

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

BOARD MEETING )  
JUNE 2, 2017 )

TRANSCRIPT OF PROCEEDINGS

Heard at Room 111 of the Metcalf Building  
1520 East Sixth Avenue  
Helena, Montana  
June 2, 2017  
10:00 a.m.

BEFORE CHAIRMAN JOAN MILES,  
BOARD MEMBERS MARIETTA CANTY,  
CHRIS TWEETEN, and ROBIN SHROPSHIRE,  
(All by telephone)

PREPARED BY: LAURIE CRUTCHER, RPR  
COURT REPORTER, NOTARY PUBLIC

1           WHEREUPON, the following proceedings were  
2 had and testimony taken, to-wit:

3                           \* \* \* \* \*

4           CHAIRMAN MILES: We have all four of us  
5 who are still on the Board on the phone. I think  
6 we can proceed. I'm phoning in from the west  
7 coast; Chris is in Missoula; Marietta I'm assuming  
8 is in Helena; and you are in Helena, too. But I  
9 think we're all on the phone; is that correct?

10           MS. SHROPSHIRE: Yes.

11           CHAIRMAN MILES: I guess we'll just go  
12 ahead and convene the meeting there now. I know  
13 Andres is there, so we'll be getting a number of  
14 reports from him, but let's call the meeting to  
15 order for our March 31st, 2017 Board meeting.  
16 Because the Legislature did not act on any  
17 confirmations, we currently are a four member  
18 Board, and if we recall what --

19           MS. SHROPSHIRE: Joan, sorry to  
20 interrupt. Since this is probably going to be in  
21 the minutes, you said you are calling the March  
22 31st meeting to order, and it is March 31st  
23 meeting minutes, but I just wanted to make sure we  
24 have the correct date for the record.

25           CHAIRMAN MILES: Thank you. I'm looking

1 at the minutes. Yes. It is June 2nd, 2017.

2 Thank you.

3 So as we discussed last at our March  
4 meeting, if we are now a four member Board, we do  
5 have to be unanimous in any decision, so we'll  
6 keep that in mind as we have number of action  
7 items on the agenda. And so the first order of  
8 business would be to approve the minutes from  
9 March 31st, 2017. Have people had a chance to  
10 look at that?

11 Joyce, I did find a number of small  
12 corrections that need to be made, and I actually  
13 typed them up for you, but I don't have internet  
14 and I can't send it. So if the other Board  
15 members are okay with a motion that would be to  
16 adopt the minutes with the corrections noted, and  
17 I will get those to Joyce as soon as I can.  
18 They're just small things, but I noticed them when  
19 I read it. Is there a motion to approve?

20 MS. SHROPSHIRE: This is Robin. So  
21 moved.

22 CHAIRMAN MILES: Is there a second?

23 MR. TWEETEN: I'll second.

24 CHAIRMAN MILES: Thank you, Chris. And  
25 as I noted, I will send Joyce -- I think there

1 were four minor corrections that needed to be  
2 made, but I do like to make sure that that  
3 happens, and I won't be signing them today anyway.  
4 So I'll get a hold of Joyce as soon as I get home  
5 on Monday. Any further discussion?

6 (No response)

7 CHAIRMAN MILES: The motion has been  
8 made and seconded. All in favor, please say aye.

9 (Response)

10 CHAIRMAN MILES: Opposed.

11 (No response)

12 CHAIRMAN MILES: Hearing none, the  
13 motion carries. Thank you.

14 On the agenda. Does somebody want to  
15 give us an update on Senate Bill 337? That's on  
16 the agenda. I am aware that that was vetoed, but  
17 is somebody prepared to give us a little update on  
18 that?

19 MR. HALADAY: Chair, I can do that.  
20 This is Andres. So Board, if you recall, Senate  
21 Bill 337 passed both houses of the Montana  
22 Legislature, and it would have eliminated the  
23 Board of Environmental Review.

24 On May 25th, 2017 Governor Bullock  
25 transmitted his veto to the Secretary of State,

1 noting among other things that the Board gives the  
2 public an opportunity to provide input on pending  
3 regulations, and that SB337 would remove that  
4 opportunity. It also noted that much of the tasks  
5 the Board performs would simply be transferred to  
6 the Department anyway, and so ultimately he vetoed  
7 337, leaving the Board in place; and all of the  
8 procedural discussions we had about what would  
9 occur at this point are moot. Any questions about  
10 that?

11 CHAIRMAN MILES: Andres, thank you. I  
12 have not seen the veto message, so I appreciate  
13 your summary of that. I guess the only question  
14 -- whether it is for you or for the Department --  
15 has there been any communication about  
16 appointments? I'm assuming now the Governor  
17 appoints seven people. Since those three who gave  
18 wonderful service to the Board were not confirmed,  
19 I'm assuming that he appoints seven people; is  
20 that correct?

21 MR. HALADAY: That's correct, Chair.  
22 And it is a little tricky. As you recall, Board  
23 Members O'Connor, Byron, and Reinhart-Levine were  
24 all awaiting Senate confirmation. Those  
25 confirmations died in the standing committee when

1 the Legislature adjourned, and so those terms  
2 ended immediately upon adjournment, and so those  
3 are vacant at this point.

4 The four of you remaining on the Board  
5 continue to serve under the operative statutes  
6 until the Governor appoints a successor. And I  
7 checked this morning to make sure that we didn't  
8 have any appointment at the last minute because it  
9 would have thrown into question whether any of you  
10 could appear at this meeting today, and it doesn't  
11 appear anyone has been appointed. So as far as we  
12 know, the four of you are still serving until we  
13 receive some kind of official communication from  
14 the Governor appointing your replacement.

15 CHAIRMAN MILES: Andres, I'm assuming  
16 that probably three appointments would be made for  
17 two years to finish out the terms; would that be  
18 correct? And then the four appointments for the  
19 four of our seats would be full term?

20 MR. HALADAY: That's correct. The way I  
21 interpret the statute is that for the three terms  
22 that expired on April 28th, those appointments  
23 would run for the remaining two years, and so that  
24 would be 2019. The four of you, any successors'  
25 terms should technically begin on the first of

1 this year, and run for four years.

2 CHAIRMAN MILES: Okay. Any other  
3 questions or discussion about that?

4 (No response)

5 CHAIRMAN MILES: I think I would like to  
6 say -- and I've been in touch with Dr. Byron, and  
7 Roy O'Connor, and Michele. I just would want to  
8 say on the record a sincere thanks for the work  
9 that they did for the past two years. They were  
10 very committed and participatory Board members,  
11 and I just want to officially thank them on the  
12 record for their service.

13 Okay. A contested case update. We'll  
14 move to your report, Andres.

15 MR. HALADAY: Sure, maybe I can just  
16 interject one last thing on other updates. With  
17 regard to voting today, as the Chair noted, we  
18 have a quorum, but the statute appears to indicate  
19 that we need a majority of the Board, which would  
20 require unanimity on the Board's part. I think  
21 DEQ may have some information they'd want to  
22 provide to the Board regarding the potential that  
23 a three to one vote or three voting members could  
24 establish a successful vote one way or the other,  
25 but we'll cross that bridge if and when we get to

1 it.

2 The other thing I'm going to recommend  
3 is that we have Joyce poll the Board for each  
4 individual vote today to ensure that each of the  
5 four states their vote on the record, just because  
6 we want to make sure that "A," it's a unanimous  
7 vote, and "B" that we get four votes before we  
8 dive into that rabbit hole.

9 CHAIRMAN MILES: Thank you.

10 MR. HALADAY: Contested case update.  
11 We're on enforcement cases assigned to the Hearing  
12 Examiner. "A" and "B" I will address together.  
13 That's Copper Ridge, and Reflections at Copper  
14 Ridge.

15 We held a summary judgment oral argument  
16 earlier this month, and so the matter is now  
17 submitted for disposition. Hopefully I will be  
18 getting an order out to the parties or for your  
19 consideration shortly.

20 CHAIRMAN MILES: Thank you.

21 MR. HALADAY: Item (c), that is Goran,  
22 LLC, that matter, I believe in the last week we  
23 received a request to stay proceedings. The  
24 parties want to attempt to work out a resolution  
25 of that matter. So that's a slight update from



1 what is on your case update.

2 Oil Field Rock is exactly what it says  
3 on your agenda. We've got a scheduling order in  
4 effect, and the parties are proceeding under it.

5 Item E, Wagoner Family Partnership, the  
6 same scheduling order has been entered, and the  
7 parties are proceeding pursuant to that order.

8 Turning to Section 2, non-enforcement  
9 cases assigned to the Hearing Examiner, Phillips  
10 66, the same as the last update. We have an order  
11 approving the stipulation to stay appeal, and the  
12 parties are complying with the terms of that  
13 stipulation. No update.

14 LT Trucking. We have a scheduling order  
15 in effect, and the parties are going through  
16 discovery.

17 Heart K Land and Cattle. There is an  
18 update. The parties have requested, since this  
19 agenda was put out, a stay to attempt some form of  
20 resolution in the matter. So I either need to  
21 enter that or it will be entered shortly.

22 Item (d) Westmoreland Resources. We are  
23 still waiting for any notification by the parties  
24 of a final order issued by the Montana Supreme  
25 Court.

1           Item (e) Bull Mountain. The motion to  
2 compel was complete. I denied the motion to  
3 compel about two weeks ago. And so the parties  
4 will be moving forward with discovery in that  
5 matter.

6           Item (f) Payne Logging. The parties are  
7 briefing summary judgment. I think it actually  
8 might be complete at this point. So that will be  
9 awaiting either oral argument or disposition.

10           Western Energy. The parties are  
11 proceeding under a limited expert discovery order  
12 after the motion to exclude Petitioner's expert  
13 witnesses was granted in part and denied in part.

14           Item (h) Montanore Minerals. This one,  
15 there is an error on the -- this is my  
16 typographical mistake. The last sentence says,  
17 "Petitioner corporation was ordered to obtain  
18 Legal Counsel by May 26th." That's wrong. That  
19 had to do with a different case. And so that  
20 matter, Montanore has Legal Counsel, they always  
21 had Legal Counsel, but there was an extended  
22 deadline for parties to file a stipulated  
23 discovery order.

24           CHAIRMAN MILES: So just eliminate that  
25 last sentence about --

1 MR. HALADAY: Yes, although I think the  
2 May 26th is incorrect. I think that was extended  
3 out to June. I must have had the wrong update  
4 inserted in there. Apologies.

5 CHAIRMAN MILES: Basically they're  
6 working under an extension right now.

7 MR. HALADAY: Yes. So we don't have  
8 anything going on in that case until the parties  
9 provide a proposed order.

10 CHAIRMAN MILES: Thank you.

11 MR. HALADAY: In the matter of Glacier  
12 Ranch Subdivision, so I think actually those two  
13 were reversed by mistake -- that's my fault --  
14 between Montanore and Glacier Ranch. They did  
15 extend the date for a proposed scheduling order,  
16 although I did recently get a request from Glacier  
17 Ranch to withdraw their appeal, and so we'll be  
18 working through that. That hasn't been formalized  
19 yet, but we will have to get something more formal  
20 from them because it was just an email  
21 correspondence.

22 So those are all of the cases assigned  
23 to the Hearing Examiner, and I'd entertain any  
24 questions from any of the Board members on either  
25 enforcement cases or non-enforcement cases.

1 (No response)

2 CHAIRMAN MILES: Sounds like -- hearing  
3 none, we can move on to the Western Energy, cases  
4 not assigned to a Hearing Examiner.

5 MR. HALADAY: My understanding from Mr.  
6 North is that there is no update on that matter,  
7 and he is nodding his head that that's correct.  
8 So unless any of the Board members have a specific  
9 question on that, we can move on.

10 CHAIRMAN MILES: Are we ready to move  
11 on?

12 MS. SHROPSHIRE: Yes.

13 CHAIRMAN MILES: Sounds like we can move  
14 on to the new contested case. Montana Northwest  
15 Company's appeal of DEQ waiver review, etc.

16 MR. HALADAY: So as set forth in the  
17 agenda, Montana Northwest requested a hearing  
18 pursuant to 76-4-126. They requested a source  
19 specific mixing zone. DEQ reviewed three unique  
20 analyses provided by the Applicant, and determined  
21 the request did not meet the requirements. And so  
22 as you can see, their appeal asserts the denial  
23 was based on lack of fact and consensus at DEQ,  
24 and they further assert the system solution had  
25 been granted in the past in both Montana and other

1 states.

2 It is up to the Board whether it would  
3 like to keep this, or assign it to a Hearings  
4 Examiner. One consideration the Board might want  
5 to make in that determination is that the four  
6 Board members who are assigning this, or if the  
7 Board were to chose to keep it, may not be Board  
8 members by the time anything further occurs in  
9 this case.

10 CHAIRMAN MILES: But that wouldn't  
11 affect it, would it, unless the new Board members  
12 wanted to reconsider that? Is that what they  
13 would do?

14 MR. HALADAY: Yes, I assume the Board  
15 could reconsider the assignment to a Hearings  
16 Examiner, or if the Board were to choose to keep  
17 it, that Board could, a subsequent Board could  
18 determine to reassign the matter to a Hearing  
19 Examiner. But it is just something for the Board  
20 to think about.

21 CHAIRMAN MILES: Is there any discussion  
22 on that matter? We can either choose to take that  
23 matter directly under consideration, or assign to  
24 a permanent Hearings Examiner. Is there a motion  
25 to do one of those things? Or discussion first if

1 you want.

2 MR. TWEETEN: Madam Chair, this is  
3 Chris. I would move to assign the matter to our  
4 Hearing Examiner, assuming he has the resources to  
5 handle it in terms of time.

6 CHAIRMAN MILES: Thanks, Chris. Is  
7 there a second?

8 MS. CANTY: This is Marietta. I'll  
9 second the motion.

10 CHAIRMAN MILES: Thank you, Marietta.  
11 And Andres, I'm not there to see whether you are  
12 nodding your head that, yes, you can take it or  
13 not. Can you take this case on?

14 MR. HALADAY: Chair, I'm happy to take  
15 it.

16 CHAIRMAN MILES: Thank you. Any further  
17 discussion?

18 MR. TWEETEN: Madam Chair, this is  
19 Chris. By way of explanation, this seems to be  
20 the kind of matter that we would traditionally  
21 assign to a Hearing Examiner, so I don't see any  
22 reason not to just follow our traditional practice  
23 simply because there is only four of us. As  
24 Andres mentioned, once the Board is filled out, if  
25 those members choose to take a matter back, they

1 certainly have the authority to do that. So I  
2 just think we ought to move this on down the  
3 procedural road here. No reason to stop and hold  
4 it right now, I don't think.

5 CHAIRMAN MILES: Thank you, Chris. I  
6 would concur with that. It looks like a very  
7 technical issue that the Hearings Examiner can  
8 begin to sort out, and as you said before, can  
9 otherwise later. Any further discussion?

10 (No response)

11 CHAIRMAN MILES: It's been moved and  
12 seconded to assign the new contested case, Montana  
13 Northwest Company, to a permanent Hearing  
14 Examiner. All in favor, please say aye.

15 (Response)

16 MR. HALADAY: Joyce is indicating that  
17 she heard four.

18 CHAIRMAN MILES: Okay. Great. Thank  
19 you. All right. Then we've taken care of that.  
20 Motion carries.

21 Final action on contested cases. These  
22 are all -- I believe all of this information is  
23 included in the second -- well, I guess it is the  
24 last attachment that was on the website. I think  
25 all of the final contested cases were in that.

1           And so the first item is Columbia Falls.  
2 Do we have any update on that? And if people  
3 recall -- I don't think there was any information  
4 included in the Board packet on this. If people  
5 recall, that was the case that Ben Reed conducted  
6 the hearing, and said he would submit I guess a  
7 proposed order on it or a recommended decision on  
8 that. Have we heard anything further on that,  
9 Andres?

10           MR. HALADAY: Madam Chair, no, we have  
11 not. I put this or left this on as a final action  
12 item just because there had been discussion on it  
13 at the Board's last meeting, and the Board had  
14 tabled the, at that point, recommended motion on  
15 my part to transfer the matter both for procedure  
16 and substance to a Hearing Examiner. If you  
17 recall, the Board ultimately determined to leave  
18 the substantive resolution with Mr. Reed, and any  
19 subsequent procedural matters to the current Board  
20 attorney once that findings of fact and  
21 conclusions of law was issued.

22           To date I haven't had any update from  
23 Mr. Reed. I know attorneys for both parties are  
24 in the room. I don't know if they have thoughts  
25 on the matter and the Board wants to hear from



1       them, or if the Board wants to have some  
2       discussion and then potentially hear from the  
3       parties.

4               CHAIRMAN MILES: I think that was my  
5       next question. We deferred really to a request by  
6       the parties that they did not want to start the  
7       process all over again, and that they wanted to  
8       get the follow up from the original hearing. And  
9       I guess that would be my question to the parties  
10      right now. Are you still comfortable with that,  
11      or do we need to get this moving in another  
12      direction? So I would ask if the parties are  
13      there, if they could respond about that.

14             MR. HALADAY: Madam Chair, both Mr.  
15      Moser and Mr. Tietz are at the podium.

16             MR. MOSER: Madam Chair, members of the  
17      Board, this is Kurt Moser with DEQ. The  
18      Department's position at this point would be to  
19      request that the Board simply leave this matter on  
20      the table, and I guess potentially resume  
21      discussion at the next Board meeting.

22             MR. TIETZ: Madam Chair, Board members,  
23      this is John Tietz for Columbia Falls Aluminum.

24             The same. The last we heard from Mr.  
25      Reed, he intended to issue an order in this.

1       Until we hear something from him, or it just gets  
2       too far down the road that nothing is happening,  
3       but until we hear something other, we would be  
4       inclined to leave it as is.

5               CHAIRMAN MILES: Any further discussion,  
6       Board members? Any comments or concerns about  
7       this?

8               (No response)

9               CHAIRMAN MILES: Well, it sounds, it  
10       would appear that people are willing to leave this  
11       on the table for now. I do hope that at the next  
12       Board meeting, and perhaps there is new Board  
13       members, that a discussion take place about this.  
14       I mean it can't go on interminably. We need to,  
15       for all of the parties' sake, get this moving at  
16       some point.

17               Andres, if you would make an effort --  
18       and I know you have made efforts, but perhaps make  
19       an additional effort before the next Board meeting  
20       to contact Ben to get the status, so the new Board  
21       could consider that.

22               MR. HALADAY: I'll do that, Madam Chair.  
23       And just as a question of direction to the Board,  
24       does the Board want this to stay on as an action  
25       item, just so that it is a discussion point at

1 future meetings, or should I move it back to just  
2 general updates?

3 CHAIRMAN MILES: Chris, Marietta, Robin,  
4 any comments about that? I guess I would leave it  
5 in the category that it is right now so that it  
6 doesn't get lost in discussion, and that because  
7 of the fact there had been a full hearing on that,  
8 I'd rather not have it just in the general  
9 updates. That could go on and on and on for  
10 months. So my preference would be to leave it as  
11 it is. Any comments from other Board members  
12 about that?

13 MR. TWEETEN: Madam Chair, this is  
14 Chris. I think I agree with that.

15 MS. SHROPSHIRE: That sounds good, Joan.  
16 This is Robin.

17 MS. CANTY: This is Marietta. I think  
18 that I would need to recuse myself from making any  
19 decisions on this case, as Mr. Tietz is a law  
20 partner of my husband's.

21 CHAIRMAN MILES: At this point we're  
22 just not doing anything with it. We're still  
23 deferring to the request by the parties to wait  
24 for Ben's information.

25 Okay. So I think at this point then, we

1 have --

2 MR. TWEETEN: Excuse me, Madam Chair.  
3 This is Chris. Can I just add something to the  
4 discussion?

5 CHAIRMAN MILES: Please do.

6 MR. TWEETEN: There is a statute in MAPA  
7 that deals with this situation, and I had it on my  
8 screen, and then it went away, and now I've got it  
9 back. It's 2-4-622, which is entitled, "When  
10 Hearings Officer unavailable for decision." And  
11 basically it is sort of drafted backwards, but  
12 what it basically provides, as I read it, is that  
13 someone else can prepare a proposed decision in  
14 the absence of the Hearing Examiner who conducted  
15 the hearing, provided that there are no issues  
16 involving the demeanor of witnesses that would  
17 need to be decided.

18 And sort by negative implication, what  
19 that means to me is that if there are no such  
20 issues, then we could assign this to another  
21 person to review the record and prepare proposed  
22 findings and conclusions.

23 I note that it sort of back-handedly  
24 suggests that the concurrence of the parties is  
25 required for this to happen, because it says, "If

1 the demeanor of the witnesses is considered  
2 immaterial by all parties." So we would have to,  
3 I think, have the concurrence of the parties in  
4 this matter to make that move.

5 But I would just observe that I think  
6 this matter will need to move along at some point,  
7 and I would urge the parties to consider this  
8 statute as an alternative, because I don't think  
9 we can let this sit on our docket forever, waiting  
10 for Ben to pull himself away from the other  
11 matters that he's working on overseas, and direct  
12 his attention to this.

13 CHAIRMAN MILES: Thank you, Chris.  
14 That's actually my concern, too. Did someone else  
15 want to say something?

16 MS. SHROPSHIRE: I was just going to say  
17 that we don't have a quorum today anyway, so I  
18 don't think we can't vote on it regardless.

19 MR. TWEETEN: I wasn't suggesting that  
20 we do. I was just bringing this to the attention  
21 of the Board as a possible alternative for future  
22 meetings.

23 MS. SHROPSHIRE: I agree that -- so --

24 CHAIRMAN MILES: I totally agree, too,  
25 although Robin, I think we do have a quorum of the

1 Board. We have four of us. That was the topic of  
2 conversation that any of our decisions would need  
3 to be unanimous in order to be effective.

4 MS. SHROPSHIRE: Even if Marietta has to  
5 recuse herself?

6 CHAIRMAN MILES: Oh, correct. Okay.  
7 That's right. Thank you for that. I think we're  
8 just going to leave it as is, and Chris, thanks  
9 for summarizing that statute. And I know that  
10 Andres basically talked about that, too. And so  
11 at some point the Board needs to do its due  
12 diligence and move it along, but we will be in  
13 communications with the parties about that, or the  
14 new Board will.

15 Okay. Thank you. So now I think at  
16 this point we have three proposed orders that  
17 Andres can go through, and we need -- I think  
18 based on what was said at the beginning of the  
19 meeting -- we should do these one at a time, and  
20 we will have a roll call vote on each proposed  
21 order, so that's very clear in the record.

22 So Andres, would you please begin  
23 discussion of the Laurel Refinery and the proposed  
24 order for final agency decision, and that is the  
25 first packet of information that is in that last

1 group of documents that were posted on the  
2 website.

3 MR. HALADAY: Madam Chair, so this is in  
4 the matter of the notice of appeal of final MPDES  
5 Permit No. MT 264 issued by DEQ for the Laurel  
6 Refinery in Laurel, Yellowstone County, Montana.

7 If you recall -- I believe it was at the  
8 March meeting, but it actually might have been the  
9 January meeting -- the parties requested that all  
10 deadlines be stayed, so they could attempt to work  
11 out a settlement with regard to all of the issues  
12 that were on appeal other than appeal issue No. 2.

13 They've now submitted their stipulations  
14 and a proposed final order for agency decision.  
15 Basically if the Board adopts the parties'  
16 stipulation and the final order, this matter won't  
17 terminate. What will happen is appeal issue No. 2  
18 will come back, and the parties will set a status  
19 conference with myself, and we will set a  
20 scheduling order to figure out what's necessary to  
21 move appeal issue No. 2 forward to either a  
22 hearing or some form of final disposition that  
23 will then later come back to the Board for final  
24 disposition of the entire case. So this would  
25 dispose of all other issues in the case if the

1 Board agrees.

2 Other than that, I would leave it to the  
3 Board's determination of the documents submitted,  
4 and also the parties' opportunity to address the  
5 Board.

6 CHAIRMAN MILES: Okay. Could you point  
7 the Board to the page in that last packet where  
8 the actual proposed order is included? Are you  
9 looking at it as a whole? Or perhaps Joyce can --

10 MR. HALADAY: Yes. So there is one  
11 document entitled, "Board order for final agency  
12 decision." It would have been the -- I don't have  
13 the packet pages numbered. It would start just  
14 before the findings of fact and conclusions of law  
15 for the Vanak Transportation case.

16 CHAIRMAN MILES: Okay. And I apologize.  
17 I had all of those documents bookmarked with page  
18 numbers in my iPad, and I of course read them all,  
19 and bookmarked them; but when I had to leave the  
20 house this morning to find better cell coverage, I  
21 forgot to bring that with me. So I just wanted to  
22 make sure that people got to the right proposed  
23 order, and that we can discuss that and vote on  
24 it. Is there any discussion by the Board members  
25 about the proposed order?



1 (No response)

2 CHAIRMAN MILES: Are the parties  
3 interested -- I don't know if they're present --  
4 do the parties have any comments to present to the  
5 Board?

6 MR. TWEETEN: Excuse me, Madam Chair.  
7 This is Chris. For the parties' consideration, is  
8 it your intention that this stipulation constitute  
9 a final agency action for purposes of triggering  
10 the right to appeal to District Court?

11 CHAIRMAN MILES: That's a question for  
12 Andres.

13 MR. HALADAY: Board Member Tweeten, I  
14 believe that the parties don't intend that to be  
15 the case, and I'm getting a nod of assent from Mr.  
16 Tietz and from Mr. Moser.

17 CHAIRMAN MILES: Okay.

18 MR. HALADAY: Board, if you're looking  
19 at the PDF, it starts on Page 62.

20 CHAIRMAN MILES: Thank you for that.  
21 That helps.

22 MR. TWEETEN: My packet seems to be  
23 divided into three separate groups of documents  
24 each with its own set of page numbers, so I'm on  
25 Page 10 of 102.

1                   CHAIRMAN MILES: That is the correct  
2 group of documents. The final order is on Page  
3 62.

4                   MR. TWEETEN: Okay. Great.

5                   CHAIRMAN MILES: Is there any other  
6 discussion or comment? I sometimes hear my own  
7 echo coming out, so I'm not sure if it's Robin or  
8 Marietta trying to say something, or if I'm  
9 hearing a delayed reaction of my own voice.

10                   (No response)

11                   CHAIRMAN MILES: Any comments by the  
12 parties?

13                   (No response)

14                   MR. HALADAY: There is none, Madam  
15 Chair.

16                   CHAIRMAN MILES: Thank you. Then I  
17 would entertain a motion, unless we have any  
18 concerns, a motion to adopt the proposed order for  
19 final agency decision in the matter of the notice  
20 of appeal of final MPDES permit number, etc., for  
21 the Laurel Refinery.

22                   MS. SHROPSHIRE: So moved. This is  
23 Robin.

24                   CHAIRMAN MILES: Thank you, Robin. Is  
25 there a second?

1 MS. CANTY: I'll second.

2 CHAIRMAN MILES: Thank you, Marietta.

3 Is there any further discussion?

4 (No response)

5 CHAIRMAN MILES: Joyce, would you take a  
6 roll call, please.

7 MS. WITTENBERG: Sure. Mr. Tweeten.

8 MR. TWEETEN: Yes. Aye.

9 MS. WITTENBERG: Ms. Shropshire.

10 MS. SHROPSHIRE: Yes. Aye.

11 MS. WITTENBERG: Ms. Canty.

12 MS. CANTY: Aye.

13 MS. WITTENBERG: Chair Miles.

14 CHAIRMAN MILES: Yes. Aye.

15 MS. WITTENBERG: Four votes.

16 CHAIRMAN MILES: Thank you. That is a  
17 unanimous decision by the four members of the  
18 Board. Thank you.

19 MR. HALADAY: And Madam Chair, this is  
20 Andres. The one thing that we'll need from you is  
21 a signed original copy of that final agency  
22 decision.

23 CHAIRMAN MILES: Sure. And if that can  
24 be ready, I could pop into the office on Tuesday,  
25 Joyce, and sign that, as well as bring you those

1 corrections from the minutes.

2 MR. HALADAY: Joyce is nodding that's  
3 fine.

4 CHAIRMAN MILES: Thank you. If there is  
5 no further discussion or comments, we'll move to  
6 the matter of the appeal of Vanak Transportation,  
7 and that information starts on Page 67 of that 110  
8 page attachment.

9 MR. HALADAY: Board, this is Andres. So  
10 you have before you the findings of fact,  
11 conclusions of law, and proposed order in this  
12 case. You also have an order on exceptions that I  
13 put out after that proposed order was issued,  
14 along with a notice of submittal, indicating that  
15 no party had filed exceptions to the decision.

16 If you refer to the order on exceptions,  
17 which should be around Page 71 or 72 of your  
18 packet, there had been a question last month  
19 regarding what the Board can do with regard to  
20 these decisions, so I quoted the Administrative  
21 Rules and the applicable statute in there for the  
22 Board's consideration.

23 But at this point, it is up to the Board  
24 to adopt, amend, or deny the findings of fact,  
25 conclusions of law, and proposed order in Vanak

1 Transportation.

2 CHAIRMAN MILES: Thank you, Andres. I  
3 was a little confused on this one. It seems to me  
4 the last order that is in there is actually under  
5 your signature. Did I miss the page where -- or  
6 would that be issued under your signature, or is  
7 there an order that would be issued under the  
8 Board's signature?

9 MR. HALADAY: Madam Chair, the statute  
10 allows the Board to adopt in full a Hearing  
11 Examiner's proposed order, so it procedurally  
12 isn't necessary for the Board to officially enter  
13 an additional order. The records and vote of this  
14 meeting should suffice, along with a transmittal  
15 of that notification to the parties would  
16 ultimately trigger notice of the final  
17 disposition, and any option to appeal to District  
18 Court by the parties. But if the Board would  
19 prefer a formal order, that can be drafted up as  
20 well.

21 CHAIRMAN MILES: Thanks, Andres. That's  
22 fine. I just wanted to clarify that, because this  
23 is a little bit different than the one we just  
24 did. So if the statute provides for that, then  
25 our action would be to either adopt, reject, or

1 amend the Hearing Examiner's final decision, I'm  
2 perfectly comfortable with that. Any comment from  
3 other Board members?

4 (No response)

5 CHAIRMAN MILES: Chris, does that  
6 procedurally make sense to you?

7 MR. TWEETEN: Yes, it does. It doesn't  
8 appear that Vanak has done anything to move this  
9 matter forward, so I think the Hearing Examiner's  
10 decision is appropriate.

11 CHAIRMAN MILES: Is there a motion then  
12 to adopt the Hearing Examiner's decision in the  
13 matter of the appeal of Vanak Transportation?

14 MR. TWEETEN: I would so move.

15 CHAIRMAN MILES: Thank you, Chris. Is  
16 there a second?

17 MS. CANTY: I'll second. This is  
18 Marietta.

19 CHAIRMAN MILES: Okay. Thank you. It's  
20 been moved and seconded. Any further discussion?

21 (No response)

22 CHAIRMAN MILES: Are there any of the  
23 parties there that would be interested in  
24 commenting?

25 MR. HALADAY: Madam Chair, there aren't

1 any.

2 CHAIRMAN MILES: Okay. Thank you. Then  
3 hearing none, I'll turn it over to Joyce again for  
4 a roll call vote.

5 MS. WITTENBERG: Mr. Tweeten.

6 MR. TWEETEN: Yes.

7 MS. WITTENBERG: Ms. Shropshire.

8 MS. SHROPSHIRE: Yes.

9 MS. WITTENBERG: Ms. Canty.

10 MS. CANTY: Yes.

11 MS. WITTENBERG: Chair Miles.

12 CHAIRMAN MILES: Yes. Thank you. That  
13 was a unanimous vote by the Board, the current  
14 four members of the Board, to adopt the Hearing  
15 Examiner's decision.

16 So the last item is the Timbershor at  
17 Finley Point Wastewater Subdivision Rewrite. And  
18 there had been an appeal by I think -- (inaudible)  
19 -- Andres --

20 MR. HALADAY: Madam Chair, could you  
21 just repeat yourself?

22 CHAIRMAN MILES: We're going to take up  
23 the matter of the appeal of conditions of  
24 certification for Timbershor at Finley Point  
25 Wastewater.

1           My only comment was that this, as I  
2 understand it, was a rewrite of some subdivision  
3 regulations, and some parties, at least one couple  
4 filed exceptions to that rewrite, and that's the  
5 underlying case that's going on here. This  
6 information starts on Page 80 of that Board  
7 packet, the 110 page packet. So Andres.

8           MR. HALADAY: Sure. Board, just by way  
9 of background, I issued an order on April 3rd,  
10 2017, findings of fact, conclusion of law, and a  
11 proposed order. This was on summary judgment.  
12 This didn't go to hearing.

13           You'll note in your packet the parties  
14 were permitted to file exceptions. The  
15 Rys-Sikoras, who are the Petitioners, did file  
16 exceptions. There had been responses. I should  
17 note that in the third to last sentence, it  
18 states, "The Rys-Sikoras have submitted a reply."  
19 That was my drafting error. It should say, "The  
20 Rys-Sikoras have not submitted a reply pursuant to  
21 the order on exceptions."

22           And so if you were confused as to why  
23 there wasn't a reply in your packet, it is because  
24 I made a mistake there, not you or anyone putting  
25 together the packet. So it is left to the Board



1 to adopt, reject, or amend the proposed order.

2 And I know there are parties here today  
3 to speak to the Board, so I'd leave it to the  
4 Board whether Board members want to have  
5 discussion first, and then allow the parties to  
6 speak, or want to hear from the parties first.

7 CHAIRMAN MILES: Thanks, Andres. Board,  
8 is there a preference for how we do this?

9 MS. CANTY: This is Marietta. I think  
10 we should hear from the parties first.

11 CHAIRMAN MILES: Okay. Let's do that,  
12 would the first person please identify yourself.

13 MR. RYS-SIKORA: Madam Chair, this is  
14 Adam Rys-Sikora, and Board members. My wife and I  
15 have been adversely affected by this decision on  
16 the wastewater treatment plan; and also the plat  
17 rewrite adversely affects us, not only  
18 financially, but denies access to our property.  
19 Thank you.

20 CHAIRMAN MILES: Thank you. Are there  
21 any questions for Mr. Rys-Sikora?

22 (No response)

23 CHAIRMAN MILES: Is there anyone who  
24 would like to comment on this?

25 MR. HALADAY: I think Mr. Pettis is

1 coming up to the podium.

2 CHAIRMAN MILES: Thank you. That really  
3 helps to have you let us know what's going on in  
4 the room, and I'm sorry we're all absent today, I  
5 mean physically absent.

6 MR. PETTIS: Madam Chair, members of the  
7 Board, this is Aaron Pettis for the Department.

8 This is a very simple case overall, and  
9 it starts and ends with 76-4-126, which is the  
10 statutory basis for hearings under the Sanitation  
11 and Subdivision Act. And the statute is very  
12 clear that only denials by the Department can be  
13 appealed to the Board. If you look at the  
14 statute, it says, "Upon a denial of approval of  
15 subdivision plans, the person who is aggrieved by  
16 the denial may request a hearing within thirty  
17 days of the notice of denial."

18 It is undisputed in this case that the  
19 Department approved the application, and that the  
20 Rys-Sikoras are trying to appeal that approval of  
21 subdivision plans. This is a threshold issue, and  
22 we don't have to get into the substance of their  
23 concerns here because the statute just does not  
24 provide a basis for a hearing before the Board.  
25 And for that reason, I urge the Board to adopt the

1 proposed order. Thank you.

2 CHAIRMAN MILES: Thank you, Mr. Pettis.  
3 Are there any questions for Mr. Pettis?

4 (No response)

5 CHAIRMAN MILES: Hearing none, are there  
6 any other parties who wish to comment on this?

7 MR. HALADAY: There are, Madam Chair.

8 MR. ERICKSON: Madam Chair, members of  
9 the Board, it is Rob Erickson on behalf of the  
10 Intervenor Timbershor Association, Inc. I don't  
11 want to take up the Board's time with reiterating  
12 what Mr. Pettis has already described, and of  
13 course, the Board can read the order prepared by  
14 the Hearing Examiner.

15 Again, this is purely a legal issue at  
16 this point. It begins and ends with the statute.  
17 As Mr. Haladay has eloquently put it out in his  
18 order, the Board of Environmental Review, like all  
19 administrative agencies, has only the jurisdiction  
20 which is specifically conferred to it by the  
21 Legislature, nothing less, nothing more.

22 Put another way, in the absence of a  
23 statute conferring jurisdiction -- and standing  
24 for that matter -- to the petition, the agency  
25 lacks jurisdiction, the petitioner lacks standing

1 to pursue an appeal such as this. That's exactly  
2 what's occurred here. I don't want to belabor  
3 this, but I'm prepared to answer any questions  
4 that the Board may have of Timbershor.

5 MR. HALADAY: Madam Chair?

6 (No response)

7 MR. HALADAY: Mr. Tweeten?

8 (No response)

9 MS. SHROPSHIRE: Did we lose Joan?

10 MR. HALADAY: Who do we still have on  
11 the line?

12 MS. CANTY: Marietta is here.

13 MS. SHROPSHIRE: Robin is here.

14 UNKNOWN SPEAKER: The following  
15 participant has entered the conference.

16 CHAIRMAN MILES: Hi. This is Joan. It  
17 appears that I lost connection.

18 MR. HALADAY: Welcome back, Madam Chair.  
19 Everyone else is still on the line.

20 CHAIRMAN MILES: I don't know what  
21 happened after -- I apparently lost connection  
22 right after Mr. Erickson was completing his  
23 comments. Thank you for those comments.

24 MR. ERICKSON: Madam Chair, this sort of  
25 thing happens to me rather frequently, so no

1 problem.

2 UNKNOWN SPEAKER: The following  
3 participant has entered the conference.

4 MR. TWEETEN: Chris Tweeten.

5 MR. HALADAY: So we now have everybody  
6 back.

7 MR. TWEETEN: I'm sorry. My phone got  
8 cut off.

9 CHAIRMAN MILES: Mr. Erickson -- I don't  
10 know what happened there, so I appreciate those  
11 comments. Go ahead, Chris.

12 MR. TWEETEN: Madam Chair, this is  
13 Chris. I'm sorry. I apologize. My call got  
14 dropped for some reason. So it took me a couple  
15 of minutes to get back in, but I'm back in at this  
16 point.

17 MS. SHROPSHIRE: Is it worth repeating?  
18 I guess I'm not sure what the two of you guys  
19 missed, if it is worth repeating the end part of  
20 that again, just to make sure you heard  
21 everything.

22 MR. TWEETEN: I didn't hear anything  
23 that Mr. Erickson had to say.

24 CHAIRMAN MILES: I think we'd better  
25 repeat that then. I thought I heard all of --

1 MR. TWEETEN: If you wouldn't mind.

2 MR. ERICKSON: Absolutely. It's no  
3 problem at all. Really I did not much more than  
4 repeat what Mr. Pettis has already provided today,  
5 and really what's in the order that is proposed  
6 before the Board.

7 Again, the Board of Environmental  
8 Review, like all agencies of the State of Montana,  
9 lacks jurisdiction unless it is specifically  
10 conferred to it by the Legislature. For that  
11 matter, petitioners or litigants lack standing  
12 unless some act by the Legislature provides  
13 standing to them.

14 There is no standing here. There is no  
15 jurisdiction here. The statute at issue makes it  
16 very clear, repeats the words several times, that  
17 only appeals of denials by the DEQ allow for a  
18 hearing before the Board of Environmental Review.

19 Here we have an approval. As a result  
20 the statute doesn't apply, and there is no  
21 standing. Again, I don't want to belabor this  
22 point, but I'm happy to answer any questions that  
23 the Board may have for Timbershor.

24 CHAIRMAN MILES: Thank you very much,  
25 Mr. Erickson. Are there any other questions or

1 comments from Board members for Mr. Erickson?

2 MS. SHROPSHIRE: This is Robin, and so I  
3 just want to make sure I understand. A permit was  
4 approved, and that may or may not have impacted  
5 somebody. What other resources would they have to  
6 deal with the impacts?

7 MR. ERICKSON: I think perhaps your  
8 question is one of remedy. Because there is no  
9 jurisdiction in this case, no standing in this  
10 case, does that leave the Rys-Sikoras or a  
11 similarly situated person without a remedy? The  
12 answer is no. There is a remedy here, and it is  
13 under the Montana Administrative Procedures Act  
14 Section 2-4-11 et. seq.

15 Under that act, the Rys-Sikoras or  
16 another petitioner had the ability to file a  
17 petition before the District Court to review the  
18 DEQ's decision to approve this subdivision  
19 rewrite. They didn't do that. They opted to  
20 pursue a remedy in this forum. Unfortunately this  
21 forum lacks jurisdiction.

22 CHAIRMAN MILES: Anything further,  
23 Robin?

24 MS. SHROPSHIRE: No. That answers my  
25 question.

1 MR. TWEETEN: Madam Chair, this is Chris  
2 again. I guess I'd observe also that I think an  
3 additional remedy that would be available to them  
4 would be proceeding in a declaratory judgment act.  
5 If they want to raise issues as to the  
6 constitutionality of the statute, either on its  
7 face or as applied, they certainly have the  
8 opportunity.

9 In my opinion anyway -- I think the  
10 Court would ultimately decide whether I'm right or  
11 wrong -- but in my opinion, they would have the  
12 ability to file a declaratory judgment action in a  
13 District Court seeking a declaration that the  
14 approval of the decision has somehow adversely  
15 affected their legal interests.

16 And it may be that their thinking was  
17 that they had to exhaust this administrative  
18 remedy before proceeding in District Court.  
19 Again, that's not anything that I have an opinion  
20 on. It would be up to the District Court to  
21 decide whether that was correct or not. But that  
22 a declaratory action is something they could  
23 certainly attempt at this point if they wanted to.

24 CHAIRMAN MILES: Thank you, Chris. Any  
25 other questions or comments regarding Mr.



1 Erickson?

2 (No response)

3 CHAIRMAN MILES: Are there any other  
4 parties that wish to make a statement?

5 (No response)

6 MR. HALADAY: None, Madam Chair.

7 CHAIRMAN MILES: Thank you. Further  
8 discussion by the Board members?

9 MS. CANTY: This is Marietta. Reading  
10 through the documents, it's not clear to me what  
11 exactly happened, I guess, to put it a better way.  
12 So who wanted -- when Mr. Rys-Sikora said he was  
13 adversely affected, he can't access his property.  
14 I guess it is difficult from the documents to tell  
15 what happened. Can we get just a summary of what  
16 happened.

17 MR. HALADAY: Madam Chair, Mr. Pettis is  
18 coming to the podium.

19 MR. PETTIS: Madam Chair, members of the  
20 Board. Basically what happened is that a long  
21 time ago, the Department issued a certificate of  
22 subdivision approval for the Timbershor  
23 Subdivision. The Department reviews and approves  
24 the water, wastewater, and stormwater drainage  
25 facilities in the subdivision, but you are

1 prohibited under the act from changing those  
2 facilities unless you seek rereview and approval  
3 by the Department.

4 And in this case, Timbershor wanted to  
5 change some of its wastewater facilities in the  
6 subdivision, and so it applied to the Department  
7 to rereview those facilities because it was a  
8 change from the original conditions of approval.

9 And as far as I understand, the  
10 Rys-Sikoras are in the subdivision, and are upset  
11 about those changes.

12 CHAIRMAN MILES: Thank you, Mr. Pettis.  
13 Marietta, any further questions?

14 MS. CANTY: No. That's it. Thank you.

15 CHAIRMAN MILES: I would agree it is a  
16 little difficult for us at this point to really  
17 understand the progression of events from an  
18 original approval that was several, you know,  
19 quite a few years old to now. But it would seem  
20 to me, based on what we're hearing, that we just  
21 don't have the authority or standing, or I should  
22 say we don't have the jurisdiction in this case to  
23 overturn that decision, in my understanding.

24 Chris.

25 MR. TWEETEN: Madam Chair, could I ask

1 Mr. Pettis a question?

2 CHAIRMAN MILES: Absolutely.

3 MR. HALADAY: Madam Chair, this is  
4 Andres. Mr. Rys-Sikoras has asked to make a  
5 statement, if that's okay with the Board, after  
6 Board Member Tweeten asks his question.

7 MR. TWEETEN: Mr. Pettis.

8 MR. PETTIS: Yes, Mr. Tweeten.

9 MR. TWEETEN: Do I understand correctly  
10 then that the parties had the opportunity to  
11 appear as objectors to the proposed amendment or  
12 change in the condition of the approval for this  
13 subdivision; but once the approval was made, they  
14 no longer had authority to appear in the case  
15 because the only people who could take the matter  
16 further in the administrative process would be  
17 people aggrieved by a denial; is that correct?

18 MR. PETTIS: There is not an objection  
19 period in the review of these. So Timbershor  
20 filed the application, and the Department just  
21 reviewed and approved it like it would an ordinary  
22 subdivision review.

23 MR. TWEETEN: Okay. Thank you.

24 MR. HALADAY: Mr. Rys-Sikora is coming  
25 up to the podium.

1 MR. RYS-SIKORA: Madam Chair, Board  
2 members, just to give you a quick background of a  
3 very complicated matter. This subdivision is like  
4 none other in the state. It was very loosely  
5 arranged. The septic systems were the  
6 responsibility of the homeowners, and they were to  
7 be developed in zone areas.

8 The developer has gone bankrupt, and the  
9 homeowners association has decided to take over  
10 the septic systems. However, individual  
11 homeowners were required to pay for development of  
12 septic systems, replacement areas, and also do  
13 site work to maintain those areas.

14 The new plat rewrite takes away that  
15 property from the homeowners, makes it into a  
16 combined system, and also the new septic system  
17 plat fails to meet modern standards for fire and  
18 safety issues, access to property. At the same  
19 time the new plat changed lot locations to  
20 adversely impact our property.

21 Among other situations with the fire and  
22 safety, the Fire Department was never notified of  
23 the plat rewrite. The homeowners association also  
24 falsely provided information to the County  
25 Commissioners to get this whole process started.

1 Members are never notified of any meetings. The  
2 DEQ promised myself personally and my attorney  
3 that we would be involved in the vote for the new  
4 plat change, and that never happened. Thank you.

5 CHAIRMAN MILES: Thank you for those  
6 comments, although if I were in the room right  
7 now, I'd be probably be looking to Andres and Mr.  
8 North. I appreciate that. I think we did need to  
9 get a little sense of what was going on here. I  
10 think the real issue at hand is whether we even  
11 have any jurisdiction, whether you have standing  
12 to appeal an approval, and whether we have any  
13 jurisdiction to take up that appeal, and I think  
14 that's the issue before us today.

15 Andres, could you just comment about  
16 that, clarify that for me.

17 MR. HALADAY: Madam Chair, that's  
18 correct. As set forth in my proposed order, this  
19 is just a question of essentially whether the  
20 Rys-Sikoras get in the doors to the BER, and  
21 doesn't address any of the substance, and it's why  
22 the order doesn't have a great deal of background  
23 substance, because it really is that focused, or  
24 at least the order focuses on the very narrow  
25 issue of whether or not the appeal, pursuant to

1 the statute that permits an appeal, allows for  
2 someone to appeal where DEQ has actually approved  
3 the permit.

4 CHAIRMAN MILES: Thank you. And that's  
5 pretty clear in the proposed order that's in our  
6 packet. I appreciate the discussion to know that  
7 there are some other avenues for the Rys-Sikoras  
8 to seek some remedies. And I need to hear from  
9 the other Board members, but basically based on  
10 the information in the packet that I read, my  
11 conclusion is that we probably need to adopt that  
12 order because we just do not have jurisdiction in  
13 this case. Other comments?

14 MS. SHROPSHIRE: Joan, this is Robin,  
15 and that's what it sounds like to me. As an  
16 aside, it sounded like there was an earlier  
17 opportunity perhaps, but it wasn't clear if the  
18 process for participating in that was clear.

19 And I guess my only feedback is to the  
20 Department. It is important to me that members of  
21 the public are stakeholders. Not everybody always  
22 has the same resources available to them to  
23 participate in a process like this. And so I  
24 always encourage ways to look at making it very  
25 simple for stakeholders to participate in the

1 process so they're not eliminated, or  
2 inadvertently not even realize that they have  
3 opportunities.

4 So that's just commentary, but I do  
5 agree. It sounds like it is not within our  
6 purview.

7 CHAIRMAN MILES: Thank you, Robin.

8 MR. TWEETEN: Madam Chair, this is  
9 Chris. The only issue that is sort of a loose end  
10 here is the claim that was made by the parties  
11 that essentially they were assured by DEQ that  
12 jurisdiction existed for them to participate in  
13 this process, which turns out not to be true, and  
14 the legal answer to that is there is no  
15 jurisdiction by estoppel.

16 What that means is that bad advice from  
17 DEQ, even if it were given -- and I'm not saying  
18 it was or wasn't -- but even if they were given  
19 bad advice by DEQ as to what their remedies might  
20 be, it's not a ground for the Board to assume  
21 jurisdiction. We only have jurisdiction if it is  
22 conferred by statute. So that would be an issue  
23 that could be taken up by the parties in another  
24 forum, such as a declaratory judgment action, or  
25 some other kind of action that could challenge the

1 Board's approval of the requested change.

2 So tying up that loose end, I think that  
3 the motion to dismiss is well taken, and I think  
4 we should adopt the order.

5 CHAIRMAN MILES: Thank you, Chris.  
6 Marietta, I don't know if you have any comments or  
7 not, but I do appreciate what Chris has pointed  
8 out, that even if there was a mistake there, it  
9 doesn't impact our ability to assume jurisdiction,  
10 but it could be brought up by the Rys-Sikoras in  
11 another action.

12 MS. CANTY: Right. And I agree that if  
13 we don't have jurisdiction to make a decision on  
14 this, then we don't. I guess I would sort of  
15 reinforce what Robin said, that not all  
16 stakeholders have the resources to participate in  
17 matters such as this in the way that they can.

18 So my commentary would be that some  
19 direction be given, I guess, to the Rys-Sikoras on  
20 the appropriate way that they can find a remedy.

21 CHAIRMAN MILES: Thank you.

22 MR. TWEETEN: Madam Chair, this is  
23 Chris. I believe they do need direction --- I  
24 have no question of that -- but I think that's  
25 something they would receive from their own



1 attorney, not from DEQ, and certainly not from the  
2 Board, so --

3 CHAIRMAN MILES: I would agree with  
4 that, Chris.

5 MR. TWEETEN: I wouldn't go any further  
6 than that.

7 CHAIRMAN MILES: I think we could go too  
8 far or ask the Department to do something that's  
9 really not in their purview, but hopefully there  
10 is enough information that we have discussed today  
11 that would encourage the Rys-Sikoras to perhaps  
12 look at some other alternative remedies here.

13 With that, is there any further  
14 discussion? And if not, I would entertain a  
15 motion to adopt the Hearing Examiner's proposed  
16 order.

17 MR. TWEETEN: I would so move.

18 CHAIRMAN MILES: Thank you, Chris. Is  
19 there a second?

20 MS. SHROPSHIRE: This is Robin. I  
21 second.

22 CHAIRMAN MILES: Thank you, Robin.  
23 Further discussion.

24 (No response)

25 CHAIRMAN MILES: Joyce, will you please

1 take a roll call vote.

2 MS. WITTENBERG: Mr. Tweeten.

3 MR. TWEETEN: Yes.

4 MS. WITTENBERG: Ms. Shropshire.

5 MS. SHROPSHIRE: Yes.

6 MS. WITTENBERG: Ms. Canty.

7 MS. CANTY: Yes.

8 MS. WITTENBERG: Chair Miles.

9 CHAIRMAN MILES: Yes. Thank you. The  
10 motion has carried unanimously, and I do  
11 appreciate all the parties' participation today.  
12 And this is a rather unusual position, but very  
13 clearly under statute, I think this is the  
14 decision the Board has to make. So thank you for  
15 your participation today.

16 Okay. Is there any further business for  
17 the Board to undertake?

18 MR. HALADAY: Madam Chair.

19 CHAIRMAN MILES: Hearing none, I would  
20 open -- did somebody say something?

21 MR. HALADAY: Madam Chair, I was going  
22 to let you know nobody was coming forward, but it  
23 sounds like you were going to open public comment.

24 CHAIRMAN MILES: I was going to open  
25 public comment on any matters not on the agenda.

1 This is the time for members to comment on any  
2 public matter within the jurisdiction of the Board  
3 that is not otherwise on the agenda.

4 (No response)

5 MR. HALADAY: There is none, Madam  
6 Chair.

7 CHAIRMAN MILES: Thank you, Andres. I  
8 think we have concluded our business. Once again,  
9 I just want to thank everybody, particularly thank  
10 the four of you for participation today so that  
11 everyone impacted by Board decisions, that we were  
12 able to do business today, and take care of some  
13 matters. And we don't know whether we'll see each  
14 other again at the next Board meeting. We may or  
15 may not. Best wishes to everyone. It sounded  
16 like somebody wanted to say something.

17 (No response)

18 CHAIRMAN MILES: Okay. Is there a  
19 motion?

20 MR. TWEETEN: Madam Chair, move to  
21 adjourn.

22 CHAIRMAN MILES: Thank you. I never  
23 know on this motion. Do I go through a second and  
24 a vote?

25 MR. HALADAY: Madam Chair, this is

1 Andres. I think you can just deem that one  
2 approved.

3 CHAIRMAN MILES: Thank you. I will deem  
4 that approved. Thank you everybody. I appreciate  
5 that. And Joyce, we'll get in touch with you as  
6 soon as I'm back in town next week. Thanks to  
7 everybody. Andres, thank you for your support,  
8 for the Department support, and we may or may not  
9 see you in a couple months.

10 (The proceedings were concluded

11 at 11:09 a.m. )

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C E R T I F I C A T E

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 - 52 - 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                      day of                      , 2017.

LAURIE CRUTCHER, RPR  
Court Reporter - Notary Public  
My commission expires  
March 9, 2020.