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BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

BOARD MEETING)
APRIL 11, 2025)

TRANSCRIPT OF PROCEEDINGS (VIA ZOOM)

April 11, 2025
9:00 a.m.

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

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

3 * * * * *

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

7 MS. MOISEY-SCHERER: Good morning,
8 everybody. Chair Simpson.

9 CHAIR SIMPSON: Here.

10 MS. MOISEY-SCHERER: Board Member
11 Altemus.

12 BOARD MEMBER ALTEMUS: Present.

13 MS. MOISEY-SCHERER: Board Member
14 Knuteson.

15 BOARD MEMBER KNUTESON: Here.

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

18 BOARD MEMBER RANKOSKY: Here.

19 MS. MOISEY-SCHERER: Board Member Smith.

20 BOARD MEMBER SMITH: Here.

21 MS. MOISEY-SCHERER: Vice Chair Aguirre
22 said she would not be attending, but we still have
23 a quorum.

24 CHAIR SIMPSON: And I gather Jon Reiten
25 is not here?

1 MS. MOISEY-SCHERER: I'm sorry. I³
2 couldn't hear you.

3 CHAIR SIMPSON: Is Jon Reiten present?

4 MS. MOISEY-SCHERER: No, he's not.

5 CHAIR SIMPSON: I know that he had asked
6 not to be reappointed. I wasn't sure if he would
7 participate in this meeting or not. But okay.
8 Let's proceed with the agenda.

9 * * * * *

10 (ALSO PRESENT: Board Attorney Terisa Oomens.
11 DEQ Personnel Present: Board Secretary: Sandy
12 Moisey Scherer. Board Liaison: Deputy Director
13 James Fehr. DEQ Director Sonja Nowakowski.
14 DEQ Communications: Emma Gronda, Madison
15 McGeffers. DEQ Legal: Catherine Armstrong,
16 Isabelle Nebel, Sam King, Nick Whitaker. DEQ Air,
17 Energy and Mining: Eric Dahlgren, Josh Bridgeman,
18 Mike Glenn.
19 Other Parties Present: Laurie Crutcher, Crutcher
20 Court Reporting. Elena Hagen, Montana DOJ Agency
21 Legal Services Bureau; Robert Farris-Olsen; David
22 (Kim) Wilson - Morrison Sherwood Wilson & Deola,
23 PLLP; Matt Guptill, Sabrina Temple, Decker Coal;
24 Samuel Yemington, Holland & Hart; Vicki Marquis,
25 Mark Stermitz, Crowley Fleck; Todd Briggs,

4
1 Westmoreland Mining; Lori Watson; David Smith,
2 Montana Contractors Association)

3 * * * * *

4 CHAIR SIMPSON: The first item is to
5 review and approve the minutes from the December
6 20th, 2024 meeting. Are there any changes,
7 alterations, comments on the minutes?

8 (No response)

9 CHAIR SIMPSON: Is there a motion?

10 BOARD MEMBER SMITH: I'll motion to
11 approve the meeting minutes from the December
12 meeting.

13 BOARD MEMBER RANKOSKY: Second.

14 CHAIR SIMPSON: A motion has been made
15 and seconded to approve the minutes of the
16 December 20, 2024 meeting. All in favor, say aye.

17 (Response)

18 CHAIR SIMPSON: Opposed.

19 (No response)

20 CHAIR SIMPSON: Motion carries. Let's
21 proceed to the briefing items. I have a few
22 questions and comments on these as we move along,
23 so let's just go a page at a time.

24 First is under "Cases in Court," and the
25 only one listed there other than the DEQ versus

5

1 BER case is Western Energy. Which one is this?
2 AM4? Yes, this is AM4. Signal Peak I believe
3 should be here also, has a case in court. Terisa,
4 are we missing something here?

5 MS. OOMENS: No. Sorry. I apologize.
6 I wasn't aware that you were specifically asking
7 me a question. Yes, it can be readed. I'm not
8 sure how or when it fell off, but we can
9 definitely put it back on the agenda.

10 CHAIR SIMPSON: To the best of my
11 knowledge, it hasn't been resolved. In fact I
12 wanted to bring that up a little later. But that
13 is one that is in court, and it's been there for a
14 couple years, and you and I have talked about it.
15 As far as I know there hasn't been any decision.

16 MS. OOMENS: Correct.

17 CHAIR SIMPSON: Okay. Moving ahead to
18 Page 5. This is Item 2(a) Westmoreland Resources
19 MPDES. I see that there has been some activity on
20 this. This is one that has been with us for a
21 very long time. I think the comment there is
22 self-explanatory. Would anyone from either DEQ or
23 Westmoreland care to comment on that?

24 MR. KING: Good morning, Board Chair
25 Simpson and Board members. This is Sam King for

6
1 DEQ. Kirsten Bowers, who is representing the
2 agency on this case, had something up and was
3 unable to attend the BER meeting. But the
4 information that you have reflected on the agenda
5 with respect to the public comment period going
6 until June 1st is accurate. I don't really have
7 anything further to add other than that.

8 CHAIR SIMPSON: Is there some hope that
9 this case will ultimately be resolved in the near
10 future?

11 MR. KING: I can't speculate on that.

12 CHAIR SIMPSON: Okay. Thank you. We'll
13 revisit that in June, which will be after the June
14 1st deadline that's noted in the comment there.

15 Moving ahead. Page 11 Item (e), this
16 has to do with Riverside Contracting and Friends
17 of the Jocko. That case is in court now, is it
18 not?

19 MS. OOMENS: That's correct.

20 CHAIR SIMPSON: So perhaps for the next
21 meeting we should move that ahead into the Cases
22 in Court.

23 MS. OOMENS: My understanding is Elena
24 leaves it on the agenda for one meeting after the
25 Board decision, and just in case we do have to

7

1 move it to court. So I believe at least the way I
2 understand how the agenda is written, it stays in
3 this position for one meeting, and then yes, as of
4 next meeting it will be moved.

5 CHAIR SIMPSON: Okay. Sounds good.
6 Thank you.

7 Page 17, Item (c), this is the Gateway
8 Conservation Alliance regarding opencut mining
9 permit near Gallatin Gateway. I believe that's
10 the Black Pit TMC. I believe this one is also in
11 court, and also I wanted to ask.

12 As I recall, there was another case in
13 Gallatin County, gravel pit case, which I don't
14 see on the briefing items. Am I missing something
15 here, Terisa?

16 MS. OOMENS: I think that other case is
17 Letter (d) on the next page.

18 CHAIR SIMPSON: Okay. All right.
19 Sorry. I stand corrected. That one also seems to
20 be in court. Is there an update to the status of
21 those? I think at one point, we had heard that
22 they had been remanded back to the Board, but have
23 there been any developments there at all?

24 MR. KING: Board Chair Simpson, Sam King
25 again. So with the GCA, the stay was with respect

1 to a constitutional challenge that was filed in
2 Gallatin County, and that's the same with the GCCC
3 case was also stayed based on the constitutional
4 challenge in District Court.

5 The Attorney General's Office appeared,
6 and is defending the constitutionality of the
7 opencut act in that case. The AG's Office filed a
8 motion to dismiss GCA's constitutional claim as to
9 both their facial constitutional challenge, and
10 their as-applied constitutional challenge.

11 The District Court then granted the
12 motion as to the as-applied challenge, stating
13 that petitioners would have to exhaust their
14 administrative remedies, meaning they would have
15 to go through the BER proceeding to develop an
16 administrative record before they could bring an
17 as-applied constitutional challenge, but the Court
18 denied the AG's motion on the grounds that the
19 facial challenge to the Opencut Act was ripe.

20 Subsequently to the Court's order, which
21 I believe was issued, I want to say late February
22 or early March, the Attorney General's Office then
23 filed a second motion to dismiss based on new case
24 law under the argument that even for a facial
25 constitutional challenge, when it concerns a MAPA

1 contested case proceeding, you'd have still have
2 to go through the BER.

3 There's still ongoing briefing on that
4 issue, so ultimately that case hasn't been
5 resolved yet, but once it has been, I suspect GCA
6 may re-engage their stayed BER proceeding.

7 CHAIR SIMPSON: Thank you, Sam. Could
8 you explain briefly the difference between the two
9 types of constitutional challenges that you cited.

10 MR. KING: Yes. So an as-applied
11 constitutional challenge means you as a petitioner
12 are challenging the constitutionality of a
13 statutory scheme based on specific unique facts to
14 your case. So it may not be unconstitutional in
15 all instances, but you're stating that in the
16 specific context that you are challenging a
17 specific determination that in fact your
18 constitutional rights have been infringed.

19 In contrast, if you're raising a facial
20 constitutional challenge, then you need to prove
21 that in all instances the statute is
22 unconstitutional. Does that make sense?

23 CHAIR SIMPSON: Yes. That makes good
24 sense. Thank you very much. So has this appeal
25 been made on one or the other or both bases, or is

1 it automatically considered under both scenarios?

2 MR. KING: It's not automatically
3 considered under both scenarios. It's dependent
4 on whatever the complaint challenges the
5 constitutionality of the statutory provisions.

6 So a petitioner could bring a facial
7 constitutional challenge; alternatively could
8 raise only an as-applied constitutional challenge.
9 In this instance, GCA had raised both an
10 as-applied constitutional challenge and a facial
11 challenge.

12 And the Court dismissed the as-applied
13 constitutional challenge stating that the
14 petitioners would need to exhaust their
15 administrative remedies by first going through BER
16 review to develop a record, from which the Court
17 could then assess whether or not the statute
18 provisions in question are indeed
19 unconstitutional.

20 And because they hadn't done so, the
21 Court said, "We can't hear this case yet," finding
22 that long standing Montana Supreme Court precedent
23 would require you to basically go through the BER
24 first, and then you can raise -- If, say, you
25 filed a petition for judicial review, then you

1 could raise your constitutional challenges.

2 But the Court again denied the Attorney
3 General's motion to dismiss the facial
4 constitutional challenge because it said based on
5 existing case law, you don't need to go through
6 the BER process and exhaust your administrative
7 remedies before you can go seek relief if the
8 statute is unconstitutional in all instances,
9 meaning that the case is still alive currently.

10 That said, then the Attorney General's
11 Office, based on new case law that just came out
12 at the end of last year, and after the first
13 motion was completely briefed, that seemed to
14 suggest that existing precedent was overturned to
15 the extent that even when bringing a facial
16 unconstitutional challenge, you would still need
17 to develop an administrative record when it
18 involves a MAPA contested case proceeding.

19 And so that issue remained unresolved,
20 so yet to be determined how the Court will
21 determine that issue.

22 CHAIR SIMPSON: Thank you for the
23 clarification, Mr. King. That helps a lot. So I
24 guess we'll wait and see what happens, like we had
25 another choice. Any other comments or questions?

1 Yes. I'm sorry.

2 BOARD MEMBER ALTEMUS: Chair Simpson,
3 this is Julia Altemus. So before you move on, I
4 do have a question regarding the pending cases. I
5 think there's like four of them that are pending
6 the decision by the Hearings Examiner. I guess a
7 general question is: How long does that take, or
8 do we have some kind of time frame as to when
9 that's going to happen? Because there are four
10 that are just pending decisions from that person,
11 and maybe we could take action and move on.
12 They've been there for quite awhile.

13 CHAIR SIMPSON: Three of those are cases
14 that are being handled by Rob Cameron, and we've
15 been looking into that to see if we can get a
16 handle on what's holding those up. And those are,
17 I think those are the only three cases that are
18 left with Mr. Cameron.

19 The fourth one I assume you're talking
20 about is Clearwater?

21 BOARD MEMBER ALTEMUS: Could be. It's
22 not on my screen anymore, but I think there were
23 four for sure, so that would make sense.

24 CHAIR SIMPSON: Clearwater is close.
25 Terisa is working on that one. We should see that

1 at our next meeting.

2 BOARD MEMBER ALTEMUS: Okay. It would
3 be nice if we could figure out the other three,
4 because I think that's only prudent to get those
5 things done on behalf of everybody.

6 CHAIR SIMPSON: Well, it's very
7 frustrating for everyone involved, because it
8 seems like they've been hanging for a long time.

9 BOARD MEMBER ALTEMUS: They have been.
10 Okay. Thank you.

11 CHAIR SIMPSON: So we will pursue that,
12 and hopefully have more information on that at our
13 next meeting. Anything further on the briefing
14 items?

15 (No response)

16 CHAIR SIMPSON: Let's move ahead to
17 Roman Numeral III, Action Items. The first is the
18 Matter of the Notice of Appeal and Request for
19 Hearing by Alpine Pacific Utilities regarding
20 issuance of MPDES Permit No. MTX000164, BER
21 2019-06, Water Quality.

22 I'm not even sure I understand what
23 we're being asked to do here, and I was hoping
24 there was somebody who can brief the Board from
25 both Alpine and -- on just what this is all about,

1 so we can understand what it is we're being asked
2 to approve.

3 (No response)

4 CHAIR SIMPSON: Is there nobody here to
5 address this?

6 MR. KING: Board Chair Simpson, I'm
7 sorry to take up all of your time today.

8 Again, Kirsten Bowers is the attorney of
9 record for the Alpine Pacific Utilities.
10 Basically the parties have just entered into a
11 stipulation. They're working out an agreement,
12 and trying to extend the time from which DEQ can
13 complete a nonsignificance determination at
14 Outfall 001. It's not complete.

15 So basically the first amendment to the
16 second stipulation sets the deadline to move the
17 permit renewal and modification forward. All
18 that's being asked of the Board is just to agree
19 to retain jurisdiction over this matter, and then
20 within thirty days after issuing the permit,
21 Alpine will move to dismiss the existing case.
22 And then they could, if they so choose, appeal the
23 new permit that will be issued, but that would be
24 a new case.

25 So all to say a pretty uncontroversial

15
1 request of the Board, but it's basically just
2 asking the Board to bless the agreement between
3 the parties, so that they can continue to work
4 this out on an extended deadline that they've
5 agreed upon.

6 And I don't know if -- Rick Tappan is
7 the attorney of record that represents Alpine.
8 I'm not sure if he's on today or not.

9 MS. MOISEY-SCHERER: Chair Simpson, this
10 is Sandy. The Counsel for Alpine is not on the
11 call.

12 CHAIR SIMPSON: Thank you. What I'd
13 hoped was that someone could explain to the Board
14 just what Alpine is, and there's apparently
15 groundwater discharges, significant volumes of
16 water. I for one have no idea what the issue is
17 on the ground. This has been on our list of
18 briefing items for as long as I've been on the
19 Board, and before that.

20 So I guess before I would ask if there's
21 a motion, it sounds like a procedural question.
22 I'm reluctant to hold up the process, but I really
23 would like to know what this is all about, but I
24 guess that's going to have to wait for another
25 time.

1 BOARD MEMBER SMITH: Chair Simpson.

2 CHAIR SIMPSON: Yes.

3 BOARD MEMBER SMITH: Ms. Oomens, is she
4 still the Hearing Examiner on this case? Would it
5 make sense to hear her thoughts on this?

6 MS. OOMENS: So I am the Hearing
7 Examiner to the extent that I'm monitoring the
8 case, and getting the status reports from the
9 parties.

10 The way I understand what's happening is
11 they're just negotiating, so I'm not actually
12 taking any action as a Hearing Examiner. The
13 parties are just negotiating amongst themselves.
14 And so our action in this is again just
15 monitoring, and as Mr. King said, in the event
16 that there's a problem with a new permit that's
17 issued, that will be a new case.

18 So this case is kind of just waiting for
19 them to finalize their agreement on whether
20 there's going to be a new permit or not. I don't
21 know if that addresses any of your questions or
22 concerns, but that's kind of my role, our role.

23 BOARD MEMBER SMITH: It looks like to me
24 we're being asked to basically approve an
25 amendment, and I don't know why we would do that

1 until the case is somewhat finalized.

2 MS. OOMENS: So again, maybe Mr. King
3 can explain it a little bit more, but as far as I
4 read it, the amendment is just changing a
5 deadline. It's just changing the timeline,
6 pushing out the finalization of that agreement.
7 And so if we don't let them push the deadline,
8 then it just kind of falls through, and I don't
9 know what impact that would have on their permit
10 they have currently.

11 BOARD MEMBER SMITH: Who set the
12 deadline?

13 MS. OOMENS: This is a great question
14 for Mr. King.

15 MR. KING: Board Member Smith. The
16 parties just agreed to the deadline. And to give
17 the Board just some insight, part of the reason
18 this case has been ongoing is there's been what
19 DEQ believes to be some confusion from Alpine and
20 its representatives about what was actually
21 required for DEQ to process this permit renewal
22 and modification.

23 Alpine has gone through several
24 attorneys here, and so we've been working with
25 Alpine to try and get all of the information that

1 we need so that we can process this permit. And
2 so therefore the parties have worked out an
3 extension of existing deadlines for which they can
4 actually do so.

5 We're just asking for -- because it's
6 before the Board, and it has been before the Board
7 for a long time, we're just asking for the Board's
8 approval to the new deadline that the parties
9 agreed upon, if that makes sense.

10 BOARD MEMBER SMITH: Why do we need to
11 approve the deadline? I mean I assume this
12 happens all the time between two parties like this
13 and the Hearing Examiner that these cases are
14 extended amongst you all, without us having to
15 determine anything in that. So why do we have to
16 approve it? Why do we need to -- if it's just a
17 notice, do we need a motion for anything here?

18 MS. OOMENS: I guess I'm not -- Are you
19 directing that question at me or Mr. King? Just
20 to clarify.

21 BOARD MEMBER SMITH: Either. Whoever
22 can best answer it.

23 MS. OOMENS: So I would say that it
24 comes in front of the Board because it's a
25 settlement deadline, because it's revising the

1 stipulation that they've agreed to. And so that
2 stipulation is in essence a final agreement
3 between the parties, and so because it's revising
4 that final agreement, then it has to come before
5 the Board rather than the Hearing Examiner.

6 I guess my question, and where I get a
7 little confused, is why, if the intent of the
8 parties is to come up with a new permit, which
9 would then maybe be appealed on its own and be a
10 new case, why we continue to oversee this one.
11 I'm not sure if Mr. King would be able to answer
12 that, but that would be -- that's kind of my
13 outstanding question for this case, is why we're
14 continuing to oversee it when they could just
15 negotiate this on their own.

16 BOARD MEMBER SMITH: I guess that's
17 where I'm confused, because it seems like when
18 things like this have happened before, we just get
19 a motion to dismiss, and so why do we not just
20 wait until that happens?

21 MR. KING: I understand your question
22 and your confusion, Board Member Smith.

23 I think the request was made because
24 dating back to 2020, the Board did assume
25 jurisdiction over this matter, and also voted to,

1 initially back in October 2020 voted to adopt the
2 parties' stipulation and request for retention of
3 Board jurisdiction in the first instance.

4 So because it's under the Board's
5 purview, since that time there's been several
6 modifications to this agreed stipulation, and
7 consistent with past practice have just requested
8 for ongoing requests of the Board to retain
9 jurisdiction.

10 That said, if the parties work this out,
11 then ultimately there will be a motion to dismiss
12 this case; and should Alpine desire, would appeal
13 that issuance or denial of the permit also to this
14 Board.

15 It does seem procedural and sort of
16 unnecessary in a sense, but recognizing that the
17 Board did accept jurisdiction in the first
18 instance, the parties have just operated under the
19 assumption that any sort of further stipulations
20 or agreements would also be approved or rejected
21 by this Board as well.

22 I suppose the Board does have authority
23 to just disagree to retain jurisdiction, which
24 they could do that as well, and the parties could
25 presumably still work it out on their own, but --

1 BOARD MEMBER ALTEMUS: Chair Simpson.

2 Thank you, Mr. King. I was actually just going to
3 ask you that, because it looks like we're being
4 asked to do two things, and the last one is to
5 agree or disagree to retain the jurisdiction of
6 the Board. So what happens if we just disagree to
7 retain, and I think you answered that question.

8 CHAIR SIMPSON: Mr. King or Ms. Oomens,
9 either one.

10 MR. KING: Board Chair Simpson. I don't
11 have anything further. I'll obviously leave it up
12 to the Board to decide what it wants to do.

13 I am a little concerned, just because if
14 the Board doesn't agree to retain jurisdiction,
15 and then approve the first amendment to the second
16 stipulation, my only concern is that neither
17 Alpine's attorney is present on the call, and nor
18 is Ms. Bowers. So I wouldn't want to interfere
19 with the agreement that they've reached without
20 giving them an opportunity to respond to those
21 issues.

22 So I guess to that extent, without them
23 being here, my request to the Board is just bless
24 the second stipulation, and continue to hold
25 jurisdiction to the Board. I don't think doing so

1 will put any sort of additional demand on this
2 Board's docket because the parties are in the
3 midst of resolving this case, and ultimately
4 should be removed here shortly.

5 BOARD MEMBER ALTEMUS: Chair Simpson.
6 I'm assuming we invited the attorney for Alpine to
7 be here. Did we invite the attorney for
8 representation? Were they invited to be at this
9 meeting and they're just not here?

10 CHAIR SIMPSON: I have to assume that
11 they were notified that this item was on the
12 agenda.

13 BOARD MEMBER ALTEMUS: I guess my
14 concern is this has been going on for five years,
15 more than five years, and whatever we can do to
16 get it resolved, and I'm not sure that the parties
17 are that concerned.

18 CHAIR SIMPSON: Terisa, please correct
19 me if I'm wrong, but I think we have a couple of
20 options here. The first is to do as we're being
21 asked, which is to approve the first amendment to
22 the second stipulation, whatever it is, extending
23 the time; and the second is to retain
24 jurisdiction.

25 The second option would be to approve

1 the amendment, that is, extend the time frame, but
2 table the question of jurisdiction until --
3 retaining jurisdiction until the next meeting when
4 hopefully somebody will be able to explain to us a
5 little more clearly what the ramifications would
6 be.

7 And third is just to table the whole
8 thing. I hate to do that because this has hung
9 now for years, and it would really be nice to get
10 it resolved, so I'd be reluctant to introduce yet
11 another delay. Is that an accurate assessment?

12 MS. OOMENS: That's correct. You can
13 approve everything they're asking for, you can
14 partially approve it and deny some of it, or you
15 can completely deny what they're asking.

16 But again, kind of as we've talked
17 about, this really is kind of a blessing from the
18 Board. So the parties are still negotiating and
19 doing their thing behind the scenes.

20 So I guess if you want my opinion on it,
21 I would suggest that we just table it until the
22 next meeting so that the actual attorneys that are
23 working on the cases can tell us what's happening.
24 I know that's kind of something we discuss anyway
25 for all the cases, so maybe that's the best

1 option.

2 And as great as Mr. King is at filling
3 us in, like he said, he's not the attorney on the
4 case. So maybe it's best to just wait for them.

5 BOARD MEMBER SMITH: Chair Simpson, it
6 looks like the status report is June 20th, which
7 actually exactly coincides with our next Board
8 meeting. Is that date supposed to be when it's
9 submitted to us, or when it's submitted to the
10 Hearing Examiner?

11 MS. OOMENS: That would be submitted to
12 me. So I get the status reports from the parties.
13 You guys just get any revisions to the stipulation
14 between them.

15 BOARD MEMBER SMITH: So realistically
16 speaking, it might not be to the point of
17 conclusion where we can actually make another
18 determination until probably the following meeting
19 in August; is that accurate?

20 MS. OOMENS: If they have any further
21 changes to the stipulation, that could come at any
22 point in time. That's not necessarily matched up
23 with the status report. The status report just
24 comes to me to make sure that they are still
25 making progress and moving along. Does that make

1 sense?

2 BOARD MEMBER SMITH: Yes.

3 CHAIR SIMPSON: If I understand
4 correctly, the Board has initially assumed
5 jurisdiction over this case rather than assigning
6 it to a Hearing Examiner, which is why the
7 question is coming to us in the first place.

8 MS. OOMENS: If I could just jump in and
9 clarify on that piece. That's not wholly correct.
10 So you did assign it to a Hearing Examiner, but
11 the reason you're getting involved now is because
12 it involves the stipulation, which is a final
13 agreement that the Board has to approve. Although
14 it doesn't --

15 CHAIR SIMPSON: And this is a
16 stipulation that's been negotiated by the parties?

17 MS. OOMENS: Correct.

18 CHAIR SIMPSON: I don't really see any
19 reason to hold off on that. The question of
20 jurisdiction, I'm just not sure to go with that.
21 I'd kind of like to hear from the parties on it.
22 I think we've done a pretty good job of beating
23 this dead horse. Is there a motion to do
24 something?

25 (No response)

1 CHAIR SIMPSON: Is there a motion to --
2 Let's take it one piece at time. Is there a
3 motion to approve the stipulation, or table it,
4 one or the other?

5 BOARD MEMBER ALTEMUS: I will move to
6 approve the stipulation, just to keep this thing
7 hopefully getting to a resolution, and not waiting
8 until fall. So I will make that motion.

9 CHAIR SIMPSON: Is there a second?

10 BOARD MEMBER SMITH: I'll second that.

11 CHAIR SIMPSON: Thank you. A motion has
12 been made and seconded. I think we have discussed
13 it sufficiently. All in favor, say aye.

14 (Response)

15 CHAIR SIMPSON: Opposed.

16 (No response)

17 CHAIR SIMPSON: Motion carries.

18 As for retaining jurisdiction, is there
19 a motion to retain jurisdiction or a motion to
20 table until the next meeting when the attorneys
21 are present to explain to us what this case is all
22 about?

23 BOARD MEMBER SMITH: I motion to retain
24 jurisdiction. I think it would still be nice to
25 have a description, but I think we need a motion

1 to retain jurisdiction anyway.

2 BOARD MEMBER KNUTESON: I would second
3 that motion.

4 CHAIR SIMPSON: Thank you. A motion has
5 been made and seconded to retain jurisdiction,
6 that the Board retain jurisdiction in this case.
7 Any further discussion?

8 (No response)

9 CHAIR SIMPSON: All in favor, say aye.

10 (Response)

11 CHAIR SIMPSON: Opposed.

12 (No response)

13 CHAIR SIMPSON: Motion carries. Thank
14 you very much, everyone.

15 * * * * *

16 (Decker Coal Company Request for Hearing
17 Transcript bound separately)

18 (9:40 a.m. to 11:50 a.m.)

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20 CHAIR SIMPSON: General public comment
21 Item 5. Is there any general public comment to be
22 offered? Under this item members of the public
23 may comment on any public matter within the
24 jurisdiction of the Board that is not otherwise on
25 the agenda for the meeting. Individual contested

1 case proceedings are not public matters in which
2 the public may comment.

3 (No response)

4 CHAIR SIMPSON: Hearing none, we'll move
5 to Board Chair update, Item 6. A couple of brief
6 items there. I wanted to just review with the
7 Board the legislative items that surfaced during
8 the Legislature. I know some of you have been
9 keeping track of these, some may not.

10 I'll start with House Bill 603. This is
11 was to remove the attorney requirement for
12 quasi-judicial boards. This is a bill that I
13 understand was requested by the Governor for the
14 reason that it's been difficult to fill -- Under
15 current requirements, each quasi-judicial board is
16 required to have an attorney, and of course, that
17 includes the Board of Environmental Review. But
18 it's been difficult to recruit attorneys to serve
19 on boards, and there have been long delays, so
20 that's the reason for it, as I understand it.

21 Most recently the bill has been
22 concurred by the Senate committee. I don't know
23 whether there's been a vote on the floor yet, but
24 presumably that will pass.

25 Senate Bill 559. This was a bill that

1 just came out last week on the last day for
2 non-revenue bills. It was to give petitioners on
3 permits, permit actions, the opportunity to bypass
4 BER and go directly to District Court by paying a
5 \$100 fee.

6 There was a hearing on it last week in
7 Senate Natural Resources. I testified briefly as
8 an information witness. And that bill was tabled
9 in committee, so I believe it is done.

10 There were two other bill draft requests
11 by Senator Ellis in addition to 559. Those were
12 never drafted as bills, so they've gone away.

13 There were also two bills having to do
14 with opencut gravel pits. Senate Bill 391 would
15 have revised some of the public notice and public
16 -- rules having to do with public notice and
17 public hearings. That one missed the transmittal
18 deadline, so it is dead.

19 Senate Bill 460 again revised opencut
20 laws. This one had to do with protection of
21 surface and groundwater, and it also missed the
22 transmittal deadline.

23 So that's all I'm aware of that has been
24 going on in the Legislature that has any direct
25 applicability to the Board. Julia, I know this is

1 your bailiwick. Am I missing anything?

2 BOARD MEMBER ALTEMUS: Not for us. No.

3 Well, there's definitely some nutrient standard
4 nutrition stuff going through, but opencut, and
5 the direct bills that would have impacted the
6 Board, you handled those, so thank you.

7 CHAIR SIMPSON: Thank you very much. A
8 couple of other items.

9 At the beginning of the meeting we were
10 talking about cases in court, and at our next
11 meeting I'd like to ask the parties in those cases
12 to brief us on where they stand.

13 The two cases that I have in mind are
14 the Signal Peak case, which had to do with water
15 availability to support post-mining land use.
16 That was decided by the Board and appealed to
17 District Court. I have not heard one word about
18 it since, and have no idea where it stands.
19 That's been over two years ago. So I thought it's
20 something that I don't want the Board to lose
21 track of because it's hanging out there.

22 And then the same thing with the Rosebud
23 Mine Amendment 4 case. That one was decided by
24 the Supreme Court over a year ago. In fact it was
25 the day after Thanksgiving day of 2023. It was

1 remanded back to District Court. There were a
2 couple of issues that were to be remanded back to
3 the Board, but we have nothing from the Court, and
4 so I'll be asking Terisa to contact the parties in
5 those two cases to give us briefings at the next
6 meeting.

7 And then the third item would be the
8 Cameron cases, which we've already discussed.
9 There are three cases there. The latest we've
10 heard, we're waiting on the proposed findings of
11 fact, conclusions of law. So we need to look into
12 that, and see what the status is, and whether
13 there's anything we can do to shake those loose.

14 That's all I've got. Any questions from
15 for me from the Board?

16 (No response)

17 CHAIR SIMPSON: Thank you very much,
18 everyone. It's been an interesting meeting to say
19 the least. It looks like we have three minutes to
20 go until lunch time, so we're doing okay there.
21 Is there a motion to adjourn?

22 BOARD MEMBER SMITH: So moved.

23 BOARD MEMBER ALTEMUS: Second.

24 CHAIR SIMPSON: It's been moved and
25 seconded to adjourn the meeting. We'll see you at

1 our special meeting in a couple of weeks. 32 All in
2 favor, say aye.

3	(Response)
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4 CHAIR SIMPSON: We're adjourned. Thank
5 you everyone for your patience and diligence.

6 (The proceedings were concluded
7 at 11:58 a.m.)

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STATE OF MONTANA

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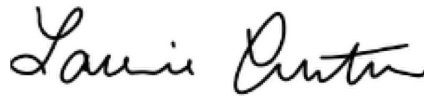
COUNTY OF LEWIS & CLARK

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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 - 32 - 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 21st day of
April, 2025.



LAURIE CRUTCHER, RPR

Court Reporter - Notary Public

My commission expires

March 9, 2028.

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