DEQ Montana Department of Environmental Quality

**BOARD OF ENVIRONMENTAL REVIEW**
**MEETING MINUTES**

**JUNE 26, 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
Board Liaison: Deputy Director James Fehr
DEQ Legal: Catherine Armstrong, Kirsten Bowers, Amanda Galvan, Sam King, Jeremiah Langston, Lee McKenna, Kurt Moser, Isabelle Nebel, and Nick Whitaker
DEQ Air, Energy and Mining: Craig Henrikson, Eric Merchant, Dan Walsh, and Bo Wilkins
DEQ Enforcement: Whitney Bausch, and Shaina Brown
DEQ Water Quality: Rachel Clark, Tatiana Davila, Lindsey Krywaruchka, and Andy Ulven
DEQ Communications: Mae Vader

**Other Parties Present**
Cheryl Romsa — Cheryl Romsa Court Reporting
Angela Otero
Rick Tappan – Tappan Law Firm
Pamela Garman, and Vicki Marquis – Crowley Fleck
Sarah Clerget, Andrea Grave, Matthew Dolphay, Matt Salzman, and Samuel Yemington – Holland & Hart
David (Kim) Wilson – Morrison Sherwood Wilson & Deola, PLLP
Barbara Chillcott – Western Environmental Law Center
Todd Briggs – Westmoreland
Jason Mohr – Montana Legislative Services
Diane Conradi – Conradi Law Office
Joe Dauner – Calumet Specialty Products Partners, L.P.
Bruce Fleming – Montana Renewables

## 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.

### A. Review and Approve Minutes

**A.1. The Board will vote on adopting the May 1, 2026, Meeting Minutes.**

Board member Payne moved to APPROVE the May 1, 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 May 15, 2026, Meeting Minutes.**

Board member Smith moved to APPROVE the May 15, 2026, meeting minutes. Board member Payne SECONDED. The motion PASSED unanimously.

There was no further board discussion or public comment.

**A.3. Renewal of Board Counsel Hupp's Contract**

Chair Simpson briefed the Board regarding Board Counsel Hupp's contract. Her initial contract was an interim appointment pending what was expected to be another option for representation of the board by in-house, state-employed counsel. Board Counsel Hupp's contract will expire on August 14, 2026. As there is not an option for representation of the board by in-house, state-employed counsel, the Board is looking to renew Board Counsel Hupp's legal representation contract.

Board member Rankosky motioned to RENEW the contract with Dana Hupp as general counsel to the Board until August 2027. Board member Altemus SECONDED. The motion PASSED unanimously.

There was no further board discussion or public comment.

## II. CONTESTED CASE BRIEFINGS

a. Contested case summaries are on pages 16-44 of the meeting materials. Current case briefings are on the agenda.

Chair Simpson reviewed the current updates. He asked DEQ for an update on R & D Transit, LLC. Nick Whitaker of DEQ provided an update.

There was no further board discussion or public comment.

## III. NEW CONTESTED CASES

a. **In the Matter Of: The Notice of Appeal and Request for Contested Case Hearing by Westmoreland Absaloka Mining LLC regarding the Department of Environmental Quality's March 25, 2026, Notice of Violation, BER 2026-04 SM**

Chair Simpson noted that on April 24, 2026, Westmoreland filed an appeal and request for contested case hearing with respect to the DEQ's Notice of Violation issued pursuant to ARM 17.24.1211(2) related to Westmoreland's bond. On May 7, 2026, DEQ filed a Motion to Stay Proceedings and Brief in Support. On May 21, 2026, Westmoreland filed a Response to the Motion to Stay.

A hearing on the Motion to Stay will be scheduled for the August Board meeting.

## IV. ACTION ITEMS

a. **In the Matter of: Appeal and Request for Hearing by Westmoreland Rosebud Mining LLC regarding Issuance of MPDES Permit No. MT0032042, Colstrip, MT, BER 2022-06 WQ (Rosebud Mine Area B Amendment 5)**

Chair Simpson asked counsel for the parties for an update. Kirsten Bowers of DEQ and Matthew Dolphay of Holland and Hart gave an update regarding the settlement agreement.

Chair Simpson said that this matter will be revisited at the August meeting.

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

On June 4, 2026, DEQ issued the Resolution of Order to Revise the Permit to West Decker Mine, concluding that the Order to Revise the West Decker Permit has been resolved.

Vicki Marquis of Holland and Hart and Sam King of DEQ gave an update regarding a Motion to Dismiss, which was agreed upon just prior to today's meeting. Ms. Marquis shared her screen so the Board members could see the draft Motion.

Board member Smith motioned to GRANT the Motion to Dismiss as proposed today by both parties. Board member Altemus SECONDED. Discussion ensued.

The motion PASSED unanimously.

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

Kirsten Bowers of DEQ and Rick Tappan of Tappan Law Firm gave oral argument regarding the Motion to Dismiss. Discussion ensued.

Board member Payne motioned that the Board APPROVE DEQ's Motion to Dismiss with prejudice. Board member Altemus SECONDED. Discussion ensued.

The motion PASSED unanimously.

d. **In the Matter of: Appeal and Request for Hearing Regarding MDEQ's Decision on MAQP #5263-03, Calumet/Montana Renewables, BER 2026-01 AQ**

The Board heard oral argument from Angela Otero, and Sarah Clerget of Holland and Hart. Discussion ensued.

Board member Payne motioned to GRANT MRL's Motion to Intervene. Board member Smith SECONDED.

The motion PASSED unanimously.

Board member Payne motioned to GRANT MRL's Motion to Dismiss. Board member Rankosky SECONDED.

The motion PASSED unanimously.

e. **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 asked the Board for questions or comments regarding the proposed Final Agency Action and Order of the Board. The Board did not have questions or comments.

Board member Payne motioned to APPROVE the proposed Order. Board member Smith SECONDED.

The motion PASSED unanimously.

## V. GENERAL PUBLIC COMMENT

No comments were received.

## VI. BOARD CHAIR UPDATE

a. Chair Simpson spoke about the Special Meeting that was held May 1, 2026. The Board voted unanimously to proceed with an appeal regarding the Selenium decision. The appeal has been filed by the Board and the successor to Teck Coal.

## VII. ADJOURNMENT

Board member Payne MOVED to adjourn the Board Meeting; Board member Altemus SECONDED. The motion PASSED unanimously.

The meeting was adjourned at 11:41 P.M.

Board of Environmental Review June 26, 2026, minutes approved:

_/s/ David Simpson_______________________
DAVID SIMPSON
CHAIR
BOARD OF ENVIRONMENTAL REVIEW

_August 14, 2026_______________________
DATE