



**BOARD OF ENVIRONMENTAL REVIEW
MEETING MINUTES
FEBRUARY 20, 2026**

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, Jennifer Rankosky and Joe Smith.

Roll was called and a quorum was present.

Board Attorney Present

Dana Hupp, Board Counsel

DEQ Personnel Present

Board Secretary: Sandy Moisey Scherer

Board Liaison: Deputy Director James Fehr

DEQ Director Sonja Nowakowski

DEQ Legal: Catherine Armstrong, Kirsten Bowers, Amanda Galvan, Loryn Johnson, Sam King, Jeremiah Langston, Lee McKenna, Kurt Moser, Isabelle Nebel, and Kaitlin Whitfield

DEQ Air, Energy and Mining: Josh Bridgeman, Julian Calabrese, Eric Dahlgren, Mitch Hoffman, Emily Lodman, Alex Mackey, Gabrielle Ostermayer, Brian Schrage, Betsy Townsend, Dan Walsh

DEQ Enforcement: Kristen Trapp

DEQ Communications: Mae Vader

Other Parties Present

Laurie Crutcher — Crutcher Court Reporting

Shiloh Hernandez — Earthjustice

Anne Hedges, and Derf Johnson - MEIC

Jeff Oven, Vicki Marquis, and Morgan Pettit – Crowley Fleck

Matthew Dolphay, Andrea Grave, and Samuel Yemington – Holland & Hart

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

Alan Ringlein – A.M. Welles

D Cape, Jeremy Cottrell, Timothy Garvin, Jerry Gillespie, Seth Gudgel, Jon P. Heroux, David Kuzara, Nathaniel Huckabay, Juris Ore, Dustin Martens, L. Miller, Jesse Noel, Jeffrey Provenza, Joshua Ralph, Riley Robinson, Wes Sessions, R Spang, Bob Smith, David Traverso, and Kenneth Wooley - Westmoreland

Diane Conradi – Conradi Law Office

Matthew Bain – Parson Behle & Latimer

Frank Bartlett, and J. Fleischman – OSMRE

Sarah Zuzulock – Zuzulock Environmental

Heather McDowell, Matt Wolfe, and Randy Weimer – Sibanye Stillwater
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Krista Lee Evans – Calumet

Matt Vincent – Montana Mining

Stephanie Bonucci

Casey Kennedy – Northern Plains

I. ADMINISTRATIVE MATERIALS

A. Review and Approve Minutes

A.1. The Board will vote on adopting the October 24, 2025, Meeting Minutes.

Board member Smith moved to APPROVE the October 24, 2025, meeting minutes. Board member Altemus SECONDED. The motion PASSED unanimously.

There was no further board discussion or public comment.

B.1. 2026 Board Calendar

Board member Payne moved to APPROVE the 2026 Board Calendar. Board member Rankosky SECONDED. Discussion ensued. The motion PASSED unanimously.

There was no further board discussion or public comment.

II. BRIEFING ITEMS

a. Contested case updates are on page 7-30 of the meeting materials.

There was no further board discussion or public comment.

III. NEW CONTESTED CASES

a. 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

Board member Payne motioned that the Board RETAIN jurisdiction. Board member Rankosky SECONDED. Discussion ensued.

Jeff Oven from Crowley Fleck and Kurt Moser from DEQ said that due to the complexity of the case, a contested case hearing may be necessary. Appointing a Hearing Examiner would help with the discovery process. Discussion ensued.

The motion PASSED 5-1, with Vice Chair Aguirre dissenting.

b. **In the Matter Of: Appeal and Request for Hearing Regarding MDEQ's Decision on MAQP #5263-03, BER 2026-01 AQ**

Chair Simpson reviewed the request from Petitioner Angela Otero with respect to the Department's December 15th decision to approve an air quality permit for Montana Renewables, LLC for the MRL Great Falls renewable fuels plant. Ms. Otero acknowledged in her request that she did not include an affidavit, which is required under 25-2-218, MCA. She was not present at the meeting.

Vice Chair Aguirre moved to REJECT the petition as incomplete. Board member Altemus SECONDED. Discussion ensued.

Board member Payne offered an amendment to APPOINT a Hearing Examiner, to help flesh out the issues and get it resolved in a more formal manner.

Vice Chair Aguirre moved to WITHDRAW her motion.

Board member Payne moved to APPOINT a Hearing Examiner to help flesh out the issue in a more formal manner. Board member Rankosky SECONDED. Discussion ensued.

Board member Payne amended his motion for the Board to RETAIN jurisdiction through the initial steps on this moving forward, to try to CLARIFY the issues, so that the Board can make a more informed decision. Board member Smith SECONDED. The motion PASSED 5-1, with Vice Chair Aguirre dissenting.

c. **In the Matter Of: The 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**

Chair Simpson deferred discussion of this matter until after the oral argument on the Department's Motion to Dismiss in BER 2025-04 SM.

After discussing BER 2025-04 SM, the Chair Simpson returned to BER 2026-02 SM, Westmoreland's Notice of Noncompliance. There was confusion from Board members about what the Board was discussing but Chair Simpson offered clarification. Board member Payne thought there was a motion to combine the matter that was just dismissed with the new petition, and that maybe at this point the Board can recognize that the motion is probably moot now that the other matter has been dismissed.

Sam King of DEQ said he suspects some disagreement with Ms. Marquis as to the scope of what this case is about, and what the issues are that are to be resolved by the merits. DEQ has not filed a brief. The Board could vote to appoint a Hearing Examiner or hear it themselves. Vicki Marquis of Crowley Fleck said that it's Westmoreland's view that this issue should follow the normal contested case process.

Board member Payne moved that this matter be TABLED until the regularly scheduled April Board meeting. Vice Chair Aguirre SECONDED. Discussion ensued. The motion PASSED unanimously.

IV. ACTION ITEMS

- a. **In the Matter of: Notice of Appeal and Request for Hearing by the Montana Environmental Information Center and Sierra Club regarding Approval of Surface Mining Permit No. C2011003F, BER 2019-05 OC , Western Energy Area F**

The Board voted to appoint BER Counsel Dana Hupp as successor Hearing Examiner at the October 24, 2025, meeting. Chair Simpson briefed the Board that there is now a signed contract with Board Counsel Hupp to complete the case as a Hearing Examiner. She will not be able as Hearing Examiner to represent the Board when we get to the state of the completing findings, proposed findings of fact and conclusions of law. That will need to be handled by alternate Counsel, possibly DLI.

- b. **In the Matter Of: Notice of Appeal and Request for Hearing by Alpine Pacific Utilities Regarding Issuance of MPDES Permit No. MTX000164, BER 2019-06 WQ**

Chair Simpson reviewed recent developments in the case. Alpine Pacific Utilities has asked for an Extension of Time to respond to the Department's Motion to Dismiss. This matter will be tabled until the next regularly scheduled Board meeting in April.

- c. **In the Matter of: Appeal and Request for Hearing by Valley Garden Land & Cattle LLC regarding Issuance of Opencut Mining Permit #674, Amendment #3, BER 2022-04 OC**

Chair Simpson discussed the status of this case and asked the Board if March 20th would be acceptable for a special meeting to hear Summary Judgment for Valley Garden Land & Cattle.

Lee McKenna of DEQ asked when the Board would like to schedule a site visit, to familiarize themselves with the site to better make an informed decision. Kim Wilson of Morrison Sherwood Wilson & Deola commented that he felt that a site visit was unnecessary as former Hearing Examiner Cameron had visited the site. Kim Wilson said that his client would oppose a site inspection as it's an unnecessary expense given the extensive administrative record. He said that the March 20th date for a special meeting was acceptable.

Discussion ensued regarding inspection and drone footage of the site. Lee McKenna shared her screen, to show the drone footage of the site. Discussion ensued.

Board member Payne motioned to SCHEDULE oral argument on March 20, 2026, and to DEFER the decision for a site visit after the Board has reviewed all documents and heard arguments of Counsel. Board member Altemus SECONDED. Discussion ensued. The motion PASSED unanimously.

Kim Wilson asked about the time of the meeting on March 20th. Chair Simpson said the meeting will start at 9:00 a.m. He will meet with Board Counsel about how much time to allow and will get an order out.

Chair Simpson told the Board members that Board Secretary Moisey Scherer will be sending the complete case file to Board before the meeting, as the file is voluminous. Vice Chair Aguirre asked if the information could be sent via File Transfer Service. Board Secretary Moisey Scherer said that the documents are larger than what can be sent via the File Transfer Service. She will be mailing the information on thumb drives to all Board members.

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

Chair Simpson gave a short update and said that oral argument for this case will be heard at the April meeting. Board member Payne asked if this will be on the agenda for the special meeting or the next regularly scheduled meeting. Chair Simpson said it would be at the April meeting.

Board Counsel Hupp asked if the parties could briefly expound about the substance of the argument that will be presented in April. She wanted to get the parties' perspectives on dividing basically the motion into two separate hearings, and how they envisioned this process going forward.

Sam Yemington of Holland and Hart agreed that this is a two-step process – 1) Determination by the Board if his clients are entitled under the law to an award of fees, whether nominal or the entirety of the award requested, and 2) The question with respect to the reasonableness of the award, the reasonableness of the fees and costs that have been requested - which needs to be subjected to an evidentiary hearing.

Shiloh Hernandez, Counsel for Petitioners, agreed that the two-step process is correct, and a hearing will need to be held regarding jurisdiction and the eligibility for fees. There is a Petitioner's Motion to Strike Westmoreland's last brief that will need to be addressed before proceeding. His clients would like clarity with respect to whether or not Westmoreland's reply brief will be stricken; and if not, whether or not his clients would be given leave to file a surreply.

Board Counsel Hupp said that the Motion to Strike the Reply Brief that was referenced is now fully briefed. At the Chairman's discretion, this issue could be on the agenda for the special meeting in March. Shiloh Hernandez, Counsel for Petitioners, proposed that this matter be assigned to a Hearing Examiner, potentially Board Counsel Hupp. Board Counsel Hupp disagreed with Mr. Hernandez, and said the Board can choose to delegate this issue to Chairman Simpson if they wish, as it's a fairly simple matter. Sam Yemington of Holland and Hart agreed with Board Counsel Hupp.

Board member Payne motioned to DELEGATE to the Chair the resolution of the pending Motion to Strike. Vice Chair Aguirre SECONDED. The motion PASSED unanimously.

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

Chair Simpson gave a short briefing on the case, and said that the parties requested a Stay until the April meeting or later. Vicki Marquis of Crowley Fleck said that instead of coming back to the Board and asking for more extensions, perhaps extending the Stay until the June meeting would be appropriate. Sam King of DEQ said DEQ is amenable to extending to the June meeting for further update.

Board member Payne motioned to EXTEND the Stay until the June Board meeting. Board member Altemus SECONDED. Discussion ensued. The motion PASSED unanimously.

f. **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**

Vicky Marquis of Crowley Fleck and Sam King of DEQ gave oral argument on DEQ's Motion to Dismiss. Discussion ensued.

Vice Chair Aguirre motioned to GRANT DEQ's Motion to Dismiss as the Board did not have jurisdiction. Board member Payne SECONDED. The motion PASSED unanimously.

V. GENERAL PUBLIC COMMENT

No comment was received.

VI. BOARD CHAIR UPDATE

a. MAPA Contested Case Process

Chair Simpson said that in the process of working through what the Board needed to do in order to affirm the appointment of Dana Hupp as the Hearing Examiner for Rosebud Area F, he refamiliarized himself with the Montana Administrative Procedure Act. Under 2-4-611, "A hearing examiner must be assigned with due regard to the expertise required for the particular matter." He asked the Board to consider how to approach the requirement when assigning hearing examiners to DLI. Also, 2-4-612, MCA, references hearings, rules of evidence, cross-examination, and judicial notice. "The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of evidence." Chair Simpson wanted to reinforce that the Board is a public board, and part of its responsibility is to bring its background knowledge and common sense into cases that come before the Board.

VII. ADJOURNMENT

Board member Payne MOVED to adjourn the Board Meeting; Vice Chair Aguirre SECONDED. The motion PASSED unanimously. The meeting was adjourned at 12:37 P.M.

Board of Environmental Review February 20, 2026, minutes approved:

/s/ David Simpson

DAVID SIMPSON
CHAIR
BOARD OF ENVIRONMENTAL REVIEW

May 15, 2026

DATE