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BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

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BOARD MEETING )  
June 9, 2023 )

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TRANSCRIPT OF PROCEEDINGS (VIA ZOOM)

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June 9, 2023  
9:00 a.m.

BEFORE CHAIRMAN DAVID SIMPSON,  
BOARD MEMBERS JON REITEN, JOSEPH SMITH,  
JULIA ALTEMUS, STACY AGUIRRE, JEN RANKOSKY,  
and LEE BRUNER

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1           WHEREUPON, the following proceedings were  
2 had:

3                           \* \* \* \* \*

4           CHAIR SIMPSON: Good morning, everyone.  
5 Shall we bring the meeting to order. Sandy, would  
6 you call the roll, please.

7           MS. MOISEY-SCHERER: Chair Simpson.

8           CHAIR SIMPSON: Here.

9           MS. MOISEY-SCHERER: Board Member  
10 Aguirre.

11           BOARD MEMBER AGUIRRE: Here.

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

14           BOARD MEMBER ALTEMUS: Present. Good  
15 morning.

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

18           BOARD MEMBER BRUNER: Here.

19           MS. MOISEY-SCHERER: Board Member  
20 Rankosky. She's here. I just asked her to  
21 unmute.

22           BOARD MEMBER RANKOSKY: I'm sorry. I  
23 was on a call. I'm here. Can you hear me?

24           MS. MOISEY-SCHERER: We can. Board  
25 Member Reiten.

1 BOARD MEMBER REITEN: Here.

2 MS. MOISEY-SCHERER: Board Member Smith.

3 BOARD MEMBER SMITH: Here.

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

5 CHAIR SIMPSON: Thank you. Shall we  
6 identify others who are attending the meeting,  
7 please.

8 MS. MOISEY-SCHERER: I'm Sandy  
9 Moisey-Scherer, Board secretary. Rebecca Harbage,  
10 DEQ; Laurie Crutcher, Court Reporter; Angie  
11 Colamaria, DEQ; Terisa Oomens, Agency Legal  
12 Services; Colson Williams, DEQ; Kirsten Bowers,  
13 DEQ; Sarah Bordelon; Nick Whitaker, DEQ; Andy  
14 Janes; Libby Langston; Mary Cochenhour; Ray Stout;  
15 Terry Martin-Denning; Vicki Marquis; Whitney  
16 Bausch, DEQ.

17 \* \* \* \* \*

18 (Catherine Armstrong, Jeremiah Langston, Ruby  
19 Hopkins, Bailey Tasker, Dan Walsh, Aislinn Brown,  
20 Elena Hagen, Alan Zackheim, Diane Conradi, Jane  
21 Grachowski, Derf Johnson, John, Shelly Mitchell,  
22 also attending via Zoom)

23 \* \* \* \* \*

24 CHAIR SIMPSON: Thank you. The first  
25 order of business is to review and approve the

1 minutes of the April Board meeting. Are there any  
2 comments or corrections to the minutes?

3 (No response)

4 CHAIR SIMPSON: Hearing none, do we have  
5 a motion?

6 BOARD MEMBER AGUIRRE: I'll make a  
7 motion to approve the meeting minutes from the  
8 April 7th, 2023 meeting.

9 BOARD MEMBER REITEN: I'll second.

10 CHAIR SIMPSON: It's been moved and  
11 seconded to approve the minutes from the April  
12 Board meeting. All in favor say aye.

13 (Response)

14 CHAIR SIMPSON: Opposed, nay.

15 (No response)

16 CHAIR SIMPSON: Motion passes. Thank  
17 you.

18 Item B is a presentation by DEQ  
19 regarding the relationship, the administrative  
20 attachment between DEQ and BER. This is a matter  
21 that came up. It's part of the orientation  
22 package that was reviewed with new members here a  
23 couple of weeks ago, but we thought it would be a  
24 good idea just to ask the Department to take a few  
25 minutes and explain how this administrative

1 attachment works. Who will be making that  
2 presentation?

3 MS. COLAMARIA: Mr. Chair, this is Angie  
4 Colamaria, the Chief Legal Counsel at DEQ. Can  
5 you all hear me?

6 I was not obviously part of that  
7 discussion, so I can, I'll talk for a few minutes  
8 and just generally explain the relationship, but  
9 then if you have questions, obviously I can try to  
10 answer those if it doesn't get to what you're  
11 wanting me to cover.

12 So as you mentioned, the Board is  
13 attached to the Department of Environmental  
14 Quality for administrative purposes only. There  
15 are a lot of boards across the State that are  
16 attached to agencies for administrative purposes  
17 only.

18 This Board is designated as a  
19 quasi-judicial board. What that means is that BER  
20 still exercises its authorities and it functions  
21 independently of the DEQ. As far as day-to-day  
22 operations, we treat it as a different entity,  
23 almost like we would treat a court, and we have no  
24 approval authority or control over the Board  
25 subsequently in what it does.

1           However, because it is administratively  
2 attached to DEQ, the BER does not have its own  
3 budget, but the BER budget is included in DEQ's  
4 budget each year, so we, as part of our annual  
5 budget process, we estimate a BER budget based on  
6 costs from previous years, and we include that in  
7 our annual agency budget proposal where we go  
8 before the Legislature. That's part of the budget  
9 that gets approved.

10           So we do supervise and control the  
11 budgeting part, the recordkeeping, and reporting,  
12 and some of the administrative and clerical  
13 functions for the BER.

14           So for example, we provide staff for the  
15 Board in the form of the BER secretary. So  
16 Sandy's position is actually a DEQ position with  
17 DEQ duties, but then part of her regular duties is  
18 to act as the Board secretary. So she has to wear  
19 two hats, and keep her role separate when  
20 conducting her various BER duties versus her DEQ  
21 duties, as if she's working for two separate  
22 organizations.

23           So for example, we maintain ex parte  
24 restrictions. When we're discussing any case  
25 specific matter, we don't involve Sandy in those

1 discussions and vice versa. So we try to keep  
2 those roles separate, and Sandy is an angel for  
3 doing a really good job of keeping those lines in  
4 intact.

5 In terms of additional other staff, like  
6 the BER attorneys, the paralegals, the Hearing  
7 Examiners, the BER contracts with ALS or an  
8 outside law firm, as you know, to provide those  
9 services, but the invoices for those external  
10 services get sent to DEQ, and then we pay them out  
11 of our budget.

12 That's pretty simple. It's kind of a  
13 weird relationship, but that's been the general  
14 gist of how it works. Any questions?

15 CHAIR SIMPSON: Any questions or  
16 comments from the Board?

17 (No response)

18 CHAIR SIMPSON: Thank you very much,  
19 Angie. I believe it's pretty straight forward.  
20 Did I hear a comment?

21 BOARD MEMBER AGUIRRE: I just want to  
22 say that I feel like it is weird to use the word  
23 weird, so I just kind of wanted to go on the  
24 record about the use of that weird relationship  
25 characterization.

1 MS. COLAMARIA: Understood. I guess I  
2 mean it's not like a typical agency budget where  
3 you guys have your own budget line item that you  
4 go to the Legislature, and defend that budget, and  
5 get budget approval. You have to go through  
6 another agency. But other than that, it's pretty  
7 straight forward.

8 CHAIR SIMPSON: Any other comments or  
9 questions?

10 (No response)

11 CHAIR SIMPSON: Once again, thank you  
12 very much, Angie. I think -- Well, I'll just back  
13 up a second.

14 The attachment with DEQ I think relieves  
15 the Board of having to deal itself with  
16 administrative matters such as hiring staff,  
17 management of budget, etc. That's taken care of  
18 by the Department, although the Board does have  
19 some contact with the Department where the budget  
20 is concerned.

21 Just for information, I will be meeting  
22 with James Fehr here sometime, well, next week to  
23 talk about Board budget. Apparently there are  
24 some concerns about the budget with all of the  
25 cases that we have going on, and the litigation



1 that's in progress. So we will be involved in  
2 that to some degree, but unless there are further  
3 questions, why don't we move on.

4 (No response)

5 CHAIR SIMPSON: The next item, Item C,  
6 one item that's not on the agenda, but I wanted to  
7 mention it. I neglected to mention at the last  
8 meeting that shortly after I received notification  
9 I had been appointed Chair, I contacted Vice Chair  
10 Aguirre, and asked her to continue as Vice Chair,  
11 which she agreed to do. So I wanted to be sure  
12 that was included in the record.

13 The next item, nomination of  
14 subcommittee for Department of Environmental  
15 Quality versus the Board of Environmental Review.

16 I've been turning over in my mind for  
17 some -- well, ever since this litigation surfaced,  
18 what would be the best approach to managing that.  
19 And after thinking it over pretty carefully for a  
20 couple of weeks, my conclusion was that it makes  
21 sense to have an ad hoc committee to manage this.

22 Now, we are restricted by public meeting  
23 laws to having -- any time we have a quorum  
24 together, it is technically a public meeting. So  
25 where I've decided to go with this is to appoint

1 an ad hoc committee of three to be the primary  
2 contact for this litigation. That would consist  
3 of Vice Chair Aguirre, and Board Member Bruner. I  
4 would --

5 So we'll be handling the day-to-day  
6 contact with Counsel and strategic issues as it  
7 relates to this litigation. However, there's no  
8 intention to exclude the rest of the Board, and  
9 it's just that there's going to be, at some point  
10 there's going to be quite a bit of -- I was going  
11 to say paper, but it's not really paper in this  
12 modern world -- more communication on this  
13 litigation.

14 So if you would like to be kept in the  
15 loop as far as any documentation that comes out of  
16 this case -- legal briefs, filings, etc. -- please  
17 contact Counsel, and be sure that you're included  
18 in the mailing.

19 Otherwise what we'll do is as this thing  
20 runs its course, it will be a regular item on our  
21 agenda to have an executive session to review the  
22 status of the case and any pending issues.

23 I guess I would ask our Counsel whether  
24 we need a vote on this. I presume that we don't,  
25 but it's not something we've discussed. Terisa.

1 MS. OOMENS: If you're going to create a  
2 subcommittee, I would suggest that you make a  
3 motion and vote on it.

4 CHAIR SIMPSON: Okay. Well, I will make  
5 that motion that we establish an ad hoc committee  
6 to manage the DEQ versus BER litigation to handle  
7 the day-to-day, just the day-to-day communications  
8 that will be required. Is there a second?

9 BOARD MEMBER SMITH: I'll second.

10 CHAIR SIMPSON: It's been made and  
11 seconded, a motion made and seconded. Any  
12 discussion?

13 BOARD MEMBER SMITH: I assume there's --  
14 do the other members of that group or committee  
15 accept the nominations, or do we need to do that?

16 CHAIR SIMPSON: Yes. I've visited with  
17 both Lee and Stacy, and we're all on board.

18 BOARD MEMBER BRUNER: (Indicating)

19 BOARD MEMBER AGUIRRE: (Indicating)

20 BOARD MEMBER SMITH: Perfect.

21 BOARD MEMBER ALTEMUS: Chair Simpson, I  
22 guess I have a question. I think on the agenda  
23 farther down, MEIC has also filed a lawsuit, so  
24 I'm assuming it is not just DEQ that you will be  
25 -- the subcommittee will be reviewing both?

1 CHAIR SIMPSON: That's correct.

2 BOARD MEMBER ALTEMUS: Okay. So maybe  
3 that needs to be stated.

4 CHAIR SIMPSON: Perhaps. Would you care  
5 to amend the motion?

6 BOARD MEMBER ALTEMUS: I guess I would  
7 move that a subcommittee be formed in order to  
8 look at the day-to-day communications on the  
9 lawsuits filed by DEQ and MEIC against the Board  
10 of Environmental Review, if that makes sense.

11 BOARD MEMBER SMITH: Makes sense to me.  
12 I'll second that.

13 CHAIR SIMPSON: Second. Okay. We have  
14 a second for the amended motion. Any further  
15 discussion? Thank you very much, Julia.

16 (No response)

17 CHAIR SIMPSON: A motion has been made  
18 and seconded. All in favor, say aye.

19 (Response)

20 CHAIR SIMPSON: Opposed.

21 (No response)

22 CHAIR SIMPSON: Motion carries. Let's  
23 move on to the briefing items, and what I'd ask  
24 here is that Counsel update us with any material  
25 developments on these cases as we go through them.

1           Just as a matter of information, I  
2   expect at the next meeting we'll take a closer  
3   look at these. Right now, in connection with the  
4   budget discussion mentioned earlier, I've been  
5   going through these, and just trying to get a  
6   handle on where they stand, and how much effort is  
7   going into them in terms of billable hours from  
8   Counsel, hoping to get a little better  
9   understanding of just what the level of effort is  
10   that's going into these cases. Some of them have  
11   been hanging on for quite awhile. I think we have  
12   one that goes back to 2015 involving Westmoreland  
13   Resources. I believe it's an MPDES issue.

14           But we'll be -- one of the things that I  
15   anticipate discussing at the next meeting is how  
16   we might move some of these things along to keep  
17   them from just hanging in limbo for years, but  
18   that discussion I think is a little premature now,  
19   but as you go through the agenda for the next  
20   meeting, it's something we should be thinking  
21   about.

22           Terisa, do you have any -- Rather than  
23   go through these point-by-point, are there any  
24   developments on these cases that are worth  
25   discussing at this point?

1 MS. OOMENS: Not at this point. The  
2 only thing I would say is as far as A(1)(a), we  
3 talked about it at the last meeting, they did hear  
4 oral argument on April 3rd, but I think it has  
5 been taking six months, eight months, to get a  
6 decision. So just as a heads-up to everyone, this  
7 one will probably be hanging out for awhile.

8 Other than that, I think they're all  
9 moving forward slowly, unless anyone has a  
10 specific question.

11 CHAIR SIMPSON: I'm just leafing through  
12 here. I made a bunch of notes on my agenda, but I  
13 don't see any --

14 BOARD MEMBER BRUNER: I have a question.  
15 Item 2(a) in the matter of Westmoreland Resources.  
16 The last line there says, "On 31 May '23, the  
17 Hearings Examiner received a notice of change in  
18 Hearings Examiner." Who to whom?

19 MS. OOMENS: So I am now the Hearing  
20 Examiner.

21 BOARD MEMBER BRUNER: Okay. So that was  
22 -- you issued an order saying that the Hearing  
23 Examiner had been changed to you?

24 MS. OOMENS: Correct. The previous  
25 Hearing Examiner has left ALSB, and so we needed a

1 new one.

2 CHAIR SIMPSON: Thank you, Terisa.

3 MS. OOMENS: You're welcome.

4 BOARD MEMBER BRUNER: One more. On Item  
5 2(b), is Patrick Riskin still the Hearings  
6 Examiner on that case? No. I'm sorry. Rob  
7 Cameron came on.

8 MS. OOMENS: Yes, I believe that that's  
9 Rob Cameron's case.

10 BOARD MEMBER BRUNER: Thank you.

11 CHAIR SIMPSON: Yes. Rob Cameron was  
12 appointed December 9th, 2022.

13 BOARD MEMBER BRUNER: That's all I've  
14 got. Thank you.

15 CHAIR SIMPSON: I have nothing further  
16 on any of the briefing items, I don't believe.

17 BOARD MEMBER AGUIRRE: Chairman Simpson,  
18 on Item 2(d), it says that a hearing in this  
19 matter is scheduled for June 2023. Has that been  
20 scheduled or is there an update on that item?

21 MS. OOMENS: It has been scheduled for  
22 the 19th through the 21st of June.

23 BOARD MEMBER AGUIRRE: Thank you.

24 MS. OOMENS: You're welcome.

25 CHAIR SIMPSON: Any further discussion

1 of the briefing items?

2 (No response)

3 CHAIR SIMPSON: Let's move on to action  
4 items Roman Numeral III.

5 The first has to do with the appeal and  
6 request for hearing by Westmoreland Rosebud Mining  
7 regarding issuance of MPDES Permit No. MT0032042,  
8 Colstrip, Montana.

9 This is a case that we discussed at the  
10 last meeting with respect to the discharges,  
11 salinity limitations on discharges into ephemeral  
12 drainages, and we approved a settlement agreement  
13 which involved establishing the natural salinity  
14 level in these drainages as the standard  
15 ultimately.

16 So the parties were going to investigate  
17 the data that's available through past monitoring,  
18 and develop any new data necessary in order to  
19 establish these standards.

20 And we had asked that a status report be  
21 given at each Board meeting. It doesn't need to  
22 be all that detailed, but we would like to keep  
23 track of the progress on this to be sure that  
24 there's an end point somewhere down the line.

25 So is there a representative from --



1 representatives from Westmoreland Rosebud Mining  
2 and the Department that could bring us up to date  
3 on the status of this process. Ms. Bowers.

4 MS. BOWERS: Good morning, Chair  
5 Simpson, members of the Board. I'm the attorney  
6 representing DEQ on this matter, and I believe  
7 Sarah Bordelon is on the call today.

8 And we actually jointly provided a  
9 written update, which is at the end of your item,  
10 that we are currently working on finalizing the  
11 quality assurance project plan for this project,  
12 for the nonanthropogenic standard assessment. And  
13 we'll be gathering existing data, and then  
14 deciding if we have some data gaps and need more  
15 data.

16 But I don't have anything in addition to  
17 what is in your briefing item unless you have  
18 questions.

19 CHAIR SIMPSON: So if I understand this  
20 correctly, you're still developing, working on a  
21 process that will be involved to -- that will be  
22 utilized to develop the data, the data in  
23 question; is that an accurate statement?

24 MS. BOWERS: Yes, Chair Simpson, members  
25 of the Board, that's correct.

1 CHAIR SIMPSON: Okay. I've got nothing  
2 further on that. Anything else from the Board?

3 BOARD MEMBER BRUNER: This is Lee. I  
4 missed that in our materials. Where is it  
5 located? Can anybody point me to it?

6 MS. BOWERS: Board Member Bruner,  
7 members of the Board. It's on your action items  
8 III(A) at the bottom. There's an update that  
9 starts, "On May 31st, 2023 the parties provided an  
10 update," and then it summarizes the update. The  
11 attorneys for Westmoreland and DEQ jointly worked  
12 on that language, and provided it to the Board  
13 secretary.

14 BOARD MEMBER BRUNER: Okay. So was that  
15 language included -- I probably misunderstood. I  
16 thought someone said that update was provided in  
17 the materials that we were provided with the  
18 meeting, and I didn't see it there, but that  
19 probably means I missed it.

20 MS. BOWERS: Board Member Bruner,  
21 members of the Board. I don't think there was  
22 anything provided in the Board materials. It's  
23 just in the agenda, just summarized at the end of  
24 that item.

25 BOARD MEMBER BRUNER: Thank you.

1 MS. BOWERS: You're welcome.

2 CHAIR SIMPSON: Further comments or  
3 questions for the Department?

4 (No response)

5 CHAIR SIMPSON: Hearing none, we'll move  
6 on.

7 \* \* \* \* \*

8 (Recessed at (9:27 a.m. and  
9 reconvened at 10:45 a.m.)

10 (In the matter of Oreo's Refining  
11 transcript bound separately)

12 \* \* \* \* \*

13 CHAIR SIMPSON: I'd like to defer Item  
14 (c), the action by the Montana Environmental  
15 Information Center, et al., to Item 7, I think. I  
16 guess maybe I ought to ask a question here.

17 Montana Environmental Information  
18 Center, Clark Fork Coalition, MEIC has filed a  
19 petition for judicial review and declaratory  
20 judgment. This is essentially a duplicate of the  
21 DEQ versus BER case. I don't know that there's  
22 much we can say about it except that it's there.

23 I guess I'd ask our attorney Ms. Oomens  
24 if there is some action that the Board needs to  
25 take.

1 MS. OOMENS: The Board needs to appoint  
2 an attorney to represent it. Again, based on what  
3 you've done previously, that would be appointing  
4 Agency Legal Services.

5 CHAIR SIMPSON: I guess we're getting  
6 into the issue of legal representation, and I  
7 don't know if the full Board is aware, but Ms.  
8 Oomens informed us that she had a conflict, and so  
9 she is no longer representing the Board with  
10 respect to this litigation, and it has been  
11 reassigned to Alan Zackheim, who we'll be talking  
12 with here just shortly.

13 MS. OOMENS: Which is to me a great  
14 example of why you would appoint Agency Legal  
15 Services, so that when an attorney, or if an  
16 attorney happens to be conflicted out of a case,  
17 we don't have to come back to the Board to have  
18 the Board reassign it to a different attorney.

19 CHAIR SIMPSON: Well, I'm presuming this  
20 would be assigned to Mr. Zackheim.

21 MS. OOMENS: Correct.

22 BOARD MEMBER ALTEMUS: Chair Simpson, I  
23 have a question, please.

24 CHAIR SIMPSON: Yes.

25 BOARD MEMBER ALTEMUS: So in the past,

1 the last one, we had this discussion in closed  
2 meeting. Can we -- I don't feel comfortable  
3 talking about our legal representation now because  
4 there may be other --

5 CHAIR SIMPSON: That's what I'm turning  
6 over in my mind here before going any further, and  
7 that's why I wanted to put it off. I guess we can  
8 take that step and assign it, but just as another  
9 matter, we may want to rethink our assignment of  
10 Counsel in this case altogether. Let me put it  
11 that way.

12 So with that in mind, I suppose maybe  
13 what we ought to do is assign this to Mr. Zackheim  
14 rather than ALS at this time, and then go from  
15 there. I would make that motion, that we as the  
16 Board assign this case to our current Counsel on  
17 the DEQ versus BER case, Alan Zackheim.

18 BOARD MEMBER BRUNER: Second.

19 CHAIR SIMPSON: It's been moved and  
20 seconded. Discussion?

21 (No response)

22 CHAIR SIMPSON: All in favor, say aye.

23 (Response)

24 CHAIR SIMPSON: Opposed.

25 (No response)

1 CHAIR SIMPSON: Motion carries.

2 New contested cases. Item 4. The first  
3 case, the matter of a hearing request for  
4 exploration license 00680, Butte Highland site.  
5 And then we can probably handle all these at once.

6 We have Item (b), the matter of formal  
7 appeal challenging the Department of Environmental  
8 Quality's approval of Riverside Contracting's  
9 opencut mining permit.

10 And then Item (c), the matter of appeal  
11 and request for hearing by Protect the Clearwater  
12 regarding issuance of opencut mining permit No.  
13 3473.

14 Again, I'd ask Counsel. Can we handle  
15 these together and assigning them to ALS?

16 MS. OOMENS: That's fine if you want to  
17 make one motion for all three of them. Sure.

18 CHAIR SIMPSON: Is there a motion?

19 BOARD MEMBER REITEN: Mr. Chairman, I  
20 would present a motion that we consider these,  
21 that we assign these to ALS, all of these.

22 CHAIR SIMPSON: Is there a second?

23 BOARD MEMBER ALTEMUS: I'll second it.

24 CHAIR SIMPSON: It's been moved and  
25 seconded that these three cases -- Butte Highland

1 site, approval of -- appeal of Riverside  
2 Contracting's opencut mining permit, and the  
3 matter of appeal and request for hearing regarding  
4 opencut mining permit No. 3473 be assigned to  
5 Agency Legal Services Hearing Examiner. All in  
6 favor, say aye.

7 (Response)

8 CHAIR SIMPSON: Opposed.

9 (No response)

10 CHAIR SIMPSON: Motion carries.

11 The next item is general public comment.  
12 Under this item, members of the public may comment  
13 on any public matter within the jurisdiction of  
14 the Board that is not otherwise on the agenda for  
15 the meeting. Individual contested case  
16 proceedings are not public matters for which the  
17 public may comment. Is there any public comment?

18 (No response)

19 CHAIR SIMPSON: Apparently there isn't.  
20 Moving on to the Board Chair update. I think we  
21 kind of got duplicated on a couple of items here  
22 on the agenda. I think what we had intended to  
23 cover here has already been covered with respect  
24 to the appointment of the Vice Chair and the ad  
25 hoc committee to manage the litigation with DEQ.

1           One other item I think I'd like to bring  
2 up there is we had decided here last year that we  
3 would attempt to have at least one meeting per  
4 year in person in Helena. Last year it was the  
5 October meeting.

6           It's been suggested that we schedule the  
7 August meeting in Helena in person. I would  
8 certainly support that. I guess what I would like  
9 to do is to hold off, though, until we see what  
10 the agenda looks like, because if it looks like it  
11 is just going to be a routine one hour meeting,  
12 maybe we don't want to have everybody driving to  
13 Helena for it. On the other hand, if we have an  
14 agenda that will require extended discussion, I  
15 would certainly be in favor of having that, trying  
16 to or scheduling that meeting in Helena. Any  
17 other thoughts on that?

18           BOARD MEMBER REITEN: Mr. Chairman, I  
19 totally agree with you on that. I think it would  
20 be good to have -- you know, if it's just a simple  
21 meeting, I don't think there's a reason for us to  
22 go to the expense of everyone driving to Helena.  
23 Thank you.

24           MS. MOISEY-SCHERER: Chair Simpson,  
25 Board Member Bruner has his hand up.



1 CHAIR SIMPSON: Lee.

2 BOARD MEMBER BRUNER: I note that we do  
3 have a number of members from the eastern part of  
4 the state, and Dave, and Jon from Billings.  
5 There's no requirement that we do this in Helena.  
6 We also could consider the option of having one in  
7 Billings, perhaps allowing folks from Billings who  
8 want to attend or observe the Board that  
9 opportunity.

10 One person in five in the state of  
11 Montana lives in Yellowstone County. So I'm not  
12 advocating that we change that. I just want to  
13 throw it out as a point for discussion that we  
14 don't have to -- the default doesn't have to be  
15 Helena.

16 CHAIR SIMPSON: Thank you, Lee.  
17 Interesting thought. Other boards do have  
18 meetings around the state. I have not known BER  
19 to do that. Perhaps they have in the past.

20 BOARD MEMBER AGUIRRE: DEQ has an office  
21 in Billings, so that's not unreasonable. I mean  
22 maybe it starts to make sense then that maybe a  
23 meeting is in Billings and a meeting is in Helena,  
24 and we actually get together more than once a year  
25 in person. Thought as well.

1           CHAIR SIMPSON: Well, does anybody on  
2 the Board object to just holding off on making a  
3 decision whether this will be an in-person or Zoom  
4 meeting? And ask the question. What kind of lead  
5 time would we need in order to plan for it?  
6 Because calendars do tend to get filled up.

7           BOARD MEMBER BRUNER: Can you explain --  
8 would two weeks ahead of the meeting be sufficient  
9 to make the call?

10          CHAIR SIMPSON: That's within the time  
11 frame where the Department pulls together all of  
12 the items that are going to go onto the agenda, so  
13 I think that would make sense.

14          BOARD MEMBER BRUNER: I would make a  
15 motion that we leave it in the Chairman's  
16 discretion whether the next meeting would be live  
17 or by Zoom, based on his review of the agenda, and  
18 as timely as possible to allow people to make  
19 travel arrangements.

20          CHAIR SIMPSON: I have a motion. Is  
21 there a second?

22          BOARD MEMBER REITEN: I'll second that.

23          CHAIR SIMPSON: It's been moved and  
24 seconded. Discussion.

25                 (No response)

1 CHAIR SIMPSON: Hearing none, all in  
2 favor, say aye.

3 (Response)

4 CHAIR SIMPSON: Opposed.

5 (No response)

6 CHAIR SIMPSON: We'll be sure and notify  
7 everyone at least two weeks before how we're going  
8 to handle the meeting in August.

9 That concludes our agenda exclusive of  
10 the executive session to discuss the DEQ versus  
11 BER and also MEIC versus BER, the two of which are  
12 tied together. Our agenda adjournment comes after  
13 the executive session. I think adjournment should  
14 come now, and then move to the executive session.  
15 Is that appropriate, Ms. Oomens?

16 MS. OOMENS: Yes. That's fine if you  
17 want to do it that way.

18 CHAIR SIMPSON: Is there a motion to  
19 adjourn our regular session?

20 BOARD MEMBER REITEN: Mr. Chairman, I  
21 move that we adjourn the regular session.

22 CHAIR SIMPSON: Is there a second?

23 BOARD MEMBER SMITH: I'll second.

24 CHAIR SIMPSON: It's been moved and  
25 seconded that we adjourn our regular meeting.

1 Discussion.

2 (No response)

3 CHAIR SIMPSON: All in favor, say aye.

4 (Response)

5 CHAIR SIMPSON: Thank you. We are  
6 adjourned.

7 (The proceedings were concluded  
8 at 10:59 a.m. )

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C E R T I F I C A T E

STATE OF MONTANA )

: SS.

COUNTY OF LEWIS & CLARK )

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

That the proceedings were taken before me at  
the time and place herein named; that the  
proceedings were reported by me in shorthand and  
transcribed using computer-aided transcription,  
and that the foregoing -28 - 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 22nd day of  
June 2023.

/s/ Laurie Crutcher

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

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