

**BOARD OF ENVIRONMENTAL REVIEW
MEETING MINUTES**

OCTOBER 24, 2025

Call to Order

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

Attendance

Board Members Present

Chair Dave Simpson; Vice Chair Stacy Aguirre; Board Members Julia Altemus, Allan Payne, and Joe Smith.
Board member Rankosky was not present.

Roll was called and a quorum was present.

Board Attorney Present

Dana Hupp, Interim Board Counsel

DEQ Personnel Present

Board Secretary: Sandy Moisey Scherer

Board Liaison: Deputy Director James Fehr

DEQ Communications: Christopher Wardell

DEQ Legal: Catherine Armstrong, Kirsten Bowers, Amanda Galvan, Aurora Goddard, Sam King, Jeremiah Langston, Lee McKenna, Kurt Moser, Isabelle Nebel, and Nick Whitaker

DEQ Air, Energy and Mining: Josh Bridgeman, Ric Casteel, Mitch Hoffman, Emily Lodman, Gabrielle Ostermayer, Brian Schrage, and Dan Walsh

DEQ Enforcement: Chad Anderson

Other Parties Present

Laurie Crutcher — Crutcher Court Reporting

Shiloh Hernandez — Earthjustice

Vicki Marquis — Crowley Fleck

Samuel Yemington, Andrea Grave, Sarah Bordelon — Holland & Hart

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

Alan Ringlein — A.M. Welles

William Meyer — map-inc.org

I. ADMINISTRATIVE MATERIALS

A. Review and Approve Minutes

A.1. The Board will vote on adopting the August 22, 2025, Meeting Minutes.

Board member Altemus moved to APPROVE the August 22, 2025, meeting minutes. Board member Smith SECONDED. Board member Payne said he would abstain from the vote, as he wasn't at the prior meeting.

Chair Simpson asked for a vote and said he only heard three responses. Vice Chair Aguirre said she may need to abstain as she wasn't at the prior meeting either. Chair Simpson indicated that with three votes, there was not a quorum. Vice Chair Aguirre said she read the minutes and did not have any issues with them. Discussion ensued. Board member Payne changed his mind and said that he would vote to approve the minutes. Vice Chair Aguirre did the same. The motion PASSED unanimously.

There was no further board discussion or public comment.

Chair Simpson welcomed Allan Payne to the Board. Board members introduced themselves and gave a brief introduction. Interim Board Counsel Hupp gave an introduction as well.

B.1. 2026 Board Calendar

Chair Simpson noted that the 2026 Board Calendar was in the meeting packet. He asked Board members to review, as it will come up in the December meeting. There was no board discussion or public comment.

II. BRIEFING ITEMS

- a. Chair Simpson did a brief review, and there were no comments from the Board.

Board member Altemus asked for meeting participants to identify themselves as she did not recognize many names on the call (and which ones were from DEQ). The Board Secretary reviewed for the record who was on the call.

III. ACTION ITEMS

- a. **Decisions on how to proceed with active cases**

Chair Simpson reviewed the cases with the Board, and discussion ensued.

a.1. BER 2015-06 WQ, Westmoreland Absaloka Mine

Board member Smith moved to GRANT the Joint Motion for Stay. Board member Payne SECONDED. Discussion ensued. The motion PASSED unanimously.

a.2. **BER 2019-05 OC, Western Energy Area F**

Chair Simpson reminded the Board that it assumed jurisdiction of this case at the June meeting. The Board may retain the case or assign it to a Hearing Examiner. Discussion ensued.

Counsel for all three parties requested that the case be assigned to Ms. Dana Hupp, Interim Board Counsel, due to the technical nature of the case.

Board member Payne motioned to ASSIGN this case to an outside Hearing Examiner, not Interim Board Counsel Hupp. Board member Altemus SECONDED. Discussion ensued. Board member Smith asked for a list of available hearing examiners from DLI for future reference. Deputy Director Fehr said he would ask for a list. The Board discussed financial costs for hearing examiners. The motion FAILED 4-1, with Board member Payne dissenting.

Board member Altemus motioned to ASSIGN this case to Interim Board Counsel Dana Hupp, as Hearing Examiner. Vice Chair Aguirre SECONDED. Discussion ensued.

Board member Altemus amended her motion to APPOINT Dana Hupp, to be the Board Counsel for the case. Vice Chair Aguirre SECONDED. Discussion ensued.

Board member Payne amended the motion to APPOINT Dana Hupp as the Successor Hearing Examiner. Vice Chair Aguirre SECONDED. Discussion ensued. The amended motion PASSED unanimously.

Discussion ensued. Chair Simpson asked Board member Payne to restate his amended motion. Board member Payne restated his amended motion that the Board APPOINT Dana Hupp as the Successor Hearing Examiner to take this matter forward as the Hearing Examiner. A vote was held, and the vote was three in favor and two opposed, with Chair Simpson and Board member Payne dissenting. Chair Simpson said that the motion failed for lack of a quorum vote.

Board member Payne called for Point of Order, asking if it is the majority of the Board or majority of the Board present that's required for a quorum vote. Discussion ensued. Deputy Director Fehr said he would look for the legislation from the recent Legislative Session that addressed the number needed for a vote to have a quorum. Chair Simpson called for a break, to sort this out.

Upon returning from the break, the legislation about the quorum question had been placed in the meeting chat. It is 2-15-124, MCA. Discussion ensued.

Chair Simpson had stated that the motion failed because it did not reach the four-vote threshold. That was apparently in error, so the motion PASSES on a vote of three to two.

a.3. **BER 2019-06 WQ, Alpine Pacific Utilities**

The Board assumed jurisdiction for this matter on June 20, 2025. Discussion ensued. No further action is necessary at this time.

a.4. **BER 2022-04 OC, Valley Garden Land & Cattle LLC**

The Board assumed jurisdiction for this matter on June 20, 2025. Chair Simpson asked the parties for comment. David (Kim) Wilson of Morrison Sherwood Wilson & Deola, PLLP and Lee McKenna of DEQ gave comment. Lee McKenna stated that there is an error in the materials that were provided to the Board and motions for summary judgment have not been fully briefed. Discussion ensued.

Board member Payne moved that the Board RETAIN jurisdiction, LIFT the stay, ORDER the summary judgment motions complete, and then CONSIDER the case at its next meeting after the completion of the summary judgment briefing. Vice Chair Aguirre SECONDED. The motion PASSED unanimously.

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

Chair Simpson invited the parties to present their issues and positions on the issues to the Board. Shiloh Hernandez of Earthjustice, Sam King of DEQ, and Samuel Yemington of Holland and Hart appeared before the Board. Discussion ensued.

Vice Chair Aguirre motioned to ACCEPT the Hearing Examiner's Proposed Findings of Fact and Conclusions of Law. Board member Payne SECONDED. The motion PASSED unanimously.

Board member Payne motioned to REJECT the Petitioners' Exceptions. Vice Chair Aguirre SECONDED. The motion PASSED unanimously.

Board member Payne motioned for the Board to ACCEPT DEQ's Exceptions to the Order of the Hearings Examiner and incorporate into the final FOFCOL. Board member Smith SECONDED. The motion PASSED unanimously.

As for the issue of Intervenor's Westmoreland/Local 400's Standing, discussion ensued.

Board member Altemus motioned to REJECT Intervenor's Exceptions regarding the Standing of the Petitioners. Board member Payne SECONDED. Discussion ensued. The motion PASSED unanimously.

Board member Payne motioned that the Board ACCEPT the remaining Exceptions from the Intervenor's to the extent they do not conflict with DEQ's Exceptions. Board member Smith 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 Payne moved to APPROVE the Request for Dismissal. Board member Smith SECONDED. The motion PASSED unanimously.

IV. NEW CONTESTED CASES

- a. **In the Matter of: The Notice of Appeal and Request for Hearing by Westmoreland Absaloka Mining LLC regarding Minor Revision 311 for Coal Surface Mine Permit C1985005, BER 2025-04 SM**

Board member Payne motioned to TABLE this matter until the next meeting. Board member Altemus SECONDED. Discussion ensued, and this point the Board maintains jurisdiction. The motion PASSED unanimously.

V. GENERAL PUBLIC COMMENT

Chair Simpson inadvertently forgot to call for public comment. There were no requests by the public to make comments outside of those made prior in the meeting

VI. BOARD CHAIR UPDATE

- a. Board discussion regarding managing new cases going forward.

Chair Simpson spoke about how the Board has handled cases in the past and the loss of Hearing Examiners. Chair Simpson suggested that the Board might consider taking jurisdiction for new cases as they come to the Board. The cases would go through the initial procedural steps (prehearing order, discovery, and items that take place leading up to the scheduling of a hearing). Then, at some point, once the case has defined itself, the Board can decide whether this is something that the Board wants to maintain jurisdiction on or whether to assign it to a Hearing Examiner.

- b. Update the standard prehearing order.

Chair Simpson directed the Board's attention to a template for a draft prehearing order, page eight. Discussion ensued. No vote was taken.

VII. ADJOURNMENT

Board member Smith MOVED to adjourn the Board Meeting; Board member Payne SECONDED. The motion PASSED unanimously. The meeting was adjourned at 1:16 P.M.

Board of Environmental Review October 24, 2025, minutes approved:

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

February 20, 2026
DATE