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1 WHEREUPON, the followings proceedings were had:

2 CHAIRMAN RUSSELL: It's a little after 9, and
3 I'll call this Board of Environmental Review meeting to
4 order.

5 The first thing on the agenda is the review and
6 approval of the March 29, 2007 regularly scheduled board
7 meeting held via teleconference.

8 MS. SHROPSHIRE: I move that we approve of the
9 minutes.

10 CHAIRMAN RUSSELL: It's been moved by Robin. Is
11 there a second?

12 MR. MIERS: Second.

13 CHAIRMAN RUSSELL: It's been seconded by Larry.
14 All those in favor signify by saying "aye."

15 (Vote.)

16 CHAIRMAN RUSSELL: Opposed.

17 (No response.)

18 CHAIRMAN RUSSELL: Okay, moving on, we have the
19 briefing items, contested cases assigned to Hearings
20 Officer Katherine Orr.

21 MS. ORR: Good morning, all.

22 Mr. Chairman and members of the Board, you can see
23 before you these items. On the first item, 1a, CR Kendall
24 Corporation, I did receive a status report, and the case
25 was stayed pending the issuance of an EIS. The EIS is

1 going to be done -- This is a post-closure situation, and
2 the company is putting in a treatment system and then an
3 EIS will be completed, and then the case will go forward
4 or not. And the Department projects that the EIS will be
5 completed in 2008. So that's that status.

6 On item 1c -- this is MEIC -- Yes.

7 MR. ROSSBACH: B?

8 MS. ORR: B has been stayed.

9 MR. ROSSBACH: It has been stayed?

10 MS. ORR: Yes. And sort of the replacement case
11 of that is 1c. And Bull Mountain filed a motion to
12 dismiss for mootness, and I ruled on that on May 22nd,
13 saying that the case is not moot. They were arguing that
14 the application for modification makes the case moot, and
15 I ruled that disposition of that application for
16 modification may make it moot, but until that happens, it
17 is not moot. So what is remaining is the challenge by
18 MEIC of the amendment to the permit as opposed to a
19 modification.

20 Most of these others sort of are self-explanatory.
21 Korner Cafe, the parties are still contemplating a
22 settlement. The same with Willow Creek. On the next
23 item, 1g, Thompson River Co-Gen, we had a three-day
24 hearing in May, and I should be -- the parties are going
25 to present proposed findings of fact and conclusions of

1 law on the 29th of June, and I should have a proposed
2 decision for the Board for the September hearing. That's
3 a relatively lengthy and complicated case, so that's when
4 that will happen.

5 The next matter, 1h, the hearing is set in July;
6 1i, the parties are still attempting to negotiate; same
7 with 1j, same with 1k. And then on item 1l, involving
8 Westmoreland, doing business as Western Energy, this is
9 the case that's going to come before the Board in July.
10 And I've checked about the process regarding what happens
11 when the Board is conducting the hearing and have some
12 recommendations, and, you know, they aren't terribly
13 different than I think the way it's gone before.

14 Basically, I will have a prehearing conference and that
15 will explain the burden of proof and the order of the
16 hearing. Then the Board will hear testimony, and if
17 there's an objection proposed by counsel, I would make a
18 recommendation, and then the Board would vote on that.

19 Is that your understanding, Joe?

20 CHAIRMAN RUSSELL: Yeah, that's what we've done
21 in the past.

22 MS. ORR: So then during the hearing, I think
23 what would be the best process would be for the Board to
24 single out for itself the main points for -- for voting,
25 and then the Board would vote on those points. And

1 basically, the issues here are whether the violation
2 occurred and whether the proposed penalty is proper. And
3 I can give you some sites right now, if you want to kind
4 of look at those in the interim. And then my
5 understanding is the Board would vote on those, and then I
6 would write proposed findings of fact, conclusions of law,
7 circulate those, and then in the next board meeting, there
8 would be a vote on that.

9 Is that about right, Joe?

10 CHAIRMAN RUSSELL: Yeah, that's fine.

11 MS. ORR: Okay. Now, I will say that the parties
12 have indicated that they may settle this case, so this may
13 not happen in July, but -- If you want to write down these
14 cites, I think they're good to look at because this is a
15 penalty case: Montana code Annotated 82-4-254(3).

16 MS. SHROPSHIRE: Can you say that again, please?

17 MS. ORR: 82-4-254(3).

18 And now we're going to get into the Administrative
19 Rules of Montana, which are -- these are all on the
20 Internet. The first one is ARM 17.4.303, and the next one
21 is 17.24.751. That has to do with construction of a power
22 line, which is what this case involves, is whether the
23 permit as it applies to the construction of the power line
24 and its impact on raptors was done properly according to
25 the permit. So those are just some sections that you may

1 want to take a look at.

2 And then items lm, n, and o are all in the process of
3 settlement discussions.

4 Cases in litigation, this is still the Flying J
5 Petroleum case. Nothing really has happened on that,
6 except the Department has filed a motion for a scheduling
7 conference with the judge. And as far as I know, the
8 judge hasn't ordered that yet, but that's been hanging
9 around for an awful long time. Who knows what's
10 happening? The judge assumed his post in January of this
11 year and maybe is having trouble getting adjusted and
12 getting a law clerk.

13 The next item is legislation.

14 CHAIRMAN RUSSELL: Tom, did you want to mention
15 anything on that?

16 MR. LIVERS: On legislation?

17 CHAIRMAN RUSSELL: Yeah.

18 MR. LIVERS: Sure. Between John and me, we'll
19 give a quick briefing.

20 You'll recall during Session there were a couple of
21 bills that proposed changes in the makeup of membership in
22 the Board of Environmental Review. Both of those died in
23 committee. I don't think either of them made it out of
24 their respective houses.

25 There were a couple of relatively significant coal bed

1 methane bills. The more far-reaching was House Bill 383,
2 and that would have significantly expanded the allowable
3 discharges for coal bed methane water. That made it out
4 of the House and died in the Senate. Then Senate Bill 407
5 was a little more circumscribed as it was originally
6 written, although in some amendments it was broadened, and
7 we had concerns, as did EPA, with particularly the use of
8 on-channel storage for the discharge. That did pass out
9 of both houses and out of the Legislature and was vetoed
10 by the Governor.

11 A couple of mining bills: Senate Bill 180 was the
12 Department's proposed legislation in the wake of the metal
13 mine rulemaking last year. That did not come out of its
14 original senate committee, and what ended up taking up
15 some of those provisions was House Bill 460, which was
16 primarily initiated by industry with some consultation
17 with the Department. It had many of the provisions that
18 we had originally tried to get into Senate Bill 180. And
19 one of the provisions essentially -- one of the major
20 provisions survived and became law, and that was allowing
21 interim bonding, which was probably, from our perspective,
22 not the only important piece, but the most significant
23 single piece of that legislation; to allow us, under
24 certain criteria, to be able to immediately go to some
25 interim bonding for protection prior to completing some of

1 the analyses.

2 There were a few mercury standard, mercury emissions
3 bills, all of which died. And we had a couple of fee cap
4 increases that would have then been subject to board
5 action. Those both died, as well; one for water quality
6 discharge fees, raising the fee caps there, and one for
7 allowing raising the public water supply fees.

8 Senate Resolution 8 confirmed Joe, Heidi, and Larry,
9 and it did get a few no votes, including some
10 Flathead County legislators.

11 CHAIRMAN RUSSELL: One. And he doesn't vote for
12 anything. Thanks, Tom.

13 MR. LIVERS: Yeah, no problem.

14 And then Senator Cobb's Senate Bill 62 increases
15 payments to advisory board members. It changes the \$25 to
16 \$50 and then tags it to inflation over time.

17 So those are, I guess, general and topic bills, and
18 then John has also some that are relating to the Montana
19 Administrative Procedures Act.

20 MR. NORTH: Mr. Chairman, members of the Board,
21 John North, chief legal counsel for the Department.

22 You'll recall there were a number of administrative
23 procedures bills. Most of them died, and only three that
24 are of any significance at all passed, and I'll just list
25 those briefly. House Bill 70 took out of the

1 Attorney General's Office and put into the Secretary of
2 State's Office the authority to adopt rules and procedure
3 pertaining to rulemaking, left the contested case
4 procedural rules in the Attorney General's Office. But
5 the model rules will now be adopted by the Secretary of
6 State's Office. That sets the form -- one of the things
7 it does is it sets the form for our notices and so forth,
8 so I suspect that given that, we'll see some changes in
9 those rules and some changes in the notice forms, if not
10 requirements, for the next year or so.

11 Senate Bill 71 passed. It provided that the -- it
12 amended the bill sponsor notification requirement.
13 Whenever an agency, including this board, makes its
14 initial rulemaking to implement a statute or an amendment
15 to the statute, we, the DEQ, have to notify the primary
16 sponsor of the bill at the point when we start drafting.
17 There were some problems with that with the Public
18 Employees Retirement Board, and this bill was then passed
19 that says that not only do we have to say that the bill
20 sponsor requirements apply, but we have to say how and
21 when we did the notification, and if we don't do that,
22 then the rulemaking is invalid.

23 And finally, the only other bill that passed is
24 Senate Bill 466, and it pertains to the economic impact
25 statement that the Board has prepared -- two of which the

1 Board has prepared over the last several years. It
2 basically says that in addition to the other requirements,
3 the economic impact statement for our rulemaking has to
4 analyze the secondary economic impacts on small businesses
5 in the area; so not only contractors in the affected
6 industry, but also small businesses.

7 And then I'll only list one bill that didn't pass --
8 that's because it pertained specifically to the Board of
9 Environmental Review -- and that was House Bill 276. That
10 bill provided that if the Board received a rulemaking
11 petition that was substantially similar to legislation
12 that failed in the past legislative session, the Board
13 could not accept the petition. And it gave the ability or
14 the authority to make that determination to the director
15 of DEQ. That bill did not pass.

16 CHAIRMAN RUSSELL: That's a good thing.

17 Oh, did I say that? I'm sorry.

18 All right, thank you, John and Tom.

19 Next item on the agenda is action items, initiation of
20 rulemaking and appointment of hearings officer.

21 MR. LIVERS: Mr. Chairman, actually, there's one
22 more briefing --

23 CHAIRMAN RUSSELL: Oh, that's right.

24 MR. LIVERS: -- however, I think we've got
25 someone --

1 CHAIRMAN RUSSELL: Do you want to hold off on
2 that?

3 MR. LIVERS: We may hold off on that one and
4 swing back.

5 I think we've got somebody from the Forest Service
6 coming?

7 UNIDENTIFIED SPEAKER: I talked to Mary Beth
8 yesterday. She needs to drop off a child at school in
9 Bozeman this morning, so I assume she won't be here until
10 about 10 o'clock, I would guess.

11 CHAIRMAN RUSSELL: We may be done, but --

12 UNIDENTIFIED SPEAKER: But hopefully, she'll
13 arrive in time for that.

14 MR. LIVERS: So we'll hold that toward the end.
15 We may want to hear it before the action on --

16 CHAIRMAN RUSSELL: Just right before D?

17 MR. LIVERS: Yeah, right.

18 CHAIRMAN RUSSELL: Okay. So we will -- as I said
19 before, we're going to move on to the action items,
20 initiation of rulemaking. The first item on the agenda is
21 to amend ARM 17.8.501, 17.8.505, 17.8.514, for the annual
22 adjustment of air quality operation and open burning fees.

23 Mr. Homer.

24 MR. HOMER: Mr. Chairman, members of the Board,
25 for the record, my name is Charles Homer; I'm with the

1 Air Resources Management Bureau. I believe that most of
2 the members of the Board have been through this before.
3 This is our annual adjustment of air quality fees. As
4 opposed to a lot of the Department's fees, air quality
5 fees are adjusted every year by the Board. The fees are
6 based on the legislative appropriation. There are certain
7 adjustments made to that. We have a certain amount of
8 carryover at the end of the year, and we have a certain
9 amount of application fees that are collected, so our
10 target amount doesn't exactly match our appropriation. We
11 come up with that through a series of calculations.

12 In your packet, you received an initial notice. We
13 have provided you today an amended notice. The reason for
14 this change is that due to House Bill 2 being passed in
15 the Special Session, we had not and actually do not have,
16 as of today, the final-final appropriation. So the
17 numbers I'm giving you now probably are the final numbers,
18 but they may change. I doubt that that will change the
19 Department's proposal. If it does, we would do so at the
20 time of hearing if the Board chooses to proceed with
21 rulemaking.

22 Let me quickly go through a couple of other changes
23 that the rule is making to the air fee structure, and then
24 I'll quickly go through the numbers. I don't want to
25 spend a lot of time going over that. If you have

1 questions, I can certainly go into more depth. One thing
2 that this new rule is proposing to do is adjust the
3 minimum fee that a facility will pay on an annual basis.
4 We adjusted that based on the Consumer Price Index change
5 from the last time the fee was established, so it's going
6 from \$470 to \$500. Because the Board established rules
7 last year for the registration of oil and gas well
8 facilities, we have now established an annual fee for
9 those registered oil and gas wells. That is slated to --
10 or proposed to be at \$600 a year, the same as we currently
11 charge for portables.

12 We have changed the date by which we determine if
13 somebody is subject to the fee rule. In the past, we had
14 used January 1st of the year in which the fees are
15 assessed. We're proposing to change that to March 1st.
16 This gives a little additional time for facilities that
17 are no longer operating to get their permit revoked after
18 the first of the year and brings the date a little closer
19 to the actual facilities that will be operating during the
20 time the fees are expended.

21 Those are the main structural changes. Again, as I
22 stated earlier, this is based on the Board establishing a
23 fee level to collect the Department's appropriation. We
24 had an initial number that we had in the initial notice.
25 We've adjusted that, so the current -- our current

1 understanding of the appropriation for air fees for 2008
2 is 3.875 million, an increase of approximately \$878,000.
3 Normally, we would propose a fee amount that, given those
4 adjustments, would collect that appropriation. We have
5 decided that since the amount didn't change significantly,
6 that we are going to leave our fee proposal, our
7 dollar-per-ton fee proposal as it was initially.

8 That will result in a small revenue shortfall; at this
9 point, it's looking somewhere around \$17,000. We expect
10 to make this up through additional vacancy savings. As
11 part of the increased appropriation, we received approval
12 for four additional fee-funded FTE, and the appropriation
13 is based on them being hired as of the beginning of the
14 fiscal year, July 1st. Well, that won't happen. We don't
15 have enough time to get all those positions filled in the
16 next month, so we think that \$17,000 will be made up
17 through those vacancies. So we don't see an additional --
18 any problem from leaving the fee at the proposed level.

19 So what we are proposing is to change the
20 dollar-per-ton fee from the current 22.30 up to 29.96.
21 Now, the reason for this fairly dramatic change in the
22 dollar-per-ton number is, one, the increase in the
23 appropriation of \$800,000. And without getting into too
24 much detail, that had to do with a couple of FTE to deal
25 with oil and gas wells, an FTE for major source

1 permitting, Title V, and an FTE to deal with PSD
2 permitting sources, mainly to deal with tracking increment
3 consumption from major facilities. And then there was a
4 significant increase in our contracted services money to
5 deal with air regulatory issues.

6 The other thing that led to this increase is that
7 there was an approximately 10 percent reduction in
8 emissions in 2006 versus 2005, and so that, in and of
9 itself, even if appropriation remained constant, would
10 create a -- not an increase in the amount collected, but
11 an increase in the dollar-per-ton number. There were
12 several things that influenced that. One is there was
13 some reduction in emissions through emission controls and
14 emission practices in several facilities; some of those
15 were, you know, voluntary, some of those were based on
16 complying with consent decrees. There was a couple of
17 facilities that reduced production in 2006 as compared to
18 2005, and then there were some source tests that were
19 performed that changed the emission factor for facilities,
20 so some were just changes in the way emissions were
21 calculated. But that combined to create about a
22 10 percent reduction.

23 So again, to summarize, we're increasing the base fee
24 from 470 to 500; we're establishing a \$600 flat fee for
25 registered oil and gas facilities, the same as we do for

1 portables; and we are increasing the dollar-per-ton amount
2 from 22.30 to 29.96.

3 In addition, we're also making changes to the fees
4 that we charge to the approximately one dozen major open
5 burners. Those are the major federal land managers --
6 Forest Service, BLM, Park Service -- and major timber
7 companies. There was a small increase in the budget that
8 we assigned to them, a little over \$3,000, and then there
9 was a decrease in emissions from major open burning also,
10 and so that combined to increase their fee rate from
11 16.47 per ton of particulate to 21.07. Because the
12 opening burning can vary quite a bit season to season,
13 those fees change a lot more and tend to go up and down
14 more.

15 Those are the major changes. We are requesting that
16 the Board grant authority to initiate rulemaking. We have
17 a tentative date that we've discussed with the Board's
18 attorney, so if the Board wishes to assign a hearings
19 officer, we are ready to have a hearing right near the
20 beginning of August.

21 CHAIRMAN RUSSELL: Any questions for Chuck?

22 How many new FTEs?

23 MR. HOMER: A total of four fee-funded FTE. Now,
24 there's one additional FTE that was granted, but that
25 would be funded by a grant from BLM.

1 MS. SHROPSHIRE: Any of those internships?

2 MR. LIVERS: Those are all permanent full-time
3 FTE, although we are looking at some internship
4 possibilities.

5 Robin's reference is to House Bill 835, which was
6 considered during Session that would have moved many of
7 the significant permitting functions to Tech in Butte and
8 set up an internship program to perform those functions.
9 We felt that was maybe not fully thought out and overly
10 far-reaching, but we are proceeding with some discussions
11 with Tech to see if there is some subset that might make
12 sense on a pilot basis.

13 I assume three of those four are the oil and gas
14 permitting FTE that you're talking about, Chuck?

15 MR. HOMER: Actually, one -- the fifth one would
16 be oil and gas, BLM, so two of the four fee-funded ones
17 would be oil and gas.

18 MR. LIVERS: So, you know, we think that the oil
19 and gas air emissions registration may be something that
20 lends itself to an intern pilot under DEQ supervision, and
21 we may take some of the resources that would have gone --
22 that would go toward those. You know, we haven't talked
23 about exactly how we're going to manifest the staffing
24 yet, but it does make sense to try, on a pilot basis,
25 doing something with oil and gas registration in Butte.

1 MS. SHROPSHIRE: And maybe this -- I don't know
2 if this pertains, but I would encourage you to talk to the
3 Colleges of Technology also, not just Tech.

4 MR. LIVERS: Yeah. I mean, this is step one.
5 That's not the extent of the discussions we see.

6 (A brief discussion was held off the record.)

7 CHAIRMAN RUSSELL: Thank you.

8 Katherine, you're available?

9 MS. ORR: Yes.

10 CHAIRMAN RUSSELL: And sometime in August. Do we
11 have an actual date?

12 MR. HOMER: I reserved the room for either
13 August 1st or 2nd.

14 CHAIRMAN RUSSELL: And that works for you?

15 MS. ORR: Yes.

16 CHAIRMAN RUSSELL: So I will entertain a motion
17 to appoint -- to actually initiate rulemaking and appoint
18 Katherine the hearings officer, examiner.

19 MR. ROSSBACH: So moved.

20 CHAIRMAN RUSSELL: It's been moved by Bill. Is
21 there a second?

22 MS. SHROPSHIRE: Second.

23 CHAIRMAN RUSSELL: Seconded by Robin. All those
24 in favor signify by saying "aye."

25 (Vote.)

1 CHAIRMAN RUSSELL: Opposed.

2 (No response.)

3 CHAIRMAN RUSSELL: Thank you, Chuck.

4 The next item on the agenda, and I won't read all of
5 these administrative rules, but this is the update on the
6 air quality incorporation by reference rules.

7 Mr. Homer.

8 MR. HOMER: Mr. Chairman, members of the Board,
9 this, again, is an annual exercise we go through. In the
10 clean air rules, we have incorporated many federal rules
11 by reference. Those rules change. Each year, we
12 incorporate the new edition of the Code of Federal
13 Regulations to update our rules. So this just changes the
14 incorporation from the 2005 volume to the 2006.

15 There's a couple other minor administrative changes,
16 updating the Montana Code Annotated references, changing
17 references to EPA regional libraries. There's a lot of
18 changes involved in this, but nothing that's not a change
19 to federal rules, so no real impact on facilities.

20 Again, we're requesting that the Board assign a
21 hearings examiner and schedule a hearing. We can use the
22 other available date, I believe, for this hearing.

23 CHAIRMAN RUSSELL: Okay, great.

24 Any questions for Chuck?

25 (No response.)

1 CHAIRMAN RUSSELL: Seeing none, I will entertain
2 a motion to initiate rulemaking --

3 Katherine, I guess you would be available if either
4 date works for you.

5 MS. ORR: Either date works.

6 CHAIRMAN RUSSELL: -- and appoint Katherine the
7 hearings officer.

8 MS. SHROPSHIRE: I actually do have a question.

9 CHAIRMAN RUSSELL: We'll back up, then -- or, no,
10 we won't. We'll actually --

11 MS. SHROPSHIRE: I'll move.

12 CHAIRMAN RUSSELL: Okay, it's been moved.

13 MS. SHROPSHIRE: Can we discuss it?

14 CHAIRMAN RUSSELL: Is there a second for
15 discussion --

16 MR. MIERS: I'll second it.

17 CHAIRMAN RUSSELL: Seconded for discussion
18 purposes. Larry seconded it. Questions.

19 MS. SHROPSHIRE: There's new language, I think,
20 pertaining to the mercury allocations. Is that new?

21 MR. HOMER: The change is just conforming to the
22 mercury rule that the Board adopted to make sure that the
23 incorporations of the trading portion of the rule are
24 consistent with the current federal rules.

25 MS. SHROPSHIRE: Okay, that was my only question.

1 Thanks.

2 CHAIRMAN RUSSELL: Hence, we strike CAMR, right?

3 MR. HOMER: (Indicating affirmatively.)

4 CHAIRMAN RUSSELL: Anything else, Robin?

5 Oh, yeah. You know, I look out there. Is there
6 anyone in the audience that would like to speak to this
7 before the Board takes action?

8 (No response.)

9 CHAIRMAN RUSSELL: Seeing none -- thank you,
10 Tom -- all those in favor signify by saying "aye."

11 (Vote.)

12 CHAIRMAN RUSSELL: Opposed.

13 (No response.)

14 CHAIRMAN RUSSELL: All right. It's been so long
15 since we met.

16 MR. LIVERS: Out of practice.

17 CHAIRMAN RUSSELL: All right, the next item on
18 the agenda is actually final action on appeals. No. 1 is
19 the matter of violations of the Water Quality Act at Cenex
20 Harvest States fueling facility, Condon, BER 2006-28 WQ.

21 MS. ORR: Mr. Chairman, members of the Board,
22 this is a case involving a discharge from an above-ground
23 storage tank and a request for penalties by the Department
24 of I think \$38,000. And this will settle for that amount,
25 and the appropriate remedial action has been incorporated

1 into the administrative order on consent.

2 CHAIRMAN RUSSELL: Okay. Before we take action,
3 does anyone know of this case in the audience? Is this
4 the underground above-ground tank that was put in the --
5 When the rules first came about, there was this -- they
6 were putting these tanks in these open vaults. Do you
7 remember some of these you'd see around the state? And I
8 was wondering if this was one of those. I know there's
9 one in Condon, but...

10 John, you don't know?

11 Well, I might just inquire after this is all done on
12 this one, because I know there was a lot of issues around
13 that, were they above-ground or were they below-ground
14 tanks. I think Seeley, there's one in Seeley like this
15 also.

16 MR. MIERS: They're in a vault?

17 CHAIRMAN RUSSELL: Well, they're like in a
18 basement. They poured a foundation and then they stuck
19 these underground tanks in there. They didn't actually
20 cover them. It was an issue years ago while I was
21 actually doing some of that stuff.

22 Sorry to take up your time, Katherine.

23 MS. ORR: The writeup doesn't imply that, but you
24 may want to ask.

25 CHAIRMAN RUSSELL: I'll ask at some point.

1 Okay, so I do have an order for dismissal in front of
2 me, and I will entertain a motion for authorization for
3 the board chair to sign the dismissal with prejudice.

4 MR. MARBLE: I so move.

5 CHAIRMAN RUSSELL: It's been moved by Don. Is
6 there a second?

7 MR. ROSSBACH: Second.

8 CHAIRMAN RUSSELL: Seconded by Bill. Any further
9 discussion?

10 (No response.)

11 CHAIRMAN RUSSELL: All those in favor signify by
12 saying "aye."

13 (Vote.)

14 CHAIRMAN RUSSELL: Opposed.

15 (No response.)

16 CHAIRMAN RUSSELL: Okay, the next item is the
17 matter of appeal by Dan Fuchs, Broken 7 Subdivision,
18 regarding Gallatin City-County Health Department's denial
19 of a request to change the provisions of the original
20 certificate of subdivision plat approval, BER 2006-22 SUB.

21 MS. ORR: Mr. Chairman, members of the Board,
22 this was settled by an agreement between Mr. Fuchs and
23 Gallatin County, and I believe that's in your packet. And
24 it, I guess, comes down to Mr. Fuchs agreeing to install a
25 24-inch culvert as opposed to a 12-inch culvert for his

1 subdivision, and you have an order of dismissal.

2 CHAIRMAN RUSSELL: I do have an order, and I will
3 entertain a motion to authorize the board chair to sign
4 this order of dismissal with prejudice.

5 MR. MIERS: So moved.

6 CHAIRMAN RUSSELL: It's been moved by Larry. Is
7 there a second?

8 MS. KAISER: I'll second.

9 CHAIRMAN RUSSELL: Thanks, Heidi. Didn't know
10 you were still there.

11 Heidi seconded. Any further discussion?

12 MR. MARBLE: Question.

13 CHAIRMAN RUSSELL: Question.

14 MR. MARBLE: We have in our folder a joint
15 stipulation. Is that for this?

16 MS. ORR: Yes, that's the one.

17 MR. MARBLE: It says in there that the subdivider
18 is supposed to install this 24-inch culvert prior to
19 May 1st, 2007, and I wonder, has that been done?

20 MS. ORR: I don't know.

21 MR. MARBLE: So I guess what I'm wondering if --

22 CHAIRMAN RUSSELL: Jon is here.

23 MR. DILLIARD: Mr. Chairman, members of the
24 Board, I'm Jon Dilliard with the Public Water and
25 Subdivisions Bureau.

1 Mr. Marble, the construction was completed on that.
2 However, with recent flooding, they had a failure of that
3 pipeline, and I believe they're in the process now of
4 repairing that and upgrading some of the construction.

5 CHAIRMAN RUSSELL: Maybe they needed a bigger
6 culvert than the 24.

7 MR. MARBLE: I guess that includes taking out the
8 existing 12-inch?

9 MR. DILLIARD: Mr. Chairman, Mr. Marble, yes,
10 they did remove the 12-inch pipe, they put in the 24-inch,
11 and I believe they reinforced some of the road crossings.

12 MR. MARBLE: Thank you.

13 CHAIRMAN RUSSELL: All right, the next item on
14 the agenda -- Wait, we haven't voted yet.

15 All those in favor signify by saying "aye."

16 (Vote.)

17 CHAIRMAN RUSSELL: Opposed.

18 (No response.)

19 CHAIRMAN RUSSELL: Okay, the next item on the
20 agenda is the matter of violations to the Montana Strip
21 and Underground Mine Reclamation Act by BMP Investments at
22 the Bull Mountain Mine #1, BER 2006-24 SM. Do I have
23 information on that?

24 Do you have it?

25 MS. SHROPSHIRE: I just have a couple of pages.

1 CHAIRMAN RUSSELL: I must have put something out
2 of order here.

3 Katherine.

4 MS. ORR: Mr. Chairman, members of the Board, you
5 should have a stipulation to dismiss, and this involves
6 Bull Mountain apparently putting in a ground water well in
7 the wrong formation. It put it in the Fort Union
8 Formation instead of the Madison Formation. The
9 originally requested penalty was 37,381, and the case is
10 being settled for 12,500. I guess the company asked for a
11 transition time to move to the Madison Formation, and
12 so that's what basically this penalty corresponds to, if
13 I'm understanding the case correctly.

14 CHAIRMAN RUSSELL: All right, thank you.

15 I will entertain a motion to authorize the board chair
16 to sign this order of dismissal with prejudice. Is there
17 a motion?

18 MR. MARBLE: I'll move.

19 CHAIRMAN RUSSELL: It's been moved by Don. Is
20 there a second?

21 MR. MIERS: I'll second it.

22 CHAIRMAN RUSSELL: It's been seconded by Larry.
23 Any questions before we --

24 MR. MARBLE: I guess, Katherine, I wonder if --
25 The movement to the proper zone, is that part of this?

1 MS. ORR: Is the what?

2 MR. MARBLE: The movement of the -- they're
3 taking it out of the wrong zone?

4 MS. ORR: Right.

5 MR. MARBLE: Are they moving it to -- or changing
6 their operation to take it out of the correct zone?

7 MS. ORR: I think what they're doing is they're
8 now putting their well into the correct formation, which
9 is the Madison Formation.

10 MS. SHROPSHIRE: I'm assuming which is deeper.

11 MR. MARBLE: So the problem is solved.

12 MS. ORR: Apparently. If there's someone from
13 the Department who could tell you that for certain...

14 MR. LIVERS: We'll find out. My understanding is
15 it's not completed, but that's the direction they're
16 taking, but John is going to check on that.

17 MS. SHROPSHIRE: I had a question, also, just in
18 terms of why it went from 37,000 to 12,500, how that was
19 negotiated.

20 MS. ORR: And I don't have that information. I
21 think you should hear from the Department.

22 CHAIRMAN RUSSELL: We can double-back if you
23 don't want to take action on this -- I'm guessing that if
24 they're going to resolve this, then here's no harm and
25 they're able to reduce their penalty based on their new

1 penalty schedule, and that's how it works. So if you want
2 to take action, we can, and we can just be briefed on it
3 later, or we can hold off.

4 MR. MARBLE: I'd like to see us hold off, because
5 they're going to get some other information for us, too.

6 CHAIRMAN RUSSELL: So we'll table this, and when
7 we do see someone in here, I'll ask for someone to -- or I
8 guess I need a motion to table it first.

9 MR. ROSSBACH: So moved.

10 CHAIRMAN RUSSELL: It's been moved to table. Is
11 there a second?

12 MR. MIERS: I'll second that.

13 CHAIRMAN RUSSELL: All right. All those in
14 favor.

15 (Vote.)

16 CHAIRMAN RUSSELL: All right, it's tabled. I'll
17 take a motion to take it off the table when the Department
18 has the right people here.

19 The next item on the agenda is the new contested cases
20 on appeal. The first one is the matter of the request for
21 hearing by John Pendleton.

22 MR. LIVERS: Mr. Chairman, we've got the right
23 folks from the Department if you want to go ahead and act
24 on that item now. It's up to you.

25 CHAIRMAN RUSSELL: I'll take a motion to take it

1 off the table.

2 MR. ROSSBACH: So moved.

3 MR. MARBLE: Second it.

4 CHAIRMAN RUSSELL: Okay, it's off the table --
5 seconded. All those in favor.

6 (Vote.)

7 MR. LIVERS: Mr. Chairman, we've got Jane Amdahl
8 here, and I think there were two questions on the table.
9 One is the status of the --

10 CHAIRMAN RUSSELL: No, it's off the table.

11 MR. LIVERS: -- status of the well in the
12 Madison Formation --

13 It's off the table, Mr. Chair, thank you.

14 -- and the other is I guess just some background on
15 the reduction in the settlement amount.

16 CHAIRMAN RUSSELL: All right. Jane.

17 MS. AMDAHL: Mr. Chairman, members of the Board,
18 I'm Jane Amdahl, attorney with DEQ. I was involved in the
19 settlement negotiations and preparation in that matter
20 that's under discussion.

21 First of all, yes, they did complete the well into the
22 Madison Formation. That was done several months -- a
23 number of months ago, quite some time ago, and so that's
24 not really an issue for DEQ anymore.

25 The other, as to why the penalty was reduced in the

1 settlement negotiations, largely, it was a matter of
2 adjusting the penalty to meet circumstances that we hadn't
3 really taken into consideration. Part of it was because
4 Mr. DeMichiei, who is the new owner, manager, whatever, of
5 the company, had said that when he took over, one of the
6 first things he said was, oh, my gosh, look at this, we
7 need to get that well taken care of now. They did start
8 working on it before we penalized them, but they had
9 problems. Apparently, a pump they'd ordered wasn't
10 working properly; that caused a lot of the delay in
11 getting the appropriate well put in. But he explained how
12 they were trying hard to get it corrected, and so we
13 decided to take into consideration the fact that they had
14 been working to correct the problem before we issued the
15 penalty. So it was decided that that would be a more
16 appropriate penalty.

17 I hope that explains it. If you have questions...

18 CHAIRMAN RUSSELL: Any questions for Jane?

19 (No response.)

20 CHAIRMAN RUSSELL: All right, thank you very
21 much. Thanks for rushing down here, too -- or over here.

22 With all that, I'll entertain a motion to authorize
23 the board chair to dismiss -- sign this dismissal with
24 prejudice.

25 MS. SHROPSHIRE: So moved.

1 CHAIRMAN RUSSELL: It's been moved by Robin. Is
2 there a second?

3 MR. MARBLE: Second.

4 CHAIRMAN RUSSELL: It's been seconded by Don.
5 All those in favor signify by saying "aye."

6 (Vote.)

7 CHAIRMAN RUSSELL: Opposed.

8 (No response.)

9 CHAIRMAN RUSSELL: All right, thanks.

10 The next item is the matter of request for hearing by
11 John Pendleton regarding the alleged violations of the
12 Montana public water supply laws at the Ponderosa Mobile
13 Home Court in Corvallis. There's probably a Ponderosa
14 Mobile Home Court in every community, isn't there?

15 All right. There is in our packet the notice of
16 violation. Apparently, this guy drilled a well without
17 approval. We need to appoint Katherine the permanent
18 hearings examiner, if you so are willing, Katherine.

19 MS. ORR: Oh, yes, that fine.

20 CHAIRMAN RUSSELL: That's great.

21 I don't think we need to do anymore on this but to do
22 that. Is there a motion to appoint Katherine the
23 permanent hearings examiner?

24 MR. MARBLE: I move.

25 CHAIRMAN RUSSELL: It's been moved by Don. Is

1 there a second?

2 MS. SHROPSHIRE: Second.

3 CHAIRMAN RUSSELL: It's been seconded by Robin.

4 All those in favor signify by saying "aye."

5 (Vote.)

6 CHAIRMAN RUSSELL: Opposed.

7 (No response.)

8 CHAIRMAN RUSSELL: The next item is the matter of
9 appeal by the Town of Superior, BER 2007-05 WQ, regarding
10 the MPDES permit, MT0020664.

11 Bill.

12 MR. ROSSBACH: Is someone here from the
13 Department to talk about this, our response to their
14 comments? Is there somebody here?

15 MR. LIVERS: Mr. Chairman, Mr. Rossbach, Tom Reid
16 is here and can speak to this.

17 MR. ROSSBACH: Good.

18 I guess, Tom, maybe this is my own personal thing, but
19 I'm kind of interested in the questions that are -- sort
20 of the bigger picture of the questions that are raised by
21 the Town of Superior's comments and your response in terms
22 of, you know, cost of monitoring, cost-benefits of
23 monitoring, the technology available to do this kind of
24 monitoring. And I'm not saying I necessarily want to hear
25 this, but I'm kind of interested in being educated about

1 these water quality issues. I'm deeply concerned about
2 public sanitary facilities discharging into my Clark Fork
3 River, among other things, but just in general, I'm really
4 interested in water treatment plants and monitoring water
5 treatment plants, and I kind of am thinking this may be --
6 because it's a relatively small one, that the issues may
7 be one that we want to hear ourselves.

8 But I'd like you to give me some background on sort of
9 the general principles involved here, cost-benefit
10 analysis for these treatment monitoring programs.

11 MR. REID: Mr. Chairman, Mr. Rossbach --

12 MR. ROSSBACH: Maybe I'm confusing you, but go
13 ahead.

14 MR. REID: There are a lot of issues there.

15 MR. ROSSBACH: Yes.

16 MR. REID: In this particular circumstance, a
17 permit was issued -- Let me give you a little bit of
18 background. Most of the permits that we've issued --
19 We've been delegated, the State, under the federal
20 Clean Water Act since 1974. Most of the permits between
21 1974 and 2000, 2002, somewhere in that period, contained
22 only what we call technology-based limits. They were
23 limits that met the design so that for publically owned
24 treatment works, the facility was required to meet
25 national secondary standards for treatment of sewage.

1 They did not address water quality-based issues at all,
2 such as pathogens, nutrients, sediment, all those issues
3 that are now very popular and the public has expressed a
4 concern with. So since that period, as we reissue
5 permits, we're looking at water quality-based concerns.

6 Now, in this particular permit, the issues that were
7 raised during the public comment period by the
8 municipality primarily related to the level of sampling
9 that was required. One of the things we did in this
10 permit was we did not allow a mixing zone for pathogens in
11 the river so that they will have to -- And we gave them a
12 plan schedule, several years, to put in disinfection at
13 the facility, and so they will now have to sample -- I
14 don't know if they have sampling requirements. We've
15 issued so many permits that I might be getting -- But they
16 all fall into a similar pattern, as you identified. So
17 they will have to sample -- Perhaps they had to sample
18 monthly for pathogens; now, they'll have to sample on a
19 weekly basis, because they will have a numeric effluent
20 limit in their permit for pathogens.

21 The same goes with BOD and TSS. Those parameters --
22 those parameters we use, and EPA, to -- We monitor both
23 the influent and the effluent, and those parameters are
24 indicator parameters to measure the amount of treatment
25 that goes on in that lagoon. This system is a lagoon. I

1 think it's a three-cell-area lagoon. Again, I can get
2 those details, but I don't have those with me on the
3 treatment system. They used to sample once a month.
4 That is not adequate, I can tell you that. So we have now
5 required them to sample weekly. That's consistent with
6 other states in the region. For a lagoon, that's
7 adequate. We've went from a grab sample to a composite
8 sample. These are all things that I consider
9 state-of-the-art or, you know, minimum requirements.

10 We also imposed some monitoring requirements in this
11 particular permit. Because the Clark Fork River is listed
12 on the State's 303(d) list as impaired for certain metals,
13 they have to do some screens for I think three or four
14 metals. Copper, lead, and cadmium, I think are the three
15 parameters.

16 The other major issue on appeal here is, they do
17 exceed the ammonia standard in the discharge. That's
18 going to happen in a lagoon. They have a mixing zone for
19 ammonia. It doesn't have an overall effect on the
20 integrity of the water body, so we did grant them a mixing
21 zone for chronic ammonia. We were concerned about acute
22 toxicity issues with ammonia, wet tests, so they will be
23 required to perform a wet test, which is a whole effluent
24 toxicity test. In addition, they will have to define the
25 extent of that mixing zone for chronic toxicity.

1 CHAIRMAN RUSSELL: Actually, it says you're going
2 to remove the wet requirement.

3 MR. REID: Okay.

4 MS. SHROPSHIRE: For metals also.

5 MR. REID: We did, in response to comments, then,
6 look at that, you know, the -- Because they are sampling
7 for the parameters that have been identified as acute
8 toxicity, contributing to acute toxicity, ammonia, and
9 they are doing the mixing zone, in response to the --
10 Their main comment was the cost of all this, so we were
11 sensitive to that, being a relatively small community, and
12 we did reduce -- we went back and looked at the permit and
13 we did reduce some of the monitoring requirements. And
14 I'm sorry, I apologize, I didn't -- In some cases, these
15 are all site-specific decisions, and this one, I guess, we
16 reduced the wet test. A wet test is about \$1,000 per
17 sample.

18 CHAIRMAN RUSSELL: But then they wanted to not
19 have to do a mixing zone study either.

20 MR. REID: Right.

21 CHAIRMAN RUSSELL: You know, Bill, the thing
22 that's going on is that a lot of these municipalities seem
23 to be challenging this. Two things come to mind: They
24 challenged us on the storm water stuff because they're
25 just sick and tired of being regulated, or is this just --

1 are they all in this cycle of getting their MPDES permits
2 renewed, or are they doing something that's prompting the
3 permits to be renewed?

4 MR. REID: Mr. Chairman, members of the Board,
5 the permits are renewed every five years, and so as I kind
6 of indicated earlier, we are now putting in water
7 quality-based limits and increasing the sample frequency,
8 so there is a lot of push-back on the communities. And I
9 think we'll be regular visitors up here. That hasn't been
10 true in the past. The issues with Lolo, which is on
11 appeal, same issues; nutrient standards, having to provide
12 additional treatment. Bozeman, Butte both are nutrient
13 issues, water quality-based limits in their permits.

14 So we do look at -- We reduced some of the sampling
15 requirements, but they are still required to do the mixing
16 zone study and hand-sampling. So I think that will be a
17 common theme.

18 And we are trying to educate -- going to -- I was just
19 up in Polson last week talking to the Northwest
20 Sanitarians about ground water permits. But we're trying
21 to get out in the community and educate the operators
22 about this, working with the consultants who the
23 municipalities rely on quite heavily for guidance. But
24 basically, we have been -- we are increasing the sample
25 frequency to bring it I guess up to speed, up to current

1 standards, and that is an economic hardship on smaller
2 communities.

3 CHAIRMAN RUSSELL: Well, they have a tremendous
4 mixing zone, 3300 feet.

5 MR. REID: It's typical of -- Mr. Chairman,
6 members of the Board, the mixing zone was incorporated in
7 the previous permit. The rules say that that -- we can't,
8 we don't have the option to change those mixing zones
9 unless we can demonstrate impairment of use. Most of
10 these facilities were designed with a bank discharge, a
11 discharge pipe that comes down the side of the stream;
12 it's an incomplete mix, there's no effluent diffuser, and
13 they just hug the bank for a long distance. So we hope to
14 address that issue in the next permit renewal and shorten
15 that up. But we can't do that unless we have the
16 information. We can't send people out to every site and
17 do those mixing zone studies for them.

18 CHAIRMAN RUSSELL: Bill.

19 MR. ROSSBACH: Just a general -- Because I see
20 that the nature of their, at least the text of their
21 appeal is that the monitoring requirements are not
22 scientifically justified. So can you -- I guess from what
23 I'm hearing from you, you feel pretty confident that they
24 are scientifically justified --

25 MR. REID: Yes.

1 MR. ROSSBACH: -- technologically and
2 scientifically justified.

3 MR. REID: Mr. Chairman, Mr. Rossbach. I believe
4 they are, and some of that goes back to the way the
5 effluent limits are written in the permit, and basically,
6 those effluent limits are based on federal criteria. We
7 express the effluent limits in terms of a monthly average
8 and a seven-day average, and if you're taking one sample a
9 month, it's really hard to determine an average.

10 MR. ROSSBACH: Yeah.

11 MR. REID: And so I'm not sure where they're -- I
12 haven't seen or reviewed any of their criticism of that,
13 but we believe that it is based on federal guidance. The
14 size of the facility, we do consider facilities less than
15 a tenth of an MGD, between a tenth and 1 MGD, and over
16 1 MGD, million gallons per day. You know, the City of
17 Missoula samples every day for these same parameters,
18 whereas Superior, because it's a lagoon, the detention
19 time in the lagoon is supposed to be 180 days. We take
20 all those factors into consideration before we set those
21 limits. But we still have to have a minimum number of
22 samples to calculate a monthly average.

23 So, yes, we believe -- to answer your question, we
24 believe what we put in the permit is accurate.

25 MS. SHROPSHIRE: I have a quick question.

1 CHAIRMAN RUSSELL: Robin.

2 MS. SHROPSHIRE: I'm just going to read their
3 comment and then the response, and it relates to the
4 Clark Fork impairment with metals, also. But the comment
5 is: "Why should the Town be required to sample, analyze,
6 and report these metals when there is no evidence to
7 suggest that the impairment results from Superior's
8 discharge," et cetera. And the Department responds: "The
9 Department will remove the monitoring for total
10 recoverable metals from the draft permit due to the lack
11 of industrial contributors to the wastewater treatment
12 facility."

13 I guess my question is, have they been measuring for
14 metals? Have they been sampling for metals and analyzing
15 them; do you know?

16 MR. REID: Mr. Chairman, Robin Shropshire, I
17 believe -- well, as I said earlier, every facility is
18 supposed to renew the application -- The permit expires
19 every five years, and 180 days prior to the expiration,
20 they are supposed to submit an application. In that
21 application, they are supposed to provide that
22 information. We haven't been getting that information
23 because it hasn't been the practice in the past to collect
24 that information, but the rules support that.

25 So we feel that the correct place to obtain that

1 information is to, in the next permit cycle, require that
2 information through the completeness process. And so
3 that, again, is the way the rules are set up to obtain
4 that type of information. Based on that information, then
5 we set the limits in the permit accordingly and the
6 monitoring requirements.

7 MS. SHROPSHIRE: I guess my -- You know, if it's
8 expensive to analyze for things that aren't in their
9 effluent, I can understand that argument. Because the
10 Clark Fork has higher concentrations of metals, it seems
11 to me that that would be one thing that -- and I don't
12 know if it's fair to make them demonstrate, you know,
13 quantitatively that they aren't contributing. So maybe
14 it's a bigger question we can address another time, but I
15 guess I'm not convinced that they don't have metals. Are
16 you convinced that they don't have metals?

17 MR. REID: Mr. Chairman, Ms. Shropshire, part of
18 that, it's site-specific case, as I said earlier. The
19 dilution ratio for the Town of Superior is about 3,000 to
20 1 in the Clark Fork River, so basically, there's very
21 little they could discharge that would affect the river,
22 unless they were actually putting those metals in from a
23 manufacturing plant. Those metals, lead, cadmium, and
24 copper, are typically found if there are industrial
25 sources that are contributing into the wastewater. So in

1 the absence -- I think in the response to comments that
2 you read, our response was in the absence of those
3 industrial sources, we did not -- we removed those metal
4 requirements, sampling requirements, and the fact that it
5 was a 3,000 or so dilution ratio.

6 The same would not apply to the City of Missoula or
7 Butte or Bozeman or Kalispell. All those cities have
8 what's called pretreatment programs, and we look at metals
9 coming into the wastewater treatment plant even before it
10 goes through treatment, and they are on quarterly
11 sampling, as well as the sludge that comes out of the
12 wastewater treatment plant.

13 MS. SHROPSHIRE: Thank you.

14 CHAIRMAN RUSSELL: Anything else?

15 (No response.)

16 CHAIRMAN RUSSELL: Thanks, Tom. Appreciate it.

17 MR. ROSSBACH: One more question. Tom, I'm
18 sorry.

19 We're talking about a cycle of this. How many of
20 these appeals have we dealt with or have you dealt with?
21 How often do these permits come up, and then how often
22 have they been appealed? Who else has been appealing
23 these, or is this the first major one?

24 MR. REID: Mr. Chairman, Mr. Rossbach, I believe
25 there are -- you were counting them up -- maybe four or

1 five right now that are in front of the Board. This is
2 the new one.

3 MR. ROSSBACH: Right.

4 MR. REID: Butte --

5 MR. ROSSBACH: The one that has all five
6 together, isn't that the one that's all of the various --

7 CHAIRMAN RUSSELL: That's storm water.

8 MR. ROSSBACH: That's storm water.

9 CHAIRMAN RUSSELL: Right, that's storm water.
10 That's the big seven that are challenging the SP -- I
11 forget what --

12 MR. REID: MS4.

13 CHAIRMAN RUSSELL: MS4.

14 MR. ROSSBACH: Katherine, are you doing all of
15 those? Who is doing all of those appeals?

16 MS. ORR: I don't have very many MPDES permits.
17 I've got the City of Bozeman, Butte-Silver Bow, Missoula.

18 MR. ROSSBACH: I don't want to pick on
19 Mineral County, but I think we should take a couple of
20 these up to hear them ourselves.

21 CHAIRMAN RUSSELL: Or maybe there's another, a
22 hybrid -- There's this ongoing issue, and I think it ties
23 back into TMDL and some other things that are coming up,
24 that TMDL may be modifying some permits at some point. I
25 know that they've talked to the Department about their

1 fear of what TMDL is going to do to a lot of these plants.
2 I don't know if there's something the Department could put
3 together for us that might kind of show the threading or
4 the interrelationship between some of this that may be
5 happening that isn't happening yet. I don't know, think
6 about that. Or we hear one, but --

7 MR. ROSSBACH: Yeah, I don't know.

8 The other thing that I was thinking about, Superior or
9 Mineral County, are they signatories to the VNRP?

10 MR. REID: Mr. Chairman, Mr. Rossbach, no.
11 Mineral County/Superior are not signatories. The only
12 signatories to the VNRP are Stone Container, City of
13 Missoula, Butte, and --

14 MR. ROSSBACH: Missoula City-County.

15 MR. REID: Well, not the Lolo -- The appeal
16 before you is the Lolo wastewater treatment plant, which
17 is operated by Missoula County. The City of Missoula is a
18 signatory, as well as the City of Butte and the City of
19 Bozeman.

20 MR. ROSSBACH: Well, except the Missoula
21 City-County Health Department is a signatory. I don't
22 know whether the treatment plant is, but I know the
23 Health Department has been a signatory.

24 MR. REID: Mr. Chairman, Mr. Rossbach, yes,
25 you're correct. The County is a signatory, the

1 Health Department, because of the ground water issues in
2 the Missoula aquifer.

3 MR. ROSSBACH: Right.

4 MR. REID: But we still have an appeal from Lolo,
5 and that facility is owned and operated by the County.

6 CHAIRMAN RUSSELL: Well, maybe that's a good
7 thing, Tom, to think about.

8 MR. LIVERS: Mr. Chairman, offhand a couple ways.
9 I mean, we could certainly consider some briefing
10 preparation on, you know, the relationship of pending TMDL
11 to the permits. There's probably an argument to be made
12 for hearing a sample case if, indeed, more of these are
13 coming. It just gives the Board a little more familiarity
14 in making its ultimate determination on these. So I think
15 there's some merit to that suggestion, too.

16 CHAIRMAN RUSSELL: And I wouldn't want to pick on
17 Superior. I'd like to see a Butte or a Gallatin, Bozeman
18 show up.

19 MR. ROSSBACH: But we're too late on Bozeman.

20 CHAIRMAN RUSSELL: Well, I wonder if there will
21 be others popping up pretty soon.

22 MR. REID: Mr. Chairman --

23 CHAIRMAN RUSSELL: We can do Superior, but, I
24 mean, I look at some of their arguments and go, well, a
25 lot of these things are going to --

1 MR. ROSSBACH: They're going to be the same
2 thing, that's what I'm saying.

3 CHAIRMAN RUSSELL: Well, some of these arguments
4 are --

5 MR. ROSSBACH: Maybe not.

6 MS. SHROPSHIRE: I mean, they're all different.

7 CHAIRMAN RUSSELL: You know, we really probably
8 should speak more in order for our court reporter.

9 But, you know, Bill, if you want to do that, that's
10 fine by me, too.

11 MR. ROSSBACH: Well, I'm not sure. I'm just
12 questioning. I guess the issue is the same as you have.
13 I'd like to do one of these, I'd like to become more
14 informed, I'd like to see about establishing a board-based
15 consensus policy for the Department, but is this the case
16 to do it? I'm not sure, and I guess I don't know the
17 answer to that. And maybe if somebody who has a little
18 more background on the status of other MPDESSs, who might
19 be appealing them and what's coming down the road, it
20 would be interesting.

21 MR. REID: Mr. Chairman, I would offer, on behalf
22 of the permits program, that we could certainly put
23 together a presentation, and I think we could summarize in
24 a generic sense what these issues are in all these
25 permits, if that would be beneficial.

1 CHAIRMAN RUSSELL: Well, and why don't we just
2 hold off on appointing -- Let's just let this one ride
3 until the next meeting, and we can take up action then,
4 and we'll just leave Katherine the interim --

5 MR. ROSSBACH: Temporary interim.

6 CHAIRMAN RUSSELL: Is that all right with you?

7 MS. ORR: Oh, absolutely.

8 CHAIRMAN RUSSELL: And no offense intended, but
9 then we won't have to backtrack.

10 MR. LIVERS: Mr. Chairman, and in addition to the
11 summary presentation Tom is talking about, maybe we can
12 internally take a look at some of these cases and others
13 that we're aware of coming up and see if one might be
14 particularly representative and a good candidate for the
15 Board to hear itself and have that ready for the July
16 meeting.

17 CHAIRMAN RUSSELL: Larry.

18 MR. MIERS: Are these decisions unilaterally
19 across the state? I mean, in other words, the rules that
20 apply to Superior for discharge are the same as they are
21 in eastern Montana? Is there any consideration for
22 differences of the area of the state?

23 MR. REID: Mr. Chairman, Mr. Mires, the MPDES
24 rules are uniform. A lot of the issues that are
25 developing are a result of -- As I said earlier, we have

1 technology-based limits. Those are uniform. A wastewater
2 treatment plant in the Clark Fork is going to be subject
3 to the same technology-based requirements as the Billings
4 wastewater treatment plant or Glendive, wherever. We do
5 have -- It's when we get to the water quality standards --

6 MR. MIERS: That's my question.

7 MR. REID: Those are site-specific. The water
8 quality standards are adopted on a basin-by-basin
9 approach, and so we have water quality standards that
10 range from A-1 Closed down to -- well, I shouldn't say --
11 down to I Classification, the Upper Clark Fork, A, B, C,
12 so we'd have to reflect those water quality standards.
13 The main thing is, just having water quality-based
14 effluent limits in the permits are a new -- something new
15 to the dischargers.

16 Right now, none of these are TMDL based. They are all
17 just water quality-based based on near-field effects,
18 which are toxicity in the mixing zone, pathogens. Those
19 aren't related to TMDLs. The Butte appeal is related to
20 the TMDL. This is the first one.

21 CHAIRMAN RUSSELL: Well, thank you. And I guess
22 we won't take any action on this one, we'll just let it
23 ride.

24 Why don't we take a break. Are we going to backtrack
25 or are we going to go into the acquisition?

1 MR. LIVERS: Mr. Chairman, I think we are ready
2 to go back to the briefing. That makes some sense to do
3 that prior to moving into the acquisition. A break would
4 be great, we've got a PowerPoint.

5 CHAIRMAN RUSSELL: All right. So we'll just set
6 up for that.

7 (A brief recess was taken.)

8 CHAIRMAN RUSSELL: All right, we're back in
9 session, and I'm over here so I can see the PowerPoint.

10 MR. KOERTH: Chairman Russell, members of the
11 Board of Environmental Review, my name is John Koerth; I'm
12 with the Department's Remediation Division. Specifically,
13 I'm the program supervisor for the Abandoned Mine Section.
14 You won't typically see us up here before the Board of
15 Environmental Review. We don't write rules, we don't
16 issue permits, we don't issue violations. We clean up
17 abandoned mines.

18 And just to clarify a couple things, the spelling of
19 my name is not the same as item 1h. I have no relation to
20 Paul Kurth Mining; a different spelling. Also, I noticed
21 that John left us out of the legislative updates, as long
22 as I'm on the topic of being invisible. So in addition to
23 the other legislative items that you were updated on,
24 Senate Bill 442 passed both houses, I believe one of them
25 unanimously and one with a lot of people in favor of it,

1 signed by the Governor. This bill clarifies the purposes
2 for which abandoned mine reclamation funds can be spent,
3 clarifies the purpose of the abandoned mine funding. And
4 I'll probably talk about how that -- how we work. So
5 because we're not used to coming here, you don't really
6 know what we do, I thought I'd give you a short
7 infomercial first before we get on to the topic at hand.

8 This property purchase is to benefit the abandoned
9 mine reclamation program, and the program has been in
10 existence since 1980. We're not new kids on the block.
11 We've been around for quite a while. We're 100 percent
12 funded with federal funds. And as far as the type of site
13 we're talking about today, the McLaren tailings site,
14 since 1995, we've cleaned up 31 sites of a very similar
15 nature involving mine, mill, and smelter wastes.

16 I don't know if we can kill some of the lights, this
17 would certainly show a little better. I don't know if
18 anyone has ever been to the ghost town of Comet. This is
19 High Ore Creek down in Jefferson County. Anyway, this is
20 what it looked like a few years ago, then those fine folks
21 from the abandoned mine program came, and there were
22 several hundred thousand cubic yards of mine waste cleaned
23 out of that valley. You see that tree line there on the
24 left-hand side? That's how far the waste came up that
25 valley floor. That was tucked into a repository site, and

1 now we see some processes taking place that allow High Ore
2 Creek to start recovering. We were up there last fall,
3 found frogs.

4 Outside of Helena here, there's a site called
5 Spring Hill Tailings. This used to be a place where
6 they'd find a lot of abandoned cars that had been stolen.
7 People would go there for those late-night parties that
8 you don't want your teenager attending. A lot of
9 different things happened out there. The site was a
10 problem for years. That's what it looks like now. It's
11 been acquired by the Prickly Pear Land Trust, and the
12 Prickly Pear Land Trust is in the process of transferring
13 this property back to the United States Forest Service,
14 where it will provide recreational access to public lands
15 that have been previously cut off by these private mining
16 claims.

17 This is just a quick shot of some work that's underway
18 right now. This is one component of a site called the
19 Washington Mine. It's under construction right now down
20 in Jefferson County. We haven't got the seed on it yet,
21 but this was taken just a short time ago.

22 Again, just the purpose to let you know we do believe
23 we know what we're doing, we've had quite a bit of
24 experience in these areas.

25 What we're here to talk about today is the acquisition

1 of a parcel that will allow the reclamation at the
2 McLaren tailings site down in Cooke City. You can look at
3 this aerial photo showing some land boundaries on it. You
4 can see the community of Cooke City, you see the parcel
5 that's outlined in red. The parcel that's outlined in red
6 is addressed in your packet. This is the property that
7 we're looking at acquiring. Most of this property is held
8 by a small Montana corporation that really doesn't have
9 anything except this little piece of contaminated ground.
10 In addition, we're looking at acquiring the triangles
11 shown in purple. These are currently owned by the
12 United States Forest Service. They've been surveyed off
13 and would be transferred, as well. Probably -- well,
14 depending on how things work out, it could either go to
15 the State or to the mining company or the other land
16 holder. And so we're looking at the whole parcel, those
17 two triangles of Forest Service land to be transferred and
18 the other land that's outlined in red. It's a total of
19 about 36 acres.

20 What you see in blue there is Soda Butte Creek, and
21 Soda Butte Creek through there has been channelized.
22 Well, first of all, they filled it full of tailings;
23 starting in the '30s and into the '50s, they filled the
24 creek full of tailings, and as they pushed the tailings
25 into the creek, the creek spread out towards the south.

1 It was a problem site both -- When it was in
2 operation, they used to have the rangers from Yellowstone
3 come up there and investigate how come Soda Butte Creek
4 was chocolate colored and red and white, every other kind
5 of color. And after the site shut down, there had been
6 enough investigations to warrant some kind of work, and in
7 1969, a channel was put -- showing that current alignment
8 for Soda Butte Creek. They dug a channel around the north
9 side of the tailings to route the creek away from the
10 tailings, and some soil cover was put on top of the
11 tailings, but it's not a fix.

12 The site shown with the "R," that's where we're
13 looking at for our repository. Right now, the tailings
14 are 30 feet deep in the former stream channel. We'd like
15 to excavate those tailings and get them out of that stream
16 channel, we'd like to excavate the tailings that are in
17 the floodplain, and we'd like to clean up some additional
18 wastes that are at the former mill site. Well, in order
19 to do that, we need to have a place to put it. We can't
20 just leave it there if we're going to fix this problem.

21 And the problem is that the wastes were placed in
22 ground water and they're saturated, and because they're
23 saturated, ground water percolates through those wastes
24 and discharges to Soda Butte Creek. This is one of the
25 seeps. This is another seep. And this is a fairly

1 prominent seep, but this is only 60 percent of the flow of
2 contaminants as measured by our sampling. The other
3 40 percent occurs in a series of much smaller and more
4 discrete seeps. This one actually comes out of the toe of
5 the tailings impoundment.

6 So this site is eligible for abandoned mine land
7 funds. I mentioned Senate Bill 442 clarifies these
8 purposes, and our purposes are really set in federal law,
9 too. So we have to determine, did the mining take place
10 prior to 1977? If it took place after 1977, we can't use
11 our funds. This site was active from 1934 to 1953; we've
12 met that criteria.

13 The land and water resources have been adversely
14 affected by past mining activities. You saw those seeps
15 coming out of there. It's visual evidence. We have the
16 chemical evidence; we see the poor vegetation. That site
17 really hasn't turned back into a lush wetland since that
18 work was done in the '60s. The discharges exceed aquatic
19 life standards for iron. The Fish, Wildlife & Parks
20 people tell me that the fish avoid that portion of
21 Soda Butte Creek, that they go up Woody Creek. They don't
22 like to go up that part of Soda Butte Creek, and
23 downstream there's a place where they go; they don't go
24 here. There are no bonds or reclamation plans in effect
25 for this. It's not any kind of mining plan. There's no

1 other development plans, and there's no viable responsible
2 party capable of carrying out this work. So those are the
3 boxes we have to check when we're looking at eligibility,
4 and this site is fully eligible for our funds.

5 So purchase is essential to acquire a repository site
6 that's outside the floodplain, and that repository site,
7 it doesn't necessarily look it, but that's 50 feet above
8 the stream level. No repository site, no cleanup.

9 Purchase would be paid with abandoned mine land grant
10 funds received from the Department of Interior, Office of
11 Surface Mining, and the cleanup at the property would be
12 paid with abandoned mine cleanup funds received from the
13 Department of Interior, Office of Surface Mining.

14 I'm going to recommend that you folks think this is
15 important and will pass a resolution directing the
16 purchase of the property, as well as -- the private
17 parcels as well as those parcels that would be transferred
18 from the Forest Service. And if anyone would have
19 questions, I'd be glad to answer them.

20 This picture shows, I think that's Republic Mountain,
21 and you see the tailings there off on the left-hand side
22 down through the sticks.

23 MR. MARBLE: You said that Soda Butte Creek now
24 runs through areas that have been filled in with tailings,
25 or is -- When we do this, we approve this, will that

1 pretty well -- How much will that improve --

2 MR. KOERTH: We will remove all of the waste from
3 the floodplain. We will reestablish a new stream channel.
4 We won't leave it there perched on that side ditch they
5 put in in the '60s. The stream channel through there
6 should be 30 feet lower than it is now. So we will remove
7 all that waste, we will get it out of ground water. We've
8 been investigating the repository site with monitoring
9 ground water in that area. We see no ground water. We
10 put wells in. As I said, that bench is 50 feet above
11 Soda Butte Creek. We put wells 43 feet down; we see no
12 water in them. We've monitored them for the last
13 two years; no water, ever.

14 So we think it's a viable repository site. You know,
15 it isn't going to be easy, it isn't going to be cheap, but
16 that's what we do.

17 MS. KAISER: John, this is Heidi.

18 MR. KOERTH: Hi, Heidi.

19 MS. KAISER: I've got a question for you. You
20 said you went to 43 feet with the wells?

21 MR. KOERTH: Uh-huh.

22 MS. KAISER: Why didn't you go a little deeper --

23 MR. KOERTH: Because we figured at that level, we
24 would have hit the water table which is probably
25 represented by Soda Butte Creek, which we can guess at

1 that. We wanted to see how saturated the area was below
2 where our repository was without actually drilling down
3 into more of a regional water table.

4 MS. KAISER: Okay. I'm just -- I'm guessing the
5 cost of this property is a drop in the bucket compared to
6 the rest of the costs for cleaning up the site.

7 MR. KOERTH: Certainly. The cost estimate we
8 have goes back a few years, you know. I estimate this is
9 over a \$5 million project to clean up.

10 MS. KAISER: I believe that.

11 MR. ROSSBACH: What is the long-term plan, then,
12 for stabilizing the tailings once it's put in this
13 repository? How does that work?

14 MR. KOERTH: The repository would be excavated --
15 I mean, we'd remove the trees from that portion of the
16 site to the extent there's any trees or vegetation, we'd
17 excavate down about 20 feet, we'd grade and compact that
18 area, we'd move the wastes into that area, and then we
19 would install impermeable caps over the top of it and
20 run-on controls.

21 MR. ROSSBACH: And then you restore whatever --

22 MR. KOERTH: And then we'd restore the stream
23 channel and the area where the tailings formerly were.

24 MR. MARBLE: Is this the main remaining problem
25 on Soda Butte Creek?

1 MR. KOERTH: Yes, I believe so. There has been
2 some work undertaken by the Forest Service in this area,
3 and this is really the remaining problem. This is not
4 part of the New World cleanup. The money from the
5 New World cleanup can't be used on this site.

6 MR. MARBLE: But that New World stuff is not
7 coming into Soda Butte?

8 MR. KOERTH: You know, Mary Beth Marks will be
9 talking to you in a little bit here, and you can ask her
10 that question. I believe that we see clean water above --
11 our sampling shows clean water above Soda Butte Creek.
12 You know, there may be some minor issues above that --
13 above the tailings is what I mean, on Soda Butte Creek
14 above the tailings. We sampled all along that reach
15 between the upper part of the tailings and the lower part,
16 and that's where we see the contaminants coming in.

17 MR. MARBLE: So what's the status on the
18 acceptance of liability?

19 MR. KOERTH: There's two things that protect us
20 on the liability angle. The Department has been -- The
21 EPA had former involvement with this site. They want out
22 of it. We're negotiating an agreement to eliminate the
23 liability in relation to RCRA, CERCLA, other federal
24 actions, and also to limit the ability of third parties to
25 sue for contribution protection -- or contribution, as

1 well. There is another liability protection shield, if
2 you wish, and that's the abandoned mine program itself has
3 an exemption for liability for any federal statute. And
4 it's very -- We could talk about the things that that
5 covers, and it would cover every federal statute. The
6 thoughts when they put that -- when Congress put that on
7 was -- The abandoned mine program predates Superfund, and
8 some of these sites that had been worked on in the past
9 under the abandoned mine program had become Superfund
10 sites; for example, some work in Butte. The program that
11 we administer was concerned that they might eventually
12 become liable under those other statutes, and so they got
13 Congress to pass a blanket liability for other federal
14 statutes where you're following an approved abandoned mine
15 program. So there's protection there, as well.

16 MR. MIERS: After the project is cleaned up, what
17 happens to the property 30, 40, years from now? Does that
18 remain state property or does it transfer to the Parks,
19 does it transfer to the Forest Service?

20 MR. KOERTH: It could remain state property, it
21 could transfer. We're inserting a provision in the
22 consent decree that would allow transfer to another state
23 or local government entity without additional work being
24 done, you know, beyond what we're doing or additional
25 studies or any of that sort of thing. So we've got a

1 one-time transfer. You know, we've looked at -- We just
2 talked about it in a very loose sense. Park County has
3 expressed an interest if we get to that point. There may
4 be other parties, as well.

5 MR. MIERS: But it probably wouldn't go on the
6 market for private purchase?

7 MR. KOERTH: That would be a requirement in the
8 consent decree. This has some restrictions placed on it.
9 No, that's not likely to happen. So it would be used for
10 conservation, open space purposes.

11 There's a little bit of parcel that's actually right
12 there adjacent to Cooke City that you see on that map that
13 formerly had the camp facilities for that company; they
14 had their company houses and their boarding houses and
15 their mess halls and that sort of stuff located there.
16 And there's not tailings on that. It's a small parcel,
17 though.

18 MR. MIERS: Right.

19 MR. KOERTH: I guess there's a lot of waste
20 there. It doesn't look it because it's 30 feet deep and
21 it's been graded off and covered up. But it needs to be
22 moved if you're ever going to fix the water quality
23 problems in Soda Butte Creek.

24 MR. MARBLE: So the company that owns this will
25 be totally out of the picture and will not be coming back

1 in in the foreseeable future?

2 MR. KOERTH: They would be out of the picture.
3 There's a separate agreement being worked with that
4 company and EPA that essentially requires them to transfer
5 this property to us, if that's signed.

6 MR. MARBLE: When I looked over the appraisal, it
7 said it was marked down substantially. I suppose -- Is
8 this, in your opinion, then, the price that's to be paid,
9 pretty reasonable?

10 MR. KOERTH: I'm not aware of any 35-acre parcels
11 five miles from Yellowstone you're going to get for
12 \$58,000. I just don't know of any.

13 And just as an aside, I get calls a lot from people
14 who are realtors and people who are purchasing parcels. I
15 had someone call me about a month ago, and they were
16 looking to purchase a five-acre mill site in the
17 Tobacco Root Mountains that had tailings on it, and it was
18 a steal to them at a mere \$10,000 an acre. So I certainly
19 advised him to maybe hire -- if he had that kind of money
20 to throw around, to maybe hire an environmental
21 professional to do an assessment on it in more detail.
22 But he thought this was outrageously cheap at \$10,000 an
23 acre in the Tobacco Roots. I don't know.

24 There's been some letters of support sent, and I
25 believe everyone has received those, but there may be some

1 folks who would like to talk it. If there's more
2 questions, I'll be glad to answer them.

3 CHAIRMAN RUSSELL: All right, thank you.

4 I guess the way we'll do this, we'll take action on
5 this, and then we'll double-back to the briefing item,
6 since they are somewhat exclusive.

7 MR. MARBLE: Need to hear from people.

8 CHAIRMAN RUSSELL: And we will be doing that.

9 Is there anyone in the audience that would like to
10 speak to this matter before the Board? If you would like
11 to speak, then you need to come up here and state your
12 name and where you're from.

13 MS. HUMISTON: I brought a lot of water with me,
14 and it is water. I haven't done this for a long time, and
15 I appreciate being here today.

16 Chairman Russell, members of the Board, I thank you
17 for the chance to speak to you today about the proposed
18 purchase of the property for the McLaren tailings
19 repository. And you have just seen those lovely,
20 beautiful pictures, and that's where I live.

21 My name is Joan Humiston, and I'm from Cooke City,
22 Montana, the northeast entrance to Yellowstone Park. My
23 husband Bill and I are native Montanans, and I was
24 actually born here in Helena a long time ago. We
25 graduated from Bridger, Montana, the Bridger High School,

1 and we lived in Billings for many years, as well, going
2 back and forth to Cooke City, working during the summers
3 and then staying in Billings in the wintertime. We
4 ultimately moved up to Cooke City 30 years ago, and we've
5 been there ever since year around. And that's not easy
6 for everybody, and not everybody wants to do that. We
7 live, actually, three miles out of Cooke City, and so we
8 snowmobile back and forth to town each day to work.
9 That's fun, though.

10 I am here on behalf of Beartooth Alliance, an
11 affiliate of Northern Plains Resource Council since 1991.
12 We have at least 100 members in our affiliate and
13 represent a strong cross-section of the community. I will
14 keep my comments brief.

15 If you have been to the Cooke City area, I don't think
16 it would be hard for you to imagine why we want to protect
17 it. Like many summer visitors who pass through our
18 community, I place a high value on its scenic beauty and
19 natural wonders. Indeed, many of our members make their
20 living because people come here to recreate and enjoy the
21 abundant outdoor activities that Cooke City has to offer.

22 A threat to Cooke City's splendor and recreational
23 opportunities is the McLaren tailings, which has been
24 explained to you already. The dam enclosing the tailings
25 was never anchored when it was built, so the entire

1 tailings are unstable. In a part of the state where
2 seismic activity is always a real prospect, the tailings
3 present a continuous threat of catastrophic failure
4 through either earthquakes or flooding. This could result
5 in toxic materials running all the way down to the
6 Lamar Valley into Yellowstone Park, which, itself, forms
7 an important part of our local economy. However, the more
8 predictable threat is the ongoing pollution from the
9 McLaren tailings.

10 The site contains over 150,000 cubic yards of tailings
11 material that pollutes Soda Butte Creek year in and year
12 out through simply day-to-day weather. It leaves a
13 streambed of rusty, iron color, which you saw in the
14 pictures, and seriously disrupts aquatic life in the
15 watershed. The EPA leveled the site and covered it with
16 the soil in 1995, but that soil is eroding away. We are
17 in need of an approach that will resolve the problem
18 instead of simply postponing it.

19 The value of Soda Butte Creek should not be
20 underestimated. It is an important attraction in our
21 area. Many of us work as fishing guides or provide
22 services and products to our fishermen. Indeed, at the
23 tailings site, there are no fish. We only start to see
24 fish some distance down from the tailings, and the density
25 increases as we move closer to the park. It is important

1 to our community this natural resource be protected, and
2 the purchase of the McLaren repository site is a step in
3 ensuring that.

4 The tailings form an open area of 12 acres that could
5 be put to better use. Right now, there are no real
6 restrictions on entering the site, and we often see
7 children and even adults entering the contaminated area.
8 This poses a threat to human health and safety and
9 highlights a need for open grounds, such as a city park,
10 that would expand the rate of recreational opportunities
11 for people living in and visiting the area.

12 I encourage you to approve the purchase of the McLaren
13 repository site. It is an investment in the economic
14 future of the Cooke City area, and it will help us to do
15 our part to keep Montana the kind of place that people
16 from all over come to visit. And I thank you for your
17 time, and I would encourage you to come visit us in
18 Cooke City.

19 Thank you very much.

20 CHAIRMAN RUSSELL: Thank you, Joan.

21 Anyone else?

22 MS. ISRAEL: I appreciate the opportunity to
23 speak to you all, too. My name is Nellie Israel. I have
24 been chair of the Beartooth Alliance for the past
25 six years. Since the beginning of the reclamation of the

1 New World Mine waste in 2001 by the U.S. Forest Service,
2 BA has urged the reclamation of the Forest Service and
3 private land not covered by the New World Mine consent
4 decree of 1996.

5 I must say, thanks to our efforts and the cooperation
6 of the Forest Service and the DEQ, their portion of two
7 small toxic tailings has been -- well, actually, two small
8 toxic tailings credited wholly to the Forest Service has
9 been deposited into the present New World repository. I
10 feel this action on the part of the Forest Service has
11 made it possible for the DEQ to move ahead on the removal
12 of the tailings that sit on the private land. To their
13 credit, Montana DEQ drafted an EE/CA which BA has
14 approved, and Beartooth Alliance, I must say, has a
15 remarkable membership that includes the expertise of
16 Mike Whittington, water hydrologist, and Jim Kuipers, mine
17 reclamation consultant, who helped us with the final
18 decision on the DEQ's preferred alternative plan.

19 On a totally other note involving the fishery of
20 Soda Butte Creek, not only would fish return to the stream
21 and be edible, but it would also allow this section of
22 Soda Butte Creek to be potentially one of the only secure
23 populations of -- I said "the native species" -- fish,
24 which are the cutthroat trout, which we're trying to save
25 within Montana.

1 We had all kinds of complications involving
2 Forest Service land, private land, and national and state
3 politics, the liability connected with it, but a solution
4 to the removal of the large tailings sitting on Cooke City
5 is now possible, and I urge you to approve the purchase of
6 the Camjac property by the Montana DEQ.

7 Thank you very much.

8 CHAIRMAN RUSSELL: Thanks, Nellie.

9 Anyone else?

10 MS. VARNES: Chairman Russell and members of the
11 Board, I'm Barbara Varnes, a Montanan born and residing in
12 Billings my entire life, and I would leave you to
13 determine how long that is. Also, we have a modest cabin
14 in Cooke City. We've had it for over 40 years. And
15 Cooke City is a beautiful, fragile, place. We Montanans
16 are always involved in protecting our water. We only ask
17 that whatever action is taken, that that process is done
18 right to protect our water.

19 When we realize that three tributaries at the
20 headwaters of the Yellowstone River are in the mountains
21 of Cooke City, we really need to be concerned and protect
22 these headwaters, as the Yellowstone River flows through
23 Yellowstone National Park to the Missouri and to the
24 Mississippi. The major threat to the Soda Butte tributary
25 of the Yellowstone is the McLaren tailings. I live by the

1 tailings and Soda Butte Creek and am a witness to the
2 erosion over time from heavy rains, snowmelt, and the
3 public use of these toxic tailings. This is serious
4 business.

5 Senator Baucus and Senator Tester have succeeded in
6 getting \$1.1 million for a study of the Yellowstone River
7 to identify possible threats and ways to protect it. The
8 McLaren tailings pose an ominous threat, and I feel we
9 should seize the opportunity to remove these tailings. We
10 would be taking the lead in this movement to protect the
11 Yellowstone River and the future of this very fragile
12 valley which supports the northeast entrance to
13 Yellowstone National Park. And I would really plead and
14 urge with you to help get rid of the biggest threat that I
15 see to the Yellowstone in honor of this study that's going
16 to be done to protect and take away all the threats that
17 the Yellowstone has.

18 I've left a copy of the article in the "Billings
19 Gazette" for you to read regarding that money that
20 Senator Baucus and Senator Tester have received. And it
21 didn't fit on the computer, so I had to hand-write the
22 last few sentences, but it's there.

23 Thanks.

24 CHAIRMAN RUSSELL: Thanks, Barbara.

25 Anyone else?

1 (No response.)

2 CHAIRMAN RUSSELL: Okay, thanks for your
3 comments.

4 Bill.

5 MR. ROSSBACH: Yes. Mr. Koerth, could you tell
6 us exactly -- or maybe John or Tom, can you tell us what
7 exactly we need to have in an appropriate motion to go
8 forward on this? Do you need just a motion authorizing
9 the Department -- I mean, why don't you spell out the
10 motion you think we need?

11 I'm sorry to preempt you, Mr. Koerth, but I want to
12 make sure we get this right.

13 MR. NORTH: Mr. Chairman, Mr. Rossbach, I think
14 if you look at the department recommendation, it is
15 written with the statute in mind. What the motion needs
16 to say is that it needs to be a motion for the Board to
17 purchase the property at the appraised rates or, for the
18 other two pieces, at the appraisal that was conducted by
19 the Forest Service. The statute is somewhat of an
20 aberration. When the -- when the bill creating DEQ and
21 the BER was passed in '95, it really should have been "the
22 Department." It was the Board of Land Commissioners, and
23 that statute was missed. The one in the Strip Mine Act
24 was not missed, so if this were a coal mining property, it
25 would be the Department purchasing. But anyway, the main

1 point is that it needs to be the Board voting to purchase
2 the property.

3 MR. ROSSBACH: Do we need, also, any
4 authorizations for anyone, like for the chairman to sign
5 appropriate documentation? What else do we need in the
6 motion?

7 MR. NORTH: I think that would be a good idea,
8 yeah.

9 MR. ROSSBACH: Well, I -- Is there any more
10 discussion?

11 CHAIRMAN RUSSELL: (Indicating negatively.)

12 MR. ROSSBACH: Well, this -- Maybe this is too
13 personal. This issue comes -- it's so close to my heart
14 that I have to make the motion. July 1972, July 15th,
15 approximately, I spent the evening in a tent somewhere
16 near the New World Mine site after having flown in from an
17 east coast city, which shall remain nameless, and
18 basically, from that day forward, I've been a Montanan.
19 So the mine tailings issue in the New World Mine site,
20 Cooke City area, the Bearhooths in general, is as
21 important to me as anything there is in terms of what I
22 have done and what I want to continue to do.

23 So I would therefore make the motion to authorize the
24 Board to acquire the property at the appraised value and
25 purchase the two properties currently owned by the

1 Forest Service listed at appraised value determined by the
2 Forest Service and to further authorize the board chair to
3 sign any appropriate documents necessary to fulfill this
4 function.

5 MS. SHROPSHIRE: I'd like to --

6 MR. MARBLE: Second.

7 MS. SHROPSHIRE: -- second it.

8 CHAIRMAN RUSSELL: I think Robin beat you.

9 MS. SHROPSHIRE: Sorry.

10 CHAIRMAN RUSSELL: All right, it's been seconded
11 by Robin. Any further discussion?

12 (No response.)

13 CHAIRMAN RUSSELL: I certainly don't want to
14 delete what Bill just said. All those in favor signify by
15 saying "aye."

16 (Vote.)

17 CHAIRMAN RUSSELL: Opposed.

18 (No response.)

19 CHAIRMAN RUSSELL: All right. With that, we will
20 move to the last item on the agenda as we back up to a
21 briefing on the water quality standards for the New World
22 Mining District.

23 MS. MARKS: Mr. Chairman, members of the Board,
24 for the record, my name is Mary Beth Marks. I am with the
25 USDA Forest Service on the Gallatin National Forest, and

1 I'm the on-scene coordinator for the New World Mining
2 District Response and Restoration Project.

3 I am pleased to come before you today to update the
4 Board with the progress we have made on the New World
5 Response and Restoration Project. For this briefing,
6 we've assembled a few handouts which are being passed out
7 right now that summarize the results of the surface water
8 quality data collected in 2006. These data show the
9 positive impact our reclamation efforts have made on the
10 water quality in Fisher Creek and Daisy Creek since we
11 began cleaning the district up, the waste sites in the
12 district, in 2001.

13 I am happy to report that in October of last year, we
14 completed the construction of the last large earthmoving
15 project that we have planned for the district, which was
16 the capping of mineralized and disturbed soils in the
17 Como Basin. If you look at the first two figures in the
18 handout, you can see the Como Basin is located towards the
19 middle of the map area, so Figure 1 is an overview of the
20 area, and then Figure 2 also shows the surface water
21 sampling stations. While we still have decisions to make
22 on some remaining sources of mining-related contaminants
23 on district property, including the final decision on what
24 to do with the remaining 10 added discharges, all major
25 sources have been addressed.

1 The Como Basin Project, which lies in the headwaters
2 of the Fisher Creek, was the second phase of the
3 Glengarry Mine closure. Previous to this project, in
4 2004, we completed hydraulic plugging and backfilling of
5 the Glengarry Mine to eliminate an acidic and metals-laden
6 discharge to Fisher Creek. In 2005, along with several
7 other waste dump removals, we also completed the removal
8 of the Glengarry waste rock dump, which was directly
9 impacting water quality in Fisher Creek. The Glengarry
10 discharge historically accounted for the majority of the
11 copper load measured in the creek during low flow periods,
12 although during high flows, there were several other major
13 sources of copper and other metals in Fisher Creek,
14 including runoff from Como Basin and ground water inflows.

15 The third page of your handout is a table, Table 1,
16 that shows the percent reduction in flow concentration and
17 metals load that resulted from the closure of the
18 Glengarry Mine. As you can see, the average reduction in
19 concentration measured to date is 90 percent, shown at the
20 bottom of that table. Figure 3 shows the change in
21 concentration measured in Fisher Creek at Station SW-3,
22 the first water quality station on the stream, which is
23 located several hundred yards downstream of the historic
24 discharge and shows the data under both low and high flow
25 conditions. As you can see, substantial reductions, more

1 than 50 percent, have been measured under both flow
2 conditions for iron, manganese, and lead, with lesser
3 reductions measured for aluminum, cadmium, copper, and
4 zinc.

5 On the fourth page of the handout are Graphs 4 and 5
6 of copper concentration in Fisher Creek at two stations,
7 SW-3 and CFY-2. As you can see, we now meet aquatic
8 standards for copper at CFY-2 during part of the year,
9 during the winter low flow period between November and
10 May, but we still have a way to go to meet these standards
11 at SW-3 and in the headwaters of Fisher Creek. We are
12 expecting to see some improvement in copper, lower
13 concentrations, as a result from the Como Basin cap.

14 Other projects of note that were completed under this
15 response and restoration include capping the McLaren Pit,
16 which was the largest disturbance in the district and
17 comprised about 67 percent of total waste on district
18 property. This work was completed in 2003. As the
19 McLaren Pit is located in the headwaters of the
20 Stillwater River, it is one of the major contributors to
21 water quality degradation in this drainage. Cleanup work
22 at this site involved consolidating a considerable volume
23 of waste into the former pit and constructing a
24 geomembrane cap and soil cover over the consolidated waste
25 rock. This 11-acre capping system is intended to

1 eliminate percolation of snowmelt and rain through the
2 waste rock and thereby reduce the loading of metals that
3 has historically discharged from the pit to Daisy Creek.

4 Figure 6 shows you the changes in metal concentration
5 measured in Daisy Creek that can be attributed to the
6 capping of the McLaren Pit waste. At Station DC-2, the
7 most dramatic changes have been measured during high flow
8 conditions, when the large volume of snow that collects on
9 the capped area, which has historically leached through
10 the waste, now runs off as uncontaminated water. The
11 results during low flow conditions are not as robust, but
12 measurable decreases have been realized for all the metals
13 monitored except for zinc. Figure 7 shows you the trend
14 in copper concentrations measured at this station over the
15 years.

16 In the Stillwater River, at Station SW-7, water
17 quality is consistently better and meeting aquatic
18 standards during all times except high flow conditions
19 that occur during June and July, and you can see this on
20 Figure 8. A considerable amount of suspended sediment is
21 scoured and moves through the stream during this flow
22 period and likely accounts for these exceedances of the
23 aquatic standards. For the third year in a row, there
24 were no exceedances of aquatic life standards at this
25 station based on a dissolved analysis.

1 No temporary or narrative standards were exceeded in
2 2006 on the Daisy Creek or Stillwater River drainages. In
3 Fisher Creek, the temporary standard for total recoverable
4 zinc was exceeded in one sample event, but this appears to
5 be an anomalous occurrence based on the dissolved
6 concentration for that sample.

7 We continue to believe that the reclamation activities
8 completed and planned for the future will see successful
9 and incremental improvements in water quality in each of
10 the three drainages. We further believe that the best
11 cleanup activities have been selected and are being
12 implemented for these drainages.

13 This completes my update to you, and I thank you for
14 your attention and would be glad to answer any questions
15 that you may have.

16 CHAIRMAN RUSSELL: Thanks, Mary Beth.

17 Does anyone have any questions?

18 MR. MARBLE: I'd just like to say, I'm glad to
19 see you making such good progress. I remember some time
20 some ago, I was up at Cooke City when you had a rally up
21 there trying to get all this started. I don't know how
22 many years ago that was, but it looks like progress has
23 been made, so congratulations.

24 And I'd also like to thank the abandoned mines people
25 for hanging in there and getting this work done with very

1 little fanfare. Thank you.

2 CHAIRMAN RUSSELL: All right.

3 MS. MARKS: Thank you.

4 CHAIRMAN RUSSELL: Thank you.

5 Anything further, Board, before we take general public
6 comment?

7 (No response.)

8 CHAIRMAN RUSSELL: All right. This is the time
9 in the meeting that we will take general public comment
10 from anyone in the audience. Anyone wish to speak to the
11 Board?

12 (No response.)

13 CHAIRMAN RUSSELL: Seeing none, I'll entertain a
14 motion to adjourn.

15 MR. MARBLE: I move we adjourn.

16 MR. ROSSBACH: Second.

17 CHAIRMAN RUSSELL: It's been moved and seconded.

18 All those in favor.

19 (Vote.)

20 CHAIRMAN RUSSELL: We're adjourned.

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

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