors Association

Frank Tabish, LHC MT

Representative Steve Gunderson

cjc416

Ruth Angeletti

Tracie Gibbons

Joe

Phyllis

I. ADMINISTRATIVE MATERIALS

A. Review and Approve Minutes

A.1. The Board will vote on adopting the June 21, 2024, Meeting Minutes.

Board member Reiten moved to APPROVE the June 21, 2024, meeting minutes. Board member Rankosky 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 cases.

For CDV 2023-21 (Selenium), Chair Simpson gave a general update. Board members Altemus and Knuteson asked for copies of documents, and Chair Simpson said he would send copies to all Board members.

For BER 2015-06 WQ, Chair Simpson asked DEQ for information regarding the renewal application. Kirsten Bowers of DEQ gave an update to the Board.

Chair Simpson asked about the status of BER 2022-05 SM (Rosebud Mine Area B Amendment 5), which is one of Hearing Examiner Cameron’s cases. Board Counsel Oomens said that Hearing Examiner Cameron is in the process of reviewing summary judgment documents and is drafting his proposed FOFCOL for the Board. The documents are extensive, and it is taking a decent amount of time for his review. There is no timeline to share as to when this will appear before the Board.

Board member Knuteson asked about the ability of Board members to review documents, so it is not cumbersome to prepare before a meeting. Board Counsel Oomens said that they could discuss how to facilitate that, if that is what the Board wants. Discussion ensued. Board Counsel Oomens said that it would potentially cause some conflict and an issue for the Board to review other documents. She will work with the Board Secretary to come up with a solution.

Chair Simpson asked Board Counsel Oomens for clarification regarding what is occurring in the BER 2023-02 OC (Marvin Rehbein Site near Arlee) case. Board Counsel Oomens said the parties have filed summary judgment, responses to summary judgment, and replies to summary judgment. She is in the process of reviewing and writing her order.

Chair Simpson asked for an update on BER 2023-03 OC (Protect the Clearwater). Board Counsel Oomens said that this is the case that came before the Board previously on summary judgment. The parties have filed a second summary judgment motion, and they’re working on their responses and replies. She is in the process of reviewing all information.

Chair Simpson asked for an update regarding Westmoreland Rosebud Mining (BER 2022-06 WQ). Kirsten Bowers of DEQ responded on the status of the water monitoring.

The Board did not have any additional questions.

III. ACTION ITEMS

a. **In the Matter of: Notice of Appeal and Request for Hearing on TMC Inc, Permit No. 3462/Black Pit, BER 2024-03 OC**

Chair Simpson gave a brief summary of the case. The Board will hear oral argument from the parties on the pending motion to limit evidence. Board Counsel Oomens presented background information, for clarification of where the case stands and what the Board will be doing in today's meeting. Chair Simpson asked the Board for a motion for opposition to moving forward with the oral argument, but there was no response from Board members. Discussion ensued and the Board decided to proceed with the oral argument.

Sam King of DEQ, Mark Stermitz of Crowley Fleck, Graham Coppes of Fergus and Coppes, and Kim Wilson of Morrison Sherwood Wilson & Deola presented oral argument before the Board.

Discussion ensued.

Vice Chair Aguirre moved to DENY GCA's Motion to Limit Evidence or in Limine. Board member Altemus SECONDED.

The motion PASSED unanimously.

Board Counsel Oomens reminded Chair Simpson regarding the Motion to Stay the case pending resolution of the constitutionality of HB 599. Chair Simpson asked the Board for a motion.

Board member Reiten motioned to STAY the case until resolution of the question of constitutionality of HB 599. Board member Altemus SECONDED.

The motion PASSED unanimously.

IV. NEW CONTESTED CASES

a. **In the Matter of: Appeal and Request for Hearing by Gallatin County Community Coalition regarding Issuance of Opencut Mining Permit #3561, Case No. BER 2024-04 OC.**

Board member Reiten moved to ASSIGN the case to a Hearing Examiner. The motion died for lack of a second.

Board member Altemus moved that the Board RETAIN jurisdiction of the case. Vice Chair Aguirre SECONDED.

Discussion ensued. The motion PASSED unanimously.

V. GENERAL PUBLIC COMMENT

No public comment was given.

VI. BOARD CHAIR UPDATE

a. Continuing Board responsibilities or authority

Chair Simpson spoke regarding his previous memo about Board responsibilities. Opinions presented in his memo were not universally accepted, and he is looking for clarification. Chair Simpson said he should have included MCA 75-1-101 (Environmental Policy Statement) in a previous Board packet, but this was included in today's meeting materials.

Chair Simpson said that that Board Counsel had communicated with Sam King of DEQ regarding the number of dryland permits that have been issued since HB 599 went into effect. There have been 120 dryland permits issued, although some were regular permits amended into dryland permits. Obviously, not all dryland permits are being appealed to the Board. Appeals that have been challenged are in more developed areas, and so far, only one has been challenged. She asked DEQ if there had been any unintended environmental consequences in the recent past and was informed that there have not been any front-end impacts from gravel pits. Discussion ensued.

b. Summarized agenda discussion

Chair Simpson asked the Board if there should be a change in how briefing items are presented, creating a more compressed agenda. Discussion ensued.

Board members said that they would prefer to leave case information on the agenda as is, the current format provides a good update for the cases before the Board.

c. General Board business, procedural matters, and questions from Board Members

Chair Simpson asked Board members about the hybrid case process and if the Board had any interest in increasing participation in the process, with respect to hearings. Discussion ensued.

Board Counsel Oomens said she would need to check notice processes.

Discussion ensued. The Board will discuss the participation issue in greater detail in a future meeting.

VII. ADJOURNMENT

Board member Smith MOVED to adjourn the Board Meeting; Board member Rankosky SECONDED. The motion PASSED unanimously. The meeting was adjourned at 12:04 P.M.

Board of Environmental Review August 23, 2024, minutes approved:

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

December 20, 2024
DATE