

BOARD OF ENVIRONMENTAL REVIEW
April 17, 2026, 9:00 AM
DEQ ZOOM CONFERENCE

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, 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 February 20, 2026, meeting minutes.
2. The Board will vote on adopting the March 20, 2026, meeting minutes.
3. Discussion regarding meeting dates – Special meeting in May or in-person meeting in June.

II. CONTESTED CASE BRIEFINGS

A. CONTESTED CASE SUMMARIES

Please see pages 10-36 in the Meeting Packet for a summary of all active cases.

B. CURRENT CONTESTED CASE UPDATES

1. BER 2019-05 OC - Western Energy Company, Area F

Board Counsel Hupp is working on a FoFCoL.

2. BER 2019-06 WQ – Alpine Pacific Utilities

The DEQ's motion to dismiss has been fully briefed and is ready for oral argument ; the Board will set a hearing date and briefs will be distributed prior to that time.

3. BER 2022-04 OC – Valley Garden Land & Cattle LLC

The Board heard oral argument during its special meeting March 20, 2026. The Board decided to grant DEQ's Summary Judgment motion with respect to all issues except standing. The Board also granted in part and denied in part Valley Garden's Motion to limit the scope of hearing.

4. BER 2022-06 WQ – Rosebud Mine Area B Amendment 5

MDEQ and Westmoreland provide the following joint status report for Cause No. BER 2022-06-WQ. The non-anthropogenic standards process is still moving forward consistent with the Stipulation, as the Parties continue analyzing the existing water quality data and data collected by Westmoreland. In May 2025, MDEQ conducted a preliminary analysis of the data, and shortly thereafter Westmoreland engaged a consultant to assist with its own analysis of the data. Westmoreland provided its analysis to MDEQ in January 2026 and is awaiting MDEQ's response. As of the date of this joint update, MDEQ anticipates providing its response to Westmoreland during the week of April 6. All data will be analyzed and the Parties will determine next steps, which may include initiating rulemaking to adopt new water quality standards for the Receiving Waters by proposing nonanthropogenic electrical conductivity (EC) and sodium adsorption ratio (SAR) water quality standards within 90 days after completion of data analyses, as contemplated by Section 21(i) of the Stipulation, by proposing an amendment to the Stipulation, or by terminating the Stipulation and requesting a new Prehearing Order in this matter pursuant to 21(g) of the Stipulation.

5. BER 2025-01 SM – Decker Coal Company, West Decker Mine

On February 25, 2026, Chair Simpson issued an Order Extending Stay, until the Board's June 2026 meeting.

6. BER 2025-05 WQ – Stillwater Mining Company

On February 24, 2026, Chair Simpson issued an Initial Procedural Order. On February 25, 2026, DEQ filed a Notice of Appearance. On March 10, 2026, the parties filed a Stipulated Scheduling Order. On March 20, 2026, Stillwater Mining filed an Initial Prehearing Statement. On March 20, 2026, DEQ filed an Initial Prehearing Statement. On March 25, 2026, Chair Simpson issued a Scheduling Order.

7. BER 2026-01 AQ – MDEQ's Decision on MAQP #5263-03

Motions to Intervene and Dismiss have been filed by MRL; Briefing is not yet complete. Oral arguments on pending motions will be heard at a subsequent meeting date to be decided by the Board. Briefs will be distributed prior to that time.

8. BER 2026-02 SM – Westmoreland Absaloka Mining LLC, Noncompliance No. CN2026001

On February 24, 2026, Chair Simpson issued an Order Setting Deadline for Responsive Pleading. On March 12, 2026, DEQ filed a Motion for Partial Dismissal and to Limit the Scope of Westmoreland's Notice of Appeal and Request for Formal Hearing. On March 26, 2026, Westmoreland Absaloka Mining, LLC filed a Response Opposing DEQ's Motion for Partial Dismissal and to Limit the Scope of Westmoreland's Notice of Appeal and Request for Hearing.

A reply from DEQ is pending. Oral arguments will be heard at a subsequent meeting, date to be decided by the Board. Briefs will be distributed prior to that time.

III. NEW CONTESTED CASES

a. **In the Matter Of: Appeal and Request for Hearing by R & D Transit, LLC, BER 2026-03 SW**

On March 3, 2026, R & D Transit, LLC filed an appeal and request for hearing.

The Board will ask DEQ for clarification and status.

IV. ACTION ITEMS

a. **In the Matter of: Notice of Appeal and Request for Hearing by the Western Sugar Cooperative regarding Its Montana Pollutant Discharge Elimination System Permit No. MT0000281 Issued October 20, 2020, BER 2020-05 WQ**

On April 3, 2026, counsel for Western Sugar and DEQ contacted the Board Secretary to advise that they have reached an agreement to modify the Settlement Agreement, which might impact the Board's Final Agency action in Case No. BER 2020-05 WQ (dismissed by the Board on May 3, 2024).

On April 6, 2026, counsel for Western Sugar and DEQ filed a Joint Notice of First Modification to Settlement Agreement.

The Board may acknowledge this Joint Notice or amend its Final Agency Action.

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

The Board will hear oral arguments from the parties regarding Westmoreland's petition for costs, expenses, and attorney fees.

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

VII. ADJOURNMENT

VIII. UPDATE ON SELENIUM LITIGATION – POTENTIAL EXECUTIVE SESSION

On April 8, 2026, the District Court issued an order granting DEQ's and Conservation Groups' motions for summary judgment.