

**BOARD OF ENVIRONMENTAL REVIEW
August 14, 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 A.M.

I. ADMINISTRATIVE ITEMS

A. REVIEW AND APPROVE MINUTES

1. The Board will vote on adopting the June 26, 2026, meeting minutes.

B. BOARD COUNSEL HUPP'S CONTRACT RENEWAL

1. Chair Simpson will update the Board about the renewal of the contract.

II. CONTESTED CASE BRIEFINGS - INFORMATIONAL

A. CONTESTED CASE SUMMARIES

Please see pages 7-37 in the Meeting Packet for a summary of all active cases.

B. NEW CONTESTED CASES

1. In the Matter of the Appeal of: Montana Air Quality Permit No. 5537-00, NYDIG DFM Data Center, Richland County, MT, BER 2026-05 AQ

On July 22, 2026, Kevin and Karen Boehler filed a Notice of Appeal, Request for Contested Case Hearing, and Affidavit of Direct and Adverse Effect regarding DEQ's final decision to issue Montana Air Quality Permit No. 5537-00 for the proposed NYDIG DFM Data Center in Richland County, MT. On August 4, 2026, the DEQ filed a Motion to Dismiss for Lack of Subject Matter Jurisdiction. The Motion to Dismiss is not fully briefed.

2. In the Matter of the Appeal of: The Notice of Violation and Administrative Compliance Order for Violations of the Public Water Supply Laws at Red Rooster Bar by Angel Viren, BER 2026-06

On August 5, 2026, Angel Viren filed a Notice of Appeal of the Notice of Violation and Administrative Compliance Order for Violations of Public Water Laws at the Red Rooster Lodge. At its October 2026 regular meeting, the Board anticipates it will consider whether to retain jurisdiction, assign a hearing examiner for some or the totality of the case, or reject the petition.

C. 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 this fall for Board discussion on the FoFCoL and the parties' exceptions thereto.

2. In the Matter Of: Notice 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. On July 30, 2026, DEQ filed a Motion to Dismiss or, in the Alternative, Motion for More Definite Statement, along with a Brief in Support. The Motion to Dismiss is not fully briefed.

III. 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.

Counsel for the parties will provide an update and the Board will discuss the status of the case and consider what action, if any, is appropriate.

B. 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 June 26, 2026, the Board heard oral argument on Montana Renewables, LLC's motions to intervene and dismiss. The Board voted to grant those motions.

The Board will review and take action on the proposed Final Agency Action and Order.

C. 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 June 26, 2026, the Board heard oral argument on the DEQ's motion to dismiss with prejudice. The Board voted to grant that motion.

The Board will review and take action on the proposed Final Agency Action and Order.

D. In the Matter of: 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

AND

In the Matter of: 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 May 7, 2026, DEQ filed a Motion to Stay Proceedings and Brief in Support in case nos. BER 2026-02 SM and BER 2026-04 SM. On May 21, 2026, Westmoreland filed a Response to the Motion to Stay. On June 4, 2026, DEQ filed a Reply in Support of the Motion to Stay for both cases.

On August 4, 2026, the parties submitted a Joint Proposed Order on Motion to Stay for the Board's consideration. Counsel for the parties will be available at the Board's meeting to answer questions regarding the proposed order.

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

On June 18, 2026, the Conservation Groups filed a Motion to Stay Proceedings and Brief in Support with respect to the Board's upcoming October 3, 2026, evidentiary hearing on the amount of attorney fees and costs to be awarded to Westmoreland/Local 400.

The Motion seeks to Stay the Board's proceedings because the Conservation Groups have appealed to District Court the Board's May 15, 2026, preliminary decision that the Board has jurisdiction to hear Westmoreland/Local 400's Fee Petition and that Westmoreland/Local 400 are entitled to attorney fees and costs.

On July 6, 2026, Westmoreland/Local 400 filed a Response in Opposition to Motion to Stay Proceedings and Request for Hearing. On July 23, 2026, the Conservation Groups filed a Reply in Support of Motion to Stay Proceedings and Brief in Support.

The Board will hear oral arguments and will consider the Motion to Stay Proceedings.

*Since briefing on the Motion to Stay Proceedings was completed, the Conservation Groups filed an Amended Complaint and request for injunctive relief in District Court naming the Board as a defendant. The Amended Complaint and the Board's responses to the Conservation Groups' filings are provided with the Board's packet. Additional

documents related to the District Court proceeding are available from the District Court Clerk's Office and the Board Secretary.

F. 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 May 18, 2026, DEQ filed a Motion to Dismiss Stillwater Mining Company's Appeal Issue "C". On June 1, 2026, Stillwater Mining Company 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 Company's Appeal Issue "C".

The Board will hear oral arguments and will consider the Motion to Dismiss Stillwater Mining Company's Appeal Issue "C".

IV. 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.

V. BOARD CHAIR UPDATE

VI. CLOSED/EXECUTIVE SESSION

Discussion regarding litigation strategy related to the lawsuit (Rosebud County, DV-44-0027-OC) filed by MEIC and Sierra Club against Westmoreland, the DEQ, and the Board with respect to the Board's May 15, 2026, preliminary decision in BER 2022-05 (See Item III.E. above).

VII. ADJOURN