BOARD OF ENVIRONMENTAL REVIEW
MEETING MINUTES

AUGUST 14, 2026

Call to Order

Chair Simpson called the meeting to order at 9:05 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
Director Sonja Nowakowski
DEQ Legal: Catherine Armstrong, Kirsten Bowers, Amanda Galvan, Aurora Goddard, Jeremiah Langston, Kurt Moser, and Nick Whitaker
DEQ Air, Energy and Mining: Josh Bridgeman, Beverly Faraday, Craig Henrikson, Eric Merchant, Barry Pemberton
DEQ Water Quality: Tatiana Davila, Katya Koepsel, Scott Patterson
DEQ Communications: Mae Vader

Other Parties Present
Cheryl Romsa — Cheryl Romsa Court Reporting
Jeff Oven, and Vicki Marquis – Crowley Fleck
Sarah Clerget, Andrea Grave, Matthew Dolphay, Matt Salzman, and Samuel Yemington – Holland & Hart
Tyler Stockton – Boone Karlberg
Todd Briggs – Westmoreland
Jason Mohr – Montana Legislative Services
Jenny Harbine, Shiloh Hernandez, Leo Killsback, and Lars Phillips – Earthjustice
Anne Hedges, and Derf Johnson – MEIC
Mathew Bain – Parsons Behle and Latimer
Jennifer Crow – Scheer Law
Wenona Lenberg – Montana Clean Water
Karen Boehler

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 June 26, 2026, Meeting Minutes.

Board member Payne moved to APPROVE the June 26, 2026, meeting minutes. Board member Rankosky SECONDED. The motion PASSED unanimously.

There was no further board discussion or public comment.

A.2. Renewal of Board Counsel Hupp's Contract

Chair Simpson briefed the Board regarding Board Counsel Hupp's contract renewal. He thanked Deputy Director Fehr and Sam King of DEQ for working to get this contract completed.

There was no further board discussion or public comment.

II. CONTESTED CASE BRIEFINGS

a. Contested case summaries are on pages 7-37 of the meeting materials. Current case briefings are on the agenda.

There was no further board discussion or public comment.

b. New Contested Cases

1. In the Matter of the Appeal of: Montana Air Quality Permit No. 5537-00, NYDIG DFM Data Center, Richland County, MT, BER 2026-05 AQ

Chair Simpson noted that this is a new case before the Board. The Board intended to have a quick briefing from the parties but since the agenda went out, DEQ has filed a motion to dismiss for lack of subject matter jurisdiction. Briefing is not yet complete, so this will be addressed at the next meeting.

2. **In the Matter of the Appeal of: The Notice of Violation and Administrative Compliance Order for Violations of the Public Water Supply Laws at Red Rooster Bar by Angel Viren, BER 2026-06**

Chair Simpson noted that this appeal is about a notice of violation and administrative compliance order for violations of the public water supply laws at Red Rooster Bar in Shepherd, Montana, by Angel Viren.

Amanda Galvan of DEQ gave a short review of the matter, and Ms. Viren was not present at the meeting.

Chair Simpson said that the Board will defer any action until there is a clearer picture of whether or not Ms. Viren wishes to challenge the notice, as her filing was not entirely clear. This will be addressed at the next meeting.

c. Current Contested Case Updates

1. **In the Matter of: Notice of Appeal and Request for Hearing by MEIC and Sierra Club Regarding approval of Surface Mining Permit No. C2011003F, BER 2019-05 OC**

Board Counsel Hupp is working on the FoFCoL. The Board anticipates that it is going to schedule a Special Meeting this fall for Board discussion on the FoFCoL and the parties' exceptions thereto.

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

On March 3, 2026, R & D Transit, LLC filed an appeal. On July 30, 2026, DEQ filed a Motion to Dismiss or, in the Alternative, Motion for More Definite Statement, along with a Brief in Support. The Motion to Dismiss is not fully briefed and will be addressed at the next meeting.

III. 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 the parties for an update. Kirsten Bowers of DEQ and Matthew Dolphay of Holland and Hart updated the Board regarding a settlement agreement.

Chair Simpson asked for an update at the October meeting, as the parties work towards settlement.

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

At the June 26, 2026, Board meeting, the Board granted MRL's Motion to Intervene and MRL's Motion to Dismiss.

Board member Payne motioned to APPROVE the proposed Final Agency Action and Order. Board member Rankosky SECONDED.

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**

At the June 26, 2026, Board meeting, the Board approved DEQ's Motion to Dismiss with Prejudice.

Board member Payne motioned to APPROVE the proposed Final Agency Action and Order. Board member Rankosky SECONDED.

The motion PASSED unanimously.

d. **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**

AND

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 asked the parties for comment. Vicki Marquis of Crowley Fleck and Amanda Galvan of DEQ provided an update.

Board member Payne motioned to DENY the proposed Order on the Motion to Stay, but to instead GRANT the parties a stay until the February meeting, giving them time to resolve the matter and directing them to report back to the Board at the February meeting. Board member Altemus SECONDED. Discussion ensued.

The motion PASSED unanimously.

e. **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 asked Board Counsel Hupp for a summary of where the Board is procedurally. Board Counsel Hupp provided an update.

Tyler Stockton of Boone Karlberg and Samuel Yemington of Holland and Hart gave oral argument. Discussion ensued.

The Board took a break at 10:13 a.m., and reconvened at 10:25 a.m. Roll was called and Board member Smith did not rejoin the meeting. A quorum was present.

Board member Payne motioned to DENY the Motion to Stay Proceedings. Board member Altemus SECONDED. Discussion ensued.

The motion PASSED unanimously.

f. **In the Matter of: The Notice and Request for Hearing by Stillwater Mining Company Regarding Major Modification of MPDES Permit No. MT0026808, BER 2025-05 WQ**

Kurt Moser of DEQ and Jeff Oven of Crowley Fleck gave oral argument. Discussion ensued.

Board member Payne motioned to GRANT DEQ's Motion to Dismiss Issue "C" but with LEAVE for the Petitioner to AMEND the claim, to clarify the issue. Board member Rankosky SECONDED. Discussion ensued.

The motion PASSED unanimously.

IV. GENERAL PUBLIC COMMENT

No comments were received.

V. BOARD CHAIR UPDATE

1. Chair Simpson asked for the Board's input regarding including special meeting dates in the 2027 meeting calendar. The special meeting dates would be calendared in the intervening months between regular meetings.

2. Chair Simpson has reviewed the FY26 BER billing report and will provide his analysis at the October meeting.

3. Chair Simpson and Board Counsel Hupp will be reviewing the Board's policies and procedures and making proposed edits for the Board's review, including requiring briefs to contain a summary of the argument section at the beginning of each brief which summarizes the issues and relief requested.

VI. CLOSED/EXECUTIVE SESSION

a. Board member Rankosky MOVED to go into Executive Session. Board member Payne SECONDED.

The motion PASSED unanimously.

The Board left the regularly scheduled meeting at 11:46 a.m., to attend the Closed/Executive Session.

VII. ADJOURNMENT

The Board reconvened the regularly scheduled meeting at 12:16 p.m. Roll was taken and a quorum was present.

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

The meeting was adjourned at 12:17 P.M.

Board of Environmental Review August 14, 2026, minutes approved:

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

_October 16, 2026_____
DATE