1	BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
2	OF THE STATE OF MONTANA
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5	BOARD MEETING)
6	DECEMBER 13, 2019)
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8	TRANSCRIPT OF PROCEEDINGS
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10	Heard at Room 111 of the Metcalf Building
11	1520 East Sixth Avenue
12	Helena, Montana
13	December 13, 2019
14	9:00 a.m.
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17	
18	BEFORE CHAIR CHRIS DEVENY;
19	and BOARD MEMBERS JOHN DEARMENT,
20	CHRIS TWEETEN, DEXTER BUSBY,
21	HILLARY HANSON, and DAVID LEHNHERR (By phone)
22	
23	PREPARED BY: LAURIE CRUTCHER, RPR
24	COURT REPORTER, NOTARY PUBLIC
25	

1	WHEREUPON, the following proceedings were
2	had and testimony taken, to-wit:
3	* * * *
4	CHAIR DEVENY: Good morning, everybody.
5	Welcome. I'd like to call this meeting of the
6	Board of Environmental Review to order. And Sara,
7	if you could take roll call of the Board members,
8	please.
9	MS. NELSEN: Is Chris Deveny here?
10	CHAIR DEVENY: Here.
11	MS. NELSEN: Dexter Busby.
12	MR. BUSBY: Here.
13	MS. NELSEN: Hillary Hanson.
14	(No response)
15	MS. NELSEN: John Dearment.
16	MR. DEARMENT: Here.
17	MS. NELSEN: Chris Tweeten.
18	(No response)
19	MS. NELSEN: And David Lehnherr.
20	MR. LEHNHERR: Here.
21	MS. NELSEN: There are six Board members
22	present for a quorum.
23	CHAIR DEVENY: Did Hillary respond?
24	MS. NELSEN: No, she did not.
25	MS. HANSON: I am here. Can you hear

1 | me?

MS. NELSEN: Yes, we can, Hillary.

Thank you. So there are six Board members present for a quorum.

CHAIR DEVENY: Thank you. Let's have other introductions.

MS. CLERGET: Chris Tweeten is not on the phone.

CHAIR DEVENY: It is just five because Chris was not on the phone. He did say he would call in.

MR. TWEETEN: This is Chris.

CHAIR DEVENY: There we go. Great. All six of us are here then. So let's have introductions.

MS. SOLEM: Aleisha Solem, Agency Legal Services.

MS. CLERGET: Sarah Clerget. I'm the Board attorney.

MR. DAVIS: Tim Davis. I'm sitting in for George Mathieus as the Department liaison.

MS. NELSEN: Sara Nelsen. I'm the interim Board secretary for the Board.

MS. BOWERS: Kirsten Bowers, DEQ Legal.

MS. SCHERER: Sandy Scherer, DEQ.

MR. MOSER: Kurt Moser, DEQ Legal. 1 2 MR. HAYES: Ed Hayes, Deputy Chief Legal for DEO. 3 4 MS. COLAMARIA: Angie Colamaria, Chief 5 Legal, DEQ. MR. KENNING: Jon Kenning, DEQ Water 6 7 Quality. MS. CHRISTOPHERSON: 8 9 Christopherson, DEQ Legal. 10 MR. ANDERSON: Chad Anderson, DEQ 11 Enforcement. 12 MR. LUCAS: Mark Lucas, DEQ Legal. 13 MR. CRONIN: Chris Cronin, Opencut 14 Mining Program Supervisor. 15 MR. SEVERS: Eric Severs, DEQ Water 16 Quality Division. 17 MS. McLAUGHLIN: Joanna McLaughlin, DEQ 18 Water Quality. 19 MS. HORNE: Melinda Horne, DEQ Water 20 Quality. 21 MS. RAO: Maya Rao, DEQ Water Quality. 22 MR. BARTON: Darryl Barton, DEQ Water 23 Quality. 24 CHAIR DEVENY: Thank you. And are there 25 any other individuals on the phone from the

public, or any agencies that would care to check in this morning?

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MS. JACOBSEN: Good morning. This is Nancy Jacobsen with Rippling Woods Homeowners Association.

CHAIR DEVENY: Thank you, Nancy. Anybody else online this morning to check in?

MS. MARQUIS: Good morning. Vicki Marquis. I'm an attorney with Holland and Hart, and I represent CSH, Inc., and our notice of appeal of the water discharge permit is featured as one of the action items on your agenda today.

CHAIR DEVENY: Thank you, Vicki. other members of the public want to check in by phone?

MS. SLATER: Linda Slater, and I own land near there.

CHAIR DEVENY: Thank you, Linda. other members of the public?

MR. HOWELL: Michael Howell, H-O-W-E-L-L, Bitterroot Star.

CHAIR DEVENY: Any other member of the public on the phone today?

MR. VAUSE: Yes. My name is Kurt Vause, resident of Victor, Montana, and an appellant in

your packet for today.

CHAIR DEVENY: Okay. Thank you. And I think there was another person that spoke up.

MR. MAKI: Kevin Maki, KECI-TV.

CHAIR DEVENY: Thank you. Anybody else?

(No response)

CHAIR DEVENY: Any other members of the public to check in this morning?

(No response)

CHAIR DEVENY: Thank you all. And I would just remind you to please mute your phone when not speaking. It will really make the meeting go much smoother for everybody.

With that, we'll go on to review the minutes of the October 4th meeting that was here. Do any of the Board members have any additions or corrections?

(No response)

CHAIR DEVENY: Hearing none, I do have one addition I'd like to be made, and that has to do with the fact that we did have public comment on the rulemaking section. I just want that to be in the record. So let me try to find it here for a second.

This had to do with Section III(a) No. 1

1 on the action items under the adoption of the 2 requirements for the Regional Haze Program. would just like the minutes to reflect that we did 3 ask for public comments on those requirements, and 4 5 that there were none. So Sara, if you can make those corrections. 6 7 MS. NELSEN: I will do that. CHAIR DEVENY: Are there any other 8 additions or corrections that Board members would 9 10 like to have? 11 (No response) 12 CHAIR DEVENY: If not, could I entertain 13 a motion to approve the minutes. This is Chris. So moved. 14 MR. TWEETEN: 15 CHAIR DEVENY: It's been moved. Ιs 16 there a second to approve the minutes with the 17 correction that I submitted? This is David. 18 MR. LEHNHERR: 19 second that motion. 20 CHAIR DEVENY: It's been moved and 21 seconded. Any further discussion? 22 (No response) 23 CHAIR DEVENY: Hearing none, all those 24 in favor of approving the minutes with the

addition that I suggested, please signify by

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saying aye.

(Response)

CHAIR DEVENY: Any opposed?

(No response)

CHAIR DEVENY: Hearing none, the minutes passed with the correction I submitted. Thank you.

The next order of business is reviewing and approving the 2020 schedule for next year.

The Board members were sent the schedule in their packets, and were also contacted by Lindsay over the last few weeks, and we came up with a list of dates.

Hillary, I know you're not able to make that April date, but I think given the number of people that we have on the Board, it was probably best to go ahead and suggest that date anyway.

Hope you're okay with that.

Any discussion about the dates for the proposed meeting schedule?

MS. HANSON: Chris, this is Hillary.

I'm just looking. I think it was actually August

I can't make, not April.

CHAIR DEVENY: Oh, okay. Great. Well,
I'm sorry about the August date, too.

MS. HANSON: That's fine. I just wanted to make sure that you guys knew what I meant, the one that I was talking about.

CHAIR DEVENY: Okay. Thanks for clarifying that. So I would like to move that we establish the 2020 meeting schedule as in our packet. Would there be a second to that motion?

MR. TWEETEN: This is Chris. I'd

CHAIR DEVENY: It's been moved and seconded. Any further discussion?

(No response)

second.

CHAIR DEVENY: All those in favor of approving the 2020 meeting schedule as in our packet, please signify by saying aye.

(Response)

CHAIR DEVENY: Any opposed?

(No response)

CHAIR DEVENY: Hearing none, the motion passes. I just realized that I didn't provide any public comment opportunity for this, so we will see if there was anybody that had any objections to that schedule, if we need to go back and talk about that any more.

(No response)

CHAIR DEVENY: Is there any public comment about the schedule?

(No response)

CHAIR DEVENY: Hearing none, the motion stands as we just voted on. Thank you, and we'll move on to briefing items on the contested cases. And Sarah, if you could give us an update.

MS. CLERGET: All right. Starting on your agenda with briefing item II(A)(1)(a) CMG Construction. There allegedly has been a settlement reached, but it needs to be finalized, and I have given them until December 16th, 2019 to file that stipulation or respond to the discovery, and I've indicated that there will be no further extensions, as I've now given them several. So hopefully that will be a final date for them to get that settled.

Copper Ridge and Reflections. That one we've issued a scheduling order, and set deadlines for dispositive motions, which will be fully briefed in June of 2020. And then depending on whether or not there are motions filed, we'll set a hearing schedule as necessary for that.

The non-enforcement cases, 2(a), Alpine Pacific Utilities. There is a scheduling order.

Discovery closes June 2020.

The City of Great Falls, also a scheduling order through dispositive motions. And for the non-lawyers, when I say dispositive motions, that means summary judgment motions usually, so it's the big motions. So that's set through -- dispositive motions will be briefed in September of 2020.

(c), under 2(c) actually belongs in your action items section, because that is a case that's married to the CHS case. So the update on that is the same as the CHS case, which as you see later is an action item. So we'll wait and deal with that when we get to the action items.

Westmoreland Resources. There is a scheduling order, issued that November 27th, and set dispositive motions, which will be briefed in December of 2020. That's a ways out.

Montanore Minerals. It's stayed pending what is going on in the Supreme Court right now under the cause numbers there. So our underlying case, which is ripe for decision from the Hearing Examiner, is stayed, so I'm not issuing that decision until we figure out what's going on with the Supreme Court.

Golden West Properties. I allowed them to file second motions for summary judgment. So I ruled on the first motions for summary judgment, and then there was some briefing, and requests for a second round. I allowed that. They are fully briefed in front of me, and ripe for decision, so that's waiting on me and will be coming out shortly.

Talen, which is the one that we were supposed to have today, as you guys obviously saw that you're not hearing that today. They have filed something indicating that they needed to dispense the schedule until they could file their motions to govern the proceedings, which are due December 17th. So I will have a better idea what's going to happen. They moved the hearing to January, but then suspended the schedule. So December 17th, I'll know more, but the bottom line is you're not hearing it today.

Spring Creek Coal. December 13th, 2019, the parties will either file a stipulated settlement agreement or a joint proposed scheduling order. So they have indicated that settlement is a possibility, and they're working through that, and have until the end of the month.

Western Energy Area F, as we're calling it. They're completing discovery, and dispositive motions are due January 6th, 2020, although there has been some indication that that might need to be extended, but that's when they're currently due.

And not assigned to a Hearing Examiner, 3(a), is a DEQ update, I believe.

MS. BOWERS: Good morning, members of the Board. I'm Kirsten Bowers, DEQ attorney. And just a brief update on the Rosebud case.

As provided in the short summary in your packet, we have a final decision from the Supreme Court, and the case has been remanded to the District Court.

And then the Western Energy Company, the only updates since the summary that's in your packet is Western Energy Company filed a motion to substitute the District Court Judge, Judge Seeley, and so we don't know who our judge is yet. But that matter is remanded to District Court for decision on issues of material fact.

CHAIR DEVENY: Thank you, Ms. Bowers.

On that same case, I have an update from our outside Counsel whom we've --

MS. CLERGET: It's not the same case.

2 It is a different case. Keep going. You're in

3 | right place, but it's a different case.

CHAIR DEVENY: Moving forward. It's another Western Energy case dealing with the Montana Environmental Information Center, Sierra Club, DEQ, Montana Board of Environmental Review, and Western Energy.

So we were named in a case, and had to obtain outside Counsel. And I've asked our outside Counsel Amy Christensen to give us an update on that, and I have a brief update from her. I'm just going to read it.

"MEIC and the Sierra Club filed a petition for judicial review of BER's decision to approve the permit for the Rosebud Mine. BER filed a motion to dismiss on the grounds that BER should not have been named in the petition since it was the deciding agency, and not a party to the underlying contested case proceeding.

"The motion has been fully briefed and is now awaiting a decision. The Judge issued a scheduling order, which states that she will decide the motion to dismiss on or before January 10th, 2020. The scheduling order also set

deadlines for further briefing in the case."

So that's still ongoing, and will continue to be updated by our outside Counsel.

MS. CLERGET: That's the end. Now you've got action items on new contested cases.

CHAIR DEVENY: Actually we're going to slip in another category in here, which is going to be No. 2. This was not in the packet, but we do have something that came up with a DEQ rulemaking issue. And I'm going to ask Tim Davis of DEQ to give the Board an update on this, and tell us what it is that they need from us.

MR. DAVIS: Thank you, Madam Chair.

Members of the Board, I want to give you an update

-- this is Tim Davis -- give you an update on the

rulemaking that the Board initiated to increase

engineering fees for public water wastewater

systems. It also included some rulemaking

involving a municipal facilities exclusion.

The Environmental Quality Council objected to the rulemaking, and so therefore rulemaking has been delayed until January 15th when the Environmental Quality Council will meet again, and decide whether to lift that objection or not.

If they do lift that objection, DEQ, the Department, would request that the Board hold a special meeting to finalize the rulemaking so that it can be submitted to the Secretary of State by February 4th, which is the last filing deadline prior to the end of the six month period that we need to adopt rules within.

So we've already worked up a response to comments for the Board. We are ready, once it's lifted, to provide materials to the Board to be able to act, but it would need to be -- and we could talk, Madam Chair, if it may be beneficial to set up a special hearing in case we need it. If we don't, we can notify the Board, let you know that they did not lift the objection.

CHAIR DEVENY: So Tim, if you could clarify. So if they don't lift the objection, we need to hold another hearing, or you guys have to? How does that work?

MR. DAVIS: Madam Chair, if they do not lift the objection, it's my understanding that the six months will expire, and we would to have to initiate, the Board would have to initiate new rulemaking to go forward with the fees in the future, with those rules in the future.

CHAIR DEVENY: Do Board members have questions of Mr. Davis on this issue?

(No response)

CHAIR DEVENY: Any questions from Board members?

(No response)

CHAIR DEVENY: So hearing none, I guess we will ask for Sarah's suggestion on this.

MS. CLERGET: I was just going to suggest if we want to ask Sara Nelsen to get us a date. We probably want a little bit of time, maybe the end of January would be a good target, sometime in the last two weeks of January.

CHAIR DEVENY: So after we find out whether they're going to lift their objections, then if you could then poll the Board members, and we could set up a meeting.

MS. NELSEN: So just to make sure I understood that correctly, after the decision is made with the meeting that Tim has had, I will send a poll to Board members to schedule a special meeting separate from the scheduled February one?

MS. CLERGET: I think we might want to go ahead and just schedule it, so that we have it on the calendar, and then we can always cancel it.

Go ahead and ask Sara to find a date at the end of January.

CHAIR DEVENY: So don't wait. Go ahead and schedule it, and then if we have to cancel it.

MS. NELSEN: I will do that and notify you of the scheduled meeting.

CHAIR DEVENY: You'll need to poll the Board members to find some possible dates, make sure that we have a quorum.

MS. CLERGET: We'll work with her on that.

MS. NELSEN: Got it.

MR. DAVIS: Thank you, Madam Chair.

CHAIR DEVENY: Anything else?

MR. DAVIS: The only other thing, if I may take just a quick second. It's not on the agenda specifically. But Angie Colamaria, our new Chief Legal Counsel, is here when we did the quick introductions. I just want to take a second just to acknowledge her, and see if, Madam Chair, if you had any questions for her, or wanted her to just say hi, introduce herself. I don't know if this is a correct place, but I thought I'd just take the opportunity while my mike was hot to do so.

CHAIR DEVENY: I think that would be fine. If you'd like to come up and introduce

yourself. And welcome to Helena.

MS. COLAMARIA: Thanks. I'm happy to be here, happy to be here in Helena. I've been here for three weeks, so I'm still pretty new. I'm also, just so you know, in the process of waiving into the bar, so you're still going to see Ed and the rest of the attorneys on Court documents, Board documents, etc., while I'm still in that process. But I'm really looking forward to meeting everyone and working with you.

CHAIR DEVENY: Thank you. Welcome. So we're ready to move on then to new contested cases, and I'll turn this back over to Sarah Clerget, our Board attorney.

MS. CLERGET: So in your packet you have the materials from the new cases that we got.

There are fourteen of them. They all relate to the same permit, that same Moudy Pit site. So I'm assuming you've had the opportunity to look through those materials.

And you have your standard menu of options that you always have with the Hearing Examiner, in addition to -- and just to clarify --

those are: You can keep the case in its entirety; you can assign it to a Hearing Examiner for procedural purposes only; you can assign it for the dispositive motions stage through, for example, summary judgment; or you can assign it in its entirety to the Hearing Examiner. And the Hearing Examiner can be me or anyone else of your choosing.

And in addition to those regular menu of options, because all of these cases relate to the same site, I would suggest that you consider consolidating them for procedural purposes, and then take whatever action you're going to take in terms of assigning it on all of them combined for procedural purposes. So that would be my recommendation, and it's up to the Board how you want to proceed.

CHAIR DEVENY: Thank you, Sarah. I think having looked at all these, since they're all related, for procedural purposes it makes total sense to consolidate these. So I would make a motion to consolidate the fourteen cases for procedural purposes.

 $$\operatorname{MR}.$$ LEHNHERR: This is David. I second that motion.

CHAIR DEVENY: 1 It's been moved and 2 seconded to consolidate the fourteen cases for 3 procedural purposes. Is there any discussion by Board members? 4 5 (No response) CHAIR DEVENY: Hearing none, all those 6 7 in favor of the motion, please signify by saying 8 aye. 9 (Response) 10 CHAIR DEVENY: Any opposed? 11 (No response) 12 CHAIR DEVENY: Hearing none, the 13 fourteen cases have been consolidated. The next thing we need to do is to 14 15 decide whether we're going to keep these cases 16 ourselves, or to assign them to Sarah either for 17 procedural purposes or in their entirety. Do we 18 have discussion on this? 19 (No response) 20 CHAIR DEVENY: What's the pleasure of the Board members? 21 22 MR. BUSBY: I would make a motion that 23 we assign it to Sarah for the entirety. This is 24 Dexter.

CHAIR DEVENY:

Thank you, Dexter.

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been moved that the fourteen consolidated cases be assigned to our Hearing Officer Sarah Clerget for

the entirety of the cases. Is there a second?

I'll second it. It's been moved and seconded. Is there any discussion by Board members?

(No response)

these, Sarah?

CHAIR DEVENY: Hearing none, all those in favor of assigning the fourteen consolidated contested cases in their entirety to the Hearing Officer, please signify by saying aye.

(Response)

CHAIR DEVENY: Are there any opposed?

(No response)

CHAIR DEVENY: Hearing none, the motion carries, and these cases have been assigned to our Hearings Officer. Is there anything further on

MS. CLERGET: No.

CHAIR DEVENY: Okay. Thank you.

MS. CLERGET: So now we move on to the action items on contested cases.

The first one is Signal Peak Energy.

The District Court piece of it is not an action item, but I wanted to keep them together so there

wasn't confusion. That one is just an update from our outside Counsel.

CHAIR DEVENY: Again, this is Signal

Peak Energy/Bull Mountain Coal Mine permit case
where we were named as a party, and the case has
gone before the Supreme Court. We've had to go
hire outside Counsel to represent us, and Amy
Christensen's update on this is as follows:

"Signal Peak Energy appealed the
District Court order denying its request to obtain
discovery from two landowners, who were also
members of MEIC. In the District Court matter,
BER filed a notice of non-participation, and we
filed a similar notice in the appeal pending
before the Montana Supreme Court.

"Signal Peak has filed its opening brief on appeal, and Respondents received an extension until December 20th to file their response brief."

So this case, too, is ongoing, and we'll continue to keep the Board updated.

MS. CLERGET: Then the contested case is the action item that we need from you guys. There has been a question raised, and I just need clarification from the Board.

Does the Board intend to grant the

Hearing Examiner jurisdiction for the purposes of deciding the summary judgment motions only, or for the entirety of the case through the final recommended decision or the FOFCOL? So I just need that clarification, is the only action item.

CHAIR DEVENY: I went back through, and perhaps some of you have, too, to look at the record from our meeting on that, and I can understand why there was a little confusion because we had a motion, and then there was a very lengthy discussion between the motion and when we voted on it.

And when I called for the question on the vote, I didn't represent what was actually in the motion correctly. So we ended up voting on something that wasn't actually in the motion. The motion just dealt with the summary judgment part of it, but after our discussion, it was clear the Board was talking about assigning the case in its entirety to our Hearings Officer.

But we do need to clarify that, and if we could do that today in a motion to make sure that everybody is clear on what the intention of the Board was, which I believe was to assign the case in its entirety to the Hearings Officer. Any

questions on that from Board members, or differing 1 2 opinions? MR. BUSBY: This is Dexter, Chris. 3 4 would make a motion that we assign the balance of 5 this case in its entirety to the Hearing Officer. CHAIR DEVENY: Could you go ahead and 6 7 repeat that, Dexter. MR. BUSBY: Yes. I would make a motion 8 that we assign the balance of this case in its 9 10 entirety to the Hearings Officer, because I agree 11 with you. I think that was our intent. 12 CHAIR DEVENY: Thank you, Dexter. Ι 13 would second that motion. 14 MR. LEHNHERR: I'll second that motion. 15 CHAIR DEVENY: Any further discussion by Board members on this? I want to make sure that 16 17 we're real clear in what we're doing here. 18 (No response) 19 CHAIR DEVENY: Hearing none, all those 20 in favor of the motion to assign the case in its 21 entirety to the Hearing Officer, please signify by 22 saying aye. 23 (Response) 24 CHAIR DEVENY: Any opposed?

(No response)

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CHAIR DEVENY: Hearing none, the motion passes. Thank you.

MS. CLERGET: The second action item is CHS, which also includes the Laurel Refinery case, Permit No. 264, which is the one that I indicated when I was doing the update should have moved with CHS.

So this is the stipulation that you have in your packet, and as explained in my motion, you can approve or reject the stipulation. And my understanding is that the parties are here and available if you have questions, but I told them I didn't believe you needed to hear from them unless you had questions. So it is at your pleasure how you would like to proceed.

CHAIR DEVENY: So the stipulations are in the Board packet. I hope people have had a chance to take a look at them. Does anybody have any discussion or suggestions of how to move forward with this?

(No response)

CHAIR DEVENY: Hearing no discussion, I want to make sure I make this motion correctly, so give me half a second here. I would move that the Board approve the stipulation in the case of

CHS --

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stuff?

1 2 MS. CLERGET: Permit No. 264. CHAIR DEVENY: -- Permit No. 264, 3 4 approve the stipulation in that referenced contested case. 5 MS. CLERGET: Chris, I think you want to 6 7 adopt the Board order, the proposed Board order as the final Agency action. 8 CHAIR DEVENY: And approve the proposed 9 10 Board order for final Agency decision. Do Board 11 members have any questions or comments on this? 12 MR. TWEETEN: This is Chris. I'11 13 second the motion. 14 CHAIR DEVENY: Thank you, Chris. 15 further discussion, questions? 16 MR. BUSBY: Could I get just a really, 17 really -- This is Dexter. Could I get really 18 brief explanation of the next steps before we vote on this? 19 20 CHAIR DEVENY: Sure. Sarah. 21 MS. CLERGET: Dexter, do you have 22 questions for me on procedural stuff, or do you 23 need to hear from the parties on the substantive

25 MR. BUSBY: I just need to hear from you.

MS. CLERGET: So essentially what happens here is that if you approve this, it takes a piece of the contested case -- not all of it, but a piece of it -- and settles that, and we have a final agency decision on that portion, and then the rest of the case continues in front of me.

MR. BUSBY: Okay. That's what I thought Chris meant with her motion. I just wanted to make sure.

CHAIR DEVENY: Thank you for clarifying that, Sarah. Any other comments or questions from the Board members?

(No response)

CHAIR DEVENY: Hearing none, all those in favor of the motion, please signify by saying aye.

(Response)

CHAIR DEVENY: Any opposed?

(Response)

CHAIR DEVENY: Was there an opposition vote?

(No response)

CHAIR DEVENY: I don't think so. I think they were in all in favor. Okay. So the

motion passes. Thank you.

And with that, I think we're ready to move on to the Board Counsel update, and we'll go back to Sarah for that.

MS. CLERGET: So I have two issues for the Board Counsel update.

The first is I want to just generally alert the Board to the fact that the Coal Council sent a letter to the Board which involved one former Board member and current Board members, and DEQ responded to that letter, and cc'd it to all of the parties in any coal case that we have. And we just wanted to let the Board know that that had happened, and that the letter was floating around out there.

The reason DEQ responded was because the Governor asked DEQ for a response, and so I don't think there is any further action there. It was just an FYI for the Board. Anything else on that?

CHAIR DEVENY: I just wanted to say for those of you who may not be aware, Melissa

Hornbein has resigned from the Board. She is the former member that Sarah referred to. She's taken another position that she thought would make it difficult for her to serve on the Board.

I've been in contact with the Governor's Office, and they are in the process of searching for applicants for the Board of Environmental Review position, and they hope to have someone selected in the coming weeks. So I'm hopeful we'll have a new Board member by February, but probably not. Crossing my fingers.

MS. CLERGET: So that's it for the first update.

The second item is we talked at the last Board meeting about rules, and how we are working to fulfill our statutory obligation to review our rules every two years. We continue to work with DEQ about that.

At the last meeting one of the things we talked about was the procedural rules which don't require as much coordination with the programs of DEQ. Those are mostly stuff that we can do ourselves. And Aleisha has been working on that a little bit, and I've started some work on it.

But I wanted to ask you guys if it was all right. What I would like to do is hold some round tables even before I have a draft -- we don't have anything formalized in a draft -- but hold some round tables with what I would call the

stakeholders in the contested case process, our regular, those who appear in front of us regularly, and have some discussion with them about process, and what they think might work, or what they don't like, what isn't working, and see if that can inform and update to the procedural portions of the rules.

So I wanted to run that by you guys and make sure that you thought that that was okay. I expect probably one or two of those before I get a final draft, and then maybe -- or draft, not a final draft, but a draft -- and then potentially give it back out to them, give a draft back out to them, and have their thoughts before I even bring anything formalized to you guys, is sort of the process I was imagining, and I wanted to see if you guys agree.

CHAIR DEVENY: Do Board members have any feedback for Sarah, or any questions about her idea of putting together these stakeholder groups?

MR. TWEETEN: This is Chris. I think it sounds like a good idea.

CHAIR DEVENY: Thank you, Chris. Any other comments from Board members?

(No response)

32 MS. CLERGET: I'll consider that 1 2 permission. CHAIR DEVENY: I think it is a good 3 4 I think we'll go ahead and get as much 5 input as you can. MS. CLERGET: That's all I have. 6 7 CHAIR DEVENY: Then in terms of the DEQ rules, I'm hoping that we're kind of moving on in 8 that direction, that things are happening, so that 9 10 we can continue to make sure that we're on top of 11 all of the rules of the Department, and 12 coordinating with Sarah. 13 MR. DAVIS: Madam Chair, this is Tim Davis again. We can plan to give you an update in 14 15 your February meeting on that as well, if you'd 16 like. 17 CHAIR DEVENY: That would be great. 18 Thank you, Tim. Are there comments from Board members? 19 20 (No response) 21 CHAIR DEVENY: You're not coming through 22 if somebody was trying to comment. 23 (No response)

CHAIR DEVENY: I think it was just

background noise. Thank you. Okay.

24

25

We're now ready to open up the meeting for general public comment on any public matter outside of contested cases. So if you have comments on contested cases, I'm sorry, but we're not allowed to hear those. Is there any general public comment?

MR. TWEETEN: Madam Chair, this is Chris.

CHAIR DEVENY: Yes, Chris, go ahead.

MR. TWEETEN: I observed that there are a number of folks on the phone, maybe some folks in the room as well, interested in the Moudy Pit action. And understanding that this is not the time for any comments with respect to the merits of those contested cases, I wondered if any of them might be permitted to comment with respect to the Board's action today.

We're not hearing the merits of that matter today. Any comments on the merits would be out of order. But if any of them have any observations or comments about our action today, I would hope that we would be able to -- (inaudible) --

23 (inaudible) --

CHAIR DEVENY: I guess I'll ask our attorney for her advice on this.

MS. CLERGET: I guess I'm a little worried that we won't get into the substance, Chris. But if you think that there is a way that we can do that without getting into the substance, I'll defer to you.

MR. TWEETEN: Well, I guess I'm not sure there is. I just wanted to explain for the benefit of those folks who went to the trouble of getting on the phone this morning that we're not ignoring your presence, understanding that you're interested in the contested case that is not ready for discussion on the merits yet.

And I think at the very least we should give them an explanation as to the fact that the statute that we're operating under requires us to take public comment on matters outside of the agenda, but we ordinarily don't receive comments from parties with respect to matters that are on the agenda, like the Moudy Pit matter.

I just think that folks might be mystified as to why they went to the trouble of getting on the phone at this early procedural stage of that case, and not ready to hear the merits, so that was my concern. I don't want folks to think we've ignored them in that respect.

CHAIR DEVENY: I appreciate that, Chris, and I think you're right. The people on the phone do deserve to have an explanation of why we're not taking comment on that, and I think you've adequately and eloquently explained that.

So if there are members on the phone that want to speak up only on the procedural issues of what we did today by consolidating the cases and assigning them to the Hearings Officer, that they're welcome to speak up at this time, but that nothing substantive about the case can be talked about, and if it is brought up, we have no other recourse but to cut you off.

So if there is anybody on the phone that would wish to speak to the action that the Board took today on the case, please speak up now, and we'll take you one at a time.

MS. JACOBSEN: Madam Chairman, this is Nancy Jacobsen from the Rippling Woods Homeowners Association.

CHAIR DEVENY: Yes, Ms. Jacobsen.

MS. JACOBSEN: Thank you for listening.

You have made this process a lot easier for us.

CHAIR DEVENY: I'm sorry. Our Court

Reporter is having a hard time picking you up. Is

there a way for you to get closer to the phone?

MS. JACOBSEN: Yes. Let me take you off speaker. Is that better?

CHAIR DEVENY: That's better. Thank you.

MS. JACOBSEN: I'm Nancy Jacobsen from Rippling Woods Homeowners Association. I just wanted to give a shout out to Lindsay Ford, who was extremely helpful in helping us coordinate and understand the process, and we were fully advised that this was strictly to put the case in front of you, and determine how it is to proceed from here.

I do have one question. I don't know if it's appropriate to ask, so I will put it forth, because one of our -- We have seventy-plus members that are involved in this appeal, and one of them, and most of us think this, too, that we don't know how the process works at this point, so we're looking at two things.

One, the process and the steps that go on from here, hoping that that will be divulged to us in the process.

And the other comment was -- because that is so important to us to know the procedures and the steps. The other question was Judge

Jennifer Boatwright-Lint, who is one of our appellants, had asked if there was -- in her appeal if there was any way we could make meetings here in the Bitterroot, since there are seventy-plus of us that most of us have full-time jobs, and the ability to get to Helena is really difficult at best.

And I don't know if, again, if that is something we talk about now or will come later, so it's just an informational thing so I can update the group.

CHAIR DEVENY: I'll ask Sarah Clerget, our Board attorney to respond. Thank you.

MS. CLERGET: Sure. This is Sarah. And you guys will be getting an order from me as the Hearing Examiner that explains the procedure in very great detail, and points you to the rules that will govern the procedure, so hopefully that will be helpful, and we'll work through that process together.

As to the travel on the hearings, that is actually a legitimate question for the Board. Normally I hold hearings in Helena so that the Board doesn't have to pay my travel, but if the Board is willing to entertain paying the travel

for me to hold the hearings elsewhere, that is something I'm willing to do. It is up to the Board whether or not they want to do that.

appropriate for you to travel, given the large number of interested parties in this case. So I don't know that we would need a motion for that, I think, but I think the Board members would probably agree with me that it would be appropriate for you to travel to the Bitterroot.

MS. CLERGET: So in that case we can work out the specifics of that within our contested case process, but you guys have now heard that the Board is willing to pay the cost of me coming down there, which will save you guys some travel.

MS. JACOBSEN: That's excellent. Thank you so much. We really appreciate that consideration.

CHAIR DEVENY: Thank you, Ms. Jacobsen.

Are there other members of the public that wish to speak?

(No response)

CHAIR DEVENY: Hearing none, I believe we're ready for a motion to adjourn this meeting

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39
     unless anybody has anything else to bring up.
 1
               MR. BUSBY: So moved. This is Dexter.
 2
 3
               CHAIR DEVENY:
                               I'll second it.
                                                 It's
     been moved and seconded that we adjourn.
 4
                                                 All
 5
     those in favor, please signify by saying aye.
 6
               (No response)
 7
               CHAIR DEVENY: All those opposed.
 8
               (No response)
                               Thank you everybody.
 9
               CHAIR DEVENY:
     happy holidays. We'll look forward to seeing you
10
11
     in the new year.
12
              (The proceedings were concluded
13
                       at 9:52 a.m.)
14
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1	CERTIFICATE
2	STATE OF MONTANA)
3	: SS.
4	COUNTY OF LEWIS & CLARK)
5	I, LAURIE CRUTCHER, RPR, Court Reporter,
6	Notary Public in and for the County of Lewis &
7	Clark, State of Montana, do hereby certify:
8	That the proceedings were taken before me at
9	the time and place herein named; that the
10	proceedings were reported by me in shorthand and
11	transcribed using computer-aided transcription,
12	and that the foregoing - 39 - pages contain a true
13	record of the proceedings to the best of my
14	ability.
15	IN WITNESS WHEREOF, I have hereunto set my
16	hand and affixed my notarial seal
17	this, 2019.
18	
19	LAURIE CRUTCHER, RPR
20	Court Reporter - Notary Public
21	My commission expires
22	March 9, 2020.
23	
24	
25	

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