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

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

ATTORNEY APPEARING ON BEHALF OF THE BOARD OF ENVIRONMENTAL REVIEW:
MR. MICHAEL RUSSELL, ESQ. (via Zoom)
Special Assistant Attorney General
Agency Legal Services Bureau
P.O. Box 201440
Helena, MT 59620-1440

ATTORNEY APPEARING ON BEHALF OF SIGNAL PEAK:
MR. SAMUEL YEMINGTON, ESQ. (via Zoom)
Attorney at Law
Holland & Hart
401 North 31st St., Suite 1500
Billings, MT 59101

ATTORNEY APPEARING ON BEHALF OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY:
MR. JEREMIAH LANGSTON, ESQ. (via Zoom)
Special Assistant Attorney General
Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620

APPEARING ON BEHALF OF MONTANA ENVIRONMENTAL INFORMATION CENTER:
MR. SHILOH HERNANDEZ, ESQ. (via Zoom)
Attorney at Law
Montana Environmental Information Center
107 West Lawrence St., Suite N-6
Helena, MT
WHEREUPON, the following proceedings were had:

* * * * *

CHAIR RUFFATTO: Good morning, everyone. I will call the meeting to order. And Sandy, please start by calling the roll of the Board.

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

CHAIR RUFFATTO: Here.

MS. MOISEY-SCHERER: Board Member Smith.

BOARD MEMBER SMITH: Here.

MS. MOISEY-SCHERER: Board Member Aguirre.

BOARD MEMBER AGUIRRE: Here.

MS. MOISEY-SCHERER: Board Member Simpson.

(No response)

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

BOARD MEMBER SIMPSON: It says I'm --

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

BOARD MEMBER SIMPSON: I'm here.

MS. MOISEY-SCHERER: Board Member Altemus.
BOARD MEMBER ALTEMUS: Good morning.

Present.

MS. MOISEY-SCHERER: Board Member Lehnherr.

BOARD MEMBER LEHNHERR: Here.

MS. MOISEY-SCHERER: Board Member Reiten.

BOARD MEMBER REITEN: Here.

MS. MOISEY-SCHERER: We have a quorum.

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

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

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

I would first like to introduce to the Board and everybody else that's on Michael Russell, who is our new Agency Legal Services attorney, and I would ask Michael to give us just
a little bit information about himself, and so please go forward, Mike.

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

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

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

(No response)

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

MR. RUSSELL: I don't believe so.

CHAIR RUFFATTO: Okay. Thank you. Well, I just wanted to take this opportunity to at least put on the record to say thank you to
Katherine for her work over the last year and a half; and Michael, we're looking forward to working with you, and I'm sure we will have a good process going forward.

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

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

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

I wanted to emphasize again that until
we have a Board ruling on the final document, that anything can change. Nothing is final until we get to that point.

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

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

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

I don't want to be jumping in with every discussion point, and taking up time. I'm not sure it would really make a difference. I just want to preface the meeting, so people understand why I may say or I may vote no, but I won't be
trying to take up time, we won't have a lot of
time discussing every point that is raised.
Thanks.

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

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

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

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

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

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

(No response)

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

BOARD MEMBER SIMPSON: Second.

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

(No response)

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

(Response)

CHAIR RUFFATTO: Opposed.

BOARD MEMBER LEHNHERR: Nay.

CHAIR RUFFATTO: All right. Dr.
Lehnerr, would you want us to do a roll call each
time, or can we rely on the fact that you have
explained that you're voting no, and only if
someone else is voting no will we take a roll
call?

BOARD MEMBER LEHNHERR: I think that's
reasonable.

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

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

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

CHAIR RUFFATTO: Is there a second?

BOARD MEMBER AGUIRRE: I'll second.

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

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

CHAIR RUFFATTO: Thank you, David. I
would argue that not only is it irrelevant, but I think there was a good point made that this exception was raised untimely, and agree that the monitoring questions were not relevant, and to the extent it related to the spoliation argument, that was rejected a couple of times during the hearing. So I will be supporting the motion. Is there any more discussion?

(No response)

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

(Response)

CHAIR RUFFATTO: Opposed.

BOARD MEMBER LEHNHERR: Nay.

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

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

(No response)

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

BOARD MEMBER ALTEMUS: Second.

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

(No response)

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

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

BOARD MEMBER ALTEMUS: We didn't vote.

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

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

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

(Response)
CHAIR RUFFATTO: Nay.

BOARD MEMBER LEHNHERR: Nay.

CHAIR RUFFATTO: Dr. Lehnherr voted nay.

Otherwise it's all aye's. The motion passes.

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

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

BOARD MEMBER SIMPSON: Second.

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

(No response)

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

(Response)

CHAIR RUFFATTO: Opposed.

BOARD MEMBER LEHNHERR: Nay.

CHAIR RUFFATTO: It was all aye's except for one no vote by Dr. Lehnherr.
Now we're going to Exception M, and the exception is that the finding of fact referred to the Rosebud Mine and not the Bull Mountain Mine.

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

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

CHAIR RUFFATTO: Thank you. DEQ.

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

CHAIR RUFFATTO: And Signal Peak.

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

CHAIR RUFFATTO: Okay. In that case I move we accept this exception, based on the stipulation of all of the parties that we can change that wording from the Rosebud Mine to Bull
Mountain Mine without reviewing the entire record. Is there a second?

BOARD MEMBER REITEN:  Second.

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

(No response)

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

(No response)

CHAIR RUFFATTO:  It passes unanimously.

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

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

CHAIR RUFFATTO:  Second.

BOARD MEMBER AGUIRRE:  I'll second.
CHAIR RUFFATTO: Stacy, thank you.

Thank you, Dave. A motion has been moved and seconded that MEIC Exception N be rejected. Any discussion?

(No response)

CHAIR RUFFATTO: All in favor, say aye.

(Response)

CHAIR RUFFATTO: Opposed.

BOARD MEMBER LEHNHERR: Nay.

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

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

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

BOARD MEMBER AGUIRRE: Second.

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

(No response)

CHAIR RUFFATTO: It's been moved and seconded that MEIC Exception O be rejected. All
in favor, say aye.

(Response)

CHAIR RUFFATTO: Opposed.

BOARD MEMBER LEHNHERR: Nay.

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

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

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

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

BOARD MEMBER AGUIRRE: I'll second.

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

(No response)

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

(Response)

CHAIR RUFFATTO: Opposed.

BOARD MEMBER LEHNHERR: Nay.

CHAIR RUFFATTO: It passes with Dr.
Lehnherr voting no.

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

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

BOARD MEMBER SIMPSON: Second.

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

(No response)

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

(Response)

CHAIR RUFFATTO: Opposed.

BOARD MEMBER LEHNHERR: Nay.

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

The next one is "R," MEIC Exception R, the finding is unsupported about the evidence of water quality impacts.
BOARD MEMBER REITEN: I'll second that.

CHAIR RUFFATTO: Who was that?

BOARD MEMBER REITEN: Jon.

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

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

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

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

(No response)

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

(Response)

CHAIR RUFFATTO: Opposed.

BOARD MEMBER LEHNHERR: Nay.

CHAIR RUFFATTO: Motion passes, Dr. Lehnerr voting no.

The next one is MEIC Exception S, and that's that the water quality needs are
unsupported. And this is essentially the same argument that MEIC made in Exception K that we've already addressed.

So I would move to reject this exception.

BOARD MEMBER SIMPSON: Second.

CHAIR RUFFATTO: Discussion.

(No response)

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

(Response)

CHAIR RUFFATTO: Opposed.

BOARD MEMBER LEHNHERR: Nay.

CHAIR RUFFATTO: The motion passes, Dr. Lehn Herr voting no.

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

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

BOARD MEMBER REITEN: I'll second that one.

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

(No response)

CHAIR RUFFATTO: All in favor, say aye.

(Response)

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

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

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

BOARD MEMBER LEHNHERR: Nay.

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

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

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

CHAIR RUFFATTO: And I will second it.
Discussion.

(No response)

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

(Response)

CHAIR RUFFATTO: Opposed.

BOARD MEMBER LEHNHERR: Nay.

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

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

BOARD MEMBER AGUIRRE: I'll second that.

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

(No response)

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

(Response)

CHAIR RUFFATTO: Opposed.

BOARD MEMBER LEHNHERR: (Indicating)

CHAIR RUFFATTO: The motion passes
subject to Dr. Lehnerr's no vote. I didn't actually hear it, but I saw it. All right. Now we're going to DEQ exceptions.

BOARD MEMBER SIMPSON: Mr. Chairman.

CHAIR RUFFATTO: Yes.

BOARD MEMBER SIMPSON: This is Dave. Could I make a few comments before we move on?

CHAIR RUFFATTO: Definitely.

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

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

And this may be a subject for another meeting, perhaps the next meeting, but I wanted to raise the question of whether it would be appropriate for this Board to establish that in order for exceptions to findings of fact and
conclusions of law to be considered by this Board, that specific relief be requested.

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

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

BOARD MEMBER SIMPSON: Understood.

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

I would encourage any parties that are on, or that in the future may make exceptions, that they spell out what they're looking for a little better, and make it a little easier. It is very frustrating for us to have to go through this
process. But your point is well taken, Dave, so we'll think about it.

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

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

MR. RUSSELL: Yes, sir.

CHAIR RUFFATTO: Thank you.

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

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

Is there a second?

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

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

(No response)

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

(Response)

CHAIR RUFFATTO: Opposed.

(No response)

CHAIR RUFFATTO: The motion passes unanimously.

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

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

BOARD MEMBER ALTEMUS: Second.
CHAIR RUFFATTO: Discussion.

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

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

BOARD MEMBER AGUIRRE: Okay.

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

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

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

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

(Response)

CHAIR RUFFATTO: The motion passes unanimously.

BOARD MEMBER LEHNHERR: Chairman Ruffatto.

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

BOARD MEMBER LEHNHERR: Nay.

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

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

CHAIR RUFFATTO: We're going to DEQ Exception C, which relates to Conclusions of Law 21 and 22. And essentially what DEQ is proposing is that we revise 21 and 22 to reflect the burden of proof that DEQ has been arguing throughout this proceeding.
I am going to oppose, or I'm going to eventually vote to reject this, because I believe that this supports, that these two conclusions of law support the conclusion that we made at the last meeting that regardless of the burden of proof, DEQ prevails. So I will move to reject DEQ Exception C relating to Conclusions of Law 21 and 22.

BOARD MEMBER SIMPSON: Second.

CHAIR RUFFATTO: Discussion.

(No response)

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

(Response)

CHAIR RUFFATTO: Opposed.

(No response)

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

BOARD MEMBER LEHNHERR: Yes.

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

Now we're going to DEQ Exception D. There's some wording on Page 54 of the proposed Findings of Fact and Conclusions of Law, suggesting that DEQ opposed MEIC's standing.
I have reviewed the documents, and I'm convinced that DEQ did not oppose the standing, so I will ask at this point. MEIC, do you have reason to believe -- I know you didn't take any position in your briefing on this -- but do you have any reason to believe that DEQ opposed MEIC's standing?

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

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

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

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

BOARD MEMBER AGUIRRE: I'll second.

CHAIR RUFFATTO: Any discussion?

(No response)

CHAIR RUFFATTO: All in favor, say aye.

(Response)
CHAIR RUFFATTO: Opposed.

(No response)

CHAIR RUFFATTO: Passes unanimously.

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

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

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

BOARD MEMBER SIMPSON: Second.

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

(No response)

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

(Response)

CHAIR RUFFATTO: Opposed.

BOARD MEMBER LEHNHERR: Nay.

CHAIR RUFFATTO: The motion passes with Dr. Lehn Herr voting no.
Signal Peak Exception B. Signal Peak, on Page 47 of the Findings of Fact and Conclusions of Law, Signal Peak argues that there is a sentence there that is misleading, or I think I would state it more accurately as potentially misleading.

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

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

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

BOARD MEMBER REITEN: I'll second that.

CHAIR RUFFATTO: Discussion.
(No response)

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

(Response)

CHAIR RUFFATTO: Opposed.

(No response)

CHAIR RUFFATTO: Passes unanimously.

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

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

BOARD MEMBER REITEN: I'll second that.

CHAIR RUFFATTO: Discussion.

(No response)

CHAIR RUFFATTO: All in favor --

BOARD MEMBER AGUIRRE: Chairman, I have
a question about the separation of this into two.
CHAIR RUFFATTO: Good question. I will explain that by my thinking there. There were two parts to Signal Peak's exception. One was to change the conclusion of law to reflect Signal Peak's argument regarding the burden of proof, and DEQ's argument regarding the burden of proof.

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

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

BOARD MEMBER AGUIRRE: I believe that makes sense to separate them. I got hung up on the word "irrational" in the actual point as well,
and how to separate them, unsupported and irrational. So I just -- I think separating them makes sense.

   CHAIR RUFFATTO: Did I use the word "irrational"?
   BOARD MEMBER AGUIRRE: You did not. They did. Signal Peak did. So separating them to a burden of proof I think is a positive. I'm just, I guess I'm wondering what the next part of that will be.

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

   BOARD MEMBER AGUIRRE: Okay.

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

   BOARD MEMBER AGUIRRE: Thank you for explaining, Chairman.

   CHAIR RUFFATTO: You bet. A motion has been made and seconded that we reject Signal Peak's Exception C to the extent it relates to the burden of proof. Any more discussion?
CHAIR RUFFATTO: All in favor, say aye. (Response)

CHAIR RUFFATTO: Opposed. (No response)

CHAIR RUFFATTO: Motion passes unanimously.

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

BOARD MEMBER AGUIRRE: I second the motion.

CHAIR RUFFATTO: Discussion? (No response)

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

CHAIR RUFFATTO: Opposed.

BOARD MEMBER LEHNHERR: Nay.

CHAIR RUFFATTO: Stacy, let me clarify. Your vote was yes?
BOARD MEMBER AGUIRRE: My vote was yes, Chairman.

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

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

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

BOARD MEMBER ALTEMUS: I'll second.

CHAIR RUFFATTO: Thank you, Julia.

Discussion?

(No response)

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

(Response)

CHAIR RUFFATTO: Opposed.

BOARD MEMBER LEHNHERR: Nay.

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

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

(Recess taken)

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

MS. MOISEY-SCHERER: Chairman Ruffatto.

CHAIR RUFFATTO: Here.

MS. MOISEY-SCHERER: Board Member Smith.

BOARD MEMBER SMITH: Here.

MS. MOISEY-SCHERER: Board Member Aguirre.

BOARD MEMBER AGUIRRE: Here.

MS. MOISEY-SCHERER: Board Member Simpson.

BOARD MEMBER SIMPSON: Here.

CHAIR RUFFATTO: Board Member Altemus.

BOARD MEMBER ALTEMUS: Here.

MS. MOISEY-SCHERER: Board Member Lehnherr.

BOARD MEMBER LEHNHERR: Here.

MS. MOISEY-SCHERER: Board Member Reiten.

BOARD MEMBER REITEN: Here.
MS. MOISEY-SCHERER: We have a quorum.

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

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

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

BOARD MEMBER ALTEMUS: I'll second it.

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

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

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

(No response)

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

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

And so I feel that it is incumbent on the Board members to bring to bear whatever knowledge and experience that bears on the
question at hand, and so otherwise this Board
would be made up of seven attorneys. So I think
I'm going to oppose this motion for that reason.

CHAIR RUFFATTO: Any more discussion?

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

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

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

I agree completely with David's
statement that we are a board made up of experts
by the statute, and for that reason, the Board brings to the table expertise that would not exist in just any old board.

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

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

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

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

CHAIR RUFFATTO: Any more discussion?

Yes. Go ahead.

BOARD MEMBER ALTEMUS: Mr. Chair, I still support your motion. And I think it's a
really fine line, and I do agree with a lot of
what Mr. Simpson is saying and Mr. Reiten did, but
I do think it's a very fine line, and I do think
we have to go with what the findings of fact were
and stay on the record. And that was information
that was extra, which maybe may have swayed
somebody's vote. But I do agree with your motion,
Mr. Ruffatto. Thank you.

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

(Response)

CHAIR RUFFATTO: Opposed.

BOARD MEMBER SIMPSON: No.

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

BOARD MEMBER AGUIRRE: Yes.

CHAIR RUFFATTO: David Simpson, I hate
to do this to you, but the Board has ruled that
that evidence should not be considered. So when
we are voting on this in the final analysis, that
evidence needs to be excluded from our
consideration. Does that make sense, Dave?
BOARD MEMBER SIMPSON: Certainly, Mr. Chairman, it makes sense, and I don't know that it's dispositive one way or the other in terms of whether or not the -- or what the final result will be. Let me put it that way. I say I think it's relevant, and I think it was properly brought forward, and that's all I'll say.

CHAIR RUFFATTO: Thank you, David.

Let's move on. I'm going to start -- I hope that you all have the mark-up that was included in your materials because I want to spend the next 40 minutes going through that.

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

So I want to put some restrictions on that. I do not expect any argument about the conclusions that we have made, but if any of the parties think that there is language that misstates what the Board has determined, or language that is just -- that there would be better language, we will be open to hearing those, but we are not opening this up to argue the points
that have already been argued extensively over the
last meeting and in the briefs. Any questions
about that?

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

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

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

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

MR. LANGSTON: Yes.

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

MR. LANGSTON: That's correct, Mr.
Chairman.
CHAIR RUFFATTO: And what you're saying is that should be 82-4 what?

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

CHAIR RUFFATTO: (3)(d)?

MR. LANGSTON: Yes, Mr. Chairman.

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

MR. RUSSELL: Will do.

CHAIR RUFFATTO: Thank you.

MR. LANGSTON: Thank you, Mr. Chairman.

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

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

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

So what I want to do is to go through this essentially, I'm going to say, section by section, and we will have a motion to approve a section, or a number of pages, or some category of materials, and then we will vote on that, and then we will continue, keeping in mind that nothing is
final until we get to the end.

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

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

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

BOARD MEMBER LEHNHERR: I'll second that motion.

CHAIR RUFFATTO: Thank you, David. Any discussion?

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

CHAIR RUFFATTO: Great question. Mike, we should be adding this meeting and the next
meeting to the ultimate Procedural History for the
next draft. Good point.

MR. RUSSELL: Good.

CHAIR RUFFATTO: Any more discussion?

(No response)

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

(Response)

CHAIR RUFFATTO: Opposed.

(No response)

CHAIR RUFFATTO: Motion passes
unanimously.

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

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

So I would move that we accept the Legal
Standard portion, subject to the question that Mike will be looking into regarding that citation.

BOARD MEMBER REITEN: I'll second it.

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

(No response)

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

(No response)

CHAIR RUFFATTO: Opposed.

(No response)

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

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

But one thing that we've identified in the past is that the parties have referred to the deep underburden with different acronyms, and through the course of this, two primary acronyms have popped out, one would be the DUB, and one is DUA.
The only reason I raise this now is that it does appear in the Procedural History, DUA is defined, but then again -- and maybe I'm jumping ahead here -- but at Finding of Fact 34 it's defined again as DUB.

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

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

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

CHAIR RUFFATTO: I don't know. I can't answer that. So let's address the question. Does MEIC have a point about that?
MR. HERNANDEZ: We do not, Chairman Ruffatto. As far as I can tell, the parties are referring to the same geologic layer with both acronyms, if that provides any clarity. I apologize if it doesn't.

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

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

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

So I'm going to ask Mike to review the document carefully, and we will raise this issue at the next meeting, and find out if -- and at that time we will make a decision on it.
MR. LANGSTON: Mr. Chairman, may I --

CHAIR RUFFATTO: Yes.

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

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

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

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

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

So not having looked at how it's used
throughout the document, there may be a rationale for splitting them, but I'm not sure it's necessary frankly, but just an observation that there might be a rationale for using one or the other.

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

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

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

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

MR. RUSSELL: I believe we do. I did
notice that when I reviewed the document before when we had discussed it briefly. I'll have to review it again, and make sure there aren't any substantive differences in the manner in which the document uses those terms.

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

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

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

So with that said, where you see a change, it should be only a typographical error or a grammatical error. So we're going to start out by going through Findings of Facts 1 through 14. Why don't you take a look at those, and then we'll decide whether or not we're going to approve those or not.
Forgive me for making all the motions. I'd be happy if someone else would jump in and make them, but to move it along, I will move that we accept Findings of Fact 1 through 14 subject to any minor errors that we have corrected.

BOARD MEMBER LEHNHERR: I will second that motion.

CHAIR RUFFATTO: Discussion?

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

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

(No response)

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

BOARD MEMBER LEHNHERR: I will withdraw my second.
CHAIR RUFFATTO: Thank you.

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

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

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

CHAIR RUFFATTO: Is there a second?

BOARD MEMBER SIMPSON: Second.

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

MR. HERNANDEZ: Thank you, Chairman Ruffatto. Very briefly, just a matter of clarification. I believe that the name of the mine is the Bull Mountains, plural, Mine not the Bull Mountain Mine. And I think there's
inconsistency in the record on this, but with Mr. Langston and Mr. Yemington here, I think I'd like to settle once and for all that the name of the mine is the Bull Mountains Mine, and not the Bull Mountain Mine.

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

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

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

MR. YEMINGTON: I share that sentiment.

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

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

BOARD MEMBER SIMPSON: I was.

CHAIR RUFFATTO: Do you agree, Dave?

MR. SIMPSON: Yes.

CHAIR RUFFATTO: Further discussion?
(No response)

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

(No response)

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

BOARD MEMBER LEHNHERR: (Indicating)

CHAIR RUFFATTO: Opposed? Any no's?

BOARD MEMBER LEHNHERR: Nay.

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

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

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

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

Okay. Now we're going to the Discussion section, and I think I will break this up a little
bit because there may be questions.

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

BOARD MEMBER AGUIRRE: I second.

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

(No response)

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

(Response)

CHAIR RUFFATTO: Opposed.

(No response)

CHAIR RUFFATTO: Motion carries unanimously.

I think at this point, because we're getting close to the end here, and I'm not seeing anything that is a major change, I'm going to propose that we go all the way from 466 to 475
where we start the discussion on the exceptions.

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

BOARD MEMBER ALTEMUS: I'll second.

CHAIR RUFFATTO: Thank you, Julia.

Discussion.

(No response)

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

(Response)

CHAIR RUFFATTO: Opposed.

BOARD MEMBER LEHNHERR: Nay.

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

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

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

BOARD MEMBER AGUIRRE: Chairman, I'm
moving to not deal with them separately, but I do
have one question about when the additional language gets added in on Page 481. So I can make a motion that deals with them all together, and then -- but I have that question first about the DEQ exceptions section, and Signal Peak's exceptions.

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

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

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

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

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

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

CHAIR RUFFATTO: Is there a second?
CHAIR RUFFATTO: I will second it.

Discussion.

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

Response)

CHAIR RUFFATTO: Opposed.

BOARD MEMBER LEHNHERR: Nay.

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

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

Put another way, Mike will accept all of the changes subject to the minor tweaks that we did today, and then we will -- the mark-up next time will only show the new material, the new
changes. Does that make sense? Any questions about that?

(No response)

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

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

So I move that we accept Conclusions of Law 1 through 20.

BOARD MEMBER AGUIRRE: I second that.

CHAIR RUFFATTO: Discussion.

(No response)

CHAIR RUFFATTO: All in favor, say aye.

(Response)

CHAIR RUFFATTO: Opposed.

(No response)

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

CHAIR RUFFATTO: On the favorable part?

We're waiting for -- is anybody opposed?

(No response)

CHAIR RUFFATTO: It passes unanimously.
I'm going to skip 21 --

BOARD MEMBER SIMPSON: I was going to --

I'm sorry -- I was muted. I voted aye.

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

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

BOARD MEMBER AGUIRRE: I second.

CHAIR RUFFATTO: Discussion.

(No response)

BOARD MEMBER SIMPSON: Second.

CHAIR RUFFATTO: Any more discussion --

Go ahead.

BOARD MEMBER SIMPSON: Were you asking
-- I thought it was seconded. Was it seconded?

Was there a second?

CHAIR RUFFATTO: Yes.

BOARD MEMBER AGUIRRE: Yes, I seconded.
BOARD MEMBER SIMPSON: I misunderstood.

Sorry.

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

(Response)

CHAIR RUFFATTO: Opposed.

BOARD MEMBER LEHNHERR: Nay.

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

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

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

BOARD MEMBER AGUIRRE: Second.

CHAIR RUFFATTO: Discussion.

(No response)

CHAIR RUFFATTO: All in favor of approving the Order section subject to the change regarding DEQ's position regarding MEIC's
standing, all in favor say aye.

(Response)

CHAIR RUFFATTO:  Opposed.

BOARD MEMBER LEHNHERR:  Nay.

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

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

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

(No response)

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

BOARD MEMBER AGUIRRE:  Second.

CHAIR RUFFATTO:  It's been moved and seconded that we adjourn. All in favor say aye.
(Response)

CHAIR RUFFATTO: We are adjourned.

Thank you all.

(The proceedings were concluded
at 10:58 a.m.)

* * * * *
CERTIFICATE

STATE OF MONTANA )
               : SS.
COUNTY OF LEWIS & CLARK )

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

That the proceedings were taken before me at
the time and place herein named; that the
proceedings were reported by me in shorthand and
transcribed using computer-aided transcription,
and that the foregoing - 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.
passes [29]
past - 49:21
patience - 66:20
perhaps - 23:22
permits - 25:13
personal - 8:18
Petitioners - 14:12
physical - 50:11
pick - 57:9
picky - 58:22
pieces - 33:14
plus - 47:10
pointed [2] 17:11, 26:18
popped - 49:24
positive - 35:8
potentially - 32:5
precluded - 25:15
precedes - 24:16
preface [2] 7:15, 7:24
preference - 50:14
preliminary - 45:16
PREPARED - 1:21
Present - 4:2
presented [3] 32:11, 42:7,