BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

BOARD MEETING
APRIL 23, 2021

TRANSCRIPT OF PROCEEDINGS (VIA ZOOM)

April 23, 2021
9:00 a.m.

BEFORE CHAIRMAN STEVEN RUFFATO,
BOARD MEMBERS DAVID SIMPSON,
JON REITEN, JOSEPH SMITH, JULIA ALTEMUS,
HILLARY HANSON, and DAVID LEHNHERR

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WHEREUPON, the following proceedings were had:

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CHAIRMAN RUFFATO: Good morning, everyone. It's 9:00, and I'm going to call this meeting of the Board of Environmental Review to order. Welcome. I'll start out by welcoming new Board member Julia Altemus. I hope you can hear me. If you can't, someone let me know.

BOARD MEMBER ALTEMUS: I can hear you. Good morning.

CHAIRMAN RUFFATO: Julia, did I pronounce your name correctly?

BOARD MEMBER ALTEMUS: Yes, you did. Thank you.

CHAIRMAN RUFFATO: Thank you, Julia. I also want to welcome Regan. And am I pronouncing your name?

MS. SIDNER: Regan Sidner.

CHAIRMAN RUFFATO: Regan. Thank you. Thank you, Regan. I appreciate it. Sidner; is that right?

MS. SIDNER: Yes.

CHAIRMAN RUFFATO: Thanks, Regan. And so Regan is our new secretary, and Julia is a new
Board member. Let's start out by doing a roll call. So is Joyce or Regan going to do that, one of you?

MS. WITTENBERG: I am going to do that today, Chairman.

CHAIRMAN RUFFATO: Thank you, Joyce.

Please go ahead.

MS. WITTENBERG: Chairman Ruffato.

CHAIRMAN RUFFATO: Here.

MS. WITTENBERG: Board member Lehn herr.

BOARD MEMBER LEHNHERR: Here.

MS. WITTENBERG: Board member Simpson.

BOARD MEMBER SIMPSON: Here.

MS. WITTENBERG: Board member Hanson.

BOARD MEMBER HANSON: Here.

MS. WITTENBERG: Board member Reiten.

BOARD MEMBER REITEN: Here.

MS. WITTENBERG: Board member Smith.

BOARD MEMBER SMITH: Here.

MS. WITTENBERG: Board member Altemus.

BOARD MEMBER ALTEMUS: Here.

MS. WITTENBERG: We have a full quorum of the Board.

CHAIRMAN RUFFATO: Thank you, Joyce. Is there someone from DEQ who is going to introduce
the DEQ staffers that are present?

    MS. WITTENBERG: I'm not seeing George on the line yet, Mr. Chairman. I think I can go ahead and identify from those logged in. It looks like we have -- I'm going to ask you to unmute yourself and confirm. Is that Aaron Pettis?

    MR. PETTIS: Yes, it is.

    MS. WITTENBERG: Aaron Pettis. We have Marguerite Thomas.

    MS. THOMAS: Here.

    MS. WITTENBERG: We have Kirsten Bowers.

    MS. BOWERS: Yes. Here.

    MS. WITTENBERG: Kurt Moser.

    MR. MOSER: Yes. Here.

    MS. WITTENBERG: Nicholas Whittaker.

    MR. WHITTAKER: Here.

    MS. WITTENBERG: And I believe that's it for DEQ staff. If I've missed any DEQ staff, please speak up.

    MR. LUCAS: Mr. Chair, members of the Board, Mark Lucas, DEQ staff attorney, Air, Energy, and Mining Division. Good morning.

    MS. WITTENBERG: Thank you, Mark. That seems to be all the DEQ staff aside from Regan and myself.
MR. BARTON: Darryll Barton, Water Quality, DEQ.

CHAIRMAN RUFFATO: Thank you, Joyce. And now if we could identify the other individuals present. Joyce, could you identify those, and we'll get them on the record.

MS. WITTENBERG: Yes, I can do that. Please, as I call out your name, tell me if you're a member of the public, or if you're with ALSB or another State agency, please. Michelle Snowberger.

MS. SNOWBERGER: Good morning. Yes, I'm here on behalf of Agency Legal Services Bureau.

MS. WITTENBERG: Laurie, our Court Reporter is here I see. Lindsey Simon.

MS. SIMON: I'm here on behalf of Agency Legal Services Bureau.

MS. WITTENBERG: Jeffrey Doud.

MR. DOUD: I'm here with Agency Legal Services Bureau as well.

MS. WITTENBERG: Caitlin Buzzas.

MS. BUZZAS: Yes. I'm here. I'm part of Agency Legal Services as well.

MS. WITTENBERG: Katherine Orr, Board attorney. Vicki Marquis.
MS. MARQUIS: Yes. Hi. Good morning.
I'm Vicki Marquis. I'm here representing Copper Ridge Development Corporation and Reflections at Copper Ridge.

MS. WITTENBERG: Andrew --

MR. CZIOK: Good morning. It's pronounced Chuck. It's easier than it looks. I'm an attorney with Agency Legal Services as well. Yes, ma'am.


MS. LAUGHNER: Public. I'm representing Western Sugar.

MS. WITTENBERG: And the name is not coming up. Is it Katherine Armstrong?

MS. ARMSTRONG: Yes, ma'am. I'm a paralegal for DEQ.

MS. WITTENBERG: Did I miss anybody? If I missed anybody, please speak up.

(No response)

MS. WITTENBERG: I think that's it.

CHAIRMAN RUFFATTO: Thank you, Joyce. I think at this point, first of all, I'd like to say that I would like to take -- I think the tradition is to take a break roughly every one hour. I'd
ask Regan and Joyce to remind me, but I'd like to take those breaks at normal kind of natural breaking points.

So the first order of business on the agenda is review and approval of minutes. Before we get into those, I wanted to ask a question of Joyce, and that question is: When you're preparing the minutes, do you typically rely on the transcript of the hearing?

MS. WITTENBERG: Yes, mostly. I usually draft the minutes from my notes with all but the votes, motions and votes, and then complete it when I get the transcript, yes.

CHAIRMAN RUFFATO: Thank you, Joyce. Then we'll go to the first minutes we need to review and approve, and that's the minutes of the meeting of December 11th, 2020. Five of us were not there. Dr. Lehnherr and Hillary Hanson were there, so I'm going to ask them if they see anything in the minutes that you thought were problematic.

BOARD MEMBER HANSON: (Shakes head)

BOARD MEMBER LEHNHERR: (No response)

CHAIRMAN RUFFATO: If not, I will ask the balance of the Board members if you had any
questions or comments about the minutes from December 11th.

(No response)

CHAIRMAN RUFFATO: Any comments from the public?

(No response)

CHAIRMAN RUFFATO: Then I will entertain a motion to approve the minutes of the meeting of December 11th, 2020.

BOARD MEMBER HANSON: So moved.

CHAIRMAN RUFFATO: Do I have a second?

BOARD MEMBER LEHNHERR: I'll second that motion.

CHAIRMAN RUFFATO: Thank you, Hillary and Dr. Lehnherr. A motion has been made and seconded to approve the minutes of the Board meeting of December 11th, 2020. All in favor, say aye.

(Response)

CHAIRMAN RUFFATO: Opposed, same sign.

(No response)

CHAIRMAN RUFFATO: The motion carries unanimously. The next item is the approval of the minutes of February 26th, 2021, our February meeting. Are there any comments from the Board on
the minutes?

(No response)

CHAIRMAN RUFFATO: Any comments from the public on the minutes?

(No response)

CHAIRMAN RUFFATO: Then I'll entertain a motion to approve those minutes.

BOARD MEMBER SIMPSON: So moved.

CHAIRMAN RUFFATO: I'll second that motion. A motion has been made and seconded to approve the minutes of February 26th, 2021. All in favor, say aye.

(Response)

CHAIRMAN RUFFATO: Opposed, same sign.

(No response)

CHAIRMAN RUFFATO: The motion carries unanimously.

At this point, I'm going to ask Katherine Orr to introduce the Hearing Examiners that have been appointed to the various cases or may be appointed to the various cases. And I would thank Katherine for giving us some little biographical sketches for all of the Hearing Examiners, so we know them a little better, get to know them a little better. Katherine, I'll turn
it over to you at this point for those
introductions.

MS. ORR: Thank you very much. Board
members, you have in front of you the bios of the
Hearing Officers who are here at Agency Legal
Services, and what I thought I would do is just so
you can attach a description to a face, have each
one of the attorneys introduce themselves here via
the Zoom.

Before I do that, I wanted to say that
Amy Christensen, who is outside Counsel -- she
does not work for Agency Legal Services, she owns
and operates her own law firm in Helena -- her bio
is included here, and she mentioned to me she is
taking her first day of vacation in two years
today, so she can't be with us in person, but I
think this adequately describes her experience.
And she's representing the Board in District Court
when there's been a petition for judicial review.

So I'll start with, just so that they
know I'm going to read the list now, and then
we'll have each one of the staff here introduce
themselves. We didn't think it was necessary for
them to talk about their background today because
you have that in front of you in writing.
But I will say I am extremely proud of each one of these individuals. They're absolutely professional and very hard working, and it's a joy to work with each one of them, and I think you will find the same. So the list that I will go through is as indicated on the bios, Jeffrey Doud, Lindsey Simon, Drew Cziok, Caitlin Buzzas, Michelle Snowberger.

So Jeff, would you like to introduce yourself.

MR. DOUD: My name is Jeffrey Doud. I've been with Agency Legal Services for about six years now, and never dabbled in the environmental realm, but certainly excited to learn this area of law, and hopefully provide the Board with some sound, well-reasoned decisions for your consideration.

MS. ORR: Thanks, Jeff. Lindsey, would you introduce yourself, please.

MS. SIMON: Mr. Chair, members of the Board, I'm Lindsey Simon. I have been with Agency Legal Services Bureau for a little over a year and a half now. Prior to that, I was an attorney at Montana Legal Services Association where I practiced primarily in the world of state
administrative law.

   So although I am new to environmental law, I have a firm background in the Montana Administrative Procedures Act and contested case hearings. I'm excited to take on some Hearing Examiner work for the Board.

   MS. ORR: Thanks, Lindsey. Drew, would you introduce yourself, please.

   MR. CZIOK: Good morning. Like Katherine said, my name is Drew Cziok. I'm also an attorney at Agency Legal Services. I have been here since last November. Before that I was an associate at Crowley Fleck here in Helena; before that I was with the US Department of Homeland Security; and back before that was I working for some Administrative Law Judges. So I'm excited to be getting back into the world of administrative law, and looking forward to working with all of you.

   MS. ORR: Thank you, Drew. Caitlin, would you introduce yourself.

   MS. BUZZAS: Hi. I'm Caitlin Buzzas. This is my third week I think at Agency Legal Services, so I'm pretty new here. But before I went to law school, I spent about eight years in
D.C. doing environmental policy, so I'm very excited to be back in the world of science and being a Hearing Examiner for DEQ.

MS. ORR: Thank you. Michelle, would you introduce yourself, please.

MS. SNOWBERGER: Good morning, Mr. Chair, members of the Board. My name is Michelle Snowberger, and I'm an Assistant Attorney General with Agency Legal Services Bureau. I've held this position for just over a month, so not very long here. I came, though, from the -- it was a transfer within the Department of Justice.

I was General Counsel for the Motor Vehicle Division for just about a year; and prior to that I was a Bureau Chief for five years for MVD. So I have both operational and legal familiarity with the administrative rule process, both on drafting and making administrative rules, but also the administrative rule hearing process, as we did hearings throughout my term at MVD.

Prior to my coming to work for the Department of Justice, I was the Belgrade City Court Judge for 13 years; and prior to that, my legal history, I was both a Cooke County Public Defender in Chicago, Illinois, and also then
worked for a small litigation firm where we did major criminal defense, and then kind of a slew of additional litigation, both on the federal and state matters.

So I'm excited to be continuing my work within the administrative process and to be a Hearing Examiner. Thank you.

MS. ORR: Thank you, Michelle. Did any of the Board members or Mr. Chairman, if you'd like, if anyone has any questions generally, we'd be glad to answer them.

CHAIRMAN RUFFATTO: Thank you, Katherine, and welcome to this meeting, and to the Hearing Examiner role. I appreciate all of you.

The next order of business is to discuss the assignment of cases to Hearings Examiner. We put this on the agenda as kind of a supplement to the orientation that was conducted at the February meeting, and primarily for the five of us that are new, so that we understand what it means to assign a case to a Hearing Examiner. And so I would like Katherine again to introduce this subject, and then to explain a little bit, and then maybe we could open it up for questions from the Board.

Katherine, please.
MS. ORR: This is Katherine Orr speaking. Mr. Chairman, members of the Board, the Board as you know has quasi-judicial authority and responsibility to adjudicate cases that are brought before it, and most of those cases are on appeal from an action of the Department of Environmental Quality, whether that be a Notice of Violation, or an original action before the Board. And this is across all of the subject matters, for instance, water, air, solid waste, that sort of thing; subdivisions, which you have a case involving that today.

And so the Board, it is within the Board's full discretion to determine whether it wants to delegate adjudication of a case to the Hearing Officers, and that delegation can be full or partial.

And what I mean by that is the Board is well within its authority to designate a Hearing Officer for the purposes of adjudicating prehearing matters, or matters that don't result in a final disposition of the case, such as a summary judgment or a hearing on the merits.

So the spectrum is from delegating to the Hearing Officers on sort of the smaller level
motions practice, through -- and then on the spectrum through summary judgment if there is one, and then on the spectrum through full hearing on the merits. And so when we come to these meetings, there will be an action item -- there isn't this time -- but there may be an action item where the Board members are to determine how they want to delegate, if at all, adjudication of the case.

As you can tell from the materials, these cases tend to be lengthy, somewhat complex, and extensive in the documentation, and briefing, and exhibits, and transcripts. So a reason to delegate to the Hearing Officer is to fulfill the standards in the statute and the Administrative Procedure Act of handling a case where the individuals who are doing the adjudication have the expertise, may do it in an expedient manner, have the available time to review and rule on the case given the record.

So for the purposes of all of the Board members, if a case is delegated fully to a Hearing Officer -- which has been the case in the past few years -- then it's up to the Hearing Officer to bring their decision to the Board for final
approval. And you have that matter before you today, for example, whether or not to approve the proposed decision that has been presented to you by Jeff Doud in the Copper Ridge and the Reflections cases.

So also there is a provision in MAPA that you can bring in an outside Hearing Officer. It all really depends on your decision concerning expertise and availability really. The statute that is the authority for what I've just been saying is to 2-4-611 sub (4), if you wanted to look at that.

So that's really what I have to say about it, and I'd love to answer questions if I haven't covered something.

CHAIRMAN RUFFATO: This is Steve Ruffato. Any questions from the Board members? (No response)

CHAIRMAN RUFFATO: I have a couple of questions, Katherine. When a decision comes from a Hearing Examiner to the Board, what is the standard of review that the Board has to apply to that decision? And if you would address the findings of fact, conclusions of law, and the order, all three of those, the standards of review
that apply.

MS. ORR: Okay. Automatically when you use the term "standard of review," I would like to emphasize that in my view, the Board and the Hearing Officer are not different levels from which there's an appeal. The Hearing Officer proposes a decision, and it's up to the Board whether it wants to accept that decision.

There's no jurisdictional deference. The Hearing Officer's proposed order is just that, it's a recommendation, and then it's up to the Board to determine whether or not it will approve the findings of facts and conclusions of law in the proposed decision.

The standard that the Board applies when it's determining whether to approve those findings of fact and conclusions of law is whether the claims are made based on a preponderance of the evidence, and that applies to the findings of fact.

Unfortunately the way that the Administrative Procedure Act operates is that if an entity such as yourselves -- an agency -- hasn't itself heard the record, and when it's reviewing the proposed findings of fact, if the
Board determines that it wants to change a finding of fact, having looked at the transcript, or having determined that there's a finding of fact that doesn't comport with what is on the record, then the Board itself has to review the whole record in order to alter that finding of fact.

That's not true of vis-a-vis conclusions of law. The Board doesn't have to review the whole record if it wants to change a conclusion of law, and this is all governed by 2-4-621. I believe that's it. No. I'm referring to another section there.

But under 2-4-621, the Board -- and this is scoping out to kind of a macro scale -- may in general adopt a proposed decision, reject, remand, or modify -- let me back up -- may adopt or reject the findings of fact and/or modify them, but to do that, the Board has to review the whole record.

The Board may also reject or modify the conclusions of law, and doesn't have to review the whole record. So if that answers your question. I hope it does. Thank you.

CHAIRMAN RUFFATO: This is Steve Ruffato. It answered the question, but I'd like to drill down a little bit, Katherine.
MS. ORR: Absolutely.

CHAIRMAN RUFFATO: And then specifically with findings of fact, as I read the statute, it essentially says that in order to change a finding of fact, we have to conclude that there is not -- I think the words are -- substantial evidence in the record.

And to elaborate on that, my reading suggested to me that if we disagree with the finding of fact after review of the whole record, but there's still substantial evidence on the record for the finding the fact, we are not permitted to change it. Am I stating that accurately?

MS. ORR: Let me, if I might respectfully amend that, or say that there's a little bit more of an explanation.

What the Board is doing is basically evaluating whether the preponderance of the evidence, given the findings of fact, support the overall conclusion of how to rule, whether or not the claims are supported, for example, or not supported. That's a preponderance of the evidence standard.

But when the Board is looking at a
finding of fact -- just in itself, not in the overall decision -- it has to be supported by substantial evidence. So that's a little bit of a twist on what you were saying.

CHAIRMAN RUFFATO: Thank you, Katherine. Then the other question that I wanted to ask is to talk about the process.

If we have before us a proposed finding of fact and conclusion of law, and we look at that, and we say, "We're not sure if the findings of fact are supported by substantial evidence," what's the process at that point?

MS. ORR: Then you, Mr. Chairman -- Katherine Orr -- and Board members, then you would look at the record, and determine for yourselves what the findings of fact are as supported by the substantial evidence, and then what the ultimate decision should be based on the preponderance of the evidence.

CHAIRMAN RUFFATO: I'll ask one more question, then I think I'll be done, Katherine, and that is: Will you explain what the process of looking at the entire record looks like from the Board members' point of view.

MS. ORR: The Board members would be
supplied with basically all of the briefs, all of
the previous rulings, all of the transcript, and
all of the attendant exhibits.

CHAIRMAN RUFFATO: Thank you.

MS. ORR: I must say, this is compounded
by the fact that there have been several hearings,
so I think a place to start -- if the Board were
to determine that it wanted to look at the whole
record -- would be to first look at the proposed
decision of the present Hearing Officer, Mr. Doud,
and to determine whether or not from that document
there should be a modification or an adoption of
that document, if that makes sense.

CHAIRMAN RUFFATO: That makes sense,
Katherine. Thank you. One of the reasons I
wanted to go through this is because we're going
to be getting into this later on today, but I kind
of wanted to do it as an educational process
particularly for us new Board members.

And Julia, I know that you weren't at
the prior Board meeting, and I would just
encourage you, if you haven't done so, to read the
transcript from the February Board meeting, and
the orientation materials that I'm sure you were
provided to kind of get you up to speed.
Then one more thing that I'd like to do, and that is: I'd like to ask a few members of the attorneys that regularly practice before the Board, if you're willing -- don't feel compelled to do it at all -- but if you have some comments or points that you'd like to make about, first, the decision of assigning cases to Hearing Examiners, I would appreciate it. But I don't want to put anybody on the spot. If you're not inclined to make any comments, that's fine.

(No response)

CHAIRMAN RUFFATO: That will be great. We will not receive any of those comments.

So the next point on the agenda that I'd like to go into is a discussion of the disclosure of Board member contact information on the website. At our orientation meeting in February we raised this issue, and decided to put it off for discussion at this meeting.

The suggestion was made that maybe we do not want to have our contact information on the website because that tends to invite ex parte contacts, and that it would be better if all communications to Board members go through the Board secretary. So I'd like to open that up to
discussion among the Board.

MS. ALTEMUS: Mr. Chair, this Julia Altemus. I would prefer that all communication go through the secretary at DEQ. That would be my preference since I am still working.

CHAIRMAN RUFFATO: Thank you, Julia. This is Steve Ruffato. I will make a motion, and then we can open up it up for further discussion. I will make a motion that we not place the contact information of the Board members on the website, and that the website contain an appropriate statement that all communications directed to Board members go through the Board secretary.

BOARD MEMBER LEHNHERR: (Indicating)

CHAIRMAN RUFFATO: David, are you seconding that motion?

BOARD MEMBER LEHNHERR: Yes.

CHAIRMAN RUFFATO: Discussion?

(No response)

CHAIRMAN RUFFATO: Our agenda calls for any public comments on this point, and so I will ask for any public comments on this motion.

(No response)

CHAIRMAN RUFFATO: Hearing none, a motion has been made and seconded that we not
place contact information of the Board members on
the website, and that a statement is included that
all communications are to go through the Board
secretary. All in favor, say aye.

(Response)

CHAIRMAN RUFFATO: Opposed, same sign.

(No response)

CHAIRMAN RUFFATO: Motion passes unanimously.

The next item on the agenda are the
briefing items, and what I'd like to suggest we do
here is that we quickly walk through each of these
briefing items. I'm going to assume that Board
members have read the descriptive paragraphs in
each case, and then I'm going to ask the Hearing
Examiner if they have anything to add.

Again, I'm assuming that all Board
members have read the descriptive paragraph, and
so I'm asking the Hearing Examiners to just add
anything that's new or different in the
description. Does that procedure sound okay to
the Board, or does any of the member of the Board
have objection to that?

(No response)

CHAIRMAN RUFFATO: Hearing none, we'll
proceed on that basis. The first case is the Copper Ridge case and Reflections at Copper Ridge. At this point I'm only going to talk about the District Court case, because we'll be talking about the other aspect of it later. We do not have a Hearing Examiner on this part of it. We have a District Court case, and since Amy is not here, I'm simply going to ask the Board if there are any questions you'd like to pose to Katherine or anyone else about this case.

(No response)

CHAIRMAN RUFFATO: Hearing none --

Excuse me. Go ahead.

BOARD MEMBER SIMPSON: Mr. Chairman, this is Dave Simpson. Just a question. This issue has not yet cleared the Board of Environmental Review, and I'm a little confused as to why there is a parallel proceeding in District Court.

CHAIRMAN RUFFATO: This is Steve Ruffato. Thank you for that question, Dave, and I think Katherine can answer that for us. I would try, but I'd probably screw it up. So Katherine, can you answer that question for Mr. Simpson.

MS. ORR: Okay. I wish Amy were here,
Mr. Chairman, Mr. Simpson. It looks like this is a question that is an interlocutory appeal on the question of the admissibility of the photographs. And I think it is pending, it looks like. In a round about way, I hope I'll get to your question.

It is pending, and it's on a parallel track with the administrative proceeding. And it looks like the Judge hasn't ruled on the Board's motion to dismiss.

As Amy described it to me, what's before the District Court right now is the Board's motion to remove itself from the case, so it's a challenge to a previous Board action. And this opens up a set of issues in general that I think are really interesting, which is should a Board itself be a party in a judicial review action. And Amy has filed a motion to dismiss on the basis that she doesn't think it should be a party.

So it was a challenge to a prior ruling of the Board, and what is pending in District Court is whether the Board itself should be a party, and the Judge hasn't ruled on that.

CHAIRMAN RUFFATO: Thank you very much.

BOARD MEMBER SIMPSON: Thank you very much.
CHAIRMAN RUFFATO: Thank you, Katherine. I might add I was confused by this, too, David, and I thought that it was strange to have an interlocutory appeal. There is a provision in the Administrative Procedure Act that allows that in some cases, so I'm assuming that's what is going on here.

A question that you may have, and I have in my mind -- I'm not sure if we need to answer it -- but Katherine, do you have a thought as to what would happen if we were to accept the proposed findings and conclusions, what would happen with that District Court case, or what might happen?

MS. ORR: Yes. Interesting question, Mr. Chairman. It's hard to say what the disposition, what the follow-up would be after the Board's ruling.

But I'd say hypothetically if it were appealed, then there's a question whether it would be in the same Court -- number one -- and there's a question if it were, if it could be consolidated. So I don't know.

CHAIRMAN RUFFATO: This is Steve Ruffato. Thank you. I don't think we need to know the answer to that question, but I think the
Board just maybe needs to know that it would have
impact on that in some respect probably, but I
don't think we need to try to think about the
answer. Any other questions?

(No response)

CHAIRMAN RUFFATO: If not, we'll go to
the next matter, and that is the Westmoreland
Resources Notice of Violation. The Hearing
Examiner is Mr. Doud. Is there anything to add to
what's in the agenda description?

MR. DOUD: No, I think that the
description is accurate, Mr. Chairman.

CHAIRMAN RUFFATO: Thank you, Mr. Doud.

Then I would ask: Do any members of the Board
have questions on this case?

(No response)

CHAIRMAN RUFFATO: Hearing none, we'll
go to the next one. That's Alpine Pacific
Utilities case, and the Hearing Examiner is Ms.
Lindsey Simon. Are there any changes or additions
that you would make to the description in the
agenda?

MS. SIMON: I do not believe so.

CHAIRMAN RUFFATO: Thank you. Any
questions for the Board?
(No response)

MS. SIMON: Not on my part, no.

CHAIRMAN RUFFATO: Thank you. Let's go to the next case then, and that's the Westmoreland Resources case, appeal from a final MPDES permit. The Hearing Examiner in this case is again Lindsey Simon, correct? Anything to add?

MS. SIMON: No, Mr. Chair.

CHAIRMAN RUFFATO: Any questions from the Board?

(No response)

CHAIRMAN RUFFATO: We'll go the next case. This is Montanore Minerals. The Hearing Examiner is Drew Cziok. Any additions or changes?

MR. CZIOK: No, sir.

CHAIRMAN RUFFATO: Thank you. Any questions from the Board?

(No response)

CHAIRMAN RUFFATO: The next case is Spring Creek Coal. And Drew, you're the Hearing Examiner on this one also?

MR. CZIOK: Yes, sir. I have nothing to add beyond the description in the agenda.

CHAIRMAN RUFFATO: Thank you. Any questions from the Board on this one?
CHAIRMAN RUFFATO: Hearing none, we'll go to Signal Peak. The Hearing Examiner is Mr. Cziok.

MR. CZIOK: This one actually went to Ms. Buzzas recently, but I believe she's still on the call.

MS. BUZZAS: Yes, I am. I don't have anything to add except, yes, this case has been transferred to myself.

CHAIRMAN RUFFATO: Okay. Thank you.

Any questions from the Board?

(No response)

CHAIRMAN RUFFATO: Going to the next one, the Rippling Woods Homeowners Association case. Hearing Examiner is Michelle Snowberger.

Any changes or additions?

MS. SNOWBERGER: Mr. Chair, members of the Board, we do have one addition to the status for this. Recently I disclosed through a notice of disclosure a potential conflict that I may have with this case, because I was friends with one of the individuals that was mentioned in a deposition.

We held a status hearing on that issue
to determine what the parties' positions were at that time. The Appellants had no objection to my continuing to act as a Hearing Examiner. The Department requested additional time, because their lead attorney was unable to appear at that status hearing. They filed a status report yesterday requesting that I reconsider my decision as to whether or not that I did not have a conflict, and that's currently under review at this time.

CHAIRMAN RUFFATO: Thank you. Any questions from the Board on this one?

(No response)

CHAIRMAN RUFFATO: Katherine, I think you started to ask a question, but I may be wrong. Do you have a point?

MS. ORR: Thank you, Mr. Chairman. Ms. Snowberger and I had had a discussion about this yesterday, and I was concerned about the extent, and she was too, about the extent to which she could talk about an item that was not specifically placed on the agenda here; and since you asked the question of any changes, I think we covered it.

CHAIRMAN RUFFATO: Got it. Thank you, Katherine. The next case is Western Energy. The
Hearing Examiner on this one is Mr. Doud again.

MR. DOUD: Thank you, Mr. Chairman. I have nothing to add or to change to the description provided to the Board.

CHAIRMAN RUFFATO: Any questions from the Board?

(No response)

CHAIRMAN RUFFATO: Hearing none, we'll go to the next case, and this is Montana Environmental Information Center and Sierra Club versus DEQ. I think there is no Hearing Examiner that I found when I looked through this, and I assume -- and so maybe someone can explain to me the status of this. Katherine, can you do that.

MS. ORR: It looks to me like the case is fully in front of -- Well, let me respond, Mr. Chairman, by first saying honestly I don't know the full status of this. And I can check.

MS. WITTENBERG: Chairman Ruffato, We do have Kirsten Bowers on the line, and she is the one who provided the status for this, so she could update you further.

CHAIRMAN RUFFATO: Thank you, Joyce. Kirsten, can you give me a short, give the Board a short status report here, please.
MS. BOWERS: Yes. Good morning, Chair Ruffato, members of the Board. I'm Kirsten Bowers, for the record, an attorney with DEQ.

And the summary in your packet accurately reflects what's going on in the District Court, but for the Board members' information, this is a case that's been all the way to the Supreme Court, and it's now on remand to District Court. And it's just been stayed on your agenda while that action is pending. And currently before the District Court the parties are briefing pretrial motions, and that briefing will be done in early May, I think May 7th.

CHAIRMAN RUFFATO: Thank you, Ms. Bowers. Any questions from the Board?

(No response)

CHAIRMAN RUFFATO: Hearing none, we will go to the Savco case. I gather from the description that the Hearing Examiner is no longer the Hearing Examiner, but the case has also been dismissed. Is that correct, Katherine?

MS. ORR: Mr. Chair, that is correct.

CHAIRMAN RUFFATO: Any questions from the Board?

(No response)
CHAIRMAN RUFFATO: Hearing none, we'll go to the Signal Peak case. The Hearing Examiner again is Drew. Any changes or additions?

MR. CZIOK: No, sir.

CHAIRMAN RUFFATO: Questions from the Board?

(No response)

CHAIRMAN RUFFATO: Going on, the Woodrock case looks like it is in the same status as the Savco case. Any questions from the Board?

(No response)

CHAIRMAN RUFFATO: Hearing none, we'll go on. The next one is the City of Great Falls. The Hearing Examiner is Mr. Doud.

MR. DOUD: Thank you, Mr. Chairman. There's nothing to add to the description that's been provided to the Board.

CHAIRMAN RUFFATO: Questions from the Board members, please.

(No response)

CHAIRMAN RUFFATO: Hearing none, we'll move on to the next one. Actually just for the sake of time, I'd do the next two, the Transcanada Keystone Pipeline cases, the Keystone XL Pipelines cases. There are two of them that we assigned to
a Hearing Examiner last meeting. Katherine has
been assigned to be the Hearing Examiner on both
of those. Katherine, is there any changes on
either of those two cases?

MS. ORR: Mr. Chairman, members of the
Board, the description is correct. And what I
would add is we had a status conference this week,
and it has been continued pending activities at
the Federal government level regarding those
Keystone permits.

CHAIRMAN RUFFATO: Thank you, Katherine.
Any questions from the Board on either of those
cases?

(No response)

CHAIRMAN RUFFATO: Hearing none, we'll
go to the Riverside Contracting case. The Hearing
Examiner is Mr. Cziok.

MR. CZIOK: Mr. Chair, I don't have
anything to add to what's stated in the agenda.

CHAIRMAN RUFFATO: Thank you. Any
questions from the Board?

(No response)

CHAIRMAN RUFFATO: Hearing none, we'll
go to the Talen Montana case. Katherine, you
again have been assigned to this -- or this case
has been assigned to you, I should say. Any changes from the description?

MS. ORR: Mr. Chairman, no changes.

This is a case where the parties got together, and decided that they would ask for a stay of the proceedings in December, and that stay is still in effect.

CHAIRMAN RUFFATO: Thank you. Any questions from the Board?

(No response)

CHAIRMAN RUFFATO: Hearing none, I will go to the Western Sugar case. Again, Mr. Cziok.

MR. CZIOK: Yes, sir. I have nothing to add beyond the agenda item.

CHAIRMAN RUFFATO: Questions from the Board.

(No response)

CHAIRMAN RUFFATO: Hearing none, we will go to the one contested case not assigned to a Hearing Examiner. So I have a question about this one, if someone can answer. What is the status of this case before the Board? I couldn't figure that out from the paragraph. Katherine, do you have an answer? Or I'll ask anybody on the line.

MS. ORR: Mr. Chairman, I think that if
you might direct yourself to one of the Department attorneys, that would be useful.

CHAIRMAN RUFFATO: Kirsten Bowers.

MS. BOWERS: Thank you, Chair Ruffato, I think I provided my summary maybe out of order. What I provided my summary earlier, I meant to talk about this case, and I guess I maybe accidentally got out of order, and talked about a related case.

This case is the one that went to the Supreme Court, and then was remanded back to District Court on the issue of the MPDES permit for the Western Energy Coal Mine in Colstrip. And so that case is now proceeding before the First Judicial District Court in accordance with a scheduling order that requires the party to brief pretrial motions by May 7th. I'm sorry. I did my summary out of order.

CHAIRMAN RUFFATO: No worries at all. Is the hearing, or is the process before the Board completed, or is it stayed?

MS. BOWERS: No, it's stayed pending completion of the Court case, and it hasn't been assigned to a Hearing Examiner.

CHAIRMAN RUFFATO: All right. Thank
you. Any questions, any additional questions from the Board on this Western Energy case?

(No response)

CHAIRMAN RUFFATO: If not, that concludes the briefing matters.

MS. WITTENBERG: Chairman Ruffato, this might be a really good time to take a break.

CHAIRMAN RUFFATO: Thank you, Joyce. That's a good idea. Let's take a ten minute break. We will reconvene at 10:10.

(Recess taken 10:00 a.m.)

(Copper Ridge and Reflections at Copper Ridge and Murray Transcripts bound separately)

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(Reconvened at 1:14 p.m.)

MS. ORR: Yes. As, Mr. Chairman, members of the Board, you perhaps are aware of Senate Bill 233, which is wending its way to the Governor's Office as I understand it, and this is a lengthy bill that basically removes from the Board's responsibilities rulemaking in the areas that it used to have rulemaking authority, and those cover things like air quality, major facility siting act, reclamation, water quality,
public water and sewage systems, solid waste management, and agricultural chemical groundwater.

This doesn't mean that the Board doesn't have its authority, as it always has, to hear appeals, or exercise its quasi-judicial functions, which include subpoenaing witnesses, conducting hearings, administering oaths, compelling the production of evidence, etc.

The one thing that struck me that I haven't reviewed is what if the Board itself has some need for instituting rules of procedure for the conduct of its hearings. And I have not researched that, and if you'd like me to research that, I can. I don't know. In other words, I don't know if this bill is affecting that. I'm sorry. I should have an answer on that before today, but it struck me this morning.

CHAIRMAN RUFFATO: I don't have any concern that you don't have an answer to that because it's not even a law yet. It just looks like it's probably going to go there, and we will find that out in the near future, and then we'll also have to figure out when that's effective, and then we'll have to address the question that you asked, and that is how does it affect our ability
to make rules with respect to our procedure.

And I don't think we need to address that, and if any Board member has a question or comment, feel free to ask or comment, but I just wanted the Board to be aware that this was happening or could be happening, and I didn't want it to come as a surprise if it happened. Any questions or comments from the Board?

BOARD MEMBER SIMPSON: Mr. Chairman, this is Dave Simpson again. Ms. Orr, what would be the impact of Senate Bill 233 regarding the Board's initiative to initiate rulemaking? That is, if it takes the Board out of the rulemaking process, but if there are issues that the Board feels need to be addressed, can we take those to the Department, and initiate the process?

MS. ORR: Mr. Chairman, Board Member Simpson. The way I look at that is that the Board doesn't have any formal authority to do that. Informally as a citizen I think you could do it.

BOARD MEMBER SIMPSON: Any citizen can file a petition for rulemaking, and I assume that that would be an option for the Board as well if there is no other avenue.

MS. ORR: Mr. Chair, Mr. Simpson. I
agree with that. I think the Board could look through its formal motions practice, decide to file a petition for rulemaking, and have that entertained by the Department.

BOARD MEMBER SIMPSON: Thank you.

CHAIRMAN RUFFATO: Thank you, Mr. Simpson and Katherine. Any more comments, questions?

(No response)

CHAIRMAN RUFFATO: Katherine, do you have anything else you would like to update us on?

MS. ORR: Mr. Chair, I do not at this time.

CHAIRMAN RUFFATO: Thank you, Katherine. At this point, I would like to open up the floor to any member of the public that has comments regarding the matters that might be before the Board other than the contested cases.

(No response)

CHAIRMAN RUFFATO: So I've opened this up to public comment.

(No response)

CHAIRMAN RUFFATO: Since there is none, I would move that this meeting be adjourned. Do I have a second?
BOARD MEMBER REITEN: I'll second it.

CHAIRMAN RUFFATO: Thank you, Jon. A motion has been made and seconded that the meeting be adjourned. All in favor, say aye.

(Response)

CHAIRMAN RUFFATO: Same sign, opposed.

(No response)

CHAIRMAN RUFFATO: The motion carries unanimously. Thank you all for sticking with this and getting the work done. We'll close the meeting now. The meeting is adjourned.

(The proceedings were concluded at 1:21 p.m.)

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CERTIFICATE

STATE OF MONTANA )

: SS.

COUNTY OF LEWIS & CLARK )

I, LAURIE CRUTCHER, RPR, Court Reporter, Notary Public in and for the County of Lewis & Clark, State of Montana, do hereby certify:

That the proceedings were taken before me at the time and place herein named; that the proceedings were reported by me in shorthand and transcribed using computer-aided transcription, and that the foregoing - 43 - pages contain a true record of the proceedings to the best of my ability.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 25th day of April, 2021.

__________________________
LAURIE CRUTCHER, RPR
Court Reporter - Notary Public
My commission expires
March 9, 2024.
Nicholas - needs - necessary - natural - myself - Murray - moved - moved - MPDES - Murray - MVD - myself - 4:25, 31:10

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