BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

BOARD MEETING

OCTOBER 16, 2026

TRANSCRIPT OF THE PROCEEDINGS - VIA ZOOM

October 16, 2026
9:01 a.m.

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

REPORTED BY: CHERYL ROMSA
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PERSONS PRESENT:

Board Attorney Present:
Dana Hupp, Board Counsel

DEQ Personnel Present:
Board Secretary: Sandy Moisey Scherer
Board Liaison: Deputy Director James Fehr
DEQ Director: Sonja Nowakowski
DEQ Legal: Catherine Armstrong, Kirsten Bowers, Amanda Galvan, Sam King, Jeremiah Langston, Kurt Moser, Isabelle Nebel, Nick Whitaker, and Kaitlin Whitfield
DEQ Air, Energy and Mining: Josh Bridgeman and Mitch Hoffman
DEQ Water Quality: Scott Patterson
DEQ Communications: Mae Vader

Other Parties Present:
Andrea Grave and Samuel Yemington - Holland & Hart
Vicki Marquis - Crowley Fleck
Todd Briggs - Westmoreland
Jason Mohr - Montana Legislative Services

WHEREUPON, the proceedings were had as follows:

CHAIR SIMPSON: Well, let's proceed. Sandy, would you call the roll, please.

MS. MOISEY SCHERER: Yes, sir.

Chair Simpson.

CHAIR SIMPSON: Here.

MS. MOISEY SCHERER: Board Member Altemus.

BOARD MEMBER ALTEMUS: Here.

MS. MOISEY SCHERER: Board Member Rankosky.

BOARD MEMBER RANKOSKY: Here. Can you not hear me?

MS. MOISEY SCHERER: I can hear you now.

BOARD MEMBER RANKOSKY: Okay.

MS. MOISEY SCHERER: Board Member Smith.

BOARD MEMBER SMITH: Here.

MS. MOISEY SCHERER: We have four members, sir.

CHAIR SIMPSON: Well, we have a quorum, so let's proceed.

Welcome, everybody. I hope everyone enjoyed their reading assignment for this meeting, which ultimately came to naught. But we do have a few matters to, to look at on our regular agenda. I don't think this meeting is going to last us very long, but...

I guess I would note, first of all, that the use of AI tools during virtual public meetings is not allowed by

board members or public participants pending state adoption of formal policies that address concerns and issues surrounding these uses.

The first order of business, Item I under Administrative Items, is review and approve the minutes for the August 14th, 2026 board meeting. Are there any comments or corrections to the minutes?

(No response.)

CHAIR SIMPSON: Hearing none, is there a motion?

BOARD MEMBER SMITH: I'll motion to approve the meeting minutes from the October 2nd meeting.

CHAIR SIMPSON: Is there a second?

BOARD MEMBER RANKOSKY: I'll second.

CHAIR SIMPSON: Thank you.

It's been moved and seconded that the minutes from the August 14, 2026 meeting be approved. All in favor say aye.

(Response.)

CHAIR SIMPSON: Okay. Thank you very much.

We have a number of cases in, in progress here at various stages. We'll run through those pretty quickly, with a couple of -- at least one, maybe two exceptions.

First of all, we have a new contested case, Elkhorn Goldfields, and the status is that Elkhorn Goldfields has filed a petition regarding bond forfeiture. DEQ has filed

a motion to dismiss, but the briefing is not yet complete on that, and so rather than, than deal with this in any way, I suggest we just defer this until December.

Say, Dana, do we need a motion to do that or can we just move forward?

MS. HUPP: You can just move forward.

CHAIR SIMPSON: Thank you.

Moving to Current Contested Case Updates, of course, the first matter there is Area F at Rosebud Mine. Dana is the hearing examiner on that. And as you can well appreciate, for the last -- easily for the last month, maybe longer, the Amendment 5 matter has been all-consuming for her and for, for me too. So we're still looking at, still looking at completing that this year, or at least having the FoFCoL available in December. So I think a lot of that depends on just what else happens in this, this world we live in on the board.

(BER 2020-05 WQ transcript bound separately.)

(9:05 a.m. to 9:39 a.m.)

* * * *

CHAIR SIMPSON: The remainder of our agenda is primarily updates, and I'll run through them fairly quickly. The next item, No. 3, appeal and request for hearing by Westmoreland Rosebud Mining, LLC, regarding issuance of MPDES Permit MT0032042, Colstrip, Montana,

BER 2022-06 WQ, Water Quality.

This is interesting. The parties have been attempting to negotiate on this by collecting additional data for sediment ponds in the Amendment 5 area. Apparently, they've been unable to reach an agreement, and so Westmoreland wants to come back to the Board with a -- beginning with a new prehearing order to govern this appeal. I'm not sure I understand specifically where we stand on this.

Are we expecting, expecting a response from DEQ on this, Dana?

MS. HUPP: Chairman Simpson, I anticipate that Westmoreland will actually be filing something with the Board, so at this point, no, we are not anticipating a formal response from the DEQ.

CHAIR SIMPSON: So we have not had a formal petition from Westmoreland.

MS. HUPP: That is correct. They, they simply just provided a status report.

CHAIR SIMPSON: Yep. Okay. So we'll review --

BOARD MEMBER RANKOSKY: Somebody's hand is up. A Samuel Yemington's hand is up.

CHAIR SIMPSON: Oh. I'm sorry. Mr. Yemington.

MR. YEMINGTON: Chairman Simpson, members of the Board, on behalf of Westmoreland here. I'm happy to

provide a little clarification, if that's helpful.

CHAIR SIMPSON: Please.

MR. YEMINGTON: Sure. So as, as noted in our October 2nd submittal, the parties were unable to reach an agreement. It's our intention to file a motion with the Board lifting that stipulation and reinitiating the contested case proceeding. It's further our intention to propose a path forward.

Given the nature of this dispute, we do feel that it can be resolved in a somewhat summary fashion and won't necessitate a full-blown contested case. Certainly defer to DEQ's thoughts with respect to that characterization of the dispute, but it would be our position that this could be kept by the Board and resolved in, again, summary fashion.

So our, our proposal would be to, again, file that motion, lift that stipulation, reinitiate the contested case proceeding, and propose that summary process for the Board to resolve the final issue.

CHAIR SIMPSON: Do you anticipate that those filings, the process would be complete by the December meeting? It's not that far off.

MR. YEMINGTON: Yes. Yeah, absolutely. In fact, we will probably get that to you in the next couple weeks. Obviously, we have had competing deadlines with respect to

some of our other matters before the Board, but it's our intention to, to get that proposal in front of you. And, and we would also commit to working with the Department as well on that. We, we believe that it could be a stipulated process.

CHAIR SIMPSON: Okay. Well, thank you very much. That certainly, certainly aids in my understanding of where we, where we stand on this.

Are there any questions from the Board for Mr. Yemington?

(No response.)

CHAIR SIMPSON: So we won't be taking any action on this and we'll revisit it in December.

MR. YEMINGTON: Chairman Simpson, just, just very briefly a point --

CHAIR SIMPSON: Yes.

MR. YEMINGTON: -- of administration here. I would just ask that the board, the board secretary identify myself as counsel of record in this case, together with my colleagues. I'm not currently of record, but to avoid just filing a notice of appearance, it would be my ask that the Board recognize me as counsel of record as well.

CHAIR SIMPSON: Dana, do we need anything further than a verbal request?

MS. HUPP: I think just for the, the record, Mr. Yemington, if you don't mind just filing a notice of appearance.

But for purposes I think of this hearing -- excuse me, for this meeting, I think, since he has not before filed a request, it's fine for the Board to take note that he is representing Westmoreland.

MR. YEMINGTON: Board Member -- or Chair Simpson, members of the Board, absolutely. I'm glad to do that.

CHAIR SIMPSON: All right. Thank you very much. We'll, we'll revisit that then in December.

Next matter, Item 4, appeal and request for hearing by Stillwater Mining Company regarding a major modification of MPDES Permit No. MT0026808, BER 2025-05, WQ, Water Quality.

On September 4th, 2026, Stillwater Mining Company amended its notice of appeal. On September 18th, 2026, DEQ filed a motion to dismiss Stillwater's Claim C. And on October 2nd, 2026, Stillwater filed a response brief. Briefing is not complete; we're expecting a reply from DEQ. But this is another matter that I anticipate, anticipate dealing with at our December meeting.

It seems to me we've been through this once, but I admit that with everything else that's been going on, I certainly haven't had an opportunity to review and digest

what's been filed in this so far.

Next is No. 5, matter of notice of appeal and request for hearing by Westmoreland Absaloka Mining, LLC, for Coal Surface Mining Permit C1985005, Noncompliance No. CN2026001. That's Case No. BER 2026-02, Surface Mining, SM. And matter of notice of appeal and request for contested case hearing by Westmoreland Absaloka Mining, LLC, regarding the Department of Environmental Quality's March 25th, 2026 notice of violation, BER 2026-04. And as you will recall, this all has to do with the dispute between Westmoreland and DEQ over calculation of the required bond.

At its 2026 meeting [verbatim], the Board stayed these matters until its February 2027 meeting. On October 2nd, 2026, Westmoreland filed a reclamation report and affidavit of Ken Wooley with respect to the status of reclamation in the Absaloka Mine. These documents are included in the Board's packet. I'd like to thank Westmoreland Absaloka for filing the additional information. I found it very informative and helpful.

You know, it seems to me that in this case, as the State -- or DEQ and, and Westmoreland Absaloka are at loggerheads over, over calculation of the bond -- I don't know, this may be, may be premature, but I'm just going to plant a seed, and that is perhaps maybe a third party

needs to become involved here and try and resolve this matter between the, between the parties. At least based on what we've seen so far, I'm not sensing any, any agreement is forthcoming in the short term. Just a thought.

Okay. Item 6. This is a request for hearing by --

MS. GALVAN: Chair Simpson, my apologies. Amanda Galvan for DEQ. I just wanted to make one comment related to the matter before we move on.

CHAIR SIMPSON: Sure. Go right ahead.

MS. GALVAN: If that's okay. The only comment is that DEQ does plan to file a brief response to Westmoreland's status update in the next week or so, just for some additional information.

CHAIR SIMPSON: Okay. Great. Thank you very much.

MS. GALVAN: Yeah. Thank you very much.

CHAIR SIMPSON: Okay. Back to R&D Transit, LLC, BER 2026-03 SW, Surface Water.

On March 3rd, 2026, R&D Transit, LLC, filed an appeal. On July 30th, 2026, DEQ filed a motion to dismiss or, in the alternative, a motion for a more definite statement along with a brief in support. R&D Transit has not responded. The Board anticipates addressing the pending motion at its December meeting.

I guess the only question I have on this, has the time frame for response passed or is it still running?

MS. HUPP: Chairman Simpson, the time for responding has passed.

CHAIR SIMPSON: Okay. So we should be in a position to make a decision on that.

MS. HUPP: Correct.

CHAIR SIMPSON: Okay. Next is the matter of the appeal of Montana Air Quality Permit No. 5537-00, the NYDIG DFM Data Center, Richland County, Montana, BER 2026-05 AQ.

On January -- on July 22nd, 2026, Kevin and Karen Boehler filed a notice of appeal, request for contested case hearing, and affidavit of direct and adverse effect regarding DEQ's final decision to issue Montana Air Quality Permit No. 5537-00 for the proposed NYDIG DFM Data Center in Richland County, Montana.

On August 4th, 2026, the DEQ filed a motion to dismiss for lack of subject matter jurisdiction. The Boehlers have not responded to the motion to dismiss. The Board anticipates addressing the pending motion at its December meeting.

And I guess on this one, I have the same question. Has the time, time frame passed for response or is it still running?

MS. HUPP: Chairman Simpson, same answer. The time has passed to file a response.

CHAIR SIMPSON: Okay. So we'll deal with that in December.

Next, the matter of appeal of notice of violation and administrative compliance order for violations of the public water supply laws at Red Rooster Bar by Angel Viren, BER 2026-06 PWS, Public Water Supply.

On August 5th, 2026, Angel Viren filed a notice of appeal and notice -- appeal of the notice of violation and administrative compliance order for violations of public water laws at the Red Rooster Bar. On September 25th, 2026, DEQ filed a motion to dismiss and a brief in support of the motion to dismiss. On October 2nd, 2026, the Chair issued an order granting Red Rooster Bar until November 6, 2026, to file a response to the motion to dismiss. The Board anticipates scheduling oral arguments on the pending motion at its December meeting.

And just to update the Board, we have received an e-mail from Angel Viren on this matter, but not a formal response to the order, so -- and that time frame is still running, so we will, again, deal with this in December, depending on how that unfolds.

Anything further on that, Dana?

MS. HUPP: Nothing further.

CHAIR SIMPSON: Okay. Thank you.

All right. A couple of cases in court.

Montana Department of Environmental Quality vs. Board of Environmental Review, Teck Coal Limited, and the Board of County Commissioners of Lincoln County, Case No. CDV-2023-21; and also, Montana Environmental Information Center, Clark Fork Coalition, Idaho Conservation League, Idaho Rivers United vs. Montana Board of Environmental Review, Teck Coal Limited, and the Board of County Commissioners of Lincoln County, Lewis and Clark County Cause No. DV-23-0366.

Of course, these cases have been consolidated. This all has to do with the selenium rule in Lake Koocanusa, which has been appealed to the Supreme Court. Just as a matter of record, the Board and EVR's opening briefs on appeal were filed with the Supreme Court on September 29th, 2026.

Any further comment on that, Dana?

MS. HUPP: No further comments. The, the DEQ and Conservation Groups have requested an extension for their response brief. I believe it's now due in December, and so the final briefing in this case will probably occur in January.

CHAIR SIMPSON: Okay. Thank you.

And the next, in the matter of the -- This happened

fairly recently -- well, September 24th: In the matter of the formal appeal challenging DEQ's approval of Riverside Contracting Opencut Mining Permit No. 3415 for the Marvin Rehbein site near Arlee in Lake County, Montana, BER 2023-02 OC for Opencut and Case No. DV 25-18.

On September 24th, 2026, the district court held that the Board erred in determining that the notice of provisions of OMRA, the Opencut Mining Reclamation Act, were complied with and reversed and remanded the matter to the agency for further proceedings consistent with the district court's opinion.

I'm not at all clear on what happens now. Dana, can you enlighten us as to -- I mean, I presume this is -- It says it's remanded to the Board. The last time we had a remand, we never heard anything further from the parties and it's still hanging out there in the ozone somewhere.

MS. HUPP: Chairman Simpson, I guess I would defer your question to the DEQ. I read the order as it was being remanded to the agency, and I anticipated, based upon my review of the order, that "agency" in this context meant the DEQ. But I don't know if DEQ's counsel for this case is, is participating in this meeting.

So to answer your question, I think this is actually going back to the DEQ versus the Board, but maybe if no one is online, we could, we could request a status update

at the December meeting.

CHAIR SIMPSON: Yeah, that sounds reasonable.

I'm presuming also that there is no one -- or counsel for DEQ in this case is not on the call.

(No response.)

CHAIR SIMPSON: Okay. We'll put this on the agenda for, for update in December.

Okay. Before we move on, anything further on our various cases in progress here?

(No response.)

CHAIR SIMPSON: Okay. At this point, of course, our original agenda called for moving into the Rosebud Mine Area B Amendment 5, Permit No. C1984003B, BER 2022-05. And the Board has been apprised that the Supreme Court has ordered, I believe the correct term is arrest on that process and ordered the Board to file a, a brief stating our position with regard to jurisdiction in this matter.

So as far as a timeline goes, it's hard to say when we might hear anything further. In discussing this with Dana, I anticipate that our brief will be filed before too long, since all the information has already been developed for the, for the case that went to the Rosebud County district court. So all we can do is, is wait on this one.

And I guess the only comment I have is although I feel

comfortable with the Board's vote on assuming jurisdiction in this matter, there is a disagreement with MEIC and the Conservation Groups, and it would be helpful to have some direction from the Supreme Court on this either to resume this process or, or not. So all we can do is wait and see what happens.

General Public Comment. Under this item, members of the public may comment on any public matter within the jurisdiction of the Board that is not otherwise on the agenda for the meeting. Individual contested case proceedings are not public matters on which the public may comment.

Is there, are there any -- Is there any comment from the public on any matter under the Board's jurisdiction?

(No response.)

CHAIR SIMPSON: I'm anticipating not.

MS. MOISEY SCHERER: Chair Simpson, this is Sandy. I don't see any.

CHAIR SIMPSON: Okay. Thank you.

Hearing none, we'll move on.

Board Chair Update. I really don't have much. I already commented on the Amendment 5 -- or Rosebud AM5 matter.

I guess the one thing I would bring up is that I had promised at the next meeting back in June that I would

have the analysis of the Fiscal Year 26 costs and the, and the data available to the Board. Not anticipating time at this meeting to deal with it and also having been totally absorbed by the, by the AM5 matter, I do not have that material pulled together yet for the Board. I anticipate, again, having that in December just as a matter of information.

Any questions for me from the Board?

(No response.)

CHAIR SIMPSON: Hearing none, thank you very much, everyone. Is there a motion to adjourn?

BOARD MEMBER ALTEMUS: So moved.

BOARD MEMBER RANKOSKY: Second.

CHAIR SIMPSON: It's been moved and seconded to adjourn the meeting. Once again, thank you, everybody, for your participation and insight. All in favor say aye.

(Response.)

CHAIR SIMPSON: Meeting is adjourned. Thank you again. Have a great weekend.

(The proceedings concluded at 10:01 a.m.)

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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 -18- 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 29th day of October, 2026.

/s/Cheryl A. Romsa
CHERYL A. ROMSA

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