



**BOARD OF ENVIRONMENTAL REVIEW  
MEETING MINUTES**

**MARCH 20, 2026**

**Call to Order**

Chair Simpson called the meeting to order at 9:02 a.m.

**Attendance**

**Board Members Present**

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

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, Amanda Galvan, Sam King, Jeremiah Langston, Lee McKenna, Isabelle Nebel, and Kaitlin Whitfield

DEQ Air, Energy and Mining: Craig Henrikson, Emily Lodman, Eric Merchant, Brian Schrage, and Bo Wilkins

DEQ Communications: Mae Vader

**Other Parties Present**

Laurie Crutcher — Crutcher Court Reporting

Pamela Garman, Vicki Marquis, and Morgan Pettit — Crowley Fleck

Sarah Clerget, and MJ Salzman — Holland & Hart

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

Bruce Fleming

Alan Ringlein — A.M. Welles

Diane Conradi — Conradi Law Office

Todd Briggs — Westmoreland

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I. ACTION ITEMS

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

Chair Simpson said that Montana Renewables recently had filed a motion to intervene and also a motion to dismiss. These will not be considered today as the Board has not seen the filings, as they did not arrive in time to make it into the agenda. This will be deferred until the April meeting.

- b. **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**

Although this was next item on the agenda, Chair Simpson asked to defer this discussion until after the Valley Garden oral argument.

After concluding the Valley Garden oral argument, the Board moved to the Final Agency Action and Order.

Board member Payne moved that the draft findings of fact and conclusions of law with respect to Westmoreland Absaloka Minor Revision 311 be APPROVED by the Board for finalization. Board member Smith SECONDED.

The motion PASSED unanimously.

- 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**

David (Kim) Wilson of Morrison Sherwood Wilson & Deola, and Lee McKenna of DEQ offered oral argument. Chair Simpson was experiencing technical issues, so there were delays in the oral argument. Discussion ensued.

Board member Payne motioned to AWARD summary judgment to DEQ and SUSTAIN the permit. Vice Chair Aguirre SECONDED. Discussion ensued.

Board member Payne motioned that the Board, with respect to the petition, HAS subject matter jurisdiction for the claims that arise under the Opencut Mining Act, but DOES NOT have subject matter jurisdiction with respect to the other claims raised in the petition. Vice Chair Aguirre SECONDED.

Chair Simpson raised a point of order as the Board had a previous motion on the floor, which was seconded, but not voted on by the Board. He asked if Board member Payne wanted to withdraw his first motion and substitute it with the second. Discussion ensued.

Board member Payne WITHDREW any and all pending motions he had before the Board. Vice Chair Aguirre WITHDREW her second.

Board member Payne motioned that the Board HAS subject matter jurisdiction over the claims arising solely under the Opencut Mining Act, and that it DOES NOT have jurisdiction over the other issues raised in the complaint. Vice Chair Aguirre SECONDED.

The motion PASSED unanimously.

Board member Payne motioned that the Board FINDS the Petitioner has standing to raise the issues in its petition with respect to the Opencut Mining Act. Board member Smith SECONDED.

The motion PASSED 4-1, with Board member Payne dissenting.

Discussion ensued. Vice Chair Aguirre asked Board member Payne for the reason for his dissent. She questioned if she wanted to change her vote. After further discussion, Vice Chair Aguirre decided that her vote would stand. Discussion ensued.

Chair Simpson motioned to conditionally ADMIT the evidence offered by both parties, and that the Board will ADDRESS to the extent necessary the weight afforded to each such evidence in findings of fact and conclusions of law. Board member Smith SECONDED. Discussion ensued.

The motion PASSED unanimously.

Discussion ensued.

Board member Payne motioned that the Board GRANT DEQ's summary judgment motion with respect to the notice, completeness, and the acceptability issues. Vice Chair Aguirre SECONDED.

The motion PASSED unanimously.

The Board will ultimately need to vote at the meeting in April to approve the language in the proposed order as drafted by Board Counsel Hupp or as may be amended.

## II. GENERAL PUBLIC COMMENT

No comment was received.

## III. ADJOURNMENT

Board member Smith MOVED to adjourn the Board Meeting; Board member Rankosky SECONDED. The motion PASSED unanimously. The meeting was adjourned at 1:12 P.M.

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

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

May 15, 2026  
DATE