

**BOARD OF ENVIRONMENTAL REVIEW
MEETING MINUTES
DECEMBER 8, 2023**

Call to Order

Chair Simpson called the meeting to order at 9:00 a.m.

Attendance

Board Members Present

By Zoom: Chair Dave Simpson; Board Members Julia Altemus, Jennifer Rankosky, Jon Reiten, and Joe Smith.
Vice Chair Stacy Aguirre did not attend the meeting.

Roll was called and a quorum was present.

Board Attorney Present

Terisa Oomens

DEQ Personnel Present

Board Secretary: Sandy Moisey Scherer

Board Liaison: Deputy Director James Fehr

DEQ Communications: Moira Davin

DEQ Legal: Catherine Armstrong, Kirsten Bowers, Sarah Christopherson, Angie Colamaria, Sam King, Loryn Johnson,
Jeremiah Langston, Kurt Moser, and Kaitlin Whitfield

DEQ Air, Energy and Mining: Emily Lodman

DEQ Water Quality: Andy Ulven, Katie Makarowski

Other Parties Present

Laurie Crutcher, Crutcher Court Reporting

Elena Hagen, Montana DOJ Agency Legal Services Bureau

Bill Mercer, Sarah Bordelon, and Sam Yemington - Holland & Hart

Vicki Marquis, Crowley Fleck

I. ADMINISTRATIVE MATERIALS

A. Review and Approve Minutes

A.1. The Board will vote on adopting the October 20, 2023, Meeting Minutes.

Board member Smith moved to APPROVE the October 20, 2023, meeting minutes. Board member Reiten SECONDED. The motion PASSED unanimously.

There was no board discussion or public comment.

A.2. Review and approve the proposed Board meeting schedule for 2024.

Board member Altemus moved to APPROVE the proposed Board meeting schedule for 2024. Board member Smith SECONDED. The motion PASSED unanimously.

II. BRIEFING ITEMS

Chair Simpson and Board Counsel Oomens offered clarification regarding cases. Chair Simpson asked about the Westmoreland Rosebud Mining MPDES permit stipulation in BER 2022-06 WQ. Kirsten Bowers of DEQ and Bill Mercer of Holland and Hart provided an update to the Board.

The Board did not have any questions.

III. ACTION ITEMS

None.

IV. GENERAL PUBLIC COMMENTS

None.

V. GENERAL PUBLIC COMMENT

No public comment was given.

VI. BOARD CHAIR UPDATE

A.1. Chair Simpson mentioned that the agenda for today's meeting is brief. Cancelling today's meeting was considered but due to the recent Supreme Court decision summarized by Board Counsel Oomens, a decision was made to hold the meeting. Chair Simpson hoped all Board members had a chance to read the decision and he gave a brief description of the background information of the case. He would like to propose the February meeting be a two-day meeting (possibly February 15th and 16th), but he will flesh out an agenda within the next couple of weeks.

Item 1 for this meeting on February 15th would be a status conference on Westmoreland Rosebud Amendment 4 case regarding the Rosebud Mine layout, the mine plan, and specifically the Area B Amendment. This Board does not have any hands-on background in this case and there are two other cases that are potentially affected (Area F and Area B Amendment).

Item 2 for this meeting would be to go through three specific items being remanded to the Board by the Supreme Court, and to get the perspective of the parties on those issues. Chair Simpson would like to hear from the parties on their view of how the Supreme Court decisions affects those other two pending cases, and whether it will be necessary to back up on the status of those cases or make any adjustments going forward, to be sure that those cases eventually are resolved.

The meeting on February 16th would be the regular Board meeting, and Chair Simpson said the Moudy Pit case is expected to be before the Board. He asked for comments from the Board on the schedule being proposed, and the subject matter of the meetings.

Jeremiah Langston of DEQ mentioned that DEQ has filed a petition for rehearing of the Montana Supreme Court's decision on a very narrow issue regarding attorney fees. The Court will issue a remittitur, which is essential for the Board to obtain jurisdiction over AM4. He said that it is good for the Board to be thinking about the case and the attorney fee issue should not have any bearing on the Board proceedings.

Chair Simpson said he was not aware of DEQ's petition for rehearing on the issue of attorney fees but agreed that it should not have any bearing on whether the Board proceeds.

Sam Yemington of Holland and Hart echoed Mr. Langston's comments but wanted to put the Board on notice that they have a conflict with the February 15th date as there's an oral argument in Billings with Judge Davies. Mr. Yemington said there would be sufficient time to revisit scheduling with the judge and reset that oral argument to another date but emphasized that MEIC needs to be part of the conversation.

Chair Simpson said he is under the assumption that the Board could go ahead with the concept. The Board will be distributing documentation to the parties as to when the meeting will be, what the subject matter will be, and any specifics about specific information that the Board may request. There is a possibility that the Board could hear the Moudy Pit case on February 15th and have the status conference on this case on February 16th. He will discuss all this with Board Counsel Oomens in greater detail.

Board Counsel Oomens suggested that the Board wait until the remittitur is received from the Montana Supreme Court. When the remittitur is received is when the Board obtains jurisdiction. She also recommended waiting before deciding to pass a motion that the Board have a two-day meeting. Chair Simpson decided to defer his decision about having a two-day meeting until hearing from the Court. In the meantime, the Board will continue to prepare for the distribution of information.

Board member Altemus asked if there was any news of a replacement for Board member Bruner. Chair Simpson asked Board Secretary Moisey Scherer and she responded that she has not received any information.

VII. ADJOURNMENT

Board member Rankosky MOVED to adjourn the Board Meeting; Board member Smith SECONDED.
The motion PASSED unanimously. The meeting was adjourned at 9:38 A.M.

Board of Environmental Review December 8, 2023, minutes approved:

/s/ David Simpson
DAVID SIMPSON
CHAIR
BOARD OF ENVIRONMENTAL REVIEW

February 16, 2024
DATE