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BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

An appeal in the matter of) CASE NO.
amendment application AM3,) BER 2016-07-SM
Signal Peak Energy LLC's)
Bull Mountain Coal Mine #1)

TRANSCRIPT OF PROCEEDINGS

Heard Via Zoom
May 23, 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: Good morning, everyone.
5 I will call the meeting to order. And Sandy,
6 please start by calling the roll of the Board.

7 MS. MOISEY-SCHERER: Good morning.
8 Chairman Ruffatto.

9 CHAIR RUFFATTO: Here.

10 MS. MOISEY-SCHERER: Board Member Smith.

11 BOARD MEMBER SMITH: Here.

12 MS. MOISEY-SCHERER: Board Member
13 Aguirre.

14 BOARD MEMBER AGUIRRE: Here.

15 MS. MOISEY-SCHERER: Board Member
16 Simpson.

17 (No response)

18 CHAIR RUFFATTO: Dave, you're muted. We
19 can't hear you.

20 BOARD MEMBER SIMPSON: It says I'm --

21 CHAIR RUFFATTO: There you are. Now we
22 hear you.

23 BOARD MEMBER SIMPSON: I'm here.

24 MS. MOISEY-SCHERER: Board Member
25 Altemus.

1 BOARD MEMBER ALTEMUS: Good morning.

2 Present.

3 MS. MOISEY-SCHERER: Board Member

4 Lehnherr.

5 BOARD MEMBER LEHNHERR: Here.

6 MS. MOISEY-SCHERER: Board Member

7 Reiten.

8 BOARD MEMBER REITEN: Here.

9 MS. MOISEY-SCHERER: We have a quorum.

10 CHAIR RUFFATTO: Thank you, Sandy. Can
11 you please identify who else is on.

12 MS. MOISEY-SCHERER: Moira Davin, DEQ;
13 Deputy Director Fehr, DEQ; Sarah Bordelon, Holland
14 and Hart; Samuel Yemington, Holland and Hart;
15 Shiloh Hernandez, MEIC; Derf Johnson, MEIC;
16 Jeremiah Langston, DEQ; Loryn Johnson, DEQ;
17 Michael Russell, Agency Legal Services; Sarah
18 Christopherson, DEQ; Vicki Marquis, Holland and
19 Hart.

20 CHAIR RUFFATTO: Thank you, Sandy. We
21 have a quorum. We should move forward.

22 I would first like to introduce to the
23 Board and everybody else that's on Michael
24 Russell, who is our new Agency Legal Services
25 attorney, and I would ask Michael to give us just

1 a little bit information about himself, and so⁵
2 please go forward, Mike.

3 MR. RUSSELL: Thank you. Good morning,
4 everyone. My name is Michael Russell. I started
5 with the Agency Legal Services Bureau just under a
6 month ago. I have a background in primarily civil
7 defense litigation, started my career at a private
8 law firm in Albuquerque, New Mexico; did mostly
9 insurance defense work.

10 Then I transitioned to the government
11 sector, and became an Assistant City Attorney for
12 the City of Albuquerque. Then earlier this year
13 my wife and I decided to move up here, and I got
14 this job. And we're both very happy to be here,
15 and I'm looking forward to supporting the Board in
16 its work.

17 CHAIR RUFFATTO: Thanks, Mike. Is
18 Katherine Orr on by chance?

19 (No response)

20 CHAIR RUFFATTO: I don't see her on the
21 panel. Go ahead, Mike.

22 MR. RUSSELL: I don't believe so.

23 CHAIR RUFFATTO: Okay. Thank you.
24 Well, I just wanted to take this opportunity to at
25 least put on the record to say thank you to

1 Katherine for her work over the last year and a
2 half; and Michael, we're looking forward to
3 working with you, and I'm sure we will have a good
4 process going forward.

5 The meeting today is scheduled for two
6 hours. We will adjourn at 11:00 or close to
7 11:00. So however far along we get, that's how
8 far we'll get. We're not going to go beyond that,
9 because I assured everybody that that's all we
10 were going to do.

11 We only have the one agenda item, and
12 that's to continue the Board deliberations on the
13 proposed findings of fact and conclusions of law
14 for the Signal Peak Bull Mountain Coal Mine
15 matter.

16 And I'd like to first say that we've had
17 the briefs, the exceptions, and the proposed
18 findings of fact and conclusions of law for some
19 time now. We had oral arguments on April 10th.
20 And so I'm assuming that we're going to move
21 pretty quickly because everyone should be familiar
22 with the arguments and the points. And so as I
23 said, hopefully we can move fairly quickly and get
24 fairly far along.

25 I wanted to emphasize again that until

1 we have a Board ruling on the final document, that
2 anything can change. Nothing is final until we
3 get to that point.

4 And what we're going to do today is to
5 continue with the deliberation outline that we
6 started on at our last meeting, and we're going to
7 start on MEIC Exception I in that outline. And
8 hopefully we will get through that deliberation
9 outline, and get into the marked up findings of
10 fact and conclusions of law.

11 So before we actually get started, does
12 anybody have any questions or comments about how
13 we're going to proceed today? Yes, Dr. Lehnherr.

14 BOARD MEMBER LEHNHERR: Chairman
15 Ruffatto, I just wanted to preface my involvement
16 today. I sort of think I know where things are
17 headed, and I probably will disagree with most of
18 the points of discussion that are brought up. I
19 will be frequently voting probably no on some of
20 the motions.

21 I don't want to be jumping in with every
22 discussion point, and taking up time. I'm not
23 sure it would really make a difference. I just
24 want to preface the meeting, so people understand
25 why I may say or I may vote no, but I won't be

1 trying to take up time, we won't have a lot of
2 time discussing every point that is raised.

3 Thanks.

4 CHAIR RUFFATTO: Thank you, Doctor. I
5 appreciate your comment. Anything else? Yes, Mr.
6 Hernandez.

7 MR. HERNANDEZ: I just wanted to revisit
8 one point from last week very briefly.

9 There was a comment on a harmless error,
10 whether or not some of the errors matter. And
11 there was a comment by Board Member Reiten, who
12 mentioned his familiarity with the water in the
13 Bull Mountains, and his understanding that people
14 are still drilling wells there, and therefore
15 there should be sufficient water for replacement
16 water.

17 I just wanted to place an objection that
18 any personal information about water in the Bulls
19 is outside of the record, and not appropriate
20 basis for any ruling in this case. So I want to
21 preserve that objection, and end there. Thank
22 you, Chairman.

23 CHAIR RUFFATTO: Thank you. Let's move
24 forward with the exception, failure to address.
25 Exception I is the failure to address proposed

1 findings generally.

2 Does anybody -- and the point here is
3 that MEIC is arguing that the findings of fact
4 should have addressed every one of MEIC's proposed
5 findings of fact. Does anybody have a motion, or
6 a question, or a discussion point?

7 (No response)

8 CHAIR RUFFATTO: I will move that MEIC
9 Exception I referring in each case to the
10 deliberation outline be rejected. The reason for
11 that, the reason for my motion, is that the
12 Supreme Court has never required what MEIC is
13 arguing.

14 BOARD MEMBER SIMPSON: Second.

15 CHAIR RUFFATTO: A motion has been made
16 and seconded. Any discussion?

17 (No response)

18 CHAIR RUFFATTO: All right. There being
19 no discussion, the motion has been made and
20 seconded that MEIC Exception I be rejected. All
21 in favor, say aye.

22 (Response)

23 CHAIR RUFFATTO: Opposed.

24 BOARD MEMBER LEHNHERR: Nay.

25 CHAIR RUFFATTO: All right. Dr.

1 Lehnherr, would you want us to do a roll call each
2 time, or can we rely on the fact that you have
3 explained that you're voting no, and only if
4 someone else is voting no will we take a roll
5 call?

6 BOARD MEMBER LEHNHERR: I think that's
7 reasonable.

8 CHAIR RUFFATTO: All right. Thanks,
9 Doctor. The motion passes.

10 Going to the next one, this is "J," and
11 it's the failure to address Signal Peak Energy's
12 design standards, violations, or the monitoring
13 violations. I'm sure that we've all read the
14 briefs on this point. Is there a motion or
15 discussion?

16 BOARD MEMBER SIMPSON: I'll make the
17 motion that it be rejected, Item J be rejected.

18 CHAIR RUFFATTO: Is there a second?

19 BOARD MEMBER AGUIRRE: I'll second.

20 CHAIR RUFFATTO: Thank you, David and
21 Stacy. Discussion?

22 BOARD MEMBER SIMPSON: Mr. Chairman, I
23 would only comment monitoring issues are
24 irrelevant to the subject of this case.

25 CHAIR RUFFATTO: Thank you, David. I

1 would argue that not only is it irrelevant, but I
2 think there was a good point made that this
3 exception was raised untimely, and agree that the
4 monitoring questions were not relevant, and to the
5 extent it related to the spoliation argument, that
6 that was rejected a couple of times during the
7 hearing. So I will be supporting the motion. Is
8 there any more discussion?

9 (No response)

10 CHAIR RUFFATTO: If not, a motion has
11 been made and seconded that MEIC Exception J be
12 rejected. All in favor, say aye.

13 (Response)

14 CHAIR RUFFATTO: Opposed.

15 BOARD MEMBER LEHNHERR: Nay.

16 CHAIR RUFFATTO: Let the record note
17 that Dr. Lehnherr voted nay. The motion passes.

18 The next one is "K," which is another
19 failure to address argument, and this is the 100
20 gallon per minute replacement water figure that
21 was estimated in the 2013 application, and we
22 considered this question to some extent when we
23 discussed "E." So do I have a motion here?

24 (No response)

25 CHAIR RUFFATTO: I would move that MEIC

1 Exception K be rejected because the FOFCOL in fact
2 did address the amount of water in the aquifer,
3 and it also addressed the 100 gallon per minute
4 figure numerous times. So for that reason I would
5 move to reject this exception for the reasons
6 discussed in the briefs. Is there a second?

7 BOARD MEMBER ALTEMUS: Second.

8 CHAIR RUFFATTO: Julia seconded, so it's
9 been moved and seconded. Discussion.

10 (No response)

11 CHAIR RUFFATTO: It's been moved and
12 seconded that MEIC Exception K be rejected.

13 Moving to Exception L, and this is the
14 failure to address the admission that the CHIA
15 water assessment was mistaken. Yes.

16 BOARD MEMBER ALTEMUS: We didn't vote.

17 CHAIR RUFFATTO: Thank you, David.
18 Thank you, Julia. I'm getting ahead of myself
19 now.

20 BOARD MEMBER ALTEMUS: My memory is --
21 Did we vote?

22 CHAIR RUFFATTO: Thank you. Let's go
23 back to "K." A motion has made been and seconded
24 to reject. All in favor.

25 (Response)

1 CHAIR RUFFATTO: Nay.

2 BOARD MEMBER LEHNHERR: Nay.

3 CHAIR RUFFATTO: Dr. Lehnherr voted nay.
4 Otherwise it's all aye's. The motion passes.

5 Now we'll go to "L," failure to address
6 the admission that the CHIA water assessment was
7 mistaken. Again, we addressed this back in the
8 discussion of Exception E.

9 And for the reasons stated in the brief,
10 I would move that this exception be rejected. I
11 think when you read the CHIA in its totality, it's
12 clear that it was not mistaken, and that when you
13 put it in context, it's all correct. Is there a
14 second?

15 BOARD MEMBER SIMPSON: Second.

16 CHAIR RUFFATTO: It's been moved and
17 seconded. Discussion.

18 (No response)

19 CHAIR RUFFATTO: All in favor of the
20 motion, say aye.

21 (Response)

22 CHAIR RUFFATTO: Opposed.

23 BOARD MEMBER LEHNHERR: Nay.

24 CHAIR RUFFATTO: It was all aye's except
25 for one no vote by Dr. Lehnherr.

1 Now we're going to Exception M, and the
2 exception is that the finding of fact referred to
3 the Rosebud Mine and not the Bull Mountain Mine.

4 My question here would be to the three
5 parties. Will you stipulate that that was simply
6 an error, it should refer to the Bull Mountain
7 Mine? And if you so stipulate, you are
8 stipulating that we do not have to review the
9 whole record to change this finding of fact. Mr.
10 Hernandez, would you so stipulate?

11 MR. HERNANDEZ: Chairman Ruffatto, the
12 Petitioners are fine changing this. It's a small
13 detail. We stipulate that the correct reference
14 is to the Bull Mountains Mine, not the Rosebud
15 Mine.

16 CHAIR RUFFATTO: Thank you. DEQ.

17 MR. LANGSTON: Mr. Chairman, DEQ would
18 stipulate to those conditions.

19 CHAIR RUFFATTO: And Signal Peak.

20 MR. YEMINGTON: The same. We would
21 stipulate as well.

22 CHAIR RUFFATTO: Okay. In that case I
23 move we accept this exception, based on the
24 stipulation of all of the parties that we can
25 change that wording from the Rosebud Mine to Bull

1 Mountain Mine without reviewing the entire record.
2 Is there a second?

3 BOARD MEMBER REITEN: Second.

4 CHAIR RUFFATTO: It's been moved and
5 seconded that we change the reference in Finding
6 54 from Rosebud Mine to Bull Mountain Mine. Any
7 discussion?

8 (No response)

9 CHAIR RUFFATTO: There being no
10 discussion, all in favor, say aye.

11 (Response)

12 CHAIR RUFFATTO: It passes unanimously.

13 Now we will go to MEIC Exception N, and
14 this refers to Findings of Fact 77 through 82, 92
15 and 95, and the argument is that they are
16 unsupported, and essentially the argument refers
17 back to the exceptions that we discussed in "I,"
18 "J," "K" and "L," and it relates to the monitoring
19 standards, the 100 gallon per minute 2013
20 estimate, and the alleged mistake in the CHIA. Do
21 I have any discussion or a motion?

22 BOARD MEMBER SIMPSON: I make the motion
23 that it be rejected.

24 CHAIR RUFFATTO: Second.

25 BOARD MEMBER AGUIRRE: I'll second.

1 CHAIR RUFFATTO: Stacy, thank you.
2 Thank you, Dave. A motion has been moved and
3 seconded that MEIC Exception N be rejected. Any
4 discussion?

5 (No response)

6 CHAIR RUFFATTO: All in favor, say aye.

7 (Response)

8 CHAIR RUFFATTO: Opposed.

9 BOARD MEMBER LEHNHERR: Nay.

10 CHAIR RUFFATTO: All aye's except for
11 Dr. Lehnherr, so the motion passes.

12 Now we go to Exception O, and that is
13 the Finding 97 that it refers to "likely many
14 miles" versus "maybe several miles."

15 I have gone to the references that are
16 record references that were cited by SPE, and
17 because I think the evidence supports the
18 findings, I would vote, or I would move that MEIC
19 Exception O be rejected.

20 BOARD MEMBER AGUIRRE: Second.

21 CHAIR RUFFATTO: Thank you, Stacy. A
22 motion has been moved and seconded. Discussion.

23 (No response)

24 CHAIR RUFFATTO: It's been moved and
25 seconded that MEIC Exception O be rejected. All

1 in favor, say aye.

2 (Response)

3 CHAIR RUFFATTO: Opposed.

4 BOARD MEMBER LEHNHERR: Nay.

5 CHAIR RUFFATTO: The motion passes with
6 a no vote by Dr. Lehnherr.

7 Let us go to "P." This again is Finding
8 97, and that the argument by MEIC is that the
9 formation is not continuous.

10 Again, I reviewed the references that
11 SPE pointed out, and this finding is supported. I
12 think it's also true that what the finding talks
13 about is the formation, and not the aquifer.

14 But in any event, I move to reject MEIC
15 Exception P.

16 BOARD MEMBER AGUIRRE: I'll second.

17 CHAIR RUFFATTO: It's been moved and
18 seconded. Any discussion?

19 (No response)

20 CHAIR RUFFATTO: All in favor of
21 rejecting Exception P, say aye.

22 (Response)

23 CHAIR RUFFATTO: Opposed.

24 BOARD MEMBER LEHNHERR: Nay.

25 CHAIR RUFFATTO: It passes with Dr.

1 Lehnherr voting no.

2 Now we're going to "Q." Finding 99 is
3 unsupported, according to MEIC, and this relates
4 to the extent of the DUA.

5 I would make the same comment here.
6 I've looked at the evidence. I think it's
7 supported. I think it's a matter of semantics,
8 that the argument was simply a matter of
9 semantics, and the 14 miles by 22 miles is the
10 study area for the DUA. So I would move to reject
11 "Q."

12 BOARD MEMBER SIMPSON: Second.

13 CHAIR RUFFATTO: It's been moved and
14 seconded. Discussion.

15 (No response)

16 CHAIR RUFFATTO: All in favor of
17 rejecting MEIC Exception Q, say aye.

18 (Response)

19 CHAIR RUFFATTO: Opposed.

20 BOARD MEMBER LEHNHERR: Nay.

21 CHAIR RUFFATTO: The motion passes
22 subject to Dr. Lehnherr's lone no vote.

23 The next one is "R," MEIC Exception R,
24 the finding is unsupported about the evidence of
25 water quality impacts.

1 BOARD MEMBER REITEN: I'll second that.

2 CHAIR RUFFATTO: Who was that?

3 BOARD MEMBER REITEN: Jon.

4 CHAIR RUFFATTO: Jon, why don't you make
5 a motion to reject it, and then I'll second it.

6 BOARD MEMBER REITEN: I'll make a motion
7 to reject it.

8 CHAIR RUFFATTO: I would second that. I
9 will be voting to reject, because what's going on
10 here is that there was a quote that was accurate,
11 and then there's another finding that qualifies
12 that quote. So I think as a whole the findings of
13 fact are accurate.

14 A motion has been made and seconded to
15 reject MEIC Exception R. Any discussion?

16 (No response)

17 CHAIR RUFFATTO: All in favor of
18 rejecting MEIC Exception R, say aye.

19 (Response)

20 CHAIR RUFFATTO: Opposed.

21 BOARD MEMBER LEHNHERR: Nay.

22 CHAIR RUFFATTO: Motion passes, Dr.
23 Lehnherr voting no.

24 The next one is MEIC Exception S, and
25 that's that the water quality needs are

1 unsupported. And this is essentially the same
2 argument that MEIC made in Exception K that we've
3 already addressed.

4 So I would move to reject this
5 exception.

6 BOARD MEMBER SIMPSON: Second.

7 CHAIR RUFFATTO: Discussion.

8 (No response)

9 CHAIR RUFFATTO: All in favor of
10 rejecting MEIC Exception S.

11 (Response)

12 CHAIR RUFFATTO: Opposed.

13 BOARD MEMBER LEHNHERR: Nay.

14 CHAIR RUFFATTO: The motion passes, Dr.
15 Lehnherr voting no.

16 Now we go to "T," and this is the
17 argument that the Finding 130 regarding water
18 rights evaluation is unsupported.

19 Again, I reviewed record evidence, and
20 found good record evidence to support this.
21 Therefore I would move to reject MEIC Exception T.

22 BOARD MEMBER REITEN: I'll second that
23 one.

24 CHAIR RUFFATTO: It's been moved and
25 seconded that Exception T be rejected.

1 Discussion.

2 (No response)

3 CHAIR RUFFATTO: All in favor, say aye.

4 (Response)

5 CHAIR RUFFATTO: Going to "U," this is
6 the Finding 143, the water treatment.

7 MS. MOISEY-SCHERER: Excuse me. Did we
8 finish that vote? I just heard the aye's. Were
9 there any nays?

10 CHAIR RUFFATTO: Thank you. I'll bet
11 there is. Nays?

12 BOARD MEMBER LEHNHERR: Nay.

13 CHAIR RUFFATTO: I apologize. The
14 motion passes subject to Dr. Lehnherr's nay vote.

15 Now we'll go to MEIC Exception U. This
16 is arguing that Finding 143 regarding water
17 treatment is unsupported. MEIC argues that the
18 water treatment testimony was not by an expert,
19 and therefore should not be considered. The
20 Hearing Examiner accepted the evidence and relied
21 upon it. Therefore, I would vote to reject this
22 exception.

23 BOARD MEMBER AGUIRRE: I'll make that
24 motion to reject MEIC Item U.

25 CHAIR RUFFATTO: And I will second it.

1 Discussion.

2 (No response)

3 CHAIR RUFFATTO: All in favor of
4 rejecting MEIC Exception U.

5 (Response)

6 CHAIR RUFFATTO: Opposed.

7 BOARD MEMBER LEHNHERR: Nay.

8 CHAIR RUFFATTO: The motion passes with
9 Dr. Lehnherr voting no.

10 Going to "V," this is Finding 145 is
11 unsupported, and the point is about legal
12 barriers. We discussed this point and considered
13 it back when we considered MEIC Exception H, and
14 for the reasons in the briefs and discussed there,
15 I would vote to reject MEIC Exception V.

16 BOARD MEMBER AGUIRRE: I'll second that.

17 CHAIR RUFFATTO: Thank you. A motion
18 has been made and seconded. Any discussion?

19 (No response)

20 CHAIR RUFFATTO: All in favor, say aye,
21 of rejecting MEIC Exception V.

22 (Response)

23 CHAIR RUFFATTO: Opposed.

24 BOARD MEMBER LEHNHERR: (Indicating)

25 CHAIR RUFFATTO: The motion passes

1 subject to Dr. Lehnherr's no vote. I didn't
2 actually hear it, but I saw it. All right. Now
3 we're going to DEQ exceptions.

4 BOARD MEMBER SIMPSON: Mr. Chairman.

5 CHAIR RUFFATTO: Yes.

6 BOARD MEMBER SIMPSON: This is Dave.

7 Could I make a few comments before we move on?

8 CHAIR RUFFATTO: Definitely.

9 BOARD MEMBER SIMPSON: This list of
10 exceptions, or the exceptions brief from MEIC, I
11 know you did a lot of work on this, Mr. Chairman,
12 to ferret out these various specific exceptions
13 from the text.

14 And when I went through it the first
15 time, the observation I made was the only relief
16 that was requested by MEIC was at the end of their
17 brief, that this Finding of Fact, Conclusion of
18 Law be either rejected or remanded, and so what we
19 have are a long list of exceptions with no
20 specific relief requested.

21 And this may be a subject for another
22 meeting, perhaps the next meeting, but I wanted to
23 raise the question of whether it would be
24 appropriate for this Board to establish that in
25 order for exceptions to findings of fact and

1 conclusions of law to be considered by this Board,
2 that specific relief be requested.

3 If there's no specific relief requested
4 to which we can decide yes or no, they wouldn't be
5 considered by the Board, because it seems we spent
6 an awful lot of time on this. I know you have.

7 CHAIR RUFFATTO: Let's take that under
8 consideration. I think that we should probably
9 put that on a list of things to talk about. I
10 know we spent a lot of time. I think it's
11 important that we make sure that we've thought
12 about all of the exceptions.

13 BOARD MEMBER SIMPSON: Understood.

14 CHAIR RUFFATTO: I'm a little concerned
15 if we make a rule that -- to be honest, if we make
16 a rule that procedurally precludes exceptions,
17 that we might create a problem if there's an
18 appeal. So I'm a little reluctant to make a
19 summary rule that would reject without
20 consideration.

21 I would encourage any parties that are
22 on, or that in the future may make exceptions,
23 that they spell out what they're looking for a
24 little better, and make it a little easier. It is
25 very frustrating for us to have to go through this

1 process. But your point is well taken, Dave, so
2 we'll think about it.

3 BOARD MEMBER SIMPSON: Thank you, Mr.
4 Chairman. I didn't expect a decision at this
5 point, but my request is that we look into it to
6 see if it's legally supportable.

7 CHAIR RUFFATTO: Mike, would you put
8 that on your agenda to take a look?

9 MR. RUSSELL: Yes, sir.

10 CHAIR RUFFATTO: Thank you.

11 Now we're going to the DEQ exceptions.
12 The first exception that DEQ makes is that MEIC's
13 exempt well permits argument, particularly the
14 housing development versus the mine argument, be
15 precluded because it was untimely raised.

16 I will make a motion that we reject this
17 exception of DEQ, not because we're concluding it
18 has no merit, but because we don't need to address
19 it because we have -- or the Hearing Examiner
20 considered the matter, and rejected the point, and
21 we have also rejected the point. So I would say
22 that we reject this exception because we do not
23 need to address it.

24 Is there a second?

25 BOARD MEMBER LEHNHERR: I will second

1 that, Chairman Ruffatto.

2 CHAIR RUFFATTO: Thank you. A motion
3 has been made and seconded that DEQ Exception A be
4 rejected on grounds that we do not need to address
5 it. Discussion.

6 (No response)

7 CHAIR RUFFATTO: All in favor of the
8 motion to reject DEQ Exception A, please say aye.

9 (Response)

10 CHAIR RUFFATTO: Opposed.

11 (No response)

12 CHAIR RUFFATTO: The motion passes
13 unanimously.

14 DEQ's Exception B is essentially that
15 the FOFCOL states that DEQ did not address this
16 argument.

17 I have reviewed the briefs and all the
18 things that were pointed out, and I think DEQ did
19 address this argument, and therefore I would move
20 that we accept DEQ's Exception B, but not
21 necessarily in the language or the approach that
22 DEQ proposed. So I would accept it conceptually
23 only, and we will have Mike cover it in the
24 language. Is there a second?

25 BOARD MEMBER ALTEMUS: Second.

1 CHAIR RUFFATTO: Discussion.

2 BOARD MEMBER AGUIRRE: I think on that
3 one, I just need clarification on the point, the
4 motion being conceptual.

5 CHAIR RUFFATTO: Yes. The reason why
6 I'm saying conceptual is because DEQ's proposed
7 solution was fairly dramatic, and I think we can
8 do it by deleting a few words back on Page 48, and
9 we don't need to make all the changes that DEQ has
10 proposed.

11 BOARD MEMBER AGUIRRE: Okay.

12 CHAIR RUFFATTO: I can get even more
13 specific if you want.

14 BOARD MEMBER AGUIRRE: No. That helps.
15 Just procedurally I just didn't -- I just had that
16 procedural type question. I agree with the way
17 that you're approaching it. I just didn't
18 understand that procedurally that was supported.
19 But I'm good. Thank you.

20 CHAIR RUFFATTO: Thank you, Stacy. And
21 I will add that you will get to see the language
22 at the next meeting that we propose to -- or that
23 Mike proposes to accomplish this, and I will have
24 reviewed that, too.

25 MS. AGUIRRE: Thank you again.

1 CHAIR RUFFATTO: Thank you, Stacy. A
2 motion has been made and seconded to accept
3 conceptually DEQ's Exception B, but not
4 necessarily in the words proposed by DEQ. All in
5 favor, say aye.

6 (Response)

7 CHAIR RUFFATTO: The motion passes
8 unanimously.

9 BOARD MEMBER LEHNHERR: Chairman
10 Ruffatto.

11 CHAIR RUFFATTO: I should say opposed.
12 I'm sorry. You're right. Opposed.

13 BOARD MEMBER LEHNHERR: Nay.

14 CHAIR RUFFATTO: The motion passes with
15 Dr. Lehnherr voting no. Forgive me, Doctor. I'm
16 getting confused here. It's not hard to confuse
17 me.

18 BOARD MEMBER LEHNHERR: You have your
19 hands full. I appreciate it.

20 CHAIR RUFFATTO: We're going to DEQ
21 Exception C, which relates to Conclusions of Law
22 21 and 22. And essentially what DEQ is proposing
23 is that we revise 21 and 22 to reflect the burden
24 of proof that DEQ has been arguing throughout this
25 proceeding.

1 I am going to oppose, or I'm going to
2 eventually vote to reject this, because I believe
3 that this supports, that these two conclusions of
4 law support the conclusion that we made at the
5 last meeting that regardless of the burden of
6 proof, DEQ prevails. So I will move to reject DEQ
7 Exception C relating to Conclusions of Law 21 and
8 22.

9 BOARD MEMBER SIMPSON: Second.

10 CHAIR RUFFATTO: Discussion.

11 (No response)

12 CHAIR RUFFATTO: All in favor of the
13 motion to reject DEQ's Exception C, say aye.

14 (Response)

15 CHAIR RUFFATTO: Opposed.

16 (No response)

17 CHAIR RUFFATTO: Dave, did you vote yes
18 or no?

19 BOARD MEMBER LEHNHERR: Yes.

20 CHAIR RUFFATTO: Okay. The motion
21 passes unanimously. Thank you.

22 Now we're going to DEQ Exception D.
23 There's some wording on Page 54 of the proposed
24 Findings of Fact and Conclusions of Law,
25 suggesting that DEQ opposed MEIC's standing.

1 I have reviewed the documents, and I'm
2 convinced that DEQ did not oppose the standing, so
3 I will ask at this point. MEIC, do you have
4 reason to believe -- I know you didn't take any
5 position in your briefing on this -- but do you
6 have any reason to believe that DEQ opposed MEIC's
7 standing?

8 MR. HERNANDEZ: Thank you, Chair
9 Ruffatto. Just to be clear, this is to prevent
10 the Board from having to review the entire record,
11 right?

12 CHAIR RUFFATTO: No. I don't think this
13 is a finding of fact, so no, I don't think that's
14 the reason. The reason here is just I wanted to
15 make sure that you did not have some argument that
16 DEQ in fact did oppose MEIC's standing.

17 MR. HERNANDEZ: We had no such argument,
18 Chairman Ruffatto.

19 CHAIR RUFFATTO: Okay. Thank you. So I
20 move that DEQ's Exception D be accepted.

21 BOARD MEMBER AGUIRRE: I'll second.

22 CHAIR RUFFATTO: Any discussion?

23 (No response)

24 CHAIR RUFFATTO: All in favor, say aye.

25 (Response)

1 CHAIR RUFFATTO: Opposed.

2 (No response)

3 CHAIR RUFFATTO: Passes unanimously.

4 Now we're going to the Signal Peak's
5 exceptions, and we'll start with the Signal Peak
6 Exception A, which requests a conclusion of law
7 regarding the Hearing Examiner's appointment.

8 I will ask for any discussion or a
9 motion. I guess I'll tell you that I've thought
10 about this quite a lot, and I've concluded that as
11 a matter of caution we should include this
12 paragraph.

13 So I will so move that Signal Peak's
14 Exception A be accepted.

15 BOARD MEMBER SIMPSON: Second.

16 CHAIR RUFFATTO: It's been moved and
17 seconded. Discussion.

18 (No response)

19 CHAIR RUFFATTO: All in favor of the
20 motion to accept Signal Peak's exception, say aye.

21 (Response)

22 CHAIR RUFFATTO: Opposed.

23 BOARD MEMBER LEHNHERR: Nay.

24 CHAIR RUFFATTO: The motion passes with
25 Dr. Lehnherr voting no.

1 Signal Peak Exception B. Signal Peak,
2 on Page 47 of the Findings of Fact and Conclusions
3 of Law, Signal Peak argues that there is a
4 sentence there that is misleading, or I think I
5 would state it more accurately as potentially
6 misleading.

7 And the sentence that they'd like
8 deleted or changed is the language, "While the
9 quality of water in the underburden --" "quantity
10 of water in the underburden is unknown, there was
11 no evidence presented to show this violated the
12 law."

13 MEIC argues that we cannot change this
14 because it sounds like a finding of fact, and
15 therefore we can't change it unless we review the
16 whole record. There may be some merit in that
17 argument.

18 But more importantly, from my point of
19 view, is that read in context, that sentence
20 simply means that the exact amount is unknown. So
21 I don't think when you read the whole thing that
22 there's any ambiguity, so I move that we reject
23 Signal Peak's Exception B.

24 BOARD MEMBER REITEN: I'll second that.

25 CHAIR RUFFATTO: Discussion.

1 (No response)

2 CHAIR RUFFATTO: All in favor of
3 rejecting Signal Peak Exception B, of rejecting
4 it, say aye.

5 (Response)

6 CHAIR RUFFATTO: Opposed.

7 (No response)

8 CHAIR RUFFATTO: Passes unanimously.

9 Signal Peak Exception C is similar to
10 DEQ's exception regarding Conclusions of Law 21
11 and 22, and I won't go into all the ins and outs
12 that Signal Peak argued here, different
13 alternatives. But I'm going to split this up into
14 two pieces: One, to reject Signal Peak's
15 exception, similar to the reason why we rejected
16 DEQ's exception relating to the burden of proof.

17 So I move to reject Signal Peak's
18 Exception C to the extent it relates to the burden
19 of proof.

20 BOARD MEMBER REITEN: I'll second that.

21 CHAIR RUFFATTO: Discussion.

22 (No response)

23 CHAIR RUFFATTO: All in favor --

24 BOARD MEMBER AGUIRRE: Chairman, I have
25 a question about the separation of this into two.

1 CHAIR RUFFATTO: Good question. I will
2 explain that by my thinking there. There were two
3 parts to Signal Peak's exception. One was to
4 change the conclusion of law to reflect Signal
5 Peak's argument regarding the burden of proof, and
6 DEQ's argument regarding the burden of proof.

7 Then they also proposed that there be a
8 sentence added to -- let me find it here -- that
9 there be a sentence added to the Conclusion of Law
10 22 that would read, "DEQ confirmed that Signal
11 Peak satisfied this obligation by investigation
12 into the geologic and hydrologic properties of the
13 deep underburden aquifer as compared to the
14 anticipated probable replacement," with some
15 references to the findings of fact and conclusions
16 of law.

17 So I was separating it into the burden
18 of proof point, and the addition of the sentence.
19 So I'm not asking you to consider the addition of
20 the sentence now, just the burden of proof point.
21 Does that make sense, Stacy, or have I muddied the
22 water even further?

23 BOARD MEMBER AGUIRRE: I believe that
24 makes sense to separate them. I got hung up on
25 the word "irrational" in the actual point as well,

1 and how to separate them, unsupported and
2 irrational. So I just -- I think separating them
3 makes sense.

4 CHAIR RUFFATTO: Did I use the word
5 "irrational"?

6 BOARD MEMBER AGUIRRE: You did not.
7 They did. Signal Peak did. So separating them to
8 a burden of proof I think is a positive. I'm
9 just, I guess I'm wondering what the next part of
10 that will be.

11 CHAIR RUFFATTO: The next part of it
12 will be, in my view, subject to all your
13 consideration, is to add that sentence that Signal
14 Peak suggested we add.

15 BOARD MEMBER AGUIRRE: Okay.

16 CHAIR RUFFATTO: And if you want to find
17 that sentence, it's on Page 10 of Signal Peak's
18 exception document. Let me go back and try to
19 state where I think we're at.

20 BOARD MEMBER AGUIRRE: Thank you for
21 explaining, Chairman.

22 CHAIR RUFFATTO: You bet. A motion has
23 been made and seconded that we reject Signal
24 Peak's Exception C to the extent it relates to the
25 burden of proof. Any more discussion?

1 (No response)

2 CHAIR RUFFATTO: All in favor, say aye.

3 (Response)

4 CHAIR RUFFATTO: Opposed.

5 (No response)

6 CHAIR RUFFATTO: Motion passes

7 unanimously.

8 Now as I telegraphed, I want to add, I
9 want to make a motion that we accept Signal Peak's
10 suggested added sentence which reads, "DEQ
11 confirmed that Signal Peak satisfied this
12 obligation by investigation into the geologic and
13 hydrologic properties of the deep underburden
14 aquifer as compared to the anticipated probable
15 replacement."

16 BOARD MEMBER AGUIRRE: I second the
17 motion.

18 CHAIR RUFFATTO: Discussion?

19 (No response)

20 CHAIR RUFFATTO: All in favor, say aye.

21 (Response)

22 CHAIR RUFFATTO: Opposed.

23 BOARD MEMBER LEHNHERR: Nay.

24 CHAIR RUFFATTO: Stacy, let me clarify.

25 Your vote was yes?

1 BOARD MEMBER AGUIRRE: My vote was yes,
2 Chairman.

3 CHAIR RUFFATTO: In favor. Thank you.
4 The motion passes with Dr. Lehnherr voting no.

5 And now we're going to go to Signal
6 Peak's Exception D, which relates to Conclusion of
7 Law 23, and Signal Peak argued that Conclusion of
8 Law 23 should be divided into two different
9 conclusions of law to address the two remaining
10 claims by MEIC.

11 I have reviewed this, and I think it
12 makes sense, and it's the right thing to do. And
13 so I move that we accept Signal Peak's Exception
14 D.

15 BOARD MEMBER ALTEMUS: I'll second.

16 CHAIR RUFFATTO: Thank you, Julia.
17 Discussion?

18 (No response)

19 CHAIR RUFFATTO: All in favor of
20 accepting Signal Peak's Exception D relating to
21 Conclusion of Law 23, please say aye.

22 (Response)

23 CHAIR RUFFATTO: Opposed.

24 BOARD MEMBER LEHNHERR: Nay.

25 CHAIR RUFFATTO: The motion passes with

1 Dr. Lehnherr voting no.

2 Well, that took us an hour, so why don't
3 we take about an eight minute break, and we'll
4 reconvene at 10:10.

5 (Recess taken)

6 CHAIR RUFFATTO: I will call the meeting
7 back into order. Sandy, please call the roll.

8 MS. MOISEY-SCHERER: Chairman Ruffatto.

9 CHAIR RUFFATTO: Here.

10 MS. MOISEY-SCHERER: Board Member Smith.

11 BOARD MEMBER SMITH: Here.

12 MS. MOISEY-SCHERER: Board Member

13 Aguirre.

14 BOARD MEMBER AGUIRRE: Here.

15 MS. MOISEY-SCHERER: Board Member

16 Simpson.

17 BOARD MEMBER SIMPSON: Here.

18 CHAIR RUFFATTO: Board Member Altemus.

19 BOARD MEMBER ALTEMUS: Here.

20 MS. MOISEY-SCHERER: Board Member

21 Lehnherr.

22 BOARD MEMBER LEHNHERR: Here.

23 MS. MOISEY-SCHERER: Board Member

24 Reiten.

25 BOARD MEMBER REITEN: Here.

1 MS. MOISEY-SCHERER: We have a quorum.

2 CHAIR RUFFATTO: Thank you. What I want
3 to do now, I want to go to the mark-up that was in
4 the meeting materials, and go through that, and
5 address whether the Board accepts various
6 provisions in that.

7 My intention is to go through it
8 methodically, but before I do that, I've been
9 thinking about Mr. Hernandez's objection, and I
10 think his objection is well taken.

11 So I will move that the Board conclude
12 that only the evidence contained in the findings
13 of fact can be considered, and that it should not
14 consider any factual material that came in from
15 Board members or otherwise, other than in the
16 factual record. Do I have a second to that?

17 BOARD MEMBER ALTEMUS: I'll second it.

18 CHAIR RUFFATTO: A motion has been made
19 and seconded that the Board will not consider any
20 evidence that came in from Board members, or in
21 any other manner, other than the findings of fact,
22 in the proposed findings of fact.

23 Let me explain why I made the motion. I
24 think that there is a potential issue there, and I
25 think that the findings of fact stand for

1 themselves.

2 I will say that the Board is constituted
3 by the statute in a way that brings -- that is
4 intended to bring experts onto this board, and it
5 is perfectly appropriate for the experts to apply
6 their knowledge and to explain matters to the
7 Board, but it should not go so far as specific
8 factual points similar to the one that Mr.
9 Hernandez objected to. Does that make sense?

10 (No response)

11 CHAIR RUFFATTO: I should put it this
12 way. Any discussion on that point?

13 BOARD MEMBER SIMPSON: Mr. Chairman, I
14 think I understand the point that you're raising
15 here. Before you brought forward your motion, I
16 had intended to make some comments on Mr.
17 Hernandez's objection as well, which echo what you
18 just stated, that is, the statutory make-up of
19 this Board is designed to bring together a number
20 of different background experiences and points of
21 view to bring to bear on the decision making that
22 we need to make.

23 And so I feel that it is incumbent on
24 the Board members to bring to bear whatever
25 knowledge and experience that bears on the

1 question at hand, and so otherwise this Board
2 would be made up of seven attorneys. So I think
3 I'm going to oppose this motion for that reason.

4 CHAIR RUFFATTO: Any more discussion?

5 BOARD MEMBER REITEN: I think I've
6 learned something here that I've got to watch what
7 I say, and I thought that was appropriate, what I
8 was saying regarding my knowledge of the area, but
9 I guess I'd better not express it unless I'm very
10 careful.

11 CHAIR RUFFATTO: Jon, thank you for that
12 comment, and I agree with your point, in that I
13 think you could have made the same point by
14 referring to the findings of fact, and your
15 understanding, your expertise, based on the
16 findings of fact. So I appreciate your point very
17 much.

18 And I will state a little -- I will
19 argue a little more. I don't know where this is
20 going, but I want to -- I'm fairly confident that
21 the findings of fact by themselves support what
22 we're ruling on here, and that we do not need
23 anything outside of that.

24 I agree completely with David's
25 statement that we are a board made up of experts

1 by the statute, and for that reason, the Board
2 brings to the table expertise that would not exist
3 in just any old board.

4 So it's perfectly appropriate to take
5 into account that expertise, but I think the
6 contested case process requires that all actual
7 evidence that is presented be on the record; and
8 by on the record, that means in the hearing that
9 was presented or that was conducted under oath.

10 So I'm going to argue that we vote in
11 favor of the motion. Any more discussion?

12 BOARD MEMBER SIMPSON: Mr. Chairman, I'd
13 just like to make the point that I think Mr.
14 Reiten's comment was entirely appropriate, and I
15 don't really see where having a comment regarding
16 the drilling of wells in the Bull Mountains in the
17 record of the Board proceedings really alters the
18 findings of fact as they're listed in the FOFCOL.

19 So again, my position remains unchanged.
20 I think the comment was entirely appropriate, and
21 helpful, and that's why we're on the Board.

22 CHAIR RUFFATTO: Any more discussion?
23 Yes. Go ahead.

24 BOARD MEMBER ALTEMUS: Mr. Chair, I
25 still support your motion. And I think it's a

1 really fine line, and I do agree with a lot of
2 what Mr. Simpson is saying and Mr. Reiten did, but
3 I do think it's a very fine line, and I do think
4 we have to go with what the findings of fact were
5 and stay on the record. And that was information
6 that was extra, which maybe may have swayed
7 somebody's vote. But I do agree with your motion,
8 Mr. Ruffatto. Thank you.

9 CHAIR RUFFATTO: A motion has been made
10 and seconded that the objection made by Mr.
11 Hernandez be upheld, and that any evidence that is
12 not included in the findings of fact be excluded
13 from consideration. All in favor, say aye.

14 (Response)

15 CHAIR RUFFATTO: Opposed.

16 BOARD MEMBER SIMPSON: No.

17 CHAIR RUFFATTO: Stacy, I take it that
18 your vote was in favor of the motion?

19 BOARD MEMBER AGUIRRE: Yes.

20 CHAIR RUFFATTO: David Simpson, I hate
21 to do this to you, but the Board has ruled that
22 that evidence should not be considered. So when
23 we are voting on this in the final analysis, that
24 evidence needs to be excluded from our
25 consideration. Does that make sense, Dave?

1 BOARD MEMBER SIMPSON: Certainly, Mr.
2 Chairman, it makes sense, and I don't know that
3 it's dispositive one way or the other in terms of
4 whether or not the -- or what the final result
5 will be. Let me put it that way. I say I think
6 it's relevant, and I think it was properly brought
7 forward, and that's all I'll say.

8 CHAIR RUFFATTO: Thank you, David.
9 Let's move on. I'm going to start -- I hope that
10 you all have the mark-up that was included in your
11 materials because I want to spend the next 40
12 minutes going through that.

13 And let me say this, that at the last
14 meeting, Dr. Lehnherr asked that the parties may
15 be given a chance to address any language that
16 they have concerns about, and I said that we would
17 do that.

18 So I want to put some restrictions on
19 that. I do not expect any argument about the
20 conclusions that we have made, but if any of the
21 parties think that there is language that
22 misstates what the Board has determined, or
23 language that is just -- that there would be
24 better language, we will be open to hearing those,
25 but we are not opening this up to argue the points

1 that have already been argued extensively over the
2 last meeting and in the briefs. Any questions
3 about that?

4 MR. LANGSTON: Mr. Chairman, in
5 reviewing the draft, I had one very small edit to
6 propose, and it's on Bates stamp 0434, and there's
7 a citation to Montana Code Annotated 82-4-227 sub
8 (3)(a).

9 I believe that is intended to be a
10 citation to 82-4-253 sub (3) sub (d). And I'll
11 just point out that the citation here is to the
12 material damage standard, which the Board has
13 found is inapplicable to this proceeding.

14 And I think what was intended here was
15 to cite to the suits for lack of availability of
16 water, which was in the previously cited citation.
17 So I just wanted to bring that to the Board's
18 attention and flag that.

19 CHAIR RUFFATTO: Let's conclude that
20 again. This is on Bates No. 0434?

21 MR. LANGSTON: Yes.

22 CHAIR RUFFATTO: And it's about a third
23 of the way down?

24 MR. LANGSTON: That's correct, Mr.
25 Chairman.

1 CHAIR RUFFATTO: And what you're saying
2 is that should be 82-4 what?

3 MR. LANGSTON: 253 subsection (3)(d).

4 CHAIR RUFFATTO: (3)(d)?

5 MR. LANGSTON: Yes, Mr. Chairman.

6 CHAIR RUFFATTO: Mike, when we're
7 looking at this, will you take a close look at
8 that?

9 MR. RUSSELL: Will do.

10 CHAIR RUFFATTO: Thank you.

11 MR. LANGSTON: Thank you, Mr. Chairman.

12 CHAIR RUFFATTO: I did not mean for the
13 parties to have to raise it right now, but thank
14 you for doing that.

15 MR. LANGSTON: My apologies if I spoke
16 out of turn, but thank you for the opportunity.

17 CHAIR RUFFATTO: That is within the
18 first portion, so that works good, or close to the
19 first portion.

20 So what I want to do is to go through
21 this essentially, I'm going to say, section by
22 section, and we will have a motion to approve a
23 section, or a number of pages, or some category of
24 materials, and then we will vote on that, and then
25 we will continue, keeping in mind that nothing is

1 final until we get to the end.

2 So I want to start out by covering the
3 Introduction and the Procedural History, and
4 that's on pages -- and when I refer to pages, I'll
5 be referring to these Bates numbers. I think
6 that's an accurate statement for these numbers --
7 0428 through 0432.

8 So I would point out that the changes to
9 that from the original FOFCOL are essentially
10 clean-up, plus a continuation of the Procedural
11 History of the FOFCOL -- of the process, that is,
12 the substantive changes essentially on 0432.

13 So I'm going to move that we accept
14 those first two sections, Introduction and
15 Procedural History.

16 BOARD MEMBER LEHNHERR: I'll second that
17 motion.

18 CHAIR RUFFATTO: Thank you, David. Any
19 discussion?

20 BOARD MEMBER AGUIRRE: Mr. Chairman, I
21 just had a quick question about today's special
22 session, and if that becomes part of that
23 procedural history.

24 CHAIR RUFFATTO: Great question. Mike,
25 we should be adding this meeting and the next

1 meeting to the ultimate Procedural History for the
2 next draft. Good point.

3 MR. RUSSELL: Good.

4 CHAIR RUFFATTO: Any more discussion?

5 (No response)

6 CHAIR RUFFATTO: If not, all in favor of
7 accepting the Introduction and Procedural History
8 subject to additional changes based on this
9 meeting and the next meeting, say aye.

10 (Response)

11 CHAIR RUFFATTO: Opposed.

12 (No response)

13 CHAIR RUFFATTO: Motion passes
14 unanimously.

15 Then we're going to do the Legal
16 Standard. This is Page 432 through 434. Again,
17 there's a little clean-up. There's one word that
18 was changed on Paragraph 434 that was clearly a
19 typographical error. It changed "quality" to
20 "quantity" about five lines down because it said
21 "quality" twice.

22 And then approval of this will also be
23 subject to the question that Mr. Langston raised
24 regarding the citation a third of the way down.

25 So I would move that we accept the Legal

1 Standard portion, subject to the question that
2 Mike will be looking into regarding that citation.

3 BOARD MEMBER REITEN: I'll second it.

4 CHAIR RUFFATTO: A motion has been made
5 and seconded. Discussion.

6 (No response)

7 CHAIR RUFFATTO: There being no
8 discussion, all in favor of accepting the Legal
9 Standard section subject to the one citation
10 question, all in favor, say aye.

11 (Response)

12 CHAIR RUFFATTO: Opposed.

13 (No response)

14 CHAIR RUFFATTO: Mr. Yemington, I'm
15 looking for you here. There you are.

16 MR. YEMINGTON: Just one quick comment,
17 and the reason I lowered my hand is I think that
18 vote was specific to the section of this that may
19 not raise this issue.

20 But one thing that we've identified in
21 the past is that the parties have referred to the
22 deep underburden with different acronyms, and
23 through the course of this, two primary acronyms
24 have popped out, one would be the DUB, and one is
25 DUA.

1 The only reason I raise this now is that
2 it does appear in the Procedural History, DUA is
3 defined, but then again -- and maybe I'm jumping
4 ahead here -- but at Finding of Fact 34 it's
5 defined again as DUB.

6 And I think there is some value in
7 consistency in this document, so I don't know if
8 that's something you want to address now, or as we
9 get further into the findings, but I think the
10 best I can tell they're identified, and those
11 acronyms are used for the same physical aquifer.

12 But we would support a consolidation or
13 a consistency there, going with either DUB or DUA.
14 We wouldn't have a preference one way or the
15 other, but we do think there is some issue that
16 could come up if the Board relies on two different
17 acronyms for the same geologic resource.

18 BOARD MEMBER AGUIRRE: I have a question
19 then based on that. In the Procedural section
20 that we approved, do we then -- would we then keep
21 the DUA acronym going forward through the
22 document?

23 CHAIR RUFFATTO: I don't know. I can't
24 answer that. So let's address the question. Does
25 MEIC have a point about that?

1 MR. HERNANDEZ: We do not, Chairman
2 Ruffatto. As far as I can tell, the parties are
3 referring to the same geologic layer with both
4 acronyms, if that provides any clarity. I
5 apologize if it doesn't.

6 CHAIR RUFFATTO: It does. What I'm
7 going to do -- go ahead.

8 BOARD MEMBER AGUIRRE: That's why I
9 suggested. It seemed to me that it was referring,
10 so that confirmation confirmed what I was
11 thinking, that they were the same, referring to
12 the same thing. So that's what prompted my
13 question about -- since we approved the Procedural
14 section already, that we use the DUA as the
15 acronym throughout the entire document.

16 CHAIR RUFFATTO: Well, what I'm going to
17 do, Stacy, I mean you have a good point. And I
18 would recognize that there may be some lack of
19 consistency here, but without reviewing the
20 document carefully, I'm not convinced that we can
21 do that.

22 So I'm going to ask Mike to review the
23 document carefully, and we will raise this issue
24 at the next meeting, and find out if -- and at
25 that time we will make a decision on it.

1 MR. LANGSTON: Mr. Chairman, may I --

2 CHAIR RUFFATTO: Yes.

3 MR. LANGSTON: Just one point of
4 clarification that would maybe help discussion on
5 this matter.

6 It's my understanding that in the CHIA
7 DEQ has referred to it as the DUB, whereas Signal
8 Peak has referred to in its filings as the DUA.
9 So I don't know if you want to be consistent with
10 the CHIA or with the Applicant's filings, but I
11 think that's where the divergent usage comes from.

12 CHAIR RUFFATTO: Thank you for the
13 explanation. That would probably explain why
14 there's inconsistency. So yes, Mr. Hernandez.

15 MR. HERNANDEZ: I'm sorry. Chairman
16 Ruffatto, Board Member Simpson.

17 BOARD MEMBER SIMPSON: Mr. Chairman,
18 depending on the context, I guess there's a
19 potential for one or the other being the correct
20 reference, with the understanding that DUB stands
21 for deep underburden, and DUA stands for deep
22 underburden aquifer, the former being the geologic
23 unit, and the latter referring to its hydrologic
24 function.

25 So not having looked at how it's used

1 throughout the document, there may be a rationale
2 for splitting them, but I'm not sure it's
3 necessary frankly, but just an observation that
4 there might be a rationale for using one or the
5 other.

6 CHAIR RUFFATTO: Thank you, David. I
7 actually would agree with that point, and that
8 there may be a rationale for doing it. Mr.
9 Hernandez.

10 MR. HERNANDEZ: Thank you, Chairman
11 Ruffatto. And I think that the point that Member
12 Simpson made is a good one, but also concerned
13 that a lot of this is semantic. I just want to be
14 clear that in my statements earlier that we are
15 not waiving our arguments that the FOFCOL confuses
16 the scope of the geologic unit with the extent of
17 the aquifer. That's an argument we made, and
18 we're certainly not waiving it by this.

19 With that said, it does seem like the
20 reference to the two terms is somewhat semantic.

21 CHAIR RUFFATTO: Thank you, Mr.
22 Hernandez. Mike, do we have enough background to
23 review it, and come back with an answer at our
24 next meeting?

25 MR. RUSSELL: I believe we do. I did

1 notice that when I reviewed the document before
2 when we had discussed it briefly. I'll have to
3 review it again, and make sure there aren't any
4 substantive differences in the manner in which the
5 document uses those terms.

6 CHAIR RUFFATTO: Thank you. So I'm
7 going to move on, with the assurance to the Board
8 that we're going to take a look at that, and we
9 will revisit it at our next meeting.

10 And thank you, Mr. Yemington, for
11 bringing it to our attention.

12 At this point, I want to approve or
13 disapprove and discuss -- Let me start out with --
14 We're going to the findings of fact, and let me
15 tell you that based on the preliminary decisions
16 that we've made, we're probably going to accept
17 all of the findings of fact without change, except
18 for obvious typographical errors.

19 So with that said, where you see a
20 change, it should be only a typographical error or
21 a grammatical error. So we're going to start out
22 by going through Findings of Facts 1 through 14.
23 Why don't you take a look at those, and then we'll
24 decide whether or not we're going to approve those
25 or not.

1 Forgive me for making all the motions.
2 I'd be happy if someone else would jump in and
3 make them, but to move it along, I will move that
4 we accept Findings of Fact 1 through 14 subject to
5 any minor errors that we have corrected.

6 BOARD MEMBER LEHNHERR: I will second
7 that motion.

8 CHAIR RUFFATTO: Discussion?

9 BOARD MEMBER AGUIRRE: I have a
10 question, Chairman, of why. Are you breaking it
11 down for some reason, or since we've stated that
12 only, that we are going to correct the obvious
13 errors, and if we've looked at them, why we
14 wouldn't just approve them as one section.

15 CHAIR RUFFATTO: That's a very good
16 point, Stacy. I would invite any other
17 discussion. We could speed this along if the
18 Board members are generally comfortable with
19 addressing all of the findings of fact at one
20 time.

21 (No response)

22 CHAIR RUFFATTO: Then I will withdraw my
23 motion if the second will withdraw the second.

24 BOARD MEMBER LEHNHERR: I will withdraw
25 my second.

1 CHAIR RUFFATTO: Thank you.

2 BOARD MEMBER AGUIRRE: Do you want me to
3 make a new motion then?

4 CHAIR RUFFATTO: I do, but the only
5 change that I think we have to be conscious of is
6 the one change that we've approved in 54 to change
7 Rosebud Mine to Bull Mountain Mine, so that would
8 be the only substantive change that we would make.
9 So if you would make that motion, that would be
10 great, Stacy.

11 MS. AGUIRRE: I make a motion to approve
12 the finding of fact section with particular note
13 to the change in No. 54, changing the reference to
14 Rosebud Mine -- or changing Rosebud Mine to Bull
15 Mountain; and also making a note that any other
16 changes are obvious typographical errors.

17 CHAIR RUFFATTO: Is there a second?

18 BOARD MEMBER SIMPSON: Second.

19 CHAIR RUFFATTO: Mr. Hernandez, you have
20 a question.

21 MR. HERNANDEZ: Thank you, Chairman
22 Ruffatto. Very briefly, just a matter of
23 clarification. I believe that the name of the
24 mine is the Bull Mountains, plural, Mine not the
25 Bull Mountain Mine. And I think there's

1 inconsistency in the record on this, but with Mr.
2 Langston and Mr. Yemington here, I think I'd like
3 to settle once and for all that the name of the
4 mine is the Bull Mountains Mine, and not the Bull
5 Mountain Mine.

6 CHAIR RUFFATTO: Mr. Langston, Mr.
7 Yemington, do you have a view on mountain or
8 mountains?

9 I have to admit I did not pick up on a
10 discrepancy there, but I could have easily missed
11 it.

12 MR. LANGSTON: Mr. Chairman, I have my
13 hydrologist with me right now, and he's confirming
14 that it is Bull Mountains, plural, so I believe
15 Mr. Hernandez is correct.

16 MR. YEMINGTON: I share that sentiment.

17 BOARD MEMBER AGUIRRE: Can I make an
18 amendment then to the motion to make that
19 correction?

20 CHAIR RUFFATTO: Absolutely, assuming
21 your second agrees. Who was the second?

22 BOARD MEMBER SIMPSON: I was.

23 CHAIR RUFFATTO: Do you agree, Dave?

24 MR. SIMPSON: Yes.

25 CHAIR RUFFATTO: Further discussion?

1 (No response)

2 CHAIR RUFFATTO: All in favor of
3 accepting the findings of fact, subject to the
4 change to Finding of Fact 54, and the
5 typographical changes, all in favor, say aye.

6 (Response)

7 CHAIR RUFFATTO: The motion carries
8 unanimously. And I want to thank --

9 BOARD MEMBER LEHNHERR: (Indicating)

10 CHAIR RUFFATTO: Opposed? Any no's?

11 BOARD MEMBER LEHNHERR: Nay.

12 CHAIR RUFFATTO: Oh, I thought you said
13 -- Oh, okay. Forgive me.

14 DR. LEHNHERR: I'm sorry, but I meant to
15 vote no.

16 CHAIR RUFFATTO: You got it. Okay. The
17 motion passes subject to Dr. Lehnherr's nay vote.

18 And I did want to thank Mr. Hernandez
19 for his catching the "mountains" versus the
20 "mountain." That's a good lawyerly thing to do.
21 I would always do that if I saw it. The rest of
22 you probably think it's picky, but I think it's a
23 good point, so thank you, Mr. Hernandez.

24 Okay. Now we're going to the Discussion
25 section, and I think I will break this up a little

1 bit because there may be questions.

2 So let's start with the Discussion
3 section Pages 463 to 466. I move that we accept
4 the Discussion section, the first portion of that,
5 463 to 466. Do I have a second?

6 BOARD MEMBER AGUIRRE: I second.

7 CHAIR RUFFATTO: Discussion. The reason
8 why I broke this up is because that has the
9 material stricken on Page 464 and 465 regarding
10 the deference that we made the decision on last
11 meeting. Other than that, the changes are all
12 minor. Any more discussion?

13 (No response)

14 CHAIR RUFFATTO: All in favor of
15 accepting Pages 463 through 466 to the Standing
16 section, say aye.

17 (Response)

18 CHAIR RUFFATTO: Opposed.

19 (No response)

20 CHAIR RUFFATTO: Motion carries
21 unanimously.

22 I think at this point, because we're
23 getting close to the end here, and I'm not seeing
24 anything that is a major change, I'm going to
25 propose that we go all the way from 466 to 475

1 where we start the discussion on the exceptions.

2 So I move that we accept that portion of
3 the discussion from 466 through 475.

4 BOARD MEMBER ALTEMUS: I'll second.

5 CHAIR RUFFATTO: Thank you, Julia.

6 Discussion.

7 (No response)

8 CHAIR RUFFATTO: Hearing none, all in
9 favor of accepting Pages 466 through 475, say aye.

10 (Response)

11 CHAIR RUFFATTO: Opposed.

12 BOARD MEMBER LEHNHERR: Nay.

13 CHAIR RUFFATTO: The motion carries
14 subject to Dr. Lehnherr's no vote.

15 Now we get into some new material that
16 is based upon the meeting from April where we are
17 addressing specifically the various exceptions,
18 and I would ask the Board how you would like to
19 handle this. Would you like to handle this all as
20 a group or in some other fashion?

21 Maybe I'll put it a different way. Is
22 there anybody that would like to deal with any of
23 these points on Pages 476 through 481 separately?

24 BOARD MEMBER AGUIRRE: Chairman, I'm
25 moving to not deal with them separately, but I do

1 have one question about when the additional
2 language gets added in on Page 481. So I can make
3 a motion that deals with them all together, and
4 then -- but I have that question first about the
5 DEQ exceptions section, and Signal Peak's
6 exceptions.

7 CHAIR RUFFATTO: Yes. Mike will draft
8 the provisions that relate to all of the
9 exceptions that we dealt with today, and that will
10 be in the next draft. Does that answer your
11 question? Which we will consider hopefully at the
12 June meeting.

13 MS. AGUIRRE: That does answer my
14 question, Chairman. So I would like to move to
15 approve the -- I want to make sure I -- the
16 Discussion section in its entirety.

17 CHAIR RUFFATTO: And by that you mean
18 the exception discussion section in its entirety?

19 BOARD MEMBER AGUIRRE: Correct. There
20 you go. Yes. Correct. Thank you, Mr. Chairman.

21 CHAIR RUFFATTO: To the extent it's
22 covered, with that caveat.

23 BOARD MEMBER AGUIRRE: So the extent
24 it's covered, yes. Thank you, Chairman.

25 CHAIR RUFFATTO: Is there a second?

1 (No response)

2 CHAIR RUFFATTO: I will second it.

3 Discussion.

4 (No response)

5 CHAIR RUFFATTO: All in favor of
6 approving the Discussion section relating to the
7 parties' exceptions to the extent they are
8 included in this document that we're -- this
9 mark-up we're looking at. All in favor, say aye.

10 (Response)

11 CHAIR RUFFATTO: Opposed.

12 BOARD MEMBER LEHNHERR: Nay.

13 CHAIR RUFFATTO: Motion passes subject
14 to Dr. Lehnherr's no vote.

15 As a matter of explanation, what we will
16 bring forward to the next meeting -- subject to
17 Mike's schedule, and we'll press him on this -- we
18 will bring forward a mark-up from the clean
19 version that we have today, so the next mark-up
20 will only cover the changes from beyond what we
21 looked at today.

22 Put another way, Mike will accept all of
23 the changes subject to the minor tweaks that we
24 did today, and then we will -- the mark-up next
25 time will only show the new material, the new

1 changes. Does that make sense? Any questions
2 about that?

3 (No response)

4 CHAIR RUFFATTO: Okay. So now I'm going
5 to go on to Conclusions of Law, and because of the
6 changes that we're going to be making, essentially
7 I'm going to go this way.

8 I'm going to move that we accept
9 Conclusions of Law 1 through -- I'm going to leave
10 it at 20, and then we'll deal with it from there.
11 So I move that we accept Conclusions of Law 1
12 through 20.

13 BOARD MEMBER AGUIRRE: I second that.

14 CHAIR RUFFATTO: Discussion.

15 (No response)

16 CHAIR RUFFATTO: All in favor, say aye.

17 (Response)

18 CHAIR RUFFATTO: Opposed.

19 (No response)

20 BOARD MEMBER AGUIRRE: I believe I
21 forgot to say aye.

22 CHAIR RUFFATTO: On the favorable part?
23 We're waiting for -- is anybody opposed?

24 (No response)

25 CHAIR RUFFATTO: It passes unanimously.

1 I'm going to skip 21 --

2 BOARD MEMBER SIMPSON: I was going to --
3 I'm sorry -- I was muted. I voted aye.

4 CHAIR RUFFATTO: Thank you. I'm going
5 to skip 21, 22, and 23, because those are going to
6 be changed based upon our decisions today, and
7 we're not ready to really consider those, so those
8 we'll need to look at again.

9 So I'm going to go to what we have here
10 as 24, and I would move that we accept Conclusion
11 of Law 24, understanding that the number will
12 change because we're splitting 23 up. So I move
13 that we accept the language of Conclusion of Law
14 24 as contained in this mark-up.

15 BOARD MEMBER AGUIRRE: I second.

16 CHAIR RUFFATTO: Discussion.

17 (No response)

18 BOARD MEMBER SIMPSON: Second.

19 CHAIR RUFFATTO: Any more discussion --
20 Go ahead.

21 BOARD MEMBER SIMPSON: Were you asking
22 -- I thought it was seconded. Was it seconded?
23 Was there a second?

24 CHAIR RUFFATTO: Yes.

25 BOARD MEMBER AGUIRRE: Yes, I seconded.

1 BOARD MEMBER SIMPSON: I misunderstood.
2 Sorry.

3 CHAIR RUFFATTO: Got it. All in favor
4 of approving the language of Conclusion of Law 24
5 as contained in this mark-up, say aye.

6 (Response)

7 CHAIR RUFFATTO: Opposed.

8 BOARD MEMBER LEHNHERR: Nay.

9 CHAIR RUFFATTO: It passes subject to
10 Dr. Lehnherr's no vote.

11 Now we're going to the Order portion,
12 which is all broke up here, but if you -- I think
13 it reads well once we accept the changes.

14 So I'm going to move that we accept the
15 Order section subject to the change that would
16 clarify that DEQ did not object to MEIC's
17 standing. I'll state that again. I move that we
18 approve the Order section subject to the change to
19 reflect that DEQ did not oppose MEIC's standing.

20 BOARD MEMBER AGUIRRE: Second.

21 CHAIR RUFFATTO: Discussion.

22 (No response)

23 CHAIR RUFFATTO: All in favor of
24 approving the Order section subject to the change
25 regarding DEQ's position regarding MEIC's

1 standing, all in favor say aye.

2 (Response)

3 CHAIR RUFFATTO: Opposed.

4 BOARD MEMBER LEHNHERR: Nay.

5 CHAIR RUFFATTO: The motion passes
6 subject to Dr. Lehnherr's no vote.

7 I would like to take credit for getting
8 done before 11:00, but I think I have to give that
9 to Stacy who moved us along, give that credit to
10 Stacy. Otherwise I'd still be going a few
11 sections at a time.

12 So as far as I'm concerned we're done
13 for today. The only thing that I wanted to say is
14 that we will bring forward a mark-up showing the
15 additional language and changes only in the June
16 meeting. Any questions or comments about the next
17 step?

18 (No response)

19 CHAIR RUFFATTO: Thank you for all your
20 patience, and for agreeing to participate in this
21 meeting. I know it was probably not easy for many
22 of you, so thank you. I will move to adjourn.

23 BOARD MEMBER AGUIRRE: Second.

24 CHAIR RUFFATTO: It's been moved and
25 seconded that we adjourn. All in favor say aye.

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(Response)

CHAIR RUFFATTO: We are adjourned.

Thank you all.

(The proceedings were concluded

at 10:58 a.m.)

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C E R T I F I C A T E

STATE OF MONTANA)

: SS.

COUNTY OF LEWIS & CLARK)

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

That the proceedings were taken before me at
the time and place herein named; that the
proceedings were reported by me in shorthand and
transcribed using computer-aided transcription,
and that the foregoing - 67 - 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 25th day of
May, 2022.

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

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