BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

BOARD MEETING
DECEMBER 10, 2021

TRANSCRIPT OF PROCEEDINGS (VIA ZOOM)

December 10, 2021
9:00 a.m.

BEFORE CHAIRMAN STEVEN RUFFATTO,
BOARD MEMBERS DAVID SIMPSON,
JON REITEN, JOSEPH SMITH, JULIA ALTEMUS,
DAVID LEHNHERR, and STACY AGUIRRE

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WHEREUPON, the following proceedings were had:

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CHAIR RUFFATTO: Good morning, everyone. Welcome. I believe it's time for this meeting to start, so I will call it to order. And Regan, could you please call the roll of the Board members.

MS. SIDNER: Chair Ruffatto.

CHAIR RUFFATTO: Here.

MS. SIDNER: Board Member Lehnherr.

BOARD MEMBER LEHNHERR: Here.

MS. SIDNER: Board Member Simpson.

BOARD MEMBER SIMPSON: Here.

MS. SIDNER: Board Member Aguirre.

Board Member Aguirre.

(No response)

CHAIR RUFFATTO: We can't hear you, Stacy, but we can see you. So I think we can call her here, but we'll make sure that when we -- that somehow she can communicate. Maybe she needs to call in again.

MS. SIDNER: Board Member Reiten.

BOARD MEMBER REITEN: Here.

MS. SIDNER: Board Member Smith.
BOARD MEMBER SMITH: Here.

MS. SIDNER: Board Member Altemus.

(No response)

MS. SIDNER: Board Member Altemus.

(No response)

MS. SIDNER: Still connecting to audio, I believe.

BOARD MEMBER ALTEMUS: Here.

MS. SIDNER: Board Member Aguirre, can you try one more time?

(No response)

MS. SIDNER: I will troubleshoot with you privately, Board Member Aguirre.

CHAIR RUFFATTO: We have a quorum. So let's start out -- let's identify everyone else that's here. Regan, can you start with DEQ folks.

MS. SIDNER: Yes, Chair Ruffatto. I see Staff Liaison James Fehr; Angela Colamaria; Chad Anderson; Catherine Armstrong; Ed Hayes; Kayla Glossner; Nick Whitaker; Sarah Christopherson; Aaron Pettis; Kurt Moser; Lauren Johnson; Kirsten Bowers. Have I missed any DEQ members? Christine Weaver. Did I miss anybody else from DEQ?

MS. SULLIVAN: Lauren Sullivan with DEQ.

MS. SIDNER: Thank you, Lauren. Anybody
else from DEQ that I've missed?

(No response)

MS. SIDNER: Chair Ruffatto, do you want me to move on to non-DEQ members?

CHAIR RUFFATTO: Please.

MS. SIDNER: Vicki Marquis; Clayton Elliott; Andrew Cziok; Katherine Orr, our Board attorney; John Martin; C. Laughner -- I believe that's Caitlin? Caitlin or Catherine Laughner. I apologize. I didn't get everybody written down. I have to scroll.

MS. ORR: That would be Caitlin Buzzas, I think. Do you have her?

MS. SIDNER: Caitlin Buzzas, are you present?

(No response)

MS. SIDNER: I don't believe so. I don't have her.

MS. ORR: All right.

MS. SIDNER: Sam Yemington; Martha Thomson. Have I missed anybody?

(No response)

MS. SIDNER: Hearing no response.

CHAIR RUFFATTO: Thank you. George Mathieu is not on. I thought he might be. Since
he's not, I would ask James to convey our thanks
to George for his years of service to the State
and to this Board. I wanted to thank him, so
would you convey that to him? I'd appreciate it.

And then I wanted to introduce to
everyone James Fehr. He is our new liaison with
DEQ. James, if you'd be comfortable, if you could
just tell us a couple of things about yourself,
and it would probably be helpful for everybody.

MR. FEHR: Absolutely. Thank you very
much. So I just rejoined DEQ starting November
1st. I worked with DEQ as their HR manager back
from 2010 to 2012. After I was the HR manager
here, I went on to work for the City of Helena as
their Human Resource Director. And during the
pandemic I was the Chief Human Resource Officer
for Department of Public Health and Human
Services.

I am a native Montanan. I grew up in
Corvallis, so I'm a Bitterrooter; graduated from
University of Montana, so western Montana boy.
Happy to be here.

CHAIR RUFFATTO: Welcome, James. Glad
you're here.

I think our next order of business -- If
I didn't say it, I wanted to state that we have a quorum. All Board members are present. So I wanted to declare a quorum. And then we'll move on with our agenda items.

The first one is we will vote on the minutes of the last two meetings. We will take them one at a time, and the first one is the October 8th meeting, and I would like to start out by moving to amend the minutes in a few respects, and so I will go through that.

The first amendment would be on Page 2, Roman Numeral III(1) in the sixth line, replace the word "exceptions" with the words "response briefs."

Then in that same paragraph, in the seventh line, the sentence that starts with, "Oral argument did not proceed," put a period after the word "proceed," and then delete the rest of that sentence all the way to the end.

And then add the following sentence, "The Board granted an extension to file response briefs until November 5, 2021."

And then on Page 3 on the Board Counsel update, in the second line after the word "Board," delete the words "secretary to be noticed to the
Board and the public for review."

I read through the -- or that's the end.
After I state "review," that's the end of the insert. I read through the transcript, and I believe these are accurate. Do I have a motion to second my amendment to these minutes?

BOARD MEMBER SIMPSON: I second. This is Dave.

CHAIR RUFFATTO: Is there any discussion, or questions as to why I have amended these?

(No response)

CHAIR RUFFATTO: If there's no objection, no further discussion, I will call the question. A motion has been made and seconded to amend the minutes as stated. All in favor, say aye.

(Response)

CHAIR RUFFATTO: Opposed, nay.

(No response)

CHAIR RUFFATTO: Motion carries. Now I would entertain a motion to adopt these minutes as amended.

BOARD MEMBER AGUIRRE: I'll make a motion to adopt the minutes as amended.
BOARD MEMBER LEHNHERR: I'll second that.

CHAIR RUFFATTO: Thank you, David.

Thank you, Stacy. Did you get that, Board Member Aguirre? We can hear you fine now. And then Board Member Lehnherr seconded the motion. Any discussion?

(No response)

CHAIR RUFFATTO: Hearing none, all in favor say aye.

(Response)

CHAIR RUFFATTO: Opposed, nay.

(No response)

CHAIR RUFFATTO: It carries.

Now we'll go to the Board minutes of the October 29th special meeting. Is there any discussion?

(No response)

CHAIR RUFFATTO: I would entertain a motion to adopt those minutes.

BOARD MEMBER REITEN: So moved.

BOARD MEMBER AGUIRRE: Second.

CHAIR RUFFATTO: A motion was made by Board Member Reiten, and I think it was seconded by Board Member Aguirre. Any discussion?
CHAIR RUFFATTO: Opposed, nay.

(No response)

CHAIR RUFFATTO: It carries.

Board Member Aguirre, am I pronouncing your name correctly?

BOARD MEMBER AGUIRRE: It's Aguirre.

CHAIR RUFFATTO: Thank you.

BOARD MEMBER AGUIRRE: You bet.

CHAIR RUFFATTO: At this point it also calls for any public comment on the minutes. Is there any public comment on the minutes we have just adopted?

(No response)

CHAIR RUFFATTO: Hearing none, we'll move on.

Several meetings ago we received a memo from Board Member Simpson about potentially speeding up some of these cases, and one of the focuses was the potential for informal processes.

In response to that memo, ALS has prepared a memo that was in the Board meeting packet, and I'd like to give Board Member Simpson a chance to explain where we're at in that process of considering that, and then we can have some
discussion and go from there. Board Member Simpson, are you okay with --

BOARD MEMBER SIMPSON: Thank you, Mr. Chairman. And I'd like to thank the Department of Justice for putting together the response, and it was very helpful and very clarifying.

We had a conference call on this a week or so ago. And I guess just to summarize where I think we stand is, first of all, it's pretty clear that there are some, in fact probably a majority of the cases that come before the Board, that really don't lend themselves well to an informal process, particularly those that involve a third party. It's just hard to see how something like this might be applied.

The other major take-away was that up to this point, there has been no use, at least in recent years, of informal processes in these contested cases that are brought before the Board, even though an informal process is authorized by statute and regulation.

So I think as a first step, our understanding is that the first mention of the possibility of implementing or utilizing informal process would be, has been at the prehearing
That process is being changed, we understand, to include the mention for a -- include the statement of the opportunity to use an informal process in the scheduling order, initial scheduling order, which I think is a step in the right direction. That process is I believe being implemented.

I guess in my own mind, since this process has not been used in any recent case certainly, there's a great deal of question, and certainly in my mind, as to what an informal process would look like.

The obvious requirement is that the rights of the parties are protected, and that the record is built that can be then carried forward to District Court, should either party desire to appeal it, and the statute does authorize an appeal to the District Court where an informal process is used.

So what I'd request is that a process be outlined as to what the informal procedure would look like, so that those who are considering whether or not to utilize it know what they're getting into.
Right now there really isn't anything, other than the language of the statute and the rules -- which I think I guess from my own viewpoint is a little bit mushy. So that in my mind would be the next step, is to try to define what the alternative process would look like, so that petitioners who desire, who might desire to use it would know what they're getting into.

In addition to that, there's a question as to whether or not DEQ would consent to an informal process, since it requires the agreement of the parties. So that's a second question that I think is worth bringing up and looking into.

And Mr. Chairman, I think that about covers it. Did I miss anything?

CHAIR RUFFATTO: So I think you covered it well, Dave. Board members, do you have any questions or want to discuss this?

BOARD MEMBER LEHNHERR: Chairman Ruffatto.

CHAIR RUFFATTO: Yes. Board Member Lehnherr, go ahead.

BOARD MEMBER LEHNHERR: I think Board Member Simpson raises some great points there, and I just appreciate his bringing the issue up, and I
look forward to whatever clarification is offered of the good questions he just raised.

CHAIR RUFFATTO: Thank you. Any other points or questions?

(No response)

CHAIR RUFFATTO: I would add one point, or a couple of things.

First, the statute requires -- it doesn't just authorize informal process, but it requires the parties to be offered the chance at an informal process; and we think including that offer essentially in the initial order is a good move in the right direction to implement the statute clearly.

Another question, a question that Mr. Simpson raised, and that is whether or not DEQ would be willing to consider informal processes, or an informal process, if the party appealing the DEQ action were willing to do so.

I'm not going to put DEQ on the spot because I'll tell you, the Board members, that I asked that question yesterday, but I'm guessing there hasn't been a chance to consider it. But if DEQ wants to respond, they can, but I don't want to put you on the spot at all. So we can talk
about that later.

     MR. FEHR: No response on that today.

     We'll have a discussion internally.

     CHAIR RUFFATTO: Thank you very much, James.

     As far as Board Member Simpson's point about better defining what an informal process would look like, yesterday ALS got to me, and I got to Mr. Simpson just before this meeting, an order that is going to help start -- a possible example order that would start to help define that, but I'm not ready to talk about it. And as I said, I just sent to it Mr. Simpson, Board Member Simpson this morning, so I'm guessing he's not ready to talk about it either. But that process is ongoing, so we will report back at a later date.

     Any comments or questions about what I have said here?

     BOARD MEMBER AGUIRRE: Mr. Chairman, I have a quick question. How do we, as Board members, then participate in the movement forward of that study, or that example, or is that something that's just taken on by Board Member Simpson?
CHAIR RUFFATTO: I considered whether we needed to have Board action on that first step, but because it's required by statute, we just implemented that first step of including it in the first order.

At some point I anticipate coming back to the Board with more specific proposals or concepts, at which time the Board will have an opportunity to further consider it, but that doesn't foreclose the potential for discussing it in more detail right now, if you've had a chance to read that memo and have some thoughts that you'd like to add. And I'm sorry. Go ahead.

BOARD MEMBER AGUIRRE: I was just thanking you, and I do not have enough insight yet to offer any comment, but will make sure that I get to that point.

CHAIR RUFFATTO: Thank you. Any other discussion?

I would like to call out one other provision in that memo. And by the way, I want to mention that the memo was a little out of order in the meeting materials, so maybe you didn't catch it. It was at the very tail end. So if you didn't catch it before, it's at the very tail end.
So if you haven't had a chance to read it, please read it.

But one of the recommendations is the concern about what the word here is used -- well, the attempts to move matters from the Hearing Examiner to the Board before the matter is completed, and it suggests that those be discouraged.

And I guess I agree with that. At this point I don't think -- I'm not prepared to suggest anything more than that point, but we may be considering that further, too. In my mind, matters that are -- what's referred to as -- interlocutory, probably shouldn't come to the Board unless it's really unusual circumstances. But for now, at least I'm not going to suggest any action by the Board. Any discussion of that point?

(No response)

CHAIR RUFFATTO: We have on here the possibility of public comment, and the thought there was on the informal process. Because we have a lot of folks who have been in front of the Board a lot, I thought it might be useful if anybody here on the Zoom meeting had any comments
about the potential of an informal process. I wanted to open it up to anybody who wanted to offer comments or suggestions.

BOARD MEMBER AGUIRRE: Mr. Chairman, is it better to wait for DEQ's input on public comment on informal process? I was thinking from my regulatory standpoint, if you're looking at, say, informal process that people would go through directly with DEQ, and public comment into that.

CHAIR RUFFATTO: Very good point. I expect, as the concept requires, it requires the consent of both DEQ and the appealing party, so your point is very well taken.

And so I think that you're probably right, that depending on what DEQ tells us, that would probably affect the public comment. But again, I want to offer the chance to anybody. If they want to make a comment, they can, but Board Member Aguirre's point is well taken.

(No response)

CHAIR RUFFATTO: I take it there's no public comment forthcoming, so we'll move on to the next item, and that's determining the schedule for 2022 for the Board meetings, and I'm hopeful that the Board members have all taken a look at
the proposed schedule.

And I would start out. If there's a motion to adopt it, I would entertain that motion, or if there's some concern that somebody has with that schedule, let's talk about it.

BOARD MEMBER REITEN: Mr. Chairman, this is Jon Reiten. My only concern is that Fridays and Mondays can be difficult for me personally, because if I'm going anywhere, that's when it's going to happen. So that's my only concern. Tuesday, Wednesday, Thursday anytime would work, but Fridays and Mondays, for me it is difficult. I'm not sure if that's for anyone else. And I'm not that concerned about it, because if we know in advance I can make plans. So that's just my little concern.

CHAIR RUFFATTO: Thanks, Jon. Any other discussion?

MS. SIDNER: Chairman Ruffatto. May I make a comment?

CHAIR RUFFATTO: Yes. Please.

MS. SIDNER: It is not discussed on this page what time these meetings should start. Historically we begin the meetings at 9:00, I believe, but that is something we could discuss at
this point as well if 9:00 doesn't work. I know for me personally, 9:00 is not great, but I'm not a Board member. So I just wanted to point out that that is not on this page, the start time of the meetings.

CHAIR RUFFATTO: We certainly can discuss that, Regan. Thank you. So any more discussion on both the timing and the dates?

BOARD MEMBER SIMPSON: Mr. Chairman, I guess I have to agree with Board Member Reiten that Fridays and Mondays up against a weekend can be an inconvenience; and on the other hand, I believe that for certainly as long as I can remember, these meetings have been held on Fridays. I'm not sure why that is, but maybe there is a reason behind it.

BOARD MEMBER ALTEMUS: Mr. Chair, this is Julia. I don't have a preference of dates, but I would agree 9:00 to try to meet in person and are traveling, that might be a problem with us traveling.

CHAIR RUFFATTO: Julia, just so I understand what you were saying, what you're saying is that if we're meeting in person, 9:00 might not be the best, and I take it that would
probably be because some people may want to drive
to Helena on Friday morning; is that what you're
thinking?

BOARD MEMBER ALTEMUS: That's correct.

Thank you.

CHAIR RUFFATTO: Any more discussion?

BOARD MEMBER LEHNHERR: Chairman Ruffatto, this is David Lehnherr. I am wondering
if DEQ can provide any perspectives since
organizationally they're heavily involved. Do
they have a perspective on what date and what time
works best? Thank you.

CHAIR RUFFATTO: Thank you, David. I
agree. If there's anybody on the meeting who has,
No. 1, some history as to why it's Friday; No. 2,
would it be a problem if we moved it from Friday;
and No. 3, is there anything magic about 9:00.

MR. FEHR: I'm going to defer to our
Chief Legal. She's got a little bit more history.
This works for me today just fine. So Ms.
Colamaria, do you have any feedback?

MS. COLAMARIA: Thanks, James. I would
say if we're going move it off of a Friday,
Mondays are definitely not good for DEQ. We've
got a lot of organizational meetings on that day,
just across the agency. We haven't had a problem with Fridays.

I do know that people do tend to, if they're going to go on a long vacation, they leave on a Friday, but we haven't had a problem with working around that. But I think maybe we would be fine with like a Thursday or any other day organizationally.

CHAIR RUFFATTO: I can say for myself that the day doesn't matter to me, and the time doesn't matter to me, so I would entertain a motion on -- Let's start with the time. Let's decide what time we should start.

And if there's a motion that someone wants to make, I am fine to make the motion, or fine to entertain a motion on 9:00. I wouldn't want to move it past 10:00 in case there are long meetings, but I think 9:00 or 10:00 would work.

BOARD MEMBER AGUIRRE: I'll just make a comment before that that I'm coming from a long way, and I'm very much in favor of in-person meetings, and I know 9:00 isn't great, but Friday at 9:00 works pretty well for me as far as a day and traveling back, if I'm going to travel back. I'm also open to what people decide.
CHAIR RUFFATTO: Does anyone want to make a motion?

(No response)

CHAIR RUFFATTO: In order to keep the discussion going, I will move that we keep the time at 9:00, and I'm doing that just to move it forward, and because that's historically how it's been done. I move that we keep the time at 9:00.

BOARD MEMBER LEHNHERR: I will second that motion, Chairman Ruffatto.

CHAIR RUFFATTO: Thank you. Any further discussion?

BOARD MEMBER SIMPSON: Mr. Chairman, I concur with the motion, but I'd also suggest that when we get to point where we're considering a return to in-person meetings, that we might want to revisit this.

CHAIR RUFFATTO: I will make a point that there are kind of -- it cuts both ways for a lot of people. If I'm traveling from the Billings area, I would probably prefer to drive back as early as possible, too. So it kind of cuts both ways. I would probably come up on Thursday, for example, and drive back Friday afternoon. So it kind of cuts both ways, but we can handle it
either way. So any more discussion?

BOARD MEMBER ALTEMUS: May I ask a question, Mr. Chair?

CHAIR RUFFATTO: Certainly.

MS. ALTEMUS: So in 2022, are you thinking that it would strictly be in person, or are we going to try to do hybrid continuing, so you have an option to be online and not traveling bad roads? Because I've done bad roads into Helena for years in the morning, and it's not fun.

CHAIR RUFFATTO: I'm going to state my view. I think that we should maintain the option for virtual at all times, but it may be that the DEQ folks have a different view, but my view would be we should maintain the option for virtual meetings, but encourage people to come to in-person meetings.

I would ask if DEQ has a view on whether or not, as we move forward and start in-person meetings, and encourage them, will we maintain the ability to have some folks on Zoom?

MR. FEHR: Yes, I'm sure that we're able to manage that in the Metcalf Building.

CHAIR RUFFATTO: Ms. Colamaria, I expect that you can comment on back before COVID. I
assume that it was made available, maybe not by
Zoom, but by conference call; is that correct?

    MS. COLAMARIA: That's correct. I have
only been here for two years, so I don't have a
lot of back history, but the four months I was
here before COVID, that was an option to have a
hybrid. And our policy since COVID has been to
always bring the public meeting up for hybrid
option, and so we would continue to do that.

    CHAIR RUFFATTO: Thank you. Any further
discussion on the motion?

    (No response)

    CHAIR RUFFATTO: A motion has been made
and seconded that we continue to start the
meetings at 9:00 a.m. All in favor, say aye.

    (Response)

    CHAIR RUFFATTO: Opposed, nay.

    (No response)

    CHAIR RUFFATTO: Motion carries. Now
let's talk about Fridays. I think that, again,
this cuts both ways. For some Board members, they
would like to have the opportunity to drive back
home on a weekend rather than on a work day. I
assume that's what you're stating, Board Member
Aguirre, right?
BOARD MEMBER AGUIRRE: Actually I would probably drive home on Friday afternoon, a long day, weather permitting. So I'm good with Friday.

I would prefer not to have the meeting in the middle of the week, and Monday appears to not be a great day, but Friday works. Thursday would work. I'd prefer not to have Tuesday or Wednesday meetings, but I'll make whatever work.

CHAIR RUFFATTO: Thank you. I would entertain a motion on what day of the week.

MR. REITEN: Mr. Chairman, I'd like to make a motion we have the meetings on Thursdays, keep to the same general calendar, but it would just be a day earlier than what has been published.

CHAIR RUFFATTO: Thank you, Board Member Reiten. Is there a second?

BOARD MEMBER LEHNHERR: Chair Ruffatto, I'll second that motion.

CHAIR RUFFATTO: Thank you. Discussion.

BOARD MEMBER ALTEMUS: Mr. Chair, this is Julia Altemus again. Thursdays is really problematic for me. I have a lot of meetings during the week, and Friday mornings work better for me, but I'll just have to try to make it work
if Thursday works best for everybody else. Thank you.

CHAIR RUFFATTO: Board Member Smith, you had your hand up.

BOARD MEMBER SMITH: I just wanted to state my standpoint. I think everybody else has. To be honest, I'm fairly indifferent on when we have it, so that's why I really haven't provided much comment.

If we have the option, and a fair number of Board members would be attending in person, I would probably do that, and at 8:00 in the morning, I would probably just come up the same day and leave when it's done, so --

CHAIR RUFFATTO: Any more discussion on the motion to move the Board meeting to Thursday?

BOARD MEMBER AGUIRRE: I am with Board Member Altemus. Thursday, I will make it work, but I will have to change some significant meetings. I'll have to adjust with that.

CHAIR RUFFATTO: Any more discussion?

BOARD MEMBER SIMPSON: Mr. Chairman, I tend to agree. I think, as you say, it cuts both ways, and even though at this stage of my life in retirement one day is about the same as the next,
but I'm inclined to keep the meetings on Friday.

CHAIR RUFFATTO: Any more discussion?

BOARD MEMBER LEHNHERR: Chairman Ruffatto, this is David Lehnherr. I have a lot of flexibility as far as the day goes, so I'll probably just abstain from the vote, and let the people that have more investment in the day of the week decide this matter.

CHAIR RUFFATTO: Thank you, David. Any more discussion?

(No response)

CHAIR RUFFATTO: I appreciate the discussion, and I appreciate the concerns. I'm probably going to vote against this motion, not because I care much, but because I think most of DEQ and most of those that appear before DEQ on a regular basis have thought of this as a Friday meeting, and I'm inclined, since it does cut both ways and folks have views both ways, I'm going to vote against the motion. Any more discussion?

(No response)

CHAIR RUFFATTO: Hearing none, a motion has been made and seconded that the meetings be moved to Thursday. All in favor, say aye.

(Response)
CHAIR RUFFATTO: Opposed, nay.

(No response)

CHAIR RUFFATTO: Motion fails. Let's do a roll call vote.

MS. SIDNER: Chair Ruffatto.

CHAIR RUFFATTO: Nay.

MS. SIDNER: Board Member Lehnherr.

BOARD MEMBER LEHNHERR: Abstain.

CHAIR RUFFATTO: Board Member Simpson.

BOARD MEMBER SIMPSON: Nay.

MS. SIDNER: Board Member Aguirre.

BOARD MEMBER AGUIRRE: Nay.

MS. SIDNER: Board Member Reiten.

BOARD MEMBER REITEN: Aye.

MS. SIDNER: Board Member Smith.

BOARD MEMBER SMITH: Abstain.

MS. SIDNER: Board Member Altemus.

BOARD MEMBER ALTERMUS: Nay.

CHAIR RUFFATTO: At this point, I will make a motion that we adopt the schedule that was proposed.

BOARD MEMBER SIMPSON: Second.

CHAIR RUFFATTO: That was seconded by Board Member Simpson. Discussion.

(No response)
CHAIR RUFFATTO: Hearing none, if there's no objections to call the question, all in favor, say aye.

(Response)

CHAIR RUFFATTO: Opposed.

(No response)

CHAIR RUFFATTO: The motion carries.

Thank you all.

The next are briefing items. I'm going to ask those Hearing Examiners that are in the meeting and Board Counsel Orr if there are any updates or changes to the updates that were included in the agenda.

MS. ORR: Mr. Chair, this is Katherine Orr. I'm not aware of any changes, although for example in the Duane Murray case, which is on Page 2, there was a hearing yesterday, but there hasn't been a decision issued yet, and that's the only change that I know of.

Interestingly, in (c), this is the Sidney Sugars case, the parties were asked if they wanted to have an informal process, and they said no. I thought you'd be interested in that.

Other than that, there have been no changes other than what's on the agenda here.
CHAIR RUFFATTO: Thank you. Then I will ask the Board members if you have any questions or comments about any of the briefing items.

(No response)

CHAIR RUFFATTO: I had a couple of questions and comments if no one else has any. My first question was on the Murray case, and is Ms. Brown on the call?

MS. ORR: Unfortunately she is not today. She is on her first day of vacation.

CHAIR RUFFATTO: All right. Got it. I was just curious. Maybe you know. Did Mr. Murray appear at that hearing?

MS. ORR: He did.

CHAIR RUFFATTO: Okay. Thank you. That's all I wanted to know.

MS. ORR: And she is going to put in the order what his response was.

CHAIR RUFFATTO: Okay. Thank you. I was hoping he did because that was the issue before that we had. So thank you.

MS. ORR: And you wanted to comment on Page 6. I think you wanted to bring up to the Board -- this is the MEIC and Sierra Club versus DEQ and Western Energy.
This is the case where Judge Bidegaray issued a decision, and there could be a point where the Board is going to have to review the question of whether to appeal Judge Bidegaray's denial of the BER's motion to dismiss as a party. That's on Page 6 right above the action items. I don't know if you're there yet, but I just wanted to bring that to your attention.

CHAIR RUFFATTO: I appreciate the reminder, and we will discuss that a little bit now. Thank you, Katherine.

I'm hopeful that the Board members have read, or if they haven't read, the two decisions in that case. That's again on Page 6, the MEIC versus DEQ case. There were two decisions in the packet. The one decision denied the Board's motion to dismiss, and the other decision was a decision on the merits of the judicial review of the Board's decision.

I hope you all get a chance to read those, but I wanted to talk about this a little bit to introduce to the Board members -- other than Board Member Lehnherr, who I'm sure is familiar with the issue here -- but just to make sure that you all kind of understand what's going
Over the last few years, and maybe before that, but certainly over the last few years, the Board has been named several times in these cases where the Board's action is being subjected to judicial review.

And the prior Board -- Well, first of all, it's been the Board's position that it should not be named, it's inappropriate to name the Board, and unnecessary. And so in the past the Board determined to hire Amy Christensen to see if we could get some rulings that said the Board could be dismissed and was not necessary.

Two District Courts have ruled against the Board on that, and therefore have kept the Board as a party in those cases. In this particular case, it's one of the two where the District Court said, "No, we're going to keep the Board in the case as a party."

The issue that I think drove this for the Board was the cost and hassle of hiring a lawyer to represent the Board in these matters where the Board's decision is being reviewed, and it arguably is not the place of the Board, at least in most cases, for the Board to go in and
defend its position. The parties will argue those points. And so that has been the position of the Board.

Now that this case has been -- there's been a ruling on the merits, and we anticipate that there will probably be an appeal. This could be the case that the Board should take to the Supreme Court on this issue of whether or not the Board should be named and get a definitive ruling.

So that's the issue. And I'm not asking for any action at this meeting. We don't know when we will be called upon to make that decision, but I wanted to explain the situation to the Board members so you're a little bit prepared and can be thinking about it as we move towards that potential decision. Is there any questions or discussion?

BOARD MEMBER LEHNHERR: Chairman Ruffatto.

CHAIR RUFFATTO: Yes. Board Member Lehnherr.

BOARD MEMBER LEHNHERR: I think you provided a good summary. Cost was an issue, and since we are a quasi-judicial body, I think it was felt also that involving the Board or keeping the
Board involved as a party was sort of like asking, was sort of like if a judicial decision was reviewed or was appealed, that keeping the Board as a party would sort of be like trying to involve a Court that made a decision as a party in whatever decision they made on appeal. I may not have been clear there.

CHAIR RUFFATTO: You were very clear. That's exactly right. That's exactly the point. And I certainly -- That's really a good clarification for the issue. Yes. Thanks, David. And I would add that I don't know what has motivated parties to bring the Board in. I can speculate, and I will speculate. I think it's a matter of caution, that they don't want to get a determination that they needed the Board and did not name the Board. So I think it's a cautionary move on part of the lawyers, and we all know that lawyers are risk averse, so they don't want to take any chances. Any further discussion?

(No response)

CHAIR RUFFATTO: If none, we will move on. But I will point out that in addition to the issue we've been discussing, I would encourage you all to read that decision on the merits, because
there are a number of points in that that will affect, or at least have implications in other actions that we will be taking up. So please, when you get a chance, read that decision.

It is now almost 10:00. So how about we take a ten minute break, and reconvene at 10:10.

(Recess taken)

CHAIR RUFFATTO: I'm going to call the meeting back into order. Regan, would you please call the roll of the Board.

MS. SIDNER: Chair Ruffatto.
CHAIR RUFFATTO: Here.
MS. SIDNER: Board Member Lehnherr.
BOARD MEMBER LEHNHERR: Here.
MS. SIDNER: Board Member Simpson.
BOARD MEMBER SIMPSON: Here.
MS. SIDNER: Board Member Aguirre.
BOARD MEMBER AGUIRRE: Here.
MS. SIDNER: Board Member Reiten.
BOARD MEMBER REITEN: Here.
MS. SIDNER: Board Member Smith.
BOARD MEMBER SMITH: Here.
MS. SIDNER: Board Member Altemus.
BOARD MEMBER ALTEMUS: Here.
MS. SIDNER: Thank you.
CHAIR RUFFATTO: Thanks, Regan. We have a quorum.

We're now going to the action items. The first action item is the Oreo Refining case which we discussed at the end of August. And we have received a couple of status reports, and the last status report signed by both DEQ and the Petitioner said that they could not reach a settlement, so the Board now has to decide whether or not we are going to assign this case to ALS as a Hearing Examiner, either in whole or in part.

So that's where we're at. I would entertain a motion or open it up to discussion, whichever you prefer.

BOARD MEMBER LEHNHERR: Chairman Ruffatto.

CHAIR RUFFATTO: Yes.

BOARD MEMBER LEHNHERR: Just as a point from which to base discussion, I would like to make a motion that we assign this case to a Hearing Examiner in its entirety.

CHAIR RUFFATTO: Motion accepted. Is there a second?

BOARD MEMBER REITEN: I'll second it.

CHAIR RUFFATTO: Thank you. Discussion.
BOARD MEMBER SIMPSON: Mr. Chairman, I'm not sure I have a clear picture of what the process would be should the Board decide to take this up as opposed to assigning it to a Hearing Examiner.

The issue seems to be fairly narrow, and I wonder if we could discuss for a minute just what it would mean in terms of Board obligations if we were to take this on directly.

CHAIR RUFFATTO: We can discuss that, and if I told you I knew exactly what it would look like, I would not be telling the truth because I don't know exactly what it would look like. So I'm going to ask Katherine if she can outline what it would look like, if she would be so kind.

MS. ORR: I would be glad to. This is a case involving the issuance of a license to operate a solid waste system, and the Board -- It is in a contested case stage, and you would direct me to issue a prehearing order on behalf of the Board, which Chair Ruffatto would sign, and it would lay out the processes for prehearing matters, and then the hearing itself.

And the Board -- There may be discovery
motions before it gets to the contested case stage, but the parties would submit their filings regarding that to the Board, and the Board could entertain those in its meeting or a special meeting.

And then at the actual contested case hearing, the parties would assemble and present their evidence and witnesses before the Board. And you could use my help in organizing the exhibits, and helping you rule on questions of admissibility of the exhibits, or help you entertain objections regarding testimony along the way.

And the burden of proof I believe would be on the owner of Oreo's Refining, so that entity or person would go first. Then the Department would go second. They would put on their case. And then the Board would have the ability to question the witnesses as they are presented, and then the Board would deliberate, and vote on the relief.

CHAIR RUFFATTO: Board Member Simpson, did that help?

BOARD MEMBER SIMPSON: It does help. And correct me if I'm wrong, but from the
information that's been provided to the Board, it
sounds as if this is an issue of whether or not
the DEQ will either renew or restore the solid
waste processing license for Oreo.

And the Petitioner has made the case
that, among other things, her livelihood depends
on this, and so time is of the essence. So that's
why the case has caught my attention.

And just as kind of a side note, it
strikes me as one that might very well be a
candidate for an informal process should the
Petitioner decide to go that way.

So I don't know. I'm just very -- let's
put it this way. I'm a little bit bothered by the
fact that just as a matter of routine we refer
these cases to Hearing Examiners, and the reason
seems to be the amount of work that is involved in
administering these cases, which under a contested
case is considerable. And I guess ultimately it
comes back to the Board for a final decision.

I'm just having a hard time
understanding what the advantages and
disadvantages are from a management perspective of
how the Board proceeds in a case like this one.
That's why I raised the question.
CHAIR RUFFATTO: Board Member Smith.

BOARD MEMBER SMITH: Chair Ruffatto, and Ms. Orr, maybe this would help answer some of Mr. Simpson's questions and mine. How long do we think it would take, or I guess how many meetings? If we were to hear this as a Board, how many meetings do we think it would take for just this case?

And I know that's probably not a fair question, because I'm sure it varies quite a bit depending on the complexity of the case. This seems like a simple case compared to some of them. So how many meetings do we think it would take if we were to do this as a board?

MS. ORR: Mr. Chair, I could perhaps weigh in on that.

CHAIR RUFFATTO: Please.

MS. ORR: Chair Ruffatto, Board Members. That's very, very hard to say, of course, because we don't know if there's going to be a motion for summary judgment, we don't know if there's going to be a request to handle or involve the parties in discovery, and we don't know if there are going to be discovery disputes.

But I would think this would be a fairly
simple matter, and I think the initial order could
maybe try to say something like the Board would
like to have as streamlined a process as possible,
and so just leave it at that. We don't want to
infringe on their due process rights. But I just
can't predict, to be honest.

CHAIR RUFFATTO: Thank you, Katherine.
I have some thoughts that I will share. I don't
know how helpful they will be.

When I first read the appealing
document, I thought it should be a simple thing to
resolve. Since they've tried for two months and
haven't got anywhere, it seems like it's not so
simple, and I'm guessing there's a lot more to
this than what we have seen.

So my reaction is it may not be a simple
matter, and as Katherine says, I think how many
meetings, how much time of this Board is just an
open question.

And I harken back to an earlier meeting
this year when Board Member Lehnherr said this
gets to be complicated, and a lot of work, and
it's important to seriously consider assigning it.

After watching these cases for a year,
and looking at them, unless this Board wants to
spend a lot more time than I think we are now spending, I think by and large we will probably want to assign them to a Hearing Examiner. I think the question of an informal process is probably still open here, but even that, because it's not well defined, I'm thinking that that would not be an easy process in front of the Board, and so I'm inclined to assign it in its entirety.

And pardon me, but I think a motion has been made and seconded, right? There was a second. I think I seconded it, or maybe Dave did. I can't remember. So any more discussion? I'm going to vote in favor of the motion. Joe.

BOARD MEMBER SMITH: Yes, Chair Ruffatto. I would say I am probably going to vote in favor of the Hearing Officer also, although I do concur with Mr. Simpson on all of his thoughts also, wanting to take every opportunity we have to streamline the process, but not seeing a good opportunity to do that yet.

CHAIR RUFFATTO: Thank you. Any more discussion?

BOARD MEMBER SIMPSON: Mr. Chairman, I'm inclined to vote in favor of the motion as well.
However, I guess I would raise the question that as this case proceeds, of course at every meeting we get our status report on each of the cases that's in progress.

I'm just wondering if there is -- thinking out loud here, and probably not getting very far -- but of keeping a little closer tabs on the process to kind of -- well, let me rephrase that -- for the Board to be more involved than it typically is in a case assigned to a Hearing Examiner.

I don't know the -- I don't even know if it's a valid question. I'm just raising it to see if there are hybrid options that might be employed here.

BOARD MEMBER ALTEMUS: Mr. Chair, this is Julia Altemus. I agree with Board Member Simpson. I think if we were more involved as we go forward with the process, we might learn some lessons as far as -- we might have decided that may be a benefit for this case to doing a formal process, but if we can stay more involved at least so we'll learn along the way as we move forward to the next one. Thank you.

CHAIR RUFFATTO: All good points. Thank
you. Any more discussion?

    (No response)

    CHAIR RUFFATTO: If no one objects, I'm going to call the question.

    (No response)

    CHAIR RUFFATTO: All in favor of the motion to assign this matter, the Oreo Refining matter, to ALS as a Hearing Examiner for the case in its entirety, say aye.

    (Response)

    CHAIR RUFFATTO: Opposed.

    (No response)

    CHAIR RUFFATTO: Motion carries. I'm going to make another motion. I'm going to move that the Hearing Examiner, that we direct the Hearing Examiner to, before this matter moves into a formal contested case, I'm going to direct the Hearing Examiner to hold a conference call or a Zoom call where the parties can discuss the possibility, the option and possibility of agreeing to an informal process.

    BOARD MEMBER SIMPSON: Second.

    CHAIR RUFFATTO: A motion has been made and seconded that we direct the Hearing Examiner to hold a conference call or a Zoom call as the
first step to offer the option and discuss the informal process. Any discussion?

BOARD MEMBER LEHNHERR: Chairman Ruffatto, this is David Lehnherr. On its surface the motion sounds like a good idea. I'm wondering if Katherine Orr can weigh in with her perspective on the matter.

MS. ORR: I would be glad to, Chair Ruffatto, if I may.

CHAIR RUFFATTO: Please do.

MS. ORR: Chair Ruffatto, members of Board. I think that's very doable and it would certainly draw attention to the option. As you know, the parties have to waive in writing the informal process, so easy to do. That can go in the prehearing order.

I don't know if there's anything more to say about that, and I think you're contemplating that the conference would address that issue exclusively.

CHAIR RUFFATTO: That's what my motion contemplates instead of -- yes.

MS. ORR: So that's very doable.

CHAIR RUFFATTO: Any more discussion?

(No response)
CHAIR RUFFATTO: Mr. Whitaker, I would call on you, but I see that Ms. Mitchell is not on the call, so I don't feel really good about that. If you wanted to speak specifically to the informal process and the likelihood, I would be happy to do that, but I'm not requiring you to do that.

MR. WHITAKER: Chair Ruffatto, yes. Nick Whitaker on behalf of DEQ. No, I have nothing further to add. Thanks.

CHAIR RUFFATTO: Thank you. Any more discussion?

(No response)

CHAIR RUFFATTO: A motion has been made and seconded that we direct the Hearing Examiner to hold a conference call or a Zoom meeting with the parties as the first step in this process where the option of an informal process will be offered, explained, and discussed, and a determination made at that time or a reasonable time after that whether the parties will agree to it. I'll call the question unless there's more discussion.

(No response)

CHAIR RUFFATTO: All in favor, say aye.
(Response)

CHAIR RUFFATTO: Opposed, nay.

(No response)

CHAIR RUFFATTO: Motion carries.

We'll go to the next matter. This is the matter of the Notice of Appeal and Request for Hearing by Western Energy Company, BER Case 2012-12. I emphasize that number because this case has been pending since 2012, but it's gone through a lot of things, and I don't think -- I think the parties have been working on a resolution all that time.

A motion, an unopposed motion by the Appellant and DEQ, and it's unopposed by Intervenor MEIC, to dismiss this case as moot, and the reason for it being moot is that the 2012 permit that this proceeding was about has been superseded by a permit effective August 1st, 2021.

I don't think it's necessary to call on the parties unless some Board member wants to call on the parties. I think representatives of the parties are both here, but it seems like this first -- that the mootness of this case seems clear, but let's first have a motion on whether or not we want to grant the motion to dismiss this
matter as moot.

BOARD MEMBER SIMPSON: So moved.

CHAIR RUFFATTO: Is there a second?

BOARD MEMBER SMITH: I'll second.

CHAIR RUFFATTO: A motion has been made and seconded that we grant the motion to dismiss this case as moot. Discussion.

BOARD MEMBER SIMPSON: Mr. Chairman, having read through all of that, I think I have an understanding of what has transpired, and what has brought us to this point, but I'm wondering if we couldn't call on the parties to just give a brief statement as to what it is that has gotten us here.

CHAIR RUFFATTO: We definitely can.

BOARD MEMBER SIMPSON: Twelve years and five minutes.

CHAIR RUFFATTO: I'm going to call on Ms. Marquis to speak first, and then we'll give DEQ a chance to respond if they want to.

MS. MARQUIS: Certainly. Thank you, Chairman Ruffatto, members of the Board. My name is Vicki Marquis, and I'm with Holland and Hart. We represent Westmoreland in this matter.

As Board Chairman informed you, this is
a joint motion by both Westmoreland and DEQ. It's not opposed by MEIC and Sierra Club who intervened in this case.

The appeal was originally filed by Westmoreland in 2012 challenging certain aspects of their MPDES or water discharge permit. The administrative litigation followed, and Westmoreland and DEQ reached an agreement that the permit be remanded back to DEQ and modified.

At the same time the permit was challenged by MEIC and Sierra Club in the District Court.

So the permit was remanded in this administrative action back to DEQ, and this appeal was stayed, and the language used in that stay is found on Page 87 of your Board materials. It was stayed until resolution of the permit modifications and, quote, "any other pending administrative or judicial proceedings concerning the final permit decision," end quote.

So because we had a District Court challenge going on, that took a long, long time. There was a decision reached by Judge Seeley that was appealed to the Montana Supreme Court. The Montana Supreme Court issued a decision, and
remanded the case back to District Court.

It went back in front of Lewis & Clark District Court before Judge Abbott, and in that matter, there was some discovery and there was some litigation.

In the meantime DEQ issued the new 2021 MPDES or water discharge permit to Westmoreland. All the parties agreed that that permit did supersede the previous permits, provides a new document to be appealed and/or challenged, and that District Court case was dismissed as moot for lack of jurisdiction.

So that dismissal of the District Court case fulfills the condition of the stay that the Board had this 2012 case under, which was resolution of the litigation. So there's nothing more to litigate or appeal on this case.

There was a permit issued in 2012. That permit has been superseded by the recently issued 2021 permit, which is distinct in its own right, as is obvious because it's also the next action item on your agenda.

So this motion was filed jointly by DEQ and Westmoreland and unopposed, and we request that the Board grant it and dismiss this case as
CHAIR RUFFATTO: Does the DEQ representative want to speak to this? Kirsten.

MS. BOWERS: Good morning, Chairman Ruffatto, members of the Board. Ms. Marquis summarized the long litigation and administrative process accurately as far as DEQ is concerned, and we agree that the case should be dismissed because the underlying 2012 permit is now superseded by the 2021 renewal.

CHAIR RUFFATTO: Thank you, Ms. Bowers. Is there anybody in the meeting from MEIC or Sierra Club? Are they represented?

(No response)

CHAIR RUFFATTO: Apparently not. It was unopposed by them, so we can only assume that they would agree with what has been said.

BOARD MEMBER SIMPSON: Dave Simpson. May I make a comment?

CHAIR RUFFATTO: I was going to try to be funny. I hope you understood all that.

BOARD MEMBER SIMPSON: Just a comment, Mr. Chairman, brief comment.

I think if you just cut down to the bottom line on this, it is that the process of
appealing the permit lasted much longer than the permit itself. The permit term expired before the case could be decided, and so the new permit has resolved the issues. Does that pretty much sum it up, Ms. Marquis?

MS. MARQUIS: The new permit renewal does provide a new document that can be challenged. I won't speak to whether it resolves all the issues. It certainly does resolve most of the issues that were in the litigation, and moots out the pending litigation and the appeal.

BOARD MEMBER SIMPSON: Thank you, Mr. Chairman, for indulging me.

CHAIR RUFFATTO: You bet. So any more discussion?

(No response)

CHAIR RUFFATTO: If there's no more discussion, a motion has been made and seconded that the Board grant the motion to dismiss this matter as moot. All in favor, say aye.

(Response)

CHAIR RUFFATTO: Opposed, nay.

(No response)

CHAIR RUFFATTO: The motion passes.

We'll go to the next action item, and as
it has been mentioned, this matter is on the new permit that was granted and effective August 1 of 2021.

And the parties have reached an agreement and a stipulation on this matter, and they have asked the Board to enter the proposed order that will be the final agency decision, and it resolves the dispute between Westmoreland and DEQ, at least to the extent of the appealed item.

On this one, because we're being asked to make a substantive decision, I'm going to ask again for the parties to explain to the Board the status of this, and I will start with DEQ, and then have -- I say status -- but explain what you're asking the Board to do, and I'll start with DEQ and then go to Westmoreland.

MS. BOWERS: Chair Ruffatto, Members of the Board. The only issue on appeal was the electrical conductivity standard for planned discharges from the Rosebud Mine, and actually only the average monthly limit was modified from what the permit had at 229 microsiemens per centimeter to 500, which is consistent with the water quality standard in 17.30.670 sub (4), and no other provisions in the permit are modified.
DEQ was satisfied with the stipulation to modify the permit as proposed because no discharge may exceed that 500 limit, and this only applies to discharges from Lee Coulee, which is seven outfalls at the mine, and those outfalls have not discharged during the past permit term which started in 2012.

So the Department is satisfied that water quality is protected by the modification, and ask the Board to adopt the stipulation and resolve the case.

CHAIR RUFFATTO: Ms. Marquis, do you want to speak for Westmoreland again?

MS. MARQUIS: Thank you, Board Chairman, members of the Board. Ms. Bowers gave an accurate summary of stipulation and the issues in this appeal. The only thing I would add is just to note that this issue was not associated with the appeal of the litigation that we just discussed. So this was a new issue, and we've resolved it as Ms. Bowers explained. Thank you.

CHAIR RUFFATTO: Thank you both. Any discussion by the Board, or motion?

BOARD MEMBER REITEN: Mr. Chairman, I move that we accept this decision, or whatever it
is.

CHAIR RUFFATTO: Second. I'm calling for a second.

BOARD MEMBER SIMPSON: Second.

CHAIR RUFFATTO: It's been moved by Board Member Reiten, seconded by Board Member Simpson, that we adopt the proposed order as agreed to by the parties as the final agency decision. Discussion.

BOARD MEMBER SIMPSON: Mr. Chairman, if I could make a comment on this.

The issue here has to do with electrical conductivity of any discharges in Lee Coulee. That discharge, if I remember right -- I don't have it right in front of me -- it's 500 microsiemens per centimeter in terms of electrical conductivity.

The reason for that number is the in-stream standard for Rosebud Creek, as well as Tongue River, Powder River -- and I may be missing a drainage here -- that was implemented and adopted by the Board some years ago, establishing in-stream standards for electrical conductivity, i.e., salinity, and a sodium adsorption ratio in these discharges.
What is interesting is that in many cases, the actual levels of these parameters in these drainages exceed the standard. So what the Board essentially did, in my view -- and this is really just kind of tangential to our core discussion here -- but it has created a situation of impairment by issuance of a rule, and therefore affects any discharges, any new discharges in the drainage.

The reason I bring it up is that we have another issue before us having to do with selenium in Lake Koocanusa, which to me is a parallel issue.

So just in case there was any confusion as to why this set of discharge points has a different standard than other discharge points associated with the mining operation, that's my understanding of how we got here; and if I'm wrong, I'd like to be corrected, but I think that's the case.

CHAIR RUFFATTO: Any responsive comments or discussion?

(No response)

CHAIR RUFFATTO: Thank you.

MR. MARTIN: Mr. Chair, members of the
Board.

CHAIR RUFFATTO: Yes.

MR. MARTIN: Let me just confirm Member Simpson's memory. I think what you just recounted is entirely accurate as to how it was that this situation came to pass, and let me say on behalf of our client we appreciate the comment.

CHAIR RUFFATTO: Any other comments from DEQ or Board members?

(No response)

CHAIR RUFFATTO: Any more discussion on the motion?

(No response)

CHAIR RUFFATTO: Hearing none, and if there's no objection to calling the question.

(No response)

CHAIR RUFFATTO: A motion has been made and seconded that we adopt the proposed Board order as final agency decision. All in favor, say aye.

(Response)

CHAIR RUFFATTO: Opposed, nay.

(No response)

CHAIR RUFFATTO: The motion carries.

Let's go on now to the item rule review,
and this is the selenium standard case. We don't have any action to take here.

I wanted to just comment that the schedule for how we're going to address this is on the website. I assume everyone that's interested has taken a look at that. I will just outline the high points.

The record, the rulemaking record will be placed on the website on or before December 15th. Comments will need to be submitted by January 14th, responsive comments by January 21st; and then we're going to have a public meeting on January 31st, the time and place and details of that will be provided later; and then it will be ready to be submitted to the Board.

Is there any questions, comments, discussion by the Board on this matter?

(No response)

CHAIR RUFFATTO: As I said, there's no action for us to take, so absent discussion, comments, I'm going to move on.

BOARD MEMBER AGUIRRE: I have a quick question, Chairman Ruffatto.

CHAIR RUFFATTO: Yes.

BOARD MEMBER AGUIRRE: When there's
comments received that are addressing other matters outside of the specific matter of the stringency review, do we still post those comments, or are those comments removed from the record, or how does that work?

CHAIR RUFFATTO: I'm going to offer my view of that, but then I'm going to ask Katherine to disagree with me or agree.

I don't think that the Board or Board Counsel should be making the decision as to whether or not comments beyond the stringency review should be removed from the record. It's my view that it will be our job to sift through that, and for each of us to disregard the ones that don't address the specific matter at hand.

Katherine, do you think that's a fair approach, or do you have a different view?

MS. ORR: Chair Ruffatto, I think that is the best approach.

BOARD MEMBER AGUIRRE: Thank you.

CHAIR RUFFATTO: You bet. Any other comments?

(No response)

CHAIR RUFFATTO: Hearing no other comments, I'm going to go on to Board Counsel
update. Katherine, do you have anything to discuss with us?

MS. ORR: Mr. Chair, members of the Board, I do not. Maybe in reference to the previous agenda items, I hope it's clear that the submissions go to the Board secretary. So I just wanted to make that little addition.

CHAIR RUFFATTO: Thank you, Katherine. Any questions for Katherine?

(No response)

CHAIR RUFFATTO: Hearing none, I'm going to go on to the general public comment. I'll open it up for public comment for anything within the jurisdiction of the Board that is not otherwise covered by the agenda, except that individual cases, contested cases, are not public matters, and therefore not appropriate for public comment. Is there any public comment?

(No response)

CHAIR RUFFATTO: Hearing none, I would thank you all, and I would move for adjournment.

BOARD MEMBER LEHNHERR: Chair Ruffatto, I move that we adjourn the meeting.

CHAIR RUFFATTO: I second it. A motion has been made and seconded to adjourn the meeting.
All in favor, say aye.

(Response)

CHAIR RUFFATTO: Opposed.

(No response)

CHAIR RUFFATTO: Motion passes. We are adjourned. Thank you, everyone.

(The proceedings were concluded at 10:54 a.m.)

* * * * *
CERTIFICATE

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 - 61 - 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 2nd day of January, 2022.

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