

**MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY**

MONTANA DEPARTMENT OF
ENVIRONMENTAL QUALITY,
MONTANA ENVIRONMENTAL
INFORMATION CENTER, CLARK FORK
COALITION, IDAHO CONSERVATION
LEAGUE, and IDAHO RIVERS UNITED,

Petitioners,

v.

MONTANA BOARD OF
ENVIRONMENTAL REVIEW, TECK
COAL UNLIMITED,¹ and THE BOARD OF
COUNTY COMMISSIONERS OF
LINCOLN COUNTY,²

Respondents.

Cause No. DV-2023-21

**ORDER ON MOTIONS FOR
SUMMARY JUDGMENT
AND MOTION TO STRIKE**

¹Teck Coal Unlimited now goes by the name EVR Operations Limited (hereinafter Teck Coal/EVR). *See* D.C. Doc. 95.

² The State of Montana, represented by the Montana Department of Justice, moved to intervene as a respondent in March 2023. The State then moved to withdraw in August 2024. Both motions were granted.

1 On January 10, 2023, Petitioner Montana Department of
2 Environmental Quality's (DEQ) filed a petition for judicial review of the Final
3 Agency Action and Order of the Board of Environmental Review (BER) in Cause
4 Numbers BER 2021-04 and 08, dated April 19, 2022 (hereinafter the April 2022
5 Order).

6 On May 18, 2023, the Montana Environmental Information Center,
7 the Clark Fork Coalition, the Idaho Conservation League, and the Idaho Rivers
8 United (Conservation Groups) filed a petition for judicial review in Montana
9 Environmental Information Center, et al. v. BER, et al., Lewis and Clark County
10 Cause No. DV 2023-366.

11 On March 6, 2024, this court granted a motion to consolidate
12 DV 2023-366 with this case.³ On April 16, 2024, the court ruled on a motion
13 to dismiss counterclaims. Currently before the court are motions for summary
14 judgment filed by all parties. Oral argument was held July 29, 2025.

15 The claims remaining following the court's decision as to
16 Petitioner DEQ's motion to dismiss (and withdrawal of Respondent State of
17 Montana) include Petitioner Conservation Groups' claims, Petitioner DEQ's
18 claims, Respondent BER's counterclaim, and Respondent Teck Coal/EVR's first
19 counterclaim. D.C. Doc. 76 at 11. The court concludes there are no genuine
20 issues of material fact, and resolution of this issue involves construction of the
21 applicable statutes. Those statutes establish the BER's lack of authority to enter
22 its April 2022 Order. In addition, DEQ complied with Montana Code Annotated
23 § 75-5-203. Petitioners are entitled to summary judgment.

24 /////

25 ////

26
27 ³ This Court will add reference to "DV 2023-366" in any reference to a pleading in that case
(prior to consolidation).

STANDARD OF REVIEW

Pursuant to Mont. R. Civ. P. 56(c)(3), summary judgment "should be rendered if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." "Material issues of fact are identified by looking to the substantive law which governs the claim." *McGinnis v. Hand*, 1999 MT 9, ¶ 6, 293 Mont. 72, 972 P.2d 1126. *Accord Glacier Tennis Club at the Summit, LLC v. Treweek Constr. Co.*, 2004 MT 70, ¶ 21, 320 Mont. 351, 87 P.3d 431; *Babcock Place P'ship v. Berg, Lilly, Andriolo & Tollefsen, P.C.*, 2003 MT 111, ¶ 15, 315 Mont. 364, 69 P.3d 1145.

The court must view the evidence in the light most favorable to the party opposing summary judgment and draw reasonable inferences in favor of the party opposing summary judgment. *Hutzenbiler v. RJC Inv., Inc.*, 2019 MT 80, ¶ 7, 395 Mont. 250, 439 P.3d 378. It must "identify the applicable law, apply it to the uncontroverted facts, and determine who prevails." *Yorlum Props., Ltd. V. Lincoln County*, 2013 MT 298, ¶ 12, 372 Mont. 159, 311 P.3d 748.

In evaluating cross-motions for summary judgment, the court must "evaluate each party's motions on its own merits, taking care in each instance to draw all reasonable inferences against the party whose motion is under consideration." *Ike v. Jefferson Nat'l Life Ins. Co.*, 267 Mont. 396, 399-400, 884 P.2d 471, 474 (1994) (citing *Heublein, Inc. v. U.S.*, 996 F.2d 1455, 1461 (2d Cir. 1992)).

FACTUAL BACKGROUND

This case involves the regulation of water quality in Montana as it relates to selenium in Lake Koocanusa and the Kootenai River in northwest Montana. The BER is a seven-member quasi-judicial board appointed by the Montana Governor. Mont. Code Ann. § 2-15-3502. Prior to July 2021, the BER

1 was tasked with the duties in Mont. Code Ann. § 75-5-301 regarding water
2 quality in Montana, including rulemaking. Mont. Code Ann. §§ 75-2-201, -301
3 (2019). Pursuant to that power and those duties, the BER adopted ARM
4 17.30.632 "Selenium Standards for Lake Koocanusa and the Kootenai River" in
5 December 2020. The rule states:

6 (1) For Lake Koocanusa and the Kootenai River mainstem, the
7 standards specified in (6) and (7) supersede the otherwise applicable
8 water quality standards found elsewhere in state law.

9 (2) Numeric selenium standards for Lake Koocanusa and the
10 Kootenai River mainstem from the US-Canada international boundary
11 to the Montana-Idaho border are expressed as both fish tissue and
12 water column concentrations. When the aquatic ecosystem is in steady
13 state and selenium data is available for both fish tissue and the water
14 column, the fish tissue standards supersede the water column
15 standard. When the aquatic ecosystem is in non-steady state, both the
16 fish tissue and water column standards apply. The numeric selenium
17 standards apply to the lake, to the river, or to both, as provided in this
18 rule.

19 (3) As of [December 25, 2020], Lake Koocanusa and the Kootenai
20 River aquatic ecosystems are in non-steady state. The department will
21 reassess the status of these aquatic systems triennially and amend this
22 rule to reflect any change.

23 (4) The water column standards are derived from modeling selenium
24 bioaccumulation in fish tissue and reflect criteria that protect the
25 aquatic life beneficial use. Permit conditions and limits developed
26 from the water column standards comply with the fish tissue
27 standards.

(5) No person may violate the numeric water quality standards in (6)
and (7).

(6) Fish tissue standards will be instantaneous measurements not to
be exceeded. Fish tissue sample results shall be reported as a single
value representing an average of individual fish samples or a
composite sample, each option requiring a minimum number of five
individuals from the same species. Fish tissue standards are applicable
to tissues of fish in Lake Koocanusa from the US-Canada
international boundary to the Libby Dam and in the mainstem
Kootenai River from the outflow below the Libby Dam to the

1 Montana-Idaho border. Egg/ovary tissue standards supersede any
2 muscle or whole-body standards, as well as the water column
3 standards in (7), when fish egg/ovary samples are available and when
4 the aquatic ecosystem is in steady state. When fish egg/ovary samples
5 are unavailable, and the aquatic ecosystem is in steady state, fish
6 muscle or wholebody standards supersede the water column standards
7 in (7).

8 Fish Tissue Selenium Concentration

9 Eggs/Ovaries 15.1 mg/kg dry weight (dw)

10 Muscle 11.3 mg/kg dw

11 Whole Body 8.5 mg/kg dw

12 (7) Water column standards are the numeric standards for total
13 dissolved selenium computed as a 30-day average, and shall not be
14 exceeded more than once in three years, on average.

15 (a) Lake Koocanusa from the US-Canada international
16 boundary to the Libby Dam: 0.8 µg/L.

17 (b) Kootenai River mainstem from the outflow below the
18 Libby Dam to the Montana-Idaho border: 3.1 µg/L.

19 ARM 17.30.632.

20 After the passage of months, a change in membership of the BER,
21 and passage of legislation that shifted to DEQ the rulemaking function regarding
22 water quality (2021 Legislative Session, S. 233, 66th Leg. Reg. Sess.), petitions
23 were filed by Respondent Teck Coal/EVR (July 2021) and Respondent Board of
24 County Commissioners of Lincoln County (Lincoln County) (October 2021)
25 pursuant to Mont. Code Ann. § 75-5-203 (2021). The petitions requested that
26 BER change its determination as to whether the level of selenium set by ARM
27 17.30.632 as to the water column is more stringent than comparable federal
regulations or guidelines. D.C. Doc. 111⁴ AM_DEQ000004 - 000070 (received
by the BER July 1, 2021); 000098 - 000133 (received by the BER October 14,
2021).

⁴ Citation to the record will be to D.C. Doc. 111 AM_DEQ00 ____.

1 In an April 2022 Order, the BER reversed its determination as to
2 the stringency of the allowed level of selenium stated in ARM 17.30.632. It
3 stated that the standard in the rule is more stringent than the federal guidelines,
4 that the BER had erred previously, and that new rulemaking would be required to
5 have a "valid and enforceable lake water column standard." D.C. Doc. 111
6 AM_DEQ000117 - 000136.

7 **DISCUSSION**

8 The petitions by DEQ and the Conservation Groups request review
9 of the April 2022 Order and seek declarations as to the language of the Order.
10 D.C. Doc. 5; DV 2023-366 - D.C. Doc. 1. The motions for summary judgment
11 similarly request review of the April 2022 Order.

12 Petitioner DEQ filed in this case a copy of the administrative
13 record. An objection and motion regarding the record was filed by EVR on
14 August 30, 2024. The issues raised in the motion were resolved by the filing of
15 the "amended" record September 27, 2024.

16 DEQ and BER set out statements of undisputed facts. Some of the
17 facts stated therein are disputed by other parties. All parties cite the record filed
18 with the court on September 27, 2024. The court considers the facts set out in the
19 record filed as D.C. Doc. 111 as the undisputed facts as to all procedural issues.

20 The facts relevant to the motions before this Court are those
21 established by the records of the BER regarding (1) the promulgation and
22 adoption of ARM 17.30.632 "Selenium Standards for Lake Koocanusa and the
23 Kootenai River," adopted in December 2020; (2) the BER's handling of the
24 petitions filed in 2021 by Teck Coal/EVR and Lincoln County; and (3) the
25 establishment of findings by DEQ June 14, 2022.⁵ D.C. Doc. 111.

26
27 ⁵ In addition to making findings pursuant to Mont. Code Ann. § 75-5-203 (process started April 1, 2022), DEQ filed a motion to alter or amend the April 2022 Order, asking the BER to strike

1 The record of the process by which ARM 17.30.632 was
2 promulgated and adopted by the BER includes (1) the public notices issued by
3 DEQ as to the proposed rule; (2) the meetings held by the BER on September 24,
4 2020, November 5, 2020, and December 11, 2020; (3) the voluminous scientific
5 and technical reports presented and available throughout the process by all
6 interested persons and parties (including innumerable references to the EPA
7 Appendix K and the development of site-specific standards); and (4) the large
8 number of public comments received (including by Respondents) and addressed
9 by DEQ during the process. D.C. Doc. 111.

10 The record of the process by which the BER reversed its decision
11 as to ARM 17.30.632 in its April 2022 Order (and its order denying DEQ's
12 motion to alter or amend) includes (1) the public notices issued by the BER as to
13 the petitions filed by Respondents; (2) the meetings held by the BER in 2021 and
14 2022 regarding the petitions and DEQ's motion to alter the April 2022 Order; (3)
15 the voluminous scientific and technical reports referred to by interested persons
16 and parties; and (4) the large number of public comments received (including by
17 Respondents) and addressed by the DEQ during the process. D.C. Doc. 111.

18 The record of DEQ's written findings in 2022 shows (1) the public
19 notices issued by DEQ as to the findings and related DEQ website information;
20 (2) the public meeting held by DEQ on April 26, 2022; (3) the voluminous
21 scientific and technical reports presented and available throughout the process by
22 all interested persons and parties; and (4) the large number of public comments
23 received (including by Respondents) and addressed by the DEQ during the
24 process. D.C. Doc. 111.

25
26 the portion of the Order directing DEQ to initiate new rulemaking. AM_DEQ000137 - 000165.
27 This motion was denied by the BER on December 9, 2022. AM_DEQ000525 - 000530; Exhibit
2 to D.C. Doc. 5.

1 It is clear that when the BER had the authority to engage in
2 rulemaking (prior to July 2021), it reviewed all pertinent information and
3 determined two types of selenium standards for Lake Koocanusa and the Kootenai
4 River, i.e., fish tissue and water column concentrations. D.C. Doc. 111.
5 Legislation by the 2021 Montana Legislature ended the rulemaking authority of the
6 BER. *See* S. 233, 66th Leg. Reg. Sess. (Mont. 2021); Mont. Code Ann.
7 §§ 75-5-201, 203, 301. In Mont. Code Ann. § 75-5-203 subsections (1), (2), (3),
8 and (4)(b), references to the BER were changed to DEQ. BER, when it no longer
9 had rulemaking power, then found in its April 2022 Order that the selenium
10 standard set in ARM 17.30.632 for the water column of Lake Koocanusa (ARM
11 17.30.632(7)(a)) was more stringent than the federal standards. It also declared
12 that new rulemaking was necessary. DEQ issued written findings in June 2022
13 regarding the site-specific water column selenium standard for Lake Koocanusa
14 pursuant to Mont. Code Ann. 75-5-203.

15 Even though the 2021 Montana Legislature ended the rulemaking
16 authority of the BER, Respondents maintain that the BER had the authority to
17 issue the April 2022 Order. Therefore, the issue of whether the April 2022 Order
18 constitutes rulemaking must be considered.

19 An administrative rule is an "agency regulation, standard, or
20 statement of general applicability that implements, interprets, or prescribes law or
21 policy or describes the organization, procedures, or practice requirements of an
22 agency. **The term includes the amendment or repeal of a prior rule.**

23 [Emphasis added.]" Mont. Code Ann. § 2-4-102(11). Administrative rulemaking
24 requires compliance with all applicable procedures set out in the Montana
25 Administrative Procedures Act (Mont. Code Ann. §§ 2-4-101, et seq.) (MAPA).
26 *See S. Mont. Tel. Co. v. Mont. PSC, Dep't of Pub. Serv. Regulation*, 2017 MT
27 123, ¶ 15, 387 Mont. 415, 395 P.3d 473.

1 The language of the April 2022 Order includes that the BER
2 previously acted pursuant to a mistake of law in concluding that the standard for
3 Lake Koocanusa's water column standard was not more stringent than that set by
4 federal guidelines. It also concludes that new rulemaking must be initiated. The
5 April 2022 Order is clearly an attempt by the BER to repeal or amend ARM
6 17.30.632.

7 By declaring invalid the rule it had promulgated and adopted 16
8 months prior and stating that the process must start over ("in order to have a valid
9 and enforceable lake water column standard"), the BER decision is a reversal of
10 its December 2020 rulemaking. AM_DEQ000117 - 000136. The BER's decision
11 in April 2022 and its denial of DEQ's motion to alter and amend in December
12 2022 involve the same unauthorized actions by the BER. The actions constitute
13 rulemaking - actions no longer within the BER's authority.

14 As stated by the Montana Supreme Court:

15 While an administrative body acting as a tribunal has quasi-judicial
16 power, it does not follow that its power is equal to the power of a
17 district court to hear all facets of a case. Jurisdiction in an
18 administrative hearing, contrary to a District Court's jurisdiction, is
19 strictly limited by statute. "It is a basic rule of law that . . . an
20 administrative agency, has only those powers specifically conferred
21 upon it by the legislature . . ." *City of Polson v. Public Service Com'n*
22 (1970), 155 Mont. 464, 469, 473 P.2d 508, 511, *Gwynn v. Town of*
23 *Eureka* (1978), 178 Mont. 191, 193, 582 P.2d 1262, 1263. An
24 administrative agency may not assume jurisdiction without express
25 delegation by the legislature. *City of Billings v. Public Service Com'n*
26 *of Montana* (1981), 193 Mont. 358, 369, 631 P.2d 1295, 1303.

27 *Auto Parts of Bozeman v. Employment Rels. Div. Uninsured Employers'*
Fund, 2001 MT 72, ¶ 38, 305 Mont. 40, 23 P.3d 193.

 There is no genuine issue of material fact, and the legal issue is
clear. The Legislature's statutory change in rulemaking authority effective July

1 1, 2021, negated any rulemaking action by the BER after that date. The April
2 2022 Order is a rulemaking action. The BER did not have the authority to
3 engage in rulemaking. Petitioners are entitled to judgment as a matter of law.

4 In responding to DEQ's motion for summary judgment, Teck
5 Coal/EVR filed a brief that makes reference to the declaration of Luoma "as
6 explanatory of the Administrative Record on the Selenium Standard and DEQ's
7 evaluation of Lake Koocanusa's water quality." D.C. Doc. 129 at 5. The
8 declaration includes "background information on selenium, EPA Guidance, and
9 the modeling used to derive site-specific water quality standards generally." D.C.
10 Doc. 142 at 7. Teck Coal/EVR urges consideration of the declaration of Luoma
11 on the basis of language in the court's Amended Scheduling Order (drafted by
12 the parties) and its assertion that the declaration is necessary to this court's
13 determination of the motions for summary judgment, even though it includes
14 nothing new as to the determinations of the BER. D.C. Doc. 142.

15 On April 2, 2025, DEQ moved to strike Luoma's declaration and
16 the portions of Teck Coal/EVR's brief as to summary judgment, arguing that the
17 declaration and argument are not part of the administrative record before the
18 court. The Conservation Groups joined the motion to strike. The motion is well
19 taken and will be granted.

20 This court is required to review only the record provided in this
21 case. Mont. Code Ann. § 2-4-704. *See also Peretti v. Dep't of Revenue*, 2016
22 MT 105, ¶ 15, 383 Mont. 340, 372 P.3d 447. The court is not faced here with a
23 redetermination of the selenium standard. Review of the record presented in
24 2020 through 2022 establishes that a wealth of evidence and information was
25 presented to the BER regarding the issue of the selenium standard for the water
26 column in Lake Koocanusa.

1 Teck Coal/EVR states a motion to strike on pages 27 - 28 of its
2 brief regarding motions for summary judgment (D.C. Doc. 129). To the extent
3 necessary, this Court recognizes Teck Coal/EVR's assertions and will rely on the
4 record filed with this Court as to the facts (D.C. Doc. 111) and the parties' filings
5 in this case as to their status.

6 The conclusion as to the BER's lack of authority to issue an order
7 amending or appealing ARM 17.30.632 is consistent with all standards otherwise
8 applicable to the court's review of the BER decision. The parties agree that this
9 case does not involve a "contested case" pursuant to MAPA. (In a contested
10 case, the "legal rights, duties, or privileges of a party" are determined. Mont.
11 Code Ann. § 2-4-102(4).) But the parties do not agree as to the standard of
12 review this Court should use in reviewing the April 2022 Order of the BER.

13 Respondents urge that the MAPA rules apply because they filed
14 petitions with the BER requesting a declaratory ruling and the April 2022 Order
15 was a result thereof. They cite Mont. Code Ann. § 2-4-501 ("A declaratory
16 ruling or the refusal to issue such a ruling shall be subject to judicial review in
17 the same manner as decisions or orders in contested cases.") and ARM 1.3.201
18 and -229, urging use of MAPA standards of review. D.C. Docs. 127 at 4; 129 at
19 8; 133 at 15. As noted in Mont. Code Ann. § 2-4-704 (standard of review for
20 contested cases), a court may reverse an agency decision if substantial rights of
21 an appellant have been prejudiced because a decision is in excess of the statutory
22 authority of the agency. *See Victory Ins. Co. v. State*, 2025 MT 180, 423 Mont.
23 377, 573 P.3d 772.

24 Petitioners maintain that the applicable review standard is set by
25 case law in non-contested cases - was the decision arbitrary, capricious, or
26 otherwise unlawful? D.C. Docs. 119 at 15 - 16; 122 at 7; 141 at 2 - 3.

27 ///

1 An agency decision not involving a "contested case" is arbitrary or
2 capricious only if: (1) any factual considerations or findings
3 specified by law as criteria for decision are not supported by
4 substantial evidence; (2) the decision is based on an erroneous
5 conclusion or application of law or reaches an illegal or
6 unconstitutional result; or (3) the decision is manifestly lacking in
7 conscientious reasoning regarding the pertinent legal criteria
8 consistent with the ultimate decision. See *Core-Mark [Int'l, Inc. v.*
9 *Mont. Bd. of Livestock*, 2014 MT 197], ¶¶ 37-38 and 42 [376 Mont.
10 25, 329 P.3d 1278](internal citation omitted); *Winchell v. Mont.*
11 *Dep't of Nat. Res. & Conservation*, 1999 MT 11, ¶¶ 11-12, 293
Mont. 89, 972 P.2d 1132 (standard of review of agency decision not
involving a "contested case" is whether the decision was based on an
erroneous application or conclusion of law, in excess of the agency's
"statutory bounds," "wholly unsupported" by the pertinent evidence,
or "clearly arbitrary or capricious").

12 *Wagarin v. State*, 2022 MT 236, ¶ 9, 411 Mont. 1, 521 P.3d 36. See also
13 *Mont. Env't Info. Ctr. v. Mont. Dep't of Env't Quality*, 2019 MT 213, ¶ 19,
14 397 Mont. 161, 451 P.3d 493.

15 The BER's April 2022 Order was arbitrary and capricious
16 pursuant to subsection (2) in the previous case quote – it was based on an
17 erroneous application of law. That is, the BER no longer had the statutory
18 authority to engage in rulemaking, which includes the amendment or repeal of a
19 prior rule. Mont. code Ann. § 2-4-102(11).

20 If BER correctly concluded that the standard stated in ARM
21 17.30.632 is more stringent than federal guidelines as to the water column in
22 Lake Koocanusa, there is still no basis on which to grant Respondents' requests.
23 Judgment in favor of Petitioners is also proper because of DEQ's compliance
24 with Mont. Code Ann. 75-5-203 following the April 2022 Order. While the 2021
25 legislative changes to Section 75-5-203 substituted DEQ ("the department") for
26 the BER ("the board") in most sections, the BER retained power to review a rule
27 alleged to be more stringent pursuant to subsection (4)(a).

1 Section 75-5-203 allows state regulations more stringent
2 than federal regulations or guidelines in limited situations, as follows:

3 (2) The department may adopt a rule to implement this chapter that
4 is more stringent than comparable federal regulations or guidelines
5 only if the department makes a written finding after a public hearing
and public comment and based on evidence in the record that:

6 (a) the proposed state standard or requirement protects public
health or the environment of the state; and

7 (b) the state standard or requirement to be imposed can
8 mitigate harm to the public health or environment and is achievable
under current technology.

9 (3) The written finding must reference pertinent, ascertainable, and
10 peer-reviewed scientific studies contained in the record that forms
11 the basis for the department's conclusion. The written finding must
12 also include information from the hearing record regarding the costs
to the regulated community that are directly attributable to the
proposed state standard or requirement.

13 (4) (a) A person affected by a rule that the person believes to be
14 more stringent than comparable federal regulations or guidelines
15 may petition the board to review the rule. If the board determines
16 that the rule is more stringent than comparable federal regulations or
17 guidelines, the department shall comply with this section by either
18 revising the rule to conform to the federal regulations or guidelines
19 or by making the written finding, as provided under subsection (2),
20 within a reasonable period of time, not to exceed 8 months after
receiving the petition. A petition under this section does not relieve
the petitioner of the duty to comply with the challenged rule. The
department may charge a petition filing fee in an amount not to
exceed \$250.

21
22 (b) A person may also petition the board for a rule review
23 under subsection (4)(a) if the department adopts a rule in an area in
24 which no federal regulations or guidelines existed and the federal
25 government subsequently establishes comparable regulations or
guidelines that are less stringent than the previously adopted
department rule.

26 (5) This section does not apply to a rule adopted under the
27 emergency rulemaking provisions of 2-4-303(1).

Mont. Code Ann. § 75-5-203.

1 As noted by the BER in the April 2022 Order, its reconsideration of ARM
2 17.30.632 was pursuant to Subsection (4). AM_DEQ000136.

3 The result of the review is found in the Amended
4 Administrative Record (D.C.Doc. 111) at AM_DEQ008167 to DEQ008175.
5 Contrary to both BER's and Teck Coal/EVR's counterclaims, the findings are fully
6 supported by credible evidence in the record and are compliant with Section
7 75-5-203.

8 Respondents urge incomplete or inconsistent application of
9 the other parts of Section 75-5-203. Any review of the BER action must be with
10 application of the entire statute, which is unique and specific to a more stringent
11 standard. By the clear language of the statute, the BER had only the power to
12 review and consider whether or not the selenium standard was more stringent.
13 And thereafter, by the clear language of the statute, DEQ must either revise the
14 rule or make written findings within a reasonable period.

15 To require findings **only** prior to petitions adds language to
16 the statute. That is not the role of this court. Mont. Code Ann. § 1-2-101.

17 We interpret a statute first by looking to its plain language. *Maier v.*
18 *State*, 2021 MT 296, ¶ 8, 406 Mont. 280, 498 P.3d 755. We construe
19 a statute by reading and interpreting the statute as a whole, "without
20 isolating specific terms from the context in which they are used by
21 the Legislature." *State v. Felde*, 2021 MT 1, ¶ 19, 402 Mont. 391,
22 478 P.3d 825. We will not interpret the statute further if the language
23 is clear and unambiguous. *Maier*, ¶ 8. We look to legislative intent if
24 the language is not clear and unambiguous and give effect to the
25 legislative will. *Mont. Sports Shooting Ass'n v. State*, 2008 MT 190,
26 ¶ 11, 344 Mont. 1, 185 P.3d 1003. Statutory construction should not
lead to absurd results if a reasonable interpretation can avoid it.
Maier, ¶ 8. We must harmonize statutes relating to the same subject,
as much as possible, giving effect to each. *Mont. Sports Shooting*
Ass'n, ¶ 11.

27 *Victory*, 2025 MT 180, ¶ 12.

Based on the foregoing, **IT IS ORDERED:**

1. The motion to strike the declaration of Luoma is

GRANTED.

2. DEQ's motion for summary judgment on all claims is

GRANTED.

3. The Conservation Groups' motion for summary judgment is

GRANTED as set forth above.

4. The cross motions for summary judgment and counterclaims of BER and Teck Coal/EVR are **DENIED.**

ELECTRONICALLY SIGNED BELOW

cc: Mary E. Cochenour, via email
Kristen H. Bowers, via email
Aislinn W. Brown, via email
Dana L. Hupp, via email
Aaron Pettis, via email
Terisa Oomens, via email
Shiloh Hernandez, via email
Lindsay M. Thane, via email
Murry Warhank, via email