

**BOARD OF ENVIRONMENTAL REVIEW
October 16, 2026, 9:00 AM
DEQ ZOOM CONFERENCE**

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

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

9:00 A.M.

I. ADMINISTRATIVE ITEMS

A. REVIEW AND APPROVE MINUTES

1. The Board will vote on adopting the August 14, 2026, meeting minutes.

II. CONTESTED CASE BRIEFINGS – INFORMATIONAL

A. CONTESTED CASE SUMMARIES

Please see pages 7-39 in the Meeting Packet for a summary of all active cases.

B. NEW CONTESTED CASES

- 1. In the Matter of: Elkhorn Goldfields Inc. Hard Rock Mining Operating Permit No. 00173, Golden Dream Mine, Request for Hearing on Notice of Intent to Forfeit Bond(s), BER 2026-07 HR**

On August 13, 2026, Elkhorn Goldfields Inc. filed a Request for Hearing regarding Hard Rock Mining Operating Permit No. 00173, Golden Dream Mine, Notice of Intent to Forfeit Bond(s). On October 2, 2026, the DEQ filed a Motion to Dismiss and Brief in Support. Briefing is not complete.

C. CURRENT CONTESTED CASE UPDATES

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

Board Counsel Hupp is working on the FoFCoL. The Board anticipates scheduling a Special Meeting for Board discussion of the FoFCoL and the parties' exceptions thereto.

2. In the Matter of: Notice of Appeal and Request for Hearing by the Western Sugar Cooperative regarding Its Montana Pollutant Discharge Elimination System Permit No. MT0000281 Issued October 29, 2020, BER 2020-05 WQ

On October 1, 2026, Western Sugar Cooperative filed a Motion for Second Amendment of the Board's May 3, 2024, Final Agency Action, seeking to extend its November 1, 2026, deadline to submit its MPDES permit supplemental renewal application to April 1, 2027. The DEQ opposes the request. Briefing is not complete.

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

Westmoreland filed a status report on October 2, 2026. The parties have been unable to reach an agreement with respect to numeric standards for EC and SAR. Westmoreland's status report indicates it plans to move the Board to terminate the DEQ and Westmoreland's prior Stipulation staying this appeal and to request that the Board issue a new Prehearing Order to govern this appeal. The Board anticipates taking action on this matter at its December meeting.

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

On September 4, 2026, Stillwater Mining Company amended its notice of appeal. On September 18, 2026, the DEQ filed a motion to dismiss Stillwater's Claim "C", and on October 2, 2026, Stillwater filed a response brief. Briefing is not complete.

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

AND

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

At its August 2026 meeting, the Board stayed these matters until its February 2027 meeting. On October 2, 2026, Westmoreland filed a Reclamation Report and the Affidavit of Ken Wooley with respect to the status of reclamation at the Absaloka Mine. Those documents are included in the Board's packet.

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

On March 3, 2026, R & D Transit, LLC filed an appeal. On July 30, 2026, the DEQ filed a Motion to Dismiss or, in the Alternative, Motion for More Definite Statement, along with a Brief in Support. R & D Transit has not responded. The Board anticipates addressing the pending Motion at its December meeting.

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

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

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

On August 5, 2026, Angel Viren filed a Notice of Appeal of the Notice of Violation and Administrative Compliance Order for Violations of Public Water Laws at the Red Rooster Bar. On September 25, 2026, DEQ filed a Motion to Dismiss, and a Brief in Support of Motion to Dismiss. On October 2, 2026, the Chair issued an order granting Red Rooster Bar until November 6, 2026, to file a response to the Motion to Dismiss. The Board anticipates scheduling oral arguments on the pending Motion at its December meeting.

D. CASES IN COURT

1. Montana Department of Environmental Quality v. Montana Board of Environmental Review, Teck Coal Limited, and the Board of County Commissioners of Lincoln County, Case No. CDV 2023-21.

Montana Environmental Information Center, Clark Fork Coalition, Idaho Conservation League, Idaho Rivers United v. Montana Board of Environmental Review, Teck Coal Limited, and The Board of County Commissioners of Lincoln County, Lewis and Clark County, Cause No. DV-23-0366.

The Board and EVR's opening briefs on appeal were filed with the Supreme Court on September 29, 2026.

2. In the Matter of the Formal Appeal Challenging the DEQ's Approval of Riverside Contracting's Opencut Mining Permit #3415 for the Marvin Rehbein Site Near Arlee in Lake County, Montana, BER 2023-02 OC, DV 25-18.

On September 24, 2026, the District Court held that the Board erred in determining that the Notice of provisions of OMRA were complied with and reversed and remanded the matter to the agency for further proceedings consistent with the District Court's opinion.

III. ACTION ITEMS

10 am to 5 pm (Lunch Break at Approximately Noon)

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

1. Motion to Designate Board Member Payne as Presiding Member for Evidentiary Hearing

Anticipated Motion: Motion to designate Board Member Payne as the Presiding Member for evidentiary hearing with the Board to retain full authority to deliberate and decide Westmoreland's petition for attorney fees, costs, and expenses; Board Member Payne will have authority to decide objections and offers of proof, but any such rulings can be reversed by a majority vote of the Board.

2. MEIC's Request to Disqualify Pursuant to Mont. Code Ann. § 2-4-611(4)

On September 24, 2026, Anne Hedges filed an affidavit on behalf of MEIC to disqualify Chairman Simpson from this matter. The Board will discuss and take action on that request.

3. Evidentiary Hearing on Reasonableness of Westmoreland's Petition for Attorney Fees, Costs, and Expenses

The Board will conduct an evidentiary hearing with respect to the reasonableness of Westmoreland's petition for attorney fees, costs, and expenses. Note: The Board will deliberate at a later date.

IV. GENERAL PUBLIC COMMENT

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

V. BOARD CHAIR UPDATE

VI. ADJOURN