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BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

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BOARD MEETING )  
May 15, 2026 )

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TRANSCRIPT OF PROCEEDINGS - VIA ZOOM

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May 15th, 2026  
9:00 a.m.

BEFORE CHAIR DAVID SIMPSON,  
BOARD MEMBERS JULIA ALTEMUS, JENNIFER RANKOSKY,  
ALLAN PAYNE, and JOSEPH SMITH

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

1 BOARD ATTORNEY PRESENT:

2 Dana Hupp, Board Counsel

3 DEQ PERSONNEL PRESENT:

4 Board Secretary Sandy Moisey-Scherer

5 DEQ Director Sonja Nowakowski

6 DEQ Legal: Catherine Armstrong, Sam King, Kurt

7 Moser

8 DEQ Communications: May Vader

9 OTHER PARTIES PRESENT:

10 EarthJustice: Jenny Harbine, Shiloh Hernandez, Keo

11 KILLSBACK, Chrissy Pepino

12 MEIC: Derf Johnson

13 SIERRA CLUB: Nathaniel Shoaff

14 CROWLEY FLECK: Pamela Garman, Vicki Marquis

15 HOLLAND & HART: Andrea Grave, Samuel Yemington

16 PERSONS BEHLE & LATIMER: Mathew Bain

17 WESTMORELAND: Jeremy Cottrell, Todd Briggs

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1           WHEREUPON, the following proceedings were  
2 had:

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

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

9           CHAIR SIMPSON: Here.

10          MS. MOISEY-SCHERER: Vice Chair Aguirre.

11          (No response)

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

14          BOARD MEMBER ALTEMUS: Good morning.  
15 Here.

16          MS. MOISEY-SCHERER: Board Member Payne.

17          BOARD MEMBER PAYNE: Here.

18          MS. MOISEY-SCHERER: Board Member  
19 Rankosky.

20          BOARD MEMBER RANKOSKY: Here.

21          MS. MOISEY-SCHERER: Board Member Smith.

22          BOARD MEMBER SMITH: Here.

23          MS. MOISEY-SCHERER: We have a quorum,  
24 sir.

25          CHAIR SIMPSON: Thank you, Sandy. Let's

1 proceed. First of all, a few weeks ago we  
2 received a directive from the Lieutenant  
3 Governor's Office to make this following statement  
4 at the beginning of each meeting.

5 "The use of AI tools during virtual  
6 public meetings is not allowed by Board members or  
7 public participants pending State adoption of  
8 formal policies that address the concerns and  
9 issues surrounding these uses."

10 I'd also wanted to point out that this  
11 is, the agenda that we're using is the same agenda  
12 that we had prepared for the April meeting when we  
13 did not have a quorum and were not able to proceed  
14 with business, so there may be some update on some  
15 of these matters as we go through, but we'll try  
16 to stick with the agenda as it was prepared at  
17 that time.

18 First, administrative items, review and  
19 approval of the minutes. We had two sets of  
20 minutes, one for our special meeting and one for  
21 the -- in February and then for the March special  
22 meeting.

23 Regarding the February 20, 2026 meeting  
24 minutes, are there any comments or corrections to  
25 the minutes?

1 (No response)

2 CHAIR SIMPSON: Is there a motion?

3 BOARD MEMBER RANKOSKY: I make a motion  
4 to approve those minutes.

5 BOARD MEMBER SMITH: I'll second.

6 CHAIR SIMPSON: A motion has been made  
7 and seconded to approve the February 20, 2026  
8 meeting minutes. Further discussion.

9 (No response)

10 CHAIR SIMPSON: All in favor, say aye.

11 (Response)

12 CHAIR SIMPSON: Opposed.

13 (No response)

14 CHAIR SIMPSON: Motion passes. Thank  
15 you very much. The next item, March 20, 2026  
16 minutes. This was the special meeting. Again,  
17 comments or corrections to the minutes?

18 (No response)

19 CHAIR SIMPSON: Is there a motion?

20 BOARD MEMBER PAYNE: I'll move to  
21 approve the minutes.

22 BOARD MEMBER ALTEMUS: I'll second.

23 CHAIR SIMPSON: It's been moved and  
24 seconded to approve the minutes for the March 20,  
25 2026 meeting. All in favor, say aye.

1 (Response)

2 CHAIR SIMPSON: Opposed.

3 (No response)

4 CHAIR SIMPSON: Motion carries. The  
5 next item was discussion regarding meeting dates.  
6 This as it's printed on the agenda is a little bit  
7 out of date because at the time we were thinking  
8 about a special meeting in May because we have  
9 several items that we're going to need to have  
10 oral argument on at some point.

11 But since we've scheduled and ended up  
12 rescheduling our April meeting in May, we're now  
13 looking at June 26, which is, I think we've moved  
14 that forward a week because of scheduling issues.  
15 And I'm thinking about in-person meeting in June,  
16 and that may or may not be practical because of  
17 recent developments, so we'll revisit that at the  
18 end of the meeting when we see how things unfold  
19 here.

20 Moving on, for review of the contested  
21 case summaries, those were all in the packet.  
22 Current cases, we'll go through those one at a  
23 time and what the status is under "B."

24 First is BER 2019-05 OC. That's Western  
25 Energy Company Area F. Board Counsel Hupp is

1 working on the FOFCOL for that. We should see it  
2 later this summer.

3 Next is 2019-06, that's Alpine Pacific  
4 Utilities. DEQ's motion to dismiss has been fully  
5 briefed, and it is ready for oral argument. Since  
6 that time, we've had a little back and forth on  
7 that, but right now we're scheduling that for the  
8 June 26th meeting. Comments or questions on that,  
9 or either one of those for that matter?

10 (No response)

11 CHAIR SIMPSON: No. 3 is 2022-04 Open  
12 Cut, Valley Garden Land and Cattle. That was the  
13 case that we heard at our special meeting, and  
14 we're anticipating that Dana will have the FOFCOL  
15 ready for our review for the June, to review at  
16 the June 26th meeting.

17 Next -- any questions on that?

18 (No response)

19 CHAIR SIMPSON: Next item, 2022-06 Water  
20 Quality, Rosebud Mine Area Amendment B. DEQ and  
21 Westmoreland have provided a brief status report.  
22 At that time DEQ had anticipated providing its  
23 response to Westmoreland due the week of April  
24 6th. This has to do with MPDES permitting of the  
25 sediment pond associated with Rosebud Mine Area B

1 Amendment 5. I wanted to ask the parties if  
2 there's any recent updates on this as to the  
3 status. I guess I'd ask DEQ first.

4 (No response)

5 CHAIR SIMPSON: Is there someone from,  
6 Counsel from DEQ prepared to address this?

7 MS. MOISEY-SCHERER: Chair Simpson, this  
8 is Sandy. Sam King has his hand up.

9 CHAIR SIMPSON: I'm sorry. I was  
10 looking at my agenda rather than the screen.  
11 Please proceed, Mr. King.

12 MR. KING: Good morning, Board Chair. I  
13 believe Kirsten Bowers is representing DEQ in this  
14 matter, and she's out today, so I don't have any  
15 update to offer the Board. I don't think she was  
16 anticipating providing any update. So I  
17 apologize.

18 CHAIR SIMPSON: Thank you.  
19 Westmoreland, any comment on this?

20 MS. MOISEY-SCHERER: Chair Simpson, this  
21 is Sandy. Sam Yemington has his hand up.

22 CHAIR SIMPSON: Mr. Yemington.

23 MR. YEMINGTON: Chair Simpson, members  
24 of the Board. Similar to Mr. King's comments, the  
25 attorney from our firm who is assisting on that

1 matter isn't on this call, or isn't prepared to  
2 respond. It's my understanding the parties  
3 continue to work together on that towards a  
4 solution, but I can't offer further detail.

5 CHAIR SIMPSON: I was hoping we could  
6 have a discussion about this, but if Counsel for  
7 the parties isn't present, there probably isn't  
8 much point. Anyway, I'm hoping that there's been  
9 some progress here, and also had some thoughts  
10 that the parties might consider in their  
11 discussions and negotiations. So I have no  
12 further comments or questions on that. Anything  
13 more from the Board?

14 (No response)

15 CHAIR SIMPSON: We'll look forward to an  
16 update at our next regular meeting.

17 Next item, Item 5, this is just a  
18 procedural matter. Decker Coal Company West  
19 Decker Mine. We've issued an order extending the  
20 stay, so the parties can negotiate a solution  
21 until the June meeting, so we'll be -- barring any  
22 change in scheduling, we'll be looking at that in  
23 June also.

24 Stillwater Mining, an initial procedural  
25 order has been issued. And I guess the most

1 recent development we've had on that is a request  
2 for a short extension on initial filings. Any  
3 comments or questions on that?

4 (No response)

5 CHAIR SIMPSON: Moving ahead, 2026-01  
6 Air Quality, this is the MRL decision up at Great  
7 Falls. Motions to intervene and dismiss have been  
8 filed by MRL, and at that time briefing was not  
9 yet complete. Briefing I believe is now complete,  
10 and we anticipate hearing oral argument on the  
11 motions by MRL in June. Any questions or comments  
12 on this?

13 (No response)

14 CHAIR SIMPSON: Moving on. 2026-02  
15 Surface Mining, Westmoreland Absaloka Mining  
16 Noncompliance No. CN2026001. On March 12th, DEQ  
17 filed a motion for partial dismissal and to limit  
18 the scope of Westmoreland's Notice of Appeal and  
19 Request for Formal Hearing. Now Westmoreland has  
20 filed a response.

21 In the interim, there was a notice of  
22 violation issued on this on March 26th. That is  
23 case BER 2026-04 SM. That's not been distributed  
24 to the Board, I don't believe. And so  
25 Westmoreland Absaloka has petitioned for review on

1 that as well as I noted.

2 I also want to note that Westmoreland  
3 has appealed our decision on Minor Revision 311.  
4 That's the one that had to do with the bond  
5 calculation. That's been appealed to District  
6 Court on April 23rd.

7 And more recently DEQ has filed for  
8 motions to stay on both of these, that is, the  
9 notice of noncompliance and the notice of  
10 violation. The reason being of course that since  
11 Westmoreland has appealed this, and these three  
12 cases, two cases are interrelated with the Minor  
13 Revision 311 case, all having to do with the  
14 bonding calculation prepared by DEQ, there  
15 certainly is a sound basis for that motion.  
16 However we've not heard anything yet from  
17 Westmoreland as to their position on that.

18 And so again, this is the third item  
19 that we had intended to deal with in June, and we  
20 will deal with it at that time, but we had  
21 anticipated oral argument on DEQ's motion for  
22 partial dismissal. Whether or not that happens  
23 will depend on our decision on whether to stay the  
24 matter until the Minor Revision 311 is settled by  
25 the Court. So that's the status. Are there any

1 questions on that for either me or Dana?

2 (No response)

3 CHAIR SIMPSON: Moving along, new  
4 contested cases. We have an appeal and request  
5 for hearing by R&D Transit, LLC, BER 2026-03 Solid  
6 Waste, but there was nothing in the filing that  
7 indicated what this case is all about. So I  
8 wanted to ask DEQ for any other available  
9 information on what the status of this case is  
10 right now. Mr. King.

11 MR. KING: Thank you, Board Chair, Board  
12 members. I'm filling in for Mr. Nick Whitaker who  
13 will be handling this matter. He's in a  
14 Bankruptcy Court proceeding today, but did want to  
15 give you just a little bit of background.

16 So this case involves a trucking  
17 accident spill on I-90. We issued a violation for  
18 that spill. We've been in communication with  
19 R&D's insurance carrier through their Counsel, and  
20 Ms. Jennifer Crow I believe is her name. I'm not  
21 sure if she's on this call.

22 We've had discussions with her. She is  
23 trying to reach R&D Transit, and has been unable  
24 to do so at this time. And so what we're asking I  
25 think for right now is just to put a pin in this

1 case, and put it maybe as a status update at the  
2 next June hearing, if possible, to provide a  
3 little bit more information on where things are  
4 at.

5 I think there's likely a solution here  
6 that won't involve a contested case, but we'd like  
7 to have Ms. Crow be able to reach R&D, and to try  
8 figure out what we need to do going forward, so --

9 CHAIR SIMPSON: Okay. Thank you, Mr.  
10 King. Dana, is there action we should take on  
11 this matter right now other than acknowledging  
12 that we have a new case?

13 MS. HUPP: Chairman Simpson, at this  
14 point, I think Mr. King's recommendation makes  
15 sense. I think that we should just note on the  
16 agenda for the June meeting that we will request  
17 an update from DEQ regarding the status.

18 CHAIR SIMPSON: Very well. Thank you  
19 very much. Any other further questions or  
20 comments on this one?

21 (No response)

22 CHAIR SIMPSON: Moving ahead to action  
23 items. This one has to do with BER 2020-05 Water  
24 Quality, Notice of Appeal and Request for Hearing  
25 by Western Sugar Cooperative regarding its Montana

1 MPDES permit.

2 Counsel for Western Sugar and DEQ  
3 contacted the Board Secretary to advise the recent  
4 agreement to modify the settlement agreement,  
5 which might impact the Board's final agency action  
6 in Case BER 2020-05, which was dismissed by the  
7 Board on May 3rd, 2024.

8 On April 6, 2026, Counsel for Western  
9 Sugar and DEQ filed a joint notice of first  
10 modification to the settlement agreement. The  
11 Board may acknowledge this joint notice or amend  
12 its final agency action.

13 I believe that is in the Board packet,  
14 and hopefully everybody has taken a look at it.  
15 All it has to do with is an extension of time, and  
16 I believe that the only action -- in previous  
17 cases like this what the Board just has done is  
18 simply to approve the amendment.

19 So I would ask if there are any comments  
20 or questions from the Board on this. I guess I'd  
21 also ask Dana. Is that a correct summary of where  
22 we stand on it?

23 MS. HUPP: That's a correct summary. I  
24 think we could ask -- I believe Ms. Marquis is on  
25 the line. But from my perspective, I think it

1 would be cleanest for the Board to amend its final  
2 agency action to note the extension of these  
3 deadlines.

4 So I think procedurally if the Board is  
5 so inclined, there could be a motion to amend the  
6 final agency action, to extend the deadlines  
7 that's set forth in the pleadings prepared by Ms.  
8 Marquis and Mr. Moser.

9 CHAIR SIMPSON: Thank you, Dana. Ms.  
10 Marquis, any comment? Anything further?

11 MS. MARQUIS: Yes. Thank you, Board  
12 Chair. Just to give you just a little bit of  
13 background, Western Sugar was working hard on  
14 gathering data, and putting together a model.  
15 They've spent a lot of time and money with a  
16 consultant to do that.

17 It's my understanding that the way the  
18 process should go, there should be a conceptual  
19 site model, and then they input the data and  
20 calibrate the model, and then use the model, and  
21 that process got compressed, and the model became  
22 very complex, and the first consultant they had  
23 hired was unable to calibrate the model, so  
24 essentially the model was unusable for their  
25 purposes.

1           Western Sugar hired an additional  
2 consultant, and had their review of everything  
3 with the data, and the recommendation from their  
4 consultant was for a 14 month extension to allow  
5 one more campaign season of data gathering to  
6 calibrate the model.

7           Western Sugar went to DEQ with that  
8 proposal. DEQ offered a six month extension, so  
9 Western Sugar agreed to the six month extension,  
10 and that's how we arrived the amended deadlines  
11 that you see before you in the filings today. So  
12 if you have further questions of me, I'd be happy  
13 to address those.

14           CHAIR SIMPSON: Thank you very much.  
15 That helps a lot. Is there a motion? Is there a  
16 motion to amend our final agency action to  
17 incorporate this extension of time?

18           BOARD MEMBER ALTEMUS: Chair Simpson,  
19 I'll take a stab at it here, but I guess I move  
20 that we acknowledge and amend the Board's final  
21 agency action -- I want to make sure that "Board"  
22 word is in there, not just final agency action --  
23 to allow for extended time for the settlement  
24 agreement.

25           BOARD MEMBER PAYNE: I'll second that

1 motion.

2 CHAIR SIMPSON: A motion has been made  
3 and seconded to amend our final Board action on  
4 this matter, to incorporate the time extension  
5 that has been stipulated by the parties. Further  
6 discussion.

7 (No response)

8 CHAIR SIMPSON: All in favor, say aye.

9 (Response)

10 CHAIR SIMPSON: Opposed.

11 (No response)

12 CHAIR SIMPSON: Motion carries.

13 (9:23 a.m.)

14 (Rosebud Mine Area B Amendment 5 Permit Number  
15 C1984003B, BER 2022-05 SM transcript bound  
16 separately 9:23 a.m. to 12:52 p.m.)

17 \* \* \* \* \*

18 CHAIR SIMPSON: Moving forward with our  
19 agenda, general public comment. Under this item  
20 members of the public may comment on any public  
21 matter within the jurisdiction of the Board that  
22 is not otherwise on the agenda for the meeting.  
23 Individual contested case proceedings are not  
24 public matters on which the public may comment.  
25 Is there any public comment? Any comment from the

1 public.

2 (No response)

3 MS. MOISEY-SCHERER: I'm not seeing any,  
4 sir.

5 CHAIR SIMPSON: Thank you. The next  
6 item, Board Chair update. I really don't have  
7 anything. We covered --

8 Well, I guess we do have one item there  
9 that we need to consider, and that is at our next  
10 meeting, we had anticipated that there would be  
11 three matters on which we would hear oral  
12 argument, one of those being the Westmoreland  
13 Absaloka Notice of Noncompliance, and the motion  
14 by DEQ for partial dismissal.

15 Since DEQ has since moved to stay those  
16 proceedings, since the matter, the related matter  
17 of Minor Revision 311 has been appealed, we will  
18 be considering that, but we have not heard from  
19 Westmoreland. If that eventually happens, that  
20 is, if the proceeding is stayed, that will reduce  
21 considerably the time required for that meeting.

22 I'm all in favor of face-to-face  
23 meetings, in-person meetings, but that may argue  
24 against bringing everyone together. And  
25 especially with price of fuel as it is now, it may

1 not be such a good idea after all. So we'll see  
2 what happens, and we'll get that information out  
3 to the Board at some point as to what we will opt  
4 to do at that meeting.

5 Any other comments from the Board on the  
6 matter of the next meeting?

7 (No response)

8 CHAIR SIMPSON: We'll move forward then.  
9 The next item is adjournment. Is there a motion?

10 BOARD MEMBER PAYNE: I move we adjourn.

11 BOARD MEMBER ALTEMUS: Second.

12 CHAIR SIMPSON: It's been moved and  
13 seconded to adjourn the meeting. Thank you  
14 everyone for your participation. This has been a  
15 grueling meeting, but I think a productive one,  
16 and we'll look forward to seeing you in June.  
17 All in favor say aye.

18 (Response)

19 CHAIR SIMPSON: Opposed.

20 (No response)

21 CHAIR SIMPSON: We are adjourned.

22 Again, thank you very much.

23 (The proceedings were concluded

24 at 12:55 p.m. )

25 \* \* \* \* \*

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STATE OF MONTANA )

: SS.

COUNTY OF LEWIS & CLARK )

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

That the proceedings were taken before me at  
the time and place herein named; that the  
proceedings were reported by me in shorthand and  
transcribed using computer-aided transcription,  
and that the foregoing -19- pages contain a true  
record of the proceedings to the best of my  
ability.

IN WITNESS WHEREOF, I have hereunto set my  
hand and affixed my notarial seal this 27th day of  
May, 2026.

*Laurie Crutcher*

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

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