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BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

BOARD MEETING)
OCTOBER 24, 2025)

TRANSCRIPT OF PROCEEDINGS (VIA ZOOM)

October 24, 2025
9:00 a.m.

BEFORE CHAIRMAN DAVID SIMPSON,
VICE CHAIR STACY AGUIRRE,
BOARD MEMBERS JOSEPH SMITH,
JULIA ALTEMUS, and ALLAN PAYNE

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

Board Attorney Present

Dana Hupp, Interim Board Counsel

DEQ Personnel Present

Board Secretary: Sandy Moisey Scherer

Board Liaison: Deputy Director James Fehr

DEQ Communications: Christopher Wardell

DEQ Legal: Catherine Armstrong, Kirsten Bowers,

Amanda Galvan, Aurora Goddard, Sam King, Jeremiah

Langston, Lee McKenna, Kurt Moser, Isabelle Nebel,

and Nick Whitaker

DEQ Air, Energy and Mining: Josh Bridgeman, Ric

Casteel, Mitch Hoffman, Emily Lodman, Gabrielle

Ostermayer, Brian Schrage, and Dan Walsh

DEQ Enforcement: Chad Anderson

Other Parties Present

Laurie Crutcher Crutcher Court Reporting

Shiloh Hernandez Earthjustice

Vicki Marquis - Crowley Fleck

Samuel Yemington, Andrea Grave, Sarah Bordelon -

Holland & Hart

David (Kim) Wilson - Morrison Sherwood Wilson &

Deola, PLLP

Alan Ringlein - A.M. Welles

William Meyer map-inc.org

1 WHEREUPON, the following proceedings were
2 had:

3 * * * * *

4 CHAIR SIMPSON: Good morning, everyone.
5 It looks like we're still short one Board member.
6 I don't see Jen on there. Have you heard anything
7 from her, Sandy?

8 MS. MOISEY-SCHERER: No, sir.

9 CHAIR SIMPSON: Well, let's go ahead and
10 bring the meeting to order. Good morning,
11 everyone. Welcome to the October 2025 meeting of
12 the BER. Sandy, would you call the roll, please.

13 MS. MOISEY-SCHERER: Chair Simpson.

14 CHAIR SIMPSON: Here.

15 MS. MOISEY-SCHERER: Vice Chair Aguirre.

16 VICE CHAIR AGUIRRE: Here.

17 MS. MOISEY-SCHERER: Board Member

18 Altemus.

19 BOARD MEMBER ALTEMUS: Here.

20 MS. MOISEY-SCHERER: Board Member Payne.

21 BOARD MEMBER PAYNE: Here.

22 MS. MOISEY-SCHERER: Board Member Smith.

23 BOARD MEMBER SMITH: Here.

24 MS. MOISEY-SCHERER: Let me check to see
25 if Board Member Rankosky is here. She's not here

1 yet, sir.

2 CHAIR SIMPSON: Okay. Thank you. Go
3 ahead, Sandy. We do have a quorum.

4 MS. MOISEY-SCHERER: We do have a
5 quorum, sir.

6 CHAIR SIMPSON: We've got a pretty heavy
7 agenda this morning. I think it's going to be an
8 interesting meeting. But before we proceed, I
9 would like to welcome our newest Board member
10 Allan Payne who replaces Amanda on the Board who
11 was not reappointed. I would like to take a
12 minute for the Board Members to just kind of go
13 around the table and introduce ourselves in just a
14 couple of sentences.

15 I'm Dave Simpson. I live in Yellowstone
16 County just about a couple of miles from the
17 Billings city limit. My background briefly, I'm
18 retired. I worked in the coal industry for
19 approximately 40 years, including 34 years with
20 Westmoreland Coal doing environmental permitting
21 and reclamation planning, and then a couple years
22 in consulting. I fill the natural scientist slot
23 on the Board. Vice Chair Aguirre.

24 VICE CHAIR AGUIRRE: I'm Stacy Aguirre.
25 I live in Glendive, Montana. I fill the public

1 representative, one of the public representative
2 positions. My background is I'm an engineer from
3 Montana Tech, and have worked in the energy
4 industry in some fashion since graduating from
5 Montana Tech, and am still working providing
6 environmental services to the oil and gas
7 industry.

8 CHAIR SIMPSON: Thank you, Stacy. Joe.

9 BOARD MEMBER SMITH: I'm Joe Smith.

10 I've been on the Board now for, this is my second
11 term, so I think about six years or so. I'm from
12 Ravalli County. I'm also a Montana Tech graduate,
13 a civil engineer by trade; worked in mostly water
14 resources engineering for about ten years in
15 Montana, and then have been in the utility sector
16 working for both electric co-ops, and now I'm
17 employed by a telecommunications company in
18 Hamilton, Montana; and also have served on the
19 Ravalli County Planning Board for about ten years
20 now.

21 CHAIR SIMPSON: Thank you, Joe. Julia.

22 BOARD MEMBER ALTEMUS: Good morning,
23 everybody. Julia Altemus. I'm in Missoula. I've
24 been on the Board since 2021. I also represent
25 the public representative on the Board.

1 My background, as I am still working,
2 but spent 14 years working as a staffer to the US
3 Senate in Energy and Natural Resources, and have
4 been working on behalf and for the Montana timber
5 community for the last 38 years; maybe will retire
6 at some point soon, but that's kind of my
7 background is energy and natural resources, and
8 again, I represent the public representative on
9 the Board. Thank you.

10 CHAIR SIMPSON: Thank you, Julia.
11 Allan.

12 BOARD MEMBER PAYNE: My name is Allan
13 Payne. I am too also a graduate of Montana Tech
14 some many years ago. I am an attorney at law, but
15 I am at this point mostly retired. And I am new
16 to the Board. Actually I'm originally from Libby,
17 where my family was involved -- where my family
18 were loggers, but I now live in Helena.

19 CHAIR SIMPSON: Thank you, Allan. Once
20 again, welcome to the Board. I trust everyone
21 enjoyed their 473 page reading assignment for this
22 meeting. I know I sure did. I also would like to
23 introduce Dana Hupp who is assisting us as interim
24 Board Counsel since the last meeting. Dana, would
25 you like to say a few words.

1 MS. HUPP: Good morning. I'm excited to
2 be asked to be interim Board Counsel. I am
3 currently living in Missoula. I'm a Ohio native,
4 but have been in Missoula for about 25 years now.
5 So I look forward to this opportunity.

6 CHAIR SIMPSON: Thank you, Dana. Did I
7 miss anyone?

8 (No response)

9 CHAIR SIMPSON: I don't think so. Well,
10 let's proceed with the August 22nd meeting
11 minutes. Are there any comments or alterations to
12 the minutes?

13 (No response)

14 CHAIR SIMPSON: Is there a motion?

15 BOARD MEMBER ALTEMUS: I move to approve
16 the minutes.

17 BOARD MEMBER SMITH: I'll second.

18 CHAIR SIMPSON: Thank you, Julia. It's
19 been moved and seconded to approve the August 22
20 meeting minutes. Any further discussion?

21 BOARD MEMBER PAYNE: Mr. Chairman, I'm
22 going to abstain from the vote because I wasn't at
23 the meeting, so I can't really vote to approve it
24 if I wasn't there.

25 CHAIR SIMPSON: Thank you, Allan. All

1 in favor say aye.

2 (Response)

3 CHAIR SIMPSON: I heard three. Was
4 there a --

5 VICE CHAIR AGUIRRE: I think I might
6 need to abstain as well since I wasn't on the
7 meeting call. I did read through them. I don't
8 have any issues with them.

9 CHAIR SIMPSON: I guess we may be at a
10 little bit of a dilemma because that brings us
11 down to three votes which isn't a quorum. So I
12 guess --

13 VICE CHAIR AGUIRRE: Can I vote? Can
14 Allan vote?

15 BOARD MEMBER PAYNE: Yes. We can vote
16 to approve it. I just thought I shouldn't, but I
17 don't think there's a requirement that we have to
18 abstain. So I vote -- if everyone here -- if
19 those are a proper reflection of what happened at
20 the meeting, then I would vote to approve as well.

21 VICE CHAIR AGUIRRE: I agree. I vote to
22 approve as well.

23 CHAIR SIMPSON: Okay. Thank you very
24 much. Motion carries, unanimously I believe.

25 Moving ahead, normally what we do at

1 this time is go through the briefing items, and
2 I'll have one comment on that, but I think the
3 cases that are of most interest to us we'll be
4 making decisions on under action items.

5 But one thing I did want to point out is
6 that there has been one new development since the
7 Board packages were sent out, and that is that on
8 October 15th, we received an order from the
9 District Court on the Gateway Conservation
10 Alliance case. This is the opencut mining permit
11 just outside of Gallatin Gateway, and this is a
12 case that the Board had elected to assume
13 jurisdiction.

14 The order was in response to a motion
15 for dismissal from DEQ. That motion was granted,
16 and so this case comes back to the Board. As I
17 said, we didn't have enough time to include this
18 in the Board package, but if you recall, the Board
19 had stayed the proceedings in the interim while
20 this case played out in court, and the parties
21 have been directed to file a status report within
22 thirty days of issuance of a decision from the
23 Montana District Court, so that's what we'll
24 expect to receive next on that case.

25 The same is true on the Gallatin County

1 Community Coalition. This is the second gravel
2 pit case in Gallatin County. I'm not entirely
3 certain where that project is located. I haven't
4 looked at the petition. But again, that case was
5 stayed in response to the filing by the
6 petitioners in District Court, and so that stay
7 will ultimately be lifted as well.

8 I think, I guess I would ask Counsel if,
9 for the sake of proper procedure, whether we
10 should hold off until the next meeting before
11 lifting the stay. I'm inclined to wait until we
12 get the status reports from the parties.

13 MS. MOISEY-SCHERER: Chairman Simpson,
14 this is Sandy. Sam King has his hand up.

15 CHAIR SIMPSON: As usual I can't see all
16 of the participants here. Thank you, Sam. Please
17 go ahead.

18 MR. KING: Good morning, Board Chair and
19 Board members. Can everybody hear me okay?

20 CHAIR SIMPSON: Yes.

21 MR. KING: I thought I would chime in
22 here on this case. Both the concrete materials
23 case and the TMC Black Site case, we are preparing
24 a status report for the Board.

25 One thing I would like to flag, however,

1 is that there hasn't been entry of judgment in
2 that District Court case yet, so while that
3 disposed of the claims in that case, until there's
4 an entry of judgment, the time for appeal to the
5 Montana Supreme Court doesn't start running. I'm
6 not aware if plaintiffs in that case will intend
7 to appeal that to the Montana Supreme Court, but
8 that might dictate whether or not it's of interest
9 to the Board to keep this case stayed or not.

10 So this is a long way of saying that it
11 might be in the Board's best interests to just
12 hold off on making a decision of whether to lift
13 that stay or not until the next Board meeting.

14 CHAIR SIMPSON: Thank you, Sam. Sandy.

15 MS. MOISEY-SCHERER: Chair Simpson, this
16 is Sandy again. Kim Wilson has his hand up.

17 MR. WILSON: Mr. Chairman, can you hear
18 me?

19 CHAIR SIMPSON: Yes, I can.

20 MR. WILSON: I just wanted to say I
21 concur in what Mr. King just said. We're not sure
22 yet if we're going to appeal that case which
23 prompted the stay here. And so I guess I would
24 agree with Mr. King that that decision to lift the
25 stay can wait.

1 And I guess also to say -- and I don't
2 remember if that order of the stay -- I guess that
3 did say that we would report within thirty days,
4 and we're happy to do that. But because of the
5 stay the parties -- appeal time will be longer
6 than the usual thirty days, the appeal deadline.

7 CHAIR SIMPSON: Thank you very much.
8 This was not an agenda item, so I don't feel that
9 we should be making any decisions on it just yet.
10 I think it would be premature. So any other
11 comments from the Board or from Board Counsel?

12 BOARD MEMBER ALTEMUS: Chairman Simpson,
13 not in relation to this, but normally before we
14 move in, we have DEQ identify who is in the
15 meeting. So some names that are here I don't
16 recognize. When we're done with this topic, can
17 we do introductions first before we move forward?

18 CHAIR SIMPSON: Yes, let's do that,
19 please. I overlooked that. I apologize. Thank
20 you very much. Are there any further comments on
21 this subject? I don't think we need a motion.
22 Since it's not on the agenda, we'll just hold off
23 until the matter plays out.

24 (No response)

25 CHAIR SIMPSON: Sandy, could we review

1 for the record who's on the call in addition to
2 the Board members and Counsel.

3 MS. MOISEY-SCHERER: Yes, sir. My name
4 is Sandy Moisey-Scherer, I'm the Board secretary
5 for the Board. Laurie Crutcher is on the call,
6 she's the Court Reporter. We have Sam King from
7 DEQ; Vicki Marquis; Kim Wilson; Sam Yemington;
8 Kirsten Bowers; Sarah Bordelon; Shiloh Hernandez;
9 Deputy Director Fehr; Alan Ringlein; Amanda
10 Galvan; Andrea Grave; Catherine Armstrong; Aurora
11 Goddard; Brian Schrage; Emily Lodman; Isabelle
12 Neville; Jeremiah Langston; Josh Bridgeman; Kurt
13 Moser; Lee; Mitch; Mitch Hoffman; Ric Casteel.
14 And I believe that's all on the call.

15 CHAIR SIMPSON: We have a lot of
16 interest this morning. I guess I'm not surprised
17 with what we have on our agenda. You have to
18 excuse me. I've got a big pile of paper on my
19 desk here, and sometimes I have trouble figuring
20 out where I need to be.

21 MS. MOISEY-SCHERER: Chair Simpson, this
22 is Sandy. Before we go into the other items, we
23 have not talked about the 2026 meeting calendar.

24 CHAIR SIMPSON: Right. That's the next.
25 I'm sorry. We did jump ahead a little bit. The

1 Board calendar was included in the Board package.
2 Normally that comes out in December, but Sandy had
3 it prepared, and we thought it would be best to
4 include it in this agenda, so that you can take a
5 look at it, and see if you would like to make any
6 changes or alterations.

7 I think we'll hold off on a vote on that
8 until December, but are there any of the Board
9 meeting dates that create a conflict for anyone at
10 this point that you know of? I'd just add to that
11 I don't know what I'm doing next week, let alone
12 next year, so it's kind of hard to say.

13 MS. MOISEY-SCHERER: Chair Simpson, Vice
14 Chair Aguirre has her hand up.

15 CHAIR SIMPSON: Stacy.

16 VICE CHAIR AGUIRRE: Yes. I was just
17 wondering if Board Member Altemus's question was
18 actually answered on what -- I think you
19 specifically asked about who from DEQ is on the
20 call. Are you good with the naming of the people,
21 or do you want to know specifically who's
22 representing DEQ?

23 BOARD MEMBER ALTEMUS: Thanks, Board
24 Member Aguirre. Normally we get identification as
25 to who they are representing, and not just their

15
1 names. I can see their names, but I don't know
2 who they're representing. And some people I
3 recognize and some people I don't, so that was
4 kind of my question. Thank you. I was going to
5 let it go, but thank you for bringing that back up
6 again.

7 CHAIR SIMPSON: I think -- I'm sure we
8 have a number of attorneys and representatives of
9 petitioners in addition to DEQ on this call
10 because there are several cases that this Board is
11 going to decide what direction we're going to go.

12 And I guess if it would be the Board's
13 preference, we can identify who is being
14 represented here. I believe that will come out as
15 we go through the cases, and there will be
16 comments from the parties I'm sure. Anything
17 further, Julia? Would you prefer to go back, or
18 what are your thoughts?

19 BOARD MEMBER ALTEMUS: No, thank you,
20 Chairman. I think as people speak, if they would
21 identify who they're representing that would be
22 helpful, instead of just launching in. That would
23 be great. So I know who they're representing, if
24 they can do that, instead of going back through
25 again. Thanks.

1 CHAIR SIMPSON: Thank you very much.
2 Sandy, have I missed anything else before going
3 into action items?

4 MS. MOISEY-SCHERER: No, sir.

5 CHAIR SIMPSON: Well, before we go into
6 the action items, I would like to bring the Board
7 Chair Update forward. That's normally one of the
8 last things we discuss, but I think the topics
9 there may very well enter into our consideration
10 and discussion of the various cases that we're
11 looking at.

12 The first item there is Board discussion
13 regarding managing new cases going forward. I
14 guess I would comment that we've been faced with a
15 significant problem or challenge here because
16 we've lost our Hearing Examiners from the
17 Department of Justice, as well as Rob Cameron, who
18 was handling several cases as outside Hearing
19 Examiner.

20 And I guess the way I feel about that
21 right now is quite often a problem is just a
22 cleverly disguised opportunity, and I think that's
23 the case here. I think we're fortunate in the
24 timing here because we have a relatively low
25 number of cases that we need to make some

1 decisions on how we proceed going forward.

2 But it occurred to me in going through
3 all of this, this has been an opportunity for me
4 to really get back into looking at these active
5 cases -- where we stand, how we got where we are
6 -- and it raised a question in my mind as to
7 whether the Board's way of operating here has been
8 something that we might consider modifying
9 somewhat.

10 And the reason I say that is when the
11 cases come to us, at least in my experience on the
12 Board over the last five years or so, is that it's
13 been an automatic decision with a couple of
14 exceptions to assign them to a Hearing Examiner
15 without really knowing what the cases are about.
16 And it's become pretty obvious that not all of the
17 cases that come to the Board automatically go
18 through the contested case hearing process, they
19 take a number of different courses depending on
20 how the parties approach the case.

21 So what I want to suggest just as a
22 general thought is that the Board might consider
23 taking jurisdiction on the new cases as they come
24 to us; and then later going through the
25 procedural, initial procedural steps, which is the

1 prehearing order, and discovery, and those items
2 that take place leading up to the scheduling of a
3 hearing; and then at some point, once the case has
4 defined itself, for the Board to decide whether
5 this is something that it wants to maintain
6 jurisdiction on or whether we want to assign it to
7 a Hearing Examiner.

8 Obviously some of these cases that go to
9 contested case hearing, the hearings are several
10 days long, and I don't think this Board is
11 prepared to spend that kind of time on the
12 hearings.

13 So if you look, the second item under
14 the Board Chair's comments has to do with the
15 initial prehearing order, and included in your
16 package is a template that we put together to
17 guide the process from the beginning. This is not
18 too much different from previous versions of it.
19 What we did was take a look at a typical
20 prehearing order, and went through, and made a few
21 minor changes in it.

22 But I'd like to call your attention to
23 Page 8 of that order where it says "on or before,"
24 whatever the appropriate date is, "the parties
25 shall prepare and file preliminary prehearing

1 statements which include statement of facts,
2 contentions of law, list of proposed stipulated
3 facts, preliminary witness list other than
4 experts, a proposed exhibit list, the party's
5 requested relief," and a list of potential
6 prehearing motions and list of legal issues
7 capable of prehearing resolution. We might also
8 want to add to that statement of issues or claims.

9 And I guess what I would suggest is that
10 this might be an appropriate point for the Board
11 to review the status of the case, and make that
12 decision as to whether it's appropriate to retain
13 jurisdiction or to assign it to a Hearing
14 Examiner. And as we go through these action items
15 on our active cases, I think this is a question
16 that is going to come up.

17 So I wanted to just cover that briefly
18 before we get into the action items, and so before
19 we get to the specific cases, are there any
20 thoughts from the Board on the topic of how the
21 Board proceeds with cases as they come before us?
22 Any comments from the Board?

23 BOARD MEMBER PAYNE: Being the newest
24 member, I have to speak here with a little
25 humility because I don't have the history the

1 other members have here.

2 But in looking at the cases,
3 particularly the Westmoreland case that we're
4 going to be talking about later, it seems to me
5 that, for example, there's a statutory and
6 administrative rule requirement in that particular
7 case that the hearing be initiated within thirty
8 days of the petition submission, and obviously
9 that didn't happen in this case.

10 And I think the Board can be faced with
11 these sort of "How do we do all of those
12 deadlines?," and it may well -- An order that we
13 have here might be appropriate, depending on what
14 type of challenges, you know, what permit is being
15 challenged, or denial of permit is challenged, or
16 what declaratory ruling is being asked of us.

17 There may need to be at some point
18 different pretrial orders that take into account
19 the statutory time frames that the Board is
20 supposed to be, should be observing. But I don't
21 want to get too far, too advanced in that, because
22 obviously there's an immediate need here with the
23 Hearings Officers having been, you know, Agency
24 Legal Services having been taken away. We may
25 need to have a --

1 Maybe we adopt this general rule, but it
2 might be at some appropriate time to maybe have a
3 subcommittee really look at all of the various
4 types of permits, because the challenges that can
5 come to the Board, and different challenges may be
6 subject to different preliminary orders or
7 different procedures. So that may be something we
8 want to look at in the future, but I think this
9 order here is a great start, but it may not be one
10 size fits all.

11 CHAIR SIMPSON: That's certainly the
12 case, and thank you very much, Allan. I guess I
13 would comment further that there are some cases
14 that obviously would need to go directly to a
15 Hearing Examiner, and what I'm talking about are
16 challenges to, for example, coal mining permits.
17 We've had several of those, and inevitably those
18 cases go through the full contested case process.

19 There are others, including a couple
20 that are before us today as examples, that don't
21 necessarily take that route, depending on the
22 nature of the issues and the nature of the
23 petition.

24 So the prehearing order, at least as I
25 see it, is a way to kind of get the ball rolling,

1 and sort out just what course that case is going
2 to take, and that's why I'm bringing forward the
3 suggestion, and that's all it is, that the Board
4 may want to proceed internally with the initial
5 procedures until the case can be a little bit more
6 clearly defined as to what direction it's going to
7 go.

8 This is a way for the Board to take a
9 more active role. Once we assign a case to a
10 Hearing Examiner, the substance of the case no
11 longer comes under the jurisdiction of the Board,
12 and so we hear nothing about it. All we see are
13 what amount to monthly status reports as to
14 whether there have been any new filings or new
15 actions taken in these various cases. Other
16 thoughts?

17 MS. MOISEY-SCHERER: Chair Simpson, Vice
18 Chair Aguirre has her hand up.

19 CHAIR SIMPSON: Yes, thanks. Stacy.

20 VICE CHAIR AGUIRRE: So based on what
21 you said, and what Allan added, for me as a Board
22 member, one thing that I feel has been missing is
23 really an upfront understanding, and you spoke to
24 this, Chairman Simpson, and so did Board Member
25 Payne.

1 We need to have an upfront understanding
2 of the issues, and that seems to be lacking, as
3 you have said, Chairman Simpson, in the process.
4 The fact that that seems to be lacking upfront is
5 a more true understanding of really what is at
6 issue, has made it confusing to figure out how to
7 proceed, or how to think about it, or even what
8 our options are to handle it.

9 Because sometimes we may want to say,
10 "Okay. This seems like it could be solved easier
11 if," A, B, C, but sometimes it will be, "This is a
12 little more complicated, and so we need to take
13 that route." So kind of matching up what both
14 you, Chair Simpson and Board Member Payne
15 presented in thoughts is almost to me like even
16 one step further than what has to happen first, in
17 that we have to kind of have to have a true
18 understanding of what's at issue, because we --

19 Like Board Member Payne said, one size
20 doesn't fit all, and that seems -- That one
21 statement to me hit a chord, because that is a lot
22 of the issues a lot of times, even with these
23 cases, is that you're trying to do one size fits
24 all, and they have some uniqueness even if they're
25 a more simple debate, or issue, or matter.

1 So it almost seems like the process that
2 we have had since I've been on the Board almost
3 complicates it more from our ability to do our job
4 as Board members, and really truly have the kind
5 of input that we need to have on these cases.

6 So I guess in summary, it feels like
7 part of what you presented, Chairman Simpson, was
8 right on the mark, in that we really need to have
9 an understanding of the matter, but I feel like
10 that is a more upfront necessity than even
11 somewhere kind of down the line, even a small
12 distance down the line.

13 I'm not sure if that's exactly making
14 sense, but that's been the challenge for me as a
15 Board member is to kind of want to know right
16 upfront, "Why is this here?," like more simply.
17 "Why is this here?"

18 CHAIR SIMPSON: Well, I guess you've
19 framed exactly what has been on my mind, is that
20 I've been very frustrated with the fact that we
21 get these cases, and we assign them to a Hearing
22 Examiner. We do see the initial petitions, and
23 the initial petition might be 20 pages or it might
24 be a letter. We don't really at that point have
25 any means of sorting out what the issues, how the

1 issues are going to unfold.

2 VICE CHAIR AGUIRRE: Exactly.

3 CHAIR SIMPSON: Thank you. Thank you,
4 Stacy. Julia, any thoughts?

5 BOARD MEMBER ALTEMUS: No. Thanks for
6 the conversation. I agree with everything that's
7 being said, so I think the more information we
8 have, I think there are decisions we can make in
9 general. So yes. Thanks.

10 CHAIR SIMPSON: Joe.

11 BOARD MEMBER SMITH: I'm in agreement
12 with Julia. I agree with everything that's been
13 said. I'd appreciate little bit more substance
14 upfront. I honestly feel like what you put
15 together here somewhat puts into words how we've
16 been operating the last few Board meetings anyway,
17 because I feel like we had a little bit more
18 substance into these cases upfront. We've even
19 kept some of them on our docket a little bit
20 longer. So I think what you've done has kind of
21 just formalized how we've been operating the last
22 few Board meetings.

23 CHAIR SIMPSON: Thank you, Joe. I guess
24 I'd like to comment then. I don't know if the
25 other Board members are aware of this, but one of

1 the things that I've learned, and I guess I kind
2 of knew it in the back of my mind but never took
3 advantage of it, is that Sandy, the Board
4 secretary, has the docket for each of these cases,
5 which is a list of filings which also connects to
6 the filings themselves.

7 And in reviewing these cases that we're
8 working on, Dana and I have gone through a lot of
9 that, and frankly spent quite a bit of time on it
10 just to get a good handle on where we are. But
11 those records are available to the Board members
12 if you want to take advantage of it.

13 And also I think going forward, for
14 those cases that the Board has retained
15 jurisdiction on either permanently or temporarily,
16 it would probably be a good idea for the Board
17 members to be copied in on those filings as they
18 come in, and Sandy and I will talk about that and
19 work out a process, assuming we go that direction.
20 Further thoughts?

21 (No response)

22 CHAIR SIMPSON: Again, have I missed
23 anyone? I don't think so. Let's move forward to
24 the four cases that are before us. What we need
25 to do here is to decide whether to assign these to

1 a Hearing Examiner, or whether to retain
2 jurisdiction either permanently or temporarily.
3 And I guess in practical terms, anytime the Board
4 assumes jurisdiction, it is temporary until we
5 decide, permanent until we decide otherwise or
6 vice versa.

7 The first case is -- see if I've got
8 this right. The first case is case Westmoreland
9 Absaloka. It's a water quality case, BER 2015-06.
10 This has been going on for ten years. And if you
11 recall at the last Board meeting, the petitioners
12 had filed a second petition in this case having to
13 do with the most recent renewal of that permit.

14 We held a status conference on October
15 6th, and the parties I think have filed a joint
16 motion, stipulation, to stay the proceedings for
17 the next 15 to 30 days. The parties appear to be
18 cautiously optimistic that they can reach a
19 negotiated resolution.

20 The recommendation, and this
21 recommendation for discussion is that BER retain
22 jurisdiction, take no further action at this time,
23 other than to stay this case at the request of the
24 parties. I believe that's -- I've got so much
25 paper on my desk I'm having a hard time keeping up

1 with things. But let me just sort this out.

2 We do have it. On October 10th -- This
3 is in the Board packet. "On October 10th, 2025,
4 the parties filed a joint motion for a stay to
5 allow the parties time to evaluate and propose a
6 joint resolution. The Board or Hearing Examiner
7 will need to rule on that joint motion for stay."

8 So the recommendation is to issue a stay
9 to give the parties time to try to sort this out,
10 and come to a settlement, and to retain
11 jurisdiction. Is there a motion from the Board so
12 that we can move forward with discussion, if any?

13 BOARD MEMBER SMITH: I will motion to
14 grant the request for stay on BER Case No.
15 2015-06.

16 BOARD MEMBER PAYNE: I'll second that.

17 CHAIR SIMPSON: It's been moved and
18 seconded to stay 2015-06. Is there any comment
19 from the parties?

20 (No response)

21 CHAIR SIMPSON: DEQ or Westmoreland?

22 MS. MARQUIS: Chairman Simpson, members
23 of the Board. Thank you for your time this
24 morning. I don't really have a comment, just
25 wanted to let you know that I'm here representing

1 Westmoreland on this matter, and we appreciate
2 your consideration of the stay. We think we can
3 make some good progress, and report back to the
4 Board. So thank you for your consideration.

5 CHAIR SIMPSON: Thank you very much.

6 MS. MOISEY-SCHERER: Chair Simpson,
7 Kirsten Bowers of DEQ has her hand up.

8 CHAIR SIMPSON: Ms. Bowers, please
9 proceed.

10 MS. BOWERS: Chair Simpson, members of
11 the Board. I'm representing DEQ in the
12 Westmoreland Absaloka case, and I'm just available
13 to answer questions if there are any.

14 CHAIR SIMPSON: Thank you very much.
15 Any further discussion from the Board?

16 MS. MOISEY-SCHERER: Chair Simpson, this
17 is Sandy. Board Member Payne has his hand up.

18 BOARD MEMBER PAYNE: I'm not sure what
19 the proper procedure is, Chairman, but do I direct
20 my questions, if I have questions for the Counsel,
21 do I direct them to you, or can I ask them
22 directly?

23 CHAIR SIMPSON: You can ask directly.

24 BOARD MEMBER PAYNE: I guess I'd just
25 ask Counsel. It was two weeks ago you signed the

1 request for the stay. Have there been any
2 developments since then?

3 MS. MARQUIS: I'll go ahead and take a
4 stab at answering that. Chair Simpson, Board
5 Member Payne. We've exchanged emails. I think
6 the next step is for us to come up with our plan
7 for what we're going to do in the next six months.
8 And I know Kirsten and I have not had an
9 opportunity to have a direct conversation about
10 that, but that's least at our vision of the next
11 step which we're working toward.

12 MS. BOWERS: Yes, Board Member Payne and
13 members of the Board. I agree with Ms. Marquis on
14 that.

15 CHAIR SIMPSON: Thank you very much.
16 Any further discussion?

17 BOARD MEMBER PAYNE: Do either of the
18 Counsel have any suggestions for a specific time
19 period for the stay, or do you want just an open
20 ended one?

21 CHAIR SIMPSON: Go ahead.

22 MS. BOWERS: Board Member Payne, members
23 of the Board. The stay is proposed until June
24 1st, 2026.

25 CHAIR SIMPSON: Thank you, Kirsten.

1 Further discussion? Further discussion from the
2 Board? It's been moved and seconded to approve
3 the stay as requested.

4 (No response)

5 CHAIR SIMPSON: Hearing no further
6 discussion, all in favor, say aye.

7 (Response)

8 CHAIR SIMPSON: Opposed.

9 (No response)

10 CHAIR SIMPSON: Motion carries.

11 (BER 2019-05 OC transcript bound separately
12 9:45 a.m. and reconvened 10:52 a.m.)

13 * * * * *

14 CHAIR SIMPSON: The third item is BER
15 2019-06 WQ. This is Alpine Pacific Utilities.
16 The Board assumed jurisdiction for this matter on
17 June 20th, 2025. The Board can decide to assign
18 this matter to a Hearing Examiner, retain the
19 case, or retain it temporarily.

20 On September 19th, 2025 the parties
21 filed a joint status report with the Board. The
22 matter is currently stayed. The DEQ was to make a
23 final determination to renew or modify the permit
24 by October 20th, 2025. Alpine Pacific is to move
25 to dismiss this appeal within thirty days of DEQ's

1 final permit decision. Alpine may then request a
2 new contested case hearing to appeal DEQ's final
3 permit decision.

4 So I guess the first question for the
5 parties is: Has DEQ issued its final decision?
6 And has there been any further developments in
7 this case? Ms. Bowers.

8 MS. BOWERS: Yes, Chair Simpson, members
9 of the Board. DEQ did issue a final permit and
10 that was effective October 1st, 2025. So we're
11 still within the thirty days for Alpine to file a
12 motion to dismiss, but they didn't comment on the
13 draft permit, so I fully expect this will be
14 dismissed by your next Board meeting. And Alpine
15 is represented by Rick Tappan, and I don't believe
16 he's on the call today.

17 CHAIR SIMPSON: Well, thank you very
18 much. I think then that we can retain
19 jurisdiction in this case for the time being, and
20 revisit it at our next meeting once the process
21 has played out. I don't believe we need any
22 action by the Board. Do we, Dana, or do we?

23 MS. HUPP: You do not, Chairman Simpson,
24 and members, you do not need any further action at
25 this point.

1 CHAIR SIMPSON: Thank you very much.

2 (BER 2022-04 OC Valley Gardens transcript bound
3 separately. 10:54 a.m. reconvened 11:07 a.m.)

4 * * * * *

5 CHAIR SIMPSON) Moving forward to Item
6 (b), this I guess is the main event for the
7 meeting here. It's a little bit after eleven.
8 Hopefully we can wrap this -- I don't know if we
9 can wrap it up by noon, but hopefully by 1:00 at
10 the latest.

11 Why don't we take a look at Item (c)
12 first. This is Decker Coal Company's request
13 regarding permit C1983007. Decker has filed a
14 notice and request for dismissal for East Decker
15 Coal. The Board will now decide whether or not to
16 accept this notice and request for dismissal.

17 This is a case that we debated long and
18 hard here several meetings ago. This has to do
19 with reclamation issues at Decker. Decker has
20 requested dismissal. So the parties have come to
21 agreement. I compliment them on getting -- the
22 State and Decker Coal getting together, and
23 resolving those issues, without having to go
24 through the contested case process. Is there a
25 motion to approve the request for dismissal?

1 BOARD MEMBER PAYNE: I move that the
2 Board approve the request for dismissal.

3 CHAIR SIMPSON: Is there a second?

4 BOARD MEMBER SMITH: I'll second.

5 CHAIR SIMPSON: A motion has been made
6 and seconded. Any discussion?

7 (No response)

8 CHAIR SIMPSON: Once again, I'd just
9 like to compliment the parties on getting this
10 resolved. All in favor, say aye.

11 (Response)

12 CHAIR SIMPSON: Opposed.

13 (No response)

14 CHAIR SIMPSON: Thank you very much.

15 * * * * *

16 BER 2022-05 SM Rosebud Mine Area B

17 Transcript bound separately

18 11:07 a.m. reconvened 1:11 p.m.)

19 * * * * *

20 CHAIR SIMPSON: We are running over time
21 a little bit. We have one more item to consider,
22 which I don't think is going to take very long,
23 and that is the matter of the Notice of Appeal and
24 Request for Hearing by Westmoreland Absaloka
25 Mining, LLC, for coal surface mining permit

1 C1985005. This has to do with a challenge with
2 respect to calculation of bond.

3 The Department has filed a notice to
4 dismiss, a request to dismiss. I don't believe
5 we're in a position to do anything on this right
6 now until we hear back from Westmoreland, which I
7 don't believe we have as yet. So I think what we
8 need to do is table this until our next meeting.
9 Is there a motion?

10 BOARD MEMBER PAYNE: I guess just to
11 move it along, I motion to table this matter until
12 our next meeting.

13 CHAIR SIMPSON: Thank you. A motion has
14 been made to table the new contested case 2025-04
15 SM. Is there a second?

16 BOARD MEMBER ALTEMUS: I'll second.

17 CHAIR SIMPSON: A motion has been made
18 and seconded to table this matter until the next
19 meeting. I guess I would note that because it has
20 been filed, it does have a number, and at this
21 point the Board maintains jurisdiction, but there
22 are valid issues here that are going to have to be
23 addressed at some point, and right now we don't
24 have any response from Westmoreland, so we will
25 consider it on that basis. All in favor, say aye.

1 BOARD MEMBER PAYNE: Actually could I
2 raise a point here before we go to vote?

3 CHAIR SIMPSON: Certainly. Discussion.

4 BOARD MEMBER PAYNE: It seemed to me --
5 I just want to clarify if Westmoreland's Counsel
6 is here. Looking at their petition, it looked
7 like they were petitioning on two different
8 things: They were appealing the DEQ decision, but
9 then they want a declaratory ruling from the Board
10 on basically with respect to how the DEQ goes
11 about determining these bonds.

12 And I guess I just want to find out. Am
13 I reading that right? There's really two things
14 you're asking from the Board? There's two matters
15 here; is that correct?

16 CHAIR SIMPSON: I believe that's
17 correct, yes, and the DEQ has raised a couple of
18 questions here in their motion to dismiss. And I
19 think it is important, though, in an effort to
20 move the meeting along, I neglected to ask
21 Westmoreland if they have a comment on this as far
22 as when and if they will respond.

23 MS. MARQUIS: Chair Simpson, members of
24 the Board, our response will be filed today.

25 CHAIR SIMPSON: Thank you very much. So

1 it's coming. And we will deal with this then at
2 our next meeting when we have more complete
3 information.

4 The motion before us is to table to the
5 next meeting. All in favor, say aye.

6 (Response)

7 CHAIR SIMPSON: We have already covered
8 the Board Chair updates, so we have one more
9 important piece of business. Is there a motion to
10 adjourn?

11 BOARD MEMBER SMITH: So moved.

12 BOARD MEMBER PAYNE: Second.

13 CHAIR SIMPSON: It's been moved and
14 seconded to adjourn the meeting. Thank you
15 everyone. It's been kind of an intense meeting,
16 very interesting, very informative, and I think
17 the Board has done their work well. Further
18 discussion?

19 (No response)

20 CHAIR SIMPSON: All in favor, say aye to
21 adjourn.

22 (Response)

23 CHAIR SIMPSON: Once again, thank you,
24 everyone. Thanks for a good meeting.

25 (The proceedings were concluded at 1:16 p.m.)

C E R T I F I C A T E

STATE OF MONTANA

)

: SS.

COUNTY OF LEWIS & CLARK

)

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

That the proceedings were taken before me at
the time and place herein named; that the
proceedings were reported by me in shorthand and
transcribed using computer-aided transcription,
and that the foregoing - 37 - 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 4th day of
November, 2025.



LAURIE CRUTCHER, RPR

Court Reporter - Notary Public

My commission expires

March 9, 2028.

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