

**BOARD OF ENVIRONMENTAL REVIEW  
February 20, 2026, 9:00 AM  
DEQ ZOOM CONFERENCE**

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**NOTE:** Board members, the Board attorney, and secretary will be participating electronically. Interested persons, members of the public, and the media are welcome to attend via Zoom or telephonically. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this meeting. Please contact the Board Secretary by e-mail at [deqbersecretary@mt.gov](mailto:deqbersecretary@mt.gov), no less than 24 hours prior to the meeting to advise her of the nature of the accommodation needed.

**9:00 AM**

**I. ADMINISTRATIVE ITEMS**

**A. REVIEW AND APPROVE MINUTES**

1. The Board will vote on adopting the October 24, 2025, meeting minutes.

**B. 2026 BOARD CALENDAR**

1. The Board will vote to approve the 2026 calendar.

**II. BRIEFING ITEMS**

**A. CONTESTED CASE UPDATES**

Please see pages 7-30 in the Meeting Packet.

**III. NEW CONTESTED CASES**

- a. In the Matter Of: Appeal and Request for Hearing by Stillwater Mining Company regarding Major Modification of MPDES Permit No. MT0026808, BER 2025-05 WQ**

On December 19, 2025, Stillwater Mining Company filed an appeal and request for hearing regarding a major modification of MPDES Permit No. MT0026808.

The Board can decide to hear the case itself or assign a hearing examiner for some or the totality of the case.

- b. In the Matter Of: Appeal and Request for Hearing Regarding MDEQ's Decision on MAQP #5263-03, BER 2026-01 AQ**

On January 14, 2026, the Board received a request for a hearing from Angela Otero with respect to the DEQ's December 15, 2025, decision to approve Montana Air Quality Permit #5263-03. The permit applicant was Montana Renewables LLC for the MRL Great Falls Renewable Fuels Plant.

Under the Clean Air Act, if the DEQ approves or denies an application for an operating permit, or the renewal, modification, or amendment of a permit, any person that participated in the public comment process may request a hearing from the board, subject to two conditions: (1) the request must be filed within 30 days after the department renders its decision; and (2) the request must include an affidavit setting forth grounds for the request. Mont. Code. Ann. § 75-2-218(5).

Ms. Otero participated in public comment and timely submitted her request for a hearing. However, her request was not accompanied by a sworn affidavit or declaration in lieu of an affidavit. Mont. Code. Ann. § 1-6-105(1)(a). Her request acknowledges this deficiency.

The Board can decide to hear the case itself, assign a hearing examiner for some or the totality of the case, or reject the petition as incomplete.

**c. In the Matter of: The Notice of Appeal and Request for Hearing by Westmoreland Absaloka Mining, LLC for Coal Surface Mine Permit C1985005, Noncompliance No. CN2026001, BER 2026-02 SM**

On February 6, 2026, the Board received a Notice of Appeal and Request for Hearing by Westmoreland Absaloka Mining, LLC.

#### **IV. ACTION ITEMS**

**a. In the Matter of: Notice of Appeal and Request for Hearing by the Montana Environmental Information Center and Sierra Club regarding Approval of Surface Mining Permit No. C2011003F, BER 2019-05 OC, Western Energy Area F**

The Board voted to appoint BER Counsel Dana Hupp as successor Hearing Examiner at the October 24, 2025, meeting. Chair Simpson will brief the board on status.

**b. In the Matter of: Notice of Appeal and Request for Hearing by Alpine Pacific Utilities regarding Issuance of MPDES Permit No. MTX000164, BER 2019-06 WQ**

On January 26, 2026, Chair Simpson issued an Order Requesting Status Report. On February 5, 2026, DEQ filed a status report with a motion to dismiss, and Alpine filed a letter objecting to some requirements included in the amended permit, but did not file a new petition within the specified time frame.

- c. **In the Matter of: Appeal and Request for Hearing by Valley Garden Land & Cattle LLC regarding Issuance of Opencut Mining Permit #674, Amendment #3, BER 2022-04 OC**

Summary judgment briefing is complete, and the Board will decide when to schedule oral argument.

- d. **In the Matter of: Appeal and Request for Hearing Regarding Rosebud Mine Area B Amendment 5 Permit Number C1984003B, BER 2022-05 SM.**

On November 26, 2025, Westmoreland filed a Petition for Costs, Expenses and Fees. On December 9, 2025, the Petitioners filed an Unopposed Motion for Extension of Time. On December 15, 2025, Chair Simpson issued an Order Setting Briefing Schedule on Westmoreland/Local 400's Petition for Costs, Expenses, and Fees. On December 17, 2025, Petitioners filed a Notice of Appearance of Robert Farris-Olsen. On January 9, 2026, Petitioners filed their Response to Petition for Costs, Expenses, and Fees.

Reply briefs have been filed and the Board will decide when to hear oral arguments on the threshold matter of jurisdiction.

- e. **In the Matter of: Decker Coal Company's Request for Hearing regarding Permit C1987001C (West Decker Mine), BER 2025-01 SM.**

On December 9, 2025, Chair Simpson issued an Order Extending Stay until the Board's February 20, 2026, meeting. The parties shall file status reports ahead of that meeting, but no later than January 29, 2026. On January 29, 2026, the parties filed a Joint Status Report.

The parties request the Board extend the stay of this case until its April meeting or later. A status report will be provided to the Board on April 3, 2026 or any other date the Board deems appropriate.

- f. **BER 2025-04 SM, Westmoreland Absaloka Mining LLC**

On October 24, 2025, the Board tabled the discussion about this case and whether the Board has jurisdiction in this matter.

On October 24, 2025, Westmoreland filed a Response Opposing DEQ's Motion to Dismiss, Oral Argument Requested (with Exhibits N-W). On November 7, 2025, DEQ filed a Reply in Support to Dismiss Westmoreland's Request for Hearing and Petition for Declaratory Ruling. On January 21, 2026, Westmoreland filed a Notice. On January 28, 2026,

Chair Simpson issued an Order Setting Oral Argument at the February 20 meeting on DEQ's Motion to Dismiss; the Board will decide whether or not to grant this motion.

**On February 6, 2026, Westmoreland filed a Motion to Consolidate this case with BER 2026-02 SM, and a Brief in Support of the Motion to Consolidate. On February 9, 2026, Chair Simpson issued an Order Requesting Supplemental Legal Authority, to be submitted no later than February 11, 2026 to ensure sufficient time for the additional information to be included in the Board meeting packet. On February 11, 2026, Westmoreland filed a Supplemental Briefing on Legal Authority. On February 11, 2026, DEQ filed a Supplemental Brief.**

**V. GENERAL PUBLIC COMMENT**

Under this item, members of the public may comment on any public matter within the jurisdiction of the Board that is not otherwise on the agenda for the meeting. Individual contested case proceedings are not public matters on which the public may comment.

**VI. BOARD CHAIR UPDATE**

- a. MAPA Contested Case Process

**VII. ADJOURNMENT**