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BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

BOARD MEETING)
FEBRUARY 25, 2022)

TRANSCRIPT OF PROCEEDINGS (VIA ZOOM)

February 25, 2022
9:00 a.m.

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

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1 WHEREUPON, the following proceedings were
2 had:

3 * * * * *

4 CHAIR RUFFATTO: Shawna, would you
5 please call the roll.

6 MS. PIESKE: All right. Chair Steven
7 Ruffatto.

8 CHAIR RUFFATTO: Here.

9 MS. PIESKE: David Lehnherr.

10 BOARD MEMBER LEHNHERR: Here.

11 MS. PIESKE: David Simpson.

12 BOARD MEMBER SIMPSON: Here.

13 MS. PIESKE: Stacy Aguirre.

14 (No response)

15 MS. PIESKE: Jon Reiten.

16 BOARD MEMBER REITEN: Here.

17 MS. PIESKE: Joseph Smith.

18 (No response)

19 CHAIR RUFFATTO: Julia Altemus.

20 BOARD MEMBER ALTEMUS: Here.

21 MS. PIESKE: And James Fehr, Deputy
22 Director.

23 MR. FEHR: Here.

24 CHAIR RUFFATTO: Shawna, let me start
25 off by saying we have a quorum, so I don't think

1 we need to ask anybody else who is here, but I
2 think we do need to identify everybody who is
3 here. So Shawna, I would start with that, and now
4 go through DEQ first, and then others if that
5 works.

6 MS. PIESKE: Sandy Scherer, Jeremiah
7 Langston, Sarah Christopherson, Angie Colamaria,
8 Kirsten Bowers. Did I get everyone?

9 MR. MORGAN: This is Jon Morgan. I'm
10 also an attorney with DEQ.

11 MS. PIESKE: Thank you, Jon.

12 MR. HAYES: This is Ed Hayes. I'm also
13 an attorney with DEQ.

14 MS. PIESKE: Okay. Thank you.

15 MR. PETTIS: This is Aaron Pettis. I'm
16 an attorney with DEQ.

17 MS. PIESKE: Thank you.

18 CHAIR RUFFATTO: Anybody else from DEQ?

19 UNKNOWN SPEAKER: Mr. Chair, it looks
20 like we have several in the attendees, and just
21 list them.

22 MS. PIESKE: Sandy.

23 CHAIR RUFFATTO: Sandy, we can't hear
24 you, at least I can't.

25 (No response)

1 CHAIR RUFFATTO: I'm sure we'll get this
2 worked out pretty quick.

3 MS. MOISEY-SCHERER: Can you hear me
4 now?

5 CHAIR RUFFATTO: Yes, I can, loud and
6 clear. Thank you.

7 MS. MOISEY-SCHERER: Sorry about that.
8 It just sometimes works and sometimes doesn't. My
9 apologies.

10 Kirsten Bowers is DEQ; Nick Whitaker,
11 DEQ; Lee McKenna, DEQ; Catherine Armstrong, DEQ;
12 Loryn Johnson, DEQ; Myla Kelly, DEQ; Lauren
13 Sweeney, DEQ; Moira Davin, DEQ. I believe that's
14 all I have for DEQ.

15 CHAIR RUFFATTO: Sandy, can you list the
16 other attendees then? Is that a list you can
17 state for the Court Reporter?

18 MS. MOISEY-SCHERER: Murry Warhank,
19 Lincoln County Board of Commissioners; Caitlin
20 Buzzas of Agency Legal; Sarah Bordelon, she is an
21 attorney representing Signal Peak and
22 Westmoreland; Shiloh Hernandez, EarthJustice; Sam
23 Yemington, Holland and Hart; Elena Hagen, Agency
24 Legal; Derf Johnson, MEIC; Pat Riskin, Agency
25 Legal.

1 CHAIR RUFFATTO: All right. Have we
2 missed anyone? If so, I don't know if you can
3 unmute, but you could raise your hand, I think.

4 MS. BROWN: Aislinn Brown, also at
5 Agency Legal Services. I don't think my name was
6 called.

7 CHAIR RUFFATTO: Thank you, Aislinn.

8 MS. MARQUIS: Vicki Marquis at Holland
9 and Hart. I don't think my name was called, but
10 I'm here.

11 CHAIR RUFFATTO: Thank you. All right.
12 Before we go on, I wanted to lay out what I
13 thought the schedule for today would be. We're
14 probably not going to follow the agenda precisely
15 in order.

16 We will follow the schedule, or the
17 agenda, through page -- through the first action
18 item which is on Page 6, and at that point, we
19 will skip the next two, if we're still in the
20 morning, and the reason for that is that we'll
21 take a break around noon, and then at 1:00 p.m.,
22 we're going to have a closed session.

23 And for the record we're going to have
24 that closed session for the Board to discuss legal
25 strategy and litigation strategy with our outside

1 Counsel, Amy Christensen, and so I just wanted to
2 state that for the record. That will happen at
3 1:00, and only the Board and a few others, the
4 Board secretary, and Amy will be involved in that,
5 Amy Christensen.

6 At 1:30, we will proceed with the
7 agenda, depending on where we're at. And I'm
8 hopeful that at 1:30 we will start the selenium
9 discussion. So does anybody have any questions
10 about that schedule or clarifications?

11 (No response)

12 CHAIR RUFFATTO: Okay. Let's go to our
13 first agenda item, and that's the review and
14 approval of the minutes of the last meeting. Do I
15 have a motion from the Board to --

16 I just saw in a chat asking the question
17 of when the selenium discussion would likely
18 start. I'm not exactly sure, but I'm hopeful that
19 it starts about 1:30, but it won't start before
20 noon. It will start at 1:30 or after.

21 Getting back to the agenda, do I have a
22 motion from a Board member to approve the minutes?

23 BOARD MEMBER SMITH: So moved.

24 CHAIR RUFFATTO: Second.

25 BOARD MEMBER LEHNHERR: Second.

1 CHAIR RUFFATTO: It's been moved and
2 seconded to approve the minutes from the December
3 10th meeting. All in favor, say aye.

4 (Response)

5 CHAIR RUFFATTO: Opposed, nay.

6 (No response)

7 CHAIR RUFFATTO: The motion passes
8 unanimously.

9 The next order of business has been
10 something that we've talked about off and on for
11 the past year, and that's the question of informal
12 procedures.

13 In your Board packet, at Page 5, is a
14 comparison of the formal procedure under Montana
15 Administrative Code, and the informal procedure
16 that was prepared by Dave Simpson.

17 And I can report that if you recall at
18 the last meeting, I asked DEQ what their view of
19 the possible use of the informal procedure, and
20 James Fehr got back to me and said that DEQ would
21 certainly consider using the informal procedure in
22 an appropriate case, and so we're planning on
23 moving in that direction to the extent possible.
24 James, did you have anything else to add on that
25 point?

1 MR. FEHR: I didn't. I think that
2 covers it.

3 CHAIR RUFFATTO: Thank you, James. So
4 at this point I'll turn it over to Board Member
5 Simpson to talk about the informal procedure, and
6 how we might move forward.

7 BOARD MEMBER SIMPSON: Thank you, Mr.
8 Chairman. Just a couple of brief comments. At
9 the last meeting we had reviewed our discussion of
10 the --

11 CHAIR RUFFATTO: Dave, you're breaking
12 up. I'm not sure why.

13 BOARD MEMBER SIMPSON: Well, I think
14 I'll try to speak up a little more. Is that
15 better?

16 CHAIR RUFFATTO: Yes, it is. Thank you.

17 BOARD MEMBER SIMPSON: I think my
18 computer not only is very quiet, but it's hard of
19 hearing, just like I am. So we'll try to move
20 along here.

21 Anyway, at our last meeting we had a
22 brief discussion about the informal process, and
23 reviewed discussions that we had had with Aislinn
24 Brown at Legal Services, Agency Legal Services.

25 And since that time, I've taken some

1 time and gone through the statute to try to get a
2 handle on just how the informal procedure is to be
3 structured. And I have to admit it was a little
4 bit of a task because the reference is in several
5 places, and there is no order prescribed in the
6 law as to how this is supposed to happen.

7 But it is summarized in a sheet that has
8 been included with agenda items. If you have an
9 interest, I would encourage just taking a look at
10 that, and comparing it to the statute, if you have
11 any questions or interest. I'll try to answer any
12 questions if there are any, but that is the
13 history as it stands at this point.

14 And of course, Chairman Ruffatto and I
15 have been in touch on this, because I am not an
16 attorney, and I do believe that this needs to be
17 something that is consistent, entirely consistent
18 with the statute that we're working under. So I
19 believe that what is presented there is accurate,
20 and with that, let's move forward.

21 CHAIR RUFFATTO: All right. Is there
22 any discussion on the informal process? Any
23 questions?

24 (No response)

25 CHAIR RUFFATTO: All right. And I

1 should point out -- I should have done this
2 earlier. I had a call from Katherine Orr a little
3 while ago, and she is not well today, so she won't
4 be on the call. She won't be at the meeting. So
5 I wanted to mention that. I'm sorry I didn't do
6 it earlier.

7 Anyway, Dave, I think you maybe had a
8 motion you wanted to make about this, so the Board
9 can move forward.

10 BOARD MEMBER SIMPSON: I did, Mr.
11 Chairman. So absent any further discussion at
12 this point, let's move ahead with that.

13 I'd like to make a motion that for each
14 new appeal the Board immediately issue an order
15 that describes and compares the formal and
16 informal procedures, and requires the parties to
17 indicate if they wish to waive the formal
18 procedure and proceed under an informal procedure,
19 and that the Board Counsel draft such an order.

20 CHAIR RUFFATTO: Do we have a second?

21 BOARD MEMBER LEHNHERR: I'll second
22 that.

23 CHAIR RUFFATTO: Thank you, Doctor. And
24 I'll provide a -- First of all, I'll call for
25 discussion, and then I'll provide a little more

1 background that Dave, and I, and Aislinn, and
2 Katherine have talked about.

3 The statute requires that all of the
4 parties be offered the opportunity to proceed
5 under an informal process or informal procedure.
6 I think that that has been done, but I'm not sure
7 it's been done at a point in time when it was as
8 meaningful as it might have been.

9 So the thinking here is that as soon as
10 an appeal comes in, the Board immediately would
11 issue an order offering the informal process. So
12 that's where we're at. Any more discussion?

13 (No response)

14 CHAIR RUFFATTO: A motion has been made
15 and seconded that we -- that immediately upon the
16 issuance or the receipt of an appeal, an order be
17 issued from the Board requesting that the parties
18 would indicate whether or not they are willing to
19 waive a contested -- or a formal process and
20 proceed under an informal process. All in favor,
21 say aye.

22 (Response)

23 CHAIR RUFFATTO: Opposed, nay.

24 (No response)

25 CHAIR RUFFATTO: The motion carries

1 unanimously.

2 Ms. Colamaria, since you popped up
3 there, I wondered if you had a point you wanted to
4 make here.

5 MS. COLAMARIA: I was waiting for my
6 opportunity, yes. If I could just request that
7 when you do send out the description of the two
8 choices for folks, if you include a detailed
9 description of what that informal process looks
10 like, so that they can make an informed decision.

11 Because as Member Simpson pointed out,
12 it is not very clear in the rules or the statute,
13 so having a detailed description I think would be
14 helpful in letting people make that decision.

15 CHAIR RUFFATTO: We definitely will, and
16 we will -- If you get a chance to review Page 5 of
17 the Board packet, that was an effort to do that.
18 So we will include something like that in the
19 orders, so people know what they're agreeing to.
20 And I would -- Go ahead.

21 MS. COLAMARIA: I was just going to add.
22 Will there be a chance to comment on that?

23 CHAIR RUFFATTO: If you would like to
24 comment on it, we will give you a chance to
25 comment on it.

1 MS. COLAMARIA: Great. Thank you.

2 CHAIR RUFFATTO: Dave, help me remember
3 to make sure that happens. Okay?

4 BOARD MEMBER SIMPSON: Will do. Thank
5 you.

6 CHAIR RUFFATTO: And we volunteered
7 Katherine to draft that, so it's really dangerous
8 to miss a meeting because you get volunteered for
9 stuff.

10 Let's go -- I think that concludes that
11 subject unless someone has something else.

12 (No response)

13 CHAIR RUFFATTO: Let's go to the Vice
14 Chair appointment. I wanted to explain why that's
15 on the agenda.

16 There are three reasons why it's on the
17 agenda. First, it turns out that I will be
18 recusing myself on the new agenda -- or the new
19 matter that shows up on the agenda, so we need
20 someone to handle that where I will be recused.

21 I expect there will be times in the
22 future when I will either miss a meeting or have
23 to be recused otherwise. That's the second
24 reason. And the third reason is that I want to
25 pass off some of the administrative duties that

1 are taking a lot of my time.

2 So I spoke to Board Member Aguirre, and
3 I twisted her arm, and she agreed to serve in that
4 capacity. So I would move that the Board appoint
5 Board Member Aguirre to be our Vice Chairman.

6 BOARD MEMBER SIMPSON: Second.

7 CHAIR RUFFATTO: It's been moved and
8 seconded that the Board appoint Board Member
9 Aguirre as Vice Chairman. Discussion.

10 (No response)

11 CHAIR RUFFATTO: If there's no more
12 discussion, it's been moved and seconded that
13 Board Member Aguirre be appointed Vice Chairman of
14 the Board. All in favor, say aye.

15 (Response)

16 CHAIR RUFFATTO: Opposed, nay.

17 (No response)

18 CHAIR RUFFATTO: The motion carries
19 unanimously.

20 The next topic is Hearing Examiners. We
21 have talked about Hearing Examiners off and on
22 over the past year, and I'd just like to mention a
23 little background here that I'm sure has been
24 obvious to all of you, that we have had a number
25 of Hearing Examiners on our cases, and a number of

1 turnover on the cases.

2 Agency Legal Services has been
3 understaffed, and has been short handed, and has
4 had a fair amount of turnover. That hasn't been
5 the best circumstance.

6 So I took it upon myself to visit with
7 the Attorney General's Office, including Agency
8 Legal Services, and I think we've hit upon a plan
9 which hopefully will improve the situation, and
10 what our effort is going to be is to reduce the
11 number of Hearing Examiners on new cases to two
12 Hearing Examiners.

13 Those two Hearing Examiners I'm
14 proposing will be Rob Cameron or Patrick Riskin.
15 At Page 6 in the materials is the start of the
16 resumes for those two lawyers, and you will see
17 that they're both very experienced lawyers, with
18 lots of litigation experience, and that's really
19 what the Hearing Examiner job is about.

20 And you will also notice that Pat Riskin
21 is now the Bureau Chief at ALS. Rob Cameron is an
22 outside lawyer with Jackson, Murdo and Grant. I
23 did some due diligence and I think we're really
24 fortunate to find Rob, who is willing to take this
25 on. And he's got very good experience.

1 I went to the committee that approves
2 outside Counsel within State government, and
3 received approval to hire Rob, and at this point,
4 I would ask Rob and Pat to flip on their screens
5 so we can meet them.

6 I see -- Pat, I believe that your name
7 shows up as Aislinn Brown. You don't look like
8 her today, but -- she's much better looking, I'll
9 tell you that.

10 MR. RISKIN: Yes, she is. As much as I
11 can try, no, I'm having some difficulty unmuting
12 my computer, so I'm actually in Aislinn's office,
13 and I apologize for that.

14 CHAIR RUFFATTO: So just so you have an
15 opportunity to meet Patrick and Rob, here they
16 are. I'm not going to ask them to say anything.
17 You have their resumes, and so I will just make a
18 few more comments.

19 Our goals in this process are to
20 increase the efficiency, to develop some expertise
21 in the Hearing Examiner role, hopefully improve
22 the time for the processing of these, and I think
23 it will be good for the Board members and the
24 Hearing Examiners to get to know each other, and I
25 think that that will be helpful in the process.

1 So with that, I will open it up to any
2 questions, comments, discussions. Dr. Lehnherr.

3 BOARD MEMBER LEHNHERR: Thank you,
4 Chairman Ruffatto. Welcome, Patrick and Rob.

5 I just want to say that of course
6 impartiality is the most important thing when it
7 comes to a Hearing Examiner, and I assume that if
8 either one -- I'd have to look closer at Patrick's
9 CV -- but it looks like Rob will still be involved
10 with Jackson, Murdo and Grant.

11 And I assume that whenever a Hearing
12 Examiner, or that whenever someone is associated
13 with a law firm that's involved in one of the
14 cases, that case would obviously not be assigned
15 to a Hearing Examiner associated with any firm
16 involved in one of these cases.

17 CHAIR RUFFATTO: Actually I will answer
18 that. I think it's absolutely clear that we will
19 not assign a Hearing Examiner from a firm that had
20 anybody involved in one of these cases, so that
21 would be clear. To be clear, that would be
22 important from the ethical rules of lawyers, as
23 well as the state ethical rules.

24 BOARD MEMBER LEHNHERR: Thank you.

25 CHAIR RUFFATTO: Any other questions or

1 discussion?

2 (No response)

3 CHAIR RUFFATTO: If not, we will move
4 on. I don't think we need a motion at this point.
5 We will have a motion whenever we appoint these
6 folks. And so we're not going to be appointing
7 ALS broadly in the future, we will only be
8 appointing specific individuals, and it will be
9 one or the other of these hopefully.

10 I can't say that that will happen all
11 the time, because there may be reasons why that
12 won't work. I would also comment that we're not
13 planning on changing any of the assignments that
14 currently exist within ALS unless there's a
15 vacancy, and we have one of those now.

16 And I might even ask Pat -- since
17 Katherine is not here. The one vacancy I saw as I
18 look through this was the fact that Drew Cziok has
19 now left ALS. And have you assigned someone to
20 that, or will that be you, Pat?

21 MR. RISKIN: That would probably be me.

22 CHAIR RUFFATTO: Okay. I don't have
23 anything else on this subject, unless someone has
24 some more comments or discussion.

25 (No response)

1 CHAIR RUFFATTO: All right. Pat and
2 Rob, thank you for showing up this morning. I
3 know it was a little longer than I promised you,
4 but thank you. Have a good day.

5 Let's go to the next item, and that is
6 the briefing items, and what I'll do here is just
7 like we've been doing. I'm going to ask for any
8 changes that have occurred. And unfortunately
9 Katherine is not here, so she usually knows what
10 the changes were from when the agenda was
11 prepared. But I will look through this, and if
12 any of the Hearing Examiners are on, and they know
13 of a change, please let us know.

14 I know on Page 2 Item (b), that the
15 findings of fact and conclusions of law have been
16 completed, and we're now in the process of the
17 exceptions being filed. So that's the Murray
18 case, Item (b), so that will probably be on our
19 agenda for the next meeting hopefully.

20 That's the only change I have and am
21 aware of. Are there any other changes that
22 anybody else is aware of that want to mention
23 them?

24 (No response)

25 CHAIR RUFFATTO: All right. Now I'm

1 going to ask the Board if any Board member has any
2 questions about any of these items that we might
3 be able to answer or look for an answer for on the
4 briefing items.

5 (No response)

6 CHAIR RUFFATTO: All right. I don't
7 have any questions either, but I think I will do
8 this.

9 If you turn to Page 5, (f), this is the
10 Western Sugar Cooperative matter. And just for
11 the record, I'm going to move that Pat Riskin be
12 appointed Hearing Examiner for that case because
13 Drew Cziok has left ALS. Do I have a second?

14 BOARD MEMBER LEHNHERR: Second.

15 CHAIR RUFFATTO: Thank you, Doctor. Any
16 discussion?

17 (No response)

18 CHAIR RUFFATTO: If none, it's been
19 moved and seconded that Pat Riskin be appointed
20 Hearing Officer for the Western Sugar Cooperative
21 case that's BER 2020-5. All in favor, say aye.

22 (Response)

23 CHAIR RUFFATTO: Opposed, nay.

24 (No response)

25 CHAIR RUFFATTO: It passes unanimously.

1 I think we're ready for the first action
2 item.

3 MS. BORDELON: Mr. Chairman, may I be
4 heard on agenda item (e), just above the Sugar
5 Cooperative, the Westmoreland Area F case?

6 CHAIR RUFFATTO: Yes, Sarah.

7 MS. BORDELON: Thank you. My name is
8 Sarah Bordelon with Holland and Hart. I represent
9 Westmoreland.

10 We recently received notice that a
11 Hearing Examiner has assumed jurisdiction in that
12 case. I was wondering whether that Hearing
13 Examiner would continue or one of the new ones
14 would take over, and either way, whether the Board
15 would formally appoint the Hearing Examiner
16 pursuant to the applicable statute.

17 CHAIR RUFFATTO: I haven't thought about
18 that. Do you have the name of the Hearing
19 Examiner that was appointed?

20 MS. BORDELON: Ms. Dietrich, I believe.

21 CHAIR RUFFATTO: Yes. We will -- I did
22 talk to Katherine about that yesterday. She has
23 been substituted, so we will do that. I would
24 move that Michelle Dietrich be appointed Hearing
25 Examiner for the Western Energy Case BER 2019-5.

1 Do I have a second?

2 BOARD MEMBER LEHNHERR: I will second
3 that again.

4 CHAIR RUFFATTO: Thank you, Doctor.
5 Discussion?

6 (No response)

7 CHAIR RUFFATTO: All in favor of the
8 motion, please say aye.

9 (Response)

10 CHAIR RUFFATTO: Opposed, no.

11 (No response)

12 CHAIR RUFFATTO: It passes.

13 Mr. Hernandez, did I see your hand up
14 and I overlooked it?

15 MR. HERNANDEZ: Good morning, Chairman
16 Ruffatto. I did raise my hand. I put it down. I
17 just wasn't expecting any discussion of the Area F
18 case, and after Ms. Bordelon raised her hand, I
19 wanted to make sure that I had the opportunity to
20 respond to anything she said. But I'm glad that
21 the Board has moved forward with formalizing the
22 appointment of a Hearing Examiner, and I have
23 nothing to add at this point. Thank you.

24 CHAIR RUFFATTO: Thank you. It's 9:45.
25 We're going to move on to the action items, and I

1 will introduce that now. But I think we'll take a
2 break before we start the oral arguments, but I'll
3 introduce the matter.

4 * * * * *

5 (Signal Peak Energy, LLC's Bull Mountain Coal Mine
6 #1 Permit No. C1993017, BER 2016-07-SM transcript
7 bound separately)

8 (9:45 a.m.)

9 * * * * *

10 (Board meeting reconvened at 12:00 p.m.)

11 CHAIR RUFFATTO: All right. We will now
12 take a lunch break that for everybody except the
13 Board, and Laurie, and Sandy, will be until 1:30.
14 For the Board and Laurie and Sandy, we will go
15 into closed session at 1:00, and make a decision
16 that's all tied up with this matter, because the
17 Board is a party in the appeals or could be a
18 party in the appeals going to the Supreme Court.

19 So is everybody clear? We're adjourning
20 for everybody until 1:30, but for the Board and
21 Laurie and Sandy, we're convening at 1:00 p.m.
22 Any questions?

23 (Lunch recess taken)

24 (Off the record for executive session)

25 * * * * *

1 (Transcript of In the Matter of Adoption of New
2 Rule I pertaining to Selenium Standards
3 for Lake Kooconusa, BER 2021-04 WQ
4 bound separately)

5 * * * * *

6 (Board meeting reconvened at 4:49 p.m.)

7 CHAIR RUFFATTO: And I am going to go
8 mute, because I'm going to recuse myself from the
9 Montanore matter, and our new appointed Vice Chair
10 will take over at this point, please.

11 VICE CHAIR AGUIRRE: So I have the con,
12 I guess.

13 In the matter -- this is under Item (a),
14 the new contested case in the matter of the appeal
15 and request for hearing by Montanore Minerals
16 Corporation regarding issuance of MPDES Permit No.
17 MT-0030279, Libby, Montana, BER 2022-01, Water
18 Quality.

19 On January 28, 2022, Montanore Minerals
20 Corporation filed a notice of appeal and request
21 for hearing with exhibits regarding DEQ's denial
22 of Montanore's permit renewal application for its
23 MPDES permit.

24 Before us on this case are three
25 possible decisions of which we need to make one

1 today. The Board can decide to assign a Hearing
2 Examiner for procedural issues in this case; No.
3 2, we can hear the case itself; or No. 3 we can
4 assign a Hearing Examiner for the totality of the
5 case. And so I'm going to start out by asking for
6 a motion on this matter, and which of the three
7 possibilities we want to proceed with.

8 (No response)

9 VICE CHAIR AGUIRRE: I can render a
10 thought to get it started, that it seems best to
11 assign a Hearing Examiner for the totality of the
12 case to get this case started, and moving forward.
13 That's my thought on it.

14 BOARD MEMBER SIMPSON: Is that a motion,
15 Madam Chairman?

16 VICE CHAIR AGUIRRE: Yes, that can be a
17 motion. Yes, I make a motion.

18 BOARD MEMBER SIMPSON: I'll second it.

19 VICE CHAIR AGUIRRE: Is there any
20 discussion?

21 BOARD MEMBER SIMPSON: I guess I'd like
22 to raise a question, and since it's late in the
23 day, I even hesitate to do it, so maybe we ought
24 to just take it under advisement for a later date.

25 But I'm beginning to wonder why we're

1 seeing so many challenges to MPDES renewals. It
2 seems like there's been a quite a few of those in
3 recent months, and not really -- I don't know. It
4 just seems odd to me, and maybe it's a question
5 that ought to be posed to the Department.

6 VICE CHAIR AGUIRRE: I'm not exactly
7 sure at this point how we do that, but I agree
8 with you that that could be something that the
9 Board could pose a question to the Department on
10 that.

11 BOARD MEMBER SIMPSON: Well, rather than
12 a motion this late in the afternoon, I suggest
13 maybe it be considered as an agenda item for the
14 next meeting.

15 VICE CHAIR AGUIRRE: Agreed. We'll put
16 that on the agenda for the next meeting that will
17 address the number of cases that are coming our
18 way with regard to MPDES permits. So make a note
19 of that.

20 So there's a motion and it's been
21 seconded that's on the floor. Is there any more
22 discussion?

23 (No response)

24 VICE CHAIR AGUIRRE: No more discussion?

25 BOARD MEMBER SIMPSON: One more

1 question, Madam Chair. I presume this case will
2 be assigned to one of the two Hearing Examiners
3 that we approved early in the meeting.

4 VICE CHAIR AGUIRRE: That's correct.

5 BOARD MEMBER SIMPSON: Okay. Let's
6 proceed. I presume you have an idea as to which
7 that would be. I certainly do not.

8 VICE CHAIR AGUIRRE: I would -- My
9 thought is that it would go to the outside
10 Counsel, but I do not know, and so that's
11 something --

12 BOARD MEMBER SIMPSON: There are two of
13 those, and that's why I raised the question. I
14 assume it would go to outside Counsel.

15 VICE CHAIR AGUIRRE: Right. So I was
16 thinking Rob Cameron.

17 BOARD MEMBER SIMPSON: I'm just
18 wondering if that should be part of the motion.

19 VICE CHAIR AGUIRRE: That procedurally I
20 am not certain.

21 CHAIR RUFFATTO: Well, because it's only
22 a procedural question, I will jump in. I think
23 who it is should be a part of the motion, so
24 whoever you want to add to that, I think you
25 should name the potential Hearing Officer.

1 VICE CHAIR AGUIRRE: Based on that
2 feedback, I feel that I'll amend the motion to add
3 that we will assign this to Rob Cameron, outside
4 Counsel.

5 BOARD MEMBER SIMPSON: I'll second the
6 amended motion.

7 VICE CHAIR AGUIRRE: Any further
8 discussion on that?

9 (No response)

10 VICE CHAIR AGUIRRE: Hearing no more
11 discussion, I'll close that discussion and call
12 for the question. All in favor of the motion,
13 signify by aye.

14 (Response)

15 VICE CHAIR AGUIRRE: Opposed.

16 (No response)

17 VICE CHAIR AGUIRRE: Motion carried
18 unanimously. You have the con back, Mr. Chairman.

19 CHAIR RUFFATTO: Thank you, Stacy. I
20 think we're very close to the end. The next
21 agenda item is Board Counsel updates. Since she
22 is not here, we will skip that one.

23 The one after that is general public
24 comment on anything that has not been addressed in
25 this meeting, but within the jurisdiction of the

1 Board, and my guess is that no one has the energy
2 to comment, but I will ask for any public
3 comments.

4 (No response)

5 CHAIR RUFFATTO: Any public comments?

6 (No response)

7 CHAIR RUFFATTO: Hearing none, I move to
8 adjourn this meeting. Do I hear a second?

9 BOARD MEMBER SIMPSON: Mr. Chair --
10 Well, let's second the motion, but I have a
11 comment. I'll second it.

12 CHAIR RUFFATTO: Okay. Discussion.

13 BOARD MEMBER SIMPSON: Mr. Chairman, we
14 have discussed at the last meeting the possibility
15 of returning to in-person meetings, and admittedly
16 this time around, especially with the weather the
17 way it's been, I don't think anybody was in too
18 much of a mood to drive to Helena.

19 But it's my understanding that other
20 boards and commissions are holding in-person
21 meetings, and I believe that as a standard, we
22 should return to in-person meetings with our next
23 meeting.

24 If anybody feels uncomfortable doing
25 that, we certainly have the virtual option

1 available through the equipment that the
2 Department has in the meeting room. And so I was
3 wondering if we need a motion on that, or whether
4 it would be appropriate.

5 CHAIR RUFFATTO: I'm going to ask James
6 Fehr if he has any input on that from the State
7 Administration level on whether or not there's
8 been a directive or some guidance for the boards
9 to go back to in-person meetings, or what's
10 probably more likely hybrid.

11 MR. FEHR: I haven't heard direction on
12 boards at this time. That's something I could
13 check into. As far as just how we're managing our
14 staff or employees statewide, we haven't changed
15 directive on offering it. If we offer it in
16 person, we offer it virtually as well.

17 CHAIR RUFFATTO: Thanks, James. Dave,
18 we can have a motion, but I would be inclined to
19 take your point under consideration as we move
20 towards the next meeting, and see where we're at
21 at that time. Is that okay with you?

22 BOARD MEMBER SIMPSON: That sounds good.
23 I'm reluctant to make a motion, but I think we
24 ought to move in that direction if at all
25 possible.

1 BOARD MEMBER AGUIRRE: I mean just like
2 a point of information. I feel poorly today, and
3 so having this opportunity to have this virtual
4 was awesome because I could participate. But I am
5 a big fan of in-person meetings.

6 CHAIR RUFFATTO: I expect that whatever
7 we do, the option of virtual meetings at least in
8 part will remain available to deal with that
9 situation, and any number of situations that
10 arise. I think it's a wonderful tool, but I also
11 think that in person has lots of value, too. So
12 we'll keep working in that direction.

13 Before we vote on the motion -- it's
14 easy to vote on it because I think we're ready --
15 but I just want to thank everybody for your
16 patience and your bearing with us. It's been a
17 hard day, and you all have done yeoman's work
18 here. Thank you very much.

19 So if there's no further discussion, a
20 motion has been made and seconded that we adjourn.
21 All in favor say aye.

22 (Response)

23 CHAIR RUFFATTO: The motion passes
24 unanimously. Thank you all. Have a good evening.

25 (The proceedings were concluded at 5:02 p.m.)

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C E R T I F I C A T E

STATE OF MONTANA)

: SS.

COUNTY OF LEWIS & CLARK)

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

That the proceedings were taken before me at
the time and place herein named; that the
proceedings were reported by me in shorthand and
transcribed using computer-aided transcription,
and that the foregoing - 31 - 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 11th day of
March 2022.

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

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