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BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

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BOARD MEETING )  
December 9, 2022 )

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TRANSCRIPT OF PROCEEDINGS (VIA ZOOM)

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December 9, 2022  
9:00 a.m.

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

PREPARED BY: LAURIE CRUTCHER, RPR  
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1           WHEREUPON, the following proceedings were  
2 had:

3                               \* \* \* \* \*

4           CHAIR RUFFATTO: I'll call the meeting  
5 to order, and let's start out, Sandy, will you  
6 please call the roll.

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

9           CHAIR RUFFATTO: Here.

10          MS. MOISEY-SCHERER: Vice Chair Aguirre.

11          VICE CHAIR AGUIRRE: Here.

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

14          BOARD MEMBER ALTEMUS: Here. Good  
15 morning.

16          MS. MOISEY-SCHERER: Board Member  
17 Lehnherr.

18          BOARD MEMBER LEHNHERR: Here.

19          CHAIR RUFFATTO: Board Member Reiten.

20          BOARD MEMBER REITEN: Here.

21          MS. MOISEY-SCHERER: Board Member  
22 Simpson.

23          BOARD MEMBER SIMPSON: Here.

24          MS. MOISEY-SCHERER: Board Member Smith.

25          BOARD MEMBER SMITH: Here.

1 MS. MOISEY-SCHERER: We have a quorum,  
2 sir.

3 CHAIR RUFFATTO: Thank you, Sandy. And  
4 are you in a position to for the record state who  
5 else is on the call, on the meeting.

6 MS. MOISEY-SCHERER: Yes, sir. Laurie  
7 Crutcher, Court Reporter; Michael Russell, Board  
8 Counsel; Kurt Moser from DEQ; Vicki Marquis, Legal  
9 Counsel; Andy Janes; Catherine Armstrong; Brian  
10 Balmer, United States Forest Service; Derf  
11 Johnson; Elena Hagen, Agency Legal Services; Emily  
12 Lodman; Francesca Fionda; Deputy Director Fehr,  
13 Montana DEQ; Katie Makarowski, DEQ; Kirsten  
14 Bowers, DEQ; Lauren Sweeney, DEQ; Loryn Johnson,  
15 DEQ; Linsey Gaudisio; Mary Cohenour; Ray Stout;  
16 Rebecca Harbage, DEQ; Samuel Yemington, Holland  
17 and Hart; Sarah Ogden; Nicholas Whitaker, DEQ.  
18 That is all I have, sir.

19 \* \* \* \* \*

20 (Also present Chris Dorrington; Jessica Wilkerson;  
21 Jeremiah Langston; Ed Hayes; Moira Davin; Nick  
22 Danielson; Lindsey Krywaruchka; Heidi Barnes;  
23 Rachel Clark; Murry Warhank; Jennifer Eckstrom;  
24 Hayden Blackford; Corey Bullock, CBC News; Stephen  
25 Pfeiffer; Brad Smith, ICL; Peggy Trenk, Treasure

1 State Resources Association; Haley Williams; Emily  
2 Qiu; Barbara Chillcott, WELC; Grace Judge; Tonya  
3 Fish, EPA; Adanks; Sean; Amanda Eggert, Montana  
4 Free Press; Grace Judge; Chelsea Colwyn)

5 \* \* \* \* \*

6 CHAIR RUFFATTO: Thank you, Sandy. I  
7 would just, for your scheduling, I expect that  
8 we'll be done within two hours -- I could be wrong  
9 -- maybe even within one hour, but I think it will  
10 be a relatively short meeting.

11 The first order of business is the  
12 review and approval of the minutes of the meeting  
13 of October 14th, and I would ask for a motion from  
14 a Board member for approval.

15 BOARD MEMBER REITEN: I move to approve.

16 BOARD MEMBER SMITH: I'll second.

17 CHAIR RUFFATTO: A motion has been made  
18 and seconded to approve the minutes of the meeting  
19 of October 14th. Discussion.

20 (No response)

21 CHAIR RUFFATTO: Is there any  
22 discussion?

23 (No response)

24 CHAIR RUFFATTO: Hearing none, I will  
25 call the question. All in favor of approving the

1 meeting minutes of the Board of October 14th, say  
2 aye.

3 (Response)

4 CHAIR RUFFATTO: Opposed, same sign.

5 (No response)

6 CHAIR RUFFATTO: The motion carries.

7 Then we will go to our next administrative item,  
8 and a little background on this one for your  
9 recollection.

10 In February of this year, a motion was  
11 passed that an order regarding informal procedures  
12 go out with every new matter.

13 What we have learned is that no one is  
14 likely to agree to informal procedures, or at  
15 least not the cases that we've -- where it's been  
16 considered, and sending out an order for every new  
17 case has resulted in additional time and more  
18 expense.

19 So I'm going to move that only when the  
20 Chair or a Board member believes informal  
21 procedures may be more likely will an order be  
22 issued.

23 BOARD MEMBER SIMPSON: Second.

24 CHAIR RUFFATTO: Thank you, David.

25 Discussion.

1 (No response)

2 CHAIR RUFFATTO: I've given you my  
3 rationale for making the motion. A little more  
4 beyond that would be that I think for 90 percent,  
5 give or take, of our cases, the parties are not  
6 going to want to go by informal procedures. I  
7 think there may be a case now and then when the  
8 parties would be agreeable to informal procedures,  
9 and I think we can identify those possibilities  
10 when they come in.

11 BOARD MEMBER SIMPSON: Mr. Chairman.

12 CHAIR RUFFATTO: Yes. Go ahead.

13 BOARD MEMBER SIMPSON: Mr. Chairman,  
14 this is Dave. I certainly agree with that, and I  
15 think we recognized from the beginning that a  
16 large number, very possibly, and probably the  
17 majority of cases that come before the Board would  
18 not lend themselves well to the informal  
19 procedure, particularly permit appeals which tend  
20 to be complex, often with intervening parties and  
21 so on. So I agree that your motion certainly  
22 makes sense.

23 CHAIR RUFFATTO: David Lehnherr, do you  
24 have your hand up?

25 BOARD MEMBER LEHNHERR: No. Sorry,

1 Chairman Ruffatto. I don't.

2 CHAIR RUFFATTO: Any more discussion? I  
3 can see you don't, David. I had a hand on your  
4 box, but it was my cursor so -- any more  
5 discussion?

6 (No response)

7 CHAIR RUFFATTO: All right. A motion  
8 has been made and seconded that an informal order  
9 will go out only when the Chair or some member of  
10 the Board believes that informal procedures may be  
11 likely or more likely to be agreed to. All in  
12 favor, say aye.

13 (Response)

14 CHAIR RUFFATTO: Opposed.

15 (No response)

16 CHAIR RUFFATTO: The motion carries.  
17 Our next administrative item relates to Hearing  
18 Examiner reassignments. We continue to have  
19 turnover at ALS. We have lost two of our Hearing  
20 Examiners since the last meeting. Caitlin Buzzas  
21 has two cases, and she has left ALS.

22 And Mike Russell, our Counsel, has taken  
23 another position with the Attorney General's  
24 Office, so he's not able to handle -- he's moved  
25 out of ALS, and is not able to handle Hearing

1 Examiner matters. Fortunately at least for the  
2 time being, the powers that be are going to allow  
3 Mike Russell to continue as Board Counsel, but he  
4 will not have the capacity to handle Hearing  
5 Examiner matters.

6 Caitlin Buzzas has two cases that need  
7 to be reassigned, and Mike Russell has six cases  
8 to be reassigned. The potential Hearing Examiners  
9 that we have, or that I've identified and I'm  
10 going to talk about, are three. Rob Cameron,  
11 Michelle Dietrich.

12 If you recall, Rob Cameron has been  
13 handling two cases, and he's an outside lawyer.  
14 Michelle Dietrich is with ALS, and Liz Leman with  
15 ALS, I think a relatively new lawyer with ALS.

16 Mike, could you give us briefly the  
17 credentials of Michelle and Liz.

18 MR. RUSSELL: Sure. Both Michelle and  
19 Liz are licensed attorneys practicing here in  
20 Montana state and federal courts.

21 Michelle has been at ALSB for  
22 approximately three years, I believe. She handles  
23 a pretty diverse portfolio of cases, including a  
24 fair number of Hearing Examiner cases, or has a  
25 fair bit of Hearing Examiner experience.



1           She served as the Chief and Deputy,  
2 Chief Legal Counsel for the State Auditor for  
3 approximately one and a half years, and she was at  
4 the Department of Revenue as Counsel there for  
5 just under seven years. She's very familiar with  
6 MAPA and handling administrative proceedings.

7           As far as Liz goes, she's been with ALS  
8 since I believe May of this year. Before that she  
9 was at the Department of Public Health and Human  
10 Services as an Administrative Law Judge, so she  
11 has a fair bit of experience in that capacity,  
12 administering oaths, admitting evidence, deciding  
13 cases, doing all of those tasks involved in  
14 Hearing Examiner work. And she's also got  
15 significant familiarity with MAPA and  
16 administrative proceedings.

17           I think that's a synopsis of their  
18 relevant experience as far as I'm aware, but I  
19 could obtain more information if necessary.

20           CHAIR RUFFATTO: Thank you, Mike. I  
21 think that gives us a picture of their experience.  
22 So before we start the reassignment process,  
23 there's kind of a housekeeping matter that we need  
24 to deal with, and that is to extend, to agree to  
25 extend the contract for Rob Cameron. His contract

1 is due to expire after one year, which is in  
2 January.

3 So I would move that the Board approve  
4 the extension of the contract for Rob Cameron.

5 BOARD MEMBER REITEN: I'll second that.

6 CHAIR RUFFATTO: Discussion?

7 (No response)

8 CHAIR RUFFATTO: Is there any  
9 discussion?

10 (No response)

11 CHAIR RUFFATTO: Hearing none, then a  
12 motion has been made and seconded that Rob  
13 Cameron's contract be extended. All in favor say  
14 aye.

15 (Response)

16 CHAIR RUFFATTO: Opposed.

17 (No response)

18 CHAIR RUFFATTO: The motion passes. Now  
19 as far as the assignments, I visited with Mike,  
20 and Mike checked with ALS, and we're recommending  
21 that Liz Leman be assigned to the Rippling Woods  
22 case.

23 So I would move that Liz Leman be  
24 assigned to the Rippling Woods case in place of  
25 Caitlin Buzzas.

1 VICE CHAIR AGUIRRE: I'll second that.

2 CHAIR RUFFATTO: Thank you. Discussion?

3 (No response)

4 CHAIR RUFFATTO: A motion has been made  
5 and seconded that Liz Leman be assigned as Hearing  
6 Examiner to the Rippling Woods case.

7 The next recommendation, and I move that  
8 Michelle Dietrich of ALS be assigned the Ployhar  
9 and Oreo's Refining cases. The Ployhar case was  
10 with Mike Russell, and the Oreo's Refining case  
11 was with Caitlin Buzzas. I move that Michelle  
12 Dietrich be assigned to those two cases as Hearing  
13 Examiner.

14 BOARD MEMBER LEHNHERR: Second.

15 CHAIR RUFFATTO: Discussion?

16 (No response)

17 CHAIR RUFFATTO: Is there any  
18 discussion?

19 (No response)

20 CHAIR RUFFATTO: Hearing none, all in  
21 favor of the motion that Michelle Dietrich be  
22 assigned to the Ployhar and Oreo's Refining cases,  
23 say aye.

24 (Response)

25 CHAIR RUFFATTO: Opposed.

1 (No response)

2 BOARD MEMBER ALTEMUS: Mr. Chair, did we  
3 need to vote on the first motion? Did I miss it?

4 CHAIR RUFFATTO: Did we not?

5 MS. MOISEY-SCHERER: No.

6 CHAIR RUFFATTO: We didn't vote on the  
7 Liz Lemman motion?

8 MS. MOISEY-SCHERER: (Nods head)

9 BOARD MEMBER ALTEMUS: The first one,  
10 the very first motion that you made, we did not  
11 vote on that one.

12 VICE CHAIR AGUIRRE: To extend Rob  
13 Cameron's contract?

14 BOARD MEMBER ALTEMUS: No, to assign  
15 that case to the first one. Did I miss that vote?

16 CHAIR RUFFATTO: Let's make sure we get  
17 it. A motion has been made and seconded that Liz  
18 Lemman be assigned to the Rippling Woods case. All  
19 in favor, say aye.

20 (Response)

21 CHAIR RUFFATTO: Opposed.

22 (No response)

23 CHAIR RUFFATTO: The motion carries.  
24 And thank you for catching that. Did you get the  
25 motion for Michelle Dietrich?

1 MS. MOISEY-SCHERER: Yes.

2 CHAIR RUFFATTO: And it passed?

3 MS. MOISEY-SCHERER: (Nods head)

4 CHAIR RUFFATTO: Now I move that the  
5 remaining cases that were assigned to Mike Russell  
6 be assigned to Rob Cameron. That's a total of  
7 five cases. I'll go through them if you want me  
8 to, but otherwise that's my motion.

9 BOARD MEMBER REITEN: I'll second.

10 CHAIR RUFFATTO: Any discussion?

11 BOARD MEMBER ALTEMUS: Mr. Chair, I  
12 guess I would ask. Does he have cases aside from  
13 the five you're assigning?

14 CHAIR RUFFATTO: There are no other  
15 cases. There are no other pending cases that  
16 we're needing to reassign.

17 BOARD MEMBER ALTEMUS: Does he have  
18 current cases, though, besides the five that you  
19 would reassign to him?

20 CHAIR RUFFATTO: Yes, he has the Ployhar  
21 case, which we just moved to assign that to  
22 Michelle Dietrich.

23 BOARD MEMBER ALTEMUS: Okay. So he'll  
24 have five.

25 CHAIR RUFFATTO: He'll have five. He

1 currently -- well, he had two. One of them  
2 closed, and then he has the Richards case.

3 BOARD MEMBER ALTEMUS: Okay. Thank you.

4 CHAIR RUFFATTO: Any more discussion?

5 (No response)

6 CHAIR RUFFATTO: A motion has been made  
7 and seconded that the remainder of the cases  
8 currently assigned to Mike Russell be assigned to  
9 Rob Cameron, and that's all of his cases except  
10 for the Ployhar case. All in favor, say aye.

11 (Response)

12 CHAIR RUFFATTO: Opposed.

13 (No response)

14 CHAIR RUFFATTO: Motion carries. Next  
15 we'll go to the 2023 BER calendar, and that was in  
16 our packet at Page 5. And so before we make a  
17 motion, let's see if there's any discussion or  
18 comments that folks want to talk about.

19 BOARD MEMBER ALTEMUS: Mr. Chair, this  
20 is my last meeting. Three of us fall off the  
21 Board after this meeting. So I guess I will  
22 recuse myself.

23 CHAIR RUFFATTO: Any more comments or  
24 discussion?

25 (No response)

1 CHAIR RUFFATTO: Do I have a motion to  
2 approve that calendar?

3 BOARD MEMBER SMITH: So moved.

4 CHAIR RUFFATTO: Do I have a second?

5 VICE CHAIR AGUIRRE: Second.

6 CHAIR RUFFATTO: A motion has been made  
7 and seconded to approve the calendar as presented  
8 in the meeting packet. Any more discussion?

9 (No response)

10 CHAIR RUFFATTO: If none, a motion has  
11 been made and seconded to approve the calendar.  
12 All in favor, say aye.

13 (Response)

14 CHAIR RUFFATTO: The motion passes. Now  
15 we're going to go to the briefing items, and I am  
16 going to go through those page by page and ask for  
17 any questions, comments, or updates, if anybody  
18 has any updates that they're aware of after the  
19 agenda came out. So on the first page, there's  
20 only one case. Is there any questions, comments,  
21 or updates?

22 MR. RUSSELL: Chair Ruffatto, my  
23 understanding is that there should be an order  
24 entered on the pending dispositive motion in short  
25 order. I know that Ms. Buzzas had hoped to get it

1 out sooner, but wasn't able to before she left  
2 ALS. So that should be coming down the pike  
3 pretty soon.

4 CHAIR RUFFATTO: It did not -- It is a  
5 dispositive motion that was made?

6 MR. RUSSELL: That's my understanding,  
7 yes.

8 CHAIR RUFFATTO: And so she didn't get  
9 it out, so that will pass to Michelle to finish  
10 up; is that right?

11 MR. RUSSELL: Right.

12 CHAIR RUFFATTO: Okay. Thank you.  
13 Going to -- Any more questions or comments on that  
14 first page?

15 (No response)

16 CHAIR RUFFATTO: Then we'll go to the  
17 second page. Questions or comments?

18 MR. RUSSELL: Chair Ruffatto, regarding  
19 the Item No. (a), cases in court, I believe we're  
20 still waiting for a decision on that, but my  
21 update for item letter (b) would be that as we  
22 discussed at the previous meeting, I filed a  
23 motion to dismiss the Board from that judicial  
24 review case, consistent with our position in the  
25 case directly above that in front of the Supreme



1 Court, and that is now fully briefed.

2 CHAIR RUFFATTO: Thank you. Was there  
3 opposition to your motion?

4 MR. RUSSELL: Yes.

5 CHAIR RUFFATTO: By whom?

6 MR. RUSSELL: By MEIC.

7 CHAIR RUFFATTO: Okay. Thank you. Did  
8 anybody else file a brief?

9 MR. RUSSELL: No. MEIC was the only  
10 party to oppose the motion.

11 CHAIR RUFFATTO: Okay. Thank you. Any  
12 more questions, comments, or updates on Page 2?

13 (No response)

14 CHAIR RUFFATTO: We'll go to Page 3.  
15 Questions, comments, or updates?

16 (No response)

17 CHAIR RUFFATTO: Page 4, any questions,  
18 comments, or updates?

19 (No response)

20 CHAIR RUFFATTO: Mike, do you have an  
21 update on Item (e)? I think that's where we're  
22 at.

23 MR. RUSSELL: That's Western Sugar?

24 CHAIR RUFFATTO: No, Rippling Woods.

25 MR. RUSSELL: Oh, Rippling Woods.

1 CHAIR RUFFATTO: (c) I should say. I'm  
2 sorry.

3 MR. RUSSELL: I know that Ms. Buzzas was  
4 working on a final decision in that case, so that  
5 will be transferred to Liz Lemman to finish that  
6 up. I know that's in progress.

7 CHAIR RUFFATTO: Thank you. Any more  
8 questions, comments?

9 (No response)

10 CHAIR RUFFATTO: Go to Page 5.

11 Questions, or comments, updates?

12 MR. RUSSELL: As far as the letter (e)  
13 goes in Western Sugar, a new stipulated scheduling  
14 order has been entered in that case.

15 CHAIR RUFFATTO: Okay. Thank you.  
16 Let's go to Page 6. Any questions, comments, or  
17 updates?

18 (No response)

19 CHAIR RUFFATTO: Let's go to Page 7.

20 Questions, comments, or updates?

21 VICE CHAIR AGUIRRE: Chairman Ruffatto.

22 CHAIR RUFFATTO: Yes.

23 VICE CHAIR AGUIRRE: On Page 6, for the  
24 Sidney Sugars, it says the Hearing Examiner  
25 granted a request for oral argument for January

1 13th. That's something that we are involved in?

2 CHAIR RUFFATTO: No.

3 VICE CHAIR AGUIRRE: Okay. Thank you.

4 CHAIR RUFFATTO: You bet. A more  
5 complete response is that will be oral arguments  
6 in front of the Hearing Examiner, who is ALS  
7 Attorney Aislinn Brown.

8 Page 7 again, any questions or comments?

9 MR. RUSSELL: Regarding item (i), Valley  
10 Gardens, the parties submitted a request to vacate  
11 the scheduling order, and set a status conference.  
12 That was submitted earlier this week after I left  
13 ALS, so I wasn't sure if I had authority to grant  
14 that, but I would recommend to Mr. Cameron that  
15 after he assumes jurisdiction of the case, to  
16 vacate the scheduling order, and hold a status  
17 conference to establish a new schedule.

18 CHAIR RUFFATTO: Thank you. Please  
19 follow up with Mr. Cameron on that one.

20 MR. RUSSELL: Sure.

21 CHAIR RUFFATTO: Thank you. Any more  
22 questions on Page 7, updates?

23 BOARD MEMBER SIMPSON: Mr. Chairman,  
24 yes, one, Mr. Chairman, please. With regards to  
25 Item (h), do we have any better idea what this

1 appeal is about? I see there was supposed to be  
2 some correspondence, but no further information.

3 CHAIR RUFFATTO: I was told that it's an  
4 appeal about applying oil to a road that could  
5 affect a stream, is what I heard about that. And  
6 the Hearing Examiner -- who by the way, he's not  
7 named on here, but it's Rob Cameron is the Hearing  
8 Examiner -- asked or required a more definite  
9 statement on the appeal; and Mr. Richards  
10 submitted a letter, which apparently is supposed  
11 to be that more definite statement. That's all I  
12 know about that, Board Member Simpson.

13 BOARD MEMBER SIMPSON: Thank you.

14 CHAIR RUFFATTO: So it is progressing.  
15 It's a case where the person that appealed is not  
16 very sophisticated on these matters, so it's kind  
17 of slow getting things to a conclusion, is what my  
18 understanding is.

19 BOARD MEMBER SIMPSON: Thank you.

20 CHAIR RUFFATTO: Going to Page 8. Any  
21 questions or comments?

22 MR. RUSSELL: On matter (k), the Ployhar  
23 case, there is a pending motion that was just  
24 recently fully briefed regarding the removal of  
25 the case from the contested case docket, so that

1 will be something that the new Hearing Examiner,  
2 Ms. Dietrich, will need to rule on before that  
3 matter proceeds.

4 CHAIR RUFFATTO: Very good. And you  
5 will communicate with her to make sure that it's  
6 handled expeditiously?

7 MR. RUSSELL: Yes.

8 CHAIR RUFFATTO: Okay. Thank you.  
9 Going to Page 9 now, the one case before the  
10 Action Items. Any updates?

11 (No response)

12 CHAIR RUFFATTO: Hearing none, we'll go  
13 to the Action Items.

14 The only item under Action Items is some  
15 carry-over business from the prior meeting on the  
16 selenium matter, the petitions by Teck Coal and  
17 the Board of County Commissioners of Lincoln  
18 County.

19 We have two things to deal with there.  
20 At the last meeting the Board voted to deny DEQ's  
21 motion to amend, and the Board voted to direct  
22 that a written decision be prepared and presented  
23 to the Board for this meeting. That was in our  
24 packet at Page 14. We need a motion to approve or  
25 reject that decision, and then we can have

1 discussion.

2 BOARD MEMBER ALTEMUS: I'll move to  
3 approve, Mr. Chair.

4 CHAIR RUFFATTO: Thank you, Julia. Do  
5 we have a second?

6 VICE CHAIR AGUIRRE: I'll second.

7 CHAIR RUFFATTO: Thank you, Stacy.  
8 Discussion?

9 (No response)

10 CHAIR RUFFATTO: Is there any  
11 discussion?

12 (No response)

13 CHAIR RUFFATTO: Hearing none, I will  
14 call the question. A motion has been made and  
15 seconded to approve the proposed written decision  
16 denying DEQ's motion to amend. All in favor, say  
17 aye.

18 (Response)

19 CHAIR RUFFATTO: Opposed.

20 (Response)

21 CHAIR RUFFATTO: Let's take a roll call  
22 vote, please.

23 MS. MOISEY-SCHERER: Chairman Ruffatto.

24 CHAIR RUFFATTO: Aye.

25 MS. MOISEY-SCHERER: Vice Chair Aguirre.

1 VICE CHAIR AGUIRRE: Aye.

2 MS. MOISEY-SCHERER: Board Member

3 Altemus.

4 BOARD MEMBER ALTEMUS: Aye.

5 MS. MOISEY-SCHERER: Board Member

6 Lehnherr.

7 BOARD MEMBER LEHNHERR: Nay.

8 MS. MOISEY-SCHERER: Board Member

9 Reiten.

10 BOARD MEMBER REITEN: Nay.

11 MS. MOISEY-SCHERER: Board Member

12 Simpson.

13 BOARD MEMBER SIMPSON: Aye.

14 MS. MOISEY-SCHERER: Board Member Smith.

15 BOARD MEMBER SMITH: Aye.

16 CHAIR RUFFATTO: Thank you. The motion  
17 passes.

18 The second carry-over item, at the last  
19 meeting the Board voted to grant the joint motion  
20 to submit a letter to EPA with the decision of the  
21 Board, and the Board voted to request proposed  
22 letters from the petitioners.

23 Those letters were received. I have  
24 worked -- I have revised those proposed letters  
25 primarily to shorten them, and they appear at Page

1 20 of our packet materials. So we need a motion  
2 to accept or reject the draft letter to EPA that  
3 appears at Page 20 of our meeting materials.

4 VICE CHAIR AGUIRRE: Mr. Chairman, I  
5 make a motion to accept the draft letters as  
6 presented for submittal to EPA.

7 BOARD MEMBER ALTEMUS: I'll second.

8 CHAIR RUFFATTO: A motion has been made  
9 and seconded to accept the draft letter at Page 20  
10 to send to the EPA. Discussion.

11 BOARD MEMBER SIMPSON: Mr. Chairman, I  
12 have a suggestion for a minor revision to the  
13 language, on Page 2 of the letter, first paragraph  
14 under "Background on the lake water column  
15 standard."

16 About the middle of that paragraph it  
17 says, "In both the initial publication and  
18 response to comments the Board misinformed the  
19 public that the lake water column standard," etc.

20 I would like to strike "misinformed the  
21 public," and replace it with "asserted;" and then  
22 further on in that sentence after "water column  
23 standard" insert "using EPA approved methods, and  
24 hence was not more stringent than the Federal  
25 guideline." I think it's a more accurate



1 description of the action that was taken by the  
2 Board at that time.

3 CHAIR RUFFATTO: Dave, help me out here.  
4 What page are you on?

5 BOARD MEMBER SIMPSON: I'm on Page 2 of  
6 the letter, Page 21 of the materials, the first  
7 paragraph after "Background on the lake water  
8 column standard."

9 CHAIR RUFFATTO: Got it.

10 BOARD MEMBER SIMPSON: And the sentence  
11 starts at the end of Line 4, "In both the initial  
12 publication and in response to comments, the Board  
13 misinformed the public," and I would like to  
14 strike "misinformed the public," and replace that  
15 with the word "asserted."

16 And then after, continuing on with the  
17 sentence, "that the lake water column standard,"  
18 and then insert after "standard," "using EPA  
19 approved methods, and hence was not more  
20 stringent," etc.

21 CHAIR RUFFATTO: I'm trying to recall  
22 the best parliamentary procedure. Would you make  
23 that as an amendment to the motion? I think that  
24 would be the appropriate thing to do, Dave.

25 BOARD MEMBER SIMPSON: Yes, Mr.

1 Chairman. I would make an amendment to the motion  
2 to revise that sentence as discussed.

3 CHAIR RUFFATTO: Is there a second?

4 VICE CHAIR AGUIRRE: I'll second.

5 CHAIR RUFFATTO: A motion has been made  
6 and seconded to amend the original motion as  
7 stated. Discussion.

8 BOARD MEMBER LEHNHERR: Chairman  
9 Ruffatto, can we have that revision restated one  
10 more time, please?

11 CHAIR RUFFATTO: I will read the  
12 sentence the way that the amendment would change  
13 it. It would now read, "In both the initial  
14 publication and in response to comments, the Board  
15 asserted --" I think you'd have to put --  
16 "asserted to the public that the lake water  
17 standard was not set more stringent than the  
18 federal guideline, and that the stringency statute  
19 therefore did not apply."

20 And then in the next sentence, "The lake  
21 water standard using the EPA approved method --"  
22 no.

23 BOARD MEMBER SIMPSON: Could I --

24 CHAIR RUFFATTO: Yes, you do it, Dave.

25 BOARD MEMBER SIMPSON: Would you like me

1 to read it, please? As revised the sentence would  
2 read, "In both the initial publication and in  
3 response to comments, the Board asserted that the  
4 lake water column standard using EPA approved  
5 methods and hence --" or excuse me -- "used EPA  
6 approved methods, and hence was not set more  
7 stringent than the federal guideline, and that the  
8 stringency statute therefore did not apply."

9 CHAIR RUFFATTO: Discussion.

10 (No response)

11 CHAIR RUFFATTO: I am opposed to this  
12 amendment, and the reason I'm opposed is because a  
13 critical factor in our decision was that the Board  
14 did misinform the public because the appropriate  
15 guidance was the 1.5 standard, so I think it's  
16 important to call out that there was a misinformed  
17 public because that's part of what made the  
18 rulemaking -- that's one of several factors that  
19 made the rulemaking invalid.

20 When you misinform the public in advance  
21 of the rulemaking, then they cannot effectively  
22 participate because they don't have accurate  
23 information. So I'm opposed to the motion to  
24 amend. Any more discussion?

25 BOARD MEMBER SIMPSON: Mr. Chairman, I

1 guess I would just ask the question for my own  
2 enlightenment. If I understand correctly, you  
3 feel that the way it is worded is important to the  
4 decision that was made.

5 CHAIR RUFFATTO: It's important for two  
6 reasons. The misinformation is a critical factor  
7 in the -- one of many that caused the rule to be  
8 invalid, because what the statute says is that the  
9 Board at that time was supposed to tell the public  
10 whether or not the proposed standard was more  
11 stringent than the comparable federal guideline,  
12 and we concluded that the comparable federal  
13 guideline was 1.5 and not that methodology that  
14 DEQ argued was the guideline.

15 So the accurate statement is that it was  
16 a misinformation to the public, and I think that's  
17 valuable for two reasons: One, that's part of our  
18 basis for decision, and if you have read the  
19 decision that we just approved, that is made clear  
20 in that decision; and two, I think it's important  
21 to make that point to EPA so it is clear to EPA  
22 that that occurred.

23 BOARD MEMBER SIMPSON: Given that  
24 explanation, Mr. Chairman, I request to withdraw  
25 my motion to amend.

1 CHAIR RUFFATTO: Will the second  
2 withdraw? Yes, Stacy, go ahead.

3 VICE CHAIR AGUIRRE: The way that Board  
4 Member Simpson revised it I don't feel undoes what  
5 you were trying to accomplish. I think the word  
6 "misinformed" is sort of willful, which I don't  
7 believe is what happened, and that's why I  
8 seconded the change using the word "asserted,"  
9 because that really is what the Board -- it sounds  
10 like that is -- I wasn't on the Board -- but it  
11 sounds like that's what the Board, exactly what  
12 the Board did. It wasn't an intentional  
13 misinformation, but an assertion maybe based on  
14 not making a fact clear.

15 But I won't -- if discussion on that  
16 seems that it really needs to say "misinformation"  
17 or "misinformed," I will pull my second.

18 CHAIR RUFFATTO: Before you answer that,  
19 let me tell you that it's my view that the word  
20 "misinformed" does not imply one way or another  
21 whether it was intentional. It was just  
22 misinformation. Whether it was intentional or not  
23 is a different question, but it did misinform the  
24 public because they were told one thing and the  
25 fact of the matter was different. So that's my

1 response to that.

2 So with that, Board Member Simpson has  
3 withdrawn his motion. Are you prepared to  
4 withdraw your second?

5 VICE CHAIR AGUIRRE: I will withdraw my  
6 second.

7 CHAIR RUFFATTO: Thank you both. That  
8 was a good discussion, and valuable. Is there any  
9 more discussion on the original motion to approve  
10 the letter?

11 (No response)

12 CHAIR RUFFATTO: Hearing none, a motion  
13 has been made and seconded to approve the draft  
14 letter to EPA that appears at Page 20 of our  
15 materials. All in favor, say aye.

16 Let's not go through that. Let's have a  
17 roll call vote.

18 MS. MOISEY-SCHERER: Chairman Ruffatto.

19 CHAIR RUFFATTO: Aye.

20 MS. MOISEY-SCHERER: Vice Chair Aguirre.

21 VICE CHAIR AGUIRRE: Aye.

22 MS. MOISEY-SCHERER: Board Member

23 Altemus.

24 BOARD MEMBER ALTEMUS: Aye.

25 MS. MOISEY-SCHERER: Board Member

1 Lehnherr.

2 BOARD MEMBER LEHNHERR: Nay.

3 MS. MOISEY-SCHERER: Board Member

4 Reiten.

5 BOARD MEMBER REITEN: Nay.

6 CHAIR RUFFATTO: Board Member Simpson.

7 BOARD MEMBER SIMPSON: Aye.

8 MS. MOISEY-SCHERER: Board Member Smith.

9 BOARD MEMBER SMITH: Aye.

10 CHAIR RUFFATTO: The motion passes.

11 Now we're going to move on to the new  
12 contested case. It's the matter of the renewal of  
13 MPDES permit No. Montana 264 issued to CHS, Inc.  
14 for discharges from the Laurel Refinery, and it's  
15 BER Case No. 2022-07. And we need to decide if  
16 we're going to keep the case as a board, or we're  
17 going to assign it in part or in total to a  
18 Hearing Examiner. Do I have a motion?

19 BOARD MEMBER SIMPSON: Mr. Chairman,  
20 I'll move that the case be assigned in total to a  
21 Hearing Examiner.

22 CHAIR RUFFATTO: Thank you, Board Member  
23 Simpson. Is there a second?

24 BOARD MEMBER LEHNHERR: Second.

25 CHAIR RUFFATTO: Thank you, Dr.

1 Lehnherr, for the second. Any discussion?

2 (No response)

3 CHAIR RUFFATTO: Hearing none, a motion  
4 has been made and seconded that the Laurel  
5 Refinery case be assigned in total to a Hearing  
6 Examiner. All in favor, say aye.

7 (Response)

8 CHAIR RUFFATTO: Opposed.

9 (No response)

10 CHAIR RUFFATTO: The motion carries.

11 Then I'm going to move that we assign Rob Cameron  
12 to this case. Do I have a second?

13 BOARD MEMBER SMITH: I'll second.

14 CHAIR RUFFATTO: Discussion.

15 (No response)

16 CHAIR RUFFATTO: Hearing none, a motion  
17 has been made and seconded that Rob Cameron be  
18 assigned as Hearing Examiner to the Laurel  
19 Refinery case. All in favor, say aye.

20 (Response)

21 CHAIR RUFFATTO: Opposed.

22 (No response)

23 CHAIR RUFFATTO: Hearing none, the  
24 motion carries. Board Counsel, do you have any  
25 updates?



1           MR. RUSSELL: I don't think I have any  
2 update other than those I've already provided,  
3 unless there's a specific question or request.

4           CHAIR RUFFATTO: Questions from Board  
5 members to Board Counsel?

6           (No response)

7           CHAIR RUFFATTO: Hearing none, we will  
8 move on to public comment. Is there any public  
9 comment?

10          (No response)

11          CHAIR RUFFATTO: Hearing none, I have a  
12 few comments. First, I want to thank those of you  
13 who would be rolling off the Board for your  
14 service and your hard work. It's been an honor  
15 working with you.

16                 But then I also want to tell you that I  
17 am resigning from the Board. This will be my last  
18 meeting, and so I want to thank everyone for the  
19 opportunity to work with you, and it truly has  
20 been an honor to work with you in serving Montana.

21                 And I also want to ask forgiveness for  
22 those of you who I may have been unkind to at any  
23 point. I know I get worked up sometimes, and I  
24 ask your forgiveness. It's never appropriate to  
25 be unkind. So those are my comments. Anything

1 else that anybody wants to say?

2 BOARD MEMBER ALTEMUS: Mr. Chair, I just  
3 want to say thank you for your leadership. It's  
4 been an honor to work with everybody, and I'm  
5 going to miss you all. So you guys do great work,  
6 and you do great work for the State of Montana's  
7 constituents. So keep it up. That's all I can  
8 say. Thank you.

9 CHAIR RUFFATTO: Thank you, Julia.

10 BOARD MEMBER LEHNHERR: (Indicating)

11 CHAIR RUFFATTO: Thank you, David.

12 Anything else?

13 (No response)

14 CHAIR RUFFATTO: Then I move for  
15 adjournment. Is there a second?

16 BOARD MEMBER ALTEMUS: I'll second. My  
17 last one.

18 CHAIR RUFFATTO: Thanks, Julia. All in  
19 favor, say aye.

20 (Response)

21 CHAIR RUFFATTO: Thank you all.

22 (The proceedings were concluded

23 at 9:54 a.m. )

24 \* \* \* \* \*

25

C E R T I F I C A T E

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

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

That the proceedings were taken before me at  
the time and place herein named; that the  
proceedings were reported by me in shorthand and  
transcribed using computer-aided transcription,  
and that the foregoing - 34 - 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 18th day of  
December, 2022.

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

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