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BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

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BOARD MEETING )  
JUNE 11, 2021 )

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TRANSCRIPT OF PROCEEDINGS (VIA ZOOM)

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June 11, 2021  
9:00 a.m.

BEFORE CHAIRMAN STEVEN RUFFATO,  
BOARD MEMBERS DAVID SIMPSON,  
JOSEPH SMITH, JULIA ALTEMUS  
and DAVID LEHNHERR

PREPARED BY: LAURIE CRUTCHER, RPR  
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1           WHEREUPON, the following proceedings were  
2 had and testimony taken, to-wit:

3                   \* \* \* \* \*

4           CHAIR RUFFATO: Good morning, everyone.  
5 Can you hear me? Before we get started, I want to  
6 explain a couple things. I'm in a strange  
7 circumstance. I'm in Richland County for a  
8 funeral. We had a severe storm last night, and  
9 there's a power outage, and so I'm sitting on a  
10 hill with a hot spot with my phone in a pickup,  
11 and so I have probably some questionable service  
12 and internet connection.

13           So after we get going, I'm going to ask  
14 one of the Board members to volunteer to chair  
15 this meeting if I get cut off, or lose service, or  
16 that sort of thing. I also have to leave for this  
17 funeral at 10:20. I expect the meeting will be  
18 over by then, but I'm not sure of that, and so  
19 that volunteer would hopefully continue on with  
20 the meeting if we have a quorum at that point.

21           So with that explanation, I will call  
22 the meeting to order, and ask Regan to call roll.

23           MS. SIDNER: Thank you, Chairman. I  
24 have Board member Chair Ruffato.

25           CHAIR RUFFATO: Here.

1 MS. SIDNER: Board member Lehnherr.

2 BOARD MEMBER LEHNHERR: Here.

3 MS. SIDNER: Board member Simpson.

4 BOARD MEMBER SIMPSON: Here.

5 MS. SIDNER: Board member Smith.

6 BOARD MEMBER SMITH: Here.

7 MS. SIDNER: Board member Reiten.

8 (No response)

9 MS. SIDNER: I believe he was not able  
10 to join us. Board member Reiten.

11 (No response)

12 MS. SIDNER: Board member Altemus.

13 BOARD MEMBER ALTEMUS: Here.

14 MS. SIDNER: And Board member Hanson.

15 (No response)

16 MS. SIDNER: Board member Hanson.

17 (No response)

18 MS. SIDNER: I believe she was also  
19 unable to join us today. We do have a quorum.

20 CHAIR RUFFATO: Thank you, Regan. Can  
21 we get introduction of the other folks on the  
22 call, on the meeting.

23 MS. SIDNER: Yes, I will. Would you  
24 like me to start with --

25 CHAIR RUFFATO: With the DEQ folks, and

1 maybe Mr. Mathieus could introduce them.

2 MS. SIDNER: I think he wanted me to do  
3 that.

4 CHAIR RUFFATO: Okay.

5 MS. SIDNER: Bear with me. I think I  
6 have everyone from DEQ. I have Angie Colamaria;  
7 Sarah Christopherson; Chris Cronin; Emily Lodman  
8 (phonetic); George Mathieus; Aaron -- is that  
9 Aaron Pettis?

10 MR. PETTIS: Yes, it is.

11 MS. SIDNER: Kirsten Bowers; Joanna  
12 McLaughlin. I believe that's everyone. Did I  
13 miss anybody from DEQ on the call?

14 CHAIR RUFFATO: Thank you, Regan. Now  
15 if you could identify -- Well, I see Katherine Orr  
16 is on, our attorney.

17 MS. ORR: Good morning.

18 MS. SIDNER: Martin VanOort is on the  
19 call from DEQ. And we have Laurie Crutcher, our  
20 Court Reporter; Catherine Laughner; J. C. Martin;  
21 S. R. Yemington. I've got a couple of initials  
22 here. Vicki Marquis; Caitlin Buzzas; Andrew  
23 Cziok; Julia Giffin. Did I miss anybody?

24 CHAIR RUFFATO: Thank you, Regan.  
25 Anybody that hasn't been identified who is on the

1 call, or the phone, or on the Zoom meeting?

2 (No response)

3 CHAIR RUFFATO: At that point then we  
4 will move to the minutes of the last meeting held  
5 on April 23rd. I'm assuming that all of the Board  
6 members have reviewed those minutes, and I would  
7 entertain a motion to approve those minutes.

8 BOARD MEMBER SIMPSON: So moved. This  
9 is Dave.

10 BOARD MEMBER SMITH: I'll second.

11 CHAIR RUFFATO: A motion has been made  
12 and seconded to approve the minutes of the April  
13 23rd. All in favor, say aye.

14 (Response)

15 CHAIR RUFFATO: Those opposed.

16 (No response)

17 CHAIR RUFFATO: The motion carries  
18 unanimously.

19 It's got a note for public comment, and  
20 I will ask if there's any public comment regarding  
21 the minutes.

22 (No response)

23 CHAIR RUFFATO: Hearing none, let's go  
24 to the briefing items. And rather than handle  
25 this the way we did last meeting, because I'm

1 hopeful this meeting is short, the way I'd like to  
2 approach this is to instead of going case-by-case,  
3 I'm going to ask the Hearing Examiners who are on  
4 the phone to tell us whether or not any of their  
5 cases have any changes from the briefing that  
6 appears on the agenda. And I think Katherine was  
7 also going to check on that. So are there any  
8 updates to any of the cases?

9 (No response)

10 CHAIR RUFFATO: Hearing none, then I'm  
11 going to ask the Board members if there's anybody  
12 that has questions about any of the cases on  
13 briefing matters.

14 MS. ORR: Mr. Chairman, may I interrupt?

15 CHAIR RUFFATO: Yes.

16 MS. ORR: I just realized I was muted.  
17 There are two updates, and I've canvassed all of  
18 the attorneys, and I'd be glad to go into those if  
19 that's appropriate at this time.

20 CHAIR RUFFATO: Please do, Katherine.  
21 Thank you.

22 MS. ORR: In the matter of the notice of  
23 appeal by Duane Murray regarding the notice of  
24 violations and administrative compliance and  
25 penalty order, on May 28th, DEQ moved to amend the

1 current scheduling order and reopen discovery.

2 On June 1st, William Holahan, Bill  
3 Holahan, a new attorney in the office, assumed  
4 jurisdiction. On June 4th, he granted DEQ's  
5 motion, and issued an amended scheduling order,  
6 and the parties have until August 3rd to complete  
7 discovery, and until August 30th, 2021 to file  
8 dispositive motions. If there are no dispositive  
9 motions, the parties have until September 13th,  
10 2021 in which to file proposed hearing dates. So  
11 that's that case.

12 And the only other one was one handled  
13 by Mr. Doud. That's a case in the matter of the  
14 notice of appeal and request for hearing by  
15 Western Energy Company regarding the approval of  
16 surface mining permit No. C2011003F BER  
17 2019-05-OC.

18 Mr. Doud conducted a hearing starting on  
19 June 2nd in that matter. He had a three day  
20 hearing, and two more days have been allocated to  
21 complete the hearing. It was continued to June  
22 21st through 22nd, 2021. And that's all.

23 CHAIR RUFFATO: Thank you, Katherine.

24 MS. ORR: There are no other deviations  
25 from the agenda.

1 CHAIR RUFFATO: Thank you. Then I will  
2 ask again the Board members, if you have any  
3 questions about any of the briefing matters.

4 (No response)

5 CHAIR RUFFATO: I actually have a couple  
6 of questions, and I don't know if they can be  
7 answered. But this is Item (h) at the bottom of  
8 Page 4, and it's a notice of appeal by Signal Peak  
9 regarding water rights impairment, and I think Mr.  
10 Cziok is on the phone, so maybe he can answer the  
11 question.

12 But I didn't understand the last  
13 sentence of that briefing. It says, "On May 27th,  
14 Hearing Examiner Cziok issued an order dismissing  
15 this case with prejudice," and then it says,  
16 "Pending the District Court's final disposition of  
17 SPE District Court appeal and final resolution of  
18 any appeals from the District Court's final  
19 disposition."

20 Mr. Cziok, can you elaborate on that a  
21 little bit. It may be obvious, but can you tell  
22 me what's going on.

23 MR. CZIOK: It looks like a typo. That  
24 was without prejudice, which might be the  
25 confusion. With prejudice would make it hard for



1 anything else to really happen after that.

2 CHAIR RUFFATO: That's what I was  
3 worried about. I didn't understand. Okay.

4 MR. CZIOK: I had a rough week. I just  
5 got back in. This is my first time seeing this  
6 paragraph.

7 CHAIR RUFFATO: Thank you, Andrew. That  
8 does explain, so thank you.

9 MR. CZIOK: Certainly.

10 CHAIR RUFFATO: The other question I had  
11 is in the very next item, this is (i) on Page 5,  
12 it talks about the Board order for final agency  
13 decision resolving issues one, three, four, and  
14 five. And I didn't go back and study things, and  
15 so the answer is probably there, but I'm  
16 wondering. Is this case still going for issue  
17 two?

18 MS. ORR: Mr. Chairman, members of the  
19 Board, I think that this is a DEQ matter, so if  
20 there's someone from DEQ who can address your  
21 question, that would be great.

22 MS. COLAMARIA: Mr. Chair, this is Angie  
23 Colamaria. The lead attorney for this couldn't be  
24 on the call today, but I can try to answer your  
25 question.

1           This case is still ongoing for the  
2 remaining matters, and the parties have  
3 tentatively agreed on a settlement for that, and  
4 will be submitting -- and Vicki, correct me if I'm  
5 wrong. I don't know if you've actually submitted  
6 them yet, or are about to submit it -- a  
7 stipulation to the Board.

8           CHAIR RUFFATO: A stipulation regarding  
9 the one remaining issue?

10           MS. COLAMARIA: Yes. So the stipulation  
11 would be the document itself, proposed Board  
12 order, that basically says everything that's in  
13 the stipulation between the parties and the  
14 exhibits. So you can see the difference between  
15 the permit, how it was, and what we are proposing  
16 to amend it to.

17           CHAIR RUFFATO: So thank you, Ms.  
18 Colamaria. So I understand it, the parties have  
19 reached an agreement on all issues?

20           MS. COLAMARIA: Yes.

21           CHAIR RUFFATO: Okay. Thank you.

22           (Ms. Clerget present)

23           CHAIR RUFFATO: That's all of the  
24 questions I had. Any other questions by Board  
25 members?

1 (No response)

2 CHAIR RUFFATO: Then let's go to --  
3 There are no action items. There is one new  
4 contested case. I'll refer to it as the Lucy's  
5 sandbox gravel pit case. And we have to make a  
6 decision at some point whether or not we're going  
7 to assign this to a Hearing Examiner.

8 And my first point is the information  
9 that we got in the packet I felt did not give us  
10 very much information. And as we've discussed in  
11 previous meetings, the decision to refer this or  
12 assign it to a Hearing Examiner was a pretty  
13 important decision. So I felt that at least in my  
14 mind I did not have enough information.

15 And I see that Sarah has her hand up.  
16 Can you explain what's going on here?

17 MS. CLERGET: Yes, Chair Ruffato. This  
18 is Sarah Clerget, and I represent DEQ in this  
19 matter. And I wanted to let you know that I have  
20 contacted opposing Counsel. Your Board secretary  
21 reached out last night to try and get the  
22 additional information.

23 I got her email, and I tried to reach  
24 out to -- I shouldn't say opposing Counsel. He  
25 doesn't have a lawyer yet -- the opposing party,

1 and I haven't had any response yet, nor I believe  
2 has the Board secretary.

3 And I was uncomfortable supplementing  
4 the record without -- because right now what's  
5 filed is what's in front of you. So there isn't  
6 anything else filed in the case. And it was the  
7 appellant's filing, and therefore they would have  
8 had to amend their filing in the case in order to  
9 provide that to you, and so that's the reason why  
10 it's not provided.

11 And I wasn't comfortable doing that  
12 without them amending, and I also --  
13 unfortunately, as you guys know, one of the things  
14 that's hard about being a member of the Board is  
15 that you only get to see what's put in front of  
16 you, and that unfortunately was all that was put  
17 in front of you in this case.

18 And I have a request in terms of keeping  
19 it in front of the Board, but I don't know if this  
20 is the time. I just wanted to answer your  
21 question first, but I have more to ask when it  
22 comes time to decide.

23 CHAIR RUFFATO: Thank you, Sarah. I  
24 want to ask the Board members if you had any  
25 comments or thoughts. And I'm not asking for a

1 motion yet because I've got a thought in my mind  
2 that I want to pursue. Well, maybe I will put a  
3 motion on the table, and then we can discuss it.

4 I would move that we table this until we  
5 have more information, and that's my motion.

6 BOARD MEMBER SIMPSON: Second.

7 CHAIR RUFFATO: A motion has been made  
8 and seconded that we table this matter until there  
9 is further information. Discussion, please.

10 MS. CLERGET: Chair Ruffato, I would ask  
11 that this matter be kept with the Board, rather  
12 than tabled, but be kept with the Board for the  
13 purpose of the Board hearing the entire matter.  
14 You could designate it to a Hearing Examiner for  
15 procedural purposes, but keep the jurisdiction for  
16 the purpose of deciding any substantive motions.  
17 So that would be motions for summary judgment,  
18 motions in limine, all the motions to dismiss, all  
19 things like that.

20 And the reason I ask you for that is  
21 because this is a relatively small case. It will  
22 be relatively low impact for you guys in terms of  
23 time. And I think it would be a very good case  
24 for you guys to test essentially, and see what it  
25 is that Hearing Examiners do, what motions come

1 in, when they come in, how the process works.

2 So I think that would be really useful  
3 for you guys, and this is a great test case; and I  
4 also think that there's a high likelihood that we  
5 could potentially settle this case early, or that  
6 there may be a default. And so if that happens I  
7 prefer it to come directly back to you. It may  
8 save some time and energy on everybody's part,  
9 including a potential hearing examiner.

10 So that was one reason why I wanted to  
11 ask you to keep it for substantive purposes, and  
12 in saying that, I don't mean to obviously  
13 disparage anybody from ALS or the ability of any  
14 of the Hearing Examiners. I just think this  
15 particular case might be a good one for you guys  
16 to keep.

17 CHAIR RUFFATO: Thank you, Sarah. Board  
18 members, any discussion?

19 BOARD MEMBER SMITH: I appreciate  
20 Sarah's comments, and I don't necessarily disagree  
21 that it might be a good opportunity for us to hear  
22 the case, but I also am in support of the motion  
23 to table it for now until we know what the  
24 particular issues are in this case.

25 CHAIR RUFFATO: Any other discussion?

1           BOARD MEMBER ALTEMUS: I would agree. I  
2 just don't feel like I have enough information, so  
3 I think if you table it at this time, you can  
4 always go back and do something else. I would  
5 agree with the motion to table. I don't believe I  
6 have enough information, so I think at this point  
7 that would be my preference. Thank you.

8           CHAIR RUFFATO: Dr. Lehnherr.

9           BOARD MEMBER LEHNHERR: Thank you. I  
10 would be in favor of taking Sarah's advice. We  
11 won't be meeting again for a couple of months. It  
12 sounds like a case that could be a good learning  
13 experience for the Board, and it sounds like it  
14 could be resolved fairly quickly.

15           Just in general there's -- and if we  
16 assigned the case to a Hearing Examiner for  
17 procedural matters, we would find out everything,  
18 I believe, that people are wondering about. And  
19 just in general, I think we would want to be very  
20 careful about cases we handle in their entirety,  
21 and that should be reserved for very rare  
22 circumstances.

23           But I think Sarah gave us some great  
24 advice there. That's the end of my comment.  
25 Thank you.

1 CHAIR RUFFATO: Thank you, Doctor.  
2 Katherine, can you give us a thumbnail sketch of  
3 what an assignment for procedural purposes would  
4 look like on this matter.

5 MS. ORR: Mr. Chairman, members of the  
6 Board. That could be everything up to and  
7 including a motion for summary judgment, so the  
8 prehearing matters; setting discovery; setting the  
9 timelines for introduction of exhibits, and the  
10 timeline for discussion of the witnesses; and then  
11 exchange of the exhibit list and of the witnesses;  
12 objections to the admissibility of the exhibits;  
13 motions in limine. I would think you would want  
14 to rule on the motion for summary judgment and  
15 anything more substantive after that.

16 CHAIR RUFFATO: Thank you. Sarah.

17 MS. CLERGET: I apologize, Chair  
18 Ruffato, if this is not the appropriate place. My  
19 ask I guess for DEQ would be for you guys to  
20 decide on anything substantive, and I would put  
21 motions in limine and evidentiary rulings in that  
22 category, just because in the past those have  
23 turned out to be really rather dispositive of the  
24 case.

25 And so if you're contemplating keeping



1 it, I'd just ask that in your designation to the  
2 Hearing Examiner that you potentially lay out what  
3 exactly the Hearing Examiner is substantively,  
4 versus procedurally, allowed to decide.

5 And my ask from DEQ as the DEQ lawyer is  
6 that it include motions to dismiss be heard by  
7 you, which would include, for example, a default  
8 judgment coming in front of you; motions in  
9 limine; motions for summary judgment; and then any  
10 briefings that might arise that would require a  
11 substantive decision in the interim.

12 Sometimes those are outside of that list  
13 -- rarely, but sometimes -- and so I would just  
14 ask that if you designate it that you're keeping  
15 it for substantive purposes, that that would be  
16 the designated list. That's DEQ's ask.

17 CHAIR RUFFATO: Thank you, Sarah. I'd  
18 like to hear some thoughts from Julia, and Dave  
19 Simpson, and Joe, regarding the motion that's on  
20 the table, and I would be prepared to withdraw my  
21 motion if the thought is that we should follow the  
22 suggestion by DEQ.

23 BOARD MEMBER SIMPSON: This is Dave, Mr.  
24 Chairman. One of the things that I've been  
25 looking at are the rules that govern procedure in

1 the Administrative Procedure Act, and there is a  
2 provision for informal hearing, which this  
3 Department appears to ignore 100 percent of the  
4 time.

5 This looks like a relatively  
6 uncomplicated case. My reason for supporting  
7 tabling the motion is to consider that possibility  
8 at the next meeting when we have more time.

9 CHAIR RUFFATO: Thank you, David. I'm  
10 going to call for the question on the motion to  
11 table, and I'm going to view that as not  
12 necessarily rejecting the DEQ's suggestion, but  
13 tabling it; and I'm also going to assume that  
14 between now and the next meeting, if there is a  
15 possibility of getting a resolution, if it's  
16 possible that that might happen during that time,  
17 if -- I assume the parties can get together at any  
18 time and reach an agreement.

19 So I'm going to call for the question on  
20 the motion to table. So all in favor say aye.

21 (Response)

22 BOARD MEMBER LEHNHERR: Point of order,  
23 Mr. Chairman.

24 CHAIR RUFFATO: Go ahead.

25 BOARD MEMBER LEHNHERR: I believe we

1 have to vote on the -- when you call the question,  
2 I think we have to vote on ending discussion, and  
3 then we can move to a vote on the motion.

4 CHAIR RUFFATO: All right. David, do  
5 you believe that we need a motion to end  
6 discussion?

7 BOARD MEMBER LEHNHERR: Mr. Chairman,  
8 you're referring to me?

9 CHAIR RUFFATO: I'm following up on your  
10 point of order. So what is your --

11 BOARD MEMBER LEHNHERR: We don't need a  
12 motion to vote on the question, but we have to  
13 vote on the question, just to make sure everyone  
14 wants to end discussion. It's a minor point, but  
15 an important one in some cases.

16 CHAIR RUFFATO: Okay. Point taken. All  
17 in favor of ending discussion, say aye.

18 (Response)

19 CHAIR RUFFATO: Opposed.

20 (No response)

21 CHAIR RUFFATO: Then I will call the  
22 question. All in favor of the motion, say aye.

23 (Response)

24 CHAIR RUFFATO: Opposed.

25 BOARD MEMBER LEHNHERR: Aye.

1 CHAIR RUFFATO: The motion carries four  
2 to one, and so the matter is tabled until next  
3 meeting.

4 And just as a point that I think I would  
5 like to make to DEQ. When these matters come up,  
6 I am going to always ask for enough information to  
7 make these decisions. So if it's possible for DEQ  
8 to work with the outside party to get that  
9 information in front of the Board, I would ask you  
10 to do that in advance of the meeting, so we avoid  
11 delays. Thank you. Sarah.

12 MS. CLERGET: Chair Ruffato, just a  
13 point of clarification, so I understand going  
14 forward. Since the matter has been tabled, the  
15 matter of assigning it to a Hearing Examiner has  
16 been tabled, that means that the Board maintains  
17 jurisdiction in the intervening time.

18 If DEQ, for example, needs a ruling on a  
19 motion in the next two months before the next  
20 Board meeting, I want to be clear that we are  
21 submitting that motion to the Board.

22 CHAIR RUFFATO: Yes, that would be  
23 appropriate.

24 MS. CLERGET: Thank you.

25 CHAIR RUFFATO: All right. Then I think

1 we have the Board update is the next item.  
2 Katherine, did you have some matters you were  
3 going to explain to us regarding rulemaking and  
4 anything else?

5 MS. ORR: Yes, there was some question  
6 about what's remaining as far as the Board's  
7 rulemaking authority. And I've reviewed the final  
8 version of Senate Bill 233, as well as the  
9 statutory and regulatory authority that the Board  
10 has.

11 And just very briefly under 2-4-201 in  
12 MAPA, each agency is required to adopt as a rule a  
13 description in the organization stating the  
14 general course and method of its operations and  
15 methods whereby the parties may obtain information  
16 or make submissions or requests, and also adopt  
17 Rules of Practice.

18 And also in 2-3-103, in the public  
19 participation statute, it indicates in Subsection  
20 (2) that the Governor shall ensure that each  
21 board, etc., adopts coordinated rules for its  
22 programs, and the guidelines must provide policies  
23 and procedures to facilitate public participation  
24 in those programs. The guidelines must be adopted  
25 as rules, and published in a manner so that the

1 rules may be provided to a member of the public  
2 upon request.

3 Those directives in the statute are also  
4 repeated in the Attorney General's Model Rules ARM  
5 1.3.201, and I would say that's the basis for the  
6 authority. And the word "board" in 17.4.101 has  
7 adopted portions of the Attorney General's Model  
8 Rules, as well as the Secretary of State's  
9 organizational and procedural rules; and the  
10 Department itself has described the Board of  
11 Environmental Review in ARM 17.1.101. But I would  
12 say that there's a lot that needs to be filled in  
13 by the Board as far as its self-description and  
14 operating procedures.

15 Other than that, regarding the  
16 substantive statutes which fall under the  
17 authority of the Department, the Board no longer  
18 has authority to make rules.

19 CHAIR RUFFATO: Thank you, Katherine.  
20 So what my understanding is our authority to make  
21 rules regarding our procedures and processes has  
22 not been removed, and so that is still available.

23 MS. ORR: Yes. And to the extent that  
24 that has been done, I would call it spotty.

25 CHAIR RUFFATO: Thank you. David

1 Simpson, you had raised a point a little while ago  
2 about the informal process, and I was wondering if  
3 you had some thoughts that we might even start to  
4 think about regarding rules that might be  
5 generated to implement that.

6 BOARD MEMBER SIMPSON: Mr. Chairman, I  
7 haven't put together any detailed  
8 proposals/suggestions at this point, but I have  
9 taken a look at the Model Rules, and I guess what  
10 is being discussed dovetails pretty well with what  
11 I've had in mind, and that is I do think that the  
12 Board should consider developing and adopting  
13 rules for processes to be used by the Board for  
14 these contested cases.

15 One of my great frustrations is that as  
16 soon as there is an appeal, it seems to  
17 automatically roll over into contested case, which  
18 frankly in my opinion doesn't serve the public  
19 very well, because things take so long. It's  
20 heavily weighted toward process with virtually no  
21 attention to product.

22 And so if there's a more efficient way  
23 to approach violation appeals, and items of that  
24 nature, it's something that I think we should look  
25 into and proceed with considering some more

1 detailed rules.

2 But beyond that, I guess I would  
3 volunteer that by the next meeting should have  
4 something a little bit more detailed as to what  
5 direction it might go.

6 CHAIR RUFFATO: Thank you, Dave. Mr.  
7 Mathieus.

8 MR. MATHIEUS: Thank you, Mr. Chair. I  
9 would just ask the Board, as you're discussing and  
10 planning actions and items that you are going to  
11 pursue, that you work with me. It's basically a  
12 budgetary issue. We have a very tight budget.  
13 Frankly the Board has been over-running that  
14 budget for the last couple of years, and I can't  
15 react. I have to be able to plan in order to  
16 react to budget.

17 So I just would throw that out to you  
18 guys, and work with me, as we plan things, to  
19 figure out what it's going to cost to do it, and I  
20 can budget appropriately. So I'm just trying to  
21 be responsible, so I appreciate your attention in  
22 that.

23 CHAIR RUFFATO: I very much appreciate  
24 your comments and your concerns, and we will work  
25 with you, and that would be appropriate, and what



1 I think would be the right thing to do. So I  
2 agree.

3 MR. MATHIEUS: Thank you, Mr. Chairman.

4 CHAIR RUFFATO: Any other comments,  
5 questions, suggestions regarding the matter that  
6 Katherine has raised and that Dave has mentioned?  
7 Joe.

8 BOARD MEMBER SMITH: I just have a quick  
9 question for Mr. Mathieus again. What are -- as  
10 far as a little clarification on the budget  
11 issues, what the biggest things that are  
12 over-running the budget? I assume it's just time  
13 for Hearing Examiners?

14 MR. MATHIEUS: Mr. Chair, Mr. Smith.  
15 That's correct. I mean some of the product of  
16 increased budget has just been the increased cases  
17 over the years, and as it's hard to get  
18 predictability there. I understand that. But  
19 there are some things, like the topic we're  
20 discussing right now, that I think can give me  
21 some predictability.

22 CHAIR RUFFATO: Joe, did that answer  
23 your question?

24 BOARD MEMBER SMITH: It did. And just a  
25 follow up thought. I think some of Mr. Simpson's

1 thoughts would actually potentially alleviate some  
2 of those issues as well by hopefully making cases  
3 proceed maybe a little more bit more efficiently  
4 in some cases.

5 CHAIR RUFFATO: Thank you. Ms. Marquis.

6 MS. MARQUIS: Good morning. Thank you,  
7 Mr. Chairman, members of the Board. I was going  
8 to address this in the public comment period that  
9 follows, but this seems to be on topic. I'm not  
10 sure if you're accepting public comment, if this  
11 is appropriate timing or not.

12 But I just want to offer that at least a  
13 year and a half ago, former Hearing Examiner  
14 Clerget convened a round table of most of the  
15 attorneys that routinely practice in front of the  
16 Board, and out of that round table there were a  
17 number of good suggestions that were broadly  
18 supported, and one of those was, or a couple of  
19 those had to do with some procedural changes that  
20 might be helpful for everyone involved, including  
21 the Board, the attorneys who practice in front of  
22 the Board.

23 And one of those that had a lot of  
24 substance and a lot of support was the need to  
25 have the Board's previous decisions accessible to

1 the public in some sort of electronic or digitized  
2 fashion, preferably searchable, if that's  
3 possible.

4 I don't know where those discussions  
5 ever went, but I just offer that up because that  
6 process, I don't know where it ended or where it  
7 went, or if there's any record or notes of it, but  
8 there were some ideas that came out of that  
9 process that had broad support from all of the  
10 parties.

11 And I'm just speaking on my own behalf.  
12 I'm not representing any of my clients right now.  
13 I forgot to interject that earlier. But I just  
14 want to be clear on that.

15 So there were some ideas that came out  
16 of that round table that might be helpful, and  
17 they're sort of on this topic about the procedures  
18 and process. Thank you.

19 CHAIR RUFFATO: Thank you. I want to  
20 say thank you for those comments, Ms. Marquis.  
21 They were appropriate, even though it was during  
22 this time.

23 Katherine, do you have anything more on  
24 the update, the Board Counsel's update, that you  
25 would like to talk about?

1 MS. ORR: Just very briefly, Mr.  
2 Chairman, members of the Board. We've had a  
3 member of Agency Legal Services depart our Bureau,  
4 Lindsey Simon, and therefore there has been a  
5 substitution of Counsel for her cases that she  
6 had. There are three of them. Two of them were  
7 assigned to Mr. Doud, and one was then was  
8 assigned to a new member of our office, Mr.  
9 William Holahan, and just wanted to let you know  
10 about that. If you would like any more  
11 information in that regard, I'd be glad to be more  
12 specific even.

13 CHAIR RUFFATO: Any questions or  
14 comments from the Board on the Hearing Examiner  
15 assignment matter?

16 (No response)

17 CHAIR RUFFATO: Hearing none, I will  
18 move on. Again, Katherine, I take it that was  
19 your last update?

20 MS. ORR: Yes, Mr. Chairman.

21 CHAIR RUFFATO: Does anybody on the  
22 Board have any questions or comments that we  
23 haven't talked about that they would like to  
24 address to the Board Counsel?

25 (No response)

1 CHAIR RUFFATO: Then I would like to  
2 move to the general public comment section of the  
3 meeting, portion of the meeting, and ask for any  
4 general public comment.

5 (No response)

6 CHAIR RUFFATO: Hearing none, I guess I  
7 think we can conclude the meeting. Do we have a  
8 motion for adjournment?

9 BOARD MEMBER ALTEMUS: So moved.

10 BOARD MEMBER LEHNHERR: Second.

11 CHAIR RUFFATO: Motion by Julia, and the  
12 second by Dr. Lehnherr. A motion has been made  
13 and seconded to adjourn the meeting. All in  
14 favor, say aye.

15 (Response)

16 CHAIR RUFFATO: Opposed.

17 (No response)

18 CHAIR RUFFATO: The meeting is  
19 adjourned. Thank you all.

20 (The proceedings were concluded

21 at 9:45 a.m. )

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C E R T I F I C A T E

STATE OF MONTANA )

: SS.

COUNTY OF LEWIS & CLARK )

I, LAURIE CRUTCHER, RPR, Court Reporter,  
Notary Public in and for the County of Lewis &  
Clark, State of Montana, do hereby certify:

That the proceedings were taken before me at  
the time and place herein named; that the  
proceedings were reported by me in shorthand and  
transcribed using computer-aided transcription,  
and that the foregoing - 29 - pages contain a true  
record of the proceedings to the best of my  
ability.

IN WITNESS WHEREOF, I have hereunto set my  
hand and affixed my notarial seal this 24th day of  
June, 2021.

\_\_\_\_\_  
LAURIE CRUTCHER, RPR  
Court Reporter - Notary Public  
My commission expires  
March 9, 2024.

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