

**BOARD OF ENVIRONMENTAL REVIEW
MEETING MINUTES**

MAY 15, 2026

Call to Order

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

Attendance

Board Members Present

Chair Dave Simpson; Board Members Julia Altemus, Allan Payne, Jennifer Rankosky, and Joe Smith.
Vice Chair Stacy Aguirre 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
DEQ Director Sonja Nowakowski
DEQ Legal: Catherine Armstrong, Sam King, and Kurt Moser
DEQ Communications: Mae Vader

Other Parties Present

Laurie Crutcher — Crutcher Court Reporting
Jenny Harbine, Shiloh Hernandez, Leo Killsback, and Chrissy Pepino — Earthjustice
Derf Johnson — MEIC
Nathaniel Shoaff, Sierra Club
Pamela Garman, and Vicki Marquis — Crowley Fleck
Andrea Grave, and Samuel Yemington — Holland & Hart
Mathew Bain — Parsons Behle & Latimer
Todd Briggs, Jeremy Cottrell — Westmoreland

I. ADMINISTRATIVE MATERIALS

Chair Simpson read a directive from the Lieutenant Governor's Office regarding the use of AI tools. The use of AI tools during virtual public meetings is not allowed by Board members or public participants pending State adoption of formal policies that address the concerns and issues surrounding these issues.

He also pointed out that the agenda is the same one that was prepared for the April meeting when the Board did not have a quorum and were not able to proceed with business.

A. Review and Approve Minutes

A.1. The Board will vote on adopting the February 20, 2026, Meeting Minutes.

Board member Rankosky moved to APPROVE the February 20, 2026, meeting minutes. Board member Smith SECONDED. The motion PASSED unanimously.

There was no further board discussion or public comment.

A.2. The Board will vote on adopting the March 20, 2026, Meeting Minutes.

Board member Payne moved to APPROVE the March 20, 2026, meeting minutes. Board member Altemus SECONDED. The motion PASSED unanimously.

There was no further board discussion or public comment.

A.3. Discussion regarding meeting dates – special meeting in May or in-person meeting in June

Chair Simpson said that this was on the agenda as it was a carryover from the April meeting. The June 26, 2026, meeting may be via Zoom and not in person.

There was no further board discussion or public comment.

II. CONTESTED CASE BRIEFINGS

- a. Contested case summaries are on page 10-36 of the meeting materials. Current case briefings are on the agenda.

Chair Simpson reviewed the current updates.

For BER 2022-06 WQ – Rosebud Mine Area B Amendment 5, Chair Simpson asked for an update from DEQ. Sam King of DEQ responded that Kirsten Bowers was out of the office, and he didn't think she was anticipating providing an update. Samuel Yemington of Holland and Hart said that the attorney from their firm who is assisting on this matter was not on the call. It is his understanding that the parties continue to work together towards solutions. Chair Simpson said that the Board will be looking forward to an update at the next regular meeting.

There was no further board discussion or public comment.

III. NEW CONTESTED CASES

a. **In the Matter Of: Appeal and Request for Hearing by R & D Transit, LLC, BER 2026-03 SW**

Chair Simpson asked DEQ for clarification and status.

Sam King of DEQ said that Nick Whitaker, who is DEQ's attorney on this matter, was in a bankruptcy hearing. This case involves a trucking accident spill on I-90, for which a violation was issued. DEQ has been communicating with Ms. Jennifer Crow, Counsel for R & D's insurance carrier, who is not on the call today. DEQ is hoping to provide a status update at the June meeting, to provide more information on where things stand. There is likely a solution that will not involve a contested case, but Ms. Crow has been unable to contact her client.

Chair Simpson asked for an update at the June meeting.

IV. ACTION ITEMS

a. **In the Matter of: Notice of Appeal and Request for Hearing by the Western Sugar Cooperative regarding Its Montana Pollutant Discharge Elimination System Permit No. MT0000281 Issued October 20, 2020, BER 2020-05 WQ**

Chair Simpson asked counsel for the parties for an update. Vicki Marquis of Crowley Fleck gave an update to the Board.

Board member Altemus motioned that the Board ACKNOWLEDGE and AMEND the Board's final agency action to allow for extended time for the settlement agreement. Board member Payne 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.**

Board Counsel Hupp put together a decision-making tree to assist the Board with their decision regarding Westmoreland's filing to recover legal costs from the Conservation Groups. Just prior to the April meeting date, two filings were received from the Conservation Groups. The first was a notice filing of supplemental authority, and the second was a motion to assign a Hearing Examiner.

Board member Payne motioned to ACCEPT the notice of supplemental authority but STRIKE legal arguments contained therein due to timeliness. Board member Altemus SECONDED. Discussion ensued.

The motion PASSED unanimously.

Board member Payne motioned to DENY the motion to appoint a hearing examiner based on timeliness. Board member Smith SECONDED.

The motion PASSED unanimously.

The Board heard brief oral argument regarding the matter of jurisdiction from Shiloh Hernandez of Earthjustice and Samuel Yemington of Holland and Hart. Discussion ensued.

Board member Payne moved that the Board ACCEPT jurisdiction of Westmoreland's petition for attorney fees as to cause of action No. 2. Board member Altemus SECONDED. Discussion ensued.

The motion PASSED unanimously.

The Board heard brief oral argument regarding substantive matters, entitlement to attorney fees. Discussion ensued.

Board member Altemus motioned that Westmoreland MADE a substantial contribution to the Board's Final Order. Board member Smith SECONDED.

The motion PASSED unanimously.

Board member Altemus motioned that the Board FINDS that the Petitioners ACTED in bad faith. Board member Rankosky SECONDED. Discussion ensued.

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

Board member Altemus motioned that the Board AFFIRM that the Conservation Groups participated for the purpose of harassing or embarrassing Westmoreland. Board member Smith SECONDED.

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

The Board will schedule a second hearing to determine the amount of attorney fees to be awarded.

V. GENERAL PUBLIC COMMENT

No comments were received.

VI. BOARD CHAIR UPDATE

- a. Chair Simpson did not have any updates.

VII. ADJOURNMENT

Board member Payne MOVED to adjourn the Board Meeting; Board member Altemus SECONDED.
The motion PASSED unanimously. The meeting was adjourned at 12:55 P.M.

Board of Environmental Review May 15, 2026, minutes approved:

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

June 26, 2026
DATE