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BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

BOARD MEETING)
December 20, 2024)

TRANSCRIPT OF PROCEEDINGS (VIA ZOOM)

December 20, 2024

9:00 a.m.

BEFORE CHAIRMAN DAVID SIMPSON,
BOARD MEMBERS JON REITEN, JOSEPH SMITH,
JULIA ALTEMUS, STACY AGUIRRE, JENNIFER RANKOSKY,
and AMANDA KNUTESON

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

1 WHEREUPON, the following proceedings were
2 had:

3 * * * * *

4 CHAIR SIMPSON: Good morning, everyone.
5 Sorry. I'm a couple minutes late. My computer
6 decided to update. Anyway, let's bring the
7 meeting to order. Good morning, everyone. Sandy,
8 would you take the roll, please.

9 MS. MOISEY-SCHERER: Yes, sir. Good
10 morning. Chair Simpson.

11 CHAIR SIMPSON: Here.

12 MS. MOISEY-SCHERER: Vice Chair Aguirre.

13 VICE CHAIR AGUIRRE: Here.

14 MS. MOISEY-SCHERER: Board Member
15 Altemus.

16 BOARD MEMBER ALTEMUS: Here.

17 MS. MOISEY-SCHERER: Board Member
18 Knuteson.

19 BOARD MEMBER KNUTESON: Here.

20 MS. MOISEY-SCHERER: Board Member
21 Rankosky.

22 BOARD MEMBER RANKOSKY: Here.

23 MS. MOISEY-SCHERER: Board Member
24 Reiten.

25 (Indicating)

1 MS. MOISEY-SCHERER: Let me double
2 check. I admitted him. He might have lost
3 connection. Let me check. He's on the call, but
4 he just hasn't responded. Board Member Smith.

5 BOARD MEMBER SMITH: Here.

6 MS. MOISEY-SCHERER: Board Member
7 Reiten, can you hear me? There he is. All
8 present, sir.

9 BOARD MEMBER REITEN: (Indicating)

10 CHAIR SIMPSON: Thank you very much. It
11 looks like we have a full board, a quorum. Sandy,
12 would you also --

13 MS. MOISEY-SCHERER: My name is Sandy.
14 I'm the Board secretary. Sandy Moisey-Scherer. I
15 have Graham Coppes of Ferguson and Coppes; Deputy
16 Director James Fehr; Kaitlin Whitfield, DEQ;
17 Laurie Crutcher, Court Reporter; Mark Stermitz,
18 Crowley Fleck; Terisa Oomens, Board Attorney;
19 Catherine Armstrong, DEQ; CBA 667; David Smith,
20 Montana Contractors Association; Elena Hagen,
21 Agency Legal Services; Eric Dahlgren, DEQ;
22 Jeremiah Langston, DEQ; Jim Coefield; Kurt Moser,
23 DEQ; Lindsay Thane; Madeline VerWey, DEQ; Rosalyn
24 DeLillo Knock; Sam King, DEQ; Sarah
25 Christopherson, DEQ; Todd Briggs; and Whitney

1 Bausch, DEQ.

2 * * * * *

3 (Present on the call: Board Attorney Present:

4 Terisa Oomens.

5 DEQ Personnel Present:

6 Board Secretary: Sandy Moisey-Scherer; Board

7 Liaison, Deputy Director James Fehr; DEQ

8 Communications, Mae Vader.

9 DEQ Legal: Catherine Armstrong, Sarah
10 Christopherson, Sam King, Jeremiah Langston, Kurt
11 Moser, Abby Sherwood, and Kaitlin Whitfield.

12 DEQ Air, Energy and Mining: Whitney
13 Bausch, Eric Dahlgren, Ruby Hopkins, Carly
14 Russell, Anne Spezia, Bailey Tasker, Madeline
15 VerWey.

16 DEQ Enforcement: Chad Anderson, Jackson
17 Brooks, Anna Pieri.

18 Other Parties Present: Laurie Crutcher,
19 Crutcher Court Reporting; Elena Hagen, Montana
20 DOJ, Agency Legal Services Bureau; Mark Stermitz,
21 Crowley Fleck; Graham Coppes, Ferguson & Coppes,
22 PLLC; Todd Briggs - Westmoreland; David Smith, MT
23 Contractors Association; Frank Tabish, LHC MT; Jim
24 Coefield; Alan Ringlien, A.M. Welles; Cale Fisher,
25 Riverside Contracting; Rosalyn DiLillo Knock;

1 Lindsay Thane Schwabe; Ken Murphy, TMC-Belgrade;
2 Larry Frankel; Lauren Cook; Val Lucas)

3 * * * * *

4 CHAIR SIMPSON: Thank you, Sandy. Once
5 again, good morning everyone, and welcome to the
6 December 2024 meeting of the Board of
7 Environmental Review. We'll start with the
8 administrative items, review and approve the
9 minutes from August 23, 2024. Is there a motion?

10 BOARD MEMBER SMITH: Motion to approve.

11 BOARD MEMBER RANKOSKY: Second.

12 CHAIR SIMPSON: A motion has been made
13 and seconded to approve the minutes of the August
14 meeting. All in favor, say aye.

15 (Response)

16 CHAIR SIMPSON: Opposed.

17 (No response)

18 CHAIR SIMPSON: Motion carries. The
19 minutes are approved. The next item is the 2025
20 Board calendar.

21 BOARD MEMBER RANKOSKY: Move to approve.

22 CHAIR SIMPSON: Excuse me. We have a
23 motion to approve? Is that what that was? I'm
24 sorry.

25 BOARD MEMBER RANKOSKY: Yes.

1 CHAIR SIMPSON: We have a motion. Is
2 there a second?

3 BOARD MEMBER KNUTESON: I second that
4 motion.

5 CHAIR SIMPSON: It's been moved and
6 seconded to approve the 2025 schedule. Before
7 proceeding with the vote, I did want to point out
8 that I had asked Sandy to move up the December
9 meeting to move it a little further away from the
10 holidays, and I wanted to be sure you're all aware
11 of that. If there are other thoughts on that, now
12 would be the time to discuss them.

13 It seemed like anytime in December there
14 are going to be potential conflicts with holiday
15 activities, but anyway, any thoughts on that?
16 Agree, disagree, rather return it to the 19th?

17 (No response)

18 CHAIR SIMPSON: Hearing no further
19 discussion, it's been moved and seconded to
20 approve the Board meeting schedule for 2025. All
21 in favor, say aye.

22 (Response)

23 CHAIR SIMPSON: Opposed.

24 (No response)

25 CHAIR SIMPSON: Motion carries. Let's

1 proceed to the briefing items. Terisa, if you⁷
2 would walk us through this, please, and highlight
3 the updates since the last meeting.

4 MS. OOMENS: Sure. So a lot of the
5 updates are in the bold, like we had talked about
6 during our last meeting.

7 But the one that I wanted to point out
8 that didn't quite make it on here is we did get an
9 updated stipulation from Alpine. I think it is
10 noted that they would be bringing us a new
11 stipulation, but they didn't get it to us in time
12 to make it into the packet and the agenda.

13 So other than that, everything's moving
14 forward. We still haven't gotten a remand in the
15 Westmoreland case from the Montana District Court.
16 We're hoping to get that eventually, but Judge
17 Bidegaray did make it on the Supreme Court, and so
18 I assume that that Montana District Court case
19 will be assigned to a new Judge and we will get a
20 remand from that new Judge.

21 Other than that, those are kind of the
22 highlights. Happy to answer any questions if you
23 have them.

24 CHAIR SIMPSON: Just a little further
25 comment on that. I don't know what's happened to

1 my Zoom here, but I guess it's just because I'm
2 kind of a luddite when it comes to computer
3 programs.

4 One thing I did want to point out. On
5 the DEQ versus the Board of Environmental Review
6 and the related MEIC, et al., case, that of course
7 is the selenium rule. The latest update shows
8 that the briefing is to have started this month.
9 There's been another one month schedule change on
10 that, so the initial briefing will take place in
11 mid-January 2025.

12 Just leafing through here. Terisa
13 brought us up to date on Alpine. Are there any
14 further comments or questions from the Board on
15 any of the briefing items? I think it's all
16 fairly straight forward. I'm trying to remind
17 myself if I have any other questions, but I do
18 not. Any other comments from the Board on
19 briefing items?

20 (No response)

21 CHAIR SIMPSON: If not, let's move on to
22 the action items.

23 (Transcript of Oral Argument in the Matter of the
24 Formal Appeal of DEQ approval of Riverside
25 Contracting Opencut Permit No. 3415 bound

1 separately)

2 (9:14 a.m. to 11:22 a.m.)

3 * * * * *

4 CHAIR SIMPSON: General public comment,
5 Item 4. Under this item members of the public may
6 comment on any public matter within the
7 jurisdiction of the Board that is not otherwise on
8 the agenda for the meeting. Individual contested
9 case proceedings are not public matters on which
10 the public may comment. Is there any public
11 comment?

12 (No response)

13 CHAIR SIMPSON: Any public comment?

14 (No response)

15 CHAIR SIMPSON: Hearing none, we'll move
16 to Item 5, the Board Chair update.

17 In your packages, we included a memo
18 from the Chair regarding 2024 fiscal year legal
19 expenses, along with a spreadsheet. This is
20 simply a matter of information.

21 One of the things that -- and I guess
22 this goes back to my background in business. I
23 think it's important to have a recognition of what
24 public funds are being expended on activities of
25 the Board, and gives you a little insight as to

1 what the expense is with regard to contested
2 cases, particularly if they go to hearing, because
3 that's really where the time is spent.

4 So if there are any questions, I'd be
5 happy to try to answer them, but this was strictly
6 for your information. Any thoughts on it?

7 (No response)

8 CHAIR SIMPSON: I guess I would add to
9 that. It's kind of hard to know where we're going
10 if we don't know where we've been. So it's a good
11 summary of the work that was completed last year.

12 I guess one of the more significant
13 observations I had is that we had far more cases
14 disposed of than we had new cases, which means our
15 caseload is going down. So I'm not really sure
16 what that means. Either the Department is doing a
17 better job, or nothing's happening, or people
18 aren't pay attention, one of the three. But I
19 think it is a positive development certainly.

20 BOARD MEMBER AGUIRRE: I think this was
21 a very insightful and valuable piece of
22 information on our efforts and what goes into
23 that, as far as time and as far as expenses.

24 BOARD MEMBER KNUTESON: I agree. I
25 think --

1 CHAIR SIMPSON: It happened -- Sorry,
2 Amanda.

3 BOARD MEMBER KNUTESON: I was seconding
4 Stacy's. I was just thanking you. I agree that
5 was very helpful, especially for me as a newer
6 Board member, to be able to see the kind of year
7 in review and the resources that go into dealing
8 with all of these matters.

9 And I don't want interrupt you or change
10 the topic, but I think this might segue in. I
11 don't know if the Board is aware. I was just
12 scanning through legislative concepts and draft
13 bills, and I saw that there is a proposal to
14 eliminate the Board of Environmental Review, and
15 two other proposals related to changing what we
16 do, and topics we cover.

17 I just wanted to -- To the extent -- I
18 don't know what the motivation behind that is.
19 I'll watch the hearings like everyone else. But I
20 just think it's helpful seeing that summary of
21 what the Board has been doing, and how much is
22 expended on it.

23 And I don't know again if that ties in
24 with the basis for this legislation or not, but I
25 think that we as a Board should probably keep an

1 eye on that, and participate in these hearings. I
2 think we should exist.

3 CHAIR SIMPSON: We certainly will keep
4 an eye on it. And I was aware of the first, I
5 guess it's a bill draft request at this point,
6 with regard to elimination of the Board. I was
7 not aware of the other two. I guess one thing we
8 need to do is take a look at those. And I
9 guess --

10 BOARD MEMBER ALTEMUS: Mr. Chair, I can
11 give you the LC numbers if you want, but I think
12 the question we need to ask ourselves, and what I
13 kind of mentioned this morning, is that I'm not
14 sure that we legally can weigh in. We can
15 certainly watch, but I think we have to be really
16 careful.

17 Because there are three right now, there
18 could be more, and there's a whole bunch of
19 opencut ones. So I just think we need to be
20 careful about -- I will be in halls come January
21 6th, because of my job. So if somebody stops me
22 in the hall on these things, I can't speak to it.
23 So I think we need to be clear about that. Thank
24 you, Amanda.

25 CHAIR SIMPSON: What are the LC numbers

1 on those, Julia? Do you have them handy?

2 BOARD MEMBER ALTEMUS: I do. So 646 --
3 I'm sorry. That's Opencut.

4 647 is to eliminate the Board; 648 is to
5 revise what we do; and 649 is to revise how people
6 appeal to the Board. Those are all Senator
7 Ellis's LC's. And there could be more.

8 CHAIR SIMPSON: Okay. Well, there could
9 be more, and probably will be more. I'm not sure
10 what the motivation is behind these. I guess I
11 can guess, but I'm not going to speculate.

12 I think -- and please correct me if I'm
13 wrong, either Terisa or Legal Counsel for the
14 Department -- but I believe that as Board members,
15 we can provide informational testimony at a
16 minimum. I'm not sure about our ability to take a
17 position on this. I don't know where we stand.

18 MS. OOMENS: I will just throw in there.
19 Number one, we're assuming that any of this goes
20 anywhere. They could very well stop before we get
21 to a hearing or anything.

22 But number two, I would say we have to
23 be very careful about whether we are acting on the
24 Board's behalf or our own personal opinions on the
25 matter. If something is said on the Board's

1 behalf, that needs to be approved by the Board and
2 discussed previously. However, if you personally
3 feel the need or the desire to go to these
4 hearings and express your personal opinion on the
5 matter, you have the right to do so.

6 So at this point that's what I'll say,
7 but just keep that in the back of your mind.

8 CHAIR SIMPSON: Terisa, could I ask you
9 to repeat that, please? My internet connection
10 cut out for a few seconds there.

11 MS. OOMENS: Sure. If you're going to,
12 or if you want to go to these hearings, should
13 there be one, and speak on the Board's behalf, we
14 need to have Board approval to do so, and some
15 kind of agreement on a statement of what's being
16 said, or what information is being provided.

17 If you want to appear or go in a
18 personal capacity, and express your own personal
19 opinions on whether or not the Board should be
20 affected in any manner, number one, make sure that
21 that's clear that you're expressing your personal
22 opinion, and number two, you have every right to
23 do so.

24 CHAIR SIMPSON: Okay. Well, that
25 clarifies it then. Thank you very much.

1 MS. OOMENS: You're welcome.

2 BOARD MEMBER ALTEMUS: Mr. Chair, can I
3 ask one more question, please?

4 CHAIR SIMPSON: Yes. Please.

5 BOARD MEMBER ALTEMUS: So I really
6 appreciated what you did with that report. I've
7 never seen one. I've been on this Board now for
8 several years. I've never seen that done. Can we
9 get -- without too much effort, and if it's too
10 much effort, I understand -- but it would be good
11 to have a comparison to at least maybe the last
12 couple of years, because I think that would be
13 helpful going forward. Are we trending in the
14 right direction or are we not? I think we are,
15 but the proof would be to look back at what
16 happened previous.

17 CHAIR SIMPSON: I guess I'd have to pose
18 that question to Sandy, because she's the one that
19 compiled all of this information at my request.
20 And so prior to the time that I took over as
21 Chairman, I'm not sure what the availability of
22 information would be. I know it's there
23 somewhere, but how easy it might be to retrieve
24 it, I don't know.

25 We are collecting it going forward, I

1 can say that, and assuming we're still here next
2 year, we'll be repeating the process. Any
3 thoughts on that, Sandy?

4 MS. MOISEY-SCHERER: As for costs, I'll
5 have to look at the files and confer with Deputy
6 Director Fehr to make sure I have everything
7 correct.

8 BOARD MEMBER ALTEMUS: It's just a
9 thought. I think it would be helpful to know if
10 we've made improvements over the last three or
11 four years, or if we're trending in the wrong
12 direction.

13 CHAIR SIMPSON: Well, Sandy, why don't
14 you discuss that in-house there, and we'll put it
15 on the informational agenda for the next meeting,
16 just to give us an idea what the options might be,
17 if any.

18 BOARD MEMBER ALTEMUS: Thank you.

19 CHAIR SIMPSON: I believe we've already
20 moved into Item B, General Board Business. That's
21 really all I had. Anything further from the
22 Board?

23 MS. OOMENS: I just had one question,
24 just because it's fresh on everyone's mind. The
25 way that -- getting you the briefing, and the

1 exhibits, and that kind of thing for this latest
2 contested case, I just wanted to see how the
3 facilitation of that this time went, compared to
4 other times, if there's ways that we can make that
5 easier or better for the Board. I just kind of
6 wanted to get some input, because it was a little
7 different than we had previously done, so --

8 CHAIR SIMPSON: Thank you, Terisa. And
9 I guess from my own standpoint, I found it very
10 helpful to have the briefing early so that we had
11 some time to review it, and I guess everybody has
12 a different way of looking at things, but it helps
13 me to read it, and then come back to it later.
14 And quite often if we get the stuff the same week,
15 there isn't really time to study it all that much.

16 It raises another question, though, that
17 I'd wanted to bring up, and this goes back to the
18 discussion on the Board schedule. We have --

19 Terisa, you and I have discussed having the
20 information package to Sandy by Wednesday of the
21 week that it's supposed to come out to the Board.

22 And I don't know if we need a motion on
23 that, but that would probably move your schedule
24 forward as to when you need to have the
25 information from all of the sources that compile

1 the information that goes into the Board agenda.
2 So what are your thoughts on that?

3 MS. OOMENS: That is another thing that
4 we tried to change this time around. I believe we
5 did get the packet to Sandy by Wednesday this
6 week. And so I think we are able to change that
7 at this point without bumping back any of the
8 other deadlines, but I guess we'll see as we go
9 this year if that changes. But at this point, I
10 think we're okay. Does that answer your question?

11 CHAIR SIMPSON: Yes, it answers my
12 question. Thank you. But I think it is
13 worthwhile to have the information in a day or
14 two, at least a day, preferably two, before it has
15 to go out to the Board.

16 BOARD MEMBER KNUTESON: I wanted to
17 thank Terisa as well for amending the way that you
18 provide that information. I like the direction
19 you're going and really appreciate that.

20 CHAIR SIMPSON: Thank you, Amanda.
21 Anything further for the good of the order?

22 (No response)

23 CHAIR SIMPSON: Before adjourning, I'd
24 like to thank everybody for their participation,
25 for your participation, also wish everybody Merry

1 Christmas, and a Happy New Year.

2 I've not heard anything about
3 appointments, reappointments going forward, but
4 hopefully that will be forthcoming soon, and we
5 will know where we stand. So with that, is there
6 a motion to adjourn?

7 BOARD MEMBER ALTEMUS: So moved.

8 BOARD MEMBER RANKOSKY: Second.

9 CHAIR SIMPSON: It's been moved and
10 seconded to adjourn the meeting. All in favor,
11 say aye.

12 (Response)

13 CHAIR SIMPSON: Motion carries. Meeting
14 adjourned. Once again, thank you everybody, and
15 we'll see you next year.

16 (The proceedings were concluded

17 at 11:37 a.m.)

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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 -19- 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 2nd day of
January, 2025.

LAURIE CRUTCHER, RPR
Court Reporter - Notary Public
My commission expires
March 9, 2028.

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