DEQ Montana Department of Environmental Quality

BOARD OF ENVIRONMENTAL REVIEW
SPECIAL MEETING
OCTOBER 2, 2026

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ACTION ITEMS

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In the Matter of: Notice of Appeal and Request for Hearing Regarding Rosebud Mine Area B Amendment 5 Permit Number C1984003B

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MEMORANDUM

To: Chairman David Simpson and Members,
Montana Board of Environmental Review
From: Dana L. Hupp, Legal Counsel
Date: September 25, 2026
Re: BER 2022-05-SM: The Conservation Groups' and Westmoreland's Motions in Limine Related to Evidentiary Hearing

In accordance with the Board's June 10, 2026, Scheduling Order, the Conservation Groups and Westmoreland/Local 400 (collectively "Westmoreland") each filed motions in limine on September 4, 2026.

The motions in limine are related to the upcoming October 16, 2026, evidentiary hearing on the amount of attorney fees, costs, and expenses (collectively "fees") to be awarded to Westmoreland. The Board voted at its May 15, 2026, meeting that Westmoreland is "entitled" to receive fees under MSUMRA. The question remaining is the amount of fees.

The rules setting forth the substantive and procedural requirements for obtaining fees are located at Mont. Admin. R. 17.24.1307-1309. Section 1307 provides, in part:

> (2) Whenever any final order is issued in any administrative proceeding under the Act at the request of the permittee, permit applicant, or the department, **appropriate and reasonable costs, expenses and attorney fees incurred by the permittee, permit applicant, or the department for or in connection with participation in the proceeding** may be assessed against any party if it is demonstrated that the party participated in the proceeding in bad faith and for the purpose of harassing or embarrassing the permittee, permit applicant, or the department. . . .
>
> (4) Attorney fees, costs and expenses recoverable under (1) and (2) of this rule include attorney fees, costs and expenses reasonably and necessarily incurred in seeking an award under this rule.

Mont. Admin. R. 17.24.1307(2) and (4) (emphasis added).

The parties' motions in limine seek to exclude specific evidence from admission at the Board's October 16, 2026, evidentiary hearing on the amount of fees.

The Conservation Groups' motions seek to exclude:

1) supplemental billing records that Westmoreland produced to its own expert, but did not produce to the Conservation Groups until a later date, and

2) evidence regarding Holland & Hart's 2026 blended billing rate of $745/hour.

(Doc. 128 and 129.)

Westmoreland's motion seeks to exclude evidence, argument, or testimony at the evidentiary hearing that revisits: "(1) the merits of Claim 2 or (2) the Board's determination that Conservation Groups prosecuted Claim 2 in bad faith and for the purposes of harassing or embarrassing Westmoreland." (Doc. 127 at 2.)

I. Potential Course of Action

The Conservation Groups' Motions in Limine

The following is a decision-making tree related to the Conservation Groups' motions in limine:

Question/Motion 1:

Did Westmoreland fail to timely produce supplemental billing records and, if so, should it be precluded from introducing those billing records or testimony related thereto at the evidentiary hearing?

- **Yes** → The Conservation Groups' motion in limine is granted; Westmoreland cannot offer into evidence the supplemental billings records from November 2025 to June 2026, including expert testimony related thereto. **(End)**

- **No** → The Conservation Groups' motion in limine is denied; Westmoreland may introduce the supplemental billing records (subject to other objections) and testimony related thereto. **(End)**

Question/Motion 2:

Did Westmoreland fail to timely disclose Holland & Hart's 2026 $745/hour blended rate and, if so, should it be precluded from introducing evidence, including expert testimony, regarding that rate at the evidentiary hearing?

- **Yes** → The Conservation Groups' motion in limine is granted; Westmoreland cannot offer evidence of Holland & Hart's 2026 $745/hour blended rate, including expert testimony related thereto. **(End)**

- **No** → The Conservation Groups' motion in limine is denied; Westmoreland may introduce into evidence information related to Holland & Hart's 2026 $745/hour blended rate. **(End)**

Westmoreland's Motion in Limine

Westmoreland's Motion in Limine does not easily lend itself to a decision-making tree, thus the following is a high-level summary followed by one potential course of action for the Board's consideration.

The question raised by Westmoreland's motion is whether the Conservation Groups can offer expert testimony at the October 16, 2026, hearing regarding the merits of Claim 2 or Westmoreland's entitlement to an award.[1]

The Board has already ruled on the merits of Claim 2. The Board issued its Final Decision on November 4, 2025, including Findings of Fact and Conclusions of Law. The Board's decision related to Claim 2 is final and cannot be appealed.

The Board has also determined that Westmoreland is "entitled" to fees. In response to Westmoreland's Petition for fees, the Board and parties agreed to a two-step process whereby the Board would hold a hearing on Westmoreland's entitlement to fees and, if appropriate, a second hearing on the amount. At its May 15, 2026, meeting the Board voted that Westmoreland is "entitled" to fees. The question remaining is the amount of those fees.

It is anticipated that Westmoreland will submit evidence at the upcoming evidentiary hearing that it is entitled to all its attorney fees and costs related to Claim 2 from the date the notice of appeal was filed through these attorney fees proceedings. Conversely, it is

[1] Mont. Admin. R. 17.24.1307 identifies two separate elements that the board must consider when determining whether Westmoreland is entitled to attorney fees: (1) whether the claims were brought in bad faith, and (2) for the purpose of harassing or embarrassing Westmoreland. This memo collectively refers to these elements as "bad faith."

anticipated that the Conservation Groups will argue that Westmoreland is not entitled to fees at all or, alternatively, that the Board can only award fees that Westmoreland incurred but-for the alleged bad faith and harassing conduct.

Evidence related to the Conservation Groups' conduct during the contested case proceeding may be relevant to the Conservation Groups' argument that no or limited fees should be awarded, i.e. it may go to the appropriate and reasonable fees to be awarded. Additionally, Westmoreland's expert has indicated that she believes that all of the Conservation Groups' conduct associated with Claim 2 was in bad faith and that all Holland & Hart's fees were reasonable. Thus, her opinion is that Westmoreland is entitled to all its fees associated with Claim 2. To the extent that she testifies as such, then the Board should allow the Conservation Groups to cross-examine her opinions regarding the Conservation Groups' conduct and offer rebuttal testimony.

Suggested Approach:

The Board could consider granting Westmoreland's motion in limine in part and denying it in part, as follows:

1) The Board could deny Westmoreland's motion to the extent it seeks to exclude evidence of the Conservation Groups' conduct which is relevant to the appropriate and reasonable fees to be awarded; and

2) The Board could grant the motion as it relates to the introduction of evidence of the Conservation Group's conduct for the purpose of arguing that Claim 2 was incorrectly decided or that Westmoreland is not "entitled" to fees.

I anticipate what will happen at the hearing, as a practical matter, is that the Conservation Groups' expert will opine that he does not think that the Conservation Groups acted in bad faith and that no fees are appropriate, but will also testify that if the Board thinks a certain category (see categories below) of the Conservation Groups' conduct was in bad faith, then X amount of fees are attributable to that conduct.

It is my recommendation that the Board should err on the side of admitting evidence because when the Board prepares its Findings of Fact and Conclusions of Law, it can disregard testimony that is not relevant to the specific issues before it.

II. Factual and Procedural Background

On November 4, 2025, the Board issued its Final Agency Action and Order of the Board of Environmental Review resolving three claims raised in the underlying contested case in this matter.

The Conservation Groups then appealed Claims 1 and 3 to the district court. The Conservation Groups did not object to the Hearing Examiner's findings with respect to Claim 2 related to the stream buffer rule and, thus, it was not appealable.

On November 26, 2025, Westmoreland filed its Petition for Costs, Expenses, and Fees under the MSUMRA (Mont. Code Ann. § 82-4-251(7) and Mont. Admin. R. 17.24.1307 through 1309) seeking its fees associated with defending Claim 2. (Doc. 99.)

Westmoreland's Petition sets forth the Conservation Groups' specific conduct that Westmoreland contends was in bad faith and/or for the purpose of harassing and embarrassing Westmoreland:

1) The Conservation Groups ("CG") argued that Claim 2 was a legal claim but then changed their position mid-case. (*Id.* at 6-9)

2) CG refused to withdraw Claim 2 despite evidence and expert testimony that the claim was without merit. (*Id.* at 9-11)

3) CG pursued Claim 2 for two years after their expert testified that he saw no indicators of groundwater, that the topsoil was "very dry" and unsaturated, and that the groundwater table was most likely below the channel's elevation. (*Id.*)

4) CG were sanctioned for discovery abuse; the Hearing Examiner struck CG's expert's affidavit that contained new information that was not reconcilable with CG's discovery responses or Mr. Anderson's prior deposition testimony. (*Id.* at 11-12.)

5) CG alleged on summary judgment that Westmoreland spoliated evidence material to Claim 2, and specifically that Westmoreland's permitted sediment control measures in the vicinity of Lee Coulee were undertaken with the intent to destroy or conceal indicators of an intermittent stream. The Hearing Examiner rejected those claims. (*Id.* at 12-13.)

6) After the Hearing Examiner denied Claim 2 on the merits, CG attempted to voluntarily dismiss the claim, on the basis that Westmoreland had "obliterated the stream reach." (*Id.* at 13-14.) Here is the exact language used by CG in their Exceptions to Proposed Order on Summary Judgment:

> Conservation Groups do not dispute the proposed decision's correct findings and conclusions with respect to standing, which the Board should adopt. Conservation Groups also do not seek further review of and voluntarily dismiss their second claim—regarding protection of an intermittent stream reach—because WRM recently obliterated the stream reach at issue, precluding the groups' ability to obtain meaningful relief on that claim.

(Doc. 91 at 3.)

At the Board's February 20, 2026, meeting, the parties and the Board discussed and agreed that it was appropriate to hold two hearings with respect to Westmoreland's Petition for fees: the first with respect to whether Westmoreland was entitled to fees ("Entitlement Hearing"), and the second, if the Board determined Westmoreland was entitled to fees, on the amount of fees to be assessed ("Reasonableness Hearing"). Tr. of Board Meeting, Case No. BER 2022-05-SM (Feb. 20, 2026) at 3:11-19.

On May 15, 2026, the Board held the Entitlement Hearing. The Board voted at the hearing that Westmoreland is entitled to an award as a matter of law because the Conservation Groups participated in the proceeding in bad faith and for purposes of harassing or embarrassing Westmoreland. (*Id.*) A final order with respect to Westmoreland's Petition for fees was not issued by the Board at the time because the Board still had to determine the amount of fees to be awarded.

On June 10, 2026, after a scheduling conference and seeking input from the parties, the Chair issued the Scheduling Order governing the Reasonableness Hearing. (Doc. 122.) The Scheduling Order set a simultaneous expert disclosure deadline of August 7, 2026, requiring that "all materials considered or relied upon" by an expert be disclosed in that expert's report, set September 16, 2026 as the deadline for production of supplemental billing records, and confirmed that the Board's final written decision addressing both its jurisdiction and the specific factual and legal bases for its bad faith findings would issue after the Reasonableness Hearing and the parties' post-hearing submissions. (*Id.* at 2-4.)

On August 7, 2026, both parties disclosed their fee experts. (Doc. 127 at 4; Doc. 129 at 4.) Westmoreland retained Catherine Laughner and the Conservation Groups retained the Hon. Gregory Pinski (ret.) as their respective experts.

Ms. Laughner's expert report disclosed that Westmoreland had been paying Holland & Hart a new blended rate of $745 per hour since January 2026, an increase from the $590 per hour rate disclosed in Westmoreland's original Petition for fees. (Doc. 129 at 11.) Ms.

Laughner's report also indicated that supplemental spreadsheets reflecting Westmoreland's fees through approximately one month before the report (through June 2026) were attached to the report, but the spreadsheets were not provided. (*Id.* at 4.)

The Conservation Groups requested the spreadsheets on Friday, August 14, 2026. (Doc. 129, Ex. C at 2.) Westmoreland's counsel produced the spreadsheets on Thursday, August 20, 2026, five days before Ms. Laughner's deposition. (Doc. 129, Ex. C at 1.) The deadline in the Scheduling Order for producing supplemental billing records through August 2026 was September 16, 2026.

On August 29, 2026, Westmoreland deposed Judge Pinski. (Doc. 127 at 6.) He testified, among other things, that he does not consider the Board's May 15, 2026, bad-faith and harassment finding to be final, citing the absence of a written order, pending district court and (now resolved) appellate proceedings seeking to halt the Board's proceeding, and his mistaken understanding that the Board's scheduling order left the jurisdictional and bad faith issues open for further consideration. (*Id.*; Doc. 127, Ex. A at 57:8-24, 99:11-20, 240:15-241:7.)

III. Legal Standards

A motion in limine is a pretrial mechanism for excluding irrelevant, immaterial, unfairly prejudicial, confusing, or wasteful evidence before it reaches the hearing record. *Anderson v. Boyne USA, Inc.*, No. CV-21-95-BU-BMM, 2025 U.S. Dist. LEXIS 108358 at *2 (D. Mont. Feb. 11, 2025) ("Motions in limine serve as procedural mechanisms to limit in advance testimony or evidence in a particular area."). More specifically, motions in limine "prevent irrelevant, immaterial, or unfairly prejudicial evidence from being introduced. . . ." *Stand Up Mont. v. Missoula Cnty. Pub. Schools*, 2023 MT 240, ¶ 28, 414 Mont. 229, 539 P.3d 1117. Beyond irrelevance and unfair prejudice, an order in limine may also exclude confusing, misleading, wasteful, and cumulative evidence. *State v. Zlahn*, 2014 MT 224, ¶¶ 27-32, 376 Mont. 245, 332 P.3d 247.

Under MAPA, the Board is bound by common law and statutory rules of evidence. Mont. Code Ann. § 2-4-612(2). Thus, the Board, like the trial court, has authority to grant or deny a motion in limine and to take whatever precautions are necessary to ensure a fair and just process. *Rubin v. Hughes*, 2022 MT 74, ¶ 55, 408 Mont. 219, 507 P.3d 1169; *Hulse v. Dept. of Motor Veh. Div.*, 1998 MT 108, ¶ 15, 289 Mont. 1, 961 P.2d 75.

IV. Parties' Arguments

A. Conservation Groups' Motion in Limine to Exclude Westmoreland's Billing Records

The Conservation Groups' first motion in limine involves supplemental billing records covering October 1, 2025, through June 30, 2026, that were reviewed by Westmoreland's expert and opined upon in her August 7, 2025, report. (Doc. 129 at 4.)

Those records show approximately 702 additional hours billed between November 5, 2025 (the day after the Board issued its final order in the underlying case) and June 30, 2026. (*Id.* at 5.) The Conservation Groups emphasize that Westmoreland's expert report claimed the records were "attached hereto" when they were not, and that Westmoreland did not actually produce them until two business days before the deposition of Westmoreland's expert. (*Id.*)

The Conservation Groups argue that Westmoreland's failure to provide the supplemental billing records to them while providing them to their own expert prior to the expert disclosure deadline is unfairly prejudicial because it allowed Westmoreland's expert to form and support an opinion that the Conservation Groups' expert never had a chance to see or address in his report. (*Id.* at 8.) They argue that "[t]here is no justification to handing over documents to an expert but omitting to hand them over to the other side, especially when the information had been requested under the rules." (*Id.* at 7 (quoting *Bentley v. ConocoPhillips Pipeline Co.*, No. CV 09-01-M-DWM, 2010 WL 11537799, at *5–*9 (D. Mont. Feb. 3, 2010).)

Westmoreland responds that it was not required to produce the updated billing records before September 16, 2026. The Board's Scheduling Order required only that materials "considered or relied upon" by an expert be "disclosed" in the expert's report, a term Westmoreland argues is distinct from producing or attaching the underlying documents. (Doc. 138 at 5-6.) The Conservation Groups' own expert also listed materials he reviewed without attaching them, which Westmoreland argues should undercut any claim that the disclosure required production. (*Id.*)

Westmoreland further argues that Mont. R. Civ. P. 37(c)(1) does not apply because the Board's Scheduling Order created no formal discovery process governed by Mont. R. Civ. P. 26(b)(4) (*Id.* at 7-8.) Thus, unlike the cases cited by the Conservation Groups, Westmoreland argues that it did not conceal the records or ignore a discovery request, and their expert's report disclosed that she had reviewed billing records and would review more as they became available. (*Id.* at 8-10.) Even if Rule 37(c)(1) did apply though, Westmoreland argues that exclusion would be unwarranted because any failure to attach records was substantially justified by Westmoreland's adherence to the timeline set forth in the Board's Scheduling Order. (*Id.* at 11.)

Finally, Westmoreland also contends that the Conservation Groups suffered no prejudice. (*Id.* at 10-11.) They received the records on August 20, 2026, five days before the deposition of Westmoreland's expert, and nearly two months before the hearing. The Conservation Groups' counsel cross-examined Westmoreland's expert about the billing records at length during her deposition and reserved the right to offer rebuttal testimony through their own expert. (*Id.*)

The Conservation Groups' arguments rely on federal cases that apply a more stringent discovery standard than the one Montana law imposes. (*See id.* at 8.) The Board must determine whether Westmoreland's failure to produce supplemental billing records on August 7th constitutes a discovery abuse necessitating the exclusion of those records and related testimony, or harmless error that does not unfairly prejudice the Conservation Groups at the upcoming evidentiary hearing.

Granting the motion would bar Westmoreland from offering the October 2025 through June 2026 billing records and the roughly 702 hours of fees they support and would prevent Westmoreland's expert from testifying about them at the upcoming evidentiary hearing. Denying the motion would allow Westmoreland's expert to testify about the records and support her opinion that the additional 702 hours of fees are reasonable, subject to cross-examination by the Conservation Groups.

B. The Conservation Group's Motion in Limine to Exclude Westmoreland's 2026 Blended Rate

The Conservation Groups' second motion in limine involves evidence of Westmoreland's counsel's blended billing rate of $745 per hour, which Westmoreland's expert report states took effect in January 2026. (Doc. 129 at 11.) The Conservation Groups argue that Westmoreland's failure to disclose the $745 hourly rate until the expert disclosure deadline is unfairly prejudicial. (*Id.* at 12.) Their expert learned of the increase when he received Westmoreland's expert report, which was due on the same day as his own, and thus had no opportunity to address the reasonableness of the rate increase in his own report. (*Id.*)

Westmoreland raises largely the same arguments against the motion to exclude its $745 hourly blended rate. Westmoreland again argues that Mont. R. Civ. P. 37(c)(1) does not apply because the Scheduling Order created no formal discovery process and no deadline for disclosure other than the August 7, 2026, expert disclosure deadline. (Doc. 138 at 7.) The federal cases the Conservation Groups cite in support of exclusion dealt with concealment or noncompliance with actual discovery requests that did not occur here. (*Id.* at 7-10.)

Westmoreland emphasizes that the Conservation Groups' counsel questioned Westmoreland's expert directly about the $745 rate and its reasonableness at her August 25, 2026, deposition which, Westmoreland argues, shows the Conservation Groups have

known of, and had a full opportunity to challenge, the rate well before the hearing. (*Id.* at 4, 10.) Westmoreland argues that excluding evidence of the current rate would prevent the Board from fulfilling its mandate to determine the correct amount of the fee award, and notes that the Conservation Groups' own expert reserved the right to amend his opinions and offer rebuttal testimony addressing the rate at the hearing. (*Id.* at 6, 10.) As with the first motion, Westmoreland contends that any delay in disclosure was substantially justified and harmless. (*Id.* at 11.)

In light of these facts, the Board must determine whether Westmoreland's August 7, 2026, disclosure of its increased blended rate constitutes discovery abuse necessitating exclusion of that evidence, or whether the timing of that disclosure is simply not unfairly prejudicial. Granting the motion would bar Westmoreland from relying on the $745 per hour rate. Any hours the Board considers would instead be valued at the previously disclosed $590 per hour rate. Denying the motion would allow Westmoreland to rely on the $745 per hour rate for the hours billed at that rate, subject to cross-examination and to the Conservation Groups' expert's testimony challenging the rate's reasonableness.

C. Westmoreland's Motion in Limine to Limit Scope of Hearing

Westmoreland's motion in limine asks the Board to preclude the Conservation Groups from presenting or soliciting evidence, argument, or testimony at the upcoming evidentiary hearing that contests or otherwise revisits the merits of Claim 2, or the Board's determination that the Conservation Groups prosecuted Claim 2 in bad faith and for the purpose of harassing or embarrassing Westmoreland. (Doc. 127 at 3.)

Westmoreland's motion catalogs various statements in the Conservation Groups' expert report that Westmoreland argues are indicative of the Conservation Groups' "desire and intent to relitigate the merits of Claim 2 and Westmoreland's entitlement to an award – only this time through their expert witness." (Doc. 127 at 4-7.) These statements include opinions that there was "no evidence of bad faith and harassing conduct," that Claim 2 "was plausible and supported by law and evidence," and that the Board's finding of liability "was not unanimous and did not find or apply any of the factors" for bad faith or frivolousness. (*Id.* at 4-5.) Westmoreland also points to the Conservation Groups' expert's deposition testimony that "there was no bad faith . . . and harassing conduct," and that Claim 2 "is not final," and that the Board's entitlement hearing was "procedurally and constitutionally improper." (*Id.* at 6.)

Westmoreland argues that the Board has already resolved the entitlement and bad faith issues at its May 15, 2026, hearing, and that the forthcoming evidentiary hearing only exists to determine the amount of the award already owed. (*Id.* at 3-4). Thus, Westmoreland contends that further argument regarding entitlement or bad faith is beyond the scope of the upcoming hearing. (*Id.*)

Westmoreland also argues that the scope of the award does not depend on the extent of bad faith found by the Board. (*See id.* at 3.) Westmoreland argues that Mont. Admin. R. 17.24.1307(2) authorizes a prevailing party to recover "all costs and expenses, including attorneys' fees and expert witness fees" reasonably incurred once bad faith and harassment are established. (*Id.*, n. 2.) In other words, Westmoreland argues that once the Board has determined that Westmoreland is entitled to fees based on the Conservation Groups' bad faith, Westmoreland is entitled to recover all of the fees incurred defending against Claim 2, not just the fees tied to the specific conduct of the Board found to be in bad faith. (*See id.*)

The Conservation Groups respond that Judge Pinski's testimony is relevant under Mont. R. Evid. 401 and 402 to three questions pending before the Board: what conduct, if any, constituted bad faith and harassment; whether the Board should exercise its discretion to award fees at all; and what a reasonable award would be. (Doc. 139 at 10.)

First, the Conservation Groups argue that they are entitled to rebut Westmoreland's disclosed expert testimony. Westmoreland's expert has opined that "[e]verything related to the challenge of the permit was a bad faith act" and has characterized the Conservation Groups' litigation conduct, including the spoliation claim and the expert-disclosure dispute, as abusive. The Conservation Groups argue that Mont. Code Ann. § 2-4-612(1) entitles them to answer that testimony with Judge Pinski's contrary opinion. (*Id.* at 10-11.)

Second, the Conservation Groups argue that the Board's May 15, 2026, votes were expressly preliminary and non-final, that the Board represented to the district court that its written decision on "the specific factual and legal bases for its bad faith and harassment findings" would not issue until after the hearing, and that their own expert's testimony about what conduct does and does not qualify as bad faith or harassment therefore remains squarely within the hearing's scope. (*Id.* at 11-12.)

Third, the Conservation Groups argue that their own expert's testimony regarding Westmoreland's litigation conduct is relevant to whether the Board should exercise its discretion to deny fees altogether, because misconduct by a fee-seeking party may nullify an otherwise available award. (*Id.* at 12-13.)

Finally, the Conservation Groups argue that Westmoreland bears the burden of proving a causal nexus between the conduct found to be in bad faith and the fees it seeks, which the Conservation Groups contend further confirms the relevance of evidence identifying the specific conduct at issue. (*Id.* at 13.)

Westmoreland's argument that they are entitled to "all" fees associated with Claim 2 relies, in part, on the federal counterpart to the MSUMRA. The relevant federal regulation specifies that an award may include "(a) **[a]ll** costs and expenses, including attorneys' fees and expert witness fees, reasonably incurred as a result of initiation and/or participation in a proceeding under the Act; and (b) **[a]ll** costs and expenses, including

attorneys' fees and expert witness fees, reasonably incurred in seeking the award in [the Office of Hearings and Appeals, Department of the Interior]." 43 C.F.R. § 4.1295(a)-(b) (emphasis added).

Though promulgated to conform the MSUMRA to federal law, Montana's regulation does not explicitly specify that a party is entitled to recover "all" fees. *Mont. Env't Info. Ctr. v. Westmoreland Rosebud Mining, LLC*, 2023 MT 224, ¶¶ 90-91, 414 Mont. 80, 545 P.3d 623. Instead, Mont. Admin. R. 17.24.1307(2) provides:

> Whenever any final order is issued in any administrative proceeding under the Act at the request of the permittee, permit applicant, or the department, **appropriate and reasonable costs, expenses and attorney fees incurred by the permittee**, permit applicant, or the department **for or in connection with participation in the proceeding may be assessed** against any party **if it is demonstrated that the party participated in the proceeding in bad faith and for the purpose of harassing or embarrassing the permittee**, permit applicant, or the department.

Mont. Admin. R. 17.24.1307(2) (emphasis added).

In a prior attorney fees proceeding arising from a dispute from the same permit, Judge Bidegary explained:

> Once [eligibility and entitlement] are satisfied, the Court determines whether "the attorneys' fees requested are appropriate under the circumstances. *S. Appalachian Mountain Stewards v. Zinke*, No. 2:16CV00026, 2017 WL 5147620, at *1 (W.D. Va. Nov. 6, 2017). Here, although the reasonableness determination is to be made after a hearing, the Court notes that, "[t]he starting point for establishing the proper amount of a fee award is the so-called lodestar product, the number of hours reasonably expended multiplied by a reasonable hourly rate." *Id.*

Mont. Env't Info. Ctr. v. Mont. Dep't Env't. Qual., Order on Pet'rs' Mot. for Fees and Costs, DV 2019-34 (Apr. 21, 2022) at 5. Under that framework, the scope of the reasonableness hearing depends on the hours reasonably expended and the rates charged defending against the claim, not on the merits of the underlying claim or the extent of the bad faith. However, it should be noted that that case did not involve allegations of bad faith conduct.

In the context of contempt motions, the Montana Supreme Court has cautioned that "costs and fees should be limited to those reasonably incurred on or after April 19, 2011, for attorney time strictly related to the prosecution of the contempt issues." *Animal Found. of Great Falls v. Mont. Eighth Jud. Dist. Ct.*, 2011 MT 289, ¶ 28, 362 Mont. 485, 265 P.3d 659. Similarly, the United States Supreme Court has held when a federal court exercises its inherent authority to sanction bad faith conduct by ordering a litigant to pay the other

side's legal fees, the award is limited to the fees the innocent party incurred solely because of the misconduct, or put another way, to the fees that party would not have incurred but for the bad faith. *Goodyear Tire & Rubber Co. v. Haeger*, 581 U.S. 101, 108-11 (2017).

The Board will ultimately need to decide how to calculate the amount of fees and costs, **but that does not need to be decided with respect to this Motion**. For purposes of this Motion, the question is whether the Conservation Groups can submit evidence relevant to their argument that the fees should be limited, including that specific conduct should not give rise to fees. Even so, they do not get to relitigate the issue of whether Westmoreland is "entitled" to fees.

The summary section above sets forth one potential path for resolving this Motion.

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Electronically Filed with the
Montana Board of Environmental Review
9/4/26 at 4:34 PM
By: *Sandy Moisey Scherer*
Docket No: BER 2022-05 SM

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

IN THE MATTER OF: APPEAL AND REQUEST FOR HEARING REGARDING ROSEBUD MINE AREA B, AMENDMENT 5 PERMIT NO. C1984003B	)	**CASE NO. BER 2022-05 SM**
	)	**MOTION IN LIMINE TO EXCLUDE EVIDENCE ON DECIDED ISSUES**

INTRODUCTION

Westmoreland Rosebud Mining LLC and International Union of Operating Engineers, Local 400 ("Westmoreland") respectfully move the Board of Environmental Review ("Board") for an order *in limine* precluding Montana Environmental Information Center and Sierra Club ("Conservation Groups") from presenting or soliciting evidence, argument, or testimony at the Reasonableness Hearing contesting or otherwise revisiting (1) the merits of Claim 2 or (2) the Board's determination that Conservation Groups prosecuted Claim 2 in bad faith and for purposes of harassing and embarrassing Westmoreland. The reason is straightforward: the Board has ruled on these issues, and Conservation Groups should not be allowed to relitigate these issues at the Reasonableness Hearing.

LEGAL STANDARD

The purpose of a motion *in limine* is to prevent the introduction of irrelevant, immaterial, or prejudicial evidence. *Rubin v. Hughes*, 2022 MT 74, ¶ 55. Beyond this, an order *in limine* may exclude confusing, misleading, wasteful, and cumulative evidence. *Larsen v. Williams*, No. BDV 1998-518, 2004 Mont. Dist. LEXIS 2508, at *2-3 (Mont. 1st Jud. Dist. 2004); *Poole v. State*, No. BDV 2000-370, 2004 Mont. Dist. LEXIS 2422, at *3-4 (Mont. 1st Jud. Dist. 2004); *State v. Zlahn*, 2014 MT 224, ¶ 27. The Board has inherent power to grant or deny a

motion *in limine*, to admit or exclude evidence, and to take such other precautions as necessary to ensure a fair and just process. *Rubin*, ¶ 55.

ARGUMENT

A. The Only Remaining Issue Is the Reasonableness of the Award Sought.

On February 20, the Parties agreed to adjudicate Westmoreland's Fee Petition in two steps. *First*, the Board would determine Westmoreland's legal entitlement to an award ("Entitlement Hearing").[1] *Next*, the Board would determine the reasonableness of the award sought. ("Reasonableness Hearing").[2] Tr. of Board Meeting, Case No. BER 2022-05-SM (Feb. 20, 2026) at 3:11-19; Order Regarding April Oral Argument (April 8, 2026). On May 15, the Board convened the Entitlement Hearing, and having considered the evidence and argument, ruled that Westmoreland is entitled to an award as a matter of law because Conservation Groups participated in the proceeding in bad faith and for purposes of harassing or embarrassing Westmoreland. Tr. of Board Meeting, Case No. BER 2022-05-SM (May 15, 2026) at 46:12-18, 144:15-145:19, 147:21-148:19. BER's determination

[1] By law, a permittee is entitled to an award if Conservation Groups participated in the proceeding in bad faith and for purposes of harassing Westmoreland. 43 C.F.R. 4.1294(d); *see also* ARM 17.24.1307(2).

[2] By law, an entitled party may recover "All costs and expenses, including attorneys' fees and expert witness fees" reasonably incurred participating in the proceeding and seeking the award. 43 C.F.R. 4.1295(a)-(b); *see also* ARM 17.24.1307(2) and (4).

on the reasonableness of the award sought by Westmoreland – the singular purpose of the Reasonableness Hearing – is all that remains. Scheduling Order (Hearing on Amount of Attorney Fees, Costs, and Expenses) at 2-3.

B. Conservation Groups Improperly Seek to Relitigate The Merits of Claim 2 and Westmoreland's Entitlement to an Award.

On August 7, Conservation Groups disclosed the expert report of Judge Gregory Pinski. While Judge Pinski has been engaged by Conservation Groups to opine on the reasonableness of the award sought, his expert report includes extensive opinions and arguments on the merits of Claim 2 and Westmoreland's entitlement to an award. Pinski Expert Witness Disclosure at 23-29. The following statements, while not exhaustive, illustrate this point:

- "[T]here [is] no evidence of bad faith and harassing conduct[.]"
- "Westmoreland cannot satisfy its [entitlement] burden merely by pointing to the Board's adverse ruling on part of one claim."
- "Losing, even at summary judgment, does not convert a colorable legal challenge into frivolous or bad-faith litigation."
- "The relevant inquiry is whether the Conservation Groups' position lacked any reasonable legal or factual foundation when asserted[.]"
- "[T]he governing standard . . . requires Westmoreland to prove both that the Conservation Groups took part 'in bad faith' **and** 'for purposes of harassing or embarrassing' the applicant."
- "This [entitlement] standard is even more restrictive than Rule 11, MRCP."
- "The Board counsel advised that bad faith 'requires a finding that the Conservation Groups' action was frivolous, unreasonable, or without

foundation.' . . . There is no such finding that any specific conduct met that standard."

- "[T]here is no evidence of purposeful conduct."
- ". . . Claim 2 – the Buffer Zone claim – was plausible and supported by law and evidence because it rested on the regulatory distinction between intermittent streams and ephemeral drainage ways."
- ". . . Conservation Groups' [Claim 2] argument was supported by several categories of factual support: [listing eight categories of alleged factual support for Claim 2]."
- "[Claim 2] was complex, unsettled, and involved undefined terms."
- "The Board's extensive merits analysis – 30 findings and 15 conclusions over 13 pages – is evidence that the issue was complicated, not frivolous."
- "[T]he Board's finding of liability was not unanimous and did not find or apply any of the factors identified by Board counsel for determining that a claim was frivolous or in bad faith."
- "[W]hile Westmoreland denied in briefing that it had any reason to believe the conditions of the reach might be relevant to this case when it was bulldozed, the time entries of its counsel show that its attorneys discussed 'discovery and site inspection' in September 2022, which was months prior to Westmoreland's bulldozing of certain portions in November or December 2022."
- "Critically, just because a party may be entitled to do something, does not necessarily mean doing it is not spoliation. Parties have an ongoing duty to not spoliate evidence."
- ". . . Westmoreland's asserted 'bad faith' examples are mischaracterized. Most notably, Westmoreland materially altered expert Anderson's deposition testimony . . . ."
- ". . . Westmoreland's 'discovery abuse' claim is unsupported by the record."

- "[L]osing a discovery dispute is not evidence of frivolousness or bad faith . . . ."
- ". . . Conservation Groups cannot be held to harass Westmoreland because they never sued Westmoreland . . . . That fact alone seriously undermines any claim that the purpose of the proceeding was to harass Westmoreland."
- ". . . Conservation Groups' misstatement in the exemption briefing that mining had 'obliterated the stream reach' – was one isolated incorrect statement that was promptly corrected . . . . The narrow, limited issue cannot support the extreme conclusion that the entire proceeding was brought to harass Westmoreland."
- "In my opinion, the Conservation Groups did not act in bad faith or to harass Westmoreland because they brought a legitimate, evidence-supported, technically complex challenge to DEQ's permitting decision[.]"
- ". . . Westmoreland's accusations of bad faith rest on mischaracterizations and alleged alterations of testimony[.]"

Id.

On August 29, Judge Pinski sat for a deposition. Therein, Judge Pinski testified that (1) "there was no bad faith . . . and harassing conduct"; (2) Claim 2 is not final; (3) the Board "will continue to address" the issues of bad faith and harassment; (4) the Board's characterization of Claim 2 was wrong; (5) the Board "did not conclude" that Westmoreland is entitled to an award; and (6) the Board's Entitlement Hearing was "procedurally and constitutionally improper." Pinski Dep. 62:11-12, 57:8-24, 99:11-20, 70:14-19, 100:4-8, 240:15-241:7.[3] None of these

[3] Relevant excerpts from the draft transcript of Judge Pinski's deposition are attached hereto as Exhibit A.

statements speak to the reasonableness of the award sought by Westmoreland, and instead, are offered to attack the merits of Claim 2 and the Board's determination that Conservation Groups prosecuted Claim 2 in bad faith and for purposes of harassing and embarrassing Westmoreland. This is entirely improper.

In sum, Judge Pinski's statements mirror those presented by Conservation Groups at the Entitlement Hearing and on appeal. These statements do not weigh on the reasonableness of the award sought by Westmoreland; rather, they demonstrate Conservation Groups' desire and intent to relitigate the merits of Claim 2 and Westmoreland's entitlement to an award – only this time through their expert witness. This is improper and beyond the defined scope of the Reasonableness Hearing. Scheduling Order (Hearing on Amount of Attorney Fees, Costs, and Expenses) at 3.

C. Evidence, Argument, and Testimony Concerning the Merits of Claim 2 and Westmoreland's Entitlement to an Award Must Be Excluded From the Reasonableness Hearing.

The purpose of a motion *in limine* is to prevent the introduction of irrelevant, immaterial, or unfairly prejudicial evidence. *Rubin*, ¶ 55. Beyond this, an order *in limine* may exclude confusing, misleading, wasteful, and cumulative evidence. *Larsen*, 2004 Mont. Dist. LEXIS 2508, at *2-3; *Poole*, 2004 Mont. Dist. LEXIS 2422, at *3-4; *Zlahn*, ¶ 27. For obvious reasons, Conservation Groups' opinions and arguments concerning the merits of Claim 2 and Westmoreland's entitlement

to an award – whether offered through Judge Pinski, counsel, or Westmoreland's witnesses – are unfairly prejudicial to Westmoreland, the Board, and the process. Allowing such evidence will be confusing, misleading, wasteful, and cumulative. In the interest of fairness and to avoid prejudice, the Board must exclude from the Reasonableness Hearing all evidence, opinion, and argument on the merits of Claim 2 and Westmoreland's entitlement to an award.

CONCLUSION

For the reasons stated, Westmoreland respectfully requests the Board issue an order *in limine* precluding Conservation Groups from presenting or soliciting evidence, argument, or testimony at the Reasonableness Hearing contesting or otherwise revisiting (1) the merits of Claim 2 or (2) the Board's determination that Conservation Groups prosecuted Claim 2 in bad faith and for purposes of harassing and embarrassing Westmoreland.

DATED: September 4, 2026

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I hereby certify that on September 4, 2026, a true and accurate copy of the foregoing was served on the following by electronic mail:

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EXHIBIT A

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW

OF THE STATE OF MONTANA

IN THE MATTER OF: APPEAL
AND REQUEST FOR HEARING
REGARDING ROSEBUD MIND AREA B, AMENDMENT 5
PERMIT NO. C1984003B

Case No. BER 2022-05-SM

VIDEO-RECORDED AND VIDEOCONFERENCE DEPOSITION UPON
ORAL EXAMINATION OF
GREGORY PINSKI
-- ROUGH DRAFT --

ROUGH

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A. I -- again, with the same caveat on my last answer. I have not -- I've not been lead counsel in a case under the Clean Water Act. I don't -- again, I don't know the full scope of -- of the environmental cases that my partner has handled and where I may have been listed as counsel of record.

Q. Okay. And last one.
Clean Air Act, any litigation of Clean Air Act cases?

A. No. No. No.

Q. And then just a final question here.
After you returned to Montana to practice law, can you just say generally what percentage of your practice throughout your career was dedicated to plaintiffs work and what percentage was dedicated to defense work?

A. Sure. I would say -- in the period of time between 2004 and 2012, I would say my time was probably 50/50. Between -- I still served as national counsel for Shred-it and handled their work all over the United States, and so that was probably 50 percent of my time. And then the other 50 percent of my time was plaintiffs work.
Applying the percentages after I left the

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bench has been -- is a little more difficult, and I guess I would need to think about it.
Like I said, predominantly I have a mediation and arbitration practice. I have some plaintiffs cases. I have some defense cases. I would say that my time is spent 70 percent -- 70 percent on -- on mediation/arbitration work, and the other 30 percent could be equally divided between plaintiffs and defendants.
And, you know, I'm just -- I'm very broadly speaking on that. I have not done an analysis of that.

Q. That's perfectly fine. Thank you. Let's move forward.
You've been retained in this case to issue an expert opinion; is that right?

A. Yes, sir.

Q. And I'll invite your attention to what's been marked as Exhibit 1.

A. Okay.

Q. Look at that.

A. Sure.
MR. YEMINGTON: And, for the record, I'll refer to these as Westmoreland's exhibits. In a -- in Cathy Laughner's deposition, I believe

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they were marked with numbers as well. And just to avoid confusion, I'll try to say Westmoreland exhibit with -- with how it's been marked electronically and provided it to you.
BY MR. YEMINGTON:

Q. Is that all right?

A. Sure.

Q. Judge, do you have that exhibit in front of you?

A. I do.

Q. And does this appear to be a true and correct copy of your expert report?

A. Yes.

Q. When were you retained, if you recall?

A. I -- I believe that the first -- the first day that I work on this was around July 8th.

Q. And you've been retained to opine on the reasonableness of the fees requested by Westmoreland of the union; is that right?

A. That's right.

Q. And your opinion doesn't extend to, for example, the merits of the case or Westmoreland and the union's entitlement to an award; is that right?

A. Well, I don't know what you mean by the

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merits of the case, because, you know, there are aspects of my opinion that touch upon the merits of the case, but as I carved out in my report, I have not rendered an opinion on jurisdiction, on prevailing party status or things like that.

Q. Okay. Well, let's -- let's just quickly touch on the merits of the case.
Do you dispute that the merits of the case is final?

A. I -- yes, I don't believe that -- I don't believe that that's final.

Q. And what is it that you don't -- don't recognize as final?

A. Well, I mean, the board hasn't -- first of all, the board hasn't issued a determination on this particular issue yet, part of which touches upon bad faith and harassing conduct.
And, of course, there's already a pending district court action that's ongoing. And I understand there's a -- there was even a Supreme Court action that was filed recently. So, you know, everything's ongoing. So when you refer to it as "final," you know, that's not something that I can -- I can agree with.

Q. Okay. Let me put a little bit more

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standards, practices and customs.
The fourth opinion is that the -- the blended rate analysis doesn't allow for a meaningful review of the reasonableness under Montana customs, practices and standards.
My fifth opinion is that the -- the fee petition does not satisfy what's referred to as the seven Plath factors, which come from the Montana Supreme Court decision of Plath versus Schonrock.
My sixth opinion is that there was no bad faith or -- and harassing conduct as required by the applicable law in Montana.
And my seventh opinion is that there was -- there's been no establishment of a causal nexus between the claimed fees and the underlying alleged bad faith and harassing conduct as required by the customs, practices and standards in Montana.
BY MR. YEMINGTON:
Q. Okay. Thank you for that. That's an excellent summary.
What's your understanding, as you sit here today, regarding the nature of the AFI permit at issue in this litigation?

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A. Maybe clarify that for me. I'm not sure what -- I'm not sure what you mean.
Q. Sure. So you understand that this concerns a mine permit challenge, this contested case, and MEIC and Sierra Club challenged the legal validity of that mine permit; is that fair?
A. Yes.
Q. Okay. And I'm just asking if you have any understanding, as you sit here today, what I refer to when I say the AFI permit?
What is it? Who asked for it?
A. Oh, sure. I mean, as a describe in my -- in my expert report, the A -- again, broadly speaking, the AM5 permit is -- is an amendment, Amendment 5, that was submitted to the DEQ to expand the Rosebud Mining into a new area. I think it was approximately 9,000 acres or so.
And the conservation groups challenged that. The DEQ issued its CHIA. They contested that. You know, there's basically on three -- three bases in their notice of appeal.
And then that went to the Board of Environmental Review. I understand that the Board of Environmental Review decision has been appealed to the district court and that's -- that's

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pending.
And, of course, we have this ancillary attorney fee proceeding that's ongoing as well.
So I described it in more detail in my report, but in a nutshell, that's -- that's how I would describe it to you.
BY MR. YEMINGTON:
Q. That's great.
Any -- any recollection with respect to when the litigation was filed?
A. Did I -- can I reference my report? I think that it goes back to -- let's see.
The notice of appeal, it says here, you know, it's dated June 27th of 2022, so sometime before that.
Q. Okay. And why do you say before then?
Do you believe that there was a sort of initiating document prior to that?
And, again, just to clarify, my question was when the litigation started.
A. I do not know all of those -- all of those specific dates, Mr. Yemington. You know, yeah, I don't know the specific date of the permit. I don't know the specific date of the -- of the challenge. Those -- those weren't issues

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that, in my estimation, were material to me to sort of know every specific date.
Q. Okay. Well, I appreciate that.
Speaking in generalities, would you agree that the litigation started sometime in 2022 and concluded on the merits in November of 2025?
And I'm speaking directly to the contested case before the board, not the ancillary proceedings or the judicial review.
A. Sure. So I do see on page 5 of my report, part of the facts that I gathered, the DEQ approved a modified version of AM5 May 27th of '22. I don't know when that permit was filed, but I will accept that particular date.
And, you know, then, as I mentioned, the notice of appeal was filed June 27th of 2022. And I do understand that decisions were rendered in '25 and then, you know, are ongoing at this point.
Q. Sure. But with respect to that process before the board, from the notice of appeal to the issuance of a final FOFCOL, would you agree that's about three and a half years?
A. Sure.
Q. Okay. Any understanding, as you sit here today, with respect to related AM5 litigation?

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statement?
A. Yes, I do.
Q. Okay. As you sit here today, any understanding with respect to whether DER's final decision, the FOFCOLs issued on November 4th of 2025, characterize claim 2?
A. You'll have to rephrase your question. I'm sorry, sir. I don't understand it.
Q. Okay. You recall that BER issued their final decision on November 4, 2025 --
A. Yes.
Q. -- resolving all three claims?
A. Yes.
Q. Within that document, the findings of fact and conclusions of law reached by the board, did they characterize claim 2?
A. They did characterize claim 2.
Q. Do you dispute that characterization?
A. I do.
Q. Did MEIC and Sierra Club dispute that characterization?
A. Yes, they have.
Q. And when did they?
A. Well, they've disputed that characterization throughout this proceeding.

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You know, essentially their argument is that, you know, claim 2 had two parts to it. It had a procedural challenge to it and then it had a factual component to it, that the stream was intermittent.
And, you know, upon filing their summary judgment brief, they only focused on the first prong that I mentioned, which was the procedural issue and the DEQ's improper application of -- of, you know, various factors in determining whether the stream was ephemeral or intermittent.
And throughout the process after that summary judgment, you know, that argument was recast I think improperly, and that found its way into the findings of fact that I -- I don't believe accurately reflect the record.
And that bears upon my opinions as it relates to the -- as it relates to the bad faith and harassing conduct, which the -- I expressed my opinions on.
Q. Okay. Let's talk about claim 2 and how it's characterized in the final decision.
A. Uh-huh.
Q. At Finding of Fact 16, in the final decision issued by the court -- and I haven't

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marked that as an exhibit, but I'll represent to you that they characterize the three claims that were raised.
And with respect to claim 2, they say that (as read):
The DEQ improperly authorized disturbance of an intermittent or perennial stream reach, specifically wetland 4-2/2, in violation of said stream Buffer Rule.
That's a Finding of Fact 16; is that fair?
A. I don't have it in front of me. I -- for purposes -- I don't have it in front of me and it's fairly lengthy, what you just read to me. So if you're going to ask me questions to digest that, I would really appreciate having it in front of me if you don't mind.
Q. I appreciate that. I'm going to go that direction thought.
What I'm going to ask you is do you have any understanding with respect to where that Finding of Fact No. 16 came from?
A. It came from the board.
Q. Where did the board get Finding of Fact 16?

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A. I -- I don't know that.
Q. I'll represent to you that that was a finding of fact proposed by the hearing examiner.
Will you accept that --
MR. STOCKTON: I'm registering an objection to questioning the witness without the document in front of him about specifics and citations within said document.
THE WITNESS: I don't know where -- I don't know where it came from, Mr. Yemington.
BY MR. YEMINGTON:
Q. Okay. Well, let's take a step back.
At the beginning of this case, will you accept that the Board of Environmental Review assigned this matter to a hearing examiner to adjudicate the three claims raised by MEIC and Sierra Club?
A. Yes.
Q. And through the course of that contested case, the parties participated in discovery, motion practice, briefing and so on and so forth.
You've reviewed the docket, right?
A. They did.
Q. And all of those pleadings that you've reviewed were filed with the hearing examiner; is

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to explore those. What I'm asking is specific to the hearing, so if we can keep the answers specific to the hearing, I think we can move more quickly through this.

So I simply asked that the DER conclude that.

Right or wrong, did they conclude that they had the authority to do this?

A. Yes, they did.

Q. Right or wrong, did they conclude that MEIC and Sierra Club -- I apologize.

Right or wrong, again, did BER conclude that MEIC and Sierra Club had prosecuted claim 2 in bad faith and for purposes of harassing and embarrassing my clients?

A. I need to back up to your prior question about jurisdiction for a moment, and then I'll answer this one.

I have to correct my answer. They did conclude that, but I am confused by that conclusion, because later in their scheduling order on these attorneys' fees issue, they indicated that the jurisdictional issues were going to be addressed in this particular order that follows this proceeding.

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So I don't know whether they are going to revisit that issue or whether that issue has been final from a board standpoint. That is not clear -- that's not clear to me. So I need to revise my answer to jurisdiction.

Can you ask me your next question again? I'm sorry.

Q. No need to apologize. Again, not asking for your opinion with respect to whether or not they reached the correct conclusion.

But at the May 15th hearing, the Board of Environmental Review, did they conclude that MEIC and Sierra Club prosecuted this claim, claim No. 2, in bad faith and for purposes of harassing my clients?

A. They indicated as such on the transcript, but, again, I'm unclear whether or not that is ultimately their decision, because the scheduling order seems to indicate that they're going to continue to address those issues.

And, you know, in addition, even if they concluded that under the statute, an award of an attorneys fee is discretionary.

And so, yes, they said that on the transcript, but is that the final decision, I don't know that, because it's -- it's somewhat confusing based upon the procedure that the board has undertaken.

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Q. And did they conclude that my clients are entitled, as a matter of law, to an award in this case specific to claim 2?

A. No. No, they did not -- they did not conclude that.

Q. Just briefly, do you recall -- again, understanding that you reviewed that transcript, do you recall statements by BER members that claim 2 was, quote, just not logical, end quote, and, quote, contrary to common sense, end quote?

A. I -- you know, you're asking me questions about the transcript. I -- if you want to point me to where it's at, I'm happy to take a look at it.

Q. No recollection as to those statements?

A. I do not -- here's the thing: I don't have the entire transcript in front of me. So when we take words in isolation out of a transcript and out of context, I'm not going to answer one way or the other about whether or not I remember that.

Q. Okay. Well, I'll invite your attention to what's been marked as Westmoreland's Exhibit 4.

Do you recognize this document?

A. Yes. This is the transcript.

Q. Okay. And if I understood your testimony, you have reviewed this transcript?

A. I have, yes.

Q. Okay. And do you recall that, before the board voted, there was discussion among the board members?

A. Yes.

Q. And how would you characterize that discussion?

A. Haphazard, disorganized, nonspecific, stream of consciousness. It -- it is not in any way specific to the conduct that they're trying to sanction.

Q. Do you recall statements by BER members that MEIC and Sierra Club's litigation tactics were, quote, really frustrating?

A. I -- I do not.

Q. That they said that those litigation tactics were, quote, not doing the process any good?

A. I don't recall that. If you want to point me to it and I can look at it in context,

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format, 127.
Is that right on your end?
A. Yes, sir.
Q. Okay. And so Exhibit B, generic time entries. Let's talk about those.
A. Okay.
Q. Tell me about this exhibit.
How did you -- how did you come up with this?
A. Well, I reviewed the attorneys' fees entry and noted entries that I didn't understand what exactly was going on.
So, for instance, in this first time entry of yours, sir, on 6/27 of '22, this, again, is the one that we referred to earlier. This is attend to correspondence regarding the same.
So, you know, typically what you would -- first of all, I'm not sure what "attend to" means. That's a phrase that you use frequently, and I -- I don't know what that means.
But, secondly, there's no indication of what the correspondence is related to or who it's to or what it's about, right? And so in that instance, I have no idea whether, you know, that's related to, you know, claim 3, climate change

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issue, or whether that's related to spoliation argument. I have no idea what that's related to.
And so, again, when you look at this passing of fees on to the other party and demonstrating that the fees are reasonable, you have to be able to determine what it relates to in order to be able to determine whether or not it's recoverable.
Q. Okay. And so if I understand your testimony -- and if we talk about that first entry, my entry.
A. Yes, sir.
Q. You find that unreasonable, both because it was block billed and because it was generic?
A. That's true.
Q. Okay. And do you understand that we have only requested one-third of that entry?
A. I similarly believe that that is unreasonable and not compliant with the law that requires a nexus between the conduct and the fees that are awarded.
Q. Okay. And so there's no scenario, in your opinion, where we could recover fees for our client for my time entry on 6/27/22.
Is that your testimony?

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A. That's absolutely my testimony.
Q. Okay. And would that be your same testimony with respect to every entry?
A. Yes, because I have -- I've taken this one step further in my analysis and I've actually identified for you those entries that relate to claim 2 or that mention claim 2, mention buffer zone rule. And so I found those and tied those in and then did this same analysis to them.
I did the same thing with spoliation. Again, I'm sort of forced to do this because I don't know -- I don't know what fees are being awarded for because the board really hasn't specified that yet.
Q. Okay. And so if the board were to issue a final decision that says, We view these 10 individual acts by MEIC and Sierra Club to have been forwarded in bad faith and for purposes of harassing Westmoreland and the union.
Would that require you to revisit these tables?
A. Well, first of all, I believe that that is procedurally and constitutionally improper. So that hasn't been done and I have no indication of if it will be done. And the board chairman at the

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transcript, Chairman Simpson specifically said, We're not making any determination of when this bad faith and harassment occurred.
So I'm sort of forced to play the hand that I'm dealt, which is a very vague -- which is a very vague one at this point, and that's not consistent with due process.
Q. Okay. So, again, I want to focus on the invoices and --
A. Sure.
Q. -- getting your opinion on reasonability. Okay? I -- I don't think that we -- I understand that this could go different directions with respect to the order the board ultimately adopts and MEIC and Sierra Club's decisions with respect to their appellate rights. I appreciate that. But we're not there yet, right?
A. That's the point that I was making when I said we're playing the hand that we're dealt, Mr. Yemington.
So when you ask what I would do if this or if that, I don't know. All I know is is that, you know, we're in a real sort of quagmire here as it relates to the procedural posture of how this is happening.

Electronically Filed with the
Montana Board of Environmental Review
9/4/26 at 5:23 PM
By: *Sandy Moisey Scherer*
Docket No: BER 2022-05 SM

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BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

IN THE MATTER OF: NOTICE OF APPEAL AND REQUEST FOR HEARING ROSEBUD MINE AREA B AMENDMENT 5 PERMIT NUMBER C1984003B	CASE NO. BER 2022-05 SM **CONSERVATION GROUPS' MOTIONS *IN LIMINE***

Petitioners Montana Environmental Information Center ("MEIC") and Sierra Club ("SC") (collectively "Conservation Groups") move for two evidentiary rulings as outlined below.

First, Conservation Groups move for exclusion of Westmoreland Rosebud Mining LLC and International Union of Operating Engineers, Local 400's (collectively "WRM") undisclosed fee entries (nine months of information, October 1, 2025, to June 30, 2026) (hereinafter "supplemental billing records"). WRM provided those supplemental billing records to its own expert for her to opine upon and she disclosed

opinions regarding them, however, WRM did not provide those records to Conservation Groups before the expert deadline, thus depriving Conservation Groups the opportunity for their expert to disclose an opinion in his report on the reasonableness of those fee entries. Such undisclosed evidence should be disallowed. It is unfairly prejudicial for a party to provide proprietary attorneys' fees records to their own expert and disclose opinions regarding those fees but not disclose the same information to the opposing side in a timely manner before the expert disclosure deadline. *Hulse v. State, Dept. of J., Motor Veh. Div.*, 1998 MT 108, ¶ 15, 289 Mont. 1, 961 P.2d 75 (holding motion *in limine* serves to exclude "unfairly prejudicial" evidence from being admitted); *Bentley v. ConocoPhillips Pipeline Company*, No. CV 09-01-M-DWM, 2010 WL 11537799 (D. Mont. Feb. 3, 2010) (among other holdings, excluding expert testimony on undisclosed documents sought in discovery, not provided to opposing side, but relied upon by own party's expert).

Moreover, the supplemental billing records, even though relied upon in WRM's expert report, were not attached to the report. Conservation Groups requested the supplemental billing records, but only received the records on a Thursday evening, when WRM's expert's deposition was set for the following Tuesday morning. Mont. R. Civ. P. 37(c)(1) ("If a party fails . . . to disclose information regarding opinions of a witness as required by Rule 26(b)(4), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless."); *Olson v. Montana Rail Link, Inc.*, 227 F.R.D. 550, 2005 WL 1037116 (D. Mont. 2005) (excluding expert testimony on information

referenced and relied upon in expert report, but not produced with expert report and, later, only fully produced two days before expert deposition).

Second, Conservation Groups move for exclusion of evidence regarding WRM's new blended billing rate of $745/hour, because WRM waited until its expert disclosure on August 7, 2026 (where its expert opined on the new rate), to reveal that seven months earlier, as of January 2026, WRM began paying Holland and Hart at a blended rate of $745/hour, thus depriving Conservation Groups the opportunity for their expert to disclose an expert opinion in his report on whether such a blended rate was reasonable or not. Such undisclosed evidence should be disallowed. It is unfairly prejudicial for a party to provide increased hourly rate information to their own expert and disclose opinions regarding that rate but not disclose the same information to the opposing side in a timely manner before the expert disclosure deadline. *Hulse*, ¶ 15; *Bentley*, 2010 WL 11537799.

A supporting brief is filed contemporaneously with this motion.

DATED this 4th day of September, 2026.

BOONE KARLBERG P.C.



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BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

IN THE MATTER OF: NOTICE OF APPEAL AND REQUEST FOR HEARING ROSEBUD MINE AREA B AMENDMENT 5 PERMIT NUMBER C1984003B	CASE NO. BER 2022-05 SM **CONSERVATION GROUPS' BRIEF IN SUPPORT OF THEIR MOTIONS *IN LIMINE***

Petitioners Montana Environmental Information Center ("MEIC") and Sierra Club ("SC") (collectively "Conservation Groups") file this brief in support of their Motions *in Limine* for pre-hearing evidentiary rulings on the following topics:

1. Exclusion of Westmoreland Rosebud Mining LLC and International Union of Operating Engineers, Local 400's (collectively "WRM") undisclosed fee entries (nine months of information, October 1, 2025, to June 30, 2026) (hereinafter "supplemental billing records"), because WRM provided those supplemental billing records to its own expert for her to opine upon

and she disclosed opinions regarding them; however, WRM did not provide those records to Conservation Groups before the expert deadline, thus depriving Conservation Groups the opportunity for their expert to disclose an opinion in his report on the reasonableness of those fee entries. Such undisclosed evidence should be disallowed. It is unfairly prejudicial for a party to provide proprietary fee entries to their own expert and disclose opinions regarding those fee entries, but not disclose the same information to the opposing side in a timely manner before the expert disclosure deadline.

2. Exclusion of evidence regarding WRM's new blended billing rate of $745/hour, because WRM waited until its expert disclosure on August 7, 2026 (where its expert opined on the new rate), to reveal that as of January 2026, WRM began paying Holland and Hart at a blended rate of $745/hour, thus depriving Conservation Groups the opportunity for their expert to disclose an expert opinion in his report on whether such a blended rate was reasonable or not. Such undisclosed evidence should be disallowed. It is unfairly prejudicial for a party to provide proprietary hourly rate information to their own expert and disclose opinions regarding that rate, but not to disclose the same information to the opposing side in a timely manner before the expert disclosure deadline.

STANDARD

"Motions in limine serve as procedural mechanisms to limit in advance testimony or evidence in a particular area." *Anderson v. Boyne USA, Inc.*, No. CV 21-95-BU-BMM, 2025 WL 1475529, at *1 (D. Mont. Feb. 11, 2025) (quotation marks omitted). "A motion in limine is a pre-trial motion to prevent irrelevant, immaterial, or prejudicial evidence from being introduced at trial." *Stand Up Montana v. Missoula Cnty. Pub. Schools*, 2023 MT 240, ¶ 28, 414 Mont. 229, 539 P.3d 1117.

ANALYSIS

I. The Board of Environmental Review ("Board") should bar WRM from admitting evidence of the fee entries not timely provided to Conservation Groups, but provided to WRM's own expert.

WRM filed its Fee Petition in this matter on November 26, 2025. Attached to the Fee Petition was a declaration of Samuel Yemington, which included as Exhibit 1, a spreadsheet of attorneys' fees dating from June 27, 2022, to September 30, 2025. (Doc. 99, Ex. D at Ex. 1.) WRM's Fee Petition sought 1/3 of that total amount and represented that two months (October and November 2025) had not yet been invoiced, but that "[o]nce final, the amount sought will be adjusted accordingly." (Doc. 99 at 22, fn.12.) WRM did not supplement its Fee Petition, nor did it provide Conservation Groups with updated billing records reflecting the amounts it sought in the time leading up to the August 7, 2026, expert disclosure deadline in this matter. (Scheduling Order, ¶ 2 (providing sole and simultaneous expert disclosure deadline).)

Despite not providing any updated billing records to Conservation Groups, WRM did, in fact, provide the supplemental billing records (dating from October 1,

2025, to June 30, 2026) to its own expert, attorney Catherine Laughner, who reviewed, relied upon, and expressed an opinion on the reasonableness of those hours. (WRM Expert Disclosure, Expert Report of Catherine Laughner (Aug. 7, 2026), **Exhibit A**.) In her August 7, 2026, expert report, Ms. Laughner represented that she reviewed "Spreadsheets reflecting attorneys' fees and costs and expenses incurred by Westmoreland through June 2026":

> • Spreadsheets reflecting attorneys' fees and costs and expenses incurred by Westmoreland through June 2026;[1]

(Ex. A, Expert Report of Catherine Laughner at 4 (emphasis added).) In the related Footnote 1, Ms. Laughner stated that billing timing permitted her to review the billing entries up to "approximately one month prior to the date of this report" and that she would review upcoming billing records:

> [1] The spreadsheets reflecting the attorneys' fees and costs and expenses incurred by Westmoreland/Local 400 attached hereto necessarily reflect only those attorneys' fees and costs and expenses incurred through approximately one month prior to the date of this report, as billing records reflecting more recent activity were not yet available at the time of this report. Because Westmoreland continues to incur fees and costs, including in connection with seeking the award of fees addressed herein, I will review forthcoming spreadsheets reflecting such additional attorneys' fees and costs and expenses as they become available and may testify regarding such additional fees and costs, consistent with the methodology and opinions set forth herein.

(*Id.* at fn.1 (emphasis added).) Ms. Laughner testified she had the opportunity to review the supplemental billing records three times in preparing her report, that she had received then before the expert disclosure deadline, and that it "[m]ust have been" sometime in July 2026 when she received them. (Rough Dep. of C. Laughner at 284:2–18 (Aug. 25, 2026), **Exhibit B**.)

In the substance of her report, Ms. Laughner revealed that WRM claimed it had incurred a total of 2,787.2 hours in defending this case from outset to the Board's entry of the Final Order on November 4, 2025, and she claimed that 1/3 of those hours—approximately 929—were, in her opinion, reasonably related to Claim 2. (Ex. A at 10, 13–14.) Ms. Laughner's report also revealed that the supplemental billing records showed WRM has incurred an additional approximately 702 hours from the day after the entry of the final order, November 5, 2025, to June 30, 2026, which she opined was reasonable, meaning WRM's "fees-for-fees" claim was nearing (and now potentially exceeds) the total it seeks for the defense of Claim 2. (Ex. A at 10; Ex. B at 283:10–17.)

Moreover, Ms. Laughner's expert report indicated that the updated spreadsheets were "attached hereto." (Ex. A at fn.1.) The supplemental billing records, however, were not attached. (*See* Ex. A.) After receiving Ms. Laughner's report, Conservation Groups asked for the supplemental billing records. (Emails between Counsel (Aug. 7–20, 2026), **Exhibit C**.) Despite being requested, WRM did not provide the supplemental billing records until Thursday evening, August 20, 2026, when there were just two business days before Ms. Laughner's deposition set for Tuesday morning, even though the documents had been provided to Ms. Laughner in advance of the expert disclosure deadline and she agreed it "[m]ust have been" in July 2026 when she received them. (Ex. B at 284:7–18 (Ms. Laughner testifying "I don't remember the exact date," but agreeing it was before August 7, 2026, and "[m]ust have been" sometime in July 2026 when received). In any event, Conservation Groups did not have the supplemental billing records before the expert disclosure deadline of August 7, 2026 (they did not

receive them until August 20, 2026), and, as such, they were unable to have their expert review and provide opinions on the supplemental billing records ahead of the expert disclosure deadline.

A. The supplemental billing records should be excluded, because WRM provided them to its expert before the expert disclosure deadline, but not to the other side.

It is unfairly prejudicial for WRM to be permitted to introduce and rely upon proprietary documents it provided to its own expert, but did not provide to the other side at the same time or before the expert disclosure deadline. *Hulse v. State, Dept. of J., Motor Veh. Div.*, 1998 MT 108, ¶ 15, 289 Mont. 1, 961 P.2d 75 (holding motion *in limine* serves to exclude "unfairly prejudicial" evidence from being admitted). The upcoming hearing concerns whether and, if so, how much in attorneys' fees and costs WRM may be entitled to. WRM's Fee Petition only outlined fees incurred through September 30, 2026. (Doc. 99.) That was the information available to Conservation Groups when it retained its expert witness, the Honorable Greg Pinski (ret.), and, as Judge Pinski's expert disclosure shows, the fees claimed by WRM through September 30, 2025 (as attached to its Fee Petition), were the only WRM billing records available for Judge Pinski to review before his expert disclosure was due on August 7, 2026:

99	11/26/25	Westmoreland's Petition for Costs, Expenses, and Fees, with Proposed Order

(Conservation Groups Expert Witness Disclosure, Expert Witness Disclosure of Judge Gregory G. Pinski (Ret.) at p.68 (Aug. 7, 2026), **Exhibit D**.) As noted above, however, WRM gave its expert something only it could provide—billing records from October 1,

2025, to June 30, 2026, and its expert then disclosed opinions about those records. Conservation Groups (and thus their expert) were not provided those documents prior to the expert disclosure deadline.

In *Bentley v. ConocoPhillips Pipeline Company*, one of Montana's federal district court judges, the Honorable Donald Molloy, barred admission of documents that should have been (but were not) provided to the other side, but were, rather, provided to the party's expert who relied and opined upon them. No. CV 09-01-M-DWM, 2010 WL 11537799, at *5–*9 (D. Mont. Feb. 3, 2010). In that case, the defendant had been asked for certain documents in discovery that had not been produced, but provided those same documents to its expert, who relied on the materials in her expert disclosure. *Id.* at *5–*8. In ruling on a motion to exclude the expert, Judge Molloy stated:

> Here, [the defendant] failed to produce all of its violence in the workplace policies to [the plaintiff], while its own expert was reviewing and relying on them. In the expert's written report, the policy was listed but still not made available to [the plaintiff]. [The defendant] did not correct this inadequacy until after the expert disclosure deadline and [the plaintiff] filed this motion. This allowed Defendant's expert to rely on materials that [plaintiff's] expert should have also received. In short, [defendant] was "gaming the system" by providing one set of policies to [plaintiff] and another to its expert, and in doing so failed to fully disclose its expert testimony by the deadline. The consequence is to strike those portions of the expert's testimony that relate to the undisclosed material.

Id. at *8 (emphasis added). Judge Molloy noted that "[t]here is no justification to handing over documents to an expert but omitting to hand them over to the other side, especially when the information had been requested under the rules." *Id.* Ultimately, Judge Molloy held:

> [The defendant] gained an advantage by allowing its expert to rely on things that [the plaintiff] did not have but should have. Here the appropriate sanction is to prohibit the expert witness from testifying or expressing any opinion based on documents [the defendant] should have produced to [the plaintiff] in its initial disclosures and discovery responses, but failed to do.

Id. (emphasis added).

If WRM wanted to provide the supplemental billing records to its expert, it should have also disclosed them to Conservation Groups at the same time. That would have ensured both sides were on equal footing when it came to what billing records their experts had available to them. WRM will likely argue that the Scheduling Order in this matter provides that supplemental billing records were to be produced on September 16, 2026. That is what the Scheduling Order provides, but it does not resolve the unfair prejudice to Conservation Groups created by WRM's decision to provide the supplemental billing records only to its expert before the expert disclosure deadline.

Conservation Groups disclosed an expert report based on the billing records available to them as of the expert disclosure deadline. WRM, however, disclosed an expert report based on additional information only it could, and did, provide its expert. That created an unequal playing field, which is unfairly prejudicial to Conservation Groups. *Hulse*, ¶ 15. As such, akin to what Judge Molloy held in *Bentley*, the Board should bar evidence of the supplemental billing records or testimony about them at the forthcoming hearing.

B. The supplemental billing records should be excluded, because WRM did not attach them to WRM's expert disclosure and, instead, provided them Thursday evening before her Tuesday deposition.

The Board's Scheduling Order required that "all materials considered or relied upon" by the experts in this matter be disclosed in the expert report propounded by the parties in this proceeding. (Scheduling Order, ¶ 2.) Under Montana Rule of Civil Procedure 37(c)(1), "[i]f a party fails . . . to disclose information regarding opinions of a witness as required by Rule 26(b)(4), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless." Mont. R. Civ. P. 37(c)(1). In *Olson v. Montana Rail Link, Inc.*, the defendant purportedly failed to include certain analysis and work done by the expert which was referenced, but not included, in the disclosure. 227 F.R.D. 550, 551–52 (D. Mont. 2005). After receiving the disclosure, the plaintiff asked for the information and received some of it, but asserted it was not provided the full set of information until "two days" before the expert's deposition. *Id.* In that case, Judge Molloy found that failure to include the information relied upon by the expert in the disclosure was not permitted and excluded the undisclosed information. *Id.* at 552–53. Similarly, in *Graham v. BNSF Railway Co.*, the plaintiff omitted certain "facts and data" (a memorandum by another expert) supporting the expert's opinion when it produced the expert report. No. CV 12-145-M-DWM, 2014 WL 1223680, at *1 (D. Mont. Mar. 24, 2014). The omission was discovered during the expert's deposition and, ultimately, Judge Molloy held that the untimely disclosure warranted exclusion of the expert's opinion on that undisclosed information. *Id.* at *2.

Here, WRM did not include the supplemental billing records with Ms. Laughner's report, which her report stated were "attached hereto." (Ex. A, Laughner Report at 4 n.1.) Given their proprietary nature, the supplemental billing records identified in Ms. Laughner's report were not available to Conservation Groups. As such, Conservation Groups requested the information after receiving Ms. Laugher's report, but did not receive it until Thursday evening, when her deposition was set for Tuesday morning. Given the late disclosure of the supplemental billing records and no opportunity to provide a rebuttal opinion under the Scheduling Order, the Board should exclude them from the hearing in this matter and bar Ms. Laughner or any other witness from testifying or expressing an opinion about the supplemental billing records.

* * *

WRM affirmatively provided its own expert information only it could provide, but did not provide it to Conservation Groups at the same time, much less before the expert disclosure deadline of August 7, 2026. Thus, Conservation Groups were not able to provide that information to their own expert (Judge Pinski) so he could render an opinion on the reasonableness (or lack thereof) of the supplemental billing records in his expert report. Conservation Groups then only received the supplemental billing records on Thursday evening, with just two business days before Ms. Laughner's deposition was set to begin on Tuesday morning.

It is unfairly prejudicial for one side's expert to be given proprietary information (here, nine months of billing records) not provided to the other side's expert and then

permit introduction of that undisclosed evidence or testimony regarding it at the hearing. Thus, given the lack of disclosure, Conservation Groups respectfully submit that (1) WRM should be barred from admitting evidence of the supplemental billing records (October 1, 2025, to June 30, 2026) at the hearing in this matter, (2) Ms. Laughner's testimony at the hearing should be limited to not discuss the supplemental billing records, and (3) Ms. Laughner's expert report, to the extent it relies on the undisclosed evidence, should be stricken from the record or otherwise limited.

II. The Board should bar WRM from admitting evidence of its new hourly rate of $745/hr, since it was not disclosed to Conservation Groups before the expert disclosure deadline, but provided it to its own expert.

WRM's expert report from Ms. Laughner disclosed that as of January 2026—seven months earlier—Holland and Hart had increased the "blended" hourly rate charged for work on this matter:

> B. Reasonableness of Hourly Rates
>
> The second component of the lodestar calculation is the hourly rate. Westmoreland seeks fees calculated at the following blended rates for attorneys:
>
> • Partners/Associates: $495/hour (case inception through February 2023); $545/hour (March through December 2023); $590/hour (January 2024 through December 2025); $745 (January 2026 through present).

(Ex. A, Laughner Report at 14 (emphasis added).) Up until Ms. Laughner's expert report was disclosed, Conservation Groups' only information regarding WRM's claimed billing rates were those disclosed in WRM's Fee Petition, which stated that, as of the filing of the Fee Petition, Holland and Hart's rate was $590/hr. (Doc. 99, Ex. D at 9, ¶ 20.) Thus, through WRM's expert disclosure in this proceeding, Conservation

Groups learned that approximately seven months earlier, Holland and Hart had raised its rates by around 26%.

Like WRM's decision to provide its expert nine months of supplemental billing records, WRM's decision to provide its expert with the updated rate it was paying its legal counsel, but to not disclose that information to Conservation Groups before the expert disclosure deadline is unfairly prejudicial. *Hulse*, ¶ 15; *Bentley* at *5–*8. WRM's expert was provided the information and was able to render an opinion on the increased hourly rate. Conservation Groups were not provided that information prior to the expert disclosure deadline. Thus, for the same reasons that the supplemental billing records should be excluded from the upcoming hearing, so should evidence of Holland and Hart's newly increased billing rate of $745/hr.

CONCLUSION

WRM's decision to affirmatively provide proprietary information—billing records and updated billing rate—to its own expert, while not providing that information to Conservation Groups' before the expert disclosure deadline, unfairly prejudices Conservation Groups. When WRM provided that information to its expert, it should have sent that information to Conservation Groups so both sides' experts would be permitted to review and opine on the updated information. WRM did not do so. As such, the Board should enter an order barring admission of and testimony regarding the supplemental billing records and Holland and Hart's newly-disclosed hourly rate of $745/hr. for its legal work in this matter.

DATED this 4th day of September, 2026.

BOONE KARLBERG P.C.



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BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

IN THE MATTER OF: APPEAL AND REQUEST FOR HEARING REGARDING ROSEBUD MINE AREA B, AMENDMENT 5 PERMIT NO. C1984003B	)	**CASE NO. BER 2022-05 SM**
	)	**WESTMORELAND ROSEBUD MINING LLC AND INTERNATIONAL UNITON OF OPERATION ENGINEERS, LOCAL 400'S EXPERT REPORT DISCLOSURE**

Pursuant to the Board of Environmental Review's June 10, 2026 Scheduling Order, Intervenor-Respondents Westmoreland Rosebud Mining LLC and International Union of Operating Engineers, Local 400 ("Westmoreland/Local 400") hereby submit the attached: (1) Expert Report of Catherine Laughner and (2) Expert Declaration of Kenneth Wooley.

DATED: August 7, 2026

/s/ Samuel R. Yemington

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In the Matter of the Appeal and Request for Hearing Regarding Rosebud Mine Area B Amendment 5 Permit No. C1984003B

Case No. BER 2022-05 SM

Expert Report
of
Catherine A. Laughner

August 7, 2026

C A Laughner

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I. SUBJECT MATTER

My name is Catherine Laughner, and I am an attorney licensed to practice law in Montana and Wyoming. I hold a Juris Doctorate degree and a Bachelor of Science degree in Chemistry and have over 30 years of experience working with environmental regulations and the practice of law in Montana.

I have been retained by Westmoreland Rosebud Mining LLC and International Union of Operating Engineers, Local 400 (together, "Westmoreland") to provide an independent expert opinion on the reasonableness of the attorneys' fees, costs, and expenses sought in Westmoreland's Petition for Costs, Expenses, and Fees (the "Petition"), filed November 26, 2025, in Case No. BER 2022-05 SM before the Montana Board of Environmental Review ("Board" or "BER").

I have been asked to evaluate the reasonableness of these fees, costs, and expenses applying the relevant legal standard used by Montana tribunals and courts in fee-shifting cases, and the regulatory requirements of ARM 17.24.1307 through 17.24.1309, which govern fee petitions in contested cases arising under the Montana Strip and Underground Mine Reclamation Act ("MSUMRA"), § 82-4-251(8), MCA. In accordance with the Board's June 10, 2026 Scheduling Order, this Report sets forth: (1) my complete opinions regarding the reasonableness of the fees, costs, and expenses sought; (2) the factual and analytical basis for each opinion; (3) the methodology I employed to formulate my opinion; and (4) all materials I considered or relied upon in forming my opinions.

Based on my review of the materials described below and my professional experience, it is my opinion that the fees, costs, and expenses sought by Westmoreland are reasonable and appropriate under the applicable legal standard governing the award of attorneys' fees and costs in Montana and are consistent with customary rates for comparable litigation services in the state. As I explain in detail below, the amounts sought here fall well within range of fees that courts have found reasonable for comparable environmental litigation matters in Montana.

My specific opinions set forth in Section IX, the factual and analytical basis for each, and the methodology I employed are set forth in detail in the sections that follow.

II. QUALIFICATIONS

As set forth in my Curriculum Vitae, attached hereto as Exhibit A, I have practiced law in Montana for over 30 years, having been admitted to the State Bar of Montana on October 12, 1990. I have been an attorney at the law firm of Browning, Kaleczyc, Berry & Hoven, P.C. in Montana since 1990, first as an Associate and then Shareholder and, most recently, Of Counsel. My practice has focused on complex environmental and natural resources litigation, permit defense, and regulatory compliance matters and has included representing clients at all levels of government and in private party litigation, including litigation involving environmental groups.

My work has included matters arising under the federal Clean Air Act, Clean Air Act of Montana, the federal Water Pollution Control Act, the Montana Water Quality Act, the federal Resource Recovery and Conservation Act, the Montana Hazardous Waste Act, MSUMRA, the federal Superfund Act, the Montana Comprehensive Environmental Cleanup and Responsibility Act, Endangered Species Act, and the Toxic Substances Control Act. This work has included representing clients in administrative and court proceedings, including before the Montana Board of Environmental Review, Montana Department of Environmental Quality, and other state and federal agencies.

I am familiar with rates charged by attorneys in Montana for complex civil litigation, including natural resources, environmental, and administrative law matters based upon my experience managing a 30-attorney law firm and heading its environmental practice group, which included setting and discussing billable rates directly with clients. I have been retained and paid by private industry clients for my legal work since 1990, giving me direct, ongoing familiarity with prevailing billing practices and rates for environmental and natural resources counsel in Montana. I am familiar with the rates charged by other Montana litigators of comparable experience and reputation.

I am being compensated at the rate of $800 per hour for my time in connection with this engagement. My opinions are my own and are not contingent upon the outcome of this proceeding or the amount of any fee award.

III. MATERIALS REVIEWED

In forming my opinions, I have reviewed the following materials:

- Case filings for Case No. BER 2022-05 SM, and the following discovery request and response pleadings and case transcripts and recordings:
    - Petitioners' Initial Discovery Requests to Westmoreland;
    - Intervenor-Respondents' Responses to Petitioners' Initial Discovery Requests;
    - Intervenor-Respondents' First Supplemental Response to Petitioners' Initial Discovery Requests;
    - Intervenor-Respondents' Second Supplemental Response to Petitioners' Initial Discovery Requests;
    - Intervenor-Respondents' Third Supplemental Response to Petitioners' Initial Discovery Requests;
    - Audio recording of summary judgment hearing (February 18, 2025)
    - Transcript of Board Proceedings (Oct. 24, 2025);
    - Transcript of Board Proceedings (Feb. 20, 2026);
    - Transcript of Board Proceedings (May 15, 2026);
- Expert Declaration of Kenneth Wooley in Support of Petition for Fees, Costs, and Expenses;
- Spreadsheets reflecting attorneys' fees and costs and expenses incurred by Westmoreland through June 2026;[1]
- Area B AM5 Cumulative Hydrologic Impact Assessment;

[1] The spreadsheets reflecting the attorneys' fees and costs and expenses incurred by Westmoreland/Local 400 attached hereto necessarily reflect only those attorneys' fees and costs and expenses incurred through approximately one month prior to the date of this report, as billing records reflecting more recent activity were not yet available at the time of this report. Because Westmoreland continues to incur fees and costs, including in connection with seeking the award of fees addressed herein, I will review forthcoming spreadsheets reflecting such additional attorneys' fees and costs and expenses as they become available and may testify regarding such additional fees and costs, consistent with the methodology and opinions set forth herein.

- Case filings for *Mont. Env't Info. Ctr. v. Mont. Dept. of Env't Quality*, Case No. DV 26-27 in the Montana Sixteenth Judicial District Court, Rosebud County, Montana;
- The following filings filed in *Montana Environmental Information Center v. Montana Department of Environmental Quality*, Case No. DV 19-34 (Mont. 16th Dist. Ct.) ("AM4 Case"):
    - Petitioners' Motion for Costs and Attorneys' Fees
    - Brief in Support of Petitioners' Motion for Costs and Attorneys' Fees
    - Declaration of Derf Johnson
    - Declaration of L. Randall Bishop in Support of Petitioners' Motion for Costs and Attorneys' Fees
    - Declaration of Roger Sullivan
    - Declaration of Shiloh Hernandez
    - Declaration of Timothy Bechtold in Support of Petitioners' Motion for Fees and Costs
    - Declaration of Walton D. Morris, Jr., in Support of the Plaintiff's Petition for an Award of Costs and Expenses Including Reasonably Attorneys Fees for Case Nos. BER 2016-03 SM and DV 19-34
    - Montana Department of Environmental Quality's Answer and Unopposed Motion to Stay Briefing Schedule Pending Settlement Negotiations
    - DEQ's Answer Brief in Opposition to Petitioners' Motion For Costs and Attorneys' Fees
    - Reply in Support of Petitioners' Motion for Costs and Attorneys' Fees
    - Order on Petitioners' Motion for Fees and Costs
    - Petitioners' Supplemental Petition for Costs and Attorneys' Fees
    - Second Declaration of Walton D. Morris, Jr.
    - Second Declaration of Roger Sullivan
    - Second Declaration of Shiloh Hernandez
    - Second Declaration of Derf L. Johnson
    - Declaration of Maxon R. Davis
    - Montana Department of Environmental Quality's Disclosure of Staff Attorney Timesheets
    - Transcript of Proceedings Hearing on Motion for Attorney's Fees

- Order Awarding Reasonable Fees Attorney Fees and Costs

- The following filings filed in *Held v. State of Montana*, Cause No. CDV-2020-307 (Mont. 1st Dist. Ct.)
  - Brief in Support of Plaintiffs' Motion for an Award of Costs and Attorneys' Fees
  - Declaration of Timothy Bechtold in Support of Plaintiffs' Motion for an Award of Costs and Attorneys' Fees
  - Declaration of Raph Graybill in Support of Plaintiffs' Motion for an Award of Costs and Attorneys' Fees
  - Declaration of Michael B. Gerrard in Support of Plaintiffs' Motion for an Award of Costs and Attorneys' Fees
  - Declaration of Roger Sullivan in Support of Plaintiffs' Motion for Costs and Attorneys' Fees
  - Declaration of Barbara Chillcott in Support of Plaintiffs' Motion for an Award of Costs and Attorneys' Fees
  - Declaration of Nathan Bellinger in Support of Plaintiffs' Motion for an Award of Costs and Attorneys' Fees
  - Declaration of Mathew Dos Santos in Support of Plaintiffs' Motion for an Award of Costs and Attorneys' Fees
  - Defendants' Combined Response in Opposition to Plaintiffs' Motion for an Award of Costs and Attorney Fees and Motion to Tax Costs
  - Declaration of Patrick M. Risken
  - Reply Brief in Support of Plaintiffs' Motion for an Award of Costs and Attorneys' Fees
  - Findings of Fact, Conclusions of Law and Order on Attorney Fees and Costs
- The following filings filed in *Reagor v. State of Montana*, Cause No. DV-32-2023-0001245-DK (Mont. 4th Dist. Ct):
  - Plaintiffs' Motion for Attorneys' Fees
  - Plaintiffs' Brief in Support of Motion for Attorneys' Fees
  - Declaration of Alex Rate in Support of Plaintiffs' Motion for Costs and Attorney' Fees
  - Declaration of Kyle A. Gray in Support of Plaintiffs' Motion for Costs and Attorney' Fees

- Declaration of Brianne C. McClafferty in Support of Plaintiffs' Motion for Costs and Attorney' Fees
- Defendants' Brief in Opposition to Plaintiffs' Motion for Attorney Fees
- Plaintiffs' Reply Brief in Support of Motion for Attorneys' Fees
- Order Granting Plaintiffs' Motion for Attorneys' Fees
- Supplemental Declaration of Alex Rate in Support of Plaintiffs' Motion for Attorneys' Fees
- Transcript of Proceedings Evidentiary Hearing (June 16, 2025)
- Findings of Fact, Conclusions of Law & Order Awarding Attorney Fees

- The following filings filed in *Signal Peak Energy, LLC v. Montana Environmental Information Center*, Case No. 18-0869 (Mont. 13th Dist. Ct.):
  - Defendants' Motion for Attorneys' Fees and Costs
  - Brief in Support of Defendants' Motion for Attorney's Fees and Costs
  - Declaration of Shiloh Hernandez in Support of Defendant's Motion for Attorney's Fees and Costs
  - Declaration of James Jensen in Support of Motion for Attorneys' Fees
  - Declaration of L. Randall Bishop
  - Declaration of Kelly Varnes
  - Declaration of David J. Deitrich
  - Declaration of Andrew M. Hawley in Support of Defendant's Motion for Attorney's Fees and Costs
  - Declaration of Laura King in Support of Defendant's Motion for Attorney's Fees and Costs
  - Signal Peak Energy, LLC's Response to Motion for Attorneys' Fees
  - Reply in Support of Defendants' Motion for Attorneys' Fees and Costs
  - Transcript of Proceedings Oral Argument (Feb. 11, 2019)
  - Order
- Firm website biographies for: William Mercer, John Martin, Samuel Yemington, Sarah Bordelon, and Matthew Dolphay;
- LexisNexis CounselLink 2025 Trends Report;

- *Law Firm Rate Volatility Continues, But Middle Market Clients Are More Protected Than Others*, Law.com;
- *Law firm rates in 2026*, Thomson Reuters Institute;
- *Navigating the Cost-Rate Tightrope: What 2026 Holds for Big Law*, Law.com Pro;
- *Rate Hikes Above 10% Persist for Am Law 100 as Top Partners Bill $3,000*, Law.com;
- Memorandum of Board Counsel (provided to Board with April 2026 Board Packet);
- Spreadsheet identifying counsel's rates;
- Relevant Montana Supreme Court and district court decisions on attorney fee reasonableness, as cited herein;
- Montana Rules of Professional Conduct; and
- Such other materials as referenced in this Report.

IV. ENTITLEMENT TO FEES

Under MSUMRA, the Board of Environmental Review ("Board") may award a permittee reasonably and necessarily incurred costs, expenses, and attorney fees incurred in connection with its participation in the proceeding when the opposing party "participated in the proceeding in bad faith and for the purpose of harassing or embarrassing the permittee . . . ." § 82-4-251(8), MCA; ARM 17.24.1307(2) and (4).

During the Board's May 15, 2026 meeting, the Board determined the opposing parties, Montana Environmental Information Center and Sierra Club (together, "Conservation Groups"), participated in this proceeding in bad faith and for the purpose of harassing or embarrassing Westmoreland. As such, Westmoreland's entitlement to fees has been established.

V. LEGAL STANDARD AND METHODOLOGY

Montana courts and tribunals have applied the "lodestar method" to determine the reasonableness of a fee award. Under this method, the reasonable fee is calculated by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate. *Gendron v. Mont. Univ. Sys.*, 2020 MT 82, ¶ 12.There is a **strong presumption** that the lodestar amount represents the

reasonable fee. *Laudert v. Richland Cnty. Sheriff's Dep't*, 2001 MT 287, ¶ 17 (citing *Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 478 U.S. 546, 565 (1986)); *JTL Group, Inc. v. New Outlook, LLP*, 2010 MT 1, ¶ 52. In my experience, clients and attorneys determine what each is willing to charge and pay for legal work and expenses, and once that is agreed upon, the work is conducted, invoices are submitted and the client pays the services. Holland & Hart has been and continues to be paid.

Montana courts have also considered the seven "Plath factors" in evaluating fee reasonableness: "(1) the amount and character of services rendered; (2) the labor, time and trouble involved; (3) the character and importance of the litigation in which the services were rendered; (4) the amount of money or the value of the property to be affected; (5) the professional skill and experience called for; (6) the attorneys' character and standing in their profession; and (7) the results secured by the services of the attorneys." *Plath v. Schonrock*, 2003 MT 21, ¶ 36.

My methodology in this report is the application of the legal standards set forth above. Specifically, I considered the lodestar factors and evaluated the number of hours reasonably expended in this litigation and that were multiplied by a reasonable hourly rate, consistent with the framework adopted in *Gendron v. Mont. Univ. Sys.*, *JTL Group, Inc. v. New Outlook, LLP*, and *Laudert v. Richland Cnty. Sheriff's Dep't*. I further considered and applied each of the seven Plath factors identified in *Plath v. Schonrock*—namely, the amount and character of services rendered, the labor, time and trouble involved, the character and importance of the litigation, the amount of money or value of property affected, the professional skill and experience called for, the attorneys' character and standing in their profession, and the results secured by the services of the attorneys—to assess the reasonableness of the fees at issue. The opinions expressed in this report reflect the application of this methodology to the billing records, case materials, and other information reviewed, as detailed below.

VI. SUMMARY OF OPINIONS

In my opinions, set forth in Section IX, both the hours expended and the hourly rates charged by Westmoreland's counsel in this matter are reasonable, and necessary, the resulting lodestar calculation is therefore entitled to the strong

presumption of reasonableness. I have accordingly afforded the fee award requested by Westmoreland the substantial deference to which it is owed.

In addition, I considered the seven *Plath* factors (*see* Section VIII). Considered individually, each factor weighs in favor of the requested award; considered together, they reinforce and corroborate the reasonableness already reflected in the lodestar figure. It is my opinion, to a reasonable degree of professional certainty, that the fees, costs, and total amount sought by Westmoreland are reasonable, necessary, and fully supported under Montana law, and that they should be awarded in full.

VII. THE LODESTAR PRESUMPTION

A. Reasonableness of Hours Expended

The first component of the lodestar calculation is the number of hours reasonably expended. As set forth in Westmoreland's fee spreadsheets, Holland & Hart attorneys and staff have expended a total of **3,489.2 hours** from the commencement of this proceeding until June 30, 2026. Of those hours, **2,787.2 hours** were incurred between commencement of the action on June 27, 2022, and entry of the Board's final order on November 4, 2026. Westmoreland seeks fees for only **one-third** of that time attributable to the defense and defeat of Claim 2. Since the entry of the Board's final order, and through June 2026, Westmoreland has expended approximately **702 hours** seeking the award of fees, which are recoverable pursuant to ARM 17.24.1307.

i. The Hours Are Reasonable Given the Complexity and Duration

In my experience, the hours expended are reasonable for the defense of a complex claim in a contested environmental proceeding spanning more than three years and the associated efforts in seeking the fee award. The following factors support this conclusion:

Technically complex litigation. As recognized by Conservation Groups, the claims brought by Conservation Groups, including Claim 2, involved "complex legal issues, requiring detailed analysis." Resp. to Pet. for Costs, Expenses, and Fees at 16. The claims implicated groundwater hydrology, geomorphology, stream classification methodologies, groundwater modeling, cumulative impacts, material

damage, historic mine impacts, viability of reclamation, and site-specific impacts and the associated regulations governing surface mining. Responding to such claims required substantial scientific and legal expertise requiring counsel to retain and coordinate with technical experts in hydrology and geomorphology, review voluminous scientific data, prepare expert disclosures and rebuttal reports, and present complex scientific testimony.

Subclaims and abuses of process in discovery. In addition to the complexity of the claims advanced by Conservation Groups, Conservation Groups also advanced a number of subclaims, including those concerning burden of proof, evidentiary scope, admissibility of evidence and expert opinion, and expert qualifications.

By way of example, Conservation Groups objected to Westmoreland's intervention in the contested case, requiring Westmoreland to expend considerable time and expense in responding to Conservation Groups' arguments and defending its right to intervene in an action challenging its own mining permit.

Each of the ancillary subclaims raised by Conservation Groups implicated legal and factual issues distinct from the core merits of the dispute and each therefore required counsel to undertake separate research, analysis, and briefing to respond thereto, materially increasing the time counsel was required to devote to the matter.

Conservation Groups further abused the discovery process by forwarding a baseless spoliation claim and improperly relying upon undisclosed evidence. The Board specifically determined that Conservation Groups not only failed to timely raise their spoliation claim, but that they failed to provide any evidence that would satisfy any of the factors to establish spoliation. Final Agency Action and Order of the Board ("Final Order") at Conclusion of Law ("COL") ¶¶ 25-32. The Board further found that Conservation Groups relied upon a declaration from their expert that "contained significant information and analysis not previously disclosed during discovery and, by all indications, was developed after [the expert's] deposition and the close of the discovery period." Final Order at Finding of Fact ("FOF") ¶ 39. This declaration was ultimately stricken from the record. *Id.* at ¶ 42. Conservation Groups' pursuit of a baseless spoliation claim and improper reliance

on undisclosed evidence caused Westmoreland to incur significant legal fees and costs in identifying, briefing, and responding to such conduct.

Motions practice. Westmoreland was compelled to engage in and respond to extensive motions practice including motions for protective orders, motions for summary judgment, motions to strike, and related briefing necessitated by Conservation Groups filings, requests, and actions throughout the course of the litigation, and resulting in hearings and oral arguments before the Hearing Examiner and the Board. Conservation Groups have continued to require Westmoreland to engage in extensive motions practice and briefing exercises in the adjudication of the pending fees petition. In the past two months alone Conservation Groups have filed:

(1) a Motion to Strike with the Board

(2) a Motion to Assign Hearing Examiner with the Board

(3) Notice of Supplemental Authority with the Board

(4) a Petition for Immediate Review with the district court

(5) a Motion to Stay with the Board

(6) a Motion to Accept Immediate Review with the district court

(7) a Motion to Stay Proceedings Before the Board of Environmental Review with the district court

(8) an Amended Complaint and Petition for Immediate Review, including a petition for temporary restraining order and writ of prohibition with the district court

(9) a Motion for Temporary Restraining Order and Alternative Writ of Prohibition in the district court.

Each of these filings independently required Westmoreland to divert attorney and staff time in order to research, draft, and submit responsive briefing and to monitor and coordinate parallel proceedings before both the Board and the district court. Taken together, these nine filings in a two-month span are not an isolated burst of activity but are consistent with Conservation Groups' litigation

tactics throughout the more than four years this matter has been pending, during which Conservation Groups have repeatedly multiplied proceedings and required Westmoreland to expend considerable time and effort responding to motions, briefing, and hearings.

Conservation Groups' bad-faith litigation tactics. Conservation Groups repeatedly shifted their legal theories and factual positions, necessitating additional work by Westmoreland's counsel to respond to evolving claims. *See e.g.*, Am. Comp. and Pet. (Case No. DV 26-27) at ¶ 42 (asserting there were multiple formulations of Claim 2). As explained above, Conservation Groups also engaged in procedural abuses and gamesmanship that increased the burden on Westmoreland's counsel, necessitating additional time responding to such tactics and resulting in increased fees and costs incurred.

Multi-year duration. The case was actively litigated from June 2022 through the Final Order in November 2025 and continues today with the present fee petition—more than four years. Over that period, counsel was required to maintain familiarity with the case, respond to pleadings, prepare for and attend hearings, and manage a large documentary record.

ii. The One-Third Allocation Is Conservative

Westmoreland's decision to allocate only one-third of total hours to Claim 2 with respect to fees sought from the commencement of the litigation until the Board's final decision on November 4, 2025 is conservative and reasonable. Claim 2 was one of three claims, but it was the most fact-intensive and technically demanding of the three, involving specialized issues of stream classification, groundwater hydrology, geomorphology, and groundwater modeling. Moreover, Conservation Groups requested a site inspection that was specific to Claim 2. This not only resulted in motions practice regarding the use of evidence from that site inspection but required counsel for Westmoreland to travel to the site and mine personnel to prepare for and accommodate the visit—a costly and time-consuming exercise.

Thus, a pro rata allocation of one-third treats all three claims equally, even though the evidence suggests that Claim 2 consumed a disproportionate share of

litigation effort due to its factual complexity, claim-specific motions practice, and time-consuming and expensive site visit.

iii. Comparison to Opposing Counsel's Hours

For context, in the analogous AM4 Case involving many of the same parties and counsel, Conservation Groups sought recovery for over **2,500 total hours** (with lead attorney Shiloh Hernandez alone billing over 1,800 hours). In *Held v. State*, environmental advocacy counsel sought recovery for thousands of hours across multiple attorneys (including 1,892.8 hours for Nathan Bellinger and 1,428.2 hours for Roger Sullivan alone). The hours sought here for a single complex claim over three-plus years of litigation is well within the range of what comparable Montana environmental litigators have deemed necessary and sought to recover.

B. Reasonableness of Hourly Rates

The second component of the lodestar calculation is the hourly rate. Westmoreland seeks fees calculated at the following blended rates for attorneys:

- Partners/Associates: $495/hour (case inception through February 2023); $545/hour (March through December 2023); $590/hour (January 2024 through December 2025); $745 (January 2026 through present).

- Paralegals/Specialists: $180 to $335/hour

It is my opinion that these rates are reasonable and consistent with the customary commercial rates for attorneys of comparable skill, experience, and reputation performing comparable work in Montana and the relevant legal market.

i. The Rates Are Below Counsel's Rates

Significantly, the rates charged to Westmoreland are **contractually negotiated rates that are below the rates charged by most of the counsel**. For complex environmental litigation, Ms. Bordelon charges up to $925/hour, Mr. Yemington charges up to $825/hour, and Mr. Dolphay charges up to $805/hour. These rates exceed the $495-$745/hour rates charged to the client in this matter.

This discounting from counsel's rates to contractual rates is strong evidence of reasonableness. The rates charged were not inflated for purposes of this fee petition; they are the actual blended rates negotiated between client and counsel in the ordinary course of the attorney-client relationship and actually invoiced over the life of the engagement.

The use of blended rates in this matter is reasonable because senior attorneys' time is discounted. Rather than billing each timekeeper at his or her individual rate, Holland & Hart and Westmoreland applied a contractually negotiated blended rate structure that compresses the range between the most senior and more junior timekeepers. The net effect is a rate structure that redistributes cost away from the most expensive, most experienced timekeepers and toward the overall efficiency of the matter, rather than one designed to inflate the fee request.

ii. Holland & Hart's Rates Are Consistent with Montana Market Rates

Multiple Montana courts have found rates in the $495-$745/hour range reasonable for experienced attorneys handling complex litigation in Montana:

AM4 Case, Cause No. DV-19-34 (May 13, 2022 Order Award Reasonable Fees Attorney Fees and Costs): More than four years ago, the Sixteenth Judicial District Court in Rosebud County found rates between $225 and $350 to be reasonable. Based upon my experience, rates have increased significantly since that time due to inflation, increased demand for specialized counsel, and other economic factors affecting the legal market generally. Considering this documented increase in prevailing rates and considering the specialized nature of work performed by the Holland & Hart attorneys, it is my opinion that rates in excess of $350 per hour are reasonable in this matter.

Reagor v. State, Cause No. DV-23-1245 (July 1, 2025 Findings of Fact, Conclusions of Law & Order Awarding Attorney Fees): The court found Holland & Hart's rates—including Kyle Gray's effective rate of $566.39/hour and Brianne McClafferty's effective rate of $466.52/hour—to be reasonable for Montana complex litigation. Testimony established that top Montana litigators charge $400-

$500/hour, with some (Jim Goetz, Raph Graybill) charging up to $600/hour. The rates sought in this matter are consistent with such rates.

Held v. State, Cause No. CDV-2020-307 (Sept. 16, 2025, Findings of Fact, Conclusions of Law and Order on Attorney Fees and Costs): The district court recognized average rates between $250 and $550/hour as reasonable for experienced environmental and public-interest litigators in Montana, with several attorneys billing up to $550/hour and falling squarely within the range of fees sought by Westmoreland. It is my opinion that, considering the highly technical nature of the claims at issue and the specialized expertise of Westmoreland's counsel, the requested fees ranging from $495-$745/hour are reasonable.

iii. Counsel's Qualifications Justify the Rates Charged

Holland & Hart has litigated permit challenges, enforcement action, bonding disputes, and reclamation obligations under MSUMRA and Surface Mining Control and Reclamation Act ("SMCRA") regulatory schemes for decades. As such, Holland & Hart is ranked National Tier 1 by *Best Law Firms 2026* in Environmental Law, Environmental Litigation, Mining Law, Oil and Gas Law, and Natural Resources Law, reflecting sustained, top-tier performance across the full range of practice areas that bear directly on mining permit defense.

This level of specialized experience and sustained national recognition supports the reasonableness of the hourly rates charged in this matter. In my experience, the rates charged by counsel with this degree of subject-matter depth, properly reflect the skill, efficiency, and substantive expertise required to litigate matters of this type effectively.

This matter was staffed by a team of Holland & Hart attorneys, including partners with senior-level experience in mining, environmental, and administrative litigation, as well as associates who supported research, drafting, and case development.[2] Key attorneys who worked on this matter include:

William Mercer. Honorable Judge Mercer was confirmed as a U.S. District Judge for the District of Montana on October 22, 2025. He served in the U.S.

[2] Worth noting, is that Conservation Groups have maintained a team of no less than three attorneys and up to seven attorneys throughout the course of this litigation.

Department of Justice, including as assistant U.S. Attorney and then as the U.S. Attorney for the District of Montana. He joined Holland & Hart in 2010, during which time he represented many clients in complex environmental and regulatory matters. He was recognized by *Best Lawyers in America* for Natural Resources Law and Commercial Litigation and by *Chambers USA* for Natural Resources and Environment law and by *Mountain States Super Lawyers* for Environmental law and Environmental Litigation.

John Martin. Mr. Martin had decades of experience in public and private practice prior to his retirement. During those years, he focused his practice on environmental and natural resource litigation. He served as lead counsel in the successful defense of a large number of public and private companies throughout the United States. John developed particular expertise in litigating cases under NEPA, the Clean Water Act, the Surface Mining Control & Reclamation Act, CERCLA, and the Endangered Species Act. Early in his career, John served at the U.S. Department of the Interior and at the U.S. Department of Justice where he litigated on behalf of government agencies. Prior to joining Holland & Hart, John was a partner at two international law firms where he chaired the environmental practice departments.

Samuel Yemington. Mr. Yemington is a partner in Holland & Hart's Washington, D.C. who has over a decade of experience representing clients in complex administrative and environmental law proceedings, consistently appearing on behalf of clients in front of administrative agencies including the Board. Mr. Yemington is among the most experienced attorneys practicing before the Board, with over ten years of sustained appearances in contested case and other proceedings there. His practice has involved representing various clients, including Westmoreland, in a substantial number of matters before the Board, frequently litigating against Conservation Groups and similar environmental advocacy groups.

Mr. Yemington's practice also includes deep experience with the federal SMCRA, the cornerstone federal statute governing the regulation of coal mining and reclamation, and the direct federal counterpart to MSUMRA. His expertise in this area is reflected in his role as a co-author of the SMCRA chapter of American Law of Mining, the preeminent treatise on mining law.

This sustained, repeated engagement before the Board, combined with his authoritative work on SMCRA and its state-law analog MSUMRA, has given Mr. Yemington a depth of familiarity and experience with Montana law, including MSUMRA, the Montana Environmental Policy Act, and Montana Administrative Procedures Act, and the Board. Consistent with this experience, Mr. Yemington has been recognized by *Best Lawyers: Ones to Watch* for his work in environmental law.

Sarah Bordelon. Ms. Bordelon is a partner in Holland & Hart's Reno office and one of the country's most experienced attorneys on coal mine reclamation law, with expertise on both SMCRA and MSUMRA. Sarah co-authored the SMCRA chapter of American Law of Mining, the preeminent treatise on U.S. mining law, and her authority on SMCRA and MSUMRA issues is reflected in that scholarship as well as in her sustained record of contested-case work before agencies and courts applying those statutes.

Over the past decade, Sarah has represented numerous clients in environmental and natural resources litigation before various boards, agencies, and courts, including the Board, where SMCRA and MSUMRA and other permitting and enforcement disputes frequently arise. She is among the most experienced attorneys practicing before these tribunals, with over a decade of sustained appearances in contested proceedings. Her practice has centered on representing a range of clients, including Westmoreland, frequently litigating against conservation groups and similar environmental advocacy groups in disputes turning on permitting, bonding, and reclamation obligations.

Beyond her core SMCRA and MSUMRA practice, Sarah's substantive experience spans federal statutes including the National Environmental Policy Act, the Clean Air Act, the Clean Water Act, the Outer Continental Shelf Lands Act, the National Historic Preservation Act, the Endangered Species Act, the Marine Mammal Protection Act, the Migratory Bird Treaty Act, the Federal Land Policy and Management Act, and the Administrative Procedure Act, as well as extensive experience with Montana state law, including the Montana Environmental Policy Act and the Montana Administrative Procedure Act.

Matthew Dolphay. Mr. Dolphay is a partner in Holland & Hart's Billings office whose practice centers on complex environmental litigation and large-scale project permitting throughout the Mountain West, with particular depth in the Clean Water Act, the National Environmental Policy Act, and Montana's environmental regulatory framework including MSUMRA, the Montana Environmental Policy Act, and the Montana Administrative Procedure Act. Mr. Dolphay has extensive experience representing clients in state and federal courts as well as in administrative proceedings before the Board.

Beyond litigation, Matthew has substantial experience permitting large-scale projects in the Mountain West, having guided clients through the permitting of major coal and hard-rock mines, high-voltage electric transmission lines, and oil and gas pipelines. This permitting practice is informed by his technical background: Matthew holds an undergraduate degree in civil engineering and worked as an environmental engineer consulting for clients on Superfund sites before becoming an attorney. Mr. Dolphay's expertise is reflected in his professional recognitions, including *Chambers USA* for Natural Resources & Environment and *Best Lawyers in America* for Environmental Law.

In addition to these attorneys, associates and other Holland & Hart team members contributed substantial work on legal research, discovery, drafting, and administrative filings throughout the representation, allowing the matter to be staffed efficiently. The collective expertise of this team was brought to bear in the defense of the AM5 permit. In my opinion, the qualifications, experience, and professional standing of the attorneys involved fully justify the contracted rates charged for the work and is within the range that Montana courts have approved for comparable work.

iv. Comparison To Fees Sought and Awarded To Opposing Counsel and Holland & Hart Attorneys In Montana Litigation

Perhaps the most compelling evidence of the reasonableness of Westmoreland's fee request is a comparison to the fees that Conservation Groups' own counsel (and similarly situated Montana public-interest environmental litigators) have sought and been awarded in directly analogous litigation and fees that Holland & Hart attorneys in other complex litigation have been awarded. As

set forth below, Westmoreland's request is consistent with the fees these same or similar counsel have routinely sought and recovered.

***Signal Peak Energy v. MEIC* (2019)**

Approximately seven years ago, in *Signal Peak Energy, LLC v. MEIC et al.*, No. DV 18-0869, MEIC and certain citizen defendants requested and were awarded $55,372.00 in attorney's fees at rates ranging from $265 to $395 (including Shiloh Hernandez at $310/hour) in mine permit litigation. As such, these rates are indicative of the prevailing market rates at the time.

Based upon my experience, rates have increased across all markets in the past several years. Considering the time that has elapsed since opposing counsel requested and were awarded these fees, it is my opinion that the fees requested by Westmoreland nearly a decade later are reasonable.

***The AM4 Case* (2022)**

In the directly analogous predecessor case—the AM4 case—Conservation Groups (represented by the same counsel, Shiloh Hernandez of Earthjustice) moved for over $850,000 in costs and attorneys' fees. That case involved a challenge to an earlier, but much smaller, amendment to the same Rosebud Mine permit, involving many of the same parties, counsel, and legal issues. The rates requested in that case ranged from $275-$550/hour. Declarations of counsel submitted in support of such award admit such rates to be at least consistent with—and even below—market rates for such services. *See e.g.*, Decl. of Shiloh Hernandez at 12 (stating that rates from $275 to $550/hour are "reasonable, **if low**.") (emphasis added).

In its Order, the Court stated that "while these rates are higher than in some states, they are not inappropriate here." Order Awarding Reasonable Attorney Fees and Costs, at 22. While the Court reduced some rates charged, it still awarded a total award of $896,030.25.

Based upon this award, and the declarations submitted by Mr. Hernandez and other counsel in support of that award recognizing rates up to $550/hour to be at least reasonable, if not low, it is my opinion that the rates requested by Westmoreland's counsel are reasonable. Moreover, the AM4 case was decided

over three years ago. Rates have increased across the market. For these reasons, rates from $495-$745/hour are reasonable for the work completed by Westmoreland's counsel.

***Reagor v. State* (2025)**

In *Reagor v. State*, No. DV-23-1245, the district court awarded Holland & Hart $95,649.63 in attorney fees for pro bono constitutional work. The court's Findings of Fact and Conclusions of Law found Holland & Hart's rates—including Kyle Gray's effective rate of **$566.39/hour** and Brianne McClafferty's effective rate of **$466.52/hour**—to be reasonable for complex Montana litigation. Testimony at the evidentiary hearing established that top Montana litigators regularly charge rates in the "high fours, into the mid-fives," with some attorneys (Jim Goetz, Raph Graybill) charging up to $600/hour. Tr. of Proceedings, Cause No. DV-23-1245 (June 16, 2025), at 21:21-22:3. Testimony further established that firms such as Dorsey & Whitney and Perkins Coie (competitors of Holland & Hart) were charging rates up to $800/hour. *Id.* at 20:15-21:6.

Based upon this, the Court concluded the rates charged by the Holland & Hart attorneys to be "reasonable under the circumstances and within the range of hourly rates for this type of legal work." Findings of Fact, Conclusions of Law & Order Awarding Attorney Fees, Cause No. DV-23-1245 (July 1, 2025), at 17. As such, the *Reagor* decision directly supports the reasonableness of the $495-$745/hour rates Holland & Hart charged Westmoreland in the present matter.

***Held v. State* (2025)**

In *Held v. State of Montana*, No. CDV-2020-307, a coalition of environmental advocacy organizations sought and was awarded approximately **$3,000,000** in attorney fees and costs for partial success in a climate-change constitutional case. The district court approved average rates ranging from $250/hour to $550/hour for attorneys with varying levels of experience, including opposing counsel, Shiloh Hernandez. This decision further supports the reasonableness of the $495-$745/hour rates Holland & Hart charged by Westmoreland in the present matter.

C. Conclusion

Montana Courts are clear there is strong presumption that the lodestar amount represents a reasonable fee award. *Laudert*, 2001 MT 287, ¶ 17. As set forth above and in Section IX, it is my opinion that both the hours expended and the rates charged by Westmoreland's counsel are reasonable and necessary under Montana law and consistent with rates and hours awarded to similarly situated counsel in directly comparable litigation. As such, the lodestar calculation yields a presumptively reasonable fee and the full fee award requested by Westmoreland should be granted.

VIII. THE PLATH FACTORS

The Plath factors are used by Montana courts to assess the reasonableness of fees charges. These factors are: "(1) the amount and character of the services rendered; (2) the labor, time and trouble involved; (3) the character and importance of the litigation in which the services were rendered; (4) the amount of money or the value of the property to be affected; (5) the professional skill and experience called for; (6) the attorneys' character and standing in their profession; and (7) the results secured by the services of the attorneys." *Plath*, 2003 MT 21, ¶ 36. These factors strongly support a full fee award here.

Amount and Character of Services Rendered. It is my opinion that the amount and character of services rendered by Westmoreland's counsel in defending and defeating Claim 2 and in seeking the fee award were substantial and commensurate with the demands of a complex, multi-year contested environmental case and, further, that the character of these services reflects a level of subject-matter expertise that few, if any attorneys, possess. Environmental laws, including MSUMRA, and its implementing regulations are a specialized body of law, governing technical subjects including hydrology, geomorphology, groundwater modeling, and cumulative hydrologic impact. Successfully litigating claims under this regulatory scheme demands a depth of familiarity with these topics that is acquired only through sustained, repeated practice in this narrow field. Westmoreland's counsel possess precisely that unique experience, developed through years of representing clients in front of the Board and other tribunals. This, coupled with the amount of services rendered in a multi-year proceeding involving extensive motions practice fully supports a full fee award.

Labor, Time and Trouble Involved. The labor, time, and trouble involved in defending and defeating Claim 2 was extensive, attributable largely to Conservation Groups' own litigation conduct. As I explained in Section VII.a.i, above, not only did the underlying contested case implicate complex technical and legal issues, but Conservation Groups advanced numerous ancillary subclaims that necessitated significant responsive briefing. Beyond that, Conservation Groups advanced a baseless spoliation claim and engaged in discovery practices, necessitating responses from Westmoreland. Conservation Groups' discovery request forced Westmoreland to produce and review hundreds of thousands of pages of documents for responsiveness, privilege, and confidentiality, an undertaking rendered particularly wasteful. Counsel for Conservation Groups stated that he never reviewed these documents for purposes of the litigation.

Conservation Groups continue to drive up costs through their improper requests, petitions, and wasteful motions practice before the Board and the district court regarding the present fee petition. In the past two months alone, Conservation Groups have submitted at least nine filings with the Board and the district court, including an improper petition for review and competing motions to stay and requests for injunctive relief. Taken together with the more than four years over which this matter has been actively litigated, it is my opinion that the hours claimed are reasonable and were, to a significant degree, the direct and foreseeable consequence of Conservation Groups' own litigation choices—its expansive discovery demands, its pursuit of a spoliation claim the Board found wholly unsupported, and its continued multiplication of proceedings even at the fee-petition stage. This factor accordingly weighs strongly in favor of the reasonableness of the hours for which recovery is sought.

Character and Importance of the Litigation. As is generally true of litigation over a mine's operating permit, the loss of such a permit can result in the cessation or curtailment of mining operations, with consequences that typically extend to the mine's workforce, the communities and public services that depend on the mine's continued operation, and the revenues generated for local and state governments. Permitting decisions of this kind can also carry broader implications for industries and infrastructure that depend on the mine's uninterrupted output, such as power generation facilities served by the mine's production. Importantly, Conservation Groups did not merely seek a declaration or remedial conditions on

AM5—they requested the Board vacate the permit. Without AM5, Westmoreland cannot lawfully continue mining operations in the permit area, a fact of which Conservation Groups were well aware when they sought vacatur. Because the permit's loss would have meant the mine's operations simply could not continue, Westmoreland could not afford to treat this litigation as an ordinary regulatory dispute or take any chances with the outcome; the stakes required retaining counsel with the demonstrated skill and experience necessary to win outright.

As set forth in the Declarations of Kenneth Wooley and Steven Cross in Support of Westmoreland's Motion to Intervene and the Expert Declaration of Kenneth Wooley in Support of Petition for Fees Costs, and Expenses, loss of AM5 posed significant threat to the Mine's operations and the workforce there. Even a temporary loss of the permit and the operational curtailment that would follow could require hundreds of miners and specialized workers to relocate for similar employment. The character and importance of this litigation must therefore be assessed not only against the value of the permit itself, but against the practical reality that even a temporary adverse outcome would have inflicted lasting harm that no subsequent victory could fully reverse. Based upon this, the character and importance of the litigation support a full fee award.

Amount of Money or Value of Property Affected. The value of the property affected here, while difficult to put a precise number on, is easily in the tens of millions of dollars, far exceeding the fees and costs sought. As set forth in Mr. Wooley's declarations, AM5 was critical to the continued operation of the Rosebud Mine and instrumental in fulfilling Westmoreland's contractual coal delivery requirements. Beyond that, Westmoreland provides significant tax revenue to the State, Rosebud County, and the Federal government—to the tune of approximately $35 million per year. Had Conservation Groups succeeded in obtaining vacatur of AM5, the resulting curtailment or cessation of mining operations would have fallen most immediately on the Rosebud Mine's workforce, including Local 400's members, through layoffs or reduced work, with consequences that would have rippled outward to the Colstrip community and surrounding areas that depend on the mine for employment, local commerce, and public services funded in part by the mine's tax contributions. These are not speculative or remote harms; they are the direct and foreseeable consequence of

losing the permit that authorizes the mine's continued operation. Considering the value of the mine's operations, its contractual obligations, its tens of millions of dollars in annual tax contributions, and the employment and community interests that depend on it, the property and interests genuinely at stake in this litigation were substantial by any measure, and materially disproportionate to the fees and costs Westmoreland now seeks to recover. This factor accordingly weighs heavily in favor of a full fee award, as the value of what Westmoreland's counsel successfully protected far exceeds the modest cost of the representation required to protect it.

Professional Skill and Experience Called For. It is my opinion that the professional skill and experience called for in this matter were exceptional, and that the Holland & Hart team assembled to defend AM5 possesses significant depth of MSUMRA and SMCRA experience. MSUMRA and its federal counterpart, SMCRA, are technically demanding statutory schemes and Holland & Hart attorneys have mastered the statutes.

In my opinion, no other attorneys litigating in Montana have the combined experience of Westmoreland's counsel with respect to MSUMRA and SMCRA. By way of example, Ms. Bordelon and Mr. Yemington both co-authored the SMCRA chapter of American Law of Mining, and both have decade-plus records of contested-case work before the Board and other tribunals applying MSUMRA and SMCRA, frequently opposing Conservation Groups and similar advocacy organizations in exactly this type of permitting dispute. General practitioners do not possess this level of experience in this narrow field. As such the professional skill and experience called for in this matter support a full fee award.

Attorneys' Character and Standing. It is my opinion that the character and standing of Holland & Hart attorneys who staffed this matter, within the legal profession generally and within the environmental and mining law community in particular, independently support the reasonableness of the rates charged. Holland & Hart is the largest law firm in the Mountain West and is ranked National Tier 1 by *Best Law Firms 2026* in Environmental Law, Environmental Litigation, Mining Law, Oil and Gas Law, and Natural Resources Law. Taken together, it is my opinion that the sustained peer recognition, professional honors, and institutional

standing of these attorneys that worked on the matter are commensurate with, and justify, the rates charged for their services in this matter.

Results Secured. Westmoreland achieved a complete victory on Claim 2. The Board issued 31 factual findings and 16 legal conclusions rejecting the Conservation Groups' Claim 2 as both factually and legally baseless. This was not a partial success or a mixed result—it affirmed Westmoreland's position, achieved over the Conservation Groups' persistent prosecution of the claim. As recognized by the Montana Supreme Court, and Conservation Groups in the AM4 case, success on the merits is a critical factor in determining reasonableness of fees. *Laudert*, 2001 MT 287, ¶ 20 ("An attorney should receive fees for the full services provided where a plaintiff has obtained excellent results."); AM4 Case, Br. in Supp. of Pets.' Mot. for Costs and Attorneys' Fees, at 9 (recognizing success to be the most important factor and strongly supporting a fully compensatory fee). As such, Westmoreland's victory supports a full fee award.

IX. CONCLUSION AND OPINION

Based on my review of the materials described above, my familiarity with attorney fee awards in Montana, and my experience evaluating the reasonableness of attorney fees in complex litigation, it is my opinion, to a reasonable degree of professional certainty, that:

1. The **hourly rates** charged by Holland & Hart to Westmoreland are reasonable and consistent with prevailing market rates for attorneys of comparable skill, experience, and reputation performing comparable services in the State of Montana. These rates are below counsel's rates and are consistent with rates that Montana courts have determined to be reasonable.

2. The **hours expended** are reasonable and necessary given the technical complexity of the issues, the duration of the litigation, the volume of discovery, the motions practice, and the Conservation Groups' shifting theories and bad-faith litigation conduct.

3. The **total fees sought** are reasonable and supported by the strong presumption in favor of the lodestar amount.

4. The **costs and expenses** are reasonable and reflect the actual out-of-pocket costs incurred in connection with the contested case proceeding.

5. The **total amount sought** is reasonable, necessary, and consistent with prevailing Montana market rates and precedent, and should be awarded in full.

EXHIBIT A

CURRICULUM VITAE

CATHERINE A. LAUGHNER, ESQ.

Attorney at Law

EDUCATION

Oklahoma City University School of Law, Oklahoma City, OK
Juris Doctor, 1989

University of Houston Law Center, Houston, TX
Year attended: 1989

University of Utah, Salt Lake City, UT
Bachelor of Science, Chemistry, 1979
Honors: Academic Scholarship

BAR AND COURT ADMISSIONS

- State Bar of Montana – October 12, 1990
- State Bar of Wyoming – May 18, 2018
- United States Supreme Court – Circa 1990
- United States Court of Appeals for the Ninth Circuit – 1992
- United States District Court, District of Montana – October 12, 1990
- United States Court of International Trade – May 9, 2011

PROFESSIONAL EXPERIENCE

Browning, Kaleczyc, Berry & Hoven, P.C. (BKBH), Bozeman, MT 1990-present
Attorney

- Represented clients in complex, multi-party environmental and regulatory matters involving common law claims and statutory matters arising under the federal Clean Air Act, Clean Air Act of Montana, Montana Strip and Underground Mine Reclamation Act, federal Water Pollution Control Act, Montana Water Quality Act, federal Resource Conservation and Recovery Act, Montana Hazardous Waste Act, federal Superfund Act (CERCLA), federal Endangered Species Act, Montana Comprehensive Environmental Cleanup and Responsibility Act, Toxic Substances Control Act, and regulations administered by OSHA, the Department of Transportation, and the Department of Justice.
- Advised and represented clients with respect to environmental permitting and compliance, due diligence reviews, natural resources and oil & gas/energy law, and white-collar criminal matters, representing parties at all levels of government as well as in private-party litigation.
- Retained and paid by private industry clients for over 30 years; Shareholder until 2018 before becoming Of-Counsel in 2018; managed a 30-attorney law firm and led its environmental practice group, including discussing and setting billable rates with clients.

- Defended and counseled clients—many on a continuous, decades-long basis—in administrative and court proceedings, including permit defense matters before the Montana Board of Environmental Review, the Montana Department of Environmental Quality, the U.S. EPA, and other federal agencies, as well as in matters involving environmental groups.
- Handled full permit defense litigation from 1990 to 2018, including administrative record review, application of agency deference standards, contested case hearings, and intervention by environmental groups.
- Managed complex environmental and permit defense litigation from 1990 to 2018, including coordination of multiple expert witnesses (technical, scientific, and regulatory), extended agency proceedings preceding litigation, and multi-party intervention.

Chevron USA, Evanston, WY, Oklahoma City, OK, Houston, TX 1982-1990
Technical Assistant & Environmental Specialist

- Assisted with environmental compliance and permitting activities for the Carter Creek Natural Gas Plant and an eight-state region.

U.S. Occupational Safety & Health Administration, Salt Lake City, UT 1979-1981
Analytical Chemist

PUBLICATIONS AND PRESENTATIONS

- Continuing Legal Education (CLE) Presenter: Environmental Law, Oil & Gas Law, Bench Bar programs (1990s)
- Published an article on OSHA compliance in the oil and gas industry (2000s)

PROFESSIONAL AFFILIATIONS

- Montana Bar Association – Environmental & Natural Resources Section and Federal Law Section (approx. 1990-2018)
- Wyoming Bar Association – Energy Section (approx. 2018-2020)

HONORS & RECOGNITIONS

- AV rated by Martindale Hubbell. Client Distinction Award recognized for Quality of Service, Overall Value, Responsiveness and Communication Ability.
- Ranked Chambers Band 1, commended for excellence in communication, details, and negotiation.

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Attorneys for Westmoreland Rosebud Mining LLC and International Union of Operating Engineers, Local 400

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

IN THE MATTER OF: APPEAL AND REQUEST FOR HEARING REGARDING ROSEBUD MINE AREA B, AMENDMENT 5 PERMIT NO. C1984003B	)	**CASE NO. BER 2022-05 SM**
	)	**EXPERT DECLARATION OF KENNETH WOOLEY IN SUPPORT OF PETITION FOR FEES, COSTS, AND EXPENSES**

I, Kenneth Wooley, upon oath and under the penalty of perjury declare as follows:

1. I am the Chief Operating Officer – U.S. Operations for Westmoreland Mining, LLC ("Westmoreland"). I have been employed by Westmoreland since 2021. Prior to my appointment to my current position in July 2025, I served as Senior General Manager of the Rosebud Mine and Regional General Manager for Montana and North Dakota. I offer this declaration based on my extended experience, expertise, and familiarity in coal mining, the operations of Rosebud Mine, and this litigation.

2. I am a resident of Montana and reside in Billings, Montana. I hold a Bachelor of Science in Mechanical Engineering from Montana Technological University (1993) and graduated valedictorian of my class. I am deeply involved in the Yellowstone County and Rosebud County communities. I have served on three community boards and actively support business development efforts across the region.

3. I have been employed in the mining industry for 33 years and have deep operational expertise in coal mining. My resume is appended to this declaration.

4. Prior to joining Westmoreland, I spent 25 years in various leadership positions with Peabody Energy Corporation and Rio Tinto overseeing surface coal and underground hard-rock mining operations. Beginning in 1995 and continuing

until 2010, I oversaw maintenance and production at multiple Rio Tinto mines. From 2010 to 2021, I worked at Peabody's North Antelope Rochelle Mine, the largest surface coal mine in the United States.

5. Beginning in 2021 and continuing until 2025, I was employed by Westmoreland as Senior General Manager of the Rosebud Mine and Regional General Manager for North Dakota and Montana. In these roles, I managed operations, coal production, permitting, reclamation, legal, and the workforce at the Rosebud Mine. I directly oversaw the planning, application, and approval of AM5. In 2025, Westmoreland promoted me to Chief Operating Officer – U.S. Operations. In this role, I am responsible for Westmoreland's coal mining operations in three U.S. states and Westmoreland's contract mining division which spans North America.

6. I am very familiar with the decades of legal challenges brought by Montana Environmental Information Center and Sierra Club against the Rosebud Mine and the significant threats posed by the AM5 litigation to Westmoreland, its highly skilled and unreplaceable workforce, the Rosebud Mine, and the surrounding communities.

7. The Rosebud Mine is a surface coal mine near Colstrip, Montana spanning approximately 41,000 acres of private, Federal, and State of Montana lands. The Rosebud Mine employs approximately 335 highly skilled miners and

staff and produces approximately 5 million tons of coal per year. The primary customer of the Rosebud Mine is the Colstrip Power Plant, and the Rosebud Mine provides all of the coal required by the Colstrip Power Plant. The quantity and quality of coal delivered from the Rosebud Mine to the Colstrip Power Plant is set by contract.

8. Mining and reclamation operations at the Rosebud Mine are governed by five permits issued by the Montana Department of Environmental Quality (DEQ): Area A, Area B, Area C, Area D, and Area F. Mining operations in Area D have concluded, and Area E has achieved full bond release. The vast majority of the coal mined from Area A, Area B, Area C, and Area F is delivered to the Colstrip Power Station and combusted for electrical generation.

9. On May 27, 2022, DEQ approved a fifth amendment to the Rosebud Mine's Area B permit (AM5). The significance of AM5 on Westmoreland's operations and the viability of the Rosebud Mine cannot be overstated. AM5 added approximately 10,000 acres to the footprint of the Rosebud Mine and provided Westmoreland with access to approximately 44 million tons of recoverable coal reserves. Critically, AM5 allowed the Rosebud Mine to continue its operations, and absent access to AM5 coal, the Rosebud Mine risked closure.

10. Conservation Groups challenged AM5 and requested the permit amendment be declared unlawful and vacated in its entirety. Given the significant

operational risks and cascading disruptions that would result from the vacatur of AM5 (including the risk of mine closure), Westmoreland and its workforce immediately sought to intervene in the AM5 litigation.

11. I filed a declaration in support of Westmoreland's motion to intervene in this litigation. Therein, I testified to the significance of AM5 and the real and immediate threats of the litigation posed on Westmoreland, the Rosebud Mine, and its workforce. Specifically, I testified that AM5 was critical to Westmoreland's continued operation of the Rosebud Mine and that the relief requested by Conservation Groups – denying Westmoreland access to 9,108 acres of land and millions of tons of coal – would materially impact the operations at the Rosebud Mine. I emphasized that AM5 was particularly important to the Rosebud Mine because exploratory testing had indicated that AM5 coal was of high quality and met Westmoreland's contractual quality control specifications, that the proximity of AM5 to active mining and reclamation operations meant that AM5 coal could be immediately sourced, and that AM5 coal would be instrumental in fulfilling Westmoreland's contractual coal delivery requirements. I further testified that the vacatur of AM5 would materially impact Westmoreland's operations at the Rosebud Mine and would result in the loss of significant revenue for Westmoreland, Rosebud County, the State of Montana, and the Federal government.

12. I have reviewed my prior declaration and stand by every statement. Furthermore, each prospective statement contained in my prior declaration regarding the quality and quantity of AM5 coal, the importance of AM5 in fulfilling Westmoreland's contractual coal quality and quantity delivery requirements, and the immediate availability of AM5 coal has borne out. Westmoreland began mining AM5 coal in 2022, and since then, mining has continued without interruption. AM5 coal has been instrumental in Westmoreland meeting its contractual coal delivery requirements and the Rosebud Mine remaining operational.

13. I have also reviewed the declaration of Steve Gross filed in support of Westmoreland's motion to intervene in this litigation, wherein Mr. Gross testified that the relief requested by Conservation Groups, if granted, would have imperiled union jobs at the Rosebud Mine. I agree with Mr. Gross's statements and concur that vacatur of AM5 would have affected the jobs of many miners and other specialized workers.

14. Given the significant risks posed by Conservation Groups' challenge to AM5, Westmoreland engaged Holland & Hart, LLP to defend the permit in the litigation. Holland & Hart LLP has represented Westmoreland for more than a decade in high stakes litigation such as this, and in that capacity, Holland & Hart LLP has repeatedly defended against and defeated coal permit challenges brought

by Conservation Groups. Holland & Hart LLP employs a bench of attorneys with unmatched knowledge, skill, experience, and success defending coal companies and defeating coal permit challenges in Montana and beyond. Holland & Hart LLP's staffing, rates charged, and hours billed defending Westmoreland against Conservation Groups' AM5 litigation are consistent with their staffing, rates charged, and hours billed in the analogous AM4 litigation and the Area F litigation.

15. During discovery, Conservation Groups sent Westmoreland broad and all-encompassing discovery requests seeking (1) every file pertaining to the AM5 application; (2) all correspondence pertaining to this matter; (3) all communications between Westmoreland and OSMRE regarding AM5; and (4) all data, analysis, or considerations regarding the potential impacts associated with other areas of the Rosebud Mine and the Big Sky Mine. Responding to Conservation Groups' discovery requests required Holland & Hart LLP attorneys and staff to review hundreds of thousands of potentially responsive documents and communications, and a significant portion of Westmoreland's litigation costs and expenses were incurred responding to Conservation Groups' discovery requests.

16. Counsel for Conservation Groups testified before the Board of Environmental Review in May 2026 that Westmoreland produced approximately 350,000 pages of documents responsive to their discovery requests. Counsel for

Conservation Groups further testified that he never reviewed these documents for purposes of this litigation, thereby rendering the exercise entirely pointless.

17. During discovery, Conservation Groups demanded a site inspection of the Lee Coulee drainage. As Senior General Manager of the Rosebud Mine, I was responsible for coordinating and facilitating the site inspection. This effort required multiple Westmoreland employees to build fences, provide transportation, conduct safety training, and chaperone Conservation Groups and their counsel. All of these costs and expenses were borne by Westmoreland.

18. I have reviewed the invoice spreadsheet attached to Westmoreland's Fee Petition and as updated through June 2026. The invoice spreadsheet is consistent with the invoices received and paid (or being processed for payment) by Westmoreland for purposes of this litigation.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 6 day of August 2026.

Kenneth Wooley
Chief Operating Officer – U.S. Operations
Westmoreland Mining, LLC
Billings, MT
Location

38932025_v2

Ken Wooley

2075 Overland Ave., Suite 2F
Billings, MT 59102
kwooley@Westmoreland.com

Education

Montana Technological University
B.S., Mechanical Engineering, 1993
Valedictorian

Professional Experience

Westmoreland Mining, LLC
Chief Operating Officer, U.S. Operations/Senior and Regional General Manager
2021-present

- Served as Senior and Regional General Manager and now Chief Operating Officer, overseeing production, cost, permitting, and employee operations.
- Manage Westmoreland's nationwide contract mining division.
- Achieved a sustained 80% increase in EBITDA on comparable revenues versus pre-2020 performance.
- Lead regional business development efforts and support community outreach through service on community boards.

Peabody – North Antelope Rochelle Mine
General Manager, Maintenance
2010-2021

- Led the Maintenance Department at Peabody's North Antelope Rochelle Mine (NARM) in Gillette, Wyoming, including Mobile Maintenance, Field Maintenance, Reliability, Plant Operations, Train Loading, Warehousing and Operational Services involving 250 pieces of heavy mobile equipment, 17 large shovels, 4 draglines and 5 plants.
- Assisted with implementation of SafeStart, Balmert's safety leadership and Peabody's SAWOL Safety Standards as well as NARM's ultra-class equipment using 4100 XPC shovels, Komatsu 960E and Liebherr T282 haul trucks.
- Assisted in completion of large projects including a 1570 dragline erection and the relocation of a 6,500TPH near-pit truck dump.
- Acted as interim VP of Operations for 10 months, leading the restart of an idled mine adjacent to NARM.

Kennecott Eagle Mine
Operations Manager
2008-2010

- Managed construction of surface operations while ensuring operational readiness for both the surface and underground.
- Played key role in community relations.

Kennecott Greens Creek Mine
Director of Operations Services
2007-2008

- Led the Underground Maintenance, Mill Maintenance, Surface Maintenance, Reliability, Ship Loading, Warehousing and Power Generation.

Kennecott Energy Company
Multiple Operations, Engineering, and Asset Management Roles
1995-2007

- Progressed from an entry level engineer to the GM of Asset Management across all five properties, including work as Reliability Engineer, Maintenance Planner, Operations Supervisor, Dragline Erection Manager, Maintenance Manager and Mine Manager.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

IN THE MATTER OF:

NOTICE OF APPEAL AND REQUEST FOR HEARING ROSEBUD MINE AREA B AMENDMENT 5 PERMIT NUMBER C1984003B	CASE NUMBER BER 2022-05 SM

DEPOSITION UPON ORAL EXAMINATION OF

CATHERINE A. LAUGHNER

**********ROUGH DRAFT**********

BE IT REMEMBERED, that the deposition upon oral examination of CATHERINE A. LAUGHNER, appearing at the instance of MEIC and the Sierra Club, was taken at the offices of Fisher Court Reporting, 800 North Last Chance Gulch, Suite 1, Helena, Montana, on Tuesday, August 25th, 2026, beginning at the hour of 9:00 a.m., pursuant to the Montana Rules of Civil Procedure, before Deborah L. Fabritz, Court Reporter - Notary Public.

* * * * * * *

DRAFT

APPEARANCES

ATTORNEYS APPEARING ON BEHALF OF THE PETITIONER, MONTANA ENVIRONMENTAL INFORMATION CENTER and SIERRA CLUB:

Mr. Tyler Stockton, Esq.
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Missoula, MT 59802
and
Mr. Shiloh Hernandez, Esq.
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and

ATTORNEYS APPEARING ON BEHALF OF RESPONDENT, WESTMORELAND ROSEBUD MINING, LLC, and INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 400:

Mr. Matthew H. Dolphay, Esq.

Holland & Hart LLP

401 North 31st Street, Suite 1200

Billings, MT 59103-0639

and

Mr. Samuel R. Yemington, Esq. (via Zoom)

Holland & Hart LLP

505 9th Street NW, Suite 700

Washington, DC 20004

and

Ms. Andrea Grave, Esq. (via Zoom)
Holland & Hart LLP
2020 Carey Avenue, Suite 800
Cheyenne, WY 82001

I N D E X

EXAMINATION OF CATHERINE A. LAUGHNER PAGE
Mr. Tyler Stockton.....

E X H I B I T S

DEPOSITION EXHIBIT NUMBER PAGE
Exhibit 1 Curriculum vitae of Catherine A. Laughner, Esq.....
Exhibit 2 Montana Code Annotated 2025 Title 82, Chapter 4, Part 2 Noncompliance - Suspension of Permits - 82-4-251.....
Exhibit 3 Expert report of Catherine A. Laughner, August 7, 2026.....
Exhibit 4 Montana Code Annotated 2023 Title 82, Chapter 4, Part 2 Noncompliance - Suspension of Permits - 82-4-251.....
Exhibit 5 Montana Code Annotated 2021 Title 82, Chapter 4, Part 2 Noncompliance - Suspension of Permits - 82-4-251.....

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(Exhibits continued)
Exhibit 6 Montana Code Annotated 2025 Title 25, Chapter 10, Part 7 Requirements For Attorney Fee Award Request - Awards Against State.....
Exhibit 7 Oral argument transcript dated May 15, 2026.....
Exhibit 8 Letter to the Board of Environmental Review from Earthjustice dated November 2, 2022 Re: Amended notice of appeal and request for hearing.....
Exhibit 9 Joint Supplemental Statement of Undisputed Facts.....
Exhibit 10 Declaration of Emily Lodman.....
Exhibit 11 Fee requests.....
Exhibit 12 Petitioner's Brief in Support of Motion for Summary Judgment.....
Exhibit 12 Montana DEQ, Westmoreland Rosebud Mining LLC, and International Union of Operating Engineers, Local 400's, brief in support of joint motion to strike the declaration of Bruce Anderson.....

PROOF

(Exhibits continued)
Exhibit 13Excerpt from the deposition of Bruce Anderson taken 7/13/23.....
Exhibit 14Motion for ProtectiveOrder.....
Exhibit 15Motion for Protective Order.....
Exhibit 16Order Denying Motion to Strike in Part and Granting it in Part.....
Exhibit 17Affidavit of Samuel Yemington in Support of Petitioner for Costs and Expenses.....
Exhibit 18Supplemental fee requests.....

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

* * * * * * *

CATHERINE A. LAUGHNER,

called as a witness, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. STOCKTON:

Q. Good morning, Ms. Laughner.

A. Laughner.

Q. Laughner? Forgive me. I've been saying it wrong since ever since I got your disclosure. Forgive me. Laughner.

It's a pleasure to meet you this morning. My name is Tyler Stockton. I'm an attorney with the Boone Karlberg firm over in Missoula. I represent the Sierra Club and the Montana Environmental Information Center.

Have you ever been deposed before?

A. Yes.

Q. Okay. We'll get that in a second. I guess the first thing, how would you like me to refer to you. I can call you Ms. Laughner. I can call you Cathy. How would you prefer to be referred to?

A. I have no preference.

Q. Are you sure? Okay. You're welcome to call me Tyler, hey you. I respond to anything.

You've been deposed before. What was the context of that?

A. I'm just thinking. Do you want me to break it down into depositions or what?

Q. Sure.

A. Okay. Been deposed twice.

Q. And what were those cases?

A. I think -- it was a long time ago. One of them was a Clean Water Act case.

Q. And what was the other one?

A. I don't really remember. Maybe common law, trespass.

Q. Okay. In the Clean Water Act case, why were you deposed?

A. I was a fact witness.

Q. And a fact witness of what?

A. Pardon me?

Q. A fact witness of what?

A. Gosh, this was in the '80s.

Q. Was that before your legal career had started? I guess we haven't gotten into your background yet. Was it before your legal career or as a young lawyer, something along those lines?

A. Yes.

Q. Okay. And then the trespass case, what was that about?

A. I don't really remember.

Q. Were you a fact witness as well?

A. Yes.

Q. Okay. I'm presuming that in your -- in your legal practice you took depositions. Is that correct?

A. Yes.

Q. For the record, though, I typically have to go through the rules we lay out in the deposition. So forgive me for repeating things I am sure you already know.

The first thing is, is that you and I cannot talk over one another for our court reporter and all that. Can you wait until my question is finished, and I'll wait until your answer is finished before each of us respectfully speak. Is that fair?

A. Yes.

Q. Okay. And then second, we often as people communicate with um-hums and uh-huhs, and we communicate nonverbally. That's natural. Today -- you are already doing a great job at it -- we can't do that. We have to say yeses and nos and clear

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answers. If I ask you "is that a yes" or "is that a no," I'm not trying to be rude. Is that fair?
A. Yes.
Q. Okay. And I guess lastly, you understand that you're under oath today?
A. I'm sorry. I didn't hear that.
Q. You understand that you're under oath today?
A. I understand that.
Q. Okay. Tell me about your background real quick if you would. High level, where did you go to school and what was your education background, when did you become a lawyer, et cetera?
A. I've been lawyer since 1990.
Q. Where did you go to school?
A. Undergrad or law school?
Q. Both of them.
A. Okay. I went to law school -- I graduated from Oklahoma City University, and I also went to the University of Houston Law Center.
Q. And then at one point you made your way and started your legal career in 1990. Where did you start that?
A. In Helena, Montana.
Q. Here at Browning Kaleczyc?

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A. Correct.
Q. Okay. And so you came from Texas up to Montana for your first law job?
A. That's right.
Q. Okay. And you stayed at Browning Kaleczyc to today. Correct? You're still working at the firm?
A. I'm of counsel.
Q. Okay. How long were you an associate and how long were you a partner at Browning Kaleczyc?
A. I -- let's see. I started work in 1990, so I was an associate until 1995.
Q. Okay. And you were a partner until -- when did you become of counsel?
A. I became a shareholder in 1995.
Q. Okay. And when did you stop being a shareholder and transition to of counsel?
A. 2018.
Q. Okay. And you're in that role today?
A. Correct.
Q. Okay.
MR. STOCKTON: I need to -- actually, I should have marked that.
BY MR. STOCKTON:
Q. I'm handing you what I have marked as exhibit -- well, real quick.
MR. DOLPHAY: Just start at 1.
MR. STOCKTON: Should we start at 1?
MR. DOLPHAY: Yeah. Unless you want to do something different just start at 1.
MR. STOCKTON: Okay. I was going to say do we need to do A or something like that given prior stuff, but let's do Exhibit 1.
(Whereupon, Exhibit 1 was marked for identification.)
BY MR. STOCKTON:
Q. I'm handing you what I've marked as Exhibit 1, Ms. Varner, have you seen this --
A. Laughner.
Q. Laughner. Forgive me. Have you seen this document before?
A. Yes.
Q. And what is it?
A. Curriculum vitae.
Q. For who?
A. Myself.
Q. Okay. And is this a full and fair statement of your educational, employment, and professional background?
A. As far as I can remember.

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Q. Is there anything that you think should be added to this?
A. Well, I didn't add a bunch of personal stuff. I think this is fair.
Q. Okay. How long have you been a member of the coal board?
A. Oh, gosh. I think this is my second term.
Q. Okay. And it's not on your CV. Correct?
A. Nope.
Q. Okay. So you're in your second term. How long -- how many years have you been on the coal board?
A. I couldn't tell you.
Q. Do you not recall or can you give me a range?
A. I don't really remember.
Q. Okay. How long is each term?
A. I think it's four years.
Q. And how many years are you into your second term?
A. One or two.
Q. Okay. So fair to say five to six years you've been on the coal board?
A. I can't really remember.
Q. What's your position on the coal board?

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A. I'm a board member.
Q. And what are the roles and duties of a board member of the coal board?
A. It's by statute. I would have to look at it.
Q. Do you know what they are generally speaking?
A. Do you have a copy of the statute I could look at?
Q. My question is for you. Do you recall what you do quarterly at the meetings at the -- for the coal board?
A. Yes.
Q. And what are those things?
A. We review applications and assess them against the statutory criteria.
Q. And applications for what?
A. For grants.
Q. Grants out of what monies?
A. Well, there's a -- I think it's a severance tax. It's money designated by the legislature.
Q. And where does that severance tax money come from?
A. I'm not exactly sure.

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Q. Is it a tax assessed on coal extracted from the ground in Montana?
A. I believe so.
Q. Okay. So your role is to assess grant applications for distribution of coal tax severance monies. Fair?
A. I don't know if I would use the word "distribution."
Q. What word would you use?
A. The board awards grants to applicants -- to qualified applicants according to the statutory criteria.
Q. Okay. And you're awarding, though, money collected from the mining companies -- coal mining companies here in Montana?
A. I think I just answered that.
Q. I guess let me go ahead and get this straight. The money or the grants that you're awarding, that money comes from the coal severance tax. Fair?
A. As far as I know.
Q. Okay. And what are the companies that pay into that coal severance tax fund? What mining companies would be extracting coal in Montana?
A. I don't -- I don't know all of the companies.

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Q. Would Westmoreland Rosebud Mining, LLC, be one of them?
A. I'm not sure if that has ever come up.
Q. I'm sorry. I probably worded my question poorly. But would Westmoreland Rosebud Mining, LLC, if they extract coal here in Montana, be paying into the coal severance tax?
A. I guess when you're saying Westmoreland, LLC, I don't know the name of the entity exactly, and that's why I can't answer exactly.
Q. Okay.
A. I would say coal companies that extract coal in Montana pay the tax.
Q. And your role as a board member is to then distribute those funds to potential grantees based upon certain criteria?
A. I already answered that.
Q. Fair?
A. We award grants according to the statutory criteria.
Q. Okay. And why does the coal board exist? What is its purpose statement?
A. I don't know if I could exactly answer that because I don't have the statute in front of me,

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but it's for the benefit of coal-impacted communities.
Q. And so if coal mining were to leave a particular community, you could be considering grants to fund things in that community because it was impacted by the withdrawal of coal in that community. Fair?
A. That's a confusing question.
MR. DOLPHAY: Objection to form, but --
THE WITNESS: Sorry.
MR. DOLPHAY: You're good.
BY MR. STOCKTON:
Q. So coal-impacted communities, how can coal impact a community? What are the two ways that it impacts it under statute?
A. I would have to look at the statute, but generally I could answer that.
Q. Please go ahead.
A. We have applications for a tractor to help out at a cemetery, improve roads. So if they meet the statutory criteria, then they're awarded money and they can -- and the coal board funds equipment like that.
Q. I guess my question was a little bit more specific. What makes a community coal impacted?

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A. I don't really know.
Q. I'll go ahead and read for had you Montana Code Annotated 96-201, quote, the purposes of this part are to assist local government units that have been required to expand the provision of public services as a consequence of large-scale development of coal mines and coal-using energy complexes or as a consequence of a major decline in coal mining or in the operation of coal-using energy complexes, to assist in the construction and reconstruction of designated portions of highways that are served -- that serve the affected area by the large-scale development to support county land planning and support public schools throughout the state, end quote.
Does that help refresh your recollection for the purpose of the coal board?
A. Could I see that, please?
Q. This is my work product. But does that help refresh your recollection as to the purpose of the coal board?
A. I suppose it does. That's a long explanation.
Q. Two general purposes, to help where coal development has increased demand generally speaking

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and to help where coal withdrawal or drawdown of coal work has a negative impact on the community. Is that fair?
MR. DOLPHAY: Objection. Asked and answered.
THE WITNESS: Same answer.
BY MR. STOCKTON:
Q. To what?
A. I didn't really understand your question.
Q. Okay. Let's go back to it, I guess. The coal-impacted community is a community that has either large-scale development increase or decrease in it. Is that a fair summary of the coal-impacted community definition?
A. I don't know if -- that seems to be a characterization of the statute. And I can't say that I have paid that much attention to it because what I do is assess applications against the statutory criteria and award, along with other board members, the grants.
Q. So you're working to award these grants or not award certain grants, fair, from the coal tax fund?
A. I already answered that.
Q. Okay. If the AM-5 permit as pertains to

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this case was not granted, what could have happened in that community?
A. Well, according to Ken Woolsey -- is it Wooley? Woolsey?
MR. DOLPHAY: Close. Go ahead.
THE WITNESS: Okay. There would have been a lot of jobs lost among other things.
BY MR. STOCKTON:
Q. And if there had been a drawdown of coal work in this area, your position on the coal board may have resulted in fielding and responding to increased grant requests for that community. Fair?
A. I don't know. The legislature sets the amount of money that goes to the coal board fund, and then we distribute it or award grants.
Q. And the Rosebud Mine issue in this proceeding is one of the mines that does comprise the coal impact area. Correct?
A. Yes.
Q. Okay. And during your time on the coal board, you have voted to award grants in the immediate vicinity of the Rosebud Mine in Rosebud County and areas surrounding it. Correct?
A. What county is that? Around Colstrip.
Q. And during your time on the coal board,

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you have voted to award grants for work that was related to the Rosebud Mine?
A. I have awarded grants -- we have awarded grants to the county, to the hospital, to the sheriff's department.
Q. Due to the impacts that the Rosebud Mine has in that community?
A. I don't know if it's necessarily to Rosebud Mine. It's whatever the applicant has put in their application and if it meets the statutory criteria.
Q. Are you a member of the Montana coal council?
A. No.
Q. Have you ever been one?
A. No.
Q. Have you ever presented or been a part of any coal council meetings or advocacy work?
A. No.
Q. Okay. Have you ever done any work for Westmoreland in your legal career or in your consulting or other career?
A. Today.
Q. Okay. Anything other than serving as an expert witness today?

A. No.
Q. Okay. How about any Westmoreland entity or subsidiary?
A. No.
Q. Okay. Do you know any members of, say, the board of directors of Westmoreland? Do you know any of the executives of the Westmoreland mine in Rosebud? Do you have any personal relationships or know any of them?
A. I don't think so.
Q. Do you know Ken Wooley?
A. I know of him.
Q. Have you ever met him in person?
A. No.
Q. Okay. Have you ever met him digitally like on the phone or via Zoom or by Teams call?
A. I don't think so.
Q. Okay. Has your firm ever been opposed or opposite the Sierra Club or MEIC before?
MR. DOLPHAY: Objection to form.
You can answer.
THE WITNESS: I think so.
BY MR. STOCKTON:
Q. Okay. And --
A. Oh, you mean the client that we

represented? No.
Q. Have you ever represented a client adverse to Sierra Club or MEIC?
A. I think so.
Q. And what was that case or what do you recall about it?
A. I couldn't remember.
Q. Did you work on that case or that litigation in any way?
A. I'm sure I did.
Q. Okay. What would have been your role in that work?
A. I don't remember. I mean as an attorney.
Q. What's your opinion of the Sierra Club?
A. I don't know if I have an opinion of the Sierra Club other than they should not have challenged the permit.
Q. What's your opinion of MEIC?
A. They should not have challenged this permit.
Q. Do you have any other opinions regarding either the Sierra Club or MEIC separate from this particular case?
A. They -- they seem to be less effective as an environmental group because they litigate, and

there are other environmental groups that are more productive.
Q. You think litigation is nonproductive?
A. That's a really broad question.
Q. I'm just following up on your opinion regarding the Sierra Club and MEIC. Why do you think litigation is nonproductive by them?
A. Well, do you mean in that case or generally?
Q. Your opinion was expressed as separate from this instant case, so that's what I'm following up on. Generally not really regarding this specific case, why is it your opinion that Sierra Club and MEIC's litigation is nonproductive?
A. Well, I don't know that much about the Sierra Club. I -- I think your last question was directed about MEIC. So what is your question?
Q. My question is why is it your opinion that Sierra Club or MEIC's litigation is not productive?
A. It's the general impression I've had over the years.
Q. And what do you base that general impression on?
A. That they bring baseless claims.
Q. And what are those baseless claims in your

opinion?
A. As I sit here, I can't think of -- you would have to ask me a specific question, and I probably couldn't remember over the years.
Q. So you have no particular recollection of baseless claims that you would base your opinion on?
A. That's not what I said.
Q. What particular examples or cases do you base your opinion that Sierra Club and MEIC bring baseless litigation on?
A. Are you asking about MEIC or Sierra Club?
Q. Either/or.
A. Can you ask that again?
Q. What particular cases or facts do you base your opinion upon that either Sierra Club or MEIC bring baseless litigation?
A. I have that general impression after practicing for many years.
Q. And so no particular thing comes to mind except your general impression?
A. I cannot give you a specific example as I'm sitting here today other than this case.
Q. We'll get to your opinions in this case. I think your work for Browning Kaleczyc was in the in re Bull Mountain case where you were

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adverse to Sierra Club and MEIC. Does that help refresh your recollection of that case?
A. I don't -- I didn't think I had worked on that case.
Q. Okay. So you were adverse to Sierra Club and MEIC in a different matter than that?
MR. DOLPHAY: Objection. Assumes facts not in evidence.
You can answer the question.
THE WITNESS: Yeah. Can you ask that question again? That seemed like a confusing question. I don't think I have litigated against the Sierra Club.
BY MR. STOCKTON:
Q. So that's a -- earlier you had testified that you had worked on a case adverse to the Sierra Club --
A. No. That's not right.
Q. -- and MEIC. So I want to --
A. Just --
Q. -- give you an opportunity to go ahead and correct that. What was the case that you worked on where you as legal counsel were adverse to either entity?
MR. DOLPHAY: Objection. Assumes facts

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not in evidence.
THE WITNESS: I don't think I have litigated a case against a Sierra Club or represented a client. I have been involved in litigation against MEIC, I believe.
BY MR. STOCKTON:
Q. And do you remember what that case was?
A. I believe I was representing either the League of City and Towns or the City of Helena.
Q. Okay. And is that the case where you -- one of the perhaps examples where you base your opinion upon regarding baseless litigation brought by MEIC?
A. Not necessarily. It's -- I read a lot of cases, and so it could have been that.
Q. In your work for like Montana League of Cities and Towns and whatnot, those were a series of federal cases. Correct?
A. I can't remember.
Q. Do you recall if you were plaintiff or defendant in those cases or if your client, I should say, was plaintiff or defendant?
A. It was more about rule making.
Q. Okay. What do you mean by rule making?
A. Rule making of water quality and the Water

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Quality Act.
Q. And were you doing that at the Montana level or the federal level or challenging rules? What was the context of that?
A. As far as I can remember, it was rule development.
Q. Okay. And is that one of the bases for your opinion that MEIC brings baseless litigation?
MR. DOLPHAY: Objection. Misstates the testimony.
You can answer.
THE WITNESS: Well, now that I think about it, that wasn't litigation. We were talking about rule making.
BY MR. STOCKTON:
Q. Okay. So do you have any experience, then, in being adverse to Sierra Club or MEIC as opposing counsel?
A. I don't remember. Not Sierra Club as far as I can remember.
Q. Okay. Let's go ahead and start with the legal standard for attorneys fees in MSUMRA matters. What is the statutory basis in your opinion for an award of attorneys fees in MSUMRA case?
A. It's in Title 82.

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Q. Okay. Title 82 what?
A. Are you asking me to site the statute?
Q. I'm asking you to site your understanding of where that statute is at.
A. Title 82. I can't remember off the top of my head. Maybe it's 251.
Q. Okay. That's generally -- I generally agree with you. I'm reading from your report here. Quote, under MSUMRA the board of environmental review, quote, board, may award a permitee reasonably and necessarily incurred costs, expenses, and attorneys fees incurred in connection with its participation in the proceeding and the opposing party, quote, participating in the proceeding in bad faith and for the purpose of harassing or embarrassing the permitee, ellipses, end quote. And there you cite 82-4-251(8) Montana Code Annotated as well as two regulatory sections. Do you recall that section in your report?
A. Yes.
Q. Okay. And you're familiar with the MSUMRA statute. Is that fair?
A. The one you just read?
Q. Yes. Well, I read from your report, which is a little bit of a summary of the statute, but I'm

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asking if you're familiar with it.
MR. DOLPHAY: Objection. Form.
THE WITNESS: I'm generally familiar with it.
BY MR. STOCKTON:
Q. Okay. I'm going to hand you what I have marked as Exhibit 2.
(Whereupon, Exhibit 2 was marked for identification.)
BY MR. STOCKTON:
Q. Make sure I didn't hand you my copy and my editing. Please go ahead and take a look at Exhibit 2 here. Is this the statute that you are relying upon in your report?
MR. DOLPHAY: Objection to form.
THE WITNESS: It looks like it.
BY MR. STOCKTON:
Q. And in particular what subsection are you relying upon?
MR. DOLPHAY: Same objection.
THE WITNESS: Are you asking me for my legal opinion?
BY MR. STOCKTON:
Q. No, I'm not. I'm making sure that -- is this the statute that you rely upon in your report,

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82-4-251(8)?
MR. DOLPHAY: Objection to form.
THE WITNESS: And it's implementing regulations.
BY MR. STOCKTON:
Q. Okay. So -- and so just to be clear, you are relying on the 2025 version of this statute, correct, in your report?
A. 2025.
MR. DOLPHAY: Objection. Assumes facts not in evidence.
THE WITNESS: Yeah. I don't know what version this is.
BY MR. STOCKTON:
Q. So if you look at the top of the version I have handed you, does it have a year on it?
A. Yes.
Q. Okay. And if your report sites 82-4-251(8), that's your citing to the 2025 version of the statute. Correct?
MR. DOLPHAY: Objection. Assumes facts not in evidence.
THE WITNESS: You know, I'm not sure. I would definitely -- I would think that Holland and Hart would be able to explain it with more specificity than I could.
BY MR. STOCKTON:
Q. So your opinion today is that you're not familiar with the legal standard that you have cited in your report?
A. That's not --
MR. DOLPHAY: Objection. Miss -- wait. Objection. Misstates the testimony.
THE WITNESS: That's not correct.
BY MR. STOCKTON:
Q. Okay. Then give us your understanding of the statute that you relied upon as the statutory authority for fees in your report.
MR. DOLPHAY: Objection. Assumes facts not in evidence. Misstates the testimony.
THE WITNESS: It's my understanding that MSUMRA is the statute that allows either party to obtain fees.
BY MR. STOCKTON:
Q. And is that -- do you have any more of a specific understanding than the statement you just made?
MR. DOLPHAY: Objection.
BY MR. STOCKTON:
Q. For example --

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MR. DOLPHAY: Oh, go ahead.
BY MR. STOCKTON:
Q. -- what specific statute and what effective year would apply to this case?
MR. DOLPHAY: Objection. Asked and answered. Objection. Legal conclusion.
You can answer.
THE WITNESS: MSUMRA provides for the award of fees.
BY MR. STOCKTON:
Q. You're aware that 82-4-251 has been amended twice, once in 2023 and 2025. Correct?
A. No.
Q. So you're not aware of that?
A. Same answer.
Q. Okay. And given that MSUMRA amendments have to be approved by the federal government, neither of those amendments, 2023 nor 2025, are you effective. Correct?
MR. DOLPHAY: Objection. Assumes facts not in evidence. Legal conclusion.
THE WITNESS: Could you ask that again, please.
MR. STOCKTON: I'll have the court reporter read it back.

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(Whereupon, the requested record was read.)
MR. DOLPHAY: Same objection.
THE WITNESS: I don't know the answer to that.
BY MR. STOCKTON:
Q. All right. And you're aware, though, that your report sites the 2025 version of the statute?
MR. DOLPHAY: Objection. Misstates the testimony.
THE WITNESS: Did I put the version in my report?
BY MR. STOCKTON:
Q. Your report cites 82-4-251(8). Subsection 8 does not exist in the -- as the attorneys fees provision --
MR. DOLPHAY: Objection.
BY MR. STOCKTON:
Q. -- in the 2021 version, which is the applicable version in this case. Were you not aware of that?
MR. DOLPHAY: Objection. Misstates the testimony. Question of law beyond the what the expert was retained for.
You can answer.

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THE WITNESS: Well, I don't know that was a question, but I think it was in 7.
MR. STOCKTON: I'll tell you what. Let's go ahead and go off the record.
(Whereupon, a break was then taken.)
(Whereupon, Exhibit 3 was marked for identification.)
BY MR. STOCKTON:
Q. Let's go back on the record.
All right, Ms. Laughner. I have given you what I have marked as Exhibit 3. Can you please describe the document that is Exhibit 3?
A. It looks like my expert report.
Q. And go ahead and take a look through it. Is anything missing. Is it incomplete? Does it look complete to you?
A. There's an exhibit missing.
Q. What's that exhibit that is missing?
A. Ken Woolsey [sic].
Q. Let's go ahead and add that in. I'm handing you Ken Woolsey's declaration.
MR. DOLPHAY: Wooley.
BY MR. STOCKTON:
Q. Wooley. And please go ahead and review

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that. Now is it complete?
A. I believe so.
Q. Okay. I would like you to turn to page 8 of your expert report in this case under the heading four entitlement to fees. That first paragraph there you stated that the board of environmental review may make an award of attorneys fees, and you lay that language out. And then you cite to Section 82-4-251(8) Montana Code Annotated. Is that correct?
A. Yes.
Q. And --
A. And the regulations.
Q. And we'll get to the regulations in a second, but at least starting with the statute, you cite to the statute, correct, that has subsection eight in it?
A. And the regulations.
Q. Okay. And I guess looking at 82-4-251(8), you're aware that subsection 8 only exists as an attorney fees provision in the 2025 version of Montana Code Annotated. Fair?
MR. DOLPHAY: Objection. Legal conclusion. Outside her scope.
BY MR. STOCKTON:
Q. The question was whether you were aware.

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MR. DOLPHAY: Same objection.
THE WITNESS: Could you ask that again.
BY MR. STOCKTON:
Q. Are you aware that subsection 8, being the attorneys fees award provision being 82-4-251, only exists in the 2025 version of Montana Code Annotated?
MR. DOLPHAY: Same objection.
THE WITNESS: I'm aware that it exists in the 2025 version.
BY MR. STOCKTON:
Q. Okay. I'm handing you what I have marked as Exhibit 4.
(Whereupon, Exhibit 4 was marked for identification.)
BY MR. STOCKTON:
Q. Which I'll represent to you -- and correct me if I'm wrong -- is the 2023 version of 82-4-251. Is that correct?
A. I don't know.
Q. Will you go ahead and take a look at what I have handed you and tell me if that is the 2023 version of 82-4-251 Montana Code Annotated.
A. I don't know if it is or not.
Q. What does the document say?
A. Montana Code Annotated 2023.

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Q. Okay. I want to go ahead and turn in that subsection to subsection 8. Does subsection 8 consume an award of attorneys fees?

MR. DOLPHAY: Objection. Question of law. Outside of scope.

You can answer.

THE WITNESS: I haven't looked at this before.

BY MR. STOCKTON:

Q. You have never looked at the 2023 version of this statute?

A. Is that a question?

Q. Yes.

A. Could you rephrase that.

Q. Have you ever looked at the 2023 version of the 82-4-251 Montana Code Annotated?

A. You know, as I sit here, I can't remember if I have or have not, but I would have to read the whole thing and study it.

Q. Did you review the 2023 version in prepping for your deposition or in preparing your report?

A. I don't remember.

Q. So go ahead and turn to subsection 8. Do you see subsection 8 on the second page?

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A. Yes.

Q. So subsection 8 in this version is an attorneys fees award section?

A. Is that a question?

Q. Your answer was yes, and I believe my question was whether subsection 8 concerns attorneys fees. And I'm just confirming.

MR. DOLPHAY: Objection. Question of law.

THE WITNESS: I see attorneys fees in section 7.

BY MR. STOCKTON:

Q. Okay. So -- okay. It's in section 7. Your report, though, cites 82-4-251(8). Correct?

A. And the implementing regulations.

Q. Just to make sure we're clear on our record, you cite 82-4-251(8) subsection and the implementing regulations. Correct?

A. That's what it says.

Q. And so at least in the 2023 version, subsection 8 does not concern attorneys fees. Subsection 7 does. Correct?

MR. DOLPHAY: Objection. Question of law.

You can answer.

THE WITNESS: I don't know if what you showed me is the 2023 version.

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BY MR. STOCKTON:

Q. Does the top of the document represent that it's Montana Code Annotated 2023? Does the top of Exhibit 4 represent that it's the 2023 version of the statute?

A. That's what it says.

Q. Okay. I'm handing you what I have marked as Exhibit 5.

(Whereupon, Exhibit 5 was marked for identification.)

BY MR. STOCKTON:

Q. As the document states at the top of Exhibit 5, this is Title 82, Chapter 4, part 2, particularly 251, of Montana Code Annotated 2021. Is that correct?

A. I don't know.

Q. Is that what the top of Exhibit 5 says?

A. Yes.

Q. Okay. And in turning to you subsection 8 in Exhibit 5, does that section reference attorneys fees in any way?

MR. DOLPHAY: Objection. Question of law. Outside her scope.

THE WITNESS: I'm sorry. Could you ask that again.

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BY MR. STOCKTON:

Q. Does subsection 8 of 82-4-251 Montana Code Annotated 2021 concern attorneys fees in any way?

A. Section 7 does.

Q. Okay. So section 7 in 2021 is the provision that addresses attorneys fees. Correct?

MR. DOLPHAY: Same objection and asked and answered.

BY MR. STOCKTON:

Q. Different document here. So we're at 2021. Section 7 is the attorneys fees provision. Correct?

A. You're representing to me that this is 2021. I haven't seen it before.

Q. Okay. And so in preparing your report, you did not rely upon the 2021 version of Montana Code Annotated for preparing your report? If you haven't seen it before, you haven't. Correct?

A. No. I wouldn't necessarily say that.

Q. I guess walk me through that. If you haven't seen this statute, how could you have relied upon it in preparing your report?

MR. DOLPHAY: Objection. Misstates the testimony. She didn't say she hasn't seen the statute.

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BY MR. STOCKTON:
Q. Have you seen the 2021 version of 82-4-251 Montana Code Annotated?
MR. DOLPHAY: Objection. Form.
You can answer.
THE WITNESS: Yeah. I don't know if I exactly knew what version it was, but I have seen that language in section 7 before.
BY MR. STOCKTON:
Q. Okay. I guess this is where I'm getting at. Your report cites subsection 8. Correct?
MR. DOLPHAY: Objection. Asked and answered.
THE WITNESS: That's what it says.
BY MR. STOCKTON:
Q. And subsection 8 in the 2021 version of the statute does not refer to attorneys fees. Correct?
MR. DOLPHAY: Objection. Asked and answered.
THE WITNESS: Section 7 does.
BY MR. STOCKTON:
Q. Okay. Is it fair to say that your expert report, then, is relying on the 2025 version of the statute?

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MR. DOLPHAY: Objection. Asked and answered.
THE WITNESS: You know, I'm not sure about that.
BY MR. STOCKTON:
Q. Are you aware what version of the statute applies in this case in this proceeding?
MR. DOLPHAY: Objection. Asked and answered. Outside her scope.
THE WITNESS: I would have to do some research on that. It's not an answer I can give sitting here today.
BY MR. STOCKTON:
Q. Okay. And do you know what version of the statute you cited in your report, 2021, 2023, or 2025?
MR. DOLPHAY: Objection. Asked and answered.
THE WITNESS: I think I would give the same answer.
BY MR. STOCKTON:
Q. And what is that?
A. Could you read that back, please.
(Whereupon, the requested record was read.)

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BY MR. STOCKTON:
Q. So as you sit here today, your answer and your testimony is that you would need to do further research to understand what version of the statute you cited in your report. Correct?
MR. DOLPHAY: Objection. Sorry. Objection. Misstates the testimony. Legal conclusion.
BY MR. STOCKTON:
Q. The question is merely what you understand to be the version in your report.
MR. DOLPHAY: Same objection.
THE WITNESS: I cited 82-4-251, and it's implementing regs. The subsection is either 7 or 8.

BY MR. STOCKTON:
Q. But your report says 8?
MR. DOLPHAY: Objection. Misstates the evidence. Assumes facts not in evidence that there was a change substantively.
You can answer.
THE WITNESS: That wasn't really a question.
BY MR. STOCKTON:
Q. My question was your report states

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subsection 8.
A. That's what it says.
Q. Let's go ahead and let's take a look -- you cited the 2025 version of the statute. So go ahead and go back to Exhibit 2 if you would, subsection 8. Let's go ahead and work with the one you cited.
I'll represent to that the operative one in this case is 2021, but we'll rely upon the one that you cited for the next couple of questions.
MR. DOLPHAY: Objection. Assumes facts not in evidence. Misstates the testimony.
BY MR. STOCKTON:
Q. So your report says "Under MSUMRA, the board of environmental review," board in quotes, "may award a committee reasonably and necessarily incurred costs, expenses and attorneys fees." And you go on to quote.
I would like you to point to me in subsection 8 of the 2025 version or subsection 7 of the 2021 or '3 version where is the board of environmental review is referenced in the statute.
MR. DOLPHAY: Objection. Outside her opinions that she's been requested to render. Question of law.

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THE WITNESS: That's my understanding.
BY MR. STOCKTON:
Q. Your understanding that the statute here references the board of environmental review?
MR. DOLPHAY: Same objection.
THE WITNESS: That's my interpretation.
BY MR. STOCKTON:
Q. And go ahead and take a look at subsection 8 of the 2025 version in Exhibit 2. Does the statute refer to the board of environmental review in any way?
MR. DOLPHAY: So let me get an objection in. Objection. This is outside the scope. This is not what was requested by the board's order. You're relitigating the jurisdictional issue, which is not proper.
MR. STOCKTON: I'm merely asking her about her report.
MR. DOLPHAY: No. You're -- no, you're not. You're relitigating this jurisdictional issue that is the determination of the board. That is not what is in the scheduling order.
You can answer.
THE WITNESS: Could you repeat your question.

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BY MR. STOCKTON:
Q. My question is, where in either subsection 7 of the 2021 or 2023 or subsection 8 of the 2025 version of the statute --
A. Whoa. That's --
Q. -- the board is referenced. You can look at whatever version you want. My question is, is the board of environmental review referenced in these subsection?
MR. DOLPHAY: Same objection.
THE WITNESS: In my practice over the years, we considered the board part of the department.
BY MR. STOCKTON:
Q. And I guess I must have misphrased my question. Where in the statute is the board referenced?
MR. DOLPHAY: She gave you an answer. Again, this is outside. I think -- Mr. Stockton, how long do you think you're going to go with this one, because this is where -- this is not what the board of environmental review directed us to do.
We -- she's here -- just for the record, she's here to testify regarding the reasonableness of fees. This is not proper to relitigate the board's jurisdiction. That's within the board's domain. So I -- I'm just wondering how long we're going to keep going.

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MR. STOCKTON: So --
MR. DOLPHAY: Because we've been going for quite awhile relitigating an issue that is per the board.
MR. STOCKTON: So, Mr. Dolphay, I guess I'll lay my record out here. The expert report that the mine and the union proffered cited the wrong version of the statute and on top of that made a representation there that in a particular setting that the board may do something.
So I'm merely asking her about what her own record states, and we'll work through all the reasonableness and everything here. But this right here is exactly what is in her report, and we are entitled to ask her about what is contained in her expert report.
MR. DOLPHAY: That's not right. The substance of that statute has not changed. So for our record, there's no change in substance. The gotcha fails. That is the same substantive section. You know that. You know that's just trying to be a gotcha and it's wrong. So there is no incorrect

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statements in the report. This is going into jurisdictional issue that is for the board of environmental review. You've got a lot of rope here that you ran out, and so this is all improper to keep going down this.
MR. STOCKTON: So -- so speaking objections, Mr. Dolphay --
MR. DOLPHAY: You just did one for the record and I responded.
MR. STOCKTON: No. What I'm saying here -- and if we need to go off the record to hash this out, we can. I want to work through her report, and what I'm trying to do here is establish that her report has made certain claims. That goes to -- she is making a claim here that this is what the board may do. And we'll move on after -- after I'm done with my few questions here.
MR. DOLPHAY: How many -- how many more questions do you have? This is not proper. It's not proper to relitigate the jurisdictional issue. You know that. You know that is not what she's here to testify for. You know that is not what the board of environmental review asked us to do. So these questions are improper and you've been at this for 15 minutes at least. So how long do you have left on

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these irrelevant questions?
MR. STOCKTON: I'm on my last question. But, Mr. Dolphay --
MR. DOLPHAY: Go ahead and ask the question.
MR. STOCKTON: -- this goes to -- this goes to credibility.
MR. DOLPHAY: It does not.
MR. STOCKTON: It goes from the section --
MR. DOLPHAY: You all are trying to create this record on jurisdiction that improper, and that's what is happening right now. It's improper under the board's order. Ask your question and then we need to move on.
BY MR. STOCKTON:
Q. Ms. Laughner, can you point to any of the three versions of the statute before you where the attorneys fees provision specifically references the board of environmental review?
MR. DOLPHAY: Objection. Asked and answered. Same objections as I made before.
THE WITNESS: I already answered that question.
BY MR. STOCKTON:
Q. And your answer was?

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MR. DOLPHAY: Same objection.
THE WITNESS: It's time for you to move on.
BY MR. STOCKTON:
Q. Are you being instructed not to answer by your counsel?
A. No.
Q. So my question is, can you find the board referenced in any of these three attorneys fees provisions?
MR. DOLPHAY: Objection. We've already -- we've been through this, Mr. Stockton. We've been through it, and she said she considers the board as part of the department under the statute. She's already said that. We've -- we've already done this. This is jurisdiction. It's not proper. You know it's not proper.
MR. STOCKTON: Mr. Dolphay, the question, though, is where in the statute is that referenced. Her answer was that was her interpretation. This is a different question.
MR. DOLPHAY: You said you had one question left. She answered.
MR. STOCKTON: She hasn't answered the question.

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MR. DOLPHAY: She just did. She just did.
MR. STOCKTON: We'll come back to that.
BY MR. STOCKTON:
Q. All right. Moving ahead, when was the first time you became aware of 25-10-712 Montana Code Annotated regarding the Montana legislature's definition of reasonableness for fee awards?
MR. DOLPHAY: Sorry. I wasn't paying attention.
THE WITNESS: Yeah.
MR. DOLPHAY: I'm not messing with you. I wasn't paying attention.
MR. STOCKTON: I haven't handed her an exhibit yet.
MR. DOLPHAY: Oh, okay. Where are you at?
BY MR. STOCKTON:
Q. My question is when was the first time you became aware of the statute 25-10-712 Montana Code Annotated where the Montana legislature defined whether -- the elements for reasonableness of fee awards?
A. Is that the -- that's the statute about state awarding fees or trying to get fees from states.
Q. Well, we'll get to the specific one

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related to the statute, but when did you become aware of that statute?
A. Is that the statute that -- when someone is trying to get fees from the state, is that the statute?
Q. My question was, is when did you become aware of that of the statute I referenced.
MR. DOLPHAY: Objection. Asked and answered.
(Whereupon, Exhibit 6 was marked for identification.)
THE WITNESS: Quite awhile ago.
BY MR. STOCKTON:
Q. You did not reference this statute in your expert report. Correct?
A. Right.
Q. Okay. I would like you to take a look at 25-10-712(1) and read to me that first sentence.
A. Do you have 711 with you?
Q. I asked you a question. I do not have 711 with me. Is 711 in the first sentence?
A. What did you want me to do?
Q. So my question for you is, where in the 25-10-712(1) does the legislature state that it must be an award against the State of Montana?

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A. Well, it says that in the title, awards against the state in 711. You have to read that with this.

Q. So I guess real quick, though, in subsection 1, where does it limit it to the state?

MR. DOLPHAY: Asked and answered.

THE WITNESS: It says awards against the state.

BY MR. STOCKTON:

Q. In subsection 1? I'm reading, quote, an award of attorneys fees must be reasonable. The reasonable claim for attorneys fees must include the following, and it has a colon with subsections A through C and sub-Roman X all the way down. And subsection 2 states as a rebuttal presumption that certain things are unreasonable, and then in subsection 3 it says in addition to the requirements of those of subsection 1 and 2, when considering an award of attorneys fees against the state, the court shall take into consideration and adds that in.

So my question for you is in subsection 1, where does it limit the statute to awards against the state?

MR. DOLPHAY: Objection. Asked and answered.

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THE WITNESS: Well, what you just read was your characterization, and I think that's wrong.

BY MR. STOCKTON:

Q. Why do you think it's wrong?

A. Because it's awards against the state.

Q. There's two aspects to this statute, correct, one about reasonableness of awards in general, and then there's specific provisions where it's against the state in subsection 3.

A. Well, that's your characterization.

Q. Okay. Are you aware of who carried this amended l-- or this legislature in the House of Representatives in the 2025 legislative session?

A. I can't remember that.

Q. Would it be -- would it surprise you if it was Mr. Fitzpatrick of the Browning Kaleczyc firm?

A. Does it surprise me? I have no idea.

Q. When you prepared your expert report in this case, you reviewed certain -- I'm quoting -- spreadsheets from -- that were provided to you. Correct?

MR. DOLPHAY: Objection to form.

THE WITNESS: Are you referring to the exhibits attached to Yemington's affidavit?

BY MR. STOCKTON:

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Q. Well, so actually go ahead and turn with me to page 7 of your expert report -- or 6 of your expert report -- or 4 -- forgive me -- page 4 of your expert report. And the second to last bullet point there reflects that you relied upon, quote, spreadsheets reflecting attorneys fees and costs and expenses incurred by Westmoreland through June 2026, end quote. Then there's a footnote referencing basically that you will update your testimony when you receive more.

So my question is, what spreadsheets did you review?

MR. DOLPHAY: Objection to form.

THE WITNESS: Exhibit 1 to Yemington's report.

BY MR. STOCKTON:

Q. And that was it?

MR. DOLPHAY: Objection. Form.

THE WITNESS: I don't know if that's true or not.

BY MR. STOCKTON:

Q. Okay. We can get into Yemington's affidavit, but the fees attached to his affidavit only go through September 30th or so of 2025. You state here that you reviewed fees through June of

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2026. Were there additional spreadsheets that you reviewed?

A. So what were you representing about the dates?

Q. If you look at Mr. Yemington's declaration affidavit, the fees that were attached to that ended approximately September of 2025, because that petition in the attached affidavit was filed in November of 2025. You here represent, though, you reviewed fees through June of 2026. So I'm asking did you get another spreadsheet that was different from that?

A. Yeah. I think I did.

Q. Okay. And what was the format for that? Was it in pdf or was it Excel? How did you review it?

A. Couldn't tell you.

Q. Do you not recall? Is that -- is that your testimony?

A. I probably didn't pay attention to the format.

Q. Okay. How was it sent to you? Was it e-mail? Handed to you? Do you recall?

A. I don't know.

Q. Were there are redactions in the versions

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you reviewed?
A. I don't remember that either.
Q. Was it electronic or printed?
A. You already asked me that.
Q. No. I asked you about the file format. So I'm asking like was it printed out or electronic mail?
A. Yeah. I couldn't tell you.
Q. Okay. If you were provided spreadsheets detailing fees up to June 30th, 2026, but conservation groups were not provided those so their expert could review them, would you view that as fair?
MR. DOLPHAY: Objection. Assumes facts not in evidence. We sent these to you, Tyler.
MR. STOCKTON: They weren't provided in time for our expert report. Ms. Laughner was permitted to review them before her expert report was provided.
MR. DOLPHAY: The scheduling order provides when we have to update.
BY MR. STOCKTON:
Q. So what I'm getting at, is it fair for one side's expert to get additional billing entries provided to them but not provided to the other side

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so that their expert may challenge them in his or her report?
MR. DOLPHAY: Objection. Assumes facts not in evidence. Beyond the scope of her retention.
You can answer.
THE WITNESS: That's a ridiculous question.
BY MR. STOCKTON:
Q. So my question was, is it fair?
MR. DOLPHAY: Well, Mr. Stockton, is this going -- I'm just -- what is this going towards? It's not going towards her opinions. Is it going towards bias? I mean, what's the basis for this line of questioning?
MR. STOCKTON: The basis for this line of questioning gets to what Ms. Laughner reviewed so that we can establish what Mr. Pinski was not permitted to review before their expert reports were disclosed.
MR. DOLPHAY: But she already told you what she was provided. You're asking now is it fair. That's not -- you're not asking her what materials she reviewed. You're asking her is it fair. So are you alleging that she's biased? What -- yeah. What -- what -- what is the genesis of this line of

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questioning and how does it relate to the issues at hand?
MR. STOCKTON: Are you objecting?
MR. DOLPHAY: Yes. I have objected. I'm wondering where --
MR. STOCKTON: Was this to the form of the question? So my question is getting at is whether she thinks that the document that she provided and reviewed and testified about, whether that was fair to have those versus not having those for the other side.
MR. DOLPHAY: And how does that relate to her opinions? I mean, Rule 26 requires you to relate to the opinions. It doesn't allow you to go off on harassment, and I'm not -- I'm not sure where this is -- how this is relevant or tangentially relevant to her opinions.
MR. STOCKTON: So her opinion is that the fees expended or claimed here by the mine and the union from October 1st to June of 2026 were reasonable. She has that opinion. And I'm asking if the other side's expert not being able to have that opinion was fair or not.
MR. DOLPHAY: That has nothing to do with the issues at hand. It's harassment.

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MR. STOCKTON: Are you saying it's not relevant?
MR. DOLPHAY: I'm -- I have asked you to detail why it's relevant.
MR. STOCKTON: And I have.
MR. DOLPHAY: You have failed to do so.
MR. STOCKTON: I have.
MR. DOLPHAY: No.
MR. STOCKTON: She's testified about it, and I'm asking whether or not she thinks it's appropriate for the other side to have had that to testify about.
MR. DOLPHAY: How does that relate to the reasonableness of fees?
MR. STOCKTON: Because if she's testifying to certain evidence that wasn't provided to the other side --
MR. DOLPHAY: But she's already given you the evidence. She's already said what she's reviewed, and now you're asking her if it's fair. That has nothing to do with the opinions. I mean, you're -- I don't see a genuine basis for to you ask that question.
MR. STOCKTON: So I guess are you instructing her not to answer?

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MR. DOLPHAY: You can answer this, but if it goes further, I will stop it.
Go ahead.
THE WITNESS: Okay. What was your question again?
BY MR. STOCKTON:
Q. My question is do you think it's fair for you to have October 2025 to June 2026 data if the other side fee entries were not provided?
THE WITNESS: As I said, that's a ridiculous question. My opinion is -- I think the total that I was talking about was based on Yemington's affidavit, and it was around 1.4 million. So I don't know what the total was.
BY MR. STOCKTON:
Q. Okay. So --
A. After -- I don't know what the total was after he rendered his opinion.
Q. Okay. So it's your testimony today that your opinion only relates to what was in Mr. Yemington's affidavit. Correct?
MR. DOLPHAY: Objection. Misstates the testimony. She -- Mr. Stockton, she's told you that she received the additional bills; that she reviewed them. These are the same -- these -- you received

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these as well.
MR. STOCKTON: But, Mr. Dolphay, she just testified that she was basing her entire opinion off of what was attached to Mr. Yemington's affidavit.
MR. DOLPHAY: That's not what she testified.
MR. STOCKTON: I'll go ahead and have the court reporter read it back.
Could you please read back the witness's last answer?
MR. DOLPHAY: And the question if you wouldn't mind too.
(Whereupon, the requested record was read.)
MR. DOLPHAY: She's not saying that's the -- her whole opinion is based on just that. She was talking about the affidavit. That's --
MR. STOCKTON: This -- these improper -- this is coaching objections, Mr. Dolphay, and --
MR. DOLPHAY: Go ahead.
MR. STOCKTON: -- they're not proper.
MR. DOLPHAY: Go ahead.
BY MR. STOCKTON:
Q. And so to -- maybe let's back up a little bit. How many affidavits of Mr. Yemington are you

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aware of, Ms. Laughner?
A. One.
Q. And that is the fee entries that you reviewed. Correct?
MR. DOLPHAY: Objection. Misstates the testimony.
MR. STOCKTON: I'm just asking if those are what she reviewed, and she can tell me correct or not. That's not misstating her testimony.
THE WITNESS: Yeah. I don't understand that question.
BY MR. STOCKTON:
Q. So you reviewed Mr. Yemington's affidavit and the supporting fee entries attached to that affidavit. Correct?
A. I guess I'm having trouble when you say "fee entries."
Q. Billing records.
A. I reviewed Exhibit 1.
Q. Exhibit 1 to Mr. Yemington's affidavit. Correct? When you say Exhibit 1, you're talking attached to Mr. Yemington's affidavit?
A. That is kind of jumbled. Can you repeat your question?
Q. When you were referring to Exhibit 1 what

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document are you referring to?
A. Yemington's, the spreadsheet.
Q. Which was attached or provided where?
A. Yemington's affidavit.
Q. And so those fee entries -- maybe we should talk about our terms so we can make sure we have them clear. When I say fee entries or spreadsheet or billing records, how do you describe that Exhibit 1 in general? How would you describe it so we can talk about the same thing together?
A. Yeah. I don't know. Just say Exhibit 1.
Q. Okay. So you only reviewed Exhibit 1 to Mr. Yemington's affidavit?
A. At what period of time?
MR. DOLPHAY: Thank you. Sorry.
BY MR. STOCKTON:
Q. So I guess your opinion is based upon what range of time of fee entries?
MR. DOLPHAY: Objection. The report speaks for itself.
THE WITNESS: I'm confused by your questions.
BY MR. STOCKTON:
Q. Let's go ahead and go back to your report, then. You stated in your report on page 4 that

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you've reviewed spreadsheets. I'll start -- we'll go ahead and work through here word by word. Spreadsheets is plural. Correct?

A. Yes.

Q. So does that mean you reviewed more than one spreadsheet?

A. At the time I wrote this opinion, I believe the only spreadsheets I had were those attached to Mr. Yemington's opinion, and it's my understanding from the scheduling order that that would be updated.

Q. You stated in your report that you had reviewed the transcript of the board of environmental review's proceedings at the May 15th hearing. Correct?

A. Yes.

Q. Okay. In your own words, what, if anything, did the board conclude was considered bad faith conduct?

MR. DOLPHAY: Okay. Objection. We're going back into something that is outside her scope, that is a determination for the board. And you said you had one question left on that, and then we're going back into it.

MR. STOCKTON: No. Mr. Dolphay, I'll go

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ahead and reveal my cards for you. You've seen our expert's report, and our contention is that there needs to be a nexus between what the board finds is bad faith and harassing conduct and the fees being claimed. Ms. Laughner did not do that analysis at all.

So I'm laying the ground for that -- that criticism of her expert report. Her expert report does not address the connection between any particular alleged bad faith or harassing conduct and the fees being claimed. That is one of our primary criticisms, and we are entitled to go into and critique the omissions in her report. And I am allowed to lay the foundation for those things.

So this is not going into jurisdiction again in any way, shape, or form. What this is, is laying the foundation for her report, what we believe are serious omissions.

MR. DOLPHAY: I don't agree with the characterization. I will let you go into it in a little bit.

BY MR. STOCKTON:

Q. So in reviewing the May 15th transcript, what, if anything, in your understanding did the board specifically vote and find was bad faith

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conduct?

MR. DOLPHAY: Objection. Presumes facts not in evidence and question of law and outside of her report.

THE WITNESS: My opinion goes to the reasonableness of the rates and the time. I think you're asking me about rebuttal opinion.

BY MR. STOCKTON:

Q. So I must have misphrased my question. I'll go ahead and ask it again. What, if anything, in the May 15th transcript in the board's vote therein did the board find a specific bad faith conduct?

MR. DOLPHAY: Objection. Presumes facts not into evidence. The board determined and they issued a final order.

THE WITNESS: The board found bad faith.

BY MR. STOCKTON:

Q. Did the board specifically say what was bad faith?

MR. DOLPHAY: Objection. Outside the scope of the testimony, and she's asked to provide legal conclusions, not proper in the scheduling order.

BY MR. STOCKTON:

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Q. I don't believe Mr. Dolphay is instructing you not to answer, so --

A. Oh, I didn't know there was a question pending.

Q. Yeah.

MR. STOCKTON: If you could please read it back.

(Whereupon, the requested record was read.)

MR. DOLPHAY: Same objection.

THE WITNESS: Are you asking me to characterize what the board said?

BY MR. STOCKTON:

Q. I'm just merely asking based upon your review of that transcript if the board specifically found certain acts were in bad faith or not.

MR. DOLPHAY: Objection. Outside the scope of what the witness is retained for. Going into the jurisdictional issue that's already been determined by the board. Not proper under the board's order.

THE WITNESS: I'm not sure that I know how to answer that because the board found bad faith.

BY MR. STOCKTON:

Q. I'm going to hand you -- well, let's go

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ahead and back up. Your opinion in this case does not analyze any specific alleged bad faith conduct and the connection to certain fees being claimed, does it?

MR. DOLPHAY: Objection. Outside the scope. Assumes facts not into evidence. Relitigating the jurisdictional issue.

THE WITNESS: I was asked to look at the rates and the time spent.

BY MR. STOCKTON:

Q. And so you did not analyze any particular alleged bad faith conduct. Correct?

MR. DOLPHAY: Objection. Outside the scope of the witness's testimony. Outside of what's proper in the scheduling order. Relitigating jurisdictional issues which the board did not authorize you to do here today.

MR. STOCKTON: So let's go off the record if we could.

(Whereupon, a break was then taken.)

MR. STOCKTON: All right. And we are back on the record. Counsel have had conversations off the record regarding the deposition and in particular, I guess, putting a couple things on the record.

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The first is, is that conservation groups believe we are entitled to do ask Ms. Laughner regarding the text of her report, what it says, what it may say incorrectly, statutes that may be incorrectly referred to, or conclusions that we may disagree with in order to challenge the credibility of the report and the opinions contained therein in order to effectively cross-examine and understand her opinions. And so questions regarding the statute, for example, come precisely from section 4 of her report regarding her conclusions on that front. Questions regarding other statutes, say 25-10-712, address section 5 of her report and her conclusions regarding applicable legal standard.

Questions regarding bad faith and what was bad faith and whether bad faith was found generally or regarding specific actions go in particular to section 7 of her report, specifically where she makes the representation that conservation groups engaged in bad faith litigation tactics, as well as other areas of section 7 of her report, as well as in section 8 of her report or the section where she covers the Plath factors. The questions regarding bad faith tie into each of those things where she specifically discusses specific alleged acts, and we maintain that we are entitled to ask her about what those are, what the board found, and whether her report is reasonable or not for the purposes of cross-examination and examining and challenging her opinions.

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MR. DOLPHAY: The questions that were asked by counsel sought to relitigate determinations that have been made by the board of environmental review. The board of environmental review specifically made a determination as to jurisdiction here that has been taken up on interlocutory appeal and now to supervisory control to the Montana Supreme Court.

And the plaintiff's petitioners are trying to relitigate that issue here today improperly through an expert that has relying on the determination that has already been made by the board and not what the board of environmental review requested expert testimony on, inconsistent with the record. Likewise, the determination of bad faith, the board of environmental review specifically found that the MEIC and the Sierra Club proceeded in bad faith for the purposes of harassing Westmoreland. They made that determination.

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And, again, petitioners, MEIC and Sierra Club, are seeking to improperly relitigate the issue of bad faith and harassment which the board of environmental review has already found. The board of environmental review will put into a determination to a final order. That is not what is requested of the witness. Having said that, I intend to object to the questions but will give counsel some latitude to move forward so we can continue this deposition here today.

MR. STOCKTON: I believe the only other thing we would add to that is that we do object to speaking objections moving ahead and in the past and respectfully request they be curtailed.

BY MR. STOCKTON:

Q. Ms. Laughner, your opinion in this case is that the hours expended by the mine and by the union in defense of the case were reasonable. Correct?

A. Yes.

Q. And it's your -- specifically your opinion that one-third of the hours expended are reasonable as attributable to the defense in defeat of claim two. Is that correct?

A. I wouldn't state it that way.

Q. How would you state your one-third

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conclusion?
A. Let's see. I think it was one-third of the amount. I'm not sure it's one-third of the hours. One-third allocation.
Q. An allocation of what?
A. Of hours.
Q. So your opinion is that one-third of the hours, not the amount is reasonably attributable to the defense of --
A. I would say both.
Q. Okay. So your opinion is that it could either way. We could take 2,787.2 hours from commencement of the case to entry of the final order and divide by three, or we could take the total dollars over that same period and divide by three. Either one in your opinion is a reasonable conclusion?
A. Whatever I said in my report.
Q. And I'm asking you here today if that is your testimony.
A. Well, you're characterizing it, so I don't know if that's all of it or not.
Q. Then fill me in on the remainder.
A. I'm not -- I'm not sure I understand what you mean.

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Q. I'm trying to understand specifically what your one-third fee allocation opinion regards. Fees or hours or both?
A. I laid it out on page 13.
Q. Okay. Then go ahead and tell us about it.
A. Westmoreland's decision to allocate one-third of total hours of claim two with respect to fees sought from the commencement of the litigation until the board's final decision on November 4, 2025, is conservative and reasonable. Claim two was one of three claims, but it was the most fact intensive and technically demanding of the three, involving specialized issues of stream classification, groundwater hydrology, geomorphology, and groundwater modeling.
Moreover, conservation groups requested a site inspection that was specific to claim two. This not only resulted in motions practice regarding the use of evidence from that site inspection but required counsel for Westmoreland to travel to the site and mine personnel to prepare for and accommodate the visit, a costly and time-consuming exercise. Thus a pro rata allocation of one-third treats all three claims equally, even though the evidence suggests that claim two consumed a

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disproportionate share of litigation affect due to its factual complexity, claim specific motions practice and time consuming and expensive site visit.
Q. So looking at your first sentence on page 13, one-third of total hours, your opinion is limited to the number of hours, not the amount of fees. Correct?
A. I don't know about that.
Q. Where in your opinion regarding one-third that you just read in full do you state that the total amount of one-third as opposed to hours is stated?
A. Well, it says with respect to fees sought.
Q. So your opinion is, is that that one-third hours is reasonable and then the fees sought. So it's both? Here's what I'm trying to get at. Is it hours or is it fees or is it both? Is there going to be potentially different numbers?
A. Yeah. Don't take it out of context. My opinion is on page 13.
Q. And so I'm just trying to understand your opinion {}. Is it your opinion that the reasonable fee is one-third of hours and then we multiple by a rate, or is it one-third of the total amount sought, or is it both?

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A. I don't understand what you're asking.
Q. What don't you understand about it? I'm trying to figure out if your opinion is based upon the hours or the amount sought or both.
A. My opinion is on page 13.
Q. And I guess my question is, is could you please elaborate whether you're basing it on hours or amount or both?
A. I think I already answered that.
Q. It's unclear from your opinion here. Westmoreland's decision to allocate only one-third of total hours to claim two with respect to fees sought, et cetera, et cetera, is conservative and reasonable. So I'm trying to understand your conservative and reasonable conclusion.
Do we take the 2,700 or so hours and divide by 3, or do we take the total amount billed in that same time frame and divide by 3? My client is entitled to know what that amount is and what you're basing your opinion upon as reasonable and conservative.
A. All I can say is I'm sorry you don't understand that.
Q. So hear me out here. If we were to take 2,700 hours -- let's just talk in round numbers, okay

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-- and then we allocate the first third, the second third, and the third third of that time frame in time, we would -- given that the hourly rate has changed, that would actually be a different number than one-third of the total amount sought. Does that make sense?

A. What makes sense to me is what I said on page 13.

Q. And I'm trying to get to what your actual opinion is about one-third of what. Is it the first third of hours spent, is it the second third of hours spent, is it the third of the third hours spent, or is it the approximately 1.4 million in that range divided by 3?

A. I don't think your question makes any sense to me.

Q. Well, can you explain to me why it's not making sense to you, what you don't understand about it?

A. I don't know if I can explain it any better than what's on page 13.

Q. Let's just do this a different way then. In your opinion how many dollars is reasonable and conservative for the mine and the union to claim here between commencement of this case and entry of the final order?

A. The order, the November 4th order?

Q. Yes.

A. I would go back to Yemington's affidavit. That was reasonable to me.

Q. And what is that amount?

A. I would have to look at that.

Q. And that gets to something in your report. Your report actually does not state what the reasonable amount of fees recoverable in that time period is, does it?

A. That might yet to be determined.

Q. So let's go ahead and back up, then. Has the final order in this case been entered regarding claim two?

A. The November 4th?

Q. Yes.

A. Yes.

Q. Okay. So it's been entered. The fee petition was filed after that on November 26th. Fair?

A. I would have to look.

Q. Reasonable to assume it was filed after the November 4th order was entered?

A. If it was properly filed.

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Q. But I'm just asking about time. It was filed after the November 4th order?

A. I would have to look.

Q. Is it reasonable to conclude it was filed after?

A. Sure.

Q. Okay. And as you sit here today, we're talking about the period of fees from commencement of the case to the entry of the final order. Can you tell me the amount that in your opinion is reasonable for the mine and the union to recover in that initial period?

A. I already answered that.

Q. Do you know the exact number? Is it in your report?

A. I relied on Yemington's affidavit to find that information.

Q. Okay. I guess my question is, does your report state what that dollar amount is?

A. That's yet to be determined.

Q. So I guess my question is, your opinion is what Mr. Yemington's affidavit is?

A. I looked at his affidavit, but my opinion is on page 13.

Q. And that's what I'm getting at. What specific dollar amount in that first phase of that litigation from commencement to entry of final order in your opinion is the reasonable amount being claimed by the mine and the union?

A. I already answered that.

Q. Where is that in your report?

A. I'm a little bit confused about what you're asking.

Q. I'm asking for what you believe is the reasonable amount of money being sought by the mine and the union from commencement of this case to the entry of the final order and where that is at in your report.

A. My opinion is that it's reasonable to allocate one-third of the total hours.

Q. Okay. So your opinion is one-third of the total hours?

A. To claim two with respect to fees sought.

Q. Okay. But your -- your opinion contains no conclusion as to the specific dollar amount you believe is reasonable?

A. I already answered that.

Q. So where in your report is that dollar figure specified?

A. Yet to be determined.

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Q. And why is it yet to be determined if all of that time has already been spent and incurred many months ago, if the fees are there and the spreadsheet is there?
A. I don't know.
Q. In your first opinion here regarding the reasonableness of the hours expended, you articulate that the case was technically complex, contained subclaims, abuses of processes in discovery, motions practice, bad faith litigation tactics, and multiyear duration. So I want to work through each of those things as we go through here.
First, the technically complex nature, how does the technically complex nature of the case relate to claim two?
A. It's an environmental issue.
Q. Anything else?
A. Well, the mischaracterizations by MEIC in the litigation and the tactics they used.
Q. And we'll get to that. But is that part of what you maintain is the technical complex nature of the case?
A. I'm sorry. Say that again.
Q. I'm looking specifically at your opinion about this case being technically complex, and you

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said it was an environmental matter. Are there any other reasons that make this case complex technically?
A. Well, that encompasses a lot of area. Usually environmental cases have a lot of detail that you got to get right.
Q. Okay. Are all environmental cases complex?
A. I would object to that question as being overbroad, but in my experience, I could say generally they're quite detailed and specific.
Q. Okay. And -- and I guess my specific question then is how -- how is claim two complex specifically as opposed to say claim one or claim three?
A. I don't know about claim one or claim three.
Q. Okay. Did you do any analysis of claim one?
A. I wasn't asked to do any.
Q. Did you do any analysis of claim three?
A. I wasn't asked to do any.
Q. Okay. But you maintain that claim two reasonably comprised one-third of the case. Correct?
A. Yes.

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Q. Even though you didn't analyze claim one or claim three at all?
A. I think you're mischaracterizing what I said.
Q. How do you know that claim two is more complex than claim one and claim three?
A. Well, I could look at the time spent, and it was apparent to me that a lot more time was spent on claim two.
Q. But you didn't look at claim one and claim three specifically. Fair?
A. A lot of briefing and a lot of attorney fees had to do with claim two.
Q. And I guess maybe I probably misphrased my question. But you didn't look at claim one nor claim three and the legal arguments regarding them?
A. I didn't analyze claim one or three.
Q. If you didn't analyze claim one or three, how do you know which time entries related to claim two or claim one or claim three?
A. I could tell from the briefing and the order and the time entries that a lot more time was spent on claim two.
Q. And I guess my question for you is, is if you didn't analyze claim one and claim three, how

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would you know which time entries related to claim two or the other two claims?
A. I think I already answered that.
Q. And I guess my question is how would you know that?
A. I looked at the time entries, the briefings, and the order.
Q. But you did not look at claims one or claim three?
A. I looked at claims one and three, but I did not analyze them.
Q. Okay. What was claim one? Do you know?
A. Something about material damage.
Q. Okay. And do you know what claim three was?
A. Climate change.
Q. Okay. And what was claim two then?
A. Stream buffer rule.
Q. Your opinion in this case is that the case was complex, but there was a number of subclaims advanced in this case. And you list a number of them, the first being the burden of proof was a subclaim. What -- what arguments made in the burden of proof and what motions, et cetera, underlie your opinion on that?

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A. Petitioners or the MEIC had the burden of proof, and they advanced arguments that were wrong.
Q. And what arguments were those?
A. Oh, gosh, that was laid out by -- at the summary judgment hearing, I believe, and in that briefing. MEIC had the burden to prove that DEQ got it wrong in issuing -- approving a permit.
Q. Okay. And I guess your -- you represent that that was a subclaim in the case. What do you mean by burden of proof is a subclaim in this case?
A. Well, it was -- I mean, they were arguing things that were are well settled.
Q. And what was that?
A. The burden of proof.
Q. Okay. And what do you mean by the burden of proof being well settled or not? What -- what was incorrect about that in your opinion?
A. DEQ has the burden of proof -- or not DEQ. MEIC has the burden of proof.
Q. Okay. And I guess what my question is, is how did -- you state that that was a subclaim that was advanced by the conservation groups, and I'm trying to understand what you mean by the burden of proof as a subclaim.
A. Well, Westmoreland and DEQ had to brief it

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and go off and kind of correct MEIC's misrepresentations about the burden of proof.
Q. And what was -- what were MEIC's misrepresentations in your opinion?
A. Oh, gosh, it's hard to -- hard to articulate all of their reasons, but they relied on -- they didn't get the case law right.
Q. And what was that?
A. I think it was the 2023 opinion.
Q. 2023 MEIC which was Westmoreland case?
A. I think so.
Q. Okay. And what about that?
A. I'm not sure what you mean by what be that.
Q. I guess I'm trying to understand what you maintain is incorrect. And you said it was the 2023 case, but the 2023 case came down after opening briefs were filed and response briefs were filed but before reply briefs in this case. So I'm trying to understand your argument here about this burden of proof and incorrect nature of it. I'm trying to get to the bottom why you believe that was incorrectly done by MEIC.
A. Well, I don't know all the ins and outs of the 2023 case, but NAPPA requires the challenger to

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prove DEQ got it wrong.
Q. Okay. And is that well settled law?
A. Yes.
Q. Did 2023 MEIC make any findings or conclusions regarding that, or was that an open question for the Supreme Court during the briefing in this case?
A. All along in my practice NAPPA controls.
Q. And I understand that maybe NAPPA controls, but you would agree with me that Supreme Court interpretations of NAPPA would also be controlling. Fair?
A. I think that's -- I don't -- I don't know. What you're asking me is goofy.
Q. I'm asking you whether the binding precedent in the Montana Supreme Court is controlling. It is. Correct?
A. The binding Supreme Court opinions of the Supreme Court have changed over the years.
Q. And so what's in place at any given time might shift a little bit. Fair? Could?
A. NAPPA is NAPPA.
Q. Okay. But the Supreme Court's interpretations of NAPPA would control as well. Right?

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A. I don't know if I would always agree with that.
Q. Okay. What is the burden of proof here that you believe MEIC improperly argued or incorrectly argued?
A. Oh, I can't remember off the top of my head.
Q. And so I guess how -- how would you say that MEIC got it wrong then?
A. It was MEIC's burden to prove that DEQ made a mistake.
Q. All right. And I guess -- but your opinion is that one of the subclaims in this case was the burden of proof, and I am trying to understand what you specifically say was -- was wrong about that or multiplied the litigation.
A. I thought I just answered that.
Q. And my question is what was wrong about it? You said it was wrong, but I'm trying to get to why you say it was wrong. Does that make sense? I'm trying to understand your why for saying that this was an improper subclaim brought by MEIC and the Sierra Club.
A. Everybody knows that NAPPA requires the person challenging DEQ's action has the burden of

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proof.
Q. Okay. And how did MEIC or Sierra Club in their briefing or arguments not do that in your opinion?
A. They had no facts and no evidence.
Q. I guess my question, though, is, is you said the burden of proof itself was a subclaim, and so I'm getting at the legal element standard of the burden. This is your opinion. What comprises that?
A. I don't understand what you're getting at at all.
Q. So let's look at page 11 of your report.
A. Uh-huh.
Q. Under the heading subclaims and abuses there.
A. Uh-huh.
Q. You say, "In addition to the complexity of the claims advanced by conservation groups, conservation groups also advanced a number of subclaims, including those concerning burden of proof."
I'm trying to understand what subclaim and burden of proof here -- what you mean by that. Do you know what MEIC argued the burden of proof was?
A. I can't remember at the time I wrote this.

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I did study it quite extensively.
Q. Okay. And this is my opportunity to ask you questions about it. Are you saying that you knew it when you wrote the report but you don't know it now?
A. MEIC was saying didn't recognize that they had the burden of proof.
Q. Okay. So that's your argument, is that MEIC said they didn't have the burden?
A. They went round and round on the burden of proof when it was clear. They should not have been arguing about it.
Q. In your opinion. Correct? That's your opinion about it?
A. It's my opinion that there were -- was time and effort spent on arguing that. And it was kind of a rabbit hole that they brought up, and they shouldn't have.
Q. Okay. And this is my follow-up question is, sitting here today, you don't know what those specific arguments were?
A. I don't think that's right.
Q. Then flush it out for me if you would. What were MEIC's arguments about the burden of proof that you believe were incorrect?

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A. They didn't seem to think that they had the burden of proof.
Q. And that's the extent of your opinion on that front?
A. I wouldn't say that.
Q. Okay. What else is there?
A. I couldn't tell you sitting here today.
Q. Okay.
A. It's not a memory test.
Q. This is my opportunity to ask you about your conclusions, and so I'm trying to exhaust them as best I can. And so if you think of anything during the rest of this deposition, will you please let me know? Otherwise, I'll conclude we have exhausted your knowledge. Is that fair?
A. It's not fair to say you have exhausted my knowledge.
Q. On the specific questions we're asking.
A. As I sit here today because it's not a memory test.
Q. Any -- any other opinions regarding the burden of proof that MEIC and Sierra Club advocated that you thought were incorrect?
A. My general opinion is that they didn't recognize that they had the burden of proof.

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Q. And we have gone through that. Is there anything else?
A. I don't think so.
MR. DOLPHAY: Objection to form, after.
BY MR. STOCKTON:
Q. Real quick I guess I want to revisit something. How much time did you spend in general numbers reviewing the materials in this case and preparing your report?
A. Full-time.
Q. Okay. But how many hours? Full-time for one day? Two weeks? You know, what was that?
A. Full-time since I agreed to work on it.
Q. And when was that?
A. Probably early July.
Q. Early July. So July 1? July 10?
A. First week in July.
Q. First week in July. So we're sitting here in the third week of August. Is that fair? Today is the 24th. Right?
A. 25th.
Q. 25th. Okay. So you worked on this case full-time for about seven weeks. Is that fair?
A. Yes. Except for when my husband was in the hospital.

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Q. Okay. So I'm just trying to get to you worked on it full-time for about seven weeks except for a defined period where your husband was in the hospital. Is that 300 hours? Doing rough math, 30 times 7, 30 times 10 hours a day? How would you -- how many hours would you conclude in general that you spent working on this matter?

A. I don't know.

Q. Okay. What is full-time for you? You said you had worked on this full-time. Is that seven hours a day? Is that 35 hours a week? What does that mean for you?

A. Many, many, many hours looking at all of the detail in the entire record.

Q. So -- but I guess my question is, is you said full-time, and I am trying to get to specifically as much as we can, you spent seven full weeks full-time on you this. How many hours would you estimate it was?

A. Except when my husband was in the hospital, I haven't added it up.

Q. And I guess my question here today is would you go ahead and roughly do the math? Is that 7 hours -- or is that 7 weeks times 35 minus a specific amount?

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A. I don't know.

Q. You don't know how many hours you've spent in general?

A. I worked on it full-time.

Q. Full-time. Okay.

MR. DOLPHAY: Tyler, after this one, can we can have a break? Do you want to take lunch? What do you want to do?

MR. STOCKTON: I'm good to continue until --

MR. DOLPHAY: We've been going for about an hour. You want to -- are you going to start another line of questioning?

MR. STOCKTON: I'm in the middle of a line of questioning. I'm just -- given that we're talking about --

MR. DOLPHAY: Five minutes?

MR. STOCKTON: -- what she knows. We can take --

MR. DOLPHAY: How about we --

MR. STOCKTON: Let's exhaust this line of question before we take a break, though. I think there's a question pending, so --

MR. DOLPHAY: Okay. Ask the question pending and then let's talk. I'm trying to push it back.

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BY MR. STOCKTON:

Q. I'll rephrase it. Sitting here today, you represented you worked full-time on this since the first week of July, which is about seven weeks.

A. Exempt when my husband was in the hospital.

Q. Yeah. And I'm trying to avoid asking specifically how long it was. I want to be sensitive to that. That's why I'm asking you to try to tell me what you would conclude your hours were. Is that six weeks worth of work? Is that five? Is that seven times full-time. I know for me, I bill 30 to 40 hours a week generally speaking. Is that true for you? That's what I'm trying to get at. How would you do that math, Ms. Laughner?

A. Probably not more than eight hours a day.

Q. Okay. So eight hours a day, seven weeks. 7 times 5 days a week is 35 days. Right? 35 times 8 is 280 hours. Is that a reasonable estimation of where it might be?

A. I don't know.

Q. Okay. And I guess we're sitting here today, and you've represented that it's not a memory test. But I guess you have been working on this full-time for about seven weeks.

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Anything else regarding your opinion that the MEIC or Sierra Club's burden of proof of arguments were incorrect beyond your conclusion that they claimed they didn't have the burden? Anything else beyond that argument?

MR. DOLPHAY: Objection. Form.

THE WITNESS: Yeah. I don't understand that. Say that again.

BY MR. STOCKTON:

Q. You worked on this for around 280 hours, in the ballpark. I won't hold you to that precise number. And you reviewed a large number of things that are listed in your report. Right? Is that correct?

A. I reviewed a lot of documents.

Q. Okay. And I'm asking if there is any other arguments regarding the burden of proof that you believe MEIC or Sierra Club got incorrect, other than your opinion that they argued they didn't have it?

A. They didn't recognize the right burden of proof.

Q. And that is -- that's the accepted on that piece?

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A. That's what I can tell you as I sit here right now.
Q. Okay.
MR. STOCKTON: We can take a break.
(Whereupon, a break was then taken.)
BY MR. STOCKTON:
Q. We're back on the record. And it is 12:48 p.m.
Ms. Laughner, we were discussing your first point or your second point in your lodestar, then, also regarding subclaims, and we had finished up talking about the subclaim titled the burden of proof. And I would like to move on to the second one, which is evidentiary scope.
On page 11 of your report, you note that the conservation groups advanced a subclaim regarding evidentiray scope. What do you mean by that and what are you basing that opinion upon?
A. Well, there was some discussion that I looked at, documents related to whether the parties were limited to the record or if it was under the contested case.
Q. Okay. So this evidentiary scope, as I'm understanding your testimony, whether the scope of a

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contested case concerns the record before DEQ or if the record is more open than that? Is that what your understanding is?
A. I think that's generally right.
Q. Okay. And in your opinion, was that a settled area of law at the time of this proceeding?
A. I think so.
Q. What do you mean by that?
A. Well, the -- in the contested case, you're not just limited to the four corners of the record at the time that DEQ made its decision.
Q. What do you base that conclusion on or that opinion on?
A. NAPPA.
Q. Okay. And where in NAPPA and in what case?
A. I don't know if I can really tell you that off the top of my head.
Q. Okay. And I guess you're aware that the 2023 MEIC decision established precedent regarding the scope in a contested case. Are you aware of that?
MR. DOLPHAY: Objection. Assumes facts not in evidence.
THE WITNESS: I'm sorry. Could you say

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that again?
BY MR. STOCKTON:
Q. So are you aware of whether or not the Montana Supreme Court in the 2023 MEIC decision rendered an opinion regarding the scope of evidence in a contested case?
A. I think that's right, but I don't know it was determined as if at that time or not.
Q. And so do you know when the 2023 MEIC decision came down by the Supreme Court?
A. Do I know when did it?
Q. Uh-huh.
MR. DOLPHAY: Objection as to vagueness. I think you defined the 2023 case, but maybe you are.
THE WITNESS: Yeah. you said 2023.
MR. DOLPHAY: Just put a little color on which one.
BY MR. STOCKTON:
Q. I'm sorry. There was only one, right, one 2023 MEIC decision?
And my understanding is it came down in the middle of the summary judgment briefing in this case in November of 2023. Is that your understanding? Have you looked --
A. Yeah. I don't know.

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Q. You don't know. Okay.
A. I get --
Q. If the Montana Supreme Court ruled regarding the evidentiary scope midway through the briefing in this matter, is it fair to infer that it was a disputed question being litigated before the Supreme Court while this case was proceeding?
A. I don't know about that because I -- my understanding in my practice is that it was not -- I mean, which was before 2023, is that it was not limited to the -- just to the -- to the record at the time DEQ decided, I think.
Q. So your practice in this area of law would you say generally ended in what year?
A. I continue to practice today.
Q. Oh, okay. But I guess maybe add some color, then, to your prior statement regarding your prior work and the scope of evidence.
Do you see what I'm getting at? What do you mean by that?
A. Well, in my practice, if it was a contested case, you weren't just limited to the DEQ's decision at the time. So even before 2023, as far as I'm concerned, it was pretty settled.
Q. That was your opinion, but in the AM4

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decision or the 2023 MEIC decision, the Supreme Court ruled on the four corners rule. Correct?
A. That's my understanding.
Q. Okay. Let's just talk in general terms about the timing of an appeal. If the Montana Supreme Court issues a decision in November of 2023, is it fair to say that the briefing on that decision was six months to a year before that?
A. Was that a question? I'm sorry.
Q. I'm just asking about -- if the Montana Supreme Court issues a decision in November 2023, fair to say the briefing on the disputes in that case were done in the six months to a year-ish before the decision?
A. I'm trying to relate that to my practice because my practice always followed that it wasn't just limited to four corners.
Q. Okay. And I'm moving to a little bit of a different question about the timing of the Supreme Court appeal and whether this scope of evidence was a live question during this incident case.
So if the Montana Supreme Court rules in 2023 on an issue -- let's say it's an evidentiary scope issue -- is it fair to say that the briefing regarding that issue took place in the six months to

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year before the decision was issued?
A. Is it fair to say the briefing what --
Q. Okay. If you're taking -- have you ever appeared at the Montana Supreme Court?
A. No.
Q. Okay.
A. Well, not in person but written briefs.
Q. You have written briefs but not being counsel of record on any of the cases?
A. I haven't given an oral argument.
Q. Okay. Okay. If the Montana Supreme Court issues a decision in almost any case, a standard, civil or environmental type case, how long is it between briefing and the Supreme Court's decision? What's that range? I know it varies a little bit, but how long?
A. I don't know.
Q. Is it six months?
A. Yeah. I don't know.
Q. Is it a year?
A. I haven't kept track.
Q. In your experience, how long did it take when you were up at the Supreme Court?
A. That is so rare, I really don't remember.
Q. Okay. So you don't -- are you -- would

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you say you really don't have the specific experience to opine about appeals at the Montana Supreme Court?
A. Yes. I would say that.
Q. Okay. And then I guess we can back up just a little bit. If you're up at the Supreme Court on a dispute, that dispute usually began at a district court or administrative and district. Right? You have to go back to the district court before the Montana Supreme Court. Is that fair?
A. Uh-huh.
Q. Okay. So if the Montana Supreme Court is ruling on the scope of evidence in November of 2023, fair to say that there was a district court opinion or decision on appeal that was being reviewed?
A. I'm sorry. I didn't hear a question. Is it fair to say --
Q. Is it fair to say that if you have a Supreme Court appeal, you're reviewing a district court decision?
A. Yes.
Q. Okay. And so if the Montana Supreme Court is ruling in November 2023 about the scope of evidence in a contested NAPPA case, it's reasonable to conclude that at some point in the six months to two years before there was a district court opinion

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about the same issue?
A. Yes. Could be.
Q. Okay. And so potentially as early as 2021 or 2022 there's a district court interpreting the scope of evidence question. Correct?
A. Yes.
Q. Okay. And so in your opinion here you argued that there was an improper subclaim to bring evidentiary scope arguments in this case. But my question for you is, how is it improper to raise it in this case if there's a dispute at the district court going up to the Montana Supreme Court at the same time?
A. Well, in my practice the Montana Supreme Court wasn't always consistent over the course of 30 years or so. And so the evidentiary scope for a NAPPA case, a contested case, always you had -- were not limited just to what was in the administrative record if it was related.
Q. And your -- in your practice and experience in this area, were you actively practicing in this area in 2022, 2023, 2024 while this case and the 2023 MEIC Supreme Court decision occurred?
A. Well, what comes to mind is probably a case that I litigated in 2020 where it was in front

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of BER, and we weren't limited to the administrative record or to the record at the time the decision was made.

Q. Okay. And that predates this matter by a few years?

A. So the Supreme Court was consistent with what happened before 2023.

Q. What did the Supreme Court -- well, let's go back. In the AM4 decision, what did the district court hold regarding the four corners rule?

A. Well, it's my recollection that they did have to stick to the administrative record.

Q. So there was a district court opinion --

A. Somewhere.

Q. -- in the AM4 decision potentially predating or around the same time as this case that said four corners rule applied. Correct?

A. Yeah.

Q. So how is it improper for --

A. Well, I don't know if that was right.

Q. You might disagree with that decision?

A. Uh-huh.

Q. And then the Montana Supreme Court in 2023 in the MEIC decision, what did they conclude regarding the four corners rule?

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A. That it was not strictly related -- I mean, I don't know -- I don't know the term exactly. But it was not strictly limited to just what was before the DEQ when they made the decision.

Q. It wasn't a wide open record, though, was it?

A. I'm not sure I know what you mean by that.

Q. The 2023 MEIC decision, the Supreme Court concluded that the four corners applied, but you could have testimony explaining parts of the four corners -- of content or evidence inside the four corners. Is that your understanding of it as well?

A. I would say I'm not an expert at it. I'm really focused on the lodestar and the Plath factors in my opinion.

Q. I guess that's why I'm asking you because this is one of your specific opinions to support your lodestar analysis. Right?

A. Uh-huh.

Q. You are argued that advancing evidentiary scope issues was improper?

A. Uh-huh.

Q. But it was also a live question before the Montana Supreme Court and the district court at the same time. So how is it improper to argue the evidentiary scope when it's a disputed question being decided by the Supreme Court at the same time?

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A. Well, I guess in my practice it wasn't disputed. It was the way it always was.

Q. And the law after maybe your active practice on this subject shifted as it pertained to this case and the AM4 decision?

A. I wouldn't characterize it that way, but I mean shifted. I think the Montana Supreme Court decision was consistent with my understanding and practice before that.

Q. Have you seen the recent Valley Garden decision by the board of environmental review?

A. I remember reading about it. I don't know if I have actually seen the decision.

Q. And do you recall what the board of environmental rule -- or board of environmental review concluded regarding the application of the 2023 MEIC decision in that case?

A. I kind of -- I looked at that a little bit and it seemed to be consistent with my understanding, but I'm not an expert on it.

Q. You're not an expert on it, but you're rendering an opinion about MEIC and Sierra Club's arguments as being improper or incorrect?

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A. Yes.

Q. Okay.

A. Because I understand that it's not limited to the administrative record at the time DEQ made its decision.

Q. So I guess your understanding under the 2023 MEIC decision, what else can come into the evidentiary record?

A. I'm not sure how to answer that, what else. Like if it was not related at it, probably can't come in.

Q. You would agree, though, at least during the time of this case the scope of the evidentiary record was a live issue?

A. Not in my mind because of my practice.

Q. But per the district court's decision and the Supreme Court's decision that was being actively litigated. Correct?

A. Well, apparently.

Q. Your next opinion here is that MEIC brought a subclaim regarding the admissibility of evidence. What does that opinion mean? What documents are you relying upon? What do you mean by the admissibility of evidence arguments being incorrect here?

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A. That related to Anderson's declaration and expert opinion is also related to that.
Q. Okay.
A. That's what I was thinking of.
Q. Okay. And so your opinion in that is his declaration was a subclaim regarding its admissibility?
A. Well --
Q. What do you mean by that?
A. There had to be briefing. And, you know, what I read was that the scheduling order was not adhered to, and so there had to be briefing about that. And so there was just another side issue that Westmoreland and their attorneys had to spend time and money on.
Q. In your practice, have you ever had an expert witness's testimony either, you know, limited in some way or completely limited?
A. Yes.
Q. Okay. And have you ever brought the motion to limit the other party's expert?
A. Yes.
Q. Or get them completely thrown out?
A. Yeah.
Q. Okay. And I guess when you had your own

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expert limited or potentially disallowed, if that occurred, do you think it was bad faith conduct for you to proffer that opinion or put that forward?
A. I don't think I ever had an expert limited, but I brought those motions.
Q. You brought those motions?
A. Against the other side, uh-huh.
Q. But you in your practice never had an expert's testimony limited or cabined down in some way?
A. Not that I can think of.
Q. Do you think in all those instances where you filed a motion in limine or, say, objected at trial to an expert's opinion on the stand and won, that the other side was acting in bad faith?
A. Probably.
Q. You think so?
A. Yeah.
Q. Did you -- did you bring a motion for attorneys fees or claim fees for that?
A. I have not.
Q. Okay. How many evidentiary hearings or trials have you had in your career?
A. Oh, my gosh.
Q. More than ten? More than a 100? Do you

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have -- range is fine.
A. I could say too many because I usually tried to get things resolved before it got to that point.
Q. So more or less than ten?
A. More.
Q. Okay. More or less than 50?
A. More.
Q. Okay. More or less than 100?
A. Probably.
Q. Okay. Well, more or less than?
A. More.
Q. Okay. More than 150?
A. I don't know.
Q. You've had more than 150 trials or point of entry hearings?
A. I don't know.
Q. You don't know. Okay.
Your last thing here is you state that the conservation groups brought a subclaim regarding expert qualifications. What is that based upon?
A. Well, I read -- I read the entire -- I read a lot of documents and what came to mind there were the -- I read a lot of documents, and I read about Emily Lodman's and Martin -- Martin's work that

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they did. They started working on this in 2017 or so and continued until 2021. And to me, they did an exhaustive review and made a very reasoned and good decision about the permit, and it seemed to me that the MEIC just took potshots at their work and at the same time did not even read all of their work and understand it.
Q. How does that connect to expert qualifications, though? Your particular opinion here is that the subclaim advanced by the conservation groups regarded expert qualifications was improper?
A. Yeah.
Q. What -- what document or where in the record did the conservation groups attack qualifications of an expert?
A. Well, Emily Lodman and Martin were experts in their field of hydrology, and it just seemed to me that they were random potshots taken by MEIC at their expertise. I mean, they were saying it's all about the stream buffer rule. They looked at that exhaustively from -- and came up with an opinion in 2021.
Q. Okay. And so is challenging the permit, then challenging the qualifications of DEQ experts?
A. Yes. I think so, because DEQ had good

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people working really hard on that decision, and it to me it really -- MEIC was trying to make them look bad when they actually did really good work, and MEIC hadn't even looked at the complete record.

Q. In your opinion is any challenge to a DEQ permit permissible?

A. Yes.

Q. But just not this one, wasn't permissible?

A. Well, I read the record and it seemed to me from the get-go that that challenge should not have been made, and the reason is, is because the whole issue about the water table was just totally baseless.

Q. And we'll get to, I guess, your arguments on that, but can you explain how you think the water table argument was baseless? What specific reasons?

A. That at first when the claim was brought, it was fashioned as a legal -- a legal question, and then it kind of got twisted into, oh, the water table is -- the stream is below the water table. That was to me completely made up and not based on the record. Then it switched back to that, oh, it's just now a legal claim. So it seemed like a wild goose chase. It didn't seem like they were -- it's obvious the MEIC had not looked at the -- had the

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same records that Emily Lodman and the other parties did.

Q. So in your opinion then bad faith began --

A. At the get-go.

Q. -- at the get-go. Your opinion is there was bad faith from the beginning to end regarding claim care?

A. Yes.

MR. DOLPHAY: Subject to the objections retrospectively, rule, questions of law, board jurisdiction. Keep going.

BY MR. STOCKTON:

Q. So it's your opinion that it was bad faith from the very beginning, at the outset?

A. Yes.

MR. DOLPHAY: Objection.

THE WITNESS: Sorry.

MR. DOLPHAY: You're fine.

BY MR. STOCKTON:

Q. Go ahead and define for me, then, what was claim two?

A. Well, it switched during the course of the litigation as far as I could tell.

(Whereupon, Exhibit 8 was marked for identification.)

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BY MR. STOCKTON:

Q. I'm handing you what I have marked as Exhibit 8. Are you familiar with this document, Ms. Laughner?

A. I have seen it.

Q. Okay. And this is Sierra Club and MEIC's amended notice of appeal. Correct?

A. Looks like it.

Q. Okay. And it's your understanding that claim two was laid out in paragraph 8. Is that fair?

A. You know, I really relied on the findings of facts and the conclusions of law from the -- from BER.

Q. Okay. So did you review and rely on the actual pleading by conservation groups?

A. I reviewed it.

Q. But you didn't rely upon it in your understanding of claim two?

A. I relied on the findings of fact and the conclusions of law.

Q. Would you disagree that the petitioner or plaintiff is the master of their own complaint and pleading?

A. I don't know. I guess so.

Q. Okay. So if we wanted to understand

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conservation groups' legal claim, we would look at conservation groups' own pleading, not the concluding document at the end. Fair?

A. I wouldn't. I would look at the conclusions of law of the -- and the findings of fact of the hearing officer and the BER.

Q. Okay. So you would not look at the complaint or pleading to understand what a plaintiff or a petitioner brought?

A. I did look at it, but I relied on the findings of facts and conclusions of law.

Q. Go ahead and turn to paragraph 8, if you would, in Exhibit 8. Go ahead and take a second to review it, and then I've got some questions for you about it.

A. Okay.

Q. Okay. So this is where claim two comes from. It concerns the buffer zone rule and intermittent versus ephemeral stream. Correct? Correct?

A. Paragraph 8?

Q. Uh-huh.

A. Concerns a buffer zone, is that what you said? Okay.

Q. Yeah. And intermittent versus ephemeral

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stream in the last sentence?
A. Uh-huh.
Q. So the second sentence there articulates that a claim that DEQ is denying protections of the buffer zone rule to this particular section of stream, correct, on the basis that it does not contain alluvium, even though no such requirement exists in the buffer zone rule?
That right there is a legal formulation of the claim saying that DEQ applied an incorrect analysis because the rule doesn't contain an alluvium analysis. Fair?
A. So are you saying that DEQ denies protection because the rule did not -- well, my understanding is that -- that the first argument that they advanced is that DEQ didn't -- they're trying to frame it as a legal issue, is that DEQ didn't apply the right standard of it.
Q. Okay. And then the last sentence here is that the CHIA and permit application acknowledge that this stream reach is sourced by groundwater and therefore not ephemeral but intermittent or perennial. And that would be a factual argument saying, hey, look at this, you said it was sourced by groundwater, and therefore by definition, it's not

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ephemeral but intermittent or perennial.
That's a factual articulation of the claim?
A. Well, it has legal definitions in there.
Q. But it's grounded in a -- you said it was sourced by groundwater which then has implications in whether it's ephemeral or intermittent or perennial.
A. Yeah. I don't agree with that statement at all.
Q. I get you might not agree with it. I'm just asking you, that's what it says. It's an argument because of this particular fact regarding groundwater, certain definitions of the stream apply, right, whether it's ephemeral or intermittent or perennial? That's what this sentence is saying.
A. So it says the CHIA and permit application say it's not ephemeral. That's what it says. But in ephemeral and intermittent and perennial have legal definitions.
Q. Okay. And I guess --
A. Maybe it's a mixed question of fact and law.
Q. But it's got a factual element to that one. Right?
A. Okay.

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Q. The first one is -- the first sentence or sentence before is the legal formulation when DEQ didn't apply the right requirements?
A. Uh-huh.
Q. Then the second is this factual legal argument. Correct?
A. Well, it's a mixed question of fact and law.
Q. Okay. But there's two different formulations there by DEQ, connected but different?
A. I don't know if I would characterize it that way, but I understand what you're saying.
Q. Okay. Do you know if an ephemeral stream can be sourced by groundwater?
MR. DOLPHAY: Objection. Legal conclusion.
THE WITNESS: An ephemeral stream is above the water table -- or ephemeral, I mean, ephemeral is not a stream.
BY MR. STOCKTON:
Q. So can it be sourced by groundwater then?
A. Well, what do you mean by groundwater? Do you mean like an unsaturated groundwater?
Q. So we're talking about whether or not seeps, for example. If it's sourced by seeps, can it

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be ephemeral or not?
A. Yes.
Q. So it could be either? It could or it could not?
MR. DOLPHAY: Objection. Form. Legal conclusion.
THE WITNESS: Yeah. I mean, you are asking for a legal conclusion, but a coulee is ephemeral.
BY MR. STOCKTON:
Q. That's your opinion?
A. It's fact.
MR. DOLPHAY: Same objection. Go ahead.
THE WITNESS: It's fact.
BY MR. STOCKTON:
Q. And I guess my last question on this, ephemeral streams can have groundwater flow in them?
MR. DOLPHAY: Same objection.
THE WITNESS: Yeah. Well, when you say it's not an ephemeral stream and when you say groundwater, that means certain things to me.
BY MR. STOCKTON:
Q. Right. Okay. So if there is groundwater that potentially kicks it into intermittent or perennial?

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MR. DOLPHAY: Same objection.
THE WITNESS: Not at all.
BY MR. STOCKTON:
Q. Not at all? Can you explain?
A. Well, if it's ephemeral, it means that it's not -- the water table is never above. Okay. Is it like a coulee, a dry coulee? And when you use the term groundwater it's kind of loose.
Q. Okay. In your opinion this is kind of a loose or gray area?
A. Not at all.
Q. No?
A. No.
Q. Okay.
A. The definition of ephemeral is very specific.
Q. Okay. Then what is the definition of an ephemeral stream?
MR. DOLPHAY: Objection. Legal conclusion. Outside the witness's scope.
THE WITNESS: Well, it's defined in the statute.
BY MR. STOCKTON:
Q. So we would look to that for the definition?

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A. It's always above the water table.
Q. You raise as a particular example of the objection to the intervention in this case, what's the basis for your opinion on that?
A. Pretty settled or well-settled that the permittee has a right to intervene. There's really no argument about that.
Q. Okay. And did you take a look at conservation groups opposition brief?
A. Yes.
Q. Okay. What were the arguments raised there.
MR. DOLPHAY: Objection. Overbroad.
THE WITNESS: You know, I'm not sure I remember it very accurately.
BY MR. STOCKTON:
Q. Okay. What's your best recollection?
A. That DEQ could do it all, represent Westmoreland and the Union.
Q. And do you recall the basis for that argument and where that argument came from?
A. I don't.
Q. Okay. Would it surprise you that it was arguments made by Holland & Hart in a different case?
MR. DOLPHAY: Objection. Assumes facts not in evidence.
THE WITNESS: I don't know if that would surprise me or not.
BY MR. STOCKTON:
Q. Okay. And you recall that a conservation groups' opposition was -- I'm summarizing -- but, hey, board of environmental review, if you're going to do this in a different case, you need to do the same here, and if you're not, then here's the limitations we would put on the intervention. Do you recall that?
A. Are you talking about this -- these briefs?
Q. The brief in this case, yes.
A. Yeah. What I recall is that MEIC wanted to put some limitations on that, and that did not -- they were not restrictive. Other than Westmoreland and the union were going to be treated as the same.
Q. So some restrictions were imposed being that the union and the mine were treating this kind of one party together?
A. That's what I recall.
Q. Okay. So some restrictions were --
A. Yeah. Not one party but one -- yeah.
Q. And I guess in MEIC's opposition brief did they cite legal authority for their argument?
A. I can't remember. Probably.
Q. And if they did, is it bad faith to rely upon certain legal authority and make those arguments?
MR. DOLPHAY: Objection. Outside the witness's scope. Legal conclusion.
THE WITNESS: I think it is bad faith.
BY MR. STOCKTON:
Q. Okay. It's bad faith to make an argument relying upon legal authorities?
A. Depends on what -- what legal authority you rely on, I guess.
Q. In here, it's your opinion that it was improper for MEIC and Sierra Club to file this opposition to their intervention, but it contained legal authority. How is it --
A. Yeah. I do think it was improper for them to file, to oppose it.
Q. Even though they relied on legal authority and raised arguments based upon that authority?
A. Yeah, I do.
Q. Do you know what that legal authority was?
MR. DOLPHAY: Objection. Overbreadth.
THE WITNESS: Not as I sit here.

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BY MR. STOCKTON:
Q. Okay. Is that legal authority or why it was improper to rely on that legal authority stated in your report?
A. Is the legal authority stated in my report? I don't think so.
Q. Did you research that issue particularly to come to your conclusion?
A. I didn't independently.
Q. Your next opinion here is that conservation groups abused the discovery process by forwarding a baseless spoliation claim. Do you recall that opinion?
A. Yes.
Q. Okay. What is your understanding of a client or an entity in litigation's duty to preserve evidence?
A. Oh, gosh.
MR. DOLPHAY: Objection to the provision.
THE WITNESS: Well, my experience, once you know it's an issue, primarily more electronic than anything, is that you need to preserve the evidence for litigation.
BY MR. STOCKTON:
Q. If the thing, be it electronic, be it the

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crashed car, be it the stream flow or the stream bed or what not, whatever the thing at issue is needs to be preserved if the litigation concerns or relates to it. Fair?
A. I don't know about the relates.
Q. This is from the Walden versus Yellowstone Electric: A party has a duty to preserve evidence when a party in control knows or reasonably should know that existing items or information may be relevant to pending or reasonably foreseeable litigation, end quote.
So I'm reading a quote from a case, but is that consistent with your general understanding of the duty to preserve --
A. Yes.
Q. Okay. Have you in your entire career as a lawyer working with clients had a situation where one of your clients perhaps needed to work on or deal with a piece of evidence that was relevant in a case? So say it's like a railroad track that was at issue, but you needed to replace the railroad ties or something. Have you ever encountered a situation like that in your career?
A. I don't think so.
Q. Okay. You have never encountered a

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situation where there was a crashed car that needed to be -- needed to be repaired but also was evidence?
A. I -- my practice has been environmental law, and so I haven't had that situation.
Q. Okay. Given your experience, I guess, if that were to occur in your career, what would you have done?
A. I don't know. I haven't really thought about that.
Q. Would it have been reasonable to, you know, perhaps write a letter to opposing counsel that says this thing is at issue in this case, we need to do work on it, that work is going to be completed in 60 days, let us know if you would like to inspect or look at it before? Would that be a reasonable approach in your opinion?
MR. DOLPHAY: Objection to form.
THE WITNESS: I don't know. I would file a motion for preliminary injunction.
BY MR. STOCKTON:
Q. How would the other side know that the work was going to be done, though, if the opposing counsel never told them?
A. I guess I'm having trouble with this because it's such a hypothetical that I haven't

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really ever encountered.
Q. Did you ever have a client need to do work on, like -- in your environmental work like on a site that was at issue in litigation?
A. I can't really think of an example like that.
Q. So I mean, maybe it's fair to say you would defer to maybe the opinion of lawyers or judges who have encountered those situations as to either the right thing to do in that situation?
A. I don't know. I have met a lot of lawyers and judges that have been wrong, so I don't know.
Q. Do you think sending a letter and informing opposing counsel is a reasonable step?
MR. DOLPHAY: Objection to form.
THE WITNESS: That's a lot of -- I think it might be fact, depends on the facts in the situation and the parties.
BY MR. STOCKTON:
Q. Is it fair to say that maybe you're not an expert on spoliation issues then?
A. I would say that I am an expert on being an attorney and discovery matters, and I have had spoliation come up that I've had to deal with.
Q. Okay. But you haven't had a situation

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come up where your client was working on the thing at issue in the litigation and you needed to address that?
A. I can't really relate to that scenario.
Q. Okay. You wouldn't be an expert being able to opine about that situation?
A. Oh, I wouldn't say that. I could.
Q. Okay. So would it be reasonable to then ask or inform opposing counsel that work was going to be done on the item at issue in the case?
MR. DOLPHAY: Objection. Outside the scope, going back to issues already found by the BER regarding spoliation.
THE WITNESS: I think it depends on the situation and the facts.
BY MR. STOCKTON:
Q. And I guess I'm getting at your opinion in this case though here. Right? So your opinion is that the spoliation claim it baseless. Correct? That's your opinion?
A. Yes.
Q. Okay. And so I'm asking you about a lawyer client's duty when the item at issue in the litigation is to be preserved or not and how you address that, if it needs to be worked on or changed

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in some way. But you haven't actually encountered that situation in your practice?
MR. DOLPHAY: Objection. Outside the scope.
THE WITNESS: So what I would say is it depends on the facts at the time.
BY MR. STOCKTON:
Q. Yeah. And I think my question is, is in your professional experience, you have never encountered a situation where a client needed to work or do work on a certain thing that was at issue in the litigation and had to address that with opposing counsel?
A. Had to what?
Q. Address that with opposing counsel.
MR. DOLPHAY: Objection. Form.
THE WITNESS: I can't recall a specific situation like a car crash right now that -- so I'm having a hard time understanding how that would apply to an environmental case.
BY MR. STOCKTON:
Q. Well, what's your understanding of the couple sentences in footnote regarding spoliation in the opening brief by conservation groups? What's your understanding of the argument there?

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MR. DOLPHAY: Objection. Going back to law of the case that's been determined by the board. Question of law.
You can answer.
BY MR. STOCKTON:
Q. So this is the thing. Your opinion here is that the spoliation claim is baseless. And I think I'm entitled to ask your opinion as to why it was baseless. That's specifically in your report on page 11?
A. Yes.
Q. So what I'm asking here is what's your understanding of conservation groups spoliation argument.
A. What I focused on was when the parties were out -- or the primary thing I focused on, the parties were out during the inspection and that issue came up and Dr. Lodman explained to the MEIC, the environmental groups what was going on. And it seemed to me that they just totally ignored her explanation or tried to understand what was going on and went ahead anyway with their argument.
Q. Okay. So your -- your basis for saying it's baseless was that Dr. Lodman, Emily Lodman, explained what had happened during the site

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inspection, and then that should have been accepted and not challenged? Is that what you're saying? I want to understand that.
MR. DOLPHAY: Objection. Question of law. Issues determined by the board.
THE WITNESS: That was a -- to me, very important that DEQ tried to communicate information to MEIC, and in the findings of facts and conclusions of law, there was -- I mean, there was no issue about it.
BY MR. STOCKTON:
Q. So I guess I want to revisit, make sure I understand. Your opinion is that the spoliation claim was baseless. Correct?
A. Yes.
Q. Okay. And the basis for your conclusion that it was baseless is that Dr. Lodman explained what had happened during the site inspection and that therefore making the spoliation arguments in summary judgment was unfounded?
A. I'm a little bit confused about your question. What I could to say was that it seems reasonable to me that anybody would accept her explanation, and I mean, she's independently saying what happened, giving the facts, and it was

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disregarded. So I would say that was primarily but maybe not entirely the reason why spoliation -- the hearing examiner found the -- there was nothing to the spoliation claim.

Q. Okay. I guess point number one, you think the conservation group should have --

A. Paid attention to the facts.

Q. -- paid attention to Dr. Lodman's explanation?

Is there anything else that undergirds your opinion that the spoliation claim was baseless as stated on page 11 of your expert report?

A. Yes. I read the pleadings and came to my own determination about that.

Q. And how do the pleadings which we have already looked at make the spoliation claim baseless?

A. Well, I don't know if it's the pleadings, but I heard the arguments and decided for myself. And I mean, it -- it was the same conclusion that the hearing examiner came to.

Q. So by arguments, what arguments do you mean?

A. Whatever -- whatever were in the briefs on that issue.

Q. Okay. And do you recall what conservation

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groups' argument was?

A. I don't.

Q. So your conclusion today is that it was baseless, but you can't articulate what the conservation groups' argument was?

A. Well, that's not exactly right.

Q. Okay. Then fill me in.

A. I don't understand -- I don't remember the timing of this, but -- and I forget the exact argument of the conservation group, but it seemed reasonable to me that the timing of the sediment control measures did not jive with what -- with what MEIC was arguing, and there were legitimate reasons and approval for that work to be done.

Q. And in your opinion -- in your opinion there was -- in your opinion, there was no need for the mine or the union to let conservation groups know that the work, the sediment control work, was being done?

MR. DOLPHAY: Objection. Question of law. Outside of the scope of the witness's retention.

THE WITNESS: I doubt they had a duty to do that.

BY MR. STOCKTON:

Q. Okay. Fair to say that this case at least

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concerned in part wetland 4-2/2?

I know we colloquially we say 4-2-2, but I'm spelling it out for the court reporter.

Fair to say that this case concerned wetland 4-2/2?

A. I don't know if it did or not.

Q. Why don't you go ahead and turn to Exhibit 8 that we have in front of you.

A. 8.

Q. Go ahead and turn with me to paragraph 8. Does the conservation groups' amended notice of appeal refer to the perennial reach of Lee Coulee at wetland 4-2/2?

A. Oh, I will have to read this. Let's see. We're looking at paragraph 8?

Q. Uh-huh.

A. Okay. What's your question?

Q. My question was, is it fair to say that this case at least concerned wetland 4-2/2?

A. This claim two?

Q. Uh-huh.

A. That is MEIC's characterization of it.

Q. And so MEIC and Sierra Club's pleading in this case says that its arguments in paragraph 8 relate to wetland 4-2/2?

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A. That's what it says there.

Q. Okay. So the mine and the union were on notice that that particular wetland was at least relevant or related to this case?

A. I don't know.

Q. So you don't know if it's fair to say that this claim relates to wetland 4-2/2?

A. Well, this doesn't really make a lot of sense to me as I'm reading this.

Q. Does it refer to wetland 4-2/2?

A. Yeah. But what does wetland 4-2/2 have to do with an ephemeral -- with this stream?

Q. The allegation here is, quote, DEQ denies protections of the buffer zone rule, ARM 17.24.651 sub 1, to the intermittent to perennial reach of Lee Coulee at wetland 4-2/2. Then the sentence finishes out laying out the argument. And then the next sentence says -- argues that this stream which is sourced by groundwater per the CHIA and permit and therefore not ephemeral, but intermittent or perennial.

So my question for you is, is it fair to say that this claim related to wetland 4-2/2?

A. I wouldn't say so because it seemed like the buffer zone rule covers a stream.

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Q. But the argument here is that wetland 4-2/2 was at issue.
MR. DOLPHAY: Objection. Asked and answered.
THE WITNESS: They're different.
BY MR. STOCKTON:
Q. If you were defense counsel in this case, would you say that this claim relates to wetland 4-2/2? Would you tell your client it relates to a different wetland?
A. I would say this claim does not affect a wetland.
Q. In conservation groups' spoliation arguments on summary judgment, did they cite law and did they cite fact to support their agreement?
I know you might disagree with it, but did they cite it?
A. Did they cite it where?
Q. In their spoliation argument made in the summary judgment.
MR. DOLPHAY: Objection. Outside the scope of the witness's retention.
THE WITNESS: I'm trying to remember if spoliation argument was in the summary judgment filing or was it before that. I can't remember

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specifically.
BY MR. STOCKTON:
Q. You can't remember?
A. Huh-uh.
Q. What's your understanding of a baseless argument? So we're still talking about your opinion that the spoliation argument was baseless.
What makes something baseless?
MR. DOLPHAY: Objection. Question of law.
THE WITNESS: Well, the finding -- the hearing officer found there was no fact -- no facts and no expert related to MEIC's claim.
BY MR. STOCKTON:
Q. I think maybe you're misunderstanding my question again. So your opinion here on page 11 is that the conservation groups abused discovery process by forwarding a baseless spoliation claim. My question is, what's your criteria for determining if something is baseless or not?
A. Just generally?
Q. Yeah.
MR. DOLPHAY: Question of law. Objection.
THE WITNESS: There's no fact or evidence or expert to support the challenge.
BY MR. STOCKTON:

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Q. Okay. And so in MEIC's spoliation arguments, did they cite factual things? For example, did the mine or the union deny that the blading in and around wetland 4-2/2 had occurred?
A. I don't think that they denied it. The work was done.
Q. Right. So -- so -- so blading had occurred on the wetland referenced in conservation groups' pleading. Correct?
A. I think so.
Q. And then were conservation groups told by the mine or the union that the blading work was going to be done before it was done?
A. I don't know.
Q. Okay. And did conservation groups cite law in support of their spoliation arguments in the arguments they made?
A. I don't remember.
Q. Then you don't remember what -- where those arguments were made either?
A. When or what?
Q. In what documents or --
A. Yeah. I can't remember.
Q. Did you research the authority cited by conservation groups in their spoliation argument?

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A. No. I just went by -- I focused mostly on the findings of fact and conclusions of law.
MR. DOLPHAY: We've been going over an hour. Do you have a --
MR. STOCKTON: I need to finish up this line of questions if that's fair.
MR. DOLPHAY: Yeah. That's fair. But like ten or five minutes?
MR. STOCKTON: Sure.
BY MR. STOCKTON:
Q. Your opinion is that Dr. Lodman credibly explained what had happened and conservation groups should have accepted that of what she said?
A. They should not have ignored those facts.
Q. And are you aware specifically of what Dr. Lodman said in her declaration during all of this?
A. I read that, yeah.
Q. Okay. Do you recall when the blading occurred of wetland 4-2/2?
A. I remember reading it was before it became an issue.
Q. If I represent to you the mine said it happened November or December 2022, would you have any reason to dispute that? I can show you the

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declaration if you want to see it.
A. December -- sure. Okay.
Q. Okay. And does that refresh your recollection about when the blading in or around wetland 4-2/2 pond 300 occurred?
A. Yes.
Q. What date was that?
A. Late December or late 2022.
Q. November or December of 2022. Correct?
A. Uh-huh.
Q. Okay. Do you recall that one of the arguments raised by the mine and the union was that conservation groups were on notice about the work being done? Do you recall that argument being made?
A. I don't.
(Whereupon, Exhibit 9 was marked for identification.)
BY MR. STOCKTON:
Q. I'm going to hand you what I have marked as Exhibit 9. And this is a statement of undisputed -- joint supplemental statement of undisputed facts by both the DEQ and the mine and the union.
I would like you to turn to the end of that. The paragraph 47 -- 46 and 47. Do you see paragraphs 46 and 47?

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A. Yeah. Okay.
Q. Okay. And in here the argument being made by the mine and the union and DEQ is that certain strippage of the drainageway occurred. That's paragraph 46. Approximately 22 percent was stripped of the wetland.
And then 47 says MEIC and Sierra Club were well aware of this upcoming activity, which was projected in the annual mine report on April 2023. Do you see that?
A. Uh-huh.
Q. So the argument here is that MEIC and Sierra Club knew about it. Is that fair? Do you see that in paragraph 47 of Exhibit 9?
MR. DOLPHAY: Objection. Outside the witness's scope of retention.
THE WITNESS: I don't know. That's what it says, that they were aware. Is that what you're asking me?
BY MR. STOCKTON:
Q. Yeah.
A. Yeah.
Q. They were aware because of what -- what does the mine and the union argue put conservation groups on notice, what was it that put them on

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notice?
A. An annual mine report.
Q. And when was that annual mine report dated?
A. In '23.
Q. What date in '23? What month?
A. April.
Q. How can MEIC and Sierra Club be aware of strippage done in November, December 2022 when it was supposedly published in April of 2023?
A. I don't know.
Q. The citation in paragraph 47 for that statement about awareness --
A. Uh-huh.
Q. -- is derived from Exhibit FF, Ms. Lodman's -- Dr. Lodman, I believe, declaration, which I'm handing to you as Exhibit 10.
(Whereupon, Exhibit 10 was marked for identification.)
BY MR. STOCKTON:
Q. Looking at Exhibit 9, what paragraph in Dr. Lodman's declaration supports the mine and the union's argument?
A. Let's see.
Q. So if you look at Exhibit 9, that

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statement by the mine?
A. Uh-huh.
Q. They say that the MEIC and Sierra Club's awareness of the upcoming activity was projected in the annual mine report in April 2023. Right?
A. Uh-huh.
Q. Then they support that with a citation to paragraph 6 of Exhibit FF, Lodman declaration. What does Exhibit 6 of the Lodman declaration say?
A. You mean paragraph 6?
Q. Paragraph 6.
A. Let's see. I'm not really getting what your point is.
Q. Dr. Lodman's declaration here doesn't say that MEIC and Sierra Club were on notice of the strippage, does it?
A. I don't know. I paid attention to what Dr. Lodman told the parties when they were out at the inspection.
Q. And I'm asking a slightly different question, which is, does the statement that conservation groups were aware of the strippage come from Emily Lodman's declaration? I'm asking if that is in her declaration in paragraph 6 as cited.
A. Yeah. I don't know.

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Q. It doesn't look like it's there, does it?
A. I don't know. I mean --
Q. Have you read it just now?
A. Well, I'm kind of a methodical person. It would take me awhile for it to sink in.
Q. Looking at paragraph 6, does Ms. Lodman say the conservation groups were on notice regarding the strippage?
A. What I get out of it is that she refers to the annual mine report.
Q. Okay. And that came out in April of 2023. Right?
A. Uh-huh.
Q. How could that put the conservation groups on notice regarding strippage done in November, December 2022, approximately three to four months earlier?
A. Yeah. I don't know.
Q. It doesn't, does it?
A. I don't know.
MR. DOLPHAY: All right. Give me a break? Five minutes. I got to go to the bathroom.
MR. STOCKTON: Two more questions.
MR. DOLPHAY: All right.
BY MR. STOCKTON:

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Q. Did the DE -- did the conservation groups to take the DEQ's position regarding preservation of evidence as true or meeting the legal standard for spoliation?
MR. DOLPHAY: Question of law. Objection.
THE WITNESS: I don't think DEQ had a position on spoliation.
BY MR. STOCKTON:
Q. I guess my question though was, did the conservation group have to take Dr. Lodman's explanation as to the strippage as true and therefore not bring the spoliation argument? Are they under a legal requirement to do that?
A. Well, they had to have some basis for it.
Q. And I guess there's no dispute that there was strippage done. Correct?
A. You know, I don't really -- I don't use that word strippage, so I don't really know what -- is that a term of art?
Q. Blading of the wetland 4-2/2 regarding mitigation of control measures.
A. It was apparently done. I don't know when.
Q. You looked at the declaration earlier. It was done in November, December 2022. Right?

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A. Oh, in Batie's declaration, yeah.
Q. And that was after the notice of appeal in this case was filed?
A. Let's see. When was that? 2022. Right.
Q. Regarding wetland 4-2/2. Correct? It references it?
A. I don't know. Does he?
Q. The notice of appeal references wetland 4-2/2?
A. I thought you meant Batie. Batie does not reference it.
Q. Batie references pond 300. Right?
A. Yeah.
Q. Which is in the middle of wetland 4-2/2. But I guess my question for you is, it's still your opinion that it was a baseless spoliation claim?
A. Yes.
Q. Even though the notice of appeal stated a concern of wetland 4-2/2 and the conservation groups per the documents you reviewed could not have known by the annual mine report in April of 2023 that the strippage had been done four months earlier. Still your opinion that it was a baseless claim?
A. Yes.
MR. STOCKTON: Okay. We can take a break.

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MR. DOLPHAY: Thanks.
(Whereupon, a break was then taken.)
BY MR. STOCKTON:
Q. We are back on the record. It is 2:24. Ms. Laughner, we just wrapped up discussing your conclusion that the spoliation claim was baseless. The next area I would like to transition to is your examination of the fee entries regarding the spoliation claim.
Okay. So your expert opinion here is that Westmoreland was forced to incur significant legal fees and costs as it related to the spoliation claim. That's on pages 11 and 12 of your opinion. That's your opinion. Correct?
A. Yeah. I think so. In addition to other things.
Q. Well, in addition to the expert declaration, but I want to cover the first thing first, which is what we were talking about is the spoliation claim.
A. Okay.
Q. Your opinion is that that caused significant fees and costs to be incurred in responding to that?

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A. Yeah. I don't know about the word "significant." I might have said that.
Q. Let's turn to page 12 at the top. "Caused Westmoreland to incur significant legal fees and costs in identifying, briefing, and responding to such conduct."
A. All those things, uh-huh.
Q. So beginning with the spoliation claim. , What analysis of the billing entries did you complete to conclude that the time spent in responding to the spoliation claim was significant?
A. Well, did I say significant specifically for that one, or is it lumped together?
Q. It's lumped together, but I'm talking about them one at a time here.
A. Okay.
Q. Is it your opinion that responding to the spoliation claim is not significant?
A. Well, no. It was a significant, but --
Q. Okay.
A. -- all of them together were significant at a time.
Q. Okay. But like you just said, your opinion is that the spoliation one was significant?
A. Yes.

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Q. I'm going to keep this in the book for now so it's easier for us to work with because these are big documents. But I'm going to mark Exhibit 11 as the spreadsheet of fees attached to Mr. Yemington's affidavit. It's the first tab in this book.
(Whereupon, Exhibit 11 was marked for identification.)
THE WITNESS: Can I --
MR. STOCKTON: If you want one, it's right here.
MR. DOLPHAY: I appreciate that. Let's -- can we move some of these exhibits over so we don't --
THE WITNESS: You want them right here?
MR. DOLPHAY: Give them to the court reporter unless you're going to go through those again.
THE WITNESS: Here's two twos.
(Whereupon, a discussion was held outside the record.)
BY MR. STOCKTON:
Q. You reviewed the fee entries associated with the spoliation claim. Correct?
A. Yes.
Q. And how many fee entries did you identify

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were related to responding to it?
A. I don't remember.
Q. Would it be less than five? More than five?
A. I don't remember.
Q. Was it a lot or a little?
A. It's a really thick document, so I don't remember.
Q. But your testimony is that you did review the fees regarding and relating to the spoliation response by Westmoreland. Correct?
A. That's my -- best of my recollection.
Q. Okay. And what -- what fees were those?
A. Are you talking about attorney fees?
Q. What entries related to those?
MR. DOLPHAY: Objection. Overbreadth.
THE WITNESS: I can't tell you without going through this whole thing.
BY MR. STOCKTON:
Q. Okay. And fair to say you did not in your expert report identify what fee entries were associated with responding to the spoliation claim?
A. I didn't think that was important.
Q. You didn't think it was important?
A. Uh-huh.

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Q. But it was your opinion that it was significant?
A. Well, lumped together they're significant.
Q. But --
A. All of these different things.
Q. But I guess your earlier testimony just a couple of minutes ago was that responding to the spoliation claim was significant. So I'm getting to what work you put in to identifying the fees so you could reach the conclusion that it was significant.
So how many hours did you spend reviewing this Exhibit 11?
A. I don't know how many hours I spent reviewing it. I reviewed it three times.
Q. Okay. And did you keep notes to yourself about entries related to the spoliation claims so you could later conclude they were substantial or significant?
A. No.
Q. Okay. So then what is the basis of your opinion that the response to the spoliation claim was a significant undertaking?
A. Well, there was quite a bit of briefing about it. And it was in the issue in the summary judgment, and there was discussion about it in the

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findings of facts and conclusions of law.
Q. Okay. So I guess let's go ahead and work through those specific entries. Why don't you turn the entry for a Mr. Adams on September 5th, 2023, the far left-hand column.
A. What page is that on?
Q. 34.
A. 25?
Q. Page 34, September 5th, 2023, by Mr. Erik Adams, sitting in about the middle of the page. Do you see that time entry?
A. September 5th? Is that what you said? Oh, that's '23? Is it '23 or --
Q. 2023.
A. Oh, I thought you said '25. Okay.
Q. In that fee entry, this is the first one that I can find regarding responding to the spoliation argument. Mr. Erik Adams represents that he billed four hours doing what -- what do you see in that time entry? What was he doing for those four hours?
A. Reviewed the CHIA, began reviewing spoliation.
Q. Okay. So there's more than that, though. The first thing he did was he analyzed whether a

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supplemental declaration should be appended to the response. Right?
A. Okay.
Q. Then he says he reviewed the CHIA to see if DEQ considered the factors MEIC alleges they failed to consider. Right?
A. Uh-huh.
Q. And the next thing he did, he began reviewing precedent discussing spoiliation to argue no spoliation occurred here. Right?
A. Uh-huh.
Q. Three different tasks. Right?
A. Uh-huh.
Q. Fair to say that was a block billed entry?
A. No. I wouldn't say that.
Q. Can you tell me how much time he spent on each specific thing?
A. He spent four hours on that day doing that research.
Q. For just the spoliation?
A. Could be.
Q. But how much time did he spend working on the supplemental -- determining whether a supplemental declaration should be appended?
A. It doesn't say.

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Q. Okay. It doesn't say how long he spent reviewing the CHIA to see if these factors were failed to be considered. Right? It doesn't say that? Does it say how long he spent doing that?
A. We don't know.
Q. And then the last entry is that he began looking at precedent regarding spoliation. Right?
A. Yes.
Q. We don't know how long he did that either?
A. Took him four hours to do those four things.
Q. Okay. They're different things. Right?
A. I don't know if they're related or not.
Q. Does the CHIA and factors relate to the spoliation argument?
A. Could.
Q. How so?
A. Well, spoliation -- I mean, we were talking about the -- the whole issue is the stream buffer rule so they're all related to me.
Q. So the spoliation concerned the stream buffer rule?
A. Well, isn't that what you guys are saying?
Q. I guess my question is, is the spoliation argument concerned certain blading done at wetland

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4-2/2? The claim concerned whether DEQ appropriately considered certain legal factors or whether DEQ appropriately concluded that the Lee Coulee at 4-2/2 was ephemeral and not intermittent or perennial stream. So I'm having a hard time seeing how all three of these entries concerned spoliation.
A. I see them related.
Q. In your opinion, all four hours were spent working on spoliation-related things?
A. They could be.
Q. We can't know, can we?
A. Because it's related to this -- your argument on the stream buffer rule.
Q. So the spoliation argument is related to the stream buffer rule?
A. I think so.
Q. Okay. It's unclear what Mr. Adams spent four hours -- how he allocated his time to each of these three tasks?
MR. DOLPHAY: Objection. Asked and answered.
THE WITNESS: I think it looks like a pretty good detailed description.
BY MR. STOCKTON:
Q. It doesn't say, though, what he did with

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each of these three things?
A. You mean how much time?
Q. Uh-huh.
A. Like he didn't spend .5 on one thing or the other is what you're trying to say?
Q. Right.
A. Yeah. Okay.
Q. He didn't break this into three time entries that totaled four hours, and he didn't say in his description for each of the three things like one hour, two hours, one hour. Right?
A. He did not do that.
Q. Okay. So this is the first -- this is four hours of work at the high end regarding spoliation. Okay? Fair?
A. Is that a question?
Q. Yeah.
A. Okay. Yeah. Sure.
Q. Let's look to the next reference to spoliation. This is on 9/7 by Mr. Adams where he spent 2.2 hours. Do you see that time entry?
A. Uh-huh.
Q. Can you go ahead and read that description -- I'll read it out loud. Quote, continue spoliation research; meet internally to determine whether to

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request an extension and request a declaration from the client detailing which portions of Lee Coulee were bladed, end quote.
Is it possible to know how long this internal meeting took compared to the time Mr. Adams spent researching or discussing a declaration?
A. Looks to me like they are all related and it took 2.2 hours.
Q. So you would say an extension request is related to the spoliation issue?
A. Well, yes.
Q. How do you know that?
A. That is just my view because there -- it took 2.2 hours.
Q. So because it took 2.2 hours, it was all related even though the description doesn't say that?
A. That's what I would conclude.
Q. Okay. So 2.2 hours at the max there. Let's turn to 9/15, which is the next entry regarding spoliation. This, again, is Mr. Adams with 2.5 hours. And he says there, quote, finish draft of buffer zone, spoliation, and standing sections of the response brief, begin adding citations, end quote.
Can you tell me from that description how much time Mr. Adams spent working on the standing

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section of the brief versus the spoliation or buffer zone sections?
A. I don't think so.
Q. So at least some portion of this is unrelated to spoliation in any way. Fair?
A. It's hard to guess. Maybe in his mind it was related. I don't know.
Q. Do you see another time entry that day where he broke up his work?
A. Are you referring to 9/19?
Q. No. 9/15, that same day. Any other entries by Mr. Adams where he broke out the work he did that day?
A. Yeah. There's only one entry on 9/15.
Q. So he block billed together standing stuff with other issues, citation work. We can't tell what amount of time was spent on what?
A. I wouldn't call it that way.
Q. You would say this is not block billed?
A. Right.
Q. Is standing a separate issue from spoliation?
A. I don't know what he was thinking. Maybe in his mind they were related.
Q. You don't know that, though?

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A. I don't.
Q. You're aware that conservation groups won the standing argument which was brought by Westmoreland and the mine now in summary judgment. Correct?
A. Right.
Q. If spoliation arguments were lost and standing argument was won, those are pretty separate issues. Fair?
A. I don't know as I sit here. They could be related.
Q. But you don't know?
A. Oh, I didn't believe that was a question.
Q. You don't know if it was related or not?
A. I don't.
Q. The last entry in these billing records that reference spoliation is on January 23rd, 2025. This is page 47. It's an entry by Mr. Yemington for 5.8 hours on January 23rd, 2025.
A. Oh, wait. Sorry. January -- what page is that on?
Q. 47.
A. January 23rd, '25. Okay. Uh-huh. For how many hours?
Q. 5.8.

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A. Okay.
Q. That's the only entry by Mr. Yemington that day. Correct?
A. Yes.
Q. Okay. And it looks like he said, quote, continue drafting AM5 proposed FOFCOLs; pull and review MEIC spoliation argument; update FOFCOLs with response to same, end quote.
Did I read that right?
A. Yes.
Q. So Mr. Yemington that day spent 5.8 hours working on the FOFCOLs with some of that being related to spoliation and updating the FOFCOLs regarding it. Right? It would be duplicate if he had -- since he references updating and drafting the FOFCOLs twice in there.
Do you know what Mr. Yemington was drafting in the first phrase "continued drafting AM5 proposed FOFCOLs"?
A. He was drafting the FOFCOLs.
Q. Okay. But do you know what specific sections there?
A. Which ones? No.
Q. No? He says in the next two clauses that some of that drafting was regarding spoliation

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arguments made. Correct?
A. He doesn't say some. What do you mean? Pull and review.
Q. So if he spent some time reviewing the spoliation arguments made?
A. Uh-huh.
Q. Then he updated the FOFCOLs with response to same?
A. Uh-huh.
Q. Okay. So whatever he was drafting in the first clause, it would be duplicative to enter the second clause regarding updating the same?
A. Yeah, I doubt that.
Q. You think he spent 5.8 hours drafting the spoliation portion of the FOFCOLs?
A. Well, he said pull and review MEIC spoliation argument.
Q. Okay. Okay.
A. He could have done that for five hours.
Q. Are you aware of how long the argument was in the opening brief regarding spoliation?
A. I don't remember.
Q. I'm going to hand you what I have marked as Exhibit 12.
(Whereupon, Exhibit 12 was

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marked for identification.)
BY MR. STOCKTON:
Q. This document is titled petitioner's brief in support of motion for summary judgment. I will direct you to -- I will direct you to page 18.
Actually, let me amend that slightly a second here. Page 18, starting on page 17, though, the conservation groups said at the bottom, quote, DEQ may not be permitted to rely on any argument about alluvium because WRM, with DEQ's approval, bulldozed the majority of this reach without notifying the conservation groups before the groups were permitted to visit the site precluding them from observing the presence or absence of alluvium in the majority of the reach.
Citation. This destruction of and failure to preserve evidence was spoliation -- footnote 6, and I'll get to that in a second. WRM and DEQ may not be permitted to benefit from their unlawful actions. Citation Montana Code Annotated 1-3-208.
Then footnote 6 cites the Montana State University Bozeman case, the Spotted Horse case, and the sentence, quote, WRM's and DEQ's spoliation alone should resolve this claim; the appropriate sanction for spoliation is a finding that DEQ violated the

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buffer zone rule by not protecting this reach."
Are you aware of any additional argument made by conservation groups in their opening brief regarding spoliation?
A. I'm not sure I understand the question.
Q. Are you a --
A. Are you saying that this is the only place they mention spoliation?
Q. In their opening brief, this is the extent of the spoliation argument.
A. Okay.
Q. Is it reasonable to spend 5.8 hours summarizing this and perhaps what might be in the reply brief?
A. Absolutely.
Q. An entire day's work or three-quarters of a day's work to summarize three sentences in a footnote?
And the 5.8 hours here is significant in your opinion?
MR. DOLPHAY: Objection. Compound question. Asked and answered.
THE WITNESS: Well, I mean, I think it's a significant issue.
BY MR. STOCKTON:

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Q. Significant issue. Would you have taken 5.8 hours to summarize these arguments?
A. Well, I don't know about that. But does he say summarize?
Q. Pull and review MEIC's spoliation argument, update FOFCOLs with response to same.
A. Yeah. Well, I mean generally you can't, I can't, and courts have said that they can't second-guess, you know, a counsel's -- there's actually three cases that I can think of -- where you don't, the Ninth Circuit has said you can't second-guess professional judgment. That was cited in the AM4 case in the opinion and briefing and also in the Held case, so I'm not really in a position to second-guess.
Q. But your opinion is that the legal fees here incurred were reasonable, and your opinion is that 5.8 hours on this one issue is reasonable?
A. Yes.
Q. Okay. If we were to add all this together, and I guess first question, are you aware of any additional entries regarding spoliation in the time entries?
MR. DOLPHAY: Objection. Overbreadth.
THE WITNESS: I don't know if I can answer

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that off the top of my head.
BY MR. STOCKTON:
Q. Okay. Your opinion is they're significant, and these are the only entries referencing spoliation I was able to find.
Let's go ahead and add them up. 9/5/2023 by Mr. Adams was at most four hours. You and I disagreed a little bit on whether it was block billed, but let's just take the total number, 4 hours. On 9/7 he billed 2.2.
On 9/15 Mr. Adams billed 2.5. And then a year and a half later, Mr. Yemington spent 5.8 hours on January 23rd at most.
If we add those together, do you know how much that was?
A. I didn't add it up.
Q. Okay. Let's add it up. 4 plus 2.2 is 6.2. 6.2 plus 2.5 is 8.7. And 8.7 plus 5.8 is 14.5 hours. Do you have any reason to dispute my math?
A. No.
Q. I'm a lawyer, so you can dispute it if you want.
In your opinion, 14.5 hours at the absolute max on spoliation as referenced in the time entries is a significant amount of legal fees?

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A. Yeah. I think it is. I mean, that adds up. And that may not have been all of the time that -- I don't know. Maybe when in reviewing like the findings of facts and the conclusions of law of the hearing officer, I mean, he had spoliation paragraphs in there. They had to review all of that. So I think it's significant.
Q. If the mine and the union don't, or -- and -- or their lawyers don't specifically reference what they're doing in a time entry such that we can know later when they're trying to impose those fees, how is it fair if we can't identify the work done say on spoliation?
A. We can identify the work on spoliation and I think when you're looking at reasonableness and the Plath factors and lodestar, I mean you don't flyspeck every little entry.
Q. I'm asking you, I guess, is it reasonable to conclude that these entries were significant?
A. Yes.
Q. Okay. And you have identified no additional entries that you can recall today regarding spoliation?
A. Not as I sit here, other than, you know, as related to the findings of facts and conclusions

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of law, of -- you know, after reviewing both parties and also the hearing officer's and the around board; s adoption of those findings and conclusions.
Q. I'll go ahead and represent to you that the mine and the union's findings of fact, conclusions of law on spoliation, totaled paragraph 47 to 54. If I have that I accurately, that's seven paragraphs. Fair?
A. Okay.
Q. Is it reasonable for Mr. Yemington to have spent 5.8 hours reviewing the arguments and drafting seven paragraphs?
A. I think so. I could have done that.
Q. Would you have passed fees like that along from an associate working for you on a case?
A. It depends.
Q. Would you have done that in this case?
A. I can't second guess what -- I can't second guess that.
Q. So you're saying you won't second guess it or -- because your opinion is that the fees incurred here were reasonable and significant, and I am asking you about this particular opinion of yours.
If you were sitting in the reviewing managing attorney role, would you have passed them

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along?
A. I'm not sure I understand your question. Do I think this was reasonable, yes, I do.
Q. And by this, you're referencing all of the fees in this case?
A. Yes.
Q. Every single one of them in your opinion is reasonable --
A. Yes.
Q. There's not a single one that you would say that should removed?
A. Well, as, you know, as you evaluate it with the lodestar and the Plath factors, I would say that the fees were reasonable.
Q. Okay. And I guess a slightly different question which is, in your review of every single one of these fee entries, your opinion is every single one of them is reasonable?
A. Yeah. I took a very close look at them.
Q. Not a single one was improperly block billed, improperly vague, excessive in any way in your opinion?
MR. DOLPHAY: Objection. Asked and answered.
THE WITNESS: Well, I don't know what you

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mean by that. But to me that they were -- it was significant detail in order to recover them under MSUMRA.
BY MR. STOCKTON:
Q. And I guess maybe I'm misstating my question. Forgive me.
In your review of all of these fee entries, there was not a single one that you deemed was excessive, improper, improperly block billed, too vague, that you would have said, aww, that should not go along to the client or be passed along here?
A. When you say improperly block billed or vague, I don't know what your standard is for that. But as far as I'm concerned, they did a good job describing in detail what was required to recover -- to get paid first of all from Westmoreland. And to recover.
Q. And I guess I'll ask it one last time. Are there any fees in this that you say should not been considered reasonable, any fee entries in this entire case?
A. No. I think they're all reasonable.
Q. Your second portion of your opinion regarding significant legal expenses incurred regarded the motion to strike and the Anderson

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declaration. Right? This is that second piece of your opinion on pages 11 and 12. Correct?
A. Well, my opinions are at the end. My opinions are on pages 26 and 27. But are you breaking that down?
Q. On page 11 and 12, so we just got done talking about your opinion regarding the baseless spoliation claim in your opinion, and this undisclosed evidence, and those you conclude at the end of the paragraph on page 12, caused Westmoreland to incur significant legal feels and costs. Correct?
A. Are you talking about the motion practice page?
Q. No. It's right before that.
A. Oh.
Q. Paragraph -- beginning on page 11 and concluding at the top of 12?
A. Uh-huh.
Q. Do you see that?
We covered the spoliation side of that, but your other argument in that paragraph was that the conservation groups improperly relied on and disclosed evidence, and that at the end of the paragraph you conclude, you argue caused Westmoreland to incur significant legal fees and costs?

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A. Uh-huh.
Q. I want to transition to that.
A. Okay.
Q. Let's turn to the -- real quick, I guess. Did you analyze the entries specifically related to the motion to strike?
A. What I did was I had the docket sheet and I looked at the entries and I compared what was going on at the same time.
Q. Okay. And how many hours was spent on the motion to strike? Did you do that?
A. I couldn't tell you off the top of my head.
Q. Did you do that analysis?
A. No. I generally looked at them as required by the lodestar and Plath factors.
Q. Let's work through a few of these. Let's turn to page 34 of the fee entries on August 29th, 2023.
A. Page 24?
Q. 34.
A. Oh. Okay.
Q. And this is the first entry that I can find that references the motion to strike the Anderson declaration, and it's Miss Sarah Bordelon,

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1.5 hours. And then in that, she says, she, quote, review draft language on burden circulated by SR Yemington regarding MSUMRA contested case; review notes from JL Coberly regarding review of MEIC's statement of undisputed facts; videoconference with Samuel King and SR Yemington regarding coordination on responsive facts for MSUMRA contested case summary judgment, motion to strike Anderson declaration, and responses to MEIC's motion for summary judgment; follow up with litigation team regarding drafting plan for same.

Q. Did I miss anything in there?

A. I don't think so.

Q. Of that 1.5 hours, how much was spent regarding the motion to strike the Anderson declaration. Can you tell me from the fee entry?

A. Some time within 1.5 hours.

Q. But not the full time?

A. Probably not.

Q. We can't know, can we?

A. I don't know.

Q. Can you provide a reasonably certain calculation of how much of that fee entry related to the motion to strike Mr. Anderson's declaration?

A. I think a lot of work went into that. But

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I can't tell you how much of it it was.

Q. Let's turn to you Mr. Yemington's entry for that same day, a couple lines down. Mr. Yemington on August 29th, 2023 spent 6.7 hours doing, quote, continue drafting motion for summary judgment response briefs; attend to standing and evidentiary scope arguments; attend to correspondence regarding the same; conference with SC Bordelon and counsel for DEQ regarding motion to strike and opposition to motion for summary judgment briefing. Did I get that right?

A. Uh-huh. Yes.

Q. How much of the 6.7 hours that Mr. Yemington billed that day related to the motion to strike?

A. I don't know.

Q. We can't tell from the fee entry, can we?

A. Could be the entire amount. I don't know.

Q. Was the motion to strike inside the summary judgment motion?

A. Let's see.

Q. It was a separate motion, wasn't it?

A. Well, let's see. It's my recollection that the summary judgment -- MEIC summary judgment had a bunch of stuff in there about Anderson.

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Q. But I guess my specific question on the motion to strike, we can't tell how much was spent on the motion to strike versus responding to summary judgment versus standing arguments versus evidentiary scope arguments, regarding e-mails about all of that, we can't parse that out based on this fee entry, can we?

A. They could be all related.

Q. Do you think the standing argument is related to Mr. Anderson's declaration?

A. I don't know.

Q. So we can't know --

A. I don't.

Q. -- what Mr. Yemington was doing for what period of time on August 29th, 2023, can we?

A. I don't know.

Q. Let's turn to 9/7/2023, Mr. Yemington's time entry that day. It's on the next page at the top.

Mr. Yemington spent 5.5 hours on the September 7th, 2023, working on, quote, attend to motion to strike; attend to correspondence regarding the same; begin drafting the same; review MEIC disclosures and discovery responses to support the same; conference with S.C. Bordelon regarding motion

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for summary judgment response and SDF; attend weekly coal conference to discuss matter status and path forward. Did I read that right?

A. Yes.

Q. I guess my first question is what does attending to something mean? Have you ever used that in your billing entries?

A. Sure.

Q. And what is that?

A. Work on.

Q. Okay. Is it drafting? Is it thinking about? Is it researching? We can't know, can we?

A. Could be all those things.

Q. But we don't know?

A. Working on it, uh-huh.

Q. The weekly coal conference, how is that related to the Anderson motion to strike?

A. I don't know.

Q. We can't tell what Mr. Yemington in these 5.5 hours was doing regarding the motion to strike, nor -- compared to the coal conference call and Plath forward?

A. All seems to be related to the defense.

Q. Okay. So it's related to the defense, but it's whole case, right? But you couldn't tell me

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specifically what things here were related to Mr. Anderson, can you?
A. Well, that's not the standard. The point is not to flyspeck all these entries and second guess their professional judgment. I reviewed this in response -- I was asked to review this, the reasonableness using -- and I thought using the Plath factors and the lodestar was how Montana courts do it.
Q. In your opinion this is not a block bill, and it's all related to the same thing and you can tell that from the billing entry?
A. I think he did a nice job detailing what work was conducted in that 5.5 hours. I think it's a good description.
Q. How could we know the connection between when you state in your expert report was improper conduct and the time spent in this entry on 9/7/2023?
A. Say that again.
Q. How can we know the connection between the Anderson issue which you identified as improper in your expert report and what time Mr. Yemington spent on 9/7/2023?
Q. Do we know what was said in the coal conference call?

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A. I'm not sure I know what you're asking me. Why would it be important to know exactly how much time is spent? What was important to me is was it reasonable, was the amount of time reasonable?
Q. And you think 5.5 hours here is reasonably related to claim two?
A. I don't know if I'm saying that. I'm just saying that the time spent and the detail is reasonable.
Q. Let's go over to page 37 and let's go to Ms. Bordelon's time entry at the top there. September 29th, 2023. Do you see where I'm at?
A. Uh-huh, yes.
Q. Ms. Bordelon spent 1.2 hours that day. Quote, telephone conference with Samuel King (DEQ) and SR Yemington regarding approaches on response briefs, support in factual documents, and motion to strike; then a long redaction. Did I read that correctly?
A. Yes.
Q. Do you know what is behind that redaction?
A. No.
Q. Were you provided fee billing entries that were redacted or not?
A. No.

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Q. So the ones you received were not redacted?
A. I received just like this.
Q. Just like this, with redactions in it?
A. Uh-huh.
Q. So you don't know what is behind that redaction. Right?
A. Well, when I was looking at the docket sheet, sometimes I could figure it out.
Q. Okay. You were inferring, but you can't know for sure?
A. Right. Right.
Q. Okay. So I guess my question for you is how much of this time entry related to the motion to strike and how much related to, say, the undisclosed redacted portion? We can't know that, can we?
A. Sorry. Lost my focus. Say that again.
Q. How much time -- we can't know how much time was spent on the Anderson motion to strike, say, versus the redacted time entry, can we?
A. No.
Q. When someone puts in the time entry, the phrase "path forward," what does that mean?
A. Are you looking at a specific one here?
Q. No. It's replete throughout the time

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entries, but if you want to look at one for example on page 38, the time entry at the bottom, Mr. Yemington on October 16th spent 2.2 hours, quote, attend a motion for summary judgment response brief and motion to strike; attend to correspondence regarding the same; conference with Todd Briggs and SC Bordelon regarding Batie declaration and path forward, end quote.
A. Oh.
Q. What does path forward mean?
A. Well, I don't know what he means exactly but that is something I have used quite, you know, commonly. It just has to do with strategy and how -- what tasks, list of tasks that you need to do regarding whatever brief or motion that was pending or coming up with here. I have used path forward, been paid for.
Q. But from here we can't know particularly what the path forward relates to?
A. Well, we can't know, but we could look at the docket sheet and see what he was doing working on.
Q. So if someone says path forward on this date, we could look at the docket sheet and it generally regarded that?

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A. To me path forward is looking at the strategy and talking about what tasks need to be accomplished.
Q. That's not stated in this fee entry, is it? You're inferring that. Correct?
A. It's a pretty common thing to do.
Q. In your opinion the time spent to write the motion to strike Mr. Anderson's declaration was reasonably incurred and in your opinion unnecessary because conservation groups should not have proffered it. Is that a fair summary of your opinion on that -- that issue?
A. If they wanted his testimony, they should have disclosed it according to the scheduling order.
Q. Okay. And that's your opinion. I get that.
A. And it's the hearing officer's opinion. He found that in the findings of facts and the conclusions of law.
Q. And I guess my question for you, though, is, did you review the motion to strike and the -- and the statements made in it?
A. Yes.
Q. Okay. And when you are quoting depositions, for example, and you omit phrases

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relating, say, particular time or a caveat the deponent is making, do you insert an ellipses to indicate something was omitted from the quote or do you -- are you comfortable with quoting sworn testimony without putting an ellipses in?
MR. DOLPHAY: Objection. Outside the scope of the witness's retention.
THE WITNESS: Could you give me an example?
BY MR. STOCKTON:
Q. Let's go ahead and look through it.
(Whereupon, Exhibit 12 was marked for identification.)
BY MR. STOCKTON:
Q. I'm handing what I have marked as Exhibit 12. Am I right?
THE REPORTER: Yes.
BY MR. STOCKTON:
Q. And this document is titled brief in support of motion to strike the declaration of Bruce Anderson. Correct?
A. Yes.
Q. Okay. Go ahead and turn with me to page 18 of the motion. There's a paragraph at the bottom there that begins with "perhaps most alarming."

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Mr. Anderson's declaration directly contradicts his sworn deposition testimony. Despite conceding at deposition that the drainage housing wetland 4-2/2 is likely not intermittent, not sourced by springs and/or seeps, and in all probability above the local water table. Mr. Anderson's declaration revisits these questions and takes a position directly at odds with his sworn testimony, end quote.
Did I read that -- those two sentences correctly?
A. Yes.
Q. Okay. And then after that, there is a citation to Mr. Anderson's deposition transcript at lines 176:2 to page 179:2, but then a quote is put in the parenthetical. Do you see that?
A. Uh-huh.
Q. Okay. And that quote put in says, I did not -- quote, I did not see any springs or seeps while I was there. Those are primary indicators of a groundwater table that's above the adjoining terrain, and I didn't see that. So it tells me, in all probability, that the groundwater table was probably not above the elevation of the channel, end quote. And quote, it certainly made me question my assumptions about the intermittent status of the

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channel, end quote. Did I read that correctly?
A. Yes.
Q. So that right there is a quoted representation as to what Mr. Anderson stated in his declaration. Right?
MR. DOLPHAY: Objection. Outside the scope of the witness. The witness is here to testify regarding everything else in the present case.
BY MR. STOCKTON:
Q. In your opinion in this case, Ms. Laughner, is that the time and fees spent in the motion to strike Mr. Anderson, was reasonable and necessarily incurred and should be assessed against the conservation groups. Correct?
A. Yes.
Q. Okay. And I just read from that exact motion that you contend the fees for should be assessed. Correct?
A. Getting a little bit weary. I think so.
Q. Okay.
A. This is the -- okay.
Q. I'm handing you what I have marked as Exhibit 13, which is an excerpt of Mr. Anderson's deposition.
(Whereupon, Exhibit 13 was

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marked for identification.)
BY MR. STOCKTON:
Q. Did you read this in your review of this case?
A. Let's see. Did I? I think so. I don't think I read the declaration because it was already -- the hearing officer had already struck it.
Q. Okay. Well, let's -- I don't want to spend -- just all I want to do is focus in on this quote from Westmoreland's brief. And so turn with me to the third page of that declaration excerpt to page 176.
A. Wait -- oh, you mean the deposition?
Q. Yes, please.
A. Uh-huh.
Q. If you look at page 176 --
A. What page?
Q. 176. If you look down on page 19 or line 19?
A. Okay. 19, uh-huh.
Q. It begins with, so it tells me, and I would like for you to go ahead --
A. Wait, wait, wait. Let me find it. I found it.
Q. Go ahead and turn with me back to the

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prior exhibit where that quote is in the brief.
A. Uh-huh.
Q. The second line up at the end from the bottom. So it tells me. Do you see that?
A. Yeah.
Q. I'm going to go ahead and read from the brief, and I would like for you to follow along in the actual deposition transcript?
A. Okay.
Q. Okay. I'll read from the brief.
A. Okay.
Q. So it tells me, in all probability, that groundwater table was probably not above the elevation of the channel, end quote.
A. Uh-huh.
Q. Was there a portion left out of the mine's brief from the deposition.
MR. DOLPHAY: Objection. Outside the scope of the witness's testimony, relitigating issues of bad faith, and harassment.
THE WITNESS: Looks you the same to me.
BY MR. STOCKTON:
Q. If you look at Page 176 of the deposition.
A. Uh-huh.
Q. Line 20, or 19, so it tells me when I was

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there, and the phrase quote when I was there is not in the quote in the brief.
MR. DOLPHAY: Same objection.
BY MR. STOCKTON:
Q. Do you see that?
A. I'm not quite sure what you're getting at because on page 18 it says while I was there.
Q. There was a prior sentence, this is a later sentence. Right? So at the bottom that last sentence, so it tells me -- it starts on line 19 of the deposition. So it tells me when I was there that, and if you look at the brief it says, quote, so it tells me, in all probability.
MR. DOLPHAY: Same objection.
BY MR. STOCKTON:
Q. Correct?
A. Okay.
Q. So is it your opinion that the conservation group should be required to cover the fees regarding briefing containing a material alteration of deposition testimony?
MR. DOLPHAY: Same objection, plus assumes facts not in evidence. Mischaracterizes the testimony or the document.
THE WITNESS: Yeah. I would say you're

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mischaracterizing it.
BY MR. STOCKTON:
Q. Did I read the quote wrong?
A. Well, I mean, it's very clear he's talking about when he was out there in both documents to me. And I do think it's fair to recover fees for that.
Q. Okay. Would you have put an ellipses in that quote to indicate the omitted phrase?
MR. DOLPHAY: Same objection.
THE WITNESS: I would try to be accurate.
BY MR. STOCKTON:
Q. You would have put an ellipses in?
MR. DOLPHAY: Same objection.
THE WITNESS: I don't think that's misleading at all.
BY MR. STOCKTON:
Q. I guess maybe that's miss -- I had a poorly worded question, but would you have put an ellipses in to indicate the removed language?
A. I don't know. I can't second-guess that.
Q. In your own work, would you have done that if you were writing this?
A. I would try to be accurate.
Q. And I guess if you would have mistakenly drafted that quote in a brief, you yourself, then you

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later came to learn that you had not drafted it accurately either with an ellipses or adding the words in, what would you have done in later briefing regarding acknowledging that or fixing that? Would you have changed it going forward?

MR. DOLPHAY: Objection. Same objection. Outside the scope.

THE WITNESS: I would try to make it accurate.

BY MR. STOCKTON:

Q. Would you have stated in briefing to the tribunal that the prior briefing had been incorrect and maybe drop in a footnote note that you were correcting the record in later briefing?

MR. DOLPHAY: Same objection.

THE WITNESS: I don't know. I would -- depends on if it really mattered, I guess, because both of these documents say while I was out there. I would not mislead the tribunal like MEIC has.

BY MR. STOCKTON:

Q. You would have corrected the quote, though?

MR. DOLPHAY: Same objection.

THE WITNESS: Same answer.

BY MR. STOCKTON:

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Q. Transitioning to the next part of your expert report regarding motions practice, this is on page 13.

MR. DOLPHAY: Is this a -- we've been going for an hour, Mr. Stockton. Is this a new topic?

MR. STOCKTON: What was that, Matt?

MR. DOLPHAY: We've been going for an hour. Is this a new topic?

MR. STOCKTON: It's a new topic. We can take five minutes.

MR. DOLPHAY: Thank you.

MR. STOCKTON: Yep. Going off the record.

(Whereupon, a break was then taken.)

BY MR. STOCKTON:

Q. All right. Ms. Laughner, I'm moving to page 12 of your expert report titled motions practice.

Your opinion here is that Westmoreland --

A. Wait, wait. Let me find it.

ZOOM TECHNICIAN: Could we get the sound back on, please?

MR. DOLPHAY: We're back on now.

ZOOM TECHNICIAN: Thank you.

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BY MR. STOCKTON:

Q. All right. Ms. Laughner, I'm moving to page 12 of your expert report titled motions practice. Your opinion here is that Westmoreland --

A. Wait, wait. Let me find it.

ZOOM TECHNICIAN: Could we get the sound back on, please?

MR. DOLPHAY: We're back on now.

ZOOM TECHNICIAN: Thank you.

BY MR. STOCKTON:

Q. Turning to page 12 of your report, Ms. Laughner, titled motions practice here --

A. Uh-huh.

Q. -- your opinion is that Westmoreland was compelled and engaged to respond to extensive motions practice and that you conclude is generally a -- conservation groups have repeatedly multiplied the proceeding and required Westmoreland to expand considerable time and efforts responding to motion briefing and hearings. That's -- you're concluding with that section to the top of page 13. Is that correct?

A. Yes.

Q. Okay. And I want to work through a few of these. So the first thing at the top of page 12

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there, you referenced motions for protective orders. And did you review both of those motions for protective orders?

A. Yes.

Q. And were those filed by conservation groups, or were they filed by Westmoreland and the mine?

A. Let's see. I'm trying to remember. Motion for protective order for the inspection was filed by the mine.

Q. Okay. And then there's a second protective order or ruling regarding a motion for protective order. Do you recall that one?

A. I'm trying to think. Big docket.

Q. Okay.

A. Let's see. Refresh my memory.

Q. We'll get to it in a second.

A. Okay.

Q. Let's start with the first one. But both of them were not brought by the conservation groups. If you want to look at the orders, we can. But my overarching initial question is, how did the conservation groups multiple this proceeding if the -- regarding these two motions of protective orders if they were brought by the mine, not by conservation

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groups?
A. Well, Westmoreland was -- and the union was forced to file a motion for protective order.
Q. And so you think because they were -- the conservation groups requested the site inspection?
A. Right.
Q. That's what made it improper?
A. Yes.
Q. Okay. Even though the hearing examiner here explicitly allowed the site inspection to go ahead?
A. Right.
Q. And so it was improper even though ordered to proceed by the hearing examiner?
A. Right. Well, it was improper to -- it was improper to -- I mean, it was worthwhile with Westmoreland to resist the site inspection.
Q. This is not in -- this is not an instance where the conservation groups multiply the proceedings with a motion?
A. Oh, yeah, they did.
Q. This protective order was not filed by conservation groups.
A. Right.
Q. Or motion for protective order, I should

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say.
A. Right.
Q. So they did not multiply the proceedings by filing this motion. Correct?
A. Westmoreland had to file it to protect themselves.
Q. And the hearing examiner permitted it to go ahead by order?
A. Right. With certain conditions.
Q. Okay. And so I guess my question, though, is, is your expert opinion here says on page 12 that motions practice Westmoreland was compelled to engage in needless motions practice because of conservation groups' work. And I guess I'm trying to understand how conservation groups can be responsible for the mine's own motions.
MR. DOLPHAY: Objection. Misstates the statement on page 12.
THE WITNESS: I don't see the distinction you're making because Westmoreland was forced to protect themselves and seek a protective order which the hearing officer did not grant but put on conditions.
BY MR. STOCKTON:
Q. But the site inspection was ordered to

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proceed ahead. Correct?
A. With conditions. Right. So it took time and money to file that motion.
Q. What about the site inspection was improper if it was ordered here?
A. Well, for all the reasons that Westmoreland put in their brief.
Q. Okay. Your opinion is -- what Westmoreland said in their brief is your opinion?
A. It was legitimate in my -- my view.
Q. Did you come to any independent conclusion or analysis of that?
A. Yes.
Q. Did you disagree in any way with Westmoreland's arguments or 100 percent agreed with them?
MR. DOLPHAY: Objection. Outside the scope.
THE WITNESS: Yeah. I don't remember the specifics.
BY MR. STOCKTON:
Q. In your opinion was the site inspection bad faith?
MR. DOLPHAY: Objection. Outside the scope. Board has already determined bad faith and

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harassment per the board order.
(Whereupon, Exhibit 14 was marked for identification.)
BY MR. STOCKTON:
Q. On page 13 of your expert report, Ms. Laughner, you make the statement that as explained about conservation groups also engaged in procedural abuses and gamesmanship that increased the burden on Westmoreland's counsel. And that's under your heading regarding bad faith litigation tactics.
MR. STOCKTON: So my questions regarding bad faith are directly tied to Ms. Laughner's opinions regarding the same. I'll go ahead an just make that clear on the record.
BY MR. STOCKTON:
Q. But returning to my question here, Exhibit 14 that I put in front of you, was it -- was it in bad faith to seek a site inspection in this case?
A. Yes. I stand by what I put in my opinion. This whole challenge was bad faith.
Q. In Exhibit 14 -- well, and I guess maybe let's refer to that. This entire proceeding was bad faith is what you said. Right?
A. Right.
Q. So is it your opinion that claims one and

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three were bad faith as well?
MR. DOLPHAY: Objection. Outside the scope as to the other claims.
THE WITNESS: That's what the hearing officer found or not -- let's see. That's what the board found.
BY MR. STOCKTON:
Q. It's your opinion that the board concluded conservation groups' entire litigation claims one, two, and three were done in bad faith?
A. Are you asking me about the board or the hearing officer?
Q. Your testimony was just that the board examiner or the board, not the examiner?
A. Yeah. The board found in -- found bad faith.
Q. And your opinion, though, was that this entire proceeding was in bad faith?
A. Correct.
Q. Including claims one and three?
MR. DOLPHAY: Same objection on the other claims.
THE WITNESS: Let's see. I didn't -- I didn't study one and three.
BY MR. STOCKTON:

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Q. So your conclusion that this entire proceeding was in bad faith should be corrected maybe to narrow that down? Yes?
A. No. I think the entire proceeding was in bad faith.
MR. DOLPHAY: Objection on the other claims as to outside the scope.
BY MR. STOCKTON:
Q. I've handed you Exhibit 14, which is the hearing examiner's order regarding motion for protective order here. And I just wanted to put it in the record here and ask you, your understanding is that the site inspection was ordered to proceed as requested by MEIC and Sierra Club with certain restrictions put in place. Correct?
A. That's my recollection.
Q. And it's your opinion in this case that it was bad faith for the conservation groups to ask for something that the hearing examiner granted?
MR. DOLPHAY: Objection as to outside the scope.
THE WITNESS: That's a little bit confusing to me. Your question is.
BY MR. STOCKTON:
Q. Your opinion in this case is that having

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to bring motions for protective orders caused this case to be -- these proceedings to be multiplied. Correct?
A. Not just bringing the motion, but the entire issue of the motion.
Q. Okay. So the site inspection. How can it unreasonably be multiplying the proceedings if the hearing examiner permitted it to go ahead?
A. Westmoreland was forced to bring the protective order -- motion for protective order.
Q. Would Westmoreland have agreed to the limitations the hearing examiner put on it and allow the inspection to occur?
MR. DOLPHAY: Objection. Form.
THE WITNESS: Yeah. I don't understand that question. Would Westmoreland have agreed? I don't -- I don't know.
BY MR. STOCKTON:
Q. And so conservation groups asked for a site inspection. Correct?
A. I believe so, yeah.
Q. And then presumably Westmoreland objected. Correct?
A. Yes.
Q. Okay. And then Westmoreland sought a

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protective order. Correct?
A. Yes.
Q. And the hearing examiner permitted the site inspection to happen with a couple restrictions upon it. Correct?
A. Yes.
Q. Okay. So how -- in your opinion how was asking for the site inspection unreasonably multiplying the proceeding?
A. Because Westmoreland was forced to seek a motion for protective order.
Q. Is it your opinion that whenever a party has to seek a protective order, the other side's request is needlessly multiplying the proceeding?
A. Let's see. Does that question make any sense? I'm trying to think of that. Could you repeat it.
Q. I'll have the court reporter read it back.
(Whereupon, the requested record was read.)
THE WITNESS: I don't know if you could make that general statement. My opinion is that the hours spent in doing that were reasonable.
BY MR. STOCKTON:
Q. Your opinion back when we talked about the

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evidentiary scope is that certain evidence outside the four corners is -- was permitted in your practice correct?
A. No. That's not exactly what I said but generally.
Q. And so a site inspection here would be relevant under your interpretation of the evidentiary scope?
MR. DOLPHAY: Objection. Outside the scope of the witness's retention.
THE WITNESS: Yeah. I don't know.
BY MR. STOCKTON:
Q. So you have rendered an opinion in this case that the site inspection requests needlessly multiplied the proceedings. Correct?
A. Yes.
Q. Okay. And your opinion is that the evidence outside the four corners of the permit application may be considered. Correct?
A. If it's related to what's -- if it's related.
Q. And here a site inspection was ordered. So under your definition of the evidentiary scope, this was a relevant area of inquiry. Correct?
A. I don't think so. I think it was out of

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line for the -- for the site inspection to take place.
Q. And so you would disagree with the hearing examiner here?
A. Probably.
Q. And so you think it was out of line to -- out of line to order it to go ahead?
A. For the reasons that Westmoreland put in their motion.
Q. In your review of this proceeding and all the things that you reviewed --
A. Uh-huh.
Q. -- are there any arguments at all made by Westmoreland that you disagree with or think were unreasonable or unsupported?
MR. DOLPHAY: Objection. Outside the scope of the witness's testimony -- or retention. Overbroad.
THE WITNESS: Yeah. That is a really broad question I can't answer. I mean, as I was reading it, I was like, you know, should there been a new paragraph here or section, that sort of thing.
BY MR. STOCKTON:
Q. I would like you to answer the question that's pending.

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A. Oh, was there anything that I didn't agree with?
Q. Uh-huh.
MR. DOLPHAY: Same objection.
THE WITNESS: I can't answer that off the top of my head. I would have to look at something specifically. I would say that I agree that their fees and the rates that I examined under the play factors and considering the board's -- or the hearing examiner's findings of facts and conclusion of law as well that what they did was reasonable.
BY MR. STOCKTON:
Q. To your knowledge, did the board rely upon or cite the site inspection in the final decision in this case?
A. The hearing examiner?
Q. The hearing examiner or the board's adoption of the hearing examiner's final order.
A. I think there were findings of facts about the site inspection.
Q. So the site inspection was cited and relied upon in the final order in this case?
A. I think so.
Q. But in your opinion it was improper to ask for it?

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MR. DOLPHAY: Objection. Outside the scope. You can answer.
THE WITNESS: It was reasonable to file a motion for a protective order.
BY MR. STOCKTON:
Q. And again, my question, though, was, was that your opinion was, is that your opinion was that it was improper to seek the site inspection. Correct?
MR. DOLPHAY: Same objection.
THE WITNESS: I don't know if "improper" is the right word. I would say it was reasonable to seek a protective order.
BY MR. STOCKTON:
Q. Well, how would you characterize the site inspection request then?
A. Reasonable. What do you mean?
Q. How would you characterize the site inspection request if not proper?
A. Oh, the request?
MR. DOLPHAY: Objection. Outside the scope.
THE WITNESS: How would I characterize the request for a site inspection?
BY MR. STOCKTON:

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Q. Uh-huh.
A. I don't know, because I mean, you can ask and the other party can file a motion for a protective order. So for the reasons that were in the motion for protective order, that's how I would characterize the request.
Q. Handing you what I have marked as Exhibit 15.
(Whereupon, Exhibit 15 was marked for identification.)
BY MR. STOCKTON:
Q. This is the second protective order -- or second order regarding a protective order in this case. Have you reviewed this document, Ms. Laughner?
A. Let me look at it. Oh, yes.
Q. Okay. And in this case this was again Westmoreland, the mine, seeking a protective order from the board, correct, or from the hearing examiner?
A. Looks like it.
Q. Let's turn to page 4, the top of page 4 there. This is in the analysis section by the hearing examiner. There he states, quote, moreover, apart from a general reference to MRCFP 26, DEQ slash WRM slash local 400 cites to no legal authority in

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support of their argument, end quote.
Did I read that correctly?
A. Yes.
Q. Okay. And the hearing examiner here denied the request for a protective order. Correct?
A. Yes.
Q. And in your opinion is it reasonable for Westmoreland and the mine to claim their fees for bringing a motion where they failed to site legal authority in support of their argument?
A. Yes.
MR. DOLPHAY: Objection. Misstates the testimony.
BY MR. STOCKTON:
Q. The next thing that you mention in your expert report here on page 12 was that Westmoreland was compelled to engage and respond -- and I'm skipping over a couple motions we already worked on a little bit -- to this motions to strike. You're aware that -- so we have talked about the one -- the affirmative one that Westmoreland brought regarding Mr. Anderson. Correct? But there was also another motion to strike brought by the conservation groups. Are you aware of that motion?
A. Yes.

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Q. Okay. What was that other motion to strike about?
A. I think it was about an overlength brief.
Q. And how did that motion to strike resolve? Did conservation groups at least win in part?
A. No.
Q. I'm handing you what I have marked as Exhibit 16.
(Whereupon, Exhibit 16 was marked for identification.)
BY MR. STOCKTON:
Q. Why don't you turn with me to the end of that. This is the order denying the motion to strike in part and granting it in part. There the conservation groups' motion to strike was partially successful. Correct?
A. Let's see. Granted in part.
Q. And do you think it was improper or incorrect for conservation groups to move to strike the overlength reply brief in this case?
MR. DOLPHAY: Objection. Outside the scope of the witness's testimony -- or her retention.
THE WITNESS: Well, the conservation groups didn't get what they were moving for, but they were allowed to file a surreply brief.

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BY MR. STOCKTON:
Q. Okay. And so your opinion is that seeking this relief needlessly multiplied the proceeding even though the conservation groups were granted an opportunity to respond instead of striking the overlength brief by the mine?
A. Say that again.
Q. Your opinion is that this motion to strike filed by the conservation groups as you note on page 12 needlessly multiplied these proceedings. Correct?
A. Yes.
Q. How can a motion that is granted in part needlessly multiply proceedings?
A. Well, it didn't make sense to me that there was a surreply brief was necessary, and this whole -- I mean, the time that Westmoreland had to spend reviewing it and dealing with this whole issue cost them more -- cost the client more money.
Q. So in your opinion it's reasonable to assign or recover fees regarding responding to this motion to strike even though the conservation groups at least partially prevailed?
A. Yes. I mean, it's consistent with what has happened in the AM4 case and other cases in Montana.

DRAFT

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Q. As you note on page 13, you believe that certain actions by the conservation groups regarding this proceeding were done in bad faith. Was the motion to strike that the conservation groups filed a bad faith act in your opinion?

MR. DOLPHAY: Objection. Legal conclusion.

THE WITNESS: Yeah. The whole challenge to the permit was done in bad faith in my opinion.

BY MR. STOCKTON:

Q. So even a motion that the conservation groups prevailed in part on is -- is considered bad faith?

A. Same -- same answer.

Q. Similar question regarding the motion to assign a hearing examiner, in your opinion the motion to assign a hearing examiner, was that a bad faith act?

MR. DOLPHAY: Objection. Outside the scope. Objection. Question of law.

THE WITNESS: Well, the board has already found bad faith.

BY MR. STOCKTON:

Q. You issued legal -- or you've issued an expert opinion in this case on page 13 that the

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conservation groups engaged in bad faith litigation tactics. I'm merely asking you about your opinion on this. Was the motion to assign a hearing examiner a bad faith act?

MR. DOLPHAY: Same objection.

THE WITNESS: I think everything that relate to the challenge of it was a bad faith act.

BY MR. STOCKTON:

Q. And I guess we can run through these real quickly. We could probably go pretty quickly if that's your opinion. Number 3, was filing a notice of supplemental authority a bad faith act?

MR. DOLPHAY: Same objection.

THE WITNESS: Yes.

BY MR. STOCKTON:

Q. And was filing a petition for immediate review with the district court under 2-4-701 Montana Code Annotated a bad faith act?

A. Yes.

MR. DOLPHAY: Same objection.

BY MR. STOCKTON:

Q. Was filing a motion to stay these proceedings while the immediate appeal preceded a bad faith act in your opinion?

MR. DOLPHAY: Same objection.

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THE WITNESS: Everything related to the challenge was a bad faith act.

BY MR. STOCKTON:

Q. The motion at the district court to accept immediate review, in your opinion that was a bad faith act?

MR. DOLPHAY: Same objection.

THE WITNESS: Same answer.

BY MR. STOCKTON:

Q. Filing an amended complaint and petition for immediate review at the district court in your opinion was a bad faith act?

MR. DOLPHAY: Same objection.

THE WITNESS: Everything related to the challenge of the permit was a bad faith act.

BY MR. STOCKTON:

Q. And everything related to defending the fee claim is also bad faith in your opinion?

MR. DOLPHAY: Same objection.

THE WITNESS: I think you asked that backwards.

BY MR. STOCKTON:

Q. So a number of the things that we have actually talked about here occurred at the district court regarding this fee proceeding?

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A. Uh-huh.

Q. Do you believe that those were also bad faith acts?

A. Yes.

Q. Do you believe filing a motion for a TRO and alternative writ at the district court was a bad faith act?

MR. DOLPHAY: Same objection.

THE WITNESS: Everything related to challenging the permit.

BY MR. STOCKTON:

Q. And that was regarding the fee petition but same answer for you. Correct?

MR. DOLPHAY: Same objection.

THE WITNESS: What was your whole question?

BY MR. STOCKTON:

Q. A number of these motions and things that you list here on page 12 of your expert report involve actions taken either regarding this fee proceeding or actions taken at the district court regarding the fee proceeding. Is taking the appeal and filing motions at the district court a bad faith act in your opinion?

MR. DOLPHAY: Same objection.

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THE WITNESS: Yes.
BY MR. STOCKTON:
Q. And I guess you stated that everything regarding challenging the permit was bad faith in your opinion. Correct?
A. Right.
MR. DOLPHAY: Same objection.
BY MR. STOCKTON:
Q. In your opinion is there any nonbad faith act in this permit proceeding taken by the conservation groups?
A. Oh, gosh.
MR. DOLPHAY: Wait. Objection again to -- she's only been asked to opine on claim two, reasonableness of fees, not the rest of it.
BY MR. STOCKTON:
Q. You can answer.
A. I can't answer because it's a really broad question.
Q. As it relates to claim two in this proceeding, are there any actions by conservation groups you would say were not done in bad faith?
MR. DOLPHAY: Same objection. Outside the scope of what she's been retained to do, which is analyze the reasonableness of the attorney fees.

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THE WITNESS: Yeah. So I think that the -- the fees that I reviewed are reasonable. I think the rates charged are reasonable.
BY MR. STOCKTON:
Q. So shifting -- I guess I'll direct your attention to page 13 of your expert report where you make the assertion that the conservation groups engaged in bad faith litigation tactics. Correct?
A. Yep.
Q. So you have rendered an opinion on the litigation tactics of conservation groups. Correct?
A. Yes.
MR. DOLPHAY: Objection. Misstates the testimony.
But go ahead.
BY MR. STOCKTON:
Q. Where did I misstate your expert opinion regarding bad faith litigation tactics on page 13?
A. My opinion is at the end of the -- my opinions are on page 26 and 27.
Q. So looking at page 13 of your expert opinion, did you render an opinion that the conservation groups engaged in bad faith tactics?
A. I do believe that they did engage in bad faith litigation tactics. That's what I believe.

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Q. And then just asking you about your opinion rendered on page 13, were any of conservation groups' actions in this proceeding not in bad faith in your opinion?
MR. DOLPHAY: Objection. Outside the witness's scope of retention and overbroad.
THE WITNESS: Yeah. I can't -- I can't answer that because -- I mean, I could give you an example. Like when Doug -- Bruce Anderson's deposition was noticed up and he appeared at his deposition. That's not bad faith. So I mean, I can't answer your question because it's too broad.
BY MR. STOCKTON:
Q. Okay. Okay. And that's precisely what I was getting at, Ms. Laughner, is that your opinion is that this entire proceeding was done in bad faith. Correct?
A. Right.
Q. So let's --
A. Let me just correct that. The challenge was in bad faith, is what I had said before, not the entire proceeding.
Q. So challenging the permit was in your opinion bad faith?
MR. DOLPHAY: Are you done?

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MR. STOCKTON: I'm asking her what she just said.
MR. DOLPHAY: I know. I want to put in an objection. Objection. Outside the scope. She's been requested to testify to the reasonableness of fees as to content. Right?
MR. STOCKTON: I object to the coaching in your objection.
MR. STOCKTON: Can you go ahead and read back the question?
(Whereupon, the requested record was read.)
THE WITNESS: Yes.
MR. DOLPHAY: And my objection,
BY MR. STOCKTON:
Q. Okay. Your opinion is regarding these bad faith litigation tactics. How do you define bad faith as you state in page 13 of your report?
A. Whenever I see wrongdoing, like lying, cheating, stealing, I would say that's bad faith.
Q. Lying and cheating are your examples of bad faith?
A. And stealing.
Q. And stealing. Okay. Are there -- are you rendering an opinion that stealing occurred in this

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case?
MR. DOLPHAY: Objection. This is outside the scope. The board's already found bad faith.
Go ahead.
THE WITNESS: My opinions are on page 26 and 27 of this report.
BY MR. STOCKTON:
Q. And I guess I'm focusing in on your paragraph regarding bad faith litigation tactics on page 13 and asking you about your -- your standard that you use to reach that conclusion.
A. Uh-huh.
Q. And so you had said lying, cheating, and stealing are bad faith acts.
A. Or worse, yeah. Uh-huh.
Q. Is there any -- do you have any examples of stealing that you cite or relied upon in reaching your opinion on page 13 of this?
MR. DOLPHAY: Same objection.
THE WITNESS: My opinions are page 20 -- whatever it is -- 20 -- my opinions are on page 26 and 27.
MR. STOCKTON: I'll go ahead and have the question read back.
(Whereupon, the requested

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record was read.)
THE WITNESS: My opinions are on page 26 and 27. I could give you my belief about lying, cheating and stealing.
BY MR. STOCKTON:
Q. And I guess my question, though, was, in your conclusion that there was bad faith litigation tactics, you defined three things that could constitute that, and I'm just exploring them one after another.
A. Uh-huh.
Q. And so concerning your paragraph on page 13 regarding bad faith litigation tactics, were there any stealing examples that you relied upon in this paragraph in reaching this conclusion here?
A. Yes.
Q. What stealing occurred in this case?
A. DEQ, starting in 2017 until 2021, spent an exhaustive amount of time working on this case and not reviewing the entire record, and bringing the challenge which was baseless took up their time, wasted BER time, so that's stealing time to me.
Q. And that's the entirety of your opinion regarding stealing being bad faith in this case?
A. I don't know if it's my entire feeling,

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that's what I think.
Q. Anything else on specifically stealing that you have not already articulated?
A. The time taken up is a problem. It wasn't right.
Q. Anything else that you would add to that?
A. Not as I sit here.
Q. I want to exhaust your knowledge on this. Any additional things regarding stealing that you can think of?
A. That's my answer.
Q. The second thing you said here, cheating. What was in your opinion as it pertains to paragraph on page 13 of your report do you consider cheating in this case?
A. My opinions are page 25 and 26 of this report. My belief is that cheating occurred when MEIC did not comply with the scheduling order and tried to bring in extra evidence.
Q. So that was Bruce Anderson's declaration, and that is, you think, is cheating in this case?
A. Yes.
Q. So is untimely disclosure in your opinion cheating?
MR. DOLPHAY: Objection. Outside the

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scope. Legal conclusion.
THE WITNESS: That's the specific example I can think of.
BY MR. STOCKTON:
Q. Okay.
A. Not following -- not following the rules.
Q. Have you in your entire legal career ever filed or done something after a deadline in a scheduling order?
A. I don't think so.
Q. Never? Not once?
A. Same answer.
Q. Never?
MR. DOLPHAY: Objection. Asked and answered.
BY MR. STOCKTON:
Q. And then what do you maintain in this case was lying?
A. What comes to mind is the completely baseless and made-up assertion that the coulee was below the water table.
Q. Okay. So your opinion is that conservation groups' legal argument regarding the -- or arguments regarding the water table was lying?
MR. DOLPHAY: Objection. Outside the

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scope.
THE WITNESS: Yeah. It was a lie.
BY MR. STOCKTON:
Q. Any other things that you maintain constituted lying in this case?
MR. DOLPHAY: Same objection.
THE WITNESS: That's what comes to mind as I sit here right now.
BY MR. STOCKTON:
Q. And this is my opportunity to ask you questions. Have I exhausted your knowledge on your opinion regarding lying that occurred in this case?
MR. DOLPHAY: Same objection.
THE WITNESS: My opinions are on page 26 and 27, and they relate to the reasonableness of fees and the rates charged. That's what I was asked to do.
BY MR. STOCKTON:
Q. But you rendered an opinion on page 13 of bad faith litigation tactics, and you've defined that as lying, cheating, and stealing. And so I'm asking you if there is any other examples of lying that you have not stated today thus far?
MR. DOLPHAY: Objection. Misstating the testimony.

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THE WITNESS: Yeah. There are, but I can't think of any right now. But as I was going through reading the documents, there were a lot of misrepresentations.
BY MR. STOCKTON:
Q. And can you go ahead and cite them for me today?
A. No.
Q. And are they cited in your report?
A. That's not what my report was about.
Q. Is misquoting testimony lying in your opinion?
MR. DOLPHAY: Same objection as earlier.
THE WITNESS: I don't know of an example of that.
BY MR. STOCKTON:
Q. Are there any other examples of bad faith litigation tactics as you discuss on page 13 of your report that we have not discussed?
A. Oh, gosh, well, one that comes to mind is the wild goose chase of changing the -- changing the claim.
Q. What do you mean by that?
A. Well, trying to cast it as a legal claim. Then it becomes a factual claim. Then it becomes a legal claim.

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Q. And if we wanted to understand as we discussed earlier what conservation groups' claims were in this case, we should look at their pleading, their notice of appeal. Correct?
A. No. I think we should look at the findings of fact and conclusions of law.
Q. So to understand a party's arguments or claims any a case, we should not look at their complaint but perhaps look at just the verdict at the end of the trial?
A. The hearing officer probably did look at the complaint, but in his opinion -- or in his order. That's what I paid attention to.
Q. So you didn't pay attention to the notice of appeal?
A. That's not what I said.
Q. So you said you paid attention to a hearing examiner's conclusions. My question is, did you pay attention to the notice of appeal to understand petitioner's claims in this case?
A. I read it, but I relied on the findings of facts and the conclusions of law.
Q. I would like to transition to the one-third allocation, which is your next opinion here

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on page 13. Your opinion is that one-third of Westmoreland's total hours is a reasonable allocation of the fees regarding claim two. Correct?
A. I think you said that right.
Q. What were the factors that you relied upon to reach that conclusion?
A. Most of the time was spent on that. There were -- I mean, just what I said in my first paragraph there, end of B -- or II rather.
Q. Your opinion there in that paragraph is claim two is the most fact intensive and technically demanding. You explain why. You say those things and getting involved in a site inspection and motions practice regarding the inspection. Correct?
A. You read that in part.
Q Is that a fair summary of your opinion on why one-third is a reasonable and conservative allocation?
A. Definitely it was very fact intensive.
Q. Let's do the math real quick. In your report you note that there was 2,787.2 hours incurred from commencement to entry of the final order. We can go to the section of your report on that if you would like, but I believe I'm remembering it. Page 10. Was that correct?

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A. Can you read back the question?
(Whereupon, the requested record was read.)
THE WITNESS: Yes.
BY MR. STOCKTON:
Q. Okay. And so your conclusion is one-third is reasonable, and if we do the math that is 929.05 hours. Can we round to 929 for ease of our discussion today?
A. I didn't do the math.
Q. In your opinion 929 hours is reasonable for the defense of the claim two?
A. I guess.
Q. What time entries did you specifically review to reach your one-third conclusion?
A. I reviewed all the claim entries.
Q. Every single one?
A. Yes.
Q. Did you keep a log or a notation as to this is regarding claim two, this isn't, this is, this isn't, to come to your one-third conclusion?
A. No. I looked at the totality of it.
Q. Did you do any confirmation in your conclusion by, say, looking at time entries for a one-month period and analyzing what they specifically

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related to and see if that added up to one-third or not?
A. No. I looked at the total.
Q. Did you review the claim entries in this case to analyze but for bringing claim two, would the mine have had to engage in that work regardless?
A. I don't know what you mean by that.
Q. Presumably some of the fee entries in this case relate to claim one. Correct?
A. Probably.
Q. Presumably some of the fee entries in this case relate to claim three. Correct?
A. Probably.
Q. Presumably some of the fee entries in this case relate to the standing arguments. Correct?
A. Yes.
Q. Presumably some of the fees relate to specifically claim two. Correct?
A. Yes.
Q. Presumably some of the fee entries relate to the spoiliation argument. Right? Correct?
A. Yes.
Q. Okay. And so my question is, did you do an analysis of but for bringing claim two, would the mine have had to incur this work in this proceeding?

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So say claim two was not in this case. Did you do an analysis of what would have been incurred if claim two was not present?
A. Gosh, that sounds really speculative.
Q. You can answer my question.
A. No.
Q. Let's go ahead and look at those set of fees in front of you. Let's turn to August 2022. Page 3E is the first time entry for August 2022, and we're going to go through a number of these time entries.
The first entry in August is one by a Mr. Martin for 1.3 hours. Do you see that?
A. Yes.
Q. Okay. Does this entry refer to claim two?
A. Yes.
Q. How?
A. Well, it's pretty basic to the entire litigation.
Q. Is there any mention of claim two in this?
A. No. But this is not what courts do. They don't go and flyspeck every little entry.
Q. Did intervening in the case have anything to do specifically with claim two?
A. Absolutely.

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Q. If claim one and three had only been brought, would they still have had to intervene?
A. I'm only focused on claim two.
Q. So my question, though, is, if claim two wasn't present, would the mine still have intervened? Had intervened? Sought to intervene?
A. I can't answer that question.
Q. Why can't you answer that?
A. I wasn't counsel to Westmoreland at that time.
Q. But you have offered an opinion that one-third of this entry, correct -- your opinion is that one-third of all the entries are reasonably allocated to claim two. And I am asking how this particular entry, how one-third of it relates specifically to claim two.
A. My opinions are page 25 and 26, and my opinion generally is that a one-third allocation is more than fair. And the courts don't look at individual entries like this and flyspeck them. They look at reasonableness overall.
Q. So my question, I guess, is, is specifically, though, how is one-third of this time entry related to claim two?
A. I guess I would give you the same answer.

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Q. How is the redaction in this entry related to claim two?
A. A one-third allocation of all the entries I think is fair.
Q. And I think maybe you miss -- I probably misstated my question. But how is the redaction here -- how is one-third of the redaction related to claim two?
A. I think I would give you the same answer.
Q. And what was that?
A. That one-third allocation of all the entries is reasonable.
Q. Let's turn to Mr. Martin's entry on 8/3/2022. He billed .4 of an hour regarding e-mail correspondence to the mine personnel regarding DEQ's position in this case. Correct?
A. I'm sorry. You lost me.
Q. This is the entry by Mr. Martin 8/3/2022. He billed .4 for an e-mail correspondence with WRM personnel regarding DEQ's position. Correct?
A. Looks like you read that right.
Q. Okay. And how is one-third of this related to claim two?
A. One-third of all the entries is a fair way to -- is a fair way to allocate the cost.

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Q. Let's turn to Mr. Martin's entry on August 9th, 2022. In there he billed 1.8 hours for, quote, further review of arguments concerning cumulative impacts semi-colon, review related correspondence semi-colon, telephone conference with S.C. Bordelon regarding content of argument, end quote.
Do you recall which claim was the cumulative impact claim?
A. I think I do.
Q. And what one what was it?
A. Well, some of the discussion was intermixed with all three of them, but I think that was primarily number one.
Q. Okay. So how does Mr. Martin's time entry for 1.8 hours here relate to claim two if the cumulative impact claim was claim one?
A. One-third of all of the entries and time is a fair way to allocate. Courts do not flyspeck and second-guess the professional judgment.
Q. Let's look at August 15, 2022, Ms. Bordelon's time entry that day for 2.2 hours.
A. What date?
Q. August 15, 2022.
A. I don't see that. August 16th?

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Q. I see 15th. It's the --
A. Oh, okay. Uh-huh..
Q. There she coordinates with T.J. DiPaola regarding docket monitoring, reviews the MEIC response to motion to intervene, update notes regarding litigation status of contested case, more redaction, and identified pending action items. Follow up with experts Ms. Hunter and Dr. Nicklin regarding involvement in the case.
How does one-third of this time entry relate to claim two?
A. Seems like it relates to all of the claims, and a one-third of the three claims is a fair way to allocate.
Q. You can't specifically identify what in this time entry by Ms. Bordelon was related to claim two?
A. I didn't analyze it that way because courts don't do that.
Q. Is there a potential that the redacted materials don't relate to claim two as well, or you just don't know?
A. I didn't analyze it that way.
Q. Let's turn to page 6.
MR. DOLPHAY: We're about an hour again,

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Tyler. How much do you have? Five minutes, ten minutes when you stop?
MR. STOCKTON: I've got awhile?
MR. DOLPHAY: Can we take a break?
MR. STOCKTON: Yeah. We can take say maybe not 15 minutes, but can we do a 5-minute.
We can go off the record.
(Whereupon, a break was then taken.)
MR. STOCKTON: All right. We're back on the record. It is 5:12 p.m.
BY MR. STOCKTON:
Q. We're turning to page 6, Ms. Laughner, of the fee entries exhibit in this case. And I want to work through a few things in this -- I want to work through a few of these time entries here.
Let's turn to the 9/16/2022 entry by Ms. DiPaola. It's a third of the way down the page. Do you see that, Ms. Laughner?
A. Yes.
Q. Okay. And in that entry she says that she, quote, reviewed, revised, and finalized client memorandum regarding the status of current Westmoreland litigation matters and deadlines, e-mail correspondence with S.C. Bordelon regarding the same,

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e-mail memorandum to Mr. Heroux and working group, end quote. Did I read that right?
A. I think so.
Q. Ms. DiPaola references litigation matters in the plural. Do you know what you other litigation matters are being referenced in these billing entries?
A. In this billing entry?
Q. In this one but we will visit others.
A. Oh. No.
Q. And is it reasonable in your opinion to -- for Westmoreland to seek fees relating to other litigation matters in this proceeding?
A. I didn't -- I don't flyspeck these entries, I analyze them according to the Plath factors.
Q. And I guess my question for you was a little different, which was is it reasonable for Westmoreland to seek to recover fees incurred regarding work in cases other than this one?
A. I don't think that's what it says, but I think it's reasonable to recover one-third of all these fees.
Q. Okay. And I guess maybe I misstated my question. I can go a little bit more broadly. In

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your opinion is it reasonable for Westmoreland in this proceeding to claim fees for work done on other matters?
A. Outside of this case?
Q. Correct.
A. I wouldn't think so.
Q. You would say it's not reasonable?
A. I would say it's not reasonable to flyspeck the entries here. That's not how courts do it.
Q. And I guess my question, though, was following up on yours. You said it's not reasonable, and I want to make sure. It's not reasonable for Westmoreland in your opinion to seek fees in this proceeding for fees incurred regarding other matters?
A. As far as I know, Westmoreland is seeking fees only for this matter.
Q. Your allocation is one-third of all the hours in this matter. Correct?
A. Yes.
Q. Okay. And in Ms. DiPaola's fee entry here, she references plural litigation matters. Correct?
A. Looks like it.
Q. And so if we're applying your one-third

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methodology, one-third of this fee would be considered reasonable. And my question for you is, why is it reasonable to recover -- or is it reasonable to recover for fees incurred in other matters?
A. It's reasonable to recover one-third of the fees in this matter.
Q. And so if there are fee entries that refer to other matters, it would be unreasonable to seek those fees?
A. I don't know -- I don't think she's saying that, but I would say that it's reasonable to seek fees for one-third of the time spent on this matter.
Q. Okay. And just to confirm the inverse, seeking fees not for this matter, other matters would be unreasonable. Correct?
A. Let's see. Is that a double negative? I would stick with what I said.
Q. If Westmoreland is claiming fees based on these entries that relate to other matters, that would not be reasonable in your opinion?
A. As far as I know, Westmoreland is only seeking fees for this matter.
Q. And if they were seeking fees for other matters, that would be unreasonable. Correct?

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A. I don't think that's the case.
Q. And that wasn't my question. My question was if they were, would that be unreasonable?
A. I don't know. You know, maybe somehow it's related. I can't second-guess them. I don't flyspeck this. I looked at this and analyzed this according to the Lodestar and Plath matters.
Q. Let's go ahead and look down at the September 22, 2022, entry by Ms. DiPaola near the bottom of the page there. And in that she references a conference call with an H.M. Rimer, S.R. Yemington, and S.C. Bordelon, quote, regarding status of Westmoreland litigation matters, end quote.
What other matters would be referred to in Ms. DiPaola's time entry?
A. I don't know and I don't know if there's -- if it really is other matters.
Q. Do you think she made a typo by making it plural?
A. I don't know. I didn't flyspeck this. This is not how I analyzed it.
Q. You didn't do an analysis to see if Westmoreland entered time in this spreadsheet that related to other matters?
A. My analysis was looking at the totality of

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the hours and applying them the Plath factors to them.

Q. Why don't we take a look on the next page to October 25, 2022, entry by Ms. Coberly. Do you see that? It's about two-thirds of the way down the page.

A. Yes.

Q. And in that she says she spent two hours, quote, revised the motions to dismiss comma for both the BER redaction litigations, end quote.

this entry Ms. Coberly is referring to more than one motion to dismiss. Correct?

A. Could be.

Q. Was any motion to dismiss filed in this case?

A. I don't remember.

Q. I will represent to you that the docket reflects no motion to dismiss was filed. Would you have a reason to disagree with me?

A. I don't think so.

Q. Okay. In your opinion it's -- it would be reasonable for Westmoreland to recover one-third of this fee entry that concerns a motion to dismiss in multiple proceedings and as it pertains to this proceeding one that wasn't filed. Correct?

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A. It's reasonable for Westmoreland to seek one-third of the totality of the fees. I don't flyspeck this.

Q. Is it reasonable for Westmoreland to seek fees for litigation work that was never filed?

A. Yes.

Q. Why is that reasonable?

A. Well, they could have worked on something and then decided not to file it. They would charge the client for that.

Q. And I guess how is that reasonable, then, to try to assess in this case to the other side if that motion was never filed?

A. Well, MSUMRA allows for the recovery of reasonable fees, and if you look at the totality, one-third is reasonable.

Q. And I guess my question was slightly different, which is, is it reasonable for Westmoreland to seek to recover fees regarding an unfiled motion?

A. Yes.

Q. And is it reasonable for Westmoreland to seek fees to recover for work done on a motion in a different proceeding?

A. It could be.

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Q. In this proceeding?

A. Right.

Q. Why don't you turn with me to the November 7th, 2022, entry by Ms. Bordelon on page 8. It's about the middle of the page. Do you see that?

A. Yes.

Q. And in that he entry Ms. Bordelon spent three hours circulating a Westmoreland position on MEIC's proposed amended notice of appeal in BER contested case to parties along redaction, and then, quote, begin reviewing and editing motion to dismiss MSUMRA-contested case, telephone with litigation team regarding strategy for motions to dismiss in both cases, end quote. Did I read that correctly?

A. I think so.

Q. Okay. And it's your opinion that it was -- it is reasonable for Westmoreland to recover fees for the motion referenced here that was never filed in this case. Correct?

A. It's my opinion that seeking fees for one-third of the total hours is reasonable.

Q. And by implication it would be one-third of this fee entry which concerns a motion that was never filed?

A. I wouldn't characterize it that way.

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Q. Is it reasonable for Westmoreland to seek fees regarding a motion that was never filed as referenced by Ms. Bordelon in November?

A. Sure.

Q. Okay. And is it reasonable for Westmoreland to recover fees for other cases, as she refers to it, both cases here?

A. I think that's the same question you just asked me.

Q. And is your answer still the same that it's reasonable?

A. My answer is that it's reasonable to recover one-third of the total hours. That's how I analyzed it according to the Lodestar and Plath.

Q. And so if that -- if your analysis of these fees necessarily incorporates work done on other matters, you think it's reasonable for that to be assessed in this case?

A. Could be.

Q. How is another case -- how do fees incurred for work in another case bear on a fee award in this case?

A. I could -- I could easily see that. They might be related issues.

Q. And so the work done on a different motion

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in a different case could be assessed in another case in your opinion?
A. That sounds reasonable. But, again, it's just one-third of the total and that's conservative.
Q. Why don't you look at the November 28th, 2022, entry by Mr. Yemington for .5 an hour at the bottom of the page 8. There Mr. Yemington says he, quote, attend to a.m. five MTDs semi-colon, conference with S.C. Bordelon regarding the same, end quote.
There Mr. Yemington is referencing to plural motions to dismiss just like others have referenced. Your opinions are the same, that recovering fees for these motions both unfiled and in a different proceeding are reasonable?
A. My opinion is that it's reasonable to recover one-third of all the total fees.
Q. And in your analysis when you went through all these fee entries three times, did you identify that other matters were being referred to and billed for?
A. I don't know if I did or not.
Q. You spent 2 to 300 hours in your workup in this case. Correct?
A. I said full-time was?

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Q. 280 was the general math we reached.
A. Uh-huh.
Q. And in that time you did -- did you ever figure out what the other litigation being referred to in these time entries related to?
A. I don't know if it is actually other litigation. You're reading that into it.
Q. Ms. Bordelon's entry on 11/7/2022 says both cases.
A. Which one is that? 11/28?
Q. It's in the middle of the page on 11/7/2022 by Ms. Bordelon. And in there she refers to both cases. Is it your testimony today that that is referring to the same case or a different case?
A. Yeah. I don't know. I didn't audit the fee entries.
Q. As you testified --
A. I looked at them generally.
Q. As you testified earlier, you went through these fee entries three times. Correct?
A. Correct.
Q. And you didn't identify that there were other matters being referred to and billed on. Correct?
A. I don't see other matters.

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Q. We just reviewed about maybe three or four time entries referring to matters in the plural or, quote, both cases.
A. Right.
Q. And you still maintain that you don't see references to other matters?
A. I would just go by what they put here. It doesn't say other matters.
Q. Does "both cases" not refer to another matter?
A. I don't know. I don't read too much into the entries. I looked at the total amount and one-third is reasonable.
Q. Did you -- did you reach out to Westmoreland and say, hey, I see other matters being referred to here, what's that about at all?
A. I didn't.
Q. Would that be important to know?
A. I looked at the total. That's how courts analyze it.
Q. So it wouldn't be important to you to figure out if other matters were being included in these time entries?
A. I looked at the reasonableness of the hours.

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Q. And you did that by examining all these fee entries three times right?
A. I didn't do an audit or a flyspeck of all the entries.
Q. You reviewed them three times?
A. I did.
Q. Why don't you turn to page 15. There a little below the middle of the page there's an entry by Mr. Mercer, now Judge Mercer, on February 6th, 2023.
A. Sorry about that.
Q. We all do it, so no apology needed.
MR. DOLPHAY: My phone is dead, so I don't have to worry about mine.
MR. STOCKTON: Did you find a charger?
MR. DOLPHAY: No. It's fine. I'll be fine.
BY MR. STOCKTON:
Q. So real quick transitioning, page 15 there's an entry by the now Judge Mercer on February 6, 2023, a little below the middle of the page. Do you see that?
A. February 6th?
Q. Yes.
A. Yes.

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Q. Okay. And there he says he spent .3 hours, quote, participate in periodic update telephone conference with colleagues regarding pending cases, end quote. And there Mr. Mercer is specifically referring to plural more than one case. Correct?
A. I don't know.
Q. By saying the word "cases," you're unsure if he's referring to more than one?
A. Right.
Q. And in your opinion it's reasonable to recover one-third of this time entry even though it might cover multiple cases as his text says?
A. It's reasonable to recover one-third of the total.
Q. And the total for this proceeding?
A. For the total hours spent.
Q. Why don't you turn to the next page, to February 16th, 2023, by Ms. Bordelon, in the middle of the page 1.7 hours. There she says she billed for, quote, telephone conference with litigation team regarding status of state and BER litigation, end quote.
Is it still your testimony that multiple matters are not being billed for in these time

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entries?
A. My opinion is that it's reasonable to recover one-third of the total fees and that is conservative.
Q. And I am looking at specifically this time entry by Ms. Bordelon. She references a state and BER litigation. She's referring to two separate pieces of litigation. Correct?
A. I don't know. I don't know what she meant by that exactly.
Q. If you read that, would you conclude there was more than one case being referenced?
A. Not necessarily.
Q. And it's your opinion that it's reasonable to recover one-third of this time entry even though it refers to, quote, state and BER litigation?
A. This is not an auditing exercise. Didn't flyspeck it. It's reasonable to recover one-third of the total.
Q. Which would be one-third of this time entry as well?
A. One-third of the total hours.
Q. That would be one-third of this time entry as well. Correct?
A. I wouldn't put it that way. Courts don't

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flyspeck and do an audit of this.
Q. Let's take a look at page 18. March 28th, 2023, Mr. Adams at the very bottom of the page second entry from the bottom has a 1.3-hour entry where he says he dealt with, quote, review S.R. Yemington's edits to the protective order motion and add further edits and revisions. Evaluate redaction and the ongoing work near the pond MEIC seeks to visit, end quote. Do you see that? Did I read that correctly?
A. I think so.
Q. Okay. We talked a lot about spoiliation and the duty to preserve evidence earlier. This time entry seems to reference that Mr. Adams knew about ongoing work at the site inspection location. Correct?
A. I'm not sure.
Q. His phrase is evaluate blank the ongoing work near the pond MEIC seeks to visit, end quote. And you're unsure he's referring to work at the place where the MEIC wanted to conduct the site inspection?
A. That's what it looks like, but I'm not sure.
Q. Are you aware of another pond or wetland that the site inspection concerned, or there's only one. Right?

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A. Not that I read about.
Q. There's only one. Right?
A. I guess I'm not sure about the word "pond."
Q. He makes it clear that it's the place that the MEIC wished to inspect. Correct?
A. Probably.
Q. We've reviewed a number of time entries here where there are redactions, and we -- you and I -- neither you nor me know what is behind those redactions. Fair?
A. When I was reviewing it against the docket sheet, sometimes I could figure it out.
Q. But in general you don't know the precise words behind those redactions?
A. I do not know the precise words.
Q. Okay. And I guess in your opinion it's reasonable to claim one-third of the total fees in this case. Correct?
A. Yes.
Q. Okay. And that would be one-third of the redacted entries as well?
A. Yes.
Q. Okay. And you think -- so you -- you did no separate analysis to say, well, redacted entries,

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we don't know what is in there, so I'll make -- for you they're included and we take one-third of it all. Correct?
A. Yes.
Q. Okay.
(Whereupon, Exhibit 17 was marked for identification.)
BY MR. STOCKTON:
Q. I'm handing you what I have marked as Exhibit 17. This is the affidavit of Mr. Yemington that you have referred to before. Correct?
A. Yes. Correct.
Q. I would like you to turn with me to paragraph 7 on page 4. Mr. Yemington attested to the following. Quote, the attached spreadsheet itemizing the time expanded and fees invoiced, Exhibit 1, includes redactions of privileged attorney-client information and related and AM5 litigation for which Westmoreland will perform under do not seek recovery, end quote.
How in your analysis of this case did you exclude the redacted time entries and the related AM5 litigation that Mr. Yemington expressly says the mine does not seek?
A. I thought they were seeking all of the

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entries or one-third of the total.
Q. So Mr. Yemington's affidavit contradicts that, doesn't it?
A. I would think that he would be more correct than me.
Q. Okay. And so given Mr. Yemington's affidavit here, all entries, including redactions and those related AM5 litigation, those other cases referenced in these time entries, should be excluded from your analysis?
A. I don't understand your question. It's kind of long. Can you break it down?
Q. Well, if Mr. Yemington here says that the mine is not seeking recovery for redacted privileged attorney-client information and related AM5 litigation --
A. Wait. Wait. Wait. Wait. Wait.
Q. -- we should remove those from your analysis. Correct?
A. Well, I suspect that the -- that's one of the reasons why -- or the reasons why they're only seeking a third when most of the work was related to claim two.
Q. Well, my question, I think, was a little bit more specific, which is how did you -- these are

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specific identification of two categories that need to be excluded and not sought. How did you account for that in your specific analysis?
A. I don't know if my analysis was that specific because I looked at the totality and didn't audit or flyspeck every entry, and I think that's -- only recovering a third is reasonable.
Q. So you did not take into account what Mr. Yemington here explicitly says the mine is not seeking?
A. I looked at the total amount of hours, and for a litigation that takes place over a course of three to four years, that was very reasonable. And 1.5 or 1.4 million spent on attorneys fees for that amount of time is common.
Q. And I guess I -- maybe I misphrased my question a little bit, but how did you take this sentence regarding what Westmoreland is not seeking and ensure it was not included in your analysis?
A. I looked at the total number and thought it was reasonable.
Q. So you did not specifically exclude the entries that the mine says they are excluding?
A. He's being more conservative than I would be.

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Q. This is the representation of the mine's counsel. Correct?
A. Yes.
Q. And so each and every I redacted entry and entry with regards to other AM5 litigation should not be part of the fee claim in this case. Correct?
A. He's not seeking those.
Q. And as counsel for Westmoreland, that's his representation on behalf of his client. Correct?
A. If he's attesting to paragraph 7, that would be correct.
Q. We've discussed quite a bit in this case that your opinion is that the proceeding was brought or the challenge to the permit was brought in bad faith. Correct?
A. Should not have been brought.
MR. DOLPHAY: Objection. Same objection regarding the scope of her testimony.
BY MR. STOCKTON:
Q. You reviewed the hearing transcript from the May 15th hearing. Correct?
A. I read it.
Q. Okay. And if you want to turn that binder in front of you to the next tab, that would be the --
MR. DOLPHAY: All the way.

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THE WITNESS: Oh, over here.
BY MR. STOCKTON:
Q. Then on to the next tab.
A. Oh, okay.
Q. And that is our Exhibit 7, I believe. This is Exhibit 7, which is the hearing transcript of May 15.
(Whereupon, Exhibit 18 was marked for identification.)
BY MR. STOCKTON:
Q. I would like you to turn with me to page 57, line 17. And to orient you on the page before, Mr. Yemington is speaking and his argument continues on to page 57. Correct?
A. Okay.
Q. Okay. In looking at line 17 of page 17, he makes the argument -- I guess line 19, quote, a reasonable party acting in good faith would have withdrawn this claim after the site inspection and after Mr. Anderson's deposition testimony, end quote.
This is Mr. Yemington arguing on behalf of the mine. Correct? Your opinion in this case is that the entire challenge to the permit was brought in bad faith. Correct?
MR. DOLPHAY: Same objection I named

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before regarding her scope of her testimony, scope of her retainment.
THE WITNESS: So my opinions are in -- on pages 25 and 26. My belief is that this challenge should never have been brought.
BY MR. STOCKTON:
Q. At least Mr. Yemington arguing on behalf of the mine, his opinion on behalf of the mine was that the reasonable party acting in good faith would have withdrawn claim two after the site inspection and after the deposition testimony. Correct?
A. That's one thing he said here.
Q. And I would like you to turn with me real quick to page 106, beginning at line 14. This is Mr. Yemington again, I'll represent to you, but if you would like to check that, you got to go back a couple of pages to page 103. Are you at page 106, line 20?
A. Not yet.
Q. Okay. Beginning on line 14, this is Mr. Yemington. He says, quote, so where do you draw the line? Is it at the outset? Maybe. Is it during discovery? Even better. Is it after the site inspection and Mr. Anderson's deposition that concluded discovery? That was the last day of

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discovery, was Mr. Anderson's deposition on July 13th of 2023. At that point I respectfully submit that no reasonable person and no counsel acting within their duty would perpetuate that claim as it had been pleaded and how it had been presented in discovery. After that deposition, it was entirely discredited and defeated. Continuing onto the next page. So I would say with absolute certainty that that bad faith piece starts there. And it may start before that, but it certainly perpetuated too because one thing we didn't hear about in this presentation was the discovery abuse on summary judgment where they presented significant analysis and evidence that wasn't disclosed during discovery.
Mr. Yemington's position is that perhaps the bad faith began earlier, but he says that with absolute certainty his thought, his opinion, his argument is that it began at the site inspection slash deposition of Mr. Anderson which occurred two back-to-back days. How is it reasonable to claim one-third of the entire proceeding and the argument being made by Westmoreland is that for sure the bad faith began at the deposition slash site inspection? How is it reasonable to claim one-third of the fees before that date?

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MR. DOLPHAY: Objection. Misstates the testimony. Misstates the record. Question of law. Outside the scope of what Ms. Laughner has been retained to opine in these proceedings.
THE WITNESS: Well, my opinions are, again, in -- on pages 25 and 26 of my opinion. But I would say that at this point with the Anderson issue, it was revealed to everyone how fraudulent the challenge was, but the challenge should never have been brought from the beginning.
BY MR. STOCKTON:
Q. And I guess my question was, is how is it reasonable when Mr. Yemington on behalf of the mine argues that the bad faith for sure started at the site inspection deposition? How is it reasonable to claim one-third the of the fees before that?
MR. DOLPHAY: Same objection.
THE WITNESS: I thought I just answered that, but it is reasonable because there's all this activity leading up to this point when it's revealed to everyone.
BY MR. STOCKTON:
Q. So just to be clear, you have no time limitation or segmentation applied to your one-third fee allocation. Beginning here and ending there,

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it's the whole thing?
A. MSUMRA would allow for the recovery of costs for the whole thing.
Q. You rendered an opinion in this case. I'll go back to your report here. Regarding the rates being claimed in this case, this is page 14. In your opinion the blended rate -- we'll break this up a little bit. In your opinion blended rates are reasonable to recover. Correct?
A. Yes.
Q. Have you ever sought and recovered a blended rate in any case in Montana?
A. I don't think so.
Q. Are you aware of any case in Montana where a blended rate was awarded?
A. No.
Q. You disclosed in your report that Westmoreland and Holland & Hart apparently agreed to a rate of $745 an hour beginning in January 2026 to the present. Correct?
A. Yes.
Q. And in your opinion is that 745 an hour blended rate is reasonable?
A. Yes. Over -- for that period of time that you're talking about.

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Q. In 2026 only. Correct?
A. I guess, yeah.
Q. Okay. Are you aware of any rate -- well, I guess inside Browning Kaleczyc, your firm, are there any associates billing at $745 an hour in 2026?
A. I don't know.
Q. Are you aware of any?
A. I think the blended rate is a good deal.
Q. Well, and I think that wasn't my question. My question was are you aware of any associates in your law firm that are being billed at $745 an hour for legal work in Montana?
A. I don't know what the rates are.
Q. Are you aware of any partners or shareholders in your law firm of Browning Kaleczyc who are billing at $745 an hour for legal work in Montana?
A. Yes.
Q. How many partners are billing at that and what are the rates?
A. I don't know what Browning Kaleczyc charges other than myself.
Q. And are you charging more than 745 an hour for legal work?
A. I charge $800 for my time.

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Q. And is that the only reference point that you're relying upon for the 745 rate we just talked about?
A. No. Not at all. I mean, I looked at the rates charged in AM4, and let's see, the case that -- the AM4 case -- and I think it was Judge Bidegaray's opinion where the AM4 rate -- she references the Firdave (phonetically) Oil case that was 2018, and that was a rate of $600. So also there's the case -- there's a recent Montana case Reagor case, and the rate mentioned there in testimony is $800 an hour. And even in the -- let's see -- the AM4 case and testimony in the -- I think it was AM4 also which was, what, 2021 maybe, Hernandez cited that 550 an hour was low.
Q. So -- and I think maybe I must have misphrased my question. My question was, are you -- let's rephrase. Inside Browning Kaleczyc you testified that there were shareholders who were billing 745 an hour or more. Correct?
A. Well, I was -- I mean --
Q. Were you referring to just yourself?
A. Yes.
Q. Okay.
A. Yeah. I don't know what Browning Kaleczyc

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charges.
Q. Okay. And so the only reference point for the 745 an hour inside Browning Kaleczyc that you're relying upon is your own rate in this case. Correct?
A. I don't know why you're saying inside Browning Kaleczyc, because I was looking across Montana rates. Browning Kaleczyc doesn't do this kind of -- necessarily do this kind of work.
Q. Forgive me. I guess I understood that you in your experience at Browning Kaleczyc was that you did exactly this type of work, so therefore, I'm asking about your experience regarding your rates charged by your firm.
A. Right.
Q. So just focusing on your work at Browning Kaleczyc, the only shareholder you're aware of charging 750 an hour or more is yourself, and it's for this case. Correct?
A. Not necessarily. I don't know what the other share -- I don't know what shareholders at Browning Kaleczyc charge. And I looked at rates across Montana for this kind of environmental work.
Q. And does Browning Kaleczyc do this type of environmental work? You represented you did while you worked there?

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A. Other than myself, probably not.
Q. If you -- have you been hired for any environmental work like this in 2026 other than being an expert witness?
A. Yes.
Q. And what was your rate in those matters?
A. Let's see. I had a client call me and said, you know, you helped us with this project nine years ago, can you help us with this again. And I charged not $800 an hour.
Q. What did you charge?
A. I don't really remember off the top of my head, but it was over 500.
Q. That was less than 745. Correct?
A. Well, it was a very simple matter, and it was an old client and he was a friend.
Q. But when you were asked to do environmental work recently, your rate was more than 500 but less than 745 an hour. Correct?
A. Yes.
Q. And the only -- the only rate that you charge that is over 750 is your work as an expert witness in this matter. Correct?
A. This is the only case I'm working on right now.

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Q. Real quick, we'll do a little aside here. You've represented that your work has been full-time for about seven weeks. We estimated that to be 280-ish hours. Your rate in this matter is how much?
A. $800 an hour for my time.
Q. And so is it fair to take 280 times 800 and conclude that you've billed in the vicinity of $224,000 as an expert witness in this matter?
A. I don't know.
Q. Let's go back to 2024 and 2025.
A. Oh, on this transcript?
Q. No. No. Looking at your expert report, Westmoreland and Holland & Hart.
A. What page?
Q. Page 14 your expert report. Holland & Hart charge Westmoreland a blended rate of 590 an hour for the work done in January 2024 through December 2025. Correct?
A. Yes.
Q. Okay. And what were associates inside Browning Kaleczyc billed for between January 2024 through December 2025?
A. I don't know.
Q. Were they billed at $590 an hour?
A. I don't know. I did read some reports

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that associates are billing at like 525.
Q. And where do those reports come from and were they commenting on Montana?
A. I don't think they were unique to Montana, but it was kind of surprising to me.
Q. My question was, were those reports regarding Montana?
A. I don't think so. I think it might have been a nationwide.
Q. Fair to say Montana is a different legal market than, say, DC or New York?
A. Well, depends on your expertise.
Q. Are you aware of any associates being billed at 590 an hour inside Browning Kaleczyc between January 2024 and December 2025?
A. I don't know what Browning Kaleczyc rates are, but I do know Mr. Hernandez said that 550 an hour was low.
Q. Are you aware of shareholders inside Browning Kaleczyc charging $590 an hour in that same time frame, January 2024 to December 2025?
A. I don't know what shareholders in Browning Kaleczyc charge.
Q. And the same question for the case inception through February 2023, 485 an hour and same

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question for March to December of 2023 of 545 an hour. You don't know what Browning Kaleczyc would charge in those time periods?
A. No.
Q. You did no analysis of your own law firm, how they rate except for your own rate as an expert in this case?
A. I looked at the case law. Like I said, Judge Bidegaray's, and the -- her decision and the filings pertaining to that. And I looked at the Held case and the testimony related there, and I looked at the Reagor case who said that rates are up to $800 an hour.
Q. You express on page 14 of your expert report that the contractual rates between Holland & Hart and Westmoreland were less than these certain lawyers -- I'll get to them in a second -- standard rate inside the firm. Correct?
A. Where are you looking?
Q. At the bottom of page 14.
A. Oh, the rates are below counsel's rates?
Q. Yes.
A. Is that what you're reading?
Q. Yes.
A. Okay. Uh-huh.

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Q. It was your -- you expressed that -- that rates charged by Westmoreland -- or charged by Holland & Hart to Westmoreland were below the rates of the lawyers involved in their general practice. Right?
A. I think that's right. Uh-huh.
Q. And I guess Holland & Hart is a nationwide firm. Correct?
A. Well, I think of them more as mountain west.
Q. Are you aware -- where is Mr. Yemington located?
A. In DC.
Q. Okay. And Mr. Dolphay is located here. Correct?
A. Yes.
Q. Ms. Bordelon, where is she located? Do you know?
A. Nevada.
Q. Okay. Do you know where any of the associates in this matter were located, Ms. Grays or Mr. Adams?
A. Wyoming.
Q. They're in Wyoming. Okay. Are you aware of any lawyers in Montana charging $925 an hour for

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shareholder legal work?
A. Let's see. In Montana the highest I think I'm aware of is $800 an hour.
Q. And that would be you?
A. No. That's testimony in some of the cases I mentioned.
Q. And in those cases $800 an hour was not awarded, though, was it?
A. No -- yes, it was.
Q. Which case?
A. I think in the Reagor case.
Q. Why don't you turn to your summary of that case on the next page. The court -- you said, quote, the court found Holland & Hart's rates, including Kyle Gray's effective rate of 566.39 an hour and Brianne McClafferty's effective rate of 466.52 an hour to be reasonable for Montana complex litigation.
A. Uh-huh.
Q. So the court did not award those high-end rates, did it?
A. Well, I'm looking at page 21, and that's where I refer to $800 an hour.
Q. So what you're referring to, though, is testimony that firms such as Dorsey & Whitney and Perkins Coie, Holland & Hart's competitors, were

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charging rates up to $800 an hour. Right?
A. Uh-huh.
Q. In Reagor, which was decided just last year, the court significantly cut those down and awarded only 566 an hour for Ms. Gray and 466 an hour for Ms. McClafferty. Correct?
A. I think that's right.
Q. So the court in Reagor rejected those rates above 566 an hour. Correct?
A. I don't know if rejected is the right word. There's just testimony of rates charged $800 an hour.
Q. Right. But I'm referring to your statement regarding what the court found, which was that --
A. Yeah. I mean --
Q. -- high end of 566 was the top. Correct?
A. Right. Uh-huh.
Q. Well below 745 an hour. Correct?
MR. DOLPHAY: Objection. Form.
THE WITNESS: What do you --
BY MR. STOCKTON:
Q. 566 an hour is significantly less than 745 an hour. Correct?
A. Yeah. I really don't know how that's

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relevant to the rates that are blended which I think are a bargain for Westmoreland.
Q. And that wasn't my question. My question was that 745 an hour is a lot more than 566 which is the top rate awarded in the Reagor case?
A. It's not the top rate awarded in Montana.
Q. And my question for you was in the Reagor case. Could you please answer that question.
A. The Reagor case, 566 is less than 745.
Q. Okay. That was Holland & Hart lawyers. Correct?
A. Correct.
Q. Same lawyers, same firm -- or at least same firm as involved in this case. Correct?
A. Same firm.
Q. You reviewed the AM4 case, correct, regarding the attorneys fees?
A. Yes.
Q. And in that case Rosebud County District Court found rates of 225 to 350 to be reasonable four years ago?
A. I would have to look.
Q. Let's look at your report on page 15.
A. Oh, yeah. That was the case where Hernandez says 550 is low.

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Q. But the Rosebud County District Court did not award 550. Correct?
A. Looks like the rate they awarded was 350.
Q. 225 to 350. Right?
A. Yep.
Q. You've identified that the qualifications of the counsel in this case justify the rates being charged. Correct?
A. Yes.
Q. Okay. And when I look through that, your summary of the lawyers involved only concerns the partner- or shareholder-level attorneys. Correct?
A. Let's see. What page are you looking at?
Q. Page 16 to page 19.
A. Okay.
Q. You did not analyze the qualifications of the associates involved in this case. Correct?
A. I don't know about that because I did -- I didn't include it in my opinion, but I think the affidavit of Yemington mentioned it.
Q. But your opinion -- your expert report here does not lay that out in any way, does it?
A. I don't know if I mentioned it in the blended rate or not. You know, the associates -- there weren't a lot of entries for the associates

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Q. I was just going to ask you that. What analysis did you do to compare the amount of hours billed by associates versus shareholder- or partner-level attorneys?
A. I didn't analyze it that way. I looked at the totality of it.
Q. And so your opinion here about counsel's qualifications only discusses the shareholder level and omitted discussing the associate qualifications. Correct?
A. Well, I knew about the associate qualifications.
Q. And you chose not to include them in your expert report?
A. I did not discuss the associates in my expert report.
Q. And is it -- and it is reasonable, though, in your opinion that associates should be billed at 495 an hour from case inception to February of 2023. Correct?
A. I think the blended rate is reasonable and I really think it's a bargain.
Q. And I think maybe I must have misphrased my question. Is it your opinion that it's reasonable to charge 495 an hour for associates between

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inception of this case and February of 2023?
A. Well, you can't look at it that way. It's a blended rate.
Q. But associates are being billed at that rate. Correct?
A. Yes.
Q. Okay. And in your opinion it's reasonable to bill associates at that rate?
A. As long as the other end is lower than their regular rate so it's blended.
Q. And so if there's associates working on the case now, in your opinion it's reasonable that they be billed at $745 an hour?
A. It's reasonable to me that the hard-working shareholders that worked on this case gave -- really gave the client a break by having a blended rate. And I don't look at the associated -- associates rate isolated like that.
Q. But if we take your opinion that one-third of the total hours expended is reasonable times the hourly rate given the time period, your opinion is that billing or shifting the fees here for those associates at those rates is reasonable?
A. The blended rate is reasonable.
Q. I think we can run move through some of

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this pretty quickly. I want to run through your Plath factor analysis. Your Plath factor runs through these factors, correct, and -- and essentially concludes that your -- your opinions are reasonable in the end.
You opine that the amount and character of services rendered was reasonable in your first factor. Correct?
A. Yes.
Q. Okay. As we have discussed today, however, you did no specific claim-by-claim or issue-by-issue analysis through the time entries to reach that. Correct?
A. I didn't flyspeck I looked at the total.
Q. Your analysis went off the total and you said that that was reasonable in your opinion. Correct?
A. Right.
Q. Same question regarding the labor, time, and trouble involved. You did not go through the fee entries and analyze whether the entry was related to claim two or not in order to reach this conclusion, rather you base your analysis off the total hours. Correct?
A. I looked at the case as a whole.

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Q. The same would be true for each of your Plath factor analysis here. You didn't look at the factor and then analyze the specific fee entries. You looked at the whole totality of fees being claimed. Correct?
A. I looked at the hours claimed -- the hours reported. Determined that they were reasonable. And I looked at the rate reported and determined those were reasonable.
Q. Okay. Do you understand that Westmoreland and the union are seeking fees for fees in this proceeding?
A. I think so.
Q. Okay. And do you understand that Westmoreland is claiming fees in this proceeding for legal work done at the district court?
A. Yes.
Q. And do you think that the -- that the board can award fees for work at the district court?
A. The statute allows that.
Q. In your opinion. Correct?
MR. DOLPHAY: Objection. Outside the scope.
You can answer.
BY MR. STOCKTON:

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Q. Are you opining that the fees incurred after the final order through June 30th, 2026, are reasonably incurred?
A. Yes.
Q. And some of those fees include the work at the district court. Correct?
A. Yes.
Q. And it's your opinion that the board can evaluate what occurred at the district court and award fees for the legal work there. Correct?
A. I believe MSUMRA allows for that.
Q. And you think that's reasonable and appropriate for Westmoreland to seek and recover those fees. Correct?
A. Yes.
Q. You did no analysis to separate the fees incurred for work at the district court versus work in this proceeding before the board. Correct?
A. I didn't -- are you asking me if I separated them out?
Q. Yes.
A. Well, they are kind of separate by looking at the Exhibit 1, I think.
Q. Let's go ahead and look at Exhibit 1. We marked this. If you turn back, what's the last fee

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entry in Exhibit 1?
A. It looks like 9/30/2025.
Q. And --
A. Oh, so I think I'm wrong about that. I think Exhibit 1 does you include some after the November 4th decision.
Q. Okay. But the appeal to district court of claim two or the jurisdictional decision did not occur until when?
A. I don't really know.
Q. June of -- June 15th or so of this year.
A. Oh, okay.
Q. Long after Exhibit 1. Correct?
A. Yes.
Q. And did you review fees after Exhibit 1 in preparing your report?
A. I think we -- I think you asked me that earlier. Yeah.
Q. And you did?
A. Yeah.
Q. Okay. Those weren't attached to Mr. Yemington's affidavit?
A. Yeah. We talked about that earlier.
Q. Correct they weren't?
A. Uh-huh.

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Q. Okay.
A. Because -- because they were going to be updated in September, I think, according to the scheduling order.
Q. And I guess my question for you is this. How did you receive that fee spreadsheet, the supplemental one not attached to Mr. Yemington's affidavit but the October 1st to June 30th entries?
A. Yeah. We -- you asked me that question earlier.
Q. The question still stands.
A. How did I receive it? I got it from Matt.
Q. Okay. Did you get it -- and when did you get it?
A. After August 7th.
Q. So you got the spreadsheet after August 7th?
A. Yes. If I remember right.
Q. Okay. In your expert report you opine about those fees, and your expert report was dated October 7th. Correct?
A. August.
Q. Or August 7th.
A. August, yeah.
Q. How could you opine in your report about

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the fees through June 30, 2026, if you did not receive them until the day your report went out or after the report went out?

A. Let's see. I don't know if I've got the dates right. Where is it in my report that says that?

Q. On page 4 you state in the second to last bullet point that you reviewed spreadsheets reflecting attorneys fees and costs, expenses incurred by Westmoreland through June 2026. Correct? That would include those supplemental fees. Correct?

A. I think I got those after August 7th.

Q. So go ahead and turn to page 10 of your report. Two questions: Why did you include the spreadsheets through June 30th, 2026, if you received them after the date of your report?

A. Why did I include it on page 4?

Q. Uh-huh.

A. I think I was anticipating that I would get those because I guess I'm going to supplement my review of them.

Q. Your report does not say that, though. Your report says you reviewed them. Correct?

A. It says at the footnote I will review the spreadsheets.

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Q. Let's go back to page 4. At the top you state: "In forming my opinions, I have reviewed the following materials colon." Correct?

A. Yep.

Q. And then second to last bullet point is, quote, spreadsheets reflecting attorneys fees and costs and expenses incurred by Westmoreland through June '26, end quote. Correct?

A. It says that.

Q. So you reviewed and relied upon those for your representation?

A. I don't think I did. I think I just looked at the Exhibit 1.

Q. So is that incorrect in your report?

A. Well, if you read the footnote, it says I will review, so probably could have been clearer.

Q. Let's take a look at your footnote in detail.

A. Okay.

Q. Your footnote says, quote, the spreadsheets reflecting the attorneys fees and costs and expenses incurred by Westmoreland local 400 attached hereto necessarily reflect only those attorneys fees and costs and expenses incurred through approximately one month prior to the date of this report as billing records reflecting more recent activity were not yet available at the time of this report, end quote.

Your representation in your report was that the billing entries up to approximately one month prior to the date of your report were included and reviewed and relied upon. Correct?

A. I don't think -- I reviewed the spreadsheet attached to Exhibit 1. I don't think I had anything more than that.

Q. Do you want to correct your report as we sit here today?

A. I'm kind of tired, so I would like to think about that a little bit. But I'm pretty sure that I only reviewed Exhibit 1.

Q. We'll go ahead and give you a moment to think about it if you would like.

MR. DOLPHAY: Let's go off the record.

(Whereupon, a discussion was held outside the record.)

MR. STOCKTON: Let's go back on the record. It's 6:30 and counsel have agreed that there is 15 minutes left in this deposition.

BY MR. STOCKTON:

Q. Ms. Laughner, when we took our break, you wanted to take a moment to think about when you had received the supplemental fee spreadsheet regarding fees incurred between October 1st, 2025, to the end of June 2026. Do you have an updated, corrected, or changed answer to your prior testimony?

A. The date on page 4 is correct. I had my dates mixed up.

Q. Okay. So you did receive the supplemental spreadsheet in time to include and rely upon in your expert report?

A. I did.

Q. Okay. And you intend to receive and review additional fees in this matter and update your testimony. Correct?

A. I think so.

Q. Did you receive a copy of your expert report when it was produced to the other side, kind of like a -- you know, gets produced to the other side and just a copy of here's the -- here's the produced served version? Did you get one of those?

A. Yes.

Q. Okay. And did you review it?

A. I don't remember.

Q. Were you aware that your reference to the spreadsheets from October 1st, 2025, to June 30th,

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2026, were not included with your report as initially served?
A. Say that again.
Q. Were you aware that the spreadsheets you relied upon, the supplemental ones, were not attached to your report when served to opposing counsel on August 7th, 2026?
A. The spreadsheets themselves or the reference to them?
Q. Your footnote 1 states: The spreadsheets reflecting attorneys fees and costs and expenses incurred by Westmoreland local 400 attached hereto necessarily reflect only those attorneys fees and costs and expenses incurred through approximately one month prior to the date of this report, end quote.
So your report referenced that the spreadsheets through June 2026 were attached to your report. Correct?
A. I don't know if they were or not.
Q. And when did you become aware that the supplemental spreadsheets were not attached?
A. I don't know if they were attached or not.
Q. Did you ever become aware of the fact that they were not when served on opposing counsel?
A. Say that again.

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Q. Did you become aware of the fact that they were not included when served -- your report was served on opposing counsel?
A. When did I become aware?
Q. Did you become aware?
A. I don't know.
Q. Your intent, though, was to attach them to your report. Correct?
A. Yes.
Q. Let's turn to page 10 of your report. You represent that Westmoreland has expended approximately 702 hours seeking the award of fees in this case. Correct?
A. Yes.
Q. And it's your opinion that those 702 hours are reasonable and necessary. Correct?
A. Yes.
Q. Okay. And that was based upon what review? What analysis did you do to reach that conclusion?
A. The Lodestar and Plath factors.
Q. Of those 702 hours?
A. Right.
Q. Okay. Did you do a review of the time entries?

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A. Yes.
Q. How many times did you review them, not the initial ones but the supplemental ones?
A. I think at least three times.
Q. You went through them three times?
A. Uh-huh.
Q. When did you receive that supplemental spreadsheet?
A. Awhile ago.
Q. And by awhile ago, what do you mean?
A. Gosh, I don't remember the exact date.
Q. It was before August 7th. Correct?
A. Yes.
Q. So was it around the time you were retained?
A. I don't remember.
Q. Was it sometime in July 2026?
A. Must have been.
Q. Okay. Let's go ahead and mark that so we have it as an exhibit for convenience sake. It's the -- should be the second tab in your book. I'll go ahead and mark it.
MR. STOCKTON: What's our next exhibit?
THE REPORTER: 18.
MR. STOCKTON: Are those the ones

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beginning October 1st?
MR. DOLPHAY: Yeah.
MR. STOCKTON: Okay.
(Whereupon, Exhibit 18 was marked for identification.)
MR. STOCKTON: I smush it a little bit. Might have to rewrite it. Sorry.
BY MR. STOCKTON:
Q. Let's take a look at the time entry on page 2 of Exhibit 18. On October 24th, 2025, by Mr. Yemington, 7.9 hours. Do you see that?
A. Not yet. Okay. Uh-huh.
Q. And I guess Mr. Yemington stated that he had, quote, attempt AM5 exceptions oral argument preparation, attend to BER hearing regarding the same, attend to correspondence regarding the same, conference with DEQ counsel, S. Bordelon and A.A. Gray, regarding the same and path forward, circulate summary of BER hearing for client review, attend correspondence from Mr. Briggs regarding the same, end quote.
In that fee entry, are we able to determine the specific time that Mr. Yemington spent on each of those phrases of work that he did?
A. He detailed what he did for 7.9 hours.

Q. And I guess my question was specifically, we don't -- we can't know specifically what he -- how much time he spent for each of those entries, can we?

A. I would guess not.

Q. As we come to the conclusion of this deposition, is there any of your testimony that you would like to correct, change, or modify in any way?

A. I can't think of anything right now.

Q. Okay.

MR. STOCKTON: No further questions.

MR. DOLPHAY: The witness will read and sign.

(Whereupon, the deposition concluded at 6:39 p.m.)

SIGNATURE RESERVED.

* * * * * * * *

ROUGH

From:	Tyler Stockton
To:	Matthew H. Dolphay; Valerie Arias; shernandez@earthjustice.org; laphillips@earthjustice.org; jeremiah.langston2@mt.gov; King, Samuel; Matt Hayhurst; Armstrong, Catherine
Cc:	Andi N. Grave; Samuel R. Yemington; Sarah C. Bordelon; Michelle McCallum
Subject:	RE: In the Matter of: Appeal and Request for Hearing Regarding Rosebud Mine Area B, Amendment 5 Permit Number C1984003B, Case No. BER 2022-05 SM - SERVICE ONLY - Expert Report Disclosure
Date:	Thursday, August 20, 2026 5:20:01 PM
Attachments:	image001.png

Matt, Sam, and Sarah,

We requested the files that Ms. Laughner reviewed, opined upon, and stated were appended (but were not) to her report nearly a week ago. Three days ago (Monday), Westmoreland promised they would be provided "tomorrow," which was Tuesday. It is now end of business on Thursday and Westmoreland has not provided the files. Ms. Laughner's deposition is set for Tuesday—only two business days away.

We respectfully request that the exact same files/spreadsheet(s) provided to Ms. Laughner be provided to us immediately.

Thanks,

Tyler

From: Matthew H. Dolphay <MHDolphay@hollandhart.com>
Sent: Monday, August 17, 2026 9:20 PM
To: Tyler Stockton <tstockton@boonekarlberg.com>; Valerie Arias <VArias@hollandhart.com>; shernandez@earthjustice.org; laphillips@earthjustice.org; jeremiah.langston2@mt.gov; King, Samuel <samuel.king@mt.gov>; Matt Hayhurst <mhayhurst@boonekarlberg.com>; Armstrong, Catherine <catherine.armstrong2@mt.gov>
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Subject: RE: In the Matter of: Appeal and Request for Hearing Regarding Rosebud Mine Area B, Amendment 5 Permit Number C1984003B, Case No. BER 2022-05 SM - SERVICE ONLY - Expert Report Disclosure

Hi Tyler,

Will get this to you tomorrow.

Thanks, Matt

Matthew Dolphay
Partner, Holland & Hart LLP

mhdolphay@hollandhart.com | **T:** (406) 896-4628 | **M:** (406) 390-0941
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From: Tyler Stockton <tstockton@boonekarlberg.com>
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Subject: RE: In the Matter of: Appeal and Request for Hearing Regarding Rosebud Mine Area B, Amendment 5 Permit Number C1984003B, Case No. BER 2022-05 SM - SERVICE ONLY - Expert Report Disclosure

External Email

Matt, Sam, and Sarah,

Forgive the follow up, but for ease of reference, we're referring to the spreadsheets referenced on page 4 of her report and in footnote 1. Given the deadlines and her upcoming deposition, we kindly request ask that it be provided as soon as possible.

Thanks,

Tyler

From: Tyler Stockton
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Subject: RE: In the Matter of: Appeal and Request for Hearing Regarding Rosebud Mine Area B, Amendment 5 Permit Number C1984003B, Case No. BER 2022-05 SM - SERVICE ONLY - Expert Report Disclosure

Matt, Sam, and Sarah,

Ms. Laughner's expert report stated she reviewed a spreadsheet of hours being claimed through June 30, 2026, and that it was attached to her report, but we don't see that in the report. Could you please send that over?

Thanks,

Tyler

From: Valerie Arias <VArias@hollandhart.com>
Sent: Friday, August 7, 2026 4:12 PM
To: shernandez@earthjustice.org; laphillips@earthjustice.org; jeremiah.langston2@mt.gov; King, Samuel <samuel.king@mt.gov>; Tyler Stockton <tstockton@boonekarlberg.com>; Matt Hayhurst <mhayhurst@boonekarlberg.com>; Armstrong, Catherine <catherine.armstrong2@mt.gov>
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Subject: In the Matter of: Appeal and Request for Hearing Regarding Rosebud Mine Area B, Amendment 5 Permit Number C1984003B, Case No. BER 2022-05 SM - SERVICE ONLY - Expert Report Disclosure

Good afternoon,

Attached for service upon counsel of record in the above-subject matter is *Westmoreland/Local 400's Expert Report Disclosure*.

Sincerely

Valerie Arias

Legal Assistant

HOLLAND & HART LLP

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Attorneys for Petitioners Montana Environmental Information Center and Sierra Club

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

IN THE MATTER OF: NOTICE OF APPEAL AND REQUEST FOR HEARING ROSEBUD MINE AREA B AMENDMENT 5 PERMIT NUMBER C1984003B	CASE NO. BER 2022-05 SM **PETITIONERS MONTANA ENVIRONMENTAL INFORMATION CENTER AND SIERRA CLUB'S EXPERT WITNESS DISCLOSURE**

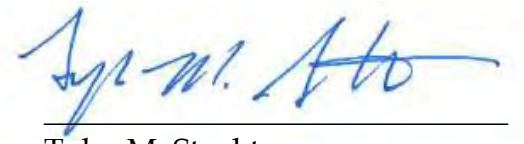
Pursuant to the Board's June 10, 2026, Scheduling Order, Petitioners Montana Environmental Information Center ("MEIC") and Sierra Club ("SC") (collectively "Conservation Groups") submit the following expert report for the Hon. Greg Pinski (ret.), which is attached as **Exhibit 1**.

Judge Pinski's qualifications, publications, prior expert witness testimony, compensation, documents reviewed, factual and analytical bases, methodology, and opinions are set forth in Ex. 1.

By submitting this expert report, Conservation Groups are reserving and do not waive any of their arguments concerning the Board's jurisdiction to entertain Westmoreland Rosebud Mining LLC and International Union of Operating Engineers, Local 400's (collectively "Westmoreland") fee petition, whether Westmoreland is entitled to any award of fees or expenses, the Board's process of requiring Conservation Groups to disclose expert testimony before the Board has issued findings regarding the conduct allegedly triggering an award of fees and expenses, or other disputed issues.

DATED this 7th day of August, 2026.

BOONE KARLBERG P.C.



Tyler M. Stockton
Matthew B. Hayhurst
Attorneys for Petitioners Montana Environmental Information Center and Sierra Club

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true copy of the foregoing document was served upon the following individuals by the means designated below:

[ ] U.S. Mail
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DATED: August 7, 2026

BOONE KARLBERG P.C.



Brooke Burnham, Paralegal

EXHIBIT 1

Judge Gregory G. Pinski (Ret.)
P. O. Box 3028
Great Falls, MT 59403-3028
(406) 727-3550
greg@mttrials.com

Expert Witness Disclosure

In re: Appeal and Request for Hearing Regarding Rosebud Mine Area B, Amendment 5 Permit No. C1984003B
Montana Board of Environmental Review
Case No. BER 2022-05 SM
August 7, 2026

Qualifications and Publications

I am a retired Montana district court judge licensed to practice law in Montana since 2000 and in Minnesota since 1999. While a district court judge, I sat by designation on the Montana Supreme Court and presided over approximately 10,000 cases. I am an elected member of the American Law Institute and National Academy of Distinguished Neutrals and appointed by the Montana Legislature to the Uniform Law Commission. I have also served as an adjunct instructor of legal writing at the University of Minnesota Law School.

Before becoming a judge, as lead counsel for plaintiffs and defendants in complex civil cases, I practiced before federal and state courts in 23 states. I began my practice of law with LathropGPM (formerly Gray Plant Mooty) in Minneapolis where I represented business clients including Shred-it, Cargill, Apple, Charter Communications, International Dairy Queen, Minnesota Vikings, AXA Investment Advisors, R.J. Reynolds, and many other companies. Upon returning to Montana, while remaining as national counsel to Shred-it, I maintained a plaintiff's law practice. Among the cases I handled include representing a nationwide class of cattle ranchers in a beef carcass grading dispute, a nationwide class of nearly 50,000 insurance policyholders, a nationwide fuel pricing class action, and I was lead counsel in the tragic Mercy Flight airplane crash.

After leaving the bench, I maintain an extensive mediation and arbitration practice, having mediated nearly 400 cases. I have mediated disputes involving attorney fees, including environmental cases. As a retired judge, I have been appointed by several

courts to serve as a special master in complex civil cases, including disputes over discovery issues and sanctionable conduct.

Whether as a judge, mediator, or attorney, I have extensive experience in prosecuting, defending, resolving, and deciding attorney fee petitions. This varied experience has given me a deep understanding of the customs, practices, and standards for seeking and awarding attorney fees in Montana.

My professional background, including a list of publications, is more fully described in the curriculum vitae attached as **Exhibit A**.

Prior Expert Witness Testimony

During the past four years, I testified as an expert witness at a post-conviction relief hearing on August 3, 2022, in *Charles Henry Pinner v. State of Montana,* Cause No. 20-27, Montana Fifteenth Judicial District Court. The petitioner-defendant was represented by Colin M. Stephens. The respondent-plaintiff State of Montana was represented by Daniel Guzynski, Assistant Attorney General for Montana. I was hired as an expert witness by the State of Montana.

I have been retained as an expert witness in other cases that resolved before I testified:

> *Big Sky Ranch Partners, LLC, et al. v. Mahlen, et al.,* Case No. 24-cv-00083-JTJ, U.S. District Court for the District of Montana. I was retained by Dale R. Cockrell, Moore, Cockrell, Goicoechea & Johnson, for Defendant Thomas Lee Mahlen to provide opinions on the standard of care for attorneys.
>
> *Bechtold v. ESIS, Inc.,* Case No. 24-cv-00152-KLD, U.S. District Court for the District of Montana. I was retained by Matthew T. Meade, Smith, Oblander, Meade & Mitcham, PC for Plaintiff Baron Bechtold to provide opinions on insurance claim handling practices.
>
> *Judd v. Knuchel, et al.,* Case No. 21-000100, Montana Sixth Judicial District Court. I was retained by Robert Farris-Olsen, Morrison, Sherwood, Wilson & Deola, PLLP, for Plaintiff Nathan Judd to provide opinions on the standard of care for attorneys.

Larsen v. Sayers, Case No. 21-000217, Montana Second Judicial District Court. I was retained by Brett P. Clark, Crowley Fleck, PLLP for Plaintiff Scott Larsen to provide opinions on the reasonableness of attorney's fees.

Compensation

I charge $395 per hour for my services as an expert witness.

Documents Reviewed

The facts forming my opinions come from my review of these documents provided to me. Additional facts relied on are discussed in the context of my opinions.

I received and reviewed the pleadings, orders, motions, briefs, exhibits, declarations, transcripts, audio/video materials, and correspondence made available to me in the file for *In the Matter of: Notice of Appeal and Request for Hearing, Rosebud Mine Area B Amendment 5 Permit Number C1984003B*, BER 2022-05 SM. The documents reviewed include the materials listed on **Exhibit B**. Where a docket entry identifies exhibits or attachments, my review included the exhibits or attachments associated with that filing to the extent provided in the file.

Opinions

I have been asked to render an opinion to a reasonable degree of professional certainty on whether Intervenor-Respondents Westmoreland Rosebud Mining LLC and International Union of Operating Engineers, Local 400's (collectively, "Westmoreland") petition for award of attorney fees, costs, and expenses is reasonable under Montana law and the associated customs, practices, and accepted standards in Montana.

My opinions are expressed to a reasonable degree of professional certainty. These opinions are based on the information provided. I reserve the right to further expand and/or amend these opinions and their bases as more information becomes available, particularly as depositions are taken, other experts revealed, and discovery continues. I intend to provide rebuttal testimony to other disclosed expert witnesses.

For this report, I am relying upon my legal and judicial experience with the customs, practice, and acceptable standards for attorney fee awards in Montana. For purposes of my opinions, I assume the governing legal standards include Montana fee-

reasonableness principles, § 25–10–712, MCA, ARM 17.24.1307(2), ARM 17.24.1309, and the but-for causation requirement applicable to fee awards based on alleged frivolous or bad-faith litigation conduct. I do not offer an independent legal opinion on fee entitlement, the Board's authority, or prevailing-party status. My opinions concern the reasonableness, documentation, allocation, and causal nexus of the fees, costs, and expenses requested by Westmoreland and whether an award is reasonable in this case.

Summary of Opinions

Assuming the Board determines that some fee entitlement exists, Westmoreland's fee petition is unreasonable. It fails to comply with the custom, practice, and accepted standards for reasonableness of fee requests in Montana. The petition does not reliably segregate fees incurred because of the alleged bad faith and harassing conduct from fees for other claims, general case defense, discovery, ordinary summary judgment work, exceptions briefing, fee-shifting research, or work that would have been performed no matter the alleged conduct. The same is true for Westmoreland's claim for Claim 2-related fees and expenses.

The billing records also have extensive block billing, generic task descriptions, duplication, overstaffing, and insufficient detail of, and support for, claimed expenses and hourly rates. Based on the custom, practices, and accepted standards in Montana, the petition is not reasonable and should not be accepted. If any fees are awarded, they should be limited to entries specifically tied to the alleged fee-triggering conduct and reduced to account for block billing, vagueness, duplication, overstaffing, unsupported rates, unsupported expenses, and lack of causal nexus.

Factual Background Relevant to Fee Allocation

This matter arises from the Montana Department of Environmental Quality's approval of Amendment 5 ("AM5") to the Rosebud Mine Area B permit, Permit No. C1984003B, for mining near Colstrip, Montana. Westmoreland Rosebud Mining LLC is the current operator of the Rosebud Mine.

The Board's summary judgment order describes the Rosebud Mine as encompassing over 30,000 acres, with mining operations across Areas A, B, C, D, and F. AM5 was sought to extend the mine footprint to the south and southwest and increase the Area B permit area by 9,108 acres. As approved, AM5 authorized strip mining of about 62.3 million tons of coal from 2,539 acres in the headwaters of Lee Coulee over a 21-year period.

DEQ approved a reduced version of AM5 on May 27, 2022. In the Board's later summary judgment findings, DEQ's approval was described as following an independent review of the probable hydrologic impacts of the proposed mining activities, relying on DEQ's technical and scientific staff, and as documented through a Cumulative Hydrologic Impact Assessment ("CHIA"), Response to Comments, and Written Findings and Record of Decision.

On June 27, 2022, Montana Environmental Information Center and Sierra Club (collectively, the "Conservation Groups") filed a Notice of Appeal and Request for Hearing with the Board of Environmental Review ("Board" or "BER"). The Conservation Groups appealed DEQ's May 27, 2022, approval of AM5 under § 82–4–206(1)–(2), MCA, and ARM 17.24.425(1), and asked for a hearing before the Board.

The Conservation Groups' appeal challenged DEQ's approval for three reasons in its Notice of Appeal:

1. DEQ's CHIA fails to assess the cumulative hydrologic impacts of all mining on the Lee Coulee alluvium, but erroneously considers the impacts of the AMS expansion in isolation and expressly ignores impacts from existing operations from the Rosebud Mine and from the Big Sky Mine. In assessing material damage, DEQ erroneously isolates the impacts of the AMS expansion on the Lee Coulee alluvium from pollution from the Rosebud Mine and the Big Sky Mine. DEQ asserts that AMS will not be any worse than the impacts of the Big Sky Mine. But the material damage determination does not compare the individual impacts of mining operations. Instead, this analysis determines whether the total impact of all mining will cause material damage. The AMS CHIA thus fails to lawfully assess cumulative hydrologic impacts or material damage.

2. Further, DEQ fails to protect intermittent stream reaches in Lee Coulee from disturbance from strip-mining operations. DEQ denies protections of the Buffer Zone Rule, ARM 17.24.651(1), to the intermittent to perennial reach of Lee Coulee at wetland 4-2/2 on the basis that the reach does not contain alluvium, even though no such requirement exists in the Buffer Zone Rule. The CHIA and permit application acknowledge that this stream reach is sourced by

groundwater and is therefore not ephemeral, but intermittent or perennial.

3. DEQ further refuses to assess the projected impacts of climate change on hydrology and other resources in the project area on the basis that the agency lacks legal authority to address probable climate impacts. MSUMRA, however, does not limit DEQ's ability to assess climate impacts. DEQ is required to assess the climatic conditions when assessing the cumulative hydrologic impacts and the requirements for reclamation. Evidence indicates that climate change is projected to cause significant increases in temperature and evaporative deficit in the area, and reductions in soil moisture. These climatic effects will in turn require substantially more water for existing uses in the future (since more of the existing water will be baked out of the earth through heat and evaporation). The cumulative hydro logic impacts of the AMS expansion-which will strip-mine an important shallow aquifer-will be more extreme because of worsening climatic conditions from climate change, which will have a dramatic impact on the likelihood of successful reclamation. DEQ's basis for ignoring the impacts of climate change when assessing mining's impacts to the hydrologic balance was erroneous, inconsistent, and arbitrary and capricious.

Westmoreland moved to intervene on July 28, 2022. Over Conservation Groups' objection, the Hearing Examiner granted intervention on September 12, 2022, and ordered that, without leave, Westmoreland and Local 400 would be treated as a single party for all purposes in the contested-case proceeding.

The Board's summary judgment order later summarized the Conservation Groups' amended claims: Claim 1 challenged DEQ's cumulative-impact analysis for the Lee Coulee alluvium; Claim 2 alleged that DEQ improperly authorized disturbance of an intermittent or perennial stream reach, specifically Wetland 4-2/2, in violation of ARM 17.24.651(1)–(2); and Claim 3 alleged that DEQ did not meaningfully consider global climate trends when evaluating reclamation viability.

Discovery proceeded under the Montana Rules of Civil Procedure and the Board's scheduling orders. The parties exchanged expert disclosures on January 25, 2023, and rebuttal expert disclosures on February 8, 2023. The Conservation Groups identified hydrologist Bruce Anderson as their expert and rebuttal expert. The Board's summary judgment order states that Mr. Anderson opined, among other

things, that the Lee Coulee reach encompassing Wetland 4-2/ 2 was an intermittent-to-perennial stream receiving groundwater input and lying below the local water table part of the year. Mr. Anderson also provided rebuttal opinions concerning DEQ's failure to consider the relevant legal standards in application of the Buffer Rule:

> DEQ's proposed testimony about mapped alluvium, water rights, observed flow below the embankment of Pond 300, and the absence of a biological community as defined in ARM 17.24.651(3) is irrelevant to whether this reach of the Lee Coulee is intermittent or perennial. An intermittent or perennial stream does not require the presence of mapped alluvium. Moreover, the basis of DEQ's statements about mapped alluvium is unclear, as DEQ has long identified alluvium in the upper reaches of Lee Coulee.

(Dkt. 58-2, at 3.)

DEQ and Westmoreland also disclosed expert witnesses. DEQ designated Dr. Emily Lodman and Martin Van Oort, both hydrologists. Westmoreland designated Dr. Michael Nicklin and John Carstensen in hydrology, Penny Hunter in biota, and Steven Viert in wetlands, each offering rebuttal opinions to the Conservation Groups' claims.

On March 10, 2023, the Conservation Groups served Westmoreland with a Notice for Inspection and Examination of Real Property, which sought to conduct a Rule 34 inspection of certain property on April 21, 2023, particularly focusing on the reach of Lee Coulee, which contained Pond PO-300, Wetland 4-2/2, and the seeps feeding those features and the former "wet reach" of Lee Coulee. A month later, and just over a week before the inspection, Westmoreland sought a protective order barring the inspection. In its motion, among other reasons, Westmoreland argued the Conservation Groups' claims were purely legal in nature with no factual disputes and requested that should any inspection occur, it be scheduled for after June 1, 2023. The Hearing Examiner ruled on June 6, 2023, ordering the Conservation Groups' inspection could proceed, but imposed certain restrictions. Thus, given Westmoreland's objections, though Conservation Groups attempted to inspect in the spring, it did not occur until the summer.

A joint site inspection of the Lee Coulee drainage, including Wetland 4-2/2, occurred on July 12, 2023. The inspection was attended by the Hearing Examiner, counsel for all parties, and expert witnesses including Mr. Anderson, Mr. Carstensen, and Dr. Lodman. Mr. Anderson was deposed the following day, July 13, 2023.

On August 23, 2023, the parties submitted cross-motions for summary judgment addressing Claims 1, 2, and 3. On summary judgment, the Conservation Groups narrowed their presentation of Claim 2, the Buffer Zone claim, to a contention that DEQ did not follow the correct legal analysis in applying the Buffer Zone Rule: "To determine if the reach qualified as an intermittent stream reach, DEQ did not consider the factors set forth in regulation, but instead considered other extra-regulatory factors." (Dkt. 28 at 14; *see also id.* at 2.) This argument was consistent with Mr. Anderson's rebuttal opinion. (Dkt. 58-2 at 3.)

Time entries by Westmoreland reflect that it understood Conservation Groups' arguments on summary judgment concerned whether DEQ had applied the correct factors. For example, the September 5, 2023, entry by Erik Adams noted he "review[ed] CHIA to see if DEQ considered the factors MEIC allege they failed to consider." Mr. Adams, on September 11, 2023, stated he worked on the response brief "arguing that the factors considered by DEQ in the CHIA were proper." The next day, Mr. Adams also worked on that issue billing for "[c]ontinue drafting section of response brief arguing DEQ's CHIA did address the factors MEIC's summary judgment motion claims DEQ ignored."

Westmoreland also moved to dismiss for lack of associational standing. Summary judgment briefing continued through October 18, 2023, and concluded on December 21, 2023.

During summary judgment briefing, the Conservation Groups submitted a declaration from Mr. Anderson. Respondents moved to strike the declaration and to preclude reliance on information and analysis in it. As noted below, Westmoreland's motion included a material alteration of Mr. Anderson's testimony. The Hearing Examiner granted the motion, striking the declaration and prohibiting the Conservation Groups from relying on its contents in their summary judgment filings.

The Hearing Examiner's order did not identify any specific opinions that were not disclosed in discovery. (Dkt. 72 at 1–6.) The order did not refute the Conservation Groups' argument that the opinions in the declaration were disclosed but struck the declaration while simultaneously stating that if the Conservation Groups' argument were correct, the declaration would be duplicative and unnecessary: "Finally, [i]f MEIC/Sierra Club's position is accurate, *i.e.*, that the substance of the Anderson Declaration exists elsewhere in the record, then the Declaration would be merely duplicative and therefore unnecessary." (*Id.* at 5–6.) Thus, without specificity, the Hearing Examiner's order generally found that the declaration had significant

information and analysis not previously disclosed during discovery and seemed to have been developed after Mr. Anderson's deposition and the close of discovery. Because the order was issued after the close of briefing, there was no opportunity for the Conservation Groups to update their briefs with citations to Mr. Anderson's expert disclosures.

After the Hearing Examiner's issuance of the order striking Mr. Anderson's declaration, on December 12, 2024, Westmoreland filed a notice that "mining of the ephemeral drainage housing Wetland 4-2/2 and Pond 300 will occur soon." (Dkt. 73 at 2.) The Conservation Groups then sought expedited review, which the Hearing Examiner granted. (Dkts. 74–75.) The Hearing Examiner held a hearing on summary judgment on February 18, 2025. (Dkt. 83.) At the close of the hearing, the Hearing Examiner complimented the briefing and arguments of all counsel as "high quality" and "exemplary." (*Id.*)

The Hearing Examiner issued an Order on Motions for Summary Judgment on May 23, 2025. The Order recommended summary judgment for DEQ and Westmoreland, denial of the Conservation Groups' motion, and affirmance of AM5 as lawful and proper. The Order stated the Conservation Groups did not meet their burden to show that DEQ's permitting decision was unlawful or unsupported by the record, and the evidence and legal arguments submitted by DEQ and Westmoreland showed the agency's actions were supported by substantial evidence and consistent with the applicable legal framework. The Hearing Examiner rejected Westmoreland's argument the Conservation Groups lacked standing. The Board adopted the Hearing Examiner's findings and conclusions on standing.

Westmoreland proposed to the Hearing Examiner a finding that the Conservation Groups committed "obvious discovery abuse" and that finding was rejected. (Dkt. 81, p. 12 ¶49.) Westmoreland did not take exception to the Hearing Examiner's rejection of that finding. The Hearing Examiner's recommended order did not make any findings that any arguments of the Conservation Groups were frivolous, in bad faith, or made for the purpose of harassing Westmoreland or DEQ.

The Board issued its Final Agency Action and Order on November 4, 2025. The Board adopted Hearing Examiner Cameron's May 23, 2025, order, with revisions, as the Board's final agency action and incorporated the proposed findings of fact and conclusions of law as revised. The Board rejected the Conservation Groups' exceptions in their entirety, adopted DEQ's proposed revisions/exceptions, and adopted Westmoreland's proposed revisions/exceptions except as to standing and to the extent they conflicted with DEQ's exceptions. The Board's Final Agency Action

and Order did not make any findings that any arguments of the Conservation Groups were frivolous, in bad faith, or made for the purpose of harassing Westmoreland or DEQ.

On November 26, 2025, Westmoreland filed a Petition for Costs, Expenses, and Fees. The petition sought an award of costs, expenses, and fees incurred in defeating Claim 2, the Buffer Zone Rule claim. Westmoreland argued Claim 2 was "factually and legally baseless" and the Board's final order rejected the Conservation Groups' challenge in its entirety. They further contended that the Conservation Groups prosecuted Claim 2 in bad faith and with intent to harass or embarrass Westmoreland.

The Conservation Groups opposed the fee petition. In their response, they argued the fee petition was based on unfounded allegations of bad faith; the Buffer Zone claim was based on expert testimony and evidence; the claim turned on ambiguous and disputed issues, such as the meaning of "local water table" and "stream"; the Hearing Examiner made no finding that the Conservation Groups' claims were frivolous or brought in bad faith and, instead, described the parties' work favorably; and contested the Board's jurisdiction to award attorney's fees and costs. Moreover, the Conservation Groups argued that the fee petition "misstate[d]" their Buffer Zone Claim:

> Petitioners claimed DEQ's application of the Buffer Zone Rule was unlawful because it "was not based on the factors that define an intermittent stream." Dkt. 38 at 14-20. Thus, they sought to prove—not that the stretch is intermittent—but rather that DEQ failed to "apply[] the correct procedural and substantive requirements" to assess intermittency. *MEIC v. Westmoreland*, 2023 MT 224, ¶¶ 19, 21; Dkt. 38 at 14-20.

(Dkt. 111 at 2.) Westmoreland's time entries, however, demonstrate that its attorneys understood the Conservation Groups' Buffer Zone claim presented on summary judgment to be that DEQ "failed to consider" the correct "factors" in applying the Rule. (Dkt. 99, Ex. D, Ex. 1 at 34–35 (time entries for Erik Adams from 9/5/2023, 9/11/2023, and 9/12/2023).)

The Conservation Groups' response also framed the appeal as a challenge to DEQ's permitting decision, not as claims brought against Westmoreland. In their surreply brief, Conservation Groups also argued they appealed DEQ's decision in June 2022,

and raised no claims against Westmoreland. Westmoreland intervened of its own accord.

Conservation Groups furthered these arguments at the May 15, 2026, hearing. At the beginning of the hearing, the parties argued their respective positions regarding whether the Board has jurisdiction to entertain a fee award. Following that argument, the Board concluded that it had jurisdiction to award fees in this case and the parties proceeded to the arguments on whether there was bad faith and harassing or embarrassing conduct by the Conservation Groups in this matter.

Westmoreland maintained it was entitled to its fees for defending Claim 2 and that the facts found in the Board's final order controlled. Westmoreland maintained that "[t]o prevail on Claim 2, Conservation Groups had the burden of proof, they had the burden of proving with evidence and expert opinion that the local water table was not 60 to 80 feet below the elevation of the channel, as concluded by DEQ, but rather above the elevation of the channel for at least part of the year." (Tr. at 50:23–51:4.) Westmoreland argued that the Conservation Groups acted in bad faith and harassed Westmoreland by pursuing what it argued was a baseless claim that lacked evidentiary or expert support, misrepresenting facts, ignoring evidence, committing discovery abuse, and falsely accusing Westmoreland of destroying evidence. (*Id.* at 52:1–10.) Westmoreland argued that the Conservation Groups should have withdrawn Claim 2 after the site inspection and their expert's deposition, claiming that no reasonable entity should have advanced the claim after that point. (*Id.* at 57:19–22.)

In response, the Conservation Groups argued that the analysis must not look at the final decision and whether Conservation Groups lost or whether certain evidence was stricken, but the plaintiff's position, for determining if bad faith and harassing conduct occurred. (*Id.* at 66:11–19.) Conservation Groups made clear that following the site inspection and deposition of their expert, the claim they advanced in their summary judgment motion was whether DEQ had appropriately applied the correct legal standard to determine if the buffer zone rule applied. (*Id.* at 116:11–119:2.)

Conservation Groups highlighted that this was an argument ultimately affirmed by the 2023 Montana Supreme Court decision *MEIC v. Westmoreland*, 2023 MT 224, ¶ 19, 414 Mont. 80, 545 P.3d 623, which held that the party challenging the DEQ's actions has the burden to show that "no" "DEQ [did not] follow[] the law in appropriately applying the correct procedural and substantive requirements" at issue. In addition to the legal argument, Conservation Groups highlighted that their expert

disclosed opinions that DEQ did not follow the correct procedures in assessing the Buffer Zone Rule and DEQ's own analysis supported the argument, which was, even though the Board did not agree with the arguments, sufficient factual bases for Claim 2. Conservation Groups also noted that the *MEIC* decision was decided by the Montana Supreme Court in the middle of the summary judgment briefing, which provided that post-decisional evidence was not appropriate to consider, which then factored into whether the site visit and certain photographs should be considered. (Tr. at 97:4–102:2.) Conservation Groups also made clear that even though their notice of appeal had raised a factual argument in Claim 2 (in addition to a legal argument regarding DEQ applying the wrong standard), the factual argument was dropped in the Conservation Groups' affirmative summary judgment motion based on the evidence in the record and the expert's testimony. (*Id.* at 116:11–119:2.) Conservation Groups only advanced the legal argument on summary judgment.

After the arguments were completed, the Board voted 4–1 that Conservation Groups had acted in bad faith. Immediately prior to the vote, Board Chair Simpson discussed his experience working with Westmoreland's predecessor in interest and discussed the geology of the area. He stated, "So what's happening is that the water is coming out of the bedrock, and into the stream bottom, and creating this temporary wetland, but—So what you have with the downward movement of water is that, yes, yes, there is a perched water table in the overburden, but the water is forced to the surface by the less permeable material, and the water flows downhill from there." (*Id.* at 136:9–16.) He acknowledged that "these seeps are fairly common in the area," but "they don't appear every year." (*Id.* at 137:19–22.) He then concluded that "asserting that there is an intermittent stream which is in contact with an underlying water table at these kinds of elevations is not, it's just not logical." (Tr. at 138:6–13.)

In response to a question from Board Member Payne, Board counsel, Dana Hupp, stated that indicators of bad faith are "continuing litigation without facts, misrepresenting facts, a lack of candor to the Tribunal, and misconduct." (Tr. at 142:6–10.)

Board Member Altemus then moved to find that the Conservation Groups "acted in bad faith." (Tr. at 144:7–13.) Board Member Altemus based the motion on statements by Westmoreland's counsel that the Conservation Groups had challenged other permits of Westmoreland:

> But Mr. Yemington even said that they've been—their permits have been challenged every single time, and this is the first time they've

> actually gone after damages, and that also just speaks to the fact that this was over the top, and I agree. I think this was over the top.

(Tr. at 143:18–23.)

Chair Simpson raised the point that the motion did not identify specific conduct constituting bad faith:

> A discussion point. This determination does not make a finding as to what point this began, and I think it was covered certainly in some detail by Mr. Yemington as to the various points in the process where this may have been—or this was a factor. I want to word it correctly.

(Tr. at 144:19–145:2.) No member of the Board clarified this point. The Board then voted 4–1 (Board Member Payne, the only attorney on the Board, voting no) in favor of Board Member Altemus's motion. (Tr. at 145:4–19.) The motion did not define or specify what was bad faith or when it began.

The Board then addressed whether the Conservation Groups "participated for the purpose of harassing or embarrassing Westmoreland or DEQ." (Tr. at 145:20–24.) Board Member Altemus indicated that she did not believe the Conservation Groups' participated in the proceeding for the purpose of harassing: "So, Mr. Chair, again, I'm not sure that I find—maybe I could be wrong—but I'm not sure that I find evidence of harassment. That's a pretty tough high bar, I think. So I think I would have a hard time going there." (Tr. at 145:25–146:5.)

Chair Simpson responded: "From my standpoint, accusing Westmoreland of spoliation for when they went in and did their excavation, when they were only following their mining and reclamation plan, I think is probably the best example of what I would consider harassing or embarrassing." (Tr. at 146:6–11.)

Board Member Altemus responded: "Thank you. I stand corrected. I forgot about that one. Thank you." (Tr. at 146:12–13.)

Chair Simpson continued: "So that point in particular. There are others where one could argue that they constituted harassment or embarrassing Westmoreland, but that one in my mind clearly does, so I plan to vote in the affirmative on this one." (Tr. at 146:15–20.)

Member Altemus then moved "that the Board find in Westmoreland's favor that the Plaintiffs were acting in a harassing and—what was the other word—manner." (Tr. at 147:10–15.) The Board then voted 4–1 (Board Member Payne voting no) in favor of the motion. (Tr. at 148:1–19.) The motion did not define what was the harassing or embarrassing conduct.

The Board set a hearing on Westmoreland's fee petition for October 16, 2026.

Standards Assumed for Fee Review

Westmoreland bears the burden of proving that any fee award is allowed by the governing Montana statute or administrative rule and is reasonable, supported by competent evidence, and causally connected to fee-authorizing conduct.

The customs, practices, and standards I apply on the reasonableness of attorney fees are based on my experience as a judge, mediator, and attorney who has prosecuted, defended, resolved, and decided many fee petitions over the past 27 years. My opinions are informed by the following summary of Montana law.

Montana follows the American Rule: each party generally bears its own attorney fees unless a statute, contract, or narrowly recognized equitable exception allow fee shifting. *See City of Helena v. Svee*, 2014 MT 311, ¶ 18, 377 Mont. 158, 339 P.3d 32; *Sampson v. National Farmers Union Prop.*, 2006 MT 241, ¶ 12, 333 Mont. 541, 144 P.3d 797; *Goodover v. Lindey's Inc.*, 255 Mont. 430, 445, 843 P.2d 765 (1992). Here, under narrow statutory and administrative provisions, a discretionary award of attorney fees and costs is permitted but not required under § 82–4–251(7) (2021), MCA, and ARM 17.24.1307(2).

Montana law also places the burden on the fee claimant to prove that requested attorney fees are reasonable and supported by competent evidence. *See Chase v. Bearpaw Ranch Ass'n*, 2006 MT 67, ¶¶ 22, 36–40, 331 Mont. 421, 133 P.3d 190; *Plath v. Schonrock*, 2003 MT 21, ¶¶ 36, 39–41, 314 Mont. 101, 64 P.3d 984.

Under § 82–4–251(7) (2021), MCA,

> Whenever an order is issued under this section or as the result of any administrative proceeding under this part, at the request of any person, a sum equal to the aggregate amount of all costs, expenses, and attorney fees as determined by the department to have been reasonably incurred by the person for or in connection

> with the person's participation in the proceedings, including any judicial review of agency actions, may be assessed against either party as the court, resulting from judicial review, or the department, resulting from administrative proceedings, considers proper.

Under ARM 17.24.1307(2),

> Whenever any final order is issued in any administrative proceeding under the Act at the request of the permittee, permit applicant, or the department, appropriate and reasonable costs, expenses and attorney fees incurred by the permittee, permit applicant, or the department for or in connection with participation in the proceeding may be assessed against any party if it is demonstrated that the party participated in the proceeding in bad faith and for the purpose of harassing or embarrassing the permittee, permit applicant, or the department.

These standards are narrowly construed and the parties agree attorney fees have never been awarded under this bad faith provision.

Section 25–10–712, MCA,[1] provides relevant requirements for evaluating a fee request. I assume for this report those standards apply. The statute states that an award of attorney fees must be reasonable and that a reasonable fee claim must include, among other things:

- the date a task is performed and the name of the timekeeper;
- a specific description of the task, including the nature, purpose, or subject of the work performed;
- descriptions sufficient for a reasonable person to understand what work is being claimed;

[1] In 2025, the Montana Legislature passed SB 39, codified at § 25–10–712, MCA, governing awards of attorney fees in civil lawsuits. SB 39 provides the statute "applies to awards of attorney fees in civil lawsuits that are pending on or after the effective date of this act." The effective date is October 1, 2025. Since this proceeding was pending after that date, § 25–10–712, MCA, applies. *See, e.g.*, *Upper Missouri Waterkeeper, et al. v. Broadwater County,* Case No. BDV-22-38 (Mont. First Jud. Dist. Ct. Nov., 20, 2025) (McMahon, D.J.) (ruling that § 25–10–712, MCA, applies to a lawsuit filed in 2022 that remains pending in 2025). I mediated and successfully resolved the attorney fee dispute in this case.

- time billed in tenths of an hour;
- a statement indicating whether the attorney has or has had a client who pays the hourly rate requested;
- a detailed list of time spent on each task;
- no block billing or aggregation of tasks;
- an itemized list of expenses, including receipts from vendors;
- in-house copying expenses not exceeding 10 cents per page; and
- an indication of whether a portion of the fee has been paid and whether the client is responsible for paying a portion of the bill if the attorney does not collect the award.

Section 25–10–712, MCA, also identifies rebuttable presumptions of unreasonableness, including sending more than one attorney to a deposition, sending more than two attorneys to an oral argument or trial, charging for telephone calls, faxes, library facilities, or electronic research subscriptions, and charging an hourly rate greater than the statewide average if the attorney has not been practicing for more than 10 years.

Under Montana's common law reasonableness analysis, courts traditionally consider the following non-exclusive factors:

1. the amount and character of services rendered;
2. the labor, time, and trouble involved;
3. the character and importance of the litigation;
4. the amount of money or value of property affected;
5. the professional skill and experience required;
6. the attorneys' character and standing; and
7. the results secured.

See Plath, ¶ 36; *see also* ARM 17.24.1309. In full, ARM 17.24.1309(1) provides:

> (1) A petition for costs, expenses, or attorney fees must include the name of the person from whom costs and expenses are sought and the following must be submitted in support of the petition:
>
> > (a) an affidavit setting forth in detail all costs and expenses including attorney fees reasonably incurred for or in connection with, the person's participation in the proceedings;

(b) receipts or other evidence of such costs and expenses; and

(c) where attorney fees are claimed, evidence concerning the hours expended on the case, the customary commercial rate of payment for such services in the area, and the experience, reputation and ability of the individual or individuals performing the services.

Where fees are sought for allegedly frivolous or bad-faith litigation conduct in a matter involving both challenged and unchallenged claims or work, the fee request must be evaluated for causal nexus. The United States Supreme Court has explained that a fee award for frivolous claims may include only fees the opposing party would not have incurred but for the frivolous claim. *See Fox v. Vice*, 563 U.S. 826, 829, 834–36 (2011). The Court later applied the same causal principle to fee sanctions based on bad-faith conduct, holding that such awards must be compensatory and limited to fees that would not have been incurred but for the misconduct. *See Goodyear Tire & Rubber Co. v. Haeger*, 581 U.S. 101, 108–10 (2017).

The conclusion a party is entitled to an award of attorney fees is reviewed for correctness. *See Hughes v. Ahlgren,* 2011 MT 189, ¶ 10, 361 Mont. 319, 258 P.3d 439. If legal authority exists, a decision on the amount of attorney's fees awarded is reviewed for an abuse of discretion. *Id.* Abuse of discretion occurs when a court acts "arbitrarily without employment of conscientious judgment or [exceeds] the bounds of reason resulting in substantial injustice." *Gaustad v. City of Columbus,* 272 Mont. 486, 488, 901 P.2d 565 (1995).

Opinion 1: The Fee Petition Contains Extensive Block Billing That Prevents Reliable Allocation

In contravention of § 25–10–712, MCA, and the customs, practices, and acceptable standards of reasonableness for fee awards in Montana, the billing records contain numerous entries that aggregate multiple tasks into one time entry. These entries often combine substantive legal work, correspondence, conferences, record review, drafting, research, staffing, and strategy. When several tasks are combined into a single entry, it is impossible to determine how much time was spent on each task or whether any particular portion was caused by the alleged fee-triggering conduct.

Examples of block billing include entries that combine:

- document review and correspondence;

- legal research, drafting, and internal circulation;
- case strategy conferences, litigation holds, and case-assessment notes;
- review of opposing filings, internal conferences, and correspondence;
- fee-shifting research, correspondence, and claim-dismissal issues;
- preparation for meetings, multiple conferences, outline review, drafting, legal research, and correspondence; and
- review/revision, citation work, email correspondence, and team coordination.

Though not exhaustive, specific examples of time entries that are inappropriately block billed are shown on **Exhibit C**.

This pattern materially impairs the ability to determine whether the time claimed was reasonable, whether it was necessary, whether it related to Claim 2, and whether it would have been incurred absent the alleged conduct. Block-billed entries throughout Westmoreland's fee petition should be disallowed.

Opinion 2: The Fee Petition Contains Generic and Vague Descriptions

In contravention of § 25–10–712, MCA, and the customs, practices, and acceptable standards of reasonableness for fee awards in Montana, many entries use generic or under-described phrases such as "matter status," "path forward," "attend to correspondence," "regarding the same," "attend to matter staffing," "case status," "team call," and similar descriptions. Such entries do not consistently identify the subject, purpose, recipient, necessity, or claim-specific relationship of the work performed.

Generic descriptions are particularly problematic in this matter because the fee petition depends on allocation. Without a specific description of the task, the record does not show whether the entry related to the Buffer Zone claim, another claim, general litigation defense, ordinary coordination, fee-shifting research, or work that would have been performed regardless of Claim 2. Vague or generic entries throughout Westmoreland's fee petition should not be awarded.

Though not exhaustive, specific examples of time entries that are inappropriately vague or generic are shown on **Exhibit D**.

Opinion 3: The Fee Petition Raises Duplication and Overstaffing Concerns

The billing records reflect repeated internal conferences, overlapping attorney participation, and multiple timekeepers billing for the same litigation events or adjacent work streams. The records include multiple-attorney participation in deposition and site-inspection periods, repeated senior-attorney conferences, multiple timekeepers reviewing or revising the same briefs, and overlapping entries for strategy calls, status conferences, and correspondence.

Multiple attorneys may sometimes be reasonable in complex litigation, but the fee claimant must show why the staffing was reasonable and necessary for the specific recoverable work. The records here do not consistently provide that showing. Entries involving duplication or overstaffing throughout Westmoreland's fee petition should be disallowed under the customs, practices, and acceptable standards of reasonableness for fee awards in Montana.

Though not exhaustive, specific examples of time entries that are duplicated or overstaffed are shown on **Exhibit E.**

Opinion 4: The Fee Petition Does Not Adequately Support All Claimed Rates and Expenses

The billing records include high hourly rates, including rates identified in the petition materials such as attorney John Martin's $954.28 per hour rate (as noted in his first time entry)[2] or paralegal Michelle McCallum's $369.45 (as noted in her first time entry)[3] per hour rate. I am not aware of any attorneys charging such hourly rates in Montana, nor paralegals. I do not opine those rates are categorically unreasonable, but they greatly exceed reasonable customary, and accepted rates for attorneys or paralegals in Montana. Under Montana law, rates at that level require adequate evidentiary support, including evidence of the lawyer's experience, role, market rate, whether the lawyer has or has had a client who pays the requested hourly rate, and whether the rate satisfies any applicable statutory requirements.

I recognize that Mr. Martin was a nationally recognized mining law specialist who authored treatises on the subject. There are similarly qualified specialists in Montana

[2] This number is taken by dividing the "billed amt" by the "bl hrs" on Mr. Martin's first time entry (p.1): $1145.14/1.2=$954.28/hr.
[3] This number is taken by dividing the "billed amt" by the "bl hrs" on Ms. McCallum's first time entry (p. 34): $73.89/.2=$369.45/hr.

who charge half his hourly rate, however. For instance, in recent litigation, I hired Ed Eck, former dean of the University of Montana School of Law. Dean Eck was a principal author of the Uniform Trust Code and for over 30 years, taught trusts and estates to thousands of Montana lawyers and judges. Dean Eck's qualifications as a Montana lawyer and professor are on par with Mr. Martin. Dean Eck's hourly rate is $400 per hour.

Two weeks ago, retired Judge Robert Olson serving as an arbitrator in a fee-shifting dispute ruled a claimed $700 hourly rate by a Minneapolis attorney-accountant with over 30 years of experience serving as an expert witness in a Montana farm and ranch dispute was unreasonable. Judge Olson reduced the rate to $420 per hour.

Moreover, Westmoreland's blended-rate methodology does not satisfy Montana's reasonableness standard. Under *Plath* and *Bachmeier*, reasonableness depends in part on the professional skill and experience required and the attorneys' character and standing. Section 25–10–712, MCA, further requires rate-specific proof, including whether the attorney has a client who pays the requested rate and whether a rate exceeds the statewide average for attorneys with fewer than 10 years' practice.

A blended rate defeats that analysis. It does not show that each attorney's rate is reasonable based on that attorney's experience. It may undercharge senior lawyers, but it may also overcharge for junior lawyers, associates, or routine tasks. The statute does not ask whether the *firm's* average rate is reasonable; it requires scrutiny of the *attorney's* rate and experience. For instance, based on fee entries, Erik Adams performed nearly all the work on the spoliation issue. Mr. Adams had less than ten years experience. He was billing as low as around $287 per hour in 2022 and up to $482 per hour in 2023. Westmoreland makes no effort to prove his billing rate is reasonable under Montana's statewide average, particularly during the 2023 timeframe regarding the spoliation issue, where his rates were in the higher $400+/hr. range. *See* § 25–10–712(2)(d), MCA (establishing rebuttable presumption that charging an hourly rate greater than the statewide average if the attorney has not been practicing more than ten years).

Persuasive federal authority confirms that courts should not blindly apply a blended rate. In *Feld Motor Sports v. Traxxas, LP,* No. 4:14-CV-543, 2016 WL 2758183 (E.D. Tex. May 12, 2016), the court rejected the uniform application of a blended rate and assigned lower rates to other partners and associates based on market rates and attorney-specific experience. In *McKenna v. City of Philadelphia,* 582 F.3d 447 (3d. Cir. 2009), the court required task-specific and attorney-specific rate scrutiny, affirming different rates for different types of work.

Westmoreland's cost request should be denied or reduced because § 25–10–712, MCA, requires itemized expense support, including vendor receipts, and a reasonableness showing. The petition lists $46,468.75 in broad cost categories and seeks one-third of that amount merely because Claim 2 was one of three claims. That arithmetic allocation is not evidence that the costs were actually incurred for Claim 2, much less that they were reasonable and necessary. Westmoreland's fee petition also does not include vendor receipts as required by § 25–10–712(1)(e), MCA.

Westmoreland bears that burden and it has failed to meet it here. The fee petition should be disallowed under the customs, practices, and acceptable standards of reasonableness for fee awards in Montana.

Opinion 5: Montana's Reasonableness Factors Do Not Support the Fee Petition

Based on the customs, practices, and acceptable standards for fee awards in Montana, Westmoreland's petition fails the *Plath* reasonableness analysis because it seeks a fee award untethered to the limited result it obtained and the limited misconduct it alleges. The petition is expressly confined to fees "incurred in defeating Claim 2," while Westmoreland reserves any future request for Claims 1 and 3. The *Plath* factors therefore require claim-specific and conduct-specific allocation.

Applying Montana's common law reasonableness factors, Westmoreland's petition is deficient and should be disallowed.

Amount and Character of Services; Labor, Time, and Trouble

The amount and character of services rendered and the labor, time, and trouble involved do not support shifting the full requested amount. The records include general case work, multi-claim summary judgment work, internal conferences, status updates, administrative tasks, exceptions briefing, fee-shifting research, and work not shown to have been caused by the alleged Claim 2 conduct.

The difficulty is not simply that the case was complex. It was. The difficulty is that the petition does not reliably say which work was caused by the allegedly fee-triggering conduct and which work would have been performed had the allegedly free-triggering conduct not occurred.

Character and Importance of the Litigation; Value at Stake

The character and importance of the litigation and the value at stake show that Westmoreland had independent reasons to vigorously defend against all three claims and to protect its permit interests. Those factors do not, by themselves, show that the Conservation Groups should bear the entire cost of Westmoreland's defense or the cost of work not caused by the alleged Claim 2 conduct.

Skill, Experience, Character, and Standing of Counsel

The case involved technical environmental issues and required skilled counsel. However, the professional skill and experience required do not excuse the fee claimant from proving that the specific hours, rates, expenses, and staffing choices were reasonable, nonduplicative, adequately described, and causally connected to recoverable work.

High hourly rates (as marked by calculating the actual rate billed by Mr. Martin for example, not the blended rate) and repeated senior-attorney participation require adequate support. They are unreasonable because the entries are block-billed, vague, duplicative, or mixed with work that would have been performed regardless of Claim 2.

Results Secured

The results-secured factor supports disallowance of the fee petition or at a minimum, a substantial reduction. Westmoreland's petition is directed to Claim 2, not to the entire case. Westmoreland also reserves any future request related to Claims 1 and 3. The fee petition requires claim-specific and conduct-specific allocation which Westmoreland has failed to prove and the Board has failed to specify. Board Chair Simpson expressly noted, "This determination does not make a finding as to what point this began . . . ." (Tr. at 144:19–21.) Moreover, a recent filing by the Board in the district court confirmed that it had not specified what conduct was sanctionable and that it would make that finding following the hearing on reasonableness: "[t]he scheduling order [in this matter] confirmed that the Board's final written decision, addressing both its statutory authority to adjudicate the fee petition and the specific factual and legal bases for its bad faith and harassment findings, will not issue until after the hearing and the parties' post-hearing submissions." (Board's Brief in Support of Motion to Dismiss Amended Complaint and Request for Oral Argument at 4, *MEIC v. DEQ*, No. DV-44-2026-0027-OC (Aug. 4, 2026).)

Westmoreland seeks fees for the entirety of Claim 2, while the Board discussion on both elements—bad faith and harassment—seemed limited to the alleged spoliation issue. At the hearing, the Board members agreed 4–1 that Conservation Groups engaged in bad faith conduct at some undefined time in the litigation, but Board Member Altemus did not agree Conservation Groups engaged in bad faith for the purpose of harassment (Tr. at 145:25–146:5), until Chair Simpson focused on spoliation and Board Member Altemus agreed that constituted harassment (Tr. at 146:6–14.) It is reasonable to conclude the operative conduct from the Board's dialogue that met both the bad faith **and** harassment standard for attorney's fees is the Conservation Group's unsuccessful spoliation argument.

Further, under Westmoreland's own theory, the actionable conduct did not begin at case inception; it began only after the site inspection and Anderson deposition, when Westmoreland contends the Conservation Groups' expert testimony expressed uncertainty about whether the portion of Lee Coulee in question was intermittent. Moreover, it is important to note that the Conservation Groups only affirmatively moved for summary judgment on the legal aspect of Claim 2, arguing that DEQ had failed to apply the correct legal standard. A full award would improperly shift fees for work attributable to Claims 1 and 3, general permit-defense work, ordinary summary judgment work, and litigation activities Westmoreland would have undertaken anyway. More importantly, under the Board's finding, the only allegedly sanctionable conduct that met both requirements of the statute—bad faith and harassment—was the Conservation Groups' argument about spoliation. As evidenced by Westmoreland's own time entries, the fees attributable to this issue are minimal. The reason there are not significant fees with a nexus to this issue is that it was not a material issue in the case as evidenced by the limited summary judgment briefing attributed to it.

Opinion 6: There Is No Evidence Of Bad Faith And Harassing Conduct

Under § 82–4–251(7) (2021), MCA, the Legislature imposed a discretionary standard for the award of attorney's fees by using the language "may be assessed." This discretionary standard is further codified in ARM 17.24.1307(2). In applying these standards, even if the Board finds the Conservation Groups engaged in bad faith and with the purpose of harassing Westmoreland, the appropriate tribunal still retains discretion on whether to award attorney's fees. Based on my familiarity with the customs, practices, and accepted standards for fee awards in Montana, not only is there no evidence of bad faith and harassing conduct, but even if such a finding is made, the appropriate tribunal retains discretion to deny an award of attorney's fees.

This is precisely what the Court did in *MEIC*, ¶ 107, where the Court had authority to award attorney's fees on appeal but declined to exercise its discretion to do so. Here, in my opinion, it would be unreasonable to award any fees at all.

Westmoreland cannot satisfy its burden merely by pointing to the Board's adverse ruling on part of one claim. Losing, even at summary judgment, does not convert a colorable legal challenge into frivolous or bad-faith litigation. The relevant inquiry is whether the Conservation Groups' position lacked any reasonable legal or factual foundation when asserted, or whether it was pursued for an improper purpose—not whether Westmoreland ultimately prevailed on a discrete issue.

First, the governing standard is stringent and conjunctive. ARM 17.24.1307(2) requires Westmoreland to prove both that the Conservation Groups took part "in bad faith" **and** "for the purpose of harassing or embarrassing" the applicant.

This standard is even more restrictive than Rule 11, MRCP. Even under Rule 11, sanctions are not imposed simply because a party loses. Rule 11 is directed at objectively frivolous filings or filings interposed for an improper purpose, and it is not a prevailing-party fee-shifting device. *See D'Agostino v. Swanson*, 240 Mont. 435, 445, 784 P.2d 919 (1990). Federal courts similarly caution that Rule 11 sanctions are generally reserved for the "exceptional circumstance" where a claim is patently unmeritorious or frivolous. *See Lima v. Deutsche Bank Nat'l Trust Co.,* 687 Fed. Appx. 606, 609 (9th Cir. 2017) (recognizing that Rule 11 is not intended to "chill an attorney's enthusiasm or creativity in pursuing factual or legal theories. . . . The key question . . . is whether a complaint states an arguable claim — not whether the pleader is correct in his perception of the law." (internal citations omitted)). While a district judge, I presided over approximately 2,500 civil cases. I recall only finding Rule 11 violated in 3 cases: *In re Estate of Boland,* ADP-15-125, *aff'd* 2019 MT 236; *Schnittgen v. BNSF,* ADV-13-168, and *Chapman v. Ebay,* DDV-12-682(a).

The Board counsel advised that bad faith "requires a finding that the Conservation Groups' action was frivolous, unreasonable, or without foundation." (Board Memo., Apr. 6, 2026, at p. 8) There is no such finding that any specific conduct met that standard.

Second, there is no evidence of purposeful conduct. In other statutory contexts, a person acts "purposely with respect to a result or to conduct described by a statute . . . if it is that person's conscious object to engage in that conduct or cause that result." § 45–2–101(65), MCA. Purposeful conduct is the highest level of criminal intent, above acting knowingly and negligently. As applied here, to prove purposeful

conduct, Westmoreland must prove the conduct was Conservation Groups' conscious objective, not merely a foreseeable consequence or litigation effect. There is no evidence in the record supporting this conclusion. It is proper for the Board to consider the criminal standard for purposeful conduct: here, in the Board counsel memo and Westmoreland's reply brief (p. 18), the Board looked to criminal definition of harassment.

Third, Claim 2—the Buffer Zone claim—was plausible and supported by law and evidence because it rested on the regulatory distinction between intermittent streams and ephemeral drainage ways. As noted, the claim, as affirmatively moved on summary judgment, was premised—not on whether the segment of Lee Coulee was in fact intermittent, but on DEQ's failure to apply the correct legal standard in assessing applicability of the Buffer Zone Rule: "To determine if the reach qualified as an intermittent stream reach, DEQ did not consider the factors set forth in regulation, but instead considered other extra-regulatory factors." (Dkt. 38 at 14.)

Legally, that claim has been confirmed by recent Montana Supreme Court caselaw, *MEIC*, ¶ 19, decided during the summary judgment briefing in this case, which allows review of DEQ's permitting decision to determine "whether DEQ followed the law in appropriately applying the correct procedural and substantive requirements of MSUMRA." (Dkt. 38 at 14.) The claim rested on the regulatory distinction between intermittent streams and ephemeral drainage ways, (Dkt. 38 at 14–15), an uncertain area of law without any guiding precedent. As noted, while Westmoreland has argued to the Board that the Conservation Groups' claim on summary judgment was that the section of Lee Coulee was intermittent, its counsel's billing records demonstrate that they understood the claim as challenging the "factors" DEQ did and did not assess. (Dkt. 99, Ex. D, Ex. 1 at 34, 35 (time entries for Erik Adams from 9/5/2023, 9/11/2023, and 9/12/2023).)

Moreover, Conservation Groups' argument was supported by several categories of factual support:

- The analysis of the Buffer Zone Rule in DEQ's analysis document, the Cumulative Hydrologic Impact Assessment (CHIA), (Dkt. 38 at 15; Dkt. 39-2 (CHIA));
- DEQ expert testimony that undercut DEQ's reasons for denying Buffer Zone protections, (Dkt. 38 at 15; Dkt 39-4 (Lodman Deposition));
- Admissions in DEQ's CHIA that the relevant portion of Lee Coulee was fed by "seeps" sourced from groundwater and that such groundwater constitutes the "local water table," (Dkt 38 at 17; Dkt. 39-2);

- Evidence from multiple scientific and expert reports identifying groundwater seeps or springs surfacing in the relevant portion of Lee Coulee and persistent presence of water in the section, including the CHIA (written by DEQ), the Probable Hydrologic Consequences Report (PHC) (drafted by WRM's consultant), the wetland report (Cedar Creek Wetland Report, written by consultants for WRM), an aquatic life report (Environmental Resources Management, Area B-Extension South Macroinvertebrate Survey), and baseline data, (Dkt. 38 at 18–19; Dkt. 39-2; Dkt. 39-6; Dkt. 39-7; Dkt. 39-12; Dkt. 39-15; Dkt. 39-16);
- The CHIA, PHC, Cedar Creek Wetland Report, and DEQ's deposition testimony all identified seeps in this section of Lee Coulee, indicating that the section could not be ephemeral, (Dkt. 39, ¶¶ 49, 55, 61, 63);
- The CHIA analysis that identified the groundwater sourcing the seeps as the "local water table," (Dkt. 39, ¶ 63);
- An expert declaration from Bruce Anderson stating that the factors DEQ relied on in conducting its analysis of the Buffer Zone were not the factors required under MSUMRA, (Dkt. 38 at 16–17; Dkt. 39, ¶¶ 50–52; Dkt. 39-19); While the Hearing Examiner ultimately struck Anderson's declaration for containing unidentified undisclosed information, (Dkt. 72), Anderson's testimony that DEQ did not consider the relevant factors in assessing the Buffer Zone Rule was timely disclosed, (Dkt. 58-2 at 2–3);
- Altogether, the Conservation Groups presented 18 proposed findings of undisputed fact with supporting citations related to Claim 2 in their statement of undisputed facts (Dkt. 39, ¶¶ 47–64, 23), proposed disputed facts with supporting citations related to Claim 2 in their statement of disputed facts (Dkt. 53, ¶¶ 98–120, 10), supplemental proposed disputed facts with supporting citations related to Claim 2 in their supplemental statement of disputed fact (Dkt. 70, ¶¶ 33–42, and 18), additional proposed findings of fact with supporting citations related to Claim 2 in their proposed findings of fact and conclusions of law (Dkt. 82 at 1–23, ¶¶ 48–65).

Fourth, the claim was complex, unsettled, and involved undefined terms. No Montana case or final Board decision had interpreted the Buffer Zone Rule, and the key terms "local water table" and "stream" were undefined under MSUMRA. DEQ's own expert allegedly admitted DEQ had no definition of "local water table" and had "never seen a good definition" of it. (Dkt. 39-4 at 203:20–21 ("[D]oes DEQ have any guidance on definition of local water table? A. Nope."); *id.* at 204:21–22 ("I don't think there's—I've never seen a good definition of local water table.").)

The Board's extensive merits analysis—30 findings and 15 conclusions over 13 pages—is evidence that the issue was complicated, not frivolous.

Fifth, the Hearing Examiner did not find frivolousness or bad faith—and praised counsel's work as "high quality" and "exemplary." Further, the Board's finding of liability was not unanimous and did not find or apply any of the factors identified by Board counsel for determining that a claim was frivolous or in bad faith. Board counsel stated that "continuing litigation without facts, misrepresenting facts, a lack of candor to the Tribunal, and misconduct" can indicate that a claim is frivolous or in bad faith. (Tr. at 142.) The Board did find any of these factors when it voted to hold the Conservation Groups liable. (*Id.* at 143–48.) Chair Simpson argued that it was not "logical" for the Conservation Groups to "assert[] that there is an intermittent stream" in this section of Lee Coulee. (Tr. at 138:6–13.) But in their affirmative summary judgment motion, the Conservation Groups did not assert that the section of Lee Coulee was intermittent; they instead argued that "DEQ did not consider the factors set forth in regulation, but instead considered other extra-regulatory factors." (Dkt. 38 at 14.) As noted, Westmoreland's counsel recognized internally that the Conservation Groups' argument on summary judgment were about whether DEQ consider the correct regulatory factors. (Dkt. 99, Ex. D, Ex. 1 at 34, 35 (time entries for Erik Adams from 9/5/2023, 9/11/2023, and 9/12/2023).)

Board Member Altemus moved to find bad faith based on the Conservation Groups appealing other permits of Westmoreland that were not before the Board. (Tr. at 143:10–23.) That, however, in my opinion, is not a basis for finding bad faith with respect to Claim 2. The Board also found a purpose to harass Westmoreland, which it did not define, but inference from the transcript shows it was not on the merits of Claim 2, but on the basis of the Conservation Groups' brief spoliation argument. (Tr. at 145:20–146:20.)

Even that limited spoliation argument, however, was based on the fact that Westmoreland had bulldozed a certain portion of the stretch of Lee Coulee before the inspection occurred. (Dkt. 38 at 18 & n.6; Dkt. 36-1, ¶¶ 3–7; Dkt 60-9, ¶ 3.) Westmoreland argued it was permitted to do the work, that Conservation Groups' site visit request came after the work was done, and that in discovery responses Westmoreland believed it had no duty to preserve the stretch.

However, while Westmoreland denied in briefing that it had any reason to believe the conditions of the reach might be relevant to this case when it was bulldozed, the time entries of its counsel show that its attorneys discussed "discovery and site inspection" in September 2022, which was months prior to Westmoreland's

bulldozing of certain portions in November or December 2022. (Dkt. 99, Ex. D, Ex. 1 at 3 (time entry for Sam Yemington from 9/29/2022); Dkt. 60-9, ¶ 3 (site bulldozed in November or December 2022).) Critically, just because a party may be entitled do something, does not necessarily mean doing it is not spoliation. Parties have an ongoing duty to not spoliate evidence. *See e.g.*, *Montana State U.-Bozeman v. Montana First Jud. Dist. Ct.*, 2018 MT 220, ¶ 23, 392 Mont. 458, 426 P.3d 541 (providing duty to preserve evidence arises when party knows or reasonably should know that evidence may be relevant to reasonably foreseeable litigation). In my opinion, the spoliation argument was not harassing or improper.

Sixth, Westmoreland's asserted "bad faith" examples are mischaracterized. Most notably, Westmoreland materially altered expert Anderson's deposition testimony by omitting the time-limiting language "when I was there" and "not yesterday, at least." Conservation Groups argue this omission created the false impression that Anderson conceded the reach was ephemeral, when he actually maintained that the reach was intermittent. Anderson's statement about one July inspection did not concede the stretch was always above the water table or was ephemeral. Westmoreland's alteration was material because, under MSUMRA, an intermittent stream need only be "below the local water table for at least some part of the water year," *i.e.*, seasonally.

Seventh, Westmoreland's "discovery abuse" claim is unsupported by the record. Westmoreland asserted to the Board that the Hearing Examiner found "obvious discovery abuse." Westmoreland proposed this finding, but the Hearing Examiner rejected it. Westmoreland cannot turn its own rejected proposed finding into a basis for fees. Regardless, losing a discovery dispute is not evidence of frivolousness or bad faith, especially where Westmoreland itself lost a discovery dispute, *e.g.*, the site inspection.

To the extent Westmoreland's argument is based on the Hearing Examiner's decision to strike the Conservation Groups' expert declaration, while technically disallowing certain evidence is considered a "sanction" under Rule 37, having something disallowed based on timeliness is not "discovery abuse." Moreover, the Hearing Examiner's decision makes clear that though the declaration was struck, he also noted that if Conservation Groups' argument was accurate that the information in the declaration "exists elsewhere in the record, then the Declaration would be merely duplicative and therefore unnecessary. Thus, no prejudice will result from the information contained in the Declaration."

Eighth, Conservation Groups cannot be held to harass Westmoreland because they never sued Westmoreland. Westmoreland intervened on its own over Conservation Groups' objection. Conservation Groups filed the appeal against DEQ, challenging DEQ's permitting decision. That fact alone seriously undermines any claim that the purpose of the proceeding was to harass Westmoreland.

Ninth, the evidence of alleged "harassment" alleged by Westmoreland—Conservation Groups' misstatement in the exemption briefing that mining had "obliterated the stream reach"—was one isolated incorrect statement that was promptly corrected. The statement was based on Westmoreland's prior notice that "mining of the ephemeral drainage housing Wetland 4-2/2 and Pond 300 will occur soon." (Dkt. 73 at 2.) Counsel corrected and apologized for the statement at oral argument following certain evidence and argument being put on by Westmoreland. It cannot reasonably be inferred that such conduct prejudiced Westmoreland. The narrow, limited issue cannot support the extreme conclusion that the entire proceeding was brought to harass Westmoreland.

Tenth, Westmoreland's conduct in this case cuts against awarding it fees. Westmoreland's time entries indicate it discussed a "site inspection" in September 2022, before Lee Coulee bulldozing occurred later that year and there was a material alteration of the expert's testimony in briefing. Given the focus on the spoliation question and the expert testimony, in my opinion, Westmoreland's own actions cut against awarding it fees.

In my opinion, the Conservation Groups did not act in bad faith or to harass Westmoreland because they brought a legitimate, evidence-supported, technically complex challenge to DEQ's permitting decision; the key legal and factual issues were unsettled; the Hearing Examiner never found frivolousness or bad faith and instead praised the quality of the parties' work; Westmoreland's accusations of bad faith rest on mischaracterizations and alleged alterations of testimony; and the appeal was filed against DEQ, not Westmoreland, defeating the argument that its purpose was to harass Westmoreland.

For the foregoing reasons, based on my experience and qualifications, I believe any award of fees and expenses in this proceeding would be unreasonable.

Opinion 7: The Petition Does Not Establish a Reliable Casual Nexus Between the Alleged Conduct and the Full Fee Request.

Westmoreland's fee petition is expressly directed to fees incurred in defeating Claim 2, the Buffer Zone Rule claim, although at the hearing, the Board seemed more narrowly focused on the alleged spoliation conduct. Those limitations matter. The underlying contested case involved three claims, standing arguments, multiple parties, technical environmental issues, extensive summary judgment briefing, exceptions briefing, intervention issues, discovery disputes, and post-merits fee litigation. A fee petition must provide a reliable method for separating fees incurred because of the alleged bad faith conduct from fees for other claims and general litigation activity.

Westmoreland's approach to simply divide their total fees in thirds as detailed in its fee petition is neither reasonable nor reliable and also fails to meet their burden of proof. The petition does not provide that reliable method. The billing records include work on:

- general case assessment and strategy, such as reviewing documents, strategy on intervention, numerous conferences on "path forward," planning discovery, etc.)
- intervention and unsuccessful standing arguments;
- work on at least one motion to dismiss that was never filed;
- general discovery and expert work;
- multiple unsuccessful discovery motions;
- summary judgment briefing addressing multiple claims;
- motion to strike work;
- exceptions briefing;
- coordination with DEQ;
- internal conferences and team management;
- fee-shifting research;
- potential fee-claim work; and
- general correspondence and matter-status tasks.

Most time entries do not identify whether the work related to Claim 1, Claim 2, Claim 3, multiple claims, general case defense, or fee-claim preparation. Others identify Claim 2 or Buffer Zone issues but combine that work with other tasks in a single block-billed entry. The records do not permit a reliable calculation of the fees,

costs, and expenses caused by the alleged fee-triggering, namely the alleged bad faith and harassing conduct.

This is especially important because Westmoreland's own theory does not seem to treat all work from case inception as sanctionable. The alleged fee-triggering conduct is tied to Claim 2 and, more specifically, to the contention that the Conservation Groups continued to prosecute the Buffer Zone claim after some point. If that is the alleged causal trigger, fees incurred before that point, fees for claims other than Claim 2, and fees Westmoreland would have incurred regardless are not shown by the petition to satisfy a but-for causation test.

Westmoreland argued for various points but claimed no reasonable party should have continued to prosecute Claim 2 following the site inspection and deposition of Conservation Groups' expert. (Tr. at 57:17–22, 106:14–25.) However, the Board did not identify when the alleged bad faith and harassing conduct actually started. In any event, in its discussion at the hearing, based on the Board Chair's comment while discussing the motion to find intent to harass, the Board seemingly identified the spoliation issue as the operative conduct meeting both of the statutory requirements for an award of attorney's fees. The Board's discussion on spoliation as the sanctionable issue is narrower than Westmoreland's fee petition on the entirety of Claim 2, thus making it inherently unreasonable.

Although there is a substantial factual and legal basis for disallowing Westmoreland's claimed attorney's fees and costs in their entirety, if the Board awards any fees, it must award only those that Westmoreland incurred but-for the alleged bad faith and harassing conduct. Punishing a party for more than allegedly bad faith and harassing conduct is punitive and neither reasonable nor supported by the customs, practices, and accepted standards for reasonableness of fee requests in Montana.

Fees awarded for alleged bad faith or harassing conduct must have a nexus to the conduct at issue. This is informed by the United States Supreme Court which has held courts may only award fees and costs the other party would have incurred "but for" the frivolous claim. *See Fox v. Vice,* 563 U.S. at 829. More specifically, the Court held

> if the defendant would have incurred those fees anyway, to defend against *non*-frivolous claims, then a court has no basis for transferring the expense to the plaintiff. Suppose, for example, that a defendant's attorney conducts a deposition on matters

> relevant to both a frivolous and a non-frivolous claim—and more, that the lawyer would have taken and committed the same time to this deposition even if the case had involved only the non-frivolous allegation. In that circumstance, the work does not implicate Congress's reason for allowing defendants to collect fees. The defendant would have incurred the expense in any event; he has suffered no incremental harm from the frivolous claim.

Id. at 836; *see also Harris v. Maricopa County Superior Court,* 631 F.3d 963, 972 (9th Cir. 2011) (discussing the heavy burden a movant carries in seeking fees for frivolous claims and holding, "Unless a prevailing defendant can establish that its attorneys would not have performed the work involved except for the need to defend against the frivolous claims (and thus would not have done the work in whole or in part in order to defend against the nonfrivolous claims), it is not entitled to the fees in question."). The Court tasks lower courts with applying this standard in the context of the entire litigation—for both frivolous and non-frivolous claims:

> These standards would be easy to apply if life were like the movies, but that is usually not the case. In Hollywood, litigation most often concludes with a dramatic verdict that leaves one party fully triumphant and the other utterly prostrate. The court in such a case would know exactly how to award fees (even if that anti-climactic scene is generally left on the cutting-room floor). But in the real world, litigation is more complex, involving multiple claims for relief that implicate a mix of legal theories and have different merits. Some claims succeed; others fail. Some charges are frivolous; others (even if not ultimately successful) have a reasonable basis. In short, litigation is messy, and courts must deal with this untidiness in awarding fees.

Id. at 834.

Assuming based on the Board's discussion the alleged fee triggering event is the spoliation issues, applying the *Fox* "but for" test, fees may be awarded only for work that would not have been incurred but for that allegedly bad faith and harassing conduct.

Typically the conduct being sanctioned is clear before this stage of the proceedings where attorney's fees are evaluated for reasonableness. That conduct is unclear here.

Board Chair Simpson expressly noted, "This determination does not make a finding as to what point this began . . . ." (Tr. at 144:19–21.) Moreover, a recent filing by the Board in the district court confirmed that it had not specified what conduct was sanctionable and that it would make that finding following the hearing on reasonableness: "[t]he scheduling order [in this matter] confirmed that the Board's final written decision, addressing both its statutory authority to adjudicate the fee petition and the specific factual and legal bases for its bad faith and harassment findings, will not issue until after the hearing and the parties' post-hearing submissions." (Board's Brief in Support of Motion to Dismiss Amended Complaint and Request for Oral Argument at 4, *MEIC v. DEQ*, No. DV-44-2026-0027-OC (Aug. 4, 2026).)

Westmoreland seeks fees for the entirety of Claim 2, while the Board discussion on both elements—bad faith and harassment—seemed limited to the alleged spoliation issue. At the hearing, the Board members 4–1 agreed that Conservation Groups engaged in bad faith conduct at some undefined time in the litigation, but Board Member Altemus did not agree Conservation Groups engaged in bad faith for the purpose of harassment (Tr. at 145:25–146:5), until Chair Simpson focused on spoliation and Board Member Altemus agreed that constituted harassment (Tr. at 146:6–11). It is reasonable to conclude the operative conduct from the Board's dialogue that met both the bad faith **and** harassment standard for attorney's fees is the Conservation Group's unsuccessful spoliation argument.

Westmoreland is not entitled to an award of attorney's fees because its fee petition fails to meet the customs, practices, and acceptable standards in Montana. However, if the Board is inclined to award fees, I analyze the reasonableness of Westmoreland's petition under Claim 2 and under the alleged spoliation conduct.

Under the "but for" test, I identified Westmoreland's time entries that expressly reference spoliation or Lee Coulee blading:

Date	Timekeeper	Amount	Billing Narrative
9/5/2023	Adams, Erik J.	$1,928.55	Determine whether a supplemental declaration should be appended to the response; review CHIA to see if DEQ considered the factors MEIC alleges they failed to consider; begin reviewing precedent discussing spoliation to argue no spoliation occurred here; (p. 34)
9/7/2023	Adams, Erik J.	$1,060.70	Continue spoliation research; meet internally to determine whether to request an extension and

			request a declaration from the client detailing when portions of Lee Coulee were bladed; (p. 34)
9/15/2023	Adams, Erik J.	$1,205.34	Finish draft of buffer zone, spoliation, and standing sections of the response brief; begin adding citations; (p. 36)
1/23/2025	Yemington, Samuel R.	$3,363.59	Continue drafting AM5 proposed FOFCOLs; pull and review MEIC spoliation argument; update FOFCOLs with response to same; (p. 47)
		$7,558.18	

Closely Related Lee Coulee Spoliation/Blading Entries

Date	**Timekeeper**	**Amount**	**Billing Narrative**
9/18/2023	Adams, Erik J.	$2,458.90	Review and revise disputed facts; confirm hearing examiner has received our motion; review order granting extension to file response; continue adding citations to response brief; begin preparing declaration detailing the blading activity at Lee Coulee; (p. 36)
9/19/2023	Adams, Erik J.	$1,976.76	Continue preparing declaration describing the blading at Lee Coulee and its purpose; add additional detail to response brief describing the purpose of that blading; review CHIA and associated documents and add additional information to response brief about how DEQ studied Lee Coulee's water levels; add additional information to supplemental statement of facts; (p. 36)
		$4,435.66	

Westmoreland's time entries indicate it incurred, at most, **$11,993.84** in attorney's fees related to the spoliation issue. Of those time entries, however, all are block-billed and fail to comply with § 25–10–712, MCA. They also fail to comply with the customs, practices, and acceptable standards of reasonableness for fee awards in Montana. They should be disallowed.

Westmoreland also seeks an award of attorney's fees related to its fee petition. I considered those entries that expressly reference fees in that regard.

Date	**Timekeeper**	**Amount**	**Narrative**
9/2/2025	Yemington, Samuel R.	$2,419.00	Conference with DEQ counsel regarding MEIC exceptions and path forward; conference with SBordelon and AGrave regarding the same; begin researching fee shifting standard under MSUMRA and implementing rules; attend to correspondence regarding the same; coordinate follow up

			discussion with Westmoreland regarding the same; [redaction] (p. 54)
9/3/2025	Grave, Andrea N.	$1,652.00	Begin research on MSUMRA fee shifting provisions and process for seeking fees; (p. 54)
9/3/2025	Yemington, Samuel R.	$2,124.00	Continue researching fee shifting under MSUMRA and implementing rules; attend to correspondence regarding the same; attend to correspondence from Westmoreland regarding dismissal of Buffer Zone claim; [redaction]"(p. 54)
9/4/2025	Bordelon, Sarah C.	$1,475.00	[Redaction] telephone conference with SYemington regarding client recommendation on response to MEIC withdrawing argument in BER MSUMRA litigation and preparation for potential claim for attorneys fees [redaction] review and analyze research notes from AGrave on fee shifting provisions; (p. 54)
9/4/2025	Grave, Andrea N.	$2,596.00	Continue research on MSUMRA fee shifting: review case law implementing the same: review parallel SMCRA provisions and case law implementing the same; prepare summary of findings; email correspondence with SYemington and SBordelon regarding the same; (p. 54)
9/5/2025	Bordelon, Sarah C.	$472.00	Review follow-up team correspondence regarding fee shifting research; [redaction] (p. 54)
9/5/2025	Grave, Andrea N.	$59.00	Email correspondence with SBordelon and SYemington regarding initial fee shifting research and additional research items; (p. 54)
9/7/2025	Bordelon, Sarah C.	$177.00	Review and analyze responses from AGrave regarding questions on fee-shifting research; (p. 54)
9/7/2025	Grave, Andrea N.	$826.00	Conduct additional research on fee shifting provision of MSUMRA and SMCRA, including review of similar provisions implemented in other states; prepare summary of the same; email correspondence with SYemington and SBordelon; (p. 54)
9/8/2025	Grave, Andrea N.	$2,183.00	Video conference with SBordelon and SYemington regarding strategy for response to Petitioners' exceptions and research related to seeking fees; video conference with Westmoreland team to discuss the same; telephone call with SYemington to discuss outline for response brief. assignment of tasks. and upcoming board meeting: (p. 54)

9/8/2025	Yemington, Samuel R.	$4,071.00	Prepare for conference with Westmoreland team regarding MEIC exceptions submission; conference with SBordelon and AGrave regarding the same and fee shifting standard; conference with Westmoreland team regarding the same and path forward; review draft response outline; conference with AGrave regarding the same and path forward; begin drafting response to MEIC exceptions; research standard for amending Complaint and dismissing claim post-judgment; attend to correspondence from Mr. Briggs regarding status of Lee Coulee mining; (p. 55)
		$18,054.00	

Of these time entries, **$16,402.00** is disallowed as non-compliant with § 25–10–712, MCA, and they also fail to comply with the customs, practices, and acceptable standards of reasonableness for fee awards in Montana, as discussed in more detail below:

Date	**Timekeeper**	**Disallowed Amount**	**Reason Disallowed Under § 25-10-712**
9/2/2025	Samuel R. Yemington	$2,419.00	Block-billed: combines DEQ conference, internal conference, fee-shifting research, correspondence, and follow-up coordination.
9/3/2025	Samuel R. Yemington	$2,124.00	Block-billed/mixed: combines fee-shifting research, correspondence, and separate correspondence regarding dismissal of Buffer Zone claim.
9/4/2025	Sarah C. Bordelon	$1,475.00	Block-billed: combines conference, client recommendation, potential fee-claim preparation, and review/analysis of research notes.
9/4/2025	Andrea N. Grave	$2,596.00	Block-billed: combines MSUMRA research, SMCRA research, case-law review, summary preparation, and email correspondence.
9/5/2025	Sarah C. Bordelon	$472.00	Generic: "Review follow-up team correspondence regarding fee shifting research" does not identify the specific subject, purpose, or task with sufficient detail.
9/5/2025	Andrea N. Grave	$59.00	Generic: email correspondence regarding research/additional research items; insufficient specific task detail.
9/7/2025	Sarah C. Bordelon	$177.00	Generic: "Review and analyze responses" regarding fee-shifting research does not identify the specific issue or task sufficiently.
9/7/2025	Andrea N. Grave	$826.00	Block-billed: combines additional research, comparative review, summary preparation, and email correspondence.

9/8/2025	Andrea N. Grave	$2,183.00	Block-billed: combines internal strategy conference, Westmoreland team conference, telephone call, outline discussion, task assignments, and board-meeting discussion.
9/8/2025	Samuel R. Yemington	$4,071.00	Block-billed: combines preparation, multiple conferences, outline review, drafting, research, and correspondence.
		$16,402.00	

Thus, on its fee petition work, at most, Westmoreland is entitled to **$1,652.00** in attorney's fees that are reasonable under the customs, practices, and acceptable standards of reasonableness for fee awards in Montana.

Despite not making a determination on the bad faith conduct triggering an award of attorney's fees, if the Board adopts a more expanded view that Westmoreland is entitled to attorney's fees on the Buffer Zone / Claim 2 issues, using the "but for" standard, I identified those time entries that expressly reference one of the following: Buffer Zone Rule/Buffer Zone argument/Buffer Zone claim; Claim 2; dismissal of Buffer Zone claim; and MEIC withdrawing argument:

Date	**Timekeeper**	**Amount**	**Billing Narrative**
6/8/2023	Yemington, Samuel R.	$2,090.75	Prepare for and attend expert deposition preparation discussion with counsel for DEQ and SCBordelon; attend to MEIC claims regarding Buffer Zone Rule; circulate ground water demonstrative from Dr. Nicklin for purposes of the same; attend weekly coal telephone conference regarding matter status and path forward; (p. 25)
7/10/2023	Adams, Erik J.	$1,527.16	Prepare for Bruce Anderson's deposition; begin drafting section of summary judgment motion addressing the buffer zone rule; (p. 27)
7/14/2023	Adams, Erik J.	$1,661.91	Research additional Montana precedent addressing the buffer zone rule and incorporate into summary judgment draft; (p. 28)
7/21/2023	Adams, Erik J.	$404.25	Begin drafting summary judgment section of undisputed facts pertaining to the buffer zone rule; (p. 29)
7/25/2023	Adams, Erik J.	$2,155.99	Begin drafting declaration of Steve Viert; review Montana precedent to determine the burden of proof MEIC must show; continue drafting buffer zone section of the summary judgment motion; (p. 29)

7/26/2023	Adams, Erik J.	$1,257.66	Review MEIC's protective order response and note which points to dispute in our reply; review Lodman deposition transcript and incorporate into summary judgment briefing; finish rough draft of buffer zone rule summary judgment section; (p. 29)
8/8/2023	Adams, Erik J.	$1,340.59	Revise buffer zone section of summary judgment motion; add additional precedent and cites to the CHIA and Bruce Anderson's deposition; (p. 31)
8/16/2023	Yemington, Samuel R.	$2,945.82	Continue drafting Motion for Summary Judgment; attend to Buffer Zone argument; conference with SCBordelon and JCMartin regarding the same and path forward; attend to correspondence regarding the same; (p. 32)
9/15/2023	Adams, Erik J.	$1,205.34	Finish draft of buffer zone, spoliation, and standing sections of the response brief; begin adding citations; (p. 36)
10/10/2023	Bordelon, Sarah C.	$2,062.81	Review revisions to draft response brief from EJAdams and BCSmith; telephone conference with SRYemington regarding MEIC request for extension of time and treatment of Buffer Zone argument; review correspondence from Samuel King regarding joint filings; review party correspondence regarding MEIC request for extension of time; edit and revise Buffer Zone argument to incorporate comments and draft from SRYemington; (p. 37)
12/11/2023	Adams, Erik J.	$2,881.84	Finish rough draft of reply brief sections discussing the buffer zone rule and the cumulative impact analysis; send draft for internal review and incorporation into the full reply brief; (p. 42)
2/7/2025	Yemington, Samuel R.	$3,751.09	Continue finalizing AM5 Proposed FOFCOLs; attend to correspondence regarding the same; locate and circulate AM3 and Area F BER Orders in administrative record; update Proposed FOFCOLs with the same; continue building out material damage and Buffer Zone Rule legal discussion; update legal citations; attend to correspondence regarding the same; circulate draft FOFCOLs for internal and DEQ review; (p. 48)
9/3/2025	Bordelon, Sarah C.	$177.00	Review and analyze procedural strategy suggestion from SYemington regarding claim 2 in BER MSUMRA contested case and follow-up

			regarding same; review client correspondence regarding same; (p. 54)
9/3/2025	Yemington, Samuel R.	$2,124.00	Continue researching fee shifting under MSUMRA and implementing rules; attend to correspondence regarding the same; attend to correspondence from Westmoreland regarding dismissal of Buffer Zone claim [redacted]; (p. 54)
9/4/2025	Bordelon, Sarah C.	$1,475.00	[redacted] telephone conference with SYemington regarding client recommendation on response to MEIC withdrawing argument in BER MSUMRA litigation and preparation for potential claim for attorneys fees [redacted] review and analyze research notes from AGrave on fee shifting provisions;
		$27,061.21	

Of these time entries, **$23,477.46** is disallowed as non-compliant with § 25–10–712, MCA, and they also fail to comply with the customs, practices, and acceptable standards of reasonableness for fee awards in Montana, as discussed in more detail below:

Date	**Timekeeper**	**Disallowed Amount**	**Reason Disallowed Under § 25–10–712**
6/8/2023	Yemington, Samuel R.	$2,090.75	Block-billed; combines deposition preparation, Buffer Zone claim work, circulation of a demonstrative, and weekly conference time in one entry.
7/10/2023	Adams, Erik J.	$1,527.16	Block-billed; combines deposition preparation and drafting of the Buffer Zone section. No task-by-task time allocation.
7/25/2023	Adams, Erik J.	$2,155.99	Block-billed; combines declaration drafting, legal research, and drafting the Buffer Zone section.
7/26/2023	Adams, Erik J.	$1,257.66	Block-billed; combines review of MEIC's protective-order response, deposition transcript review, incorporation into summary-judgment briefing, and drafting the Buffer Zone section.
8/16/2023	Yemington, Samuel R.	$2,945.82	Block-billed; combines drafting, Buffer Zone argument work, conference, and correspondence.
9/15/2023	Adams, Erik J.	$1,205.34	Block-billed; combines three separate subject areas—buffer zone, spoliation, and standing—in one entry.

10/10/2023	Bordelon, Sarah C.	$2,062.81	Block-billed; combines review of revisions, conference, extension-related correspondence, and editing the Buffer Zone argument.
12/11/2023	Adams, Erik J.	$2,881.84	Block-billed; combines buffer zone rule work with cumulative impact analysis in the same entry; not claim-specific.
2/7/2025	Yemington, Samuel R.	$3,751.09	Block-billed; combines FOFCOL work, correspondence, locating orders, updating materials, and both material damage and Buffer Zone Rule discussion. Mixed-issue entry.
9/3/2025	Yemington, Samuel R.	$2,124.00	Block-billed; combines fee-shifting research, correspondence, and correspondence regarding dismissal of Buffer Zone claim.
9/4/2025	Bordelon, Sarah C.	$1,475.00	Block-billed; combines conference, response strategy, preparation for a potential fee claim, and review/analysis of fee-shifting research notes.
		$23,477.46	

Under an expanded approach that includes fees referencing Claim 2, Westmoreland is entitled to **$3,583.75** in attorney's fees that are reasonable under the customs, practices, and acceptable standards of reasonableness for fee awards in Montana.

In summary, despite not specifying exactly what fees are being awarded for, in applying the *Fox* "but for" test and § 25–10–712, MCA, and the customs, practices, and acceptable standards of reasonableness for fee awards in Montana, a reasonable award of attorney fees, if any, to Westmoreland is as follows:

Subject	**Fees Claimed**	**Fees Disallowed Under § 25–10–712**	**Net Reasonable Fee Award**
Spoliation	$11,993.84	($11,993.84)	$0.00
Attorney Fee Petition	$18,054.00	($16,402.00)	$1,652.00
Claim 2/Buffer Zone Rule	$27,061.21	($23,477.46)	$3,583.54
TOTAL	$57,109.05	($51,873.30)	**$5,235.75**

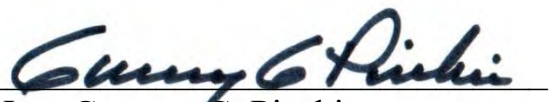
While Westmoreland should not be entitled to an award of fees because its petition is unreasonable and should be disregarded in its entirety, if fees are awarded, it must be at this substantially reduced amount of **$5,235.75**.

Conclusion

Westmoreland's fee petition is unreasonable because the billing records do not provide a reliable, task-specific, claim-specific, and conduct-specific basis for shifting the requested fees. The records have extensive block billing, vague or generic descriptions, duplication, overstaffing, mixed-purpose work, and insufficient support for rates and expenses. The fee petition does not comport with the customs, practices, and acceptable standards of reasonableness for fee awards in Montana.

If the Board determines that some fee entitlement exists, any award should be substantially reduced and limited to fees supported by competent evidence that the work was reasonable, adequately described, nonduplicative, properly staffed, supported by reasonable rates and expenses, and would not have been incurred but for the alleged fee-triggering conduct.

Dated this 7th day of August, 2026.



Hon. Gregory G. Pinski
Montana District Court Judge (Ret.)

EXHIBIT A

Curriculum Vitae

CURRICULUM VITAE

GREGORY G. PINSKI

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Legal Experience

- Partner, CONNER, MARR & PINSKI, PC, Great Falls, Mont. (2020-present)
- District Judge, STATE OF MONTANA, Eighth Judicial District Court (2013-2020)
  - Chief Judge (2014-2015, 2019-2020)
  - Designated to sit on Montana Supreme Court, *Morrow v. Bank of Am.*, 2014 MT 117
  - Asbestos Claims Court Judge (2018-2020)
  - Veterans Treatment Court Judge (Founder) (2013-2020)
  - Adult Treatment Court Judge (2013-2020)
  - Commissioner, National Conference of Commissioners on Uniform State Laws (Uniform Law Commission) (2016-present)
  - Drafting Committee, National Conference of Commissioners on Uniform State Laws (Model Veterans Treatment Court Act) (2016-2018)
  - Study Committee, National Conference of Commissioners on Uniform State Laws (Non-Compete Agreements) (2018-2020)
  - Study Committee, National Conference of Commissioners on Uniform State Laws (ICWA) (2022-2024)
  - Civilian Appointee, United States Army War College, National Security Forum (2021)
  - Civilian Appointee, United States Air Force Air War College, National Security Forum (2018)
  - Civilian Appointee, United States Navy, Leaders to Sea Program (2019)
  - Member, National Judicial Opioid Task Force (2017-2019)
  - Member, Montana Uniform District Court Rules Committee (2013-2020)
  - Member, Montana Access to Justice Commission (2015-2018)
  - Member, Montana Drug Court Council (2016-2020)
  - Member, Montana Crime Lab Advisory Board (2016-2020)
- Consultant, SCRAM Systems, Inc., Denver, CO (2021-2023)
- Consultant, PharmChem, Inc., Fort Worth, TX (2021-present)
- Judicial Consultant, ALL RISE (TREATMENT COURT INSTITUTE AND JUSTICE FOR VETS), Alexandria, VA (2017-present)
- Judicial Consultant, TRIBAL LAW AND POLICY INSTITUTE, Los Angeles, CA (2019-2021)
- Judicial Consultant, NATIONAL CENTER FOR STATE COURTS, Williamsburg, VA (2025-present)
- Faculty, NATIONAL JUDICIAL COLLEGE, UNIVERSITY OF NEVADA-RENO, Reno, NV (2019-2022)
- Judicial Consultant, AMERICAN UNIVERSITY (BJA), Washington, DC (2016-2018)
- Partner, CONNER & PINSKI, PLLP, Great Falls, Mont. (2004-2012)

- Associate, GRAY, PLANT, MOOTY, MOOTY & BENNETT, P.A., Minneapolis, Minn. (1999-2004)
- Adjunct Instructor, Legal Writing, UNIVERSITY OF MINNESOTA LAW SCHOOL (2003)
- Summer Associate, GRAY, PLANT, MOOTY, MOOTY & BENNETT, P.A. (1998)
- Law Clerk, CHURCH, HARRIS, JOHNSON & WILLIAMS, P.C., Great Falls, Mont. (1997)

Other Professional Experience

- THE WHITE HOUSE, OFFICE OF PRESIDENTIAL SCHEDULING, Intern, Washington, D.C. (1995)

Education

- University of North Dakota, Grand Forks, N.D.
  Bachelor of Arts, *magna cum laude*, Political Science and Communications (1996) (GPA: 3.52)
  Juris Doctorate, *with distinction* (1999) (GPA: 3.57, Class Rank 7/61)
  Articles Editor, NORTH DAKOTA LAW REVIEW (1998-1999)
  Moot Court Champion (1998) (Best Brief, Best Appellant Team, and Best Oralist)
  Graduate Teaching Assistant (1997-1998)
  Order of the Barristers
  American Board of Trial Advocates Scholarship
  Geiger Honors Scholarship
  Outstanding Achievement Award, Carrigan Cup Trial Advocacy Competition
  Highest Grade in Employment Discrimination Law and First Amendment Law
  Editor-in-Chief, DAKOTA STUDENT newspaper
  Student Senator

- National Judicial College, University of Nevada-Reno, Reno, Nev.
  General Jurisdiction Trial Skills (2013), Opinion Writing (2014), Judicial Leadership (2015), Advanced Concepts in Criminal Justice (2016), Mindfulness for Judges (2018)

- Pepperdine Caruso School of Law, Straus Institute of Dispute Resolution, Malibu, CA.
  Mediating the Litigated Case (2022)
  Mediating the Litigated Case 2.0 (2026)

Bar Admissions

- Minnesota Supreme Court, October 27, 1999
- Montana Supreme Court, December 22, 2000
- United States Court of Appeals for the Eighth Circuit, September 22, 2000
- United States Court of Appeals for the Ninth Circuit, February 13, 2006
- United States Court of Appeals for the Second Circuit, March 1, 2006
- United States Court of Appeals for the Third Circuit, October 22, 2009
- United States District Court for the District of Minnesota, April 2, 2000
- United States District Court for the District of Montana, April 18, 2005

- United States District Court for the District of Colorado, December 8, 2011
- United States District Court for the Northern District of Texas, December 9, 2009
- United States District Court for the Southern District of Texas, September 30, 2005

Past admissions (*pro hac vice*) in the following courts (exact dates of admission unavailable):

- United States District Court for the Middle District of Alabama
- Barbour County Circuit Court, Alabama
- United States District Court for the Central District of California
- San Mateo County Superior Court, California
- United States Bankruptcy Court for the District of Delaware
- United States District Court for the Southern District of Florida
- United States District Court for the Northern District of Georgia
- Gwinnett County Superior Court, Georgia
- United States District Court for the District of Hawaii
- First Circuit District Court, Hawaii
- DuPage County District Court, Illinois
- Polk County District Court, Iowa
- United States District Court for the District of Kansas
- United States District Court for the Western District of Kentucky
- Fayette County Circuit Court, Kentucky
- United States District Court for the Eastern District of Louisiana
- Oakland County Circuit Court, Michigan
- United States District Court for the District of Nebraska
- United States District Court for the District of New Hampshire
- United States Bankruptcy Court for the District of New Jersey
- United States District Court for the Southern District of New York
- United States District Court for the Eastern District of New York
- Supreme Court of the State of New York, New York County
- Supreme Court of the State of New York, Westchester County
- Cuyahoga Court of Common Pleas, Ohio
- United States District Court for the District of Oregon
- United States District Court for the Western District of Pennsylvania
- United States District Court for the Eastern District of Pennsylvania
- Blair County Court of Common Pleas, Pennsylvania
- Harris County District Court, Texas
- Waller County District Court, Texas
- Dallas County District Court, Texas
- Bexar County District Court, Texas

Representative Reported Cases

As District Judge:

- *State v. Tome,* 2021 MT 229 (Reversed)
- *JRN Holdings v. Dearborn Meadows,* 2021 MT 203 (Affirmed in part, Reversed in part)
- *State v. Parker,* 2021 MT 108N (Affirmed)

- *State v. Newrobe,* 2021 MT 105 (Reversed)
- *Beavers v. State,* 2021 MT 81N (Affirmed)
- *State v. Tolliver,* 2021 MT 34N (Affirmed)
- *State v. Keefe*, 2021 MT 8 (Affirmed in part, Reversed in part)
- *State v. Pelletier,* 2020 MT 249 (Reversed)
- *State v. Polejewski,* 2020 MT 287N (Affirmed)
- *State v. Komeotis,* 2020 MT 246N (Affirmed)
- *Gottlob v. DesRosier,* 2020 MT 210 (Affirmed)
- *Gottlob v. DesRosier,* 2020 MT 212 (Reversed)
- *State v. Funkhouser,* 2020 MT 175 (Affirmed)
- *In re C.S.,* 2020 MT 127 (Affirmed)
- *Houser v. City of Billings,* 2020 MT 51 (Affirmed)
- *State v. Boone,* 2020 MT 35N (Affirmed)
- *In re R.L.,* 2019 MT 267 (Affirmed)
- *In re K.P.,* 2019 MT 272N (Affirmed)
- *In re Estate of Boland,* 2019 MT 236 (Affirmed)
- *State v. Webber,* 2019 MT 216 (Reversed)
- *Paranteau v. State,* 2019 MT 211N (Affirmed)
- *State v. Block,* 2019 MT 180 (Affirmed)
- *State v. Martinez,* 2019 MT 171N (Affirmed)
- *In re K.L.,* 2019 MT 123N (Affirmed)
- *City of Great Falls v. Taggart,* 2019 MT 70N (Affirmed)
- *In re D.R. and P.W.,* 2019 MT 25N (Affirmed)
- *In re D.M. and T.M.,* 2019 MT 24N (Affirmed)
- *In re B.Y.,* 2018 MT 309 (Reversed)
- *In re Estate of Boushee,* 2018 MT 274N (Affirmed)
- *In re L.A.G.,* 2018 MT 255 (Reversed)
- *Sollid v. LSF9 Master Trust,* 2017 MT 242N (Affirmed)
- *In re G.W.,* 2018 MT 192 (Affirmed)
- *Collins v. District Court,* 2018 MT 125 (Reversed)
- *Kohoutek v. State,* 2018 MT 123 (Reversed)
- *State v. Youpee,* 2018 MT 120 (Affirmed)
- *State v. Beauchman,* 2018 MT 63N (Affirmed)
- *Independence Medical v. DPHHS,* 2018 MT 57 (Affirmed, in part)
- *Watson v. BNSF,* 2017 MT 279 (Reversed)
- *In re Marriage of Miller,* 2017 MT 281N (Affirmed)
- *In re Marriage of Broesder,* 2017 MT 223 (Reversed)
- *State v. Otto,* 2017 MT 212 (Affirmed)

- *In re M.R.C.,* 2017 MT 202N (Affirmed)
- *Cross Guns v. District Court,* 2017 MT 144 (Affirmed)
- *Goodover v. Oblander,* 2017 MT 130N (Affirmed)
- *State v. Talksabout,* 2017 MT 79 (Affirmed)
- *Novak v. Novak,* 2017 MT 49N (Affirmed)
- *City of Great Falls v. Kiser,* 2017 MT 41N (Affirmed)
- *Bird v. Cascade County,* 2016 MT 345 (Affirmed)
- *Crabtree v. Czech,* 2016 MT 326N (Reversed)
- *In re G.O.,* 2016 MT 298N (Affirmed)
- *West v. USAA,* 2016 MT 285 (Reversed)
- *State v. Spottedbear,* 2016 MT 243 (Affirmed)
- *In re B.R.,* 2016 MT 234N (Affirmed)
- *State v. Stevenson,* 2016 MT 221N (Affirmed)
- *In re A.D. and K.D.,* 2016 MT 217N (Affirmed)
- *In re F.L.,* 2016 MT 193N (Affirmed)
- *State v. Charlo-Whitworth,* 2016 MT 157 (Affirmed)
- *State v. Hancock,* 2016 MT 21 (Affirmed)
- *State v. McAlister,* 2016 MT 14 (Affirmed)
- *Reis v. Luckett,* 2015 MT 337 (Affirmed)
- *In re Vaughn Elem. Sch. Dist. 74,* 2015 MT 313 (Affirmed)
- *In re C.M.,* 2015 MT 292 (Affirmed)
- *In re Marriage of Linn,* 2015 MT 286N (Affirmed)
- *Mont. Hlth. Network, Inc. v. Great Falls Orthopedic Assoc.,* 2015 MT 186 (Affirmed)
- *In re J.W.,* 2015 MT 128N (Affirmed)
- *Strizich v. State,* 2015 MT 124N (Affirmed)
- *Edmundson v. Montana Dep't of Corrections,* 2015 MT 105N (Affirmed)
- *MC, Inc. v. Cascade City-County Bd. of Hlth.,* 2015 MT 52 (Reversed)
- *Bracha v. Hanley,* 2015 MT 35N (Affirmed)
- *Kenser v. Premium Nail Concepts,* 2014 MT 280 (Reversed)
- *In re L.N.,* 2014 MT 187 (Affirmed)
- *State v. Kinlock,* 2014 MT 179N (Affirmed)
- *New Hope v. Faith Lutheran,* 2014 MT 69 (assumed case from McKinnon, D.J.)
- *Marriage of Novak,* 2014 MT 62 (assumed case from McKittrick, D.J.)
- *Chapman v. Maxwell,* 2014 MT 35 (Affirmed)
- *In re K.G.,* 2013 MT 352N (Affirmed)
- *In re T.S.,* 2013 MT 274 (Affirmed)
- *In re K.J.,* 2013 MT 314N (Affirmed)

As Attorney:

- *Doll v. Little Big Warn Ranch,* 2024 MT 179, 554 P.3d 175 (Mont. 2024)
- *Blaine v. Benefis Health Sys., Inc.,* 2023 WL 5842313 (9th Cir. 2023)
- *Volk v. New York Life Ins. Co.,* 598 F. Supp. 3d 979 (D. Mont. 2022)
- *Grassmyer v. Shred-it USA, Inc.,* 392 Fed. Appx. 18 (3d Cir. 2010)
- *Guschausky v. Am. Family Life Assurance Co. of Columbus,* 2012 U.S. Dist. Lexis 46495, 146939, 46480, 2011 U.S. Dist. Lexis 49973 (D. Mont.)
- *Yeager v. Morris,* 2013 MT 44, 369 Mont. 90, 296 P.3d 1164
- *Ward v. Johnson,* 2012 MT 96, 365 Mont. 19, 277 P.3d 121
- *Ford Motor Co. v. Dist. Ct.,* 364 Mont. 551, 286 P.3d 248 (2012)
- *Brennan v. Dist. Ct.,* 2009 Mont. Lexis 707
- *Am. Family Life Assurance Co. of Columbus v. Dist. Ct.,* 2008 Mont. Lexis 524
- *Access Info. Mgm't v. Shred-it Am., Inc.,* 2011 U.S. Dist. Lexis 53573, 2010 U.S. Dist. Lexis 116862 (D. Haw.)
- *Shred-it Am., Inc. v. Macnaughton,* 2011 U.S. Dist. Lexis 51933 (D. Haw.)
- *McGrane v. Shred-it USA, Inc*., 2011 U.S. Dist. Lexis 47809, 47330, 45321 (W.D. Pa.)
- *Smith v. Shred-it USA, Inc*., 2010 U.S. Dist. Lexis 100949, 100981 (N.D. Tex.)
- *Grassmyer v. Shred-it USA, Inc*., 2009 U.S. Dist. Lexis 81791 (W.D. Pa.)
- *Shred-it USA, Inc. v. Bartscher,* 2005 U.S. Dist. Lexis 48261 (E.D.N.Y.)
- *Shred-it USA, Inc. v. Confidential Shredding, LLC,* 2005 U.S. Dist. Lexis 45220 (S.D.N.Y.)
- *Shred-it USA, Inc. v. Mobile Data Shred, Inc*., 248 F. Supp. 2d 302, (S.D.N.Y. 2003), 238 F. Supp. 2d 604, 202 F. Supp. 2d 228 (S.D.N.Y. 2002), 228 F. Supp. 2d 455 (S.D.N.Y. 2002), 222 F. Supp. 2d 376 (S.D.N.Y. 2002), 2004 U.S. Dist. Lexis 16112 (S.D.N.Y)

Court Appointed Special Master or Settlement Master

- *Ed Boland Construction, Inc. v. Olson,* Case No. DV-23-162 (Montana Eighth Judicial District Court, 2025)
- *Cheney v. McBride,* Case No. DV-24-123 (Montana Eighth Judicial District Court, 2024)
- *Vicevich v. Kultgen,* Case No. DV-20-403 (Montana Second Judicial District Court, 2023)
- *Kirkindall v. Reflections Academy,* Case No. DV-21-10 (Montana Twentieth Judicial District Court, 2022-2024)
- *Mach v. Montana Hlth. Coop.,* Case No. ADV-15-269 (Montana First Judicial District Court 2021-2023)
- *Town of Plains v. Lawyer,* Case No. DV-21-04 (Montana Fourth Judicial District Court, 2022)
- *Niblack v. Saxton,* Case No. DV-18-235 (Montana Fourth Judicial District Court, 2022)
- *Weston v. George,* Case No. 20-42 (Montana Fourth Judicial District Court, 2021)

Representative Acquisitions

As Lead Counsel:

- Shred-it USA, Inc. Asset Acquisition of SI of Akron, Inc. (Ohio)
- Presidio Investments (US), Inc. Asset Acquisition of EnviroShred, Inc. (Ala.)
- Shred-it USA, Inc. Asset Acquisition of Boyer-Utah, Inc. (Utah)
- Shred-it USA, Inc. Asset Acquisition of Brink's, Inc. (Tex.)
- Presidio Investments (US), Inc. Stock Purchase of Greenway Services, Inc. (Ky.)
- Shred-it USA, Inc. Asset Acquisition of Rhino Enterp., Inc. (N.J.)
- Shred-it USA, Inc. Asset Acquisition of Metro Area Corp. (Del.)
- Shred-it USA, Inc. Asset Acquisition of JMBZ, Inc. (Cal.)
- Shred-it USA, Inc. Asset Acquisition of L and K Prop., Inc. (Tenn.)
- Shred-it USA, Inc. Asset Acquisition of Pro Data Mgmt., LLC (Colo.)
- Shred-it USA, Inc. Asset Acquisition of Campo Enterp., Inc., (Cal.)
- Shred-it USA, Inc. Asset Acquisition of Volunteer Shredding, Inc. (Tenn.)
- Recall Info. Mgmt., Inc. Certain Asset Acquisition of Shred-it USA, Inc. (Ga.)
- Shred-it USA, Inc. Asset Acquisition of Shredco, Inc. (Ariz.)
- Shred-it USA, Inc. Asset Acquisition of Gulf Shred, Inc. (Ala.)
- Shred-it USA, Inc. Asset Acquisition of Minnesota Shredding, LLC (Minn.)
- Shred-it USA, Inc. Asset Acquisition of Home Locators, Inc. (Fla.)
- Shred-it USA, Inc. Asset Acquisition of Inland Empire Shred-it, Inc. (Cal.)
- Shred-it USA, Inc. Asset Acquisition of Pacific Shredco, LLC (Wash.)

Books and Law Review Publications

- Gregory G. Pinski, *The Constitutionality of a Prosecutorial Veto in Veterans Treatment Courts*, 1 DRUG CT. REV. 111 (2019).
- GREGORY G. PINSKI, COVENANTS AGAINST COMPETITION IN FRANCHISE AGREEMENTS (Michael R. Gray & Natalma M. McKnew, eds. American Bar Association 3d ed. 2012).
- Gregory G. Pinski & Angela L. Rud, *The Employer's Bermuda Triangle: An Analysis of the Intersection Between Workers' Compensation, ADA and FMLA*, 76 N.D. L. REV. 69 (2000).
- Gregory G. Pinski, Comment, *The Eighth Circuit Recognizes Same Sex Harassment Under Title IX*, 74 N.D. L. REV. 141 (1998).

Articles

- Gregory G. Pinski, *Veterans Fought for Us; Let's Fight For Them*, GREAT FALLS TRIB., Nov. 11, 2018, at 4A.
- Gregory G. Pinski, *Veterans Fought for Our Freedom, Shouldn't We Fight for Theirs?*, GREAT FALLS TRIB., Nov. 10, 2017, at 4A.
- Reviewer, National Drug Court Research Center, American University, Annual Drug Court Survey (January 2017).
- Gregory G. Pinski, *Helping Veterans Overcome the Invisible Wounds of War*, GREAT FALLS TRIB., Nov. 9, 2016, at 6A.
- Gregory G. Pinski, *'Night Court' No Solution to Justice System Crisis*, GREAT FALLS TRIB., Oct. 5, 2016, at 4A.

- Gregory G. Pinski, *Serving Those Who Served Our Country*, GREAT FALLS TRIB., Nov. 9, 2015, at 4A.
- Gregory G. Pinski, *Veterans Court A New Feature in Great Falls*, GREAT FALLS TRIB., Nov. 9, 2013, at 6A.
- Gregory G. Pinski, *Courts Owe A 'Moral Obligation' to Wayward Vets*, GREAT FALLS TRIB., Oct. 13, 2012, at 6A.
- *Frequently Asked Questions Regarding Non-Compete Agreements*, EMPLOYMENT EDGE (Gray Plant Mooty & Bennett, P.A.), June 2003.
- *U.S. Supreme Court Invalidates FMLA Regulation Requiring Employers to Provide Notice to Employees of FMLA Leave*, EMPLOYMENT EDGE (Gray Plant Mooty & Bennett, P.A.), March 2002.
- *Court Holds That Non-Union Employees Have The Right To Request A Co-Worker's Presence During Disciplinary Interviews*, EMPLOYMENT EDGE (Gray Plant Mooty & Bennett, P.A.), December 2001.
- *U.S. Supreme Court Upholds Mandatory Arbitration Provision Contained in an Employment Application*, EMPLOYMENT EDGE (Gray Plant Mooty & Bennett, P.A.), April 2001.
- *Federal and State Protection for Employees Who Participate in the National Guard*, EMPLOYMENT EDGE (Gray Plant Mooty & Bennett, P.A.), September 2001.
- Gregory G. Pinski, *Up To The Plate And Then The Altar*, GRAND FORKS HERALD, Aug. 19, 1996, at A1.
- Gregory G. Pinski, *UND Students Will Be Able To Access Internet from Residence Halls*, GRAND FORKS HERALD, Aug. 11, 1996, at F9.
- Gregory G. Pinski, *Loch Ness Monster Is Spotted In GF*, GRAND FORKS HERALD, Aug. 11, 1996, at B1.
- Gregory G. Pinski, *Mea Culpa Mea Culpa*, GRAND FORKS HERALD, Aug. 9, 1996, at C1.
- Gregory G. Pinski, *It Was A Big Deal*, GRAND FORKS HERALD, Aug. 5, 1996, at A1.
- Gregory G. Pinski, *Hot Wheels On Display*, GRAND FORKS HERALD, Aug. 4, 1996, at B1.
- Gregory G. Pinski, *Library Completes Construction Of Information Highway*, Aug. 2, 1996, at B3.
- Gregory G. Pinski, *The Magic Goes On*, GRAND FORKS HERALD, July 28, 1996, at B1.
- Gregory G. Pinski, *Company Offers Free E-mail Service*, GRAND FORKS HERALD, July 28, 1996, at D2.
- Gregory G. Pinski, *A Short, Sharp Storm*, GRAND FORKS HERALD, July 22, 1996, at A1.
- Gregory G. Pinski, *Three Hurt In One-Car Rollover*, GRAND FORKS HERALD, July 16, 1996, at B3.
- Gregory G. Pinski, *Prairie Pageantry*, GRAND FORKS HERALD, July 14, 1996, at A1.
- Gregory G. Pinski, *The Magic Goes On*, GRAND FORKS HERALD, July 28, 1996, at B1.
- Gregory G. Pinski, *BMX Bike Racers Kickup Dust In New Track*, GRAND FORKS HERALD, July 11, 1996, at C12.
- Gregory G. Pinski, *Duck Race Main Event Of Today's Big Bang*, GRAND FORKS HERALD, July 4, 1996, at A1.
- Gregory G. Pinski, *GF Man Charged After Chase*, GRAND FORKS HERALD, July 1, 1996, at A3.

- Gregory G. Pinski, *First Ducks Sent Down The Tubes*, GRAND FORKS HERALD, June 27, 1996, at B1.
- Gregory G. Pinski, *Rain Will Go Away After Washing Out Summer Fun*, GRAND FORKS HERALD, June 24, 1996, at A9.
- Gregory G. Pinski, *10 Seconds Is All It Takes To Crown A Winner*, GRAND FORKS HERALD, June 23, 1996, at B1.
- Gregory G. Pinski, *The Perfect Father-in-Law*, GRAND FORKS HERALD, June 16, 1996, at E1.
- Gregory G. Pinski, *Legionnaires To Parade Through GF*, GRAND FORKS HERALD, June 13, 1996, at B1.
- Gregory G. Pinski, *Grafton Standoff Ends Peacefully*, GRAND FORKS HERALD, June 10, 1996, at B1.
- Gregory G. Pinski, *What Election? Gambling Strikes An Interest With Ambivalent Voters*, GRAND FORKS HERALD, June 10, 1996, at A1.
- Gregory G. Pinski, *Grafton Gunman Holds Police In Standoff*, GRAND FORKS HERALD, June 9, 1996, at A2.
- Gregory G. Pinski, *Let The Games Begin*, GRAND FORKS HERALD, May 31, 1996, at A1.
- Dozens of college newspaper articles authored as Editor in Chief of the DAKOTA STUDENT available upon request

Legislative Testimony

- Montana Legislature, House Energy, Technology & Federal Relations, HB 577 (Facial Recognition Technology) (February 26, 2021)
- Montana Legislature, House Judiciary Committee, HB 44 (Judicial Expansion) (January 26, 2017)
- Montana Legislature, House Judiciary Committee, HB 255 (Judicial Disqualification) (January 29, 2015)

Speaking Engagements (Selected) and Client Training

- Numerous educational and informational speeches on court system topics to community organizations, including Boy Scouts of America, Rotary Club, Lion's Club, Elk's Club, United Way, Leadership Great Falls, churches, schools, and other community groups
- Trainer, PharmChem, Inc., *Introduction to Federal Grants for Treatment Courts* (November 13, 2024)
- Faculty, Montana Trial Lawyers Association, *Meditations About Mediation* (April 19, 2024)
- Faculty, Cascade County Bar Association, *Perspectives from Both Sides of the Bench* (April 27, 2023)
- Trainer, PharmChem, Inc., *PharmCheck Sweat Patch & Specialty Courts* (April 18, 2023)
- Trainer, SCRAM Systems, Inc., *Approaching Judges and Testifying in Court with Confidence* (2023)
- Trainer, SCRAM Systems, Inc., *Selling to Federal Grant Recipients* (2023)
- Trainer, SCRAM Systems, Inc., *Treatment Court 101: An Untapped Sales Market* (2023)

- Faculty, National Judicial College, *Impaired Driving Essentials, Alcohol Monitoring Solutions* (September 22, 2022)
- Trainer, SCRAM Systems, Inc., *Peer Review Team* (2022)
- Trainer, PharmChem, Inc., *Selling to Federal Grant Recipients* (July 27, 2022)
- Trainer, SCRAM Systems, Inc., *The Role of Continuous Alcohol Monitoring in the Criminal Justice System* (February 18, 2022)
- Faculty, American Probation and Parole Association, *How Elements of Criminal Justice Reform Could Impact the Use of Electronic Monitoring* (February 1, 2022)
- Trainer, SCRAM Systems, Inc., *Judicial Perspectives on Continuous Alcohol Monitoring* (January 27, 2022)
- Faculty, State Bar of Montana CLE, *Perspectives From Both Sides of the Bench* (January 15, 2022)
- Trainer, Benefis Health System, Inc., *Leadership in Uncertain Times* (June 25, 2021)
- Trainer, SCRAM Systems, Inc., *Selling to Federal Grant Recipients* (April 15, 2021)
- Faculty, National Judicial College, *Substance Use Disorders in the Courtroom* (December 1, 2020)
- Speaker, American Probation & Parole Association, *Critical Role of Electronic Monitoring in Community Supervision* (July 30, 2020)
- Keynote Speaker, Great Falls Chamber of Commerce, Military Affairs Committee Annual Meeting (February 7, 2020)
- Faculty, National Judicial College, *Substance Use Disorders: Stigma, Language, and Misconceptions* (November 11, 2019)
- Keynote Speaker, Youth Arts for Veterans Concert (November 7, 2019)
- Speaker, Great Falls Base Camp (May 18, 2019)
- Faculty, *Attorney's Fees and Sanctions,* State Bar of Montana CLE (May 2, 2019)
- Speaker, *Opioid Epidemic,* United Way (May 1, 2019)
- Faculty, *Veterans Legal Issues,* State Bar of Montana CLE (January 21, 2019)
- Commencement Speaker, Charles M. Russell High School (May 24, 2018)
- Commencement Speaker Montana State University-Great Falls College (May 5, 2018)
- Faculty, *Drug Treatment Courts,* State Bar of Montana Bench and Bar CLE (April 27, 2018)
- Faculty, *As The Court Sees It: Practice Tips From The Judicial Perspective*, Montana Trial Lawyers Association (April 13, 2018)
- Speaker, National Judicial Opioid Task Force, National Center for State Courts, *Teleservices and Medication Assisted Treatment* (January 27, 2018)
- Keynote Speaker, Community Martin Luther King Day, Jr. Memorial Service (January 15, 2018)
- Speaker, Montana Healthcare Foundation, *Promising Initiatives Addressing Substance Use Disorders in Montana* (November 7, 2017)
- Speaker, Montana Judges Association, *Toxicology for Judges* (October 12, 2017)
- Speaker, Montana Board of Crime Control, Crime Prevention Conference (October 4, 2017)
- Keynote Speaker, Vets4Vets Stand Down (September 28, 2017)

- Speaker, Alcohol Monitoring Systems Regional Conference (September 27, 2017)
- Speaker, Montana Department of Revenue Alcohol Education Summit (August 16, 2017)
- Keynote Speaker, Disabled Veterans of America State Conference (June 3, 2017)
- Speaker, 24th Annual Mayor's Prayer Breakfast (May 3, 2017)
- Speaker, The Impact of Addiction on Great Falls' Families, MSU-Great Falls (Apr. 6, 2017)
- Panelist, Montana Meth Summit, Montana Legislature (Feb. 16, 2017)
- Panelist, Chasing the Dragon: The Life of an Opiate Addict, U.S. Attorney (2017)
- Faculty, Montana Statewide Drug Court Conference (2016)
- Keynote Speaker, Youth Arts for Veterans Concert (2016)
- Keynote Speaker, Mayor's Challenge to End Veteran Homelessness (2016)
- Speaker, Governor's Veterans Healthcare Initiative (2016)
- Panelist, U.S. Attorney Forum, From Pills to Heroin: Montana Opioid Threat (2016)
- Panelist, U.S. Attorney Forum, Improving Reentry Outcomes in Montana (2016)
- Panelist, Montana Access to Justice Commission Forum Series (2016)
- Panelist, Opioid Epidemic in Montana, Benefis Healthcare and Great Falls Tribune (2016)
- Faculty, Cascade County Bar Association, People's Law School (2016)
- Keynote Speaker, Veterans Day, Montana Veterans Memorial (2015)
- Panelist, Child and Sexual Abuse Forum, Benefis Healthcare and Great Falls Tribune (2015)
- Faculty, *As Judges See It: Top Mistakes Attorneys Make in Civil Litigation*, NBI (2015)
- Faculty, Montana Trial Academy, Montana Trial Lawyers Association (2014)
- Guest Speaker, Judicial Panel, Montana Bar Association CLE (2014)
- Keynote Speaker, Red Mass Ethics CLE (2014)
- Faculty, *Perspectives from the Bench*, Montana Trial Lawyers Association (2014)
- Mock Trial Training, University of Great Falls (2014)
- Guardian Ad Litem Training, Cascade County (Annual)
- Keynote Speaker, Leadership Great Falls (2013)
- Keynote Speaker, Veterans Court Dedication Ceremony (2013)
- Keynote Speaker, National Adoption Day
- Guest Speaker, Veterans Stand Down, Vets4Vets (2013)
- Keynote Speaker, Friends of Scouting Banquet (2013)
- Guest Speaker, *Perspectives from the Bench*, Cascade County Bar Association (2013)
- Faculty, *What Civil Judges Want You to Know*, National Business Institute (2013)
- Faculty Co-Chair, *Anatomy of a Lawsuit*, Montana Trial Lawyers Association (2013)
- Keynote Speaker, Cascade County Bar Association (2013)
- Faculty, *Issues in Electronic Discovery and Settlement Agreements*, Montana Trial Lawyers Association (2012)
- Trainer, *Employment Law 101*
- Trainer, *Labor Relations 101*

- Trainer, *Non-Competes in a Competitive World*
- Trainer, *Managing Trade Secrets*
- Trainer, *Protecting Your Company's Assets: Non-Compete and Confidentiality Agreements*
- Trainer, *At Whose Expense: Workplace Harassment Training with Theatre at Work*
- Trainer, *Managing Employee Absences*
- Keynote Speaker, C.M. Russell High School Honor Society Induction
- Keynote Speaker, Rotary Club of Great Falls, Eagle Scout Honors

Veterans Treatment Court and Drug Treatment Court Training Engagements

- Treatment Court Institute, Technical Assistance Training, Springfield, MA (June 2, 2026)
- Treatment Court Institute, Technical Assistance Training, Winfield, KS (August 12, 2025)
- Treatment Court Institute, Technical Assistance Training, Oroville, CA (July 14, 2025)
- Treatment Court Institute, Operational Tune-up Training, Richmond, VA (June 10, 2025)
- Faculty, All Rise National Training Conference, *PharmChek Sweat Patch Integration: Experts' Proven Practices for Better Compliance and Program Success,* Orlando, FL (May 29, 2025)
- Justice for Vets, Operational Tune-up Training, Dallas, TX (March 19, 2025)
- All Rise, South Carolina Treatment Court Conference, Greenville, SC (March 7, 2025)
- Treatment Court Institute, Technical Assistance Training, Springfield, MA (March 5, 2025)
- All Rise, California Treatment Court Conference, Monterey, CA (March 1, 2025)
- National Center for State Courts, Federal Court Training, Concord, NH (February 28, 2025)
- Justice for Vets, Operational Tune-up Training, Olathe, KS (February 10, 2025)
- National Center for State Courts, Iowa Best Practice Standards (January 5, 2025)
- All Rise, Ohio Treatment Court Conference, Columbus, OH (October 25, 2024)
- All Rise, Washington Treatment Court Conference, Seattle, WA (October 16, 2024)
- Justice for Vets, Technical Assistance Training, Lansing, MI (September 18, 2024)
- Treatment Court Institute, Technical Assistance Training, Las Vegas, NV (August 22, 2024)
- Treatment Court Institute, Technical Assistance Training, Lovingston, VA (July 25, 2024)
- Treatment Court Institute, ISTA Training, Aberdeen, SD (June 25, 2024)
- Treatment Court Institute, Technical Assistance Training, Oklahoma City, OK (June 19, 2024)
- Treatment Court Institute, Technical Assistance Training, Colorado Springs, CO (June 5, 2024)
- Treatment Court Institute, Technical Assistance Training, Fairbault, MN (June 3, 2024)
- All Rise, Idaho Treatment Court Conference, Boise, ID (April 23, 2024)
- All Rise, Missouri Treatment Court Conference, Branson, MO (April 10, 2024)
- All Rise, Oklahoma Judges Bootcamp, Oklahoma City, OK (April 4, 2024)
- All Rise, Louisiana Treatment Court Conference, Lake Charles, LA (March 19, 2024)
- All Rise, South Carolina Treatment Court Conference, Charleston, SC (February 11, 2024)
- NADCP, Tennessee Treatment Court Conference, Murfreesboro, TN (December 6, 2023)
- NADCP, Team Building and Infrastructure Training, Lansing, MI (November 29, 2023)

- Justice for Vets, Veterans Treatment Court Technical Assistance, St. Louis, MO (October 31, 2023)
- Justice for Vets, Veterans Treatment Court Technical Assistance, Stockton, CA (October 20, 2023)
- NADCP, Hawaii Treatment Court conference, Honolulu, HI (October 14, 2023)
- Justice for Vets, Veterans Treatment Court Technical Assistance, Sanford, FL (October 5, 2023)
- NADCP, ISTA Training, Paw Paw, MI (October 2, 2023)
- Justice for Vets, Veterans Treatment Court Technical Assistance, St. Paul, MN (August 9, 2023)
- NADCP, Minnesota Treatment Court Conference, Minneapolis, MN (June 5, 2023)
- NADCP, Team Building and Infrastructure Training, Anchorage, AK (May 25, 2023)
- Justice for Vets, Veterans Treatment Court Technical Assistance, Chaska, MN (May 19, 2023)
- NADCP, Team Building and Infrastructure Training, Oklahoma City, OK (May 11, 2023)
- NADCP, Maryland Treatment Court Conference, Baltimore, MD (May 2, 2023)
- Justice for Vets, Veterans Treatment Court Technical Assistance, Centennial, CO (April 24, 2023)
- NADCP, Arkansas Treatment Court Conference, Little Rock, AR (April 12, 2023)
- NADCP, Drug Treatment Court Operational Tune-up, Taholah, WA (April 4, 2023)
- NADCP, ISTA Training, Billings, MT (March 22, 2023)
- NADCP, Colorado Treatment Court Conference, Denver, CO (March 8, 2023)
- NADCP, South Carolina Treatment Court Conference, Charleston, SC (March 6, 2023)
- NADCP, ISTA Training, San Antonio, TX (February 28, 2023)
- Justice for Vets, Veterans Treatment Court Technical Assistance, Maderas, CA (February 6, 2023)
- NADCP, ISTA Training, Jackson, MS (January 23, 2023)
- NADCP, Pennsylvania Treatment Court Conference, State College, PA (October 27, 2022)
- NADCP, Drug Treatment Court Technical Assistance, Vallejo, CA (October 17, 2022)
- NADCP, Wyoming Treatment Court Conference, Cheyenne, WY (September 30, 2022)
- NADCP, Drug Treatment Court Technical Assistance, DuPage, IL (September 28, 2022)
- NADCP, Veterans Treatment Court Operational Tune-up, Duluth, MN (August 24, 2022)
- NADCP, Drug Treatment Court Operational Tune-up, Lake, LA (August 9, 2022)
- NADCP, Drug Treatment Court Technical Assistance, Oroville, CA (May 16, 2022)
- NADCP, Drug Treatment Court Technical Assistance, Oakland, CA (May 3, 2022)
- Justice for Vets, Veterans Treatment Court Technical Assistance, Skokie, IL (April 21, 2022)
- NADCP, Drug Treatment Court Technical Assistance, Nationwide (March 17, 2022)
- NADCP, Drug Treatment Court Operational Tune-up, Tulalip, WA (February 23, 2022)
- Justice for Vets, Veterans Treatment Court Operational Tune-up, Peachtree City, GA (Mar. 9, 2022)
- Justice for Vets, Veterans Treatment Court Technical Assistance, Albuquerque, NM (Oct. 27, 2021)

- NADCP, Drug Treatment Court Technical Assistance, Jim Thorpe, PA (Oct. 20, 2021)
- NADCP, Drug Treatment Court Technical Assistance, Dallas, TX (Sept. 14, 2021)
- Faculty, NADCP National Training Conference, *The Verdict is In: Efficacy of Continuous Alcohol Monitoring, Evidentiary Standards, and the Burden of Proof,* National Harbor, MD (Aug. 15, 2021)
- NADCP, Drug Treatment Court Technical Assistance, Quincy, CA (July 19, 2021)
- NADCP, Drug Treatment Court Operational Tune-up, Baltimore, MD (Oct. 5, 2021)
- NADCP, Drug Treatment Court Operational Tune-up, Halifax, VA (Sept. 2, 2021)
- NADCP, Oklahoma Drug Treatment Court Conference, Oklahoma City, OK (Sept. 1, 2021)
- NADCP, Wyoming Drug Treatment Court Conference, Cheyenne, WY (June 8, 2021)
- NADCP, New Hampshire On-Demand Treatment Court Training, Concord, NH (May 13, 2021)
- NADCP, Idaho On-Demand Treatment Court Training, Boise, ID (May 6, 2021)
- NADCP, Arizona Drug Treatment Court Conference, Prescott, AZ (April 15, 2021)
- Justice for Vets, Veterans Treatment Court Operational Tune-up, Augusta, ME (April 13, 2021)
- Justice for Vets, Veterans Treatment Court Planning Initiative, Chester, SC (March 30, 2021)
- NADCP, Drug Treatment Court Technical Assistance, Tucson, AZ (March 25, 2021)
- NADCP, Drug Treatment Court Technical Assistance Training, Reno, NV (March 17, 2021)
- Justice for Vets, Veterans Treatment Court Planning Initiative, Van Wert, OH (March 10, 2021)
- NADCP, Drug Treatment Court Technical Assistance Training, Chaska, MN (March 8, 2021)
- NADCP, Drug Treatment Court Operational Tune-up, Kelso, WA (March 2, 2021)
- NADCP, Indiana Drug Treatment Court Conference, Indianapolis, IN (February 25., 2021)
- Justice for Vets, Veterans Treatment Court Technical Assistance, San Francisco, CA (February 16, 2021)
- NADCP, Drug Treatment Court Operational Tune-up, Safford, AZ (November 18, 2020)
- NADCP, Drug Treatment Court Operational Tune-up, Grand Island, NE (October 27, 2020)
- Justice for Vets, Veterans Treatment Court Planning Initiative, Amarillo, TX (October 21, 2020)
- NADCP, Ohio Drug Treatment Court Conference, Columbus, OH (October 19, 2020)
- Justice for Vets, Veterans Treatment Court Planning Initiative, Lincoln, NE (October 15, 2020)
- Justice for Vets, Veterans Treatment Court Technical Assistance, Elizabethtown, KY (October 5, 2020)
- Tribal Law and Policy Institute, 10th Annual Enhancement Training, Los Angeles, CA (September 28, 2020)
- NADCP, Drug Treatment Court Planning Initiative, Yulee, FL (September 23, 2020)
- Justice for Vets, Veterans Treatment Court Technical Assistance, St. Petersburg, FL (September 20, 2020)
- Oklahoma Justice and Recovery Conference, Oklahoma City, OK (August 27, 2020)
- NADCP, Veterans Treatment Court Technical Assistance, St. Louis, MO (August 19, 2020)
- Justice for Vets, Veterans Treatment Court Technical Assistance, St. Louis, MO (August 9, 2020)

- American Probation and Parole Association, Role of Electronic Monitoring in Community Supervision (July 30, 2020)
- Justice for Vets, Veterans Treatment Court Planning Initiative, Shakopee, MN (July 23, 2020)
- NADCP, Drug Treatment Court Operational Tune-up Training, Oklahoma City, OK (July 5, 2020)
- Justice for Vets, Veterans Treatment Court Planning Initiative, Newton, NC (June 24, 2020)
- Justice for Vets, Veterans Treatment Court Technical Assistance, Joliet, IL (June 9, 2020)
- Tribal Law and Policy Institute, Southwest Tribal Healing to Wellness Court Training, Phoenix, AZ (May 18, 2020)
- Justice for Vets, Veterans Treatment Court Planning Initiative, Florence, AL (March 17, 2020)
- NADCP, Drug Treatment Court Operational Tune-up, Los Angeles, CA (March 9, 2020)
- Justice for Vets, Veterans Treatment Court Planning Initiative, Georgetown, TX (February 25, 2020)
- NADCP, Drug Treatment Court Operational Tune-up, Springfield, IL (February 18, 2020)
- Justice for Vets, Veterans Treatment Court Enhancement Training, Spotsylvania, VA (January 27, 2020)
- NADCP, Drug Treatment Court Operational Tune-up, Opelousas, LA (November 6, 2019)
- Justice for Vets, Veterans Treatment Court Technical Assistance, Reno, NV (October 20, 2019)
- NADCP, North Dakota Drug Treatment Court Conference, Fargo, ND (October 15, 2019)
- Justice for Vets, Veterans Treatment Court Operational Tune-up, Ocala, FL (October 7, 2019)
- Justice for Vets, Veterans Treatment Court Operational Tune-up, Chaska, MN (October 2, 2019)
- Justice for Vets, Veterans Treatment Court Operational Tune-up, St. Louis, MO (September 18, 2019)
- NADCP, Drug Treatment Court Operational Tune-up Training, Pierre, SD (September 4, 2019)
- Tribal Law and Policy Institute, Tribal Veterans Wellness Symposium, Missoula, MT (August 22, 2019)
- Justice for Vets, Veterans Treatment Court Operational Tune-up Training, Salt Lake City, UT (August 7, 2019)
- Justice for Vets, Veterans Treatment Court Planning Initiative, Asheville, NC (June 4, 2019)
- NADCP, Drug Treatment Court Planning Initiative Training, Harriman, TN (May 7, 2019)
- NADCP, Texas Drug Treatment Court Conference, Galveston, TX (April 11, 2019)
- NADCP, Colorado Drug Treatment Court Conference, Denver, CO (March 29, 2019)
- NADCP, Idaho Drug Treatment Court Conference, Boise, ID (March 18, 2019)
- NADCP, Drug Treatment Court Planning Initiative, Livingston, MT (March 12, 2019)
- Justice for Vets, Veterans Treatment Court Planning Initiative, Indianapolis, IN (March 6, 2019)
- NADCP, Drug Treatment Court Judges Training, Dells, WI (February 7, 2019)
- NADCP, Medication-Assisted Treatment Training, Kansas City, MO (November 28, 2018)
- NADCP, Facilitated Drug Treatment Court Planning Retreat, Kingman, AZ (November 8, 2018)
- NADCP, Drug Treatment Court Judges Training, French Lick, IN (October 23, 2018)
- NADCP, Drug Treatment Court Operational Tune-up Training, Mt. Vernon, IL (Sept. 9, 2018)

- NADCP, Drug Treatment Court Operational Tune-up Training, Duluth, MN (July 13, 2018)
- NADCP, Drug Treatment Court Operational Tune-up Training, Carson City, NV (June 29, 2018)
- NADCP/Justice for Vets National Training Conference, *Federal Court Collaboration with State Veterans Treatment Courts*, Houston, TX (May 29, 2018)
- NADCP/Justice for Vets National Training Conference, *Model Veterans Treatment Court Act*, Houston, TX (May 29, 2018)
- NADCP, Drug Treatment Court Planning Initiative Training, Tiffin, OH (April 20, 2018)
- Justice for Vets, Veterans Treatment Court Planning Initiative Training, El Reno, OK (April 6, 2018)
- NADCP Drug Treatment Court Planning Initiative Training, Macon, GA (March 14, 2018)
- Justice for Vets, Veterans Treatment Court Planning Initiative Training, Flagstaff, AZ (March 10, 2018)
- NADCP Drug Treatment Court Operational Tune-up Training, Florence, AZ (February 23, 2018)
- NADCP/Justice for Vets National Training Conference, *Veterans Treatment Courts: Lessons Learned Through Research*, National Harbor, MD (July 10, 2017)
- NADCP/Justice for Vets National Training Conference, *Federal Court Collaboration with State Veterans Treatment Courts*, National Harbor, MD (July 10, 2017)
- NADCP Drug Treatment Court Operational Tune-up Training, Champaign, IL (May 3, 2017)
- NADCP Training the Trainers, Drug Treatment Court Operational Tune-up Training, Washington, DC (March 24, 2017)
- BJA Technical Assistance Site Visit, Clay County Veterans Treatment Court, Moorhead, MN (October 10, 2016)
- BJA Technical Assistance Site Visit, Christian County Veterans Treatment Court, Hopkinsville, KY (August 15, 2016)
- BJA Technical Assistance Site Visit, Davidson County Veterans Treatment Court, Nashville, TN (April 11, 2016)
- BJA Technical Assistance Site Visit, Hall County Veterans Treatment Court, Gainesville, GA (June 20, 2016)

Honors and Awards

- BOY SCOUTS OF AMERICA
  - *Eagle Scout*
  - *National Outstanding Eagle Scout Award* (First Montanan to receive award)
  - *James E. West Fellow*
  - *Scouter's Key Award*
  - *Scout Leader's Training Award*
  - *Den Leader Award*
  - *Outstanding Fundraiser Award*
  - *Lutheran Lamb Service to Youth Award*

- *Unit Leader Award of Merit*
- *Council Alumni Award*
- *Order of the Arrow (Brotherhood Member)*

- ELECTED MEMBER, AMERICAN LAW INSTITUTE
- ELECTED MEMBER, NATIONAL ACADEMY OF DISTINGUISHED NEUTRALS
- UNITED STATES DEPARTMENT OF VETERANS AFFAIRS AWARD OF EXCELLENCE
- FELLOWS OF THE AMERICAN BAR FOUNDATION
- UNIVERSITY OF NORTH DAKOTA ALUMNI FOUNDATION, *Young Alumni Achievement Award*
- GREAT FALLS ELKS LODGE *2018 Citizen of the Year*
- UNIVERSITY OF NORTH DAKOTA SCHOOL OF LAW ALUMNI FOUNDATION, *Dean's Council*
- GREAT FALLS TRIBUNE, *Rising Star*
- MINNESOTA LAWYER, *Up and Coming Attorney*
- MINNESOTA LAW & POLITICS, *Rising Star*
- GRAY PLANT MOOTY, *Pro Bono All-Star*

Present and Past Community Involvement

- Board of Directors, Montana Council, Boy Scouts of America
- Chairman and Vice Chairman, Lewis & Clark District, Boy Scouts of America
- Assistant Scoutmaster, Troop 1, Boy Scouts of America
- Merit Badge Counselor, Lewis & Clark District, Boy Scouts of America
- Cubmaster, Assistant Cubmaster, and Den Leader, Pack 143, Boy Scouts of America
- Finance Chair, Lewis & Clark District, Boy Scouts of America
- Eagle Scout Board of Review, Lewis & Clark District, Boy Scouts of America
- Corporate Secretary and Director, Montana Special Olympics
- Corporate Secretary and Director, Darcy Lynn Dengel Foundation
- Trustee, Michael Patrick Cosmo Conner Foundation
- Evaluation Committee Chair, Montana Special Olympics
- Bethel Lutheran Church
- Key Volunteer, United Way of Cascade County
- Volunteer, Cascade County Victim-Witness Advocacy Project (assist victims of domestic violence obtain restraining orders)
- Volunteer, Lewis House Domestic Abuse Project (assist victims of domestic violence obtain restraining orders)
- Volunteer, C.M. Russell High School Debate Judge

Continuing Legal Education Courses (Past Ten Years)

- All Rise / Justice for Vets National Conference (Annual Attendance)
- Uniform Law Commission Annual Meeting (Annual Attendance)

- Montana Bar Association, Ski and CLE (Faculty)
- Winning Mediation Practices and Pitfalls to Avoid
- May it Displease the Court? Keeping Your Head in Court
- The Impact of Culture on Negotiation and Mediation
- American Law Institute Annual Meeting
- Montana Judges Association Semi-Annual Conference (Annual Attendance)
- National Judicial College, Mindfulness for Judges
- When Bad Biases Happen to Good People
- Implicit Bias: The Bias You Didn't Know You Have...But You Do
- Montana Trial Lawyers Association Spring CLE (Faculty)
- Montana Bar Association, Bench and Bar CLE (Faculty)
- ABA Equal Justice Conference
- NDCI Training the Trainers, Drug Court Operational Tune-up
- National Judicial College, Advanced Concepts in Criminal Justice
- Montana Statewide Drug Treatment Court Conference (Faculty)
- National Judicial College, Judicial Leadership
- As Judges See It: Top Mistakes Attorneys Make in Civil Litigation (Faculty)
- MTLA Trial Academy (Faculty)
- National Judicial College, Judicial Writing
- National Judicial College, General Jurisdiction Trial Skills
- Montana Bar Association, Diverse Issues and Judges Panel (Faculty)

Present and Past Professional Memberships

- American Law Institute
- National Academy of Distinguished Neutrals
- Fellows of the American Bar Foundation
- Montana Judges Association
- All Rise (formerly National Association of Drug Court Professionals)
- Montana Bar Association
- Minnesota Bar Association
- Cascade County Bar Association
- American Bar Association
- National Eagle Scout Association

EXHIBIT B

Documents Reviewed

Docket No.	Date	Document
1	6/27/22	Notice of Appeal and Request for Hearing
2	7/8/22	Order re Informal Procedures
3	7/13/22	Joint Motion for Informal Conference
4	7/28/22	Motion to Intervene
5	7/28/22	Proposed Order
6	8/15/22	Petitioners' Response to Westmoreland Rosebud Mining LLC's Motion to Intervene
7	8/18/22	Initial Procedural Order
8	8/29/22	Westmoreland Rosebud Mining, LLC and International Union of Operating Engineers, Local 400's Reply in Support of Motion to Intervene, with Exhibits A-C
9	9/12/22	Order Granting Intervention
10	9/16/22	Joint Motion for Case Management Order
11	9/19/22	Scheduling Order
12	10/13/22	Notice of Appearance of Counsel
13	11/7/22	Amended Notice of Appeal and Request for Hearing
14	1/11/23	Notice of Withdrawal of Counsel - J. Martin
15	2/3/23	Joint Motion to Modify Scheduling Order and Proposed Order
16	2/6/23	Amended Scheduling Order
17	4/10/23	Westmoreland Rosebud Mining LLC and International Union of Operating Engineers, Local 400's Motion for Protective Order and Brief in Support, with Exhibits A-I
18	4/14/23	Plaintiff's Unopposed Motion for Extension of Time
19	4/14/23	Proposed Order
20	4/14/23	Order Granting Extension of Time
21	5/4/23	Petitioners' Response to Intervenor-Respondents' Motion for Protective Order, with Exhibits
22	5/19/23	Joint Motion to Amend Scheduling Order and Proposed Amended Scheduling Order
23	5/22/23	Amended Scheduling Order
24	5/30/23	Reply Brief in Support of Westmoreland Rosebud Mining LLC and International Union of Operating Engineers, Local

		400's Motion for a Protective Order
25	5/30/23	Petitioners' Notice of Submission
26	6/6/23	Order re Motion for Protective Order
27	6/21/23	Order re Site Inspection
28	6/22/23	Joint Motion for Stipulated Protective Order and Proposed Order
29	6/28/23	Order re Site Inspection and Anderson Deposition
30	7/10/23	Motion for a Protective Order
31	7/10/23	Proposed Order Granting Motion for a Protective Order
32	7/25/23	Petitioner's Response to Respondents' Motion for Protective Order
33	8/10/23	Unopposed Joint Motion for Extension of Time
34	8/10/23	Proposed Order Granting Joint Motion for Extension of Time
35	8/11/23	Order Granting Joint Motion for Extension of Time
36	8/14/23	Joint Reply in Support of Motion for a Protective Order, with Exhibit A - Declaration of Emily Lodman
37	8/23/23	Petitioners' Motion for Summary Judgment
38	8/23/23	Brief in Support of Motion for Summary Judgment
39	8/23/23	Statement of Undisputed Facts, Exhibits 1-18, Declaration of B. Anderson, Declaration of S. Gilbert, Declaration of A. Hedges, Declaration of A. Bonogofsky with Exhibit A, and Declaration of M. Scott
40	8/23/23	Westmoreland Rosebud Mining LLC and International Union of Operating Engineers, Local 400's Motion for Summary Judgment
41	8/23/23	Westmoreland Rosebud Mining LLC and International Union of Operating Engineers, Local 400's Brief in Support of Motion for Summary Judgment
42	8/23/23	Westmoreland Rosebud Mining LLC and International Union of Operating Engineers, Local 400's Appendix of Exhibits in Support of Motion for Summary Judgment, with Exhibits A-C

43	8/23/23	Joint Statement of Undisputed Facts, with Exhibits A-AA
44	8/23/23	DEQ's Motion for Summary Judgment
45	8/23/23	DEQ's Brief in Support of Motion for Summary Judgment
46	9/14/23	Joint Motion for Extension of Dispositive Motion Response and Reply Briefing Deadlines
47	9/14/23	Proposed Order Granting Joint Motion for Extension of Dispositive Motion Response and Reply Briefing Deadlines
48	9/18/23	Order Granting Joint Motion for Extension of Dispositive Motion Response and Reply Briefing Deadlines
48-1	10/2/23	Order re Protective Order
49	10/11/23	Unopposed Motion for Extension of Time
50	10/11/23	Proposed Order Granting Joint Motion for Extension of Time
51	10/11/23	Order Granting Joint Motion for Extension of Time
52	10/18/23	Petitioners' Response to Respondents' Motions for Summary Judgment
53	10/18/23	Petitioners' Statement of Disputed Facts, with Exhibits 1-14
54	10/18/23	DEQ's Response in Opposition to Petitioners' Motion for Summary Judgment (Oral Argument Requested)
55	10/18/23	Westmoreland Rosebud Mining LLC and International Union of Operating Engineers, Local 400's Response Brief to Petitioners' Summary Judgment Motion
56	10/18/23	Westmoreland Rosebud Mining LLC and International Union of Operating Engineers, Local 400's Appendix of Exhibits in Support of Response Brief to Petitioners' Summary Judgment Motion, with Exhibits KK-OO
57	10/18/23	Montana Department of Environmental Quality, Westmoreland Rosebud Mining LLC, and International Union of Operating Engineers, Local 400's Joint Motion to Strike
58	10/18/23	Montana Department of Environmental Quality,

		Westmoreland Rosebud Mining LLC, and International Union of Operating Engineers, Local 400's Brief in Support of Joint Motion to Strike the Declaration of Bruce Anderson
59	10/18/23	Joint Statement of Disputed Facts
60	10/18/23	Joint Statement of Undisputed Facts
61	10/31/23	Unopposed Motion for Extension of Time, Proposed Order
62	10/31/23	Order Granting Joint Motion for Extension of Time
63	11/6/23	Response to Motion to Strike, with Exhibit 1
64	11/17/23	DEQ, Westmoreland Rosebud Mining LLC, and International Union of Operating Engineers, Local 400's Motion for Extension of Deadline to Reply in Support of Joint Motion to Strike, with Proposed Order
65	11/20/23	Order Granting Motion for Extension of Deadline to Reply in Support of Joint Motion to Strike
66	11/28/23	DEQ, Westmoreland Rosebud Mining LLC, and International Union of Operating Engineers, Local 400's Reply in Support of Joint Motion to Strike; transcript-synced deposition video
67	12/21/23	Westmoreland Rosebud Mining LLC and International Union of Operating Engineers, Local 400's Reply in Support of Summary Judgment, Oral Argument Requested
68	12/21/23	DEQ's Reply Brief in Support of Motion for Summary Judgment
69	12/21/23	Petitioners' Combined Reply to DEQ and WRM's Response Briefs in Support of Motion for Summary Judgment, with Exhibits 1-2
70	12/21/23	Petitioners' Supplemental Statement of Disputed Facts, with Exhibit 1
71	6/10/24	Notice of Change of Address for Sarah C. Bordelon
72	9/11/24	Order re Joint Motion to Strike Declaration of Bruce Anderson

73	12/12/24	Notice
74	12/20/24	Notice and Request for Expedited Review
75	12/23/24	Order re Expedited Review
76	1/7/25	Order
77	1/27/25	Order Setting Summary Judgment Hearing
78	2/4/25	Unopposed Motion for Extension of Time, with Proposed Order
79	2/4/25	Order Granting Unopposed Motion for Extension of Time
80	2/10/25	Joint Submission of Proposed Findings of Fact and Conclusions of Law
81	2/10/25	Proposed Findings of Fact and Conclusions of Law
82	2/10/25	Proposed Order re Motions for Summary Judgment
83	2/18/25	Hearing - Summary Judgment Argument - Audio
83	2/18/25	Hearing - Summary Judgment Argument - Video
83-1	5/1/25	Notice of Withdrawal - Emily T. Qiu
84	5/23/25	Findings of Fact and Conclusions of Law - Recommended Decision
85	5/30/25	Joint Motion for Clarification and Briefing Schedule, with Proposed Order
86	6/6/25	Order Granting Joint Motion for Clarification and Briefing Schedule
87	6/26/25	Notice of Assumption of Jurisdiction
88	7/17/25	Partially Unopposed Motion for Extension of Time to File Exceptions to the Order, Exhibit 1 (Declaration of Shiloh Hernandez), and Proposed Order
89	7/18/25	Westmoreland's Response in Opposition to MEIC's Motion for Extension
90	7/21/25	Order Granting Motion for Extension of Time to File Exceptions to the Order
91	8/29/25	Petitioners' Exceptions to Proposed Order on Summary Judgment
92	8/29/25	Westmoreland's Exceptions to Recommended Order on Motions for Summary Judgment

93	8/29/25	DEQ's Exceptions to Recommended Order on Motions for Summary Judgment
94	10/3/25	Westmoreland's Response in Opposition to Petitioners' Exceptions to Proposed Order on Summary Judgment
95	10/3/25	Combined Response to Exceptions to Proposed Order on Summary Judgment
96	10/3/25	DEQ's Responses to Petitioners' Exceptions
97	11/4/25	Final Agency Action and Order of the Board of Environmental Review
98	11/17/25	Notice of Withdrawal and Substitution of Counsel
99	11/26/25	Westmoreland's Petition for Costs, Expenses, and Fees, with Proposed Order
100	12/9/25	Unopposed Motion for Extension of Time, with Proposed Order
101	12/15/25	Order Setting Briefing Schedule
102	12/17/25	Notice of Appearance - Robert Farris-Olsen
103	1/9/26	Response to Petition for Costs, Expenses, and Fees
104	2/13/26	Reply in Support of Petition for Costs, Expenses, and Fees
105	2/19/26	Motion to Strike
106	2/19/26	Response in Opposition to Conservation Groups' Motion to Strike
107	2/19/26	Reply in Support of Motion to Strike
108	2/23/26	Order Denying Motion to Strike in Part and Granting It in Part
109	3/17/26	Unopposed Motion for Extension of Time to File Sur-Reply to Petition for Costs, Expenses, and Fees; Proposed Order
110	3/18/26	Order Granting Unopposed Motion for Extension of Time
111	3/25/26	Sur-reply to Petition for Costs, Expenses, and Fees
112	4/8/26	Order regarding April Oral Argument
113	4/15/26	Notice of Supplemental Authority and Request to Take Judicial Notice
114	4/15/26	Motion to Assign Hearing Examiner

115	4/16/26	Response in Opposition to Notice of Supplemental Authority and Request to Take Judicial Notice
116	4/16/26	Response in Opposition to Petitioners' Motion to Assign Hearing Examiner
117	4/17/26	Combined Reply in Support of Notice of Supplemental Authority and Motion to Assign Hearing Examiner
118	5/21/26	Order Setting Scheduling Conference
119	5/29/26	Notice of Submission of Proposed Scheduling Order
120	5/29/26	Conservation Groups' Notice of Submission of Proposed Scheduling Order; Proposed Scheduling Order re Reasonableness Determination

In addition to the docketed pleadings and orders listed above, I received and reviewed the following materials made available in the matter file:

Date / Identifier	**Document or Material**
5/15/26	Meeting Packet
5/15/26	Hearing Transcript — Argument regarding Jurisdiction and Liability
6/3/26	Pleadings Docket / Docket Index
6/10/26	Scheduling Order — Hearing on Amount of Attorney Fees, Costs, and Expenses
7/15/26	Petitioners' Witness and Exhibit List
7/15/26	Respondents' Witness and Exhibit List
4/22/22	DV 19-34 Second Declaration of Shiloh Hernandez
4/22/22	DV 19-34 Second Declaration of Roger Sullivan
4/22/22	DV 19-34 Petitioners' Supplemental Petition for Costs and Attorneys' Fees
4/8/22	DV 19-34 Reply in Support of Petitioners' Motion for Costs and Attorneys' Fees
12/8/21	DV 19-34 Declaration of Timothy Bechtold in Support of Petitioners' Motion for Fees and Costs
12/9/21	DV 19-34 Declaration of Roger Sullivan
12/10/21	DV 19-34 Declaration of L. Randall Bishop in Support of Petitioners' Motion for Costs and Attorneys' Fees
12/13/21	DV 19-34 Brief in Support of Petitioners' Motion for Costs and Attorneys' Fees
12/9/21	DV 19-34 Declaration of Shiloh Hernandez
12/10/21	DV 19-34 Declaration of Derf Johnson
12/10/21	DV 19-34 Declaration of Walton D. Morris, Jr.
Undated	DV 19-34 Copy of S. Hernandez Hours

12/13/21	DV 19-34 Petitioners' Motion for Costs and Attorneys' Fees
Undated	DV 19-34 Petioners' [sic] Proposed Order on Petioners' [sic] Motion for Fees and Costs
Undated	DV 19-34 RS – 2nd Fees and Costs (12-2021 thru 4-2022)
8/4/26	Board Brief in Support of Motion to Dismiss Amended Complaint and Request for Oral Argument, No. DV-44-2026-0027-OC

EXHIBIT C

Block Billing Table

Page	Date	Timekeeper	Amount	Hours	Narrative	Why block billed
1	6/27/2022	Yemington, Samuel R.	$220.22	0.5	Review AM5 NOA; attend to correspondence regarding the same;	Aggregates document review and correspondence.
1	6/28/2022	Martin, John C.	$1,145.14	1.2	Review notice of appeal and forward to WRM personnel; [redaction] placed call to Mr. Steere; review draft permit;	Aggregates review, forwarding, telephone call, and separate permit review.
1	6/30/2022	Bordelon, Sarah C.	$1,541.53	2.6	Telephone conference with SRYemington regarding preliminary impressions of merits claims in MEIC's Notice of Appeal and Request for Hearing and procedural strategy in case; circulate litigation hold reminder to client team; draft case assessment notes on initial procedural strategy issues as well as preliminary review of substantive claims and circulate internally.	Aggregates conference, litigation hold, drafting, substantive review, and internal circulation.
1	6/30/2022	Yemington, Samuel R.	$1,233.22	2.8	Attend to AM5 NOA; conference with SCBordelon regarding the same and initial motion practice; attend to matter staffing; attend to correspondence from WRM regarding the same;	Aggregates NOA work, conference, staffing, and correspondence.
1	7/5/2022	Bordelon, Sarah C.	$224.12	0.4	Telephone conference with SRYemington regarding preparation of intervention papers and strategy regarding structure of Petitioners' case; circulate case update to client team;	Aggregates attorney conference and client update.

1	7/5/2022	Yemington, Samuel R.	$915.69	2.2	Review NOA against public comments and DEQ's response to same; circulate comments spreadsheet for internal review; conference with SCBordelon regarding matter status and path forward; attend to matter staffing;	Aggregates review, circulation, conference, and staffing.
1	7/7/2022	Bordelon, Sarah C.	$616.33	1.1	[redaction] draft and circulate proposed agenda for client call internally; research 30-day hearing requirement referenced in Petitioners' Request for Hearing, draft notes regarding same, and circulate to SRYemington:	Aggregates agenda drafting/circulation, legal research, note drafting, and circulation.
1	7/7/2022	DiPaola, Trisa J.	$166.49	1.2	Draft Motion to Intervene in BER 2022-05 SM; email to SRYemington for review;	Aggregates drafting and email/transmission for review.
1	7/7/2022	Yemington, Samuel R.	$707.58	1.7	Attend to correspondence regarding matter status and WRM call; attend to AM5 intervention; begin drafting motion to intervene; conference with SCBordelon regarding the same;	Aggregates correspondence, intervention work, drafting, and conference.
1	7/11/2022	Bordelon, Sarah C.	$1,008.54	1.8	Video conference with client team regarding [redaction] intervention in BER contested case, potential preliminary motions in BER contested case, overview of claims in BER contested case, and engagement of experts in BER contested case; follow-up telephone conference with JCMartin regarding same;	Aggregates client conference covering multiple topics and follow-up attorney call.
1	7/11/2022	Mercer, William W.	$905.02	1.6	Participate in litigation update call; prepare for call; call with JCMartin;	Aggregates preparation, participation, and separate call.

1	7/11/2022	Yemington, Samuel R.	$1,581.64	3.8	Attend to WRM AM5 initial case call; conference with WRM team regarding matter status, claims, and path forward; [redaction]	Aggregates case call and team conference/status strategy.
1	7/12/2022	Yemington, Samuel R.	$998.93	2.4	Conference with SCBordelon regarding AM5 expert engagements and intervention; attend to question of facial standing; attend to correspondence regarding the same; attend to matter staffing; continue drafting motion to intervene;	Aggregates conference, legal analysis, correspondence, staffing, and drafting.
1	7/13/2022	Yemington, Samuel R.	$2,289.22	5.5	Attend to standing facial challenge standard; research same; review recent MTSC decisions on associational standing and pleading requirements; attend to correspondence regarding the same;	Aggregates legal analysis, research, case review, and correspondence.
1	7/14/2022	Yemington, Samuel R.	$1,748.13	4.2	Continue researching facial challenge to standing; continue drafting motion to intervene; attend to correspondence regarding matter staffing;	Aggregates research, drafting, and staffing correspondence.
1	7/15/2022	Yemington, Samuel R.	$1,706.51	4.1	Continue researching NOA pleading requirements; attend to question of facial standing challenge; continue drafting motion to intervene;	Aggregates research, legal analysis, and drafting.
1	7/18/2022	Bordelon, Sarah C.	$784.42	1.4	Coordinate with SRYemington regarding status of intervention papers; confirm extent of expert engagement with Dr. Nicklin regarding session for discussion of substantive issues raised in Request for Hearing; contact Ms. Hunter	Aggregates research, drafting, and expert witness engagement.

					regarding potential expert engagement; follow-up with client team regarding potential additional intervenors and status of intervention papers; telephone conference with SRYemington regarding wetlands expert, legal research results on standing issues, and preparation of intervention papers;	
1	7/18/2022	Yemington, Samuel R.	$1,331.91	3.2	Continue researching facial challenge to standing; begin drafting motion to dismiss for lack of standing; attend to intervene and supporting affidavit; attend to correspondence regarding same; attend to expert engagements and substantive review of NOA claims; conference with SCBordelon regarding the same;	Aggregates research, drafting, and expert witness engagement.
2	7/20/2022	Bordelon, Sarah C.	$784.42	1.4	Telephone conference with JCMartin and SRYemington regarding [redaction] intervention coalition in BER matter; circulate follow-up for client meeting on intervention; review and analyze email from BER Attorney regarding conference on case schedule; circulate email to client team with comments;	Aggregates conference, client follow-up, email review, analysis, and circulation.
2	7/20/2022	Martin, John C.	$1,172.36	1.3	[redaction] confer with SRYemington and SCBordelon regarding strategy for litigation; telephone conference with Mr. Cottrell [redaction]	Aggregates internal conference and client conference.

2	7/21/2022	Bordelon, Sarah C.	$728.37	1.3	Review updates from SRYemington regarding conversation with Mr. Langston and DEQ position on procedure for litigating contested case; [redaction] telephone conference with SRYemington regarding response to DEQ procedural position;	Aggregates review/analysis and conference.
2	7/21/2022	Yemington, Samuel R.	$1,581.64	3.8	Attend to AM5 contested case status; conference with DEQ regarding anticipated witnesses and informal procedures, attend to correspondence regarding the same; [redaction] attend to correspondence regarding informal conference; notify BER of intent to intervene and participate in informal conference;	Aggregates status work, conference, multiple correspondence tasks, and notification/participation tasks.
2	7/25/2022	Yemington, Samuel R.	$1,290.29	3.1	Conference with JCMartin and SCBordelon regarding intervention status, MTD for lack of jurisdiction, and motion to strike; conference with Mr. Hernandez regarding position on intervention; reach out to DEQ regarding the same; draft motion to intervene and circulate for internal review; attend to correspondence regarding the same;	Aggregates multiple conferences, outreach, drafting, circulation, and correspondence.

2	7/26/2022	Martin, John C.	$1,082.18	1.2	[redaction] telephone conference with SRYemington and SCBordelon regarding intervention and other issues related to BER proceeding: telephone conference with Mr. Gross regarding participation of Local 400 in BER litigation; review correspondence related to BER proceeding and position taken by MEIC;	Aggregates multiple conferences and correspondence review.
2	7/27/2022	Yemington, Samuel R.	$1,789.76	4.3	Attend to Motion to Intervene; attend correspondence regarding the same; review draft motion and declarations and revise the same; conference with JCMartin regarding the same; coordinate filing of the same; attend to correspondence from BER regarding informal conference;	Aggregates drafting/revision, conference, filing coordination, and correspondence.
2	7/28/2022	Martin, John C.	$1,893.81	2.1	Telephone conference with SRYemington regarding strategy for hearing with BER Chair; participate in hearing; telephone conference with SRYemington regarding path forward; [redaction]	Aggregates strategy call, hearing participation, and follow-up call.

2	7/28/2022	Yemington, Samuel R.	$2,747.07	6.6	Finalize motion to intervene and supporting materials; attend to correspondence regarding the same; coordinate filing with BER; prepare for informal conference; attend to correspondence regarding the same; review MAPA informal contested case rules; conference with JCMartin regarding the same; follow up with DEQ regarding position on informal procedures; conference with JCMartin regarding the same; attend and participate in informal conference; follow up with team regarding the same;	Block billing across many tasks.
3	8/9/2022	Martin, John C.	$1,884.10	1.8	Further review of arguments concerning cumulative impact; review related correspondence; telephone conference with SCBordelon regarding content of argument;	Aggregates argument review, correspondence review, and conference.
3	8/15/2022	Bordelon, Sarah C.	$1,430.73	2.2	[redaction] coordinate with TJDiPaola regarding docket monitoring; review MEIC response to motion to intervene in MSUMRA contested case; update notes regarding litigation status of contested case and identify pending action items; follow-up with experts (Ms. Hunter and Dr. Nicklin) regarding involvement in case;	Aggregates coordination, response review, note-updating, action-item identification, and expert follow-up.

3	8/15/2022	Martin, John C.	$837.38	0.8	Telephone conference with WWMercer regarding strategy for other participants in BER proceeding: review and draft email correspondence re MEIC objection to intervention;	Aggregates conference, review, and drafting correspondence.
3	8/15/2022	Mercer, William W.	$853.48	1.3	Review NGO's opposition to Westmoreland's motion to intervene; review JCMartin's e-mail on same and respond to it; review SCBordelon's response; call with JCMartin on yesterday's e-mail and the issues today's e-mails; review engagement letter for Mr. Carstensen;	Aggregates multiple reviews, response, call, and engagement letter review.
3	8/16/2022	Bordelon, Sarah C.	$260.13	0.4	Review email from Dr. Nicklin regarding inclusion of Mr. Carstensen in hydrology analysis; prepare expert engagement letter for Mr. Carstensen and circulate to Dr. Nicklin and Mr. Carstensen; review follow-up from Ms. Hunter and coordinate with SRYemington regarding timing for same; circulate update on expert engagement status internally;	Aggregates email review, letter prep, circulation, follow-up review, coordination, and status update.
3	8/17/2022	Yemington, Samuel R.	$2,029.03	4.2	Prepare for and attend conference with AM5 hydrologist experts Dr. Nicklin and Mr. Carstensen and SCBordelon; continue drafting reply in support of WRM and Local 400 intervention in BER contested case proceeding: attend to correspondence regarding the same;	Aggregates preparation, conference, drafting, and correspondence.

3	8/18/2022	Yemington, Samuel R.	$628.03	1.3	Attend to correspondence regarding reply in support of motion to intervene and standing challenge; review First Scheduling Order issued by BER for contested case proceeding; attend to correspondence regarding the same; attend to AM5 expert engagements and correspondence regarding the same;	Aggregates multiple correspondence tasks, order review, and expert engagement work.
3	8/22/2022	Yemington, Samuel R.	$2,029.03	4.2	Continue drafting reply in support of intervention; attend to correspondence regarding the same; conference with SCBordelon regarding discovery and site inspection; attend to case management order and motion to dismiss for lack of standing.	Aggregates drafting brief, correspondence, discovery, and site inspection.
4	8/23/2022	Bordelon, Sarah C.	$650.33	1	Telephone conference with Ms. Hunter and WWMercer regarding expert engagement on aquatic life issues for BER matter; [redaction] contact Mr. Viert regarding expert engagement on wetlands issues for BER matter; circulate update on status of pending action items in BER litigation to litigation team; [redaction]	Aggregates conference, outreach, and status update.

4	8/24/2022	Bordelon, Sarah C.	$1,105.56	1.7	Review and respond to Mr. Viert regarding wetlands expert testimony; telephone conference with litigation team regarding upcoming litigation deadlines and action items in BER matter [redaction] review and respond to follow-up with Mr. Viert regarding expert testimony on wetlands issues and coordinate follow-up meeting;	Aggregates review/response, conference, follow-up, and coordination.
4	8/24/2022	Mercer, William W.	$1,050.44	1.6	Call with colleagues re: planning and logistics; review response from Mr. Viert and SCBordelon's response to him; provide Judge Abbott's order on the request for limitation on intervention in the Bad Actor case; follow-up re: argument made by Mr. Hernandez in that case and the identical argument made there;	Aggregates call, multiple reviews, and follow-up substantive work.
4	8/26/2022	Bordelon, Sarah C.	$1,950.99	3	Telephone conference with SRYemington regarding approach on motions to dismiss for lack of standing in both cases, and scheduling order: review notes from Dr. Nicklin regarding perched groundwater: coordinate with EJAdams regarding expert engagement letters; complete revising reply in support of motion to intervene in BER contested case and circulate internally with comments:	Aggregates conference, review, coordination, revision, and circulation.

4	8/26/22	Yemington, Samuel R.	$1,497.62	3.1	Attend to correspondence regarding AM5 motion to dismiss for lack of standing in [redaction] BER actions; conference with SCBordelon regarding status of reply in support of intervention in BER contested case proceeding [redaction]; attend to BER case management order; circulate correspondence regarding prior negotiations with MEIC and DEQ regarding the same;	Aggregates correspondence, briefing, and conference.
5	8/29/2022	Bordelon, Sarah C.	$1,820.92	2.8	Review comments on reply in support of motion to intervene in BER contested case; telephone conference with SRYemington, EJAdams, and JLFreitas regarding [redaction] motions to dismiss for lack of standing in each case; follow-up telephone conference with SRYemington regarding proposed case management schedule for BER contested case and final comments on draft reply in support of intervention in same; review and respond to comments from WWMercer regarding same; edit and revise draft reply and coordinate filing same;	Block billing across many discrete tasks.
5	8/29/2022	Mercer, William W.	$459.57	0.7	Review edits of colleagues on reply briefs on intervention motion; forward additional edits to SCBordelon; communicate with SCBordelon on need to make additional reference at the outset of the brief	Aggregates review, forwarding, and communication.

5	8/29/2022	Yemington, Samuel R.	$3,574.96	7.4	[redaction] attend to reply in support of intervention in BER contested case proceeding attend to correspondence regarding the same; provide final edits and assist with filing and exhibits:	Aggregates reply work, correspondence, edits, filing, and exhibits.
6	9/16/2022	Bordelon, Sarah C.	$915.58	1.6	Review party correspondence regarding scheduling order; draft paragraph on Westmoreland position on scheduling order, circulate internally, review team comments, and discuss with JCMartin; edit and revise draft joint case management plan to reflect Westmoreland position and circulate to parties;	Aggregates review, drafting, circulation, discussion, revision, and circulation to parties.
6	9/16/2022	DiPaola, Trisa J.	$85.02	0.6	Review, revise, and finalize client memorandum regarding the status of current Westmoreland litigation matters and deadlines; e-mail correspondence with SCBordelon regarding the same; e-mail memorandum to Mr. Heroux and working group;	Aggregates review, revision, finalization, and communications.
6	9/19/2022	Martin, John C.	$2,302.56	2.5	Telephone conference regarding experts; telephone conference with Mr. Nicklin regarding anticipated testimony; telephone conference with SCBordelon regarding approach to litigation; review initial submissions to Board;	Aggregates three calls and document review.

10	12/12/2022	Bordelon, Sarah C.	$634.83	1.1	Follow up with SRYemington on outreach to MEIC on discovery extension in MSUMRA contested case; [redaction] review correspondence regarding new hearing examiner for MSUMRA contested case; coordinate internally regarding strategy discussion on potential motion to dismiss [redaction] MSUMRA contested case; telephone conference with SRYemington regarding next steps in MSUMRA contested case; telephone conference with Mr. Langston regarding same:	Aggregates follow-up, review, coordination, and conferences.
10	12/12/2022	Yemington, Samuel R.	$1,120.82	2.6	Attend to AM5 discovery production; conference with counsel for MEIC regarding the same; attend to correspondence regarding appointment of replacement hearing examiner and potential conflicts; conference with counsel for DEQ regarding matter statuses and path forward	Aggregates discovery, conference, correspondence, and another conference.
10	12/14/2022	Bordelon, Sarah C.	$577.12	1	Video conference with counsel regarding discovery production response; draft and send e-mail to document agreements with opposing counsel; summarize status of review and agreements in update to client;	Aggregates conference, drafting email, and client update.

10	1/2/2023	Bordelon, Sarah C.	$1,522.09	2.3	[redaction] continue developing expert disclosure for Dr. Nicklin and Mr. Carstensen in MSUMRA BER contested case; develop disclosures for Ms. Hunter and Mr. Viert; circulate draft framework to SRYemington with comments regarding further development of same and check-in on initial disclosures and discovery;	Aggregates multiple disclosure-development tasks and circulation/check-in.
11	1/4/2023	Yemington, Samuel R.	$3,057.64	5.8	Attend to AM5 discovery responses; conference with Dr. Nicklin regarding the same; attend to correspondence regarding production upload and review status; attend to initial disclosures; begin reviewing the same; finalize initial disclosure review and edits; attend to correspondence regarding the same; begin identifying expert reports and supporting materials for disclosures; attend to correspondence regarding the same; begin reviewing permit application appendices and supporting materials; conference with TDiPaola regarding pulling the same from Montana DEQ portal; circulate initial disclosure for WRM review;	Block billing across multiple tasks across many distinct tasks.

11	1/6/2023	Bordelon, Sarah C.	$1,720.62	2.6	Review and respond to queries on document production review for MSUMRA contested case; review and comment on near-final discovery requests; review and analyze DEQ discovery requests to MEIC; telephone conference with SRYemington regarding same and expert disclosures; expand and revise expert disclosure and circulate to experts for review with comments:	Aggregates multiple reviews, analysis, conference, revision, and circulation.
11	1/6/2023	Yemington, Samuel R.	$2,688.62	5.1	Attend to responses to MEIC AM5 discovery requests; revise draft requests for admission, interrogatories, and requests for production; conference with SCBordelon regarding the same; attend to correspondence regarding the same; coordinate service of the same; review DEQ initial discovery requests; conference with SCBordelon regarding the same;	Aggregates drafting, conference, correspondence, service, and review.
12	1/10/2023	Bordelon, Sarah C.	$661.78	1	Conduct final review of initial disclosures in MSUMRA contested case; telephone conference with TRVanBockern regarding document production review; meeting with EKNannini regarding same; coordinate follow up meetings with experts for expert disclosures; review DEQ and MEIC initial disclosures; review follow up correspondence with Dr. Nicklin regarding document production;	Aggregates review, conference, meeting, coordination, and correspondence.

12	1/12/2023	Bordelon, Sarah C.	$1,786.80	2.7	Review notes from SRYemington regarding potential response to anticipated request for site visit; review updates from Dr. Nicklin and Mr. Carstensen regarding additional documents to reference in expert disclosure; review updates on discovery production review; video conference with Dr. Nicklin, Mr. Carstensen, and litigation team regarding scope of expert disclosure; video conference with Ms. Hunter and Mr. Viert regarding same; follow up with experts regarding resumes; meeting with litigation team regarding case status; coordinate with JLCoberly regarding document production review for MSUMRA contested case;	Block billing across many distinct tasks.
12	1/12/2023	DiPaola, Trisa J.	$446.06	2.7	Participate in video conference with expert witnesses Dr. Nicklin, Mr. Carstensen, SRYemington, and SCBordelon regarding expert disclosures, exhibits; participate in video conference with expert witnesses Mr. Viert, Ms. Hunter, SRYemington, and SCBordelon regarding expert disclosures and exhibits; participate in video conference with SCBordelon, SMMathiascheck, HMReimer, KAlohnson, and SRYemington regarding status of litigation matters and upcoming deadlines:	Aggregates three separate conferences.

12	1/12/2023	Yemington, Samuel R.	$3,268.51	6.2	Attend to site inspection request; attend to research regarding the same; summarize rules and case law regarding contested case site inspections; circulate same for internal review; conference with AM5 experts regarding discovery production and materials supporting opinions; attend to correspondence regarding the same; attend coal telephone conference to discuss matter statuses and path forward;	Aggregates research, summary, circulation, conference, and correspondence.
12	1/13/2023	Coberly, Jessica L.	$812.64	2.1	Strategize approach to document review; review document formats; identify counsel for privilege review; determine document review format; conduct document review [redaction];	Aggregates strategy, identification, determination, and document review.
13	1/16/2023	Nannini, Erica K.	$2,119.93	4.5	Draft responses to initial discovery requests; continue reviewing documents for responsiveness and privilege;	Aggregates drafting and document review.
13	1/20/2023	Bordelon, Sarah C.	$727.96	1.1	Review and respond to queries on format for 1st discovery production in MSUMRA contested case; review and revise discovery responses and prepare for submission; telephone conference with litigation team regarding discovery production, final preparation of expert reports, [redaction	Aggregates review, revision, preparation, and conference.

18	3/15/2023	Adams, Erik J.	$2,101.90	4.5	Finish reviewing documents provided by Mr. Wooley for responsiveness and privilege; begin reviewing documents provided by Mr. Standa; meet with client to strategize on how to respond to MEIC's discovery responses and MEIC's request to inspect the site;	Aggregates multiple reviews and client strategy meeting.
18	3/15/2023	Yemington, Samuel R.	$2,737.01	4.8	Attend to MEIC AM5 discovery responses; continue outlining same against NOA and public comments; circulate summary of MEIC's AM5 claims and discovery statements; prepare for and attend conference with WRM team regarding discovery status, site inspection request, and path forward; conference with EJAdams regarding site inspection research, deposition scheduling, and path forward;	Block billing across multiple distinct tasks.
18	3/18/2023	Yemington, Samuel R.	$2,451.91	4.3	Attend to MEIC second discovery requests to DEQ; review the same; attend to correspondence regarding the same; review research regarding site visit authority; attend to correspondence regarding the same; attend to Motion for a Protective Order; draft and circulate outline regarding the same;	Aggregates review, correspondence, research, motion work, and outline drafting.

18	3/28/2023	Yemington, Samuel R.	$3,478.29	6.1	Attend to AM5 Motion for Protective Order; finalize and circulate same for internal review; draft response and confer correspondence to MEIC and circulate the same for internal review; attend to correspondence regarding the same; [redaction]	Aggregates finalizing, circulation, drafting, conferral correspondence, and further correspondence.
20	4/13/2023	Bordelon, Sarah C.	$1,382.85	2	Check in with document reviewers regarding progress and status of document production in MSUMRA contested case; telephone conference with litigation team regarding case status and outstanding action items; conduct preliminary review of injunction standard for MSURMA contested case and coordinate with EJAdams regarding additional research on same; telephone conference with SRYemington regarding party telephone conference on resolution of discovery and scheduling depositions; telephone conference with EJAdams regarding research on injunction standard for MSUMRA; review follow up notes from EJAdams regarding same:	Block billing across multiple tasks across many distinct tasks.

21	5/8/2023	Coberly, Jessica L.	$3,126.87	7.4	Review documents for privilege and responsiveness; review motion for protective order and the response; research cases cited in the response; review exhibits cited in the protection order and the response; begin outlining arguments for reply brief;	Aggregates review, research, exhibit review, and argument outlining.
21	5/9/2023	Bordelon, Sarah C.	$1,806.55	2.5	Telephone conference with Mr. King regarding deposition scheduling for MSUMRA contested case; review MEIC response to motion for protective order; video conference with litigation team regarding reactions to same and development of reply in support of motion for protective order; review follow up correspondence on deposition scheduling; coordinate finalizing deposition notice for Mr. Anderson:	Aggregates conference, review, video conference, follow-up correspondence, and coordination.
22	5/10/2023	Bordelon, Sarah C.	$1,445.24	2	Conduct final review of deposition notice for Mr. Anderson in MSUMRA contested case; begin preparing outline for Anderson deposition with focus on preliminary topics and witness expertise; coordinate with team regarding finalizing last document production and text for submission of same;	Aggregates review, outline prep, and coordination.

22	5/15/2023	Coberly, Jessica L.	$718.33	1.7	Review treatise and incorporate a quote into the draft; coordinate answers to remaining factual questions for the draft; incorporate factual updates to draft reply; revise draft reply and cut down to meet page limit; draft introduction to reply brief; draft first paragraph of the argument section; clean up citations;	Block billing across many tasks.
23	5/18/2023	Bordelon, Sarah C.	$1,806.55	2.5	Coordinate with parties regarding proposed briefing schedule for MSURMA contested case summary judgment; edit and revise reply in support of motion for protective order in same; video conference with litigation team regarding status of pending litigation and action items on same;	Aggregates coordination, revision, and conference.
23	5/19/2023	Bordelon, Sarah C.	$433.57	0.6	Coordinate internally regarding circulation of draft reply in support motion for protective order in MSUMRA contested case; review team and client comments regarding same; coordinate cite-checking and preparing to file same; review party correspondence regarding finalizing proposed scheduling order in MSUMRA contested case and review as-filed motion;	Aggregates coordination, review, cite-checking, filing prep, and correspondence review.

23	5/22/2023	Bordelon, Sarah C.	$1,083.93	1.5	Coordinate with team regarding finalizing and filing reply in support of motion for protective order; review and respond to team and party correspondence regarding scheduling expert depositions; conduct final review of reply in support of motion for protective order; telephone conference with litigation team regarding strategy on proposed alternative relief to add to the reply:	Block billing across many tasks.
23	5/22/2023	Yemington, Samuel R.	$3,971.97	6.9	Attend to deposition scheduling; attend to correspondence regarding the same; conference with team regarding matter status and path forward; attend to Montana Legislation and impact on Montana Supreme Court: attend to reply in support of motion for protective order; provide final edits; finalize and file reply brief;	Block billing across many tasks.

23	5/23/2023	Yemington, Samuel R.	$3,626.58	6.3	Conference with Dr. Nicklin regarding AM5 site visit and reaction: attend to correspondence regarding the same; attend to deposition preparation; begin reviewing permit application materials and decision documents for the same; review MTSC Artesian Water opinion; attend to correspondence regarding the same [redaction] attend to deposition scheduling; attend to correspondence regarding the same; correspond with DEQ regarding new material damage definition and impact of the same on ongoing matters;	Block billing across many tasks.
24	5/25/2023	Bordelon, Sarah C.	$650.36	0.9	Telephone conference with litigation team regarding deposition of Mr. Van Oort in MSUMRA contested case and implications of same for Plaintiffs' theory of the case, preparation for subsequent depositions, and planning for briefing; review plaintiffs' notice of submission of briefing on motion for protective order in MSUMRA contested case; coordinate with Dr. Nicklin and Mr. Carstenson regarding deposition preparation; update experts regarding case schedule and anticipated support for summary judgment briefing;	Block billing across many tasks.

25	6/9/2023	Yemington, Samuel R.	$4,181.49	8.4	Attend to DEQ 30(b)(6) deposition; attend to correspondence regarding the same; attend deposition of Dr. Lodman; conference with SCBordelon regarding the same;	Aggregates two depositions, correspondence, and conference.
26	6/22/2023	Yemington, Samuel R.	$3,335.24	6.7	Attend to site inspection request and proposed dates: attend to correspondence regarding the same; conference with MEIC counsel regarding site Inspection status and photo request; attend to expert deposition preparation and document review for the same; attend to correspondence regarding deposition materials; locate and circulate the same; conference with SC Bordelon regarding site inspection scheduling and path forward: attend to deposition transcript of Dr. Lodman; conference with court reporter regarding the same; attend to correspondence regarding the same;	Block billing across many tasks.
26	6/26/2023	Yemington, Samuel R.	$2,688.10	5.4	Attend to MEIC correspondence regarding site Inspection status and photo request; attend to correspondence regarding WRM matter status and communication; conference with WWMercer and SCBordelon regarding matter status and Sile Inspection; attend to correspondence regarding the same; attend to WRM inquiry regarding Inspection sampling,	

					photographs, and videos; provide recommendation regarding the same; attend to correspondence from MEIC counsel regarding deposition notice of Dr. Nicklin; review the same.	
26	6/27/2023	Yemington, Samuel R.	$7,218.05	14.5	Travel to Bozeman for expert depositions; continue preparation for same: attend to MEIC request to continue deposition; attend hearing regarding the same; conference with WRM regarding Order and path forward; conference with SCBordelon and WWMercer regarding the same.	Aggregates travel, deposition preparation, hearing attendance, and conferences.
26	6/29/2023	Bordelon, Sarah C.	$6,939.36	11	Prepare for and observe deposition of Dr. Nlcklin in MSUMRA contested case; review follow up client correspondence regarding preparation for Inspection; review amended deposition notice from OEQ regarding Anderson deposition; follow up meeting with SRYemington regarding impression of Nicklin deposition and planning for Inspection and Anderson deposition; return travel from Bozeman	Aggregates travel, deposition preparation, and conferences.
27	7/5/23	Yemington, Samuel R.	$1,864.32	3.4	Attend to site inspection itinerary and participants; attend to stipulated protection order regarding evidence developed during site Inspection; confer with counsel from MEIC and DEQ	Block billing across multiple tasks

					regarding the same; attend to Nicklin photographs and Bates stamping of same; attend to Wiley groundwater table definition and article; attend to correspondence regarding the same; circulate the same; attend to MEIC site visit attendee request; attend to correspondence regarding the same; revise and circulate Joint stipulated motion for protective order;	
27	7/10/23	Bordelon, Sarah C.	$3,097.48	4.5	Review party correspondence regarding Inspection and protective order in MUSMRA contested case; telephone conference with SRYemington regarding same, follow up meeting with Samuel King, and revised strategy for Anderson deposition; update and revise deposition notes with additional tines of questioning per strategy revisions; video conference with litigation team regarding drafting assignments for summary Judgment briefing MSUMRA AM5 litigation and updates on arguments in light of depositions held to date; circulate relevant supporting documents regarding same;	Block billing across multiple tasks

32	8/14/2023	Yemington, Samuel R.	$5,837.08	10.7	Review and finalize declaration of Mr. Batie in support of protective order; circulate same for WRM review and approval; attend to correspondence regarding the same; continue drafting Motion for Summary Judgment; attend to reply in support of protective order; finalize and coordinate filing of the same; finalize and coordinate filing of reply in support of protective order; attend to correspondence regarding supporting declarations; conference with SCBordelon regarding the same; conference with WRM team regarding the same and path forward; finalize the same; conference with TDiPaola regarding finalizing reply brief and filing of the same;	Block billing across drafting, filing, correspondence, and conferences.

33	8/22/2023	Bordelon, Sarah C.	$1,848.97	2.7	Telephone conference with SRYemington regarding status of summary judgment package in MSUMRA contested case and coordination with DEQ: review and respond to team correspondence on brief, statement of facts, and declarations; coordinate with team regarding plan for finalizing documents and exhibits; circulate near-final filing package to client and expert teams; review and analyze draft DEQ brief; review and edit near-final statement of facts; review and edit near-final summary judgment brief; review near-final expert declarations; coordinate with litigation team regarding plan for finalizing and filing summary judgment package;	Block billing across multiple tasks
33	8/22/2023	Coberly, Jessica L.	$2,602.83	6.5	Cite check the statement of undisputed facts; incorporate edits from experts; incorporate additional paragraphs from DEQ; review motion edits; coordinate cite checking; review DEQ brief for consistency; revise SUF pursuant to DEQ edits; cite-check SUF citations in motion for summary judgment; coordinate declarations; add to the brief or the SUF where necessary to synchronize the citations;	Block billing across multiple tasks

35	8/29/2023	Bordelon, Sarah C.	$1,027.21	1.5	Review draft language on burden circulated by SRYemington regarding MSUMRA contested case; review notes from JLCoberly regarding review of MEIC's Statement of Undisputed Facts; video conference with Samuel King and SRYemington regarding coordination on responsive facts for MSUMRA contested case summary judgment, motion to strike Anderson declaration, and responses to MEIC's motion for summary judgment; follow up with litigation team regarding drafting plan for same;	Aggregates multiple reviews, conference, and follow-up.

35	8/29/2023	Yemington, Samuel R.	$3,654.99	6.7	Continue drafting Motion for Summary Judgment response brief; attend to standing and evidentiary scope arguments; attend to correspondence regarding the same; conference with SCBordelon and counsel for DEQ regarding motion to strike and opposition to Motion for Summary Judgment briefing:	Aggregates drafting, argument work, correspondence, and conference.
35	9/6/2023	Coberly, Jessica L.	$1,728.18	4	Draft introduction to cumulative impacts argument; draft response to MEIC's argument no cumulative impacts analysis was completed; strategize approach to statement of disputed facts and supplemental statement of facts; draft response to MEIC argument regarding the material damage calculation; draft argument that criticism of DEQ's analysis is unexhausted; incorporate all new citations into the supplemental statement of facts;	Block billing across multiple tasks across multiple sections and tasks.

35	9/7/2023	Yemington, Samuel R.	$3,237.21	5.5	Attend to Motion to Strike; attend to correspondence regarding the same; begin drafting the same; review MEIC disclosures and discovery responses to support the same; conference with SCBordelon regarding Motion for Summary Judgment response and SDF; attend weekly coal conference to discuss matter status and path forward;	Block billing across multiple tasks across motion drafting, review, conference, and status call.
35	9/13/2023	McCallum, Michelle Y.	$480.26	1.3	Continue drafting joint motion for extension of dispositive motion response and reply deadlines, draft proposed order granting same, and communicate with SRYemington, SCBordelon, and VArias regarding same; review e-mail communications with parties regarding proposed deadlines; telephone conference with SRYemington regarding litigation status memorandum:	Aggregates drafting, communications review, and conference.
35	9/13/2023	Yemington, Samuel R.	$1,000.59	1.7	Attend to joint motion for extension of response briefing deadline; attend to correspondence regarding the same; conference with SCBordelon regarding the same; propose extension dates to DEQ and MEIC; attend to Statement of Disputed Facts and Supplemental Statement of Undisputed Facts; attend to correspondence regarding the same;	Aggregates motion work, correspondence, conference, and facts work.

36	9/14/2023	Adams, Erik J.	$1,687.48	3.5	Review motion for Extension of Time: review CHIA and cite areas where DEQ distinguished perched aquifers from the local water table; continue drafting response section addressing the adequacy of DEQ's determination Lee Coulee was ephemeral;	Aggregates review, cite extraction, and drafting.
36	9/14/2023	Yemington, Samuel R.	$1,530.32	2.6	Conference with MEIC counsel regarding extension of filing deadline; draft and circulate proposed joint motion for extension; attend to correspondence regarding the same; conference with SCBordelon regarding matter status and path forward; attend weekly coal conference;	Aggregates conference, drafting, circulation, correspondence, and status call.
36	9/18/2023	Adams, Erik J.	$2,458.90	5.1	Review and revise disputed facts; confirm hearing examiner has received our motion; review order granting extension to file response; continue adding citations to response brief; begin preparing declaration detailing the blading activity at Lee Coulee;	Aggregates facts revision, order review, cite work, and declaration prep.

36	9/19/2023	Adams, Erik J.	$1,976.76	4.1	Continue preparing declaration describing the blading at Lee Coulee and its purpose; add additional detail to response brief describing the purpose of that blading; review CHIA and associated documents and add additional information to response brief about how DEQ studied Lee Coulee's water levels; add additional information to supplemental statement of facts;	Block billing across multiple tasks across declaration, brief, document review, and supplemental facts work.
36	9/21/2023	Adams, Erik J.	$1,301.77	2.7	Review AM5 AVF and incorporate into response brief; finish drafting declaration of Russell Batie; update statement of supplemental facts;	Aggregates review/incorporation, declaration drafting, and facts update.
36	9/21/2023	McCallum, Michelle Y.	$221.66	0.6	Video conference with SRYemington, SCBordelon, EJAdams, and JLCoberly regarding summary judgment response, statements of fact, exhibits, and motion to strike expert; video conference with internal team regarding case status and deadlines;	Aggregates multiple conferences on distinct subjects.

36	9/22/2023	Yemington, Samuel R.	$2,413.19	4.1	Attend to AM5 joint disputed facts and supplemental undisputed facts; begin reviewing the same; attend to correspondence regarding the same; coordinate with counsel for DEQ regarding the same; conference with team regarding briefing status, staffing, and path forward;	Aggregates facts work, correspondence, coordination, and conference.
36	9/23/2023	Yemington, Samuel R.	$2,884.06	4.9	Attend to AM5 Motion for Summary Judgment statement of disputed facts and supplemental facts; continue revising the same; review deposition transcript of Martin Van Oort regarding cumulative impacts and material damage; attend to correspondence regarding the same; circulate drafts to DEQ counsel for review and feedback;	Aggregates facts drafting/revision, transcript review, correspondence, and circulation.
37	9/29/2023	Bordelon, Sarah C.	$886.63	1.2	Telephone conference with Samuel King (DEQ) and SRYemington regarding approaches on response briefs, support in factual documents, and motion to strike;	Aggregates multiple substantive subjects in one conference entry.

37	9/29/2023	Yemington, Samuel R.	$2,707.49	4.6	Attend to AM5 MSJ response pleadings; attend to correspondence regarding the same; conference with DEQ counsel and SCBordelon regarding the same and path forward; revise Motion to Strike Bruce Anderson declaration; circulate same for DEQ review;	Aggregates pleading work, correspondence, conference, revision, and circulation.
37	10/4/2023	Adams, Erik J.	$1,346.07	3.1	Further revise motion to strike; amend Russ Batie declaration; add cites in response brief to the Batie and Viert declarations; begin cite checking response brief;	Aggregates motion revision, declaration amendment, cite additions, and cite checking.
37	10/4/2023	Yemington, Samuel R.	$1,166.18	2.2	Attend to AM5 Motion for Summary Judgment response briefing and Motion to Strike; conference with counsel for DEQ regarding the same and path forward; research sham affidavit doctrine; update Motion to Strike brief to include argument regarding the same;	Aggregates response brief work, conference, research, and updating brief.

38	10/11/2023	Adams, Erik J.	$1,085.54	2.5	Review DEQ's revised supplemental statement of undisputed facts; incorporate their changes into our joint statement; review motion for extension of time to file response brief;	Aggregates review/incorporation and separate motion review.
38	10/11/2023	Bordelon, Sarah C.	$532.34	0.8	Telephone conference with SRYemington regarding revisions to summary judgment response brief in MSUMRA contested case; review revisions from SRYemington to Buffer Rule argument in MSUMRA contested case response brief on summary judgment; edit and revise same; draft introduction for brief;	Aggregates conference, review, edit/revise, and drafting.
38	10/11/2023	Yemington, Samuel R.	$3,551.55	6.7	Attend to Motion for Summary Judgment response brief; continue drafting the same; attend to correspondence regarding the same; conference with SCBordelon regarding the same and path forward;	Aggregates response brief drafting, correspondence, and conference.

38	10/12/2023	Bordelon, Sarah C.	$3,526.74	5.3	Coordinate with drafting team regarding planning for finalizing response brief in MSUMRA contested case summary judgment; telephone conference with litigation team regarding same; edit and revise full summary judgment response brief for content, persuasiveness, clarity, and length; circulate revisions internally and coordinate on finalizing summary judgment response package:	Block billing across multiple tasks.
38	10/12/2023	Yemington, Samuel R.	$3,127.48	5.9	Attend to Motion for Summary Judgment response brief; continue revising same; conference with team regarding status and path forward; attend to correspondence regarding the same; conference with Dr. Nicklin regarding well borings and local water table data;	Aggregates brief revision, conference, correspondence, and expert conference.
38	10/13/2023	McCallum, Michelle Y.	$568.57	1.7	Review files for and prepare exhibits in support of summary judgment response; e-mail SCBordelon regarding same; finalize case status and deadlines memorandum and e-mail same to client;	Aggregates exhibit prep, email, and memorandum/client communication.

38	10/13/2023	Yemington, Samuel R.	$2,067.32	3.9	Attend to Motion for Summary response brief; continue revising the same; attend to well borings and groundwater table data; attend to correspondence regarding the same; circulate draft response for client review and feedback; coordinate discussion regarding Mine declaration regarding Lee Coulee disturbance date; conference with JCMartin regarding the same and PO briefing:	Block billing across multiple tasks.
38	10/16/2023	Adams, Erik J.	$2,388.19	5.5	Review DEQ's changes to the supplemental statement of undisputed facts and the statement of disputed facts; update both documents and send to DEQ for review; determine whether the Van Oort deposition was a 30(b)(6); begin reviewing legislative history to determine whether MEIC's "undisputed fact" #70 accurately characterized SMCRA;	Aggregates review/update, transmittal, deposition analysis, and legislative-history review.
38	10/16/2023	Bordelon, Sarah C.	$1,663.56	2.5	Coordinate with BCSmith regarding plan for finalizing summary judgment response package in MSUMRA contested case; video conference with Todd Briggs and SRYemington regarding Batie declaration and response brief package; follow up telephone conference with SRYemington regarding same; coordinate with internal team regarding plan for finalizing response package;	Block billing across multiple tasks.

					conduct final read and provide comments on Joint Supplemental Statement of Undisputed Facts and Joint Statement of Disputed Facts; review follow up correspondence from team on revisions and updates to response package;	
39	10/17/2023	Bordelon, Sarah C.	$1,463.93	2.2	Review comments from DEQ on draft supplemental statement of facts and follow up team correspondence regarding same; review revised Batie declaration; coordinate with team regarding exhibits for motion to strike and response brief; conduct final read on motion to strike; conduct preliminary review of revisions to response brief; respond to team correspondence regarding finalizing response package; telephone conference with EJAdams regarding same:	Block billing across multiple tasks.

39	10/17/2023	McCallum, Michelle Y.	$1,371.26	4.1	Continue preparing summary judgment response exhibits; continue review and revision of brief in support of motion to strike and preparation of exhibits for same; draft appendix of exhibits to response brief; review statements of facts and communicate with EJAdams regarding exhibits to same;	Aggregates exhibit prep, brief revision, appendix drafting, and communications.
39	10/18/2023	Adams, Erik J.	$2,344.77	5.4	Finish cite checking the response brief; confirm all exhibits are attached to the brief and referenced accurately; help finalize and file brief;	Aggregates cite checking, exhibit confirmation, and filing/finalization.
39	10/18/2023	McCallum, Michelle Y.	$1,438.15	4.3	Continue preparing exhibits for summary judgment response and motion to strike; review and revise appendix in support of summary judgment response; review and revise draft e-mails filing summary judgment response, motion to strike Anderson declaration, and statements of facts; manage filing and submit exhibits to parties via secure file transfer;	Block billing across multiple tasks.

39	10/18/2023	Smith, Bryson C.	$2,537.63	5	Finalize motion to strike and response to summary judgment motion; review Petitioners' response to summary judgment motion;	Aggregates finalization and review of opposition.
40	11/9/2023	McCallum, Michelle Y.	$230.56	0.7	Video conference with internal team regarding replying to motion to strike; review response to motion to strike and provide to client; revise memorandum regarding litigation status and deadlines and e-mail to client;	Aggregates conference, review, and memorandum/client communication.
40	11/13/2023	Yemington, Samuel R.	$2,886.21	5.5	Conference with AM5 team regarding Motion to Strike reply and MSJ reply; continue outlining Motion to Strike reply; attend to correspondence regarding the same; attend to correspondence regarding AM5 boundary vis a vis Big Sky; locate and circulate CHIA map illustrating the same:	Block billing across multiple tasks.

41	11/14/2023	Bordelon, Sarah C.	$922.25	1.4	Video conference with Mr. King (DEQ) and SRYemington regarding strategy and content for reply in support of motion to strike Anderson declaration in MSUMRA contested case; follow up internally regarding motion for Extension of Time to account for holiday;	Aggregates conference and follow-up tasking.
41	11/16/2023	Yemington, Samuel R.	$2,466.39	4.7	Continue drafting reply in support of Motion to Strike; continue researching the same; attend to request for extension; attend to correspondence regarding the same; attend to OSM demand letter; review draft of same;	Block billing across multiple tasks.
41	11/17/2023	Yemington, Samuel R.	$2,151.54	4.1	Continue drafting reply in support of Motion to Strike; attend to research regarding the same; attend to request for extension; attend to correspondence regarding the same; coordinate filing of the same; conference with WWMercer regarding matter status and path forward;	Block billing across multiple tasks.

43	12/13/2023	Bordelon, Sarah C.	$1,472.11	2.1	Review notes from SRYemington on draft AM5 reply brief; conduct preliminary review of draft AM5 brief; review team correspondence regarding same; telephone conference with SRYemington regarding same; review and edit draft AM5 reply brief; review draft DEQ reply brief; [redacted]	Block billing across multiple tasks.
43	12/14/2023	Yemington, Samuel R.	$837.64	1.5	Attend to DEQ reply brief and review the same; attend weekly coal telephone conference to discuss matter status and path forward; conference with BCSmith and EJAdams regarding MEIC's Statement of Disputed Facts and AM5 reply brief in support of summary judgment;	Aggregates review, status conference, and internal conference.
44	12/15/2023	Bordelon, Sarah C.	$1,612.31	2.3	Review team correspondence regarding revisions to draft reply brief in MSUMRA contested case summary judgment briefing; edit and revise same for persuasion, clarity, and word count; circulate draft brief to client team; circulate draft brief to DEQ: [redacted]	Aggregates review, edit/revise, and circulation.

44	1/3/2024	Yemington, Samuel R.	$1,635.46	2.9	Review Montana Supreme Court case law regarding fees and waived claims on judicial review; attend to correspondence regarding the same and applicability to AM5; continue reviewing MEIC reply in support of summary judgment and applicability of AM4 on scope and standard of review; conference with SCBordelon regarding the same;	Aggregates case-law review, correspondence, merits review, and conference.
44	1/4/2024	McCallum, Michelle Y.	$248.55	0.7	Prepare initial draft motion and supporting brief moving to strike Petitioners' Exhibit 1 in support of summary judgment reply and communicate with SRYemington and SCBordelon regarding same; video conference with internal team regarding case status and deadlines;	Aggregates drafting, communication, and conference.
45	6/17/2024	Yemington, Samuel R.	$1,028.13	1.9	Attend to MAPA process and standards for proposed final orders issued on summary judgment; research the same; summarize research and circulate for internal review; attend to correspondence regarding the same;	Aggregates research, summary, circulation, and correspondence.

47	1/23/2025	Yemington, Samuel R.	$3,363.59	5.8	Continue drafting AM5 proposed FOFCOLs; pull and review MEIC spoliation argument; update FOFCOLs with response to same;	Aggregates FOFCOL drafting, review, and response update.
48	2/7/2025	Yemington, Samuel R.	$3,751.09	6.8	Continue finalizing AM5 Proposed FOFCOLs; attend to correspondence regarding the same; locate and circulate AM3 and Area F BER Orders in administrative record; update Proposed FOFCOLs with the same; continue building out material damage and Buffer Zone Rule legal discussion; update legal citations; attend to correspondence regarding the same; circulate draft FOFCOLs for internal and DEQ review;	Block billing across multiple tasks.

52	7/16/2025	Yemington, Samuel R.	$3,304.00	5.6	Attend to MEIC request for extension; attend to correspondence regarding the same; conference with SBordelon regarding the same and path forward; conference with Mr. Briggs regarding the same; draft and circulate response in opposition to motion for extension; attend to AM5 exceptions brief; review DC Circuit standing decision; update exceptions brief with the same; attend to correspondence with DEQ counsel regarding the same: circulate draft exceptions brief for DEQ review and feedback;	Block billing across multiple tasks.
52	7/17/2025	Mercer, William W.	$1,652.00	2.8	Participate in status conference on matters with SBordelon and SYemington; review e-mail from Mr. Briggs in response to plan outlined by SYemington on extension request; review e-mail from Mr. Hernandez on basis for the extension request; review SYemington's e-mail regarding conference with Mr. Hernandez on his extension request; research history of BER appointments and Senate action on same in 2025 Legislature; forward information on same to SYemington:	Block billing across multiple tasks.

52	7/17/2025	Yemington, Samuel R.	$3,953.00	6.7	Attend to correspondence regarding MEIC Motion for Extension; conference with SBordelon regarding the same and path forward; attend to status of BER members; conference with WMercer regarding the same; conference with MEIC counsel regarding extension request; follow up with SBordelon regarding the same; finalize and circulate response in opposition; review MEIC motion for extension; review SBordelon revisions and update brief in response to MEIC submission; attend to correspondence from Mr. Briggs and Mr. Cottrell regarding draft response:	Block billing across multiple tasks.
52	7/18/2025	Yemington, Samuel R.	$3,068.00	5.2	Revise draft response to Motion for Extension; incorporate comments from Mr. Briggs; circulate revised draft and attachments for final reviews; attend to correspondence regarding the same; coordinate filing of response in opposition to extension; attend to correspondence regarding the same;	Aggregates revision, circulation, correspondence, and filing.

52	7/23/2025	Yemington, Samuel R.	$2,006.00	3.4	Attend to exceptions briefing; continue reviewing revisions and redlines; circulate updated draft for DEQ consideration; conference with DEQ counsel and AGrave regarding exceptions alignment and path forward; conference with team regarding matter status and path forward; continue revising exceptions brief;	Block billing across multiple tasks.
53	8/25/2025	Yemington, Samuel R.	$2,860.88	4.6	Review and revise exceptions brief; draft exception regarding unpreserved and unsupported substantive claim; review AGrave's redlines and comments; attend to correspondence from DEQ counsel regarding exceptions brief and status of the same;	Aggregates review/revision, drafting, review of comments, and correspondence.
53	8/26/2025	Yemington, Samuel R.	$1,927.98	3.1	Finalize review and edits of AM5 exceptions: circulate for internal review: attend to correspondence from AGrave regarding the same; attend to correspondence from DEQ counsel regarding draft DEQ exceptions brief and begin reviewing the same;	Aggregates final edits, circulation, correspondence, and review of DEQ draft.
53	8/27/2025	Bordelon, Sarah C.	$1,244.33	1.7	Review team comments on DEQ exceptions brief; review and analyze DEQ draft exceptions brief; conduct final read and edit on Intervenors' draft exceptions brief and follow up internally regarding same;	Aggregates review of comments, analysis of DEQ brief, final editing, and internal follow-up.

53	8/27/2025	Yemington, Samuel R.	$2,549.91	4.1	Attend to exceptions brief; attend to correspondence regarding the same; review SBordelon edits to the same; continue reviewing DEQ draft exceptions brief; conference with DEQ counsel regarding the same;	Aggregates brief work, correspondence, edit review, DEQ brief review, and conference.
53	8/28/2025	Grave, Andrea N.	$1,512.73	3.4	Conduct citation review of exceptions brief to confirm accuracy and correct form; telephone conference with SYemington to discuss the same; email correspondence with SYemington and SBordelon;	Aggregates cite review, telephone conference, and email correspondence.
53	8/28/2025	Yemington, Samuel R.	$2,052.37	3.3	attend to correspondence with WMercer regarding status of exceptions brief; review DEQ revised preservation exception; attend to correspondence regarding the same; address exceptions brief redlines, comments, and citation issues;	Aggregates correspondence, review, further correspondence, and edits/citation work.
54	8/29/2025	Grave, Andrea N.	$756.36	1.7	Finalize exceptions brief for filing; email correspondence with SYemington regarding the same; review Petitioners' exceptions brief; email correspondence with SYemington and SBordelon regarding the same;	Aggregates finalizing, emails, review of opposing brief, and more emails.

54	8/29/2025	Yemington, Samuel R.	$2,301.09	3.7	Finalize AM5 exceptions brief; attend to correspondence with AGrave regarding the same and filing; attend to correspondence with DEQ counsel regarding COS and BER secretary status; coordinate filing of exceptions brief; begin reviewing MEIC exceptions; attend to correspondence with SBordelon and AGrave regarding the same and path forward; attend to correspondence with DEQ counsel regarding the same;	Aggregates finalizing, multiple correspondence tasks, filing coordination, review of MEIC exceptions, and strategy follow-up.
54	8/30/2025	Grave, Andrea N.	$1,245.76	2.8	Conduct research on voluntary dismissal of claims following issuance of a recommended decision; review Petitioners' prior filings to determine whether their exceptions brief cited documents not previously relied upon;	Aggregates legal research and factual/record review.
54	9/2/2025	Bordelon, Sarah C.	$1,180.00	2	Video conference with SYemington and AGrave regarding response to MEIC exceptions brief in BER MSUMRA litigation review follow-up correspondence regarding same;	Aggregates video conference and follow-up correspondence review.

54	9/2/2025	Yemington, Samuel R.	$2,419.00	4.1	Conference with DEQ counsel regarding MEIC exceptions and path forward; conference with SBordelon and AGrave regarding the same; begin researching fee shifting standard under MSUMRA and implementing rules; attend to correspondence regarding the same; coordinate follow up discussion with Westmoreland regarding the same;	Aggregates multiple conferences, research, correspondence, and scheduling/coordination.
54	9/3/2025	Yemington, Samuel R.	$2,124.00	3.6	Continue researching fee shifting under MSUMRA and implementing rules; attend to correspondence regarding the same; attend to correspondence from Westmoreland regarding dismissal of Buffer Zone claim;	Aggregates fee-shifting research, related correspondence, and separate claim-dismissal correspondence.
54	9/4/2025	Bordelon, Sarah C.	$1,475.00	2.5	telephone conference with SYemington regarding client recommendation on response to MEIC withdrawing argument in BER MSUMRA litigation and preparation for potential claim for attorneys fees review and analyze research notes from AGrave on fee shifting provisions;	Aggregates conference, client recommendation, fee-claim preparation, and research-note review.

54	9/4/2025	Grave, Andrea N.	$2,596.00	4.4	Continue research on MSUMRA fee shifting: review case law implementing the same: review parallel SMCRA provisions and case law implementing the same; prepare summary of findings; email correspondence with SYemington and SBordelon regarding the same;	Aggregates multiple research tasks, summary preparation, and emails.
54	9/7/2025	Grave, Andrea N.	$826.00	1.4	Conduct additional research on fee shifting provision of MSUMRA and SMCRA, including review of similar provisions implemented in other states; prepare summary of the same; email correspondence with SYemington and SBordelon;	Aggregates legal research, comparative review, summary preparation, and email correspondence.
54	9/8/2025	Grave, Andrea N.	$2,183.00	3.7	Video conference with SBordelon and SYemington regarding strategy for response to Petitioners' exceptions and research related to seeking fees; video conference with Westmoreland team to discuss the same; telephone call with SYemington to discuss outline for response brief. assignment of tasks. and upcoming board meeting:	Aggregates internal conference, client/team conference, phone call, outline discussion, task assignment, and board-meeting discussion.

55	9/8/2025	Yemington, Samuel R.	$4,071.00	6.9	Prepare for conference with Westmoreland team regarding MEIC exceptions submission; conference with SBordelon and AGrave regarding the same and fee shifting standard; conference with Westmoreland team regarding the same and path forward; review draft response outline; conference with AGrave regarding the same and path forward; begin drafting response to MEIC exceptions; research standard for amending Complaint and dismissing claim post-judgment; attend to correspondence from Mr. Briggs regarding status of Lee Coulee mining:	Aggregates preparation, multiple conferences, outline review, drafting, legal research, and correspondence.
55	9/9/2025	Yemington, Samuel R.	$3,186.00	5.4	Attend to correspondence from Mr. Briggs regarding status of Lee Coulee mining; continue drafting response to MEIC exceptions; pull and review MEIC discovery responses and Motion to Strike briefing for the same;	Aggregates correspondence, drafting, record pulling, discovery review, and motion-brief review.
55	9/13/2025	Yemington, Samuel R.	$3,068.00	5.2	Continue drafting response to MEIC exceptions; circulate burden of proof and motion to dismiss arguments for internal review; attend to correspondence from AGrave regarding prior MEIC oral argument representations regarding responsive findings in proposed decision; review AM4 oral argument transcript regarding the same;	Aggregates drafting, internal circulation, correspondence, and transcript review.

55	9/16/2025	Yemington, Samuel R.	$3,776.00	6.4	[redaction] conference with AGrave regarding response to MEIC material damage exceptions; research MRCP standard for motion for reconsideration and plaintiff's obligation to enunciate nature of claim; pull AM5 CHIA cumulative impact and material damage discussion; review the same and circulate for Claim 1 response; [redaction]	Aggregates conference, legal research, record retrieval, review, and circulation.
56	9/17/2025	Yemington, Samuel R.	$3,422.00	5.8	Continue drafting exceptions response brief; conference with DEQ counsel regarding the same and path forward; update and circulate response outline and brief sections for review; conference with AGrave regarding the same and path forward;	Aggregates drafting, two conferences, outline updates, and circulation.
56	9/18/2025	Grave, Andrea N.	$2,773.00	4.7	Continue drafting and revising response to Conservation Groups' exceptions brief, including additional research regarding role of the Board on review; attend team call to discuss status of matters;	Aggregates drafting/revising, research, and team call.
56	9/18/2025	Yemington, Samuel R.	$2,419.00	4.1	Continue drafting exceptions response brief; continue review of MEIC's material damage arguments as presented in disclosures, discovery, and pleadings on summary judgment; conference with team regarding matter status and path forward;	Aggregates drafting, review of multiple record categories, and team conference.

EXHIBIT D

Generic Time Entries

Page	Date	Timekeeper	Amount	Hours	Entry	Why vague / generic
1	6/27/2022	Yemington, Samuel R.	$220.22	0.5	"Review AM5 NOA; attend to correspondence regarding the same;"	"Correspondence regarding the same" does not identify sender, recipient, purpose, or subject beyond the prior task.
1	7/5/2022	Yemington, Samuel R.	$915.69	2.2	"Review NOA against public comments and DEQ's response to same; circulate comments spreadsheet for internal review; conference with SCBordelon regarding matter status and path forward; attend to matter staffing;"	"Matter status," "path forward," and "matter staffing" are broad and do not specify the substantive work.
1	7/7/2022	Yemington, Samuel R.	$707.58	1.7	"Attend to correspondence regarding matter status and WRM call; attend to AM5 intervention; begin drafting motion to intervene; conference with SCBordelon regarding the same;"	"Attend to correspondence," "matter status" are generic.
1	7/11/2022	Yemington, Samuel R.	$1,581.64	3.8	"Attend to WRM AM5 initial case call; conference with WRM team regarding matter status, claims, and path forward;"	"Matter status" and "path forward" are nonspecific.
2	7/21/2022	Yemington, Samuel R.	$1,581.64	3.8	"Attend to AM5 contested case status; conference with DEQ regarding anticipated witnesses and informal procedures, attend to correspondence regarding the same; attend to correspondence regarding informal conference; notify BER or intent to intervene and participate in informal conference;"	"Attend to correspondence" is generic
2	7/22/2022	Yemington, Samuel R.	$1,623.27	3.9	"Attend to AM5 NOA conference with WRM team regarding BER informal process; matter status and path forward; conference with SCBordelon and JCMartin regarding the same;"	"Matter status and path forward" and "regarding the same" are generic.
2	7/29/2022	Yemington, Samuel R.	$499.47	1.2	"Attend to matter status and path forward; attend to correspondence regarding the same; conference with SCBordelon and EJAdams regarding informal conference developments, assignment to	"Matter status," "path forward," and "correspondence regarding the same" are vague.

					hearing examiner, and motion to dismiss for lack of standing;"	
3	8/11/2022	Mercer, William W.	$131.31	0.2	"Call with colleagues;"	Does not identify subject, purpose, or participants beyond "colleagues."
3	8/12/2022	Yemington, Samuel R.	$1,835.79	3.8	"Prepare for and attend BER meeting; attend to correspondence regarding the same;"	"Attend to correspondence" is vague.
5	9/8/2022	Mercer, William W.	$577.69	1.0	"Telephone conference with colleagues regarding status of matters and next steps;"	"Status of matters and next steps" is generic.
5	9/8/2022	Yemington, Samuel R.	$1,105.24	2.6	"Conference with KAJohnson, WWMercer, SCBordelon, and JCMartin regarding matter status;"	"Matter status" is vague standing alone.
6	9/22/2022	Yemington, Samuel R.	$212.55	0.5	"Conference with team regarding matter status and path forward;"	Generic status/strategy entry without substantive detail.
7	10/20/2022	Yemington, Samuel R.	$1,606.38	3.5	"Continue researching associational standing in context of constitutional right to clean and healthful environment; attend to correspondence regarding the same; attend weekly coal telephone conference, regarding matter status and path forward;"	"Correspondence regarding the same" and "matter status and path forward" are vague.
10	12/5/2022	Yemington, Samuel R.	$689.73	1.6	"Conference with Dr. Nicklin regarding AM5 discovery production; conference with SCBordelon regarding AM5 MTDs and path forward; attend to correspondence regarding the same"	"Path forward" and "correspondence regarding the same" are vague.
17	3/6/2023	Yemington, Samuel R.	$2,166.80	3.8	"Attend to matter status; conference with SCBordelon regarding path forward; attend to AM5 MSUMRA contested case discovery production and responses; conference with SCBordelon regarding the same; attend to correspondence regarding the same;"	"Matter status," "path forward," and "same" are generic.
18	3/21/2023	Yemington, Samuel R.	$741.27	1.3	"Conference with counsel for DEQ regarding MEIC site visit request, deposition scheduling and discovery	"Correspondence regarding the same" is vague.

					responses and requests: attend to correspondence regarding the same:"	
21	5/8/2023	Yemington, Samuel R.	$402.95	0.7	"Conference with SCBordelon regarding matter status and path forward;"	Generic status/strategy entry.
23	5/10/2023	Yemington, Samuel R.	$287.82	0.5	"Attend to correspondence regarding discovery cutoff and path forward;"	"Path forward" and "attend to correspondence" are vague.
28	7/17/2023	Yemington, Samuel R.	$2,083.65	3.8	"Attend to matter status and path forward; conference with team regarding Motion for Summary Judgment briefing and substance of same; conference with WRM team regarding matter status and path forward;"	"Matter status," "path forward," and "substance of same" are generic.
30	7/21/2023	Yemington, Samuel R.	$1,425.66	2.6	"Attend to Statement of Undisputed Facts; attend to correspondence regarding the same; conference with TDiPaola regarding the same; continue drafting the same; attend weekly coal conference to discuss matter status and path forward;"	"Attend to," "same," and "matter status and path forward" are vague.
55	9/2/2025	Yemington, Samuel R.	$2,419.00	4.1	"Conference with DEQ counsel regarding MEIC exceptions and path forward; conference with SBordelon and AGrave regarding the same; begin researching fee shifting standard under MSUMRA and implementing rules; attend to correspondence regarding the same; coordinate follow up discussion with Westmoreland regarding the same;"	"Path forward," "same," and "correspondence regarding the same" are vague.
55	9/8/2025	Grave, Andrea N.	$2,183.00	3.7	"Video conference with SBordelon and SYemington regarding strategy for response to Petitioners' exceptions and research related to seeking fees; video conference with Westmoreland team to discuss the same; telephone call with SYemington to discuss outline for response brief. assignment of tasks. and upcoming board meeting:"	"Strategy," "same," "assignment of tasks," and "upcoming board meeting" are only generally described.

56	9/17/2025	Yemington, Samuel R.	$3,422.00	5.8	"Continue drafting exceptions response brief; conference with DEQ counsel regarding the same and path forward; update and circulate response outline and brief sections for review; conference with AGrave regarding the same and path forward;"	Repeated "same and path forward" language is vague.

EXHIBIT E

Duplication of Services

Page	Date	Timekeeper	Amount	Hours	Entry	Duplication / Overstaffing Issue
1	7/11/2022	Bordelon, Sarah C.	$1,008.54	1.8	"Video conference with client team regarding intervention in BER contested case, potential preliminary motions in BER contested case, overview of claims in BER contested case, and engagement of experts in BER contested case; follow-up telephone conference with JCMartin regarding same;"	Multiple attorneys appear involved in the same initial case/status call and follow-up discussions.
1	7/11/2022	Mercer, William W.	$905.02	1.6	"Participate in litigation update call; prepare for call; call with JCMartin;"	Duplicates participation in litigation update / initial strategy call.
1	7/11/2022	Yemington, Samuel R.	$1,581.64	3.8	"Attend to WRM AM5 initial case call; conference with WRM team regarding matter status, claims, and path forward;"	Same date and same general litigation-update/case-status subject as other timekeepers.
2	7/22/2022	Yemington, Samuel R.	$1,623.27	3.9	"Attend to AM5 NOA conference with WRM team regarding BER informal process; matter status and path forward; conference with SCBordelon and JCMartin regarding the same;"	Multiple senior attorneys are included in overlapping conferences on the same matter status and procedural issues.
3	8/17/2022	Bordelon, Sarah C.	$650.32	1.0	"Video conference with Dr. Nicklin, Mr. Carstensen, and SRYemington regarding technical review of plaintiffs' claims in MSUMRA litigation;"	Both Bordelon and Yemington appear to bill for the same expert/technical review conference.
3	8/17/2022	Yemington, Samuel R.	$2,029.03	4.2	"Prepare for and attend conference with AM5 hydrologist experts Dr. Nicklin and …"	Appears to overlap with Bordelon's expert conference on the same date.
6	9/22/2022	Bordelon, Sarah C.	$572.24	1.0	"Telephone conference with litigation team regarding status of MSUMRA BER contested case, and	Litigation-team status conference appears duplicative of other same-day status/update entries.

					outstanding action items on same, and update notes regarding same;"	
6	9/22/2022	Yemington, Samuel R.	$212.55	0.5	"Conference with team regarding matter status and path forward;"	Same-day team status/path-forward conference; likely overlaps with litigation-team status conference.
8	10/13/2022	Bordelon, Sarah C.	$371.98	0.6	"Telephone conference with litigation team regarding preparation for BER hearing and MSUMRA contested case, timing for filing, status of motion to dismiss in contested case,"	Multi-attorney litigation-team conference.
8	10/13/2022	DiPaola, Trisa J.	$105.34	0.7	"Telephone conference with SRYemington and SCBordelon regarding status of Westmoreland litigation matters and deadline…"	Appears to overlap with the same status/deadline litigation-team conference.
9	11/7/2022	Bordelon, Sarah C.	$1,967.79	3.0	"Circulate Westmoreland position on MEIC's proposed amended NOA in BER contested case to parties; begin reviewing and editing Motion to Dismiss MSUMRA contested case; telephone conference with litigation team regarding strategy for Motions to Dismiss in both cases;"	Multiple attorneys appear to bill for strategy/review of motions to dismiss.
9	11/7/2022	Martin, John C.	$739.02	0.7	"Review draft brief;"	Separate senior-attorney review of the same draft briefing package.
9	11/7/2022	Mercer, William W.	$132.43	0.2	"Review draft brief on standing;"	Additional senior-attorney review of the same standing brief.
10	12/5/2022	Bordelon, Sarah C.	$577.12	1.0	"Telephone conference with Messrs. Nicklin and Cartstensen and litigation team regarding preparation of discovery responses from WET Technologies; follow up telephone	Multiple attorneys on discovery-response conference and follow-up.

					conference with SRYemington regarding same…"	
10	12/5/2022	DiPaola, Trisa J.	$89.30	0.7	"Telephone conference with Messrs. Nicklin, Cartstensen, SRYemington, and SCBordelon regarding discovery production…"	Same discovery-production conference as other timekeepers.
11	12/14/2022	Bordelon, Sarah C.	$577.12	1.0	"Video conference with counsel regarding discovery production response; draft and send e-mail to document agreements with opposing counsel; summarize status of review and agreements in update to client;"	Multiple attorneys/staff appear involved in the same discovery-production conference.
11	12/14/2022	DiPaola, Trisa J.	$51.03	0.4	"Participate in video conference with Mr. Hernandez, Ms. Qiu, SCBordelon, and SRYemington regarding AM5 discovery production;"	Same AM5 discovery-production conference, with multiple firm timekeepers.
13	1/11/2023	DiPaola, Trisa J.	$165.21	1.0	"Participate in video conference with SCBordelon, SRYemington, EKNannini, EJAdams, and TRVanBockern regarding discovery production and expert witness disclosures in BER 2022-05 SM;"	Six-person internal/near-internal conference; overstaffing concern.
13	1/11/2023	Nannini, Erica K.	$2,355.48	5.0	"Telephone conference with internal team regarding document review strategy; continue document review;"	Same discovery/document-review strategy subject as multi-attorney conference.
13	1/12/2023	Bordelon, Sarah C.	$1,786.80	2.7	"...video conference with Dr. Nicklin, Mr. Carstensen, and litigation team regarding scope of expert disclosure; video conference with Ms. Hunter and Mr. Viert regarding same; ... meeting with	Multiple conferences with litigation team and experts on same disclosure/status topics.

					litigation team regarding case status...”	
13	1/12/2023	DiPaola, Trisa J.	$446.06	2.7	“Participate in video conference with expert witnesses Dr. Nicklin, Mr. Carstensen, SRYemington, and SCBordelon regarding expert disclosures, exhibits; participate in video conference with expert witnesses Mr. Viert, Ms. Hunter, SRYemington, and SCBordelon regarding expert disclosures and exhibits; participate in video conference with SCBordelon, SMMathiascheck, HMReimer, KAlohnson, and SRYemington regarding status of litigation matters and upcoming deadlines:”	Multiple timekeepers in repeated expert-disclosure/status conferences; strong overstaffing candidate.
13	1/20/2023	Bordelon, Sarah C.	$727.96	1.1	“...telephone conference with litigation team regarding discovery production, final preparation of expert reports,”	Same status/deadline call appears also billed by DiPaola.
13	1/20/2023	DiPaola, Trisa J.	$82.60	0.5	“Participate in video conference with SCBordelon, SMMathiascheck, JCMartin, KAGray, KAJohnson, and SRYemington regarding status of litigation matters and upcoming deadlines;”	Six-person status/deadline conference; likely duplicative of litigation-team status call.
13	1/26/2023	Bordelon, Sarah C.	$1,125.02	1.7	“...telephone conference with litigation team regarding discovery status in MSUMRA contested case; draft and circulate notes on action items;”	Same status/deadline conference appears billed by DiPaola.

13	1/26/2023	DiPaola, Trisa J.	$115.65	0.7	"Participate in video conference with JCMartin, SCBordelon, HMReimer, KAJohnson, and SRYemington regarding status of litigation matters and upcoming deadlines;"	Multi-attorney status/deadline call; duplicative of Bordelon litigation-team conference.
17	3/6/2023	Adams, Erik J.	$1,167.72	2.5	"Discuss with SCBordelon deposition plan and plan for remaining discovery; revise deposition notice and submit for internal review; continue document review..."	Same deposition notice/discovery plan also billed by Bordelon.
17	3/6/2023	Bordelon, Sarah C.	$1,431.59	2.0	"Video conference with EJAdams regarding 30(b)(6) deposition notice; telephone conference with SRYemington regarding discovery status..."	Duplicates Adams's deposition-notice/discovery-planning time.
21	5/9/2023	Bordelon, Sarah C.	$1,806.55	2.5	"Telephone conference with Mr. King regarding deposition scheduling... video conference with litigation team regarding reactions to same and development of reply in support of motion for protective order..."	Same date also includes DiPaola and Yemington entries on deposition scheduling/reply strategy.
21	5/9/2023	DiPaola, Trisa J.	$17.76	0.1	"Participate in telephone conference regarding proposed location and dates for deposition of experts in BER 2022-05;"	Duplicates deposition-scheduling conference.
21	5/9/2023	Yemington, Samuel R.	$1,899.64	3.3	"Conference with AM5 team regarding reply brief in support of motion for protective order and path forward conference with DEQ and MEIC regarding deposition scheduling: conference with SCBordelon regarding matter status and path forward;"	Overlaps with Bordelon and DiPaola on same reply/deposition-scheduling issues.

23	5/10/2023	Adams, Erik J.	$1,131.70	2.4	"Continue drafting reply brief; review, revise and submit deposition notice; review final discovery production;"	Same deposition notice/review subject also billed by Bordelon.
23	5/10/2023	Bordelon, Sarah C.	$1,445.24	2.0	"Conduct final review of deposition notice for Mr. Anderson in MSUMRA contested case; begin preparing outline for Anderson deposition..."	Multiple attorneys reviewing/revising the same deposition notice and preparing deposition outline.
26	6/8/2023	Bordelon, Sarah C.	$1,387.87	2.2	"Telephone conference with Mr. King and SRYemington regarding preparation for Lodman deposition and Anderson deposition; video conference with litigation team regarding litigation status;"	Multiple attorneys on deposition-prep and status conferences.
26	6/8/2023	DiPaola, Trisa J.	$155.04	1.0	"Participate in Microsoft Teams Meeting regarding AM5 deposition preparation with Mr. King, SRYemington, and SCBordelon;"	Duplicates deposition-preparation meeting billed by Bordelon.
28	6/29/2023	Yemington, Samuel R.	$4,231.27	8.5	"Prepare for and attend deposition of Dr. Nicklin; defend the same; coordinate site inspection and participation with counsel for MEIC; attend to correspondence regarding the same and Motion for Protection Order..."	Deposition attendance/defense plus other attorneys involved in same deposition/site-inspection period; potential overstaffing.
28	6/30/2023	Bordelon, Sarah C.	$883.19	1.4	"Evaluate strategic options related to expert opinion and deposition... telephone conference with litigation team regarding next steps and outstanding action items..."	Same deposition/site-inspection issues also billed by Yemington.

28	6/30/2023	Yemington, Samuel R.	$2,737.88	5.5	"Attend to site inspection; attend to correspondence regarding the same; travel from Bozeman to Washington, DC;"	Same site-inspection/deposition cluster; multiple attorneys involved in adjacent work.
28	7/13/2023	Yemington, Samuel R.	$4,660.80	8.5	"Attend expert deposition of Mr. Anderson; attend to correspondence regarding the same; conference with SCBordelon and DEQ counsel regarding same and path forward;"	Multiple attorneys involved in Anderson deposition preparation/strategy; potential overstaffing at deposition and post-deposition conference.
28	7/17/2023	Bordelon, Sarah C.	$1,651.99	2.4	"Video conference with JLCoberly, EJAdams, and SRYemington regarding refinement to summary judgment arguments... video conference with client team, SRYemington, and WWMercer regarding after action report on inspection and deposition and next steps..."	Multiple lawyers in overlapping post-inspection/deposition strategy meetings.
28	7/17/2023	Coberly, Jessica L.	$402.50	1.0	"Strategize use of inspection and expert witness Anderson deposition details in motion for summary judgment briefing;"	Same subject as Bordelon's multi-lawyer strategy conference.
28	7/17/2023	Yemington, Samuel R.	$2,083.65	3.8	"Attend to matter status and path forward; conference with team regarding Motion for Summary Judgment briefing and substance of same; conference with WRM team regarding matter status and path forward;"	Same summary judgment strategy/post-deposition subject as Bordelon and Coberly.
35	9/21/2023	McCallum, Michelle Y.	$221.66	0.6	"Video conference with SRYemington, SCBordelon, EJAdams, and JLCoberly regarding summary judgment response, statements of fact, exhibits, and motion to strike expert; video conference with	Five-attorney conference on briefing package and motion to strike; overstaffing concern.

					internal team regarding case status and deadlines;"	
36	10/12/2023	Bordelon, Sarah C.	$3,526.74	5.3	"Coordinate with drafting team regarding planning for finalizing response brief... telephone conference with litigation team regarding same; edit and revise full summary judgment response brief..."	Multiple drafting-team/litigation-team participants on finalizing the same response brief.
36	10/12/2023	McCallum, Michelle Y.	$200.67	0.6	"Video conference with internal team regarding summary judgment response, client meeting, case status and deadlines; provide MEIC's counsel with summary judgment exhibits via secure file transfer;"	Same internal-team summary judgment response conference.
37	10/19/2023	Bordelon, Sarah C.	$133.07	0.2	"Review correspondence from MEIC regarding filing; telephone conference with litigation team regarding matter status and preparation for drafting reply brief in MSUMRA summary judgment;"	Same-day team/status work overlaps with other internal conference entries.
37	10/19/2023	McCallum, Michelle Y.	$100.34	0.3	"Video conference with internal team regarding case status and deadlines;"	Same-day internal status/deadline conference; possible duplication.
37	10/19/2023	Smith, Bryson C.	$609.03	1.2	"Review and analyze response summary judgment briefs from Petitioners and DEQ; plan for reply brief;"	Same reply-brief planning work as team conference.
40	11/13/2023	Adams, Erik J.	$343.89	0.8	"Prepare for and meet with SCBordelon, SRYemington, and BCSmith to prepare for and begin drafting the summary judgment reply brief and the motion to strike reply brief;"	Four attorneys in same drafting-planning meeting.

40	11/13/2023	Bordelon, Sarah C.	$592.87	0.9	"Video conference with litigation team regarding plan for drafting replies in support of motion to strike and motion for summary judgment in MSUMRA contested case; review draft outline..."	Same drafting-planning meeting as Adams entry.
40	11/13/2023	Mercer, William W.	$1,089.72	1.6	"Confer with colleagues regarding r…"	Appears to relate to same reply-brief planning cluster; additional senior-attorney conference time.
42	11/27/2023	Bordelon, Sarah C.	$461.12	0.7	"...telephone conference with litigation team regarding implications of AM4 decision for AM5 contested case and approach for same in reply brief;"	Same AM4-impact conference also billed by Mercer.
42	11/27/2023	Mercer, William W.	$204.32	0.3	"Telephone conference with colleagues to discuss potential impacts from AM4 opinion;"	Duplicates AM4-impact team conference.
43	11/30/2023	Bordelon, Sarah C.	$131.75	0.2	"Video conference with litigation team regarding schedule for drafting reply brief; review team correspondence regarding outline and assigned briefing sections;"	Same reply-brief scheduling/planning conference likely billed by others.
43	11/30/2023	McCallum, Michelle Y.	$461.12	1.4	"Communicate with internal regarding rescheduling weekly conference; video conference with internal team regarding case status and deadlines; review procedural order..."	Duplicative internal status/deadline conference on same date.
51	6/2/2025	Grave, Andrea N.	$531.00	0.9	"Video conference with SBordelon and SYemington to discuss AM5 FOFCOL exceptions and objections; email correspondence with SYemington regarding the same;"	Three attorneys on FOFCOL exceptions/objections conference.

51	6/2/2025	Mercer, William W.	$295.00	0.5	"Participate in telephone conference with colleagues on developments …"	Appears to add another senior-attorney conference on same development/status issues.
55	9/2/2025	Bordelon, Sarah C.	$1,180.00	2.0	"Video conference with SYemington and AGrave regarding response to MEIC exceptions brief in BER MSUMRA litigation review follow-up correspondence regarding same;"	Same MEIC exceptions response strategy conference billed by multiple attorneys.
55	9/2/2025	Grave, Andrea N.	$1,003.00	1.7	"Video conference with SBordelon and SYemington regarding Petitioners' exceptions and preliminary response strategy;"	Same conference as Bordelon's entry.
55	9/2/2025	Yemington, Samuel R.	$2,419.00	4.1	"Conference with DEQ counsel regarding MEIC exceptions and path forward; conference with SBordelon and AGrave regarding the same; begin researching fee shifting standard…"	Same internal conference with Bordelon and Grave; also adds DEQ conference and research.
55	9/8/2025	Bordelon, Sarah C.	$1,475.00	2.5	"video conference with SYemington and AGrave regarding detailed recommendation regarding objections to MEIC exceptions brief in BER MSUMRA contested case; video conference with client team regarding same;"	Same strategy conference billed by multiple attorneys.
55	9/8/2025	Grave, Andrea N.	$2,183.00	3.7	"Video conference with SBordelon and SYemington regarding strategy for response to Petitioners' exceptions and research related to seeking fees; video conference with Westmoreland team to discuss the same; telephone call with SYemington..."	Same internal and client strategy conferences as Bordelon/Yemington.

56	9/8/2025	Yemington, Samuel R.	$4,071.00	6.9	"Prepare for conference with Westmoreland team... conference with SBordelon and AGrave regarding the same and fee shifting standard; conference with Westmoreland team regarding the same and path forward; review draft response outline; conference with AGrave..."	Same internal/client strategy conferences billed by three attorneys.
56	9/18/2025	Grave, Andrea N.	$2,773.00	4.7	"Continue drafting and revising response to Conservation Groups' exceptions brief, including additional research regarding role of the Board on review; attend team call to discuss status of matters;"	Same-day team call/status and response-brief work also billed by Yemington.
56	9/18/2025	Yemington, Samuel R.	$2,419.00	4.1	"Continue drafting exceptions response brief; continue review of MEIC's material damage arguments... conference with team regarding matter status and path forward;"	Same response-brief/status conference cluster as Grave.

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Electronically Filed with the
Montana Board of Environmental Review
9/21/26 at 5:24 PM
By: *Sandy Moisey Scherer*
Docket No: BER 2022-05 SM

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

IN THE MATTER OF: APPEAL AND REQUEST FOR HEARING REGARDING ROSEBUD MINE AREA B, AMENDMENT 5 PERMIT NO. C1984003B	**CASE NO. BER 2022-05 SM** **WESTMORELAND ROSEBUD MINING LLC AND INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 400'S RESPONSE IN OPPOSITION TO CONSERVATION GROUPS' MOTIONS IN LIMINE**

INTRODUCTION

The Board's Scheduling Order set September 16, 2026 as the deadline for Westmoreland/Local 400 to provide updated billing information prior to the evidentiary hearing. Westmoreland/Local 400 nonetheless provided Conservation Groups advance copies of the records on August 20 – five days before the deposition of Cathy Laughner, nearly a month before the required disclosure deadline, and nearly two months before the evidentiary hearing. Conservation Groups had a full opportunity to cross-examine Westmoreland/Local 400's expert about the records and related rates and retain ample opportunity to challenge this evidence at the hearing. As such, Conservation Groups' Motions in Limine must be denied.

BACKGROUND

On November 26, 2025, Westmoreland/Local 400 filed its Petition for Costs, Expenses, and Fees ("Fee Petition"). The Fee Petition included affidavits of counsel and attached spreadsheets identifying all costs and expenses incurred (and associated rates) from the inception of this case through September 30, 2025 (*i.e.* all billing and cost records available at the time of the Fee Petition). Fee Petition, Exs. D and E. The Fee Petition recognized that amount sought would be adjusted for fees and costs later incurred and invoiced. *Id.* at 22, n. 12.

On June 10, 2026, the Board issued its Scheduling Order setting forth the deadlines by which Westmoreland/Local 400 were to provide such adjustments. It established two governing deadlines: **September 16, 2026** and **November 20, 2026**.

By **September 16**, Westmoreland/Local 400 were to "provide updated information with respect to the amount of its attorney fees, costs, and expenses, including, but not limited to, invoices not previously provided for amounts claimed through August 2026." Scheduling Order, ¶ 6.

By **November 20, 2026**, Westmoreland/Local 400 is to "file with the Board the additional amount of attorney fees, costs, and expenses it is seeking from September 1, 2026, through its submission of its Objections to Conservation Groups' Revised Proposed FOFCOL on November 13, 2026." Scheduling Order, ¶ 13.

On August 7, 2026, the parties simultaneously exchanged expert reports pursuant to the Scheduling Order. While both expert reports include a list of materials reviewed by each expert, neither report contains copies of the identified material. Westmoreland/Local 400's expert, Ms. Laughner, submitted a detailed report containing her complete opinions regarding the reasonableness of Westmoreland/Local 400's attorney fees, costs, and expenses. Ms. Laughner's report referenced the fees incurred between October 1, 2025 through June 30,

2026, and noted she would review forthcoming billing records as they became available.

After receiving Ms. Laughner's report, Conservation Groups requested the billing information for October 1, 2025 through June 30, 2026, which Westmoreland/Local 400 provided them on August 20, 2026 – five days before Ms. Laughner's scheduled deposition on August 25, 2026. Notably, Conservation Groups did not serve a subpoena duces tecum – the typical mechanism for compelling production of an expert's underlying documents at deposition – because Westmoreland/Local 400 voluntarily provided the billing records in advance of the deposition (and nearly a month before it was required to do so under the Scheduling Order).

On August 25, 2026, Conservation Groups deposed Ms. Laughner for 7 hours, the maximum duration permitted under the Montana Rules of Civil Procedure. During the deposition, Conservation Groups' counsel questioned Ms. Laughner about this billing information, including the current billing rate, and her opinions regarding the reasonableness of those fees. *See, e.g.*, Tr. of Catherine Laughner (attached to Conservation Groups' Brief as Ex. B), at 258:17-23 ("You disclosed in your report that Westmoreland and Holland & Hart apparently agreed to a rate of $745 an hour beginning in January 2026 to the present. Correct? . . . And in your opinion is that 745 an hour blended rate is [sic] reasonable?"); 275:1-3

("Are you opining that the fees incurred after the final order through June 30th, 2026, are reasonably incurred?"). Conservation Groups thus had a full and fair opportunity to challenge Ms. Laughner's testimony regarding this evidence under oath.

On September 4, 2026, Conservation Groups filed these Motions in Limine seeking to exclude: (1) evidence of the fees incurred between October 2025 and June 2026 and (2) the updated billing rates. For the reasons below, these motions should be denied.

ARGUMENT

I. Westmoreland/Local 400 Were Not Required to Produce the Updated Billing Information Prior to September 16, 2026.

The Scheduling Order expressly governs all "pre-hearing, hearing, and post-hearing matters." Scheduling Order, at p. 2. Consistent with that framework, the Board set clear deadlines for Westmoreland/Local 400 to provide updated billing information: once before the evidentiary hearing and once after. For post-hearing submissions the Scheduling Order provides an opportunity for Conservation Groups to submit objections to amounts claimed. The Scheduling Order contains no analogous provision for the updated billing information submitted on September 16. The reason for that is self-evident: Conservation Groups will have an opportunity to present evidence as to those records at the evidentiary hearing. As to the expert reports, the Scheduling Order only required the parties to

exchange expert reports on August 7 – not the underlying materials reviewed in preparing those reports. Conservation Groups themselves recognize as much, acknowledging that the Scheduling Order required "'all materials considered or relied upon' by the experts in this matter be *disclosed* in the expert report propounded by the parties in this proceeding." Br. in Supp. of Mot. in Limine, at 9 (emphasis added). Conservation Groups' word choice is telling. A document "disclosed" is not attached, produced, or provided to the opposing party. Conservation Groups' own expert report confirms this reading and forecloses any argument to the contrary: Judge Pinski's expert report lists all the materials that he reviewed and relied upon, yet none of those materials are attached to or produced with his report. *See* Expert Rep. of Judge Pinski (attached to Conservation Groups' Brief as Ex. D), at Ex. B.

Excluding the updated billing information would prevent the Board from fulfilling its mandate to determine the full amount of the fee award. Conservation Groups cannot seriously contend that the Board should determine the reasonableness of fees while being barred from reviewing eight months of billing records.

The Board's scheduling framework was designed to ensure both sides have complete information before the hearing. Conservation Groups' motions would subvert the Board's carefully constructed process and deprive the Board of the

complete record it needs to render a just determination. The Scheduling Order anticipated that billing records would continue to accrue and established specific deadlines for their production and challenge. Conservation Groups were not only provided an opportunity to participate in the scheduling conference that set those deadlines, but they have been on notice of them since June 10. If Conservation Groups believed that an earlier pre-hearing production date was warranted, they were under an obligation to timely object to the schedule. Their delay, which seeks to convert the Scheduling Order into a procedural trap to prevent Westmoreland/Local 400 from recovering fees incurred after the Fee Petition was filed, is reminiscent of the "sharp practices" for which the Board chastised the Conservation Groups at the May 15 hearing.

II. The Rules and Case Law Cited By Conservation Groups Are Inapplicable.

Conservation Groups rely on Montana Rule of Civil Procedure 37(c)(1) to assert that the updated billing information should be excluded. Rule 37(c)(1) does not apply to this situation. Rather, this rule provides that a party may be prevented from using information or a witness if that party fails to disclose information regarding the opinions of that witness as required under Rule 26(b)(4). Rule 26(b)(4), however, applies only to parties engaged in the discovery process.

Specifically, Rule 26(b)(4) provides the methods by which facts and opinions may be obtained through the discovery process, which include through

interrogatories or deposition. Mont. R. Civ. P. 26(b)(4)(A). Here, the Scheduling Order did not provide for formal discovery between the parties. The Scheduling Order established a process exclusively for exchanging witness and exhibit lists, expert reports, and depositions – it did not authorize interrogatories or any other formal discovery mechanism governed by Rule 26 or 37. Because Rule 37(c)(1) sanctions apply only when a party fails to disclose information of a witness required by Rule 26(b)(4) – governing discovery requests and not the exchange of expert reports and pre-hearing submissions in an administrative proceeding – Rule 37(c)(1) has no application here.

Each of the cases relied upon by Conservation Groups suffer from the same flaw: they are federal cases relying upon the federal counterpart to Montana Rule of Civil Procedure 37. In *Bentley v. ConocoPhillips Pipeline Co.*, the court excluded expert testimony where the defendant had failed to produce documents requested by plaintiff related to defendant's internal policies. No. CV 09-01-M-DWM, 2010 U.S. Dist. LEXIS 158083, at *12-22 (D. Mont. Feb. 3, 2010). Critically, the exclusion in *Bentley* was premised on the defendant's failure to respond to formal discovery requests – including initial disclosures, interrogatories, and requests for production – all of which are governed by Rules 26 and 37. *Id.* at *14-17. The court found that defendant was "gaming the system" by providing the policies to its own expert and not to plaintiff, despite plaintiff

having specifically requested those documents under the discovery rules. *Id.* at *12-20. No such discovery mechanism exists in this proceeding, and Westmoreland/Local 400 were under no obligation to produce its billing records on any schedule other than the one established by the Scheduling Order.

In *Olson v. Mont. Rail Link, Inc.*, plaintiff requested certain information identified in defendants' expert report. 227 F.R.D. 550, 551-52 (D. Mont. 2005). More than a month after disclosure of the report, plaintiff provided a "half-hearted" and "inadequate" response that did not include all the information requested. *Id.* at 551. This came after defendant had already engaged in "tactical gamesmanship" during discovery by refusing to provide certain documents. *Id.* at 551. The court characterized this behavior as a "further demonstration of plaintiff's continued demonstration of "gaming the rules" and "toy[ing]" with the rules of civil procedure. *Id.* at 550-51. With that background, and based upon the "significant delay" in providing the requested information and the "grudging fashion" in which it was eventually provided, the court imposed sanctions for failure to comply with Federal Rule of Civil Procedure 26. *Id.* at 552. Westmoreland/Local 400 engaged in no such gamesmanship here, instead providing advance copies of the billing records upon request nearly a month *before* they were due under the Scheduling Order.

In *Graham v. BNSF Railway Co.*, plaintiff did not disclose a memorandum relied upon by its expert and such omission was not uncovered until the middle of the expert's deposition. No. 12-145-M-DWM, 2014 U.S. Dist. LEXIS 39454, at *4-5 (D. Mont. Mar. 24, 2014). The expert report did not mention the underlying memorandum and, as such, defendants were unaware that it formed the basis of the expert's opinion. *Id.* No such concealment occurred here. Ms. Laughner's expert report clearly identified that she had reviewed the billing records and anticipated reviewing additional records as they became available.

III. There is No Prejudice to Conservation Groups.

Conservation Groups cannot credibly claim prejudice. They received the updated billing records on August 20, 2026 – before the deposition of Westmoreland/Local 400's expert witness and nearly two months before the evidentiary hearing. Nothing prevents Conservation Groups from presenting testimony, exhibits, or arguments about the reasonableness of the updated billing information, including the updated rate, at the hearing. Indeed, Conservation Groups' own expert, Judge Pinski, anticipated precisely this scenario in his expert report, acknowledging that he "reserve[s] the right to further expand and/or amend these opinions and their bases as more information becomes available" and that he "intend[s] to provide rebuttal testimony to other disclosed expert witnesses."

Expert Rep. of Judge Pinski, at 3. Judge Pinski is free to address the updated billing information in his hearing testimony, just as he contemplated.

Moreover, even assuming *arguendo* that Montana Rule of Civil Procedure 37(c)(1) applies – which it does not here – exclusion would be unwarranted. Rule 37(c)(1) permits exclusion of undisclosed information only where the failure to disclose was neither "substantially justified" nor "harmless." Neither condition is met here. Westmoreland/Local 400's formal production of the updated billing records on the timeline established by the Scheduling Order was substantially justified. And the disclosure was harmless because Conservation Groups received the advance copies of the records with ample time to prepare for the expert deposition and the formal production on the schedule provided by the Board to allow for adequate preparation for the evidentiary hearing.

CONCLUSION

For the reasons stated, Conservation Groups' Motions in Limine seeking to exclude evidence of Westmoreland/Local 400's updated billing information, including updated rates, should be denied.

DATED: September 21, 2026

/s/ Matthew H. Dolphay

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CERTIFICATE OF SERVICE

I hereby certify that on September 21, 2026, a true and accurate copy of the foregoing was served on the following by electronic mail:

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Electronically Filed with the
Montana Board of Environmental Review
9/21/26 at 5:41 PM
By: *Sandy Moisey Scherer*
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Attorneys for Petitioners Montana Environmental Information Center and Sierra Club

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

IN THE MATTER OF: NOTICE OF APPEAL AND REQUEST FOR HEARING ROSEBUD MINE AREA B AMENDMENT 5 PERMIT NUMBER C1984003B	CASE NO. BER 2022-05 SM **PETITIONERS MONTANA ENVIRONMENTAL INFORMATION CENTER AND SIERRA CLUB'S RESPONSE TO WESTMORELAND ROSEBUD MINING, LLC AND INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 400'S MOTION IN LIMINE**

INTRODUCTION

The Board's specific motions and corresponding votes at the May 15, 2026, hearing did not identify any specific bad faith or harassing conduct and no written findings have been issued on those questions. At the district court proceeding the Board stated its votes in May were "preliminary, non-final." And, the Board has not determined, in its discretion, that Westmoreland Rosebud Mining LLC and International Union of Operating Engineers, Local 400 ("Westmoreland") should be awarded any attorneys' fees, costs, or expenses.

Accordingly, the Board has ordered the parties to submit proposed findings and conclusions on Westmoreland's entitlement to fees and any amount of fees, and Westmoreland, in turn, has submitted an expert disclosure revealing it intends to offer testimony about Montana Environmental Information Center and Sierra Club's (collectively "Conservation Groups") purportedly "bad faith litigation tactics" and, when asked about her opinions on that topic, Westmoreland's expert witness stated, among other things: "The whole challenge to the permit was done in bad faith."

Despite disclosing expert testimony regarding Conservation Groups' alleged "bad faith litigation tactics," Westmoreland now argues Conservation Groups should not be permitted to counter that disclosed testimony with its own expert testimony. The Board should deny the invitation. Testimony and evidence by the Honorable Gregory Pinski (ret.) regarding what, if any, conduct of the Conservation Groups could be considered bad faith and purposefully harassing is both relevant to the final determinations the Board seeks to make and necessary to address Westmoreland's proposed testimony. As such, Westmoreland's motion in limine should be denied.

BACKGROUND

I. February Hearing.

The Board held a hearing in February 2026 in this matter and inquired of the parties how it should address Westmoreland's fee petition ("Petition"). (H'rg Tr. at 3:6–19 (Feb. 20, 2026).) The Conservation Groups indicated that, generally, a two-step process is required to

assess fees.[1] (*Id.* at 5:8.) Conservation Groups explained that first step would be for the Board to "assess the eligibility of Westmoreland for fees." (*Id.* at 6:11–14.) The groups emphasized their objection to any entitlement of Westmoreland to fees: "[W]e think that there's no question that Westmoreland is not entitled to fees here, but if there were hypothetically to be a determination that they were … a hearing on the reasonableness of fees would be necessary." (*Id.* at 7:3–8.)

II. May Hearing.

The Board then held a hearing on May 15, regarding the questions of bad faith and purpose to harass. At the conclusion of that hearing, the Board did not enter findings of fact or conclusions of law, but, rather, conducted several votes, two of which are relevant. First, Board Member Altemus moved to find that the "Petitioners acted in bad faith." (H'rg Tr. at 144:7–10 (May 15, 2026).) The motion did not identify any specific conduct that constituted bad faith. (*Id.*) Board Chair Simpson recognized that "[t]his determination does not make a finding as to what point this [bad faith] began[.]" (*Id.* at 144:19–24.) The Board did not clarify this point or identify any point when any bad faith conduct began or what conduct was considered to be in bad faith. (*See id.* at 144:7–145:19.) The Board then voted 4-1 in favor of the motion, with Board Member Payne voting nay. (*Id.* at 145:4–19.)

Second, the Board addressed whether any conduct of the Conservation Groups was "for the purpose of harassing or embarrassing Westmoreland or DEQ." (*Id.* at 145:20–24.)

[1] During that same hearing, Conservation Groups reiterated their position that "there simply is no jurisdiction for the Board to address the propriety of fees in the first instance." (H'rg Tr. at 5:8–14 (Feb. 20, 2026).) As the Board has acknowledged, Br. in Response to Mots. for Injunctive Relief at 14, fn.3, *MEIC v. DEQ*, No. DV-26-27 (Mont. 16th Jud. Dist. Ct. Aug. 5, 2026), the Conservation Groups did not waive their jurisdictional objection.

Initially, Board Member Altemus stated that she did not believe the Conservation Groups had acted for the purpose of harassing Westmoreland: "So Mr. Chair, again, I'm not sure that I find—and maybe I could be wrong—but I'm not sure that I find evidence of harassment. That's a pretty tough high bar, I think. So I think I would have a hard time going there." (*Id.* at 145:25–146:5.) At that point, Chair Simpson stated: "From my standpoint, accusing Westmoreland of spoliation for when they went in and did their excavation, where they were only following their mining and reclamation plan, I think is probably the best example of what I would consider harassing or embarrassing." (*Id.* at 145:6–11.) At that point, Member Altemus stated: "Thank you. I stand corrected. I forgot about that one. Thank you." (*Id.* at 145:12–14.)

Chair Simpson then announced his intention to vote to find harassment, based on the spoliation argument: "So that point in particular. There are others where one could argue that they constituted harassment or embarrassing Westmoreland, but that one in my mind clearly does, and so I plan to vote in the affirmative on this one." (*Id.* at 145:15–20.) Member Altemus then made a motion:

> Since I recanted, I guess I'll go ahead since nobody is stepping in, but I would move that the Board find in Westmoreland' favor that the Plaintiffs were acting in a harassing and—what was the other word—manner.
>
> CHAIR SIMPSON: Embarrassing.
>
> BOARD MEMBER ALTEMUS: Embarrassing. Thank you. Embarrassing manner. Thank you.

Id. at 147:10–18. Despite the discussion between two Board members, the specific motion did not identify what was actually considered to be harassing or embarrassing to Westmoreland. The Board then voted 4-1 in favor of the motion, with Board Member Payne again voting

nay. (*Id.* at 147:21–148:17.) The Board then promptly adjourned. (*Id.* at 148:18–19.) The Board has not issued a written order identifying any specific wrongful conduct or finding that Westmoreland is entitled to attorneys' fees.

III. The Board's Scheduling Order.

In response to the Board's request, the Conservation Groups subsequently submitted a proposed scheduling order for the determination of a reasonable award of fees. (Dkt. 120.) The groups specifically reserved their right to object to jurisdiction or liability for attorneys' fees. (*Id.* at 2, ¶ 1.) They further objected to participating in further proceedings related to a reasonable award of fees "without adequate notice" of what conduct was supposedly bad faith or intended to harass Westmoreland. (*Id.* at 3, ¶ 3.)

The Board then issued a scheduling order requiring the parties to submit proposed findings and conclusions on all aspects of Westmoreland's fee petition:

> Each party's proposed FOFCOL should address the factual and legal issues presented by the parties with respect to Westmoreland's November 26, 2025, Petition for Attorney Fees, Costs, and Expenses, including, but not limited to, those related to the Board's jurisdiction, Westmoreland's substantive entitlement to attorney's fees, costs, and expenses, the legal standard applicable to determining the amount of attorney fees, and the amount of fees, costs, and expenses to be awarded.

(Dkt. 122 at 3, ¶ 6.)

IV. The Parties' Expert Disclosure.

Westmoreland subsequently disclosed the expert report of Catherine Laughner. Ms. Laughner's report addressed, among other things, what she called: "Conservation Groups' bad-faith litigation tactics." (Dkt. 129, Ex. A-16 (Laughner Report at 13).) The report continued:

> Conservation Groups repeatedly shifted their legal theories and factual positions, necessitating additional work by Westmoreland's counsel to respond to evolving claims. *See e.g.*, Am. Comp. and Pet. (Case No. DV 26-27) at ¶ 42 (asserting there were multiple formulations of Claim 2). As explained above, Conservation Groups also engaged in procedural abuses and gamesmanship that increased the burden on Westmoreland's counsel, necessitating additional time responding to such tactics and resulting in increased fees and costs incurred.

(*Id.*) The report's reference to "[a]s explained above" seemingly referred to Ms. Laughner's opinion the Conservation Groups engaged in "abuses of process in discovery," "advanced a number of subclaims," and "repeatedly multiplied proceedings." (Dkt. 129 at Ex. A-14–16 (Laughner Report at 11–13).) Specifically, Ms. Laughner addressed the spoliation issue (calling it "baseless"), the expert disclosure issue (calling it "improper"), and addressed numerous motions or filings in this case (calling them a "mulpli[cation]" of the case). (*Id.*) These, and other factors, formed the basis of Ms. Laughner's opinion that the work on those issues and more, should be included in the fee award Westmoreland seeks.

At her deposition, Ms. Laughner further testified, among other things, that "The whole challenge to the permit was done in bad faith in my opinion." (Deposition of Catherine Laughner at 210:5–13 (Aug. 25, 2026), attached as **Exhibit A**).). She continued, "Everything related to the challenge of the permit was a bad faith act." (*Id.* at 212:4–213:17.) Ms. Laughner defined "bad faith" as "wrongdoing, like lying, cheating, stealing." (*Id.* at 218:1–5.)

Like Westmoreland, Conservation Groups also disclosed an expert witness, Judge Pinski. Judge Pinski provided opinions on the reasonableness of Westmoreland's fee claim, whether, in his opinion, there was bad faith and harassing conduct, and whether the Board should, in its discretion, award fees at all, given the conduct at issue. (*See* Conservation Groups' Final Witness and Exhibit Lists (Sept. 16 2026); Dkt. 129 at Ex. D.) Judge Pinski, who has presided over thousands of cases in his career, concluded there was no bad faith actions

in this proceeding, much less an intent to harass or embarrass Westmoreland. (*See generally* Dkt. 129 at Ex. D.) Judge Pinski also expressed his opinion that, even if the Board in its discretion decided to award fees, Westmoreland has nevertheless failed to draw a link between its total requested fees and any conduct marked by bad faith and harassment, warranting a significantly reduced fee. (*Id.* at 34–44 (Pinski Report at 30–40).) Those opinions are all outlined fully in Judge Pinski's report. (*Id.*)

V. Westmoreland's Proposed Findings of Fact and Conclusions of Law.

On September 16, 2026, Westmoreland submitted proposed findings of fact and conclusions of law. (Westmoreland Rosebud Mining LLC and International Union of Operating Engineers, Local 400's Proposed Findings of Fact and Conclusions of Law ("Westmoreland Proposed FOFCOL") (Sept. 16, 2026).) In its proposed ruling, Westmoreland repeats Ms. Laughner's arguments, insisting that it is entitled to additional fees related to "ancillary subclaims, a baseless spoliation claim, discovery abuses, and an immediate appeal" due to the Conservation Groups' "own litigation conduct." (*Id.* at COL ¶ 52.) The proposed findings identify and qualify as evidence of bad faith significant additional conduct that was not found by the Board (or the Hearing Examiner Cameron) to constitute bad faith or purposeful harassment:

> This determination is further supported by BER's findings that Conservation Groups prosecuted Claim 2 without legitimate facts or expert analysis, misrepresented facts, committed discovery abuse, made false statements, ignored defeating evidence, and baselessly claims that Westmoreland/Local 400 had knowingly destroyed and concealed evidence

(*Id.* at COL ¶ 25; *accord* COL 32.)

VI. Immediate Review Proceeding.

Following the Board's May 15 hearing, the Conservation Groups sought immediate review at district court. During that proceeding, the Board characterized its May 15 decisions as preliminary and non-final: "The Board's rulings on jurisdiction and entitlement are preliminary, the administrative proceedings are ongoing, and no final written decision has been issued." (Br. in Supp. of Mot. to Dismiss at 9, *MEIC v. DEQ*, DV-26-27 (Mont. 16th Jud. Dist. Ct. Aug. 4, 2026); *id.* at 2 (classifying decisions as "non-final").) The Board stated that it would make factual findings on fee entitlement after the conclusion of the current proceedings: "[T]he Board's written decision, addressing both its statutory authority to adjudicate the fee petition and the specific factual and legal bases for its bad faith and harassment findings, will not issue until after the hearing and the parties' post hearing submissions." (*Id.* at 4.)

LEGAL STANDARD

"A motion in limine can seek to prevent or limit the introduction of evidence at trial, and the authority to grant or deny the motion rests in the inherent power of the district court to admit or exclude evidence so as to ensure a fair trial." *Meek v. Montana Eighth Jud. Dist. Ct.*, 2015 MT 130, ¶ 9, 379 Mont. 150, 349 P.3d 493. "A motion in limine is a pre-trial motion to prevent irrelevant, immaterial, or prejudicial evidence from being introduced at trial." *Stand Up Montana v. Missoula Cnty. Pub. Schools*, 2023 MT 240, ¶ 28, 414 Mont. 229, 539 P.3d 1117.

Westmoreland suggests that the Surface Mining Control and Reclamation Act ("SMCRA") and its regulations apply to this proceeding. (Dkt. 127 at 3, nn.1–2.) WRM is mistaken. This fee proceeding is governed exclusively by the Montana Strip and

Underground Mine Reclamation Act ("MSUMRA"), its regulations, and related statutory and case law authorities regarding the reasonableness of a fee award.

"SMCRA's regulation scheme is mutually exclusive—either the U.S. Secretary of the Interior or the State regulatory agency regulates surface coal mining, but not both." *Mont. Env't Info. Ctr. v. Opper*, No. CV12-34-H-DLC, 2013 WL 485652, at *4 (D. Mont. Jan. 22, 2013), *aff'd sub nom. Mont. Env't Info. Ctr. v. Stone-Manning*, 766 F.3d 1184 (9th Cir. 2014). "That is, when a state has primacy, state law governs matters involving the enforcement of minimum national standards." *Id.* In other words, "state law is exclusively operative," therefore, SMCRA and its regulations do not apply. *Id.* at *4; *see also Bragg v. W. Va. Coal Ass'n*, 248 F.3d 275, 288 (4th Cir. 2001) (finding that federal regulations "'drop out' as operative provisions" where state has achieved primacy).

Under MSUMRA, fees "may" be awarded against a member of the public only upon a finding of both that a party litigated (1) "in bad faith" and (2) "for the purpose of harassing or embarrassing" the permittee. MCA § 82-4-251(7) (2021); ARM 17.24.1307(2). Even if those prerequisites are established, the adjudicator still retains discretion to deny fees altogether: "Section 82-4-251(7) (2021), MCA, provides that attorney fees may be assessed on judicial review if the court considers it proper. We decline to award additional attorney fees in this instance." *Mont. Env't Info. Ctr. v. DEQ* (*MEIC 2023*), 2023 MT 224, ¶ 107, 414 Mont. 80, 545 P.3d 623; MCA § 82-4-251 (providing fees "may be assessed" not shall). Even if a tribunal determines to exercise its discretion and award fees, the award must be limited "reasonably incurred" fees and costs. MCA § 82-4-251(7) (2021); ARM 17.24.1307(2) (allowing only "appropriate and reasonable costs, expenses, and attorney fees").

ARGUMENT

Westmoreland argues that Judge Pinski's opinions—regarding what, if any, conduct of the Conservation Groups constituted bad faith and harassment, whether Westmoreland's own conduct is disqualifying, and whether the Board in its discretion should deny fees altogether—are irrelevant. Westmoreland is mistaken and its motion should be denied.

Evidence is relevant and admissible if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. Relevant evidence may include evidence bearing upon the credibility of a witness or hearsay declarant." Mont. R. Evid. 401; Mont R. Evid. 402; MCA § 2-4-612(2) (Montana rules of evidence apply to contested cases). Judge Pinski's testimony about what conduct, if any, constituted bad faith and harassment is plainly relevant to the questions that are pending before Board: (1) what specific conduct, if any, constituted bad faith and harassment; (2) if there is any such conduct whether, in the Board's discretion, any fees should be awarded at all; and (3) what, if anything, a reasonable award should would be.

First, Conservation Groups are entitled to rebut Westmoreland's evidence and arguments. To support its fee claim and arguments under the *Plath*/lodestar analysis, Westmoreland has disclosed that its own expert will testify regarding alleged "bad faith litigation tactics," which she asserts were "procedural abuses and gamesmanship" such as "ancillary subclaims," a "baseless spoliation claim," and "improperly relying upon undisclosed evidence," among other things. (Dkt. 129, Ex. A14–16 (Laughner Report at 11–

13).) During her deposition, Ms. Laughner stated: "Everything related to the challenge of the permit was a bad faith act." (Ex. A at 212:17–22 (Aug. 25, 2026).)

Westmoreland repeats Ms. Laughner's claims in its proposed findings and conclusions, qualifying significant conduct as bad faith and harassment—conduct that the Board's motions and votes did not specifically identify as wrongful at the May 15 hearing—to support recovery of "one-third (1/3) of their costs, fees, and expenses incurred participating in this litigation" and "all of their costs, fees, and expenses incurred obtaining this award." (Westmoreland Proposed FOFCOL at COL ¶¶ 38–39, 25, 32, 52; *cf.* H'rg Tr. at 143:1–148:19 (May 15, 2026).)

Conservation Groups are entitled to rebut Westmoreland's testimony with their own evidence. The Conservation Groups must be able to present Judge Pinski's testimony—for example, that there is "no evidence of bad faith and harassing conduct," (Dkt. 129, Ex. D-27 (Pinski Report at 23))—to counter these statements and testimony from Ms. Laughner. *See* MCA § 2-4-612(1) ("Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.").

Second, the Board has expressly stated that votes at the May 15 hearing were "preliminary" and "non-final." (Br. in Supp. of Mot. to Dismiss at 2 *MEIC v. DEQ*, DV-26-27 (Mont. 16th Jud. Dist. Ct. Aug. 4, 2026); *see also id.* at 9.) The Board further stated that it must still make a final determination and specific findings about what, if any, conduct constituted bad faith and harassment: "[T]he Board's written decision, addressing both its statutory authority to adjudicate the fee petition and the specific factual and legal bases for its bad faith and harassment findings, will not issue until after the hearing and the parties' post hearing

submissions." (Br. in Supp. of Mot. to Dismiss at 4, *MEIC v. DEQ*, DV-26-27 (Mont. 16th Jud. Dist. Ct. Aug. 4, 2026).) Moreover, at the May 15 hearing, the Board's specific motions and accompanying votes did not specify what conduct was considered bad faith or done with an intent to harass or embarrass Westmoreland. Rather, the Board's Scheduling Order required the parties to submit proposed findings related to "Westmoreland's substantive entitlement to attorney's fees, costs, and expenses." (Dkt. 122 at 3, ¶ 6.) To assess (1) what reasonable fees the Conservation Groups may be liable for, (2) whether in its discretion to award any fees, even if the Conservation Groups are liable for fees; and (3) the reasonableness of any requested fees, *see* MCA § 82-4-251(7) (2021); *MEIC 2023*, ¶ 107, there must be determinations about what, if any, specific conduct constituted bad faith and harassment and when such wrongful conduct occurred. *Fox v. Vice*, 563 U.S. 826, 829, 834–36 (2011) (in context of frivolous claim in civil rights proceeding, permitting fee shifting only for those fees incurred "but for" frivolous conduct and would not have been incurred otherwise). Judge Pinski's testimony about what conduct could and could not be considered bad faith and harassment is highly probative of and relevant to these consequential factual determinations: it is therefore admissible. Mont. R. Evid. 401, 402.

Third, Judge Pinski's testimony about Westmoreland's "mischaracterizations and alleged alterations of testimony," (Dkt. 127 at 6; *see also* Dkt. 129 at ExD-32–33 (Pinski Report at 28–29); Conservation Groups Proposed Findings of Fact and Conclusions of Law at Ex. 1 (Rough Deposition of Greg Pinski (Aug. 29, 2026)) at 115:3–116:3), is also relevant to whether the Board, in its discretion, should award any fees at all, as a fee-requesting party's own actions may "nullify" a fee award. *See* 32 Am. Jur. 2d Federal Courts § 201 ("While a clearly

vexatious suit in which the behavior of the harassed party is fully blameless will justify an award of attorney's fees on the ground of bad faith, improper or dilatory activities on the part of the prevailing party may nullify such conduct and result in denial of an award."); *MEIC 2023*, ¶ 107 (adjudicator retains discretion to deny fees even if party is otherwise entitled to fees).

Fourth, Westmoreland argues that the "[o]nly [r]emaining [i]ssue [i]s the [r]easonableness of the [a]ward [s]ought." (Dkt. 127 at 3.) Westmoreland is mistaken. As noted, the Board's May 15 findings were only preliminary and non-final and neither specified what conduct was sanctionable nor when any such conduct began. Accordingly, the Board has ordered the parties to submit proposed findings and conclusions addressing Westmoreland's entitlement to fees. Moreover, even if the Board determined that Westmoreland were eligible for an award of fees at the May 15 hearing, it must still exercise its discretion as to whether to award or deny fees altogether. *MEIC 2023*, ¶ 107. Further, even to simply assess the reasonableness of any requested fees, as the Board must, MCA § 82-4-251(7) (2021); ARM 17.24.1307(2), an expert must assess what conduct is wrongful, as both Westmoreland's expert (Ms. Laughner) and the Conservation Groups' expert (Judge Pinski) have done. Finally, in assessing reasonableness of fees under these circumstances, Westmoreland must prove a causal nexus to the alleged conduct that constitutes bad faith and harassment, *Goodyear Tire & Rubber Co. v. Haeger*, 581 U.S. 101, 108–11 (2017); *Lu v. United States*, 921 F.3d 850, 859–61 (9th Cir. 2019), which further demonstrates the relevance of the evidence Westmoreland seeks to exclude. Westmoreland has not met its burden to prove that exclusion of the targeted evidence is warranted here.

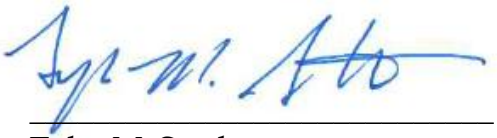
In short, Judge Pinski's opinions that (1) the specific items of conduct identified by Westmoreland in its Petition for fees and its proposed findings and conclusions do not constitute bad faith or harassment, (2) that "Westmoreland's conduct in this case cuts against an award of fees," (Dkt. 129 at Ex. D-27–33 (Pinski Report at 23–29)), and (3) that any fee award must be limited to fees incurred in relation to specific, identified wrongful conduct are highly probative and admissible.

CONCLUSION

Westmoreland's attempt to exclude Judge's Pinski testimony would render the Board's analysis of what, if any, fees Westmoreland should receive one-sided. Westmoreland's motion in limine should be denied.

DATED this 21st day of September, 2026.

BOONE KARLBERG P.C.



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CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true copy of the foregoing document was served upon the following individuals by the means designated below:

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BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

IN THE MATTER OF:

NOTICE OF APPEAL AND REQUEST FOR HEARING ROSEBUD MINE AREA B AMENDMENT 5 PERMIT NUMBER C1984003B	CASE NUMBER BER 2022-05 SM

DEPOSITION UPON ORAL EXAMINATION OF

CATHERINE A. LAUGHNER

BE IT REMEMBERED, that the deposition upon oral examination of CATHERINE A. LAUGHNER, appearing at the instance of MEIC and the Sierra Club, was taken at the offices of Fisher Court Reporting, 800 North Last Chance Gulch, Suite 1, Helena, Montana, on Tuesday, August 25th, 2026, beginning at the hour of 9:00 a.m., pursuant to the Montana Rules of Civil Procedure, before Deborah L. Fabritz, Court Reporter - Notary Public.

* * * * * * *

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

* * * * * * *

CATHERINE A. LAUGHNER,

called as a witness, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. STOCKTON:

Q. Good morning, Ms. Laughner.

A. Laughner.

Q. Laughner? Forgive me. I've been saying it wrong since ever since I got your disclosure. Forgive me. Laughner.

It's a pleasure to meet you this morning. My name is Tyler Stockton. I'm an attorney with the law firm of Boone Karlberg over in Missoula. I represent the Sierra Club and the Montana Environmental Information Center.

Have you ever been deposed before?

A. Yes.

Q. Okay. We'll get that in a second. I guess the first thing, how would you like me to refer to you. I can call you Ms. Laughner. I can call you Cathy. How would you prefer to be referred to?

A. I have no preference.

Q. Are you sure? Okay. You're welcome to call me Tyler, hey you. I respond to anything.

You've been deposed before. What was the context of that?

A. I'm just thinking. Do you want me to break it down into depositions or what?

Q. Sure.

A. Okay. I've been deposed twice.

Q. And what were those cases?

A. I think -- it was a long time ago. One of them was a Clean Water Act case.

Q. And what was the other one?

A. I don't really remember. Maybe common law, trespass.

Q. Okay. In the Clean Water Act case, why were you deposed?

A. I was a fact witness.

Q. And a fact witness of what?

A. Pardon me?

Q. A fact witness of what?

A. Gosh, this was in the '80s.

Q. Was that before your legal career had started? I guess we haven't gotten into your background yet. Was that before your legal career or as a young lawyer, something along those lines?

A. Yes.

Q. Okay. And then the trespass case, what was that about?

A. I don't really remember.

Q. Were you a fact witness as well?

A. Yes.

Q. Okay. I'm presuming that in your -- in your legal practice you took depositions. Is that correct?

A. Yes.

Q. For the record, though, I typically have to go through the rules we lay out in the deposition. So forgive me for repeating things I am sure you already know.

The first thing is, is that you and I cannot talk over one another for our court reporter and all that. Can you wait until my question is finished, and I'll wait until your answer is finished before each of us respectfully speak. Is that fair?

A. Yes.

Q. Okay. And then second, we often as people communicate with um-hums and uh-huhs, and we communicate nonverbally. That's natural. Today -- you are already doing a great job at it -- we can't do that. We have to say yeses and nos and clear

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answers. If I ask you "is that a yes" or "is that a no," I'm not trying to be rude. Is that fair?
A. Yes.
Q. Okay. And I guess lastly, you understand that you're under oath today?
A. I'm sorry. I didn't hear that.
Q. You understand that you're under oath today?
A. I understand that.
Q. Okay. Tell me about your background real quick if you would. High level, where did you go to school and what was your education background, when did you become a lawyer, et cetera?
A. I've been a lawyer since 1990.
Q. Where did you go to school?
A. Undergrad or law school?
Q. Both of them.
A. Okay. I went to law school -- I graduated from Oklahoma City University, and I also went to the University of Houston Law Center.
Q. And then at one point you made your way and started your legal career in 1990. Where did you start that?
A. In Helena, Montana.
Q. Here at Browning Kaleczyc?

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A. Correct.
Q. Okay. And so you came from Texas up to Montana for your first law job?
A. That's right.
Q. Okay. And you stayed at Browning Kaleczyc to today. Correct? You're still working at the firm?
A. I'm of counsel.
Q. Okay. How long were you an associate and how long were you a partner at Browning Kaleczyc?
A. I -- let's see. I started work in 1990, so I was an associate until 1995.
Q. Okay. And you were a partner until -- when did you become of counsel?
A. I became a shareholder in 1995.
Q. Okay. And when did you stop being a shareholder and transition to of counsel?
A. 2018.
Q. Okay. And you're in that role today?
A. Correct.
Q. Okay.
MR. STOCKTON: I need to -- actually, I should have marked that.
BY MR. STOCKTON:
Q. I'm handing you what I have marked as

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exhibit -- well, real quick.
MR. DOLPHAY: Just start at 1.
MR. STOCKTON: Should we start at 1?
MR. DOLPHAY: Yeah. Unless you want to do something different just start at 1.
MR. STOCKTON: Okay. I was going to say we need to do A or something like that given prior stuff, but let's do Exhibit 1.
(Whereupon, Exhibit 1 was marked for identification.)
BY MR. STOCKTON:
Q. I'm handing you what I've marked as Exhibit 1, Ms. Laughner, have you seen this --
A. Laughner.
Q. Laughner. Forgive me. Have you seen this document before?
A. Yes.
Q. And what is it?
A. Curriculum vitae.
Q. For who?
A. Myself.
Q. Okay. And is this a full and fair statement of your educational, employment, and professional background?
A. As far as I can remember.

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Q. Is there anything that you think should be added to this?
A. Well, I didn't add a bunch of personal stuff. I think this is fair.
Q. Okay. How long have you been a member of the coal board?
A. Oh, gosh. I think this is my second term.
Q. Okay. And it's not on your CV. Correct?
A. Nope.
Q. Okay. So you're in your second term. How long -- how many years have you been on the coal board?
A. I couldn't tell you.
Q. Do you not recall or can you give me a range?
A. I don't really remember.
Q. Okay. How long is each term?
A. I think it's four years.
Q. And how many years are you into your second term?
A. One or two.
Q. Okay. So fair to say five to six years you've been on the coal board?
A. I can't really remember.
Q. What's your position on the coal board?

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A. I'm a board member.
Q. And what are the roles and duties of a board member of the coal board?
A. It's by statute. I would have to look at it.
Q. Do you know what they are generally speaking?
A. Do you have a copy of the statute I could look at?
Q. My question is for you. Do you recall what you do quarterly at the meetings at the -- for the coal board?
A. Yes.
Q. And what are those things?
A. We review applications and assess them against the statutory criteria.
Q. And applications for what?
A. For grants.
Q. Grants out of what monies?
A. Well, there's a -- I think it's a severance tax. It's money designated by the legislature.
Q. And where does that severance tax money come from?
A. I'm not exactly sure.

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Q. Is it a tax assessed on coal extracted from the ground in Montana?
A. I believe so.
Q. Okay. So your role is to assess grant applications for distribution of coal tax severance monies. Fair?
A. I don't know if I would use the word "distribution."
Q. What word would you use?
A. The board awards grants to applicants -- to qualified applicants according to the statutory criteria.
Q. Okay. And you're awarding, though, money collected from the mining companies -- coal mining companies here in Montana?
A. I think I just answered that.
Q. I guess let me go ahead and just get this straight. The money or the grants that you're awarding, that money comes from the coal severance tax. Fair?
A. As far as I know.
Q. Okay. And what are the companies that pay into that coal severance tax fund? What mining companies would be extracting coal in Montana?
A. I don't -- I don't know all of the companies.

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Q. Would Westmoreland Rosebud Mining, LLC, be one of them?
A. I'm not sure if that has ever come up.
Q. I'm sorry. I probably worded my question poorly. But would Westmoreland Rosebud Mining, LLC, if they extract coal here in Montana, be paying into the coal severance tax?
A. I guess when you're saying Westmoreland, LLC, I don't know the name of the entity exactly, and that's why I can't answer exactly.
Q. Okay.
A. I would say coal companies that extract coal in Montana pay the tax.
Q. And your role as a board member is to then distribute those funds to potential grantees based upon certain criteria?
A. I already answered that.
Q. Fair?
A. We award grants according to the statutory criteria.
Q. Okay. And why does the coal board exist? What is its purpose statement?
A. I don't know if I could exactly answer that because I don't have the statute in front of me,

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but it's for the benefit of coal-impacted communities.
Q. And so if coal mining were to leave a particular community, you could be considering grants to fund things in that community because it was impacted by the withdrawal of coal in that community. Fair?
A. That's a confusing question.
MR. DOLPHAY: Objection to form, but --
THE WITNESS: Sorry.
MR. DOLPHAY: You're good.
BY MR. STOCKTON:
Q. So coal-impacted communities, how can coal impact a community? What are the two ways that it impacts it under statute?
A. I would have to look at the statute, but generally I could answer that.
Q. Please go ahead.
A. We have applications for a tractor to help out at a cemetery, improve roads. So if they meet the statutory criteria, then they're awarded money and they can -- and the coal board funds equipment like that.
Q. I guess my question was a little bit more specific. What makes a community coal impacted?

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A. I don't really know.
Q. I'll go ahead and read for you Montana Code Annotated 96-201, quote, the purposes of this part are to assist local government units that have been required to expand the provision of public services as a consequence of large-scale development of coal mines and coal-using energy complexes or as a consequence of a major decline in coal mining or in the operation of coal-using energy complexes, to assist in the construction and reconstruction of designated portions of highways that are served -- that serve the affected area by the large-scale development, to support county land planning and support public schools throughout the state, end quote.
Does that help refresh your recollection for the purpose of the coal board?
A. Could I see that, please?
Q. This is my work product. But does that help refresh your recollection as to the purpose of the coal board?
A. I suppose it does. That's a long explanation.
Q. Two general purposes, to help where coal development has increased demand generally speaking

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and to help where coal withdrawal or drawdown of coal work has a negative impact on the community. Is that fair?
MR. DOLPHAY: Objection. Asked and answered.
THE WITNESS: Same answer.
BY MR. STOCKTON:
Q. To what?
A. I didn't really understand your question.
Q. Okay. Let's go back to it, I guess. The coal-impacted community is a community that has either had large-scale development increase or decrease in it. Is that a fair summary of the coal-impacted community definition?
A. I don't know if -- that seems to be a characterization of the statute. And I can't say that I have paid that much attention to it because what I do is assess applications against the statutory criteria and award, along with other board members, the grants.
Q. So you're working to award these grants or not award certain grants, fair, from the coal tax fund?
A. I already answered that.
Q. Okay. If the AM-5 permit as pertains to

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this case was not granted, what could have happened in that community?
A. Well, according to Ken Woolsey -- is it Wooley? Woolsey?
MR. DOLPHAY: Close. Go ahead.
THE WITNESS: Okay. There would have been a lot of jobs lost among other things.
BY MR. STOCKTON:
Q. And if there had been a drawdown of coal work in this area, your position on the coal board may have resulted in fielding and responding to increased grant requests for that community. Fair?
A. I don't know. The legislature sets the amount of money that goes to the coal board fund, and then we distribute it or award grants.
Q. And the Rosebud Mine at issue in this proceeding is one of the mines that does comprise the coal impact area. Correct?
A. Yes.
Q. Okay. And during your time on the coal board, you have voted to award grants in the immediate vicinity of the Rosebud Mine in Rosebud County and areas surrounding it. Correct?
A. What county is that? Around Colstrip.
Q. And during your time on the coal board,

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you have voted to award grants for work that was related to the Rosebud Mine?
A. I have awarded grants -- we have awarded grants to the county, to the hospital, to the sheriff's department.
Q. Due to the impacts that the Rosebud Mine has in that community?
A. I don't know if it's necessarily to Rosebud Mine. It's whatever the applicant has put in their application and if it meets the statutory criteria.
Q. Are you a member of the Montana Coal Council?
A. No.
Q. Have you ever been one?
A. No.
Q. Have you ever presented or been a part of any coal council meetings or advocacy work?
A. No.
Q. Okay. Have you ever done any work for Westmoreland in your legal career or in your consulting or other career?
A. Today.
Q. Okay. Anything other than serving as an expert witness today?

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A. No.
Q. Okay. How about any Westmoreland entity or subsidiary?
A. No.
Q. Okay. Do you know any members of, say, the board of directors of Westmoreland? Do you know any of the executives of the Westmoreland mine in Rosebud? Do you have any personal relationships or know any of them?
A. I don't think so.
Q. Do you know Ken Wooley?
A. I know of him.
Q. Have you ever met him in person?
A. No.
Q. Okay. Have you ever met him digitally like on the phone or via Zoom or by a Teams call?
A. I don't think so.
Q. Okay. Has your firm ever been opposed or opposite the Sierra Club or MEIC before?
MR. DOLPHAY: Objection to form.
You can answer.
THE WITNESS: I think so.
BY MR. STOCKTON:
Q. Okay. And --
A. Oh, you mean the client that we

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represented?
Q. Have you ever represented a client adverse to Sierra Club or MEIC?
A. I think so.
Q. And what was that case or what do you recall about it?
A. I couldn't remember.
Q. Did you work on that case or that litigation in any way?
A. I'm sure I did.
Q. Okay. What would have been your role in that work?
A. I don't remember. I mean as an attorney.
Q. What's your opinion of the Sierra Club?
A. I don't know if I have an opinion of the Sierra Club other than they should not have challenged the permit.
Q. What's your opinion of MEIC?
A. They should not have challenged this permit.
Q. Do you have any other opinions regarding either the Sierra Club or MEIC separate from this particular case?
A. They -- they seem to be less effective as an environmental group because they litigate, and

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there are other environmental groups that are more productive.
Q. You think litigation is nonproductive?
A. That's a really broad question.
Q. I'm just following up on your opinion regarding the Sierra Club and MEIC. Why do you think litigation is nonproductive by them?
A. Well, do you mean in this case or generally?
Q. Your opinion was expressed as separate from this instant case, so that's what I'm following up on. Generally not really regarding this specific case, why is it your opinion that Sierra Club and MEIC's litigation is nonproductive?
A. Well, I don't know that much about the Sierra Club. I -- I think your last question was directed about MEIC. So what is your question?
Q. My question is why is it your opinion that Sierra Club or MEIC's litigation is not productive?
A. It's the general impression I've had over the years.
Q. And what do you base that general impression on?
A. That they bring baseless claims.
Q. And what are those baseless claims in your

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opinion?
A. As I sit here, I can't think of -- you would have to ask me a specific question, and I probably couldn't remember over the years.
Q. So you have no particular recollection of baseless claims that you would base your opinion on?
A. That's not what I said.
Q. What particular examples or cases do you base your opinion that Sierra Club and MEIC bring baseless litigation on?
A. Are you asking about MEIC or Sierra Club?
Q. Either/or.
A. Can you ask that again?
Q. What particular cases or facts do you base your opinion upon that either Sierra Club or MEIC bring baseless litigation?
A. I have that general impression after practicing for many years.
Q. And so no particular thing comes to mind except your general impression?
A. I cannot give you a specific example as I'm sitting here today other than this case.
Q. We'll get to your opinions in this case. I think your work for Browning Kaleczyc was in the In Re Bull Mountain case where you were

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adverse to Sierra Club and MEIC. Does that help refresh your recollection of that case?

A. I don't -- I didn't think I had worked on that case.

Q. Okay. So you were adverse to Sierra Club and MEIC in a different matter than that?

MR. DOLPHAY: Objection. Assumes facts not in evidence.

You can answer the question.

THE WITNESS: Yeah. Can you ask that question again? That seemed like a confusing question. I don't think I have litigated against the Sierra Club.

BY MR. STOCKTON:

Q. So that's a -- earlier you had testified that you had worked on a case adverse to the Sierra Club --

A. No. That's not right.

Q. -- and MEIC. So I want to --

A. Just --

Q. -- give you an opportunity to go ahead and correct that. What was the case that you worked on where you as legal counsel were adverse to either entity?

MR. DOLPHAY: Objection. Assumes facts

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not in evidence.

THE WITNESS: I don't think I have litigated a case against a Sierra Club or represented a client. I have been involved in litigation against MEIC, I believe.

BY MR. STOCKTON:

Q. And do you remember what that case was?

A. I believe I was representing either the League of City and Towns or the City of Helena.

Q. Okay. And is that the case where you -- one of the perhaps examples where you base your opinion upon regarding baseless litigation brought by MEIC?

A. Not necessarily. It's -- I read a lot of cases, and so it could have been that.

Q. In your work for like Montana League of Cities and Towns and whatnot, those were a series of federal cases. Correct?

A. I can't remember.

Q. Do you recall if you were plaintiff or defendant in those cases or if your client, I should say, was plaintiff or defendant?

A. It was more about rule making.

Q. Okay. What do you mean by rule making?

A. Rule making of water quality in the Water

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Quality Act.

Q. And were you doing that at the Montana level or the federal level or challenging rules? What was the context of that?

A. As far as I can remember, it was rule development.

Q. Okay. And is that one of the bases for your opinion that MEIC brings baseless litigation?

MR. DOLPHAY: Objection. Misstates the testimony.

You can answer.

THE WITNESS: Well, now that I think about it, that wasn't litigation. We were talking about rule making.

BY MR. STOCKTON:

Q. Okay. So do you have any experience, then, in being adverse to Sierra Club or MEIC as opposing counsel?

A. I don't remember. Not Sierra Club as far as I can remember.

Q. Okay. Let's go ahead and start with the legal standard for attorneys fees in MSUMRA matters. What is the statutory basis in your opinion for an award of attorneys fees in an MSUMRA case?

A. It's in Title 82.

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Q. Okay. Title 82 what?

A. Are you asking me to cite the statute?

Q. I'm asking you to cite your understanding of where that statute is at.

A. Title 82. I can't remember off the top of my head. Maybe it's 251.

Q. Okay. That's generally -- I generally agree with you. I'm reading from your report here. Quote, under MSUMRA the board of environmental review, quote, board, may award a permitee reasonably and necessarily incurred costs, expenses, and attorneys fees incurred in connection with its participation in the proceeding when the opposing party, quote, participated in the proceeding in bad faith and for the purpose of harassing or embarrassing the permitee, ellipses, end quote. And there you cite 82-4-251(8) Montana Code Annotated as well as two regulatory sections. Do you recall that section in your report?

A. Yes.

Q. Okay. And you're familiar with the MSUMRA statute. Is that fair?

A. The one you just read?

Q. Yes. Well, I read from your report, which is a little bit of a summary of the statute, but I'm

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asking if you're familiar with it.
MR. DOLPHAY: Objection. Form.
THE WITNESS: I'm generally familiar with it.
BY MR. STOCKTON:
Q. Okay. I'm going to hand you what I have marked as Exhibit 2.
(Whereupon, Exhibit 2 was marked for identification.)
BY MR. STOCKTON:
Q. Make sure I didn't hand you my copy and my editing. Please go ahead and take a look at Exhibit 2 here. Is this the statute that you are relying upon in your report?
MR. DOLPHAY: Objection to form.
THE WITNESS: It looks like it.
BY MR. STOCKTON:
Q. And in particular what subsection are you relying upon?
MR. DOLPHAY: Same objection.
THE WITNESS: Are you asking me for my legal opinion?
BY MR. STOCKTON:
Q. No, I'm not. I'm just making sure that -- is this the statute that you rely upon in your

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report, 82-4-251(8)?
MR. DOLPHAY: Objection to form.
THE WITNESS: And its implementing regulations.
BY MR. STOCKTON:
Q. Okay. So -- and so just to be clear, you are relying on the 2025 version of the statute, correct, in your report?
A. 2025?
MR. DOLPHAY: Objection. Assumes facts not in evidence.
THE WITNESS: Yeah. I don't know what version this is.
BY MR. STOCKTON:
Q. So if you look at the top of the version I have handed you, does it have a year on it?
A. Yes.
Q. Okay. And if your report cites 82-4-251(8), that's your citing to the 2025 version of the statute. Correct?
MR. DOLPHAY: Objection. Assumes facts not in evidence.
THE WITNESS: You know, I'm not sure. I would definitely -- I would think that Holland and Hart would be able to explain it with more

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specificity than I could.
BY MR. STOCKTON:
Q. So your opinion today is that you're not familiar with the legal standard that you have cited in your report?
A. That's not --
MR. DOLPHAY: Objection. Miss -- wait. Objection. Misstates the testimony.
THE WITNESS: That's not correct.
BY MR. STOCKTON:
Q. Okay. Then give us your understanding of the statute that you relied upon as the statutory authority for fees in your report.
MR. DOLPHAY: Objection. Assumes facts not in evidence. Misstates the testimony.
THE WITNESS: It's my understanding that MSUMRA is the statute that allows either party to obtain fees.
BY MR. STOCKTON:
Q. And is that -- do you have any more of a specific understanding than the statement you just made?
MR. DOLPHAY: Objection.
BY MR. STOCKTON:
Q. For example --

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MR. DOLPHAY: Oh, go ahead.
BY MR. STOCKTON:
Q. -- what specific statute and what effective year would apply to this case?
MR. DOLPHAY: Objection. Asked and answered. Objection. Legal conclusion.
You can answer.
THE WITNESS: MSUMRA provides for the award of fees.
BY MR. STOCKTON:
Q. You're aware that 82-4-251 has been amended twice, once in 2023 and 2025. Correct?
A. No.
Q. So you're not aware of that?
A. Same answer.
Q. Okay. And given that MSUMRA amendments have to be approved by the federal government, neither of those amendments, 2023 nor 2025, are effective. Correct?
MR. DOLPHAY: Objection. Assumes facts not in evidence. Legal conclusion.
THE WITNESS: Could you ask that again, please.
MR. STOCKTON: I'll have the court reporter read it back.

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(Whereupon, the requested record was read.)
MR. DOLPHAY: Same objection.
THE WITNESS: I don't know the answer to that.
BY MR. STOCKTON:
Q. Okay. And you're aware, though, that your report cites the 2025 version of the statute?
MR. DOLPHAY: Objection. Misstates the testimony.
THE WITNESS: Did I put the version in my report?
BY MR. STOCKTON:
Q. Your report cites 82-4-251(8). Subsection 8 does not exist in the -- as the attorneys fees provision --
MR. DOLPHAY: Objection.
BY MR. STOCKTON:
Q. -- in the 2021 version, which is the applicable version in this case. Were you not aware of that?
MR. DOLPHAY: Objection. Misstates the testimony. Question of law beyond the -- what the expert was retained for.
You can answer.

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THE WITNESS: Well, I don't know if that was a question, but I think it was in 7.
MR. STOCKTON: I'll tell you what. Let's go ahead and go off the record.
(Whereupon, a break was then taken.)
(Whereupon, Exhibit 3 was marked for identification.)
BY MR. STOCKTON:
Q. Let's go back on the record.
All right, Ms. Laughner. I have given you what I have marked as Exhibit 3. Can you please describe the document that is Exhibit 3?
A. It looks like my expert report.
Q. And go ahead and take a look through it. Is anything missing? Is it incomplete? Does it look complete to you?
A. There's an exhibit missing.
Q. What's that exhibit that is missing?
A. Ken Woolsey [sic].
Q. Let's go ahead and add that in. I'm handing you Ken Woolsey's declaration.
MR. DOLPHAY: Wooley.
BY MR. STOCKTON:
Q. Wooley. And please go ahead and review

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that. Now is it complete?
A. I believe so.
Q. Okay. I would like you to turn to page 8 of your expert report in this case. Under the heading four entitlement to fees. That first paragraph there you stated that the board of environmental review may make an award of attorneys fees, and you lay that language out. And then you cite to Section 82-4-251(8) Montana Code Annotated. Is that correct?
A. Yes.
Q. Okay.
A. And the regulations.
Q. And we'll get to the regulations in a second, but at least starting with the statute, you cite to the statute, correct, that has subsection eight in it?
A. And the regulations.
Q. Okay. And I guess looking at 82-4-251(8), you're aware that subsection 8 only exists as an attorney fees provision in the 2025 version of Montana Code Annotated. Fair?
MR. DOLPHAY: Objection. Legal conclusion. Outside her scope.
BY MR. STOCKTON:

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Q. The question was whether you were aware.
MR. DOLPHAY: Same objection.
THE WITNESS: Could you ask that again?
BY MR. STOCKTON:
Q. Are you aware that subsection 8, being the attorneys fees award provision being 82-4-251, only exists in the 2025 version of Montana Code Annotated?
MR. DOLPHAY: Same objection.
THE WITNESS: I'm aware that it exists in the 2025 version.
BY MR. STOCKTON:
Q. Okay. I'm handing you what I have marked as Exhibit 4.
(Whereupon, Exhibit 4 was marked for identification.)
BY MR. STOCKTON:
Q. Which I'll represent to you -- and correct me if I'm wrong -- is the 2023 version of 82-4-251. Is that correct?
A. I don't know.
Q. Will you go ahead and take a look at what I have handed you and tell me if that is the 2023 version of 82-4-251 Montana Code Annotated.
A. I don't know if it is or not.
Q. What does the document say?

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A. Montana Code Annotated 2023.
Q. Okay. I want to go ahead and turn in that statute to subsection 8. Does subsection 8 consume an award of attorneys fees?
MR. DOLPHAY: Objection. Question of law. Outside of scope.
You can answer.
THE WITNESS: I haven't looked at this before.
BY MR. STOCKTON:
Q. You have never looked at the 2023 version of this statute?
A. Is that a question?
Q. Yes.
A. Could you rephrase that?
Q. Have you ever looked at the 2023 version of 82-4-251 Montana Code Annotated?
A. You know, as I sit here, I can't remember if I have or have not, but I would have to read the whole thing and study it.
Q. Did you review the 2023 version in prepping for your deposition or in preparing your report?
A. I don't remember.
Q. So go ahead and turn to subsection 8. Do

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you see subsection 8 on the second page?
A. Yes.
Q. So subsection 8 in this version is an attorneys fees award section?
A. Is that a question?
Q. Your answer was yes, and I believe my question was whether subsection 8 concerns attorneys fees. And I'm just confirming.
MR. DOLPHAY: Objection. Question of law.
THE WITNESS: I see attorneys fees in section 7.
BY MR. STOCKTON:
Q. Okay. So -- okay. It's in section 7. Your report, though, cites 82-4-251(8). Correct?
A. And the implementing regulations.
Q. Just to make sure we're clear on our record, you cite 82-4-251(8) subsection and the implementing regulations. Correct?
A. That's what it says.
Q. And so at least in the 2023 version, subsection 8 does not concern attorneys fees. Subsection 7 does. Correct?
MR. DOLPHAY: Objection. Question of law.
You can answer.
THE WITNESS: I don't know if what you

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showed me is the 2023 version.
BY MR. STOCKTON:
Q. Does the top of the document represent that it's Montana Code Annotated 2023? Does the top of Exhibit 4 represent that it's the 2023 version of the statute?
A. That's what it says.
Q. Okay. I'm handing you what I have marked as Exhibit 5.
(Whereupon, Exhibit 5 was marked for identification.)
BY MR. STOCKTON:
Q. As the document states at the top of Exhibit 5, this is Title 82, Chapter 4, part 2, particularly 251, of Montana Code Annotated 2021. Is that correct?
A. I don't know.
Q. Is that what the top of Exhibit 5 says?
A. Yes.
Q. Okay. And in turning to subsection 8 in Exhibit 5, does that section reference attorneys fees in any way?
MR. DOLPHAY: Objection. Question of law. Outside her scope.
THE WITNESS: I'm sorry. Could you ask

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that again?
BY MR. STOCKTON:
Q. Does subsection 8 of 82-4-251 Montana Code Annotated 2021 concern attorneys fees in any way?
A. Section 7 does.
Q. Okay. So section 7 in 2021 is the provision that addresses attorneys fees. Correct?
MR. DOLPHAY: Same objection and asked and answered.
BY MR. STOCKTON:
Q. Different document here. So we're at 2021. Section 7 is the attorneys fees provision. Correct?
A. You're representing to me that this is 2021. I haven't seen it before.
Q. Okay. And so in preparing your report, you did not rely upon the 2021 version of Montana Code Annotated for preparing your report? If you haven't seen it before, you haven't. Correct?
A. No. I wouldn't necessarily say that.
Q. I guess walk me through that. If you haven't seen this statute, how could you have relied upon it in preparing your report?
MR. DOLPHAY: Objection. Misstates the testimony. She didn't say she hasn't seen the

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statute.
BY MR. STOCKTON:
Q. Have you seen the 2021 version of 82-4-251 Montana Code Annotated?
MR. DOLPHAY: Objection. Form.
You can answer.
THE WITNESS: Yeah. I don't know if I exactly knew what version it was, but I have seen that language in section 7 before.
BY MR. STOCKTON:
Q. Okay. I guess this is where I'm getting at. Your report cites subsection 8. Correct?
MR. DOLPHAY: Objection. Asked and answered.
THE WITNESS: That's what it says.
BY MR. STOCKTON:
Q. And subsection 8 in the 2021 version of the statute does not refer to attorneys fees. Correct?
MR. DOLPHAY: Objection. Asked and answered.
THE WITNESS: Section 7 does.
BY MR. STOCKTON:
Q. Okay. Is it fair to say that your expert report, then, is relying on the 2025 version of the

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statute?
MR. DOLPHAY: Objection. Asked and answered.
THE WITNESS: You know, I'm not sure about that.
BY MR. STOCKTON:
Q. Are you aware what version of the statute applies in this case in this proceeding?
MR. DOLPHAY: Objection. Asked and answered. Outside her scope.
THE WITNESS: I would have to do some research on that. That's not an answer I can give sitting here today.
BY MR. STOCKTON:
Q. Okay. And do you know what version of the statute you cited in your report, 2021, 2023, or 2025?
MR. DOLPHAY: Objection. Asked and answered.
THE WITNESS: I think I would give the same answer.
BY MR. STOCKTON:
Q. And what is that?
A. Could you read that back, please?
(Whereupon, the requested

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record was read.)
BY MR. STOCKTON:
Q. So as you sit here today, your answer and your testimony is that you would need to do further research to understand what version of the statute you cited in your report. Correct?
MR. DOLPHAY: Objection. Sorry. Objection. Misstates the testimony. Legal conclusion.
BY MR. STOCKTON:
Q. The question is merely what you understand to be the version in your report.
MR. DOLPHAY: Same objection.
THE WITNESS: I cited 82-4-251, and its implementing regs. The subsection is either 7 or 8.
BY MR. STOCKTON:
Q. But your report says 8?
MR. DOLPHAY: Objection. Misstates the evidence. Assumes facts not in evidence that there was a change substantively.
You can answer.
THE WITNESS: That wasn't really a question.
BY MR. STOCKTON:
Q. My question was your report states

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subsection 8.
A. That's what it says.
Q. Let's go ahead and let's take a look -- you cited the 2025 version of the statute. So go ahead and go back to Exhibit 2 if you would, subsection 8. Let's go ahead and work with the one you cited.
I'll represent to that the operative one in this case is 2021, but we'll rely upon the one that you cited for the next couple of questions.
MR. DOLPHAY: Objection. Assumes facts not in evidence. Misstates the testimony.
BY MR. STOCKTON:
Q. So your report says "Under MSUMRA, the board of environmental review," board in quotes, "may award a permittee reasonably and necessarily incurred costs, expenses and attorneys fees." And you go on to quote.
I would like you to point to me in subsection 8 of the 2025 version or subsection 7 of the 2021 or '3 version where the board of environmental review is referenced in the statute.
MR. DOLPHAY: Objection. Outside her opinions that she's been requested to render. Question of law.

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THE WITNESS: That's my understanding.
BY MR. STOCKTON:
Q. Your understanding that the statute here references the board of environmental review?
MR. DOLPHAY: Same objection.
THE WITNESS: That's my interpretation.
BY MR. STOCKTON:
Q. And go ahead and take a look at subsection 8 of the 2025 version in Exhibit 2. Does the statute refer to the board of environmental review in any way?
MR. DOLPHAY: So let me get an objection in. Objection. This is outside the scope. This is not what was requested by the board's order. You're relitigating the jurisdictional issue, which is not proper.
MR. STOCKTON: I'm merely asking her about her report.
MR. DOLPHAY: No. You're -- no, you're not. You're relitigating this jurisdictional issue that is the determination of the board. That is not what is in the scheduling order.
You can answer.
THE WITNESS: Could you repeat your question?

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BY MR. STOCKTON:
Q. My question is, where in either subsection 7 of the 2021 or 2023 or subsection 8 of the 2025 version of the statute --
A. Whoa. That's --
Q. -- the board is referenced. You can look at whatever version you want. My question is, is the board of environmental review referenced in these subsections?
MR. DOLPHAY: Same objection.
THE WITNESS: In my practice over the years, we considered the board part of the department.
BY MR. STOCKTON:
Q. And I guess I must have misphrased my question. Where in the statute is the board referenced?
MR. DOLPHAY: She gave you an answer. Again, this is outside. I think -- Mr. Stockton, how long do you think you're going to go with this line, because this is where -- this is not what the board of environmental review directed us to do.
We -- she's here -- just for the record, she's here to testify regarding the reasonableness of fees. This is not proper to relitigate the board's jurisdiction. That's within the board's domain. So I -- I'm just wondering how long we're going to keep going.

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MR. STOCKTON: So --
MR. DOLPHAY: Because we've been going for quite awhile relitigating an issue that is per the board.
MR. STOCKTON: So, Mr. Dolphay, I guess I'll lay my record out here. The expert report that the mine and the union proffered cited the wrong version of the statute, and on top of that made a representation there that in a particular setting that the board may do something.
So I'm merely asking her about what her own report states, and we'll go through all the reasonableness and everything here. But this right here is exactly what is in her report, and we are entitled to ask her about what is contained in her expert report.
MR. DOLPHAY: That's not right. The substance of that statute has not changed. So for our record, there's no change in substance. The gotcha fails. That is the same substantive section. You know that. You know that's just trying to be a gotcha and it's wrong. So there is no incorrect

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statements in the report. This is going into jurisdictional issue that is for the board of environmental review. You've got a lot of rope here that you ran out, and so this is all improper to keep going down this.
MR. STOCKTON: So -- so speaking objections, Mr. Dolphay --
MR. DOLPHAY: You just did one for the record and I responded.
MR. STOCKTON: No. What I'm saying here -- and if we need to go off the record to hash this out, we can. I want to work through her report, and what I'm trying to do here is establish that her report has made certain claims. That goes to -- she is making a claim here that this is what the board may do. And we'll move on after -- after I'm done with my few questions here.
MR. DOLPHAY: How many -- how many more questions do you have? This is not proper. It's not proper to relitigate the jurisdictional issue. You know that. You know that is not what she's here to testify for. You know that is not what the board of environmental review asked us to do. So these questions are improper and you've been at this for 15 minutes at least. So how long do you have left on

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these irrelevant questions?
MR. STOCKTON: I'm on my last question as a matter of fact. But, Mr. Dolphay --
MR. DOLPHAY: Go ahead and ask the question.
MR. STOCKTON: -- this goes to -- this goes to credibility.
MR. DOLPHAY: It does not.
MR. STOCKTON: It goes from the section --
MR. DOLPHAY: You all are trying to create this record on jurisdiction that's improper, and that's what is happening right now. It's improper under the board's order. Ask your question and then we need to move on.
BY MR. STOCKTON:
Q. Ms. Laughner, can you point to me in any of the three versions of the statute before you where the attorneys fees provision specifically references the board of environmental review?
MR. DOLPHAY: Objection. Asked and answered. Same objections as I made before.
THE WITNESS: I already answered that question.
BY MR. STOCKTON:
Q. And your answer was?

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MR. DOLPHAY: Same objection.
THE WITNESS: It's time for you to move on.
BY MR. STOCKTON:
Q. Are you being instructed not to answer by your counsel?
A. No.
Q. So my question is, can you find the board referenced in any of these three attorneys fees provisions?
MR. DOLPHAY: Objection. We've already -- we've been through this, Mr. Stockton. We've been through it, and she said she considers the board as part of the department under the statute. She's already said that. We've -- we've already done this. This is jurisdiction. It's not proper. You know it's not proper.
MR. STOCKTON: Mr. Dolphay, the question, though, is where in the statute is that referenced. Her answer was that was her interpretation. This is a different question.
MR. DOLPHAY: You said you had one question left. She answered.
MR. STOCKTON: She hasn't answered the question.

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MR. DOLPHAY: She just did. She just did.
MR. STOCKTON: We'll come back to that.
BY MR. STOCKTON:
Q. All right. Moving ahead, when was the first time you became aware of 25-10-712 Montana Code Annotated regarding the Montana legislature's definition of reasonableness for fee awards?
MR. DOLPHAY: Sorry. I wasn't paying attention.
THE WITNESS: Yeah.
MR. DOLPHAY: I'm not messing with you. I wasn't paying attention.
MR. STOCKTON: I haven't handed her an exhibit yet.
MR. DOLPHAY: Oh, okay. Where are you at?
BY MR. STOCKTON:
Q. My question is when was the first time you became aware of the statute 25-10-712 Montana Code Annotated where the Montana legislature defined whether -- the elements for reasonableness of fee awards?
A. Is that the -- that's the statute about state awarding fees or trying to get fees from states?
Q. Well, we'll get to the specific one

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related to the statute, but when did you become aware of that statute?
A. Is that the statute that -- when someone is trying to get fees from the state, is that the statute?
Q. My question was, is when did you become aware of that, of the statute I referenced?
MR. DOLPHAY: Objection. Asked and answered.
(Whereupon, Exhibit 6 was marked for identification.)
THE WITNESS: Quite awhile ago.
BY MR. STOCKTON:
Q. You did not reference this statute in your expert report. Correct?
A. Right.
Q. Okay. I would like you to take a look at 25-10-712(1) and read to me that first sentence.
A. Do you have 711 with you?
Q. I asked you a question. I do not have 711 with me. Is 711 in the first sentence?
A. What did you want me to do?
Q. So my question for you is, where in the 25-10-712(1) does the legislature state that it must be an award against the State of Montana?

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A. Well, it says that in the title, awards against the state, and 711 you have to read that with this.

Q. So I guess real quick, though, in subsection 1, where does it limit it to the state?

MR. DOLPHAY: Asked and answered.

THE WITNESS: It says awards against the state.

BY MR. STOCKTON:

Q. In subsection 1? I'm reading, quote, an award of attorneys fees must be reasonable. The reasonable claim for attorneys fees must include the following, and it has a colon with subsections A through C and sub-Roman i's all the way down. And subsection 2 states as a rebuttal presumption that certain things are unreasonable, and then in subsection 3 it says in addition to the requirements imposed by subsection 1 and 2, when considering an award of attorneys fees against the state, the court shall take into consideration, and adds that in.

So my question for you is in subsection 1, where does it limit the statute to awards against the state?

MR. DOLPHAY: Objection. Asked and answered.

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THE WITNESS: Well, what you just read was your characterization, and I think that's wrong.

BY MR. STOCKTON:

Q. Why do you think it's wrong?

A. Because it's awards against the state.

Q. There's two aspects to this statute, correct? One about reasonableness of awards in general, and then there's specific provisions where it's against the state in subsection 3.

A. Well, that's your characterization.

Q. Okay. Are you aware of who carried this amended -- or this legislature in the House of Representatives in the 2025 legislative session?

A. I can't remember that.

Q. Would it be -- would it surprise you if it was Mr. Fitzpatrick of the Browning Kaleczyc firm?

A. Does it surprise me? I have no idea.

Q. When you prepared your expert report in this case, you reviewed certain -- and I'm quoting -- spreadsheets from -- that were provided to you. Correct?

MR. DOLPHAY: Objection to form.

THE WITNESS: Are you referring to the exhibits attached to Yemington's affidavit?

BY MR. STOCKTON:

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Q. Well, so actually go ahead and turn with me to page 7 of your expert report -- or 6 of your expert report -- or 4 -- forgive me -- page 4 of your expert report. And the second to last bullet point there reflects that you relied upon, quote, spreadsheets reflecting attorneys' fees and costs and expenses incurred by Westmoreland through June 2026, end quote. Then there's a footnote referencing basically that you will update your testimony when you receive more.

So my question is, what spreadsheets did you review?

MR. DOLPHAY: Objection to form.

THE WITNESS: Exhibit 1 to Yemington's report.

BY MR. STOCKTON:

Q. And that was it?

MR. DOLPHAY: Objection. Form.

THE WITNESS: I don't know if that's true or not.

BY MR. STOCKTON:

Q. Okay. We can get into Yemington's affidavit, but the fees attached to his affidavit only go through September 30th or so of 2025. You state here that you reviewed fees through June of

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2026. Were there additional spreadsheets that you reviewed?

A. So what were you representing about the dates?

Q. If you look at Mr. Yemington's declaration affidavit, the fees that were attached to that ended approximately September of 2025, because that petition and the attached affidavit was filed in November of 2025. You here represent, though, you reviewed fees through June of 2026. So I'm asking did you get another spreadsheet that was different from that?

A. Yeah. I think I did.

Q. Okay. And what was the format for that? Was it in pdf or was it Excel? How did you review it?

A. Couldn't tell you.

Q. Do you not recall? Is that -- is that your testimony?

A. I probably didn't pay attention to the format.

Q. Okay. How was it sent to you? Was it e-mail? Handed to you? Do you recall?

A. I don't know.

Q. Were there redactions in the versions you

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reviewed?
A. I don't remember that either.
Q. Was it electronic or printed?
A. You already asked me that.
Q. No. I asked you about the file format. So I'm asking like was it printed out or electronic mail?
A. Yeah. I couldn't tell you.
Q. Okay. If you were provided spreadsheets detailing fees up to June 30th, 2026, but conservation groups were not provided those so their expert could review them, would you view that as fair?
MR. DOLPHAY: Objection. Assumes facts not in evidence. We sent these to you, Tyler.
MR. STOCKTON: They weren't provided in time for our expert report. Ms. Laughner was permitted to review them before her expert report was provided.
MR. DOLPHAY: The scheduling order provides when we have to update.
BY MR. STOCKTON:
Q. So what I'm getting at, is it fair for one side's expert to get additional billing entries provided to them but not provided to the other side

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so that their expert may challenge them in his or her report?
MR. DOLPHAY: Objection. Assumes facts not in evidence. Beyond the scope of her retention.
You can answer.
THE WITNESS: That's a ridiculous question.
BY MR. STOCKTON:
Q. So my question was, is it fair?
MR. DOLPHAY: Well, Mr. Stockton, is this going -- I'm just -- what is this going towards? It's not going towards her opinions. Is it going towards bias? I mean, what's the basis for this line of questioning?
MR. STOCKTON: The basis for this line of questioning gets to what Ms. Laughner reviewed so that we can establish what Mr. Pinski was not permitted to review before their expert reports were disclosed.
MR. DOLPHAY: But she already told you what she was provided. You're asking now is it fair. That's not -- you're not asking her what materials she reviewed. You're asking her is it fair. So are you alleging that she's biased? What -- yeah. What -- what -- what is the genesis of this line of

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questioning and how does it relate to the issues at hand?
MR. STOCKTON: Are you objecting?
MR. DOLPHAY: Yes. I have objected. I'm wondering where --
MR. STOCKTON: Was this to the form of the question? So what my question is getting at is whether she thinks that the document that she provided and reviewed and testified about, whether that was fair to have those versus not having those for the other side.
MR. DOLPHAY: And how does that relate to her opinions? I mean, Rule 26 requires you to relate to the opinions. It doesn't allow you to go off on harassment, and I'm not -- I'm not sure where this is -- how this is relevant or tangentially relevant to her opinions.
MR. STOCKTON: So her opinion is that the fees expended or claimed here by the mine and the union from October 1st to June of 2026 were reasonable. She has that opinion. And I'm asking if the other side's expert not being able to have that opinion was fair or not.
MR. DOLPHAY: That has nothing to do with the issues at hand. It's harassment.

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MR. STOCKTON: Are you saying it's not relevant?
MR. DOLPHAY: I'm -- I have asked you to detail why it's relevant.
MR. STOCKTON: And I have.
MR. DOLPHAY: You have failed to do so.
MR. STOCKTON: I have.
MR. DOLPHAY: No.
MR. STOCKTON: She's testified about it, and I'm asking whether or not if she thinks it's appropriate for the other side to have had that to testify about.
MR. DOLPHAY: How does that relate to the reasonableness of fees?
MR. STOCKTON: Because if she's testifying to certain evidence that wasn't provided to the other side --
MR. DOLPHAY: But she's already given you the evidence. She's already said what she's reviewed, and now you're asking her if it's fair. That has nothing to do with the opinions. I mean, you're -- I don't see a genuine basis for you to ask that question.
MR. STOCKTON: So I guess are you instructing her not to answer?

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MR. DOLPHAY: You can answer this, but if it goes further, I will stop it.
Go ahead.
THE WITNESS: Okay. What was your question again?
BY MR. STOCKTON:
Q. My question is do you think it's fair for you to have October 2025 to June 2026 data if the other side fee entries were not provided to them?
THE WITNESS: As I said, that's a ridiculous question. My opinion is -- I think the total that I was talking about was based on Yemington's affidavit, and it was around 1.4 million. So I don't know what the total was.
BY MR. STOCKTON:
Q. Okay. So --
A. After -- I don't know what the total was after he rendered his opinion.
Q. Okay. So it's your testimony today that your opinion only relates to what was in Mr. Yemington's affidavit. Correct?
MR. DOLPHAY: Objection. Misstates the testimony. She -- Mr. Stockton, she's told you that she received the additional bills; that she reviewed them. These are the same -- these -- you received

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these as well.
MR. STOCKTON: But, Mr. Dolphay, she just testified that she was basing her entire opinion off of what was attached to Mr. Yemington's affidavit.
MR. DOLPHAY: That's not what she testified to.
MR. STOCKTON: I'll go ahead and have the court reporter read it back.
Could you please read back the witness's last answer?
MR. DOLPHAY: And the question if you wouldn't mind too.
(Whereupon, the requested record was read.)
MR. DOLPHAY: She's not saying that's the -- her whole opinion is based on just that. She was talking about the affidavit. That's --
MR. STOCKTON: This -- these improper -- this is coaching objections, Mr. Dolphay, and --
MR. DOLPHAY: Go ahead.
MR. STOCKTON: -- they're not proper.
MR. DOLPHAY: Go ahead.
BY MR. STOCKTON:
Q. And so to -- maybe let's back up a little bit. How many affidavits of Mr. Yemington are you

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aware of, Ms. Laughner?
A. One.
Q. And that is the fee entries that you reviewed. Correct?
MR. DOLPHAY: Objection. Misstates the testimony.
MR. STOCKTON: I'm just asking if those are what she reviewed, and she can tell me correct or not. That's not misstating her testimony.
THE WITNESS: Yeah. I don't understand that question.
BY MR. STOCKTON:
Q. So you reviewed Mr. Yemington's affidavit and the supporting fee entries attached to that affidavit. Correct?
A. I guess I'm having trouble when you say "fee entries."
Q. Billing records.
A. I reviewed Exhibit 1.
Q. Exhibit 1 to Mr. Yemington's affidavit. Correct? When you say Exhibit 1, you're talking attached to Mr. Yemington's affidavit?
A. That is kind of jumbled. Can you repeat your question?
Q. When you were referring to Exhibit 1 what

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document are you referring to?
A. Yemington's, the spreadsheet.
Q. Which was attached or provided where?
A. Yemington's affidavit.
Q. And so those fee entries -- maybe we should talk about our terms so we can make sure we have them clear. When I say fee entries or spreadsheet or billing records, how do you describe that Exhibit 1 in general? How would you describe it so we can talk about the same thing together?
A. Yeah. I don't know. Just say Exhibit 1.
Q. Okay. So you only reviewed Exhibit 1 to Mr. Yemington's affidavit?
A. At what period of time?
MR. DOLPHAY: Thank you. Sorry.
BY MR. STOCKTON:
Q. So I guess your opinion is based upon what range of time of fee entries?
MR. DOLPHAY: Objection. The report speaks for itself.
THE WITNESS: I'm confused by your questions.
BY MR. STOCKTON:
Q. Let's go ahead and go back to your report, then. You stated in your report on page 4 that

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you've reviewed spreadsheets. I'll start -- we'll go ahead and work through here word by word. Spreadsheets is plural. Correct?

A. Yes.

Q. So does that mean you reviewed more than one spreadsheet?

A. At the time I wrote this opinion, I believe the only spreadsheets I had were those attached to Mr. Yemington's opinion, and it's my understanding from the scheduling order that that would be updated.

Q. You stated in your report that you had reviewed the transcript of the board's of environmental review's proceedings at the May 15th hearing. Correct?

A. Yes.

Q. Okay. In your own words, what, if anything, did the board conclude was considered bad faith conduct?

MR. DOLPHAY: Okay. Objection. We're going back into something that is outside her scope, that is a determination for the board. And you said you had one question left on that, and then we're going back into it.

MR. STOCKTON: No. Mr. Dolphay, I'll go

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ahead and reveal my cards for you. You've seen our expert's report, and our contention is that there needs to be a nexus between what the board finds is bad faith and harassing conduct and the fees being claimed. Ms. Laughner did not do that analysis at all.

So I'm laying the ground for that -- that criticism of her expert report. Her expert report does not address the connection between any particular alleged bad faith or harassing conduct and the fees being claimed. That is one of our primary criticisms, and we are entitled to go into and critique the omissions in her report. And I am allowed to lay the foundation for those things.

So this is not going into jurisdiction again in any way, shape, or form. What this is, is laying the foundation for her report of what we believe are serious omissions.

MR. DOLPHAY: I don't agree with the characterization. I will let you go into it a little bit.

BY MR. STOCKTON:

Q. So in reviewing the May 15th transcript, what, if anything, in your understanding did the board specifically vote and find was bad faith conduct?

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MR. DOLPHAY: Objection. Presumes facts not in evidence and question of law and outside of her report.

THE WITNESS: My opinion goes to the reasonableness of the rates and the time. I think you're asking me about rebuttal opinion.

BY MR. STOCKTON:

Q. So I must have misphrased my question. I'll go ahead and ask it again. What, if anything, in the May 15th transcript in the board's vote therein did the board find a specific bad faith conduct?

MR. DOLPHAY: Objection. Presumes facts not into evidence. The board determined and they issued a final order.

THE WITNESS: The board found bad faith.

BY MR. STOCKTON:

Q. Did the board specifically say what was bad faith?

MR. DOLPHAY: Objection. Outside the scope of the testimony that she's asked to provide, legal conclusions, not proper in the scheduling order.

BY MR. STOCKTON:

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Q. I don't believe Mr. Dolphay is instructing you not to answer, so --

A. Oh, I didn't know there was a question pending.

Q. Yeah.

MR. STOCKTON: If you could please read it back.

(Whereupon, the requested record was read.)

MR. DOLPHAY: Same objection.

THE WITNESS: Are you asking me to characterize what the board said?

BY MR. STOCKTON:

Q. I'm just merely asking based upon your review of that transcript if the board specifically found certain acts were in bad faith or not.

MR. DOLPHAY: Objection. Outside the scope of what the witness is retained for. Going into the jurisdictional issue that's already been determined by the board. Not proper under the board's order.

THE WITNESS: I'm not sure that I know how to answer that because the board found bad faith.

BY MR. STOCKTON:

Q. I'm going to hand you -- well, let's go

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ahead and back up. Your opinion in this case does not analyze any specific alleged bad faith conduct and the connection to certain fees being claimed, does it?

MR. DOLPHAY: Objection. Outside the scope. Assumes facts not into evidence. Relitigating the jurisdictional issue.

THE WITNESS: I was asked to look at the rates and the time spent.

BY MR. STOCKTON:

Q. And so you did not analyze any particular alleged bad faith conduct. Correct?

MR. DOLPHAY: Objection. Outside the scope of the witness's testimony. Outside of what's proper in the scheduling order. Relitigating jurisdictional issues which the board did not authorize you to do here today.

MR. STOCKTON: So let's go off the record if we could.

(Whereupon, a break was then taken.)

MR. STOCKTON: All right. And we are back on the record. Counsel have had conversations off the record regarding the deposition and in particular, I guess, putting a couple things on the record.

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The first is, is that conservation groups believe we are entitled to ask Ms. Laughner regarding the text of her report, what it says, what it may say incorrectly, statutes that may be incorrectly referred to, or conclusions that we may disagree with in order to challenge the credibility of the report and the opinions contained therein in order to effectively cross-examine and understand her opinions. And so questions regarding the statute, for example, come precisely from section 4 of her report regarding her conclusions on that front. Questions regarding other statutes, say 25-10-712, address section 5 of her report and her conclusions regarding applicable legal standard.

Questions regarding bad faith and what was bad faith and whether bad faith was found generally or regarding specific actions go in particular to section 7 of her report, specifically where she makes the representation that conservation groups engaged in bad faith litigation tactics, as well as other areas of section 7 of her report, as well as in section 8 of her report or the section where she covers the Plath factors.

The questions regarding bad faith tie into each of those things where she specifically discusses specific alleged acts, and we maintain that we are entitled to ask her about what those are, what the board found, and whether her report is reasonable or not for the purposes of cross-examination and examining and challenging her opinions.

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MR. DOLPHAY: The questions that were asked by counsel sought to relitigate determinations that have been made by the board of environmental review. The board of environmental review specifically made a determination as to jurisdiction here that has been taken up on interlocutory appeal and now to supervisory control to the Montana Supreme Court.

And the plaintiff's/petitioners are trying to relitigate that issue here today improperly through an expert that is relying on the determination that has already been made by the board and not what the board of environmental review requested expert testimony on, inconsistent with the record.

Likewise, the determination of bad faith, the board of environmental review specifically found that MEIC and the Sierra Club proceeded in bad faith for the purposes of harassing Westmoreland. They made that determination.

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And, again, petitioners, MEIC and Sierra Club, are seeking to improperly relitigate the issue of bad faith and harassment which the board of environmental review has already found. The board of environmental review will put into a determination to a final order. That is not what is requested of the witness.

Having said that, I intend to object to the questions but will give counsel some latitude to move forward so we can continue this deposition here today.

MR. STOCKTON: I believe the only other thing we would add to that is that we do object to speaking objections moving ahead and in the past and respectfully request that they be curtailed.

BY MR. STOCKTON:

Q. Ms. Laughner, your opinion in this case is that the hours expended by the mine and by the union in defense of the case were reasonable. Correct?

A. Yes.

Q. And it's your -- specifically your opinion that one-third of the hours expended are reasonable as attributable to the defense in defeat of claim two. Is that correct?

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A. I wouldn't state it that way.
Q. How would you state your one-third conclusion?
A. Let's see. I think it was one-third of the amount. I'm not sure it's one-third of the hours. One-third allocation.
Q. An allocation of what?
A. Of hours.
Q. So your opinion is that one-third of the hours, not the amount is reasonably attributable to the defense of --
A. I would say both.
Q. Okay. So your opinion is that it could be either way. We could take 2,787.2 hours from commencement of the case to entry of the final order and divide by three, or we could take the total dollars over that same period and divide by three. Either one in your opinion is a reasonable conclusion?
A. Whatever I said in my report.
Q. And I'm asking you here today if that is your testimony.
A. Well, you're characterizing it, so I don't know if that's all of it or not.
Q. Then fill me in on the remainder.

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A. I'm not -- I'm not sure I understand what you mean.
Q. I'm trying to understand specifically what your one-third fee allocation opinion regards. Fees or hours or both?
A. I laid it out on page 13.
Q. Okay. Then go ahead and tell us about it.
A. "Westmoreland's decision to allocate one-third of total hours to claim two with respect to fees sought from the commencement of the litigation until the board's final decision on November 4, 2025, is conservative and reasonable. Claim two was one of three claims, but it was the most fact intensive and technically demanding of the three, involving specialized issues of stream classification, groundwater hydrology, geomorphology, and groundwater modeling."
"Moreover, conservation groups requested a site inspection that was specific to claim two. This not only resulted in motions practice regarding the use of evidence from that site inspection but required counsel for Westmoreland to travel to the site and mine personnel to prepare for and accommodate the visit, a costly and time-consuming exercise. Thus a pro rata allocation of one-third

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treats all three claims equally, even though the evidence suggests that claim two consumed a disproportionate share of litigation effort due to its factual complexity, claim specific motions practice, and time consuming and expensive site visit."
Q. So looking at your first sentence on page 13, one-third of total hours, your opinion is limited to the number of hours, not the amount of fees. Correct?
A. I don't know about that.
Q. Where in your opinion regarding one-third that you just read in full do you state that the total amount of one-third as opposed to hours is stated?
A. Well, it says with respect to fees sought.
Q. So your opinion is, is that that one-third hours is reasonable and then the fees sought. So it's both? Here's what I'm trying to get at. Is it hours or is it fees or is it both? Because they're going to be potentially different numbers?
A. Well, don't take it out of context. My opinion is on page 13.
Q. And so I'm just trying to understand your opinion really. Is it your opinion that the

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reasonable fee is one-third of hours and then we multiple by a rate, or is it one-third of the total amount sought, or is it both?
A. I don't understand what you're asking.
Q. What don't you understand about it? I'm trying to figure out if your opinion is based upon the hours or the amount sought or both.
A. My opinion is on page 13.
Q. And I guess my question is, is could you please elaborate whether you're basing it on hours or amount or both?
A. I think I already answered that.
Q. It's unclear from your opinion here. Westmoreland's decision to allocate only one-third of total hours to claim two with respect to fees sought, bubble, bubble, et cetera, et cetera, is conservative and reasonable. So I'm trying to understand your conservative and reasonable conclusion.
Do we take the 2,700 or so hours and divide by 3, or do we take the total amount billed in that same time frame and divide by 3? My client is entitled to know what that amount is and what you're basing your opinion upon as reasonable and conservative.
A. All I can say is I'm sorry you don't

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understand that.
Q. So hear me out here. If we were to take 2,700 hours -- let's just talk in round numbers, okay -- and then we allocate the first third, the second third, and the third third of that time frame in time, we would -- given that the hourly rate has changed, that would actually be a different number than one-third of the total amount sought. Does that make sense?
A. What makes sense to me is what I said on page 13.
Q. And I'm trying to get to what your actual opinion is about one-third of what. Is it the first third of hours spent, is it the second third of hours spent, is it the third of the third hours spent, or is it the approximately 1.4 million in that range divided by 3?
A. I don't think your question makes any sense to me.
Q. Well, can you explain to me why it's not making sense to you, what you don't understand about it?
A. I don't know if I can explain it any better than what's on page 13.
Q. Let's just do this a different way then.

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In your opinion how many dollars is reasonable and conservative for the mine and the union to claim here between commencement of this case and entry of the final order?
A. The order, the November 4th order?
Q. Yes.
A. I would go back to Yemington's affidavit. That was reasonable to me.
Q. And what is that amount?
A. I would have to look at that.
Q. And that gets to something in your report. Your report actually does not state what the reasonable amount of fees recoverable in that time period is, does it?
A. That might yet to be determined.
Q. So let's go ahead and back up, then. Has the final order in this case been entered regarding claim two?
A. The November 4th?
Q. Yes.
A. Yes.
Q. Okay. So it's been entered. The fee petition was filed after that on November 26th. Fair?
A. I would have to look.

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Q. Reasonable to assume it was filed after the November 4th order was entered?
A. If it was properly filed.
Q. But I'm just asking about time. It was filed after the November 4th order?
A. I would have to look.
Q. Is it reasonable to conclude it was filed after?
A. Sure.
Q. Okay. And as you sit here today, we're talking about the period of fees from commencement of the case to the entry of the final order. Can you tell me the amount that in your opinion is reasonable for the mine and the union to recover in that initial period?
A. I already answered that.
Q. Do you know the exact number? Is it in your report?
A. I relied on Yemington's affidavit to find that information.
Q. Okay. I guess my question is, does your report state what that dollar amount is?
A. That's yet to be determined.
Q. So I guess my question is, your opinion is what Mr. Yemington's affidavit is?

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A. I looked at his affidavit, but my opinion is on page 13.
Q. And that's what I'm getting at. What specific dollar amount in that first phase of that litigation from commencement to entry of final order in your opinion is the reasonable amount being claimed by the mine and the union?
A. I already answered that.
Q. Where is that in your report?
A. I'm a little bit confused about what you're asking.
Q. I'm asking for what you believe is the reasonable amount of money being sought by the mine and the union from commencement of this case to the entry of the final order and where that is at in your report.
A. My opinion is that it's reasonable to allocate one-third of the total hours.
Q. Okay. So your opinion is one-third of the total hours?
A. To claim two with respect to fees sought.
Q. Okay. But your -- your opinion contains no conclusion as to the specific dollar amount you believe is reasonable?
A. I already answered that.

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Q. So where in your report is that dollar figure specified?
A. Yet to be determined.
Q. And why is it yet to be determined if all of that time has already been spent and incurred many months ago, if the fees are there and the spreadsheet is there?
A. I don't know.
Q. In your first opinion here regarding the reasonableness of the hours expended, you articulate that the case was technically complex, contained subclaims, abuses of process in discovery, motions practice, bad faith litigation tactics, and multiyear duration.
So I want to work through each of those things as we go through here.
First, the technically complex nature, how does the technically complex nature of the case relate to claim two?
A. It's an environmental issue.
Q. Anything else?
A. Well, the mischaracterizations by MEIC in the litigation and the tactics they used.
Q. And we'll get to that. But is that part of what you maintain is the technical complex nature

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of the case?
A. I'm sorry. Say that again.
Q. I'm looking specifically at your opinion about this case being technically complex, and you said it was an environmental matter. Are there any other reasons that make this case complex technically?
A. Well, that encompasses a lot of area. Usually environmental cases have a lot of detail that you got to get right.
Q. Okay. Are all environmental cases complex?
A. I would object to that question as being overbroad, but in my experience, I could say generally they're quite detailed and specific.
Q. Okay. And -- and I guess my specific question then is how -- how is claim two complex specifically as opposed to say claim one or claim three?
A. I don't know about claim one or claim three.
Q. Okay. Did you do any analysis of claim one?
A. I wasn't asked to do any.
Q. Did you do any analysis of claim three?

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A. I wasn't asked to do any.
Q. Okay. But you maintain that claim two reasonably comprised one-third of the case. Correct?
A. Yes.
Q. Even though you didn't analyze claim one or claim three at all?
A. I think you're mischaracterizing what I said.
Q. How do you know that claim two is more complex than claim one and claim three?
A. Well, I could look at the time spent, and it was apparent to me that a lot more time was spent on claim two.
Q. But you didn't look at claim one and claim three specifically. Fair?
A. A lot of briefing and a lot of attorney fees had to do with claim two.
Q. And I guess maybe I probably misphrased my question. But you didn't look at claim one nor claim three and the legal arguments regarding them?
A. I didn't analyze claim one or three.
Q. If you didn't analyze claim one or three, how do you know which time entries related to claim two or claim one or claim three?
A. I could tell from the briefing and the

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order and the time entries that a lot more time was spent on claim two.
Q. And I guess my question for you is, is if you didn't analyze claim one and claim three, how would you know which time entries related to claim two or the other two claims?
A. I think I already answered that.
Q. And I guess my question is how would you know that?
A. I looked at the time entries, the briefings, and the order.
Q. But you did not look at claims one or claim three?
A. I looked at claims one and three, but I did not analyze them.
Q. Okay. What was claim one? Do you know?
A. Something about material damage.
Q. Okay. And do you know what claim three was?
A. Climate change.
Q. Okay. And what was claim two then?
A. Stream buffer rule.
Q. Your opinion in this case is that the case was complex, but there was a number of subclaims advanced in this case. And you list a number of

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them, the first being the burden of proof was a subclaim. What -- what arguments made in the burden of proof and what motions, et cetera, underlie your opinion on that?

A. Petitioners or -- MEIC had the burden of proof, and they advanced arguments that were wrong.

Q. And what arguments were those?

A. Oh, gosh, that was laid out by -- at the summary judgment hearing, I believe, and in that briefing. MEIC had the burden to prove that DEQ got it wrong in issuing -- approving a permit.

Q. Okay. And I guess your -- you represent that that was a subclaim in the case. What do you mean by burden of proof is a subclaim in this case?

A. Well, it was -- I mean, they were arguing things that were well settled.

Q. And what was that?

A. The burden of proof.

Q. Okay. And what do you mean by the burden of proof being well settled or not? What -- what was incorrect about that in your opinion?

A. DEQ has the burden of proof -- or not DEQ. MEIC has the burden of proof.

Q. Okay. And I guess what my question is, is how did -- you state that that was a subclaim that

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was advanced by the conservation groups, and I'm trying to understand what you mean by the burden of proof as a subclaim.

A. Well, Westmoreland and DEQ had to brief it and go off and kind of correct MEIC's misrepresentations about the burden of proof.

Q. And what was -- what were MEIC's misrepresentations in your opinion?

A. Oh, gosh, it's hard to -- hard to articulate all of their reasons, but they relied on -- they didn't get the case law right.

Q. And what was that?

A. I think it was the 2023 opinion.

Q. 2023 MEIC which was a Westmoreland case?

A. I think so.

Q. Okay. And what about that?

A. I'm not sure what you mean by what about that.

Q. I guess I'm trying to understand what you maintain was incorrect. And you said it was the 2023 case, but the 2023 case came down after opening briefs were filed and response briefs were filed but before reply briefs in this case. So I'm trying to understand your argument here about this burden of proof and incorrect nature of it. I'm trying to get

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to the bottom why you believe that was incorrectly done by MEIC.

A. Well, I don't know all the ins and outs of the 2023 case, but NAPPA requires the challenger to prove DEQ got it wrong.

Q. Okay. And is that well settled law?

A. Yes.

Q. Did 2023 MEIC make any findings or conclusions regarding that, or was that an open question for the Supreme Court during the briefing in this case?

A. All along in my practice NAPPA controls.

Q. And I understand that maybe NAPPA controls, but you would agree with me that Supreme Court interpretations of NAPPA would also be controlling. Fair?

A. I think that's -- I don't -- I don't know. What you're asking me is goofy.

Q. I'm asking you whether the binding precedent in the Montana Supreme Court is controlling. It is. Correct?

A. The binding Supreme Court -- opinions of the Supreme Court have changed over the years.

Q. And so what's in place at any given time might shift a little bit. Fair? Could?

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A. NAPPA is NAPPA.

Q. Okay. But the Supreme Court's interpretations of NAPPA would control as well. Right?

A. I don't know if I would always agree with that.

Q. Okay. What is the burden of proof here that you believe MEIC improperly argued or incorrectly argued?

A. Oh, I can't remember off the top of my head.

Q. And so I guess how -- how would you say that MEIC got it wrong then?

A. It was MEIC's burden to prove that DEQ made a mistake.

Q. All right. And I guess -- but your opinion is that one of the subclaims in this case was the burden of proof, and I am trying to understand what you specifically say was -- was wrong about that or multiplied the litigation?

A. I thought I just answered that.

Q. And my question is what was wrong about it? You said it was wrong, but I'm trying to get to why you say it was wrong. Does that make sense? I'm trying to understand your why for saying that this

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was an improper subclaim brought by MEIC and the Sierra Club.
A. Everybody knows that NAPPA requires the person challenging DEQ's action has the burden of proof.
Q. Okay. And how did MEIC or Sierra Club in their briefing or arguments not do that in your opinion?
A. They had no facts and no evidence.
Q. I guess my question, though, is, is you said the burden of proof itself was a subclaim, and so I'm getting at the legal element standard of the burden. This is your opinion. What comprises that?
A. I don't understand what you're getting at at all.
Q. So let's look at page 11 of your report.
A. Uh-huh.
Q. Under the heading subclaims and abuses there.
A. Uh-huh.
Q. You say, "In addition to the complexity of the claims advanced by conservation groups, conservation groups also advanced a number of subclaims, including those concerning burden of proof."

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I'm trying to understand what subclaim and burden of proof here -- what do you mean by that? Do you know what MEIC argued the burden of proof was?
A. I can't remember at the time I wrote this. I did study it quite extensively.
Q. Okay. And this is my opportunity to ask you questions about it. Are you saying that you knew it when you wrote the report but you don't know it now?
A. MEIC was saying they didn't recognize that they had the burden of proof.
Q. Okay. So that's your argument, is that MEIC said they didn't have the burden?
A. They went round and round on the burden of proof when it was clear. They should not have been arguing about it.
Q. In your opinion. Correct? That's your opinion about it?
A. It's my opinion that there were -- was time and effort spent on arguing that. And it was kind of a rabbit hole that they brought up, and they shouldn't have.
Q. Okay. And this is my follow-up question is, sitting here today, you don't know what those specific arguments were?

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A. I don't think that's right.
Q. Then flush it out for me if you would. What were MEIC's arguments about the burden of proof that you believe were incorrect?
A. They didn't seem to think that they had the burden of proof.
Q. And that's the extent of your opinion on that front?
A. I wouldn't say that.
Q. Okay. What else is there?
A. I couldn't tell you sitting here today.
Q. Okay.
A. It's not a memory test.
Q. This is my opportunity to ask you about your conclusions, and so I'm trying to exhaust them as best I can. And so if you think of anything during the rest of this deposition, will you please let me know? Otherwise, I'll conclude we have exhausted your knowledge. Is that fair?
A. It's not fair to say you have exhausted my knowledge --
Q. On the specific questions we're asking.
A. -- as I sit here today because it's not a memory test.
Q. Any -- any other opinions regarding the

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burden of proof that MEIC and Sierra Club advocated that you thought were incorrect?
A. My general opinion is that they didn't recognize that they had the burden of proof.
Q. And we have gone through that. Is there anything else?
A. I don't think so.
MR. DOLPHAY: Objection to form, after.
BY MR. STOCKTON:
Q. Real quick I guess I want to revisit something. How much time did you spend in general numbers reviewing the materials in this case and preparing your report?
A. Full-time.
Q. Okay. But how many hours? Full-time for one day? Two weeks? You know, what was that?
A. Full-time since I agreed to work on it.
Q. And when was that?
A. Probably early July.
Q. Early July. So July 1? July 10?
A. First week in July.
Q. First week in July. So we're sitting here in the third week of August. Is that fair? Today is the 24th. Right?
A. 25th.

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Q. 25th. Okay. So you worked on this case full-time for about seven weeks. Is that fair?
A. Yes. Except for when my husband was in the hospital.
Q. Okay. So I'm just trying to get to you worked on it full-time for about seven weeks except for a defined period where your husband was in the hospital. Is that 300 hours? Doing rough math, 30 times 7, 30 times 10 hours a day? How would you -- how many hours would you conclude in general that you spent working on this matter?
A. I don't know.
Q. Okay. What is full-time for you? You said you had worked on this full-time. Is that seven hours a day? Is that 35 hours a week? What does that mean for you?
A. Many, many, many hours looking at all of the detail in the entire record.
Q. So -- but I guess my question is, is you said full-time, and I am trying to get to specifically as much as we can, you spent seven full weeks full-time on this. How many hours would you estimate it was?
A. Except when my husband was in the hospital? I haven't added it up.

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Q. And I guess my question here today is would you go ahead and roughly do the math? Is that 7 hours -- or is that 7 weeks times 35 minus a specific amount?
A. I don't know.
Q. You don't know how many hours you've spent in general?
A. I worked on it full-time.
Q. Full-time. Okay.
MR. DOLPHAY: Tyler, after this one, can we can have a break? Do you want to take lunch? What do you want to do?
MR. STOCKTON: I'm good to continue until --
MR. DOLPHAY: We've been going for about an hour. You want to -- are you going to start another line of questioning?
MR. STOCKTON: I'm in the middle of a line of questioning. I'm just -- given that we're talking about --
MR. DOLPHAY: Five minutes?
MR. STOCKTON: -- what she knows. We can take --
MR. DOLPHAY: How about we --
MR. STOCKTON: Let's exhaust this line of

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question before we take a break, though. I think there's a question pending, so --
MR. DOLPHAY: Okay. Ask the question pending and then let's talk. I'm not trying to push it back.
BY MR. STOCKTON:
Q. I'll rephrase it. Sitting here today, you reprensented you worked full-time on this since the first week of July, which is about seven weeks.
A. Except when my husband was in the hospital.
Q. Yeah. And I'm trying to avoid asking specifically how long it was. I want to be sensitive to that. That's why I'm asking you to try to tell me what you would conclude your hours were. Is that six weeks worth of work? Is that five? Is that seven times full-time. I know for me, I bill 30 to 40 hours a week generally speaking. Is that true for you? That's what I'm trying to get at. How would you do that math, Ms. Laughner?
A. Probably not more than eight hours a day.
Q. Okay. So eight hours a day, seven weeks. 7 times 5 days a week is 35 days. Right? 35 times 8 is 280 hours. Is that a reasonable estimation of where it might be?

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A. I don't know.
Q. Okay. And I guess we're sitting here today, and you've represented that it's not a memory test. But I guess you have been working on this full-time for about seven weeks.
Anything else regarding your opinion that the MEIC or Sierra Club's burden of proof arguments were incorrect beyond your conclusion that they claimed they didn't have the burden? Anything else beyond that argument?
MR. DOLPHAY: Objection. Form.
THE WITNESS: Yeah. I don't understand that. Say that again.
BY MR. STOCKTON:
Q. You worked on this for around 280 hours, in the ballpark. I won't hold you to that precise number. And you have reviewed a large number of things that are listed in your report. Right? Is that correct?
A. I reviewed a lot of documents.
Q. Okay. And I'm asking if there is any other arguments regarding the burden of proof that you believe MEIC or Sierra Club got incorrect, other than your opinion that they argued they didn't have it?

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A. They didn't recognize the right burden of proof.
Q. And that is -- that's the accepted agreement on that piece?
A. That's what I can tell you as I sit here right now.
Q. Okay.
MR. STOCKTON: We can take a break.
(Whereupon, a break was then taken.)
BY MR. STOCKTON:
Q. We're back on the record. And it is 12:48 p.m.
Ms. Laughner, we were discussing your first point or your second point in your Lodestar then, also regarding subclaims, and we had finished up talking about the subclaim titled the burden of proof. And I would like to move on to the second one, which is evidentiary scope.
On page 11 of your report, you note that the conservation groups advanced a subclaim regarding evidentiary scope. What do you mean by that and what are you basing that opinion upon?
A. Well, there was some discussion that I looked at, documents related to whether the parties

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were limited to the record or if it was under the contested case.
Q. Okay. So this evidentiary scope, as I'm understanding your testimony, whether the scope of a contested case concerns the record before DEQ or if the record is more open than that? Is that what your understanding is?
A. I think that's generally right.
Q. Okay. And in your opinion, was that a settled area of law at the time of this proceeding?
A. I think so.
Q. What do you mean by that?
A. Well, the -- in the contested case, you're not just limited to the four corners of the record at the time that DEQ made its decision.
Q. What do you base that conclusion on or that opinion on?
A. NAPPA.
Q. Okay. And where in NAPPA and in what case?
A. I don't know if I can really tell you that off the top of my head.
Q. Okay. And I guess you're aware that the 2023 MEIC decision established precedent regarding the scope in a contested case. Are you aware of

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that?
MR. DOLPHAY: Objection. Assumes facts not in evidence.
THE WITNESS: I'm sorry. Could you say that again?
BY MR. STOCKTON:
Q. So are you aware of whether or not the Montana Supreme Court in the 2023 MEIC decision rendered an opinion regarding the scope of evidence in a contested case?
A. I think that's right, but I don't know if it was determined at that time or not.
Q. And so do you know when the 2023 MEIC decision came down by the Supreme Court?
A. Do I know when did it?
Q. Uh-huh.
MR. DOLPHAY: Objection as to vagueness. I think you defined the 2023 case, but maybe you are.
THE WITNESS: Yeah. you said 2023.
MR. DOLPHAY: Just put a little color on which one.
BY MR. STOCKTON:
Q. I'm sorry. There was only one, right, one 2023 MEIC decision?
And my understanding is it came down in

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the middle of the summary judgment briefing in this case in November of 2023. Is that your understanding? Have you looked --
A. Yeah. I don't know.
Q. You don't know. Okay.
A. I get --
Q. If the Montana Supreme Court ruled regarding the evidentiary scope midway through the briefing in this matter, is it fair to infer that it was a disputed question being litigated before the Supreme Court while this case was proceeding?
A. I don't know about that because I -- my understanding in my practice is that it was not -- I mean, which was before 2023, is that it was not limited to the -- just to the -- to the record at the time DEQ decided, I think.
Q. So your practice in this area of law would you say generally ended in what year?
A. I continue to practice today.
Q. Oh, okay. But I guess maybe add some color, then, to your prior statement regarding your prior work and the scope of evidence.
Do you see what I'm getting at? What do you mean by that?
A. Well, in my practice, if it was a

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contested case, you weren't just limited to the DEQ's decision at the time. So even before 2023, as far as I'm concerned, it was pretty settled.

Q. That was your opinion, but in the AM4 decision or the 2023 MEIC decision, the Supreme Court ruled on the four corners rule. Correct?

A. That's my understanding.

Q. Okay. Let's just talk in general terms about the timing of an appeal. If the Montana Supreme Court issues a decision in November of 2023, is it fair to say that the briefing on that decision was six months to a year before that?

A. Was that a question? I'm sorry.

Q. I'm just asking about -- if the Montana Supreme Court issues a decision in November 2023, fair to say the briefing on the disputes in that case were done in the six months to a year-ish before the decision?

A. I'm trying to relate that to my practice because my practice always followed that it wasn't just limited to the four corners.

Q. Okay. And I'm moving to a little bit of a different question about the timing of a Supreme Court appeal and whether this scope of evidence was a live question during this incident case.

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So if the Montana Supreme Court rules in 2023 on an issue -- let's say it's an evidentiary scope issue -- is it fair to say that the briefing regarding that issue took place in the six months to year before the decision was issued?

A. Is it fair to say the briefing what --

Q. Okay. If you're taking -- have you ever appeared at the Montana Supreme Court?

A. No.

Q. Okay.

A. Well, not in person but written briefs.

Q. You have written briefs but not being counsel of record on any of the cases?

A. I haven't given an oral argument.

Q. Okay. Okay. If the Montana Supreme Court issues a decision in almost any case, a standard, civil or environmental type case, how long is it between briefing and the Supreme Court's decision? What's that range? I know it varies a little bit, but how long?

A. I don't know.

Q. Is it six months?

A. Yeah. I don't know.

Q. Is it a year?

A. I haven't kept track.

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Q. In your experience, how long did it take when you were up at the Supreme Court?

A. That is so rare, I really don't remember.

Q. Okay. So you don't -- are you -- would you say you really don't have the specific experience to opine about appeals at the Montana Supreme Court?

A. Yes. I would say that.

Q. Okay. And then I guess we can back up just a little bit. If you're up at the Supreme Court on a dispute, that dispute usually began at a district court or administrative and district. Right? You have to go back to the district court before the Montana Supreme Court. Is that fair?

A. Uh-huh.

Q. Okay. So if the Montana Supreme Court is ruling on the scope of evidence in November of 2023, fair to say that there was a district court opinion or decision on appeal that was being reviewed?

A. I'm sorry. I didn't hear a question. Is it fair to say --

Q. Is it fair to say that if you have a Supreme Court appeal, you're reviewing a district court decision?

A. Yes.

Q. Okay. And so if the Montana Supreme Court

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is ruling in November 2023 about the scope of evidence in a contested NAPPA case, it's reasonable to conclude that at some point in the six months to two years before there was a district court opinion about the same issue?

A. Yes. Could be.

Q. Okay. And so potentially as early as 2021 or 2022 there's a district court interpreting the scope of evidence question. Correct?

A. Yes.

Q. Okay. And so in your opinion here you argued that there was an improper subclaim to bring evidentiary scope arguments in this case. But my question for you is, how is it improper to raise it in this case if there's a dispute at the district court going up to the Montana Supreme Court at the same time?

A. Well, in my practice the Montana Supreme Court wasn't always consistent over the course of 30 years or so. And so the evidentiary scope for a NAPPA case, a contested case, always you had -- were not limited just to what was in the administrative record if it was related.

Q. And your -- in your practice and experience in this area, were you actively practicing

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in this area in 2022, 2023, 2024 while this case and the 2023 MEIC Supreme Court decision occurred?
A. Well, what comes to mind is probably a case that I litigated in 2020 where it was in front of BER, and we weren't limited to the administrative record or to the record at the time the decision was made.
Q. Okay. And that predates this matter by a few years?
A. So the Supreme Court was consistent with what happened before 2023.
Q. What did the Supreme Court -- well, let's go back. In the AM4 decision, what did the district court hold regarding the four corners rule?
A. Well, it's my recollection that they did have to stick to the administrative record.
Q. So there was a district court opinion --
A. Somewhere.
Q. -- in the AM4 decision potentially predating or around the same time as this case that said four corners rule applied. Correct?
A. Yeah.
Q. So how is it improper for --
A. Well, I don't know if that was right.
Q. You might disagree with that decision?

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A. Uh-huh.
Q. And then the Montana Supreme Court in 2023 in the MEIC decision, what did they conclude regarding the four corners rule?
A. That it was not strictly related -- I mean, I don't know -- I don't know the term exactly. But it was not strictly limited to just what was before the DEQ when they made the decision.
Q. It wasn't a wide open record, though, was it?
A. I'm not sure I know what you mean by that.
Q. The 2023 MEIC decision, the Supreme Court concluded that the four corners applied, but you could have testimony explaining parts of the four corners -- of content or evidence inside the four corners. Is that your understanding of it as well?
A. I would say I'm not an expert at it. I'm really focused on the Lodestar and the Plath factors in my opinion.
Q. I guess that's why I'm asking you because this is one of your specific opinions to support your Lodestar analysis. Right?
A. Uh-huh.
Q. You are argued that advancing evidentiary scope issues was improper?

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A. Uh-huh.
Q. But it was also a live question before the Montana Supreme Court and the district court at the same time. So how is it improper to argue the evidentiary scope when it's a disputed question being decided by the Supreme Court at the same time?
A. Well, I guess in my practice it wasn't disputed. It was the way it always was.
Q. And the law after maybe your active practice on this subject shifted as it pertained to this case and the AM4 decision?
A. I wouldn't characterize it that way, but, I mean shifted. I think the Montana Supreme Court decision was consistent with my understanding and practice before that.
Q. Have you seen the recent Valley Garden decision by the board of environmental review?
A. I remember reading about it. I don't know if I have actually seen the decision.
Q. And do you recall what the board of environmental rule -- or board of environmental review concluded regarding the application of the 2023 MEIC decision in that case?
A. I kind of -- I looked at that a little bit and it seemed to be consistent with my understanding,

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but I'm not an expert on it.
Q. You're not an expert on it, but you're rendering an opinion about MEIC and Sierra Club's arguments as being improper or incorrect?
A. Yes.
Q. Okay.
A. Because I understand that it's not limited to the administrative record at the time DEQ made its decision.
Q. So I guess your understanding under the 2023 MEIC decision, what else can come into the evidentiary record?
A. I'm not sure how to answer that, what else. Like if it was not related at all, it probably can't come in.
Q. You would agree, though, at least during the time of this case the scope of the evidentiary record was a live issue?
A. Not in my mind because of my practice.
Q. But per the district court's decision and the Supreme Court's decision that was being actively litigated. Correct?
A. Well, apparently.
Q. Your next opinion here is that MEIC brought a subclaim regarding the admissibility of

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evidence. What does that opinion mean? What documents are you relying upon? What do you mean by the admissibility of evidence arguments being incorrect here?

A. That related to Anderson's declaration and expert opinion is also related to that.

Q. Okay.

A. That's what I was thinking of.

Q. Okay. And so your opinion in that is his declaration was a subclaim regarding its admissibility?

A. Well --

Q. What do you mean by that?

A. There had to be briefing. And, you know, what I read was that the scheduling order was not adhered to, and so there had to be briefing about that. And so there was just another side issue that Westmoreland and their attorneys had to spend time and money on.

Q. In your practice, have you ever had an expert witness's testimony either, you know, limited in some way or completely limited?

A. Yes.

Q. Okay. And have you ever brought the motion to limit the other party's expert?

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A. Yes.

Q. Or get them completely thrown out?

A. Yeah.

Q. Okay. And I guess when you had your own expert limited or potentially disallowed, if that occurred, do you think it was bad faith conduct for you to proffer that opinion or put that forward?

A. I don't think I ever had an expert limited, but I brought those motions.

Q. You brought those motions?

A. Against the other side, uh-huh.

Q. But you in your practice never had an expert's testimony limited or cabined down in some way?

A. Not that I can think of.

Q. Do you think in all those instances where you filed a motion in limine or, say, objected at trial to an expert's opinion on the stand and won, that the other side was acting in bad faith?

A. Probably.

Q. You think so?

A. Yeah.

Q. Did you -- did you bring a motion for attorneys fees or claim fees for that?

A. I have not.

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Q. Okay. How many evidentiary hearings or trials have you had in your career?

A. Oh, my gosh.

Q. More than ten? More than a 100? What do you have? Range is fine.

A. I could say too many, because I usually tried to get things resolved before it got to that point.

Q. So more or less than ten?

A. More.

Q. Okay. More or less than 50?

A. More.

Q. Okay. More or less than 100?

A. Probably.

Q. Okay. Well, more or less than?

A. More.

Q. Okay. More than 150?

A. I don't know.

Q. You've had more than 150 trials or point of entry hearings?

A. I don't know.

Q. You don't know. Okay.

Your last thing here is you state that the conservation groups brought a subclaim regarding expert qualifications. What is that based upon?

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A. Well, I read -- I read the entire -- I read a lot of documents and what came to mind there were the -- I read a lot of documents, and I read about Emily Lodman's and Martin -- Martin's work that they did. They started working on this in 2017 or so and continued until 2021. And to me, they did an exhaustive review and made a very reasoned and good decision about the permit, and it seemed to me that the MEIC just took potshots at their work and at the same time did not even read all of their work and understand it.

Q. How does that connect to expert qualifications, though? Your particular opinion here is that the subclaim advanced by the conservation groups regarded expert qualifications was improper?

A. Yeah.

Q. What -- what document or where in the record did the conservation groups attack qualifications of an expert?

A. Well, Emily Lodman and Martin were experts in their field of hydrology, and it just seemed to me that they were random potshots taken by MEIC at their expertise. I mean, they were saying it's all about the stream buffer rule. They looked at that exhaustively from -- and came up with an opinion in

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2021.
Q. Okay. And so is challenging the permit, then, challenging the qualifications of DEQ experts?
A. Yes. I think so, because DEQ had good people working really hard on that decision, and it to me it really -- MEIC was trying to make them look bad when they actually did really good work, and MEIC hadn't even looked at the complete record.
Q. In your opinion is any challenge to a DEQ permit permissible?
A. Yes.
Q. But just not this one, wasn't permissible?
A. Well, I read the record and it seemed to me from the get-go that that challenge should not have been made, and the reason is, is because the whole issue about the water table was just totally baseless.
Q. And we'll get to, I guess, your arguments on that, but can you explain how you think the water table argument was baseless? What specific reasons?
A. That at first when the claim was brought, it was fashioned as a legal -- a legal question, and then it kind of got twisted into, oh, the water table is -- the stream is below the water table. That was to me completely made up and not based on the record.

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Then it switched back to that, oh, it's just now a legal claim. So it seemed like a wild goose chase. It didn't seem like they were -- it's obvious the MEIC had not looked at the -- had the same records that Emily Lodman and the other parties did.
Q. So in your opinion then bad faith began --
A. At the get-go.
Q. -- at the get-go. Your opinion is there was bad faith from the beginning to end regarding claim care?
A. Yes.
MR. DOLPHAY: Subject to the objections retrospectively, rule, questions of law, board jurisdiction. Keep going.
BY MR. STOCKTON:
Q. So it's your opinion that it was bad faith from the very beginning, at the outset?
A. Yes.
MR. DOLPHAY: Objection.
THE WITNESS: Sorry.
MR. DOLPHAY: You're fine.
BY MR. STOCKTON:
Q. Go ahead and define for me, then, what was claim two?

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A. Well, it switched during the course of the litigation as far as I could tell. What exhibit number are we on? 8?
(Whereupon, Exhibit 8 was marked for identification.)
BY MR. STOCKTON:
Q. I'm handing you what I have marked as Exhibit 8. Are you familiar with this document, Ms. Laughner?
A. I have seen it.
Q. Okay. And this is Sierra Club and MEIC's amended notice of appeal. Correct?
A. Looks like it.
Q. Okay. And it's your understanding that claim two was laid out in paragraph 8. Is that fair?
A. You know, I really relied on the findings of facts and the conclusions of law from the -- from BER.
Q. Okay. So did you review and rely on the actual pleading by conservation groups?
A. I reviewed it.
Q. But you didn't rely upon it in your understanding of claim two?
A. I relied on the findings of fact and the conclusions of law.

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Q. Would you disagree that the petitioner or plaintiff is the master of their own complaint and pleading?
A. I don't know. I guess so.
Q. Okay. So if we wanted to understand conservation groups' legal claim, we would look at conservation groups' own pleading, not the concluding document at the end. Fair?
A. I wouldn't. I would look at the conclusions of law of the -- and the findings of fact of the hearing officer and the BER.
Q. Okay. So you would not look at the complaint or pleading to understand what a plaintiff or a petitioner brought?
A. I did look at it, but I relied on the findings of facts and conclusions of law.
Q. Go ahead and turn to paragraph 8, if you would, in Exhibit 8. Go ahead and take a second to review it, and then I've got some questions for you about it.
A. Okay.
Q. Okay. So this is where claim two comes from. It concerns the buffer zone rule and intermittent versus ephemeral stream. Correct? Correct?

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A. Paragraph 8?
Q. Uh-huh.
A. Concerns a buffer zone rule, is that what you said? Okay.
Q. Yeah. And intermittent versus ephemeral stream in the last sentence?
A. Uh-huh.
Q. So the second sentence there articulates that a claim that DEQ is denying protections of the buffer zone rule to this particular section of stream, correct, on the basis that it does not contain alluvium, even though no such requirement exists in the buffer zone rule?
That right there is a legal formulation of the claim saying that DEQ applied an incorrect analysis because the rule doesn't contain an alluvium analysis. Fair?
A. So are you saying that DEQ denies protection because the rule did not -- well, my understanding is that -- that the first argument that they advanced is that DEQ didn't -- they're trying to frame it as a legal issue, is that DEQ didn't apply the right standard of it.
Q. Okay. And then the last sentence here is that the CHIA and permit application acknowledge that

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this stream reach is sourced by groundwater and therefore not ephemeral but intermittent or perennial. And that would be a factual argument saying, hey, look at this, you said it was sourced by groundwater, and therefore by definition, it's not ephemeral but intermittent or perennial.
That's a factual articulation of the claim?
A. Well, it has legal definitions in there.
Q. But it's grounded in a -- you said it was sourced by groundwater which then has implications in whether it's ephemeral or intermittent or perennial.
A. Yeah. I don't agree with that statement at all.
Q. I get you might not agree with it. I'm just asking you, that's what it says. It's an argument that because of this particular fact regarding groundwater, certain definitions of the stream apply, right, whether it's ephemeral or intermittent or perennial? That's what this sentence is saying.
A. So it says the CHIA and permit application say it's not ephemeral. That's what it says. But ephemeral and intermittent and perennial have legal definitions.

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Q. Okay. And I guess --
A. So maybe it's a mixed question of fact and law.
Q. But it's got a factual element to that one. Right?
A. Okay.
Q. The first one is -- the first sentence or sentence before is the legal formulation when DEQ didn't apply the right requirements?
A. Uh-huh.
Q. Then the second is this factual legal argument. Correct?
A. Well, it's a mixed question of fact and law.
Q. Okay. But there's two different formulations there by DEQ, connected but different?
A. I don't know if I would characterize it that way, but I understand what you're saying.
Q. Okay. Do you know if an ephemeral stream can be sourced by groundwater?
MR. DOLPHAY: Objection. Legal conclusion.
THE WITNESS: An ephemeral stream is above the water table -- or ephemeral, I mean, ephemeral is not a stream.

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BY MR. STOCKTON:
Q. So can it be sourced by groundwater then?
A. Well, what do you mean by groundwater? Do you mean like an unsaturated groundwater?
Q. So we're talking about whether or not seeps, for example. If it's sourced by seeps, can it be ephemeral or not?
A. Yes.
Q. So it could be either? It could or it could not?
MR. DOLPHAY: Objection. Form. Legal conclusion.
THE WITNESS: Yeah. I mean, you are asking for a legal conclusion, but a coulee is ephemeral.
BY MR. STOCKTON:
Q. That's your opinion?
A. It's fact.
MR. DOLPHAY: Same objection. Go ahead.
THE WITNESS: It's fact.
BY MR. STOCKTON:
Q. And I guess my last question on this, ephemeral streams can have groundwater flow in them?
MR. DOLPHAY: Same objection.
THE WITNESS: Yeah. Well, when you say

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it's not an ephemeral stream and when you say groundwater, that means certain things to me.
BY MR. STOCKTON:
Q. Right. Okay. So if there is groundwater that potentially kicks it into intermittent or perennial?
MR. DOLPHAY: Same objection.
THE WITNESS: Not at all.
BY MR. STOCKTON:
Q. Not at all? Can you explain?
A. Well, if it's ephemeral, it means that it's not -- the water table is never above. Okay. Is it like a coulee, a dry coulee? And when you use the term groundwater it's kind of loose.
Q. Okay. In your opinion this is kind of a loose or gray area?
A. Not at all.
Q. No?
A. No.
Q. Okay.
A. The definition of ephemeral is very specific.
Q. Okay. Then what is the definition of an ephemeral stream?
MR. DOLPHAY: Objection. Legal

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conclusion. Outside the witness's scope.
THE WITNESS: Well, it's defined in the statute.
BY MR. STOCKTON:
Q. So we would look to that for the definition?
A. It's always above the water table.
Q. You raise as a particular example of the objection to the intervention in this case. What's the basis for your opinion on that?
A. Pretty settled that or well settled that the permittee has a right to intervene. There's really no argument about that.
Q. Okay. And did you take a look at conservation groups' opposition brief?
A. Yes.
Q. Okay. What were the arguments raised there?
MR. DOLPHAY: Objection. Overbreadth.
THE WITNESS: You know, I'm not sure I remember it very accurately.
BY MR. STOCKTON:
Q. Okay. What's your best recollection?
A. That DEQ could do it all, represent Westmoreland and the Union.

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Q. And do you recall the basis for that argument and where that argument came from?
A. I don't.
Q. Okay. Would it surprise you that it was arguments made by Holland & Hart in a different case?
MR. DOLPHAY: Objection. Assumes facts not in evidence.
THE WITNESS: I don't know if that would surprise me or not.
BY MR. STOCKTON:
Q. Okay. And you recall that a conservation groups' opposition was -- I'm summarizing -- but, hey, board of environmental review, if you're going to do this in a different case, you need to do the same here, and if you're not, then here's the limitations we would put on the intervention. Do you recall that?
A. Are you talking about this -- these briefs?
Q. The brief in this case, yes.
A. Yeah. What I recall is that MEIC wanted to put some limitations on that, and that did not -- they were not restrictive. Other than Westmoreland and the union were going to be treated as the same.
Q. So some restrictions were imposed being

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that the union and the mine were treating this kind of one party together?
A. That's what I recall.
Q. Okay. So some restrictions were --
A. Yeah. Not one party but one -- yeah.
Q. And I guess in MEIC's opposition brief did they cite legal authority for their argument?
A. I can't remember. Probably.
Q. And if they did, is it bad faith to rely upon certain legal authority and make those arguments?
MR. DOLPHAY: Objection. Outside the witness's scope. Legal conclusion.
THE WITNESS: I think it is bad faith.
BY MR. STOCKTON:
Q. Okay. It's bad faith to make an argument relying upon legal authorities?
A. Depends on what you -- what legal authority you rely on, I guess.
Q. In here, it's your opinion that it was improper for MEIC and Sierra Club to file this opposition to their intervention, but it contained legal authority. How is it --
A. Yeah. I do think it was improper for them to file, to oppose it.

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Q. Even though they relied on legal authority and raised arguments based upon that authority?
A. Yeah, I do.
Q. Do you know what that legal authority was?
MR. DOLPHAY: Objection. Overbreadth.
THE WITNESS: Not as I sit here.
BY MR. STOCKTON:
Q. Okay. Is that legal authority or why it was improper to rely on that legal authority stated in your report?
A. Is the legal authority stated in my report? I don't think so.
Q. Did you research that issue particularly to come to your conclusion?
A. I didn't independently.
Q. Your next opinion here is that conservation groups abused the discovery process by forwarding a baseless spoliation claim. Do you recall that opinion?
A. Yes.
Q. Okay. What is your understanding of a client or an entity in litigation's duty to preserve evidence?
A. Oh, gosh.
MR. DOLPHAY: Objection to the provision.

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THE WITNESS: Well, my experience, once you know it's an issue, primarily more electronic than anything, is that you need to preserve the evidence for litigation.
BY MR. STOCKTON:
Q. If the thing, be it electronic, be it the crashed car, be it the stream flow or the stream bed or what not, whatever the thing at issue is needs to be preserved if the litigation concerns or relates to it. Fair?
A. I don't know about the relates.
Q. This is from the Walden versus Yellowstone Electric case, 2021 MT 123 quote. "A party has a duty to preserve evidence when a party in control knows or reasonably should know that existing items or information may be relevant to pending or reasonably foreseeable litigation, end quote.
So I'm reading a quote from a case, but is that consistent with your general understanding of the duty to preserve --
A. Yes.
Q. Okay. Have you in your entire career as a lawyer working with clients had a situation where one of your clients perhaps needed to work on or deal with a piece of evidence that was relevant in a case?

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So say it's like a railroad track that was at issue, but you needed to replace the railroad ties or something. Have you ever encountered a situation like that in your career?
A. I don't think so.
Q. Okay. You have never encountered a situation where there was a crashed car that needed to be -- needed to be repaired but also was evidence?
A. I -- my practice has been environmental law, and so I haven't had that situation.
Q. Okay. Given your experience, I guess, if that were to occur in your career, what would you have done?
A. I don't know. I haven't really thought about that.
Q. Would it have been reasonable to, you know, perhaps write a letter to opposing counsel that says this thing is at issue in this case, we need to do work on it, that work is going to be completed in 60 days, let us know if you would like to inspect or look at it before? Would that be a reasonable approach in your opinion?
MR. DOLPHAY: Objection to form.
THE WITNESS: I don't know. I would file a motion for preliminary injunction.

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BY MR. STOCKTON:
Q. How would the other side know that the work was going to be done, though, if the opposing counsel never told them?
A. I guess I'm having trouble with this because it's such a hypothetical that I haven't really ever encountered.
Q. Did you ever have a client need to do work on, like -- in your environmental work like on a site that was at issue in litigation?
A. I can't really think of an example like that.
Q. So I mean, maybe it's fair to say you would defer to maybe the opinion of lawyers or judges who have encountered those situations as to either the right thing to do in that situation?
A. I don't know. I have met a lot of lawyers and judges that have been wrong, so I don't know.
Q. Do you think sending a letter and informing opposing counsel is a reasonable step?
MR. DOLPHAY: Objection to form.
THE WITNESS: That's a lot of -- I think it might be fact, depends on the facts in the situation and the parties.
BY MR. STOCKTON:

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Q. Is it fair to say that maybe you're not an expert on spoliation issues then?
A. I would say that I am an expert on being an attorney and discovery matters, and I have had spoliation come up that I've had to deal with.
Q. Okay. But you haven't had a situation come up where your client was working on the thing at issue in the litigation and you needed to address that?
A. I can't really relate to that scenario.
Q. Okay. You wouldn't be an expert being able to opine about that situation?
A. Oh, I wouldn't say that. I could.
Q. Okay. So would it be reasonable to then ask or inform opposing counsel that work was going to be done on the item at issue in the case?
MR. DOLPHAY: Objection. Outside the scope, going back to issues already found by the BER regarding spoliation.
THE WITNESS: I think it depends on the situation and the facts.
BY MR. STOCKTON:
Q. And I guess I'm getting at your opinion in this case though here. Right? So your opinion is that the spoliation claim it baseless. Correct?

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That's your opinion?
A. Yes.
Q. Okay. And so I'm asking you about a lawyer client's duty when the item at issue in the litigation is to be preserved or not and how you address that if it needs to be worked on or changed in some way. But you haven't actually encountered that situation in your practice?
MR. DOLPHAY: Objection. Outside the scope.
THE WITNESS: So what I would say is it depends on the facts at the time.
BY MR. STOCKTON:
Q. Yeah. And I think my question is, is in your professional experience, you have never encountered a situation where a client needed to work or do work on a certain thing that was at issue in the litigation and had to address that with opposing counsel?
A. Had to what?
Q. Address that with opposing counsel.
MR. DOLPHAY: Objection. Form.
THE WITNESS: I can't recall a specific situation like a car crash right now that -- so I'm having a hard time understanding how that would apply

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to an environmental case.
BY MR. STOCKTON:
Q. Well, what's your understanding of the couple sentences in footnote regarding spoliation in the opening brief by conservation groups? What's your understanding of the argument there?
MR. DOLPHAY: Objection. Going back to law of the case that's been determined by the board. Question of law.
You can answer.
BY MR. STOCKTON:
Q. So this is the thing. Your opinion here is that the spoliation claim is baseless. And I think I'm entitled to ask your opinion as to why it was baseless. That's specifically in your report on page 11?
A. Yes.
Q. So what I'm asking here is what's your understanding of conservation groups' spoliation argument?
A. What I focused on was when the parties were out -- or one -- the primary thing I focused on, the parties were out during the inspection and that issue came up and Dr. Lodman explained to the MEIC, the environmental groups, what was going on. And it

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seemed to me that they just totally ignored her explanation or tried to understand what was going on and went ahead anyway with their argument.
Q. Okay. So your -- your basis for saying it's baseless was that Dr. Lodman, Emily Lodman, explained what had happened during the site inspection, and then that should have been accepted and not challenged? Is that what you're saying? I want to understand that.
MR. DOLPHAY: Objection. Question of law. Issues determined by the board.
THE WITNESS: That was a -- to me, very important that DEQ tried to communicate information to MEIC, and in the findings of facts and conclusions of law, there was -- I mean, there was no issue about it.
BY MR. STOCKTON:
Q. Okay. So I guess I want to revisit, make sure I understand. Your opinion is that the spoliation claim was baseless. Correct?
A. Yes.
Q. Okay. And the basis for your conclusion that it was baseless is that Dr. Lodman explained what had happened during the site inspection and that therefore making the spoliation arguments in summary

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judgment was unfounded?
MR. DOLPHAY: Objection --
THE WITNESS: I'm a little bit confused about your question. What I could to say was that it seems reasonable to me that anybody would accept her explanation, and I mean, she's independently saying what happened, giving the facts, and it was disregarded. So I would say that was primarily but maybe not entirely the reason why spoliation -- the hearing examiner found the -- there was nothing to the spoliation claim.
BY MR. STOCKTON:
Q. Okay. I guess point number one, you think the conservation group should have --
A. Paid attention to the facts.
Q. -- paid attention to Dr. Lodman's explanation?
Is there anything else that undergirds your opinion that the spoliation claim was baseless as stated on page 11 of your expert report?
A. Yes. I read the pleadings and came to my own determination about that.
Q. And how do the pleadings which we have already looked at make the spoliation claim baseless?
A. Well, I don't know if it's the pleadings,

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but I heard the arguments and decided for myself. And I mean, it -- it was the same conclusion that the hearing examiner came to.
Q. So by arguments, what arguments do you mean?
A. Whatever -- whatever were in the briefs on that issue.
Q. Okay. And do you recall what conservation groups' argument was?
A. I don't.
Q. So your conclusion today is that it was baseless, but you can't articulate what the conservation groups' argument was?
A. Well, that's not exactly right.
Q. Okay. Then fill me in.
A. I don't understand -- I don't remember the timing of this, but -- and I forget the exact argument of the conservation group, but it seemed reasonable to me that the timing of the sediment control measures did not jive with what -- with what MEIC was arguing, and there were legitimate reasons and approval for that work to be done.
Q. And in your opinion -- in your opinion there was -- in your opinion, there was no need for the mine or the union to let conservation groups know

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that the work, the sediment control work, was being done?
MR. DOLPHAY: Objection. Question of law. Outside of the scope of the witness's retention.
THE WITNESS: I doubt they had a duty to do that.
BY MR. STOCKTON:
Q. Okay. Fair to say that this case at least concerned in part wetland 4-2/2?
I know we colloquially we say 4-2-2, but I'm spelling it out for the court reporter.
Fair to say that this case concerned wetland 4-2/2?
A. I don't know if it did or not.
Q. Why don't you go ahead and turn to Exhibit 8 that we have in front of you.
A. 8.
Q. Go ahead and turn with me to paragraph 8. Does the conservation groups' amended notice of appeal refer to the perennial reach of Lee Coulee at wetland 4-2/2?
A. Oh, I will have to read this. Let's see. We're looking at paragraph 8?
Q. Uh-huh.
A. Okay. What's your question?

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Q. My question was, is it fair to say that this case at least concerned wetland 4-2/2?
A. This claim two?
Q. Uh-huh.
A. That is MEIC's characterization of it.
Q. And so MEIC and Sierra Club's pleading in this case says that its arguments in paragraph 8 relate to wetland 4-2/2?
A. That's what it says there.
Q. Okay. So the mine and the union were on notice that that particular wetland was at least relevant or related to this case?
A. I don't know.
Q. So you don't know if it's fair to say that this claim relates to wetland 4-2/2?
A. Well, this doesn't really make a lot of sense to me as I'm reading this.
Q. Does it refer to wetland 4-2/2?
A. Yeah. But what does wetland 4-2/2 have to do with an ephemeral -- with this stream?
Q. The allegation here is, quote, DEQ denies protections of the buffer zone rule, ARM 17.24.651 sub 1, to the intermittent to perennial reach of Lee Coulee at wetland 4-2/2. Then the sentence finishes out laying out the argument.

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And then the next sentence says -- argues that this stream which is sourced by groundwater per the CHIA and permit and therefore not ephemeral, but intermittent or perennial.

So my question for you is, is it fair to say that this claim related to wetland 4-2/2?

A. I wouldn't say so because it seemed like the buffer zone rule covers a stream.

Q. But the argument here is that wetland 4-2/2 was at issue.

MR. DOLPHAY: Objection. Asked and answered.

THE WITNESS: They're different.

BY MR. STOCKTON:

Q. If you were defense counsel in this case, would you say that this claim relates to wetland 4-2/2? Would you tell your client it relates to a different wetland?

A. I would say this claim does not affect a wetland.

Q. In conservation groups' spoliation arguments on summary judgment, did they cite law and did they cite fact to support their agreement?

I know you might disagree with it, but did they cite it?

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A. Did they cite it where?

Q. In their spoliation argument made in the summary judgment.

MR. DOLPHAY: Objection. Outside the scope of the witness's retention.

THE WITNESS: I'm trying to remember if the spoliation argument was in the summary judgment filing or was it before that. I can't remember specifically.

BY MR. STOCKTON:

Q. You can't remember?

A. Huh-uh.

Q. What's your understanding of a baseless argument? So we're still talking about your opinion that the spoliation argument was baseless.

What makes something baseless?

MR. DOLPHAY: Objection. Question of law.

THE WITNESS: Well, the finding -- the hearing officer found there was no fact -- no facts and no expert related to MEIC's claim.

BY MR. STOCKTON:

Q. I think maybe you're misunderstanding my question again. So your opinion here on page 11 is that the conservation groups abused the discovery process by forwarding a baseless spoliation claim.

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My question is, what's your criteria for determining if something is baseless or not?

A. Just generally?

Q. Yeah.

MR. DOLPHAY: Question of law. Objection.

THE WITNESS: There's no fact or evidence or expert to support the challenge.

BY MR. STOCKTON:

Q. Okay. And so in MEIC's spoliation arguments, did they cite factual things? For example, did the mine or the union deny that the blading in and around wetland 4-2/2 had occurred?

A. I don't think that they denied it. The work was done.

Q. Right. So -- so -- so blading had occurred on the wetland referenced in conservation groups' pleading. Correct?

A. I think so.

Q. And then were conservation groups told by the mine or the union that the blading work was going to be done before it was done?

A. I don't know.

Q. Okay. And did conservation groups cite law in support of their spoliation arguments in the arguments they made?

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A. I don't remember.

Q. Then you don't remember what -- where those arguments were made either?

A. When or what?

Q. In what documents or --

A. Yeah. I can't remember.

Q. Did you research the authority cited by conservation groups in their spoliation argument?

A. No. I just went by -- I focused mostly on the findings of fact and conclusions of law.

MR. DOLPHAY: We've been going over an hour. Do you have a --

MR. STOCKTON: I need to finish up this line of questions if that's fair.

MR. DOLPHAY: Yeah. That's fair. But like ten -- five, ten minutes?

MR. STOCKTON: Sure.

BY MR. STOCKTON:

Q. Your opinion is that Dr. Lodman credibly explained what had happened and conservation groups should have accepted that of what she said?

A. They should not have ignored those facts.

Q. And are you aware specifically of what Dr. Lodman said in her declaration during all of this?

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A. I read that, yeah.
Q. Okay. Do you recall when the blading occurred of wetland 4-2/2?
A. I remember reading it was before it became an issue.
Q. If I represent to you the mine said it happened November or December 2022, would you have any reason to dispute that? I can show you the declaration if you want to see it.
A. December -- sure. Okay.
Q. Okay. And does that refresh your recollection about when the blading in or around wetland 4-2/2 pond 300 occurred?
A. Yes.
Q. What date was that?
A. Late December or late 2022.
Q. November or December of 2022. Correct?
A. Uh-huh.
Q. Okay. Do you recall that one of the arguments raised by the mine and the union was that conservation groups were on notice about the work being done? Do you recall that argument being made?
A. I don't.
(Whereupon, Exhibit 9 was marked for identification.)

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BY MR. STOCKTON:
Q. I'm going to hand you what I have marked as Exhibit 9. And this is a statement of undisputed -- joint supplemental statement of undisputed facts by both the DEQ and the mine and the union.
I would like you to turn to the end of that. The paragraph 47 -- 46 and 47. Do you see paragraphs 46 and 47?
A. Yeah. Okay.
Q. Okay. And in here the argument being made by the mine and the union and DEQ is that certain strippage of the drainageway occurred. That's paragraph 46. Approximately 22 percent was stripped of the wetland.
And then 47 says MEIC and Sierra Club were well aware of this upcoming activity, which was projected in the annual mine report on April 2023. Do you see that?
A. Uh-huh.
Q. So the argument here is that MEIC and Sierra Club knew about it. Is that fair? Do you see that in paragraph 47 of Exhibit 9?
MR. DOLPHAY: Objection. Outside the witness's scope of retention.
THE WITNESS: I don't know. That's what

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it says, that they were aware. Is that what you're asking me?
BY MR. STOCKTON:
Q. Yeah.
A. Yeah.
Q. They were aware because of what? What does the mine and the union argue put conservation groups on notice, what was it that put them on notice?
A. An annual mine report.
Q. And when was that annual mine report dated?
A. In '23.
Q. What date in '23? What month?
A. April.
Q. How can MEIC and Sierra Club be aware of strippage done in November, December 2022 when it was supposedly published in April of 2023?
A. I don't know.
Q. The citation in paragraph 47 for that statement about awareness --
A. Uh-huh.
Q. -- is derived from Exhibit FF, Ms. Lodman's -- Dr. Lodman's, I believe, declaration, which I'm handing to you as Exhibit 10.

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(Whereupon, Exhibit 10 was marked for identification.)
BY MR. STOCKTON:
Q. Looking at Exhibit 9, what paragraph in Dr. Lodman's declaration supports the mine and the union's argument?
A. Let's see.
Q. So if you look at Exhibit 9, that statement by the mine?
A. Uh-huh.
Q. They say that the MEIC and Sierra Club's awareness of the upcoming activity was projected in the annual mine report on April 2023. Right?
A. Uh-huh.
Q. Then they support that with a citation to paragraph 6 of Exhibit FF, Lodman declaration. What does Exhibit 6 of the Lodman declaration say?
A. You mean paragraph 6?
Q. Paragraph 6.
A. Let's see. I'm not really getting what your point is.
Q. Dr. Lodman's declaration here doesn't say that MEIC and Sierra Club were on notice of the strippage, does it?
A. I don't know. I paid attention to what

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Dr. Lodman told the parties when they were out at the inspection.

Q. And I'm asking a slightly different question, which is, does the statement that conservation groups were aware of the strippage come from Emily Lodman's declaration? I'm asking if that is in her declaration in paragraph 6 as cited.

A. Yeah. I don't know.

Q. It doesn't look like it's there, does it?

A. I don't know. I mean --

Q. Have you read it just now?

A. Well, I'm kind of a methodical person. It would take me awhile for it to sink in.

Q. Looking at paragraph 6, does Ms. Lodman say the conservation groups were on notice regarding the strippage?

A. What I get out of it is that she refers to the annual mine report.

Q. Okay. And that came out in April of 2023. Right?

A. Uh-huh.

Q. How could that put the conservation groups on notice regarding strippage done in November, December 2022, approximately three to four months earlier?

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A. Yeah. I don't know.

Q. It doesn't, does it?

A. I don't know.

MR. DOLPHAY: All right. Give me a break? Five minutes. I got to go to the bathroom.

MR. STOCKTON: Two more questions.

MR. DOLPHAY: All right.

BY MR. STOCKTON:

Q. Did the DE -- did the conservation groups have to take the DEQ's position regarding preservation of evidence as true or meeting the legal standard for spoliation?

MR. DOLPHAY: Question of law. Objection.

THE WITNESS: I don't think DEQ had a position on spoliation.

BY MR. STOCKTON:

Q. I guess my question though was, did the conservation group have to take Dr. Lodman's explanation as to the strippage as true and therefore not bring the spoliation argument? Are they under a legal requirement to do that?

A. Well, they had to have some basis for it.

Q. And I guess there's no dispute that there was strippage done. Correct?

A. You know, I don't really -- I don't use

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that word strippage, so I don't really know what -- is that a term of art?

Q. Blading of the wetland 4-2/2 regarding mitigation of control measures.

A. It was apparently done. I don't know when.

Q. You looked at the declaration earlier. It was done in November, December 2022. Right?

A. Oh, in Batie's declaration, yeah.

Q. And that was after the notice of appeal in this case was filed?

A. Let's see. When was that? 2022. Right.

Q. Regarding wetland 4-2/2. Correct? It references it?

A. I don't know. Does he?

Q. The notice of appeal references wetland 4-2/2?

A. I thought you meant Batie. Batie does not reference it.

Q. Batie references pond 300. Right?

A. Yeah.

Q. Which is in the middle of wetland 4-2/2. But I guess my question for you is, it's still your opinion that it was a baseless spoliation claim?

A. Yes.

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Q. Even though the notice of appeal stated a concern of wetland 4-2/2 and the conservation groups per the documents you reviewed could not have known by the annual mine report in April of 2023 that the strippage had been done four months earlier. Still your opinion that it was a baseless claim?

A. Yes.

MR. STOCKTON: Okay. We can take a break.

MR. DOLPHAY: Thanks.

(Whereupon, a break was then taken.)

BY MR. STOCKTON:

Q. We are back on the record. It is 2:24. Ms. Laughner, we just wrapped up discussing your conclusion that the spoliation claim was baseless. The next area I would like to transition to is your examination of the fee entries regarding the spoliation claim.

Okay. So your expert opinion here is that Westmoreland was forced to incur significant legal fees and costs as it related to the spoliation claim. That's on pages 11 and 12 of your opinion. That's your opinion. Correct?

A. Yeah. I think so. In addition to other things.

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Q. Well, in addition to the expert declaration, but I want to cover the first thing first, which is what we were talking about which is the spoliation claim.
A. Okay.
Q. Your opinion is that that caused significant fees and costs to be incurred in responding to that?
A. Yeah. I don't know about the word "significant." I might have said that.
Q. Let's turn to page 12 at the top. "Caused Westmoreland to incur significant legal fees and costs in identifying, briefing, and responding to such conduct."
A. All those things, uh-huh.
Q. So beginning with the spoliation claim. What analysis of the billing entries did you complete to conclude that the time spent in responding to the spoliation claim was significant?
A. Well, did I say significant specifically for that one, or is it lumped together?
Q. It's lumped together, but I'm talking about them one at a time here.
A. Okay.
Q. Is it your opinion that responding to the

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spoliation claim is not significant?
A. Well, no. It was a significant -- it was significiant but --
Q. Okay.
A. -- all of them together were significant at a time.
Q. Okay. But like you just said, your opinion is that the spoliation one was significant?
A. Yes.
Q. I'm going to keep this in the book for now so it's easier for us to work with because these are big documents. But I'm going to mark Exhibit 11 as the spreadsheet of fees attached to Mr. Yemington's affidavit. It's the first tab in this book.
(Whereupon, Exhibit 11 was marked for identification.)
THE WITNESS: Can I --
MR. STOCKTON: If you want one, it's right here.
MR. DOLPHAY: I appreciate that. Let's -- can we move some of these exhibits over so we don't --
THE WITNESS: You want them right here?
MR. DOLPHAY: Give them to the court reporter unless you're going to go through those

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again.
THE WITNESS: Here's two twos.
(Whereupon, a discussion was held outside the record.)
BY MR. STOCKTON:
Q. You reviewed the fee entries associated with the spoliation claim. Correct?
A. Yes.
Q. And how many fee entries did you identify were related to responding to it?
A. I don't remember.
Q. Would it be less than five? More than five?
A. I don't remember.
Q. Was it a lot or a little?
A. It's a really thick document, so I don't remember.
Q. But your testimony is that you did review the fees regarding and relating to the spoliation response by Westmoreland. Correct?
A. That's my -- best of my recollection.
Q. Okay. And what -- what fees were those?
A. Are you talking about attorney fees?
Q. What entries related to those?
MR. DOLPHAY: Objection. Overbreadth.

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THE WITNESS: I can't tell you without going through this whole thing.
BY MR. STOCKTON:
Q. Okay. And fair to say you did not in your expert report identify what fee entries were associated with responding to the spoliation claim?
A. I didn't think that was important.
Q. You didn't think it was important?
A. Uh-huh.
Q. But it was your opinion that it was significant?
A. Well, lumped together they're significant.
Q. But --
A. All of these different things.
Q. But I guess your earlier testimony just a couple of minutes ago was that responding to the spoliation claim was significant. So I'm getting to what work you put in to identifying the fees so you could reach the conclusion that it was significant. So how many hours did you spend reviewing this Exhibit 11?
A. I don't know how many hours I spent reviewing it. I reviewed it three times.
Q. Okay. And did you keep notes to yourself about entries related to the spoliation claims so you

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could later conclude they were substantial or significant?
A. No.
Q. Okay. So then what is the basis of your opinion that the response to the spoliation claim was a significant undertaking?
A. Well, there was quite a bit of briefing about it. And it was in the issue in the summary judgment, and there was discussion about it in the findings of facts and conclusions of law.
Q. Okay. So I guess let's go ahead and work through those specific entries. Why don't you turn the entry for a Mr. Adams on September 5th, 2023, the far left-hand column.
A. What page is that on? 25?
Q. Page 34, September 5th, 2023, by Mr. Erik Adams, sitting in about the middle of the page. Do you see that time entry?
A. September 5th? Is that what you said? Oh, that's '23? Is it '23 or --
Q. 2023.
A. Oh, I thought you said '25. Okay.
Q. In that fee entry, this is the first one that I can find regarding responding to the spoliation argument. Mr. Erik Adams represents that

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he billed four hours doing what -- what do you see in that time entry? What was he doing for those four hours?
A. Reviewed the CHIA, began reviewing spoliation.
Q. Okay. So there's more than that, though. The first thing he did was he analyzed whether a supplemental declaration should be appended to the response. Right?
A. Okay.
Q. Then he said he reviewed the CHIA to see if DEQ considers the factors MEIC alleges they failed to consider. Right?
A. Uh-huh.
Q. And the next thing he did, he began reviewing precedent discussing spoiliation to argue no spoliation occurred here. Right?
A. Uh-huh.
Q. Three different tasks. Right?
A. Uh-huh.
Q. Correct? Fair to say that was a block billed entry?
A. No. I wouldn't say that.
Q. Can you tell me how much time he spent on each specific thing?

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A. He spent four hours on that day doing that research.
Q. For just the spoliation?
A. Could be.
Q. But how much time did he spend working on the supplemental -- determining whether a supplemental declaration should be appended?
A. It doesn't say.
Q. Okay. It doesn't say how long he spent reviewing the CHIA to see if these factors were failed to be considered. Right? It doesn't say that? Does it say how long he spent doing that?
A. We don't know.
Q. And then the last entry is that he began looking at precedent regarding spoliation. Right?
A. Yes.
Q. We don't know how long he did that either?
A. Took him four hours to do those four things.
Q. Okay. They're different things. Right?
A. I don't know if they're related or not.
Q. Does the CHIA and factors relate to the spoliation argument?
A. Could.
Q. How so?

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A. Well, spoliation -- I mean, we were talking about the -- the whole issue is the stream buffer rule so they're all related to me.
Q. So the spoliation concerned the stream buffer rule?
A. Well, isn't that what you guys are saying?
Q. I guess my question is, is the spoliation argument concerned certain blading done at wetland 4-2/2. The claim concerned whether DEQ appropriately considered certain legal factors or whether DEQ appropriately concluded that the Lee Coulee at 4-2/2 was ephemeral and not intermittent or a perennial stream. So I'm having a hard time seeing how all three of these entries concerned spoliation.
A. Oh, I see them related.
Q. In your opinion, all four hours were spent working on spoliation-related things?
A. They could be.
Q. We can't know, can we?
A. Because it's related to this -- your argument on the stream buffer rule.
Q. So the spoliation argument is related to the stream buffer rule?
A. I think so.
Q. Okay. It's unclear what Mr. Adams spent

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four hours -- how he allocated his time to each of these three tasks?

MR. DOLPHAY: Objection. Asked and answered.

THE WITNESS: I think it looks like a pretty good detailed description.

BY MR. STOCKTON:

Q. It doesn't say, though, what he did with each of these three things?

A. You mean how much time?

Q. Uh-huh.

A. Like he didn't spend .5 on one thing or the other? Is that what you're trying to say?

Q. Right.

A. Yeah. Okay.

Q. He didn't break this into three time entries that totaled four hours, and he didn't say in his description for each of the three things like one hour, two hours, one hour. Right?

A. He did not do that.

Q. Okay. So this is the first -- this is four hours of work at the high end regarding spoliation. Okay? Fair?

A. Is that a question?

Q. Yeah.

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A. Okay. Yeah. Sure.

Q. Let's look to the next reference to spoliation. This is on 9/7 by Mr. Adams where he spent 2.2 hours. Do you see that time entry?

A. Uh-huh.

Q. Can you go ahead and read that description -- I'll read it out loud. Quote, continue spoliation research; meet internally to determine whether to request an extension and request a declaration from the client detailing which portions of Lee Coulee were bladed, end quote.

Is it possible to know how long this internal meeting took compared to the time Mr. Adams spent researching or discussing a declaration?

A. Looks to me like they are all related and it took 2.2 hours.

Q. So you would say an extension request is related to the spoliation issue?

A. Well, yes.

Q. How do you know that?

A. That is just my view because there -- it took 2.2 hours.

Q. So because it took 2.2 hours, it was all related even though the description doesn't say that?

A. That's what I would conclude.

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Q. Okay. So 2.2 hours at the max there. Let's turn to 9/15, which is the next entry regarding spoliation. This, again, is Mr. Adams with 2.5 hours. And he says there, quote, finish draft of buffer zone, spoliation, and standing sections of the response brief; begin adding citations, end quote.

Can you tell me from that description how much time Mr. Adams spent working on the standing section of the brief versus the spoliation or buffer zone sections?

A. I don't think so.

Q. So at least some portion of this is unrelated to spoliation in any way. Fair?

A. It's hard to guess. Maybe in his mind it was related. I don't know.

Q. Do you see another time entry that day where he broke up his work?

A. Are you referring to 9/19?

Q. No, 9/15, that same day. Any other entries by Mr. Adams where he broke out the work he did that day?

A. Yeah. There's only one entry on 9/15.

Q. So he block billed together standing stuff with other issues, citation work. We can't tell what amount of time was spent on what?

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A. I wouldn't call it that way.

Q. You would say this is not block billed?

A. Right.

Q. Is standing a separate issue from spoliation?

A. I don't know what he was thinking. Maybe in his mind they were related.

Q. You don't know that, though?

A. I don't.

Q. You're aware that conservation groups won the standing argument which was brought by Westmoreland and the mine now in summary judgment. Correct?

A. Right.

Q. So if spoliation arguments were lost and standing argument was won, those are pretty separate issues. Fair?

A. I don't know as I sit here. They could be related.

Q. But you don't know?

A. Oh, I didn't believe that was a question.

Q. You don't know if it was related or not?

A. I don't.

Q. The last entry in these billing records that reference spoliation is on January 23rd, 2025.

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This is page 47. It's an entry by Mr. Yemington for 5.8 hours on January 23rd, 2025.
A. Oh, wait. Sorry. January -- what page is that on?
Q. 47.
A. January 23rd, '25. Okay. Uh-huh. For how many hours?
Q. 5.8.
A. Okay.
Q. That's the only entry by Mr. Yemington that day. Correct?
A. Yes.
Q. Okay. And it looks like he said, quote, continue drafting AM5 proposed FOFCOLs; pull and review MEIC spoliation argument; update FOFCOLs with response to same, end quote.
Did I read that right?
A. Yes.
Q. Okay. So Mr. Yemington that day spent 5.8 hours working on the FOFCOLs with some of that being related to spoliation and updating the FOFCOLs regarding it. Right? It would be duplicate if he had -- since he references updating and drafting the FOFCOLs twice in there.
Do you know what Mr. Yemington was

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drafting in the first phrase "continued drafting AM5 proposed FOFCOLs"?
A. He was drafting the FOFCOLs.
Q. Okay. But do you know what specific sections there?
A. Which ones? No.
Q. No? He says in the next two clauses that some of that drafting was regarding the spoliation arguments made. Correct?
A. He doesn't say some. What do you mean? Pull and review.
Q. So he spent some time reviewing the spoliation arguments made?
A. Uh-huh.
Q. Then he updated the FOFCOLs with response to same?
A. Um-hum.
Q. Okay. So whatever he was drafting in the first clause, it would be duplicative to enter the second clause regarding updating the same?
A. Yeah, I doubt that.
Q. You think he spent 5.8 hours drafting the spoliation portion of the FOFCOLs?
A. Well, he said pull and review MEIC spoliation argument.

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Q. Okay. Okay. And so --
A. He could have done that for five hours.
Q. Are you aware of how long the argument was in the opening brief regarding spoliation?
A. I don't remember.
Q. I'm going to hand you what I have marked as Exhibit 12.
(Whereupon, Exhibit 12 was marked for identification.)
BY MR. STOCKTON:
Q. This document is titled petitioner's brief in support of motion for summary judgment. I will direct you to -- I will direct you to page 18.
Actually, let me amend that slightly, give me a second here.
Page 18, starting on page 17, though, the conservation groups said at the bottom, quote, DEQ may not be permitted to rely on any argument about alluvium because WRM, with DEQ's approval, bulldozed the majority of this reach without notifying the conservation groups before the groups were permitted to visit the site precluding them from observing the presence or absence of alluvium in the majority of the reach.
Citation. This destruction of and failure

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to preserve evidence was spoliation -- footnote 6, and I'll get to that in a second. WRM and DEQ may not be permitted to benefit from their unlawful actions. Citation to Montana Code Annotated 1-3-208.
Then footnote 6 cites the Montana State University Bozeman case, the Spotted Horse case, and the sentence, quote, WRM's and DEQ's spoliation alone should resolve this claim; the appropriate sanction for spoliation is a finding that DEQ violated the buffer zone rule by not protecting this reach."
Are you aware of any additional argument made by conservation groups in their opening brief regarding spoliation?
A. I'm not sure I understand the question.
Q. Are you a --
A. Are you saying that this is the only place they mention spoliation?
Q. In their opening brief, this is the extent of the spoliation argument.
A. Okay.
Q. Is it reasonable to spend 5.8 hours summarizing this and perhaps what might be in the reply brief?
A. Absolutely.
Q. An entire day's work or three-quarters of

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a day's work to summarize three sentences in a footnote?
And the 5.8 hours here is significant in your opinion?
MR. DOLPHAY: Objection. Compound question. Asked and answered.
THE WITNESS: Well, I mean, I think it's a significant issue.
BY MR. STOCKTON:
Q. Significant issue. Would you have taken 5.8 hours to summarize these arguments?
A. Well, I don't know about that. But does he say summarize?
Q. Pull and review MEIC's spoliation argument, update FOFCOLs with response to same.
A. Yeah. Well, I mean generally you can't, I can't, and courts have said that they can't second-guess, you know, a counsel's -- there's actually three cases that I can think of -- where you don't, the Ninth Circuit has said you can't second-guess professional judgment. That was cited in the AM4 case in the opinion and briefing and also in the Held case, so I'm not really in a position to second-guess.
Q. But your opinion is that the legal fees

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here incurred were reasonable, and your opinion is that 5.8 hours on this one issue is reasonable?
A. Yes.
Q. Okay. If we were to add all this together, and I guess first question, are you aware of any additional entries regarding spoliation in the time entries?
MR. DOLPHAY: Objection. Overbreadth.
THE WITNESS: I don't know if I can answer that off the top of my head.
BY MR. STOCKTON:
Q. Okay. Your opinion is they're significant, and these are the only entries referencing spoliation I was able to find.
Let's go ahead and add them up. 9/5/2023 by Mr. Adams was at most four hours. You and I disagreed a little bit on whether it was block billed, but let's just take the total number, 4 hours. On 9/7 he billed 2.2.
On 9/15 Mr. Adams billed 2.5. And then a year and a half later, Mr. Yemington spent 5.8 hours on January 23rd at most.
If we add those together, do you know how much that was?
A. I didn't add it up.

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Q. Okay. Let's add it up. 4 plus 2.2 is 6.2. 6.2 plus 2.5 is 8.7. And 8.7 plus 5.8 is 14.5 hours. Do you have any reason to dispute my math?
A. No.
Q. I'm a lawyer, so you can dispute it if you want.
In your opinion, 14.5 hours at the absolute max on spoliation as referenced in the time entries is a significant amount of legal fees?
A. Yeah. I think it is. I mean, that adds up. And that may not have been all of the time that -- I don't know. Maybe when in reviewing like the findings of facts and the conclusions of law of the hearing officer, I mean, he had spoliation paragraphs in there. They had to review all of that. So I think it's significant.
Q. If the mine and the union don't, or -- and -- or their lawyers don't specifically reference what they're doing in a time entry such that we can know later when they're trying to impose those fees, how is it fair if we can't identify the work done say on spoliation?
A. We can identify the work on spoliation and I think when you're looking at reasonableness and the Plath factors and the Lodestar, I mean you don't

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flyspeck every little entry.
Q. And I'm asking you, I guess, is it reasonable to conclude that these entries were significant?
A. Yes.
Q. Okay. And you have identified no additional entries that you can recall today regarding spoliation?
A. Not as I sit here, other than, you know, as related to the findings of facts and conclusions of law, of -- you know, after reviewing both parties and also the hearing officer's and the board's adoption of those findings and conclusions.
Q. I'll go ahead and represent to you that the mine and the union's findings of fact, conclusions of law on spoliation, totaled paragraph 47 to 54. If I have that I accurately, that's seven paragraphs. Fair?
A. Okay.
Q. Is it reasonable for Mr. Yemington to have spent 5.8 hours reviewing the arguments and drafting seven paragraphs?
A. I think so. I could have done that.
Q. Would you have passed fees like that along from an associate working for you on a case?

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A. It depends.
Q. Would you have done that in this case?
A. I can't second guess what -- I can't second guess that.
Q. So you're saying you won't second guess it or -- because your opinion is that the fees incurred here were reasonable and significant, and I am asking you about this particular opinion of yours.
If you were sitting in the reviewing managing attorney role, would you have passed them along?
A. I'm not sure I understand your question. Do I think this was reasonable, yes, I do.
Q. And by this, you're referencing all of the fees in this case?
A. Yes.
Q. Every single one of them in your opinion is reasonable --
A. Yes.
Q. There's not a single one that you would say that should removed?
A. Well, as, you know, as you evaluate it with the Lodestar and the Plath factors, I would say that the fees were reasonable.
Q. Okay. And I guess a slightly different

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question which is, in your review of every single one of these fee entries, your opinion is every single one of them is reasonable?
A. Yeah. I took a very close look at them.
Q. Not a single one was improperly block billed, improperly vague, excessive in any way in your opinion?
MR. DOLPHAY: Objection. Asked and answered.
THE WITNESS: Well, I don't know what you mean by that. But to me that they were -- it was sufficient detail in order to recover them under MSUMRA.
BY MR. STOCKTON:
Q. And I guess maybe I'm misstating my question. Forgive me.
In your review of all of these fee entries, there was not a single one that you deemed was excessive, improper, improperly block billed, too vague, that you would have said, eh, that should not go along to the client or be passed along here?
A. When you say improperly block billed or vague, I don't know what your standard is for that. But as far as I'm concerned, they did a good job describing in detail what was required to recover --

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to get paid first of all from Westmoreland. And to recover.
Q. And I guess I'll ask it one last time. Are there any fees in this that you say should not been considered reasonable, any fee entries in this entire case?
A. No. I think they're all reasonable.
Q. Your second portion of your opinion regarding significant legal expenses incurred regarded the motion to strike and the Anderson declaration. Right? This is that second piece of your opinion on pages 11 and 12. Correct?
A. Well, my opinions are at the end. My opinions are on pages 26 and 27. But are you breaking that down?
Q. On page 11 and 12, so we just got done talking about your opinion regarding the baseless spoliation claim in your opinion --
A. Uh-huh.
Q. -- and this undisclosed evidence, and those you conclude at the end of the paragraph on page 12, caused Westmoreland to incur significant legal fees and costs. Correct?
A. Are you talking about the motion practice page?

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Q. No. It's right before that.
A. Oh.
Q. Paragraph -- beginning on page 11 and concluding at the top of 12?
A. Uh-huh.
Q. Do you see that?
We covered the spoliation side of that, but your other argument in that paragraph was that the conservation groups improperly relied upon undisclosed evidence, and that at the end of the paragraph you conclude, you argue caused Westmoreland to incur significant legal fees and costs?
A. Uh-huh.
Q. Okay. I want to transition to that.
A. Okay.
Q. Let's turn to the -- real quick, I guess. Did you analyze the entries specifically related to the motion to strike?
A. What I did was I had the docket sheet and I looked at the entries and I compared what was going on at the same time.
Q. Okay. And how many hours was spent on the motion to strike? Did you do that?
A. I couldn't tell you off the top of my head.

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Q. Did you do that analysis?
A. No. I generally looked at them as required by the Lodestar and Plath factors.
Q. Let's work through a few of these. Let's turn to page 34 of the fee entries on August 29th, 2023.
A. Page 24?
Q. 34.
A. Oh. Okay.
Q. And this is the first entry that I can find that references the motion to strike the Anderson declaration, and it's a Miss Sarah Bordelon, 1.5 hours. And then in that, she says, she, quote, review draft language on burden circulated by S.R. Yemington regarding MSUMRA contested case; review notes from J.L. Coberly regarding review of MEIC's statement of undisputed facts; videoconference with Samuel King and S.R. Yemington regarding coordination on responsive facts for MSUMRA contested case summary judgment, motion to strike Anderson declaration, and responses to MEIC's motion for summary judgment; follow up with litigation team regarding drafting plan for same."
Did I miss anything in there?
A. I don't think so.

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Q. Of that 1.5 hours, how much was spent regarding the motion to strike the Anderson declaration? Can you tell me from the fee entry?
A. Some time within 1.5 hours.
Q. But not the full time?
A. Probably not.
Q. We can't know, can we?
A. I don't know.
Q. Can you provide a reasonably certain calculation of how much of that fee entry related to the motion to strike Mr. Anderson's declaration?
A. I think a lot of work went into that. But I can't tell you how much of it it was.
Q. Let's turn to Mr. Yemington's entry for that same day, a couple lines down.
Mr. Yemington on August 29th, 2023 spent 6.7 hours doing, quote, continue drafting motion for summary judgment response briefs; attend to standing and evidentiary scope arguments; attend to correspondence regarding the same; conference with S.C. Bordelon and counsel for DEQ regarding motion to strike and opposition to motion for summary judgment briefing."
Did I get that right?
A. Uh-huh. Yes.

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Q. How much of the 6.7 hours that Mr. Yemington billed that day related to the motion to strike?
A. I don't know.
Q. We can't tell from the fee entry, can we?
A. Could be the entire amount. I don't know.
Q. Was the motion to strike inside the summary judgment motion?
A. Let's see.
Q. It was a separate motion, wasn't it?
A. Well, let's see. It's my recollection that the summary judgment -- MEIC summary judgment had a bunch of stuff in there about Anderson.
Q. But I guess my specific question on the motion to strike, we can't tell how much was spent on the motion to strike versus responding to summary judgment versus standing arguments versus evidentiary scope arguments, regarding e-mails about all of that, we can't parse that out based on this fee entry, can we?
A. They could be all related.
Q. Do you think the standing argument is related to Mr. Anderson's declaration?
A. I don't know.
Q. So we can't know --

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A. I don't.
Q. -- what Mr. Yemington was doing for what period of time on August 29th, 2023, can we?
A. I don't know.
Q. Let's turn to 9/7/2023, Mr. Yemington's time entry that day. It's on the next page at the top.
Mr. Yemington spent 5.5 hours on September 7th, 2023, working on, quote, attend to motion to strike; attend to correspondence regarding the same; begin drafting the same; review MEIC disclosures and discovery responses to support the same; conference with S.C. Bordelon regarding motion for summary judgment response and SDF; attend weekly coal conference to discuss matter status and path forward." Did I read that right?
A. Yes.
Q. I guess my first question is what does attending to something mean? Have you ever used that in your billing entries?
A. Sure.
Q. And what is it?
A. Work on.
Q. Okay. Is it drafting? Is it thinking about? Is it researching? We can't know, can we?

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A. Could be all those things.
Q. But we don't know?
A. Working on it, uh-huh.
Q. The weekly coal conference, how is that related to the Anderson motion to strike?
A. I don't know.
Q. We can't tell what Mr. Yemington in these 5.5 hours was doing regarding the motion to strike, nor the -- compared to the coal conference call and path forward?
A. All seems to be related to the defense.
Q. Okay. So it's related to the defense, but its whole case, right? But you couldn't tell me specifically what things here were related to Mr. Anderson, can you?
A. Well, that's not the standard. The point is not to flyspeck all these entries and second guess their professional judgment. I reviewed this in response -- I was asked to review this, the reasonableness using -- and I thought using the Plath factors and the Lodestar was how Montana courts do it.
Q. In your opinion this is not a block bill, and it's all related to the same thing and you can tell that from the billing entry?

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A. I think he did a nice job detailing what work was conducted in that 5.5 hours. I think it's a good description.
Q. How could we know the connection between when you state in your expert report was improper conduct and the time spent in this entry on 9/7/2023?
A. Say that again.
Q. How can we know the connection between the Anderson issue, which you identified as improper in your expert report, and what time Mr. Yemington spent on 9/7/2023?
Do we know what was said in the coal conference call?
A. I'm not sure I know what you're asking me. Why would it be important to know exactly how much time is spent? What was important to me is was it reasonable, was the amount of time reasonable?
Q. And you think 5.5 hours here is reasonably related to claim two?
A. I don't know if I'm saying that. I'm just saying that the time spent and the detail is reasonable.
Q. Let's go over to page 37 and let's go to Ms. Bordelon's time entry at the top there. September 29th, 2023. Do you see where I'm at?

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A. Uh-huh, yes.
Q. Ms. Bordelon spent 1.2 hours that day. Quote, telephone conference with Samuel King (DEQ) and S.R. Yemington regarding approaches on response briefs, support in factual documents, and motion to strike;" and then a long redaction. Did I read that correctly?
A. Yes.
Q. Do you know what is behind that redaction?
A. No.
Q. Were you provided fee billing entries that were redacted or not?
A. No.
Q. So the ones you received were not redacted?
A. I received just like this.
Q. Just like this, with redactions in it?
A. Uh-huh.
Q. So you don't know what is behind that redaction. Right?
A. Well, when I was looking at the docket sheet, sometimes I could figure it out.
Q. Okay. You were inferring, but you can't know for sure?
A. Right. Right.

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Q. Okay. So I guess my question for you is how much of this time entry related to the motion to strike and how much related to, say, the undisclosed redacted portion? We can't know that, can we?
A. Sorry. Lost my focus. Say that again.
Q. How much time -- we can't know how much time was spent on the Anderson motion to strike, say, versus the redacted time entry, can we?
A. No.
Q. When someone puts in the time entry, the phrase "path forward," what does that mean?
A. Are you looking at a specific one here?
Q. No. It's replete throughout the time entries, but if you want to look at one for example on page 38, the time entry at the bottom, Mr. Yemington on October 16th spent 2.2 hours, quote, attend a motion for summary judgment response brief and motion to strike; attend to correspondence regarding the same; conference with Todd Briggs and S.C. Bordelon regarding Batie declaration and path forward, end quote.
A. Oh.
Q. What does path forward mean?
A. Well, I don't know what he means exactly but that is something I have used quite, you know,

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commonly. It just has to do with strategy and how -- what tasks, list of tasks that you need to do regarding whatever brief or motion that was pending or coming up with. I have used path forward, been paid for.

Q. But from here we can't know particularly what the path forward relates to?

A. Well, we can't know, but we could look at the docket sheet and see what he was working on.

Q. So if someone says path forward on this date, we could look at the docket sheet and it generally regarded that?

A. To me path forward is looking at the strategy and talking about what tasks need to be accomplished.

Q. That's not stated in this fee entry, is it? You're inferring that. Correct?

A. It's a pretty common thing to do.

Q. In your opinion the time spent to write the motion to strike Mr. Anderson's declaration was reasonably incurred and in your opinion unnecessary because conservation groups should not have proffered it. Is that a fair summary of your opinion on that -- that issue?

A. If they wanted his testimony, they should

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have disclosed it according to the scheduling order.

Q. Okay. And that's your opinion. I get that.

A. And it's the hearing officer's opinion. He found that in the findings of facts and the conclusions of law.

Q. And I guess my question for you, though, is, did you review the motion to strike and the -- and the statements made in it?

A. Yes.

Q. Okay. And when you are quoting depositions, for example, and you omit phrases relating, say, a particular time or a caveat the deponent is making, do you insert an ellipses to indicate something was omitted from the quote or do you -- are you comfortable with quoting sworn testimony without putting an ellipses in?

MR. DOLPHAY: Objection. Outside the scope of the witness's retention.

THE WITNESS: Could you give me an example?

BY MR. STOCKTON:

Q. Let's go ahead and look through it.

(Whereupon, Exhibit 12a was marked for identification.)

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BY MR. STOCKTON:

Q. I'm handing what I have marked as Exhibit 12. Am I right?

THE REPORTER: Yes.

BY MR. STOCKTON:

Q. And this document is titled brief in support of motion to strike the declaration of Bruce Anderson. Correct?

A. Yes.

Q. Okay. Go ahead and turn with me to page 18 of the motion. There's a paragraph at the bottom there that begins with "perhaps most alarming."

Mr. Anderson's declaration directly contradicts his sworn deposition testimony. Despite conceding at deposition that the drainage housing wetland 4-2/2 is likely not intermittent, not sourced by springs and/or seeps, and "in all probability" above the local water table. Mr. Anderson's declaration revisits these questions and takes a position directly at odds with his sworn testimony, end quote.

Did I read that -- those two sentences correctly?

A. Yes.

Q. Okay. And then after that, there is a

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citation to Mr. Anderson's deposition transcript at lines 176:2 to page 179:2, but then a quote is put in the parenthetical. Do you see that?

A. Uh-huh.

Q. Okay. And that quote put in says, I did not -- quote, I did not see any springs or seeps while I was there. Those are primary indicators of a groundwater table that's above the adjoining terrain, and I didn't see that. So it tells me, in all probability, the groundwater table was probably not above the elevation of the channel, end quote. And quote, it certainly made me question my assumptions about the intermittent status of the channel, end quote. Did I read that correctly?

A. Yes.

Q. So that right there is a quoted representation as to what Mr. Anderson stated in his declaration. Right?

MR. DOLPHAY: Objection. Outside the scope of the witness. The witness is here to testify regarding everything else in the present case.

BY MR. STOCKTON:

Q. And your opinion in this case, Ms. Laughner, is that the time and fees spent in the motion to strike Mr. Anderson, was reasonable and

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necessarily incurred and should be assessed against the conservation groups. Correct?
A. Yes.
Q. Okay. And I just read from that exact motion that you contend the fees for should be assessed. Correct?
A. Getting a little bit weary. I think so.
Q. Okay. I'm handing you what -- motion to strike.
A. This is the -- okay.
Q. I'm handing you what I have marked as Exhibit 13, which is an excerpt of Mr. Anderson's deposition.
(Whereupon, Exhibit 13 was marked for identification.)
BY MR. STOCKTON:
Q. Did you read this in your review of this case?
A. Let's see. Did I? I think so. I don't think I read the declaration because it was already -- the hearing officer had already struck it.
Q. Okay. Well, let's -- I don't want to spend -- just all I want to do is focus in on this quote from Westmoreland's brief. And so turn with me to the third page of that declaration excerpt to page

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176. And if you look, beginning at --
A. Wait -- oh, you mean the deposition?
Q. Yes, please.
A. Uh-huh.
Q. If you look at --
A. What page?
Q. Page 176. If you look down on page 19 or line 19?
A. Line -- 176 -- 19. Uh-huh.
Q. It begins with, so it tells me, and I would like for you to go ahead --
A. Wait, wait, wait. Let me find it. Okay. I found it.
Q. Yep. So go ahead and turn with me back to the prior exhibit where that quote is in the brief.
A. Uh-huh.
Q. The second line up at the end from the bottom. So it tells me. Do you see that?
A. Yeah.
Q. I'm going to go ahead and read from the brief, and I would like for you to follow along in the actual deposition transcript.
A. Okay.
Q. Okay? I'll read from the brief.
A. Okay.

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Q. "So it tells me, in all probability that groundwater table was probably not above the elevation of the channel, end quote.
A. Uh-huh.
Q. Was there a portion left out of the mine's brief from the deposition?
MR. DOLPHAY: Objection. Outside the scope of the witness's testimony, relitigating issues of bad faith, and harassment.
THE WITNESS: Looks the same to me.
BY MR. STOCKTON:
Q. If you look at page 176 of the deposition.
A. Uh-huh.
Q. Line 20 -- or 19, "so it tells me when I was there", and the phrase quote when I was there" is not in the quote in the brief.
MR. DOLPHAY: Same objection.
BY MR. STOCKTON:
Q. Do you see that?
A. I'm not quite sure what you're getting at because on page 18 it says while I was there.
Q. That was a prior sentence, this is a later sentence. Right? So at the bottom that last sentence, so it tells me -- it starts on line 19 of the deposition. "So it tells me when I was there

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that", and if you look at the brief it says, quote, so it tells me, in all probability."
MR. DOLPHAY: Same objection.
BY MR. STOCKTON:
Q. Correct?
A. Okay.
Q. So is it your opinion that the conservation groups should be required to cover the fees regarding briefing containing a material alteration of deposition testimony?
MR. DOLPHAY: Same objection, plus assumes facts not in evidence. Mischaracterizes the testimony or the document.
THE WITNESS: Yeah. I would say that you're mischaracterizing it.
BY MR. STOCKTON:
Q. Did I read the quote wrong?
A. Well, I mean, it's very clear he's talking about when he was out there in both documents to me. And I do think it's fair to recover fees for that.
Q. Okay. Would you have put an ellipses in that quote to indicate the omitted phrase?
MR. DOLPHAY: Same objection.
THE WITNESS: I would try to be accurate.
BY MR. STOCKTON:

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Q. You would have put an ellipses in?
MR. DOLPHAY: Same objection.
THE WITNESS: I don't think that's misleading at all.
BY MR. STOCKTON:
Q. I guess maybe that's miss -- I had a poorly worded question, but would you have put an ellipses in to indicate the removed language?
A. I don't know. I can't second-guess that.
Q. In your own work, would you have done that if you were writing this?
A. I would try to be accurate.
Q. And I guess if you would have mistakenly drafted that quote in a brief, you yourself, then you later came to learn that you had not drafted it accurately either with an ellipses or adding the words in, what would you have done in later briefing regarding acknowledging that or fixing that? Would you have changed it going forward?
MR. DOLPHAY: Objection. Same objection. Outside the scope.
THE WITNESS: I would try to make it accurate.
BY MR. STOCKTON:
Q. Would you have stated in briefing to the

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tribunal that the prior briefing had been incorrect and maybe drop it in a footnote and note that you were correcting the record in later briefing?
MR. DOLPHAY: Same objection.
THE WITNESS: I don't know. I would -- depends on if it really mattered, I guess, because both of these documents say while I was out there. I would not mislead the tribunal like MEIC has.
BY MR. STOCKTON:
Q. You would have corrected the quote, though?
MR. DOLPHAY: Same objection.
THE WITNESS: Same answer.
BY MR. STOCKTON:
Q. Transitioning to the next part of your expert report regarding motions practice, this is on page 13.
MR. DOLPHAY: Is this a -- we've been going for an hour, Mr. Stockton. Is this a new topic?
MR. STOCKTON: What was that, Matt?
MR. DOLPHAY: We've been going for an hour. Is this a new topic?
MR. STOCKTON: It's a new topic. We can take five minutes.

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MR. DOLPHAY: Thank you.
MR. STOCKTON: Yep. Going off the record.
(Whereupon, a break was then taken.)
BY MR. STOCKTON:
Q. All right. Ms. Laughner, I'm moving to page 12 of your expert report titled motions practice.
Your opinion here is that Westmoreland --
A. Wait, wait. Let me find it.
ZOOM TECHNICIAN: Could we get the sound back on, please?
MR. DOLPHAY: We're back on now.
ZOOM TECHNICIAN: Thank you.
(Whereupon, a discussion was held outside the record.)
BY MR. STOCKTON:
Q. Turning to page 12 of your report, Ms. Laughner, titled motions practice here.
Your opinion is that Westmoreland was compelled to engage in and respond to extensive motions practice, and that you conclude is generally a -- conservation groups have repeatedly multipled the proceeding and required Westmoreland to expend considerable time and effort responding to motions,

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briefings, and hearings. That's your concluding opinion for this section on the top of page 13. Is that correct?
A. Yes.
Q. Okay. And I want to work through a few of these. So the first thing, at the top of page 12 there you referenced motions for protective orders. Did you review both of those motions for protective orders?
A. Yes.
Q. And were those filed by conservation groups or were they filed by Westmoreland and the mine?
A. Let's see. I'm trying to remember. A motion for protective order for the inspection was filed by the mine.
Q. Okay. And then there's a second protective order or ruling regarding a motion for protective order. Do you recall that one?
A. I'm trying to think.
A. Big docket.
Q. Okay.
A. Let's see. Refresh my memory.
Q. We'll get to it in a second. Let's start with the first one. But both of them were not

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brought by the conservation groups? If you want to look at the orders we can, but my overarching initial question is, how did the conservation groups multiply this proceeding regarding these two motions for protective orders, if they were brought by the mine not by conservation groups?

A. Well, Westmoreland was and the union was forced to file a motion for protective order.

Q. And so you think because they were -- the conservation groups requested the site inspection?

A. Right.

Q. That's what made it improper?

A. Yes.

Q. Okay. Even though the hearing examiner here explicitly allowed the site inspection to go ahead?

A. Right.

Q. And so it was improper even though ordered to proceed by the hearing examiner?

A. Right. Well, it was improper to -- it was improper to -- I mean, it was worthwhile for Westmoreland to resist the site inspection.

Q. But this is not in -- this is not an instance where the conservation groups multiplied the proceedings with a motion?

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A. Oh, yeah, they did.

Q. This protective order was not filed by conservation groups?

A. Right.

Q. Or motion for protective order, I should say?

A. Right.

Q. So they did not multiply the proceedings by filing this motion. Correct?

A. Westmoreland had to file it to protect themselves.

Q. And the hearing examiner permitted it to go ahead by order?

A. Right. With certain conditions.

Q. Okay. And so I guess my question, though, is, your expert opinion here says on page 12 that motions practice, Westmoreland was compelled to engage in needless motions practice because of conservation groups' work. And I guess I'm trying to understand how conservation groups can be responsible for the mines on motions.

MR. DOLPHAY: Objection. Misstates the statement on page 12.

THE WITNESS: I don't see the distinction you're making because Westmoreland was forced to

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protect themself and seek a protective order which the hearing officer did not grant but put on conditions.

BY MR. STOCKTON:

Q. But the site inspection was ordered to proceed ahead. Correct?

A. With conditions, right. So it took time and money to file that motion.

Q. What about the site inspection was improper, if it was ordered here?

A. Well, for all the reasons that Westmoreland put in their brief.

Q. Okay. Your opinion is what Westmoreland said in their brief is your opinion?

A. It was legitimate in my view.

Q. Did you come to any independent conclusion or analysis of that?

A. Yes.

Q. Did you disagree in any way with Westmoreland's arguments or 100 percent agreed with them?

MR. DOLPHAY: Objection. Outside the scope.

THE WITNESS: Yeah, I don't remember the specifics.

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MR. STOCKTON: What exhibit are we on?

THE REPORTER: 14.

BY MR. STOCKTON:

Q. In your opinion, was the site inspection bad faith?

MR. DOLPHAY: Objection. Outside the scope. Board has already determined bad faith and harassment per the board order.

(Whereupon, Exhibit 14 was marked for identification.)

BY MR. STOCKTON:

Q. On page 13 of your expert report, Ms. Laughner, you make the statement as explained above, conservation groups also engaged in procedural abuses and gamemanship that increased the burden on Westmoreland's counsel. That's under your heading regarding bad faith litigation tactics.

So my questions regarding bad faith are directly tied to Ms. Laughner's opinions regarding the same. I'll just go ahead and make that clear on the record.

We'll return to my question here. Exhibit 14 I put in front of you, was it -- was it in bad faith to seek a site inspection in this case?

A. Yes. I stand by what I put in my opinion.

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This whole challenge was bad faith.
Q. In Exhibit 14 -- well, I guess maybe let's refer to that. This entire proceeding was bad faith is what you said. Right?
A. Right.
Q. So is it your opinion that claims one and three were bad faith as well?
MR. DOLPHAY: Objection. Outside the scope as to the other claims.
THE WITNESS: That's what the hearing officer found or not -- let's see. That's what the board found.
BY MR. STOCKTON:
Q. It's your opinion that the board concluded conservation groups entire litigation of claims one, two, and three were done in bad faith?
A. Are you asking me about the board or the hearing officer?
Q. Your testimony was just that the board examiner or the board, not the --
A. Yeah. The board found bad faith.
Q. And your opinion though was that this entire proceeding was in bad faith?
A. Correct.
Q. Including claims one and three.

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MR. DOLPHAY: Same objection onto the other claims.
THE WITNESS: Let's see. I didn't study one and three.
BY MR. STOCKTON:
Q. So your conclusion is that this entire proceeding was in bad faith, should be corrected maybe to narrow that down? Yes?
A. No, I think the entire proceeding was in bad faith.
MR. DOLPHAY: Objection on the other claims as to be outside the scope.
BY MR. STOCKTON:
Q. I've handed you Exhibit 14, which is the hearing examiner's order regarding motion for protective order here. And I just wanted to put it in the record here and ask you, your understanding is that the site inspection was ordered to proceed as requested by MEIC and Sierra Club with certain restrictions put in place. Correct?
A. That's my recollection.
Q. And it's your opinion in this case that it was bad faith for the conservation groups to ask for something that the hearing examiner granted?
MR. DOLPHAY: Objection as to outside the scope.
THE WITNESS: That's a little bit confusing to me. Your question is.
BY MR. STOCKTON:
Q. Your opinion in this case is that having to bring or motions for protective orders caused this case to be -- these proceedings to be multiplied. Correct?
A. Not just bringing the motion, but the entire issue of the motion.
Q. Okay. The site inspection. How can it unreasonably be multiplying the proceedings if the hearing examiner permitted it to go ahead?
A. Westmoreland was forced to bring the protective order -- motion for protective order.
Q. Would Westmoreland have agreed to the limitations the hearing examiner put on it and allow the inspection to occur?
MR. DOLPHAY: Objection. Form.
THE WITNESS: Yeah. I don't understand that question. Would Westmoreland have agreed? I don't -- I don't know.
BY MR. STOCKTON:
Q. And so conservation groups asked for a site inspection. Correct?

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A. I believe so, yeah.
Q. And then presumably Westmoreland objected. Correct?
A. Yes.
Q. Okay. And then Westmoreland sought a protective order. Correct?
A. Yes.
Q. And the hearing examiner permitted the site inspection to happen with a couple restrictions upon it. Correct?
A. Yes.
Q. Okay. So how -- in your opinion how was asking for the site inspection unreasonably multiplying the proceeding?
A. Because Westmoreland was forced to seek a motion for protective order.
Q. Is it your opinion that whenever a party has to seek a protective order, the other side's request is needlessly multiplying the proceeding?
A. Let's see. Does that question make any sense? I'm trying to think of that. Could you repeat it?
Q. I'll have the court reporter read it back.
(Whereupon, the requested record was read.)

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THE WITNESS: I don't know if you could make that general statement. My opinion is that the hours spent in doing that were reasonable.
BY MR. STOCKTON:
Q. Your opinion back when we talked about the evidentiary scope is that certain evidence outside the four corners is -- was permitted in your practice. Correct?
A. No. That's not exactly what I said but generally.
Q. And so a site inspection here would be relevant under your interpretation of the evidentiary scope?
MR. DOLPHAY: Objection. Outside the scope of the witness's retention.
THE WITNESS: Yeah. I don't know.
BY MR. STOCKTON:
Q. So you have rendered an opinion in this case that the site inspection request needlessly multiplied the proceedings. Correct?
A. Yes.
Q. Okay. And your opinion is that the evidence outside the four corners of the permit application may be considered. Correct?
A. If it's related to what's -- if it's

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related.
Q. And here a site inspection was ordered. So under your definition of the evidentiary scope, this was a relevant area of inquiry. Correct?
A. I don't think so. I think it was out of line for the -- for the site inspection to take place.
Q. And so you would disagree with the hearing examiner here?
A. Probably.
Q. And so you think it was out of line to -- out of line to order it to go ahead?
A. For the reasons that Westmoreland put in their motion.
Q. In your review of this proceeding and all the things that you reviewed --
A. Uh-huh.
Q. -- are there any arguments at all made by Westmoreland that you disagree with or think were unreasonable or unsupported?
MR. DOLPHAY: Objection. Outside the scope of the witness's testimony -- or retention. Overbroad.
THE WITNESS: Yeah. That is a really broad question I can't answer. I mean, as I was

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reading it, I was like, you know, should there be a new paragraph here or section, that sort of thing.
BY MR. STOCKTON:
Q. I would like you to answer the question that's pending.
A. Oh, was there anything that I didn't agree with?
Q. Uh-huh.
MR. DOLPHAY: Same objection.
THE WITNESS: I can't answer that off the top of my head. I would have to look at something specifically. I would say that I agree that their fees and the rates that I examined under the Plath factors and considering the board's -- or the hearing examiner's findings of facts and conclusion of law that what they did was reasonable.
BY MR. STOCKTON:
Q. To your knowledge, did the board rely upon or cite the site inspection in the final decision in this case?
A. The hearing examiner?
Q. The hearing examiner or the board's adoption of the hearing examiner's final order.
A. I think there were findings of facts about the site inspection.

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Q. So the site inspection was cited and relied upon in the final order in this case?
A. I think so.
Q. But in your opinion it was improper to ask for it?
MR. DOLPHAY: Objection. Outside the scope. You can answer.
THE WITNESS: It was reasonable to file a motion for a protective order.
BY MR. STOCKTON:
Q. And again, my question, though, was, is that your opinion was that it was improper to seek the site inspection. Correct?
MR. DOLPHAY: Same objection.
THE WITNESS: I don't know if "improper" is the right word. I would say it was reasonable to seek a protective order.
BY MR. STOCKTON:
Q. Well, how would you characterize the site inspection request then?
A. Reasonable. What do you mean?
Q. How would you characterize the site inspection request if not proper?
A. Oh, the request?
MR. DOLPHAY: Objection. Outside the

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scope.
THE WITNESS: How would I characterize the request for a site inspection?
BY MR. STOCKTON:
Q. Uh-huh.
A. I don't know, because I mean, you can ask and the other party can file a motion for a protective order. So for the reasons that were in the motion for protective order, that's how I would characterize the request.
Q. Handing you what I have marked as Exhibit 15.
(Whereupon, Exhibit 15 was marked for identification.)
BY MR. STOCKTON:
Q. This is the second protective order -- or second order regarding a protective order in this case. Have you reviewed this document, Ms. Laughner?
A. Let me look at it. Oh, yes.
Q. Okay. And in this case this was again Westmoreland and the mine seeking a protective order from the board, correct, or from the hearing examiner?
A. Looks like it.
Q. Let's turn to page 4, the top of page 4

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there. This is in the analysis section by the hearing examiner. There he states, quote, moreover, apart from a general reference to MR.Civ.P.26, DEQ/WRM/Local 400 cites to no legal authority in support of their argument, end quote.
Did I read that correctly?
A. Yes.
Q. Okay. And the hearing examiner here denied the request for a protective order. Correct?
A. Yes.
Q. And in your opinion is it reasonable for Westmoreland and the mine to claim their fees for bringing a motion where they failed to cite legal authority in support of their argument?
A. Yes.
MR. DOLPHAY: Objection. Misstates the testimony.
BY MR. STOCKTON:
Q. The next thing that you mention in your expert report here on page 12 was that Westmoreland was compelled to engage and respond -- and I'm skipping over a couple motions we already worked on a little bit -- to this motions to strike. You're aware that -- so we have talked about the one -- the affirmative one that Westmoreland brought regarding

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Mr. Anderson. Correct? But there was also another motion to strike brought by the conservation groups. Are you aware of that motion?
A. Yes.
Q. Okay. What was that other motion to strike about?
A. I think it was about an overlength brief.
Q. And how did that motion to strike resolve? Did conservation groups at least win in part?
A. No.
Q. I'm handing you what I have marked as Exhibit 16.
(Whereupon, Exhibit 16 was marked for identification.)
BY MR. STOCKTON:
Q. Why don't you turn with me to the end of that. This is the order denying the motion to strike in part and granting it in part.
There the conservation groups' motion to strike was partially successful. Correct?
A. Let's see. Granted in part.
Q. And do you think it was improper or incorrect for conservation groups to move to strike the overlength reply brief in this case?
MR. DOLPHAY: Objection. Outside the

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scope of the witness's testimony -- or retention.
THE WITNESS: Well, the conservation groups didn't get what they were moving for, but they were allowed to file a surreply brief.
BY MR. STOCKTON:
Q. Okay. And so your opinion is that seeking this relief needlessly multiplied the proceeding even though the conservation groups were granted an opportunity to respond instead of striking the overlength brief by the mine?
A. Say that again.
Q. Your opinion is that this motion to strike filed by the conservation groups as you note on page 12 needlessly multiplied these proceedings. Correct?
A. Yes.
Q. How can a motion that is granted in part needlessly multiply proceedings?
A. Well, it didn't make sense to me that there was a surreply brief was necessary, and this whole -- I mean, the time that Westmoreland had to spend reviewing it and dealing with this whole issue cost them more -- cost the client more money.
Q. So in your opinion it's reasonable to assign or recover fees regarding responding to this motion to strike even though the conservation groups

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at least partially prevailed?
A. Yes. I mean, it's consistent with what has happened in the AM4 case and other cases in Montana.
Q. As you note on page 13, you believe that certain actions by the conservation groups regarding this proceeding were done in bad faith. Was the motion to strike that the conservation groups filed a bad faith act in your opinion?
MR. DOLPHAY: Objection. Legal conclusion.
THE WITNESS: Yeah. The whole challenge to the permit was done in bad faith in my opinion.
BY MR. STOCKTON:
Q. So even a motion that the conservation groups prevailed in part on is -- is considered bad faith?
A. Same -- same answer.
Q. Similar question regarding the motion to assign a hearing examiner, in your opinion the motion to assign a hearing examiner, was that a bad faith act?
MR. DOLPHAY: Objection. Outside the scope. Objection. Question of law.
THE WITNESS: Well, the board has already

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found bad faith.
BY MR. STOCKTON:
Q. You issued a legal -- or you've issued an expert opinion in this case on page 13 that the conservation groups engaged in bad faith litigation tactics. I'm merely asking you about your opinion on this.
Was the motion to assign a hearing examiner a bad faith act?
MR. DOLPHAY: Same objection.
THE WITNESS: I think everything that related to the challenge of the permit was a bad faith act.
BY MR. STOCKTON:
Q. And I guess we can run through these real quickly. We could probably go pretty quickly if that's your opinion.
Number 3, was filing a notice of supplemental authority a bad faith act?
MR. DOLPHAY: Same objection.
THE WITNESS: Yes.
BY MR. STOCKTON:
Q. And was filing a petition for immediate review with the district court under 2-4-701 Montana Code Annotated a bad faith act?

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A. Yes.
MR. DOLPHAY: Same objection.
BY MR. STOCKTON:
Q. Was filing a motion to stay these proceedings while the immediate appeal preceded a bad faith act in your opinion?
MR. DOLPHAY: Same objection.
THE WITNESS: Everything related to the challenge is a bad faith act.
BY MR. STOCKTON:
Q. The motion at the district court to accept immediate review, in your opinion that was a bad faith act?
MR. DOLPHAY: Same objection.
THE WITNESS: Same answer.
BY MR. STOCKTON:
Q. Filing an amended complaint and petition for immediate review at the district court in your opinion was a bad faith act?
MR. DOLPHAY: Same objection.
THE WITNESS: Everything related to the challenge of the permit was a bad faith act.
BY MR. STOCKTON:
Q. And everything related to defending the fee claim is also bad faith in your opinion?

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MR. DOLPHAY: Same objection.
THE WITNESS: I think you asked that backwards.
BY MR. STOCKTON:
Q. So a number of the things that we have actually talked about here occurred at the district court regarding this fee proceeding?
A. Uh-huh.
Q. Do you believe that those were also bad faith acts?
A. Yes.
Q. Do you believe filing a motion for a TRO and alternative writ at the district court was a bad faith act?
MR. DOLPHAY: Same objection.
THE WITNESS: Everything related to challenging the permit.
BY MR. STOCKTON:
Q. And that was regarding the fee petition but same answer for you. Correct?
MR. DOLPHAY: Same objection.
THE WITNESS: What was your whole question?
BY MR. STOCKTON:
Q. A number of these motions and things that

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you list here on page 12 of your expert report involve actions taken either regarding this fee proceeding or actions taken at the district court regarding the fee proceeding. Is taking the appeal and filing motions at the district court a bad faith act in your opinion?

MR. DOLPHAY: Same objection.

THE WITNESS: Yes.

BY MR. STOCKTON:

Q. And I guess you stated that everything regarding challenging the permit was bad faith in your opinion. Correct?

A. Right.

MR. DOLPHAY: Same objection.

BY MR. STOCKTON:

Q. In your opinion is there any nonbad faith act in this permit proceeding taken by the conservation groups?

A. Oh, gosh.

MR. DOLPHAY: Wait. Objection again to -- she's only been asked to opine on claim two, reasonableness of fees, not the rest of it.

BY MR. STOCKTON:

Q. You can answer.

A. I can't answer because it's a really broad

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question.

Q. As it relates to claim two in this proceeding, are there any actions by conservation groups you would say were not done in bad faith?

MR. DOLPHAY: Same objection. Outside the scope of what she's been retained to do, which is analyze the reasonableness of the attorney fees.

THE WITNESS: Yeah. So I think that the -- the fees that I reviewed are reasonable. I think the rates charged are reasonable.

BY MR. STOCKTON:

Q. So shifting -- I guess I'll direct your attention to page 13 of your expert report where you make the assertion that the conservation groups engaged in bad faith litigation tactics. Correct?

A. Yep.

Q. So you have rendered an opinion on the litigation tactics of conservation groups. Correct?

A. Yes.

MR. DOLPHAY: Objection. Misstates the testimony.

But go ahead.

BY MR. STOCKTON:

Q. Where did I misstate your expert opinion regarding bad faith litigation tactics on page 13?

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A. My opinion is at the end of the -- my opinions are on page 26 and 27.

Q. So looking at page 13 of your expert opinion, did you render an opinion that the conservation groups engaged in bad faith litigation tactics?

A. I do believe that they did engage in bad faith litigation tactics. That's what I believe.

Q. And then just asking you about your opinion rendered on page 13, were any of conservation groups' actions in this proceeding not in bad faith in your opinion?

MR. DOLPHAY: Objection. Outside the witness's scope of retention and overbroad.

THE WITNESS: Yeah. I can't -- I can't answer that because -- I mean, I could give you an example. Like when Doug -- Bruce Anderson's deposition was noticed up and he appeared at his deposition, that's not bad faith.

So I mean, I can't answer your question because it's too broad.

BY MR. STOCKTON:

Q. Okay. Okay. And that's precisely what I was getting at, Ms. Laughner, is that your opinion is that this entire proceeding was done in bad faith.

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Correct?

A. Right.

Q. So let's --

A. Let me just correct that. The challenge was in bad faith, is what I had said before, not the entire proceeding.

Q. So challenging the permit was in your opinion bad faith?

MR. DOLPHAY: Are you done?

MR. STOCKTON: I'm asking her what she just said.

MR. DOLPHAY: I know. I want to put in an objection. Objection. Outside the scope. She's been requested to testify to the reasonableness of fees as to content. Right?

MR. STOCKTON: And I object to the coaching in your objection.

Can you go ahead and read back the question?

(Whereupon, the requested record was read.)

THE WITNESS: Yes.

MR. DOLPHAY: And my objection.

THE REPORTER: Came after that.

BY MR. STOCKTON:

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Q. Okay. Your opinion is regarding these bad faith litigation tactics. How do you define bad faith as you state in page 13 of your report?
A. Whenever I see wrongdoing, like lying, cheating, stealing, I would say that's bad faith.
Q. Lying and cheating are your examples of bad faith?
A. And stealing.
Q. And stealing. Okay. Are there -- are you rendering an opinion that stealing occurred in this case?
MR. DOLPHAY: Objection. This is outside the scope. The board's already found bad faith.
Go ahead.
THE WITNESS: My opinions are on page 26 and 27 of this report.
BY MR. STOCKTON:
Q. And I guess I'm focusing in on your paragraph regarding bad faith litigation tactics on page 13 and asking you about your -- your standard that you use to reach that conclusion.
A. Uh-huh.
Q. And so you had said lying, cheating, and stealing are bad faith acts.
A. Or worse, yeah. Uh-huh.

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Q. Is there any -- do you have any examples of stealing that you cite or relied upon in reaching your opinion on page 13 of this?
MR. DOLPHAY: Same objection.
THE WITNESS: My opinions are on page 20 -- whatever it is -- 20 -- my opinions are on page 26 and 27.
MR. STOCKTON: I'll go ahead and have the question read back.
(Whereupon, the requested record was read.)
THE WITNESS: My opinions are on page 26 and 27. I could give you my belief about lying, cheating and stealing.
BY MR. STOCKTON:
Q. And I guess my question, though, was, in your conclusion that there was bad faith litigation tactics, you defined three things that could constitute that, and I'm just exploring them one after another.
A. Uh-huh.
Q. And so concerning your paragraph on page 13 regarding bad faith litigation tactics, were there any stealing examples that you relied upon in this paragraph in reaching this conclusion here?

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A. Yes.
Q. What stealing occurred in this case?
A. DEQ, starting in 2017 until 2021, spent an exhaustive amount of time working on this case and in not reviewing the entire record, and bringing the challenge which was baseless took up their time, wasted BER time, so that's stealing time to me.
Q. And that's the entirety of your opinion regarding stealing being bad faith in this case?
A. I don't know if it's my entire feeling. That's what I think.
Q. Anything else on specifically stealing that you have not already articulated?
A. The time taken up is a problem. It wasn't right.
Q. Anything else that you would add to that?
A. Not as I sit here.
Q. I want to exhaust your knowledge on this. Any additional things regarding stealing that you can think of?
A. That's my answer.
Q. The second thing you said here, cheating. What was in your opinion as it pertains to the paragraph on page 13 of your report do you consider cheating in this case?

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A. My opinions are page 25 and 26 of this report. My belief is that cheating occurred when MEIC did not comply with the scheduling order and tried to bring in extra evidence.
Q. So that was Bruce Anderson's declaration, and that is, you think, cheating in this case?
A. Yes.
Q. So is untimely disclosure in your opinion cheating?
MR. DOLPHAY: Objection. Outside the scope. Legal conclusion.
THE WITNESS: That's the specific example I can think of.
BY MR. STOCKTON:
Q. Okay.
A. Not following -- not following the rules.
Q. Have you in your entire legal career ever filed or done something after a deadline in a scheduling order?
A. I don't think so.
Q. Never? Not once?
A. Same answer.
Q. Never?
MR. DOLPHAY: Objection. Asked and answered.

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BY MR. STOCKTON:
Q. And then what do you maintain in this case was lying?
A. What comes to mind is the completely baseless and made-up assertion that the coulee was below the water table.
Q. Okay. So your opinion is that conservation groups' legal argument regarding the -- or arguments regarding the water table was lying?
MR. DOLPHAY: Objection. Outside the scope.
THE WITNESS: Yeah. It was a lie.
BY MR. STOCKTON:
Q. Any other things that you maintain constituted lying in this case?
MR. DOLPHAY: Same objection.
THE WITNESS: That's what comes to mind as I sit here right now.
BY MR. STOCKTON:
Q. And this is my opportunity to ask you questions. Have I exhausted your knowledge on your opinion regarding lying that occurred in this case?
MR. DOLPHAY: Same objection.
THE WITNESS: My opinions are on page 26 and 27, and they relate to the reasonableness of fees

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and the rates charged. That's what I was asked to do.
BY MR. STOCKTON:
Q. But you rendered an opinion on page 13 of bad faith litigation tactics, and you've defined that as lying, cheating, and stealing. And so I'm asking you if there is any other examples of lying that you have not stated today thus far?
MR. DOLPHAY: Objection. Misstating the testimony.
THE WITNESS: Yeah. There are, but I can't think of any right now. But as I was going through reading the documents, there were a lot of misrepresentations.
BY MR. STOCKTON:
Q. And can you go ahead and cite them for me today?
A. No.
Q. And are they cited in your report?
A. That's not what my report was about.
Q. Is misquoting testimony lying in your opinion?
MR. DOLPHAY: Same objection as earlier.
THE WITNESS: I don't know of an example of that.

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BY MR. STOCKTON:
Q. Are there any other examples of bad faith litigation tactics as you discuss on page 13 of your report that we have not discussed?
A. Oh, gosh, well, one that comes to mind is the wild goose chase of changing the -- changing the claim.
Q. What do you mean by that?
A. Well, trying to cast it as a legal claim. Then it becomes a factual claim. Then it becomes a legal claim.
Q. And if we want to understand as we discussed earlier what conservation groups' claims were in this case, we should look at their pleading, their notice of appeal. Correct?
A. No. I think we should look at the findings of fact and conclusions of law.
Q. So to understand a party's arguments or claims in a case, we should not look at their complaint but perhaps look at just the verdict at the end of the trial?
A. The hearing officer probably did look at the complaint, but in his opinion -- or in his order. That's what I paid attention to.
Q. So you didn't pay attention to the notice

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of appeal?
A. That's not what I said.
Q. So you said you paid attention to the hearing examiner's conclusions. My question is, did you pay attention to the notice of appeal to understand petitioner's claims in this case?
A. I read it, but I relied on the findings of facts and the conclusions of law.
Q. I would like to transition to the one-third allocation, which is your next opinion here on page 13.
Your opinion is that one-third of Westmoreland's total hours is a reasonable allocation of the fees regarding claim two. Correct?
A. I think you said that right.
Q. What were the factors that you relied upon to reach that conclusion?
A. Most of the time was spent on that. There were -- I mean, just what I said in my first paragraph there, end of B -- or ii rather.
Q. Your opinion there in that paragraph is claim two is the most fact intensive and technically demanding. You explain why. You say those things. And getting involved in a site inspection and motions practice regarding the inspection. Correct?

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A. You read that in part.
Q Is that a fair summary of your opinion on why one-third is a reasonable and conservative allocation?
A. Definitely it was very fact intensive.
Q. Let's do the math real quick. In your report you note that there was 2,787.2 hours incurred from commencement to entry of the final order. We can go to the section of your report on that if you would like, but I believe I'm remembering it. Page 10. Was that correct?
A. Can you read back the question?
(Whereupon, the requested record was read.)
THE WITNESS: Yes.
BY MR. STOCKTON:
Q. Okay. And so your conclusion is one-third is reasonable, and if we do the math that is 929.05 hours. Can we round to 929 for ease of our discussion today?
A. I didn't do the math.
Q. In your opinion 929 hours is reasonable for the defense of the claim two?
A. I guess.
Q. What time entries did you specifically

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review to reach your one-third conclusion?
A. I reviewed all the claim entries.
Q. Every single one?
A. Yes.
Q. Did you keep a log or a notation as to this is regarding claim two, this isn't, this is, this isn't, to come to your one-third conclusion?
A. No. I looked at the totality of it.
Q. Did you do any confirmation in your conclusion by, say, looking at time entries for a one-month period and analyzing what they specifically related to and see if that added up to one-third or not?
A. No. I looked at the total.
Q. Did you review the claim entries in this case to analyze but for bringing claim two, would the mine have had to engage in that work regardless?
A. I don't know what you mean by that.
Q. Presumably some of the fee entries in this case relate to claim one. Correct?
A. Probably.
Q. Presumably some of the fee entries in this case relate to claim three. Correct?
A. Probably.
Q. Presumably some of the fee entries in this

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case relate to the standing arguments. Correct?
A. Yes.
Q. Presumably some of the fees relate to specifically claim two. Correct?
A. Yes.
Q. Presumably some of the fee entries relate to the spoliation argument. Right? Correct?
A. Yes.
Q. Okay. And so my question is, did you do an analysis of but for bringing claim two, would the mine have had to incur this work in this proceeding? So say claim two was not in this case. Did you do an analysis of what would have been incurred if claim two was not present?
A. Gosh, that sounds really speculative.
Q. You can answer my question.
A. No.
Q. Let's go ahead and look at those set of fees in front of you. Let's turn to August 2022. Page 3 is the first time entry for August 2022, and we're going to go through a number of these time entries.
The first entry in August is one by a Mr. Martin for 1.3 hours. Do you see that?
A. Yes.

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Q. Okay. Does this entry refer to claim two?
A. Yes.
Q. How?
A. Well, it's pretty basic to the entire litigation.
Q. Is there any mention of claim two in this?
A. No. But this is not what courts do. They don't go and flyspeck every little entry.
Q. Did intervening in the case have anything to do specifically with claim two?
A. Absolutely.
Q. If claim one and three had only been brought, would they still have had to intervene?
A. I'm only focused on claim two.
Q. So my question, though, is, if claim two wasn't present, would the mine still have intervened? Had to intervene, sought to intervene?
A. I can't answer that question.
Q. Why can't you answer that?
A. I wasn't counsel to Westmoreland at that time.
Q. But you have offered an opinion that one-third of this entry, correct -- your opinion is that one-third of all the entries are reasonably allocated to claim two. And I am asking how this

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particular entry, how one-third of it relates specifically to claim two.

A. My opinions are on page 25 and 26, and my opinion generally is that a one-third allocation is more than fair. And the courts don't look at individual entries like this and flyspeck them. They look at reasonableness overall.

Q. So my question, I guess, is, is specifically, though, how is one-third of this time entry related to claim two?

A. I guess I would give you the same answer.

Q. How is the redaction in this entry related to claim two?

A. A one-third allocation of all the entries I think is fair.

Q. And I think maybe you miss -- I probably misstated my question. But how is the redaction here -- how is one-third of the redaction related to claim two?

A. I think I would give you the same answer.

Q. And what was that?

A. That one-third allocation of all the entries is reasonable.

Q. Let's turn to Mr. Martin's entry on 8/3/2022. He billed .4 of an hour regarding e-mail

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correspondence to the mine personnel regarding DEQ's position in this case. Correct?

A. I'm sorry. You lost me.

Q. This is the entry by Mr. Martin on 8/3/2022. He billed .4 for an e-mail correspondence with WRM personnel regarding DEQ's position. Correct?

A. Looks like you read that right.

Q. Okay. And how is one-third of this related to claim two?

A. One-third of all the entries is a fair way to -- is a fair way to allocate the cost.

Q. Let's turn to Mr. Martin's entry on August 9th, 2022. In there he billed 1.8 hours for, quote, further review of arguments concerning cumulative impact; review related correspondence; telephone conference with S.C. Bordelon regarding content of argument, end quote.

Do you recall which claim was the cumulative impact claim?

A. I think I do.

Q. And what one was it?

A. Well, some of the discussion was intermixed with all three of them, but I think that was primarily number one.

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Q. Okay. So how does Mr. Martin's time entry for 1.8 hours here relate to claim two if the cumulative impact claim was claim one?

A. One-third of all of the entries and time is a fair way to allocate. Courts do not flyspeck and second-guess the professional judgment.

Q. Let's look at August 15, 2022, Ms. Bordelon's time entry that day for 2.2 hours.

A. What date?

Q. August 15, 2022.

A. I don't see that. August 16th?

Q. I see 15th. It's the --

A. Oh, okay. Uh-huh.

Q. There she coordinates with T.J. DiPaola regarding docket monitoring; reviews the MEIC response to motion to intervene; update notes regarding litigation status of contested case -- more redaction -- and identify pending action items; follow up with experts Ms. Hunter and Dr. Nicklin regarding involvement in case.

How does one-third of this time entry relate to claim two?

A. Seems like it relates to all of the claims, and one-third of the three claims is a fair way to allocate.

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Q. You can't specifically identify what in this time entry by Ms. Bordelon, though, was related to claim two?

A. I didn't analyze it that way because courts don't do that.

Q. Is there a potential that the redacted materials don't relate to claim two as well, or you just don't know?

A. I didn't analyze it that way.

Q. Let's turn to page 6.

MR. DOLPHAY: We're about an hour again, Tyler. How much do you have? What do you think, five minutes, ten minutes when you stop?

MR. STOCKTON: I've got awhile.

MR. DOLPHAY: Can we take a break?

MR. STOCKTON: Yeah. We can take say maybe not 15 minutes, but can we do a 5-minute?

MR. DOLPHAY: That sounds good.

MR. STOCKTON: We can go off the record.

(Whereupon, a break was then taken.)

MR. STOCKTON: All right. We're back on the record. It is 5:12 p.m.

BY MR. STOCKTON:

Q. We're turning to page 6, Ms. Laughner, of

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the fee entries exhibit in this case. And I want to work through a few things in this -- I want to work through a few of these time entries here.

Let's turn to the 9/16/2022 entry by Ms. DiPaola. It's a third of the way down the page. Do you see that, Ms. Laughner?

A. Yes.

Q. Okay. And in that entry she says that she, quote, review, revise, and finalize client memorandum regarding the status of current Westmoreland litigation matters and deadlines; e-mail correspondence with S.C. Bordelon regarding the same; e-mail memorandum to Mr. Heroux and working group, end quote. Did I read that right?

A. I think so.

Q. Ms. DiPaola references litigation matters in the plural. Do you know what you other litigation matters are being referenced in these billing entries?

A. In this billing entry?

Q. In this one but we will visit others.

A. Oh. No.

Q. And is it reasonable in your opinion to -- for Westmoreland to seek fees relating to other litigation matters in this proceeding?

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A. I didn't -- I don't flyspeck these entries, I analyze them according to the Plath factors.

Q. And I guess my question for you was a little different, which was is it reasonable for Westmoreland to seek to recover fees incurred regarding work in cases other than this one?

A. I don't think that's what it says, but I think it's reasonable to recover one-third of all these fees.

Q. Okay. And I guess maybe I misstated my question. I can go a little bit more broadly. In your opinion is it reasonable for Westmoreland in this proceeding to claim fees for work done on other matters?

A. Outside of this case?

Q. Correct.

A. I wouldn't think so.

Q. You would say it's not reasonable?

A. I would say it's not reasonable to flyspeck the entries here. That's not how courts do it.

Q. And I guess my question, though, was following up on yours. You said it's not reasonable, and I want to make sure. It's not reasonable for Westmoreland in your opinion to seek fees in this proceeding for fees incurred regarding other matters?

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A. As far as I know, Westmoreland is seeking fees only for this matter.

Q. Your allocation is one-third of all the hours in this matter. Correct?

A. Yes.

Q. Okay. And in Ms. DiPaola's fee entry here, she references plural litigation matters. Correct?

A. Looks like it.

Q. And so if we're applying your one-third methodology, one-third of this fee would be considered reasonable. And my question for you is, why is it reasonable to recover -- or is it reasonable to recover for fees incurred in other matters?

A. It's reasonable to recover one-third of the fees in this matter.

Q. And so if there are fee entries that refer to other matters, it would be unreasonable to seek those fees?

A. I don't know -- I don't think she's saying that, but I would say that it's reasonable to seek fees for one-third of the time spent on this matter.

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Q. Okay. And just to confirm the inverse, seeking fees not for this matter, other matters, would be unreasonable. Correct?

A. Let's see. Is that a double negative? I would stick with what I said.

Q. If Westmoreland is claiming fees based on these entries that relate to other matters, that would not be reasonable in your opinion?

A. As far as I know, Westmoreland is only seeking fees for this matter.

Q. And if they were seeking fees for other matters, that would be unreasonable. Correct?

A. I don't think that's the case.

Q. And that wasn't my question. My question was if they were, would that be unreasonable?

A. I don't know. You know, maybe somehow it's related. I can't second-guess them. I don't flyspeck this. I looked at this and analyzed this according to the Lodestar and Plath matters.

Q. Let's go ahead and look down at the September 22, 2022, entry by Ms. DiPaola near the bottom of the page there. And in that she references a conference call with an H.M. Reimer, S.R. Yemington, and S.C. Bordelon, quote, regarding status of Westmoreland litigation matters, end quote.

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What other matters would be referred to in Ms. DiPaola's time entry?
A. I don't know and I don't know if there's -- if it really is other matters.
Q. Do you think she made a typo by making it plural?
A. I don't know. I didn't flyspeck this. This is not how I analyzed it.
Q. You didn't do an analysis to see if Westmoreland entered time in this spreadsheet that related to other matters?
A. My analysis was looking at the totality of the hours and applying then the Plath factors to them.
Q. Why don't we take a look on the next page to October 25, 2022, entry by Ms. Coberly. Do you see that? It's about two-thirds of the way down the page.
A. Yes.
Q. And in that she says she spent two hours, quote, revise the motions to dismiss, for both the BER -- redaction -- litigations, end quote.
This entry Ms. Coberly is referring to more than one motion to dismiss. Correct?
A. Could be.

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Q. Was any motion to dismiss filed in this case?
A. I don't remember.
Q. If I represent to you that the docket reflects no motion to dismiss was filed, would you have a reason to disagree with me?
A. I don't think so.
Q. Okay. In your opinion it's -- it would be reasonable for Westmoreland to recover one-third of this fee entry that concerns a motion to dismiss in multiple proceedings and as it pertains to this proceeding one that wasn't filed. Correct?
A. It's reasonable for Westmoreland to seek one-third of the totality of the fees. I don't flyspeck this.
Q. Is it reasonable for Westmoreland to seek fees for litigation work that was never filed?
A. Yes.
Q. Why is that reasonable?
A. Well, they could have worked on something and then decided not to file it. They would charge the client for that.
Q. And I guess how is that reasonable, then, to try to assess in this case to the other side if that motion was never filed?

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A. Well, MSUMRA allows for the recovery of reasonable fees, and if you look at the totality, one-third is reasonable.
Q. And I guess my question was slightly different, which is, is it reasonable for Westmoreland to seek to recover fees regarding an unfiled motion?
A. Yes.
Q. And is it reasonable for Westmoreland to seek fees to recover for work done on a motion in a different proceeding?
A. It could be.
Q. In this proceeding?
A. Right.
Q. Why don't you turn with me to the November 7th, 2022, entry by Ms. Bordelon on page 8. It's about the middle of the page. Do you see that?
A. Yes.
Q. And in that entry Ms. Bordelon spent three hours circulating a Westmoreland position on MEIC's proposed amended notice of appeal in BER contested case to parties -- a long redaction -- and then, quote, begin reviewing and editing motion to dismiss MSUMRA-contested case; telephone conference with litigation team regarding strategy for motions to

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dismiss in both cases, end quote. Did I read that correctly?
A. I think so.
Q. Okay. And it's your opinion that it was -- it is reasonable for Westmoreland to recover fees for the motion referenced here that was never filed in this case. Correct?
A. It's my opinion that seeking fees for one-third of the total hours is reasonable.
Q. And by implication it would be one-third of this fee entry which concerns a motion that was never filed?
A. I wouldn't characterize it that way.
Q. Is it reasonable for Westmoreland to seek fees regarding a motion that was never filed as referenced by Ms. Bordelon in November?
A. Sure.
Q. Okay. And is it reasonable for Westmoreland to recover fees for other cases, as she refers to it, both cases here?
A. I think that's the same question you just asked me.
Q. And is your answer still the same, that it's reasonable?
A. My answer is that it's reasonable to

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recover one-third of the total hours. That's how I analyzed it according to the Lodestar and Plath.

Q. And so if that -- if your analysis of these fees necessarily incorporates work done on other matters, you think it's reasonable for that to be assessed in this case?

A. Could be.

Q. How is another case -- how do fees incurred for work in another case bear on a fee award in this case?

A. I could -- I could easily see that. They might be related issues.

Q. And so the work done on a different motion in a different case could be assessed in another case in your opinion?

A. That sounds reasonable. But, again, it's just one-third of the total and that's conservative.

Q. Why don't you look at the November 28th, 2022, entry by Mr. Yemington for .5 an hour at the bottom of the page 8. There Mr. Yemington says he, quote, attend to AM5 MTDs; conference with S.C. Bordelon regarding the same, end quote.

There Mr. Yemington is referencing to plural motions to dismiss just like others have referenced. Your opinions are the same, that

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recovering fees for these motions both unfiled and in a different proceeding are reasonable?

A. My opinion is that it's reasonable to recover one-third of all the total fees.

Q. And in your analysis when you went through all these fee entries three times, did you identify that other matters were being referred to and billed for?

A. I don't know if I did or not.

Q. You spent 2 to 300 hours in your workup in this case. Correct?

A. Is that what full-time was?

Q. 280 was the general math we reached.

A. Uh-huh.

Q. And in that time you did -- did you ever figure out what the other litigation being referred to in these time entries related to?

A. I don't know if it is actually other litigation. You're reading that into it.

Q. Ms. Bordelon's entry on 11/7/2022 says both cases.

A. Which one is that? 11/28?

Q. It's in the middle of the page on 11/7/2022 by Ms. Bordelon. And in there she refers to both cases. Is it your testimony today that that

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is referring to the same case or a different case?

A. Yeah. I don't know. I didn't audit the fee entries.

Q. As you testified --

A. I looked at them generally.

Q. As you testified earlier, you went through these fee entries three times. Correct?

A. Correct.

Q. And you didn't identify that there were other matters being referred to and billed on. Correct?

A. I don't see other matters.

Q. We just reviewed about maybe three or four time entries referring to matters in the plural or, quote, both cases.

A. Right.

Q. And you still maintain that you don't see references to other matters?

A. I would just go by what they put here. It doesn't say other matters.

Q. Does "both cases" not refer to another matter?

A. I don't know. I don't read too much into the entries. I looked at the total amount and one-third is reasonable.

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Q. Did you -- did you reach out to Westmoreland and say, hey, I see other matters being referred to here, what's that about at all?

A. I didn't.

Q. Would that be important to know?

A. I looked at the total. That's how courts analyze it.

Q. So it wouldn't be important to you to figure out if other matters were being included in these time entries?

A. I looked at the reasonableness of the hours.

Q. And you did that by examining all these fee entries three times. Right?

A. I didn't do an audit or a flyspeck of all the entries.

Q. You reviewed them three times?

A. I did.

Q. Why don't you turn to page 15. There, a little below the middle of the page, there's an entry by Mr. Mercer, now Judge Mercer, on February 6th, 2023.

A. Sorry about that. Sorry.

Q. We all do it, so no apology needed.

MR. DOLPHAY: My phone is dead, so I don't

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have to worry about mine.
MR. STOCKTON: Did you find a charger?
MR. DOLPHAY: No. It's fine. I'll be fine.
BY MR. STOCKTON:
Q. So real quick transitioning, page 15 there's an entry by the now Judge Mercer on February 6, 2023, a little below the middle of the page. Do you see that?
A. February 6th?
Q. Yes.
A. Yes.
Q. Okay. And there he says he spent .3 hours, quote, participate in periodic update telephone conference with colleagues regarding pending cases, end quote. And there Mr. Mercer is specifically referring to plural more than one case. Correct?
A. I don't know.
Q. By saying the word "cases," you're unsure if he's referring to more than one?
A. Right.
Q. And in your opinion it's reasonable to recover one-third of this time entry even though it might cover multiple cases as his text says?

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A. It's reasonable to recover one-third of the total.
Q. And the total for this proceeding?
A. For the total hours spent.
Q. Why don't you turn to the next page, to February 16th, 2023, by Ms. Bordelon, in the middle of the page 1.7 hours. There she says she billed for, quote, telephone conference with litigation team regarding status of state and BER litigation, end quote.
Is it still your testimony that multiple matters are not being billed for in these time entries?
A. My opinion is that it's reasonable to recover one-third of the total fees and that is conservative.
Q. And I am looking at specifically this time entry by Ms. Bordelon. She references a state and BER litigation. She's referring to two separate pieces of litigation. Correct?
A. I don't know. I don't know what she meant by that exactly.
Q. If you read that, would you conclude there was more than one case being referenced?
A. Not necessarily.

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Q. And it's your opinion that it's reasonable to recover one-third of this time entry even though it refers to, quote, state and BER litigation?
A. This is not an auditing exercise. Didn't flyspeck it. It's reasonable to recover one-third of the total.
Q. Which would be one-third of this time entry as well?
A. One-third of the total hours.
Q. But that would be one-third of this time entry as well. Correct?
A. I wouldn't put it that way. Courts don't flyspeck and do an audit of this.
Q. Let's take a look at page 18. March 28th, 2023, Mr. Adams at the very bottom of the page second entry from the bottom has a 1.3-hour entry where he says he dealt with, quote, review S.R. Yemington's edits to the protective order motion and add further edits and revisions; evaluate -- redaction -- the ongoing work near the pond MEIC seeks to visit, end quote. Do you see that? Did I read that correctly?
A. I think so.
Q. Okay. We talked a lot about spoliation and the duty to preserve evidence earlier. This time entry seems to reference that Mr. Adams knew about

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ongoing work at the site inspection location. Correct?
A. I'm not sure.
Q. His phrase is evaluate -- blank -- the ongoing work near the pond MEIC seeks to visit, end quote. And you're unsure that he's referring to work at the place where the MEIC wanted to conduct the site inspection?
A. That's what it looks like, but I'm not sure.
Q. Are you aware of another pond or wetland that the site inspection concerned, or there's only one. Right?
A. Not that I read about.
Q. There's only one. Right?
A. I guess I'm not sure about the word "pond."
Q. He makes it clear that it's the place that the MEIC wished to inspect. Correct?
A. Probably.
Q. We've reviewed a number of time entries here where there are redactions, and we -- you and I -- neither you nor me know what is behind those redactions. Fair?
A. When I was reviewing it against the docket

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sheet, sometimes I could figure it out.
Q. But in general you don't know the precise words behind those redactions?
A. I do not know the precise words.
Q. Okay. And I guess in your opinion it's reasonable to claim one-third of the total fees in this case. Correct?
A. Yes.
Q. Okay. And that would be one-third of the redacted entries as well?
A. Yes.
Q. Okay. And you think -- so you -- you did no separate analysis to say, well, redacted entries, we don't know what is in there, so I may have screwed up.
For you, they're included and we take one-third of it all. Correct?
A. Yes.
Q. Okay. What exhibit number are we on?
THE REPORTER: 17.
(Whereupon, Exhibit 17 was marked for identification.)
BY MR. STOCKTON:
Q. I'm handing you what I have marked as Exhibit 17. This is the affidavit of Mr. Yemington

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that you have referred to before. Correct?
A. Yes.
Q. I would like you to turn with me to paragraph 7 on page 4. Mr. Yemington attested to the following. Quote, the attached spreadsheet itemizing the time expended and fees invoiced, Exhibit 1, includes redactions of privileged attorney-client information and related AM5 litigation for which Westmoreland/Local 400 do not seek recovery, end quote.
How in your analysis of this case did you exclude the redacted time entries and the related AM5 litigation that Mr. Yemington expressly says the mine does not seek?
A. I thought they were seeking all of the entries for one-third of the total.
Q. So Mr. Yemington's affidavit contradicts that, doesn't it?
A. I would think that he would be more correct than me.
Q. Okay. And so given Mr. Yemington's affidavit here, all entries, including redactions and those related to AM5 litigation, those other cases referenced in these time entries, should be excluded from your analysis?

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A. I don't understand your question. It's kind of long. Can you break it down?
Q. Well, if Mr. Yemington here says that the mine is not seeking recovery for redacted privileged attorney-client information and related AM5 litigation --
A. Wait. Wait. Wait. Wait. Wait.
Q. -- we should remove those from your analysis. Correct?
A. Well, I suspect that the -- that's one of the reasons why -- or the reasons why they're only seeking a third when most of the work was related to claim two.
Q. Well, my question, I think, was a little bit more specific, which is how did you -- these are specific identification of two categories that need to be excluded and not sought. How did you account for that in your specific analysis?
A. I don't know if my analysis was that specific because I looked at the totality and didn't audit or flyspeck every entry, and I think that's -- only recovering a third is reasonable.
Q. So you did not take into account what Mr. Yemington here explicitly says the mine is not seeking?

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A. I looked at the total amount of hours, and for a litigation that takes place over a course of three to four years, that was very reasonable. And 1.5 or 1.4 million spent on attorneys fees for that amount of time is common.
Q. And I guess I -- maybe I misphrased my question a little bit, but how did you take this sentence regarding what Westmoreland is not seeking and ensure it was not included in your analysis?
A. I looked at the total number and thought it was reasonable.
Q. So you did not specifically exclude the entries that the mine says they are excluding?
A. He's being more conservative than I would be.
Q. This is the representation of the mine's counsel. Correct?
A. Yes.
Q. And so each and every redacted entry and entry with regards to other AM5 litigation should not be part of the fee claim in this case. Correct?
A. He's not seeking those.
Q. And as counsel for Westmoreland, that's his representation on behalf of his client. Correct?
A. If he's attesting to paragraph 7, that

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would be correct.
Q. We've discussed quite a bit in this case that your opinion is that the proceeding was brought or the challenge to the permit was brought in bad faith. Correct?
A. Should not have been brought.
MR. DOLPHAY: Objection. Same objection regarding the scope of her testimony.
BY MR. STOCKTON:
Q. You reviewed the hearing transcript from the May 15th hearing. Correct?
A. I read it.
Q. Okay. And if you want to turn in that binder in front of you to the next tab, that should be the --
MR. DOLPHAY: All the way.
THE WITNESS: Oh, over here.
BY MR. STOCKTON:
Q. Yeahmthen on to the next tab.
A. Oh, okay.
Q. And that is our Exhibit 7, I believe. This is Exhibit 7, which is the hearing transcript of May 15.
(Whereupon, Exhibit 7 was marked for identification.)

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BY MR. STOCKTON:
Q. I would like you to turn with me to page 57, line 17. And to orient you on the page before, Mr. Yemington is speaking and his argument continues on to page 57. Correct?
A. Okay.
Q. Okay. In looking at line 17 of page 17, he makes the argument -- I guess line 19, quote, a reasonable party acting in good faith would have withdrawn this claim after the site inspection and after Mr. Anderson's deposition testimony, end quote.
This is Mr. Yemington arguing on behalf of the mine. Correct?
Your opinion in this case is that the entire challenge to the permit was brought in bad faith. Correct?
MR. DOLPHAY: Same objection I named before regarding her scope of her testimony, and scope of her retainment.
THE WITNESS: So my opinions are in -- on pages 25 and 26. My belief is that this challenge should never have been brought.
BY MR. STOCKTON:
Q. Okay. At least Mr. Yemington in arguing on behalf of the mine, his opinion on behalf of the

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mine was that the reasonable party acting in good faith would have withdrawn claim two after the site inspection and after the deposition testimony. Correct?
A. That's one thing he said here.
Q. And I would like you to turn with me real quick to page 106, beginning at line 14. This is Mr. Yemington again, I'll represent to you, but if you would like to check that, you got to go back a couple of pages to page 103.
Are you at page 106, line 20?
A. Not yet.
Q. Okay. Beginning on line 14, this is Mr. Yemington. He says, quote, so where do you draw the line? Is it at the outset? Maybe. Is it during discovery? Even better. Is it after the site inspection and Mr. Anderson's deposition that concluded discovery? That was the last day of discovery, was Mr. Anderson's deposition on July 13th of 2023. At that point, I respectfully submit that no reasonable person and no counsel acting within their duty would perpetuate that claim as it had been pleaded and how it had been presented in discovery. After that deposition, it was entirely discredited and defeated.

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Continuing onto the next page. So I would say with absolute certainty that that bad faith piece starts there. And it may start before that, but it certainly perpetuated too because one thing we didn't hear about in this presentation was the discovery abuse on summary judgment where they presented significant analysis and evidence that wasn't disclosed during discovery.
Mr. Yemington's position is that perhaps the bad faith began earlier, but he says that with absolute certainty his thought, his opinion, his argument is that it began at the site inspection slash deposition of Mr. Anderson which occurred two back-to-back days.
How is it reasonable to claim one-third of the entire proceeding and the argument being made by Westmoreland is that for sure the bad faith began at the deposition slash site inspection? How is it reasonable to claim one-third of the fees before that date?
MR. DOLPHAY: Objection. Misstates the testimony. Misstates the record. Question of law. Outside of the scope of what Ms. Laughner has been retained to opine in these proceedings.
THE WITNESS: Well, my opinions are,

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again, in -- on pages 25 and 26 of my opinion. But I would say that at this point with the Anderson issue, it was revealed to everyone how fraudulent the challenge was, but the challenge should never have been brought from the beginning.
BY MR. STOCKTON:
Q. And I guess my question was, is how is it reasonable when Mr. Yemington on behalf of the mine argues that the bad faith for sure started at the site inspection deposition? How is it reasonable to claim one-third of the fees before that?
MR. DOLPHAY: Same objection.
THE WITNESS: I thought I just answered that, but it is reasonable because there's all this activity leading up to this point when it's revealed to everyone.
BY MR. STOCKTON:
Q. So just to be clear, you have no time limitation or segmentation applied to your one-third fee allocation. Beginning here and ending there, it's the whole thing?
A. MSUMRA would allow for the recovery of costs for the whole thing.
Q. You rendered an opinion in this case -- I'll go back to your report here -- regarding the

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rates being claimed in this case. This is page 14. In your opinion the blended rate -- we'll break this up a little bit.
In your opinion blended rates are reasonable to recover. Correct?
A. Yes.
Q. Have you ever sought and recovered a blended rate in any case in Montana?
A. I don't think so.
Q. Are you aware of any case in Montana where a blended rate was awarded?
A. No.
Q. You disclosed in your report that Westmoreland and Holland & Hart apparently agreed to a rate of $745 an hour beginning in January 2026 to the present. Correct?
A. Yes.
Q. And in your opinion is that 745 an hour blended rate is reasonable?
A. Yes. Over -- for that period of time that you're talking about.
Q. In 2026 only. Correct?
A. I guess, yeah.
Q. Okay. Are you aware of any rate -- well, I guess inside Browning Kaleczyc, your firm, are

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there any associates billing at $745 an hour in 2026?
A. I don't know.
Q. Are you aware of any?
A. I think the blended rate is a good deal.
Q. Well, and I think that wasn't my question. My question was are you aware of any associates in your law firm that are being billed at $745 an hour for legal work in Montana?
A. I don't know what the rates are.
Q. Are you aware of any partners or shareholders in your law firm of Browning Kaleczyc who are billing at $745 an hour for legal work in Montana?
A. Yes.
Q. How many partners are billing at that and what are the rates?
A. I don't know what Browning Kaleczyc charges other than myself.
Q. And are you charging more than 745 an hour for legal work?
A. I charge $800 for my time.
Q. And is that the only reference point that you're relying upon for the 745 rate we just talked about?
A. No. Not at all. I mean, I looked at the

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rates charged in AM4, and let's see, the case that -- the AM4 case -- and I think it was Judge Bidegaray's opinion where the AM4 rate -- she references the Verdad Oil case that was 2018, and that was a rate of $600. So also there's the case -- there's a recent Montana case, Reagor case, and the rate mentioned there in testimony is $800 an hour. And even in the -- let's see -- the AM4 case and testimony in the -- I think it was AM4 also which was, what, 2021 maybe, Hernandez cited that 550 an hour was low.
Q. So -- and I think maybe I must have misphrased my question. My question was, are you -- let's rephrase.
Inside Browning Kaleczyc you testified that there were shareholders who were billing 745 an hour or more. Correct?
A. Well, I was -- I mean --
Q. Were you referring to just yourself?
A. Yes.
Q. Okay.
A. Yeah. I don't know what Browning Kaleczyc charges.
Q. Okay. And so the only reference point for the 745 an hour inside Browning Kaleczyc that you're relying upon is your own rate in this case. Correct?

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A. I don't know why you're saying inside Browning Kaleczyc, because I was looking across Montana rates. Browning Kaleczyc doesn't do this kind of -- necessarily do this kind of work.

Q. Forgive me. I guess I understood that you in your experience at Browning Kaleczyc was that you did exactly this type of work, so therefore, I'm asking about your experience regarding your rates charged by your firm.

A. Right.

Q. So just focusing on your work at Browning Kaleczyc, the only shareholder you're aware of charging 745 an hour or more is yourself, and it's for this case. Correct?

A. Not necessarily. I don't know what the other share -- I don't know what shareholders at Browning Kaleczyc charge. And I looked at rates across Montana for this kind of environmental work.

Q. And does Browning Kaleczyc do this type of environmental work? You represented you did while you worked there?

A. Other than myself, probably not.

Q. If you -- have you been hired for any environmental work like this in 2026 other than being an expert witness?

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A. Yes.

Q. And what was your rate in those matters?

A. Let's see. I had a client call me and said, you know, you helped us with this project nine years ago, can you help us with this again. And I charged not $800 an hour.

Q. What did you charge?

A. I don't really remember off the top of my head, but it was over 500.

Q. That was less than 745. Correct?

A. Well, it was a very simple matter, and it was an old client and he was a friend.

Q. But when you were asked to do environmental work recently, your rate was more than 500 but less than 745 an hour. Correct?

A. Yes.

Q. And the only -- the only rate that you charge that is over 745 is your work as an expert witness in this matter. Correct?

A. This is the only case I'm working on right now.

Q. Real quick, we'll do a little aside here. You've represented that your work has been full-time for about seven weeks. We estimated that to be 280-ish hours. Your rate in this matter is how much?

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A. $800 an hour for my time.

Q. And so is it fair to take 280 times 800 and conclude that you've billed in the vicinity of $224,000 as an expert witness in this matter?

A. I don't know.

Q. Let's go back to 2024 and 2025.

A. Oh, on this transcript?

Q. No. No. Looking at your expert report, Westmoreland and Holland & Hart --

A. What page?

Q. Page 14 your expert report. Holland & Hart charged Westmoreland a blended rate of 590 an hour for the work done in January 2024 through December 2025. Correct?

A. Yes.

Q. Okay. And what were associates inside Browning Kaleczyc billed for between January 2024 through December 2025?

A. I don't know.

Q. Were they billed at $590 an hour?

A. I don't know. I did read some reports that associates are billing at like 525.

Q. And where do those reports come from and were they commenting on Montana?

A. I don't think they were unique to Montana,

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but it was kind of surprising to me.

Q. My question was, were those reports regarding Montana?

A. I don't think so. I think it might have been a nationwide.

Q. Fair to say Montana is a different legal market than, say, DC or New York?

A. Well, depends on your expertise.

Q. Are you aware of any associates being billed at 590 an hour inside Browning Kaleczyc between January 2024 and December 2025?

A. I don't know what Browning Kaleczyc rates are, but I do know Mr. Hernandez said that 550 an hour was low.

Q. Are you aware of shareholders inside Browning Kaleczyc charging $590 an hour in that same time frame, January 2024 to December 2025?

A. I don't know what shareholders in Browning Kaleczyc charge.

Q. And the same question for the case inception through February 2023, 485 an hour and same question for March to December of 2023 of 545 an hour. You don't know what Browning Kaleczyc would charge in those time periods?

A. No.

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Q. You did no analysis of your own law firm's hourly rate except for your own rate as an expert in this case?
A. I looked at the case law. Like I said, Judge Bidegaray's, and the -- her decision and the filings pertaining to that. And I looked at the Held case and the testimony related there, and I looked at the Reagor case who said that rates are up to $800 an hour.
Q. You express on page 14 of your expert report that the contractual rates between Holland & Hart and Westmoreland were less than these certain lawyers -- I'll get to them in a second -- standard rate inside the firm. Correct?
A. Where are you looking?
Q. At the bottom of page 14.
A. Oh, the rates are below counsel's rates?
Q. Yes.
A. Is that what you're reading?
Q. Yes.
A. Okay. Uh-huh.
Q. It was your -- you expressed that -- that rates charged by Westmoreland -- or charged by Holland & Hart to Westmoreland were below the rates of the lawyers involved in their general practice.

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Right?
A. I think that's right. Uh-huh.
Q. And I guess Holland & Hart is a nationwide firm. Correct?
A. Well, I think of them more as mountain west.
Q. Are you aware -- where is Mr. Yemington located?
A. In DC.
Q. Okay. And Mr. Dolphay is located here. Correct?
A. Yes.
Q. Ms. Bordelon, where is she located? Do you know?
A. Nevada.
Q. Okay. Do you know where any of the associates in this matter were located, Ms. Grave or Mr. Adams?
A. Wyoming.
Q. They're in Wyoming. Okay. Are you aware of any lawyers in Montana charging $925 an hour for shareholder legal work?
A. Let's see. In Montana the highest I think I'm aware of is $800 an hour.
Q. And that would be you?

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A. No. That's testimony in some of the cases I mentioned.
Q. And in those cases $800 an hour was not awarded, though, was it?
A. No -- yes, it was.
Q. Which case?
A. I think in the Reagor case.
Q. Why don't you turn to your summary of that case on the next page. The court -- you said, quote, the court found Holland & Hart's rates, including Kyle Gray's effective rate of 566.39 an hour and Brianne McClafferty's effective rate of 466.52 an hour to be reasonable for Montana complex litigation.
A. Uh-huh.
Q. So the court did not award those high-end rates, did it?
A. Well, I'm looking at page 21, and that's where I refer to $800 an hour.
Q. So what you're referring to, though, is testimony that firms such as Dorsey & Whitney and Perkins Coie, Holland & Hart's competitors, were charging rates up to $800 an hour. Right?
A. Uh-huh.
Q. Okay. But in Reagor, which was decided just last year, the court significantly cut those

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down and awarded only 566 an hour for Ms. Gray and 466 an hour for Ms. McClafferty. Correct?
A. I think that's right.
Q. So the court in Reagor rejected those rates above 566 an hour. Correct?
A. I don't know if rejected is the right word. There's just testimony of rates charged $800 an hour.
Q. Right. But I'm referring to your statement regarding what the court found, which was that --
A. Yeah. I mean --
Q. -- high end of 566 was the top. Correct?
A. Right. Uh-huh.
Q. Well below 745 an hour. Correct?
MR. DOLPHAY: Objection. Form.
THE WITNESS: What do you --
BY MR. STOCKTON:
Q. 566 an hour is significantly less than 745 an hour. Correct?
A. Yeah. I don't really know how that's relevant to the rates that are blended which I think are a bargain for Westmoreland.
Q. And that wasn't my question. My question was that 745 an hour is a lot more than 566 which is

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the top rate awarded in the Reagor case?
A. It's not the top rate awarded in Montana.
Q. And my question for you was in the Reagor case. Could you please answer that question.
A. The Reagor case, 566 is less than 745.
Q. Okay. And that was Holland & Hart lawyers. Correct?
A. Correct.
Q. Same lawyers, same firm -- or at least same firm as involved in this case. Correct?
A. Same firm.
Q. You reviewed the AM4 case, correct, regarding the attorneys fees?
A. Yes.
Q. And in that case Rosebud County District Court found rates of 225 to 350 to be reasonable four years ago?
A. I would have to look.
Q. Let's look at your report on page 15.
A. Oh, yeah. That was the case where Hernandez says 550 is low.
Q. But the Rosebud County District Court did not award 550. Correct?
A. Looks like the rate they awarded was 350.
Q. 225 to 350. Right?

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A. Yep.
Q. You've identified that the qualifications of the counsel in this case justify the rates being charged. Correct?
A. Yes.
Q. Okay. And when I look through that, your summary of the lawyers involved only concerns the partner- or shareholder-level attorneys. Correct?
A. Let's see. What page are you looking at?
Q. Page 16 to page 19.
A. Okay.
Q. You did not analyze the qualifications of the associates involved in this case. Correct?
A. I don't know about that because I did -- I didn't include it in my opinion, but I think the affidavit of Yemington mentioned it.
Q. But your opinion -- your expert report here does not lay that out in any way, does it?
A. I don't know if I mentioned it in the blended rate or not. You know, the associates -- there weren't a lot of entries for the associates.
Q. I was just going to ask you that. What analysis did you do to compare the amount of hours billed by associates versus shareholder- or partner-level attorneys?

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A. I didn't analyze it that way. I looked at the totality of it.
Q. And so your opinion here about counsel's qualifications only discusses the shareholder level and omitted discussing the associate qualifications. Correct?
A. Well, I knew about the associate qualifications.
Q. And you chose not to include them in your expert report?
A. I did not discuss the associates in my expert report.
Q. And is it -- and it is reasonable, though, in your opinion that associates should be billed at 495 an hour from case inception to February of 2023. Correct?
A. I think the blended rate is reasonable and I really think it's a bargain.
Q. And I think maybe I must have misphrased my question. Is it your opinion that it's reasonable to charge 495 an hour for associates between inception of this case and February of 2023?
A. Well, you can't look at it that way. It's a blended rate.
Q. But associates are being billed at that

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rate. Correct?
A. Yes.
Q. Okay. And in your opinion it's reasonable to bill associates at that rate?
A. As long as the other end is lower than their regular rate so it's blended.
Q. And so if there's associates working on the case now, in your opinion it's reasonable that they be billed at $745 an hour?
A. It's reasonable to me that the hard-working shareholders that worked on this case gave -- really gave the client a break by having a blended rate. And I don't look at the associated -- associates rate isolated like that.
Q. But if we take your opinion that one-third of the total hours expended is reasonable times the hourly rate given the time period, your opinion is that billing or shifting the fees here for those associates at those rates is reasonable?
A. The blended rate is reasonable.
Q. I think we can run through some of this pretty quickly. But I want to run through your Plath factor analysis.
Your Plath factor runs through these factors, correct, and -- and essentially concludes

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that your -- your opinions are reasonable in the end. You opine that the amount and character of services rendered was reasonable in your first factor. Correct?
A. Yes.
Q. Okay. And As we have discussed today, however, you did no specific claim-by-claim or issue-by-issue analysis through the time entries to reach that. Correct?
A. I didn't flyspeck. I looked at the total.
Q. Your analysis went off the total and you said that that was reasonable in your opinion. Correct?
A. Right.
Q. Same question regarding the labor, time, and trouble involved. You did not go through the fee entries and analyze whether the entry was related to claim two or not in order to reach this conclusion, rather you base your analysis off the total hours. Correct?
A. I looked at the case as a whole.
Q. The same would be true for each of your Plath factor analysis here. You didn't look at the factor and then analyze the specific fee entries. You looked at the whole totality of fees being

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claimed. Correct?
A. I looked at the hours claimed -- the hours reported, determined that they were reasonable. And I looked at the rate reported and determined those were reasonable.
Q. Okay. Do you understand that Westmoreland and the union are seeking fees for fees in this proceeding?
A. I think so.
Q. Okay. And do you understand that Westmoreland is claiming fees in this proceeding for legal work done at the district court?
A. Yes.
Q. And do you think that the -- that the board can award fees for work at the district court?
A. The statute allows that.
Q. In your opinion. Correct?
MR. DOLPHAY: Objection. Outside the scope.
You can answer.
BY MR. STOCKTON:
Q. Are you opining that the fees incurred after the final order through June 30th, 2026, are reasonably incurred?
A. Yes.

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Q. And some of those fees include the work at the district court. Correct?
A. Yes.
Q. And it's your opinion that the board can evaluate what occurred at the district court and award fees for the legal work there. Correct?
A. I believe MSUMRA allows for that.
Q. And you think that it's reasonable and appropriate for Westmoreland to seek and recover those fees. Correct?
A. Yes.
Q. You did no analysis to separate the fees incurred for work at the district court versus work in this proceeding before the board. Correct?
A. I didn't -- are you asking me if I separated them out?
Q. Yes.
A. Well, they are kind of separate by looking at the Exhibit 1, I think.
Q. Let's go ahead and look at Exhibit 1. We marked this. If you turn back, what's the last fee entry in Exhibit 1?
A. It looks like 9/30/2025.
Q. And --
A. Oh, so I think I'm wrong about that. I

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think Exhibit 1 does include some after the November 4th decision.
Q. Okay. But the appeal to district court of claim two or the jurisdictional decision did not occur until when?
A. I don't really know.
Q. June of -- June 15th or so of this year.
A. Oh, okay.
Q. Long after Exhibit 1. Correct?
A. Yes.
Q. And did you review fees after Exhibit 1 in preparing your report?
A. I think we -- I think you asked me that earlier. Yeah.
Q. And you did?
A. Yeah.
Q. Okay. Those weren't attached to Mr. Yemington's affidavit?
A. Yeah. We talked about that earlier.
Q. Correct, they weren't?
A. Uh-huh.
Q. Okay.
A. Because -- because they were going to be updated in September, I think, according to the scheduling order.

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Q. And I guess my question for you is this. How did you receive that fee spreadsheet, the supplemental one, not attached to Mr. Yemington's affidavit but the October 1st to June 30th entries?
A. Yeah. We -- you asked me that question earlier.
Q. The question still stands.
A. How did I receive it? I got it from Matt.
Q. Okay. Did you get it -- and when did you get it?
A. After August 7th.
Q. So you got the spreadsheet after August 7th?
A. Yes. If I remember right.
Q. Okay. In your expert report you opine about those fees, and your expert report was dated October 7th. Correct?
A. August.
Q. Or August 7th.
A. August, yeah.
Q. How could you opine in your report about the fees through June 30, 2026, if you did not receive them until the day your report went out or after the report went out?
A. Let's see. I don't know if I've got the

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dates right. Where is it in my report that says that?
Q. On page 4 you state in the second to last bullet point that you reviewed spreadsheets reflecting attorneys fees and costs and expenses incurred by Westmoreland through June 2026. Correct? That would include those supplemental fees. Correct?
A. I think I got those after August 7th.
Q. So go ahead and turn to page 10 of your report. Two questions: Why did you include the spreadsheets through June 30th, 2026, if you received them after the date of your report?
A. Why did I include it on page 4?
Q. Uh-huh.
A. I think I was anticipating that I would get those because I guess I'm going to supplement my review of them.
Q. Your report does not say that, though. Your report says you reviewed them. Correct?
A. It says at the footnote I will review the spreadsheets.
Q. Let's go back to page 4. At the top you state: "In forming my opinions, I have reviewed the following materials colon." Correct?
A. Yep.

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Q. And then second to last bullet point is, quote, spreadsheets reflecting attorneys fees and costs and expenses incurred by Westmoreland through June '26, end quote. Correct?
A. It says that.
Q. So you reviewed and relied upon those for your representation?
A. I don't think I did. I think I just looked at the Exhibit 1.
Q. So is that incorrect in your report?
A. Well, if you read the footnote, it says I will review, so probably could have been clearer.
Q. Let's take a look at your footnote in detail.
A. Okay.
Q. Your footnote says, quote, the spreadsheets reflecting the attorneys fees and costs and expenses incurred by Westmoreland/Local 400 attached hereto necessarily reflect only those attorneys fees and costs and expenses incurred through approximately one month prior to the date of this report as billing records reflecting more recent activity were not yet available at the time of this report, end quote.
Your representation in your report was

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that the billing entries up to approximately one month prior to the date of your report were included and reviewed and relied upon. Correct?
A. I don't think -- I reviewed the spreadsheet attached to Exhibit 1. I don't think I had anything more than that.
Q. Do you want to correct your report as we sit here today?
A. I'm kind of tired, so I would like to think about that a little bit. But I'm pretty sure that I only reviewed Exhibit 1.
Q. We'll go ahead and give you a moment to think about it if you would like.
MR. DOLPHAY: Let's go off the record.
(Whereupon, a discussion was held outside the record.)
MR. STOCKTON: Let's go back on the record. It's 6:30 and counsel have agreed that there is 15 minutes left in this deposition.
BY MR. STOCKTON:
Q. Ms. Laughner, when we took our break, you wanted to take a moment to think about when you had received the supplemental fee spreadsheet regarding fees incurred between October 1st, 2025, to the end of June 2026. Do you have an updated, corrected, or

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changed answer to your prior testimony?
A. The date on page 4 is correct. I had my dates mixed up.
Q. Okay. So you did receive the supplemental spreadsheet in time to include and rely upon in your expert report?
A. I did.
Q. Okay. And you intend to receive and review additional fees in this matter and update your testimony. Correct?
A. I think so.
Q. Did you receive a copy of your expert report when it was produced to the other side, kind of like a -- you know, gets produced to the other side and just a copy of here's the -- here's the produced served version? Did you get one of those?
A. Yes.
Q. Okay. And did you review it?
A. I don't remember.
Q. Were you aware that your reference to the spreadsheets from October 1st, 2025, to June 30th, 2026, were not included with your report as initially served?
A. Say that again.
Q. Were you aware that the spreadsheets you

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relied upon, the supplemental ones, were not attached to your report when served to opposing counsel on August 7th, 2026?
A. The spreadsheets themselves or the reference to them?
Q. Your footnote 1 states: The spreadsheets reflecting attorneys fees and costs and expenses incurred by Westmoreland/Local 400 attached hereto necessarily reflect only those attorneys fees and costs and expenses incurred through approximately one month prior to the date of this report, end quote.
So your report referenced that the spreadsheets through June 2026 were attached to your report. Correct?
A. I don't know if they were or not.
Q. And when did you become aware that the supplemental spreadsheets were not attached?
A. I don't know if they were attached or not.
Q. Did you ever become aware of the fact that they were not when served on opposing counsel?
A. Say that again.
Q. Did you become aware of the fact that they were not included when served -- your report was served on opposing counsel?
A. When did I become aware?

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Q. Did you become aware?
A. I don't know.
Q. Your intent, though, was to attach them to your report. Correct?
A. Yes.
Q. Let's turn to page 10 of your report. You represent that Westmoreland has expended approximately 702 hours seeking the award of fees in this case. Correct?
A. Yes.
Q. And it's your opinion that those 702 hours are reasonable and necessary. Correct?
A. Yes.
Q. Okay. And that was based upon what review? What analysis did you do to reach that conclusion?
A. The Lodestar and Plath factors.
Q. Of those 702 hours?
A. Right.
Q. Okay. Did you do a review of the time entries?
A. Yes.
Q. How many times did you review them, not the initial ones but the supplemental ones?
A. I think at least three times.

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Q. You went through them three times?
A. Uh-huh.
Q. When did you receive that supplemental spreadsheet?
A. Awhile ago.
Q. And by awhile ago, what do you mean?
A. Gosh, I don't remember the exact date.
Q. It was before August 7th. Correct?
A. Yes.
Q. So was it around the time you were retained?
A. I don't remember.
Q. Was it sometime in July 2026?
A. Must have been.
Q. Okay. Let's go ahead and mark that so we have it as an exhibit for convenience sake. It's the -- should be the second tab in your book. I'll go ahead and mark it.
What's our next exhibit? 18?
THE REPORTER: 18.
MR. STOCKTON: Are those the ones beginning October 1st?
MR. DOLPHAY: Yeah.
MR. STOCKTON: Okay.
(Whereupon, Exhibit 18 was

marked for identification.)
MR. STOCKTON: I smudged it a little bit. Might have to rewrite it. Sorry.
BY MR. STOCKTON:
Q. Let's take a look at the time entry on page 2 of Exhibit 18. On October 24th, 2025, by Mr. Yemington, 7.9 hours. Do you see that?
A. Not yet. Okay. Uh-huh.
Q. And I guess Mr. Yemington stated that he had, quote, continue AM5 exceptions oral argument preparation; attend BER hearing regarding the same; attend to correspondence regarding the same; conference with DEQ counsel, S. Bordelon and A. Grave regarding the same and path forward; circulate summary of BER hearing for client review; attend to correspondence from Mr. Briggs regarding the same, end quote.
In that fee entry, are we able to determine the specific time that Mr. Yemington spent on each of those phrases of work that he did?
A. He detailed what he did for 7.9 hours.
Q. And I guess my question was specifically, we don't -- we can't know specifically what he -- how much time he spent for each of those entries, can we?
A. I would guess not.

Q. As we come to the conclusion of this deposition, is there any of your testimony that you would like to correct, change, or modify in any way?
A. I can't think of anything right now.
Q. Okay.
MR. STOCKTON: No further questions.
MR. DOLPHAY: The witness will read and sign.
(Whereupon, the deposition concluded at 6:40 p.m.)
SIGNATURE RESERVED.
* * * * * * * * *

DEPONENT'S CERTIFICATE

I, CATHERINE A. LAUGHNER, the deponent in the foregoing deposition, DO HEREBY CERTIFY, that I have read the foregoing - 287 - pages of typewritten material and that the same is, with any changes thereon made in ink on the corrections sheet, and signed by me a full, true and correct transcript of my oral deposition given at the time and place hereinbefore mentioned.

_____
CATHERINE A. LAUGHNER

Subscribed and sworn to before me this _____day of _____, 2026.

_____
PRINT NAME: _____
Notary Public, State of Montana
Residing at: _____
My commission expires: _____

C E R T I F I C A T E

STATE OF MONTANA)
: ss
COUNTY OF GALLATIN)

I, Deborah L. Fabritz, Registered Professional Reporter and Notary Public for the State of Montana, residing in Bozeman, do hereby certify:

That I was duly authorized to and did swear in the witness and report the deposition of CATHERINE A. LAUGHNER, in the above-entitled cause; that the foregoing pages of this deposition constitute a true and accurate transcription of my stenotype notes of the testimony of said witness, all done to the best of my skill and ability; that the reading and signing of the deposition by the witness have been expressly RESERVED.

I further certify that I am not an attorney nor counsel of any of the parties, nor relative or employee of any attorney or counsel connected with the action, nor financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal on this 2nd day of September, 2026.

DEBORAH L. FABRITZ
Notary Public
for the State of Montana
Residing at:
Bozeman, Montana
My Commission Expires:
December 9, 2026

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