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BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

BOARD MEETING)
OCTOBER 8th, 2021)

TRANSCRIPT OF PROCEEDINGS (VIA ZOOM)

October 8, 2021
9:00 a.m.

BEFORE CHAIRMAN STEVEN RUFFATO,
BOARD MEMBERS DAVID SIMPSON,
JON REITEN, JOSEPH SMITH, and DAVID LEHNHERR
(Via Zoom)

PREPARED BY: LAURIE CRUTCHER, RPR
COURT REPORTER, NOTARY PUBLIC
lauriecrutcher@gmail.com

1 WHEREUPON, the following proceedings were
2 had and testimony taken, to-wit:

3 * * * * *

4 CHAIR RUFFATO: Good morning, everyone.
5 Welcome. I believe it's time to call the meeting
6 to order. So Regan, are you on?

7 MS. SIDNER: I am.

8 CHAIR RUFFATO: Thank you. Would you
9 call roll, please.

10 MS. SIDNER: Yes. Chair Ruffato.

11 CHAIR RUFFATO: Here.

12 MS. SIDNER: Board Member Lehnherr.

13 BOARD MEMBER LEHNHERR: Here. I am in a
14 different time zone, and we'll hope my WiFi works,
15 but there may be some difficulty. But I'm here
16 for now.

17 MS. SIDNER: Board Member Simpson.

18 BOARD MEMBER SIMPSON: Here.

19 MS. SIDNER: Board Member Reiten.

20 BOARD MEMBER REITEN: Here.

21 MS. SIDNER: Board Member Smith.

22 (No response)

23 MS. SIDNER: That's on me. He's in the
24 waiting room. Hang on one moment. Board Member
25 Smith, are you connected to audio yet?

1 BOARD MEMBER SMITH: Yes, I am. Thank
2 you.

3 MS. SIDNER: Board Member Altemus.

4 (No response)

5 MS. SIDNER: Board Member Altemus.

6 (No response)

7 MS. SIDNER: And I believe that's
8 everybody.

9 CHAIR RUFFATO: Did Board Member Altemus
10 respond?

11 MS. SIDNER: No.

12 CHAIR RUFFATO: Was that a yes?

13 MS. SIDNER: No. Sorry.

14 CHAIR RUFFATO: She did not respond. So
15 we have five of us here; is that right?

16 MS. SIDNER: Correct.

17 CHAIR RUFFATO: All right. We have a
18 quorum.

19 For those who -- I assume you all know
20 that Board Member Hanson resigned, and I'm told
21 that a new Board Member has been or is being
22 appointed, but that person is not here today.
23 Anyway, we have a quorum.

24 So Regan, if you would -- First of all,
25 I'd like to know who is there on the Board in

1 person. Is it just Board Member Simpson, or is
2 Board Member Smith also there in person?

3 BOARD MEMBER SIMPSON: Mr. Chairman, I'm
4 the only one. This is Dave.

5 CHAIR RUFFATO: All right. Thanks,
6 Dave. If you, Regan, would identify all the folks
7 that are on at the meeting, and also start with
8 DEQ, and then go to others.

9 MS. SIDNER: Okay. We have Chad
10 Anderson who is acting staff liaison today; Chris
11 Cronin; Amy Steinmetz; Kirsten Bowers; Nick
12 Whitaker; Aaron Pettis; Angela Colamaria; Kurt
13 Moser; Brent -- (inaudible) -- I believe that's
14 everyone. Have I missed anyone from the
15 Department of Environmental Quality?

16 (No response)

17 CHAIR RUFFATO: Thank you, Regan. If
18 you would go on to the other folks that are
19 present.

20 MS. SIDNER: We have Vicki Marquis;
21 Clayton Elliott; Aaron Bolton; Catherine Laughner;
22 Murry Warhank; Dana Hupp; Wyatt Petryshen; Alexis
23 Adams; Jeremy Craft; Caitlin Buzzas; Andrew Cziok;
24 Lauren Sullivan; Aislinn Brown; Derf Johnson;
25 Randy Janes; Emily Qiu; John Metropoulis; Ellie

1 Hudson-Heck; Eric Regensberger, he's with DEQ;
2 Jason Gildea; Katherine Orr, our Board Counsel;
3 and Laurie Crutcher, our Court Reporter. Have I
4 missed anybody?

5 (No response)

6 CHAIR RUFFATO: Thank you, Regan. I
7 think -- I can't confirm, but if no one is
8 speaking up, I think you have everyone.

9 First of all, I don't know how long this
10 meeting is going to last, but I was just going to
11 mention that if it lasts into this afternoon, we
12 will break for lunch. And I've communicated with
13 Regan last night and this morning, and we will
14 break for lunch in sufficient time for you to go
15 to a restaurant. I'm not sure if the meeting will
16 last that long. It will depend.

17 Our first order of business on the
18 agenda is to approve the minutes from the last
19 meeting, and those were distributed in your
20 packet. So first of all, I would ask if the Board
21 members have any comments regarding the minutes.

22 BOARD MEMBER SIMPSON: Mr. Chairman,
23 this is Dave. The roll call reflects that I was
24 not present at the meeting. I was not at the time
25 of the roll call, but I would ask that it be noted

1 that I joined the meeting late due to computer
2 issues.

3 CHAIR RUFFATO: I think that's
4 appropriate. Actually when I look at the list,
5 David, I think it's more of a typographical error.
6 The last name there is David Smith, and we don't
7 have a David Smith, so I think that was intended
8 to be you.

9 So do we have a motion to amend -- or to
10 approve the minutes with the amendment that it
11 reflect that Board Member Simpson was present?

12 BOARD MEMBER SMITH: Yes, I'll motion to
13 approve the minutes with the added change that
14 Board Member Simpson was present.

15 CHAIR RUFFATO: Thank you.

16 BOARD MEMBER LEHNHERR: I would second
17 the motion. This is David.

18 CHAIR RUFFATO: Thank you, David. Thank
19 you, Joe. It's been moved and seconded that the
20 Board minutes with the change be approved. All in
21 favor, say aye.

22 (Response)

23 CHAIR RUFFATO: Opposed, same sign.

24 (No response)

25 CHAIR RUFFATO: The Board minutes are

1 approved.

2 I have a couple of comments relating to
3 the minutes. Those comments are, number one, we
4 talked about two things last meeting: One the
5 study that the Board asked for regarding
6 expediting processes. There's been work done on
7 that, but it was not ready to submit, to bring to
8 Board at this meeting. I wanted to update the
9 Board on that.

10 And the other one was a policy on
11 information provided to the Board for new cases.
12 Again, there's been work done on that, but it was
13 not ready to bring to the Board, and we will do
14 that. We will bring both of those to the Board
15 when they're ready.

16 Any other comments from the Board about
17 the minutes?

18 (No response)

19 CHAIR RUFFATO: Any public comments
20 regarding the minutes?

21 (No response)

22 CHAIR RUFFATO: If not, we will move on
23 to the briefing items. We'll handle these like we
24 have the last several meetings. First, I'm going
25 to ask the Hearing Examiners and our Counsel if

1 there are any changes on any of the items. We are
2 not going to go through them one by one, but
3 please speak up if there are any changes or
4 updates since the minutes came out on the briefing
5 items.

6 MS. ORR: Mr. Chair, may I comment?

7 CHAIR RUFFATO: Yes, please.

8 MS. ORR: Mr. Chair, members of the
9 Board. Good morning. I have asked Counsel for
10 all of these, Counsel Hearing Officers, for all of
11 these cases to let me know whether there have been
12 any changes in their cases since the agenda was
13 developed.

14 And the answer is that there have been
15 no changes since the agenda was developed, with
16 the exception of Signal Peak Energy, I would say.
17 And we will get to that as an action item.

18 CHAIR RUFFATO: Thank you, Katherine.

19 MS. ORR: I'm sorry. There might be one
20 matter to talk about regarding Oreo's Refining,
21 but do you want me to talk about that right now?

22 CHAIR RUFFATO: Please do.

23 MS. ORR: Okay. Just so the Board
24 knows, there was an order issued to the parties
25 asking them to try to settle the case, and the

1 parties filed a joint status report on September
2 10th timely, and they have indicated that they are
3 attempting to settle this, conferring with one
4 another, and they asked for more time to try to
5 accomplish that. They've asked for more time
6 until October 12th.

7 And I don't think this is an action item
8 for the Board, but just to say that the Chairman
9 has signed that request for an extension, and the
10 parties have until October 12th to file, either
11 settle or file a status report with the Board.

12 CHAIR RUFFATO: Thank you, Katherine.
13 That was important to update because we talked
14 about that last meeting. Thank you.

15 Do any of the Board members have any
16 questions about the briefing items? And again,
17 I'm not going to go through them one by one, but
18 if you have a question about any of them, please
19 ask that now.

20 (No response)

21 CHAIR RUFFATO: Hearing no questions, we
22 will move on to the next item on the agenda, and
23 that is the action items.

24 And the first action item is the appeal
25 of the amended application of AM3, AM3 amended

1 application, amended application of Signal Peak
2 for the Bull Mountain coal mine, and we're
3 scheduled to hear oral arguments today on the
4 exceptions.

5 I'll first ask: Who is here that is
6 representing the parties in this? Let's start
7 with the petitioner. Who is representing the
8 petitioner?

9 (No response)

10 CHAIR RUFFATO: Is there no one here
11 representing the petitioner?

12 (No response)

13 CHAIR RUFFATO: Who is here? Go ahead.

14 MS. MARQUIS: Excuse me. Board Members,
15 Chair, are you looking for a representative from
16 Signal Peak?

17 CHAIR RUFFATO: No. I think the
18 petitioner would be the party that appealed, which
19 would be, I think it would be MEIC or
20 EarthJustice. Do we not have a representative?

21 MR. JOHNSON: Mr. Chairman, this is Derf
22 Johnson with the Montana Environmental Information
23 Center. And my apologies. I am going to need to
24 make a phone call regarding my co-Counsel, and get
25 him on to the hearing here, because he has been

1 tracking this, and that should take me about two
2 minutes.

3 CHAIR RUFFATO: Thank you, Mr. Johnson.
4 And who is here representing the DEQ on this
5 matter?

6 MS. COLAMARIA: Mr. Chair, this is Angie
7 Colamaria. We are going to have to do the same
8 thing. I think there may have been a
9 misunderstanding on the oral argument schedule.
10 It's our understanding that we were still in
11 briefings. So I'm going to have to also do a
12 phone call, and get our Counsel on the phone.

13 CHAIR RUFFATO: Thank you, Ms.
14 Colamaria. And is there anybody here representing
15 Signal Peak?

16 MS. MARQUIS: Chair Ruffato, Members of
17 the Board. My name is Vicki Marquis with Holland
18 and Hart, and we represent Signal Peak. However,
19 I believe that the exceptions briefing has not
20 been completed, and I believe this is the matter
21 in which DEQ attorney Mark Lucas filed an
22 unopposed motion for an extension on briefing.

23 So I'm not certain that the exceptions
24 have been fully briefed, and are ripe for oral
25 argument in front of the Board. I believe that's

1 where the confusion is occurring.

2 CHAIR RUFFATO: I saw an order that
3 called for exceptions to be filed by September 1,
4 responses by September 15. Those deadlines were
5 not met. I don't understand that. I think I'm
6 going to ask our Counsel to let me know what she
7 knows about this. It seems a little strange to
8 me.

9 MS. ORR: Mr. Chairman, members of the
10 Board, and Counsel for the parties. What appears
11 to have happened is that the parties filed their
12 exceptions, and they were given an order -- as
13 Chairman Ruffato has mentioned -- to file response
14 briefs on September 15th, which did not happen.

15 And then yesterday the parties filed a
16 joint motion for extension of time to file
17 response to exceptions to proposed findings of
18 fact with the Hearing Officer, Ms. Buzzas.

19 And this case has been referred to the
20 Board. It's no longer in the hands of the Hearing
21 Examiner, and so it wouldn't be appropriate for
22 Ms. Buzzas to address that order, or that joint
23 motion, and here we are before the Board.

24 And if the parties wish to orally
25 request a motion for extension today, I think that

1 would be appropriate, basically reiterating their
2 motion with the Board, and I guess that motion
3 would consist of a request for more time to file
4 responses to exceptions.

5 So with that, I guess I would turn it
6 over to Chair Ruffato, and he may want to
7 entertain arguments or a formal request from the
8 parties' representatives.

9 BOARD MEMBER LEHNHERR: Chairman
10 Ruffato.

11 CHAIR RUFFATO: Yes.

12 BOARD MEMBER LEHNHERR: This is David
13 Lehnherr.

14 CHAIR RUFFATO: Go ahead, David.

15 BOARD MEMBER LEHNHERR: I would just
16 ask, would like a little bit of clarification --
17 and Ms. Orr, you may able to help with this.

18 It seems like there has been a proposed
19 FOFCOL, and yet I haven't seen that in any of our
20 documentation. It seems a little bit unusual to
21 be dealing -- I've never encountered this
22 situation where a FOFCOL was in the works, but I
23 haven't seen the final FOFCOL, and here we are,
24 the Board, dealing with issues related to a
25 proposed FOFCOL.

1 And maybe I missed it in the paperwork,
2 but I haven't seen the actual proposed FOFCOL.

3 CHAIR RUFFATO: David, that's a good
4 question, and you're exactly right. It did not
5 show up in the Board meeting materials.

6 We identified that issue last weekend,
7 and I think on Monday it was emailed out to all
8 the Board members. So you probably got it, but
9 maybe you didn't have a chance to see it.

10 BOARD MEMBER LEHNHERR: All right.
11 Thank you. Maybe I missed that. Thank you.

12 CHAIR RUFFATO: It certainly was an
13 oversight in the Board materials, meeting
14 materials.

15 I will entertain a request from one of
16 the parties, if they want to make it, or if -- I
17 think we're missing all of the attorneys that are
18 directly representing the parties, so maybe we
19 should table this, and go on to the next item, and
20 then we can come back to it, unless Ms. Marquis,
21 as the Holland and Hart lawyer, wants to speak up.

22 MS. MARQUIS: Chairman Ruffato, members
23 of the Board. I think it would be better if -- I
24 would hate to speak to this without the DEQ
25 attorney Mark Lucas and MEIC's attorney present.

1 So I think it would be better to table it, if the
2 Board is amenable to that. And I apologize for
3 the confusion.

4 CHAIR RUFFATO: Okay. Thank you, Ms.
5 Marquis. We will table it. Regan, would you make
6 sure I come back to this before the end of the
7 meeting?

8 MS. SIDNER: Yes, Chair Ruffato.

9 CHAIR RUFFATO: Yes. Thank you.

10 MR. JOHNSON: Mr. Chairman, my
11 apologies. I was trying to get my co-Counsel on
12 here who has been tracking this matter much more
13 closely than I have, and wasn't able to digest all
14 of the conversation.

15 He's going to be on shortly just to
16 clarify when we come back to this matter later on
17 in the agenda.

18 CHAIR RUFFATO: Thank you, Mr. Johnson.
19 I appreciate that.

20 MR. JOHNSON: Well, it was more of a
21 question. We will revisit this matter later on in
22 the agenda? Is that your intent?

23 CHAIR RUFFATO: Yes, that's my
24 intention.

25 MR. JOHNSON: Okay. Thank you.

1 CHAIR RUFFATO: Thank you. So now we
2 will move on to the next item, which is a new
3 contested case, in the matter of Sidney Sugars,
4 Incorporated, appeal of the Montana Pollution
5 Discharge Elimination System Permit two four
6 eight.

7 And I'm assuming all of the Board
8 members have reviewed the appeal document, and our
9 task today is to figure out if we are going to
10 assign that to a Hearing Examiner, or if we are
11 going to retain it, or if we are going to assign
12 it to a Hearing Examiner for procedural matters
13 and retain it for substantive matters. Does any
14 member of the Board have a motion on that
15 question?

16 (No response)

17 CHAIR RUFFATO: Maybe if we don't get a
18 motion, do we have some discussion that might lead
19 towards a motion on this matter?

20 (No response)

21 CHAIR RUFFATO: If not then I --

22 BOARD MEMBER SIMPSON: Mr. Chairman.

23 CHAIR RUFFATO: Yes.

24 BOARD MEMBER SIMPSON: This is Dave
25 Simpson. I guess given past practice, my

1 assumption was that we would consider referring
2 this to a Hearing Examiner.

3 CHAIR RUFFATO: Yes. That is kind of
4 the normal practice. We have talked a number of
5 times about whether or not that should be routine,
6 or whether we should consider it each time a
7 little more carefully.

8 As I read the petition, this seems like
9 this involves a number of fairly important legal
10 matters, and also a fair number of technical
11 matters. I'm not sure how that cuts necessarily,
12 but in my mind we should not do a knee jerk assign
13 it to a Hearing Examiner in every case, although
14 this may be an appropriate case to assign to a
15 Hearing Examiner. Yes, Board Member Lehnherr.

16 BOARD MEMBER LEHNHERR: Thank you,
17 Chairman Ruffato. I want to make sure you can
18 hear me. I agree that we shouldn't automatically
19 refer to a Hearing Examiner, but it often is a
20 good course of action. And I think it's good to
21 keep mind that that doesn't mean we will not have
22 input down the road, but often the Hearing Officer
23 can gather testimony, and input, and the
24 appropriate documents, and sort of distill it for
25 us somewhat.

1 I guess I'm just wanting to verify or
2 reiterate that that doesn't mean we don't have the
3 final say.

4 CHAIR RUFFATO: Very good point. Thank
5 you, David. Is there a motion given that
6 discussion?

7 BOARD MEMBER REITEN: Mr. Chairman, this
8 is Jon Reiten. I move that we move this to a
9 Hearing Officer for further review.

10 CHAIR RUFFATO: Jon, can I ask you to
11 clarify that? Do you want that to refer to a
12 Hearing Examiner in its entirety, or just for
13 procedural matters?

14 BOARD MEMBER REITEN: I would say in its
15 entirety.

16 CHAIR RUFFATO: A motion has been made.
17 Is there a second to the motion to assign this to
18 ALS for all matters in this case? I'm looking for
19 a second.

20 BOARD MEMBER LEHNHERR: I will second
21 that. This is David.

22 CHAIR RUFFATO: Thank you, David.
23 Discussion?

24 (No response)

25 CHAIR RUFFATO: A motion has been made.

1 BOARD MEMBER SIMPSON: Mr. Chairman.

2 CHAIR RUFFATO: Yes.

3 BOARD MEMBER SIMPSON: This is Dave. I
4 guess I'm still turning over in my mind the issue
5 of expedited procedures.

6 This appears to be a rather complex case
7 with multiple technical issues as well as legal
8 issues, and I wonder if there's anything to be
9 gained by requesting that the Hearing Examiner
10 conduct an informal conference with the parties to
11 flesh out the key issues, and whether there are
12 any points that can be -- facts that can be
13 stipulated -- let's put it that way -- to perhaps
14 bring about a more streamlined process.

15 CHAIR RUFFATO: I certainly think that
16 is always a good thing to occur. Katherine, maybe
17 you can speak to that. My sense would be that the
18 Hearing Examiners would always make that effort,
19 but that should be something that we should be
20 talking about in our study as to whether or not
21 that actually occurs in every case.

22 MS. ORR: Mr. Chairman, members of the
23 Board. I'd be glad to supplement here.

24 Actually this request, this appeal, for
25 one thing has distilled for review some of the

1 provisions of the permit, so that's very useful.

2 Also what seems to be happening with
3 these kinds of cases is the Department and the
4 appellant or other intervenors do get together,
5 and try to resolve the terms informally -- if
6 you've noted from other cases -- which could be
7 encouraged.

8 And as Chairman Ruffato says, typically
9 in these contested cases, what you've said, Board
10 Member Simpson, does occur. The Hearing Examiner
11 asks before the hearing, for example, whether
12 there's an agreed statement of facts where the
13 parties can get together. And as to the key
14 issues, as I've said, I think those have already
15 been kind of distilled out here.

16 So I understand the concern to
17 streamline, and I think the Hearing Examiner can
18 be informed that that is a serious consideration
19 for this Board, and the Hearing Examiner can try
20 to encourage the parties not, for example, to have
21 discovery disputes, to resolve the discovery
22 disputes informally.

23 Just as an editorial comment, my study
24 of some of the past ways that the cases have been
25 handled yields two thoughts: One, anytime there's

1 a referral to the Board for an interlocutory
2 appeal, that's very time consuming, and perhaps
3 that can be curtailed.

4 And the other thing is as a matter of
5 the Administrative Procedure Act, the Hearing
6 Examiner can ask in every case if the parties want
7 to resolve this informally. In fact we're viewing
8 that as a requirement. So that will be done, and
9 I hope Member Simpson is encouraged by that.

10 But at any rate these are complex cases,
11 and if the parties choose to litigate them in the
12 formal sense, the Hearing Examiner will conduct
13 the case accordingly.

14 CHAIR RUFFATO: Thank you, Katherine.
15 And David, I agree with your concern. I agree
16 this is an important issue. I think this
17 discussion is very helpful as we move towards the
18 study that we started last meeting. So thank you,
19 Dave, and thank you, Katherine. Any other
20 comments or discussion?

21 (No response)

22 CHAIR RUFFATO: A motion has been made
23 and seconded to assign the Sidney Sugars case in
24 its entirety to ALS for a Hearing Examiner. All
25 in favor, say aye.

1 (Response)

2 CHAIR RUFFATO: Opposed, same sign.

3 (No response)

4 CHAIR RUFFATO: It passes unanimously.

5 Now we'll go on to the next item on the agenda,
6 the rule review. It's the petition of Teck Coal,
7 Limited, to review the selenium rule that was
8 adopted by this Board last December. So we'll
9 move into that at this point.

10 First of all, to all those who
11 commented, at that last meeting the Board
12 requested that we receive -- or that the
13 interested parties provide comments to be used to
14 address the petition of Teck Coal. We received a
15 number of comments, and I want to thank everyone.
16 They were very helpful and enlightening to me, and
17 I assume so for the rest of the Board.

18 Based on those comments, and my
19 understanding, I think we have several steps to
20 take, and I will start with what I think is the
21 first step, but don't -- if the Board members have
22 other ideas than what I'm going to suggest, please
23 speak up.

24 But the first step I think we need to
25 decide is based on the numerous comments that

1 requested or recommended that we simply reject the
2 petition, and dismiss the petition without further
3 consideration.

4 The most complete articulation of that
5 recommendation was made by EarthJustice in their
6 comments and responsive comments, so I think the
7 first step is to decide if we are going to
8 consider the petition or reject it without
9 consideration, based upon the arguments and the
10 comments made in that regard.

11 So I will first ask if anyone has a
12 motion on that point. Does anyone have a motion
13 on whether we reject the petition based upon the
14 arguments made by EarthJustice and the other and
15 various other commenters, or to accept the
16 petition, and consider it, and establish a
17 process? That's the question.

18 BOARD MEMBER SIMPSON: Mr. Chairman.

19 CHAIR RUFFATO: Go ahead.

20 BOARD MEMBER SIMPSON: This is Dave.
21 I'd like to, before we consider a motion for
22 either action, there are some comments I would
23 like to make at some point, either now or at the
24 appropriate time if a motion is made. I would
25 request which is more appropriate.

1 CHAIR RUFFATO: David, I think if you
2 want to make those comments now, it's fine. If
3 you'd rather wait until there's a motion on the
4 table, I'm fine with that, too. Whichever you
5 prefer.

6 BOARD MEMBER SIMPSON: I think I'd
7 prefer to make those comments now.

8 I've gone back and read in detail, and
9 reread a number of the documents that were
10 provided to us in the course of this. And I
11 realize that this has been a long process, and we
12 are -- the new Board members. Excuse me -- are
13 not privy to all of the long history on this.

14 However, looking at the MCA state
15 regulations "no more stringent than federal
16 regulations or guidelines" under which this
17 petition has been filed, I think there are some
18 questions that need to be raised.

19 The determination was made by the Board
20 that the change in standard from 1.5 to 0.8
21 micrograms per liter was not more stringent than
22 the federal, based on the fact that the analysis
23 was conducted under -- using procedures that were
24 approved by the Environmental Protection Agency.

25 However, any time there is a deviation

1 from the EPA standards, which typically are
2 adopted by reference, there has to be a process
3 whereby EPA approves the change, as well as the
4 methodologies that were used to make the
5 determination.

6 So the question then becomes if that's
7 the case, can that argument be used as a
8 justification for any adoption of a more stringent
9 regulation than is recommended by EPA? If it is
10 the case, then it makes the statute 75-5-203
11 irrelevant.

12 So my view on this is that in a strictly
13 mathematical sense 0.8 certainly is a more
14 stringent standard than 1.5. My view is that the
15 petition should be accepted, and that DEQ should
16 in turn be directed to make the demonstration
17 required by the statute.

18 Whether it will change anything remains
19 to be seen, but there are other issues concerning
20 the technical aspects of this that I won't get
21 into right now, depending on which direction this
22 goes. But that would be my preference, and I'm
23 prepared to make the motion. I guess I'd hold off
24 until -- there may be other comments from other
25 members of the Board.

1 CHAIR RUFFATO: Thank you, David. Dr.
2 Lehnherr, I think I saw your hand go up, but maybe
3 not.

4 BOARD MEMBER LEHNHERR: Well, actually I
5 raised it virtually. I'll lower it. I will wait
6 until we have a motion before I comment further.
7 Thank you.

8 CHAIR RUFFATO: Thank you, Doctor. Any
9 other comments from the Board before Mr. Simpson
10 makes his motion?

11 (No response)

12 CHAIR RUFFATO: Board Member Simpson,
13 are you prepared to make that motion?

14 BOARD MEMBER SIMPSON: Mr. Chairman, I
15 would move that the petition from Teck Coal
16 regarding compliance with the 75-5-203 MCA be
17 accepted, and the Department be directed to
18 prepare the demonstration that's required under
19 that statute.

20 I would also note that this is not a
21 rulemaking, and that we are far away from any
22 rulemaking that may or may not occur as a result.

23 CHAIR RUFFATO: Board Member Simpson, I
24 think there are two concepts in your motion that I
25 would like to ask you if you intend that. The

1 first concept is that we accept the petition and
2 consider it; and the second point in your motion
3 relates to the Department's role in that.

4 I think those are two separate issues.
5 And I would second your motion if you would amend
6 it to just be the first concept, and that is that
7 the Board accept the petition, and establish a
8 process for considering it, and leave out the
9 second one.

10 BOARD MEMBER SIMPSON: Mr. Chairman, I
11 accept your amendment to the motion.

12 CHAIR RUFFATO: Then I second the
13 motion. A motion has been made that the Board
14 accept the petition of Teck Coal, and establish a
15 process for considering the petition. Discussion,
16 please.

17 (No response)

18 CHAIR RUFFATO: Is there any discussion
19 on the motion? Dr. Lehnherr.

20 BOARD MEMBER LEHNHERR: Thanks. I'll be
21 a broken record here, but I think it's pretty
22 clear that the selenium standard that was adopted
23 by the previous Board did not exceed the EPA
24 standard, and EPA essentially said that.

25 And again, I think a more important

1 point, that I think this is a pretty egregious
2 example of a polluter or potential polluter trying
3 to take advantage of a reconstituted Board after
4 last year's election to do an end run around a
5 very sound decision that the Board made, and an
6 end run around the DEQ.

7 So I think personally I don't know what
8 word to use -- outrageous -- whatever word, I
9 think it has to be pretty strong. Again, I
10 realize I'm just a broken record here, but I feel
11 that needs to be said. Thank you.

12 CHAIR RUFFATO: Thank you, Doctor. Your
13 comments are respected, and don't worry about
14 being a broken record. I understand your
15 position. Any other comments? Discussion?

16 (No response)

17 CHAIR RUFFATO: I will offer my
18 thoughts. I think that the statute is fairly
19 clear that this petition is in order. It
20 contemplates a review after a rule has been
21 adopted. That seems clear to me.

22 And so I think the Board has an
23 obligation to accept the petition and consider it,
24 and the issue raised by Dr. Lehnherr is a matter
25 that we will need to consider, and that is the

1 substantive issue that we need to consider when we
2 take up the petition. So I am going to vote in
3 favor of this motion.

4 Is there any other discussion before we
5 vote on this motion?

6 BOARD MEMBER REITEN: Mr. Chairman, this
7 is Jon Reiten. I would agree with Dr. Lehnherr.
8 I think the ruling, the decision was made
9 previously, and I don't see that it's right for us
10 to overturn it right now, so I'm going to vote
11 against it.

12 CHAIR RUFFATO: All right. Any other
13 discussion?

14 (No response)

15 CHAIR RUFFATO: Is there any objection
16 to moving on to vote on the motion?

17 (No response)

18 CHAIR RUFFATO: A motion has been made
19 and seconded that we accept the petition, and that
20 we consider it and adopt the process. All in
21 favor, say aye.

22 (Response)

23 CHAIR RUFFATO: Opposed, same sign.

24 (Response)

25 CHAIR RUFFATO: I think that means that

1 we don't have a decision. Regan, would you please
2 call the roll and ask for a yes or a no on this
3 motion.

4 MS. SIDNER: Yes. Chair Ruffato.

5 CHAIR RUFFATO: I vote yes.

6 MS. SIDNER: Board Member Lehnherr.

7 BOARD MEMBER LEHNHERR: No.

8 MS. SIDNER: Board Member Simpson.

9 BOARD MEMBER SIMPSON: Yes.

10 MS. SIDNER: Board Member Reiten.

11 BOARD MEMBER REITEN: No.

12 MS. SIDNER: Board Member Smith.

13 BOARD MEMBER SMITH: Yes.

14 MS. SIDNER: And I believe Board Member
15 Altemus is still absent.

16 CHAIR RUFFATO: If I'm not mistaken,
17 this means that we have not made a decision; is
18 that right, Katherine? Because we need a majority
19 to make a decision, a majority of the Board. We
20 need four members of the Board.

21 MS. ORR: Mr. Chair, members of the
22 Board, that is correct. So right now you don't
23 have enough impetus from the Board to go forward
24 with the petition.

25 CHAIR RUFFATO: But we also don't have

1 enough to dismiss the petition, correct?

2 MS. ORR: Mr. Chair, members of the
3 Board, that's correct. If you wanted to
4 recharacterize the motion or have further
5 discussion on that, you can, but at this point,
6 there's been no vote to carry the petition
7 forward.

8 CHAIR RUFFATO: Understood. That would
9 suggest to me that we need a motion in order to
10 make sure we're -- we can't move. I would say we
11 need a motion to dismiss the petition, and we'll
12 see how that comes out.

13 BOARD MEMBER REITEN: I make a motion
14 that we dismiss the petition.

15 BOARD MEMBER LEHNHERR: I will second
16 that motion. This is David.

17 CHAIR RUFFATO: A motion has been made
18 and seconded that we dismiss the petition and not
19 consider it. Discussion.

20 (No response)

21 CHAIR RUFFATO: I will just state that
22 I've already stated my position, so I will be
23 voting no on this motion. Is there any objection
24 to moving to a vote on this motion?

25 (No response)

1 CHAIR RUFFATO: Hearing no objection,
2 let's take a roll call again. All in favor of the
3 motion say aye.

4 BOARD MEMBER REITEN: Aye.

5 BOARD MEMBER LEHNHERR: Aye.

6 CHAIR RUFFATO: All opposed.

7 BOARD MEMBER SMITH: No.

8 BOARD MEMBER SIMPSON: No.

9 CHAIR RUFFATO: All right. Regan, would
10 you please take a roll call vote on this motion,
11 yes or no.

12 MS. SIDNER: Yes. Chair Ruffato.

13 CHAIR RUFFATO: No.

14 MS. SIDNER: Board Member Lehnherr.

15 BOARD MEMBER LEHNHERR: Yes.

16 BOARD MEMBER SIMPSON: No.

17 MS. SIDNER: Board Member Reiten.

18 BOARD MEMBER REITEN: Yes.

19 MS. SIDNER: Board Member Smith.

20 BOARD MEMBER SMITH: No.

21 MS. SIDNER: Member Altemus is not with
22 us today.

23 CHAIR RUFFATO: Board members, we need
24 to make a decision on our next step then. We have
25 to make a decision at some point.

1 I'm going to suggest that we schedule a
2 special meeting as soon as we can when we can get
3 more members of the Board present, so we can make
4 a decision on this point. And the reason why I
5 think we should do it quickly is that if we take
6 it up, we have a short time frame to get it
7 resolved, and so I don't think we can wait until
8 the next meeting. I think we need to do that,
9 make a decision as soon as possible.

10 So I move that we direct the secretary
11 to find a date when we will have more than the
12 five of us present at a special meeting as soon as
13 possible, and I assume we're going to need to
14 notice that meeting, and give, I would expect, at
15 least a seven day notice on that. Would that be
16 right, Katherine?

17 MS. ORR: Yes, Mr. Chair.

18 CHAIR RUFFATO: So I move we instruct
19 the secretary to schedule a meeting as soon as
20 possible, give appropriate notice for a special
21 meeting to address this agenda item.

22 BOARD MEMBER SIMPSON: Second.

23 CHAIR RUFFATO: Discussion.

24 (No response)

25 CHAIR RUFFATO: Before we go forward,

1 something just occurred to me. Katherine, would
2 there be another procedural step that we could
3 take instead of a special meeting? Could we
4 adjourn this meeting until we get more members of
5 the Board present so we could do it sooner?

6 MS. ORR: I'm not quite --

7 CHAIR RUFFATO: Not adjourn it. That's
8 the wrong word. Could we postpone the meeting to
9 another day in the near future, and then we
10 wouldn't have to notice it?

11 MS. ORR: Mr. Chair, members of the
12 Board. I think you've already noticed various
13 items for this meeting, and it would be important
14 to carry forward with those, for example the
15 Signal Peak issue.

16 So I think really the best -- my advice
17 is the best course is to schedule a special
18 meeting. And you might get an indication, since
19 people are gathered here, the Board members, and
20 ask them alternative dates if they are able to
21 access that at this short notice. That might help
22 the Board secretary.

23 CHAIR RUFFATO: Good idea, Katherine. I
24 think we should take up the motion first, and then
25 we will look at our schedule and find out when we

1 might be able to schedule a meeting, a special
2 meeting. Dr. Lehnherr.

3 BOARD MEMBER LEHNHERR: Chairman
4 Ruffato, I just am wondering if you could clarify
5 the need for a special meeting as opposed to
6 waiting. I guess the next meeting would be in
7 December. But I suspect that the matter will be
8 disposed of somewhat readily. So if you could
9 just clarify that. It may be totally appropriate
10 to have a special meeting, but if you could just
11 clarify your concerns, that would be helpful.
12 Thank you.

13 CHAIR RUFFATO: I will clarify my
14 concerns. If we take up the matter, we will need
15 to have a period of time. If you read through the
16 proposed processes, those processes are going to
17 take a period of time, depending on which process
18 we would adopt. But it's a period of time that
19 will clearly entail months to get comments, to
20 analyze the issues, and to make a decision. That
21 will clearly take months.

22 The statute under which we are operating
23 gives an eight month period to reach a final
24 conclusion. Now, if the Board, for example,
25 decides that the regulation is not more stringent,

1 then -- or not the proposed regulation -- but the
2 adopted regulation is not more stringent, then the
3 matter will be concluded.

4 But if the Board decides that it is more
5 stringent, then there's additional work that needs
6 to be done, and it all has to be done within eight
7 months. We already are into that two and a half
8 months, so we don't have a lot of time left, and
9 that's the reason I think it is urgent to make the
10 decision.

11 And of course if the decision is to
12 reject the petition, it's no longer urgent, or if
13 the decision is that it's not more stringent, if
14 the rule is not more stringent, then that will be
15 the end of it.

16 But in the third scenario, if we decide
17 that the rule is more stringent, then there's
18 going to be a serious time crunch, and so I want
19 to anticipate the possibility of that third
20 scenario.

21 BOARD MEMBER LEHNHERR: Thank you.

22 CHAIR RUFFATO: Any further discussion?

23 (No response)

24 CHAIR RUFFATO: Any objection to
25 proceeding with a vote on the motion?

1 (No response)

2 CHAIR RUFFATO: Hearing none, a motion
3 has been made and seconded to direct the secretary
4 to schedule, to notice and schedule a special
5 meeting as early as possible to consider the Teck
6 Coal matter. All in favor, say aye.

7 (Response)

8 CHAIR RUFFATO: Opposed.

9 (No response)

10 CHAIR RUFFATO: The motion carries
11 unanimously.

12 So to help out Regan, let's give her an
13 idea. Now I expect that all of us cannot be
14 definitive, but let's give her an idea of when
15 this could occur. We're going to need a seven day
16 notice period, so it can't occur any sooner than
17 the week after next. So does anybody have any
18 idea of their availability the week after next?

19 BOARD MEMBER SMITH: Chairman Ruffato, I
20 would say I am available next, the Friday after
21 next. That would be October 22nd.

22 CHAIR RUFFATO: Joe, would you available
23 any earlier that week? Because we could notice
24 this as early -- probably not, probably not on
25 Monday, but it seems like we could have the

1 meeting October 20th through the 22nd, anytime
2 during that time.

3 BOARD MEMBER SMITH: Yes, it looks like
4 I could do October 20th as well.

5 CHAIR RUFFATO: But not the 21st?

6 BOARD MEMBER SMITH: No.

7 CHAIR RUFFATO: I can't do the 20th, so
8 I guess the 22nd is the best date that week.
9 Board Member Reiten, are you available on the
10 22nd?

11 BOARD MEMBER REITEN: Right now I'm
12 traveling, and I don't have my calendar, but I
13 think I am available. I just can't completely
14 verify it.

15 CHAIR RUFFATO: Good. Thank you. Dr.
16 Lehnherr, are you available on the 22nd?

17 BOARD MEMBER LEHNHERR: Yes. My
18 preference would be the following week, but I can
19 make the 22nd work, technology willing.

20 CHAIR RUFFATO: Understood. Board
21 Member Simpson.

22 BOARD MEMBER SIMPSON: Yes, I'm
23 available.

24 CHAIR RUFFATO: All right. I think that
25 accounts for all five of us. Regan, let's shoot

1 for the 22nd, but if you would get an email out
2 today to all members confirming their availability
3 on the 22nd, and then follow up if it turns out
4 that is not a good date for at least -- I mean
5 hopefully we can get all six of us.

6 I'm not sure how soon the new member
7 will be on board. I don't know where that process
8 is at, but we need at least the six of us before I
9 think we can make a decision. Is that understood,
10 Regan, or have I been unclear?

11 MS. SIDNER: Chair Ruffato, I will do
12 that. Thank you.

13 CHAIR RUFFATO: Thank you, Regan, very
14 much.

15 How about if we take a ten minute break
16 at this point, and we will reconvene in ten
17 minutes.

18 (Recess taken)

19 CHAIR RUFFATO: I will call the meeting
20 back into order, and I would ask if Regan would
21 take the roll call.

22 MS. SIDNER: Chair Ruffato.

23 CHAIR RUFFATO: Here.

24 MS. SIDNER: Board Member Lehnherr.

25 BOARD MEMBER LEHNHERR: Here.

1 MS. SIDNER: Board Member Simpson.

2 BOARD MEMBER SIMPSON: Here.

3 MS. SIDNER: Board Member Reiten.

4 (No response)

5 CHAIR RUFFATO: Board Member Reiten.

6 (No response)

7 MS. SIDNER: Board Member Smith.

8 BOARD MEMBER SMITH: Here.

9 MS. SIDNER: Board Member Altemus.

10 (No response)

11 CHAIR RUFFATO: Board Member Altemus.

12 (No response)

13 CHAIR RUFFATO: Board Member Reiten, did
14 you return?

15 (No response)

16 MS. SIDNER: That gives us four.

17 CHAIR RUFFATO: We'll wait a minute.

18 MS. SIDNER: Board Member Reiten.

19 BOARD MEMBER REITEN: Here.

20 MS. SIDNER: Perfect.

21 CHAIR RUFFATO: We have a quorum. I
22 believe that we at this point should go back to
23 the Signal Peak matter. Do we have
24 representatives of the parties available now?

25 MR. HERNANDEZ: Mr. Chair, Shiloh

1 Hernandez for petitioners. I'm here and prepared
2 to speak on this matter.

3 CHAIR RUFFATO: Thank you, Mr.
4 Hernandez. Is there anybody here for DEQ?

5 MS. COLAMARIA: Mr. Chair, this is Angie
6 Colamaria, Chief Legal at DEQ. I'm still unable
7 to get a hold of Mr. Lucas. He's out today. But
8 I can speak about procedure and status.

9 CHAIR RUFFATO: Thank you, Ms.
10 Colamaria. How about for Intervenor Signal Peak?

11 MR. YEMINGTON: Mr. Chair, Sam
12 Yemington, attorney with Holland and Hart, on
13 behalf of Signal Peak.

14 CHAIR RUFFATO: Thank you. I guess
15 maybe first I would ask one of you what has
16 transpired in terms of the order that required
17 exceptions by September 1 and responses by
18 September 15th.

19 MR. HERNANDEZ: Mr. Chair, members of
20 the Board. I can speak to that. I think we're
21 all on the same page.

22 All parties filed exceptions to the
23 proposed ruling on October 1st, and responses to
24 those exceptions are not due until the 15th, but I
25 understand that DEQ, on behalf of all the parties,

1 filed a joint motion for an extension of that
2 deadline until the end of -- the beginning of
3 November, on account of DEQ's Counsel Mr. Lucas
4 leaving DEQ, and having shuffled through --

5 No, actually he's in the process of
6 leaving DEQ, but I understand Ms. Colamaria, and
7 he's trying to wrap things up, so it's a bit of a
8 juggle for him. So that's where things stand.
9 We're hoping to finish briefing by early November.

10 MS. COLAMARIA: That's right. The
11 motion we filed yesterday asked for an extension
12 until November 5th.

13 But just to clarify, on August 11th,
14 Hearing Examiner Buzzas did give us an extension,
15 granted an extension of time until the 15th of
16 October. So I think that's probably where some of
17 the confusion was, is that we currently have an
18 extension until the 15th of October. We asked for
19 a little more time because of the scheduling
20 conflicts.

21 CHAIR RUFFATO: That does help.

22 MR. YEMINGTON: Mr. Chair, member of the
23 Board, just for the sake of the record, everything
24 represented by the parties and Single Peak agrees
25 with.

1 We would just note that the impetus for
2 the initial extension after the decision was
3 issued by the Hearing Examiner, the impetus for
4 that initial extension was competing deadlines
5 with another contested case proceeding, and as
6 represented by the Department, that initial
7 extension was granted by the Hearing Examiner on
8 the 11th of August, and exceptions have been filed
9 to my knowledge by all parties, and we're still
10 working with an October 15th deadline to respond
11 to those exception, with an understanding that the
12 Department has requested an extension, given Mr.
13 Lucas' commitments in leaving the Department.

14 CHAIR RUFFATO: Katherine, you commented
15 earlier that because this matter had been
16 submitted to the Board, that the Hearing Examiner
17 no longer had jurisdiction. Do these additional
18 facts change that position, or that view?

19 Because I think we just learned a new
20 fact that I didn't know until just now, and that
21 was that there was an extension granted by the
22 Hearing Examiner for the exceptions to be filed by
23 September 15th and responses by October 5th. So
24 maybe this is not in the Board's hands yet, it's
25 still in the Hearing Examiner's hands.

1 MS. ORR: I think the decision was
2 submitted -- the FOFCOL was submitted to the Board
3 in August, and at that point it was under the
4 aegis of the Board.

5 And the Board has looked at exceptions,
6 and has been reviewing those for the purposes of
7 this meeting, and oral argument was set before the
8 Board at this meeting, and I think it's up to the
9 Board to determine whatever direction the parties
10 request the Board to go.

11 And that can certainly include
12 acknowledgment of the extension, or granting of
13 an additional extension. Apparently there's a
14 request to have an extension until November,
15 according to this joint motion. So that's what I
16 would advise you.

17 CHAIR RUFFATO: Thank you, Katherine.
18 Then I will take the comments that have been made
19 as a request to grant an extension until November
20 5th for responses to exceptions to be filed. Do
21 any of the representatives disagree with that?

22 MR. HERNANDEZ: Yes. That sounds good.

23 MS. COLAMARIA: (Nods head)

24 CHAIR RUFFATO: Board members, we need
25 to decide whether or not we're going to grant an

1 additional extension beyond the initial extension
2 that we granted. I think it's pretty simple that
3 we should probably do that.

4 So I will make a motion that we grant an
5 extension to November 5th to file exceptions -- to
6 file responses to the exceptions that have been
7 filed. Is there a second?

8 BOARD MEMBER REITEN: I'll second that.

9 CHAIR RUFFATO: It's been seconded, it's
10 been moved and seconded. The second was by Board
11 Member Reiten, and the motion was made by me.
12 It's been moved and seconded that we grant an
13 extension to the parties to file responses to the
14 exceptions until November 5th. Any discussion?

15 (No response)

16 CHAIR RUFFATO: If there's no
17 discussion, I will call the question. All in
18 favor of the motion, say aye.

19 (Response)

20 CHAIR RUFFATO: Opposed.

21 (No response)

22 CHAIR RUFFATO: Motion passes. The
23 extension is granted. So I guess that concludes
24 that matter for today.

25 I think the next item on the agenda is

1 the Board Counsel update, if you have anything,
2 Katherine, or if the Board has any questions of
3 Katherine.

4 MS. ORR: Mr. Chair, members of the
5 Board, I don't have an update other than what
6 we've been discussing.

7 CHAIR RUFFATO: Thank you. Any
8 questions of Board Counsel?

9 (No response)

10 CHAIR RUFFATO: If not, we'll move on to
11 the general public comment item, and so I will
12 ask. Any member of the public that wants to
13 comment on anything, any public matter within the
14 jurisdiction of the Board that has not otherwise
15 been addressed in the agenda.

16 (No response)

17 CHAIR RUFFATO: Any public comment?

18 (No response)

19 CHAIR RUFFATO: Hearing none, I think
20 we're at the end of our agenda.

21 BOARD MEMBER SIMPSON: Mr. Chair, can I
22 make one request, please, one comment.

23 CHAIR RUFFATO: Absolutely.

24 BOARD MEMBER SIMPSON: This has to do
25 with Board process.

1 I wanted to raise the question of
2 whether it would be possible to send out, to
3 notice and send out -- excuse me -- to send out
4 the Board materials to the members of the Board
5 two weeks ahead of time, so that if there are any
6 questions or requests for additional information,
7 they can be completed before the noticing
8 deadline, seven days before the meeting.

9 CHAIR RUFFATO: I agree completely with
10 that request. Now, I'm not sure if it's possible
11 to get all of that out, but I believe I asked for
12 a similar -- I mean a similar request at the last
13 meeting that the Board members get materials as
14 soon as possible.

15 I can tell you that I spent many hours
16 over the last week digesting the Signal Peak
17 matter and being frustrated, and I think these
18 matters are sufficiently complex that you can't
19 expect the Board members to digest it in a week,
20 when some of these matters have been pending, and
21 complicated matters pending for five years.

22 So I agree completely with Board Member
23 Simpson that Board members should receive
24 materials absolutely as soon as they're available,
25 and if that comes in piecemeal, I have no problem

1 with that, and then you put in the final material
2 for the meeting that goes out to the public. But
3 I think we need more time.

4 BOARD MEMBER REITEN: I strongly agree
5 with you. Jon Reiten, Mr. Chairman.

6 CHAIR RUFFATO: Thank you. Katherine,
7 do you have any comment on that request?

8 MS. ORR: Mr. Chair, members of the
9 Board. I think given the complexity of these
10 documents, it's very important that the Board get
11 them as soon as possible, as you say.

12 The only thing I would add is as you've
13 seen, documents pour into the Board before the
14 meeting and sometimes right before the meeting,
15 and it's going to be unavoidable that documents
16 need to be provided to the Board as they come in.

17 And I think as a matter of law and
18 notice, there's a time past which the notice to
19 the public in the packet has to be whatever is
20 reasonable, and usually that's seven days, but
21 I've seen cases and handled cases where the
22 reasonableness of it was less than seven days.

23 It kind of depends on what it is that
24 you're trying to accomplish, but with that caveat,
25 I wholeheartedly agree and will try to comply with

1 that objective.

2 CHAIR RUFFATO: Very good. Thank you.
3 Thank you Board Member Simpson for bringing it up.

4 As a good example, when responses to
5 exceptions are filed on November 5th, hopefully we
6 get them on November 6, 5th or 6th. At that
7 point, I can tell you that it's fresh in my mind.
8 Now I would rather review them at that point than
9 just prior to another meeting.

10 So is there any other public comments or
11 Board comments at this point?

12 BOARD MEMBER SIMPSON: Just to follow up
13 on that. What's the current required timeline for
14 documents to go to the Board secretary prior to a
15 meeting?

16 CHAIR RUFFATO: Yes. Go ahead, Regan.

17 MS. SIDNER: Mr. Chairman, members of
18 the Board. I typically get the documents from the
19 public and from the Agency Legal Services about
20 eight days before the Board meeting, and they need
21 to be posted online about seven days before the
22 Board meeting per policy. As Board Counsel Orr
23 stated, culture is to submit documents kind of at
24 the eleventh hour.

25 CHAIR RUFFATO: Thank you, Regan. I

1 could be wrong, but I'm thinking about the
2 calendar, and it seems like the Friday two weeks
3 before the meeting is a date when all documents
4 should be to you, Regan. Is that not happening,
5 or is that just new applications?

6 MS. SIDNER: I believe you're correct.
7 I think this requires some more in-depth
8 conversation between Board Counsel Orr and myself.
9 I think your request is reasonable, and we should
10 be able to adjust our internal policies to make
11 that happen. We just need to have some more
12 in-depth conversations between her and I.

13 CHAIR RUFFATO: That's great, Regan. I
14 appreciate it. And I particularly feel that our
15 Hearing Examiners should be attuned to this,
16 because they're working with us all the time, and
17 we should not be working at the eleventh hour.
18 And I'm afraid that if we do, it's going to cause
19 more difficulties and more delay if we don't honor
20 this request. So thank you.

21 Any more discussions? Dr. Lehnherr.

22 BOARD MEMBER LEHNHERR: Thank you,
23 Chairman Ruffato. I would just ask that -- I
24 think the piecemeal is okay to an extent, but not
25 too piecemeal I would ask, since it's so easy to

1 patch items electronically that if, say for
2 example, there are documents associated with a
3 FOFCOL, that you would, say, put any documents
4 that place new documents in perspective along with
5 the new documents.

6 Say if there's, for example, a FOFCOL,
7 that new documents pertaining to maybe some FOFCOL
8 along with it, just so we're not getting a
9 document that is sort of not placed in perspective
10 by not having its other documents along with it.

11 CHAIR RUFFATO: I think that's a
12 reasonable request, and I would just ask the
13 secretary and Counsel to provide documents in a
14 manner to the Board that is useful, and use your
15 judgment on that. At the end of the process, I
16 believe we will get all of the documents in a
17 package which will be the Board material. So it's
18 not like we won't eventually have them all in a
19 package. So thank you.

20 BOARD MEMBER SIMPSON: Mr. Chairman,
21 just to amplify a little bit on the subject.
22 There's really two reasons I had in mind.

23 One of course we've already discussed,
24 to give Board members as much time as possible to
25 review the documents, but the other is to avoid

1 putting ourselves in the position where the
2 meeting has already been noticed, documents have
3 been overlooked in the public notice such that the
4 seven day requirement would not be met; that is,
5 should additional, should something be overlooked
6 and it's picked up by the Board in the meantime,
7 that word would come back to the Board secretary
8 before the seven day deadline, if that makes any
9 sense.

10 CHAIR RUFFATO: It does. I'm not
11 confident that the seven day deadline is a hard
12 deadline, but that's something we'll maybe have to
13 consider.

14 An example of that was the Signal Peak
15 findings and conclusions that was not included in
16 the Board materials, and so we'll be discussing
17 that and considering that further. Thank you,
18 Dave. Any other discussion?

19 (No response)

20 CHAIR RUFFATO: If not, a motion to
21 adjourn would be in order.

22 BOARD MEMBER SIMPSON: So moved.

23 CHAIR RUFFATO: I second that motion.
24 It's been moved and seconded that we adjourn. All
25 in favor, say aye.

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(Response)

CHAIR RUFFATO: Opposed.

(No response)

CHAIR RUFFATO: Motion passes
unanimously. We are adjourned. Thank you all for
your careful attention, and we will be seeing you
I hope on the 22nd. Thank you.

(The proceedings were concluded

at 10:35 a.m.)

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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 - 53 - 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 10th day of
October, 2021.

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

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