

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the Matter of: Notice of
Appeal and Request for Hearing
by Alpine Pacific Utilities
Regarding Issuance of MPDES
Permit No. MTX000165.

Case No.
BER 2019-06 WQ

TRANSCRIPT OF THE PROCEEDINGS - ORAL ARGUMENT
(VIA ZOOM)

June 26, 2026
9:19 a.m.

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

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A P P E A R A N C E S

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1 WHEREUPON, the proceedings were had as follows:

2 CHAIR SIMPSON: This has to do with DEQ's motion
3 to deny, so -- motion to dismiss, excuse me. So DEQ,
4 we'll begin with DEQ. And please, I believe we've
5 allotted 15 minutes on this plus 5 minutes for rebuttal.

6 MS. BOWERS: Thank you, Chair Simpson, members of
7 the Board. My name is Kirsten Bowers, representing
8 Montana DEQ in this matter. And this is kind of a, a
9 longstanding permit appeal. It's been on your agenda a
10 long time, and the administrative record shows that the
11 parties really have worked hard to, to come to an
12 agreement on the permit.

13 In fact, this, this case involves a stipulation
14 between the parties to settle. It's an amendment to the
15 second stipulation, which was entered in 2024. The first
16 stipulation was entered in 2020. And then on March 21st,
17 2025, Alpine and DEQ jointly filed the first amendment of
18 the second stipulation and continued to request retention
19 of board jurisdiction in this matter.

20 And the, the permit action is to modify Alpine's
21 permit and renew it. And under the amendment to the
22 stipulation, the parties agreed to modify Alpine's
23 application for permit to maintain daily flow of
24 52,000 gallons per day at an existing outfall, which is
25 designated outfall 001, and it's located at the

1 Glacier Ranch Subdivision; and then to seek a daily flow
2 limit of up to 100,000 gallons per day at a proposed
3 outfall, 002, located at Glacier Park International
4 Airport.

5 The parties proceeded to renew and modify the permit
6 to maintain the discharge limit at 001 and, and didn't
7 authorize the discharge within the airport property.
8 Alpine's application materials and request for
9 modification of the permit did not provide the final
10 location and shape of the drain fields at the airport, and
11 so DEQ, in its review, could not authorize the full
12 100,000 gallons per day at the proposed airport outfalls,
13 which ended up being three drain fields associated with
14 three outfalls, which we designated Outfalls 002, 003, and
15 004.

16 DEQ provided the discharge volume that was supported
17 by Alpine's proposed location and the shape or orientation
18 of the three separate drain fields. A preliminary
19 engineering report was not included in the application
20 materials for the new outfalls at the airport, and,
21 therefore, the design capacity had to be estimated based
22 off of the aerial sizes of the drain fields. And, and we
23 ended up authorizing approximately 70 percent of what they
24 requested or 67,600 gallons per day rather than the
25 100,000 gallons per day. And this was because DEQ had to

1 accommodate setbacks, protect what we thought were
2 downgradient existing water supply wells and surface water
3 and neighboring properties.

4 Alpine received official written notice of DEQ's
5 tentative determination on August 15th, 2025, and DEQ's
6 notice at that time informed Alpine of the initiation of a
7 comment period during which the public and the applicant,
8 Alpine, could comment on the draft permit. DEQ publicly
9 noticed its tentative decision on the renewal and
10 modification of the permit on August 18th, 2025, for a
11 period of 30 days. DEQ received no comments from the
12 public or from Alpine during this comment period. The
13 final permit was issued on September 24th, 2025, and it
14 became final on October 1st, 2025. Alpine received
15 written notice that the final permit issued.

16 The failure to comment here is significant, because
17 under the administrative rules implementing the Montana
18 Water Quality Act, all persons, including applicants, who
19 believe any condition of a draft permit is inappropriate
20 or that the Department's tentative decision to prepare a
21 draft permit is inappropriate shall raise all reasonably
22 ascertainable issues and submit all reasonably available
23 arguments supporting their position by the close of the
24 public comment period. Failure to comment waives the
25 right to appeal. Without comment, DEQ has no idea what

1 issues or objections the applicant may have to a permit.

2 And also under the Montana Water Quality Act,
3 75-5-403(2), if the Department denies an application for a
4 permit, issues a permit, or modifies a permit, the
5 Department shall give written notice of its action to the
6 applicant or holder. Within 30 days of the Department's
7 decision, the applicant or holder may request a hearing
8 before the Board for the purpose of petitioning the Board
9 to reverse or modify the action of the Department.

10 DEQ received no comments from the public or from
11 Alpine, and the final permit issued and became final.
12 Alpine also did not appeal the final permit. Alpine
13 agreed, pursuant to terms of the stipulation between the
14 parties, to dismiss the appeal when they were issued a
15 final permit.

16 Alpine's response is that DEQ entered a binding
17 settlement agreement that expressly retained board
18 jurisdiction, that DEQ breached that agreement by issuing
19 a permit material -- materially different, and the DEQ
20 cannot now rely on the dismissal provision to extinguish
21 the Board's jurisdiction while disregarding its own
22 obligation under the agreement. Specifically, Alpine
23 claims DEQ breached the stipulation by not granting Alpine
24 the full 100,000 gallons per day at the airport. But all
25 these issues should have been raised in Alpine's response

1 during the public comment period.

2 The reductions in discharge capacity are not
3 permanent, and they may be adjusted after engineering
4 review, which is now ongoing. Alpine may seek a permit
5 modification to authorize the airport outfalls at the full
6 requested volumes with appropriate conditions after
7 completion of engineering review and before construction
8 and operation of the drain fields.

9 The purpose of the 2025 permit renewal and the
10 modification was to increase overall capacity to
11 accommodate the airport flows and maintain the existing
12 subdivision capacity at Outfall 001. The permit does
13 provide the requested volume at Outfall 1 and nearly
14 70 percent of the volume at the airport outfalls.

15 Alpine relies on paragraph 4 of the stipulation to
16 claim DEQ expressly determined that Alpine's modified
17 application provides sufficient information to support the
18 daily flow of 52,000 gallons per day at Outfall 001 and
19 the daily flow of 100,000 gallons per day at proposed
20 outfall 002 or the airport.

21 But the following paragraph provides: Notwithstanding
22 DEQ's determination that the modified application for
23 renewal and major modification of the permit is complete
24 and DEQ's acknowledgment that Alpine has provided
25 sufficient information to assist DEQ's development of a

1 tentative decision to renew and modify the permit, the
2 Parties agree to continue to cooperate by sharing
3 information necessary to develop the permit.

4 Paragraph 4 was intended to indicate sufficient
5 information was provided to begin drafting a tentative
6 permit decision, but under paragraph 5, the parties agreed
7 to continue to share information. Nothing in paragraph 4
8 indicates the parties fully resolved the terms of the
9 permit in the stipulation, nor could they. The
10 stipulation and the Montana Water Quality Act clearly
11 require a tentative discharge permit to undergo public
12 notice and comment.

13 So -- and furthermore, paragraph 16 provides: Nothing
14 in the first amendment to the second stipulation limits
15 DEQ's authority to review the permit renewal application,
16 to request additional information, and renew and modify
17 the permit under the Montana Water Quality Act and the
18 Montana Administrative Rules adopted under the Montana
19 Water Quality Act.

20 The stipulation could not and did not supersede DEQ's
21 obligations under Montana law.

22 DEQ issued a tentative decision and initiated a
23 comment period. DEQ explained that after Alpine completes
24 preliminary engineering review and seasonal ground water
25 flow direction is determined, the permitted volumes could

1 be increased at the airport outfalls through a permit
2 modification. Without a preliminary engineering report
3 and based on the information it had available, DEQ based
4 the daily flow capacities at the airport on aerial drain
5 field sizes, and this was all reflected in the tentative
6 permit decision available for the 30-day public comment
7 period. Alpine neither objected to the tentative permit
8 nor sought modification of any time frames or requirements
9 in the stipulation.

10 Alpine's disagreement with DEQ's issuance of a
11 material -- materially different permit than agreed to in
12 the stipulation should have been raised during the public
13 comment period, and Alpine should have also disputed DEQ's
14 concerns relating to drain field configuration setbacks,
15 ground water characterization, and design details in
16 comments on the permit.

17 Board Counsel provided a memo to the BER raising
18 two questions that should be resolved in this -- to
19 determine this motion. And the first is: Did DEQ breach
20 the stipulation by issuing the permit with less than
21 100,000 gallons per day at the airport, suggesting
22 analysis under contract law? And the second question is:
23 Did Alpine fail to exhaust administrative remedies by not
24 commenting and not appealing the permit decision?

25 DEQ respectfully maintains that the second question is

1 determinative here. It is undisputed that Alpine did not
2 submit comments during the 30-day comment period and did
3 not request a hearing before the Board. And Alpine's
4 failure to participate in the public comment process and
5 its failure to appeal the final permit decision within the
6 statutory time frame constitutes a waiver of its right to
7 further board review.

8 Alpine had ample opportunity to request a hearing or
9 raise its concerns, and the Board's retained jurisdiction
10 over this permit appeal does not render participation in
11 the administrative process unnecessary. Due to Alpine's
12 failure to participate, this proceeding is final and
13 should now be terminated.

14 On September 24th, 2025, DEQ issued a permit and
15 provided written notice to Alpine of the final renewal and
16 modification of the permit. The permit went into effect,
17 and Alpine is now operating under the permit.

18 DEQ's reply brief was not in the Board's materials,
19 but it is in the BER's appeal docket for this case. It's
20 Document No. 60. And I did -- I cited a case in that
21 brief that is a fairly recent Supreme Court case, and that
22 case is City of Great Falls vs. International Association
23 of Firefighters, and the cite is 2024 MT 302. And in that
24 case, it has language that says that unless exceptions are
25 filed on a proposed tentative decision, that decision

1 becomes final. And that, that reasoning can be applied in
2 this case.

3 Alpine did not file any objections to DEQ's tentative
4 permit decision, and that decision is now final. Had
5 Alpine availed itself of the statutorily prescribed
6 administrative remedies, the BER could have retained
7 jurisdiction of this matter. And Alpine cannot now
8 complain that DEQ departed from the settlement, issued a
9 material different -- materially different permit, and
10 then extinguished board jurisdiction, when Alpine had
11 adequate remedies. It simply chose not to use them.

12 So, therefore, DEQ's motion to dismiss with prejudice
13 should be granted. And that's what I have for now. Thank
14 you.

15 CHAIR SIMPSON: Thank you, Ms. Bowers. And great
16 job. 14 minutes. Thank you very much.

17 Alpine.

18 MR. TAPPAN: Good morning, Chairman and
19 distinguished board members. My name is Rick Tappan,
20 counsel for Alpine Pacific Utilities. I endeavor to keep
21 this much shorter than 15 minutes, but I'll try not to
22 speak too quickly. Sometimes I have a habit of doing
23 that, especially with a lot of caffeine in me.

24 So I, I do agree with the DEQ that the issuance of
25 this permit was substantively different from what was

1 agreed to in the stipulation. I take issue with DEQ's
2 characterization of the plain language of paragraph 4.

3 DEQ is identifying that as a tentative agreement, but
4 the plain language identifies that: DEQ hereby determines
5 Alpine's modified application for renewal and major
6 modification of MTX000164 is complete and provides
7 sufficient information to support the daily flow of
8 52,000 gallons per day at outfall 001 and daily flow of
9 100,000 gallons per day at outfall 002. There is no
10 tentative language in that paragraph.

11 So some of the history of this process is, is
12 important to understand by the Board. You know, we got
13 one bite at the apple with our response brief, and, you
14 know, if it -- I think it's appropriate that, you know,
15 after this meeting, we submit further e-mails between
16 counsel to demonstrate the communications that we have had
17 throughout this process.

18 But this first amendment of the second stipulation was
19 executed on March 21st. Prior to that -- prior to
20 executing that agreement, Alpine and DEQ conducted
21 significant correspondence, with Alpine submitting
22 information requested by the DEQ in order to go final with
23 the permit. I counted no fewer than 13 e-mails were
24 received from DEQ's counsel, Ms. Bowers, regarding the
25 language of the first amendment and information necessary

1 for approval and modification.

2 For instance, on March 3rd, Ms. Bowers stated: I
3 spoke with Erik Englebert, the ground water permitting
4 section supervisor, and confirmed that the permit writers
5 need the final location and shape/orientation on the drain
6 field, but not the final engineering approval or
7 engineering details to draft the discharge permit.

8 So prior to executing this first agreement, Alpine
9 provided the specific drain field location and dimensions,
10 setback distances, survey details, and ground water flow
11 information, all requested by the DEQ. On March 20th, the
12 day before parties executed this agreement, Ms. Bowers
13 stated: I will forward to Water Protection Bureau staff
14 and let you know right away if there are additional
15 questions. I will get the status report and stipulation
16 filed.

17 So at the time of filing the executed stipulation,
18 Alpine had provided substantive information requested by
19 DEQ for issuance of the permit and no outstanding requests
20 for information remained. Then between the execution on
21 March 21st and issuance of the draft permit on
22 August 11th -- Because we received the permit, the draft
23 permit before the public did as a courtesy, I believe. So
24 we received it on August 11th.

25 The following correspondence occurred, right, between

1 those two dates. On June 4th, I e-mailed Ms. Bowers to
2 ask whether the permit was on track and whether DEQ needed
3 any additional information from Alpine. On that same day,
4 Ms. Bowers responded that according to the DEQ staff, the
5 draft permit is on track.

6 On July 23rd, 2025, I again touched base to see how
7 the draft permit was coming along. And on that same day,
8 Ms. Bowers responded, stating: Thanks for reaching out.
9 In accordance with the first amendment of the second
10 stipulation, DEQ has made a tentative determination to
11 renew and modify MTX000164. The draft permit and related
12 documents are currently in internal review and will be
13 shared with Alpine as soon as that process is complete.
14 DEQ expects to complete its internal review of the
15 tentative permit decision by August 1st. Pursuant to that
16 timeline agreed to in the first amendment of the second
17 stipulation, DEQ will give public notice of the tentative
18 determination to renew and modify MTX00164 by August 20th,
19 2025.

20 At no point prior to Alpine's receipt of the draft
21 permit on August 11th did DEQ request any additional
22 information even when prompted by Alpine. So that
23 paragraph 5 which counsel cites to about the parties agree
24 to continue to cooperate by sharing any information
25 necessary to develop the renewal and major modification is

1 interesting insofar as substantive information was shared
2 with DEQ prior to execution of the stipulation, no further
3 information was requested by DEQ after execution of the
4 stipulation even when prompted by Alpine. Okay?

5 After issuance of the permit to Alpine on August 11th,
6 we, we received the permit as forwarded by Ms. Bowers. I
7 communicated with Ms. Bowers via e-mail and phone on
8 multiple occasions, all within or prior to the 30-day
9 public comment period, expressing our concerns with both
10 the reduced outfall flow rate and the effluent
11 concentrations.

12 On September 19th, Ms. Bowers stated: I think the
13 next step is for Alpine to submit the preliminary
14 engineering report to the DEQ Engineering Bureau for
15 review of the proposed system design at the airport.
16 After the final system design at Glacier Airport is
17 approved, it may be possible to increase the daily flow
18 rate and adjust the effluent limits for the airport
19 outfalls. This will be done through a permit
20 modification.

21 So that statement that after engineering review and
22 final system design is approved, the permit modification
23 may be possible is in direct contravention to Ms. Bowers'
24 statement on March 3rd, stating: Permit writers need the
25 final location and shape/orientation of the drain field

1 but not the final engineering approval or engineering
2 details to draft the discharge permit.

3 DEQ's position that Alpine did not submit public
4 comment on the draft permit is not supported by the clear
5 record of correspondence. The, the comments were received
6 directly to DEQ's counsel. There was no reason for us to
7 submit them through any public portal because we had
8 negotiated this agreement directly with DEQ's counsel,
9 that was the point of contact, and that's whom we have
10 directed all of our correspondence with regard to this
11 matter to.

12 So we can provide those communications to the Board
13 for their review after this, after this hearing is over.
14 But the point is, is where the DEQ stresses that, you
15 know, the second point of Alpine failed to exhaust its
16 remedies, and they argue that is determinative because we
17 did not submit comments, we absolutely did. We had very
18 substantive concerns about not just the reduction in the
19 outfall that was agreed to under paragraph 4, but also the
20 concentrations of the effluents were, were a very strict
21 standard that we could not understand given that we had
22 submitted information and DEQ had requested nothing but
23 still amended those effluent concentrations substantially.

24 So DEQ offers no legal explanation for why final
25 engineering information authorized the Department to

1 unilaterally alter the settlement agreement. And the
2 settlement agreement, I think everybody recognizes, is a
3 binding contract, and that applies to contracts with state
4 agencies.

5 So here, we are asking for this Board to retain
6 jurisdiction, to enforce the settlement agreement between
7 the parties given that there is no substantive reason for
8 departure from the terms of the agreement.

9 DEQ wants to insert additional terms into paragraph 4
10 by identifying that as a tentative determination when
11 there is no indication by the plain language that that is
12 accurate and then argue that we have not exhausted our
13 remedies by commenting when, in fact, we did comment and
14 the DEQ failed to address or even recognize that any
15 comments were submitted. So that right there invalidates
16 the final permit issuance, because the DEQ did not respond
17 to any comments that were submitted, especially by us.
18 They just ignored them and, you know, did not identify
19 they even existed.

20 So the point is that we did not -- Alpine did not fail
21 to present outstanding issues or exhaust our remedies.
22 DEQ did breach its contract, and no party disputes the
23 terms of the agreement, including whether this Board
24 retains jurisdiction to determine that breach. DEQ
25 erroneously issued a final permit without commenting on or

1 responding to Alpine's substantive concerns submitted
2 during the public comment period, and this is error and
3 invalidates the final permit issuance.

4 where DEQ failed to adhere to the plain terms of the
5 contract, this Board has authority to instruct DEQ to
6 alter the permit to the agreed discharge rates for
7 outfall 001 and outfall 002. Thank you.

8 CHAIR SIMPSON: Thank you, Mr. Tappan.

9 Anything further, Ms. Bowers?

10 MS. BOWERS: Thank you, Chair Simpson, members of
11 the Board. Yeah, I think, I think there is maybe a
12 misunderstanding about the public process that was in
13 place here. The communications back and forth between
14 Alpine and DEQ that Mr. Tappan described did not occur
15 during the public process -- during the public comment
16 period. The public comment period initiates after DEQ
17 issues its tentative permit decision, and that would have
18 been August 18th.

19 So Alpine had a duty to comment during that 30-day
20 comment period if it objected to the permit or had
21 questions about DEQ's assumptions about drain field
22 location. I mean, DEQ disagrees that we had the final
23 location. In fact, those are still going through
24 engineering review, so I don't think they're final at this
25 point.

1 And then I guess since we're looking at external
2 information, this is actually something that's filed in
3 your record, the parties filed a joint status report dated
4 September 19th, 2025, which would have been as the public
5 comment period was coming to an end. And the parties
6 jointly state that, that Alpine was seeking a discharge of
7 up 100,000 gallons per day at the airport and, and the
8 parties agreed that DEQ received no public comments on the
9 tentative permit.

10 So I think there's maybe a little bit of a disconnect
11 between what DEQ would consider the application process
12 and back-and-forth between Alpine and DEQ during that
13 process and the actual official public comment period,
14 which initiated after the tentative permit issued. And at
15 that point, Alpine was obligated to submit formal comments
16 to DEQ on the tentative permit decision, and they did not.

17 I don't have anything further unless you have
18 questions. Thank you.

19 CHAIR SIMPSON: Thank you, Ms. Bowers.

20 Mr. Tappan.

21 MR. TAPPAN: Thank you, Chairman. It appears now
22 we're splitting hairs. We're talking formal comments
23 versus actual comments, and we're talking during the
24 August 18th period, even though the draft determination
25 was sent to us on August 11th. So we reached out almost

1 immediately to counsel with our questions and our
2 concerns.

3 To the extent we filed a joint status report
4 recognizing there were no public comments, well, that's
5 true. There were no public comments. We don't think that
6 there was anything for the public to -- well, we were
7 hoping there would be no public comments, because we don't
8 see this as an objectionable application. But that
9 doesn't mean that the applicant didn't have concerns. We
10 are not the public, we're the applicant.

11 So, you know, I think that we're moving the ball here,
12 and the Board has to be aware that, that we did, we did
13 engage in a lengthy back-and-forth with counsel, and
14 counsel would go talk to, you know, people in the
15 Water Bureau to get answers for us, but we -- it wasn't
16 just a one-and-done, and we did have a back-and-forth,
17 both over e-mail and via phone, about our concerns with
18 the, the permit.

19 To the extent none of that made it into the record is
20 clearly erroneous and a problem given that we, we did
21 reach out. And to the extent we're going to be precluded
22 because we didn't file something formally on August 18th I
23 think would be a miscarriage, but I also think it's not
24 supported by the record.

25 But I will supplement this argument with those e-mails

1 if this Board would find them to be dispositive. Thank
2 you.

3 CHAIR SIMPSON: Thank you, Mr. Tappan.

4 Questions from the Board.

5 BOARD MEMBER PAYNE: I have got one.

6 CHAIR SIMPSON: Board Member Payne.

7 BOARD MEMBER PAYNE: Actually, you know, when I
8 first read this, I thought it was a straightforward issue,
9 but listening to the arguments of counsel, this is way
10 more complicated and, and deeper.

11 But let me start with, let me start with this question
12 to DEQ: Had the exchange of e-mails been submitted during
13 the official public comment period, would DEQ have treated
14 those as public comment?

15 MS. BOWERS: Board Member Payne, members of the
16 Board, so the -- under the rule, the applicable rule, all
17 persons, including the applicant, who has a comment on a
18 permit has to submit comments during the public comment
19 period. And so yes, if, if Alpine had submitted their
20 objections during the public comment period, we would, we
21 would have accepted and considered them as comments on the
22 permit and responded to them.

23 BOARD MEMBER PAYNE: Okay. I have a question for
24 Mr. Tappan. I think you have the better argument on the
25 plain language of paragraph 4, but, you know, in my

1 career, both working for and working against DEQ, it has
2 always been very clear to me that, you know, an agency
3 such as DEQ, you know, cannot make an agreement to issue a
4 permit or make a decision that's subject to -- you know,
5 where that decision is subject to public comment until
6 that public comment has been received and analyzed.

7 So, you know, while the plain language of paragraph 4
8 I think supports your argument, I think the general -- you
9 know, the law here, I'm not sure it's a reasonable
10 interpretation to say, well, DEQ agreed to this permit
11 condition without -- you know, prior to submitting it for
12 public comment.

13 So I guess I'd like you to address that issue: How
14 can, how can -- why is it a reasonable interpretation of
15 paragraph 4 that DEQ, before receiving any public --
16 before having the opportunity for public comment, agreed
17 to make that, you know, agreed to issue the permit with
18 that condition in it?

19 MR. TAPPAN: Thank you for that question. So
20 first, there was no public comment; right? And so -- and
21 the DEQ had made their determination going into the public
22 comment period. So it's not as though they agreed to the
23 terms that the parties agreed to in paragraph 4 and then
24 modified it based on public comment.

25 BOARD MEMBER PAYNE: You know, I understand that.

1 And that's why, that's why this is getting more
2 complicated. Because the determination of the
3 reasonableness and the meaning of paragraph 4 has to be
4 made prior to whether public comment was made or not,
5 because it was what was the understanding of the parties
6 at the time. And, you know, this was before public
7 comment would have been submitted.

8 And you're saying, though, the agreement was final.
9 So to me, in my mind, originally, I kind of was thinking
10 along your way, but now I'm, now I'm really kind of -- I
11 think I'm understanding here that because it has to be,
12 you know, we have to interpret that at the time it was
13 made, we don't know if there's public comment or not, but
14 DEQ has to leave that open.

15 Now, whether they were appropriate in changing their
16 mind, you know, because of the public comment, but, you
17 know -- but at the time it was made, the agreement was
18 made, that's when we have to interpret it. And how can
19 DEQ agree to a -- If the permit is subject, if the
20 tentative permit is subject to public comment, how can DEQ
21 agree to a term without having had the, without the public
22 having an opportunity to make that comment?

23 MR. TAPPAN: So this agreement was executed
24 March 21st, 2025. And prior to execution of this
25 agreement, parties had substantive correspondence back and

1 forth where we submitted all information requested by the
2 DEQ to come to the recognition that it was appropriate to
3 support those daily flows of 52,000 and 100,000 gallons
4 per day. There was nothing left outstanding on the DEQ
5 side when the parties executed.

6 So for the DEQ to say, well, we came into -- we had
7 more questions after the fact which altered our ability to
8 adhere to paragraph 4, that's not supported by the e-mails
9 that I sent to counsel in June and July asking is there
10 any additional information that the DEQ is looking for,
11 and they responded no or they failed to identify anything
12 that was substantive. And then we go into the public --
13 we go into the issuance of the permit, and it is
14 substantively different from what was negotiated and
15 proposed and agreed to.

16 So I, I hear you where you say that how can they
17 finalize a permit without incorporating the public
18 comment, but all of this information was already in their
19 wheelhouse and provided to them before we executed this
20 agreement, and we had no information from the DEQ that
21 there was anything that they had outstanding that would
22 alter that, that paragraph 4.

23 And yes, paragraph 5 requires us to share and ask for
24 and provide information as requested. No additional
25 information was requested. And so then that is entirely

1 perplexing to us why the draft permit would be issued to
2 us first and then to the public a few days later that
3 substantively departs from what was agreed to in
4 paragraph 4.

5 BOARD MEMBER PAYNE: Okay. I don't have anything
6 further.

7 CHAIR SIMPSON: Thank you, Allan.

8 MS. BOWERS, I see you have your hand up.

9 MS. BOWERS: Thank you, Chair Simpson, members of
10 the Board. I just wanted to briefly follow up on a thread
11 that Board Member Payne raised, and that is the point that
12 DEQ can't commit to a final permit based on a stipulation.
13 We have to go through a public comment process and, and
14 respond to comments, and potentially that changes the
15 permit.

16 And that's why the, the tentative permit decision
17 package is called a tentative decision, and that package
18 includes the permit, a fact sheet that explains the
19 permit, and an environmental assessment, all of which can
20 be commented on during the public comment period. And we
21 didn't get any comments from the applicant or the public.

22 CHAIR SIMPSON: Thank you, Ms. Bowers.

23 Anything -- any further questions from the Board?

24 (No response.)

25 CHAIR SIMPSON: It looks like we're ready to move

1 forward. I guess I would ask first, is there a motion on
2 which we can base our discussion?

3 BOARD MEMBER PAYNE: Well, to begin the
4 discussion, I'll make a motion that the Board approves the
5 Department of Environmental Quality's motion to dismiss.

6 BOARD MEMBER ALTEMUS: I'll second it.

7 CHAIR SIMPSON: A motion has been made and
8 seconded to grant the Department's motion to dismiss.
9 Discussion.

10 BOARD MEMBER PAYNE: I'll start.

11 CHAIR SIMPSON: Go ahead, Allan.

12 BOARD MEMBER PAYNE: You know, with respect to,
13 you know, the submission of public comments within the
14 public comment period, it's always been, you know, my
15 understanding of the, you know, the purpose of the public
16 comment is encourage, you know, the public to comment and
17 to be involved in these decisions. And, you know, there
18 the applicant always stands in a kind of unique position
19 because they're in much -- direct, you know, communication
20 with DEQ.

21 And I would be really reluctant to -- You know, even
22 though it was, you know, it was submitted outside the
23 public comment, it was before the public comment period
24 initiated, I think DEQ is very well-aware of those
25 decisions. So, you know, I don't, I don't find DEQ's

1 argument there that there wasn't public comment. You
2 know, that's sort of very much against the whole -- you
3 know, I think what the purpose of it was. They knew those
4 comments.

5 Now, you know, a complicating factor, those, those
6 public comments were not, quote/unquote, available to the
7 public, but, you know, most public comments aren't. You
8 just -- You know, those are submitted to the agency and
9 you don't hear what other people's comments were until the
10 agency makes its decision.

11 But here, I don't, I don't find that, that argument
12 persuasive -- that DEQ argument persuasive, because I
13 don't want us to be, you know, elevating, you know, form
14 over purpose here. And I think the purpose of the public
15 comments -- you know, I think Alpine made their public
16 comments and made their, their unhappiness known to DEQ.

17 But I would love -- If anybody else has any different
18 view on that, I'd like to hear it.

19 BOARD MEMBER ALTEMUS: So Mr. Chair, I would be
20 happy to give you a different perspective on that, Board
21 Member Payne. You know, we're splitting hairs over public
22 comment, but honestly, they're important hairs to split.
23 They are.

24 So what's the point of having the administrative rule
25 about public comment if we don't follow it? I mean, and I

1 agree, I'm assuming that, you know, Alpine figured that
2 what they were saying in their e-mails is their public
3 comment, and they certainly raised their issues. But I
4 have written many, many public comments. And they are
5 available, the public comments are available online during
6 the, during the course of public comment, not just after
7 the fact.

8 So I do think it's important that -- And change the
9 law, I mean, if you want to have e-mails going back and
10 forth as part of public comment. I mean, they're not
11 posted; those are not posted online. They're e-mails
12 between the agency and Alpine. So I guess my point is, is
13 I do think it's important, if we're going to have a law,
14 if we're going to have administrative rules, that they do
15 have to be followed. And it's unfortunate that Alpine
16 didn't feel that they should have done that through the
17 portal because they had been doing that agency-to-Alpine,
18 you know, back-and-forth.

19 But anyway, that is my perspective. I do think it
20 needs to be followed, and if it's not followed, then you
21 need to change the law.

22 CHAIR SIMPSON: Thank you, Julia.

23 Anything further from the Board?

24 Board Member Smith, any thoughts on this?

25 BOARD MEMBER SMITH: I guess a quick

1 clarification on the motion. If we motion to dismiss, I
2 assume -- I'm looking at the decision tree that we have
3 from counsel. I assume that's a motion to dismiss with
4 prejudice and we're done, and that means that Alpine's --
5 Do they still have recourse to I guess file another appeal
6 on this matter or is it, is it over?

7 CHAIR SIMPSON: I think I can answer that.
8 Please, somebody -- I'll ask counsel to correct me if I'm
9 wrong. But it's over as far as this particular permit
10 goes. However, Alpine would still have the opportunity to
11 file for a modification on its permit to, to add the
12 additional drain field and the additional, the additional
13 discharge volume. So they're not precluded from doing
14 that. All it does is initiate a new process.

15 So that if Alpine were to file for a modification or
16 amendment, whatever it's called, in this case, DEQ would
17 consider it. And if -- In the process of processing the
18 permit, it would go through the same process; that is
19 there would be negotiation between the parties, that is
20 between Alpine and DEQ, there would be a tentative permit,
21 public comment, and then a final permit and an opportunity
22 for Alpine to appeal afterwards.

23 But it would start a new case. It would not be the
24 case that we've been working on for the last seven years.

25 BOARD MEMBER SMITH: That, that helps.

1 CHAIR SIMPSON: Board Member Rankosky.

2 BOARD MEMBER RANKOSKY: I agree with the public
3 comment that you are all talking about. We -- at my job,
4 we have to have a public comment period, we have to listen
5 to it, and then we base decisions on that public comment.
6 And you do have -- I don't know why Alpine wouldn't have
7 submitted that information. That is, that is par for the
8 course in my world. So -- because that's their
9 opportunity to tell the public of their intent and let the
10 community look at it. We post all of our public comment;
11 we do all of that. So I'm in agreement with, with
12 Julia Altemus.

13 CHAIR SIMPSON: Okay. Thank you. I'll make just
14 a short, a brief comment on this. You know, the process
15 is broken into distinct stages, and once the application
16 is filed, there's a process that the applicant and the
17 Department go through to, in the end, create the final --
18 to create the permit.

19 It's a, it's a negotiation, certainly, because
20 technical issues are considered back and forth, and
21 ultimately what comes out of that is the tentative or
22 proposed permit. That's when the formal process starts
23 with public comment and ultimately the issuance of the
24 final permit, and then there's the 30-day period during
25 which the permittee may challenge that permit with a

1 petition to the Board.

2 I guess, you know, it seems to me that what we're
3 seeing here is somewhat of a conflation of the negotiation
4 process and the formal process, but they're separate and
5 distinct. But beyond that, I don't think there is any
6 question or I haven't heard it disputed that Alpine did
7 not file a petition within the 30 days as required in
8 order to appeal the permit in its final form. So I'm
9 certainly on board with the motion.

10 Further discussion.

11 (No response.)

12 CHAIR SIMPSON: Moved and seconded that DEQ's
13 motion to dismiss be granted.

14 BOARD MEMBER PAYNE: Yeah, I think we might need
15 a clarification, because DEQ had really submitted
16 two different -- you know, their motion to dismiss on
17 two different grounds. One was the public comment, but
18 one was basically on the interpretation of paragraph 4.
19 And I just -- if the Board is, you know -- if it wants --
20 You know, if we want to clarify as to which -- if we're
21 going to vote on which of those grounds, maybe we should
22 vote on them separately so the record is clear. But I
23 guess I'd invite the Chairman to comment on it.

24 CHAIR SIMPSON: No, that's a good question. But
25 really, what's before us is the motion to dismiss, and I

1 believe that by acting on that motion, we will have
2 answered both questions. I guess I would ask our counsel.

3 Dana, do you have any, any thoughts on the question
4 raised by Board Member Payne?

5 MS. HUPP: Chairman Simpson and Board Member
6 Payne, I would prepare a draft order for the Board's
7 review in August, and so at that point, you could review
8 it. You know, in listening to the discussions, it appears
9 to me that the Board is making this decision based upon
10 the clear language of the supplement agreement and the
11 fact that, ultimately, Alpine failed to file a notice of
12 appeal within the time frame required.

13 You know, ultimately, you know, there is a question in
14 my mind legally whether or not Alpine was required to file
15 comments. I do not read the statute as Alpine being
16 required to file comment in order to file a notice of
17 appeal. And I respectfully disagree with DEQ's counsel's
18 interpretation of the City of Great Falls case. I think
19 that case requiring comments was limited to the complaints
20 under the Unfair Labor Practices Act.

21 So -- I do think, though, that the statute is clear
22 that Alpine was required to file an appeal within the time
23 period, certain time period and that did not occur.

24 CHAIR SIMPSON: Board Member Payne, are you
25 comfortable with that?

1 BOARD MEMBER PAYNE: You mean do we get to delay
2 our decision? Sure. Yeah, I just, I just offered to
3 break it out in the two. And if Dana wants to, you know,
4 write that up for us to then formally vote on, you know,
5 or vote for our approval in the next meeting, I'm fine
6 with that. Because at this point, I think I might
7 split -- I'd probably split my vote. But I guess maybe,
8 maybe it would be better to have it in writing so we can
9 look at it.

10 CHAIR SIMPSON: Thank you. Thank you, Allan.
11 Anything further?

12 I believe we're ready to vote. It's been moved and
13 seconded that DEQ's motion to dismiss be granted. All in
14 favor say aye.

15 (Response.)

16 CHAIR SIMPSON: Opposed.

17 (No response.)

18 CHAIR SIMPSON: The motion carries unanimously.

19 It is 11 minutes after 10:00. Why don't we take a
20 short break and then come back for the, for the next item
21 on our agenda, which regards DEQ's decision on Air Quality
22 Permit 5263-03, Montana Renewables. That will give our
23 court reporter a chance to get reset. And why don't we,
24 why don't we reconvene at 10:20.

25 (The proceedings were concluded at 10:11 a.m.)

COURT REPORTER'S CERTIFICATE

STATE OF MONTANA)
 ss.
COUNTY OF LEWIS AND CLARK)

I, CHERYL A. ROMSA, Court Reporter, residing in
Helena, Montana, do hereby certify:

That the foregoing proceedings were reported by
me in shorthand and later transcribed into typewriting;
and that the foregoing transcript of the proceedings
consisting of -33- pages of typewritten material
constitute a full, true, and accurate transcript of my
stenotype notes of the proceedings had and taken in the
above-entitled matter at the time and place hereinbefore
mentioned to the best of my ability.

DATED this the 20th day of July, 2026.

/s/Cheryl A. Romsa
CHERYL A. ROMSA

0	4	22:13 adequate [1] - 11:11 adhere [2] - 18:4, 24:8 adjust [1] - 15:18 adjusted [1] - 7:3 administrative [7] - 3:10, 5:17, 9:23, 10:11, 11:6, 27:24, 28:14 Administrative [1] - 8:18 adopted [1] - 8:18 aerial [2] - 4:22, 9:4 afterwards [1] - 29:22 agencies [1] - 17:4 agency [5] - 22:2, 27:8, 27:10, 28:12, 28:17 agency-to-Alpine [1] - 28:17 agenda [2] - 3:9, 33:21 agree [7] - 8:2, 11:24, 14:23, 23:19, 23:21, 28:1, 30:2 agreed [16] - 3:22, 6:13, 8:6, 9:11, 12:1, 14:16, 16:19, 18:6, 19:8, 22:10, 22:16, 22:17, 22:22, 22:23, 24:15, 25:3 agreement [22] - 3:12, 6:17, 6:18, 6:22, 12:3, 12:20, 13:8, 13:12, 16:8, 17:1, 17:2, 17:6, 17:8, 17:23, 22:3, 23:8, 23:17, 23:23, 23:25, 24:20, 30:11, 32:10 ahead [1] - 26:11 Air [1] - 33:21 Airport [2] - 4:4, 15:16 airport [15] - 4:7, 4:10, 4:12, 4:20, 6:24, 7:5, 7:11, 7:14, 7:20, 9:1, 9:4, 9:21, 15:15, 15:18, 19:7 Allan [3] - 25:7, 26:11, 33:10 allotted [1] - 3:5 almost [1] - 19:25 Alpine [62] - 3:17, 5:4, 5:6, 5:8, 5:12, 5:14, 6:11, 6:12, 6:22, 6:23, 7:4, 7:15, 7:24, 8:23, 9:7, 9:13, 9:23, 10:1, 10:8, 10:15, 10:17, 11:3, 11:5, 11:7, 11:10, 11:17, 11:20, 12:20, 12:21, 13:8, 13:18, 14:3, 14:13, 14:22, 15:4, 15:5, 15:13, 16:3, 16:15, 17:20, 18:14, 18:19, 19:6, 19:12, 19:15, 21:19, 27:15, 28:1, 28:12, 28:15, 28:17, 29:10, 29:15, 29:20, 29:22, 30:6, 31:6, 32:11, 32:14, 32:15, 32:22 Alpine's [14] - 3:20, 3:22, 4:8, 4:17, 6:16, 6:25, 7:16, 9:10, 10:3, 10:11, 12:5, 14:20, 18:1, 29:4 ALTEMUS [2] - 26:6, 27:19 Altemus [1] - 30:12 alter [3] - 17:1, 18:6, 24:22 altered [1] - 24:7 amended [1] - 16:23 amendment [9] - 3:14, 3:17, 3:21, 8:14, 12:18, 12:25, 14:9, 14:16, 29:16 ample [1] - 10:8 analysis [1] - 9:22 analyzed [1] - 22:6 answer [1] - 29:7 answered [1] - 32:2 answers [1] - 20:15 anyway [1] - 28:19 appeal [13] - 3:9, 5:25, 6:12, 6:14, 10:5, 10:10, 10:19, 29:5, 29:22, 31:8, 32:12, 32:17, 32:22 appealing [1] - 9:24 apple [1] - 12:13 applicable [1] - 21:16 applicant [10] - 5:7, 6:1, 6:6, 6:7, 20:9, 20:10, 21:17, 25:21, 26:18, 30:16 applicants [1] - 5:18 application [11] - 3:23, 4:8, 4:19, 6:3, 7:17, 7:22, 8:15, 12:5, 19:11, 20:8, 30:15 applied [1] - 11:1 applies [1] - 17:3 appropriate [4] - 7:6, 12:14, 23:15, 24:2 approval [4] - 13:1, 13:6, 16:1, 33:5 approved [2] - 15:17, 15:22 approves [1] - 26:4 argue [2] - 16:16, 17:12 argument [6] - 20:25, 21:24, 22:8, 27:1, 27:11, 27:12 arguments [2] - 5:23, 21:9 ascertainable [1] - 5:22 assessment [1] - 25:19 assist [1] - 7:25 associated [1] - 4:13 Association [1] - 10:22 assume [2] - 29:2, 29:3 assuming [1] - 28:1 assumptions [1] - 18:21 August [13] - 5:5, 5:10, 13:22, 13:24, 14:15, 14:18, 14:21, 15:5, 18:18, 19:24, 19:25, 20:22, 32:7 authority [2] - 8:15, 18:5 authorize [3] - 4:7, 4:11, 7:5 authorized [1] - 16:25 authorizing [1] - 4:23 available [6] - 5:22, 9:3, 9:6, 27:6, 28:5 availed [1] - 11:5 aware [2] - 20:12, 26:24 aye [1] - 33:14	
1	5		B
1 [1] - 7:13 100,000 [9] - 4:2, 4:12, 4:25, 6:24, 7:19, 9:21, 12:9, 19:7, 24:3 10:00 [1] - 33:19 10:11 [1] - 33:25 10:20 [1] - 33:24 11 [1] - 33:19 11th [5] - 13:22, 13:24, 14:21, 15:5, 19:25 13 [1] - 12:23 14 [1] - 11:16 15 [2] - 3:5, 11:21 15th [1] - 5:5 16 [1] - 8:13 18th [4] - 5:10, 18:18, 19:24, 20:22 19th [2] - 15:12, 19:4 1st [2] - 5:14, 14:15	5 [4] - 3:5, 8:6, 14:23, 24:23 52,000 [4] - 3:24, 7:18, 12:8, 24:3 5263-03 [1] - 33:22		
	6		
	60 [1] - 10:20 67,600 [1] - 4:24		
	7		
	70 [2] - 4:23, 7:14 75-5-403(2) [1] - 6:3		
	A		
	a.m [1] - 33:25 ability [1] - 24:7 absolutely [1] - 16:17 accepted [1] - 21:21 accommodate [2] - 5:1, 7:11 accordance [1] - 14:9 according [1] - 14:4 accurate [1] - 17:12 acknowledgment [1] - 7:24 Act [6] - 5:18, 6:2, 8:10, 8:17, 8:19, 32:20 acting [1] - 32:1 action [3] - 3:20, 6:5, 6:9 actual [2] - 19:13, 19:23 add [1] - 29:11 additional [10] - 8:16, 13:14, 14:3, 14:21, 17:9, 24:10, 24:24, 29:12 address [2] - 17:14,		
2			
2020 [1] - 3:16 2024 [2] - 3:15, 10:23 2025 [11] - 3:17, 5:5, 5:10, 5:13, 5:14, 7:9, 10:14, 14:6, 14:19, 19:4, 23:24 20th [2] - 13:11, 14:18 21st [4] - 3:16, 12:19, 13:21, 23:24 23rd [1] - 14:6 24th [2] - 5:13, 10:14			
3			
30 [3] - 5:11, 6:6, 31:7 30-day [5] - 9:6, 10:2, 15:8, 18:19, 30:24 302 [1] - 10:23 3rd [2] - 13:2, 15:24			back-and-forth [4] - 19:12, 20:13, 20:16, 28:18 ball [1] - 20:11 base [3] - 14:6, 26:2, 30:5 based [6] - 4:21, 9:3, 22:24, 25:12, 32:9 became [2] - 5:14, 6:11 becomes [1] - 11:1 begin [3] - 3:4, 8:5, 26:3

BER [2] - 9:17, 11:6 BER's [1] - 10:19 better [2] - 21:24, 33:8 between [12] - 3:14, 6:13, 12:15, 13:20, 13:25, 17:6, 18:13, 19:11, 19:12, 28:12, 29:19, 29:20 beyond [1] - 31:5 binding [2] - 6:16, 17:3 bit [1] - 19:10 bite [1] - 12:13 Board [28] - 3:7, 6:8, 10:3, 12:12, 16:12, 17:5, 17:23, 18:5, 18:11, 20:12, 21:1, 21:4, 21:6, 21:15, 21:16, 25:10, 25:11, 25:23, 26:4, 27:20, 28:23, 31:1, 31:19, 32:4, 32:5, 32:9, 32:24 board [9] - 3:19, 6:17, 9:17, 10:7, 11:10, 11:19, 28:24, 30:1, 31:9 Board's [4] - 6:21, 10:9, 10:18, 32:6 bowers [1] - 11:15 BOWERS [4] - 3:6, 18:10, 21:15, 25:9 Bowers [14] - 3:7, 12:24, 13:2, 13:12, 14:1, 14:4, 14:8, 15:6, 15:7, 15:12, 18:9, 19:19, 25:8, 25:22 Bowers' [1] - 15:23 breach [3] - 9:19, 17:22, 17:24 breached [2] - 6:18, 6:23 break [2] - 33:3, 33:20 brief [4] - 10:18, 10:21, 12:13, 30:14 briefly [1] - 25:10 broken [1] - 30:15 Bureau [3] - 13:13, 15:14, 20:15	7:2, 7:10, 7:12 career [1] - 22:1 carries [1] - 33:18 case [12] - 3:13, 10:19, 10:20, 10:21, 10:22, 10:24, 11:2, 29:16, 29:23, 29:24, 32:18, 32:19 certain [1] - 32:23 certainly [3] - 28:3, 30:19, 31:9 CHAIR [21] - 3:2, 11:15, 18:8, 19:19, 21:3, 21:6, 25:7, 25:22, 25:25, 26:7, 26:11, 28:22, 29:7, 30:1, 30:13, 31:12, 31:24, 32:24, 33:10, 33:16, 33:18 challenge [1] - 30:25 chance [1] - 33:23 change [2] - 28:8, 28:21 changes [1] - 25:14 changing [1] - 23:15 characterization [2] - 9:15, 12:2 chose [1] - 11:11 cite [1] - 10:23 cited [1] - 10:20 cites [1] - 14:23 City [2] - 10:22, 32:18 claim [1] - 7:16 claims [1] - 6:23 clarification [2] - 29:1, 31:15 clarify [1] - 31:20 clear [5] - 16:4, 22:2, 31:22, 32:10, 32:21 clearly [2] - 8:10, 20:20 close [1] - 5:23 comfortable [1] - 32:25 coming [2] - 14:7, 19:5 comment [66] - 5:7, 5:8, 5:12, 5:16, 5:24, 5:25, 7:1, 8:12, 8:23, 9:6, 9:13, 10:2, 10:4, 15:9, 16:4, 17:13, 18:2, 18:15, 18:16, 18:19, 18:20, 19:5, 19:13, 21:13, 21:14, 21:17, 21:18, 21:20, 22:5, 22:6, 22:12, 22:16, 22:20, 22:22, 22:24, 23:4, 23:7, 23:13, 23:16, 23:20,	23:22, 24:18, 25:13, 25:20, 26:14, 26:16, 26:23, 27:1, 27:22, 27:25, 28:3, 28:6, 28:10, 29:21, 30:3, 30:4, 30:5, 30:10, 30:14, 30:23, 31:17, 31:23, 32:16 commented [1] - 25:20 commenting [3] - 9:24, 17:13, 17:25 comments [30] - 5:11, 6:10, 9:16, 10:2, 16:5, 16:17, 17:15, 17:17, 19:8, 19:15, 19:22, 19:23, 20:4, 20:5, 20:7, 21:18, 21:21, 25:14, 25:21, 26:13, 27:4, 27:6, 27:7, 27:9, 27:15, 27:16, 28:4, 28:5, 32:15, 32:19 commit [1] - 25:12 communicated [1] - 15:7 communication [1] - 26:19 communications [3] - 12:16, 16:12, 18:13 community [1] - 30:10 complain [1] - 11:8 complaints [1] - 32:19 complete [4] - 7:23, 12:6, 14:13, 14:14 completes [1] - 8:23 completion [1] - 7:7 complicated [2] - 21:10, 23:2 complicating [1] - 27:5 concentrations [3] - 15:11, 16:20, 16:23 concerns [8] - 9:14, 10:9, 15:9, 16:18, 18:1, 20:2, 20:9, 20:17 concluded [1] - 33:25 condition [3] - 5:19, 22:11, 22:18 conditions [1] - 7:6 conducted [1] - 12:20 configuration [1] - 9:14 confirmed [1] - 13:4 conflation [1] - 31:3	consider [2] - 19:11, 29:17 considered [2] - 21:21, 30:20 constitutes [1] - 10:6 construction [1] - 7:7 contact [1] - 16:9 continue [3] - 8:2, 8:7, 14:24 continued [1] - 3:18 contract [4] - 9:22, 17:3, 17:22, 18:5 contracts [1] - 17:3 contravention [1] - 15:23 cooperate [2] - 8:2, 14:24 correct [1] - 29:8 correspondence [5] - 12:21, 13:25, 16:5, 16:10, 23:25 Counsel [1] - 9:17 counsel [14] - 11:20, 12:16, 12:24, 14:23, 16:6, 16:8, 20:1, 20:13, 20:14, 21:9, 24:9, 29:3, 29:8, 32:2 counsel's [1] - 32:17 counted [1] - 12:23 course [2] - 28:6, 30:8 Court [1] - 10:21 court [1] - 33:23 courtesy [1] - 13:23 create [2] - 30:17, 30:18	delay [1] - 33:1 demonstrate [1] - 12:16 denies [1] - 6:3 deny [1] - 3:3 departed [1] - 11:8 Department [6] - 6:3, 6:5, 6:9, 16:25, 26:5, 30:17 Department's [3] - 5:20, 6:6, 26:8 departs [1] - 25:3 departure [1] - 17:8 DEQ [79] - 3:3, 3:4, 3:8, 3:17, 4:11, 4:16, 4:25, 5:8, 5:11, 5:25, 6:10, 6:16, 6:18, 6:19, 6:23, 7:16, 8:22, 8:23, 9:3, 9:19, 9:25, 10:14, 11:8, 11:24, 12:3, 12:4, 12:20, 12:22, 13:11, 13:19, 14:2, 14:4, 14:10, 14:14, 14:17, 14:21, 15:2, 15:3, 15:14, 16:14, 16:22, 16:24, 17:9, 17:14, 17:16, 17:22, 17:24, 18:4, 18:5, 18:14, 18:16, 18:22, 19:8, 19:11, 19:12, 19:16, 21:12, 21:13, 22:1, 22:3, 22:10, 22:15, 22:21, 23:14, 23:19, 23:20, 24:2, 24:4, 24:6, 24:10, 24:20, 25:12, 26:20, 26:24, 27:12, 27:16, 29:16, 29:20, 31:15 DEQ's [24] - 3:2, 5:4, 5:5, 7:22, 7:24, 7:25, 8:15, 8:20, 9:10, 9:13, 10:18, 11:3, 11:12, 12:1, 12:24, 16:3, 16:6, 16:8, 18:21, 26:25, 31:12, 32:17, 33:13, 33:21 described [1] - 18:14 design [5] - 4:21, 9:15, 15:15, 15:16, 15:22 designated [2] - 3:25, 4:14 details [4] - 9:15, 13:7, 13:10, 16:2 determination [8] - 5:5, 7:22, 14:10, 14:18, 17:10, 19:24, 22:21, 23:2 determinative [2] - 10:1, 16:16
C			D	
caffeine [1] - 11:23 cannot [3] - 6:20, 11:7, 22:3 capacities [1] - 9:4 capacity [4] - 4:21,			daily [9] - 3:23, 4:1, 7:18, 7:19, 9:4, 12:7, 12:8, 15:17, 24:3 Dana [2] - 32:3, 33:3 dated [1] - 19:3 dates [1] - 14:1 days [4] - 5:11, 6:6, 25:2, 31:7 decision [25] - 5:9, 5:20, 6:7, 8:1, 8:6, 8:22, 9:6, 9:24, 10:5, 10:25, 11:4, 14:15, 18:17, 19:16, 22:4, 22:5, 25:16, 25:17, 27:10, 29:2, 32:9, 33:2, 33:21 decisions [3] - 26:17, 26:25, 30:5 deeper [1] - 21:10	

determine [2] - 9:19, 17:24 determined [2] - 7:16, 8:25 determines [1] - 12:4 develop [2] - 8:3, 14:25 development [1] - 7:25 different [10] - 6:19, 9:11, 11:9, 11:25, 24:14, 27:17, 27:20, 31:16, 31:17 dimensions [1] - 13:9 direct [2] - 15:23, 26:19 directed [1] - 16:10 direction [1] - 8:25 directly [2] - 16:6, 16:8 disagree [1] - 32:17 disagreement [1] - 9:10 disagrees [1] - 18:22 discharge [10] - 4:6, 4:7, 4:16, 7:2, 8:11, 13:7, 16:2, 18:6, 19:6, 29:13 disconnect [1] - 19:10 discussion [4] - 26:2, 26:4, 26:9, 31:10 discussions [1] - 32:8 dismiss [11] - 3:3, 6:14, 11:12, 26:5, 26:8, 29:1, 29:3, 31:13, 31:16, 31:25, 33:13 dismissal [1] - 6:20 dispositive [1] - 21:1 disputed [2] - 9:13, 31:6 disputes [1] - 17:22 disregarding [1] - 6:21 distances [1] - 13:10 distinct [2] - 30:15, 31:5 distinguished [1] - 11:19 docket [1] - 10:19 Document [1] - 10:20 documents [1] - 14:12 done [4] - 15:19, 20:16, 28:16, 29:4	downgradient [1] - 5:2 draft [15] - 5:8, 5:19, 5:21, 13:7, 13:21, 13:22, 14:5, 14:7, 14:11, 14:20, 16:2, 16:4, 19:24, 25:1, 32:6 drafting [1] - 8:5 drain [12] - 4:10, 4:13, 4:18, 4:22, 7:8, 9:4, 9:14, 13:5, 13:9, 15:25, 18:21, 29:12 due [1] - 10:11 during [18] - 5:7, 5:12, 7:1, 9:12, 10:2, 18:2, 18:15, 18:19, 19:12, 19:23, 21:12, 21:18, 21:20, 25:20, 28:5, 28:6, 30:24 duty [1] - 18:19	E e-mail [2] - 15:7, 20:17 e-mailed [1] - 14:1 e-mails [8] - 12:15, 12:23, 20:25, 21:12, 24:8, 28:2, 28:9, 28:11 effect [1] - 10:16 effluent [3] - 15:10, 15:18, 16:23 effluents [1] - 16:20 elevating [1] - 27:13 encourage [1] - 26:16 end [2] - 19:5, 30:17 endeavor [1] - 11:20 ended [2] - 4:13, 4:23 enforce [1] - 17:6 engage [1] - 20:13 Engineering [1] - 15:14 engineering [13] - 4:19, 7:3, 7:7, 8:24, 9:2, 13:6, 13:7, 15:14, 15:21, 16:1, 16:25, 18:24 Englebert [1] - 13:3 entered [3] - 3:15, 3:16, 6:16 entirely [1] - 24:25 environmental [1] - 25:19 Environmental [1] - 26:5	Erik [1] - 13:3 erroneous [1] - 20:20 erroneously [1] - 17:25 error [1] - 18:2 especially [2] - 11:23, 17:17 estimated [1] - 4:21 exceptions [1] - 10:24 exchange [1] - 21:12 excuse [1] - 3:3 executed [6] - 12:19, 13:12, 13:17, 23:23, 24:5, 24:19 executing [2] - 12:20, 13:8 execution [4] - 13:20, 15:2, 15:3, 23:24 exhaust [3] - 9:23, 16:15, 17:21 exhausted [1] - 17:12 existed [1] - 17:19 existing [3] - 3:24, 5:2, 7:11 expects [1] - 14:14 explained [1] - 8:23 explains [1] - 25:18 explanation [1] - 16:24 expressing [1] - 15:9 expressly [2] - 6:17, 7:16 extent [3] - 20:3, 20:19, 20:21 external [1] - 19:1 extinguish [1] - 6:20 extinguished [1] - 11:10	F fact [7] - 3:13, 17:13, 18:23, 24:7, 25:18, 28:7, 32:11 factor [1] - 27:5 fail [2] - 9:23, 17:20 failed [5] - 16:15, 17:14, 18:4, 24:11, 32:11 failure [5] - 5:16, 5:24, 10:4, 10:5, 10:12 fairly [1] - 10:21 Falls [2] - 10:22, 32:18	far [1] - 29:9 favor [1] - 33:14 few [1] - 25:2 fewer [1] - 12:23 field [7] - 9:5, 9:14, 13:6, 13:9, 15:25, 18:21, 29:12 fields [5] - 4:10, 4:13, 4:18, 4:22, 7:8 figured [1] - 28:1 file [11] - 11:3, 20:22, 29:5, 29:11, 29:15, 31:7, 32:11, 32:14, 32:16, 32:22 filed [7] - 3:17, 10:25, 13:16, 19:2, 19:3, 20:3, 30:16 filing [1] - 13:17 final [32] - 4:9, 5:13, 5:14, 5:15, 6:11, 6:12, 6:15, 10:5, 10:12, 10:15, 11:1, 11:4, 12:22, 13:5, 13:6, 15:16, 15:22, 15:25, 16:1, 16:24, 17:16, 17:25, 18:3, 18:22, 18:24, 23:8, 25:12, 29:21, 30:17, 30:24, 31:8 finalize [1] - 24:17 fine [1] - 33:5 Firefighters [1] - 10:23 first [13] - 3:15, 3:17, 8:14, 9:19, 12:18, 12:25, 13:8, 14:9, 14:16, 21:8, 22:20, 25:2, 26:1 flow [11] - 3:23, 4:1, 7:18, 7:19, 8:25, 9:4, 12:7, 12:8, 13:10, 15:10, 15:17 flows [2] - 7:11, 24:3 follow [2] - 25:10, 27:25 followed [3] - 28:15, 28:20 following [2] - 7:21, 13:25 follows [1] - 3:1 form [2] - 27:13, 31:8 formal [4] - 19:15, 19:22, 30:22, 31:4 formally [2] - 20:22, 33:4 forth [8] - 18:13, 19:12, 20:13, 20:16, 24:1, 28:10, 28:18, 30:20 forward [2] - 13:13,	26:1 forwarded [1] - 15:6 frame [2] - 10:6, 32:12 frames [1] - 9:8 full [3] - 4:11, 6:24, 7:5 fully [1] - 8:8 furthermore [1] - 8:13
G						
gallons [13] - 3:24, 4:2, 4:12, 4:24, 4:25, 6:24, 7:18, 7:19, 9:21, 12:8, 12:9, 19:7, 24:3 general [1] - 22:8 given [3] - 16:21, 17:7, 20:20 Glacier [3] - 4:1, 4:3, 15:16 grant [1] - 26:8 granted [3] - 11:13, 31:13, 33:13 granting [1] - 6:23 Great [2] - 10:22, 32:18 great [1] - 11:15 ground [4] - 8:24, 9:15, 13:3, 13:10 grounds [2] - 31:17, 31:21 guess [10] - 19:1, 22:13, 26:1, 28:12, 28:25, 29:5, 31:2, 31:23, 32:2, 33:7						
H						
habit [1] - 11:22 hairs [3] - 19:22, 27:21, 27:22 hand [1] - 25:8 happy [1] - 27:20 hard [1] - 3:11 hear [3] - 24:16, 27:9, 27:18 heard [1] - 31:6 hearing [4] - 6:7, 10:3, 10:8, 16:13 helps [1] - 29:25 hereby [1] - 12:4 history [1] - 12:11 holder [2] - 6:6, 6:7 honestly [1] - 27:22 hoping [1] - 20:7 HUPP [1] - 32:5						

I idea ^[1] - 5:25 identifies ^[1] - 12:4 identify ^[2] - 17:18, 24:11 identifying ^[2] - 12:3, 17:10 ignored ^[1] - 17:18 immediately ^[1] - 20:1 implementing ^[1] - 5:17 important ^[4] - 12:12, 27:22, 28:8, 28:13 inappropriate ^[2] - 5:19, 5:21 included ^[1] - 4:19 includes ^[1] - 25:18 including ^[3] - 5:18, 17:23, 21:17 incorporating ^[1] - 24:17 increase ^[2] - 7:10, 15:17 increased ^[1] - 9:1 indicate ^[1] - 8:4 indicates ^[1] - 8:8 indication ^[1] - 17:11 information ^[28] - 7:17, 7:25, 8:3, 8:5, 8:7, 8:16, 9:3, 12:7, 12:22, 12:25, 13:11, 13:18, 13:20, 14:3, 14:22, 14:24, 15:1, 15:3, 16:22, 16:25, 19:2, 24:1, 24:10, 24:18, 24:20, 24:24, 24:25, 30:7 informed ^[1] - 5:6 initiate ^[1] - 29:14 initiated ^[3] - 8:22, 19:14, 26:24 initiates ^[1] - 18:16 initiation ^[1] - 5:6 insert ^[1] - 17:9 insofar ^[1] - 15:1 instance ^[1] - 13:2 instruct ^[1] - 18:5 intended ^[1] - 8:4 intent ^[1] - 30:9 interesting ^[1] - 15:1 internal ^[2] - 14:12, 14:14 international ^[1] - 10:22 International ^[1] - 4:3	interpret ^[2] - 23:12, 23:18 interpretation ^[4] - 22:10, 22:14, 31:18, 32:18 invalidates ^[2] - 17:15, 18:3 invite ^[1] - 31:23 involved ^[1] - 26:17 involves ^[1] - 3:13 issuance ^[9] - 9:10, 11:24, 13:19, 13:21, 15:5, 17:16, 18:3, 24:13, 30:23 issue ^[5] - 12:1, 21:8, 22:3, 22:13, 22:17 issued ^[10] - 5:13, 5:15, 6:11, 6:14, 8:22, 10:14, 11:8, 17:25, 19:14, 25:1 issues ^[8] - 5:22, 6:1, 6:4, 6:25, 17:21, 18:17, 28:3, 30:20 issuing ^[2] - 6:18, 9:20 item ^[1] - 33:20 itself ^[1] - 11:5 J job ^[2] - 11:16, 30:3 joint ^[2] - 19:3, 20:3 jointly ^[2] - 3:17, 19:6 Julia ^[2] - 28:22, 30:12 July ^[2] - 14:6, 24:9 June ^[2] - 14:1, 24:9 jurisdiction ^[8] - 3:19, 6:18, 6:21, 10:9, 11:7, 11:10, 17:6, 17:24 K keep ^[1] - 11:20 kind ^[4] - 3:8, 23:9, 23:10, 26:18 Kirsten ^[1] - 3:7 known ^[1] - 27:16 L Labor ^[1] - 32:20 language ^[9] - 10:24, 12:2, 12:4, 12:10, 12:25, 17:11, 21:25, 22:7, 32:10	last ^[1] - 29:24 law ^[6] - 8:21, 9:22, 22:9, 28:9, 28:13, 28:21 leave ^[1] - 23:14 left ^[1] - 24:4 legal ^[1] - 16:24 legally ^[1] - 32:14 lengthy ^[1] - 20:13 less ^[1] - 9:20 limit ^[2] - 4:2, 4:6 limited ^[1] - 32:19 limits ^[2] - 8:14, 15:18 listen ^[1] - 30:4 listening ^[2] - 21:9, 32:8 located ^[2] - 3:25, 4:3 location ^[7] - 4:10, 4:17, 13:5, 13:9, 15:25, 18:22, 18:23 longstanding ^[1] - 3:9 look ^[2] - 30:10, 33:9 looking ^[3] - 19:1, 24:10, 29:2 looks ^[1] - 25:25 love ^[1] - 27:17 M mail ^[2] - 15:7, 20:17 mailed ^[1] - 14:1 mails ^[8] - 12:15, 12:23, 20:25, 21:12, 24:8, 28:2, 28:9, 28:11 maintain ^[3] - 3:23, 4:6, 7:11 maintains ^[1] - 9:25 major ^[3] - 7:23, 12:5, 14:25 March ^[7] - 3:16, 12:19, 13:2, 13:11, 13:21, 15:24, 23:24 material ^[3] - 6:19, 9:11, 11:9 materially ^[3] - 6:19, 9:11, 11:9 materials ^[3] - 4:8, 4:20, 10:18 matter ^[5] - 3:8, 3:19, 11:7, 16:11, 29:6 mean ^[6] - 18:22, 20:9, 27:25, 28:9, 28:10, 33:1 meaning ^[1] - 23:3 means ^[1] - 29:4	meeting ^[2] - 12:15, 33:5 Member ^[9] - 21:6, 21:15, 25:11, 27:21, 28:24, 30:1, 32:4, 32:5, 32:24 members ^[5] - 3:6, 11:19, 18:10, 21:15, 25:9 memo ^[1] - 9:17 might ^[2] - 31:14, 33:6 mind ^[3] - 23:9, 23:16, 32:14 minutes ^[5] - 3:5, 11:16, 11:21, 33:19 miscarriage ^[1] - 20:23 misunderstanding ^[1] - 18:12 modification ^[15] - 4:9, 5:10, 7:5, 7:10, 7:23, 9:2, 9:8, 10:16, 12:6, 13:1, 14:25, 15:20, 15:22, 29:11, 29:15 modified ^[4] - 7:16, 7:22, 12:5, 22:24 modifies ^[1] - 6:4 modify ^[8] - 3:20, 3:22, 4:5, 6:9, 8:1, 8:16, 14:11, 14:18 Montana ^[9] - 3:8, 5:17, 6:2, 8:10, 8:17, 8:18, 8:21, 33:22 morning ^[1] - 11:18 most ^[1] - 27:7 motion ^[19] - 3:2, 3:3, 9:19, 11:12, 26:1, 26:4, 26:5, 26:7, 26:8, 29:1, 29:3, 31:9, 31:13, 31:16, 31:25, 32:1, 33:13, 33:18 move ^[1] - 25:25 moved ^[2] - 31:12, 33:12 moving ^[1] - 20:11 MT ^[1] - 10:23 MTX000164 ^[2] - 12:6, 14:11 MTX00164 ^[1] - 14:18 multiple ^[1] - 15:8 N name ^[2] - 3:7, 11:19 nearly ^[1] - 7:13 necessary ^[3] - 8:3,	12:25, 14:25 need ^[4] - 13:5, 15:24, 28:21, 31:14 needed ^[1] - 14:2 needs ^[1] - 28:20 negotiated ^[2] - 16:8, 24:14 negotiation ^[3] - 29:19, 30:19, 31:3 neighboring ^[1] - 5:3 new ^[3] - 4:20, 29:14, 29:23 next ^[3] - 15:13, 33:5, 33:20 none ^[1] - 20:19 nothing ^[4] - 8:7, 8:13, 16:22, 24:4 notice ^[9] - 5:4, 5:6, 5:15, 6:5, 8:12, 10:15, 14:17, 32:11, 32:16 noticed ^[1] - 5:9 Notwithstanding ^[1] - 7:21 O objected ^[2] - 9:7, 18:20 objectionable ^[1] - 20:8 objections ^[3] - 6:1, 11:3, 21:20 obligated ^[1] - 19:15 obligation ^[1] - 6:22 obligations ^[1] - 8:21 occasions ^[1] - 15:8 occur ^[2] - 18:14, 32:23 occurred ^[1] - 13:25 October ^[1] - 5:14 offered ^[1] - 33:2 offers ^[1] - 16:24 official ^[3] - 5:4, 19:13, 21:13 once ^[1] - 30:15 one-and-done ^[1] - 20:16 ongoing ^[1] - 7:4 online ^[2] - 28:5, 28:11 open ^[1] - 23:14 operating ^[1] - 10:17 operation ^[1] - 7:8 opportunity ^[6] - 10:8, 22:16, 23:22, 29:10, 29:21, 30:9 opposed ^[1] - 33:16 order ^[4] - 12:22, 31:8, 32:6, 32:16
---	---	---	---	--

orientation ^[1] - 4:17 originally ^[1] - 23:9 outfall ^[4] - 3:24, 4:3, 15:10, 16:19 Outfall ^[9] - 3:25, 7:12, 7:13, 7:18, 7:20, 12:8, 12:9, 18:7 outfalls ^[7] - 4:12, 4:14, 4:20, 7:5, 7:14, 9:1, 15:19 Outfalls ^[1] - 4:14 outside ^[1] - 26:22 outstanding ^[4] - 13:19, 17:21, 24:4, 24:21 overall ^[1] - 7:10 own ^[1] - 6:21	percent ^[2] - 4:23, 7:14 period ^[28] - 5:7, 5:11, 5:12, 5:24, 7:1, 8:23, 9:7, 9:13, 10:2, 15:9, 18:2, 18:16, 18:20, 19:5, 19:13, 19:24, 21:13, 21:19, 21:20, 22:22, 25:20, 26:14, 26:23, 30:4, 30:24, 32:23 permanent ^[1] - 7:3 permit ^[103] - 3:9, 3:12, 3:20, 3:21, 3:23, 4:5, 4:9, 5:8, 5:10, 5:13, 5:15, 5:19, 5:21, 6:1, 6:4, 6:11, 6:12, 6:15, 6:19, 7:4, 7:9, 7:12, 7:23, 8:1, 8:3, 8:6, 8:9, 8:11, 8:15, 8:17, 9:1, 9:6, 9:7, 9:11, 9:16, 9:20, 9:24, 10:5, 10:10, 10:14, 10:16, 10:17, 11:4, 11:9, 11:25, 12:23, 13:4, 13:7, 13:19, 13:21, 13:22, 13:23, 14:2, 14:5, 14:7, 14:11, 14:15, 14:21, 15:5, 15:6, 15:19, 15:22, 15:24, 16:2, 16:4, 17:16, 17:25, 18:3, 18:6, 18:17, 18:20, 19:9, 19:14, 19:16, 20:18, 21:18, 21:22, 22:4, 22:10, 22:17, 23:19, 23:20, 24:13, 24:17, 25:1, 25:12, 25:15, 25:16, 25:18, 25:19, 29:9, 29:11, 29:18, 29:20, 29:21, 30:18, 30:22, 30:24, 30:25, 31:8 Permit ^[1] - 33:22 permitted ^[1] - 8:25 permittee ^[1] - 30:25 permitting ^[1] - 13:3 perplexing ^[1] - 25:1 persons ^[2] - 5:18, 21:17 perspective ^[2] - 27:20, 28:19 persuasive ^[2] - 27:12 petition ^[2] - 31:1, 31:7 petitioning ^[1] - 6:8 phone ^[2] - 15:7, 20:17 place ^[1] - 18:13	plain ^[6] - 12:2, 12:4, 17:11, 18:4, 21:25, 22:7 plus ^[1] - 3:5 point ^[12] - 14:20, 16:9, 16:14, 16:15, 17:20, 18:25, 19:15, 25:11, 27:24, 28:12, 32:7, 33:6 portal ^[2] - 16:7, 28:17 position ^[3] - 5:23, 16:3, 26:18 possible ^[2] - 15:17, 15:23 post ^[1] - 30:10 posted ^[2] - 28:11 potentially ^[1] - 25:14 Practices ^[1] - 32:20 precluded ^[2] - 20:21, 29:13 prejudice ^[2] - 11:12, 29:4 preliminary ^[4] - 4:18, 8:24, 9:2, 15:13 prepare ^[2] - 5:20, 32:6 prescribed ^[1] - 11:5 present ^[1] - 17:21 problem ^[1] - 20:20 proceeded ^[1] - 4:5 proceeding ^[1] - 10:12 proceedings ^[2] - 3:1, 33:25 process ^[18] - 10:4, 10:11, 12:11, 12:17, 14:13, 18:12, 18:15, 19:11, 19:13, 25:13, 29:14, 29:17, 29:18, 30:14, 30:16, 30:22, 31:4 processing ^[1] - 29:17 prompted ^[2] - 14:22, 15:4 properties ^[1] - 5:3 property ^[1] - 4:7 proposed ^[8] - 4:2, 4:12, 4:17, 7:19, 10:25, 15:15, 24:15, 30:22 protect ^[1] - 5:1 Protection ^[1] - 13:13 provide ^[4] - 4:9, 7:13, 16:12, 24:24 provided ^[8] - 4:16, 7:24, 8:5, 9:17, 10:15,	13:9, 13:18, 24:19 provides ^[4] - 7:17, 7:21, 8:13, 12:6 provision ^[1] - 6:20 public ^[78] - 5:7, 5:12, 5:24, 6:10, 7:1, 8:11, 9:6, 9:12, 10:4, 13:23, 14:17, 15:9, 16:3, 16:7, 18:2, 18:12, 18:15, 18:16, 19:4, 19:8, 19:13, 20:4, 20:5, 20:6, 20:7, 20:10, 21:13, 21:14, 21:18, 21:20, 22:5, 22:6, 22:12, 22:15, 22:16, 22:20, 22:21, 22:24, 23:4, 23:6, 23:13, 23:16, 23:20, 23:21, 24:12, 24:17, 25:2, 25:13, 25:20, 25:21, 26:13, 26:14, 26:15, 26:16, 26:23, 27:1, 27:6, 27:7, 27:14, 27:15, 27:21, 27:25, 28:2, 28:4, 28:5, 28:6, 28:10, 29:21, 30:2, 30:4, 30:5, 30:9, 30:10, 30:23, 31:17 publicly ^[1] - 5:8 purpose ^[6] - 6:8, 7:9, 26:15, 27:3, 27:14 pursuant ^[2] - 6:13, 14:15	Rankosky ^[1] - 30:1 RANKOSKY ^[1] - 30:2 rate ^[2] - 15:10, 15:18 rates ^[1] - 18:6 rather ^[1] - 4:24 reach ^[1] - 20:21 reached ^[1] - 19:25 reaching ^[1] - 14:8 read ^[2] - 21:8, 32:15 ready ^[2] - 25:25, 33:12 really ^[5] - 3:11, 23:10, 26:21, 31:15, 31:25 reason ^[2] - 16:6, 17:7 reasonable ^[2] - 22:9, 22:14 reasonableness ^[1] - 23:3 reasonably ^[2] - 5:21, 5:22 reasoning ^[1] - 11:1 rebuttal ^[1] - 3:5 receipt ^[1] - 14:20 received ^[11] - 5:4, 5:11, 5:14, 6:10, 12:24, 13:22, 13:24, 15:6, 16:5, 19:8, 22:6 receiving ^[1] - 22:15 recent ^[1] - 10:21 recognition ^[1] - 24:2 recognize ^[1] - 17:14 recognizes ^[1] - 17:2 recognizing ^[1] - 20:4 reconvene ^[1] - 33:24 record ^[6] - 3:10, 16:5, 19:3, 20:19, 20:24, 31:22 recourse ^[1] - 29:5 reduced ^[1] - 15:10 reduction ^[1] - 16:18 reductions ^[1] - 7:2 reflected ^[1] - 9:5 regard ^[1] - 16:10 regarding ^[1] - 12:24 regards ^[1] - 33:21 related ^[1] - 14:11 relating ^[1] - 9:14 relies ^[1] - 7:15 reluctant ^[1] - 26:21 rely ^[1] - 6:20 remained ^[1] - 13:20 remedies ^[6] - 9:23,
P				
Pacific ^[1] - 11:20 package ^[2] - 25:17 par ^[1] - 30:7 paragraph ^[21] - 7:15, 7:21, 8:4, 8:6, 8:7, 8:13, 12:2, 12:10, 14:23, 16:19, 17:9, 21:25, 22:7, 22:15, 22:23, 23:3, 24:8, 24:22, 24:23, 25:4, 31:18 Park ^[1] - 4:3 part ^[1] - 28:10 participate ^[2] - 10:4, 10:12 participation ^[1] - 10:10 particular ^[1] - 29:9 parties ^[18] - 3:11, 3:14, 3:22, 4:5, 6:14, 8:6, 8:8, 13:12, 14:23, 17:7, 19:3, 19:5, 19:8, 22:23, 23:5, 23:25, 24:5, 29:19 Parties ^[1] - 8:2 party ^[1] - 17:22 PAYNE ^[10] - 21:5, 21:7, 21:23, 22:25, 25:5, 26:3, 26:10, 26:12, 31:14, 33:1 Payne ^[7] - 21:6, 21:15, 25:11, 27:21, 32:4, 32:6, 32:24 people ^[1] - 20:14 people's ^[1] - 27:9 per ^[13] - 3:24, 4:2, 4:12, 4:24, 4:25, 6:24, 7:18, 7:19, 9:21, 12:8, 12:9, 19:7, 24:4				
			Q	
			Quality ^[6] - 5:18, 6:2, 8:10, 8:17, 8:19, 33:21 Quality's ^[1] - 26:5 questions ^[9] - 9:18, 13:15, 18:21, 19:18, 20:1, 21:4, 24:7, 25:23, 32:2 quick ^[1] - 28:25 quickly ^[1] - 11:22 quote/unquote ^[1] - 27:6	
			R	
			raise ^[2] - 5:21, 10:9 raised ^[5] - 6:25, 9:12, 25:11, 28:3, 32:4 raising ^[1] - 9:17 Ranch ^[1] - 4:1	

11:6, 11:11, 16:16, 17:13, 17:21 render [1] - 10:10 renew [6] - 3:21, 4:5, 8:1, 8:16, 14:11, 14:18 Renewables [1] - 33:22 renewal [7] - 5:9, 7:9, 7:23, 8:15, 10:15, 12:5, 14:25 reply [1] - 10:18 report [6] - 4:19, 9:2, 13:15, 15:14, 19:3, 20:3 reporter [1] - 33:23 representing [1] - 3:7 request [7] - 3:18, 4:8, 6:7, 8:16, 10:3, 10:8, 14:21 requested [11] - 4:24, 7:6, 7:13, 12:22, 13:11, 13:18, 15:3, 16:22, 24:1, 24:24, 24:25 requests [1] - 13:19 require [1] - 8:11 required [5] - 31:7, 32:12, 32:14, 32:16, 32:22 requirements [1] - 9:8 requires [1] - 24:23 requiring [1] - 32:19 reset [1] - 33:23 resolved [2] - 8:8, 9:18 respect [1] - 26:12 respectfully [2] - 9:25, 32:17 respond [2] - 17:16, 25:14 responded [4] - 14:4, 14:8, 21:22, 24:11 responding [1] - 18:1 response [6] - 6:16, 6:25, 12:13, 25:24, 31:11, 33:17 Response [1] - 33:15 retain [1] - 17:5 retained [3] - 6:17, 10:9, 11:6 retains [1] - 17:24 retention [1] - 3:18 reverse [1] - 6:9 review [14] - 4:11, 7:4, 7:7, 8:15, 8:24,	10:7, 14:12, 14:14, 15:15, 15:21, 16:13, 18:24, 32:7 Rick [1] - 11:19 rule [3] - 21:16, 27:24 Rules [1] - 8:18 rules [2] - 5:17, 28:14	S	seasonal [1] - 8:24 second [10] - 3:15, 3:18, 8:14, 9:22, 9:25, 12:18, 14:9, 14:16, 16:15, 26:6 seconded [3] - 26:8, 31:12, 33:13 section [1] - 13:4 see [3] - 14:6, 20:8, 25:8 seeing [1] - 31:3 seek [2] - 4:1, 7:4 seeking [1] - 19:6 sent [2] - 19:25, 24:9 separate [2] - 4:18, 31:4 separately [1] - 31:22 September [4] - 5:13, 10:14, 15:12, 19:4 setback [1] - 13:10 setbacks [2] - 5:1, 9:14 settle [1] - 3:14 settlement [5] - 6:17, 11:8, 17:1, 17:2, 17:6 seven [1] - 29:24 shall [2] - 5:21, 6:5 shape [2] - 4:10, 4:17 shape/orientation [2] - 13:5, 15:25 share [2] - 8:7, 24:23 shared [2] - 14:13, 15:1 sharing [2] - 8:2, 14:24 sheet [1] - 25:18 short [2] - 30:14, 33:20 shorter [1] - 11:21 shows [1] - 3:10 side [1] - 24:5 significant [2] - 5:16, 12:21 simply [1] - 11:11	SIMPSON [21] - 3:2, 11:15, 18:8, 19:19, 21:3, 21:6, 25:7, 25:22, 25:25, 26:7, 26:11, 28:22, 29:7, 30:1, 30:13, 31:12, 31:24, 32:24, 33:10, 33:16, 33:18 Simpson [4] - 3:6, 18:10, 25:9, 32:5 sizes [2] - 4:22, 9:5 Smith [1] - 28:24 SMITH [2] - 28:25, 29:25 sometimes [1] - 11:22 somewhat [1] - 31:3 soon [1] - 14:13 sort [1] - 27:2 sought [1] - 9:8 specific [1] - 13:9 specifically [1] - 6:22 split [3] - 27:22, 33:7 splitting [2] - 19:22, 27:21 staff [2] - 13:13, 14:4 stages [1] - 30:15 standard [1] - 16:21 stands [1] - 26:18 start [4] - 21:11, 26:10, 29:23 starts [1] - 30:22 state [2] - 17:3, 19:6 statement [2] - 15:21, 15:24 stating [2] - 14:8, 15:24 status [3] - 13:15, 19:3, 20:3 statute [2] - 32:15, 32:21 statutorily [1] - 11:5 statutory [1] - 10:6 step [1] - 15:13 still [4] - 16:23, 18:23, 29:5, 29:10 stipulation [24] - 3:13, 3:15, 3:16, 3:18, 3:22, 6:13, 6:23, 7:15, 8:9, 8:10, 8:14, 8:20, 9:9, 9:12, 9:20, 12:1, 12:18, 13:15, 13:17, 14:10, 14:17, 15:2, 15:4, 25:12 straightforward [1] - 21:8 stresses [1] - 16:14 strict [1] - 16:20 subdivision [1] -	7:12 Subdivision [1] - 4:1 subject [4] - 22:4, 22:5, 23:19, 23:20 submission [1] - 26:13 submit [9] - 5:22, 10:2, 12:15, 15:13, 16:3, 16:7, 16:17, 19:15, 21:18 submitted [12] - 16:22, 17:15, 17:17, 18:1, 21:12, 21:19, 23:7, 24:1, 26:22, 27:8, 30:7, 31:15 submitting [2] - 12:21, 22:11 substantially [1] - 16:23 substantive [7] - 13:18, 15:1, 16:18, 17:7, 18:1, 23:25, 24:12 substantively [3] - 11:25, 24:14, 25:3 sufficient [4] - 7:17, 7:25, 8:4, 12:7 suggesting [1] - 9:21 supersede [1] - 8:20 supervisor [1] - 13:4 supplement [2] - 20:25, 32:10 supply [1] - 5:2 support [3] - 7:17, 12:7, 24:3 supported [4] - 4:16, 16:4, 20:24, 24:8 supporting [1] - 5:23 supports [1] - 22:8 Supreme [1] - 10:21 surface [1] - 5:2 survey [1] - 13:10 system [3] - 15:15, 15:16, 15:22	19:9, 19:14, 19:16, 23:20, 25:16, 25:17, 29:20, 30:21 term [1] - 23:21 terminated [1] - 10:13 terms [7] - 6:13, 8:8, 17:8, 17:9, 17:23, 18:4, 22:23 therefore [2] - 4:21, 11:12 thinking [1] - 23:9 thoughts [2] - 28:24, 32:3 thread [1] - 25:10 three [3] - 4:13, 4:14, 4:18 throughout [1] - 12:17 timeline [1] - 14:16 touched [1] - 14:6 track [2] - 14:2, 14:5 treated [1] - 21:13 tree [1] - 29:2 true [1] - 20:5 try [1] - 11:21 two [5] - 9:18, 14:1, 31:16, 31:17, 33:3
				U		
				ultimately [4] - 30:21, 30:23, 32:11, 32:13 unanimously [1] - 33:18 under [13] - 3:21, 5:17, 6:2, 6:22, 8:6, 8:17, 8:18, 8:21, 9:22, 10:17, 16:19, 21:16, 32:20 undergo [1] - 8:11 undisputed [1] - 10:1 Unfair [1] - 32:20 unfortunate [1] - 28:15 unhappiness [1] - 27:16 unilaterally [1] - 17:1 unique [1] - 26:18 unless [2] - 10:24, 19:17 unnecessary [1] - 10:11 up [7] - 4:2, 4:13, 4:23, 19:7, 25:8, 25:10, 33:4 Utilities [1] - 11:20		
				T		
				TAPPAN [4] - 11:18, 19:21, 22:19, 23:23 Tappan [6] - 11:19, 18:8, 18:14, 19:20, 21:3, 21:24 technical [1] - 30:20 tentative [26] - 5:5, 5:9, 5:20, 8:1, 8:5, 8:11, 8:22, 9:5, 9:7, 10:25, 11:3, 12:3, 12:10, 14:10, 14:15, 14:17, 17:10, 18:17,		

V
versus ^[1] - 19:23 via ^[2] - 15:7, 20:17 view ^[1] - 27:18 volume ^[4] - 4:16, 7:13, 7:14, 29:13 volumes ^[2] - 7:6, 8:25 vote ^[6] - 31:21, 31:22, 33:4, 33:5, 33:7, 33:12 vs ^[1] - 10:22
W
waiver ^[1] - 10:6 waives ^[1] - 5:24 wants ^[3] - 17:9, 31:19, 33:3 water ^[6] - 5:2, 8:24, 9:15, 13:3, 13:10 Water ^[7] - 5:18, 6:2, 8:10, 8:17, 8:19, 13:13, 20:15 well-aware ^[1] - 26:24 wells ^[1] - 5:2 wheelhouse ^[1] - 24:19 WHEREUPON ^[1] - 3:1 whole ^[1] - 27:2 world ^[1] - 30:8 write ^[1] - 33:4 writers ^[2] - 13:4, 15:24 writing ^[1] - 33:8 written ^[5] - 5:4, 5:15, 6:5, 10:15, 28:4
Y
years ^[1] - 29:24