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BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

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BOARD MEETING )  
JUNE 20, 2025 )

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TRANSCRIPT OF PROCEEDINGS (VIA ZOOM)

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June 20, 2025  
9:00 a.m.

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

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

1 ALSO PRESENT:

2 Board Attorney: Terisa Oomens

3 DEQ Personnel Present

4 Board Secretary: Sandy Moisey Scherer

5 Board Liaison: Deputy Director James Fehr

6 DEQ Director: Sonja Nowakowski

7 DEQ Legal: Catherine Armstrong, Kirsten Bowers,

8 Sarah Christopherson, Sam King, Kurt Moser,

9 Abigail Sherwood, Nick Whitaker, and Kaitlin

10 Whitfield

11 DEQ Air: Energy and Mining: Whitney Bausch, Adam

12 Bradley, Josh Bridgeman, Julian Calabrese, Beverly

13 Faraday, Mike Glenn, Mitch Hoffman, Emily Lodman,

14 Alex Mackey, Brian Schrage, Bailey Tasker,

15 Madeline VerWey, and Dan Walsh

16 Other Parties Present:

17 Elena Hagen - Montana DOJ Agency Legal Services

18 Mark Stermitz, Vicki Marquis, Samuel Yemington,

19 Crowley Fleck

20 David (Kim) Wilson, Morrison Sherwood Wilson &

21 Deola, PLLP

22 Todd Briggs, Westmoreland

23 David Smith, MT Contractors Association

24 Frank Tabish and Jeff LHC MT

25 Sabrina Temple Decker Coal Company

1           WHEREUPON, the following proceedings were  
2 had:

3                           \* \* \* \* \*

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

6           MS. MOISEY-SCHERER: Chair Simpson.

7           CHAIR SIMPSON: Here.

8           MS. MOISEY-SCHERER: Board Member  
9 Knuteson.

10          BOARD MEMBER KNUTESON: Here.

11          MS. MOISEY-SCHERER: Board Member  
12 Rankosky.

13          BOARD MEMBER RANKOSKY: Here.

14          MS. MOISEY-SCHERER: Board Member Smith.

15          BOARD MEMBER SMITH: Here.

16          MS. MOISEY-SCHERER: We have four  
17 present, sir.

18          CHAIR SIMPSON: Thank you, Sandy. That  
19 is a quorum, I believe. Could we note who else is  
20 participating in the meeting please for the  
21 record.

22          MS. MOISEY-SCHERER: For DEQ I know  
23 Kaitlin Whitfield; Kirsten Bowers; Mark Stermitz  
24 is here from Crowley Fleck; Sam King from DEQ;  
25 Vicki Marquis from Crowley Fleck; Nick Whitaker.

1 And I do have Kim Wilson, but he has declined to  
2 be a panelist, sir.

3 CHAIR SIMPSON: That is all?

4 MS. MOISEY-SCHERER: Kim Wilson is  
5 raising his hand, sir.

6 MR. WILSON: If I can speak, this is Kim  
7 Wilson. I'm not sure what that message meant, so  
8 I didn't want to go on audio. I'm not declining  
9 to be a panelist if you need me to participate.

10 CHAIR SIMPSON: Thank you. Sandy.

11 MS. MOISEY-SCHERER: For Protect the  
12 Clearwater, Mr. Wilson, will you be participating  
13 in that?

14 MR. WILSON: Yes, and I'm also here to  
15 observe the Valley Garden summary.

16 MS. MOISEY-SCHERER: Mr. Wilson, I just  
17 promoted you to panelist.

18 CHAIR SIMPSON: Is that everyone, Sandy?

19 MS. MOISEY-SCHERER: That's all of the  
20 Legal Counsel that I've heard from so far.

21 CHAIR SIMPSON: Thank you very much.  
22 Let's proceed with review and approval of the  
23 minutes. We have minutes from the April 11th  
24 regular meeting and April 25th, 2025 special  
25 meeting. First, the April 11th minutes. Are

1 there any comments or corrections to the minutes?

2 (No response)

3 CHAIR SIMPSON: Hearing none, is there a  
4 motion?

5 BOARD MEMBER SMITH: I'll motion to  
6 approve the April 11th, and if we can in one  
7 motion, the April 25th meeting minutes.

8 BOARD MEMBER RANKOSKY: Second.

9 CHAIR SIMPSON: It's been moved and  
10 seconded to approve the April 11 and April 25  
11 meeting minutes. Is there any discussion?

12 (No response)

13 CHAIR SIMPSON: With respect to the  
14 April 11 minutes, I'd just to comment that when I  
15 first read those minutes, I thought something  
16 might be missing, and so I asked Sandy to follow  
17 up -- this had to do with the East Decker matter  
18 -- and she assured me that the motions were all  
19 correctly reported, which they were. Just to  
20 refresh my memory, I went back to the transcript.

21 It was my understanding that the reason  
22 we had called the special meeting was to hear the  
23 East Decker Notice of Noncompliance and Order of  
24 Abatement case. That was not mentioned in the  
25 comments, but that's essentially what we did with

1 that special meeting on April 25th. So I just<sup>6</sup>  
2 wanted to clarify that for the record.

3 Further comment?

4 (No response)

5 CHAIR SIMPSON: All in favor, say aye.

6 Excuse me. It's been moved and seconded to  
7 approve the minutes for April 11 and April 25  
8 meetings. All in favor, say aye.

9 (Response)

10 CHAIR SIMPSON: Opposed.

11 (No response)

12 CHAIR SIMPSON: Motion carries. Let's  
13 move forward to the briefing items. We have some  
14 discussion on several of these.

15 Starting with the first item, contested  
16 case updates, specifically the Westmoreland  
17 Rosebud AM4 case that was heard by the -- it was  
18 appealed. The Board decision was made back in I  
19 believe 2018. I don't remember the exact date,  
20 but that case was appealed to the District Court  
21 and ultimately to the Supreme Court, the State  
22 Supreme Court. And the Supreme Court issued its  
23 decision the Friday after Thanksgiving of 2023, so  
24 it's been a year and a half.

25 There were several matters with regard

1 to that case that were to be remanded to the  
2 Board, and so I wanted to ask if the  
3 representatives of the parties are here, I think I  
4 certainly on behalf of the Board would like to ask  
5 what the status of the remand is, and what the  
6 position of the parties is with regard to those  
7 matters that are still hanging. These are some  
8 loose ends that at some point in the near future I  
9 think the Board would like to tie up.

10 Is there someone from the Department who  
11 can address this or a representative of  
12 Westmoreland Coal?

13 MS. MOISEY-SCHERER: Chair Simpson, I'm  
14 promoting Sam Yemington to answer that question.

15 CHAIR SIMPSON: Thank you.

16 MS. MOISEY-SCHERER: Chair Simpson, I'm  
17 not sure if Mr. Yemington is having technical  
18 issues. His hand was up, I promoted him, and I'm  
19 not sure if he hasn't unmuted.

20 MR. YEMINGTON: Chairman Simpson,  
21 members of the Board, this is Samuel Yemington on  
22 behalf of Westmoreland. I apologize. I missed  
23 that question as I was being elevated to the  
24 panel, so if there's an outstanding question for  
25 Westmoreland, I'd just ask that you please repeat

1 it.

2 CHAIR SIMPSON: My question is that this  
3 case was decided by the Supreme Court about a year  
4 and a half ago, and it was kind of a split  
5 decision, but the net result is that several  
6 matters, several issues were remanded to the  
7 Board, but in order for the Board to consider  
8 them, they need to be remanded by the District  
9 Court, which has not happened.

10 And of course the Judge in that case has  
11 since been elected to the Supreme Court. I for  
12 one am not aware of who this case may have been  
13 assigned to since.

14 So as I said, there are three matters  
15 that were, based on the Supreme Court's decision,  
16 were to be remanded to the Board for further  
17 consideration. Those would be in summary  
18 additional water quality parameters, cumulative  
19 hydrological impacts, and the impairment status of  
20 East Fork Armells Creek.

21 So I'm curious as to whether the Board  
22 can expect a remand at any time in the immediate  
23 future, or any information really that the parties  
24 may have to inform us as to what status of this  
25 case is, that is, I presume it's up to the parties



1 as to where they want to proceed, but I'd just  
2 like to have a status report rather than just  
3 leave this thing hanging indefinitely.

4 MR. YEMINGTON: Certainly. And Chairman  
5 Simpson, members of the Board. That's an accurate  
6 reflection of the procedural posture of this case.

7 I would note that there were several  
8 matters that were remanded to the District Court.  
9 Westmoreland was not party to those particular  
10 matters. Those were issues between the petitioner  
11 Montana Environmental Information Center and the  
12 Department of Environmental Quality.

13 We didn't participate in that aspect of  
14 the remand, and I would defer to Counsel for MEIC  
15 and Counsel for the Department with respect to  
16 that aspect of the remand.

17 It is my understanding that that has  
18 been concluded in the District Court, and the only  
19 issue here is waiting for the petitioner MEIC to  
20 initiate the remand to the Board of Environmental  
21 Review. It's further my understanding that that  
22 was accomplished in December.

23 I note that because there's been some  
24 development with the Montana Legislature since  
25 then that weighs directly on this case, that is,

1 the Montana Legislature revisited and redefined  
2 the definition of material damage, which is  
3 central to and material to the questions that were  
4 remanded to the Board in this case.

5 That legislation was signed by the  
6 Governor in May, and it was communicated, it was  
7 sent from the Department of Environmental Quality  
8 to the Office of Surface Mining Reclamation  
9 Enforcement for review and approval. If that  
10 standard is approved, it will apply retroactively  
11 to the AM4 permit.

12 So the only point there, Chairman  
13 Simpson and members, is that I believe, and  
14 certainly from our perspective, there's not a  
15 particular rush to move forward here with the  
16 remand to the Board, just because we need to wait  
17 and see whether or not OSM approves the Montana  
18 Legislature's definition of material damage.

19 If they do, we will certainly be moving  
20 forward under that standard; and if not, the  
21 expectation is that this would be remanded at that  
22 time to the Board for processing under the  
23 existing standard.

24 CHAIR SIMPSON: Thank you very much.  
25 Who is representing the Department on this matter?

1 Mr. King?

2 MR. KING: Yes. Good morning, Board  
3 members and Board Chair. I am representing  
4 Montana DEQ with respect to this matter, as well  
5 as Jeremiah Langston.

6 As Mr. Yemington correctly noted, no  
7 party has asked for a remand from the District  
8 Court. DEQ and MEIC did resolve the outstanding  
9 issues on attorneys fees. It's not DEQ's  
10 intention to ask for the remand, so we're just  
11 going to wait for a party, whether that's  
12 Westmoreland or MEIC, to ask for any such remand.  
13 But that hasn't happened yet, and we intend to  
14 wait and see whether or not if it does.

15 CHAIR SIMPSON: Thank you. If I recall  
16 correctly, the Supreme Court sustained vacation of  
17 that permit. Is the permit in force or is it not?

18 MR. KING: It's not in force for  
19 purposes of mining. It does remain for purposes  
20 of any sort of reclamation obligations.

21 CHAIR SIMPSON: Okay. Thank you. That  
22 wasn't clear to me. Is there anyone representing  
23 MEIC who might be able to comment on this that is  
24 on the call?

25 (No response)

1 CHAIR SIMPSON: I'm presuming not.

2 MS. MOISEY-SCHERER: Chair Simpson, I  
3 don't see --

4 CHAIR SIMPSON: Are there any questions  
5 from the Board? Sorry.

6 MS. MOISEY-SCHERER: Chair Simpson, I  
7 don't see anybody, sir.

8 CHAIR SIMPSON: Okay. Thank you. The  
9 way my screen is set up, I can't really see raised  
10 hands, so Sandy, I appreciate your help with that.  
11 Any further questions or comments from the Board  
12 on this matter?

13 (No response)

14 CHAIR SIMPSON: So I guess we'll wait  
15 and see. Thank you very much, though. The update  
16 is helpful in understanding where we are.

17 Moving forward with the briefing items,  
18 the next Item (b), this is Department of  
19 Environmental Quality versus Board of  
20 Environmental Review, and MEIC et al., versus  
21 Board of Environmental Review on the selenium  
22 water column rule, Lake Kooconusa.

23 The status of this case is that -- and I  
24 think it's adequately described here in the  
25 agenda, but I just wanted to relate that briefing

1 has been concluded, and the oral arguments are  
2 scheduled for July 22nd in Helena at 9:00 a.m.

3 The next case Item (c), Montana  
4 Environmental Information Center versus Department  
5 of Environmental Quality. I'm sorry. This is  
6 Signal Peak.

7 Signal Peak I had a question about, but  
8 that's been answered in the agenda, that is, what  
9 the status of the District Court case is.

10 Briefing was completed January 2024. Oral  
11 argument was held February 15th, 2024, and a  
12 decision is pending.

13 The next has to do with Riverside. I  
14 don't believe we have anything further on that. I  
15 understand that's been appealed.

16 Moving to nonenforcement cases assigned  
17 to a Hearing Examiner. This is one of three cases  
18 that remain where Mr. Rob Cameron, outside  
19 Counsel, was appointed by the Board as Hearing  
20 Examiner. This appointment was made I believe  
21 back in 2022, if I'm not mistaken.

22 And the purpose was to try to speed  
23 things along on some of these cases, because at  
24 the time there was an awful lot of turnover within  
25 ALS as far as changes of Hearing Examiners. So

1 the Board at that time, under the leadership of  
2 Steve Ruffatto, decided that we'd try going to  
3 outside Counsel to act as Hearing Examiner on some  
4 of these cases.

5 Mr. Cameron, as I recall, was assigned  
6 six cases, three of which have been concluded, and  
7 three of which remain to be decided. The first is  
8 listed here. I've gotten ahead of myself. Please  
9 excuse me. I was on the wrong page.

10 Nonenforcement (a) is Westmoreland  
11 Resources MPDES. That one is still moving  
12 forward.

13 But anyway, moving ahead to the Rob  
14 Cameron cases. The Board received notice from Mr.  
15 Cameron here several weeks ago that, first of all,  
16 he apologized for the delay in these cases, and  
17 noted that he's been dealing with some health,  
18 personal health matters that have resulted in  
19 delays.

20 And then we more recently heard from Mr.  
21 Cameron that he is no longer to able to serve as  
22 Hearing Examiner in these cases, and has  
23 essentially returned the cases to the Board, again  
24 due to health considerations.

25 I really hope Mr. Cameron is able to

1 deal successfully with those matters, but this  
2 leaves these three remaining cases with the Board,  
3 and all three are I think very close, with FOFCOLs  
4 either drafted or complete.

5 Terisa, if I wonder if you could give us  
6 a brief summary on the three cases that we're  
7 talking about here, where they stand, whether or  
8 not the Board needs to take any action at this  
9 time.

10 MS. OOMENS: So I think the first thing  
11 we should note is in one of his cases, Rosebud  
12 Mine Area B, that would be BER No. 2022-05, he did  
13 issue an order in that one, and the parties are  
14 working on exceptions, so that one is very close.  
15 It's a step before coming to the Board anyway, so  
16 that one should be wrapping up, which is nice.

17 The other two cases, from what I could  
18 review in the file, looks like they are either  
19 fully briefed on the FOFCOLs, so the parties have  
20 drafted FOFCOLs for the Hearing Examiner, or the  
21 Board in this case probably; or they are just  
22 fully briefed on summary judgment, ready to be  
23 reviewed and decided. The parties may have more  
24 to add to that, but it is unfortunate that we've  
25 lost Rob as a Hearing Examiner.

1           And so I think probably the best case,  
2 because these are really close to wrapping up, is  
3 for the Board to assume jurisdiction, bring them  
4 back from the Hearing Examiner under Board  
5 jurisdiction, and the Board can just wrap them up  
6 that way.

7           I'm happy to try and answer any specific  
8 questions, but it looks like at least Kim Wilson  
9 has his hand raised and may have something to add.

10           CHAIR SIMPSON: Mr. Wilson.

11           MR. WILSON: Thank you, Mr. Simpson. I  
12 wanted to point out, and I noticed this on the  
13 last Board agenda, the summary of the status of  
14 the Valley Garden case is inaccurate, because the  
15 summary here says the case has summary judgments  
16 fully briefed, and is pending a decision.

17           Actually this case has had kind of a  
18 convoluted procedural history. I'm representing  
19 Valley Garden, the petitioners, by the way. And  
20 the last activity, just to summarize, was in the  
21 spring of 2024. April 26th we had a hearing on  
22 various motions in limine that both we and DEQ had  
23 filed, and which because of those motions, the  
24 Hearing Examiner Mr. Cameron had at our request  
25 stayed summary judgment briefing.



1           And so my recollection is that where  
2 things are procedurally with that case is that  
3 once the Hearing Examiner makes or made a decision  
4 on the motions in limine, then I think both  
5 parties would then be filing responses, and then  
6 replies on summary judgment.

7           Both parties had initially back in I  
8 think 2023 filed motions for summary judgment and  
9 briefed them, if I'm recalling correctly, and it  
10 was after one round of briefing that, based on our  
11 motion to stay pending these motions in limine,  
12 that Mr. Cameron did that.

13           So procedurally Valley Garden still has  
14 a couple of hoops to go, and I just wanted to  
15 clarify that that's the case.

16           CHAIR SIMPSON: Thank you very much.

17           MR. WILSON: And if I could add, Mr.  
18 Chair, I notice -- I don't think Lee McKenna,  
19 who's DEQ's Counsel, is on the call, but I think  
20 I've given an accurate summary of where things  
21 are.

22           CHAIR SIMPSON: Thank you very much.  
23 We'll try to document the status on this before  
24 our next meeting and proceed from there.

25           MR. KING: And sorry to interrupt, Board

1 Chair Simpson. This is Sam King.

2 CHAIR SIMPSON: I was going to ask if  
3 the Department had a comment on this.

4 MR. KING: No, I was just going to chime  
5 in and say that yes, Lee McKenna is not on the  
6 call, but I'm somewhat familiar with the status of  
7 this case. I believe that Mr. Wilson's rendition  
8 of the procedural nature is accurate.

9 CHAIR SIMPSON: Okay. Thank you very  
10 much.

11 The other two cases have to do with  
12 Westmoreland Rosebud Area B AM5, I believe, and  
13 Area F. Are there any comments as to the status  
14 from either Westmoreland Coal, the Department, or  
15 MEIC -- who apparently is not on the call.

16 MR. KING: This is Sam King again for  
17 the Department. And what's reflected in here is  
18 accurate as far as what the status is of those  
19 cases. So for Area F, we've engaged in  
20 exceptions, and responses to exceptions, briefing,  
21 before Mr. Cameron.

22 And so I think the next step is it comes  
23 before the Board, and then we have oral argument  
24 on that, whether to adopt the proposed findings of  
25 fact and conclusion of law, and whether to accept

1 any of the parties' exceptions.

2 With respect to Rosebud AM5, this  
3 accurately reflects the status of the summary  
4 judgment, and the proposed findings of fact and  
5 conclusions of law; and as is also noticed here in  
6 the BER agenda, the next step is for the parties  
7 to engage in exceptions briefing, and then that  
8 will come before the full Board.

9 CHAIR SIMPSON: Thank you very much.  
10 Any further comments or questions from the Board  
11 on any of these cases?

12 (No response)

13 CHAIR SIMPSON: Terisa, do we need a  
14 motion to assume jurisdiction of these cases --

15 MS. MOISEY-SCHERER: Chair Simpson, this  
16 is Sandy. Board Member Knuteson has her hand up.

17 CHAIR SIMPSON: I'm sorry. Amanda,  
18 please proceed.

19 BOARD MEMBER KNUTESON: Thank you, Chair  
20 Simpson. I was just going to request that if we  
21 follow Terisa's guidance, and the Board takes  
22 jurisdiction over at sort of this end stage with  
23 these three cases, can we please access the  
24 hearing transcripts and the full record in some  
25 fashion? I assume that's not just going to be an

1 email. I would just request access to the hearing  
2 transcripts specifically. If there are arguments  
3 before the --

4 CHAIR SIMPSON: I believe we have access  
5 to the full record. I'll defer to Terisa on that,  
6 but I believe we do.

7 MS. OOMENS: Yes. Sandy will have to  
8 facilitate your access to that, just because, like  
9 you said, it's too large to send in an email. But  
10 Sandy should be able to get that to you one way or  
11 another. But yes, we do have it from Mr. Cameron.

12 BOARD MEMBER KNUTESON: Great, as long  
13 as I would just say more than a week before  
14 whatever meeting where we hold the hearing on the  
15 cases that we're taking. Thank you.

16 CHAIR SIMPSON: Thank you. Mr.  
17 Yemington, you have your hand up.

18 MR. YEMINGTON: Thank you, Chairman  
19 Simpson and members of the Board. Again, Sam  
20 Yemington representing Westmoreland in both of  
21 these cases.

22 Just to provide a bit of additional  
23 detail here with respect to the hearing  
24 transcripts, I would note that all of these  
25 hearings, the Area F hearing for example, was a

1 four day hearing. It was recorded with video and  
2 audio as well, so that may facilitate the Board's  
3 efforts to familiarize themselves with the record  
4 and get up to speed, but I do caution it's quite  
5 considerable, the record, in both cases.

6 CHAIR SIMPSON: Just for clarity, have  
7 both cases been through hearing --

8 MR. YEMINGTON: Chairman Simpson,  
9 members, if I can answer that question as well.  
10 No, that's not the case. The Area F contested  
11 case was largely resolved on summary judgment with  
12 a single claim remaining for an evidentiary  
13 hearing. That evidentiary hearing was conducted  
14 several days ago. That was the four day hearing  
15 that I was alluding to.

16 The AM5 case, which is the more recent  
17 contested case, was fully resolved by Hearing  
18 Examiner Cameron on summary judgment, and it was  
19 his proposed decision that there were no factual  
20 issues that demanded an evidentiary hearing, and  
21 it could be resolved on the briefing.

22 And so that's the proposed order that  
23 the Board received in May of this year. The Area  
24 F case has just gone through briefing and proposed  
25 orders following that evidentiary hearing, and so

1 that proposed decision includes obviously all of  
2 the evidence and argument that was introduced by  
3 the parties in that four day hearing.

4 So the same, essentially the same  
5 process as here, just one case was resolved on  
6 summary judgment, and the other case necessitated  
7 an evidentiary hearing.

8 CHAIR SIMPSON: Thank you. Back to you,  
9 Terisa. Do we need a motion to assume  
10 jurisdiction in these cases --

11 MS. OOMENS: Yes, please.

12 CHAIR SIMPSON: -- from Mr. Cameron? Is  
13 there a motion?

14 (No response)

15 CHAIR SIMPSON: Is there a motion to  
16 assume jurisdiction in the three cases that have  
17 been handed back to the Board by Mr. Cameron?

18 BOARD MEMBER RANKOSKY: Motion to move,  
19 the three cases to move back to the Board.

20 CHAIR SIMPSON: Thank you, Jennifer. Is  
21 there a second?

22 BOARD MEMBER SMITH: I'll second.

23 CHAIR SIMPSON: Thank you, Joe. It's  
24 been moved and seconded for the Board to assume  
25 jurisdiction of the three cases: Western Energy

1 Company, BER 2019-05; Valley Garden Land and  
2 Cattle, Opencut Permit No. 674, BER 2022-04 OC;  
3 and Area B, Rosebud Mine Area B Amendment 5, BER  
4 2022-05 SM. Is there further discussion?

5 (No response)

6 CHAIR SIMPSON: Hearing none, all in  
7 favor say aye.

8 (Response)

9 CHAIR SIMPSON: Opposed.

10 (No response)

11 CHAIR SIMPSON: Motion passes. Thank  
12 you very much.

13 Moving forward through the briefing  
14 items, those were the main items I wanted to  
15 cover, although I did have a question with regard  
16 to Alpine Pacific Utilities. This case has not  
17 been assigned to a Hearing Examiner.

18 We had a decision on this at the last  
19 meeting, and at that time Counsel for the  
20 Department on this case wasn't available, and I  
21 wanted to ask if we could have just a very brief  
22 explanation of what this case is about, because it  
23 was not at all clear from the action that we took  
24 at the last meeting, other than it has to do with  
25 MPDES. Is there anyone from the Department

1 prepared to speak on this?

2 MS. BOWERS: Yes, Chairman Simpson,  
3 members of the Board. I'm Kirsten Bowers  
4 representing DEQ in the Alpine Pacific Utilities  
5 case.

6 This is a groundwater discharge permit  
7 appeal, and I don't know -- Alpine is represented  
8 by Rick Tappan. I don't believe he's on today.  
9 And the permittee is Justin Ahmann. I don't know  
10 if Mr. Ahmann is on either.

11 But the bottom line here is that the  
12 parties agreed to a second stipulation and a  
13 schedule for permit renewal, and then we amended  
14 it. And what was before you at your last meeting  
15 was the first amendment to the second stipulation  
16 between the parties. And under that amendment,  
17 the parties agreed to a schedule for the  
18 groundwater permit renewal, and we are on track to  
19 issue a draft permit July 21st of this year. So  
20 it's moving forward.

21 It's been kind of a complicated permit.  
22 It was a renewal, and a major modification, and  
23 the major modification would have involved  
24 increasing the volume, and the outfall, the  
25 original Outfall 001 is very close to surface



1 water, so it required kind of a complex change in  
2 transport modeling, which took some time to do.

3 And then the parties agreed to -- and  
4 then another modification was to add another  
5 outfall, Outfall 002, which is at the airport in  
6 Kalispell, the Glacier Airport.

7 So what we agreed on was to move forward  
8 with Outfall 002, and then keep Outfall 001 at its  
9 original volume at this time. The permittee could  
10 come back and propose another modification, but  
11 for now, we're just going to move forward with  
12 Outfall 002, the new one at the airport, and keep  
13 Outfall 001 at its original volume. So we at  
14 least have a schedule to get the permit done.

15 CHAIR SIMPSON: Thank you, Ms. Bowers.  
16 This is one that has been on our docket since  
17 before I joined the Board four years ago, so it's  
18 been going for a long time.

19 But I am a little curious, if you could  
20 just tell us briefly what kind of a facility is  
21 this with a groundwater discharge. That's not at  
22 all clear to me.

23 MS. BOWERS: It's a private treatment  
24 system. I don't really know off the top of my  
25 head what type of treatment it is. I think it's a

1 Level 2, though, treatment. They currently treat  
2 about 57,000 gallons per day, mostly residential;  
3 and then they're adding the airport with another  
4 outfall that will treat I think it's up to 100,000  
5 gallons per day.

6 And eventually there is a proposal to  
7 increase the original outfall up to 100,000  
8 gallons per day, but that will require some  
9 modeling work that hasn't been completed yet.

10 CHAIR SIMPSON: So it's residential  
11 waste treatment, is what it is?

12 MS. BOWERS: Mostly. I think there will  
13 be some commercial, though, too.

14 CHAIR SIMPSON: Okay. All right. Well,  
15 thank you very much. That's very helpful, at  
16 least to my mind, being able to understand what  
17 we're talking about here.

18 Moving forward. With respect to --  
19 Again, I'm on Page 16 of our agenda, Item (c),  
20 which is Appeal and Request for Hearing,  
21 Westmoreland Rosebud regarding MPDES Permit No.  
22 32042, Case 2022-06 Water Quality.

23 This is the one that had to do with  
24 defining water quality in one of the tributaries  
25 of Rosebud Creek, and there hasn't been a report

1 to the Board, at least according to the  
2 information here in the agenda, for over a year,  
3 so I was just wondering if there's anybody with  
4 the Department or Rosebud Mine who can tell us  
5 where that stands, and whether progress is being  
6 made in defining the water quality status of that  
7 ephemeral drainage.

8 MS. BOWERS: Yes, Chair Simpson, members  
9 of the Board, Kirsten Bowers representing DEQ on  
10 that matter also.

11 And so currently the parties are  
12 proceeding with data analysis, and we're  
13 proceeding under the stipulation to adopt  
14 nonanthropogenic standards for electrical  
15 conductivity and sodium adsorption ratio. And  
16 once that analysis is complete, then there's a 90  
17 day deadline that will be triggered to initiate a  
18 rulemaking.

19 CHAIR SIMPSON: Is there a schedule as  
20 far as completing that analysis? It's been going  
21 on for some time.

22 MS. BOWERS: Yes, and there isn't a  
23 schedule for the analysis itself, so we're going  
24 through quite a bit of data, and then once that  
25 analysis is complete, then there is a 90 day

1 deadline that will be triggered to propose new  
2 nonanthropogenic standards for the receiving  
3 waters. And I think somebody from Westmoreland is  
4 on the call as well.

5 CHAIR SIMPSON: Mr. Yemington, I see  
6 your hand up.

7 MR. YEMINGTON: Yes, Chairman Simpson,  
8 members of the Board, on behalf of Westmoreland  
9 again.

10 We just share Ms. Bowers' presentation  
11 of the procedural posture here, and just note for  
12 the Board that the collection of the water  
13 monitoring data, the completion of that exercise  
14 was relatively recent, and we've only now been  
15 able to get that information to our hydrologists  
16 who are conducting that independent analysis. And  
17 as stated by Counsel for DEQ, once that process is  
18 completed, it will initiate that 90 day window  
19 under the stipulation.

20 CHAIR SIMPSON: Okay. It sounds like  
21 it's moving forward then, if the data collection  
22 phase has been completed. So thank you very much.  
23 Any other questions from the Board on that matter?

24 (No response)

25 CHAIR SIMPSON: The remaining two

1 briefing items have to do with gravel pit projects  
2 in Gallatin County, both of which have been stayed  
3 pending Court action. So I believe we're ready to  
4 move forward with action items. Just one more  
5 time, are there any questions or comments from the  
6 Board having to do with any of the briefing items  
7 before we move on?

8 (No response)

9 CHAIR SIMPSON: Thank you. Hearing  
10 none, we'll move on to the action items.

11 The first is in the matter of appeal and  
12 request for hearing by Protect the Clearwater  
13 regarding issuance of Opencut Mining 3473, Case  
14 No. BER 2023-03.

15 This is the case we heard I believe back  
16 in December, if I'm not mistaken, and was remanded  
17 -- It had to do with whether or not this is a,  
18 quote, "dryland opencut permit," and the Board  
19 remanded the case back to the Hearing Examiner to  
20 provide more information from the permit materials  
21 on two questions: The first had to do with  
22 hydrology, surface and groundwater; and the second  
23 had to do with the number of occupied structures  
24 within a half mile of the permit.

25 We have a new and revised finding of

1 fact, conclusions of law proposed from -- prepared  
2 by the Hearing Examiner Terisa Oomens. And on  
3 seeing that this matter was on our agenda  
4 initially, as you know, we had talked about, or I  
5 planned to have an in-person meeting, thinking  
6 that this case was going to take quite a bit of  
7 time to discuss and resolve.

8 But on receiving the packet materials,  
9 learned that the parties have agreed to waive  
10 exceptions and oral argument on this, so it comes  
11 directly to the Board on those two items. I  
12 presume everyone has read the proposed findings of  
13 fact and conclusions of law, so to initiate  
14 discussion, is there a motion whether to accept  
15 and adopt the proposed findings of fact and  
16 conclusions of law in favor of the Department of  
17 Environmental Quality?

18 (No response)

19 CHAIR SIMPSON: Is there a motion?

20 (No response)

21 CHAIR SIMPSON: For purposes of  
22 discussion -- yes.

23 BOARD MEMBER SMITH: Chair Simpson, go  
24 ahead. I was going to go ahead and motion.  
25 Sorry.

1 CHAIR SIMPSON: Go ahead, Joe. I'm  
2 sorry.

3 BOARD MEMBER SMITH: I will motion to  
4 approve the findings of fact and conclusions of  
5 law given to us by the Hearing Examiner.

6 BOARD MEMBER RANKOSKY: I'll second.

7 CHAIR SIMPSON: Is there a second? It's  
8 been moved and seconded to accept the, adopt the  
9 findings of fact and conclusions of law as  
10 presented by the Hearing Examiner. Discussion.

11 (No response)

12 CHAIR SIMPSON: Is there discussion from  
13 the Board members?

14 BOARD MEMBER KNUTESON: Chair Simpson,  
15 if I may, I had a question.

16 CHAIR SIMPSON: Yes.

17 BOARD MEMBER KNUTESON: I had a question  
18 for Counsel for Protect the Clearwater. Reading  
19 through everything, one of the things that I was  
20 hoping -- I know that they've waived oral argument  
21 -- but I was hoping to hear a concise summary of  
22 precisely which aspects of DEQ's work that was  
23 incorporated into the FOFCOL we have before us  
24 what they contend would represent the ad hoc  
25 rationalizations that were mentioned in the





1 water is whether any surface water channels were  
2 affected or intersected; and second was whether  
3 the gravel pit as proposed would intercept  
4 groundwater.

5 And it wasn't a question of, at least in  
6 my mind, was not a question of whether or not the  
7 Department had sufficient information, it was  
8 whether sufficient information had been presented  
9 to the Board through the FOFCOL, and I believe  
10 those questions have been satisfactorily answered,  
11 at least to my satisfaction, by presenting some  
12 mapping information, as well as groundwater  
13 elevations as indicated by adjacent surface water.

14 And then the second had to do with the  
15 number of occupied structures within, under the  
16 legal definition, within a half mile of the  
17 project, and I believe supplemental information  
18 provided to us has been satisfactory to answer  
19 that question as well.

20 So I'm certainly in agreement with the  
21 motion. Is there any further discussion?

22 (No response)

23 CHAIR SIMPSON: It's been moved and  
24 seconded to approve and adopt the findings of fact  
25 and conclusions of law as proposed by the Hearing

1 Examiner on Case No. BER 2024-04 -- excuse me --  
2 2023-03 -- I was looking at the wrong page --  
3 Permit No. 3473, Opencut Permit No. 3473. All in  
4 favor, say aye.

5 (Response)

6 CHAIR SIMPSON: Opposed.

7 (No response)

8 CHAIR SIMPSON: Motion carries.

9 The next item on our agenda has to do  
10 with West Decker. We were scheduled to hear oral  
11 arguments on Decker's request for hearing  
12 specifically with regard to an order to -- it had  
13 to do with an order to revise the permit for West  
14 Decker.

15 I understand that just this morning we  
16 have received from Decker Coal a motion to stay  
17 this case until December. I guess I would ask our  
18 attorney Ms. Oomens to summarize the status for  
19 us, so that we can move forward here. Ms. Oomens.

20 MS. OOMENS: Sure. And again, I'm sure  
21 the parties may want to elaborate. But yes,  
22 yesterday afternoon we received a request from  
23 Decker a motion to stay, which is unopposed,  
24 meaning DEQ agrees with staying the proceedings  
25 until December.

1           Based on what's included in that motion,  
2 it seems like the parties are attempting to work  
3 it out amongst themselves, which is great  
4 considering the discussion we've had the last  
5 couple meetings about both Decker West and Decker  
6 East. So that's kind of the status unless you  
7 would like the parties to add anything.

8           CHAIR SIMPSON: Thank you, Terisa. Yes,  
9 please. Representative from Decker Coal, do you  
10 have any comments you'd like to add here, please?

11           MS. MARQUIS: Yes. Good morning and  
12 thank you for your time.

13           So on West Decker, just earlier this  
14 week the compliance deadline was extended to  
15 October 1st, 2025, and that is in recognition  
16 primarily of the long lead time that it takes to  
17 obtain the post-mine topography and the associated  
18 hydrologic control plan, which has always been --  
19 you know, my client has had this long lead  
20 deadline, knowing that it would not be completed  
21 until September.

22           So the compliance deadline, DEQ was  
23 gracious and extended that to October 1st. We  
24 would like to provide a status update to the Board  
25 prior to your December meeting. That should give

1 the parties time to complete the PMT, submit it to  
2 the Department, and have a discussion about it,  
3 and then we can provide an update for your  
4 December meeting.

5 CHAIR SIMPSON: Well, thank you very  
6 much. And as long as you have the floor, would  
7 you comment on Decker East as well, please.

8 MS. MARQUIS: Certainly. Decker East,  
9 the parties have done a lot of work on Decker  
10 East. As you'll see in our brief in support of  
11 the motion, there were some immediate meetings and  
12 communications with DEQ after the last Board  
13 meeting.

14 Things are progressing forward. In  
15 fact, there have been two of the issues and  
16 requirements noted in the Order of Abatement have  
17 been resolved through submission, review, and  
18 approval of minor revisions. There are three  
19 outstanding, but those have also been moving  
20 forward at the same time.

21 The compliance deadline has been  
22 extended in that matter a couple of times by the  
23 Department, and so again, we're requesting to stay  
24 this case until your December meeting, and we will  
25 provide a status update to the Board in advance of

1 your December meeting to provide an update on  
2 where this matter is.

3 CHAIR SIMPSON: Thank you very much.  
4 Mr. King, do you have a comment on this as well?

5 MR. KING: Yes. Thank you, Board Chair  
6 and Board members. I really don't have anything  
7 further to add than what Ms. Marquis already  
8 provided. The parties are in a good spot, have  
9 been discussing and moving the ball forward. So  
10 we're in agreement with staying this proceeding,  
11 and think likely that this case can come to a  
12 resolution through the parties.

13 CHAIR SIMPSON: Thank you very much. I  
14 guess I'd comment that I really appreciate the  
15 effort put forth by both the Department and Decker  
16 to resolve these issues. It sounds like progress  
17 is being made.

18 Is there a motion to stay the -- we'll  
19 handle them one at a time. Is there a motion to  
20 stay action on this case BER 2025-01 SM West  
21 Decker as requested by the parties?

22 BOARD MEMBER RANKOSKY: Motion to stay  
23 BER 2025-01.

24 BOARD MEMBER KNUTESON: I second that.

25 CHAIR SIMPSON: A motion has been made

1 and seconded to stay the West Decker case.

2 Further discussion.

3 (No response)

4 CHAIR SIMPSON: All in favor, say aye.

5 (Response)

6 CHAIR SIMPSON: Opposed.

7 (No response)

8 CHAIR SIMPSON: Motion carries

9 unanimously.

10 Proceeding to Decker East, is there a  
11 motion to stay this case as requested by the  
12 parties, BER 2025-02 SM?

13 BOARD MEMBER RANKOSKY: Motion to stay  
14 BER 2025-02 SM.

15 CHAIR SIMPSON: Is there a second?

16 BOARD MEMBER KNUTESON: I'll second.

17 CHAIR SIMPSON: A motion has been made  
18 and seconded to stay the East Decker case 2025-02  
19 SM as requested by the parties until December.

20 Further 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 unanimously. Thank you very much. Again, thank  
3 you to the parties for moving this forward.

4 We have a new contested case, moving on  
5 to Item 4, in the matter of Yogo Sapphire Group,  
6 LLC, exploration license No. 00886, BER 2025-03  
7 HRM.

8 The background on this was included in  
9 the Board package. My understanding is that Yogo  
10 Sapphire Group has filed a notice of dismissal  
11 without prejudice. We're being asked to approve,  
12 essentially approve the dismissal. Is there  
13 anyone from Yogo Sapphire Group here to provide  
14 any information to the Board on this case?

15 MR. WHITAKER: Chair Simpson.

16 CHAIR SIMPSON: Thank you.

17 MR. WHITAKER: Chair Simpson, this is  
18 Nick Whitaker, staff attorney with DEQ. And I  
19 don't believe Martin King is on the call.

20 But we've been in discussion about this,  
21 and your recitation and what's in the agenda is  
22 correct, that they filed an appeal. We've  
23 subsequently worked with Yogo Sapphire Group, and  
24 now they've just dismissed -- they filed a notice  
25 of dismissal of appeal, so I don't believe any

1 further action is necessary at this point.

2 CHAIR SIMPSON: Well, I compliment the  
3 parties. I think this is the shortest contested  
4 case we've had, at least in my memory. I guess I  
5 would ask our Counsel Terisa, do we need a motion  
6 on this?

7 MS. OOMENS: I don't think you need a  
8 motion on this, but if you want to make one  
9 dismissing the case, feel free to do so.

10 CHAIR SIMPSON: Is there a motion?

11 BOARD MEMBER SMITH: Yes, I'll motion to  
12 grant the dismissal of the case BER 2025-03 Yogo  
13 Sapphire.

14 CHAIR SIMPSON: Is there a second?

15 BOARD MEMBER RANKOSKY: Second.

16 CHAIR SIMPSON: It's been moved and  
17 seconded to dismiss 2025-03 HRM, Hard Rock Mining.  
18 Further discussion.

19 (No response)

20 CHAIR SIMPSON: All in favor, say aye.

21 (Response)

22 CHAIR SIMPSON: Opposed.

23 (No response)

24 CHAIR SIMPSON: Motion carries. Thank  
25 you very much. That concludes new contested



1 cases.

2 The next item, Item 5, general public  
3 comment. Under this item, members of the public  
4 may comment on any public matter within the  
5 jurisdiction of the Board that is not otherwise on  
6 the agenda for the meeting. Individual contested  
7 case proceedings are not public matters on which  
8 the public may comment. Is there any public  
9 comment?

10 (No response)

11 CHAIR SIMPSON: Any public comment?

12 (No response)

13 CHAIR SIMPSON: Hearing none, we'll move  
14 on.

15 The next item is Board Chair update.  
16 Just a couple of things. We've already talked  
17 about the status of the litigation that we have in  
18 progress having to do with the selenium rule for  
19 Lake Koochanusa. As noted earlier, the briefing  
20 has been completed, and oral arguments are  
21 scheduled for the 22nd of July if anybody is  
22 interested in attending those.

23 The other item that I think needs to be  
24 brought up before the Board is that I received  
25 notice a few days ago from our attorney Terisa

1 Oomens that she will be leaving ALS effective next  
2 Friday, I believe, and so the Board will be  
3 without Legal Counsel.

4 I'd like to thank Terisa for her  
5 service. It's been a pleasure working with  
6 Terisa, and wish you well in your future endeavors  
7 as you move on.

8 But we're in a situation where ALS is  
9 short staffed, so there's nobody there to take  
10 over as Hearing Examiner on behalf of the Board,  
11 so we need to find another means of obtaining  
12 Legal Counsel.

13 I'm not really sure where this is going.  
14 I did have a discussion this morning with Mr. Fehr  
15 with DEQ talking about possible options, but we  
16 will proceed and see where it all leads. But I  
17 wanted the Board to be aware of the situation with  
18 respect to Legal Counsel.

19 That's all I have. Any questions for  
20 me?

21 (No response)

22 CHAIR SIMPSON: Hearing none, I believe  
23 we are ready to adjourn.

24 MS. MOISEY-SCHERER: Chair Simpson.

25 CHAIR SIMPSON: Yes, Sandy.

1 MS. MOISEY-SCHERER: This is Sandy. Sam  
2 Yemington has his hand up, sir.

3 CHAIR SIMPSON: I'm sorry. Mr.  
4 Yemington.

5 MR. YEMINGTON: Chairman Simpson and  
6 members of the Board, not to delay things here,  
7 but as a matter of housekeeping, given the  
8 announcement that Ms. Oomens will be departing  
9 from ALS, could you provide the parties some  
10 guidance with respect to how they would like  
11 communications on the contested cases that the  
12 Board has now assumed jurisdiction, that is in the  
13 past we would deal directly with Hearing Examiner  
14 or Counsel for the Board. In the interim is there  
15 a preference with respect to any of these  
16 communications or filings?

17 CHAIR SIMPSON: Those filings should go  
18 to the Board Secretary Sandy.

19 MR. YEMINGTON: Thank you. I appreciate  
20 that.

21 CHAIR SIMPSON: Anything further?

22 (No response)

23 CHAIR SIMPSON: Is there a motion to  
24 adjourn?

25 BOARD MEMBER RANKOSKY: Motion to

1 adjourn.

2 BOARD MEMBER SMITH: Second.

3 CHAIR SIMPSON: It's been moved and  
4 seconded to adjourn the meeting. Thank you  
5 everybody. We'll see you in a couple months, and  
6 as always, life gets more interesting. So all in  
7 favor say aye, motion to adjourn.

8 (Response)

9 CHAIR SIMPSON: Motion carries  
10 unanimously. Thank you everybody. What was  
11 anticipated to be a long meeting turned out to be  
12 relatively brief. Thank you again.

13 (The proceedings were concluded  
14 at 10:13 a.m. )

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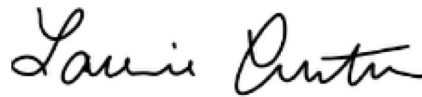
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STATE OF MONTANA )  
 : SS.  
COUNTY OF LEWIS & CLARK )

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 -44- 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 28th day of  
June, 2025.



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

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