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BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

BOARD MEETING)
APRIL 21, 2016)

TRANSCRIPT OF PROCEEDINGS

Heard at Room 111 of the Metcalf Building
1520 East Sixth Avenue
Helena, Montana
April 21, 2016
12:00 p.m.

BEFORE CHAIRMAN JOAN MILES,
BOARD MEMBERS DR. ROBERT BYRON;
and MARIETTA CANTY, ROY O'CONNOR,
CHRIS TWEETEN, ROBIN SHROPSHIRE,
and MICHELE REINHART-LEVINE (by telephone)

PREPARED BY: LAURIE CRUTCHER, RPR
COURT REPORTER, NOTARY PUBLIC

1 WHEREUPON, the following proceedings were
2 had and testimony taken, to-wit:

3 (Mr. Tweeten not present)

4 * * * * *

5 CHAIRMAN MILES: I will go ahead and
6 call the meeting to order, because I know Marietta
7 is only on for the first hour and a half. I don't
8 have any idea how long it's going to last today,
9 but we'll get as much done as we can while you're
10 on the phone. So I'll call the meeting to order.
11 Do you want to take attendance? Hillary is going
12 to take official attendance.

13 MS. HOULE: Thank you, Madam Chair. I'm
14 just going to go down the list, and please say
15 "here" if you're on the phone. Dr. Robert Byron
16 is present. Marietta.

17 MS. CANTY: Here.

18 MS. HOULE: Roy.

19 MR. O'CONNOR: Here.

20 MS. HOULE: Michele.

21 MS. REINHART-LEVINE: Here.

22 MS. HOULE: Robin.

23 MS. SHROPSHIRE: Here.

24 MS. HOULE: Chris.

25 (No response)

1 CHAIRMAN MILES: Thank you. I really
2 appreciate everyone accommodating this change in
3 the schedule. That was a little difficult to try
4 to pull together, but I appreciate everyone trying
5 to make their calendars work for this. We do want
6 to in a few minutes take up the conversation about
7 the scheduling for the rest of the year, because
8 if people have major conflicts, we really would
9 like to find those out now, so we find out if
10 we're going to have enough people to constitute a
11 quorum for the meetings in the future, so we'll
12 get to that in a minute.

13 The first item of business would be to
14 adopt the February 5th, 2016 meeting minutes. And
15 I'll just note that we will make a correction on
16 Roy O'Connor's name on there. Are there any other
17 changes or comments?

18 (No response)

19 CHAIRMAN MILES: Is there a motion to
20 adopt the February 5th meeting minutes?

21 DR. BYRON: Madam Chair, so moved.

22 CHAIRMAN MILES: Is there a second?

23 MR. O'CONNOR: Madam Chair, second.

24 This is Roy.

25 CHAIRMAN MILES: Any further discussion?

1 (No response)

2 CHAIRMAN MILES: All in favor, please
3 say aye.

4 (Response)

5 CHAIRMAN MILES: Opposed.

6 (No response)

7 CHAIRMAN MILES: The minutes are
8 adopted, and I will sign those after the meeting.
9 Thank you.

10 So in terms of the remaining 2016
11 meeting schedule, only a couple of people
12 responded to the Doodle request sent out by
13 Hillary in terms of the remaining meetings for the
14 year, so I'm not sure whether we take that as
15 you're all able to make those remaining meetings,
16 or if you just didn't get around to responding.
17 But we really would appreciate it, when Hillary
18 sends a message like that, if people would
19 respond. So the June 3rd meeting --

20 UNKNOWN SPEAKER: Now joining.

21 MR. TWEETEN: Chris Tweeten.

22 CHAIRMAN MILES: Hi, Chris. Thanks for
23 joining. This is Joan. We've just adopted the
24 minutes, and you're on perfect timing to discuss
25 the rest of the 2016 schedule. I was just saying

1 that only a couple of people responded to the
2 Doodle poll, so we are not sure what that means,
3 if it meant you people just didn't get around to
4 it, or just hadn't had a chance to check your
5 schedules, or that you're fine with the rest of
6 the meetings.

7 So in terms of the June 3rd meeting, I
8 am out of town for that one unfortunately, and
9 will not be able to attend, but we would like to
10 keep that meeting on June 3rd. We've already sent
11 out public notice about a particular hearing
12 that's going to take place that day, and that's to
13 do with the triennial review of water quality
14 standards. So since that notice has already gone
15 out, we would like to keep that meeting on June
16 3rd. Is there anyone else who anticipates being
17 unable to attend that meeting?

18 (No response)

19 CHAIRMAN MILES: I'm going to take that
20 as I am the only one that will be absent. Roy,
21 you did respond to the Doodle poll, and you did
22 not check June 3rd. Are you able to attend that
23 meeting?

24 MR. O'CONNOR: Yes, I am. Sorry I
25 didn't get that.

1 CHAIRMAN MILES: I don't know who spoke
2 at the very end. Was that still Roy?

3 MR. O'CONNOR: Yes, it was, I think.

4 CHAIRMAN MILES: That would be great,
5 and I will be the one person absent at that
6 meeting, and would appoint somebody to act as
7 Chair for that meeting. I'll do that at the end
8 of the meeting. I appreciate that.

9 How about August? I'm also
10 unfortunately gone in August, and it looks like
11 Dr. Byron is not available in August. What else
12 do we know for August 5th? Is everyone else --

13 MR. O'CONNOR: I would be available.

14 CHAIRMAN MILES: Who else is available
15 August 5th?

16 MS. REINHART-LEVINE: I'm available.

17 CHAIRMAN MILES: I should have asked who
18 is unavailable.

19 (No response)

20 CHAIRMAN MILES: Do you see a need in
21 that case to switch the meeting? My sincere
22 apologies that I will miss that one. I know I
23 will not be able to be on the phone on that one.
24 So we will stick then with the original schedule
25 of June 3rd and August 5th. I haven't heard any

1 conflicts on September 30th or December 9th. Are
2 there any major conflicts that anyone is aware of
3 that would prevent you from attending that
4 meeting? You can look at your calendars.

5 (No response)

6 CHAIRMAN MILES: Thank you. I think
7 we're going to stick with the remainder of the
8 year meeting schedule. My apologies for the two
9 unavoidable conflicts, but it looks like the rest
10 of the Board will be able to be in attendance and
11 continue, so the schedule will remain as it is.
12 Thank you very much.

13 So the second order of business is our
14 briefing items from our Legal Counsel Ben Reed.
15 I'll turn it over to you, Ben.

16 MR. REED: Thank you, Madam Chair.
17 Under enforcement cases that have been assigned to
18 me, Highlander Bar continues to percolate within
19 the Department.

20 For (b), Copper Ridge, I've issued an
21 order staying the scheduling in this matter. The
22 same for both, I should say, both Copper Ridge
23 Subdivision requests.

24 For (d), a scheduling order has been
25 issued, but the case is proceeding.

1 For non-enforcement cases that have come
2 before me, in (a), the matter has been stayed
3 pending either party's concerns about the terms of
4 the stipulation.

5 Columbia Falls Aluminum Company, there
6 are a couple of motions before me. One is a
7 motion for partial summary judgment, and one is a
8 motion to compel discovery. Until I rule on the
9 two motions, we've stayed the scheduling order. I
10 anticipate issuing a ruling in both matters either
11 today or tomorrow, at which point I'll ask the
12 parties to have a telephonic hearing, and we'll
13 get back with our normal schedule.

14 Heart K Land and Cattle has had a
15 scheduling order issued, and that case is
16 proceeding at pace.

17 Westmoreland Resources by the request of
18 the parties has been stayed.

19 Regarding the MPDES permit for the
20 Laurel Refinery, the scheduling order has been
21 issued and initial disclosures have been filed.

22 In the matter of the termination of
23 Payne Logging's application, there is a motion to
24 dismiss. I've received that. Pending a ruling on
25 that, I'm going to stay the scheduling in that

1 matter.

2 And finally, in WECO, for the Rosebud
3 Strip Mine Area B, a stipulated schedule has been
4 offered. I have not yet issued the order in that
5 matter.

6 And then in 3(a), WECO, the matter is
7 currently in front of the District Court.

8 CHAIRMAN MILES: Is that different?

9 MR. REED: It is, Madam Chair. That's a
10 2012 case, and the other WECO case that's
11 currently awaiting my scheduling order is a 2016
12 case.

13 CHAIRMAN MILES: I think that's it for
14 you for now?

15 MR. REED: Yes, Madam Chair.

16 CHAIRMAN MILES: We'll get back to final
17 action later.

18 So other briefing items. This is the
19 topic of the Department proposing that the Board
20 initiate rulemaking on the public water supply
21 rule package, so who is taking this?

22 MR. MATHIEUS: Madam Chair, if I may.
23 Just for everyone's benefit, on this briefing
24 item, the Department is just trying to look at
25 where we have these large rulemakings so we can

1 better inform the Board ahead of time, rather than
2 coming with initiation. So taking these
3 opportunities to talk about what we've done today,
4 what we're planning to do, how we've engaged the
5 public and whatnot. So that's the purpose of
6 today's briefing.

7 CHAIRMAN MILES: This is the power point
8 presentation that was sent out?

9 MR. MATHIEUS: Correct. Tammy Filliater
10 will be representing the Department today. Thank
11 you.

12 MS. FILLIATER: Thank you, Madam Chair
13 and members of the Board.

14 So as George said, we'd like to give a
15 brief overview, and then we'll take questions at
16 the end. If you have questions during the talk,
17 let me know, and I can address them then, and we
18 will spend time at the end.

19 CHAIRMAN MILES: Just one interruption.
20 This is not the same as the June 3rd hearing.
21 Will somebody talk about this later during the
22 meeting, what this is?

23 MR. MATHIEUS: We can, Madam Chair.

24 CHAIRMAN MILES: You know you attached
25 this, Hillary, to one of the notices you sent out,

1 so I want to make sure people know what it is.

2 MS. HOULE: Yes, Madam Chair. I just
3 want to clarify. It was on request from Amy
4 Steinmetz, who is in charge of the triennial
5 review. One of the Board members requested to
6 review the publication notice.

7 CHAIRMAN MILES: I just wanted the other
8 Board members to know what it was.

9 MS. HOULE: So it just an FYI, but as
10 George said, we can definitely --

11 CHAIRMAN MILES: Just so everybody knows
12 what's goes on. So this is sort of advance
13 briefing before you request us to initiate
14 rulemaking.

15 MS. FILLIATER: Correct, Madam Chair.
16 And so what I'll do is I'll talk about the revised
17 total coliform rule, and it is something that
18 actually was adopted under federal jurisdiction in
19 April of this year, and so we're in the process of
20 writing the rules. And so what I'll do during
21 today's talk is I'll give a timeline, our
22 projected timeline, a scope of the rule package,
23 and a birds-eye view. So I'm just going to hit
24 the major points, so that you have an idea of what
25 we're talking about, and then we'll have time for

1 questions.

2 So we'll start with the timeline. So
3 the RTCR was actually adopted in February of 2013.
4 Starting shortly before then, there has been
5 extensive outreach, and this outreach has been
6 focused on public water supplies, cities, towns,
7 other groups, so that they're aware of what's
8 going on. We have approached the Public Water
9 Supply Focus Group several times, and they have
10 also had influence on this package. And that's
11 been going on for two years. In the Board packet,
12 we actually attached a summary of all the outreach
13 we've performed.

14 In February of 2015, we requested in
15 writing an extension, and that was to the EPA, and
16 they granted that extension. And so what that
17 does is it pushes our deadline to February of
18 2017. So that's the deadline we're working under.
19 We'd like to have everything proposed, adopted,
20 and official by February.

21 And so in order to make that happen, we
22 actually just sent the rule package to the EPA,
23 and we're waiting for comments from them. Last
24 week or a week and a half ago, we sent out just
25 over 4,000 postcards, and we sent those postcards

1 to all of the certified operators, all of the
2 public water systems, and also the interested
3 parties list; and at that time we made it clear
4 that we were requesting informal comments. That
5 way we can see what people are thinking about what
6 we're doing.

7 And I'm happy to say that so far I have
8 received approximately 16 comments. Most of the
9 them are, "Oh, is this Libby's deal?" She's the
10 one that's done the outreach, so they're familiar
11 with it. A couple of people wanted to know, "What
12 does this mean? Do I need to do anything
13 different?"

14 I've only received one substantial
15 comment, and that was from a certified operator
16 who I'll talk about the details later, but there
17 is a seasonal system requirement. And his comment
18 was that this is going to cost systems some money,
19 but that he thought it was worth it. He thought
20 it would protect public health. So that's the
21 only substantial comment so far.

22 In April on the first, the RTCR was
23 implemented. The EPA has enforcement
24 responsibility for the rule at this point. We
25 would like to propose the rules in either June or

1 August, and then adopt the rules in either
2 September or December, and then we can have
3 everything in place by our extension deadline.

4 And so in terms of the scope of the rule
5 package, the primary reason for this rule package
6 is the revised total coliform rule. However, it
7 made sense to also adopt the most current edition
8 of the Code of Federal Regulations, so that's
9 included in this rule package. We're currently
10 under the 2009, so we're going to adopt the 2015.
11 And then also within this package, we want to do
12 some housekeeping and clarification of rules.

13 So in terms of the rule package, the
14 total coliform rule of 1989 is what we were
15 working under through March of this year. And
16 every six years the EPA takes a look at their
17 major rules, and makes modifications, and they do
18 this so that they can provide the best public
19 health possible. And so it took a number of years
20 to go through, propose the changes, and this is
21 the resulting rule package.

22 This particular rule applies to all of
23 our public water systems regardless of size, so it
24 is all -- just over 2,100 systems will be affected
25 by the rule.

1 For the major changes, I divided them
2 into eight categories. There are some others, but
3 these are the eight major changes. The first is
4 that each public water system, all 2,100, will
5 need to devise a site sampling plan; and in the
6 large scheme of things, this is pretty straight
7 forward. They should already have a sampling plan
8 on record. It was just a matter of adding some
9 detail, adding some repeat testing sites, and
10 submitting that to the Department.

11 And in the corner, you'll notice the
12 bottom right. As I'm going through the
13 presentation, what I'm going to do is distinguish
14 between things that are mandatory if we want
15 primacy, and then things that are at State
16 discretion. And so for some things, the EPA is
17 looking at our rule package, and they're assessing
18 it for it to be less stringent than what they're
19 doing. They want it to be at least as stringent.
20 And so if it is less stringent, then they're going
21 to send the package back, and we'd have to make a
22 rule change. So if things are mandatory, I'm
23 designating that. So this is a mandatory item on
24 the list.

25 Testing for E.coli is also mandatory.

1 Currently if a system collects a coliform sample
2 during the month with a routine sample, and it
3 comes back positive, they have a choice. They can
4 test for either fecal coliforms or E. coli. With
5 the new rule change, they have to test for
6 E. coli, and so this is a mandatory change. It is
7 also something that big picture wise is minor,
8 because most labs are set up, they test for
9 E. coli anyways.

10 The third item on the list are seasonal
11 systems. You'll notice that I have a mandatory
12 tag on this slide, and the mandatory portion of
13 this is that all seasonal systems need to perform
14 and document a start-up procedure. So this time
15 of year, campgrounds are getting ready to open up.
16 What that means is that they'll repressurize their
17 system, they'll need to do a specific number of
18 steps, including inspecting all their equipment to
19 make sure it still works; they'll check their
20 chemicals to make sure they're still fresh; and
21 they'll flush water from the pipes.

22 And then after they perform all of these
23 steps, they'll document it on a sheet, send it to
24 our Department, and then we'll enter it into the
25 computer that they've finished this requirement.

1 Now, we've included testing a sample of
2 water for coliforms, and this is the part of the
3 slide that is State discretion. And so each state
4 has the ability to say, "Yes, we want this to be
5 done," or "No, we don't." And in order to protect
6 public health, the Department believes it is a
7 good idea to require this test, and in the long
8 run, we think it will actually help the system
9 out, because previously they start up, their first
10 routine is positive, they're already walking down
11 the path of violations and other steps that need
12 to be done.

13 With this particular procedure, before
14 they even start serving water to the public, we're
15 asking that they collect the sample of water, test
16 it, and then they know when they open up their
17 doors that the water is safe to drink.

18 CHAIRMAN MILES: So would that basically
19 become part of their sampling schedule then that
20 they would have to do in the first section when
21 they do seasonal systems?

22 MS. FILLIATER: So yes, it becomes part
23 of the seasonal systems startup check sheet.

24 Now, the interesting thing is it is not
25 considered to be a routine sample, and so it is a

1 special sample because water is not being served
2 to the public. And so that's kind of the beauty
3 of it, in that if it comes back positive for
4 coliform, they can find the problem, fix it, and
5 then when they collect their first official
6 routine, then that counts. Did that answer your
7 question?

8 CHAIRMAN MILES: Yes. Thank you.

9 MS. FILLIATER: So for the fourth item
10 -- I actually have several slides here -- it's for
11 coliform monitoring frequency. And I know this is
12 a lot of information, but I wanted to throw it out
13 there, and just be very clear on what we're doing.

14 These are mandatory requirements that we
15 need to adopt. You'll notice I have a red star
16 there, and so as we go through the frequency for
17 all systems through the EPA, if we adopt them, is
18 that all systems except for groundwater systems
19 that are non-community, serving 1,000 people or
20 fewer, actually their frequency would be once per
21 quarter. Everyone else would have a frequency of
22 once per month. And this is the way the rules are
23 written.

24 Now, the State of Montana, we've looked
25 at this, and I went back and I did some research,

1 and you'll notice that I've starred there a MAR
2 Notice from 1999. And so back in 1999, the
3 federal rule was this: These groundwater
4 non-community water systems serving fewer than
5 1,000 people, their frequency is once per quarter,
6 and there is a long history there.

7 But what the Department did is they
8 actually adopted this, and there was a county here
9 in Montana that petitioned the Board that was
10 present at that time, and said that, "Quarterly
11 monitoring is not frequent enough. We believe it
12 should be monthly monitoring."

13 And so under the 1989 total coliform
14 rule, which was through March of this year, we
15 required our systems to sample monthly, and then
16 what they could do, based upon specific things --
17 we looked at their coliform test results, we
18 looked at other things -- then they could qualify
19 for quarterly; and then if their test results, if
20 they started to getting total coliform positives,
21 then that would trigger them back to monthly.

22 So very, very different ideas. EPA, you
23 start at quarterly; you can be bumped from
24 quarterly, but you start at quarterly. Montana,
25 you start at monthly, and then if you qualify --

1 because you're a very well run system, you're
2 collecting your samples, you're turning them in on
3 time -- then you can qualify for quarterly.

4 So I have this slide marked with a red
5 star, just so it is clear that it is different.
6 And I have copies of the MAR Notice if anyone is
7 interested.

8 Also when we look at the federal rules,
9 there are provisions for reduced coliform
10 monitoring frequency, and they're listed on this
11 slide. And when we look at everything on this
12 slide, all of these are at State discretion, and
13 so the State can decide whether they want to allow
14 the reduced monitoring or not.

15 And here in Montana, we would like to
16 take the approach of, "No, we're not going to
17 reduce monitoring." We believe that it will help
18 protect public health. Things change quickly, and
19 we would like to find problems quickly if they
20 occur. So this is State discretion. We do have a
21 choice here.

22 CHAIRMAN MILES: But you're basically
23 saying to not deviate from the original
24 requirements.

25 MS. FILLIATER: Right. What we would

1 like to do is adopt monthly monitoring, and then
2 not allow, for example, groundwater systems to be
3 able to qualify for once a year. We prefer not to
4 do that.

5 So here is a slide where I've summarized
6 all of our systems, the monitoring frequencies
7 through March of this year, and then beginning
8 April 1st, so we can just make clear kind of where
9 we're at as a Department. Before the RTCR, all of
10 our systems were monitoring monthly. That was
11 baseline. Beginning April 1st, we were planning
12 on continuing that monitoring monthly.

13 Our seasonal systems and our
14 non-seasonal -- I've got the second and third rows
15 there. Both rows concern transient systems that
16 are using only groundwater, and serving 1,000 or
17 fewer people. The difference is that the second
18 row is our seasonal systems on the depressurized
19 part of the year, and then they're starting up for
20 a five or six month period. Our non-seasonal
21 systems, they are actively serving water to the
22 public all year round.

23 And so with the TCR through March 2016,
24 notice that all of our TNC or transient
25 non-community systems could qualify for quarterly

1 monitoring. And in order to do that, they would
2 meet specific requirements.

3 Beginning April 1st, that's going to be
4 one major change. And specifically when we look
5 at those seasonal systems, they can no longer
6 qualify for the quarterly monitoring. However,
7 the non-seasonal systems, if they're currently on
8 quarterly monitoring, they stay on quarterly.
9 Other systems, if they want to try to qualify,
10 they can submit the paperwork, and we'll try to
11 help them be able to do that.

12 So our seasonal systems then, they have
13 our seasonal startup procedure. They also are
14 going from quarterly to monthly monitoring with
15 these rule changes.

16 And I would like to make the point that
17 with all the outreach, as we went through the
18 process of writing the rules, learning the rules,
19 and doing this, what we did is we trained the
20 systems, all the operators, based upon what we're
21 probably going to adopt, and so they're familiar
22 with these rules. These rules beginning April 1st
23 have already been implemented. And then what
24 we'll do is if the rule package is slightly
25 different, that's okay. What we'll do is we'll go

1 back and retrain just on those point items that we
2 change.

3 Fifth, we have something called clean
4 compliance history, and I have a star here because
5 this is something that's different than the
6 federal requirement. And I have the federal
7 definition up there. Basically if you have a
8 system that is on quarterly, they start getting
9 positive test results, they're triggered to
10 monthly. In order to go back to quarterly, they
11 have to meet this definition: No monitoring
12 violations related to total coliforms, no
13 treatment technique triggers in terms of total
14 coliforms, and no MCL violations.

15 We have a policy -- It is not within the
16 rule -- but we have a policy within the Department
17 that a system must have satisfactory total
18 coliform test results for 24 months. And so once
19 again, remember, it's slightly different. All of
20 our systems start on monthly. That's baseline.
21 To qualify for quarterly, our policy is that they
22 have test results that are good, we go back for a
23 two year period, and then we also have no MCL
24 exceedences, monitoring violations, or treatment
25 tech violations of any kind.

1 So federal guidelines, they're saying
2 just coliforms. State of Montana, what we've been
3 using is other parameters, for example nitrates
4 and nitrites, that can indicate contamination by
5 sewage. And so as we've written the rules now, we
6 have not adopted the term "clean compliance
7 history," and it is because it conflicts with our
8 State policy.

9 Sixth on the list, we have something
10 called dual sampling. Up through April -- this is
11 under the total coliform rule -- Montana allowed
12 the use of something called dual samples, and
13 groundwater systems serving 1,000 or fewer people
14 qualify to use these dual samples. And so what
15 would happen is a routine sample comes back
16 positive; since we had dual sampling in place,
17 that would trigger the collection of three repeat
18 samples, and one what we call a dual sample. So
19 that's four samples.

20 CHAIRMAN MILES: What is a dual sample?

21 MS. FILLIATER: So a dual sample is
22 actually going to trigger two different rules. It
23 is going to trigger the total coliform rule. It
24 will also trigger the groundwater rule. And so
25 that's why it's called dual, is that it is used

1 for both rules.

2 And the important point here is that
3 with dual sampling under the TCR, a system has a
4 positive sample, they collect four samples as a
5 result, and those samples are collected
6 immediately.

7 With the RTCR, there is also something
8 called dual sampling. The requirements have
9 changed on who can use the dual sampling and how
10 it works, and so Montana is proposing to not adopt
11 dual sampling. This is a State discretion item.
12 Some states are adopting it, some are not.
13 Montana would like to not adopt it.

14 In this case, a routine sample comes
15 back positive, we take a look at the entire rule.
16 Even though we're not using the dual samples, the
17 system is triggered to collect four samples. And
18 so this is -- actually I have a star here because
19 what I sent out, what's posted on the web page, it
20 says three in parentheses, so I wanted to make
21 sure that was correct.

22 The idea here is that TCR, four samples
23 were triggered. We just call them slightly
24 different names. Under the RTCR, positive sample,
25 four samples.

1 Seventh, we have temporary routines.
2 Through April of this year, small systems that had
3 positive test results, if they collect a sample
4 today, they have a positive total coliform test
5 result, next month they would be required to
6 collect what we call five temporary routines.

7 With the RTCR, that's changed a little
8 bit. In that, starting April 1st, if a system
9 gets that positive test result, they would no
10 longer have those five temporary routines.

11 Instead they trigger what's called a Level 1 or
12 Level 2 assessment, and I'm going to go into more
13 detail here in a moment. This is a mandatory
14 requirement.

15 So we'll start with the Level 1
16 assessments, and they're triggered by the number
17 of total coliform positive samples that are
18 collected in a month; or it could be triggered by
19 not collecting all of your repeat samples after a
20 total coliform positive. So this is mandatory.

21 So here is in general terms what
22 happens. I'm a system, I'm a small system. I
23 collect two samples this month because that's what
24 I'm required to take. Under the 1989 TCR, that
25 would have triggered five samples the following

1 month.

2 Now with the RTCR, I collect my two
3 samples; if they come back positive, I'm triggered
4 to do what's called a Level 1 assessment, and this
5 is basically what's called a find and fix
6 strategy. So the old rule, the TCR, they were
7 more concerned with you have your positive test
8 results; once you hit a certain number, you're in
9 violation.

10 With the RTCR -- this is a major change
11 -- there's a paradigm shift. Now we're going to
12 find and fix. And so in this case, I'm a small
13 system, I collect my two samples, they come back
14 positive, it triggers this Level 1. The way the
15 State would like to approach it is that the system
16 operator conducts that Level 1 assessment. So
17 they're going to go through their entire system,
18 they're going to look at their sampling technique;
19 they're going to take a look at the source, see if
20 there's a cracked well casing; they're going to
21 look at their chlorine, did the chlorine level
22 drop on that particular day.

23 And then after they do a complete
24 assessment, they're going to document things that
25 they found, and then they need to fix those

1 particular items. So very, very different
2 strategy.

3 Level 2 is the next step. And so with a
4 Level 1, we're looking at total coliform
5 positives. A Level 2, we're looking at either an
6 E. coli positive sample -- the stakes have just
7 gone up -- or we've had two Level 1 triggers in a
8 twelve month period. And I have the mandatory
9 here. The Level 2 assessments are mandatory.

10 The part that's at State discretion is
11 that we would like to have those completed by DEQ
12 personnel. And so we have sanitary survey
13 inspectors who would go out. They would basically
14 do the same thing the operator did for Level 1,
15 only in more detail. Start at the source, work
16 all the way through the distribution systems.

17 With these Level 2's, what they find
18 needs to be fixed. And so in some cases it is
19 going to be really easy. The operator used the
20 restroom facilities, went out, was in a hurry, the
21 sample came back E. coli positive because they
22 didn't sample that correctly. That would be the
23 easiest case, and so the find and fix would be,
24 "Yes. Here we found the problem. It was the
25 sampling technique." Our fix is that we're going

1 to train the operator in the correct procedure.

2 On the other end of the spectrum is that
3 they have E. coli positive, and go out and look at
4 a storage tank, and the storage tank is leaking,
5 and there's contamination entering the storage
6 tank. With the RTCR, that would mean replacing
7 that storage tank, so fixing the problem.

8 But we feel like a fresh set of eyes is
9 a good idea, so we would like the DEQ personnel to
10 go out and perform that assessment.

11 So at this point I'll take questions,
12 requests for -- if there is pieces of information,
13 you want me to go into more detail. When I
14 actually propose the package --

15 CHAIRMAN MILES: You will go into more
16 detail when you propose the package.

17 MS. FILLIATER: Yes.

18 CHAIRMAN MILES: Any further questions?
19 That was a great presentation. Anybody have any
20 questions or comments?

21 (No response)

22 CHAIRMAN MILES: That was very helpful
23 to know what's coming down the road.

24 Just a quick question about the one, the
25 very last thing you said where you would have DEQ

1 personnel actually do the assessment, which makes
2 sense. Do you anticipate, would that cost the
3 operator more? Would you get some opposition to
4 this?

5 MS. FILLIATER: Actually that's I think
6 a positive, in that the DEQ personnel will travel
7 out there, perform the assessment. It might be a
8 three hour day, it might be an eight hour day, but
9 we're not charging the public water system for
10 that assessment.

11 CHAIRMAN MILES: Anybody else?

12 (No response)

13 CHAIRMAN MILES: Thank you. That was
14 very helpful, and we'll be seeing this then in
15 June?

16 MS. FILLIATER: In June or August. I
17 think we prefer August, but we're going to see how
18 it progresses. Thank you, Madam Chair.

19 CHAIRMAN MILES: Thanks a lot. That's
20 very helpful. And I guess just so I don't confuse
21 everybody else, George, if you just want to -- the
22 subject of the triennial review of water quality
23 standards, I was the one that asked Amy, just so
24 the Board members could see what went out to the
25 public. But if you can explain briefly what that

1 is, that hearing that will happen in June.

2 MR. MATHIEUS: Madam Chair, I'd be happy
3 to. So just simplistically, our triennial review
4 is obviously a three year look at our water
5 quality standards, so it is an opportunity for the
6 public to take a look at our water quality
7 standards and comment on their current form.

8 So at the February meeting, we asked the
9 Board to solicit public comment for our triennial
10 review, so that happened in February. The hearing
11 you're referring to and what went out is that we
12 scheduled a hearing for the next Board meeting on
13 June 3rd, so another part of this public comment,
14 public process. And then we anticipate at the
15 August meeting that we will bring proposals to the
16 Board for initiation based on all that public
17 input.

18 CHAIRMAN MILES: So this is asking the
19 public what's working, what's not working.

20 MR. MATHIEUS: Correct.

21 CHAIRMAN MILES: Traditionally have you
22 come up with many changes in this process?

23 MR. MATHIEUS: Madam Chair, many times
24 we've anticipated changes just based on our
25 interactions with various groups, so we have

1 handled it that way.

2 CHAIRMAN MILES: Okay. Anybody have any
3 questions about that?

4 (No response)

5 CHAIRMAN MILES: Thank you. That brings
6 us to back to Ben, new contested cases.

7 MR. REED: I'm not sure that I have much
8 to contribute in the new contested cases area.

9 CHAIRMAN MILES: Initiation of
10 rulemaking.

11 MR. MATHIEUS: Madam Chair, today we
12 have Liz Ulrich here representing the air program.

13 MS. ULRICH: Good afternoon, Madam
14 Chair, members of the Board. My name is Liz
15 Ulrich, and I'm representing the Air Quality
16 Bureau here at DEQ.

17 The Department is here today to ask the
18 Board to initiate rulemaking to amend the Air
19 Quality rules related to prevention of significant
20 deterioration permitting provisions. A little
21 history for you.

22 CHAIRMAN MILES: Just so everybody
23 knows, this is in your packet, and the packet is
24 posted in pieces. This is Item III(B)(1),
25 executive summary for action on rule initiation.

1 MS. HOULE: That's correct, Madam Chair.
2 Since I've been posting it in pieces, it will be
3 after the briefing items. It states Action Item
4 III(B)(1), initiation of rulemaking, I believe is
5 the title on the web page.

6 CHAIRMAN MILES: Thanks. I just wanted
7 to get everybody to the right spot.

8 MS. ULRICH: So on December 9th, 2013,
9 the Environmental Protection Agency amended the
10 significant monitoring concentration for
11 particulate matter with a diameter with less than
12 2.5 microns. We refer to that as PM2.5 SMC. This
13 amendment decreased the SMC from four micrograms
14 per meter cubed over a 24 hour averaging period to
15 zero micrograms per meter cubed with no averaging
16 period.

17 Because the EPA amended its regulation,
18 the Department requested that the Board amend
19 Title 17 Chapter 8 Subchapter 8 of the
20 Administrative Rules of Montana to reflect the
21 changes. However, the Department inadvertently
22 failed to recommend that the Board remove the 24
23 hour averaging period for the PM2.5 SMC.

24 The Board amended the rule without
25 removing the averaging period as requested by the

1 Department on December 26th, 2014. So today I'm
2 here asking that the Board remove the phrase "24
3 hour average" from ARM 17.8.818, making the
4 Board's rules consistent with and as stringent as
5 the EPA regulation; and upon adoption of this
6 amendment, if you so choose, the Department will
7 submit the revised rule into the Montana State
8 Implementation Plan, ensuring Montana's ongoing
9 New Resource Review prevention of significant
10 deterioration program primacy and authority.

11 The Department recommends the Board
12 initiate rulemaking for the proposed amendment.
13 Are there any questions?

14 CHAIRMAN MILES: Thanks, Liz. Any
15 questions?

16 (No response)

17 CHAIRMAN MILES: So basically an
18 oversight by all, and we can correct it.

19 MS. ULRICH: Yes.

20 CHAIRMAN MILES: Unless anyone has any
21 questions, the Board has the option to initiate
22 rulemaking as requested, and issue the attached
23 draft notice of proposed amendment with no public
24 hearing contemplated -- that was included in the
25 packet -- we can modify the notice and initiate

1 rulemaking, or we can determine that the amendment
2 of the rule is not appropriate and deny the
3 request to initiate. And the Department has
4 recommended that we initiate rulemaking as
5 described in the draft notice of proposed
6 amendment with no public hearing. Is there a
7 motion from the Board?

8 MS. REINHART-LEVINE: Madam Chair, this
9 is Michele. I move the Board initiate rulemaking
10 and issue the attached draft notice of proposed
11 amendment.

12 CHAIRMAN MILES: Thank you, Michele. Is
13 there a second?

14 DR. BYRON: Second.

15 CHAIRMAN MILES: Second Rob Byron. Is
16 there any further discussion?

17 (No response)

18 CHAIRMAN MILES: Is there any public
19 comment?

20 (No response)

21 CHAIRMAN MILES: Seeing none, we will
22 vote on the motion as proposed by Michele
23 Reinhart-Levine. All in favor, please say aye.

24 (Response)

25 CHAIRMAN MILES: Opposed.

1 (No response)

2 CHAIRMAN MILES: Hearing none, the
3 motion passes unanimously. Thank you very much.
4 We'll get that corrected.

5 Circular DEQ2. Who is this?

6 MR. MATHIEUS: Madam Chair, it is Tammy
7 Filliater again, I believe.

8 MS. FILLIATER: Madam Chair, members of
9 the Board, once again, my name is Tammy Filliater,
10 and I'm the rule coordinator for the Public Water
11 and Subdivision Bureau of the DEQ.

12 At the end of 2015, the Department
13 updated wastewater treatment operator
14 certification classes by combining four classes
15 into two classes. Currently the Department is
16 using these two new classes to categorize newly
17 certified wastewater operators. However, DEQ2
18 only describes the four classes used to classify
19 operators certified before 2016.

20 On December 4th, 2015, the Board
21 proposed two changes: First, to update DEQ2 by
22 removing the wording for the four wastewater
23 classes that are stated there now, and adding
24 wording to point an interested party to ARM
25 17.40.202, which contains the most current

1 wastewater treatment system classification
2 information; second, to incorporate by reference
3 the updated version of DEQ2 into the appropriate
4 ARMs.

5 A public hearing was held on 14 January
6 2016, the public comment period is over, and there
7 were no formal comments submitted. The Department
8 recommends that the Board adopt the amendments as
9 proposed. Thank you.

10 CHAIRMAN MILES: Any questions for
11 Tammy?

12 (No response)

13 CHAIRMAN MILES: Hearing none, are there
14 any members of the public that wish to comment on
15 this?

16 (No response)

17 CHAIRMAN MILES: Seeing none, so this
18 was -- just to restate that -- we started this
19 rulemaking back in December, and now we're at the
20 point where the public hearing was held, no
21 comments were received. The Department has done
22 their analyses for House Bill 521 and Senate Bill
23 311, and those are the stringency requirements
24 that our rules cannot be more stringent than
25 federal regulations unless they are justified

1 through a series of statutory requirements; and
2 then 311 is the takings analyses. So nothing was
3 found deficient in those areas, or it did not
4 constitute a taking.

5 So to shorten that, the motion at this
6 point would be for the Board to adopt the proposed
7 amendments as set forth in the attached Notice of
8 Public Hearing, and to also adopt the Presiding
9 Officer's report, the House Bill 521 and Senate
10 Bill 311 analyses, and adopt the rules as
11 proposed. Is there a motion to that effect?

12 DR. BYRON: Madam Chair, so moved.

13 CHAIRMAN MILES: Rob Byron has moved to
14 approve the rules as proposed. Is there a second?

15 MR. O'CONNOR: Madam Chair, this is Roy.
16 I second the motion.

17 CHAIRMAN MILES: Thank you. Roy
18 O'Connor seconds. Any further discussion?

19 (No response)

20 CHAIRMAN MILES: Hearing none, all in
21 favor, please say aye.

22 (Response)

23 CHAIRMAN MILES: Anyone opposed?

24 (No response)

25 CHAIRMAN MILES: Motion carries

1 unanimously. Thank you.

2 It looks like Other Action, nothing on
3 that item, and we will now go to final action on
4 contested cases.

5 MR. REED: Madam Chair, there is a bit
6 of a complication in E(1). The short version of
7 the complication is that there are three cases
8 here, BER 2015-04a, b, and c. "a" and "c" ought
9 properly to be dismissed at this time, and so the
10 Board should take that action, or that would be my
11 recommendation.

12 For "b," the Department is currently in
13 negotiations with a transferee over that permit.
14 The individual to whom the transfer of the permit
15 will be being made will also support the dismissal
16 of this particular appeal, but if a transfer of a
17 permit is made to the individual, then the permit
18 can essentially stay in effect, whereas if the
19 transfer is cancelled, then he has to reapply for
20 a fresh permit.

21 So I would recommend that the Board move
22 to dismiss BER 2015-04a and 2015-04c, both air
23 quality permit appeals.

24 CHAIRMAN MILES: Thank you. Any
25 questions of Ben?

1 (No response)

2 CHAIRMAN MILES: Do we have a motion to
3 the effect of Ben's recommendation, which would be
4 to dismiss Items 2015-04a and 04c, under the
5 Montana air quality permit issued to Eureka Pellet
6 Mills? Is there a motion to that effect?

7 DR. BYRON: Madam Chair, so moved.

8 CHAIRMAN MILES: Thank you. Rob Byron
9 has moved. Is there a second?

10 MS. CANTY: This is Marietta. I'll
11 second.

12 CHAIRMAN MILES: Is there any further
13 discussion about this?

14 (No response)

15 CHAIRMAN MILES: Hearing none, all in
16 favor, please say aye.

17 (Response)

18 CHAIRMAN MILES: Opposed.

19 (No response)

20 CHAIRMAN MILES: Hearing none, the
21 motion carries unanimously. Thank you. That's on
22 Item III-E-1. Now III-E-2.

23 MR. REED: For III-E-2, Madam Chair, an
24 order of dismissal with prejudice was issued, the
25 party having effectively withdrawn their appeal,

1 and I would recommend that the Board dismiss the
2 matter.

3 CHAIRMAN MILES: Thank you. And by the
4 way, we have these orders here, and if the Board
5 approves, then I will sign them at the end of the
6 meeting. Is there any discussion, any questions
7 of Ben on this item?

8 (No response)

9 CHAIRMAN MILES: The motion would be to
10 issue an order of dismissal with prejudice with
11 the Chair's signature. Is there a motion to that
12 effect? This is for the Silverado Heights
13 Subdivision Lots 1 and 10 Rewrite. Is there a
14 motion to that effect?

15 MR. O'CONNOR: Madam Chair, this is Roy.
16 I would so move.

17 CHAIRMAN MILES: Thank you, Roy.

18 DR. BYRON: Second.

19 CHAIRMAN MILES: Dr. Byron seconded.
20 Any further discussion?

21 (No response)

22 CHAIRMAN MILES: All in favor, please
23 say aye.

24 (Response)

25 CHAIRMAN MILES: Opposed.

1 (No response)

2 CHAIRMAN MILES: Hearing none, the
3 motion carries unanimously. Thank you.

4 MR. REED: For No. 3, Madam Chair, in
5 the matter of the appeal of the denial of the
6 Wiediger Family Transfer, the parties having
7 effectively withdrawn their appeal, I would
8 recommend now that the Board dismiss the matter
9 with prejudice.

10 CHAIRMAN MILES: Any questions for Ben?

11 (No response)

12 CHAIRMAN MILES: So the motion would be
13 to issue an order of dismissal with prejudice on
14 the denial of the Wiediger Family Transfer. Is
15 there a motion to that effect?

16 MS. SHROPSHIRE: Madam Chair, this is
17 Robin. So moved.

18 CHAIRMAN MILES: Thank you, Robin. Is
19 there a second?

20 DR. BYRON: I'll second.

21 CHAIRMAN MILES: Rob will second. Thank
22 you. Any further discussion?

23 (No response)

24 CHAIRMAN MILES: Hearing none, all in
25 favor, please say aye.

1 (Response)

2 CHAIRMAN MILES: Opposed.

3 (No response)

4 CHAIRMAN MILES: Hearing none, the
5 motion carries unanimously. Thank you.

6 The last item would be the Yellowstone
7 Energy Limited Partnership permit for a facility
8 in Billings. Ben.

9 MR. REED: Yes, Madam Chair. As the
10 Board will note, a stipulation for entry of final
11 agency decision accompanying the modified MPDES
12 permit was in the Board's packet. The parties
13 have given it for the Board's consideration and
14 for final action. I would recommend that the
15 Board support this stipulation.

16 CHAIRMAN MILES: I want to make sure I
17 know where that was in the packet, this particular
18 one. That would have been the last, probably the
19 last. Make sure everyone knows what they're
20 looking at.

21 MS. HOULE: Madam Chair, that would be
22 item No. 3(e) on briefing items on the Board's
23 main website there. It has its own link. It is
24 the last link, and it should be the last page. I
25 believe it starts on Page 9 of that link.

1 CHAIRMAN MILES: Hopefully people had a
2 chance to look at that ahead of time. So the
3 motion would be to -- would you repeat that?

4 MR. REED: I think the motion would be
5 to approve the entry of final agency decision,
6 Madam Chair.

7 CHAIRMAN MILES: The motion would be to
8 approve the entry of final agency decision in the
9 matter of the notice of appeal and request for
10 hearing by Yellowstone Energy Limited Partnership.
11 Is there any discussion on that, any questions?

12 (No response)

13 CHAIRMAN MILES: I would accept a motion
14 to that effect. Does anyone want to move that we
15 accept the final agency decision?

16 DR. BYRON: So moved.

17 CHAIRMAN MILES: Rob Byron has moved.
18 Is there a second?

19 MS. SHROPSHIRE: This is Robin. I'll
20 second.

21 CHAIRMAN MILES: Is there any discussion
22 on this item?

23 (No response)

24 CHAIRMAN MILES: Hearing none, all in
25 favor of the proposed motion, please say aye.

1 (Response)

2 CHAIRMAN MILES: Opposed.

3 (No response)

4 CHAIRMAN MILES: Motion carries. Thank
5 you.

6 MR. REED: Yes, Madam Chair. There is
7 one matter for public comment, if I may.

8 CHAIRMAN MILES: Okay.

9 MR. REED: In the past two weeks, the
10 Board of Environmental Review has received
11 approximately a dozen letters from individuals and
12 entities in the greater metropolitan Roundup areas
13 who have all had commentary on the Signal Peak
14 matter.

15 After some discussion, I wanted to bring
16 these matters to the Board's attention. I wrote
17 us a relatively standard letter indicating to the
18 parties that were sending in letters that the
19 matter was no longer before the Board, and
20 therefore that the matter was something upon which
21 the public could comment; but since the Board had
22 remanded it for further consideration, that it
23 wasn't really appropriate, that the Board didn't
24 have any control of the matter. Further, if the
25 matter did come before the Board again, that it

1 would be inappropriate for the Board to take
2 public comment.

3 What I would propose at this time is
4 rather than read those letters to the Board in
5 public comment, that with the Board's permission,
6 the matters might be posted into the record on the
7 website.

8 CHAIRMAN MILES: The actual letters
9 posted?

10 MR. REED: Yes, Madam Chair, as public
11 comment, or read into the minutes for the Board's
12 future reference.

13 CHAIRMAN MILES: Did the Board see those
14 letters? I know I saw them. You sent them to me.

15 MR. REED: The Board has not seen those
16 letters.

17 CHAIRMAN MILES: If the Board wanted to
18 look at those letters, they would be on the
19 website, but we should be careful if the issue
20 comes back to the Board.

21 MR. REED: That is correct.

22 MR. O'CONNOR: Madam Chair, do we have
23 any updates on the situation with respect to
24 Signal Peak Energy?

25 CHAIRMAN MILES: I'm looking at George

1 and John.

2 MS. HOULE: Might I suggest -- Can I
3 finish? I'm sorry, Madam Chair. One thing about
4 the letters is that I have filed them as
5 correspondence with the Board, so they are part of
6 the record in that matter, and I'm happy to have
7 them available on that website if the Board so
8 chooses.

9 CHAIRMAN MILES: Then back to Roy's
10 question about the status report on Signal Peak.

11 MR. MATHIEUS: Madam Chair, might I
12 suggest that we just send copies of the letters to
13 each Board member?

14 CHAIRMAN MILES: Sure. I saw them that
15 way. I think that would be perfectly acceptable.
16 I think it is a pretty standard letter that was
17 generated, and came from a number of interested
18 persons in that area.

19 Update. Any update on the status of
20 what the Department is doing on Signal Peak?

21 MR. NORTH: Madam Chair, members of the
22 Board, John North, Chief Legal Counsel with the
23 Department.

24 You'll recall the Board remanded this
25 matter back to the Department for further

1 proceedings consistent with the Board's order and
2 opinion, and so that has been occurring. An
3 updated Probable Hydrologic Impact Assessment was
4 submitted by the Applicant, and the Department is
5 currently in the process of preparing an updated
6 Cumulative Hydrologic Impact Assessment. We
7 anticipate that to be out within the next month or
8 so, and then it would go to public comment.

9 CHAIRMAN MILES: So within the next
10 month. Does that answer your question, Roy?

11 MR. O'CONNOR: Yes, it does. Thank you,
12 Madam Chair.

13 CHAIRMAN MILES: Any other questions or
14 comments?

15 (No response)

16 CHAIRMAN MILES: I think what we'll do
17 then is just have you send a copy of the letters
18 to Board members, but with the advisory that if
19 this matter does become another contested case in
20 front of the Board, those letters would constitute
21 ex parte communication, and really could not be
22 considered at that point.

23 MR. REED: What I've advised people who
24 have written in is that future letters, if the
25 matter comes before the Board, would then be

1 considered ex parte.

2 CHAIRMAN MILES: At that point they
3 would be ex parte.

4 MR. REED: I think at this point they're
5 simply public comment. So yes, Madam Chair.

6 CHAIRMAN MILES: I'm correct in that,
7 but if there were to be any future correspondence,
8 we'll distribute those letters to the Board
9 members. Okay. Thank you.

10 Any other public comment? Anyone here
11 wish to comment on any issues or matters before
12 the Board?

13 (No response)

14 MR. MATHIEUS: Just before you adjourn,
15 Madam Chair, if there is no public comment.

16 CHAIRMAN MILES: I don't see any public
17 comment. The only other item I would want to take
18 care of is appointing somebody to act as Chair for
19 the June 3rd meeting, and Robin, I was wondering,
20 since you're so experienced and you're here in
21 Helena, would you be willing to do that? Would
22 that be possible for you to do on June 3rd?

23 MS. SHROPSHIRE: Madam Chair, I'd be
24 happy to do that.

25 CHAIRMAN MILES: Thank you. I guess I

1 should go ahead and do August as well. I don't
2 know, Robin, if you'd be able to look at your
3 August calendar, and if you think that would not
4 be possible for you, I could ask someone else.
5 Maybe you could look at your calendar first.

6 MS. SHROPSHIRE: I looked, and that week
7 I may be traveling. So if you don't mind, can I
8 confirm and get back to you on that one?

9 CHAIRMAN MILES: That would be great,
10 and if not, I'll get back to somebody else with a
11 request for the August 5th meeting. Thank you.
12 That would be wonderful, Robin. So June 3rd,
13 Robin will chair the meeting, and I think that was
14 what George was going to remind me to do. Any
15 other items?

16 (No response)

17 CHAIRMAN MILES: Very efficient meeting
18 today. Thank you all for being on the telephone.
19 I appreciate everybody being able to reschedule,
20 and we'll look forward to the June meeting.
21 Motion to adjourn?

22 DR. BYRON: So moved.

23 CHAIRMAN MILES: Meeting is adjourned.

24 (The proceedings were concluded

25 at 1:05 p.m.)

C E R T I F I C A T E

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

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

That the proceedings were taken before me at
the time and place herein named; that the
proceedings were reported by me in shorthand and
transcribed using computer-aided transcription,
and that the foregoing - 50 - pages contain a true
record of the proceedings to the best of my
ability.

IN WITNESS WHEREOF, I have hereunto set my
hand and affixed my notarial seal
this _____ day of _____, 2016.

LAURIE CRUTCHER, RPR
Court Reporter - Notary Public
My commission expires
March 9, 2020.

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