

**BOARD OF ENVIRONMENTAL REVIEW
June 26, 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.

NOTE: Use of AI tools during virtual public meetings is not allowed by Board members or public participants pending state adoption of formal policies that address the concerns and issues surrounding these uses.

9:00 AM

I. ADMINISTRATIVE ITEMS

A. REVIEW AND APPROVE MINUTES

1. The Board will vote on adopting the May 1, 2026, meeting minutes.
2. The Board will vote on adopting the May 15, 2026, meeting minutes.

B. RENEWAL OF BOARD COUNSEL HUPP'S CONTRACT

Chair Simpson will brief the Board regarding the renewal of Board Counsel Hupp's legal representation contract, which expires August 14, 2026.

II. CONTESTED CASE BRIEFINGS

A. CONTESTED CASE SUMMARIES

Please see pages 16-44 in the Meeting Packet for a summary of all active cases.

B. CURRENT CONTESTED CASE UPDATES

- 1. In the Matter of: Notice of Appeal and Request for Hearing by MEIC and Sierra Club Regarding Approval of Surface Mining Permit No. C2011003F, BER 2019-05 OC**

Board Counsel Hupp is working on the FOFCOL. The Board anticipates that it is going to schedule a Special Meeting for October 2, 2026, for Board discussion on the FOFCOL and the parties' exceptions thereto.

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

A scheduling conference was held on June 5, 2026, related to the evidentiary hearing on the amount of Westmoreland's request for attorney fees, costs, and expenses. The Chair issued a scheduling order on June 10, 2026. The evidentiary hearing is scheduled for October 16, 2026.

3. In the Matter Of: The Notice of Appeal and Request for Hearing by Westmoreland Absaloka Mining LLC regarding Minor Revision 311 for Coal Surface Mine Permit C1985005, BER 2025-04 SM

On March 24, 2026, the Board issued its Final Agency Act and Order granting DEQ's Motion to Dismiss the appeal. The Board has been notified that Westmoreland appealed the Board's decision to District Court.

4. In the Matter of: The Notice and Request for Hearing by Stillwater Mining Company Regarding Major Modification of MPDES Permit No. MT0026808. BER 2025-05 WQ

On February 24, 2026, Chair Simpson issued an Initial Procedural Order. On May 18, 2026, DEQ filed a Motion to Dismiss and Brief in Support to Dismiss Stillwater Mining's Appeal Issue "C". On June 1, 2026, Stillwater Mining filed a Response Opposing DEQ's Motion to Dismiss, Oral Argument Requested. On June 12, 2026, DEQ filed a Reply Brief in Support of Motion to Dismiss Stillwater Mining's Appeal Issue "C". It is anticipated that a hearing on the Motion to Dismiss will be scheduled for the August Board meeting.

5. 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 9, 2026, Westmoreland filed an appeal and request for contested case hearing related to the DEQ's January 8, 2026, *Notice of Noncompliance and Order of Abatement*. On May 7, 2026, the DEQ filed a Motion to Stay Proceedings and Brief in Support. On May 21, 2026, Westmoreland filed a Response to the Motion to Stay. A hearing on the Motion to Stay will be scheduled for the August Board meeting.

6. 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 filed this appeal. On June 11, 2026, Chair Simpson issued an Order Requesting Status Update at the June Board Meeting. On June 15, 2026, counsel for R & D Transit requested that the Board reset the update to the August Board meeting, as counsel is traveling on that date. Counsel for R & D

Transit, LLC said that they are working with DEQ to secure a vendor to organize the requested cleanup.

III. NEW CONTESTED CASE

A. In the Matter Of: The Notice of Appeal and Request for Contested Case Hearing by Westmoreland Absaloka Mining LLC regarding the Department of Environmental Quality's March 25, 2026, Notice of Violation, BER 2026-04 SM

On April 24, 2026, Westmoreland filed an appeal and request for contested case hearing with respect to the DEQ's Notice of Violation issued pursuant to ARM 17.24.1211(2) related to Westmoreland's bond. On May 7, 2026, DEQ filed a Motion to Stay Proceedings and Brief in Support. On May 21, 2026, Westmoreland filed a Response to the Motion to Stay. A hearing on the Motion to Stay will be scheduled for the August Board meeting.

The Notice of Appeal is attached to the Meeting Materials but only contains a list of exhibits. The entire Notice of Appeal, including all exhibits, will be in the August Board Meeting Materials.

IV. ACTION ITEMS

A. In the Matter of: Appeal and Request for Hearing by Westmoreland Rosebud Mining LLC regarding Issuance of MPDES Permit No. MT0032042, Colstrip, MT, BER 2022-06 WQ (Rosebud Mine Area B Amendment 5)

The DEQ filed a status report on April 3, 2026. The parties will provide an update on the status of the matter. The Board will discuss the status of the case and consider what action, if any, is appropriate.

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

On June 4, 2026, DEQ issued the Resolution of Order to Revise the Permit to West Decker Mine, concluding that the Order to Revise the West Decker Permit has been resolved.

The Chair requests that the parties provide an update at the June 26, 2026, Board meeting with respect to whether the matter can now be dismissed. After hearing from the parties, the Board will determine the appropriate next steps.

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

On January 16, 2026, Chair Simpson issued an Order Requesting Status Report. On February 4, 2026, the DEQ filed a status report and a Motion to Dismiss. The DEQ's Motion to Dismiss is fully briefed. The Board will hear oral argument and consider the Motion to Dismiss at this meeting.

D. In the Matter of: Appeal and Request for Hearing Regarding MDEQ's Decision on MAQP #5263-03, Calumet/Montana Renewables, BER 2026-01 AQ

On March 17, 2026, MRL filed Motions to Intervene and Dismiss. The Motions are fully briefed. The Board will hear oral argument and consider the Motions to Intervene and Dismiss at this meeting.

E. 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

The Board will discuss and vote on the draft of Board's Final Decision and Order in this matter with respect to the parties' pending cross-motions for summary judgment and motions in limine.

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