



**BOARD OF ENVIRONMENTAL REVIEW
MEETING MINUTES**

JUNE 20, 2025

Call to Order

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

Attendance

Board Members Present

Chair Dave Simpson; Board Members Amanda Knuteson, Jennifer Rankosky and Joe Smith.

Vice Chair Stacy Aguirre and Board Member Julia Altemus were not in attendance.

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 Director: Sonja Nowakowski

DEQ Legal: Catherine Armstrong, Kirsten Bowers, Sarah Christopherson, Sam King, Kurt Moser, Abigail Sherwood, Nick Whitaker, and Kaitlin Whitfield

DEQ Air, Energy and Mining: Whitney Bausch, Adam Bradley, Josh Bridgeman, Julian Calabrese, Beverly Faraday, Mike Glenn, Mitch Hoffman, Emily Lodman, Alex Mackey, Brian Schrage, Bailey Tasker, Madeline VerWey, and Dan Walsh

Other Parties Present

Laurie Crutcher — Crutcher Court Reporting

Elena Hagen — Montana DOJ Agency Legal Services Bureau

Mark Stermitz and Vicki Marquis — Crowley Fleck

David (Kim) Wilson — Morrison Sherwood Wilson & Deola, PLLP

Todd Briggs — Westmoreland

David Smith — MT Contractors Association

Frank Tabish and Jeff — LHC MT

Sabrina Temple — Decker Coal Company

Samuel Yemington — Holland & Hart

I. ADMINISTRATIVE MATERIALS

A. Review and Approve Minutes

A.1. The Board will vote on adopting the April 11, 2025, Meeting Minutes and the April 25, 2025, Meeting Minutes.

Board member Smith moved to APPROVE the April 11, 2025, meeting minutes and the April 25, 2025, meeting minutes. Board member Rankosky SECONDED. The motion PASSED unanimously.

There was no board discussion or public comment.

II. BRIEFING ITEMS

- a. Chair Simpson, Board Counsel Oomens, Sam King of DEQ, and Samuel Yemington of Holland & Hart offered clarification regarding cases.

Chair Simpson spoke about six cases that were assigned to Rob Cameron as Hearing Examiner, by former Chair Steve Ruffato. Three cases have concluded but three remain undecided – BER 2019-05 OC (Western Energy Area F), BER 2022-04 OC (Valley Garden Land & Cattle) and BER 2022-05 SM (Rosebud Mine Area B Amendment 5). Rob Cameron has notified the Board that he will not be able to continue as Hearing Examiner for these three cases. Chair Simpson asked Board Attorney Oomens for her recommendation for how the Board should handle this.

Board Counsel Oomens reviewed the status of the three cases and recommended that the Board assume jurisdiction of these cases.

Kim Wilson, counsel for Valley Garden Land & Cattle, said that the status of this case as described in the agenda is not correct. Motions in Limine are still pending. Sam King of DEQ concurred with Mr. Wilson's rendition of the procedural nature of the case.

Board member Knuteson requested hearing transcripts for BER 2019-05 OC (Western Energy Area F) and BER 2022-05 SM (Rosebud Mine Area B Amendment 5). Board Attorney Oomens said that the Board Secretary would get information to Board members, so they would have sufficient time for review. Sam Yemington of Holland & Hart, representing Westmoreland in both cases, noted that the hearing transcripts from the Westmoreland cases are quite considerable.

Board member Rankosky motioned for the Board to ASSUME jurisdiction of BER 2019-05 OC (Western Energy Area F), BER 2022-04 OC (Valley Garden Land & Cattle) and BER 2022-05 SM (Rosebud Mine Area B Amendment 5). Board member Smith SECONDED. The motion PASSED unanimously.

Chair Simpson had questions regarding BER 2019-06 WQ (Alpine Pacific Utilities). Kirsten Bowers of DEQ gave an update.

Chair Simpson, Kirsten Bowers of DEQ, and Samuel Yemington of Westmoreland offered clarification regarding BER 2022-06 WQ (Westmoreland Rosebud).

The Board did not have any additional questions.

III. ACTION ITEMS

- a. **In the Matter of Appeal and Request for Hearing by Protect the Clearwater Regarding Issuance of Opencut Mining Permit #3473, BER 2023-03 OC.**

Chair Simpson reviewed the history of the case, and noted that the parties have agreed to waive exceptions and oral argument. The Board will proceed with deliberations regarding the new and revised Hearing Examiner's Proposed Findings of Fact and Conclusion of Law. Discussion ensued.

Board member Smith moved to APPROVE the Hearing Examiner's Findings of Fact and Conclusions of Law. Board member Rankosky SECONDED. Discussion ensued. The motion PASSED unanimously.

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

Chair Simpson said that the Board was scheduled to hear oral argument on Decker's request for hearing to revise the permit for West Decker. Decker Coal Company recently filed an unopposed Motion to Stay Proceedings until December. Chair Simpson asked counsel for Decker Coal to give an update to the Board. Ms. Marquis spoke about how Decker Coal is working with DEQ towards a resolution, and Decker Coal will provide a status update to the Board in advance of the December 2025 meeting. She also gave an update for East Decker. Sam King of DEQ concurred with Ms. Marquis' remarks.

Board member Rankosky moved to STAY BER 2025-01 SM until the December 2025 Board meeting. Board member Knuteson SECONDED. The motion PASSED unanimously.

- c. **In the Matter of: Decker Coal Company's Request for Hearing Regarding Permit C1983007 (East Decker Mine), BER 2025-02 SM.**

Board member Rankosky moved to STAY BER 2025-02 SM until the December 2025 Board meeting. Board member Knuteson SECONDED. The motion PASSED unanimously.

IV. NEW CONTESTED CASE

- a. **In the Matter of: Yogo Sapphire Group, LLC Exploration License No. 00886, BER 2025-03 HRM.**

Chair Simpson spoke about the new contested case, and Nick Whitaker of DEQ gave an update. The matter has been resolved by the parties.

Board member Smith motioned to GRANT dismissal of this case. Board member Rankosky SECONDED. The motion PASSED unanimously.

V. GENERAL PUBLIC COMMENT

No public comment was given.

VI. BOARD CHAIR UPDATE

Chair Simpson spoke regarding the status of the litigation in progress with the Selenium case (CDV 2023-21), as the briefing has concluded. Oral arguments are scheduled for July 22 in Helena at 9:00 a.m.

He also mentioned that Board Attorney Oomens is leaving Agency Legal Services. Chair Simpson thanked her for her work with the Board. Currently Agency Legal Services is unable to assign cases to anyone else at the agency, as they are short staffed. The Board will need to obtain legal counsel. Chair Simpson has spoken with Board Liaison, Deputy Director Fehr, and they will be discussing this matter in greater detail.

VII. ADJOURNMENT

Board member Rankosky MOVED to adjourn the Board Meeting; Board member Smith SECONDED. The motion PASSED unanimously. The meeting was adjourned at 10:13 A.M.

Board of Environmental Review June 20, 2025, minutes approved:

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

August 22, 2025
DATE